



# Determination

Application for minor variation of authorisation AA1000435  
lodged by  
Recruitment, Consulting and Staffing Association  
in respect of  
amendments to the Professional Conduct Grievance Intervention  
Guidelines and the RCSA Constitution  
Authorisation number: AA1000435

17 December 2021

Commissioners: Keogh  
Rickard  
Brakey  
Ridgeway

## Summary

The ACCC has decided to vary authorisation AA1000435 granted to the Recruitment, Consulting & Staffing Association (RCSA) in relation to its professional conduct regime.

The proposed variations are: (i) to amend the Professional Conduct Grievance Intervention Guidelines (PCGIG) to enable the Professional Conduct Review Committee (PCRC) to make an early professional conduct recommendation (PCR) in the course of an investigation; and (ii) to make administrative changes to RCSA's Constitution.

The ACCC considers that the proposed variations are minor and are unlikely to result in a reduction in the extent to which the benefit to the public from authorisation AA1000435 outweighs any detriment to the public.

Authorisation AA1000435, as varied, will remain in effect until 8 August 2024, which is the expiry date of the original authorisation.

### 1. The application for minor variation

- 1.1. On 16 November 2021, the Recruitment, Consulting and Staffing Association (**RCSA**) applied for a minor variation of authorisation AA1000435, granted by the ACCC on 8 August 2019 until 8 August 2024.
- 1.2. Authorisation AA1000435 relates to RCSA's professional conduct regime, which sets out professional standards for members, guidelines for the resolution of grievances and processes for dealing with non-compliance by members. Within this regime the Professional Conduct Review Committee (**PCRC**<sup>1</sup>) directs investigations, makes findings and recommends sanctions in respect of matters under RCSA's Code of Professional Conduct (**Code**) and Professional Conduct Grievance Intervention Guidelines (**PCGIG**).
- 1.3. RCSA seeks to amend subclauses 6.3.2 and 6.3.2.1 of the PCGIG to enable the PCRC to make an early Professional Conduct Recommendation (**PCR**) in the course of an investigation to facilitate early resolution of a grievance by providing case-specific guidance as to how the member may conform to the standards of professional conduct specified in the Code (**PCGIG Variations**).
- 1.4. RCSA also seeks to make administrative changes to its Constitution. The ACCC notes that Authorisation AA1000435 is only in respect of certain clauses of RCSA's Constitution.<sup>2</sup> The proposed variations to the authorised clauses of RCSA's Constitution are limited to replacing references to the (now retired) Disciplinary and Dispute Resolution Procedures with reference to the 'PCGIG' and correction of typographical errors (**Constitution Variations**). Proposed amendments to other clauses of RCSA's constitution (that are not authorised) seek to bring co-opted director maximum terms into alignment with other directors, align director eligibility for president, and make other minor administrative changes.
- 1.5. This application for a minor variation was made under subsection 91A of the *Competition and Consumer Act 2010* (the **Act**).

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<sup>1</sup> The RCSA board convenes the PCRC from a panel of experienced and accredited RCSA professional members.

<sup>2</sup> Clause 2.1 (Classes of Membership), clause 2.2 (Criteria for Membership), clause 2.8 (Exclusion or Suspension or other sanctions), clause 8.3 (By Laws), and clause 15 (Dispute Resolution).

- 1.6. The ACCC may grant authorisation which provides businesses with protection from legal action under the competition provisions in Part IV of the Act for arrangements that may otherwise risk breaching those provisions in Part IV, but are not harmful to competition and/or are likely to result in overall public benefits.

## 2. Background

- 2.1. RCSA describes itself as the peak industry body for recruitment, staffing and workforce solutions in Australia and New Zealand. RCSA represents over 2000 corporate and individual members across the staffing sector who provide recruitment and human resource services such as permanent placement services, contracting services, on-hire services and workforce consulting services. RCSA also includes two internal member groups; the first comprising nursing agencies, the Association of Nursing Recruitment Agencies; and another comprising medical recruiters, the Association of Medical Recruiters Australia and New Zealand.
- 2.2. RCSA's professional conduct regime was first authorised by the ACCC on 24 September 2003 (A90829). It has been re-authorised on three occasions: On 21 January 2009 (A91102), 12 February 2014 (A91388) and most recently on 8 August 2019 until 9 August 2024 (AA1000435). The ACCC has also granted authorisation to three minor variation applications since 2003.<sup>3</sup>
- 2.3. Authorisation AA1000435 is for conduct that may include a cartel provision within the meaning of Division 1 of Part IV of the Act or constitute exclusive dealing within the meaning of section 47 of the Act and substantially lessen competition within the meaning of section 45 of the Act.

