

CRIMINAL PROCEDURE IN THE SOUTH PACIFIC

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I. INTRODUCTION

This paper surveys the legislation governing criminal procedure in the jurisdictions of Melanesia, Micronesia and Polynesia which possess a heritage of English law. There are twelve jurisdictions in this category: Cook Islands, Fiji Islands, Kiribati, Nauru, Niue, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu. Collectively, they will be described as the jurisdictions of “the South Pacific region”.^[1] In some instances, versions of English law were received directly from the United Kingdom. In other instances, they came through Australia or New Zealand. The concern of this paper, however, is not with historical matters.^[2] Its aim is instead to examine the shape of the legislation currently in force, charting the general themes which characterise the region and some of the distinctive features of particular jurisdictions.

The paper complements an earlier examination of issues of responsibility under the criminal codes of the South Pacific region.^[3] That paper traced the impact of two models of codification. The “Stephen code”, originally drafted by Sir James Stephen in England in the late nineteenth century, became the foundation for the New Zealand *Crimes Act*^[4] and then for the criminal codes of Cook Islands, Niue, Samoa and Tokelau.^[5] The “Griffith code”, originally drafted for Queensland by Sir Samuel Griffith at the end of the nineteenth century, was first enacted in Queensland itself,^[6] then later exported by Australia to Nauru^[7] and Papua New Guinea.^[8] It was also used as a model by British officials in the Colonial Office and subsequently the Foreign and Commonwealth Office. They exported it to Fiji Islands, Kiribati, Solomon Islands and Tuvalu.^[9] Tonga and Vanuatu stand apart from these models: their statutes on criminal offences are unique.^[10] The Stephen and Griffith codes, however, still provide the framework for the law of criminal offences in the jurisdictions where they were introduced.

The Stephen and Griffith codes both contained procedural provisions. Both codes focused on indictable procedure, leaving summary procedure to a separate statute. They contained detailed provisions on the form of indictments, some aspects of the structure of trials, the available verdicts and appeals. Neither, however, came anywhere near approaching a complete codification of criminal procedure for indictable offences. For example, the burden of proof was ignored; the coverage of trial procedure was sparse; much of the law relating to juries and to committal or preliminary proceedings was left for the common law or covered by separate legislation. Criminal procedure in both New Zealand and Queensland is governed by a variety of statutes which supplement the schemes of the respective criminal codes.^[11]

Although the South Pacific jurisdictions have generally followed either the Stephen or the Griffith code for their law of criminal offences, some different directions have been taken in the law of criminal procedure. Only Papua New Guinea has a criminal code covering both offences and procedure, following

the Griffith model in both respects. Most of the other jurisdictions have separate statutes, in some instances titled “codes”, dealing specifically with procedural matters and providing extensive and often remarkably detailed coverage of the field. Another feature of criminal procedure in the South Pacific jurisdictions is the role of constitutional protections. Almost all the jurisdictions have written constitutions which prescribe a range of rights relating to criminal procedure.

The combination of constitutional rights and procedural statutes has produced a distinctive regional model of criminal procedure, characterised by written law of broad coverage and detailed specificity. One of the aims of this paper is to make this model more widely known. It has been largely ignored outside the region. It could, however, provide useful reference material for other jurisdictions contemplating the codification of the law of criminal procedure.

Even within the region, the model has received little attention in the absence, until quite recently, of a regional institution of legal education.^[12] It should therefore be emphasised that this is a survey of procedural law rather than practice. The relationship between law and practice is always problematic but becomes especially so when officials and lawyers have not received systematic training in the law of their own jurisdiction. Law and practice in the South Pacific are, however, likely to draw more closely together now that regional legal education is more readily available. Practice may be brought into line with the law as knowledge of the law increases. Alternatively, wider knowledge of the law may advance critical reflection about its practical utility and stimulate movements for reform. Whatever is to be the direction for future development, some attention needs to be paid to the content of the existing statutory law.

Part II of this paper examines more closely the sources and structure of the law of criminal procedure in the South Pacific. Part III analyses some common elements of criminal procedure in the region and some distinctive features of particular jurisdictions.

II. THE FRAMEWORK OF CRIMINAL PROCEDURE

1. Constitutional rights

All of the jurisdictions of the South Pacific region, with the exception of Tokelau, have written constitutions.^[13] All of these constitutions, except that of Niue, contain provisions on fundamental rights and freedoms, including guarantees of a range of rights respecting the criminal process.^[14]

A standard model of constitutional rights was developed for the former British dependencies in the South Pacific. The original model is still in effect in Kiribati, Solomon Islands and Tuvalu, where constitutional rights are substantially the same in structure, content and expression. Some amendments were introduced in Fiji Islands through its 1997 constitution but the heritage is still clearly discernible. The British model was also adopted for the Nauru constitution, despite the historical role of Australia in its administration. The constitution of Papua New Guinea covers similar ground but is drafted in different terms.

Notable features of the British model are the range and specificity of the provisions. The components of the model are: general declarations of the right to ‘life, liberty, security of the person and the protection of law’ and of the right to protection for the privacy of a home and other property;^[15] statements of the justifications for depriving a person of liberty and of the rights of a person who is arrested or detained;^[16] a prohibition on searches without consent except under specified conditions;^[17] and a set of provisions labelled ‘Provisions to secure protection of law’.^[18] Under the latter heading, there is: a general guarantee of a fair hearing within a reasonable time by an independent and impartial court;^[19] a declaration of the right to be presumed innocent until proved or having pleaded guilty;^[20] a series of specific rights

respecting the trial process such as a right to information about the charge and a right to adequate time and facilities for the preparation of a defence;^[21] a prohibition on retrospective changes in the law;^[22] a prohibition on certain forms of double jeopardy;^[23] and a guarantee of the right of an accused not to be compelled to give evidence.^[24] The original model guaranteed the right of an accused to be defended ‘at his own expense, by a representative of his own choice’. This is still how the right respecting counsel is framed in Kiribati, Solomon Islands and Tuvalu.^[25] In Fiji Islands and Nauru, however, there is now an additional right to have counsel provided where ‘the interests of justice’ require this.^[26] Fiji Islands, together with Papua New Guinea, has also given constitutional recognition to rights to appeal against conviction or sentence.^[27]

With respect to the specificity of the provisions, an example is the prohibition on double jeopardy. The prohibition, which covers the ground of the common pleas of *autrefois acquit* and *autrefois convict*, specifically extends to a retrial following a pardon and specifically excludes a retrial following an appeal.^[28]

Constitutional rights respecting the criminal process are more restricted in the former New Zealand dependencies of Cook Islands and Samoa. The constitution of Cook Islands contains a set of general declaratory rights, including equality before the law and the protection of the law but not privacy.^[29] The constitution of Samoa contains none of these declaratory rights. There is a general guarantee of trial fairness in both constitutions, although only Samoa includes a requirement for trial within a reasonable time.^[30] Moreover, only Samoa has provisions relating to specific aspects of the trial process, including a right of an indigent person to have legal assistance provided where this is required by ‘the interests of justice’.^[31] Both constitutions also incorporate the presumption of innocence,^[32] some rights in relation to arrest or detention,^[33] and a prohibition on retrospective changes in the law.^[34] A broader range of additional rights is found in Samoa than in Cook Islands: the Samoa constitution covers self-incrimination and double jeopardy,^[35] neither of which is mentioned in the Cook Islands constitution. Searches are ignored by both constitutions.

Tonga, which was always self-governing in internal affairs, has an idiosyncratic constitution. There are no general declaratory rights respecting the criminal process. There is also no general guarantee of trial fairness although there are provisions relating to some specific aspects of the trial process.^[36] Searches are addressed but only with respect to warrants for searching property;^[37] the writ of habeas corpus is entrenched but otherwise issues relating to arrest or detention are ignored;^[38] retrospectivity is covered only by a general prohibition which is limited to ‘rights and privileges’;^[39] there is nothing on the presumption of innocence. The constitution does, however, cover self-incrimination and double jeopardy.^[40] It also guarantees the right to elect trial by jury for indictable offences.^[41]

The former Anglo-French condominium of Vanuatu also has an unusual set of constitutional rights. On the one hand, it alone matches the model of the former British dependencies in the range of its general declaratory rights carrying implications for the criminal process: the right to protection of the law and the right to privacy of the home and other property are both included.^[42] There is also a general guarantee of a fair hearing within a reasonable time by an independent and impartial court, a guarantee of the presumption of innocence, a range of rights respecting specific aspects of the trial process, including a right to be afforded a lawyer ‘if it is a serious offence’, and provisions on retrospectivity and double jeopardy.^[43] On the other hand, it has the only set of constitutional rights in the South Pacific which covers neither searches nor arrest and detention. Self-incrimination is also ignored.

Despite curious gaps in some jurisdictions, constitutional rights are clearly a prominent feature of criminal

procedure throughout the South Pacific. In this respect, the South Pacific jurisdictions can be contrasted with the Anglo-Australasian jurisdictions which provided their legal heritage. Constitutional rights have been a relatively recent development in the United Kingdom and New Zealand;^[44] they still play no role in Australia.

2. Procedural codes and acts

One of the features of criminal law in the South Pacific region is the existence of separate statutes setting out a general framework for criminal procedure. The focus of this part will be on these general procedural statutes. They are found in the legislation of Cook Islands, Fiji Islands, Kiribati, Nauru, Samoa, Solomon Islands, Tuvalu and Vanuatu. The exceptions are: Papua New Guinea, which has retained the Griffith model of a general criminal code covering not only offences but also aspects of indictable procedure, supplemented by statutes dealing with other procedural matters;^[45] Niue and Tokelau, where there is no separate criminal code, offences and procedure both being incorporated as parts of a wider legislative instrument;^[46] and Tonga, where provisions on criminal procedure are dispersed among a variety of statutes.^[47]

As also happened with constitutional rights, a standard model for a procedural statute was developed for the former British dependencies: Fiji Islands, Kiribati, Solomon Islands and Tuvalu. The model still operates in these jurisdictions.^[48] The statutes are called ‘codes’ of criminal procedure, a term which suits their range and specificity. The British model code is also used in the former Anglo-French condominium of Vanuatu, although with a few, relatively minor, amendments.^[49] Moreover, it has been adopted in the former Australian dependency of Nauru,^[50] despite Nauru using the Griffith code for its law of criminal offences. Nauru uses the term ‘act’ rather than ‘code’ in the title of its procedural statute but the form and content follows the model of the codes. Henceforth, the term ‘South Pacific codes’ will be used to describe all statutes following the model including that of Nauru. The other two jurisdictions with general procedural statutes are the former New Zealand dependencies of Cook Islands and Samoa.^[51] Their statutes, which are called ‘acts’, are shorter, less extensive in coverage and less detailed than the statutes following the British model code.

The Solomon Islands statute can illustrate the model of the South Pacific procedural codes. The other former British dependencies of Fiji Islands, Kiribati and Tuvalu use basically the same system of titles and numbers, with the differences being minor. Some amendments have been made to titles and numbers in Nauru and Vanuatu but the common structure has been retained.

The *Criminal Procedure Code* of Solomon Islands is laid out in the following way:

Part I – ‘Preliminary’. This covers the title of the statute, definitions, and the range of the statute’s application.

Part II – ‘Powers of Courts’. This covers the jurisdiction of courts and the sentencing powers of different levels of courts.

Part III – ‘General Provisions’. These provisions cover restraints upon physical liberty: powers of arrest without warrant; other matters respecting arrests; powers respecting escapes and ‘retakings’; security for keeping the peace and maintaining good behaviour; powers to prevent the commission of offences. Also covered are warrantless powers to ‘detain and search’ persons, vehicles and vessels.

