

Wednesday, 6th February 2019

David Jones, General Manager – Adjudication
Gavin Jones, Director - Merger & Authorisation Review
Australian Competition & Consumer Commission
GPO Box 520, Melbourne Vic 3001

adjudication@acc.gov.au

Dear Sirs,

RE: A91388 - Application for revocation of an authorisation for proposed conduct and substitution of a replacement

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 2000 corporate and individual members across the staffing sector.

I am writing to submit our application seeking authorisation of our new Code of Professional Conduct from the ACCC. As you may already know from previous meetings, ACCC's authorisation of our current Code (A91388) is due to expire 6 March 2019 and we have since developed a new revised version of the Code of Professional Conduct, which reflects changes in market and regulatory conditions in our industry.

We sincerely apologise for the delay in submitting these applications and for any resulting inconvenience caused.

We are requesting revocation of the existing authorisation and substitution:

1. for twelve months commencing on the date of authorisation, of an identical Code to the one presently authorized ("**Old Code**");
2. after twelve months commencing on the date of authorisation, and for nine years only, of a new Code ("**Code 5**");
3. 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 new Professional Conduct and Grievance Intervention Guidelines.

We are also seeking interim authorisation for the elements in paragraphs 1 and 3 above.

This request is to enable time for the ACCC to fully consider our application for revocation and substitution with RCSA's new proposed Code of Professional Conduct (**Code 5**) and to enable a smooth transition in the changeover from the Old Code to Code 5 for RCSA members and members of the public.

In relation to the proposed new Code of Professional Conduct, per your recommendation, we are submitting the full application for revocation of an authorisation for proposed conduct and substitution of a replacement herewith including all supporting documentation and required information.

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

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

Robin Shepherd,
General Manager, Operations & Member Services
Ph: +61 448 190 381
Email: rshepherd@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 excellent, enterprise and integrity in the companies of all Members and of individuals engaged by those companies;

- 1.3(b) *to improve the knowledge and skill with respect to their responsibilities, duties and rights in the employment services industry.*
- 1.3(d) ... *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 2,000 Corporate and Individual 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).

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 50 countries and 7 of the largest international workforce solutions companies.

1.4. email address for service of documents in Australia.

info@rcsa.com.au, 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: A91388

Date Granted: 12 February 2014

Expiry Date: 6 March 2019

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

Authorisation of the Code is sought on behalf of:

- RCSA (address and contact details as previously supplied).
- RCSA's members at the time of application. There are presently in excess of 2,000 members some of whom are individuals. Membership lists can be provided in confidence on request.
- 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 for 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 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 seeking revocation and substitution as the existing authorisation is due to expire. While the new proposed Code and Professional Conduct Grievance Intervention Guidelines are different to the previous versions in their approach, the essential conduct under authorisation is not substantially changed.

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.

Authorisation of the Code is sought on behalf of:

- RCSA (address and contact details as previously supplied).
- RCSA's members at the time of application. There are presently in excess of 2,000 members some of whom are individuals. Membership lists can be provided in confidence on request.
- 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 of advocate, 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 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.

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

RCSA's Professional Conduct Regime has been developed over 15 years of experience of the Code in its current form and of its Disciplinary and Dispute Resolution Procedure, which have both been continuously improved.

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.

The focus of the new Code is on enhancing standards of professional conduct as opposed to rule-setting and policing. The new Code is designed around high level principles outlined in simple language that can be easily understood by Members and the public.

Please see:

- Attachment A** – [Proposed New Code of Professional Conduct](#)
- Attachment B** – [Current Code for Professional Conduct](#)
- Attachment C** – [Summary of Key Changes between the Codes](#)
- Attachment D** – [Proposed New Professional Conduct Grievance Intervention Guidelines](#)
- Attachment E** – [Current Disciplinary & Dispute Resolution Procedures](#)
- Attachment F** – [Summary of Key Changes between the PCGIG and D&DRP](#)
- Attachment G** – [RCSA Code Guideline – Undertakings](#)
- 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** – [COMMERCIAL IN CONFIDENCE: RCSA Code Guideline – Client Services Agreement Template](#)
- Attachment L** – [PUBLIC VERSION: RCSA Synopsis of Client Services Agreement Template](#)
- Attachment M** – [RCSA Constitution](#)
- Attachment N** – [RCSA By-Laws](#)
- Attachment O** – [Member Consultation Survey Results](#)

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

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 (old Code and Code 5), 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 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.

Five examples of such material are provided here for authorisation, refer to the following attachments:

- Attachment G – RCSA Code Guideline – Undertakings
- 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 – COMMERCIAL IN CONFIDENCE: RCSA Code Guideline – Client Services Agreement Template
- Attachment L – PUBLIC VERSION: RCSA Synopsis of Client Services Agreement Template

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

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.

4.2. an outline of any changes to the conduct between the existing authorisation and the new authorisation

Key changes to the conduct between the existing authorisation and the new authorisation are summarised in the following attachments:

- Attachment C – Summary of Key Changes between the Codes
- Attachment F – Summary of Key Changes between the PCGIG and D&DRP

4.3. the relevant provisions of the Competition and Consumer Act 2010 (Cth) (the Act) to which the proposed conduct would or might apply

RCSA's Professional Conduct Regime is designed to have minimal impact upon competition in view of the size and extent of the recruitment and workforces services market in Australia and in view of the size and extent of market for association services for that sector.

Other service suppliers in the recruitment and the human resources services market include:

- Non members;
- Internal recruitment teams in government and medium to large enterprise, whether operating on a shared service basis or transfer cost basis;
- Multi-disciplined professions across a variety of accounting, industrial advocacy, organisational consulting and business service firms;
- Social Media based recruitment solution services suppliers such as LinkedIn;
- Job boards such as SEEK.

Other service suppliers in the market for association services for the recruitment and human resources services sector include:

- Professional associations for multi-disciplined professions;
- Australian Human Resources Institute;
- Chambers of Commerce;

- Other industry associations that may operate in specialised sub-markets – e.g. APSCO Australia.

Cartels

No element of RCSA's Professional Conduct Regime involves:

- Price fixing;
- Market sharing;
- Bid rigging;
- Controlling or limiting outputs or the amount of goods and services

Reservation of work

There is no reservation of work or monopoly by one profession when another has the credentials to also do the work.

However, clients of Members will sometimes stipulate membership of RCSA or an equivalent body as a qualification to tender or supply; or they may adopt Code provisions (most usually the around Supplier Transition arrangements) as conditions in their own purchasing contracts. RCSA promotes this behaviour as important in providing consumer confidence in the industry and trust in professional standards.

Restrictions to entry

Restrictions on entry into the market have the potential to result from the imposition of educational competency standards or certification requirements.

Where clients of Members stipulate membership of RCSA or an equivalent body as a qualification to tender or supply, RCSA's membership and accreditation requirements may operate as a partial barrier to entry for those who do not meet applicable professional conduct standards. However, the impact of any restrictions to entry arising from RCSA's Professional Conduct regime are now to be considered in light of barriers raised by State and Territory Labour-Hire Licensing laws (Qld, SA (nominally) and Vic (imminently)) and Employment Agency Laws (Qld and ACT).

Market separation

No element of RCSA's Professional Conduct Regime involves separating the market into discrete professions or activities, including those performed by accredited individuals.

Prescribed advertising or promotions.

Under RCSA's Old Code, some conduct is proscribed; rather than prescribed:

- Advertising of jobs without permission of the "Job Owner" or without the member satisfying itself that the job is genuine;
- Presentation of Workseekers for job without clear permission from the Workseeker;
- Promotion of a claimed "right to represent" a Workseeker to a Client without permission of the Workseeker and the Client.

Ownership and business structures

No element of RCSA's Professional Conduct Regime directly involves conduct of this type. However, the 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 may indirectly have such an effect.

Local presence requirements

No element of RCSA's Professional Conduct Regime directly involves conduct of this type. However, general requirements to act in accordance with e.g. labour-hire licensing laws may import local presence requirements derived from those laws.

RCSA By-law 1.2(d) permits the granting of Corporate Membership to International Corporate Members subject to the applicant agreeing to submit to the laws of Australia and the jurisdiction of Australian Courts in respect of any dispute or matter arising in connection with their membership.

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 evolved in the absence of national, uniform or harmonised legislation.

Since that time there has been a significant change in regulatory oversight for the industry, including the introduction of labour hire licensing regimes in a number of state jurisdictions. In addition, there are a number of other new regulations that impact and govern a range of member business activities as well as the strong possibility of the introduction of a national licensing regime for the sector in the near future

In light of changes to the regulatory environment and increasing overlap of the industry code with statutory regulations, RCSA, being a domestic body, has formed the view that enforcement of legal obligations, both as a matter of comity and of practicality, is best handled by relevant statutory regulators. As a result, RCSA aspires to move away from its role as an industry regulator to that of an advocate for enhanced industry and professional standards.

In response regulatory oversight and market expectations the industry has continued to evolve and demonstrate characteristics of a profession. Therefore, RCSA's proposed Code of Professional Conduct reflects competencies and expectations of a profession and professionals described by the Professional Standards Council. With its new proposed Code of Professional Conduct, RCSA hopes to align its activities more closely to the provision of member services and towards informing and championing 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, especially in the current climate of evolving labour procurement practices and supply chain integrity requirements. This includes changes in procurement practices by the federal government – a major purchaser of labour hire and recruitment services. 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.

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.

Although individual and corporate RCSA Members will be impacted by the proposed Code of Professional Conduct change, the impact on competition will be minimal. The Code does not impose conditions that determine pricing or competitive behavior but rather sets a bar for industry professional standards¹.

Since subscription 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 Code of Professional Conduct has 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 an industry code) have the additional benefit improved business confidence of dealing with suppliers who are accountable to RCSA for their professional conduct.

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

¹ 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.

proposed conduct overlap (compete with each other) or have a vertical relationship (eg supplier-customer).

According to Ibis World Data (2018), the recruitment service industry in Australia is valued in excess of \$15 billion with 8,917 establishments in all Australian state and territories. The temporary staffing industry amounts to 8,418 establishments and some \$26.4 billion in revenue throughout Australia. RCSA has a membership pool that roughly equates to 25% of the market. Furthermore, the online recruitment services industry in Australia has 46 establishments and is worth \$461.3 million in revenue.

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 and can be, to a certain degree, described in economic terms as a monopsony. 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 client 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, the Victorian Inquiry into the Labour Hire Industry and Insecure Work Report (2019 , p55) notes that the industry market share concentration is low and that the “ top four operators account for less than 22% of the total industry market share, and the industry includes a large number of small firms’.

The report attributes these conditions to a large number of small operators each competing for clients and workers with low barriers to entry and low profit margins, arguing that “intensified competition has put pressure on pricing level’. 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 Code of

Professional Conduct is highly unlikely to adversely impact competition in the market.

The recent report from The Treasury, *Final Report - Black Economy Taskforce* (2018, p.84), specifically noted the high level of competition within the industry and highlighted the issue of rouge on-hire operators undermining responsible agencies. The monetary principle of Gresham's law of 'bad money driving out good money' was used to describe these adverse market conditions.

The report elaborated describing a scenario "where good businesses are driven out of the market by illegitimate operators who are able to undercut prices by not complying with tax, employment and other obligations and by defaulting on creditors".

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 current code of conduct.

These conditions make it unlikely that the proposed Code of Professional Conduct will adversely impact the competitive environment for the sector. Rather, the Code has 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 to particular persons or classes of persons or in particular circumstances, namely:
 - 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 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 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.

The Code, Professional Conduct Grievance Intervention Guidelines and relevant provisions of the By-Laws are likely to result in significant benefit to the public in so far as they:

- 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.

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.

The supplier transition process provides an efficient model for managing transitions professionally and ethically. It has done so for more than a decade 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.

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, will facilitate faster resolution of grievances.

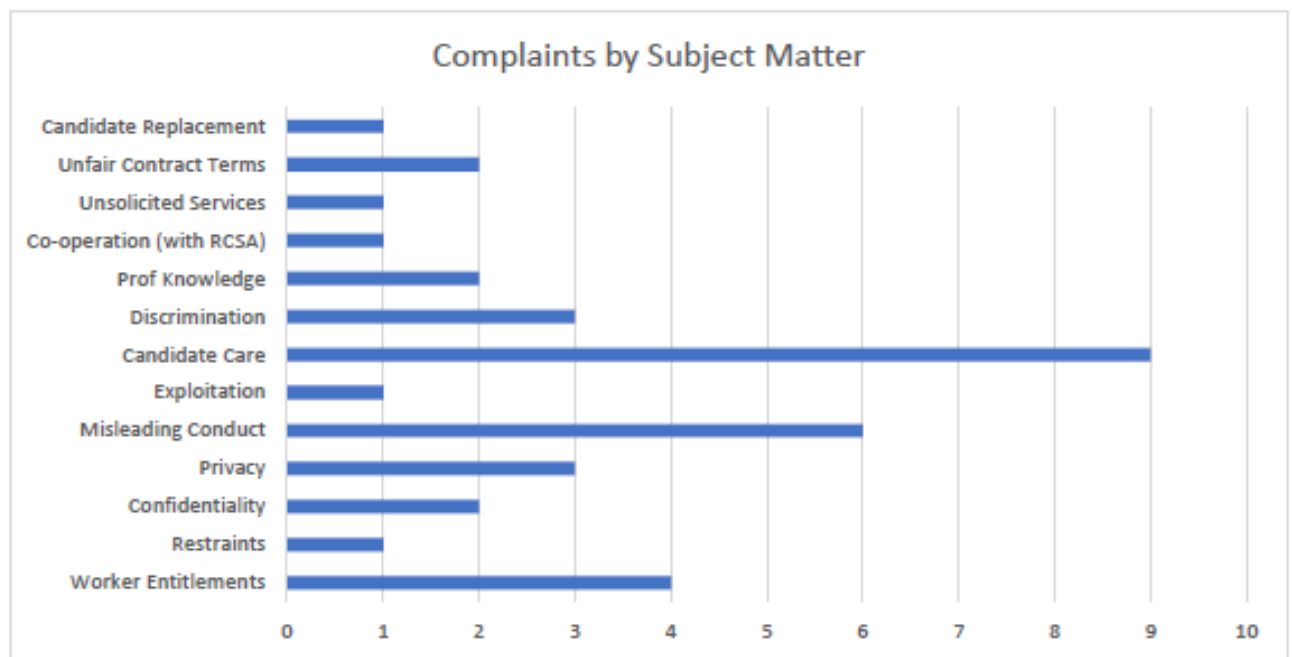
Workers and candidates, especially vulnerable ones, are better protected under the proposed Code of Professional Conduct due to inherent dispute resolution mechanisms within the proposed Code of Conduct and Professional Conduct Grievance Intervention Guidelines that provide efficient outcomes.

RCSA Complaints Data

We are able to provide the following statistics about complaints dealt with in the past 12 months by RCSA. Remembering that a single complaint will often cover several subjects.

The most 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.

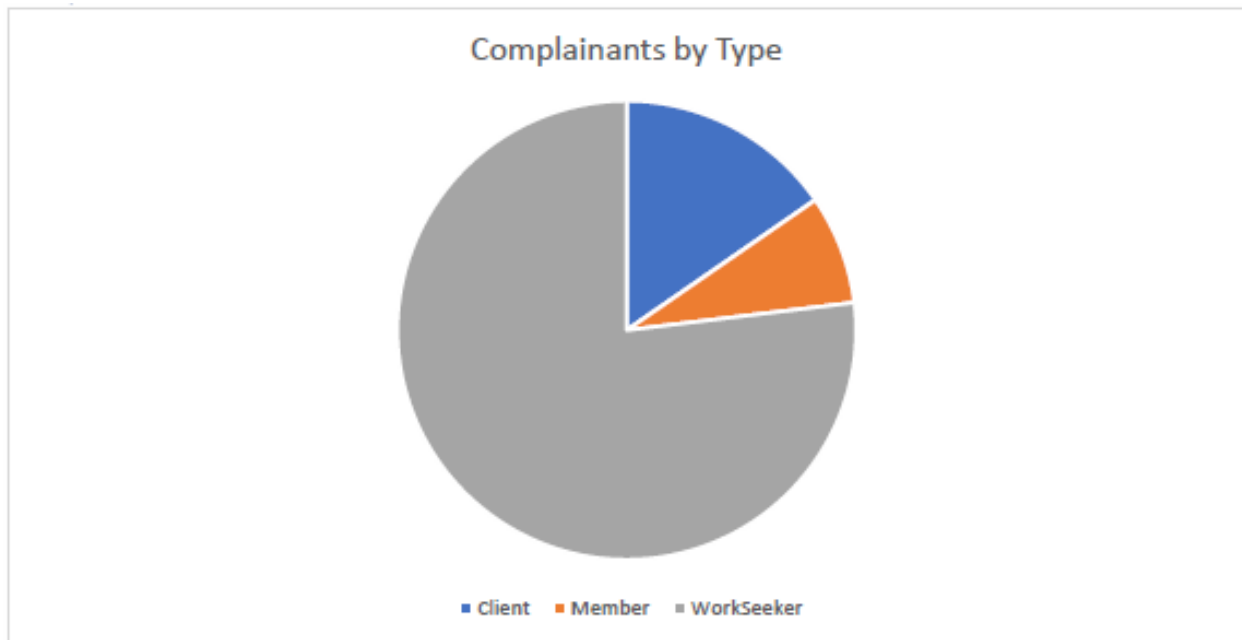
RCSA is often better positioned to handle consumer complaints than regulators due to the multidisciplinary issues that can be contained in single complaint. This is one reason why statutory regulators, with single-focus jurisdictions, are sometimes unable to provide a complete solution.



Over 75% of complaints received are received from workseekers/candidates. This demonstrates how important the RCSA Professional Conduct regime is to workseekers/candidates as a means of resolving disputes.

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.



RCSA Member Consultation Survey Results

See *Attachment O – 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.

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
Level 4, 575 Bourke Street
Melbourne, Victoria, 3000
T: +61 3 9918 9230

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@australianchamber.com.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** – [Current Code for Professional Conduct](#)
- Attachment C** – [Summary of Key Changes between the Codes](#)
- Attachment D** – [Proposed New Professional Conduct Grievance Intervention Guidelines](#)
- Attachment E** – [Current Disciplinary & Dispute Resolution Procedures](#)
- Attachment F** – [Summary of Key Changes between the PCGIG and D&DRP](#)
- Attachment G** – [RCSA Code Guideline – Undertakings](#)
- 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** – [COMMERCIAL IN CONFIDENCE: RCSA Code Guideline – Client Services Agreement Template](#)
- Attachment L** – [PUBLIC VERSION: RCSA Synopsis of Client Services Agreement Template](#)
- Attachment M** – [RCSA Constitution](#)
- Attachment N** – [RCSA By-Laws](#)
- Attachment O** – [Member Consultation Survey Results](#)

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: 6 February 2019

Charles Cameron
Chief Executive Officer



Date: 6 February 2019

Robin Shepherd
General Manager, Operations & Member Services

RCSA CODE OF PROFESSIONAL CONDUCT

Professional Standards 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

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

2) Trustworthy

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

3) Respectful

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

4) Knowledgeable

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

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

Acceptance by RCSA of a Member's statement of commitment shall create a binding and enforceable contract:

- a. between Members and RCSA; and
- b. between Members

effective upon the Member's applying for, obtaining, or retaining membership after its terms have been notified to the Member at the address for notices last noted in RCSA's records, that the Member, 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, of one person (the victim) by another person, occurs if the other person's conduct causes the victim to enter into any of the following conditions:

- i. slavery, or a condition similar to slavery;
- ii. servitude;

- iii. forced labour;
- iv. forced marriage;
- v. debt bondage;

and includes in relation to workseekers:

- vi. a serious contravention of the civil remedy provisions within the meaning of s. 557A of the *Fair Work Act 2009* (C'th);
- vii. a deliberate, serious and sustained failure to comply with the duty of good faith in s. 4 of the *Employment Relations Act 2000* (NZ); and
- viii. unconscionable conduct within the meaning of the common law or the *Australian Consumer Law*.

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:

- ix. aiding, abetting, counselling or procuring;
- x. inducing or attempting to induce; or
- xi. 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.

Ends.



