

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 sub-paragraphs (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:

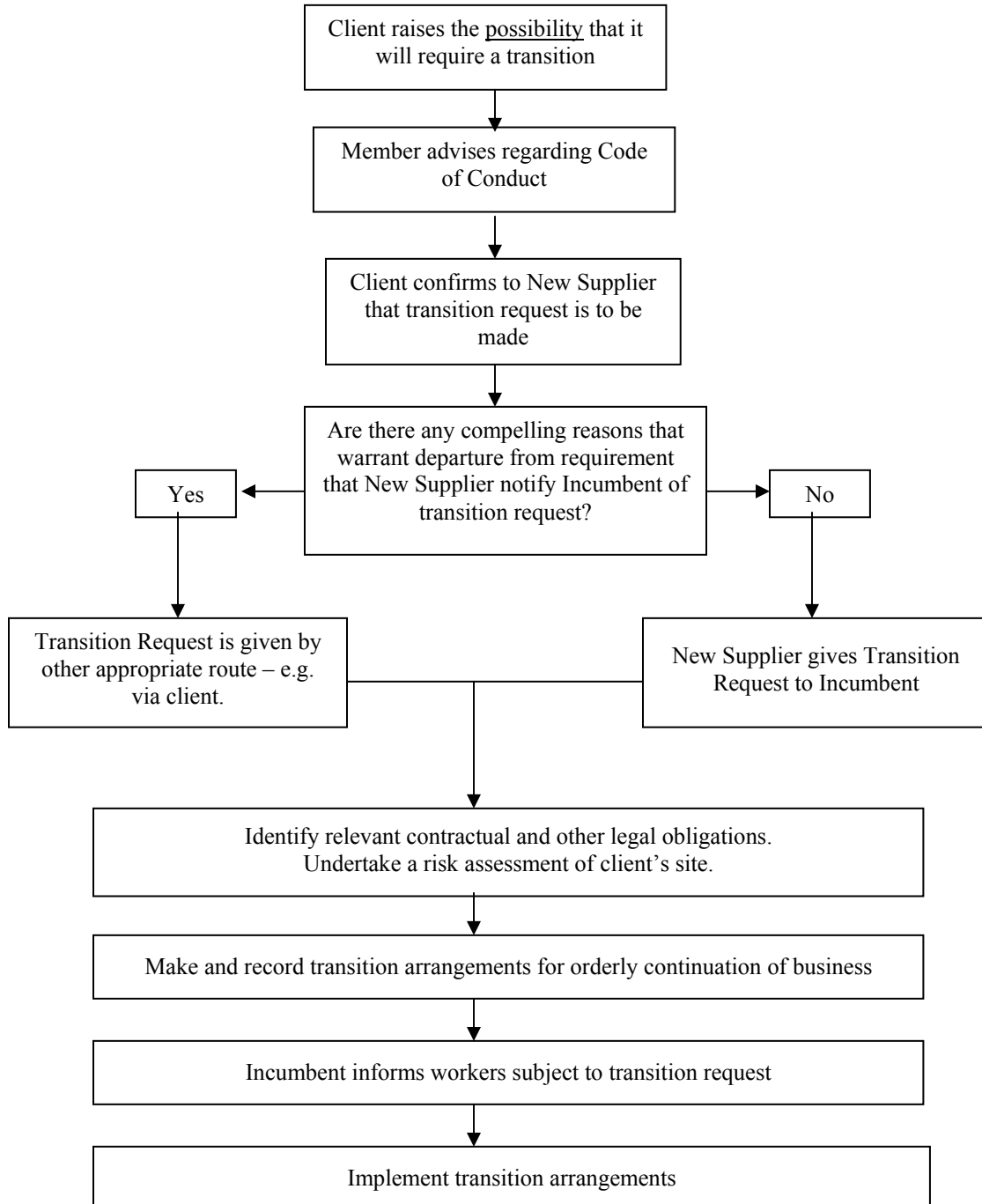
- (i) “a member might be directed to make a payment in respect of another party’s costs as becoming the Members or in the interests of the RCSA.....the parties to any complaint or dispute notification or appeal under this guideline will each bear their own costs of and incidental to the proceeding”.

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.