



This revised version is effective from 14 April 2020

## FSC Standard No 1: *Code of Ethics & Code of Conduct*

<p><b>FSC Membership this Standard is relevant to:</b></p>	<p>This Standard is relevant to all FSC Members.</p> <p>The Standard applies only to Full Members of the FSC. Supporting Members are encouraged to comply with this Standard as far as practicable and as circumstances permit.</p> <p>The Code of Ethics and Code of Conduct contained in this Standard were developed in conjunction with Dr. Simon Longstaff of The Ethics Centre.</p>
<p><b>Date of this version:</b></p>	<p>14 April 2020.</p>
<p><b>History (prior versions) of this Standard:</b></p>	<p>9 November 1999, 22 June 2001, 31 August 2007, 4 May 2012, 31 October 2016 and last reviewed, prior to this version, on 4 May 2018. Minor amendments to wording made on 27 March 2023.</p>
<p><b>Main Purpose of this Standard:</b></p>	<p>This Standard establishes: an ethical framework to guide decision making and specific rules regarding certain conduct. This Standard also sets out FSC's Standards making process, the requirement for annual sign-off from the Board of FSC Members certifying compliance with all applicable FSC Standards, and related matters.</p> <p>Accordingly, this Standard contains:  <i>A Code of Ethics</i> for FSC Members;  <i>A Code of Conduct</i> for FSC Members; and      Procedural provisions relating to Standard setting and the on-going governance of Standards, together with details concerning the relevant compliance processes to be undertaken by full FSC Members.</p>

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## **Part One: Application of the Standard and Commentary**

### **1.1 Introduction and background**

#### **Purpose of the Code**

The Financial Services Council (**FSC**) is the industry association for the superannuation, financial advisory networks, licensed trustee company services, funds management and life insurance industries (**Financial Services Sector**). FSC seeks to advance the efficiency and integrity of the Australian financial system by, among other things, acting as the focal point for the development of benchmark standards and codes of practice for the above industry sectors, where appropriate.

FSC Standard Number 1 – *Code of Ethics and Code of Conduct* (**Code**) establishes an ethical framework to guide decision making and specific rules regarding certain conduct. This Standard also sets out FSC's Standards-making process and the requirement for annual sign-off, from the Board of FSC Members, certifying compliance with all applicable FSC Standards, and related matters.

#### **History**

The Standard was originally developed in 1997-98, following the establishment of the FSC, and was formally issued on 9 November 1999.

It was reissued on 22 June 2001 in substantially the same form. The Standard underwent a further review at the end of 2006 and was approved by the FSC Board in February 2007 and reissued on 31 August 2007 and on 4 May 2012 (incorporating updates on the sign-off process required for compliance with FSC's Standards in respect of FSC Members which are part of a group of companies or described as "**conglomerate members**"). It was revised, in minor respects, on 31 October 2016 with a major review approved by the FSC Board on 4 May 2018.. The latest version of FSC Standard No. 1 (to facilitate processes during a Force Majeure Event) was approved on 14 April 2020. Minor amendments to reflect the correct names of FSC Standards approved on 27 March 2023.

### **1.2 Date of application to Members**

This iteration of the Standard takes effect on and from 1 July 2018. Members are encouraged to comply voluntarily from an earlier time.

### **1.3 Application**

All FSC Members must:

- (i) comply with the ethical framework and rules of conduct set out in Part Two and Part Three of this Code; and
- (ii) effectively establish codes of ethics and conduct in their companies that incorporate the principles of this Code.

The Codes are intended to complement existing Australian law, and laws of overseas jurisdictions, where applicable, and is not intended to replace any relevant law. **To the extent of any inconsistency between the law and this Code, the law prevails. Subject to any such inconsistency, the requirements of the Code are to have full force and effect.**

**Subject to paragraph 1.7, The *Code of Ethics* and *Code of Conduct* apply in full and without exception to all Full Members. FSC will not grant an exemption to either Code.**

While FSC's Supporting Members are not required to comply with this Standard, they are encouraged to have regard to and observe its core tenets; particularly in connection with their dealings with an FSC Member or associate.

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## **1.4 Meaning of Certain Expressions or Terms**

For the purposes of this Standard, if an expression or term is capitalized but not defined in this Standard and is defined in Guidance Note 5 *Industry Terms and Definitions*, then that expression or term has the meaning given to in Guidance Note 5. Examples of this include the expressions or terms Customer and **Scheme**.

## **1.5 Breach of an FSC Standard**

Appendix C, Paragraph C.4 sets out the processes that the FSC and an FSC Member should adopt in the event of an alleged breach of an FSC Standard. Reference generally should be made to Appendices B and C in this regard.

## **1.6 Review of Standards**

FSC Standards are typically reviewed every three years. In exceptional circumstances, a Standard may be reviewed at an earlier time – for example, in response to a substantial evolution in the regulatory and business environment.

## **1.7.....Force Majeure Event**

Upon the occurrence of a Force Majeure Event, the FSC Standards Oversight and Disciplinary Committee (**SODC**) has power to grant relief on such terms and conditions as it thinks fit from compliance with the procedural requirements only of this Standard One and the requirements of other Standards as provided for in Stage 8 in Appendix A and paragraph B2.5 of B2 in Appendix B.

