

## **SOPAC 38<sup>th</sup> Session Governing Council Decision on the RIF Agenda item extracted from the Summary Record of the Proceedings**

### **271. Resolution<sup>1</sup>**

- i) The Governing Council of SOPAC considered a legal memorandum regarding the implications for SOPAC associated with the implementation of the RIF decision in regard to the transfer of the functions of SOPAC into SPC and SPREP. Council expressed its appreciation to the law firm K&L Gates for their services facilitated through the SOPAC/STAR network and the legal advice given in the memorandum. The memorandum is attached in Appendix 5.
- ii) Council considered the matter at length and the verbatim report of the discussion is appended to this Summary Record of the 38<sup>th</sup> Annual Session of Council as Appendix 5.
- iii) Council recognised that the challenge is to effectively address the legal and practical implications of implementation of the RIF decision by the January 2010 timeline set by Leaders in Niue in 2008, while complying with the legal requirements of the "Agreement Establishing SOPAC", the timelines in the Agreement; external legal obligations, and the need to preserve service delivery to its island members.
- iv) Council noted with pleasure the assurances provided by Australia, New Zealand and the European Union in regard to their funding commitments in support of the SOPAC work programme when it has been transferred to SPC and SPREP. Council also noted the difficulty for Australia and New Zealand to enter into long-term funding arrangements while there was still some uncertainty about the transfer of functions, and noted the need to secure funding from non-traditional donors.
- v) Council further noted with pleasure the unequivocal assurances provided by the CEOs of SPC and SPREP that they would support and actively pursue the continuation of STAR and PMEG.
- vi) Council concluded and agreed as follows:
  - a) The SOPAC Agreement is an international agreement between states and territories.
  - b) Compliance with the 2007/8/9 Forum RIF decisions must accord with the principles of the Pacific Islands Forum in regard to good governance, transparency and accountability, and Council is vested with this responsibility under the SOPAC Agreement.
  - c) The full and effective implementation of the RIF decision from Jan 2010 will require a transition period, during which issues such as funding contracts (current and new), employee contracts and relationships, intellectual property, budget and governance must be addressed and resolved through the development of Integration Agreements between SOPAC and the receiving organisations (SPC and SPREP).
  - d) Council must continue its role as provided for in the SOPAC Agreement, supported by a Director, during this transition period, and recognised that this transition period had already begun.
  - e) The Director of SOPAC together with the Director General of SPC and Director of SPREP in the period to July 2010 develop draft detailed Integration Agreements to be circulated to members three months ahead of the 2010 Council meeting. Council will consider and approve these agreements at its 2010 meeting.

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<sup>1</sup> This summary record shows the final resolution. Its contents were discussed at various times during the meeting, not only under Agenda item 10.1

- f) These Integration Agreements with SPREP and SPC must: ensure all parties are in agreement as to the key terms of the transactions; provide a “Road Map” for orderly implementation; provide employees and third parties with certainty regarding structure of transactions and composition of the resulting entities; and include oversight and recourse procedures.
  - g) It is envisaged that the SOPAC/SPREP agreement and the SOPAC/SPC agreement dealing with energy and ICT outreach will be relatively simple and straightforward.
  - h) The SOPAC/SPC agreement dealing with the core of the SOPAC work programme being integrated into SPC as a new Applied Science and Technology Division as agreed by the July 2009 SOPAC Council meeting may require suspension, dissolution or amendment to the SOPAC Agreement.
  - i) Notices of proposals for suspension, dissolution or amendment to the SOPAC Agreement in accord with Article 14, to facilitate full and effective implementation must be circulated by July 2010 three months ahead of the next annual session of Council.
  - j) Any decisions at the 2010 meeting in regard to suspension, dissolution or amendment of the Agreement, will require ratification by the members, recognising that a ratification by 2/3rds (12 out of 17) of the full members is required before the decisions may be implemented.
  - k) In order to have full and effective implementation of the RIF decision and complete the transfer of SOPAC functions, Council noted alternatives to suspension or dissolution. Council agreed to defer consideration of this issue until an appropriate later date<sup>2</sup>.
  - l) Council through the Chair will seek the agreement of SPC to hold its next annual session in close conjunction with the 2010 meeting of the CRGA. It would be convenient for the SOPAC Council to meet immediately before CRGA thus the latter could be informed of the Council’s decisions.
  - m) Council requested the Director to inform the Secretary General of PIFS, Director General SPC, Director of SPREP and all SOPAC donors and partners of the outcomes of its deliberation on the progress with implementation of the RIF reform and seek their support during the transition period and beyond.
- vii) Council recognised the second three-year contract of the current Director ends on 31<sup>st</sup> January, and the current Deputy Director ends on 31<sup>st</sup> March, and under the circumstances decided to revisit this matter under Other Business and in Closed Session.

272. Council endorsed the resolution as a way forward for implementing the Leaders’ decision on the rationalisation of SOPAC functions into SPC and SPREP and complying with the requirements of the Agreement Establishing SOPAC.

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<sup>2</sup> The example of the Western European Union and the Council of Europe