



PACIFIC JUDICIAL STRENGTHENING INITIATIVE

SITUATION ANALYSIS OF PACIFIC LAWYER ASSOCIATIONS¹

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**FEDERAL COURT
OF AUSTRALIA**



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¹ The term 'Lawyer Associations' used throughout this report is inclusive of both Law Societies and Bar Associations.

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Executive Summary

Purpose of this Review

This review assesses the needs of Pacific law associations in relation to their efforts to professionalise legal professions across the Pacific, including their regulatory frameworks and capacity requirements. It documents best practices and initiatives currently in existence and identifies key priority areas for focus going forwards, along with recommendations for how the PJSI could contribute to these through piloting activities and approaches in the next iteration of the Program.

Background and Context

Strong and healthy Pacific lawyer associations are needed to fulfil their critical public purposes of providing competent, ethical and well-regulated lawyers to serve the courts, the people and to uphold the rule of law. While lawyer associations must be self-regulated to operate independently, as their function requires, the state remains responsible for providing oversight of these delegated regulatory powers within the social framework of law and justice being public goods.

Main Findings

Despite their critical roles directed to serving public purposes, Pacific lawyer associations have been expected to self-fund their activities. Yet most have only very limited means for raising funds and consequently, have been chronically under-resourced. States and donors have neglected to step-in and provide support.

Most Pacific lawyer associations remain heavily dependent on voluntary contributions by their executives, which cannot be reliably sustained. This has retarded their steady institutional development and left many ill-equipped to fulfil core functions, such as to administer swift and effective professional discipline of their members. Many are also unable to provide their members with adequate professional development opportunities and support.

This combination of capacity deficits carries significant risks. Most law graduates enter the profession with limited knowledge of local legal frameworks and practical legal skills and then have limited opportunities to learn from experienced, competent and ethical lawyers ‘on the job’, creating major competency issues. Most face complex ethical dilemmas due to conflicts of interest arising out of kinship obligations or small legal profession environments. Poorly regulated Pacific lawyers may succumb to pressure to use their legal skills to facilitate corrupt or improper legal transactions by powerful political or economic actors, contributing to further drops in professional standards and even undermining, rather than upholding, the rule of law.

Most of the effort to increase professionalism of lawyers in the region has focused on reforming legal regulatory frameworks. While good laws are certainly needed, and many still require further reform and attention, laws alone are certainly not enough. This review argues that the biggest gains are to be made by switching focus to investing in people, providing financial resources, infrastructure, technical expertise and supporting regional coordination of capacity strengthening efforts of national lawyer associations.

Recommendations

This review recommends investment in the following priority areas:

- Establish mandatory Continuing Professional Development ‘points’ systems for legal education (face-to-face, video, webinar) made more sustainable by accrediting points to senior lawyers who provide learning activities (also reducing costs) and possibly adding a small CLE levy to the annual practising certificate fee.
- Establish mentoring/coaching models matching ‘super coach’ senior vetted lawyers with junior lawyers to inculcate them with good practice habits and to offer ongoing mentoring and support.
- Ensure lawyer associations (except in micro-states) each have an office and/or administrative capacity, and operational resources to provide their core functions. This includes capacity to administer practising certificate applications and integrity requirements, CLE and pro bono ‘points schemes’ including to verify attendances, control the quality of pro bono work performed and efficient case management of complaints and disciplinary mechanisms etc.
- Establish structured pro bono programs coordinated with national/other existing legal aid providers and law schools that are properly ‘scoped’ and ‘messed’ to ensure they are not depriving lawyers of paid work or seen as a substitute for properly funded legal aid systems, with appropriately ‘sized’ and matched cases according to lawyers’ experience and areas of practice, that provide lawyers with public recognition and awards schemes to honour their pro bono contributions.
- Establish national and regional legal ethics advisory services for lawyers through lawyer associations and regional capacity (below)
- Strengthen resourcing and capacity of complaints and disciplinary mechanisms including by:
 - Setting targets for number of matters and timeframes for resolution of complaints²
 - Providing some remuneration (beyond a certain level of voluntary contribution) for investigators and those sitting on panels to expedite sittings to resolve complaints;
 - Building technical capacity to ensure high standards of investigation and natural justice are adhered to;
 - Providing public information regarding complaints mechanisms against lawyers; and
 - Publishing/making public final outcomes of professional misconduct complaints.
- Support lawyer associations to increase their policy and law reform functions
- Investigate options for providing regional capacity to:
 - Develop and deliver high quality CLE packages that can be delivered remotely to all Pacific jurisdictions
 - Provide small grants fund that lawyer associations can apply for to undertake innovative programs of community legal education and outreach

² For example, that 80% of complaints be finally determined within 6 months (excluding any court appeals).

- Establish regional or national standardised written test on legal ethics as compulsory pre-admission requirement
- Support small jurisdictions to administer their core functions including ‘points’ CPD and pro bono programs
- Provide confidential and accessible professional ethics advisory service to lawyers from all Pacific jurisdictions
- Advocate for national lawyer associations and provide them with technical assistance upon request
- Arrange collective cost-effective professional indemnity insurance for national lawyer association members

In March 2020 these recommendations were endorsed by the Chief Justices’ Forum as the main areas to be further explored in a consultative regional workshop with national lawyer association actors. This workshop, followed by a final workshop with Chief Justices, were conducted in March 2021 endorsing the key issues identified and proposed solutions to these, as per the results set out in Annex F.

1.0 Introduction

Lawyers and their professional associations serve critical public purposes in all Pacific states, through their functional contributions to the rule of law and through their roles in regulating the legal profession. Many Pacific states are in states of rapid governmental and economic transformation, and typically struggle to implement the rule of law. The demographics of Pacific legal professions, and the nature of Pacific legal practice is also undergoing major change. In these dynamic environments there are serious consequences attached to denying Pacific legal professions the opportunity to develop their capacity to fulfil their necessary functions. Where legal systems are firmly entrenched, poor practice on the part of individual legal practitioners may be unfortunate. However, where legal systems are not well entrenched, have limited reach, or struggle to secure public support and legitimacy, poor professional and ethical behaviour among lawyers may have greater consequences. Mindful of this, Chief Justices of Pacific judiciaries have continued in their encouragement and support of national legal professions, while also urging the need for greater attention be paid to lawyers' standards of professional competence and ethical conduct, including reminding them of their overarching duties to the law and the courts.³

This review is a brief 'pulse check' of Pacific lawyer associations and regulation of the legal professions in 15 Pacific countries being: The Cook Islands, Nauru, Niue, Tokelau, Tuvalu, Vanuatu, Federated States of Micronesia, Palau, Tonga, Solomon Islands, Fiji, Papua New Guinea, Kiribati, Samoa and the Marshall Islands. From even cursory examination, building the capacity of law associations has long been neglected by Pacific governments and donors. This review therefore seeks to articulate 'a case' addressing them for why adequate resourcing and support for law associations is so crucial to Pacific countries. It also highlights the basic (but seemingly overlooked) point that regulation of the legal profession ultimately remains a state responsibility despite some aspects of implementation being necessarily delegated to other bodies or to the profession itself, due to the need for the legal profession to enjoy functional independence from the state.

The review will then switch to providing a current 'snapshot' of Pacific legal professions⁴ and a situation analysis of their key needs and capacity deficits. While these needs clearly vary in very significant ways, including based on the laws, size and other characteristics of individual jurisdictions, most face some similar challenges, such as the difficulty of stretching to cover extensive geographic areas with limited numbers of lawyers and very limited resources. Whether

³ For example, recent comments by his Honour Chief Justice Palmer seeking the legal profession's support with reducing unnecessary delays and adjournments. See '*Lengthy Remand Becomes a Concern: Chief Justice*', 'A legal practitioner's duty to his client must be balanced with his overriding duty towards the court and the law. It is improper and unethical for a lawyer to accede to his client's request when he knows it is contrary to the law, procedure and good practice'. The Island Sun, 17 January 2020, available at <https://theislandsun.com.sb/lengthy-remands-become-a-concern-chief-justice/> and also reporting of comments by his Honour Chief Justice Lunabek in welcoming admission of lawyers to the Court:

'In taking an oath (or affirmation) before this bench, you have agreed to uphold duties to your client. More importantly, you have accepted a paramount duty to the Court. This overriding duty rests on public interest principles; it is to assist the court to do justice according to law...', '*Chief Justice congratulates and encourages lawyers*', Daily Post Vanuatu, 21 November 2015 available at https://dailypost.vu/news/chief-justice-congratulates-and-encourages-lawyers/article_ab9d1723-29d6-54de-ad51-fa551d16ed9d.html?mode=jgm. See also comments by former Chief Justice Injia, to newly admitted lawyers emphasising the duty of lawyers not to engage in conduct which is illegal, dishonest or unprofessional or could bring the legal profession into disrepute, and emphasising ethics, etiquette and competence in all their professional activities as lawyers, '*New lawyers admitted*', The Loop, 2 March 2018 at <http://www.looppng.com/png-news/new-lawyers-admitted-74128>.

⁴ See also Annex A: Table 1: Admission to Practice Requirements; Table 2: Practising Certificate Requirements Annex B: Table 1: Summary of Pacific Legal Professions and Laws; Table 2: Summary of Mechanisms for Addressing Professional Misconduct of Lawyers.

nations are large or small, all their populations deserve good lawyers and responsive regulatory regimes. Concomitantly, all their lawyers need support and opportunities for mutual learning and professional development so they can provide quality legal services and make their contributions to the rule of law, as well as providing wider civil society leadership and direction in Pacific societies.

The review offers some initial observations, conclusions and recommendations for further discussion and thought regarding the key needs and priorities of lawyer associations to perform their core professional and regulatory functions. It also puts forward some suggestions and preliminary recommendations regarding the kind of support that would be best effective in addressing these. However, this is a 'living document' which will change as it progresses through several phases of discussion and consultation. The first phase will be consideration of recommendations by Chief Justices at the PJSI Chief Justices' Leadership Forum in the Solomon Islands in March 2020. Inputs from the Forum will then be fed into a regional consultation workshop with national lawyer association representatives later in the year. Further data and insights from this workshop will then be compiled into a revised review document elaborating further on recommended models of support. This may then lead to development of pilot activities or approaches supported by Chief Justices in the next iteration of PJSI program.

2.0 Objectives and Methodology of Review⁵

The main objectives of this study are to:

- Gather information and document the regulatory framework for lawyers and the roles, functions and activities of lawyer associations throughout the region.
- To assess the scope and nature of needs in relation to professionalising legal professions across the Pacific, including their regulatory frameworks and capacity requirements.
- Identify and document best practices and initiatives in lawyer associations and regulatory frameworks to enhance exchange and learning between jurisdictions
- Identify key priority areas for focus and support for Pacific lawyer associations and generate preliminary ideas for how the PJSI could contribute through piloting activities and approaches

The methodology adopted for this study included:

- A desk-based literature review of:
 - International standards relating to legal aid and global 'best practice' models.
 - Existing rules, legislation and regulations governing the legal profession in 15 Pacific states and:
 - A review of articles and reports relating to lawyer association activities in the Pacific.
- Development of a detailed interview guideline document.
- Conduct of one-on-one interviews with presidents or other senior members of lawyer associations in as many PJSI participating countries as was possible.⁶

⁵ *Terms of Reference, Bar Associations Adviser*, PJSI, 7 September 2019.

⁶ Interviews were conducted with law association actors from Palau, Marshall Islands, Samoa, Solomon Islands, PNG and Kiribati.

- Compilation of country data.⁷
- Analysis of results and write up of draft report.

As noted above, further elements of the methodology are planned but are yet to be executed, including:

- Inputs from the Chief Justices Forum in 2020 including consideration of draft recommendations.
- A regional workshop of national lawyer association actors likely to be conducted in Palau in October 2020.
- Compilation of feedback and finalisation of review and further elaborated recommendations, with a 'roadmap' of possible pilot and future activities in the next iteration of the PJSI program.

3.0 Background

Over the past two decades there has been increased recognition of the need to professionalise legal professions across the Pacific region. The main approach taken has been the introduction or updating of national laws to regulate legal practice alongside discussion about the possible role of regional uniform laws and rules of practice. Most countries included in this review already have dedicated laws and rules of conduct for regulation of their legal professions. Several countries have recently, or are currently in the process of, updating their laws to ensure that they cover all essential areas of regulation including, for example, admission and ongoing practice requirements, discipline mechanisms, codes of conduct, and increasingly, regulation of trust accounts and compulsory continuing professional development requirements.

However, this professionalisation effort has focused primarily on the legal architecture for regulation of national legal professions and has neglected the actors responsible for implementing much of this regulation, being the lawyer associations themselves. Even the most pressing and basic needs of Pacific law societies and associations have been ignored, despite these bodies being assigned, often by law, ever greater responsibility for essential regulatory functions and most having only very limited capacity to self-fund these activities.

The consequence of this neglect is an obvious major disconnect between the functions that lawyer associations have been assigned and are required or expected to fulfil, and their actual capacity to fulfil them. The overall paucity of resources for these essential functions in both the spheres of the roles of lawyer associations and the regulation of the profession makes it very difficult for substantial progress to be made. This lack of prioritisation of support for national associations is also reflected at the regional level, with donors in recent years stepping back from supporting the South Pacific Lawyers Association (SPLA), which was the main body convening and driving reforms of legal practice environments and supporting small Pacific legal professions. This retreat is a significant set-back, leaving a gap most keenly felt, especially by small jurisdictions who were dependent on regionally provided support.

⁷ See Annex A: Table 1: Admission to Practice Requirements; Table 2: Practising Certificate Requirements Annex B: Table 1: Summary of Pacific Legal Professions and Laws; Table 2: Summary of Mechanisms for Addressing Professional Misconduct of Lawyers.

3.1 Professional Lawyer Associations: The ‘poor cousin’ of Pacific Justice Chains

It remains somewhat of a mystery to understand how this ‘disconnect’ between the heavy responsibilities of lawyer associations and their limited resources, could have reached the point that it has, and why there has not been much earlier intervention and investment in lawyer associations across the Pacific. Lawyer associations remain the most neglected part of Pacific justice systems. Perhaps this is because Pacific governments see regulation of the legal profession primarily as a private concern, rather than a core state responsibility necessary for public purposes. Perhaps other justice institutions see lawyers and their associations as somewhat ancillary and peripheral to the core functions of justice service provision performed by the courts, the prosecution and the police. Perhaps donors have similar perceptions to these or are not fully cognisant of the centrality of lawyer associations and the ‘health’ of the legal profession to the effective functioning of justice processes and access to justice. Perhaps the consequences of neglecting the legal profession have not been made clear enough, including how such neglect undercuts the impact of other investments across the ‘justice chain’. Whatever the reasons, this brief review has ascertained that lawyer associations across the Pacific have been sorely neglected and require a major boost in support in order to fulfil their heavy, and growing responsibilities.

This conclusion points to the need for a ‘business case’ to be made for prioritising investment in Pacific lawyer associations. Thus, the following sections identify the stakes involved by stating the important and unique roles of lawyers and their associations, and the dependence of other justice and state actors on these being effectively performed in often fragile governance and legal environments.

4.0 ‘The Case’ for Investing in Lawyer Associations in the Pacific

A strong, independent legal profession, combined with a strong independent judiciary, is a system that *applies the rule of law and guarantees access to justice*. The legal professions of each Pacific country *form the foundation of the justice system*. In the words of his Honour, Chief Justice Lunabek:

‘...as an integral component of an independent Judiciary, the Bar, including the Public Sector Lawyers plays a very crucial role in the administration of justice. It is the instrument of the defence, protection and preservation of rights and the correction of wrongs. The Bar is also the lighthouse that guides the captains and the pilots of government to the shore of good democratic government and maintenance of law and order in the society.’⁸

Thus, at the highest level, an independent legal profession *helps to keep the power of executive and legislature branches of the state in check by engaging the judicial branch of the state in its role of applying corrective adjudication* where needed. By providing legal representation for those who otherwise would have no voice, lawyers *protect the rights of citizens from the exercise of corrupt or arbitrary power* and can be effective interrupters of power relations of “the strong do as they will, the weak do as they must”, antithetical to the rule of law. *This is a key role in many Pacific states where the rule of law is not well established.*

⁸Opening Address of Legal Advocacy for Lawyers and Prosecutors Program, 1 June 2016, as reported in Evaluation Report: Legal Advocacy Skills development in the Public Sector, Vanuatu, available at https://www.vicbar.com.au/sites/default/files/EvaluationReport_Advocacy_June2016_FINAL.pdf.

Lawyers are often amongst the most forthright civil society actors, when governance is lacking and public institutions are weak. They often provide inputs to draft laws and policies and thus help improve the quality of policy and legislation under consideration. By participating in public debate around such matters of public interest, lawyers help the voting public to better understand and have a voice about matters that affect them. In these various ways, lawyers *make important contributions to the maintenance of Pacific democracies*.

An independent legal profession is *crucial to building and maintaining a state in which human rights are respected*. The central role played by an independent legal profession in giving practical effect to human rights guarantees is reflected in the *United Nations Basic Principles on the Role of Lawyers*.⁹ (See also Annex E for a summary of key international standards relating to the roles of lawyers). Without access to competent and independent legal practitioners, people are often unaware of or unable to exercise their rights effectively, rendering the protections afforded both victims and defendants under domestic and international law meaningless.

It is only if lawyers are available and willing to assist all, including in unpopular or controversial cases, that everyone can have access to justice, equality before the law and that the presumption of innocence can have meaning. In the absence of strong professional associations to publicly explain and defend the role of lawyers, *the role of lawyers in providing representation in difficult or unpopular cases can easily be misinterpreted as endorsement or support of the politics or activities of their clients*. In the absence of a strong professional association to explain and disseminate public information and public defence of lawyers' roles, *lawyers may face stigma, retribution, or be denied work, including by governments*, for providing representation in unpopular or controversial cases, creating a major disincentive to lawyers taking on this work and undermining the right to legal representation for all.

Lawyers play key roles in *providing community access to justice and enforcing civil and legal rights*. The legal profession is often the first point of contact for any person with a legal issue. They often contribute to social justice by assisting people without means and shining a light on the injustices suffered by vulnerable people in communities. This is a critical function in Pacific states where legal aid services often cannot come close to meeting the demand for free legal assistance.

Lawyers *contribute to peaceful and inclusive societies* by bringing to the courts for resolution issues where individuals or social groups may otherwise 'take law into their own hands'. In some countries lawyers see themselves as guardians of the constitution and take direct action by closing courts and striking.¹⁰ In assisting people to articulate and realise their rights, lawyers help avert or overcome the alienation and disadvantage experienced by segments of the community. They also help to ensure that people's frustrations and grievances are resolved via structured and lawful dispute resolution mechanisms rather than left to manifest in less constructive forms of protests and unrest.

⁹ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, [Resolution](#).

¹⁰ For example, recently in India lawyers marched and went on strike to protest the 'Citizenship Amendment Act' which introduced religion-specific criteria for citizenship rights, and police use of force against protesters. Representatives of the Bar stated that lawyers were 'soldiers of the Constitution and responsible for upholding the law' and 'Lawyers are people who are proactive in responding to any developments. Rights from the Independence movement to now, lawyers have been at the forefront of any movement, it was quite natural for lawyers to come out and express their opinion.' 'Lawyers in Delhi hit streets to protest against CAA, NRC and NPR', 15 January 2020, India Today, at <https://www.indiatoday.in/india/story/lawyers-delhi-protest-caa-nrc-npr-slogans-modi-shah-police-1636897-2020-01-15>.

Lawyers *disseminate and circulate legal information* in environments where sources of legal information and outreach services are often scarce and when Pacific communities typically have very low levels of legal literacy.

- *Competent lawyers can save people and the courts, both time and money and help courts to manage its caseload.* They help people to articulate the nature of their problem and focus disputes on the real matters in issue. They help them to navigate their options for seeking a remedy, referring them to the agency most able to provide assistance or redress including by directing appropriate cases to court and *filtering out cases which can be settled outside of court, thus saving precious time and resources of courts.*
- The performance of the courts, which operate in the adversarial system of justice, is heavily dependent on the capacity of the practising bar. *Lawyers must assist the court, as their overarching professional responsibilities require.* This includes in relation to ensuring the efficient and proper administration of justice, such as by *minimising unnecessary adjournments*, being diligent in their observance of undertakings, not misleading the court, being frank in responses and disclosures to the Court, not acting in a biased way and acting with competence, honesty, and courtesy towards other solicitors, parties and witnesses. *Conversely, if lawyers are unethical, incompetent and inefficient, this has a direct knock-on effects in eroding the ability of the courts to administer justice.*
- *Lawyers are also the ‘talent pool’ for the judiciary, the prosecution and the entire justice system.* Without nurturing talent and supporting lawyers in their professional and ethical development throughout their careers, the justice system will lack for quality candidates and this will be reflected in poor judicial outcomes, stagnant case law, weakened rule of law and low public confidence in justice and the state.

5.0 Regulation of the Legal Profession as a Social Good and State Responsibility

Individual lawyers are not able to perform the above roles alone. They need to be part of strong, independent, competent and well-regulated lawyer associations who can reliably support them. Thus, lawyer associations perform a wide range of functions which often include some or all the following:

- Essential regulatory roles including upholding admission and practice requirements, administering professional discipline and upholding professional standards and ethics.
- Services and support for lawyers which may include collective professional indemnity insurance and superannuation schemes; continuing professional development, mentoring and coaching opportunities; ethical advisory services; employment services; social and sporting events; well-being and mental health services for lawyers; and member discounts.
- Participation in specialised committees and other advocacy activities focused on areas of law reform, policy development and wider public debates on matters of public interest.
- Advocacy for the profession and public awareness raising of the role of the legal profession and the wider justice system.
- Social justice contributions through provision of pro bono services.

Having a well-regulated legal profession is not a ‘nice to have’ but rather, a public necessity and a public good. This is especially important in the case in Pacific legal environments where the impact of an unregulated legal profession can be especially deleterious to the rule of law and even go to issues of the integrity and sovereignty of the state.

