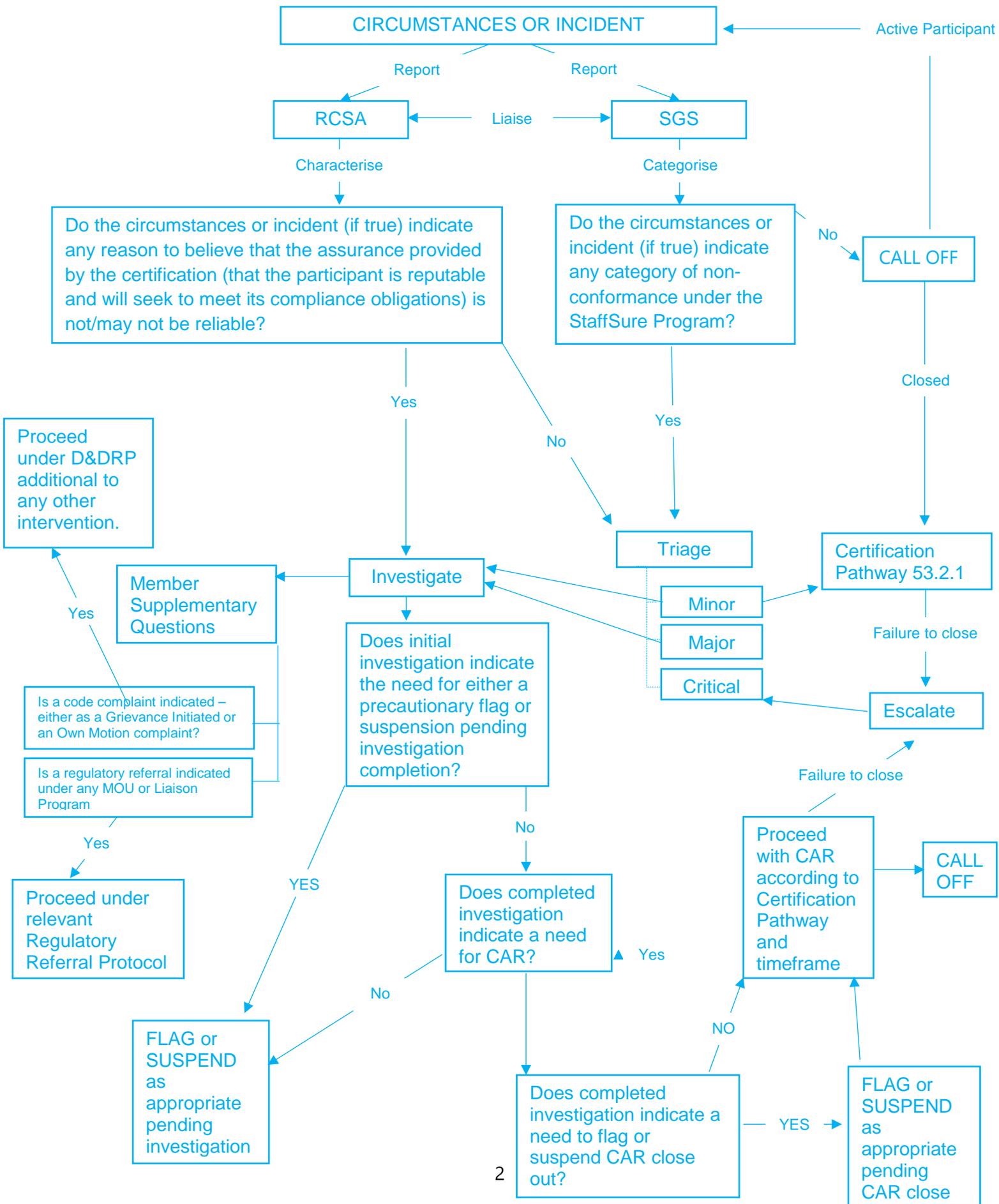




# PRECAUTIONARY FLAG & SUSPENSION PROTOCOL





## Introduction

At its core, StaffSure is more about assurance than about compliance. Certification provides a level of assurance that a certified Workforce Services Provider is reputable and will seek to meet its compliance obligations.

Certification therefore helps to distinguish reputable operators from dodgy ones. It is not a guarantee that mistakes will never be made. Even in the best-regulated organisations, mistakes can be made - e.g. the ABC's recent failure to pay its casual staff correctly.<sup>1</sup> Despite having underpaid 2,500 casual staff, there are few who would suggest that the ABC is not a reputable broadcaster (as broadcasters go), or that it will not try to meet its compliance obligations. Few would suggest that the ABC should lose its broadcast licence over the failure, or that it should be taken off air.

From time to time, circumstances may arise or incidents may occur that throw into doubt the assurance provided StaffSure certification in respect of a certified WSP and whether it can be relied on. In those cases, it may be necessary to consider whether certification should be subject to a precautionary flag or suspended.

