



## SAMOA

# LAWYERS AND LEGAL PRACTICE ACT 2014

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**AN ACT to regulate the legal profession and legal practice and for related purposes.**

*[Assent and commencement date: 28 October 2014]*

**BE IT ENACTED** by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART 1  
PRELIMINARY**

**1. Short title and commencement-**(1) This Act may be cited as the Lawyers and Legal Practice Act 2014.

(2) This Act commences on the date of assent by the Head of State.

**2. Interpretation-**(1) In this Act, unless the context otherwise requires:

“barrister” means a lawyer who has opted to practise law as a barrister sole pursuant to section 34;

“barrister and solicitor” means a lawyer who is admitted under Part 4 as a barrister and solicitor of the Supreme Court;

“barrister sole practising certificate” means a practising certificate of a barrister sole issued under section 35(1)(c);

“conflict of interest” means an interest of a person that has the potential to undermine the impartiality of that person in a matter;

“Council” means the Council of the Law Society elected under section 10(1);

“councillor” means a member of the Council;

“court” in relation to the work of a lawyer, or the appearance of a lawyer as counsel, includes any tribunal established by law;

“Court of Appeal” means the Court of Appeal of Samoa;

“Complaints Committee” or “Committee” means the Complaints and Investigation Committee established by section 47;

“disciplinary tribunal” or “tribunal” means a lawyers’ disciplinary tribunal established by section 52;

“government agency” includes all public enterprises under the Public Bodies (Performance and Accountability) Act 2001;

- “law firm” means a firm of solicitors or of barristers and solicitors (whether comprising a sole practitioner or more than 1 lawyer), in which at least 1 lawyer is entitled to practise law on his or her own account under this Act, and holds a current practising certificate;
- “Law Society” or “Society” means the Samoa Law Society continued by section 4;
- “lawyer” means a person who has been duly admitted as a barrister and solicitor, whether that person practises as a barrister sole, or as a solicitor under this Act;
- “member” in relation to the Law Society, means a lawyer who currently holds a practising certificate under this Act;
- “Minister” means the Minister who is directed under Article 35 of the Constitution to be responsible for this Act;
- “newspaper” means a newspaper having wide circulation throughout Samoa;
- “non-resident lawyer” means a lawyer who is enrolled on the temporary roll and holds a current practising certificate as a non-resident lawyer;
- “permanent roll” means the permanent roll established under section 15(1)(a);
- “practising certificate” means a practising certificate issued under section 35;
- “President” means the President of the Law Society;
- “professional misconduct” means professional misconduct of a lawyer specified under section 42, and includes professional misconduct specified under any other provision of this Act;
- “Registrar” means the Registrar of the Supreme Court;
- “Regulations” means Regulations made under this Act;
- “repealed Act” means the Law Practitioners Act 1976;
- “resident member” means a lawyer other than a non-resident lawyer;
- “roll” means the permanent roll of barristers and solicitors or the temporary roll of barristers and solicitors kept under section 15;
- “Rules” means Rules made under section 7;
- “Secretary” means the Secretary of the Law Society;
- “solicitor” means a lawyer who practises law as a solicitor under this Act;
- “Supreme Court” means the Supreme Court of Samoa;

“temporary roll” means the temporary roll established under section 15(1)(b);

“territory” includes any state, province, or other area within a country;

“trust account”, means a trust account of a solicitor at any bank in Samoa either:

- (a) in the name of that solicitor; or
- (b) in the name of a firm of solicitors in which the solicitor is a partner or is held out to be a partner; or
- (c) in the name of a solicitor or firm of solicitors by whom the solicitor is employed or engaged.

“unsatisfactory professional conduct” means unsatisfactory professional conduct of a lawyer specified under section 41, and includes unsatisfactory professional conduct specified under any other provision of this Act.

(2) Without limiting the expression “practise as a solicitor or lawyer” in this Act, a person is taken to practise as a solicitor or lawyer for the purposes of this Act if the person gives or provides legal advice on Samoan law (oral or written) for a fee or other valuable consideration to any person, whether in Samoa or elsewhere or draws or prepares for or on behalf of any other person, or holds himself or herself out as being ready to draw or prepare for or on behalf of any other person, any:

- (a) transfer of land, conveyance or other registrable instrument affecting land; or
- (b) will; or
- (c) document forming part of legal proceedings in a court which names that person as the lawyer on the court record; or
- (d) any other document of a type prescribed by Regulations or any other law as requiring a lawyer to draw or prepare.

(3) As an exception to subsection (2), the preparation or perusal or delivery of documents for or in connection with an international bank licensed under the International Banking Act 2005, or the giving of advice on international banking matters or services by or for a trustee company registered under the Trustee Companies Act 1988, is not regarded as practise as a solicitor or lawyer for the purposes of this Act.

**3. Purpose of the Act and fundamental obligations of lawyers-**(1) The purposes of this Act are:

- (a) to ensure that the legal profession of Samoa is administered and regulated in accordance with accepted professional and ethical standards; and
- (b) to prescribe requirements for the admission of lawyers and restrict the right to undertake legal practice and provide legal services to duly qualified and experienced persons who are of good character; and
- (c) to ensure that monies entrusted to lawyers are held in accordance with legal requirements and are applied only for the purpose which the client instructs; and
- (d) to ensure that the fees and costs charged by lawyers are fair and reasonable; and
- (e) to hold lawyers to account for any act of unsatisfactory professional conduct or professional misconduct and for any breach of the ethical and fiduciary duties applying to lawyers.

(2) All lawyers must comply with the following fundamental obligations in relation to their practice and the services they provide:

- (a) to uphold the rule of law and to facilitate the administration of justice in Samoa; and
- (b) to be independent in providing legal services to their clients; and
- (c) to act in accordance with all fiduciary duties and duties of care owed by them to their clients; and
- (d) to protect, subject to the overriding duties as officers of the court and other duties in or made pursuant to this Act, the interests of their clients.

**PART 2  
SAMOA LAW SOCIETY**

**4. Continuation of the Law Society** - (1) The Samoa Law Society established under the repealed Act is continued, and must be managed and administered, and exercise its duties and powers, under this Act.

(2) All lawyers who practise law, whether as a barrister sole or a solicitor, must be members of the Law Society, and are bound by its rules and subject to its procedures.

- (3) The Law Society:
- (a) is a body corporate with perpetual succession; and
  - (b) must have a common seal; and
  - (c) may enter into contracts; and
  - (d) may commence or be a party to legal proceedings under its name; and
  - (e) may acquire, hold and dispose of property both real and personal; and
  - (f) may carry out any other act that a legal entity may lawfully do.

**5. Functions of the Law Society** - The functions of the Law Society are:

- (a) to promote and encourage proper conduct among lawyers, including the proper management and expenditure of client's monies held on trust; and
- (b) to suppress illegal, unethical, dishonourable, unprofessional, and improper conduct by lawyers; and
- (c) to preserve and maintain the integrity and status of the legal profession; and
- (d) to review all applications for admission to determine that the requirements of this Act have been met by the applicant; and
- (e) to provide, promote, and encourage opportunities for the acquisition, development, and dissemination of legal knowledge; and
- (f) to promote and encourage the maintenance of the rule of law, and the development of the laws of Samoa; and
- (g) to promote respect for the Samoan customs and traditions to its members where relevant; and
- (h) to consider and suggest amendments to the law; and
- (i) to represent the legal profession and advocate for its interests; and
- (j) to protect the interests of the legal profession; and
- (k) to carry out any other functions under this Act and any other law.

**6. Duties and powers of the Law Society**-(1) The Law Society has the powers under this Act and any other law, and all powers

that are necessary or reasonably expedient to enable it to carry out its functions.

