



National Parliament of Solomon Islands

Bills and Legislation Committee

# Committee Report

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Report on the Legal Profession Bill 2017  
(No. 3 of 2017)



NP-Paper No. 30 of 2017

Presented on 21<sup>st</sup> October, 2017

National Parliament Office

## COMMITTEE MEMBERS

The current members of the Bills and Legislation Committee (10<sup>th</sup> Parliament) are:

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Hon. Jeremiah Manele, MP

Hon. Dr Derek Sikua, MP

Hon. Rick Houenipwela, MP

Hon. Matthew C. Wale, MP

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## CHAIR'S FOREWORD



Hon. Connelly Sandakabatu, MP, Chairman

### REPORT OF THE BILLS AND LEGISLATION COMMITTEE

Mr. Speaker,

Pursuant to Standing Orders No. 71 (b) and (g) of the National Parliament of Solomon Islands, it is an honour and pleasure for me Sir, to present the Report of the Bills and Legislation Committee on the Inquiry into the **Legal Profession Bill 2017** for laying before Parliament.

A handwritten signature in blue ink, appearing to read 'Connelly', with a large, stylized flourish above it.

**Hon. Connelly Sandakabatu**

Chairman

Bills and Legislation Committee

21 October, 2017

## COMMITTEE FUNCTIONS

The Committee is established under *Standing Order*<sup>71</sup>; an Order made pursuant to the *Constitution*<sup>1</sup> and has the functions, together with the necessary powers to discharge such, to:

- (a) examine such matters as may be referred to it by Parliament or the Government;
- (b) review all draft legislation prepared for introduction into Parliament;
- (c) examine all subsidiary legislation made under any Act so as to ensure compliance with the Acts under which they are made;
- (d) monitor all motions adopted by Parliament which require legislative action;
- (e) review current or proposed legislative measures to the extent it deems necessary;
- (f) examine such other matters in relation to legislation that, in the opinion of the Committee require examination; and
- (g) make a written report to each Meeting of Parliament containing the observations and recommendations arising from the Committee's deliberations.

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<sup>1</sup> Section 62, *Constitution of Solomon Islands* 1978.

## EXECUTIVE SUMMARY

The Legal Profession Bill 2017 (the Bill) was noticed for first reading by the Honourable Speaker on the 20<sup>th</sup> of July 2017. The Bills and Legislation Committee (the Committee) conducted hearings into the Bill on the 13<sup>th</sup> & 14<sup>th</sup> of September 2017.

The Objects of the Bill are 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. It establishes two new legal entities to jointly regulate the profession, the Legal Profession Authority (LPA) and the Solomon Islands Law Society (SILS). A comprehensive analysis of the Bill can be read in chapter 2.

Generally the Committee supports a comprehensive legal framework that provides for a strong and vibrant legal profession. A legal profession, the members of which, are truly professional and are held to the highest ethical and professional rules. This is crucial to ensure the public trust and have confidence in the profession.

The Committee has outlined a number of issues in chapter 4 that they need further clarification and or amendments.

The Committee made the following recommendations;

1. That a sub-clause be added to clause 6 (4) to state; 'the person also publish the advertisement on at least one occasion on the Solomon Islands Broadcasting Corporation (SIBC).'
2. That the membership of the Legal Profession Authority board be reduced to a total of four (4) members instead of eight (8) as provided in the Bill. This is to prevent quorum issues that could lead to the Authority not being able to transact its business.
3. That Clause 12 (1) (c) be amended to reduce the total membership of the LPA to four. Further, that the composition ensure a balance between practitioners in the private and in public sectors.
4. That Division 2 be amended to merely state the mandatory requirement that Solomon Islands Law Society have a constitution and prescribe minimum rules/requirements in such a constitution. Matters such the composition of the SILS Board and term of office should be regulated in the constitution
5. That clause 14 (1) be amended and tightened so that the Chairperson of the Legal Profession Authority does not have influence on the way the appointed alternate votes on a particular issue.
6. That clause 37 (1) (a) be amended to state; 'the Attorney-General, or his/her alternate, be the Chairperson of the disciplinary committee.

