FSC Australia
Dispute resolution procedures.

Introduction

The FSC process seeks to find a consensus between 3 core chambers of interest. In many cases these can come from divergent positions and on the way to consensus there may be disputes and disagreement that need to be resolved.

In addition within the FSC community there may be disputes relating to groups, individuals, processes, practices and principles.

Therefore there is a need for a dispute resolution process.

In the first instance it is important to identify the correct pathway to use and to identify people who can help you with the process.

Pathway selection.

What is the dispute about?

1. **How a certified forest is managed**

   Have you made an attempt to raise or resolve the dispute with the forest manager e.g. by speaking to the forest manger or by putting your concerns in writing?

   No - This may mean that you have not met the test of prior participation which may prevent the dispute from progressing further. You need to approach the certified forest manager and attempt a resolution first. Note; posting a complaint on a web site or complaining to a third party does not constitute prior participation.

   Yes – If there is no resolution take the complaint to the certified forest manager’s certification body in writing.

2. **The process by which a certified forest has been accredited or the actions of a certification body.**

   Have you made an attempt to raise the issue with the relevant certification body? Note; posting a complaint on a web site or complaining to a third party does not constitute raising the issue with the certification body.

   No – You need to put your concerns to the certification body first.
Yes - Does the response allay your concerns?

Yes – Dispute resolved.

No – Raise the issue with:

ASI- Accreditation Services International GmbH
Charles-de-Gaulle-Str. 5
53113 Bonn
Germany

Phone: ++ 49 (228) 367 66 34
Fax: ++ 49 (228) 367 66 30
E-mail: info@accreditation-services.com

Does the response allay your concerns?

Yes – Dispute resolved.

Note; posting a complaint on a web site or complaining to a third party does not constitute prior participation.

No – Refer the complaint to FSC International by invoking the informal disputes process (http://www.fsc.org/keepout/en/content_areas/77/47/files/Interim_Dispute_Resolution_Protocol.PDF).

3. The process by which the certification body has been accredited.

Have you made an attempt to raise the issue with ASI?

No – You need to put your concerns to ASI in writing first. Note; posting a complaint on a web site or complaining to a third party does not constitute raising the issue with the ASI.

Yes - Does the response allay your concerns?

Yes – Dispute resolved.


4. Complaints about FSC Australia including complaints about individual Directors/the Chairman.
Have you made an attempt to raise the issue with the FSC Australia CEO or Board?

No – You need to put your concerns to the FSC Australia in writing first. Note; posting a complaint on a web site or complaining to a third party does not constitute raising the issue with FSC Australia.

Yes - Does the response allay your concerns?

Yes – Dispute resolved.


5. Disputes about the standards or procedures of FSC International.

Refer to the process outlined in this document beginning with Section 1 (below).

People who can help

FSC Australia Board
FSC Australia CEO
FSC International Centre
ASI

Section 1 principles and ground rules

1.0 Summary of the Basic Principles of FSC Australia’s disputes resolution process.

1.1 Standing of the Board

The Board of FSC Australia (The Board) only has standing to hear disputes related to the development of the national standard.

If the complainant is not satisfied with the outcome of the dispute on matters relating to the development of a national standard heard by the FSC Australia Board they have recourse to appeal through the FSC International disputes process.

The FSC Australia Board can, if all parties agree, be a forum for alternative disputes resolution on other issues. This would not be a binding process but would satisfy the principle for early dispute resolution (see below) and the requirement for ‘prior participation’ should the dispute then progress to the
FSC International Informal and formal disputes process outlined in the current FSC International disputes protocol\(^1\).

1.2 Refer the dispute to the right person or body.

Disputes depending on their type must be referred in the first instance to the proper body as follows.

<table>
<thead>
<tr>
<th>For a complaint about</th>
<th>Talk to</th>
</tr>
</thead>
<tbody>
<tr>
<td>How a certified forest is managed.</td>
<td>The forest manager.</td>
</tr>
<tr>
<td>The process by which a forest was certified or the activities of a certification body.</td>
<td>The certification body.</td>
</tr>
<tr>
<td>The process by which a certification body has been accredited.</td>
<td>ASI.</td>
</tr>
<tr>
<td>National or sub-national forest stewardship standards.</td>
<td>FSC Australia Standards working group FSC Australia Board</td>
</tr>
<tr>
<td>FSC International policies or standards.</td>
<td>FSC International Centre</td>
</tr>
<tr>
<td>Other complaints about FSC Australia or the conduct of its Directors.</td>
<td>FSC International Policy and Standards Unit FSC International Centre.</td>
</tr>
</tbody>
</table>

1.3 Disputes should be resolved at the lowest possible level.

In all cases disputes should be resolved at the lowest possible level, preferably by discussions between the parties. Failure to do this may invalidate a dispute raised at the FSC Australia Board or FSC International level which requires evidence of ‘prior participation’.

1.4 Qualifications for invoking disputes

Only FSC Australia or FSC International members-in-good-standing may file a dispute. Non-members should contact a member to bring their dispute to FSC Australia.

1.5 Participation. Non participation, affected parties and interested parties.

\(^1\) http://www.fsc.org/en/about/accreditation/disp_resol
Parties to bringing a complaint (i.e. the complainants) will be deemed either affected parties or interested parties for the purposes of the dispute. If a dispute is resolved between the affected parties and the respondent the dispute is considered resolved for the purposes of this procedure.

Once a party has been determined as an affected party or an interested party they must participate in the process until its conclusion.

Parties may participate by using a nominated proxy who is also a party to the dispute.

Normally additional participants to the process after the process has started will not be allowed although interventions or information which assists the resolution of the dispute will be considered on its merits.

1.6 Natural Justice.

In any dispute resolution under the informal and formal procedures in section 2.0 the principles of Natural Justice\(^2\) will apply.

1.7 In good faith, directly relevant, not frivolous or vexatious

There is an expectation that the process to resolve a dispute will be undertaken in good faith. Only issues directly relevant to the matter will be heard in the disputes process. Disputes that are deemed frivolous or vexatious by the Board will not be heard at the Boards discretion.

\(^2\) Natural justice includes the notion of procedural fairness and may incorporate the following guidelines:

- A person or organisation who is the subject of a complaint, should be given adequate notice about the proceedings (including details of the complaint).
- A person making a decision should declare any personal interest they may have in the proceedings.
- A person who makes a decision should be unbiased and act in good faith. He/she therefore can not be one of the parties in the case, or have an interest in the outcome. This is expressed in the latin maxim, \textit{nemo judex in sua causa}: "no man is permitted to be judge in his own cause".
- Proceedings should be conducted so they are fair to all the parties - expressed in the latin maxim \textit{audi alteram partem}: "let the other side be heard".
- Each party to a proceeding is entitled to ask questions and contradict the evidence of the opposing party.
- A decision-maker should take into account relevant considerations and extenuating circumstances, and ignore irrelevant considerations.
- Justice should be seen to be done. If the community is satisfied that justice has been done, they will continue to place their faith in the process.
1.8 Conflicts of interest

Any conflict of interest from any party including members of the Board must be declared in advance of the process.

2.0 Alternate dispute resolution processes.

2.1 A key principle of the FSC Australia dispute resolution process is that every effort should be made to resolve a dispute at the lowest possible level.

The more official dispute resolution processes laid down in the sections following are necessarily complex and costly (in some cases at the complainants cost) and FSC Australia would urge complainants to explore every avenue of alternate dispute resolution.

The Board of FSC Australia can offer support and advice in perusing ADR as opposed to invoking the informal or formal disputes process.

The following are examples of accepted ADR methods that may be relevant and useful in the context of disputes over national standards.

2.3 Negotiation

Negotiation should ALWAYS be tried first.

At its most basic, negotiation is an informal bargaining process. It takes place directly between the people in dispute, but can be assisted by others e.g. lawyers, advocates. The people involved in the dispute communicate directly to try and reach an agreement. Communication may be written or spoken and may take some time. Effective negotiators know that it is hard to reach an agreement unless everyone feels they get some benefit (a 'win-win' situation).

Negotiation is a good first step for almost any type of dispute. However, if negotiation fails, other more formal types of ADR may be more appropriate.

2.3 Mediation

Mediation is a process in which a neutral person (the mediator) helps people to negotiate with each other and resolve their dispute.

Mediation is confidential, and can only work if:

- Everyone is prepared to work towards a resolution
- Everyone involved in the dispute comes together for a face-to-face meeting
- The mediator runs the process and the people in dispute decide what they want to talk about
- The mediator helps identify issues and possible options
- The people in dispute work out a solution with the help of the mediator
- Mediators don't impose a decision
Mediation can be used when individuals in the process have a clear conflict with one another.

