



Form FA

Commonwealth of Australia

Trade Practices Act 1974 — subsection 91A (1)

APPLICATION FOR MINOR VARIATION OF A NON-MERGER AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91A (1) of the *Trade Practices Act 1974* for a minor variation of an authorisation.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) **Name of applicant:**
(Refer to direction 2)

A91226

Recruitment and Consulting Services Association Limited. ABN 41 078 606 416

- (b) **Description of business carried on by applicant:**
(Refer to direction 3)

Industry association in Australia and New Zealand for members who provide recruitment, on-hire and consulting services within the employment services industry.

- (c) **Address in Australia for service of documents on the applicant:**

Level 3, 63 Exhibition St, MELBOURNE, VICTORIA 3000

2. Minor variation of authorisation

- (a) **Description of the contract, arrangement or understanding, or the relevant conduct, for which authorisation was granted, including, but not limited to, the registration number assigned to that authorisation (the original authorisation):**

On 21 January 2009, the Commission granted authorisation in respect of application A91102 for a contract, arrangement or understanding by which participants agree to adhere to a code for professional practice (the Code) administered in accordance with the RCSA's Constitution and its *Disciplinary & Dispute Resolution Procedures* which together provide a regime for the imposition upon members of sanctions that may include expulsion, suspension, fines and other sanctions.

- (b) **Provide a description of the goods or services that relate to the authorisation for which variation is sought:**

Industry association services in the employment services industry – more particularly those relating to the disciplinary and dispute resolution functions carried out by RCSA under Authorisation A91102 and as are detailed in RCSA's Disciplinary & Dispute Resolution Procedure.

- (c) **Provide details of the variation for which authorisation is sought, including but not limited to identification of differences between the contract, arrangement or understanding, or the relevant conduct, that was originally authorised and the contract, arrangement or understanding, or the relevant conduct, for which a minor variation of authorisation is sought:**

(Refer to direction 4)

The proposed variation is limited to enhancements in the procedures for dealing with grievances and disciplinary complaints made against Members of RCSA. The enhancements are contained in the true copy of the marked up draft of version 8 of the Disciplinary & Dispute Resolution Procedure which is attached and marked "A".

- (d) **Facts and evidence relied upon in support of the claim that the variation is a minor variation:**

The proposed variation does not involve any material change in the effect of the authorisation, which was previously assessed by the Commission as being likely to continue to provide effective market regulation, promoting equitable dealings in the employment services market and improving business efficiency.

3. **Parties to the contract, arrangement or understanding (whether proposed or actual), or conduct, for which variation of authorisation is sought**

- (a) **Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding, or the relevant conduct:**

RCSA and its Members. RCSA's Members include its corporate and accredited professional members. There are presently in excess of 3000 members.

- (b) **Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:**

(Refer to direction 5)

- RCSA (address as previously supplied)
- RCSA's Members. There are presently in excess of 3000 corporate and individual members. The membership list contains personal information. It can be provided to the

Commission on a confidential basis if collection of this information is considered necessary by the Commission.

- (c) Where those parties on whose behalf the application is made are not known - description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:
- RCSA's directors, office bearers and employees from time to time called upon to exercise functions in accordance with the Constitution, D&DRP or to promote or enforce provisions of the Code.
 - Its Members from time to time.
 - Its professional advisors called upon from time to time to advise upon, make recommendations in relation to or conduct training or publish training materials in support of the Code and matters arising under it.
 - Any person called upon to act in the role of mediator or arbitrator in respect of matters arising under the Code.
 - Members of the public seeking determinations under the Code in connection with their dealings with Members of RCSA.
 - Any subsidiary that RCSA may form and in like manner, its directors, office bearers and employees, members, and persons having dealings with it in relation to matters arising under the Code.

4. Public benefit claims

- (a) Provide submissions regarding the effect of the minor variation upon the public benefits resulting or likely to result from the original authorisation:

The authorised arrangements comprising the Code for Professional Conduct, Constitution and *Disciplinary & Dispute Resolution Procedure* ("D&DRP") were previously assessed by the Commission as being likely to continue to provide effective market regulation, promoting equitable dealings in the employment services market and improving business efficiency.

The D&DRP supports the *Code for Professional Conduct* by providing access to means of dispute resolution, including an early intervention module, escalation to formal complaint, investigation, hearing and determination procedures, procedures for the imposition of sanctions and procedures that allow for independent commercial arbitration *de novo* by way of appeal.

The proposed variations enhance the effectiveness of the D&DRP in the following respects:

1. The proposed variation to rule 4.1(b):
 - a. sets out the steps in chronologically correct sequence in order to convey more clearly what will happen when a grievance is raised;
 - b. allows for the possibility that matters giving rise to a grievance may be resolved by direct discussions between the grievance bearer and the Member within a window of opportunity of no more than 30 days;
 - c. does not compel the Ethics Register to delay RCSA's intervention; but allows him/her to do so where it is considered that this might be beneficial in resolving the grievance.

