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## A Professional Project in the South Pacific: Regionalism and Reforming Solomon Islands' Legal Profession

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ARTICLE

A PROFESSIONAL PROJECT IN THE SOUTH  
PACIFIC: REGIONALISM AND REFORMING  
SOLOMON ISLANDS' LEGAL PROFESSION

*Francesca Bartlett\**

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### I. INTRODUCTION

Solomon Islands lawyers may soon be subject to a profoundly new regime governing their practice and their professional bodies. This Article reports on the context and progress of the proposed reforms, as well as considering what might be its benefits and draw backs. As a preliminary matter, it is worth considering why such proposed reforms may be needed, particularly for such a small legal profession. As in many other countries, a principal reason appears to be a perception of significant regulatory failure.<sup>1</sup> For instance, a recent Solomon Islands study stated that, from its consultation process with its profession, “it became clear that the issue of greatest immediate concern is the ineffectiveness of the current complaints and discipline handling system and its failure to provide prompt and certain outcomes”.<sup>2</sup> The study report continued that this was regarded by “[m]any interviewees ...as the paramount issue and as one which required urgent and immediate action’.<sup>3</sup>

The failure of a regulatory system to deal with breaches of accepted standards of professional ethics and competency by lawyers has long been a catalyst for reform across the world.<sup>4</sup> As the legal professions and the economies and stability of governments of small Pacific nations grow, there may be opportunity for and expectation that comprehensive reforms occur to address perceived problems. Regulatory fixes for a range of systemic country problems are key objectives for international professional bodies.<sup>5</sup> This Article considers the case of a tiny developing nation, Solomon Islands, at a point of adopting “hard law” legislative reform in the context of a post-conflict

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1. For a recent comparative law discussion of regulation of the legal profession, see NOEL SEMPLE, *LEGAL SERVICES REGULATION AT THE CROSSROADS: JUSTITIA’S LEGIONS* (2015).

2. MINISTRY OF JUSTICE & LAW COUNCIL OF AUSTRALIA, *REVIEW OF LEGAL PROFESSION REGULATIONS IN THE SOLOMON ISLANDS – SCOPING STUDY REPORT 10* (2011) [hereinafter *SCOPING STUDY*].

3. *Id.*

4. See RICHARD L. ABEL, *THE LEGAL PROFESSION IN ENGLAND AND WALES* (1988); CHRISTINE PARKER, *JUST LAWYERS: REGULATION AND ACCESS TO JUSTICE* (1999).

5. For a description of the approaches of such bodies in detail, see Leslie Levin et. al., *The Impact of International Organizations on Lawyers Regulations*, *infra* p. 189.

state in rapid governmental and economic transformation.<sup>6</sup> To a large extent, localized concerns dominate. However, as the above quote citing views of Solomon Islands lawyers indicates, there appear to be common denominators when it comes to regulating a legal profession in any nation state—standards of lawyer competency and ethical performance, and a functioning regulatory system, are chief concerns.<sup>7</sup>

There has been a recent proliferation of regulatory tinkering across the world.<sup>8</sup> This Article describes the push for reform and the process of selecting and implementing a coherent and workable system for Solomon Islands with an understandable eye towards adopting the best regulatory model possible. The analysis begins with a discussion of the impetus for reform, and the active role of the wider regional professional community forming the South Pacific Law Association. This body and its regional regulatory project afoot across the Pacific are described to contextualize the proposed legal profession reforms including a model code of conduct and a Bill before the Parliament of Solomon Islands for the governance of its lawyers. The stated object of this “professional project”<sup>9</sup> is to assist the strengthening and development of local legal professions with the ostensible intention of creating other societal goods. It draws inspiration from wider international sources, as it references concepts such as the United Nations’ *Sustainable Development Goal 16*<sup>10</sup> and *Basic Principles for*

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6. As discussed in Part II, Solomon Islands is by no means the smallest nation in the Pacific region or the world. However, as compared to Australia for instance which is also considered in this Article, it has a very small population and legal profession, and operates in a significantly different social and economic context.

7. For other legal systems, see SEMPLE, *supra* note 1. It is conceded that the Scoping Study represents the views of Solomon Islands lawyers (and perhaps Australian lawyers assisting in undertaking the review and drafting) rather than their clients. As Richard Abel has long pointed out of legal professions in the United States and England, public concerns are often expressed about the need to act in relation to individual ‘rouge’ lawyers but it is less likely that the profession will willingly advocate systemic change that may result in a diminishing of professional control and status. See ABEL, *supra* note 4.

8. SEMPLE, *supra* note 1. This is not to suggest that the approaches are homogenous.

9. See MAGALI SAFATTI LARSON, *THE RISE OF PROFESSIONALISM: A SOCIOLOGICAL ANALYSIS* (1977).

10. S. PAC. LAWYERS ASS’N, *PACIFIC ISLANDS FORUM SECRETARIAT REGIONAL POLICY CONSULTATION* (2018), available at [https://docs.wixstatic.com/ugd/eb06c7\\_93e482d5985449abba118079b28b0f88.pdf](https://docs.wixstatic.com/ugd/eb06c7_93e482d5985449abba118079b28b0f88.pdf); U. N. Sustainable Development Goals, Goal 16: Promote just, peaceful and inclusive societies, UN Doc A/CONF.223/3 (July 17, 2014), <http://www.un.org/sustainabledevelopment/peace-justice/>.

*the Legal Profession*<sup>11</sup> and suggests use of a model ethical code coming out of the International Bar Association's *The Independence of the Legal Profession*.<sup>12</sup> As other international lawyers' associations, the South Pacific Law Association has employed a range of "soft" influences to engender better regulation and practice which is ideally to be implemented as legislative reform.<sup>13</sup> This Article considers the case of a country intending to make national law as a result of such efforts, and how much convergence of professional regulation is possible or desirable in this diverse regional legal community.<sup>14</sup>

The lawyer initiatives in the region must be understood in the context of geopolitical considerations and engagements by their respective states. Wealthy neighboring countries such as Australia and New Zealand have stakes in the successful legal transformations of small nations in the Pacific.<sup>15</sup> Shahar Hameiri describes the approach of Australian aid as one of "securitization," where poverty reduction and stable government in neighboring countries is seen as linked to regional security.<sup>16</sup> This has manifested not only in arm's length funding but also in interventions into the affairs of its neighbors; the most dramatic example being the long term, large scale assistance mission in the Regional Assistance Mission Solomon Islands, or "Operation Helpem Fren."<sup>17</sup> Upon the formal withdrawal of the

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11. *Pacific Islands Forum Secretariat Regional Policy Consultation*, *supra* note 10; UNITED NATIONS, BASIC PRINCIPLES FOR THE LEGAL PROFESSION (1990).

12. S. PAC. LAWYERS. ASS'N, LEGAL PROFESSION REGULATION IN THE SOUTH PACIFIC (2017), available at [https://docs.wixstatic.com/ugd/0217f9\\_693bd145a93d45f0bbc1c595568eac55.pdf](https://docs.wixstatic.com/ugd/0217f9_693bd145a93d45f0bbc1c595568eac55.pdf) [<https://perma.cc/GX5L-SHFB>] [hereinafter *2017 Report*]; INTERNATIONAL BAR ASSOCIATION, THE INDEPENDENCE OF THE LEGAL PROFESSION: THREATS TO THE BASTION OF A FREE AND DEMOCRATIC SOCIETY: A REPORT BY THE IBA'S PRESIDENTIAL TASKFORCE ON THE INDEPENDENCE OF THE LEGAL PROFESSION (2016).

13. For a discussion of these legal approaches, see Gregory Shaffer & Mark Pollack, *Hard and Soft Law: Alternatives, Complements and Antagonists in International Governance*, 94 MINN. L. REV. 706 (2010). Shaffer and Pollack point to the relationship of soft and hard law where the former might pave the way for a nation to implement hard law which is then made active by soft law processes.

14. As Leslie Levin, Lyn Mather & Leny de Groot-van Leeuwen describe in their essay contained in this volume, there is a convergence of rules with respect to the legal profession as a result of the efforts and shared values of a number of impactful international lawyers' bodies. Levin et. al., *supra* note 5.

15. See George Carter & Stewart Firth, *The Mood in Melanesia after the Regional Assistance Mission to Solomon Islands*, 3 ASIA & THE PAC. POL'Y STUD. 16-25 (2015).

16. Shahar Hameiri, *Risk Management, Neo-Liberalism and the Securitisation of the Australian Aid Program*, 62 AUSTL. J. INT'L AFF. 357-71 (2008).

17. This assistance mission is described in more detail in Part III. See *infra* Part III.

operation in 2017, the former Solomon Islands Prime Minister described the operation as evidence of “the importance of Pacific diplomacy, solidarity and cooperation.”<sup>18</sup> The focus of the operation was on governance assistance, with a key emphasis on justice projects.<sup>19</sup> This was expressed as regionalism as collective action and purpose.<sup>20</sup> However, there remain important ethno-cultural and geographical distinctions, as well as major economic difficulties, that must be considered. Part III traces the specific manifestation of regionalism in the reform project for the legal profession of Solomon Islands.<sup>21</sup> It appears to be modeled on its larger neighbor, Australia’s,<sup>22</sup> regulatory approach.<sup>23</sup> While these countries share a colonial inheritance of a common law system, there are distinct professional drivers and national contexts in each country, making this a problematic model for legal transplantation. Nevertheless, small nations also deserve good lawyers and a responsive regulatory regime,

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18. *Business of the House*, NAT’L PARLIAMENT OF SOLOMON ISLANDS (June 27, 2017), [http://www.parliament.gov.sb/files/hansard/10th\\_session/6thMeeting/National%20Parliament%20of%20Solomon%20Islands\\_2017\\_06\\_27\\_26.pdf](http://www.parliament.gov.sb/files/hansard/10th_session/6thMeeting/National%20Parliament%20of%20Solomon%20Islands_2017_06_27_26.pdf) [https://perma.cc/AWD3-455B]. Members of the Pacific Islands Forum were invited to intervene in the country’s affairs by the Parliament of Solomon Islands: *RAMSI Treaty or the Facilitation of International Assistance Mission Act 2003*. It was therefore not a peacekeeping mission or military intervention under international law; Chapter 8 of the United Nations Charter.

19. See REGIONAL ASSISTANCE MISSION SOLOMON ISLANDS, <http://www.ramsi.org/works/law-justice/> [https://perma.cc/R4BA-LSUY].

20. See, e.g., PAC. ISLANDS FORUM SECRETARIAT, THE FRAMEWORK FOR PACIFIC REGIONALISM 3 (2014), available at [https://www.forumsec.org/wp-content/uploads/2018/02/Framework-for-Pacific-Regionalism\\_booklet.pdf](https://www.forumsec.org/wp-content/uploads/2018/02/Framework-for-Pacific-Regionalism_booklet.pdf) [https://perma.cc/Q2QC-CQNC].

21. Emphasized by the President of the Australian Law Council, Duncan McConnell, at a South Pacific Lawyers Association conference in 2015. *Regionalism Key to Strengthening Legal Profession and Rule of Law*, 12 NEWSPLASH 5, 5 (2015), available at [https://docs.wixstatic.com/ugd/0217f9\\_a6ec219b00af41bb824603d6f0e793f7.pdf](https://docs.wixstatic.com/ugd/0217f9_a6ec219b00af41bb824603d6f0e793f7.pdf) [https://perma.cc/29J3-YL8T].

22. Australia has a large land mass but a small population (of around 23 million). It has a high representation of lawyers at around 0.34 per cent of the population or about one lawyer for every 294 Australians. For more on the Australian regulatory regime and background, see Francesca Bartlett & Linda Haller, *Australia: Legal Services Regulation in Australia – Innovative Co-Regulation*, in INTERNATIONAL PERSPECTIVES ON THE REGULATION OF LAWYERS AND LEGAL SERVICES 161-82 (Andy Boon ed., 2017); Christine Parker, *Regulation of the Ethics of Australian Legal Practice: Autonomy and Responsiveness*, 25 U. OF NEW SOUTH WALES L. J. 676 (2002).

23. This is the Author’s inference. While Solomon Islands parliamentary documents do not cite Australian legislation as the source of the current Bill, it is significantly similar in its drafting and content, and Australian lawyers and legal bodies have been instrumental in urging for such reform as described later in the Article.

and Solomon Islands should be congratulated on its efforts looking to implement an exemplary regulatory model. Australia's regulation of legal services has been often cited as a world leader and it has a stable and prosperous legal market.<sup>24</sup> Making this regulation model work in Solomon Islands is the hard part.

