



Australian
Competition &
Consumer
Commission

Application for minor variation of authorisation A91388

lodged by
Recruitment & Consulting
Services Association

in respect of

amendments to the
RCSA Constitution

Date: 3 March 2017

Authorisation number: A91388

Commissioners:
Sims
Rickard
Schaper
Court

Summary

The Australian Competition and Consumer Commission has decided to vary the authorisation granted to the Recruitment & Consulting Services Association (RCSA) in 2014 in relation to its professional conduct regime.

The variations consist of amendments to RCSA's Constitution which will enable not for profit and government business entities to become RCSA members, and give two of RCSA's member groups (the Association of Medical Recruiters Australia and the Association of Nursing Recruitment Agencies) the right to jointly appoint one Director of RCSA.

The application for minor variation

1. On 9 January 2017, RCSA applied to the Australian Competition and Consumer Commission (**ACCC**) for minor variations to authorisation A91388.¹
2. Authorisation A91388 was granted for RCSA's professional conduct regime, which is administered through RCSA's Code for Professional Conduct, Disciplinary & Dispute Resolution Procedures and relevant clauses of RCSA's Constitution & By-Laws (the **Professional Conduct Regime**).
3. RCSA's Professional Conduct Regime was first authorised on 24 September 2003 (A90829). It has been re-authorised twice, for five years on each occasion: on 21 January 2009 (A91102) and 12 February 2014 (A91388). The ACCC has also granted authorisation to two minor variation applications since 2003.²
4. RCSA is seeking minor variations to authorisation A91388 to allow changes to clauses 2.2 and 5.2 of its Constitution. The proposed variations are:
 - **expansion of the criteria to become a member:** RCSA proposes to amend Rule 2.2 of its Constitution to allow 'any business entity, including not for profit and government business entities...involved in the industry' to become RCSA members. Currently only 'companies involved in the industry' can become members.
 - **appointment of directors:** RCSA proposes to amend Rule 5.2 of its Constitution to give the Association of Medical Recruiters Australia and New Zealand (AMRANZ) and the Australian Nursing Recruiters Association (ANRA), through a joint meeting of their Councils, the right to appoint one Corporate Representative as a Director of RCSA. Currently, AMRANZ and ANRA do not have the right to appoint Directors.

Background

5. RCSA is the peak industry association in Australia and New Zealand for members who provide recruitment and human resources services, including on-hire employee services, contracting services, contractor management services, permanent placement services and workforce consulting services.

¹ Authorisation is a transparent process where the ACCC may grant protection from legal action for conduct that might otherwise breach the Competition and Consumer Act 2010 (the CCA). Applicants seek authorisation where they wish to engage in conduct which is at risk of breaching the CCA but nonetheless consider there is an offsetting public benefit from the conduct. Detailed information about the authorisation process is available in the ACCC's Authorisation Guidelines at www.accc.gov.au/publications/authorisation-guidelines-2013

² On 9 January 2006 and 2 July 2010.

6. RCSA states that its objective is to promote the utilisation of its Professional Conduct Regime to achieve self-regulation of the on-hire worker services sector, wherever possible and effective, rather than see the introduction of additional legislative regulation.
7. RCSA currently has approximately 1 830 members, approximately 1 089 of whom are individuals. RCSA membership is voluntary and is open to both corporate recruitment companies and individuals who are practising or have an interest in recruitment. RCSA members include multi-national companies, single consultancies and individual practitioners operating within a recruitment consultancy. These members represent a wide range of professional fields, including medical, industrial, administrative, financial and engineering services. All RCSA members agree to abide by the Professional Conduct Regime. Accredited members currently are entitled to elect two directors – this will not change.
8. RCSA is divided into six Regional Councils each representing a different geographical area – NSW/ACT, New Zealand, QLD/NT, SA, VIC/TAS, and WA. The Regional Councils currently appoint one director each – this will not change.
9. RCSA also has two Member Groups – AMRANZ and ANRA – which represent medical recruiters and nursing recruitment agencies respectively. Member Groups are given formal recognition under the RCSA Constitution as having “unique needs and issues for advancement through RCSA”. Member Groups currently do not have the right to appoint a director. RCSA proposes to amend its Constitution to allow its two Member Groups to jointly appoint one Director.

