

## USP COUNCIL - CODE OF CONDUCT

---

### Preamble

Members of Council are subject to a range of legal duties which they take on when they assume office. Most of these duties have a moral and ethical content as well in the sense that they seek to ensure that Council functions according to the highest standards of good governance, and in the interests both of all stakeholders in the University and the external communities which it serves.

As the primary governing organ of the University the Council and its members, collectively and individually, must perform their functions, not only effectively and efficiently, according to high standards of moral and ethical conduct. As such a governing organ the Council must provide an excellent model of corporate behaviour for the University and the wider communities.

Whether viewed from a legal or an ethical perspective the duties of members of Council are generally of two kinds. The first are duties of competence, diligence and/or prudence, especially in, but not confined to, the area of decision making. There are expectations that members will take an active and informed role in the governance of the University through the medium of the Council. There are also expectations that members, whilst not experts in any particular field of management, will perform their duties and functions in a manner that will conform to reasonable standards of competence.

Being a fiduciary requires a concentration on the interests of the University rather than the personal interests of the member or of third parties who are alien to or remote from those interests. Those who are appointed to Council enter a fiduciary relationship with the University as a legal entity at the time of their appointment. The relationship is a multi-faceted one in respect of the kinds of duties which it imposes on a member of Council. It requires honesty in the performance of a Council-related tasks. It requires that the confidentiality of information of the institution be protected and not misused for purposes foreign to, or possibly in competition with, those of the University. It insists that powers be exercised for the proper purpose for which they were given and that the limits of those powers not be exceeded or otherwise abused.

A person who becomes a member of Council is put in a position of power and authority. Such a position creates an expectation of competence in performance and the exercise of a high degree of good faith and trust. It requires both responsibility and accountability in ethical and in legal terms in order to ensure that the power and authority is exercised for those who are the proper beneficiaries of it: in this case the University as a whole, its particular stakeholders as well as the communities which are served by them.

The following Code of Conduct seeks to give direct expression to these ideas with a view to guaranteeing that the Council through the performance of its members will fully serve the purposes for which it was established.

## **The University of the South Pacific**

### **Code of Conduct of the Council**

#### **Reasonable care, skill and diligence**

1. A member of the Council must act with reasonable care, skill and diligence in the performance of his or her role as a member of Council. Amongst other things members of Council are expected, collectively and individually, to:
  - (a) fully inform themselves as to the nature of the issues on which they are expected to deliberate;
  - (b) be critically aware of the nature and the reasonably expected consequences, outcomes and effects of decisions of the Council and its subordinate bodies;
  - (c) fully and actively involve themselves, as far as practicable, in all of the decision-making processes and proceedings of the Council;
  - (d) contribute as effectively as possible to the discussion of issues before the Council;
  - (e) seek to ensure, so far as they are reasonably able, that the decisions and actions of the Council comply with standards of prudence appropriate to institutions of a similar nature and authority;
  - (f) take such steps as are reasonable to encourage full compliance by Council, its members and officers with the Charter, Statutes, Ordinances, Standing Orders and other provisions of the regulatory system of the University;
  - (g) seek to ensure, as far as possible, that the Council and the University as a whole complies with its legal obligations and with their established policies and procedures.

#### **Fiduciary Duty**

2. A member of the Council stands in a fiduciary relationship to the University and as such must act honestly and in the best interests of the University, at all times preferring the University's benefit to:
  - (a) his or her own personal advantage whether financial or otherwise; or
  - (b) the advantage of any other person or organization; or
  - (c) the advantage of the group qualifying the member for election or appointment to Council.

#### **Conflict of Interest**

3. A member of the Council is obliged to avoid conflicts of duty to the University and personal interest. Where any such conflict arises the member shall disclose the existence of the interest and shall refrain from taking part in any deliberation, exercise of power or decision-making process to which that interest may be relevant. An interest for the purposes of this provision shall include a direct or an indirect interest but shall not include:
  - (a) an interest which naturally follows from membership of the group qualifying the member for election or appointment as a member of Council; and
  - (b) is an interest which is not in any other respects personal to such member

## **Confidentiality**

4. A member of Council must observe the confidentiality both of the Council and of the University at all times and, without limiting the generality of the foregoing, shall not, without the prior fully informed consent of the Council:
  - (a) disclose information or knowledge which is, from the point of view of the Council or the University, confidential in nature;
  - (b) take advantage in any manner of any confidential information or knowledge which is acquired by that member by virtue of his or her position as a member of Council or as an officer of the University;
  - (c) disclose or reveal the content of any deliberations of the Council or of any of its committees or subordinate bodies which are confidential proceedings;
  - (d) aid or assist another person to use or take advantage, financial or otherwise, directly or indirectly, of information or knowledge confidential to the University.