2.4 Facilitation

Facilitation is like mediation, but is used for groups that are in conflict. A neutral person (the facilitator) helps the people involved negotiate with one another and come to some agreement.

The process involves:

- Everyone involved comes to one, or several meetings, run by the facilitator
- The facilitator helps to identify problems to be solved and tasks to be accomplished
- Facilitators don’t impose a decision
- The people at the meeting make a group decision on actions and outcomes

Facilitation can be used to avoid a dispute by providing a forum for different points of view to be discussed. It can be used for complex matters such as conflicts between Environmental, Social and Economic interests in National standards setting. It can also be used where people are having difficulty working together.

3.0 Background and rules of engagement in all informal and formal disputes.

3.1 Types of Complainants:

Formal complainants shall deem by a determination of the Board to be considered as affected or interested parties. The different classes have different rights and duties.

3.2 Affected parties will be entitled to full participation in the resolution of the dispute.
3.2.1 They will receive copies of all notices and documents filed in conjunction with the case.
3.2.2 They will be entitled to submit a brief to the Board and participate fully in any site visits, evidentiary hearings or oral arguments permitted by the Board.
3.2.3.1 Wherever possible, to expedite the process and reduce costs, Affected parties will be encouraged by the Board to submit joint briefs and make joint presentations at any evidentiary hearings or oral arguments permitted by the decision maker.
3.2.3.2 The Board will retain discretion both to limit the lengths of any briefs filed to a reasonable length and, where necessary to avoid cumulative, duplicative, or repetitive testimony or oral argument, to limit participation of affected parties at any evidentiary hearings or oral arguments that are permitted.
3.2.3.3 If any further review of the decision on the dispute is permitted under this protocol, Affected parties will be entitled to be considered as participants below for purposes of any such requirement for seeking further review.

3.3 *Interested parties* will be entitled to all the same rights of participation in the resolution of the dispute as the Affected parties.

3.4 If a dispute is resolved between the affected parties and the respondent the dispute is considered resolved for the purposes of these procedures.

3.5 If the interested parties do not agree they will then have the option of framing a further dispute. This further dispute will normally not be accepted by the Board if it seeks to overturn the agreed outcome of the original dispute and/or disadvantage the affected parties in the original dispute. The Interested parties may however challenge the process of the original dispute resolution.

3.6 Where there is no clear affected party the interested party(ies) assume the rights of an affected party for the purposes of the dispute.

4.0 Participation, Non participation and participation through proxy.

4.1 Once a party has been determined as an affected party or an interested party they must participate in the process. Failure to participate in the process without good reasons (in writing to the Board) will be deemed as an abandoning of the dispute by that party. This will not however invalidate the dispute to date as long as there are complainants remaining.

4.2 The only exception to 11.1 above is where participation is by and through a nominated proxy. Parties may nominate another complainant to hold their proxy at any stage in the process but at that point cannot return to the process at a later date and express a different view to that expressed by their proxy holder.

4.3 No additional party can become party to an existing dispute unless they have the approval of all other parties to the dispute and satisfy all other conditions of participation.

4.4 No additional party accepted into a dispute can normally re-litigate an already resolved point. If all parties agree that additional information is valid it can be admitted or the original dispute can be abandoned and resubmitted as a separate dispute.
5.0 **In good faith**, directly relevant, not frivolous or vexatious

5.1 There is an expectation that the process to resolve a dispute will be undertaken in good faith. Failure to do so, at the discretion of the Board, may invalidate the dispute (for the complainant) or result in a ruling by the Board to uphold or not uphold a dispute, or part of a dispute.

5.2 Only issues directly relevant to the matter will be heard in the disputes process. Any complaint in the standards setting process must be relevant to an aspect of the principles and criteria of the FSC or a failure to follow a published policy or process of FSC International or FSC Australia.

5.3 Disputes that are deemed frivolous or vexatious by the Board will not be heard at the Board’s discretion.

6.0 **Natural Justice.**

6.1 In any dispute resolution under the informal and formal procedures the principles of Natural Justice will apply. The basis of natural justice is that both parties to a dispute must be heard and must be allowed to respond to statements made by the other party to the matter.

7.0 **Conflicts of interest**

7.1 Any conflict of interest from any party including members of the Board must be declared in advance of the process.

7.2 Members of the Board with conflicts of interest must recuse themselves from proceedings if asked by any party to the dispute or by the Board. Board Members may use their judgment to recuse themselves.

7.3 Failure to declare a conflict of interest may invalidate a dispute or a dispute outcome and will be grounds for an appeal.

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3 Honesty; a sincere intention to deal fairly with others.

*Good faith* is an abstract and comprehensive term that encompasses a sincere belief or motive without any malice or the desire to defraud others.
SECTION 2, DISPUTES PROCEDURES

Part 1: INFORMAL RESOLUTION

1 Informal Resolution Required:

1.1 Prior to lodging a formal dispute with the FSC Australia, a potential complainant must seek informal resolution of the matter.

2 Potential Complainants:

2.1 All potential complainants must be FSC Australia or FSC International members in good standing.
2.2 All non-members other than bodies specified in the immediately preceding subsection must get an FSC Australia member to seek informal resolution of the matter.

3 Filing Requirements:

3.1 The potential complainant must submit to the FSC Australia CEO a short, simple letter that:

3.1.1 describes the basis for the dispute;
3.1.2 summarizes the proceedings and results to date;
3.1.3 explains how the timeliness requirements of Section 4 have been met;
3.1.4 identifies potential parties to the dispute;
3.1.5 identifies how the potential complainant has previously participated in the proceedings giving rise to the dispute; and,
3.1.6 suggests a solution.

3.2 The CEO of FSC Australia shall reject any letter that fails to meet substantially the above requirements. Such a rejection shall:

3.2.1 be written;
3.2.2 specify the reason(s) for the rejection; and
3.2.3 indicate how the deficiencies may be corrected.

3.3 Before rejecting a letter as inadequate, the CEO shall give due regard to the informal nature of this state of the proceedings.

3.3.1 The CEO may not reject a letter as inadequate solely because it would fail to meet the requirements for a formal complaint.

3.4 The CEO’s rejection of a letter as inadequate may be separately appealed to the Chair of the FSC Australia Board.
3.4.1 For purposes of resolving an appeal regarding the adequacy of the letter, only the procedures of Part 9, ? 5, shall apply.

3.5 Neither the time spent by the CEO in reviewing the adequacy of the letter, nor the time that passes between the filing of any appeal of a rejection of the letter and the receipt of the Chair’s written decision on an appeal, shall count towards the 30 day periods specified below for properly seeking informal resolution of a dispute.

4.0 Timeliness:

4.1 The attempt to seek informal resolution of a dispute must be made by a timely filed letter that meets the requirements described above.

4.2 Calculation of Time:

4.2.1 For all matters relating to disputes about a national standard informal resolution of a dispute must be sought within 30 days of the date of filing of the dispute.

4.3 Rejection of Filing:

4.3.1 The CEO shall reject as untimely matters that are filed beyond the dates specified above.
4.3.2 The CEO’s rejection of a letter as untimely may be separately appealed to the Chair of the FSC Australia Board.
4.3.3 For purposes of resolving an appeal regarding the adequacy of the letter, only the procedures of Part 9, 5, shall apply.

5 Prior Participation:

5.1 The requirements of Part 9, 6, apply to informal resolution of a dispute.
5.2 Prior participation is a pre requisite to an informal and formal dispute. The lack of prior participation may lead to the rejection of a dispute.
5.3 Prior participation should include an obvious attempt to resolve the dispute at the lowest possible level e.g. by use of alternate dispute resolution.

6 Duty of Reasonable Cooperation:

6.1 The duty of reasonable cooperation set out in Part 7 applies to potential party/parties’ participation in attempted informal resolution of the dispute.

