

RIGHTS OF AND PROCEDURES OF ADMISSION IN SOUTH PACIFIC COUNTRIES

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INTRODUCTION

The rights of persons to be admitted as lawyers (barristers and/or solicitors) in South Pacific countries are regulated by their respective legislation, which slightly varies from country to country. Most countries in the South Pacific, including Papua New Guinea, share a common law jurisdiction because of their affiliation with the British Commonwealth.

Most countries in the South Pacific have their own set of legislative provisions regulating the qualifications and the rights of persons to be admitted as lawyers. This paper outlines the legislative provisions of a number of different jurisdictions to show how a person can be admitted as a lawyer in these countries.

This information on one's right to admission as a lawyer in each of the countries of the South Pacific is vital for those people who want to practice law in this region.

This paper is directed to those who might have had little or no understanding of how a person can be admitted as a lawyer in South Pacific countries to practice law either individually or collectively to build just, fair and stable societies by upholding the rule of law.

The countries covered in this paper are: Papua New Guinea, Fiji, Vanuatu, Samoa, Solomon Islands, Cook Islands, Tonga, Kiribati and Nauru.

PAPUA NEW GUINEA

Legislation/Laws Regulating Admission in PNG

- *Lawyers Act 1986*
- *Lawyers Admission Rules 1990*
- *Lawyers (Examination) Regulation 1992*
- *Post-graduate Legal Training Institute Act 1972*
- Two precedent cases relation to admissions

Requirements for Admission

As Trainee Lawyers

Citizen applicant

To be enrolled as a trainee lawyer at the Post Graduate Legal Training Institute, a Papua New Guinea citizen has to comply with Part IV of the *Post-Graduate Legal Training Institute Act 1972*.

* Both from the PNG Legal Training Institute.

In summary, the applicant has to satisfy the Legal Training Council

- that he or she possesses a Bachelor of Laws Degree (four years of study in law at the University of Papua New Guinea); and
- that he or she is a fit and proper person.

Foreign applicant

To be admitted as a trainee lawyer at the Post Graduate Legal Training Institute a non-citizen must satisfy the LTI council

- that he or she possesses the required academic qualification; and
- that he or she is a fit and proper person; and
- that he or she has studied constitutional law, land law and customary law under the supervision of the Dean of the Faculty of Law of the University of Papua New Guinea.

Note: a foreign law degree is recognised from certain universities in Australia, New Zealand, Great Britain and Northern Ireland. Someone holding one of these degrees would still need to study and sit for an examination and pass those three subjects. However, there are no restrictions on nationalities.

As Lawyers

Citizen applicant

To be admitted as a lawyer one must comply with Part III of the *Lawyers Act 1986* (as amended) and the *Lawyers Admission Rules 1990*.

In summary, the National Court must be satisfied:

- that the applicant possesses the required academic qualifications;
- that the applicant possesses the required practice qualifications;
- that the Attorney General has certified that the applicant is a fit and proper person to be admitted as a lawyer; and
- that the applicant is a fit and proper person to be admitted as a lawyer and that no person or authority objects to the applicant's application for admission for whatever reasons.

Foreign applicant

To be admitted as a lawyer the applicant must possess:

- such other described academic or educational qualifications [s 25(2)(b)]; and
- a certificate of admission to practice as a lawyer in a prescribed country such as Australia, New Zealand, United Kingdom of Great Britain and Northern Ireland. [s 25(3)(b)]; and
- a minimum three years post-admission practice experience in a prescribed country [s 25(3)(b)]; and
- a certificate signed by the Attorney General that the applicant is a fit and proper person to be admitted to practice in PNG [s 25(3)(d)].
- that the applicant has studied constitutional law, land law and customary law under the supervision of the Dean of the Faculty of Law of the University of Papua New Guinea and had passed these subjects.

Precedents establishing admission of lawyers in PNG

The following cases establish the admission precedent whereby an applicant can be admitted as a lawyer under s 25 of the *Lawyers Act 1986*.

