

Disciplinary & Dispute Resolution Procedures

1. About these Procedures

1.1. Procedures for the RCSA Ethics Committee

- 1.1.1. 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').
- 1.1.2. 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

- 1.2.1. Clause 2.8 of RCSA's Constitution stipulates that Members are liable to discipline in accordance with RCSA's Disciplinary and Dispute Resolution Procedures.
- 1.2.2. 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:
 - 1. Code for Professional Conduct;
 - 2. Disciplinary and Dispute Resolution Procedures; or
 - 3. Constitution.
- 1.2.3. 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 law applicable to agreements reached in mediation.

1.3. RCSA's Code for Professional Conduct

- 1.3.1. 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].
- 1.3.2. The Code is divided into a number of sections which set out General Principles and eight specific principles:
 - 1. Confidentiality and Privacy;
 - 2. Honest Representation;
 - 3. Work Relationships;
 - 4. Legal Compliance;
 - 5. Safety & Security;
 - 6. Certainty of Engagement;
 - 7. Professional Knowledge;
 - 8. Good Order.
- 1.3.3. The Code also contains within its schedules, relevant application guidelines, recommendations, references to RCSA's Service Delivery Standards and explanatory notes.
- 1.3.4. The Code also allows for RCSA to issue Industry Improvement Statements and Conduct Recommendations which inform standards of Member conduct and to which regard may be had by RCSA when interpreting the requirements of the Code and in determining whether conduct of a Member is unbecoming of a Member or prejudicial to the interests of RCSA.

1.4. RCSA's Disciplinary and Dispute Resolution Procedure

1.4.1. RCSA has developed Disciplinary and Dispute Resolution Procedures to support the Constitution and the Code.

1.4.2. The Disciplinary and Dispute Resolution Procedures are contained within this document.

1.5. Revocation of Previous Procedures and Guidelines

These Procedures supersede any previous Disciplinary and Dispute Resolution Procedure that dealt with anything dealt within these Procedures and the same are hereby expressed to be revoked.

2. Definitions

Arbitrator – means an arbitrator appointed under these Procedures;

Board – means the Board of Directors of RCSA and includes, where the context permits, any Committee or person to whom the Board has delegated any of its powers or functions;

CEO – means the Chief Executive Officer of RCSA or a person performing the duties of the CEO under due delegation;

Code – means the Code for Professional Conduct established by RCSA and authorized by the ACCC;

Complainant – means a person who makes a Complaint or who notifies a Grievance under these procedures;

Complaint – means a Grievance that has been referred to RCSA's Ethics Committee as a complaint under these Procedures;

Constitution – means the constitution of RCSA;

Corporate Membership Category of Service – means any category of service recognized by the Board of RCSA as being of a type 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 of Service as at date of authorisation of the 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;

D&DRP or these Procedures – means the Disciplinary and Dispute Resolution Procedures set out in these Procedures;

Employment Service – means any category of service recognized by RCSA as a Corporate Membership Category of Service;

Ethics Registrar – means the person appointed by the CEO to perform the functions of the Ethics Registrar as described in the D&DRP;

Grievance – means an expression of dissatisfaction with a Member regarding that Member's conduct that is made under these Procedures;

Matter – means a Complaint or Grievance;

Member – means a person who holds any category of Membership of RCSA that is recognised under RCSA's Constitution and who has signed, or is required by the Board of RCSA to sign, a statement of Commitment; and includes a Professional Member and an applicant for membership;

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;

Professional Practice – means practice connected with or in the course of providing an Employment Service;

RCSA's EC – means RCSA's Ethics Committee established under the Constitution;

Rule - a reference to a Rule or sub-Rule is a reference to a Rule of Sub-Rule of these Procedures;

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

- 3.1.1. The Board has overriding responsibility for the management and control of RCSA;
- 3.1.2. The Board authorizes Guidelines for Members;
- 3.1.3. The Board develops and maintains a Code for Professional Conduct for its Members;
- 3.1.4. The Board may issue Industry Improvement Statements and make or endorse Conduct Recommendations that which inform standards of Member conduct and to which regard may be had by RCSA when interpreting the requirements of the Code and in determining whether conduct of a Member is unbecoming of a Member or prejudicial to the interests of RCSA.
- 3.1.5. 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, who may be appointed Panel Chairperson; and
 - 2. such other Members of the RCSA as the Board thinks fit including, wherever practicable, a Life Member of RCSA.
- 3.1.6. The Board appoints a panel of persons from amongst whom Councilors may be appointed from time to time in accordance with these Procedures.
- 3.1.7. The Board delegates such of its powers to RCSA's EC as may be necessary for its proper functioning;
- 3.1.8. The Board may appoint a qualified person to act as counsel to assist RCSA's EC;
- 3.1.9. The Board may resolve to censure, suspend or expel a Member or impose other sanctions as it thinks fit;
- 3.1.10. The Board may approve RCSA's initiating and prosecuting before the RCSA's EC a complaint against a Member;
- 3.1.11. 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;
- 3.1.12. The Board may refer an unresolved difference about a Complaint to arbitration;

