

NATIONAL RESEARCH COUNCIL BILL 2016  
(BILL NO. 5 OF 2016)

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# BILL NO. 5 OF 2016

## A BILL

FOR AN ACT TO ESTABLISH THE NATIONAL RESEARCH COUNCIL AND TO  
REGULATE THE OPERATIONS OF THE NATIONAL RESEARCH FUND AND  
RELATED MATTERS

ENACTED by the Parliament of the Republic of Fiji—

### PART 1—PRELIMINARY

#### *Short title and commencement*

- 1.—(1) This Act may be cited as the National Research Council Act 2016.
- (2) This Act comes into force on the date or dates appointed by the Minister by notice in the Gazette.

#### *Act to bind the State*

2. This Act binds the State.

#### *Interpretation*

3. In this Act, unless the context otherwise requires—

“Council” means the National Research Council established under section 5;

“Director” means the Director of the Council appointed under section 7;

“Fund” means the National Research Fund;

“member” means a member of the Council;

“Minister” means the minister responsible for education;

“Parliament” means the Parliament of the Republic of Fiji;

“person” means a natural or legal person, including a company, association or body of persons whether corporate or unincorporate;

“protected information” means information, the disclosure of which may reasonably be expected to disclose a trade secret or adversely affect a person in relation to the lawful business affairs of the person or the person’s research interests, including any research proposal or idea contained in or relating to the research proposal;

“research” means a systematic investigation and study of materials and sources in order to establish facts and reach new conclusions, that is undertaken by a researcher who requests or acquires funding for research from the Council;

“research proposal” means a proposal submitted to the Council for funding of the activities outlined in the proposal; and

“researcher” means a person who undertakes any research.

*Objective of this Act*

**4.** The objective of this Act is to make provision for a national body to pursue and fund activities designed to—

- (a) raise the standards and development of research, and development in all scientific, health, educational, industrial, technological, social and economic areas; and
- (b) encourage or promote consideration of ethical issues relating to research and development.

**PART 2—NATIONAL RESEARCH COUNCIL**

*Establishment of the National Research Council*

**5.—(1)** This section establishes the National Research Council as a body corporate with perpetual succession and a common seal.

(2) The Council may enter into contracts and sue and be sued in its corporate name and has the power to acquire, hold and dispose of property, both real and personal, and generally do all such acts and things that are necessary for or incidental to the performance of its functions under this Act or any written law.

(3) The affixing of the seal of the Council must be authenticated in the manner specified under section 48 of the Interpretation Act (Cap. 7) and when so authenticated must be judicially noticed.

(4) If a document appears to bear the common seal of the Council, it must be presumed, in the absence of proof to the contrary, that the common seal of the Council was duly affixed to such document.

*Composition of the Council*

**6.—**(1) The Council is to be constituted by—

- (a) the chairperson to be appointed by the Minister;
- (b) the permanent secretary responsible for strategic planning;
- (c) the permanent secretary responsible for education;
- (d) three persons who are or have been actively engaged in research, including academic research to be appointed by the Minister; and
- (e) such other persons to be appointed by the Minister, each representing an institution designated by the Minister by notice in the Gazette.

(2) The members may hold office for a term up to 3 years and are eligible for reappointment.

(3) The remuneration of members of the Council, or of any committee appointed by the Council, who are not public officers, must be determined by the Minister.

*Director of the Council*

**7.—**(1) There must be a Director of the Council who is to be appointed by the Council on such terms and conditions as determined by the Council.

(2) The functions of the Director are to—

- (a) manage the affairs of the Council, maintain and promote the efficiency and good order of the Council;
- (b) appoint and employ persons, subject to terms and conditions determined by the Director, for the purposes of this Act;
- (c) keep the Council informed of the accounts maintained by the Council and advise and make recommendations to the Council on the application of such accounts; and
- (d) submit an annual report to the Council on the operations of the Council.

*Powers of the Council*

**8.** The Council has all the powers necessary to enable it to perform its functions, including the following—

- (a) encourage the utilisation of research and development results to promote national development and sustainability;
- (b) promote the development of a national intellectual database to form the basis of a vibrant and knowledgeable economy;

- (c) determine the fees to be paid or charges to be levied, in respect of any activity it undertakes or facilitates; and
- (d) set up committees for the purpose of conducting any scientific research.