Citizen applicant—Application by Kunjip for admission as a lawyer [1997] PNGLR 284.

The applicant, a PNG citizen, obtained her law degree in PNG but completed the equivalent of the Legal Training Institute (PLT Course) at the Queensland University of Technology. She sought admission under the *Lawyers Act* and applied for a waiver to s 25(3)(a) of the Act pursuant to s 28(2) on the grounds that she had met that requirement. It was held that the requirement for admission was waived and the applicant was admitted to practice as a lawyer because she complied with the requirements of admission as specified.

Foreign applicant—In the Matter of the Lawyers Act, Application by Roger Gill Maguire [2003] PGNC 49.

The applicant, an Australian, applied under s 28(2) of the *Lawyers Act* for a waiver of the requirements for certification as a fit and proper person under s 25(3)(d) of the Act. Subject to that application being granted, he also sought admission as a lawyer to practice in Papua New Guinea. He had applied for a waiver of the requirement to sit an examination under s 25(5) of the Act on the basis of his academic and practice qualifications. That application was made as a prelude to getting a certification under s 25(3)(d) as ‘a fit and proper person’ before applying for admission as a lawyer under s 26 of the Act. This application was opposed by the Attorney General but not by the Law Society.

The court found that the Attorney General erred in effectively failing to issue the applicant the appropriate certificate as a fit and proper person. The requirement for the Attorney General’s certification under s 25(3)(d) was waived pursuant to s (28)(2) by the court. Similarly, given the applicant’s academic and professional qualifications, he was qualified for admission as a lawyer to practice law in PNG.

Admission procedures

Application for Admission to Practice

The procedure is laid down in the *Lawyers Admission Rules 1990*. Those rules provide:

1. An application for admission to practice as a lawyer shall be made by way of Notice of Motion supported by an affidavit from the applicant.
2. An affidavit referred to in Subsection (1) shall set out the following matters:
 - a. brief details of the applicant's schooling;
 - b. details of the applicant's work experience;
 - c. details of the applicant's academic qualification;
 - d. details of the applicant's practical legal training after getting a bachelor of law degree
 - e. whether the applicant has any criminal convictions, if so, details of those convictions.

All qualifications identified in the main body of the affidavit must be supported by annexing a copy of the relevant certificate, diploma, or degree to the affidavit.

Each applicant must give a 'Notice of Intention' to apply to practice as a lawyer, which must be published in a newspaper circulating in PNG at least 14 days prior to the hearing of the application in the National Court.

Once the Court is satisfied with all the requirements, the Court admits the applicant as a lawyer and he or she takes an oath of office and signs the lawyers roll at the Court Registry.

Application for a Practising Certificate

The admitted lawyer can immediately practice law but has to apply to the Papua New Guinea Law Society for a practising certificate. The practising certificates come in two forms: restricted and unrestricted. Restricted certificates are for junior lawyers with five years' or less experience. Unrestricted status is for those who have five or more years' experience as lawyers and want to practice as private lawyers on their own account.

Payment of Scheduled Fee

There are payments involved in getting these certificates to practice. For nationals, the fee is in the vicinity of PNG Kina K7,000.00 for restricted practicing certificates and K12,000.00 for unrestricted. The fees for foreigners are 20 to 30 percent higher. These figures are just a guide. Unrestricted practicing certificate-holders have insurance cover of up to a minimum of K500, 000.00 for sole private practitioners.

Fiji

Legislation/Laws Regulating admission in Fiji

- *Legal Practitioners Decree 2009*

Admission requirements to practise law in Fiji

Fiji requires all lawyers to have:

- a Bachelor of law degree (four years of study); and
- a certificate of successful completion of either the Professional Diploma in Legal Practice offered by the University of the South Pacific or Graduate Diploma in Legal Practice offered at Fiji National University; or
- an equivalent law degree and bar admission course from abroad; and
- be admitted to the roll of barristers and solicitors of the High Court of Fiji and hold a current practicing certificate issued by the Chief Registrar's office.