7. That clause 40 be amended so that the Solomon Islands Law Society report annually to the Legal Profession Authority rather than to the Minister.
8. That Part 7 be amended to have the effect that:
  - a) Matters currently covered by Clauses 69 to 79 be regulated by the Legal Profession Authority, and
  - b) That Solomon Islands Law Society role to approve acceptable Continuing Legal Education activity is retained in the bill.
9. That:
  - (a) Clause 112 (2) (a) be amended to reduce the time for an application for assessment of costs from 12 to 4 months to prevent law firms being kept out of its earned money for an unreasonably long period.
  - (b) There should be some provision for the cost assessors to deliver their determinations within fixed period of the date of hearing.
10. That clause 119 be appropriately reworded to provide for clear explanations on the minimum acceptable standard of competence and diligence that the general public should expect from legal practitioners.
11. That appropriate capacity building work be conducted for qualified mediators as necessary to meet the requirements of this bill.
12. That the Government through the Ministry of Justice and Legal Affairs provide the necessary resources, manpower and funding to the Legal Profession Authority and the Solomon Islands Law Society to ensure they are able to robustly discharge their important functions.

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## 1.0 INTRODUCTION

This Report present the findings and recommendations by the Bills and Legislation Committee ('the Committee') after reviewing the **Legal Profession Bill 2017** ('the Bill') as required under the Standing Orders of the National Parliament of Solomon Islands ('the Standing Orders').

Relevant stakeholders<sup>2</sup> were invited before the Committee and make presentations or provide submissions on the contents, policy matters, and intentions of the Bill.

The hearings into the Bill were held from the 13 and 14 of September 2017 at the National Parliament Building. The List of witnesses that appeared before the Committee and minutes of these proceedings are contained in Appendix 1 and 2.

Written submissions were also received from witnesses that appeared before the Committee. A list of Written Submissions can be found in Appendix 3.

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<sup>2</sup> See Appendix 1



- Establishment of a new government Regulatory Authority for the legal profession that will be responsible for administering the legislation, issuing practising certificates and taking disciplinary action in serious cases of misconduct
- Formal establishment of the Bar Association as a legal entity which will have responsibility for the resolution of minor complaints and continuing legal education
- Clear requirements and standards for admission to the legal profession
- The introduction of categories for practicing certificates and the ability to impose conditions on practising certificates, including conditions in relation to legal education
- Statutory requirements for trust accounts, legal costs and billing to provide greater transparency in the management of client money and to reduce the risk of misunderstanding and disputes about legal costs
- New processes for complaints and disciplinary matters, with the introduction of a two tier system that distinguishes between minor complaints from clients, and more serious disciplinary matters. This will be supported by clear definitions for unsatisfactory professional conduct (less serious) and professional misconduct (more serious), and a wider range of sanctions and resolution options to deal with complaints.

In accordance with the Cabinet decision, the Ministry of Justice and Legal Affairs prepared a Discussion Paper in 2013 which was widely circulated to legal stakeholders. The Ministry held a series of community and stakeholder consultations and workshops in 2014 on the policy aspects of the proposed legislation with Government and private sector lawyers, civil society and community groups. The consultations indicated strong support for better regulation of the legal profession and support for the specific initiatives proposed by the Ministry. The Ministry then provided drafting instructions to the Attorney General's Chambers for the preparation of a Consultation Draft Legal Profession Bill.<sup>6</sup>

## 2.2 Draft Legal Profession Bill

### Consultation<sup>7</sup>

The Ministry received the first consultation draft Bill in 2014 and commenced an extensive consultation process. Copies of the draft Bill were sent to all legal practitioners, to the Solomon Islands Bar Association (SIBA), the judiciary, community groups and stakeholders. Workshops were held with lawyers, the judiciary and stakeholders.

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<sup>6</sup> MJLA, submission No. 3, p. 3

<sup>7</sup> Ibid

The same is true of the current system in Solomon Islands where the slowness; complexity and uncertainties of the complaints and disciplinary processes have hampered or prevented proper and necessary disciplinary action.

The self-regulation model has been successfully replaced or supplemented with an independent, government funded regulatory system working in conjunction with an incorporated professional body representing the interests of members in most jurisdictions.

Solomon Islands has the advantage of being able to look at the research and results of the reforms that have been undertaken in other countries in order to develop this new local model of regulation that must be efficient and effective within the available resources. These changes will deliver a simpler, more consistent, and clearly defined regulatory framework that puts the needs of consumers at the forefront of the system.

## **2.3 The Legal Professional Bill 2017**

This section is adopted from the information guide provided by the Ministry of Justice and legal Affairs. It provides an analysis of the various Parts of the Bill and explanations about the major areas of reform.

### **Part 1**

#### **Objects and principles of the legislation**

The objective of the legislation is the regulation of legal practitioners and legal practice, to protect the consumers of legal services and the public and to facilitate the efficient and fair administration of justice.