Part IV – ‘Provisions Relating to All Criminal Investigations and Proceedings’. The reference at the end of this title varies between the code jurisdictions. It is ‘All Criminal Investigations and Proceedings’ in Kiribati and Tuvalu as well as Solomon Islands, ‘All Criminal Investigations’ in Fiji Islands, ‘Criminal

Proceedings' in Nauru, and 'All Prosecutions' in Vanuatu. The content is very similar in all these jurisdictions. A miscellaneous range of matters is covered. Some relate to the investigation of offences, some to prosecutions and some to proceedings at trial. Particular matters are: the location of trials; the entering of a *nolle prosequi*; the appointment and powers of prosecutors; the institution of proceedings; processes for compelling the appearance of an accused person; search warrants; bail and recognizances; the form of charges; joinder of counts and defendants; double jeopardy arising from previous convictions or acquittals; processes for compelling the attendance of witnesses; the examination of witnesses; reversals of the burden of proof for negative averments; rules respecting evidence for the defence; accused persons who are of 'unsound mind'; the content of judgments and the mode of delivering them; costs and compensation; reconciliation; restitution of property; convictions for offences other than those charged; the right to be defended by a lawyer.

Part V – 'Mode of Taking and Recording Evidence in Inquiries and Trials'. This is a short part which deals with a few evidentiary matters including documentary evidence, the language of courts and interpretation to other languages. The language is English in Solomon Islands, but English is defined to include 'Solomon Islands pidgin'. In Vanuatu, Bislama and French may be used as well as English. English is the sole language permitted by the codes of the other jurisdictions.

Part VI – 'Procedure in Trials before Magistrates' Courts'. This part deals systematically with the steps in trials before magistrates' courts. Among the matters covered are adjournments, pleas, withdrawal and amendment of charges, 'no case' acquittals, and consideration of other offences admitted by an accused. The jurisdiction of magistrates is, however, dealt with in the Magistrates' Courts Ordinance instead of the Criminal Procedure Code.^[52] Excluding the topic from the code is also the arrangement in some other jurisdictions.^[53] Only the Fijian code deals with the jurisdiction of magistrates.^[54]

Part VII – 'Provisions Relating to the Committal of Accused Persons for Trial before the High Court'. This part covers the conduct of preliminary inquiries and proceedings after committal for trial.

Part VIII – 'Procedure in Trials before the High Court'. The title 'High Court' is also used in Fiji Islands, Kiribati and Tuvalu, whereas 'Supreme Court' is used in Nauru and Vanuatu. This part covers similar ground to the corresponding part on summary trials. Matters covered include pleas, amendment of charges, adjournments, bail, the prosecution case, 'no case' rulings, the defence case, rebuttal evidence, final submissions and judgment. There are also provisions on the optional use of assessors. There are also optional schemes for assessors in the Kiribati and Tuvalu codes and mandatory schemes in the Fiji Islands and Vanuatu codes. There is no provision for their use in the Nauru code.

Part IX – 'Appeals from Magistrates' Courts and Cases Stated'. This part deals only with appeals to the High Court from magistrates' decisions and with cases stated by magistrates for decision by the High Court. Appeals from High Court decisions are dealt with in separate legislation.

Part X – 'Supplementary Provisions'. This part covers habeas corpus proceedings as well as some minor matters such as copies of proceedings, forms and expenses.

The failure to address the jurisdiction of magistrates is one of the more obvious gaps in the coverage of most South Pacific codes. Another is the failure to cover appeals from the High or Supreme Courts. The omission has been corrected in the Vanuatu code, which contains general provisions on appellate rights and the powers of an appeal court for all levels of appeal.^[55] In the former British dependencies of Fiji Islands, Kiribati, Solomon Islands, reference must be made to a separate *Court of Appeal Act* for the higher level of appeals. The provisions of these acts follow a standard model.^[56] In Tuvalu, there are provisions respecting the Court of Appeal in the *Superior Courts Act*.^[57] In Nauru, the *Appeals Act* governs all levels of appeal.^[58]

Another matter covered by separate legislation is the ‘island’ or ‘local’ courts of Solomon Islands, Tuvalu and Vanuatu, in which minor cases can be handled by customary processes.^[59] In addition, the *Magistrates’ Courts Acts* of Kiribati, Solomon Islands and Tuvalu contain a provision authorising magistrates to promote reconciliation and settlement in minor criminal cases.^[60] In Fiji Islands, Nauru and Vanuatu, the same authorisation has been incorporated in the general procedural code.^[61]

Various examples could be given of the systematic detail of the South Pacific codes. Unusually for legislation on criminal procedure, there is a description of what actually constitutes an arrest. For example, the Solomon Islands code provides:^[62]

10(1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

‘No case’ acquittals offer another matter which is often absent from procedural legislation but is covered by the South Pacific codes. The Solomon Islands code reads:

269(1) When the evidence of the witnesses for the prosecution has been concluded, and the statement or evidence (if any) of the accused person before the committing court has been given in evidence, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence, shall, after hearing, if necessary, any arguments which the public prosecutor or advocate for the prosecution or the defence may desire to submit, record a finding of not guilty.

Similarly, judgments generally receive little attention in legislation on criminal procedure. In the South Pacific codes, however, there are express requirements respecting the content of a judgment, including reasons, and the mode of delivering it. The Solomon Islands version reads:^[63]

150(1) The judgment in every trial in any criminal court in the exercise of its original jurisdiction shall be pronounced, or the substance of such judgment shall be explained, in open court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties and their advocates, if any:

Provided that the whole judgment shall be read by the presiding Judge or magistrate if he is requested to do so by the prosecution or the defence ...

151(1) Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the court in English, and shall contain the point or points for determination, the decision thereon and the reasons for the decision ...

Provided that where the accused has admitted the truth of the charge and has been convicted, it shall be sufficient compliance with the provisions of this subsection if the judgment contains only the finding and sentence or other final order ...

A different type of statute is found in the *Criminal Procedure Acts* of Cook Islands and Samoa.^[64] There are some major differences between these two jurisdictions. In Cook Islands, all criminal trials and committal proceedings are held in the High Court and juries are used for serious offences. In contrast, offences in Samoa are tried in magistrates’ courts as well as the Supreme Court, there are no committal proceedings, and assessors are used instead of juries. Nevertheless, the *Criminal Procedure Acts* of the two jurisdictions are very similar to each other in structure, content and expression.

The Samoa Act can illustrate the model. It is laid out in the following way:

Part 1 – ‘Preliminary’. This covers the title of the statute, definitions, and the range of the statute’s

application.

Part II – ‘Procedure for the Prosecution of Offences’. This is the major part, dealing with a wide range of matters. It covers: arrests; informations; summonses; a few matters relating to the taking of evidence; some general matters relating to trials, including location, joinder of counts and defendants, and withdrawal and amendment of charges; alternative offences of which an accused can be found guilty; appearances; pleadings; the order of proceedings and other miscellaneous matters relating to the conduct of a trial; witnesses; adjournments and bail; and search warrants.

Part III – ‘Assessors in Supreme Court Trials’. This part has no parallel in the Cook Islands act, where juries are covered by separate legislation. The part covers the selection and role of assessors, which differs from that in the code jurisdictions. Under the codes, the role of assessors is advisory only. Samoa, however, requires a number of them to concur in a verdict of guilty.^[65]

Part IV – ‘Miscellaneous Provisions as to Trial’. The miscellaneous matters include discharges, retrials and reservations of questions of law.

Part V – ‘Sentence and Enforcement of Penalties’ and ‘Punishments’. This part deals with a variety of sentencing matters, such as the discretion to impose less than a maximum sentence, cumulative sentences and the manner of carrying out a sentence of death. The part seems out of place in a statute on procedure.

Part VI – ‘Preservation of the Peace’. This part deals with peace bonds.

Part VII – ‘Appeals from Magistrates’ Courts to the Supreme Court’. Appeals are omitted entirely from the Cook Islands act, except for a few provisions relating the custody of appellants: rights of appeal and the powers of an appellate court are handled under the *High Court Act*.^[66] The Samoa act deals with these issues in part, with respect only to appeals to the Supreme Court from verdicts of magistrates. The higher level of appeals, from verdicts of the Supreme Court to the Court of Appeal, falls under the *Judicature Act*.^[67] This is the same split arrangement as is found in the jurisdictions with procedural codes.

Part VIII – ‘Miscellaneous’. The matters included here include orders for compensation, restitution and costs.

The *Criminal Procedure Acts* of Cook Islands and Samoa are much shorter than the codes which follow the British model. A range of important matters are omitted. For example, in Cook Islands, the role of juries falls within the *High Court Act* and their composition and operation is covered by the *Juries Act*.^[68] In Samoa, the jurisdiction of magistrates in criminal cases is determined by the *Magistrates’ Courts Act*.^[69]

Among the matters covered by the *Criminal Procedure Acts* of Cook Islands and Samoa, but receiving less attention than in the codes, are the form of charges and the order of proceedings at a trial. The form of charges is dealt with by a provision merely referring to the form prescribed in a Schedule; and the Schedule merely refers to the location, date and ‘nature’ of the alleged offence.^[70] In contrast, the codes prescribe in some detail how the offence is to be described, stressing that ‘ordinary language’ is to be used as much as possible, and require sufficient particulars to provide ‘reasonable information’ about the charge.^[71] On the order of proceedings at a trial, the Cook Islands and Samoa statutes just provide for the court to hear first the evidence for the prosecution and then the evidence for the defence, followed by any rebuttal evidence, and for opening and closing addresses.^[72] The codes, however, not only address these matters in greater detail but also cover cross-examination, ‘no case’ acquittals, and judgments.^[73]

None of the Anglo-Australasian jurisdictions have general procedural codes comparable those of the

South Pacific region.^[74] The desirability of introducing some general procedural statute is mooted from time to time in other jurisdictions but no progress has been made. If moves were to be made in this direction, the South Pacific codes could provide a useful point of reference.

III. ELEMENTS OF CRIMINAL PROCEDURE

1. Police powers

The traditional English approach to powers of criminal investigation and law enforcement was to require warrants for their exercise. The approach was also carried forward in Australia and New Zealand. An exception was made with respect to warrantless powers of arrest for the purpose of initiating proceedings in court. No recognition was given, however, to warrantless powers for the investigation of offences. Perhaps the assumption was made that there was no need for warrantless investigative powers or the cynical view was taken that the unlawful exercise of such powers should be ignored.^[75]

This English tradition has been followed in the jurisdictions with historical ties to New Zealand: Cook Islands, Samoa, Niue and Tokelau. The procedural legislation of these jurisdictions includes provisions on arrest and search warrants and also on arrests without warrant.^[76] A police officer is authorised to make an arrest without warrant on the basis of ‘good cause to suspect’ that certain categories of offence have been committed.^[77] However, it appears that the purpose of the arrest must be to initiate court proceedings: in Cook Islands, the person must be brought before a court ‘as soon as possible and in any case no later than 48 hours after the time of the arrest’;^[78] in Samoa, the person must be produced before ‘a remanding officer within 24 hours (excluding the time of any necessary journey)’;^[79] in Niue and Tokelau, the person must be produced before a court ‘as soon as possible’.^[80]

The other South Pacific jurisdictions have taken a different direction. They all have statutory provisions on arrests, both with and without warrants,^[81] and also on search warrants.^[82] In addition, they have all prescribed conditions under which police officers are authorised to conduct searches and exercise some other powers without warrants.^[83] Some of the South Pacific constitutions contain rights with respect to searches, although there is no obvious conflict with the legislative authorisations. In Fiji Islands there is a constitutional guarantee against unreasonable search or seizure and a requirement for any search or seizure to be authorised by law.^[84] In Papua New Guinea there is a general constitutional protection against searches of the person or property,^[85] but this can be overridden by laws designed to advance certain public interests, including ‘public order’ and ‘public welfare’, and meeting certain procedural requirements.^[86] The constitutions of Kiribati, Nauru, Solomon Islands and Tuvalu contain a dramatic constitutional prohibition on searches without consent.^[87] The prohibition is, however, subject to some very broad exceptions, including searches authorised by laws making provision for ‘the prevention and investigation of breaches of the law’.

