



South Pacific
LAWYERS' ASSOCIATION

Legal Professional Regulation in the South Pacific

September 2017



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About the South Pacific Lawyers Association

The South Pacific Lawyers' Association (SPLA) was established in 2007 by Pacific Bar leaders, with support from the International Bar Association (IBA), the Law Council of Australia and the New Zealand Law Society. The Secretariat for SPLA is hosted by the Law Council.

The goals of the SPLA are:

- to represent the interests of the legal profession in the South Pacific region within the region and internationally;
- to support the development of independent peak legal professional bodies in the South Pacific region.

The members of the SPLA are:

- America Samoa Law Society;
- Cook Islands Law Society;
- Fiji Law Society;
- Kiribati Law Society;
- Law Council of Australia;
- Marshall Islands Law Society
- New Zealand Law Society;
- Niue Lawyers;
- Norfolk Island Bar Association;
- Papua New Guinea Law Society;
- Samoa Law Society;
- Solomon Islands Bar Association;
- Timor L'este Bar Association (AATL);
- Tonga Law Society;
- Tuvalu Lawyers;
- Vanuatu Law Society.

Acknowledgement

The Law Council and the SPLA wish to acknowledge contributions by SPLA member associations and their executive committees in facilitating collection of primary materials and providing substantive feedback on draft versions of this Report. This Report is a significant step by the legal profession in the region to improving understanding of approaches to regulation of lawyers and legal professional ethics.

We also wish to acknowledge the support of the Pacific Islands Law Officers Network (PILON) for having supported the development of this initiative since 2008 and the Australian Attorney-Generals' Department, for its financial contribution to support the substantial research which has gone into producing this Report.

A number of authors made a substantial contribution to this Report. Dr Radhika Withana was instrumental in conducting initial research and preparing the first draft of the Report. Dr Withana is a barrister at the New South Wales Bar. David Naylor, Administrator of the SPLA from 2008-2014, oversaw the creation and development of the SPLA Model Rules Project. Mr Naylor has made valuable contributions in the comparative analysis, substantive drafting and editing of the Report. He is currently a Lecturer at the School of Law at the University of the South Pacific. The SPLA also wishes to recognise the valuable contributions of John Farrell and Catherine Brims to the preparation and finalisation of the Report.

Finally, the Law Council and the SPLA wish to acknowledge the contribution by the SPLA's founding Chair Ross Ray QC. Ross was one of the driving forces behind the establishment of the SPLA Steering Committee at the inaugural Pacific Roundtable in November 2007 and was the elected Chair of the SPLA Executive until his untimely passing in 2016. Ross was instrumental in first proposing the South Pacific Model Rules Project to SPLA Steering Committee members at the Fiji Law Society Annual Convention in July 2008 and overseeing the development of the project, including this Report. Ross was a champion of legal education and development of the legal profession in the region. Without Ross, this important work by the Law Council and the SPLA would have never commenced.

Executive Summary

Introduction

1. The legal profession must be subject to clear, comprehensive, and transparent Rules of Professional Conduct to ensure the integrity of the legal profession.
2. The objective of this Report is to identify and discuss relevant considerations for developing model legal professional conduct rules and complaints and discipline handling procedures ('model rules and procedures') in the South Pacific region. These considerations include:
 - The geographical coverage of possible model rules and procedures;
 - The need and/or desire of South Pacific countries within that coverage for model rules and procedures for the legal profession;
 - Possible content, format and structures for model rules and procedures;
 - The advantages/disadvantages of model rules and procedures (to clients, court, society, the profession and to law societies);
 - Economic, social/cultural legal and political barriers to the development and implementation of model rules and procedures; and
 - The likely costs of conducting a project to develop model rules and procedures.
3. Each jurisdiction examined in this Report has in place some form of regulation of the legal profession. While there appears to be a general agreement on the value of such governing rules and procedures, the vast divergence across the South Pacific identified in this Report suggests that detailed model rules and procedures are not feasible at this point in time. Instead, general model rules and procedures, which can be tailored to meet the specific needs and requirements of each jurisdiction, provide a more viable option. It is noted that further regional consultation is key to this development.
4. In order to aid future discussions on the creation of general model rules and procedures, this Report identifies common areas for improvement in existing South Pacific rules, legislation and regulations governing the legal profession. It does not consider it appropriate to analyse the likely costs of a project to develop model rules and procedures at this time without commitment from local Government.
5. While development of model rules and procedures themselves are beyond the scope of this Report, a tailored version of the *International Bar Association's Principles of Conduct for the Legal Profession ('IBA Principles')*¹ have been provided as an appropriate starting point for future work.

¹ Appendix 1.

Methodology

6. This Report analyses existing rules, legislation and regulations governing the legal profession in the South Pacific region.
7. Current legislation, regulations and rules of professional conduct were requested from SPLA members in the following jurisdictions:²
 - Cook Islands
 - Federated States of Micronesia
 - Kingdom of Tonga (Tonga)
 - Kiribati
 - Nauru
 - Norfolk Island
 - Marshall Islands
 - Palau
 - Papua New Guinea
 - Pitcairn Islands
 - Republic of the Fiji Islands (Fiji)
 - Samoa
 - Solomon Islands
 - Tokelau
 - Tuvalu
 - Vanuatu
8. Legal Profession Acts (LPAs) were compared and analysed based on how they deal with:
 - The admission of lawyers to legal practice;
 - Regulations regarding trust accounts;
 - Costs disclosures and cost agreements and their relationship to disciplinary processes and governance of the conduct of the legal profession;
 - The coverage and content of existing legal professional conduct rules in the South Pacific region; and
 - The processes for dealing with professional misconduct and discipline of lawyers.
9. Research was undertaken by the Secretariat of the South Pacific Lawyers' Association (SPLA) to identify possible social, cultural and political barriers to reform, and coverage of possible model rules. This was provided to the SPLA Executive for consideration, and comments received were incorporated into the Report.
10. Following suggestions from the SPLA, reference was made to the *International Bar Association's Principles of Conduct for the Legal Profession ('IBA Principles')*³ as a basis for future model rules and procedures. A tailored version of these rules is provided for comment as part of the Report.

Key Findings

11. Varied local situations necessitate a general approach to model rules and procedures. A common agreement on the content of these would provide a solid basis for advancing the regulation of the profession in the region.
12. Analysis of the existing of the legislation, regulations and rules of professional conduct in each country, and discussions held with the SPLA and the Pacific Islands Law Officers' Network,

² Pacific Islands Forum member countries not included in the Report include Australia, New Zealand and Niue. Other countries in the region which were not included in the Survey include American Samoa, Wallis and Futana and Francophone jurisdictions.

³ Appendix 1.

demonstrates a general agreement on the benefit of regulation of the legal profession. However, for various reasons, some lawmakers across the region have not focused on legal profession regulatory reform, despite advocacy in these countries for change. This further supports the adoption of general model rules and procedures by the profession as a starting point for future reform.

13. The review undertaken in this Report indicates significant omissions and/or challenges in some jurisdictions to clear, comprehensive and transparent regulation of the legal profession. While not present in all jurisdictions, these include:

- An absence of provisions subjecting a lawyer to disciplinary actions if he or she fails to make full disclosure of information upon admission that may affect an assessment of good character.⁴
- An absence of any character requirements for practising certificates and disciplinary consequences flowing from failure to disclose matters that may affect an assessment of suitability to practice.⁵
- No mandatory requirement for Professional Indemnity ('PI') insurance as a requirement for the issue of a practising certificate.⁶
- In jurisdictions that provide for practise solely as a barrister in a fused system,⁷ professional conduct rules do not appear to define separately the standards of professional conduct for legal practitioners acting solely as a barrister, other than Samoa. Notably, Samoa's rules apply to practitioners generally but focuses one Chapter entirely to "barristersole" who have been briefed as barristers.
- A general failure to address how trust account money is to be dealt with and the disciplinary consequences for failing to properly administer trust accounts and/or deal with trust account money and trust account property. Significantly, in jurisdictions without legislation dealing specifically with trust account money, there is no statutory prescription for how client's money should be kept and dealt with or any statutory prescription of disciplinary consequences arising from the failure to properly deal with trust accounts and trust property. As a consequence this is left to the common law to resolve.⁸
- A lack of disciplinary consequences arising from the charging of excessive legal costs in connection with the practice of law.⁹
- An absence of detailed provisions governing a lawyer's disclosure obligations to prospective clients, including requirements in any formal cost agreement and provisions for setting aside or varying of cost agreements. There also appears to

⁴ For example, there is no obligation to disclose past convictions, especially for dishonesty offences, as matters touching on an assessment of good character, except in Samoa where s26(5)(c) makes failure to divulge any information which is relevant to the issuing of a practising certificate an offence.

⁵ None of the regulations examined create liability from failure to disclose matters that may affect an assessment of suitability to practice except Samoa.

⁶ Only Papua New Guinea and Norfolk Islands have these requirements. The Cook Islands and the Republic the Fiji Islands mention the requirement but do not have a mechanism for ensuring that PI Insurance is held.

⁷ Jurisdictions which separately define barristers are the Cook Islands, Kiribati, Nauru, Palau, The Norfolk Islands, the Pitcairn Islands, Samoa and Vanuatu.

⁸ Jurisdictions without trust account provisions are the Federated States of Micronesia, Kiribati, Marshall Islands, Solomon Islands, Palau, Pitcairn Islands, Tonga, Tuvalu and Vanuatu.

⁹ Jurisdictions with provisions that address disagreement over reasonable costs include the Kingdom of Tonga, Norfolk Islands, Papua New Guinea, The Republic of the Fiji Islands, Samoa,

be a lack of enforceable consequences where cost agreements do not meet the formalities where they are stipulated.¹⁰

- Limited statutory regulations on contingency fees, setting aside and variation of cost agreements, and provisions concerning recovery of costs for clients.¹¹
- Non-existent or inadequate professional conduct rules. Where present, conduct rules often do not comprehensively cover professionalism of lawyers in and out of court, nor interactions with clients or between members of the profession.¹²
- A lack of clarity regarding complaint making procedures such as provisions for acknowledging receipt of a complaint, the creation of a file, the notification of the relevant practitioner, the gathering of evidence, and so on, and a lack the relevant criteria for proceeding with disciplinary hearings of clarity in.¹³ Further, many of the primary materials considered do not clearly specify what procedures will apply to such hearings and whether the hearings are to be in public, the composition of any tribunal and whether there is a right to legal representation.

14. These findings demonstrate potential areas for improvement in the content, format and structure of model rules and procedures. Further, the Report notes that the *IBA Principles* address these issues across the South Pacific region and may provide a useful foundation for the development of future model rules. A tailored version has been suggested as a basis for further discussion and consultation.

15. Different legal and political climates have slowed many reform efforts in developing countries. It is noted that, while the Report considers only the existing arrangements, several jurisdictions are contemplating amendments to existing legislation in this area which will hopefully remedy many of these omissions/difficulties.¹⁴

Next Steps / Further Research

16. This Report forms only the first stage in the development of model legal profession conduct rules and complaints and discipline handling procedures for the South Pacific. It is suggested that further research be undertaken into:

- The application of these existing arrangements in practice to further the development of model rules and procedures.
- Social, political and cultural barriers to legal profession law reform in each country.
- Any Non-State mechanisms for enforcing legal professional standards.

17. It is further suggested that government and regional organisations support initiatives which promote positive regional dialogue on legal professional standards, ethics and lawyer regulation in the region.

¹⁰ Disclosure requirements are addressed in some respect in the Federated States of Micronesia, Kingdom of Tonga, Kiribati, Marshall Islands, Nauru, Norfolk Islands, Papua New Guinea, the Republic of the Fiji Islands, Samoa and Vanuatu.

¹¹ Variation provisions are addressed in the Marshall Islands, Samoa, and Vanuatu.

¹² Countries with professional conduct rules are: the Cook Islands; Kingdom of Tonga; Marshall Islands; Nauru; Norfolk Island; Palau, Papua New Guinea; Republic of the Fiji Islands; Samoa; Solomon Islands; and Vanuatu.

¹³ The Kingdom of Tonga, Kiribati, the Republic of the Fiji Islands, Samoa and Vanuatu have some requirements for the making of complaints.

¹⁴ For example, Legal Profession Bill 2014 (Solomon Islands); Law Practitioners' Bill 2016 (Cook Islands); Law Practitioners' Regulations 2016 (Cook Islands); Legal Profession Act 2005 Vanuatu.

1 Introduction

1.1 Objective of the Report

18. This Report identifies and discusses relevant considerations for developing model legal professional conduct rules and complaints and discipline handling procedures ('model rules and procedures') for the legal profession in the South Pacific region. These considerations include:
- The geographical coverage of possible model rules and procedures;
 - The need and/or desire of South Pacific countries within that coverage for model rules and procedures for the legal profession;
 - Possible content, format and structures for model rules and procedures;
 - The advantages/disadvantages of model rules and procedures (to clients, court, society, the profession and to law societies);
 - Economic, social/cultural legal and political barriers to the development and implementation of model rules and procedures; and
 - The likely costs of conducting a project to develop model rules and procedures.
19. The development of model rules and procedures themselves are beyond the scope of this Report. Further, it is not considered appropriate for this Report to analyse the likely costs of a project to develop model rules and procedures at this time without commitment from local governments.

1.2 Background to the Report

20. A proposal to develop model legal professional conduct rules for South Pacific countries was first discussed by members of the South Pacific Lawyers' Association (SPLA) at the inaugural South Pacific Roundtable in November 2007. At a meeting held during the Fiji Law Society Annual Convention 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 'minimum standards' available to member countries. The SPLA viewed this as a useful step towards raising awareness of professional ethical obligations and the creation and/or simplification of codes for legal professional conduct in South Pacific countries.
21. It was decided that the SPLA should liaise with the Pacific Islands Law Officers' Network (PILON) regarding the proposal. At its meeting on 5-9 December 2008 in Vanuatu, 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.'
22. This Report is the first step in furthering the South Pacific Model Rules Project. It reports on existing legal professional rules and complaints and discipline handling procedures for South Pacific countries and provide advice on the relevant considerations for the future development of Model Rules.

1.3 Methodology

23. This Report analysed existing rules, legislation and regulations governing the legal profession in the South Pacific region.

24. Current legislation, regulations and rules of professional conduct were requested from SPLA members in the following jurisdictions:¹⁵

- Cook Islands
- Federated States of Micronesia
- Kingdom of Tonga (Tonga)
- Kiribati
- Nauru
- Norfolk Island
- Marshall Islands
- Palau
- Papua New Guinea
- Pitcairn Islands
- Republic of the Fiji Islands (Fiji)
- Samoa
- Solomon Islands
- Tokelau
- Tuvalu
- Vanuatu

25. Data was organised into tables to facilitate comparative analysis on how existing legal profession legislation (LPA) in each jurisdiction dealt with:

- Admission of lawyers to legal practice;¹⁶
- Regulations regarding trust accounts;¹⁷
- Costs disclosures and cost agreements and their relationship to disciplinary processes and governance of the conduct of the legal profession;¹⁸
- Coverage and content of existing legal professional conduct rules in the south pacific region;¹⁹ and
- Processes for dealing with professional misconduct and discipline of lawyers.²⁰

26. The coverage and content of existing legal professional conduct rules was compared against baseline international guidance and best practice for the regulation of the legal profession. Particular reference was made to the *International Bar Association's Principles of Conduct for the Legal Profession ('IBA Principles')* and its *Guide for Establishing and Maintaining Complaints and Discipline Procedure*.²¹

27. Research was undertaken by the Secretariat of the SPLA into geographic coverage, barriers to reform, recommendations and next steps. This was provided to the SPLA Executive for consideration, and comments received via email, over the phone and during face to face meetings of members at the 2015 South Pacific Lawyers' Conference and incorporated into the Report.

¹⁵ Pacific Islands Forum member countries not included in the Report include Australia, New Zealand and Niue. Other countries in the region which were not included in the Survey include American Samoa, Wallis and Futana and Francophone jurisdictions.

¹⁶ Part 3.1 and Appendix 2.

¹⁷ Part 3.2.

¹⁸ Part 3.3 and Appendix 3.

¹⁹ Part 3.4 and Appendix 4.

²⁰ Part 3.5 and Appendix 5.

²¹ Appendix 1.

1.4 Structure of Report

28. This Report is split into 5 Sections, in addition to the introduction. These Sections address:

- The need for rules of legal professional conduct;
- An analysis of current legislation;
- Considerations for the implementation of model rules and procedures;
- Conclusions;
- Next steps; and
- Recommendations.

29. The analysis in Section 5 is further divided into 5 parts, dealing with:

- Admission of lawyers to legal practice;
- Regulations regarding trust accounts;
- Costs disclosures and cost agreements and their relationship to disciplinary processes and governance of the conduct of the legal profession;
- Coverage and content of existing legal professional conduct rules in the south pacific region; and
- Processes for dealing with professional misconduct and discipline of lawyers.

