

REPUBLIC OF NAURU
LEGAL PRACTITIONERS BILL 2019
EXPLANATORY MEMORANDUM

The *Legal Practitioners Bill 2019* is a Bill for the *Legal Practitioners Act 2019*.

This memorandum provides an explanation of the Bill and is only intended to indicate the general effect.

EXPLANATION OF CLAUSES

PART 1 – PRELIMINARY

Clause 1 provides that, once enacted, the short title of the Bill will be the *Legal Practitioners Act 2019*.

Clause 2 sets out when the Bill's provisions will commence which is on 2 September 2019.

Clause 3 is the objective of the Bill which is to ensure the legal profession is regulated; prescribe admission requirements of practitioners and the rights and obligations of practitioners; to provide for the engagement, admission and appearance of foreign practitioners; establish the Nauru Law Society; regulate the holding of trust accounts; provide for the fixing of a scale of professional fees and costs and monitoring compliance of professional service delivery; establish a Legal Practitioners Disciplinary Tribunal to deal with any act of professional misconduct; and to establish and enforce Professional Conduct Rules

Clause 4 defines certain terms used in the Bill.

PART 2 – ADMISSION OF LEGAL PRACTITIONERS

Clause 5 requires the Chief Justice to review the papers filed for admission and any objections received before the application is fixed for hearing. This requirement is necessary as the Chief Justice may not be on the island but other Judges may hear and determine the application for admission. No application is to be heard or determined by a judge if it is not approved by the Chief Justice.

Subclause (2) anticipates that the Chief Justice should preside over all applications for admissions by a legal practitioner. However, in the absence of the Chief Justice, a Supreme Court Judge may preside over the hearing of the application.

Subclause (3) provides that the Chief Justice or Judge of the Supreme Court where the application for admission is granted shall administer the oath or affirmation to practice law and admit the practitioner to the Roll of Practitioners.

Subclause (4) allows the Court to consider any objections in court, which may require calling of witnesses or other forms of evidence. Any person opposing an application for admission may also attend the application and be heard. All petitions which are objected to are dealt with only by the Chief Justice.

Clause 6 provides a summary of the requirements of admission of a barrister and solicitor, pleader and a foreign practitioner who intends to practice in the Republic. This clause does not include temporary admission.

Clause 7 in subclause (1) provides that the applicant who is a Nauruan citizen is a fit and proper person to practice law; holds a degree in law from a designated country or tertiary institution and admitted to practice as a barrister and solicitor in a designated country. An applicant may also be admitted to practice as a barrister and solicitor if at any time prior to applying for admission, he or she was practicing as a pleader in the Republic for more than 12 months. It also recognises a person who has practiced as a pleader before obtaining a law degree.

Subclause (2) provides that the Chief Justice may prescribe such other requirements which may be necessary for the purposes of subclause (1).

Subclause (3) gives the Chief Justice the discretion to exempt a person from the requirement under subclause (1)(c), that is, if at any time prior to applying for admission, he or she was practicing as a pleader in the Republic for more than 12 months. The Chief Justice may admit a person on any condition the Chief Justice deems fit.

Clause 8 retains the requirement for a Pleaders course and the right to practice law in the Republic. The Chief Justice is required to prescribe the course and examination for pleaders by regulations.

Clause 9 provides the qualification requirement for foreign practitioners who intend to practice law in the Republic as an employee or as a partner in the law practice. A foreigner cannot practice law in the Republic unless he or she is a partner in a law practice in Nauru or employed by a Nauruan entity. In addition, the foreign practitioner must comply with the interpretation of 'legal representative' in Article 15 of the Constitution which is to provide evidence of his or her right to enter Nauru.

Subclause (2) requires that a foreign practitioner must reside in the Republic for 2 months prior to the hearing of the application for admission under subclause (3).

Subclause (3) vests a broad discretion in the Chief Justice to waive the residential requirements.

Subclause (4) provides that this clause does not apply to the temporary admission of foreign practitioners under Part 3.

Clause 10 requires applications for admission as a barrister and solicitor to be made in the form and manner as prescribed by the Chief Justice. Applications received shall be provided by the Registrar to the Secretary for Justice and the Law Society and be gazetted.

Subclause (4) allows the Secretary for Justice and the Law Society to make enquiries as to the character, qualifications and experience of the applicant. A report shall be provided to the Registrar for the consideration of the Supreme Court on hearing the application.

Subclause (5) requires a person intending to object to the application to notify the Registrar in writing providing the reasons for such objection and that he or she may appear on the hearing of the application. Such notice must be made no later than 14 days of the publication of the application in the gazette.