For the purpose of this Standard One, the term “Force Majeure Event” includes any event or cause beyond the reasonable control of an FSC Member that materially affects the capacity of an FSC Member to comply fully with the requirements of a Standard, including, strike, industrial action, war, sabotage, terrorist activity, national emergency, pandemic, blockade or governmental action,

## **1.8 Appendices**

The Appendices to this Standard are:

Appendix A – FSC’s Standard-Setting Process

Appendix B – Annual Compliance Process

Appendix C – Ongoing monitoring of compliance, good practice and disciplinary procedure.

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## **Part Two: Code of Ethics**

### **The General Duty – the public interest:**

The public interest is best served by access to markets in which participants can make well-informed choices free from undue constraints. Markets can only be free and efficient if they exclude those who act dishonestly and unfairly or otherwise distort their proper functioning. Thus:

- 2.0 Members of the FSC have an *overriding general duty* to establish and maintain a strong ethical foundation for the market in financial products and services and their investment activities.

### **Specific Duties – subject to the general duty:**

#### *Primacy of Customers*

- 2.1 Members of the FSC should give primacy to the duty owed to their Customers.

#### *Fairness and equity*

- 2.2 Members of the FSC should treat all stakeholders in a manner that is fair and equitable.

#### *Trustworthiness*

- 2.3 Members of the FSC should:
- conduct all of their affairs in a manner that merits the trust and good opinion of Customers and other stakeholders; and
  - establish and publish their own ethical frameworks; nominating core values and principles that will:
    - defines the elements of their internal culture(s); and
    - regulate their dealing(s) with all stakeholders.

#### *Applying a high standard of conduct*

- 2.4 Members of the FSC should:
- ensure that the tasks they perform are undertaken honestly and with due care, competence and diligence;
  - ensure their people are properly trained and perform their duties and obligations to a high standard of professionalism; and
  - develop and maintain a high standard of risk and compliance practice and implement solid foundations for the management and oversight of that practice; periodically reviewing its effectiveness, and promptly and transparently addressing any deficiencies which are identified.

#### *Managing conflicts of interest or duty*

- 2.5 Without limiting anything else in this Standard, subject to any relevant law, FSC Members must not allow conflicts of interest or duty to influence their actions. In addressing any competing interests the FSC Member must ensure that:
- Customers' interests are of paramount importance in all decisions and transactions; the execution of Customers' requirements comes before attention is given to those of the FSC Member;
  - FSC Members' conduct contributes to markets operating in an efficient and informed manner; FSC Members must place their duty to Customers ahead of those owed to their shareholders and/or others; and
  - FSC Members avoid circumstances where they may be perceived to have a conflict.

#### *In accordance with the Rule of Law*

- 2.6 Members of the FSC should give effect to the spirit as well as the letter of the law.

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## Part Three: Code of Conduct

### 3.1 Applying the FSC Code of Ethics

FSC Members must apply all of the tenets of the *Code of Ethics* specified in Part Two of this Standard.

### 3.2 Fair and appropriate competition

While vigorous competition within the industry is encouraged, FSC Members should always compete fairly and in a manner that increases trust and confidence in the Financial Services Sector and its subsectors.

### 3.3 Providing clear, concise and effective disclosure

FSC Members must provide disclosures to Customers and potential Customers that are clear, concise and effective (whether in written or non-written form) and in a manner consistent with any relevant laws. If practicable, such disclosure should extend **beyond** the minimum requirements of any relevant law, contain relevant information and be presented so as to enable the Customers to make an informed decision and not be misleading. This enables sound investment decisions to be made by Customers and potential Customers and should include, but not be limited to, disclosures about any conflicts of interest (see also section 3.5 below) and disclosures of any fees and charges that are likely to be incurred.

### 3.4 Managing Conflicts

- a. At a minimum, an FSC Member must actively address their obligations, in relation to conflicts, as arise under the law.
- b. FSC Members must have in place adequate arrangements to assess existing and potential areas of conflict arising from internal or external interests or duties by identifying:
  - circumstances that may cause a conflict of interest at an individual, business or entity level;
  - behaviour that may affect the independence of decisions at an individual, business, entity, product or service level; and
  - any other matters or circumstances which may give rise to any potential conflicts.

### 3.5 Confidentiality & Appropriate Use of Information

- a. FSC Members have an obligation to comply with all relevant privacy laws in Australia and overseas (where applicable).
- b. Without limiting any other legal obligations, FSC Members must respect and preserve confidential information by adopting and implementing a proactive and measured approach to:
  - safeguarding information regarding their Customers that is in their possession;
  - avoiding the misuse of private information obtained in the course of their business activities;
  - and
  - keeping, as reasonably practicable, up to date with the latest cyber security measures to keep customer data safe.
- c. Private information is not to be misused to gain an improper commercial or personal advantage.
- d. FSC Members must neither create nor use false or misleading information by act or omission.

### 3.6 Development of talent

- a. In addition to any relevant legal requirements, FSC Members have an obligation to have in place, and to make reasonable efforts to implement, proper processes intended to ensure that their people (including agents engaged in service delivery):
  - have appropriate standards of skill and competence;
  - are well supervised;

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are diligent and take proper care when discharging their duties and obligations toward Customers and other stakeholders; and  
are supported to develop the relevant knowledge, skills and dispositions through access to training and education.

- b. Members have an obligation to have in place, and to make reasonable efforts to implement, proper processes intended to ensure that they do not hire a person who:
  - is unethical;
  - lacks integrity; or
  - has otherwise brought, or could bring, their employer or industry into disrepute.