30. For simplicity, the majority of the research discussed in Section 5 has been displayed in the Appendices to the Report.

1.4.1 Legal Profession legislation in the South Pacific region

31. The following legislation, regulations and rules were examined for the purposes of producing the Report:

Jurisdiction	Primary materials
Cook Islands	<ul style="list-style-type: none">• <i>Law Practitioners Act 1993-94 (as amended by the Law Practitioners Amendment Act 2008)</i>²²• <i>Law Practitioners (Admission) Regulations 1994.</i>
Federated States of Micronesia	<ul style="list-style-type: none">• <i>Rules for Admission to Practice Before the Supreme Court of the Federated States of Micronesia 1981 (as amended 15 January 2001)</i>• <i>American Bar Association Model Rules of Professional Conduct 1983 ('ABA Model Rules')</i>
Kiribati	<ul style="list-style-type: none">• <i>Kiribati Law Society Act 2006</i>• <i>Professional Conduct & Practice (Kiribati Lawyers) Rules 2011</i>
Fiji	<ul style="list-style-type: none">• <i>Legal Practitioners Act 2009</i>• <i>Trust Accounts Act 1996</i>• <i>Legal Profession Act 1991</i>
Marshall Islands	<ul style="list-style-type: none">• <i>Rules for Admission to and for the Practice of Law 2015</i>• <i>American Bar Association Model Rules of Professional Conduct 1983 ('ABA Model Rules')</i>
Palau	<ul style="list-style-type: none">• <i>Rules of Admission for Attorneys and Trial Counsellors to Practice in the Courts of Republic of Palau 2001</i>

²² The Cook Islands Law Society Council is in the early stages of drafting a new Law Practitioners Bill which will repeal the Act.

	<ul style="list-style-type: none"> • <i>Rules of Admission to Practice Law and Limitations of the Practice of Law for Trial Counsellors in the Republic of Palau 1989</i> • <i>Disciplinary Rules & Procedures for Attorneys</i>²³ • <i>Lawyers Act 1986</i>
Papua New Guinea	<ul style="list-style-type: none"> • <i>Professional Conduct Rules 1989</i> • <i>Lawyers (Trust Account) Regulation 1990</i> • <i>Lawyers Admission Rules 1990</i>
Pitcairn Islands	<ul style="list-style-type: none"> • <i>Legal Practitioners Ordinance 2001</i> • <i>Legal Practitioners Act 1973</i>
Nauru	<ul style="list-style-type: none"> • <i>Barristers and Solicitors (Accounts) Rules 1973</i> • <i>Barristers and Solicitors (Remuneration: Non-Contentious Business) Rules 1974</i> • <i>Legal Practitioners Practice Rules 1973</i>
Norfolk Island	<ul style="list-style-type: none"> • <i>Legal Profession Act 1993</i> • <i>Legal Profession (Practice) Regulations 2008.</i>
Samoa	<ul style="list-style-type: none"> • <i>Law Practitioners Act 1976</i> • <i>Rules of Professional Conduct for Barristers and Solicitors of Samoa 2004</i>
Solomon Islands	<ul style="list-style-type: none"> • <i>Legal Practitioners Act 1996 (as amended)</i> • <i>Legal Practitioners (Professional Conduct) Rules 1995</i>²⁴
Tokelau	No act, regulations or rules
Tonga	<ul style="list-style-type: none"> • <i>Law Practitioners Act 1989</i> • <i>Rules of Professional Conduct for Law Practitioners 2002</i>
Tuvalu	No act, regulations or rules
Vanuatu	<ul style="list-style-type: none"> • <i>Legal Practitioners Act 2011</i> • <i>Legal Practitioners Act 1980</i>²⁵

1.4.2 Definitions

32. Throughout this Report, for the sake of brevity, several short-hand references will be adopted to refer to the legislation and rules listed above:

- Where reference is made to the relevant Legal Profession Act (LPA) or ‘the Act’ of a particular country the reference is to the primary LPA that is listed first for each jurisdiction in the table above.
- Similarly, where reference is made to the relevant Legal Profession Regulation (LPR) or ‘the Regulation’ of a particular country the reference is to the primary LPR that is listed first in each jurisdiction in the table above.
- Any reference to ‘the Rules’ means the professional conduct rules listed second in each jurisdiction. Where there is more than one set of Rules listed in respect of a particular jurisdiction then the relevant rules will be named in full.
- Where provisions are listed in brackets in discussion of a particular jurisdiction, the reference is to sections in the relevant LPA.

²³ This is not legislation created by the Palau Parliament but rules promulgated by the Palau Supreme Court.

²⁴ The Solomon Islands are currently reviewing new legislative arrangements to supplement current legislation.

²⁵ To be repealed by s 44(a) of the Legal Profession Act 2005 upon commencement.

2 The Need for Rules of Legal Professional Conduct

33. Rules of professional conduct are based on notions of legal professional ethics. Traditionally in Anglo-American legal systems, peak legal professional bodies have developed comprehensive rules to provide guidance to legal practitioners on the minimum standards of conduct required to meet their ethical obligations as lawyers.
34. Rules of professional conduct require lawyers to adhere to the highest standards of behaviour when representing clients, while also complying with selected high standards of conduct in dealings which could impact clients, or the reputation of the profession.
35. Professional ethics are influenced by the regulatory, professional and social infrastructure surrounding the legal profession. Generally, the greater the resources of legal profession regulators, and peak professional bodies, the more effectively lawyers can be educated and trained to adhere to high standards of legal professional conduct.
36. Notions of legal ethics are taught in law schools and, ideally, how a lawyer translates theory into practice is learned in the first few years of legal practice through supervised practise and mentoring and specific education in ethical legal practice. In many jurisdictions around the world, it is mandatory for lawyers to undertake continuing legal education in ethics and professional responsibility. The conduct of a lawyer is therefore affected by values and principles learned as a student and as a practitioner; from observation, imitation and specific training.
37. Legal profession regulators must ensure that rules of professional conduct are culturally and socially relevant, consensus driven, unambiguous and are capable of being enforced. Conduct rules for lawyers seek to set out the ethical values and principles by which the minimum standards of conduct for lawyers are set. To the extent that rules of professional conduct are socially irrelevant, contentious, vague or unenforceable, legal profession regulation is ineffective.
38. In addition to impacts on clients, the undermining of trust in the legal system and erosion of the rule of law, ineffective legal profession regulation has several deleterious effects:
 - Failure to effectively regulate lawyers (or any profession) contributes to an environment in which systemic corruption can thrive, particularly as lawyers necessarily draft laws, facilitate the transfer of property and are involved in the resolution of most commercial disputes.
 - Lawyers are intrinsically involved in all domestic and international trade. Ineffective regulation creates uncertainty in the effectiveness of dispute resolution which negatively impacts domestic and international trade – particularly foreign direct investment. Corruption and rent seeking behaviour by officials adds to the cost of doing business in the particular country.
39. As a result, it is desirable that the legal profession is subject to clear, comprehensive, and transparent rules of professional conduct to ensure the highest standards are upheld by legal practitioners.

3 Analysis of Current Legislation

3.1 Admission to Practice and Practising Certificates

3.1.1 Overview

40. Each LPA examined (other than Kiribati and Tuvalu) contains rules governing the admission to practice as a lawyer or legal practitioner. Each LPA has similar requirements for admission as a lawyer, although each jurisdiction differs in the terminology used to refer to lawyers (some use the general 'legal practitioner' or 'barrister and/or solicitor' or both) and differing provisions for the administration of admissions and the granting of admissions.
41. In each jurisdiction, admission to practice and practise as a lawyer has differing requirements. Usually, it is a requirement of practice that lawyers not only be admitted to practice, but that they have a valid practising certificate with fixed duration which must be renewed periodically (typically annually).
42. Each jurisdiction contains a roll of lawyers (howsoever described in the relevant jurisdiction). Practitioners sign the roll upon a successful application for admission.
43. A detailed summary of the legislation of the jurisdictions surveyed in relation to admission to practice and practising certificates is contained in *Appendix 2*.

3.1.2 Analysis and Recommendations

The Relationship between Good Character and Professional Discipline

44. An essential aspect of admission to practice is that the person admitted to practice is not only qualified, but also has good moral character. Admission as a lawyer is a privileged position in the community and one which requires a high degree of trust. The efficient administration of justice also requires that courts are able to trust lawyers who have the right of appearance.
45. Other than in Nauru there are different statutory tests for good character: whether the person is 'fit and proper' or of 'good character.' The essential question is what each jurisdiction's LPA provides, as a matter of law, for assessing good character. A glaring omission in many of the LPAs (other than Samoa) is the lack of provisions holding a lawyer liable for disciplinary actions if he or she fails to make full disclosure of information that may affect the outcome of his or her admission application in respect of matters that may affect an assessment of good character. Another omission is the absence of any character requirements for practising certificates and, similarly, disciplinary consequences flowing from the failure to disclose matters (such matters to be listed in the Act) that may affect an assessment of suitability to practise.
46. Typically, consequences flowing from a failure to disclose information relevant to admission may be to render admission void, as in the case of Samoa. Failure to disclose relevant information may also lead to a finding of professional misconduct or some lesser category of misconduct if the legislation so provides.
47. Legislative changes in this regard would serve to signal to the community and the legal profession the legislature's regard for the importance of candour in the admission process, the absence of which results in serious consequences for the individual who fails to provide full disclosure. Such legislative changes would serve to ensure that, not only is a practice of full disclosure engendered among applicants for admission (and renewal of practising certificates),

but that there is redress for any such failure. This also serves as a powerful deterrent to others in the profession. Similar considerations apply with respect to criminalising the failure to obtain a practising certificate prior to practice by a lawyer who is admitted, which some of the jurisdictions (Solomon Islands, Vanuatu, Norfolk Island, Kiribati and Tuvalu) do not contain.

Professional Indemnity Insurance

48. PI insurance, importantly, offers protection to the consumers of legal services in the event of their lawyers' negligence. It protects them from loss incurred as a result of that negligence, particularly in circumstances where the lawyers would not have the resources to pay consequential damages.
49. A majority of the LPAs examined do not contain provisions requiring lawyers to take out PI insurance or making it a requirement for the grant of practising certificate.
50. One explanation for this may be that the rate of litigation for professional negligence (and misconduct) is not high enough to warrant such a provision. Additionally, the insurance market in South Pacific countries is significantly smaller than elsewhere. Nonetheless, the jurisdictions in which PI insurance is not addressed in the LPA or as a requirement for the issue of a practising certificate may wish to consider whether, as a matter of policy, such a requirement should be inserted into their LPA having regard to future size of the profession in light of local social and economic conditions.
51. A further consideration should be to examine the circumstances under which an insurer may be able to provide PI insurance affordably to lawyers in each jurisdiction.

Barrister and Solicitor: A Fused System

52. Most jurisdictions have a fused legal profession in that all lawyers are admitted to the Bar and thus qualified to practise as barristers or solicitor, or both. The usual formulation in each jurisdiction is to recognise that a person is qualified to be admitted as a 'barrister or solicitor' or as a 'barrister and solicitor' of the relevant courts.
53. This is in contrast to the United Kingdom and certain jurisdictions in Australia, such as New South Wales and Victoria. In Australia, there is no fusion of the two branches of the legal profession. While solicitors still have the right of audience in all courts, the admission and certification of barristers is governed by a separate body (usually a State Bar Association). Barristers are instructed by solicitors, are strictly regulated on the circumstances in which they may receive instructions from members of the public directly, and are excluded from lodging and signing court documents (such as pleadings) and holding and dealing with trust money.
54. Where the jurisdictions provide for practice solely as a barrister (e.g. where the legislation provides for admission to practice as 'barrister or solicitor' it would be prudent to have professional conduct rules directed to conduct as a 'barrister sole.' Some jurisdictions provide for this.
55. The remaining jurisdictions that do not provide separate rules of a kind similar to Samoa should consider amending their Professional Conduct Rules to separately define the standards of professional conduct for legal practitioners acting solely as a barrister.

3.2 Trust Accounts

3.2.1 Overview

56. Lawyers commonly receive monies from a client or a third party to be held for, or on behalf of, a client or a third party. For example, money may be received for holding in a convenient location prior to disbursement, pending the happening of some event (e.g. money for payment of certain taxes and duties when they fall due for payment), or for the payment of experts in the course of litigation.
57. At common law, where monies to an agent are to be held for the benefit of another, the agent becomes a trustee of that money. Thus for the lawyer, holding money for, or on behalf of, another person or entity (whether for the client or lawyer at the direction of a client) serves to constitute the lawyer as trustee of that money. The lawyer holds the legal title, and the party for whose benefit the money is held holds beneficial interest in the money. The money received and held on behalf of another should be kept separate from the practice trading accounts of the lawyer. Once the funds are merged, the interests of the third party are potentially at risk.
58. Due to the risk to clients and third parties of malpractices by lawyers in relation to trust money, it is important that provisions are made to: ensure the correct handling of trust money; prevent and punish misuse of trust money; and to provide a remedy (such as payment from a compensation fund) to innocent parties.

3.2.2 Primary Materials

59. Six of the LPAs address the issue of how trust account money is to be dealt with and the disciplinary consequences for failing to properly administer trust accounts and/or deal with trust account money and trust account property. Those jurisdictions that do include trust account provisions are:
- the Cook Islands (ss22-28);
 - Fiji (*Trust Accounts Act 1996*);
 - Nauru (Barrister and Solicitors (Accounts) Rules 1973);
 - Papua New Guinea (ss 75 – 79 of the LPA and Lawyers (Trust Account) Regulations)
 - Samoa (ss37-39);
 - Norfolk Island (ss 22-32).
60. Those jurisdictions that do not include trust account provisions are:
- Federated States of Micronesia;
 - Kiribati;
 - Marshall Islands
 - Solomon Islands;
 - Palau;
 - Pitcairn Islands;
 - Tonga;
 - Tuvalu;
 - Vanuatu.

61. In jurisdictions where the requirements for trust accounts and dealing with trust money is not addressed in legislation, this is a stark omission and one that requires serious consideration in view of the trust vested in lawyers with respect to trust money.

3.2.3 Analysis and Recommendations

General Comments on Trust Accounts

62. At present, in jurisdictions where there is no legislation governing what solicitors do with money held on trust by them for the benefit of their client or a third party, the only remedy available against a lawyer who misuses the money held on trust would be found in the general law. This includes a declaration that the lawyer holds the money on trust in the manner of a resulting (or more specifically, quistclose trust) or constructive trust.

63. Significantly, in jurisdictions where there are no provisions for dealing with trust money, there is no statutory prescription for how that money should be kept and dealt with. Matters which are not addressed include:

- A requirement that lawyers deposit money received for, or on behalf of, any person to be held exclusively for that person into a trust account with a financial institution;
- Regulations to ensure that the lawyer's own monies relating to the practice are held in an 'office account' or in some other way kept separate from, and not co-mingled with, money held for and on behalf of clients;
- Detailed prescriptions for lawyers' to account for money received for and on behalf of another person emphasising the requirement for, and procedures concerning, the accurate, accessible and ordered account of such money. Such as:
 - The requirement to give account on request of the client;
 - The requirement that trust accounts not be overdrawn;
 - The requirement to report misappropriation of funds;
 - The prohibition on false names in trust accounts;
 - The prohibition on the use or withdrawal of trust money without authority;
 - Exhaustive procedures for the withdrawal of trust money in payment of professional costs; and
 - Exhaustive prescription in the form of regulations as to the form of the account and the type of documentation to be maintained;
- Detailed prescriptions for lawyers dealing with money given by a client in advance of providing legal services and the manner in which disbursement of those funds is to be effected by the lawyer;
- Detailed prescriptions for external independent monitoring of a lawyer's trust accounts by means of audit and/or inspection.

64. In four of the six jurisdictions that have legislation dealing with trust accounts, the legislation does not adequately define key concepts, such as the notion of trust money.²⁶ In the context of addressing the gaps in the legislation relating to trust money, all LPAs should define the meaning of certain key terms. For example, (taking the definition from the Australian Model Laws)²⁷ concepts coming within the statutory reach of trust money may include:

²⁶ Those jurisdictions that do include: Fiji (Trust Account Act, s 2) and Papua New Guinea (s 1).

²⁷ See, eg, Legal Profession Uniform Law Application Act 2014 (Vic).

- Trust Money – money received in the course of, or in connection with, the provision of legal services by a law practice (which itself would need to be defined) for, or on behalf of, another person;
- Controlled Money – trust money received or held by a law practice which has a written direction to deposit the money in an account (other than a general trust account) over which it has, or will have, exclusive control (this money being money not held in an orthodox trust account, but also for other money coming within their control, directly or indirectly);
- Money controlled by a law practice pursuant to a power to deal with it for or on behalf of another person that is exercisable by the practice, or jointly and severally with the person or a nominee;
- Transit Money – money a law practice receives subject to instructions to pay or deliver it to a third party, other than an associate of the practice. Transit money must be paid or delivered as required by those instructions rather than put in a trust account.

