Monday, 12 May 2014

**Proposed Intent of Constitutional Amendments**

It is following an extensive analysis of the compliance requirements of FSC Australia, whereby by operation of law, to address risk or as required by FSC International that I present this paper and series of Constitutional amendments, carried by the Board. These amendments are designed to address issues and make opportunities possible as follows:

- Ensure amendments are made to the language where typographical or construction errors have occurred in the past to ensure clear interpretation of provisions; and
- Rigour in the process behind admission and removal from membership; and
- Consistency with FSC International’s criteria as documented in their Statutes, and ensuring that if the Policy for Association, was to be invoked by the International Board then this also applies to the Australian membership component; and
- No inconsistency between decisions of FSC International and FSC Australia in relation to the same membership application; and
- Offering Joint Membership to enable a stronger voice at FSC International level for a reduced combined fee. This will allow joint members to vote and participate in General Assemblies and all international standards setting processes; and
- FSC Australia can receive a portion of the International membership fee if we implement the joint membership program, ensuring a stronger local organisation; and
- Compliance with the Procedure for the Operation of the FSC Network FSC PRO 60-006 and the provisions of the annual Co-operation Agreement and other program administration requirements; and
- Compliance with the Australian Charities and Not For Profits Commission Act 2012; and
- Allow the Board to appoint a person who is completely independent of the Organisation to the position of Independent Chair. This will enable professional and consistent governance of the Organisation, help avoid allegations of conflicts of interest and ensure the voice of FSC Australia, in the event of CEO absence, is not confused with the voice of personal or representative interests of Directors. This person would be an Officer pursuant to Rule 14.6. Currently the Constitution does not allow a Chair to be an externally appointed Officer, on construction of the rules requiring appointment of a Chair from 'one of their number' (13.5). Amendment is required to allow this to happen.

**Background and Explanation of Issues**

1. FSC Australia is required to operate pursuant to the Procedure for the Operation of the FSC Network FSC PRO 60-001 and is subject to an annual Cooperation Agreement whereby the use of the trademark is licensed to RFMA Ltd to enable operation as a National Office. A Self-Assessment is completed annually, and an action plan in order to address the compliance issues arising must be put in place. The inconsistencies in membership criteria create some areas of non-compliance for FSC Australia.
2. FSCA is required to administer and implement international programs, including a joint membership program following a series of motions approved by the International Membership at the General Assembly in 2011, with a vision to becoming 'One Global Organisation';

3. A formerly constituted Board in or about 2010 created the *Guidelines for Membership Applicants* which seek to put a level of process and rigour around selection and approval of members. These create further inconsistencies between the requirements for International and Australian membership and will upon new amendments accepted at the AGM, cease to operate;

4. The Membership Committee has for approximately 2 years reviewed the different requirements for membership between RFMA and FSC International and has not yet been able to reconciled a way forward, due to the different Constitutional provisions. The inconsistencies create hierarchical and technical difficulties to implement joint membership. Similarly, questions arise as to how FSC as a whole (as in the two organisations) would handle any of the following foreshadowed situations
   - An applicant to one failing to meet the criteria but meeting the criteria of the other; and
   - The situation where the membership rules of the two organisations require different information to be submitted, thus processes cannot be streamlined and applications for Joint Membership processed in a simple manner.
   - An Australian Member being found by the International Board to have failed to meet the requirements of the Policy for Association (FSC-POL-01-004).

These questions have the ability to create reputational risk for the FSC System and need to be addressed before they may arise, and to ensure the streamlined workings of the Organisation in compliance with its International Contracts and Procedures.

5. There are mistakes and drafting inaccuracies that need to be corrected in the Constitution.
   - There is the word ‘or’ missing between paragraph 3.13(a)(i) and 3.13(a)(ii) which introduces uncertainty in interpretation as to whether it has to be either or both of these elements that need to be met in order to invoke the provision.
   - In some places the word *person* is used without referring to the defined word *Person* creating circular references and uncertainty. This is a drafting error and needs to be fixed.
   - Some provisions incorrectly cross-refer due to drafting error.

6. The FSC International governing rules relating to membership are found in Title Two of the International Statutes, in the Eleventh to the Seventeenth Statute. We have reproduced these rules as exactly as possible and referred to them. We enclose the relevant rules for your review.
TITLE TWO
MEMBERS

ELEVENTH. The Organization shall be formed by Members, which shall be those individuals or legal entities who participated in the incorporation of the Organization, and those that could be later admitted as Members by the General Assembly in accordance with the provisions included in these Statutes.

Legal entities admitted as Members shall designate a representative before the Organization, who will be responsible for the relationship between the Organization and the Member and who will also represent the entity at the General Assembly. This is in the understanding that: (i) individual FSC members cannot be appointed as designated representatives of a Member of the Organization, and (ii) one person cannot represent more than one organizational member.

As further explained in Title Three of these Statutes, the General Assembly of the Organization is made up of three chambers. The Organization’s membership criteria to the three chambers is described in Clause Twentieth.

TWELFTH. The individuals or legal entities wishing to become Members shall deliver a written or electronic application (including by e-mail) to the Board of Directors. Applications must be accompanied by the following information.

1. A statement of support for the Organization describing how the organization or individual is meeting the tenets of the Organization. In the case of organizational members, this support shall take the form of a statement from its governing body.

2. In the case of organizations, this must include statutes, annual reports or other information regarding funding and activities, and any publicly available accounts, and list of members (if relevant).