### **3.7 Promotion and support of ethical decision-making behaviours through sound corporate governance**

- a. FSC Members should explicitly support the FSC standards of ethical and professional conduct, and of corporate governance;
- b. FSC Members should reinforce appropriate ethical behaviours and practices at all levels of the organisation by:
  - developing and embedding an ethical decision-making framework;
  - utilizing training or other measures to embed and promote a culture of ethical decision-making;
  - evaluating and refining their organizational culture; and
  - providing and championing 'in confidence' and safe, 'whistle-blower-type' reporting mechanisms for raising concerns about what is perceived to be inappropriate practice.

### **3.8 Other FSC Standards and Compliance with Law**

For clarity, the obligations in this Part Three **are additional to and operate in conjunction with** all other relevant FSC Standards, such as the Life Insurance Code of Practice, and all relevant laws.

### **3.9 Standard Applies Overseas**

Australian business integrity, competence, robust regulatory framework and high standards of risk control should never be compromised. This Standard applies to FSC Members who operate overseas.

## Appendix A: FSC's Standard-Setting Process

### A.1 Objectives

The objectives of the Standards are to provide public confidence, objectivity, credibility and professionalism within the industry. The standard-setting process generally consists of the stages set out below.

In some instances, it may be appropriate for **different stages or processes** to be adopted **provided that** the relevant Board Committee and the Standards Oversight and Disciplinary Committee (**SODC**) have had input into the adoption of a Standard (or Guidance Note) and the same is formally adopted by the FSC Board

**And provided further that** the SODC may approve any non-material or non-significant amendments to any Standard or Guidance Note as it thinks fit, (such as correction of typographical errors, redundant wording or logos and manifest errors) and submit those for formal adoption by the FSC Board. If the SODC requires clarity as to whether any error is non-material or non-significant for these purposes, it will consider the advice of the FSC Secretariat and any relevant or appropriate Board Committee, Working Group or Expert Group.

**The relevant stages are as follows: -**

**Stage 1:** Identification of an issue and an assessment of its priority.

**Stage 2:** Assessment of the need for a Standard or Guidance Note.

**Stage 3:** Put a case for the development of a Standard or Guidance Note to the appropriate FSC Board Committee.

**Stage 4:** Working Group to develop a draft for the purposes of consultation.

**Stage 5:** Submit an exposure draft to the broad FSC Membership and any interested parties as might be required for consultation.

**Stage 6:** Working Group to finalise the draft.

**Stage 7:** Final draft to be referred to the appropriate FSC Board Committee for endorsement.

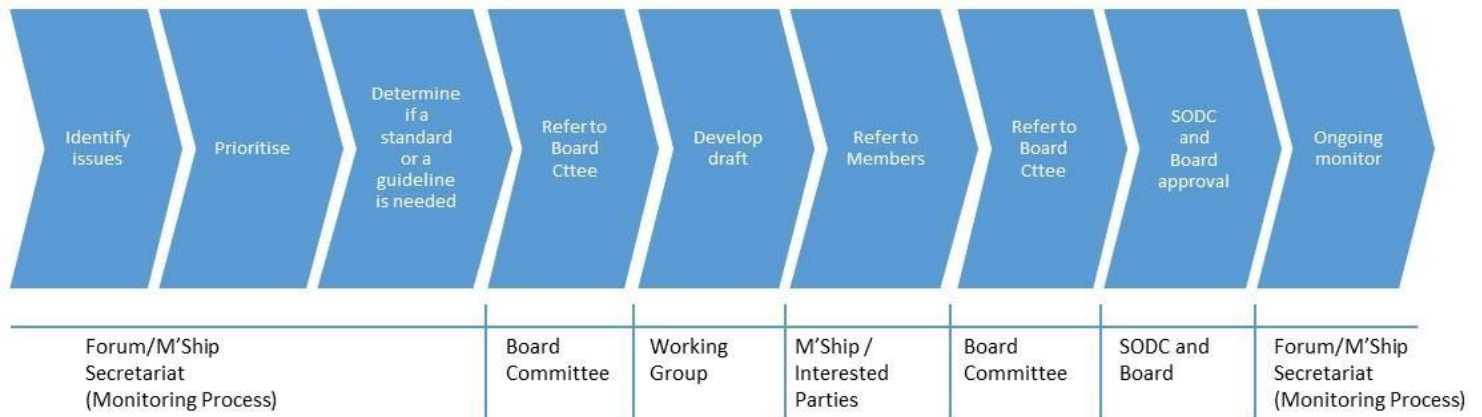
**Stage 8:** Final draft to be referred to the SODC for approval and the SODC will refer the draft to the FSC Board for final approval.

**Stage 9:** Ongoing monitoring and enforcement (refer Appendix C)



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## Standard Setting process



### Stage 1: Identification of an issue and an assessment of its priority.

FSC Standards and Guidance Notes are conceived through the identification of issues that members consider require attention. Ideas for the development of new Standards are openly sought and the views of Members, supporting members and others are welcomed on emerging issues. Changes to existing Standards should be thoroughly explored before the remainder of the development process is progressed.

The identification of emerging issues may be referred by the FSC Board, Board Committees, Forums, the Membership and the Secretariat, or as a result of issues raised during the monitoring process. Issues then need to be prioritised to ensure the appropriate allocation of resources.

### Stage 2: Assessment of the need for a Standard or Guidance Note.

Research should be undertaken to assess the need for a Standard or Guidance Note. Issues identified in the initial process may be addressed in a variety of ways: Member education, awareness campaigns, dialogue with a relevant regulator and other interested parties, as well as the establishment of a Standard or Guidance Note.

