



Notification of proposed collective bargaining with or without a boycott or exclusive dealing or resale price maintenance

GUIDANCE IN COMPLETING YOUR NOTIFICATION TO THE ACCC

To lodge a notification of proposed:

- collective bargaining with or without a boycott or
- exclusive dealing or
- resale price maintenance

(the **notification**), you should include the information, data and documents outlined in this form. Where possible, each question should be answered fully and be substantiated with evidence. If a question is not relevant or where information is not available and cannot be reasonably estimated, please provide a brief explanation.

If the ACCC is not satisfied that the statutory test is met, it cannot allow the notification.

It is an offence to knowingly provide false or misleading information to the ACCC. Refer to section

122.1 of the Criminal Code (CC).

Key points for lodging your notification

- We encourage you to consult the relevant guidelines and contact the ACCC at adjudication@acc.gov.au for a pre-lodgement discussion to clarify what information and evidence may be needed to assess your notification.
- Failure to provide sufficient information may render the notification invalid or otherwise impact the ACCC's ability to assess your notification.
- You should provide all relevant information and evidence you intend to rely on.
- Less weight will likely be given to a statement or submission that is not supported with corroborating evidence.
- A valid notification **must** contain:
 - a public version of your notification for publication on the public register. You should provide a clearly marked confidential version if you wish to claim confidentiality for parts of your notification. All confidentiality claims must be substantiated. The public version must contain sufficient information to enable public consultation on your notification
 - a signed declaration by the notifying party
 - payment of the relevant fee (\$1,000 collective bargaining; \$2,500 exclusive dealing; \$1,000 resale

INFORMATION

NOTIFYING PARTY

1. Provide details of the notifying party, including:

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

The Recruitment & Consulting Services Association Ltd, ACN 078 606 416 ("RCSA").

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

Mr Charles Cameron CEO of RCSA, ph: [REDACTED] email:

[REDACTED]

1.3. a description of business activities

Supply of industry association services to members of the workforce services industry in Australia and New Zealand.

1.4. email address for service of documents in Australia.

[REDACTED]

DETAILS OF THE NOTIFIED CONDUCT

2. The notified conduct is for:

Exclusive dealing (s. 47 of the *Competition and Consumer Act 2010* (Cth) (the Act));

3. Provide details of the notified conduct including:

3.1. a description of the notified conduct

The conduct relates to RCSA's StaffMatch program, which is supported by funding from the Queensland government and managed by RCSA with assistance from technology, certification & audit, and workforce governance advisors.

It forms part of the arrangements the Queensland government will shortly announce as the Jobs Finder Queensland policy, being part of the Queensland government's economic relief policies in relation to COVID 19.

StaffMatch is a labour market enabler that will streamline opportunities for Queensland job seekers to find temporary and ongoing work opportunities and for Queensland business and organisations to find temporary workers during the COVID 19 pandemic whilst having the confidence that:

- ✓ workers are being properly paid, protected and supported by professional staffing agencies that have been vetted by RCSA,
- ✓ the program is operating consistently with legal, ethical, and societal

expectations to which Approved Providers can be held accountable – such principles being based on the provisions of RCSA’s Code for Professional Conduct and Professional Conduct Grievance Intervention Guideline, recently authorized by the Commission (AA1000435, 17 July 2019).

It seeks to do that by providing a 'concierge' service designed to match eligible job seekers (who will register their interest through a Queensland government provided portal) with participating recruitment, labour hire and private employment agency businesses that are suitable for them based on geographic location and specialisation.

RCSA proposes to confer services (rights, benefits, or privileges of participation in StaffMatch) to labour hire and private employment agency businesses on condition that those businesses are either:

- corporate members of RCSA;
- non-members who are StaffSure certified (see Notification N99774, 9 August 2017);
- a Labour Hire 'Approved Employer' within the Australian Government Seasonal Worker Program (provided that an Approved Provider that qualifies in this way is only an Approved Provider in respect of agriculture industry on-hire assignments and where the on-hire is not on an accommodation only basis);
- Approved under the Queensland Government Standing Offer Arrangement for Office Based Staff Solutions or ICT if participation is limited to office based or ICT based on-hire assignments or placements only; or
- other organisations which RCSA approves for inclusion in the program based on assessment against the StaffSure Standard (referenced in Notification N99774, 9 August 2017).

If an applicant for Approved Provider status falls into any one of the first four categories listed above, it will be considered to have established a Qualifying Assurance Program sufficient to enable RCSA to approve entry into the StaffMatch Program.

However, even if an applicant does not have a Qualifying Assurance Program, RCSA may still approve its application to become an Approved Provider under cl 9.4 of the Implementation Agreement (*Eligibility without a Qualifying Assurance Program*).

Applicants for approval via this route will be informed at the time of application that:

- if they wish to use this option, they will be required engage with SGS, the independent certifying Body for RCSA's StaffSure programme;
- SGS would provide a report to RCSA about the steps which the applicant should take, and the timeframe in which it should take them, in order to be considered for approval as an Approved Provider.

- RCSA may impose reasonable condition on approval – including a condition that restricts the applicant to supplying only certain services or in certain sectors or areas; - e.g. not to supply or procure accommodation in connection with work offered to eligible employees;
- If they do not wish to engage SGS or incur the cost of doing so, they can withdraw their application.

All applicants for approval will additionally be informed at the time of application that:

- If there is a dispute between RCSA and them about an RCSA termination, expulsion, suspension, imposition of conditions, or demerit decision, they must be given a right to raise the dispute with the Department; and
- If a dispute is raised with the Department:
 - RCSA must provide, and require them to provide all relevant information to allow the Department to give informed consideration to the dispute;
 - the original decision of RCSA will apply while the matter is being reconsidered and
 - the Department will make recommendations to RCSA about how the dispute should be resolved,.
 - RCSA, having due regard to the recommendation of the Department will redetermine the matter in dispute.

The process is to be applied in a manner that is fair, equitable and reasonable and does not involve any pressure on the applicant to become a member of RCSA.

Participating recruitment businesses (Approved Providers) will also be required to agree to a Professional Recruiter Accord as a condition of participation in the StaffMatch program. The Professional Recruiter Accord is based on principles drawn from:

- ✓ RCSA's Code for Professional Conduct and Professional Conduct Grievance Intervention Guideline, recently authorized by the Commission (AA1000435, 17 July 2019);
- ✓ The Queensland Government Supplier Code of Conduct parts 2, 3 and 4 https://www.hpw.qld.gov.au/_data/assets/pdf_file/0023/3938/procurementsuppliercodeofconduct.pdf
- ✓ The Queensland Government's Ethical Supplier Mandate, <https://www.business.qld.gov.au/running-business/marketing-sales/tendering/supply-queensland-government/ethical-supplier-requirements/mandate> utilising RCSA's Professional Conduct Grievance Intervention Guidelines and imposing demerit points accumulation of which may result in suspension or exclusion from the program.

3.2. any relevant documents detailing the terms of the notified conduct

- an Implementation Agreement between RCSA and the State of Queensland, represented by the Department of Employment, Small Business and Training
- a Professional Recruiter Accord, which sets out the professional conduct requirements of Approved Provider recruitment businesses.
- the StaffSure Standard referenced in Notification N99774, 9 August 2017).
- RCSA's Professional Conduct Grievance Intervention Guidelines (PCGIG) authorized by the Commission under Authorizations and supporting guidance materials dealing with the implementation of the PCGIG;
- Conditions to which applicants for Approved Provider status under the StaffMatch program agree at the time of submitting their application.

3.3. the rationale for the notified conduct

The notified conduct is to support the Job Finder Queensland government policy designed to support employment in Queensland in the face of the disruptions arising from COVID 19, which have resulted in numerous Queensland employees being stood down, made redundant or receiving less work from their previous employment at a time when other businesses still have demands for additional labour.

The policy premise is that the specialist Approved Providers will be able to more quickly locate and place eligible job seekers into work opportunities, and thereby benefit both job seekers and businesses (particularly small to medium enterprises) which are facing high demand but have limited capacity to also undertake recruitment.

Eligible job seekers will, by registering on a Queensland Government database, have the opportunity to find work by being assigned to help the people, communities and essential businesses of the State. The rationale for the intended criteria for becoming an Approved Provider is to provide the Queensland government with assurances that eligible job seekers will be properly paid, protected and supported by professional recruitment and staffing agencies that have been approved by RCSA as having relevant skill and operating under established professional conduct and assurance standards.

Where Approved Providers under the program place or employ and on-hire an eligible individual from the Queensland Government database, and that individual continues in employment for at least 40 hours during the intended 6 month term of the contract, the supplier will be eligible to receive an incentive payment sourced from the Queensland Government in the sum of \$350 plus GST for each such successful placement or on-hire assignment. The policy premise from these incentives is that Approved Providers will be incentivised to quickly find work for eligible job seekers which they are allocated through the program.

This opportunity to assist Queensland work seekers, businesses and organizations is a very important one which comes with an expectation of high service and probity standards.

The Approved Providers are free to negotiate commercial terms with their clients for the provision of placement and on-hire services. However, when doing so under this scheme, RCSA encourages them to offer terms which reflect the times and the likely economic stress upon the client (without providing any prescribed or recommended pricing).

3.4. any time period relevant to the notified conduct.

The StaffMatch program is proposed to commence on Thursday 16th April 2020 following announcement by the Queensland government

The program is proposed to run for 6 months and then extend as mutually agreed.

The program provides for the potential for earlier termination, including an orderly wind down period of one month (such that the Queensland government can cease the program if the impacts of COVID 19 on employment opportunities reached an end earlier than anticipated).

4. Provide documents submitted to the notifying party's board or prepared by or for the notifying party's senior management for purposes of assessing or making a decision in relation to the notified conduct and any minutes or record of the decision made.¹

RCSA, together with the Queensland Department of Employment, Small Business and Training has approached the Commission on a confidential basis ahead of the Hon Minister's announcement to discuss the notification and the scope of any additional documents required.