It is important to recognise that many roles of Pacific lawyers can predictably bring them into conflict with other actors, particularly those involved in governance and public institutions, and other powerful political and economic interests. If Pacific lawyers are not well supported by strong and independent lawyer associations and regulated standards, *they become more vulnerable to political control or pressure by powerful political and economic actors and are at high risk of being co-opted by them.* These risks warrant further contemplation in Pacific contexts where foreign actors are known to deliberately seek out jurisdictions where regulations are absent or enforcement of them is weak, or states that are poorly governed or tolerant of corrupt or illegal practices. *Unfortunately, poorly supported and regulated lawyers may be drawn into the web of such illegal activities.* This risk is especially high as lawyers’ skills are often needed by those who seek to abuse the law, whether in relation to drafting laws, facilitating the transfer of property, dealing with commercial disputes or facilitating conditions for both domestic and international trade. *Unregulated lawyers can therefore contribute to negative social impacts such as corruption, misuse of public or natural resources and loss of public confidence in state institutions.*

Several lawyers interviewed in this review spoke of the daily reality of pressure or other interference in the performance of lawyers’ roles, such as when acting in cases against powerful political or economic vested interests or defending suspects of controversial crimes. However *more common ‘garden variety’ ethical challenges and conflicts of interest also abound in Pacific legal practice owing to factors such as the small available pool of lawyers, the tight-knit nature of communities and customary obligations to kin* which are often a more powerful social force than obligations to state law or professional ethics.

These are major challenges to handle, even for the most experienced and established lawyers. However, in all Pacific jurisdictions these risks are *further compounded by the generally young demographic of the profession.* This review found that many junior lawyers are thrown ‘headfirst’ into demanding court work and other legal roles with limited experience and support. They may not have opportunities to develop sound understandings of practice ethics and professionalism. They are often supervised by others who themselves lack training, experience, and time and resources. They are often working in high-pressure jobs with poor pay and conditions, with frequent opportunities and high incentives for corruption, carrying the expectations of their communities and the obligations of their kinship networks. Inadequate supervision and lack of support structures around them leave many lawyers poorly equipped to handle the complex challenges they face.

Pacific lawyers need to be equipped and supported to best cope with the inevitable barrage of ethical challenges they face in legal practice. Practising lawyers need ongoing access to ethical advice whenever it is needed. They also need the opportunity to engage with others who have experienced navigating similar issues, as well as coaching and support as they deal with ethical challenges throughout their careers. These are needs of all lawyers, no matter their experience. Contextual ‘know how’ for how to respond ethically in difficult circumstances is knowledge that need to be circulated and shared between generations of lawyers and as widely as possible through lawyer associations, who are best placed to bring structure to ethical support. Where

such preventative measures including solid training and ongoing support fail to prevent lawyers being harnessed for improper purposes or engaging in unethical conduct, it is crucial that such conduct be swiftly ‘nipped in the bud’ and individuals transparently held accountable to their professional and ethical commitments, also as a deterrence to others.

Thus, effective regulation of the legal profession is not merely a form of market control or for collective status enhancement for lawyers. It is primarily for the public good. The legal profession is *self-regulatory*, within the broader notion of state responsibility for *oversight regulatory* powers being delegated relating to legal servicing within the social framework of law and justice being public goods. It is for the benefit of the public, other state institutions with interdependent functions and for the underlying system of governance, which all rely upon effective performance of the legal profession’s functions and services and ensuring that its proper purposes are not hijacked. Thus, regulation of the legal profession needs to be framed as a necessity for the creation of public and societal goods, and needed to safeguard, and prevent harm to these public purposes.

These public purposes and status are indicated by the fact that regulation of Pacific legal professions is provided for by national laws. There is also clear international consensus which has emerged over the past 30 years recognising the important public good at stake in relation to the regulation and protection of the roles of lawyers, their associations and the environmental conditions necessary for them to thrive.¹¹ As regulation of the legal profession is a matter of law, creating an expectation that the state will ensure it will be applied and implemented, it is therefore also a core state responsibility, in the same way as having a well-regulated health profession is provided for by law and recognised as a public good. The main structural distinction between the two is that in the case of the legal profession, the state must delegate most aspects of its regulation responsibilities to other bodies or to the lawyer associations themselves, as independence from the state is integral to the legal profession’s function.¹²

However, the fact that aspects of this regulation role have been delegated or devolved to non-state entities in no way reduces the responsibility of the state to still ensure that effective regulation occurs. The state remains responsible not only for ensuring that relevant and appropriate laws regulating the legal profession are in place but just as importantly, that professional associations or other delegated bodies are properly equipped and resourced to perform the functions required of them by law. Should a law society or other non-government regulatory body prove unable to continue operating, for example due to insolvency, the state still retains ultimate responsibility for ensuring that effective regulation of the legal profession occurs. It is therefore the responsibility of each Pacific state to ensure that its’ lawyer associations are accountable, properly audited and adequately funded.

¹¹ See Annex E, *Key International Standards Relating to the Regulation and Practice of Lawyers*, for further details.

¹² In order to practice, lawyers in most countries around the world must be licensed and agree to be bound by stringent professional obligations. However, at the same time, regulation of lawyers must not impinge on the independence of the profession. This is why regulation of lawyers must be handled by statutory bodies that operate independently from the Executive, or by the legal profession itself. For example, in order to ensure that lawyers are able to provide robust legal representation to all those who require it, without fear that their professional status will be revoked, decisions concerning the issuance or revocation of practising certificates must be independent from the Executive and must be subject to independent judicial review. The need for legal professions to be at least in part self-regulating, is one important reason why the capacity of Pacific legal professions must be built up.

6.0 'Snapshot' of Pacific Legal Professions and Situation Analysis of Key Needs and Capacity Deficits¹³

6.1 Availability of Legal Assistance across the Pacific

The most recent (and only) regional survey of bar associations was undertaken back in 2011 by the South Pacific Lawyers Association (SPLA). The SPLA survey found that at that time there were around 1,694 lawyers working in the 15 South Pacific countries surveyed,¹⁴ broken down into categories of private lawyers, government lawyers and members of lawyers' associations.¹⁵ There is (obviously) great variation in the size of legal professions across Pacific jurisdictions. Micro-states, such as Tokelau and Niue may have only a handful of lawyers, and PNG has more than 1100. Despite these differences in scale, some general observations can still be made.

As a whole, the Pacific legal profession is small and tends to be concentrated in the major centres. Generally, there are fewer private legal practitioners than public lawyers. As expected, the overall proportion of lawyers per capita is lower throughout the Pacific than in larger, more developed common law jurisdictions such as Australia or New Zealand. However, there are some exceptions to this, such as The Cook Islands, which has approximately one lawyer per 234 people,¹⁶ which is a much higher ratio than either Australia (1:351) or New Zealand (1:409). While PNG has the largest and fastest growing legal profession,¹⁷ it remains very overstretched considering PNG's huge population of almost 9 million people, with a lawyer per capita ratio of 1:10,470. Comparing this to other large Pacific states, the Solomon Islands ratio is 1:4188 and for Fiji, the best resourced profession in the Pacific, it is 1:2542.

Retention of lawyers is also a major issue in some jurisdictions. In some Pacific states there are very few people who train as lawyers and thus the available pool of qualified graduates who are eligible for admission to practice, is already small. Some jurisdictions reported that scholarships for study of law, which had previously provided a steady flow of graduates, are no longer prioritised,¹⁸ raising concern that there may be further future shortages of lawyers in those countries. Other movement patterns noted include lawyers in some Pacific countries leaving for better paid opportunities in other states. These may be in other Pacific states or in the US, New Zealand or Australia. Several small but better resourced Pacific countries can attract lawyers from larger Pacific jurisdictions where salary conditions are lower, however this does not necessarily

¹³ See also Annex A: Table 1: Admission to Practice Requirements; Table 2: Practising Certificate Requirements Annex B: Table 1: Summary of Pacific Legal Professions and Laws; Table 2: Summary of Mechanisms for Addressing Professional Misconduct of Lawyers.

¹⁴ SPLA Members, S. PAC. LAWYERS ASS'N, <https://www.southpacificlawyers.org/constituent-members> [<https://perma.cc/A6TK-SXU9>] (including the American Samoa Bar Association, Cook Islands Law Society, Fiji Law Society, Kiribati Law Society, Law Council of Australia, New Zealand Law Society, Nauru Law Society, Niue Lawyers, Norfolk Island Bar Association, Papua New Guinea Law Society, Samoa Law Society, Solomon Islands Bar Association, Timor Leste Bar Association, Tonga Law Society, Tuvalu Lawyers, and Vanuatu Law Society)

¹⁵ See Annex B for this data, which has been updated where possible based on information collected in this review. Not all jurisdictions responded to the request for an interview for this review, thus it has proven difficult to obtain up to date data on the number of practising lawyers in each jurisdiction. Direct comparison between countries is also made difficult due to the different rules in force in some jurisdictions requiring all lawyers including government lawyers, to hold practising certificates and be members of the national lawyers' association, whereas in others these are not requirements and thus not all lawyers are 'counted.'

¹⁶ With a population of 18,000 and approximately 52 lawyers.

¹⁷ Now with more than 1100 members of the Law Society, increased from 879 in 2011.

¹⁸ Such as in Kiribati and Samoa. Previously, students would receive scholarships to study law on condition that they returned to their home countries and worked in legal roles for the 2-3 years, or if they did not, they would be required to repay the costs of their scholarships.

solve lawyer shortages in jurisdictions with high admissions requirements, such as the need to pass the American Bar exam.

There is significant movement between Government lawyers and private practice within countries. Government lawyers are paid significantly lower than (successful) private practitioners, which can make it difficult for government agencies to attract and retain good legal staff. NGO and government legal aid lawyers are typically paid even less than other government lawyers, making it even more difficult for the pro bono sector to retain its legal talent. As noted in the Solomon Island Justice Project Design Document:

‘[a]gencies struggle to attract and retain good staff. Government lawyers can get much higher remuneration in the private sector. There is a high turn-over. Good lawyers are promoted to the judiciary.’¹⁹

Most ‘attrition’ from the legal profession itself is due to lawyers taking up other opportunities within their home countries. Lawyers are often in high demand for other roles, especially in Pacific states where they may be a shortage of highly educated people with strong analysis and verbal and written communication skills. Others become Parliamentarians or parliamentary staffers, academics or assume CEO level non-practising roles in corporations.

No data could be found in relation to the number of foreign lawyers practising in Pacific jurisdictions. This would be very useful information to collect, to monitor changing trends, however based on the anecdotal information provided in the interviews conducted, there are significant numbers of foreign lawyers working within most Pacific jurisdictions. This is especially in those countries (both large and small) hosting large-scale commercial ventures and increasingly, lawyers from New Zealand, Australia and the United States appearing in larger litigation matters across the region. In some jurisdictions, relaxation of residence requirements for admission of foreign lawyers has been strongly criticised by local lawyers concerned that this will lock them out of work opportunities. In countries where shipping or finance companies turn over millions of dollars annually through their Pacific operations, local lawyers may lose the chance to secure lucrative private law work with most of this legal work now migrating offshore. Conversely, other jurisdictions have been more concerned with restricting access of foreign lawyers, not necessarily to protect local lawyers’ livelihoods but to prevent particular groups from getting access to any legal representation.

6.2 Demographics of Pacific Legal Professions

Most Pacific lawyers have studied law at the University of the South Pacific (USP) or the University of Papua New Guinea, with smaller numbers having studied in Australia, New Zealand, the United States or the United Kingdom. There is significant variation in entry standards for the study of law and the quality of legal education across these countries. The small number of graduates from developed countries have significantly higher entry-level skills to the legal profession than most locally educated lawyers. It is important to bear in mind that aside from PNG students, all other students have studied law not based on the specific legal systems of their own countries. In addition, most non-Papuan Pacific lawyers have studied law in their second or third language,

¹⁹ Solomon Islands Justice Program Design Document (2017), available at <https://dfat.gov.au/about-us/publications/Documents/solomon-islands-justice-program-design-2017-2021.pdf>

often with students from a dozen different Pacific countries and many of them completing their study partly or wholly online.²⁰

Mirroring national population distributions, the most Pacific lawyers are young. For example, in the Solomon Islands it is estimated that 80% of lawyers are under 40 years old and most of them in private practice are sole practitioners. In Samoa it is estimated that 60% of Law Society members are under the age of 30 and many of them are primarily doing court work, with older lawyers more likely to have moved into senior roles in Government or non-practising legal or non-legal corporate roles.

The youthful profile of Pacific legal professions highlights the huge need for proper investment in ongoing professional training, coaching, mentoring and other support for junior lawyers. As noted by Robert Cartledge, graduate lawyers in South Pacific countries are “often thrust into positions of authority and responsibility beyond the level of their ‘training’ without the support of an experienced mentor. They are literally thrown in the deep end.”²¹ As is further discussed below, this review found that lawyer associations do not currently have capacity to provide the support required not only by the few, but by most members.

In relation to the gender division of Pacific legal professions, a regional survey of South Pacific countries conducted by the SPLA in 2014 found that even though women make up more than 50% of all law students and around half of all law graduates from the USP,²² only approximately 34% of practising lawyers are women.²³ Other major findings in the study include:

- Jurisdictions with the smallest percentage of women lawyers were Vanuatu (21%); Papua New Guinea (29%); and the Solomon Islands (29%) and with the highest percentage were Nauru (60%); Samoa (58%); and Kiribati (51%).
- In private practice, those jurisdictions with the lowest percentage of women lawyers were Vanuatu (15%); Solomon Islands (19%); and Tonga (20%) and those with the highest were Samoa (53%); Kiribati (63%); Tuvalu (100%); and Niue (100%).
- Women lawyers account for approximately 44% of all lawyers employed in Government / in-house roles in the South Pacific.²⁴ Excluding Papua New Guinea, 57% of government lawyers are women.
- Papua New Guinea and the Cook Islands are the only jurisdictions in which there are more women in private practice than in government / in-house positions.
- PNG and Fiji both have their own Women Lawyers Associations.
- At the time of the study there were 26 female judges and magistrates across all 11 surveyed jurisdictions, and seven had only one or no female judicial officers.
- In Fiji the total representation of women in the legal profession is approaching parity (41%) and women are also equally represented in private and government / in-house

²⁰ See Penfold, Carolyn --- "Teaching Legal Ethics and Professionalism in a South Pacific Context" [2013] LegEdRev 2; (2013) 23(1) Legal Education Review 7, at p.8.

²¹ Robert Cartledge, Thrown in at the Deep End, 3 NEWSPLASH 6, 9 (2011), available at https://docs.wixstatic.com/ugd/0217f9_8b9ed8f97907487ab0535c89320a7286.pdf [<https://perma.cc/CFC8-5TFB>]

²² According to 2010 figures from the University of the South Pacific, as reported in the Women in the Law in the South Pacific: Survey Report, SPLA, February 2014, p4.

²³ This compares with: Australia (45.4%); New Zealand (44.2%); and United States of America (31%).

²⁴ Compared to Australia (57.9%); New Zealand (58%); and United States of America (30%).

practice. The Cook Islands has also achieved close to equal representation of men and women in the legal profession.

The causes of under representation of women in Pacific legal practice have not been studied but are likely based in patriarchal social and cultural patterns, similar to the barriers facing women lawyers in other regions. One element may be a time lag between when women law graduates reached parity with men, and the time it has taken them to work through to all echelons of the profession. However, as with other jurisdictions, it is likely that time alone is not the answer to ongoing gender imbalance in the profession without also addressing systemic patriarchal barriers that prevent women from entering, remaining in or advancing in Pacific legal professions.

Many female lawyers likely find it difficult to juggle work and family obligations, and lack familial support or access to affordable childcare, or have other family or carer responsibilities. Women may find it harder to safely commute to locations as required by their work or to travel outside of regular work hours. Some areas of law may be considered unsuitable for women due to enduring gender stereotypes or cultural barriers. Women lawyers may face gender-based discrimination or sexual harassment by people they encounter in justice institutions, their employers, colleagues, or by their clients.

As in other parts of the world, women lawyers are still more likely to be concentrated in lower paid parts of the legal profession such as family law and public law, as indicated by the over-representation of women in government lawyer roles across the Pacific. This is likely because these areas are perceived to be more suitable for women according to gender stereotypes and may also provide better access to maternity leave and flexible or part time work hours. Even though women dominate public law, they remain a small minority in senior public positions and the judiciary, likely because they are more likely to be overlooked for promotion in areas, as are women lawyers in other regions. They are also less likely to practice senior criminal law roles or secure well-paid positions in corporate law possibly because these are seen as being less suitable for women and they may be more likely to be overlooked for promotion in areas where they remain small minorities, similar to women lawyers in other regions. Even with targeted, deliberate strategies the rate of change to remove barriers faced by women in the legal profession is likely to be slow.

6.3 Legal Regulation

Thirteen out of the 15 countries included in this review have laws in place which regulate the legal profession including in such issues as admission, good character, discipline and in some instances, trust accounts, and continuing professional development requirements.²⁵ Many jurisdictions have separate rules on ethics and professional conduct. In most Pacific countries, some regulation of the legal profession is delegated by law to either separate statutory bodies or to lawyer associations. Law societies or bar associations also exist in 13 out of the 15 countries included in this review, however not all of them are recognised by law or delegated regulatory responsibilities, although many are, especially in relation to the administration of professional discipline (discussed further below).²⁶

²⁵ See Annex B for details of the laws and rules regulating the legal professions in all 15 countries.

²⁶ | For example in Papua New Guinea the Papua New Guinea Law Society (PNGLS) is responsible for regulation of the legal profession as per The Lawyers Act 1986 (PNG). The functions of the PNGLS are set out in section 7 of the Lawyers Act and include:

a. to promote the interest of the public and the interest of lawyers in relation to legal matters and generally to promote and uphold justice and the rule of law; and

Shortly after its founding in 2007, the South Pacific Lawyers Association ('SPLA') established the Model Laws Project, aimed at investigating the viability of developing model draft legal practice laws to help support standardised regulation of legal practice across the region. A review of rules, regulations and laws governing the legal profession of 15 Pacific countries²⁷ was conducted by the Australian Law Council ('ALC') with the SPLA in 2017.²⁸ It concluded that due to the level of divergence of laws and rules in place across the region, the development of general model rules and procedures, which could be readily tailored according to the needs and preferences of each jurisdiction, would be the preferred approach.

The review found some common areas of regulatory weakness across many Pacific jurisdictions including:

- Absence of good character requirements to gain admission to the profession
- No disciplinary mechanism to enforce requirements to disclose matters affecting 'good character' and suitability to practise
- No mandatory requirement for professional indemnity insurance
- Where there is a fused profession, a lack of separate professional conduct rules for lawyers practising solely as barristers
- Inadequate regulation of trust accounts
- Inadequate regulation of disclosure obligations to prospective clients
- Inadequate regulation to ensure fees are reasonable, to manage contingency fees, setting aside or varying cost agreements and recovery of costs for clients
- Non-existent or inadequate professional conduct rules, and
- Lack of clear procedures for making complaints about the conduct of lawyers

The report also provided specific recommendations for draft conduct rules and complaints procedures to address underdeveloped areas in many Pacific legal profession acts, and referred to the *IBA Principles* as providing norms that Pacific countries could draw upon and tailor to their individual circumstances.

Several Pacific countries have proceeded to pass new laws regulating the legal profession in recent years, including: Samoa in 2014, (*Lawyers and Legal Practice Act 2014*); FSM in 2016 (*Rules for Admission to Practice before the Supreme Court of the Federated States of Micronesia 2016*); and Nauru (*Legal Practitioner Act 2019*). A new draft law has been under consideration in the Solomon Islands since 2007 and was reviewed by the Parliamentary Bills and Legislation Committee in 2017. While the consultation process for the law was very thorough, concern was raised that the draft law may be an unsuitable legal transplantation from Australia²⁹ as it created systems of regulation too complex and onerous to be sustainable for the Solomon Islands legal

b. to promote and encourage proper conduct by lawyers; and

c. to suppress illegal, dishonourable and improper and unprofessional practices and conduct by lawyers; and

d. to preserve and maintain the integrity and status of lawyers.

²⁷ Cook Islands, Federated States of Micronesia, Kingdom of Tonga (Tonga), Kiribati, Nauru, Norfolk Island, Marshall Islands, Palau Papua New Guinea, Pitcairn Islands, Fiji, Samoa, Solomon Islands, Tokelau, Tuvalu and Vanuatu.

²⁸ Legal Profession Regulation in the South Pacific, ALC, SPLA, September 2017.

²⁹ See Francesca Bartlett 'A Professional Project in the South Pacific: Regionalism and Reforming Solomon Islands', *Fordham Int Law J*, Vol 42, Issue 2, [2018] p263-267.j

Legal ProfessionBased on the Australian 'Legal Profession Uniform Law' enacted in Victoria and NSW in 2015.

environment.³⁰ The Committee expressed concern that the Bill anticipated the participation of mediators, accountants and auditors in regulatory roles, who may be simply unavailable or too costly to engage. Concern was also expressed about the burden it placed on lawyers and judges, who would also be required to give time to implementing the Act. In the words of the Committee:

...will a practising lawyer be willing or able to devote sufficient time to all of this and still run a busy practice? Will the Chief Justice or other Judges of the High Court have time for other obligations as well as their primary role as judges?³¹

Members of the profession expressed concern about the co-regulatory aspect of the powers invested in the Minister of Justice, which included power to dismiss a member of the Legal Practice Authority and a requirement that the Solomon Islands Law Society report to the Minister (instead of the Legal Practice Authority.) While the Bill required that the Legal Practice Authority be provided with the necessary staff and facilities to perform its role under the Act, it did not provide for resourcing of the Solomon Islands Law Society for its responsibilities under the Act, under the assumption that these could be self-funded. The Parliamentary Committee recommended that the provision requiring funding for the Legal Practice Authority be extended to the Law Society for funding of its assigned activities.³² It remains to be seen whether this or other Committee recommendations are incorporated into the final Bill.