## II. "REGIONALISM" AND A PACIFIC PROFESSIONAL PROJECT

The South Pacific, as it is defined here according to membership of the South Pacific Law Association, is composed of sixteen island nations, most of them small.<sup>25</sup> As of May 2011, there were around 1,694 lawyers working in the South Pacific.<sup>26</sup> These small states (which excludes Australia and New Zealand) generally occupy very small land masses (with large sea areas) and some are composed of a collection of islands with diverse linguistic, ethnic and cultural groups.<sup>27</sup> In many cases, geographic isolation and underdevelopment may make communication difficult between lawyers working in regional or remote areas and those working in urban contexts. Technological capacity is universally limited.<sup>28</sup> There are perennial

24. See, e.g., Susan Saab Fortney & Thalia Gordon, *Adopting Law Firm Management Systems to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation*, 10 *UNI. OF ST. THOMAS L. J.* 152 (2012); Bartlett & Haller, *supra* note 22.

25. *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).

26. S. PAC. LAWYERS ASS'N, *NEEDS EVALUATION SURVEY FOR SOUTH PACIFIC LAWYERS ASSOCIATIONS – FINAL REPORT (2011)*, available at [https://docs.wixstatic.com/ugd/0217f9\\_54872c6fdb3d472288d883520f41d966.pdf](https://docs.wixstatic.com/ugd/0217f9_54872c6fdb3d472288d883520f41d966.pdf) [<https://perma.cc/8ACT-QEJH>] [hereinafter *NEEDS EVALUATION SURVEY*] (omitting Australian, New Zealand, Tongan, Federated States of Micronesia, and Marshall Islands Lawyers due to the difficulty of getting accurate data about numbers of practitioners in the region as most nations do not maintain a register of practitioners).

27. See Caroline Penfold, *Developing Legal Communication Skills in the South Pacific Context*, 7 *LEGAL EDUC. R.* 117, 121-22 (2014).

28. See generally, *NEEDS EVALUATION SURVEY*, *supra* note 26 (relating to the technological capacities of individual countries within the SPLA). In 2011, the Solomon Islands Bar Association reported substantial incapacity of practitioners in terms of internet access: *NEEDS EVALUATION SURVEY*, *supra* note 26, at 15. Even Solomon Islands courts are reported to experience operational difficulties associated with inadequate technological capacity such as an inability to collect data and manage caseloads. RAMSI, *REBUILDING A NATION: TEN YEARS*

issues of conflicts that can arise in small legal professional communities that may be exacerbated where customary and imported law and process conflict.<sup>29</sup> As lawyers from Vanuatu and Solomon Islands told Carolyn Penfold, “lawyers need to know how the two systems interact; how custom works, its role and place and its interaction with the normal legal system, the interface between [custom] and introduced law”.<sup>30</sup> As described later in this Article, while many lawyers from the South Pacific are trained at the University of the South Pacific where there is a focus on legal pluralism,<sup>31</sup> this remains a difficult practicing context. Lawyers’ bodies from neighbouring nations such as Australia and New Zealand, as well as international bodies, have for some time provided assistance in the form of funding and advocacy for the profession,<sup>32</sup> as well as training in received law and practice.<sup>33</sup> This Article does not describe, or evaluate the success of, these national professional connections in any detail. Rather, it is interested to consider the regional initiative to produce continuity of regulation of legal professions in the region. The next Section begins by describing the efforts of its regional organization representing all South Pacific lawyer organizations to

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OF THE SOLOMON ISLANDS – RAMSI PARTNERSHIP 25 (Mary Louise O’Callaghan ed., 2013), available at <http://www.ramsi.org/wp-content/uploads/2014/07/Rebuilding-a-Nation-RAMSI-EBook-185ca1c0-4b11-4ea0-86ac-eb0110e15b66-0.pdf> [<https://perma.cc/VVP9-KPGL>].

29. The Author does not engage with the rich scholarship about legal pluralism in the Pacific but acknowledges that this may be a relevant factor for the study of its legal professions; see also Jennifer Corrin, *Moving Beyond the Hierarchical Approach to Legal Pluralism in the South Pacific*, 59 J. OF LEGAL PLURALISM 29 (2009). For instance, it might be formally included in the legislative regime as is the case in the Samoan *Lawyers and Legal Practice Act 2014*. See *Lawyers and Legal Practice Act* (Act No. 21/2014) (Samoa).

30. Carolyn Penfold, *Contextualizing Program Outcomes for Pacific Island Law Graduates*, 22 LEGAL EDUC. REV. 51 (2012). The Constitution of the Solomon Islands Section 75 provides for the Parliament to have regard to ‘the customs, values and aspirations of the people of the Solomon Islands’ in making laws; Section 76 provides for customary law to be part of the law of the country. SOLOM. IS. CONST. 1978, §§ 75-76.

31. For information on the law degree (LLB) offered at the University of the South Pacific at its campus in Vanuatu on its website, see *School of Law*, UNIVERSITY OF THE SOUTH PACIFIC, <https://www.usp.ac.fj/index.php?id=518> [<https://perma.cc/4NFN-V6Y3>].

32. See *infra* Part II.A.

33. For a list of activities, see, e.g., S. PAC. LAWYERS ASS’N, ANNUAL REPORT 2, 8 (2011-12), available at [https://docs.wixstatic.com/ugd/0217f9\\_cdcc2ebdd66c459da4ae06934b63a618.pdf](https://docs.wixstatic.com/ugd/0217f9_cdcc2ebdd66c459da4ae06934b63a618.pdf) [<https://perma.cc/3K57-YP2A>] [hereinafter ANNUAL REPORT]. This is not to imply, however, that training in received law and practice are necessarily the best or most appropriate assistance for lawyers to act competently and ethically within other South Pacific legal systems. Indeed, in some cases such imported educational efforts might be ill-suited and counter-productive, as Penfold describes of some university training. Penfold, *supra* note 27.



assist in understanding and framing a reform agenda for the region's legal professions.

*A. The South Pacific Lawyers Association*

The South Pacific Lawyers Association (the "SPLA") is a key collaboration of lawyers' organizations in the region facilitating training and advocacy, conducting underlying research, and driving a regulatory reform agenda.<sup>34</sup> The SPLA has provided an important opportunity for lawyers and professional lawyer organizations to meet and share knowledge as well as to attend profession training.<sup>35</sup> As its former Chair, Ross Ray, stated in its (only available) Annual Report in 2012: "Since its inception in 2007, the [SPLA] has set out to draw together the region's peak legal professional bodies that had until that time largely worked in isolation".<sup>36</sup>

The stated goals of the SPLA - undoubtedly a profession building project - are to: "represent the interests of the legal profession in the South Pacific region; and support the development of independent peak legal professional bodies in the South Pacific region".<sup>37</sup> Its vision is "for an independent, effective, collegiate and well respected legal profession in the South Pacific region."<sup>38</sup> Yet, the most recent submission by the SPLA to the Pacific Island Forum Secretariat<sup>39</sup> in

34. See ANNUAL REPORT, *supra* note 33, at 8. See also the Constitution of SPLA which is contained within the Annual Report. ANNUAL REPORT, *supra* note 33, at 12.

35. See *About SPLA*, S. PAC. LAWYERS ASS'N, <https://www.southpacificlawyers.org/about> [<https://perma.cc/8FAG-BYC2>]. For reasons of space, this article does not trace the ways in which the SPLA and other law societies or governments have provided professional education and training. For a discussion of pre-qualification education of South Pacific lawyers, see *infra* Part III.D.

36. ANNUAL REPORT *supra* note 33, at 2.

37. S. PAC. LAWYERS ASS'N, STRATEGIC PLAN 1 (2014-15), available at [https://docs.wixstatic.com/ugd/0217f9\\_9eeca47c8b394d529d7f16ade4821949.pdf](https://docs.wixstatic.com/ugd/0217f9_9eeca47c8b394d529d7f16ade4821949.pdf) [<https://perma.cc/J2FW-TWXR>].

38. *Id.*

39. *Pac. Islands Forum Secretariat*, THE PACIFIC ISLANDS FORUM, <https://www.forumsec.org/who-we-arepacific-islands-forum/> [<https://perma.cc/2LDN-Q9AM>]. This consists of 18 countries as member states: Australia, Cook Islands, Federated States of Micronesia, Fiji, French Polynesia, Kiribati, Nauru, New Caledonia, New Zealand, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu. The Forum is often credited as another regional body creating a collective identity, the "Pacific Way," although some have questioned its effectiveness. See Eric Shibuya, *The Problems and Potential of the Pacific Islands Forum*, in *THE ASIA PACIFIC – A REGION IN TRANSITION* 102-115 (Jim Rolfe ed., 2004).

February 2018 plays down the benefit to the lawyers<sup>40</sup> of strengthening lawyer bodies, and emphasizes the connection between its mission to develop a strong, independent, and capable legal profession and access to justice and improving “rule of law outcomes across the Pacific.”<sup>41</sup> It cites international principles for support in this vision.<sup>42</sup> The SPLA suggests that this vision would best achieved by an ambitious plan of:

- “ongoing regional dialogue in support of an independent Pacific legal profession and judiciary;
- prioritizing legal profession regulatory reform;
- developing a regional approach to the establishment and operation of legal profession bodies which addresses the unique pressures faced by these organizations in the Pacific context; and
- supporting the development of guidance of a general and regionally applicable nature on the use of mediation and alternative dispute resolution in the Pacific”.<sup>43</sup>

The Law Council of Australia and Australian government body, AusAid, began this regional initiative by bringing together fifteen Pacific Island countries at the International Bar Association Pacific Leaders’ Forum in 2007.<sup>44</sup> The SPLA was first conceived of by professional law societies and bar associations of the region at a Roundtable during this Forum.<sup>45</sup> The International Bar Association provided a start-up grant of approximately AUD\$15,000 to establish a Secretariat for the SPLA in that year, and it was officially launched in 2011 when the first Executive was elected.<sup>46</sup>

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40. Indeed, the SPLA contends that its efforts to enhance and reform the profession are “not for the benefit of practising lawyers”: *Pacific Islands Forum Secretariat Regional Policy Consultation*, *supra* note 10, at 5.

41. *Id.* at 2.

42. *Id.* at 3-4 (citing Eighth U.N. Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, *Basic Principles on the Role of Lawyers*, (Aug. 24 – Sept. 7, 1990), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx> [<https://perma.cc/5QFT-VV6X>]).

43. *Pacific Islands Forum Secretariat Regional Policy Consultation*, *supra* note 10, at 2.

44. ANNUAL REPORT, *supra* note 33, at 5.

45. *Id.*

46. *Id.* at 5, 9.

However, funding for the SPLA remains limited and sporadic, raising difficulties for continuing its key activities.<sup>47</sup> There does not appear to have been an updated strategic plan since 2015 and there are no minutes or reports about the latest SPLA members conference held in Samoa in 2017.<sup>48</sup> The Law Council of Australia continues to provide some continuous resourcing support by funding the Secretariat based in Canberra which updates the website and produces its newsletter.<sup>49</sup> The most recent substantive piece of work of the organization was undertaken with the Law Council of Australia and funded by the Australian Attorney General's Department.<sup>50</sup> Funding will remain an issue for this body as its law society members are generally operated on a volunteer basis and generate little or no fee income,<sup>51</sup> except in Australia and New Zealand.<sup>52</sup> In a submission in February 2018 to the Pacific Islands Forum Secretariat as part of its Regional Policy Consultation, the SPLA has pointed to financial instability and recommended that:

In these circumstances, SPLA requests that [Pacific Islands Forum Secretariat] consider supporting a regional approach to the establishment and operation of legal profession bodies. In order to ensure the financial viability of these organisations and noting the

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47. Resources for its reports are provided by international lawyer associations or governments as can be seen in the reports themselves described in this Article. However, as far as the author is aware the SPLA is not funded by its membership lawyer associations. It receives some stable resourcing through the hosting of the Secretariat in Australia. *See generally*, S. PAC. LAWYERS ASS'N, *supra* note 37 (articulating core objectives of representation, regulation, and education which require recurring funding).