3.2. What the EC Does

- 3.2.1. RCSA's EC receives Complaints from the Ethics Registrar and CEO and decides whether it will accept each Complaint for investigation, hearing and determination;
- 3.2.2. RCSA's EC directs the investigation of and hears Complaints;
- 3.2.3. RCSA's EC, at the request of the Board, makes test case determinations and develops advisory standards and Industry Improvement Statements to deal with systematic and recurring problems and with novel matters of national or international interest to RCSA Members;
- 3.2.4. RCSA's EC, following the conclusion of a hearing, makes findings and may make a recommendation to the Board supported by reasons;
- 3.2.5. RCSA's EC provides a report of its findings and recommendation to the Board.

3.3. What the CEO Does

- 3.3.1. The CEO obtains the commitment of Members to abide by the Code and to support the mission of the RCSA;
- 3.3.2. The CEO ensures that the RCSA's EC is resourced to handle Complaints;
- 3.3.3. 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;
- 3.3.4. 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;

- 3.3.5. The CEO, with assistance from the Ethics Registrar, co-ordinates the publication of proceedings of the RCSA's EC and the Board;
- 3.3.6. The CEO ensures that assistance is available for Complainants in the formulation and lodgment of Complaints or Grievances and that summaries of decisions of RCSA's EC are available to Complainants and Members;
- 3.3.7. The CEO establishes systems for receiving Complaints and Grievances and forwarding them to appropriate bodies, and ensures that notifications are issued as required by these Procedures;
- 3.3.8. 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;
- 3.3.9. The CEO monitors the Complaints and Grievance handling process to ensure that Complaints and Grievances are dealt with in a timely manner and courteously;
- 3.3.10. 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;
- 3.3.11. 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

- 3.4.1. An Arbitrator may arbitrate:
 - 1. a declined matter
 - 2. a matter that has miscarried as set out in sub-Rules 14.1.3.1 to 14.1.3.3;
 - 3. a matter on appeal.
- 3.4.2. An Arbitrator makes an award which may contain a recommendation to the Board.
- 3.4.3. 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 court of competent jurisdiction may review an Arbitrator's award.

3.6. What the Ethics Registrar Does

- 3.6.1. The Ethics Registrar assists Members and Complainants with inquiries concerning the Code and the D&DRP;
- 3.6.2. The Ethics Registrar facilitates the resolution of Grievances through the Intervention Process described in the D&DRP;
- 3.6.3. 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;
- 3.6.4. The Ethics Registrar collects data on Complaints and Grievances and their outcomes.
- 3.6.5. The Ethics Registrar co-ordinates the availability of Panelists to participate on Ethics Committees and schedules hearing dates.

3.7. What the PPC Does

- 3.7.1. The PPC reviews the Code, D&DRP, determinations and non-binding rulings made thereunder and makes recommendations to the Board for their further development.
- 3.7.2. The PPC provides advice on the content of Industry Improvement Statements.

4. Grievance Intervention Process

- 4.1. Any person may notify a Grievance by providing sufficient details of it in writing to the Ethics Registrar.
- 4.2. Upon notification of a Grievance the Ethics Registrar:
 - 4.2.1. Checks that the Member Company/person against whom the Grievance is raised ("the Respondent") is a Member;
 - 4.2.2. Will record and acknowledge the time and date of receipt as well as brief details sufficient to describe the nature of the Grievance;
 - 4.2.3. 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.
 - 4.2.4. 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;
 - 4.2.5. Seeks approval from the Complainant for information about the Grievance to be forwarded to the Respondent.
- 4.3. 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:
 - 4.3.1. 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 of the D&DRP and a copy of the Code.
- 4.4. The Respondent is given ten business days in which to provide a substantive response. 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.
- 4.5. 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-Rule 4.4, the Respondent's failure to respond may be referred to the Board and the Respondent may forthwith be called upon to show cause why sanctions ought not be imposed under clause 2.8 of the Constitution.
- 4.6. When the Ethics Registrar receives the response:
 - 4.6.1. 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 the participants, 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 participants whether their Grievance is proceeding in accordance with the timetable they have established; and
 4. the participants 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.