(2) Without limiting subsection (1), the Law Society may do all or any of the following:

- (a) issue practising certificates;
- (b) inquire into the character and qualifications of each applicant for admission, and ensure that all relevant matters are brought to the attention of the Supreme Court when it hears the application for admission;
- (c) investigate complaints made against lawyers, and any other ethical or professional misconduct by any lawyer or law firm;
- (d) undertake prosecutions against lawyers or other persons for a breach of this Act or any other law relating to the practice of law;
- (e) appoint any lawyer to appear in any court on behalf of the Society in respect of any matter referred to in paragraphs (a) and (b), or in any other matter in which the Society may be concerned or interested;
- (f) in accordance with this Act, and with the Rules, impose and collect fees or other charges from its members and from applicants for admission as a lawyer;
- (g) require that lawyers undertake or attend courses of continuing legal education, and seminars or courses relating to developments in the law;
- (h) issue certificates attesting to the character and status of members, upon payment of a fee fixed by the Council;
- (i) exercise any other powers that are conferred on it by this Act or any other Act.

**7. Rules for professional conduct-**(1) The Law Society may make rules for professional conduct or standards for the purposes of regulating the Society or the legal profession, and in particular may make the following professional rules:

- (a) rules relating to duties of lawyers to clients and the courts;
- (b) rules relating to solicitors' scale of costs and other legal fees or costs, subject to regulations to deal with overcharging on mortgages and other securities documents;



- (c) rules relating to meetings of the Society or Council;
  - (d) rules relating to trust accounts;
  - (e) rules relating to duties when preparing mortgages, securities or loan contracts, including duties to ensure that an unrepresented party to mortgages, securities or other loan contracts understands the obligations and implications in them;
  - (f) rules dealing with further classifications of practising certificates, the rights of practice, and restrictions on rights to practise law, applying to the classifications of practising certificate;
  - (g) rules relating to disciplinary procedures;
  - (h) other rules required to be made under this Act.
- (2) Rules must not be inconsistent with this Act or regulations.
- (3) Rules do not come into effect until endorsed by at least two-thirds of resident members of the Society at an annual or special meeting or by use of the circular procedure referred to in section 9.
- (4) Rules bind all members of the Law Society, and all other persons to whom such rules may be applied under this Act.
- (5) The Secretary must provide a copy of the Rules to any person to whom the Rules apply, and may charge a fee approved by the Council.

**8. Meetings of the Law Society-**(1) The following rules apply at an annual general meeting of the Law Society:

- (a) an annual general meeting must be held -
  - (i) in every calendar year to elect the officers of the Society and to deal with any other business or matter;
  - (ii) within 15 months of the previous annual general meeting;
  - (iii) at a time and place to be appointed by the Council;
- (b) the President or the Vice-President (if the President is not present) or a member of Council elected by the members present (if both the President and the Vice-President are absent) is to preside;
- (c) forty per cent of members who are resident lawyers (present in person) constitute a quorum, subject to subsection (5);

(d) any question is to be decided by a majority of votes of the members present;

(e) the person presiding has a deliberative vote, and, in the case of an equality of votes, has a casting vote.

(2) The Council may at any time, and must whenever required to do so by a notice in writing by not less than 10% of the members of the Society, call an extraordinary general meeting of the Society at a time and place (being within 28 days after receipt of any such notice) appointed by the Council.

(3) The Council must give a member of the Law Society the following notices of meetings and of the businesses to be transacted:

(a) for an annual general meeting, not less than 14 days' notice; and

(b) for other general meeting, not less than 5 days' notice, but an accidental failure to comply with this subsection does not invalidate the proceedings.

(4) Notice may be given by:

(a) advertisement placed in a newspaper; or

(b) delivery of a written notice to the office or postal address provided to the Society by each member; or

(c) the transmission of an electronic mail message to the electronic mail address of the member, or the law firm with whom the member is employed, as provided to the Secretary.

(5) If there is no quorum at an annual general meeting, a further meeting:

(a) must be called by notice given under subsections (3)(a) and (4); and

(b) that further meeting may proceed with the members present even if there is no quorum as required under subsection (1)(c).

(6) A person who is suspended from practise as a lawyer has no right to participate or vote in any annual, general or other meeting of the Society.

(7) Subject to this Act, and to Rules, the Law Society may regulate its procedures at general meetings.

### **9. Procedures for approving Rules or motions by circular-**

(1) As an exception to any other provision of this Act, the consent

of members to any Rules or other resolution proposed by the Society may be obtained by:

- (a) delivering notice of the proposed Rules or resolution to the postal, office or electronic mail address of members; and
- (b) providing an opportunity for the members to indicate their consent or otherwise to the proposal by written or electronic mailed communication.

(2) Rules may provide for further procedures relating to the application of this section.

(3) For the purposes of this section, the Secretary may require all lawyers to provide an electronic mail address, and the sending of any notice or document to the electronic mail address provided is taken to be valid service of the notice or document on the lawyer for any purpose under this Act.

**10. Council of the Law Society-**(1) The Council of the Samoa Law Society consists of current members of the Society elected to be the following councillors of the Society:

- (a) the President;
- (b) the Vice-President;
- (c) the Secretary;
- (d) the Treasurer;
- (e) three other councillors.

(2) The Attorney General is entitled to sit in and be heard at all meetings of Council but does not have voting rights.

(3) A councillor:

- (a) holds office until the next annual general meeting following the one at which the officer is elected to office (unless the councillor sooner vacates office), and is eligible for re-election; and
- (b) continues in office until a successor comes into office, unless the councillor sooner vacates office; and
- (c) may resign from office in writing to the Council; and
- (d) may be removed from office by the Society at a general meeting on the grounds of -
  - (i) mental disability or impairment; or
  - (ii) insolvency declared in accordance with law; or
  - (iii) neglect of duty or misconduct proved to the satisfaction of the general meeting; and

- (e) must immediately vacate the office if -
    - (i) the councillor is suspended under this Act from practice as a lawyer; or
    - (ii) disciplinary proceedings under Part 7 are commenced against the councillor; or
    - (iii) the councillor is charged with any offence which involves misuse of monies entrusted to the councillor, or any other act of dishonesty; and
  - (f) must not be a part of a process or a decision of the Council made under Part 7 if the councillor has a conflict of interest.
- (4) If the office of a councillor becomes vacant, the vacancy must be filled:
- (a) by a vote taken by the Council in a meeting of the Council; or
  - (b) as provided under the Rules,
- and the new councillor holds office for the remainder of the term of the councillor who vacated the office.
- (5) Rules may provide:
- (a) procedures in relation to the nomination and election of councillors, including the filling of vacancies; and
  - (b) for sitting fees and other allowances to all or any of the officers comprising the Council.

**11. Meeting of the Council-**(1) The Council shall meet at least once a month and at any other time considered necessary by the President or majority of the councillors.

(2) Subject to the Rules, a meeting of the Council is to be chaired by:

- (a) the President; or
  - (b) the Vice President, if the President is absent; or
  - (c) a councillor present elected by other councillors present, if the President and the Vice President are both absent or both are not present after the expiration of 15 minutes from the appointed time of the meeting.
- (3) At a meeting of the Council:
- (a) five councillors constitute a quorum, subject to any quorum determined under paragraph (f);

- (b) the Council may discuss and deliberate on the business of the Society, including matters in relation to the functions, duties and powers of the Council under the Act;
- (c) any question is to be decided by show of hands;
- (d) a councillor present has 1 vote, subject to paragraph (e);
- (e) the presiding councillor has a deliberative vote and a casting vote;
- (f) the Council may regulate other procedures, including adjournments and determining quorum for transacting other business of the Council.

(4) The Secretary in consultation with the President may summon a meeting of the Council by notice through email, telephone or in writing served on all councillors.

(5) The Council may delegate any of its functions, duties and powers under this Act to a sub-Committee consisting of councillors and members of the Society, subject to conditions imposed by the Council or other requirements set out in the rules, including meeting procedures and proceedings of the sub-committee.

(6) A written resolution of the Council signed by all members of the Council or a sub-committee is valid as if it had been passed at a meeting of the Council or sub-committee.