The best means for dealing with identified issues should be canvassed and a wide variety of potential solutions considered.

So as to demonstrate that all options have been considered, in the normal course, the Secretariat will develop or oversee the development of an Issues Paper which should include a description of the problem and the need for a Standard or Guidance Note, a discussion of the problem, and a list of practical options for the consideration of Members and others.

### Stage 3: Put a case for the development of a Standard or Guidance Note to the appropriate FSC Board Committee.

The relevant Issues Paper is then presented to the appropriate FSC Board Committee for confirmation. Once the FSC Board Committee has approved the direction of the Issues Paper, the production of the Standard or Guidance Note should be delegated to a new or existing Working Group.

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## **Stage 4: Working Group to develop a draft.**

As directed by the FSC Board Committee in conjunction with the Secretariat, a Working Group will develop a draft Standard or Guidance Note for review by the Members.

## **Stage 5: Submit an exposure draft to the broad FSC Membership and any interested parties for consultation.**

Following the completion of a draft Standard or Guidance Note, an Exposure Draft should be distributed to all Full and Supporting Members through the Nominated Representatives of Members and, if appropriate, to any other interested parties. Members and other interested parties should be given the opportunity to comment on the draft paper. A time limit for receipt of comments should be quoted to ensure prompt progression to the next stage of the standard- setting process.

## **Stage 6: Working Group to finalise the draft.**

Submissions from Members and other parties should be directed by the FSC Secretariat to the Working Group responsible for the draft paper. The Working Group must then determine whether there is consensus on an issue.

## **Stage 7: Final draft to be referred to the appropriate FSC Board Committee for endorsement**

At this stage a recommendation from the Working Group should be made to the appropriate FSC Board Committee, including an indication of whether the proposed Standard or Guidance Note is supported by all Members, and if not the nature and degree of opposition to it.

If the Committee is satisfied with the draft paper a recommendation is then made to the SODC for final approval.

## **Stage 8: Final draft referred to the SODC for approval and referral to the FSC Board for final approval.**

The draft Standard or /Guidance Note will be presented to the next meeting of the SODC for approval.

Three members of the FSC Board comprise the SODC. Following each meeting of the SODC which considers a final draft, the SODC is to provide a report summarising its decisions for final approval by the FSC Board.

Once approved, the Standard or Guidance Note is issued to all Members with an **Effective Date** set at a suitable period after the Issue Date. The purpose of this is to give Members and other interested parties an opportunity to prepare for its implementation on the Effective Date. However, upon the occurrence of a supervening Force Majeure Event that impacts the appropriateness of the Effective Date and the material ability of FSC Members to comply fully with the Standard on and from the Effective Date, the SODC in its absolute discretion and on such terms and conditions as it thinks fit, may defer or delay the Effective Date for the duration of the adverse effect of the Force Majeure Event or such other time period as the SODC thinks fit and appropriate in all the circumstances. This provision also applies to Guidance Notes with appropriate modifications as required.

## **Stage 9: Ongoing monitoring and enforcement (refer Appendix C)**

The Standards and Guidance Notes will be monitored by the Senior Policy Manager Member. or Guidance Notes those amendments will be advanced in accordance with the standard setting process outlined in stages 1 to 9.

## **Appendix B: Annual Compliance Process**

### **B.1 Statement of intention**

- 1.1 This document is designed to provide guidance to FSC Members on the process to be followed in order to ensure ongoing compliance with the FSC Standards.
- 1.2 FSC is not a regulator. FSC intends to monitor compliance with the FSC Standards with a minimum of formality. The focus will be on outcomes not on prescriptive procedures. Notwithstanding this intent, certain processes are required where breaches of FSC Standards are identified.
- 1.3 FSC does not intend to ensure compliance with the FSC Standards by conducting site visits. Where FSC does become aware of a potential breach of the FSC Standards, the procedures outlined below will be followed.
- 1.4 Where there is a conflict between these procedures and relevant legislation or constituent documents, FSC Members are encouraged to adhere to the spirit and intention of these procedures rather than their literal meaning.

### **B.2 Annual compliance statement**

- 2.1 FSC's full Members are required to adopt a Board resolution each year stating they are satisfied that:
  - The company has complied with mandatory FSC Standards for the year just completed; or
  - Where the company has not complied, the exemptions which have been granted to them by FSC in this regard; or
  - The Standards which are not applicable to the company's business.
- 2.2 Where an FSC Member is a subsidiary company, the annual compliance statement is not required to be signed by the holding company board. Compliance should be attested to by the Board of the subsidiary or division to which the FSC Standards apply.
- 2.3 Where an FSC Member has more than one subsidiary that is required to comply with the FSC standards, the Member should submit to FSC:
  - One consolidated annual compliance statement signed by the holding company board covering all relevant divisions/subsidiaries; or
  - Separate annual compliance statements signed by all relevant subsidiary boards for the respective subsidiaries. See below for further information in relation to the sign-off required from an FSC Member which is part of a group of companies (sometimes described as a "conglomerate member").
- 2.4 Where one consolidated annual compliance statement is signed by the holding company it should:
  - Confirm as part of the compliance statement that any subsidiary/entity covering superannuation, financial advice, trustee company services, managed

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investments, funds management and life insurance has been included in the compliance sign off procedures; and

List the entities which have been included in the compliance audit. Conglomerate

members are also subject to the sign-off requirement set out in paragraph 2.8 (which sets out the activities and entities which the FSC member which is a part of a group of companies (“**conglomerate member**”) is required to provide sign-off on.