NOTE: The 30 day period has been selected having regard to the possibility that key staff, whose input may be necessary in seeking resolution, may not be available due to absence for leave or other purposes, which in the majority of cases would not be expected to be for periods of greater than 30 days.

2. The proposed variation to rule 4.5(e):
 - a. provides that a Member may give an undertaking to the RCSA Board in satisfaction or partial satisfaction of a disciplinary complaint;

NOTE: Disciplinary complaint proceedings are not *inter partes* proceedings between Complainants and Respondents. They are proceedings between RCSA and its Member for the determination of matters concerning Members' conduct *qua* members. "Satisfaction" of complaint proceedings, therefore, does not affect any legal rights that a Complainant may have against a Member; though, a Member may offer satisfaction in terms that might additionally settle disputes that arise between the Member and the Complainant. If that were to happen, apart from whatever contractual remedy a Complainant might have against the Member, the Member would also be bound, upon pain of disciplinary sanction, to honour the undertaking.

- b. is broadly modelled upon the provisions and policy of section 87B of the *Trade Practices Act 1974*¹ so far as they may be adapted to an organisation whose authority with respect to its Members derives not from statute; but from contract;
- c. is designed to provide an alternative pathway towards resolution and disposition of complaints in a manner that will encourage early compliance with standards established by the Code for Professional Conduct;

NOTE: RCSA regards the proposed undertaking procedure as an important compliance tool. It is submitted that the availability of such an alternative pathway will make it possible for RCSA to deal with a greater number of matters; will lead to earlier disposition of complaints; will reduce the costs and duration of complaint hearings and is likely to produce outcomes that are less likely to be challenged by Members under the appeal procedures;

- d. is designed to ensure that governance responsibility so far as it relates to the maintenance and enforcement of professional standards rests with the Board;
 - e. is designed to preserve the independence of external review under commercial arbitration procedures established by the D&DRP.
3. The proposed variation to rule 4.6(a)(vii) is consequential upon the proposed variations to rule 4.5(e).

The Code and the D&DRP are otherwise unaltered apart from minor typographical corrections.
(See *Direction 6 of this Form*)

(b) Facts and evidence relied upon in support of these claims:

The extent of the proposed changes is evident in attached document "A".

¹ As outlined in *Guidelines on the use of enforceable undertakings by the Australian Competition and Consumer Commission, September 2009* - <http://www.accc.gov.au/content/item.cfm?itemId=263958&nodeId=92f8fbf65ed2a9bd80cf1a53ea1b3a161b&fn=Section%2087B%20of%20the%20TPA.pdf> accessed 21 April 2010 12:08pm.

In the period February 2009 to February 2010, RCSA responded to 507 Code queries relating to: Fee Related Disputes (146); Candidate Care (140); Transitioning under the Code (115); Advertising (106).

In that same period RCSA completed 121 grievance interventions.

The vast majority of interventions completed under the D&DRP occur at the early intervention stage.

It is RCSA's experience that steps taken to encourage communication between Complainants and Members at this early stage are highly productive of resolutions.

On the basis of that experience, RCSA submits that the proposed amendment to rule 4.1(b) should encourage early resolution.

NOTE: RCSA notes that this approach appears to have been adopted by the ACCC² and by Office of the Privacy Commission³ to good effect. Given that a substantial number of complaints involve consumer type and privacy related issues there is reason to think that the experience of the ACCC and OPC will hold true for RCSA.

In RCSA's experience in dealing with complaints, the early recognition by Members that conduct may have fallen short of the standard expected by the Code is also an important factor in producing effective early resolutions.

Recognition may be delayed due to defensiveness on the part of Members as well as by other factors.

It is RCSA's experience in dealing with complaints that the hearing and determination process which follows upon escalation of a grievance to formal complaint status may contribute somewhat to the degree of defensiveness shown on the part of a Member/respondent.

It is RCSA's experience in handling complaints that if an alternative mechanism for the handling of complaints can be opened up, recognition of non-compliance is likely to come about much sooner.

It is RCSA's experience that Members, recognising that their practice has fallen short of the standard required by the Code are, in the main, keen to comply and make amends. RCSA regards such a response on the part of Members as one that is "becoming of a Member" in terms of its Constitution.

² <http://www.accc.gov.au/content/index.phtml/itemId/815327> accessed 21 April 2010 12:53PM.

³ <http://www.privacy.gov.au/complaints/before> accessed 21 April 2010 12:49PM.