(7) The Council must ensure that proper minutes are kept of all proceedings at meetings of the Council and such minutes are regarded without further proof required of sufficient evidence of meetings when certified correct by the Chairperson at the next succeeding meeting.

(8) Any act done in good faith at any meeting of the Council, or of a sub-committee of the Council, or by any person acting as a councillor or member of the sub-committee, is valid despite that a defect or irregularity in an appointment of a councillor or a member of the sub-committee is later disqualified from being a councillor or a member of the sub-committee.

**12. Conflict of interest** - If a person has any interest in a matter on which the Council must make a decision or issue an order under this Act, that person:

- (a) must declare the interest; and
- (b) must not take part in a process or decision regarding the matter relevant to the declaration made.

**13. Functions, powers, and duties of Council-**(1) The Council has the following functions:

- (a) to act as the executive body of the Law Society;
- (b) to be responsible for the administration, control, and management of the affairs of the Society, and of its funds and other assets, under this Act;
- (c) to implement the provisions of this Act; subject to the duties and powers of the Minister under this Act;
- (d) perform other functions conferred on it by this Act or by any other law, or under the Regulations or Rules.

(2) The Council has the following powers:

- (a) to appoint committees of members of the Law Society, and delegate to any such committee any of the powers of the Council, and to revoke a delegation.
- (b) to carry out other powers that are necessary or reasonably expedient for the exercise and performance of its functions and duties, including such powers as may be conferred on it by this Act or any other law, or by the Rules.

(3) Nothing in this section prevents the Council from appointing persons who are not members of the Law Society to sit on a committee if it is appropriate to have lay representation on it, or if the Council considers such a person can contribute to the effective performance of the role and duties of the committee.

(4) Subject to this Act, and to the Rules, the Council may regulate its own procedures in such manner as it thinks fit.

**14. Law Society account -** (1) The Law Society must:

- (a) establish and maintain an account to be called the “Samoa Law Society Account”, at a bank licensed under the Financial Institutions Act 1996; and
- (b) ensure that all monies lawfully received by the Society or the Council, or by any officer, member or agent of the Society, are deposited into that Account.

(2) Withdrawals from the Samoa Law Society Account may not be made except by cheque or other instrument signed by any officer of the Law Society authorised for that purpose by the Council, and countersigned by another officer of the Society who is so authorised.

(3) The Law Society must keep proper records and books of account and must cause its accounts to be audited annually, and the

Secretary must provide to every member a copy of the annual accounts together with the auditor's report on the accounts.

(4) Nothing in this section prevents the Council from authorising the establishment of more than 1 account if it considers that a separate account should be kept for any specific purpose of the Society, or to ensure that the Society's funds are properly managed and invested, and the requirements of this section apply to each such account.

### **PART 3 ROLLS OF BARRISTERS AND SOLICITORS**

#### **15. Registrar to maintain rolls of barristers and solicitors-**

(1) The Registrar must establish and maintain at the Registrar's office the following rolls:

- (a) a permanent roll of barristers and solicitors of the Supreme Court, containing the names of all persons who are admitted as a barrister and solicitor under section 27; and
- (b) a temporary roll of barristers and solicitors of the Supreme Court, containing the names of all persons who are admitted temporarily as a barrister and solicitor under section 27.

(2) Upon the commencement of this Act, the Registrar must enter the names of lawyers who are currently admitted to practise law under the repealed Act, in accordance with the nature of the admission as being permanent or temporary.

**16. Enrolment-**(1) When a person is admitted as a barrister and solicitor under section 27, the Registrar must enter the name of the person on the appropriate roll.

(2) For temporary admission, the Registrar must also specify on the temporary roll the duration determined under section 25 for the temporary admission.

**17. Removal and suspension of names from the roll-**(1) The Registrar must strike the name of a lawyer off, or note the suspension of the lawyer, on the appropriate roll:

- (a) upon receipt of a certificate signed by the Secretary that an order has been made under this Act that the name

of the lawyer be struck off a roll, or that the lawyer is to be suspended from practice; or

(b) if the Registrar is otherwise advised of a decision to strike off or suspend a lawyer by a person or body empowered under this Act to make such a decision; or

(c) upon an order to that effect being made by the Supreme Court.

(2) When giving effect to subsection (1), the Registrar must note on the roll the date the order was made and the reasons for making the order.

**18. Restoration of names on the roll-**(1) The Registrar must restore to the roll the name of a lawyer struck off or suspended from it:

(a) if the Supreme Court makes an order under section 21 that the name of a person be restored to a roll; or

(b) upon the expiration of a period of suspension.

(2) When giving effect to subsection (1)(a), the Registrar must note on the roll the date of the order, by whom it was made, and the reasons given for the order being made.

**19. Review of a roll on appeal** - Where, as the result of an appeal, an order of the Council or of the Supreme Court relating to any matter affecting a roll is reversed or varied, the Registrar of the Supreme Court must make such entries on the appropriate roll as are necessary to give effect to the order of the Council or Court determining the appeal.

**20. Removal of name at own request** - On the application of a lawyer, the Supreme Court may make an order that the lawyer's name be removed from either roll.

**21. Restoration of names to rolls-**(1) A person whose name has been struck off or removed from a roll may, subject to this Act, apply to the Supreme Court for the restoration of his or her name to that roll.

(2) On application being made to the Supreme Court under this section, the Court may, if it is satisfied that the person is a fit and proper person to practise as lawyer, make an order that the name of the person be restored to the appropriate roll.



(3) In making an order under subsection (2), the Supreme Court may impose the condition that the lawyer must not, until the lawyer is authorised by the Council to do so:

- (a) practise as a barrister or as a solicitor; or
- (b) practise as a solicitor on his or her own account.

**22. Restoration fees** - The Law Society may fix by resolution in general meeting or by Rules, fees that are payable to the Society for the restoration of lawyers' names to a roll.

#### **PART 4 ADMISSION OF LAWYERS**

**23. General qualifications for admission-**(1) A person is qualified for admission as a Barrister and Solicitor of the Supreme Court if the person:

- (a) has attained the age of 21 years; and
- (b) is established to be of good character in accordance with this Part; and
- (c) holds the prescribed qualifications.

(2) For the purpose of subsection (1), "prescribed qualifications" means qualifications prescribed under the repealed Act, or qualifications which must be prescribed by the Council, and by notice published in the Savali and a newspaper.

(3) No qualifications must be prescribed for the purpose of subsection (1) unless they are equivalent to, or are in the opinion of the Council, equivalent to:

- (a) an academic qualification in law; or
- (b) a professional qualification in law; or
- (c) an academic and professional qualification in law, in any country or territory, or in any jurisdiction within any country or territory, which in the opinion of the Council has a legal system sufficiently similar to that of Samoa.

(4) In addition to any qualifications prescribed under this section, Rules may require that applicants for admission demonstrate knowledge of Samoan laws and practice, and may require that an applicant attend a course of training and complete an examination in this regard, as approved by the Council.

**24. Admission and enrolment on the permanent roll** - No lawyer may be enrolled on the permanent roll unless the Supreme Court is satisfied that the lawyer:

- (a) is a citizen of Samoa; and
- (b) meets other general qualifications under section 23.

**25. Temporary admission and enrolment on the temporary roll**-(1) The Supreme Court may, on application under this Part, admit an applicant who is not a citizen of Samoa as a barrister and solicitor on the temporary roll, if the Court is satisfied that the applicant meets the general qualifications under section 23.

(2) The Supreme Court may, on the recommendation of the Council, determine the duration of enrolment under subsection (1) taking into account any of the following:

- (a) the period for which the lawyer is contracted to work in Samoa;
- (b) the length of time that the lawyer is likely to be retained to represent clients in a court of Samoa;
- (c) the period of the lawyer's likely residence in Samoa taking into account any relevant factor.

(3) No period determined under subsection (2) may exceed 5 years, but a lawyer may submit further applications after the expiration of any period of temporary admission.

