



REPUBLIC OF NAURU

LEGAL PRACTITIONERS BILL 2019

No. of 2019

A Bill for an Act to regulate the legal profession and legal practice and for related purposes.

Certified: []

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Enacted by the Parliament of Nauru as follows:

PART 1 – PRELIMINARY

1 Short Title

This Act may be cited as the *Legal Practitioners Act 2019*.

2 Commencement

This Act commences on 2 September 2019.

3 Objective

The objective of this Act is to:

- (a) provide for the regulation of the legal profession and the practice of law;
- (b) prescribe requirements for the admission of practitioners and the rights and obligations of practitioners;
- (c) provide for the engagement, admission and appearance of foreign practitioners;
- (d) establish the Nauru Law Society;
- (e) regulate the holding of trust accounts for the purposes of practice as a practitioner as required by this Act or under any other written law;
- (f) provide for the fixing of a scale of professional fees and costs and monitoring compliance of professional service delivery;
- (g) establish a Legal Practitioners Disciplinary Tribunal to deal with any act of professional misconduct; and
- (h) establish and enforce the Professional Conduct Rules for Legal Practitioners.

4 Definitions

In this Act:

'client' means a person who:

- (a) consults a practitioner and on whose behalf the practitioner renders or agrees to render a legal service with or without fees;
- (b) having consulted a practitioner, reasonably concludes that the practitioner has agreed to render services on his or her behalf, -

and includes a client of the law practice of which the practitioner is a partner or employee whether or not the practitioner handles the client's work;

'Commissioner for Oaths' is a person appointed under section 59;

'conflict of interest' means the existence of a genuine risk that the practitioner's loyalty to or acting in the best interest of a client would be materially and adversely affected by the practitioner's own interest or the practitioner's duty to other clients;

'Council' means the Executive Council of the Nauru Law Society established under section 51;

'foreign practitioner' means a practitioner who is not a citizen of Nauru;

'judicial officer' means a Justice of Appeal, Judge, Magistrate, Registrar, Deputy Registrar or any other person exercising judicial powers under any written law;

'law practice' or 'practice' means a law firm registered under the *Business Names Registration Act 2018*, the *Business Licences Act 2017*, *Beneficial Ownership Act 2017* and where applicable, the *Partnership Act 2018* but does not include a department of the Government providing legal services or a legal section of an Instrumentality of the Republic;

'legal practitioner' or 'practitioner' means a barrister and solicitor or a pleader duly admitted to practice law under Parts 2 or 3 of this Act and who has a current practicing certificate;

'Minister' means the Minister for Justice;

'President' means the President of the Law Society who shall be a barrister and solicitor;

'professional misconduct' includes:

- (a) unsatisfactory professional conduct of a legal practitioner, law practice, employee or agent where the conduct involves a substantial and or consistent failure to reach or maintain a reasonable standard of competence and diligence;
- (b) conduct of a legal practitioner where the occasion in the practice of law or occurring otherwise than in connection with the practice of law, that would, where established justify a finding that the practitioner is not a fit and proper person to engage in legal practice;
- (c) conduct of the law practice, its employee or agent in the practice of law or occurring otherwise than in connection with the practice of law where established justify a finding that the law practice is not fit to operate; or
- (d) any misconduct which practitioners of good repute and competency would reasonably regard as disgraceful or dishonourable;

'Registrar' means the Registrar of the Courts;

'resident practitioner' means a practitioner having a law practice in the Republic and has a current practicing certificate;

'secretary' means the secretary of the Law Society;

'Society' means the Nauru Law Society established under section 47;

'the Court' means the Supreme Court unless stated otherwise;

'Tribunal' means the Legal Practitioners Disciplinary Tribunal established under section 27.

PART 2 – ADMISSION OF LEGAL PRACTITIONERS

5 Chief Justice to approve admission of practitioners

- (1) The Chief Justice shall approve an application by any person duly qualified under this Act to practice as a practitioner after considering:
 - (a) an application for admission;
 - (b) any objections to the application received by the Registrar; and
 - (c) a report prepared by the Registrar for the purposes of the application for admission for consideration by the Chief Justice.
- (2) Where there is no objection to the application, the application shall be heard and determined:
 - (a) by the Chief Justice; or
 - (b) in the absence of the Chief Justice, a Supreme Court Judge.
- (3) Where the application is granted, the Chief Justice or a Supreme Court Judge shall proceed to administering the oath or affirmation to practice law and to admit the practitioner to the Roll of Legal Practitioners.
- (4) Subject to section 10(5), where there is an objection to an application for admission by any person, the Chief Justice shall hear and determine the application and the objection in open court.

6 Admission as a barrister and solicitor or pleader

A person may be admitted to practice law where he or she satisfies:

- (a) in the case of a barrister and solicitor who is a Nauruan citizen, the requirements in section 7;
- (b) in the case of a pleader, the requirements in section 8;
- (c) in the case of a foreign practitioner, the requirements in section 9; or
- (d) in the case of a temporary admission, the requirements in Part 3.

7 Qualifications of barristers and solicitors

- (1) A Nauruan citizen shall be qualified for admission as a barrister and solicitor if he or she:
 - (a) is a fit and proper person to practice law;

- (b) holds a degree in law from a designated country or tertiary institution; and
 - (c) is duly admitted to practice as a practitioner in any other designated country or has practiced as a pleader in the Republic for a period of over 12 months at any time prior to the date of application for admission.
- (2) The Chief Justice may prescribe such other requirements as may be necessary for the purposes of subsection (1).
- (3) The Chief Justice may exempt a person from the requirement under subsection (1)(c) or may admit a person on any condition as the Chief Justice deems fit.

8 Qualifications of pleaders

- (1) A person may be admitted to practice as a pleader if he or she:
- (a) is a fit and proper person to practice law; and
 - (b) has successfully completed a Pleadings course prescribed by the Chief Justice.
- (2) The Chief Justice may prescribe such other requirements as may be necessary for the purposes of subsection (1).

9 Qualifications for foreign practitioners

- (1) A person who is not a citizen of Nauru may be eligible for admission as a barrister and solicitor if he or she:
- (a) is a fit and proper person to practice law;
 - (b) holds the prescribed qualifications;
 - (c) is duly admitted to practice as a practitioner in a designated country;
 - (d) provides evidence of offer of employment as a barrister and solicitor in the Republic or is a partner in the law practice of a Nauruan practitioner duly admitted to practice under sections 7 and 8; and
 - (e) he or she complies with the interpretation of 'legal representative' in Article 15 of the Constitution.
- (2) On or before the hearing of an application for admission as a barrister and solicitor under subsection (1), the applicant shall have resided in the Republic for a continuous period of not less than 2 months.
- (3) The Chief Justice, on the hearing of the application for admission to practice as a barrister and solicitor may abridge or dispense with the requirement under subsection (2).
- (4) This section does not apply to the temporary admission of foreign practitioners under Part 3.

10 Application for admission to practice as a practitioner

- (1) An application for admission to practice as a practitioner shall be made to the Chief Justice in such form and manner as may be prescribed.
- (2) The Registrar shall provide a copy of the application under subsection (1) to the Secretary for Justice and the Society as soon as practicable.
- (3) The Registrar shall publish the application filed under subsection (1) in the Gazette.
- (4) The Secretary for Justice and the Society may make such enquiries as to the character, qualifications and experience of the applicant and submit a report to the Registrar for the purposes of the hearing and determination of the application.
- (5) A person who intends to object to an application for admission shall notify the Registrar in writing:
 - (a) the grounds and reasons for such objection; and
 - (b) whether he or she intends to appear in person or be represented by a practitioner on the hearing of the application for admission,-

no later than 14 days from the publication of the application in the Gazette.
- (6) The Registrar may provide a copy of the objection to the person seeking to be admitted as a practitioner and require the applicant to respond to the objection in writing within 7 days of receipt of the copy of the objection.
- (7) The Registrar shall include the name of the person objecting to the application for admission, the reasons for such objection in the report under section 5(1)(c) and any response received under subsection (6).
- (8) Where an application for admission is dismissed, the Chief Justice shall deliver his or her decision or judgment and publish the reasons for his or her determination.

11 Oath or affirmation of admission

- (1) Where the Chief Justice grants an application for admission, the person shall subscribe to the oath or affirmation contained in Schedule 1 before being enrolled in the Roll of Legal Practitioners.
- (2) A person shall not be enrolled in the Roll of Legal Practitioners or practice law unless the person has complied with the requirement under subsection (1).

12 Roll of Legal Practitioners

- (1) The Registrar shall be responsible for keeping and maintaining a register of the Roll of Legal Practitioners.

