

22 March 2024

Lyn Camilleri  
General Manager, Competition Exemptions Branch  
Australian Competition and Consumer Commission  
GPO Box 3131 CANBERRA ACT 2601  
[exemptions@accc.gov.au](mailto:exemptions@accc.gov.au)

Dear Lyn/Ms Camilleri/General Manager,,

**RE: AA100435 - Application for revocation and substitution of an authorisation.**

The Recruitment, Consulting & Staffing Association (RCSA) is the peak industry body for the recruitment, staffing and workforce solutions industry in Australia and New Zealand, representing some 1500 companies and brands across the staffing sector.

I am writing to submit our application seeking revocation and substitution of our Code of Professional Conduct and Professional Conduct Grievance Intervention Guidelines from the ACCC. As you may already know from previous meetings, ACCC's authorisation of our current Code AA1000435 is due to expire 8 August 2024 and we have since made minor changes to the Code of Professional Conduct as well as the Professional Conduct Grievance Intervention Guidelines, which reflects required amendments and improvements identified through the last 5 years in operation and application.

We are requesting a revocation and substitution of the existing authorisation:

1. for ten years commencing on the date of authorisation, of the Code presently authorized with minor changes being;
  - a. updated definition of exploitation which encapsulates a higher standard of behaviour and;
  - b. update to the adoption section capturing volunteers as being bound by the Code
2. for ten years commencing on the date of authorisation, of:
  - a. the same elements of RCSA's Constitution and By-Laws as are presently authorised;
  - b. a Professional Conduct and Grievance Intervention Guidelines as are presently authorised with minor amendments, which are outlined in Attachment C to the document below.

This request is to enable time for the ACCC to fully consider our application for revocation and substitution with RCSA's minor changes to the Code of Professional Conduct and Professional Conduct Grievance Intervention Guidelines.

Please find attached the application along with relevant evidence and payment.

We are extremely grateful for the support provided to us by the ACCC in navigating this process and thank you for your consideration of our application.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Charles Cameron', with a long horizontal flourish extending to the right.

Charles Cameron  
Chief Executive Officer

# Application for revocation of an authorisation for proposed conduct and substitution of a replacement

## Information

### Applicants

#### 1. Provide details of the applicants for revocation and substitution, including:

##### 1.1. name, address (registered office), telephone number, and ACN

The Recruitment, Consulting and Staffing Association Limited  
ACN 078 606 416  
Level 9, 500 Collins Street, Melbourne VIC 3000  
PO Box 291 Collins St West  
VIC 8003 Australia

Tel: +61 3 9663 0555  
Fax: +61 3 9663 5099  
Email: [info@rcsa.com.au](mailto:info@rcsa.com.au)

##### 1.2. contact person's name, position, telephone number, and email address

Charles Cameron  
Chief Executive Officer  
Ph: +61 439 000 786  
Email: [ccameron@rcsa.com.au](mailto:ccameron@rcsa.com.au)

Lily Andrews  
Advocacy & Professional Standards Manager  
Ph: +61 448 332 610  
Email: [landrews@rcsa.com.au](mailto:landrews@rcsa.com.au)

##### 1.3. a description of business activities

The business activities affected by the application for authorisation are:

- dealings between members and the public (customers and workseekers) for the supply and acquisition of workforce services (e.g. labour-hire services; recruitment (placement) services; workforce consulting services)
- dealings between members in relation to the supply and acquisition of workforce services.

RCSA is a company limited by guarantee. Its objectives stated in its Constitution include:

- 1.3 (a) *to promote excellence, enterprise and integrity in the businesses of all Members and of individuals engaged by those businesses;*

- 1.3 (b) to advance education by improving knowledge and skill with respect to their responsibilities, duties and rights in the Employment Services Industry.
- 1.3 (d) The Association will foster ethical and procedural best practice among Members by:
- i. administering and regulating Member compliance with the Code for Professional Conduct;
  - ii. acting as facilitator of the resolution of, and appoint Committees to deal with, disputes between Members;
  - iii. regulating, as far as is possible, the relations between Members as well as regulating the relationship between Members and the general public.

RCSA is the peak industry body for recruitment, staffing and workforce solutions in Australia and New Zealand representing over thousands of companies and brands as corporate members. The association also includes two internal Member Groups; the first comprising nursing agencies, the Association of Nursing Recruitment Agencies (ANRA); and another comprising medical recruiters, the Association of Medical Recruiters Australia and New Zealand (AMRANZ).

Collectively, the recruitment and staffing sectors in Australia and New Zealand represent revenue in excess of \$30B with a wage bill in excess of \$21B. It's a growing and dynamic sector, contributing more than 400K jobs across Australia and New Zealand. Our members account for approximately 60% of the sector's turnover.

RCSA promotes and facilitates professional practice within the recruitment and staffing industry. It sets the benchmark for industry standards through representation, education, research and business advisory support to our member organisations and accredited professionals who are bound by the ACCC authorised RCSA Code for Professional Conduct through membership.

RCSA is a proud member of the World Employment Confederation, the voice of the employment industry at global level, representing labour market enablers in 43 countries and 11 of the largest international workforce solutions companies.

#### **1.4. email address for service of documents in Australia.**

[info@rcsa.com.au](mailto:info@rcsa.com.au), [advocacy@rcsa.com.au](mailto:advocacy@rcsa.com.au) (and email addresses of authorised persons as above)

#### **Authorisation to be revoked (the existing authorisation)**

### **2. Provide details of the authorisation sought to be revoked including:**

#### **2.1. the registration number and date of the authorisation which is to be revoked**

ACCC Registration number: AA1000435

Date Granted: 8 August 2019

Expiry Date: 8 August 2024

**2.2. other persons and/or classes of persons who are a party to the authorisation which is to be revoked**

- RCSA (address and contact details as previously supplied).
- RCSA's members.
- RCSA's directors, office bearers and employees.
- RCSA's professional advisors.
- People acting in the role of counsellor, expert appraiser, professional conduct advocate, mediator or arbitrator in respect of matters arising under the Code.
- Members of the public or representatives of government or business requiring service providers to be familiar with or comply with provisions of the Code and PCGIGs.
- Members of the public or representatives of government or business seeking determinations under the PCGIGs in connection with their dealings with Members of RCSA.
- Any subsidiary that RCSA may form and in like manner, its directors, office bearers and employees, members, and persons having dealings with it in relation to matters arising under the Code.

**2.3. the basis for seeking revocation, for example because the conduct has changed or because the existing authorisation is due to expire.**

RCSA is actively pursuing the revocation and substitution of its current authorization, which is set to expire in August 2024. Although the recent modifications to the Code and Professional Conduct Grievance Intervention Guidelines differ slightly in approach from their predecessors, the fundamental conduct under authorisation remains largely unaltered. These adjustments stem from a synthesis of member feedback accumulated over the past five years through involvement in matters through the PCGIG, operational improvements designed to make process more efficient and effective, and insights from a Code survey conducted by RCSA. The meticulous consideration of such feedback underscores RCSA's commitment to continually refining its standards in response to evolving industry dynamics and the expressed needs of its diverse membership base.

**Authorisation to be substituted (the new authorisation)**

**3. If applicable, provide details of any other persons and/or classes of persons who also propose to engage, or become engaged, in the proposed conduct and on whose behalf authorisation is sought. Where relevant provide:**

**3.1. name, address (registered office), telephone number, and ACN**

**3.2. contact person's name, telephone number, and email address**

**3.3. a description of business activities.**

Revocation and substitution of the Code is sought on behalf of:

- RCSA (address and contact details as previously supplied).

- RCSA’s members at the time of application and future members, as well as non-member volunteers.
- RCSA’s directors, office bearers and employees called upon from time to time to exercise functions in accordance with the Constitution, Professional Conduct Grievance Intervention Guidelines (PCGIG) or to promote or enforce provisions of the Code of Professional Conduct.
- RCSA’s professional advisors called upon from time to time to advise upon, make recommendations in relation to or conduct training or publish training materials in support of the Code and matters arising under it.
- Any person called upon to act in the role identified in the Constitution or PCGIG in respect of matters arising under the Code, Constitution, or PCGIG.
- Members of the public or representatives of government or business requiring service providers to be familiar with or comply with provisions of the Code and PCGIGs.
- Members of the public or representatives of government or business seeking determinations or appraisals under the Code in connection with their dealings with Members of RCSA.
- Any subsidiary that RCSA may form and in like manner, its directors, office bearers and employees, members, and persons having dealings with it in relation to matters arising under the Code, Constitution, or PCGIG.

### The proposed conduct

#### 4. Provide details of the proposed conduct, including:

##### 4.1. a description of the proposed conduct and any documents that detail the terms of the proposed conduct

Re-authorisation is sought for RCSA’s professional conduct regime, which sets out the professional standards for, and regulates the conduct of, its members in relation to the provision of recruitment and human resources services (the **Professional Conduct Regime**).

Please see:

**Attachment A – [Proposed New Code of Professional Conduct](#)**

**Attachment B** – [Proposed New Professional Conduct Grievance Intervention Guidelines](#)

**Attachment C** – [Summary of key updates to PCGIG](#)

**Attachment D** – [RCSA Constitution](#)

**Attachment E** – [RCSA By-Laws](#)

**Attachment F** – [Summary of PCGIG Interventions 2019 - 2023](#)

**Attachment G** – [Member Consultation Survey Results](#)

**Attachment H** – [RCSA Code Guideline – Charging Fees & Charges to Workseekers](#)

**Attachment I** – [RCSA Code Guideline – Service Network Responsibilities](#)

**Attachment J** – [RCSA Code Guideline – Supplier Transitions](#)

**Attachment K** – [RCSA Code Guideline – Checklist for Client Service Agreements](#)

At a high level, these professional standards relate to the manner in which recruitment agencies and other service providers deal with job seekers and employers, and the ways in which RCSA members interact with each other in providing those services.

RCSA is seeking authorisation to continue to enter into arrangements pursuant to the Professional Conduct Regime, which may involve breaches of the Act, namely:

- Excluding from the supply of association services:
  - Those upon whom sanctions are imposed.
  - Applicants for membership, who are refused membership.
  
- Excluding from the supply of workforce services:
  - Members who are constrained from providing services in a certain manner.
  - Members upon whom sanctions are imposed.
  - Applicants who may encounter a partial barrier to entry where potential clients stipulate RCSA (or equivalent) membership and membership is refused.
  
- Third line forcing where an applicant for membership is required to include related entities and assume responsibility for their conduct, and to supply sponsorship or franchise services to related entities on the condition that they obtain membership services from RCSA (the Membership Extension Principle). For example, a franchisor that applies for corporate membership may be required to include all franchisees in its application.

The Code is to be administered in accordance with RCSA's Constitution, By Laws and the Professional Conduct Grievance Intervention Guidelines which together provide a regime

for sanction as well as business improvement mechanisms. We are seeking authorisation of the following:

### **Constitution**

Provisions of RCSA's Constitution which form elements of its Professional Conduct Regime and for which authorisation is sought are:

- Clause 2.1 – *Classes of Membership*, which permits the Board to:
  - Establish classes of membership;
  - Determine restrictions on membership;
  - Determine requirements with respect to standards, business operation, qualifications and accreditation for admission to each class.
- Clause 2.2 – *Criteria for Membership*, which prescribes a requirement for eligible applicants for membership to be bound by the Constitution; the Code for Professional Conduct; the Disciplinary & Dispute Resolution Procedures and the By-Laws.
- Clause 2.8 – *Exclusion or Suspension or other sanctions*, which allows the Board, following the Disciplinary & Dispute Resolution Procedures or Constitution, to impose a wide range of sanctions in the event that a Member engages in conduct which in the 7 of 217 8 opinion of the Directors is unbecoming of the Member or prejudicial to the interests of the Association.
- Clause 8.3 – *Power to make By-Laws*.
- Clause 15 - *Dispute Resolution*, which directs disputes to be dealt with under the D&DRP and thereafter to arbitration.

### **By-laws**

Provisions and proposed provisions of RCSA's By-Laws, which form elements of its Professional Conduct Regime and for which authorisation is sought are:

- By-law 1.1(b) - *Membership Extension Principle*, which, subject to an exception in By-Law 1.2(f) permits RCSA to require an applicant for Corporate Membership to include in its application all related entities that are substantially engaged in the supply of specified categories of service. "Related entity" in this context is a broad concept that (subject to the category of service qualification) extends to any entity with regard to which the applicant for Corporate Membership represents that it has given or established any sponsorship, approval or affiliation and would include, for example related entities in a corporate group and franchisees in a franchise group where application for Corporate Membership is made by the franchisor.
- By-law 1.10 - *Objections to Membership*

### **Code of Professional Conduct**

Authorisation is sought for the entire Code, which specifies and guides standards for ethics, probity and professional conduct within a broad compass as interpreted and applied in accordance with specified reference documents indicated in the Professional Conduct Grievance Intervention Guidelines.



### **Professional Conduct Grievance Intervention Guidelines**

Authorisation is sought for the entire Professional Conduct Grievance Intervention Guidelines, which establishes procedures for managing professional conduct grievance interventions and disputes and which in accordance with which Members may be liable to the imposition of sanctions including exclusion, suspension and fines.

### **RCSA certification and accreditation schemes**

RCSA has developed several certification and accreditation schemes designed to improve industry standards and promote best practice.

The RCSA Service Delivery Standard has been specifically designed to assist RCSA Members to develop systems and controls to ensure clients and candidates receive excellent service. The RCSA sees this Standard as an important component in its platform of defining professional standards for the recruitment and on-hire industries in Australia and New Zealand.

StaffSure is a certification program developed by RCSA in response to calls from business and government for a simple and effective solution to the exploitation of workers by “labour hire” providers. StaffSure addresses the key business integrity and risk elements within contemporary workforce services, based on market intelligence and knowledge that only the industry has. Workforce Service Providers are businesses, in all forms, that source, assign and manage employees and contractors for business and government. They may hire and assign workers to work directly for clients or they may manage their own workers to deliver the services as a contractor. Workforce Services Providers include labour hire providers, contracting firms, employment agencies, payroll agencies and recruitment firms. StaffSure allows Workforce Service Providers to prove, and market, their business integrity and, by doing so, protect the broader integrity of the recruitment and staffing industry throughout Australia and New Zealand.

Compliance with these programs is not mandatory, although some Members and non-members have been accredited against these standards.

Its relevance to RCSA’s Professional Conduct Regime is that these programs contain standards to which reference may be had when interpreting the broadly stated requirements of the RCSA Code. The PCGIG pathways may also use the diversion of grievances into corrective measures within these certification programs if they are applicable.

Consequently, authorisation is not sought for the SDS or StaffSure *per se*- merely for those provisions of the Code and PCGIG that permit reference to it or interact with it.

The SDS is a commercially sensitive document in that it represents valuable intellectual property owned by RCSA. A copy can be provided to the Commission on a Commercial in Confidence basis if requested. The StaffSure Standards are available publicly on the StaffSure website [www.staffsure.org](http://www.staffsure.org) and can be provided if requested.

### **RCSA Code interpretive guidance materials**

The proposed procedures for development of RCSA Code guidance material, which may include statements of strategic intent, Code Guidelines, and Consensus Statements, and reference to them in interpreting the broadly stated requirements of the RCSA Code represent an innovative inclusion to its Professional Conduct Regime.

Interpretative Guidance Materials may serve a broader purpose of offering a framework for addressing concerns of a systemic nature within the employment services industry.

They are defined in the RCSA Code as:

#### *Statement of Strategic Intent*

The RCSA Board is to develop and publish periodic statements of strategic priority and intent concerning the exercise of its disciplinary jurisdiction and supporting its Members in developing the capacity for effective self-regulation.

#### *Code Guidelines*

Inform RCSA Members and the public about how the Code is likely to be interpreted and applied in specific situations involving Members, and assist Members with managing these situations.

#### *Consensus Statement*

Are public statements by the RCSA for promoting excellence, enterprise and integrity, and improving knowledge and professionalism regarding responsibilities, duties and rights in the staffing and recruitment industry. These would only be published after development in consultation with regulatory and industry stakeholders.

It is intended that these interpretive guidance materials should provide the means by which RCSA may identify and recommend means of addressing, consistently with its Code of Professional Conduct, a broader range of issues and raise professional standards across the industry.

The RCSA Code already requires general standards of professional conduct and requirements for legal compliance which would extend to compliance with EEO laws.

The ability to develop and publish these materials will provide the means by which RCSA can address specific practices such as those that operate as a barrier to mature age worker participation, as well as other topical systemic issues such as worker classification and engagement (whether as employee or independent contractor; casual or non-casual) etc. whilst preserving the design principle that the Code should operate as a statement of high level principles supported by specific reference and interpretative material and dispute resolution procedures that are designed to support Member compliance.

Examples of such materials are provided here for authorisation, refer to the following attachments:

- **Attachment H** – [RCSA Code Guideline – Charging Fees & Charges to Workseekers](#)
- **Attachment I** – [RCSA Code Guideline – Service Network Responsibilities](#)
- **Attachment J** – [RCSA Code Guideline – Supplier Transitions](#)
- **Attachment K** – [RCSA Code Guideline – Checklist for Client Service Agreements](#)

### **Counselling & Conduct Recommendations**

The proposed procedures for counselling and the making of a conduct recommendation represent another innovative inclusion to RCSA’s Professional Conduct Regime which has been successful in previous version and is strengthened in this version.

A Conduct Recommendation is defined in the RCSA Code as:

*Conduct Recommendation* means a recommendation given under the PCGIG by RCSA to a Member with regard to means by which the Member may conform its conduct to the standard becoming of the Member or not prejudicial to the interests of RCSA;

Under the PCGIG, a Conduct Recommendation may be made in the course of counselling a Member or by the Board. It is not mandatory for a Member to comply with a Conduct 10 of 217 11 Recommendation; but in the event that a complaint escalates from a Member’s having acted inconsistently with the recommendation, the Member may be called upon to show cause why sanctions should not be imposed.

The procedures reflect the design principle that it is preferable to provide early guidance to Members as to the means by which they can meet the high standards of professional conduct required under the Code and to support them in that process; rather than merely to punish them when it is discovered that they have not.

Authorisation is not sought for any Conduct Recommendation per se - merely for those provisions of the Code and PCGIG that permit the making of them and their use in interpreting and applying the provisions of the Code and PCGIG.

As the ACCC is aware, the RCSA ‘new’ Code has been in operation for the past 5 years since its last authorisation and has aligned its activities more closely to the provision of member services and towards informing and championing ethical and professional standards in recruitment and workforce services. The minor changes being sought in the revocation and substitution reflect operational feedback compiled since the implementation of the ‘new’ Code, along with feedback from a Code survey which was conducted in an effort to gain an understanding of improvements which can be made, from the perspective of Members.

The Code itself is seeking two minor changes, one being an extended definition of exploitation which raises the standard, and the second which envelops non-member volunteers into being bound by the Code - not just members- as outlined in:

### **Attachment A – [Proposed New Code of Professional Conduct](#)**

We feel these extend the boundaries of the Code in an effort to disseminate the highest industry standards possible.

**Attachment B** – [Proposed New Professional Conduct Grievance Intervention Guidelines](#)

**Attachment C** – [Summary of key updates to PCGIG](#)

The proposed changes to the RCSA Professional Conduct Grievance Intervention Guidelines (see Attachments B & C) aim to improve the management of professional conduct issues within the organisation.

Key adjustments include leveraging the Registry function for role resets and delegations, transforming 'Structured Listening' into conciliation led by the Professional Conduct Registrar, and enhancing counselling services for members. Additionally, a pathway for informal commitments to meet professional conduct standards is proposed, along with empowering the Professional Conduct Review Committee (PCRC) to engage in conciliation before formal investigation- in an effort to keep the mediation between engaged parties in order to facilitate a more seamless resolution. Legal representation will be further restricted in favour of collaborative approaches, and guidelines will be simplified which further this premise. The authority to require members to contribute to costs will be highlighted, and flexibility in setting time limits will be introduced. Summary Show Cause triggers will be clarified, and publication wording will be standardised. Arbitration procedures will be streamlined to use either the Constitution model or Commercial Arbitration Rules, with arbitrators focusing on awarding costs rather than imposing sanctions. These changes aim to enhance efficiency, clarity, and fairness in addressing professional conduct matters within RCSA.

The Conduct may include a cartel provision within the meaning of Division 1 of Part IV of the Act or constitute exclusive dealing within the meaning of section 47 of the Act and substantially lessen competition within the meaning of section 45 of the Act.

#### **4.4. the rationale for the proposed conduct**

RCSA's existing Code of conduct was introduced following industry deregulation of the early 1990s and as a result, the Code's content reflects RCSA's role in the industry as a self-regulator – a role that originally evolved in the absence of national, uniform or harmonised legislation.

The Professional Conduct Regime of RCSA reflects over two decades of refinement, drawing on experience with the current iteration of the Code and its evolving Professional Conduct Grievance Intervention Guidelines (previously referred to as Disciplinary and Dispute Resolution Procedures).

RCSA submits that the Conduct is likely to result in public benefits in the form of:

- promoting equitable dealing in the workforce services market,

- providing improved means of continuing effective regulation through assisting members to act ethically and professionally within the workforce services industry and providing effective grievance intervention mechanisms, and
- fostering business efficiency to the extent that the arrangements provide for efficient business models (for example, supplier transitions, where a client redirects in whole or in part its requirements for the supply of on-hire services from one workforce services provider to another workforce service provider) and facilitate faster resolution of grievances.

RCSA further submits that the proposed arrangements will assist members to act professionally and ethically and reduce the risk that parties who deal with members (work seekers; business consumers; other service suppliers) will be exposed to unprofessional conduct.

Throughout its operational tenure over the last five years, RCSA has adeptly administered the Code, affirming the efficacy of the existing system in elevating standards of professional conduct. The iterative enhancements and continuous improvement efforts applied to the Professional Conduct Grievance Intervention Guidelines underscore RCSA's unwavering commitment to cultivating a robust framework that not only withstands the test of time but consistently aligns with the evolving dynamics of professional conduct standards within the evolving industry. This sustained dedication to refinement reflects RCSA's astute understanding of the intricacies inherent in fostering and sustaining a culture of ethical excellence.

RCSA has a dedication to ensuring its practices reflect any changes in the regulatory environment and increasing overlap of the industry Code with statutory regulations. As such, the minor changes to the Code of Professional Conduct and Professional Conduct Grievance Intervention Guidelines are in response to members feedback as well as operational assessments - to ensure improvements are continually made for the betterment of the industry.

In response to growing regulatory oversight and changing market expectations, and as the industry continued to evolve and demonstrate increasing characteristics of a unified profession, the basic architecture of the Code shifted in 2019 from one which had been predominantly rules-based to one that was values and principles-based. Thus, today, RCSA's Code of Professional Conduct reflects competencies and expectations of a profession and professionals shaped by the Professional Practice Council of RCSA (our member advisory council who oversee the Code and professional conduct regime). With minor adjustments, RCSA hopes to continue to further synchronise its endeavours with delivering member services and advocating ethical and professional standards in recruitment and workforce services.

#### **4.5. the term of authorisation sought and reasons for seeking this period.**

RCSA is seeking a ten (10) year authorisation period for the proposed Professional Conduct regime.

RCSA has been operating with an ACCC approved Code of conduct since its first authorisation in 2003. Since that time there has been significant growth in regulatory oversight for the sector. Given the increased impact of external regulation and oversight, and the long success of the Professional Conduct regime, RCSA believes it is appropriate to seek authorisation for a period of 10 years.

Furthermore, RCSA believes that both members and the public will benefit from a stability created by a longer period of authorisation of the Code. Having a 10-year authorisation period will provide certainty to other regulators, businesses, members, candidates/workers and the general public of long-term professional expectations within the industry. Moreover, since our previous application in 2019, there have been very minor amendments to the code, which demonstrate its effectiveness in its current form. In the lead up to this application, considerable consultation was required to ensure this version of the code ensured longevity. RCSA believe a 10 year authorisation is deserved, considering the points above in conjunction with the length of time the code has been in operation.

**5. Provide the name of persons, or classes of persons, who may be directly impacted by the proposed conduct (e.g. targets of a proposed collective bargaining arrangement; suppliers or acquirers of the relevant goods or services) and detail how or why they might be impacted.**

Those excluded from the supply of association services:

- Those upon whom sanctions are imposed.
- Applicants for membership who are refused membership.

Those who are excluded from the supply of workforce services:

- Members who are constrained from providing services in a certain manner.
- Members upon whom sanctions are imposed.
- Applicants who may encounter a partial barrier to entry where potential clients stipulate RCSA (or equivalent) membership and membership is refused.

Applicants for membership who are required to include related entities and assume responsibility for their conduct, and to supply sponsorship or franchise services to related entities on the condition that they obtain membership services from RCSA (the Membership Extension Principle). For example, a franchisor that applies for corporate membership may be required to include all franchisees in its application.

Individual and corporate RCSA Members will not be impacted by the proposed changes, and the impact on competition will be minimal. The Code does not impose conditions that determine pricing or competitive behaviour but rather sets a bar for industry professional standards, a contravention of which can lead to the imposition of sanctions including suspension or expulsion from RCSA <sup>1</sup>.

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<sup>1</sup> The Code Guideline dealing with “Charging Fees & Charges to Workseekers” does, however, require that any fees and costs permitted to be charged to workseekers be fair and reasonable. In that context, it should be noted that State and Territory laws are inconsistent regarding the charging of fees to workseekers.

Since membership of RCSA is voluntary, consumers (candidates/ workers/ workseekers) and business clients are free to engage with any agency in the market. Hence the proposed changes have little, if any impact on competition in upstream or downstream vertical transactions.

Instead, consumers and business clients reserve the freedom to choose any supplier that fits their business requirements regardless of whether the supplier is a RCSA member or not. However, clients and consumers who engage with RCSA members (being subscribers to a voluntary industry Code) have the additional benefit improved business confidence of dealing with suppliers who are accountable to RCSA for their professional conduct. Consequently, some clients do require that their workforce services suppliers be members of RCSA or an equivalent industry/professional association.

### **Market information and concentration**

**6. Describe the products and/or services, and the geographic areas, supplied by the applicants and identify all products and services in which two or more parties to the proposed conduct overlap (compete with each other) or have a vertical relationship (eg supplier-customer).**

According to Ibis World Data (2023), the recruitment service industry in Australia is valued at more than \$17 billion with 8,917 establishments in all Australian state and territories. Furthermore, the temporary staffing industry amounts to 8,784 establishments and some \$17 billion in revenue throughout Australia. RCSA has a membership pool that roughly equates to 60% of the turnover of these markets. Furthermore, the online recruitment services industry in Australia has 48 establishments and is worth \$939 million in revenue, according to Ibis World Data (2023).

The market for recruitment and workforce services has few barriers to entry and is highly competitive. However, due to increased government regulatory oversight and state-based licensing regimes, barriers to entry for temporary staffing agencies are increasing in the industry. The competitive environment, especially with respect to large contracts with public sector and large private sector clients is high. These conditions reduce the incentive to collude or for a collusion to sustain, as many players competing to tender with a smaller number of large clients have a payoff incentive to oppose each other.

**7. Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.**

Recruitment and workforce services span all sectors and industries in the Australian labour market. Recruiters seek and deliver candidates for specific roles based on needs identified and articulated by clients. Workforce service providers tend to seek and provide workers to work on client sites on a per assignment basis. Procurement contracts are usually awarded to competing agencies through a competitive tender process.

There are many recruitment and workforce service providers in the market with a high number of small to medium sized clients and relatively low number of large clients. Large

clients are usually ASX listed firms and public sector departments where the tender process is highly competitive.

**8. In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.**

In relation to market share and participation in the sector, Ibis World Data (2023) notes that the industry market share concentration is low and that, “There are no major players in this industry. The industry is highly fragmented and small-to medium sized firms tend to service niche markets or specific geographic areas.”

These conditions are due to a large number of small operators each competing for clients and workers with low barriers to entry and low profit margins. The combination of high levels of competition, low barriers to entry, small profit margins, and competitive tender processes means the industry is highly competitive and RCSA’s proposed changes are highly unlikely to adversely impact competition in the market.

If anything, government research into the sector seems to suggest that competition in the industry is so high that it has the potential to put pressure on professional standards. Such a rationale was the focal point of argument made by state and federal government regulators with respect to the introduction of many of the statutory regulations that the industry has experienced since the approval of the original RCSA Code of Conduct.

These conditions make it unlikely that the proposed changes will adversely impact the competitive environment for the sector. Rather, the Code and these proposed changes have the potential to enhance procurement practices and improve overall industry standards, which will provide significant benefit for the sector’s environment and operation, and to consumers.

**9. Describe the competitive constraints on the parties to the proposed conduct, including any likely change to those constraints should authorisation be granted. You should address:**

- 9.1. existing or potential competitors**
- 9.2. the likelihood of entry by new competitors**
- 9.3. any countervailing power of customers and/or suppliers**
- 9.4. any other relevant factors.**

Insofar as the RCSA’s Professional Conduct Regime may amount to a contract arrangement or understanding between competitors, it may involve exclusionary provisions in the following respects:

- preventing, restricting or limiting the supply of ASSOCIATION SERVICES<sup>2</sup> to particular persons or classes of persons or in particular circumstances, namely:

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<sup>2</sup> Association Services being RCSA membership and any entitlements conferred by membership, including eligibility for members to use their affiliation with RCSA on corporate and promotional material



- those upon whom sanctions such as exclusion or suspension are imposed as a result of their having been found to have engaged in conduct unbecoming of a Member or prejudicial to the interests of RCSA;
- applicants for membership, who are refused membership as a result of having:
  - engaged in conduct on the basis of which objection may be made to their fitness to be members; or
  - refused to agree to be bound by the RCSA Code and PCGIG; or
  - failed to meet the requirements of the Membership Extension Principle
- preventing, restricting or limiting the supply of WORKFORCE SERVICES<sup>3</sup> to particular persons or classes of persons or in particular circumstances, namely:
  - Members who are constrained from providing services otherwise than in the manner prescribed by the Code when interpreted and applied in accordance with its terms or by reference to identified interpretative guidance material such as an RCSA Code Guideline or Conduct Recommendation;
  - Members upon whom sanctions such as exclusion, suspension or direction to refrain from doing a thing are imposed as a result of their having been found to have engaged in conduct unbecoming of a Member or prejudicial to the interests of RCSA;
  - Applicants for membership who may encounter a partial barrier to entry where clients or potential clients stipulate membership of RCSA or an equivalent body as a qualification to tender or supply services and membership is refused as a result of having:
    - engaged in conduct on the basis of which objection may be made to their fitness to be members; or
    - refused to agree to be bound by the RCSA Code and PCGIG; or
    - failed to meet the requirements of the Membership Extension Principle.

### *Third line forcing*

RCSA's insistence on an applicant for membership's complying with the Membership Extension Principle to "rope in" related entities, or assume responsibility for their conduct that falls short of the high standard required by the RCSA Code, may involve it in third line

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<sup>3</sup> **Workforce services** being those offered by workforce services providers (e.g. recruitment agencies) to the recruitment and human resources market.

forcing or attempts at third line forcing (i.e. the Applicant supplying sponsorship or franchise services to its “related entities” on condition that they obtain membership services from RCSA); and may expose it to accessorial liability.

However, the incidence of such arrangements is not so great as to suggest that any substantial lessening of competition in a relevant market would result from the Membership Extension Principle.

*NOTE: that “related entity” as defined in the RCSA By-Laws has a wider meaning than “related body corporate” used in the Act.*

#### *Public benefit*

RCSA submits that the Commission may be satisfied in all circumstances that the proposed conduct would result or be likely to result in such a benefit to the public that it should be allowed.

#### **Public benefit**

**10. Describe the benefits to the public that are likely to result from the proposed conduct. Refer to the public benefit that resulted under the authorisation previously granted. Provide information, data, documents or other evidence relevant to the ACCC’s assessment of the public benefits.**

- Promote equitable dealings in the workforce services market;
- Provide improved means of continuing effective regulation through assisting members to act ethically and professionally within the workforce services industry and providing effective grievance intervention mechanisms; and
- Foster business efficiency to the extent to which the arrangements provide for efficient business models (supplier transition) and facilitate faster resolution of grievances.
- enabling market participants to make decisions that are more informed.
- providing consistency in behavioural standards where state and territory legislation is misaligned.

RCSA submits that the proposed arrangements will assist Members to act professionally and ethically and reduce the risk that parties who deal with Members (Workseekers; business consumers; other service suppliers) will be exposed to unprofessional conduct.

For detailed case study information on how the Professional Conduct Regime is conducted and the outcomes achieved, please see: **Attachment F – [Summary of PCGIG Interventions 2019 - 2023](#)**

We submit that these examples of outcomes provide evidence of how the RCSA Professional Conduct Regime assist members to act professionally and ethically and reduces the risk that parties who deal with members (work seekers; business consumers; other service suppliers)

will be exposed to unprofessional conduct and providing effective grievance intervention mechanisms.

The supplier transition process provides an efficient model for managing transitions professionally and ethically. It has done so for more than 20 years and has found great acceptance amongst Members and their clients. It provides an efficient model for placing the locus of decision making – whether to go or whether to stay – with the workers most likely to be affected by the transition. It provides procedures for ensuring that workers are satisfactorily informed of their options and entitlements.

RCSA submits that it is testimony to the efficiency of the supplier workforce transition process both as a business process and as a means of preventing and settling disputes that the number of transition complaints has dropped markedly since the provisions were first authorised in 2003. **See Attachment J.**

The guideline on charging fees and other charges to workseekers is consistent with international standards promoted by the International Labour Organisation under Article 7 of C181 - Private Employment Agencies Convention, 1997 (No. 181) and by the World Employment Confederation (WEC) of which RCSA is a constituent member. See Attachment H.

The guideline on Client Service Agreements assists members and customers to know how the Code's *Certainty of Engagement* principle should be applied and may assist in helping members (and their advisors) to avoid the inclusion of unfair terms in their standard form contracts. **See Attachment K.**

The Service Network Responsibilities Guideline provides members with a model for ensuring good supply chain governance starting with their direct outsource suppliers. **See Attachment I.**

Provisions in the Professional Conduct Grievance Intervention Guidelines, and in particular those which have been identified as having been designed to provide earlier and case-specific guidance to Members as to how they may conform their conduct to the high standards required under the Code, have been demonstrated through our experience over the past five years to facilitate faster resolution of grievances.

The Code of Professional Conduct not only establishes a robust framework but also underscores a tangible public benefit, particularly evident in the protection of workers and candidates, especially those vulnerable within the employment landscape. Over the past five years of its operational tenure, RCSA's Professional Conduct Regime has demonstrated its efficacy in safeguarding the interests of these individuals. Additionally, it provides robust protection, and a dispute resolution mechanism to small business consumers of our member's services.

These benefits are attributable to the well-crafted dispute resolution mechanisms inherent in the Code of Conduct and the Professional Conduct Grievance Intervention Guidelines. These mechanisms are designed with a focus on efficiency, helping members rise to meet professional standard expectations, and ensuring fair resolutions to disputes. The tangible track record of the last five years attests to the effectiveness of these provisions, affirming their role in enhancing the protection of workers and candidates, thereby contributing to

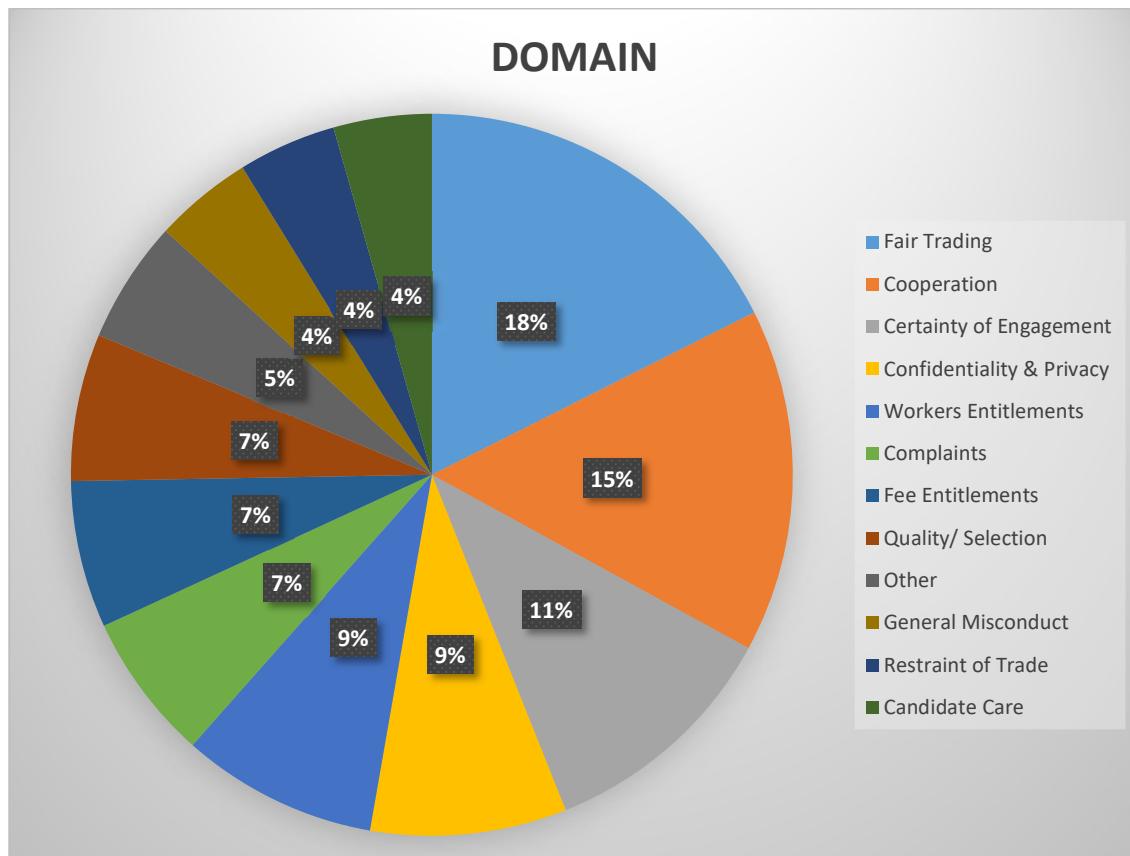
the broader public welfare. Our proposed minor changes to the PCGIG are designed to build on this success and provide operational efficiencies.