7 Role of Chair:

7.1 For timely requests to seek informal resolution of a dispute submitted by a prior participant in that dispute, the CEO will forward the letter to the Board.
7.2 If the complaint involves the conduct or decision of the Board the CEO should attempt an informal resolution of the matter.
7.3 For all other complaints, the Chair of the Board should attempt an informal resolution.
7.4 Starting from the date of the appropriate Chair’s receipt of a timely letter that meets the filing requirements of this part of the Protocol, the Chair will have 30 days to attempt to resolve the matter informally.
7.4.1 The Chair, after consultation with the Board, will have complete discretion to choose how to attempt to resolve the dispute informally. This may involve the Chair nominating a delegate to handle the process.
7.4.1.1 Ordinarily, if the process chosen by the Chair will involve expenses to FSC Australia beyond the costs of routine communication with the potential parties, the Chair will not proceed until he or she has obtained agreement from enough of the potential parties to reimburse FSC Australia for those costs.
7.4.1.2 The Chair’s choice of process or Delegate will not be subject to further review under any portion of the protocol nor will it constitute separate grounds for invoking the protocol.
7.4.2 If, at any time during that 30 day period, the Chair determines that a negotiated resolution of the dispute is unlikely, the Chair must send the potential parties a letter to that effect. Upon receipt of such a letter, the potential parties may file a formal complaint under the provisions of Part 2.
7.4.2.1 The Chair’s decision will not be subject to further review under any portion of the Protocol nor will it constitute separate grounds for invoking the protocol.
7.4.3 If, during the 30 day period, it appears to the Chair that there is a reasonable likelihood of a negotiated solution to the dispute within a reasonable period of time, the Chair must send the potential parties a letter that extends the time for negotiations an additional 45 days.
7.4.3.1 The Chair’s decision will not be subject to further review under this protocol nor will it constitute separate grounds for invoking the protocol.
7.4.4 At the termination of the 45 day period, the Chair must either report to the Board consensus on a solution to the dispute or, if consensus is not reached, send the potential parties a letter that authorizes the filing of a formal complaint.
7.4.4.1 In the absence of agreement of all the potential parties, and the Chair’s conclusion that the matter remains appropriate for a complete or partial negotiated solution, the Chair may Chair may make an extension but this extension period may not extend beyond an additional 45 days.
7.4.4.2 If the parties agree to additional extensions, any such additional extensions shall run for no more than an additional 45 days.
7.4.4.2.1 The parties may not agree in advance to consecutive extensions.
7.4.4.3 Additional extensions, each for no more than another 45 day period, are possible if the Chair believes they would be productive of a negotiated solution to all or part of the dispute, and all the parties agree to each additional extension.
7.4.5 The Chair’s failure to issue any letter during either the 30 day or 45 day periods described in Paragraphs 7.3 & 7.3.3, or the failure to obtain consensus to extend the negotiation period as provided above, will be
deemed to be a conclusion that the matter is not a likely candidate for negotiated resolution, and the potential complainants may then file a formal complaint under the provisions of Part 2.

7.5 Disputes may be resolved in part through the Chair’s informal, consensus-building negotiations.

7.5.1 When, during the initial 30 day period, it appears to the Chair reasonably likely that a partial negotiated solution is feasible, the Chair shall extend the negotiation period as provided above in Paragraph 7.3.3. Such an extension will encompass the entire dispute, even the portion to which it appears that a negotiated settlement will not be likely.

7.5.2 At the end of the 45 day extension period, the Chair must either:

7.5.2.1 issue a letter to the potential parties that no agreement on any part of the dispute has been reached, thereby freeing the potential parties to file a formal complaint; or

7.5.2.2 report to the Board consensus on the partial solution to the dispute and simultaneously send the potential parties a letter that authorizes the filing of a formal complaint as to those unresolved matters.

7.5.2.2.1 in such cases, the Chair shall indicate those portions of the dispute for which consensus has not been reached.

8.0 Resolution of Dispute:

8.1 If the Chair is able to resolve the dispute, in whole or in part, the parties and the Chair shall determine how best to memorialize the agreement.

9.0 Resolution agreement

9.1 The resolution agreement must be signed by the respondent and affected parties to the dispute before the dispute is deemed resolved.

10. Public notification:

10.1 As part of the agreement, the parties and Chair (in consultation with the Board and the parties to the dispute) may determine which portions of the agreement, if any, are to be made available to other members or the public.
Part 2: INITIATING A FORMAL COMPLAINT

11 Membership: All potential complainants must be FSC Australia or FSC International members in good standing.
11.2 Each complaint must be filed by at least one affected party and seconded by at least two other FSC Australia or FSC International members.
11.2.1 The seconds may come from any combination of additional affected parties or interested parties.
11.2.2 Non-members with a complaint must get FSC Australia members to file (and second) the complaint.
11.2.2 If an affected party is not an FSC Australia member a complaint can be filed on their behalf by a member without them losing any rights as an affected party.

12 Security:

12.1 Each complaint filed must be accompanied by $1000 security posted by the complainant(s) in a form acceptable to the CEO.
12.2 For good cause shown, the FSC Australia Board may waive or reduce the security requirement.
12.2.1 Requests for waivers or reductions of the security requirement must:
12.2.1.1 be in writing;
12.2.1.2 specify in detail, with supporting documentation, the good cause for the waiver or reduction; and must accompany the filing of a complaint.
12.2.2 Upon receipt of a properly filed waiver request, the FSC Australia Board shall either deny the request in whole, grant the request in whole, or may set as a security requirement an amount less than the otherwise applicable $1000.
12.2.3 The Board shall act promptly on the waiver request and communicate promptly its written decision to the party seeking the waiver. The Board may take this decision by any method it sees fit, including delegation to a committee of nominated Board members.
12.2.3.1 Failure of the Board to rule within 30 days of the request shall be deemed to be a denial of the request in whole.
12.2.3.2 Where the Board has not waived entirely the security requirement, the party who had sought the waiver or reduction shall have 10 days following transmission of the Board’s written decision to that party to comply with the amount required under the Board’s decision.
12.2.4 The Board’s decision on requests for waivers or reductions of the security amount, including decisions deemed to be denials by the passage of the 30 day period specified above, will not be subject to further review under this protocol nor will it constitute separate grounds for invoking the protocol.

13 Prior Participation:
13.1 The requirements of Part 1, 9 and 6, apply to formal resolution of a complaint filed under this protocol.

14 Contents:
14.1 Complaints must:
14.1.2 indicate how the complainant met any applicable prior participation requirements;
14.1.3 be accompanied by a brief and written supporting materials. Briefs:
5.1.3.1 shall not exceed 50 pages; and
5.1.3.2 shall elaborate fully the complainant’s arguments, referring, where appropriate, to specific provisions of the supporting materials;
14.1.4 identify the type and location of any other, non documentary supporting evidence; and
14.1.5 be accompanied by the $1000 security deposit or a written request for a waiver that satisfies the requirements of Section 3;
14.1.6 include any challenges for cause then required to be made under Part 8.
14.3 The CEO shall reject any complaint that fails to meet the requirements of this. Such a rejection shall:
14.3.1 be written;
14.3.2 specify the reason(s) for the rejection; and
14.3.3 indicate how the deficiencies may be cured.
14.4 Before rejecting a complaint as inadequate, the CEO shall give due regard to the formal nature of this stage of the proceedings and the parties duty to fully present the dispute in a form capable of resolution with a minimum of additional information gathering efforts by FSC Australia.
14.4.1 The CEO shall reject a complaint and its supporting documents even if the same materials would have satisfied, or did previously satisfy, the requirements for a letter used to initiate an informal dispute resolution process under Part 1.
14.5 The CEO’s rejection of a filing as inadequate may be separately appealed to the Chair of the FSC Australia Board.
14.5.1 For purposes of resolving an appeal regarding the adequacy of the letter, only the procedures of Part 9.5, shall apply.
14.6 Neither the time spent by the CEO in reviewing the adequacy of the filing, nor the time that passes between the filing of any appeal of a rejection of the filing and the receipt of the Chair’s written decision on an appeal, shall count towards the 30 day periods specified below for properly seeking formal resolution of a dispute.

15.0 Timeliness:

15.1 Formal complaints, must be filed within 30 days from the following:
15.1.1 the date of the issuance of any letter from the Chair that indicates that the dispute, or an identified portion of it, is not reasonably capable of negotiated solution;
15.1.2 The date of the Chair’s failure to extend the negotiation period an additional 45 days beyond the original 30 days.
15.1.3 The date that the Chair issues the letter saying that extended negotiations have failed to reach an accord on all of the dispute; or
15.1.4 the expiration of any 45 day extension period for which the Chair fails to obtain consensus for an additional extension or fails to issue a letter
indicating that the dispute is not reasonably capable of negotiated solution.

15.2 Rejection of Filing:
15.2.1 The CEO shall reject as untimely complaints that are filed beyond the dates specified above.
15.3 The CEO’s rejection of a complaint as untimely may be separately appealed to the Chair.
15.3.1 For purposes of resolving an appeal regarding the timeliness of the complaint, only the procedures of Part 9.5, shall apply.
Part 3: SETTING THE COMPLAINT FOR RESOLUTION

Notifications to the Board

16.1 The Board for all complaints shall be the Board of FSC Australia.

16.2 Promptly upon receipt of a complaint that meets the filing requirements for formal complaints, the CEO shall forward copies of the complaint (and its supporting documents) to the Chair.

