

Friday, 24 July 2020

Mr. Jason Gordon
Australian Competition & Consumer Commission
Level 2, 23 Marcus Clarke Street
Canberra ACT 2601

Dear Mr Gordon,

Re: Response to APSCo Submission

Thank you for providing us with the opportunity to respond to the submissions of the Queensland Department of Employment, Small Business and Training and of APSCo.

The Department's submission correctly sets out the background to the program and what we understand to have been critical considerations.

The APSCo submission requires a more detailed response. We set out what we understand to be APSCo's principal objections in the numbered paragraphs below and respond as follows.

1. *RCSA is one of two industry Associations that actively advocate for and drive best practice across the Australian recruitment market, in the interests of both the job seekers and even representation why is only one of those bodies part of the Scheme?*

Response

In RCSA's submission, the reasons for RCSA's appointment are clear from the June 17th, 2020 submission provided by Allens on behalf of the Queensland Department of Employment, Small Business and Training (the Department). There is no need to repeat those reasons here.

Moreover, APSCo's question, asked perhaps rhetorically, seems not to take into account the extent of RCSA's role in the program and its obligations under the Implementation Agreement. That is understandable as the Implementation Agreement was provided to the Commission on a Commercial-in-Confidence basis.

Nevertheless, the Commission will be aware, that RCSA plays a significant role in administering the RCSA StaffMatch Professional Accord, which provides the professional conduct governance framework for the program. The Accord is substantially based on RCSA's Code for Professional Conduct and its Professional Conduct Grievance Intervention Guidelines, already authorised by the Commission.

As such, it would be impracticable for APSCo to have a role to play in the administration of that Accord. However, RCSA would continue to welcome constructive suggestions from APSCo about the program or how it could be improved.

2. *At present, the channel to participate is controlled exclusively by RCSA and requires applicants to be either a RCSA Member or be vetted by RCSA for consideration. Given that APSCo Members adhere to a professional Code of Conduct, Member companies offer the same level of protection and professionalism to candidates and clients. APSCo Members should therefore automatically qualify for the program.*

Response

The Allens submission on behalf of the Department makes clear the several different pathways by which an applicant for Approved Provider status can establish that it has a Qualifying Assurance Program.

The Allens submission also makes clear the controls that govern approval and the extent of the Department's involvement. There is no need to repeat those matters here.

Again, the APSCo submission appears not to appreciate the extent of RCSA's role in the program and its obligations under the Implementation Agreement.

The argument that APSCo Members should automatically qualify for the program because they are bound by the APSCo Code fails to recognise that it is not the Code which is the Qualifying Assurance Program, but rather the full extent of the membership (or participant, in the case of non-member) approval process and the means of holding members and non-member participants accountable through the Professional Recruiter Accord that provides the necessary means of assurance. Members and non-members alike are bound by the Accord, rather than by the RCSA Code.

3. *The program clearly positions RCSA as the single voice for the recruitment industry. This is both false and misleading.*

Response

RCSA has not represented that it is the "single voice" for the recruitment industry. Indeed, recognition of the alternative Approved Qualifying Program pathways and opening both the program and StaffMatch certification to non-members clearly indicates that RCSA claims no such title.

4. *If the intent of the program is to connect job seekers with available employment opportunities enabling APSCo to have inclusion serves to widen that opportunity and better serve Queensland job seekers in need of assistance.*

Response

In RCSA's respectful submission, the contention is not well-founded.

As to any concern that Queensland job seekers may be disadvantaged by the presumed exclusion of APSCo members, the first thing to note about that is that APSCo members are not excluded.

Secondly, of APSCo's claimed 200 member companies, RCSA understands that only 79 of them are not joint members of RCSA who would be eligible in any event.

Thirdly, of APSCo's claimed 200 member companies, upon regional search of its member directory, it appears that only 29 of them operate in Queensland. APSCo could perhaps indicate how many of its members who are not joint RCSA Members are active in Queensland.

Fourthly, the sectors and jobs that are targeted by the program mostly lie outside APSCo's sphere of interest. According to its searchable member directory, APSCo's members concentrate upon the following sectors:

Accounting, Communication/media/advertising, Digital, Education, Engineering, Executive search, Finance banking/superannuation, Government, Graduate, Indigenous, Insurance, Telecommunications, Library records information management, Logistics and Supply chain, Medical/health care, Recruitment to recruitment, Science/technology.

The Commission will note, from the Initial Work Categories, listed in the commercial-in-confidence Implementation Agreement, that there would likely be little overlap between the sectors and jobs that fall within the sphere of APSCo's interest and those targeted by the Program and serviced by Approved Providers.

Consequently, it is RCSA's submission that, even to the extent to which any APSCo members may not have a Qualifying Assurance Program in place and therefore have to apply for approval under clause 9.4 of the Implementation Agreement, there is no resultant substantial lessening of competition in any relevant Queensland or Australian market.