On the basis of this experience it is RCSA's opinion that the proposed variation to rule 4.5(e) ought to facilitate speedier outcomes and a greater preparedness on the part of Members to acknowledge possible shortcomings and to make amends.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

The Australian market for recruitment, consulting and on-hire services as identified in the Commission's final determination in A91102.

(See Direction 7 of this Form)

6. Public detriments

- (a) **Provide submissions regarding the effect of the minor variation upon the detriments to the public resulting or likely to result from the original authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 2 (b) above and the prices of goods or services in other affected markets:**

The proposed variations will reduce or, alternatively, not have any effect upon the detriments to the public resulting or likely to result from the original authorisation.

(See Direction 8 of this Form)

- (b) **Facts and evidence relied upon in support of these claims:**

The proposed variation is limited to enhancements in the procedures for dealing with grievances and disciplinary complaints made against members of RCSA.

7. Further information

- (a) **Name, postal address and telephone contact details of the person authorised by the applicant to provide additional information in relation to this application:**

Mr Peter Giles
RCSA Ethics Registrar
PO Box 18028
Collins St East VIC 8003 Australia

T: +61 3 9663 0555
F: +61 3 9663 5099
E: ethics@rcsa.com.au

Dated..... 4/5/10

Signed by/on behalf of the applicant


.....
(Signature)

GEORGE LAMBROU

(Full Name)

RCBA

(Organisation)

ACTING CEO

(Position in Organisation)

DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1 (b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding, or the relevant conduct, in respect of which the authorisation is sought.
4. In completing this form, provide details of the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, in respect of which minor variation of authorisation is sought.

In providing these details:

- (a) to the extent that the contract, arrangement or understanding, or the relevant conduct, has been reduced to writing — provide a true copy of the writing; and
 - (b) to the extent that the contract, arrangement or understanding, or the relevant conduct, has not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing; and
 - (c) If minor variation of authorisation is sought for a contract, arrangement or understanding (whether proposed or actual) which may contain an exclusionary provision — provide details of that provision.
5. Where minor variation of an authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of the likely effect of the minor variation upon those public benefits considered to result or to be likely to result from the original authorisation, including quantification of those effects where possible.
 7. Provide details of the market(s) likely to be affected by the contract, arrangement or understanding (whether proposed or actual), in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.
 8. Provide details of the likely effect of the minor variation upon those detriments to the public, including those resulting from the lessening of competition, which may result from the original authorisation. Provide quantification of these effects where possible.



Disciplinary & Dispute Resolution Procedures

Version (8)

RCSA Ltd
ABN41 078 606 416
PO Box 18028, Collins Street East
Victoria 8003
Ph: (+61 3 9663 0555
Fax: +61 3 9663 5099
Email: ethics@rcsa.com.au

1. About These Procedures

1.1 Procedures for the RCSA Ethics Committee

- (a) These Procedures have been developed by the Board to assist the RCSA's Ethics Committee in the handling of Complaints, which might arise from time to time under RCSA's Code for Professional Conduct ('the Code').
- (b) Where these procedures are silent on any issue, reference may be made to AS ISO 10002-2006: Customer Satisfaction – Guidelines for Complaints handling in organizations for guidance.

1.2 Members Are Liable to Discipline

- (a) Clause 2.8 of RCSA's Constitution stipulates that Members are liable to discipline in accordance with RCSA's Disciplinary and Dispute Resolution Procedures.
- (b) Clause 2.8 of RCSA's Constitution stipulates that Board may censure, suspend or expel a Member from the RCSA following the guidelines and processes stipulated in RCSA's:
 - (i) Code for professional Conduct;
 - (ii) Disciplinary and Dispute Resolution Procedures; 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 Procedures. 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 Procedures. If a non-member is a party to arbitration, the arbitrator's award will bind the non-member in accordance with the law governing the arbitration and the rules of the arbitration. If a non-member participates in 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 Conduct

- (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 authorized by the ACCC].
- (b) The Code is divided into a number of sections which set out General Principles and eight specific 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 Disciplinary and Dispute Resolution Procedures to support the Constitution and the Code.
- (b) The Disciplinary and Dispute Resolution Procedures are contained within this document.

1.5 Revocation of Previous Procedures and Guidelines

- (a) These Procedures supersede any previous Regional Guideline and Disciplinary and Dispute Resolution Procedure, that dealt with anything dealt within these Procedures and the same are hereby expressed to be revoked.