The Legislation has provisions that set out principles and safeguards to guide practitioners and regulatory bodies in the exercise of their duties and obligations. The general principles enshrined in the Bill are as follows:<sup>10</sup>

- Uphold the rule of law
- Facilitate the administration of justice
- Act with independence and integrity
- Act in accordance with all fiduciary duties and duties of care owed by lawyers to their clients

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<sup>10</sup> MJLA, Submission No. 3, p. 5

- is currently of good reputation and character
- is bankrupt
- has carried out reserved legal work without admission or holding a practising certificate
- is subject to an order made against the person in Solomon Islands or any other country under any regulatory legislation, or the person's name has been removed from the roll of practitioners
- has practiced law in contravention of the law, has lost the right to practice law in Solomon Islands or another country, or has pending disciplinary proceedings or unresolved complaints
- is unable to satisfactorily carry out the inherent requirements of legal practice
- has been convicted of an offence, the nature of the offence, when it was committed and the person's age at the time
- has engaged in academic dishonesty
- has contravened a law relating to trust money or trust accounts
- has had a supervisor, manager or receiver appointed to any legal practice engaged in by the person.

Criteria which would make a person unsuitable to practice are a criminal conviction for an offence which carries a possible penalty of 5 years imprisonment. This means that any person convicted of a serious offence is excluded from admission and there is no discretion vested in either the Legal Profession Authority or the High Court to admit such a person.

In order to initially determine whether a person is a fit and proper person, the regulatory authority requires the applicant to advertise their application for admission in a public notice in a national newspaper inviting submissions to be made to the Registrar of the High Court or the Legal Profession Authority.

## **Part 2**

### **Restrictions on Legal Practice**

The Bill continues the current prohibition on non-legal practitioners engaging in legal practice or providing legal services. The Bill also provides that a person who is not a legal practitioner is not entitled to any fees for legal services and that any money paid may be recovered as a civil debt.

The Bill further contains a prohibition for people who are not legal practitioners to advertise or represent themselves as being able to provide legal services.

more inclusive and better reflected the greater range of work and services that were provided by lawyers in the modern world.

The Bill establishes SILS as a legal entity. The proposed functions of SILS include-

- representation on the LPA
- making representations to the High Court regarding applications for admission
- mediation and/or determination of minor complaints against legal practitioners
- facilitating and approving continuing legal education
- advocacy and lobbying on behalf of members
- providing welfare, social and recreational services to members.

In order to perform those functions, SILS has powers to:

- investigate complaints and require legal practitioners to respond to complaints
- compel the production of information or documents from practitioners and financial institutions
- impose appropriate sanctions on legal practitioners.

#### **Other matters in relation to the establishment of SILS**

In addition to the functions and powers identified above, the legislation also deals with a range of other matters in relation to SILS such as membership, representative functions, general powers and governance.

Membership of SILS will be compulsory for all legal practitioners. SILS will be administered by a Board consisting of:

- President
- Vice President
- Treasurer
- Secretary
- 3 other members

SILS will be governed according to a Constitution adopted by its members.

The Interpretation and General Provisions Act provides some basic powers and duties for a body corporate that is established by an Act.<sup>11</sup> They are-

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<sup>11</sup> MJLA, Submission No. 3, p. 8

## Part 6

### Practising certificates

The legislation prescribes standard conditions for practising certificates, including a requirement-

- to comply with the legislation
- to notify the LPA if the practitioner is charged with a relevant offence
- to maintain a business premises and/or an address for service of documents in Solomon Islands
- to comply with Continuing Legal Education (CLE) obligations

The LPA may impose other conditions on a practising certificate, for example, requirements for supervision, specified continuing legal education or restrictions on the areas of practice.

The legislation prescribes categories of practising certificates and sets out the minimum requirements applying to each category-

- Restricted - for legal practitioners with less than 2 years supervised experience, or legal practitioners employed by the holder of an unrestricted certificate
- Government- for practitioners working in government Ministries appointed by the Judicial and Legal Services Commission, excluding Magistrates.
- Corporate- for practitioners working solely as an employee of a corporate entity.
- Visiting practising certificate –for practitioners from overseas acting in one or more case for a temporary period.
- Unrestricted - for legal practitioners in partnership or sole practice or practice managers who have met minimum legislative requirements, including training in relation to the operation of a trust account and practice management.

Practitioners may move from one category into another if their work circumstances change. Holders of Restricted, Corporate and Government practicing certificates may be eligible to move to the unrestricted category after a specified period of experience working for a person with an unrestricted certificate and if the LPA is satisfied that the lawyer has achieved a sufficient level of competency. Practitioners in government offices can obtain an unrestricted practising certificate after five years in the position. Persons who have attained unrestricted practising certificates may remain in that category if they change to corporate or government work.