- (2) The name of every person admitted to practice as a practitioner shall be enrolled in the Roll of Legal Practitioners.
- (3) No person shall be entitled to practice as a practitioner unless the person's name is enrolled in the Roll of Legal Practitioners.
- (4) The Registrar shall issue a certificate of enrolment under the seal of the Supreme Court to any person who is admitted as a practitioner.
- (5) The Registrar may on an application by a practitioner issue a duplicate copy of the certificate of enrolment to a practitioner whose name appears in the Roll of Legal Practitioners.
- (6) The Registrar may remove from the Roll of Legal Practitioners, the name of a practitioner:
 - (a) who applies for such removal;
 - (b) where the Tribunal orders the removal of the practitioner's name;
 - (c) where the Court orders the removal of such name;
 - (d) subject to any appeal, has been convicted of a criminal offence involving dishonesty or fraud; or
 - (e) who has been declared bankrupt.
- (7) The Chief Justice may prescribe the details of the records to be contained in the Roll of Legal Practitioners.

PART 3 – TEMPORARY ADMISSION

13 Temporary admission

- (1) A foreign practitioner admitted to practice law in any other designated country may apply to the Chief Justice to be admitted to practice as a barrister and solicitor for the purpose of any specific cause or matter.
- (2) For the purposes of subsection (1), the foreign practitioner shall comply with the requirements under sections 9 (1)(a), (b), (c) and (e).
- (3) The application under subsection (1) shall be in the form and manner as prescribed by the Chief Justice.
- (4) The Registrar shall:
 - (a) provide a copy of an application under subsection (1) to the Secretary for Justice and the Society; and
 - (b) publish the application under subsection (1) in the Gazette.
- (5) The Secretary for Justice and the Society may make such enquiries as to the character, qualifications and experience of the applicant and submit a report to the Registrar for the purposes of the hearing of the application.

- (6) The Chief Justice or a Supreme Court Judge or the Registrar of the Supreme Court upon considering an application and any objections received may:
 - (a) summarily allow or dismiss the application;
 - (b) grant the application with conditions; or
 - (c) adjourn to allow the hearing of the application.
- (7) Where the Chief Justice grants an application for admission, the foreign practitioner shall subscribe to the oath or affirmation contained in Schedule 1 before being enrolled in the Roll of Temporary Legal Practitioners.
- (8) The foreign practitioner shall not be enrolled in the Roll of Temporary Legal Practitioners or practice law unless he or she has complied with the requirement under subsection (7).
- (9) A foreign practitioner admitted under this Part shall:
 - (a) represent a client limited to the cause or matter for which he or she is admitted; and
 - (b) appear on instructions of a resident barrister and solicitor or a pleader with more than 10 years' experience, for that cause or matter.
- (10) The Registrar shall issue a temporary practicing certificate under this Part to a foreign practitioner with a condition of practice limited to the specific cause or matter and any other conditions granted by the Court under subsection (6)(b).
- (11) A temporary practicing certificate issued under this Part shall be valid for 6 months from the date of issue or the earlier determination of the specific cause or matter for which admission was granted.
- (12) Before the expiry of the practicing certificate under subsection (1), the foreign practitioner shall renew his or her temporary certificate unless:
 - (a) the cause or matter is determined by the Court;
 - (b) the foreign practitioner formally withdraws from the cause or matter;
 - (c) the instructing practitioner under subsection (9)(b) has formally withdrawn from the cause or matter; or
 - (d) the foreign practitioner is unable to enter the Republic.
- (13) Where the temporary practicing certificate has lapsed, the foreign practitioner shall:
 - (a) cease to practice; or
 - (b) apply for temporary admission under this Part.

PART 4 – PRACTICING CERTIFICATES

14 Practicing certificates

- (1) All practicing certificates issued by the Registrar under this Act are deemed to expire on the 14th day of February of each year.
- (2) A practicing certificate issued other than pursuant to an application for a renewal, shall take effect from the day the certificate is issued.
- (3) A current practicing certificate is deemed to be cancelled where the name of the practitioner is removed from or struck-off the Roll of Legal Practitioners or Roll of Temporary Legal Practitioners.
- (4) The Registrar shall:
 - (a) by notice, gazette a list of practitioners with current practicing certificates on or before 15 March each year;
 - (b) provide a copy of the list of practitioners to the Minister; and
 - (c) provide a copy of the list of practitioners with current practicing certificates to the Society.
- (5) Except for subsection (3), this section does not apply to practitioners admitted under Part 3.

15 Application for practicing certificates

- (1) The application for a practicing certificate shall be:
 - (a) in the prescribed form;
 - (b) accompanied by the prescribed fees; and
 - (c) accompanied by evidence of payment of the Society's annual membership fees.
- (2) A practitioner who:
 - (a) changes his or her place of business or residence;
 - (b) enters into or dissolves a partnership in relation to his or her practice; or
 - (c) changes his or her employment, -shall immediately notify the Registrar and the secretary in writing.
- (3) A practicing certificate issued under this section shall:
 - (a) be in the prescribed form with or without any conditions; and
 - (b) where the certificate is subject to a condition, such condition shall be endorsed on the certificate; and

- (c) be signed by the Registrar and the seal of the Supreme Court shall be affixed.
- (4) The Registrar in considering an application for the issuance of a practicing certificate may require the practitioner to provide further information or particulars as the Registrar deems fit.

16 Practicing certificate may be declined

- (1) The Registrar may decline an application for the renewal of a practicing certificate where the practitioner:
 - (a) fails to comply with the requirements of this Act;
 - (b) subject to any pending appeal, has been convicted in the Republic or elsewhere of an offence which involves dishonesty or fraud;
 - (c) is unfit to carry on and conduct his or her law practice as a result of an injury or illness;
 - (d) has failed to comply with any laws relating to trust funds under his or her control;
 - (e) fails to comply with any order or direction given by the Tribunal; or
 - (f) is absent from the Republic for more than a continuous period of 3 months without any reasonable cause or without having a practitioner managing the law practice.
- (2) The Registrar shall give reasons in writing for declining an application for a practicing certificate under subsection (1).

17 Suspension of certificate

- (1) A practicing certificate may be suspended by the Registrar where the:
 - (a) Tribunal orders that the practicing certificate be suspended;
 - (b) practitioner fails to comply with any conditions of his or her practicing certificate;
 - (c) practitioner fails to maintain and provide a record of any trust account when required to do so; or
 - (d) practitioner is absent from the Republic for more than a continuous period of three months without any reasonable cause or without having a practitioner managing the practice.
- (2) The Registrar shall notify the practitioner in writing of the suspension of a practicing certificate under subsection (1).

- (3) On receipt of a notice under subsection (2), the practitioner shall immediately cease practice as a practitioner until such time the suspension lapses or is removed.
- (4) The Registrar may rescind the suspension where the practitioner complies with any orders or directions of the Tribunal or with such other conditions.

18 Cancellation of certificate

A practicing certificate may be cancelled by the Registrar where the practitioner:

- (a) has been struck-off the Roll of Legal Practitioners or Roll of Temporary Legal Practitioners;
- (b) habitually fails to comply with the provisions of this Act and conditions of the practicing certificate; or
- (c) is absent from the Republic for more than a continuous period of 3 months without any reasonable cause or without having a practitioner managing the practice.

PART 5 – RIGHTS AND LIABILITIES OF LEGAL PRACTITIONERS

19 Right to practice

Any person who is duly admitted as a practitioner and has a current practicing certificate may practice law in the Republic in accordance with this Act or any other written law.

20 Limitation on right of practitioner to commence private practice on own account

- (1) A practitioner shall not commence practice under his or her own name or a business name unless he or she has during the 3 years immediately after the practitioner was admitted, practiced under the supervision of a practitioner having practiced for not less than 5 years in the Republic or elsewhere.
- (2) The requirements under subsection (1) may be deemed to be complied with where the practitioner has practiced law under supervision for part or whole of the 3 years in the Republic, a Commonwealth jurisdiction or a designated country.
- (3) A practitioner seeking to practice law under his or her name or business name shall:
 - (a) seek the approval of the Registrar;
 - (b) notify the secretary;
 - (c) comply with the requirements of the *Business Names Registration Act 2018*, *Business Licences Act 2017*, *Beneficial Ownership Act 2017* and where applicable, the *Partnership Act 2018*;

- (d) register and obtain a tax identification number under the *Revenue Administration Act 2014*;
 - (e) provide a written report certifying competency from his or her supervising practitioner; and
 - (f) comply with the requirements of this Act.
- (4) The Chief Justice may abridge the time of 3 years under subsection (1) upon the recommendation of the Society.

21 Officer of the court

A practitioner is an officer of the court.

PART 6 – COSTS

22 Recovery of costs

A practitioner may, in respect of services rendered, sue for and recover:

- (a) costs pursuant to any agreement as to costs made under section 23; or
- (b) in the absence of such agreement, in accordance with the schedules of fees prescribed by the Chief Justice in consultation with the Society.