The following documents will be provided with the notification:

- the Implementation Agreement between RCSA and the Queensland Department of Small Business, Employment and Training. Please note that both RCSA and the Queensland Government have requested that the Implementation Agreement be treated as commercial-in confidence and not placed on the public register. CONFIDENTIAL
- a Professional Recruiter Accord, which sets out the professional conduct requirements of Provider Participant recruitment businesses.
- the StaffSure Standard referenced in Notification N99774, 9 August 2017). Please note that RCSA has requested that the StaffSure Standard be treated as commercial in confidence as was the case in Notification N99774, 9 August 2017 and that it not be placed on the public register CONFIDENTIAL
- RCSA's Professional Conduct Grievance Intervention Guidelines authorized by the Commission under Authorization AA 1000435, 17 July 2019.
- Conditions to which applicants for Approved Provider status under the StaffMatch program agree at the time of submitting their application in the form in which it is contemplated they will appear in the on-line

application.

As some documents contain commercial-in-confidence information about pricing of services between RCSA and the Department of Small Business, Employment and Training and about commercially valuable technology and program processes, RCSA and the Department will ask that commercially sensitive portions (which they will identify) not be published on the Commission's public register.

5. Provide the names and/or a description of the persons or classes of persons who may be directly impacted by the notified conduct (including targets in collective bargaining or boycott conduct) and detail how or why they might be impacted.

Labour hire providers and private employment agencies lawfully operating in Queensland under the provisions of the *Labour Hire Licensing Act 2017* (Qld) and the *Private Employment Agents Act 2005* (Qld) may be impacted:

- a) by being approved to participate in the program – including if approved on conditions

Examples:

- If there are concerns around accommodation, a condition may be imposed that the provider is not to on-hire Workseekers to remote work assignments.
 - If participant self-audit against the StaffSure standard reveals gaps, confirmed on consultation with SGS, the certification body for the StaffSure program (previously mentioned), a condition may be imposed requiring the participant to close the gaps either before supplying services, or within a reasonable time if the gap is not major or critical.
 - a condition that Provider Participants be bound to the Professional Recruiter Accord (mentioned above);
 - a condition that Provider Participants, if not already StaffSure certified, on-line introductory course and the SGS internal audit checklist,
- b) by being refused the opportunity to participate entirely or to some extent – either by refusal of their application or by subsequent imposition of conditions, suspension or termination.
- c) by funding and referral support being directed to Approved Provider participants.

Parties involved in program management & funding – RCSA, the Department of Small Business, Employment and Training, SGS Australia Pty Ltd ("SGS") and A C Wood Holdings Pty Ltd t/a WorkAccord according to their respective roles outlined in the Implementation Agreement.

Competitors in the primary and secondary markets identified at Question 6, who do not become Approved Providers.

Workseekers and Employers looking for workers, who will benefit from the notified conduct to the extent of having potentially greater access to pool of reputable and proficient recruitment services providers who commit to upholding established standards of service, already the subject of authorisation and standing notification.

MARKET INFORMATION AND CONCENTRATION

6. Describe the products and/or services, and the geographic areas, supplied by the notifying parties. Identify all products and services in which two or more parties to the notified conduct overlap (compete with each other) or have a vertical relationship (e.g. supplier-customer).

Market for supply of recruitment services in Australia

The relevant primary market was most recently identified by the Commission in Authorisation (AA1000435, 17 July 2019) as the market for the supply of recruitment and workforce services in Australia.

Although the development of state based licence schemes may have created some barriers to entry and border closures and travel restrictions under COVID-19 public health measures may have created some sub market discontinuity in the broader labour market, it is submitted that the primary market remains largely unaffected by the changed circumstances because licensing extends to interstate operators supplying labour hire services in Queensland and the substantial portion of recruitment and management operation will not be conducted in person in any case – reflecting increasing use of electronic commerce and the effects of social distancing measures. That is to say, the changed circumstances do not result in any significant modification of the geographic dimension of the primary market.

There are more than 3,000 labour hire providers licensed under the Queensland scheme. It is anticipated that the notified conduct would impact no more than about 200 of them, leaving a substantial portion of the market unaffected.

As explained in response to Question 9 below, the notified conduct does not preclude eligible job seekers from approaching other providers not participating in the program, such that RCSA considers the program will not impact on competition.

Market for the supply of industry association services

The market for the supply of industry association services would include RCSA, and APSCO Australia as suppliers specializing in the staffing and recruitment subsector. Closely related industry associations that provide professional and industrial support to their members might include AHRI and the various Chambers of Commerce.

It is submitted that, in view of the small number of acquirers of industry association services likely to be impacted by the notified conduct, the market for the supply of industry association services will be unaffected.

Market for the supply of certification services

In the StaffSure Notification N99774, 9 August 2017, RCSA identified a further relevant market as the market in Australia (and New Zealand) for the supply and acquisition of certification and audit services and, in particular, ISO 9001:2015, *Quality management systems - Requirements*.

Other significant suppliers apart from SGS, the certifying body under the StaffSure program, would include the accredited bodies in relation to quality management

systems listed on the JAS- NZ website. <https://www.jas-anz.org/accredited-bodies/all> (130 in all).

It is submitted that, in view of the number of certification services suppliers, the market penetration of ISO:9001:2015 and its derivatives, and the comparatively small number of Approved Providers in the StaffMatch program, the notified conduct is unlikely to have and significant impact on competition.

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.

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.

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

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

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

For the purpose of this notification, Approved Providers are restricted to labour hire providers as defined in the *Labour Hire Licensing Act 2017* (Qld) and private employment Agents as defined in the *Private Employment Agents Act 2005* (Qld).

Labour hire providers - Under s. 7 of the LHL Act, a person (a "provider") provides "labour hire services" if, in the course of carrying on a business, the person supplies, to another person, a worker to do work.

Examples of providers—

- a contractor who supplies workers to a farmer or fruit grower to pick produce for the farmer or grower
- a group training organisation or principal employer organisation under the Further Education and Training Act 2014 that supplies an apprentice or trainee to an employer
- an employment agency who on-hires temporary administration staff to a business

There are some exceptions and detailed provisions that relate to the definition that are not of major significance in the context of this notification.

Private employment agents – Relevantly for the purposes of notification, these are defined under s.4 of the *Private Employment Agents Act 2005* (Qld)

A person is a "private employment agent" if the person, in the course of carrying on business and for gain—

(a) offers to find—

(i) casual, part-time, temporary, permanent or contract work for a person; or

(ii) a casual, part-time, temporary, permanent or contract worker for a person;

Additional sub-sections have the effect of excluding labour hire providers from the definition. There are some further sub-sections that relate to performers and models, that are not relevant in the context of the present notification.

Sales processes for both classes of "recruiter" typically involve: sourcing candidates and job opportunities, gaining authority to recruit (for employers) and represent (Workseekers), agreeing conditions of representation of terms of business, matching Workseekers to jobs and employers.

Labour hire providers additionally engage the workseeker directly or indirectly under an employment contract or independent contract, on-hire the worker to a host client and manage the employment/engagement relationship, permitting the "host" client to direct and supervise the work.

"Supply chains" most usually take the form of networks by which various functions may be outsourced. Typically, those functions might be:

- sourcing/selection
- engagement
- mobilisation (including induction and work health & safety training)
- occupational, pre-vocational and recent-graduate training
- performance of work (by workseekers)
- management & supervision
- accommodation
- payment
- demobilisation.

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

Approximately 25% of the 240 odd providers (i.e. 60 of them) would operate hybrid labour hire and PEA businesses. However there is a sense in which it might be correct to say that every labour hire operator who charges a temp-to-perm fee is also a PEA.

9. In assessing a notification, the ACCC takes into account competition faced by the parties to the proposed conduct. Describe the factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously.

The notified conduct and related Queensland government policies are designed to provide an additional avenue for eligible job seekers to find employment, with the hope of facilitating the matching of job seekers to businesses with labour needs.

It is not designed as an exclusive channel, and by a job seeker registering their interest through the Queensland government portal they will not have agreed to any limit on dealing with other recruiters, labour hire or workforce service suppliers. Accordingly, RCSA anticipates that eligible job seekers will also seek out employment and work through other avenues including non-participants in the program.

Job seekers are also not required to deal with the Approved Providers that RCSA matches them with, such that any resulting arrangements they enter will be voluntary.

Accordingly, Approved Providers operating through the program will continue to face vigorous competition from numerous recruitment and staffing businesses. That continuing competition will ensure that Approved Providers will continue to compete vigorously and do not raise prices, reduce quality or choice, reduce innovation or coordinate.

There will also continue to be competition as between matched Approved Providers, as:

- the StaffMatch arrangements will match an eligible job seeker with Approved Providers based on geographic location and specialisation – such that each Approved Provider will compete for the opportunity to place the job seeker and the potential to earn the government funded incentive payment and any fees charged to a client e.g. earned through labour-hire arrangements; or placement fees
- Approved Providers will continue to source opportunities from outside the program as well.

In addition, the StaffMatch arrangements do not prescribe how arrangements between an eligible job seeker and the Approved Providers, or the Approved Providers and their clients, are to be operate (other than in respect of the compliance standards described in this notification and ancillary issues necessary to substantiate eligibility for the government incentive payments).

Accordingly, this notification is being made out of an abundance of caution, and RCSA considers the notified conduct will not have any impact on competition.

PUBLIC BENEFIT

10. Describe the benefits to the public that are likely to result from the notified conduct. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.

The principal benefit of the StaffMatch program is that a substantial number of Queenslanders will gain access to a concierge-managed program for matching workers, recruiters, employers, and jobs at a time of great volatility and uncertainty in employment markets, stress and anxiety.

In particular, StaffMatch is intended to provide better matching of job seekers with recruitment / labour hire firms based on geographic location and specialisation than might occur if job seekers were left to their own devices.

