

Compliance with FSC Standards

This document provides guidance on the process to be followed by FSC Full members in order to ensure ongoing compliance with FSC Standards.

The FSC is not a regulator. The 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.

The FSC does not intend to ensure compliance with the FSC Standards by conducting site visits. Where the FSC does become aware of a potential breach of the FSC Standards, the procedures outlined below will be followed.

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.

Annual compliance statement

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, that exemptions have been granted to them by FSC in this regard; or
- there may be Standards which are not applicable to the company's business.

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.

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").

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, managed investments and funds management 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 (see the section below on Conglomerate members which sets out the activities and entities on which the FSC member, as a part of a group of companies ("conglomerate member") is required to provide sign-off).

The compliance statement (refer to Example Annual Compliance Statement heading below) 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). 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.

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 as noted above. In such case the statement must confirm that it is signed on behalf of and with the authority of the Board.

Requirements for Supporting members

Supporting Members and other member categories are encouraged, but are not required, to comply with the Standards and Guidance Notes or to provide a compliance statement. They are not required to apply for exemption.

Requirements for conglomerate members

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, managed investments and funds management, 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 FSC compliance sign-off

To avoid doubt, each of the following activities and entities are excluded from the coverage of FSC membership and compliance statements as they are not activities governed by FSC membership:

- (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.

Non-supply of compliance statement

Failure to supply the compliance statement within the timeframe specified (by 30 September each year) 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.

Where the explanation includes reference to a potential breach, reference should be made to the section heading Breach of Standards for further guidance.

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 the section on Managing Conflicts under FSC Standard 1 Code of Ethics and Code of Conduct which outlines the practices an FSC Member should have in place.

Breach of Standards

Where the FSC has reasonable grounds to believe that a Member has breached an FSC Standard, the FSC may request evidence be produced by a Member to confirm actual compliance with the FSC Standards.

FSC Members should seek guidance from the FSC immediately on becoming aware of the potential breach of any FSC Standard.

An FSC Member, depending on the materiality of the breach, may be subject to disciplinary action for breaching any FSC Standard.

Applying for exemption from compliance with aspects of the Standards

If, during the course of the year, a Full Member becomes aware that there has been non-compliance with specific aspects of a Standard 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.

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.

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 should be made no later than 30 August each year so that the Application can be submitted for consideration by the SODC and a decision reached prior to 30 September.
- The application should be signed by the relevant person responsible for the co-ordination of compliance with FSC Standards.

The 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.

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.

Where an application for exemption is denied:

- the reasons for the denial of an exemption request will be provided;
- the FSC Member must endeavour to comply with the Standard within a reasonable period, determined by the FSC Secretariat, from the date of denial of the exemption application;
- the FSC Member must advise the FSC CEO, in writing, of their compliance with the Standard within the date provided in the point above. Failure to do so may result in sanctions applied under Appendix C of the FSC Code of Ethics and Code of Conduct;
- the FSC Member may appeal against any decision made (refer Appeal process outlined below) for guidance on the appeal process.

Where a compliance issue is ongoing, and exemption has previously been granted, the FSC Member must reapply for an exemption every subscription year. Approval of exemptions for a particular year is no guarantee of future exemptions being granted.

Any subsequent applications for exemption must address how the Member has attempted to comply and why the compliance failure continues.

When assessing an application for exemption, the FSC Secretariat may seek advice from the membership or other expert(s) prior to deciding. This advice will be requested on a 'no names' basis. Any cost incurred in this process will be at FSC's expense.

FSC reserves the right to make the terms of any exemption public on a 'no names' basis.

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.

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.

Non-application of Certain Standards

Apart from Standard 1, no other relevant FSC Standard applies to an FSC Member who satisfies the conditions set out in this section. The conditions referred to are as follows:

- 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**);
- 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 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**);
- 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;
- 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.
- 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.
- The Relevant Member however must always otherwise comply with the terms of this Standard 1.
- 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.

Review of FSC Standards

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) the FSC will follow the procedures outlined in the [FSC Standard setting process information sheet](#).

Where any FSC Member considers a Standard or Guidance Note requires review, they should provide their reasoning to the FSC in writing.

Where FSC determines the requested review is justified, it will confirm this with the FSC Member and make other Members aware of the formation of a working group. During the period of review, the Standard as it is currently drafted continues to apply unless FSC has granted a blanket exemption

The process detailed under this paragraph also applies to the development of a new Standard or Guidance Note.

Answering Standard and Guidance Note related questions

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 policy team. All FSC Standards and Guidance Notes queries will be directed to the appropriate FSC policy area.

In the event that the policy team does not have the technical knowledge required to respond to a query, it should be referred to a technical expert within a Member company (normally a Working Group representative involved in the development or review of that particular Standard or Guidance Note). Where deemed appropriate, this advice will be requested on a 'no names' basis.

Where the question raises issues that cannot easily be dealt with, a working group may be established to address the issue. Responses to frequently asked questions may be posted for Member or other access on FSC's website, as appropriate or required.

General conditions

The FSC Board reserves the right to change these procedures at any time, subject to 3 months' notice to Members or adequate industry consultation.

For clarity, the example compliance statement set out below 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 as applicable.

Example - Annual Compliance Statement

Company Secretary
Financial Services Council Ltd
Suite 30.1, Level 30
9 Castlereagh Street
Sydney NSW 2000

30 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"* 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.		Compliance		
		Yes	No	N/A
STANDARD RELEVANT TO ALL FULL MEMBERS				
1	<i>Code of Ethics & Code of Conduct</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
STANDARDS RELEVANT TO FUNDS MANAGEMENT/INVESTMENT MEMBERS				
13	<i>Voting Policy, Voting Record & Disclosure</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22 ^{Note 1}	<i>Cultural Capability in Native Title Services</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
23	<i>Principles of Internal Governance and Asset Stewardship</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
STANDARD RELEVANT TO FINANCIAL ADVICE MEMBERS				
24	<i>Life Insurance Approved Product List</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
STANDARDS RELEVANT TO SUPERANNUATION MEMBERS				
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"/>
28	<i>Claims Handling for Superannuation Funds</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Note 1: Standard 22 –applies to FSC members which are licensed trustee companies that provide trustee, investment or related services to Aboriginal & Torres Strait Islander communities.

Sign-off/Attestation

Signed Director/ Authorised Person

Date

Ongoing Monitoring of Compliance, Best Practice and Disciplinary Procedure

Member compliance process

The FSC expects 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.

Identification of potential compliance issues

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

Exemptions

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.

Identification of non-compliance

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.

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.

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

- the FSC Secretariat will notify the Member in writing that an event of potential non-compliance has been identified detailing the nature of the non-compliance;
- the FSC Secretariat will 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 s7.0 of the FSC Constitution.

Disciplinary action

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.

Appeal process

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 stating the grounds of appeal.

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

For the purpose of hearing the appeal, the FSC Board may seek legal advice.

As soon as practical the Chief Executive Officer will notify the Member of the time and place for the hearing of the appeal.

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.

The FSC Board may proceed in the absence of the Member provided it is satisfied that notice of the hearing was properly served.

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.

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.

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.

Reinstatement of Members

At the completion of the suspension period, the FSC Board will re-admit the suspended member at an appropriate level of membership.

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.