Compensation fund

65. Few of the LPAs contain provisions for fidelity or guarantee funds administered by the local law society to provide for compensation to persons who suffer pecuniary loss arising from a lawyer's default relating to trust money and property. Those jurisdictions which have a fund include:
- the Cook Islands (ss 36 – 56) – however, the fund is at capacity (\$50,000) and as yet, there has been no distribution of funds from it;
 - Fiji (Part 4 of the *Trust Accounts Act* 1996); and
 - Papua New Guinea (Part IX, ss 84 -101) - however, this part of the Act is not in effect, and therefore, no compensation fund currently exists in Papua New Guinea.
66. In those jurisdictions without compensation funds, the only redress if trust money held by a solicitor were to be used fraudulently or improperly is to apply to the courts for judgment against the solicitor personally. Where a claim against the fund is made, a statutory assessment will be made as to the rights of the client at the time of payment from the fund. There are often caps on claims against the fund. Consideration should be given to addressing the omissions in the LPAs and provide for legislative provisions that deal with:
- setting up and dealing with trust accounts and trust property by lawyers;
 - External audits of trust accounts;
 - Disciplinary consequences flowing from failure to deal properly with trust accounts and trust property; and
 - Establishment of a fidelity fund or compensation fund to compensate for those who suffer pecuniary loss arising from a lawyer's failure to deal properly with clients and/or property.

3.3 Costs Disclosure and Costs Agreements

3.3.1 Overview

67. A common source of discontent between lawyers and clients is the matter of legal costs. Safeguards built into legislation to protect the community and clients from escalating legal costs differ amongst the different LPAs. The obligation of the lawyer to provide an expectation of costs

prior to representation is desirable to avoid potential subsequent dispute. A summary of the relevant legislation across the jurisdictions surveyed is contained in *Appendix 3*.

3.3.2 Analysis and Recommendations

General Comments on costs disclosure and costs agreements

68. Most of the LPAs are silent on the disciplinary consequences arising from the charging of excessive legal costs in connection with the practice of law. For example, legislative regimes governing the issue of costs can include:

- Extensive costs disclosure requirements;
- Disciplinary sanctions for lawyers who charge grossly excessive fees;
- The review of a bill of costs by an independent adjudicator; and
- The prospects of a costs agreement being set aside in certain circumstances.

69. The lawyer's claim to costs refers and derives from their retainer. In the absence of a valid provision governing the lawyer's remuneration in the retainer (or in the separate contract), the lawyer is entitled to recover scale costs. Where no scale applies, costs are recoverable to the fair and reasonable value of the legal services provided. There are also limited provisions containing requirements governing:

- a lawyer's disclosure obligations to prospective clients, which should be in writing in a way that clients can understand, to set out the way in which the lawyer will charge and give an indication of their likely costs exposure so that consumers of legal services are in a position to make an informed decision about the services they engage;
- The formalities of costs agreements including that they be in writing and that an offer in respect to a purported costs agreements can be accepted by conduct other than in writing;
- The enforceability consequences in relation to costs recovery where costs agreements do not meet the formalities. This includes where a cost agreement may become void and unenforceable;
- Statutory regulation of contingency fees (where all or part of the fees are payable based on a successful outcome in the litigation), in particular:
- The requirements of a valid contingency fee, including: setting out the circumstances constituting the successful outcome of the matter; that the agreement be in writing and in clear, plain language; signed by the client and containing a statement that the client has been informed of the right to seek independent legal advice before entering into such an agreement; and a cooling-off period of a fixed number of days (e.g. 5 days);
- The requirements for a valid uplift fee agreement in which a premium, not in excess of 25% of the costs otherwise payable on the successful outcome of the matter, is payable (including for example, that the uplift fee be separately identifiable in the agreement and disclosure requirements by the lawyer to the client that must be in writing); and
- Setting aside and variation of costs agreements.

Recovery of costs from clients

70. In addition to the recovery of costs from clients at general law based on the principles of contract or equity, in Anglo-American jurisdictions, such as Australia and New Zealand, the availability of recovery of costs from clients is also governed by a statutory regime in the relevant LPA. In these jurisdictions there are certain restrictions on recovery governed by the statute. The policy

underpinning this being that a lawyer's recovery of costs is dependent on having followed the proper billing procedures that fairly, accurately and transparently set out the costs incurred by the client and which the client is liable to pay under the retainer and costs agreement. Such restrictions on recovery include:

- Prohibiting lawyers from commencing proceedings to recover costs without first delivering to the client a 'bill of costs' and waiting a statutory prescribed period;
- Where the lawyer received for costs from the client monies in advance of the service being provided; and
- Procedures directed at assessing the fairness and reasonableness of lawyers' bills by an independent person/body, which is known variously as 'assessment,' 'taxation' or 'revision' and which may therefore reduce the lawyer's bill.

71. By contrast, similar provisions are not found in most of the LPAs reviewed. Consideration of their inclusion may be needed to protect consumers as well as to provide a statutory incentive to ensure conduct conforms to the statutory standard expected.

3.4 Rules of Professional Conduct

3.4.1 Overview

72. Rules of professional conduct for lawyers are used to regulate the conduct of the legal profession and provide broad guidelines for the conduct of practice generally. In the primary material considered, there is either a rule-making power in the relevant LPA for the making of professional conduct rules, or such rules form part of the relevant LPA or a separate Act.

3.4.2 Primary Materials

73. The following jurisdictions have professional conduct rules:

- Cook Islands (Schedule to the Act titled 'Code of Ethics');
- Kingdom of Tonga;
- Marshall Islands;
- Nauru (in relation to trust accounts and costs for non-contentious matter);²⁸
- Norfolk Island²⁹ - as the judges and magistrates who visit from Australia tend to follow the principles applicable in his or her home jurisdiction, the duties to clients are those generally applicable in Australian jurisdictions;
- Palau;³⁰
- Papua New Guinea;
- Republic of the Fiji Islands (Schedule to the Act titled 'Rules of Professional conduct and Practice');
- Samoa;
- Solomon Islands; and
- Vanuatu.³¹

²⁸ Barristers and Solicitors (Remuneration: Non-Contentious Business) Rules 1974; Barristers and Solicitors (Accounts) Rules 1973.

²⁹ In relation to: Legal Profession (Audit) Regulations 2008.

³⁰ Disciplinary Rules and Procedures for Attorneys.

³¹ Professional conduct is governed by the Legal Practitioners Act.

74. See *Appendix 4* below for a summary of the legislation across the region with reference to the *IBA Principles*.

3.4.3 Analysis and Recommendations

75. The rules considered include the following topics:

- Independence of practitioners;
- Client-lawyer relationship and conflict of interest;
- Conduct of practice generally;
- Relationship with clients;
- Distributing information about legal services e.g. advertising;
- Relationship between practitioners;
- Relations with third parties;
- Court proceedings and practice;
- Conduct as prosecutor and defence lawyer in criminal matters; and
- Practice of barristers.

76. While the rules are not exhaustive, one matter that would appear to be absent from the professional conduct rules is in relation to conduct as prosecutor.³² There is no mention of whether the rules relating to prosecutors apply to a prosecutor in a disciplinary proceeding. This is of course for the legislature to consider and amend if it is considered appropriate.

77. For those jurisdictions, such as Vanuatu and Tonga, that appear to have conduct rules that cover some, but not all of, the topics identified in paragraph **75** it may be prudent to amend existing rules or make new rules that cover the topics not addressed by conduct rules in other jurisdictions. It would be desirable to provide the community and the profession with guidance as to the standards of behaviour expected of lawyers' interactions with each other and clients and the proper conduct of legal work in and out of the court.

3.5 Complaints and Discipline Handling

3.5.1 Overview

78. Complaints and discipline handling procedures are crucial to the legal profession to ensure trust from the client and the community. It is desirable that current systems address misconduct effectively and with transparency, including holding disciplinary proceedings where necessary. There is scope for more structure on the procedures in the complaint making process, such as provisions concerning the receipt of a complaint, the creation of a file, the notification of the practitioner, and the gathering of evidence.

79. *Appendix 5* contains a summary of the current legislative complaints and disciplinary systems regarding investigation of complaints and penalties for misconduct and a discussion of the reasons behind these approaches.

³² Except Tonga and Samoa.

3.5.2 Analysis and Recommendations

Conduct Leading to Disciplinary Proceedings

80. There appear to be at least three main shortcomings to the current legislative frameworks adopted by most of the jurisdictions (other than Fiji and Samoa):

- Issues with definitions;
- Categorisation of conduct; and
- A lack of clear nexus between other conduct matters and disciplinary action.

81. Professional misconduct does not appear to be appropriately defined in the majority of legislation. Other jurisdictions, including Australia and followed in Fiji, have defined professional misconduct as:

- Unsatisfactory professional conduct where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and
- Conduct of a legal practitioner, whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in the legal practice.

82. Adopting these definitions would remove the need for a separate conduct category ('conduct unbecoming a barrister or solicitor').

83. The two categories of 'professional misconduct' and 'conduct unbecoming of a barrister or solicitor,' as well as the formulations adopted in other jurisdictions such as the breach of 'fundamental obligations' in Kiribati, appear insufficient to deal with the range of complaints concerning legal practitioners. Complaints regarding charging excessive costs or performing work with insufficient competence or diligence may fall short of either of the existing categories but is nonetheless conduct that should attract disciplinary consequences.

84. A category to cover such conduct may be 'unsatisfactory professional conduct.' This is usually defined as 'conduct in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner.'³³

85. None of the legislation in each of the jurisdictions contains guidance as to the relationship between poor professional work and disciplinary action. Clarity in this respect may be gained by including in the legislation a non-exhaustive list of conduct that is capable of being professional misconduct and unsatisfactory professional conduct (if the latter category of conduct is inserted to amend existing LPAs). A list may include:

- Conduct consisting of a contravention of the LPA, the regulations or the legal profession rules;
- Charging of excessive legal costs in connection with the practice of law; and
- Conduct for which there is a conviction for a serious offence, or a tax offence, or an offence involving dishonesty.

³³ See for example s296 Legal Profession Uniform Law (NSW).

Investigating disciplinary complaints

86. In some jurisdictions, the decision not to investigate or to further investigate a complaint is made by the professional association. In other jurisdictions, the decision is made by the Chief Justice.³⁴ A consumer of legal services already aggrieved by the service he or she has received may justifiably feel as if lawyers are 'protecting their own' if his or her complaint is dismissed without being investigated, especially where the decision is made by the professional association or the Chief Justice acting in his or her non-judicial capacity. In the absence of a dedicated Disciplinary Committee that is established as a sub-unit or agency within the professional association, the perception may well be that the profession is attempting to 'protect one of its own.'
87. Moreover, where complaints are made to, and dealt with by, the office of the Chief Justice, an even greater risk is present to the confidence of the community to have complaints dealt with, and public confidence and respect for the office of the Chief Justice. Although judicial officers may perform non-judicial tasks (the constitutionality of which may differ from jurisdiction to jurisdiction and about which this Report does not comment), care may need to be taken in jurisdictions where the Chief Justice (or his or her office) is involved in the investigation of complaints to ensure that the non-judicial roles undertaken by the Chief Justice do not lessen the prestige and dignity of that office. Being tasked with investigating complaints about the professional conduct of lawyers, then later sitting in judgment in the performance of the Chief Justice's judicial function, could be seen to blur the lines.
88. Alternatively, it may be beneficial to establish a Disciplinary Committee as a sub-group within the country's professional association charged with the responsibility for deciding whether to investigate a complaint, and for deciding whether to proceed with disciplinary proceedings. In this regard, a Disciplinary Committee should be required to investigate a complaint unless, in the opinion of the Committee:
- the length of time that has elapsed between the incident that is the subject of a complaint and the date on which the complaint was made makes investigation of the complaint impracticable or undesirable;
 - the subject-matter of the complaint is trivial;
 - the complaint is frivolous or vexatious or is not made in good faith;
 - the person aggrieved does not desire that action be taken or continued;
 - an adequate remedy is available through other channels.
89. None of the LPA provisions in any of the jurisdictions examined imposes an obligation that the complaints are dealt with in a timely manner. Timelines of review affects the public's confidence in the way complaints are handled, and which feeds into the public's perception that the profession is taking complaints seriously. Delay may well be perceived as a means by which to avoid dealing with the complaint and to have an ulterior, self-serving purpose. It may be advisable to adopt the same or similar phrasing employed in the Australian legal profession model laws that a disciplinary committee must deal with complaints 'as efficiently and expeditiously as is practicable.' The content and scope of what is 'efficient' and 'expeditious' will be for the courts to develop.
90. It is further noted that some of the LPAs in each jurisdiction do not specify the complaint making process.³⁵ This is likely to cause much uncertainty to those who would seek to make use of the

³⁴ Cook Islands, Palau, Nauru.

³⁵ Papua New Guinea and Solomon Islands.

complaint and disciplinary processes regulating lawyers. Notwithstanding, it should be noted that some jurisdictions explain relevant processes on the website of the regulatory body.³⁶

91. Each of the jurisdictions also adopts differing approaches to the investigation of a complaint. Absent in some jurisdictions is a mechanism whereby complaints can be investigated and a determination be made as to whether to dismiss the complaint or whether the complaint should be referred for final determination to a disciplinary proceeding.
92. The LPAs make minimal provision for the manner in which disciplinary proceedings should be conducted. Some of the LPAs give the body hearing the proceedings power and privileges similar to those of Commissions of Inquiry,³⁷ and witness protection similar to those in Commissions of Inquiry. Other legislative models adopted include the same body investigating and determining the complaint³⁸ and one jurisdiction has no provisions dealing with investigation.³⁹

Determining the outcome of disciplinary complaints

93. There are at least three matters in which the LPAs could be developed in relation to the final determination of a complaint:
 - Inclusion of an obligation of fairness;
 - Inclusion of a default adherence to the principle of open justice; and
 - providing for publication of reasons for findings.
94. Currently there is no express obligation on the body hearing the disciplinary matter to conduct the proceedings fairly. Consideration should be given to the requirement for the body hearing the disciplinary matter to conduct hearings in accordance with the rules of natural justice. Having regard to the principle of open justice, hearings should be held in public except where it is not in the public interest and is so determined and ordered by the body hearing the disciplinary matter. Public hearings have an important role to play in the deterrence function. It is noted that at least in one jurisdiction hearings are expressly not in public.⁴⁰
95. Written reasons which are given for a finding of misconduct should also be publicly available. Although some legislation requires that orders be published, reasons are also important. The provision of reasons and their public availability has a dual function in to provide procedural fairness to the individual concerned and to make available for guidance the approach the disciplinary body took towards different categories of misconduct. Although each case turns on its own facts, reasons will serve as useful guidance for those charged with the responsibility of prosecuting and defending a practitioner who is the subject of disciplinary proceedings. Reasons also provide a public record of the profession's efforts to deal with misconduct.

3.5.3 Penalties for Misconduct

96. There are a range of penalties available where a practitioner is found guilty of professional misconduct. Common penalties available in each of the jurisdictions include:
 - removal of name from the roll of practitioners;

³⁶ See for example Fiji: <http://www.judiciary.gov.fj/index.php/judicial-department/legal-practitioners-unit> (accessed 14 May 2017).

³⁷ Cook Islands, Papua New Guinea and Samoa.

³⁸ Kiribati, Papua New Guinea, Samoa and Solomon Islands.

³⁹ Tonga.

⁴⁰ Papua New Guinea.

- censure or reprimand;
- payment of fine;
- payment of costs;
- cancellation or suspension of practising certificate for a specified time; and
- imposition of conditions on practising certificate as thought appropriate, including among others, a course of continuing education (Fiji and Samoa).

97. There would appear to be a number of other sanctions available in international jurisdictions that are not specified in the LPAs (other than in Fiji and Samoa), relating to additional education and ongoing obligations of continuing education in a particular respect.⁴¹ Specific sanctions listed in other LPAs that might be considered include:

- specific conditions be imposed on the practitioner's practising certificate;
- that the practitioner undertake and complete a specific course of further legal education;
- that the practitioner undertake a specific period of practice under supervision of a specified kind;
- that the practitioner do or refrain from doing something in connection with the practice of law;
- that the practitioner's practice be subject to periodic inspection by a relevant person of the professional association or related body for a specific or indefinite period;
- a compensation order, where the practitioner pays compensation up to a prescribed maximum amount to a person who has suffered loss by reason of his or her act or omission;
- that the practitioner repay the whole or a specified part of the amount charged for the legal services about which the complaint related;
- that the practitioner cancel or reduce legal fees;
- that the practitioner rectify, at his/her own expense, any error or omission;
- that the practitioner shall apologise to the complainant.