### RCSA Grievance Data

We are able to provide the following statistics about grievances dealt with in the past five years under the Professional Conduct Grievance Intervention Guidelines by RCSA (See Attachment F).

- It is important to note that a single complaint will often cover several subject domains. For example, a common complaint is about candidate care. However, this can manifest in different ways – e.g. misleading conduct (about jobs), failure to pay worker entitlements, privacy breach, or discrimination for example. As most grievances indicate some deficit in professional knowledge (Code Principle 4) we have not included Code Principle 4 (Knowledgeable) as a separate Domain. The RCSA Board has, however, resolved, adopting a recommendation from the Professional Practice Council to place strategic focus on professional learning & development for next 12 months. The effect of such a resolution is to highlight professional knowledge deficits as a strong indicator in favour of accepting a grievance for intervention.

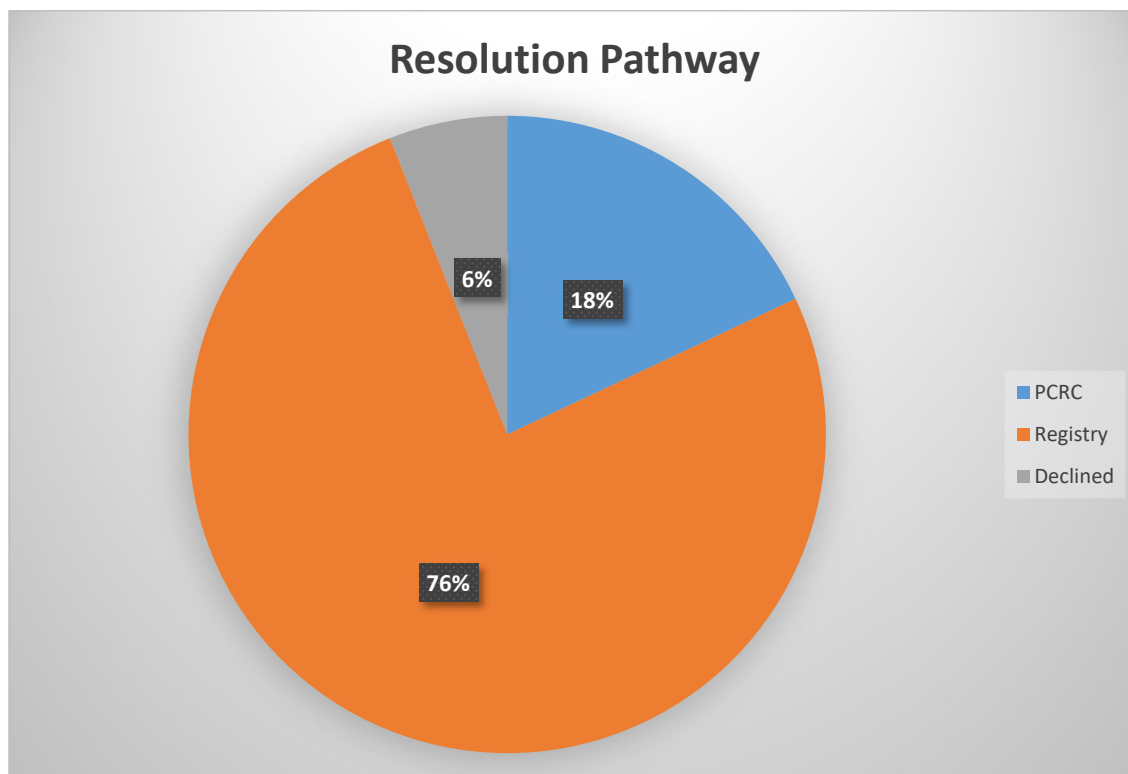
The largest domain during the past five years has been Fair Trading issues.



RCSA is often better positioned to handle consumer complaints than regulators due to the multidisciplinary issues that can be contained in single complaint. This is one reason why statutory regulators, with single-focus jurisdictions, are sometimes unable to provide a complete solution.

The Code is complimentary to government regulation initiatives and public discourse in terms of supply chain integrity and modern slavery mitigation ( I.e. *Modern Slavery Act 2018*). Subscription to RCSA proposed voluntary Code by agencies will improve public confidence in the industry and will aid above objectives thereby amounting to a public benefit.

The success in achieving resolution shows that the Code and PCGIG are operating effectively in the public benefit. 76% of grievances are resolved without needing to be progressed to a Professional Conduct Review Committee (PCRC). 94% of grievance requests received are accepted for intervention demonstrating a high level of intervention and integrity in the consideration of all matters received.



#### RCSA Member Consultation Survey Results

See Attachment G – Member Consultation Survey Results

#### **Public detriment (including likely competitive effects)**

**11. Describe any detriments to the public likely to result from the proposed conduct, including those likely to result from any lessening of competition. Refer to the public detriment that may have resulted under the authorisation previously granted. Provide information, data, documents, or other evidence relevant to the ACCC assessment of the detriments.**

Detriments to the public are minimal and the code is unlikely to have any impact on prices or competition in the market.

Membership of RCSA may provide an advantage to recruitment service providers over those that choose not to become members because members hold themselves to a higher professional conduct regime than is required by law. This may make RCSA members more attractive to job seekers and potential employers. If members are inappropriately expelled or not accepted as members this may impact on their ability to compete to provide recruitment services.

However, the impact of this is limited. RCSA's Professional Conduct Regime contains a dispute resolution and appeals process. RCSA membership is voluntary, open to all eligible service providers, and is not a necessary requirement for recruitment, consulting and on-hire service providers.

Any risks of detriment in the form of reduced choices and/or higher prices are low, as RCSA's Professional Conduct Regime relates to professional standards and dispute resolution procedures and not to fees, wages and/or broader conduct.

### Contact details of relevant market participants

#### **12. Identify and/or provide contact details (phone number and email address) for likely interested parties such as actual or potential competitors, customers and suppliers, trade or industry associations and regulators.**

Australian Human Resources Institute (AHRI)  
Level 2/31 Queen Street  
Melbourne, Victoria, 3000  
T: 1300 811 880  
E: enquiries@ahri.com.au

APSCO Australia  
Suite 1022, Level 10,  
Tower 4, World Trade Centre  
611 Flinders St, Melbourne 3005  
Phone: +61 3 8622 4700  
Email: info@apscoau.org

Fair Work Ombudsman  
GPO Box 9887  
Melbourne VIC 3000

Australian Chamber of Commerce & Industry  
PO Box 6005  
Kingston ACT 2604  
Phone: +61 2 6270 8000  
Email: info@acci.com.au

Labour Hire Authority  
PO Box 393  
Bendigo VIC 3552  
Phone: 1300 545 200  
Email: enquiries@labourhireauthority.vic.gov.au

Labour Hire Licensing Compliance Unit  
Office of Industrial Relations

PO Box 7129  
Brendale QLD 4500  
Phone: 1300 576 088

WorkSafe ACT  
GPO Box 158  
CANBERRA ACT 2601  
Phone: 1300 555 272  
Email: [worksafe@worksafe.act.gov.au](mailto:worksafe@worksafe.act.gov.au)

Consumer and Business Services  
GPO Box 1719  
Adelaide SA 5001  
Phone: 131 882  
Email: [occupational@sa.gov.au](mailto:occupational@sa.gov.au)

WorkSafe SA  
GPO Box 465  
Adelaide SA 5001  
Phone: 1300 365 255

Consumer Protection - Department of Energy, Mines, Industry Regulation and Safety  
Licensing Contact Centre  
2/140 William St  
Perth WA 6000  
Phone: 1300 304 064  
Email: [cplicensing@dmirs.wa.gov.au](mailto:cplicensing@dmirs.wa.gov.au)

Access Canberra  
GPO Box 158  
Canberra ACT 2601  
Phone: 13 22 81

Office of Industrial Relations  
GPO Box 69  
Brisbane QLD 4001  
Phone: (07) 3406 9999  
Email: [privacy@oir.qld.gov.au](mailto:privacy@oir.qld.gov.au)

### **Additional information**

**13. Provide any other information or documents you consider relevant to the ACCC's assessment of the proposed application.**



- Attachment A** – [Proposed New Code of Professional Conduct](#)
- Attachment B** – [Proposed New Professional Conduct Grievance Intervention Guidelines](#)
- Attachment C** – [Summary of key updates to PCGIG](#)
- Attachment D** – [RCSA Constitution](#)
- Attachment E** – [RCSA By-Laws](#)
- Attachment F** – [Summary of PCGIG Interventions 2019 - 2023](#)
- Attachment G** – [Member Consultation Survey Results](#)
- Attachment H** – [RCSA Code Guideline – Charging Fees & Charges to Workseekers](#)
- Attachment I** – [RCSA Code Guideline – Service Network Responsibilities](#)
- Attachment J** – [RCSA Code Guideline – Supplier Transitions](#)
- Attachment K** – [RCSA Code Guideline – Checklist for Client Service Agreements](#)

## Declaration by Applicant(s)

**Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.**

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).



Date: 18 March 2024

**Charles Cameron**  
Chief Executive Officer

# **RCSA CODE OF PROFESSIONAL CONDUCT**

## **PROFESSIONAL STANDARD FOR LEADERS IN THE WORLD OF WORK**

## Preamble

*mindful* that RCSA is formed for the objects of:

- promoting excellence, enterprise and integrity in the businesses of all Members and of individuals engaged by those businesses; and
- improving knowledge and skill with respect to their responsibilities, duties and rights in the Workforce Services Industry. (*Constit 1.3(a) and (b)*)

*affirming* that, to that end, RCSA will foster ethical and procedural best practice among

Members by:

- administering and regulating Member compliance with the Code for Professional Conduct;
- acting as facilitator of the resolution of, and appoint Committees to deal with, disputes between Members;
- regulating, as far as is possible, the relations between Members as well as regulating the relationship between Members and the general public. (*Constit 1.4*)

*noting* that Members, commit to working and being accountable within the RCSA Professional Conduct Framework as provided by the RCSA Constitution (*Constit 2.8*)

*confident* of the important economic and social role that recruitment consulting and staffing services providers play in improving the functioning of the labour market;

*acknowledging* concerns about the harm that may be caused to labour market participants by unsustainable and exploitative business models and practices

*recognising* that RCSA's membership of the World Employment Confederation (WEC) commits it to adhering to the WEC Code of Practice and promoting its principles to all relevant stakeholders to the extent consistent with national law and practice

*observing* that since the inception of the RCSA Code, harmonisation and modernisation at all levels of federal, state, territory and national government have filled gaps and changed the regulatory enforcement environment in which Members operate such that it is now necessary for the RCSA Code to adapt in order to preserve coherence in law and policy;

*desiring*, as a Leader in the World of Work, to articulate personal and operational values and principles:

- to inform and guide the professionalisation of recruitment and staffing industry in Australia and New Zealand in the interests of its Members and the public;

- to encourage and strengthen Members' capacity for effective self-regulation; and
- to strengthen public confidence in identifying trusted and ethical professionals amongst the array of service choices, online and artificial intelligence models, and self-proclaimed experts

RCSA NOW ARTICULATES THE STANDARD OF PROFESSIONAL CONDUCT REQUIRED OF MEMBERS AND CALLS UPON MEMBERS TO DEVELOP ITS VALUES OF PERSONAL PROFESSIONALISM AND TO EMBED THEM IN THE CONDUCT OF THEIR WORKFORCE SERVICES DEALINGS, BY MEASURES APPROPRIATE TO THEIR SIZE AND CIRCUMSTANCES, SO AS TO ASSURE THE OPERATIONAL INTEGRITY OF THEIR ORGANISATIONS.

## The RCSA Code

### PART A: Personal Professionalism

#### 1. Diligent & Competent

- a) RCSA Members are diligent in their attentiveness to the needs of their customers and in their provision of appropriate and responsive workforce services.
- b) RCSA Members exhibit the competencies necessary to provide workforce services that are reasonably fit for purpose.

#### 2. Trustworthy

- a) RCSA Members are conscientious in safeguarding the trust placed in them by their stakeholders.

#### 3. Respectful

- a) RCSA Members accord their stakeholders due respect:
  - i) treating them with courtesy and dignity;
  - ii) providing workseekers with equal opportunities for skill enhancement and career progression; and
  - iii) protecting workseekers from exploitation.

#### 4. Knowledgeable

- a) RCSA Members work diligently to develop and maintain a satisfactory and up to date level of relevant professional knowledge;
- b) RCSA Members make sure that their staff are adequately trained and skilled to undertake their responsibilities.

- c) RCSA Members maintain a continuing professional development programme to the level prescribed by RCSA commensurate with their professional accreditation.

## 5. Co-operative

- a) RCSA Members:
  - i) deal with their regulators and certification bodies in an open, timely and co-operative manner;
  - ii) co-operate reasonably in the handling of grievances and disputes - using processes of counselling (as may be directed in accordance with the *Professional Conduct Grievance Intervention Guidelines*), negotiation, expert appraisal, mediation and arbitration in order to resolve disputes and must endeavour to do so wherever practicable.

## PART B: Operational Integrity

### 6. Confidentiality

- a) RCSA Members handle information with due regard to privacy and confidentiality.

### 7. Care

- a) RCSA Members exercise care to fulfil any value promise they have made or promoted.

### 8. Certainty of Engagement

- a) RCSA Members take reasonable steps appropriate to their size and circumstances:
  - i) to ensure the certainty, transparency and scope of any contract, arrangement or understanding, to which they are a party or in which they are involved;
  - ii) to obtain adequately informed consent  
for the provision of a workforce service, or for the performance of a service network role.

### 9. Effective Complaints Handling

- a) RCSA Members establish and maintain credible grievance handling mechanisms and corrective action procedures, appropriate to their size and circumstances, to address any failure to meet the standard of professional conduct required by the RCSA Code.

**NOTE:** Credible grievance handling mechanisms must be genuine, reliable, timely, respectful of legal remedies and operate without unlawful discrimination or fear of reprimand.

## 10. Social Sustainability

- a) RCSA Members:
  - i) conduct business in a way that avoids causing or contributing to exploitation through their activities;
  - ii) seek to prevent or mitigate risks of exploitation that are linked to their operations or services by their business relationships, even if they have not contributed to those risks.

## 11. Ascertain & Assure

- a) RCSA Members, appropriately to their size and circumstances:
  - i) apply resources; and
  - ii) establish and maintain controls

to ascertain and assure themselves, to a reasonable standard of confidence, that they meet the requirements of the regulatory environment in which they operate.

**NOTE:** If the controls fail - whether through inadvertence or recklessness - the ensuing conduct may amount to unsatisfactory conduct. Corrective action or disciplinary measures may be taken depending on the seriousness of the failure and the extent to which standards of personal professionalism and operational integrity have been met.

## 12. Continuous Disclosure

- a) RCSA Members accept a professional responsibility of continuous disclosure of events in which they are involved and findings made against them which could reasonably be expected to reflect adversely on the character or reputation of the Member, the Association, or the Industry.

**Examples:** Labour hire or employment agent licence enforcement proceedings; criminal, taxation, migration, safety, consumer or competition offence proceedings; or proceedings involving privacy or confidentiality breaches.

## PART C: Directions

### 13. Members are to meet the standard of professional conduct required by the RCSA Code

RCSA Members are to meet and are responsible for ensuring that their staff meet the standard of professional conduct required by the RCSA Code.

### 14. Members are to avoid involvement in unsatisfactory professional conduct

RCSA Members are not to engage or be involved in unsatisfactory professional conduct.

## 15. Members are accountable

RCSA Members are accountable to RCSA, through its *Professional Conduct Grievance Intervention Guidelines*, for assuring to a reasonable standard of confidence that they meet the standard of professional conduct required by the RCSA Code.

## PART D: Adoption

### 16. Contract

Contract Acceptance by RCSA of a Member's or Volunteer Office Holder's (**VOH**) statement of commitment shall create a binding and enforceable contract:

- a) between the Member or VOH and RCSA; and
- b) between Members and VOHs

effective upon the Member's or VOH's applying for, obtaining, or retaining membership or office after its terms have been notified to the Member or VOH at the address for notices last noted in RCSA's records, that the Member or VOH, guided by this Code, will conform his, her or its conduct to a standard that is becoming of a Member and so as not to prejudice the interests of RCSA.

## PART E: Definitions & Interpretation

### Applicable law

means law made by or under statute, covenant, or treaty, that applies to the conduct of a Member's workforce services dealings.

### Consultant

means a person, who is engaged by a Member, whether as an employee, contractor, officer or otherwise, to represent the Member in the market in providing workforce services and includes a prospective Consultant.

### Controls

are the means by which a Member assures that its responsibility to meet the standard of professional conduct required by the RCSA Code is being satisfied.

**NOTE:** The meaning of control is broader than internal financial control and is expanded to include all planning and strategies put in place to support the standard of professional conduct required by the RCSA Code. It would include policies, procedures and practices. Transparency and probity are also part of this control environment.

### Customer

means a person who acquires, or who has dealings to acquire, a workforce service (regardless of the payment of any fee) and includes, where the context permits, a workseeker.



## Exploitation

Exploitation refers to any conduct in relation to a workseeker that markedly deviates from the accepted norms of professional staffing and recruitment conduct and practice to such an extent that that it can be characterised as "unsatisfactory professional conduct."

Exploitation includes, but is not limited to, situations that result in the workseeker being subjected to conditions suggestive of:

- slavery or conditions similar to slavery;
- servitude;
- forced labour;
- coerced commitments such as forced marriages;
- oppressive financial obligations or debt bondage.

Exploitation also encompasses acts that, while perhaps not strictly illegal, take unfair advantage of a workseeker's situation, vulnerabilities, or lack of knowledge.

## the Industry

means the on-hire, recruitment, contracting and consulting industry across Australia and New Zealand including, without limitation, the provision of recruitment, workforce consulting, on-hire and staffing services.

## Involvement (in unsatisfactory professional conduct)

Includes:

- i. aiding, abetting, counselling or procuring;
- ii. inducing or attempting to induce; or
- iii. being in any way, directly or indirectly, knowingly concerned in, or party to, unprofessional conduct.

## Professional Conduct Grievance Intervention Guidelines (PCGIGs)

are the procedures approved by the RCSA Board from time to time, regardless of how they may be styled, for implementing the RCSA Code.

**Example:** The Disciplinary & Dispute Resolution Procedures which are referred to in RCSA's Constitution would be PCGIGs.

## Reasonable standard of confidence

means in relation to a matter, circumstance, or state of affairs means that, after reasonable inquiry, the Member is comfortably satisfied, within an acceptable

degree of residual risk, as to its existence and that the Member can demonstrate the reasonable basis for such satisfaction.

### Service network

means a set of contracts, arrangements or understandings for the performance of service network roles by two or more providers.

### Service network role

means any of the following roles in relation to a workseeker:

- i. sourcing/selection
- ii. engagement
- iii. mobilisation (including induction and work health & safety training)
- iv. occupational, pre-vocational and recent-graduate training
- v. performance of work (by workseekers)
- vi. management & supervision
- vii. accommodation
- viii. payment
- ix. demobilisation.

### Staff

means persons engaged by a Member in its business to work on the Member's behalf in providing or supporting the provision of Workforce Services and includes a Consultant.

### Stakeholder

means a person who places trust in a Member to meet the standard of professional conduct required by the RCSA Code, to avoid unsatisfactory professional conduct, or to be accountable through RCSA's *Professional Conduct Grievance Intervention Guidelines*, including RCSA, another Member, Staff, a customer, a competitor, or a regulator.

### Statement of commitment

means a statement of commitment to meet the standard of professional conduct required by the RCSA Code and to be accountable through RCSA's *Professional Conduct Grievance Intervention Guidelines*, which may be in the form approved by the Board of RCSA from time to time.

### Unsatisfactory professional conduct

includes any conduct, whether of the Member or another person, occurring in connection with a Member's workforce services dealings that might reasonably be

expected to discredit the Member's commitment to meeting the standard of professional conduct required by the RCSA Code.

### Value promise

means any representation, promise or prediction that a Member's services (or services of third party supplied in connection with a Member's services) are of a particular standard, quality, value or grade; or have performance characteristics, accessories, uses or benefits or will achieve a particular purpose.

### Workforce services

means a service for the on-hire, recruitment, contracting, management or administration of labour.

### Workforce services dealings

includes all activities in establishing the relationship between an workforce services provider and its customer, workseekers or participants in its service network and all activities of a Member in providing an workforce service.

### Workseeker

means a person who seeks or obtains work through the services of a Member in a direct or on-hired capacity, whether as an employee, independent contractor, officer or otherwise.

### Interpretative Notes

Code Guidelines and other interpretive materials and professional conduct recommendations will occasionally describe outcomes that would be considered consistent with the standard of professional conduct required by the RCSA Code in particular contexts.

#### Note 1: Outcomes

Outcomes describe what Members should achieve in order to satisfy the standard of professional conduct required by the RCSA Code.

#### Note 2: Indicative behaviours & Contra-indications

The outcomes may be supplemented by **indicative behaviours** and **contra-indications**. The indicative behaviours and contra-indications indicate, but do not constitute an exhaustive list of, the behaviour which may establish the likelihood of achieving the outcomes or indicate that the outcomes have not been met.

#### Note 3: Alternative means

There may be other ways of achieving the outcomes. If Members have chosen a different method from those which RCSA has described as indicative behaviours, they might have to demonstrate how they have nevertheless achieved the outcome.

Members are encouraged to consider how they can best achieve the outcomes, taking into account the nature of their business, the particular circumstances of their workforce dealings and, crucially, the needs of their particular workseekers and customers.

**Note 4: Consistency of usage**

Terms defined or ascribed a particular usage by the RCSA Code bear those same meanings and usages in all interpretive and guidance materials, including RCSA's procedures for implementing the RCSA Code.

# PROFESSIONAL CONDUCT GRIEVANCE INTERVENTION GUIDELINES

## 1. OVERVIEW

### 1.1. What You Need to Know About RCSA's Grievance Intervention Process

RCSA is committed to ensuring that its members maintain a high level of professionalism. If there's an issue, here's how our system works:

#### 1.1.1. Solution Focus

RCSA's process is solution-focused rather than "resolution focused". While "resolution" and "solution." both aim for positive outcomes, their scopes and objectives differ in some important ways. Let's have a look at that:

##### Solution:

###### *Defined as:*

An outcome reached between RCSA and its member, addressing both the specific grievance and wider conduct implications.

###### *Scope:*

- Encompasses broader professional standards and conduct.
- May require resolution as a component.

##### Resolution:

###### *Defined as:*

Agreement or understanding reached between the Grievant and the member, addressing the specific grievance.

###### *Incorporated within Solution:*

- Solutions may require grievance resolution.
- Aims to mend relationships and address the immediate issue.

By understanding these distinctions and how they interplay, we ensure that individual grievances are handled efficiently, while upholding the integrity and standards of the profession at large.

#### 1.1.2. Engagement with the Member:

RCSA focuses on helping members to meet professional standards. If issues emerge, the main dialogue is between RCSA and the involved member.

#### 1.1.3. Promoting Professionalism:

Our approach is different from traditional disciplinary bodies. We focus on understanding professional practices and encouraging our members to adopt them.

#### 1.1.4. Your Contribution:

When you bring a concern to our attention, you provide important information. We may contact you for more details or clarification. However, it's different from a court process; there's no need for you to present a case against an opponent.

#### 1.1.5. Our Objective:

RCSA's goal is to help our members maintain good professional standards. Instead of making judgments about who's right and who's wrong, we evaluate our member's conduct. We aim to identify the appropriate professional behaviour and guide our member towards it.

## 1.2. RCSA's Disciplinary Authority

These guidelines support the exercise of RCSA's disciplinary authority regarding its members' professional conduct. That authority is sourced in RCSA's Constitution. It allows RCSA to impose sanctions on a member who has engaged in conduct that is unbecoming of the member or prejudicial to the interests of the RCSA.

### 1.2.1. Sanctions Available to RCSA

RCSA has several measures it can use if a member doesn't follow the expected professional standards:

- a) Expelling a member from RCSA.
- b) Suspending their membership for a set time.
- c) Asking them to pay fines set by the RCSA Board.
- d) Giving verbal or written warnings.
- e) Asking them to take or stop specific actions or to pay a certain amount.
- f) Requiring them to cover costs tied to these actions.

However, these actions aren't the same as legal orders from a court. If a member chooses not to follow RCSA's requests, the main outcomes are usually suspending their membership until they do or expelling them from RCSA.

## 1.3. RCSA's Jurisdiction & Intervention Criteria

RCSA has authority to intervene in grievances arising from member conduct, but it's not always obliged to do so.

### **Examples of Intervention Considerations:**

- The suitability of statutory or civil enforcement for certain grievances.
- Deference to superior investigative processes, such as police investigations or court proceedings.
- Limitations due to lack of statutory powers to produce evidence.
- Matters that do not align with RCSA's strategic priorities.

### 1.3.1. Balancing Interests

These guidelines aim to strike a balance: upholding RCSA's disciplinary role while also supporting members in their self-regulation journey.

### 1.3.2. Recognition and Respect of External Obligations:

RCSA acknowledges that members may have professional responsibilities extending to external sources.

### **Examples of External Obligations:**

- Commitments for corporate members of the World Employment Confederation.
- Obligations due to multi-disciplinary practices, such as those under AHRI or MARA Codes of Conduct.

RCSA takes account of externally sourced professional obligations when they align with its Constitution and Code.

## 1.4. Does RCSA Get Involved in Business and Workplace Disputes?

Yes, we do. Our members offer employment services, and many concerns about professional conduct come from these business activities or things that happen at a member's workplace. Here's what you need to know:

### 1.4.1. Not About Legal Rights:

We don't decide legal rights. Instead, we focus on guiding our members to act professionally during disputes.

### 1.4.2. Professional Responses:

This could mean:

- ✓ Having a clear system to handle complaints within their business.

- ✓ Using methods like talking it out (mediation) or getting an expert's view to sort out disagreements quickly and without high costs.
- ✓ Sometimes, the best professional move might be getting a legal opinion fast or working with official regulators.

#### 1.4.3. Supporting Other Solutions:

If other solutions, like courts or regulators, get involved, RCSA ensures its steps don't interfere. But we'll keep an eye on things to make sure our member continues to act in a professional way.

#### 1.5. Acceptance of an Intervention Request

When RCSA accepts a request to look into a member's conduct, it doesn't mean the member did something wrong according to our Code. It just means we're interested in whether the request relates to conduct that engages the Code or raises aspects related to the member's responsibilities under RCSA's Constitution and want to know more details. It may also mean that we think the grievance can be resolved. If a member requests us to intervene in a grievance with another member, RCSA might want to check the actions of both members.

#### 1.6. What Does a Successful a Grievance Intervention Look Like?

A grievance intervention is successful when:

- ✓ RCSA and its member agree (or RCSA determines) what the professional thing to do would be; AND
- ✓ the member commits to doing it; AND
- ✓ the member carries through on its commitment.

#### 1.7. Who Will be Helping You Resolve Your Grievance

Many different people contribute to support an intervention so that it runs smoothly. Some are RCSA employees and external consultants, though most are volunteers. The table below describes their roles and responsibilities.

**Table**

Role	Key Responsibilities	How They Assist You
<b>Members</b>	Commit to professionalism and ensure their organizations operate with integrity.	They uphold professional standards in their employment services dealings.
<b>The Board</b>	Governance, Code maintenance, directing governance framework development, publishing strategic priorities, endorsing professional conduct recommendations, appointing committees and advisors, sanctioning members, etc.	They provide overarching governance, set strategic priorities, and ensure fair evaluations.
<b>The CEO</b>	Get member commitments, resource provision for grievance interventions, provide training support, publicize the Code and guidelines.	They make sure RCSA has the resources and training to support members and manage interventions.
<b>Professional Conduct Registrar (Registrar)</b>	Receive grievances, facilitate their handling, coordinate panel members, provide information about the Code, may make recommendations or accept written commitments.	They're your primary contact point for grievances and help manage the intervention.
<b>Professional Conduct Review</b>	Make professional conduct recommendations, direct investigations, make findings about member conduct, recommend sanctions to the Board.	They review grievances in depth, ensuring that professional standards are met.

Committee (PCRC)		
Professional Practice Council (PPC)	Periodically review the Code, guidelines, performance reports, etc., develop guidance materials.	They ensure the Code and guidelines stay relevant and effective.
Professional Conduct Counsellors (PCC)	Help members understand their commitments and support them through the intervention process.	They offer guidance to members throughout the intervention process.
Arbitrator	Conduct arbitration as per the RCSA Constitution and other provisions.	They offer a formal external method to resolve certain disputes.
Code Advisors	Provide early evaluation, pathway advice, collaborate with parties to assist with interventions, conciliate in interventions. May sit as a member of a PCRC.	They offer expert advice and assistance in the intervention process, ensuring a fair evaluation of the circumstances.

**Note:** This table is a condensed version of roles and responsibilities that are more fully set out in RCSA's internal Position Descriptions, Terms of Reference, and Delegations.

## 1.8. Pathways

When RCSA intervenes in a grievance involving a member's professional conduct, it allocates its intervention to one or more confidential ADR processes (called "pathways") that it considers might help to bring about a successful outcome. RCSA monitors progress and can switch pathways when needed.

### Examples of Pathways:

- RCSA might refer an intervention to a Professional Conduct Review Committee (PCRC) to conduct an investigation.
- Instead of asking the PCRC to conduct an investigation, RCSA might facilitate an exchange of information between the grievant and its member to see if the matter can be resolved.
- RCSA might allow a member to deal with a matter through its own internal complaints handling process (if those processes are robust); or it might direct a member to explore options for external mediation.
- RCSA might require a member to engage with a Professional Conduct Counsellor or a Conciliator who can help the member to understand the issues and guide the member toward a professional outcome.

## 1.9. Confidentiality

RCSA professional conduct grievance interventions are as confidential as the law will allow. Sometimes, however, the law may require disclosure even of confidential information.

## 1.10. Privacy

1. During an intervention, RCSA will usually collect some personal information that may be protected by privacy laws.
2. In Australia, some aspects of RCSA's collection, use, and disclosure of personal information will be exempt from some provisions of the Australian Privacy Principles under the Permitted General Exemption relating to confidential ADR processes. Different provisions apply in New Zealand.
3. We try to use pseudonyms to protect identities when we can.
4. For more details on how we handle private info during these processes, check RCSA's Privacy Policy.



## 2. WORKING TOGETHER FOR BETTER OUTCOMES

### 2.1. Participation Guidelines

If someone who isn't an RCSA member doesn't follow our guidelines during an intervention in which they have been allowed to participate, they might not be allowed to continue participating.

### 2.2. What We Try to Ensure in Interventions

During these interventions, we try to ensure that:

- a) We follow the law.
- b) People feel heard and understood.
- c) People have enough information about others' reactions.
- d) RCSA's professional standards are met.
- e) Information stays private; but can be used to check if someone should be an RCSA member in the future.
- f) We keep the process simple, quick, and fair.
- g) People know the outcome and why we decided it.

### 2.3. Cooperation: Working Together for Better Outcomes

When you're involved in an RCSA intervention, whether you're directly affected, assisting someone, or giving advice, it's essential to cooperate fully with RCSA. Here's why and how:

#### 2.3.1. Why Cooperation Matters:

Just like in collaborative efforts, everyone's input and actions influence the result. When everyone works together, we can better understand the issues and find solutions that uphold professional standards.

#### 2.3.2. Your Role in Cooperation:

Share information promptly and honestly. Listen to others, respect their views, and be open to feedback. Remember, the aim isn't about winning or losing but finding the best professional outcome.

#### 2.3.3. Support and Guidance:

If you're assisting or advising someone, it's crucial to guide them toward cooperative and constructive participation. This approach aligns with the principles of collaborative problem-solving and ensures a smoother intervention process.

#### 2.3.4. Outcome of Cooperation:

By working cooperatively, we can address concerns more efficiently and effectively, promoting a high standard of professionalism and understanding.

Remember, RCSA's goal is to ensure the best professional standards. Cooperation from everyone involved makes that goal achievable.

#### 2.3.5. When Participants Choose Not to Cooperate

When participants choose not to cooperate, RCSA can:

- a) if the participant is a grievant, terminate the intervention;
- b) if the participant is a member, require the member to show cause why sanctions should not be imposed;
- c) if the participant is a non-member, withdraw the non-member's permission to participate in the intervention.

## 2.4. Lawyers

You can consult a lawyer for advice, but always keep things confidential. While you can get advice, it is only in rare cases, where someone would face severe disadvantage, that we might allow a lawyer to represent them; and we might impose some conditions.

### Example of Conditions:

- RCSA might require your lawyer to successfully complete a course of RCSA Code or PCGIG Induction training.

## 2.5. Keeping the Process Fair and Transparent

People involved in the process shouldn't try to influence RCSA Directors or members of the Professional Conduct Review Committee in ways that are not fair and transparent.

## 2.6. Costs

Everyone pays their own costs during this process unless:

- a) RCSA directs a member to pay or contribute to someone else's costs;
- b) An arbitrator decides otherwise; or
- c) A court decides otherwise.

## 2.7. Freedom to Choose Different Ways to Resolve Grievances

These guidelines don't stop:

- a) People from agreeing on a different way to resolve their grievance, as long as:
  - I. it satisfies the requirements of PCGIG 2.2;
  - II. once resolved, they tell RCSA about it;
  - III. their other method doesn't stop RCSA from looking into a member's professional conduct;
- b) A court from getting involved if needed.

# 3. GRIEVANCE INTERVENTION REQUESTS

## 3.1. Making a Request

If you have concerns about how a Member has acted professionally and it affects you directly, you can ask for our help. Use the form or method we've provided.

## 3.2. Using a Representative

If you prefer, someone else can represent you, like a lawyer, union, or community group. They need your clear permission to speak for you and must follow our guidelines, including respecting privacy, confidentiality, and working cooperatively.

## 3.3. How to Send Your Request

We have different ways for you to make your request, either in writing or by speaking to someone. We want to make sure everyone can access our services easily.

## 3.4. Protecting Privacy

When RCSA receives a request for intervention, it may require a participant and direct a member who is involved in the intervention to provide a copy of RCSA's collection notification under Australian Privacy Principle 5 or a copy of RCSA's privacy policy to any individual whose personal information RCSA is likely to collect in responding to the intervention request or handling the intervention. RCSA may require proof that its requirement or direction has been complied with.

**Note:** RCSA members are bound by RCSA's Code of Conduct to cooperate in the handling of interventions. Non-members who have RCSA's permission to participate in an intervention are required to cooperate with RCSA's handling of the intervention.

## Intervention

### 3.4.1. Choice to Intervene:

RCSA has the choice whether to intervene or not when there's a grievance about professional conduct.

### 3.4.2. Who Makes the Decision:

This decision can be made by the Board or someone they appoint, like the CEO or the Registrar.

### 3.4.3. Reasons to Not Intervene:

RCSA might decide not to intervene for various reasons, including:

- a) The grievance doesn't seem serious or seems meant to cause trouble.
- b) It doesn't raise important concerns about a member's professional conduct.
- c) RCSA's available resources might not be suited to intervening in the grievance.
- d) Investigating might interfere with ongoing legal cases, police work, or other official investigations.
- e) There was a long delay in bringing up the grievance, which might affect the intervention.
- f) The issues raised were part of a grievance that was already addressed.
- g) RCSA has accepted an undertaking or commitment from the member addressing the main concerns raised in the grievance.

### 3.4.4. Postponing Instead of Declining:

Sometimes, RCSA might choose to postpone its intervention. This could be until:

- a) Official bodies, like the police or regulators, finish their own investigations.
- b) Any legal cases between the involved parties are settled.
- c) The member(s) in question have received guidance or counselling.
- d) Everyone involved tries another way to solve the issue, like mediation, as outlined in these guidelines.