Transitional requirements allow all practitioners currently in sole practice or managing practices to be granted.

The legislation also provides that the LPA must cancel, suspend or impose conditions on a certificate at the direction of the Disciplinary Tribunal or on the recommendation of SILS following a finding of unsatisfactory professional conduct or professional misconduct.

The LPA will have the power to suspend or cancel a practising certificate if a legal practitioner -

- fails to comply with the conditions of the certificate;
- fails to comply with the legislation; or
- is charged with a serious criminal offence.

The power to suspend or cancel may also be exercised where a complaint about a disciplinary matter is made to the LPA and is being investigated or if circumstances arise which would have prevented the grant or renewal of a certificate.

### **Register of Legal Practitioners**

The LPA is required to keep a register of all holders of practicing certificates. The register must specify the type of practicing certificate and any conditions that have been imposed. The register must also provide the name of the practice and the contact details for the practitioner. The register must be available for inspection by the public during office hours. The legislation also has provisions to allow an electronic register published on the LPA website.

## **Part 7**

### **Continuing legal education**

The legislation provides for compulsory continuing legal education (CLE). The law is constantly evolving and it is important for legal professionals to keep their skills and knowledge up to date. SILS will approve the courses that are acceptable to fulfil this obligation. Practitioners are required to do a minimum of 12 CLE points each year which equates to approximately 12 hours of education. The points can be awarded for attending or presenting papers, workshops, private post graduate study or published articles. Practitioners must certify each calendar year that they have undertaken the required study and must provide information to the LPA about the points that they have accrued during each year.

## **Part 8**

### **Trust money - Definition**

The legislation clearly defines trust money and includes controlled money. Trust money is any money entrusted to a law practice or practitioner that is related to the provision of legal services.

notify the LPA of the appointment and for carrying out of the audit and the delivery of the audit report to the LPA.

The LPA will be authorised to appoint a qualified person to carry out a trust account investigation at any time. This could include where a legal practice fails to carry out an annual audit, where concerns are raised about management of a legal practice, or where the LPA decides to carry out a random audit. The LPA will be empowered to recover the costs of the audit from the legal practitioner.

### **Unclaimed trust money**

The Bill establishes the Legal Profession Fidelity Fund as a Special Fund to hold unclaimed trust money. Unclaimed trust money is money held by the firm for at least two years that belongs to a person who is unable to be contacted or refuses to accept the money. This money must be paid to the LPA and placed in the Fidelity Fund. The rightful owner may claim the money from the Fund within 7 years. After 7 years, unclaimed money is forfeited to consolidated revenue.

### **Rules**

The legislation empowers the LPA to make further rules in relation to trust money and trust accounts to ensure that the interests of clients are protected, that may include requirements for –

- details about the receipt and handling of trust money;
- rules about bank accounts to be used for trust accounts;
- trust accounting procedures and records;
- reporting;
- signatories for trust accounts;
- identification of auditors (individuals or classes of people) who are authorised to carry out audits under the Act; and
- auditing and inspection, including production of records to the LPA and appointed auditors.

## **Part 9**

### **Costs - disclosure and agreements**

The legislation contains requirements in relation to professional fees including-

- legal practitioners must give written information to clients about legal fees and how they will be charged before any work is undertaken;

The second level will be disciplinary proceedings taken against a legal practitioner by the LPA before a Disciplinary Tribunal for professional misconduct, or serious complaints of unsatisfactory professional conduct.

The Tribunal will have the power to impose a range of sanctions following a finding of professional misconduct or unsatisfactory professional conduct including-

- an order for removal from the roll of legal practitioners
- suspension or cancellation of the practising certificate held by the legal practitioner
- an order for payment of a penalty
- an order for intervention in the legal practice
- an order that imposes conditions on the practising certificate or changes the category of practising certificate that may be held by the practitioner
- an order about how the legal practitioner must conduct the practice
- orders in relation to employment including the termination of employment, orders that the legal practitioner refrain from doing something, orders for training or supervision and an order that the legal practitioner cannot apply for a practising certificate for a specified period of time
- monetary penalty
- the full range of penalties that can be imposed by SILS.

### **Definitions of conduct**

The legislation defines professional misconduct and unsatisfactory professional conduct as follows: Professional misconduct is, conduct in relation to legal practice that amounts to consistent or substantial failure to meet a reasonable standard of competence or diligence, and includes;

- intentional or reckless contravention of the legislation (including rules of professional conduct)
- intentional or reckless contravention of the conditions of the practising certificate held by the legal practitioner,
- contravening trust account regulation requirements
- failing to disclose conflict of interest
- failing to perform work
- charging of grossly excessive costs, and
- employing another legal practitioner who is not eligible to practice.