- 2.5 The compliance statement (refer Section B.9) must be submitted to FSC by 30 September of each year or such later date as determined by the SODC arising from the occurrence of a Force Majeure Event as applicable to one or more Members. It is expected that the process of review required for an FSC Member’s Board to sign the annual compliance statement will be aligned with a Member’s financial and statutory reporting requirements.
- 2.6 A representative of the Member’s Board (for example the Managing Director, Secretary, or Head of Compliance) may sign the statement of compliance on behalf of the Board in accordance with the authority provided by a Board resolution made under Clause 2.1. In such case the statement must confirm that it is signed on behalf of and with the authority of the Board.
- 2.7 Where practical and relevant, Supporting Members are encouraged, but not required, to comply with the Standards and Guidance Notes and to provide the appropriate compliance statement. If they are unable to comply, however, Supporting Members are not required to apply for exemption.

### ***Annual compliance statement requirements in respect of FSC Members which are conglomerate members***

- 2.8 Where:
- (a) the FSC Member has majority ownership (i.e. more than 50% ownership) of an entity; **and/or**
  - (b) the FSC Member has full management oversight of the activities of an entity; **and/or**
  - (c) an entity is branded, marketed or distributed under the management structure of the FSC Member (for example, a financial advisory group owned by an institution, but branded under the branding of the wealth management arm of that institution), **and** that entity’s activities cover any one or more of superannuation, financial advice, trustee company services, managed investments, funds management and life insurance, **then** the FSC Member must arrange an annual compliance statement(s) as part of the annual compliance process, covering the activities of the FSC Member **and** those entities. (The annual compliance statement may be a single statement or statement provided by one or more of the FSC Member and entities, provided that collectively the activities of the FSC Member and each of the entities is the subject of an annual compliance statement.)

### **Activities which are not part of the Compliance Sign-offs as they are not activities generally governed by FSC membership**

- 2.9 To avoid doubt, each of the following activities and entities are **excluded** from the coverage of FSC membership and compliance statements:

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- (1) execution-only stockbroking (this exclusion does not apply to any financial advice provided);
- (2) margin lending;
- (3) banking;
- (4) structured products (such as over the counter derivatives/contracts) which are not offered as or contained within a managed investment scheme, superannuation product or other collective investment or pooled vehicle;
- (5) securitisation;
- (6) a joint venture investment management (“JVIM”) entity:
  - (a) not majority owned by the FSC Member; **and**
  - (b) over which the FSC Member does not have full management oversight; and
  - (c) to the extent that (but not otherwise) such JVIM entity is branded, marketed or distributed by the FSC Member as part of a platform or like offering.

### **B.3 Non-supply of compliance statement**

- 3.1 Failure to supply the compliance statement within the timeframe specified in Clause 2.5 will be considered non-compliance with the FSC Standards. In these circumstances, FSC will send a letter within 2 weeks of the due date requesting a written explanation from the FSC Member for the non-supply.
- 3.2 Where the explanation includes reference to a potential breach, reference should be made to Section B.4 of these procedures for guidance.
- 3.3 Inadequate processes, procedures and/or resources will not be considered an appropriate reason for the non-supply of the annual compliance statement. Members are referred to Section 3.4 of FSC’s Code of Ethics and Code of Conduct which outlines the practices an FSC Member should have in place.

### **B.4 Breach of Standards**

- 4.1 Where FSC has reasonable grounds to believe that a Member has breached an FSC Standard, FSC may request evidence be produced by a Member to confirm actual compliance with the FSC Standards.
- 4.2 FSC Members should seek guidance from the FSC immediately on becoming aware of the potential breach of any FSC Standard.
- 4.3 An FSC Member, depending on the materiality of the breach, may be subject to disciplinary action for breaching any FSC Standard.

### **B.5 Applying for exemption from compliance with aspects of the Standards**

- 5.1 If, during the course of the year, a Member becomes aware that there has been non-compliance with specific aspects of the Standards and the Member reasonably believes that it will not comply by the relevant certification date, the Member should notify the FSC and apply for an exemption.
- 5.2 In applying for an exemption from compliance with sections of specific FSC Standards:
- The Member's Board must satisfy itself that they are not reasonably able to correct their systems to ensure compliance ('**System**' includes, but is not limited to any policy, procedure, document, resource or IT system used by the FSC Member); and
- The Member's Board must satisfy itself that no individual or group of Customers will be disadvantaged by the act of non-compliance.
- 5.3 The Member applying for the exemption must follow the following procedure:
- Apply for the exemption in writing to the FSC's CEO or the CEO's delegate.
- The application must provide details of the reason/s for any inability to comply, including evidence substantiating the claim. Where elements of the application are confidential, these elements must be highlighted.
- The application is made no later than 30 August each year so that the Application can be submitted for consideration by the September meeting of the SODC and a decision reached prior to 30 September.
- The application is signed by the relevant person responsible for the co-ordination of compliance with FSC Standards.
- 5.4 FSC will respond to the Member within 14 days of receipt of the application indicating the proposed course of action and timeframe for consideration. Best efforts will be made to resolve issues within a reasonable timeframe.
- 5.5 To avoid any conflicts of interest, any FSC Board Committee member who is also a representative of a Member or related party applying for exemption, or appealing a decision not to allow exemption, will be excluded from all discussion and voting on the issue.
- 5.6 Where an exemption is granted, it may not be appropriate for the FSC Member to continue to show the FSC logo without qualification. This will be resolved on a case-by-case basis.
- 5.7 Where an application for exemption is denied, the reasons for the denial of an exemption request will be provided.
- 5.8 Where an application for exemption is denied, the FSC Member must comply with the Standard within a reasonable period, determined by the FSC Secretariat, from the date of denial of the exemption application.

