



**POLICY**

**LEGAL COMPLIANCE**

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<b>Relevant legislation</b>	Higher Education Act 2008 Higher Education Regulations 2009 Higher Education (Qualifications) 2010 Higher Education (Qualifications) (Amendment) 2013 Revised Edition of the Laws (Consequential Amendments) Regulations 2016 Higher Education (Amendment) Act 2017
<b>Related FHEC documents: procedures/guidelines, etc.</b>	7-1-Procedures: Handling alleged and confirmed breaches of legislation Fiji Higher Education Strategy

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## 1.0 POLICY OBJECTIVE

As part of its Provider Monitoring Framework, this policy sets out the Fiji Higher Education Commission's approach to monitoring legal compliance. This will provide assurance that all Higher Education Institution (HEI) operations are conducted in accordance with relevant legal obligations, and encourage proactive, accountable management. In particular, this policy is designed to protect the interests of students within Fiji's higher education system.

## 2.0 POLICY

### *Scope of policy*

- 2.1 This policy applies to all Higher Education Institutions operating in Fiji. This policy includes compliance with all Fiji laws and regulations that govern HEI operations, plus any relevant international and Commonwealth legislation, regulations, codes, guidelines, protocols and frameworks.

### *Responsibilities for legal compliance*

- 2.2 Heads and governors of HEIs are responsible for ensuring that their organisations are legally compliant and creating a positive compliance culture. They will have systems and processes in place to ensure legal compliance within their own organisations.
- 2.3 In the interests of achieving the best quality higher education provision, the Commission is committed to fostering a strong compliance culture within the system and supporting HEIs to achieve this.

### *Monitoring legal compliance*

- 2.4 The Commission may monitor HEI compliance with legal obligations through any means it has at its disposal such as general relationship management, complaints (which may include anonymous complaints which the FHEC deems to merit investigation) and external audit and review processes.
- 2.5 If a complaint is made or other evidence emerges about matters beyond the remit of the Commission, the FHEC will advise the complainant to contact the appropriate government department who can best deal with the matter or advise that depart directly as appropriate.
- 2.6 Commission staff members have an obligation to report suspected or potential compliance failures to their line manager/supervisor.
- 2.7 Heads and governors of HEIs have a responsibility to advise the FHEC of any serious breaches of legal compliance they uncover within their organisations.

### ***Interventions by the Commission***

- 2.8 In cases of self-reporting, the FHEC must satisfy itself that internal actions within the HEI to remedy the situation are effective and sufficient. If they are not satisfied, the Commission must intervene.
- 2.9 Alleged breaches of legislation by an HEI identified by or to the FHEC will be assessed by the Commission for severity and risk and appropriate action determined. Planned actions must be communicated to the head of the HEI and, where appropriate, agreed with them.
- 2.10 Where the alleged breach involves the head of the HEI, the governors must be informed.
- 2.11 Where the action results from an anonymous complaint, the FHEC will protect the confidentiality of the person(s) concerned.
- 2.12 Actions may include one or more of the following:
- 2.12.1 Supporting an internal investigation
  - 2.12.2 Establishing an external investigation
  - 2.12.3 Requiring the HEI to suspend of staff involved pending the outcome of an investigation
  - 2.12.4 Requiring the HEI to suspend specific activities pending an investigation
  - 2.12.5 Requiring appropriate remedial actions of staff, departments or organisation when non-compliance has been demonstrated to occur
  - 2.12.6 Handing serious matters to the police or other enforcement agency.
- 2.13 In determining appropriate action to take, the FHEC will take into consideration how to best protect the interests of any students likely to be affected by the compliance breach.
- 2.14 In determining remedial action, the FHEC will determine the risk of such a breach re-occurring and whether the HEI has appropriate systems in place to prevent such breaches occurring again.
- 2.15 The FHEC may require an institution to implement system improvement and report on the effectiveness of that system improvement in a specified time frame or time frames.
- 2.16 The FHEC will monitor the effectiveness of agreed remedial actions and take further action as necessary if these are not effective.

### ***Register of breaches requiring FHEC intervention***

- 2.17 The FHEC will keep a central Legislative Breach Register that records;
- 2.17.1 Proven compliance breaches requiring FHEC intervention,
  - 2.17.2 The actions that were taken, and

2.17.3 The effectiveness of those actions.

This record will inform the nature of organisational reviews.

### ***Request for reconsideration of a decision by the FHEC***

2.18 Providing a matter has not been referred to law enforcement agencies or other investigating authority, any party (complainant, HEI or another affected party) may apply to the director of the FHEC for reconsideration of the decisions resulting from the investigation on the following grounds:

- a) Evidence provided not properly considered;
- b) Provision of new evidence (note: this excludes evidence previously withheld by that party); or
- c) That the process failed to apply the principles of natural justice.

2.19 In consultation with the Commissioners, the director will establish an appropriate process to review the decision.

## **3.0 BACKGROUND**

3.1 This policy is designed to protect the interests of students and other stakeholders including the Fiji government, particularly where HEIs can access public funding.

3.2 Primary accountability for legal compliance lies with the HEIs themselves. Where breaches are inadvertent or minor, the FHEC will endeavour to work with HEIs to ensure systems are in place to remedy the breach and prevent it re-occurring. Where breaches are more systematic and serious, the FHEC needs to (and will) take whatever level of direct action it deems appropriate.

## **4.0 DEFINITIONS**

<b>Legislative compliance</b>	Refers to systems at corporations and public agencies to ensure that personnel are aware of and take steps to comply with relevant laws and regulations. In general, compliance means conforming to a specification or policy, standard or law that has been clearly defined.
<b>Legislative Breach Register</b>	An FHEC register of all proven breaches requiring FHEC intervention, details of the investigation outcomes, remedial actions taken and their effectiveness.
<b>Serious breach</b>	Any breach of legislation that is deemed to be high risk, with the potential to have a serious impact on the HEI, including: <ul style="list-style-type: none"><li>• An investigation by a regulator or statutory body;</li><li>• Significant disadvantage to existing or past students;</li><li>• the potential for a sanction, enforceable undertaking, fine, penalty, compensation payment or criminal prosecution; or</li></ul>

	<ul style="list-style-type: none"> <li>• A potential impact to business processes or continuity.</li> </ul>
<b>Higher Education Institution</b>	<p>An educational institution in or operating in Fiji that provides award-conferring post-secondary education or provides educational support services for students of other higher education institutions including overseas institutions, including but not limited to:</p> <ul style="list-style-type: none"> <li>a) technical and vocational education and training centres;</li> <li>b) information technology centres;</li> <li>c) secretarial schools;</li> <li>d) language schools;</li> <li>e) hospitality training centres;</li> <li>f) educational agencies;</li> <li>g) caregiving training providers;</li> <li>h) performing arts and sports academies;</li> <li>i) religious educational institutions;</li> <li>j) colleges; and</li> <li>k) universities.</li> </ul>
<b>Heads of HEIs</b>	The senior manager of the HEI, <i>e.g.</i> Vice Chancellor, Chief Executive, President, Executive Director.
<b>Governors of HEIs</b>	The council or board of directors with governance oversight of the HEI

#### 5.0 APPROVAL BY THE CHAIRPERSON, FIJI HIGHER EDUCATION COMMISSION



Dr Milika Sobey  
Chairperson  
Fiji Higher Education Commission

Date 22/06/17