Precautionary flags and suspensions are not punishments. They are measures that have been designed into the StaffSure Program to preserve the integrity of certification for the benefit of both certified WSPs and people who have dealings with them.

RCSA, as the "owner" of the StaffSure programme has reputational, professional conduct, and financial interests in its success. It also has an interest in the professional conduct of its Members that overlaps with its interest in the StaffSure Program.

SGS, as the certifying body has reputational interest in the integrity of the StaffSure Programme.

It is important therefore that in dealing with any circumstances or incidents that might warrant suspension, robust liaison supported by effective lines of communication and reporting, and a clear sense of the Program governance structure and roles, be established.

This Protocol is in aid of that objective.

## RCSA

Key RCSA roles within the Program are:

- RCSA Technical Team (see: cl 30.2)
- CSA Nominated Administrator (see: cl 31.8)

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<sup>1</sup> See "*ABC admits it has underpaid up to 2500 casual staff over six years*"  
<https://www.smh.com.au/politics/federal/abc-admits-it-has-underpaid-up-to-2500-casual-staff-over-six-years-20190110-p50qk5.html>

Reports of circumstances or incidents "of interest" that come to RCSA's attention via any route are to be directed to RCSA's Nominated Administrator, in the first instance.

The Nominated Administrator is responsible for ensuring that the report is dealt with promptly in accordance with this Protocol and for establishing and maintaining liaison with SGS.

The Nominated Administrator will keep the RCSA CEO informed of developments in accordance with usual internal reporting arrangements.

RCSA may escalate the matter to the RCSA Technical Team at any stage.

## SGS

Key SGS roles within the Program include:

- National Program Manager (see: cl. 31.2)
- Certification Manager (see: cl. 31.3)
- Program Manager (see: cl. 31.4).

Reports of circumstances or incidents "of interest" that come to SGS' attention via any route are to be referred to the Certification Manager in the first instance.

The Certification Manager is responsible for ensuring that the report is dealt with promptly in accordance with this Protocol and for establishing and maintaining liaison with RCSA.

The Certification Manager will keep the National Program Manager informed of developments in accordance with usual internal reporting arrangements.

## Amendment

This Protocol is to be supported by amendment of the Program Control Agreement and the Terms of Engagement between SGS and Program Participants as necessary and agreed.

## Commencement

The Protocol is to be implemented as soon as possible.

## Actions

### Intake

1. Upon receiving a report of circumstances or incidents "of interest":
  - 1.1. RCSA's Nominated Administrator ("**RCSA(NA)**") and SGS' Certification Manager ("**SGS(CM)**") establish liaison;
  - 1.2. SGS (CM) logs details of the circumstances/incident, including time and source of the report, in the Program Database;
  - 1.3. RCSA(NA) imports the circumstances/incident from the Program Database into the Program Register (see: cl. 30.3);

- 1.4. SGS(CM) notifies the Certified WSP in writing that a report has been logged and is being processed under the Protocol.

## Triage Questions

### *The Reputational Question*

2. RCSA answers the following question:

***Do the circumstances or incident (if true) indicate any reason to believe that the assurance provided by certification (that the participant is reputable and will seek to meet its compliance obligations) is not/may not be reliable?***

The focus of this inquiry is on the ongoing assurance of reputability.

It is conducted on the *prima facie* basis that the circumstances or incidents are assumed to be true.

### *The Technical Question*

3. SGS answers the following question:

***Do the circumstances or incident (if true) indicate any category of non-conformance under the StaffSure Program?***

The inquiry is a technical one, focused on the definitions contained at clause 52 of the Program Agreement.

#### ***Minor***

52.3.1. A ***minor non-conformity*** includes an omission or deficiency in the RCSA Program that produces unsatisfactory conditions that if not addressed, may lead to a safety, quality or exploitation risk, or assurance failure, that is not likely to cause a system breakdown.

#### ***Major***

52.2.1. A ***major non-conformity*** includes an omission or deficiency in the RCSA Program which could lead to a highly unsatisfactory safety, quality or exploitation risk, or assurance failure, that is likely to result in a system breakdown.