98. The additional sanctions outlined in the above paragraph would be particularly relevant for misconduct that is less than a finding of professional misconduct but which is still unsatisfactory professional conduct. If legislation were to be amended to include a category of unsatisfactory professional conduct then these additional sanctions would have a greater relevance to such a category of misconduct.

4 Considerations

4.1 Barriers to Implementation

99. While there is considerable support for reform from many South Pacific countries,⁴² there are potential barriers to the development and successful implementation of model legal professional conduct rules and complaints handling procedures. An important starting point is consideration of

⁴¹ Usually targeted to the topic related to the misconduct, such as further education on the use of trust money where the misconduct deals with improper use of trust money.

⁴² The South Pacific Lawyer's Association, Needs Evaluation Survey for South Pacific Lawyer Associations (2011), at p. 7.

whether uniform standards will be accepted and complied with by the local community. Further, any such undertaking will have to consider what the intended coverage should be in light of vast geographical differences, as well as any cultural, social and economic barriers to implementation.

4.1.1 Social and Cultural Barriers

100. Acceptance of model rules and procedures by the local community underpins their potential impact. Without acceptance, there may be little incentive to adhere to and enforce the rules.
101. It has been generally agreed by peak legal professional bodies in South Pacific countries that model conduct rules or a review of current systems would be an improvement to current legal standards of review.⁴³ Specifically, the Nauru Law Society and the Solomon Islands Bar Association pointed out that a common regional approach would create consistency and ease in dealing with such matters, and highlighted the benefit in cross jurisdiction disciplinary panels. Tuvalu lawyers also saw advantage in the reduction to barriers to practise and the added ease in monitoring standards consistently across the region
102. However, some countries also expressed their reservations. The Cook Islands Law Society noted that the status quo may be more appropriate given the small size of the legal community, and many of the Islands raised concerns about costs and onerous burdens. The Papua New Guinea Law Society felt that it was unable to commit to uniform rules until an effective system had been established locally, and expressed its desire to keep complaints against lawyers in confidence. The Tonga Law Society also suggested there was no need to have complaints made publicly known, as they felt removal from the register was a sufficient penalty.
103. In introducing model rules, generating local ownership will be an important step in encouraging their implementation. Well-adapted rules will be more likely to garner support, and there may be scope for consideration of local custom provided that core values of the legal profession are not infringed. These issues are difficult to describe in the abstract as there will be variations from jurisdiction to jurisdiction. For the reasons outlined in this Report, preparing rules for a particular jurisdiction may not be an area where 'one size fits all.'
104. The first barrier to uniform model conduct rules is the diversity in customs across the South Pacific region. Parliamentary Counsel will have to decide which, if any, local customs are relevant considerations for the model rules.
105. On this note, it is suggested that there are some shared cultural considerations across the South Pacific. These include:
- Customary reconciliation and settlement processes;
 - Emphasis on the community as a whole rather than the individual;
 - The traditional emphasis on the importance of family responsibilities including the wider family and clan.
106. These cultural values raise very specific problems to model rules. For example:
- Mandatory disclosure rules could raise problems for close-knit communities which do not provide for a great amount of anonymity between members;⁴⁴

⁴³ Needs Evaluation Survey for South Pacific Lawyer Associations (2011), above n 42.

⁴⁴ See Peter Larmour, 'Corruption and the Concept of "Culture:" Evidence from the Pacific Islands,' (2008) *Crime, Law and Social Change* 49.

- Different customary settlement options might affect the local characterisation of past offences;
- Family obligations and responsibilities may affect behaviour in relation to the charging of legal fees and trust account rules. It has been suggested that some cultures would consider all monies as common family assets and expect preferential treatment from a family member, however such a consideration would be fundamentally inconsistent with the provision of a professional legal service.⁴⁵

4.1.1 Political Barriers

107. Political conflict has remained a serious concern over the last decade in several countries. Challenging political environments and limited drafting resources have ensured that lawmakers have not focused on legal profession regulatory reform, despite advocacy in these countries for change. Conversely, other South Pacific countries, including many of the micro-states, have enjoyed relative political stability. While this may suggest a common regional approach may be beneficial, this must be weighed against the benefit of common benefit and a “hub” for all regions of the South Pacific

108. A final consideration is that each jurisdiction may change and update their laws post the publication of this Report. For instance, it is noted the Solomon Islands are nearing the end of a cycle of Government let review of legal profession regulation which may impact the dynamics for uniform model conduct rules in the near future. However, the development of good model rules and procedures are likely to converge on major issues. As such, it is likely that these developments will increase uniformity across the region.

4.2 Coverage

109. Regard must also be given to the diversity in geographical and economic contexts across the region. The South Pacific region includes a variety of populations, ranging from only 44 in the Pitcairn Islands to nearly six million in Papua New Guinea. This will inevitably cause complications for a uniform standard. For example, the Pitcairn Islands does not have a population to justify a legal sector, therefore may lack the incentives or resources to enforce a uniform model rules or disciplinary code.

110. Costs are a further consideration, especially given the poor economic climate in some countries and their reliance on foreign aid.⁴⁶ The divergence in economic stability could lead to a ‘lowest common denominator’ standard, which undermines the potential benefit of the program in larger economies.

111. Language considerations are also relevant. For example, Papua New Guinea alone hosts over eight hundred and fifty language groups.

⁴⁵ See IBA rule 8 lawyer shall account promptly and faithfully for and prudently hold any property of clients or third parties that comes into the lawyer’s trust, and shall keep it separate from the lawyer’s own property.

⁴⁶ See Peter Larmour, supra n43.

5 Conclusions

112. Overall, it appears the major barriers to implementation derive from the diversity across the region.
113. Building a greater awareness of the role of an effective and professional legal sector to supporting economic growth through improved legal certainty should assist in generating the political capital to secure the passage of the necessary supporting legislation.
114. Further, given the vast difference in population sizes and the size of the legal sector, it is suggested that the rules consider different stages of implementation and seriously question the relevance for very small economies.
115. This Report suggests that general model rules, which can be tailored for individual jurisdictions, would be an appropriate way forward. While further research is required, the *IBA Principles* provide a good basis for future discussions.

6 Next Steps

116. This Report forms only the first stage in the development of model legal profession conduct rules and complaints and discipline handling procedures for the South Pacific. It is suggested that further research be undertaken into:
- The application of these existing arrangements in practice in order to further the development of model rules and procedures;
 - Social, political and cultural barriers to legal profession law reform in each country;
 - It is further suggested that initiatives be considered to promote positive regional dialogue on legal professional standards and the regulation of lawyers.

7 Recommendations

117. In view of the findings contained in this Report and its Appendices, the following principles of conduct for the legal profession are suggested as a foundation for possible draft conduct rules and complaints procedures concerning matters that appear underdeveloped in the LPAs, and with regard to the *IBA Principles*.

Principles of Conduct for the Legal Profession

- A lawyer shall make full disclosure of information that may affect the outcome of his or her admission application regarding an assessment of good character, including convictions for dishonesty and tax offences. Further, issues of disclosure should be relevant at the renewal of a lawyers' practising certificate and upon a lawyer experiencing an event which would be viewed by the regulator as reportable.⁴⁷

⁴⁷ This aligns with the first principle from the *IBA Principles*: independence.

- A lawyer shall maintain professional indemnity insurance and shall disclose such as part of the application for a practising certificate, as in accordance with International Principle 5 of the *IBA Principles*.
- A lawyer shall, at all times, maintain the highest standards of good character. This is a requirement for the issue of practising certificates. Failure to disclose adverse matters shall affect the assessment of suitability to practice and constitute conduct capable of being professional misconduct or some lesser standard of misconduct provided by the conduct rules. This reflects the honesty, integrity and fairness recognised in the *IBA Principles*.⁴⁸
- A lawyer who practises as a barrister only shall have professional standards of conduct that are particular to work as a barrister. In particular:
 - defining the work in which a barrister may engage;
 - defining what work in which a barrister may not engage;
 - stating and defining a barrister's duty to the court, which should be made paramount; and
 - stating and defining a barrister's duty to the client and other barristers.
- The *IBA Principles* promote the protection of property of clients and third parties.⁴⁹ In accordance with this, a lawyer shall maintain a trust account for money provided by a client for the benefit of third parties for the use by the lawyer in respect of costs and disbursements. A lawyer shall not use such money except as directed by the client. A failure to deal with trust account money as directed by the client shall constitute the highest degree of professional misconduct.
- Lawyers are entitled to a reasonable fee for their work, and shall not charge an unreasonable fee.⁵⁰ The charging of excessive legal costs in connection with the practice of law is capable of amounting to professional misconduct or some other lesser degree of misconduct, depending on the circumstances.
- Professional misconduct should be clearly defined and align with the need for civility, professional integrity, personal dignity, candour, diligence, respect, courtesy, and cooperation.⁵¹ It is suggested that the definition of professional misconduct include:
 - unsatisfactory professional conduct of a legal practitioner, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence, and
 - conduct of a legal practitioner whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.
- A lawyer found to have engaged in unsatisfactory professional conduct shall have engaged in conduct occurring in connection with the practice of law that falls short of the standard of

⁴⁸ See Appendix 1, *IBA Principles*, Principle 2.

⁴⁹ See Appendix 1, *IBA Principles*, Principle 8.

⁵⁰ See Appendix 1, *IBA Principles*, Principle 10.

⁵¹ See Appendix 1, *IBA Principles*, Principle 2.

competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer.

- The misconduct of a lawyer shall be investigated by a Disciplinary Committee, Professional Conduct Committee or similarly named body that is established as a sub-unit or agency within the professional association.
- Complaints of professional misconduct shall be made in writing to the relevant body responsible for handling complaints against lawyers. Any time limits for the making of complaints shall be specified.⁵²
- Complaints of professional misconduct shall be dealt with by the relevant body handling the complaint in a timely manner.⁵³
- Disciplinary hearings of complaints shall be conducted fairly and in public. The reasons for decision and orders shall be made publicly available.
- The range of penalties available, consequent upon a finding of misconduct lawyer, should be expanded to include the availability of additional sanctions so as to afford greater flexibility in the penalties available for professional misconduct which is of the lower order of seriousness, but which still warrants penalty and remedial action. For example, the imposition of a requirement for continuing education or conditions on a practising certificate in respect of the manner in which the lawyer is to practise law.

⁵² See Appendix 1, IBA Principles, Principle 1.

⁵³ See Appendix 1, IBA Principles, Principle 6.

Appendix 1 - IBA Guidelines

IBA Model Conduct Rules

Lawyers throughout the world are specialised professionals who place the interests of their clients above their own, and strive to obtain respect for the Rule of Law. They have to combine a continuous update on legal developments with service to their clients, respect for the courts, and the legitimate aspiration to maintain a reasonable standard of living. Between these elements there is often tension. These principles aim at establishing a generally accepted framework to serve as a basis on which codes of conduct may be established by the appropriate authorities for lawyers in any part of the world. In addition, the purpose of adopting these International Principles is to promote and foster the ideals of the legal profession. These International Principles are not intended to replace or limit a lawyer's obligation under applicable laws or rules of professional conduct. Nor are they to be used as criteria for imposing liability, sanctions, or disciplinary measures of any kind.

1. Independence: A lawyer shall maintain independence and be afforded the protection such independence offers in giving clients unbiased advice and representation. A lawyer shall exercise independent, unbiased professional judgment in advising a client, including as to the likelihood of success of the client's case.
2. Honesty, integrity and fairness: A lawyer shall at all times maintain the highest standards of honesty, integrity and fairness towards the lawyer's clients, the court, colleagues and all those with whom the lawyer comes into professional contact.
3. Conflicts of interest: A lawyer shall not assume a position in which a client's interests conflict with those of the lawyer, another lawyer in the same firm, or another client, unless otherwise permitted by law, applicable rules of professional conduct, or, if permitted, by client's authorisation.
4. Confidentiality/professional secrecy: A lawyer shall at all times maintain and be afforded protection of confidentiality regarding the affairs of present or former clients, unless otherwise allowed or required by law and/or applicable rules of professional conduct.
5. Clients' interest: A lawyer shall treat client interests as paramount, subject always to there being no conflict with the lawyer's duties to the court and the interests of justice, to observe the law, and to maintain ethical standards.
6. Lawyers' undertaking: A lawyer shall honour any undertaking given in the course of the lawyer's practice in a timely manner, until the undertaking is performed, released or excused.
7. Clients' freedom: A lawyer shall respect the freedom of clients to be represented by the lawyer of their choice. Unless prevented by professional conduct rules or by law, a lawyer shall be free to take on or reject a case.
8. Property of clients and third parties: A lawyer shall account promptly and faithfully for and prudently hold any property of clients or third parties that comes into the lawyer's trust, and shall keep it separate from the lawyer's own property.
9. Competence: A lawyer's work shall be carried out in a competent and timely manner. A lawyer shall not take on work that the lawyer does not reasonably believe can be carried out in that manner.

10. Fees: Lawyers are entitled to a reasonable fee for their work, and shall not charge an unreasonable fee. A lawyer shall not generate unnecessary work.

IBA Guide for Establishing and Maintaining Complaints and Discipline Procedures

Approved by the IBA Council October 2007

This guide is the work of the Bar Issues Commission's Complaints Procedures Working Group. It was prepared as a result of several meetings with developing bar leaders who expressed a need for a basic complaints and discipline procedure that they could adopt or adapt (in the absence of none or a defective process) for their own bar. It is intended as a model only.

1. An enforceable local code of conduct, based on IBA principles should be devised ('Code of Conduct'). This is a fundamental statement of the principles against which a lawyer's conduct will be considered in the context of a complaint. Before the conduct complained of can lead to disciplinary consequences, it must amount to a breach of the adopted rules as set out in the Code of Conduct.
2. Legal services consumers should be made aware of the existence of the Code of Conduct, the process for making complaints against lawyers and the disciplinary procedures that may follow a substantiated complaint.
3. Information about the procedures by which complaints are handled should be publicly available and easily accessible. The information must clearly identify where, how and to whom complaints are to be directed ('Complaint Handling Body'). The information must also specify the period of time after the conduct within which complaints must be made.
4. Any person or entity is entitled to raise a complaint at no cost.
5. The Complaint Handling Body is to provide a complainant with acknowledgement of receipt of the complaint as well as an outline of the process by which the complaint is to be handled.
6. If the Complaint Handling Body accepts a complaint orally it must cause the substance of the complaint to be reduced to a written document.
7. The lawyer who is the subject of the complaint is to receive a copy of the written complaint document as soon as practicable.
8. The lawyer must be given a reasonable opportunity and time to respond to the complaint. The lawyer should be made aware of the lawyer's positive obligation to respond and that a failure to respond in a timely and appropriate manner can give rise to disciplinary consequences.
9. The Complaint Handling Body should be fair, impartial and independent. The Complaint Handling Body is to investigate the complaint in a timely manner and report to the complainant, the lawyer, and to the appropriate body.
10. If the Complaint Handling Body determines the complaint to be of a less serious nature, it may liaise between the lawyer and complainant with a view to resolving or mediating the complaint. If the Complaint Handling Body considers the complaint to be appropriately dealt with or mediated, it need not escalate the complaint to a hearing before the Disciplinary Tribunal, as described below.

11. The Complaint Handling Body may also dismiss a complaint if the complaint is misconceived (for example, it does not relate to conduct which breaches the Code of Conduct) or if insufficient information is provided about the conduct complained of.
12. The Complaint Handling Body must notify both the complainant and the lawyer of its decision to either dismiss the complaint or to refer the matter to the Disciplinary Tribunal. The complainant can appeal against the Complaint Handling Body's dismissal to the Disciplinary Tribunal.
13. If the Complaint Handling Body does not dismiss the complaint, it must refer the matter to the Disciplinary Tribunal.
14. At any time, a lawyer may admit to the misconduct and if compatible with the legal system of the jurisdiction, agree to the appropriate sanction which must be approved by the Disciplinary Tribunal.
15. A Disciplinary Tribunal and an Appeal Tribunal are to be established for the hearing of complaints about lawyers referred by the Complaint Handling Body. The Disciplinary Tribunal and the Appeal Tribunal are to be fair, impartial and independent. Typically, such Tribunals should comprise three persons, and may, but need not necessarily, contain a non-lawyer.
16. The Disciplinary Tribunal will be provided with the file relevant to the complaint. However in deciding the matter, the Disciplinary Tribunal may consider other materials it considers relevant.
17. The Disciplinary Tribunal must issue its reasoned decisions to the complainant and to the lawyer.
18. The Disciplinary Tribunal and the Appeal Tribunal shall observe due process of law. The procedures adopted by each Tribunal should give appropriate recognition to client confidentiality. The lawyer and the complainant (or a body legally obliged to act in the public's interest) each have a right to appeal against the decisions of the Disciplinary Tribunal, to the Appeal Tribunal.
19. The Disciplinary Tribunal and the Appeal Tribunal must have a range of sanctions available so that it can impose a suitable penalty including the power to:
 - dismiss or uphold the complaint;
 - reprimand the lawyer;
 - fine and/or order the lawyer to pay restitution of money paid as fees, if the latter is compatible with the legal system of the jurisdiction;
 - suspend or revoke the lawyer's license to practice;
 - require the lawyer to undertake further a course of education; or
 - impose restrictions on the lawyer's license to practice.
20. Any decision of the Disciplinary Tribunal or Appeal Tribunal that imposes a penalty against a lawyer should be made available to the public, subject to ensuring protection of client confidentiality.