The hope of RCSA and the Queensland government is that this will result in:

- eligible job seekers being able to more quickly return to employment and earning an income; and
- small and medium size businesses needing additional labour (permanently or on a temporary basis) being able to more quickly find those resources,

with substantial benefits for the job seeker, businesses in which job seekers are placed and the Queensland economy.

There is an identified risk that job seekers and small to medium businesses facing unusual demands and with limited capacity to engage in recruitment, will be in a position of some vulnerability given their likely economic circumstances.

Consequently it is considered critically important that there are criteria applied to which recruitment and labour hire organisations can participate in the program to ensure that:

- job seekers are matched with recruitment and labour hire organisations which the appropriate expertise and specialities to enhance the prospects of them finding employment or work;
- that any economic vulnerability of job-seekers or employers is not taken advantage of; and
- public funding for this program achieves its intended outcomes.

All stakeholders will be able to have confidence in the program which draws across into its governance framework principles and procedures of the RCSA Code for Professional Conduct, which the Commission assessed as recently as July 2019 in terms:

4.8 Information asymmetry can arise between: a) service providers and their clients; b) service providers and work seekers; or c) service providers and other service providers. In these circumstances, those seeking to acquire and supply labour market services may have insufficient information to make informed and efficient decisions

...

4.10 ...the ACCC considers that information asymmetries may lead to workseekers and clients choosing not to engage with workforce services providers at all in circumstances where it would be beneficial for them to do so. For example, due to search costs of distinguishing between service providers, and uncertainty about which service providers may be more likely to perform to a high standard versus those that would not.

4.11. The ACCC considers RCSA's Professional Conduct regime is likely to reduce this imbalance and to result in a public benefit by: firstly, raising standards in the industry so that unprofessional or inappropriate conduct becomes less likely, and secondly by providing job seekers and clients with an assurance that by choosing to deal with an RCSA member, they can expect a high standard of ethical conduct and professional behaviour. In turn, job seekers can make more efficient and informed decisions about which recruitment services provider is likely to best suit their needs.

PUBLIC DETRIMENT (INCLUDING LIKELY COMPETITIVE EFFECTS)

11. Describe any detriments to the public that are likely to result from the notified conduct, including those likely to result from any lessening of competition. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments.

Some recruitment & workforce services suppliers, who are not RCSA Members, StaffSure certified, or otherwise approved for the program might perceive that the requirements of the program limit their participation in the program.

However:

- the criteria make it possible for non-certified / non-RCSA Members to apply for inclusion and be assessed against the StaffSure standard so they can be included; and
- a job seeker participating in the program is not limited in how they can approach or deal with any recruitment or workforce service supplier (whether they are an Approved Provider or not). Job seekers would be anticipated to seek work through numerous avenues,

Consequently, RCSA does not consider that the program is likely to lessen competition in any way.

The government incentive payments have also intentionally been set at a level at which they will provide additional incentives to Approved Providers to achieve placements– but not such a material proportion of the likely revenue which could be earned from recruitment placements that they will place non-participants at any material disadvantage.

The notified conduct will also not have any lasting impact on competition, given the time limited nature of the proposal. To the extent the conduct was continued beyond the time frame of COVID 19 impacts on employment in Queensland (which is not the parties' intention), the ACCC would have the opportunity to revoke the notification. As discussed earlier in this notification, the Queensland government has termination rights to bring the arrangements to an end when it considers the public benefit has ceased.

CONTACT DETAILS OF RELEVANT MARKET PARTICIPANTS

12. Identify and/or provide names and, where possible, 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.

There are approximately 240 RCSA Corporate members who would be eligible to apply to become Provider Participants under the StaffMatch program. RCSA would make a list available to the Commission if required.

It is not feasible to provide a list of the names of competitors who may not be eligible as there are more than 3,000 labour hire licence holders in Queensland. However the labour hire licence register is a public register and by matching the RCSA list against it, potential competitors could be identified by a process of exclusion.

The Queensland Department of Employment, Small Business and Training is the responsible Department for the *Labour Hire Licensing Act 2017* (Qld) and the *Private Employment Agents Act 2005* (Qld), and the party to the Implementation Agreement with RCSA. Its address and contact details are:

Attention: Steve Koch, Deputy Director-General - Investment
Department of Employment, Small Business and Training
PO Box 15483
CITY EAST

The Queensland Human Rights Commission administers the State's anti-discrimination legislation. It would perhaps have an interest in the provisions of the Professional Recruiter Accord that are designed to uphold human rights and protections against unlawful discrimination. Its website is <https://www.ghrc.qld.gov.au/>.

Association of Professional Staffing Companies Australia Ltd ACN: 143 665 025 (APSCo Australia) is a small industry association whose members compete with RCSA members principally in the professional services recruitment sector. Its members might compete with RCSA Provider Participants in filling lower end IT data entry roles, but would not compete across the range of sectors covered by the StaffMatch program.

APSCo Australia made a submission in support of RCSA's Code for Professional Conduct in (AA1000435, 17 July 2019). Its address and contact details would be:

Suite 1022, Level 10,
Tower 4, World Trade Centre,
611 Flinders St, Melbourne 3005

Phone: +61 3 8622 4700 Some of the freelance platforms, job boards and app developers that match candidates to employers and jobs would compete, though according to a different business model. It is difficult to identify them with precision. If the Commission should require further information on this point, RCSA would seek input from its Members.

ANY OTHER INFORMATION

13. Provide any other information you consider relevant to the ACCC's assessment of the notified conduct.

RCSA would be happy to answer questions the Commission may have about the StaffMatch Program and provide any further information the Commission may require.

RCSA 16 April 2020

DECLARATION BY NOTIFYING PARTY

Authorised persons of the notifying party must complete the following declaration.

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 are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).

A black rectangular box redacting the signature of the authorised person.

Signature of authorised person

CEO

Office held

Andrew C Cameron

(Print) Name of authorised person

This [insert day] day of [insert month] [insert year]

Note: If the Notifying Party is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Notifying Party, this fact must be stated.

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RCSA STAFFMATCH PROFESSIONAL RECRUITER ACCORD

By registering as an Approved Provider for the RCSA StaffMatch program, you are agreeing to operate under the RCSA STAFFMATCH PROFESSIONAL RECRUITER ACCORD (PRA). Please read the PRA carefully ask questions about it and seek legal advice about it if you need to.

The PRA consists of:

- a **StaffMatch Provider Service Charter**, which sets out professional conduct standards and requirements to adopt and embed those standards in workforce services dealings. It is based directly on RCSA's new Code for Professional Conduct, which was authorised by the ACCC in July 2019. The Charter is set out at Appendix 1,
- a set of **StaffMatch Outcomes**, which describe (non-exhaustively) results that should be achieved if the StaffMatch Service Provider Charter is observed. The outcomes are based on work which RCSA has done toward developing a professional service delivery management system standard incorporating elements of ISO 9001:2015 *Quality Management Systems – Requirements* and on parts 2, 3 and 4 of the Queensland Government's Supplier Code of Conduct. The inclusion of effective Outcomes in a Provider's SDMS creates a "pull effect" – i.e. actions and decisions are pulled toward the stated Outcome. When Outcomes are supported by processes and procedures that are aligned to Provider's Professional Service Commitment, the Service Delivery Management System can be described as being centred on delivering professional service. The StaffMatch Outcomes are set out at Appendix 2.
- A **Professional Recruiter Mandate** (PRM), which provides for demerit points to be recorded against an Approved Provider when the requirements of the Professional Service Charter are not met or the Outcomes are not achieved. Accumulation of demerit points can result in suspension or termination of an Approved Provider's participation in the StaffMatch program. The PRM does not replace RCSA's professional conduct regime, which may result in the Board imposing sanctions on RCSA Members under its Constitution. However, it does provide a pathway to facilitate administration of the StaffMatch program for non-Members as well as an additional diversionary pathway for RCSA Members who may be involved in professional conduct grievances

arising under the RCSA Code for Professional Conduct. The PRM is set out at Appendix 3.

- RCSA's Professional **Conduct Grievance Intervention Guidelines** and **Protocols (PCGIG)**, which have been designed to assist in the handling of grievances and support Members' commitments to developing values of personal professionalism and embedding them into the conduct of their workforce services dealings.

The PCGIG was authorised by the ACCC in July 2019 and has been successfully deployed since August 2019. It provides multiple pathways for assisting Members (and in its application to StaffMatch, Approved Providers) to recognise "the professional thing to do" when a grievance arises and to support them in doing it. It is supported by Guidelines and Protocols that deal with the detail of its operation. You can find the PCGIG by clicking on this link or copying and pasting it into your browser

<http://www.rcsa.com.au/documents/RCSA%20Code/New%20PCGIG.pdf>

The PCGIG applies, with necessary changes being made as though reference to a Members were read as a reference to an Approved Provider save that the RCSA Board does not impose sanctions on non-Members and non-Members do not access the arbitration provisions of the PCGIG in relation to decisions of RCSA. The Implementation Agreement provides, instead, that if a dispute is referred to the Department:

- RCSA must provide, and require the relevant Approved Provider to provide all relevant information to allow the Department to give informed consideration to the dispute;
- the decision of RCSA will apply pending a determination by the Department; and
- the decision of the Department shall be final and binding on RCSA and the Approved Provider.

Appendix 1

STAFFMATCH PROVIDER SERVICE CHARTER

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

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 recruitment and staffing industry in Australia and New Zealand in the interests of its Members and the public;
- to encourage and strengthen the 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

noting that RCSA is auspicing, with funding support from the Queensland Government, the StaffMatch Program to streamline opportunities for Queenslanders to find temporary work opportunities and for Queensland employers to find temporary workers during the COVID 19 pandemic whilst having the confidence that:

- ✓ workers are being properly paid, protected and supported by professional staffing agencies that have been vetted by RCSA,
- ✓ the program is operating consistently with legal, ethical, and societal expectations to which Providers can be held accountable -

RCSA NOW ARTICULATES THE STANDARD OF PROFESSIONAL CONDUCT REQUIRED OF STAFFMATCH APPROVED PROVIDERS AND CALLS UPON THEM 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.