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- 5.9 An FSC Member denied an exemption must advise the FSC CEO, in writing, of their compliance with the Standard within the time specified under Clause 5.7. Failure to do so may result in sanctions applied under Appendix C of the FSC Code of Ethics and Code of Conduct.
- 5.10 The FSC Member may appeal against any decision made. Refer to Appendix C.7 of the FSC Code of Ethics and Code of Conduct for guidance on the appeal process.
- 5.11 Where a compliance issue is ongoing, and exemption has previously been granted, the FSC Member must reapply for exemption every subscription year. Approval of exemptions for a particular year is no guarantee of future exemptions being granted.
- 5.12 Any subsequent applications for exemption must address how the Member has attempted to comply and why the compliance failure continues.
- 5.13 When assessing an application for exemption, the FSC Secretariat may seek advice from FSC Member(s) or Supporting Member(s) or other expert(s) prior to deciding.
- 5.14 Advice requested under Clause 5.13 will be made on a 'no names' basis. Any cost incurred in this process will be at FSC's expense.
- 5.15 FSC reserves the right to make the terms of any exemption public on a 'no names' basis.
- 5.16 Where an issue raised in respect of an FSC Standard is an industry-wide issue, the FSC Board reserves the right to grant a 'blanket' exemption until such time as the relevant Standard can be reviewed. FSC Members will not be required to request exemption for this period.
- 5.17 A report on the status of all actions and applications in relation to the FSC Standards will be provided by the Secretariat to each relevant meeting of the Standards Oversight and Disciplinary Committee.

### ***B5A Non-application of Certain Standards:***

- 5A.1 Apart from this Standard 1, no other relevant FSC Standard applies to an FSC Member who satisfies **the conditions** set out in this Part B5A in the circumstances and to the extent only set out in this Part B5A.
- 5A.2 **The conditions** referred to in the preceding paragraph are as follows:
- (a) The FSC member is:
- a. in the business of providing professional trustee or responsible entity services (known commonly as a trustee for hire or a responsible entity, RE, for hire), or
  - b. in respect of a Legacy Product, the member performs only the professional trustee or responsible entity function in respect of the Legacy Product and no other service or function  
**(Relevant Member);**
- (b) The Relevant Member is acting in that capacity in relation to a Scheme and for the purposes of performing its role in relation to the Scheme delegates its

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powers or functions in relation to the Scheme which are capable of being delegated to a service provider (for example, administration, investment management and custodial services) and engages the service provider for that purpose (**Service Provider**);

- (c) In respect only of the functions delegated to the Service Provider:
    - (i) Where the Service Provider *is* an FSC Member, bound by the FSC Standards, the Relevant Member has taken reasonable steps to ensure that the Service Provider will comply with all relevant FSC Standards in providing the services to the relevant Member; and
    - (ii) Where the Service Provider *is not* an FSC Member bound by the FSC Standards, prior to appointment of the Service Provider, the Relevant Member has undertaken all appropriate and reasonable due diligence, establishes and maintains compliance monitoring and complies with all applicable laws in relation to the appointment of the Service Provider, and;
  - (d) The Relevant Member discloses (in a prominent position such that the matter is clearly brought to the attention of Customers) in the disclosure document in relation to the Scheme that:
    - (i) Although it is an FSC Member and complies with FSC Standards, including Standard 1; in relation to the Scheme itself, it has appointed delegates and Service Provider to provide certain services to it in relation to the Scheme;
    - (ii) Such a Service Provider may or may not be an FSC Member;
    - (iii) An outline of its obligations referred to in paragraph (c) above; and
    - (iv) Accordingly, Customers in the Scheme may not receive the full benefit or protection of the FSC Standards in relation to any such services which are delegated to or provided by a Service Provider.
- 5A.3 Where the Member satisfies the conditions outlined above; the Member does not need to satisfy any relevant Standard in relation to any service so provided to it by a Service Provider in such circumstances and the Member will not be taken to be in breach of any relevant FSC Standard.
- 5A.4 The Relevant Member however must always otherwise comply with the terms of this Standard 1.
- 5A.5 For clarity, if the conditions above are satisfied, it will not be necessary for the Relevant Member to notify the FSC of any breach of the Standards of which it becomes aware in relation to such service provided to it by a Service Provider nor apply for an exemption from compliance with the FSC Standards in relation to such services.



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## **B.6 Review of FSC Standards**

- 6.1 Where the FSC secretariat determines that a particular Standard or Guidance Note requires review (e.g. as a result of a change in law, industry practice or consumer expectations) FSC will follow the procedures outlined in Appendix A of the FSC Code of Ethics and Code of Conduct).
- 6.2 Where any FSC Member considers a Standard or Guidance Note requires review, they should provide their reasoning to the FSC in writing.
- 6.3 Where FSC determines the review requested under clause 6.2 is justified, they will confirm this with the FSC Member and make other Members aware of the formation of a working group.
- 6.4 The process detailed under this paragraph also applies to the development of a new Standard or Guidance Note. Refer to Appendix A of the FSC Code of Ethics and Code of Conduct for detail on the Standard setting process.
- 6.5 During the period of such a review, the Standard as it is currently drafted continues to apply unless FSC has granted a blanket exemption under 5.16 above.