Code for Professional Conduct

1. Definitions

- 1.1 **Workseeker** – means a person who seeks the services of a Member in order to find work in a direct or on-hired capacity, whether as an employee, independent contractor, officer or otherwise and includes a prospective Workseeker;
- 1.2 **Client** – means a person, other than a Workseeker, who seeks an Employment Service and includes a prospective Client;
- 1.3 **Code** – means the Code for Professional Conduct;
- 1.4 **Conduct Recommendation** – means a recommendation given under the D&DRP 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;
- 1.5 **Confidential Information** – includes any information that may reasonably be regarded by the person who receives it, or from whom it was obtained, as being information that should not be used or disclosed without the permission of the person from whom it was obtained;
- 1.6 **Consultant** – mean 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 an Employment Service and includes a prospective Consultant;
- 1.7 **Corporate Membership Category of Service** – means any category of service recognised by the Board of RCSA as being of a type characteristically provided by a Corporate Member and includes an On-Hired Employee Service, a Contracting Service, a Contractor Management Service, a Recruitment Service, and a Workforce Consulting Service as defined in RCSA Corporate Membership Categories of Service as at the date of authorisation of this Code; but does not include a migration service of a type which by law in Australia or New Zealand may only be provided by a registered migration agent;
- 1.8 **D&DRP** – means the Disciplinary & Dispute Resolution Procedure approved by the Board of RCSA from time to time;
- 1.9 **Direction** – means a direction given under the D&DRP;
- 1.10 **Employment Service** – means any category of service recognised by RCSA as a Corporate Membership Category of Service;
- 1.11 **Industry Improvement Statement** – means a public statement made by the Board of RCSA, from time to time, lawfully for the purposes of any of the objects set out in clause 1.3(a) or 1.3(b) of RCSA's Constitution and identified as such;
- 1.12 **Job Owner** – means the enterprise that seeks an Employment Service for the performance of work or the filling of a position;
- 1.13 **Member** – means a person, who holds any category of Membership of RCSA that is recognised under its Constitution and who has signed, or is required by the Board to sign, a Statement of Commitment; and includes a Professional Member and an applicant for membership;
- 1.14 **Professional Practice** – means practice connected with or in the course of providing an Employment Service;
- 1.15 **SDS** – means RCSA's Service Delivery Standard: RCSA-SDS:2010 as amended from time to time or any standard adopted by RCSA to supplement or replace it and having the purpose of assisting Members to develop systems and controls to ensure Clients and Workseekers receive excellent service;
- 1.16 **Service Commitment and Service Charter** – have the respective meaning and usage given to them in the SDS;
- 1.17 **Staff** – mean persons engaged by a Member in its business to work on the Member's behalf in providing or supporting the provision of an Employment Service and includes a Consultant;
- 1.18 **Statement of Commitment** – means a statement of commitment to abide by the Code and the D&DRP, which may be in the form approved by the Board of RCSA from time to time;
- 1.19 **Transition Dealings** – means dealings for the transition of on-hired Workseekers from their Employment Service supplier in response to a Client's requirements.

2. Interpretation

- 2.1 The Code is a guide to conduct that is considered by RCSA to be becoming of a Member and not prejudicial to the interests of RCSA.
- 2.2 The Schedules of the Code form part of the Code.
- 2.3 Neither the Schedules nor the eight Specific Principles stated in the Code limit or derogate from the General Principles.
- 2.4 The Schedules and the eight Specific Principles stated in the Code operate in addition to, and in support of, the General Principles; but are limited in the application to conduct in the course of or connection with a Member's Professional Practice.
- 2.5 This Code stands as the Code for Professional Conduct wherever that expression is used in the Constitution.
- 2.6 Acceptance by RCSA of a Member's Statement of Commitment shall create a binding and enforceable contract between:
 - a) Members and RCSA; and
 - b) Between Members effective upon the Member's applying for, obtaining or retaining Membership after its terms have been notified to the Member at the address for notices last noted in RCSA's records, that the Member, 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.
- 2.7 In interpreting the requirements of this Code and in determining whether conduct of a Member is unbecoming of a Member or prejudicial to the interests of RCSA, RCSA, including any person appointed by RCSA to exercise a function under the D&DRP, may have regard to:
 - a) The provision of the SDS;
 - b) The provision of any current Industry Improvement Statement issued by RCSA; and
 - c) The provisions of any relevant Conduct Recommendation given by RCSA to the Member

General Principles

1. Members must act in a manner that is becoming of a Member and, to that end, observe a high standard of ethics, probity and professional conduct which requires not simply compliance with the law; but extends to honesty, equity, integrity, social and corporate responsibility in all dealings and holds up to disclosure and to public scrutiny.
2. Members must not engage in any form of conduct that is prejudicial to the interests of the RCSA.
3. Members must, except where they can satisfy RCSA that they have fair and lawful excuse, co-operate with any investigation by RCSA of Member conduct and comply with any Direction or Conduct Recommendation given with regard to the Member's conduct or grievance arising from the Member's conduct.

Specific Principles

Principle 1 – Confidentiality and Privacy

1. Members must take reasonable steps to maintain the confidentiality and privacy of information obtained in the course of their professional practice.
2. Members must take reasonable and timely steps to ascertain the extent to which any information they collect may be confidential.

Principle 2 – Honest Representation

1. Members must not knowingly:
 - a) Make a false statement of material fact;
 - b) Fail to disclose a material fact;
 - c) Make a representation as to future matters without having reasonable grounds for making it.
2. Members who place job advertisements must take care that the advertisements accurately describe what, if any, jobs are available and that all information about a job given before or at an interview with Workseekers is accurate and not misleading.
3. Members must not advertise jobs unless:
 - a) They have clear permission from the Job Owner to recruit for the job; and
 - b) They have taken reasonable steps to satisfy themselves that the job is genuine.
4. Members must not present a Workseeker for jobs unless they have clear permission from the Workseeker, given with respect to the job for which the Workseeker is presented.
5. Members must not claim that they have a right to represent a Workseeker to a Client unless they have permission from both the Workseeker and the Client given, in both cases, with respect to the job for which the Workseeker is represented.

Principle 3 – Work Relationships

1. Members must not undertake actions that would be likely to unfairly or unlawfully jeopardise a Workseekers engagements to perform work.
2. Members must not undertake actions that would be likely to unfairly or unlawfully interfere in work relationships established by others.
3. Members must not attempt unfairly or unlawfully to prevent a Workseeker from seeking work from other sources.
4. Members must act lawfully and fairly in respect of their involvement in Transition Dealings.

Principle 4 – Legal Compliance

1. Members must comply with all legal, statutory and government requirements relating to their Professional Practice.
2. Members will not engage in any form of unlawful collusive practices.
3. Members shall take reasonable steps to ensure, so far as practicable, that all new employees, Contractors, Consultants, and Workseekers honour their lawful obligations to the previous employers and principals.

Principle 5 – Safety & Security

1. Members must act diligently in assessing and responding to all safety and security risks for which they are statutorily responsible.
2. Without limitation to the scope of their statutory responsibilities, Members must inform Workseekers, Clients, Consultants and Staff, or Member of the public of any significant safety or security risk to which they may be exposed.

Principle 6 – Certainty of Engagement

1. Members must take reasonable steps to ensure the certainty and scope of their engagement:
 - a) By a Client to provide an Employment Service – including but not limited to such matters as:
 - i. content of any Service Commitment or Service Charter offered in connection with the provision of the Employment Service;
 - ii. description of the specific service/s to be provided;
 - iii. deliverable or outcomes, including proposed dates and delivery times;
 - iv. fees and charges of the agreed services, including any temp-to-perm; contractor-to-perm; agency switching fee or similar fee arrangement;
 - v. outline of the client and Workseeker relationship management process;
 - vi. commitment to rapid and fair resolution of customer complaints or issues;
 - vii. explanation of any service guarantee and claims processing;
 - viii. description of any position required to be filled including the inherent requirements of the position and the extent to which the Client offers to make reasonable adjustments to avoid unlawful discrimination and meet Equal Employment Opportunity responsibilities;
 - ix. any particular purpose for which the Employment Service is being required;
 - x. any reference, background, or suitability check required by the Client to be performed in respect of the position;
 - xi. disclosure of Client identity;
 - xii. disclosure of Workseeker information, assessment or valuation.
 - b) By a Workseeker – extending to agreement regarding all matters relevant to the Member’s representation of the Workseeker including:
 - i. Details of work conditions, the nature of the work to be undertaken, rates of pay and pay arrangements;
 - ii. The obtaining of any necessary consents, approvals, or permissions required from the Workseeker;
 - iii. The nature of any restraint imposed, directly or indirectly, upon the Workseeker with respect to the Workseeker obtaining further work.

Principle 7 - Professional Knowledge

1. Members must work diligently to develop and maintain a satisfactory and up to date level of relevant professional knowledge and, where required by RCSA’s By-Laws, maintain a Continuing Professional Development program to the level prescribed by the RCSA Levels and Criteria of Professional Membership issued from time to time.
2. Members must ensure that their Staff are adequately trained and skilled to undertake their responsibilities.

Principle 8 – Good Order

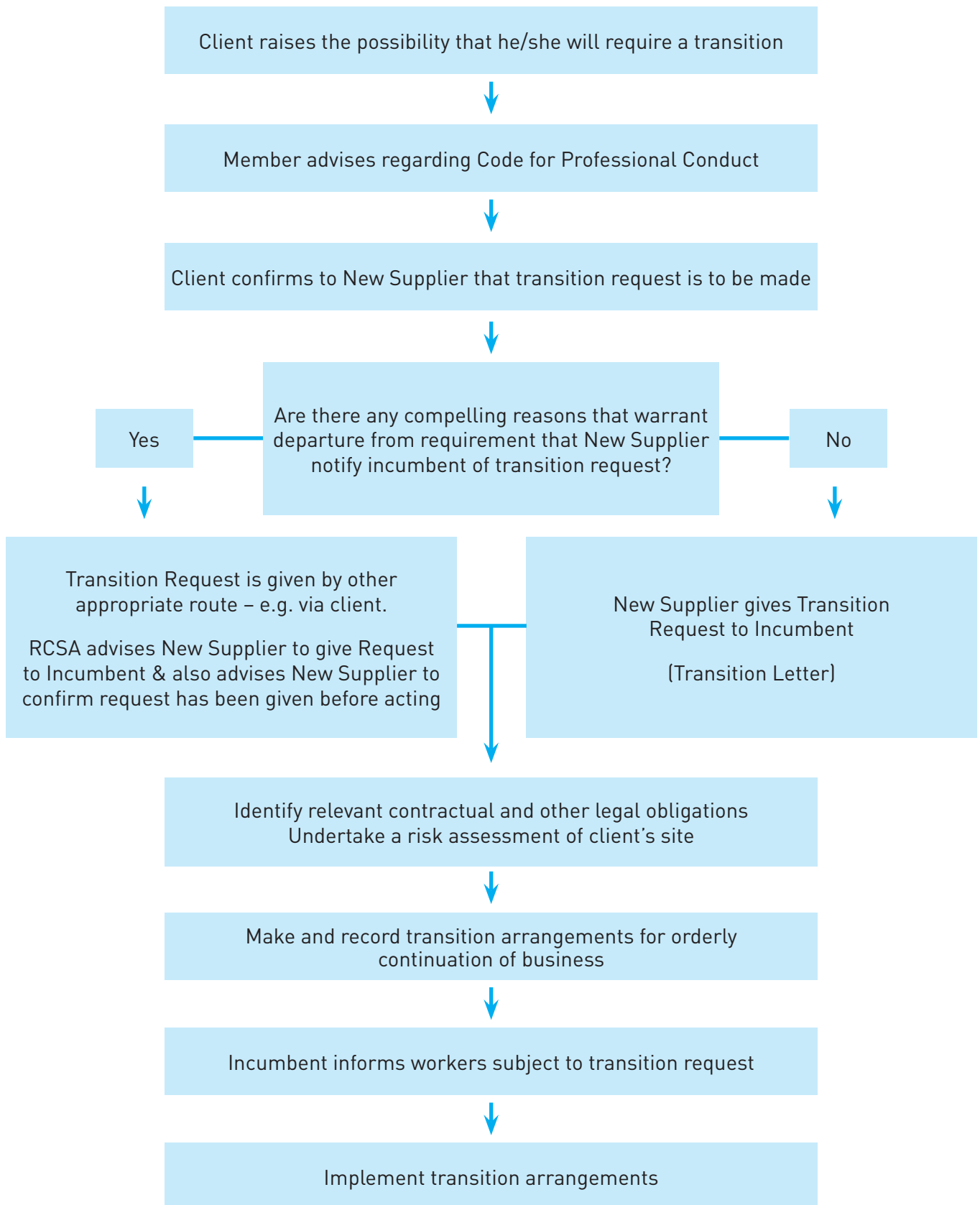
1. A Member must bring to the attention of the RCSA at the earliest possible time any material concern, which the Member has regarding the Member's or another Member's conduct in Professional Practice.
2. Concerns regarding Member's conduct in Professional Practice must be referred to the RCSA Ethics Registrar to be dealt with in accordance with the D&DRP.
3. Members are encouraged to use processes of counselling (as may be directed in accordance with the D&DRP), negotiation, expert appraisal, mediation and arbitration in order to resolve disputes and must endeavour to do so wherever practicable.

Schedule 1

Application Guidelines and Recommendations – Transition of Workers – Guidelines for Professional Conduct – Reference Principle 3

1. Members should be aware and acknowledge that in an open and competitive market place, circumstances may arise when a Client wishes to change Employment Service suppliers.
2. Members should also be aware and acknowledge that Members invest significant amount of work, money, time and intellectual resources in establishing relationships with Clients, developing critical understandings of Clients' and Workseekers' needs, training Workseekers in systems of work for Clients, and inducting Workseekers in preparation to undertake work for Clients'. Those investments contribute to Members' goodwill and support significant business capital, which is of value to Members and which Members are entitled to protect by lawful means.
3. This Guideline and Recommendation will apply in cases where a Member seeks to transition on-hired Workseekers from their Employment Service supplier in response to Client requirements.
4. Stakeholders in the transition arrangements may include Member or other Employment Service suppliers involved in the transition, the Client, the Client's customers and the on-hired Workseekers themselves.
5. Unless there are compelling reasons to the contrary, Members should give written notice to the incumbent Employer Service supplier if they require to effect a transition of on-hired Workseekers from that supplier in response to Client requirements (a "transition request").
6. In making transition arrangements, Members must give due consideration to the interest of all stakeholders.
7. Members must use reasonable endeavours to ensure that transition arrangements are managed in a professional manner and they are designed to minimise disruption to stakeholders. To that end RCSA recommends that Members ought to give consideration to and make suitable arrangements:
 - a) for the orderly continuation of business;
 - b) to identify and give effect to any relevant contractual or other legal obligations;
 - c) for the orderly transition of workers. This will usually require that the incumbent Employment Service supplier be permitted to be first to inform its Workseekers of the circumstances that have led to the transition request. The incumbent Employment Service supplier should notify its Workseekers promptly upon receipt of a transition request of circumstances that may be like to result in change, termination or redundancy in the workplace;
 - d) whilst RCSA does not make any recommendation as to the timeframe within which a transition is to be completed as circumstances will differ from case to case, Members must conduct their Transition Dealings promptly in accordance with good commercial and industrial practice;
 - e) to ensure that Workseekers are properly informed of matters relevant to their decision to the transition or not to transition;
8. Code Principles: 1 (Confidentiality and Privacy), 2 (Honest Representation), 4 (Legal Compliance), 5 (Safety & Security), 6 (Certainty of Engagement) and 8 (Good Order) will also be relevant to transition arrangements and Members should give due regard to the requirements of those principles as they apply to their transition arrangements.

SUMMARY A - Transition Flow Chart



Summary of Key Changes in the RCSA Code

Re-calibrating the RCSA Code

The present Code, in its fourth iteration, evolved in response to industry de-regulation commenced in the 1990s. In that environment, there was a need for RCSA to act as an effective industry self-regulator.

Recent years have seen the re-introduction of restrictive licensing and the development of elaborate statutory codes, together with increasing regulation in many areas of Member activity.

The proper enforcement of that regulation should now be left to the statutory regulators.

At the same time, RCSA has shifted its operating focus from industry regulator to a more member-centric service and support role.

Those changes suggest that it is time to recalibrate the RCSA Code.

General Changes in the new Code

The focus of the new Code is on enhancing standards of professional practice rather than rule-setting and sanctions.

The new Code has been kept to high level principles in simple English that can be easily understood by Members and the public.

Summary of Principles

A. Personal Professionalism

- RCSA Members are Diligent & Competent
- RCSA Members are Trustworthy
- RCSA Members are Respectful
- RCSA Members are Knowledgeable
- RCSA Members are Cooperative

B. Operational Integrity

- RCSA Members maintain Confidentiality
- RCSA Members are Careful to fulfil value and promises
- RCSA Members operate with Certainty of Engagement
- RCSA Members maintain Effective Complaints Handling mechanisms
- RCSA Members conduct Socially Sustainable businesses to avoid exploitation
- RCSA Members Ascertain & Assure that they meet regulatory requirements
- RCSA Members accept professional responsibility for Continuous Disclosure for anything which may impact their membership, the Association or industry

Key Actions for Members

1. Members are to meet the Code standards
2. Members are to avoid involvement in unprofessional conduct
3. Members are accountable

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1 **1. About these Guidelines**

2 **1.1. Object**

3 These Guidelines have been developed by RCSA’s Board to assist in the handling of
4 Professional Conduct Grievances and to support RCSA Members’ commitments to
5 develop values of personal professionalism and to embed them in the conduct of
6 their employment services dealings, by measures appropriate to their size and
7 circumstances, so as to assure the operational integrity of their organisations.

8 **1.2. Revocation of Previous Procedures**

9 These Guidelines supersede any previous Disciplinary and Dispute Resolution
10 Procedure.

11 **1.3. Jurisdiction to Intervene**

12 **See Also:** [Discretion to Intervene \(Intervention\)](#)

13 RCSA has a jurisdiction to intervene in Grievances arising from the conduct of its
14 Members. The jurisdiction is sourced in clause 2.8 of RCSA’s Constitution, which
15 provides that Members who are guilty of any conduct, which in the opinion of the
16 Directors is unbecoming of the Member or prejudicial to the interests of the
17 Association, are liable to discipline in accordance with RCSA’s Disciplinary and
18 Dispute Resolution Procedures - including these Guidelines.

19 **1.4. Discretion Not to Intervene**

20 **See Also:** [Statement of Strategic Priorities and Intent \(Strategic Content\)](#)

21 Although RCSA has jurisdiction to intervene in Grievances arising from the
22 Professional Conduct of its Members, it is not obliged to do so.

23 **Examples:**

- 24
- 25 • Some grievances may be more appropriately dealt with through statutory or civil enforcement and remedy procedures.
 - 26 • Principles of comity may warrant RCSA, as a voluntary domestic body, declining to handle a
27 Grievance in deference to a superior investigative process or tribunal - e.g. a Police or FWO
28 investigation or a court proceeding.

- 1 • Some Grievances may not be suitable for determination having regard to the fact that RCSA,
2 as a voluntary domestic body, has no statutory powers to compel the production of
3 evidence.
- 4 • Other Grievances may involve matters that fall outside current strategic priorities and
5 statements of intent for RCSA.

6 These Guidelines attempt to strike a balance of interests in RCSA's exercising its
7 disciplinary jurisdiction and supporting its Members in developing their capacity
8 for effective self-regulation.

9 **1.5. Externally Sourced Professional Obligation**

10 RCSA recognises that its Members' professional responsibilities may extend to
11 externally sourced professional obligations.

12 **Examples:**

- 13 • Obligations of corporate members of the World Employment Confederation;
- 14 • Obligations arising because of the multi-disciplinary or multi-domain nature of Members'
15 practices - e.g. obligations arising under the AHRI or the MARA Codes of Conduct.

16 So far as is practicable and consistent with its Constitution and the RCSA Code,
17 RCSA pays due regard to the externally sourced professional obligations of its
18 Members.

19 **1.6. Key Roles & Responsibilities**

20 **1.6.1. Members**

21 Members commit to develop personal values of professionalism, and to embed
22 those values in the conduct of their employment services dealings, by measures
23 necessary and appropriate to their size and circumstances, to assure the
24 operational integrity of their organisations.