## 3. Consultation

- 3.1. For the purpose of consultation, the ACCC made an initial assessment that the application is capable of being a 'minor' variation consistent with the definition of a minor variation in the Act.<sup>4</sup>
- 3.2. The ACCC then invited submissions from a range of potentially interested parties, including industry associations, recruitment and consulting services providers and government bodies. The ACCC received one public submission, which supports the minor variation.
- 3.3. OnTalent submitted that the changes are relevant to the sector and will support clarity of grievance management and resolution.<sup>5</sup>

## 4. ACCC assessment

- 4.1. Under section 91A of the Act, the ACCC may grant an application for minor variation of an authorisation if it is satisfied that:
  - the proposed variation is minor, and
  - the variation would not be likely to reduce the extent to which the benefit to the public from the authorisation outweighs any anti-competitive detriment caused by the authorisation (the minor variation test).

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<sup>3</sup> On 9 January 2006, 2 July 2010 and 3 March 2017.

<sup>4</sup> Section 87ZP(1) of the Act.

<sup>5</sup> The public submission received is available on the [ACCC's public register](#).

4.2. Section 87ZP includes the following definition:

**minor variation**, in relation to an authorisation, is a single variation that does not involve a material change in the effect of the authorisation.

4.3. Section 91A(7) enables the ACCC to consider two or more variations at the same as if they were a single minor variation if the ACCC is satisfied that the combined effect of those variations, if all were granted, would not involve a material change in the effect of the authorisation.

### The proposed variations are minor

4.4. The ACCC is satisfied that the proposed variations are minor. The ACCC considers that the proposed variations will not involve a material change in the effect of the authorisation that was originally granted. As noted, the proposed variations enable the PCRC to make a PCR during an investigation to facilitate early resolution of a grievance under the PCGIG and make administrative changes to the authorised provisions of RCSA's Constitution that update references to the 'PCGIG' and correcting typographical errors (see paragraphs 1.3 and 1.4).

### No reduction in the net public benefit of the arrangements

4.5. In its 2019 determination, the ACCC concluded that authorisation of RCSA's professional conduct regime was likely to result in a net public benefit. In particular, the ACCC considered that the arrangements would be likely to result in public benefits in the form of:

- improved professional standards
- reduction of information asymmetry, and
- promotion of equitable dealings in the employment services market.

4.6. The ACCC considers that the proposed variations will not reduce the likelihood of these public benefits arising.

4.7. The current PCGIG set out that a Professional Conduct Advocate (**PCA**) may make a PCR during the counselling process and may submit it to the PCRC for endorsement. RCSA submits that the proposed PCGIG Variations provide a more efficient path for the PCRC to issue a PCR during an investigation in circumstances where diverting to the counselling process is unnecessary.

4.8. The ACCC considers the PCGIG Variations may support likely public benefits by removing inefficiencies encountered when issuing a PCR during an investigation and by expediting the resolution of certain grievances. Moreover, the PCGIG Variations do not grant any new power as the PCGIG already identify the PCRC as a body that may make a PCR.<sup>6</sup> Instead, the PCGIG Variations clarify the circumstances when the PCRC may do so. The PCGIG Variations do not restrict the role of PCAs or limit use of counselling as an appropriate pathway for the resolution of grievances, nor do they affect the RCSA Board's role as the final decision maker with the ability to vary or revoke any PCR. The avenues of appeal or arbitration are unchanged as a result of the PCGIG Variations.

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<sup>6</sup> Clause 1.6.5. (a)

- 4.9. The ACCC considers the Constitution Variations are administrative in nature and are unlikely to have any collateral effect on the operation of RCSA's professional conduct regime.
- 4.10. In its 2019 determination, the ACCC considered that the arrangements were unlikely to result in any significant public detriment. In reaching this view, the ACCC did not consider that the arrangements would reduce competition between recruitment service providers. The ACCC also noted that any potential anticompetitive detriment arising from RCSA inappropriately refusing membership was unlikely, as: (i) the ACCC had not received any evidence of RCSA inappropriately refusing membership, (ii) RCSA's professional conduct regime contained dispute resolution and appeals processes available to members; and (iii) RCSA membership was not a necessary requirement to provide recruitment, consulting or on-hire services.
- 4.11. The ACCC considers that the proposed minor variations are unlikely to result in any increase in likely public detriments as they do not seek to change the nature of the conduct previously authorised.
- 4.12. For the reasons outlined, the ACCC is satisfied that the proposed variations would not be likely to result in a reduction in the net public benefit from Authorisation AA1000435.

## 5. Determination

- 5.1. The ACCC is satisfied that the variations are minor as defined by section 87ZP of the Act.
- 5.2. The ACCC is also satisfied that the public benefit test under section 91(4)(b) of the Act is met. That is, the variations would not result, or would not be likely to result, in a reduction in the extent to which the benefit to the public of authorisation AA1000435 outweighs any detriment to the public caused by the authorisation.
- 5.3. Pursuant to section 91A(3) of the Act, the ACCC makes this determination varying authorisation AA1000435.
- 5.4. This determination is made on 17 December 2021. If no application for a review of the determination is made with the Australian Competition Tribunal, the determination will come into force on 8 January 2022.