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19 August 2005

Mr Scott Gregson
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

Dear Mr Gregson

Application for Minor Variation to RCSA Code for Professional Practice

We act on behalf of the Recruitment & Consulting Services Association Ltd ("RCSA"). We refer to your letter to our client dated 27 June 2005.

Our client seeks a minor variation to authorisation number A90829 ("the Authorisation"), under section 91A of the Trade Practice Act 1974 (Commonwealth), which was granted in relation to the RCSA's Code for Professional Practice ("the Code"), its schedules, the Guidelines for Regions: Disciplinary and Dispute Resolution Procedures, and several clauses within the RCSA's constitution.

We **enclose** an application for a minor variation to the Authorisation. In summary, the changes that are the subject of the application for minor variation, and which are attached to the application, are:

- the amendments to the RCSA Guidelines for Regions: Disciplinary and Dispute Resolution Procedures as indicated in that document by italics;
- minor drafting amendments to the Code;
- the addition of a schedule, titled "the Transition Flowchart", to the Code; and
- the addition of "Figure 3.1 – RCSA Disciplinary & Dispute Resolution Procedure".

If you require any further information, please do not hesitate to contact our Mr Andrew Wood.

Yours faithfully
HUNT & HUNT


Andrew Wood

Partner

Author: James Clarke

AUST. COMPETITION &
CONSUMER COMMISSION
CANBERRA

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Application for Minor Variation of Authorisation

To the Australian Competition and Consumer Commission (“ACCC”):

Application is hereby made under section 91A of the Trade Practices Act 1974 for a minor variation, as set out below, to authorisation A90829 granted to the Recruitment & Consulting Services Association Ltd (“RCSA”) in relation to its Code for Professional Conduct (“the Code”), its schedules, the Guidelines for Regions: Disciplinary and Dispute Resolution Procedures (“the Guidelines”), and several clauses within the RCSA’s constitution.

Applicant’s Details

Recruitment & Consulting Services Association Ltd (ABN 41 078 606 417)
Collins Street East
Melbourne VIC 3000

Address for Service

Hunt & Hunt Lawyers
Level 23
Central Plaza 2
Brisbane Qld 4000
Ph (07) 3231 2444 Fax (07) 3221 4356

Variations Sought

The following minor variation is sought:

That paragraph 8.7 of the final determination of authorisation A90829, which reads:

This authorisation will extend only to the provisions of the Code (including Schedules 1 and 2), clauses 11.1, 11.2, 12.4 and 39 of the Constitution and the Guidelines as attached to the final determination.

be substituted for:

This authorisation will extend to the provisions of the Code (including schedules 1 and 2), clauses 11.1, 11.2, 12.4 and 39 of the Constitution and the Guidelines attached to the determination of the application for minor variation.

or such other variation as the ACCC deems appropriate in the circumstances.

The effect of this variation is to extend the authorisation to amendments made to the Guidelines and the Code as well as the addition of non-substantive schedules, as they appear in the **attached** version (2), since authorisation A90829.


Submissions in Support of Application

The variations that are the subject of this application are in respect of amendments that either:

- achieve consistency between the Code and the dispute resolution procedure in the Australian Standard for Complaints Handling (AS 4269-1995); or
- are of a technical or drafting nature.

The variations would not result in a reduction in the public benefits flowing from the Code, but may possibly enhance the public benefits by expediting the process of dispute resolution and further helping to clarify the manner in which provisions of the Code operate.

Signed on behalf of the applicant on 22/8/2005.



Andrew Wood
Partner



Recruitment &
Consulting Services
Association Ltd

GUIDELINES FOR REGIONS

Disciplinary & Dispute Resolution Procedure

VERSION (2)

RCSA Ltd
Ph: (03) 9663 0555
Fax: (03) 9663 5099
Email: info@rca.com.au

Amended by PG 08 April 2005

1. About This Guideline

1.1 *Guideline for Regions*

- (a) Under clause 13.2 of RCSA's Constitution, each Region is to be responsible for issues relating to it including government legislation, ethics, vetting applications for membership, organising local activities, and other similar functions.
- (b) Clause 13.3 of RCSA's Constitution requires the Board to ensure that RCSA has in place Guidelines for Regions, which are to assist the Regions by specifying their responsibilities, authority, procedures and composition.
- (c) This Guideline is an explanatory document that has been developed by the Board to assist Regions of RCSA in the handling of complaints, issues and disciplinary matters that might arise from time to time under Rosa's Code for Professional Practice.
- (d) It also sets out RCSA's Disciplinary and Dispute Resolution Procedure.
- (e) This Guideline is based upon *AS 4269 – 1995: Complaints Handling*. Where this Guideline is silent on any matter, reference may be made to *AS 4269 – 1995* for guidance.

1.2 *Members Are Liable to Discipline*

- (a) Clause 11.1 of RCSA's Constitution stipulates that Members are liable to discipline in accordance with RCSA's Disciplinary and Dispute Resolution Procedures.
- (b) Clause 12.4 of RCSA's Constitution stipulates that the Board may censure, suspend or expel a Member from the RCSA following the guidelines and processes stipulated in RCSA's:
 - (i) Code for Professional Practice;
 - (ii) Disciplinary and Dispute Resolution Procedure; and
 - (iii) Constitution.
- (c) Whilst RCSA can discipline its members, it cannot discipline non-members. It can pass resolutions that find in a member's favour as provided in these Guidelines. If a non-member is aggrieved by such a resolution, it can take such civil action as it may wish or it can appeal as may be provided by these Guidelines. If a non-member is a party to arbitration, the arbitrator's award will bind the non-member in accordance with the rules of the arbitration. If a non-member

participates in a mediation, the outcome (if an agreement is reached) is binding upon the non-member in accordance with the normal rules of contract.

1.3 RCSA's Code for Professional Practice

(a) RCSA has developed a Code for the Professional Conduct of its Members ("the Code"). The Code can be found on the RCSA's website. [The Code has been authorised by the ACCC].

(b) The Code is divided into a number of sections which set out General Principles and 8 key principles:

- (i) Confidentiality and Privacy;
- (ii) Honest Dealings;
- (iii) Respect for Work Relationships;
- (iv) Respect for Laws;
- (v) Respect for Safety;
- (vi) Respect for Certainty of Engagement;
- (vii) Professional Knowledge;
- (viii) Good Order.