### **Disciplinary proceedings**

The Bill establishes the Legal Profession Disciplinary Tribunal (the Tribunal). The Tribunal consists of a judge of the High Court. The LPA commences the proceedings against the practitioner. Hearings are generally open to the public. The rules of evidence apply. The Tribunal determines the matter and may dismiss the application or impose a penalty. Penalties include rectification orders, compensation, reprimand, supervisions, conditions of practice, intervention orders or cancellation of practicing certificate and removal from the roll.

## **Part 11**

### **Powers of Investigation**

In order to effectively deal with complaints and discipline, the complaint and disciplinary bodies require clear and comprehensive powers to conduct investigations and to gather evidence. This Bill provides the necessary investigatory duties and powers for the LPA and SILS.

The LPA may appoint investigators. These investigators have the power to direct legal practitioners to:

- produce documents and written information
- assist with the investigation
- co-operate with the investigation
- co-operate with the execution of a search warrant.

Failure to comply with a direction by an investigator is a criminal offence carrying a fine of \$10,000 and imprisonment for 12 months. It would also amount to professional misconduct.

Investigators may obtain a search warrant for the premises occupied by a legal practitioner and may:

- search and examine anything on the premises
- operate equipment and facilities
- take possession of relevant material and remove it
- direct any person on the premises to provide identification, to provide relevant material and to provide assistance.

Any person who obstructs or hinders an investigation commits a criminal offence. The maximum penalty is a fine of \$50,000 or imprisonment for 5 years.

## **Part 14**

### **Miscellaneous provisions**

The Bill provides protection from civil and criminal liability for persons exercising functions under the Act in good faith. This includes all persons with statutory responsibilities under the Act and extends to complainants.

The Bill also contains confidentiality provisions to ensure that persons obtaining information in the course of carrying out duties under the Act, do not disclose the information to someone else.

The Bill specifies that a law firm contravenes any provisions of the Act, each principal of the firm is liable unless they had no knowledge of the offence and were not in a position to influence the conduct. Further, the principals must have used due diligence to prevent the contravention.

## **Part 15**

### **Repeals, transitional matters and consequential amendments**

The Legal Practitioners Act (Cap.16) is to be repealed by this Bill. The Legal Practitioners (Admission) Rules are also to be repealed.

The legislation provides that all current, unresolved complaints and disciplinary proceedings under the repealed legislation should be continued and dealt with under the new provisions unless a disciplinary committee has already been appointed. Any orders imposed under disciplinary proceedings that have been finalised under the repealed Act will continue in force until they lapse or are replaced.

Any pending applications for admission to the profession are taken to be applications under the new provisions.

The current, governance, management and executive of SIBA are taken to hold the corresponding positions in SILS until the first Board SILS is constituted. Members of SIBA are deemed to be members of SILS until a specified date after commencement of this Act.

The Legal Practitioners (Professional Conduct) Rules shall remain in force until repealed or replaced by new rules made by the LPA, unless there is an inconsistency with provisions of the new Act.

contents of the Bill have benefited from the lessons learnt from regulatory systems employed in other common law and regional jurisdictions. The legislation takes into account the unique circumstances of the Solomon Islands and the challenges and opportunities that are presented to Solomon Island legal practitioners and regulators.

## Legal Profession Authority (LPA)

Witnesses raised the concern that the membership of the Legal Profession Authority may be too many. This can cause quorum issues, when some members are busy and are not able to find the time to attend sittings.

The Committee also shares this concern and suggests that the membership of the LPA board be reduced to a total of four members. A reduction in the composition of the LPA's membership also reduces the cost to the government.<sup>16</sup>

### Recommendation 2

The Committee recommends that the membership of the Legal Profession Authority board be reduced to a total of four members instead of eight as provided in the Bill. This is to prevent quorum issues that could lead to the Authority not being able to transact its business.

A witness<sup>17</sup> when commenting on the membership of the Authority expressed concern that there is risk that certain factions within the legal profession with various agenda might use clause 12 to further such agenda. The witness gave the example indicating that if the proposed SILS board is dominated by lawyers in government practice who might wish to advance the cause of government employed lawyers, which might not necessarily coincide with the interest of the profession or the public generally, they could nominate 3 lawyers in government practice under this clause to sit on the Authority. The concerned witness further commented that if the President of SILS is a lawyer in government practice, it is conceivable that the Authority could end up with 5 or 6 (if the member holding an unrestricted practising certificate is also in government employ) lawyers in government service on the Authority, out of a total membership of 8. The opposite can also be the case, where the SILS board is dominated by private practitioners.