Even current law reform efforts appear to be falling into the long-standing trap of setting up lawyer associations to fail by assuming that they have, or can generate, the resources needed to perform their assigned regulatory roles. While this may be possible for some 'richer' jurisdictions (although even for them, likely only at the expense of their investment in CPD or other activities vital to the health of the profession,) self-funding is simply impossible for many others. It is time for wide recognition that legal regulation functions cannot be fully self-funded in most Pacific environments. The experience of the Solomon Islands draft law highlights the importance that legal practice acts are carefully tailored to the specific legal environments and designed based on what is practical and sustainable, as well as what is principled.³³ A 'gold standard' model is of little value if there is not the resources nor capacity for the profession or other regulatory bodies to comply with their requirements.

Several other jurisdictions have made amendments to their legal practice rules, with Palau relaxing residency requirements in 2018 and Nauru strengthening them, also highlighting the relevance of residency requirements as a sensitive issue, especially for smaller jurisdictions.

In conclusion, there are continuing significant deficiencies in the legal frameworks for regulation of lawyers in many Pacific jurisdictions. However, in many ways, this is not the main issue. The main issue in many jurisdictions is the lack of capacity and paucity of support for implementation of any regulatory regime for lawyers. This is discussed in the following sections.

³⁰ Penfold, Carolyn --- "Teaching Legal Ethics and Professionalism in a South Pacific Context" [2013] LegEdRev 2; (2013) 23(1) Legal Education Review 7 <http://classic.austlii.edu.au/au/journals/LegEdRev/2013/2.html>, p265-267.

³¹ National Parliament of Solomon Islands Bills and Legislation Committee Report: Report on the Legal Profession Bill 2007 (No. 3 of 2017) 28 (2017), available at [http://www.parliament.gov.sb/files/committees/bills&legislationcommittee/2017/reportOnLPBil2017\(No.3of2017\).pdf](http://www.parliament.gov.sb/files/committees/bills&legislationcommittee/2017/reportOnLPBil2017(No.3of2017).pdf) [https://perma.cc/3KL9-BUF3], p 33.

³² Ibid, p 6.

³³ For example, a requirement that names be published in a national newspaper as part of a 'character objection' process can only work if there is a newspaper that has national coverage.

7.0 Resourcing of Lawyer Associations and Independent Regulatory Bodies

For most lawyer associations across the Pacific, lawyers' annual memberships or practising certificate fees are their only source of income. Some jurisdictions charge a flat rate for all lawyers, others base their fees on the number of years of practice (lower fees for junior lawyers) and several have higher rates for foreign lawyers. However, given the low annual fees charged in most jurisdictions (which range from \$10 per annum, see below for a sample of annual fees³⁴) and the relatively small sizes of the professions, this leaves associations with very limited resources for their operating costs, including the costs of providing regulation, support and services to their members.

Some jurisdictions (including the Solomon Islands) also receive income from fees for issuing temporary restrictive practicing certificates for foreign lawyers. This can provide a significant boost to some associations' resources. In small jurisdictions within which large scale commercial activities occur, such as shipping or financial services, charging much higher fees for foreign lawyers' practising certificates could prove to be a relatively untapped source of resources for some Pacific associations.

Some larger jurisdictions (such as PNG, and to a lesser extent, Samoa), invest funds from member fees in interest accruing accounts and then use quarterly interest to fund some of their organisational costs and activities. Notably, this approach is only possible for lawyer associations that operate at a certain minimum scale. Some associations have sought, with limited success, to charge some small fees for providing CLE activities, however where this has been piloted, it has detracted from attendance, meeting neither the educational nor financial purposes of the sessions. Some law societies, such as in Kiribati, conduct their own fundraising activities, such as holding raffles or running small stalls at the market to help them cover costs for some activities, such as for their annual bench bar dinner.

None of the associations who participated in interviews for this study received any donor support except in the form of 'one off' technical activities.³⁵ Several associations received technical assistance for particular activities, usually from Australian state-based or New Zealand bars,³⁶ and most of these were legal education activities with some sponsorship of places for conferences or other learning opportunities for Pacific lawyers.

The single biggest issue that all the participating associations emphasised was the problem they faced of lack of capacity and resources in all senses, including people, money, mandate and powers. As most associations have no office or staff and all of the executive and committee members are comprised of volunteers, they struggled even to find places they could conduct

³⁴ **Tuvalu** \$50 of \$100 or non-Tuvaluans; **Nauru** Barrister and solicitor: \$25 p.a. Pleader: \$10 p.a; **Palau** US\$100: inactive practitioners, 'trial attorneys', US\$200 for attorneys; **Kingdom of Tonga** \$60 p.a. (s 7(f) LPA); **Samoa** by Law Society Council public notice. \$600 tala per year flat rate for all lawyers; **Vanuatu** 5,000 Vatu for initial certificate and then 10,000 Vatu each annual renewal; **Solomon Islands** Fees from endorsement overseas counsel restrictive practicing certificate. SB \$3000. less than 5 years: \$300 SB, 5-10 years: \$500 and 10 years above \$1500; **Papua New Guinea** Unrestricted Practising Certificate: citizen - K5500, non-citizen - K6663, non-resident K8018 Restricted Practising Certificate: citizen - K2557.50, non-citizen - K3401.20.

³⁵ For example Australia has supported reviews of the PNG Lawyer's Act and development of the Solomon Islands draft laws.

³⁶ Some of which were sponsored by donors, for example the multi-year Legal Skills Advocacy Skills Development in the Public Sector Vanuatu program provided advocacy training provided to the bar in Vanuatu through partnership with the Victorian Bar funded by Australian aid.

their meetings or work from, did not have equipment for performing basic administrative functions and usually did not have budgets for purchasing even simple items of stationery.

There are some jurisdictions that are large and by pooling practising certificate fees can generate some funds to cover operating and activity costs. And there are some small jurisdictions which despite being small, do nonetheless have members of the legal profession with capacity to make greater contributions than they currently do. However, most Pacific lawyer associations are small and poor and cannot generate funds to cover even very basic levels of operational costs and activities, let alone the core substantive functions expected of them. It is absurd to place more responsibility for legal profession regulation on the shoulders of lawyers' associations unaccompanied by provision of support and resources. This review has highlighted the difficulty of the sector's reliance solely upon the continuance of the goodwill of dedicated, highly motivated volunteers to serve in executive roles in lawyer associations as the only means by which these bodies partially fulfil their onerous roles.

8.0 Infrastructure, Staffing and Operating Costs

Given their lack of resources as set out above, it is not surprising that 12 out of the 15 lawyer associations covered by this review have no office, assets or administrative staff. Only law societies and associations in PNG, Fiji and Tonga have offices. The Tongan Law Society office is located on the same site as court complex in the capital and does not require the association to pay rent. The Samoan Law Society previously had an office but could not afford rent for a central location and so ceased renting premises last year.

Aside from rent, which is a major overhead for the PNG Law Society, the other main expense for the organisation is the employment of staff. The PNG Law Society has a staff of ten which include a secretary and accounts officer, receptionist, media publicist and an in-house lawyer to represent the Council in disciplinary or other matters. The Regional Assistance Mission to the Solomon Islands (RAMSI) previously funded a permanent officer position and administration costs for the Solomon Islands Bar Association for several years. Upon RAMSI's formal withdrawal, this financial assistance lapsed, and the gap has not been otherwise filled, so there are currently no paid positions. However, the Solomon Islands Justice Project running from July 1, 2017 until June 30, 2021,³⁷ provided some earlier indications that it may provide some assistance to the Association but has not yet. The Fiji Law Society has an unknown number of staff. Until this year the Samoa had a part time secretary but does not any longer due to loss of the rented office and the need for approval from the membership to fund a full-time secretary.

Most lawyer associations struggle to find places they can meet and resources to perform their work. Most use the law firm premises of executive members for their meetings. Many members of lawyer association executives and council members pay for organisational overheads from their own pockets or rely on office stationery, printing and other resources informally subsidised by their employee firms. Several officer bearers from lawyers' associations explained with lament that they would soon have to resign or not seek re-election as they could no longer afford the expenses and loss of paid work time entailed by holding their positions.

³⁷Funded by the Australian government for around AUD\$23 million.

9.0 Complaints and Disciplinary Functions

Aside from lack of resources, the issue of greatest immediate concern to most lawyer associations interviewed in this review, was the ineffectiveness of current complaints and discipline handling systems and their failure to provide prompt and certain outcomes. Many interviewees regarded this as the paramount issue and as one which required urgent and immediate action. Participants highlighted this as a particularly fraught area due to the challenges faced in small jurisdictions and where kinship creates powerful obligations, commonly creating situations of conflicts of interest.

The lack of consequences or enforcement of discipline for professional misconduct provides impunity for practitioners to continue breaching standards (whether done intentionally or not) and allows professional and ethical conduct standards to continue to drop. In addition, participants highlighted how the lack of feedback to the public regarding the outcomes of complaints against lawyers works to undermine the reputation of the entire legal profession. Many clients are reticent to complain about their lawyers, as lawyers are often empowered members of society and they fear retribution or other consequences for doing so. In addition, many members of the public are not aware of the professional standards they should expect of lawyers, or how to make complaints against them. Most complaints relate to overcharging or for not completing the agreed scope of work. In addition, there are also complaints made by lawyers against other lawyers. Issues of unethical conduct between lawyers may relate to 'client poaching', breaches of client confidentiality, or continuing to act despite a known conflict of interest. They may also relate to personal conduct, such as sexual harassment of clients and other lawyers. While this latter category of complaints is currently rare, they are likely to become more common as public attitudes shift and become less tolerant of such behaviours. The 'bottom line' is that lack of confidence in the integrity of the legal profession detracts from public trust and ability to perform its wider social functions, as set out in earlier sections of this report. These serious consequences are why there is consensus that strengthening professional disciplinary mechanisms is a key priority.

Some of the most common problems identified regarding existing complaints and disciplinary mechanisms in Pacific jurisdictions include:

- Mechanisms are not resourced and rely upon volunteers who find it difficult to give the time needed to complete the onerous role of investigating and adjudicating complaints promptly, thoroughly and fairly.³⁸ All complaints require investigation, the collection and taking of evidence and a careful approach ensuring provision of procedural fairness. Due to delays caused by lack of resourcing, evidence is often lost, and cases frequently lag for years, even decades, without resolution. This is unfair on complainants and lawyer respondents who remain in protracted limbo.
- Mechanisms provided for in law have not been constituted or members of the bodies have not been appointed by the AG or court.
- Mechanisms require the attendance of senior public officials who cannot or will not delegate their role nor coordinate their regular attendance to ensure composition requirements and quorums are met.

³⁸ For example, see comments made by the PNG Lawyers Statutory Committee to the Special Parliamentary Committee on Public Sector Reform and Service Delivery stating they had 707 current complaints against lawyers to address and does not have the capacity to investigate, see *'Lawyers' conduct still being investigated'*, Loop, 16 November 2016, <http://www.looppng.com/content/lawyers-conduct-still-being-investigated>.

- Many mechanisms involve the appointment of members of lawyer associations to disciplinary bodies to investigate their peers. In many jurisdictions (especially small ones), it is difficult to find lawyers willing to accept such appointments due to them not wanting to be brought into conflict, or to create adverse relations with other lawyers.
- Disciplinary investigation outcomes are often not transparently conducted, for example, in many jurisdictions, hearings are closed to the public and outcomes are not necessarily published or released publicly. Therefore, there is no way the public can be assured that effective action has been taken to discipline lawyers for professional misconduct.
- Where respondents challenge disciplinary decisions of disciplinary bodies often the lawyer association then requires its own legal representation for appeal proceedings in court, which can be a further cost that impecunious lawyer associations cannot shoulder and pro bono contributions are not always forthcoming in this 'non-feel good' role.

Most (10 of 13) lawyer associations are responsible for receiving and investigating complaints against practitioners.³⁹ Yet from the information gathered in this review, funding is not provided by any government or through any statutory regime to support any association with complaints and discipline handling. Even where separate regulatory bodies are being established, such as in Samoa where a new disciplinary tribunal is being established which is provided for by statute and sits within the Law Society, the enacting law also requires that the Samoa Law Society will pay the salaries of its members from its own funds.⁴⁰ At the same time, all of the time consuming preliminary investigative 'leg work' for the cases referred to the new tribunal is expected to continue being performed by voluntary committee members of the Law Society.

While the draft Legal Profession Bill in the Solomon Islands requires the Legal Profession Authority to be resourced to undertake its role, this provision in the current Bill does not extend to the roles expected of the Law Society,⁴¹ which is somehow supposed to self-fund its self-regulatory functions. In Fiji and Vanuatu, complaints and discipline are also dealt with by an independent regulator provided for by law, however neither laws contain provision for the funding of these entities or for the law societies' roles in these.

Thus, while there are some variations on the structure of disciplinary mechanisms there is universal eschewing of responsibility for funding arrangements for these, which invariably fall on the shoulders of volunteers or must be paid out of scarce association funds. In the Marshall Islands the Court has an in-house ethical committee which includes three lawyers. Complaints are referred to the committee for investigation and Committee reports its finding to the court and the courts make the ultimate decisions, including rights of appeal. Similarly, in Nauru, complaints against lawyers are referred to the *Legal Practitioner's Disciplinary Tribunal* constituted by a judge.

³⁹ (See Annex B Table 2 for a summary of mechanisms for addressing professional misconduct of lawyers in each jurisdiction).

⁴⁰ See s44 of the Lawyers and Legal Practice Act 2014: Remuneration - A member of the Complaints Committee or a disciplinary tribunal (including a lawyer appointed as a prosecutor under section 50) is entitled to remuneration and other allowances fixed by the Council and payable from the funds of the Society.

⁴¹ However the Parliamentary Committee which considered the draft law in 2017, recommended that the draft law be amended to require the Government to provide the 'necessary resources, manpower and funding' to cover the functions of both the Legal Practice Authority and the Law Society. See National Parliament of Solomon Islands Bills and Legislation Committee Report: Report on the Legal Profession Bill 2007 (No. 3 of 2017) 28 (2017), available at [http://www.parliament.gov.sb/files/committees/bills&legislationcommittee/2017/reportOnLPBill2017\(No.3of2017\).pdf](http://www.parliament.gov.sb/files/committees/bills&legislationcommittee/2017/reportOnLPBill2017(No.3of2017).pdf) [<https://perma.cc/3KL9-BUF3>], p6.

In Kiribati, complaints are first made to a council of the Kiribati Law Society for resolution. Cases not appropriate for resolution or which cannot be amicably resolved are referred to a *Professional Conduct Committee*, established by the Attorney General. However, the Attorney General has never officially appointed a Committee despite this structure having been provided by law since 2010. While the Law Society has resolved what complaints it can,⁴² the larger number of more serious or complex complaints⁴³ have remained moribund for almost a decade. A similar bottleneck exists in the Solomon Islands, where the Executive of the Bar Association has worked to investigate and resolve what complaints it can, and, as required, has referred serious or unresolved cases to the *Disciplinary Committee* headed by the Attorney General. However, the Attorney General has not had the time needed to devote to this work and so cases have stagnated.

In the past year, the Samoan Law Society has been able to make strong headway on finalising outcomes for longstanding complaints but only because of a concerted push by dedicated volunteers on the Law Society's Complaints Committee. The Committee is comprised of a core of seven members invited to join based on their experience and reputations for fairness in the profession. Committee members are rotated in and out to avoid any conflicts arising. Outcomes are not required to be made public, however the *Lawyers and Legal Practice Act 2014* requires Council to notify government officials and the complainant, and respondent, as well the Ministry, the Chief Justice and the Attorney General. Complaints have reportedly mainly concerned a handful of 'repeat offending' practitioners and also instances where practitioners were simply not aware of their obligations or did not know how to fulfil them, again highlighting the need for greater investment in the preventive sides of education and support for lawyers around themes of legal ethics and conduct. The experience of the Law Society, now that the complaints are proceeding, some of which have attracted publicity, the professional discipline applied is becoming more effective. It is hoped that this trend continues further once the *Law Society Disciplinary Tribunal*, provided for in the Act, is established, which will comprise of 2 practitioners with minimum 8 years' experience and a lay person from the general community. Tribunal remuneration for the members is to come out of Law Society funds.

In Papua New Guinea, a *Lawyers' Statutory Complaints Committee* handles complaints against lawyers. It is administered and paid for by the Law Society but sits separately from the Council. It is comprised of the Attorney-General, *ex officio*, one of the Council (Chairperson), three senior lawyers and two lay persons. As the Law Society is large there is less of an issue in PNG of lawyers being reticent to fulfil peer review roles on the Committee, however the main issue remains that the work of the Committee is wholly voluntary, despite it being very demanding and requiring members to constantly attend and sit for long hours with no prospect of an honorarium nor even reimbursement of out of pocket expenses.

Given the multiple public purposes served by having effective complaints bodies capable of competently, swiftly and fairly investigating and adjudicating complaints against lawyers, it seems highly unrealistic to expect either that most Pacific associations can afford to pay members of disciplinary bodies for their time, or that these functions can be reliably performed solely by volunteers. Reliance on payment by local lawyers of annual practising certificate fees is not an adequate funding base for associations that are providing the public service of administering professional discipline to lawyers.

⁴² Approximately 20 cases.

⁴³ Approximately 30 cases.

For a long time, Pacific legal professions have been dragged down by lack of resources to provide effective disciplinary bodies and the consequences have been serious for the legal professions, the public and the states concerned. The answer is not to remove these functions from lawyer associations, but rather for Pacific states' to end their 'head in the sand' approach and to immediately start providing the necessary resources to statutory bodies, including professional associations, responsible for the professional discipline of lawyers.

10.0 Professional Indemnity Insurance and Trust Accounting Requirements

The purpose of professional indemnity insurance is to provide consumer protection against losses caused by negligent legal advice or assistance which go beyond the capacity of the individual lawyer to cover. No Pacific legal profession acts, (except for the Cook Islands and PNG), require lawyers to mandatorily take out professional indemnity insurance or make it a condition for renewal of practicing certificates.

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. However, the main reason as explained by participants in this review, was that it is too expensive for individual lawyers to pay, especially as the insurance market in the Pacific is small compared to other regions, pushing up the costs of insurance. Such insurance would be too expensive even at a national level for most associations, especially those of small size. Therefore this may be an area where there may be particular value in having a regional body able take out insurance for all member national lawyer associations, as a way of achieving affordable professional indemnity insurance with a 'load sharing' division of premium payments based on either the size or income of each national profession. This is exactly how approximately 200 small community legal centres across Australia are able to obtain affordable professional indemnity insurance through the main policy being taken out by the National Association of Community Legal Centres (NACLC) via a broker, with the premium payments assigned per centre based on their annual income.

The SPLA survey of Pacific legal profession laws also found that only around five laws included provisions governing the management of client funds⁴⁴ in trust accounts. In more highly regulated environments client funds must be held in dedicated trust accounts to ensure that client money is not mixed with the legal practice's funds or used for non-authorised purposes.

The absence of such regulation leaves clients exposed to loss where lawyers mix or use client funds for non-authorised purposes, as clients will typically have no remedy except under common law. Due to the risk to clients and third parties of malpractice by lawyers in relation to trust money, it is important that legal provision is 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 where client funds are used without authorisation.

The interviews conducted for this study indicated that many Pacific lawyers are not aware of their professional obligations in relation to how they handle client funds, and do not have the knowledge, nor the accounting systems in place to ensure that their practices are compliant with regulations (where they exist) or with professional conduct rules (where they do not). Most

⁴⁴ Provided to cover known costs or disbursements associated with legal action, such as court application or other fees, expert reports translation of documents, etc.

professional associations highlighted this as an area requiring attention in relation to compulsory CLE requirements (as discussed below).

11.0 Continuing Professional Development Needs

This section looks at several inter-related issues connected to Continuing Professional Development (CPD) needs of lawyers, which relate directly to standards of professional and ethical conduct.

11.1 Current CPD Activities provided by Lawyer Associations

While professional discipline is needed to remedy past or continuing professional misconduct of lawyers, the primary objective of lawyer associations must be to prevent such misconduct from occurring in the first place. The primary means for doing so is to ensure that lawyers are fully cognisant of their professional and ethical obligations and adequately equipped to meet them. This is especially critical in the Pacific, which as noted earlier, has a high proportion of junior lawyers, many of whom are sole practitioners⁴⁵ and lack experienced day-to-day guidance, and are often operating in poorly resourced and volatile legal and regulatory environments.

Despite the dire need for ongoing training and development of the regions' majority junior lawyers, CPD⁴⁶ is only mandatory in two jurisdictions – Vanuatu and Fiji. Under the Vanuatu *Legal Practice Law*, each lawyer must complete either 5 or 10 hours of CPD activities, however according to some reports the Vanuatu Law Society struggles to fulfil this obligation, due to lack of support. In Fiji there is a separate *Board of Legal Education* which accredits CPD points for activities conducted by Law Society and NGOs and others. The PNG Law Society is represented on the *Legal Institute Training Council* which approves trainings for admission and practical courses, however CPD activities are not yet compulsory for practitioners. The Solomon Islands' draft *Legal Profession Bill* requires all legal practitioners to do the equivalent of 12 hours of learning per year, which can be comprised of attending or presenting learning sessions, workshops, private post graduate studies or published articles.

Voluntary CPD is offered on a monthly basis in Samoa and semi-regularly by many other associations including Fiji and PNG, and others on an ad hoc basis whenever they can.⁴⁷ Training sessions are held in regional and provincial capitals in PNG (not only the capital) and the Law Society is hoping to reach out to more members in remote areas by disseminating videos of training and conducting webinars from a central location. Visiting foreign counsel or lawyers are asked to deliver one-off CPD sessions while they are present. Some lawyer associations conduct annual or bi-annual conferences (such as Fiji, Samoa and PNG).