Responding Parties

17.1 Promptly upon receipt of a complaint that meets the filing requirements for formal complaints, the CEO shall forward copies of the complaint (and its supporting documents) to any party named in the complaint as a potential responding party.

17.2 Whenever it appears to the CEO, to the Chair, or to any other party, that a person not currently named as a responding party should be invited to join the proceedings in that capacity, the CEO will send that person a copy of the complaint (and its supporting documents) and invite such participation.

Interventions

18.1 Whenever a person not named in any of the original complaints or response documents, or not previously identified (by either the CEO, the Chair, or by any other party) as a complainant or respondent, wishes to intervene in the resolution of a complaint filed under this protocol, either as a complainant or respondent, that person may request to intervene in the proceedings.

18.2 A request to intervene shall be in writing and filed with the CEO. It need only contain a brief statement of reasons why intervention is sought and must indicate the capacity (i.e., Affected or Interested party) in which the person seeking to intervene wishes to appear.

18.2.1 The CEO shall reject a request to intervene for failure to comply with the requirements of §3.2. above.

18.2.2 The CEO’s rejection of a filing as inadequate may be separately appealed to the Chair of the FSC Australia Board.

18.2.2.1 For purposes of resolving an appeal regarding the adequacy of the letter, only the procedures of Part 9, § 5, shall apply.

18.3 Upon receipt of a properly filed request for intervention, the CEO will forward the request to the Chair.

18.4 Within 10 days of transmission of the request, the Chair shall rule on such requests, and indicate whether the intervening party should be added as an affected party, interested party, or a respondent.

18.4.1 The Chair shall promptly issue a short written statement of decision that explains the basis of the ruling.

18.4.2 Failure of the Chair to issue a statement of decision within 10 days of transmission of the request to intervene will be deemed to be a denial of the request in whole.

18.5 As a condition of granting the request to intervene, the Chair may impose reasonable conditions on the participation of the party-to-be-added. Such
conditions may include (without limitation to the following list) any or all of the following:
18.5.1 reductions of the time permitted to file briefs;
18.5.2 reductions of the maximum length of briefs;
18.5.3 restriction of participation by the would-be intervener to certain issues or certain portions of the proceedings; or
18.5.4 any other reasonable restrictions.
18.6 To the maximum extent practicable, the intervention of a new party shall not serve to delay any of the proceedings then pending, nor shall such intervention extend the time limits for any performance required by the Chair.

19 Response Briefs

19.1 Persons named as responding parties shall have 30 days, following the CEO’s transmission to them of the complaint(s) and supporting documents, to file with the CEO their own response briefs.
19.1.1 A respondent who wishes to rest its case solely on the decision or action under review need not file a response brief.
19.1.1.1 Failure to file a response brief will not itself violate the duty of reasonable cooperation set out in Part 7.
19.1.2 A respondent who does not file a response brief that complies with the requirements of Section 4.2, however, will not otherwise be allowed to participate in any further steps under this protocol.
19.2 Response briefs shall:
19.2.1 be in writing;
19.2.2 not exceed 50 pages;
19.2.3 be accompanied by supporting documentation not already presented by the complainant(s);
19.2.4 identify the types and location of any other, non documentary supporting evidence;
19.2.5 explain why any persons not already part of the proceedings should be invited to participate;
19.2.6 contain an agreement to reimburse the FSC Australia for any costs imposed upon the respondent by the ultimate reviewing body in its written statement of decision;
19.2.7 include any challenges for cause then required to be made under Part 8.
19.3 The respondent(s) brief shall thoroughly address the issues presented by the complaint.
19.4 Respondents added to the proceedings other than by the complainants in their original complaints shall be given a reasonable period of time, not to exceed 30 days, to file their own supporting documents.
19.4.1 To the maximum extent practicable, time spent waiting for initial briefs of later-added parties shall not otherwise delay any pending proceeding nor serve to extend the time periods for actions required, under this protocol.
19.4.2 Briefs filed beyond the time permitted by these rules shall be lodged by the CEO and forwarded to the Chair.
19.4.2.1 In its ruling on the sanctionability of the conduct, the Chair shall indicate the extent (if any) to which the Board will consider the material contained in the late filed brief.
19.5 The CEO shall promptly forward copies of the respondent(s)’s briefs to the parties in the case and the Chair.
19.6 Within 15 days of either the CEO’s transmission of the final brief by the initially named respondents, or the passage of the 30 day period for receipt of those briefs, the complainants may file a reply brief with the CEO.
19.6.1 The reply brief, not to exceed 15 pages, shall be limited to matters raised directly in the respondent(s) brief(s).
19.6.1.1 New matters raised in a reply brief, i.e., points not responsive to matters raised directly in the respondent(s) brief(s), will not be considered by the Board.
19.6.2 A complainant’s failure to file a reply brief shall not be sanctionable conduct, unless the Chair has specifically directed the filing of such a reply.
19.6.3 Briefs filed beyond the time permitted by these rules, however, shall be lodged by the CEO and forwarded to the Chair with a request to initiate a review of possible sanctions.
19.6.3.1 In its ruling on the sanctionability of the conduct, the Chair shall indicate the extent (if any) to which the Board will consider the material contained in the late filed brief.
19.7 The CEO shall promptly forward copies of the complainant(s)’s reply briefs to the parties in the dispute and the Chair.
19.8 Within 15 days of the earlier of either the CEO’s transmission of the final reply brief filed by the complainants, or the passage of the 15 day period for receipt of those briefs, the respondents may file with the CEO a response to the reply brief(s).
19.8.1 The response brief, not to exceed 10 pages, shall be limited to matters raised directly in the complainant(s) reply brief(s).
19.8.1.1 No new matters shall be raised in the response brief.
19.8.2 A respondent’s failure to file a response to a reply brief shall not be sanctionable conduct, unless the Chair has specifically directed the filing of such a response.
19.8.3 Briefs filed beyond the time permitted by these rules, however, shall be lodged by the CEO and forwarded to the Chair with a request to initiate a review of possible sanctions.
19.8.3.1 In its ruling on the sanctionability of the conduct, the Chair shall indicate the extent (if any) to which the Board will consider the material contained in the late filed brief.
19.9 The CEO will promptly forward copies of the response briefs to the parties to the dispute and the Chair.

20 Certification that the dispute is ready for resolution.
20.1 Upon completion of the briefing cycle, the CEO shall send a letter, with copies to all the parties and to the Chair, certifying that the filing and briefing requirements have been met and the case is ready for consideration by the Board.

20.2 The CEO shall accompany the certification that the matter is ready for resolution with a brief description of the policy matters raised by the dispute and a recommendation on whether the Board should hear the matter itself or deny it summarily.
Part 4: THE BOARD AS THE DISPUTES RESOLUTION COMMITTEE

21 Within 15 days of the transmission of the CEO’s certification that the matter is ready for review, the Board shall decide whether to hear the complaint.
21.1 Upon reaching its decision, the Board shall issue a short written statement that either declines or agrees to hear the complaint.
21.2 Failure of the Board to issue such a statement within 15 days of the transmission of the CEO’s certification that the matter is ready for review will be deemed to be a decision that the Board has declined to review the complaint.

22 If the Board either expressly declines to hear the complaint, or is deemed to have declined to hear the complaint by the passage of time, then further review of the complaint may be sought under Part 5.
22.1 If further review is not timely and properly sought under Part 5, then, within 15 days after the expiration of the time permitted to seek that review, the Board shall allocate the costs of the resolution of the complaint under the provisions of Part 6.

23 If the Board decides to hear the complaint and promptly notifies the parties of its decision, then the Chair, in consultation with the Board, shall determine the procedures the Board will use in resolving the complaint.
24 Within 15 days of the Board’s decision to hear the matter, the Chair, after consultation with the Board, may appoint a subcommittee of three Board members, normally with one from each chamber, to consider the complaint.

24.1 The Chair’s decision regarding the appointment of a subcommittee will not be subject to further review under this protocol nor will it constitute separate grounds for invoking this protocol.
24.2 Any subcommittee appointed will have responsibility for preparing for the entire Board a recommended disposition of the matter.
24.3 Wherever possible, the subcommittee will act by consensus. If consensus is not possible, then the subcommittee can act after the affirmative vote of two of the three members.
24.4 In preparing its recommended disposition, the subcommittee may:
24.4.1 Request supplemental briefing on any pertinent matter from any of the primary complainants or respondents in the dispute;
24.4.1.1 if such supplemental briefs are requested, copies shall be sent to all parties;
24.4.1.2 whenever supplemental briefs are sought from less than all the complainants and respondents, the other complainants and respondents must also receive an opportunity to address the topic in writing.
24.4.1.2.1 Failure of such a party i.e., on who has not been specifically directed to file a supplemental brief to file an optional supplemental brief will not be a violation of Part 7.
24.4.2 Seek whatever assistance from the CEO the subcommittee believes would be helpful;
24.4.3 hold whatever site inspections, evidentiary hearings, field visits, oral arguments, or other proceedings it believes would be helpful.
24.4.3.1 The subcommittee may not hire outside experts or consultants to help resolve the dispute without Board approval.