The procedural codes of Fiji Islands, Kiribati, Nauru, Solomon Islands, Tuvalu and Vanuatu use the term ‘cognisable offence’ to describe an offence for which a police officer can make an arrest without warrant on the basis of suspicion, on reasonable grounds, of the offence having been committed.^[88] The adoption of the standard of ‘reasonable suspicion’ is expressly authorised by the constitutions of Fiji Islands, Kiribati, Nauru, Solomon Islands and Tuvalu. Under these constitutions, the permissible grounds for depriving someone of ‘the right to personal liberty’ include ‘upon reasonable suspicion of his having committed, or being about to commit, a criminal offence’.^[89] Nauru ties all its provisions on arrest without warrant to the concept of cognisable offences.^[90] In the other code jurisdictions, there are some broader powers of warrantless arrest. When the commission of a ‘non-cognisable offence’ occurs or is alleged in the presence of an officer, a demand can be made for the person’s name and address, supported

by a power to make an arrest if the demand is refused or there is reason to believe that false information has been given.^[91] In addition, there is a power to make an arrest without warrant for any offence when it is committed in the presence of an officer.^[92]

In addition to these powers of arrest, the codes contain a power for police officers to ‘detain and search’ without warrant. For all the code jurisdictions except Vanuatu, this power comprises (a) a power to detain and search any person, vehicle or package in a public place, on the basis of ‘reason to suspect’ that the search will find stolen or unlawfully obtained property or an article in respect of which any offence has been, is being or will be committed and then (b) a power to seize anything reasonably suspected to be such property or article and to detain the person possessing it.^[93] Officers of the rank of sergeant or above can also detain and search vessels. Vanuatu authorises any police officer to detain and search persons, vehicles, vessels or aircraft on the basis of reasonable suspicion, but only to look for stolen or unlawfully obtained things.^[94]

When a ‘detain and search’ power is exercised, the initial detention is for purposes of investigation. Subsequent detention, however, must be for the purpose of initiating proceedings. The requirements are the same in all the code jurisdictions, except for minor differences of drafting in Vanuatu.^[95] Persons detained as a result of searches must be brought before a magistrates’ court ‘as soon as practicable’ and, if a court appearance is not practicable within 24 hours and the offence is other than murder or treason, must be released by an officer of the rank of corporal or above on ‘entering into a recognizance, with or without security’ with respect to a future appearance.^[96] This provision is entitled ‘Detention of persons arrested without warrant’, although the term ‘arrest’ is not used in the main body of the provision. Curiously, a separate provision, entitled, ‘Disposal of persons arrested by a police officer’, states that a police officer making an arrest without warrant must send the person before a magistrate or an officer of the rank of sergeant or above ‘without unnecessary delay’.^[97] These two provisions do not mesh neatly but they point in the same general direction. There is also a requirement for an arrested or detained person to be brought before a court ‘without undue delay’ under the constitutions of Kiribati, Solomon Islands and Tuvalu.^[98] The Nauru constitution specifies a numerical limit of 24 hours.^[99] In Fiji Islands, however, the constitution permits a delay of up to 48 hours.^[100] This is a more liberal standard than the 24-hour limit under the Fiji Islands *Criminal Procedure Code*.

In Papua New Guinea and Tonga, the police have similar powers to those under the codes, including powers to search without warrant.^[101] The *Search Act* of Papua New Guinea authorises a police officer, acting without a warrant, to stop and search a person or vehicle for stolen or unlawfully obtained property or for anything used or intended to be used in the commission of an indictable offence.^[102] There must however, be reasonable grounds to believe that these conditions are satisfied: reasonable suspicion is not sufficient. The standard of ‘belief’ rather than ‘suspicion’ also applies to arrests. A police officer making an arrest without warrant must believe on reasonable grounds that an offence carrying imprisonment as a penalty is about to be, is being or has been committed.^[103] Unless bail is granted, an arrested person must be taken before a court ‘without delay’.^[104]

The *Police Act* of Tonga permits warrantless arrests and searches of persons on the basis of reasonable suspicion.^[105] The search power can be exercised to look for stolen or unlawfully obtained property. Searches of vehicles, vessels and aircraft, however, are treated like searches of houses and other buildings and subjected to a much more restrictive regime.^[106] Ordinarily, a warrant is required. Searching without a warrant is permitted only when the officer has reasonable grounds to believe that waiting for a warrant would defeat ‘the ends of justice’.

The South Pacific constitutions and procedural statutes confer various rights on persons subjected to arrest

or search powers and attach various duties to police officers exercising these powers. Under the constitutions following the British model, an arrested or detained person has the right to be informed of the reasons;^[107] and under the procedural codes which permit warrantless searches of persons, searches of the ‘private person’ are prohibited and a search of a woman must be made by another woman ‘with strict regard to decency’.^[108] Vanuatu requires all searches of persons to be made by a person of the same sex.^[109] More extensive regulatory schemes are found in the provisions of the Fiji Islands and Papua New Guinea constitutions respecting arrested or detained persons,^[110] and in the *Arrest Act* and *Search Act* of Papua New Guinea.^[111]

The combination of procedural statutes and constitutional provisions has produced quite detailed bodies of law on police powers in much of the South Pacific. The region has not yet, however, followed modern British and Australian developments which recognise the concept of investigative arrest, with the police being entitled to detain a suspect for questioning over a period of time. Moreover, none of the South Pacific jurisdictions has yet introduced a statute codifying the full range of police powers and duties and the rights of suspects, along the lines of modern initiatives in the United Kingdom and Australia.^[112] In Fiji Islands, a recent report of the Law Reform Commission has recommended the introduction of such a code.^[113] However, the report has yet to be implemented.

2. Prosecutors and defenders

In line with modern practice in most of the common law world, prosecutions in the South Pacific are largely conducted by public prosecutors. Most of the regional constitutions assign prosecutorial functions to a particular official. These officials are authorised by the constitutions to institute, conduct and discontinue prosecutions.^[114] They are also authorised in the procedural codes and acts to appoint other persons as prosecutors.^[115]

In some instances, there is a specialist official: the Director of Public Prosecutions in Fiji Islands, Nauru and Solomon Islands; the Public Prosecutor in Papua New Guinea and Vanuatu.^[116] Vanuatu has given an express guarantee of independence. Its constitution states that the Public Prosecutor ‘shall not be subject to the direction or control of any other person or body in the exercise of his functions’.

The Attorney-General is assigned prosecutorial functions in Kiribati, Samoa, Tonga and Tuvalu.^[117] The Attorney-General in these jurisdictions is a public servant, not a politician. The role of the Attorney-General in relation to prosecutions is therefore very similar to that of a specialist Director of Public Prosecutions or Public Prosecutor.

Defence costs can obviously be a problem in relatively poor countries like those of the South Pacific region. Under the constitutions of Papua New Guinea, Solomon Islands and Vanuatu, the office of the Public Solicitor has been established.^[118] This official is a public defender, charged with providing legal assistance to persons in need. In Fiji, a legal aid scheme has been established by statute.^[119]

3. Jurisdiction of trial courts

England, Australia and New Zealand, the external jurisdictions which have shaped the criminal procedure of the South Pacific region, all have systems of criminal justice which are two-tiered. Superior courts offer an elaborate procedure for more serious offences. These are established as ‘indictable’ offences, triable on charges called ‘indictments’. Traditionally, trials on indictment have involved a separation of decision-making functions. A judge decides questions of law; a jury of lay persons decides questions of fact and renders the verdict. At the lower level, magistrates’ courts offer a simplified procedure for less serious offences. These offences are specified to be punishable ‘on summary conviction’. Summary procedure

involves officials of the system deciding questions of both law and fact. In addition to trying some offences themselves, magistrates also perform a screening role in relation to offences to be tried in superior courts. A ‘preliminary inquiry’ is conducted by a magistrate to determine whether an accused should be committed for trial in the higher court.

This two-tiered model has been adopted for most of the South Pacific jurisdictions, although with adaptations. The distinctions between the two levels have often been expressed in slightly different terms; the role of the lower level has expanded in some jurisdictions; and most jurisdictions have used assessors rather than juries for trials in the superior courts. In addition, a few of the South Pacific jurisdictions have recognised a third level of ‘local’ or ‘island’ courts applying customary law.

Most of the jurisdictions of the South Pacific have two levels of criminal courts which are formally separate. The former New Zealand dependencies of Cook Islands and Niue provide partial exceptions. In these jurisdictions, all criminal cases are tried in the High Court. The High Court can, however, be constituted either by a judge or a justice of the peace (or, also, a ‘commissioner’ in Niue).^[120]

Among the jurisdictions with two levels of criminal courts, different terms are used to describe the two levels. For the higher level of court, the title ‘High Court’ is used in the jurisdictions which were formerly British dependencies: Fiji Islands, Kiribati, Solomon Islands and Tuvalu.^[121] This term is also used in Niue.^[122] For Tokelau, the relevant court is the High Court of New Zealand.^[123] ‘Supreme Court’ is used in Nauru, Samoa, Tonga and Vanuatu.^[124] In Papua New Guinea, the term is ‘National Court’, with ‘Supreme Court’ being used for its appellate tribunal.^[125]

The lower level of court is most commonly called a ‘Magistrate’s Court’.^[126] In Nauru and Papua New Guinea, however, the term ‘District Court’ is preferred.^[127] In Niue and Tokelau, ‘commissioners’ appear to play the same role.^[128]

In distinguishing between the two levels of criminal courts, the South Pacific region has generally avoided the terminology of ‘indictable offences’ and ‘offences punishable on summary conviction’. That terminology is central to the jurisdictional scheme for criminal courts only in Nauru and Papua New Guinea, the two jurisdictions to which the Queensland Criminal Code was exported directly from Australia,^[129] and in Tonga.^[130] Elsewhere, the distinction between the two levels of court is drawn primarily by reference to the maximum penalties for offences. Most superior courts are given unlimited jurisdiction over criminal offences.^[131] Magistrates’ courts are given a general jurisdiction over offences with maximum penalties up to some ceiling. The ceiling varies between jurisdictions. Some jurisdictions also have different classes of magistrate able to handle offences with different maximum penalties.