*Functions of the Council*

**9.** The functions of the Council are to—

- (a) administer the Fund, including the development of rules for the allocation of funds;
- (b) fund any research after consideration of the research proposal and all relevant circumstances surrounding the request for funding;
- (c) plan, co-ordinate and develop research and development policies and programmes for consideration by the Government;
- (d) promote, evaluate and advance research and development, funded by the Council, in all scientific, health, educational, heritage, industrial, technological, social and economic areas;
- (e) ensure that research is conducted in accordance with the highest ethical, human welfare and environmental protection standards;
- (f) provide reasonable access to researchers for global, scientific, health, educational, heritage, industrial, technological, social and economic research knowledge and encourage and strengthen co-operation among researchers both domestically and internationally;
- (g) amalgamate the research needs of government ministries, and seek a unified and transdisciplinary approach;
- (h) identify areas of national interest that require specialised research, and seek viable solutions;
- (i) have custody and control of all property, funds, fees and investments of the Council;
- (j) prepare, from time to time, for the approval of the Minister, a statement of objectives, including a corporate plan and proposed funding for such objectives and plan;
- (k) for the purposes of responsible, effective and efficient use of resources, ensure that systems are established for accountability and transparency;
- (l) subject to the provisions of this Act, carry out any activity necessary or expedient to carry out the functions of the Council;
- (m) advise the Minister on matters related to priority research, its relevance and development; and
- (n) carry out any other function that the Minister deems necessary from time to time.

*Council meetings*

**10.**—(1) The Council must meet at least twice annually and at such time and place as the chairperson may determine.

(2) At any meeting of the Council, seven members of the Council constitute a quorum.

(3) Any issue raised or to be decided at any meeting of the Council must be decided by a majority of the votes of the members present and voting, and in the event of an equality of votes, the chairperson has a casting vote.

(4) Subject to other provisions of this Act, the Council must conduct its own affairs, operations and internal procedures.

*Council policies*

**11.** Subject to other provisions of this Act and any other written law, the Council may make policies for the efficient management and good governance of the academic, administrative and financial affairs of the Council.

PART 3—INTERESTS AND PROTECTION

*Disclosure of interests*

**12.**—(1) If any member of the Council is present at a meeting of the Council and has a direct or indirect personal, pecuniary or other interest in the matter being discussed or considered, the member must immediately disclose that interest and, unless the Council otherwise determines, take no further part in the discussion or consideration of the matter.

(2) A disclosure under subsection (1) must be recorded in the minutes of the meeting of the Council.

*Protection of members of the Council*

**13.** A member of the Council is not personally liable for any act done in good faith and without gross or wilful negligence in respect of the performance of any function or the exercise of any power by that member under this Act.

*Confidentiality of protected information*

**14.**—(1) No person exercising any function under this Act is to disclose any research proposal or any information pertinent to any research proposal to any other person unless the disclosure is—

- (a) made with the written consent of the person to whom the information relates;
- (b) for the purpose of the administration or enforcement of this Act; or
- (c) in compliance with the requirement of any court, tribunal, authority or person having lawful authority to require the production of documents or the answering of questions.

(2) For the purpose of this section, the reference to a person disclosing any protected information includes the person permitting any other person to have any access to any record, document or other thing containing that information which is in the person's possession or under the person's control by virtue of the person being or having been a member or an employee of the Council.

*Protection of animals in research*

**15.** A researcher must exercise all due diligence and take reasonable steps to ensure that the research is carried out with reasonable measures concerning the safety of animals and to prevent any violation, abuse or ill treatment of animals when undertaking any research that involves animals.

*Protection of the environment, natural resources and heritage in research*

**16.** A researcher must exercise all due diligence and take reasonable steps to ensure that the research does not harm the environment, and must not carry out any research that can adversely affect the environment or any natural heritage or resource.

**PART 4—COUNCIL FINANCES**

*National Research Fund*

**17.—(1)** The Council must maintain a sustainable fund, to be known as the National Research Fund, which must be used for funding research and development proposals according to the priorities established by the Council.

(2) The objective of the Fund is to make provision for the funding and administration of research and development activities with the view of meeting the needs for national development.