25 **1.6.2. The Board**

26 The Board:

- 27 a. is responsible for the governance of RCSA;
- 28 b. develops and maintains the Code;

- 1 c. directs the development of the governance framework within which the
2 Code operates including the development and publication of Grievance
3 Intervention Protocols and Regulator Liaison Guidelines;
- 4 d. publishes statements of strategic priorities for the promotion and
5 advancement of Members' Professional Conduct;
- 6 e. may direct the development and publication of interpretative guidance
7 materials, including Consensus Statements for use in interpreting the
8 requirements of the Code or when determining if conduct is unbecoming
9 of a Member or prejudicial to the interests of RCSA;
- 10 f. may endorse Professional Conduct Recommendations to guide standards
11 of Member conduct in particular cases;
- 12 g. appoints a panel of persons for appointment to RCSA's Professional
13 Conduct Review Committees;
- 14 h. delegates such of its powers to Professional Conduct Review Committees
15 as may be necessary for their proper functioning;
- 16 i. appoints a panel of persons for appointment as Professional Conduct
17 Advocates (PCAs);
- 18 j. may appoint qualified persons as Code Advisors to assist RCSA in its
19 Professional Conduct Grievance Interventions;
- 20 k. may resolve to censure, suspend or expel a Member or impose other
21 sanctions;
- 22 l. may refer a Professional Conduct Grievance to any method of grievance
23 intervention provided for in these Guidelines, and may appoint a person
24 to have carriage of the Professional Conduct Grievance on behalf of
25 RCSA;
- 26 m. may approve RCSA's initiating an investigation into the professional
27 conduct of a Member.

28 **1.6.3. The CEO**

29 The CEO:

- 1 a. obtains Members' commitments to abide by the standard of
2 professional conduct required by the RCSA Code;
- 3 b. ensures that RCSA is resourced to handle Professional Conduct
4 Grievance Interventions;
- 5 c. ensures that there are suitable training and support opportunities to
6 assist Members to meet their commitments to the standard of
7 professional conduct required by the RCSA Code PROVIDED that this
8 does not require RCSA to provide legal or other professional assistance
9 or the cost thereof to any party to a Grievance;
- 10 d. ensures that the Code and these Guidelines are well-publicised, and that
11 information about how to notify and conduct a PCG is readily available.

12 **1.6.4. The Professional Conduct Registrar**

13 The Professional Conduct Registrar:

- 14 a. receives Professional Conduct Grievances, and decides if they are to be
15 accepted or rejected for intervention;
- 16 b. facilitates the handling of Professional Conduct Grievances;
- 17 c. collects data about Professional Conduct Grievances and their outcomes;
- 18 d. co-ordinates the availability of panel members to sit on Professional
19 Conduct Review Committees, and schedules sitting dates;
- 20 e. makes available information about the Code, these Guidelines, methods
21 and availability of dispute resolution - e.g. mediation, and resources to
22 assist participants involved in Grievances - e.g. conflict coaching and
23 sources of representation.

24 **1.6.5. The Professional Conduct Review Committee (PCRC)**

25 The Professional Conduct Review Committee:

- 26 a. may make or endorse a professional conduct recommendation;
- 27 b. directs investigations of Professional Conduct Grievances that are
28 referred to it;

- 1 c. makes findings about whether Members have met the standard of
- 2 professional conduct required by the RCSA Code;
- 3 d. upon conclusion of an investigation, may make a sanctions
- 4 recommendation to the Board;
- 5 e. at the request of the Board, develops Interpretative & Operational
- 6 Guidance Materials in accordance with these Guidelines.

7 **1.6.6. The Professional Conduct Council (PCC)**

8 The Professional Conduct Council:

- 9 a. reviews periodically the Code, these Guidelines, significant governance
- 10 advice and protocols, performance reports, training resources and their
- 11 usage, and Code determinations, and makes recommendations to the
- 12 Board for the further development of RCSA's Professional Conduct
- 13 Framework;
- 14 b. reviews and provides recommendations regarding Code Guidelines

15 **1.6.7. Professional Conduct Advocates (PCA)**

16 Professional Conduct Advocates:

- 17 a. help Members to understand and accept their commitments to the
- 18 standard of professional conduct required by the RCSA Code and their
- 19 responsibilities arising from it;
- 20 b. support and guide Members, whom they may accompany through the
- 21 grievance intervention process.

22 **1.6.8. Arbitrator**

23 An Arbitrator may:

- 24 a. conduct arbitration, as provided for by the RCSA Constitution;
- 25 b. conduct arbitrations of disputes referred to the arbitrator under the
- 26 provisions of applicable legislation, these Guidelines, or rules for
- 27 commercial or international arbitration;

1 An Arbitrator does not recommend or impose sanctions or make any award in
2 the nature of sanctions.

3 **1.6.9. Code Advisors**

4 Code Advisors engaged by RCSA:

- 5 a. provide early evaluation, pathway and procedural advice about
6 Professional Conduct Grievances to RCSA;
- 7 b. at RCSA's request collaborate with any party to a Professional Conduct
8 Grievance, or their representatives, to assist in achieving the objects of
9 the Code and these Guidelines.

10 **2. Interpretive & Operational Guidance Materials**

11 The RCSA Board may direct the development of Interpretive & Operational
12 Guidance Materials for use in:

- 13 a. interpreting the requirements of the Code;
- 14 b. determining if conduct is unbecoming of a Member, or prejudicial to the
15 interests of RCSA; or
- 16 c. allocating Professional Conduct Grievances to suitable pathways for
17 resolution.

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

21 **2.1. Statement of Strategic Priorities and Intent**

22 **See Also:** [Discretion Not to Intervene \(Strategic Content\)](#)

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

26 **2.2. Code Guidelines**

27 Code Guidelines:

1 a. inform RCSA Members and the public about how the Code is likely to be
2 interpreted and applied in specific situations involving Members;

3 **Examples**

4 • Workforce transitions, fee disputes, or candidate replacement guarantee
5 transactions.

6 b. assist Members to manage those situations consistently with their
7 commitments to develop values of personal professionalism and to
8 embed those values in the conduct of their employment services
9 dealings, by measures appropriate to their size and circumstances;

10 c. may be developed on instruction from RCSA's CEO whenever RCSA
11 perceives a need to do so;

12 d. may be developed by a committee or task group of RCSA Members -
13 including by a Professional Conduct Review Committee acting as a Code
14 Guideline Development Sub-Committee;

15 e. must be reviewed by RCSA's lawyers for assessment of any competition,
16 privacy or other regulatory impacts and also by the Professional Conduct
17 Council (together, **Review Advice**) before being approved by the Board.
18 All review advice must be provided to the Board.

19 **2.3. Consensus Statements**

20 Consensus Statements

21 a. are public statements made by the Board of RCSA, from time to time,
22 for:

23 • promoting excellence, enterprise and integrity in the businesses of
24 all Members and of individuals engaged by those businesses; and

25 • improving knowledge and skill concerning their responsibilities,
26 duties and rights in the Employment Services Industry.

27 (See clause 1.3(a) or 1.3(b) of RCSA's Constitution);

28 b. provide means by which RCSA may address topical, systemic issues
29 within the employment services industry.

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Examples:

- barriers to mature age worker participation,
 - worker classification and engagement (whether as an employee or independent contractor; casual or non-casual),
 - recognition of new work categories and methods,
 - professional handling of rights of conversion or flexibility requests;
 - conduct of small business collective bargaining under the *Competition & Consumer Act*;
- c. may be supported by specific reference and interpretative material and disciplinary and dispute resolution procedures that are designed to support Member compliance.
- d. may only be published after development in consultation with regulatory and industry stakeholders as provided for in these Guidelines.

2.3.1. Eleven-Step Process

The development of a Consensus Statement should follow an eleven-step process to ensure transparency and stakeholder consultation as follows:

- a. Board resolves to develop a Consensus Statement addressing an identified area of concern;
- b. RCSA advises relevant regulators (including the ACCC and NZ Commerce Commission) of its intent to develop a Consensus Statement, offering to consult on any regulatory issues. RCSA may also advise selected stakeholders including Industrial Organisations of Employers and Employees and Industry, business and professional associations;
- c. RCSA develops an exposure Consensus Statement taking into account feedback received during the regulatory consultation stage;
- d. The Board approves the exposure Consensus Statement for public release;
- e. RCSA invites public response during a period of not less than one month;
- f. RCSA prepares a consultation report for consideration by the Board;

- 1 g. The Board decides whether to proceed with the further development of
2 a Consensus Statement;
- 3 h. If the Board decides to proceed, RCSA prepares a draft Consensus
4 Statement for approval by the Board;
- 5 i. The draft Consensus Statement is reviewed by RCSA's lawyers for
6 assessment of any competition, privacy or other regulatory impacts;
- 7 j. If approved by the Board (subject to any requirement for authorisation
8 or notification under competition law) the draft Consensus Statement
9 and its proposed commencement date is advised to the ACCC, the NZ
10 Commerce Commission and other relevant regulatory authorities;
- 11 k. The Consensus Statement is notified to the public and becomes effective
12 on its commencement date.

13 **3. Professional Conduct Grievance Interventions Generally**

- 14 1. A Professional Conduct Grievance Intervention is a proceeding conducted
15 by RCSA in respect of the professional conduct of its Members. A Grievant
16 is not a party to such a proceeding but may participate as provided for by
17 these Guidelines.
- 18 2. A participant, who is not a Member and who fails to comply with a
19 requirement of these Guidelines may be refused any further entitlement
20 to participate.
- 21 3. Professional Conduct Grievance Interventions shall be conducted with
22 due regard to parties' and participants' interests in:
- 23 a. securing a lawful outcome;
- 24 b. being heard - noting the parties' and participants' interests in
25 emotional due process extending to the need for the parties and
26 participants:
- 27 • to feel they have been heard and listened to, acknowledged
28 and understood by those involved;

- 1 • to creatively shape solutions so that the resulting resolution
2 meets all or most of their interests, goals and needs;

3 **NOTE:**

4 These may include an apology, acknowledgement, remediating or
5 healing a culture or situation, to be understood, validation, respect.

- 6 • to be able to work at their own pace and within reasonable
7 timeframes and constraints;

- 8 • to preserve important relationships between parties and
9 participants, avoiding more harm, and when possible,
10 improving them;

- 11 • to avoid the collateral damage of draining resources, funds,
12 energies and emotions.

13 c. being sufficiently informed of relevant responses of a party or
14 participant;

15 d. knowing whether the standard of professional conduct required by
16 the RCSA Code has been met;

17 e. maintaining confidentiality consistently with the purpose for which
18 information obtained in connection with the Professional Conduct
19 Grievance Intervention may be used or disclosed - extending to the
20 purpose of maintaining records for use and disclosure in assessing
21 suitability for future membership;

22 f. having Professional Conduct Grievance Interventions completed
23 with as little cost, formality, and delay as may be consistent with
24 the requirements of fairness - the general intent of which is that
25 investigations should proceed, so far as practicable, by interview,
26 without legal representation, and by direct involvement of parties
27 and participants with the Professional Conduct Review Committee
28 when its jurisdiction is engaged;

29 g. being informed of the outcome of any Professional Conduct
30 Grievance Intervention and reasons for that outcome.

1 4. Except as may be permitted by these Guidelines, parties and participants
2 to a Professional Conduct Grievance Intervention must not attempt
3 privately to approach or influence (directly or indirectly) the Directors,
4 CEO, or any member of a Professional Conduct Review Committee
5 regarding the Professional Conduct Grievance Intervention.

6 **3.1. Costs**

7 Except in so far as:

- 8 a. a Member might be directed to make a payment in respect of another
9 party's costs as becoming the Member or in the interests of the RCSA;
- 10 b. an Arbitrator conducting an appeal under these Guidelines might
11 otherwise award; or
- 12 c. a court of competent jurisdiction might otherwise order

13 the parties and participants to a Professional Conduct Grievance Intervention
14 will each bear their own costs of and incidental to the intervention.

15 **3.2. Savings**

- 16 1. Nothing in these Guidelines prevents the parties or participants to a
17 Grievance from agreeing upon any other process for the resolution of any
18 difference between them provided that:
 - 19 a. their process satisfies the requirements of paragraph 3(3) of these
20 Guidelines;
 - 21 b. upon their difference being resolved, the parties or participants
22 jointly notify the CEO that their difference has been resolved; and
 - 23 c. their process (or any settlement or compromise reached in respect of
24 their differences) does not oust the jurisdiction of RCSA with regard
25 to its Members' professional conduct.
- 26 2. Nothing in these Procedures shall oust the jurisdiction of any court of
27 competent jurisdiction.

28 **4. Raising a Grievance**

- 1 1. Any person who has a direct and substantial interest in the professional
2 conduct of a Member and who is aggrieved by the conduct of the
3 Member's employment services dealings (**a Grievant**) may raise a
4 Professional Conduct Grievance in the form authorised by the Board from
5 time to time.

- 6 2. A Grievant may raise a Professional Conduct Grievance through a
7 representative (e.g. a legal representative, trade union, professional
8 association, or community or social justice body) who has been given
9 express permission to represent the Grievant and who undertakes to
10 observe all reasonable requirements of these Guidelines – including
11 requirements of privacy and confidentiality.

- 12 3. The Board may authorise forms and procedures for raising Professional
13 Conduct Grievances in writing as well as orally to ensure the accessibility
14 of the Code Framework.

15 **5. Discretion to Intervene**

16 **See Also:** [Mediation \(Deferral for Mediation\)](#), [Jurisdiction to Intervene \(Intervention\)](#)

- 17 1. RCSA reserves a discretion to intervene or to decline to intervene in a
18 Professional Conduct Grievance.

- 19 2. The discretion may be exercised by the Board or by its duly appointed
20 delegate - (e.g. the CEO or Professional Conduct Registrar).

- 21 3. RCSA may decline to intervene in a Professional Conduct Grievance (or
22 the continuation thereof) for any reason it considers proper, including the
23 reason that:
 - 24 a. the grievance is, or has become, frivolous or vexatious;
 - 25 b. the grievance does not disclose an important issue about a
26 Member's Professional Conduct;
 - 27 c. resources available to RCSA as a voluntary body are not suitable for
28 the investigation of the grievance;

- 1 d. investigation of the grievance may prejudice proceedings in a court
- 2 or statutory tribunal, a law enforcement investigation, or the
- 3 investigation of a statutory authority;
- 4 e. delay in raising the grievance may prejudice its investigation
- 5 f. the grievance arises from previously closed intervention;
- 6 g. the Board has accepted a written undertaking from the Member in
- 7 whole or partial satisfaction of RCSA's professional conduct interest
- 8 in the conduct giving rise to the grievance;
- 9 4. Instead of declining a Professional Conduct Grievance for intervention,
- 10 RCSA may defer it, or part of it, and direct that it not proceed until either:
- 11 a. a relevant statutory or law enforcement body completes any
- 12 investigation or prosecution that it may be conducting;
- 13 b. other legal proceedings between the parties and participants are
- 14 finalised or resolved;
- 15 c. a Member or Members involved in the Grievance undergo
- 16 counselling under these Guidelines; or
- 17 d. persons involved in the Grievance participate in mediation or any
- 18 other dispute resolution process directed or recognised under these
- 19 Guidelines.

20 **6. Pathways**

- 21 1. If RCSA decides to intervene in a Professional Conduct Grievance, the
- 22 intervention is to be placed on one or more of the Pathways provided for
- 23 in this section.
- 24 2. Acceptance of a Professional Conduct Grievance for intervention does not
- 25 imply, by that fact alone, that any Member has fallen short of the
- 26 standard of professional conduct required by the RCSA Code.
- 27 3. If RCSA decides to intervene in a Professional Conduct Grievance, the
- 28 Professional Conduct Registrar in consultation with the CEO may note a

1 caution on the Register of Members against the Member in respect of
2 whose conduct it intervenes.

- 3 4. A caution is a notation made on the Register of Members:
- 4 a. searchable by the public;
- 5 b. advising that a professional conduct issue has been raised in respect
6 of the Member's [broadly particularised – e.g. candidate
7 replacement] dealings;
- 8 c. advising that the matter is being dealt with by RCSA under
9 confidential grievance intervention procedures;
- 10 d. emphasising that neither the notation of a caution nor the conduct
11 of a Grievance Intervention implies that the Member has not met the
12 standard of professional conduct required by the RCSA Code;
- 13 e. informing the public that if they wish to know more, the Member has
14 indicated that they can contact [*AB – contact details to be provided*]
15 who has been authorised to receive and respond to proper inquiries
16 regarding the matter; and
- 17 f. Informing the public that no further comment will be forthcoming
18 from RCSA pending completion of its grievance intervention.
- 19 5. The Board or CEO can review a Professional Conduct Grievance
20 Intervention at any time and instruct that it be placed on a different or
21 additional Pathway or that an intervention on a Pathway be discontinued.
- 22 6. Discontinuance of an intervention which has been placed on a Diversion
23 & Monitoring pathway means only that RCSA would stop monitoring the
24 diversion. It does not affect the authority of any external body to which
25 the conduct has been diverted.

26 **6.1. Neutral Evaluation**

- 27 1. Neutral Evaluation is a process for assessing a Professional Conduct
28 Grievance in which the evaluator seeks to identify and limit the issues that
29 are in question.

- 1 2. Neutral Evaluation may be conducted at any time by a Code Advisor at the
2 request of RCSA for the benefit of RCSA.
- 3 3. A Member who is involved in a Professional Conduct Grievance may
4 request RCSA to conduct a Neutral Evaluation at the Member's cost. RCSA
5 may accept or decline the request in its sole discretion.
- 6 4. Neutral Evaluation is conducted with regard to the material made available
7 to the Code Advisor.
- 8 5. The evaluation must be in writing. RCSA may choose to share the
9 evaluation with any Member who is involved in the Grievance or with a
10 Professional Conduct Advocate confidentially and to help the Member to
11 understand and accept their commitments to the standard of professional
12 conduct required by the RCSA Code and the responsibilities arising from it.
- 13 6. If a Neutral Evaluation is sought by a Professional Practice Review
14 Committee, it must be shared with any Member whose conduct in relation
15 to the Grievance is the subject of the evaluation.

16 **6.2. Diversion & Monitoring**

- 17 1. Diversion and Monitoring is a pathway that groups several procedures by
18 which RCSA may divert a Grievance into one or more external channels, or
19 into a channel for resolution of RCSA's Professional Conduct interest by a
20 Member's undertaking given to the Board of RCSA.
- 21 2. If a Grievance is diverted as provided by these Guidelines, RCSA may defer
22 making any further intervention pending the outcome of the diversion
23 provided that it monitors the progress of the diversion and remains satisfied
24 that its Member's co-operation with the diversion meets the standard of
25 professional conduct required by the RCSA Code.

26 **NOTE:** The Code provides that RCSA Members deal with their regulators and
27 certification bodies in an open, timely and co-operative manner.

28 **6.2.1. Regulatory Referrals**

- 29 1. A Regulatory Referral is a referral of a Member's professional conduct
30 made by RCSC to a statutory regulator, commission or tribunal, such as the

1 Fair Work Ombudsman (FWO), the Office of the Australian Information
2 Commissioner (OAIC), the Australian Competition & Consumer Commission
3 (ACCC); NZ Commerce Commission, Labour Hire Licensing Authority, or
4 Human Rights Commission. It also includes referral to another authority
5 such as AHRI that may exercise a concurrent jurisdiction in respect of the
6 professional conduct of Members

7 2. Typically, a referral would be made where a grievance involves a workplace
8 right (within the meaning of the *Fair Work Act*, a matter more appropriate
9 to the making of a personal grievance to the Employment Relations
10 Authority (NZ), a competition or consumer law contravention, or a privacy
11 right.

12 3. A Regulatory Referral may only be made if RCSA has established a
13 Memorandum of Understanding or liaison program with the statutory
14 regulator, commission, tribunal or authority and a governance protocol for
15 determining when conduct should be referred.

16 **6.2.2. Complaints Handling Diversion**

17 1. A Complaints Handling Diversion channels a grievance into the Member's
18 internal complaints handling processes and allows the Member to
19 demonstrate its professionalism through its response to the grievance.