24.5 Any such subcommittee will submit a written report to the Board within 60 days of its appointment.

24.5.1 At the time that the subcommittee submits its report to the Board, copies of the report will be provided to all of the parties in the dispute.

24.5.1.1 The primary complainants and respondents will have 10 days to file a written response to the report.

24.5.1.1.1 Such a response shall not exceed 15 pages.

24.5.2 If the subcommittee is unable to recommend a disposition within that time period, it shall so state in its written report to the Board.

24.6 The subcommittee’s failure to submit a written report within the 60 day period will be deemed a decision by the subcommittee to recommend denial of the complaint.

24.6.1 Where the subcommittee is thus deemed to have recommended denial of the complaint, the parties will not be permitted to file responses.

24.7 As part of its report or recommended disposition, the subcommittee may recommend that the Board:

24.7.1 request supplemental briefing on any pertinent matter from any of the parties to the dispute;

24.7.2 seek additional assistance from the CEO;

24.7.3 seek the assistance of consultants or outside experts; or

24.7.4 hold new or additional site inspections, field visits, evidentiary hearings, oral arguments, or other proceedings that might help resolve the dispute.

24.8 If the subcommittee recommends a disposition of the matter, then, within 30 days of the end of the 10 day period for the parties to submit written responses to that report, the Board shall decide whether to adopt, modify, or reject the subcommittee’s recommended disposition.

24.8.1 If the recommended disposition is adopted, or adopted with only minor modifications, the Board shall transmit a written statement of decision within 15 days of its decision to adopt the recommendation.

24.8.2 If the recommended disposition is modified substantially, the Board shall transmit a written statement of decision within 30 days of its decision to modify substantially the recommendation.

24.8.3 If the recommended disposition is rejected, then, within 30 days of the rejection of the recommendation, the Board must either:

24.8.3.1 Reach its own decision on the matter and transmit its written statement of decision; or

24.8.3.2 decide how next to proceed to seek a resolution of the matter.

24.9 Failure of the Board to reach a decision within 90 days of the receipt of the subcommittee’s report will be deemed to be a rejection of the complaint.

24.9.1 Further review of the complaint by the Dispute Resolution Committee may be sought under Part 5.

24.9.2 If further review is not timely and properly sought under Part 5, then, within 15 days after the expiration of the time permitted to seek that review, the Board shall allocate the costs of the resolution of the complaint under the provisions of Part 6.

25 If the Chair decides not to appoint a subcommittee, then the Chair, in consultation with the Board, will decide which procedures will be used to resolve the dispute.
25.1 The Chair’s decision regarding the procedures to be used will not be subject to further review under this protocol nor will it constitute separate grounds for invoking this protocol.
25.2 If the Chair decides not to appoint a subcommittee, the Chair may:
25.2.1 request supplemental briefing on any pertinent matter from any of the parties to the dispute;
25.2.2 seek assistance from the CEO;
25.2.3 seek the assistance of consultants or outside experts; or
25.2.4 hold site inspections, field visits, evidentiary hearings, oral arguments, or other proceedings that might help resolve the dispute.
25.3 Within 90 days of the Chair’s decision not to appoint a subcommittee, the Board shall decide how to resolve the complaint.
25.4 Within 30 days of the decision on the resolution of the complaint, the Board shall transmit a written statement of decision.
25.5 Failure of the Board to issue a written statement of decision within 120 days of the Chair’s initial decision not to appoint a subcommittee will be deemed to be a denial of the complaint.
25.5.1 Further review of the complaint may be sought under Part 5.
25.5.2 If further review is not timely and properly sought under Part 5, then, within 15 days after the expiration of the time permitted to seek that review, the Board shall allocate the costs of the resolution of the complaint under the Provisions of Part 6.

Part 5: Independent arbitration - THE FINAL DISPUTE RESOLUTION for unresolved issues including appeals.

26 The final process for dispute resolution in the circumstances below is an agreed and independently appointed Arbitrator who is acceptable to the Board and the parties to the dispute.

27 The Arbitrator will regulate their own procedures consistent with their professional standing as an arbitrator and the rules of any professional society to which they belong and with the applicable parts of this protocol.

28 The cost of the Arbitrator will be met by the parties to the dispute.

Part 6: COSTS

29. FSC Australia will bear no direct costs arising from any dispute.

30 Each party will bear their own costs of participating in all proceedings conducted under this protocol including, if applicable the use of an Arbitrator.

31 Costs on Initial Review: Costs incurred by FSC Australia will be apportioned among the parties, and reimbursement to FSC Australia required, as follows:
31.1 Where a complaint has been sustained entirely, the responding parties must reimburse FSC Australia for its chargeable costs.
31.1.1 The chargeable costs, as described below, will be divided up equally among the responding parties.
31.2 Where a complaint has been denied entirely, including complaints deemed denied by the passage of time for issuing a statement of decision, the complaining parties must reimburse FSC Australia for its chargeable costs.

31.2.1 Complainants will each bear an equal share of all FSC Australia’s costs.

31.3 In all other cases, the Board shall indicate the respective obligations of the parties to the dispute.

31.3.1 In apportioning the respective obligations of the parties, the Board shall:

31.3.1.1 consider the extent to which the complainants and respondents substantially prevailed on their claims or responses;

31.3.1.2 consider the relative importance to the development of FSC Australia policy of the arguments successfully advanced by each of the parties;

31.3.1.3 consider any specific agreement made by the parties to pay for the costs of proceedings held during the informal process under this protocol; and

31.3.1.4 consider any other factor relevant to a fair and equitable allocation of costs.

31.3.2 Failure to apportion the respective obligations of the parties in the statement of decision shall be deemed to be a requirement that each complainant and each respondent pay an equal share of the chargeable costs.

31.3.2.1 In such instances, the chargeable costs will first be reduced by an amount that reflects the costs incurred by FSC Australia to receive, collect, print, duplicate, transmit or store the materials submitted on behalf of all of the secondary complainants.

31.3.2.2 The amount deducted under the preceding paragraph will be divided equally among all of the secondary complainants.

32 Costs on Appeal:

32.1 Appeals are heard by an Arbitrator and the costs are met by the parties to the dispute.

33 Chargeable Costs include costs incurred by FSC Australia at any stage of the proceedings (whether informal or formal, including any appeals):

33.1 to receive, collect, print, duplicate, transmit, store or otherwise process the materials submitted on behalf of the parties;

33.2 in conjunction with any FSC Australia required site inspections; field visits; evidentiary hearings; oral arguments; retention of outside experts or consultants; or meetings of the Board or committee of the Board at which the dispute is a principal agenda item;

33.2.1 meetings include tele-conferences, conference calls, or similar virtual gatherings.

33.2.2 costs incurred by FSC Australia include costs incurred by co-opted members of the Board for which those members seek reimbursement from FSC Australia, provided those costs would have been chargeable to the parties had they been incurred by FSC Australia directly.

