

AN ORDINANCE TO GOVERN THE DISCIPLINE OF THE VICE-CHANCELLOR

Statute 31 provides:

“The Vice-Chancellor, Deputy Vice-Chancellor, the Registrar, the members of staff, and the holders of any other posts for this purpose by the Council from time to time, may be disciplined or removed from office in accordance with Ordinances made by the Council.”

1. Short Title, Authority and Effective Date

This Ordinance may be cited as The University of the South Pacific Vice-Chancellor Ordinance (2015). This Ordinance is made under Articles 13 and 19 of the Charter of The University of the South Pacific and the Statutes of the University and is effective from **27 July 2015**.

2. Object

The object of this Ordinance is to codify the process for addressing allegations against the Vice-Chancellor, including the following principles:

- (a) **Confidentiality:** Any allegation dealt with in accordance with this Ordinance shall be treated by all persons to whom it is presented as confidential information which is not to be disclosed to any person not involved in the investigation of the allegation;
- (b) The Vice-Chancellor shall comply with the terms of his/her employment contract;
- (c) The Vice-Chancellor shall promote the University's values and attributes;
- (d) The Vice-Chancellor shall work to deliver on the goals and objectives of the University as promulgated by Council in its published planning documents;
- (e) The Vice-Chancellor shall not behave in any way that brings the University into disrepute;
- (f) The activities under this Ordinance are undertaken to protect the reputation of the University and to ensure that the Council through its delegated representatives shall address any substantive allegations made against the Vice-Chancellor in a timely and impartial manner and all disciplinary processes shall be subject to natural justice and due

process;

- (g) No action shall be taken by the University or the Vice-Chancellor against any named complainant who makes a complaint to the University under this Ordinance and does not publish the complaint elsewhere; and
- (h) One object of this Ordinance is to deal with allegations expeditiously in the interest of being fair to all parties. The timelines set out in this Ordinance are maximum timelines but the Pro-Chancellor shall have discretion to vary timelines as may be in the interests of being fair to all parties.

3. Interpretation

In this Ordinance, unless the context otherwise requires:

“Days” means days the banks are open for business in Fiji;

“Material” means an allegation or breach which if proven would be of sufficient seriousness to reasonably cause the Council to impose a penalty available to it under the terms of this Ordinance. An allegation which is deemed by the Pro Chancellor to be vexatious, frivolous, retaliatory, trivial, unfounded or without substance for any reason shall not be Material.

“Misconduct” means:

- (a) academic or professional malpractice; or
- (b) conduct or behavior which is incompatible with the role of Vice-Chancellor and the reputation of the University; or
- (c) any Material breach or neglect by the Vice-Chancellor of his or her duties amounting to a failure to discharge those duties with due diligence and care; or
- (d) conduct which attempts to suppress or conceal any of the above.

4. Application

Where an allegation is made that the Vice-Chancellor has committed an act of Misconduct, the allegation must be investigated and dealt with in accordance with provisions of this Ordinance.

However, and notwithstanding the above, the Pro Chancellor may determine not to investigate an allegation:

- (a) if the allegation has been published by the complainant prior to submitting

the allegation to the Pro-Chancellor under this Ordinance; or

- (b) if the Pro-Chancellor determines, without further reference, that the allegation is not Material.

5. Service of Notices

Any notice or document required by or for the purpose of this Ordinance is to be given or sent to the Vice-Chancellor in accordance with Statute 34 and within 5 Days of receipt of the allegation by the Pro Chancellor. The Vice-Chancellor shall not be notified of the identity of the complainant unless the Pro-Chancellor determines otherwise.

6. Allegation of Misconduct against Vice-Chancellor

- (a) Where the Pro-Chancellor:

- (i) receives a written document which identifies the complainant and alleges Misconduct against the Vice-Chancellor which, if proven, would be Material; or

- (ii) becomes aware of circumstances which may constitute Material Misconduct,

then, the Pro-Chancellor must, within 10 Days of either receiving the allegation or becoming aware of circumstances which may constitute Misconduct and in consultation with the Deputy Chair, and having engaged with any other persons whom the Pro-Chancellor determines may assist him or her to make a determination (including at the Pro-Chancellor's discretion, the University's legal counsel, University staff and the complainant), determine whether the allegation is Material.

