



**The Recruitment, Consulting and Staffing Association Limited  
(RCSA) –  
Application for revocation of authorisation A91388 and the  
substitution of authorisation AA1000435  
Interim authorisation decision  
28 February 2019**

**Decision**

1. The Australian Competition and Consumer Commission (the **ACCC**) has decided to suspend the operation of authorisation A91388 (which expires on 6 March 2019) and has granted interim authorisation in respect of the application for authorisation AA1000435 in substitution for the authorisation suspended.
2. The application was lodged by the Recruitment, Consulting and Staffing Association Limited (**RCSA**) on 6 February 2019. Interim authorisation was sought due to the imminent expiry of the current authorisation (A91388).
3. The ACCC has decided to grant interim authorisation for RCSA to give effect to conduct identical to that authorised under authorisation A91388, as varied on 3 March 2017. This consists of the Code for Professional Conduct (the **Current Code**), relevant clauses<sup>1</sup> of the RCSA's Constitution and By-Laws (the **Current Constitution**), and the Disciplinary & Dispute Resolution Procedures (the **DDRP**) (together the **Current Professional Conduct Regime**).
4. The Current Professional Conduct Regime may constitute a cartel provision within the meaning of Division 1 of Part IV of the *Competition and Consumer Act 2010* (the **Act**) or may constitute exclusive dealing within the meaning of section 47 of the Act.
5. Interim authorisation enables the RCSA to continue to operate the Current Professional Conduct Regime while the ACCC considers the substantive application for re-authorisation, which varies the current regime.
6. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.
7. The RCSA also applied for:
  - Authorisation, including interim authorisation, in respect of some new guidelines, the Professional Conduct Grievance Intervention Guidelines (the **PCGIG**), which are proposed to replace and update the DDRP.
  - Authorisation in respect of a new code (**Code 5**), to replace the Current Code and which would commence 12 months following authorisation.
8. The ACCC has decided not to grant interim authorisation for the PCGIG at this time. These new guidelines take a substantially different approach to the current approach under the DDRP, and the ACCC has not yet had the opportunity to assess the effect of

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<sup>1</sup> These include clause 2.1 (Classes of Membership), clause 2.2 (Criteria for Membership), clause 2.8 (Exclusion or Suspension or other sanctions), clause 8.3 (By Laws), and clause 15 (Dispute resolution) of the Applicant's Constitution; and By-Law 1.1(b) (Membership Extension Principle) and By-Law 1.10 (Objections to Membership).

this proposed change in any detail, including the likely public detriments and public benefits.

9. Instead, by granting interim authorisation for the RCSA to continue to give effect to its DDRP, the ACCC is effectively maintaining the status quo.
10. The RCSA did not request, and the ACCC does not grant, interim authorisation in respect of Code 5, but will consider whether to grant authorisation for both Code 5 and the new PCGIG as part of its consideration of the full application for authorisation, which is expected to be completed in mid-2019.

### **The application for authorisation**

11. The RCSA describes itself as the peak industry body for recruitment, staffing and workforce solutions in Australia and New Zealand, representing over 2000 corporate and individual members across the staffing sector.
12. On 6 February 2019, the RCSA applied for re-authorisation for 10 years for its professional conduct regime, which sets out the professional standards for members in relation to the provision of recruitment and human resources services. It provides for sanctions for non-compliance with the regime as well as business improvement mechanisms.

### **The authorisation process**

13. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the Act. Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs the public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether proposed conduct results in a net public benefit.

### **Interim authorisation**

14. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. This allows the parties to engage in the conduct while the ACCC is considering the substantive application.
15. The RCSA requested interim authorisation on the basis that:
  - The ACCC is unable to make a final determination on the application for re-authorisation before the current authorisation A91388 expires on 6 March 2019.
  - Without authorisation, the RCSA may be unable to administer the Current Professional Conduct Regime, as there are provisions that may otherwise breach the Act.
  - If the RCSA is unable to administer the Current Professional Conduct Regime, this may result in harm to members and their clients where an inability to enforce the high standards may compromise public confidence that RCSA members are accountable for their professional conduct.

### **Consultation**

16. The ACCC invited submissions from a range of potentially interested parties, including the Fair Work Commission, the Fair Work Ombudsman, other recruitment/staffing associations, RCSA member customers and recruitment agencies that are not RCSA members.<sup>2</sup> To date, the ACCC has received four public submissions in support of re-authorisation. These submissions did not comment on the inclusion of the PCGIG or on interim authorisation.

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<sup>2</sup> A list of the parties consulted and the public submissions received is available from the ACCC's public register [www.accc.gov.au/authorisationsregister](http://www.accc.gov.au/authorisationsregister).

17. Further information in relation to the application for re-authorisation, including any public submissions received by the ACCC as this matter progresses, is available on the ACCC's website [www.accc.gov.au/authorisationsregister](http://www.accc.gov.au/authorisationsregister).

### **Reasons for decision**

18. In granting interim authorisation for the Current Professional Conduct Regime, the ACCC considers that:

- The form of interim authorisation granted will maintain the status quo as the ACCC has authorised identical conduct under authorisation A91388 as varied on 3 March 2017.
- The ACCC is unable to reach a final determination before the RCSA's authorisation expires on 6 March 2019.
- Interim authorisation will provide the RCSA with sufficient certainty with respect to continuing its Current Professional Conduct Regime.
- When the ACCC granted authorisation to the Current Professional Conduct Regime, it concluded the likely benefit to the public would outweigh any likely public detriment including from any lessening of competition that would be likely to result. Since it was first implemented in 2003, the ACCC has authorised versions of the RCSA's professional conduct regime on three occasions.

19. In deciding not to grant interim authorisation for the new PCGIG, the ACCC considers that:

- Interim authorisation of the PCGIG would be a departure from the status quo. There are substantial differences between the current DDRP, which adopts what RCSA describes as a focus on 'detecting and punishing breaches', and the proposed new PCGIG's approach of 'promoting professional conduct'.
- Both the ACCC and interested parties have had little time to consider the PCGIG and the likely impact on RCSA members and the public.
- Interim authorisation of the PCGIG could complicate returning the market to the status quo should the ACCC not grant substantive authorisation for the PCGIG in its final determination.

### **Reconsideration of interim authorisation**

20. The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not final authorisation will be granted.