33.2.3 these costs shall include:

33.2.3.1 communication expenses incurred in arranging and holding
the meeting, hearing, visit;
33.2.3.2 rental fees for meeting facilities, if needed; and
33.2.3.3 a reasonable allowance for the members transportation, food
and lodging costs.
33.3 through the expenditure of staff time spent by the CEO throughout the
proceedings;
33.4 as a reasonable per diem for the attendance of members of the Dispute
Resolution Committee at any meetings held to develop, discuss, or resolve
the dispute;
33.4.1 Where such a meeting also includes other agenda items, a reasonable
portion of the costs shall be made that reflects the relative amount of time
spent at the meeting on the dispute.
33.5 as a reasonable per diem for the attendance of members of the Board at
any meetings, other than a regularly scheduled Board meeting, held to
develop, discuss, or resolve the dispute;
33.5.1 Where such a meeting also includes other agenda items, a reasonable
portion of the costs shall be made that reflects the relative amount of time
spent at the meeting on the dispute.
33.6 or any other reasonable cost incurred by FSC Australia to resolve the
dispute.
34 To the extent practicable, the CEO shall document each of the chargeable
costs for which FSC Australia will seek reimbursement.
34.1 A summary of that documentation will be sent to the parties to the
dispute at the time of the Board’s issuance of the statement of decision.
34.1.1 If the Board fails to request a copy or issue a statement of decision,
copies will be made available by the CEO to any party who requests
such a copy.
34.2 Upon request, the CEO must make available to the parties, the initial
reviewing body, or the final reviewing body, the invoices, receipts, logs,
ledgers, and other materials that support the CEO’s summary of chargeable
costs.
35 Appeals of Cost Allocation: A decision to allocate costs on any party
may only be appealed by that party. The following process applies:
35.1 For reimbursement obligations imposed by the Board where the Board
exercised its discretion to hear the matter as the first reviewing body, a party
required to reimburse FSC Australia may either:
35.1.1 File a separate request for review by an Arbitrator but only if the review
sought will be limited to cost apportionment issues only; or
35.1.2 Seek Board review of the reimbursement decision in conjunction with
the review otherwise sought by that party of other elements of the decision.
35.2 Where the appeal is limited to the cost apportionment issue, review by
the Board will proceed under the general procedures applicable to any
request for review of a prior Board decision reached under this protocol.
35.2.1 The Board or Arbitrator may only overturn the Board’s original
calculation or allocation of reimbursement costs for:
35.2.1.1 mechanical or computational error; or
35.2.1.2 a clear and substantial abuse of discretion.
35.2.2 The decision, on review of the Board’s calculation or allocation of
reimbursement cases shall not be reviewed further under this protocol and will
not constitute separate grounds for invoking the protocol.
35.3 Where the appeal of costs is only part of a broader appeal from one or more of the issues in the underlying decision, the Board or Arbitrator will allocate the costs for the entire action, including the appeal, under the general principles listed above in 2 & 3.

35.4 For reimbursement obligations imposed by the Board, or where an interlocutory appeal is permitted under this protocol, a petition for rehearing may be filed with the CEO.

35.4.1 Such a petition shall:
35.4.1.1 be in writing;
35.4.1.2 itemize the objections to the determination of the reimbursement obligations;
35.4.1.3 discuss in detail the basis of the objections; and
35.4.1.4 be filed no later than 15 days after either: 35.4.1.4.1 the transmission of the statement of decision in the matter; or, 35.4.1.4.2 if no such statement was issued, within 15 days of the date by which the complaint or appeal is deemed to have been denied.

35.4.2 The CEO shall reject a petition for rehearing that fails to meet the requirements for content or timeliness.
35.4.2.1 The CEO’s rejection of a petition for rehearing may be separately appealed.
35.4.2.2 Review of the rejection will otherwise proceed under the provisions of Part 9, 5.

35.4.3 The same procedures that apply to resolution of requests for review of prior Board decisions under this protocol, shall be used to resolve the petition for rehearing.

35.4.4 The Board may only change its allocation of costs for mechanical or computational errors.

35.4.5 The decision on the petition for rehearing shall not be reviewed further under this protocol and will not constitute separate grounds for invoking the protocol.

36 Satisfaction of Reimbursement Obligations

36.1 Upon the expiration of the final time to seek review or, if appropriate, rehearing of the final decision on cost reimbursement obligations, the parties will have 45 days to satisfy their obligations by transmitting funds, in a form satisfactory to the CEO, to FSC Australia’s account, in accordance with the CEO’s instructions.

36.2 If any party fails to comply with its obligations to reimburse FSC Australia within the 45 day period described above, the CEO may do any or all of the following:
36.2.1 apply any funds held by, or on behalf of, FSC Australia as security for payment of cost obligations;
36.2.1.1 any excess over the amount necessary to meet the party’s obligations must be promptly returned by the CEO.
36.2.2 offset all, or any part of, the party’s obligation to FSC Australia with amounts otherwise owed to the party, for whatever reason, by FSC Australia;
36.2.3 seek the initiation, pursuant to any applicable FSC Australia Statutes, By-Laws, Board adopted policy documents, or laws of civil authorities, of any other remedies, legal, equitable, or otherwise, that are available to FSC Australia to enforce the reimbursement obligation;
36.2.4 suspend and preclude the party’s participation in any other proceedings under this protocol;
36.2.5 refer the party, if a member, to the appropriate FSC Australia decision maker for any appropriate discipline or adjustment of membership status permissible under the FSC Australia Statutes, By-Laws, Board-adopted policy documents, or applicable laws of civil authorities;
36.2.6 make any other effort reasonably calculated to attain fulfilment of the reimbursement options.
36.3 The CEO’s actions in seeking fulfilment of a party’s cost reimbursement obligations shall not be reviewed further under this protocol and will not constitute separate grounds for invoking the protocol.

Part 7: DUTY OF REASONABLE COOPERATION
37 Existence of Duty: Persons involved as parties in any proceedings initiated under this protocol must cooperate reasonably with both FSC Australia and with other such persons in the attempt to resolve the dispute.
38 The duty arises no later than the party’s first appearance in the dispute.
38.1 An appearance includes the earliest of any of the following:
38.1.1 The filing of a request for informal resolution of a complaint under Part 1;
38.1.2 A potential party’s participation in the negotiations initiated by the Chair under Part 1;
38.1.3 The filing of a complaint under Part 2;
38.1.4 The filing of a response under Part 3;
38.1.5 The filing of a request to intervene in the dispute under Part 3.

39 Scope of Duty: The duty of reasonable cooperation includes (without being limited to):
39.1 Compliance, with all requests from Board or Arbitrator for briefs, documentation, testimony, or other participation in the process;
39.2 Compliance, within the time indicated either by a request or, if no such time is indicated, within the time permitted by these rules, with all requests for access by the Board to any of the parties’ real property where such access would be helpful to the resolution of the complaint.
39.2.1 The party may impose reasonable conditions for the time, place and manner of such visits.
39.3 Expedition of the dispute resolution process;
39.4 Negotiation in good faith to resolve the dispute; and
39.5 Civility during the conduct of any proceedings held under this protocol.

40 Investigation: Whenever it appears to the Chair that a party might be in violation of the duty of reasonable cooperation, the Chair, on its own motion, or the written motion of any other party or member of the Board, may investigate the matter.
40.1 The Chair may ask any of the parties who might be in violation of the duty to deny or explain, in writing, the conduct involved.

41 Sanctions: If, after investigating the matter, the Chair finds that there has been a violation of the duty, the Chair must sanction the party in violation.
41.1 The type of sanction will be at the Chair’s discretion, exercised after consultation with the other members of the Board.
41.1.1 In exercising that discretion, the Chair shall try to balance the severity of the sanction with the gravity of the conduct involved.
41.1.2 In making that balance, the Chair shall also consider:
41.1.2.1 The deterrent effect of the sanction on the party found in violation of the duty;
41.1.2.2 the deterrent effect on other parties, either in the current or in any other proceeding held under this protocol; and
41.1.2.3 any previous violations of the duty by the party involved, in either the current proceeding or in any other proceeding held under this protocol.
41.2 Sanctions may include all or any of the following:
41.2.1 A refusal to allow participation by the party in violation in any evidentiary hearing or oral argument that is held;
41.2.2 A specific finding, on the subject of the dispute, or any element thereof, against the party who has failed to fulfill the duty of reasonable cooperation.
41.2.2.1 If the violation of the duty affects only a portion of the complaint or response, the sanction shall be limited in effect to that portion of the complaint or response affected by the violation.
41.2.3 An order to pay additional costs incurred by FSC Australia or any of the parties to the dispute as a result of the violation;
41.2.4 An order striking the party’s complaint, appeal, response, petition, or motion, effectively finding against that party on all matters.
41.2.4.1 Such negative/punitive sanctions shall only be imposed as a last step, or where a pattern of violations of the duty (in the instant dispute resolution proceedings) has been found by the Chair.
41.2.5 Any other order reasonably calculated to meet the above-described purposes of the sanctions system.
42 If, after investigation, the Chair finds that no violation of the duty has occurred, the Chair shall explain its findings in a simple statement of findings.
42.1 The Chair’s finding of no violation of the duty of reasonable cooperation will not be subject to further review under this protocol nor will it constitute separate grounds for invoking this protocol.

43 Appealability: Sanctions imposed by the Chair may be separately and immediately appealed to the Board or appointed arbitrator.
43.1 In such cases, the requirements of this protocol for informal resolution of the dispute, and for posting of a security amount, shall not apply.
43.2 All other provisions of this protocol for formal complaints will apply.
43.3 In reviewing the sanction imposed, the Board will only reverse either the decision to impose a sanction or the type of sanction imposed, for a clear and substantial abuse of discretion by the Chair.