### 3.4.5. Notification of Intervention Decision

When RCSA receives a request for intervention, we check it. If we decide to intervene, we choose one or more pathways and let both the person raising the concern and the member whose conduct has been referred to us know:

- a) whether we're intervening; and
- b) if so, which pathway/s we're using.

## 4. CAUTIONS

### 4.1. Cautions: What Are They?

1. Sometimes issues come up that challenge the assurance of professionalism associated with RCSA membership. In such cases, we might need to consider a "caution." Cautions aren't punishments. They help make sure that RCSA's professional conduct framework stays strong for everyone's benefit.
2. A caution is note on the membership register informing the public:
  - a) about the type of conduct that led to intervention;
  - b) whether there is a precautionary suspension of membership;
  - c) that we're working on it confidentially;
  - d) that this doesn't mean the member did anything wrong;

- e) about a member contact point for more information; and
- f) that RCSA won't comment more until the process ends.

#### 4.2. Who Decides on a Caution?

1. The Registrar, together with the CEO, evaluates the conduct that gave rise to the grievance and may note a caution on the Register of Members against the Member in respect of whose conduct it intervenes.
2. The evaluation may be made whenever RCSA considers it appropriate to do so.

#### 4.3. General Approach

1. If there's a possibility that a course of conduct that gives rise to a request for intervention could weaken the assurance of professionalism that RCSA membership represents, we don't wait until we're completely sure. Instead, we act carefully and cautiously right away to prevent harm that might flow from any weakening of that assurance. This approach has two main elements:
  - a) We act early to prevent possible harm.
  - b) We balance risk against the possible effects of our actions.

#### 4.4. Procedure

##### 4.4.1. Timing

At any time after we accept an intervention request, RCSA's CEO and Professional Conduct Register may decide together whether a caution should be noted.

##### 4.4.2. Evaluation Criteria

1. In conducting an evaluation RCSA can consider any circumstances it thinks are relevant, including:
  - a) The type and seriousness of the reported conduct.
  - b) Any evidence provided.
  - c) How many people might be affected.
  - d) Any harm to the member or others.
  - e) Protecting privacy and confidential information.
  - f) Possible interference with other investigations.
  - g) The importance of RCSA's professional reputation.
  - h) Any statement of strategic priorities that the Board has published.
  - i) Other ways to address the issue.
2. We can gather information in any lawful way we choose; but must give our member a reasonable opportunity to respond to the information we intend to rely on.

##### 4.4.3. Consulting with Our Member

1. Before noting a caution, we inform our member in writing about the issue, why we're considering a caution, what we're considering, and what the caution might say. We give them a fair chance to explain why we shouldn't note a caution.
2. The member can respond in writing or in a conversation. If they choose a conversation, it starts informally. They can bring a helper, like a lawyer, provided that the helper follows our guidelines, including respecting privacy, confidentiality, and working cooperatively. The process should aim to be fast, cost-effective, and fair.

#### 4.4.4. Monitoring and Variation

If RCSA notes a caution, we monitor the situation. If things change, we might adjust the caution. The member must be informed about any proposed changes.

## 5. INTERVENTION PATHWAYS

### 5.1. Overview

1. When RCSA intervenes in a professional conduct grievance, we choose one or more pathway/s for the intervention from the ones we've listed in this section. The Board, the CEO and the Registrar can review the intervention at any point. They can switch pathways, add another pathway, or end the intervention.
2. Ending an intervention on a "Diversion & Monitoring" pathway simply means RCSA will no longer monitor it. Any other external body's authority (e.g., that of a regulatory or certification body) remains unchanged.

### 5.2. Neutral Evaluation

1. This Pathway involves evaluation of a grievance or Intervention by a Code Advisor. The aim is to identify and narrow the main issues and to find the most appropriate pathway/s for the intervention.
2. RCSA can ask for Neutral Evaluation at any time.
3. If a member is involved in a grievance, they can ask RCSA to conduct a Neutral Evaluation, but the member will need to pay for it. RCSA can agree or refuse.
4. Neutral Evaluation is based on the information given to the Code Advisor. The Code advisor can request further information.
5. The Evaluation is given in writing. RCSA may share it with involved members to help them understand and meet their professional responsibilities, but it remains confidential.
6. A Professional Practice Review Committee asks for a Neutral Evaluation. If it does, members who are parties or participating in the intervention with permission of the PCRC must be given a copy.
7. Neutral Evaluation is distinguished from the related pathway, Expert Appraisal. While both processes involve an evaluation by knowledgeable individuals, **Neutral Evaluation** takes a more overarching approach, identifying main issues and guiding the intervention towards the most appropriate resolution pathway. In contrast, **Expert Appraisal** focuses on reaching a non-binding opinion about specific technical or specialised aspects of a grievance or intervention, offering depth and clarity. It's the difference between a broad, strategic overview (Neutral Evaluation) and a deep, targeted analysis (Expert Appraisal).

### 5.3. Diversion & Monitoring

1. RCSA uses several Diversion & Monitoring Pathways, where it can divert a grievance into external channels.
2. If an intervention is placed on a Diversion & Monitoring Pathway, RCSA may choose to postpone any further intervention pending the outcome of the diversion PROVIDED that it monitors the progress of the diversion and remains satisfied that its member's co-operation with the diversion meets the standard of professional conduct required by the RCSA Code.

#### 5.3.1. Complaints Handling Diversion

1. This Diversion Pathway channels a grievance into a member's internal process. It lets them demonstrate their professionalism through the way they handle the grievance.
2. Members can use an external complaints service for better independence and efficiency.

3. RCSA will only use this pathway if we believe the member has access to a good complaints handling process, which:
  - a) is overseen by the member's senior managers;
  - b) meets RCSA's requirements for confidentiality, privacy and cooperation; and
  - c) is compatible with RCSA's Code.

#### 5.3.2. Corrective Action Diversion

1. This Diversion Pathway channels a grievance into the member's corrective action procedures linked with any certifications they have, e.g., "StaffSure." It gives members a chance to review and fix their controls to meet RCSA's standards and those of their certification body.
2. RCSA will only use this path if the member has an approved certification or accreditation that includes a corrective action procedure that meets RCSA's requirements for confidentiality, privacy and cooperation and is compatible with RCSA's Code.

#### 5.3.3. Regulatory Referral Diversion

1. This Diversion Pathway channels a grievance by way referring a Member's professional conduct to a statutory regulator, commission or tribunal, such as the Fair Work Ombudsman (FWO), the Office of the Australian Information Commissioner (OAIC), the Australian Competition & Consumer Commission (ACCC); NZ Commerce Commission, a Labour Hire Licensing Authority, or a Human Rights Commission. It also includes referral to another authority such as AHRI or MARA that may exercise a concurrent jurisdiction in respect of the professional conduct of Members
2. Typically, a Regulatory Referral would be made where a grievance:
  - a) indicates a significant breach of a human right, or a workplace right (within the meaning of the *Fair Work Act*,
  - b) raises a matter more appropriate to the making of a personal grievance to the Employment Relations Authority (NZ);
  - c) raises an important licensing issue, a competition or consumer law contravention, or breach of a privacy right.

#### Procedure

##### *Timing:*

3. Upon accepting a grievance for intervention, the CEO together with the Registrar, decides if it should be referred to a relevant regulator. This can be done at any time during the intervention process.
4. A Neutral Evaluation can be carried out at any time to assist in deciding if circumstances leading to RCSA's intervention warrant making a Regulatory Referral.

##### *Member Notification before Referral:*

5. Usually, RCSA will inform the member before a referral is made, detailing the reasons for referral. This gives the member a chance to self-disclose the issue or to say why RCSA should not make the referral.

##### *Exceptions to Prior Notification:*

6. RCSA can dispense with prior notification if it reasonably considers it necessary for any reason, including:
  - a) to prevent or reduce harm to someone.

**Example:** Addressing serious workplace hazards.

- b) If notification might interfere with police or other official actions.

**Example:** Avoiding hindrance in active law enforcement activities.

- c) If RCSA is involved in the conduct that led to intervention.

**Example:** In cases where RCSA might be involved in anti-competitive practices, it could directly report to the ACCC to pursue immunity.

#### *Mandatory Referral:*

- 7. Conduct that requires mandatory reporting, is identified by the Board, or specified in agreements/policies must be referred.

#### *Evaluation Criteria*

- 8. Considerations before referral include the severity of the conduct, available evidence, potential harm, relevant whistleblower policies and reports, privacy concerns, RCSA's strategic priorities, and possible alternatives.

### 5.3.4. Undertakings & Informal Commitments

- 1. RCSA offers two distinct approaches for Members to resolve interventions: Undertaking Diversions and Commitment Diversions.
  - a) **Commitment Diversions:** During Facilitation, members can provide written commitments to the Registrar setting out how they will address the circumstances that have led to RCSA's intervention. A commitment can influence RCSA's decision on the continuation of the Facilitation or the reallocation of the intervention to another pathway.
  - b) **Undertaking Diversions:** At any time before sanctions imposed by the RCSA on the member take effect, the member can give RCSA's Board a written undertaking that addresses, either in whole or in part, the circumstances that have led to the intervention or the proposal to impose sanctions.

#### *Confidentiality*

- 2. When a commitment or undertaking is presented confidentially and without prejudice, its terms are protected from access or disclosure, to the extent permitted by law. This protection applies unless RCSA accepts the undertaking or relies on the commitment in terminating a Facilitation.
- 3. Once accepted, RCSA retains the discretion to publish details of the commitment or undertaking as deemed appropriate PROVIDED that RCSA gives the member reasonable notice of its intention to publish.

#### *Withdrawal, Amendment, and Re-evaluation*

- 4. Members can propose changes or withdraw their commitments or undertakings, but they need consent from:
  - a) the Registrar in the case of a commitment; or
  - b) the Board in the case of an undertaking.
- 5. Withdrawals and modifications trigger a fresh Intervention Evaluation by RCSA.

#### *Compliance, Cooperation, and Consequences*

- 6. If the RCSA considers a member has breached their commitment or undertaking, it can call upon the member to show cause why sanctions should not be imposed.

#### *Procedure*

##### *Object*

- 7. The main object of a commitment and undertaking is to provide an assurance to RCSA that a member will address past professional conduct of concern that led to the Intervention and will implement measures to prevent similar conduct in future.

### *Requirements*

8. RCSA must inform a member in respect of whose conduct it intervenes of the ability to resolve the Intervention by making a commitment or giving an undertaking.
9. Members must inform the Registrar before proposing a commitment or undertaking.
10. RCSA may give a non-binding indication of what a commitment or undertaking might contain in order to address the conduct of concern the led to the Intervention.
11. Before presenting any commitment or undertaking, members are encouraged to seek legal advice.
12. RCSA's Code Advisor will evaluate all proposed commitments and undertakings. Identified shortcomings or concerns will be communicated to the member, who can either amend their proposal or proceed with it.
13. The Board in the case of an undertaking and the Registrar in the case of a commitment considers the advice and recommendation from RCSA's Code Advisor, but they are not bound by it.

### *Referrals and Notifications*

14. Submitting a commitment or undertaking doesn't exempt the member from potential Regulatory Referrals to law enforcement, certification bodies, or other relevant organisations.

### *Further Provisions on Undertakings*

15. If an undertaking is accepted:
  - a) RCSA may disclose details about it to a Professional Conduct Review Committee that may be handling the Intervention in which the undertaking was accepted; and
  - b) the Professional Conduct Review Committee is not required to proceed with further investigation or determination of the member's conduct in respect of the professional conduct interests that have been satisfied.

## 5.4. Facilitation

### 5.4.1. Objective

Facilitation is a low-key intervention method, aiming to promote understanding between participants involved in a grievance. It helps those involved to comprehend its nature and any subsequent responses, potentially leading to a self-generated solution.

### 5.4.2. Procedural Guidelines

#### Duration:

1. Facilitation can continue as long as the Registrar sees it has value, keeping in mind that prolonged processes might hinder other resolution methods and harden stances.

#### Initiation:

2. With the Grievant's approval, the Registrar informs involved Members about the grievance, including a summary of its substance and provides an opportunity for a response.

#### Member's Response:

3. Members have two weeks to provide a detailed response after notification.
4. The Registrar can shorten or extend this timeframe if deemed beneficial. Any extension must be communicated to the Grievant.

#### Post-Response Actions:

5. If both Grievant and Member agree on a method of resolution:
  - a) They must set and agree on a resolution timeline with the Registrar.
  - b) The Registrar confirms this timeline.



- c) No further intervention is needed by the Registrar, except to monitor progress based on the agreed timeline.
  - d) Both parties must update the Registrar on any timeline changes, potential resolution barriers, or if they reach a resolution.
6. If there's no agreement on method of-resolution:
- a) The Grievant is informed about the Member's response.
  - b) The Grievant gets two weeks to reply, including addressing any counter-grievance from the Member.
  - c) The reply timeframe can be shortened or extended by the Registrar if considered beneficial, with the Respondent being informed of any extensions.

#### Further Exchanges:

7. The Registrar can encourage more information exchanges between parties within set timeframes if it might aid in grievance resolution.

#### Termination:

8. If the Registrar believes that the Facilitation isn't effective or that a resolution is unlikely, they can end the Facilitation process.
9. On ending a Facilitation, the Registrar may terminate the intervention or allocate it to any other available intervention pathways.

## 5.5. Conciliation

### 5.5.1. Objective

Conciliation aims to re-align a member's conduct with RCSA's professional standards. Instead of addressing a dispute between a Grievant and a member (as in mediation), conciliation focuses on mending the professional relationship between RCSA and the member. Through this process, a Conciliator serves as a bridge, helping the member recognise deviations from the expected conduct, understand the implications of their actions, and navigate back towards the path of professional integrity.

### 5.5.2. Procedural Guidelines

#### When Conciliation may be appropriate

1. Conciliation is appropriate when a member's actions or behaviour appears to deviate from conduct that is becoming of a member or not in the interests of RCSA. It serves as an avenue to understand the reasons behind such deviations and to collaboratively devise a way to return the member to professional compliance.

#### When Conciliation may NOT be appropriate

2. While RCSA can initiate conciliation with a member, it's crucial that the member recognises the value of this process. If a member is entirely resistant or unresponsive, alternative methods might be more effective.
3. Conciliation may not be suitable if:
- a) there are ongoing legal proceedings where the outcome might be influenced by the conciliation process; or
  - b) the member has shown repetitive disregard for RCSA's guidelines despite previous interventions.

#### Conciliation Roles

4. Conciliation should be conducted by an accredited conciliator appointed by RCSA.
5. Conciliation may also be conducted by a PCRC before it embarks on the determinative stage of its investigation provided that an accredited conciliator is a member of the PCRC.

6. A conciliator who sits as a conciliator member of a PCRC does not have a determinative vote on the Committee.
7. A conciliator may also act as a Code Advisor and an Expert Appraiser.

#### Conciliation Directions

8. The Registrar can direct conciliation at any stage of an intervention, consistently with a Code Advisor's Pathway Recommendation.

#### Notification

9. The Registrar will inform the member when conciliation is being considered, outlining the reasons and any specific RCSA guidelines for the process.
10. The member must respond to the Registrar's notification promptly, detailing their stance on participating in the conciliation.
11. The Registrar will take the member's response into account when directing the structure, process, and details of the conciliation.

#### Compliance, Cooperation, and Consequences

12. Members must comply with a direction given to them to participate in conciliation and cooperate in the process in good faith.
13. A Conciliator may report non-compliance and non-cooperation by a member to the Registrar.
14. RCSA may require a member who is the subject of a report of non-compliance or non-cooperation to show cause why sanctions should not be imposed.

## 5.6. Expert Appraisal

### 5.6.1. Objective

Expert Appraisal is a process where an independent expert gives their opinion on specific questions. They help give a clear and informed view on professional conduct issues and interventions. This helps make decisions more fair, accurate, and professional. It's not a final decision, but it's a valuable tool to guide the intervention.

### 5.6.2. Differentiated from Neutral Evaluation

Expert Appraisal is distinguished from the related pathway, Neutral Evaluation. While both processes involve an evaluation by knowledgeable individuals, **Expert Appraisal** focuses on providing a non-binding opinion about specific technical or specialised aspects of a grievance or intervention, offering depth and clarity. In contrast, **Neutral Evaluation** takes a more overarching approach, identifying main issues and guiding the grievance or intervention towards the most appropriate pathway. It's the difference between a deep, targeted analysis (Expert Appraisal) and a broad, strategic overview (Neutral Evaluation).

### 5.6.3. Procedural Guidelines

#### Who Conducts Expert Appraisals

1. Expert Appraisal may be carried out by a Code Advisor or other person appointed by RCSA who is expert in the field requiring appraisal – e.g., a specialist medical recruiter on a question of medical recruitment; a specialist lawyer on a legal question.

#### Requesting Expert Appraisal

2. RCSA can ask for Expert Appraisal at any time.
3. A member or person who has been allowed to participate in an intervention with the permission of the PCRC and who may be substantially adversely affected by the outcome of a decision made by RCSA in the course of an intervention may request expert appraisal at their own cost.

4. Expert Appraisal is based on the information given to the Expert. The Expert can request further information.
5. The Appraisal is given in writing. RCSA may share it with involved members to help them understand and meet their professional responsibilities, but it remains confidential.
6. A Professional Practice Review Committee may ask the Registrar to obtain an Expert Appraisal. If it does, members who are parties, or who are participating in the intervention with permission of the PCRC and who may be substantially adversely affected by it, must be given a copy.

## 5.7. Counselling

### 5.7.1. Objective:

Counselling is about helping a member to understanding and solve problems, not about representing the Member. It offers a mechanism to guide Members through an intervention, helping them align their conduct with the RCSA Code.

### 5.7.2. Procedural Guidelines:

#### Counsellors

1. RCSA may establish a panel of respected industry leaders (including emerging leaders) to act as Professional Conduct Counsellors (Counsellors)
2. Counsellors must uphold the RCSA Code.
3. Their primary duty is to the RCSA, guiding Members through the intervention process.
4. RCSA provides Counsellors with necessary support, supervision, and insurance coverage.
5. Counsellors may charge fees provided that they meet standards of certainty of engagement under the RCSA Code.
6. Counsellors can decline or terminate their appointment.

#### When Counselling is appropriate

7. Counselling may be appropriate:
  - a) when a Member resists collaborative efforts to resolve a professional conduct issue according to the Code.
  - b) when either the Member's course of action clearly misaligns with professional conduct or a gap in the Member's professional understanding prolongs the intervention.

#### When might Counselling be Inappropriate?

8. Counselling might NOT be appropriate
  - a) if it risks violating whistleblower protections.
  - b) if it interferes with a law enforcement investigation or impacts the Member's legal defence.
  - c) if it could violate the Member's right against self-incrimination or subject them to penalties.
  - d) if it jeopardizes a Member's (or their insurer's) defence in ongoing legal proceedings.

#### Counselling Directions

9. The Registrar can direct counselling and appoint a Counsellor at any stage of an intervention consistently with a Code Advisor's Pathway Recommendation.
10. Counselling can run alongside other interventions like Facilitation or Investigations. If deemed unfruitful, the Registrar can terminate counselling, suggesting other intervention pathways.
11. The Registrar notifies the member whenever it proposes to direct counselling - outlining reasons for considering counselling, and details of the proposed counselling.

12. Members must respond promptly, within timeframes set by the Registrar, whether they will participate.
13. The Registrar then decides whether to direct counselling and informs the Member.

#### Compliance, Cooperation, and Consequences

14. Members must comply with a direction given to them to participate in counselling and cooperate in the process in good faith.
15. A Counsellor may report non-compliance and non-cooperation by a member to the Registrar.
16. RCSA may require a member who is the subject of a report of non-compliance or non-cooperation to show cause why sanctions should not be imposed.

## 5.8. Mediation

### 5.8.1. Objective

Mediation is an informal process for helping people who have a dispute to sort it out for themselves without going to court. A mediator is a neutral third person who encourages those in the dispute to talk to each other about the issues. The mediator is not an advice-giver or decision-maker. The parties examine the real problems, large or small. They then create and agree upon an outcome that meets their needs and addresses their concerns.

### 5.8.2. Procedural Guidelines

#### When Mediation may be appropriate

1. Mediation is directed toward resolution of a dispute between a Grievant and a member. It is appropriate when a grievance involves a civil dispute, the early resolution of which would be consistent with members' responsibilities under the Code.

#### When Mediation may NOT be appropriate

2. RCSA may direct a Member to participate in mediation but may not direct a non-Member to participate. Consequently, mediation would not be appropriate if a non-Member were unwilling to participate.
3. Because mediation is directed toward resolution of a dispute between a Grievant and a member, it might not be appropriate for RCSA to direct mediation if it would interfere unreasonably in the management of that dispute by a court or tribunal or the conduct of legal proceedings by the parties' lawyers.
4. While mediation is a valuable tool in many disputes, it's essential to evaluate its appropriateness based on the unique characteristics and dynamics of each situation. Mediation might NOT be appropriate in the following additional circumstances:
  - a) **Safety Concerns:** If there's a history of violence, abuse, or intimidation between the parties;
  - b) **Power Imbalances:** If significant imbalances in power or knowledge between the parties might prevent a fair outcome.
  - c) **Unwilling Participants:** If necessary parties aren't willing to participate in good faith or are being coerced into mediation.
  - d) **Criminal Activity:** In situations where there's a criminal act, such as theft or assault, which requires legal intervention.
  - e) **Urgency:** When immediate legal intervention is required, such as injunctions or protective orders.
  - f) **Complexity:** In highly complex cases where detailed examination of evidence in a formal setting is required.

- g) **Emotional Trauma:** If revisiting the issue might cause severe emotional distress to one of the parties, making a calm and structured discussion difficult.
- h) **Inherent Hostility:** If parties are so hostile that they are unlikely to work together constructively.
- i) **Confidentiality Concerns:** In situations where it's imperative to maintain public records, as mediation proceedings are typically confidential.
- j) **Lack of Autonomy:** When parties don't have the authority to settle or make decisions.
- k) **Fixed Mindsets:** If parties have non-negotiable demands or are not open to compromise.

#### Mediation Directions

- 5. The Registrar can direct mediation at any stage of an intervention consistently with a Code Advisor's Pathway Recommendation.
- 6. Mediation can run alongside other interventions like Facilitation or Investigations.

#### Notification

- 7. The Registrar notifies the Grievant and the member whenever it proposes to direct mediation - outlining reasons for considering mediation, and any RCSA requirements for the proposed mediation – e.g. timeframes, costs etc.
- 8. Participants in the proposed mediation, who have received a notification from RCSA must respond promptly, within timeframes set by the Registrar, whether they will participate
- 9. A response must include any further details required to establish the mediation. Subject to satisfying any RCSA requirements, the participants in the proposed mediation can make their own arrangements for how it will be conducted and by whom.
- 10. The Registrar may facilitate communications between the participants necessary to establish the mediation.

#### Report Back

- 11. Once mediation concludes, the participants must report back to RCSA stating whether they have resolved their dispute in accordance with RCSA's requirements

#### Compliance, Cooperation and Consequences

- 12. A Member's failure to comply with a direction to participate cooperatively in mediation is reportable to the Board and may result in the Member being called upon to show cause why sanctions ought not to be imposed.

### 5.9. Investigation & Determination

#### 5.9.1. Objective

- 1. RCSA investigations strive to uphold and reinforce professional standards within the recruitment industry through a recruiter-led review process. These inquisitorial investigations prioritise understanding a member's professional conduct in its context and collaboratively identifying what constitutes the professionally appropriate course of action.
- 2. Review Committees, comprising industry peers, actively guide the process, ensuring fairness and comprehensive exploration. They possess the flexibility to direct proceedings, offer professional recommendations, and transition between conciliation, evidence examination, and decision-making stages.
- 3. The overarching goal is to promote transparency, professional growth, and mutual trust within the recruitment community, championing a standard where every member embodies the values and principles of professional conduct in the RCSA Code

## 5.9.2. Procedural Guidelines

### When Investigation may be appropriate

1. RCSA may allocate an Intervention to an Investigation pathway when:
2. a serious concern regarding a member's professional conduct has been identified for review by a Professional Conduct Review Committee (PCRC) and
3. the CEO, in consultation with the Registrar (PCR), considers that an investigation would be beneficial in reaching a solution to the concern that has been raised.

### Allocating an Intervention to an Investigation Pathway

4. Upon determining that an investigation is appropriate, the Registrar undertakes the following steps:
  - a) **Convening the PCRC:** The Registrar establishes a Professional Conduct Review Committee to oversee the investigation.
  - b) **Member Notification:** The member, whose conduct is subject to review, is informed of the impending investigation and the composition of the PCRC.
  - c) **Detailing the Concern:** The member is provided with a clear description of the conduct under scrutiny along with RCSA's rationale for pursuing the investigation pathway.
  - d) **Material Collation:** The Registrar gathers all directly relevant material from the intervention phase. Copies of these materials are furnished to both the PCRC and the member whose conduct is under review.
  - e) **Administrative Support:** The Registrar ensures the PCRC is equipped with the necessary administrative assistance to carry out the investigation comprehensively and effectively.

### Professional Conduct Review Committees

#### *Composition:*

5. The PCRC is comprised of up to three members, with the majority being industry peers, ensuring an informed and insightful panel to conduct the investigation.

#### *Role of Conciliator:*

6. The committee may be augmented with a Conciliator member, who need not be an industry peer but may be a dispute resolution specialist. The primary role of the Conciliator is to guide the conciliation stage, facilitating discussions and aiding the committee in reaching a consensus. Importantly, while the Conciliator offers valuable insights during deliberations, they do not possess a determinative vote within the committee.

### Functions in an Investigation

7. Investigations by the PCRC comprise four functions that interconnect to uphold and reinforce professional standards:

#### *Planning Function*

8. The PCRC outlines the approach for the investigation, considering the unique nature of each case.
9. Directions may be issued by the PCRC tailored to the needs of the investigation. These can include:
  - a) Determining participant involvement or representation.
  - b) Obtaining relevant evidence.
  - c) Engaging in mediation or seeking expert determination.
  - d) Upholding confidentiality and privacy standards.
10. All members and participants, granted permission by the PCRC, are expected to adhere to the given directions. Instances of non-compliance can result in sanctions or withdrawal of participation privileges.

#### *Conciliation Function*

11. The PCRC facilitates initial dialogues, gaining a clearer understanding of the context and exploring potential solutions.
12. The PCRC can make a Professional Conduct Recommendation in carrying out its conciliation function.

#### *Evidence Gathering Function*

13. This function focuses on the need to build a comprehensive picture of the context and conduct of concern.
14. The PCRC gathers relevant documents, testimonies, neutral evaluations, and expert appraisals, ensuring every crucial facet is considered.

#### *Determination Function*

15. Upon gathering and analysing the evidence, the PCRC deliberates and determines what would have been the correct and preferable conduct for the member to have demonstrated. They assess if there's been a significant deviation from it.
16. The outcome of this function is the PCRC's Investigation Report, which details:
  - a) the PCRC's insights on the correct professional conduct and deviations, if any.
  - b) its reasons behind these insights.
  - c) any recommendations for potential sanctions or corrective actions that it wishes to make.

#### *Resolution & Enforcement*

17. The Registrar forwards the Investigation Report to the concerned member and other designated parties and participants under confidentiality and privacy conditions stipulated by the PCRC.
18. Subsequently, the Registrar briefs the Board on the PCRC's findings and recommendations.
19. A member whose conduct is the subject of the PCRC's report may make written submissions to the Board on the question of whether the Board should dismiss the PCRC's findings and recommendations on grounds of serious procedural deviations, fraud, bad faith, or legal inconsistencies (Irregularity).
20. The Board can:
  - a) adopt the PCRC's findings and recommendations;
  - b) modify the recommendations; or
  - c) dismiss the findings and recommendations for Irregularity.
21. Members and other designated parties and participants will be notified, under stipulated confidentiality and privacy conditions, of any Board resolution, its reasons, and any appeal rights.
22. Board resolutions will not take effect until after any appeal window has closed or appeal (if any) has been determined.

### 5.10. Professional Conduct Recommendations

#### 5.10.1. Objective

RCSA may make Professional Conduct Recommendations (Recommendations) to guide members involved in an intervention and to ensure alignment with both the member's professional responsibilities and RCSA's best interests.

#### 5.10.2. Procedural Guidelines

##### *Who can make a Recommendation*

1. The following can propose a Recommendation in line with any relevant Code Advice:
  - a) The CEO

- b) The Registrar
- c) A Conciliator
- d) The Professional Conduct Review Committee

When a Recommendation may be appropriate

2. RCSA may consider making a Recommendation when:
  - a) A member's professional behaviour clearly doesn't match RCSA's Code.
  - b) Adjustments to the member's actions can bring them into line with the Code.
  - c) The actions proposed in the Recommendation meet PCGIG's standards.

Endorsement and Communication

3. The Board can endorse a Recommendation to give it added authority.
4. If the Board endorses a Recommendation, RCSA may share it subject to any conditions the Board sets.
5. The Board can adjust or withdraw endorsement if they see a need to do so.
6. RCSA must promptly inform all participants affected by an intervention about any endorsed Recommendation or subsequent changes or withdrawal.
7. To speed up the process, the Board can review a Recommendation for endorsement without first notifying the member, especially to save on costs or reduce formalities.

Documentation and Submission

8. All Recommendations are in writing, with a copy being provided to the Registrar.
9. A submission to the Board for endorsement of a Recommendation should include:
  - a) Description of the conduct of concern.
  - b) Details of the Recommendation.
  - c) Reasons supporting the Recommendation.
  - d) A summary of any known reasons that might justify NOT making the Recommendation.
  - e) Summary of the steps taken during the intervention.
  - f) Relevant evaluations, notices, responses from the member, and exchanged information.
  - g) A summary of the member reasons (if any) for disagreeing with the Recommendation.
  - h) Any other information that might assist the Board.

Compliance, Cooperation, and Consequences

10. Members may decline to follow a Recommendation.
11. However, if a member doesn't comply with a Recommendation, they may be required to show cause why sanctions should not be imposed.

## 6. SHOW CAUSE PROCEDURES

### 6.1. Introduction:

RCSA is deeply invested in fostering a professional environment built on trust, mutual respect, and adherence to the highest standards of conduct. One of the core tenets of the RCSA Code of Professional Conduct is the duty of every member to cooperate. This duty underpins the effective functioning of our community and ensures a harmonious professional landscape. Our Show Cause Procedures are thus designed to address instances where this duty may not have been upheld, with the intent of reinforcing the values and standards we collectively endorse.



## 6.2. Objective:

The objective of these procedures is to ensure that the duty of cooperation, as enshrined in the RCSA Code of Professional Conduct, is consistently upheld. This process not only safeguards the integrity of our Professional Conduct Grievance Intervention Framework but also serves as a reaffirmation of the professional obligations each member agrees to when joining the RCSA community.

## 6.3. Procedural Details

### 6.3.1. Scope:

The show cause procedure may be invoked in the following situations:

- a) Failure to cooperate generally.
- b) Failure to comply with an undertaking or commitment.
- c) Failure to cooperate in conciliation.
- d) Failure to cooperate in counselling.
- e) Failure to cooperate in mediation.
- f) Failure to cooperate with directions given in an investigation.
- g) Failure to comply with a professional conduct recommendation.:

### 6.3.2. Notification to Member

Upon identifying a potential non-compliance or non-cooperation by a member, the PCGIG will send a written notice detailing:

- a) The specific instance(s) or nature of the non-compliance or non-cooperation.
- b) The potential repercussions of the non-cooperation or non-compliance.
- c) The possible sanctions being considered.
- d) The member's right to show cause as to why the contemplated sanctions should not be imposed.

### 6.3.3. Member's Response

1. The member has the right to respond within a stipulated period (e.g., 14 days). Their response can be:
  - a) In writing, detailing their reasons or explanations.
  - b) Through a conversation, where the member may elaborate on their standpoint informally.
2. Should the member opt for a conversation, they have the right to be accompanied by a helper (e.g., a legal representative), provided that the helper abides by the PCGIG's guidelines.

### 6.3.4. Consideration by a Subcommittee

Only the Board has power to impose sanctions on a member. However, the Board may delegate a subcommittee to:

- a) Review the member's response.
- b) Engage in a dialogue with the member, if required.
- c) Recommend a course of action to the Board, including potential sanctions.

### 6.3.5. Board's Decision

Based on the member's response and the subcommittee's recommendations, the Board will make a final decision on the sanctions, if any, to be imposed.

### 6.3.6. Communication to Member

The final decision, along with reasons, will be communicated to in writing to the member and other designated parties and participants under stipulated confidentiality and privacy conditions.

### 6.3.7. Implementation

Board resolutions imposing sanctions will not take effect until after any appeal window has closed or appeal (if any) has been determined.

## 7. APPEALS

### 7.1. Objective:

The objective of these appeals provisions is to provide an expedited process for challenging RCSA interventions, ensuring they are fair, withstand public scrutiny, and reflect the principle that courts typically hesitate to interfere in the proceedings of domestic tribunals. This low-interference arbitration process underscores RCSA's commitment to resolving issues internally while still allowing for a measure of external review.

**Note:** Only RCSA members can appeal under the PCGIG. Non-members who are permitted by the RCSA to participate in an intervention can request expert appraisal under the guidelines in section ###EXPERT APPRAISAL### if they are significantly and adversely impacted by a decision made by RCSA during the intervention.

### 7.2. Scope:

RCSA Members may challenge RCSA actions and decisions when disputes arise in the course of an intervention that concern:

- a) the interpretation of RCSA Constitution;
- b) RCSA actions and decision under the Constitution (including those taken under the PCGIG);
- c) alleged breaches of the Constitution.

### 7.3. Procedural details

#### 7.3.1. Notice of Challenge

Members must send a written notice of challenge to the Registrar within seven days of being notified of the action or decision they wish to challenge. This notice should:

- a) identify the member who initiates the challenge (the **Member Challenging**);
- b) identify the challenged action or decision (the **Challenged Intervention**);
- c) provide brief grounds for the challenge;
- d) suggest an alternative action or decision and explain its merits;
- e) list members whose participation in the challenge is essential for finding a solution.

#### 7.3.2. Attempt to find solution

RCSA, the Member Challenging, and other members whose participation RCSA agrees is necessary, must strive to find a solution through discussions with the Registrar. RCSA may invite non-members to participate in these discussions if considered beneficial. Facilitation, mediation, and conciliation can further aid these discussions.

#### 7.3.3. Request for Referral

1. If no solution is identified within 21 days of receiving the notice of challenge, either RCSA or any participating member can request arbitration by the 28th day.
2. The request must be in writing addressed to the Registrar and should:
  - a) identify the member who requests arbitration;
  - b) identify the Challenged Intervention;
  - c) detail reasons for the challenge;
  - d) propose an alternative action or decision detailing reasons in support.

#### 7.3.4. Consolidation

Challenges from multiple members will be consolidated into a single arbitration process.

#### 7.3.5. Appointing an Arbitrator

The arbitrator appointment process will, as far as possible, follow the RCSA constitution.

#### 7.3.6. Multiple Parties in Arbitration:

When a dispute arises that involves RCSA and multiple members with potentially diverse interests, and the parties are unable to agree on the appointment of a single arbitrator:

- a) RCSA will appoint one arbitrator;
- b) members participating in the challenge who wish to become parties to the arbitration must collaborate to jointly appoint one arbitrator.
- c) in case of disagreement among challenging parties, the CEO for the time being of Resolution Institute will appoint an arbitrator for them.

#### 7.3.7. Arbitration Guidelines

##### Correct or Preferable Outcome

1. The Arbitrator(s) will review the Challenged Intervention to identify the most appropriate outcome from amongst the options suggested by the parties. They may suggest alternative outcomes and seek feedback from the parties.

##### Grounds for Review:

2. The review will be limited to grounds stated in the Notice of Challenge.

##### Arbitrator Collaboration and Stalemate Resolution:

3. The arbitrator(s) will apply RCSA's guiding principles of RCSA's Code for Professional Conduct and PCGIG. If there are two arbitrators and they cannot agree on an outcome, the challenge will be considered unsuccessful, and the Challenged Intervention will stand.

##### Limitation on Arbitrators' Powers

4. Only the Board can impose sanctions on members; arbitrators can however make recommendations about sanctions.

##### Time Constraints:

5. The review process is to be concluded within one month of the appointment of the arbitrator(s).
6. If the review process is not completed by delivery of a decision to RCSA within that time, the challenge will be considered unsuccessful, and the Challenged Intervention will stand.

##### Oral Hearings:

7. Oral hearings are typically not part of the review though they may be allowed in rare cases. Primarily, the process will rely on written materials and submissions.

##### New Evidence:

8. New evidence can only be admitted if not available at the time of the Challenged Intervention and if vital for reaching the correct/preferable outcome.

##### Reasons:

9. If the Challenged Intervention is altered, arbitrator(s) must provide detailed reasons. Reasons are not required in the event of a stalemate or if the Challenged Intervention is upheld.