48. *See* Savalenoa Mareva Betham-Annandale, *A word from the Chair of the SPLA*, 13 *NEWSPLASH 2* (2016), available at [https://docs.wixstatic.com/ugd/0217f9\\_3661c1cd2f7446cda59da906018e8e1f.pdf](https://docs.wixstatic.com/ugd/0217f9_3661c1cd2f7446cda59da906018e8e1f.pdf) [<https://perma.cc/HB4J-VGCL>]. There are no later documents provided on the SPLA website and the author has not been able to find any indications of further activities in these areas.

49. Savalenoa Mareva Betham-Annandale, *supra* note 48, at 1. It is noted that there has not been a newsletter produced since 2016.

50. *See 2017 Report*, *supra* note 12.

51. For descriptions of individual countries, see *NEEDS EVALUATION SURVEY*, *supra* note 26.

52. In Australia and New Zealand, entitlement to practice law requires certification by the relevant legal body. This process requires that all lawyers in these countries are members of a relevant law society or bar association and these associations levy annual membership dues: *Lawyers and Conveyancers Act 2006* § 37(4) (N.Z.) (governing all New Zealand legal practitioners); *see, e.g.*, *Legal Profession Uniform Law (NSW)* § 44; *Legal Profession General Rules 2015* § 12(2) (governing lawyers in the state of New South Wales in Australia. This is representative of the regulatory approach across the country.)

central importance of the legal profession . . . this may need to include consideration of financial support for regional associations of lawyers, including but not necessarily limited to SPLA. Any such support would need to recognize and maintain the independence of the legal profession.<sup>53</sup>

Nevertheless, the SPLA, as it continues today or with a ‘rejuvenation’ of its activities through a possible future funding arrangement with the International Bar Association,<sup>54</sup> provides a collective regional presence and support for local professional bodies. The following discussion considers its focus, like most international lawyer organizations,<sup>55</sup> on developing and promoting codes of conduct and uniform regional laws for the regulation of the profession.<sup>56</sup> The next Section shows that they are based on some good underlying research about the shared and individualized problems occurring in the member nations. This research is invaluable for a well-formed policy response. However, as described in Section C, there is a tendency for convergence of regulatory approach and the uniform model proposed is an initiative of founding Chair from Australia who is inevitably influenced by his own practice context.<sup>57</sup>

Finally, as long observed by scholars of other professional projects, building local professions is a form of market control and collective status enhancement for lawyers.<sup>58</sup> The SPLA has pointed to

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53. *Pacific Islands Forum Secretariat Regional Policy Consultation*, *supra* note 10, at 9.

54. The Law Council of Australia and the SPLA have recently made representations to the International Bar Association to request funding for SPLA’s activities. It is reported that a proposal is being prepared: *IBA Bar Leaders’ Conference and Mid-Year Meetings*, LAW COUNCIL OF AUSTRALIA (June 13, 2018), <https://www.lawcouncil.asn.au/media/news/iba-bar-leaders-conference-and-mid-year-meetings> [<https://perma.cc/H5PK-PGYG>].

55. See Levin et al., *supra* note 5.

56. See generally *Regionalism Key to Strengthening Legal Profession and Rule of Law*, *supra* note 21 (stating that at the last SPLA conference in 2015 the theme was “Helping the South Pacific legal profession – Practice, Reform and Grow”).

57. *2017 Report*, *supra* note 12, at 5. The late Ross Ray QC was an Australian barrister (QC denotes Queens Counsel as a senior designation) with a long association with South Pacific nations and credited as the “driving force behind the establishment of the SPLA Steering Committee” including proposing the “South Pacific Model Rules Project to SPLA Steering Committee members at the Fiji Law Society Annual Convention in July 2008 and overseeing the development of the project.”: *2017 Report*, *supra* note 12, at 5. It is noted in the 2017 Report at 5 that training by members of the Australian and New Zealand legal professions may also add to the same convergence of practice values and behaviors.

58. See Andrew Boon & John Flood, *Globalisation of Professional Lawyers? The Significance of Lawyers’ International Codes of Conduct*, 2 LEGAL ETHICS 29, 32 (1999). As

the gap in foreign aid initiatives focused on the public legal sector that do “little to assist private clients who have need to resort to the courts.”<sup>59</sup> It asserts that supporting the private profession is needed because:

For every difficulty faced by Pacific island countries in providing access to justice, private clients and citizens face equivalent, or possibly even more severe, barriers to justice . . . . A consequence of this limited focus is that many clients confront court when this should have been avoided while others are not able to enforce their legal rights.<sup>60</sup>

While the above quote emphasizes the importance of a functioning justice system for private citizens to access their legal rights and entitlements, it also traces a business case for a strong legal profession. In doing so, the professional model advances local lawyers’ prospects of enhanced social status and may also assist foreign lawyers working for large clients where it emphasizes introduction of commercial arbitration models or removes differences in regulatory regimes across the region.<sup>61</sup> On the other hand, in Solomon Islands’ context, it has been pointed out that strengthening the regulatory grasp of the local profession over foreign lawyers is important since some foreign lawyers have been known to operate within its courts without regulation.<sup>62</sup> Generally, reform which strengthens the legal profession may be seen as crucial in a range of ways in countries where the rule of law is tenuous or legal processes relatively unregulated.

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Andrew Boon and John Flood argue, codes are made for a range of reasons but ‘primarily [it] represents lawyers.’

59. *Pacific Islands Forum Secretariat Regional Policy Consultation*, *supra* note 10, at 4.

60. *Id.*

61. *See* Boon & Flood, *supra* note 58, at 38. The trouble of ‘double deontology’ is much cited by lawyers working across jurisdictions: *See id.*

62. NAT’L PARLIAMENT OF SOLOM. IS. BILLS AND LEGIS. COMM., 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>] (hereafter ‘COMMITTEE REPORT’) (noting that changes to practicing certification through proposed legislation will address this issue).

*B. Conducting Research About the Region and its Findings About Lawyers*

As described in this Section, the SPLA has conducted some important research about the needs and the regulatory environment of the region relating to lawyers. This generates information which would otherwise not be collected or compared across nations due to the significantly under-resourced and largely voluntary national law associations across the South Pacific.<sup>63</sup> It also provides for a measure of transparency about the constitution and operation of professional bodies and their lawyer members that might not otherwise be made public. For instance, it collects basic demographic information about the legal professions of the region which is not otherwise publicly provided by state members.<sup>64</sup> Most law societies responding to a survey conducted by the SPLA in 2011 also supported the idea of establishing a regional database of lawyers.<sup>65</sup>

The reports produced by the SPLA appear designed to provide comparative information to assist the region, and may also be a basis on which local organizations can appeal to their governments for support, better laws and resourcing. The two reports described below point to deficiencies in the systems but stop short of a wider critique of the governance of the country.<sup>66</sup> They are in this sense somewhat sparse in context and often simply collate data. For instance, a report in 2011, funded by the International Bar Association, collated information about the functioning and needs of lawyers' professional bodies across the South Pacific based on responses by law societies to a survey.<sup>67</sup> This report describes the somewhat diverse regimes but also the sadly ubiquitous experiences of most of the small states in the region including, *inter alia*:

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63. *See generally*, NEEDS EVALUATION SURVEY, *supra* note 26.

64. This contention is based on my searches and SPLA reports described in this Article. *See generally*, the reports on the various law societies across the South Pacific in NEEDS EVALUATION SURVEY, *supra* note 26. For instance, in many South Pacific nations (presumably due to a lack of funding) there is no webpage containing information about the law society and its members (there is sometimes a Facebook page with limited information) and no publicly available Annual Reports with data about its profession. In many cases, there appears to be no regulatory impetus because of a lack of legislative requirement to maintain a register of local practitioners or membership of the law society is voluntary.

65. NEEDS EVALUATION SURVEY, *supra* note 26, at 8.

66. NEEDS EVALUATION SURVEY, *supra* note 26, at 8; 2017 Report, *supra* note 12.

67. NEEDS EVALUATION SURVEY, *supra* note 26.

- inadequate legal instruments regulating the legal profession;<sup>68</sup>
- poorly functioning and underfunded disciplinary systems;<sup>69</sup>
- no rules for dealing with trust money or costs disclosure;<sup>70</sup>
- poor or non-existent government resourcing of professional bodies and regulators;<sup>71</sup>
- no legal aid provision;<sup>72</sup> and
- little or no continuing education or resourcing for lawyers.<sup>73</sup>

Another report was produced by the Law Council of Australia with the SPLA in 2017 (the “2017 Report”) which compares the legislative regimes, conduct codes, and information received about political and cultural contexts.<sup>74</sup> The 2017 Report indicates that, except for Samoa which had implemented new legislation, little had changed in the region over six years despite the efforts of the SPLA.<sup>75</sup> It points to similar gaps in regulation including inadequate admission and disciplinary regimes, no mandatory professional indemnity schemes, no provisions or ethical guidance about costs disclosure or billing, and a failure to address how trust money should be dealt with.<sup>76</sup> It is on the basis of this regional research that the SPLA has attempted to develop model codes and laws.

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68. NEEDS EVALUATION SURVEY, *supra* note 26, at 6.

69. NEEDS EVALUATION SURVEY, *supra* note 26, at 6-7.

70. NEEDS EVALUATION SURVEY, *supra* note 26, at 8; *see also*, 2017 Report, *supra* note 12, at 54.

71. NEEDS EVALUATION SURVEY, *supra* note 26, at 6.

72. NEEDS EVALUATION SURVEY, *supra* note 26, at 8.

73. NEEDS EVALUATION SURVEY, *supra* note 26, at 6.

74. 2017 Report, *supra* note 12.

75. 2017 Report, *supra* note 12. The author concedes that there has been some legislative change such as practice rules introduced in Kiribati and Marshall Islands and the proposed legislation in the Solomon Islands discussed in detail in Part III.

76. 2017 Report, *supra* note 12, at 8-9.

*C. The South Pacific Model Rules Project and Encouraging National Regulation of Lawyers*

The former President of the SPLA, Ross Ray, described the SPLA and its drive for reform as productive “regionalism.”<sup>77</sup> At a meeting held during the Fiji Law Society Annual Convention in July 2008, the SPLA resolved to develop non-binding rules setting out “minimum standards” for the professional conduct of lawyers, to make these minimum standards available to member countries and to develop model legislation that could be adopted at the national level.<sup>78</sup> The SPLA proposed this approach as awareness raising of professional ethical obligations and to assist the creation or streamlining of Conduct Codes and legislation in South Pacific countries.<sup>79</sup> As far as the author is aware, no model code was ever developed. However, the Model Rules Project sought to not only develop a uniform set of ethical rules but, as described here, supported legislative reforms.

Some ten years later, the 2017 Report was the first step in advancing a unifying model. It specifically considered whether a uniform regional approach in the form of model rules and procedures would be appropriate or feasible—the “first step in furthering the South Pacific Model Rules project.”<sup>80</sup> Most nations agreed that they were in need of change in the way that their individual professions were regulated as ineffective legal profession regulation can erode trust in the legal system and the rule of law that can contribute to “an environment in which systematic corruption can thrive.”<sup>81</sup> There was recognition too of the economic risks of “corruption and rent seeking behaviour by officials” that may be facilitated by a weak or corrupt profession.<sup>82</sup> In countries struggling to establish fledgling economies after political unrest, this is a significant concern. However, there appears to also be a diversity of views within the legal professional

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77. *Regionalism Key to Strengthening Legal Profession and Rule of Law*, *supra* note 21, at 5.

78. *2017 Report*, *supra* note 12, at 11; *see also*, ANNUAL REPORT, *supra* note 33, at 7.

79. *2017 Report*, *supra* note 12, at 11. The 2017 Report notes that the Pacific Islands Law Officers’ Network at its meeting in Vanuatu on December 5-9, 2008, gave its “in principle” support to a Project to “develop model legal professional rules for South Pacific countries” and “invite the SPLA to submit its developed rules to the [Pacific Islands Law Officers’ Network] Secretariat for distribution and consideration.” *Id.*

80. *Id.*

81. *Id.* at 15.