(c) The Code also contains within its schedules, relevant application guidelines, recommendations and explanatory notes.

1.4 RCSA's Disciplinary and Dispute Resolution Procedure

(a) RCSA has developed a Disciplinary and Dispute Resolution Procedure to support the Constitution and the Code.

(b) The Disciplinary and Dispute Resolution Procedure is contained within this Guideline.

1.5 Revocation of Previous Procedures and Guidelines

(a) This Guideline supersedes any previous Regional Guideline and Disciplinary and Dispute Resolution Procedure, that dealt with any of the matters dealt with in this Guideline and the same are hereby expressed to be revoked.

2. Definitions

- 2.1 Arbitrator** means an arbitrator appointed under this Guideline;
- 2.2 Board** means the Board of Directors of RCSA;
- 2.3 CEO** means the Chief Executive Officer of RCSA;
- 2.4 Code** means the Code for Professional Practice established by RCSA and authorised by the ACCC;
- 2.5 Complainant** means a person who makes a complaint or who lodges a dispute notification;
- 2.6 Complaint** means any expression of dissatisfaction with a Member regarding that Member's compliance or non-compliance with the Code;
- 2.7 Constitution** means the Constitution of RCSA;
- 2.8 Consumer** means a person to whom a service is offered or supplied by RCSA or by a Member;
- 2.9 D. & D. R. P.** means the Disciplinary and Dispute Resolution Procedure set out in this Guideline;
- 2.10 RC** means a Regional Council established under the Constitution;
- 2.11 REC** means a Regional Ethics Committee established by a RC under a direction given by the Board;
- 2.12 Dispute Notification** means a notification of a dispute other than a Complaint;
- 2.13 Matter** means complaint or dispute notification proposed for resolution under these Guidelines;
- 2.14 Member** means a member of the RCSA;
- 2.15 NEC** means the National Ethics Committee established under the Constitution.

3. Responsibility of Bodies

3.1 What the Board Does

(a) The Board has the following responsibilities with respect to disciplinary matters and the resolution of disputes:

(i) ACCOUNTABILITY - the Board has overriding responsibility for the management and control of RCSA;

(ii) ACCOUNTABILITY/RESOURCES - the Board produces Guidelines for Regions;

(iii) ACCOUNTABILITY/RESOURCES - the Board directs each RC., within its respective territorial jurisdiction, to establish a REC;

(iv) ACCOUNTABILITY/RESOURCES - the Board approves appointees to the REC;

(v) RESOURCES - the Board develops and maintains a Code for Ethical Conduct for its Members;

(vi) RESOURCES - the Board appoints a NEC comprising:

3.1.a.vi.1 at least 1 Director; and

3.1.a.vi.2 such other Members of the RCSA as the Board thinks fit.

(vii) RESOURCES - the Board delegates such of its powers to the RC's, the REC's and the NEC as may be necessary for their proper functioning;

(viii) REMEDIES - the Board may resolve to censure, suspend or expel a Member;

(ix) ACCESS/ACCOUNTABILITY - the Board may approve a RC's initiating and prosecuting before the NEC a complaint against a Member within the jurisdiction of the relevant Region on behalf of the Board;

(x) ACCOUNTABILITY - the Board may resolve to adopt and enforce a recommendation of a REC, the NEC or an Arbitrator or may decline to adopt and enforce such a recommendation as provided in this Guideline;

(xi) ACCOUNTABILITY/FAIRNESS - the Board may refer an unresolved difference to arbitration.

(xii)

3.2 What the RC. Does

(a) Each RC. has, within the area of its own jurisdiction, the following responsibilities:

(i) RESOURCES - each RC. is to appoint, for a two year term and subject to Board approval, a REC comprising of:

3.2.a.i.1 one member of the relevant RC., who is to chair the REC;

3.2.a.i.2 such other members of the relevant Region not exceeding six;

(ii) FAIRNESS - the RC. receives complaints and dispute notifications in accordance with the D. & D. R. P and decides whether to refer them to the REC, the NEC, or whether to decline them;

(iii) FAIRNESS/ACCESS - the RC. may initiate and prosecute before the NEC, a complaint against a Member within the jurisdiction of the relevant Region on behalf of and with the prior approval of the Board;

(iv) ACCOUNTABILITY - the RC. reports promptly to the Board and the NEC regarding complaints or disputes handled or declined by it;

(v) ACCOUNTABILITY - the RC. receives the recommendations of the REC following a hearing or determination and, subject to such confidentiality or anonymity as the circumstances may require, passes those recommendations to:

3.2.a.v.1 the Board for such further action as the Board may determine; and

3.2.a.v.2 the NEC for information.

3.3 What the REC Does

(a) Each REC has, within the area of its own jurisdiction, the following responsibilities:

(i) FAIRNESS - the REC receives references from the relevant RC.;

(ii) FAIRNESS - the REC investigates and hears complaints;

(iii) FAIRNESS - the REC assists in the resolution of disputes using such dispute resolution procedures as the parties may agree;

(iv) FAIRNESS - the REC may seek advice from the NEC;

(v) ACCOUNTABILITY - the REC, following the conclusion of a hearing makes a recommendation to the Board supported by reasons;

(vi) ACCOUNTABILITY - the REC provides a report of its recommendations to the relevant RC.

3.4 What the NEC Does

(a) The NEC has the following responsibilities:

(i) FAIRNESS - the NEC receives references from the relevant RC;

(ii) FAIRNESS - the NEC investigates and hears complaints;

(iii) FAIRNESS - the NEC may provide advice to the REC;

(iv) FAIRNESS - the NEC assists in the resolution of disputes using such dispute resolution procedures as the parties may agree;

(v) SYSTEMATIC AND RECURRING PROBLEMS - the NEC at the request of the Board makes test case determinations and develops advisory standards to deal with systematic and recurring problems and with novel matters of national or international interest to RCSA Members ;

(vi) ACCOUNTABILITY - the NEC, following the conclusion of a hearing makes a recommendation to the Board supported by reasons;

(vii) ACCOUNTABILITY - the NEC provides a report of its recommendations to the Board;

(viii) REVIEWS - the NEC reviews the Code; D. & D. R. P., determinations and non-binding rulings made thereunder and makes recommendations to the Board for their further development.