#### 7.4. Finality of Appeal Decisions:

Appeal outcomes are final within RCSA subject the available rights of any party from the appeal to seek legal redress in a court of law, should they believe it necessary.

#### 7.5. Commercial Arbitration Act

In situations where this Guideline 7 does not provide guidance for the conduct of arbitrations, the *Commercial Arbitration Act 2011* as applicable in the State of Victoria, Australia, will apply.

## 8. PUBLICATION

The Board can direct the publication of details of intervention outcomes and sanctions imposed on a Member as it thinks reasonably necessary or desirable in the public interest and to achieve the objects set out in the Constitution - including the fact that a person in respect of whose conduct RCSA has intervened is or was a Member of RCSA. In doing so, the Board will have due regard to privacy and confidentiality.

## **RCSA Professional Conduct Grievance Intervention Guidelines**

### **Summary of proposed changes**

The following process changes are proposed to the PCGIG:

1. Make greater use of Registry function. Reset roles and delegations.
2. Remodel "Structured Listening" as conciliation within the RCSA Registry function, with ability for Professional Conduct Registrar (PCR) to make a Professional Conduct Recommendation;
3. Strengthen and streamline the "counselling" function and an informal support to Members.
4. Establish a pathway to allow Members to make informal commitments with PCR as a means of satisfying RCSA's professional conduct interests – a sort of low-level undertaking.
5. Strengthen conciliation role for Professional Conduct Review Committee (PCRC) by allowing PCRC to sit with a conciliator member prior to formal investigation. Streamline ability for PCRC to make a Professional Conduct Recommendation. Separate conciliation and investigation phases.
6. Further limit legal representation. Provide guidelines with preference for collaborative approaches.
7. Keep regulatory referral pathway. Amend protocols to highlight ability to establish ad hoc liaison with regulators without the need for formal Memorandums of Understanding.
8. Give emphasis to Constitutional source of "disciplinary" authority.
9. Simplify language – e.g., "emotional due process"; "structured listening.
10. Move power to develop Interpretative & Operational Guidance Materials from PCRC to PPC.
11. Consensus Statements: Never used so removed.
12. Highlight power to require a Member to make a contribution to RCSA's costs.
13. Create more flexibility around setting time limits.
14. Treat response as implied consent to summarise, reframe and forward during conciliation subject to express request for confidentiality.
15. Conflict Coaching. Never used so removed.
16. Mediation – distinguish more clearly from conciliation role performed by Registry and PCRC.
17. Clarify support role of Registry in PCRC investigations.
18. Summary Show Cause: Clarify who can trigger.
19. Make suggested publication wording a regular part of resolution at all stages.
20. Arbitration. Very complex due to two different systems operating. It has been streamlined as follows: Constitution model or Commercial Arbitration Rules if agreed. Arbitrator not to impose sanctions but may award costs.

# Constitution

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## 1. Preliminary

### 1.1 Definitions and Interpretations

In this Constitution, unless there is something in the subject or context inconsistent therewith:

**"Accredited Professional"** means an individual who has been classed by the Board as an Accredited Professional, having satisfied the requirements set out in Clause 2.2(b) and the By Laws who, for the time being, is entered in the Register as an Accredited Professional.

**"Annual General Meeting"** means an Annual General Meeting of the Association held in accordance with Clause 4.2.

**"Associate International Location"** means a Corporate Member's international location for the purpose of Membership.

**"Association"** means Recruitment, Consulting & Staffing Association Limited ACN 078 606 416.

**"Auditor"** means the auditor for the time being of the Association.

**"Blue Collar On-hire"** is that sub-category of Member on-hire services, which is focused predominantly on skilled and unskilled occupations or callings requiring physical, technical or process work that is typically performed outside an office, virtual office, or administrative setting and as may be further described by the Board from time to time.

**"Board"** means the whole or any number of Directors for the time being assembled at a meeting of Directors and being not less than a quorum and references to the "Directors" shall be construed as references to the Board unless the context otherwise requires.

**"By Laws"** means the RCSA By Laws that form an attachment to this Constitution.

**"Chairperson"** means the Chairperson of the Board or the Chair of any RCSA meeting.

**"Chief Executive Officer"** means an appointed person to facilitate the daily management of the Association and the Board.

**"Code for Professional Conduct"** means the Code for the professional conduct of Members as approved by the Board from time to time.

**"Constitution"** means this Constitution and any supplementary, substituted or amended Constitution for the time being in force.

**"Consultant Accreditation Panel"** means the body as appointed by the Board for the maintenance of accreditation and professional development standards and the development of all programs for education, in accordance with policies determined by the Board from time to time.

**"Corporate Member"** means any entity that meets the requirements of Clause 2.2 (a) and who for the time being is entered in the Register as a Corporate Member of the Association.

**"Corporate Representative"** means a representative nominated by a Corporate Member in accordance with the Constitution and the By Laws.

**"Corporations Act"** means the Corporations Act 2001 (C'th) as amended from time to time and includes, with necessary changes, any Act in substitution for it.

**"Director"** means any person formally and lawfully appointed or elected as a Director of the Association and "Directors" means all or any number of the Directors for the time being.

**"Employment Service"** means a service for the on-hire, recruitment, contracting, management or administration of labour.

**"Executive Committee"** means the Committee appointed by the Board for the daily management of the Association pursuant to Clause 8.4 (a).

**"Finance Director"** means the Finance Director of the Association.

**"Health & Medical (On-hire and Placement)"** is that category of Member services, which is focused predominantly the on-hire and recruitment placement (including locum placement) of in the medical, nursing, allied health, professional pharmacy, complementary medicine, and public health sectors and as may be further described by the Board from time to time.

**"Immediate Past President"** means the Office Bearer holding office under clause 9.14.

**"Industry"** means the on-hire, recruitment, contracting and consulting industry across Australia and New Zealand including, without limitation, the provision of recruitment, workforce consulting, on-hire and staffing services.

**"Member Groups"** Member Groups are defined as Members whose businesses are similar in nature in function and/or specialisation (e.g. healthcare, retail) who form a Group within the Association for the purpose of advancing their unique needs and issues.

**"Next Generation"** means the application of progressive "Industry" techniques, practices and methodologies that do, or are intended to, supersede traditional techniques, practices and methodologies'.

**"Office"** means the registered office for the time being of the Association.

**"Office Bearer"** means any person, who from time to time occupies the position of President, Immediate Past President, Vice President, or Finance Director of the Association or such other position as determined by the Board from time to time.

**"President"** means the President of the Association.

**"Professional Conduct Grievance Intervention Guidelines"** means the grievance and dispute resolution procedures adopted by the Board and as varied by the Board from time to time.

**"Professional Contracting"** is that sub-category of Member on-hire services, which is focused predominantly on work by professional or emerging professional occupations or callings, typically requiring tertiary academic qualifications in order to undertake full unrestricted practice and as may be further described by the Board from time to time.

**"Recognised Service Functions"** means:

- i. Professional Contracting;
- ii. White Collar On-hire;
- iii. Blue Collar On-hire;
- iv. Recruitment Placement;
- v. Health and Medical (On-hire and Placement); and
- vi. Workforce Solutions.

**"Recruitment Placement"** is that category of Member services, which is focused predominantly on sourcing, presenting, or representing work seekers for employment or engagement by a person other than the Member and includes executive and technical search services and as may be further described by the Board from time to time.

**"Region"** means any of the Regions of the Association as provided by Clause 12.1

**"Regional Council"** means the Council established by each Region in accordance with Clause 12.3 "Register" means the Register of Members.

**"Related Corporation"** means, in relation to a corporation, any corporation which is related to the first mentioned corporation by virtue of the Corporations Act; or, with regard to Members in New Zealand, by virtue of any applicable and corresponding provisions of the Companies Act 1993 (N.Z.) or of subordinate or substituted legislation of New Zealand Parliament.

**"Secretary"** includes any person appointed to perform the duties of Secretary of the Association.

**"Staffing"** means recruitment, on-hire, contracting, workforce consulting and workforce solutions services.

**"Vice President"** means the Vice President(s) of the Association.

**"White Collar On-hire"** is that sub-category of Member on-hire services, which is focused predominantly on work in managerial, administrative, or clerical occupations or callings, that is typically performed in an office, virtual office, or administrative setting and as may be further described by the Board from time to time.

**"Workforce Solutions"** is that category of Member consulting services,

which includes workforce consulting, managed services (MSP and RPO) and/or workforce management technology and as may be further described by the Board from time to time.

“Year” means the financial year of the Association ending on 30 June, unless the context otherwise requires.

## 1.2 Name and Nature of the Association

- (a) The name of the Association is The Recruitment, Consulting & Staffing Association Limited (RCSA).
- (b) The Association is a public company limited by guarantee.
- (c) Each Member undertakes to contribute an amount not exceeding fifty dollars (\$50.00) to the property of the Association if the Association is wound up:
  - i. at a time when that person is a Member; or
  - ii. within one year of the time that person ceased to be a Member, for payment of the debts and liabilities of the Association contracted before that person ceased to be Member and payment of the costs, charges and expenses of winding up the Association.

## 1.3 Objects

The objects of the Association are:

- (a) to promote excellence, enterprise and integrity in the businesses of all Members and of individuals engaged by those businesses;
- (b) to advance education by improving knowledge and skill with respect to their responsibilities, duties and rights in the Employment Services Industry.

In fulfilling objects 1.3 (a), and 1.3 (b) the Association will:

- i. examine, originate and promote improvements or alterations in legislative, economic and social matters relating to the interests of the Industry;
  - ii. provide a medium through which information of interest or value to Members may be readily ascertained and communicated to Members;
  - iii. provide any services which may assist Members to improve their standards of performance, business methods and profitability;
  - iv. raise and promote the professional status of Members through the provision of industry qualifications and corporate industry standards;
  - v. affiliate with any other organisation with similar objects to those of the Association where beneficial to the wider Membership.
- (c) The Association:
- i. will only apply the income and property (if any) of the Association

- in promoting the objects of the Association;
  - ii. must not support any activity, or impose on, or procure to be observed by, Members or others, any regulations or restrictions which, if they were an object of the Association, would make it a trade union within the meaning of the industrial legislation of any jurisdiction in which it carries on business.
- (d) The Association will foster ethical and procedural best practice among Members by:
- i. administering and regulating Member compliance with the Code for Professional Conduct;
  - ii. acting as facilitator of the resolution of, and appoint Committees to deal with, disputes between Members;
  - iii. regulating, as far as is possible, the relations between Members as well as regulating the relationship between Members and the general public.

#### **1.4 No distribution to Members**

- (a) Subject to Clause 1.4 (b), the Association must not make any distribution to any Member, whether by way of dividend, surplus or otherwise.
- (b) Clause 1.4 (a) does not prevent the Association, with the approval of the Directors and acting in good faith, paying:
- i. reasonable remuneration to a Member who is an employee of the Association;
  - ii. reasonable remuneration in consideration for services rendered or goods supplied by a Member to the Association in the ordinary course of business;
  - iii. interest, at a reasonable rate, on money borrowed by the Association from a Member;
  - iv. reasonable rent for premises leased to the Association by a Member;
  - v. out of pocket expenses incurred by a Member for, or on behalf of, the Association; or
  - vi. any other reasonable amount of a similar character to those described in this Clause 1.4 (b).

## **2. Members**

### **2.1 Classes of Membership**

- (a) The Directors may, from time to time, determine:
- i. the various classes of Membership of the Association;

- ii. any restriction in the number of Members or the number of Members within each class;
  - iii. the requirements with respect to standards, business operation, qualifications and accreditation for admission to each class;
  - iv. the rights attached to being a Member in each class.
- (b) These classes and the requirements of Membership are outlined in the By Laws.

## **22 Criteria for Membership**

- (a) Any company, business entity, including not-for-profit and government business entities, involved in the industry or which contains a department or division dedicated to the supply of Employment Services and who agrees, in writing, to be bound by and comply with the Constitution, the Code for Professional Conduct, the Professional Conduct Grievance Intervention Guidelines, and the By Laws of the Association and is eligible under the By Laws to be a Member, can apply to become a Corporate Member.
- (b) Any individual who agrees, in writing, to present before the Consultant Accreditation Panel and, upon accreditation, to be bound by and comply with the Constitution; the Code for Professional Conduct; the Professional Conduct Grievance Intervention Guidelines, and the By Laws of the Association, and is eligible under the By Laws to become an Accredited Member, can apply to become a Member.

## **23 Applications**

- (a) Each applicant, to become a Member must:
- i. Complete and submit to the Association an application form and other information as deemed necessary by the Directors from time to time; and
  - ii. agree to an accreditation assessment (if an individual) to assess entitlement to Membership post nominal, as noted in the By Laws, and which the Directors may vary, from time to time.
- (b) The Panels with responsibility for Corporate Membership and Individual Accreditation will determine, after assessment information is provided, whether an applicant can become a Member and to which class they should belong.
- (c) If an application to become a Member is accepted the Association must:
- i. give written approval of the application including details of class of Membership and the rights attached to that class as outlined in Clause 2.4 (a) and 2.4 (b) of the Constitution;
  - ii. request payment of the amount owing for the annual Membership fee (being a pro rata sum if so determined by the Directors); and
  - iii. upon payment of the amount enter the Member's name in the Member Register.

- (d) If an application to become a Member is not accepted the Association must give written notice of non- acceptance to the applicant.

## 24 Membership Entitlements

- (a) Corporate Members:
  - i. have access to, and may participate in all advertised functions and activities of the Association;
  - ii. may use only the expression "Corporate Member of The Recruitment Consulting & Staffing Association Limited" or "Corporate Member RDSA" on corporate material or for other approved promotional purposes as determined by the Board from time to time;
  - iii. are entitled to one vote for each RDSA Region, where they have locations - the maximum number of votes any Corporate Member with multiple locations is entitled to, at any call for a Member's' vote, is six (6)
  - iv. are eligible to vote at all General Meetings of the Association, pursuant to Clause 2.4 (a) (iii) and their Corporate Representative may, subject to any eligibility requirement, be elected, appointed or co-opted to a Region Council and to the RDSA Board as specified in Clause 5 of the Constitution.
- (b) Accredited Members shall:
  - i. have access to and may participate in all advertised functions and activities of the Association;
  - ii. be entitled to use the letters as specified in the By Laws;
  - iii. not be entitled to use such letters in any way other than as a personal post nominal; and
  - iv. not be entitled to use any wording which indicates or implies any Membership of, or endorsement by, the Association in any advertisement or other promotional material for any organisation that is not a Corporate Member, unless with the express authority of the Board;
  - v. be eligible to vote at all General Meetings of the Association and, subject to any eligibility requirement, to become a member of a Region Council or the RDSA Board,
- (c) Life Members/Life Fellows shall, on appointment, retain all rights and privileges of Accredited Membership, including voting and election rights as per Clause 2.4 (b) but shall pay no annual accreditation fee.
- (d) Honorary Members shall, on appointment, retain all rights and privileges of Accredited Membership as per Clause 2.4 (b) (i) (ii) (iii) (iv) but shall pay no annual accreditation fee, have no voting rights and shall not be elected to a Region Council or the Board but may sit on Committees, by invitation.

## **2.5 Transfer of Membership**

- (a) Membership of the Association shall not, without the consent of the Association, be transferred.
- (b) Any proposed transfer must be notified to the Secretary of the Association within 14 days of the proposed change. Until such time as the proposed transfer is approved by the Association, all voting rights of the Member will be suspended.
- (c) For the purposes of this Clause 2.5, the term "transfer" (including the term "transferred") shall include a change in the control of a Member which in relation to an entity means a change in the direct or indirect control of that entity.

## **2.6 Ceasing to be a Member**

- (a) Membership of the Association shall cease:
  - i. if the Member resigns that Membership in accordance with Clause 2.7;
  - ii. if the Membership is terminated under Clause 2.8;
  - iii. in the case of a Corporate Member if:
    - 1. an administrator, receiver or a receiver and manager is appointed to its assets or some of its assets;
    - 2. a liquidator is appointed in connection with the winding up of the Member; or
    - 3. an order is made by a court for the winding up of a Member being a corporation.
- (b) The estate of a deceased Accredited Member is not released from any liability in respect of that person being a Member.

## **2.7 Resignation**

- (a) A Member may resign as a Member by giving the Association not less than 28 days' notice, in writing.
- (b) Unless the notice provides otherwise, a resignation of a Member takes effect immediately on the expiry of that notice to the Association.

## **2.8 Exclusion or Suspension or other sanctions**

- (a) If any Member:
  - i. wilfully refuses or neglects to comply with the provisions of this Constitution; or
  - ii. is guilty of any conduct, which in the opinion of the Directors is unbecoming of the Member or prejudicial to the interests of the Association,

the Directors may, by resolution, censure, suspend or expel the Member from the Association, following the guidelines and process as stipulated in the Code for Professional Conduct, the Professional



- Conduct Grievance Intervention Guidelines or this Constitution.
- (b) Members are liable to disciplinary action in accordance with the Professional Conduct Grievance Intervention Guidelines.
  - (c) Sanctions may be imposed against any Member in accordance with the Professional Conduct Grievance Intervention Guidelines and such sanctions may, without limitation, include the following:
    - i. exclusion from Membership;
    - ii. suspension from Membership of the Association for any period, not exceeding five years, with eligibility for reinstatement to Membership on such terms and conditions as may be prescribed on production of satisfactory evidence that, during the period of suspension, the Member has operated their business in a professional and competent manner;
    - iii. a fine as determined by the Directors;
    - iv. a reprimand or a severe reprimand;
    - v. a direction that the Member obtain such advice relating to the conduct of their business as may be prescribed;
    - vi. a direction that the Member (personally or by its principals) attend such continuing education courses as may be specified; and
    - vii. a direction for payment of all or any portion of the costs and expenses incurred by the Association in carrying out disciplinary action.
  - (d) The Directors may resolve to expel a Member if the Member does not pay any fees due within 60 days after the due date for payment and after the reminder process has been duly actioned as described in the By Laws.
  - (e) Before passing any resolution under Clause 2.8 the Directors must:
    - i. allow the Member to give to the Directors, either orally or in writing, any explanation or defence of the reason for expulsion or suspension;
    - ii. must be satisfied the Professional Conduct Grievance Intervention Guidelines have been duly actioned - if required.
  - (f) Where a resolution is passed under Clause 2.8 (a)(ii) or Clause 2.8 (d) the Association must give the Member notice in writing of the expulsion or suspension, within 10 business days of the resolution.
  - (g) A resolution under Clause 2.8 (a) has a right of appeal as indicated in the Professional Conduct Grievance Intervention Guidelines.
  - (h) A resolution under Clause 2.8 (d) takes effect on the date of the resolution.
  - (i) The Directors may reinstate an expelled/suspended Member on any

terms and at any time as the Directors resolve, including a requirement that all amounts due, but unpaid, by the expelled Member are paid.

- (j) The termination or suspension of a Member's membership (whether by resignation, expulsion or otherwise) shall not in any way prejudice, lessen or affect the rights, duties, liabilities and obligations of a Member whether they:
  - i. arise under this Constitution or otherwise; or
  - ii. are existing at the date of such termination or may arise after that date by reason of facts or circumstances occurring or in existence at or before that date.
- (k) Without limiting the generality of Clause 2.8 (j), upon termination of a Member's membership the Member shall:
  - i. continue to be liable for any annual Membership fees and all arrears due and unpaid at the date of resignation and for all other money due by the Member to the Association;
  - ii. be liable for any sum, not exceeding \$50, for which the Member is liable as a Member under Clause 1.2 (c) of this Constitution;
  - iii. not be entitled to make any claim in respect of the unexpired portion of any Membership fees which they may have paid.

## **2.9 Variations of Membership classes and class rights**

- (a) Subject to the Corporations Act and the terms of a particular class or group of Membership the Association may:
  - i. vary or cancel the rights attached to being a Member of that class or group;
  - ii. convert a Member from one class or group to anotherby special resolution of the Association passed at a meeting of the Members included in that class or group; or with the written consent of Members who are entitled to at least 75% of the votes that may be cast in respect of membership of that class or group.
- (b) The provisions of this Constitution concerning meetings of Members (with the necessary changes) apply to a meeting held under Clause 2.9 (a).

## **2.10 Certificates**

- (a) A Membership certificate, in the form prescribed by the Directors, from time to time, shall be issued to each Member on admission to the Association certifying that they are a Member.
- (b) Membership certificates will clearly state the class of Membership and the year in which Membership commenced, plus any other details as the Directors so determine from time to time.
- (c) Every Membership certificate shall be signed by the President and countersigned by the Company Secretary. The certificate should be

prominently displayed at the Member's premises.

- (d) Every Membership certificate shall remain the property of the Association and shall be returned to the Association immediately upon cessation of Membership.

### **3. Fees**

#### **3.1 Fees payable**

- (a) The Association will require the payment of fees and/or levies by Members in the amounts and at the times as the Directors resolve.
- (b) The Association may make fees payable for classes of Members, for different amounts and at different times as the Directors resolve pursuant to Clause 3.1 (a) the Directors may, from time to time, give notice to Members that:
  - i. the time for payment of fees may be extended;
  - ii. the fees may be paid by instalments;
  - iii. the method of payment may be stipulated.
- (c) In order to provide additional funds required for the operation of the Association, the Board may determine that levies are to be paid by Members and may fix the amount and the dates for payment.
- (d) In determining fees or levies under Clause 3.1 (c) the Board may differentiate between classes/groups and/or interests of Members as to whether fees or levies are payable and as to amounts payable.
- (e) Regions/Member Groups may request that the Board approve a levy to any or all Members of that Region/Member Group for the purpose of funding projects or activities which are confined to the boundaries of that Region/Member Group. Applications of such levies are subject to the approval of the Board.

#### **3.2 Interest**

- (a) A Member must pay the Association:
  - i. interest at a rate reasonably determined by Directors on any fees which are not paid on, or before, the time appointed for payment from the time appointed for payment to the time of actual payment; and
  - ii. expenses incurred by the Association because of the failure to pay, or late payment of the amount.
- (b) The Directors may waive payment of all or any part of an amount payable referred to in Clause 3.2 (a) by resolution of the Board.

#### **3.3 Exercise of Powers**

- (a) The powers of the Association under this Clause 3 may only be exercised by the Directors.

### **4. Proceedings of Members**

#### **4.1 General Meetings of Members**

- (a) Subject to the Corporations Act, the Directors may call a General Meeting of Members at a time and place as the Directors resolve.
- (b) The Directors must call, arrange and hold a General Meeting on the request of Members who:
  - i. represent at least 5% of the votes that may be cast at a General Meeting; or
  - ii. at least 100 Members who are entitled to vote at the General Meeting.
- (c) Members with more than 50% of the votes of all Members who make a request, subject to the Corporations Act, may call and arrange to hold a General Meeting if the Directors do not do so within 21 days after the request is given to the Association.
- (d) The Court may order a General Meeting of Members to be called in accordance with the Corporations Act if it is impracticable to call the meeting in any other way.
- (e) Any notice of special business or motions shall be submitted to the Directors no later than 7 days prior to a General Meeting.
- (f) Subject to Clause 4.1 (g), the Association may call on shorter notice:
  - i. a General Meeting, if all of the Members entitled to attend and vote at the Annual General Meeting agree beforehand; and
  - ii. any other meeting, if Members with at least 95% of the votes that may be cast at the meeting, agree beforehand.
- (g) At least 21 days' notice must be given of a General Meeting of Members at which a resolution will be moved to:
  - i. remove a Director under the Corporations Act;
  - ii. appoint a Director in place of a Director removed under the Corporations Act;
  - iii. remove an Auditor under the Corporations Act.

#### **4.2 Annual General Meeting**

- (a) An Annual General Meeting is to be held in addition to any other General Meetings held by the Association in the year.
- (b) An Annual General Meeting shall be held at least once every calendar

year and within the period of five (5) months after the end of the Association's Financial Year and shall be at such time and place as may be determined by the Directors.

**4.3 Notice of Meeting**

- (a) Subject to the Corporations Act the Association must give twenty one (21) days' notice of a meeting of Members.
  - i. notice of a meeting of Members must be given to each Member and each Director and, in the case of the Annual General Meeting the auditor of the Association.
- (b) Subject to Clause 4.3 (a) the notice of a General Meeting of Members must:
  - i. set out the place, date and time of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this;
  - ii. state the general nature of the business of the meeting; and
  - iii. set out or include any other information or documents specified by the Corporations Act.
- (c) Subject to the Corporations Act, anything done (including the passing of a resolution) at a meeting of Members is not invalid if (either or both) a person does not receive notice of a meeting or the Association accidentally does not give notice of a meeting to a person.
- (d) Additionally, the business of an Annual General Meeting must include any of the following, even if not referred to in the notice of the meeting:
  - i. the consideration of the annual financial report, the Directors' report and the auditor's report for the Association;
  - ii. the appointment of the Directors to the Association;
- (e) All other business transacted at an Annual General Meeting will be deemed special.
- (f) Except pursuant to the provisions of the Corporations Act, with the prior approval of the Directors, or with the permission of the Chairperson, no person may, as regards any special business of which notice has been given, move at any Annual General Meeting any resolution (other than a resolution in the same terms as specified in that notice) or any amendment of a resolution.

**4.4 Right to attend Meetings**

- (a) Each Member and any auditor of the Association is entitled to attend any meetings of the Association.

- (b) Subject to this Constitution, each Director is entitled to attend and speak at any meetings of Members.

**4.5 Meeting at more than one place**

- (a) A meeting of Members may be held in two or more places linked together by any technology that:
  - i. gives the Members as a whole in those places a reasonable opportunity to participate in proceedings;
  - ii. enables the Chairperson to be aware of the proceedings in each place; and
  - iii. enables the Members in each place to vote on a show of hands and on a poll.
- (b) If a meeting is held in two or more places under Clause 4.5 (a):
  - i. a Member present at one of the places is taken to be present at the meeting; and
  - ii. the chairperson of that meeting may determine, for the minutes, at which place the meeting is taken to have been held.

**4.6 Quorum**

- (a) Subject to Clause 4.6 (e) a quorum for a meeting of Members is fifteen (15) persons entitled to vote at that meeting.
- (b) In determining whether a quorum for a meeting of Members is present:
  - i. where a person is present as a Member, being a Corporate Representative entitled to vote at that meeting, an Accredited Member, a proxy or attorney of another Member, each is counted separately for each appointment provided there is at least one other Member present; and
  - ii. where a person is present as a proxy or attorney for more than one Member, that person is counted separately for each appointment provided there is at least one other Member present.
- (c) The requisite quorum of Members must be present at the commencement of the meeting. If a quorum is present at the beginning of a meeting of Members it is deemed present throughout the meeting unless the Chairperson otherwise determines.
- (d) If a quorum is not present within 30 minutes after the time appointed for a meeting of Members:
  - i. if the meeting was called under Clause 4.1 (b) or Clause 4.1 (c) the meeting is dissolved; and
  - ii. any other meeting, is adjourned to the date, time and place as the

Directors may, by notice to the Members, appoint, or failing any appointment, to the same day in the next week at the same time and place as the meeting adjourned.

- (e) If the quorum is not present within 30 minutes after the time appointed for an adjourned meeting of Members:
  - i. If there are not less than five Members present, they shall constitute a quorum; and
  - ii. otherwise, the meeting is dissolved.

#### **4.7 Adjourned, cancelled and postponed meetings**

- (a) Subject to the Corporations Act the Chairperson
  - i. may; and
  - ii. must, if the Members present with a majority of votes that may be cast at that meeting agree or direct the chairperson to do so,
  - iii. adjourn a meeting of Members to any day, time and place.
- (b) No person other than the Chairperson of a meeting of Members may adjourn that meeting.
- (c) Only business left unfinished is to be transacted at a meeting of Members resumed after the adjournment.
- (d) Subject to the Corporations Act and Clause 4.7 (e), the Directors may at any time postpone or cancel a meeting of Members by giving notice, not less than five (5) business days before the time at which the meeting was to be held, to each person to whom the notice of the meeting was required to be given.
- (e) A General Meeting called under Clause 4.1 (c) must not be cancelled by the Directors without the consent of the Members who called the meeting.
- (f) A notice adjourning or postponing a meeting of Members must set out the place, date and time for the revised meeting and, if the revised meeting is to be held in two or more places, the technology that will be used to facilitate the meeting.

#### **4.8 Chairperson**

- (a) The Chair must, (if present, within fifteen (15) minutes after the time appointed for the holding of the meeting and willing to act) chair each meeting of Members.
- (b) If at a meeting of Members:
  - i. there is no Chair;

- ii. the Chair is not present within fifteen minutes (15) after the time appointed for holding the meeting of Members; or
- iii. the Chair is present within that time but is not willing to act as Chair for all or part of the meeting, the Members present may, by majority vote, elect a person present to Chair all or part of the meeting of Members. This person is required to have a minimum of five years' industry experience.

#### **4.9 General Conduct of Meetings**

- (a) Subject to the Corporations Act the Chairperson of a meeting of Members is responsible for the general conduct of the meeting and for the procedures to be adopted at that meeting.
- (b) The Chairperson of a meeting of Members may delegate any power conferred by this Clause to any person.
- (c) The powers conferred on the Chairperson of a meeting of Members under this Clause 4.9 do not limit the powers conferred by law.
- (d) The Chairperson may require any person to leave and remain out of any General Meeting who, in the opinion of the Chairperson, is not complying with his or her reasonable directions.

#### **4.10 Resolutions of Members**

- (a) Subject to the Corporations Act, a resolution is passed if more votes are cast in favour of the resolution by Members entitled to vote on the resolution than against the resolution.
- (b) Unless a poll is requested in accordance with Clause 4.11 a resolution put to the vote at a meeting of Members must be decided on a show of hands.
- (c) A declaration by the Chairperson of a meeting of Members that a resolution has, on a show of hands been passed, passed by a particular majority, or not passed, and an entry to that effect in the minutes of the meeting, are sufficient evidence of that fact, unless proved incorrect.

#### **4.11 Polls**

- (a) A poll may be demanded on any resolution at a meeting of Members except:
  - i. the election of a chairperson of that meeting;
  - ii. the adjournment of that meeting.
- (b) A poll on a resolution of Members may be demanded by:
  - i. at least five Members present and entitled to vote on that resolution;



- ii. Members with at least 5% of the votes that may be cast on the resolution on a poll; or
  - iii. the chairperson of that meeting.
- (c) A poll on a resolution at a meeting of Members may be demanded:
  - i. before a vote on that resolution is taken; or
  - ii. before or immediately after, the result of the vote on that resolution on a show of hands is declared.
- (d) A demand for a poll may be withdrawn.
- (e) A poll demanded on a resolution at a meeting of Members must be taken in the manner and at the time and place the chairperson directs.
- (f) A demand for a poll on a resolution of a meeting of Members does not prevent the continuance of that meeting dealing with other business.

#### **4.12 Voting of Members**

- (a) Subject to this Constitution and any rights or restrictions attached to a class of Membership, on a show of hands or on a poll at a meeting of Members, every Member present has one vote for the class of Membership to which they belong, which has voting rights.
- (b) In the case of an equality of votes on a resolution at a meeting of Members, the Chairperson of that meeting has a casting vote on that resolution both on a show of hands and on a poll, in addition to any vote the Chairperson has in respect of that resolution.
- (c) A Member at a meeting of Members is not entitled to vote on any resolution if any amount is due and payable, in respect of Membership fees.
- (d) A Member present at a meeting of Members is not entitled to vote on a resolution at that meeting where the vote is prohibited by the Corporations Act or an order of a court of competent jurisdiction.
- (e) The Association must disregard any vote on a resolution cast by a Member present at a meeting of Members where that Member is not entitled to vote on that resolution.
- (f) The authority of a proxy or attorney for a Member to speak or vote at a meeting of Members is suspended while the Member is present in person at that meeting.

#### **4.13 Objections to Qualification to Vote**

- (a) An objection to the qualification of any person to vote at a meeting of Members may only be made:
  - i. before the meeting, to the Directors; or

- ii. at that meeting (or any resumed meeting if that meeting is adjourned), to the Chairperson of that meeting.
- (b) Any objection under this clause must be decided by the Directors or the Chairperson of the meeting of Members (as the case may be) whose decision, made in good faith, is final and conclusive.

#### **4.14 Proxies and Representatives**

- (a) A Member, who is entitled to attend and cast a vote at a meeting of Members, may vote on a show of hands and on a poll:
  - i. in person;
  - ii. by not more than one proxy; or
  - iii. by not more than one attorney.
- (b) A proxy or attorney of a Member need not be a Member.
- (c) A Member may appoint a proxy or attorney for:
  - i. all meetings of Members; or
  - ii. any one or more specified meetings of Members.
- (d) A proxy or attorney may be appointed for all meetings or for any number of meetings or for a particular purpose.
- (e) An instrument appointing a proxy or attorney must be in a form as the Directors may prescribe or accept, from time to time but should be signed, including electronic signature, by the Member making the appointment and contain:
  - i. the name and address of the Member;
  - ii. the name of the Association;
  - iii. the name of the proxy or the name of the office held by the proxy; and
  - iv. the meetings of Members at which the proxy may be used.
- (f) The Chairperson of a meeting of Members may determine that an instrument appointing a proxy is valid even if it contains only some of the information specified in Clause 4.14(e).
- (g) Subject to the Corporations Act the decision of the Chairperson of a meeting of the Members as to the validity of an instrument appointing a proxy or attorney is final and conclusive.
- (h) Unless otherwise provided in the Corporations Act or in the appointment, a proxy or attorney may:
  - i. agree to a meeting of Members being called by shorter notice than is required by the Corporations Act or this Constitution;

- ii. agree to a resolution being either or both proposed and passed at a meeting of Members of which notice of less than the prescribed period is given;
  - iii. speak in any resolution at a meeting of Members on which the proxy or attorney may vote;
  - iv. vote at a meeting of Members (but only to the extent allowed by the appointment);
  - v. demand or join in demanding a poll on any resolution at a meeting of Members on which the proxy or attorney may vote; and
  - vi. attend and vote at any meeting of Members which is rescheduled or adjourned.
- (i) Unless otherwise provided in the Corporations Act or in the appointment, a proxy or attorney may vote on:
- i. any amendment to a resolution on which the proxy or attorney may vote;
  - ii. any motion not put to that resolution or similar motion; and
  - iii. any procedural motion relating to that resolution, including a motion to elect the chairperson of a meeting of Members, vacate the chair or adjourn that meeting.
- (j) The Association must only send a form of proxy to Members in respect of a meeting of Members which provides for that Member:
- i. to appoint a proxy of the Member's choice, but may specify who is to be appointed as proxy if the Member does not choose; and
  - ii. to vote for or against each resolution, and may also provide for the Member to abstain from voting on each resolution.
- (k) If the name of the proxy or the name of the office of the proxy in a proxy form of a Member is not filled in, the proxy of that Member is:
- i. the person specified by the Association in the form of proxy in the case the Member does not choose; or
  - ii. if no person is so specified, the chairperson of that meeting.
- (l) A Member may specify the manner in which a proxy or attorney is to vote on a particular resolution at a meeting of Members but, unless specified, the proxy or attorney may vote as he or she thinks fit.
- (m) An appointment of proxy or attorney for a meeting of Members is effective only if the Association receives the appointment (and any authority under which the appointment was signed or a certified copy of the authority) not less than 24 hours before the time scheduled for

commencement of that meeting (or adjournment of that meeting).

- (n) Unless the Association has received notice in writing before the time scheduled for the commencement or resumption of a meeting of Members, a vote cast at that meeting by a person appointed by a Member as a proxy or attorney is, subject to this Constitution, valid even if, before the person votes, the appointing Member:
  - i. dies; or
  - ii. is mentally incapacitated; or
  - iii. revokes the appointment of that person; or
  - iv. revokes the authority under which the person was appointed by a third party.

#### **4.15 Voting by Mail**

- (a) Matters of business which may be submitted to Members may be submitted by mail, including electronic mail, on the instigation of either the President, the Executive Committee or any ten (10) Members
- (b) The Company Secretary of the Association shall be responsible for ensuring:
  - i. that the notice distributed to all Members clearly states the motion to be addressed; and
  - ii. that the notice specifies a date for return which shall not be less than twenty two (22) days from the date of distribution for Australian Members and twenty seven days (27) for New Zealand and overseas Members.

### **5. Directors**

#### **5.1 Number of Directors**

- (a) The Association must have at least 6 and not more than 10 Directors, unless the Members in a General Meeting otherwise determine.