20 2. A Member may use an outsourced complaints handling service for reasons
21 of independence and efficiency provided that the service reflects and
22 supports the standard of professional conduct required by the RCSA Code.

23 3. A Complaints Handling Diversion may only be made if RCSA is reasonably
24 satisfied that the Member has access to a competent and effective
25 complaints handling process which substantially involves the Member's
26 senior or other responsible management.

27 **6.2.3. Corrective Action Diversion**

28 1. A Corrective Action Diversion channels a grievance into the Member's
29 corrective action procedures that are established in connection with

1 accreditations or certifications held by the Member - e.g. StaffSure
2 certification.

3 2. A Corrective Action Diversion affords the Member the opportunity to assess
4 the sufficiency of its controls and to take corrective action to address past
5 non-conformances and prevent future non-conformances in order to meet
6 the standard of professional conduct required by the RCSA Code.

7 3. A Corrective Action Diversion may only be made if RCSA is reasonably
8 satisfied that the Member holds an approved certification or accreditation
9 that contains a corrective action procedure which reflects and supports the
10 standard of professional conduct required by the RCSA Code.

11 **6.2.4. Undertakings**

12 1. Undertaking Diversions provide an opportunity for Members to give the
13 Board an undertaking in whole or partial satisfaction of RCSA’s professional
14 conduct interest in conduct giving rise to a Professional Conduct Grievance.

15 2. Subject to the Board’s power to waive their requirements, an Undertaking
16 Diversion may only be made in accordance with protocols or procedures
17 that RCSA develops for the giving and acceptance of undertakings.

18 3. If an undertaking is offered confidentially and without prejudice, the
19 conditions upon which it is offered shall operate, so far as the law allows, to
20 prevent access to, or disclosure of, its terms if is not accepted by the Board.

21 4. The Board may direct that an undertaking which it has accepted be
22 published or notified as it considers appropriate.

23 5. A Member may withdraw or vary an undertaking at any time, but only with
24 the consent of the Board.

25 6. If the Board considers that the Member who gave an undertaking has
26 breached any of its terms, the Board may immediately impose such
27 sanctions (including sanctions by way of a direction that the Member do, or
28 refrain from doing, something, or make a payment) as the Board thinks ft.

29 **6.3. Registry Intervention**

- 1 1. Registry Intervention is a pathway that groups several procedures for
2 dealing with Professional Conduct Grievances through the intervention of
3 RCSA’s Professional Conduct Registrar (*the PCR*).
- 4 2. Typically, Registry Intervention is indicated when the conduct which gave
5 rise to a Professional Conduct Grievance does not warrant RCSA's making a
6 Regulatory Referral, and when the Board or PCR considers that Registry
7 Intervention has reasonable prospects of bringing about a resolution either
8 alone or in conjunction with other Pathways.
- 9 3. The PCR may conduct a Registry Intervention directly or may outsource the
10 conduct of the intervention to approved and appropriately qualified
11 contracted services providers.
- 12 4. Registry Interventions may only be made if indicated by a Neutral
13 Evaluation.

14 **6.3.1. Structured Listening**

- 15 1. Structured Listening is a process that facilitates the exchange of information
16 about a Professional Conduct Grievance between those involved in the
17 grievance. Its purpose is to assist those involved to understand the nature of
18 the grievance and any response made by a person who is involved in it.
- 19 2. In a suitable case, Structured Listening may be useful in addressing the
20 parties' and participants' interests in obtaining emotional due process.
- 21 3. Structured Listening may continue for as long as the PCR considers it to be
22 worthwhile - noting the propensity for unduly protracted processes to delay
23 recourse to other processes of resolution and to entrench parties and
24 participants in positions that may make resolution more difficult to achieve.
- 25 4. If the PCR obtains approval from a Grievant which, in the opinion of the PCR,
26 is sufficient to allow a Structured Listening process to go ahead, the PCR
27 notifies each Member, whose conduct gave rise to the grievance, in writing
28 that a grievance has been raised and in so doing, provides to the Member:
 - 29 a. information about the substance of the Grievance in accordance with
30 the approval given by the Grievant;

- 1 b. an opportunity for prompt action and response.
- 2 5. A Member who has been given notice of a grievance has two weeks in which
3 to provide a substantive response. The PCR may extend the period for a
4 response if reasonably satisfied that it would be worthwhile to do so. The
5 PCR must notify the Grievant of any extension that is granted.
- 6 6. When the PCR receives the response:
- 7 a. If the Grievant and the Member have agreed to resolve the Grievance
8 between themselves:
- 9 i. a timeline for resolution must be agreed with the PCR;
- 10 ii. the PCR is to contact the participants, in writing, to confirm the
11 timeline so agreed;
- 12 iii. the PCR is not required to take any further step by way of
13 Professional Conduct Grievance Intervention other than to
14 confirm with the participants whether their Grievance is
15 proceeding in accordance with the timetable they have
16 established; and
- 17 iv. the participants must advise the PCR of:
- 18 • any change in their timetable;
- 19 • any breakdown in their steps towards resolving the
20 Grievance between themselves; and
- 21 • their having reached any resolution they may have reached.
- 22 b. If the Grievant and the Member have NOT agreed to resolve the
23 Grievance between themselves, the PCR:
- 24 i. seeks approval from the Member for information about the
25 response to be forwarded to the Grievant;
- 26 ii. provides to the Grievant information about the substance of the
27 response in accordance with the approval obtained from the
28 Member;

1 iii. gives the Grievant two weeks in which to provide a reply
2 (including in the case of a Grievant who is a Member, a
3 substantive reply to any counter-Grievance or allegation made
4 by the Member) and notifies the Member accordingly. The PCR
5 may extend the period for a reply if the PCR is reasonably
6 satisfied that it would be worthwhile to do so. The PCR must
7 notify the Member of any extension to the period for a reply
8 that is granted.

9 7. The PCR may facilitate further exchanges of information between the
10 participants, and within such timeframes as the PCR may set, if the PCR
11 considers it would be worthwhile to do so in the interests of resolving the
12 Grievance.

13 8. If at any time during the Structured Listening Process the PCR forms the
14 opinion that it is not practicable to continue the intervention, or that
15 resolution of the Grievance via Structured Listening is unlikely to be reached,
16 the PCR may terminate the process by notice in writing, effective
17 immediately on its being given.

18 9. In terminating the Structured Listening Process, the Ethics Registrar is to
19 inform the participants of any other Grievance Intervention Pathway to
20 which the Grievance has been allocated.

21 **6.3.2. Counselling**

22 1. A Member or Members involved in a Grievance may be directed to
23 participate in a process of counselling, to which end a Professional Conduct
24 Advocate may be appointed at any time by the PCR in consultation with the
25 CEO.

26 2. A Member’s failure to comply with a direction to participate in counselling is
27 reportable to the Board and may result in the Member’s being called upon
28 forthwith to show cause to the Board or to a PCRC in the manner provided
29 in section 6.4.2 (as the Board may determine) why sanctions (typically
30 suspension or a reprimand) or a caution ought not immediately to be
31 imposed.

- 1 3. Counselling is to be conducted as expeditiously as practicable.
- 2 4. Professional Conduct Advocates (if appointed) are to assist the Member or
- 3 Members involved in a Grievance to explore options to them to conform
- 4 their conduct to the standard of professional conduct required by the RCSA
- 5 Code.
- 6 5. A Professional Conduct Advocate may state in writing a non-binding opinion
- 7 to the Member or Members involved in a Grievance regarding the
- 8 requirements of the standard of professional conduct required by the RCSA
- 9 Code. A copy of any opinion so stated must be provided to the PCR.

10 **6.3.2.1 Professional Conduct Recommendations**

- 11 1. The PCA may make a Professional Conduct Recommendation to a
- 12 Member or Members involved in a Grievance, which the PCA considers
- 13 becoming of the Member and not prejudicial to the interests of RCSA.
- 14 2. A Professional Conduct Recommendation may be submitted by the PCA
- 15 to the PCRC for endorsement, together with such information gathered
- 16 in the course of counselling as may assist the PCRC to decide whether it
- 17 will endorse the recommendation.
- 18 3. The PCRC may authorise for release to the parties and participants in a
- 19 Grievance Intervention, on such terms as to confidentiality or otherwise
- 20 as the Board may think fit, any Professional Conduct Recommendation
- 21 endorsed by the PCRC.
- 22 4. The Board may revoke or vary a Professional Conduct Recommendation
- 23 or its endorsement on such terms as it thinks fit.
- 24 5. A Professional Conduct Recommendation endorsed by the PCRC (and
- 25 any variation or revocation by the Board) is to be notified promptly to all
- 26 participants in a Grievance, who are affected by it.
- 27 6. If a Member fails to comply with a Professional Conduct
- 28 Recommendation, the Member may be called upon forthwith to show
- 29 cause to the Board or to a PCRC in the manner provided in section 6.4.2
- 30 (as the Board may determine) why sanctions (typically suspension or a

1 reprimand) or a caution ought not immediately be imposed for its failure
2 to comply.

3 **6.3.2.2 Conflict Coaching**

- 4 1. Conflict Management Coaching is a process in which a trained coach
5 supports and helps an individual to deal with specific conflict situations
6 and to become competent in managing disputes. It is voluntary and
7 confidential enabling people to gain insight in examining their own
8 contribution to conflict and the choices available to them. It can be used
9 to prepare people to engage more effectively in negotiation, mediation
10 and relational conflict

11 Source: (Resolution Institute, 2018) [https://www.resolution.institute/training/cinergy-](https://www.resolution.institute/training/cinergy-conflict-coaching-4-day)
12 [conflict-coaching-4-day](https://www.resolution.institute/training/cinergy-conflict-coaching-4-day) accessed 6 Nov 2018.

- 13 2. RCSA may recommend, but may not direct, that a Member engage in a
14 process of Conflict Management Coaching.

15 **6.3.3. Mediation**

16 **See Also:** [Discretion to Intervene \(Deferral for Mediation\)](#)

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

24 Source: (Resolution Institute, 2018) [https://www.resolution.institute/dispute-](https://www.resolution.institute/dispute-resolution/mediation)
25 [resolution/mediation](https://www.resolution.institute/dispute-resolution/mediation) accessed 6 Nov 2018

- 26 2. Typically, mediation is indicated when a Grievance involves a civil dispute,
27 the early resolution of which would be consistent with the Code standard
28 of Conduct.

29 **NOTE:** The Code states:

30 *RCSA Members co-operate in the handling of grievances and disputes - using*
31 *processes of counselling (as may be directed in accordance with the PC&GIG),*

1 *negotiation, expert appraisal, mediation and arbitration in order to resolve*
2 *disputes and must endeavour to do so wherever practicable.*

3 3. RCSA may direct a Member to participate in mediation but may not direct a
4 non-Member to participate. Consequently, mediation would not be
5 indicated if a non-Member were unwilling to participate.

6 4. RCSA may direct that a Member pay part or all the cost of mediation.

7 5. A Member’s failure to comply with a direction to participate in mediation is
8 reportable to the Board and may result in the Member being called upon
9 forthwith to show cause to the Board or to a PCRC in the manner provided
10 in section 6.4.2 (as the Board may determine) why sanctions (typically
11 suspension or a reprimand) or a caution ought not to be imposed.

12 **6.4. Investigations**

13 Investigations are conducted by the Professional Conduct Review Committee (*the*
14 *PCRC*) on referral from the Professional Conduct Registrar at the direction of either
15 the Board or the CEO.

16 **6.4.1. Referral for Investigation**

- 17 1. When a Member’s conduct is to be referred to the PCRC for investigation:
- 18 a. the CEO will provide the Member, whose conduct is referred for
19 investigation, with a general description of the conduct to be
20 investigated and a summary of the reasons why it has been referred;
- 21 b. the PCR will:
- 22 • collate all directly relevant material including any Neutral
23 Evaluation that has been obtained in connection with any
24 Grievance arising from the Member's conduct and provide it to
25 the PCRC;
 - 26 • convene a PCRC; and
 - 27 • provide such administrative support to the PCRC as it may
28 reasonably require.

- 1 2. Upon receiving a Professional Conduct Referral, the PCRC is to schedule an
2 investigative interview with the Member whose conduct is the subject of the
3 referral and with any other person from whom the PCRC wishes to seek
4 information about the referred conduct.
- 5 3. A Professional Conduct Investigation concludes when the PCRC delivers its
6 report and findings.

7 **6.4.2. Summary Show Cause**

- 8 1. The PCRC may require the CEO or PCR to serve a notice in writing to any
9 Member, whose conduct is the subject of the referral, requiring the Member
10 to show cause either in writing or at an investigative interview held by the
11 PCRC why:
 - 12 a. a caution should not be recorded against the Member; or
 - 13 b. the Member should not be suspended
14 pending the conduct of the intervention.
- 15 2. If the PCRC is satisfied that the Member has shown good cause, why a
16 caution should not be recorded:
 - 17 a. the PCRC must terminate its investigation of any part of the conduct
18 in respect of which good cause has been shown;
 - 19 b. the Professional Conduct Grievance Intervention to the extent that
20 good cause has been shown, is to be either discontinued or allocated
21 to an alternative pathway under these Guidelines; and
 - 22 c. any caution that has already been noted with regard to the conduct in
23 respect of which good cause has been shown is to be removed from
24 the Register.

25 **6.4.3. Directions**

- 26 1. A Professional Conduct Investigation must proceed in accordance with any
27 directions the PCRC considers appropriate including directions:
 - 28 a. for the participation or representation of any person;

- 1 b. to preserve the anonymity of any natural person;
 - 2 c. to clarify any issue in dispute;
 - 3 d. to require the provision of information or documents;
 - 4 e. for the giving or obtaining of any evidence - including by investigative
 - 5 hearing;
 - 6 f. for the making of written submissions to ensure the validity of facts
 - 7 and to clarify information for the PCRC;
 - 8 g. to preserve the confidentiality of any information communicated in
 - 9 the course of the matter;
 - 10 h. for mediation;
 - 11 i. for expedited determination, including determination on the basis of
 - 12 written submissions;
 - 13 j. otherwise for the conduct of the investigation.
- 14 2. Directions may be made by a single member of a PCRC sitting alone.
 - 15 3. Any failure on the part of a Member to comply with directions given under
 - 16 these Guidelines may be referred to the Board, whereupon the Member
 - 17 may be called upon forthwith to show cause to the Board or to a PCRC in the
 - 18 manner provided in section 6.4.2 (as the Board may determine) why
 - 19 sanctions should not be imposed under clause 2.8 of the Constitution.

20 **6.4.4. Investigation Report**

- 21 1. The PCRC, upon completion of its investigation, is to provide a written
- 22 report (***an Investigation Report***) setting out:
 - 23 a. its determination (if any) on the question of whether the conduct
 - 24 referred to it for investigation meets the standard of professional
 - 25 conduct required by the RCSA Code;
 - 26 b. its reasons including its findings of material fact on the basis of which
 - 27 its determination is based.
- 28 2. The Investigation Report may include a recommendation:

- 1 a. for the imposition of sanctions of the type described at clause 2.8 (c)
2 of the Constitution;
- 3 b. a recommendation that the Board direct a Member to do or refrain
4 from doing an act or make a payment as may be considered just in the
5 circumstances and becoming of the Member or otherwise in the
6 interests of the RCSA.
- 7 3. The Professional Conduct Registrar is to forward a copy of the Investigation
8 Report to:
- 9 a. the Member, whose conduct is the subject of the investigation -
10 stating that the Investigation Report has been forwarded to the Board
11 for its consideration under these Guidelines;
- 12 b. the CEO; and
- 13 c. any participant directed by the PCRC to receive a copy of its
14 Investigation Report – subject to such conditions of confidentiality as
15 the PCRC may impose.
- 16 4. The CEO, upon receipt of the Investigation Report, is to notify the Board of
17 any recommendation made by the PCRC and forward a copy of the report to
18 the Board.

19 **6.4.5. Resolution and Enforcement**

- 20 1. The Board may by resolution:
- 21 a. adopt the findings and recommendations of the PCRC;
- 22 b. adopt the findings of the PCRC, but make a different order for the
23 imposition of sanctions or that a Member do or refrain from doing an
24 act or make a payment as may be considered just in the
25 circumstances; becoming of the Member or otherwise in the interests
26 of the RCSA; and consistent with the findings of the PCRC.
- 27 c. decline to adopt the findings and recommendations of the PCRC
28 because:

- 1 i. the PCRC’s investigation was not conducted as required by these
2 Guidelines;
- 3 ii. the findings were induced or affected by fraud or bad faith; or
4 iii. the findings were otherwise contrary to law.
- 5 2. If the Board resolves to impose sanctions or to direct that a Member do or
6 refrain from doing anything or make any payment, the CEO must, within 14
7 days after the resolution is made, cause written notice to be given to the
8 Member of:
- 9 • the resolution,
10 • the reasons given or adopted by the Board for having made that
11 resolution; and
12 • the Member’s right of appeal under these Guidelines.
- 13 3. The Board’s resolution does not take effect;
- 14 a. until the expiration of the period within which the Member is entitled
15 to appeal, or
16 b. if, within the period in which the Member is entitled to appeal, the
17 Member exercises the right of appeal, unless and until the Board
18 makes a resolution under subsection 6.4.7, whichever is the later.
- 19 4. If a Member fails to comply with a resolution of the Board that;
- 20 a. adopts a recommendation of the PCRC; or
21 b. adopts the findings of the PCRC, or an Arbitrator, but makes a
22 different order for the imposition of sanctions, or a direction that a
23 Member do or refrain from doing an act or make a payment
24 and has not instituted any appeal as provided for in these Guidelines, the
25 Member may immediately be called upon to show cause to the Board why
26 the Member should not be liable to censure, suspension or expulsion under
27 clause 2.8 of the Constitution upon evidence of such failure being presented
28 to the Board.

1 **6.4.6. Appeal**

2 A Member who wishes to dispute the resolution of the Board in respect of the
3 determination of a Complaint, other than a resolution that adopts the Award of
4 an Arbitrator or that gives effect to the order of a court of competent
5 jurisdiction, may appeal by giving to the CEO, within 14 days of being notified of
6 the resolution, written notice requiring the dispute to be referred to arbitration
7 under clause 15 of the Constitution and these Guidelines.

8 **6.4.7. Arbitration**

- 9 1. Arbitration under these Guidelines is to be conducted in accordance with:
- 10 a. the laws governing the conduct of commercial arbitrations in the
11 Country, State or Territory in which the conduct giving rise to the
12 Complaint occurred;
- 13 b. these Procedures; and
- 14 c. such rules as may be determined by agreement between parties and,
15 failing agreement, by the President for the time being of the Institute
16 of Arbitrators and Mediators Australia.
- 17 2. Arbitration of a dispute under these Guidelines proceeds as an investigative
18 re-hearing of the Grievance from the beginning.
- 19 3. An arbitrator may join, as a party to the arbitration, any Member who ought
20 to have been joined as a party or whose presence may be necessary to
21 determine and settle all questions involved in the proceeding.
- 22 4. An Arbitrator’s findings of fact are to be binding on the parties for the
23 purposes of these Guidelines.
- 24 5. An Arbitrator may not recommend or impose sanctions or make any award
25 in the nature of sanctions. For the avoidance of doubt, an award of costs is
26 not taken to be an award in the nature of sanctions.
- 27 6. The Board may, by resolution, adopt the findings made by an Arbitrator and
28 impose sanctions of the type described at clause 2.8(c) of the Constitution or
29 may impose any other sanctions it thinks fit.

1 7. The Board must decline to pass a resolution under the preceding paragraph
2 pending the outcome of any proceedings taken before a court of competent
3 jurisdiction for review of the Arbitrator's award.

4 **6.4.8. Publication**

5 The Board may direct the publication of such details of investigations and
6 sanctions imposed on a Member as it thinks reasonably necessary or desirable to
7 achieve the objects set out in the Constitution - including the fact that a person
8 whose conduct is the subject of the investigation is or was a Member of RCSA.