Appendix 2 - Admission to Practice

Table 1. – Admission to Practice

Jurisdiction (Title Used for Lawyers)	Administering Authority	Granting Authority	Requirements for Admission					
			Residency	Age	Education	Character	Recognition of Foreign Qualifications	Other
Cook Islands (Practitioner)	Cook Islands Law Society.	Chief Justice.	Yes. If not, an applicant must demonstrate a sound knowledge of Cook Islands law.	21 years	The Act is silent on this issue.	Fit and proper person.	Australia; New Zealand; or any other Commonwealth country named by the Minister.	<u>Interview:</u> The Council may require the applicant to attend before the Council for the purpose of an interview.
Federated States of Micronesia (Attorney)	The Act is silent on this issue.	The Act is silent on this issue.	Each applicant shall be a resident or domiciliary of the Federated States of Micronesia, or a Federated States of Micronesia citizen.	The Act is silent on this issue.	A citizen applicant must satisfy one of four experience or education standards: <ul style="list-style-type: none"> • Bar membership standard; • Law School Graduation Standard • Experience and Competency Standard • Trial Counsellor Certificate Program Standard 	Conviction of any crime or violation of professional ethics or responsibilities will prohibit admission. If any such charge is pending, full disclosure is required.	A non-citizen applicant may sit the written exam if they submit to the Court, a certificate of good standing establishing that the applicant is in good standing as an attorney eligible to practice law before the highest court in all jurisdiction(s), in which the applicant is, or has been, licensed to practice. Citizen applicants may qualify to sit the exam based on qualifications obtained overseas.	<u>Examination:</u> Any person wishing to become an attorney must pass a written exam.
Kingdom of Tonga (Law Practitioner)	The Act is silent on this issue.	The Act is silent on this issue.	No. However, an applicant must intend to practise in Tonga as a law practitioner.	The Act is silent on this issue.	An applicant must have: obtained sufficient professional knowledge and experience; and completed training in a common law jurisdiction.	Must satisfy the Chief Justice of his/her character and his/her suitability to be a law practitioner	The Act is silent on this issue.	n/a

Jurisdiction (Title Used for Lawyers)		Administering Authority	Granting Authority	Requirements for Admission					
				Residency	Age	Education	Character	Recognition of Foreign Qualifications	Other
Kiribati (Legal Practitioner)		The Act is silent on this issue.	Chief Justice.	The Act and Rules are silent on this issue.	The Act and Rules are silent on this issue.	The Act and Rules are silent on this issue.	Fit and proper persons to be admitted.	The Act and Rules are silent on this issue.	n/a
Marshall Islands (Lawyer)		The Act is silent on this issue.	The Act is silent on this issue.	Residency, citizenship or maintenance of an active practice in the Marshall Islands is required.	21 years	In order to sit the bar exam an applicant must have graduated from an approved law school. Approved law school means: any law school approved by the American Bar Association; or a law school in a common law nation other than the United States; or any other law school approved by the Supreme Court.	Cannot be admitted if convicted of criminal charge or any charge of violation of professional responsibility. Any such charge(s) must be disclosed when applying.	Graduates of 'approved law schools' (all of which are outside the Marshall Islands) may be admitted after passing the bar exam.	Must pass a written exam selected, developed and administered by the Supreme Court.
Nauru	Barrister and Solicitor	Supreme Court.	Chief Justice.	Residency is not required. However, an office or chambers must be maintained in Nauru. A solicitor/barrister must practise at that office/chambers one in every three months.	21 years	If not admitted to practise in an approved foreign country, an applicant must obtain a law degree at a university approved by the Minister.	Upon application for admission, the Registrar must complete an inquiry into the character, qualification and experience of the applicant, and provide that report to the Chief Justice for assessment.	United Kingdom; Republic of Ireland; Australia; New Zealand; or any other country specified by the Minister.	<u>Legal experience:</u> an applicant must have completed either: one year of practice in an approved country; one year's pupillage; one year's work in the office/chamber of a solicitor/barrister; or, a course of practical legal training.

Jurisdiction (Title Used for Lawyers)		Administering Authority	Granting Authority	Requirements for Admission					
				Residency	Age	Education	Character	Recognition of Foreign Qualifications	Other
	Pleader			Must ordinarily reside in Nauru.	The Act is silent on this issue.	An applicant must have undergone such training as the Chief Justice may prescribe from time to time by rules.		n/a	<u>Examination(s)</u> : an applicant must pass such examinations as the Chief Justice may from time to time by rules prescribe.
Norfolk Island (Practitioner)		The Registrar of the Supreme Court receives and assesses applications and registers successful applicants as persons entitled to practise as a practitioner.		n/a	n/a	n/a	Must be of good fame and character, and must not have his/her entitlement to practise in Norfolk Island suspended or cancelled.	To be entitled (rather than admitted) to practise in Norfolk Island a barrister or solicitor must have their name: on the roll of the High Court of Australia; or, on the roll of an Australian State or Territory Supreme Court.	n/a
Palau (Attorney)		The Act and Rules are silent on this issue	The Act and Rules are silent on this issue	Not required.	The Act is silent on this issue.	An applicant must have graduated from an accredited law school in the US (or its territories or possessions) or other foreign country.	Is of 'good moral character,' as demonstrated by a certificate of good standing. Has never been convicted of a felony, or if so convicted, has received a full pardon.	The Act is silent on this issue.	<u>Examination</u> : has taken and passed a bar examination administered by the Supreme Court of Palau or its designee.

Jurisdiction (Title Used for Lawyers)	Administering Authority	Granting Authority	Requirements for Admission					
			Residency	Age	Education	Character	Recognition of Foreign Qualifications	Other
Papua New Guinea (Lawyer)	Applications for admission are made to the National Court. Admissions are administering admission is the Admissions Council (Attorney-General, Chief Justice and President of the Papua New Guinea Law Society.	The National Court.	The Act is silent on this issue.	The Act is silent on this issue.	Must have obtained a Bachelor of Laws from the University of Papua New Guinea or other qualification equivalent in standard.	Fit and proper person to be admitted as a legal practitioner in Papua New Guinea.	United Kingdom and Northern Ireland; Australia; and New Zealand.	n/a
Pitcairn Islands (Legal Practitioner)	Registrar of the Supreme Court	Chief Justice.	The Act is silent on this issue.	The Act is silent on this issue.	Upon application to the Registrar of the Supreme Court, an applicant must provide a summary of the applicant's qualifications and experience. However, what qualifications an experience is required is not specified in the Act.	Upon application to the Registrar of the Supreme Court, an applicant must provide 'information as may be relevant to the applicant's fitness to practise law in the Islands.'	The Act is silent on this issue.	N/a

Jurisdiction (Title Used for Lawyers)	Administering Authority	Granting Authority	Requirements for Admission					
			Residency	Age	Education	Character	Recognition of Foreign Qualifications	Other
Republic of the Fiji Islands (Legal Practitioner)	The Act is silent on which body administers the process of admission.	Chief Justice.	An applicant must have been a resident in Fiji for a period of at least 3 months prior to applying.	The Act is silent on this issue.	An applicant must: have satisfactorily completed a course of legal study approved by the Board of Legal Education and approved practical training and obtained a certificate from the Board that his/her educational qualifications are sufficient to qualify for admission.	Fit and proper person.	The Act is silent on this issue.	n/a
Samoa (Barrister; Solicitor, and; Barrister and Solicitor) Barrister Sole; Solicitor; Barrister and Solicitor	Applications for admission are made to the Supreme Court. A certificate for the application is administered by the Council of the Samoa Law Society.	The Supreme Court.	An applicant must be a citizen of Samoa.	21 years	A candidate must hold the prescribed academic or professional qualifications in law (as under the repealed Act, or determined from time to time by the Council and published in the Savaii and a newspaper). Must also demonstrate a knowledge of Samoa laws and practice.	'Of good character' as determined by the certificate issued by the Council of the Samoa Law Society, with respect to issues such as whether there is disciplinary action pending.	Academic and/or professional qualifications obtained in any country/territory/jurisdiction, which, in the opinion of the Council, has a legal system similar to that of Samoa, may be recognised.	<u>Interview:</u> The Council may require the applicant to attend before the Council to be interviewed and to answer such questions and provide such information as the Council thinks proper to enable it to decide whether to issue a certificate.
Solomon Islands (Legal Practitioner)	Chief Justice of the High Court	Chief Justice of the High Court	The Act is silent on this issue.	The Act is silent on this issue.	Qualification is required although the Act is silent on what is required to be qualified.	Fit and proper person to be admitted.	The Act is silent on this issue.	n/a
Tokelau	Does not have a LPA or professional conduct rules.							
Tuvalu	Does not have a LPA or professional conduct rules.							

Jurisdiction (Title Used for Lawyers)	Administering Authority	Granting Authority	Requirements for Admission					
			Residency	Age	Education	Character	Recognition of Foreign Qualifications	Other
Vanuatu (Barrister and Solicitor)	Applications are made to the Chief Justice of the Supreme Court. However, the Act is silent on who administers the application.	The Act is silent on this issue.	Must be a resident to receive a practising certificate.	The Act is silent on this issue.	The Act is silent on this issue.	An applicant must not be suspended for practice.	The Act is silent on this issue.	<u>Practising Certificate:</u> Unlike most jurisdictions, a practising certificate is an anterior requirement for admission to practise. For further information see Table 2.

Table 2. – Practising Certificates

Jurisdiction	Granting Authority	Admission	Character	Professional Indemnity Insurance	Fees	Renewal Frequency	Mandatory CLE for Renewal
Cook Islands	Cook Islands Law Society	Required.	Required for admission to practice. See previous Table.	Required.	A response was not obtained in the time frame of this Report.	Annually on 31 January (s 12(4), LPA).	Not Required.
Federated States of Micronesia	A practising certificate is not required in the FSM. Admission alone entitles a person to practise law before the Courts in the FSM.						
Kingdom of Tonga	Registrar of the Supreme Court after seeking representations from the Tonga Law Society.	Required.	Required for admission to practice. See previous Table.	Not Required.	\$60 p.a. (s 7(f) LPA).	Annual.	Not Required.
Kiribati	The Kiribati rules are silent as to the requirements for a practising certificate.						
Marshall Islands	A practising certificate is not required in the Marshall Islands. Admission alone entitles a person to practise law before the Courts in the Marshall Islands.						
Nauru	Registrar of the Supreme Court (s 23(2)-(4) LPA).	Required.	Required for admission to practice. See previous Table.	Not required.	Barrister and solicitor: \$25 p.a. Pleader: \$10 p.a.	Annual.	Not Required.
Norfolk Island	Registrar of the Supreme Court.	Required.	Required for admission to practice. See previous Table.	Required.	A response was not obtained in the time frame of this Report.	Annual	Not Required.

Jurisdiction	Granting Authority	Admission	Character	Professional Indemnity Insurance	Fees	Renewal Frequency	Mandatory CLE for Renewal
Palau	A practising certificate is not required in Palau. Admission alone entitles a person to practise law before the Courts in Palau.						
Papua New Guinea	Papua New Guinea Law Society.	Required.	Required for admission to practice. See previous Table.	Required for unrestricted practising certificate.	Unrestricted Practising Certificate: - citizen - K5500.00 - non-citizen - K6662.70 - non-resident - K8018.00 Restricted Practising Certificate: - citizen - K2557.50 - non-citizen - K3401.20.	Annual.	Not Required.
Pitcairn Islands	There is no Pitcairn Islands practising certificate. However, in order to be admitted to practice law in the Pitcairn Islands an applicant is required to hold a current practising certificate 'issued by the appropriate authority in any Commonwealth country entitling the holder to act as a legal practitioner in that country'.						
Republic of the Fiji Islands	Registrar (Chief Registrar of the High Court).	Required.	Required for admission to practice. See previous Table.	No express requirement.	A response was not obtained in the time frame of this Report.	Annual.	An applicant for renewal of their practising certificate, must satisfy the annual requirements of the CLE programme outlined by the Legal Education Board (s 7(7) LPA).
Samoa	The Samoa Law Society has the power to issue practising certificates under 6(2)(a)	Required.	Required for admission to practice. See previous Table.	Not required.	The Council of the Law Society may fix admission fees by giving notice in the Savaii and a newspaper.	Annual.	Not Required.
Solomon Islands	Chief Justice of the High Court.	Required.	Required for admission to practice. See previous Table.	Not required.	A response was not obtained in the time frame of this Report.	A response was not obtained in the time frame of this Report.	Not Required.
Tokelau	Does not have a LPA or professional conduct rules.						
Tuvalu	Does not have a LPA or professional conduct rules.						

Jurisdiction	Granting Authority	Admission	Character	Professional Indemnity Insurance	Fees	Renewal Frequency	Mandatory CLE for Renewal
Vanuatu	The Law Council.	Unlike in the other jurisdictions a practising certificate is required for admission.	Required for admission to practice. See previous Table.	Not required.	A response was not obtained in the time frame of this Report.	A response was not obtained in the time frame of this Report.	A response was not obtained in the time frame of this Report.

Primary Materials

Cook Islands

21. The Act refers to 'practitioners,' which means a person enrolled as a barrister and solicitor or as a barrister only (ss 1 and 3).
22. The requirements for admission are that the person is:
 - 21 years or older;
 - a fit and proper person;
 - admitted to practise law in Australia, New Zealand or any other Commonwealth country named by the Minister, or who in the opinion of the Chief Justice having passed suitable exams in law demonstrates a satisfactory knowledge of law (s 3); and,
 - ordinarily resident in the Cook Islands or if not ordinarily resident in the Cook Islands, must have demonstrated a sound knowledge of Cook Islands law. This is a matter which the applicant provides evidence of in the supporting affidavit and which the Council comments on in its report to the Chief Justice in relation overseas applicants.
23. The body administering admission is the Cook Islands Law Society (s 4).
24. The office granting admission is that of the Chief Justice (s 5).
25. Practitioners are not to practise without a practising certificate (s 11) and are not entitled to a practising certificate without proof of PI insurance (whether held by a sole practitioner individually or by the firm where practice occurs in a firm) (s 12(2)).
26. Every practitioner is deemed an officer of the Court (s 10). Although not expressly stated, admission would appear to be the basis for being an officer of the Court, rather than holding a valid practising certificate in view of the fact that s 10 is located in Part I of the Act regarding admission rather than Part II regulating practising certificates.
27. There is no offence for practising without a practising certificate but it is an offence to wilfully pretend to be or take or use any name title or description implying a person is qualified to practise law when not enrolled or suspended from practice and the person shall be liable upon conviction to a fine not in excess of \$5,000 (s 61(1)).
28. Under the Act, PI Insurance is required. However, there is no monitoring of who has professional indemnity insurance when practicing certificates are renewed each year.
29. It is understood that the Bill will not make PI insurance compulsory but rather provide for disclosure in Terms of Engagement, including disclosure as to whether the practitioner has current PI insurance.

Federated States of Micronesia

30. The title used for lawyers is attorney.
31. There are three ways in which an attorney may be admitted to practice:
 - admission through trust territory High Court certification (r I);
 - admission through written exam (r II); and

- application to appear for a particular case (r IV).
32. There is a morals and character requirement for admission through written exam (r II (B)), which includes that applicants certify that there is no criminal charge or charge of violation of professional responsibilities pending against them, or disclosure of such charges where they have previously been so charged and disclosure in the application for admission, failure to disclose (or falsehood in disclosure) being a ground for disbarment.

Kingdom of Tonga (Tonga)

33. The title used for lawyers is law practitioners (s 3).
34. The requirements for admission are:
- that the person has sufficient professional knowledge and experience and training in a common law jurisdiction;
 - as to the person's character and his/her suitability to be a law practitioner; and
 - that the person intends to practise in Tonga as a law practitioner (s 5).
35. The Act is silent on how and to whom or which body applications for admission are to be made. It would appear that applications are made to the Chief Justice. The functions and objects of the Tonga Law Society (s 15) do not include administering admission applications but do include as one of its functions intervening in any application for enrolment, re-enrolment or certification as a law practitioner (s 15(1)(f)).
36. The Act is also silent on who makes the decision to admit an applicant for admission.
37. Every person who is admitted and is a law practitioner under the Act is an officer of the court (s 8(b)).
38. The terms of s 7 which is the only provision dealing with practising certificates, is drafted in ambiguous terms as to the requirement that a person hold a practising certificate and there is no express mandatory requirement that a person can only practise with a valid practising certificate. However, there is a necessary implication that a person must have a valid certificate before they can practise, due to the fact that it is an offence to practise without a valid practising certificate, punishable by imprisonment up to 2 years or a fine up to \$1,000 or both (s 10(1)). This would appear to be a drafting oversight that detracts from the Act's ability to give clear directions to members of the profession on their legal obligations.
39. There are no specific character requirements that an applicant for a practising certificate must fulfil.
40. There is no requirement for PI insurance as a condition for the issue of a practising certificate, although they must not be suspended from practice (s 7(2)(b)) which is one of the disciplinary consequences that may arise from a finding of professional misconduct (s 21(2)(b)).

