

## RCSA Code 5 Frequently Asked Questions

RCSA Code 5 Frequently Asked Questions .....	1
1. What is Code 5? .....	2
1.1. Code element .....	2
1.2. Enforcement element .....	2
1.3. Guidelines.....	3
1.4. Response capacity.....	3
2. Who, within RCSA, has approved Code 5? .....	3
3. What consultation led to Code 5? .....	3
4. Why does RCSA need an authorisation for Code 5? .....	4
5. What is the main difference between the Code element of Code 5 and the old RCSA Code? .....	4
6. Why is RCSA changing the Code element?.....	5
7. When does RCSA want the new Code element to take effect?.....	7
8. Why doesn't RCSA want the new code element to take effect now? .....	7
9. What is the main difference between the PCGIG enforcement element of Code 5 and RCSA's old D&DRP?.....	7
10. Why is RCSA changing the enforcement element? .....	7
11. When does RCSA want the enforcement element to take effect?.....	8
12. Why does RCSA want the enforcement element to take effect now?.....	8
13. Can the new enforcement element (PCGIG) work with the old Code element?.....	8
14. Are the Guideline elements all new? .....	8
15. Are the Guideline Elements mandatory? .....	9
16. What will happen to the Supplier Transition Schedule to the old Code? .....	9
17. How will RCSA monitor Code 5?.....	10

## 1. What is Code 5?

"Code 5" is the name given to RCSA's new professional conduct framework. It is called Code 5 because it incorporates the fifth iteration of the RCSA Code since the Association was first established.

Code 5 consists of the following elements:

### 1.1. Code element

The Code element articulates standards of professional conduct and calls upon Members to develop its 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.

In summary, the Code element articulates personal standards of:

- Diligence and competence
- Trustworthiness
- Respect
- Professional knowledge
- Cooperation.

It articulates operational standards of:

- Confidentiality
- Certainty of engagement
- Effective complaints handling
- Social sustainability
- Assurance
- Continuous disclosure.

The Code element directs Members

- to meet the Code standard of professional conduct;
- to avoid involvement in unsatisfactory professional conduct; and
- to be accountable to RCSA, through enforcement guidelines, for their conduct.

### 1.2. Enforcement element

The enforcement element, known as the Professional Conduct Grievance Intervention Guidelines ("**PCGIG**"), assists in the handling of professional conduct grievances and supports 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.

### **1.3. Guidelines**

Code Guidelines are not mandatory. However, they inform RCSA Members and the public about how the Code is likely to be interpreted and applied in specific situations involving Members. They also assist Members to conduct themselves consistently with their Code commitments.

### **1.4. Response capacity**

There is scope within the Code 5 framework for RCSA to develop responses, consistent with the Code, to changes in circumstances affecting Members in their employment services dealings. That response capacity is supported by the ability:

- for the RCSA Board to make periodic statements of its strategic priorities and intent regarding the Code;
- to develop further Guidelines;
- to contribute to the development of consensus statements on important industry issues.

## **2. Who, within RCSA, has approved Code 5?**

The Code 5 framework has been approved and adopted by the RCSA Board with developmental assistance from RCSA Professional Practice Council.

## **3. What consultation led to Code 5?**

Code 5 has been in development since 2015, when RCSA consulted widely with stakeholders regarding the possible development of a code that would operate as a prescribed industry code under the *Competition and Consumer Act 2010 (C'th)*.

That project did not proceed. However, elements of it, most notably:

- its outcomes and principles-based design philosophy,
- its recognition of the contribution made by the UN Guidelines on Business and Human Rights; and
- the awareness developed in that process that Members' services are frequently not supplied in linear supply chains, but through service networks involving functional outsourcing - a concept developed further in the process of RCSA StaffSure consultations.

The Code and enforcement elements were put out to Member survey, with a majority of respondents supporting Code 5 as an improvement on RCSA's existing professional conduct framework.

#### **4. Why does RCSA need an authorisation for Code 5?**

RCSA requires an authorisation for its Code 5 framework because the Code, given RCSA's market presence, may be thought to lessen competition in the market for the supply of workforce services or the market for association services.

Authorisation is also sought because the power to impose sanctions, such as expulsion or suspension, may be thought to exclude competitors from those markets in certain circumstances - e.g. where clients or customers require their workforce services suppliers to be members of an industry association that has accountability procedures to assure the professionalism of its members.

#### **5. What is the main difference between the Code element of Code 5 and the old RCSA Code?**

The old Code is largely a rules-based Code that requires Members to comply with all laws, some of which are highlighted in the Code.

The Code element of Code 5 articulates standards of personal professionalism and operational integrity which Members are called upon to embed in their workforce services dealings.