PART A: Personal Professionalism

Diligent & Competent

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

Trustworthy

- a) Approved Providers are conscientious in safeguarding the trust placed in them by their stakeholders.

Respectful

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

Knowledgeable

- a) Approved Providers work diligently to develop and maintain a satisfactory and up to date level of relevant professional knowledge;
- b) Approved Providers make sure that their staff are adequately trained and skilled to undertake their responsibilities.
- c) Approved Providers maintain a continuing professional development programme to the level prescribed by their professional bodies or industry associations commensurate with their professional accreditation.

Co-operative

- a) Approved Providers:
 - 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

Confidentiality

- a) Approved Providers handle information with due regard to privacy and confidentiality.

Care

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

Certainty of Engagement

- a) Approved Providers 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.

Effective Complaints Handling

- a) Approved Providers 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 this Charter.

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

Social Sustainability

- a) Approved Providers:
 - 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.

Ascertain & Assure

- a) Approved Providers, 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.

Continuous Disclosure

- a) Approved Providers 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 Approved Provider, RCSA, 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

Approved Providers are to meet the standard of professional conduct required by the Charter

Approved Providers are to meet and are responsible for ensuring that their staff meet the standard of professional conduct required by the Charter.

Approved Providers are to avoid involvement in unsatisfactory professional conduct

Approved Providers are not to engage or be involved in unsatisfactory professional conduct.

Approved Providers are accountable

Approved Providers are accountable to RCSA, through its *Professional Conduct Grievance Intervention Guidelines* and *Ethical Provider Mandate*, for assuring to a reasonable standard of confidence that they meet the standard of professional conduct required by the Charter and the StaffMatch Outcomes.

PART D: Definitions & Interpretation

Applicable law

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

Consultant

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

Controls

are the means by which an Approved Provider assures that its responsibility to meet the standard of professional conduct required by the Charter 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 Charter. 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); and
- vii. 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:

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

unprofessional conduct.

Professional Conduct Grievance Intervention Guidelines (PCGIGs)

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

Reasonable standard of confidence

means in relation to a matter, circumstance, or state of affairs means that, after reasonable inquiry, the Approved Provider is comfortably satisfied, within an acceptable degree of residual risk, as to its existence and that the Approved Provider 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 an Approved Provider in its business to work on the Approved Provider's behalf in providing or supporting the provision of Workforce Services and includes a Consultant.

Stakeholder

means a person who places trust in an Approved Provider to meet the standard of professional conduct required by the Charter, to avoid unsatisfactory professional conduct, or to be accountable through RCSA's *Professional Conduct Grievance Intervention Guidelines* and *ESM*, including RCSA, the Queensland Government, Staff, a customer, a competitor, or a regulator.

Unsatisfactory professional conduct

includes any conduct, whether of the Approved Provider or another person, occurring in connection with an Approved Provider's workforce services dealings that might reasonably be expected to discredit the Approved Provider's commitment to meeting the standard of professional conduct required by the Charter.

Value promise

means any representation, promise or prediction that an Approved Provider's services (or services of third party supplied in connection with an Approved Provider'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 a workforce services provider and its customer, workseekers or participants in its service network and all activities of a Member in providing a workforce service.

Workseeker

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

Interpretative Notes

RCSA Code Guidelines and other interpretive materials and professional conduct recommendations, including the RCSA StaffMatch Ethical Supplier Accord, may describe outcomes that would be considered consistent with the standard of professional conduct required by the Charter in particular contexts.

Note 1: Outcomes

Outcomes describe what Approved Providers should achieve in order to satisfy the standard of professional conduct required by the Charter.

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 Approved Providers 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. Approved Providers 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 and this Accord.

Appendix 2

STAFFMATCH OUTCOMES

Providers and the Law

Compliance

In addition to any specific items mentioned elsewhere within the StaffMatch Outcomes, a Provider must comply with all relevant legislation and standards.

Providers and their Workers

Workers are fit & proper

Workers are free of any disqualification circumstance that would prevent them from undertaking the work which they are to perform?

Alternatively to paragraph (a), any disqualification circumstances affecting a worker's suitability have been frankly discussed with the worker and customer and waived by the customer.

Worker engagements are agreed and recorded

The engagement of workers in the Providers' Service Networks is agreed and recorded in a form that meets relevant requirements.

Worker consultation is appropriate

Workers in Providers' Service Networks are consulted appropriately about:

- a. termination, change, and redundancy
- b. employment protection
- c. casual conversion
- d. flexible work arrangements
- e. rostering and leave arrangements
- f. the performance of Service Network roles and their impacts on worker
- g. agenda building to include any other agreed matters that impact on the health, safety, wellbeing, representation, work requirements, or

performance expectations in relation to workers in the Provider's Service Network.

Accommodation is reasonable

Workers for whom Provider provide or procure accommodation are accommodated to reasonable levels of safety, decency, privacy, hygiene, comfort, and affordability in the light of local conditions.

Dealings with workers are conducted in good faith

Providers and any hosts or controlling third parties deal with Providers' workers in good faith.

Workers are reasonably informed about their representation

Providers' workers are reasonably in a position to make informed decisions about whether and how their Provider will represent them; the options available to them; and whether to accept any offer of work that is made to them.

Providers have appropriate authority to present/ represent

Providers have appropriate authority from their workers to present them for the jobs for which they are put forward.

Workers are reasonably free to seek other work

Providers' workers are reasonably free to pursue work lawfully obtainable from other sources.

Fees etc charged to workers are lawful etc

Providers only enter into fee and charging arrangements with workers that are lawful, appropriate to the workers' needs, and reasonable.

Job advertising is transparent

Providers are reasonably confident that jobs which they advertise are genuine and available (or available within stated timeframes).

Jobs offered are suitable

Providers are reasonably confident that jobs for which the present workers are genuine and available (or available within stated time frames), and suitable for their workers according to their abilities and rights to work.

Exploitation is avoided

Providers are reasonably confident that neither they nor their service network participants cause or contribute to exploitation through their activities or service network dealings.

Exploitation is remedied or mitigated

Providers take reasonable steps to remedy or mitigate exploitation that is linked to their activities or service network dealings - even though they have not contributed to those impacts.

Appropriate permissions are obtained

Providers have appropriate permission from their workers (or other legal authority) to disclose their confidential or private personal information prior to making any disclosure.

Disguised unpaid work arrangements are avoided

Providers' services do not involve the use or management of unpaid or stipended volunteer workers to replace paid workers except in response to an emergency or disaster or to facilitate a genuine work experience, internship or pre-vocational program.

Wrongful multiple hiring is avoided

Providers' services do not involve the wrongful use or management of a multiple hiring of the same worker in a manner that avoids overtime or penalty payments that would be due to the worker if not engaged under a multiple hiring arrangement.

Workers are informed about their privacy protections

Providers' workers are reasonably informed of the extent to which their personal information is (or is not) protected by privacy laws.

Providers and their Customers

Claims about services are fulfilled etc

Providers' claims about their services are true, not misleading and are fulfilled.

Services are fit for purpose etc

Providers' services are reasonably fit for any purpose expressly or impliedly made known to them.

Services are delivered in a timely manner

Providers' services are delivered in a timely manner.

Customers are able to make informed decisions

Providers' customers are reasonably in a position to make informed decisions about the services they require, whether and how they will be acquired, how they are regulated and the options available to them.

Clear agreements are reached to avoid misunderstandings

Providers' customers are sufficiently clear about the details of any workforce services which Providers are to supply and about the terms and conditions on which they are to be supplied so as to reduce the risk of any misunderstanding adversely impacting workers or customers.

Appropriate authority to advertise is obtained

Providers have appropriate authority from their customers (and any job owner) to advertise jobs.

Appropriate authority to present workers is obtained

Providers have appropriate authority from their customers to present workers for the jobs for which they are put forward.

Integrity is preserved

Providers do not corrupt (e.g. by improper communication, inducements, or anti-competitive arrangements etc) any process for the acquisition of a workforce service.

Standard form contracts do not contain voidable terms

Providers are reasonably confident that their standard form contracts do not contain terms that may be void under of the *Australian Consumer Law*.

Fee agreements are legal

Providers only enter into and give effect to fee agreements that are legal as made and as performed.

Fees & charges are transparent

Providers take reasonable and appropriate steps to inform their customers of fees and charges (or the basis on which they will be charged) so far as is practicable before they supply their services.

Fees & charges do not amount to profiteering

Fees and charges charged to customers or workers in Providers' service networks are not extravagant such that they amount to profiteering.

Providers and their Businesses & Undertakings

Businesses & undertakings are established etc in accordance with applicable laws

Providers are reasonably confident that their businesses and undertakings are established, operated, and maintained in accordance with all applicable laws, including business licensing and registration laws.

Anti-competition risks are identified and avoided

Providers identify and avoid anti-competition risks arising in connection with their businesses or undertakings.

Overseas dealings comply with domestic and foreign laws

Providers are reasonably confident that when they are involved (directly or through an agent) in foreign dealings in connection with the supply of a workforce service they will abide by all relevant domestic and foreign laws.

Financial stability is assured

Providers maintain appropriate systems and controls for monitoring the financial stability of their businesses and undertakings; and take appropriate steps to address any issues identified.

Staff etc are fit & proper to perform their roles

Providers' staff (including all persons who are involved in management, or in the Providers' service network dealings) are appropriate persons to perform the functions entrusted to them.

Providers' store of professional knowledge is reasonable & current

Providers develop and maintain a reasonable and up to date level of professional knowledge relevant to the conduct of their businesses and undertakings (including, laws relating to employment agency regulation, employment relations, work health and safety, fair trading, competition, consumer protection, contracts, human rights and equal opportunity, and privacy).