Subclause (6) provides that the Registrar may provide to the person seeking admission as a practitioner a copy of the objection and require the person to respond in writing to the objection.

Subclause (7) provides that the Registrar shall include the name of the person objecting to the admission application and the reasons for such objection in the report to be provided by the Registrar under clause 5(1)(c) as well as any response received from the applicant under subclause (6).

Subclause (8) requires the Chief Justice where an application for admission is dismissed, to deliver his or her decision or judgment and publish the reasons for its decision.

Clause 11 provides that a legal practitioner shall not practice law unless he or she has subscribed to an oath or affirmation contained in Schedule 1.

Clause 12 requires the keeping and maintaining of the Roll of Legal Practitioners by the Registrar. This Roll contains the name of every person admitted to practice and unless a person's name is enrolled in the Roll, such person is not entitled to practice.

Subclause (4) provides that on enrolling a person's name on the Roll of Legal Practitioners, the Registrar shall grant a certificate of enrolment under the seal of the Supreme Court to a person who has been admitted as a practitioner.

Subclause (5) provides that a certificate of enrolment under the seal of the Supreme Court shall be issued by the Registrar to any person admitted as a practitioner.

Subclause (6) allows the Registrar to remove the name of a practitioner from the Roll:

- if such practitioner applies for removal;
- where the Tribunal orders the striking-off or removal of the practitioner's name;
- where the Court orders the removal of such name;
- subject to any appeal, the practitioner has been convicted of a criminal offence that involved dishonesty and fraud; or
- the practitioner has been declared bankrupt.

Subclause (7) provides that the Chief Justice may prescribe the details of the records to be contained in the Roll of Legal Practitioners.

PART 3 – TEMPORARY ADMISSION

Clause 13 in subclause (1) allows for an application by a foreign practitioner to the Chief Justice for admission to practice as a barrister and solicitor for the purpose of any specific cause or matter. This clause allows Nauruans to engage foreign practitioners where they feel necessary to do so to represent them in any specific cause or matter.

Subclause (2) provides the qualification requirements of a foreign practitioner as contained in clause 9. Due to the nature of temporary admission, the residential requirement of 2 months is not suitable.

Subclause (3) provides that an application by a foreign practitioner for temporary admission shall be in the form and manner prescribed by the Chief Justice.

Subclause (4) requires the Registrar to provide a copy of the application by the foreign practitioner to the Secretary for Justice and the Society and to publish the application in the Gazette.

Subclause (5) allows the Secretary for Justice and the Law Society to make enquiries as to the character, qualifications and experience of the applicant. A report shall be provided to the Registrar for the consideration of the Supreme Court on hearing the application.

Subclause (6) provides that the Chief Justice or a Supreme Court Judge or the Registrar of the Supreme Court may, upon consideration of an application any objections received:

- (a) summarily allow or dismiss the application;
- (b) grant the application with conditions; or
- (c) adjourn to allow the hearing of the application.

Subclause (7) provides that where the Supreme Court grants an application for admission, the foreign practitioner shall subscribe to the oath and affirmation contained in the Schedule before being enrolled in the Roll of Temporary Legal Practitioners.

Subclause (8) requires a foreign practitioner to subscribe to the oath and affirmation contained in the Schedule before he or she can be enrolled in the Roll of Temporary Practitioners or to practice law.

Subclause (9) provides for the limited right of practice granted to a foreign practitioner which shall be to:

- (a) represent a client limited to the cause or matter for which the practitioner 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.

Subclause (10) requires the Registrar to issue a temporary practicing certificate to a foreign practitioner. A condition of practice imposed on a temporary practicing certificate issued by the Registrar in this clause is that the foreign practitioner is limited to only the specific cause or matter for which the practitioner was admitted and any other conditions granted by the Supreme Court under subclause 6(b).

Subclause (11) provides the automatic lapsing of the temporary admission granted under subclause (1).

Subclause (12) requires the foreign practitioner to renew his or her temporary practicing certificate before expiry 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 subclause (9) (b) has formally withdrawn from the cause or matter; or
- (d) the foreign practitioner is unable to enter the Republic.

PART 4 – PRACTICING CERTIFICATES

Clause 14 provides that practicing certificates expire on 14 February each year. Practicing certificates take effect on the date of issue aside from certificates which are applied for renewal.

Subclause (3) provides that a current practicing certificate is deemed cancelled if the name of the practitioner is removed or struck-off from the Roll of Legal Practitioners or Roll of Temporary Practitioners.

Subclause (4) requires the Registrar to notify in the gazette on or before 15 March each year a list of practitioners with current practicing certificates and to provide the same list to the Minister and the Society.