#### ***Critical***

52.1.1. A ***critical non-conformity*** includes but is not limited to:

- a. the relevant presence of a Disqualification Circumstance;
- b. a breakdown of control(s) at a critical control point, pre-requisite Program, or other process step that is judged likely to cause a significant risk or is deemed not to meet the requirements of the RCSA Program;
- c. reasonable suspicion by SGS of systemic falsification of records relating to controls and the RCSA Program;

- d. *a Program Participant's failure to take effective Corrective Action within the timeframe agreed with SGS;*
- e. *a Program Participant's failure, after being notified by SGS that its RCSA Program is due to be audited in accordance with the frequency specified in this document, to have the required audit conducted within 30 days of such notice.*

## **Triage Response**

- 4. If the answer to the Reputational Question at Action #3 is "NO", RCSA steps back and allows SGS to deal with the matter as a technical matter.
- 5. If the answer to the Technical Question at Action #2 is "NO" – i.e. there is no non-conformance:
  - 5.1. the Certification Intervention is called off and SGS(CM) advises RCSA(NA) and the Certified WSP in writing.
- 6. If the answer to the Technical Question at Action #3 is "YES" – i.e. there is some level of non-conformance:
  - 6.1. the SGS(CM) categorises the non-conformance according to clause 52;
  - 6.2. if the non-conformance is MINOR, the Certification Intervention proceeds under the CORRECTIVE ACTION process in clause 53.2.1;
    - 6.2.1. if the corrective action is closed out, the Certification Intervention is called off, the Program Database is noted and the Certified WSP and RCSA are notified accordingly;
    - 6.2.2. if the corrective action is not closed out, the Certification Intervention escalates to INVESTIGATION as a CRITICAL non-conformance;
  - 6.3. if the non-conformance is MAJOR or CRITICAL, the Certification Intervention proceeds to INVESTIGATION.

## **Investigation**

### ***Investigation Generally***

- 7. Investigation should initially proceed by way of an initial "discovery meeting" to share information in an informal setting to get to the gist of the matter and shape key points for the investigation.
- 8. Investigation thereafter occurs as appropriate to the category of non-conformance being investigated and having regard to the seriousness of the threat to the ongoing assurance of reputability.

### **Investigation of RCSA Members**

9. Investigation of Members' non-conformances may be diverted into an ADDITIONAL Code pathway;
  - 9.1. There are two additional key questions that must be asked in respect of RCSA Members;

#### **The Professional Conduct Question**

##### ***Is a Code complaint indicated - either as a Grievant Initiated or Own Motion complaint?***

A Code complaint may be indicated by RCSA's Board's statements of strategic priority and intent.

Code complaints may be indicated by the presence of a complainant or grievant wishing to proceed under RCSA D&DRP (or PCGIGs) as applicable and in force.

#### **The Regulatory Referral Question**

##### ***Is a Regulatory referral indicated under any MoU or Liaison Program?***

Regulatory referrals may be indicated by RCSA MoUs or liaison arrangements with statutory regulators - e.g. the FWO and any accompanying protocol.

- 9.1.1. if the answer to the Professional Conduct Question at Action #9 is "NO", no additional Professional Conduct Intervention is required;
- 9.1.2. if the answer to the Professional Conduct Question at Action #9 is "YES", proceed under D&DRP (or PCGIGs as applicable) additionally to any other intervention;
- 9.1.3. if the answer to the Regulatory Referral Question at Action #9 is "NO", no regulatory referral is required;
- 9.1.4. if the answer to the Regulatory Referral Question at Action #9 is "YES", proceed under any relevant Regulatory Referral Protocol additionally to any other intervention;
- 9.1.5. proceed under D&DRP (or PCGIGs) as applicable.

### **Precautionary Interventions**

10. After the initial "discovery meeting" investigation at Action #7 has been completed, and at any time thereafter as the circumstances may warrant, RCSA and SGS ask and together answer the question:

***Does the investigation indicate a need for either a precautionary flag or suspension pending investigation completion?***

- 10.1. A precautionary flag may be raised or a precautionary suspension may occur in cases of uncertainty. The precautionary principle has been explained:<sup>2</sup>

*Precaution may be defined as "caution in advance", "caution practised in the context of uncertainty", or informed prudence. Two ideas lie at the core of the principle:*

- *"...an expression of a need by decision-makers to anticipate harm before it occurs. Within this element lies an implicit reversal of the onus of proof: under the precautionary principle it is the responsibility of an activity-proponent to establish that the proposed activity will not (or is very unlikely to) result in significant harm.*
- *the concept of proportionality of the risk and the cost and feasibility of a proposed action"*

- 10.2. A Precautionary Flag is a notation made on the Register:

- 10.2.1. searchable by the public;
- 10.2.2. advising that a certification issue has been raised in respect of the Certified WSP's dealings;
- 10.2.3. advising that the matter is being investigated under confidential StaffSure Certification Intervention procedures;
- 10.2.4. emphasising, subject to any necessary qualification,<sup>3</sup> that neither the notation of a flag nor the conduct of an investigation implies that the Certified WSP has been found to have been involved in a non-conformance that warrants the issuance of a Corrective Action Request (CAR) or that would result in suspension or cancellation of certification;
- 10.2.5. informing the public that if they wish to know more, the Certified WSP has indicated that they can contact someone at the company

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<sup>2</sup> [https://en.wikipedia.org/wiki/Precautionary\\_principle](https://en.wikipedia.org/wiki/Precautionary_principle) citing Andrew Jordan & Timothy O'Riordan. Chapter 3, *The precautionary principle: a legal and policy history*, in *The precautionary principle: protecting public health, the environment and the future of our children*. Edited by: Marco Martuzzi and Joel A. Tickner. World Health Organization 2004

<sup>3</sup> For example, qualification if the investigation has escalated from failure to attend to a CAR; or if a CAR has already been issued.