3.5 What the CEO Does

(a) The CEO has the following responsibilities:

(i) COMMITMENT - the CEO obtains the commitment of members to abide by the Code and to support the mission of the RCSA

(ii) RESOURCES - the CEO ensures that the RC's, the REC's and the NEC are resourced to handle complaints and disputes;

(iii) RESOURCES/ASSISTANCE - The CEO ensures that there are sufficient training and support opportunities to assist Members

to meet their obligations under the Code and these Guidelines provided that this will not require the RCSA to provide legal or other professional assistance or the cost thereof to any party to a complaint or dispute notification;

(iv) VISIBILITY/ACCESS - the CEO ensures that RCSA's Code and D.&D.R.P are well publicised to consumers and that consumers are informed about the right to complain;

(v) VISABILITY/ACCESS - the CEO co-ordinates the publication of proceedings of the REC's, the NEC and the Board;

(vi) ASSISTANCE - the CEO ensures that there are sufficient training and support opportunities to assist Members to meet their obligations under the Code;

(vii) ASSISTANCE – the CEO ensures that assistance is available for Consumers and Members in the formulation and lodgement of complaints and disputes notifications and that decisions of the REC's and NEC are available to complainants and members;

(viii) ASSISTANCE/FAIRNESS – the CEO receives complaints and dispute notifications, forwards them to appropriate bodies, and ensures that notifications are issued as required by this Guideline;

(ix) ASSISTANCE/PREVENTION – the CEO ensures that arrangements are in place to enable Members and Consumers to obtain preliminary non-binding rulings on matters that might arise under the Code;

(x) RESPONSIVENESS – the CEO monitors the disciplinary and dispute handling processes to ensure that complaints and dispute notifications are dealt with quickly and courteously;

(xi) DATA COLLECTION – the CEO ensures that there is appropriate systematic recording of complaints, dispute notifications and their outcomes and that such data is published each year in the annual report of RCSA;

(xii) REVIEW - the CEO ensures that the Code and D. & D. P. R are reviewed regularly to ensure that they are efficiently delivering effective outcomes.

3.6 What the Arbitrator Does

(a) An Arbitrator has the following responsibilities:

(i) FAIRNESS – an Arbitrator may arbitrate:

3.6.a.i.1 a declined matter;

3.6.a.i.2 a matter that has miscarried as set out in clause 4.8(a)(iii)(1) to (3) of this Guideline;

3.6.a.i.3 a matter on appeal.

(ii) ACCOUNTABILITY – an Arbitrator makes an award which may contain a recommendation to the Board.

3.7 *What the Court Does*

(a) FAIRNESS - a court of competent jurisdiction may review an Arbitrator's award.

4. Disciplinary & Dispute Resolution Procedures

4.1 Intervention Process- *amendment accepted by the PPC - 8th September 04*

- (a) The initial communication of a complaint or ethical issue is referred to the RCSA Ethics Registrar.
- (b) The Ethics Registrar arranges that the Complainant and Respondent be contacted and the complaint discussed with both parties independently.
- (c) This contact can be made by:
 - (i) the Ethics registrar;
 - (ii) the Secretariat ;
 - (iii) Ethics Mentor for the Region.
- (d) The purpose of the discussion with both parties is to ensure all necessary information is available so that the parties can explore the possibility of an early resolution.
 - (i) it is important that, at this step, any Ethics Mentor or Hunt & Hunt, if (their advice is sought), declare any conflict of interest.
- (e) The RCSA Member is to notify the Ethics Registrar (or relevant contact person) of the time-line for resolving the matter as agreed by both parties.
- (f) Resolution of the matter requires both parties to advise the RCSA Ethics Registrar of the outcome.
- (g) The RCSA will contact both parties, in writing, to confirm agreement.
- (h) If resolution is not reached then the RCSA Ethics Registrar will ascertain whether the complainant wants to lodge a complaint or dispute notification in accordance with the RCSA Disciplinary & Dispute Resolution Procedure.
- (i) RCSA Ethics Registrar notifies the complainant as to their opportunity to proceed to a formal complaint and provides the necessary paperwork.

4.2 Lodging a Complaint/Dispute Notification

- (a) Formal Complaints and Dispute Notifications are to be made in writing addressed and mailed, emailed or faxed to:

The Chief Executive Officer
Recruitment & Consulting Services Association Ltd
Level 3
63 Exhibition Street
MELBOURNE VIC 3000

Fax (03) 9663 5099

- (b) Upon receipt of a complaint or dispute notification the CEO will record and acknowledge the time and date of receipt as well as brief details sufficient to describe the nature of the complaint or dispute.

4.3 Referral amendment accepted by the PPC - 8th September 04

- (a) The Ethics Registrar will submit all information collected in the intervention process to the CEO who will forward this information with the formal complaint or dispute notification – if lodged to:
- (i) the RC that has jurisdiction in respect of the complaint or dispute;
 - (ii) if more than one RC has jurisdiction in respect of the complaint or dispute – the NEC;
 - (iii) if, in the reasonable opinion of the CEO the complaint or dispute raises significant issues of national or international interest to RCSA Members – the NEC;
 - (iv) if the complaint or dispute notification is instituted by an RC – the NEC.
- (b) Upon receiving a complaint or dispute notification the RC or NEC as the case may be will determine within 7 days whether:
- (i) to accept it for investigation, hearing and determination; or
 - (ii) to decline it.
- (c) A RC may, instead of declining a complaint or dispute notification, refer it to the NEC, which shall then investigate, hear and determine the complaint or dispute notification as the circumstances may require.
- (d) If a RC determines to accept a complaint or dispute notification for investigation, hearing and determination, it will immediately forward the complaint or dispute notification to the relevant REC.

4.4 Notice and Directions

(a) A REC or NEC that receives a complaint or dispute notification will advise the CEO whether it has accepted or declined it and the CEO will inform the complainant accordingly.