The Committee agrees with these concerns. The composition of the LPA should be equal between lawyers in the public sector and those in the private practice to avoid such risk.

<sup>16</sup> Authority members will be entitled to prescribed remuneration – cl.17

<sup>17</sup> Rodney Kingmele, Barrister & Solicitor, Sol-Law

## Ministers' discretion

Under **clause 16 (1)**, the Minister may terminate the appointment of a member of the LPA on the ground of 'misbehaviour or misconduct'. Witnesses appearing before the Committee stressed that neither of these terms are defined. Further, the bill does not say how the Minister can be satisfied that the member has either misbehaved himself or misconducted himself. Witnesses questioned how does the Minister satisfy himself that the particular member is guilty of misbehaviour or misconduct? The same applies to the ground of 'physical or mental inability to satisfactorily perform the duties of the office'. Must the Minister have the report of a medical practitioner before he is satisfied?

## The Solomon Islands Law Society (SILS)

There is strong opposition to **clause 32 (2)** by some of the witnesses.<sup>19</sup> They suggested that this should be deleted. Witnesses stressed that the composition of the SILS board should be left to the SILS constitution. SILS should be able to change the composition of its board without the need for legislative amendment, which would be the case if this clause is left in.

## Disciplinary Committee

Committee members expressed concern on **clause 37**, that it does not clearly identify who the Chairperson of the disciplinary committee is. Committee Members queried on who will call the panel, who gavels the panel into order, organises the meeting and looks at their agenda. Suggestion is for the Attorney General, or his/her alternate, to be clearly identified as the Chairperson of the disciplinary committee.

### Recommendation 6

The Committee recommends that **clause 37 (1) (a)** be amended to state: the Attorney-General, or his/her alternate, be the Chairperson of the disciplinary committee.

## SILS reporting to the Minister

Other than the fact that SILS will be established under the Act, it should not be obliged to report to the Minister on the performance of its functions and the exercise of its powers during the year as stipulated under **clause 40**. SILS should be independent in the way it performs its functions and exercises its powers. If anybody is required to report to the Minister, the LPA should be that body.

<sup>19</sup> Rodney Kingmele, Submission No. 5, p. 3

foreign lawyers, that they have complied with the requirements of their home jurisdictions, if it is the same or higher than the CLE points required in Solomon Islands.

### **Cancelling practicing certificate**

Witnesses also suggested **clause 64 (3)** to be amended so that it provides for the Authority to cancel a practicing certificate if the holder's name is removed from the roll. A lawyer is defined as 'a person who is admitted to the legal profession'. Clause 47 (2) provides that a person's admission take effect when the person signs the roll. Given that provision, a person ceases to be a lawyer upon his name being removed from the roll.<sup>23</sup>

### **Continuing Legal Education (CLE)**

Witnesses questioned the intention under **clause 70** with regards to foreign lawyers. Is it intended that a foreign lawyer who has a visiting practicing certificate must also accrue 12 CLE points in the Solomon Islands to comply with this clause? Other jurisdictions do not necessarily require their legal practitioners to accrue 12 CLE points. In some such jurisdictions, legal practitioners are only required to accrue 10 CLE points.<sup>24</sup> If it is intended that such foreign lawyers can 'cross-credit' their CLE points to comply with this clause, will the foreign lawyer be required to attend say one CLE activity in the Solomon Islands to attain the outstanding CLE point required to comply with clause 70?

Further, witnesses opined that this clause should not specify the number of CLE points which a legal practitioner is required to acquire during a CLE year in order to maintain his practising certificate. Rather, the required number of CLE points should be set out in regulations rather than in the Act itself. It is easier for the regulations to be amended rather than for the legislation to be amended. Conversely, the CLE requirements could be left to the LPA to regulate, so that changes can be made whenever deemed appropriate.

The Committee is of the view that Part 7 should merely state the mandatory requirement for Continuing Legal Education (CLE), and then empower the LPA to regulate the quality of activities and number of points any such activities can attract. The role of SILS in approving the activities that qualify as professional development activity should be retained.

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<sup>23</sup> That view is supported for example by the provision in cl.155 (2) (i) which lists removal of a practitioner's name from the roll as an order that might be made by the Disciplinary Tribunal.