23 Agreement to costs

- (1) A practitioner may enter into a written agreement with a client in relation to the amount and manner of payment of costs for the whole or any part or parts of any past or future services, fees, charges or disbursements in respect of services provided or to be provided by such practitioner.
- (2) An agreement under subsection (1) shall exclude any further claim by the practitioner in respect of any costs for the provision and completion of the services provided.
- (3) Where a party to an agreement dies or becomes incapable of performing his or her obligations prior to such obligations being fully performed and unless a contrary intention is shown in the agreement:
 - (a) the agreement shall cease; and
 - (b) the practitioner shall be entitled to charge the client such fees, charges and disbursements as would have been payable had such agreement not been entered into.
- (4) Nothing in this Act shall prevent a practitioner from taking such security from a client or any other person for future service fees, charges or disbursements as may be agreed.
- (5) Where a practitioner requires a client to pay all or a substantial portion of the total fees, he or she shall retain the money in the trust account and render periodical bills to inform the client of the manner of the use of the fees.

- (6) An agreement under this section may be reviewed by the Court on application by either party and where in the opinion of the Court such agreement is unreasonable, the Court may:
 - (a) increase or reduce the amount payable; or
 - (b) cancel the agreement and tax the costs; and
 - (c) make such order as to the costs of such review as the Court deems necessary.
- (7) In considering the reasonableness of such an agreement, the Court may take into account:
 - (a) the experience and standing of the practitioner;
 - (b) the duration of the matter to which the agreement relates;
 - (c) the urgency and circumstances in which the business is transacted;
 - (d) the difficulty of the matter and the complexity of the issues involved;
 - (e) whether the practitioner is to carry the costs of any disbursements;
 - (f) whether the practitioner is entitled to charge professional costs only in the event of success in any proceedings;
 - (g) the value or amount of any property or money involved; and
 - (h) any other matters or circumstances which the Court deems appropriate.

24 Taxation of costs

- (1) The Court may, on an application by a practitioner or a client of the practitioner, tax any costs in respect of services rendered by the practitioner:
 - (a) in an account rendered and not yet paid; or
 - (b) in an account already paid, on application within 6 months of payment.
- (2) For the purpose of taxation under subsection (1), the Court may summon any person to render accounts relating to those services.

25 Right to particulars

- (1) Where an account for professional services has been delivered to a client by a practitioner, whether calculated pursuant to an agreement made under section 23 or any schedule of fees prescribed by regulations, the client may request from the practitioner particulars of the calculation of those charges.
- (2) Where a client has requested such particulars from a practitioner, the practitioner shall not be able to institute a suit or if already instituted proceed

further with proceedings, for the recovery of those charges until those particulars have been provided and 5 days have since elapsed.

26 Agreements exempting negligence to be void

Any provision in any agreement between a practitioner and a client providing that the practitioner shall not be liable for negligence or that the practitioner shall be relieved from any responsibility to which he or she would otherwise be subject as such practitioner, shall be wholly void.

PART 7 – DISCIPLINARY MATTERS

27 Legal Practitioners Disciplinary Tribunal

- (1) The Legal Practitioners Disciplinary Tribunal is hereby established.
- (2) The Tribunal shall be constituted by a judge of the Supreme Court or a person duly qualified under the Constitution to be appointed a judge of the Supreme Court.
- (3) The President in consultation with the Chief Justice shall appoint the Tribunal for a period of 2 years and he or she may be reappointed for a further term of 2 years.
- (4) Where a Supreme Court Judge is appointed as the Tribunal, he or she shall not be paid any additional salary or benefits other than those he or she is entitled to as a Supreme Court Judge.
- (5) Where a person other than a Supreme Court Judge is appointed as the Tribunal for any specific matter for a fixed period, the Cabinet shall fix the remuneration on the recommendation of the Chief Justice.

28 Secretary to the Tribunal

- (1) The Registrar shall be the secretary to the Tribunal.
- (2) All complaints for professional misconduct shall be lodged with the secretary to the Tribunal.
- (3) The secretary to the Tribunal shall conduct or cause an inquiry into the complaint and submit a report to the Tribunal within 30 days of receipt of the complaint.
- (4) Where the Tribunal directs that a disciplinary hearing be convened, the secretary to the Tribunal shall comply with the disciplinary procedures as prescribed by Regulations.

29 Functions of Tribunal

The Tribunal:

- (a) may hear and determine all charges of professional misconduct;
- (b) may summarily dismiss a complaint which lacks any merit;

- (c) may record any settlement reached between a practitioner and a complainant;
- (d) shall give the practitioner adequate notice of the hearing and adequate opportunity to prepare and state his or her defence;
- (e) may inquire into the allegations against the practitioner in any manner that it deems necessary;
- (f) may regulate its own proceedings;
- (g) may make a finding that the conduct amounts to professional misconduct and impose a penalty accordingly; or
- (h) may impose a penalty under section 31 which shall take immediate effect.

30 Powers of the Tribunal

- (1) The Tribunal shall have such powers as may be necessary to carry out its functions.
- (2) The Registrar shall immediately take such action necessary to give effect to a decision made by the Tribunal.
- (3) The Tribunal shall have the same powers as that of a Supreme Court Judge.

31 Orders by Tribunal

- (1) On completion of the hearing of a disciplinary proceeding the Tribunal is satisfied that the practitioner or law practice or any employee or agent of a practitioner or law practice has engaged in professional misconduct, the Tribunal may make one or more of the following orders:
 - (a) that the practicing certificates of the practitioner or the partner or partners of the law practice be cancelled or suspended for such period as the Tribunal deems fit;
 - (b) that the name of the practitioner or the partner or partners of the law practice be struck from the Roll of Legal Practitioners;
 - (c) directing that the law practice cease to operate or engage in legal practice;
 - (d) that the practicing certificates of the practitioner or the partner or partners of the law practice not be issued for such period as the Tribunal deems fit;
 - (e) that the practitioner or the partner or partners of the law practice must not apply for a practicing certificate for such period as the Tribunal deems fit;
 - (f) imposing conditions on the issued or to be issued practicing certificates of the practitioner or the partner or partners of the law practice;

- (g) reprimanding the practitioner or the partner or partners of the law practice;
 - (h) that the practitioner or the partner or partners of the law practice be removed from the Roll of Notaries Public or Roll of Commissioners for Oaths;
 - (i) that the practitioner or the partner or partners of the law practice pay a fine or penalty to the Tribunal, of such sum not exceeding \$50,000.00;
 - (j) requiring the practitioner or the partner or partners of the law practice to pay compensation to any complainant of such sum as directed by the Tribunal;
 - (k) directing the practitioner or the partner or partners of the law practice to make ledgers, books of accounts records, deeds, files and other documents relating to the practitioner's practice available for inspection at such times and by such persons as are specified in the order;
 - (l) directing the practitioner or the partner or partners of the law practice to make reports on their legal practice in such manner and at such times and to such persons as are specified in the order;
 - (m) directing the practitioner or the partner or partners of the law practice to comply with conditions, including attendance at continuing legal education programmes and other educational programmes and seminars relating to legal education, practice management and other related topics in respect of the conduct of legal practice;
 - (n) directing the practitioner or the partner or partners of the law practice engage in legal practice under supervision, upon such terms and periods as stated in the order;
 - (o) directing the practitioner or the partner or partners of the law practice to stop accepting instructions as a Notary Public or Commissioner for Oaths for such period as the Tribunal deems fit;
 - (p) directing that any fees or costs paid to the practitioner or law practice by any person in relation to the subject matter of the disciplinary proceedings be reimbursed by the practitioner or law practice to such person; and
 - (q) such other orders as may be provided for in the rules of procedure made pursuant to this Act.
- (2) Without limiting any order made under subsection (1), the Tribunal may order that on and from the date specified in the order no person shall employ that employee or agent in any capacity in a law practice, except on such conditions as may be specified in the order.
- (3) The Tribunal may make any interlocutory or interim orders as it thinks fit before making its final decision in an application for disciplinary proceedings against a practitioner or law practice or any employee or agent of a practitioner or law practice.

- (4) The Tribunal may make ancillary orders in addition to the orders under subsection (1), to give full effect to the orders made under subsection (1).
- (5) The Tribunal may, with the consent of the Registrar or complainant and the practitioner or the partner or partners of a law practice, make any orders by consent, either before or after the hearing in the Tribunal and any order by consent shall have the same effect and force as an order of the Tribunal under this section.
- (6) Where the Tribunal by its order directs that something be done, it may also direct the period of time within which the order is to be complied with.
- (7) Where a person against whom an order is made is not present at the time the order is made, the Tribunal shall as soon as practicable cause a copy of the order to be served on that person.
- (8) Where the Tribunal orders a law practice to cease the practice, it shall order a receiver of the law practice be appointed by the Registrar to wind up the practice and the receiver to provide a report to the Registrar.