Some associations have formed effective ongoing partnerships with foreign bar associations to support their CPD activities. For example, the Solomon Islands Bar Association and Samoan Law Society have previously engaged the Victorian Bar and the Queensland Law Society to provide lawyers with advocacy training and ask foreign counsel to provide pro CPD sessions when they are

⁴⁵ Although several jurisdictions impose experience requirements in order to operate as a sole practitioner, usually a minimum of three years of post-admission experience. See Annex A, Table 2 'Practising Certificate Requirements' including requirements for unrestricted and restricted (i.e. supervised) legal practice.

⁴⁶ A subset of CPD is Continuing Legal Education (CLE), as it is known across many jurisdictions.

⁴⁷ See Annex A for a compilation of CLE activities provided by participating lawyer associations.

in-country. The PNG Law Society has also received advocacy training annually from these bodies, and the Palau profession receives ABA advocacy training in Western Samoa. No legal profession association currently provides organised coaching or mentoring 'matching' between senior and junior lawyers across the profession.

11.2 Future Planning for CPD Activities

All legal profession association representatives interviewed in the course of this review identified provision of regular, ongoing Continuing Legal Education (CLE) for lawyers by their associations directly or in partnership with external or local organisations, as a top priority, should they have resources to implement such activities. This is consistent with the findings of the SPLA survey conducted in 2011,⁴⁸ indicating that support for CLE remains a longstanding unmet need. The survey also identified further needs in relation to access to online legal resources, including access to legal education resources.⁴⁹

All participants were very much in favour of making CLE requirements mandatory and an annual pre-condition to issuance of practising certificates. They felt this was necessary because lawyers are really in need of ongoing skills development (and knowledge as the study of law does not necessarily equip lawyers well for the practice of law) and will not proactively seek such training and guidance themselves. Those interviewed highlighted that many junior lawyers are sole practitioners with limited opportunities for learning from more experienced practitioners. Despite this, those interviewed felt that many would not attend CLE sessions unless they were compelled to.

Some participants said there were plans or at least strong interest in their jurisdictions (including in PNG, Samoa and Solomon Islands) to introduce compulsory annual CLE requirements for lawyers by requiring each lawyer to earn a certain quota of points, based on participation in CLE activities, in order to renew their practising certificates. To reduce or eliminate speaker's fees (in order to make such a scheme more accessible and sustainable), experienced lawyers could earn their points by delivering training to others or by writing articles for others to read. However for the former, resources would still be needed to cover other overheads such as venues, recording equipment (so the sessions could be disseminated to lawyers in more remote areas,) and the costs of administering such a scheme (advertising sessions, securing speakers, registering participants, certifying and making records of participation, tracking each lawyers' points, arranging for venues etc.) Some associations (such as PNG, Samoa and the Solomon Islands), expressed interest in a points scheme being expanded to include a requirement that lawyers make a certain annual social justice contribution by providing pro bono services in a set number of cases or hours per year.⁵⁰ Pro bono contributions of lawyer associations are discussed further below.

There was also a high level of consensus amongst interviewees around common core mandatory CLE topics that should be provided annually to all legal practitioners, being basic court etiquette,⁵¹

⁴⁸ See *Legal Profession Regulation in the South Pacific*, ALC, SPLA, September 2017, p6.

⁴⁹ Ibid.

⁵⁰ The PNG Law Society provides CLE (CPD) seminars conducted in Port Moresby and also at regional/provincial centres. At present CPD is voluntary, but there are plans to make it compulsory and a point system, based on attendance, will be used when issuing practising certificates. Points can be accrued not only by attendance, but also by writing articles for the FLS magazine *LawTok*, giving seminar presentations or undertaking pro bono work.

⁵¹ Including topics such as dress in court; seating in court; bowing and maintaining silence in court; introducing oneself in court; standing in court; addressing the bench; addressing other counsel; indirect speech; giving the court undivided attention; acknowledging a ruling from the bench; addressing or referring to witnesses; staying in your place; referring to

legal ethics, practice management⁵² and compliance with trust accounting requirements. Participants felt that practitioners should, ideally, be able to choose from a range of other topics to enhance their more specialised knowledge in areas of practice they would like to move into or develop their knowledge in.

Some associations, such as the Samoan Law Society have a committee dedicated to arranging CLE for members. They conduct annual surveys of their members to find out what topics are most in demand, and then try to provide sessions on these topics so they are as relevant to members as possible. The Samoan Law Society Council has already made it a requirement for its CLE Committee to provide training on trust accounting practices twice a year. Members of the Kiribati bar suggested that associations should also try to create 'buddy' or mentoring systems, whereby all new lawyers are matched with a more experienced lawyer who is tasked to provide guidance and support for their development, and ideally be matched to related areas of legal practice, so they can also assist with technical issues.

11.3 Embedding Legal Professional Ethics

How to best embed legal professional ethics within Pacific legal practice was a matter raised by many professional associations in the interviews conducted. Several lamented that their local publics were sceptical about lawyers' professional ethics and that lawyers did not enjoy high levels of trust in the profession. Thus professional ethics is seen as an area of priority by associations who understand that lawyers are not only 'ambassadors' for the profession, but also for the legal system, and that they are expected to embody the principles of justice, fairness and equity, which underpin the rule of law.

They also recognise that the legal, social, economic and cultural environments and systems that Pacific lawyers work in, are indeed complex, influential and often do little to support lawyers' ethical and professional education and development, especially for junior lawyers for whom post-admission support, supervision, education and training may be hurried, disorganised, or even non-existent. Many senior lawyers are also unaware of professional ethics, or do not provide good role models for younger lawyers. As per comments made in a study of teaching legal ethics in the Pacific:

'Some of the most senior lawyers are the worst offenders re professionalism and ethics.' And 'Judges make comments about the lawyers in the cases ... there is a disciplinary mechanism but it's rarely used. Some lawyers don't tell clients the case is hopeless, in order to continue to get fees. They adjourn and adjourn. Some time limits are enforced, but when they're kicked out of court the client loses out, not the lawyer. Clients don't know they can act against their lawyer.'⁵³

In these situations, 'learning on the job' can simply entrench poor practice, which is why there is a need to 'teach' relevant standards of conduct and skills, as well as to have the opportunity to practice using them and to observe good examples of others' practice. Lawyers should be required to demonstrate adequate knowledge of professional standards before they enter the

evidence; dealing with questions from bench; assisting the record of evidence; being reliable; the legal status of undertakings.

⁵² Including basic file management, (including filing and record keeping, making written responses to correspondence, dating letters, and keeping copies), matter management (meeting deadlines, managing time, keeping clients update and informed), as well as practice management.

⁵³ Penfold, Carolyn --- "Teaching Legal Ethics and Professionalism in a South Pacific Context" [2013] LegEdRev 2; (2013) 23(1) Legal Education Review 7.

profession, such as through an exam-assessed entry level requirement. As noted earlier, small lawyer and national populations of many Pacific countries and cultural expectations of lawyers in their interactions with their kin and communities, often raise conflicts of interests. Conflicts of interest also commonly arise for those lawyers interacting with corporate or government contracts or activities conducted by foreign actors within Pacific states. Conflicts of interest can arise from several vantage points, such as between lawyers, between lawyers and their clients, and between lawyers and the judiciary or other justice actors.

The primacy of kinship-based relationships in Pacific societies can have major implications for Pacific lawyers who throughout their careers are pulled between obligations to the law and the courts and their obligations to kin and community. Most people surrounding and influencing lawyers will view modern concepts of professional ethics to be a form of disloyalty to kin or family if lawyers decline to act for them or refuses to breach ethical standards, such as confidentiality, to gain some advantage. Other factors which combine to form hazardous ethical terrain for Pacific lawyers include the lack of contextualised legal ethics education at university,⁵⁴ the lack of effective disciplinary procedures in many of their jurisdictions and perhaps most importantly, the lack of workplace supervision and mentoring and knowledge, even by or for senior lawyers, of standards of legal ethics and professionalism.

Strong lawyer associations could greatly assist by becoming more involved in training lawyers in ethical practice and providing ongoing support to them when ethical questions arise. Lawyer associations are well placed for this role, as they will have the best knowledge of the difficulties facing local lawyers, as well as an interest in ensuring that their training is suited to the local context. There is a need to teach lawyers how to deal with common ethical conflict scenarios based on local 'real life' challenges. This includes how to handle situations of conflict interests involving senior kin relations, chiefs, or others who are above the lawyer in the social hierarchy, as well as the need for lawyers to avoid acting for relatives in some kinds of matters.

Creating ethics committees within lawyer associations to bring some dedicated focus and service provision to this area, is a best practice already implemented by some associations, such as in the Solomon Islands where members can submit written questions to the Association and receive written advice. Sometimes the Association confidentially seeks input from former association presidents or life- long members with extensive experience in the practice of law in the Solomon Islands. This is somewhat like ethics rulings which can be sought from law societies in Australia, but which also have ethics 'hotlines' to answer lawyers' ethics queries. This an activity which could be considered by Pacific associations. It is important that models of support for professional ethics are sustainable and that professional associations are always circulating and sharing the knowledge and expertise of experienced, ethical members to build capacity in mentoring and supervision so that this knowledge can flow through different generations of lawyers.

It is also important to recognise that before lawyers will disclose ethical conflicts they face, they will often first need relationships of trust with the person/entity built upon steadfast commitments of confidentiality, impartiality and relevant expertise. On the other hand, there may be some ethical issues facing lawyers for which no lawyer from within the same national

⁵⁴ As teaching of professional ethics at USP still relies on use of Australian or NZ textbooks, which do not reflect the common kinds of ethical challenges faced by Pacific lawyers. See Penfold, Carolyn --- "Teaching Legal Ethics and Professionalism in a South Pacific Context" [2013] LegEdRev 2; (2013) 23(1) Legal Education Review 7 <http://classic.austlii.edu.au/au/journals/LegEdRev/2013/2.html>, p265-267.

association can provide truly impartial, disinterested advice on, and where an external actor will be more effective.

Having connections between ethics committees of different Pacific national associations, or in addition, ‘twinning’ arrangements with Australian or New Zealand law associations, may help to provide additional options of inter-country advice and support for particularly sensitive conflict issues. Alternatively, a regional advisory point, perhaps via the SPLA could be a valuable approach for ensuring availability of multiple layers of support and advice on legal ethics. In addition, there may also be some international bodies able to assist with advocacy on behalf of lawyers facing impossible ethical choices, such as the United Nations Office on Drugs and Crime, which offers support for lawyers trying to prosecute corruption. In any event, the aim is to build multiple layers of protection around Pacific lawyers to support them through navigating the thorny ethical issues they inevitably face in legal practice.

11.4 Conclusions regarding CPD Needs and Possible Delivery Models

In conclusion, it is clear that there needs to be a major investment made in Continuing Professional Development of lawyers in the Pacific, including in relation to professional ethics, and that further innovation is required in relation to how relevant support can be developed and provided effectively, both in relation to cost, efficiency, accessibility and quality.

Currently there is little use of technology for remote delivery of CLE sessions by any lawyer associations. PNG, with the largest challenges in providing its members in regional, provincial or remote locations with accessible CLE opportunities, is planning to consistently video CLE sessions so they can be disseminated and accessed remotely, either via the internet in areas with good internet connection, or alternatively by delivering to practitioners the videos on USBs. The Law Society is also considering providing CLE via webinar, for more interactive learning opportunities. While these strategies could greatly increase access to these precious resources for lawyers in isolated or remote locations and are certainly ‘better than nothing’, the effectiveness of using remote resources for such fundamentals would also need to be closely monitored as they may still prove to be much less effective than face-to-face training.

A good practice observed in Samoa is for the Law Society to have a dedicated CLE committee and to seek inputs from their members to determine the most relevant, in-demand topics, while also regularly providing sessions in areas of known skill deficits, such as meeting trust accounting requirements.

There may be scope for larger jurisdictions to share their recorded or printed CLE materials with smaller jurisdictions which do not operate on a scale where it is possible to develop their own programs. Materials addressing generic areas such as professional conduct, legal ethics, file management, practice management, legal advocacy and possibly trust accounting, may be possible options for inter-jurisdictional sharing of resources. Alternatively, or additionally, it may be very useful or relevant to establish a regional source of CLE, possibly the SPLA or the USP to provide remote delivery of quality CLE sessions in common generic areas, such as those mentioned above.

A further observation is that the focus of continuing professional development for lawyers has been on legal education efforts, provided through training sessions or producing legal articles. However, an area which seems to be completely lacking across the Pacific is organised coaching, mentoring or ‘buddy’ systems, whereby more experienced lawyers take on a buddy role in

supporting junior lawyers. While these kinds of needs may already be met within larger organisations, such as government departments or large law firms, they are especially needed for sole practitioners or junior lawyers working in small firms.

This is a major support gap which lawyer associations could readily fill, at limited cost, by asking their members to participate in ‘buddy systems’ matching up junior and experienced practitioners working in similar areas of law. The content of these roles could start with simple regular informal ‘check ins’ between ‘buddies’ to see how juniors are managing their caseloads, work-life balance and ethical challenges they may face. These could also possibly be developed into more organised coaching and mentoring schemes through placements and internships or through ‘mangrove models’ like how new barristers ‘read’ with a senior barrister for several months when they first join the bar. This usually involves the senior barrister providing for seven to eight months of mentoring, guidance, shadowing opportunities, (such as in court), as well as sharing their office space and sometimes working jointly on cases with the junior lawyer. It may be possible to create incentives or supports to make it worth senior lawyers’ time to take on roles to support and nurture junior lawyers as such ‘immersion’ models could prove very effective in helping provide support to developing professional and ethical conduct of junior lawyers.

12.0 Services for Lawyers provided by Professional Associations

Pacific lawyer associations consistently lamented their lack of ability to provide more services to their members, which at present are often limited to dispensing professional discipline, issuing practising certificates, providing what CLE is feasible and providing public advocacy to explain and defend the role of the legal profession. Most associations also offer some social activities including an annual bench bar dinner, and some field regular sporting teams in local competitions (sometimes pitched against teams of doctors!). Some associations provide letters of attestation and recommendation to improve members’ career prospects, and ethical advisory services. Several people interviewed said their associations were largely driven by a handful of people and that the wider membership was usually very passive and unresponsive to suggestions and activities, which was why some wanted to conduct member surveys to find out how they better engage their members, especially young members, and provide them with relevant sought after services that meet their needs.

The interviews for this review canvassed the range of services that Pacific lawyer associations are currently able to, and, if better resourced, would like to provide. Each association was asked to provide their top three priorities if they were provided with a fixed set of funds. The largest number of jurisdictions put support for CPD and CLE as their top priority (to provide, record and disseminate CPD sessions and run coaching and mentoring schemes), followed closely by support to resource the complaints and professional disciplinary mechanisms. The third top priority was funds for a secretariat and an office in a good location to enable ready access for members, administration of practising certificates, organisation and administration of CPD activities and pro bono schemes. The fourth top priority was assistance with service provision for members, including surveying members to ascertain their needs, offer collective professional indemnity insurance, develop a superannuation scheme, offer employment and career development services, and provide social, well-being and mental health services. The fifth priority identified was contributing to law reform and conducting public awareness raising around the role of lawyers and the legal system. The sixth was technical assistance with review and implementation

of aspects of legal profession laws and the seventh priority was building partnerships and exchanging support/best practices with other law societies and inter-country bodies.

13.0 Pro Bono or Reduced Fee Contributions to Social Justice⁵⁵

Lawyers, more than any other profession across the world, are famous for providing significant pro bono services as voluntary contributions to social justice. Lawyers and their professional associations often have an established culture of helping those who need legal assistance for free. This stems from professional values: that lawyers will themselves live the values of justice, and make justice equally accessible to all, and moreover, that they have a responsibility to share their privilege, of being the only ones who can bring cases to court, with disadvantaged social groups. This is expressed in many Pacific legal practice laws, which refer to the legal profession's role in promoting and providing access to justice as part of their role and public purpose.⁵⁶

Several international and national standards refer to lawyers' roles in contributing to social justice by providing legal aid or pro bono services.⁵⁷ There are also many international organisations who provide pro bono legal assistance or capacity building for local legal organisations to organise pro bono schemes.⁵⁸ In many jurisdictions around the world lawyers and their associations are heavily involved in pro bono legal practice and globally, many lawyer associations are heavily invested in pro bono legal practice. For example in Australia lawyers performed 2.86 million hours of pro bono work over a ten year period, equating to one week of free services per year by every lawyer in the country.⁵⁹ Similarly, many Pacific legal practice laws refer to the legal profession's role in promoting and providing access to justice as part of their role and public purpose.⁶⁰

From the review and interviews conducted, no jurisdictions reviewed have organized, 'scaled up' pro bono schemes supported by lawyer associations although there are some historical examples of these in the Pacific and there is strong interest by professional associations to set up schemes for performing more pro bono work, if they were supported to do so.

While many lawyers perform pro bono work, much of this assistance is in the form of legal advice for their extended network of family and friends, rather than being legal assistance targeting the most disadvantaged. A significant number of lawyers also perform reduced fee work, including for complex matters, which undoubtedly does contribute to access to justice.

Some countries have 'legal aid funds' where either the Court or the Ministry of Justice assess assign legal aid cases to private lawyers who are paid usually on a fixed cost, below-market basis.

⁵⁵ The pro bono contributions of lawyers are also considered in further detail in a related PJSI paper addressing legal aid capacities across the Pacific. See *'Situation Analysis of Pacific Legal Aid Systems'*, Dr C Graydon, PJSI, February 2020.

⁵⁶ For example, the PNG Lawyers Act states that a purpose of the Law Society is 'to promote the interest of the public and the interest of lawyers in relation to legal matters and generally to promote and uphold justice and the rule of law'.

⁵⁷ For example, the American Bar Association Model Rules of Professional Conduct. Model Rule 6.1 states that lawyers should aspire to render--without fee--at least 50 hours of pro bono legal services per year, with an emphasis that these services be provided to people of limited means or non-profit organizations that serve the poor.

⁵⁸ See <https://www.probonocentre.org.au/information-on-pro-bono/international-pro-bono/international-pro-bono-organisations/>

⁵⁹ See Australian Law Council media release, September 2017 available at <https://www.lawcouncil.asn.au/media/media-releases/2-86-million-pro-bono-hours-australian-legal-professions-unique-contribution-to-the-nation>.

⁶⁰ For example, the PNG Lawyers Act states that a purpose of the Law Society is 'to promote the interest of the public and the interest of lawyers in relation to legal matters and generally to promote and uphold justice and the rule of law'.

In some jurisdictions (such as Fiji and Samoa) lawyers must apply to be included in these panels whereas in others, such as the Marshall Islands, participation in the scheme is compulsory for all lawyers who are required to accept legal aid cases on a roster basis. In some jurisdictions, judges assign lawyers to provide pro bono assistance from the bench. Several lawyer associations, articulate expectations that members will assist in pro bono matters, such as in Kiribati where the Executive requests each member to conduct one pro bono matter per month, and in both Kiribati and Samoa (and likely others) members of the Executive often step up and run pro bono matters themselves, (such as family law matters involving vulnerable women).

There is a precedent for an organised reduced-fee legal aid scheme which used to be run by the PNG Law Society. The Society had a referral arrangement in place with the Public Solicitor's Office so that eligible 'overflow' cases could be assigned on a pro bono basis to members of the PNG Law Society. The Law Society Secretariat decided eligibility (it covered both civil and criminal matters) and then assigned cases to lawyers and paid them a reduced fee rate. The scheme was funded from quarterly interest accrued on trust accounts maintained by lawyers and invested by the Law Society and stands as an important example of a Law Society showing strong commitment to making a substantial contribution to social justice.

There is untapped potential for organised pro bono schemes to be developed through Pacific lawyer associations. This is addressed in more detail in a separate study,⁶¹ however one model that has proven successful elsewhere has been to introduce an annual 'points system' for lawyers to satisfy in order to renew their practicing certificates annually. Some points can be earned for undertaking Continuing Professional Development activities, and others earned by undertaking a certain quota of pro bono work (either number of cases or hours of work).

Such schemes do require some resources to administer, however once set up, they can operate quite efficiently and make a substantial contribution to achieving the dual objectives of improving the professional knowledge and standards of the profession by requiring them to undertake compulsory CPD activities (such as in trust account, professional ethics and practice management), while also enabling the profession to make a contribution to social justice by undertaking pro bono work.

This model was 'put to' participants in this review and was generally received with enthusiasm, similar to the response provided by professional associations to the 2011 SPLA needs assessment survey.⁶² Association representatives did caveat their support for establishing pro bono schemes with some conditions, being:

- The need for the association to have the administrative and quality control capacity to run them responsibly
- That they be properly 'scoped' and 'messed' to ensure they are not seen as a substitute for properly funded legal aid systems.
- That eligibility criteria are targeted to those with no way of raising funds to pay for legal assistance to prevent such schemes from reducing paid work opportunities for the profession, especially junior lawyers.

⁶¹ Refer to title

⁶² In particular, the Cook Islands Law Society, Solomon Islands Bar Association, Tonga Law Society and Vanuatu Law Society all said that lawyers in their jurisdictions could be encouraged to do more pro bono work.

The success of such schemes typically depends on achieving the ‘buy in’ of both current and future law society members. It is necessary to think longer term about how to imbue a pro bono friendly culture in the profession, starting with opportunities for law students to make pro bono contributions through professional practice or legal clinic subjects while they are undertaking their law degrees.

Several professional associations do already partner with USP, which provides a student legal clinic in Vanuatu and some associations (such as PNG) support students to provide pro bono assistance under supervision during university breaks. These pathways into pro bono assistance are very valuable, as once students are exposed to the legal problems faced by disadvantaged members of the community, and ‘get a taste’ for using their legal skills to assist them, this will hopefully help to create new generations of lawyers who enter the profession with a clear understanding of their duty to use their privileged position in society to ‘give back’ and contribute to greater community access to justice, making pro bono schemes run by associations ever more sustainable and entrenched.