(b) When a REC or the NEC accepts any complaint or dispute notification, it will write, within 21 days of the lodgement of the complaint or dispute notification, to such parties as it thinks are necessary for the just determination of any issue raised before it and state any directions required to be complied with to enable it to dispose of the matter.

(c) Without limiting the generality of sub-paragraph (b), directions made by a REC or NEC may include directions thought appropriate:

- (i) for the representation of any party;
- (ii) to preserve the anonymity of any natural person;
- (iii) to clarify any issue in dispute;
- (iv) to require the provision of information or documents;
- (v) for the giving or obtaining of any evidence;

amendment accepted by the PPC - 8th September 04

(vi) *for the making of written submissions to ensure the validity of facts and to clarify information for the Ethics Committee*

(vii) to preserve the confidentiality of any information communicated in the course of the matter;

(viii) for mediation;

(ix) for expedited determination, including determination on the basis of written submissions;

(x) otherwise for the conduct of the investigation, hearing or determination.

(d) Any party may on reasonable notice apply to the REC or NEC for further directions to assist it in the preparation of its case.

(e) A member who fails to comply with a direction of a REC or the NEC may, upon evidence of such failure being presented to the Board, immediately be liable to the imposition by the Board of sanctions under clause 11.2 of the Constitution.

(f) A party, who is not a member and who fails to comply with a direction of a REC or the NEC may:

- (i) if the party is a complainant - have its complaint or dispute notification dismissed;
- (ii) if the party is not a complainant – have a determination on the complaint or dispute notification made against it.

4.5 Proceedings Generally

(a) Proceedings conducted by a REC or NEC shall be based upon the parties' right:

- (i) to a lawful outcome;
- (ii) to be heard;
- (iii) to know whether the Code has been observed;
- (iv) to provide and request all relevant material to support or respond to the complaint or dispute notification;
- (v) to be informed of the criteria and processes for determining the complaint or dispute, including avenues for further review;
- (vi) to be informed of the response of any party against whom allegations or cross allegations are made;
- (vii) to be informed of the outcome and reasons for that outcome;
- (viii) to have the complaint or dispute heard and determined independently so far as is practicable;
- (ix) to maintain the confidentiality of any confidential information;
- (x) to maintain privacy so far as is practicable in accordance with the National Privacy Principles and subject to maintaining the visibility and remedial objectives of publishing the names and contraventions of persons who are found to have contravened the Code;
- (xi) to have the matter disposed with as little cost, formality and delay as may be consistent with the requirements of fairness.

amendment accepted by the PPC - 8th September 04

- (xii) *the general intent should be that matters should be heard without third party representation, where possible and the parties involved participate directly with the Committee;*

- (xiii) disputes are to be finalised, using whatever submissions are available, by the Ethics Committee if they are abandoned by the complainant;
- (xiv) any lapsed complaint should be finalised, using whatever submissions are available, by the Ethics Committee.

4.6 Declined Matters

(a) If a RC declines a matter, without on-referring it to the NEC, or the NEC declines a matter, a difference will be deemed to have arisen between RCSA and the complainant and either party may, within 28 days of notification of the declining of the matter, refer the complaint or dispute notification to arbitration as provided in clause 39 of the Constitution.

4.7 REC and NEC Determinations

(a) The determination of a REC or the NEC on a complaint or dispute notification will be in the form of a recommendation as to the appropriate orders to be made supported by reasons that set out:

- (i) any findings on material questions of fact; and
 - (ii) a reference to the evidence or other material on which the findings were based.
- (b) The determination may include:
- (i) a recommendation for the imposition of sanctions of the type described at clause 11.2 of the Constitution;
 - (ii) a recommendation that a member do or refrain from doing an act or make a payment as may be considered:
 - 4.7.b.ii.1 just in the circumstances; and
 - 4.7.b.ii.2 becoming of the member or in the interests of the RCSA.

4.8 Notification of Determinations

- (a) A REC or the NEC will release a copy of its determination to:
- (i) the parties;
 - (ii) the RC, if the matter was referred by a RC; and
 - (iii) the CEO.

(b) The CEO forthwith will notify the Board of the determination and forward to it a copy of the determination.

4.9 Resolution and Enforcement

(a) The Board may by resolution:

(i) adopt the determination of the REC or the NEC;

(ii) adopt the findings of the REC or the NEC, 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:

4.9.a.ii.1 just in the circumstances; and

4.9.a.ii.2 as would be becoming of the member or in the interests of the RCSA; and

4.9.a.ii.3 consistent with the findings of the REC or the NEC;

(iii) decline to adopt the determination of the REC or the NEC without adopting the findings of the REC or the NEC on the grounds that:

4.9.a.iii.1 the proceedings conducted by the REC or the NEC were not conducted as required by clause 4.4(a) of this Guideline;

4.9.a.iii.2 the determination was induced or affected by fraud or bad faith;

4.9.a.iii.3 the determination was otherwise contrary to law; or

4.9.a.iii.4 the determination is subject to appeal or other proceedings before a court of competent jurisdiction as hereinafter provided

(b) If the Board declines to adopt a recommendation of the REC or the NEC without adopting its findings, a difference will be deemed to have arisen between RCSA and its members and either the Board or any person who ought necessarily have been made a party to the complaint or dispute notification may, within 14 days of notification of the Board's declining the determination, refer the complaint or dispute notification to arbitration as provided in clause 39 of the Constitution. **RCSA will (subject to the Arbitrator making an award in terms of clause 11.2(g) of the Constitution) pay the reasonable costs incurred by the parties in the arbitration.**

(c) If the Board resolves to impose sanctions or to direct that a Member do or refrain from doing any thing or make any payment, the CEO must, within 7 days after the resolution is made, cause written notice to be given to the Member of the resolution, of the reasons given or adopted by the Board for having made that resolution and of the Member's right of appeal under Clause 4.9 of this Guideline.

(d) The resolution does not take effect:

(i) until the expiration of the period within which the Member is entitled to appeal against the resolution concerned, or

(ii) if within that period the member exercises the right of appeal, unless and until the Board makes a resolution under clause 4.(10)(f) of this Guideline,

whichever is the later.