Overall, magistrates in the South Pacific appear to have relatively broad jurisdiction. The highest level of magistrate in Solomon Islands and Tuvalu can exercise jurisdiction over offences with maximum penalties of up to 14 years imprisonment, although the actual sentencing power of these officials is restricted to five years imprisonment.^[132] In Fiji Islands (for the highest level of magistrate) and in Kiribati and Samoa (for all magistrates), there is jurisdiction over offences with maximum penalties of up to five years imprisonment, with no further restrictions on sentencing power.^[133] In Vanuatu, the highest level of magistrate can exercise jurisdiction, at the discretion of the prosecutor, over offences with maximum penalties of up to five years but sentencing power is restricted to two years.^[134] In Tonga, all magistrates have jurisdiction over offences carrying up to three years imprisonment.^[135] In Cook Islands, the offences over which justices have jurisdiction are listed in a schedule to the *Judicature Act*.^[136] Sentencing power in Cook Islands is limited to three years imprisonment when its High Court is constituted by three justices, but with two years imprisonment as the limit when a justice sits alone. In Tokelau, commissioners can try

offences with maximum penalties up to one year's imprisonment and can impose sentences up to three months.^[137] In Niue, no limits are placed on the jurisdiction of justices.^[138]

Where there is overlapping jurisdiction, the court of trial is initially a matter for the prosecutor. In Fiji Islands, the *Electable Offences Decree 1988* expressly provides that an accused has no right to elect trial before the High Court except for a limited number of listed offences.^[139] For other offences, a magistrate trying a serious or difficult case can, at the request of the prosecutor, convert it into a committal for trial in the High Court.^[140] Similarly, in Papua New Guinea, when a dual offence is being tried in a District Court, the magistrate can transfer proceedings to the National Court; the National Court can also make an order taking jurisdiction over the case.^[141] Conversely, in some jurisdictions, a magistrate conducting a committal hearing for a dual offence can decide to deal with the case summarily rather than sending it forward to the superior court. This is a matter for the magistrate alone in Fiji Islands, Kiribati, Nauru, Solomon Islands and Tuvalu.^[142]

A third level of 'local' or 'island' courts, applying customary law, operates in Samoa, Solomon Islands, Tuvalu and Vanuatu.^[143] In Samoa, 'village fono' are conducted by traditional assemblies.^[144] Their powers are not specifically detailed but include punishing 'village misconduct' in accordance with 'custom and usage'.^[145] In Solomon Islands, the constitution of 'local courts' is a matter for the Chief Justice, acting in accordance with 'the law or customs' of the areas in which they will operate.^[146] They have jurisdiction over offences against 'law or custom' and can punish with fines or imprisonment.^[147] No specific limits are placed on their sentencing powers but a punishment 'shall in no case be excessive and shall always be proportioned to the nature and circumstances of the offence'.^[148] In Tuvalu and Vanuatu, 'island courts' are presided over by justices or magistrates appointed for the purpose.^[149] They have jurisdiction over specified criminal offences.^[150] In Vanuatu, they are also authorised to 'administer the customary law' within their territorial jurisdiction.^[151] Sentencing power in both Tuvalu and Vanuatu is limited to six months imprisonment.^[152]

Leaving aside these 'local' or 'island' courts, the court systems of the South Pacific are quite conventional. Anglo-Australasian models have been imported with few changes. The avoidance, in most of the region, of the terminology of 'indictable offences' and 'offences punishable on summary conviction' creates a difference of terminology rather than substance. The major substantive difference is that juries play a very minor role in the region. This is discussed below.

4. Juries and assessors

Most of the South Pacific jurisdictions make some provision for lay participation in superior court trials. Only Nauru and Papua New Guinea make no provision at all for lay participation. Cook Islands and Tonga provide for trial by judge and jury. The other jurisdictions all have schemes for assessors. In practice, however, juries and assessors appear to receive much use only in certain jurisdictions where they are mandatory.

The distinction between juries and assessors can be drawn in different ways. Duff has put it this way: 'The fundamental difference between trial by judge and assessors and trial by jury is that the court is not bound by the views of assessors'.^[153] Nevertheless, in some of the South Pacific schemes for 'assessors', they must concur in the judge's decision. These might be regarded as hybrid systems. Alternatively, it might be said a jury has exclusive authority in deciding questions of fact whereas assessors either share this function with the judge or are confined to a merely advisory role.

Juries were introduced into Cook Islands for some trials before a judge by the *Juries Act 1968*. Previously,

assessors had been used. Juries are now mandatory for some offences and can be elected for some others.^[154] Juries comprise of twelve persons.^[155] A majority verdict of nine persons can be taken in the event of failure to reach agreement after three hours deliberation.^[156]

In Tonga juries comprise of seven persons.^[157] In the traditional formula for unanimity, the jurors must 'agree' upon a verdict.^[158] The right to trial by judge and jury is enshrined in the Constitution.^[159] Juries are, however, optional. At the committal stage before a magistrate, an accused is asked to elect trial by judge and jury or by alone.^[160] There are conflicting reports on the pattern of elections. One report indicates that the election is invariably for judge alone.^[161] Another report states that juries are chosen in approximately 10% of cases.^[162]

Assessors have been more popular than juries in the South Pacific region. It was been reported that, in Fiji Islands, assessors were originally introduced by the British because of concerns about the capacity of juries comprised of white settlers (then, virtually the only persons qualified for membership) to act impartially in cases involving native Fijians.^[163] Difficulties in adapting the jury system to countries with deep racial and ethnic divisions have also been advanced as the explanation for the adoption of assessors in some other parts of the British Empire.^[164]

The assessor systems of the region can be divided into two groups. One group comprises jurisdictions with the British-model code of criminal procedure: Fiji Islands, Kiribati, Solomon Islands, Tuvalu and Vanuatu. In these jurisdictions, the role of assessors is advisory only. The judge must listen to their opinions but retains the power to make the final decision.^[165] In Fiji Islands and Vanuatu, the use of assessors is mandatory for superior court trials.^[166] In the Kiribati, Solomon Islands and Tuvalu codes, there are schemes for assessors to be used at the option of the court.^[167] It has, however, been suggested that they are not used in practice.^[168] The number of assessors varies between jurisdictions: at least two in Fiji Islands (with at least four in capital cases); two or three in Kiribati and Tuvalu; one or more in Solomon Islands; two in Vanuatu.^[169] They are selected on a discretionary basis by the judge, in some instances from lists prepared by magistrates.^[170]

The other group of assessor systems comprises jurisdictions with a legal heritage from New Zealand: Niue, Samoa and Tokelau. There was also a system of assessors in the Cook Islands before the enactment of its *Juries Act 1968*.^[171] Under the New Zealand model, assessors must concur in a judge's decision to convict an accused. Their role is not merely advisory. In Niue and Tokelau, the use of assessors is mandatory for superior court trials of offences punishable by imprisonment for more than five years.^[172] For offences punishable by imprisonment for five years or less, assessors can be used at the discretion of the court.^[173] The required number of assessors is six, four of whom must concur for a conviction.^[174] In Samoa, assessors are required for offences punishable by death or life imprisonment but the accused can elect trial by judge alone for other offences with a maximum penalty of over five years.^[175] For offences punishable by imprisonment for five years or less, assessors can be used at the discretion of the court.^[176] Five assessors are required where the offence is punishable by death and four of them must concur for a conviction; four assessors are required for other offences, with the concurrence of three required for a conviction.^[177] Assessors are selected by the judge from lists prepared by the Cabinet in Niue and Tokelau and by the Judicial Service Commission in Samoa.^[178]

The use of juries is often regarded as one of the hallmarks of criminal procedure in the common law world. The preference for assessors in the legislation of most of the South Pacific constitutes one of the region's major departures from Anglo-Australasian tradition.

5. Appeals

Most of the appellate schemes of the South Pacific region are similar in character, following a model which is common in the Australasian jurisdictions. Both parties have reasonably open access to appeals against decisions at the lower level of magistrates' courts.^[179] Opportunities to appeal against decisions at trials in superior courts are open to convicted persons but are restricted or denied altogether to the prosecution.

Throughout the South Pacific region, the relevant court for appeals against decisions of magistrates is the superior court (High Court, Supreme Court or National Court, depending on the jurisdiction). Generally, both parties can appeal as of right and there are no particular restrictions on the grounds of appeal.^[180] The superior court has broad powers to substitute its own decision or make any appropriate order.^[181] Several of the South Pacific jurisdictions also have the alternative procedure of an appeal involving a 'case stated' by a magistrate on a matter of law.^[182] Vanuatu is a special case in relation to appeals from magistrates' decisions. It restricts appeals by the prosecution to points of law.^[183]

For appeals against decisions of superior courts, the relevant court in most of the South Pacific is the 'Court of Appeal' of the jurisdiction.^[184] Papua New Guinea is an exception: its appellate court is called the 'Supreme Court'.^[185] Other exceptions are Nauru and Tokelau, for which appeals are heard in overseas jurisdictions. Appeals from the Nauru Supreme Court are heard by the High Court of Australia.^[186] For Tokelau, where the functions of a superior court are performed by New Zealand High Court, appeals go to the New Zealand Court of Appeal.^[187]

Throughout the South Pacific, a person convicted on a trial in a superior court can appeal against either the conviction or the sentence. The appellate courts have broad powers.^[188] In many of the jurisdictions, the grounds on which convictions can be quashed follow a formula common to both the New Zealand *Crimes Act 1961* and the Queensland *Criminal Code*.^[189] This formula permits a verdict to be set aside when it is unreasonable or unsupported by the evidence, or there was a wrong decision on a question of law, or on any ground there was a miscarriage of justice.^[190]

On the other hand, in some of the South Pacific jurisdictions, the prosecution has no rights of appeal against trial decisions of superior courts. This is the position in Fiji Islands, Kiribati, Nauru, Solomon Islands, Tonga, and probably also in Cook Islands. With respect to appeals by convicted persons, the differences between these jurisdictions are relatively minor. A common model, with substantially the same provisions, is shared by Fiji Islands, Kiribati, Solomon Islands and Tonga. In these jurisdictions, an appeal against a conviction is as of right on a question of law and with leave on other matters; an appeal against a sentence is also with leave.^[191] In Nauru, however, there is no mention of leave requirements.^[192] Entitlement to appeal in Cook Islands is not specified. Nevertheless, the language of provisions on appeal proceedings and the powers of the Court of Appeal suggest that, in this jurisdiction too, the prosecution has no rights of appeal.^[193]

Papua New Guinea is one of a number of South Pacific jurisdictions which permit some form of appeal by the prosecution following a superior court trial as well as by a convicted person. In Papua New Guinea, a convicted person can appeal against the verdict as of right on grounds of either law or mixed law and fact, with leave on other ground, and with leave against the sentence.^[194] The prosecution too can appeal against a sentence.^[195] The prosecution can also appeal against a sentence in Tokelau.^[196] In Samoa, a convicted person can appeal as of right against either the conviction or the sentence; the prosecution can appeal not only against a sentence but also against an acquittal by a judge sitting alone.^[197] Tuvalu allows both parties to appeal as of right on most matters.^[198] Vanuatu confers unlimited rights of appeal on a

convicted person, although requiring the Court of Appeal to refrain from interfering with the exercise of discretion by the lower court unless this was ‘manifestly wrong’.^[199] Vanuatu also permits the prosecution to appeal on a point of law.^[200] In Niue, a person convicted and sentenced to death, imprisonment or a fine, can appeal as of right against the conviction or sentence.^[201] These rights are specified in a general provision which encompasses the whole appellate jurisdiction of the Court of Appeal. Also included is authorisation for appeals with leave on any questions.^[202] This could encompass appeals by the prosecution.

Some Anglo-Australasian jurisdictions have compensated for restricting prosecution appeals through schemes for reference opinions, advising on matters which have arisen in cases but not affecting their outcomes. Only Papua New Guinea has taken this route among the South Pacific jurisdictions. Following an acquittal in Papua New Guinea, the prosecution can refer a disputed point of law to the Supreme Court.^[203]

The superior courts hear appeals from magistrates as well as conducting trials. Some jurisdictions have provided for further appeals to the Court of Appeal. In Fiji Islands, Kiribati and Solomon Islands, both parties can appeal on questions of law, except where the superior court has confirmed a magistrate’s acquittal.^[204] Nauru, Papua New Guinea and Tuvalu permit appeals on any ground, with Nauru excluding cases where an acquittal has been confirmed.^[205] Vanuatu permits only the prosecution to appeal and only on a point of law.^[206]

Decisions of the courts of appeal are final in most of the region. The jurisdiction of the Privy Council to act as a court of further appeal has largely disappeared. It still survives, however, in Cook Islands, Niue and, in cases with constitutional issues, in Tuvalu.^[207] An indigenous alternative has been developed only in Fiji Islands. The Supreme Court of Fiji Islands is a court of further appeal for the review of decisions of the Court of Appeal.^[208]

6. Conclusions

Much of the criminal procedure of the South Pacific region will be quickly recognisable to lawyers from the United Kingdom, Australia and New Zealand. Anglo-Australasian models have been adapted for the region rather than replaced with systems which are structurally different. Some characteristic features of the region are: constitutionally protected rights in relation to the criminal process; “detain and search” powers for the police; constitutional or legislative recognition of public prosecutors; broad jurisdiction for magistrates; a preference for assessors over juries; prosecution rights of appeal, at least against sentences, in a number of jurisdictions; and avoidance of multiple levels of appeal. The most striking feature of the region is, however, the coverage and the systematic detail of the procedural codes of Fiji Islands, Kiribati, Nauru, Solomon Islands, Tuvalu and Vanuatu.