To win the confidence of current association, it would first be necessary to clearly define the scope of the scheme and to ensure that the burden of pro bono work is fairly distributed across the profession and transparently administered. Only relatively straightforward legal matters are usually suitable for pro bono assignment. It is not reasonable to burden a private practitioner with a lengthy criminal trial or an intergenerational land dispute matter which may drag on for decades. However simple criminal or family law cases could be assigned and enable the lawyer points towards their re-registration. Alternatively, the association could run its own community legal clinics (during the day or the evening) and lawyers could volunteer during clinic hours to provide legal advice and limited assistance, as another way to earn their pro bono CPD points. Law students could also shadow or participate in these clinics as paralegals.

A further way to create incentives for lawyers to undertake more pro bono work is to ensure that they receive public recognition and credit when they perform pro bono work. Ensuring the media covers stories of lawyers providing assistance, and the professional association gives out pro bono excellence awards at the annual Bar Dinner or other prestigious social or professional events, might be further ways to incentivise both voluntary and compulsory pro bono contributions from the legal profession.

14.0 Law Reform and Public Advocacy Roles of Lawyer Associations

As noted earlier, lawyer associations play key roles as technical legal experts in providing inputs to the vital public purpose of law reform processes. They are amongst only a small group in most Pacific nations with knowledge of how the law operates and is administered in practical effect. Their insights are therefore vital information for law makers to enable them to make the best-informed legislative decisions. They are also vital civil society actors whose inputs stimulate debate and public knowledge of wider issues of public interest, which increases the health of democracies. Both functions are especially important in Pacific environments where there are limited numbers of people with the educational backgrounds and knowledge to meaningfully participate in such debates.

This review found significant evidence of Pacific associations’ work in these important areas, despite facing critical resource shortages. Again, it is only through the voluntary contributions of

lawyers in these areas, which other state institutions such as the parliament, can benefit from the advice and inputs from the legal profession. Lawyers' contributions in these areas provide further arguments in favour of proper state support for Pacific lawyer associations, especially as often these contributions are timing consuming and onerous. For example, in recent times members of the Solomon Islands Bar Association have dedicated months of lawyer time to reviewing and providing detailed inputs to the consultation process for a new national constitution. They also made extensive submissions to the parliamentary committee reviewing the draft *Legal Profession Act*. This pattern of voluntary service to law reform is replicated in many other Pacific states. While some Pacific states have dedicated law reform commissions (such as PNG, Fiji, Vanuatu, Tonga, Samoa and the Solomon Islands),⁶³ other states do not, and the burden of supporting technically informed law reform often informally falls the shoulders of lawyer associations.

Lawyer associations also often contribute to public debate around human rights, legal rights and various other social issues of import and provide public information about the role of the justice system and the roles of lawyers. Associations often need to intervene in public debates to correct misunderstandings regarding the roles of lawyers, and to defend the actions of members of the legal profession being attacked for performing their professional duties, such as in providing criminal defence to controversial suspects. Lawyers in the Pacific also contribute to public discussion to help temper sometimes populist or factually inaccurate positions put forward by politicians from time to time, including, for example, criticism of the courts regarding sentencing decisions or criticism of people charged with rape or other violent offences being unworthy of legal aid.

Lawyer associations that have some reasonable level of resourcing in other areas (such as for professional discipline or administrative functions) can often manage to free up other time for participation in policy or law reform efforts, or can even dedicate some paid time to law reform input through having policy/law reform staff. Building this aspect of associations' work can bring multiple benefits. Often participation in law reform efforts attracts senior and accomplished lawyers as it gives them the opportunity to share their experience, contribute to systemic change and the chance to shine. Their involvement benefits law reform processes by increasing the quality of law reform inputs. It also benefits the association through increasing its influence and reputation with parliamentary actors. It provides opportunities for associations to network and collaborate with other civil society and institutional actors involved in law reform efforts. It also provides a great opportunity to attract young bright lawyers, (who many associations currently struggle to find relevant 'hooks' to engage them in their activities), by involving them in 'shadowing' appearances before parliamentary committee hearings and drafting policy submissions. Thus, building the capacity of lawyer associations to participate fully in law reform processes is a very strategic and valuable area of focus.

15.0 Regional Efforts to Strengthen Pacific Lawyer Associations

This review has highlighted how difficult it is for national lawyer associations to fulfil their functions, given the acute resource constraints they face. Especially for small jurisdictions without the scale to develop their own associations or supports for lawyers, receiving assistance at a

⁶³ Established in Papua New Guinea (2005), Samoa (2008), Fiji (1979), Vanuatu (2012), Tonga (2007 but not active) and the Solomon Islands (1994). See Peter MacFarlane and Chaitanya Lakshman, 'Law Reform in the South Pacific', *Journal of South Pacific Law*, Volume 9 2005, Issue 1, available at <http://www.paclii.org/journals/FJSPL/vol09no1/3.shtml>.

regional level is clearly needed, and some areas where this could be most feasible have been highlighted through this report. However unfortunately, this lack of prioritisation of support for national lawyer associations is also replicated at the regional level.

To provide some background, the South Pacific Lawyers Association (SPLA) was first conceived of by lawyer associations of the region at a Roundtable during the International Bar Associations' Pacific Leaders' Forum in 2007. Its purpose was to bring together peak national professional bodies to strengthen their collaboration and to support them on issues of common concern. It was formally established in 2011 with a small start-up grant from the International Bar Association and support from the Australian Law Council (ALC) and the New Zealand Law Society. It then received some funding from DFAT and support from the ALC for the SPLA Secretariat based in Canberra including for updating the website and producing the newsletter.⁶⁴

Since its establishment, the SPLA has conducted underlying research,⁶⁵ facilitated training and advocacy and driven a regulatory reform agenda regarding Pacific legal professions and regulatory regimes.⁶⁶ However the SPLA has continued to be plagued by financial insecurity with donor support drying up⁶⁷ leaving it unable to host its much valued biennial conferences, regular remote meetings,⁶⁸ or other communications⁶⁹ or resources for the Pacific legal profession. Without the means to regularly convene members and provide resources, it has become increasingly difficult for the SPLA to provide needed support to its member associations. It has adapted to these circumstances by forming partnerships. In November 2020 the SPLA formed a partnership with LAWASIA aimed at increasing exchange of information & strengthening person-to-person ties between lawyers in the Asia Pacific region through joint activities. The SPLA has also partnered with the Queensland Law Society to develop the "Practice Management Toolkit" – consisting of six lectures being released between October 2020 and April 2021. A further recent innovation has been launch of a 'members only' portal on its website providing South Pacific lawyers with much needed free access to Continuing Professional Development (CPD) lectures and resources resources, including on practice management, ethics, and advocacy .

Despite these hopeful developments, there still remains a major gap in relation to a regional presence adequately resourced to provide necessary development and support to Pacific lawyer associations.

Particular value may exist in taking a regional approach in relation to the following areas:

⁶⁴ It has also received previous support on an ad hoc basis from various other organisations For example the inaugural conference held in Vanuatu in 2013 was supported by the Vanuatu Ministry of Justice and Community Services, DLA Piper, Thomson Reuters, the South Pacific Administration and Funds Services, Transparency Vanuatu and the Law Institute of Victoria.

⁶⁵ Including an associations needs assessment (2011), a survey of women lawyers in the region (2014) and a review of legal practice laws across the South Pacific (2017). It has also provided submissions to the Pacific Islands Forum Secretariat policy consultations process (2018).

⁶⁶ Through the 'South Pacific Model Rules' project.

⁶⁷ Likely commencing in 2015. In its 2018 submission to the Pacific Islands Forum Secretariat the SPLA said it had not been able to host a conference since 2015 due to 'Ongoing reductions in the Australian aid budget and changes in the way that aid funds are allocated, evidenced for example by a shift from regional programs to an almost exclusive preference for bilateral aid projects, has severely reduced opportunities for SPLA to hold further events of this kind' Several professional association shared they also had been disappointed with DFAT funding not being followed through.

⁶⁸ Despite distance; time differences and technological difficulties

⁶⁹ Such as its newsletter, which was last produced in 2016.

- Advocacy with governments, donors, INGOs, private actors for adequate resourcing and support for national and regional legal professional bodies
- Advocacy on behalf of national lawyer associations where they are subjected to inappropriate attack by other national actors.
- Centralised, affordable CLE systems that disseminates learning videos and materials on more generic themes such as: legal ethics (contextualised to Pacific legal environments); advocacy; basic court etiquette; professional conduct; file, matter and practice management (including trust accounting).
- Centralised confidential ethics advisory service.
- Direct assistance to small jurisdictions in administering CPD programs for lawyers.
- Remote (or where possible, in-person) technical assistance upon request regarding implementation of disciplinary mechanisms or other aspects of implementation of legal practice laws or rules.
- Development of guidelines, systems, information and materials for managing various schemes such as: 'buddy' systems, administering CLE and pro bono 'points' schemes.
- Organise forums and opportunities (remote and in-person) for national associations to share best practices, ideas and resources, including annual or bi-annual conference and regional awards for pro bono and other areas of legal practice excellence

Further research regarding Pacific legal professions to establish an evidence base for advocacy areas and needs of associations. For example, to document and track their progress and positive impacts and importance to the function of democracy, courts and other underpinnings of 'the rule of law'; state responsibility to support legal profession regulation and 'value for money' of support to legal profession associations.

16.0 Main Observations and Conclusions

16.1 *Need for mind-shift in governments and donors: Pacific lawyer associations serve public interests and should receive public support to ensure they are properly resourced and capable of performing their functions*

This review has found that the key challenge facing Pacific legal profession associations is their lack of support and resources, which has resulted in many associations remaining underdeveloped and with insufficient capacities to perform their crucial roles, including in relation to regulation of the legal professions.

As noted at the beginning of this review, the reasons for the long term neglect of Pacific lawyer associations is unclear, however appears to stem from a limited understanding of how capacity of lawyers and the legal profession underpins all other justice institutions and the rule of law. There is a need to 'make a case' for why Pacific lawyer associations need to be prioritised, based on their key roles which include:

- Forming the foundation of the justice system
- Protecting human rights and the rights of citizens from the exercise of corrupt or arbitrary power

- Providing access to justice and enforce civil and legal rights
- Making important contributions to the maintenance of Pacific democracies
- Contributing to peaceful and inclusive societies
- Disseminating and circulating legal information in information starved environments
- Saving the courts and the public purse, both time and money
- Providing the ‘talent pool’ for the judiciary, the prosecution and the entire justice system

There is also a compelling case to be made for the support of lawyer associations from the opposite vantage point, being the very negative consequences for Pacific societies if there is an absence of strong, independent, competent and well- regulated legal professions, including:

- Low professional and ethical standards of conduct by lawyers
- Poor reputation and lack of public trust in lawyers and by the courts
- Poor judicial outcomes, stagnant case law
- Weakened rule of law and low public confidence in justice and the state.
- Environments where corruption and illegality can thrive

Thus, the first and foremost recommendation of this review is acceptance by governments and donors of the premise that having competent, independent and well-regulated legal professions in Pacific societies is not a ‘nice to have’ but rather, a public necessity and a public good. Lawyers associations are worthy of public investment and support so that they can build their own capacities to perform their vital roles.

16.2 Need for injection of resources and structured capacity building efforts to enable Pacific lawyer associations to fulfil their roles

It is a true credit to the dedicated people driving Pacific lawyer associations that they have been able to achieve what they have, given the acute resource constraints that most of them face. The level of voluntary contribution demanded, especially of those occupying executive or disciplinary committee roles, is unreasonably high and limits these positions to those with sufficient financial buffer to offer so much unpaid work. Reliance on almost exclusively voluntary contributions means that organisational capacities will inherently wax and wane considerably.

While larger jurisdictions have capacity to accumulate more resources and assets, they also often have the greatest burdens in trying to service all members including those in remote locations. Some of the ‘richer’ smaller jurisdictions that have higher levels of foreign activity and lower levels of geographical challenges, are probably best positioned to self-fund their associations’ activities. This could possibly be achieved by leveraging higher rates for practising certificates for foreign lawyers and higher income-tested rates for local lawyers, without it having negative effects, in terms of increasing barrier to local lawyers being able to engage in legal practice.

For most jurisdictions, self-funding options for professional associations will be more limited. Recognition of this basic fact, by governments and donors, is well overdue. While lawyers are generally comparatively ‘better off’ members of Pacific communities, there are significant numbers who are not earning high wages, both in the government and private sectors. It would not be desirable to create financial barriers to legal practice, especially for junior lawyers coming

from disadvantaged backgrounds. Diversity, including of socio-economic background, is important to have in any legal profession, which should, as far as possible, mirror the demographics of the population that it serves. Raising practising certificate fees to unaffordable levels (according to the local context) may create new barriers to legal practice for some lawyers. One option that could prevent this may be more granulated means testing of annual practising certificate fees, but then the gains may need to be balanced against the additional cost to properly administer such a scheme.

However, the basic message remains that governments (and donors) cannot continue to expect lawyer associations in the Pacific to pay for the predominantly public service of regulating the legal profession. Professional discipline, which is particularly onerous, cannot be done on an ongoing voluntary basis with any speed or regularity. The cost to clients, the community, the profession and the rule of law, of moribund, stagnating professional disciplinary processes is too high and is dragging down Pacific legal professions, with all the attendant consequences of this.

Legal profession associations' resources are being tied up in remedial processes, when they should be freed up to enable them to invest in preventative measures, (such as CPD as discussed below), as well as in other core functions, such as law reform, advocacy and public awareness raising work, pro bono work and services for members, such as career support, collective professional indemnity insurance and superannuation schemes, ethics advisory service and social, well-being and mental health services.

16.3 Legal frameworks for Pacific legal professions are imperfect but not the main issue, being resource deficits

Most of the effort that has gone into regulating Pacific legal professions has focused on legal architecture. There has already been thorough work done on identifying how legal frameworks could be technically strengthened. However, the two main points about legal regulation are:

1. Laws need to be practical and suitable for the specific legal context. Transplantation of legal practice laws from more developed jurisdictions is likely to fail in most Pacific environments as they are often complex, require unrealistic voluntary time inputs from numerous lawyers and judges and their implementation often relies on the existence of a range of other professional groups (such as accountants, auditors and mediators), which are not readily available or are prohibitively expensive for most legal practitioners. Laws need to be simple, clear, practical and most importantly, realistically implementable.
2. The main weaknesses in Pacific legal professions is not due to law deficits but due to implementation capacity deficits. Much more money and energy need to go into developing the implementers, rather than just the legal frameworks. Fixing the laws will not fix the problems unless accompanied by proper investment in the capacity of lawyers and their associations.

16.4 Critical need for Continuing Professional Development of lawyers combining CLE, coaching, mentoring and ethics advisory support

Given the youthful nature of the practising bar in most Pacific countries, and the major challenges facing most jurisdictions (in relation to professional ethics, standards of practice and conduct), the key priority of associations must be to provide the professional support and learning opportunities needed by their members.

To achieve this overall ‘lift’ in standards, what is likely needed is a multi-pronged approach, which utilises all available resources, and applies a full range of methods and options to assist lawyers with their professional development. This is needed especially, but not only, for junior lawyers, so that learning can continue at all stages of lawyers’ careers and so that all lawyers can work to reach their maximum potential and to achieve excellence in their practice of law.

Based on this conclusion, local lawyer associations should maximise and prioritise their commitment and resources for preventative, and not primarily, remedial, interventions. At present most professional associations are focused mainly on how they can provide more CLE sessions as the main type of professional development offered. Training sessions, for communicating content and techniques, are indeed valuable, especially where standards are not what they should be in the wider legal environment. Thus, many contexts will require more than ‘environmental’ learning to raise standards.

While some legal training needs are highly specialised and dependent on knowledge of a country’s particular law and procedure, there are certainly still many other topics regarding professional conduct, advocacy, ethics, and legal practice that are more generic in nature, and which could be developed on a regional basis and then adapted as needed to fit national contexts. Finding or supporting a regional actor to develop and disseminate low cost, high quality legal practice training materials would give professional standards across the Pacific a huge boost. It would be hugely beneficial, especially for small jurisdictions and jurisdictions which struggle to service lawyers in remote locations, while also creating greater consistency of standards across Pacific jurisdictions.

A further element of a multi-pronged approach (which could be delivered in-country and cost effectively) would be enhanced coaching and mentoring systems. For most adults, ‘learning through doing’, including observation and practicing with a coach, are the most effective learning methods. In Pacific legal environments this needs to be done on a selective and intentional basis, to ensure that only positive behaviours are role modelled. Bar associations could identify senior legal practitioners with high ethical and professional standards and recruit them as association ‘super coaches’ who could then coach and mentor junior lawyers and inculcate them with good practice habits.

By offering a ‘win-win’ this kind of program could become self-fulfilling and sustainable. Senior lawyers could benefit from having ‘apprentice’ lawyers to assist them and junior lawyers could benefit from shadowing and observational opportunities, while also having more intensive support, and guidance with their own cases on a day to day basis, similar to barrister ‘reader’ programs. Coaches could then become mentors and provide support in a less intensive way, (e.g. through regular ‘checking in’ for case discussion and problem solving) once junior lawyers have ‘spread their wings’ and can work with less support and supervision. Professional associations could support such ‘support pod’ structures at low cost.

As a further extension of this model, bar associations could invite retired or particularly experienced lawyers to form an ethics and practice advisory group to make themselves available to provide ad hoc advice to senior (and other) lawyers facing complex ethical challenges. Again, this could be done at relatively low cost and could achieve multiple objectives including ensuring that lawyers have access to quality advice, giving credos and recognition to senior members of the profession, and providing an effective ‘intergenerational’ circulatory learning model between lawyers, which could be sustainable.

16.5 Lawyer associations conditionally support compulsory ‘points’ systems of CPD and structured programs for pro bono contributions and should be supported to provide these

Pacific lawyer associations recognise the benefits and need for a ‘points-based’ CPD system, where lawyers can only renew their practising certificates annually if they have fulfilled a certain quota of learning activities. The main concern of associations with such a model is that they do not have resources to run enough learning activities. Strategies for making CPD activities sustainable include:

- Ensuring associations have resources to organise learning activities and to administer a ‘points scheme’, including systems for ensuring integrity (such as verification of attendance).
- Accrediting points to senior lawyers who provide learning activities (rather than needing to pay them speakers fees or coaching/mentoring fees)
- Asking visiting experts to provide seminars on a pro bono basis.
- Recording all CPD learning activities and providing these online, by USB, through webinars or other remote platforms.
- Adding a small CLE levy to the annual practising certificate fee

Many associations also see the value and willingness of their members to commit to a ‘points-based’ pro bono system whereby lawyers are also required to complete several ‘pro bono points’ in order to renew their practising certificates. Strategies for making pro bono schemes sustainable include ensuring that:

- Pro bono schemes are coordinated with national legal aid providers or courts
- Associations have the administrative and quality control capacity to run them responsibly
- They be properly ‘scoped’ and ‘messed’ to ensure they are not seen as a substitute for properly funded legal aid systems.
- Eligibility criteria is targeted to only those with no way of raising funds to pay for legal assistance to prevent such schemes from reducing paid work opportunities for the profession, especially junior lawyers.
- Pro bono work be appropriately ‘sized’ and matched according to lawyers’ experience and areas of practice.
- Lawyers be publicly recognised and celebrated for their pro bono contributions including through awards schemes.

16.6 Need for regional support source for inter-country collaboration, representation and capacity development efforts

The degree to which Pacific lawyer associations can meet the needs of the legal profession and the public will vary greatly. In small countries there may be only a handful of lawyers and no lawyer association. Yet no matter what the size of the country, lawyers still need support and reassurance. They still need access senior members of the profession and to mentoring if an ethical issue. For small countries, support will need to come through bilateral or multilateral regional mechanisms. Larger jurisdictions with hundreds of lawyers may have greater resources but may still face major challenges in meeting the scale and variety of lawyers’ needs and

supporting lawyers in more remote locations. Individual countries' associations do need a mechanism for banding together, sharing best practices and knowledge, and a forum and resources to engage in joint advocacy, planning and implementation of activities to strengthen support to lawyers and their associations across the Pacific.

The parlous resource deficiencies observed at the national lawyer association level, are also evident at the regional level, where there is now a major gap and no effective regional support provided to national associations.

The SPLA provides important functions and support to national associations, which should be continued. Areas of support needed which lend themselves to a regional approach include:

- Advocacy with governments, donors, INGOs, private actors for adequate resourcing and support for national and regional legal professional bodies
- Advocacy on behalf of national lawyer associations where they are subjected to inappropriate attack by other national actors.
- Centralised, affordable CLE systems that disseminates learning videos and materials on more generic themes such as: legal ethics (contextualised to Pacific legal environments); advocacy; basic court etiquette; professional conduct; file, matter and practice management (including trust accounting).
- Provide direct assistance to small jurisdictions with administration and CPD 'points' schemes
- Remote confidential ethics advisory service
- Remote (or where possible, in-person) technical assistance upon request regarding implementation of disciplinary mechanisms or other aspects of implementation of legal practice laws or rules
- Development of guidelines, systems, information and materials for managing various schemes such as: 'buddy' systems, administering CLE and pro bono 'points' schemes
- Organisation of forums and opportunities (remote and in-person) for national associations to share best practices, ideas and resources
- Further research regarding Pacific legal professions to establish an evidence base for advocacy areas and needs of associations

If it is assessed that a 'stand-alone' status is not sustainable or cannot be provided, then there may be a need to innovate and consider co-location/merging into another regional organisation that has consistent purposes and goals. Consideration could be given to partnering with the University of the South Pacific (USP), especially in relation to developing and disseminating CLE/CPD materials, or perhaps other regional organisations such as the Inter Pacific Bar Association or LAWASIA. Another option may be for a joint regional secretariat supported by those national lawyer associations with offices/administrative staff who could share the role on a rotating basis, however perhaps only PNG and Fiji would have the resources to participate in such an arrangement.