9

10

ends



Disciplinary & Dispute Resolution Procedures

1. About these Procedures

1.1. Procedures for the RCSA Ethics Committee

- 1.1.1. These Procedures have been developed by the Board to assist the RCSA's Ethics Committee in the handling of Complaints, which might arise from time to time under RCSA's Code for Professional Conduct ('the Code').
- 1.1.2. Where these Procedures are silent on any issue, reference may be made to AS ISO 10002-2006: Customer Satisfaction – Guidelines for Complaints Handling in Organizations for guidance.

1.2. Members Are Liable to Discipline

- 1.2.1. Clause 2.8 of RCSA's Constitution stipulates that Members are liable to discipline in accordance with RCSA's Disciplinary and Dispute Resolution Procedures.
- 1.2.2. Clause 2.8 of RCSA's Constitution stipulates that Board may censure, suspend or expel a Member from the RCSA following the guidelines and processes stipulated in RCSA's:
 - 1. Code for Professional Conduct;
 - 2. Disciplinary and Dispute Resolution Procedures; or
 - 3. Constitution.
- 1.2.3. Whilst RCSA can discipline its Members, it cannot discipline non-members. It can pass resolutions that find in a Member's favour as provided in these Procedures. If a non-member is aggrieved by such a resolution, it can take such civil action as it may wish or it can appeal as may be provided by these Procedures. If a non-member is a party to arbitration, the arbitrator's award will bind the non-member in accordance with the law governing the arbitration and the rules of the arbitration. If a non-member participates in mediation, the outcome (if an agreement is reached) is binding upon the non-member in accordance with the law applicable to agreements reached in mediation.

1.3. RCSA's Code for Professional Conduct

- 1.3.1. RCSA has developed a Code for the Professional Conduct of its Members ("the Code"). The Code can be found on the RCSA's website. [The Code has been authorized by the ACCC].
- 1.3.2. The Code is divided into a number of sections which set out General Principles and eight specific principles:
 - 1. Confidentiality and Privacy;
 - 2. Honest Representation;
 - 3. Work Relationships;
 - 4. Legal Compliance;
 - 5. Safety & Security;
 - 6. Certainty of Engagement;
 - 7. Professional Knowledge;
 - 8. Good Order.
- 1.3.3. The Code also contains within its schedules, relevant application guidelines, recommendations, references to RCSA's Service Delivery Standards and explanatory notes.
- 1.3.4. The Code also allows for RCSA to issue Industry Improvement Statements and Conduct Recommendations which inform standards of Member conduct and to which regard may be had by RCSA when interpreting the requirements of the Code and in determining whether conduct of a Member is unbecoming of a Member or prejudicial to the interests of RCSA.

1.4. RCSA's Disciplinary and Dispute Resolution Procedure

1.4.1. RCSA has developed Disciplinary and Dispute Resolution Procedures to support the Constitution and the Code.

1.4.2. The Disciplinary and Dispute Resolution Procedures are contained within this document.

1.5. Revocation of Previous Procedures and Guidelines

These Procedures supersede any previous Disciplinary and Dispute Resolution Procedure that dealt with anything dealt within these Procedures and the same are hereby expressed to be revoked.

2. Definitions

Arbitrator – means an arbitrator appointed under these Procedures;

Board – means the Board of Directors of RCSA and includes, where the context permits, any Committee or person to whom the Board has delegated any of its powers or functions;

CEO – means the Chief Executive Officer of RCSA or a person performing the duties of the CEO under due delegation;

Code – means the Code for Professional Conduct established by RCSA and authorized by the ACCC;

Complainant – means a person who makes a Complaint or who notifies a Grievance under these procedures;

Complaint – means a Grievance that has been referred to RCSA's Ethics Committee as a complaint under these Procedures;

Constitution – means the constitution of RCSA;

Corporate Membership Category of Service – means any category of service recognized by the Board of RCSA as being of a type characteristically provided by a Corporate Member and includes an On-Hired Employee Service, a Contracting Service, a Contractor Management Service, a Recruitment Service, and a Workforce Consulting Service as defined in the RCSA Corporate Membership Categories of Service as at date of authorisation of the Code; but does not include a migration service of a type which by law in Australia or New Zealand may only be provided by a registered migration agent;

D&DRP or these Procedures – means the Disciplinary and Dispute Resolution Procedures set out in these Procedures;

Employment Service – means any category of service recognized by RCSA as a Corporate Membership Category of Service;

Ethics Registrar – means the person appointed by the CEO to perform the functions of the Ethics Registrar as described in the D&DRP;

Grievance – means an expression of dissatisfaction with a Member regarding that Member's conduct that is made under these Procedures;

Matter – means a Complaint or Grievance;

Member – means a person who holds any category of Membership of RCSA that is recognised under RCSA's Constitution and who has signed, or is required by the Board of RCSA to sign, a statement of Commitment; and includes a Professional Member and an applicant for membership;

PPC – means the Professional Practice Council established by the Board to perform functions that may be described in the D&DRP or its terms of reference;

Professional Practice – means practice connected with or in the course of providing an Employment Service;

RCSA's EC – means RCSA's Ethics Committee established under the Constitution;

Rule - a reference to a Rule or sub-Rule is a reference to a Rule of Sub-Rule of these Procedures;

Statement of Commitment – means a statement to abide by the Code and the D&DRP, which statement may be in the form approved by the Board of RCSA from time to time.

3. Responsibility of Bodies

3.1. What the Board Does

- 3.1.1. The Board has overriding responsibility for the management and control of RCSA;
- 3.1.2. The Board authorizes Guidelines for Members;
- 3.1.3. The Board develops and maintains a Code for Professional Conduct for its Members;
- 3.1.4. The Board may issue Industry Improvement Statements and make or endorse Conduct Recommendations that which inform standards of Member conduct and to which regard may be had by RCSA when interpreting the requirements of the Code and in determining whether conduct of a Member is unbecoming of a Member or prejudicial to the interests of RCSA.
- 3.1.5. The Board appoints a panel of persons from whose Members RCSA's EC may be formed from time to time, comprising:
 - 1. at least 1 Director, who may be appointed Panel Chairperson; and
 - 2. such other Members of the RCSA as the Board thinks fit including, wherever practicable, a Life Member of RCSA.
- 3.1.6. The Board appoints a panel of persons from amongst whom Councilors may be appointed from time to time in accordance with these Procedures.
- 3.1.7. The Board delegates such of its powers to RCSA's EC as may be necessary for its proper functioning;
- 3.1.8. The Board may appoint a qualified person to act as counsel to assist RCSA's EC;
- 3.1.9. The Board may resolve to censure, suspend or expel a Member or impose other sanctions as it thinks fit;
- 3.1.10. The Board may approve RCSA's initiating and prosecuting before the RCSA's EC a complaint against a Member;
- 3.1.11. The Board may resolve to adopt and enforce a recommendation of the RCSA's EC or an Arbitrator or may decline to adopt and enforce such a recommendation as provided in these Procedures;
- 3.1.12. The Board may refer an unresolved difference about a Complaint to arbitration;

3.2. What the EC Does

- 3.2.1. RCSA's EC receives Complaints from the Ethics Registrar and CEO and decides whether it will accept each Complaint for investigation, hearing and determination;
- 3.2.2. RCSA's EC directs the investigation of and hears Complaints;
- 3.2.3. RCSA's EC, at the request of the Board, makes test case determinations and develops advisory standards and Industry Improvement Statements to deal with systematic and recurring problems and with novel matters of national or international interest to RCSA Members;
- 3.2.4. RCSA's EC, following the conclusion of a hearing, makes findings and may make a recommendation to the Board supported by reasons;
- 3.2.5. RCSA's EC provides a report of its findings and recommendation to the Board.

3.3. What the CEO Does

- 3.3.1. The CEO obtains the commitment of Members to abide by the Code and to support the mission of the RCSA;
- 3.3.2. The CEO ensures that the RCSA's EC is resourced to handle Complaints;
- 3.3.3. The CEO ensures that there are sufficient training and support opportunities to assist Members to meet their obligations under the Code and these Procedures provided that this will not require the RCSA to provide legal or other professional assistance or the cost thereof to any party to a Complaint or Grievance;
- 3.3.4. The CEO ensures that RCSA's Code and D&DRP are well publicized and that information about the right to make a Complaint or notify a Grievance is readily available;

- 3.3.5. The CEO, with assistance from the Ethics Registrar, co-ordinates the publication of proceedings of the RCSA's EC and the Board;
- 3.3.6. The CEO ensures that assistance is available for Complainants in the formulation and lodgment of Complaints or Grievances and that summaries of decisions of RCSA's EC are available to Complainants and Members;
- 3.3.7. The CEO establishes systems for receiving Complaints and Grievances and forwarding them to appropriate bodies, and ensures that notifications are issued as required by these Procedures;
- 3.3.8. The CEO ensures that arrangements are in place to enable Members and Complainants to obtain preliminary non-binding rulings on matters that might arise under the Code;
- 3.3.9. The CEO monitors the Complaints and Grievance handling process to ensure that Complaints and Grievances are dealt with in a timely manner and courteously;
- 3.3.10. The CEO ensures that there is appropriate systematic recording of Complaints and Grievances and their outcomes and that such data is published each year in the annual report of RCSA;
- 3.3.11. The CEO ensures that the Code and D&DRP are reviewed regularly to ensure that they are efficiently delivering effective outcomes.

3.4. What the Arbitrator Does

- 3.4.1. An Arbitrator may arbitrate:
 - 1. a declined matter
 - 2. a matter that has miscarried as set out in sub-Rules 14.1.3.1 to 14.1.3.3;
 - 3. a matter on appeal.
- 3.4.2. An Arbitrator makes an award which may contain a recommendation to the Board.
- 3.4.3. An Arbitrator may recommend, but not impose sanctions or make any award in the nature of sanctions except with the agreement of the parties to the arbitration.

3.5. What the Court Does

A court of competent jurisdiction may review an Arbitrator's award.

3.6. What the Ethics Registrar Does

- 3.6.1. The Ethics Registrar assists Members and Complainants with inquiries concerning the Code and the D&DRP;
- 3.6.2. The Ethics Registrar facilitates the resolution of Grievances through the Intervention Process described in the D&DRP;
- 3.6.3. The Ethics Registrar assists in the handling of Matters as set out in the D&DRP and may be required to undertake the investigation of Complaints at the direction of RCSA's EC;
- 3.6.4. The Ethics Registrar collects data on Complaints and Grievances and their outcomes.
- 3.6.5. The Ethics Registrar co-ordinates the availability of Panelists to participate on Ethics Committees and schedules hearing dates.

3.7. What the PPC Does

- 3.7.1. The PPC reviews the Code, D&DRP, determinations and non-binding rulings made thereunder and makes recommendations to the Board for their further development.
- 3.7.2. The PPC provides advice on the content of Industry Improvement Statements.

4. Grievance Intervention Process

- 4.1. Any person may notify a Grievance by providing sufficient details of it in writing to the Ethics Registrar.
- 4.2. Upon notification of a Grievance the Ethics Registrar:
 - 4.2.1. Checks that the Member Company/person against whom the Grievance is raised ("the Respondent") is a Member;
 - 4.2.2. Will record and acknowledge the time and date of receipt as well as brief details sufficient to describe the nature of the Grievance;
 - 4.2.3. Before taking further steps, may require the Complainant to raise the Grievance in writing directly with the Respondent and allow up to 30 days for a response.
 - 4.2.4. Request from the Complainant an email or letter with supporting documentation outlining the Grievance raised with the names of the parties involved, date and the Country, State or Territory where the Grievance arose;
 - 4.2.5. Seeks approval from the Complainant for information about the Grievance to be forwarded to the Respondent.
- 4.3. If the Ethics Registrar obtains an approval from the Complainant which in the opinion of the Ethics Registrar is sufficient to allow the Grievance Intervention to proceed, the Ethics Registrar:
 - 4.3.1. Notifies the Respondent, by email in the first instance and then by letter, that a Grievance has been raised and in so doing, provides to the Respondent:
 1. information about the substance of the Grievance in accordance with the approval from the Complainant;
 2. an opportunity for immediate action/response;
 3. a copy of Rule 4 of the D&DRP and a copy of the Code.
- 4.4. The Respondent is given ten business days in which to provide a substantive response. The Ethics Registrar may extend the period for a response if the Ethics Registrar is reasonably satisfied that it would be fair to do so. The Ethics Registrar must notify the Complainant if any extension of the period for the response that is granted.
- 4.5. If the Respondent fails to provide a substantive response within the ten day timeframe, or any extension of it allowed by the Ethics Registrar under sub-Rule 4.4, the Respondent's failure to respond may be referred to the Board and the Respondent may forthwith be called upon to show cause why sanctions ought not be imposed under clause 2.8 of the Constitution.
- 4.6. When the Ethics Registrar receives the response:
 - 4.6.1. If the Complainant and the Respondent have agreed to resolve the Grievance between themselves:
 1. a timeline for resolution must be agreed with the Ethics Registrar;
 2. the RCSA will contact the participants, in writing, to confirm the timeline so agreed;
 3. the Ethics Registrar is not required to take any further step by way of Grievance Intervention other than to confirm with the participants whether their Grievance is proceeding in accordance with the timetable they have established; and
 4. the participants are required to advise the RCSA Ethics Registrar of any change in their timetable; any breakdown in their steps towards resolving the Grievance between themselves; and of their having reached any resolution they may have reached.

- 4.6.2.** If the Complainant and the Respondent have NOT agreed to resolve the Grievance between themselves, the Ethics Registrar:
1. seeks approval from the Respondent for information about the response to be forwarded to the Complainant;
 2. provides to the Complainant information about the substance of the response in accordance with the approval obtained from the Respondent;
 3. gives the Complainant ten business days in which to provide a reply (including in the case of a Complainant who is a Member, a substantive reply to any counter Grievance or allegation made by the Respondent) and notifies the Respondent accordingly. The Ethics Registrar may extend the period for a reply if the Ethics Registrar is reasonably satisfied that it would be fair to do so. The Ethics Registrar must notify the Respondent of any extension to the period for a reply that is granted.
- 4.7.** If the Complainant fails to provide a reply as required within the ten day timeframe, or any extension of it allowed by the Ethics Registrar under sub-Rule 4.6 above, the Ethics Registrar may terminate the Grievance Intervention. If the Complainant is a Member, its failure to reply may be referred to the Board and the Complainant may forthwith be called upon to show cause why sanctions ought not be imposed under clause 2.8 of the Constitution.
- 4.8.** The Ethics Registrar may facilitate such further exchanges of information between the Complainant and the Respondent consistently with the Grievance Intervention Procedures outlined above as the Ethics Registrar considers would be of assistance in resolving the Grievance.
- 4.9.** If at any time during the Grievance Intervention Process the Ethics Registrar forms the opinion that it is not practicable to continue the intervention, or that resolution of the Grievance via the Intervention Process is unlikely to be reached, the Ethics Registrar may terminate the Intervention by notice in writing to be effective immediately on its being given.
- 4.10.** In terminating the Grievance Process the Ethics Registrar is to;
- 4.10.1.** inform the participants in the Grievance of any direction for counselling made under Rule 5;
 - 4.10.2.** inform the participants in the Grievance of the ability to make a formal Complaint under Rule 6;
 - 4.10.3.** Provide the participants in the Grievance with a copy of the Code and the D&DRP.
- 4.11.** Once an Intervention is terminated, all Grievances (including any counter Grievance) subject to the Intervention that are not escalated by making of a Formal Complaint under Rule 6 or directed for counselling under Rule 5 are deemed to have lapsed.

5. Counselling & Conduct Recommendations

- 5.1. A Member or Members involved in a Grievance may be directed to participate in a process of counselling and a Counsellor may be appointed as follows:
 - 5.1.1. By the Ethics Registrar upon terminating a Grievance;
 - 5.1.2. by an RCSA EC once seized of the referral of a Complaint; and
 - 5.1.3. by the Board at any time.
- 5.2. A Member's failure to comply with a direction to participate in counselling is reportable to the Board and may result in the Member's being called upon to show cause why sanctions ought not immediately be imposed.
- 5.3. Counselling is to be conducted as expeditiously as practicable.
- 5.4. The Counsellor is to assist the Member or Members involved in a Grievance to explore options that will enable them to conform their conduct to the standard becoming of a Member and not prejudicial to RCSA's interests. The Counsellor may have regard to any Service Delivery Standard and any Industry Improvement Statement issued by RCSA.
- 5.5. The Counsellor may state a non-binding opinion to the Member or Members involved in a Grievance regarding the operation of the Code.
- 5.6. The Counsellor may make a Conduct Recommendation to a Member or Members involved in a Grievance, which the Counsellor considers, by reference to Code, to be becoming of the Member and not prejudicial to the interests of RCSA.
- 5.7. A Conduct Recommendation may be submitted by the Counsellor to the Board for endorsement, together with such information gathered in the course of counselling as may assist the Board in deciding whether it will endorse the Conduct Recommendation.
- 5.8. The Board may authorise for release to the parties and participants in a Matter, on such terms as to confidentiality or otherwise as the Board may think fit, and Conduct Recommendation endorsed by the Board.
- 5.9. The Board may revoke or change a Conduct Recommendation or its endorsement on such terms as it thinks fit.
- 5.10. A Conduct Recommendation (and any change) made by or endorsed by Board is to be notified promptly to all participants in a Grievance, who are affected by it.
- 5.11. If a Member fails to comply with a Conduct Recommendation, the Member may be called upon forthwith to show cause to the Board or to an RCSA EC (as the Board may determine) why the Member should not be sanctioned for its failure to comply.

6. Making a Complaint

- 6.1. Upon the making and acknowledgment of a Complaint, the D&DRP, in so far as it may provide for the arbitration of any dispute or difference by an Arbitrator, operates as a commercial arbitration agreement binding the Complainant, the Respondent, and the RCSA to the extent to which they may be party to that dispute or difference.
- 6.2. A person may make a Complaint in the form authorized by the Board from time to time and by providing information and evidence in support of it.
- 6.3. Complaints are to be in writing addressed and mailed to;
The Chief Executive Officer
RCSA
PO Box 18028
Collins Street East
VIC 3000
Or emailed to; ethics@rdsa.com.au
- 6.4. Upon receipt of a Complaint the Ethics Registrar will record and acknowledge the time and date of receipt as well as brief details sufficient to describe the nature of the Complaint.

7. Referral

- 7.1. The Ethics Registrar will collate all information and evidence provided by the Complainant and Respondent into an RCSA Ethics Intervention Report and forward this report to RCSA's EC. If a participant on the EC has a Conflict of Interest, that participant must declare the Conflict prior to hearing an Ethics matter.
- 7.2. Upon receipt of the RCSA Ethics Intervention report the RCSA's EC will promptly determine whether:
 - 7.2.1. to accept it (or any part of it) for investigation, hearing and/or determination as either:
 1. a complaint about conduct alleged to be unbecoming of a Member ; or
 2. a complaint about conduct alleged to be prejudicial to the interests of RCSA; or
 - 7.2.2. to decline or defer it (or any part of it) pursuant to Rule 11.
- 7.3. If RCSA's EC accepts it (or any part of it) for investigation, hearing and/or determination it will formulate the complaint with reference to the Constitution and the Code.
- 7.4. Acceptance of a Complaint for investigation, hearing and/or determination does not imply, by that fact alone, that any Member has fallen short of the standard of professional conduct and practice required by the Code.

8. Notice and Directions

- 8.1. Once RCSA's EC receives a Complaint it will advise the CEO whether it has accepted or declined it and the CEO will inform the complainant accordingly.
- 8.2. When the RCSA's EC accepts any Complaint the Ethics Registrar will write, within 21 days of acceptance, to such Members as it thinks are necessary for the just determination or resolution of any issue raised before it and state any directions required to be complied with to enable it to dispose of the Complaint.
- 8.3. A Complaint accepted for investigation hearing and determination, other than a Complaint that a Member has engaged in conduct that is prejudicial to the interests of RCSA, must proceed in accordance with directions given for its expedited determination.
- 8.4. Without limiting the generality of sub-Rule 8.2, directions made by RCSA's EC, may include directions thought appropriate:
 - 8.4.1. for the participation or representation of any person;
 - 8.4.2. to preserve the anonymity of any natural person;
 - 8.4.3. to clarify any issue in dispute;
 - 8.4.4. to require the provision of information or documents;
 - 8.4.5. for the giving or obtaining of any evidence;
 - 8.4.6. for the making of written submissions to ensure the validity of facts and to clarify information for the RCSA's EC;
 - 8.4.7. to preserve the confidentiality of any information communicated in the course of the matter;
 - 8.4.8. for mediation;
 - 8.4.9. for arbitration of any difference on a question of fact or law arising in the course of the matter;
 - 8.4.10. for expedited determination, including determination on the basis of written submissions;
 - 8.4.11. otherwise for the conduct of the investigation, hearing or determination.
- 8.5. Directions may be made by a single member of an Ethics Panel sitting alone.
- 8.6. Any failure on the part of a Member to comply with directions given under this Rule 8 may be referred to the Board, whereupon the Member may be called upon forthwith to show cause why sanctions should not be imposed under clause 2.8 of the Constitution.