This has been a descriptive survey of legislation, and not of actual practice. Many obvious issues have not been examined. How well have Anglo-Australasian transplants served the jurisdictions of the South Pacific region? Now that the jurisdictions are all (except Tokelau) independent, will the divergences widen? What is to be the role for indigenous traditions? How can small island jurisdictions stay tuned to modern legal developments and transnational concerns? What are the prospects for regional cooperation over law reform? Such questions lie beyond the scope of this study. Its objective has simply been to provide a map of the legislation on criminal procedure which is currently in force. Nevertheless, more critical and speculative work needs to build upon a foundation of knowledge of the existing law. Hopefully, the information provided by this study will stimulate and assist in further scholarship about criminal procedure in the South Pacific region.

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[1] This roughly corresponds to practice at the University of the South Pacific School of Law. The School provides legal education for eleven of the twelve jurisdictions, excluding Papua New Guinea which has its own law school at the University of Papua New Guinea. The University of the South Pacific School of Law also provides legal education for the Marshall Islands. The Marshall Islands are not included in this survey. Their legal heritage is American rather than English.

[2] On the legal history of the South Pacific region, see Jennifer Corrin Care, Tess Newton, Don Patterson, *Introduction to South Pacific Law* (1999) chs 2-4.

[3] Eric Colvin, 'Criminal Responsibility under the South Pacific Codes' (2002) 26 *Criminal Law Journal* 93-113.

[4] First enacted as the *Crimes Act 1893* (NZ). See now the *Crimes Act 1961* (NZ). The Stephen code was also adopted in Canada. See *Criminal Code 1892* (Can); *Criminal Code*, RSC 1985, c C-46.

[5] *Crimes Act 1969* (Cook Islands); *Niue Act 1966* (NZ), Part V, as preserved by *Constitution of Niue*, Art 71; *Crimes Ordinance 1961* (Samoa); *Tokelau Crimes Regulations 1975* (NZ), adopting the criminal law provisions of the *Niue Act 1966* (NZ).

[6] *Criminal Code Act 1899* (Qld), Sch 1.

[7] Nauru has taken the *Criminal Code* (Qld), with amendments in force on 1 July 1921, through the *Laws Repeal and Adopting Ordinance 1922-67* (Nauru), s 12.

[8] *Criminal Code* [Cap 262] (PNG).

[9] *Penal Code* [Cap 1]7 (Fiji Islands); *Penal Code* [Cap 67] (Kiribati); *Penal Code* [Cap 26] (Solomon Islands); *Penal Code* [Cap 8] (Tuvalu).

[10] *Criminal Offences Act* [Cap 18] (Tonga); *Penal Code* [Cap 135] (Vanuatu).

[11] In New Zealand, in addition to the *Crimes Act 1961*, there is the *Bail Act 2000*, the *Criminal Investigations (Blood Samples) Act 1995*, the *Habeas Corpus Act 2001*, the *Juries Act 1981* and the *Justices of the Peace Act 1957*. See also the *New Zealand Bill of Rights 1998*, ss 21-26. In Queensland, in addition to the *Criminal Code*, there is the *Bail Act 1980*, the *Justices Act 1886*, the *Jury Act 1995* and the *Police Powers and Responsibilities Act 2000*.

[12] The University of Papua New Guinea has its own law school; for the other jurisdictions in the region, legal education was mainly obtained in Australia or New Zealand before the University of the South Pacific School of Law was established in 1994.

[13] On the constitutional status of Tokelau as a non-self-governing dependency of New Zealand, see A. H. Angelo, 'Tokelau', in Michael Ntumu (ed), *South Pacific Legal Systems* (1993). Acts of the New Zealand Parliament apply to Tokelau only when they are specifically declared to do so. There is no such declaration in the *New Zealand Bill of Rights Act 1990*.

[14] On the constitutional contexts within which these rights operate, see the chapters on each jurisdiction

in Michael Ntummy (ed), *South Pacific Legal Systems* (1993). See also Jennifer Corrin Care, Tess Newton, Don Patterson, *Introduction to South Pacific Law* (1999) ch 5. In some instances, rights are subject to general limitation clauses: see *Constitution of Cook Islands*, art 64(2); *Constitution of Kiribati*, s 3; *Constitution of Nauru*, art 3; *Constitution of the Independent State of Papua New Guinea*, ss 38-39; *Constitution of Solomon Islands*, s 3.

[15] *Constitution of Kiribati*, s 3; *Constitution of Solomon Islands*, s 3; *Constitution of Tuvalu*, s 11. The Nauru declaration respecting privacy is worded differently from the standard model, referring to ‘respect for private and family life’ rather than focusing on the privacy of the home and other property: see *Constitution of Nauru*, art 3. The 1997 constitution of Fiji Islands contains declarations of the right to life and ‘the right to personal privacy’ but not the other rights: see *Constitution Amendment Act 1997* (Fiji Islands) ss 22, 37.

[16] *Constitution of Kiribati*, s 5; *Constitution of Nauru*, art 5; *Constitution of Solomon Islands*, s 5; *Constitution of Tuvalu*, s 17. See also *Constitution Amendment Act 1997* (Fiji Islands) ss 23, 27.

[17] *Constitution of Kiribati*, s 9; *Constitution of Nauru*, art 9; *Constitution of Solomon Islands*, s 9; *Constitution of Tuvalu*, s 21. In s 26 of the *Constitutional Amendment Act 1997* (Fiji Islands), this section was replaced with a general guarantee against unreasonable search or seizure and a requirement for any search or seizure to be authorised by law.

[18] *Constitution of Kiribati*, s 10; *Constitution of Nauru*, art 10; *Constitution of Solomon Islands*, s 10; *Constitution of Tuvalu*, s 22. See also *Constitutional Amendment Act 1997* (Fiji Islands) ss 28-29.

[19] *Constitution of Kiribati*, s (1); *Constitution of Nauru*, art 10(2); *Constitution of Solomon Islands*, s 10(1); *Constitution of Tuvalu*, s 22(2). See also *Constitutional Amendment Act 1997* (Fiji Islands) s 29.

[20] *Constitution of Kiribati*, s 10(2)(a), (11)(a); *Constitution of Nauru*, art 10(3)(a), (12)(a); *Constitution of Solomon Islands*, s 10(2)(a), (11)(a); *Constitution of Tuvalu*, s 22(3)(a), (14)(a). See also *Constitutional Amendment Act 1997* (Fiji Islands) s 28(1)(a).

[21] *Constitution of Kiribati*, s 10(2)(b)-(f); *Constitution of Nauru*, art 10(3)(b)(f); *Constitution of Solomon Islands*, s 10(2)(b)-(f); *Constitution of Tuvalu*, s 22(3)(b)-(5). See also *Constitution Amendment Act 1997* (Fiji Islands) s 28(1)(b)-(h).

[22] *Constitution of Kiribati*, s 10(4); *Constitution of Nauru*, art 10(4); *Constitution of Solomon Islands*, s 10(4); *Constitution of Tuvalu*, s 22(6)-(7). See also *Constitution Amendment Act 1997* (Fiji Islands) s 28(1)(i).

[23] *Constitution of Kiribati*, s 10(5)-(6); *Constitution of Nauru*, art 10(5)-(6); *Constitution of Solomon Islands*, s 10(5)-(6); *Constitution of Tuvalu*, s 22(8)-(9). See also *Constitution Amendment Act 1997* (Fiji Islands) s 28(1)(k).

[24] *Constitution of Kiribati*, s 10(7); *Constitution of Nauru*, art 10(7)-(8); *Constitution of Solomon Islands*, s 10(7); *Constitution of Tuvalu*, s 22(10). See also *Constitution Amendment Act 1997* (Fiji Islands) s 28(1)(f).

[25] *Constitution of Kiribati*, s 10(2)(d); *Constitution of Solomon Islands*, s 10(2)(d); *Constitution of Tuvalu* s 22(3)(d).

[26] *Constitution Amendment Act 1997* (Fiji Islands) s 28(1)(d); *Constitution of Nauru*, art 10(3)(e).

- [27] *Constitution Amendment Act 1997* (Fiji Islands) s 28(1)(1); *Constitution of the Independent State of Papua New Guinea*, s 37(15)-(16).
- [28] Section 26(2) of the *New Zealand Bill of Rights Act 1990* also deals with the issues of pardons and appeals. Compare, however, *Crimes Act 1961* (NZ) ss 358-359 and *Criminal Code* (Qld) s 17.
- [29] *Constitution of Cook Islands*, art 64.
- [30] *Constitution of Cook Islands*, art 65(1)(d); *Constitution of Samoa*, art 9(1).
- [31] *Constitution of Samoa*, art 9(4).
- [32] *Constitution of Cook Islands*, art 65(1)(e); *Constitution of Samoa*, art 9(3).
- [33] *Constitution of Cook Islands*, art 65(1)(a), (c), (f); *Constitution of Samoa*, art 6.
- [34] *Constitution of Cook Islands*, art 65(1)(g)-(h); *Constitution of Samoa*, art 10(2).
- [35] *Constitution of Samoa*, arts 9(5), 10(3).
- [36] *Constitution of Tonga*, cl 11.
- [37] *Constitution of Tonga*, cl 16.
- [38] *Constitution of Tonga*, cl 9.
- [39] *Constitution of Tonga*, cl 20.
- [40] *Constitution of Tonga*, cls 12, 14.
- [41] *Constitution of Tonga*, cl 11. A declaration is attached that ‘this law shall never be repealed’.
- [42] *Constitution of Vanuatu*, art 5(1).
- [43] *Constitution of Vanuatu*, art 5(2)(a)-(h).
- [44] See *Human Rights Act 1998* (UK); *New Zealand Bill of Rights 1990* (NZ).
- [45] See *Criminal Code* [Cap 262] (PNG), Part VIII. See also *Constitution of the Independent State of Papua New Guinea*, s 155, on the jurisdiction of the Supreme Court and the National Court; the *Supreme Court Act* [Cap 37] (PNG) ss 20-29, governing appeals from the National Court to the Supreme Court; *District Courts Act 1963* [Cap 40] (PNG) ss 28-159, 219-246, governing summary jurisdiction, committal proceedings and appeals to the National Court. See also *Arrest Act* [Cap 339] (PNG); *Bail Act* [Cap 340] (PNG); *Search Act* [Cap 341] (PNG). For an overview of criminal procedure in Papua New Guinea, see Donald Chalmers, David Weisbrot, Salamo Injia, Warwick Andrew, *Criminal Law and Practice of Papua New Guinea* (3rd ed, 2001).
- [46] *Niue Act 1966* (NZ), Parts V-VI, as preserved by *Constitution of Niue*, art 71; *Tokelau Crimes Regulations 1975* (NZ), adopting the criminal law provisions of the *Niue Act 1966* (NZ).

[47] See *Bail Act 1990* (Tonga) as am. by *Bail (Amendment) Act 1991* (Tonga); *Court of Appeal Act* [Cap 9] (Tonga) ss 16-30, governing appeals to the Court of Appeal; *Criminal Offences Act* [Cap 18] (Tonga) s 42, governing alternative verdicts; *Evidence Act* [Cap 15] (Tonga) ss 20-33, governing the admissibility of confessions; *Magistrates' Courts Act* [Cap 11] (Tonga) ss 11-31, governing summary jurisdiction, ss 32-50, governing preliminary inquiries, ss 51-52, governing search and arrest warrants, ss 74-83, governing appeals to the Supreme Court; *Police Act* [Cap 35] (Tonga) ss 20-38, governing police powers including powers of arrest, detention and search without warrant; *Supreme Court Act* [Cap 10] (Tonga) ss 4, 9, 14, governing the jurisdiction of the Supreme Court in criminal cases and the composition and role of juries.