(e) If a Member fails to comply with a resolution of the Board that:

(i) adopts a recommendation of a REC, the NEC or an Arbitrator; or

(ii) adopts the findings of a REC the NEC, or an Arbitrator, but makes a different order for the imposition of sanctions or that a Member do or refrain from doing an act or make a payment as may be considered:

4.9.e.ii.1 just in the circumstances; and

4.9.e.ii.2 becoming of the member or in the interests of the RCSA; and

4.9.e.ii.3 consistent with the findings of the REC, the NEC or the Arbitrator;

and has not instituted any appeal as provided for in this Guideline, the Member may immediately be liable to censure, suspension or expulsion pursuant to clause 12.4(ii) of the Constitution upon evidence of such failure being presented to the Board.

4.10 Appeal

(a) A party who is aggrieved by a resolution of the Board in respect of the determination of a complaint or dispute notification, other than a resolution that adopts the Award of an Arbitrator or that gives effect to the order of a court of competent jurisdiction, may appeal by giving to the CEO, within 14 days of being notified of the resolution, a written notice requiring the complaint or dispute notification to be referred to arbitration pursuant to clause 39 of the Constitution.

4.11 Arbitrators' Awards

- (a) If a complaint or dispute notification is referred to arbitration under these Guidelines, any person who ought to necessarily have been made a party to the complaint or dispute notification may be made a party to the arbitration on the application of a party to the arbitration or on their own application.
- (b) An arbitration pursuant to this Guideline will be conducted in accordance with such rules as may be determined by the President for the time being of the Institute of Arbitrators and Mediators Australia.
- (c) An Arbitrator's award will be in the form of a determination that complies with the requirements of clause 4.6(a) and (b) of this Guideline.
- (d) An Arbitrator will provide a copy of the Arbitrator's award to the CEO.
- (e) An Arbitrator's award will be binding on the parties.
- (f) If an Arbitrator's award contains a recommendation for the imposition of sanctions of the type described at clause 11.2 of the Constitution the Board may by resolution adopt the recommendation.
- (g) The Board must decline to pass a resolution adopting an Arbitrator's recommendation for the imposition of sanctions pending the outcome of any proceedings taken before a court of competent jurisdiction in order to review the Arbitrator's award.

4.12 Costs

- (a) Except in so far as:
 - (i) 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;
 - (ii) an Arbitrator conducting a declined matter under clause 4.6, might otherwise award;
 - (iii) RCSA might be required to bear the costs of a reference to arbitration pursuant to clause 4.(9)(b) of this Guideline;
 - (iv) an Arbitrator conducting an appeal under clause 4.10, might otherwise award; or
 - (v) a court of competent jurisdiction might otherwise award
- the parties to any complaint or dispute notification or appeal under this Guideline will each bear their own costs of and incidental to the proceeding.

4.13 Savings

(a) Nothing in this Guideline shall prevent the parties to a complaint or dispute notification from agreeing upon any other process for the resolution of any difference between them provided:

(i) that such process satisfies the requirements of clause 4.4(a);

(ii) that upon their difference being resolved, the parties jointly notify the CEO that their difference has been resolved.

(b) Nothing in this Guideline shall oust the jurisdiction of any court of competent jurisdiction.

RCSA CODE FOR PROFESSIONAL PRACTICE

General Principles

1. Members will observe a high standard of ethics, probity and professional conduct.
2. Ethical behaviour is not simply compliance with legal requirements, it extends to honesty, equity, integrity and social responsibility in all dealings. It is behaviour that holds up to disclosure and to public scrutiny.
3. All members are required to sign a "Statement of Commitment" to abide by the Code for Professional Practice and to support the mission of the RCSA.
4. The Schedules to this Code form part of the Code and operate as guidelines to assist members to meet their obligations arising under the Code's Principles.

Principle 1 – Confidentiality and Privacy

1. Members will take reasonable steps to maintain the confidentiality and privacy of candidate, client and member information.
2. Permission must be sought before disclosing confidential information.

Principle 2 – Honest Dealings

1. Members will act honestly in all dealings with candidates, clients and members.
2. In the course of representing a candidate or client, a member shall not knowingly:
 - (a) make false statement of material fact;
 - (b) fail to disclose a material fact;
 - (c) make a representation as to future matters without having reasonable grounds for making it.
3. Members must adhere to principles of truth in advertising.
4. Members will only advertise permanent positions for which they have permission to recruit.
5. All fees, charges and services provided must be explicitly and fully disclosed to clients prior to the acceptance of an assignment, or prior to any work being undertaken for a client.
6. Members will not take on assignments that could result in their inability to pay temporary/contract workers.

Principle 3 – Respect for Work Relationships

1. Members will not undertake actions that may unfairly or unlawfully jeopardise a candidate's employment.
2. Members will not undertake actions that may unfairly or unlawfully interfere in work relationships established by others
3. Members shall not attempt unfairly or unlawfully to prevent a candidate or temporary/contract worker from seeking work from other sources.

4. Members will respect the rights of clients who have elected to change their staff service suppliers. Members must act lawfully, fairly and ethically in respect of their involvement in transition arrangements.

Principle 4 – Respect for Laws

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

Principle 5 – Respect for Safety

1. Members will act diligently in assessing risks to candidates, clients and members.
2. Members will not knowingly put at risk candidates, clients or members.
3. Members shall inform their temporary/contract workers whenever they have reason to believe that any particular assignment causes an occupational health and safety risk.

Principle 6 – Respect for Certainty of Engagement

1. Members will ensure that workers are given details of their work conditions, the nature of the work to be undertaken, rates of pay and pay arrangements.
2. Any variation to the engagement can only occur with prior notification to the worker.

Principle 7 – Professional Knowledge

1. Members will work diligently to develop and maintain a satisfactory and up to date level of relevant professional knowledge.
2. Members will ensure that their staff are adequately trained and skilled to undertake their responsibilities.

Principle 8 – Good Order

1. Member misconduct will be referred to the RCSA Disciplinary Committee. Subject to any appeal rights, its findings will be binding on members.
2. Disputes between members, and other parties who agree, will be referred to the RCSA Disciplinary Committee for resolution. Its findings will be binding on members and other parties.
3. Members must bring to the attention of the RCSA any violations of this Code by any member at the earliest possible time.
4. Members are encouraged to use process of negotiation, mediation and arbitration in order to resolve disputes and should do so wherever practicable.