2. Definitions

- 2.1 **APRCSA** - means a person holding accreditation as an Accredited Professional RCSA;
- 2.2 **Arbitrator** – means an arbitrator appointed under these Procedures;
- 2.3 **Board** – means the Board of Directors of RCSA;
- 2.4 **CEO** – means the Chief Executive Officer of RCSA or a person performing the duties of the CEO during her or his absence;
- 2.5 **Code** – means the Code for Professional Conduct established by RCSA and authorized by the ACCC;
- 2.6 **Complainant** – means a person who makes a Complaint or who notifies a Grievance under these procedures;
- 2.7 **Complaint** – means a Grievance that has been referred to RCSA’s Ethics Committee as a complaint under these procedures;
- 2.8 **Constitution** – means the constitution of RCSA;
- 2.9 **Corporate Membership Category of Service** – means any category of service recognized by the Board of RCSA as being of a that characteristically provided by a Corporate Member and includes an On-Hired Employee Service, a Contracting Service, a Contractor Management Service, a Recruitment Service, and a Workforce Consulting Service as defined in the RCSA Corporate Membership Categories at Service as at date of authorisation of this Code; but does not include a migration service of a type which by law in Australia or New Zealand may only be provided by a registered migration agent;
- 2.10 **D&DRP or these Procedures** – means the Disciplinary and Dispute Resolution Procedures set out in these Procedures;
- 2.11 **Employment Service** – means any category of service recognized by RCSA as a Corporate Membership Category of Service;
- 2.12 **Ethics Registrar** – means the person appointed by the CEO to perform the functions of the Ethics Registrar as described in the D&DRP;
- 2.13 **Grievance** – means an expression of dissatisfaction with a Member regarding that Member’s compliance or non-compliance with the Code that is made under these procedures;
- 2.14 **Matter** – means a Complaint or Grievance;
- 2.15 **Member** – means a person who holds any category of Membership of RCSA that is recognised under its Constitution and who has signed, or is required by the Board of RCSA to sign, a statement of Commitment; and includes an APRCSA;

- 2.16 PPC** – means the Professional Practice Council established by the Board to perform functions that may be described in the D&DRP or its terms of reference;
- 2.17 Professional Practice** – means practice connected with or in the course of providing an Employment Service;
- 2.18 RCSA’s EC** – means RCSA’s Ethics Committee established under the Constitution;
- 2.19 Statement of Commitment** – means a statement to abide by the Code and the D&DRP, which statement may be in the form approved by the Board of RCSA from time to time.

3. Responsibility of Bodies

3.1 What the Board Does

- (a) The Board has the following responsibilities with respect to Complaints and the resolution of Grievances;
 - (i) ACCONNTABILITY – the Board has overriding responsibility for the management and control of RCSA;
 - (ii) ACCOUNTABILITY/RESOURCES – the Board authorizes Guidelines for Members;
 - (iii) RESOURCES – the Board develops and maintains a Code for Professional Conduct for its Members;
 - (iv) RESOURCES – the Board appoints a panel of persons from whose Members RCSA’s EC may be formed from time to time, Comprising:
 - 1. at least 1 Director; and
 - 2. such other Matters of the RCSA as the Board thinks fit including, wherever practicable, a Life Member of RCSA.
 - (v) RESOURCES – the Board delegates such of its powers to RCSA’s EC as may be necessary for its proper functioning;
 - (vi) RESOURCES – the Board may appoint a qualified person to act as counsel to assist RCSA’s EC;
 - (vii) REMEDIES – the Board may resolve to censure, suspend or expel a Member or impose other sanctions as it thinks fit;
 - (viii) ACCESS/ACCOUNTABILITY – the Board may approve RCSA initiating and prosecuting before the RCSA’s EC a complaint against a Member;
 - (ix) ACCOUNTABILITY – the Board may resolve to adopt and enforce a recommendation of the RCSA’s EC or an Arbitrator or may decline to adopt and enforce such a recommendation as provided in these Procedures;
 - (x) ACCOUNTABILITY/FAIRNESS – the Board may refer an unresolved difference about a Complaint to arbitration;

3.2 What The EC Does

- (a) RCSA's EC has the following responsibilities:
 - (i) FAIRNESS – RCSA's EC receives Complaints from the Ethics Registrar and CEO and decides whether it will accept each Complaint for Investigation, hearing and determination;
 - (ii) FAIRNESS – RCSA's EC directs the investigation of and hears Complaints;
 - (iii) SYSTEMATIC AND RECURRING PROBLEMS – RCSA's EC 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;
 - (iv) ACCOUNTABILITY – RCSA's EC, following the conclusion of a hearing makes findings and may make a recommendation to the Board supported by reasons;
 - (v) ACCOUNTABILITY – RCSA's EC provides a report of its findings and recommendation to the Board

3.3 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 RCSA's EC is resourced to handle Complaints;
 - (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 Procedures 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 Grievance;
 - (iv) VISIBILITY/ACCRSS – the CEO ensures that RCSA's Code and D&DRP are well publicized and that information about the right to make a Complaint or notify a Grievance is readily available;
 - (v) VISABILITY/ACCESS – the CEO, with assistance from the Ethics Registrar, co-ordinates the publication of proceedings of the RCSA's EC and the Board;