This requirement is important because no person can practice law without a current practicing certificate.

Subclause (5) provides that except for subclause (3), this clause does not apply to practitioners admitted under Part 3.

Clause 15 requires that a person cannot practice law or continue to practice law without a practicing certificate or renewal of a practicing certificate. The validity of practicing certificates issued by the Registrar lapses on 14 February of each year and practitioners are consequently required to apply for renewal of their practicing certificates on or before 14 February.

Subclause (1) requires an application to be in the prescribed form, accompanied by the prescribed fees and accompanied by evidence of payment of the Society's annual membership fees.

Subclause (2) requires a practitioner to immediately notify the Registrar and the secretary of the Law Society in writing if such practitioner changes place of business or residence, enters into or dissolves a law practice partnership or changes employment.

Subclause (3) provides that a practicing certificate shall be issued in the prescribed form with or without conditions and where subject to a condition, such condition shall be endorsed on the certificate. The certificate shall be signed by the Registrar and the seal of the Supreme Court shall be affixed on the certificate.

Subclause (4) allows the Registrar in considering an application for a practicing certificate to require the practitioner to provide further information or particulars as the Registrar deems fit.

Clause 16 empowers the Registrar to decline an application for renewal of a practicing certificate. This is so where the practitioner:

- (a) has not complied with the requirements in the Bill;
- (b) subject to any pending appeal, has been convicted of an offence in the Republic or elsewhere which involves dishonesty or fraud;
- (c) is unfit to carry on or conduct his or her law practice as a result of an injury or illness;
- (d) failed to comply with laws relating to trust funds under the practitioner's control;
- (e) fails to comply with any order or direction given by the Tribunal;
- (f) is absent for more than a continuous period of 3 months from the Republic without any reasonable cause or having a practitioner manage the practice.

Subclause (1) (f) is a necessary requirement to ensure that legal practitioners are answerable to their clients. They must remain in the Republic and not abandon the practice as the clients are likely to suffer losses and may be left unrepresented.

Subclause (2) requires the Registrar to provide reasons in writing for declining an application for a practicing certificate.

Clause 17 in subclause (1) allows the Registrar to suspend practicing certificates in 3 situations. That is, where the Tribunal orders the suspension of the practicing certificate, the practitioner fails to comply with any conditions of the practicing certificate, the practitioner fails to maintain and provide a record of the trust account when required to do so or is absent for more than a continuous period of 3 months from the Republic without any reasonable cause or having a practitioner manage the practice.

Subclause (2) requires the Registrar to notify a practitioner in writing when a practicing certificate is suspended.

Subclause (3) requires the practitioner on receipt of a notice from the Registrar, to cease practicing at once until his or her suspension has been lifted.

Subclause (4) empowers the Registrar to withdraw the suspension where the practitioner complies with any decision of the Tribunal or complies with such other conditions.

Clause 18 provides that the Registrar may cancel a practicing certificate if a practitioner has been struck-off the Roll of Legal Practitioners or Roll of Temporary Legal Practitioners, routinely fails to comply with the Bill and conditions of the practicing certificate or is absent for more than a continuous period of 3 months from the Republic without any reasonable cause or having a practitioner manage the practice.

PART 5 – RIGHTS AND LIABILITIES OF LEGAL PRACTITIONERS

Clause 19 provides that only if a person has been admitted and has a current practicing certificate then he or she may practice law in the Republic in accordance with this Bill or any other written law.

Clause 20 in subclause (1) prohibits a practitioner from practicing on his or her own unless such practitioner had been supervised for a period of 3 years by a practitioner having 5 or more years of experience practicing in the Republic or elsewhere.

Subclause (2) provides that the requirements under subclause (1) is deemed to be complied with if the practitioner has practiced law for part of or the entire 3 years in either the Republic, a Commonwealth country or another country designated by the Chief Justice.

Subclause (3) requires a practitioner seeking to practice law to seek the approval of the Registrar, notify the secretary of the Law Society, comply with the requirements of business related laws such as the *Business Names Registration Act 2018*, *Business Licences Act 2017*, *Beneficial Ownership Act 2017* and *Partnership Act 2018* where applicable, register and obtain a tax identification number under the *Revenue Administration Act 2014*, provide a written report certifying competency from his or her supervising practitioner and comply with the requirements of this Bill.

Subclause (4) allows for abridgment of time under subclause (1) by the Chief Justice on the recommendation of the Society and the overall practice of the practitioner.

Clause 21 clarifies that a legal practitioner is an office of the court. This is important because a legal practitioner's paramount duty is to the court.