## **B.7 Answering Standard and Guidance Note related questions**

- 7.1 Each Standard and Guidance Note will be owned by the appropriate Board Committee within the FSC and as such will be the responsibility of the relevant Senior Policy Manager.
- 7.2 In the event that the relevant Senior Policy Manager does not have the technical knowledge required to respond to a query, they should to defer to a technical expert within a Member company (normally a representative that sat on the Working Group which developed or reviewed that particular Standard or Guidance Note). Where deemed appropriate, this advice will be requested on a 'no names' basis.
- 7.3 Where the question raises issues that cannot easily be dealt with, a working group may be established to address the issue.
- 7.4 All queries on FSC's Standards and Guidance Notes will be addressed to a central point within FSC and directed to the appropriate Senior Policy Manager.
- 7.5 Responses to frequently asked questions may be posted for Member or other access on FSC's website, as appropriate or required.

## **B.8 General conditions**

- 8.1 The FSC Board reserves the right to change these procedures at any time, subject to 3 months' notice to Members or adequate industry consultation.
- 8.2 For clarity, the example compliance statement set out in paragraph B.9 is an example only and may be modified as the circumstances require; for example if a Standard is repealed, it is not necessary for the statement to contain reference to that repealed Standard and similarly, if a new Standard is introduced, the Statement should be modified accordingly to include reference to the new Standard to the extent the new Standard is applicable to the Member.

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## **B.9 Example - Annual Compliance Statement**

### **Annual Compliance Statement**

Chief Executive Officer  
Financial Services Council  
Level 5, 16 Spring Street  
Sydney NSW 2000

1 September 2xxx

Dear Sir/Madam

### **Statement of Compliance with FSC Standards**

Pursuant to the requirements of the FSC Code of Ethics and Code of Conduct and after making appropriate enquiries, to the best of our knowledge and belief, [*insert FSC Member name, and all entities that are included as part of the FSC membership application or which are required to be part of the Compliance Sign-off as part of the sign-off applying to “conglomerate members” – see B.2 of this Standard for further information*] have been subject to the compliance checking and

Have/not been found to comply with the mandatory FSC Standards from 1 July 2xxx to 30 June 2xxx as indicated in the attached Appendix

[Any instances of non-compliance must be detailed in the declaration]

[Details of exemptions applied for or already approved]

For any further information, please contact [insert name, phone number and email of person responsible for this area].

Signed with the authority of and in accordance with a resolution of the Board of Directors.

[Director\_name]

Director – on behalf of the Board of [Insert FSC Member(s) name]

**encl. Standards Compliance Checklist**

### **FSC Standards Compliance Checklist**

The Board of Directors of «**Org\_Name**» confirms their compliance with the following FSC Standards.

**If relevant, please list all entities that are included as part of the FSC membership application and have been subject to the compliance processes and for which this compliance statement applies.**

## FSC Standard No 1: Code of Ethics & Code of Conduct

FSC STANDARD No.		Compliance		
		Yes	No	N/A
<b>GENERAL STANDARDS</b>				
1	<i>Code of Ethics &amp; Code of Conduct</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13	<i>Voting Policy, Voting Record &amp; Disclosure</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22 <sup>Note 1</sup>	<i>Cultural Capability in Native Title Services</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
23	<i>Principles of Internal Governance &amp; Asset Stewardship</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
24	<i>Life Insurance Approved Product List</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
27	<i>Removal of occupational exclusions and occupation based restrictive disability definitions in default cover</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>STANDARDS RELEVANT TO LIFE INSURERS/REINSURERS ONLY</b>				
11	<i>Genetic Testing Policy</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16	<i>Family Medical History Policy</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21 <sup>Note 2</sup>	<i>Mental Health Education Program and Training</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
25	<i>Life Insurance Industry Data Collection Policy</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
26	<i>Consent for Accessing Health Information</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
27	<i>Removal of occupational exclusions and occupation based restrictive disability definitions in default cover</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<b>Note 4</b>	<b>Note 5</b>	<b>Note 6</b>
<b>Note 3<sup>2</sup></b>	<i>Life Insurance Code of Practice</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Note 1:** Standard 22 – Standard 22 was launched in May 2015 and applies to FSC Members which are licensed trustee companies or public trustees that provide trustee, investment or related services to Aboriginal & Torres Strait Islander communities. This Standard applies in relation to a Trustee Member’s operations from July 2016.

**Note 2:** Standard 21 – Where Standard 21 applies, the FSC Member’s certification must:

- (a) cover the review of the effectiveness of the Member’s Mental Health Education Program; and
- (b) identify the percentage of *Representatives* who have undertaken and successfully completed the mental health education and training outlined in the Standard. (This information may be used by FSC on an aggregate basis for public relations purposes and/or for engagement with bodies supporting community awareness of *Mental Health concerns* and the support of those suffering a *Mental Health illness*.)

Members should refer to Standard 21 for further detail before providing their sign-off on Standard 21.

**Note 3** Under the Life Insurance Code of Practice (Code), the Life Code Compliance Committee (LCCC) is the body responsible for monitoring and enforcing compliance with the Code. If a relevant Member fails to meet its commitments under the Code, the LCCC has power to impose sanctions. If a Member does not comply with these sanctions, the FSC Board, in accordance with FSC Standard No. 1, has the discretion to carry out disciplinary action if the Member does not correct a Code breach, as explained in section 13.16 of the Code.