Properly understood, the General Principles of the old Code also stated a broad standard of professional conduct, though in somewhat vague terms. For example, General Principle 1 of the Old Code stated:

*Members must act in a manner that is becoming of a Member and, to that end, observe a high standard of ethics, probity and professional conduct which requires not simply compliance with the law; but extends to honesty, equity, integrity, social and corporate responsibility in all dealings and holds up to disclosure and to public scrutiny.*

The Specific Principles of the Old Code, covering such matters as confidentiality & privacy', honest representation, legal compliance, and safety & security largely restated existing legal compliance obligations to exemplify part of what was encompassed by the General Provision.

Other provisions of the old Code, such as work relationships, professional knowledge, certainty of engagement, and good order similarly exemplify part what was encompassed within by the General Provision, but with less of a legal compliance and more of an operational focus.

The values of personal professionalism and operational integrity now articulated in Code 5 are a more thorough, more complete, and more contemporary statement of the General Principle found in the Old Code.

In that sense both Codes can be seen to spring from the same root of concern - namely the object for which RCSA is formed - to promote excellence, enterprise and integrity in the businesses of all Members and of individuals engaged by those businesses. However, they do so in different ways that largely reflect the prevailing regulatory environment in which they were developed and in which they have been intended to operate.

## **6. Why is RCSA changing the Code element?**

RCSA's Code was originally developed to provide a common framework for regulating Members' conduct across state and national boundaries in an environment where, following the competition and red tape reforms of the 1990s and early 2000s, gaps and inconsistencies were frequently encountered.

The old Code therefore developed as a rules-based Code, which required Members to observe "all laws" as a means of creating a point of interaction with RCSA's *Disciplinary and Dispute Resolution Procedures* (D&DRP).

The Code and the D&DRP thus developed with a legalistic orientation.

The environment has changed.

RCSA is therefore now changing the Code element of its Code 5 framework to more clearly differentiate its interest in supporting and maintaining the professional conduct of its Members from the interest of statutory regulators and civil litigants in regulatory enforcement and civil remedy proceedings.

The need for differentiation has arisen because of the regulatory and legislative developments which, in recent years, have not only seen the introduction of new initiatives, such as labour hire licensing and modern slavery protections, but also of nationalisation and harmonisation of laws that previously operated inconsistently at state and territory level. WHS laws, workplace laws, privacy laws, and the Australian Consumer Law are clear examples.

Additionally, increases in the range of penalties in many regulatory areas - including e.g. the imposition of terms of imprisonment in labour hire and work health and safety areas; and substantially increased fines in most areas - have meant that a rules-based Code supported by voluntary domestic enforcement procedures no longer sits comfortably alongside more rigorous statutory enforcement models.

One would not, for example, want to see an RCSA Ethics Committee hearing or arbitration by the Australian Disputes Centre for alleged contravention of the

"comply with all laws" provision of the old Code proceeding in parallel with a criminal prosecution in Queensland for breach of a labour hire licensing prohibition with potential imprisonment in the event of a finding of guilt, or a licence cancellation proceeding.

One can readily imagine the problems that would arise for a domestic tribunal, such as RCSA's Ethics Committee, around issues of comity, privilege against penalty and the like.

It is important to appreciate that schemes such as Queensland's and Victoria's state labour hire licensing schemes affect interstate operators and contain cross-over forfeiture provisions such that a contravention in one state will affect the entitlement to hold a licence in another.

They also link to a wide range of "relevant laws" - thereby bringing those state and federal laws within the field of view of a single state regulator, on the complaint of a wide range of "interested persons" (whether directly affected by the licence holder's conduct or not).

The scale of the concern regarding interaction between the RCSA Code and the statutory schemes is indicated by the fact that there are now 3,000 labour hire licences issued in Queensland and, therefore, 3,000 providers brought within the reach of the criminal justice system.

With similar legislation passed in Victoria and due to commence later this year and the prospect of federal legislation already being touted if a Labor government is formed after the next federal election, the scale of concern will only grow,

It is in that context that RCSA considers that a rules-based Code, supported by enforcement procedures of a domestic, lay and voluntary tribunal, no longer sits comfortably alongside more rigorous statutory enforcement and civil remedy models.

At the same time, there is a renewed focus on articulating and raising standards of professionalism against declining levels of trust.

That interest is already being addressed through RCSA's StaffSure Certification Programme, which provides third-party assurance that a StaffSure certified workforce services provider (not limited to RCSA Members) is reputable and will seek to comply with its legal obligations.

The new Code is therefore seen as a natural development of that trend, leading to a requirement that membership of RCSA, and adherence to a Code for Professional Conduct designed as a statement of professional values and values of operational integrity, assures a level of professionalism that extends to all Members.

Such a scheme is capable of sitting comfortably alongside the more rigorous statutory enforcement and civil remedy models, and that is why RCSA is changing the Code element of Code 5.

## **7. When does RCSA want the new Code element to take effect?**

RCSA is proposing that the new Code element will take effect in March 2020.

## **8. Why doesn't RCSA want the new code element to take effect now?**

RCSA wants to defer the date for commencement of the new Code element to allow time for Members to become familiar with the new Code and to provide opportunities for Members to be trained in its provisions.