Part 8: CONFLICTS OF INTEREST

44 Recusal:
44.1 If at any time during a proceeding under this protocol a member of the Board knows that his or her participation in the resolution of the dispute will violate the conflicts-of-interest policy applicable to FSC Australia Board members for FSC Australia Board decisions, that member must immediately disclose that conflict to the Board and suspend his or her further participation in the proceedings.
44.1.1 The member, at the member’s election, may either disqualify him or her self permanently from all further participation in the proceedings;
44.1.2 or disclose the conflict in writing to all the parties in the proceedings and seek their written waiver of any objections to his or her further participation in the proceedings.
44.1.2.1 If a waiver is obtained from all of the parties to the proceedings, the member may resume participation in the proceedings.
44.1.2.2 Where a waiver is obtained from all of the parties, the conflict of interest will not be subject to further review under this protocol nor will it constitute separate grounds for invoking the protocol.
44.2 If at any time during a proceeding under this protocol a member of a reviewing body resolving a dispute reasonably believes that his or her participation in the resolution of the dispute might violate the conflicts-of-interest policy applicable to FSC Australia Board members for Board
decisions, or create an apparent conflict of interest, that member must follow the procedures set out in 1.5.

44.3 If at any time it appears to any of the other members of the Board that one of their colleagues on that reviewing body has an actual or potential conflict of interest within the meaning of the policy applicable to FSC Australia Board members for Board decisions, the member to whom the conflict appears must raise the actual or potential conflict with the member who might be in violation of the conflict rules.

44.3.1 The member with the potential conflict must follow the procedures set out in 1.5.

44.3.2 If the member with the actual or potential conflict fails to follow the procedures of 1.5, the member who brought the matter to the attention of the member with the potential conflict shall refer the matter to the other members of the Board.

44.3.2.1 Upon referral to the remaining reviewing body members, the procedure set out in 3 will apply.

44.4 Failure of a member to resolve an actual or potential conflict under this procedure will leave any resulting decision taken under this protocol subject to a motion to vacate under the procedure set out in 2.2, and with the consequences set out in 2.1.

44.5 Potential Conflicts: Procedure

44.5.1 The member with the suspected conflict must either:

44.5.1.1 disqualify him or herself immediately from all further participation in the proceedings;

44.5.1.2 disclose the conflict in writing to all the parties in the proceedings and seek their written waiver of any objections to his or her further participation in the proceedings;

44.5.1.2.1 If a waiver is obtained from all of the parties to the proceedings, the member may resume participation in the proceedings.

44.5.1.2.2 Where a waiver is obtained from all of the parties, the conflict of interest will not be subject to further review under this protocol nor will it constitute separate grounds for invoking the protocol.

44.5.1.3 or immediately notify the remaining members of the Board and seek their decision on whether the potential conflict or appearance of conflict requires that member to disqualify him or her from all further participation in the proceedings.

44.5.2 If the member seeks the decision of the remaining members, the member must follow the procedure set out in 3.

44.5.3 Unless waived by all the parties to a dispute, participation in any stage of the proceedings by a member who fails to address the potential conflict through one of these three steps will leave any decisions taken in the proceedings subject to a motion to vacate under 2.2.

45 Recusal: Vacating a Decision

45.1 Unless waived by all the parties to a dispute, participation in any stage of the proceedings by a member of a reviewing body who fails to recuse him or
herself immediately upon his or her awareness of the actual or potential conflict will vacate:

45.1.1 the final decision made (in the resolution of the instant complaint) by the Board to which the member with the undisclosed conflict belongs or belonged, if a final decision was reached:

45.1.1.1 this decision must be vacated even if the member with the undisclosed conflict did not participate in the deliberations that proceeded the final decision.

45.1.2 and any interim decision made, at any stage of the proceedings, in which the member with the undisclosed conflict participated in any way.

45.2 A motion to vacate a final decision for reasons of an undisclosed conflict shall be made immediately after the discovery of the undisclosed conflict, but in no event more than 30 days after the transmission of the final decision in the matter by the Board to which the member with the undisclosed conflict belongs or belonged.

45.2.1 The motion will be made to the Board who made the decision.

45.2.1.1 The party making the motion must demonstrate the existence of the conflict.

45.2.2 A party’s failure to move to vacate a decision within the preceding time limitation will be deemed to be a waiver of any objection to the participation of the member with the undisclosed conflict.

45.2.2.1 Such a deemed waiver will not be subject to further review under this protocol nor will it constitute separate grounds for invoking the protocol.

45.2.3 A decision on a motion to vacate may be appealed as provided in 5.

46 Internal review of potential conflicts:

46.1 Upon referral to the other members, the member with the potential conflict must immediately suspend any further participation in any stage of the dispute resolution process.

46.2 Within 10 days of the referral to the other members of the Board, the member in question may, if he or she so chooses, file a written statement that explains his or her understanding of the circumstances that gave rise to the challenge or potential conflict.

46.3 Within 10 days of the transmission of the statement of the member in question, the other members shall decide whether to disqualify the member in question.

46.3.1 Other than through the optional written statement described above, the member with the potential conflict or appearance of conflict shall not participate in the deliberations by the other members on the conflicts-matter.

46.4 Failure to resolve the referral within the time permitted above will be deemed to be equivalent to a decision disqualifying the member from participation.

46.4.1 Such a deemed disqualification will not be subject to further review under this protocol nor will it constitute separate grounds for invoking the protocol.

47 Challenges for Cause:

47.1 Parties to a dispute may challenge the participation of any member of the Board then involved in the resolution of a dispute under this protocol if such
participation would violate the conflicts-of-interest policy applicable to FSC
Australia Board members for Board decisions.

47.2 **Form of Challenge:** A challenge shall be made by written motion, filed
with the CEO and addressed to the Board.
47.2.1 The motion shall fully set forth the grounds for the challenge.

47.3 **Time of Challenges:**
47.3.1 For proceedings under Part 1 of this protocol, any challenge for cause
to the participation of the relevant Chair must be made:
47.3.1.1 within the letter filed with the CEO that seeks informal
resolution of the dispute, if the grounds for the alleged conflict are
known by the party filing the letter at the time that the letter was filed,
or were reasonably ascertainable by that party at that time; or
47.3.1.2 In a separate letter filed no more than 10 days after the actual
discovery of the ground(s) of the alleged conflict, or the time that
such grounds were reasonably ascertainable by that party, if such
ground(s) was not known at the time that the party filed the initial
letter;
47.3.2 For disputes that proceed to formal resolution, any challenges for
cause must be filed within 10 days of:
47.3.2.1 the transmission of the CEO’s certification that
the case is ready for review by the Board, if the grounds for
the challenge are then known or reasonably ascertainable by the party
making the challenge; or
47.3.2.2 the actual discovery (by the party making the challenge) of the
ground(s) of the alleged conflict, or the time that such grounds were
reasonably ascertainable by that party, if such ground(s) was not
known at the time that the CEO transmitted the
certification.
47.3.3 Failure to meet these time requirements will be deemed a waiver of
any ground(s) for disqualification for cause that were actually known, or
reasonably ascertainable, by the party making the challenge.
47.3.3.1 Such a deemed waiver will not be subject to further review
under this protocol nor will it constitute separate grounds for
invoking this protocol.

47.4 **Resolution of Challenges:** The resolution of the challenge will proceed
under 3.

48 **Appealability:**
48.1 A decision by any member to recuse him or herself, or a decision by the
Board to disqualify a member, shall not be subject to further review under this
protocol nor will it constitute separate grounds for invoking the protocol.
48.2 A decision by the Board (made after referral by any member, or after a
motion to disqualify a member for cause, or after a motion to vacate a
decision), that finds no grounds for disqualification of the member in question
may be appealed as follows:
48.2.1 Where the body in question is the Board, review of the decision on the
disqualification matter may be sought with an Arbitrator.
48.2.1.1 Such review may not be sought until after the Board has completed its final decision on the complaint.
48.2.1.2 The Review will proceed under the rules applicable to committee review of Board decisions on complaints.
48.2.1.3 Whenever review is sought of a Board decision not to disqualify a Board member on conflicts-of-interest grounds, the arbitrator shall review the conflict of interest challenge before it reviews any other challenge to the Board’s final decision in the matter.
48.2.1.4 If the Arbitrator concludes that the Board member should have been disqualified, the Board’s decision must be immediately vacated as the Board’s final decision in the matter.
48.2.1.5 The Arbitrator may then either send the matter back down to the Board for its reconsideration of the matter without the participation of the disqualified member, or may proceed directly to decide the entire complaint.
48.2.2 Where the body in question is the Board, the decision not to disqualify a member shall not be subject to further review under this protocol nor will it constitute separate grounds for invoking this protocol.