(4) When the duration of an enrolment has expired, the Council may:

- (a) accept a declaration on oath from the lawyer that all previous documents supplied in support of the previous admission are still true and correct; and
- (b) certify the applicant under section 26 for further admission accordingly.

**26. Applications for admission**-(1) An application for admission as a barrister and solicitor must be made by the applicant to the Supreme Court in the manner prescribed by Rules of Court, or, if there are no such rules, then in such manner as the Supreme Court may direct.

(2) A Certificate issued by the Council and signed by the Secretary, that the applicant is of good character and holds the prescribed qualifications, is sufficient evidence that the applicant has the qualifications specified in this Part.

(3) Before issuing any certificate under subsection (2), the Council must apply procedures which:

- (a) require the applicant to provide certificates from the Courts or professional lawyers associations in the jurisdiction where the applicant is practising, or has practised, attesting to the fact that no disciplinary action has been taken, or is pending, in relation to the applicant's practice of the law; and
- (b) subject to subsection (4), require an applicant to provide character references from at least 2 persons who are practising lawyers in any jurisdiction for a period of not less than 5 years and have known the applicant for not less than 3 years; and
- (c) ensure that the documents provided by the applicant in support of the application are valid and correct, and apply to the applicant; and
- (d) require the applicant to attend before a representative of the Council to be interviewed and to answer questions and provide all information necessary for the Council to decide whether to issue a certificate; and
- (e) require the applicant to provide a declaration on oath affirming that -
  - (i) all documents and information provided in support of his or her application are true and correct; and
  - (ii) there are no other matters relevant to the application that would affect his or her application, or influence the decision of the Council in relation to the issuing of the Certificate; and
- (f) make such other inquiries as the Council thinks fit concerning the applicant for the purposes of this section.

(4) For the purposes of subsection (3)(b), Council may accept a character reference from a person who is not a practising lawyer if the applicant provides reasons on oath that are acceptable to the Council for an alternative affidavit to be provided.

(5) A person who:

- (a) provides any false or misleading information in an application under this section; or

- (b) makes any false or misleading statement to the representative of the Council in the course of his or her application; or
- (c) fails to divulge any information to the Council which may have caused it to refuse to issue a certificate under this section,

commits an offence and is liable upon conviction to a fine not exceeding 1,000 penalty units, or to imprisonment for a term not exceeding 12 months, or both.

(6) The name of a lawyer who is convicted under subsection (5) must be removed from the roll.

(7) If at any time it is discovered that a person has been admitted based on false or misleading information, that is taken to be unsatisfactory professional conduct and that person must be dealt with under Part 7.

**27. Admission** - On application being made to the Supreme Court in accordance with this Part, the Supreme Court may, if it is satisfied that the applicant is qualified for admission, make an order admitting the applicant as a barrister and solicitor of the Supreme Court, and such order must:

- (a) specify whether the lawyer's name is to be entered on the permanent roll or temporary roll; and
- (b) for enrolment on the temporary roll, specify the duration of enrolment under section 25(2).

**28. Oath of admission**-(1) When an order is made for the admission of a person as a lawyer under this Part, the person must take the following oath or affirmation, before being enrolled:

*“I....., [swear/affirm] that I will truly and honestly conduct myself in the practice of a Barrister and Solicitor of the Supreme Court of Samoa according to the best of my knowledge and ability.”.*

(2) No order for the admission of a lawyer takes effect until the person in respect of whom the order is made has taken the oath or affirmation required by this section.

**29. Restriction on further applications** - The Supreme Court may, if it refuses an application for admission under this Part, order

that no further application for admission may be made by the applicant for such period, not exceeding 2 years, as the Court specifies.

**30. Admission fees-**(1) The Council of the Law Society may, by notice in the Savali and a newspaper, fix admission fees to be payable to the Society by applicants on admission as barristers and solicitors.

(2) Separate fees may be fixed for lawyers admitted on the permanent roll or temporary roll.

(3) If the Council intends to increase admission fees, a proposed increase must not exceed 50% of the current fee.

## **PART 5 PRACTICE OF THE LAW**

**31. Status of barristers and solicitors** - After the commencement of this Act, barristers and solicitors continue to have the same powers, privileges, duties, and responsibilities as applied to barristers and solicitors appearing in a court in Samoa immediately before the commencement of this Act, and such other powers, privileges, duties, and responsibilities as may be conferred on them by law.

**32. Right to practise as a lawyer-**(1) No person may practise as a lawyer unless the person:

- (a) has been admitted as a barrister and solicitor; and
- (b) holds a practising certificate.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 1,000 penalty units or to imprisonment for a term not exceeding 6 months, or both.

(3) A lawyer who holds an unrestricted practising certificate:

- (a) must comply with this section; and
- (b) has the right to practise law on his or her own account (either as a sole practitioner or as a partner in a law firm); and
- (c) may employ and supervise a lawyer who holds a restricted practising certificate.

(4) A lawyer who holds a restricted practising certificate may only practise law as:

- (a) the employee of a lawyer who holds an unrestricted practising certificate, subject to the supervision at all times of that lawyer; or
  - (b) an employee within the Office of the Attorney General or a government Ministry or a public body as defined under the Public Bodies (Performance and Accountability) Act 2001.
- (5) A non-resident lawyer who holds a practising certificate:
- (a) must practise as a lawyer in accordance with this Act under the supervision of a lawyer holding an unrestricted practising certificate; and
  - (b) must not receive monies on trust; and
  - (c) must not practise law on his or her own account.

**33. Restrictions on rights of solicitors to commence private practice on own account-**(1) No lawyer may commence practice as a solicitor on their own account, whether in partnership or as sole practitioner, unless the lawyer:

- (a) during the period of 8 years immediately preceding the date on which the lawyer commences practice on own account, has had at least 3 years' supervised experience as a barrister or as a solicitor, or as a legal officer in a government Ministry, either in Samoa or in any other country approved by the Council for the purposes of this subsection; or
  - (b) at any time within the past 5 years, has lawfully practised as a solicitor, within the past 5 years, in Samoa or in another country on his or her own account.
- (2) A lawyer seeking the right to practise law on his or her own account as a barrister and solicitor, whether in partnership or as sole practitioner, must apply to the Council for the issue of a practising certificate and must satisfy the Council that he or she:
- (a) meets the requirements of subsection (1); and
  - (b) subject to subsection (3), has resided in Samoa for a period of at least 3 years immediately prior to his or her application; and
  - (c) must be present in Samoa to undertake the management of the practice on a permanent basis, or has made arrangements which are satisfactory to the Council,

- for a lawyer of appropriate experience to be permanently present to manage the practice; and
- (d) has adequate knowledge and experience in handling monies held on trust in accordance with all requirements applying to such moneys and accounts; and
- (e) has made appropriate arrangements for the audit of the trust fund the lawyer is required to maintain under Part 6; and
- (f) meets any additional requirements applying to the right of barristers and solicitors to practise law on their own account.

(3) Rules may provide for exemptions to the residency requirements of subsection (2)(b) on the grounds that a lawyer has studied or worked for a period overseas, prior to which he or she has practised law in Samoa for the period specified by the Rules.

(4) In granting a practising certificate under this section, the Council may:

- (a) require the lawyer to provide additional information; or
- (b) impose any conditions which ensure compliance with subsection (2), and any applicable Rules.

(5) A breach of a provision of this section is professional misconduct.

**34. Barrister sole-**(1) No person must practise as a barrister sole in the courts of Samoa unless the person:

- (a) has been admitted as a barrister and solicitor; and
- (b) holds a barrister sole practising certificate.