9. Proceedings Generally

- 9.1. A disciplinary investigation and hearing conducted by RCSA's EC is a proceeding conducted by RCSA in respect of the professional conduct and practice of its Members. A Complainant is not a party to such a proceeding; but may participate with permission of and in accordance with directions given by RCSA's EC.
- 9.2. A participant, who is not a Member and who fails to comply with a direction of RCSA's EC may be denied any further entitlement to participate.
- 9.3. Proceedings conducted by RCSA's EC shall be based upon parties' and participants' interests in:
 - 9.3.1. securing a lawful outcome;
 - 9.3.2. being heard – including being heard with respect to the relevance of any Industry Improvement Statement, Service Delivery Standard or Conduct Recommendation that EC proposes to consider;
 - 9.3.3. knowing whether the Code has been observed;
 - 9.3.4. providing and requesting (subject to any lawful right of exclusion) all relevant material to support or respond to the Complaint;
 - 9.3.5. being informed of the criteria and processes for determining the matter, including avenues for further review;

- 9.3.6. being sufficiently informed of the response of any party against whom allegations or cross allegations are made;
 - 9.3.7. being informed of the outcome and reasons for that outcome;
 - 9.3.8. having the matter heard and determined independently so far as practicable;
 - 9.3.9. maintaining the confidentiality of any confidential information consistently with the purpose for which information that is obtained may be used or disclosed extending to the purpose of maintaining records for use and disclosure in assessing suitability for future membership;
 - 9.3.10. maintaining privacy so far as is practicable in accordance with applicable privacy laws and subject to maintaining the visibility and remedial objectives of publishing the names and contraventions of persons who are found to have contravened the Code and maintaining records of contraventions for use and disclosure in assessing suitability for future membership;
 - 9.3.11. having the matter disposed of with as little cost, formality and delay as may be consistent with the requirements of fairness, the general intent of which should be that matters should be heard without legal representation, where possible and the parties involved participate directly with the EC;
- 9.4. Abandoned Complaints may be finalised using whatever information and material is available to RCSA's EC.
- 9.5. Except as may be permitted by express directions given by the EC, Parties and Participants to a Complaint must not attempt privately to approach or influence the Chairperson, or any member, of the EC or Panel with regard the Complaint at any time.

10. Undertaking in satisfaction or partial satisfaction of a Matter in respect of which a Complaint may be made

- 10.1. A Member, at any time before a Complaint has been determined by the Ethics Committee, may tender, confidentially and without prejudice subject to sub-Rule 10.3, to the Board a written undertaking in whole or partial satisfaction of the Matter in respect of which the Complaint has been or may be made ("the Matter").
- 10.2. The Board may accept the undertaking in satisfaction of the Matter or such part thereof as the Board may determine.
- 10.3. The CEO will advise the Respondent, the Complainant and any person who has been granted leave to participate in the Complaint of the acceptance of any undertaking sub-Rule 10.2.
- 10.4. If a written undertaking has been tendered confidentially and without prejudice to the Board, the conditions upon which it is tendered shall operate, so far as the law allows, to prevent access to, or disclosure of, the terms and extent of any written undertaking that has been rejected by the Board except insofar as the same may be implied from notification given under sub-Rule 10.3
- 10.5. The Member may withdraw or vary the written undertaking at any time, but only with the consent of the Board.
- 10.6. If the Board considers that the Member who gave the written undertaking has breached any of its terms, the Board may immediately impose such sanctions (including sanctions by way of a direction that the Member do, or refrain from doing, something, or make a payment) as the Board thinks fit.
- 10.7. A decision of the Board:
- 10.7.1. to accept, or not to accept, a written undertaking tendered in accordance with this provision;
 - 10.7.2. to consent or not to consent to the withdrawal or variation written undertaking accepted by the board in accordance with this provision is subject to the provisions providing for arbitration in the Constitution and in sub-Rules 16.2; 16.5 and 16.6. The arbitrator's award will be binding on the parties.
- 10.8. A decision of the Board to impose sanctions under sub-Rule 10.6 is subject to the provisions providing for arbitration in the Constitution and in Rules 16.2; 16.5; 16.6 and 16.7.

11. Declined and Deferred Complaints

- 11.1. RCSA's EC may decline a Complaint for investigation, hearing or determination (or the continuation thereof) at any time for reasons including:
- 11.1.1. that it is, or has become, frivolous or vexatious;
 - 11.1.2. that it discloses no issue of substance regarding the Respondent's Professional Conduct or Practice;
 - 11.1.3. that procedures or resources available to RCSA's EC as a domestic tribunal of a voluntary body are not suitable for investigation, hearing or determination of the Complaint;
 - 11.1.4. that investigation, hearing or determination of the Complaint may prejudice:
 - 1. proceedings in a court or statutory tribunal;
 - 2. a law enforcement investigation or the investigation of a statutory authority;
 - 3. delay in making the complaint to the extent to which it may prejudice the investigation, hearing or determination of the Complaint;
 - 4. that the Complaint arises from lapsed Grievance under sub-Rule 4.11;
 - 5. that the Board has accepted a written undertaking from the Member in whole or partial satisfaction of the Matter;
- 11.2. If RCSA's EC declines a Complaint, a dispute will be deemed to have arisen between RCSA and the Complainant and either party may, within 28 days of notification of the declining of the Complaint, refer the Complaint to arbitration as provided in Rule 16.
- 11.3. Instead of declining a Complaint, or part of a Complaint, RCSA's EC may defer it, or part of it, and direct that it not proceed until either:
- 11.3.1. a Member or Members involved in the Complaint undergo a process of Counselling under Rule 5; or
 - 11.3.2. persons involved in the Complaint participate in mediation or any other dispute resolution process directed under Rule 8.

12. EC Findings

- 12.1. The findings of RCSA's EC on a Complaint will be in writing supported by reasons that set out:
- 12.1.1. any findings on material questions of fact; and
 - 12.1.2. a reference to the evidence or other material on which the findings were based.
- 12.2. The findings may include:
- 12.2.1. a recommendation for the imposition of sanctions, for the RCSA Board to determine, of the type described at clause 2.8 (c) of the Constitution;
 - 12.2.2. a recommendation that the Board direct a Member to do or refrain from doing an act or make a payment as may be considered:
 - 1. Just in the circumstances; and
 - 2. Becoming of the Member or in the interests of the RCSA.

13. Notification of Findings

- 13.1. RCSA's EC will forward a copy of its findings to:
- 13.1.1. the Respondent to the complaint stating that the matter has been forwarded to the Board for their final determination;
 - 13.1.2. the CEO; and
 - 13.1.3. any participant directed by RCSA's EC to receive a copy of its findings.
- 13.2. The CEO, upon receiving the findings, will notify the Board of the recommendation and forward to it a copy of the findings.

14. Resolution and Enforcement

- 14.1. The Board may resolution:
- 14.1.1. adopt the findings of RCSA's EC;
 - 14.1.2. adopt the findings of RCSA's EC, but make a different order for the imposition of sanctions or that a Member do or refrain from doing an act or make a payment as may be considered:
 - 1. just in the circumstances; and
 - 2. to be becoming of the Member or in the interests of the RCSA; and
 - 3. to be consistent with the findings of RCSA's EC.
 - 14.1.3. decline to adopt the findings of RCSA's EC on the grounds that:
 - 1. the proceedings conducted by RCSA's EC were not conducted as required by Rule 9.3;
 - 2. the findings were was induced or affected by fraud or bad faith;
 - 3. the recommendation was otherwise contrary to law; or
 - 4. the recommendation is subject to appeal or other proceedings before a court of competent jurisdiction as hereinafter provided.
- 14.2. If the Board, pursuant to Rule 14.1.3.1 to 14.1.3.3, declines to adopt a recommendation of RCSA's EC without adopting its findings, a difference will be deemed to have arisen between RCSA and its Members who were a Respondent or who participated in the Hearing by direction of RCSA's EC and either the Board or any such Member may, within 14 days of notification of the Board's declining the recommendation, refer the Complaint to arbitration as provided in Rule 16. **RCSA will (subject to the Arbitrator making an alternative award as to costs, pay the reasonable costs incurred by the parties in the arbitration).**
- 14.3. If the Board resolves to impose sanctions or to direct that a Member do or refrain from doing anything or make any payment, the CEO must, within 14 days after the resolution is made, cause written notice to be given to the Member of the resolution, of the reasons given or adopted by the Board for having made that resolution and of the Member's right of appeal under Rule 15.
- 14.4. The resolution does not take effect;
- 14.4.1. until the expiration of the period within which the Member is entitled to appeal the resolution concerned, or
 - 14.4.2. if, within the period in which the Member is entitled to appeal the resolution, the Member exercises the right of appeal, unless and until the Board makes a resolution under Rule 16.8, whichever is the later.

- 14.5. If a Member fails to comply with a resolution of the Board that;
- 14.5.1. adopts a recommendation of the RCSA's EC or an Arbitrator; or
 - 14.5.2. adopts the findings of RCSA's EC, or an Arbitrator, but makes a different order for the imposition of sanctions or that a Member do or refrain from doing an act or make a payment as may be considered:
 - 1. just in the circumstances; and
 - 2. becoming of the Member or in the interests of the RCSA; and;
 - 3. consistent with the findings of RCSA's EC or the Arbitrator; and has not instituted any appeal as provided for in these Procedures, the Member may immediately be liable to censure, suspension or expulsion pursuant to clause 2.8 of the Constitution upon evidence of such failure being presented to the Board.

15. Appeal

- 15.1. A party who is aggrieved by a resolution of the Board in respect of the determination of a Complaint other than a resolution that adopts the Award of an Arbitrator or that gives effect to the order of a court of competent jurisdiction, may appeal by giving to the CEO, within 14 days of being notified of the resolution, a written notice requiring the Complaint to be referred to arbitration pursuant to clause 15 of the Constitution and these Procedures.

16. Arbitration

- 16.1. If a Complaint or any dispute or reference arising with respect to it is referred to arbitration under these Procedures, any Member who ought to have been made a necessary party to the Complaint or dispute notification may be made a party to the arbitration on the application of a party to the arbitration or on their own application.
- 16.2. An arbitration pursuant to these Procedures will be conducted in accordance with:
- 16.2.1. the laws governing the conduct of commercial arbitrations in the Country, State or Territory in which the conduct giving rise to the Complaint occurred;
 - 16.2.2. these Procedures; and
 - 16.2.3. such rules as may be determined by agreement between parties and, failing agreement, by the President for the time being of the Institute of Arbitrators and Mediators Australia.
- 16.3. Arbitration of a Complaint under these Procedures proceeds as a re-hearing of the Complaint from the beginning.
- 16.4. An arbitrator may join, as a party to the arbitration, any Member who ought to have been joined as a party or whose presence may be necessary for the Court or judge to adjudicate on and settle all questions involved in the proceeding.
- 16.5. An Arbitrator's award in relation to a Complaint referred for arbitration will be in the form of a determination that complies with the requirements of Rule 9.3.
- 16.6. An Arbitrator will provide a copy of the Arbitrator's award to the CEO.
- 16.7. An Arbitrator's award will be binding on the parties, an Arbitrator may recommend, but may not impose sanctions of the type described at clause 2.8(c) of the Constitution or make any award in the nature of such sanctions except with the agreement of the parties to the arbitration. For the avoidance of doubt an award of costs is not to be regarded as a sanction or an award in the nature of sanctions.
- 16.8. The Board may by resolution adopt the recommendation made by an Arbitrator for the imposition of sanctions of the type described at clause 2.8(c) of the Constitution or may impose any other sanction it thinks fit.
- 16.9. The Board must decline to pass a resolution adopting an Arbitrator's recommendation for the imposition of sanctions pending the outcome of any proceedings taken before a court of competent jurisdiction in order to review the Arbitrator's award.

17. Costs

- 17.1. Except in so far as:
 - 17.1.1. a Member might be directed to make a payment in respect of another party's costs as becoming the Member or in the interests of the RCSA;
 - 17.1.2. an Arbitrator conducting a declined matter under these Procedures, might otherwise award;
 - 17.1.3. RCSA might be required to bear the costs of a reference to arbitration pursuant to these Procedures;
 - 17.1.4. an Arbitrator conducting an appeal under these Procedures, might otherwise award; or
 - 17.1.5. a court of competent jurisdiction might otherwise award the parties to any complaint or dispute notification or appeal under this Guideline will each bear their own costs of and incidental to the proceeding.

18. Publication

- 18.1. The Board may direct the publication of such details of proceedings and sanctions imposed on a Member as, and in such manner as, it thinks reasonably necessary, including the fact that a person who is a respondent to any Complaint is or was a Member of RCSA.

19. Savings

- 19.1. Nothing in these Procedures shall prevent the parties to a Complaint or Grievance from agreeing upon any other process for the resolution of any difference between them provided:
 - 19.1.1 that such process satisfies the requirements of Rule 9.3;
 - 19.1.2. That upon their difference being resolved, the parties jointly notify the CEO that their difference has been resolved.
- 19.2. Nothing in these Procedures shall oust the jurisdiction of any court of competent jurisdiction.

Summary of Key Changes

Between the proposed new Professional Conduct Grievance Intervention Guidelines (PCGIG) and the current Disciplinary & Dispute Resolution Procedures (D&DRP)

1. Designed the Guidelines to be more relational and transformative than previous versions - **throughout**
2. Adopted more of an explanatory style in place of the rule making style of previous versions - **throughout**.
3. Focused the guidelines much more strongly on promoting professional conduct rather than upon detecting and punishing breaches - **throughout**
4. Cut back opportunities for arbitration with non-members - **throughout**
5. Arranged the Guidelines somewhat more logically than previous versions - **throughout**.
6. Introduced the role of the Professional Conduct Advocate – a type of support person who helps a Member to understand and meet their professional conduct responsibilities; **PCGIG 1.6.7 – page 7**
7. Included a requirement for the Board to publish periodic statements of strategic priority and intent regarding its Professional Conduct Framework **PCGIG 2.1 – page 8**
8. Added provisions for developing interpretative & operational guidance materials **PCGIG 2.2 – pages 8-9**
9. Recalibrated the Industry Improvement Statement process as a Consensus Statement process able to deal with systemic issues; **PCGIG 2.3 - pages 9-11**
10. Introduced concepts of “emotional due process” and “conflict coaching” based on contemporary work in the field of conflict resolution studies. **PCGIG 3(3)(b) and 6 – pages 11-12 and 20**
11. Established a preference for the PCRC to proceed by investigative interview without the necessity for lawyers – in order to lower the tension and get to the gist of matters more quickly **PCGIG 3(3)(f) – page 12**
12. Brought forward the ability to decline a grievance intervention; **PCGIG 5 – pages 14-15**
13. Set up a triage point in the registry that allows grievances to be allocated to one of 4 pathways – Neutral evaluation – Diversion & Monitoring – Registry Intervention – Investigation; **PCGIG 6(1) – page 15**

14. Introduced the notion of a “caution” is akin to the “flag” that may be raised under StaffSure. Its detail has been developed here. **PCGIG 6(3) and (4) – pages 15 and 16**
15. Strengthened counselling procedures by linking them to the PCRC – including PCRC linkage for conduct recommendations **PCGIG 6.3.2 – pages 22-23**
16. Introduced a summary show cause procedure that operates so that if the Member shows cause why it should not be suspended during an investigation or why a caution should not be raised against it, the investigation must terminate. **PCGIG 6.4.2 – page 25-26**
17. Recalibrated the role of the EC (now the Professional Conduct Review Committee) to give it a more hands on role in directing the conduct of members **PCGIG 6.4.2 - – page 25-26.**

RCSA Code Governance Advice 2018_004

Undertakings in Satisfaction of RCSA Code Grievances & Complaints

Background

1. Rule 10 of RCSA's *Disciplinary & Dispute Resolution Procedures* ("**D&DRP**") allows a Member to tender to the Board a confidential undertaking, which the Board may accept in whole or partial satisfaction of RCSA's professional conduct interest in the Code Grievance or Complaint to which the Member is responding.
2. Undertakings, and their acceptance or rejection, may affect important legal rights. They may give rise to difficult questions about confidentiality, use and disclosure, and the extent to which their contents may be considered to be "without prejudice" in subsequent legal proceedings. They may additionally impact on rights and interests of third parties and of liability insurers.
3. The Board's acceptance or rejection of a Member's Undertaking may trigger a dispute that leads to costly and time-consuming arbitration under the D&DRP.
4. The Board's acceptance of a Member's Undertaking is also a circumstance that an RCSA Ethics Committee may consider in declining to proceed further with a Complaint referred to it for investigation, hearing or determination.
5. The Ethics Committee's declining of a Complaint that has been referred to it may also trigger a dispute that leads to costly and time-consuming arbitration under the D&DRP.
6. RCSA therefore wishes to establish a rigorous protocol for the tendering and acceptance of Members' Undertakings under the D&DRP.
7. This Code Governance Advice presents a draft for such a protocol.

Key Terms

Certification Body –

is a body that is authorised to certify compliance with International, Australian or New Zealand standards held by a Member who tenders an Undertaking and includes certification bodies for StaffSure and RCSA's Service Delivery Standard.

Code –

is the RCSA Code for Professional Conduct.

Complaint and Complainant –
are defined by the RCSA D&DRP.

Grievance and Grievant –
are defined by the RCSA D&DRP.

Law Enforcement Body –
is a body that has statutory responsibility for enforcement of laws and includes any enforcement body within the meaning of the *Privacy Act 1988* (Cwth).

Occupational Licensing Body -
is a body that has statutory responsibility for the issuing of occupational licences including labour hire licences and employment agency licences.

Protocol (DRAFT)

Purpose

- 1) The purpose of a Member's Undertaking tendered under the D&DRP is to provide an assurance, satisfactory to the Board, that:**
 - a) in respect of past professional conduct that is the subject of the Grievance or Complaint, the Member will take all appropriate measures to ensure that the Grievant has access to remedies, as provided by law, and to credible grievance mechanisms, without fear of recrimination or discrimination (c.f. WEC Code Principle 10: *Respect for Remedy*); AND**
 - b) the Member will conform its future professional conduct to the requirements of the RCSA Code.**
- 2) Members should understand that the Code extends, not only to conduct in which a Member is directly engaged; but also, to third party conduct in connection with the Member's professional practice in which the Member is knowingly concerned, or to which the Member may be considered to be an accessory.**

NOTE: A third party might be a Member's client or business ally - regardless of whether or not the client or the business ally is an RCSA Member; and regardless of whether or not it is a related entity of the Member.

Legal Advice to Be Obtained

Proponent

- 3) Members who wish to tender Undertakings:**
 - a) must give prior written notice to RCSA's Ethics Registrar of their intention to do so. The notice is not to set out, or be submitted with, the content or details of the Undertaking.**

- b) must be provided with a copy of any *Undertaking Guidelines* approved by the Board;
- c) must be advised by RCSA:
 - i) that the Undertaking must not be presented by the Member directly to the Board; but that it must pass through RCSA's CEO or Ethics Registrar;
 - ii) that RCSA has established Memoranda of Understandings with relevant statutory regulators (e.g. the FWO) that RCSA may use to provide information about the Grievance or Complaint to the regulator;
 - iii) that the Board's acceptance of an Undertaking does not resolve any civil or statutory claim that a Grievant/Complainant may have in respect of the Member's conduct which gave rise to the Grievance/Complaint, nor any interest or proceedings of a law enforcement or occupational licensing body in respect of the Member's conduct; but merely satisfies RCSA's professional conduct interest in matters within its professional conduct jurisdiction to the extent to which the Undertaking is accepted by the Board;
 - iv) to seek legal advice from the Members' own legal representatives before tendering an Undertaking or any draft;
- d) must be allowed a reasonable opportunity to receive legal advice before the Undertaking can be presented to the Board;
- e) may be informed that Counsel Assisting RCSA has been authorised to collaborate with the Members' own legal representatives for the purpose of:
 - i) answering questions that the legal representatives have about the process of tendering an Undertaking under the D&DRP;
 - ii) providing a non-binding indication of what the Undertaking should address in order to meet the purpose for which it is tendered;
 - iii) clarifying issues of confidentiality, the extent of legal privilege, and the permitted uses and disclosures of the Undertaking.