SCHEDULE 1

Application Guidelines and Recommendations – Transition of Workers – Guidelines for Ethical Conduct – reference Principle 3

- (a) Members should be aware and acknowledge that in an open and competitive market place, circumstances may arise when a client wishes to change suppliers.
- (b) Members should also be aware and acknowledge that members invest significant amounts of work, money, time and intellectual resources in establishing relationships with clients, developing critical understandings of clients' and workers' needs, training workers in system of work for clients, and inducting workers in preparation to undertake work for clients. Those investments contribute to members' goodwill and support significant business capital, which is of value to members and which members are entitled to protect by lawful means.
- (c) This Guideline and Recommendation will apply in cases where a member seeks to transition workers from one agency to another in response to client requirements.
- (d) Stakeholders in the transition arrangements may include the members or other agencies involved in the transition, the client, the client's customers and the workers themselves.
- (e) Unless there are compelling reasons to the contrary, members should give written notice to the incumbent agency if they require to effect a transition of workers from that agency in response to client requirements (a "transition request").
- (f) In making transition arrangements, members must give due consideration to the interests of all stakeholders.
- (g) Members must use reasonable endeavours to ensure that transition arrangements are managed in a professional manner and they are designed to minimise disruption to stakeholders. To that end RCSA recommends that members ought to give consideration to and make suitable arrangements:
 - i. for the orderly continuation of business;
 - ii. to identify and give effect to any relevant contractual or other legal obligations;
 - iii. for the orderly transition of workers. This will usually require that the incumbent agency be permitted to be first to inform its workers of the circumstances that have lead to the transition request. The incumbent agency should notify its workers promptly upon receipt of a transition request of circumstances that may be likely to result in change termination or redundancy in the workplace;
 - iv. as to timeframe within which the transition is to be completed. RCSA recommends that transition should be able to be completed in most ordinary cases within 45 days of advice that a transition is required;
 - v. to ensure that workers are properly informed of matters relevant to their decision to transition or not to transition;
 - vi. for the transfer or payment (as may be required) of any accrued worker benefits.
- (h) Code Principles 1 (Confidentiality and Privacy), 2 (Honest Dealings), 4 (Respect for Laws), 5 (respect for Safety, and 6 (Respect for Certainty of Engagement) will also be relevant to transition arrangements and members should give due regard to the requirements of those principles as they apply to their transition arrangements.
- (i) Members are encouraged to attempt to resolve any disputes regarding transition arrangements through process of negotiation and mediation.

See Summary Reference (A)

SCHEDULE 2

Application Guidelines and Recommendations for Ethical Conduct – Disputed Fee Reference – Reference Principle 8

- (a) This Application Guideline and Recommendation will only apply in cases where all parties agree that a disputed fee claim should be referred to RCSA for resolution (“a disputed fee reference”) via a process of ARBITRATION a disputed fee reference is not a disciplinary proceeding and does not imply that any party has acted in a matter that is other than lawful, ethical and professional. These guidelines and recommendations are provided to assist parties to assess their respective positions if they should wish to refer a disputed fee reference to RCSA for ARBITRATION. They are also intended to give guidance to ARBITRATORS as to the principles that ought to be applied in determining any disputed fee reference conducted through the offices of the RCSA. Parties are encouraged to attempt first to resolve all such disputes by process of negotiation and mediation and in that respect should take particular note of Principle 8.4 which establishes a standard for the ethical conduct of RCSA Members.
- (b) A disputed fee reference may be as to:
- i. the identity of the agency entitled to receive payment of the fee;
 - ii. any other matter in relation to a dispute fee that parties agree to submit to RCSA for resolution.
- (c) RCSA will only accept a disputed fee reference for resolution via a process of ARBITRATION if all parties who are to be bound by the determination agree that the client should only pay a single fee in respect to the service delivered by the agencies. RCSA may require as a condition of its accepting a disputed fee reference for resolution via a process of ARBITRATION that the agencies waive any claim to a fee in respect of the service delivered by the agencies other than as determined by the ARBITRATOR as a result of the ARBITRATION.
- (d) RCSA may decline to accept all or any part of a disputed fee reference at any time, regardless of whether the parties have already embarked upon a process resolution of the disputed fee reference.
- (e) RCSA may require as a condition of its accepting a disputed fee reference that if RCSA declines the reference, in circumstances where the parties have already embarked upon a process for its resolution, the rights of the parties shall be treated in all respects as being unaffected by the reference, to the intent that the parties should be at liberty to pursue their rights by such lawful means as they may consider appropriate.
- (f) Stakeholders in a disputed fee reference may include agencies, the client, and the candidate.
- (g) RCSA will, so far as is practicable, ensure that the interests of all relevant stakeholders are taken into account in resolving a disputed fee reference.
- (h) In any ARBITRATION under this Code of a disputed fee reference involving a question as to the identity of the agency is entitled to receive payment of the fee, the principal for the guidance of the ARBITRATOR, that applies when arbitrating such a disputed fee reference may usually be stated as:
- The agency that created the interview that led to the job offer in respect of which the fee is claimed is entitled to the fee provided that it has not acted unlawfully or unfairly.
- (i) For the purpose only of determining whether a party has acted unlawfully or unfairly, the arbitrator may have regard to some or all of the following matters:

- i. the entitlement of any person to represent the candidate;
- ii. whether and when the client sought out the services of the agency with regard to the position in the filling of which gave rise to the claim or claims for payment of a fee ("the position in question");
- iii. whether and when the agency provided details of the position in question to the candidate;
- iv. whether and when the agency obtained the consent of the candidate to put the candidate forward for the position in question;
- v. whether and when the agency submitted the candidate's resume in connection with the position in question;
- vi. whether and when the agency made arrangements for any interview of the candidate by the client with regard to the position in question;
- vii. the contractual entitlement of the agency to claim payment of the fee;
- viii. whether the agency has duly observed the relevant requirements of this Code for Professional Practice, and in particular Principle 1 (Confidentiality and Privacy), Principle 3 (Respect for Work Relationships), Principle 4 (Respect for Laws), Principle 5 (respect for Safety), and Principle 6 (Respect for Certainty of Engagement);
- ix. such other matters (including matters of law) as the ARBITRATOR shall think fit.