(2) A lawyer who holds a barrister sole practising certificate may only act as counsel and is subject to the following restrictions:

- (a) may not take money (whether on trust or otherwise) from any client; and
- (b) may not provide any legal services that are to be exclusively provided by a solicitor, namely -
  - (i) the preparation of any conveyance; or
  - (ii) the preparation of any will, other than on the instructions of a solicitor; or
  - (iii) the preparation of any other document prohibited or restricted to a barrister and solicitor in accordance with the Rules; or

- (iv) the performance of any other legal or other service prohibited or restricted to a barrister and solicitor in accordance with the Rules; and
- (c) subject to subsection (3), may provide legal services when briefed or instructed to do so by a solicitor.
- (3) Rules may permit barristers to be directly retained by clients in specific circumstances.
- (4) As an exception to subsection (1)(a), a barrister may receive his or her fee directly from a client for work undertaken in accordance with the Rules dealing with matters under subsection (3).
- (5) A breach of a provision of this section is professional misconduct.

**35. Issue and cancellation of annual practising certificates –**

- (1) The Law Society may issue to a resident lawyer or non-resident lawyer meeting the requirements of this Part any one of the following types of annual practising certificate:
  - (a) a restricted annual practising certificate;
  - (b) an unrestricted annual practising certificate;
  - (c) a barrister sole annual practising certificate.
- (2) An annual practising certificate issued under this Part expires:
  - (a) on 31 December in the year in which it is issued; or
  - (b) when for any reason the holder ceases to be a lawyer; or
  - (c) when for any reason the holder is suspended under this Act from practice as a lawyer; or
  - (d) when the holder is struck off the roll in accordance with this Act; or
  - (e) when the Council cancels an annual practising certificate of a lawyer to issue an annual practising certificate of another type to that lawyer.
- (3) As an exception to subsection (2), if in any year for which a practising certificate is issued the striking off or suspension of any practitioner is reversed or revoked by order of the Court of Appeal or the Supreme Court or otherwise, the lawyer's practising certificate is to be taken as a valid practising certificate for the remainder of its term for the purposes of this Part from the date of reversal or revocation.



(4) As an exception to subsection (2)(a), the Council may approve a date after the expiration of a practising certificate of a lawyer by which time application must be made for the issue of a new practising certificate, and the lawyer is entitled to continue to practise law under the authority of the expired certificate until the date fixed by Council.

(5) If a non-resident lawyer is struck off or suspended in his or her jurisdiction of ordinary practice, the lawyer is deemed struck off or suspended under this Act and may not practise as a barrister or solicitor in Samoa.

(6) If a non-resident lawyer resumes practice after suspension or being struck off in his or her jurisdiction of ordinary practice, the lawyer may apply to the Supreme Court or Council for re-admission or the issuing of a practising certificate.

(7) Practising certificates issued to lawyers who are on the temporary roll referred to in section 15(1)(b) must be issued on an annual basis, but must not exceed the duration of the temporary admission determined under section 24.

(8) If a lawyer is convicted of an offence involving dishonesty, the annual practising certificate of the lawyer is taken to have been cancelled by virtue of this section from the date of conviction.

**36. Annual practising fees** - (1) The Council of the Law Society may, by notice in the Savali and in a newspaper, fix fees for annual practising certificates payable to the Society by lawyers.

(2) If the Council proposes to increase the annual practising fees, a proposed increase must not exceed 50% of the current fee.

(3) Different fees may be fixed for different types of practising certificates.

(4) Regulations may prescribe other fees to be paid at the time of issuing practising certificates.

## **PART 6 SOLICITORS' TRUST ACCOUNTS**

**37. Solicitor to pay clients' money into trust account at a bank-**(1) Any money received for or on behalf of a person by a solicitor must:

- (a) be held by the solicitor exclusively for that person; and
- (b) be paid to that person, or as that person directs; and

- (c) until so paid, be paid into a bank in the separate trust account of that solicitor, or of the firm with whom the solicitor practises law.
- (2) The money must not:
  - (a) be used for the payment of the debts of any other creditor of the solicitor, and may not be applied for the benefit of the solicitor, or the solicitor's firm, except in payment of invoiced legal fees imposed by the rendering of a bill of costs; or
  - (b) be attached or taken in execution under an order or process of any court at the instance of any such creditor of the solicitor or of the solicitor's firm.
- (3) A breach of subsection (1) or (2) is professional misconduct.
- (4) Nothing in this section is to be construed to take away or affect any just claim or lien that a solicitor may have against any money so received by the solicitor, if the rights claimed by the solicitor are consistent with this Act and the Rules.

**38. Administration of trust account in certain cases-**(1) This section applies if the Council is satisfied that a solicitor practising in Samoa:

- (a) has been suspended from practice; or
  - (b) has had his or her name struck off the roll; or
  - (c) has ceased to practise law and has neglected to wind up the trust account after reasonable notice has been given by the Council requiring that this be done; or
  - (d) owing to physical or mental disability, or for any other reason is unable to properly administer his or her trust account or has failed to properly administer his or her trust account; or
  - (e) has been adjudged to be insolvent, or is unable to pay his or her debts; or
  - (f) has committed any theft or done anything improper in relation to the money or property of any other person; or
  - (g) has died, and that any money entrusted to that solicitor is held in a bank in a trust account of the solicitor.
- (2) If in any case to which this section applies the Council is of opinion that it is expedient that the trust account be administered by the Council, the Secretary may serve a notice on the bank signed

by any 2 members of the Council requiring the bank to pay to the Law Society any money held by the bank in the trust account.

(3) Upon receipt of the notice, the bank must immediately pay to the Law Society any money held in the trust account to which the notice relates, and the receipt of the Society is to be a complete discharge to the bank from any liability in respect of that money.

(4) Upon receipt of the money, the Council must immediately pay it into a separate bank account which may only be operated by at least 2 persons appointed by the Council for that purpose.

(5) If any money that was held by a solicitor on behalf of a person is paid to the Law Society under this section, that money must be held by the Society in trust for that person.

(6) As an exception to subsections (1) to (5), a person:

(a) who is a solicitor, and who has lawfully taken over responsibility for the management of the monies originally held in the trust account; or

(b) who claims to be otherwise adversely affected by any payment to the Law Society under this section, may apply to the Supreme Court for an order directing the Society to repay the money into the bank account from which the money was paid, or for such other order as the Supreme Court considers fit.

(7) As an exception to subsection (6), the Council may repay the money (or any part of it) into the bank account from which the money was paid.

**39. Auditing of trust accounts** - (1) A solicitor must ensure that his or her trust account is audited at least once a year by a certified chartered accountant.

(2) If, within a year, the Council receives a complaint from a person about the person's money in a solicitor's trust account, under subsection (1), the Council must, within 3 months of receiving the complaint, appoint a chartered accountant to audit the solicitor's trust account, at the Council's own costs.

(3) The Minister may appoint the Chief Auditor or a chartered accountant to carry out an independent audit of a trust account if:

(a) an audit is not carried out or is unreasonably delayed under subsection (2); or

(b) a complaint is made to the Minister about the misuse of a trust account; or

- (c) the Minister is satisfied, in the public interest, that the trust account should be audited.
- (4) A copy of the audit report carried out under this section must be given:
- (a) to the solicitor whose trust account is audited under subsection (2) or (3) within 2 months of the completion of the report; and
  - (b) to any other person prescribed by regulations.
- (5) A solicitor commits professional misconduct if the solicitor breaches subsection (1).
- (6) In this section:
- “chartered accountant” has meaning given it, in the Samoa Institute of Accountants Act 2006;
  - “Chief Auditor” means the Controller and Chief Auditor appointed under the Constitution;
  - “money” includes money intended as trust account money that has not been deposited into the solicitor’s trust account.

## **PART 7 DISCIPLINARY MATTERS**

### *Division 1 - General*

#### **40. Definitions** - In this Part:

- “complainant” means a person or a client of a lawyer who makes a complaint under section 45;
- “investigation report” means a report prepared by the Complaints Committee on its investigation under this Part;
- “respondent” means the lawyer about whom the complaint is made by a complainant.