Kiribati

41. Kiribati has rules for admission made under the *Lawyers Admission (Amendment) Rules (No 2) 1992 (the Kiribati Rules)*.
42. The title used for lawyers is legal practitioner in the Act, which is defined to mean a barrister or a solicitor or a barrister and solicitor.
43. By these rules persons seeking admission to practice must demonstrate that they are fit and proper persons to be admitted.
44. The rules are silent on which body administers the process of admission.
45. The office granting admission is that of the Chief Justice (s 4).
46. There is no provision of the relevant Acts with which the authors have been briefed that states expressly that a person who is admitted is an officer of the court. There is a provision (s 11) (in Part II dealing with professional conduct) that states that a fundamental obligation of a lawyer is to protect the interests of the client subject to his or her overriding duties as an officer of the Court, inherent in which is a presumption that lawyer who is admitted is an officer of the Court albeit that it is not expressly provided in the legislation (but would arise as a matter of necessary implication by this provision).
47. The Kiribati Rules are silent on:
 - the requirements to qualify as a lawyer;
 - the requirements for a practising certificate;
 - whether practice without a practising certificate is an offence; and
 - the need for PI insurance.

Marshall Islands

48. The noun used to describe those practising law in the Marshall Islands is lawyer or 'trial assistant.'
49. A trial assistant is an adult citizen of the Marshall Islands, who is not a graduate of a law school, but has been admitted to practise law in the Courts of the Trust Territory for the Marshall Islands District prior to 3 March 1982 or by the Court of the Republic of the Marshall Islands after that date (s 502(e)).
50. A person must not engage in the practice of law or otherwise hold him or herself out to be a lawyer unless four requirements are satisfied (s 503), namely:
 - Is 21 years of age or older;
 - Is a resident of the Marshall Islands, or a citizen, or neither but who maintains an active practice in the Marshall Islands;
 - Has passed a written exam selected, developed and administered by the Supreme Court (save the exception in s 504); and

- Has been duly admitted to practice by the Supreme Court or the High Court of the Marshall Islands.⁵⁴

51. Whilst the Act does not specify any character requirements, r 4 of the Rules provides that an applicant for admission must certify that no criminal charge or any charge of violation of professional responsibility is currently pending against the applicant and has never been so convicted, or if such charge(s) exist should be disclosed and detailed and the failure of disclosure is a grounds for non-admission or disbarment.
52. It is unlawful to practise law without complying with the requirements to practise (s 506), a person who does not comply will be guilty of contempt and subject to punishment of disbarment, or imprisonment not in excess of 6 months, or a fine not in excess of \$10,000 or any combination thereof (and for a person who is not a citizen, the additional penalty of possible deportation) (s 510).

Nauru

53. Nauru has a nomenclature for those undertaking legal work unique among the jurisdictions examined. It is the only jurisdiction that uses the term ‘pleader’, as distinct from the category of practitioner ‘solicitor and barrister.’ The main difference between the two categories appears to be that whilst pleaders may do all work associated with drafting and filing, have rights of appearance in court and to do work related and incidental to that work, they may not otherwise perform any of the functions of a barrister and solicitor (s 17(2)). There appears to be no distinction between solicitor and barrister.
54. The requirements for admission differ depending on whether admission sought is as a barrister and solicitor or as a pleader.
55. The requirements for admission as a barrister and solicitor are that the person is:
- 21 years of age or older;
 - has been admitted as a barrister or solicitor in the United Kingdom, Australia or New Zealand or any other country which the Minister may have specified or has obtained a law degree at a university approved by the Minister; and
 - has complied with the requirements for legal experience (ss 5 and 6).
56. The requirements for admission as a pleader are that the person is:
- ordinarily resident in Nauru;
 - has undergone such training as the Chief Justice may from time to time prescribe; and
 - has passed such examinations as the Chief Justice may from time to time by rules prescribe (s 11).
57. The Act is silent – at least in respect of any express requirement – as to whether an applicant for admission as a barrister and solicitor or pleader must be a fit and proper person or be by some other standard of good character. Applicants must nonetheless be assessed as to their ‘character’ and their ‘suitability’ (see sub-ss(1) and (3) of s 9 and sub-ss(1) and (2) of s 12). There is no express test by which these are to be measured.
58. The formulation of ‘fit and proper’ for example has a well-known content having been worked out by the case law. The conceptual basis to ‘fit and proper’ requires a ‘test’ that involves

⁵⁴ See also Rules, rr 2, 3 and 5.

consideration of a person's 'honesty', 'knowledge', and 'ability.' Legal precedent indicates that a person is not 'fit and proper' for office if his or her conduct 'would be reasonably regarded as disgraceful or dishonourable by his professional colleagues of good repute and competency': *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750. The 'Allinson test' has been adopted in many jurisdictions in which the 'fit and proper' formulation has been used as the standard by which to assess suitable character for legal and medical professions (indeed, the test was first formulated for medical professionals and later adopted in respect of legal professionals in England and elsewhere in common law jurisdictions).

59. Application for admission as either a barrister and solicitor or pleader is to be done by way of petition to the Chief Justice (ss (9)(1) and 12(1)). The body administering the process is the Registrar of the Supreme Court (ss (9)(1) and 12(1)).
60. The office granting admission to solicitors and barristers and pleaders is that of the Chief Justice (s 9(3) and 10, respectively).
61. Barristers and solicitors and pleaders are deemed to be officers of the Court (s 20).
62. Every person admitted to practice as a barrister and solicitor or pleader shall obtain a practising certificate annually (s 23(1)). Where a barrister and solicitor is found to be bankrupt or insolvent in Nauru, that finding will operate immediately to suspend the person's practising certification and it must be returned to the Registrar of the Supreme Court (s 26(3)). There is no similar prescription about such a finding where a person is admitted as a pleader. It is unclear why, as a matter of principle or policy, the same requirement would not apply to pleaders.
63. Practice as a lawyer without a practising certificate is an offence liable to a fine not greater than \$5000 and for a second or subsequent offence to a fine and 6 months of imprisonment (s 51).
64. There are no specific character requirements that an applicant for a practising certificate must fulfil.
65. There is no requirement in the Act about the requirement for PI insurance as a requirement for obtaining a practising certificate.

Norfolk Island

66. The Act refers to 'practitioner' throughout, but this is defined in the Schedule as barrister, solicitor, or barrister and solicitor.
67. The requirements for admission (which is not so much admission as entitlement to practise where a practitioner is otherwise admitted in another jurisdiction in Australia and whose admission is thus governed by the relevant local law) include that the person (s 10) has a right to practice in Norfolk Island and in any Court of Norfolk Island whether the court is sitting within or outside Norfolk Island:
 - where the person's name is on the roll of barristers and solicitors of the High Court of Australia referred to in s 55D(1)(a) of the Judiciary Act 1903 (Cth) (which no longer exists); or
 - where the person's name is on the roll of barristers, solicitor, barristers and solicitors or legal practitioners of the Supreme Court of a State or Territory of Australia (s 7);
 - is of good fame and character; and
 - his or her entitlement to practise in Norfolk Island is not suspended or cancelled.

68. Applications for admission are made to the Registrar of the Supreme Court of Norfolk Island (s 10(1)).
69. The Registrar registers applicants as a person entitled to practise as a practitioner (s 10).
70. A visiting practitioner may hold a recognised interstate practising certificate or a Norfolk Island practising certificate, the latter of which must be held by resident practitioners.
71. It is an offence for an unqualified person to hold himself or herself out to be qualified to practise law, punishable up to 50 penalty units (s 41). Practitioners who practice whether as residents or visiting practitioners must have a practising certificate from an approved jurisdiction.
72. An applicant for a Norfolk Island practising certificate must have PI insurance if PI cover has been prescribed by the regulations (s 15(2)(c)).
73. Currently all practitioners (with the exception of government lawyers) have PI insurance. Such PI Insurance is generally from an Australian jurisdiction where the practitioner has some connection or affinity (for example Victorian PI insurance includes Norfolk Island).

*Palau*⁵⁵

74. Lawyers are referred to as attorneys or for those who are not admitted but have a limited right of appearance in the courts of Palau, trial counsellor.
75. Only those who are admitted to practise law (other than the limited exception of trial counsellor) or those who may be admitted for the special purpose of handling a particular case) may practise law in Palau (rr 1 and 5)⁵⁶.
76. A person seeking to be admitted to practise law must obtain a certificate of admission (practice without being admitted is a contempt of court⁵⁷). Requirements for an admission certificate include that the person:
 77. Is of 'good moral character', as demonstrated by a certificate of good standing, which states that the applicant has not been the subject of original or reciprocal disciplinary proceedings in that jurisdiction for alleged violations of the rules of ethics or rules of admission and in which the applicant personally attests that they have not been disbarred in any jurisdiction at any time (or if they have never been a member of a legal profession (i.e. of a 'bar') they must submit a letter attesting to their good character from the dean of the law school from which the applicant graduated;
 78. Has never been convicted of a felony, or if so convicted, has received a full pardon from a competent authority;
 79. Has graduated from an accredited law school in the US (or its territories or possessions) or other foreign country; and

⁵⁵ References to the rules in relation to Palau refer to the Rules of Admission for Attorneys and Trial Counselors to Practise in the Courts of the Republic of Palau.

⁵⁶ See also the Rules of Admission to Practice Law and Limitations on the Practice of Law for Trial Counselors in the Republic of Palau.

⁵⁷ Disciplinary Rules & Procedures for Attorneys, r 15.

80. Has taken and passed a bar examination administered by the Supreme Court of Palau or its designee (r 2).⁵⁸

Papua New Guinea

81. The title used for lawyers is 'lawyer' and means a person admitted to practice as a lawyer under the relevant Act (s 1).

82. The requirements for admission are that the person:

- Has attained the required academic qualification (being a law degree from the University of Papua New Guinea or such other academic or educational qualifications as prescribed by the rules) (s25); and
- Is a fit and proper person (s 25(1)).

83. Applications for admission are made to the National Court (s 26). The body administering admission is the Admissions Council consisting of the Attorney-General, the Chief Justice and the President of the Papua New Guinea Law Society.

84. The National Court admits an applicant to practise (s 28).

85. Practice as a lawyer is prohibited without first signing the roll and having a valid practising certificate (s35). To practise without a practising certificate is an offence with a penalty not exceeding K1000 (s 35).

86. There are no specific character requirements that an applicant for a practising certificate must fulfil.

87. An applicant for an unrestricted practicing certificate shall produce evidence of PI insurance with an approved insurer in an adequate amount.

Pitcairn Islands

88. There is very limited prescription as to the admission of lawyers under Pitcairn law, as the limited population does not require an independent legal sector and instead relies upon the New Zealand Courts. The Regulations currently in place governs admission of lawyers as and when needed to represent a person charged with an offence or otherwise needing representation, and were implemented to avoid overburdening the New Zealand Courts.

89. Barristers and solicitors are referred to as 'legal practitioners' for the purpose of the relevant law.

90. A person cannot hold him or herself out as a legal practitioner in the islands of Pitcairn, Henderson, Ducie and Oeno Islands without a valid certificate of **admission**. To do so is an offence punishable by a fine of NZ\$1000 or imprisonment or both (s 3).

91. The legislation is silent on the process by which a person obtains a practising certificate, though it is apparent that such a certificate, as distinct from a certificate of admission, exists, as

⁵⁸ There are similar requirements for admission for trial counselors, see r 3 of the Rules of Admission to Practice Law and Limitations on the Practice of Law for Trial Counselors in the Republic of Palau

s 4(1) sets out the requirements for applying to be admitted, a requirement of which is a practising certificate.

92. The requirements for the application for admission include that it is made to the Registrar of the Supreme Court (although the Registrar may also obtain such further information as may be required from the applicant or any other person or body (s 4(2)), that the applicant provides:

- a summary of the applicant's qualifications and experience; and
- information as may be relevant to the applicant's fitness to practise law in the Islands (s 4(1)).

93. The Registrar gives the application to the Chief Justice, who has the absolute discretion to decide whether or not the application should be approved (s 5(1)) and upon approval the applicant is issued with a certificate of admission upon payment of any such fee as is prescribed (s 5(2), (3)).

94. The certificate of admission may be revoked by the Chief Justice at any time upon good cause having been shown (s 6).

Republic of the Fiji Islands (Fiji)

95. The title used for lawyers is legal practitioner (ss 1 and 34 of the Act read together).

96. The requirements for admission are that the person is:

- a fit and proper person;
- has satisfactorily completed a course of legal study approved by the Board of Legal Education and approved practical training;
- has obtained a certificate from the Board that his/her educational qualifications are sufficient to qualify for admission; and
- has been a resident in Fiji for a period of at least 3 months prior to making an admission application unless the Chief Justice has 'good reasons' to dispense with this.

97. The Act is silent on which body administers the process of admission, although the manner in which the application is to be made is specified as by way of petition to the Chief Justice (s 36).

98. The office granting admission is that of the Chief Justice (s 38(1)).

99. Practitioners are not to practise without a practising certificate (s 42) and are officers of the Court upon grant of their practising certificates (s 51).

100. A person who practises without a practising certificate shall be guilty of an offence and liable to a fine not exceeding \$5000 and for a second or subsequent offence, to imprisonment for any period not exceeding one year in addition to or in substitute for such fine (s 52(2)).

101. There are no specific character requirements that an applicant for a practising certificate must fulfil.

102. Although Part 10 of the Act authorises the Minister to make rules relating to PI insurance (of which there are none or about which authors of the Report were not briefed) there is no express requirement for proof of PI insurance as a condition for a practising certificate,

although failure of a practitioner to comply with the PI rules without lawful excuse shall be deemed professional misconduct (s 133).

103. Unlike the other professions in Fiji (e.g. Doctors and Nurses), the Minister has not made any rules regarding Professional Indemnity Insurance for the legal profession.

104. There are some Lawyers that have taken indemnity insurance covers (usually at their (corporate) clients) in particular corporate clients.

Samoa

105. The title used for lawyers is barrister and solicitor, which may be used together or solely as a barristersole (s 34)19(1)).

106. The requirements for admission (which are set out with clarity and simplicity) are that the person:

- is a citizen of Samoa s24(a);
- has attained the age of 21 years of age s23(a);
- is of good character s23(b); and
- holds the prescribed qualifications (s 23(c)).

107. Good character is proven by issuance of a certificate by the Council of the Samoa Law Society. The Council must apply procedures which check whether disciplinary action has taken place, or is pending, in relation to the practice of law (s26(3)(a), requires the applicant to provide character references s26(3)(b); ensures that the documents provided are correct (s26(3)(c)); and takes an oath to this effect (s26(3)(d)). Provision of false statements or a failure to divulge information is an offence under s26(5) and may lead to unsatisfactory professional conduct (s26(7)). A non-citizen may be granted temporary admission if they meet the requirements under s23.

108. Applications for admission are made to the Supreme Court (s 20(1)). The Council of the Samoa Law Society will issue a certificate to show the applicant has met the requirements under s23.

109. The Supreme Court admits an applicant to practice (s 21).

110. There is no specific provision stating that a person admitted to practice is an officer of the court.

111. No person may practice as a lawyer unless they have been admitted *and* hold a practising certificate (s32(1)). A person who contravenes this commits an offence. The Act distinguishes between unrestricted practising certificates, restricted practising certificates held by residents, restricted practising certificates held by non-residents and barrister soles. There are no specific character requirements that an applicant for a practising certificate must fulfil. However, admission to practice is mandatory and has such requirements.

112. It is an offence to provide false or misleading information in application to become a barrister and solicitor, which may lead to an offence, removal of their name from the roll, and amounts to unsatisfactory professional conduct. (s26(5) and (s34(5)) for barrister soles.

113. There is no requirement for PI insurance as a condition for the issue of practising certificate.
The Head of State, acting on the advice of Cabinet, may make regulations in relation to such
(s65 (1) (i)).