#### **5.2 Appointment and Election of Directors**

- (a) A Director must be either:
  - i. a Professional Member (being a person who meets or exceeds the requirements for Accredited Professional membership); or
  - ii. the Corporate Representative of a Member; or
  - iii. a person co-opted by the Board in accordance with clause 5.2 (c) (ii).
- (b) Subject to Clause 5.1 (a)
  - i. each **Australian** Region Council shall, following discussion with

the President or a Vice President of the Board, in order to promote

- the appointment of Directors with relevant experience in each of the Recognised Service Functions, appoint ONE Corporate Representative from within their Region Council (whose nomination for appointment has been approved by the Board) to act as a Director; and
- ii. the **New Zealand** Region Council shall appoint ONE Corporate Representative from the New Zealand Region Council (whose nomination for appointment has been approved by the Board) to act as a Director; and
  - iii. Accredited Members shall be entitled to elect one person from the amongst the nominated Accredited Members to act as a Director; and
  - iv. the AMRANZ and ANRA Member Groups, acting together through a joint meeting of two (2) office holders from AMRANZ and two (2) office holders from ANRA, may appoint one Corporate Representative (whose nomination for appointment has been approved by the Board) to act as a Director; and
  - v. The Board may appoint one Corporate Representative, to represent the Next Generation of members, as a Director;
- (c) So that the Board's composition may reflect the Recognised Service Functions:
- i. as far as is practicable, whilst giving primacy to the appointment of appropriate regional representatives, all Recognised Service Functions should be represented in the Board's composition; and
  - ii. the Board may, at its discretion, co-opt ONE additional Director, who will be a person selected by the Board to enhance Recognised Service Function coverage, diversity, or stakeholder participation.
- (d) A Corporate Representative will be ineligible for appointment, election or co-option as a Director if more than 25% of the Board is represented by the one Corporate Member or its related entities and the Corporate Representative represents that Corporate Member or any of its related entities.
- (e) The appointment of a Corporate Representative as a Director, in accordance with Clause 5.2 (b) (i) and (ii) must:
- i. be in writing and signed, including electronic signature, by two Members of the Region Council, accompanied by the written consent of the Corporate Representative; and
  - ii. be delivered to the Company Secretary not less than twenty one

(21) days before the date fixed for the holding of the Annual General Meeting.

- (f) The nomination of Accredited Members for election to the Accredited Member position under Clause 5.2 (b) (iii) must:
  - i. be in writing, signed (including electronic signature) by two Accredited Members and accompanied by the written consent of the Accredited Member nominated (which may be endorsed on the form of nomination); and
  - ii. be delivered to the Company Secretary not less than thirty (30) days before the date fixed for the holding of the Annual General Meeting.
- (g) If only one nomination is duly received to fill the Accredited Member position, the person nominated shall be deemed to have been elected.
- (h) If the number of nominations duly received to fill an Accredited Member position under clause 5.2 (b) (iii) exceeds the number of available positions, an election shall be conducted.
- (i) The Directors have the power at any time, and from time to time, to appoint any persons as a Director, either to fill a casual vacancy or as an addition to the Board, provided that the representation requirements as set out in Clauses 5.2 (b) and 5.2 (c) are maintained, and the total number of Directors does not exceed the number fixed in accordance with this Constitution.
- (j) The Directors are not obliged to fill any casual vacancy if the number of Directors is not below the minimum number fixed in accordance with this Constitution.
- (k) If a person is appointed under Clause 5.2 (i) as a Director, the Members must confirm the appointment by resolution at the Association's next Annual General Meeting. If the appointment is not confirmed, the person ceases to be a Director at the end of the Annual General Meeting.

### **5.3 Term of Office of Directors**

- (a) Each appointed or elected Director shall hold office for a minimum term of two years (commencing on the date of appointment or election and ending at the second Annual General Meeting next following their appointment or election as the case may be) unless they die, complete the maximum period of service permissible under Clause 5.3 (d), vacate the office, or are removed in accordance with law.
- (b) A Director co-opted under Clause 5.2 (c) (ii) shall hold office only until the second Annual General Meeting next following their co-option and may be co-opted for a further term or terms thereafter up to a maximum

of three consecutive terms (including the original term). A Co-opted Director, subject to any applicable eligibility and maximum term requirements, may be nominated for an elected or appointed position.

- (c) A Director whose term is about to end by completion of service and will thereafter be ineligible for re- appointment, re-election or co-option as a Director pursuant to Clause 5.3 (d) should retire immediately prior to the Annual General Meeting to allow presentation of the new Directors to the Annual General Meeting.
- (d) Subject to sub-paragraph (e) of this clause 5.3, except where the Director is an Office Bearer, any:
  - i. elected or appointed Director, who has served three consecutive full terms of two years;
  - ii. co-opted Director, who has served three consecutive terms;
  - iii. Director, who by combination of election, appointment, and co-option has served for six consecutive years (including any broken year)

will be ineligible for re- appointment, re-election or co-option as a Director. A Director who is an Office Bearer will be eligible to be re-elected, re-appointed or co-opted for a maximum of two further terms of such duration as is applicable to the nature of their extended directorship provided that they retain their position as an Office Bearer. If they cease to hold their Office Bearer position, they must immediately vacate their extended directorship.

- (e) By unanimous resolution of the Board, any Director (including, for the avoidance of doubt, a co-opted Director) who is about to complete their maximum period of service pursuant to Clause 5.3 (d) may be granted an extension of their service as a Director for a period of 12 months immediately following the date upon which, but for this sub-paragraph or sub- paragraph (g), the Director's maximum period of service was due to expire or until the next Annual General Meeting following such date, whichever is the earlier.
- (f) Any Director who has served the maximum period in accordance with this Clause 5.3 shall, after a period of FIVE years, be eligible for re-appointment, re-election or co-option.
- (g) Notwithstanding any other provision of this Constitution, any of the directorships set out in sub-clause 5.2 (b) and (c), which a Director is qualified to hold by reason of his or her Region membership, Membership status, Member Group participation, Next Generation qualification, Recognised Service Function expertise, or other permitted circumstance for co-option may be held by that Director, as Immediate Past President, for a period of 12 months immediately following retirement or resignation from the Presidency, or until the Annual General Meeting of the Association next following the expiry of

his or her Presidential term, whichever shall be the earlier.

- (h) SUBJECT ALWAYS TO the Board resolving to invite the Director to continue as Immediate Past President in accordance with clause 9.14.

#### **5.4 Vacation of Office**

- (a) A Director may resign as a Director of the Association by giving written notice of resignation to the Company Secretary at its registered office.
- (b) The Association may, by resolution at a Members General Meeting, remove a Director before the end of the Director's period of office in accordance with the Corporations Act and, if thought fit, appoint another person in place of that Director subject to Clause 5.4(b) (i).
- i. A resolution to remove a Region appointed Director does not take effect until a replacement Region representative has been appointed in accordance with Clause 5.2 (b) (i) or (ii) as the case may be.
- (c) A Director ceases to be a Director if the Corporations Act so provides or that Director:
- i. becomes of unsound mind or a person or estate is liable to be dealt with in any way under the law relating to mental health;
  - ii. is absent without the consent of the Directors from two meetings of the Board held during a period of 6 months and the Directors resolve that his or her office be vacated;
  - iii. is removed from the office of Director by a resolution of the Association in accordance with Clause 5.4 (b);
  - iv. resigns from the Association as a Member or the Company of which they are a Corporate Representative resigns;
  - v. is directly or indirectly interested in any contract or proposed contract with the Association and fails to declare the nature of the Director's interest;
  - vi. otherwise ceases to be, or becomes prohibited from being, a Member of the Association or a Director by virtue of the Corporations Act; or
  - vii. ceases to be a Region appointed Director by resolution of a Region Council; or
  - viii. ceases to meet any eligibility criteria or qualification requirement set out in clause 5.2 (a) or 5.2 (b).

#### **5.5 Alternate Directors**

- (a) With the other Directors' approval, a Director may appoint an alternate to exercise some or all of the Director's powers for a specified period.
- (b) Any Director, who is a Corporate Representative appointed, elected or co-opted to the Board under Clause 5.2, may request, by a resolution of his/her own Board, that the Association Board authorise any person



from the corporation to:

- i. act as its Corporate Representative at all meetings or any particular meeting or meetings held during the continuance of the authority, whether the meeting is of the Association or of any class of Members of the Association;
- ii. sit on a Regional Council, Member Group Council, Committee or sub Committee as appropriate;
- iii. act as a Director on behalf of the Corporate Member (if an elected Director) and

PROVIDED that if the Director making the request is a Region Council appointed Director, then agreement from the Region Council must be confirmed.

- (c) A letter under the seal of the corporation or such other document as the Chairperson of the meeting in his or her sole discretion considers sufficient will be prima facie evidence of the appointment of or the revocation of the appointment (as the case may be) of a Corporate Representative under Clause 5.5 (a).
- (d) If the appointing Director requests the Association to give the alternate notice of Directors' meetings, the Association must do so.
- (e) When an alternate exercises the Director's power, the exercise of the power is just as effective as if the power were exercised by the Director.
- (f) The appointing Director may terminate the alternate's appointment at any time.
- (g) An appointment of an alternate Director or its termination must be in writing and copies must be given to:
  - i. the Association; and
  - ii. the Australian Securities & Investments Commission (ASIC).

#### **5.6 Payment to Directors**

- (a) The Association must not pay any fees to a Director for performing his or her duties as a Director.

### **6. Officers**

#### **6.1 Chief Executive Officer**

- (a) The Directors may appoint a person as a Chief Executive Officer for any period and on any terms (including as to remuneration) as the Directors resolve.
- (b) The Directors may delegate any of their powers (including the power to delegate) to the Chief Executive Officer.
- (c) The Directors may revoke or vary:
  - i. the appointment of the Chief Executive Officer; or
  - ii. any power delegated to the Chief Executive Officer.

- (d) The Chief Executive must exercise the powers delegated him or her, in accordance with any directions of the Directors.
- (e) The exercise of a delegated power by the Chief Executive Officer is as effective as if the Directors exercised the power.

**6.2 Company Secretary**

- (a) The Directors must appoint a Company Secretary in accordance with the Corporations Act.
- (b) The Company Secretary shall be appointed by the Board of RCSA.

**6.3 President**

- (a) The Board shall elect a President from amongst the Directors of its then current Board AND who for have served as Director for a minimum of two years.
- (b) The President's initial term shall be for two years.
- (c) A President may be elected as President for a second consecutive term of two years; but not so as to exceed the maximum term that the President may serve as a Director.

**6.4 Vice Presidents**

- (a) The Board shall elect up to two Vice President from amongst the Directors of its then current Board.
- (b) A Vice President's initial term shall be for two years.
- (c) A Vice President may be elected as Vice-President for a second consecutive term of two years; but not so as to exceed the maximum term that the Vice President may serve as a Director.
- (d) A Vice President may be elected to serve as President; but not so as to exceed the maximum term that the person may serve as a Director.

**7. Indemnity and Insurance**

- (a) To the extent permitted by law the Association must indemnify each Director, Council Member, Committee Member and other such relevant officers who are or have been so involved with the Association and shall indemnify such persons out of the assets of the Association against a liability:
  - i. to another person (other than the Association or a related body corporate) unless the liability arises out of conduct involving a lack of good faith; and
  - ii. for costs and expenses incurred by the person:
    - 1. in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
    - 2. in connection with an application, in relation to such

proceedings, in which the Court grants relief to the person under the Corporations Act.

- (b) Except to the extent precluded by the Corporations Act, the Association may pay or agree to pay a premium in respect of a contract insuring a person who is, or has been, an officer or auditor of the Association against liability:
  - i. incurred by the person as such an officer or auditor; or
  - ii. for costs and expenses incurred by the person in defending proceedings as such an officer or auditor, whether civil or criminal and whatever their outcome.

## **8. Powers of the Association and the Directors**

### **8.1 General powers**

- (a) Subject to this Constitution, the Association may exercise, in any manner permitted by the Corporations Act, any power which a public company limited by guarantee may exercise under the Corporations Act.
- (b) The business of the Association is to be managed by, or under, the direction of the Directors.
- (c) The Directors may exercise all the powers of the Association except any powers that the Corporations Act or this Constitution requires the Association to exercise in Members General Meeting.
- (d) The Directors may, without any further authority, carry out all or any of the objects of the Association contained in this Constitution and do all other acts and things as they shall deem expedient, including (but without limiting the generality of the foregoing) the right to set membership fees for Members.

### **8.2 Execution of documents**

- (a) The common seal shall not be affixed to any instrument except by the authority of a resolution of the Board and any such document under seal must be witnessed by:
  - i. two Directors or;
  - ii. a Director and a Secretary; or
  - iii. a Director and another person appointed by the Directors for that purpose.
- (b) If the Board so resolves the Association may execute a document without a common seal if the document is signed by:
  - i. two Directors or;
  - ii. a Director and a Secretary; or
  - iii. a Director and another person appointed by the Directors for that purpose.

- (c) The Directors may resolve either generally, or in a particular case, that any signature on certificates for Membership, or other common use documents specified by the Directors, may be affixed by mechanical or other means.
- (d) Negotiable instruments may be signed, drawn, accepted, endorsed or otherwise executed by or on behalf of the Association in the manner, and the persons, as the Directors resolve.

### **8.3 By Laws**

- (a) The Directors shall have the power to formulate and enact By Laws for Membership, accreditation, management of Councils, Committees and sub Committees and any other by laws as it sees necessary from time to time.
- (b) Such By Laws shall be binding on all Members, upon adoption by the Directors, at a properly convened meeting of the Board.
- (c) The By Laws will form an attachment to this Constitution.

### **8.4 Committees**

- (a) From within the Board, the Board shall elect an Executive Committee consisting of the President, a maximum of two Vice Presidents, the Finance Director, and one further Director who may be appointed as deemed necessary by the Board from time to time.
  - i. The President shall be an ex officio Member of all Committees of the Board.
  - ii. The Vice Presidents shall assist the President in his or her duties and shall exercise such powers as may be delegated to them by the President.
  - iii. The Executive Committee shall report to and be accountable to the Board, with all the necessary powers of the Board to allow efficient management on a daily basis, including but without limiting the generality of the foregoing the right to delegate power to appointed sub- Committees. The quorum of the Executive Committee shall comprise of three.
  - iv. In the event of the Association granting leave of absence to the President for any reason whatsoever the Vice Presidents shall exercise all the powers of the office of President during the period of such leave of absence.
- (b) The Board may delegate any of its powers and/or functions (not being duties imposed on the Board as the Directors of the Association by the Corporations Act) to one or more Councils, Committees or sub Committees consisting of one or more Directors and such other Members of the Association as the Board thinks fit. Any Council, Committee or sub Committee so formed shall conform to the relevant By Laws as set down by the Directors from time to time.

- i. The Directors may revoke or vary any power delegated under Clause 8.4 (b).
  - ii. A committee or delegate must exercise the powers delegated in accordance with any directions of the Directors.
  - iii. The exercise of a delegated power by the committee or delegate is as effective as if the Directors exercised the power.
- (c) The Directors will delegate and, where necessary, organise or make whatever arrangements they may deem necessary to ensure Councils, Committees and sub Committees further the objects of the Association and the Directors will further ensure the Councils, Committees and sub Committees are responsible for the implementation of the strategic initiatives of the Association.
- (d) Except where otherwise stated in this Constitution, or in the resolution establishing or restructuring the committee, a quorum for the purposes of dealing with matters of such Committees shall be sixty per cent of the Council, Committee, sub Committee representatives. All Members of such Committees shall have one vote.
- (e) A Committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the Members present and in the case of an equality of votes the Chairperson shall have a second or casting vote.
- (f) All clauses relevant to meetings in this Constitution apply (with the necessary terminology recognised) to meetings of Committees, sub Committees and Councils.

## **9. Proceedings of Directors**

### **9.1 Resolutions of the Directors**

- (a) The Directors may pass a resolution without a meeting of the Directors being held if all the Directors entitled to vote on the resolution assent to a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of the document referred to in Clause 9.1 (a) may be used for assenting to by Directors as long as the wording of the resolution and the statement is identical in each copy.
- (c) A Director may signify assent to a document under this Clause by signing the document or by notifying the Association of that assent by any technology including telephone.
- (d) The resolution is passed when the last Director confirms.
- (e) Where such a resolution is passed by the method in Clause 9.1 (a) the resolution must be ratified at the next full meeting of Directors and recorded, as such in the minutes of that meeting.

### **9.2 Meetings of the Directors**

- (a) The Directors may meet, adjourn and otherwise regulate their meetings as they think fit but must meet no less than four times per year.
- (b) A meeting of the Directors may be held using any technology consented to by all Directors.
- (c) The consent of the Directors under Clause 9.2 (b) may be for all meetings of the Directors or for any one or more specified meetings.
- (d) A Director may withdraw consent under Clause 9.2 (c) within a reasonable time before the meeting.
- (e) If a meeting of Directors is held in two or more places linked together by any technology:
  - i. a Director present at one of the places is taken to be present at the meeting unless and until that Director states to the chairperson of the meeting that he or she is discontinuing participation in the meeting; and
  - ii. the chairperson of that meeting may determine, for the minutes, at which place the meeting will be taken to have been held.
- (f) A Director may call a meeting of Directors at any time, giving reasonable notice.
- (g) On request of any Director the Company Secretary must call a meeting of the Directors, giving reasonable notice.
- (h) The Chief Executive Officer will attend meetings of the Board but shall have no voting powers.

**9.3 Notice of a Meeting of Directors**

- (a) A notice of meeting must be given to each Director and any Alternate Director if required.
- (b) A notice of meeting of the Directors must:
  - i. set out the place, date and time of the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this); and
  - ii. state the general nature of the business of the meeting; and
  - iii. set out or include any other information or documents required for the meeting.
- (c) The Association must give no less than seven (7) days' notice of any extraordinary meeting of Directors and 21 days' notice of any changes to established meetings of Directors - unless all Directors agree otherwise.

**9.4 Quorum**

- (a) Subject to the Corporations Act, a quorum for a meeting of the Directors is, unless otherwise determined, seventy per cent of the Directors, which is to include more than half the number of Region

representatives.

- (b) A quorum for Board meeting must be present at all times during the meeting.
- (c) If there are not enough Directors to form a quorum for a Board meeting, one or more of the Directors may request that any matter of urgency be discussed and then circulated, using technology, for to enable a resolution dealing with the matter to be passed.

#### **9.5 Chairperson**

- (a) The President shall preside at meetings as Chairperson at every meeting of the Board.
- (b) If:
  - i. the President is not in attendance within fifteen minutes after the time appointed for the meeting or;
  - ii. the President is unwilling to act as Chairperson of the meetingthen a Vice President shall be Chairperson.
- (c) If:
  - i. neither the President nor a Vice President is present; or
  - ii. the President and/or the Vice Presidents decline to take the chairthen the Directors present shall choose one of their number to be Chairperson.

#### **9.6 Resolutions of the Directors**

- (a) A resolution of the Directors is passed if more votes are cast in favour of the resolution than against it and will be deemed a determination of the Board.
- (b) Subject to the Corporations Act each Director has one vote on the matters arising at a Board meeting.
- (c) Subject to the Corporations Act in the case of an equality of votes on a resolution at a Board meeting the Chairperson of that meeting does not have a casting vote on that resolution, in addition to any vote that the Chairperson has in his/her capacity as a Director.
- (d) The Chairperson of a meeting of the Board or Executive Committee may, at his or her discretion, permit the transaction of unforeseen business of which notice has not been given, provided that in the event of a resolution being adopted in relation to such business:
  - i. such resolution is to have no effect until 14 days after the minutes of the meeting have been dispatched to the Directors;
  - ii. during the 14 day period, any of the Directors voting in the affirmative at the meeting may withdraw their affirmation by notice in writing to the Company Secretary; and
  - iii. if such withdrawal has the effect of reducing the affirmative vote to

less than a simple majority of Directors present and voting at the meeting, the original motion will be negated.

#### **9.7 Minutes**

- (a) The Association must keep minute books in which it records within one month of such event:
  - i. the appointment of officers made by the Board;
  - ii. the names of the Directors present at every meeting of the Board;
  - iii. resolutions and proceedings of General Meetings;
  - iv. resolutions and proceedings of Board meetings and including Council, Committee and sub Committee meetings;
  - v. resolutions passed by the Directors without a meeting;
  - vi. resolutions passed by Councils, Committees and sub Committees without a meeting.
- (b) Any such minutes of any meeting of the Board, or of the Association, if purporting to be signed by the Chairperson of such meeting or by the Chairperson of the next meeting, shall be received as evidence of the matters stated in such Minutes.
- (c) Members are entitled to gain access to the Minute Book of meetings of the Board in accordance with the Corporations Act.

#### **9.8 Alteration to Constitution**

- (a) This Constitution shall not be altered except by way of a special resolution of the Members. A resolution of the Association is a special resolution if it is passed by a majority of not less than 75% of such Members present at a General Meeting who are eligible to vote including those Members who have appointed a proxy in accordance with Clause 4.14.

#### **9.9 Cheques**

- (a) All cheques or orders for payment of money shall be signed for and on behalf of the Association by persons authorised by the Directors and all cheques or other negotiable instruments paid to the Association's bankers for collection and requiring the endorsement of the Association may be endorsed on its behalf in such manner as the Directors may from time to time direct.

#### **9.10 Accounts**

- (a) The Directors shall ensure that the Association maintains proper accounts in which shall be kept complete records of the transactions of the Association.
- (b) Any bank account of the Association shall be operated by any two of the President, Vice Presidents, Finance Director or Chief Executive Officer or any duly appointed officer of the Association.
- (c) The Board shall, subject to the provisions of the Corporations Act, from



time to time determine whether and to what extent, and at what time and places and under what conditions or provisions the accounts and books of the Association shall be open to the inspection of the Members not being Directors; and no Member (not being a Director) shall have any right of inspecting any account or book or document of the Association, unless and except as conferred by the Corporations Act or authorised by the Board, or by a resolution of the Association in General Meeting.

- (d) At the Annual General Meeting in each year the Board shall lay before the Association a profit and loss account and a balance sheet in respect of the last completed financial year of the Association.

#### **9.11 Auditors**

- (a) At its first Annual General Meeting the Association shall appoint a person or persons or a firm as Auditor or Auditors of the Association and the Auditor so appointed shall hold office until death or removal or resignation from office in accordance with the Corporations Act.

#### **9.12 Bankers**

- (a) The bankers of the Association shall be appointed by the Board and may be changed from time to time at its discretion.

#### **9.13 The Common Seal**

- (a) The Common Seal of the Association shall not be affixed to any instrument except by authority of a Resolution of the Board and the presence of at least two Directors or a Director and the Company Secretary.

#### **9.14 Immediate Past President**

- (a) A President, who retires or resigns from the office of President may, by unanimous resolution of the Board, be invited to continue as a Director, in the office of Immediate Past President, for a further twelve months or until the Annual General Meeting of the Association next following the expiry of his or her Presidential term, whichever shall be the earlier.

### **10. Notices**

#### **10.1 Notices to Members**

- (a) Subject to Clause 10.1 (b) the Association may give notice to a Member:
  - i. by hand delivery;
  - ii. by sending it by prepaid post to the address of the Member in the Register or the alternative address (if any) nominated by that Member;
  - iii. addressed to the Member at the Member's registered address;
  - iv. by sending it by electronic means to an address (if any) nominated by that Member; or

- v. with the approval, given by special resolution of the Directors, by advertisement in accordance with Clause 10.1 (d).
- (b) For the purposes of Clauses 10.1 (a) a Member may provide the Association with an address other than that of the registered address for the purpose of serving notice on that Member.
- (c) If the address of any Member in the register is not within Australia or New Zealand and that Member does not nominate an alternative address within Australia or New Zealand, unless otherwise specified within the Corporations Act, the Association may (in addition to any method of service specified in Clause 10.1)
  - i. give a notice to a Member by:
  - ii. posting on the Association's website; or
  - iii. advertisement in accordance with Clause 10.1 (d).
- (d) Any notice allowed to be given by the Association to Members by advertisement, is sufficiently advertised if advertised once in a daily newspaper circulating in the states and territories of Australia and a daily newspaper circulating in New Zealand.
- (e) A notice sent by prepaid post may be included:
  - i. separately with; or
  - ii. as part of the text of

any other communication from the Association sent by prepaid post including the RCSA Journal or any other publication sent by the Association to Members.

#### **10.2 Notice to Directors**

- (a) The Association may give notice to a Director or an Alternate Director:
  - i. by hand delivery;
  - ii. by sending it by prepaid post to the usual residential address of that person or the alternative address (if any) nominated by that person;
  - iii. by sending it by electronic means (if any) nominated by that person; or
  - iv. by any other means agreed between the Association and that person.

#### **10.3 Notice to the Association**

- (a) A person may give notice to the Association:
  - i. by leaving it at a registered office of the Association;
  - ii. by sending by post to a registered office of the Association;
  - iii. by sending by electronic means to an address nominated by the Association for that purpose; or

- iv. by any other means permitted by the Corporations Act.

#### **10.4 Time of service**

- (a) A notice sent by prepaid post to an address in Australia or New Zealand is taken to be given:
  - i. In the case of a notice of meeting, one business day after it is posted;
  - ii. in any other case, at the time at which the notice would be delivered in the ordinary course of post.
- (b) a notice by prepaid post sent an address outside Australia or New Zealand is taken to be given
  - i. in the case of a notice of meeting, three business days after it is posted;
  - ii. in any other case, at the time at which the notice would be delivered in the ordinary course of post.
- (c) A notice sent by electronic means is taken to be given on the business day it is sent, provided that the sender's transmission report shows that the whole notice was sent correctly.
- (d) The giving of notice by prepaid post is sufficiently proved by evidence that the postage was paid and the notice:
  - i. was addressed to the correct address of the recipient as entered in the Member Register; and
  - ii. was placed in the post.

#### **10.5 Signatures**

- (a) The Directors may decide, generally or in a particular case, that a notice given by the Association be signed by electronic or other means.

### **11. Winding Up**

#### **11.1 Transfer of Surplus**

- (a) On a winding up of the Association the Members must determine one or more companies, Associations or Institutions whose Constitutions:
  - i. require them to only pursue objects similar to those in Clause 1 and to apply their income in promoting those objects and which are themselves endorsed by the Australian Taxation Office as Income Tax Exempt Entities;
  - ii. prohibit them from making distributions to their Members to at least the same extent as in Clause 1.4 (b); and
  - iii. prohibit them from paying fees to their Directors and require their Directors to approve all other payments the companies make to their Directors to whom the liquidator must give or transfer any surplus on winding up.

**112 Application to the Supreme Court**

- (a) If the Members fail to make a determination under Clause 11.1 within 20 business days of the winding up of the Association the liquidator must make an application to the Supreme Court of Victoria to make that determination.

## **12. Regions**

### **12.1 Existing Regions**

- (a) Members are divided into six Regions, one representing each of the Australian mainland States with ACT, NT and Tasmania incorporated into neighbouring Regions; and one representing New Zealand.

### **12.2 Variations of Regions**

- (a) The Directors may, from time to time:
- i. vary (by increase or reduction) the areas represented by the existing Regions; and
  - ii. establish additional Regions or sub Regions to represent other areas, within or outside Australia or New Zealand, including any area no longer represented following a variation under Clause 12.2(a).

### **12.3 Region Councils**

- (a) Each Region shall be administered by a Region Council and the Directors may, from time to time, but subject to this Constitution and the By Laws determine:
- i. the membership of each Region Council and the processes for electing or appointing its Members;
  - ii. the procedures for the conduct of business and meetings of Region Councils;
  - iii. the powers of the Directors which will be delegated to the Region Councils under Clause 8.4 (b); and
  - iv. the Directors' requirements for the Region Council to:
    1. keep records; and
    2. report to the Directors.

### **12.4 Proceeding of Region Councils**

- (a) Unless otherwise determined by the Directors, Clause 9 applies (with the necessary changes) to meetings of each Region Council.

## **13. Member Groups**

**NOTE:** Member Groups are defined as Members whose businesses are similar in nature in function and/or specialisation (e.g. healthcare, retail) who form a Group within the Association for the purpose of advancing their unique needs and issues. The Terms of Reference for Member Groups are referred to in the By Laws.

### **13.1 Existing Member Groups**

- (a) The Association has two Member Groups – the Association of Medical Recruiters Australia and New Zealand (AMRANZ) and the Association of Nursing Recruitment Agencies (ANRA).

**13.2 Variations of Member Groups**

- (a) The Directors may, from time to time vary (by increase or reduction) the Member Groups as needs are identified by the Membership.

**13.3 Member Group Councils**

- (a) Each Member Group shall be administered by a Member Group Council and the Directors may, from time to time, but subject to this Constitution and By Laws determine:
  - i. the Membership of each Member Group Council and the processes for electing or appointing its Members;
  - ii. the procedures for the conduct of business and meetings of Member Group Councils;
  - iii. the powers of the Directors which will be delegated to the Member Group Councils under Clause 8.4 (b); and
  - iv. the Directors' requirements for the Member Group Council to:
    - 1. keep records; and
    - 2. report to the Directors.

**13.4 Proceeding of Member Group Councils**

- (a) Unless otherwise determined by the Directors, Clause 9 applies (with the necessary changes) to meetings of each Member Group Council.

**14. Dispute Resolution**

- (a) Whenever any difference which cannot be readily settled by the parties shall arise between the Association and the Board on the one hand and any of the Members or their representatives on the other hand or between any Members with regard to the true construction of this Constitution or with regard to anything done or executed, omitted or suffered in pursuance of this Constitution or the Corporations Act or with regard to any breach or alleged breach or otherwise every such difference shall be firstly dealt with in accordance with the Professional Conduct Grievance Intervention Guidelines. Failing the parties being able to settle the difference shall be referred to the decision of an arbitrator to be appointed by the parties in difference or if they cannot agree upon a single arbitrator to the decision of two arbitrators of whom one shall be appointed by each of the parties.

# By-Laws

## Interpretation

“**brand**” includes any business name, whether registered or not, as well as any common element used in a business name to indicate an affiliation or association that exists between businesses.

“**business**” includes a distinct part of the business or undertaking of an organisation operating under a separate business name, whether registered or not;

“**CEO**” Wherever reference is made in these By-Laws to the CEO, the reference will be taken to include the CEO’s duly authorised delegates.

“**Disciplinary and Dispute Resolution Procedure**” is the procedure, however titled from time to time, for dealing with matters arising under the RCSA Code for Professional Conduct.

“**fees**” includes any levy required to be paid in the same manner and subject to the same consequences as for non-payment of membership fees

“**organisation**” means:

- a sole trader; or
- a body corporate; or
- a partnership; or
- any other unincorporated association; or
- a trust; or
- a government department or agency.

“**related entity**” means any entity engaged in the supply of services for the on-hire, recruitment, contracting, management or administration of labour with regard to which the applicant represents that it has, or has given or has established any sponsorship, approval or affiliation.



# 1. Corporate Membership

In recognition of the different business models and structures used within the industry, the following provisions contained in By-Law 1 apply to applications for Corporate Membership.

## 1.1. Criteria for Corporate Membership:

- a. Only an organisation that is substantially engaged (or maintains a department or division that is substantially engaged) in the supply (including the supply to "internal clients") of services for the on-hire, recruitment, contracting, management or administration of labour is eligible for Corporate Membership under this Part. A person not so engaged, but otherwise entitled to apply for Corporate Membership under the Constitution, may apply instead for membership as an RCSA Supporter under Part 4 of these By Laws.
- b Subject to compliance with competition laws, an applicant for Corporate Membership may be required to apply for membership in respect of all (or other) businesses, which it conducts and in respect of all (or other) of its related entities that are substantially engaged in the supply of services for the on-hire, recruitment, contracting, management or administration of labour ("Membership Extension Principle").
- c. An applicant for Corporate Membership may be required to apply for membership, and assessed for fees, with regard to each office and jurisdiction within Australia and New Zealand in which it carries on business whether it maintains a physical presence there or not.
- d. An applicant for Corporate Membership must supply RCSA, so far as it may reasonably require, with all relevant information with regard to related entities or businesses conducted by it within Australia and New Zealand, that are involved in the supply of services for the on-hire, recruitment, contracting, management or administration of labour so as to permit correct Membership category assessment by the CEO for recommendation to the Corporate Membership Accreditation Panel ("CMAP").
- e. Each year, on renewal, Members must confirm / amend such information as part of the renewal process. Failure to do so, or the provision of incorrect information, may result in rejection of an application for Membership or non-renewal of a Membership.
- f. It is a condition of Corporate Membership that the Corporate Member:
  - i. maintains, at all times, an effective subscription to RCSA's corporate communications including its electronic communications; and
  - ii. ensures that its Corporate Representatives and any staff having a responsibility for the supply of an Employment Service have undertaken and satisfactorily completed any mandatory Code Training component of RCSA's Continuing Professional Development program prior to exercising such responsibility and at least once in each twelve-month period thereafter; and
  - iii. has on staff and available during all times when the Corporate Member is open for business, an Executive Director, owner/operator or senior manager working within the corporation, who has a minimum of 2 years' relevant, recent and ongoing recruitment industry experience or such other formal qualifications as RCSA may stipulate as a condition of membership

## 1.2. Corporate Membership

- a. Multiple Businesses conducted by the One Organisation  
An applicant for Corporate Membership that conducts business under different brand names may be required to take out a Group Corporate Membership.
- b. Related Entities  
A membership certificate may be issued as a Group Corporate Membership Certificate to the members of a Corporate Group.
- c. Corporate Members with Virtual Operations/Networks  
Applicants for Corporate Membership, whose business model or structure includes virtual

operators in Australia or New Zealand, must indicate, in their membership application, those jurisdictions where they carry on business.

d. International Corporate Members with international locations

Applicants for Corporate Membership, who have offices outside Australia and New Zealand, may apply for Corporate Membership in the appropriate category and may (but it is not mandatory) choose to include those overseas offices as part of a group membership; PROVIDED that in any such case they agree to submit to the applicable laws of Australia or New Zealand (as the case may be) and the jurisdiction of the Australian or New Zealand courts (as the case may be) in respect of any dispute or matter arising in connection with their membership.

e. Franchises

- i. Subject to compliance with competition laws, when a franchisee that has the same brand as other franchisees or its franchisor applies for Membership, all franchisees within the franchise group in Australia and New Zealand may be required to apply for Membership, with each franchisee completing a separate application.
- ii. Group Corporate Membership can be negotiated; but franchisees must be admitted separately and commit separately to Membership responsibility.
- iii. It is incumbent upon the franchisor, where it is the applicant, to assist RCSA to facilitate this process with its franchisees so that the Membership process is as efficient as possible.

f. Membership Extension Exceptions

- i. If a case is made by an applicant for Corporate Membership for an exception to the Membership Extension Principle and is accepted by the CMAP and ratified by the Board, the exception is deemed to be approved for that Member only.
- ii. An exception may be granted in any case where an applicant for membership can demonstrate to the satisfaction of RCSA:
  - A. that it has arrangements in place (including training arrangements) reasonably sufficient to secure compliance of any business, related entity, virtual operator, overseas office, franchisee, or downstream supplier to whom or to which the Membership Extension Principle would apply but for the exception ("Subordinates"); or
  - B. that, if required by RCSA, it will be answerable for and remain liable to the imposition of sanctions in respect of the conduct of any Subordinate whose conduct is inconsistent with the Code.

### 1.3. Single Jurisdiction / Single Office Membership

Applicants for Corporate Membership in this category need to head count all staff in the entity for the purpose of Membership classification.

### 1.4. Region Membership

Members will be identified as Region Members if their principal place of business is more than 70km outside the Central Business District ("CBD") of the capital or principal city of any State or Territory in Australia in which they carry on business; or more than 70km outside the CBD of the Council Seat of any Region or Unitary Authority in New Zealand in which they carry on business. In all other cases, entities will be identified as CBD Members.

## Membership Classification

Single Jurisdiction Members	Category	No Staff (direct hire total)
All Members	I	1- 3
CBD Members	H1	4- 10
CBD Members	H	11 +
Region Members	G1	4- 10
Region Members	G	11 +
1 Aust & 1 NZ Office	F1	-

Multiple Jurisdiction Members	Category	No Staff (direct hire total)
Multiple Offices in 1 RCSA Region	F	
Offices across 2 RCSA Regions	E1	1- 5
Offices across 2 RCSA Regions	E	6+
Offices across 3 RCSA Regions	D1	1- 5
Offices across 3 RCSA Regions	D	6+
Offices across 4 RCSA Regions	C1	1- 5
Offices across 4 RCSA Regions	C	6+
Offices across 5 RCSA Regions	B1	1- 5
Offices across 5 RCSA Regions	B	6+
Offices across 6 RCSA Regions	A1	1- 10
Offices across 6 RCSA Regions	A	11 +

### 1.5. Membership Fees

- a. Membership fees are determined by the RCSA Board and reviewed annually.

### 1.6. Application Fees

- a. A non-refundable application fee is to be paid for each Membership application in the various categories.

### 1.7. Non-Payment of Fees

- a. Any Member that has not paid fees within 14 days from the due date for payment will be served a reminder notice to pay all outstanding sums.
- b. Any Member that has not paid fees within 14 days from the date of receiving a reminder notice will be served a final notice to pay outstanding sums.
- c. Any Member that has not paid fees by the date notified in the final notice will be deemed to have declined to renew membership or evinced an intention no longer to be a member (as the case may be) and may be removed from the Register as provided for in the Constitution.
- d. If a person who has been removed from the Register under the preceding paragraph:
  - i. applies for reinstatement of membership within twelve months of removal from the Register; and
  - ii. pays all outstanding fees; and
  - iii. pays in advance membership fees for the year next following the person's removal from the Register; and
  - iv. completes RCSA's Code training within the period of one month prior to reinstatement; and
  - v. complies with such further requirements as the Board may determine

the person may be reinstated to membership and the person's name restored to the Register.