#### **41. Unsatisfactory professional conduct** - A lawyer commits an act of unsatisfactory professional conduct if the lawyer breaches:

- (a) any fundamental obligation in section 3(2); or
- (b) any other requirement applying to the practice of law under this Act, the Regulations or the Rules if -
  - (i) the conduct of the lawyer in connection with the practice of law has fallen short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer; or

(ii) the conduct of the lawyer involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence.

**42. Professional misconduct** - (1) A lawyer commits an act of professional misconduct if the lawyer breaches:

- (a) any fundamental obligation stated in section 3(2); or
- (b) any other requirements applying to the practice of the law under this Act, Regulations or the Rules; or
- (c) any other act or omission, whether in the practice of the law or not.

(2) Any of the following acts are professional misconduct for the purpose of this Part:

- (a) a failure to observe the requirements applying to a trust account under this Act, which involves the taking by the lawyer of money held on trust in breach of those requirements;
- (b) taking land belonging to a client as payment of legal costs;
- (c) failure to cooperate with an investigation or proceeding undertaken under this Part;
- (d) conviction for an offence involving dishonesty;
- (e) an act or omission taken to be professional misconduct under this Act, Regulations or the Rules.

**43. Disqualifications for Complaints Committee and disciplinary tribunals** - (1) A member of the Council is not eligible for appointment to the Complaints Committee or a disciplinary tribunal.

(2) A member of the Complaints Committee is not eligible for appointment to a disciplinary tribunal.

(3) A member of a disciplinary tribunal is not eligible for appointment to the Complaints Committee.

**44. Remuneration** - A member of the Complaints Committee or a disciplinary tribunal (including a lawyer appointed as a prosecutor under section 51) is entitled to remuneration and other allowances fixed by the Council and payable from the funds of the Society.

*Complaints and Investigation Committee*

**45. Complaints and suspension-**(1) A complainant may make a written complaint to the Council stating all of the following:

- (a) the full name, address and other contacts of the complainant;
- (b) the identity of the respondent;
- (c) the alleged conduct complained.

(2) The Council may on its own initiative initiate a complaint and refer it to the Complaints Committee, which may include the following:

- (a) when a lawyer is charged with an offence involving dishonesty; or
- (b) any adverse finding of a court on the conduct of a lawyer referred by the court to the Council.

(3) The Council must refer all complaints to the Complaints Committee.

(4) The Council may, pending an investigation, hearing or determination of a complaint, suspend a lawyer from practice if it is satisfied that the complaint is serious enough to warrant a suspension.

(5) For the purposes of subsection (4), the Council must first serve notice of at least 10 working days on the lawyer requiring the lawyer to respond as to why the practising certificate should not be suspended.

**46. Complainant to be notified and reasons for decisions-**(1) The Secretary must notify a complainant in writing:

- (a) when the complaint has been received; and
- (b) any decision of the Council, Complaints Committee or a disciplinary tribunal under this Part.

(2) The Council, the Complaints Committee or a disciplinary tribunal must give reasons for its decision under this Part.

(3) The Secretary must send:

- (a) any decision of suspension by the Council to the Chief Justice, the Minister and the Attorney General; or
- (b) any decision to dismiss a complaint by the Complaints Committee or any decision on penalty imposed by a disciplinary tribunal to the Chief Justice, the Minister, the Council and the Attorney General.

**47. Complaints and Investigation Committee-**(1) This section establishes the Complaints and Investigation Committee comprising the following members appointed by the Council:

- (a) a senior member of the Society, as chairperson;
- (b) four other members of the Society.

(2) The Council may co-opt other members of the Society to the Committee if members of the Committee have a conflict or possible conflict of interest in the matter to be dealt with by the Committee.

(3) The following procedures apply at a meeting of the Committee:

- (a) the chairperson or (if the chairperson is absent) a member elected by the members present, presides;
- (b) three members constitute a quorum;
- (c) the chair has a deliberative vote and a casting vote;
- (d) a question is to be determined by majority of votes.

(4) The Committee may regulate its own procedures, subject to this Act.

(5) The functions of the Complaints Committee are:

- (a) to receive and assess all complaints referred to it by the Council;
- (b) to investigate complaints or carry out any other inquiries necessary for the purpose of this Part;
- (c) to determine a complaint to ascertain whether it is unsatisfactory professional conduct or professional misconduct;
- (d) to lay charges and institute and conduct proceedings before a disciplinary tribunal.

**48. Further information-**(1) The Complaints Committee may give written notice of at least 10 working days to the complainant to provide further information or verify any information by sworn document or statutory declaration.

(2) The complainant may in writing request the Complaints Committee to extend the 10 days to a further reasonable period approved by the Committee.

**49. Dismissal or settlement of complaints-**(1) The Complaints Committee may dismiss the complaint on any of the following grounds:

- (a) the length of time that has elapsed between the incident that is the subject of the complaint and the date on which the complaint was made makes investigation of the complaint impracticable or undesirable; or
  - (b) the subject matter of the complaint appears to be frivolous or vexatious, misconceived, lacking in substance or the complaint has not been made in good faith; or
  - (c) the complaint is withdrawn or settled by the complainant; or
  - (d) the complainant does not have sufficient personal interest in the subject matter of the complaint; or
  - (e) the complainant fails to comply with section 48; or
  - (f) the Committee is satisfied that its investigation report does not provide any evidence of unsatisfactory professional conduct or professional misconduct; or
  - (g) an adequate remedy is available through other channels.
- (2) The complainant may make a fresh complaint if the complaint is dismissed under subsection (1)(e) or, if new evidence is produced under subsection (1)(f).
- (3) If the Complaints Committee is satisfied that the complaint is minor or relates to unsatisfactory professional conduct, the Committee may settle the matter with the consent of the complainant.

**50. Investigation-**(1) The Committee may investigate all complaints about unsatisfactory professional conduct or professional misconduct.

(2) As an exception to subsection (1), the Committee may appoint:

- (a) one of its members to investigate on behalf of the Committee unsatisfactory professional conduct and to make an investigation report to the Committee for its consideration; or
- (b) at least 2 members to investigate, on behalf of the Committee, professional misconduct and to make an investigation report to the Committee for its consideration.

(3) In carrying out an investigation, the Complaints Committee may require the respondent:



- (a) to give, in writing or personally, within a stated reasonable time a full explanation of the matter being investigated; or
- (b) to appear at a stated reasonable time and place; or
- (c) to produce within a stated reasonable time any document in the respondent's custody, possession or control that the practitioner is entitled at law to produce; or
- (d) to respond to the complaint, and provide any answers to questions asked by the Committee by any means, and any information or documents required by the Committee.

**51. Charges and prosecution** - (1) When an investigation is completed, the Complaints Committee may institute and conduct any proceedings for unsatisfactory professional conduct or professional misconduct before a disciplinary tribunal.

(2) The Complaints Committee may appoint any of its members or a lawyer to undertake its powers under subsection (1).

*Division 3 - Lawyers Disciplinary Tribunals*

**52. Disciplinary tribunals** - (1) This section establishes lawyers disciplinary tribunals comprising the following members appointed by the Council:

- (a) for hearing and determining professional misconduct -
  - (i) a senior lawyer who has practised law in Samoa or elsewhere for at least 8 years, as chairperson; and
  - (ii) a lawyer who has practised law in Samoa or elsewhere for at least 5 years; and
  - (iii) a member who is not a lawyer; and
- (b) for hearing and determining unsatisfactory professional conduct -
  - (i) a lawyer qualified under paragraph (a)(i) or (ii), as chairperson; and
  - (ii) a member who is not a lawyer.

(2) In subsection (1), "lawyer" includes a retired judge.

(3) The Council must ensure that a member of a tribunal does not have any conflict or possible conflict of interest regarding the matter to be heard and determined.

(4) If a lawyer is charged for both professional misconduct and unsatisfactory professional conduct, the disciplinary charges are to be heard by a tribunal appointed under subsection (1)(a).

(5) The following procedures apply at a meeting of a tribunal:

- (a) the chairperson presides;
- (b) two members constitute a quorum;
- (c) the chair has a deliberative vote and a casting vote;
- (d) a question is to be determined by majority of votes.