- 4.6.2.** 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. gives 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.
- 4.7.** 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-Rule 4.6 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 forthwith be called upon to show cause why sanctions ought not be imposed under clause 2.8 of the Constitution.
- 4.8.** 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.
- 4.9.** If at any time during the Grievance Intervention Process the Ethics Registrar forms the opinion that it is not practicable to continue the intervention, or 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.
- 4.10.** In terminating the Grievance Process the Ethics Registrar is to;
- 4.10.1.** inform the participants in the Grievance of any direction for counselling made under Rule 5;
 - 4.10.2.** inform the participants in the Grievance of the ability to make a formal Complaint under Rule 6;
 - 4.10.3.** Provide the participants in the Grievance with a copy of the Code and the D&DRP.
- 4.11.** 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 6 or directed for counselling under Rule 5 are deemed to have lapsed.

5. Counselling & Conduct Recommendations

- 5.1. A Member or Members involved in a Grievance may be directed to participate in a process of counselling and a Counsellor may be appointed as follows:
 - 5.1.1. By the Ethics Registrar upon terminating a Grievance;
 - 5.1.2. by an RCSA EC once seized of the referral of a Complaint; and
 - 5.1.3. by the Board at any time.
- 5.2. A Member's failure to comply with a direction to participate in counselling is reportable to the Board and may result in the Member's being called upon to show cause why sanctions ought not immediately be imposed.
- 5.3. Counselling is to be conducted as expeditiously as practicable.
- 5.4. The Counsellor is to assist the Member or Members involved in a Grievance to explore options that will enable them to conform their conduct to the standard becoming of a Member and not prejudicial to RCSA's interests. The Counsellor may have regard to any Service Delivery Standard and any Industry Improvement Statement issued by RCSA.
- 5.5. The Counsellor may state a non-binding opinion to the Member or Members involved in a Grievance regarding the operation of the Code.
- 5.6. The Counsellor may make a Conduct Recommendation to a Member or Members involved in a Grievance, which the Counsellor considers, by reference to Code, to be becoming of the Member and not prejudicial to the interests of RCSA.
- 5.7. A Conduct Recommendation may be submitted by the Counsellor to the Board for endorsement, together with such information gathered in the course of counselling as may assist the Board in deciding whether it will endorse the Conduct Recommendation.
- 5.8. The Board may authorise for release to the parties and participants in a Matter, on such terms as to confidentiality or otherwise as the Board may think fit, and Conduct Recommendation endorsed by the Board.
- 5.9. The Board may revoke or change a Conduct Recommendation or its endorsement on such terms as it thinks fit.
- 5.10. A Conduct Recommendation (and any change) made by or endorsed by Board is to be notified promptly to all participants in a Grievance, who are affected by it.
- 5.11. If a Member fails to comply with a Conduct Recommendation, the Member may be called upon forthwith to show cause to the Board or to an RCSA EC (as the Board may determine) why the Member should not be sanctioned for its failure to comply.

6. Making a Complaint

- 6.1. 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.
- 6.2. 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.
- 6.3. 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@rdsa.com.au
- 6.4. 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.

7. Referral

- 7.1. The Ethics Registrar will collate all information and evidence provided by the Complainant and Respondent into an RCSA Ethics Intervention Report and forward 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.
- 7.2. Upon receipt of the RCSA Ethics Intervention report the RCSA's EC will promptly determine whether:
 - 7.2.1. to accept it (or any part of it) for investigation, hearing and/or determination as either:
 1. a complaint about conduct alleged to be unbecoming of a Member ; or
 2. a complaint about conduct alleged to be prejudicial to the interests of RCSA; or
 - 7.2.2. to decline or defer it (or any part of it) pursuant to Rule 11.
- 7.3. If RCSA's EC accepts it (or any part of it) for investigation, hearing and/or determination it will formulate the complaint with reference to the Constitution and the Code.
- 7.4. Acceptance of a Complaint for investigation, hearing and/or determination does not imply, by that fact alone, that any Member has fallen short of the standard of professional conduct and practice required by the Code.