82. *Id.*



bodies about the need for a uniformity of approach. For instance, the Solomon Islands Bar Association supported the idea of regional uniformity on the basis that it would be an improvement in regulation and ethics standards and provide greater ability for assistance to be given as between countries such as the formation of international disciplinary panels.<sup>83</sup> On the other hand, another law society from the Cook Islands pointed to the prohibitive cost of such regulation for such a small local profession.<sup>84</sup>

The 2017 Report concluded that a template model of minimum professional conduct was not appropriate at that time, although there were “significant omissions and/or challenges” in most jurisdictions.<sup>85</sup> It recommended the “more viable option” of developing a set of “general model rules and procedures, which can be tailored to meet the specific needs and requirements of each jurisdiction.”<sup>86</sup> The reasons cited for not recommending a template model were the diversity of current laws and “[d]ifferent legal and political climates” in the countries which have produced varying governmental appetites for reform.<sup>87</sup> Indeed, the 2017 Report also noted that any ethical rules must be “culturally and socially relevant, consensus driven, unambiguous and are capable of being enforced.”<sup>88</sup> This is an important consideration in a drive for reform even with the best of intentions. As discussed in Part III, in the case of the impending legislation for Solomon Islands, an excellent proposed model for regulation will achieve little if there is no ability or willingness to comply with its requirements.

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83. NEEDS EVALUATION SURVEY, *supra* note 26, at 7-8; *see also* SCOPING STUDY, *supra* note 2, at 28.

84. SCOPING STUDY, *supra* note 2, at 28. It is not known how many lawyers there are in the Cook Islands at present, but in May 2011 there were reported to be 32. NEEDS EVALUATION SURVEY, *supra* note 26, at 5.

85. 2017 Report, *supra* note 12, at 8. The 2017 Report recommends that a future initiative adapt the International Bar Association’s *Principles of Conduct for the Legal Profession*. 2017 Report, *supra* note 12, at 8.

86. 2017 Report, *supra* note 12, at 6.

87. 2017 Report, *supra* note 12, at 9.

88. 2017 Report, *supra* note 12, at 15.

### III. SOLOMON ISLANDS: ITS LEGAL PROFESSION AND PROPOSED REFORM

#### A. *The Local Context*

Solomon Islands is composed of 992 small islands or atolls covering over 28,450 square kilometers.<sup>89</sup> Its population of around 628,000<sup>90</sup> speak over seventy-five different languages and the majority of the population maintains a rural, village lifestyle, although the country is rapidly urbanizing.<sup>91</sup> The national capital, Honiara on Guadalcanal, is an increasingly densely populated city but remains poorly serviced in terms of infrastructure and basic services.<sup>92</sup> The country has a young population with a median age of twenty years old<sup>93</sup> and faces many poverty-related health and lifestyle issues such as a low adult literacy rate, poor nutrition, and shortened longevity.<sup>94</sup> Solomon Islands was ranked 156 out of 187 countries in the United Nation's 2014 Human Development Index.<sup>95</sup> The main export industry is logging of its relatively pristine forests.<sup>96</sup> Around eighty-five percent of the islands are covered by forests although only around twenty percent is viable for logging.<sup>97</sup> Like many of its Pacific neighbors, Solomon Islands is subject to extreme weather events including tsunamis, cyclones, and rising sea levels due to climate change.<sup>98</sup>

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89. AUSAID, SOLOMON ISLANDS CASE STUDY: EVALUATION OF AUSTRALIAN LAW AND JUSTICE ASSISTANCE 14 (Dec. 2012), <https://dfat.gov.au/aid/how-we-measure-performance/ode/Documents/lawjustice-solomon-islands-case-study.pdf> [<https://perma.cc/W86R-6GJL>].

90. *Solomon Islands Population*, WORLDOMETERS, <http://www.worldometers.info/world-population/solomon-islands-population/> [<https://perma.cc/W86R-6GJL>].

91. COFFEY INT'L DEV. & THE WHITELUM GRP., SOLOMON ISLANDS JUSTICE PROGRAM DESIGN DOCUMENT 4 (2017), <http://dfat.gov.au/about-us/publications/Documents/solomon-islands-justice-program-design-2017-2021.pdf> [<https://perma.cc/35UE-NA2W>].

92. AUSAID OFFICE OF DEV. EFFECTIVENESS, SOLOMON ISLANDS CASE STUDY: EVALUATION OF AUSTRALIAN LAW AND JUSTICE ASSISTANCE 14 (Dec. 2012), <https://dfat.gov.au/aid/how-we-measure-performance/ode/Documents/lawjustice-solomon-islands-case-study.pdf> [<https://perma.cc/L7W6-ZW69>].

93. *Solomon Islands Population*, WORLDOMETERS, <http://www.worldometers.info/world-population/solomon-islands-population/> [<https://perma.cc/PR55-AN6S>].

94. *See, e.g.*, COFFEY INT'L DEV. & THE WHITELUM GRP., *supra* note 91, at 4; MATTHEW ALLEN, GREED AND GRIEVANCE: EX-MILITANTS' PERSPECTIVES ON THE CONFLICT IN THE SOLOMON ISLANDS 1998-2003 12 (2013).

95. *Id.*

96. AUSAID OFFICE OF DEV. EFFECTIVENESS, *supra* note 92, at 15.

97. *Id.*

98. Gordon Leua Nanau, *Solomon Islands*, 29 THE CONTEMP. PAC. 354 (2017).

Additionally, Judith Bennett has documented social stratification along geographical lines across the islands which has led to tension.<sup>99</sup>

Solomon Islands' colonial history began in 1893 when it was proclaimed a protectorate of England and continued until it gained independence on July 7, 1978. This British influence is still visible in its governance, a Westminster system of democratic government and a common law system, and, at least in part, a contributor to continued political instability.<sup>100</sup> Violent political and social instability began in the country around 1998.<sup>101</sup> The Malaita Eagle Forces overthrew the elected government on June 5, 2000 and sought a ceasefire with another militia group, the Isatabu Freedom Movement.<sup>102</sup> A peace treaty was signed in Townsville, Australia in October 2000, however, significant violence ensued causing hundreds of people to lose their lives and around ten percent of the population to be displaced from their homes.<sup>103</sup> In 2003, operating under the legitimacy of the Biketawa Declaration,<sup>104</sup> the Australian government, with forces from all Pacific Islands Forum nations, intervened in the conflict, bringing in a large police force followed by other services to build capacity and governance institutions.<sup>105</sup> This Regional Assistance Mission Solomon Islands ("RAMSI") operated for over fourteen years until August

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99. JUDITH BENNETT, *WEALTH OF THE SOLOMONS: A HISTORY OF A PACIFIC ARCHIPELAGO, 1800-1978* (1987); *see also* ALLEN, *supra* note 94.

100. *See, e.g.*, Matthew Johnson, *Solomon Islands*, in *THE SAGE ENCYCLOPEDIA OF WAR: SOCIAL SCIENCE PERSPECTIVES* (Paul Joseph ed., 2017). After independence, the conflict in the Pacific during 1942-43 also caused significant damage and social disruption. *See* CLIVE MOORE, *MAKING MALA: MALAITA IN SOLOMON ISLANDS 1870S-1930S*, at 462 (2017); JON FRAENKEL, *THE MANIPULATION OF CUSTOM: FROM UPRISING TO INTERVENTION IN THE SOLOMON ISLANDS* (2004).

101. *See, e.g.*, ALLEN, *supra* note 94, 137-38.

102. ALLEN, *supra* note 94, 137-38.

103. ALLEN, *supra* note 94, at 7. The Solomon Island Government established a Truth and Reconciliation Commission in 2008 to conduct hearings concerning the violent conflict. Further violence erupted in 2006 in Honiara: PARLIAMENT OF THE SOLOMON ISLANDS, COMMISSION OF INQUIRY IN THE APRIL 2006 HONIARA CIVIL UNREST IN HONIARA (2008) [http://www.parliament.gov.sb/files/library%20and%20information/commission\\_of\\_inquiry/Commission\\_of\\_Inquiry.pdf](http://www.parliament.gov.sb/files/library%20and%20information/commission_of_inquiry/Commission_of_Inquiry.pdf) [<https://perma.cc/6W2L-RLEJ>].

104. This Declaration is an agreement among members of the Pacific Islands Forum about regional coordination and respect which was issued at its Forum meeting in 2000. For a description of the Biketawa Declaration. *See* Shibuya, *supra* note 39, at 12-13.

105. *See* Clive Moore, *External Intervention: The Solomon Islands Beyond RAMSI*, in *DEVELOPMENT AND SECURITY IN THE SOUTH WEST PACIFIC*, 169-196, 171 (Anne Browne ed., 2007).

2017.<sup>106</sup> Estimates of the cost to the Pacific collation for RAMSI are around AUD\$3 billion.<sup>107</sup> RAMSI's focus was on establishing a working police force, assisting in structuring a correctional services regime, establishing other essential services like fire and rescue, and building capacity of courts.<sup>108</sup>

In the legal sphere, both the Australian government and the international legal profession have funded a range of initiatives. For instance, RAMSI funded a permanent officer position and administration costs for the Solomon Islands Bar Association for a number of years.<sup>109</sup> Upon RAMSI's formal withdrawal, this financial assistance appears to have been lost and it seems there are currently no paid positions in the only professional association in the country. However, the Solomon Islands Justice Project running from July 1, 2017 until June 30, 2021 and funded by the Australian government for around AUD\$23 million, may provide some assistance in the future.<sup>110</sup>

For the last decade, there has been an ease in tensions and a greater focus on governance and attracting funding for improvements in services and infrastructure in Solomon Islands.<sup>111</sup> The country has a democratically elected government.<sup>112</sup> The judiciary continues to operate relatively free of executive control and its Chief Justice of the High Court, Sir Albert Palmer, a Solomon Islander, has acted in this role for over a decade.<sup>113</sup> Many of the judges sitting on its Court of

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106. *About RAMSI*, REGIONAL ASSISTANCE MISSION TO SOLOMON ISLANDS, <http://www.ramsi.org/about-ramsi/> [https://perma.cc/36MY-Z9PD].

107. PARLIAMENT OF THE SOLOMON ISLANDS, NATIONAL PARLIAMENT PAPER NO. 19 OF 2017, THE REGIONAL ASSISTANCE MISSION TO SOLOMON ISLANDS 2003 – 2017: A JOINT REPORT BY THE SOLOMON ISLANDS GOVERNMENT AND RAMSI ON THE 14-YEAR INTERVENTION (2017).

108. *About RAMSI*, *supra* note 106.

109. NEEDS EVALUATION SURVEY, *supra* note 26, at 17.

110. COFFEY INT'L DEV. & THE WHITELUM GRP., *supra* note 91, at 18.

111. *See* FRAENKEL, *supra* note 100, at 37. Solomon Islands National Development Strategy 2016–2035 emphasizes the importance of stable and effective governance and public order. Nevertheless, there remains debate about the composition of the state, and the diversity of languages and cultures pose continued ethno-political difficulties for a federalized nation.

112. For a brief discussion on Solomon Island democracy, *see generally* *About Us*, NAT'L PALIAMENT OF SOLOMON ISLANDS, <http://www.parliament.gov.sb/index.php?q=node/1153> [https://perma.cc/FH5U-J3KP].

113. Chief Justice Palmer as appointed as Acting Chief Justice in 2003. Other senior judicial officers such as the recently appointed Chief Magistrate, Emma Garo, are locally trained: Assumpta Buchanan, *First Female Chief Magistrate Appointed*, SOLOMON STAR (September 19, 2017), <http://www.solomonstarnews.com/index.php/news/national/item/19455-garo-makes-history> [https://perma.cc/N3Q8-746Q].

Appeal, the highest appellate court, are Australian, New Zealander and Papua New Guinean judges.<sup>114</sup> The new Prime Minister, the Hon. Rick Houenipwela, has committed to an agenda of transparent government and anti-corruption.<sup>115</sup> However, there is much governance work to do. The effects of colonialism bringing together disparate traditional groups and endemic corruption led to continued instability which has caused many to refer to the country still as a ‘failed state.’<sup>116</sup> In relation to the justice system, an Australian government report noted that “the social, political and geographic features of the Solomon Islands impose demands which the country’s common law system of justice (and Westminster System of Government) are poorly adapted to meeting.”<sup>117</sup> An interim evaluation by the Australian government in 2012 reported that in the thirty-five years since Solomon Islands gained independence, many of the governance systems, including courts, have failed or been diminished.<sup>118</sup> There is a shortage of judicial personnel and courts.<sup>119</sup> The Solomon Islands Justice Project sets out the practical challenges for the justice sector as in four main areas: “justice agencies struggle to fulfill their core functions; legal policy development coordination capacity is weak; access to justice, particularly outside Honiara, the capital, remains a challenge; and across the sector there are persistent challenges in gender and social inclusion, data collection and usage, and human resource and financial management”.<sup>120</sup> Like the SPLA, the Solomon Islands Justice Project shares the vision that a stronger profession is essential in this process of improving the justice

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114. The Chief Justice sits on the Court of Appeal. For a brief description of the judicial structure in Solomon Islands, see *Judicial system of Solomon Islands*, COMMONWEALTH GOVERNANCE [http://www.commonwealthgovernance.org/countries/pacific/solomon\\_islands/judicial-system/](http://www.commonwealthgovernance.org/countries/pacific/solomon_islands/judicial-system/) [https://perma.cc/6L5U-L6JL]; JENNIFER CORRIN & DAVID BAMFORD, *COURTS AND CIVIL PROCEDURE IN THE SOUTH PACIFIC* (2d ed. 2015).