32 Rules of evidence

- (1) The Tribunal shall not be bound by the strict rules of evidence.
- (2) Where the Tribunal admits any evidence, the Tribunal shall provide an opportunity to the practitioner to respond or rebut such evidence.

33 Tribunal hearing open to public

The hearings of the Tribunal shall be open to the public unless the Tribunal may otherwise determine.

34 Witnesses

- (1) The Tribunal or any parties to a disciplinary proceeding may summon such witnesses to appear before the Tribunal.
- (2) The provisions of the *Criminal Procedure Act 1972* apply to the summoning and giving of evidence of witnesses in this section.

35 Judgments, decisions or orders of Tribunal

- (1) The Tribunal shall deliver its judgments, decisions or orders in writing.
- (2) The Registrar shall have the power to enforce such judgments, decisions or orders.
- (3) The delivery of any judgments, decisions or orders shall be open to the public.
- (4) A copy of the judgment, decision or order shall be provided to the practitioner against whom the disciplinary charges were brought.

36 Appeal

- (1) A practitioner aggrieved by a judgment, decision or order of the Tribunal under section 35 may appeal as of right to the Court of Appeal.
- (2) An appeal from the Tribunal is deemed to be an appeal in the civil jurisdiction of the Court of Appeal.

37 Complaints about conduct of legal practitioners

Any complaint against a practitioner shall be:

- (a) in writing; and
- (b) provided to the Registrar.

38 Referral by Court, judge, etc.

- (1) A judicial officer may refer the conduct of a practitioner to the Registrar for the purposes of conducting an inquiry or investigation and where necessary, to institute disciplinary proceedings.
- (2) For the avoidance of doubt, a referral under subsection (1) shall not be deemed a conclusive determination of the particular conduct referred to the Registrar.

39 Power of Registrar to institute proceedings

- (1) The Registrar shall institute disciplinary proceedings against a practitioner where the practitioner contravenes the provisions of this Act.
- (2) The Chief Justice may make rules for the proceedings of the Tribunal.

40 Practitioner may be appointed

- (1) The Chief Justice may appoint a practitioner including a practitioner from the Office of the Public Legal Defender to represent the interests of the complainant in any disciplinary proceeding.
- (2) The practitioner may appear in person or by a counsel of his or her choice.

41 Jurisdiction of court not affected

- (1) Nothing in this Act shall affect the power of a court to deal with a practitioner for contempt of court.
- (2) Any finding for contempt of court shall not be a bar to disciplinary proceedings.

42 Limitation period

No complaint relating to an alleged professional misconduct of any practitioner or law practice shall be lodged by an intended complainant after the expiry of 2 years from the time when the right to bring the complaint accrued or when the

intended complainant first became aware of the act complained of had occurred entitling him or her to lodge a complaint.

43 No fees for complaints

- (1) No fees shall be charged for lodging a complaint to the Registrar against a practitioner.
- (2) Subsection (1) does not preclude the power of the Tribunal to order costs against the complainant where the Tribunal deems fit.

44 Register of Complaints

The Registrar shall keep and maintain a Register of Complaints made against practitioners and law practices.

45 Information to be recorded

- (1) The Registrar shall keep and maintain the Register of Complaints which shall contain the following particulars:
 - (a) the date of receipt of the complaint;
 - (b) the full name and identity of the complainant;
 - (c) the address, telephone number and electronic mail contact of the complainant;
 - (d) the name of the practitioner or law practice concerned; and
 - (e) the outcome of the complaint.
- (2) The Registrar in respect of a practitioner, shall record the following outcome or the final determination of the complaint received under subsection (1):
 - (a) an order removing the name of the practitioner from the Roll of Legal Practitioners or Roll of Temporary Legal Practitioners;
 - (b) an order relating to the issue or renewal of practicing certificates;
 - (c) an order suspending a practitioner's practicing certificate;
 - (d) an order cancelling the practicing certificate;
 - (e) an order imposing a condition on the practicing certificate;
 - (f) an order requiring a practitioner to undertake training, education, counselling or supervision;
 - (g) an order requiring inspection of the law practice of the practitioner; or
 - (h) an order requiring the payment of a fine by the practitioner.

46 Records of complaints dismissed

- (1) The Registrar shall keep and maintain a rejected or dismissed complaints record in the Register of Complaints which shall contain the following particulars:
 - (a) the date of receipt of the complaint; and
 - (b) the reason for the rejection or dismissal of the complaint.
- (2) Where a complaint is dismissed after a hearing by the Tribunal or on appeal to the Court of Appeal, the Registrar shall remove all such records of the complaint from the practitioner's record of complaint for the purposes of reporting to any authority or issuing a certificate of standing as a practitioner in the Republic.

PART 8 – NAURU LAW SOCIETY

47 Establishment of Nauru Law Society

- (1) The Nauru Law Society is hereby established.
- (2) The Society:
 - (a) shall have perpetual succession;
 - (b) shall have power to acquire real and personal property; and
 - (c) may sue and be sued.
- (3) A practitioner carrying on the practice of law in the Republic shall:
 - (a) be a member of the Society; and
 - (b) comply with the requirements in this Act or any other written law for the conduct of such practice.
- (4) Subsection (3)(a) does not apply to a practitioner admitted to practice under Part 3.

48 Common seal

- (1) The Society shall have a common seal.
- (2) The common seal of the Society shall be kept under the custody of the secretary.

49 Constitution of the Society

- (1) The Society shall within 3 months of the date of the coming effect of this Act, adopt a constitution.
- (2) A copy of the constitution shall be provided to the Registrar.

- (3) The constitution of the Society may be amended in a special or general meeting by simple majority of all the members of the Society.
- (4) The constitution shall be consistent with the requirements of this Act.

50 Functions of the Law Society

The functions of the Society are to:

- (a) advance the interests, integrity and practice of the legal profession;
- (b) provide education and training for professional development;
- (c) facilitate continuing legal education;
- (d) appear by the President or the secretary of the Society or a nominated legal representative in matters relating to professional misconduct, admissions and judicial ceremonial occasions or when invited by the Court;
- (e) in consultation with the Registrar, review and fix annual membership fees for practitioners;
- (f) represent and promote the views and interests of the legal profession;
- (g) encourage the profession to promote the welfare and interests of clients or client care;
- (h) make internal administrative rules for the governance of the profession; and
- (i) carry out any other functions under this Act and any other written law.

51 Council of the Nauru Law Society

- (1) The Nauru Law Society Council shall consist of:
 - (a) a President;
 - (b) a Vice President;
 - (c) a Secretary;
 - (d) a Treasurer; and
 - (e) 1 member elected in any general or special meeting of the Society.
- (2) A Council member:
 - (a) may hold office until the next annual general meeting;
 - (b) may resign from office in writing to the Council; and
 - (c) shall be deemed to have vacated his or her office on the grounds of:

- (i) being undischarged bankrupt or who has an arrangement with any of his or her creditors;
 - (ii) has been convicted and sentenced to custodial imprisonment for a term of 12 months or more by a Court of the Republic or any other country and has not received a pardon in or outside of the Republic;
 - (iii) lacks capacity in respect of his or her duties as a councillor;
 - (iv) is found guilty of a professional misconduct under this Act;
 - (v) fails to attend 2 consecutive Council meetings for no reason or cause; or
 - (vi) is disqualified from the practice of law under this Act.
- (3) Where any vacancy occurs in the Council, the Society shall:
- (a) in the case of the President, Secretary or Treasurer, in a Special General Meeting, where the Annual General Meeting is not to be held within 30 days of the vacancy occurring; and
 - (b) in case of the 1 member, in a special or annual General Meeting.
- (4) The Secretary for Justice, Solicitor General, Director of Public Prosecutions and the Director of the Office of the Public Legal Defender shall not hold any office in the Council.

52 Council to act as executive

The Council shall be the executive body of the Society and shall be responsible for the administration, control and management of the affairs of the Society, its funds and other assets.

53 Law Society bank account

The Society shall:

- (a) establish and maintain a bank account to be called the '*Nauru Law Society Account*';
- (b) ensure that all monies lawfully received by the Society or the Council are deposited into the account; and
- (c) provide for the keeping and maintaining of such account in the Society's constitution.

54 Meetings of the Council

- (1) The Council shall meet at least 4 times in each year.
- (2) A meeting of the Council shall be chaired by the President and in his or her absence, the Council may appoint a Council member to act as the Chairperson.