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**Note 4** - Column Heading: Sanctions imposed by the LCCC and satisfied (refer to attached explanatory material).

**Note 5** - Column Heading: Sanctions imposed by the LCCC and not satisfied (refer to attached explanatory material).

**Note 6** - Column Heading: Not applicable – no sanctions imposed by LCCC.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

## **Appendix C: Ongoing Monitoring of Compliance, Best Practice and Disciplinary Procedure**

### **C.1 Member compliance process**

- 1.1 FSC expects that Full Members will undertake reasonable inquiries to ensure that it and any of its conglomerate entities are complying with the Standards. Specifically, FSC's Full Members are required to adopt a Board resolution each year stating they are satisfied that:

The Member and its relevant entities have complied with mandatory FSC Standards for the year just completed; or

Where the Member has not complied, that an exemption has been granted by FSC in this regard; or

The Standards are not applicable to the Member's business.

### **C.2 Identification of potential compliance issues**

- 2.1 The monitoring process may identify compliance issues, which may lead to modification of the Standards.

### **C.3 Exemptions**

- 3.1 Where a Member identifies significant practical compliance issues, the SODC at its full discretion, may grant exemptions. Where the SODC does grant an exemption, it retains the right to make the exemption public, on a 'no names' basis.

### **C.4 Identification of non-compliance**

- 4.1 FSC will regard the following actions as examples of non-compliance and consider disciplinary action against a member in the following circumstances:

failure to provide the annual undertaking sought, or any other undertaking sought in relation to compliance with FSC Standards;

providing an undertaking to FSC which is false;

taking actions which deliberately or negligently contravene FSC Standards;  
and

failing to comply with FSC Standards when so directed by FSC.

- 4.2 Where a Member's conduct in other respects appears to contravene expected standards of behaviour, the SODC will be notified and will consider, on a case-by-case basis, whether disciplinary action is necessary. Because of the generality of this provision FSC will not attempt to define these situations.

- 4.3 In the event of identification of potential non-compliance with Standards by a Member, the following procedures will be undertaken:

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the FSC Secretariat should notify the Member in writing, within 21 days of identification, that an event of potential non-compliance has been identified (which will be deemed to have been received three days after posting) detailing the nature of the non-compliance;

the FSC Secretariat should attempt to resolve any potential non-compliance directly with the Member concerned. If the potential non-compliance is industry wide or highlights weakness in the Standard, the matter may be referred to the appropriate FSC Board Committee for changes to the Standard;

where this fails to resolve the matter, it will be referred to the SODC to consider in the light of individual circumstances whether disciplinary action may be warranted; and

where this results in a recommendation from the SODC to the FSC Board to undertake disciplinary action then the member will be given notice of a meeting to be held in accordance with the FSC Constitution.

### **C.5 Disciplinary action**

5.1 Where the FSC Board decides upon disciplinary action, it may take the following form:

The FSC Board may censure the Member – which may take the form of either a private or public censure. If the circumstances which gave rise to the censure are ongoing the FSC Board will seek to have them resolved to its satisfaction; where the act of non-compliance is deemed to have educative value to other Members, the Board may seek to publicise details of the matter in an FSC communication or publication. The form of communication would generally be on a “no names” basis.

where a Member does not take steps to resolve the situation to the satisfaction of the FSC Board within a reasonable period then that Member’s membership of FSC will be suspended for a fixed period as determined by the FSC Board;

if within a period after suspension of membership (that the FSC Board in its discretion has determined is reasonable) the Member has not satisfied the FSC Board that it is taking steps to resolve the situation, then expulsion of the Member will automatically follow; and

in the event that membership is suspended, any officers of the Member will be expected to stand down from any positions held within FSC and all other rights and services are revoked at the time and for the duration of the suspension.

### **C.6 Appeal process**

6.1 Any Member notified by FSC of their proposed suspension or expulsion from membership, may appeal to the FSC Board by writing to the Chief Executive Officer within 21 days of receipt of the notification (which will be deemed to have been received three days after posting) stating the grounds of appeal.

6.2 No Member of the SODC having heard the initial details of the breach will participate in the appeals process.

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- 6.3 For the purpose of hearing the appeal, the FSC Board may seek legal advice.
- 6.4 As soon as practical the Chief Executive Officer will notify the Member of the time and place for the hearing of the appeal.
- 6.5 The Member shall be given reasonable opportunity to be heard and legal representation may be present at the hearing. FSC may also instruct legal counsel to act on its behalf during the appeal.
- 6.6 The FSC Board may proceed in the absence of the Member provided it is satisfied that notice of the hearing was properly served.
- 6.7 On any appeal the FSC Board may by a simple majority vote, confirm, vary or rescind the determination. The FSC Board's decision or as appropriate the "vote by Members" will be final in accordance with the FSC Constitution.
- 6.8 All costs incurred in the appeal's process by either FSC or the Member shall be borne as set out in accordance with the FSC Constitution.
- 6.9 The Member should continue to pay the relevant annual subscription or levies during suspension (and any other monies owed) in accordance with the FSC Constitution.

### **C.7 Reinstatement of Members**

- 7.1 At the completion of the suspension period, the FSC Board will re-admit the suspended member at an appropriate level of membership.
- 7.2 A Member who has been expelled from FSC may, upon written application be reinstated as a Member at the FSC Board's discretion and at the appropriate level of membership.