<sup>24</sup> Rodney Kingmele, Submission No. 5, p. 4

months<sup>26</sup>. Further, there should be some provision for the cost assessors to deliver their determinations, within say, 3 months of the date of hearing. There is a similar provision in the High Court (Civil Procedure) Rules 2007 ('the Rules')<sup>27</sup> which can be adapted in this regard.

### Recommendation 9

The Committee recommends that:

- (a) Clause 112 (2) (a) be amended to reduce the time for an application for assessment of costs from 12 to 4 months to prevent law firms being kept out its earned money for an unreasonably long period.
- (b) There should be some provision for the cost assessors to deliver their determinations within fixed period of the date of hearing.

### Unsatisfactory professional conduct

During discussion of clause 119, a witness<sup>28</sup> commented that the definition of 'unsatisfactory professional conduct' is tied to the 'standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner. He queried on the standard that is expected by a more educated commercially minded sophisticated Solomon Islander who might have the means to engage one of the bigger law firms and knows what he expects of his lawyer to that of a rural dweller whose only contact with the legal profession might be through the Public Solicitor's office. A person who has minimal contact with the legal profession and the legal system in general might think that certain conduct by a lawyer is acceptable whereas that same conduct when viewed by a more educated Solomon Islander might be seen as conduct falling short of the required standard. This is an important qualitative requirement, and therefore this clause should be appropriately reworded.

The Committee supports the concern raised above. The current wording is simply not practicable and may be meaningless in the context of Solomon Islands.

### Recommendation 10

The Committee recommends that clause 119 be appropriately reworded to provide for clear explanations on the minimum acceptable standard of competence and diligence that the general

<sup>26</sup> Compare the time provided by cl.130 (c) for the bringing of a complaint about costs. The time should be made uniform.

<sup>27</sup> See rr.12.31 and 12.32 of the Rules

<sup>28</sup> Rodney Kingmele, Submission No.5, pp. 6-7

When appearing before the Committee a witness commented;<sup>31</sup>

*“Based on the past history of SIBA I think it is fair to say that not many lawyers are willing to spend their time on Association matters. Many lawyers fail to attend AGMs and appear to have no interest in the future of the profession at all. If this Bill becomes law membership of the Law Society will be compulsory (cl. 31) and the new regime set out in the Bill will come as a great shock to some members of the legal profession.”*

There are several sections in the Bill which require the active, voluntarily participation of members of the profession. They are;

- **Clause 12**, membership of the Legal Profession Authority (LPA) - 2 year terms. President of the Solomon Islands Law Society (SILS) and 6 lawyers with different categories of practicing certificates to be members.
- **Clause 17**, provides for remuneration of Authority members but does not say where the money will come from.
- **Clause 26**, committees appointed by the LPA.
- **Clause 32**, the Board of SILS membership: President, Vice President, Treasurer, Secretary and 3 other members. That is the same as the SIBA board.
- **Clause 37**, membership of the disciplinary committee, Attorney General or alternate plus 2 lawyers.
- **Clause 68**, where all members are required to get 12 CLE points a year by the means set out in the Bill.
- **Clause 111**, costs assessors.

The President of SILS will also be on the LPA and a member of the existing Judicial and Legal Services Commission. Also the Chief Justice or other judges will be required to make themselves available to fulfil their obligations under the Bill. Witnesses questioned will a practicing 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?

In his submission a witness commented;<sup>32</sup>

*“This Bill asks a lot of the President of the Law Society, LPA members, SILS board members and committee members. Will they be willing to put their names forward for appointment or election when*

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<sup>31</sup> Andrew Radclyffe, Submission No.1, p. 2.

<sup>32</sup> Andrew Radclyffe, submission No.1, p. 3.