- (3) The Council may regulate the procedure for its meetings.
- (4) The quorum for a meeting shall be at least 3 of the 5 members of the Council.
- (5) The secretary shall issue a notice for the meeting under subsection (1) by giving each member at least 3 days' clear notice through electronic mail or in writing.
- (6) The President may abridge the time required under subsection (5) where the convening of an urgent meeting may be required.

55 Conflict of interest

- (1) Where a Council member has any conflict of interest in a matter, he or she shall:
 - (a) declare his or her interest; and
 - (b) not take part in a process or decision relating to that matter.
- (2) The secretary shall record a declaration made under subsection (1).

56 Annual or Special General Meetings

- (1) The annual general meeting of the Society shall be held by no later than 31 October of each successive year.
- (2) A special general meeting may be held:
 - (a) where the Council deems it necessary; or
 - (b) where at least 50% of the members petition the Council to convene such a meeting and such meeting shall be convened and held no later than 30 days from the date of the presentation of the petition to the secretary.
- (3) The quorum for a meeting shall be no less than 55% of the members.
- (4) Where a member is unable to attend a meeting, he or she shall inform the secretary 3 days prior to the meeting.
- (5) Where a member fails to attend a general meeting without any reasonable excuse, the member commits a disciplinary offence which may be liable to be referred for disciplinary proceedings by the Council.

57 Minutes

- (1) The secretary shall cause proper minutes of all general and special meetings of the Society and of all meetings of the Council and of committees appointed by the Council to be taken and recorded.
- (2) The minutes in subsection (1) shall be available for inspection by any member of the Society at any reasonable time.

58 Reports and accounts

- (1) The Society shall keep proper records and books of account and shall cause its account to be audited annually.
- (2) The Council shall present to the Society in a general meeting, a full report of the activities of the Society in respect of the 12 months preceding that date.
- (3) The Secretary shall provide to every member of the Society, a copy of the annual accounts together with the auditor's report on the account at a general meeting.

PART 9 – COMMISSIONER FOR OATHS

59 Appointment of Commissioners for Oaths

- (1) The Chief Justice may, on application and from time to time, appoint any practitioner whom he or she shall consider a fit and proper person to be a Commissioner for Oaths.
- (2) The Chief Justice may, on application and from time to time and in addition to a practitioner, appoint such other persons as Commissioners for Oaths as may be necessary.
- (3) A Commissioner for Oaths shall have the power to administer oaths or affirmations for the purposes of affidavits, declarations or other depositions.
- (4) No action shall be brought against any Commissioner for Oaths in respect of any act or order performed or made by him or her in good faith in the execution of the powers or jurisdiction vested in him or her, but every such act or order, if in excess of such powers and jurisdiction, shall be liable to be revised, altered, amended or set aside upon application to the Court.
- (5) The signature of a person, when placed on a document in the exercise by that person of the powers of a Commissioner under this Section, shall be followed by the description '*Commissioner for Oaths*'.

60 Roll of Commissioners for Oaths

- (1) A person appointed as a Commissioner for Oaths shall cause his or her name to be enrolled in a book to be kept for that purpose by the Registrar and to be called the Roll of Commissioners for Oaths.
- (2) The Registrar shall issue a certificate of enrolment under the seal of the Supreme Court to a person appointed a Commissioner for Oaths under subsection (1).
- (3) A person whose name has not been enrolled under subsection (1) shall not be entitled to perform the duties of a Commissioner for Oaths within the Republic.
- (4) The Chief Justice may, in his or her discretion, strike-off the Roll of Commissioner for Oaths a person who the Chief Justice deems to be no

longer a fit and proper person to perform the duties of a Commissioner for Oaths.

PART 10 – NOTARIES PUBLIC

61 Chief Justice may appoint Notaries Public

- (1) The Chief Justice may, on application and from time to time, appoint any practitioner whom he or she shall consider a fit and proper person to be a Notary Public for the Republic.
- (2) A Notary Public appointed under subsection (1) shall discharge the duties assigned to such office by the laws of the United Kingdom and or the Republic.
- (3) A Notary Public shall pay such fees as may be prescribed by the Chief Justice.

62 Notaries to be sworn

- (1) The Chief Justice may administer the oath or affirmation of a Notary Public.
- (2) Where a practitioner is appointed as a Notary Public under section 61, he or she shall subscribe to the oath or affirmation contained in Schedule 1 before being enrolled on the Roll of Notaries Public.

63 Roll of Notaries Public

- (1) Every practitioner appointed to the office of a Notary Public shall cause his or her name to be enrolled in a book to be kept for that purpose by the Registrar and to be called the Roll of Notaries Public.
- (2) The Registrar shall issue a certificate of enrolment under the seal of the Supreme Court to a practitioner appointed a Notary Public under subsection (1).
- (3) A person whose name has not been enrolled under subsection (1) shall not be entitled to perform the duties of a Notary Public within the Republic.
- (4) The Chief Justice may, in his or her discretion, strike-off the Roll of Notaries Public a person who the Chief Justice deems to be no longer a fit and proper person to perform the duties of a Notary Public.

64 Notaries to be officers of the court

- (1) Every person discharging the duties of a Notary Public is deemed to be an officer of the Court.
- (2) Where any Notary Public is found guilty of misconduct in the execution of the duties of his or her office, such Notary Public shall immediately be discharged by the Chief Justice from the duties of his or her office.

65 Fees

The fees chargeable by a Notary Public for discharging his or her duties under the provisions of this Act shall be as prescribed by the Chief Justice.

PART 11 – OFFENCES

66 Prohibition to practice

(1) A person shall not practice as a practitioner without:

- (a) being admitted to practice; and
- (b) a current practicing certificate.

(6) Any person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 2 years or to both.

67 Unqualified person practicing

(1) A person who is not qualified to be admitted or to practice as a practitioner and who wilfully pretends to be or takes or uses any name or title implying that he or she is qualified or recognised under this Act as qualified to act as a practitioner, shall not solicit or pretend to provide legal services to any person with or without any reward.

(2) A person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 2 years or to both.

68 Acting as agent for unqualified persons

(1) A practitioner shall not:

- (a) knowingly act as agent for any person who does not hold a current practicing certificate in the performance of any act which may only be lawfully performed by the holder of a current practicing certificate; or
- (b) allow his or her name to be used by any person other than the holder of a current practicing certificate in respect of the performance of such an act.

(2) A person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 2 years or to both.

69 Employment of person struck-off or suspended

(1) A practitioner shall not knowingly employ any person who is prevented as a result of disciplinary proceedings or suspension, from practicing as a practitioner in the Republic or any other jurisdiction.

- (2) A person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 2 years or to both.

70 Failure to disclose fact of having been struck-off etc.

- (1) A practitioner shall not seek or accept employment by a practitioner or government department or statutory authority or private entity as a practitioner while:
- (a) suspended from practice as a practitioner;
 - (b) disqualified from practicing as a practitioner; or
 - (c) prevented for disciplinary reasons from practicing as a practitioner.
- (2) A person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 2 years or to both.

71 Acting as Commissioner for Oaths

- (1) A person who is suspended from performing the functions of a Commissioner for Oaths or whose name is not on the Roll of Commissioners for Oaths shall not purport to or make, do, exercise or perform any act, matter or thing relating to the office, function or practice of a Commissioner for Oaths.
- (2) A person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 2 years or to both.

72 Acting as Notary Public

- (1) A person who is suspended from practicing as a Notary Public or whose name is not on the Roll of Notaries Public shall not purport to or make, do, exercise or perform any act, matter or thing relating to the office, function or practice of a Notary Public.
- (2) A person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 2 years or to both.

PART 12 – MISCELLANEOUS

73 Liability

The Chief Justice, a Supreme Court Judge, Tribunal, Registrar, Secretary for Justice and the Council shall not be liable for any act or omission in the performance in good faith of any function, duty or power under this Act.

74 Admission fees

The Chief Justice may by notice in the Gazette, prescribe fees for the purposes of Part 2 and Part 3.

75 Designated countries

- (1) The Chief Justice shall notify in the Gazette a list of designated countries for the purposes of sections 7, 9 and 13.
- (2) The Chief Justice in consultation with the Minister and the Society may add or amend the list of designated countries.

76 Trust accounts

- (1) Any practitioner who wishes to operate a trust account for his or her clients shall only operate such account with the approval of the Chief Justice.
- (2) A practitioner who operates a trust account under subsection (1) shall:
 - (a) keep trust account books or records in such manner as to disclose clearly the position of the funds and to enable the same to be properly audited on an annual basis;
 - (b) account properly for trust account money to his or her clients; and
 - (c) provide an account on an annual basis to the Registrar for the renewal of his or her practicing certificate.

77 Publication of Rolls

The Registrar shall publish in the Gazette on or before 15 March of each year:

- (a) the Roll of Legal Practitioners;
- (b) the Roll of Temporary Legal Practitioners;
- (c) the Roll of Commissioners for Oaths; and
- (d) the Roll of Notaries Public.