EXPLANATORY NOTE: For the purposes of removing doubt, the above subparagraphs (i) to (ix) are not intended to create separately enforced ethical duties of their own right; but are intended merely for the purposes of providing guidance to the ARBITRATOR as to matters that may bear upon the question of whether particular conduct is unlawful or unfair.

- (j) Upon completion of the ARBITRATION, the ARBITRATOR will award the fee (in an amount no greater than the higher of the fees respectively claimed by the agencies) in such manner as the ARBITRATOR shall think fit this may include a split fee determination.
- (k) A disputed fee reference will be conducted in accordance with the procedures established by the Constitution of RCSA, its Guidelines for Regions, or such other procedures as the parties may agree and as may be acceptable to the ARBITRATOR.

COSTS: Members should refer to 4.12 Costs in the Disciplinary & Dispute Resolution Procedure Version (2) in particular the final clause:

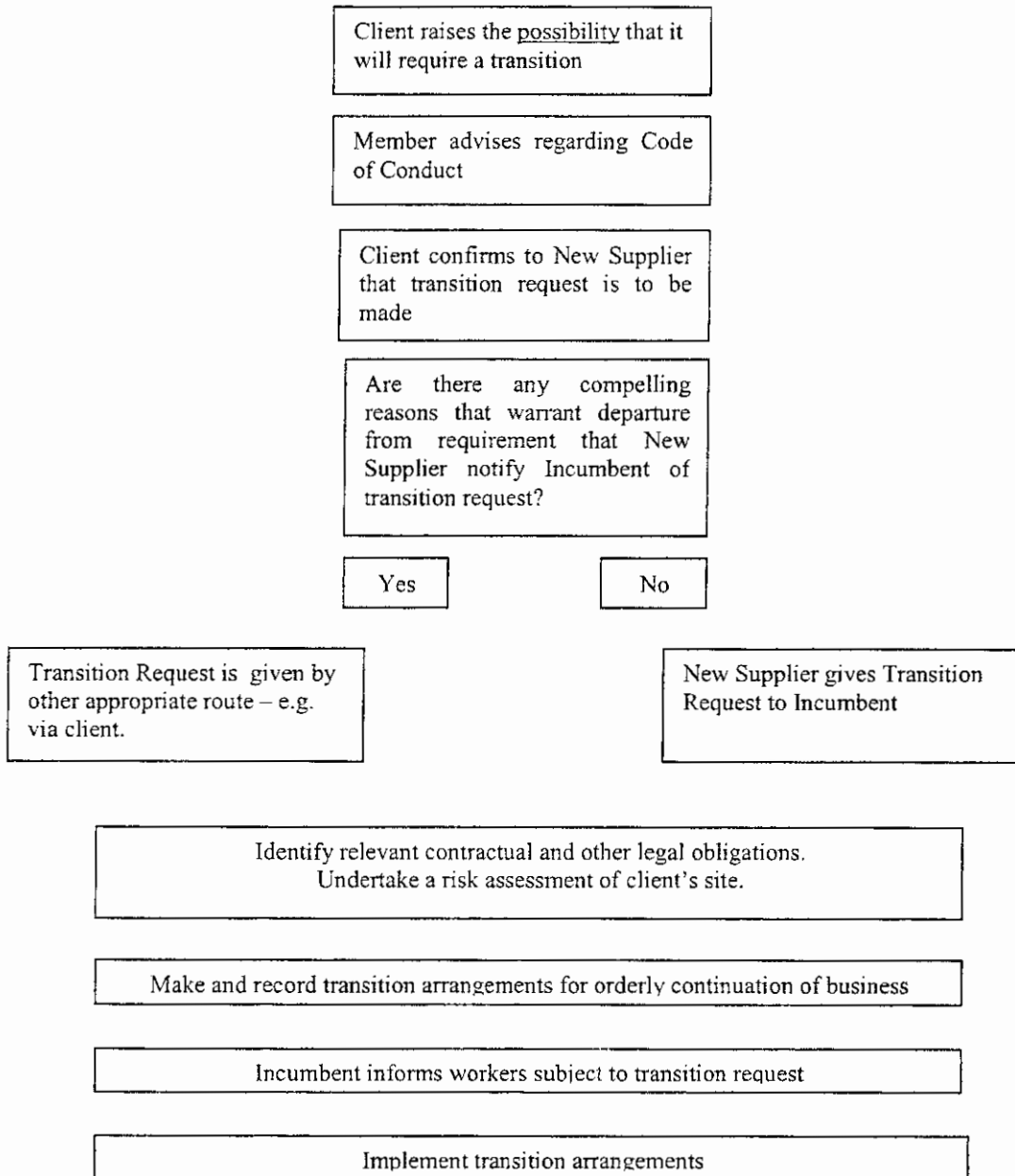
(i) "a member might be directed to make a payment in respect of another party's costs as becoming the Members or in the interests of the RCSA.....the parties to any complaint or dispute notification or appeal under this guideline will each bear their own costs of and incidental to the proceeding".

See Reference Summary (B)



SUMMARY (A)