RCSA’s submission in support of the application

10. RCSA submits that the proposed changes satisfy the definition of minor variation in the CCA because the amendments are of a technical or drafting nature only and will not result in any reduction in the net benefit of the arrangements currently authorised.

Consultation

11. Before the ACCC consults on an application for a ‘minor’ variation, for the purposes of consultation it must first satisfy itself that the proposed variation is consistent with the definition of a minor variation in the CCA. The ACCC did so in this case.
12. The ACCC then invited submissions on the application from a range of potentially interested parties, including industry associations, unions, recruitment and consulting services providers and government bodies. The ACCC received no submissions from interested parties.

ACCC assessment

13. The ACCC has assessed the application for minor variations to authorisation A91388 in accordance with the tests in section 91A of the CCA.
14. Broadly, the ACCC may vary an authorisation if it is satisfied that:
 - the proposed variation is minor, and
 - the variation would not result or would not be likely to result in a reduction in the net public benefit that arises from the authorisation.
15. A minor variation, as defined by Section 87ZP of the CCA, is a single variation to an authorisation that does not involve a material change in the effect of that authorisation.

16. The ACCC may assess more than one application for minor variation at the same time if:
- the applications are lodged at the same time, or in such close succession that the ACCC can conveniently deal with the variations at the same time, and
 - the ACCC is satisfied that the combined effect of the variations, if all were granted, would not involve a material change in the effect of the authorisation.

The proposed variations are minor

17. The ACCC is satisfied that the proposed variations are minor. The ACCC considers that the combined effect of the proposed variations will not involve a material change in the effect of authorisation A91388.
18. In particular, the proposed variation to the membership criteria does not alter the existing requirement that RCSA members are 'involved in the [recruitment] industry'. Rather, the expanded membership criteria allows not for profit and government business entities involved in the recruitment industry to become members, when previously only companies were eligible for membership. The ACCC considers this proposed variation is a minor variation.
19. Further, the proposed variation to allow AMRANZ and ANRA to jointly appoint one Corporate Representative as Director does not significantly alter the existing requirements about the composition and role of RCSA Directors or the RCSA Board. RCSA has not changed any other provisions of its Constitution relating to Directors – the number of Directors required will remain at between 6 and 12, and the requirements for being a Director are unchanged. Each Director must be either a person who is a Professional Member of RCSA or a Corporate Representative of a Member. The ACCC considers that this proposed variation is a minor variation and does not change the scope of the authorised conduct in any meaningful way.

No reduction in the net public benefit of the arrangements

20. As part of its consideration of authorisation A91388, the ACCC considered that the Professional Conduct Regime was likely to result in public benefits in promoting equitable dealings and enhanced business efficiency in the recruitment services industry. The ACCC also considered that the Professional Conduct Regime was unlikely to result in significant public detriment. In reaching this view, the ACCC noted that the appeals and dispute resolution processes appeared to be fair and transparent, membership is voluntary and not necessarily a requirement to operate in the industry.
21. The ACCC considers that the proposed variations will not result in a reduction in the net public benefit that arises from authorisation A91388.
22. Rather, the ACCC considers that the proposed variation may increase the net public benefit that arises from authorisation A91388 by extending the Professional Conduct Regime to conduct by business entities which are currently not able to become RCSA members (i.e. not for profit and government business entities involved in the industry).

Determination

23. The ACCC is satisfied that the variations are minor as defined by section 87ZP of the CCA.
24. The ACCC is also satisfied that the public benefit test under section 91A(4) of the CCA is met. That is, the variations would not result, or would be likely not to result, in a reduction in the extent to which the benefit to the public of authorisation A91388 outweighs any detriment to the public that arises from authorisation A91388.
25. Pursuant to section 91A(3) of the CCA, the ACCC makes this determination varying authorisation A91388 to enable RCSA to vary clauses 2.2 and 5.2 of its Constitution as described in its application for minor variation lodged with the ACCC on 9 January 2017.
26. This determination is made on 3 March 2017. If no application for a review of the determination is made with the Australian Competition Tribunal, the determination will come into force on 25 March 2017.