78 Service of notices

Any notice or other document required under this Act to be provided or served on a practitioner may, unless otherwise provided, be given or served by:

- (a) delivering such notice or document personally to that practitioner;
- (b) posting such notice or document by pre-paid post to that practitioner at his or her usual or last known place of business or abode last notified by that practitioner to the Registrar; or

- (c) transmission of an electronic mail message to the electronic mail address of the practitioner or the place with whom the practitioner is employed, as provided to the Registrar.

79 Jurisdiction of the District Court

The District Court shall have jurisdiction to hear and determine all criminal offences under this Act and, shall have power to impose the penalty or punishment in respect of the offences under this Act.

80 Rules

The Chief Justice may make rules to give effect to certain provisions of this Act and, without limiting the generality of this power, may make rules relating to all or any of the following matters:

- (a) the form and manner of application for admission;
- (b) the time and manner for service and delivery of any documents and provision of public notice;
- (c) fees to be paid on the filing or lodging of any application or other document;
- (d) prescribing anything which is required or permitted to be prescribed by rules under this Act;
- (e) prescribing the form of practicing certificates;
- (f) regulating the fees chargeable by practitioners;
- (g) requiring the production to such auditors of books and account;
- (h) as to the opening and keeping by practitioners of accounts at a bank for clients' money;
- (i) as to the keeping by practitioners of accounts containing particulars and information as to moneys received, held or paid by them or on account of their clients; and
- (j) prescribing anything which is required under this Act to be prescribed and carried out by the Chief Justice.

81 Regulations

The Cabinet may make regulations prescribing all matters necessary or convenient to be prescribed to give effect to this Act including disciplinary proceedings.

PART 13 – REPEAL SAVINGS AND TRANSITIONAL

82 Repeal

The *Legal Practitioners Act 1973* is hereby repealed.

Savings and transitional

- (1) All practitioners admitted including those on current temporary admission under the repealed Act as barristers and solicitors or pleaders continue as if they were admitted as barristers and solicitors or pleaders under this Act.
- (2) All Government practitioners deemed to have been admitted or exempted from the requirements of admission under the repealed Act continue as if they were admitted under this Act.
- (3) The Registrar shall enter the names of those practitioners under subsections (1) and (2) into the Roll of Legal Practitioners under this Act.
- (4) Any law practice established and carrying out the practice of law under the repealed Act shall continue as if commenced under this Act.
- (5) Any Commissioner for Oaths appointed under the repealed Act shall continue as if appointed under this Act.
- (6) Any Notary Public appointed under the repealed Act shall continue as if appointed under this Act.
- (7) Any practicing certificate issued by the Registrar under the repealed Act remains current until the expiry date under this Act.

SCHEDULE 1

Oath of legal practitioner

"I A.B. swear by the almighty God that I will be faithful and bear true allegiance to the Republic of Nauru and will truly and honestly conduct myself in the practice of law as a (*barrister and solicitor/pleader*) of the Supreme Court of the Republic of Nauru according to the best of my knowledge and ability so help me God."

Affirmation of legal practitioner

"I A.B. solemnly sincerely and truly declare and affirm that I will truly and honestly conduct myself in the practice of law as a (*barrister and solicitor/pleader*) of the Supreme Court of the Republic of Nauru according to the best of my knowledge and ability."

Oath of Notary Public

'I, A.B., do swear (or solemnly sincerely and truly declare and affirm), that I will faithfully exercise the office of a Notary Public.

I will faithfully make contracts or instruments for or between any party or parties requiring the same and I will not add or diminish anything without the knowledge and consent of such party or parties that may alter the substance of the fact; I will not attest any act, contract or instrument in which I shall know there is violence or fraud; and in all things, I will uprightly and justly in the business of notary public according to the best of my skill and ability (*and in the case of an oath*) so help me God."

Affirmation of Notary Public

'I, A.B., do solemnly sincerely and truly declare and affirm, that I will faithfully exercise the office of a Notary Public.

I will faithfully make contracts or instruments for or between any party or parties requiring the same and I will not add or diminish anything without the knowledge and consent of such party or parties that may alter the substance of the fact; I will not attest any act, contract or instrument in which I shall know there is violence or fraud; and in all things, I will uprightly and justly in the business of notary public according to the best of my skill and ability."

SCHEDULE 2



REPUBLIC OF NAURU

LEGAL PRACTITIONERS (PROFESSIONAL CONDUCT) RULES 2019

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In exercise of the powers conferred by section 80 of the *Legal Practitioners Act 2019*, the Chief Justice makes the following Rules:

PART 1 – PRELIMINARY

1 Citation

- (1) These Rules may be cited as the *Legal Practitioners (Professional Conduct) Rules 2019*.
- (2) The Rules must be cited as follows:
 - (a) in case of the general Rule, must be cited as ‘Rule X’ for example, ‘Rule 3’; and
 - (b) in case of a subrule of the general Rule, must be cited as ‘subrule X(y)’ for example, ‘subrule 3(a)’.

2 Commencement

These Rules come into effect on 1 July 2019.

3 Application

These Rules apply to the practitioners admitted to practise under Parts 2 and 3 of the Act.

4 Definition

‘*client*’ means a person who:

- (a) consults a practitioner and on whose behalf the practitioner renders or agrees to render a legal service;
- (b) having consulted a practitioner, reasonably concludes that the practitioner has agreed to render services on his or her behalf, -

and includes a client of the law practise of which the practitioner is a partner or employee whether or not the practitioner handles the client’s work;

‘*conflict of interest*’ means the existence of a genuinely substantial risk that the practitioner’s loyalty to or acting in the best interest of a client would be materially and adversely affected by the practitioner’s own interest or the practitioner’s duty to other clients;

‘*consent*’ means a fully informed and voluntary consent after full disclosure;

‘*judicial officer*’ means a Justice of Appeal, Judge, Magistrate, Registrar, Deputy Registrar or any other person exercising such judicial powers under any written law;

‘*law practice*’ or ‘*practice*’ means a law firm registered under the *Business Names Registration Act 2018*, the *Business Licences Act 2017*, *Beneficial Ownership Act 2017* and where applicable, the *Partnership Act 2018* but does not include a department of the Government providing legal services or a legal section of an Instrumentality of the Republic;

'practitioner' means a barrister and solicitor and a pleader duly admitted to practise law under Parts 2 and 3 of the Act and has a current practising certificate;

'professional misconduct' means the conduct of a practitioner's professional capacity that tends to bring disrepute to the legal profession including:

- (a) breaching or attempting to breach the Act, these Rules or any other written law;
- (b) knowingly assist or inducing another practitioner to breach or attempt to breach the Act, these Rules or any other written law;
- (c) misappropriating or otherwise dealing dishonestly with a client's or other party's moneys or property;
- (d) engaging in conduct which is prejudicial to the administration of justice;
- (e) stating or implying an ability to influence a government agency or official;
- (f) knowingly assisting a judicial officer in conduct that is in breach of the applicable rules of judicial conduct;

'sexual harassment' means a one-off incident or a series of incidents involving unwelcome sexual advances, requests for sexual favours or other verbal or physical conduct of a sexual nature when:

- (a) such conduct might reasonably be expected to cause insecurity, discomfort, offence or humiliation to the recipients of the conduct;
- (b) such conduct is made implicitly or explicitly a condition for the provision of legal services;
- (c) such conduct is made implicitly or explicitly a condition of employment; or
- (d) such conduct has the purpose or effect of interfering with the person's work performance or creating an intimidating, hostile or offensive work environment.

PART 2 - LAW AND SOCIETY

5 Duty to uphold the Constitution and the law

- (1) A practitioner must uphold the Constitution, abide by the written and other laws and promote respect for law and legal processes
- (2) A practitioner must:
 - (a) not engage in unlawful, dishonest, immoral or deceitful conduct;
 - (b) not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system;
 - (c) not for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause; and
 - (d) encourage his or her clients to avoid, end or settle a controversy where it will promote justice and fair outcome of a dispute.

6 Availability of legal services, integrity, independence and effectiveness

- (1) A practitioner must avail his or her legal services in an efficient and convenient manner compatible with professional independence, integrity and effectiveness.
- (2) A practitioner must not:
 - (a) except for valid reasons, reject the provision of legal services for the cause of those unable to afford legal services or are without a defence or oppressed;
 - (b) refuse to render legal advice to the person concerned where it is necessary to protect a person's legal right; and
 - (c) do or permit to be done any act designed primarily to solicit legal business.