NOTE: For example, there may be a need to disclose the Undertaking (or parts of it) to the Ethics Committee, the Grievant/Complainant, other RCSA Committees, a Certification Body, a Regulator, or the Public.

RCSA

- 4) Members' Undertakings that are offered under the D&DRP must be submitted to Counsel Assisting RCSA for advice and recommendation before being presented to the Board.

- 5) **Adverse recommendations and issues identified by Counsel Assisting RCSA must be communicated to the Member who tenders the Undertaking. The Member must be given a reasonable opportunity to address adverse recommendations and issues – either by amendment or by confirming that Member wishes the Undertaking to be presented to the Board notwithstanding any adverse recommendations or issues that were identified by Counsel Assisting RCSA.**
- 6) **The advice and recommendation of Counsel Assisting RCSA must be provided to the Board with the Undertaking.**
- 7) **The Board does not have to adopt the advice and recommendation of Counsel Assisting RCSA.**

Board Decision

- 8) **The Board makes an independent decision whether to accept the Undertaking in full or partial satisfaction of RCSA's professional conduct interest in matters.**
- 9) **In making its decision, the Board will have regard to the principles of the Code and to the parties' and participants' interests in Grievance/Complaint proceedings as set out in the D&DRP (see D&DRP rule 9.3).**
- 10) **The Board impose conditions on its acceptance of an Undertaking that require a Member or Members involved in the Complaint to participate in Counselling under D&DRP Rule 5; or any other dispute resolution process contemplated by Code Principle 8.**
- 11) **When accepting an Undertaking:**
 - a) **the Board will state the extent to which RCSA's disciplinary interest in the professional conduct of its Member has been satisfied; and**
 - b) **the Board may direct that a Member or Members involved in the Complaint participate in Counselling under D&DRP Rule 5; or any other dispute resolution process contemplated by Code Principle 8.**

Referral to Law Enforcement, Occupational Licensing & Certification Bodies and Others

- 12) **The tendering by a Member of an Undertaking, whether or not on a confidential or "without prejudice" basis, or other basis of claimed privilege, does not diminish the power or responsibility of RCSA to provide information about the Undertaking (or about the Member's professional conduct that is alleged to give rise to the circumstances in which the Undertaking is tendered) to:**
 - a) **a Law Enforcement Body;**
 - b) **an Occupational Licensing Body;**

- c) a Certification Body; or
- d) another body (including another industry association) that has authority to govern, direct, or counsel the professional conduct of the Member in respect of the Member's professional conduct that is alleged to give rise to the circumstances in which the Undertaking is tendered.

Referral to Ethics Committee

- 13) The Board may provide information about the Undertaking and its contents confidentially to the Ethics Committee to facilitate the making by the Ethics Committee of a decision whether to accept or decline a Complaint under the D&DRP (see D&DRP rule 11.1).
- 14) The Ethics Committee should decline to investigate, hear or determine a Complaint in respect of which RCSA's disciplinary interest in the professional conduct of its Members has been satisfied by an Undertaking that has been accepted by the Board.

Imprimatur

The Board's imprimatur to this Code Governance Advice may be given by ordinary resolution.

Recommendations

We recommend that:

- 1. RCSA prescribe the form to be used by Members when they wish to notify their intention to tender an Undertaking under the D&DRP (see Protocol art. 3(a)).
- 2. The RCSA Board direct that Guidelines for Undertakings in Satisfaction of RCSA Code Grievances & Complaints ("*Undertaking Guidelines*"). Should be prepared for the assistance of Members and the Board.
- 3. The *Undertaking Guidelines* should include information about:
 - o The procedure for tendering and accepting Undertakings;
 - o The use of any form prescribed by the Board for giving notice of intention to tender an Undertaking (see Protocol art. 3(a));
 - o What interests are satisfied by the acceptance of an Undertaking; and what interests are not satisfied or resolved (see Protocol art. 3(c)(iii))
 - o Statements that may be included in an Undertaking – e.g. statements of agreed fact; statements of measures which a Member undertakes to implement;

- Statements that may not be included in an Undertaking – e.g. self-serving statements of contested fact; statements of self-justification, argument, or submission;
 - Requirements for clarity about confidentiality, use and disclosure of the Undertaking;
 - Reserved disclosures that may be made to the Ethics Committee, Law Enforcement, Occupational Licensing and Certification Bodies; or to another industry association (see Protocol art. 3(c)(ii));
 - What happens when an Undertaking is accepted or rejected;
 - Rights of “appeal”;
4. The *Undertaking Guidelines* be approved by the Board;
 5. RCSA make the *Undertaking Guidelines* widely known to Members; and provide a copy to Members who notify their intention to tender an Undertaking under the D&DRP.
 6. RCSA develop evaluation procedures for determining when information of concern will be referred to Law Enforcement Bodies etc (See Protocol Art. 10);
 7. RCSA make its evaluation procedures known to Members;

This Code Governance Advice, and any Protocol or *Undertaking Guidelines* adopted in consequence of it, be reviewed when the Code and D&DRP are reviewed to ensure that the content and intent which they establish are synchronised.

Reference Documents

- **RCSA Code for Professional Conduct** – General Principle 1 (Transparency); Principle 1 (Confidentiality); Principle 8 (Good Order).
- **RCSA Disciplinary & Dispute Resolution Procedure** – Rules 5, 9, 10, 11 and 16
- **WEC Code of Conduct** – Principle 10 (Respect for Remedy)
- **StaffSure** – Program Agreement cl. 30.5 (Gateway Transparency); StaffSure Standard Part 6 (Transparency & Reporting).
- **Memorandum of Understanding between RCSA and FWO:** *Information sharing to facilitate a well-functioning labour market in Australia protecting the rights of workers and employers.*

Related Code Governance Advices

Nil

Status & Review

This Code Governance Advice is prepared by WorkAccord Legal. It is not legal advice. It outlines the governance issues raised by the issue that it addresses; and suggests a draft protocol consistently with the RCSA Code Governance framework.

This Code Governance Advice should be reviewed, and legal advice obtained, if RCSA contemplates any action to enforce the Code or D&DRP with respect to its content.

The Code Governance Advice should be reviewed, in any event, no later than **6th March 2019**; or earlier if there are changes to any of the reference documents on which it is based.

Date

22nd July 2018.

Ends

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](#)¹
 - *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.

¹ 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-roles 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

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.

1 Preamble

2 **acknowledging** that, in an open and competitive market, circumstances may arise when a
3 customer wishes to change employment service providers;

4 **acknowledging** that workforce service providers invest significant effort, money, time and
5 intellectual resources in establishing relationships with customers, developing critical
6 understandings of customers and workseekers' needs, training workseekers in systems of
7 work for customers, and inducting workseekers in preparation to undertake work for
8 customers, all of which contribute to workforce service providers 'customer and workseeker
9 connections, goodwill and support significant business capital that is of value and which
10 workforce service providers are entitled to protect by lawful means;

11 **acknowledging** that dealings in relation to supplier transitions may impact upon a wide
12 range of stakeholders including workseekers;

13 **affirming** that, in the absence of any contractual, industrial or other legal obligation,
14 workforce services providers (including Members) are not required to transition their
15 workforces or workseeker connections as part of a supplier transition;

16 **recognising** that Members and their stakeholders seek guidance from RCSA in the form of
17 template benchmarks, outcomes, and indicative behaviours concerning standards for
18 conducting workforce services dealings;

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

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

- 23 • to inform and guide the professionalisation of the on-hire, recruitment, contracting
24 and consulting industry across Australia and New Zealand in the interests of its
25 Members and the public; and
- 26 • to strengthen public confidence in identifying trusted and ethical professionals
27 amongst the array of service choices, online and artificial intelligence models, and
28 self-proclaimed experts

29 RCSA PROVIDES THIS GUIDELINE TO ASSIST MEMBERS TO MEET THE STANDARD OF
30 PROFESSIONAL CONDUCT REQUIRED BY THE RCSA CODE IN RELATION TO THEIR
31 INVOLVEMENT IN SUPPLIER TRANSITIONS.

32 Operating Provisions

33 1. Members should, in relation to their supplier transition dealings, achieve the following
34 outcomes:

1 **O(1) Good faith in supplier transitions**

2 Members conduct their supplier transition dealings in good faith consistently with the
3 standard of professional conduct required by the RCSA Code.

4 **O(2) Timeliness in supplier transitions**

5 Members conduct their supplier transition dealings in a timely manner in accordance
6 with good industrial practice and reasonable commercial haste.

7 **O(3) Co-operative dispute resolution in supplier transitions**

8 Members co-operate in the handling of complaints or disputes about their supplier
9 transition dealings so as to prevent, or mitigate, any disruption that their supplier
10 transition dealings may cause to arrangements for the supply of workforce services.

11 **O(4) Representations**

12 Members take care to avoid making false or misleading statements about your ability
13 to effect a supplier transition.

14 2. Members might achieve the outcomes in para. 1 by the following indicative behaviours:

15 **IB(1) Respecting lawful arrangements**

16 Having due regard for the existence of lawful supply arrangements so as to avoid
17 unlawful or unfair interference in them.

18 **IB(2) Responsiveness**

19 Responding appropriately to transition requests.

20 **IB(3) Disruption**

21 Conducting transition dealings in a manner consistent with their contractual and
22 other legal obligations, mitigating the effects of disruption to stakeholders, and
23 providing, so far as is practicable for:

- 24 a. the orderly continuation of business;
- 25 b. the identification of, and giving effect to, any relevant contractual or other legal
26 obligations;
- 27 c. the conduct of supplier transition dealings in accordance with good commercial
28 and industrial practice and with reasonable commercial haste.

29
30 ends

Workforce Services Supply Contract (Synopsis)

This is only a summary guide to our Workforce Services Supply Contract (**Long Form Contract**), which is attached or which you can access via XXX. Clause numbers follow those in our Long Form Contract. Many important words and expressions that are used in this Synopsis are defined or explained in our Long Form Contract. You should familiarise yourself with them.

The Synopsis does not replace our Long Form Contract, which you should read carefully and about which you should obtain your own legal advice. If you communicate your acceptance of this Synopsis, or request our Workforce Services, after you have received a copy of it, you will be bound by our Long Form Contract.

GENERAL CONDITIONS PART

1. Master Contract

- 1.1. Our Contract governs all requests for our Workforce Services.
- 1.2. Our Contract covers the Parties, their permitted successors and assigns.
- 1.3. The General Conditions Part applies to the supply and acquisition of our Workforce Services.
- 1.4. The Labour-Hire Services Part applies to the supply and acquisition of our Labour-Hire Services.
- 1.5. The Placement Services Part applies to the supply and acquisition of our Placement Services.
- 1.6. The Fees Schedule sets out how our fees and charges are calculated.
- 1.7. The Business Schedule contains important terms on which we both agree to do business.
- 1.8. The Definitions & Interpretation Schedule sets out agreed definitions and rules for interpretation.
- 1.9. A Synopsis is a summary guide to our Long Form Master Services Contract.

2. Acceptance

- 2.1. Our Contract can be accepted orally, in writing, or by requesting our Workforce Services.

3. Acknowledgements & Co-operation

- 3.1. The Parties agree our Contract is reasonable to protect their interests in supplying or acquiring our Workforce Services.
- 3.2. Candidate Presentation is ongoing.
- 3.3. The Parties agree to co-operate.

4. Services Requests & Authority to Initiate Candidate Presentation

- 4.1. We may require written confirmation of your Services Requests.
- 4.2. Parties may nominate representatives to co-ordinate the supply and acquisition of our Workforce Services.
- 4.3. We may decline your Services Requests.
- 4.4. You give us permission to present Candidates for Positions.

5. Our General Responsibilities

- 5.1. Our general responsibilities are additional to non-excluded obligations.
- 5.2. We will provide our Workforce Services as agreed.
- 5.3. We will obtain our Candidates' permission to present them to you.
- 5.4. We will supply extra services that are expressly agreed.
- 5.5. We will be responsible for meeting agreed service levels.
- 5.6. We will be responsible for obtaining and maintaining agreed certifications or industry association memberships.

6. Your General Responsibilities

- 6.1. You must conduct your business lawfully.
- 6.2. You must ensure Candidates whom you employ have the legal right to work.
- 6.3. You will not require us to act in breach of our licence condition, professional responsibilities etc.
- 6.4. You will not charge our Candidates certain fees or charges for the jobs they perform ("Employment Premiums").
- 6.5. You must provide accurate information.
- 6.6. You share responsibility for satisfying yourself that our Candidates meet the requirements of their work.
- 6.7. You must preserve the privacy of our Candidates' personal information.

6.8. You must have due regard for our Candidates' obligations owed to their previous employers.

6.9. You must notify us of our Candidate's acceptance of an offer of employment with you.

7. Fees, Charges & Invoices

7.1. You must pay our fees and charges when they are due.

7.2. You must pay advertising and other expenses you have authorised.

7.3. We will provide invoices.

7.4. We may vary our fees and charges on notice sufficient to give you an opportunity to negotiate them with us or to terminate this Contract.

7.5. Our fees and charges are stated on a GST exclusive basis.

8. Exclusion of Certain Liabilities

8.1. You acknowledge and agree that you bear non-exclusive responsibility for the work our Candidates perform for you.

8.2. We make no representations that our Candidates will achieve performance levels etc.

8.3. We exclude liability to you and require you to indemnify us for damage etc. caused by our Candidates (including by their negligence) except to the extent to which we have contributed to it. We limit our liability arising under statutory consumer guarantees.

8.4. Exclusions of liability and indemnities continue after termination of the Contract.

9. Termination

9.1. Either Party can terminate this Contract "for convenience" by written notice.

9.2. Either Party can terminate this Contract for serious breach which cannot be remedied, or which remains unremedied after notice.

9.3. Either Party can terminate this Contract for an Insolvency Event.

10. Confidentiality

10.1. Candidate information is provided confidentially & solely for the supply, acquisition, and use of our Workforce Services.

10.2. We can choose not to disclose the results of our pre-placement investigations or evaluations of our Candidates.

11. Dispute Resolution

11.1. The Parties will try to resolve disputes in good faith & in accordance with the RCSA Code & dispute procedures.

12. Notices

12.1. Notices must be given in writing.

13. Assignment & sub-contracting

13.1. The Parties may not assign or sub-contract their responsibilities under this Contract without consent.

14. Events Beyond Control

14.1. Parties may be excused for failure to perform due to events beyond their control.

15. Waiver

15.1. Indulgences do not amount to waiver.

16. Severance

16.1. Terms can be severed.

17. Jurisdiction

17.1. The Parties choose the law and jurisdiction that governs the Contract.

18. Relationship

18.1. The Parties' relationship is that of independent supplier and acquirer of our Workforce Services.

19. Entire Agreement

19.1. This Contract, including its various parts, schedules & any relevant Service Level Agreement or Workforce Services Brief constitutes our entire agreement.

LABOUR HIRE PART

1. Our Additional Labour-Hire Responsibilities

- 1.1. We will source and engage our On-Hire Candidates.
- 1.2. We will take reasonable steps to ensure our On-Hire Candidates are competent, skilled and qualified for the work they are to perform.
- 1.3. We are responsible for providing Work Entitlements of our On-Hire Candidates.
- 1.4. We will take out all necessary insurances required by law.

2. Your Additional Responsibilities

- 2.1. You must provide reasonable access to your workplaces & Information.
- 2.2. You must not direct our On-Hire Candidates to work at workplaces we have not agreed.
- 2.3. You must not on-hire, second, or lend our On-Hire Candidates without our permission.
- 2.4. You must inform us of inherent requirements or genuine occupational requirements of the work, and you are responsible for making reasonable adjustments required by anti-discrimination laws.
- 2.5. You must properly supervise our On-Hire Candidates whilst they are within your legal responsibility.
- 2.6. You must report adverse conduct or performance issues to us and allow us to manage them.
- 2.7. You must familiarise yourself with industrial instruments under which our On-Hire Candidates perform their work, and supervise our On-Hire Candidates in accordance with their provisions.
- 2.8. You must ensure that our On-Hire Candidates work within the skill level & classification according to which they are provided by us to you.
- 2.9. You must provide all Work Equipment at your own expense other than Work Equipment which we agree that we, or our On-Hire Candidates, will provide. In default we can provide it and charge you accordingly.
- 2.10. You must submit completed timesheets on time. In default, we can make an estimate of the work performed by our On-Hire Candidates and invoice you accordingly.
- 2.11. Persons whom you appoint to perform any function on your behalf that directly affects our On-Hire Candidates must be fit and proper to act in that role.
- 2.12. We may require you to disclose Service Network arrangements that affect our On-Hire Candidates.
- 2.13. We may require you to disclose the identity of suppliers and participants in your tiered supply arrangements or supply chain.

3. Insurance

- 3.1. Parties must take out and maintain agreed insurances. If you are in default we can take out the missing insurance and recover the cost of it together with our handling margin.
- 3.2. Parties will notify each other promptly of events or circumstances that might give rise to claims against them or our On-Hire Candidates in connection with the work our On-Hire Candidates perform.
- 3.3. Parties will co-operate with insurers who are handling claims & notifications.

4. Work Health & Safety and Welfare Responsibilities

- 4.1. Parties will consult, co-operate & co-ordinate work health & safety and welfare responsibilities as required.
- 4.2. Supply arrangements are to have regard to applicable "Horizontal Engagement" requirements.
- 4.3. You must provide site specific inductions.

PLACEMENT SERVICES PART

1. Additional Fee Provisions

- 1.1. When acting on a retained basis, we will charge fees and invoice in agreed stages.
- 1.2. When acting on a contingent basis, we will only charge a fee if our presentation of the Candidate is materially instrumental to the Candidate's Placement with you.
- 1.3. Parties agree that "material instrumentality" can be presumed in certain cases. The presumption of material instrumentality is rebuttable.
- 1.4. Certain common means by which our Candidate may already be known to you do not, of themselves, rebut the presumption of material instrumentality .
- 1.5. The presumption of material instrumentality is automatically rebutted in some cases.
- 1.6. If our fees are calculated as percentage of Annual Gross Remuneration (AGR) AND AGR has not been agreed with the successful Candidate at the time when we may invoice you for payment, AGR will be calculated based on the highest amount advised to us by you at any time up to the time of invoicing.
- 1.7. If AGR includes commissions or earned bonuses we can estimate AGR inclusive of the commission or bonus and invoice you accordingly. You can dispute our estimate.



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’t) 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.

“Disciplinary and Dispute Resolution Procedures” means the disciplinary and dispute resolution procedures adopted by the Board and as varied by the Board from time to time.

“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.

“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 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.

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 improve 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 subscribe to, support with its funds, or amalgamate with, any association or organisation which does not, to the same extent as this Constitution, restrict the application of its income and property and prohibit the making of distributions to its members; and
 - iii. 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.

2.2 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 Disciplinary and Dispute Resolution Procedures, 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 Disciplinary and Dispute Resolution Procedures, 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.

2.3 Applications

- (a) Each applicant, to become a Member must:
 - i. sign and deliver 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.

2.4 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 RCSA" 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 RCSA 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 RCSA 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 RCSA 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. willfully 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 Disciplinary and Dispute Resolution Procedures or this Constitution.
- (b) Members are liable to disciplinary action in accordance with the Disciplinary and Dispute Resolution Procedures.
- (c) Sanctions may be imposed against any Member in accordance with the Disciplinary and Dispute Resolution Procedures 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 Dispute and Disciplinary Procedures 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 Disciplinary and Dispute Resolution Procedures.
- (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 under the Seal of the Association and shall be signed by the President and countersigned by the Company Secretary. The certificate should also be signed by the Member, on receipt, and 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.
- (e) The Association may issue a replacement Certificate of admittance as a Member if:

- i. the Association receives and cancels the existing Certificate;
- ii. the Association is satisfied that the existing certificate is lost or destroyed, and the Member pays any replacement fee as the Directors resolve.