8. Notice and Directions

- 8.1. 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.
- 8.2. 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 or resolution of any issue raised before it and state any directions required to be complied with to enable it to dispose of the Complaint.
- 8.3. A Complaint accepted for investigation hearing and determination, other than a Complaint that a Member has engaged in conduct that is prejudicial to the interests of RCSA, must proceed in accordance with directions given for its expedited determination.
- 8.4. Without limiting the generality of sub-Rule 8.2, directions made by RCSA's EC, may include directions thought appropriate:
 - 8.4.1. for the participation or representation of any person;
 - 8.4.2. to preserve the anonymity of any natural person;
 - 8.4.3. to clarify any issue in dispute;
 - 8.4.4. to require the provision of information or documents;
 - 8.4.5. for the giving or obtaining of any evidence;
 - 8.4.6. for the making of written submissions to ensure the validity of facts and to clarify information for the RCSA's EC;
 - 8.4.7. to preserve the confidentiality of any information communicated in the course of the matter;
 - 8.4.8. for mediation;
 - 8.4.9. for arbitration of any difference on a question of fact or law arising in the course of the matter;
 - 8.4.10. for expedited determination, including determination on the basis of written submissions;
 - 8.4.11. otherwise for the conduct of the investigation, hearing or determination.
- 8.5. Directions may be made by a single member of an Ethics Panel sitting alone.
- 8.6. Any failure on the part of a Member to comply with directions given under this Rule 8 may be referred to the Board, whereupon the Member may be called upon forthwith to show cause why sanctions should not be imposed under clause 2.8 of the Constitution.

9. Proceedings Generally

- 9.1. 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.
- 9.2. 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.
- 9.3. Proceedings conducted by RCSA's EC shall be based upon parties' and participants' interests in:
 - 9.3.1. securing a lawful outcome;
 - 9.3.2. being heard – including being heard with respect to the relevance of any Industry Improvement Statement, Service Delivery Standard or Conduct Recommendation that EC proposes to consider;
 - 9.3.3. knowing whether the Code has been observed;
 - 9.3.4. providing and requesting (subject to any lawful right of exclusion) all relevant material to support or respond to the Complaint;
 - 9.3.5. being informed of the criteria and processes for determining the matter, including avenues for further review;

- 9.3.6. being sufficiently informed of the response of any party against whom allegations or cross allegations are made;
- 9.3.7. being informed of the outcome and reasons for that outcome;
- 9.3.8. having the matter heard and determined independently so far as practicable;
- 9.3.9. maintaining the confidentiality of any confidential information consistently with the purpose for which information that is obtained may be used or disclosed extending to the purpose of maintaining records for use and disclosure in assessing suitability for future membership;
- 9.3.10. maintaining privacy so far as is practicable in accordance with applicable privacy laws 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 and maintaining records of contraventions for use and disclosure in assessing suitability for future membership;
- 9.3.11. 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;
- 9.4. Abandoned Complaints may be finalised using whatever information and material is available to RCSA's EC.
- 9.5. Except as may be permitted by express directions given by the EC, Parties and Participants to a Complaint must not attempt privately to approach or influence the Chairperson, or any member, of the EC or Panel with regard the Complaint at any time.

10. Undertaking in satisfaction or partial satisfaction of a Matter in respect of which a Complaint may be made

- 10.1. A Member, at any time before a Complaint has been determined by the Ethics Committee, may tender, confidentially and without prejudice subject to sub-Rule 10.3, 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").
- 10.2. The Board may accept the undertaking in satisfaction of the Matter or such part thereof as the Board may determine.
- 10.3. The CEO will advise the Respondent, the Complainant and any person who has been granted leave to participate in the Complaint of the acceptance of any undertaking sub-Rule 10.2.
- 10.4. 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-Rule 10.3
- 10.5. The Member may withdraw or vary the written undertaking at any time, but only with the consent of the Board.
- 10.6. 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.
- 10.7. A decision of the Board:
 - 10.7.1. to accept, or not to accept, a written undertaking tendered in accordance with this provision;
 - 10.7.2. 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 sub-Rules 16.2; 16.5 and 16.6. The arbitrator's award will be binding on the parties.
- 10.8. A decision of the Board to impose sanctions under sub-Rule 10.6 is subject to the provisions providing for arbitration in the Constitution and in Rules 16.2; 16.5; 16.6 and 16.7.

11. Declined and Deferred Complaints

- 11.1. RCSA's EC may decline a Complaint for investigation, hearing or determination (or the continuation thereof) at any time for reasons including:
- 11.1.1. that it is, or has become, frivolous or vexatious;
 - 11.1.2. that it discloses no issue of substance regarding the Respondent's Professional Conduct or Practice;
 - 11.1.3. 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;
 - 11.1.4. 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;
 - 3. delay in making the complaint to the extent to which it may prejudice the investigation, hearing or determination of the Complaint;
 - 4. that the Complaint arises from lapsed Grievance under sub-Rule 4.11;
 - 5. that the Board has accepted a written undertaking from the Member in whole or partial satisfaction of the Matter;
- 11.2. 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 16.
- 11.3. Instead of declining a Complaint, or part of a Complaint, RCSA's EC may defer it, or part of it, and direct that it not proceed until either:
- 11.3.1. a Member or Members involved in the Complaint undergo a process of Counselling under Rule 5; or
 - 11.3.2. persons involved in the Complaint participate in mediation or any other dispute resolution process directed under Rule 8.