- (vi) ASSISTANCE – the CEO ensures that assistance is available for Complaints in the formulation and lodgment of Complaints or Grievances and that summaries of decisions of RCSA’s EC are available to Complainants and Members;
- (vii) ASSISTANCE/FAIRNESS – the CEO establishes systems for the receiving of Complaints and Grievances and their forwarding to appropriate bodies, and ensures that notifications are issued as required by these procedures;
- (viii) ASSISTANCE/PREVENTION – the CEO ensures that arrangements are in place to enable Members and Complainants to obtain preliminary non-binding rulings on matters that might arise under the Code;
- (ix) RESPONSIVENESS – the CEO monitors the Complaints and Grievance handling process to ensure that Complaints and Grievances are dealt with in a timely manner and courteously;
- (x) DATA COLLECTION – the CEO ensures that there is appropriate systematic recording of Complaints and Grievances and their outcomes and that such data is published each year in the annual report of RCSA;
- (xi) REVIEW – the CEO ensures that the Code and D&DRP are reviewed regularly to ensure that they are efficiently delivering effective outcomes.

3.4 What the Arbitrator Does

- (a) An Arbitrator has the following responsibilities
 - (i) FAIRNESS – an Arbitrator may arbitrate:
 1. a declined matter
 2. a matter that has miscarried as set out in rule 4.9(a)(iii) to (3) of these Procedures;
 3. a matter on appeal.
 - (ii) ACCOUNTABILITY – an Arbitrator make an award which may contain a recommendation to the Board.
 - (iii) REMEDIES – an Arbitrator may recommend, but not impose sanctions or make any award in the nature of sanctions except with the agreement of the parties to the arbitration.

3.5 What the Court Does

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

3.6 What the Ethics Registrar Does

- (a) RESOURCES/ASSISTANCE – the Ethics Registrar assists Members and Complainants with inquiries concerning the Code and the D&DRP;
- (b) RESOURCES/ACCESS – the Ethics Registrar facilitates the resolution of Grievances through the Intervention Process described in the D&DRP;
- (c) RESOURCES/ASSISTANCE – the Ethics Registrar assists in the handling of Matters as set out in the D&DRP and may be required to undertake the investigation of Complaints at the direction of RCSA’s EC;
- (d) DATA COLLECTION – the Ethics Registrar collect data on Complaints and Grievances and their outcomes.

3.7 What the PPC Does

- (a) REVIEWS – the PPC reviews the Code, D&DRP, determinations and non-binding rulings made there under and makes recommendations to the Board for their further development.

4. Disciplinary & Dispute Resolution Procedures

4.1 Grievance Intervention Process

- (a) Any person may notify a Grievance by providing comprehensive details of it in writing to the Ethics Registrar.
- (b) Upon notification of a Grievance the Ethics Registrar;
 - (i) Checks that the Member Company/person against whom the Grievance is raised ("the Respondent") is a Member;
 - (ii) Will record and acknowledge the time and date of receipt as well as brief details sufficient to describe the nature of the Grievance.
 - (iii) Before taking further steps, may require the Complainant to raise the Grievance in writing directly with the Respondent and allow up to 30 days for a response.
 - (iv) Request from the Complainant an email or letter with supporting documentation outlining the Grievance raised with the names of the parties involved, date and the Country, State or Territory where the Grievance arose.
 - (v) Seeks approval from the Complainant for information about the Grievance to be forwarded to the Respondent.
- (c) If the Ethics Registrar obtains an approval from the Complainant which in the opinion of the Ethics Registrar is sufficient to allow the Grievance Intervention to proceed, the Ethics Registrar;
 - (i) Notifies the Respondent by email in the first instance and then by letter, that a Grievance has been raised and in so doing, provides to the Respondent:
 1. information about the substance of the Grievance in accordance with the approval from the Complainant;
 2. an opportunity for immediate action/response;
 3. a copy of rule 4.1 of the D&DRP and a copy of the Code.
- (d) The Respondent is given ten business days in which to provide a substantive response and notifies the Complainant accordingly. The Ethics Registrar may extend the period for a response if the Ethics Registrar is reasonably satisfied that it would be fair to do so. The Ethics Registrar must notify the complainant if any extension of the period for the response that is granted.

Deleted: <#>Checks that the Member Company/person against whom the Grievance is raised ("the Respondent") is a Member; ¶

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- (e) If the Respondent fails to provide a substantive response within the ten day timeframe, or any extension of it allowed by the Ethics Registrar under sub paragraph (d) above, the Respondent's failure to respond may be referred to the Board and the Respondent may immediately be liable to the imposition of sanctions under Rule 2.8 of the Constitution.