115. See, e.g., *Business of the House*, NAT’L PALIAMENT OF SOLOMON ISLANDS (July 18, 2018), [http://www.parliament.gov.sb/files/hansard/10th\\_session/7thMeeting/National%20Parliament%20of%20Solomon%20Islands\\_2018\\_07\\_18\\_127.pdf](http://www.parliament.gov.sb/files/hansard/10th_session/7thMeeting/National%20Parliament%20of%20Solomon%20Islands_2018_07_18_127.pdf) [https://perma.cc/MKC7-VVQN] (debating the Anti-Corruption Bill 2017, which is currently before the Parliament).

116. See, e.g., Shahar Hameiri, *The Trouble with RAMSI: Re-examining the Roots of Conflict in Solomon Islands*, 19 *THE COMTEMP. PAC.* 409-41 (2007).

117. COFFEY INT’L DEV. & THE WHITELUM GRP., *supra* note 91, at 5. See also RAMSI, *supra* note 28.

118. AUSAID OFFICE OF DEV. EFFECTIVENESS, *supra* note 92, at 16-17.

119. *New Chief Magistrate for Solomon Islands*, SOLOM. IS. BROAD. CORP. (SIBC) (Aug. 22, 2016), <http://www.sibconline.com.sb/new-magistrate-for-solomon-islands/> [https://perma.cc/XDV5-U8KR].

120. COFFEY INT’L DEV. & THE WHITELUM GRP., *supra* note 91, at 6.

system, as it aims to encourage the Bar Association to take “a stronger role in enforcing legal professionalism”<sup>121</sup> and supports the implementation of regulatory reform.<sup>122</sup>

### *B. Solomon Islands’ Legal Profession*

The legal profession in Solomon Islands has grown since its first formal regulation in 1987 under the *Legal Practitioners Act 1987* which remains in force.<sup>123</sup> The current legislation closely resembles regulation in Australia prior to the early 2000s and may have provided the template. If there has been reliance on regulatory models from its larger neighbor in this area this is understandable as there was no (or an inactive) law reform body to conduct research and generate recommendations<sup>124</sup> and, in those days, there were only one or two private practice lawyers and fewer than twenty lawyers in government service.<sup>125</sup>

Solomon Islands now has around forty private practitioners and forty-eight government lawyers,<sup>126</sup> however accurate numbers of practitioners are difficult to come by as membership in its professional body is voluntary and official court registers are not accessible to the public.<sup>127</sup> While information is difficult to obtain due to limited web presence of local practitioners and no other reliable indexes, it is likely that the majority of practitioners operate in the main city of Honiara where the majority of courts and other justice bodies are located. Draft legislation before the Solomon Islands parliament, the Legal Profession Bill 2017 (the “Bill”), addresses this lack of transparency as it requires that the Legal Practitioners Authority, which is established under the

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121. *Id.* at 18.

122. *Id.*

123. SCOPING STUDY, *supra* note 2, at 5.

124. See generally Michael Sayers, *Small States and Law Reform*, 34 COMMONWEALTH L. BULL. 125 140 (2008).

125. SCOPING STUDY, *supra* note 2, at 5. An experienced practitioner told us that there may have been three private practitioners at the time.

126. COMMITTEE REPORT, *supra* note 62, at 32. This figure was supplied by the High Court Registrar on July 26, 2017.

127. See NEEDS EVALUATION SURVEY, *supra* note 26, at 15, 39. In 2011, there were fewer than 20 members of the only professional body, Solomon Islands Bar Association – which is estimated to have been less than half of the private practitioners at the time. NEEDS EVALUATION SURVEY, *supra* note 26, at 15, 39. The Bar Association does maintain a register of members but concedes that more resourcing is needed to make it more accurate including coordinating with the court register.

Bill, to maintain a register of practitioners and make it publicly available on a website if maintained.<sup>128</sup>

While the number of lawyers in Solomon Islands may have stagnated in the last seven years,<sup>129</sup> in the last twenty years it has grown significantly in proportional representation of private lawyers.<sup>130</sup> The increasing numbers of practitioners may be viewed as evidence of a positive trend of Solomon Islanders pursuing professional careers and occupying civic roles. It is also an important factor in beginning to address the low proportion of lawyers to citizens to provide better access to justice.<sup>131</sup> This is an important aspect of changing professional culture where local practitioners can mentor and model good behaviors, as well as govern their own affairs and provide increased access to lawyers. The estimated 65% growth in people of working age between 2010 and 2040 will presumably coincide with an increase in professionals including within the legal profession.<sup>132</sup> However, in the future, and even today, increases in newly qualified lawyers in Solomon Islands raises concomitant concerns about employment opportunities and adequate training for junior lawyers.<sup>133</sup>

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128. Legal Profession Bill 2007, §67; *see infra* Part III.C.

129. For a comparison of the figures provided, see COMMITTEE REPORT, *supra* note 62, at 32. *See also* NEEDS EVALUATION SURVEY, *supra* note 26, at 5. The Registrar figure provided in 2017 is lower than the number cited in 2011; however, it is possible that the earlier figure was inaccurately supplied by the professional body.

130. There has been only an increase of around thirty-seven private practitioners in Solomon Islands but this represents more than ten times more private practitioners in the local profession.

131. By my calculation on figures supplied by the Registrar to the parliamentary Committee in 2017 (eighty-eight total lawyers) and most recent population figures, the proportion of lawyers to citizen is around 1: 7,100: COMMITTEE REPORT, *supra* note 62, at 32; *Solomon Islands Population*, *supra* note 90. This is significantly lower than many other countries such as Australia and the United States of America. Indeed, in contrast to concerns expressed in these jurisdictions about oversupply of law graduates to the market, the author believes there is cause for concern about the dearth of lawyers available to assist the justice system to operate. For a discussion of Australia's and United States' legal profession, see Bartlett & Haller, *supra* note 22; Deborah Rhode, *The United State of America: Legal Services Regulation in the United States – A Tale of Two Models*, in INTERNATIONAL PERSPECTIVES ON THE REGULATION OF LAWYERS AND LEGAL SERVICES (Andy Boon ed., 2017).

132. AUSTRALIAN GOV'T DEP'T OF FOREIGN AFFAIRS AND TRADE, AUSTRALIA-SOLOMON ISLANDS TECHNOLOGY FOR DEVELOPMENT CHALLENGE 2 (2018), *available at* <https://dfat.gov.au/international-relations/themes/cyber-affairs/Documents/t4d-challenge-background-paper.pdf> (last visited Dec. 6, 2018).

133. This is not at all to suggest that the majority of lawyers working in private or government practice in Solomon Islands are junior or that their skills are inadequate. There are many experienced practitioners in private practice who also undertake important governance

A lack of stability within the country has in the past possibly endangered succession planning. Concerns about inadequate training opportunities are not new. Robert Cartledge argues that new graduates 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.”<sup>134</sup> As the Solomon Island Justice Project Design Document reported, “[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.”<sup>135</sup> Chief Justice Sir Albert Palmer said that he observed a lack of advocacy and legal submission skills among many advocates appearing before him.<sup>136</sup> Senior lawyers have expressed concern about the dearth of medium to large firms to accommodate graduates and a lack of government roles being created.<sup>137</sup> While many of the above concerns are by no means unique to Solomon Islands, they raise (as elsewhere) a range of professional conduct issues that may require attention or a regulatory response as described in the next Section.

Unlike well studied and larger jurisdictions,<sup>138</sup> the small lawyer and national population also create unique persistent potential for professional ethical failings, particularly in relation to conflicts of interest—as between lawyers, lawyers and their clients, and lawyers

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roles such as occupying positions within the Bar Association, such as current Bar President, Silverio Lepe. The recently retiring Public Solicitor, who provides legal representation for criminal defendants or as ordered by the High Court, Douglas Hou, occupied this role for ten years and worked within the service for over 25 years: Loretta Brigidia Manele, *Dedicated son of public solicitors office bids farewell*, THE ISLAND SUN (June 25, 2018), <http://theislandsun.com.sb/dedicated-son-of-public-solicitors-office-bids-farewell/> [<https://perma.cc/7F54-PB98>].

134. Robert Cartledge, *Thrown in at the Deep End*, 3 NEWSPLASH 6, 9 (2011), available at [https://docs.wixstatic.com/ugd/0217f9\\_8b9ed8f97907487ab0535c89320a7286.pdf](https://docs.wixstatic.com/ugd/0217f9_8b9ed8f97907487ab0535c89320a7286.pdf) [<https://perma.cc/CFC8-5TFB>].

135. COFFEY INT’L DEV. & THE WHITELUM GRP., *supra* note 91, at 75.

136. *See, e.g., In brief . . . Mr Ross Ray QC speaks to the Pacific Beat about Legal Education*, 7 NEWSPLASH 3, 3 (2013), available at [https://docs.wixstatic.com/ugd/0217f9\\_8a9b2d45780347bd84e99d704f8b5819.pdf](https://docs.wixstatic.com/ugd/0217f9_8a9b2d45780347bd84e99d704f8b5819.pdf) (last visited Dec. 6, 2018).

137. Editor, *AG warns in-experience private lawyer*, SOLOMON STAR (Jan. 18, 2016), <http://www.solomonstarnews.com/index.php/news/national/item/16792-ag-warns-in-experience-private-lawyers> (last visited Dec. 6, 2018). For instance, these views were expressed by former High Court judge and then Attorney General, James Apaniai in 2016. *Id.* SCOPING STUDY, *supra* note 2, at 16.

138. *See, e.g., INTERNATIONAL PERSPECTIVES ON THE REGULATION OF LAWYERS AND LEGAL SERVICES* (Andy Boon ed., 2017).



and the judiciary. There is the added complexity of custom or Kastam,<sup>139</sup> applying for either the lawyer or their client, which may conflict with or add to “state law” or professional lawyer ethical codes modelled on ethical norms in countries like Australia.<sup>140</sup> Solomon Islander and foreign lawyers working in the nation cite the nature of pluralism and the demands of working with and between varied systems as unique.<sup>141</sup> Many of these issues cannot be addressed by training in inherited ethical norms, regulatory reform or ad hoc regional collaboration initiatives sponsored by bodies like the SPLA or the Australian Law Council described later in this Article.

As advocated by international lawyers’ organizations, a strong and independent local bar can address some of these ethical, cultural, and practice issues arising within the profession.<sup>142</sup> However, there is no such body in Solomon Islands. The Solomon Islands Bar Association (“SIBA”) is the only lawyers’ body in the country and membership is voluntary.<sup>143</sup> SIBA has delegated authority to provide advice to legal practitioners on professional duties,<sup>144</sup> receive notice of

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139. ALLEN, *supra* note 94, at 16. The role of ‘Kastom’ within the political and legal sphere is a complex one in many Pacific islands including Solomon Islands. It does not only relate to customs and traditions but also has political history and subtext. ALLEN, *supra* note 94, at 16. Clive Moore similarly argues that historical and geographical circumstances make for a ‘malleable’ approach to shared culture among a large group of Solomon Islanders: MOORE, *supra* note 100, at 467. For a discussion of distinctions of ‘custom’ and ‘customary law,’ see Jennifer Corrin Care & Jean G. Zorn, *Legislating Pluralism*, 46 J. OF LEGAL PLURALISM 29, 52-53 (2001).