## **Personal Behaviour**

5. A member of the Council must strive for the highest standards of personal behaviour in their dealings with other members of the Council and with other members of the University community, in accordance with the following ethical principles.

A member of the Council must at all times act honestly in the performance of the functions of a member of the Council.

A member of the Council is also entitled to expect that the same principles should guide the treatment they receive from others.

Council members must:

- (a) be courteous and promptly responsive, and treat people with respect;
- (b) not behave towards a person in a way which harasses, intimidates, bullies, coerces, threatens, humiliates, insults or vilifies;
- (c) behave fairly, and respect the rights and obligations of others, including their right to fair working conditions and their right to privacy;
- (d) keep personal information in confidence;
- (e) not allow personal relationships to affect professional relationships and in particular, avoid patronage and favouritism;
- (f) not harm peoples reputations or career prospects in a way that is gratuitous or otherwise unfair, and give due acknowledgement to the work and contribution of others;
- (g) not discriminate on prescribed grounds, which in the University context include: gender and or/sexual orientation; racial, ethnic, cultural, and/or religious background; disability; marital status; age; union membership; political affiliation or belief; and family responsibilities;
- (h) accept the right to hold personal beliefs and not insult personal beliefs;
- (i) accept the rights of others to express personal opinions and to act on personal beliefs, within legal and ethical limits, and handle differences of opinion through rational debate, allowing different points of view to be expressed.

## **Breach of Code**

- 6 A member of the Council must use their best endeavours to ensure compliance with all relevant legislative, industrial and administrative requirements and policies of the University and the Council.

In the event that a claim is made against a member of the Council alleging a breach of the Code of Conduct, such a claim, in writing, shall be received by the Chair and Secretary to Council, however where a claim is made against the Chair of Council, the claim shall be received by the Secretary to Council.

The Secretary to Council shall refer the alleged breach to the Executive Committee. If the Executive Committee is convinced that there is a case to answer, it shall recommend to the Council the establishment of an Ethics Committee.<sup>1</sup>

The Ethics Committee may apply such procedures and take such actions as it considers appropriate in the circumstances having regard to the nature and circumstances of the breach, its seriousness and consequences, and the requirements of law and procedural fairness.

## **Protection from Liability**

- 7 A member or former member of the Council may be wholly or partially liable in a court of law for negligence, default, breach of trust or breach of duty in a civil action arising from that person's capacity as a member of the Council unless:

- (a) the person has acted honestly; and
- (b) ought fairly to be excused having regard of all circumstances of the case.

There should be safeguards, exemptions and protections for members of a university's governing body for matters or things done or omitted in good faith in pursuance of the relevant legislation. Without limitation, this should include such safeguards, exemptions and protections as are the equivalent of those that would be available were the member a director under the Corporations Act. A university (with the exception of those subject to the Corporations Act), should have a requirement included in its enabling legislation that its governing body has the power (by a two-thirds majority) to remove any member of the governing body from office if the member breaches the duties specified above. A member should be required, automatically, to vacate the office if he or she is, or becomes, disqualified from acting as a Director of a company or managing corporations under Part 2D.6 of the Corporations Act.<sup>2</sup>

## **Insurance, Members of Council**

---

<sup>1</sup> TOR for Ethics Committee

### **Functions**

The Ethics Committee is an ad-hoc committee of the Council.

### **Membership**

The Ethics Committee shall have no less than three (3) members taken from the full members of Council provided that the Council member (s) against whom the claim is made shall not be a member of the Ethics Committee.

### **Process**

The Council may prescribe the procedures to address a claim under this part

### **Penalties**

1. Warning
2. Reprimand
3. Suspend for a specified period
4. Removal from Council

<sup>2</sup> This is taken from Griffith University

- 8 Members of Council are covered under the Universities Director and Officer Liability insurance providing them protection against claims (subject to exclusions and limits/sub-limits noted in the policy) which may arise from decisions and initiatives that they make on behalf of the organization.

The University provides Travel Insurance while on approved International USP Business/Activity which includes medical, personal injury, personal liability, property (personal and university) and emergency evacuation coverage and is subject to exclusions and limits/sub-limits noted in the policy .

It should be noted, Insurance coverage is as per the terms and conditions noted in the policy(ies).

---

Revised at the 77th Council meeting held on 7 & 8 November 2013