17.0 Next Steps and Draft Recommendations for Consideration at Upcoming Chief Justices' Forum

As noted from the outset, this is an initial draft document aimed at stimulating discussion with Chief Justices and actors from national lawyer associations by providing a current situation 'snapshot' of the most pressing needs of Pacific lawyer associations and offering some preliminary views about how these might be effectively addressed. The first phase will be consideration of recommendations by Chief Justices at the Chief Justices' Forum in the Solomon Islands in March 2020.

PJSI seeks the endorsement by the Forum of the following initial recommendations:

1. The Chief Justices' Forum endorses the following priority areas for the support and development of Pacific lawyer associations:
 - *Resources and structured capacity building efforts to enable Pacific lawyer associations to fulfil their roles especially in relation to:*
 - *Mandatory 'points' systems incorporating:*
 - *Continuing Professional Development both legal education and mentoring/coaching models.*
 - *Structured pro bono programs coordinated with national/other existing legal aid providers and law schools.*
 - *Strengthening resourcing and capacity of complaints and disciplinary mechanisms.*
 - *Ensuring national lawyer associations have the administrative capacity (i.e. operational resources) to provide their core functions*
 - *Investigation of options for providing regional capacity to:*
 - *Develop and deliver high quality CLE packages that can be delivered remotely to all Pacific jurisdictions*
 - *Support small jurisdictions to administer their core functions including 'points' CPD and pro bono programs*
 - *Provide confidential and accessible professional ethics advisory service to lawyers from all Pacific jurisdictions*
 - *Advocate for national lawyer associations and provide them with technical assistance upon request*
 - *Arrange cost effective professional indemnity insurance for national lawyer association members*
2. The Chief Justices' Forum recommends that these identified areas be the focus of consultations with national lawyer association actors at a regional workshop in October 2020.

The Chief Justices' Forum requests MFAT to commence investigating options for the availability of resources needed to support these areas of activity

Annex A: Admission to Practice and Practicing Certificate Requirements

Table 1: Admission to practice requirements in participating Pacific countries

<i>Jurisdiction (Title Used for Lawyers)</i>	<i>Administering Authority</i>	<i>Granting Authority</i>	<i>Residency</i>	<i>Age</i>	<i>Education</i>	<i>Character</i>	<i>Recognition of Foreign Qualifications</i>	<i>Other</i>	<i>Comment</i>
Tokelau	Does not have a LPA or professional conduct rules.								
Tuvalu	Does not have a LPA or professional conduct rules.								
Nauru <i>Barrister and Solicitor</i>	Supreme Court.		Non citizens eligible for admission if fit and proper, holds prescribed qualification, is admitted in designated country, evidence of offer of employment in Nauru or is law partner with someone who has lived in Nauru for 2 months prior to admission	21 years	Law degree from a designated country or tertiary institution and admitted to practice in designated country or has practised as a pleader for min 12 months in Nauru	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.	United Kingdom; Republic of Ireland; Australia; New Zealand; or any other country specified by the Minister.	Has a roll of legal practitioners.
	Pleader	Chief Justice.		Must ordinarily reside in Nauru.	Fit and proper person and has completed a Pleadings program prescribed by the Chief Justice	An applicant must have undergone such training as the Chief Justice may prescribe from time to time by rules.	n/a	Also provides for temporary admission by the Chief Justice and must be briefed by Nauruan practitioner 10 years experience min. Valid for 6 months or when specific case finalised.	
Cook Islands <i>(Practitioner)</i>	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.	Interview: The Council may require the applicant to attend before the Council for the purpose of an interview.	

<i>Jurisdiction (Title Used for Lawyers)</i>	<i>Administering Authority</i>	<i>Granting Authority</i>	<i>Residency</i>	<i>Age</i>	<i>Education</i>	<i>Character</i>	<i>Recognition of Foreign Qualifications</i>	<i>Other</i>	<i>Comment</i>
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.	Examination: has taken and passed a bar examination administered by the Supreme Court of Palau or its designee	
Marshall Islands (Lawyer)	The Act is silent on this issue.	The Act is silent on this issue.	Until Oct 2018 requirement of Residency, citizenship or maintenance of an active practice in the Marshall Islands is required. Removal has been controversial. Concern legal profession open for abuse.	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. Foreign lawyers must sit local bar exam within 4 years. This creates difficulty for retaining foreign lawyers	Must pass a written exam selected, developed and administered by the Supreme Court.	Shipping companies (third largest list in the world 100k registrations business of 100-200m per year) have strong influence and use foreign lawyers, much legal work now offshore, removal of residence requirement due to political pressure on legislature. Less incentive for Marshallese to study law
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	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	

<i>Jurisdiction (Title Used for Lawyers)</i>	<i>Administering Authority</i>	<i>Granting Authority</i>	<i>Residency</i>	<i>Age</i>	<i>Education</i>	<i>Character</i>	<i>Recognition of Foreign Qualifications</i>	<i>Other</i>	<i>Comment</i>
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 common law jurisdiction. 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.	Examination: Any person wishing to become an attorney must pass a written exam.	
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	Law Society Act requires all lawyers to be members of the Law Society. All lawyers must hold a practising certificate
Samoa (Barrister; Solicitor,	Applications for admission are made to the Supreme Court. A certificate for the application	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	'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	Academic and/or professional qualifications obtained in any country/territory/jurisdiction, which, in the opinion of the Council,	Interview: The Council may require the applicant to attend before the Council to be interviewed	

<i>Jurisdiction (Title Used for Lawyers)</i>	<i>Administering Authority</i>	<i>Granting Authority</i>	<i>Residency</i>	<i>Age</i>	<i>Education</i>	<i>Character</i>	<i>Recognition of Foreign Qualifications</i>	<i>Other</i>	<i>Comment</i>
	is administered by the Council of the Samoa Law Society.				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.	is disciplinary action pending.	has a legal system similar to that of Samoa, may be recognised.	and to answer such questions and provide such information as the Council thinks proper to enable it to decide whether to issue a certificate.	
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.	Practising Certificate: Unlike most jurisdictions, a practising certificate is an anterior requirement for admission to practise.	
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. Under rules, requires a law degree, 12 months article clerkship then provisional admission under supervisor more than 5 year exp.	Fit and proper person to be admitted.	The Act is silent on this issue.	Government lawyers have exemption from admission requirements. They don't have to have a practicing certificate. But lately a discussion that they should have to sign the High Court roll.	Concern that new draft law too onerous on sole practitioners and will put many out of business. Concern that responsibilities of Law Society under law are great but have received no support or capacity

<i>Jurisdiction (Title Used for Lawyers)</i>	<i>Administering Authority</i>	<i>Granting Authority</i>	<i>Residency</i>	<i>Age</i>	<i>Education</i>	<i>Character</i>	<i>Recognition of Foreign Qualifications</i>	<i>Other</i>	<i>Comment</i>
								Still need to go through formal admission for government lawyers.	development to prepare for these. Frustrated with time wasting donors. Current law is more simple and could be retained with amendments covering disciplinary procedures and a 'fit and proper' test and establishment of the law society and add trust accounting part.
<i>Fiji (Legal Practitioner)</i>	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	
<i>Papua New Guinea (Lawyer)</i>	Applications for admission are made to	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	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	Established by Act of Parliament Lawyers Act

<i>Jurisdiction (Title Used for Lawyers)</i>	<i>Administering Authority</i>	<i>Granting Authority</i>	<i>Residency</i>	<i>Age</i>	<i>Education</i>	<i>Character</i>	<i>Recognition of Foreign Qualifications</i>	<i>Other</i>	<i>Comment</i>
	the National Court. Admissions are administering admission is the Admissions Council (Attorney-General, Chief Justice and President of the Papua New Guinea Law Society.				or other qualification equivalent in standard. Can be admitted through sitting 3 exams in PNG law: Constitutional, customary, and land law.				Law Society; expansion and improvement. Secretariat functions well. Provides a stable base and provides institutional memory and well funded To practice have to register with law society and an annual registration with practising certificate, can practice as a private lawyer, government. Government lawyer must registered

Table 2: Practising Certificate Requirements

<i>Jurisdiction</i>	<i>Granting Authority</i>	<i>Admission</i>	<i>Professional Indemnity Insurance</i>	<i>Fees</i>	<i>Mandatory CLE for Renewal</i>	<i>CLE offered/provided?</i>
Niue						Lawyers attend various regional and international workshops where possible
Tokelau	Does not have LPA or professional conduct rules					

<i>Jurisdiction</i>	<i>Granting Authority</i>	<i>Admission</i>	<i>Professional Indemnity Insurance</i>	<i>Fees</i>	<i>Mandatory CLE for Renewal</i>	<i>CLE offered/provided?</i>
Tuvalu	The Legal Practitioners Committee (LPA s 7(1)).	Required. Admission certificate re issued every 2 years	Not required	\$50 of \$100 or non-Tuvaluans	No	AG runs CLE program for lawyers on a voluntary basis. Topics covered are usually designed by the Office based on areas it finds raises most concerns in legal proceedings as well as a delivery in implementing government policies.
Nauru	Registrar of the Supreme Court (s14) LPA). Must be member of Law Society.	Required.	Not required.	Barrister and solicitor \$25 p.a. Pleader: \$10 p.a.	Not Required. Certificate withdrawn if out of Nauru for 3 months and practice not assigned. Must have 3 years post admission experience under supervision of lawyer with 5 years experience, to be sole practitioners	The NLS encourages take up of scholarships and attending seminars and workshops. No in country CLE opportunities due to lack of funding and service providers Government has established a 12 month training course for pleaders through the local University of the South Pacific centre.
Cook Islands	Cook Islands Law Society	Required.	Required.		Not Required.	Advises practitioners on courses or scholarship offers CLE is not mandatory Ad hoc CLE presentations CLE opportunities are rare
Palau	A practising certificate is not required in Palau. Admission alone entitles a person to practise law before the Courts in Palau.			US\$100: inactive practitioner s, 'trial attorneys', US\$200 for attorneys		Examples of CLE activities involving PBA 2017 Sea Shepherd Legal Training on protecting Palau National Marine Sanctuary 2015 Advanced Trial Advocacy Symposium - event conducted by the American College of Trial Lawyers and hosted by PBA PJDP mediation program 2015 and workshop on family violence and youth justice 2012 PBA also provided training to AG's Department on new penal code
Marshall Islands	Only admission required, not practicing certificate					
Federated States of Micronesia	A practising certificate is not required in the	Admission through written				

<i>Jurisdiction</i>	<i>Granting Authority</i>	<i>Admission</i>	<i>Professional Indemnity Insurance</i>	<i>Fees</i>	<i>Mandatory CLE for Renewal</i>	<i>CLE offered/provided?</i>
Kingdom of Tonga	FSM. Admission alone entitles a person to practise law before the Courts in the FSM.	exam, with prerequisite s regarding character, law school, experience, etc.				
	Registrar of the Supreme Court after seeking representations from the Tonga Law Society.	Required.	Not Required.	\$60 p.a. (s 7(f) LPA).	Not Required.	Discussion re compulsory CLE but not yet in place. NZ lawyers funded by NZ Aid have conducted seminars on trial procedure and local lawyers/judges have also addressed the TLS. Difficulties: attendance, cost and topics need to be highly relevant practitioners.
		Silent				Junior lawyers need more learning opportunities. Appearing in court gives them experience. New graduates working with people's lawyer they get good experience and in the AG's office they don't get any experience. They just watch their seniors argue in court. Some kind of rotation systems between legal aid and the AG's office would be useful. Issue with keeping the senior people.
Kiribati						Law society does not currently provide any learning opportunities for lawyers.
Samoa	The Samoa Law Society has the power to issue practising certificates under 6(2)(a) Must have min 3 years experience to become sole practitioner	Required.	Not required.	By Law Society Council public notice. \$600 tala per year flat rate for all lawyers	Not Required.	The SLS provides ongoing CLE throughout the year. Every two years, the SLS holds a conference where local and overseas lawyers are invited to present papers of interest to the development of the SLS. Participation is voluntary. Members are encouraged to be speakers and presenters. CPD is the responsibility of the Council delegated to the CLE Committee. Currently running monthly trainings on different topics. Council has made it a requirement for the Committee to provide training on trust accounting twice a year. Council is considering looking at a points system to make sure everyone attends. Also discussing how to use a points system to renew practising licence. Committee gauges interest of members and then invites senior practitioners to present. All lawyers are present in the capital so they can all readily attend and no need to record and send sessions. Council conducts surveys of members to gauge what areas they would like CPD sessions in. Also regularly review the outcomes of complaints to identify

<i>Jurisdiction</i>	<i>Granting Authority</i>	<i>Admission</i>	<i>Professional Indemnity Insurance</i>	<i>Fees</i>	<i>Mandatory CLE for Renewal</i>	<i>CLE offered/provided?</i>
Vanuatu	The Law Council.	Required and Practising certificate.	Not required.	5,000 Vatu for initial certificate and then 10,000 Vatu each annual renewal	Yes required by Vanuatu Law Society Act	any patterns that need to be addressed through CPD training. Areas of focus identified include professional ethics, trust account requirements in the Act, and legal practice management. 2014 training on administrative law provided by Australian lawyers under Centre for Asia-Pacific Pro Bono (CAPPB)
						S48 of Legal Practice Law 2011 requires each lawyer to complete either 5 or 10 hours of CLE each calendar year provided by Vanuatu Law Society but references to difficulties for VLS to fulfil this obligation
						SIBA intends that in the future CLE will be mandatory and will be tied to the renewal of practising certificates. The draft Legal Profession Law requires practitioners to complete 12 hours of CLE per year in order to renew their practising certificates. SIBA will be responsible for providing CLE. CLE currently ad hoc. SIBA has provided basic advocacy training provided by the Victorian Bar for Solomon Islands practitioners. The Queensland Law Society has also provided some advocacy training SIBA asks foreign counsel to provide pro CLE sessions when they are in country. The Chief Justice of the High Court can admit lawyers who are “fit and proper” to practice and are “qualified” but this is not further described. ¹⁵¹ There is neither a requirement that a lawyer hold a practicing certificate when engaging in the practice of law nor an established offense and penalties for not doing so. ¹⁵² There are no legislative or policy initial or ongoing requirements for issuing a practicing certificate such as undertaking continuing education
Solomon Islands	Chief Justice of the High Court.	Required.	Not required.	Fees from endorsement overseas counsel restrictive practicing certificate . SB \$3000. less than 5 years: \$300 SB, 5-10 years: \$500 and 10 years above \$1500.	Not Required.	
Republic of the Fiji Islands	Registrar (Chief Registrar of the High Court).	Required.	No express requirement.	A response was not obtained in the time frame of this Report.	An applicant for renewal of their practising certificate, must satisfy the annual requirements of the CLE programme outlined by the Legal Education	Has a Board of Legal Education which accredits CLE points for activities conducted by Law Society and NGOs and others. Held its annual Convention in Nadi 6 – 7 September 2019 in association with the International Bar Association (IBA).

<i>Jurisdiction</i>	<i>Granting Authority</i>	<i>Admission</i>	<i>Professional Indemnity Insurance</i>	<i>Fees</i>	<i>Mandatory CLE for Renewal</i>	<i>CLE offered/provided?</i>
Papua New Guinea	Papua New Guinea Law Society.	Required.	Required for unrestricted practising certificate.	Unrestricted Practising Certificate: citizen - K5500 non-citizen - K6663 non-resident K8018 Restricted Practising Certificate: citizen - K2557.50 non-citizen - K3401.20.	Board (s 7(7) LPA). Not Required.	<p>PNG Law Society represented on Legal Institute Training Council who approve trainings for admission and practical courses, and also a member on the Centre for Judicial Excellence</p> <p>The PNGLS provides CLE (CPD) Seminars are conducted in Port Moresby and also at regional/provincial centres. At present CPD is voluntary, but there are plans to make it compulsory and a point system, based on attendance, will be used when issuing practising certificates. Points can be accrued not only by attendance, but also by writing articles for the FLS magazine <i>LawTok</i>, giving seminar presentations, undertaking pro bono work, Civil and Criminal Advocacy Workshop at the Legal Training Institute held in July 2019 hosted by Law Society with Victorian Bar</p> <p>Main issue is outreach to members. Internet connectivity is good in some areas network coverage and could video and set webinar, trying to set up own website and upload videos of training or have a webinar, broadcast for central location</p> <p>In informal discussions with Australian NZ Bar and planning to formalise relationship; Involved in South Pacific Law Association and with Law Council of Australia; QLD and Vic Bar have advocacy training every year, they send a few lawyers. Support provided through CAPPB for CLE but also to examine how PNG can sustainably provide CLE through a CAPPB visit in 2016.</p> <p>Wants support to establish mentoring/coaching support networks for different kinds of lawyers in the profession.</p>

Annex B: Summary of Legal Professions and Laws

Table 1: Summary of Pacific Legal Professions and Laws

POP. CATEGORY	Country	Ratio of lawyer/pop (2011)	# private lawyer	# Gov lawyer	# Bar Ass'n Mem	Laws Regulating the Legal Profession	Trust Account?	Prof Conduct	Practicing Certificate	Comments on demographic, retention, Bar Association Composition, Resources, Activities
MICRO STATES < 3000	Tokelau 1,340	No data			N/A	No act, regulations or rules				
	Niue 1,620	1:270	1	5	N/A	No act, regulations or rules				
	Nauru 10,800	1:1542	0	7	0	<ul style="list-style-type: none"> • Legal Practitioners Act 2019 • Barristers and Solicitors (Accounts) Rules 1973 • Barristers and Solicitors (Remuneration: Non-Contentious Business) Rules 1974 • Legal Practitioners Practice Rules 1973 	✓	x		
VERY SMALL STATES 3000-20,000	Tuvalu 11,700	1:1063	1	10	N/A	<ul style="list-style-type: none"> • Legal Practitioner Act 2015 	x	✓	✓	Mention of Tuvalu Law Society in 2018 participating in SPLA Executive but not clear if Law Society is active.
	Cook Islands 18,000	1:234	32	12	58	<ul style="list-style-type: none"> • Law Practitioners Act 1993-94 (as amended by the Law Practitioners Amendment Act 2008) 22 • Law Practitioners (Admission) Regulations 1994. • Rules of Admission for Attorneys and Trial Counsellors to Practice in the Courts of Republic of Palau 2001 (and amendments) • Rules of Admission to Practice Law and Limitations of the 	✓	✓	✓	
	Palau 18,000		63 attorneys and 4 'trial		77 active 14 kinactive		x	✓ refer to ABA model rule		Various CLE collaborations (see Annex A) PBA also review bills and submit to the Congress (OEK) with the support of the Palau judiciary. PBA also often involved at the committee stage, during the second reading of the bill.

POP. CATEGORY	Country	Ratio of lawyer/pop (2011)	# private lawyer	# Gov lawyer	# Bar Ass'n Mems	Laws Regulating the Legal Profession	Trust Account?	Prof Conduct	Practicing Certificate	Comments on demographic, retention, Bar Association Composition, Resources, Activities
			counsellors'			<i>Practice of Law for Trial Counsellors in the Republic of Palau 2011</i> • Disciplinary Rules & Procedures for Attorneys ²³		s and character requirements		
SMALL STATES: 20,00-60,000	Marshall Islands 59,000	1:2950	9	11	20	• Legal Profession Act 1991 • Rules for Admission to and for the Practice of Law 2015	x	x	x	All lawyers members of the Bar Association Difficult to keep members engaged. Previously had a Law Society Had plans to conduct moots and celebrations, but members have diverse interests. Need to get Marshallese lawyers involved and motivated. Private lawyers able to earn good money but threatened by foreign offshore lawyers
	Tonga 105,000	1:2019	41	11	52	• Law Practitioners Act 1989 • Rules of Professional Conduct for Law Practitioners 2002	x	✓		Women in Law Association Tonga established Law Society contributes to public debate and provides advice on proposed policy and law changes eg independent Judicial Appointments Commission (2019)
MEDIUM STATES: 60,000-500,000	FSM 114,000	No data				• <u>Rules for Admission to Practice before the Supreme Court of the Federated States of Micronesia 2016)</u> <i>American Bar Association Model Rules of Professional Conduct 1983 ('ABA Model Rules')</i>	x	x	✓	

POP. CATEGORY	Country	Ratio of lawyer/pop (2011)	# private lawyer	# Gov lawyer	# Bar Ass'n Mems	Laws Regulating the Legal Profession	Trust Account?	Prof Conduct	Practicing Certificate	Comments on demographic, retention, Bar Association Composition, Resources, Activities
	Kiribati 118,000	1:2360	17	30	<50	<ul style="list-style-type: none"> • Kiribati Law Society Act 2006 • <i>Professional Conduct & Practice (Kiribati Lawyers) Rules 2011</i> 	x	x	x	<p>Demographic of profession young. More women. Not enough lawyers and lack of law students but prioritised for bonded scholarships for USP. Most return and stay,</p> <p>AG lawyers paid better than public defenders.</p> <p>All Members asked to assist in one Pro bono scheme where all members of the Society are asked to assist with one pro bono matter per month. Lawyers ask clients to write letter confirming they performed pro bono service. No guideline on any cases. Could be any case but so far more minor cases maintenance, custody, divorce, family law cases. Drafting of contracts. Overflow from the People's Lawyer comes to the law society. Clients directly approach any lawyer they are comfortable with and lawyer does the work and then they certify they have done this.</p> <p>During the legal year opening the Society announces the names of the lawyers who have done pro bono matters. The lawyers get public recognition for their good work.</p>
	Samoa 197,000	1:4829	40 69	52 81	103 159 (2016) 170 (2019)	<ul style="list-style-type: none"> • <u>Lawyers and Legal Practice Act 2014</u> • Rules of Professional Conduct for Barristers and Solicitors of Samoa 2004 	✓	✓		<p>Law Society council of 8 elected annually through a quorum of 60% of current membership. Currently comprised of 5 women and 3 men. There are more women than men in the profession approx. 60% women and 40% men. Majority of members below age of 30 maybe 60% mainly doing court work and then trend is more senior practitioners promoted into senior roles in Government and many former practising lawyers CEO level, private practice more senior practitioner civil transaction roles.</p> <p>Has several sub committees: Complaints and Investigations, CPD and Rules and Legislation which focuses on gaps in laws and regulation re legal</p>