Service Network roles are clear

Providers are reasonably confident that workers, customers and participants in their service networks are sufficiently clear about:

- a. who is participating;
- b. what their respective roles and responsibilities are with regard to important matters such as safety and protection against exploitation

to reduce the risk of any misunderstanding adversely impacting customers, suppliers, or workers.

Work health & safety is assured

Providers appropriately assess and respond to safety and security risks for which they are legally responsible.

Contracts etc are sound and fit for purpose

Providers' contracts, arrangements, and understandings reached in relation to their Professional Service Commitments are:

- a. clear & certain with regard to all material terms (including planned outcomes, Service Value Propositions and KPIs as required);
- b. accessible, readable & understandable;
- c. lawful;
- d. free of voidable provisions;
- e. documented or recorded;
- f. monitored & managed with respect to performance;
- g. reviewed and amended as necessary.

Confidentiality and personal information management controls operate effectively

Providers' confidential and personal information management controls effectively to:

- a. identify categories of confidential information;
- b. identify requirements and restrictions of confidentiality including requirements and restrictions with regard to use, security and disclosure;
- c. identify exceptions to confidentiality including consent exception;
- d. protect confidentiality in accordance with relevant requirements and restrictions;
- e. manage and mitigate breaches of confidentiality;

- f. identify categories of personal information which it processes or controls;¹
- g. map personal information flows including flows occasioned by the use of third-party applications;
- h. Identify applicable privacy protection obligations including regimes imposed upon the Provider as a contracted service provider and obligations imposed as a result of cross border disclosure;
- i. protect personal information in accordance with relevant requirements and restrictions;
- j. provide standards for informed consent where required;
- k. manage and record consent and permissions;
- l. manage and mitigate breaches of confidentiality and privacy.

Complaints are addressed promptly etc

Providers deal with complaints promptly, fairly, and effectively.

Providers and Social Expectations

(Note these outcomes are based on the Queensland Government Supplier Code of Conduct. They should be interpreted as supplementing the Charter and other Outcomes)

Managing workplace health and safety & wellbeing

As well as complying with all workplace health and safety laws and regulations, Providers also regularly manage and review workplace hazards and provide any required training to their employees. This includes proactively engaging with employees, industry bodies and unions and checking on workseeker wellbeing, noting especially stresses imposed by circumstances of working during pandemic.

Acting to stop domestic and family violence

The Queensland Government is committed to ending domestic and family violence. Providers support this by implementing appropriate initiatives within their business, such as having a stated zero tolerance approach to domestic and family violence or having a workplace domestic and family violence policy in place. A [model domestic and family violence policy](#) is available for adaption.

Treating workers fairly

Providers respect every worker's workplace rights and entitlements and ensure compliance with all relevant workplace laws, regulations and instruments. This includes properly paying employees, giving them their entitlements, not discriminating unlawfully and committing to workplaces free of harassment. This includes recognising the right of employees to be members of trade unions.

Acting against human rights abuses in the supply chain

Providers make all reasonable efforts to ensure that businesses within their supply chain are not engaged in, or complicit with, human rights abuses, such as forced or child labour.

Ensuring workplace diversity

Queensland Government wants to enhance workplace diversity. Providers therefore have policies and practices in place to encourage diversity and ensure equal employment opportunity for all people. This includes embracing social benefit opportunities such as training and employment opportunities for disadvantaged and marginalised jobseekers.

Providing quality, secure local jobs

Providers respect that Queensland Government values providers who provide quality, secure local jobs. These jobs provide:

- ✓ employment where people live
- ✓ fair wages and conditions
- ✓ superannuation and workers compensation
- ✓ genuine respect for the rights of workers to collectively bargain.

Acting in accordance with the spirit of the StaffMatch Program

Providers act in accordance with the spirit and purpose of the StaffMatch Program, acknowledging that funding is provided and is to be accounted for in a high-trust environment.

Providers avoid all forms of artificiality and sharp practice that could defeat, distort or undermine the effectiveness of the program, damage its integrity or interfere in the fairness and equality of its administration.

Indicative Behaviours

Providers use their best endeavours to secure their clients' co-operation with them in meeting the requirements of this Accord, including attaining the Outcomes,

Contra-indication

Providers do not make claims against the Program if they have delayed making placements, which in the ordinary course of business they would have made before gaining approval as Providers.

Appendix 3

PROFESSIONAL RECRUITER MANDATE

1. What is the Professional Recruiter Mandate (PRM)?

Purpose

The PRM will ensure that PP supplying services under the StaffMatch program uphold their professional conduct commitments made upon as a condition of their participation. The Mandate will hold PPs who do not conform to professional standards and achieve professional outcomes to account.

Demerit points component

The StaffMatch Professional Recruiter Mandate (PRM) is RCSA's mandate to administer its scheme for allocating demerit points against an Approved Provider (AP) when RCSA is reasonably satisfied that the AP failed to conform to the requirements of the Professional Recruiter Accord (**PRA**) or achieve its stated Outcomes.

Accumulation of demerit points can result in suspension or termination of an Approved Provider's participation in the StaffMatch program.

Precautionary suspension component

The PRM also allows RCSA to impose a precautionary suspension of an AP's participation in the StaffMatch program as a measure taken to protect members of the public and RCSA's interest in maintaining the integrity of the Program whilst an investigation into an AP's conduct takes place.

Precautionary suspension is not a sanction and does not imply that an AP has failed to meet the standard of professional conduct required by the Code.

Interaction with RCSA Code (for RCSA Members)

The PRM does not replace RCSA's professional conduct regime, which may result in the Board imposing sanctions on RCSA Members under its Constitution. However, it does provide an additional pathway to facilitate RCSA's administration of the StaffMatch program for Members and non-Members alike, as well as an alternative pathway for RCSA Members who may be involved in professional conduct grievances arising under the RCSA Code for Professional Conduct.

2. How does it work?

The PRM will only impact APs who repeatedly breach the Professional Recruiter Accord, unless their conduct is due to an honest mistake, oversight, or accident.

Demerit points will be issued to APs on a sliding scale for minor, major, and critical non-conformances.

An AP may be sanctioned if it reaches 10 demerits within a 6-month period.

3. What are the sanctions?

The sanctions that may be imposed are:

- a direction to carry out corrective action to the reasonable satisfaction of RCSA;
- imposition of a condition on continued participation;
- suspension of participation;
- termination of participation.

4. Concierge

The Concierge may take into account an AP's accumulation of demerit points when matching work seekers to APs or Customer Participants to APs.

5. Process

APs who are suspected of non-conforming conduct will be offered procedural fairness through the opportunity to respond to issues raised and corrective actions suggested or directed, at multiple stages in the process in accordance with RCSA Professional Conduct Grievance Intervention Guidelines so far as they can be applied to the circumstances in which the suspected non-conformance arises.

6. Demerits

Minor non-conformance: 2 demerit points

Major non-conformance: 4 demerit points

Critical non-conformance: 6 demerit points

7. Definitions

Assurance breakdown – a weakening of the assurance of professional conduct afforded by the Professional Recruiter Accord that is not likely to cause significant damage to the integrity of the StaffMatch Program

A **minor non-conformance** includes an omission or deficiency in the AP's adherence to the Professional Recruiter Accord that produces unsatisfactory conditions or outcomes which, if not addressed, may lead to a safety, quality, or exploitation risk, or assurance failure, that is not likely to cause an assurance breakdown.

A **major non-conformance** includes an omission or deficiency in the AP's adherence to the Professional Recruiter Accord that produces unsatisfactory conditions or outcomes which, if not addressed, could lead to a highly unsatisfactory safety, quality or exploitation risk, or assurance failure, that is likely to result in an assurance breakdown.

A **critical non-conformance** includes:

- a. the relevant presence of a Disqualification Circumstance (as defined in RCSA StaffSure:2017);
- b. a breakdown of control(s) at a critical control point, failure to meet Labour Hire Licensing or Private Employment Agent statutory requirements, or other process failure that is assessed as likely to cause significant damage to the integrity of the StaffMatch Program; and
- c. an AP's failure to take effective corrective action within the timeframe directed by RCSA.

PROFESSIONAL CONDUCT GRIEVANCE INTERVENTION GUIDELINES

Professional Conduct Grievance Intervention Guidelines

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1. About these Guidelines

1.1. Object

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

1.2. Revocation of Previous Procedures

These Guidelines supersede any previous Disciplinary and Dispute Resolution Procedure.

1.3. Jurisdiction to Intervene

See Also: Discretion to Intervene (Intervention)

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

1.4. Discretion Not to Intervene

See Also: Statement of Strategic Priorities and Intent (Strategic Content)

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

Examples:

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

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

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

1.5. Externally Sourced Professional Obligation

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

Examples:

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

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

1.6. Key Roles & Responsibilities

1.6.1. Members

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

1.6.2. The Board

The Board:

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

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

1.6.3. The CEO

The CEO:

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

1.6.4. The Professional Conduct Registrar

The Professional Conduct Registrar:

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

1.6.5. The Professional Conduct Review Committee (PCRC)

The Professional Conduct Review Committee:

- a. may make or endorse a professional conduct recommendation;
- b. directs investigations of Professional Conduct Grievances that are referred to it;
- c. makes findings about whether Members have met the standard of professional conduct required by the RCSA Code;
- d. upon conclusion of an investigation, may make a sanctions recommendation to the Board;
- e. at the request of the Board, develops Interpretative & Operational Guidance Materials in accordance with these Guidelines.