PART 6 – COSTS

Clause 22 provides for the methods by which a legal practitioner may recover costs for services rendered to a client. A legal practitioner may sue and recover costs under an agreement made with that client relating to costs under clause 23 or if there was no agreement, in accordance with the fees prescribed by the Chief Justice in consultation with the Law Society.

Clause 23 in subclause (1) provides that a written agreement may be entered into by a practitioner and a client in terms of costs for any past or future services, fees, charges or disbursement provided or to be provided by the practitioner.

Subclause (2) ensures that a practitioner under an agreement under subclause (1) cannot claim further in respect of any costs for services provided and completed.

Subclause (3) provides that an agreement shall cease and the practitioner entitled to charge his or her client fees, charges and disbursement if a party to an agreement dies or becomes incapable of performing the obligations prior to such obligations being fully performed and unless a contrary intention is show in the agreement.

Subclause (4) provides that a practitioner is not prevented under this Bill from taking security from a client or another person for future service fees, charges or disbursements the practitioner and client agree on.

Subclause (5) requires a practitioner to retain the money a client paid to the practitioner for all or substantial portion of the total fees required by the practitioner to be paid by the client in the trust account. The practitioner must render periodical bills to the client so that the client is informed of the manner in which the fees paid to the practitioner are being used.

Subclause (6) provides that the Court may review an agreement on the application of either party to the agreement. The Court may, if in its opinion the agreement is unreasonable – increase or reduce the amount payable, cancel the agreement and tax the costs and make such order as to the costs of such revise as the Court deems necessary.

Subclause (7) provides that the Court in considering the reasonableness of such an agreement may take into consideration:

- the experience and standing of the practitioner;
- the duration of the matter to which the agreement relates;
- the urgency and circumstances in which the business is transacted;
- the difficulty of the matter and the complexity of the issues involved;
- whether the practitioner is to carry the costs of any disbursements;
- whether the practitioner is entitled to charge professional costs only in the event of success in any proceedings;
- the value or amount of any property or money involved; and
- any other matters or circumstances which the Court deems appropriate.

Clause 24 provides that on an application by a practitioner or client of that practitioner, the Court may tax any costs for the services rendered by the practitioner in an account rendered and not yet paid or in an account already paid on application within 6 months of payment.

Subclause (2) ensures the Court may summon any person to render accounts relating to the services provided by the practitioner.

Clause 25 in subclause (1) provides that a client may request from his or her legal practitioner the particulars of the calculation of the charges in an account for professional services whether calculated pursuant to an agreement or any schedule of fees prescribed.

Subclause (2) provides that a practitioner cannot institute a suit or continue further with any proceedings if a suit has been instituted for the recovery of charges until the particulars requested by the client have been provided to the client and 5 days have passed since the provision of the particulars to the client.

Clause 26 clearly states that a practitioner cannot contract out of liability or responsibility for negligence.

PART 7 – DISCIPLINARY MATTERS

Clause 27 establishes the Legal Practitioners Disciplinary Tribunal which is 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. Such appointment is for a period of 2 years and whoever is appointed may be reappointed for a further term of 2 years.

Subclause (4) provides that if a Supreme Court Judge is appointed as Tribunal, the Judge shall not be paid any additional salary or benefits other than those the Judge is entitled to as a Supreme Court Judge.

Subclause (5) provides that where a person other than a Supreme Court Judge is appointed as Tribunal for any specific matter or for a fixed period, the Cabinet on the recommendation of the Chief Justice shall fix the remuneration for such person.

Clause 28 provides that secretary to the Tribunal shall be the Registrar.

Subclause (2) requires all complaints for professional misconduct to be lodged with the Tribunal's secretary.

Subclause (3) requires the secretary to the Tribunal to conduct or cause an inquiry into the complaint and to submit within 30 days of the receipt of a complaint, a report to the Tribunal.

Subclause (4) provides that if the Tribunal directs that a disciplinary hearing be convened, the disciplinary procedures prescribed by Regulations shall be complied with by the Tribunal secretary.

Clause 29 provides for the functions of the 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 clause 31 which shall take immediate effect.

Clause 30 provides that the Tribunal shall have all such powers as may be necessary to carry out its functions.

Subclause (2) requires the Registrar to immediately take action necessary to give effect to a decision made by the Tribunal.

Subclause (3) provides that the Tribunal has the same powers as that of a Supreme Court Judge.

Clause 31 authorises the Tribunal to make one or more orders where a hearing for a disciplinary proceeding is completed and 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 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 as 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 Commissioners for Oaths;
- (i) that the practitioner or the partner or partners of the law practice pay a fine or penalty either to the Tribunal or Registrar, 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 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.