POP. CATEGORY	Country	Ratio of lawyer/pop (2011)	# private lawyer	# Gov lawyer	# Bar Ass'n Mems	Laws Regulating the Legal Profession	Trust Account?	Prof Conduct	Practicing Certificate	Comments on demographic, retention, Bar Association Composition, Resources, Activities
LARGE STATES: 500,000-1 MILLION										<p>practice, and a social and sport committee which organises a number of events: annual bar dinner, annual sports day, lawyers v doctors etc.</p> <p>Law Society priorities 2018/19 provision of training and CLE for members, review existing practice rules and assistance to members to comply with legislative requirements</p> <p>SLS does not have an organised pro bono scheme but would like to if had administrative support and include in a points system with CPD. Members do a lot of pro bono work they arrange themselves. There is state funded legal aid fund where Ministry pays private lawyers to run legal aid matters at reduce lump sum rates. Often a lot of push back to the invoices presented.</p> <p>Govt often invited SLS to provide inputs on draft laws. After the second reading, the bills go through a select parliamentary committee and members of the public can appear before those committees. The SLS has appeared before such committees when we have lawyer with relevant technical skills.</p>
	Vanuatu 300,000	1: 3000	40	37	100	<ul style="list-style-type: none"> Legal Practitioners Act 2011 Legal Practitioners Act 1980 Rules of Etiquette and Conduct of Legal Practitioners 2011 Vanuatu Law Society Act 2010 				<p>Some uncertainty around applicable laws.</p> <p>Mention of establishment of Vanuatu Bush Lawyers Society</p>
	Solomon Islands 670,000	1:4188	42 100	48 55-60	150-160 (2019)	<ul style="list-style-type: none"> Legal Practitioners Act 1996 (as amended by 2003 Act) Legal Practitioners (Professional Conduct) Rules 1995 	x	✓		<p>Demographic of profession 30% women, 70% men, Age breakdown 80% under 40 years old, 5% below 50 and 5%, 50+. Around 100 others with law degrees but not practising: some in Government or senior advisor roles, business, NGOs, academia.</p> <p>Draft <i>Legal Profession Bill</i> 2007, which proposes a co-regulatory model with a government-related Legal Profession Authority and independent Solomon</p>

POP. CATEGORY	Country	Ratio of lawyer/pop (2011)	# private lawyer	# Gov lawyer	# Bar Ass'n Mem	Laws Regulating the Legal Profession	Trust Account?	Prof Conduct	Practicing Certificate	Comments on demographic, retention, Bar Association Composition, Resources, Activities
										<p>Islands Law Society. Had first reading speech on 9 Oct 2017 and is still before the House but not listed for debate this year. The Bill as proposed is substantially similar to Legal Profession Acts or Uniform Law in force around Australia. Bill establishes two regulatory bodies: the Legal Profession Authority to regulate the profession and the Solomon Islands Law Society Association ("SILS").</p> <p>The Solomon Islands Bar Association ("SIBA") is the only lawyers' body in the country and membership is voluntary. SIBA has delegated authority to provide advice to legal practitioners on professional duties, receive notice of office address of a legal practitioner, request production of any advertisement by a legal practitioner, and receive complaints from a legal practitioner about another legal practitioner who is in breach of the Legal Practitioners Act 1987 or ethical codes. However, in practice SIBA has a very minimal role in policing infractions except when it receives an invitation for comment from the Registrar on occasion when considering admission or issuing of a practicing certificate. SIBA is still not established under any legislation; it has no official role in licensing lawyers to practice in the country. It does not currently have any funding for office bearers or administrators. Currently no standards for admission but with status of Law Society will be able to draw up bar exam. Concerned that draft law not adapted to local environment and too onerous for lawyers and Law Society.</p> <p>Connections: QLD Bar: CLE, law and justice under RAMSI: facilitating and funding those CLEs and lawyers from QLD and Vic Bar Associations. South</p>

POP. CATEGORY	Country	Ratio of lawyer/pop (2011)	# private lawyer	# Gov lawyer	# Bar Ass'n Mems	Laws Regulating the Legal Profession	Trust Account?	Prof Conduct	Practicing Certificate	Comments on demographic, retention, Bar Association Composition, Resources, Activities
										<p>Pacific Lawyers Association: recent connections in Fiji, includes ALC and NZ LC. SPLA offered to seek assistance on Society's behalf to set up secretariat. Could train person to run the law society.</p> <p>Members of Law Asia: seeking capacity re legal contracts with China and language skills and requested support from Asian association. RAMSI previously funded a permanent officer position and administration costs for the Solomon Islands Bar Association for a number of years.</p> <p>Executive made up of 7: pres, vice sec, treasurer, and 3 ordinary members. 5 men and 2 women. In second term, women were the majority, and had female Pres in 2015. No provisions in the rules for female quota. All voluntary, no salary, expenses or honorarium, in fact members have to pay a lot. Space and activities sponsored by law firms of exec. Too onerous on them and on time of Pres and affects livelihood. So planning succession.</p> <p>Many members doing pro bono work for their 'wantok' Most lawyers are also land owners and taking cases on re loggers behalf of their clan. Hard to attract best lawyers to the bench due to the poor salary and conditions of judges: private practitioners can earn much more.</p> <p>Law Society was deregistered by Fiji's military-installed government. The move stripped the society of its ability to issue practicing certificates and made membership voluntary. (2012)</p> <p>Fiji Law Society held first AGM in 6 years in 2014. Holds an Annual Convention at which 200+ practitioners attend.</p> <p>Now has a sophisticated regulatory regime, there is a functioning disciplinary system producing</p>
	Fiji 890,000	1:2542	230	120	350	<ul style="list-style-type: none"> Legal Practitioners Act 2009 Trust Accounts Act 1996 	✓	✓	✓	

POP. CATEGORY	Country	Ratio of lawyer/pop (2011)	# private lawyer	# Gov lawyer	# Bar Ass'n Mem	Laws Regulating the Legal Profession	Trust Account?	Prof Conduct	Practicing Certificate	Comments on demographic, retention, Bar Association Composition, Resources, Activities
VERY LARGE STATES: > 1 MILLION	PNG 8.78 million	1:10,470	550	440 And 110 NGO /in house lawyers	1100	<ul style="list-style-type: none"> • Lawyers Act 1986 • Professional Conduct Rules 1989 • Lawyers (Trust Account) Regulation 1990 • Lawyers Admission Rules 1990 	✓	✓	✓	<p>jurisprudence including prosecution of poor competency matters such as "failure to respond" cases</p> <p>Gender gap closing 65% men and 35% women. Relatively junior profession, est 60% under 30. No difficulties retaining lawyers: large jurisdiction and many opportunities for advancement Many senior lawyers become heads of Department, judiciary and management roles. Plenty of student study law at the University of PNG. Some trained in Australia, UK, NZ and need to sit 4 exams in PNG constitutional, customary land law and can then apply to be admitted to practice in PNG. CLE activities as per Annex A</p>
										<p>Law Society previously provided legal aid scheme commenced in 2012 but no longer an organised scheme. Details of previous scheme below: Where PSO not able to assist, then PSO refer to the Law Society. Law Society Secretariat take applications for legal aid and then a panel decides on grants of aid. Private lawyer from the 'pool' then assigned to the case and is paid to provide legal representation by the Law Society. Scheme is funded from interest accrued on trust accounts maintained by lawyers. Mandatory for the banks to forward the interest each quarter. Civil and criminal cases are eligible, many of them being family law cases, breaches of contract, motor vehicle injury claims and dependency claims. Case types excluded include: adultery and enticement cases, land disputes, taxation claims, conveyancing,</p>

POP. CATEGORY	Country	Ratio of lawyer/pop (2011)	# private lawyer	# Gov lawyer	# Bar Ass'n Mem	Laws Regulating the Legal Profession	Trust Account?	Prof Conduct	Practicing Certificate	Comments on demographic, retention, Bar Association Composition, Resources, Activities
REGIONAL ACTORS										<p>wills and testaments, defamation actions, election petitions and traffic offences.</p> <p>Collaboration with Uni of PNG Law school Legal Education Aid Program (LEAP) collaboration between Law Society and University of PNG Law School where final year law students spend their summer break representing defendants in district courts in the Provinces where there was no public solicitor/legal aid available.</p> <p>Is not a regular program. Law Society provides ad hoc assistance but is interested to re-vamp and formalise support especially for student logistics (phone credits and funds for photocopying and transportation</p> <p>Council members: 9 members bi annual election, 3 women, and 6 men, 100% voluntary work, no expenses etc.</p> <p>Also a PNG Women Lawyers Association and PNG Environmental Law Association established.</p>
SOUTH PACIFIC LAWYERS ASSOCIATION (SPLA)						<p>SPLA, which was established in 2007 by the IBA in partnership with the Law Council and the New Zealand Law Society, was founded to support developing law societies and bar associations to promote the interests of the legal profession in the South Pacific region. SPLA is comprised of 17 constituent members, and is governed by an Executive, led by Chair Dr Gordon Hughes. The Secretariat of SPLA is hosted by the Law Council Due to the absence of a sustainable source of funding through an Australian Aid program, SPLA representatives had been unable to meet face to face since 2015.</p> <p>SPLA Executive Meeting and a SPLA General Meeting held in September 2019 as part of Fiji Law Society Annual Conference. The meetings showed that access to high quality CLE is in desperate need and discussion turned to the various ways it might be delivered. With the Secretariat, Dr Hughes is working on a list of recommendations to</p>				

POP. CATEGORY	Country	Ratio of lawyer/pop (2011)	# private lawyer	# Gov lawyer	# Bar Ass'n Mem	Laws Regulating the Legal Profession	Trust Account?	Prof Conduct	Practicing Certificate	Comments on demographic, retention, Bar Association Composition, Resources, Activities
		<p>present to the SPLA attendees enlarging on the points made. Further information will be available when the recommendations have been completed.</p> <p>STRATEGIC GOAL 1 – Represent the interests of South Pacific lawyers on regional issues concerning the rule of law, access to justice and regional law and justice policy.</p> <p>..STRATEGIC GOAL 2 – Support the development of member peak legal professional associations.</p> <p>..STRATEGIC GOAL 3 – Improve the standard of, and access to, legal education including continuing legal education (CLE) for South Pacific lawyers.</p> <p>..STRATEGIC GOAL 4 – Promote effective and robust regulation of the legal profession in the South Pacific region.</p> <p>..STRATEGIC GOAL 5 – Represent the interests of the legal profession generally in the South Pacific region.</p>								
PACIFIC ISLANDS LAW OFFICERS NETWORK (PILON)		Regional network of senior Pacific law and justice officials promoting justice and the rule of law, by sharing expertise and experiences and strengthening regional cooperation on key law and justice issues. The PILON Secretariat is based in Apia, Samoa.								
THE CENTRE FOR ASIA-PACIFIC PRO BONO (CAPPB), THE INTER PACIFIC BAR ASSOCIATION (IPBA)		<p>Housed within the Law Council of Australia Secretariat, CAPPB matches requests for legal assistance from the Asia-Pacific region with pro bono providers in Australia until 30 June 2015. An initiative of the Law Council and the Australian Government in 2011, funded by the Australian Attorney-General's Department.</p> <p>The CAPPB has facilitated more than 18 projects since its launch in July 2012, generating more than \$1.3 million worth of pro bono work for organisations in 12 Asia-Pacific countries. Projects have included legislative drafting assistance, legal advice on human rights and other matters, capacity-building and legal professional development</p> <p>An international association of business and commercial lawyers who live in, or otherwise have a strong interest in, the Asia-Pacific Region (sometimes referred to as the "Region"). It was established in April 1991 at an organizing conference held in Tokyo attended by more than 500 lawyers from countries within the Asia-Pacific Region. Since then, it has grown to become the preeminent legal association in this Region, with membership drawn from throughout the world, and currently has more than 1700 members from over 70 jurisdictions worldwide. Conducts an annual meeting and conference.</p>								
LAWASIA		LAWASIA is an international organisation of lawyers' associations, individual lawyers, judges, legal academics, and others who focus on the interests and concerns of the legal profession in the Asia Pacific region. LAWASIA facilitates its members' participation in the most dynamic economic region in the world.								
PACIFIC LEGAL NETWORK (PLN);		Provider of legal and <u>business advisory</u> services in the Pacific.								

POP. CATEGORY	Country	Ratio of lawyer/pop (2011)	# private lawyer	# Gov lawyer	# Bar Ass'n Mem	Laws Regulating the Legal Profession	Trust Account?	Prof Conduct	Practicing Certificate	Comments on demographic, retention, Bar Association Composition, Resources, Activities
AUSTRALIAN LAW COUNCIL	The Australian legal profession has maintained ties with neighbouring legal fraternities through training initiatives for a number of decades.									

*Comparison Data: Australia 1:351, New Zealand 1:409288.

Table 2: Summary of Mechanisms for Addressing Professional Misconduct of Lawyers

Country	Approach to Complaint Investigation	Penalties for Misconduct	Comments on Function
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.	
Niue			
Nauru	<p>Legal Practitioner Law 2019 establishes the Legal Practitioners Disciplinary Tribunal comprised of a judge or someone qualified to be a judge. Tribunal receives and hears complaints against lawyers. Complaints made to Registrar and must be made within 2 years of right accruing. No fee to lodge complaint. All complaints logged in register.</p> <p>Law establishes Nauru Law Society</p>	<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. 	<p>Lawyer can be removed from practitioner's roll where Disciplinary Tribunal or Court orders, has been convicted of criminal offence involving dishonesty or fraud, or declared bankrupt</p> <p>S31 Tribunal can cancel or suspend practicing certificate, struck off roll of practitioners, can direct law practice cease to operate, bar from applying for practicing certificate for a period, pay a fine, pay compensation to any person, request submission of trust accounts and can order practitioner attend CLE, can only practice under supervision, order to reimburse fees accepted,</p> <p>Hearings open to the public. Appeal is to the civil jurisdiction of the Court of Appeal</p> <p>Criminal offence to practice without qualification: \$50,000 fine or 2 years imprisonment or both and offences of employing someone struck off or for not disclosing status as struck off.</p>
Tuvalu	Legal Practitioner's Committee comprised of AG,	Powers to suspend right to practice temporarily or	

Country	Approach to Complaint Investigation	Penalties for Misconduct	Comments on Function
	Chief Ombudsman, Commission of Police and Public Solicitor investigate conduct complaints	<p>permanently and to remove name from Admission roll. Right of appeal to High Court within 14 days of decision</p> <p>Includes offences for practicing Certificate of Admission under this Act commits an offence and shall be liable to fine not exceeding \$1000 or imprisonment for not more than 2 years and \$50 per day for continuing offence, practicing while suspended, breaching the Committee's orders and holding self out falsely as legal practitioner.</p>	
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>	
Palau	Governed by the <i>Disciplinary Rules & Procedures for Attorneys</i> . All complaints concerning violation of the	Per r 3 of the <i>Disciplinary Rules & Procedures for Attorneys</i> , disciplinary action may consist of:	

Country	Approach to Complaint Investigation	Penalties for Misconduct	Comments on Function
	<p>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>	<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>	
Marshall Islands	<p>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>	<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. 	<p>Court has an in house ethical committee and appoints 3 lawyers. Complaints referred to the committee for investigation and Committee reports finding to the court and court make the ultimate decision. Goes to high court, trial court of general jurisdiction and supreme court. Is it active?</p> <p>Know of one or two minor complaints in the past 10 years and did not turn out to be substantiated.</p> <p>One got a verbal warning by HC CJ. Not public until there is a decision.</p> <p>Court has been overwhelmed by vexatious litigants who started filing litigation against local business and de frauded people of money and sued them and sued others and also brought disciplinary complaints against anyone that they sued and this overwhelmed the system.</p> <p>Court ultimately adopted a rule from the US if someone gets declared a vexatious litigant can be barred from filing further action without court approval and the court did not have to respond. People live together and hard to get lawyers to be</p>

Country	Approach to Complaint Investigation	Penalties for Misconduct	Comments on Function
			on the committee. Appointed by the court and does not involve private lawyers. Court appoints government or public sector people to avoid conflict within the practicing profession
Tonga	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>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>	
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</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</p>	

Country	Approach to Complaint Investigation	Penalties for Misconduct	Comments on Function
	of a professional authority for this or any other purpose of professional regulation in The Federated States of Micronesia.	sanctions and penalties.	
Kiribati	<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. 	<p>A council appointed by the AG is responsible for discipline and complaints and the executive administers the complaints. The hearing is held by the council.</p> <p>AGS have not appointed the council as yet. Have never appointed this and have had this obligation since 2010. Law Society has dealt with some directly. Clients complaint they paid and collect information and provide information with receipts etc, some complaints just not satisfied with the service screening it out.</p> <p>Ones without supporting documents we have not brought up to the council.</p> <p>Unresolved complaints sitting with the council around 30. Executive have probably resolved around 20 or so.</p>
Samoa	The Act provides for a complaint process under Part VII div 2. A written complaint must adhere to the	A disciplinary tribunal is established by s52 of the Act. The tribunal will hear and determine all charges of professional misconduct and	Self-regulating Complaints and Investigations Committee. Evidence of action and effectiveness. Complaints are made to the Law

Country	Approach to Complaint Investigation	Penalties for Misconduct	Comments on Function
	<p>formality of s45(a), or the Council may initiate a complaint on its own initiative to the Complaints and Investigations 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>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>	<p>Society Council which passes them to the complaints and investigations subcommittee.</p> <p>Committee receives quite a steady number of complaints, number has increased. There are 31 active complaints at present. Only making headway with them last year due to particularly active committee members as it depends on level of voluntary commitment of the committee members. It is a demanding role as cases take time. Lawyers with experience and fair reputations are invited to join the committee made up of core of 7 members, with some other rotated in and out so members can avoid sitting on cases where they may have conflicts. Outcomes are not made public but Act requires Council to notify government officials and the complainant, and respondent and also have to notify the Ministry, the Chief Justice and the Attorney General. Complaints mainly concern a handful of practitioners who are repeat offenders. Now the complaints are proceeding and there has been some publicity of these, the discipline is effective. The Disciplinary Tribunal provided for in the Act has not been established yet. It will hear evidence from the Committee. Comprised of 2 practitioners with minimum 8 years experience and 1 lay person in general community. Tribunal remuneration for the members comes out of the funds held by the law society. In need of guidance and assistance in terms of getting the processes right, and have reached out to the NZ law society for technical assistance hopefully forthcoming.</p>
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</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; 	

Country	Approach to Complaint Investigation	Penalties for Misconduct	Comments on Function
	<p>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>	<ul style="list-style-type: none"> 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; 	
Fiji	<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)). 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"> the legal practitioner; law firm; or, any employee or agent of a legal practitioner or law firm, has engaged in professional misconduct or unsatisfactory professional conduct. 	
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>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 	<p>Between 2003 and 2011, the SIBA Executive Committee was actively investigating complaints, dismissing those complaints that it considered vexatious or unmeritorious, and referring “serious” other complaints to the Attorney General.¹⁶² It also established its own procedures for disciplinary investigations.¹⁶³ In several cases, disciplinary</p>

Country	Approach to Complaint Investigation	Penalties for Misconduct	Comments on Function
	<p>It is noted that there are upcoming legislative amendments which are expected to introduce a new approach.</p>	<p>from practice for such period as the committee shall think fit;</p> <ul style="list-style-type: none"> • 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. 	<p>committees were formed, however no prosecutions or findings were ever made</p> <p>Main problem is the AG is too busy to give time to the Disciplinary Committee and no lawyers want to sit on it in judgement of their peers. President's strategy was to invite senior members willing to take up the challenge using a personal approach. They accepted, President wrote to CJ and he appointed them and they sat. Last year struck off 1 of the lawyers (outstanding case from 10 years), stole \$, convicted by HC, served time and then wanted to practice. View from the profession that he should be prosecuted. Provided him with the charges and rules and gave him the chance to respond, life- long ban. Has a 30 day appeal period to the High Court but did not appeal.</p> <p>There are many pending cases. Now this big case has been resolved need to proceed with backlog but problem is AG is too busy and has not delegated power. So trying to resolve cases in the mean time. We write to the lawyer explaining we are playing a mediation role, and request an itemised bill. Three cases money was refunded by the lawyer. Once we achieve this outcome then we leave it to the complainants to decide if they still want to raise professional disciplinary case or give solicitor a warning. Members of the committee do it all voluntarily which is not realistic given that average time it takes for the entity to finalise a disciplinary complaint is 5 sittings, with no regular schedule of sittings and depends on availability of members. With this process it takes several years to finalise a case. We also provide ethical advice to lawyers upon request. Sometimes we will outsource such questions to former presidents or senior lawyers to provide their responses to our members. Other services include support with employment service, organised a forum on lawyers' physical and mental health, Certifications,</p>

Country	Approach to Complaint Investigation	Penalties for Misconduct	Comments on Function
			good stand letters, job opportunity letter, confirmation of credentials for financial members. Often invited to comment on draft laws such as the draft constitution. We spend a lot of time contributing our comments on draft laws and amendments. Also contribute to awareness raising activities, 'roadshows/ and 'law week' for community. Also do media appearances to defend the profession from false allegations
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>	<p>Lawyers' Statutory Complaints Committee handles complaints and is separate from Council. There are lay members also on the Committee. Chairman is lawyer and from the Council and Council nominates and CJ confirms, and also a re from AG department and one other lawyer and a lay person, law society appoints them. As Law Society is large there is less issue of lawyers being reticent to fulfil peer review roles and not an obstacle.</p> <p>Issue is that the work is voluntary so asking a lot of people to constantly turn up for meetings, sit for long hours and members of statutory committee are not paid nor for expenses or honorarium</p> <p>Quite a lot of complaints against lawyers re conduct, Common complaints: received the money but did not do the work. No estimate of backlog which depends on the level of time committed by the Committee. Decisions not made public, so the complainant and lawyer know but not the public. Unless they challenge decision in court, then case parties become the Law Society Committee, the complainant and the lawyer. No requirement of secrecy but really a sense of respect for the lawyer. Need to build community confidence in lawyers but this takes resources</p> <p>Law Society also The Law Reform Commission invites Law Society to review particular laws, amendments on any legal issues. Society nominates a representative from office and they present their views and they report back to us and then we ask them to report back</p>

Country	Approach to Complaint Investigation	Penalties for Misconduct	Comments on Function
			their contributions. Can be council members or senior members of the professional with expertise in that area. There are also boards that require lawyers to be members of and the law society is invited to be part of those boards.