The LLB degree and the Graduate Diploma in Legal Practice (GDLP) are approved by the Fiji Board of Legal Education and satisfy the requirements for registration as a lawyer.

Admission requirements for foreign lawyers to practise in Fiji

Citizenship

Anybody admitted as a barrister or a solicitor (or their equivalent) in a commonwealth country may be admitted in Fiji. Every applicant must be a commonwealth citizen, must reside in Fiji for at least three months and must have such legal experience considered appropriate by the Chief Justice.

Note: It has been reported that foreign lawyers wishing to become admitted in Fiji may experience difficulty in meeting local requirements. Foreign lawyers should liaise closely with the Fiji Law Society.

Educational qualifications

For admission in Fiji, foreign lawyers must be admitted to practice in the foreign jurisdiction and there must be reciprocal recognition of qualifications between Fiji and the overseas jurisdiction.

Experience

For admission in Fiji, every applicant must have at least one year of legal experience in Fiji or in any of the commonwealth countries. To practice on his/her own account, an applicant must have at least three years of such legal experience. The nature of experience required is at the sole discretion of the Chief Justice.

Work Permits

Foreign lawyers require work permits to practice law in Fiji on a permanent basis which, in most cases, are difficult to obtain. However, foreign lawyers may be admitted temporarily to appear in specific cases before the High Court and Court of Appeal, for which no work permit is required.

VANUATU

Legislation/Laws Regulating admission in Vanuatu

- Part 4 of the *Legal Profession Act 2005*.

Admission requirements to practise law in Vanuatu

Generally, a person must:

- (a) be a citizen of Vanuatu or the holder of a permit to reside in Vanuatu.
- (b) have completed:
 - i. a degree in law from the University of South Pacific or a degree in law approved by the Admissions Committee;
 - ii. another course of academic study in law that in the opinion of the Admissions committee is substantially equivalent to a law degree.
- (c) The person:
 - i. has undertaken at least one year of fulltime supervised legal practice in an approved legal office or offices; or
 - ii. has completed a course of practical legal training approved by the Admissions Committee and undertaken at least six months of full time supervised legal practice in an approved legal office or offices; or
 - iii. has undertaken at least 2 years of fulltime supervised legislative drafting in the State law office, or in one or more approved legal offices.
 - iv. is admitted to legal practice in another jurisdiction that is approved by the Admissions Committee.
- (d) is a fit and proper person.

Admission Procedure

Procedure for making an application for admission

The procedure is laid down in the *Legal Profession Act 2005*. Section 16 of those rules provides:

A person is to apply in writing to the Admissions Committee to be admitted to legal practice under this division.

The application is to be accompanied by:

- (a) such material that will enable the Admissions Committee to determine if the applicant meets the criteria for admission under subsections 15(2), (3) and (4); and
- (b) the documents referred to in section 17 that are applicable to the applicant; and
- (c) a police report; and
- (d) an application fee of 10,000 vatu or such other amount as is prescribed by the regulations; and
- (e) such other information as is prescribed by the regulations.

The application fee is not refundable.

In addition to the original application and supporting material, the applicant must provide the Admissions Committee with five copies of the application and supporting material.

If a person who is a citizen of Vanuatu makes an application under section 16, the person must include with the application a copy of the advertisement referred to in subsection (2) of section 17.

That subsection provides that the advertisement must include:

- (a) the name and address of the applicant; and
- (b) a statement to the effect that the applicant is applying to be admitted to legal practice under this Division; and
- (c) an invitation to make written submissions to the Admissions Committee about whether the applicant is a fit and proper person to be admitted to legal practice; and
- (d) mention of a period, being not less than 10 days after the date of the advertisement, within which persons may make submissions.

The advertisement must appear in a newspaper that is available throughout Vanuatu and the cost of the advertisement must be paid by the applicant.

If a person who is the holder of a permit to reside in Vanuatu makes an application under section 16, the person must include with the application a written statement to the effect that the person is a fit and proper person to be admitted to legal practice.

The statement referred to in subsection (4) must be provided by the relevant legal professional body in the country in which the person was usually resident prior to obtaining the permit to reside in Vanuatu.