### 1.8. Membership Information Changes

- a. Change of Ownership, Brand or Delegate
  - i. Membership certificates are not transferable and remain the property of the RCSA.
  - ii. When a Member changes (including the making of a partial change) its ownership or its brand, it must
    - A. notify the RCSA of any changes within 14 days.
    - B. , return its Membership certificate together with the information requested in the change of details form within a further 14 days.
  - iii. The Membership will then be reviewed by the CEO for continuity, and upon approval, a Membership certificate will be reissued.

- b. Other Data Changes

- i. Any other changes to information in the membership, including other changes to management or control must be provided by the Member to the RCSA within 30 days of the change.

### 1.9. Objections to Membership

- a. Objections to Membership will only be considered when they are made in writing and contain specific allegations against a potential Member and/or current Member.
- b. If an objection is raised against a Member, or potential Member, the CMAP must:
  - i. examine the validity of the objection and,
  - ii. if necessary, request a Region Council to further investigate the objection, and

- iii. if appropriate, give a hearing to both parties, and
- iv. forward a recommendation to the RCSA Board for determination

PROVIDED THAT if the objection falls within Disciplinary & Dispute Resolution Procedure then the matter should be referred to the Ethics Registrar.

## 2. Accredited Members

The *RCSA Professional Accreditation Framework* allows for two key categories of individual membership: Professional Membership; and Non-Professional Membership (Associate).

### 2.1. Facilitation of Membership

- a. In recognition of the different roles consultants undertake in the industry and the many pathways to qualifications, the procedures and regulations in this By-Law may be applied from time to time by the Consultant Accreditation Panel ("CAP") to accredit individuals and admit them into the Members Register upon acceptance by the Board and payment of the required fees.

### 2.2. Accredited Membership

- a. Any natural person, who has been accredited by the CAP, may upon acceptance and payment of the prescribed fee, be registered as an Accredited Member of the Association. These By-Laws also provide for the bestowing of Honorary membership upon an individual.
- b. An Accredited Member shall be classed, in accordance with definitions contained in the RCSA Levels and Criteria of Professional Membership and the RCSA Professional Accreditation Framework as issued from time to time, and, at the time of issuance of these By-Laws, as one of the following:
  - i. an Accredited Professional;
  - ii. a Member;
  - iii. a Fellow;
  - iv. a Life Fellow;
  - v. an Honorary Member or Honorary Fellow, being a person selected by the Board from time-to-time at their discretion, as a person who is of acknowledged eminence in some activity related to the on-hire/recruitment industry or, who by reason of position, eminence or experience, has rendered outstanding assistance over a long period in promoting the objectives of the Association and for whom CPD maintenance is not applicable. Honorary Membership or Honorary Fellowship is not a category of Professional Membership;
  - vi. a Non-Professional Member ("Associate").
- c. The following post-nominals will be awarded:

<i>Accredited Professional</i>	<i>APRCSA</i>
<i>Member</i>	<i>MRCSA</i>
<i>Fellow</i>	<i>FRCSA</i>
<i>Life Fellow</i>	<i>FRCSA (Life)</i>

### 2.3. Professional Renewal (other than Life & Honorary)

- a. Each year Professional Members (other than Life and Honorary) will be required to renew their commitment to the continuing professional development program ("CPD Commitment") and demonstrate that they have maintained a Continuing Professional Development program ("CPD Maintenance") to the level prescribed by the RCSA Levels and Criteria of Professional Membership issued from time to time.
- b. Professional Members (other than Life and Honorary) will be sent a 90-day reminder on their CPD Commitment and CPD Maintenance requirements; and a 30-day reminder before the expiry date of their registration as a Professional Member.
- c. Should the required CPD Commitment not be renewed, or should the Member be unable to demonstrate that he/she has maintained the required Continuing Professional Development

Program, then the Accreditation will be deemed expired and the individual may need to re-apply for assessment by the CAP.

#### 2.4. Previous Members

Former Professional Members and non-financial Professional Members (i.e. Members who have been suspended pursuant to paragraph 2.8(d) of the RCSA Constitution) are not permitted to use their post-nominals on any stationery, advertising material or website.

#### 2.5. Membership Fees

- a. Professional Members (other than Life and Honorary) will pay a fee annually to maintain the monitoring of their professional recognition program.
- b. Non-Professional Members (Associates) will pay a fee annually to maintain their registration.

#### 2.6. Non-Payment of Fees

- a. Any Accredited Member who has not paid fees within 14 days from the due date for payment will be served a reminder notice to pay all outstanding sums.
- b. Any Accredited Member who has not paid fees within 14 days from the date of receiving a reminder notice will be served a final notice to pay outstanding sums.
- c. Any Accredited Member who has not paid fees by the date notified in the final notice will be deemed to have declined to renew membership or evinced an intention no longer to be a Member (as the case may be) and may be removed from the Register as provided for in the Constitution.
- d. If a person who has been removed from the Register under the preceding paragraph:
  - a. applies for reinstatement of membership and accreditation within twelve months of removal from the Register; and
  - b. pays all outstanding membership renewal fees; and
  - c. pays in advance membership renewal fees for the year next following the person's removal from the Register; and
  - d. completes RCSA's Code training within the period of one month prior to reinstatement; and
  - e. complies with such further requirements (including any Continuing Professional Development requirements) as the Board may determine

the person may be reinstated to membership and accreditation (as the case may be) and the person's name restored to the Register.

#### 2.7. Membership Information Changes

- a. Change of Name
  - i. Accreditation certificates are not transferable and remain the property of the RCSA.
  - ii. When an Accredited Member changes his/her name, the Member must:
    - A. notify the RCSA Head office of any changes within 14 days
    - B. return the accreditation certificate, together with the evidence of the name change e.g. (Marriage Certificate) within a further 14 days.
  - iii. The Accreditation will then be reviewed by the CAP for continuity, and upon approval, an Accreditation certificate will be reissued.

- b. Other Data Changes

Any other changes to information in respect to the Accredited Member must be provided by the individual to the RCSA b within 30 days of the change.

#### 2.8. Objections to Membership

- a. Objections to Membership will only be considered when they are made in writing and contain specific allegations against a potential Accredited Member and/or current Accredited Member. An objection may be raised by RCSA's Ethics Registrar on the basis of information that was lawfully collected in connection with the handling of any matter dealt with under RCSA's Disciplinary & Dispute Resolution Procedure, and which may lawfully be retained, used and disclosed in connection with membership applications.
- b. If an objection is raised to an Accredited Member, or potential Accredited Member, the CAP must
  - i. examine the validity of the objection and,
  - ii. if appropriate, authorise a further investigation of the objection, and
  - iii. if appropriate, give a hearing to both parties, and
  - iv. forward a recommendation to the RCSA Board for determination;

PROVIDED THAT if the objection falls within the Disciplinary & Dispute Resolution Procedure then the matter should be referred to the Ethics Registrar.



## 3. RCSA Councils, Committees & Special Interest Groups

### 3.1. Application

- a. Unless otherwise stated, all provisions in these By-Laws that relate to Councils apply (subject to any relevant Terms of Reference and with the necessary changes to terminology) to Region Councils, sub-Region Councils, and Member Group Councils.
- b. Councils, Committees, sub-Committees and Special Interest Groups formed under these By-Laws will operate in accordance with Terms of Reference established from time to time by the Board.

### 3.2. Councils

#### 3.2.1 Election of Councillors

- a. Each Region or Member Group shall have a Council to assist the Board in the management and control of the Association. This Council will consist of a Chair, two Vice Chairs and Councillors as specified in its Terms of Reference.
- b. Members eligible to vote under the Constitution shall, for their respective Regions or Member Groups, elect a Council that ensures Accredited Members are represented following, as nearly as is practicable, the procedures contained in the Constitution for elections. Councils will include at least two Individual Members and at least two Corporate Representatives.
- c. Additional members, can be chosen from amongst the Professional Members or the Corporate Representatives and co-opted to the Region Council at any point by the Chair in consultation with the CEO.
- d. The Chair in consultation with the CEO may vary the requirements of 4.2.1 (b) to ensure the formation of a workable Council.
- e. Nominations of candidates for election to a Council shall:
  - i. be made in writing using the nomination format specified by RCSA from time to time (which can include electronic or online forms),
  - ii. approved by two Members of the relevant Region or Member Group and Membership class and accompanied by the consent of the candidate; and
  - iii. be delivered to the RCSA by the specified deadline.
- f. RCSA shall forward nomination forms to all Corporate Representatives and Accredited Members for the purpose of nominating candidates, giving a period of 14 days' notice of the closing date for nominations to be received in accordance with By Law 4.2(d).
- g. If insufficient nominations are received to fill all vacancies for elected positions on the Region Council, the candidates nominated shall be deemed elected.
- h. If the number of nominations received is equal to the number of vacancies for elected positions to be filled, the person nominated shall be deemed to be elected.
- i. If the number of nominations received exceeds the number of vacancies for elected positions to be filled, a ballot shall be held. The ballot for the election of Members of the Region or Member Group Council shall be conducted via post or electronic means.
- j. The elected and appointed Members shall conduct a Council meeting and shall elect from their number the various office bearers in accordance with By Law 4.2.1(a). This will be completed at the next Council Meeting prior to the RCSA Annual General Meeting.
- k. The nomination for the appointment as a Director to the Board shall be minuted and notified to the Company Secretary at least 14 days prior to the date of the RCSA Annual General Meeting.

- l. Each Council will report directly to the Board, although they may request a Member of the Board to present any report to the Board if they so desire.
- m. A Council may delegate any of its powers and/or functions to one or more Committees or sub-Committees consisting of one or more Members of the relevant Council and such other Members of the relevant Region as the Board think fit. Any Committee or sub-Committee so formed shall conform to any regulations that may be imposed by the Board.
- n. Each Council must establish further Committees and sub-Committees as required by the Board.

### 3.2.2 Length of Service

- a. Commencing from the date of the Annual General Meeting for 2019:
  - i. terms for elected, appointed and co-opted members of the Council shall be for two years; and
  - ii. elected, appointed and co-opted members of the Council may hold office for a maximum of ten years; or if they are directors, for whilst ever they continue to serve as a director – whichever is longer.
- b. The Chair in consultation with the CEO may vary the requirements of 4.3. (a) to ensure the formation of a workable Council.

### 3.2.3 Conflict of Interest

- a. Councillors must: -
  - i. disclose to the Council all actual or potential conflicts of interest which may exist or might be reasonably be thought to exist between the interests of the Councillor and the interests of the RCSA in carrying out the activities of the Association and
  - ii. at the request of the Council within seven (7) days or such further period as may be allowed, take such steps as are necessary; and reasonable to remove any conflict of interest referred to above.
- b. If a Councillor cannot or is unwilling to remove a conflict of interest as required, then he/she must absent themselves from discussion of matters to which the conflict relates. This exit and entry should be recorded in the minutes.
- c. Councillors will indicate to the Chairperson any potential conflict of interest situation as soon as it arises.
- d. The same requirement will exist for related party transactions. Related party transactions include any financial transactions with the Association at any level. Related party transactions will be reported in writing to each RCSA Board meeting.

### 3.2.4 Council Meetings Meeting Frequency, Time, Place and Attendees

- a. Unless otherwise provided for in its Terms of Reference, a Council will meet at least on a quarterly basis face to face or by teleconference or other means.
- b. Additional Council meetings can be convened when:
  - i. the Council or the Chair determines; or
  - ii. three Council Members call a meeting.

In such situations, a minimum of seven days' notice must be given

- c. Meetings will occur at a venue determined by the Chair.

## 3.3 Committees, Sub-Committees, Special Interest Groups

### 4.3.1 Committee and Special Interest Group Members

- a. Committees, Sub-Committees and Special Interest Groups will be established as required by the direction of the Board or Councils (as per 4.2.1i). Their structure will be outlined in the Terms of Reference established for the Committee, Sub-Committee or Special Interest

Group.

- b. Corporate Representatives and Individual members will be invited to join the Committees, Sub-Committees and Special Interest Groups. There is no formal nomination process required to join these Committees or Special Interest Groups.

#### 3.3.2 Length of Service

- a. There is no set length of term for members of Committees, Sub-Committees or Special Interest Groups. Any determinations will be detailed in the relevant Terms of Reference.

#### 3.3.3 Conflict of Interest

- a. Committee, Sub-Committee and Special Interest Group members must abide by clause 4.2.3 of these by-laws.

#### 3.3.4 Meeting Frequency, Time, Place and Attendees

- a. Unless otherwise provided for in its Terms of Reference, a Committee, Sub-Committee or Special Interest Group will meet at least on a quarterly basis face to face or by teleconference or other means.
- b. Additional meetings may be called by the Chair.

## 4 RCSA Supporter

### 4.1 Criteria for RCSA Supporter

Any organisation, not eligible for corporate membership under these By Laws, who provides a service to the Industry who agrees in writing to be bound by and comply with the Constitution and the By Laws of the Association and is eligible under the By Laws to be a Supporter, can apply to be an RCSA Supporter.

### 4.2 Supporter Entitlements

Supporters shall not be entitled to vote at any General Meetings, appoint a Corporate representative or sit on a Council or the Board unless by special resolution of the Board.

### 4.3 Supporter Fees

- a. The Supporter fees are determined by the RCSA Board and reviewed annually.
- b. Any Supporter that has not paid Supporter fees after one month from the due date for payment of such fees will be served a reminder to pay all outstanding fees.
- c. Any Supporter that has not paid Supporter fees after one month from the date of receiving a reminder notice will be served a final notice to pay outstanding fees. If any fees shall remain unpaid for a period of 14 days after the final notice is served to a Supporter by the Association the Supporter at the discretion of the Board will be barred by resolution of the Board from representing that it is a Supporter notwithstanding that the Board may reinstate the Supporter on payment of all arrears if the Board thinks fit to do so.

# SUMMARY OF NEW CODE PCGIG INTERVENTIONS\*

	Summary	Outcome	Domain
1	<i>Privacy - Misleading job ads - Professional conduct in complaints handling and response to RCSA intervention – Complaints accepted by Ethics Committee for investigation – Deferral - Aspects of privacy complaint eventually resolved through intervention of OAIC</i>	Accepted for intervention - Referred to PCRC. Deferred whilst OAIC investigation under way. Intervention closed after resolution in OAIC.	Compliance (Privacy) Compliance (Fair Trading) Compliance (Code/ Complaints Handling)
2	<i>Whether Member involved in training/ unpaid work programme – Nominal complaint of ANRA accepted for investigation by Ethics Committee – Change of ownership/ management of Member in course of investigation</i>	Accepted for intervention - Matter resolved by confidential undertaking accepted by the Board.	Compliance (Workers Entitlements)
3	<i>Senior staff of NZ Corp Member alleged to have entered the workplace of the Aggrieved Member and to have engaged in allegedly abusive and intimidatory conduct toward a former consultant over a dispute about contacting clients. Respondent unco-operative in resolving the matter. Grievant concerned that Respondent will falsely represent (or has already done so) to clients that the consultant is prevented from dealing with them by a restraint of trade provision.</i>	Counselling intervention led to resolution and undertakings accepted by the Board	General Misconduct Compliance (RoT)
4	<i>Staff of two NZ Corp Members allegedly involved in altercation in public at afterparty following RCSA NZ Awards Night – Investigated by NZ lawyers - Whether conduct unbecoming of a Member or not in RCSA's interests – Whether in breach of Code</i>	Proposed counselling intervention led to resolution and undertakings accepted by the Board	General Misconduct
5	<i>Two members involved in fee dispute with client – Claim of one member based on clause possibly in restraint of trade – Claim of one member based on clause possibly in breach of Qld PEA Code of Conduct – Members (wrongly) assuming that clients only ever have to pay one fee in respect of same candidate - Members proceeding to private mediation with client.</i>	Structured listening intervention. Fee Dispute materials (including original Fee Dispute Schedule) provided to Members. No further Intervention.	Compliance (RoT) Compliance (PEA Regulation) Compliance (Code/ ??) Operational (Fee Entitlements)
6	<i>Second fee dispute - Two members involved in fee dispute with client – Claim of one Member based on clause possibly unenforceable under Australian Consumer Law - One member (wrongly) asserting a rule in the industry that agency that</i>	Accepted for intervention – proposed for counselling - Fee Dispute materials (including original Fee Dispute Schedule) provided to Members and Grievant (Client). Matter promptly resolved by	Compliance (Fair Trading) Compliance (Code/ Complaints Handling) Operational (Fee Entitlements)

	<i>represents the candidate first gets the fee - Members (wrongly) assuming that clients only ever have to pay one fee in respect of same candidate – Member putting fee claim in hands of debt collectors rather than using processes mandated by Code Principle 8 (Negotiation etc).</i>	members on receipt of materials and evaluation.	
7	<i>Candidate replacement guarantee – Refund in full if replacement not found – Replacement not found – Refund claimed against fees for subsequent placement – Refund not paid – Member offers less than full refund based on formula alleged by grievant not to have been agreed – Grievant has threatened legal action if refund of \$30k (approx.) not paid – Member unresponsive.</i>	Intervention initiated December 2019 – Member responded – Matter then resolved amicably between parties.	Compliance (Fair Trading)
8	<i>Contract - Temp-to-perm fee potentially in restraint of trade – Potential drafting weaknesses. Member seeking RCSA assistance.</i>	Accepted for intervention - Early evaluation identified 14 distinct issues for Member to consider. Matter then resolved once Member had access to relevant information.	Compliance (RoT) Compliance Code (Certainty)
9	<i>Search &amp; recruitment services agreement – Six-month term – Service Guarantee – Refund provision - Grievant dissatisfied with service – Small number of candidates referred – Termination provision allowing termination at any time on notice - Parties had a falling out over service quality – Harsh words spoken by grievant - Member purports to terminate contract before term expired – Grievant regrets harsh words spoken - Grievant seeks pro rata refund for unexpired portion of term – Member refuses to pay – Member refuses to provide services for balance of term.</i>	Accepted for intervention - Member purported to have commenced proceedings against RCSA seeking injunction in NCAT. On inquiry with NCAT registry it was discovered that no proceedings had been commenced. When challenged by RCSA, the member tendered its resignation.	Compliance (Fair Trading) Compliance (Contract) Compliance (Code/ Diligence & Competence) Compliance (Code/Complaints Handling) Operational (Service Quality)
10	<i>Search &amp; recruitment services agreement disputed entitlement to a refund of part of Member's fee for the placement of a candidate who subsequently left employment having failed to satisfactorily complete and pass a drug and alcohol test.</i>	Accepted for intervention - Matter resolved to satisfaction of both parties after structured listening and limited dispute resolution intervention.	Compliance (Fair Trading) Compliance (Code/ Diligence & Competence) Operational (Service Quality)
11	<i>Search &amp; recruitment services agreement – Candidate replacement guarantee - Candidate placed part time – Client sought pro rata reduction of fee – No pro rata provision in agreement – Nevertheless, agreed to by Member – Replacement not found within guarantee period – Refund requested – not forthcoming.</i>	Accepted for intervention - Matter resolved to satisfaction of both parties after structured listening and limited dispute resolution intervention. Parties have thanked RCSA for assistance provided.	Compliance (Fair Trading) Compliance (Code/ Certainty)

12	<p><i>APRSCA in senior executive role in Corporate Member reported in news media to have been serially involved in instances of fraud – history of use of various names - not disclosed upon applying for corporate or accredited professional membership – ACT employment agent licence held by corporate member at time of application – Member shortlisted in awards program.</i></p>	<p>Accepted for intervention via PCRC investigation under PCGIG 6.4. Members to show cause why caution should not be noted on the Register. PCRC may additionally require Members to show cause why they should not be subject to precautionary suspension pending determination. The Member subsequently tendered his resignation.</p>	General Misconduct
13	<p><i>APRSCA in senior executive role in Corporate Member alleged to have accessed Grievant’s Facebook account and to make unauthorised changes., removing and blocking friends from Grievant’s Friends list, accessing Grievant’s messages, taking screenshots and distributing various private messages from conversations Grievant had had with friends on his Messenger app through the business to other employees– Unparticularised allegation prior misconduct.</i></p>	<p>Accepted for intervention via Registry Intervention under PCGIG 6.3.1 (Structured Listening) – Confidentiality + related values grievance only – Unparticularised allegation of prior misconduct not recommended for intervention as properly a matter for RCSA own-motion investigation - Further information to be obtained from Grievant – Matter to be reviewed on receipt of further information - Grievant also an APRCSA. Following intervention, the Member tendered his resignation.</p>	General Misconduct
14	<p><i>Workseeker applied for a call centre role in 2019 – informed 2 years later application was corrupted. Applied again in June 2021 – unsuccessful – objects to recruitment methodology, scenario-based interview questions and attitude of consultant perceived as having been condescending and disrespectful. Had not complained to Member. Potential for complaints handling diversion PCGIG 6.2.2. (Member’s Internal Complaints Handling Diversion) – Accepted for intervention – disrespectful conduct only.</i></p>	<p>Accepted for intervention. After authorizing RCSA referral to Member’s complaints handling process, Grievant withdrew consent. Intervention terminated.</p>	Operational (Selection)
15	<p><i>Alleged involvement by Corporate Member in continued breach of obligations of confidentiality and contractual restraint of trade by former employee of grievant – Member contends it has not acted contrary to its legal obligations – Alleged copying and pasting by Member of Grievant’s job ad – Alleged interference in relationship between Grievant and its client – Alleged double billing for supply of staff to mutual client.</i></p>	<p>Restraint of trade grievance - accepted for intervention by process of structured listening under PCGIG 6.3.1. Job ad skimming grievance - not accepted for intervention (no evidence). Confidentiality grievance - accepted for intervention by process of structured listening under PCGIG 6.3.1. Double payment grievance - not accepted for intervention (client not a grievant).</p>	<p>Compliance (Code/ Confidentiality) Compliance (RoT) Compliance (Code/ Trustworthiness)</p>

16	<p><i>Corporate Member self-disclosed Fair Work contraventions - Underpayment impacting on-hire employees – Member had applied the wrong awards to some workers and incorrectly failed to apply any award to others – Further review found award classification issues had led to failures to pay the required minimum rates of pay, casual loading, overtime and public holiday penalty rates, shift work penalties, and certain allowances - Additional failure to provide required meal breaks and minimum shift engagements. – Member admitted that 5325 current and former on-hire employees were underpaid \$3.4 million, plus \$345k in superannuation, between 2014 and 2020 – Member entered into undertaking with FWO.</i></p>	<p>Accepted for intervention - Resolved by undertaking to RCSA.</p>	<p>Compliance (Workers Entitlements)</p>
17	<p><i>Corporate Member supplied candidate who did not hold current registration to perform in position and had not met training requirements – Client sought refund – Member refused relying on “no refund” and all-care-no responsibility clauses in terms of business – Client appealed to NCAT – NCAT held Member had engaged in misleading conduct; was not entitled to rely on “no refund” and all-care-no responsibility clauses – ordered full refund – Client followed up seeking further RCSA intervention on professional conduct grounds.</i></p>	<p>Accepted for intervention - The fact that a grievant obtains a legal remedy does not preclude RCSA from conducting a professional conduct intervention. RCSA interventions focus on future as well as past conduct and are designed to assist Members identify the professional-thing-to do both to resolve the grievance and to prevent future grievances. In this matter, the Member’s terms of business were clearly unsuitable. The matter progressed under the P CGIG from RCSA’s decision to intervene to PCRC interview with the Member in a little over a fortnight. The Member confirmed it would abide by NCAT’s order and would undertake additional measures including review of its terms of business in light of RCSA’s CSA Template to avoid future repetition.</p>	<p>Compliance (Fair Trading) Compliance (Code/ Diligence &amp; Competence) Operational (Service Quality)</p>
18	<p><i>RCSA’s raised professional conduct and Surge Workforce Program concerns with a member regarding surge charges invoiced to clients during the COVID pandemic.</i></p>	<p>Accepted for intervention – Following intervention under RCSA’s Grievance Intervention Guidelines, the concerns were resolved to the RCSA Board’s satisfaction.</p> <p>RCSA is satisfied that its member has additionally resolved customer concerns about surge charges to satisfaction of customers.</p> <p>The surge charges, which were conceived and collected by the member as an incentive to workers, have been distributed as bonus payments to workers with</p>	<p>Compliance (Fair Trading) Compliance (Code/ Certainty)</p>



		agreement of all relevant stakeholders.	
19	<i>Corporate Member's consultant approached a candidate whom she had placed with the Grievant 18 months earlier – Whether approach consistent with Code responsibilities.</i>	Matter accepted for intervention by process of Structured Listening under PCGIG 6.3.1. Intervention letters and "Useful to Know" information provided to both participants. Short time allowed for Member to resolve through its own complaints handling processes. Grievant satisfied with RCSA intervention and content not to proceed further. Matter satisfactorily closed.	Compliance (Code/ Confidentiality) Operational (Candidate Poaching)
20	<i>ISO 9001 certified and Surge Workforce Approved Corporate Member participating in the Surge Workforce Program – Suspected involvement in "Shift Blocking", the practice of booking shifts in the name of one worker before confirming that worker's availability and acceptance in order to be first to secure the shift and then seeking to substitute the worker when the worker proves to be unavailable – 20 possible incidents between March and April.</i>	Accepted for intervention – Matter referred to PCRC for investigation. PCRC determined evidence did not clearly establish shift blocking in breach of the Professional Recruiter Accord.	Compliance (Code/ Certainty) Compliance Code (Trustworthiness)
21	<i>Member prosecuted by Wage Inspectorate Victoria (WIV) for non-payment to casuals of LSL - Member defending – defence based on disputed contention that casual loading includes LSL</i>	Accepted for intervention – Matter deferred pending outcome of WIV prosecution.	Compliance (Workers Entitlements)
22	<i>Grievant alleges she was recruited, at Member's instigation, from secure ongoing employment elsewhere – Not told in course of recruitment that new position with Member might not be ongoing – Not told in course of recruitment of financial assurance issues affecting Member – Subsequently discovered and raised financial assurance issues with Member – Position subsequently made redundant as a result of "offshoring".</i>	Accepted for intervention – Matter likely to resolve by undertaking.	Compliance (Fair Trading) Compliance (Workers Entitlements) Operational (Offshoring)
23	<i>Vic. LHA investigation into worker accommodation procured by Member – Member conceding was not aware of accommodation requirements – Member agreeing to repay portion of pay deductions for non-compliant accommodation – licence conditions imposed.</i>	Accepted for intervention – allocated to certification diversion.	Compliance (Workers Entitlements)
24	<i>Unforeseen agency-switching fee claim against client in respect of 11 workers previously on-hired by Outgoing</i>	Accepted for OMI, as supplier transition dealings raise complex professional conduct issues that are	Compliance (Code/ Transitions) Compliance (Code/ Cooperation)

	<p><i>Supplier (Corporate Member) to Client – Other constraints on transition (timeframes, restraints) not identified - Incoming Supplier (Professional Member) requesting grievance intervention “on behalf of” client – Request declined in favour of RCSA Own-Motion Intervention in re conduct of both parties to transition – Request for Intervention subsequently lodged by Client – Declined in favour of RCSA Own-Motion Intervention already initiated – Whether Client to be granted “participant” status - Outgoing</i></p> <p><i>Supplier (Corporate Member) subsequently resigned in high dudgeon – RCSA OMI continued in respect of Incoming Supplier (Professional Member).</i></p>	<p>rarely one-sided. RCSA’s Guidelines on the Conduct of Supplier Transition dealings require members to cooperate in the handling of complaints and disputes; and to identify, and give effect to, any relevant contractual or other legal obligations. In a matter where Members involved in a supplier transition may not have identified the possibility of their client’s being exposed an agency-switching fee, questions may be asked of both members with regard to how that circumstance came about and with regard to what might be considered to be the professional thing to do about it.</p> <p>Member chose to resign after failing to provide evidence of having completed commitment to training.</p>	
25	<p><i>Grievant (a medical locum direct placement with retained payroll) concerned that Corporate Member, is not engaging in good faith and has stopped advocating for him – Not receiving shift availability – Grievant engaged and paid directly by hospital – Member invoices hospital on behalf of locum – Grievant concerned payment arrangements variable and uncertain.</i></p>	<p>Referred for PCRC investigation under PCGIG 6.4 following low-level structured listening intervention under PCGIG 6.3.1.</p> <p>Member chose to resign.</p>	<p>Compliance (Code/ Certainty)</p> <p>Compliance (Code/Care)</p>
26	<p><i>Grievant had unhappy experience and adverse, short employment history when placed by Member with client in 2017 – Employment terminated in consequence – Grievant subsequently unable to obtain work through member or other agencies – Grievant concerned about possible “blacklist” – Grievant subsequently requested in 2017 and 2020 to cease contact with Member – Member declines to represent – Grievant implicates other Members in allegation of participation in a blacklist in 2017 – Allegations based on fact that implicated Members have declined to represent him – Member’s client continues to request Grievant desist from making unwelcome contact with its staff.</i></p>	<p>Declined as not disclosing substantive evidence. Adequate alternative remedies under Privacy Laws. RCSA resources not suited to investigation as no statutory power to compel production of documents or information. Member resource on topic candidate blacklists to be produced.</p>	<p>Compliance (Code/Privacy)</p>
27	<p><i>Grievant concerned that Members’ recruitment practices do not meet industry best practice standards or RCSA Code standard of professionalism – Various claims about position scoping, reference checking, inappropriate interview questions – Claims that other staff “constructively dismissed” – Claims made that other</i></p>	<p>Declined as frivolous or vexatious, where grievance largely expressed as opinions or conclusions that are not made by way of submission supported by particularised claims and substantive evidence; and where grievance largely made in respect of other workers (often</p>	<p>Compliance (Workers Entitlements)</p> <p>Compliance (Confidentiality &amp; Privacy)</p> <p>Operational (Selection)</p>

	<p><i>staff have taken matters to Fair Work Commission – Claims that staff not correctly vetted or on-boarded for NDIS deployment – Claims that Member withheld wages of other staff – Claims that other staff “coerced” into giving statements in defence of Grievant’s application for anti-bullying orders – Claims that Grievant’s privacy and confidentiality breached by “telling staff what [Grievant] had done” – No particulars given – Weight to be given to conclusions and opinions stated otherwise than by way of submission supported by substantive evidence – Grievant seeks only to have individual member removed from office holding positions with RCSA - Whether grievance frivolous or vexatious.</i></p>	<p>unidentified), who have raised no grievance on their own behalf.</p>	
28	<p><i>Fee charged for direct hire placement – Member’s pre-employment checks did not discover candidate’s criminal history of sex offences with minors – Member presented candidate to client as a person who did not have criminal convictions – Member offered credit on next temp-to-perm placement after 12 weeks of temping – Candidate alleged to have stolen money from client’s site – Matter reported to police – On further digging, Member found not to have provided satisfactory reference checks in respect of other temp staff on-hired to client – Pre-employment checks omitted criminal history checks- Pre-employment checks poorly conducted with referees who had only known candidates for short period (less than a week) or who were not in positions of authority – Pre-employment checks not listed as part of member’s responsibilities in terms of business – Whether Code requirements of Diligence &amp; Competence and Trustworthiness apply in any event.</i></p>	<p>Accepted for low-level structured listening intervention under PCGIG 6.3.1.</p> <p>Resolved by Member committing to various process improvements and correcting website information.</p>	<p>Compliance (Code/ Certainty)</p> <p>Compliance (Code/ Diligence &amp; Competence)</p> <p>Operational (Selection)</p>
29	<p><i>Grievant concerned that Members’ job ad omitted essential information – Requirement to be located in Australia – Grievant located in Spain– Application rejected because Grievant did not include in application information about any intention to relocate to Australia – Grievant alleges discrimination under FWA on grounds of “geographic location” – Whether job ad demonstrated Code standards of diligence &amp; competence – Whether collection of personal information without disclosure of essential requirement from applicant who does</i></p>	<p>Recommended for low-level structured listening intervention under PCGIG 6.3.1.</p> <p>Declined.</p>	<p>Compliance (Fair Trading)</p> <p>Compliance (Code/ Privacy)</p>

	<i>not meet the requirement demonstrates due regard for privacy.</i>		
30	<i>Where Member has invoiced client participant in Surge Workforce Program without obtaining prior agreement to terms, conditions and rates – Whether Certainty of Engagement Code Principle of Operational Integrity met – Whether Care requirement and related PRA outcomes requiring fee transparency met – Where Member makes claim on website to provide services at “affordable cost” and rates alleged to be excessive – Whether PRA Outcomes relating to avoidance of extravagant pricing met – Where discrepancies in invoices and procedures to verify timesheets – Where Member has assigned invoice to invoice lender leading to aggressive recovery action at time when invoices contested – Whether Code Professional Values of Trustworthiness and Co-operation met. (A)</i>	<p>Referred to PCRC for Investigation with request for Committee to facilitate resolution and make professional conduct resolutions as necessary.</p> <p>Underlying commercial dispute satisfactorily resolved. RCSA professional conduct interests able to be satisfied by Member undertaking certain process improvements and additional training.</p>	<p>Compliance (Code/ Certainty)</p> <p>Compliance (Code/ Complaints Handling)</p> <p>Compliance (Fair Trading)</p>
31	<i>Where Member has invoiced client participant in Surge Workforce Program without obtaining prior written agreement to terms, conditions and rates – Whether Certainty of Engagement Code Principle of Operational Integrity met – Whether Care requirement and related PRA outcomes requiring fee transparency met – Where rates alleged to be excessive – Whether PRA Outcomes relating to avoidance of extravagant pricing met – Where Member has threatened letter of demand at time when invoices contested – Whether Code Professional Values of Co-operation met. (B)</i>	<p>Referred to PCRC for Investigation with request for Committee to facilitate resolution and make professional conduct resolutions as necessary.</p> <p>Underlying commercial dispute satisfactorily resolved. RCSA professional conduct interests able to be satisfied by Member undertaking certain process improvements and additional training.</p>	<p>Compliance (Code/ Certainty)</p> <p>Compliance (Code/ Complaints Handling)</p> <p>Compliance (Fair Trading)</p>
32	<i>Where Member has invoiced client participant in Surge Workforce Program without obtaining prior signed written agreement to terms, conditions and rates – Whether Certainty of Engagement Code Principle of Operational Integrity met – Whether Care requirement and related PRA outcomes requiring fee transparency met – Where Member makes website claim to “affordable rates” - Where rates alleged to be excessive – Whether PRA Outcomes relating to avoidance of extravagant pricing met. (C)</i>	<p>Referred to PCRC for Investigation with request for Committee to facilitate resolution and make professional conduct resolutions as necessary.</p> <p>Underlying commercial dispute satisfactorily resolved. RCSA professional conduct interests able to be satisfied by Member undertaking certain process improvements and additional training.</p>	<p>Compliance (Code / Certainty)</p> <p>Compliance (Fair Trading)</p>

33	<p><i>Where Member has invoiced client participant in Surge Workforce Program without obtaining prior written agreement to terms, conditions and rates – Whether Certainty of Engagement Code Principle of Operational Integrity met – Whether Care requirement and related PRA outcomes requiring fee transparency met – Where rates alleged to be excessive – Whether PRA Outcomes relating to avoidance of extravagant pricing met – Where alleged discrepancies in invoices and procedures to verify timesheets – Where Member alleged to have responded defensively – Whether Code Professional Values of Co-operation met. (D)</i></p>	<p>Referred to PCRC for Investigation with request for Committee to facilitate resolution and make professional conduct resolutions as necessary.</p> <p>Underlying commercial dispute satisfactorily resolved.</p> <p>Continuing with regard to satisfaction of RCSA professional conduct interests.</p>	<p>Compliance (Code/ Certainty)</p> <p>Compliance (Code/ Complaints Handling)</p> <p>Compliance (Fair Trading)</p>
34	<p><i>Member failed to cooperate with RCSA request for information required to conduct Surge Workforce PRA and Code Interventions (1)</i></p>	<p>Member provided with further opportunity to comply and furnished with information regarding consequences of non-compliance (demerit points under PRA)</p> <p>Member provided information after prompting.</p>	<p>Compliance (Code/ Cooperation)</p>
35	<p><i>Member failed to cooperate with RCSA request for information required to conduct Surge Workforce PRA and Code Interventions (2)</i></p>	<p>Member provided with further opportunity to comply and furnished with information regarding consequences of non-compliance (demerit points under PRA)</p> <p>Member provided information after prompting.</p>	<p>Compliance (Code/ Cooperation)</p>
36	<p><i>Member failed to cooperate with RCSA request for information required to conduct Surge Workforce PRA and Code Interventions (3)</i></p>	<p>Member provided with further opportunity to comply and furnished with information regarding consequences of non-compliance (demerit points under PRA)</p> <p>Member provided information after prompting.</p>	<p>Compliance (Code/ Cooperation)</p>
37	<p><i>Member failed to cooperate with RCSA request for information required to conduct Surge Workforce PRA and Code Interventions (4)</i></p>	<p>Member provided with further opportunity to comply and furnished with information regarding consequences of non-compliance (demerit points under PRA)</p> <p>Member provided information after prompting.</p>	<p>Compliance (Code/ Cooperation)</p>
38	<p><i>Member failed to cooperate with RCSA request for information required to conduct Surge Workforce PRA and Code Interventions (5)</i></p>	<p>Member provided with further opportunity to comply and furnished with information regarding consequences of non-compliance (demerit points under PRA)</p>	<p>Compliance (Code/ Cooperation)</p>

		Member provided information after prompting.	
39	<i>Member failed to cooperate with RCSA request for information required to conduct Surge Workforce PRA and Code Interventions (6)</i>	Member provided with further opportunity to comply and furnished with information regarding consequences of non-compliance (demerit points under PRA)  Member provided information after prompting.	Compliance (Code/ Cooperation)
40	<i>Member failed to cooperate with RCSA request for information required to conduct Surge Workforce PRA and Code Interventions (7)</i>	Member provided with further opportunity to comply and furnished with information regarding consequences of non-compliance (demerit points under PRA)  Member provided information after prompting.	Compliance (Code/ Cooperation)
41	<i>Member failed to cooperate with RCSA request for information required to conduct Surge Workforce PRA and Code Interventions (8)</i>	Member provided with further opportunity to comply and furnished with information regarding consequences of non-compliance (demerit points under PRA)  Member was permitted to withdraw from program without penalty.	Compliance (Code/ Cooperation)
42	<i>Member failed to cooperate with RCSA request for information required to conduct Surge Workforce PRA and Code Interventions (9)</i>	Member provided with further opportunity to comply and furnished with information regarding consequences of non-compliance (demerit points under PRA)  Member was permitted to withdraw from program without penalty.	Compliance (Code/ Cooperation)
43	<i>Member failed to cooperate with RCSA request for information required to conduct Surge Workforce PRA and Code Interventions (10)</i>	Member provided with further opportunity to comply and furnished with information regarding consequences of non-compliance (demerit points under PRA)  Member was permitted to withdraw from program without penalty.	Compliance (Code/ Cooperation)
44	<i>Grievant paid medical locum agency member a sum of money to start a migration application to bring a relative to Australia – Member initially refused refund but subsequently agreed to full refund after NSW Fair Trading Complaints Intervention – Member failed to pay by agreed date.</i>	Accepted for intervention (Structured Listening)  Member chose to resign.	Compliance (Fair Trading)  Compliance (Code/ Cooperation)
45	<i>Grievant claims to have been put through motions of preparing for job interview when no job on offer – Grievant contends right to work and ID docs requested prematurely.</i>	Accepted for intervention (Structured Listening)  Terminated noted “Unresolved”*  <b>Note</b> Termination of a matter noted “Unresolved” means that the grievance	Compliance (Privacy)  Operational (Candidate Care)

		<i>and record of intervention remains on the Member's professional conduct record and may be referenced when similar grievances involving the same member arise in future.</i>	
46	<i>Alleged statements made in connection with an offer of employment - Uncertainty of arrangements for approval of leave - Non-payment for work performed - Failure to pay on time for work performed (payment on time occurring on two occasions only since June 2022) - Discrimination on the basis of disability - Aggressive &amp; intimidating behaviors.</i>	Accepted for intervention (Structured Listening)  Terminated noted "Unresolved"*  <b>Note</b> Termination of a matter noted "Unresolved" means that the grievance and record of intervention remains on the Member's professional conduct record and may be referenced when similar grievances involving the same member arise in future.	Compliance (Fair Trading) Compliance (Workers Entitlements) (Compliance (Discrimination) Operational (Candidate Care)
47	<i>Allegations in the media and elsewhere that the member breached its PALM Scheme Deed obligations; withheld workers' visas; threatened to cancel workers' visas; engaged in behaviour akin to modern slavery; refused to provide payslips to workers. Some elements of the grievance are subject to complaints received by the AWU from workers and are being investigated by FWO. Allegations denied by member.</i>	Accepted for intervention (Structured Listening)  Continuing	Compliance (Workers Entitlements) Compliance (Code/ Respect/ Exploitation)
48	<i>Alleged misuse of confidential information to poach staff and have them engage in poaching clients in breach of contractual obligations. Matter involves non-members and court proceedings in which parties are represented by lawyers.</i>	Accepted for intervention (Structured Listening/ Mediation)  Underlying commercial dispute resolved.	Compliance (Code/ Confidentiality) Compliance (Code/ Cooperation)
49	<i>Alleged deactivation of on-hire candidate account without notice after member promised to assist candidate to find regular shifts – No follow by member on promise.</i>	Accepted for intervention (Structured Listening)  Continuing	Operational (Candidate Care)
50	<i>Inadvertent disregard for privacy and confidentiality – Adverse comments published regarding third party.</i>	Accepted for intervention (Structured Listening)  Resolved by member commitments.	Compliance (Code/ Care)

## NOTES

- The PCGIG came into operation one year earlier than the new Code. I have therefore described the grievances by reference to their chief topics or "domains" rather than use the different terminologies of the old and new Codes. Some of the domains overlap.
- As most grievances indicate some deficit in professional knowledge (Code Principle 4) we have not included Code Principle 4 (Knowledgeable) as a separate Domain. The RCSA Board has, however, resolved, adopting a recommendation from the Professional Practice Council to place strategic focus on professional learning & development for next 12 months. The effect of such a resolution is to highlight professional knowledge deficits as a strong indicator in favour of accepting a grievance for intervention.