- (f) When the Ethics Registrar receives the response;
 - (i) If the Complainant and the Respondent have agreed to resolve the Grievance between themselves;
 - 1. a timeline for resolution must be agreed with the Ethics Registrar;
 - 2. the RCSA will contact both parties, in writing, to confirm the timeline so agreed;
 - 3. the Ethics Registrar is not required to take any further step by way of Grievance Intervention other than to confirm with the parties whether their Grievance is proceeding in accordance with the timetable they have established; and
 - 4. the parties are required to advise the RCSA Ethics Registrar of any change in their timetable, any breakdown in their steps towards resolving the Grievance between themselves; and of their having reached any resolution they may have reached.

 - (ii) If the Complainant and the Respondent have NOT agreed to resolve the Grievance between themselves, the Ethics Registrar;
 - 1. seeks approval from the Respondent for information about the response to be forwarded to the Complainant;
 - 2. provides to the Complainant information about the substance of the response in accordance with the approval obtained from the Respondent;
 - 3. give the Complainant ten business days in which to provide a reply (including in the case of a Complainant who is a Member, a substantive reply to any counter Grievance or allegation made by the Respondent) and notifies the Respondent accordingly. The Ethics Registrar may extend the period for a reply if the Ethics Registrar is reasonably satisfied that it would be fair to do so. The Ethics Registrar must notify the Respondent of any extension to the period for a reply that is granted.
 - 4. If the Complainant fails to provide a reply as required within the ten day timeframe, or any extension of it allowed by the

Ethics Registrar under sub-paragraph (3.) above, the Ethics Registrar may terminate the Grievance Intervention. If the Complainant is a Member, its failure to reply may be referred to the Board and the Complainant may immediately be Liable to the imposition of sanctions under rule 2.8 of the Constitution.

- (iii) The Ethics Registrar may facilitate such further exchanges of information between the Complainant and the Respondent consistently with the Grievance Intervention Procedures outlined above as the Ethics Registrar considers would be of assistance in resolving the Grievance.
- (g) If at any time during the Grievance Intervention Process the Ethics Registrar forms the opinion that it is not practicable to continue the intervention of that resolution of the Grievance via the Intervention Process is unlikely to be reached, the Ethics Registrar may terminate the Intervention by notice in writing to be effective immediately on its being given.
- (h) In terminating the Grievance Process the Ethics registrar is to;
 - (i) inform the parties to the Grievance of the ability to make a formal Complaint under rule 4.2;
 - (ii) Provide the parties with a copy of the Code and the D&DRP.
- (i) Once an Intervention is terminated, all Grievances (including any counter Grievance) subject to the Intervention that are not escalated by making of a Formal Complaint under Rule 4.2 are deemed to have lapsed.

4.2 Making a Complaint

- (a) Upon the making and acknowledgment of a Complaint the D&DRP in so far as it may provide for the arbitration of any dispute or difference by an Arbitrator operates as a commercial arbitration agreement binding the Complainant, the Respondent, and the RCSA to the extent to which they may be party to that dispute or difference.
- (b) A person may make a Complaint in the form authorized by the Board from time to time and by providing information and evidence in support of it.
- (c) Complaints are to be in writing addressed and mailed to;
The Chief Executive Officer
RCSA
PO Box 18028
Collins Street East
VIC 3000

Or emailed to;
ethics@rca.com.au

- (d) Upon receipt of a Complaint the Ethics Registrar will record and acknowledge the time and date of receipt as well as brief details sufficient to describe the nature of the Complaint.

4.3 Referral

- (a) The Ethics registrar will collate all information and evidence provided by the Complainant and Respondent into an RCSA Ethics Intervention Report and forwards this report to RCSA's EC. If a participant on the EC has a Conflict of Interest, that participant must declare the Conflict prior to hearing an Ethics matter.
- (b) Upon receipt of the RCSA Ethics Intervention report the RCSA's EC will promptly determine whether:
 - (i) to accept it (or any part of it) for investigation, hearing and/or determination; or
 - (ii) to decline it (or any part of it) pursuant to Rule 4.6 of the D&DRP.
- (c) Acceptance of a Complaint for investigation, hearing and/or determination does by the fact alone not imply, by that fact alone, that any Member has fallen short of the standard of professional conduct and practice required by the Code.

Deleted:

4.4 Notice and Directions

- (a) Once RCSA's EC receives a Complaint it will advise the CEO whether it has accepted or declined it and the CEO will inform the complainant accordingly.
- (b) When the RCSA's EC accepts any Complaint the Ethics Registrar will write, within 21 days of acceptance, to such Members 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 Complaint.
- (c) Without limiting the generality of sub-paragraph (b), directions made by RCSA's EC, may include directions thought appropriate:
 - (i) for the participation or representation of any person;
 - (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;
- (vi) for the making of written submissions to ensure the validity of facts and to clarify information for the RCSA's EC;
- (vii) to preserve the confidentiality of any information communicated in the course of the matter;
- (viii) for mediation;
- (ix) for arbitration of any difference on a question of fact or law arising in the course of the matter;
- (x) for expedited determination, including determination on the basis of written submissions;
- (xi) otherwise for the conduct of the investigation, hearing or determination.