7 Practitioners to represent their actual capabilities

- (1) A practitioner in making known the facts and capabilities of his or her legal services to the public must be objective, honest, fair and dignified.
- (2) A practitioner:
 - (a) must not use or permit the use of any false, fraudulent, misleading, deceptive, undignified, self-laudatory or unfair statement or claim regarding his or her capabilities, qualifications or legal services;
 - (b) in choosing the name of the law practise, must not use a false, misleading or assumed name, except may continue to use the name of a deceased partner provided the practise indicates in all its communications that the respective partner is deceased; and
 - (c) when accepting appointment to public office, must withdraw from private practise and his or her name from the private law practise unless the Registrar of the Courts allows the retention of the name.

8 Participation in development of the legal system

A practitioner must participate in the development of the legal system by initiating or supporting efforts in law reform and in the promotion, development and maintaining of the administration of justice.

9 Professional development of legal practitioners

A practitioner must:

- (a) where practicable, keep abreast of legal developments;
- (b) participate in continuing legal education programs;
- (c) support efforts to achieve high standards as well as in the practical training of junior members of the bar; and
- (d) assist in disseminating the law and jurisprudence.

10 Practitioners in government service

- (1) A practitioner in the government service must:
 - (a) discharge their duties with due diligence and care;
 - (b) not use his or her public position to promote or advance his or her private interests or to allow private interest to interfere with his or her public duties; and
 - (c) not after leaving government service, accept engagement or employment in connection with any matter in which he or she had carriage of or has any knowledge of.
- (2) A practitioner engaged in public prosecution:
 - (a) must while prosecuting ensure justice is done and not conviction as the only final outcome; and
 - (b) in making disclosures, must not suppress facts or conceal witnesses capable of establishing the innocence of the accused.
- (3) A practitioner employed in the government service may provide services to the Instrumentalities of the Republic with the authorisation or approval of the Cabinet.

11 Prohibition on sexual harassment

A practitioner shall not sexually harass a fellow practitioner, a staff member, a client or any other person in the course of delivering legal services.

PART 3 - THE LEGAL PRACTITIONER AND THE COURTS

12 Practitioner to act with candour and good faith

- (1) A practitioner owes candour, fairness and good faith to the Courts.
- (2) A practitioner must:
 - (a) not mislead or allow the Court to be misled by any artifice;
 - (b) not knowingly misquote or misrepresent the contents of pleadings or evidence, the language or the argument of opposing counsel or the principles or text of a decision or authority or knowingly cite as law a provision already rendered inoperative by repeal or amendment or assert as a fact that which has not been proven; and
 - (c) observe the rules of procedure and must not misuse them.

13 Practitioner to observe and respect the Courts and judicial officers

- (1) A practitioner must observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.
- (2) A practitioner must:

- (a) appear in court properly attired in accordance with the practise directions issued by the Chief Justice on dress code;
- (b) be punctual for all the fixtures of the Courts;
- (c) attend to such sittings of the Courts unless he or she has obtained prior leave of the Court to be absent or instructs another practitioner to appear on his or her behalf;
- (d) address the judicial officers and professional colleagues in the appropriate manner;
- (e) maintain proper decorum in Court;
- (f) abstain from scandalous, offensive or menacing language or behaviour before the Courts;
- (g) conduct the cause or matter in logical sequence to assist the Court and the opposing practitioner to follow the cause or matter or issues with ease;
- (h) prepare for a cause or matter and not seek unnecessary adjournments;
- (i) not attribute to a Judge motives not supported by the record or evidence; and
- (j) submit grievances against a judicial officer only to the Chief Justice or duly appointed proper authorities.

14 Practitioner to promote the speedy and efficient administration of justice

- (1) A practitioner must exert every effort and consider it his or her duty to assist in the speedy and efficient administration of justice.
- (2) A practitioner must:
 - (a) be adequately prepared for his or her cause or matter on law and facts for the hearing of the cause or matter before the Courts;
 - (b) not file multiple actions arising from the same facts or cause of action;
 - (c) not after obtaining extensions of time to file pleadings, evidence, submissions or other documents let the period lapse without filing the same or providing an explanation or justification for his or her failure to do so;
 - (d) not unduly delay a case, impede the execution of a judgment or abuse the processes of the Courts;
 - (e) refrain from talking to his or her witness during a break or recess of a hearing or proceeding while the witness is still under oath or affirmation and giving testimony;
 - (f) not knowingly assist a witness to misrepresent himself or herself or to impersonate another;

- (g) not abuse, badger or harass a witness; and
- (h) avoid testifying on behalf of his or her client except:
 - (i) on formal matters;
 - (ii) on substantial matters, in cases where his or her testimony is essential to the ends of justice, in which event he or she must, during his or her testimony, entrust the trial of the case to another counsel; or
 - (iii) when lawfully required to testify but must ensure the solicitor-client privilege is not breached.

15 Practitioner to present the merits of a case

- (1) A practitioner must:
 - (a) rely on the merits of the cause or matter which he or she is representing; and
 - (b) refrain from any impropriety which tends to influence or gives the appearance of influencing the court.
- (2) A practitioner must not:
 - (a) extend extraordinary attention or hospitality to nor seek opportunity for cultivating familiarity with judicial officers;
 - (b) make public statements in the mass media in print or electronic form regarding a pending case tending to arouse public opinion for or against the facts or outcome of the case or a party; and
 - (c) allow or invite interference by another branch or agency of the Government in the normal course of judicial proceedings.

PART 4 - LEGAL PROFESSION AND LEGAL PRACTITIONER

16 Practitioner to uphold integrity and dignity of the profession

- (1) A practitioner must uphold the integrity and dignity of the legal profession and support the activities of the Nauru Law Society.
- (2) A practitioner must not:
 - (a) knowingly make a false statement or suppress a material fact in connection with his or her application for admission to practise;
 - (b) support the application for admission to the bar of any person known by him or her to be unqualified in respect of character, education or other relevant attribute; and

- (c) engage in any conduct whether in public or private life that adversely reflects on his or her fitness to practise law or behave in a scandalous manner which would bring disrepute to the legal profession.

17 Practitioner to show courtesy and candour to other practitioners

- (1) A practitioner must conduct himself or herself with courtesy, fairness and candour towards his or her professional colleagues and must avoid harassing tactics against opposing counsel.
- (2) A practitioner must not:
 - (a) in his or her professional dealings, use language which is abusive, offensive or otherwise improper; and
 - (b) directly or indirectly, encroach upon the professional employment of another practitioner.
- (3) Subrule (2)(b) does not prohibit a practitioner from rendering proper advice and assistance to persons seeking relief against practitioners conducting themselves in breach of these Rules or that is expected of a reasonable and prudent practitioner.

18 Practitioner to prohibit unauthorised practise of law

- (1) A practitioner must not, directly or indirectly, assist in the unauthorised practise of law.
- (2) A practitioner must:
 - (a) not delegate to any unqualified person the performance of any legal services which by law may only be performed by a practitioner;
 - (b) not share a fee for legal services with persons not authorised to practise law under the Act including practitioners on the Roll of Practitioners having no current practising certificates;
 - (c) pay all such monies payable over a reasonable period of time to a partner upon his or her death where a pre-existing agreement provides for the payment of such money to his or her estate or to persons specified in the agreement; and
 - (d) undertake to complete unfinished legal business of a deceased practitioner being a partner or employee.

19 Communication amongst practitioners

- (1) A practitioner must not in the course of professional practise send correspondence or otherwise communicate with another practitioner in a manner that is abusive, offensive or otherwise inconsistent with the proper tone of a professional communication with a practitioner.
- (2) A practitioner must respond with reasonable promptness to all communication with other practitioners that require a response.

- (3) A practitioner when dealing with an unrepresented person must take care to ensure that the unrepresented person is not proceeding under the impression that such person's interest will be protected by the practitioner.
- (4) A practitioner must not give an undertaking that cannot be fulfilled and must fulfil all undertakings given once accepted by the other practitioner or person.

PART 5 - THE LEGAL PRACTITIONER AND THE CLIENT

20 Practitioner not to refuse his or her services

- (1) A practitioner must not refuse his or her services to a person in need of such advice.
- (2) A practitioner must not:
 - (a) decline to represent a person solely on account of race, sex, creed or inability to pay or because of a personal opinion regarding the guilt or otherwise of such person;
 - (b) except for serious and sufficient cause, decline an appointment as amicus curiae or a request from the Nauru Law Society or for rendering of free legal assistance; and
 - (c) refuse to accept representation of an indigent client except where:
 - (i) he or she is unable to carry out the work effectively and competently; or
 - (ii) he or she has a conflict of interest.

21 Practitioner not to discriminate the level of representation

A practitioner who accepts the cause of a person unable to pay his or her professional fees must observe the same standard of conduct governing his or her relations with paying clients.