The Tribunal may also under subclauses (2), (3), (4) and (5):

- order that no person shall employ a person proven to have committed professional misconduct in any capacity in a legal practice except on conditions specified in the order;
- make interlocutory or interim order before making its final decision;
- make ancillary orders in addition to the orders in subclause (1); and
- with the consent of the Registrar and the practitioner or the partner or partners of a law practice, make orders by consent either before or after the hearing. Orders by consent shall have the same force and effect as an order of a Tribunal under this clause.

Subclause (8) requires the Tribunal to order that 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. This applies when a law practice is ordered by the Tribunal to cease the practice.

Clause 32 allows for the Tribunal not to be bound by the strict rules of evidence unlike the courts. The practitioner to whom the complaint is against is given the opportunity by the Tribunal to respond to or to rebut the evidence admitted by the Tribunal.

Clause 33 complies with the constitutional requirements of hearings to be open to the public unless otherwise determined.

Clause 34 allows the summoning of witnesses by the Tribunal or parties to a disciplinary proceeding to appear before the Tribunal. The provisions of the Criminal Procedure Act 1972 apply to the summoning and evidence of witnesses in this clause.

Clause 35 requires the judgments, decisions or orders of the Tribunal to be delivered in writing and to be delivered in open court.

Subclause (2) empowers the Registrar to enforce the Tribunal's judgments, decisions or orders.

Subclause (4) requires a copy of the judgment, decision or order of the Tribunal to be provided to the practitioner that the disciplinary charges were brought against.

Clause 36 permits a practitioner aggrieved by a judgment, decision or order of the Tribunal under clause 35 to appeal as of right to the Court of Appeal. Such an appeal is deemed to be an appeal in the civil jurisdiction of the Court of Appeal.

Clause 37 requires any complaints against a practitioner to be in writing and provided to the Registrar.

Clause 38 allows a judicial officer to 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.

A referral by a judicial officer to the Registrar of any conduct of a practitioner shall not be deemed a conclusive determination of the conduct referred.

Clause 39 ensures that the Registrar is able to institute proceedings against practitioners for non-compliance with the Bill. Rules can be made by the Chief Justice under subclause (2) for the proceedings of the Tribunal.

Clause 40 provides that the Chief Justice may appoint a practitioner to represent the interests of a complainant in any disciplinary proceeding including a practitioner from the Office of the Public Legal Defender.

The practitioner against whom the complaint is brought may appear in person or by legal representation of his or her choice.

Clause 41 ensures that the power of the courts to deal with a practitioner for contempt of court is not affected. Where a practitioner is found to have committed contempt of court, the finding of contempt of court shall not stop the disciplinary proceedings against a practitioner from taking place.

Clause 42 requires that no complaint relating to an alleged professional misconduct of a practitioner or law practice shall be lodged by an intended complainant after a lapse of 2 years from the time the right to bring the complaint accrued or when the intended complainant first became aware of the misconduct complained about had happened entitling the complainant to lodge a complaint.

Clause 43 clarifies that no fees are required to be paid for the lodging of any complaint against a practitioner. This however does not affect the power of the Tribunal to order costs against a complainant where the Tribunal deems fit.

Clause 44 requires the Registrar to keep and maintain a Register of Complaints made against practitioners and law practices.

Clause 45 in subclause (1) provides for the particulars that the Register of Complaints shall contain. Such particulars are the:

- date of receipt of the complaint;
- full name and identity of the complainant;
- address, telephone number and electronic mail contact of the complainant;
- name of the practitioner or law practice concerned; and
- outcome of the complaint.

Subclause (2) requires the Registrar to record the outcome or final determination of a complaint against a practitioner as follows:

- an order removing the name of the practitioner from the Roll of Legal Practitioners or Roll of Temporary Legal Practitioners;
- an order relating to the issue or renewal of practicing certificates;
- an order suspending a practitioner's practicing certificate;
- an order cancelling the practicing certificate;
- an order imposing a condition on the practicing certificate;
- an order requiring a practitioner to undertake training, education, counselling or supervision;
- an order requiring inspection of the law practice of the practitioner; or
- an order requiring the payment of a fine by the practitioner.

Clause 46 requires the Registrar to also keep and maintain a record of rejected or dismissed complaints in the Register of Complaints. Such records shall contain: the date of receipt of the complaint and the reason for the rejection or dismissal of the complaint.