4.5 Proceedings Generally

- (a) A disciplinary investigation and hearing conducted by RCSA's EC is a proceeding conducted by RCSA in respect of the professional conduct and practice of its Members. A Complainant is not a party to such a proceeding; but may participate with permission of and in accordance with directions given by RCSA's EC.
- (b) A participant, who is not a Member and who fails to comply with a direction of RCSA's EC may be denied any further entitlement to participate;
- (c) Proceedings conducted by RCSA's EC shall be based upon parties and participants interests in:
 - (i) securing a lawful outcome;
 - (ii) being heard;
 - (iii) knowing whether the Code has been observed;
 - (iv) providing and requesting (subject to any lawful right of exclusion) all relevant material to support or respond to the Complaint;
 - (v) being informed of the criteria and processes for determining the matter, including avenues for further review;
 - (vi) being sufficiently informed of the response of any party against whom allegations or cross allegations are made;
 - (vii) being informed of the outcome and reasons for that outcome;

- (viii) having the matter heard and determined independently so far as practicable;
 - (ix) maintaining the confidentiality of any confidential information;
 - (x) maintaining privacy so far as is practicable in accordance with the National Privacy Principles or Information 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) having the matter disposed of with as little cost, formality and delay as may be consistent with the requirements of fairness, the general intent of which should be that matters should be heard without legal representation, where possible and the parties involved participate directly with the EC.
- (d) Abandoned Complaints may be finalised, using whatever information and material is available to RCSA's EC.
- (e) **Undertaking in satisfaction or partial satisfaction of a Matter in respect of which a Complaint may be made**
- (i) A Member, at any time before a Complaint has been determined by the Ethics Committee, may tender, confidentially and without prejudice subject to sub-paragraph (iii), to the Board a written undertaking in whole or partial satisfaction of the Matter in respect of which the Complaint has been or may be made ("the Matter").
 - (ii) The Board may accept the undertaking in satisfaction of the Matter or such part thereof as the Board may determine.
 - (iii) The CEO will advise the Respondent, the Complainant and any person who has been granted leave to participate in the Complaint of any undertaking that is accepted by the Board pursuant to sub-paragraph (ii).
 - (iv) If a written undertaking has been tendered confidentially and without prejudice to the Board, the conditions upon which it is tendered shall operate, so far as the law allows, to prevent access to, or disclosure of, the terms and extent of any written undertaking that has been rejected by the Board except insofar as the same may be implied from notification given under sub-paragraph (iii).
 - (v) The Member may withdraw or vary the written undertaking at any time, but only with the consent of the Board.
 - (vi) If the Board considers that the Member who gave the written 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.

(vii) A decision of the Board:

- to accept, or not to accept, a written undertaking tendered in accordance with this provision;
- to consent or not to consent to the withdrawal or variation written undertaking accepted by the board in accordance with this provision

is subject to the provisions providing for arbitration in the Constitution and in rules 4.11(b); (e); and (f) of these procedures. The arbitrator's award will be binding on the parties.

(viii) A decision of the Board to impose sanctions under sub-paragraph (vi) is subject to the provisions providing for arbitration in the Constitution and in rules 4.11(b); (e); (f); and (g) of these procedures.

4.6 Declined Complaints

- (a) RCSA's EC may decline a Complaint for investigation, hearing or determination (or the continuation thereof) at any time for reasons including:
- (i) that it is, or has become, frivolous or vexatious;
 - (ii) that it discloses no issue of substance regarding the Respondent's Professional Conduct or Practice;
 - (iii) that procedures or resources available to RCSA's EC as a domestic tribunal of a voluntary body are not suitable for investigation, hearing or determination of the Complaint;
 - (iv) that investigation, hearing or determination of the Complaint may prejudice:
 1. proceedings in a court or statutory tribunal;
 2. a law enforcement investigation or the investigation of a statutory authority.
 - (v) delay in making the complaint to the extent to which it may prejudice the investigation, hearing or determination of the Complaint;
 - (vi) that the Complaint arises from lapsed Grievance under rule 4.1(i);

- (vii) that the Board has accepted a written undertaking from the Member in whole or partial satisfaction of the Matter.
- (b) If RCSA's EC declines a Complaint, a dispute 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 Complaint, refer the Complaint to arbitration as provided in Rule 4.11 of the D&DRP.