- who has been authorised to receive and respond to proper inquiries regarding the matter; and
- 10.2.6. informing the public that no further comment will be forthcoming from RCSA or SGS pending completion of the StaffSure investigation.
- 10.3. A Precautionary Suspension is a step beyond a flag. It does operate to suspend certification pending completion of the StaffSure investigation. As with a Flag, the Register is to be noted with an advice searchable by the public:
- 10.3.1. stating that a certification issue has been raised in respect of the Certified Provider's broadly particularised conduct;
  - 10.3.2. advising that the matter is being investigated under confidential StaffSure certification intervention procedures;
  - 10.3.3. emphasising, subject to any necessary qualification, that neither the Precautionary Suspension nor the conduct of an investigation implies that the Certified WSP has been found to have been involved in a non-conformance that warrants the issuance of a CAR or that would result in suspension beyond completion of the StaffSure investigation, or cancellation of certification;
  - 10.3.4. informing the public that if they wish to know more, the Certified WSP has indicated that they can contact someone at the company who has been authorised to receive and respond to proper inquiries regarding the matter; and
  - 10.3.5. informing the public that no further comment will be forthcoming from RCSA or SGS pending completion of the StaffSure investigation.
- 10.4. To assist in answering the question at Action #10, a Certified Provider may be called upon, by written notice, to show cause to the RCSA Technical Team why a precautionary flag should not be raised or a Precautionary Suspension should not be imposed.
- 10.4.1. the notice should set out the alleged non-conformance with sufficient particularity to enable the Certified Provider to respond to it;
  - 10.4.2. a Show Cause proceeding takes place as an investigative interview by the RCSA Technical Team;
  - 10.4.3. the RCSA Technical Team consists of such RCSA Corporate Member Representatives, Board members, management personnel, and advisors as RCSA may, in its sole discretion, determine. (see cl. 30.2.2.);

- 10.4.4. an RCSA Technical Team may be constituted specifically for the purposes of the show cause proceeding;
  - 10.4.5. the RCSA Technical Team must give reasons for raising a Precautionary Flag or imposing a Precautionary Suspension; and
  - 10.4.6. if a precautionary flag is raised or a suspension is imposed, the Certified Provider must advise all clients and customers whom, it knows or ought to know rely upon the Providers certification, including all participants in its Service Network.
- 11. If the answer to the Precautionary Intervention question at Action #10 is “NO”, RCSA allows SGS to deal with the matter as a technical matter - i.e. one that may lead to a CAR under regular Program procedures (see: cl. 53).
  - 12. If the answer to the Precautionary Intervention question at Action #10 is “YES”, FLAG or SUSPEND as appropriate pending investigation, and proceed with the investigation, issuing any necessary CAR.

## CARS

- 13. Investigation may lead to the issue of a CAR (see: cl. 53). Once the StaffSure investigation is complete SGS answers the question:

### ***Does the Investigation indicate a need to issue a CAR?***

- 13.1. if the answer to the CAR question is “NO”, - i.e. if the investigation does not reveal evidence of a non-conformance - the Register is cleared of any Precautionary Flag or Suspension, and the Certified WSP and RCSA are notified in writing accordingly;
- 13.2. if the answer to the CAR question is “YES” - i.e. there is evidence of a non-conformance:
  - 13.2.1. SGS issues any necessary CAR and proceeds under the Program Agreement.
  - 13.2.2. RCSA and SGS ask and together answer the question;

### ***Does the completed investigation indicate a need to flag or suspend pending CAR close out?***

- 13.2.2.1. to assist in answering the question, a Certified Provider may be called upon, following the procedure outlined at Action #10.4, to show cause to the RCSA Technical Team why a precautionary flag should not be raised or a Precautionary Suspension should not be imposed;
- 13.2.3. if the answer to the question at Action #13.2.2 is “NO”, the CAR proceeds under the Program Agreement;

- 13.2.4. if the answer to the question at Action #13.2.2 is “YES”, FLAG or SUSPEND as appropriate pending CAR close out.

### **Complaints, Appeals etc**

14. Complaints, appeals and disputes in respect of flags and suspensions are to be dealt with under clause 56 of the Program Agreement. Practically, this will mean that an independent Technical Team of Review should be formed to work with the National Program Manager under cl. 56.1;
  - 14.1. RCSA Members may have additional appeal avenues under cl 56.4.