Subclause (2) requires the Registrar to remove all records of the complaint from the practitioner's record of complaint where a complaint is dismissed after a hearing by the Tribunal or on appeal to the Court of Appeal. This ensures that the practitioner's record and standing as a practitioner in the Republic for the purposes of reporting to any authority or issuance of a certificate of standing is clear.

PART 8 – NAURU LAW SOCIETY

Clause 47 establishes the Nauru Law Society. The Society shall have perpetual succession and the power to acquire real and personal property; and, may sue and be sued.

Subclause (3) requires practitioners practicing law in the Republic to be a member of the Society and to comply with the requirements of this Bill and any other written law for the conduct of the practice of law. Mandatory membership is not required of temporary practitioners.

Clause 48 provides that the Society shall have a common seal and that the secretary of the Society shall keep under his or her custody the common seal of the Society.

Clause 49 requires the Society to adopt a constitution within 3 months of the Bill becoming law. The secretary shall on adoption of the Society's constitution provide a copy to the Registrar.

Subclause (3) provides that the Society's constitution may be amended by simple majority at a general or special meeting of the Society. Subclause (4) requires the constitution to be consistent with the Bill's requirements.

Clause 50 provides for the functions of the Law Society which are to:

- advance the interests, integrity and practice of the legal profession;
- provide education and training for professional development;
- facilitate continuing legal education;
- 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;
- in consultation with the Registrar, review and fix annual membership fees for practitioners;
- represent and promote the views and interests of the legal profession;
- encourage the profession to promote the welfare and interests of clients or client care;
- make internal administrative rules for the governance of the profession; and
- carry out any other functions under this Act and any other written law.

Clause 51 provides that the Council of the Law Society shall consist of a President, a Vice President, a Secretary, a Treasurer and 1 member elected in any general or special meeting of the Society.

Subclause (2) provides that a Council member may hold office until the next annual general meeting, may resign in writing from office and shall be deemed to have vacated office on the following grounds:

- being undischarged bankrupt or who has an arrangement with any of his or her creditors;
- has been 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;
- lacks capacity in respect of his or her duties as a councillor;
- is found guilty of a professional misconduct under this Bill;
- fails to attend 2 consecutive Council meetings for no reason or cause; or
- is disqualified from practicing under this Bill.

Subclause (3) provides that where there is a vacancy in the Council, the Society shall elect a replacement in the case of the President, Vice 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. Where the vacancy is that of the 1 other member, the election shall be held in a special or general meeting.

Subclause (4) restricts the Secretary for Justice, Solicitor General, Director of Public Prosecutions and the Director of the Office of the Public Legal Defender from holding any office in the Council. The reason for this is to avoid any conflict of interest in their respective roles and maintaining the independence of the Law Society.

Clause 52 provides that the Council shall be the executive body of the Society having the responsibility for the administration, control and management of the affairs, funds and other assets of the Society.

Clause 53 provides for the establishment and maintenance by the Society of a bank account to be called the 'Nauru Law Society Account'. The Society must ensure that all monies lawfully received by the Society or Council are deposited into the account and that Society must provide for the keeping and maintaining of such account in its constitution.

Clause 54 in subclause (1) requires the Council to meet at least 4 times a year. Subclause (2) provides that the President and in the President's absence, a Council member to be appointed by the Council shall chair Council meetings. Subclause (3) allows the Council to regulate the procedure for its meetings.

Subclause (4) provides that the quorum for a Council meeting is 3 of its 5 members.

Subclause (5) requires the secretary to issue a notice for a Council meeting by giving members at least 7 days' clear notice in writing or by electronic mail. Subclause (6) allows the abridgement of time required under subclause (5) where an urgent meeting is required to be convened.

Clause 55 provides that if a Council member has a conflict of interest, the Council member must disclose his or her interest which must be recorded by the secretary.

Clause 56 in subclause (1) provides that the Society's annual general meeting shall be held no later than the 31st day of October of each successive year. Subclause (2) provides that a special general meeting may be held if deemed necessary by the Council or if 50% of the members of the Society petition the Council to convene such a meeting. The meeting shall be held no later than 30 days from the date of the presentation of the petition to the secretary.

Subclause (3) provides that the quorum for the meeting shall be no less than 60% of the members of the Society. The Society cannot hold a meeting if the quorum is not met.

Subclause (4) requires a member to inform the secretary of the Society 3 days prior to the meeting if such member is unable to attend the meeting.

Subclause (5) provides that a member commits a disciplinary offence and may be liable to be referred for disciplinary proceedings by the Council if the member fails to attend a general meeting without any reasonable excuse.

Clause 57 requires the secretary to cause proper minutes of all general and special meetings of the Society and of all meetings of the Council and committees appointed by the Council to be taken and recorded. Such minutes shall be available for inspection by any member of the Society at any reasonable time.