RCSA also wants to allow sufficient lead time to let the Board make a statement of strategic priorities and intent so that Members can begin to establish and adapt practices and procedures to meet the operational standards set by the Code.

Additionally, RCSA recognises that some clients may have adopted provisions of the old RCSA Code - e.g. the Transition Schedule - as a basis for their dealings with Members (and in some cases even with non-Members). Deferral of the date for commencement will give such clients time to update the basis of their dealings with Members should they choose to do so.

## **9. What is the main difference between the PCGIG enforcement element of Code 5 and RCSA's old D&DRP?**

The main difference between the PCGIG enforcement element of Code 5 and the old D&DRP is that the PCGIG are focused more strongly and precisely on promoting professional conduct, rather than on detecting and punishing Code breaches.

The PCGIG also provide a more robust framework for allocating grievances to appropriate resolution pathways much earlier in the process.

The available resolution pathways under the PCGIG are additionally configured to reflect recent advancements in the field of conflict resolution.

## **10. Why is RCSA changing the enforcement element?**

The enforcement element is changing so that the Code 5 framework can sit comfortably alongside more rigorous statutory enforcement and civil remedy models.

## **11. When does RCSA want the enforcement element to take effect?**

RCSA would like to new Enforcement element (PCGIG) to take effect as soon as possible - i.e. March 2019.

## **12. Why does RCSA want the enforcement element to take effect now?**

RCSA wants the new Enforcement element (PCGIGs) to take effect now because:

- They are more effective and efficient;
- They integrate better with external and regulatory enforcement procedures;
- They are kinder to all parties; and
- Members will have time to become familiar with them and they will already be in place and operating smoothly when the new Code element commences.

## **13. Can the new enforcement element (PCGIG) work with the old Code element?**

Yes.

The new Code and the old Code both stem from the same root - namely the object for which RCSA is formed - to promote excellence, enterprise and integrity in the businesses of all Members and of individuals engaged by those businesses.

They are simply different expressions what that entails.

The Old Code largely demonstrates a selective focus on legal compliance as the means of achieving that objective; the New Code demonstrates a preference to focus on professional values to achieve the objective.

Likewise, the old D&DRP and the new PCGIG both stem from the same root - namely RCSA's objective of fostering ethical and procedural best practice among Members and the need to operationalise the means of doing so beyond the formal arbitration procedure provided by the Constitution.

Moreover, the processes of grievance intervention, counselling, conduct recommendation, conduct review, investigation, determination, resolution by undertaking, and arbitration already contained in the D&DRP are all found in the PCGIG. They are just configured differently, and with more of a focus on early resolution.

## **14. Are the Guideline elements all new?**

Most of the Guideline elements are updated versions of "best practice" materials that have previously been available to RCSA Members.

RCSA has had templates and guidance materials that have been available for the use of Members for many years.

To that extent, the Recruitment Fees & Related Costs Guideline, the Client Services Agreement Guideline and the Supplier Transition Guideline can be regarded as updated versions of materials that have been available to RCSA Members for some time.

The Service Networks (General) Guideline is an explanatory document that presents the service network concept, which was developed for RCSA's StaffSure Certification Programme.

By presenting these Guidelines as part of the Code 5 framework, RCSA hopes to provide greater transparency and integrate them more closely with the professional and operational values promoted by the Code.

To that end, each of the four Code Guidelines forming part of the Code 5 framework includes a panel that graphically indicates how the Guideline relates to the Code 5 standards.

## **15. Are the Guideline Elements mandatory?**

No.

Guideline elements are not mandatory. Outcomes are strongly recommended by RCSA as outcomes that Members should achieve consistently with the Code.

Likewise, directions describe what Members should do, rather than what they must do.

## **16. What will happen to the Supplier Transition Schedule to the old Code?**

The Supplier Transition Schedule now appears as Code Guideline 2019/04.

It is based on a version that was developed after extensive consultation with stakeholders which took place during 2015-2016, when RCSA was developing its proposal for prescription of a code under the *Competition and Consumer Act*.

Code Guideline 2019/04 operates to the same intent as the Supplier Transition Schedule to the Old Code, but is expressed less prescriptively and clarifies that, in the absence of contractual, industrial or other legal obligation, no obligation falls upon workforce providers (including Members) to transition their workforces or workseeker connections as part of a supplier transition.

That has always been the position under the RCSA Authorised Code, but RCSA received feedback that users were sometimes uncertain in that regard.

The operative provisions are also simplified by adopting four key outcomes and by providing examples of indicative behaviours which indicate, but do not constitute an exhaustive list of, behaviours which may establish the likelihood of achieving the outcomes.

## **17. How will RCSA monitor Code 5?**

Code 5 will be monitored:

- by follow up surveys testing user acceptance and views against the benchmark survey undertaken in January 2019
- by analysis of grievance and resolution data
- by Board and Professional Conduct Council review.

RCSA may also develop a user satisfaction survey to collect and aggregate anonymous data from Member and non-Member users of the Professional Conduct Grievance Intervention Guidelines.