1.6.6. The Professional Conduct Council (PCC)

The Professional Conduct Council:

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

1.6.7. Professional Conduct Advocates (PCA)

Professional Conduct Advocates:

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

1.6.8. Arbitrator

An Arbitrator may:

- a. conduct arbitration, as provided for by the RCSA Constitution;

- b. conduct arbitrations of disputes referred to the arbitrator under the provisions of applicable legislation, these Guidelines, or rules for commercial or international arbitration;

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

1.6.9. Code Advisors

Code Advisors engaged by RCSA:

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

2. Interpretive & Operational Guidance Materials

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

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

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

2.1. Statement of Strategic Priorities and Intent

See Also: Discretion Not to Intervene (Strategic Content)

The 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.

2.2. Code Guidelines

Code Guidelines:

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

Examples

- Workforce transitions, fee disputes, or candidate replacement guarantee transactions.
- b. assist Members to manage those situations 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;
 - c. may be developed on instruction from RCSA's CEO whenever RCSA perceives a need to do so;
 - d. may be developed by a committee or task group of RCSA Members - including by a Professional Conduct Review Committee acting as a Code Guideline Development Sub-Committee;
 - e. must be reviewed by RCSA's lawyers for assessment of any competition, privacy or other regulatory impacts and also by the Professional Conduct Council (together, *Review Advice*) before being approved by the Board. All review advice must be provided to the Board.

2.3. Consensus Statements

Consensus Statements

- a. are public statements made by the Board of RCSA, from time to time, for:
 - promoting excellence, enterprise and integrity in the businesses of all Members and of individuals engaged by those businesses; and

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

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

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

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

3. Professional Conduct Grievance Interventions Generally

1. A Professional Conduct Grievance Intervention is a proceeding conducted by RCSA in respect of the professional conduct of its Members. A Grievant is not a party to such a proceeding but may participate as provided for by these Guidelines.

2. A participant, who is not a Member and who fails to comply with a requirement of these Guidelines may be refused any further entitlement to participate.
3. Professional Conduct Grievance Interventions shall be conducted with due regard to parties' and participants' interests in:
 - a. securing a lawful outcome;
 - b. being heard - noting the parties' and participants' interests in emotional due process extending to the need for the parties and participants:
 - to feel they have been heard and listened to, acknowledged and understood by those involved;
 - to creatively shape solutions so that the resulting resolution meets all or most of their interests, goals and needs;
 - c. being sufficiently informed of relevant responses of a party or participant;
 - d. knowing whether the standard of professional conduct required by the RCSA Code has been met;

NOTE:

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

- to be able to work at their own pace and within reasonable timeframes and constraints;
- to preserve important relationships between parties and participants, avoiding more harm, and when possible, improving them;
- to avoid the collateral damage of draining resources, funds, energies and emotions.

- e. maintaining confidentiality consistently with the purpose for which information obtained in connection with the Professional Conduct Grievance Intervention may be used or disclosed - extending to the purpose of maintaining records for use and disclosure in assessing suitability for future membership;
 - f. having Professional Conduct Grievance Interventions completed with as little cost, formality, and delay as may be consistent with the requirements of fairness - the general intent of which is that investigations should proceed, so far as practicable, by interview, without legal representation, and by direct involvement of parties and participants with the Professional Conduct Review Committee when its jurisdiction is engaged;
 - g. being informed of the outcome of any Professional Conduct Grievance Intervention and reasons for that outcome.
4. Except as may be permitted by these Guidelines, parties and participants to a Professional Conduct Grievance Intervention must not attempt privately to approach or influence (directly or indirectly) the Directors, CEO, or any member of a Professional Conduct Review Committee regarding the Professional Conduct Grievance Intervention.

3.1. Costs

Except in so far as:

- a. 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;
- b. an Arbitrator conducting an appeal under these Guidelines might otherwise award; or
- c. a court of competent jurisdiction might otherwise order

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

3.2. Savings

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

4. Raising a Grievance

1. Any person who has a direct and substantial interest in the professional conduct of a Member and who is aggrieved by the conduct of the Member's employment services dealings (*a Grievant*) may raise a Professional Conduct Grievance in the form authorised by the Board from time to time.
2. A Grievant may raise a Professional Conduct Grievance through a representative (e.g. a legal representative, trade union, professional association, or community or social justice body) who has been given express permission to represent the Grievant and who undertakes to observe all reasonable requirements of these Guidelines – including requirements of privacy and confidentiality.

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

5. Discretion to Intervene

See Also: Mediation (Deferral for Mediation), Jurisdiction to Intervene (Intervention)

1. RCSA reserves a discretion to intervene or to decline to intervene in a Professional Conduct Grievance.
2. The discretion may be exercised by the Board or by its duly appointed delegate - (e.g. the CEO or Professional Conduct Registrar).
3. RCSA may decline to intervene in a Professional Conduct Grievance (or the continuation thereof) for any reason it considers proper, including the reason that:
 - a. the grievance is, or has become, frivolous or vexatious;
 - b. the grievance does not disclose an important issue about a Member's Professional Conduct;
 - c. resources available to RCSA as a voluntary body are not suitable for the investigation of the grievance;
 - d. investigation of the grievance may prejudice proceedings in a court or statutory tribunal, a law enforcement investigation, or the investigation of a statutory authority;
 - e. delay in raising the grievance may prejudice its investigation
 - f. the grievance arises from previously closed intervention;
 - g. the Board has accepted a written undertaking from the Member in whole or partial satisfaction of RCSA's professional conduct interest in the conduct giving rise to the grievance;
4. Instead of declining a Professional Conduct Grievance for intervention, RCSA may defer it, or part of it, and direct that it not proceed until either:

- a. a relevant statutory or law enforcement body completes any investigation or prosecution that it may be conducting;
- b. other legal proceedings between the parties and participants are finalised or resolved;
- c. a Member or Members involved in the Grievance undergo counselling under these Guidelines; or
- d. persons involved in the Grievance participate in mediation or any other dispute resolution process directed or recognised under these Guidelines.

6. Pathways

1. If RCSA decides to intervene in a Professional Conduct Grievance, the intervention is to be placed on one or more of the Pathways provided for in this section.
2. Acceptance of a Professional Conduct Grievance for intervention does not imply, by that fact alone, that any Member has fallen short of the standard of professional conduct required by the RCSA Code.
3. If RCSA decides to intervene in a Professional Conduct Grievance, the Professional Conduct Registrar in consultation with the CEO may note a caution on the Register of Members against the Member in respect of whose conduct it intervenes.
4. A caution is a notation made on the Register of Members:
 - a. searchable by the public;
 - b. advising that a professional conduct issue has been raised in respect of the Member's [broadly particularised – e.g. candidate replacement] dealings;
 - c. advising that the matter is being dealt with by RCSA under confidential grievance intervention procedures;
 - d. emphasising that neither the notation of a caution nor the conduct of a Grievance Intervention implies that the Member has

not met the standard of professional conduct required by the RCSA Code;

- e. informing the public that if they wish to know more, the Member has indicated that they can contact *[AB – contact details to be provided]* who has been authorised to receive and respond to proper inquiries regarding the matter; and
 - f. Informing the public that no further comment will be forthcoming from RCSA pending completion of its grievance intervention.
5. The Board or CEO can review a Professional Conduct Grievance Intervention at any time and instruct that it be placed on a different or additional Pathway or that an intervention on a Pathway be discontinued.
 6. Discontinuance of an intervention which has been placed on a Diversion & Monitoring pathway means only that RCSA would stop monitoring the diversion. It does not affect the authority of any external body to which the conduct has been diverted.

6.1. Neutral Evaluation

1. Neutral Evaluation is a process for assessing a Professional Conduct Grievance in which the evaluator seeks to identify and limit the issues that are in question.
2. Neutral Evaluation may be conducted at any time by a Code Advisor at the request of RCSA for the benefit of RCSA.
3. A Member who is involved in a Professional Conduct Grievance may request RCSA to conduct a Neutral Evaluation at the Member's cost. RCSA may accept or decline the request in its sole discretion.
4. Neutral Evaluation is conducted with regard to the material made available to the Code Advisor.
5. The evaluation must be in writing. RCSA may choose to share the evaluation with any Member who is involved in the Grievance or with a

Professional Conduct Advocate confidentially and to help the Member to understand and accept their commitments to the standard of professional conduct required by the RCSA Code and the responsibilities arising from it.

6. If a Neutral Evaluation is sought by a Professional Practice Review Committee, it must be shared with any Member whose conduct in relation to the Grievance is the subject of the evaluation.

6.2. Diversion & Monitoring

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

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

6.2.1. Regulatory Referrals

1. A Regulatory Referral is a referral of a Member's professional conduct made by RCSA to a statutory regulator, commission or tribunal, such as the Fair Work Ombudsman (FWO), the Office of the Australian Information Commissioner (OAIC), the Australian Competition & Consumer Commission (ACCC); NZ Commerce Commission, Labour Hire Licensing Authority, or Human Rights Commission. It also includes referral to another authority such as AHRI that may exercise a concurrent jurisdiction in respect of the professional conduct of Members

2. Typically, a referral would be made where a grievance involves a workplace right (within the meaning of the *Fair Work Act*, a matter more appropriate to the making of a personal grievance to the Employment Relations Authority (NZ), a competition or consumer law contravention, or a privacy right.
3. A Regulatory Referral may only be made if RDSA has established a Memorandum of Understanding or liaison program with the statutory regulator, commission, tribunal or authority and a governance protocol for determining when conduct should be referred.

6.2.2. Complaints Handling Diversion

1. A Complaints Handling Diversion channels a grievance into the Member's internal complaints handling processes and allows the Member to demonstrate its professionalism through its response to the grievance.
2. A Member may use an outsourced complaints handling service for reasons of independence and efficiency provided that the service reflects and supports the standard of professional conduct required by the RDSA Code.
3. A Complaints Handling Diversion may only be made if RDSA is reasonably satisfied that the Member has access to a competent and effective complaints handling process which substantially involves the Member's senior or other responsible management.