4.7 EC Findings

- (a) The findings of RCSA's EC on a Complaint will be in writing 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 findings may include:
 - (i) a recommendation for the imposition of sanctions, for the RCSA Board to determine, of the type described at Rule 2.8 (c) of the Constitution;
 - (ii) a recommendation that the Board direct a Member to do or refrain from doing an act or make a payment as may be considered:
 1. Just in the circumstances; and
 2. Becoming of the Member or in the interests of the RCSA.

4.8 Notification of Findings

- (a) RCSA's EC will forward a copy of its findings to:
 - (i) the Respondent to the complaint stating that the matter has been forwarded to the Board for their final determination;
 - (ii) the CEO; and
 - (iii) any participant directed by RCSA's EC to receive a copy of its findings.
- (b) The CEO within 21 days of receiving the findings will notify the Board of the recommendation and forward to it a copy of the findings.

4.9 Resolution and Enforcement

- (a) The Board may resolution:
- (i) adopt the findings of RCSA's EC;
 - (ii) adopt the findings of RCSA's EC, 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:
 - 1. just in the circumstances; and
 - 2. to be becoming of the Member or in the interests of the RCSA; and
 - 3. to be consistent with the findings of RCSA's EC.
 - (iii) decline to adopt the findings of RCSA's EC on the grounds that:
 - 1. the proceedings conducted by RCSA's EC were not conducted as required by clause 4.5 (c) of this Guideline;
 - 2. the findings were was induced or affected by fraud or bad faith;
 - 3. the recommendation was otherwise contrary to law; or
 - 4. the recommendation is subject to appeal or other proceedings before a court of competent jurisdiction as hereinafter provided.
- (b) If the Board, pursuant to Rule 4.9 (a) (iii) (1.) to (3.) above, declines to adopt a recommendation of RCSA's EC without adopting its findings, a difference will be deemed to have arisen between RCSA and its Members who were a Respondent or who participated in the Hearing by direction of RCSA's EC and either the Board or any such Member may, within 14 days of notification of the Board's declining the recommendation, refer the Complaint to arbitration as provided in Rule 4.10 of the D&DRP. **RCSA will (subject to the Arbitrator making an alternative award as to costs, 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 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, of the reasons given or adopted by the Board for having made that resolution and of the Member's right of appeal under Rule 4.10 of these Procedures.
- (d) The resolution does not take effect;
- (i) until the expiration of the period within which the Member is entitled to appeal 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 Rule 4 (11)(f) of these Procedures, whichever is the later.
- (e) If a Member fails to comply with a resolution of the Board that;
 - (i) adopts a recommendation of the RCSA's EC or an Arbitrator; or
 - (ii) adopts the findings of RCSA's EC, 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:
 1. just in the circumstances; and
 2. becoming of the Member or in the interests of the RCSA; and;
 3. consistent with the findings of RCSA's EC or the Arbitrator;

and has not instituted any appeal as provided for in these Procedures, the Member may immediately be liable to censure, suspension or expulsion pursuant to Rule 2.8 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 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 to be referred to arbitration pursuant to Rule 15 of the Constitution and these Procedures.

4.11 Arbitration

- (a) If a Complaint or any dispute or reference arising with respect to it is referred to arbitration under these Procedures, any Member who ought to have been made a necessary 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 these Procedures will be conducted in accordance with:
 - (i) the laws governing the conduct of commercial arbitrations in the Country, State or Territory in which the conduct giving rise to the Complaint occurred;
 - (ii) these Procedures; and

- (iii) 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.
- (c) Arbitration of a Complaint under these Procedures proceeds as a re-hearing of the Complaint from the beginning.
- (d) 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 for the Court or judge to adjudicate on and settle all questions involved in the proceeding.
- (e) An Arbitrator's award in relation to a Complaint referred for arbitration will be in the form of a determination that complies with the requirements of Rule 4.5 (c) of these Procedures.
- (f) An Arbitrator will provide a copy of the Arbitrator's award to the CEO.
- (g) An Arbitrator's award will be binding on the parties, an Arbitrator may recommend, but may not impose sanctions of the type described at Rule 2.8 (c) of the Constitution or make any award in the nature of such sanctions except with the agreement of the parties to the arbitration. For the avoidance of doubt an award of costs is not to be regarded as a sanction or an award in the nature of sanctions.
- (h) The Board may by resolution adopt the recommendation made by an Arbitrator for the imposition of sanctions of the type described at Rule 2.8 (c) of the Constitution or may impose any other sanction it thinks fit.
- (i) 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 these Procedures shall prevent the parties to a Complaint or Grievance from agreeing upon any other process for the resolution of any difference between them provided:
 - (i) that such process satisfies the requirements of Rule 4.5(a);
 - (ii) That upon their difference being resolved, the parties jointly notify the CEO that their difference has been resolved.
- (b) Nothing in these Procedures shall oust the jurisdiction of any court of competent jurisdiction.