- Some grievance requests have several elements, not all of which are always be accepted for intervention. The pie charts below give a rough picture of the type of grievances that have been handled and the intervention request acceptance/ decline rates. Acceptance of a grievance for intervention does not imply that a Member has breached the Code.



# RCSA Code of Professional Conduct Members Survey – September/October 2023

## Executive Summary

In September, RCSA Members were invited to participate in a survey focussed on the RCSA Code of Professional Conduct. The survey aimed to seek member feedback on the various aspects of the professional conduct framework, including the RCSA Code of Professional Conduct, Professional Conduct Grievance Guidelines (PCGIGs) and procedures for resolving professional conduct complaints. 34 members responded to the survey (30 from Australia, 4 from New Zealand), and the results are outlined below.

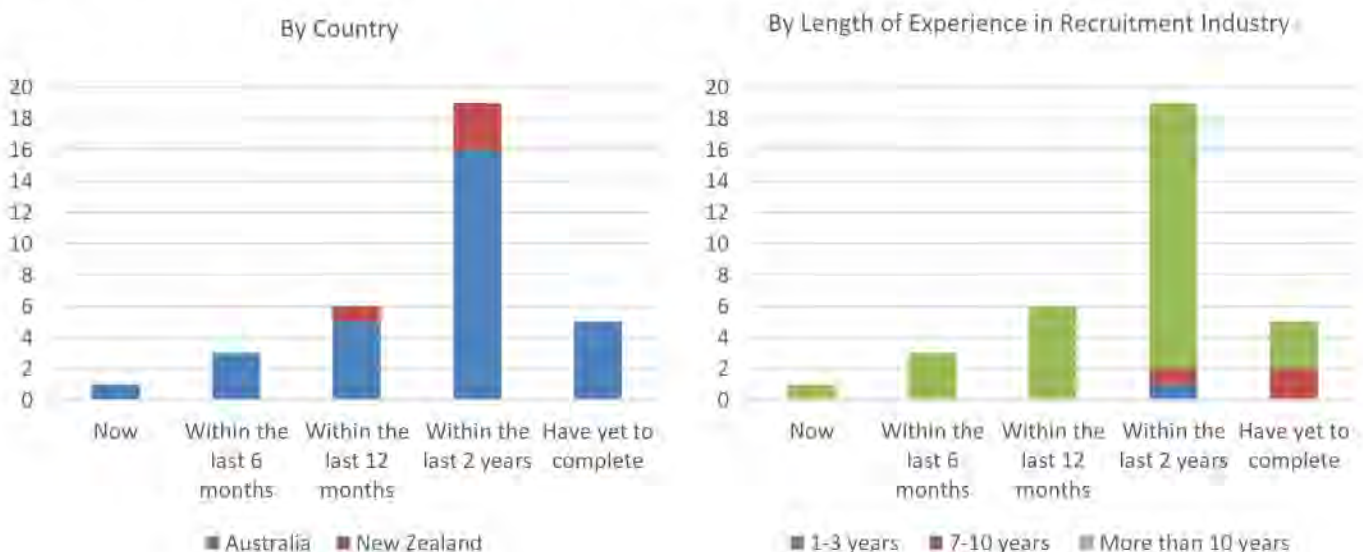
Overall, the results show that the members who responded are aware of the framework and consider it important for the industry. The major barrier for trying to learn more about professional standards and the RCSA Code of Professional Conduct is time constraints, followed by operational burdens of running their business and competing priorities for training.

Respondents indicated that they are concerned that there are no consequences or enforcement for those who break the code, or those who are not members, and that there is a need to differentiate between what is legally required and what is ethically right. It has also been observed by respondents that there are many members who are not aware of the requirements.

When asked what improvements or additional resources could help improve the resolution of professional conduct complaints in their organisation or the industry, the main themes in the respondents' comments focussed on increased transparency, more education and marketing and greater enforcement. It was also suggested that webinars podcasts could be useful. There were comments about the training being long and clunky, however there was also a comment that the training is very light.

## Results

### 1. When did you complete your RCSA Code online training module?

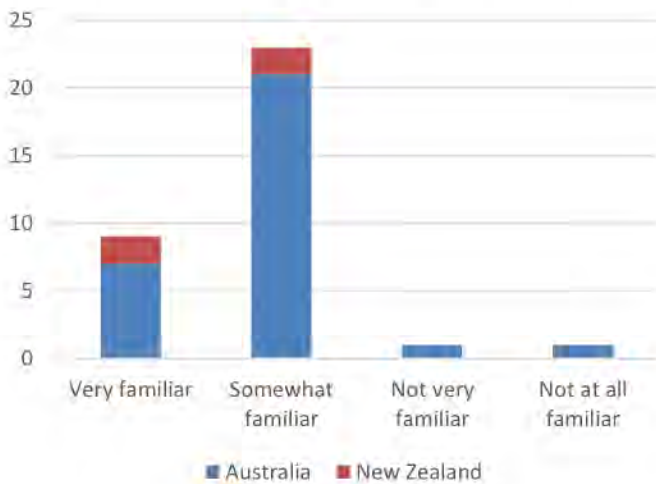


By Member Type

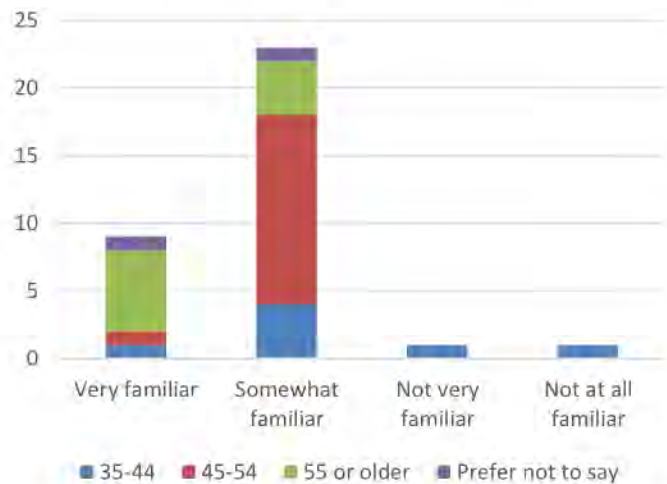


2. How familiar are you with the RDSA Code of Professional Conduct?

By Country



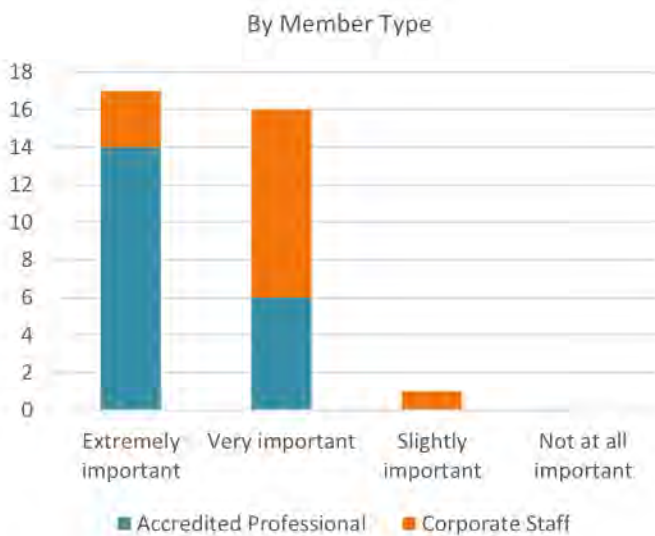
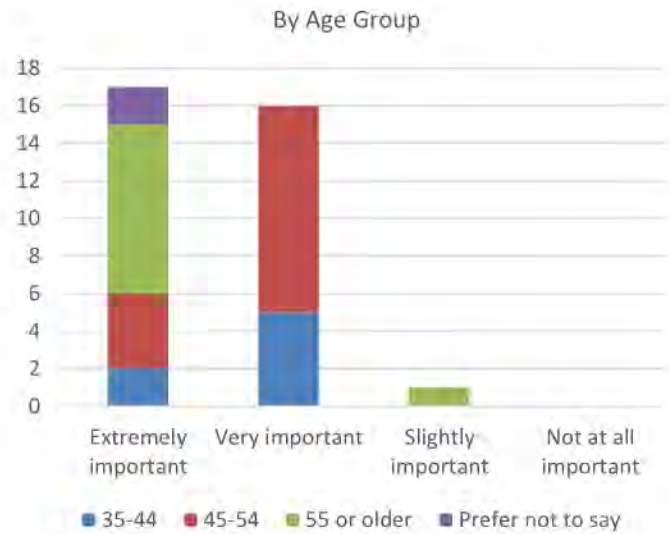
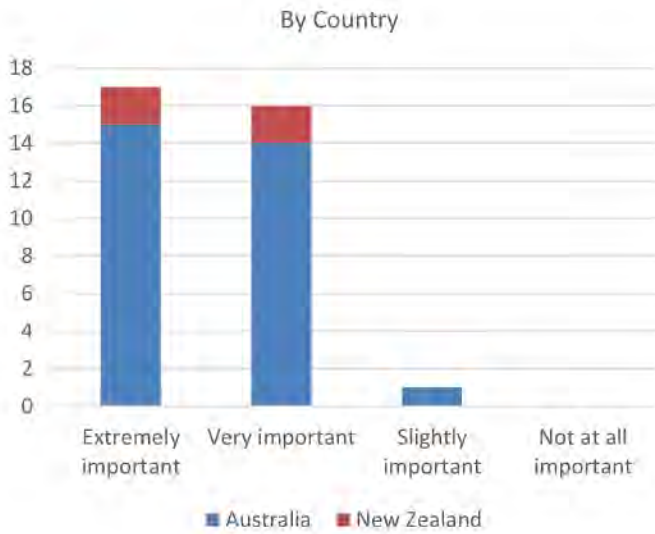
By Age Group



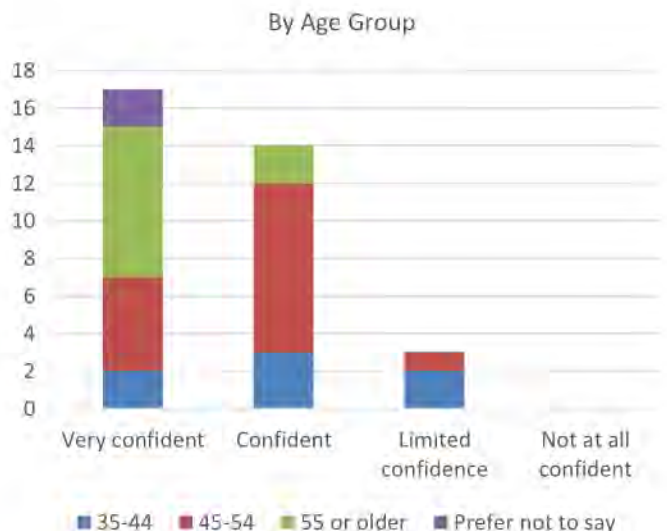
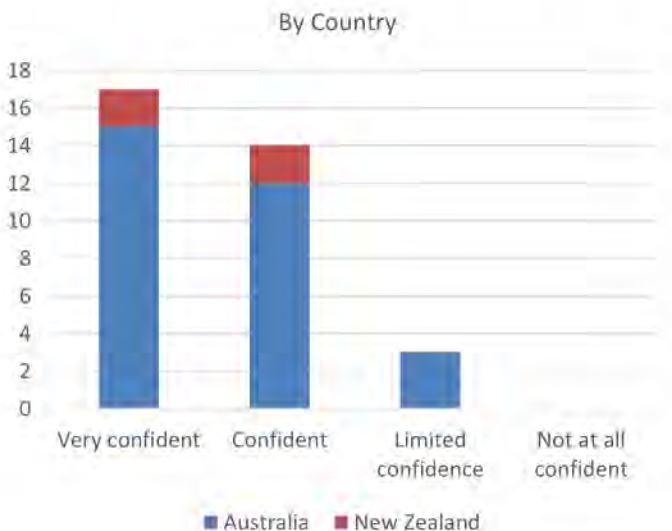
By Member Type



3. How important do you think understanding professional standards and the RCSA Code of Professional Conduct is for recruitment and staffing consultants?



4. How confident are you understanding professional standards and applying the RCSA Code of Professional Conduct principles in your daily work?

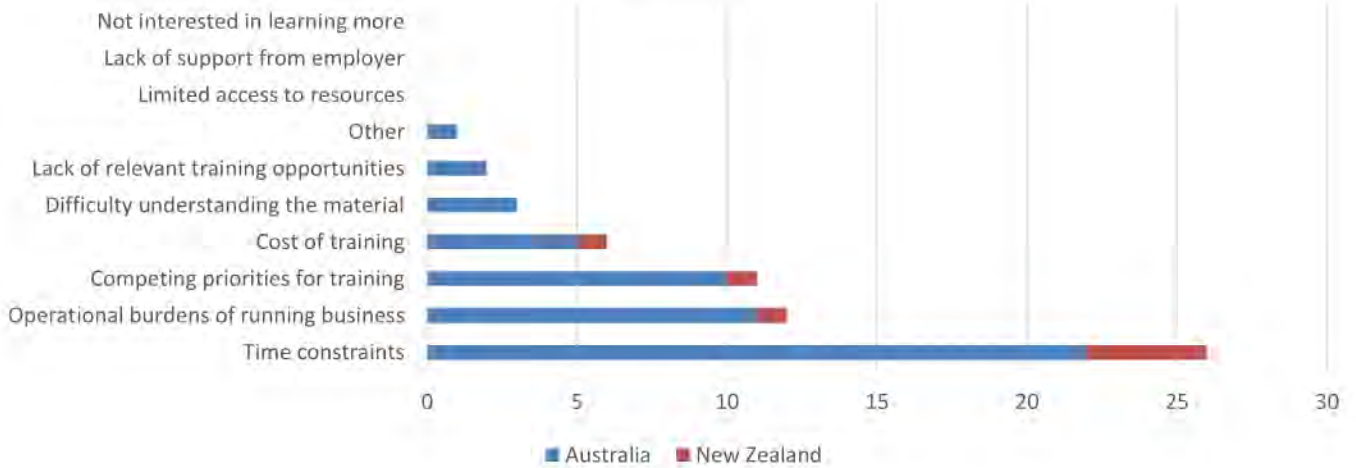


By Member Type



5. What barriers or challenges do you face when trying to learn more about professional standards and the RCSA Code of Professional Conduct?

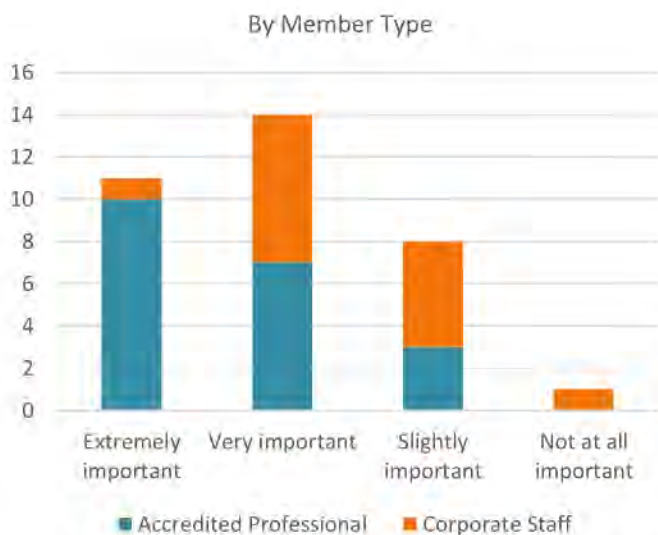
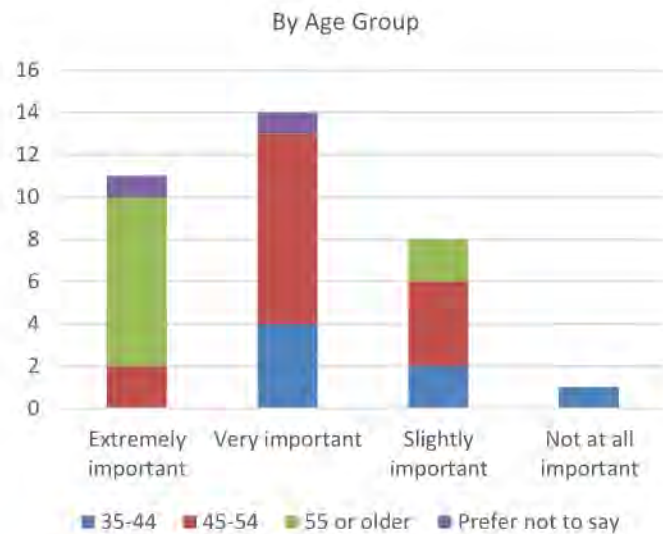
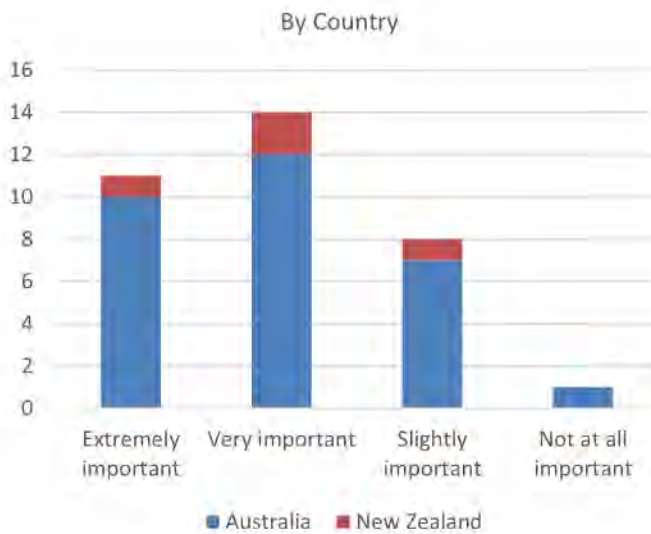
By Country



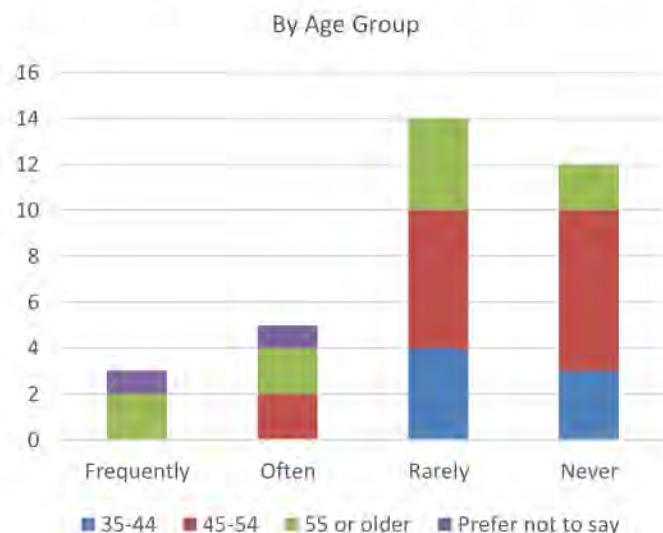
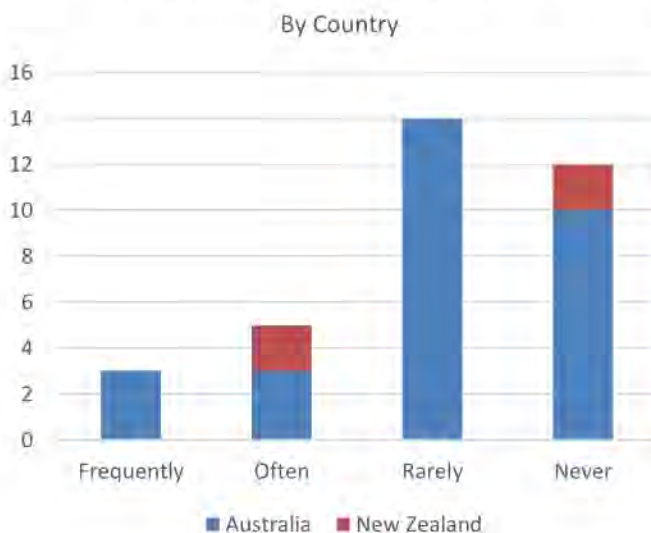
By Member Type



6. How important is your commitment to the RCSA Code of Professional Conduct in differentiating you/your business in market?



7. How often are you asked about the RCSA Code of Professional Conduct or do you make reference to the Code with clients or candidates/workers/contractors?

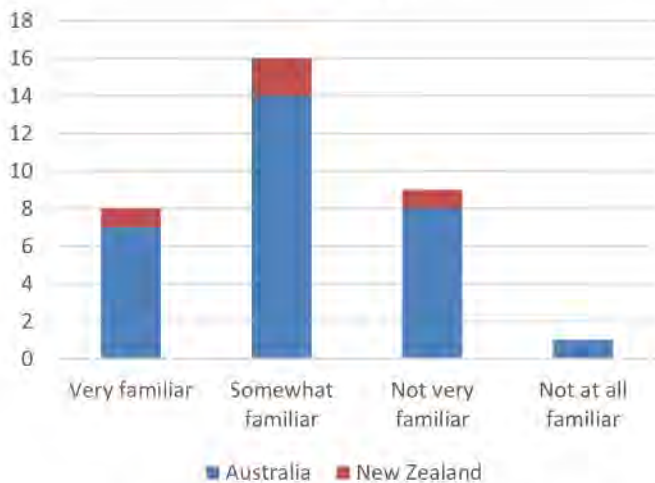


By Member Type

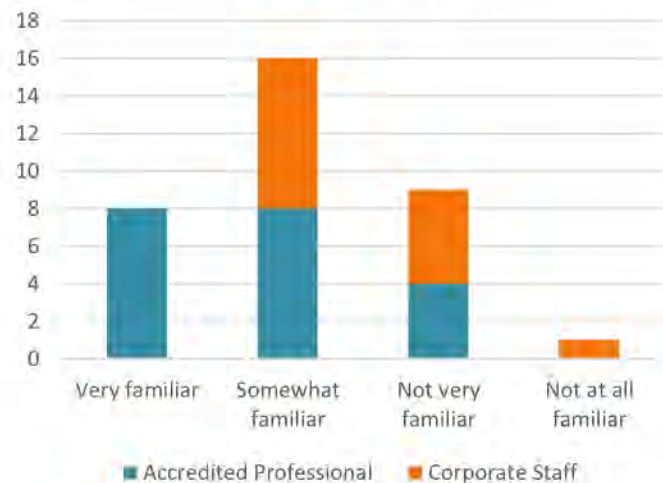


8. How familiar are you with the content and procedures outlined in RCSA's Professional Conduct Grievance Intervention Guidelines (PCGIGs)?

By Country

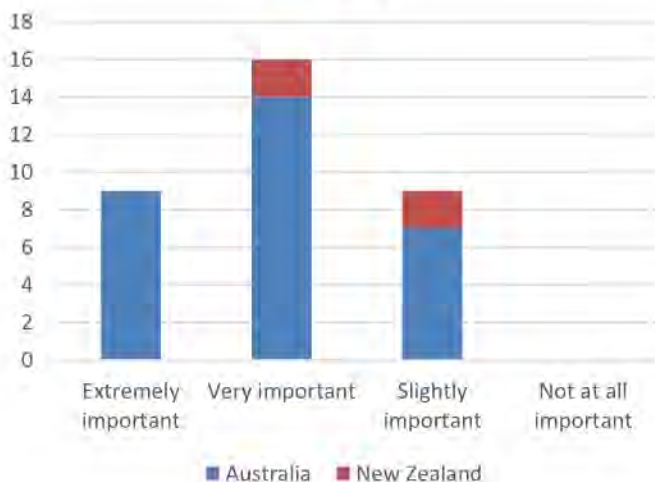


By Member Type

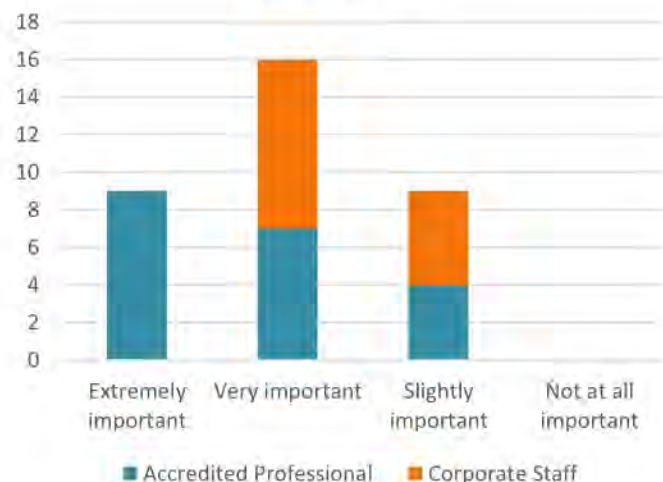


9. In your opinion, how important is it for recruitment and staffing consultants to have a good understanding of RCSA's Professional Conduct Grievance Intervention Guidelines (PCGIGs)?

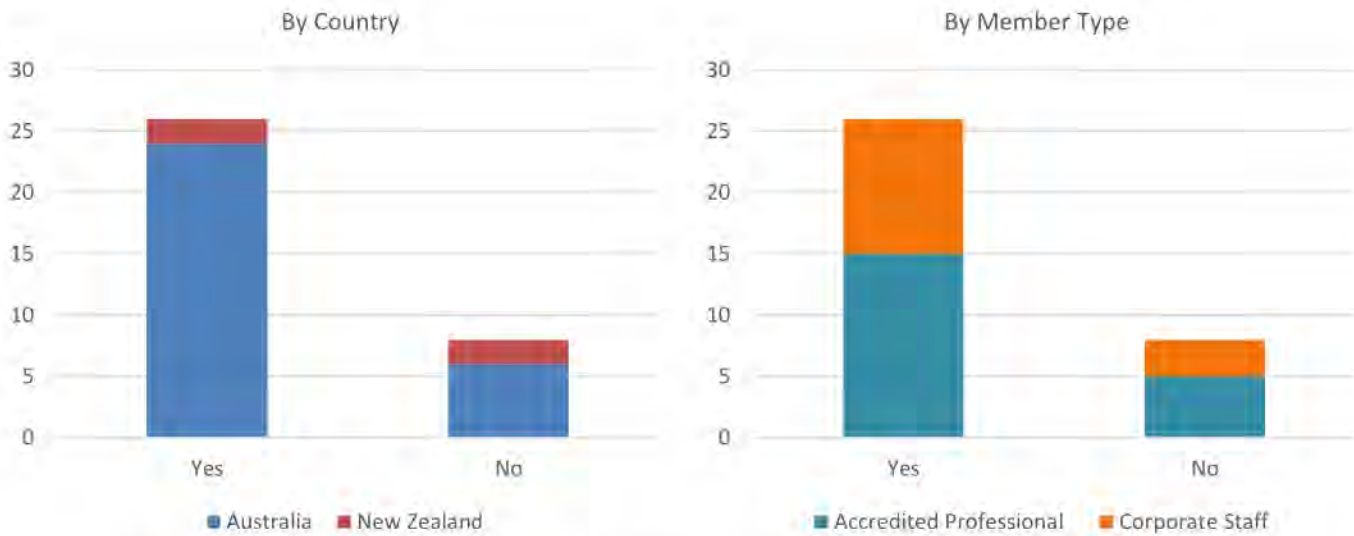
By Country



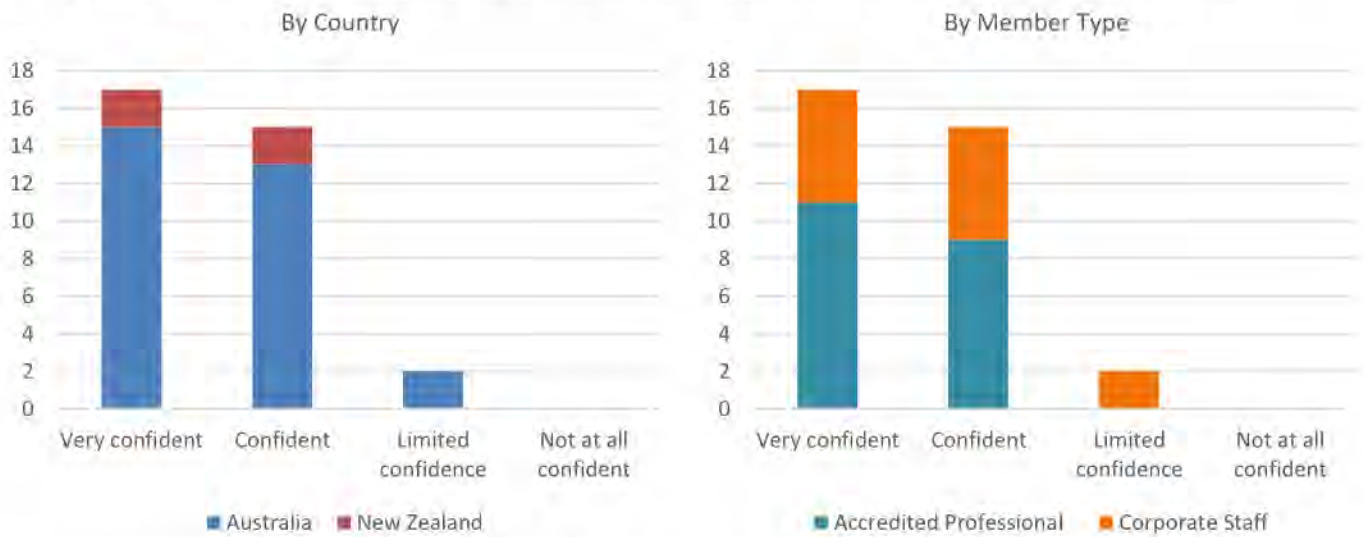
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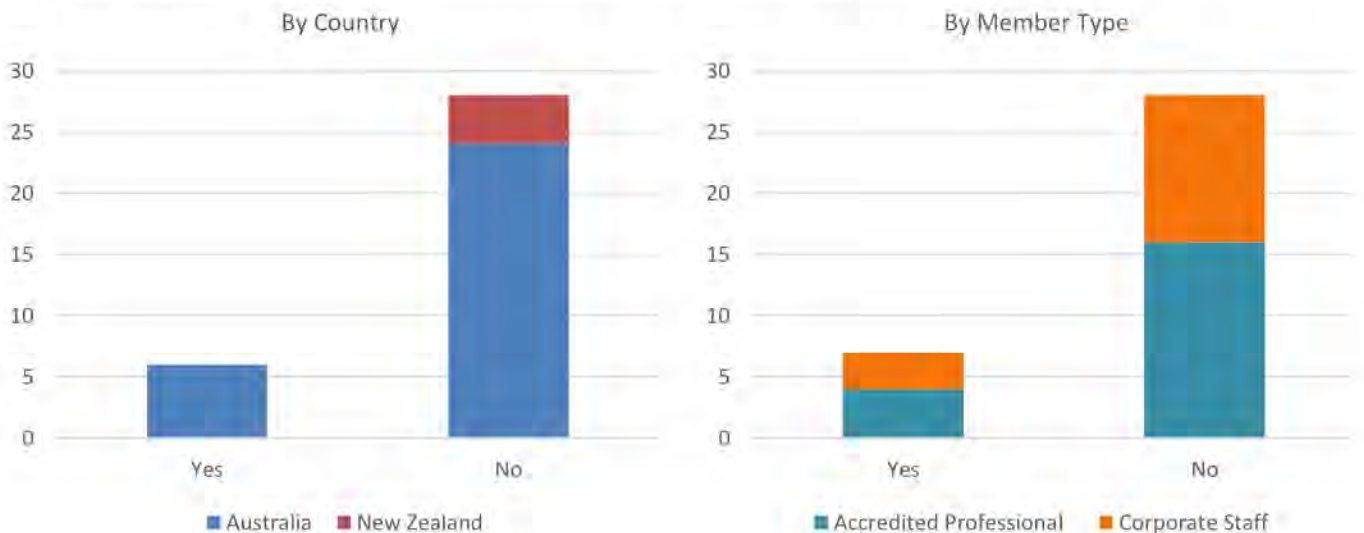
10. Were you aware of the existence of RCSA's Professional Conduct Grievance Intervention Guidelines (PCGIGs) before taking this survey?