Clause 58 mandates that the Society must keep proper records and books of account which must be audited annually.

Subclause (2) requires the Council to present to the Society a full report of the Society's activities over the past 12 months preceding a general meeting.

Subclause (3) requires the secretary to provide to every Society member a copy of the annual accounts and the auditor's report on the account at a general meeting of the Society.

PART 9 – COMMISSIONER FOR OATHS

Clause 59 in subclause (1) provides that the Chief Justice may on application and from time to time appoint a practitioner whom the Chief Justice considers a fit and proper person to be a Commissioner for Oaths. Practitioners must apply to be appointed as Commissioners for Oaths since they do not become Commissioners for Oaths as of right.

Subclause (2) provides that the Chief Justice may on application and from time to time appoint such other persons as Commissioners for Oaths as may be necessary.

Subclause (3) provides that a Commissioner for Oaths shall for the purposes of affidavits, declarations or other depositions have the power to administer oaths or affirmations.

Subclause (4) protects a Commissioner for Oaths from liability in respect of any act or order performed in good faith in the execution of the power or jurisdiction vested in the Commissioner. However, any such act or order if it exceeds the powers or jurisdiction vested in a Commissioner for Oaths shall be liable to be revised, altered, amended or set aside by the Court on an application made to the Court.

Subclause (5) requires a Commissioner of Oaths when signing a document in the exercise of the power of a Commissioner of Oaths shall have the description '*Commissioner for Oaths*' after his or her signature.

Clause 60 requires persons appointed to be a Commissioner for Oaths to have his or her name enrolled in the Roll of Commissioners for Oaths kept by the Registrar.

Subclause (2) requires the Registrar to issue a certificate of enrolment under the seal of the Supreme Court to a person appointed a Commissioner for Oaths.

Subclause (3) provides that a person whose name has not been enrolled in the Roll of Commissioners for Oaths shall not be entitled to perform the duties of a Commissioner for Oaths in the Republic.

Subclause (4) provides discretion to the Chief Justice to strike-off the name of a person from the Roll for Commissioners for Oaths whom the Chief Justice deems no longer a fit and proper person to perform the duties of a Commissioner for Oaths.

PART 10 – NOTARIES PUBLIC

Clause 61 provides that the Chief Justice may on application and from time to time appoint any practitioner he or she considers a fit and proper person to be a Notary Public for the Republic.

Subclause (2) provides that a Notary Public appointed by the Chief Justice shall discharge the duties assigned to such office by the laws of the United Kingdom and or the Republic.

Subclause (3) provides for the payment of fees by a Notary Public as may be prescribed by the Chief Justice.

Clause 62 provides that the Chief Justice may administer the oath or affirmation of a Notary Public.

Subclause (2) requires a Notary Public who is appointed by the Chief Justice to subscribe to the oath or affirmation contained in the Schedule of this Bill before being enrolled in the Roll of Notaries Public.

Clause 63 requires practitioners appointed to be a Notary Public to have his or her name enrolled in the Roll of Notaries public kept by the Registrar.

Subclause (2) requires the Registrar to issue a certificate of enrolment under the seal of the Supreme Court to a practitioner appointed a Notary Public.

Subclause (3) provides that a person whose name has not been enrolled in the Roll of Notaries Public shall not be entitled to perform the duties of a Notary Public in the Republic.

Subclause (4) provides a discretion to the Chief Justice to strike-off the name of a person from the Roll of Notaries Public whom the Chief Justice deems no longer a fit and proper person to perform the duties of a Notary Public.

Clause 64 provides that a person discharging the duties of a Notary Public is deemed to be an officer of the Court.

Subclause (2) provides that if a Notary Public is found guilty of misconduct in the performance of the duties of a Notary Public, such Notary Public shall be immediately discharged by the Chief Justice from the duties of his or her office.

Clause 65 provides that the fees that a Notary Public may charge for the discharge of his or her duties under this Bill shall be prescribed by the Chief Justice.

PART 11 – OFFENCES

Clause 66 mandates that a person cannot practice as a practitioner without being admitted to practice and without a current practicing certificate. Any person who practices without having been admitted and without a practicing certificate commits an offence and shall be liable upon conviction to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 2 years or to both.

Clause 67 in subclause (1) mandates that a person who is not qualified to be admitted as a practitioner and who willfully pretends to be or takes or uses any name or title giving the implication that such person is qualified or recognised under this Bill to act as a practitioner cannot solicit or pretend to provide legal services with or without reward to any person. Any person who breaches subclause (1) commits an offence and shall be liable upon conviction to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 2 years or to both.