12. EC Findings

- 12.1. The findings of RCSA's EC on a Complaint will be in writing supported by reasons that set out:
- 12.1.1. any findings on material questions of fact; and
 - 12.1.2. a reference to the evidence or other material on which the findings were based.
- 12.2. The findings may include:
- 12.2.1. a recommendation for the imposition of sanctions, for the RCSA Board to determine, of the type described at clause 2.8 (c) of the Constitution;
 - 12.2.2. 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.

13. Notification of Findings

- 13.1. RCSA's EC will forward a copy of its findings to:
- 13.1.1. the Respondent to the complaint stating that the matter has been forwarded to the Board for their final determination;
 - 13.1.2. the CEO; and
 - 13.1.3. any participant directed by RCSA's EC to receive a copy of its findings.
- 13.2. The CEO, upon receiving the findings, will notify the Board of the recommendation and forward to it a copy of the findings.

14. Resolution and Enforcement

- 14.1. The Board may resolution:
- 14.1.1. adopt the findings of RCSA's EC;
 - 14.1.2. 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.
 - 14.1.3. 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 Rule 9.3;
 - 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.
- 14.2. If the Board, pursuant to Rule 14.1.3.1 to 14.1.3.3, 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 16. **RCSA will (subject to the Arbitrator making an alternative award as to costs, pay the reasonable costs incurred by the parties in the arbitration).**
- 14.3. 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 15.
- 14.4. The resolution does not take effect;
- 14.4.1. until the expiration of the period within which the Member is entitled to appeal the resolution concerned, or
 - 14.4.2. if, within the period in which the Member is entitled to appeal the resolution, the Member exercises the right of appeal, unless and until the Board makes a resolution under Rule 16.8, whichever is the later.

- 14.5. If a Member fails to comply with a resolution of the Board that;
- 14.5.1. adopts a recommendation of the RCSA's EC or an Arbitrator; or
 - 14.5.2. 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 clause 2.8 of the Constitution upon evidence of such failure being presented to the Board.

15. Appeal

- 15.1. 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 clause 15 of the Constitution and these Procedures.

16. Arbitration

- 16.1. 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.
- 16.2. An arbitration pursuant to these Procedures will be conducted in accordance with:
- 16.2.1. the laws governing the conduct of commercial arbitrations in the Country, State or Territory in which the conduct giving rise to the Complaint occurred;
 - 16.2.2. these Procedures; and
 - 16.2.3. 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.
- 16.3. Arbitration of a Complaint under these Procedures proceeds as a re-hearing of the Complaint from the beginning.
- 16.4. 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.
- 16.5. 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 9.3.
- 16.6. An Arbitrator will provide a copy of the Arbitrator's award to the CEO.
- 16.7. An Arbitrator's award will be binding on the parties, an Arbitrator may recommend, but may not impose sanctions of the type described at clause 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.
- 16.8. The Board may by resolution adopt the recommendation made by an Arbitrator for the imposition of sanctions of the type described at clause 2.8(c) of the Constitution or may impose any other sanction it thinks fit.
- 16.9. 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.

17. Costs

- 17.1. Except in so far as:
- 17.1.1. 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;
 - 17.1.2. an Arbitrator conducting a declined matter under these Procedures, might otherwise award;
 - 17.1.3. RCSA might be required to bear the costs of a reference to arbitration pursuant to these Procedures;
 - 17.1.4. an Arbitrator conducting an appeal under these Procedures, might otherwise award; or
 - 17.1.5. 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.

18. Publication

- 18.1. The Board may direct the publication of such details of proceedings and sanctions imposed on a Member as, and in such manner as, it thinks reasonably necessary, including the fact that a person who is a respondent to any Complaint is or was a Member of RCSA.

19. Savings

- 19.1. 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:
- 19.1.1 that such process satisfies the requirements of Rule 9.3;
 - 19.1.2. That upon their difference being resolved, the parties jointly notify the CEO that their difference has been resolved.
- 19.2. Nothing in these Procedures shall oust the jurisdiction of any court of competent jurisdiction.