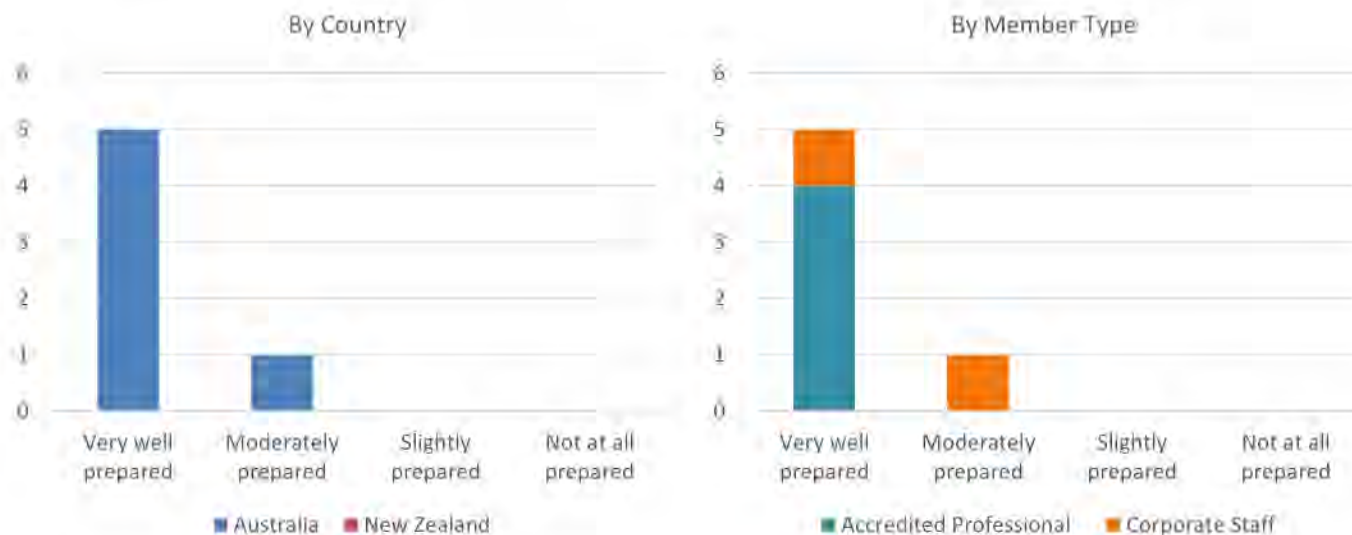
11. How confident are you in your organisation's current procedures for resolving complaints?



12. Have you ever had to handle a grievance or complaint that was escalated to RCSA and the Professional Conduct Grievance Intervention Guidelines (PCGIG)?



13. How well prepared did you feel to respond to the grievance or complaint, considering your knowledge of RCSA's Professional Conduct Grievance Intervention Guidelines (PCGIGs)?



14. Please share any challenges or barriers you have experienced or observed when trying to resolve professional conduct complaints in your organisation.

- Professionals are not aware of the code of conduct expected from them. People do not take the time to read educational material and guidelines provided to them to follow
- Never had to resolve professional conduct complaints
- We are proud not to have had any professional conduct complaints in 32 years. We work hard to ensure this continues and focus on decency first and foremost. For us this is the guiding principle which enhances compliance.
- Often other agencies are involved and they do not hold themselves to the same standard
- No challenges internally. We have had experience where (other) Members will flaunt or break the code and there is no consequence or enforcement.
- People differentiating between what is legally required and what is ethically right to do.
- Understanding our role vs the role of our clients/Host employers
- We are in the early stages of the process so too early to comment
- Attempting to resolve grievances with parties who lack foundational knowledge
- As an observation there are many members who are unaware of its details
- Willingness for both parties to contribute
- Non-members who do the wrong thing have no consequences
- Others don't understand it

15. What improvements or additional resources would you suggest for the resolution of professional conduct complaints in your organisation or within the industry?

- More online education but short time input
- Enhanced interactivity in the training of the code of conduct.
- RCSA is able to take action
- Compulsory code training and accreditation for all corporate members staff
- More case studies
- More transparency across the leadership and board at RCSA to members on the process and side deals going on with partners and members



- Keep talking about it, keep it in the media and newsletters
- Updating PCGIG. More guidelines and outcomes similar to PRA in Surge Workforce Program compiled into a type of "Technical Manual". More publication of PCGIG outcomes
- Including it in RCSA marketing as access for clients
- All recruiters need to abide by the code-RCSA members or not
- Provide members with a one-pager to put onto website, and attach to employment contract.

16. What do you think can be improved in the current available training and resources related to professional standards and the RCSA Code of Professional Conduct?

- Webinars
- Perhaps refresher trainings every 12 months
- A continuation of encouraging industry to complete the code of conduct training as mandatory.
- More awareness
- None its quite good
- I'm not sure; there is a lot available, people seem to forget that it is here
- the video training and test was very clunky
- Make is easier to navigate, slightly shorter?
- A reminder to upgrade or renew and when that should be
- Training is very light on compared with other professions - e.g. real estate. There needs to be training and resources available in specific areas such as the transition guideline or resolving fee disputes or handling candidate, client or staff poaching. And the training and resources need to be more widely promoted
- It is fine. People need to commit to have their staff educated
- Podcasts

17. Please share any additional comments or suggestions regarding professional standards, the RCSA Code of Professional Conduct or the Professional Conduct Grievance Intervention Guidelines (PCGIGs)

- RCSA should promote the code and its principles more publicly (to the broader world, not just the industry)
- The process appears to be slow and not actioning urgent matters fast enough
- Perhaps break each one down into separate modules for refreshers or learning

# RCSA CODE GUIDELINE

**Title:** Charging of Fees and Charges to Workseekers 2019/01

**Digest:** Members should know what laws and professional conduct standards govern the charging of fees and charges to Workseekers and avoid involvement in non-permitted arrangements.

**Date:** 5 February 2019

**Status:** Provisional

**Usage:** RCSA Code Guidelines are not mandatory.

However, they inform RCSA Members and the public about how the Code is likely to be interpreted and applied in specific situations involving Members.

They also assist Members to conduct themselves consistently with their commitments to develop values of personal professionalism and to embed those values in the conduct of their workforce services dealings, by measures appropriate to their size and circumstances.

They may be used to fashion Professional Conduct Recommendations under RCSA's Disciplinary & Dispute Resolution Procedures and its professional Conduct Grievance Intervention Guidelines.

**Focus:** This Code Guideline relates to the following Code 5 standards

Diligent & Competent	Trustworthy	Respectful	Knowledgeable	Co-operative		
Confidentiality	Care	Certainty of Engagement	Effective Complaints Handling	Social Sustainability	Ascertain & Assure	Continuous Disclosure
Meet Code Standard	Avoid Unsatisfactory Professional Conduct	Assure accountability				

**Authority:** RCSA Board (date); ACCC Code Authorisation (date) *[insert when obtained]*

**Review:** *[insert date]*

## Preamble

**acknowledging** concerns about the harm that may be caused to labour market participants by unsustainable and exploitative business models and practices

**recognising** that RCSA's membership of the World Employment Confederation (WEC) commits it to adhere to the WEC Code of Practice and promoting its principles to all relevant stakeholders to the extent consistent with national law and practice – including the WEC Code of Practice

**acknowledging** findings and advancements arising from the *Background paper for discussion at the Tripartite Meeting of Experts on Defining Recruitment Fees and Related Costs (Geneva, 14–16 November 2018)*

**noting** that the Australian Capital Territory, New South Wales, Queensland, South Australia, Western Australia and New Zealand each prohibit, to a greater or lesser extent, the charging of certain fees and charges to Workseekers

**noting** further that the prohibitions against the charging fees and charges to Workseekers, their extraterritorial operation, and key definitions differ

**desiring** as a Leader in the World of Work, to articulate personal and operational values and principles:

- to inform and guide the professionalisation of the on-hire, recruitment, contracting and consulting industry across Australia and New Zealand in the interests of its Members and the public;
- to encourage and strengthen Members' capacity for effective self-regulation; and
- to strengthen public confidence in identifying trusted and ethical professionals amongst the array of service choices, online and artificial intelligence models, and self-proclaimed experts

RCSA NOW PROVIDES THIS CODE GUIDELINE AND CALLS UPON MEMBERS TO EMBED ITS OPERATING PROVISIONS IN THE CONDUCT OF THEIR WORKFORCE SERVICES DEALINGS, BY MEASURES APPROPRIATE TO THEIR SIZE AND CIRCUMSTANCES, SO AS TO ASSURE THE OPERATIONAL INTEGRITY OF THEIR ORGANISATIONS.

## Operating Provisions

### 1. Ascertain & Assure

- a. Members should ascertain the extent to which the following provisions apply to the charging of fees and charges in connection with Workforce Services Dealings in which they are involved:
  - *Agents Act 2000* (ACT) Div. 5.8 [s. 96](#)

- *Employment Agents Act 1976* (WA) [s. 34](#) and [s. 36](#)<sup>1</sup>
  - *Employment Agents Registration Act 1993* (SA) [s. 20](#)
  - *Fair Trading Act 1987* (NSW) Part 4 Div. 3 see [s. 49](#)
  - *Industrial Relations Act 2016* (Qld) [s. 931](#)
  - *Private Employment Agents Act 2005 & Private Employment Agents (Code of Conduct) Regulation 2015* (Qld) [Sched. 1 Div. 3](#)
  - *Wages Protection Act 1983* (NZ) [s. 12A](#)
- b. Members who are corporate members of WEC should additionally ascertain the extent to which [Principle 3](#) of the [WEC Code: Respect for free-of-charge provision of services to jobseekers](#) applies to the charging of fees and charges in connection with Workforce Services Dealings in which they are involved.
- c. Members should establish and maintain adequate controls to assure to a reasonable standard of confidence that they comply with the applicable provisions of the legislation indicated in paragraph (a) above (and, if applicable, in paragraph (b)), and in any additional local or foreign laws that apply to the charging of fees and charges to Workseekers in connection with their Workforce Services Dealings.
2. Permitted Fee Arrangements with Workseekers
- a. Members should only enter into fee and costs arrangements with Workseekers that are lawful, appropriate to Workseekers' needs, and reasonable in amount.
- b. Members should only charge fees and charges to Workseekers if all the following conditions have been met:
- i. the charge is permitted by the law applicable to the transaction in respect of which it is made; and
  - ii. the charge is not prohibited by any applicable Code of Professional Conduct or contractual provision; and
  - iii. the Member has disclosed the charge in writing to its customer and to the Workseeker; and
  - iv. the charge is fair and reasonable; and
  - v. the Member keeps accurate records of all charges to and payments by Workseekers for six years or any longer period required by law.

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<sup>1</sup> Note that the three-year period mentioned in ss. 36(1) has expired so that the prohibition is now fully operable.

3. Avoidance of Involvement in Non-Permitted Arrangements with Workseekers
  - a. Members should avoid involvement in fees and charges arrangements with Workseekers that do not meet the standards and conditions in paragraph 2 of this Guideline.
  - b. For the purposes of this Guideline, involvement in fees and charges arrangements with WorkSeekers includes:
    - i. aiding, abetting, counselling or procuring;
    - ii. inducing or attempting to induce; or
    - iii. being in any way, directly or indirectly, knowingly concerned in, or party to, the fees and charges arrangement.

## Definitions & Interpretation

### Fees and charges -

- a. means any fee or charge of a type that is prohibited by the applicable provisions of the legislation indicated in paragraph 1(a) (and, if applicable, in paragraph 1(b)), and in any additional local or foreign laws that apply to the charging of fees and charges to Workseekers; and
- b. includes **Recruitment Fees** and **Related Costs**, which are more specifically described below and which refer to any or all fees, charges, expenses or financial obligations incurred in the recruitment process in order for Workseekers to secure employment, regardless of the manner, timing or location of their imposition or collection, and whether they are deducted from wages, paid back in wages or benefit concessions, remitted in connection with recruitment, or collected by an employer or a third party, including but not limited to agents, labour recruiters, staffing firms, subsidiaries/affiliates of the employer and any agent or employee of such entities; but
- c. does not include any fee lawfully charged by a registered migration agent.

### Recruitment Fees –

- a. include:
  - i. payments for Workforce Services offered by providers of Workforce Services, whether public or private, in matching offers of and applications for employment, or in employing Workseekers with a view to making them available to a third party which assigns their tasks and supervises the execution of these tasks;
  - ii. payments made in the case of direct hire by employers; and

- b. may be one-time or recurring and cover services for advertising and disseminating information, arranging interviews, submitting documents for government clearances, and organising travel and transportation, including in the case of migrant Workseekers, placement into employment and return to the country of origin where applicable.

#### Related Costs –

- a. means expenses integral to the recruitment process within or across national borders; and
- b. depending on the recruitment process and the context, these costs could include:
  - i. **Costs for medical tests:** these refer to payments for the obligatory medical examinations and specialised tests that are necessary to complete any stage of the recruitment process.
  - ii. **Costs for skills and qualification tests and training:** these include the costs incurred for verification tests on Workseekers' level of skills and qualifications. This may also comprise examinations for language proficiency, particularly in the context of cross-border recruitment. Moreover, these costs include the expenses incurred when employers and their representatives require additional training courses/measures to upgrade Workseekers' skills as a condition of their recruitment.
  - iii. **Costs for internal travel:** these refer to expenses incurred for travel within national borders in a specific recruitment process. These costs can also include the relocation of Workseekers, when required for a specific recruitment situation, from the place of usual residence to the new residence and place of work and back to the place of usual residence upon termination of contract.
  - iv. **Costs for introduction and orientation programmes:** these include expenses for the basic preliminary installation and orientation of newly recruited Workseekers, including on-site job orientation and training, for example on occupational safety and health. There may also be further obligatory medical screening and tests.
  - v. **Other administrative costs:** these include fees for notary and other legal, language, drafting and translation services aimed at preparing, obtaining or legalising Workseekers' identity documents, education and training credentials and employment contracts; and the cost of obtaining government clearances, including obligatory police and security clearances.
- c. **In addition to the costs listed under points (i) to (v) above, the following specific costs are attributed to international recruitment.**

- vi. **Costs for international travel and transportation and accommodation:** these refer to expenses incurred for international travel in a specific cross-border recruitment process. These may include expenses for:
  - 1. the relocation of Workseekers from the place of usual residence to the new residence and place of work;
  - 2. health and accident insurance costs covering the transportation period;
  - 3. lodging and subsistence during transit;
  - 4. Workseekers' requirements to obtain a passport or visa and costs for other clearance documents specifically required for international travel.
- vii. **Costs attributed to return:** these include transportation, lodging, health care and subsistence to ensure the foreign Workseekers' return home upon contract completion or in certain situations requiring an early end to the employment contract for various reasons.
- viii. **Costs for clearances and permits payable in the country of origin, transit and destination:** these refer specifically to the expenses incurred to meet the requirements imposed by the:
  - 1. country of origin for verification and vetting of employment contracts and enrolment into migrant welfare funds; and
  - 2. prospective employer or country of destination for entry and residence approvals, the cost of the visa, its application and grant, work and residence permits (including renewals).

This may also include costs for the authentication of documents to ensure compliance with the requirements of the country of origin, transit and/or destination.

- ix. **Costs for pre-departure orientation:** these refer to payments for migrant Workseekers' attendance in seminars prior to foreign employment, organised to better prepare selected Workseekers for the living and working conditions at destination.
- x. **Costs for post-arrival information and orientation:** these include expenses incurred for programmes designed for newly recruited foreign Workseekers on arrival in a destination country, for example, obligatory post-arrival information and orientation programmes.

## Equality of Treatment

In no case should the distinctions made in the definitions above be interpreted to undermine the principle of equality of treatment for both national and migrant Workseekers.



# RCSA CODE GUIDELINE

**Title:** Service Networks (General) 2019/03

**Digest:** Service networks are an important feature of the environment in which Members operate. Members should be able to identify and describe their service networks. They should have a reasonable understanding of the laws and regulations that affect their service networks, and they should exercise their influence within their service networks reasonably to avoid being involved in the exploitation of workseekers. The guideline offers outcomes, indicative behaviours and contra-indications that might demonstrate if the standard of professional conduct required by the RCSA Code is being met with regard to a Member’s involvement in service networks.

**Date:** 5 February 2019

**Status:** Provisional

**Usage:** RCSA Code Guidelines are not mandatory.

However, they inform RCSA Members and the public about how the Code is likely to be interpreted and applied in specific situations involving Members.

They also assist Members to conduct themselves consistently with their commitments to develop values of personal professionalism and to embed those values in the conduct of their employment services dealings, by measures appropriate to their size and circumstances.

They may be used to fashion Professional Conduct Recommendations under RCSA’s Disciplinary & Dispute Resolution Procedures and its professional Conduct Grievance Intervention Guidelines.

**Focus:** This Code Guideline relates to the following Code 5 standards

Diligent & Competent	Trustworthy	Respectful	Knowledgeable	Co-operative		
Confidentiality	Care	Certainty of Engagement	Effective Complaints Handling	Social Sustainability	Ascertain & Assure	Continuous Disclosure
Meet Code Standard	Avoid Unsatisfactory Professional Conduct	Assure accountability				

**Authority:** RCSA Board (date); ACCC Code Authorisation (date) *[insert when obtained]*

**Review:** *[insert date]*

**Author:** Andrew C. Wood Hon FRCSA (Life); Charles Cameron CEO, RCSA.

# Ensuring Reputable Service Networks

When RCSA Members deliver recruitment, staffing and other services to clients and workseekers they often rely upon a range of other service providers, and business partners, to do so. Payroll providers, training providers and other staffing firms, whom you partner with to source and place workseekers, are good examples of other businesses that exist as part of your Service Network.

Whilst these businesses are typically separate businesses to yours, they all play a critical role in the delivery of professional and ethical services and, therefore, you need to ensure they are reputable. Just because they are a service provider or an informal partner doesn't mean you can wash your hands of any responsibility. Imagine finding out that a payroll provider you were using to engage your contractor workforce wasn't paying tax or was set up as a criminal enterprise. Regardless of any protests your firm would be tarnished and, in some cases, held liable as an accessory to the crime.

The RCSA Code has evolved to place professional responsibilities upon Members to ensure they have reputable Service Networks that do not cause or contribute to exploitation and this guide has been developed to assist you to understand your responsibilities and comply with the standard of professional conduct required by the RCSA Code.

## 1. What is a service network?

*A service network is the network of critical roles that allows you to provide your recruitment and staffing services – e.g. payroll provider, sourcing agent, sub-agency in a tiered supply arrangement, accommodation provider, training & induction provider. The RCSA service network concept is limited to specific roles that are performed by people with whom you have a direct contract, arrangement or understanding. Arrangements and understandings are not necessarily formal; they are often as informal as “a nod and a wink”.*

## 2. How is a service network relevant to a recruitment or staffing firm?

*It is relevant because it allows your firm to deliver services to clients and workseekers, and you therefore have a direct interest in it working properly and professionally. Your ability to identify and describe your service networks may help you to meet your supply chain reporting responsibilities and your clients to meet theirs. Members who are unable to do so might find that they miss out on lucrative work.*

## 3. What can go wrong within a service network? Are there any examples?

*The providers in a service network can sometimes turn out to be rogues e.g. a sourcing agent that charges workseekers a fee for referring them to you, or a*

*payroll provider who is deducting those fees from payments due to your workers and keeping them in debt bondage. There are cases involving dodgy arrangements between “training” providers and recruitment/staffing service providers that have resulted in millions of dollars in fines, loss of entitlement to participate in government migration and other programs, back pay to workers, and bans on directors from involvement in the industry.*

4. Why do service networks need to be managed carefully?

*Exploitative arrangements expose your workseekers to harm. Being implicated in them damages your reputation and that of the industry and may leave you exposed to liability as an accessory. So, for recruitment and staffing firms, good “supply chain” governance often starts with good stewardship of their service networks.*

5. What do RCSA Members need to do to effectively manage service networks?

*Service networks are an increasingly important feature of the environment in which Members operate. Members should be able to identify and describe their service networks. They should develop a reasonable understanding of the laws and regulations that affect their service networks, and they should exercise their influence within their service networks reasonably to avoid being involved in the exploitation of workseekers.*

*The [operating provisions](#) which RCSA Members must comply with, in order to meet the requirements of the Code for Professional Conduct, are outlined in this Guideline.*

## Preamble

**observing** important distinctions between traditional commodity supply chains and value networks for the supply of services;

**noting** the sophistication, complexity, specialisation, and multiple-rolled nature of contemporary workforce structures and of the recruitment and staffing models which support them;

**acknowledging** concerns about the harm that may be caused to labour market participants by uncertain, unsustainable and exploitative business models and practices;

**noting** gaps left in statutory licensing and regulatory schemes pertaining specifically to the recruitment, consulting and staffing industry;

**recognising** that Members and their stakeholders seek guidance from RCSA in the form of template benchmarks, outcomes, and indicative behaviours concerning standards for conducting workforce services dealings;

**desiring** as a Leader in the World of Work, to articulate personal and operational values and principles:

- to inform and guide the professionalisation of the on-hire, recruitment, contracting and consulting industry across Australia and New Zealand in the interests of its Members and the public; and
- to strengthen public confidence in identifying trusted and ethical professionals amongst the array of service choices, online and artificial intelligence models, and self-proclaimed experts

**reminding** Members that professional conduct extends not only to their direct conduct but also to conduct in which they are involved

RCSA PROVIDES THIS GUIDELINE TO ASSIST ALL MEMBERS TO MEET THE STANDARD OF PROFESSIONAL CONDUCT REQUIRED BY THE RCSA CODE IN RELATION TO THEIR SERVICE NETWORK DEALINGS.

## Operating Provisions

1. Members should, in relation to their service networks, achieve the following outcomes:
  - 1.1. Members can identify and describe their service networks and service networks in which they are involved;
  - 1.2. Members have a reasonable understanding of the laws and regulations that affect their service networks and service networks in which they are involved;

- 1.3. Members exercise their influence within their service networks and service networks in which they are involved, reasonably to avoid being involved in the exploitation of workseekers.
2. Members might achieve the outcomes in paragraph 1 by the following indicative behaviours:
  - 2.1. training key staff to identify and describe relevant service networks and the laws and regulations that affect them;
  - 2.2. keeping records of service network dealings, contracts, arrangements and understandings in which they are involved;
  - 2.3. monitoring and reviewing service network dealings that affect their workseekers;
  - 2.4. establishing procedures to obtain information about service network operations that affect their workseekers – e.g. by including information request provisions in their terms of business;
  - 2.5. establishing procedures to receive and respond to complaints about service network operations that affect their workseekers;
3. The following contra-indications might demonstrate that a Member has failed to achieve the outcomes in paragraph 1:
  - 3.1. entering into unsuitable, inappropriate, or inadequately documented contracts, arrangements or understandings with their service network participants;
  - 3.2. being subject to a finding of having exploited or having been involved in the exploitation of workseekers.

ends

## RCSA CODE GUIDELINE

# SUPPLIER TRANSITIONS 2019/01

RCSA, PO Box 291 Collins St West VIC 8007 Australia

T: +61 3 9663 0555 F: +61 3 9663 5099 E: [ethics@rcsa.com.au](mailto:ethics@rcsa.com.au) [www.rcsa.com.au](http://www.rcsa.com.au)  
ABN 41 078 60 6 416 ACN 078 60 6 416 ACCC Authorisation granted 8 August 2019

# RCSA CODE GUIDELINE

**Title:** Supplier Transitions 2019/04

**Digest:** Absent specific legal obligation, workforce services providers are not required to transition their workforces or workseeker connections as part of a supplier transition. Members who conduct supplier transition dealings in a manner that meets the Standard of professional conduct required by the RCSA Code should conduct their dealings in good faith; in a timely manner in accordance with good industrial practice and reasonable commercial haste; and taking care to avoid making false or misleading statements about their ability to effect a supplier transition.

**Date:** 5 February 2019

**Status:** Provisional

**Usage:** RCSA Code Guidelines are not mandatory.

However, they inform RCSA Members and the public about how the Code is likely to be interpreted and applied in specific situations involving Members.

They also assist Members to conduct themselves consistently with their commitments to develop values of personal professionalism and to embed those values in the conduct of their employment services dealings, by measures appropriate to their size and circumstances.

They may be used to fashion Professional Conduct Recommendations under RCSA's Disciplinary & Dispute Resolution Procedures and its professional Conduct Grievance Intervention Guidelines.

**Focus:** This Code Guideline relates to the following Code 5 standards:

Diligent & Competent	Trustworthy	Respectful	Knowledgeable	Co-operative		
Confidentiality	Care	Certainty of Engagement	Effective Complaints Handling	Social Sustainability	Ascertain & Assure	Continuous Disclosure
Meet Code Standard	Avoid Unsatisfactory Professional Conduct	Assure Accountability				

**Author:** Andrew C. Wood Hon FRCSA (Life), solicitor & barrister

**Authority:** RCSA Board (date); ACCC Code Authorisation (date) *[insert when obtained]*

**Review:** *[insert date]*

### **Interpretative notes**

**Note 1: Supplier transition -**

means the redirection, in whole or in part, of a customer's requirements for the supply of on-hire services from one workforce services provider to another workforce service provider.

**Note 2: Supplier transition dealings -**

means dealings in respect of any supplier transition that a workforce services provider is in a position to effect, respond to, or materially influence.



## Preamble

**acknowledging** that, in an open and competitive market, circumstances may arise when a customer wishes to change employment service providers;

**acknowledging** that workforce service providers invest significant effort, money, time and intellectual resources in establishing relationships with customers, developing critical understandings of customers and workseekers' needs, training workseekers in systems of work for customers, and inducting workseekers in preparation to undertake work for customers, all of which contribute to workforce service providers' customer and workseeker connections, goodwill and support significant business capital that is of value and which workforce service providers are entitled to protect by lawful means;

**acknowledging** that dealings in relation to supplier transitions may impact upon a wide range of stakeholders including workseekers;

**affirming** that, in the absence of any contractual, industrial or other legal obligation, workforce services providers (including Members) are not required to transition their workforces or workseeker connections as part of a supplier transition;

**recognising** that Members and their stakeholders seek guidance from RCSA in the form of template benchmarks, outcomes, and indicative behaviours concerning standards for conducting workforce services dealings;

**acknowledging** concerns about the harm that may be caused to labour market participants by uncertain, unsustainable and exploitative business models and practices;

**desiring** as a Leader in the World of Work, to articulate personal and operational values and principles:

- to inform and guide the professionalisation of the on-hire, recruitment, contracting and consulting industry across Australia and New Zealand in the interests of its Members and the public; and
- to strengthen public confidence in identifying trusted and ethical professionals amongst the array of service choices, online and artificial intelligence models, and self-proclaimed experts

RCSA PROVIDES THIS GUIDELINE TO ASSIST MEMBERS TO MEET THE STANDARD OF PROFESSIONAL CONDUCT REQUIRED BY THE RCSA CODE IN RELATION TO THEIR INVOLVEMENT IN SUPPLIER TRANSITIONS.

## Operating Provisions

1. Members should, in relation to their supplier transition dealings, achieve the following outcomes:

### O(1) Good faith in supplier transitions

Members conduct their supplier transition dealings in good faith consistently with the standard of professional conduct required by the RCSA Code.

### **O(2) Timeliness in supplier transitions**

Members conduct their supplier transition dealings in a timely manner in accordance with good industrial practice and reasonable commercial haste.

### **O(3) Co-operative dispute resolution in supplier transitions**

Members co-operate in the handling of complaints or disputes about their supplier transition dealings so as to prevent, or mitigate, any disruption that their supplier transition dealings may cause to arrangements for the supply of workforce services.

### **O(4) Representations**

Members take care to avoid making false or misleading statements about your ability to effect a supplier transition.

2. Members might achieve the outcomes in para. 1 by the following indicative behaviours:

#### **IB(1) Respecting lawful arrangements**

Having due regard for the existence of lawful supply arrangements so as to avoid unlawful or unfair interference in them.

#### **IB(2) Responsiveness**

Responding appropriately to transition requests.

#### **IB(3) Disruption**

Conducting transition dealings in a manner consistent with their contractual and other legal obligations, mitigating the effects of disruption to stakeholders, and providing, so far as is practicable for:

- a. the orderly continuation of business;
- b. the identification of, and giving effect to, any relevant contractual or other legal obligations;
- c. the conduct of supplier transition dealings in accordance with good commercial and industrial practice and with reasonable commercial haste.

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# RCSA CODE GUIDELINE

## Client Service Agreements

### Introduction

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RCSA Code Guidelines serve as valuable resources for RCSA Members and the public, providing insight into how the Code is likely to be interpreted and applied in specific situations involving Members. While not mandatory, these guidelines assist Members in upholding their commitments to foster values of personal professionalism and organisational integrity and to integrate them into their workforce services dealings, tailored to their unique size and circumstances. Furthermore, these guidelines can be utilized to shape Professional Conduct Recommendations under RCSA's Professional Conduct Grievance Intervention Guidelines.

### Recognizing the Value of Members' Efforts

Members, as providers of Workforce Services and intermediaries in the labour market, invest substantial effort, financial resources, time, and intellectual capital in sourcing and establishing relationships with Candidates. They develop crucial understandings of clients' and Candidates' needs and prepare Candidates for presentation to clients, a process we refer to as "Members' Candidate Connections". These connections contribute significantly to their goodwill and constitute valuable business capital, which they are entitled to protect by lawful and fair means.

### Guidance and Standards

Members and their stakeholders often seek guidance from RCSA in the form of template benchmarks, outcomes, and indicative behaviours concerning standards for conducting workforce services dealings. It's important to remind Members that, in the absence of a Conduct Recommendation or direction made under RCSA's Professional Conduct Grievance Intervention Guidelines, they are not obligated to use any RCSA template benchmark developed and authorised for use by its Corporate Members. Members may therefore wish to develop their own standard form documents. When doing so, they should be aware of professional as well as legal requirements and should seek the assistance of a qualified legal practitioner. This guideline may assist practitioners and other advisors to understand more about how a Member's professional responsibilities under the RCSA Code might inform the type of documents they draft.

### Addressing Concerns and Articulating Values

RCSA acknowledges the concerns about potential harm to labour market participants caused by uncertain, unsustainable, and exploitative business models and practices. As a Leader in the World of Work, we aim to articulate personal and operational values and principles to inform and guide the professionalisation of the on-hire, recruitment, contracting, and consulting industry across Australia and New Zealand. This is in the interests of its Members and the public and serves to strengthen public confidence in identifying trusted and ethical professionals amongst the array of service choices, online and artificial intelligence models, and self-proclaimed experts.

### The Purpose of this Guideline

RCSA provides this guideline and encourages corporate members to consider the extent to which its recommendations suggest a fair, certain, and sustainable framework for ordering the supply in Australia of their on-hire and placement services.

## Guideline

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Your Client Service Agreement (**CSA**) serves as the foundation of your professional relationship with clients.

1. **Acceptance:** Make sure that your CSA is accepted and agreed before you supply your services. If you don't, you might not be able to rely on it.
2. **Acceptance Method:** Specify how acceptance of the CSA is to be communicated. Preference should be given to express communication over implied or deemed acceptance.
3. **Language and Clarity:** Your CSA should be written in clear, precise language understandable to its intended readers.
4. **Parties Identification:** Ensure the CSA accurately identifies all parties involved and does not include anyone your customer doesn't have authority to bind.
5. **Operational Mode:** Clearly state whether the CSA operates as a single or multi-use agreement, a standing offer arrangement, or a master contract. Seek legal advice to understand the operational implications.
6. **Scope of Services:** Clearly define what services are covered by the CSA and what is out of scope.
7. **Representation of Candidates:** Clearly define what constitutes presentation or representation of your candidates, especially if linked to fee provisions.
8. **Service Request Process:** Detail a clear process for accepting or declining service requests, including specific measures for position and person requirements.
9. **Responsibilities and Timelines:** Clearly set out what each party will do, how, and when.
10. **Communication Channels:** Establish and clarify communication channels, including authority and responsibility in both your and the client's organizations.
11. **Fee Structure:** Articulate clearly what your fees and charges are, when and how they are payable, and any triggering events.
12. **Fee Structure** Special attention may need to be given to trailing placement periods, temp-to-perm fees and agency switching fees. You may also need to consider whether restraints are aligned to corresponding restraints in your candidate/ work seeker agreements and whether they meet fairness requirements under Fair Trading, Consumer Protection and Contracts Review laws. These provisions should:
  - ✓ be capable of clear and certain operation;
  - ✓ not be dependent upon contentious circumstances unless they supported by effective evidentiary and dispute resolution provisions
  - ✓ include a conversion period that is no more than is reasonable to protect your legitimate interests;
  - ✓ be reasonably transparent to candidates whom they affect;
  - ✓ be compatible with any corresponding restraint imposed on candidates;
  - ✓ be supported by appropriate definitions;
  - ✓ take account of any restrictions that may be imposed by private employment agent laws - e.g. restrictions arising from the requirement to preserve work seekers' potential in Sched. s.10 of the *Private Employment Agents (Code of Conduct) Regulation 2015* (Qld).

13. **Invoicing:** Be clear about how and when you will invoice for your services.
14. **Fee Variation:** Clearly outline how and when fees may be varied or altered, including sufficient notice for clients to terminate the agreement if needed.
15. **GST Handling:** Clearly state how Goods and Services Tax (GST) is dealt with in the CSA.
16. **Good Faith Provision:** Consider including an express good faith provision detailing its implications for both parties.
17. **Compliance with Legal and Professional Standards:** Include a provision allowing decline of instructions that would lead to breach of license conditions, certification, or professional conduct responsibilities.
18. **Candidate Protection:** Protect candidates against unlawful recovery of fees and ensure privacy protection, especially for international data sharing.
19. **Respect for Candidates' Previous Obligations:** Require customers to consider candidates' obligations to previous employers, such as confidentiality or lawful restraints of trade.
20. **Exclusion of Legal Liabilities:** Articulate fair and proportional exclusion clauses, avoiding those that undermine proportionate liability or result in imprudent liabilities. Exclusion clauses should be fair and proportional to the scope and value of the services you are providing. You should avoid exclusion and indemnity provisions that undermine your professional responsibilities under the RCSA Code.
21. **Insurance and Indemnity Matching:** Ensure insurance and indemnity provisions match your insurance arrangements to avoid uninsured liabilities.
22. **Dispute Resolution:** Include a provision requiring cooperation in resolving disputes with minimal disruption, possibly guided by the stated objectives of the service supply.
23. **Termination Conditions:** Stipulate clear conditions under which the CSA can be terminated.
24. **Confidential Information:** Define what constitutes confidential information, its ownership, and protection measures.
25. **Intellectual Property Considerations:** Ensure IP provisions accurately reflect rights held and the transfer process, considering differences in employment and contracting relationships.
26. **Alignment with Work Seeker Engagement:** Make sure the CSA does not contradict your work seeker engagement or registration model. For example, your CSA should not say that you will supply your on-hire employees if they are, in fact employed by someone else or not employed at all.
27. **Restraint of Trade Legal Principles:** Pay attention to legal principles around restraints of trade, including special attention to placement periods, fees, and agency switching fees.
28. **Candidate Replacement Guarantees:** Clearly define circumstances for activation, operation, and any additional costs, ensuring they are fair and do not commit to things you cannot do.
29. **Candidate Replacement Guarantees (Guidelines):** Candidate replacement guarantees should:
  - ✓ be clear about the circumstances in which they are activated;
  - ✓ operate fairly within the meaning of the applicable consumer and fair trading laws;
  - ✓ take account of circumstances where a candidate's engagement may be terminated because of some conduct of the client;
  - ✓ be clear about what the agency will do;
  - ✓ be clear about any additional costs;

- ✓ not commit the agency to do anything that the agency is not reasonably confident it can do – e.g. providing a suitable replacement candidate in a candidate scarce market;
  - ✓ not purport to replace statutory guarantees that otherwise apply.
30. **Exclusivity Provisions:** Expressly state what exclusivity entails and consequences of breach, ensuring fairness and legal compliance.
  31. **Triangular Employment in NZ:** Carefully consider the inclusion of provisions for global consent in personal grievance proceedings, focusing on creating policies and procedures in consultation with relevant stakeholders.
  32. **Acknowledgments:** Include only realistic and genuine acknowledgments, avoiding any that might be seen as avoiding legal obligations or professional responsibilities.

Ends.