[48] *Criminal Procedure Code* [Cap 21] (Fiji Islands); *Criminal Procedure Code* [Cap 17] (Kiribati); *Criminal Procedure Code* [Cap 4] (Solomon Islands); *Criminal Procedure Code* [Cap 7] (Tuvalu).

[49] *Criminal Procedure Code* [Cap 136] (Vanuatu).

[50] *Criminal Procedure Act 1972* (Nauru).

[51] *Criminal Procedure Act 1980-81* (Cook Islands); *Criminal Procedure Act 1972* (Samoa).

[52] *Magistrates' Courts Ordinance* [Cap 3] (Solomon Islands) s 27.

[53] See *Magistrates' Courts Act* [Cap 52] (Kiribati) Sch 2; *Courts Act 1972* (Nauru) s 18; *Magistrates' Court Ordinance* [Cap 2] (Tuvalu) s 25; *Courts Act* [Cap 122] (Vanuatu) s 4(1)(a).

[54] *Criminal Procedure Code* [Cap 21] (Fiji Islands) ss 4-9, Sch 1.

[55] *Criminal Procedure Code* [Cap 136] (Vanuatu) ss 200-212.

[56] See *Court of Appeal Act* [Cap 12] (Fiji Islands) ss 21-38; *Court of Appeal Act* [Cap 16B] (Kiribati) ss 19-37; *Court of Appeal Act* [Cap 6] (Solomon Islands) ss 20-37.

[57] See *Superior Courts Act* [Cap 1C] (Tuvalu) ss 7-12.

[58] See *Appeals Act 1972* (Nauru), as amended by the *Appeals (Amendment) Act 1974* (Nauru).

[59] See *Local Courts Act* [Cap 46] (Solomon Islands); *Island Courts Ordinance* [Cap 3] (Tuvalu); *Island Courts Act* [Cap 167] (Vanuatu).

[60] *Magistrates' Courts Act* [Cap 52] (Kiribati) s 35; *Magistrates' Courts Act* [Cap 3] (Solomon Islands) s 38(1) *Magistrates' Courts Act* [Cap 2] (Tuvalu) s 32.

[61] *Criminal Procedure Code* [Cap 21] (Fiji Islands) s 163; *Criminal Procedure Act 1972* (Nauru) s 123; *Criminal Procedure Code* [Cap 136] (Vanuatu) s 118.

[62] See also *Criminal Procedure Code* [Cap 21] (Fiji Islands) s 13(1); *Criminal Procedure Code* [Cap 17] (Kiribati) s 10(1); *Criminal Procedure Act 1972* (Nauru) s 11(1); *Criminal Procedure Code* [Cap 7] (Tuvalu) s 10(1); *Criminal Procedure Code* [Cap 136] (Vanuatu) s 4(1).

[63] See also *Criminal Procedure Code* [Cap 21] (Fiji Islands) ss 154-155; *Criminal Procedure Code* [Cap 17] (Kiribati) ss 149-150; *Criminal Procedure Act 1972* (Nauru) ss 115-116; *Criminal Procedure Code*

[Cap 7] (Tuvalu) ss 149-150; *Criminal Procedure Code* [Cap 136] (Vanuatu) ss 93, 95. Compare the Canadian ruling on common law requirements respecting judgments in *R v Sheppard* [2002] 1 SCR 869.

[64] *Criminal Procedure Act 1980-81* (Cook Islands); *Criminal Procedure Act 1972* (Samoa).

[65] *Criminal Procedure Act 1972* (Samoa) ss 99-101.

[66] *High Court Act 1980-81* (Cook Islands) ss 51-83.

[67] *Judicature Act 1961* (Samoa) ss 52-64.

[68] *High Court Act 1980-81* (Cook Islands) ss 13-16; *Juries Act 1983* (Cook Islands).

[69] *Magistrates' Courts Act 1969* (Samoa) ss 36-40.

[70] *Criminal Procedure Act 1980-81* (Cook Islands) s 13; *Criminal Procedure Act 1972* (Samoa) s 13.

[71] *Criminal Procedure Code* [Cap 21] (Fiji Islands) ss 119, 122; *Criminal Procedure Code* [Cap 17] (Kiribati) ss 117, 120; *Criminal Procedure Act 1972* (Nauru) ss 90, 93; *Criminal Procedure Code* [Cap 4] (Solomon Islands) ss 117, 120; *Criminal Procedure Code* [Cap 7] (Tuvalu) ss 117, 120; *Criminal Procedure Code* [Cap 136] (Vanuatu) ss 71, 74.

[72] *Criminal Procedure Act 1980-81* (Cook Islands) s 13; *Criminal Procedure Act 1972* (Samoa) ss 56, 59.

[73] *Criminal Procedure Code* [Cap 21] (Fiji Islands) ss 146-147, 154-155, 209-213, 287-299; *Criminal Procedure Code* [Cap 17] (Kiribati) ss 149-150, 194-198, 250-262; *Criminal Procedure Act 1972* (Nauru) ss 115-116, 158, 198 201; *Criminal Procedure Code* [Cap 4] (Solomon Islands) ss 150-151, 196-200, 263-275; *Criminal Procedure Code* [Cap 7] (Tuvalu) ss 149-150, 194-198, 250-262; *Criminal Procedure Code* [Cap 136] (Vanuatu) ss 93, 95, 134-138, 161-186.

[74] The most general statute may be the *Criminal Procedure (Scotland) Act 1975*.

[75] See, for example, the observations of Lord Denning MR in *Ghani v Jones* [1970] 1 QB 693, 705 (CA).

[76] *Criminal Procedure Act 1980-81* (Cook Islands) ss 4-9, 96-97; *Criminal Procedure Act 1972* (Samoa) ss 4-9, 83-84; *Niue Act 1966* (NZ) ss 250-251A, 284-284A (also in force in Tokelau).

[77] *Criminal Procedure Act 1980-81* (Cook Islands) s 4; *Criminal Procedure Act 1972* (Samoa) s 4; *Niue Act 1966* (NZ) s 250 (also in force in Tokelau).

[78] *Criminal Procedure Act 1980-81* (Cook Islands) s 9(5).

[79] *Criminal Procedure Act 1972* (Samoa) s 9(1). The same provision also occurs in *Constitution of Samoa*, s 6(4). The constitutional version incorporates the definition of 'a remanding officer'.

[80] *Niue Act 1966* (NZ) s 251A(5) (also in force in Tokelau).

[81] See *Criminal Procedure Code* [Cap 21] (Fiji Islands) ss 13-31, 89-100; *Criminal Procedure Code* [Cap 17] (Kiribati) ss 10-29, 87-98; *Criminal Procedure Act 1972* (Nauru) ss 10-25, 62-72; *Criminal*

Procedure Code [Cap 4] (Solomon Islands) ss 10-29, 87-98; *Criminal Procedure Code* [Cap 7] (Tuvalu) ss 10-29, 87-98; *Criminal Procedure Code* [Cap 136] (Vanuatu) ss 4-22, 45-54. See also *Arrest Act* [Cap 339] (PNG); *Police Act* [Cap 35] (Tonga) s 21-22, on warrantless arrests; *Magistrates' Courts Act* [Cap 11] (Tonga) s 52, on arrest warrants.

[82] See *Criminal Procedure Code* [Cap 21] (Fiji Islands) ss 103-107; *Criminal Procedure Code* [Cap 17] (Kiribati) ss 101-105; *Criminal Procedure Act 1972* (Nauru) ss 75-79; *Criminal Procedure Code* [Cap 4] (Solomon Islands) ss 101-105; *Criminal Procedure Code* [Cap 7] (Tuvalu) ss 101-105; *Criminal Procedure Code* [Cap 136] (Vanuatu) ss 55-59. See also *Search Act* [Cap 341] (PNG) ss 6-8; *Magistrates' Courts Act* [Cap 11] (Tonga) s 51.

[83] See *Criminal Procedure Code* [Cap 21] (Fiji Islands) s 18; *Criminal Procedure Code* [Cap 17] (Kiribati) s 15; *Criminal Procedure Act 1972* (Nauru) s 16; *Criminal Procedure Code* [Cap 4] (Solomon Islands) s 15; *Criminal Procedure Code* [Cap 7] (Tuvalu) s 15; *Criminal Procedure Code* [Cap 136] (Vanuatu) s 9. See also *Police Act* [Cap 85] (Fiji Islands) ss 17-26; *Police Act* [Cap 105] (Vanuatu) ss 35-45.

[84] *Constitution Amendment Act 1997* (Fiji Islands) s 26.

[85] *Constitution of the Independent State of Papua New Guinea*, s 44.

[86] *Constitution of the Independent State of Papua New Guinea*, s 38.

[87] *Constitution of Kiribati*, s 9; *Constitution of Nauru*, art 9; *Constitution of Solomon Islands*, s 9; *Constitution of Tuvalu*, s 21. In s 26 of the *Constitution Amendment Act 1997* (Fiji Islands), this provision was replaced with a general guarantee against unreasonable search or seizure and a requirement for any search or seizure to be authorised by law.

[88] *Criminal Procedure Code* [Cap 21] (Fiji Islands) s 21(a); *Criminal Procedure Code* [Cap 17] (Kiribati) s 18(a); *Criminal Procedure Act 1972* (Nauru) s 10; *Criminal Procedure Code* [Cap 4] (Solomon Islands) s 18(a); *Criminal Procedure Code* [Cap 7] (Tuvalu) s 18(a); *Criminal Procedure Code* [Cap 136] (Vanuatu) s 12(1). 'Cognisable offences' are specified in a Schedule, except in Nauru where the definition is in the main text of the statute.

[89] *Constitution Amendment Act 1997* (Fiji Islands) s 23; *Constitution of Kiribati*, s 5; *Constitution of Nauru*, art 5; *Constitution of Solomon Islands*, s 5; *Constitution of Tuvalu*, s 17.

[90] *Criminal Procedure Act 1972* (Nauru) s 10.

[91] *Criminal Procedure Code* [Cap 21] (Fiji Islands) s 22(1); *Criminal Procedure Code* [Cap 17] (Kiribati) s 19(1); *Criminal Procedure Code* [Cap 4] (Solomon Islands) s 19(1); *Criminal Procedure Code* [Cap 7] (Tuvalu) s 19(1); *Criminal Procedure Code* [Cap 136] (Vanuatu) s 14(1).

[92] *Criminal Procedure Code* [Cap 21] (Fiji Islands) s 21(b); *Criminal Procedure Code* [Cap 17] (Kiribati) s 18(b); *Criminal Procedure Code* [Cap 4] (Solomon Islands) s 18(b); *Criminal Procedure Code* [Cap 7] (Tuvalu) s 18(b). In Vanuatu, this power relates to the commission of a breach of the peace in the presence of an officer: *Criminal Procedure Code* [Cap 136] (Vanuatu) s 12(2)(a).

[93] *Criminal Procedure Code* [Cap 21] (Fiji Islands) s 18; *Criminal Procedure Code* [Cap 17] (Kiribati) s 15; *Criminal Procedure Act 1972* (Nauru) s 16; *Criminal Procedure Code* [Cap 4] (Solomon Islands) s 15; *Criminal Procedure Code* [Cap 7] (Tuvalu) s 15.

[94] *Criminal Procedure Code* [Cap 136] (Vanuatu) s 9.

[95] *Criminal Procedure Code* [Cap 136] (Vanuatu) ss 15, 18.