3. In the case of a non-profit organization, evidence of charitable or not-for-profit status.

4. In the case of prospective members of the economic chamber, detailed documentation, describing the organization or individual’s commercial activities, details of forest operations or sources, including a description of how active commitment to FSC and its Principles and Criteria is being, or will be, implemented, and, for organizations, the identity of directors, the parent company and other relevant commercial relationships. At the request of the prospective member, the Board may treat financial information from the prospective member as confidential.
5. A statement of support for the application from two FSC Members in good standing, in the understanding that at least one letter should be from a member of the chamber to which the prospective member is applying to join, and preferably from the same sub-chamber.

As part of the application process, prospective members must adhere to the FSC Policy for Association (as issued and defined by the Board of Directors).

Upon receipt of the membership application, the Board of Directors shall consider it and ask for additional information if deemed necessary. The Board of Directors may then consult with the National Office (as defined below) in the country where the applicant is based. The Board of Directors shall assess whether:

A. The organization is *bona fide*.

B. There are any existent social, environmental or legal grievances. The Organization reserves the right to explore any grievances from its Members concerning a prospective member, its activities or operations. Applications will be held as pending until these grievances are resolved, if considered by the Board of Directors as substantial.

C. The candidate genuinely supports FSC and its activities.

If the opinion of the Board is favorable on these matters, the organization or individual is admitted to the membership on a provisional basis until confirmed in the next General Assembly. At least every six months the Board shall publish new applications for membership and allow the opportunity for existing Members to challenge any applications recommended by the Board of Directors. Challenges will need to be supported by written documentation and endorsed by at least two Members. If no challenge is received six months after the first publication of the application, the membership application is considered to be approved pending only confirmation by the General Assembly. In the case of a challenge, the final decision will be taken by a vote of the General Assembly.

Once admitted to the membership, each new organizational Member shall ensure that an announcement of its admission is circulated to its own stakeholders with a view to disseminating the objectives of FSC.

Members shall promptly inform the Organization’s Director General of any important change in the particulars supplied in support of their application for membership, especially when these changes could affect their eligibility for membership to the chamber they are originally assigned to.

The Board will be entitled to issue manuals to regulate application procedures and to delegate on the Secretariat its faculties and responsibilities set forth above with respect to the application process for new members.
SEVENTEENTH. Membership of the Organization will cease in any of the following cases.

1. Due to voluntary resignation, submitted to the Board of Directors in writing, two months prior to its effective date. The Member resigning from the Organization’s membership will not be entitled to any refund of membership dues paid.

2. Due to the issuance by the General Assembly of a destitute resolution. The following shall be considered as destitution causes: (i) to participate in activities contrary to the interests of the Organization, as outlined in the FSC Policy for Association; or (ii) the Member no longer meets membership requirements, or (iii) non-payment of annual dues for two consecutive years.

A destitution process may be initiated by any member of the Board of Directors or by a Member supported by two other Members. Any proposed destitution must be submitted to the Board of Directors in writing accompanied by a justification. The Board of Directors will review the matter and if it considers that the complaint is substantiated it will grant the Member the opportunity to present its position on the matter within one month from the date on which the Member is informed in writing (including by e-mail) of the destitution process and its supported justifications.

If within one month of the date on which the Member is informed of the Board's preliminary conclusion the Member does not challenge in writing (including by e-mail) this conclusion before the Board, the Member shall be considered to have withdrawn from the Organization’s membership. If the Member does challenge the Board’s preliminary conclusion, the Board of Directors shall submit the proposal together with the arguments of the Member for a decision of the General Assembly, which shall be final.

As listed above, non-payment of annual dues for two consecutive years is also considered as a destitution cause. If the dues of a Member are two years in arrears, the Member shall be informed in writing (including by e-mail) of this circumstance and will be granted the opportunity to pay all outstanding dues within one calendar month. If within such period the Member does not pay the outstanding dues, the Member shall be considered to have withdrawn from the Organization’s membership. If the Member challenges its destitution, the Board of Directors shall submit the case for a decision of the General Assembly, which shall be final.

3. Due to the death of a Member, when the Member is an individual. In such an event, membership may not be assigned to another individual, not even by will or in any other forms. All the contributions made during the lifetime of the Member will be considered as part of the patrimony of the Organization.

4. Due to the dissolution and/or liquidation of an organizational Member. In such an event, membership may not be assigned to another entity in any form. All the contributions made by the organizational Member to the Organization will be considered as part of the patrimony of the Organization.

If a former Member, who is considered to have voluntarily withdrawn from the Organization or that was destitute from the membership due to non-payment of annual dues for two consecutive years, seeks readmission to membership, all outstanding dues at the time of withdrawal or destitution must be paid in advance. After this has been done, the Member may be readmitted at the discretion of the Board without having to complete the application procedures for new Members. A Member that was destitute due to any other reason could be eligible to apply for readmission to the Organization if previously approved by the Board. In this case, the resolution of the circumstances that had led to the destitution should be required before the destitute member can reapply.
7. International membership carries with it the power to participate in the General Assembly, vote on important high level policy instruments and influence the composition of the FSC International Board. Membership of FSC Australia does not. Numerous members of FSC Australia have indicated that they wish to be members of both organisations, and are aware that Joint Membership is being offered in other countries where domestic membership is in place. On investigation, many countries administer only an International Membership scenario, but their Constitutions provide for selection of Directors in the usual way from that suite of International Members. Therefore it is less expensive for the members and they have the right to influence both. It is not suggested anywhere that this is appropriate in Australia with a strong domestic membership. However, FSCA is in a position to be able to offer a 'joint' membership offering should the issues be able to be resolved.

Kind Regards,

Natalie Reynolds

Chief Executive