- (b) If an allegation is deemed *not* to be Material by the Pro-Chancellor and the Deputy Chair, acting in good faith, then the Pro-Chancellor shall within one Day of making a determination in accordance with section 3(a) notify the Vice-Chancellor and the complainant of the dismissal of the allegation of Misconduct.

- (c) If an allegation is deemed to be Material by the Pro-Chancellor and the Deputy Chair acting in good faith, the Pro-Chancellor must as soon as possible but no later than 2 Days after making a determination in accordance with section 3(a):

- (i) notify the Vice-Chancellor in writing that there will be a referral of the allegation to a sub-committee in accordance with section 3(c)(ii); and

- (ii) refer the allegation to a sub-committee comprised of the Pro-Chancellor or his/ her delegate and three (3) members of the Council appointed by the Pro-Chancellor. The sub-committee may co-opt one or more external expert(s) and shall consult with the University's legal counsel.
- (d) The sub-committee shall:
 - (i) conduct its investigation over a period of up to 15 Days from the referral of the allegation to it;
 - (ii) notify the Executive Committee that an investigation has been instigated;
 - (iii) consider the allegation;
 - (iv) hear the Vice-Chancellor (if the Vice-Chancellor requests) or review any submissions the Vice-Chancellor wishes to make in response to the allegation; and
 - (v) report on the investigation to the Executive Committee as soon as the sub-committee, acting expediently and in good faith, is able to consider the allegation and make a report on its findings available.
- (e) Both the sub-committee and the Executive Committee may meet at any time and by any means they deem appropriate, including by electronic transmissions in writing or in person to meet their obligations under this Ordinance.
- (f) The Pro-Chancellor, with the agreement of the Executive Committee may suspend the Vice-Chancellor for the duration of the investigation but only if the Pro-Chancellor and the Executive Committee, acting reasonably, consider the Misconduct to be both Material if proven and to be conduct which would be result in sanctions being imposed on the Vice-Chancellor by persons outside of the University. If the Vice-Chancellor is suspended, the suspension shall be suspension from duties on pay and without withdrawal of privileges.
- (g) If the Pro-Chancellor is unavailable, the Misconduct allegation shall be considered by the Deputy Chair of Council, who may exercise the powers of the Pro-Chancellor.
- (h) If the Pro-Chancellor has an actual or potential conflict of interest in relation to the allegation or the relationship of trust and confidence between the Pro-Chancellor and the Vice-Chancellor has broken down,

the Misconduct allegation shall be considered by the Deputy Chair of Council. If the Pro-Chancellor and Deputy Chair both have a conflict of interest, the Secretary to Council shall convene a special meeting of the Executive Committee to consider the allegation of Misconduct.

- (i) The sub-committee shall within 5 Days of concluding its investigation, make its draft report in relation to its consideration of the Misconduct allegation to the Vice-Chancellor, who shall have the right of reply within 15 Days of receipt of the report.
- (j) The sub-committee shall consider the Vice-Chancellor's response, finalise its draft report and make its recommendations to the Executive Committee. The sub-committee shall endeavour to deliver its final report to the Executive Committee no later than 5 Days after it receives any comments from the Vice-Chancellor on the draft report.

7. Report of the Executive Committee

- (a) The Executive Committee shall consider the final report and recommendations from the sub-committee and may determine that the allegation be dismissed.
- (b) If the Executive Committee does not dismiss the allegation it shall within 10 Days of receipt of the report from the sub-committee, present the final report and any recommendations to the Council at either a scheduled Council meeting or, if required by the Executive Committee, an extraordinary meeting of Council held by electronic transmission in writing or in person.
- (c) The Pro-Chancellor shall inform the Vice-Chancellor of Council's decision as soon as practicable.

8. Penalties

The Council may, by resolution, either determine to take no action in respect of the investigation or may impose upon the Vice-Chancellor one or more of the following penalties:

- (a) warning;
- (b) reprimand; or
- (c) dismissal.

9. Ceasing Investigation

Any investigation conducted under this Ordinance shall be concluded immediately and without penalty or publication of any deliberations

- (a) If the Vice-Chancellor resigns during the course of the investigation;
- (b) If the allegation is referred to law enforcement authorities and the Pro-Chancellor determines to cease the investigation; or
- (c) If the complainant withdraws the allegation in writing.

*C80 Meeting
2&3 June 2015*