Solomon Islands

114. Under the Act the title used for lawyers is legal practitioner.
115. The requirements for admission are that the person:
- is qualified for admission (there is no further prescription in the Act or conduct rules as to what qualifications are necessary);
 - is a fit and proper person to be admitted;
 - has complied with the rules relating to the admission of legal practitioners; and
 - has paid the prescribed fee to the Registrar (s 5).
 - The Chief Justice of the High Court admits an applicant to practice (s 5(1)).
116. There is no specific provision stating that a person admitted to practice is an officer of the court or must hold a valid practising certificate in order to practise as a lawyer and thus no offence provision for practising without holding a practising certificate.
117. There is no requirement for holding PI insurance.
118. It is an offence for an unqualified person to wilfully pretend to be or take or use the title or description implying that they are qualified or recognised by law to act as a legal practitioner and the person shall be guilty of an offence and liable on summary conviction to a fine of \$2000 (s 15).

Tokelau

119. Does not have a LPA or professional conduct rules.

Tuvalu

120. Does not have a LPA or professional conduct rules.

Vanuatu

121. The title used for lawyers is barrister and solicitor (s 1B).
122. The requirements for admission are that the person holds a valid practising certification (certificate of Registered Legal Practitioner) (s 1B). Qualifications for practising as a barrister and solicitor include that the person's name is on the Roll, he or she is not suspended from practice and holds a valid practising certificate (s 1G). The Act is otherwise silent on the requirements for admission although it makes provision for details to be spelled out in regulations (s 1C) of which there do not appear to be any.
123. Applications for admission are made to the Chief Justice of the Supreme Court of Vanuatu (s 1C). There is a Law Council established under s 2 consisting of the Chief Justice, the Attorney General and one other legal practitioner appointed for two years (s2(2), but its functions (s 5) do not extend to the administration of admission applications. There is not otherwise a separate statutory body vested with separate legal personality.
124. The Act does not set out which body or office makes the decision to admit applicants for admission.

125. There is no specific provision stating that a person admitted to practice is an officer of the court.
126. Practice as a lawyer requires a valid practising certificate, which is an anterior requirement to be satisfied prior to admission (s 1B) (a departure from most jurisdictions in which admission is the first step and admission to practice is possible without a practising certificate which usually entitles the holder to practice as a lawyer).
127. There are no specific character requirements that an applicant for a practising certificate must fulfil, however, a person who is suspended from practice is not entitled to practise (s 1G(b)), where suspension is a disciplinary penalty consequent on a finding of misconduct (s 9(3)(b)).
128. There is no requirement for PI insurance as a condition for the issue of practising certificate.
129. Persons who holds themselves out as entitled to practice as a lawyer when they are not a lawyer admitted to practice, or after they have been suspended from practice, shall be guilty of an offence and liable, on conviction, to imprisonment for 2 years, or a fine of VT 40, 000, or both.
130. There is no express provision stating that practising without a practising certificate is an offence.

Table 3. – Cost Arrangements

Jurisdiction	Costs Disclosure	Contingency Fees	Taxation of Costs	Setting Aside or Variation of Cost Agreements	Penalties/Sanctions	Costs Recovery from Clients
Cook Islands	Does not appear to be covered.	Does not appear to be covered.	The Act provides for taxation (i.e. assessment) of a lawyer's bill of costs by a client (s 58(1)).	Does not appear to be covered.	Does not appear to be covered.	The Cook Islands Law Society may publish scale fees to which all lawyers are bound, except in special circumstances to be proven by the lawyer (s 59).
Federated States of Micronesia	The <i>ABA Model Rules</i> provide that a lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services (r 7.1).	Does not appear to be covered.	Does not appear to be covered.	Does not appear to be covered.	Does not appear to be covered.	A lawyer is entitled to sue for and recover costs in relation to professional services as assessed or as agreed (s 24 of the Act).
Kingdom of Tonga	A practitioner may make a written agreement with the client in relation to the amount and manner of payment (s 25(1)).	Does not appear to be covered.	The Act provides for taxation of costs to be undertaken by application to the Supreme Court (s 26).	Does not appear to be covered.	A lawyer or the client may apply to the Supreme Court for assessment of the reasonableness of a written cost agreement. The Court has power to increase or reduce the amount payable or cancel the agreement and assess the costs (s 25(3)).	The Conduct Rules provide that a lawyer shall charge no more than a fee which is 'fair and reasonable for the work done' having regard to the interests of both client and lawyer (r 3.01).

⁵⁹ It is noted that while most Jurisdictions do have a Scale of Costs, these were not provided to the SPLA for the purposes of this report.
Legal Professional Regulation in the South Pacific

Jurisdiction	Costs Disclosure	Contingency Fees	Taxation of Costs	Setting Aside or Variation of Cost Agreements	Penalties/Sanctions	Costs Recovery from Clients
Kiribati	The Conduct Rules state it is the lawyer's duty to communicate with clients on costs including, among other things, providing the client with written advice as to a reasonable estimate on costs, disbursements and provision of a retainer (r 40). The formal requirements are set out at r 41(2).	The Conduct Rules prohibit the charging of contingency fees (r 41(1)).	Does not appear to be covered.	Does not appear to be covered.	The manner in which fee disputes between an instructed and instructing lawyer are to be handled is covered by the Conduct Rules (r 44).	Costs agreements are not be unfair and unreasonable (r 41(2)).
Marshall Islands	Does not appear to be covered.	Payment of fees on a contingency basis is covered by the Act (s 509(4)). The Act permits a no win no fee or less fee basis where the client is poor or otherwise deserving of assistance (s 509(5)).	Does not appear to be covered	Increase of fees not be made unless circumstances arise which increase substantially the burden and responsibility on the lawyer (s 509(2)).	False receipts (for payment yet to be made by the client) are prohibited (s 509(6)).	Methods of charging on an hourly basis and the amount are to be agreed with the client. In the absence of agreement, the amount must be 'proper and reasonable' in all the circumstances (s 509(1)). The Act provides that the time for payment must be within a reasonable time of rendering a fee note (unless otherwise specified) (s 509(7)).
Nauru	The Act provides that a practitioner may make a written agreement with the lawyer's client in relation to the amount and manner of payment for the whole or any part of the legal services to be provided and disbursements to be charged (s 19(1)).	Does not appear to be covered	The right to sue for and recover taxed costs is covered by s 18 of the Act.	Does not appear to be covered	Contravention of s 19(1) of the Act is reviewable by the Supreme Court as to its reasonableness (s 19(3)).	The Rules provide scale fees for the remuneration of lawyers (both barristers and solicitors) for work done in relation to non-contentious business and cover the setting of scale fees (r 5).

Jurisdiction	Costs Disclosure	Contingency Fees	Taxation of Costs	Setting Aside or Variation of Cost Agreements	Penalties/Sanctions	Costs Recovery from Clients
Norfolk Island	<p>A solicitor may make an agreement about the amount of costs payable (not including disbursements), or to be payable, for work of a professional nature already undertaken or to be undertaken in the future (s 39(2)).</p> <p>Such an agreement must be in writing to be enforceable (s 39(3)).</p>	Does not appear to be covered.	A client or person to whom a statement of costs has been delivered (except pursuant to a costs agreement under s 39(2)) may apply for the taxation of the statement of costs within a specified time (s 34).	Does not appear to be covered.	A client may apply to the Supreme Court for an amount payable under the agreement to be reduced or for a declaration that the agreement is not binding on the parties where the Court assesses the agreement is not fair and reasonable (s 40).	<p>The Act bars any action for the recovery of costs or disbursements in relation to professional costs until the end of one month after the solicitor delivers to the person an itemised statement of costs or disbursements (s 33(1)).</p> <p>There is no scale of fees in Norfolk Island. However, practitioner's fees are generally the same as or lower than those applicable in Australian jurisdictions.</p>
Palau	There are no provisions dealing with costs disclosure and costs agreement.					
Papua New Guinea	<p>A lawyer may make a written costs agreement (s 66(1)).</p> <p>A bill of costs must include a signature by a lawyer and be delivered to the client (s 62(4)). It must contain particulars of the work done, the disbursements made and the costs claimed for the work done (<i>National Court Rules</i> (NCR) Order 22 Rule 49)).</p>	Does not appear to be covered.	<p>Costs may be taxed upon the application of a party chargeable or by a lawyer who has delivered a bill of costs, or upon application by third parties (s 65).</p> <p>Taxation is to be undertaken by the Registrar of the National Court (s 63) and in the prescribed way (NCR O22 R46-59).</p>	Does not appear to be covered	The client may challenge the fairness and reasonableness of a costs agreement in court, and the court has power to reduce the amount agreed or direct that costs be ascertained by taxation (s 66(3)).	<p>A non-contentious costs committee is provided for under the Act, which makes recommendations to the Minister for the remuneration of lawyers in relation to non-contentious business (ss 71 and 72).</p> <p>A lawyer may recover costs if brought one month after a bill of costs has been delivered and only where such bill of costs complies with the formal requirements under the Act (s 62(1)).</p>
Pitcairn Islands	The LPA is silent on costs disclosure matters. There would also appear to be no regulations or professional conduct rules that address this topic.					

Jurisdiction	Costs Disclosure	Contingency Fees	Taxation of Costs	Setting Aside or Variation of Cost Agreements	Penalties/Sanctions	Costs Recovery from Clients
Republic of the Fiji Islands	A practitioner may make a written agreement with the lawyer's client in relation to the amount and manner of payment for the whole or any part of the legal services to be provided and disbursements to be charged (s 77(1)).	A lawyer may agree to payment in the event of a successful outcome (s 78).	Does not appear to be covered.	Does not appear to be covered.	If a cost agreement is thought to be unreasonable, a client may apply to the Court or Judge to review. The Act grants to the Court or Judge power to, among other things, reduce the amount payable under the challenged costs agreement or to cancel the agreement all together (s 77(2)).	<p>The Act provides for the establishment of the Costs Review Committee to review the schedule of fees by which are calculated the amount of costs payable by one party to another pursuant to an order for costs made by a judge in a proceeding (ss 75 and 76).</p> <p>The lawyer's right to sue to recover costs is covered by s 79.</p> <p>The client has the right to request the particulars of the calculation of those charges (s 80).</p>
Samoa	A lawyers must, before carrying out the legal service requested, issue a letter which sets out the estimated legal fees and costs (s59(1)),	Does not appear to be covered	Does not appear to be covered	If the lawyer, in the course of carrying out the legal service, is of the opinion that the fee will increase they must issue another letter setting out the increase in fees and costs (s59(4))	<p>A lawyer may only charge and recover costs that are fair and reasonable in the circumstances, with respect to the degree of difficulty involved (s59(2)). The onus of establishing the costs are fair lies with the lawyers (s59(5)).</p> <p>The Council or a court may order that a portion of fees which is in excess of what is fair and reasonable be reimbursed, as well as impose any other penalty under Part VII (s59(6)) and also may amount to misconduct under Part VII (s59(7)).</p>	Does not appear to be covered.

Jurisdiction	Costs Disclosure	Contingency Fees	Taxation of Costs	Setting Aside or Variation of Cost Agreements	Penalties/Sanctions	Costs Recovery from Clients
Solomon Islands	The LPA and professional conduct rules are silent on costs and costs agreement at the time of the survey.					
Tokelau	Does not have a LPA and therefore no professional conduct rules.					
Tuvalu	Does not have a LPA and therefore no professional conduct rules.					
Vanuatu	<p>There is a requirement for a final account or bill of costs to contain sufficient information to identify the matter, time spent and work done (s 55). The terms of remuneration must be fair and reasonable (s 52).</p> <p>The Act also covers the provision of fee estimates where a client requests the information (s 54).</p> <p>Further, conditional fee agreements may be made, including the obligation to inform the client as to other appropriate arrangements, requirements to be in writing, and the conditions amounting to a successful outcome (s 56).</p>	Does not appear to be covered.	Does not appear to be covered.	Lawyers are required to inform the client in writing and in advance where fees are debited from money held in trust before the performance of legal services (s 53).	Does not appear to be covered	The Act provides for the fair and reasonable remuneration of legal services provided by a lawyer to his/her client (ss 50 and 51).

Appendix 4 - Rules of Professional Conduct

Table 4. – Professional Conduct Rules

Jurisdiction	Independence	Honesty, integrity and fairness	Conflicts of interest	Confidentiality / client legal-privilege	Conflicts of duty ⁶⁰	Lawyers' undertakings	Competence	Protection of client and third party property	Fees and cost disclosure
Cook Islands	Yes (Code of Ethics r 2).	Yes (Code of Ethics r 3, 11, 14).	Yes (Code of Ethics r 10, 16, 17, 22).	Yes (Code of Ethics r 6, 9, 18).	Yes (Code of Ethics r 7-8).	No.	Yes (Code of Ethics r 5).	Yes (Code of Ethics r 19-20).	Yes. (Code of Ethics r 15, 21, and 23).
Federated States of Micronesia	Does not have professional conduct rules.								
Kingdom of Tonga	Yes (Rules of Professional Conduct r 2.02(b)).	Yes (Rules of Professional Conduct r 5.01-5.02)	Yes (Rules of Professional Conduct r 1.01-1.12).	Yes (Rules of Professional Conduct r 1.07-1.08, 2.03(b)).		Yes (Rules of Professional Conduct r 5.07).		Yes (Rules of Professional Conduct 7.01-7.12).	Yes (Rules of Professional Conduct r 3.01-3.02).
Kiribati	Does not have professional conduct rules.								
Marshall Islands	Does not have professional conduct rules								
Nauru	Has rules dealing with trust accounts and costs for non-contentious matter but these are very limited.								
Norfolk Island	Has extensive rules regarding Audits but this does not seem to apply for our purposes.								
Palau	Does not seem to have conduct rules other than r 2(h) of the Disciplinary Rules which states 'any act or omission which violates the <i>ABA Model Rules</i> may give rise to disciplinary proceedings, and r 10 of the <i>Rules of Admission for Attorneys and Trial Counselors to Practice in the Courts of the Republic of Palau</i> , which covers automatic disbarment for any member of the Palau Bar convicted in any jurisdiction for a felony or other crime involving dishonesty or false statements, and any member of the Palau Bar disbarred or suspended from the practice of law in any court of competent jurisdiction.								

⁶⁰ These duties include to the client, the court and to act in the interests of justice

Jurisdiction	Independence	Honesty, integrity and fairness	Conflicts of interest	Confidentiality / client legal-privilege	Conflicts of duty ⁶⁰	Lawyers' undertakings	Competence	Protection of client and third party property	Fees and cost disclosure
Papua New Guinea	Yes (Conduct Rules r 12).	Yes (Conduct Rules r 3(a)(ii), 4, 8, 20).	Yes (Conduct Rules r 10).	Yes (Conduct Rules r 9).	Yes (Conduct Rules r 3(b)).	Yes (Conduct Rules r 25).	Yes (Conduct Rules r 3(c)).	Yes (Conduct Rules r 18).	Yes (Conduct Rules r 18).
Pitcairn Islands	Does not have professional conduct rules.								
Republic of the Fiji Islands	Yes (Rules of Professional Conduct r 3.4 and 7.7)	Yes (Rules of Professional Conduct r 4.1, r 6.1)	Yes (Rules of Professional Conduct r 1.3)	Yes (Rules of Professional Conduct r 1.1)	Yes (Rules of Professional Conduct, Chapter 3)	Yes (Rules of Professional Conduct Chapter 3)	Yes (Rules of Professional Conduct r 7.5 and 7.6)	Yes (Rules of Professional Conduct r 1.6)	Yes (Rules of Professional Conduct r 7.3 and r 8)
Samoa	Yes (Conduct Rules r 1.05 and 2.03)	Yes (Conduct Rules Chapter 7)	Yes (Conduct Rules r Chapter 1 and r 3.02)	Yes (Conduct Rules 1/01 and 1.07)	Yes (Conduct Rules Chapter 1)	Yes (Conduct Rules r 3.03 and r 5.07)	Yes (Conduct Rules 3.03)	Yes (Conduct Rules Chapter 6)	Yes (Conduct Rules Chapter 3)
Solomon Islands Rules appear to be almost exactly the same as for Papua New Guinea.	Yes (Conduct Rules r 13).	Yes (Conduct Rules r 4(a)(ii), 5, 9, 21).	Yes (Conduct Rules r 11).	Yes (Conduct Rules r 10).	Yes (Conduct Rules r 4(b)).	Yes (Conduct Rules r 26).	Yes (Conduct Rules r 4(c)).	Yes (Conduct Rules r 19).	Yes (Conduct Rules r 19).
Tokelau	Does not have a LPA and therefore no professional conduct rules.								
Tuvalu	Does not have a LPA and therefore no professional conduct rules.								
Vanuatu	Does not have legislation which describes the content of conduct obligations.								