49 Effect of Disqualification of Chair
49.1 In the event of either a Chair’s recusal from participation in the resolution of a dispute, or a successful disqualification for cause of that Chair, the Vice-Chair of the Board, if one exists, shall replace the Chair for purposes of all further proceedings (both formal and informal) in the dispute.
49.1.1 For purposes of all further proceedings in the dispute, the Vice-Chair will succeed to all of the Chair’s powers and duties regarding the dispute at hand.
49.2 In the further event of either the Vice-Chair’s recusal from participation in the solution of a dispute, or a successful disqualification for cause of the Vice-Chair, or the vacancy or non-existence of a Vice-Chair position, the CEO, in consultation with the remaining members of the Board, shall immediately select a member to replace the Vice-Chair for purposes of all further proceedings (both formal and informal) in the dispute.
49.2.1 The person selected to replace the Vice-Chair will succeed to all of the Chair’s powers and duties regarding the dispute at hand.
49.3 If further necessitated by additional recusals or successful disqualifications for cause, the process described by the provision addressing a Vice-Chair’s inability to serve shall continue, through the membership of the Board, until such time as a substitute for the Chair can be found.
49.4 If all such members of the Board are unable to serve, the provisions described in 7 shall govern the composition of the Board.

50 Effect of Disqualifications on Quorum and Voting Requirements:
50.1 If, through one or more recusals or disqualifications, the Board lacks a quorum able to hear a dispute before it, the members of the Board who are still able to participate in the may either:
50.1.1 appoint a substitute member for each disqualified member; or
50.1.2 Stop further participation in the matter and refer the dispute directly to an Arbitrator.
50.2 In cases where the Board decides to appoint substitute members:
50.2.1 to the extent possible, such a substitute should match the interest group characteristics of the member for which substitution is sought;
50.2.2 since substitute members will be subject to the Board’s conflicts-of-interest provisions, to the extent possible, substitutes shall be selected who will not present conflicts-of-interest problems;
50.2.3 the substitute member shall only have the authority to participate as a Board member in the dispute resolution process at issue.
50.3 In any case where the disqualifications or refusals require the remaining Board members to act with less than the seven members otherwise needed for a quorum, the Board may still act provided all the remaining members who have not been disqualified participate in the decision.
50.3.1 In all such cases, a simple majority of the remaining members will be sufficient to authorize either the appointment of substitutes or the referral to the Dispute Resolution Committee.
50.4 If, through one or more recusals or disqualifications, the Dispute Resolution Committee lacks a quorum able to hear a dispute before it, it shall immediately apply to the Board for appointment of a substitute.
50.4.1 to the extent possible, such a substitute should match the interest group characteristics of the member for which substitution is sought;
50.4.2 since substitute members will be subject to the Board’s conflicts-of-interest provisions, to the extent possible, substitutes shall be selected who will not present conflicts-of-interest problems;
50.4.3 the substitute member shall only have the authority to participate as a member in the dispute resolution process at issue.

Part 9: GENERAL PROVISIONS
51 Filing Requirements: Unless otherwise specified in this protocol or in a specific directive by the Chair before which a complaint, petition or appeal is then being presented:
51.1 any document required to be filed, lodged, or transmitted by a party shall be delivered to the offices of the FSC Australia CEO in Melbourne; and
51.2 a document will be deemed filed, lodged, delivered, or transmitted to FSC Australia at the moment that it is received by the FSC Australia CEO in Melbourne.
51.3 A document may be filed, lodged, transmitted to, delivered to or received By the FSC Australia CEO in any of the following forms:
51.3.1 In writing, transmitted by postal service, courier, messenger, or other personal, in-hand delivery for which a receipt, signed by an authorized person in the FSC Australia CEO, is required and executed.
51.3.2 By e-mail, or direct modem connection, preferably as a file attachment in a word processor acceptable to the FSC Australia CEO;
51.3.2.1 Parties or potential parties seeking to file, lodge or otherwise transmit a document by this means must contact the FSC Australia CEO before attempting the transmission to determine the acceptability of the file format.
51.3.3 By telefax.
51.3.4 By any other manner approved in advance by the FSC Australia CEO.
52 Time for Performance: Unless otherwise specified in these rules or in a specific directive by the Chair of the Board before which a complaint or appeal is then being presented:

52.1 Whenever a time period for a performance by the FSC Australia CEO, Board or Chair, or a response to a such a performance by a party, is calculated by the date that a document or decision is issued or transmitted, the date of issuance or transmission shall be the date that the FSC Australia CEO communicates the entire contents of the document or decision to the parties to a dispute, or to the relevant portion of a dispute.

52.2 Such communication may be accomplished in any of the following manners:

52.2.1 By hand delivery of the document to a party, a party’s agent, or one authorized to receive such a document on the party’s behalf;

52.2.2 By delivering the document to a reputable courier or messenger service which can, and has agreed to, deliver the document within five days of receipt from FSC Australia to the addressed party;

52.2.3 By telefax;

52.2.4 By e-mail or direct modem hookup;

52.2.5 By posting the document on FSC Australia’s web page; or

52.2.6 By any other manner of communicating reasonably likely to assure the receipt of the document within five days of its release by FSC Australia.

52.3 Whenever, under this protocol, any time for any performance is measured in days following some previous event, the time period will begin to run on the first day following the day of the triggering event.

52.3.1 Times for performance will be measured in calendar days, not week days or business days.

52.3.2 If, however, the deadline for performance would fall on a Saturday, a Sunday, a holiday observed by the FSC Australia CEO, or any other day in which the FSC Australia CEO’s office is closed for business, the time for performance will be extended until the next day in which the CEO is open for business.

53 Meetings

53.1 In any matter where the Board must reach a decision on the acceptance or resolution of a dispute, the Board or Committee may reach its decision:

53.1.1 at a regularly scheduled meeting;

53.1.2 at an extraordinary meeting;

53.1.3 at a conference call or other tele-conference; or

53.1.4 by written vote communicated via post, courier, fax, e-mail, or other similar means;

53.1.5 or by any other means permitted under applicable law.

54 Statement of Decision: Unless otherwise specified in these rules, whenever the Board must issue a statement of decision, such a statement of decision shall:

54.1 fairly address the principal elements of the dispute;

54.2 determine how the costs of the process will be borne by the parties; and

54.3 be transmitted to all the parties with copies made available to the public, by the CEO.
55 Appeal of CEO’s Rejection of Inadequate Filing
55.1 Simple written notice, in letter form, of such an appeal shall be filed with the CEO within 5 days of transmission of the CEO’s decision to reject any filing as untimely or otherwise inadequate under any portion of this protocol.
55.2 Upon receipt of such a notice of appeal, the CEO shall promptly (and in no event later than 10 days following such receipt) forward to the Chair of the FSC Australia Board a copy of:
55.2.1 the notice of appeal;
55.2.2 the document rejected (with any supporting documents that were attached to the rejected document); and
55.2.3 the CEO’s written statement explaining the basis of the rejection.
55.2.4 No additional supporting documents, briefs, evidentiary hearings, or oral argument may be attached or sought.
55.3 The FSC Australia Board Chair may reverse the CEO’s decision only for a clear and substantial abuse of discretion.
55.3.1 The Chair shall resolve any such dispute within 5 days of the transmission of the materials forwarded by the CEO.
55.3.2 The Chair will promptly communicate a decision, in writing, to the appellant.
55.3.2.1 The Chair’s statement of decision may be summary.
55.3.2.2 The Chair’s failure to transmit a decision to the appellant within five days of the receipt of the appeal shall be deemed to be a rejection of the appeal.
55.3.3 The Chair’s decision will not be subject to further review under any portion of this protocol nor will it constitute separate grounds for invoking the protocol.

56 Prior Participation
56.1 Only members who have previously participated in the proceedings that gave rise to the specific decision or action in dispute will be entitled to seek informal or formal resolution, through this protocol, of their dispute.

57 Joint Briefs
57.1 Where more than one affected party, respondent, appellant or appellate is a party to the case, joint briefs may be filed by any parties who are then appearing in the same capacity in the matter.
57.2 In addition, or as an alternative, any one party may indicate substantial agreement with a brief filed by any other party and present fully in its own brief only those additional points not otherwise addressed in the briefs filed by the other party(ies).

58: Miscellaneous Matters
58.1 Unless otherwise provided for in the FSC Australia Statutes or Bylaws, a quorum of the sub Committee of the Board will be 3 members.
58.2 Where possible, the Board or Committee will attempt to reach a decision by consensus.
58.2.1 Where consensus is not possible, unless otherwise provided for in the FSC Australia Statutes or Bylaws, the sub committee can act only with the affirmative vote of at least two of the committee members.