SAMOA

Legislation/Laws Regulating admission in Samoa

- Part V of the *Legal Practitioners Act 1976*.

Admission requirements to practise law in Samoa

A person is qualified for admission as a barrister or as a solicitor, or as a barrister and a solicitor, of the Supreme Court who:

- is a citizen of Samoa; and
- has attained the age of 21 years; and
- is of good character; and
- holds the prescribed qualifications.

In subsection (1), “prescribed qualifications” means qualifications prescribed, by the Council, by notice published in the gazette.

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

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

The Secretary shall cause every notice published in the Gazette under subsection (2) to be also published forthwith in the Savali, but publication in the Savali shall not affect the validity of the notice.

Admission Procedure

Procedure for making an application for admission

The procedure is laid down in the *Legal Practitioners Act 1976*. Section 20 of those rules provide:

1. An application for admission as a barrister or as a solicitor, or as a barrister and solicitor, of the Supreme Court shall be made by the applicant to the Supreme Court in the manner prescribed by rules of Court, or, if there are no such rules, then in such manner as the Supreme Court may direct.
2. A certificate issued by the Council and signed by the Secretary, that the applicant is of good character and holds the prescribed qualifications, shall be sufficient evidence that the applicant has the qualifications specified in section 19(1)(c) and (d).
3. Before issuing a certificate under subsection (2), the Council may require the applicant to attend before the Council to be interviewed and to answer such questions and provide such information as the council thinks proper to enable it to decide whether to issue a certificate; and the Council may cause such other inquiries as it thinks proper to be concerning the applicant for such purpose.

SOLOMON ISLANDS

Legislation/Laws Regulating admission in Solomon Islands

- *Legal Practitioners (Admission) Rules 1996*

Admission requirements to practise law in Solomon Islands

1. Any person who, at the time of application, is entitled to practice as a barrister, solicitor or legal practitioner in any commonwealth country and has so practiced for at least five years immediately preceding the application may apply for admission as a legal practitioner in Solomon Islands.
2. The Court, on being satisfied that the applicant:
 - a. has satisfied the conditions specified in rule 3 and
 - b. is a fit and proper person to be admitted, may admit such person as a barrister and solicitor of the High Court of Solomon Islands.
3. The admission referred to in sub rule (1) may be a general admission or with such restriction as the Court sees fit to impose.

Admission Procedure

Procedure for making an application for admission

The procedure is laid down in the *Legal Practitioners (Admission) Rules 1996*.

Every application for admission shall be made by way of petition to the Court at least one (1) month before an applicant files his petition together with

- (a) an affidavit verifying that the petitioner has been admitted to the Bar in a Commonwealth country and is entitled to practice and has in fact practiced in such jurisdiction for a period of not less than five years;
- (b) true copies of certificates and documents certifying to the petitioner's entitlement to practise;
- (c) evidence that the petitioner at the time of application continues to practise in such jurisdiction or if he has ceased to practise, the reason for so doing; and
- (d) a certificate under the hand and seal of a Judge of a Court before which the petitioner last practised stating that such petitioner is a fit and proper person to be admitted.

On receipt of an application referred to in subrule (1), the registrar shall forward such application to the Solomon Islands Bar association for its comments or recommendations.

The Bar Association's endorsement (which must be produced to the Court) must be obtained or if the Bar Association does not endorse an application, this fact must also be communicated to the Court in writing.

An applicant's petition must be moved in open Court on a day set aside by the Registrar for the hearing of admission petitions.