6.2.3. Corrective Action Diversion

1. A Corrective Action Diversion channels a grievance into the Member's corrective action procedures that are established in connection with accreditations or certifications held by the Member - e.g. StaffSure certification.
2. A Corrective Action Diversion affords the Member the opportunity to assess the sufficiency of its controls and to take corrective action to address past non-conformances and prevent future non-

conformances in order to meet the standard of professional conduct required by the RCSA Code.

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

6.2.4. Undertakings

1. Undertaking Diversions provide an opportunity for Members to give the Board an undertaking in whole or partial satisfaction of RCSA's professional conduct interest in conduct giving rise to a Professional Conduct Grievance.
2. Subject to the Board's power to waive their requirements, an Undertaking Diversion may only be made in accordance with protocols or procedures that RCSA develops for the giving and acceptance of undertakings.
3. If an undertaking is offered confidentially and without prejudice, the conditions upon which it is offered shall operate, so far as the law allows, to prevent access to, or disclosure of, its terms if it is not accepted by the Board.
4. The Board may direct that an undertaking which it has accepted be published or notified as it considers appropriate.
5. A Member may withdraw or vary an undertaking at any time, but only with the consent of the Board.
6. If the Board considers that the Member who gave an 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.

6.3. Registry Intervention

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

6.3.1. Structured Listening

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

- a. information about the substance of the Grievance in accordance with the approval given by the Grievant;
 - b. an opportunity for prompt action and response.
5. A Member who has been given notice of a grievance has two weeks in which to provide a substantive response. The PCR may extend the period for a response if reasonably satisfied that it would be worthwhile to do so. The PCR must notify the Grievant of any extension that is granted.
6. When the PCR receives the response:
- a. If the Grievant and the Member have agreed to resolve the Grievance between themselves:
 - i. a timeline for resolution must be agreed with the PCR;
 - ii. the PCR is to contact the participants, in writing, to confirm the timeline so agreed;
 - iii. the PCR is not required to take any further step by way of Professional Conduct Grievance Intervention other than to confirm with the participants whether their Grievance is proceeding in accordance with the timetable they have established; and
 - iv. the participants must advise the PCR of:
 - any change in their timetable;
 - any breakdown in their steps towards resolving the Grievance between themselves; and
 - their having reached any resolution they may have reached.
 - b. If the Grievant and the Member have NOT agreed to resolve the Grievance between themselves, the PCR:
 - i. seeks approval from the Member for information about the response to be forwarded to the Grievant;

- ii. provides to the Grievant information about the substance of the response in accordance with the approval obtained from the Member;
 - iii. gives the Grievant two weeks in which to provide a reply (including in the case of a Grievant who is a Member, a substantive reply to any counter-Grievance or allegation made by the Member) and notifies the Member accordingly. The PCR may extend the period for a reply if the PCR is reasonably satisfied that it would be worthwhile to do so. The PCR must notify the Member of any extension to the period for a reply that is granted.
7. The PCR may facilitate further exchanges of information between the participants, and within such timeframes as the PCR may set, if the PCR considers it would be worthwhile to do so in the interests of resolving the Grievance.
8. If at any time during the Structured Listening Process the PCR forms the opinion that it is not practicable to continue the intervention, or that resolution of the Grievance via Structured Listening is unlikely to be reached, the PCR may terminate the process by notice in writing, effective immediately on its being given.
9. In terminating the Structured Listening Process, the Ethics Registrar is to inform the participants of any other Grievance Intervention Pathway to which the Grievance has been allocated.

6.3.2. Counselling

1. A Member or Members involved in a Grievance may be directed to participate in a process of counselling, to which end a Professional Conduct Advocate may be appointed at any time by the PCR in consultation with the CEO.
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 forthwith to show cause to the Board or to a PCRC in

the manner provided in section 6.4.2 (as the Board may determine) why sanctions (typically suspension or a reprimand) or a caution ought not immediately to be imposed.

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

6.3.2.1 Professional Conduct Recommendations

1. The PCA may make a Professional Conduct Recommendation to a Member or Members involved in a Grievance, which the PCA considers becoming of the Member and not prejudicial to the interests of RCSA.
2. A Professional Conduct Recommendation may be submitted by the PCA to the PCRC for endorsement, together with such information gathered in the course of counselling as may assist the PCRC to decide whether it will endorse the recommendation.
3. The PCRC may authorise for release to the parties and participants in a Grievance Intervention, on such terms as to confidentiality or otherwise as the Board may think fit, any Professional Conduct Recommendation endorsed by the PCRC.
4. The Board may revoke or vary a Professional Conduct Recommendation or its endorsement on such terms as it thinks fit.

5. A Professional Conduct Recommendation endorsed by the PCRC (and any variation or revocation by the Board) is to be notified promptly to all participants in a Grievance, who are affected by it.
6. If a Member fails to comply with a Professional Conduct Recommendation, the Member may be called upon forthwith to show cause to the Board or to a PCRC in the manner provided in section 6.4.2 (as the Board may determine) why sanctions (typically suspension or a reprimand) or a caution ought not immediately be imposed for its failure to comply.

6.3.2.2 Conflict Coaching

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

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

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

6.3.3. Mediation

See Also: Discretion to Intervene (Deferral for Mediation)

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

Source: [Resolution Institute, 2018] <https://www.resolution.institute/dispute-resolution/mediation> accessed 6 Nov 2018

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

NOTE: The Code states:

RCSA Members co-operate in the handling of grievances and disputes - using processes of counselling (as may be directed in accordance with the PC&GIG), negotiation, expert appraisal, mediation and arbitration in order to resolve disputes and must endeavour to do so wherever practicable.

3. RCSA may direct a Member to participate in mediation but may not direct a non-Member to participate. Consequently, mediation would not be indicated if a non-Member were unwilling to participate.
4. RCSA may direct that a Member pay part or all the cost of mediation.
5. A Member's failure to comply with a direction to participate in mediation is reportable to the Board and may result in the Member being called upon forthwith to show cause to the Board or to a PCRC in the manner provided in section 6.4.2 (as the Board may determine) why sanctions (typically suspension or a reprimand) or a caution ought not to be imposed.

6.4. Investigations

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

6.4.1. Referral for Investigation

1. When a Member's conduct is to be referred to the PCRC for investigation:
 - a. the CEO will provide the Member, whose conduct is referred for investigation, with a general description of the conduct to be investigated and a summary of the reasons why it has been referred;
 - b. the PCR will:

- collate all directly relevant material including any Neutral Evaluation that has been obtained in connection with any Grievance arising from the Member's conduct and provide it to the PCRC;
 - convene a PCRC; and
 - provide such administrative support to the PCRC as it may reasonably require.
2. Upon receiving a Professional Conduct Referral, the PCRC is to schedule an investigative interview with the Member whose conduct is the subject of the referral and with any other person from whom the PCRC wishes to seek information about the referred conduct.
 3. A Professional Conduct Investigation concludes when the PCRC delivers its report and findings.

6.4.2. Summary Show Cause

1. The PCRC may require the CEO or PCR to serve a notice in writing to any Member, whose conduct is the subject of the referral, requiring the Member to show cause either in writing or at an investigative interview held by the PCRC why:
 - a. a caution should not be recorded against the Member; or
 - b. the Member should not be suspendedpending the conduct of the intervention.
2. If the PCRC is satisfied that the Member has shown good cause, why a caution should not be recorded:
 - a. the PCRC must terminate its investigation of any part of the conduct in respect of which good cause has been shown;
 - b. the Professional Conduct Grievance Intervention to the extent that good cause has been shown, is to be either discontinued or allocated to an alternative pathway under these Guidelines; and

- c. any caution that has already been noted with regard to the conduct in respect of which good cause has been shown is to be removed from the Register.

6.4.3. Directions

1. A Professional Conduct Investigation must proceed in accordance with any directions the PCRC considers appropriate including directions:
 - a. for the participation or representation of any person;
 - b. to preserve the anonymity of any natural person;
 - c. to clarify any issue in dispute;
 - d. to require the provision of information or documents;
 - e. for the giving or obtaining of any evidence - including by investigative hearing;
 - f. for the making of written submissions to ensure the validity of facts and to clarify information for the PCRC;
 - g. to preserve the confidentiality of any information communicated in the course of the matter;
 - h. for mediation;
 - i. for expedited determination, including determination on the basis of written submissions;
 - j. otherwise for the conduct of the investigation.
2. Directions may be made by a single member of a PCRC sitting alone.
3. Any failure on the part of a Member to comply with directions given under these Guidelines may be referred to the Board, whereupon the Member may be called upon forthwith to show cause to the Board or to a PCRC in the manner provided in section 6.4.2 (as the Board may determine) why sanctions should not be imposed under clause 2.8 of the Constitution.

6.4.4. Investigation Report

1. The PCRC, upon completion of its investigation, is to provide a written report (*an Investigation Report*) setting out:
 - a. its determination (if any) on the question of whether the conduct referred to it for investigation meets the standard of professional conduct required by the RCSA Code;
 - b. its reasons including its findings of material fact on the basis of which its determination is based.
2. The Investigation Report may include a recommendation:
 - a. for the imposition of sanctions of the type described at clause 2.8 (c) of the Constitution;
 - b. a recommendation that the Board direct a Member to do or refrain from doing an act or make a payment as may be considered just in the circumstances and becoming of the Member or otherwise in the interests of the RCSA.
3. The Professional Conduct Registrar is to forward a copy of the Investigation Report to:
 - a. the Member, whose conduct is the subject of the investigation - stating that the Investigation Report has been forwarded to the Board for its consideration under these Guidelines;
 - b. the CEO; and
 - c. any participant directed by the PCRC to receive a copy of its Investigation Report – subject to such conditions of confidentiality as the PCRC may impose.
4. The CEO, upon receipt of the Investigation Report, is to notify the Board of any recommendation made by the PCRC and forward a copy of the report to the Board.