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 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 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 Australia and twenty seven days (27) for 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 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 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 unless they die, vacate the office or are removed in accordance with Clause 5.4 (b) and 5.4 (c).
- (b) A Co-opted Director under Clause 5.2 (c) (ii) (unless the Director's co-option is terminated by simple majority resolution of the Board) shall hold office only until the Annual General Meeting next following their co-option. Subject to any applicable eligibility and maximum term requirements, such Director may be nominated for an elected or appointed position and may be co-opted for a further term thereafter.

- (c) Directors due to retire as per 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 the next succeeding sub-paragraph, any Director who has served three consecutive full terms of two years will be ineligible for re-appointment, re-election or co-option as a Director, except where the Director is an Office Bearer. They will, in this case, be eligible to be re-elected or re-appointed for a maximum of two further terms provided they retain their position as an Office Bearer.
- (e) By unanimous resolution of the Board, any Director may be excused from the requirement to retire for a period of 12 months immediately following the date upon which, but for this sub-paragraph or sub-paragraph (g), the Director first became due to retire, or until the next Annual General Meeting following such date, whichever is the earlier.
- (f) Any Director who has retired 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, or Recognised Service Function expertise may be held by that Director, as Immediate Past President, for a period of 12 months immediately following retirement or resignation from the Presidency, 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.

5.7 2017 Transition

- (a) Subject always to the Corporations Act and notwithstanding any other provision of this Constitution, the 2017 Transition provisions, set out at clause 16 will apply until the Annual General Meeting for the 2018 calendar year or until the Board is constituted as described in clauses 5.1 to 5.5, whichever shall be the earlier, whereupon this clause 5.7 will expire.

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, who hold appointment as Corporate Representatives of an Australian or New Zealand Region under clause 5.2 (b) (i) or (ii) 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 meeting then 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 chair then 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 later.

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, 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 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 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.

11.2 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, 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. Sub Regions

NOTE: Sub Regions are defined as a group of Members in a defined location who form a Sub Region within a Region for the purpose of advancing their unique needs and issues. The Terms of Reference for a Sub Region are referred to in the By Laws.

13.1 Existing Sub Regions Councils

- (a) The Association has one Sub Region Council: ACT.

13.2 Variation of Sub Regions Councils

- (a) The Directors may, from time vary (by increase or reduction) areas

represented by the Sub Regions Councils as needs are identified by the Membership.

13.3 Sub Region Councils

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

13.4 Proceeding of Sub Region Councils

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

14. 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.

14.1 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).

14.2 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.

14.3 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.

14.4 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.

15. 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 Disciplinary and Dispute Resolution Procedures. 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.

16. 2017 Board Transition

Notwithstanding any other provision of this Constitution and until the Association's Annual General Meeting for the calendar year 2018:

- (a) the maximum number of Directors that the Association may have is TWELVE (12);
- (b) the maximum number of directors who may hold office under clause 5.2 (b) (iii) (***an Accredited Members Directorship***) is TWO (2);
- (c) the cessation for any reason of an Accredited Members Directorship will not give rise to any casual vacancy unless the cessation results in the Association having no Director appointed under clause 5.2 (b) (iii);
- (d) a Director who, immediately prior to the Association's Annual General Meeting for the 2017 calendar year (***the Transition Date***) held the position of Director by virtue of having been co-opted to the Board under clause 5.2 (c) (i) of the Constitution, as it existed at that date, (a

Non-Regional Corporate Representative Co-optee) may continue, subject to the Corporations Act, to act as a Director until the Association's Annual General Meeting for the calendar year 2018 or their earlier cessation;

- (e) A Non-Regional Corporate Representative Co-optee who satisfies the criteria for appointment as a Next Generation representative at the time of the Association's Annual General Meeting for calendar year 2017 will be deemed to have transitioned, by appointment at that meeting, to the position of Director under the provisions of clause 5.2 (b) (v);
- (f) the cessation for any reason (other than transition to another Board position) of a Non-Regional Corporate Representative Co-optee's directorship will not give rise to any casual vacancy;
- (g) the maximum number of directors who may hold office under clause 5.2 (c) (ii) is TWO (2).
- (h) a Director who, immediately prior to the Transition Date, held the position of Director by virtue of having been co-opted to the Board under clause 5.2 (c) (ii) as it existed at that date, (**an Industry Sector Co-optee**) may continue, subject to the Corporations Act, to act as a Director until the Association's Annual General Meeting for the calendar year 2018 or their earlier cessation;
- (i) an Industry Sector Co-optee, who is a member of AMRANZ or ANRA at the time of the Association's Annual General Meeting for calendar year 2017 (**an AMRANZ/ANRA Industry Sector Co-optee**), will be deemed to have transitioned, by appointment at that meeting, to the position of Director under the provisions of clause 5.2 (b) (iv);
- (j) an Industry Sector Co-optee, who is not an AMRANZ/ANRA Industry Sector Co-optee, will be deemed to have been co-opted by the Board immediately following the Association's Annual General Meeting for calendar year 2017 to act as a Director under the provisions of clause 5.2 (c) (ii);
- (k) The cessation for any reason (other than transition to another Board position) of an Industry Sector Co-optee's directorship gives rise to a casual vacancy that may be filled by the Board under clause 5.2 (i);
- (l) If the Director, who holds the office of President immediately prior to the Transition Date is invited to continue as IPP under clause 9.14 The Board may determine that the Director is to hold either:
 - i. the representative position, which he or she held immediately prior to the Transition Date; or
 - ii. another position chosen by the Board from any available position

for which the Director is qualified by reason of his or her Region membership, Membership status, Member Group participation, Next Generation qualification, or Recognised Service Function expertise.



By-Laws

Interpretation

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.

Membership Extension Principle: For the purposes of applying the Membership Extension Principle:

- i. **"business"** includes a distinct part of a business operating under a separate business name, whether registered or not;
- ii. **"related entity"** means any entity engaged in the supply of labour on-hire, recruitment, contracting or consulting services 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 a corporation (or a Crown agency) that is substantially engaged (or maintains a department or division that is substantially engaged) in the supply (including the supply to "internal clients" of the corporation or agency) of labour on-hire, recruitment, contracting or consulting services 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 labour on-hire, recruitment, contracting or consulting services (**"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 on-hire, recruitment, contracting and consulting industry for correct Membership category assessment by the CEO for recommendation to the Corporate Membership Accreditation Panel (**"CMAP"**). 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.
- e. 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

In this context, Corporate Members need to be aware that RCSA's Code, Principle 7 — *Professional Knowledge* provides:

1. *Members must work diligently to develop and maintain a satisfactory and up to date level of relevant professional knowledge and, where required by RCSA's By-Laws, maintain a Continuing Professional Development program to the level prescribed by the RCSA Levels and Criteria of Professional Membership issued from time to time.*
2. *Members must ensure that their staff are adequately trained and skilled to undertake their responsibilities.*

In some jurisdictions, Members may have corresponding statutory duties.

1.2. Corporate Membership

a. Multiple Businesses conducted by the One Entity

An applicant for Corporate membership that conducts business under different brand names may be required to be part of a Group Corporate Membership — with all the ensuing benefits of 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. The RCSA CEO will review such applications and make recommendations to the CMAP based on the review.

d. International Corporate Members with international locations (other than New Zealand)

Eligible 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 laws of Australia and the jurisdiction of Australian Courts in respect of any dispute or matter arising in connection with their membership.

e. Franchises

- iv. 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.
- v. Group Corporate Membership can be negotiated but franchisees must be admitted separately and commit to Membership responsibility.
- vi. 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.

1.5. 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 +

1.6. Membership Fees

- a. The fee structure is based on the Membership classification and is agreed after the Membership application, ASIC Register and applicant's listing in commercial spaces (website, directories, telephone listings etc.) have been reviewed by the CEO.
- b. Region Members (By Law 1.4) with 4 – 10 staff will attract a fee of 80% of H1 (By Law 1.5).
- c. Region Members with greater than 11 staff attract a fee of 80% of H (By Law 1.5).
- d. All Region Members employing up to 3 staff will be classified under category I. This is the minimum Corporate Membership fee available.
- e. The Membership fees are determined by the RCSA Board and reviewed annually.

1.7. Application Fees

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

1.8. Non Payment of Fees

- a. Any Member that has not paid membership fees, or any levy required to be paid in the same manner and subject to the same consequences as for non-payment of membership fees, within 14 days from the due date for payment will be served a reminder to pay all outstanding sums.
- b. Any Member that has not paid membership fees, or any levy required to be paid in the same manner and subject to the same consequences as for non-payment of 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 membership 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.
- 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 membership renewal fees and levies; and
 - iii. pays in advance membership renewal 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.

1.9. Membership Information Changes

a. Change of Ownership, Brand or Delegate

- i. In these By-Laws, "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.
- ii. Membership certificates are not transferable and remain the property of the RCSA. When a Member changes (including the making of a partial change) its ownership or its brand, it is incumbent upon the Member to notify the RCSA of any changes within 14 days. The Membership certificate is to be returned, together with the information requested in the change of details form within a further 14 days. 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 by completing a Change of Details Form and forwarded to the RCSA within 30 days of the change.

1.10. Objections to Membership

- a. Objections 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 to a Member, or potential Member, the CMAP must examine the validity of the objection and, if necessary, request a Region Council to further investigate the objection, and if appropriate, give a hearing to both parties, and forward a recommendation to the RCSA Board for determination, or 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

In recognition of the different roles consultants undertake in this 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 and consistently 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, 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 is not a category of Professional Membership;
 - vi. a Non-Professional Member ("**Associate**").
- c. The following post-nominals will be awarded:

Accredited Professional *APRCSA*

Member *MRCSA*

Fellow Member *FRCSA*

Life Fellow *FRCSA (Life)*

2.3. 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.
- c. If an Accredited Member has not paid Membership fees as required following the receipt of due reminder notices, then the Member will be deemed to have declined to renew membership or evinced an intention no longer to be a member and may be removed from the Register, whereupon the person so removed shall cease to be an Accredited Member.
- d. If a person who has been removed from the Register under the preceding paragraph:
 - i. applies for reinstatement of membership and accreditation within twelve months of removal from the Register; and
 - ii. pays all outstanding membership renewal fees; and
 - iii. pays in advance membership renewal 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 (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.

2.4. 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.

2.5. Information Changes

a. Change of Name

Accreditation certificates are not transferable and remain the property of the RCSA. When an Accredited Member changes his/her name, it is incumbent upon the Member to notify the RCSA Head office of any changes within 14 days. The Accreditation certificate is to be returned, together with the evidence of the name change e.g. (Marriage Certificate) within a further 14 days. 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 by completing a change of details form and forwarded to RCSA Head Office within 30 days of the change.

2.6. 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.

2.7. Objections to Membership

- a. Objections 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 examine the validity of the objection and, if appropriate, authorise a further investigation of the objection, and if appropriate, give a hearing to both parties, and forward a recommendation to the RCSA Board for determination; or 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 Region Councils apply (subject to any relevant Terms of Reference and with the necessary changes to terminology) to sub-Region Councils, Member Group Councils, Committees, sub Committees and Special Interest Groups.
- b. Councils, Committees, sub Committees and Special Interest Group formed under these By-Laws will operate in accordance with Terms of Reference established from time to time by the Board.

3.2. Election of Region Councillors

- a. Each Region shall have a Region 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, elect a Region Council that ensures Accredited Members are equitably represented following, as nearly as is practicable, the procedures contained in the Constitution for the election of two Individual Members and Corporate Representatives. Additional Members, can be chosen from amongst the Professional Members or the Corporate Representatives and co-opted to the Region Council. The Board may additionally appoint two members.
- c. The Region Chair in consultation with the CEO may vary the requirements of 3.2. (b) to ensure the formation of a workable Region Council.
- d. Nominations of candidates for election to a Region Council shall:
 - i. be made in writing, signed by two Members of the relevant Region and Membership class and accompanied by the written consent of the candidate which may be endorsed on the form of nomination; and
 - ii. be delivered to the RCSA not less than 30 days before the date fixed for the holding of the RCSA Annual General Meeting.
- e. 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 3.2(c).
- f. If insufficient nominations are received to fill all vacancies for elected positions on the Region Council, the candidates nominated shall be deemed elected.
- g. 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.
- h. If the number of nominations 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 Council shall be conducted via post or electronic means.
- i. Within 14 days after the election and appointment of a Region Council, the elected and appointed Members shall conduct a Region Council meeting and shall elect from their number the various office bearers in accordance with By Law 3.2(a).

- j. The nomination for the appointment as a Director to the Board shall be minuted and notified to the Company Secretary 14 days prior to the date of the RCSA Annual General Meeting.
- k. Each Region Council will report directly to the Board, although they may request a Member of the Board to present any Region report to the Board if they so desire.
- l. A Region 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 Region 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.
- m. Each Region Council must establish further Committees and sub-Committees as required by the Board.

3.3 Length of Service

- a. Commencing from the date of the Annual General Meeting for 2012 elected, appointed and co-opted members of the Region Council shall hold office for the same term as applies to the election, appointment and co-option, as the case may be, of Directors under the Constitution.
- b. The Region Chair in consultation with the CEO may vary the requirements of 3.3. (a) to ensure the formation of a workable Region Council.

3.4. Conflict of Interest

- a. Region Councillors must: -
 - i. disclose to the Council actual or potential conflicts of interest which may exist or might be reasonably be thought to exist between the interests of the party or its seconded personnel and the interests of the other parties 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 party cannot or is unwilling to remove a conflict of interest as required then he/she must absent themselves from the room during discussion of matters to which the conflict relates. This exit and entry should be recorded in the minutes.
- c. Region 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.

3.5. Council Meetings Meeting Frequency, Time, Place and Attendees

- a. Unless otherwise provided for in its Terms of Reference, a Region Council will meet at least on a quarterly basis face to face or by teleconference or other means.
- b. Additional Region 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.

4. RCSA Supporter

4.1. Criteria for RCSA Supporter

Any Company, not eligible for corporate membership under Part 1 of these By Laws, who provides a service to the on-hire recruitment, contracting and consulting 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 Region 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 2019 Member Consultation Survey Results

In January 2019, RCSA surveyed all members about the proposed amendments to the Code of Professional Conduct.

There were a significant number of responses to the survey (144), of which 70% came from corporate members. Of responses received by individual members, over 50% came from people who hold professional accredited membership at MRCSA level (minimum 7 years industry experience or equivalent) or higher.

Member responses overwhelmingly acknowledged the changes in regulatory environment for the industry, the need to revise the current Code in the context of those changes, and the importance of having the code authorised by the ACCC.

1. Market conditions and regulatory changes

Regulatory and market conditions have significantly transformed the industry in the past 3-5 years. Members cited the two largest changes for the sector as the introduction of Labour hire licensing in some jurisdictions (69%) and the challenge of rogue operators undercutting responsible professional agencies (64%). These were closely followed by observations of overall change in labour market conditions (55%) and the emergence of public campaigns damaging industry reputation (51%).

An additional issue flagged as having an impact on the recruitment and workforce in the past 12 months was the introduction of single touch payroll (amongst other Australia Tax Office requirements). Members noted that because many agencies provide outsourced payroll functions as part of their service to clients, the change was significant for many members' systems and operations.

Another area of concern for members that has seen significant change since the formation of RCSA's previous Code is in skilled migration programmes. These changes have had significant impact on the recruitment sector as they relate directly to many of the specialised recruitment and workforce services delivered by RCSA members. More onerous regulatory requirements have added complexity and administrative costs to market testing, while changes to skilled migration lists, including the imposition of new caveats, have caused significant challenge.

These changes have particular impact for workforce services firms as they imposed changes not only to the roles they recruit for clients, but also to the recruitment consultant occupation itself. This has presented an enormous challenge for RCSA members in recruiting internal staff given the significant skills shortage that exists for recruitment consultants in Australia.

Victoria, Queensland and South Australia (a repeal bill for this legislation is currently with the SA Parliament) have passed Labour Hire Licensing Acts. In addition to the rollout of State licensing, it is anticipated that a federal licensing scheme for the labour hire sector will be established in coming years.

Other substantive changes identified by members in survey responses include changes to employment services (Job Active), a series of legal cases which have sector-wide implications, the introduction of casual conversion arrangements and changes made to modern awards.

Member responses to the survey broadly aligned with RCSA's perspective of the contemporary industry regulatory environment. Out of 144 total responses, average member responses to the question "Do you believe that market and regulatory conditions for the staffing sector have changed in recent years" indicated widespread member recognition of significant change.

2. Benefits of proposed changes

Responses by members to the proposed changes to the Code were overwhelmingly supportive. It was clear from responses that members acknowledge and respect the role the Code plays in enhancing professional standards in the industry.

The proposed new Code moves away from prescriptive internal dispute resolution procedures in preference to utilising existing regulators and regulatory mechanisms and multiple other pathways to resolve issues where relevant. This approach was perceived as an improvement and welcomed by members.

Most responses emphasised a concern about the lack of professionalism in the broader industry (agencies who are not members of any peak bodies or associations) and the RCSA's inability to police the Code outside of its member base.

Members were also asked about their perception of the Code's impact with key stakeholders. In relation to the value the proposed new Code might add to their member-client relationships, a majority of respondents indicated they felt the new Code will improve professional standards in the industry (54%), as well as improving trust in the business relationship (51%).

In relation to the impact of the proposed new Code in relation to their candidates/workers, 64% of respondents were of the view that the proposed new Code will enhance professional standards expected by candidates/workers, with 55% agreeing that the new Code will help build trust with candidates/workers.

It is clear from these responses that members see the new Code as supporting significant value for consumers, both clients and workers/candidates, by building trust and confidence when engaging with RCSA members.

When asked about the public value or social benefit that proposed code will have on the general public with respect the broader industry, 52% felt that the new Code will improve professional standards in the industry and 43% stated that they believe it will build greater trust in the industry. Furthermore, 37% stated that they believe the proposed new Code has the potential to "enhance understanding of the sector and the value it delivers to the community".

One RCSA member felt that the proposed new Code was "helpful and gives us a benchmark to operate in. Getting those outside the association to engage on these standards is the key". One member went further to state they "will refer to the Principles of the (new) Code in our Recruitment Consultant Position Descriptions whereas before was too prescriptive".

Member survey responses acknowledged the limitations of a scheme run by volunteers and without public funding; while recognising the immense and valuable contribution made by volunteers in supporting the Code to date.

3. General feedback

The final survey question sought any other general feedback from members about the proposed new Code. One response commended RCSA's support of "ethical providers who seek to enhance, not diminish, our professional status and brand reputation", while another felt "the (new) code (was) helpful as part of a package of better legislation and industry oversight".

The negative external effect of poor practice by non-members was a resounding concern expressed clearly in survey responses. One member was particularly concerned by the lack of profession behaviour by non-members, whose activities have adversely impacted industry reputation – "I believe the code is a good thing for the industry but it will only be effective if there is enforceable action that can be taken against rogue operators (generally not members of the RCSA) or there is a good campaign to increase public perception of the benefits of the industry".

Conclusion

RCSA is proud of the role our members play as champions of ethical practice and professionalism in the workforce services industry.

The vastness of business functions and services within the industry requires ongoing member consultation to occur through a variety of working groups, forums, seminars and events/activities, allowing RCSA to develop a comprehensive understanding of market and operating conditions affecting our members.

ACCC authorisation of the proposed new Code of Professional Conduct will support member engagement with RCSA as an avenue and a means to address concerns and improve standards in the sector. ACCC authorisation of the proposed new Code of Professional Conduct does, to some degree, overlay expectations about professionalism and practice across the entire industry.

This proposed new Code supports an improvement in standards across members which in turn drives and supports efforts to improve standards across the broader industry. This has the potential to significantly enhance industry outcomes and community perceptions. ACCC authorisation of the proposed new Code is a vital component of our effort to ensure the effectiveness, breadth and impact of these measures to improve industry standards.