COOK ISLANDS

Legislation/Laws Regulating admission in Cook Islands

- Part I of the *Law Practitioners Act 1993-1994*

Admission requirements to practise law in Cook Islands

Every person shall be qualified for admission as a barrister only, as the case may be who:

- (a) has attained the age of 21 years; and
- (b) is a fit and proper person to practise law and has either,
 - i. been admitted as a barrister or solicitor, or both, as the case may be, pursuant to the laws of New Zealand or Australia, or, of any other country of the Commonwealth which may from time to time be named by Order of the Minister after consultation with the Chief Justice; or

- ii. in the opinion of the Chief Justice, passed any suitable examination in law and who, while not having been admitted as a barrister or solicitor or both, demonstrates a satisfactory knowledge of law; and

(c) is:

- i. Ordinarily resident in the Cook Islands;
- ii. A person who is not ordinarily resident in the Cook Islands but, in the opinion of the Chief Justice, has demonstrated a sound knowledge of Cook Islands law.

Admission Procedure

Procedure for making an application for admission

The procedure is laid down in the *Law Practitioner's Act 1993–1994*.

Every application for admission shall be by application to the Chief Justice, and forthwith upon the filing thereof the Registrar shall deliver a copy to the Council which may require the applicant to appear before it for the purpose of an interview. The Council shall, after making or causing to be made such enquiries into the character, qualifications and experience of the applicant as it shall deem necessary, forward to the Chief Justice a confidential report regarding the suitability or otherwise of such applicant for admission, and if such confidential report is adverse to the applicant, communicate the contents thereof to the applicant.

Upon application for admission being made under the provisions of subsection (1) and after considering the confidential report of the Council (if any), and upon proof to his satisfaction of the qualification and suitability of the applicant, and upon production of such testimonials as to character as may be required, the Chief Justice, unless cause to the contrary is shown, shall by writing under his hand, admit the applicant to practise as either a barrister and solicitor or as a barrister only, upon such terms and conditions that he thinks fit and shall inform the Registrar accordingly.

Where any applicant is dissatisfied with the content of any report made by the Society pursuant to subsection (2), he may Apply to the Chief Justice for a review of the report.

Every person who has been admitted pursuant to subsection (2) shall before a Judge of the Court of Appeal or of the High Court, or a Justice of the peace:

- take the following oath – (as specified in the Act); or
- affirm as follows- (as specified in the Act) which are provided for in the *Law Practitioner's Amendment Act 2008*.

TONGA

Legislation/Laws Regulating admission in Tonga

- *Law Practitioners Act 1989*

Admission requirements to practise law in Tonga

The *Law Practitioners Act 1989* provides that no person shall practice as a law practitioner within the kingdom of Tonga unless:

- his name is on the Roll of Law Practitioners; and
- he has in force a valid practising certificate.

A person shall be deemed to practice as a law practitioner if he has engaged in work of a legal nature.

The Chief justice may enrol a person on the Roll of Law Practitioners if he is satisfied:

- that the person has sufficient professional knowledge and experience and training in a common law jurisdiction; and
- as to the person's character and his suitability to be a law practitioner;
- that the person intends to practise in Tonga as a law practitioner.

KIRIBATI

Legislation/Laws Regulating admission in Kiribati

- *Lawyers' Admission (Amendment) Rules (No. 2) 1992*

Admission requirements to practise law in Kiribati

1. A person who desires to be admitted shall apply in writing to the Attorney-General stating that he is a fit and proper person to be admitted.
2. After a personal interview with the applicant and on being satisfied that the Applicant:
 - a. is qualified for admission; and
 - b. is a fit and proper person to be admitted, the Attorney General in his discretion may issue a Certificate of qualification as in Form 1 or Form 1A, as the case may be.
3. A certificate of qualification issued by the Attorney-General under this Rule in respect of a legal practitioner admitted elsewhere may be subject to such condition or restriction as the Attorney-General may think fit to impose.

4. The Chief Justice may, subject to the payment of the fee prescribed under Rule 9(2) and Rule 12(1) and (2) where applicable, admit to practise a person who is the Holder of a certificate issued under Rule 3.

NAURU

Legislation/Laws Regulating admission in Nauru

- *Legal Practitioners Act 1973*

Admission requirements to practise law in Nauru

Every person shall be qualified for admission as a barrister and solicitor who has attained the age of twenty-one years, has such legal experience required under the provisions of the next following section as is applicable in his case and either:

- Has been admitted as a barrister or solicitor in England, Northern Ireland or the Republic of Ireland, as an advocate or law agent in Scotland or as a barrister or solicitor or as a barrister and solicitor, in Australia, New Zealand or in any other country which may from time to time after consultation with Chief Justice be notified by the Minister in the gazette; or
- has obtained a degree in law of any university approved by the Minister after consultation with the Chief Justice.