(6) A tribunal may regulate its own procedures subject to this Act.

**53. Powers and duties of tribunals - (1) A tribunal:**

- (a) may hear and determine all charges of professional misconduct and unsatisfactory professional conduct; or
- (b) may dismiss the charge if the complaint is frivolous or vexatious, misconceived, lacking in substance or the complaint has not been made in good faith; or
- (c) may, at any time during the proceedings, settle the matter between the parties; or
- (d) must give the respondent adequate notice of the hearing and adequate opportunity to prepare and state his or her defence; or
- (e) may inquire into the allegations against the respondent in any manner that it sees fit, and may regulate its own proceedings, which must be -
  - (i) in accordance with the principles of natural justice; and
  - (ii) open to the public, unless the tribunal determines that special reasons exist for a hearing to proceed (in part or in their entirety) without the public being entitled to be present; or
- (f) must endeavour to arrive at a decision made by consensus, subject to section 52(5)(d); or
- (g) may on a charge of unsatisfactory professional conduct make a finding that the conduct amounts to professional misconduct, and impose a penalty accordingly; or
- (h) may on a charge of professional misconduct make a finding that the conduct amounts to unsatisfactory

professional conduct and impose a penalty accordingly; or

(i) may impose a penalty under section 55 or 56, which must take immediate effect.

(2) The Council must immediately take all action that is necessary to give effect to a decision made by a tribunal.

*Division 4 - Powers of inquiry and penalties*

**54. Powers of Commissions of Inquiry to apply** - When undertaking an investigation, inquiry or hearing under this Part, the Complaints Committee and a disciplinary tribunal have the powers given under the Commissions of Inquiry Act 1964.

**55. Penalties for unsatisfactory professional conduct**-(1) A respondent who has been found to have committed an act of unsatisfactory professional conduct is liable to the following penalties:

- (a) the respondent's practising certificate to be subject to a specified condition;
- (b) the respondent to undertake and complete a specified course of further legal education;
- (c) the respondent to undertake a specified period of practice under supervision;
- (d) the respondent to refrain from doing specified duties in connection with the practice of law;
- (e) to subject the respondent's practice to periodic inspection by a specified person for a specified period;
- (f) the respondent to make a written apology;
- (g) the respondent to repay the whole or a specified part of the amount charged for the legal services related to the complaint;
- (h) the respondent to cancel or reduce the legal fees with respect to the services related to the complaint;
- (i) the respondent to rectify, at his or her own expense, any error or omission with respect to the services related to the complaint;
- (j) an order to pay a penalty to the Law Society not exceeding 20 penalty units.

(2) If a respondent fails or refuses to comply with a penalty imposed under subsection (1) within the time specified in the decision, the respondent is taken to have committed an act of professional misconduct and is suspended from practice by operation of this subsection from the date of expiry of the time specified in the decision or under subsection (3).

(3) If no time has been specified for the lawyer to comply with any penalty imposed under subsection (1), the lawyer must comply with it within 30 days of the penalty being imposed.

**56. Penalties for professional misconduct-**(1) A respondent who has been found to have committed an act of professional misconduct is liable to the following penalties:

- (a) be censured;
- (b) any penalty provided for in section 55(1);
- (c) suspension from practice for a period not exceeding 5 years;
- (d) an order not to practise law on own account until authorised by the Council;
- (e) an order to pay a penalty to the Law Society not exceeding 50 penalty units;
- (f) an order to reimburse the Law Society the costs and expenses incurred for the purposes of this Part;
- (g) an order that the respondent's name be struck off the roll.

(2) Section 55(2) and (3) applies to penalties imposed under this section.

(3) A lawyer who has been suspended from practice or struck off from the roll, and who prior to such action was a notary public under the Notaries Public Act 1974, is immediately discharged from that office, and may not be re-enrolled as a notary public unless reinstated by the Council or the Supreme Court.

**57. Penalties for professional misconduct involving trust accounts-**(1) Subject to subsection (4), a respondent who is found to have committed an act of professional misconduct involving the misuse of monies held on trust must be struck off from the roll.

(2) A disciplinary tribunal shall fix a period during which the respondent is ineligible to make application to the Supreme Court to be re-instated to the roll.

(3) At the expiration of the period referred to in subsection (2), the respondent may only be re-instated to the roll on the order of the Supreme Court, if the respondent can satisfy the Court that good grounds exist for the respondent to be entitled to practise law, and the Supreme Court may impose any restrictions on the rights to practise law that the Court regards as necessary.

(4) A tribunal may determine that a respondent who has been found to have committed an act of professional misconduct involving the misuse of trust account monies, to remain on the roll if:

- (a) the misuse of trust monies was inadvertent and unintentional; and
- (b) the respondent on becoming aware of the misuse immediately repaid all monies to the trust account.

(5) If a disciplinary tribunal considers the grounds stated in subsection (4) apply to a case before it, the tribunal may impose any other penalty provided for in section 55(1) or 56(1).

## **PART 8 MISCELLANEOUS**

**58. Suspension of lawyers unfit to practise law and power to manage practice-**(1) If after due inquiry the Council is satisfied that:

- (a) because of physical or mental disability a lawyer is unable to perform his or her professional duties; and
- (b) it is in the interest of his or her clients or otherwise in the public interest to suspend the lawyer from practice,

the Council may make an order suspending the lawyer from practice until the lawyer satisfies the Council that the reasons justifying the suspension no longer exist.

(2) Regulations may prescribe the powers and procedures for the taking over of management of a law practice under this Part.

**59. Evidence of fees and overcharging-**(1) If a person engages a lawyer or a law firm, the lawyer or law firm must, before carrying out the legal service requested by the person, issue a letter setting the estimated legal fees and costs for the legal service intended to be carried out.

(2) A lawyer may only charge and recover costs that are fair and reasonable in the circumstances, taking account of the degree of difficulty involved in the work.

(3) If costs are charged on the basis of the time worked, the costs are to be based only on the actual time worked for the client.

(4) If in the course of carrying out the legal service, the lawyer or the law firm is of the opinion that there will be an increase in the fees or costs estimated under subsection (1), the lawyer or the law firm must issue another letter setting out the increase in fees or costs.

(5) The onus of establishing that costs charged by a lawyer are fair and reasonable lies with the lawyer.

(6) The Council or a court may order that a portion of fees assessed to be in excess of what is fair and reasonable be reimbursed to the client, in addition to any other penalty imposed under Part 7.

(7) A breach of a provision of this section is a ground for disciplinary action under Part 7.

**60. Use of “paralegal” and “law clerk”-** (1) A person must not use the terms “paralegal” or “law clerk” in the course of his or her employment, unless the person:

(a) is employed by a lawyer under the title of “paralegal” or “law clerk”, and is subject, during his or her employment, to the supervision of that lawyer, who is responsible for the work performed by the person and for advice given during the course of the person’s employment; or

(b) uses and applies any of those terms in accordance with regulations.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 1 month, or both.

**61. Other restricted terms-**(1) No office in any government Ministry or agency, or in any company or organisation in Samoa, may use the term “legal officer”, “corporate lawyer”, “Manager of Legal Services” or any other similar term which appears to indicate that the holder of the office is authorised to practise law in

accordance with this Act, unless the holder of the office is a lawyer and holds a relevant practising certificate under this Act.

(2) A person who:

(a) uses, or permits the use of, any of the titles referred to in subsection (1) in breach of that provision; or

(b) employs or engages any person under a title referred to in subsection (1) in breach of that provision,

commits an offence and is liable upon conviction to a fine not exceeding 1,000 penalty units or to imprisonment for a term not exceeding 3 months, or both.

**62. Law Society to be a party to proceedings-**(1) A person

who:

(a) applies under this Act to the Supreme Court for any order; or

(b) appeals under this Act to the Supreme Court against any order or decision made under the authority of this Act; or

(c) appeals to the Court of Appeal against any order or decision of the Supreme Court made under this Act,

must serve notice of his or her application or appeal on the Secretary.