5. *If the role of the RCSA is to act as a concierge only, then including APSCo Membership into the qualifying criteria would offer less bias, better representation of the recruitment market and a benefit to the program and industry as a whole.*

Response

The APSCo submission not supported by any evidence of bias, failure in representation or disbenefit. Moreover, the submission does not account for the fact that APSCo members are not excluded from the program and that the majority of APSCo members are joint RCSA Members in any event.

Additionally, the submission appears to have been advanced without sufficient appreciation of the extent of RCSA's responsibilities and obligations as a contracted service provider under the Implementation Agreement.

6. *Given candidates are required to submit their details to be matched with the program participants, how is RCSA ensuring complete impartiality?*

Response

The notification explains that RCSA has appointed a third-party governance and risk management expert to provide governance oversight and instruction on the establishment of the Program, probity maintenance, and issue resolution in relation to non-compliance by Approved Providers.

RCSA has been proactive in notifying the Commission of the arrangement and in nominating APSCo as a stakeholder that would have an interest in consultation.

7. *What is the matching process in place, can RCSA provide complete transparency around how the process works and who own the data?*

Response

RCSA must decline to disclose the matching process, which is commercially sensitive information.

The commercial-in-confidence Implementation Agreement sets out transparency controls and IP ownership arrangements.

RCSA is a contracted service provider, bound under Chapter 2, Part 4 of the *Information Privacy Act 2009* (Qld) in respect of its handling of personal information.

8. *If an APSCo Member has to pay to participate in the Staffsure program to be included in the Scheme, particularly during the current economic climate, it could be deemed less expensive to join RCSA and thus jeopardises APSCo Membership.*

Response

The Commission will observe that the relevant provision in the Implementation Agreement does not require StaffSure third party certification but is flexible enough to allow authorised participation as an approved provider without certification.

Moreover, as pointed out in the Allens submission on behalf of the Department, the Implementation Agreement requires that RCSA applies that assessment process in a fair, equitable and reasonable manner that does not involve any requirement or pressure on an applicant to become a member of RCSA.

9. *What assurance is RCSA providing that agencies will not be targeted for marketing purposes as a means to drive Membership and how is this being reviewed?*

Response

The concern that RCSA may use the program to target APSCo members is sufficiently answered in the Allens submission and in the RCSA responses above.

Moreover, RCSA's CEO, Mr Charles Cameron has been forthright in stating that he will not allow membership of RCSA to be used as a back door entry to the program and has made it a condition of approval, and entry, that any new membership applicants must go through the same assessment and approval process as non-members seeking to become Approved Providers.

10. *It is also important to mention that many of our Members have been accepted on to the QLD Government Preferred Supplier Panel which specifically mentions supporting job ready programs and all of our Members also hold Labour Hire Licences where required. As such APSCo Member companies have clearly demonstrated a level of compliance and professionalism that we as an industry body take very seriously.*

Response

Providers who are on the Queensland Government Standing Offer Arrangements for either Office Based Staff Solution of ICT (in respect of office or ICT based on-hire assignments or placements) are already recognised as having a Qualifying Assurance Program regardless of whether they are APSCo members or not.

11. *Given the program is already well underway, several marketing messages appear to contradict the role RCSA has in the program. Some messaging suggests it to be an RCSA initiative and in other places a partnership with QLD Government which again is misleading.*

Response

That RCSA is deeply involved in the initiative should be apparent to all. That it has partnered with Queensland Government should be equally apparent. It is a contracted service provider to the Queensland Government through the Department. The Queensland Government's messaging indicates as much. Its Jobs Finder website clearly explains:

The Queensland Government has partnered with the recruitment and staffing industry to streamline opportunities for temporarily displaced workers to find work during the COVID-19 pandemic.

...

Job finders can have the confidence of being properly paid, protected and supported by professional staffing agencies that have been vetted by the Recruitment, Consulting and Staffing Association (RCSA), the peak industry body.

and:

The Queensland Government is working with the Recruitment, Consulting and Staffing Association (RCSA) to match as many Queenslanders as possible with job opportunities.

There is no claim that professional staffing agencies are exclusively RCSA members. The Implementation Agreement does not provide that they should be.

The reasons for selecting RCSA to participate in the initiative have been explained in the Allens submission. Amongst other things, that submission highlighted that RCSA had an existing 'StaffMatch' platform that was able to be quickly modified to provide the desired matching service - both increasing the speed and reducing the cost of roll-out of the Program.

12. *This point highlights our concern that the program will be engineered to drive Membership for RCSA, rather than to broadly serve the needs of Queenslanders in need of employment.*

Response

The program will be monitored by RCSA and by Queensland Government as set out in the Implementation Agreement. Should circumstances arise that warrant any concern, they would be dealt with according to the processes set out in that document.

We trust that our responses will be of assistance to the Commission. RCSA would be happy to provide any further information which the Commission might require.

Yours sincerely,



Charles Cameron
Chief Executive Officer