6.4.5. Resolution and Enforcement

1. The Board may by resolution:
 - a. adopt the findings and recommendations of the PCRC;

- b. adopt the findings of the PCRC, 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 just in the circumstances; becoming of the Member or otherwise in the interests of the RCSA; and consistent with the findings of the PCRC.
 - c. decline to adopt the findings and recommendations of the PCRC because:
 - i. the PCRC's investigation was not conducted as required by these Guidelines;
 - ii. the findings were induced or affected by fraud or bad faith; or
 - iii. the findings were otherwise contrary to law.
2. 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,
 - the reasons given or adopted by the Board for having made that resolution; and
 - the Member's right of appeal under these Guidelines.
3. The Board's resolution does not take effect;
- a. until the expiration of the period within which the Member is entitled to appeal, or
 - b. if, within the period in which the Member is entitled to appeal, the Member exercises the right of appeal, unless and until the Board makes a resolution under subsection 6.4.7, whichever is the later.
4. If a Member fails to comply with a resolution of the Board that;
- a. adopts a recommendation of the PCRC; or

- b. adopts the findings of the PCRC, or an Arbitrator, but makes a different order for the imposition of sanctions, or a direction that a Member do or refrain from doing an act or make a payment

and has not instituted any appeal as provided for in these Guidelines, the Member may immediately be called upon to show cause to the Board why the Member should not be liable to censure, suspension or expulsion under clause 2.8 of the Constitution upon evidence of such failure being presented to the Board.

6.4.6. Appeal

A Member who wishes to dispute the 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, written notice requiring the dispute to be referred to arbitration under clause 15 of the Constitution and these Guidelines.

6.4.7. Arbitration

1. Arbitration under these Guidelines is to be conducted in accordance with:
 - a. the laws governing the conduct of commercial arbitrations in the Country, State or Territory in which the conduct giving rise to the Complaint occurred;
 - b. these Procedures; and
 - c. 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.
2. Arbitration of a dispute under these Guidelines proceeds as an investigative re-hearing of the Grievance from the beginning.
3. 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 to determine and settle all questions involved in the proceeding.

4. An Arbitrator's findings of fact are to be binding on the parties for the purposes of these Guidelines.
5. An Arbitrator may not recommend or impose sanctions or make any award in the nature of sanctions. For the avoidance of doubt, an award of costs is not taken to be an award in the nature of sanctions.
6. The Board may, by resolution, adopt the findings made by an Arbitrator and impose sanctions of the type described at clause 2.8(c) of the Constitution or may impose any other sanctions it thinks fit.
7. The Board must decline to pass a resolution under the preceding paragraph pending the outcome of any proceedings taken before a court of competent jurisdiction for review of the Arbitrator's award.

6.4.8. Publication

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

1. The applicant holds a Queensland labour hire licence **YES/NO**
2. If yes, the Applicant's labour hire licence number is **[insert number]**
3. The Applicant is a private employment Agency operating under the Private Employment Agents Act 2005 (Qld) **YES/NO**
4. The Applicant is **[checkbox for each Qualifying Assurance Program – extract from Implementation Agreement cl. 9.3 include field for none]**
 - a. If your Qualifying Assurance Program (QAP) is neither RCSA Corporate Membership nor StaffSure certification, you will be required to upload evidence of your QAP. *Link to upload function* Have you uploaded evidence of your QAP **YES/NO**
5. If you do not presently have a Qualifying Assurance Program, RCSA may still approve your application to become an Approved Provider under cl 9.4 of the Implementation Agreement (*Eligibility without a Qualifying Assurance Programme*) – *link to provision in final form*.

If you wish to use this option you will be required to arrange a consultation (at your cost) with SGS, the certifying Body for RCSA's StaffSure programme.

SGS will provide a report to RCSA about the steps you should take and the timeframe in which you should take them in order to be considered for approval as an Approved Provider.

RCSA may impose reasonable condition on your approval – including a condition that restricts you to supplying only certain services or in certain sectors or areas.

If you do not wish to engage SGS or incur the cost of doing so, you can withdraw your application.

Do you agree to these terms **YES/NO**.

6. Have you read the terms of the Professional Recruiter Accord? **YES/NO**
7. Do you understand that the Professional Recruiter Accord includes:
 - a. A Charter of Professional Responsibilities that binds Approved Providers?
 - b. Outcomes that describe what Approved Providers should achieve in order to satisfy the standard of professional conduct required by the Charter?
 - c. A Professional Recruiter Mandate which provides for demerit points to be recorded against an Approved Provider when the requirements of the Professional Service Charter are not met or the Outcomes are not achieved?

Note: Accumulation of demerit points can result in suspension or termination of an Approved Provider's participation in the StaffMatch program

- d. Professional Conduct Grievance Intervention Guidelines under which Approved Providers may be held accountable to RCSA within the StaffMatch Program?

YES/NO

8. Do you agree as a condition of approval as an Approved Provider to be bound by the Professional Recruiter Accord? YES/NO
9. Do you understand and agree, as a condition of approval as an Approved Provider, that RCSA may change the Professional Recruiter Accord from time to time as it considers, after consultation with the Department, to be in the interests of the Program? YES/NO
10. Do you agree as a condition of approval as an Approved Provider to all of the following:
- a. If there is a dispute between RCSA and you about an RCSA termination, expulsion, suspension, imposition of conditions, or demerit decision, you must be given a right to refer the dispute to the Department.
 - b. If a dispute is referred to the Department:
 - RCSA must provide, and require you to provide all relevant information to allow the Department to give informed consideration to the dispute;
 - the decision of RCSA will apply pending a determination by the Department; and
 - the Department will consult with RCSA and make a recommendation, however the decision of RCSA made after consultation with the Department shall be final and binding on RCSA and the Approved Provider.

YES/NO

11. Do you understand that, subject to and consistently with your responsibilities under the Professional Recruiter Accord you are free to negotiate commercial terms of supply (including prices) with your clients? YES/NO
12. Do you understand that RCSA encourages all Approved Providers to exercise benevolence when pricing their recruitment placement services, taking into account the unusual social and economic conditions in which the Program is established? YES/NO
13. Do you understand, and agree as a condition of approval as an Approved Provider, that you are co-operate with RCSA to provide information reasonably required to:
- a. validate your claims for incentive payment under the scheme?

- b. allow RCSA and the Department to assess the performance and success of the Program?

YES/NO

14. Do you understand, and agree as a condition of approval as an Approved Provider that RCSA is under no obligation to pay to you the amount of any incentive payment claimed by you unless the claim has been approved and RCSA has been placed in funds to pay it? YES/NO
15. Do you understand, and agree as a condition of approval as an Approved Provider, that if you make and are paid on a false claim or receive any overpayment:
- a. RCSA may issue a certificate of the amount which it considers to have been wrongly paid?
 - b. RCSA certificate will be conclusive evidence of the amount wrongly paid?
 - c. RCSA may recover from you, as a debt payable immediately on demand, the amount so certified?

YES/NO

16. Do you understand, and agree as a condition of approval as an Approved Provider, that RCSA and the Department may conduct audits of your incentive payment claims, including by interview of your job seekers and clients? YES/NO
17. Have you read, and do you agree as a condition of approval as an Approved Provider, the conditions that must be satisfied to make an eligible claim for an incentive payment [*link – are these set out anywhere?*] including that you must declare and avoid conflicts of interest YES/NO
18. Do you understand that you must not charge any fee (or employment premium) prohibited by the *Industrial Relations Act 2016* (Qld) or the *Private Employment Agents Act 2005* (Qld) or *Private Employment Agents (Code of Conduct) Regulation 2015* (Qld)? YES/NO
19. Do you understand, and agree as a condition of approval as an Approved Provider, that:
- a. you must comply all applicable with Privacy Laws in respect of the Job Seeker Personal Information (including ensuring that the provision of information to RCSA and the Department does not contravene such laws); and
 - b. you must only use or disclose the Job Seeker Personal Information for the purpose of finding employment or work for Eligible Job Seekers?
 - c. you must only use and disclose Job Seeker Information to the extent consented to by the Job Seeker in the Terms of Use? [*need to link to these*]

YES/NO

20. Do you understand, and agree as a condition of approval as an Approved Provider, that you must co-operate fully with RCSA, using your best endeavours, to support it in meeting its obligations to the Department in respect of the Program? **YES/NO**
21. To the best of your knowledge information and belief, after due inquiry, is the applicant affected by any misconduct or improper state of affairs, as those terms are defined in the Corporations Act 2001 (Cth) that could reflect adversely on the RCSA, the Department or the Program were the applicant to be approved as an Approved Provider? **YES/NO** (If YES, please provide details in the field below *[free text field]*)

NOTE

Misconduct includes fraud, negligence, default, breach of trust and breach of duty.

Many different types of conduct could amount to an "improper state of affairs" concerning an entity to which this Policy applies.

For example, an "improper state of affairs or circumstances" might not involve unlawful conduct in relation to the entity but may indicate a systemic issue that a relevant regulator should know about to properly perform its functions. It may also relate to business behaviour and practices that might cause consumer harm.

Some broad examples of misconduct or an improper state of affairs or circumstances would be:

- a) illegal conduct, such as theft, dealing in, or use of illicit drugs, violence or threatened violence, and criminal damage against property;
- b) fraud, money laundering or misappropriation of funds;
- c) offering or accepting a bribe;
- d) financial irregularities;
- e) failure to comply with, or breach of, legal or regulatory requirements;
- f) engaging in or threatening to engage in detrimental conduct against a person who has made a disclosure or is believed or suspected to have made, or be planning to make, a disclosure;
- g) conduct that constitutes a significant risk to public safety; and
- h) misconduct or an improper state of affairs or circumstances in relation to the tax affairs of an entity to which this Policy applies (e.g. involvement in tax avoidance through cash payments).

22. Is there anything else that you wish to know or clarify regarding your application to participate as an Approved Provider in the Program? **YES/NO**

If YES, please provide details – *[free text field]*

In lodging this application you are warranting and declaring that all the information you have provided is accurate, current, and not misleading.