[96] *Criminal Procedure Code* [Cap 21] (Fiji Islands) ss 18(4), 26; *Criminal Procedure Code* [Cap 17] (Kiribati) ss 15(3), 23; *Criminal Procedure Act 1972* (Nauru) ss 16(4), 21; *Criminal Procedure Code* [Cap 4] (Solomon Islands) ss 15(3), 23; *Criminal Procedure Code* [Cap 7] (Tuvalu) ss 15(3), 23.

[97] *Criminal Procedure Code* [Cap 21] (Fiji Islands) s 23; *Criminal Procedure Code* [Cap 17] (Kiribati) s 20; *Criminal Procedure Act 1972* (Nauru) s 19; *Criminal Procedure Code* [Cap 4] (Solomon Islands) s 20; *Criminal Procedure Code* [Cap 7] (Tuvalu) s 20.

[98] *Constitution of Kiribati*, s 5(3); *Constitution of Solomon Islands*, s 5(3); *Constitution of Tuvalu*, s 5(3).

[99] *Constitution of Nauru*, art 5(3).

[100] *Constitution Amendment Act 1997* (Fiji Islands) s 27(3)(b).

[101] See *Arrest Act* [Cap 339] (PNG); *Search Act* [Cap 341] (PNG); *Magistrates' Courts Act* [Cap 11] (Tonga) ss 51-52, governing search and arrest warrants; *Police Act* [Cap 35] (Tonga) ss 20-38, governing powers of arrest, detention and search without warrant.

[102] *Search Act* [Cap 341] (PNG) ss 3(1), 5(1).

[103] *Arrest Act* [Cap 339] (PNG) s 3.

[104] *Arrest Act* [Cap 339] (PNG) ss 17(1)(a), 18(1)(e).

[105] *Police Act* [Cap 35] (Tonga) ss 21, 30.

[106] *Police Act* [Cap 35] (Tonga) s 25.

[107] *Constitution of Kiribati*, s 5(2); *Constitution of Nauru*, art 5(2); *Constitution of Solomon Islands*, s 5(2); *Constitution of Tuvalu*, s 5(2). Nauru also has a right to consult a legal representative.

[108] *Criminal Procedure Code* [Cap 21] (Fiji Islands) ss 17(2), 19; *Criminal Procedure Code* [Cap 17] (Kiribati) ss 14(2), 16; *Criminal Procedure Act 1972* (Nauru) s 15(2), (4); *Criminal Procedure Code* [Cap 4] (Solomon Islands) ss 14(2), 16; *Criminal Procedure Code* [Cap 7] (Tuvalu) ss 14(2), 16.

[109] *Criminal Procedure Code* [Cap 136] (Vanuatu) s 10.

[110] *Constitution Amendment Act 1997* (Fiji Islands) s 27; *Constitution of the Independent State of Papua New Guinea*, s 42.

[111] *Arrest Act* [Cap 339] (PNG); *Search Act* [Cap 341] (PNG).

[112] See *Police and Criminal Evidence Act 1984* (UK); *Crimes Act 1914* (Cth) ss 3C-3ZX, 15G-15XW, 23-23YV; *Police Powers and Responsibilities Act 2000* (Qld).

[113] Fiji Law Reform Commission, *Report: Reform on Police Powers in Fiji* (1999).

[114] *Constitution Amendment Act 1997* (Fiji Islands) s 114; *Constitution of Kiribati*, s 42; *Constitution of the Independent State of Papua New Guinea*, ss 176-177; *Constitution of Samoa*, art 41; *Constitution of Solomon Islands*, s 91; *Constitution of Tuvalu*, s 79; *Constitution of Vanuatu*, art 55. See also *Criminal Procedure Act 1972* (Nauru) s 45.

[115] *Criminal Procedure Code* [Cap 21] (Fiji Islands) ss 72-73; *Criminal Procedure Code* [Cap 17] (Kiribati) s 71; *Criminal Procedure Act 1972* (Nauru) s 48; *Criminal Procedure Code* [Cap 4] (Solomon Islands) s 71; *Criminal Procedure Code* [Cap 7] (Tuvalu) s 71; *Criminal Procedure Code* [Cap 136] (Vanuatu) s 31.

[116] *Constitution Amendment Act 1997* (Fiji Islands) s 114; *Constitution of the Independent State of Papua New Guinea*, ss 176-177; *Constitution of Solomon Islands*, s 91; *Constitution of Vanuatu*, art 55. See also *Criminal Procedure Act 1972* (Nauru) s 45.

[117] *Constitution of Kiribati*, s 42; *Constitution of Samoa*, art 41; *Constitution of Tuvalu*, s 79. See also *Criminal Offences Act* [Cap 18] (Tonga) s 197.

[118] *Constitution of the Independent State of Papua New Guinea*, ss 176-177; *Constitution of Solomon Islands*, s 92; *Constitution of Vanuatu*, art 56.

[119] See *Legal Aid Act* [Cap 15] (Fiji).

[120] *Judicature Act 1980-81* (Cook Islands) ss 13, 19-22; *Constitution of Niue*, ss 37, 48(1) ('commissioners'), 51(2) ('justices').

[121] *Constitution Amendment Act 1997* (Fiji Islands) s 120; *Constitution of Kiribati*, s 80; *Constitution of Solomon Islands*, s 77; *Superior Courts Act* [Cap 1C] (Tuvalu).

[122] *Constitution of Niue*, art 37.

[123] *Tokelau Amendment Act 1986* (NZ) s 3.

[124] *Courts Act 1972* (Nauru) s 17; *Judicature Ordinance 1961* (Samoa) s 31; *Supreme Court Act* [Cap 10] (Tonga); *Courts Act* [Cap 122] (Vanuatu) ss 23-23.

[125] *Constitution of the Independent State of Papua New Guinea*, ss 160-167.

[126] See *Magistrates' Courts Act* [Cap 14] (Fiji Islands); *Magistrates' Courts Ordinance* [Cap 52] (Kiribati); *Magistrates' Courts Act 1969* (Samoa); *Magistrates' Courts Ordinance* [Cap 20] (Solomon Islands); *Magistrates' Courts Act* [Cap 11] (Tonga); *Magistrates' Courts Ordinance* [Cap 2] (Tuvalu); *Courts Act* [Cap 122] (Vanuatu) ss 1-12.

[127] *Courts Act 1972* (Nauru) s 18; *District Courts Act 1963* (PNG). On the citation of the PNG statute, see Donald Chalmers, David Weisbrot, Salamo Injia, Warwick Andrew, *Criminal Law and Practice of Papua New Guinea* (3rd ed, 2001), p 66.

[128] *Constitution of Niue*, s48(1); *Tokelau Amendment Act 1986* (NZ) s 7.

- [129] See above, n 7-8 and accompanying text. See also *Courts Act 1972* (Nauru) ss 17-18; *District Courts Act 1963* (PNG) s 20.
- [130] See, generally, *Criminal Offences Act* [Cap 1] (Tonga).
- [131] *Judicature Act 1980-81* (Cook Islands) s 12; *Constitution Amendment Act 1997* (Fiji Islands) s 120; *Criminal Procedure Code* [Cap 17] (Kiribati) s 4(a); *Courts Act 1972* (Nauru) s 17; *Constitution of Niue*, s 37; *Constitution of the Independent State of Papua New Guinea*, s 166; *Judicature Ordinance 1961* (Samoa) s 31; *Criminal Procedure Code* [Cap 4] (Solomon Islands) s 4(a) and *Constitution of Solomon Islands*, s 77(1); *Criminal Procedure Code* [Cap 7] (Tuvalu) s 4(a) and *Superior Courts Act* [Cap 1C] (Tuvalu) s 3(2); *Constitution of Vanuatu*, art 49. In Tonga, the Supreme Court has jurisdiction over all indictable offences and all other offences with maximum penalties exceeding two years: *Supreme Court Act* [Cap 10] (Tonga) ss 4, 14. See also *Tokelau Amendment Act 1986* (NZ) s 3.
- [132] *Magistrates' Courts Ordinance* [Cap 20] (Solomon Islands) s 27; *Magistrates' Courts Ordinance* [Cap 2] (Tuvalu) s 25.
- [133] *Criminal Procedure Code* [Cap 21] (Fiji Islands) ss 4-9 and Sch 1; *Magistrates' Courts Ordinance* [Cap 52] (Kiribati) ss 23-24 and Sch 2; *Magistrates' Courts Act 1969* (Samoa) s 36.
- [134] *Courts Act* [Cap 122] (Vanuatu) s 4(1)(b).
- [135] *Magistrates' Courts Act* [Cap 11] (Tonga) s 11(1), as amended by the *Magistrates' Courts Amendment Act 1990*.
- [136] *Judicature Act 1980-81* (Cook Islands) ss 19-21 and Sch 2.
- [137] *Tokelau Amendment Act 1986* (NZ) s 7.
- [138] *Constitution of Niue*, s 51.
- [139] *Electable Offences Decree 1988* (Fiji Islands) s 3, Sch.
- [140] *Electable Offences Decree 1988* (Fiji Islands) s 4.
- [141] *District Courts Act 1963*, s 24.
- [142] *Criminal Procedure Code* [Cap 21] (Fiji Islands) s 235; *Criminal Procedure Code* [Cap 17] (Kiribati) s 219; *Criminal Procedure Act 1972* (Nauru) s 173; *Criminal Procedure Code* [Cap 4] (Solomon Islands) s 220; *Criminal Procedure Code* [Cap 7] (Tuvalu) s 219.
- [143] See *Village Fono Act 1990* (Samoa); *Local Courts Act* [Cap 46] (Solomon Islands); *Island Courts Ordinance* [Cap 3] (Tuvalu); *Island Courts Act* [Cap 167] (Vanuatu).
- [144] *Village Fono Act 1990* (Samoa) s 2 (definition of 'village fono'). See also Jennifer Corrin Care, Tess Newton, Don Patterson, *Introduction to South Pacific Law* (1999) p 300.
- [145] *Village Fono Act 1990* (Samoa) s 6.
- [146] *Local Courts Act* [Cap 46] (Solomon Islands) ss 1-2.

- [147] *Local Courts Act* [Cap 46] (Solomon Islands) s 12.
- [148] *Ibid.*
- [149] *Island Courts Ordinance* [Cap 3] (Tuvalu) s 9; *Island Courts Act* [Cap 167] (Vanuatu) s 3.
- [150] *Island Courts Ordinance* [Cap 3] (Tuvalu) s 5, Sch 2; *Island Courts Act* [Cap 167] (Vanuatu) s 7.
- [151] *Island Courts Act* [Cap 167] (Vanuatu) s 10.
- [152] *Island Courts Ordinance* [Cap 3] (Tuvalu) s 6; *Island Courts Act* [Cap 167] (Vanuatu) s 11.
- [153] Peter Duff, 'The Evolution of Trial by Judge and assessors in Fiji' (1997) 21 *Journal of Pacific Studies* 189, 190.
- [154] *Judicature Act 1980-81* (Cook Islands) ss 14-16; *Juries Act 1968* (Cook Islands) s 6.
- [155] *Juries Act 1968* (Cook Islands) s 6.
- [156] *Juries Act 1968* (Cook Islands) s 25.
- [157] *Supreme Court Act* [Cap 10] (Tonga) s 14(1).
- [158] *Supreme Court Act* [Cap 10] (Tonga) s 14(6), (8).
- [159] *Constitution of Tonga*, cl 11.
- [160] *Magistrates' Courts Act* [Cap 11] (Tonga) s 12. See also *Criminal Offences Act* [Cap 18] (Tonga) s 196 (b).
- [161] Jennifer Corrin Care, Tess Newton, Don Patterson, *Introduction to South Pacific Law* (1999) p 380.
- [162] Neil Vidmar, 'Juries and Lay Assessors in the Commonwealth' (2002) 13 *Criminal Law Forum* 385, 398.
- [163] See Peter Duff, above n 153.
- [164] Neil Vidmar, above n 162 at 404.
- [165] *Criminal Procedure Code* [Cap 21] (Fiji Islands) s 299; *Criminal Procedure Code* [Cap 17] (Kiribati) s 178; *Criminal Procedure Code* [Cap 4] (Solomon Islands) s 275; *Criminal Procedure Code* [Cap 7] (Tuvalu) s 178; *Criminal Procedure Code* [Cap 136] (Vanuatu) ss 179-185; *Courts Act* [Cap 122] (Vanuatu) s 14(1).
- [166] *Criminal Procedure Code* [Cap 21] (Fiji Islands) s 263; *Courts Act* [Cap 122] (Vanuatu) s 14(1).
- [167] *Criminal Procedure Code* [Cap 17] (Kiribati) s 177; *Criminal Procedure Code* [Cap 4] (Solomon Islands) s 260; *Criminal Procedure Code* [Cap 7] (Tuvalu) s 177.
- [168] Jennifer Corrin Care, Tess Newton, Don Patterson, *Introduction to South Pacific Law* (1999) p 378.