Clause 68 in subclause (1) requires a practitioner not to:

- (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.

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

Clause 69 in subclause (1) prohibits a practitioner from knowingly employing a person who is prevented as a result of disciplinary proceedings or suspension from practice, to practice as a practitioner in the Republic or any other country.

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

Clause 70 in subclause (1) prohibits a practitioner from seeking or accepting employment by a practitioner or government department or statutory authority or private entity as a practitioner while he or she is:

- (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.

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

Clause 71 in subclause (1) prohibits 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 from purporting, making or doing, exercising or performing any act, matter or thing relating to the office, function or practice of a Commissioner for Oaths.

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

Clause 72 in subclause (1) prohibits a person who is suspended from practicing as a Notary Public or whose name is not on the Roll of Notary Public from purporting, making or doing, exercising or performing any act, matter or thing relating to the office, function or practice of a Notary Public.

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

PART 12 – MISCELLANEOUS

Clause 73 provides that the Chief Justice, a Supreme Court Judge, the Tribunal, Registrar, Secretary for Justice and the Council acting under this Bill or any written law shall not be liable for any act or omission in the performance in good faith of any function, duty or power under this Bill.

Clause 74 provides that the Chief Justice may prescribe fees by notice in the Gazette for the purposes of Parts 2 and 3.

Clause 75 provides that the Chief Justice may notify a list of designated countries in the Gazette for the purposes of clauses 7, 9 and 13. The Chief Justice in consultation with the Minister and Law Society may add or amend the list of designated countries.

Clause 76 provides that a practitioner wishing to operate a trust account for his or her clients shall only operate such account with the approval of the Chief Justice.

Subclause (2) mandates that a practitioner who operates a trust account is required to:

- 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;
- account properly for trust account money to his or her clients; and
- provide audited accounts on annual basis to the Registrar for the renewal of his or her practicing certificate.

This clause is required because practitioners should not intermingle personal monies with that belonging to a client. For this reason, strict requirements are imposed on practitioners to ensure they do not inadvertently use their clients' monies without authority from the clients.

Clause 77 requires the publication by the Registrar in the Gazette on 15 March of each year of the Roll of Legal Practitioners, Roll of Temporary Legal Practitioners, Roll of Commissioners for Oaths and Roll of Notaries Public.

Publication of these Rolls in the Gazette is important for public information as to the practitioners with current practicing certificates and those appointed as Commissioners for Oaths and Notaries Public.

Clause 78 provides that any notice or document required to be provided or served on a practitioner may be given or served, unless otherwise provided, by:

- person service on that practitioner;
- posting such notice or document by pre-paid post to that person at his or her usual or last known place of business or abode last notified by that person to the Registrar; or
- electronic mail message to the electronic mail address of the member or the place with whom the member is employed, as provided to the Registrar.

Clause 79 vests jurisdiction in the District Court to hear matters relating to any offence committed under the Act.

Clause 80 provides the power to make Rules of the Court. This power is vested in the Chief Justice and he or she may create rules for regulating the form and manner for admission, the time and manner for service and delivery of any documents and provision of public notice, fees to be paid on filing or lodging any application or other document, the form of practicing certificates, fees chargeable by practitioners, requiring production to auditors of books and accounts, opening and keeping of accounts at a bank by practitioners of clients' money, 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 any other matter required to be prescribed.

Clause 81 provides for the Cabinet's regulation making power to make regulations to prescribe all matters necessary or convenient to give effect to the Bill including disciplinary proceedings.

PART 13 – REPEAL SAVINGS AND TRANSITIONAL

Clause 82 repeals the current *Legal Practitioners Act 1973*.

Clause 83 is the savings and transitional clause. This clause saves and continues the following:

- 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 Bill;
- 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 Bill;
 - the Registrar shall enter the names of those practitioners in subsections (1) and (2) into the Roll of Practitioners under this Bill;
 - any law practice established and carrying out the practice of law under the repealed Act shall continue as if commenced under this Bill;
 - any Commissioner for Oaths appointed under the repealed Act shall continue as if appointed under this Bill;
 - any Notary Public appointed under the repealed Act shall continue as if appointed under this Bill.
 - any practicing certificate issued by the Registrar under the repealed Act remains current until the expiry date under this Bill.

Schedule 1 – provides the oaths and affirmations for practitioners and Notaries Public.

Schedule 2 – is the *Legal Practitioners (Professional Conduct) Rules 2019* which provides for the responsibilities of the practitioners to the Court and in carrying out the practice of law.