## 4.0 APPENDICES

### Appendix 1: Witnesses

Date	Name	Position & Organisation
Wed 13 Sept 2017 9:50am – 10:15am	Mrs Ethel Sigimanu	Permanent Secretary- MJLA
	Ms Pamela Wilde	Legal Policy Advisor – MJLA
	Ms Joanna Kenilorea-Hanu	Senior Crown Counsel (drafting) – AG Chambers
Thur 14 Sept 2017 9:48am - 12:15pm	Mrs Ethel Sigimanu	PS, MJLA
	Ms Pamela Wilde	Legal Policy Advisor, MJLA
	Ms Joanna Kenilorea-Hanu	Senior Crown Counsel (drafting), AG Chambers
1:34pm – 2:04pm	Sir Albert R Palmer	Chief Justice (CJ), National Judiciary
	Mr Stevenson Belakama	Deputy Registrar, National Judiciary
	Mr Moody Alexander	Associate To Chief Justice, National Judiciary
	Mrs Ethel Sigimanu	PS, MJLA
	Ms Pamela Wilde	Legal Policy Advisor, MJLA
	Ms Joanna Kenilorea-Hanu	Senior Crown Counsel (drafting), AG Chambers
2:30pm – 3:12pm	Mr Silverio Lepe	President, Solomon Island Bar Association (SIBA)
	Mr John Finau	Secretary, SIBA
	Mr Douglas Hou	Public Solicitor, Public Solicitors Office
	Mrs Ethel Sigimanu	PS, MJLA
	Ms Pamela Wilde	Legal Policy Advisor, MJLA
	Ms Joanna Kenilorea-Hanu	Senior Crown Counsel (drafting), AG Chambers
3:30pm – 4:31pm	Mr Andrew Radclyffe	Barrister & Solicitor, (own firm)
	Mr Rodney Kingmele	Barrister & Solicitor, Sol-Law
	Mrs Ethel Sigimanu	PS, MJLA
	Ms Pamela Wilde	Legal Policy Advisor, MJLA
	Ms Joanna Kenilorea-Hanu	Senior Crown Counsel (drafting), AG Chambers

## 2. Prayers

Hon. Peter Tom say the opening prayer.

## 3. Welcome and Opening Remarks

The Chairman made opening remarks. He acknowledged and welcomed the PS and Legal Policy Advisor of the sponsoring Ministry and the rep from the A G Chambers to appear again before the Committee. He reminded the witnesses on parliament privileges and introduces members of the Committee. The Committee questioned the PS on her previous presentation and the other witnesses on the contents of the Bill. The witnesses answered, made clarification and commented on issues raised.

## 4. Committee hearing into the Legal Profession Bill 2017

The Hearing proper commenced and the following witnesses were admitted:

### Hearing 2 Witnesses

Mrs Ethel Sigimanu	PS, MJLA
Ms Pamela Wilde	Legal Policy Advisor, MJLA
Ms Joanna Kenilorea-Hanu	Senior Crown Counsel (drafting), AG Chambers

The Committee then go through the Bill with the witnesses page by page. The witnesses also answered and made clarification on issues raised.

Evidence concluded and the Chair thanked the witnesses for their attendance and contribution on the Bill.

*Evidence concluded. 12:15pm*

*Hearing suspended for lunch break.*

The Hearing resumed at 1:34pm and the following witnesses were admitted.

### Hearing 3 Witnesses

Sir Albert R Palmer	Chief Justice (CJ), National Judiciary
Mr Stevenson Belakama	Deputy Registrar, National Judiciary
Mr Moody Alexander	Associate To Chief Justice, National Judiciary
Mrs Ethel Sigimanu	PS, MJLA
Ms Pamela Wilde	Legal Policy Advisor, MJLA
Ms Joanna Kenilorea-Hanu	Senior Crown Counsel (drafting), AG Chambers

The Chairman made opening remarks and invites the witnesses to introduce themselves and make their presentations.

Members of the Committee then question the witnesses on their presentations.

Evidence concluded and the Chair thanked the witnesses for their attendance and contribution on the Bill.

*Evidence concluded. 2:04pm*

*Hearing suspended.*

The Hearing resumed at 2:30pm and the following witnesses were admitted.

### Hearing 4 Witnesses

Mr Silverio Lepe	President, Solomon Island Bar Association (SIBA)
Mr John Finau	Secretary, SIBA
Mr Douglas Hou	Public Solicitor, Public Solicitors Office
Mrs Ethel Sigimanu	PS, MJLA
Ms Pamela Wilde	Legal Policy Advisor, MJLA
Ms Joanna Kenilorea-Hanu	Senior Crown Counsel (drafting), AG Chambers

The Chairman made opening remarks and invite the witnesses to introduce themselves and make their presentations.

Members of the Committee then question and seek clarification from the witnesses on their presentations and on the clauses of the Bill.

Evidence concluded and the Chair thanked the witnesses for their attendance and presentations on the Bill.

*Evidence concluded. 3:12pm*

*Hearing suspended.*

### Appendix 3: Submissions

No.	Title	Author	Date Received
1	Submission to BLC on LP Bill 2017	Andrew Radclyffe	26/07/17
2	Bills Checklist	Mins of Justice & Legal Affairs (MJLA)	3/08/17
3	Information Guide	MJLA	3/08/17
4	Solomon Islands Bar Association - Letter	President	9/08/17
5	Submission on the LP Bill 2017	Rodney Kingmele	9/08/17
6	Legal Profession Authority – Set up costs – Six months of cost	MJLA	14/09/176