Appendix 5 – Complaints and Discipline Handling

Table 5. – Complaints and Discipline Handling

Jurisdiction	Approach to Complaint Investigation	Penalties for Misconduct
Cook Islands	<p>Complaints are to be made in writing to the Registrar of the High Court (s 15(1)). Investigation is undertaken by the Office of Chief Justice (s 15(2) and s 16) with all the powers of a Commission of Inquiry.</p> <p>The Cook Islands Law Society has advised the Council that they have considered the implementation of a Disciplinary Committee to address some of the issues inherent in vesting the Chief Justice with the above disciplinary powers. However, the Council decided to continue with this approach for the following reasons:</p> <ul style="list-style-type: none"> • the Cook Islands profession is small (less than 60 people) and vesting disciplinary power in a tribunal comprising other members of the profession may cause tension amongst members; and • identifying appropriate replacements of the Chief Justice who are independent of the Law Society and outside of the judiciary would be highly difficult, especially given the importance that this role be undertaken by those with experience in judicial matters. 	<p>In the Cook Islands there exist a range of penalties available in Part III of the Act for the censure of a practitioner for professional misconduct.</p> <p>Recent disciplinary proceedings have exposed a gap in penalties for misconduct. The Chief Justice is unable to suspend the practitioner from practice for a defined period of time. The Cook Islands Law Society has advised that the Bill addresses this gap.</p>
Federated States of Micronesia	<p>Rule 8.3 of the <i>ABA Model Rules</i> provides that a lawyer shall inform the appropriate professional authority if they know another lawyer has committed a violation of the <i>ABA Model Rules</i> which raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects.</p> <p>There would not appear to be any legislation, regulations or rules providing for the establishment of a professional authority for this or any other purpose of professional regulation in The Federated States of Micronesia.</p>	<p>The <i>ABA Model Rules</i> do not attempt to define appropriate disciplinary measures for professional misconduct, but related documents suggest they ‘should depend upon the facts and circumstances of the case, should be fashioned in light of the purpose of lawyer discipline, and may take into account aggravating or mitigating circumstances’ (ABA Standard 7.1)</p> <p>This creates obvious problems for inconsistent sanctions and penalties.</p>

Jurisdiction	Approach to Complaint Investigation	Penalties for Misconduct
<p>Kingdom of Tonga</p>	<p>The Law Society of Tonga appoints a Disciplinary Committee from its members which hears and determines complaints made in writing by any person (s 20) in relation to the professional conduct of law practitioners (s 19(1) and (2)). An appeal to the Supreme Court can be made following decision of the Disciplinary Committee (s 21).</p>	<p>Per s 21 of the Act, where the Disciplinary Committee is satisfied that a law practitioner is guilty of professional misconduct, or where a law practitioner is convicted by a court of an act involving dishonesty or is sentenced to a term of imprisonment of at least 2 years, the Committee may:</p> <ul style="list-style-type: none"> • recommend that the name of the law practitioner be struck off the Roll; • recommend that the practising certificate of the law practitioner be suspended for such time as the Committee may determine; • recommend the imposition on the law practitioner a fine not exceeding \$1,000; • censure the law practitioner. <p>Where the Disciplinary Committee has censured a law practitioner or has recommended that such practitioner be fined, it may also recommend to the Chief Justice that that practitioner’s practising certificate be made subject to such conditions as the Committee may recommend.</p>
<p>Kiribati</p>	<p>Complaints are to be made in writing to the Council of the Kiribati Law Society (consisting of 5 people elected from the membership of the Society (s6(1)) per s 13 of the Act. Attempts are then made to bring an amicable resolution of the matter (s 13(3)).</p> <p>Where there is no resolution or it is not amenable to an amicable resolution, a Professional Conduct Committee (PCC) is established to investigate the complaint (s 13(4)), which will either dismiss the complaint or publish its reason for decision following a hearing before the PCC where the lawyer involved has a right of appearance and representation and may call witnesses and evidence and address the PCC on the complaint (ss 18 and 19).</p> <p>The final determination of the PCC is appealable to the High Court (s21 (1)).</p>	<p>Section 20 of the Act outlines the measures which the PCC may take where a complaint has been upheld. These measure include:</p> <ul style="list-style-type: none"> • censuring or reprimanding the lawyer; • ordering the lawyer to apologise to the complainant; • if the complaint concerned an allegation of over-charging, ordering the lawyer to: <ul style="list-style-type: none"> - reduce his or her fees for the services provided to the complainant; or - refund an amount to the complainant; • ordering the lawyer to pay to the Society a fine not exceeding \$1000; • requesting the Attorney-General to petition the High Court for: <ul style="list-style-type: none"> - a suspension of the lawyer's right to practise; or - the removal of the lawyer's name from the Roll, in accordance with the provisions of the Admission Rules; • ordering the lawyer to pay to the complainant any costs and expenses incurred by the complainant in respect of the inquiry; and • ordering the lawyer to pay to the Society the costs of the inquiry.

Jurisdiction	Approach to Complaint Investigation	Penalties for Misconduct
Nauru	Complaints are to be made to the Chief Justice. Where necessary the complaint shall be formally investigated (s 35) and the Chief Justice shall decide whether the person has been guilty of professional misconduct or conduct unbecoming a barrister or solicitor (or pleader) (s 37(1)).	<p>Under s 37 of the Act, after enquiring into the complaint and of the opinion that the practitioner has been guilty of professional misconduct or of conduct unbecoming a barrister and solicitor or a pleader, the Chief Justice may:</p> <ul style="list-style-type: none"> • order that the practitioner’s name be struck off the Roll; • order that the practitioner be suspended from practice as a barrister and solicitor or pleader for such period not exceeding three years; • order the practitioner to pay into the Treasury Fund by way of penalty such sum not exceeding two hundred dollars; • censure the practitioner; and/or • order the practitioner pay into the Treasury Fund such sums as he may think fit in respect of the costs and expenses of and incidental to the inquiry.
Norfolk Island	The Norfolk Island Bar Association has only persuasive influence or power, not statutory power, regarding disciplinary complaints. Currently complaints are sent directly to the Supreme Court.	<p>Per s 18A of the Act, if the court is satisfied that a legal practitioner is guilty of professional misconduct or unsatisfactory professional conduct, the court may, by order:</p> <ul style="list-style-type: none"> • direct that the practitioner’s name be removed from the Register of Practitioners; • suspend for such period as the court considers appropriate the practitioner’s right to practise in Norfolk Island as a barrister, as a solicitor or as a barrister and solicitor; or • impose a fine.
Marshall Islands	There is no legislation, rules, or professional conduct rules for dealing with complaint handling and investigation, although the Rules (r11) do provide that a person who commits professional misconduct, including breach of the <i>ABA Model Rules</i> (R 6(f) shall be subject to disciplinary action including suspension of a practising certificate or disbarment.	<p>Under s 510 of the Act, any person who is found to have violated any provision of the Act or any rule promulgated in accordance with the Act, shall be guilty of contempt of the Supreme Court and, upon conviction, shall be subject to the following penalties:</p> <ul style="list-style-type: none"> • permanent disbarment; or • a term of imprisonment not to exceed six (6) months; or • a fine not to exceed \$10,000; • or any combination thereof.

Jurisdiction	Approach to Complaint Investigation	Penalties for Misconduct
Palau	<p>Governed by the <i>Disciplinary Rules & Procedures for Attorneys</i>. All complaints concerning violation of the rules are to be referred to the Chief Justice or his/her designee (s 4(a)), who may either dismiss the complaint if it is determined to be plainly without merit, or appoint a Disciplinary Tribunal to investigate and prosecute, if need be, before a Disciplinary Tribunal.</p> <p>Where a complaint is filed about an attorney's conduct in the prosecution or defence of a matter pending in the Trial division of the Supreme Court of Appellate division of the Supreme Court, the complaint shall be referred, at first instance, to the sitting judge(s) of the matter to which the attorney's conduct is said to relate (s 4(c)).</p>	<p>Per r 3 of the <i>Disciplinary Rules & Procedures for Attorneys</i>, disciplinary action may consist of:</p> <ul style="list-style-type: none"> • disbarment; • suspension for not more than five years; • public censure; • private censure; • a fine; and/or • community service. <p>The Disciplinary Tribunal may, in the exercise of its discretion, suspend the imposition or execution of sanctions and place the respondent attorney on probation under conditions for up to five years.</p> <p>The cost of investigating and prosecuting the action may also be assessed against the respondent attorney in cases which do not result in dismissal.</p>
Papua New Guinea	<p>Any person may ask the Lawyers' Statutory Committee (LSC) to investigate a complaint (Section 52(2)). Further, where a lawyer becomes aware of any breach of the Act or Rules, he must report the matter to the LSC (<i>Professional Conduct Rules</i> s 4(4)).</p> <p>The Commission has all the power of a Commission of Inquiry under the <i>Commission of Inquiry Act</i> (s 53).</p> <p>Proceedings are not open to the public (s 53(4)). However, decisions of the Committee can be appealed as per the requirements set out in the relevant provision (s 58).</p>	<p>Under s 54 of the Act, if the Lawyers Statutory Committee is of the opinion, after an enquiry, that a lawyer has been guilty of improper conduct as a lawyer; it may impose any one or more of 18 possible penalties. These include reprimands, suspensions/restrictions, financial penalties and an application to the Court to remove a lawyer's name from the Roll.</p>
Pitcairn Islands	<p>There are no acts, regulations or rules for dealing with complaint handling and investigation. The Chief Justice does have power at any time upon good cause to revoke the certificate of admission.</p>	<p>There are no acts, regulations or rules for dealing with complaint handling and investigation.</p>

Jurisdiction	Approach to Complaint Investigation	Penalties for Misconduct
<p>Republic of the Fiji Islands</p>	<p>Complaints must be made either orally or in writing to the Chief Registrar of the High Court (s 99) who may investigate the conduct of the lawyer or law firm (s 109) and may after such investigation:</p> <ul style="list-style-type: none"> • summarily dismiss the complaint; • seek to facilitate resolution; or • commence disciplinary proceedings before the Independent Legal Services Commission. <p>Hearings are held in public unless the Commission orders otherwise (s 113(1)).</p> <p>Proceedings and orders are governed by Division 4 of the Act.</p> <p>An appeal against a decision of the Commission to the Court of Appeal is available (s 128(1)).</p>	<p>Section 21(1) of the act provides a comprehensive range of penalties which the Independent Legal Services Commission may order against a legal practitioner or law firm or any employee or agent of a legal practitioner or law firm.</p> <p>These penalties will only be available when the Commission is satisfied that</p> <ol style="list-style-type: none"> a) the legal practitioner; law firm; or, any employee or agent of a legal practitioner or law firm, b) has engaged in professional misconduct or unsatisfactory professional conduct.
<p>Samoa</p>	<p>The Act provides for a complaint process under Part VII div 2. A written complaint must adhere to the formality of s45(a), or the Council may initiate a complaint on its own initiative to the Complaints Committee under s45(2).</p> <p>The Council must refer all complaints to the Complaints Committee (s45(3)) and may, pending an investigation, hearing or determination, suspend a lawyer from practice if they are satisfied the complaint is serious enough to warrant a suspensions (s45(4)). Notice of 10 days must be given (s45(5)), and the complainant must be notified under s46.</p> <p>The Complaints and Investigation Committee is established under s47 of the Act. The Committee has the authority to dismiss a complaint on the grounds outlined in s49(1). This does not limit the ability of a complainant to make a fresh complaint if new evidence is produced (s49(2)).</p>	<p>A disciplinary tribunal is established by s52 of the Act. The tribunal will hear and determine all charges of professional misconduct and unsatisfactory misconduct. They have power to dismiss frivolous or vexatious claims (s52(b)).</p> <p>The penalties for unsatisfactory professional conduct include: the respondent's practising certificate to be subject to a specified condition; the respondent to undertake and complete a specified course of further legal education; the respondent to undertake a specified period of practice under supervision (s55).</p> <p>The penalties for professional misconduct include: censure; any penalty provided for in section 55(1); suspension from practice for a period not exceeding five (5) years; an order not to practise law on own account until authorised by the Council; an order to pay a penalty to the Law Society not exceeding 50 penalty units.</p> <p>There are additional penalties for misconduct involving trust accounts (s57).</p>

Jurisdiction	Approach to Complaint Investigation	Penalties for Misconduct
Solomon Islands	<p>There are no specific provisions for the procedure for the making of complaints. Upon receipt of a complaint the Chief Justice may appoint a disciplinary committee to investigate the complaint (s 8(1)). Nothing in the Act provides for a hearing of the matter although there is a right of appeal to the High Court against an order made by the committee (s 12).</p> <p>It is noted that there are upcoming legislative amendments which are expected to introduce a new approach.</p>	<p>Under s 9(2) of the Act a range of penalties available to the Disciplinary Committee for the disciplining of a practitioner for professional misconduct, including:</p> <ul style="list-style-type: none"> • striking off from the roll the name of the legal practitioner; • suspension of the legal practitioner from practice for such period as the committee shall think fit; • ordering the legal practitioner to pay to general revenue a penalty as the committee thinks fit; • censuring the legal practitioner; or • ordering the legal practitioner to pay costs and expenses of and incidental to the inquiry.
Tokelau	There are no acts, regulations or rules for dealing with complaint handling and investigation.	There are no acts, regulations or rules for dealing with penalties for misconduct.
Tuvalu	There are no acts, regulations or rules for dealing with complaint handling and investigation.	There are no acts, regulations or rules for dealing with penalties for misconduct.
Vanuatu	<p>A person may complain in writing about a legal practitioner to the Secretary of the Law Council (s 8). A Disciplinary Committee of the Law Council hears these complaints (s 7(1)) and may require the Secretary to investigate and report on the complaint before it considers it further (s9(2)).</p> <p>An appeal is taken to the Supreme Court from a decision of the Disciplinary Committee (s10) pursuant to the requirements therein.</p>	<p>Section 39(1) of the Act provides that where, after an enquiry, the Disciplinary Committee finds a legal practitioner has committed misconduct, it may:</p> <ul style="list-style-type: none"> • order that he be struck off the Register of Legal Practitioners; • suspend the legal practitioner from practice for such period as it shall consider fit; • impose a fine of not more than VT 150,000 on the legal practitioner which shall be payable into the Revenue Fund; • order the legal practitioner in addition to any other penalty to pay compensation to a complainant of not more than VT 150,000; • reprimand the legal practitioner; • order the respondent to do specified legal training; • recommend, if applicable, that a customary reconciliation ceremony be held between the complainant and the respondent; • make an order for costs against the respondent; • make such other orders as the Committee considers necessary.

Primary Materials

Conduct leading to disciplinary proceedings

1. Most of the LPAs appear to adopt a variety of formulations in respect of defining the conduct that attracts disciplinary consequences.
2. Some jurisdictions draw a distinction between two broad categories of conduct: 'professional misconduct' and 'conduct unbecoming of a barrister or solicitor'.⁶¹
3. Fiji draws a distinction between unsatisfactory professional conduct and professional misconduct. Professional misconduct incorporates both limbs of the *Allinson* test, to provide for professional misconduct occurring both in connection with, but also not in connection with, the practice of law (ss 81 and 82).
4. Norfolk Island employs the same distinction between unsatisfactory professional conduct and professional misconduct (s18A(1)) - albeit without providing the tests of professional misconduct that are found in the Fiji legislation.
5. In the Cook Islands (s 15) only 'professional misconduct' is used in the Act (and is not defined or otherwise elaborated upon).
6. In Tonga the term 'professional misconduct' is used (s 20), but the Act provides no definition and only limited elaboration on what may amount to misconduct (see s 10 (3), s 27.3).
7. In Kiribati, neither professional misconduct nor cognate expressions is used. Complaints may be made about a breach of 'fundamental obligations' (s 13), which, in s 11, is defined as a number of obligations including:
 - to uphold the rule of law and to facilitate the administration of justice in Kiribati;
 - to be independent in providing professional services;
 - to act in accordance with all fiduciary duties and duties of care owed by lawyers to their clients; and
 - to protect, subject to his or her overriding duties as an officer of the High Court and to his or her duties under any Act, the interests of his or her clients.
8. In Papua New Guinea the relevant failing for which a finding made be made consequent on a complaint is 'improper conduct of a lawyer' (ss 52 and 54).
9. Samoa distinguishes between 'unsatisfactory professional conduct' and 'professional misconduct' as defined in Part VII of the Act. The penalties for the two differ, and are covered in s55 and s56 respectively. A complaint may be made in writing to the Council, or the Council may, of its own initiative, initiate a complaint to the Complaints Committee.
10. The legislation in Vanuatu distinguishes between 'misconduct' and 'unsatisfactory conduct' (s 2).
11. The Marshall Islands refers to 'professional misconduct' (The Rules, r 11) and takes in to account conduct in violation of professional rules (including conduct prohibited by the ABA

⁶¹These include Nauru (s 38(b)) and Solomon Islands (s 11(b)).

Model Rules), breach of clients' confidentiality and unauthorised use of client funds and charging excessive fees.

12. Some legislation lacks provisions dealing with discipline, namely, Tuvalu and Pitcairn Islands.