[169] *Criminal Procedure Code* [Cap 21] (Fiji Islands) s 263; *Criminal Procedure Code* [Cap 17] (Kiribati) s 177; *Criminal Procedure Code* [Cap 4] (Solomon Islands) ss 260-261; *Criminal Procedure Code* [Cap 7] (Tuvalu) s 177; *Courts Act* [Cap 122] (Vanuatu) s 14(1).

[170] *Criminal Procedure Code* [Cap 21] (Fiji Islands) ss 264-272 284-286; *Criminal Procedure Code* [Cap 17] (Kiribati) s 177; *Criminal Procedure Code* [Cap 4] (Solomon Islands) ss 240-248, 260-262; *Criminal Procedure Code* [Cap 7] (Tuvalu) s 177; *Criminal Procedure Code* [Cap 136] (Vanuatu) ss 153-159.

[171] See the reference to assessors in *Juries Act 1968* (Cook Islands) s 6.

[172] *Niue Act 1966* (NZ) s 260, as preserved by *Constitution of Niue*, Art 71; *Tokelau Crimes Regulations 1975* (NZ), adopting the criminal law provisions of the *Niue Act 1966* (NZ).

[173] *Niue Act 1966* (NZ) ss 261-262, as preserved by *Constitution of Niue*, Art 71; *Tokelau Crimes Regulations 1975* (NZ), adopting the criminal law provisions of the *Niue Act 1966* (NZ).

[174] *Niue Act 1966* (NZ) ss 264, 270, as preserved by *Constitution of Niue*, Art 71; *Tokelau Crimes Regulations 1975* (NZ), adopting the criminal law provisions of the *Niue Act 1966* (NZ).

[175] *Criminal Procedure Act 1972* (Samoa) s 87.

[176] *Criminal Procedure Act 1972* (Samoa) ss 88, 91.

[177] *Criminal Procedure Act 1972* (Samoa) ss 93, 99.

[178] *Niue Act 1966* (NZ) s 264, as preserved by *Constitution of Niue*, Art 71; *Tokelau Crimes Regulations 1975* (NZ), adopting the criminal law provisions of the *Niue Act 1966* (NZ); *Criminal Procedure Act 1972* (Samoa) ss 92-93.

[179] Magistrates' courts themselves exercise supervisory and appellate functions with respect to 'local' or 'island' courts in Solomon Islands, Tuvalu and Vanuatu. See *Local Courts Act* [Cap 46] (Solomon Islands) ss 22-23; *Island Courts Ordinance* [Cap 3] (Tuvalu) ss 29-30; *Island Courts Act* [Cap 167] (Vanuatu) ss 21-22. See also the right to appeal to the Land and Titles Court under the *Village Fono Act 1990* (Samoa) s 11.

[180] *Judicature Act 1980-81* (Cook Islands) s 76; *Criminal Procedure Code* [Cap 21] (Fiji Islands) s 308; *Criminal Procedure Code* [Cap 17] (Kiribati) s 270; *Appeals Act 1972* (Nauru) s 3; *District Courts Act* [Cap 40] (PNG) s 219; *Criminal Procedure Act 1972* (Samoa) ss 138-138A; *Criminal Procedure Code* [Cap 4] (Solomon Islands) s 283; *Magistrates' Courts Act* [Cap 11] (Tonga) s 74; *Tokelau Amendment Act 1986* (NZ) s 10 (adopting, by implication, *District Courts Act 1947* (NZ) s 72); *Criminal Procedure Code* [Cap 7] (Tuvalu) s 270. In Cook Islands, where there are no separate magistrates' courts, a decision of the High Court constituted by a justice or justices can be appealed to the High Court constituted by a judge. The *Constitution of Niue*, s 48(2), provides: 'An Act may provide for appeals from a Commissioner of the High Court to a Judge of that Court.' Such an act has not yet been passed.

[181] *Criminal Procedure Act 180-81* (Cook Islands) s 131 and *Judicature Act 1980-81* (Cook Islands) s 80; *Criminal Procedure Code* [Cap 21] (Fiji Islands) s 319; *Criminal Procedure Code* [Cap 17] (Kiribati) s 280; *Appeals Act 1972* (Nauru) s 14; *District Courts Act* [Cap 40] (PNG) s 230; *Criminal Procedure Act 1972* (Samoa) s 144; *Criminal Procedure Code* [Cap 4] (Solomon Islands) s 293; *Tokelau Amendment Act*

1986 (NZ) s 10 (adopting, by implication, *District Courts Act 1947* (NZ) s 76); *Magistrates' Courts Act* [Cap 11] (Tonga) s 80; *Criminal Procedure Code* [Cap 7] (Tuvalu) s 280; *Courts Act* [Cap 122] (Vanuatu) s 16(2). In Vanuatu, interference with a magistrate's exercise of a statutory 'discretion' is authorised only when it was 'manifestly wrong'.

[182] *Criminal Procedure Code* [Cap 21] (Fiji Islands) ss 329-340; *Criminal Procedure Code* [Cap 17] (Kiribati) ss 285-296; *Criminal Procedure Act 1972* (Samoa) ss 130-137; *Criminal Procedure Code* [Cap 4] (Solomon Islands) ss 298-309; *Criminal Procedure Code* [Cap 7] (Tuvalu) ss 285-296.

[183] *Criminal Procedure Code* [Cap 136] (Vanuatu) s 200. See also *Courts Act* [Cap 122] (Vanuatu) s 18.

[184] *Constitution of Cook Islands* s 60; *Constitution Amendment Act 1997* (Fiji Islands) s 121 and *Court of Appeal Act* [Cap 12] (Fiji Islands); *Court of Appeal Act* [Cap 16B] (Kiribati); *Constitution of Niue*, Art 55A; *Judicature Act 1961* (Samoa) s 53; *Court of Appeal Act* [Cap 6] (Solomon Islands); *Court of Appeal Act* [Cap 9] (Tonga); *Superior Courts Act* [Cap 1C] (Tuvalu) s 9; *Courts Act* [Cap 122] (Vanuatu) s 26.

[185] *Constitution of the Independent State of Papua New Guinea*, s 155(2), and *Supreme Court Act* [Cap 37] (PNG).

[186] *Appeals Act 1972* (Nauru) s 37, as am by *Appeals Amendment Act 1974* (Nauru).

[187] *Tokelau Amendment Act 1986* (NZ) s 4(1).

[188] *Criminal Procedure Act 1980-81* (Cook Islands) s 131 and *Judicature Act 1980-81* (Cook Islands) s 56; *Court of Appeal Act* [Cap 12] (Fiji Islands) s 23; *Court of Appeal Act* [Cap 16B] (Kiribati) s 22; *Appeals Act 1972* (Nauru) s 38; *Supreme Court Act* [Cap 37] (PNG) s 23; *Criminal Procedure Act 1972* (Samoa) s 164N; *Court of Appeal Act* [Cap 6] (Solomon Islands); *Tokelau Amendment Act 1986* (NZ) s 4(1) (adopting, by implication, *Crimes Act 1961* (NZ) s 383); *Court of Appeal Act* [Cap 9] (Tonga) s 17; *Superior Courts Act* [Cap 1C] (Tuvalu) s 9; *Criminal Procedure Code* [Cap 136] (Vanuatu) s 207. The powers of the Niue Court of Appeal are not specified.

[189] *Crimes Act 1961* (NZ) s 385; *Criminal Code* (Qld) s 668E(1).

[190] *Court of Appeal Act* [Cap 12] (Fiji Islands) s 23(1); *Court of Appeal Act* [Cap 16B] (Kiribati) s 22(1); *Supreme Court Act* [Cap 37] (PNG) s 23(1); *Criminal Procedure Act 1972* (Samoa) s 164N(1); *Court of Appeal Act* [Cap 6] (Solomon Islands) s 22(1); *Tokelau Amendment Act 1986* (NZ) s 4(1) (adopting, by implication, *Crimes Act 1961* (NZ) s 383); *Court of Appeal Act* [Cap 9] (Tonga) s 17(1).

[191] *Court of Appeal Act* [Cap 12] (Fiji Islands) s 21; *Court of Appeal Act* [Cap 16B] (Kiribati) s 19; *Court of Appeal Act* [Cap 6] (Solomon Islands) s 20; *Court of Appeal Act* [Cap 9] (Tonga) s 16.

[192] *Appeals Act 1972* (Nauru) s 37(1), as amended by the *Appeals Amendment Act 1974* (Nauru).

[193] *Judicature Act 1980-81* (Cook Islands) ss 54, 56, and *Criminal Procedure Act 1980-91* (Cook Islands) s 131.

[194] *Supreme Court Act* [Cap 37] (PNG) s 22.

[195] *Supreme Court Act* [Cap 37] (PNG) s 24.

[196] Appeals in Tokelau cases are governed by the *Crimes Act 1961* (NZ) s 383, which permits a

convicted person to appeal as of right against the conviction or sentence and also permits the Solicitor-General to appeal, with leave, against a sentence.

[197] *Criminal Procedure Act 1972* (Samoa) ss 164K-164L.

[198] *Superior Courts Act* [Cap 1C] (Tuvalu) s 9.

[199] *Criminal Procedure Code* [Cap 136] (Vanuatu) s 200(2); *Courts Act* [Cap 122] (Vanuatu) s 26(2).

[200] *Criminal Procedure Code* [Cap 136] (Vanuatu) s 200(3).

[200] *Constitution of Niue*, Art 55A(2)(b)-(c).

[200] *Constitution of Niue*, Art 55A(2)(d).

[200] *Supreme Court Act* [Cap 37] (PNG) s 26.

[200] *Court of Appeal Act* [Cap 12] (Fiji Islands) s 22(1); *Court of Appeal Act* [Cap 16B] (Kiribati) s 21(1); *Court of Appeal Act* [Cap 6] (Solomon Islands) s 21(1).

[200] *Appeals Act 1972* (Nauru) s 37(2); *Supreme Court Act* [Cap 37] (PNG) s 4(2); *Superior Courts Act* [Cap 1C] (Tuvalu) s 9.

[200] *Criminal Procedure Code* [Cap 136] (Vanuatu) s 200(4).

[200] *Privy Council (Judicature Committee) Act 1984* (Cook Islands) s 3(2)(c); *Constitution of Niue*, Art 55(2); *Superior Courts Act* [Cap 1C] (Tuvalu) s 13. Decisions of the New Zealand Court of Appeal are expressly declared to be final for Tokelau, excluding any role for the New Zealand Supreme Court: *Tokelau Amendment Act 1986* (NZ) s 14(2).

[200] *Constitution Amendment Act 1997* (Fiji Islands) s 122 and *Supreme Court Decree 1991* (Fiji Islands) s 8.

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