Admission Procedure

Procedure for making an application for admission

The procedure is laid down in the *Legal Practitioners Act 1973*. Those rules provide:

- Application for admission to practice as a barrister and solicitor shall be by petition in accordance with Form No. LP/Ad/1 in the Schedule to these Rules.
- The contents of a petition for admission to practice as a barrister and solicitor shall be verified by affidavit and accompanied by the certificate of the applicant's admission to practice or of his degree, as the case may be, referred to in the petition.
- A petition for admission to practice as a barrister and solicitor shall be lodged with the Registrar, together with a copy thereof. It may be lodged, but shall not be heard, before the Act comes into force.

ADMISSION REQUIREMENTS OF PAPUA NEW GUINEA COMPARED TO ADMISSION REQUIREMENTS OF THE SOUTH PACIFIC COUNTRIES

- Most South Pacific countries admit legal practitioners as barristers or solicitors.

- Most South Pacific countries do not have admission requirements for trainee lawyers except admission requirements for lawyers or barristers and solicitors.
- Admission requirements vary from country to country according to the legislations of each country. Not all share a common requirement.
- The admission requirements for PNG and Fiji are quite similar.
- However, in the case of foreigners, Fiji, unlike PNG, requires not only the educational qualification and practice qualification but also the requirements of citizenship, residency and a work permit to practice law.
- In Fiji, the nature of experience required is at the sole discretion of the Chief Justice while the 'fit and proper' test in PNG is certified at the sole discretion of the Attorney General which, in some instances, can be waived by the court if it is established that the Attorney General has acted unlawfully, maliciously or in excess of his jurisdiction.

CONCLUSION

- The discussions above clearly indicate that countries in the South Pacific each have their own legislation that governs admission of foreigners, in addition to the locals.
- There is a greater need to admit foreign applicants in the South Pacific countries as there are considerable number of foreign lawyers being admitted in PNG. This is also the case in other South Pacific countries.
- Therefore, countries in the South Pacific may liaise with each other to empower and encourage law students, trainee lawyers and lawyers to explore and expand their legal skills and knowledge not just locally but internationally. They bring wide-ranging experiences and world views to the country from where they have been admitted. There is so much out there that they need to acquire and impart in enhancing their expertise and identifying legal issues beneficial to the local bars. It is not just an individual effort but collectively intertwined among jurisdictions.
- Such an approach is one way of strengthening the relationship of the legal profession among the South Pacific countries through admission. This awareness of the admission rights, requirements and procedures can now be appreciated by any applicant seeking admission in PNG or in other South Pacific countries.
- It's all about upholding the law to curb and solve legal issues in the society. The whole idea is to do the right thing for the right purpose in the society where necessary. There is no difference in the jurisdictions, as they all carry the same nature; overall admission requirements should be established in a way that enables the applicants the required qualifications to equip them to carry out their tasks effectively in the country where they intend to practice.

RECOMMENDATIONS

Review of legal profession legislation and regulation

Governments in South Pacific countries should liaise and conduct a comprehensive review admission rules and practice requirements.

Exchange of lawyers or trainees

Lawyers and trainees should be given the privilege to choose to practice or attend training in any country within the region in exchange with other regional lawyers or trainees so that legal skills and knowledge can be imparted and appreciated by the locals on a wider perspective.

Recognition of foreigners' rights

The right of a foreigner who has qualified for admission should not be biased or exercised unlawfully on the basis of race, sex or religion by those who have the discretionary power in determining admission of foreigners to practice in a given country. This discretion must be exercised within the ambit of the Act or Legislation of that country.

Local requirements should be flexible for foreigners

Practicing law is a global profession, so there should be flexibility on the admission requirements for foreigners.