(2) The Law Society must be a party to any of the proceedings referred to in subsection (1), and is entitled to be represented and heard.

(3) For the purpose of the proceedings in subsection (2), the Law Society has a right of appeal as a party to the Court of Appeal.

**63. Vesting of responsibilities in other regulatory bodies-**(1)

If the Council fails to effectively implement the provisions of this Act in the interests of the legal profession and in the public interest, the Head of State, acting on the advice of Cabinet, may order that any of the responsibilities stated in subsection (2) be transferred from the Law Society and vested in a Legal Profession Practice Board, or other regulatory body, established and empowered by Regulations.

(2) The responsibilities that may be removed from the Law Society and vested in another regulatory body under subsection (1) include any of the following:

(a) the vetting of applicants for admission under section 26;

(b) the issuing of certificates under section 35;

- (c) the audit of trust accounts and the enforcement of obligations under Part 6;
- (d) the issuing of practising certificates;
- (e) any aspect of the disciplinary processes vested in the Council under Part 7;
- (f) the making of Rules.

**64. Exemption of liability-**(1) This section applies to the following:

- (a) the Head of State;
- (b) the Minister;
- (c) a member of the Council;
- (d) the Registrar;
- (e) the Secretary;
- (f) a member of the Complaints Committee or a disciplinary tribunal;
- (g) any other person authorised to carry out any function, duty or power under this Act.

(2) A person to whom this section applies is not personally liable for carrying out or failing to carry out, in good faith a function, duty or power under this Act.

**65. Regulations-**(1) The Head of State, acting on the advice of Cabinet, may make regulations for the purpose of giving effect to the provisions of this Act, and in particular regulations in relation to the following:

- (a) any matter for which regulations are contemplated by this Act;
- (b) any arrangement for the recognition of reciprocal admission with lawyers in other jurisdictions;
- (c) any other requirements to secure compliance with international agreements and arrangements in Samoa relating to rights of trade and commerce, and to the provision of professional services;
- (d) any arrangement which permit law firms to incorporate as companies or other entities, and any prohibitions, restrictions or requirements that apply to such arrangements;
- (e) any requirement applying to the application of funds held by the Society from the issue of practising



certificates, including the giving of financial support for -

- (i) programmes of continuing education;
  - (ii) schemes for legal aid and for the provision of community legal services;
  - (iii) any fidelity fund established for the purposes of compensating clients of lawyers who have misused trust funds;
- (f) any procedures and obligations for the review of legal costs charged by lawyers, and the remedies available to clients who may have been over-charged;
  - (g) matters relating to overcharging of legal fees and costs on mortgages and other securities document;
  - (h) any arrangements for using interest payable on trust accounts held by lawyers, including the use of such funds for any purpose specified in paragraph (e);
  - (i) any requirements for lawyers to maintain indemnity insurance, and arrangements for the provision of such insurance under arrangements approved by the Law Society;
  - (j) any fees to be paid by lawyers on admission and for practising certificates to support law library services or any other prescribed purpose;
  - (k) prescribing a solicitor's remuneration scale where the Minister is not satisfied that appropriate measures have been made;
  - (l) the auditing of trust accounts, including auditing of trust accounts by an independent auditor based on a complaint about any trust account;
  - (m) the production to the auditor of books, papers, and accounts, subject to such conditions as are prescribed;
  - (n) the persons to whom the reports of auditors must be sent for inspection, information, or record;
  - (o) any obligations of confidentiality to be observed by the auditor to preserve solicitor/client relations, and the grounds upon which such obligations are not to apply;
  - (p) any payment of the auditor's fees by the solicitor;

- (q) any other matter to ensure that all trust accounts are duly kept and audited, and that persons beneficially entitled to money and securities held by solicitors upon trust have full information in relation to such matters;
- (r) prescribing the powers and procedures for the taking over of management of a law practice;
- (s) any procedures and other functions, duties and powers of the Complaints Committee or disciplinary tribunals;
- (t) regulating paralegals and law clerks, including the following -
  - (i) imposing obligations on lawyers employing or engaging paralegals and law clerks to supervise their work and activities, and to be legally responsible for them;
  - (ii) establishing councils or associations, or vesting authority in any Council, to regulate paralegals and law clerks by implementing procedures of registration, discipline and any other matter necessary for the effective regulation of their employment or activities;
  - (iii) recognising associations of paralegals and law clerks, and vesting in them responsibilities and powers in relation to the regulation of persons undertaking such employment and activities;
  - (iv) prescribing the qualifications, expertise or training necessary for a person to be registered as paralegals and law clerks, and to continue to be so registered;
  - (v) determining matters of professional practice, and adopting and enforcing professional standards;
  - (vi) prescribing matters relating to the registration of paralegals and law clerks which are consistent with this Act;
  - (vii) prescribing offences relating to the employment and activities of paralegals and law clerks.

(2) The breach of any regulation relating to trust accounts is professional misconduct.

(3) Offences for regulations made for the purpose of this Act may prescribe a fine not exceeding 1,000 penalty units or imprisonment for a term not exceeding 6 months, or both.

**66. Repeal and amendments-**(1) The Law Practitioners Act 1976 is repealed.

(2) A reference in a law, instrument or document to:

(a) the repealed Act is taken to be a reference to this Act;  
and

(b) any terminology, office or title used in the repealed Act is taken to be a reference to the equivalent term, office or title used under this Act,

and that law, instrument or document is taken to be amended accordingly.

**67. Saving and transitional provisions-**(1) All lawyers currently admitted as barristers or solicitors under the repealed Act continue as if they were admitted as barristers and solicitors under this Act. However, the Registrar must enter the names of those lawyers into the permanent or temporary roll of barristers and solicitors under this Act.

(2) The members of the Council elected or officers and committee appointed under the repealed Act continue as if they were elected or appointed under this Act until their terms expire or they are removed or terminated under this Act.

(3) All practising certificates issued under the repealed Act must continue to have full force and effect until 31 December following the commencement of this Act, and after that date the Secretary must ensure that all lawyers hold appropriate practising certificates.

(4) All disciplinary proceedings commenced under the repealed Act continue as if they were instituted and proceeded with under this Act with any necessary modifications to the investigations, charges and hearings to comply with Part 7 of this Act.

(5) At the commencement of this Act, no complaint shall be made in respect of any ground of unsatisfactory professional conduct or professional misconduct that was not a ground for such conduct or misconduct before the commencement of this Act.

(6) All penalties pending for execution imposed under the repealed Act continue if they were imposed under and subject to execution under this Act. However, the failure by a lawyer to comply with a pending penalty imposed under the repealed Act is professional misconduct for the purposes of Part 7 of this Act.

(7) Regulations or Rules made under the repealed Act concerning the trust accounts of solicitors continue as if they were made under this Act until amended or replaced by Regulations or Rules made under this Act.

(8) The Rules of Professional Conduct of Barristers and Solicitors of Samoa made, or purported to have been made under the repealed Act continue as if they were made under this Act until they are amended or replaced by Rules made under section 7 of this Act.

(9) At the commencement of this Act, any fees prescribed under section 30 of the Law Practitioners Act 1976 continue and are validated under this section as if they were made under section 30 of this Act.

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#### **REVISION NOTES 2014-2019**

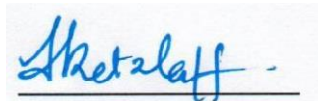
This is the official version of this Act as at 31<sup>st</sup> December 2019.

This Act has been revised by the Legislative Drafting Division in 2014 – 2019 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Correction to cross-references;
- (b) Insertion of the note of the commencement date.
- (c) Part numbering changed to decimal.

There were no amendments made to this Act since its enactment.



Lemalu Hermann P. Retzlaff  
Attorney General of Samoa

*This Act is administered by  
the Office of the Attorney General*

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