*Funds of the Council*

**18.—(1)** The funds of the Council are to consist of—

- (a) moneys appropriated from the Consolidated Fund and authorised to be paid into the Fund by Parliament;
- (b) revenues allocated to the Fund by the Minister or under any written law;
- (c) moneys earned by the Council through fees and charges, including revenues gained through the sale of any property produced or from dealing with any intellectual property rights emerging from investments made in the course of any research and development activity paid for with the money from the Fund;
- (d) grants, endowments, donations or contributions to the Fund;
- (e) moneys borrowed by the Council; and
- (f) returns on investments made by the Council.

(2) The Director is the accounting officer for the Council.



*Budget*

**19.**—(1) The Council must, each year, propose and adopt a budget for the Council for the following year.

(2) The Council must ensure that it operates within the Council’s budget, and under no circumstance becomes insolvent or financially paralysed.

(3) The funds collected through grants, endowments, donations or contributions must be used primarily for funding research grants.

*Administration of the Fund*

**20.** All expenses relating to or arising from the administration of the Fund must be charged upon and payable out of the Fund.

*Council’s financial year*

**21.** The financial year of the Council is a calendar year.

*Auditing of accounts and annual reports*

**22.**—(1) The Council must cause proper accounts of the financial affairs of the Council to be maintained, and has the power to appoint an auditor to carry out an annual audit of its accounts and other financial statements.

(2) The Council must—

- (a) prepare an annual report of the Council for its operations for the preceding year; and
- (b) submit the report, including its audited accounts, to the Minister before 30 June in each year.

(3) The Minister must, as soon as practicable after receiving the report of the Council, lay such report before Parliament.

*Application for funding*

**23.**—(1) A person may apply to the Council for funding of a research.

(2) An application under subsection (1) must be accompanied with the following—

- (a) the person’s full name and residential address;
- (b) the qualifications held by the person, as the case may be;
- (c) an approved fee;
- (d) a research proposal;
- (e) any other particulars as may be required by regulations; and
- (f) any other particulars as may be required by the Council.

*Approval of funding*

**24.** The Council, after consideration of the research proposal and all relevant circumstances surrounding the request for funding, may approve, with special terms and conditions, an application under section 23 and the funding of the research.

## PART 5—MISCONDUCT OR UNETHICAL BEHAVIOUR

*Misconduct or unethical behaviour*

**25.—**(1) Complaints alleging misconduct or unethical behaviour must be made in writing to the Council and the Council must conduct a formal inquiry into the allegation.

(2) Following a formal inquiry under subsection (1), the Council must make a decision to—

- (a) not take any action against the alleged person and close the matter;
- (b) terminate the research or any approval of the research upon receiving evidence of the misconduct or unethical behaviour; or
- (c) remedy the situation as may be required by regulations.

(3) In this section—

- (a) “misconduct” or “unethical behaviour” means a breach of a provision of this Act, including the following—
  - (i) fabrication, falsification or misrepresentation in reporting or of any finding or result;
  - (ii) plagiarism;
  - (iii) misleading ascription of authorship;
  - (iv) failure to declare and manage conflicts of interest without any reasonable excuse;
  - (v) falsification, misrepresentation or deception in a proposal to obtain funding;
  - (vi) compromising the safety of human participants, or the wellbeing of animals or the environment;
  - (vii) negligence of the obligations and duties under the Act; and
  - (viii) wilful concealment or facilitation of research misconduct by others; and
- (b) “research misconduct” does not include honest differences in judgment in management of the research project, and may not include honest errors that are minor or unintentional.

*Termination of appointments of members*

**26.—**(1) This section applies to an appointment made under Part 2.

(2) The Minister must terminate the appointment of any member of the Council if the member—

- (a) is unable to perform the functions of that office, whether arising from infirmity of body or mind;

- (b) is absent from three consecutive meetings of the Council without leave of absence granted;
- (c) becomes or has, in Fiji or elsewhere, been declared bankrupt and has not been discharged;
- (d) has, in Fiji or elsewhere, been convicted of an offence that carries an imprisonment term of more than 12 months; or
- (e) has misused the funds of the Council.

(3) If the Minister terminates an appointment, the Council must give the member a written notice—

- (a) informing the member of the termination of the appointment; and
- (b) setting out the reasons for the termination.

(4) The Minister has the overriding authority over the Council on any operative, disciplinary or policy matter concerning the Council or the members of the Council.