140. BERNARD NAROKOBI, *LO BILONG YUMI YET: LAW AND CUSTOM IN MELANESIA* 5 (1989). Bernard Narokobi describes a Melanesian conception of “law . . . to be described generally as knowledge or wisdom. Law in our view does not exist as a phenomenon which controls society, but as part of cognitive knowledge of a community” *Id.*

141. See also Carolyn Penfold, *Teaching Legal Ethics and Professionalism in a South Pacific Context*, 23 LEGAL EDUC. REV. 7, 14 (2013), <https://epublications.bond.edu.au/cgi/viewcontent.cgi?referer=https://www.bing.com/&httpsredir=1&article=1315&context=ler> (last visited Dec. 6, 2018).

142. See *supra* notes 4 and 5 and accompanying text. There is perhaps more of a role for a lawyers’ body to articulate a shared professional vision where there is a new profession in a context of fragile rule of law.

143. There is no legislative or common law imperative for a lawyer in Solomon Islands to be a member of the Bar Association. As described below, it is lawful to practise law in this jurisdiction if admitted by the High Court (or certified by the Court for foreign lawyers): Legal Practitioners Act, Act no. 14 of 1987 § 5. However, there is no provision that requires certification (which is often a role of the law society or bar association) or consequently allows for a criminal charge associated with practising without certification. SCOPING STUDY, *supra* note 2, at 14.

144. LEGAL PRACTITIONERS (PROFESSIONAL CONDUCT) RULES, r. 2.

office address of a legal practitioner,<sup>145</sup> request production of any advertisement by a legal practitioner,<sup>146</sup> and receive complaints from a legal practitioner about another legal practitioner who is in breach of the *Legal Practitioners Act 1987* or ethical codes.<sup>147</sup> 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.<sup>148</sup> 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 and, unsurprisingly, does not provide any regular lawyer education, although it sometimes engages in advocacy or advisory roles.<sup>149</sup>

*C. Legal Practitioners Act and Conduct Rules—An Ineffective Regulatory System*

1. Legal Practitioners Act 1987

As described by the 2017 Report reviewing lawyers' profession regulatory regimes of the SLPA members, there are problems and silences within Solomon Islands' regime. The legislative regime establishes the judiciary as the lawyer regulator and standard setter. The *Legal Practitioners Act 1987* (the "Act") provides extensive powers for the Chief Justice to make rules governing the profession from admission, discipline, practicing certificate requirements, dealing with trust money, and any other conduct matter required under the Act.<sup>150</sup> The Act is a relatively sparse statute. For instance, the Chief Justice of the High Court can admit lawyers who are "fit and proper" to practice

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145. LEGAL PRACTITIONERS (PROFESSIONAL CONDUCT) RULES, r. 22.

146. LEGAL PRACTITIONERS (PROFESSIONAL CONDUCT) RULES, r. 6(7).

147. LEGAL PRACTITIONERS (PROFESSIONAL CONDUCT) RULES, r. 4.

148. LEGAL PRACTITIONERS (PROFESSIONAL CONDUCT) RULES, r. 5.2; *see also* SCOPING STUDY, *supra* note 2, at 13. The Registrar of the High Court and Court of Appeal is in charge of preparing and assessing all documents of the Court as well as listing matters and deciding matter such as the necessity of assigning representation in certain cases: Law of Solomon Islands, ch. 6, §34 (Solom. Is.).

149. For instance, SIBA conducted a review of the Draft Federal Constitution of the Solomon Islands in 2016. *PM applauds Bar Association participation*, SOLOMON STAR, (June 28, 2016), <http://www.solomonstarnews.com/index.php/news/national/item/17483-pm-applauds-bar-association-participation> (last visited Dec. 6, 2018).

150. Legal Practitioners Act, Act no. 14 of 1987, § 21(1) (a)-(l).

and are “qualified” but this is not further described.<sup>151</sup> 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.<sup>152</sup> There are no legislative or policy initial or ongoing requirements for issuing a practicing certificate such as undertaking continuing education as is standard in other common law countries. While the High Court in *R v. Ashley*<sup>153</sup> emphasized that proper handling of trust money was an entrenched professional duty under the current regime as provided for in the Conduct Rules, there is in fact no legal regime for keeping a trust account, accounting to beneficiaries, and handling trust money. The *Scoping Study Report* found that not all private practitioners maintained trust accounts and some held trust money in joint accounts often by order of the court as a result of a proceeding.<sup>154</sup>

A commonly cited concern about the professional regime is the lack of a functioning disciplinary system.<sup>155</sup> As has been long noted by scholars, the lack of disciplinary response, or secrecy about these matters, also diminishes the public’s awareness about lawyer standards and respect for the profession.<sup>156</sup> In Solomon Islands, which has a largely rural population with low rates of general education,<sup>157</sup> consumers of legal services might be entirely unaware about what a lawyer is expected to do for them or what sorts of competency or ethical standards apply. A functioning and public disciplinary system might assist in raising this awareness, as well as assist in raising standards of legal services through deterrence.<sup>158</sup>

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151. *Id.* at § 5.

152. *Id.* at § 15. However, the *Legal Practitioners Act*, Act no. 14 of 1987 does reserve legal activity as in Australia and other common law countries making it an offence for an unqualified person to pretend or take and use the title or description implying that they are qualified to act as a legal practitioner. *Id.*

153. *Regina v Charles Kaukui Ashley*, HCSI-CRC No. 178 of 2011 (Dec. 13, 2011) (*per* Palmer CJ).

154. SCOPING STUDY, *supra* note 2, at 15. There are no detailed provisions in the current Act which provide for how trust accounts are to be established and maintained. This may have been ordered by the court to ensure that money with joint beneficial entitlement not be paid into a court fund.

155. *See, e.g.*, SCOPING STUDY, *supra* note 2, at 10 (providing the initial quote cited in this Article).

156. *See, e.g.*, PARKER, *supra* note 4; Leslie Levin, *The Case for Less Secrecy in Lawyer Discipline*, 20 GEO. J LEGAL ETHICS 1 (2007).

157. *See* COFFEY INT’L DEV. & THE WHITELUM GRP., *supra* note 91, at 4.

158. NEEDS EVALUATION STUDY, *supra* note 26, at 31.

The current regime and context of practice in Solomon Islands poses many obstacles for a functioning disciplinary system. Complaints have been made and the professional body has attempted to act. There are reports of a number of matters concerning alleged misconduct by practitioners from the establishment of the Act in 1987 until 1997, however, there is no official record of committees established to investigate or any disciplinary actions being taken.<sup>159</sup> In 1997, the first recorded investigation of alleged practitioner misconduct was made. The disciplinary committee established found that there was a case to answer against the practitioner. The matter concerned a practitioner who had a connection to the Attorney General. The Attorney General must chair any disciplinary committee under the Act.<sup>160</sup> It was discovered that the Act did not provide any power to delegate or establish a deputy chair, and the case was ultimately dismissed.<sup>161</sup>

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.<sup>162</sup> It also established its own procedures for disciplinary investigations.<sup>163</sup> In several cases, disciplinary committees were formed, however no prosecutions or findings were ever made.<sup>164</sup> Today, there likely remain many outstanding complaints that have not been addressed in any professional sense.<sup>165</sup> A Ministry of Justice *Scoping Study Report* in 2011 commented that “sustainable long-term solutions will require legislative reform and drafting of ‘modern’ legislation to replace the *Legal Practitioners Act 1987*.”<sup>166</sup> The *Scoping Study Report* noted a failure to set down procedural or evidentiary rules, categorize types of complaints or prescribe penalties for offenses.<sup>167</sup>

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159. SCOPING STUDY, *supra* note 2, at 5, 7.

160. NEEDS EVALUATION SURVEY, *supra* note 26, at 26.

161. SCOPING STUDY, *supra* note 2, at 5.

162. SCOPING STUDY, *supra* note 2, at 7.

163. SCOPING STUDY, *supra* note 2, at 7.

164. SCOPING STUDY, *supra* note 2, at 7.

165. SCOPING STUDY, *supra* note 2, at 5, 10. In 2011, there were 40-45 outstanding complaints and up to ten of these could be classified as ‘serious’ involving misuse of trust funds.

166. SCOPING STUDY, *supra* note 2, at 4.

167. SCOPING STUDY, *supra* note 2, at 11-12. There was an early attempt to address this in the Conduct Rules under the Act in 2010, in the draft Legal Practitioners (Disciplinary) Rules

Another chief concern is the lack of the professional organization's authority over the legal profession. At present, SIBA can receive and investigate complaints but can only dismiss or refer "serious" complaints to the Attorney General.<sup>168</sup> Even where SIBA has power to receive and act on a complaint, they have no compelling power against a practitioner who is not a member of their organization. In one serious case in 2012 which involved the dishonest conversion of over SIB\$1 million, the practitioner was found guilty of a number of criminal offenses under the Penal Code and given a custodial sentence.<sup>169</sup> In sentencing the practitioner, the Court noted the seriousness of his actions as a legal practitioner:

This is indeed a sad but disappointing case primarily because of your professional status as a lawyer, who should have known and been fully aware of your duties and responsibilities as a lawyer in respect of your client's money.

Not only does the Legal Practitioner's (Professional Conduct) Rules require accountability and care in handling of trust monies but it also places you in a special position of trust to your client, who looked up to you to deal with them in a transparent and honest manner, this was made patently clear at trial.

Those obligations are basic to your profession as a lawyer and legal practice, that is why this type of breach is treated seriously by any court in the Commonwealth jurisdiction as shown in the references and case authorities provided by prosecution and your lawyer in this case.

Today your professional status works against you as an aggravating factor.<sup>170</sup>

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2010. However, these Rules were never pursued as there was a general election later that year and the new government commissioned a review of the entire regime in 2011.

168. SCOPING STUDY, *supra* note 2, at 11. An amendment made to the Act in 2003 provided more power to SIBA to investigate and dismiss complaints or refer complaints to the Attorney General for further investigation.

169. Regina v Charles Kaukui Ashley, HCSI-CRC No. 178 of 2011 (Dec. 13, 2011) (Palmer CJ) (finding of guilt on a number of charges); Regina v. Charles Kaukui Ashley, HCSI-CRC No. 178 of 2011 (Feb. 3, 2012) (Palmer CJ) (sentencing decision).

170. Regina v. Charles Kaukui Ashley, HCSI-CRC No. 178 of 2011 (Feb. 3, 2012) (Palmer CJ), ¶¶ 1-4.

In the judgment, the Chief Justice referred the case for professional discipline to be conducted by SIBA.<sup>171</sup> No recorded discipline occurred.<sup>172</sup> While the practitioner's case may have been referred to SIBA, if the practitioner was not a member of the organization no investigation or finding about practitioner's conduct could be made without consent.<sup>173</sup>

In addition to legislative gaps, there are also cultural and structural barriers. The small jurisdiction means that there are often conflicts arising between the practitioner and a member of the disciplinary committee. The *Scoping Study* reported that where committees were established, there was often difficulty in scheduling dates for hearings or meetings when practitioners might have been uncomfortable "sit[ting] in judgement" on their peers.<sup>174</sup> As Tauvasa Tanuvasa Chou-Lee contends, there is limited availability of "practitioners who are prepared to prosecute colleagues" in small countries: "In such contexts, there might be much uneasiness on the part of practitioners, that practitioners more often than not easily declare their conflicts of interest and avoid dealing with colleagues who are the subject of a complaint or complaints."<sup>175</sup>

The other significant contextual factor associated with a small nation is the lack of practitioners available to provide voluntary services to the professional bodies when they are not funded. Recommendations by the senior legal profession to address inaction under the current regime include that the Department of Public

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171. Another angle which could be pursued in professional discipline is that the Chief Justice act on his powers to remove the practitioner from the role of admitted practitioners if considered 'unfit'. This seems an available approach in a serious case such as concerning Mr. Ashley.

172. It is conceded in this case that Mr. Ashley was rendered unable to practice through another mechanism as the High Court registrar refused to renew his practicing certificate: Penfold *supra* note 141, at 21 (citing Daniel Namosuia, *Ashley Joins Forum*, SOLOMON STAR NEWS (Oct. 8, 2012), <http://www.solomonstarnews.com/news/national/16128-ashley-joins-forum>).

173. In 2008, a draft Bill, the Solomon Islands Bar Association Bill, was prepared to establish the Solomon Islands Bar Association under legislation and to make it the lawyer regulator and require membership of the organization for certification. However, this was never enacted as there were constitutional concerns about freedom of association. SCOPING STUDY, *supra* note 2, at 5.