22 Practitioner to maintain candour, fairness etc. when dealing with clients

- (1) A practitioner must observe candour, fairness and loyalty in his or her dealings and transactions with his or her clients.
- (2) A practitioner must:
 - (a) in conferring with a prospective client ascertain as soon as practicable, whether the matter would involve a conflict with another client or his or her own interest and inform the prospective client;
 - (b) be bound by the principles of privileged communication in respect of matters disclosed to him or her by a client;
 - (c) not represent conflicting interests except with the written consent of the client after a full disclosure of the facts;

- (d) with the written consent of clients or other parties concerned to act as mediator, conciliator or arbitrator in settling disputes;
- (e) when advising his or her client, give a candid and honest opinion on the merits and probable results of the client's cause or matter, neither overstating nor understating the prospects of the cause or matter;
- (f) not state or imply that he or she is able to influence any public official, tribunal or legislative body;
- (g) impress upon his or her client compliance with the laws and the principles of fairness; and
- (h) not engage in another profession or occupation concurrently with the practise of law and where the practitioner does in engage in such profession, he or she make clear to his or her client whether he or she is acting as a practitioner or in another profession.

23 Practitioner to hold moneys on trust

- (1) A practitioner must hold in trust all moneys and properties of his or her client that may come into his or her possession.
- (2) A practitioner must:
 - (a) account for all money or property collected or received for or from the client;
 - (b) keep the funds of each client separate and apart from his or her own and those of others kept by him or her;
 - (c) deliver the funds and property of his or her client when due or upon demand;
 - (d) not borrow money from his or her client unless the client's interest are fully protected by the nature of the case or by independent legal advice; and
 - (e) not lend money to a client except, when in the interest of justice, he or she has to advance necessary expenses in a legal matter he or she is handling for the client.
- (3) For the purposes of subrule (2)(c), where a practitioner has a lien over the client's funds held on trust, the practitioner may apply such sums as may be necessary to satisfy the lien:
 - (a) for the lawful fees and disbursements on notice and proper accountability to the client; or
 - (b) to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

24 Practitioner owes fidelity to client

A practitioner owes fidelity to his or her client and must accept that the clients do repose trust and confidence in the practitioner for the professional delivery of legal services.

25 Practitioner must serve client with competence and diligence

A practitioner must:

- (a) not undertake any legal service which he or she knows or ought to have known that he or she is not qualified to render except where the practitioner may render such service in collaboration or assistance of a competent practitioner with the consent of his or her client;
- (b) not handle any legal matter without adequate preparation;
- (c) not neglect a legal matter entrusted to him or her; and
- (d) keep the client informed of the status of his or her cause or matter or any other purpose of engagement of the practitioner at regular intervals or within a reasonable time in response to the client's request for information.

26 Practitioner to act in best interest of client

- (1) A practitioner must represent his or her client with passion and in the best interest of the client within the bounds of the law.
- (2) A practitioner must:
 - (a) employ only fair and honest means to attain the lawful objectives of the client and must not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any cause or matter;
 - (b) inform his or her client of any relevant information received in the course of the representation, perpetration of fraud and must promptly call upon the client to rectify the same; and
 - (c) not allow his or her client to dictate the procedure in handling the cause or matter.

27 Practitioner must charge only fair and reasonable fees

- (1) A practitioner must be guided by the following factors in determining his or her fees:
 - (a) the time spent and the extent of the service rendered or required;
 - (b) the novelty and difficulty of the questions involved;
 - (c) importance of the subject matter;
 - (d) skills demanded;

- (e) probability of losing other employment as a result of acceptance of the proffered case;
 - (f) customary charges for similar services;
 - (g) amount involved in the controversy and the benefits resulting to the client from the service;
 - (h) contingency or certainty of compensation;
 - (i) character of the employment, whether occasional or established; and
 - (j) the professional standing of the practitioner.
- (2) In case of referral to another practitioner, the practitioner is entitled to a division of fees in proportion to the work performed and responsibility assumed with the consent of the client.
 - (3) The practitioner must not without the full knowledge and consent of the client, accept any fee, reward, costs, commission, interest, rebate or forwarding allowance or other compensation whatsoever related to his professional employment from anyone other than the client.
 - (4) A practitioner must avoid controversies with clients concerning compensation and must resort to judicial action only to prevent imposition, injustice or fraud.

28 Practitioner bound by client confidentiality

- (1) A practitioner must preserve the confidentiality of the client even after the practitioner-client relation is terminated.
- (2) A practitioner must:
 - (a) not reveal the confidences or secrets of his or her client except when:
 - (i) authorised by the client after having provided an advice on the consequences of such disclosure;
 - (ii) required by law or in compliance with a court order; or
 - (iii) necessary to collect his or her fees or to defend himself or herself, his or her employees or associates or by judicial action;
 - (b) not to the disadvantage of the client by using the information acquired in the course of engagement of service;
 - (c) not without the written consent of his client, give information from his or her files to an outside agency seeking such information for auditing, statistical, bookkeeping, accounting, data processing, or any similar purpose;

- (d) not disclose the affairs of a client of the firm to partners or associates unless necessary;
 - (e) adopt such measures as may be required to prevent those whose services are utilised by him, from disclosing or using confidences or secrets of the clients;
 - (f) avoid indiscreet conversation about a client's affairs even with members of his or her family; and
 - (g) not reveal that he or she has been consulted about a particular case except to avoid possible conflict of interest.
- (3) This Rule extends to all other practitioners including the non-legal staff in the practise.
- (4) Communications with practitioners are privileged and protected from disclosure in judicial and other proceedings.

29 Practitioner not to abandon or withdraw

- (1) A practitioner must not abandon or withdraw from his or her services except for good cause and upon notice appropriate in the circumstances.
- (2) A practitioner must withdraw his or her services where:
- (a) the client pursues an illegal or immoral course of conduct in connection with the cause or matter the practitioner is handling;
 - (b) the client insists that the practitioner to act to the contrary these Rules;
 - (c) the client persists against the practitioner's advice and remonstrance in pressing for a frivolous cause or defence;
 - (d) the practitioner has the inability to work with co-counsel who will not promote the best interests of the client;
 - (e) the mental or physical condition of the practitioner renders it difficult for him or her to carry out the employment effectively;
 - (f) the client deliberately fails to pay the fees for the services or fails to comply with the retainer agreement;
 - (g) the practitioner is elected or appointed to public office; and
 - (h) other similar cases.
- (3) A practitioner who has agreed to act in a criminal cause or matter may withdraw where the client has not paid the agreed fees and where the interval between the withdrawal and date set for the trial of a case is sufficient to enable the client to obtain representation and the new practitioner has adequate time for preparation.

- (4) A practitioner must not withdraw from a criminal cause or matter for the reason of payment of fees if the date set for the trial of the cause or matter is not sufficient for the client to obtain new representation without adversely affecting the client's interests.
- (5) A practitioner who withdraws or is discharged must, subject to a retainer lien, immediately turn over all papers and property to which the client is entitled and must cooperate with his or her successor in the orderly transfer of the matter, including all information necessary for the proper handling of the matter.

PART 6 - RUNNING A LAW PRACTISE

30 Practitioner must maintain a reputable practise

- (1) A practitioner practising on his or her own account or as an employee must keep his or her office and the working style of a professional reputation as an autonomous and independent service.
- (2) A practitioner:
 - (a) must maintain an orderly and timely record of all cases, develop a storage system and accurate files of all fixtures for appointments, conveyancing instruments or court commitments so that both the practitioner and the client are always able to check the files for any data on a particular case;
 - (b) must always provide without delay any information required by the Registrar, Nauru Law Society, Courts or other lawful authorities within the bounds of legal professional privilege;
 - (c) must be responsible for the work of his or her law office;
 - (d) must be particularly conscientious and punctual in his or her financial operations and not permit:
 - (i) to commingle a client's money with his or her own; and
 - (ii) must always be in a position to pay out such money;
 - (e) may put office sign on the building and in the building in which the law office is located.

31 Practitioner duty to report on any money laundering

A practitioner must inform the relevant authorities for any suspicious activities of money laundering by clients under the *Anti-Money Laundering Act 2008*.

PART 7 - FREE LEGAL ASSISTANCE TO DEPRIVED PERSONS

32 Practitioner to provide free legal assistance

A practitioner must provide at least 1 annual pro bono legal assistance to persons unable to afford legal services and such assistance must be carried out to the standard of practise of a reasonable and prudent practitioner.

PART 8 – ENFORCEMENT OF THE RULES

33

Enforcement of Rules

- (1) Where a practitioner acts in contravention of these Rules or fails to perform any duty imposed by the Rules, he or she shall be guilty of professional misconduct and is liable to such punishment as provided in the Act or any other written law.
- (2) It is the duty of every practitioner to report any breach of these Rules that comes to his or her knowledge to the Registrar.