Annex C: Key Findings and Recommendations from SPLA 'Needs Evaluation Survey for South Pacific Lawyer Associations: Final Report' Survey (2011)

Key findings included:

- Excluding Australia and New Zealand, there are approximately 1,694 lawyers working in the South Pacific. Of these, approximately 1,023 (60%) are engaged in private practice and approximately 671 (40%) are engaged in government / in-house roles. Of the 1,023 lawyers engaged in private practice, 591 (58%) are admitted to practice in Papua New Guinea, 230 (22.5%) are admitted to practice in Fiji and less than 5% are admitted to practice in the Cook Islands, Samoa, the Solomon Islands, Tonga and Vanuatu. Less than 1% are admitted to practice in Kiribati, Niue, Norfolk Island and Tuvalu combined.
- 90-100% of all lawyers in the region use computers and IT in their practice.
- The PNG Law Society and the Tonga Law Society are the only lawyer associations with a permanent or part-time office. All lawyer associations believe it would be beneficial to the association and the legal profession to have a permanent office –whether housed within a government body (such as a PSO or DPP's office), a court, or separate premises.
- Legislative and regulatory frameworks do not currently provide an adequate basis for sustainable funding of legal professional and regulatory bodies.
- CLE is only mandatory in one jurisdiction – Vanuatu. CLE is offered by six professional associations on an ad hoc basis.
- All legal professional associations believe that there is a strong need for practitioners to participate in CLE (whether mandatory or voluntary) and that such CLE should be offered through the association – whether in partnership with external organisations or locally driven.
- Further needs were identified in the existing limited access to online legal resources (such as any/timely court reports and consolidated legislation), including access to legal education resources
- Most (7 of 12) lawyer associations are responsible for receiving and investigating complaints against practitioners. In Fiji and Vanuatu, complaints and discipline are dealt with by an independent regulator.
- Funding is not provided by government or through statutory regimes to support any association with complaints and discipline handling.
- 92% of legal professional associations seek to implement or improve existing systems for complaints and discipline handling. The Cook Islands is the only jurisdiction which believes its existing regime for complaints and discipline handling is adequate or effective.
- All legal professional associations support the development of uniform procedures for complaints and discipline handling, provided that such model rules are developed in consultation with all associations and the implementation of such rules is not mandatory.
- More than 60% of legal professional associations support the listing of outcomes of serious breaches (i.e. offences giving rise to striking off or suspension) of legal professional obligations by practitioners on a central database which is searchable by

members of the public. Most legal professional associations do not support the listing of 'minor' complaints.

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

The study made the following nine recommendations:

Recommendation 1 – review of legal profession legislation and regulation Governments in South Pacific countries should make it a priority to conduct a comprehensive review of legal profession legislation and regulation with particular regard to:

- The scope and authority of peak legal professional associations and the need to provide for the establishment of financially sustainable peak legal professional associations;
- The appropriateness of introducing mandatory CLE and responsibility for accrediting CLE courses and programs;
- Responsibility for professional discipline and the establishment of effective and financially sustainable regulatory systems (e.g. compulsory contributions by legal

practitioners); and

- Trust accounting and audit requirements including:
 - Mandatory provisions for the keeping of trust accounts;
 - Provisions for the annual or periodic auditing of trust accounts;
 - Powers for a legal profession regulator to conduct 'spot' audits of trust accounts on reasonable grounds; and
 - The charging and use of interest on trust accounts to fund legal profession regulation.

Recommendation 2 – reform of legal profession legislation and regulation.

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

Recommendation 3 – review of funding and coordination of legal aid

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

Recommendation 4 – reform of funding and coordination of legal aid

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

Recommendation 5 – CLE access

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

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

Recommendation 6 – long-term strategies

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

Recommendation 7 – infrastructure and human resource needs

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

Recommendation 8 – online database development

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

Recommendation 9 – communication resources

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

Annex D: American Bar Association – Legal Profession Reform Index Factors

I: Professional Freedoms and Guarantees

Factor 1. Ability to Practice Law

Lawyers are able to practice without improper interference, intimidation, or sanction when acting in accordance with the standards of the profession.

Factor 2. Professional Immunity

Lawyers are not identified with their clients or their clients' causes and enjoy immunity for statements made in good faith on behalf of their clients during a proceeding.

Factor 3. Access to Clients

Lawyers have access to clients, especially those deprived of their liberty, and are provided adequate time and facilities for communications and preparation of a defense.

Factor 4. Lawyer-Client Confidentiality

The state recognizes and respects the confidentiality of professional communications and consultations between lawyers and their clients.

Factor 5. Access to Information

Lawyers have adequate access to information relevant to the representation of their clients, including information to which opposing counsel is privy (equality of arms).

Factor 6. Right of Audience

Lawyers who have the right to appear before judicial or administrative bodies on behalf of their clients are not refused that right and are treated equally by such bodies.

II: Education, Training and Admission to the Profession

Factor 7. Academic Requirements

Lawyers have a formal, university-level, legal education from academic institutions authorized to award degrees in law.

Factor 8. Preparation to Practice

Lawyers possess adequate knowledge, skills, and training to practice law upon completion of legal education.

Factor 9. Qualification Process

Admission to the profession of lawyer is based upon passing a fair, rigorous, and transparent examination and the completion of a supervised apprenticeship.

Factor 10. Licensing

Admission to the profession of lawyer is administered by an impartial body, and is subject to review by an independent and impartial judicial authority.

Factor 11. Non-Discriminatory Admission

Admission to the profession of lawyer is not denied for reasons of race, sex, sexual orientation, color, religion, political or other opinion, ethnic or social origin, membership in a national minority, property, birth, or physical disabilities.

III: Conditions and Standards of Practice

Factor 12. Formation of Independent Law Practice

Lawyers are able to practice law independently or in association with other lawyers.

Factor 13. Resources and Remuneration

Lawyers have access to legal information and other resources necessary to provide competent legal services and are adequately remunerated for these services.

Factor 14. Continuing Legal Education

Lawyers have access to continuing legal education to maintain and strengthen the skills and knowledge required by the profession of lawyer.

Factor 15. Minority and Gender Representation

Ethnic and religious minorities, as well as both genders, are adequately represented in the profession of lawyer.

Factor 16. Professional Ethics and Conduct

Codes and standards of professional ethics and conduct are established for and adhered to by lawyers.

Factor 17. Disciplinary Proceedings and Sanctions

Lawyers are subject to disciplinary proceedings and sanctions for violating standards and rules of the profession.

IV. Legal Services

Factor 18. Availability of Legal Services

A sufficient number of qualified lawyers practice law in all regions of a country, so that all persons have adequate and timely access to legal services appropriate to their needs.

Factor 19. Legal Services for the Disadvantaged

Lawyers participate in special programs to ensure that all persons, especially the indigent and those deprived of their liberty, have effective access to legal services.

Factor 20. Alternative Dispute Resolution

Lawyers advise their clients on the existence and availability of mediation, arbitration, or similar alternatives to litigation.

V. Professional Associations

Factor 21. Organizational Governance and Independence

Professional associations of lawyers are self-governing, democratic, and independent from state authorities.

Factor 22. Member Services

Professional associations of lawyers actively promote the interests and independence of the profession, establish professional standards, and provide educational and other opportunities to their members.

Factor 23. Public Interest and Awareness Programs

Professional associations of lawyers support programs that educate and inform the public about its duties and rights under the law, as well as the lawyer's role in assisting the public in defending such rights.

Factor 24. Role of Law Reform

Professional associations of lawyers are actively involved in the country's law reform process.

Annex E: Key International Standards Relating to the Regulation and Practice of Lawyers

An independent legal profession is crucial to building and maintaining a state in which the rule of law and human rights are respected. Without access to competent and independent legal practitioners, people are often unaware of or unable to exercise their rights effectively. When this occurs, the protections afforded both victims and defendants under domestic and international law are rendered meaningless.

The central role played by an independent legal profession in giving practical effect to human rights guarantees is reflected in the United Nations Basic Principles on the Role of Lawyers which were adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990. The preamble to those Principles declares that: “protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession.” The preamble further states that:

“Professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice.”

It is only if lawyers are protected to provide assistance to all, regardless of where they come from or the nature of the accusations against them, that everyone can have access to justice and equality before the law. Without lawyers available to provide rigorous representation to all those charged with criminal offences, the presumption of innocence has little meaning. Lawyers take on difficult or unpopular cases, not because they endorse or support the politics or activities of their clients, but because they believe that all people have a right to legal representation and to the benefit of whatever protection of their rights the law affords them. Lawyers expect that in taking on these cases and pursuing their clients’ interests as robustly as the law allows, they will not themselves be vilified or subject to persecution, nor denied their professional standing, nor barred from future work, including work representing the government itself or its agencies. Again this expectation is consistent with the UN Principles which provide: “18. Lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions.” 35. Without lawyers available to provide rigorous representation to all those charged with criminal offences, the presumption of innocence has little meaning.

United Nations Principles 12 to 15 set out the duties and responsibilities of lawyers as follows:

- Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.
- The duties of lawyers towards their clients shall include: (a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients; (b) Assisting clients in every appropriate way, and taking legal action to protect their interests; (c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.

- Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.
- Lawyers shall always loyally respect the interests of their clients. "The important role of lawyers to the function of legal systems and societies is well recognised through several international standards that relate to the regulation and practice of lawyers. These are important resources to guide or benchmark any strategy aimed at reforming or strengthening professional associations in the Pacific.

The most internationally recognised standards relating to the roles and responsibilities of the legal profession to societies are the *UN Basic Principles on the Role of Lawyers*, adopted in 1990.⁷⁰ These Principles address the role of lawyers in many areas and contains a section dedicated to the role of associations which includes: upholding professional standards and ethics, protecting members from persecution/discrimination/improper restrictions, providing legal services to the public and cooperating with governmental and non-governmental institutions to further justice and the public interest.

The Principles also emphasise the role of professional associations to cooperate in organisation and provision of legal services to disadvantaged people and recommend that they should be self-governing, with the executive elected by its members.

The International Lawyer association (IBA) *Standards for the Independence of the Legal Profession* (1990)⁷¹ also couch the role of lawyers around lawyers' essential roles in protecting and promoting human rights and benchmark standards relating to the independence and self-governance of lawyer association associations, as well as provisions with more of internal focus on functions of lawyer associations such as election by members, standards of conduct and legal assistance, standards of education for entry into profession and continuing education, welfare of members and discipline.

In 2018 a report of the Special Rapporteur on the independence of judges and lawyers,⁷² emphasised the minimum lawyer association requirements relating to independence, self-governance, mandate to protect the independence of legal profession and interests of members and recognition under the law. The report defines common principles for ensuring the independence of lawyer associations and identifies good practices relating to their mission, composition and functions, which include:

- Core mission – promotion and protection of independence and integrity of the legal profession and to safeguard professional interests of lawyers
- Independence – includes financial sustainability, self-governance and the ability to withstand pressure from external sources
- Establishment – recognition by law

⁷⁰ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, [Resolution](#).

⁷¹ [\(IBA\) Standards for the Independence of the Legal Profession](#).

⁷² Prepared in response to Human Rights Council Resolution ,<https://undocs.org/A/73/365>.

- Composition – an executive body elected by members, able to exercise functions without external interference
- Functions – may include regulatory functions (e.g. minimum standards of professional behaviour, continuing education, discipline) and representative functions (e.g. promotion of social justice, defending role of lawyers in society)
- Partnership with the state to promote public interest – includes access to lawyers and legal services, legal education and training, advocacy and monitoring

In 2019, the American Lawyer Association published one of the most practical tools for develop lawyer associations, in the form of the *Legal Profession Reform Index*.⁷³ These standards use 24 factors to assess the role of lawyers and legal culture drawing on the standards from the UN, Council of Europe, OSCE and various international Bar and Law Societies. The Index covers themes such as professional freedoms and guarantees; education, training and admission to the profession; conditions and standards of practice and legal services and professional associations. The standards addressing professional associations directly (factors 21-24) relate to the nature of governance of associations (self-governing, democratic, independent from state), member services (promoting profession, establishing professional standards and education), public programs (informing public of law and assisting in defending rights), law reform (active involvement of profession in law reform).

⁷³ See Annex D and [Website, Factors](#)

Annex F: Endorsed Key Issues and Solutions as Verified in Consultation Workshops, March 2021

Lawyer Associations Forum

On 18 March 2021 a Lawyer Associations Forum was convened involving 47 participants from nine countries, being a mix of office bearers from Pacific lawyer associations, and senior court members. The forum was designed to verify key findings of the *Situation Analysis of Pacific Lawyer Associations* research and to bring key actors together to discuss key challenges and pose solutions to these. There was strong endorsement of the 5 key issues and 7 top “wish-list” items as set out below, which were verified as providing a very accurate reflection of the relevant issues and challenges faced by lawyer associations across the region.

Top five issues identified were as below, including the need for greater resourcing, and the need for regional collaboration framework to support development of country evidence basis for greater resourcing.

1. **Lack of resources available to Pacific lawyer associations to fulfil their regulatory and member-support functions, esp for junior lawyers, (including need for secretariat).** The key solutions proposed to this issue included the need to persuade Parliament to adequately fund and support the independence of lawyer associations. It was further agreed that the best means for achieving this would be compilation of an evidence base at country level: data re cost savings/case studies/public feedback.

Participants also highlighted that donor support for pilot activities and technical support would still be a very helpful stepping-stone to expanding capacity and services. Some participants also suggested that there may be more self-funding potential regarding the admission fees paid by foreign lawyers, and that for those jurisdictions with an integrated bar, the courts could then readily pass these revenues onto the lawyer associations. Participants highlighted the challenges of accepting Government funding as it may also compromise independence and the difficulties for newly established law societies to establish appropriate relationships with Government funding.

2. **Ineffectiveness of complaints and discipline handling systems and their inability to provide prompt and certain outcomes and restore/promote public confidence in lawyers.** Participants spoke of entrenched difficulties in the Solomon Islands with large backlogs of complaints against lawyers remaining un-actioned for long periods and stagnation in the investigation processes.

Another major issue raised was the problem of lawyers not wanting to investigate other lawyers from their own jurisdiction and the unrealistic voluntary resource commitments required of these professional disciplinary bodies in conducting investigations and settling

disputes. There was universal agreement that there is a need for access to a pool of external lawyers to assist with investigating complex professional disciplinary complaints, an issue especially relevant for smaller jurisdictions. There was also wide recognition that this was generally a neglected area, where it was hard to make progress and concern that this was damaging the public reputation of the legal professions across the Pacific. Some jurisdictions have been able to make progress recently in resolving some complaints against lawyers through the hard, voluntary work of sub-committees of their law councils.

3. **Law graduates not equipped for the job and lack of regular, quality opportunities for ongoing learning, mentoring, ethical advice and other supports for lawyers.** There was consensus amongst participants of an urgent need for major investment in Continuing Professional Development (CPD) activities, and that there was scope to provide much more of these via remote resources.

Participants agreed CPD should be mandatory but only if it is also free, accessible, relevant and of high quality. Several jurisdictions already have mandatory CPD requirements some of these countries struggle to offer enough activities. Several participants mentioned the South Pacific Lawyers Association (SPLA) member portal which provides access to some quality resources and questions around membership eligibility. Other CPD online materials were also mentioned include LAWASIA and Commonwealth law association resources and DFAT support for CLE programs by lawyers. There was a suggestion that further effort should go into developing PACLII as the primary place for laws, research and that partnerships could possibly also be built with USP for advancing access to a wider range of legal materials.

There was confirmation regarding the consensus around the range of topics that lawyers should be required to complete CPDs including: court etiquette; legal ethics (based on local 'real life' ethical challenge)s; practice management & compliance with trust accounting requirements; basic file management and matter management (meeting deadlines, managing time, keeping clients updated etc.); and finally, advocacy skills.

Participants also confirmed that remote CPD resources are still no substitute for in person country specific training relevant to country-level legal frameworks. It was also acknowledged that training was not enough: there is a need for mentoring systems and work that needs to be done to create more collegial relations between lawyers so senior lawyers are willing to coach junior lawyers and do not see them in a competitive light. Jurisdictions shared their previous fruitful experiences, including of a mentoring programming with members of the Victorian Bar. While poor internet speeds previously presented issues this has now improved and may increase opportunities for interactive mentoring via overseas partners.

4. **Some jurisdictions: Lack of lawyers caused by issues with access to legal education, retention of lawyers, gender barriers preventing full participation/advancement of women.** Many participants talked about the huge voluntary time commitments required to be in a leadership role in a lawyer association and that most women have no discretionary time as they have such heavy professional and family workloads, effectively excluding many women from participation in lawyer associations.

There was also significant discussion around challenges with “brain drain”, of lawyers moving out of the jurisdiction to others where they can earn higher salaries and have higher standards of living including lawyers in some jurisdictions who can travel to and are qualified to practice in the US), or leaving the law for other professions, were also confirmed trends. Some jurisdictions lacked lawyers due to American Bar Association admission requirements restricting lawyer numbers in some jurisdictions and the growing range of non-law qualified programs operating across the region to make entry to the profession more accessible. Lack of work for local lawyers was raised in jurisdictions where some large scale commercial activities occur, where corporations bring their own foreign lawyers.

There was also some discussion around the tension between the need for protection of local lawyers, including through admission requirements, versus the need to make jurisdictions accessible to some foreign lawyers to meet demands for particular areas of expertise, and so lawyers can work across a range of jurisdictions (such as Pacific lawyers based in New Zealand). Participants shared their models, such as to require foreign practitioners to apply for admission to appear for each case, and to pay a fee each time. This was also a good source of revenue for the law society.

There were also notable discussions around the benefits of having an integrated bar, to bind together all people with law degrees no matter whether they are public or private lawyers, and that an integrated bar creates a stronger, unified, less splintered profession all striving for similar professional standards and goals. Unified bars are being created or debated in several states.

5. **Even if reasonably resourced, some jurisdictions too small to provide services as needed. Lack of cross-country/regional support available.** There was strong consensus around the need for further development of regional supports to lawyer associations. SPLA’s revamp has been an important development, but there remains a need for support in developing an evidence base for advocating for resourcing lawyer associations in each country, sharing of CPD resources, and a pool of external lawyers to support professional disciplinary investigations and ethical advice.

There was also strong support for the idea of development of a toolkit with key advice for newly establish lawyer associations on their establishment phase, and also checklists and

a toolkit for new lawyers to provide them with an accessible guide regarding commencing legal practice, professional and ethical dimensions.

The seven top “wish-list “items if provided with resources provided in the research, were endorsed by participants:

1. Support to **provide CPD programs and coaching/mentoring schemes**
2. Support for **complaints & professional disciplinary mechanisms.**
3. Support for **secretariat and office** in a good location for member access and **administration of CPD activities and pro bono schemes.**
4. Assistance with **service provision for members based on surveyed needs:** collective professional indemnity insurance, superannuation scheme, employment and career development services, social, well-being and mental health services.
5. Support to contribute to **law reform** and conducting **public awareness raising** around the role of lawyers & the legal system.
6. **Technical assistance** with review & implementation of aspects of legal profession laws
7. **Building partnerships and exchanging support/best practices** with other law societies and inter-country bodies.

The recommendations put forward in the *Situation Analysis* were validated as providing a useful roadmap for developing further strategies and programs of action and activities relating to the development and strengthening of lawyer associations across the Pacific.

The *Situation Analysis* provides a strong knowledge base for all participating jurisdictions to use in their own planning, including by offering a pooling of knowledge and a wider range of models and experience gained in comparable countries. In addition, participants were able to meet each other and now have established contacts with relevant actors in each participating country so they can share further information and initiatives as they unfold.

The forums provided new momentum and clarity regarding priorities, needs, possible reforms and sources of support. Further discussions with key donors and implementers (DFAT, MFAT, EU and UNDP) regarding prioritisation of particular areas of support for lawyer associations would be a sensible next step. While large scale donor support for services seems unlikely at present, a strategic and incremental approach seems very feasible. Specific pilot projects could be identified for donors to be invited to invest in. Some have already indicated possible interest in providing support to help countries develop a strong evidence basis for advocating for greater government support. It may be possible to secure support for development of other needed resources, including CPD, checklists and toolkits, pool of external lawyers to support with disciplinary investigations and professional ethics, and to support the exchange of best practices, all being key needs which could be readily met at a regional level, in order to strengthen responses at a national level.

The Courts' leaderships have been brought squarely into the conversation and indicated their availability and support to participate in efforts to strengthen the professional bars in their jurisdictions. They stand as powerful allies ready to support lawyer associations with initiative and energy to progress their development.

Conclusion

The results of the forums highlight a high level of consensus to emerge from the *Situation Analysis*, alongside the direct inputs from lawyer associations, and from Chief Justices and other senior court actors, generating clear agendas for action.

This work has generated the necessary knowledge basis; identified relevant stakeholders, (and achieved their buy in to work collaboratively) and also brought some of the key potential supporters (MFAT and UNDP) into the loop, having now directly heard from relevant actors the needs, and participated in some of the discussions. In addition, Court leaders have had further opportunity to share and reflect on the important access to justice work of courts, and their role in supporting the advocacy needs of lawyer associations in their jurisdictions. Linking all of these elements together, lawyer associations now have access to increased knowledge and networking potential, alongside senior court allies, with some budding interest and potential greater alignment with the priorities of donors and implementers.