174. SCOPING STUDY, *supra* note 2, at 11.

175. Tanuvasa Chou-Lee, *Regulating the Legal Profession*, 7 NEWSPLASH 12, 14 (2013) available at [https://docs.wixstatic.com/ugd/0217f9\\_8a9b2d45780347bd84e99d704f8b5819.pdf](https://docs.wixstatic.com/ugd/0217f9_8a9b2d45780347bd84e99d704f8b5819.pdf) [<https://perma.cc/D2Q8-V6G4>].

Prosecutions could play the role of disciplinary prosecutor. Additionally, the Chief Justice suggests that the Principal Magistrate could chair the Disciplinary Tribunal.<sup>176</sup> The involvement of salaried, government sector lawyers in the regime may address some issues of a concern about professional comity but may not necessarily solve the frequent possibility of conflicts in a very small jurisdiction. The first model also introduces the active role of a government employee in the regulation of the profession which would further diminish self-regulation. Another recommendation could be to establish twinning arrangements with mature disciplinary jurisdictions such as Australia or regional panels where practitioners from neighboring countries could come in to decide cases.<sup>177</sup> The problems in this case are ones of sustainability and cost, reliance on the implementation of like regulatory regimes, and possible shrinking of independence of the local profession.

## 2. Legal Practitioners (Professional Conduct) Rules

In 1995, the then-Chief Justice, the Hon. Sir Gilbert John Baptist Muria, made the *Legal Practitioners (Professional Conduct) Rules* (the “Conduct Rules”).<sup>178</sup> These Conduct Rules require practitioners to demonstrate appropriate professional ethical behavior including independence, competence, observation of duties to the court, and ethical dealing with clients and their money. The Conduct Rules contain a relatively comprehensive list of ethical behaviors in line with other common law countries with stable and mature legal professions. This document should signal a similar professional ethical culture to these common law countries. However, as Richard Abel has pointed out of most professions, these are often “intended primarily for public consumption, or at least as a means of collective self-deception or reassurance. For social scientists to confuse those prescriptions with actual behavior would display unpardonable naivete.”<sup>179</sup> Indeed, there have been strong concerns voiced about unethical behavior by some Solomon Islands practitioners in clear breach of ethical rules. The former Attorney General, James Apaniai, expressed a concern that

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176. SCOPING STUDY, *supra* note 2, at 12.

177. SCOPING STUDY, *supra* note 2, at 19-20.

178. A year later, the Legal Practitioners (Admission) Rules 1996 came into and remain in force.

179. RICHARD L. ABEL, *LAWYERS IN SOCIETY: AN OVERVIEW* 298 (Richard L. Abel & Philip S.C. Lewis ed., 1996).

some private practitioners practicing on their own account did not have enough experience and displayed inadequate professionalism:

For instance, they take instructions from clients at odd places such as beaches surrounded by cans of beer; they ask clients for fees anytime they like without issuing invoices or Bills of Costs, and many times when drunk; they become unreachable, unavailable and invisible after having received Deposits, etc, [sic] from clients.<sup>180</sup>

The former president of the Solomon Islands Bar Association, Whitlam K. Togamae, reminded practitioners in 2016 that present legislation requires lawyers to have an office address but it was clear that many lawyers do not have one:

I asked the Registrar of High Court that all law firms must have a physical office and address. Not only that, but maybe how to access and use email and respond [to] their clients and other members of the bar. I must reiterate to my colleague practitioners to not charge high fees from your clients if you know that you do not have an office where you client's [sic] will come to see you.<sup>181</sup>

Poor ethical behavior is seen in every country. However, where there is no likelihood of repercussion this may lead to more serious and widespread issues. While such behaviors might be well known to be a breach of professional ethics in Solomon Islands,<sup>182</sup> there have been no professional implications for ignoring these professional standards. As described above, the Solomon Islands Bar Association cannot police infractions of legal or professional standards, and the Chief Justice or High Court Registrar are busy with other duties. Penfold concludes that “where a legal system is not well entrenched, has limited reach, and is still seen by many as foreign . . . poor professional and ethical behaviour among lawyers may have greater consequences.”<sup>183</sup> No prosecutions and gaps in the current regulation may mean that behaviors seen as unprofessional in neighboring countries have come

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180. Assumpta Buchanan, *AG warns in-experience private lawyers*, SOLOMON STAR NEWS (Jan. 18, 2016), <http://www.solomonstarnews.com/index.php/news/national/item/16792-ag-warns-in-experience-private-lawyers> [https://perma.cc/8KHC-H36T].

181. *Id.*

182. *See, e.g.*, LEGAL PRACTITIONERS (PROFESSIONAL CONDUCT) RULES, r. 4 (requiring lawyers to be competent); LEGAL PRACTITIONERS (PROFESSIONAL CONDUCT) RULES, r. 11 (requiring lawyers to avoid conflicts of interest); LEGAL PRACTITIONERS (PROFESSIONAL CONDUCT) RULES, r. 19 (requiring lawyers to disclose their fees).

183. Penfold, *supra* note 141, at 14.



to be understood as tacitly accepted and normalized in Solomon Islands. Better education and modeling of ethical practice to new professionals and those used to an unresponsive regime may be needed.

However, the realities of the context of practice may make imported practice standards inappropriate as well as unachievable. As the majority of Solomon Islands lawyers are solo practitioners, they often struggle with the many implications of working alone including lack of resources and supports.<sup>184</sup> Those working on a small island remote from the capital of Honiara may not even have access to a reliable telephone and are unlikely to access internet services.<sup>185</sup> Obtaining legal resources and doing legal research is therefore always a challenge and causes a disparity of competence and diligence. It is unsurprising then that such issues are not only unpoliced, but also may not be seen as professional failings. This is not to imply that this is necessarily the case in a small jurisdiction. In Fiji, a somewhat larger jurisdiction which has introduced a sophisticated regulatory regime, there is a functioning disciplinary system producing jurisprudence including prosecution of poor competency matters such as “failure to respond” cases.<sup>186</sup> An ethical code adopted throughout the region which can take account of local cultural and functional realities might assist in lifting these standards. It could also allow for cooperative solutions to funding and conflict issues mentioned here. Still, this is likely to be a longer term process than national legislative reform, particularly as between small and dispersed communities of lawyers across the Pacific.

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184. See Leslie Levin, *The Ethical Decisionmaking of Solo and Small Law Firm Practitioners*, 41 HOUSTON L. REV. 308, 314, 343 (2004).

185. A recent report of the Australian government indicates that only one sixth of the population use the internet and these people are based in urban areas and rely on satellite technology: AUSTRALIAN GOV'T DEP'T OF FOREIGN AFFAIRS AND TRADE, *supra* note 132.

186. Chief Registrar v. Anand Singh, FJLSC No. 24 of 2013 (Nov. 7, 2013); see generally Nilesh N. Bilimoria, *Choices for South Pacific Region's Bar Associations and Law Societies?*, in *SMALL STATES IN A LEGAL WORLD* (P. Butler and C. Morris eds., 2017).

*D. Reform in Solomon Islands*

## 1. The Legal Profession Bill 2017

In 2011, the Ministry of Justice commissioned a review of the regulatory regime for lawyers.<sup>187</sup> The Ministry of Justice circulated a discussion paper in 2013 to the legal profession and held consultations during 2014.<sup>188</sup> On October 9, 2017 the *Legal Profession Bill 2007* (the “Bill”) had its first reading speech in Solomon Islands parliament. A recent media release on the parliamentary website on May 22, 2018 indicates that the Bill is still before the House,<sup>189</sup> but it is not listed as a Bill to be considered in the current sittings and is unlikely to be made law this year.<sup>190</sup> The Committee Report describing the drafting of the Bill does not reveal why it is so closely based on the Australian template.<sup>191</sup> However, there has been a commendably transparent approach to professional consultation with wide circulation of the Bill to the entire legal profession in draft form.<sup>192</sup> Indeed, in such a small professional jurisdiction this can be seen as an advantage where stratification of the profession may have less of an effect.<sup>193</sup>

A parliamentary committee reviewing the Bill noted that it was able to “look at the results and the reforms that have been undertaken in other countries” but that the final legislation should be a “local model of regulation that must be efficient and effective within the available resources.”<sup>194</sup> The Bills and Legislation Committee held consultations and released its report which supported the need for legislative reform:

Generally the Committee supports a comprehensive legal framework that provides for a strong and vibrant legal community. A legal profession, the members of which, are truly professional

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187. COMMITTEE REPORT, *supra* note 62, at 2.

188. COMMITTEE REPORT, *supra* note 62, at 3-4. An exemplary process of consideration and review prior to presentation to parliament is described in the Ministry of Justice and Legal Affairs Submission No 3.

189. See NAT’L PARLIAMENT OF THE SOLOMON ISLANDS, <http://www.parliament.gov.sb> [https://perma.cc/YFK4-888T].

190. See *Bills Before Parliament*, NAT’L PARLIAMENT OF THE SOLOMON ISLANDS, <http://www.parliament.gov.sb/index.php?q=node/286> [https://perma.cc/H3A6-5GGC].

191. COMMITTEE REPORT, *supra* note 62.

192. COMMITTEE REPORT, *supra* note 62, at 3-4.

193. Compare this to the Australian process which was influenced by the powerful large law firms sector. Bartlett & Haller, *supra* note 22, at 169. However, it is conceded that regional Solomon Islands lawyers outside Honiara might still struggle for a voice.

194. COMMITTEE REPORT, *supra* note 62, at 5.

and are held to the highest ethical and professional rules. This is crucial to ensure the public trust and have confidence in the profession.<sup>195</sup>

The Bill as proposed is substantially similar to Legal Profession Acts or Uniform Law in force around Australia. For instance, the stated objects of the legislation mirror Australian legislation: “to regulate the legal profession, to facilitate the fair and efficient administration of justice and to provide for the protection of consumers of legal services and the public.”<sup>196</sup> The Bill also adopts identical definitions of disciplinary charges.<sup>197</sup> It also introduces a co-regulatory model noting the international support for this.<sup>198</sup> It therefore establishes two new bodies, one attached to government and one independent to the profession: the Legal Profession Authority to regulate the profession and the Solomon Islands Law Society Association (“SILS”).<sup>199</sup>

The Bill sets out specific requirements for admission to legal practice and certification which also follow the Australian model of keeping admission within the scope of the judiciary.<sup>200</sup> There are new provisions for a range of certificate types and requirements for practitioners to undertake continuing legal education as a condition of certification.<sup>201</sup> It creates a Disciplinary Committee conducted by SILS

195. COMMITTEE REPORT, *supra* note 62, at iv.

196. Compare Legal Profession Act 2007 (Qld), § 3(a) and Legal Profession Bill 2007, § 3. Solomon Islands legislation more clearly states what the “interests” of administration of justice are (which are left unstated in any Australian Act).

197. Legal Profession Bill 2007, § 3. Compare to the uniform definition adopted across Australian legislation. See, e.g., Uniform Law (NSW), §§ 296, 297; Legal Profession Act 2007 (Qld) §§ 418, 419. These charges are described later in the text and accompanying notes.

198. COMMITTEE REPORT, *supra* note 62, at 4

199. Legal Profession Bill 2007, Part 3 § 9-28 (Legal Profession Authority); Part 4 § 29-41. The SIBA executive are deemed to be the executive of the newly created SILS: Legal Profession Bill 2007, § 210. The creation of new regulatory bodies seems also based on the Australian approach, which has been criticized as too expensive even in that well-funded jurisdiction: Bartlett & Haller, *supra* note, 22, at 169.

200. Legal Profession Bill 2007, Part 5 § 42-49 (admission). It provides for admission to the High Court with a requirement to show specified legal and practical training as a prerequisite as well as requisite applicant ‘fitness’. The specific education and training requirements are to be left to the Chief Justice to decide but not on an *ad hoc* basis as now – they must be published as a list in the Gazette. The Bill sets out the process for admission and provides for a reserve of practice and penalties for infringement. The Bill also sets out requirements for certification now to be administered by the Legal Profession Authority, which includes the Chief Justice, the President of the new Law Society and legal practitioners as appointed by the Justice Minister.