TRANSITION FLOWCHART





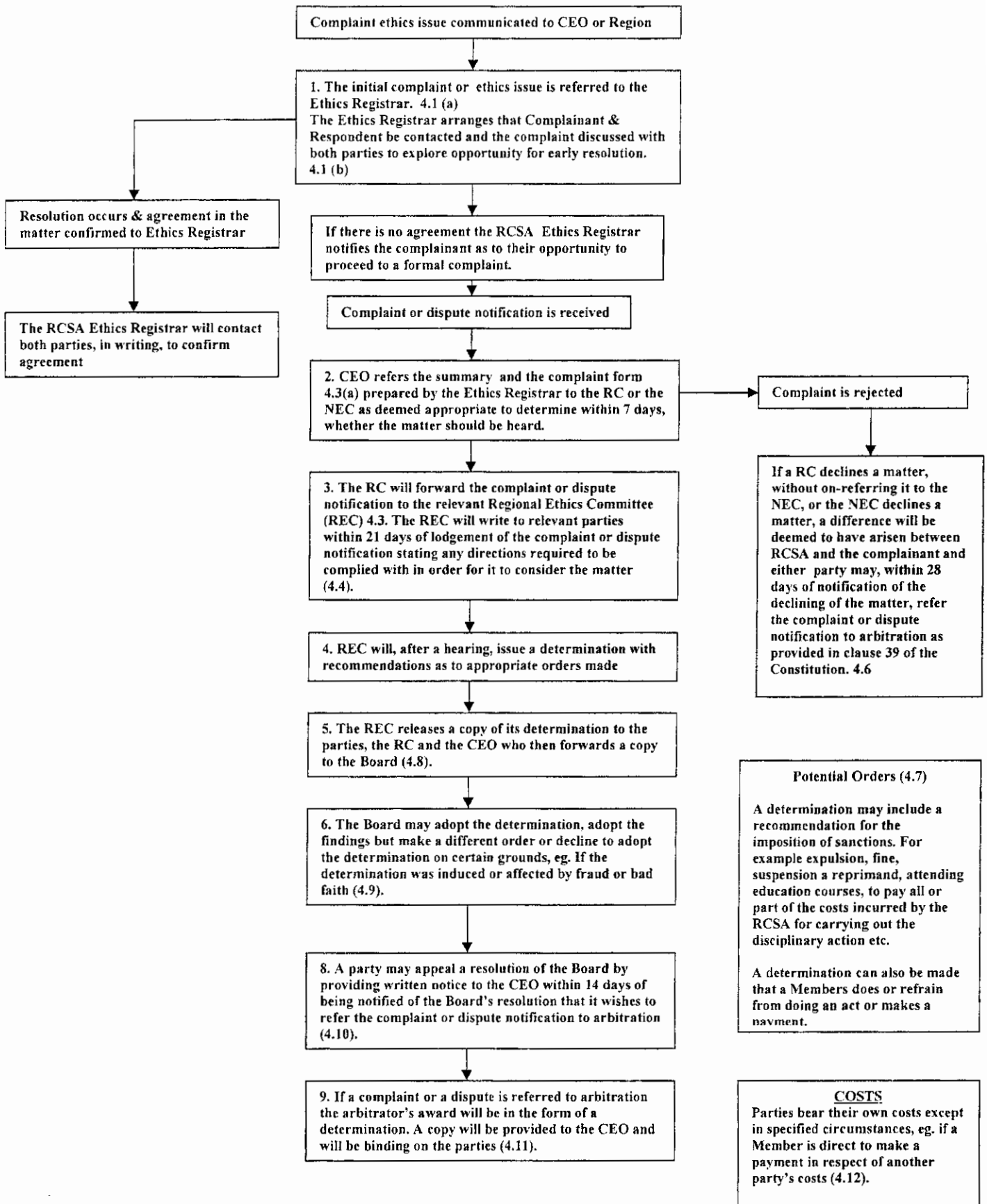
SUMMARY (B)

DISPUTED FEE REFERENCE
(Summary)

1. All parties must agree that the matter be referred by the RCSA to an ARBITRATOR and that this will incur costs to the parties.
2. RCSA will appoint an ARBITRATOR from a panel provided by the Association of Arbitrators.

Note: (a) Disputed fees are not a Disciplinary proceeding.
(b) Parties are encouraged to mediate/negotiate such disputes.
(c) The ARBITRATOR may require that agencies waive any claim to fees other than those determined by the ARBITRATOR.
3. RCSA may decline to undertake to refer disputed fee reference to ARBITRATION and will indicate the reasons why.
4. The Schedule contains guidelines for reference by the ARBITRATOR which also provide assistance to parties to assess their respective positions before requesting RCSA to facilitate ARBITRATION - points (h), (i) i – ix.

Figure 3.1 – RCSA Disciplinary & Dispute Resolution Procedure



SCHEDULE 1

Application Guidelines and Recommendations – Transition of Workers – Guidelines for Ethical Conduct – reference Principle 3

- (a) Members should be aware and acknowledge that in an open and competitive market place, circumstances may arise when a client wishes to change suppliers.
- (b) Members should also be aware and acknowledge that members invest significant amounts of work, money, time and intellectual resources in establishing relationships with clients, developing critical understandings of clients' and workers' needs, training workers in system of work for clients, and inducting workers in preparation to undertake work for clients. Those investments contribute to members' goodwill and support significant business capital, which is of value to members and which members are entitled to protect by lawful means.
- (c) This Guideline and Recommendation will apply in cases where a member seeks to transition workers from one agency to another in response to client requirements.
- (d) Stakeholders in the transition arrangements may include the members or other agencies involved in the transition, the client, the client's customers and the workers themselves.
- (e) Unless there are compelling reasons to the contrary, members should give written notice to the incumbent agency if they require to effect a transition of workers from that agency in response to client requirements (a "transition request").
- (f) In making transition arrangements, members must give due consideration to the interests of all stakeholders.
- (g) Members must use reasonable endeavours to ensure that transition arrangements are managed in a professional manner and they are designed to minimise disruption to stakeholders. To that end RCSA recommends that members ought to give consideration to and make suitable arrangements:
 - i. for the orderly continuation of business;
 - ii. to identify and give effect to any relevant contractual or other legal obligations;
 - iii. for the orderly transition of workers. This will usually require that the incumbent agency be permitted to be first to inform its workers of the circumstances that have led to the transition request. The incumbent agency should notify its workers promptly upon receipt of a transition request of circumstances that may be likely to result in change termination or redundancy in the workplace;
 - iv. as to timeframe within which the transition is to be completed. RCSA recommends that transition should be able to be completed in most ordinary cases within 45 days of advice that a transition is required;
 - v. to ensure that workers are properly informed of matters relevant to their decision to transition or not to transition;
 - vi. for the transfer or payment (as may be required) of any accrued worker benefits.
- (h) Code Principles 1 (Confidentiality and Privacy), 2 (Honest Dealings), 4 (Respect for Laws), 5 (respect for Safety), and 6 (Respect for Certainty of Engagement) will also be relevant to transition arrangements and members should give due regard to the requirements of those principles as they apply to their transition arrangements.
- (i) Members are encouraged to attempt to resolve any disputes regarding transition arrangements through process of negotiation and mediation.