## PART 6—MISCELLANEOUS

### *Regulations*

**27.** The Minister may make regulations prescribing matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### *Non-discrimination*

**28.** A person submitting a research proposal to the Council for funding must not be discriminated against, directly or indirectly, on the grounds of his or her race, culture, ethnic or social origin, colour, place of origin, sex, gender, sexual orientation, gender identity and expression, birth, primary language, economic or social or health status, HIV/AIDS status, disability, age, religion, conscience, marital status or pregnancy.

## NATIONAL RESEARCH COUNCIL BILL 2016

### EXPLANATORY NOTE

*(This note is not part of the Bill and is only intended to indicate its general effect)*

#### 1.0 BACKGROUND

- 1.1 Research is critical for the growth and development of any country.
- 1.2 The National Research Council Bill 2016 (**'Bill'**) seeks to *inter alia* establish the National Research Council (**'Council'**) and to regulate the operations of the National Research Fund (**'Fund'**). By doing so, the Bill intends to raise the standards and development of research, including development in all scientific, health, educational, heritage, industrial, technological, social and economic areas.
- 1.3 Consultations on the Bill were held with the Ministry of Education, Heritage and Arts, the Fiji National University, the University of the South Pacific, the University of Fiji, the Sugar Research Institute of Fiji, the Fiji Institute of Applied Studies and the Koronivia Research Station.

#### 2.0 FEATURES OF THE BILL

- 2.1 Part 1 of the Bill provides for the short title and the commencement provisions. The new Act will come into force on the date or dates appointed by the minister responsible for education (**'Minister'**) by notice in the Gazette.
- 2.2 Part 1 also affirms that the State will be bound by the provisions of the Bill, and provides the definitions of terms used throughout the Bill. In addition, Part 1 outlines the objective of the Bill.
- 2.3 Part 2 of the Bill establishes the Council. The Council will consist of:
  - (a) the chairperson to be appointed by the Minister;
  - (b) the permanent secretary responsible for strategic planning;
  - (c) the permanent secretary responsible for education;

- (d) three persons who are or have been actively engaged in research, including academic research to be appointed by the Minister; and
  - (e) such other persons to be appointed by the Minister, each representing an institution designated by the Minister by notice in the Gazette.
- 2.4 Part 2 also provides for the powers and functions of the Council. These are outlined in clauses 8 and 9 of the Bill. Also, it provides for meetings of the Council and the conduct of such meetings.
- 2.5 Part 3 of the Bill compels the disclosure of interests by members of the Council. If a member of the Council is present at a meeting and has an interest in a matter being discussed or considered by the Council, whether direct or indirect, pecuniary or otherwise, the member must immediately disclose that interest and take no further part in the discussion or consideration of the matter, unless the Council otherwise determines.
- 2.6 Part 3 also provides protection to members of the Council.
- 2.7 Part 4 of the Bill essentially provides for the Fund. The Fund will be used for funding research and development proposals, and will consist of—
- (a) moneys appropriated from the Consolidated Fund and authorised to be paid into the Fund by Parliament;
  - (b) revenues allocated to the Fund by the Minister or under any written law;
  - (c) moneys earned by the Council through fees and charges, including revenues gained through sale of any property produced or from dealing with any intellectual property rights emerging from investments made in the course of any research and development activity paid for with the money from the Fund;
  - (d) grants, endowments, donations or contributions to the Fund;
  - (e) moneys borrowed by the Council; and
  - (f) returns on investments made by the Council.
- 2.8 Part 4 of the Bill also enables a person to apply to the Council for funding of a research. The Council, after consideration of the research proposal and all relevant circumstances surrounding the request for funding, may approve, with special terms and conditions, an application and the funding of the research.
- 2.9 Part 5 of the Bill outlines the concept of misconduct or unethical behaviour. It also empowers the Minister to terminate the appointments of members of the Council.

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- 2.10 Part 6 of the Bill empowers the Minister to make regulations that would give effect to the provisions of the Bill. It also promotes non-discrimination of persons on the grounds of race, culture, ethnic or social origin, colour, place of origin, sex, gender, sexual orientation, gender identity and expression, birth, primary language, economic or social or health status, HIV/AIDS status, disability, age, religion, conscience, marital status or pregnancy.

### **3.0 MINISTERIAL RESPONSIBILITY**

- 3.1 The new Act comes under the responsibility of the Minister.

A. SAYED-KHAIYUM  
Attorney-General