201. Legal Profession Bill 2007, §50; Part 7, §§ 68-79 (CLE).

and a Disciplinary Tribunal.<sup>202</sup> The Attorney-General and two lawyers constitute the Committee and a judge presides over the Tribunal.<sup>203</sup> The Bill provides further investigative powers<sup>204</sup> and a regime where practicing certificates can be issued or removed for compliance or non-compliance with the legislative provisions (these powers now vested in the new Legal Profession Authority).<sup>205</sup> There are proposed provisions for appointment of supervisors of trust accounts and receivers of law firms.<sup>206</sup> As to practitioner conduct, the Bill introduces detailed requirements for establishing and accounting for a trust account and taking and dealing with client trust money.<sup>207</sup> It also requires costs disclosure, some minimum standards about charging, and, as in many states in Australia, a court administered costs assessment regime where there is a dispute between the practitioner and client about a bill.<sup>208</sup>

## 2. Problems with Transplantation

The proposed Bill seeks to address many of the structural flaws of the current disciplinary system. It provides for clear standards for ethical and competent behavior and a sophisticated, layered approach to discipline—from summary determinations of minor misconduct and sanctions imposed by SILS,<sup>209</sup> to mediation processes,<sup>210</sup> up to the formation of disciplinary tribunals to determine the most serious matters in a formal hearing.<sup>211</sup> The Legal Profession Authority may also immediately suspend a lawyer's practicing certificate where needed to remove a practitioner from practice.<sup>212</sup> Thus, the difficulties described above regarding authority to investigate and discipline legal practitioners has been removed.

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202. Legal Profession Bill 2007, § 35 (Committee established); § 148 (Tribunal established)

203. Legal Profession Bill 2007, § 37 (Committee membership); § 148(2) (Tribunal membership)

204. Legal Profession Bill 2007, Part 11, §§ 158-62.

205. Legal Profession Bill 2007, §§ 59-64.

206. Legal Profession Bill 2007, §§ 166, 179

207. Legal Profession Bill 2007, §§ 82-95.

208. Legal Profession Bill 2007, Part 9, §§ 103-18.

209. Legal Profession Bill 2007, §§ 128, 136.

210. Legal Profession Bill 2007, §134.

211. Legal Profession Bill 2007, § 148.

212. Legal Profession Bill 2007, §§ 60-62.

However, as the parliamentary committee reviewing the Bill pointed out, there are significant functional and contextual concerns about this “gold-standard” to be introduced. For instance, the committee questioned the feasibility of processes in a small jurisdiction which require many lawyers to occupy a range of new positions created.<sup>213</sup> The committee noted that the president of SILS will be expected, in addition to the professional practice, to occupy multiple roles, as will the Chief Justice. It asked:

... 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?<sup>214</sup>

It also expressed concerns that there might not be any sufficiently trained mediators to fulfill the aspect of the regime based on mediation of complaints.<sup>215</sup> It seems likely that there may be difficulties in finding sufficient qualified costs assessors or accountants to audit trust accounts of each practitioner or firm as required under the proposed Bill.

The Bill somewhat addresses concern about leaving administration of all parts of the system to busy judges or volunteer lawyers and general underfunding of regulators. It mandates that the relevant Minister<sup>216</sup> “must provide the Authority with the necessary staff and facilities to enable it to properly exercise its powers and perform its functions, including a Registrar and a Secretary to the Authority.”<sup>217</sup> In contrast, the Bill does not contain a section providing for government funding or resourcing for the newly established SILS. As all legal practitioners must be members of SILS, the body can raise funds through charging membership fees and charge for continuing education provision.<sup>218</sup> The questions may be what fees can be charged to a profession of small firm practitioners and the extent of the relative dearth of practitioners from whom to raise money. It is likely in practice then to face much the same problems as the current SIBA identifies

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213. COMMITTEE REPORT, *supra* note 62, at 33.

214. COMMITTEE REPORT, *supra* note 62, at 33

215. COMMITTEE REPORT, *supra* note 62, at v.

216. The Minister will be an elected member of parliament who is a member of the party holding government.

217. Legal Profession Bill 2007, § 28(1).

218. Legal Profession Bill 2007, § 31.

now, including an inability “to provide services for members such as CLE,”<sup>219</sup> which will be required if the Bill becomes law.<sup>220</sup>

The co-regulatory model is also somewhat uncomfortable. The proposed Bill continues the regime under the current Act which mandates the involvement and key role of the Minister of Justice and Legal Affairs.<sup>221</sup> Consultation conducted indicates that many legal practitioners consider this element of the Bill inappropriate.<sup>222</sup> The recommendations of the parliamentary committee in its report, appear to water down the involvement and influence of the Minister. For instance, it recommends that the SILS report to the Legal Profession Authority rather than the Minister, it calls for more clarity around the discretion of the Minister to dismiss a member of the Legal Profession Authority for “misbehaviour or misconduct” and incapacity, and it requires that the Bill ensure that the Minister’s delegate, which is required in times of conflict, not act under direction of the Minister.<sup>223</sup>

The Bill introduces two disciplinary charges which exactly replicate those in the Australian regimes: professional misconduct<sup>224</sup> and unsatisfactory professional conduct.<sup>225</sup> These definitions on a spectrum of behavior require some shared understanding of notions of “competence and diligence,” but, identical to Australian legislation, specify some matters that are deemed capable of a disciplinary charge.<sup>226</sup> The parliamentary committee reviewing the Bill

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219. NEEDS EVALUATION SURVEY, *supra* note 26, at 19; *see also* Bilimoria, *supra* note 186, at 245-64.

220. Legal Profession Bill 2007, § 30(c).

221. For instance, despite a provision stating that it is independent from government and ministerial control, a number of members of the Legal Profession Authority are appointed by a government minister: Legal Profession Bill 2007, §§ 11, 12.

222. COMMITTEE REPORT, *supra* note 62, at 27-28.

223. COMMITTEE REPORT, *supra* note 62, at iv, 27. The Committee welcomed a larger role for the professional body but expressed concern that its composition is dictated by Parliament. COMMITTEE REPORT, *supra* note 62, at iv, 27.

224. Legal Profession Bill 2007, § 120. Defined as including ‘unsatisfactory professional conduct of the legal practitioner that involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence’ and conduct that would ‘justify a finding that the practitioner is not a fit and proper person to practice.’

225. Legal Profession Bill 2007, § 119. Defined as including ‘conduct of the legal practitioner occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner and a breach of a condition of the legal practitioner’s practising certificate.’

226. Legal Profession Bill 2007, § 121 (including “excessive legal costs”, serious offence, tax offence and an offence involving dishonesty). Legislation around Australia varies in this

recommended that, given the newness of the regime and particularly the emphasis on competency not currently policed, there be some further legislative explanation of what standard the public is to expect of a practitioner.<sup>227</sup> The concern raised was a disparity of knowledge as between a company and a rural villager client. The definition as it stands was considered to be “simply not practicable and may be meaningless in the context of Solomon Islands.”<sup>228</sup> This is an interesting legal transplantation issue where interpretive communities differ.<sup>229</sup> Assumed common knowledge by drafters of the Bill may not be present in Solomon Islands among the legal or the general community.

Related educational and practice management issues arise from the Bill. The Bill sets out detailed requirements for dealing with trust accounts including systems of reporting and auditing, costs disclosure, and billing transparency.<sup>230</sup> Current practitioners may struggle to comply with these complex trust money provisions particularly where many operate on a cash basis and may not have access to adequate computing facilities to comply with accounting requirements. Many commentators have also raised concerns about a generalist Pacific legal education usually provided at the University of the South Pacific in Vanuatu.<sup>231</sup> Law is taught only in English<sup>232</sup> but in some cases the

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respect as to the degree of overcharging that could constitute a professional discipline charge. The Solomon Islands Bill closely resembles Queensland legislation where “excessive” costs, rather than unreasonable costs, are referred to: Legal Profession Act 2007 (Qld) § 420.

227. COMMITTEE REPORT, *supra* note 62, at 31.

228. COMMITTEE REPORT, *supra* note 62, at 31. Interestingly, a descriptive definition in addition to anything contained in an Australian Act is provided in § 121(d) that: ‘failing to perform work, including failing to attend court or appointments, failing to respond to correspondence and failing to file and serve court documents’ are capable of constituting a disciplinary charge.

229. See Pierre Legrand, *The Same and the Different*, in *COMPARATIVE LEGAL STUDIES: TRADITIONS AND TRANSITIONS* (Pierre Legrand & Richard Munday eds., 2003).

230. Legal Profession Bill 2007, §§ 85-95 (discussing trust reporting and audits); §§ 103-106 (discussing costs disclosure).

231. See, e.g., Jane Strachan, Janet Samuel & Minnie Takaro, *Ni Vanuatu Women Graduates: What Happens When They Go Home?* 17 DEV. IN PRAC. 147-53 (2007). The SIJP reported: “Informants believe the quality of legal education is declining (e.g. the University of the South Pacific and University of Papua New Guinea law schools).” COFFEY INT’L DEV. & THE WHITELUM GRP *supra* note 91, at 75. There is a requirement to undertake a postgraduate legal training course as well which is usually completed in Fiji.

232. For information contained on the University website relating to law courses: *Bachelor’s Degree Programmes: Faculty of Arts, Law and Education (FALE)*, THE UNIVERSITY

students will be not be natural English speakers or students who have studied in English.<sup>233</sup> The degree taught must also cater to a range of twelve different legal systems. Anthony Angelo and Jack Goldring contend that the approach may deliver a collection of legal subjects that is a poor fit for the jurisdiction and the work required of a local lawyer returning home.<sup>234</sup> Penfold adds that while the University of the South Pacific teaches ethics as part of its undergraduate and graduate program, there are no specialized textbooks or resources.<sup>235</sup> Thus students learn from Australian lawyers' ethics textbooks or casebooks "which assume that lawyers work in a formal, stable, orderly environment with clear rules, functioning law societies, and empowered judiciaries" and that there is no local Pacific nation context.<sup>236</sup> While such legal education may assist Solomon Islands lawyers to understand the new regime and ethical norms that seem to underlie the Bill (e.g. based on Australian professional norms), this could be very difficult to apply when working in the practice context of Solomon Islands. Thus, as the parliamentary committee indicates about new professional standards introduced by the Bill, more specific education as to how to comply with the proposed law may be needed.<sup>237</sup>

#### IV. CONCLUSION

There is an ambitious professional project afoot across the South Pacific to foster local lawyers' bodies and improve their lawyers and regulatory regimes. This is based on well-intentioned and well-informed efforts of a collaborative regional initiative of lawyers. Many lawyers in the region recognize the value of having a "modern" workable regulation to promote ethical behaviors and a strong profession to assist the rule of law and access to justice in vulnerable regimes. There is also some appetite for uniformity of approach across the region to allow for sharing of ideas and resources. Nevertheless, there are a range of challenges to introducing such reforms as discussed

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OF THE S. PAC., <https://www.usp.ac.fj/index.php?id=20475#BACHELORLAWS> [<https://perma.cc/5F8U-SMPK>].

233. Caroline Penfold, *Developing Legal Communication Skills in the South Pacific Context*, 7 LEGAL EDUC. REV. 117, 124-25 (2014).

234. Anthony H. Angelo & Jack Goldring, *The Study of Law at the University of the South Pacific*, 24 VICTORIA U. OF WELLINGTON L. REV. 103, 104 (1994).

235. Penfold, *supra* note 141, at 15.

236. Penfold, *supra* note 141, at 15.

237. COMMITTEE REPORT, *supra* note 62, at 31-32.



in this paper. For Solomon Islands, like other South Pacific nations, the small size of the country and profession as well as the poverty of its government are key challenges. Ensuring sufficient independence of the legal profession without sacrificing contemporary ideas about regulation and consumer protection is also more difficult in Solomon Islands than in other places. Structural issues arising from geographical isolation and poor technological development abound. Thus, simple requirements like advertising in national newspapers for admission is difficult where there is not a national newspaper or it is not available everywhere.<sup>238</sup> These factors constitute significant differences from the regulatory context of Australia. The task for Solomon Islands is to foster a working local profession that will also assist local lawyers to learn appropriate professional ethical practices for their social and legal context. Innovative regional cooperation solutions might be the best approach but they remain difficult to implement where they threaten the strength or control of the local professional association or are simply too difficult to establish. Solomon Islands has taken a leading role in the region in pushing forward with legislation and has provided an excellent model of professional review and consultation, also taking account of international standards of excellence. As this Article traces, the difficulty is in implementing a workable regime; the danger, as one lawyer said to the Parliamentary Committee review, is that “this [could be] . . . another law which looks good on paper but doesn’t work in practice.”<sup>239</sup>

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238. COMMITTEE REPORT, *supra* note 62, at 24.

239. COMMITTEE REPORT, *supra* note 62, at 24.