

RCSA CODE GUIDELINE

CHARGING OF FEES AND CHARGES TO WORKSEEKERS 2019/01

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RCSA CODE GUIDELINE

Title: Charging of Fees and Charges to Workseekers 2019/01

Digest: Members should know what laws and professional conduct standards govern the charging of fees and charges to Workseekers and avoid involvement in non-permitted arrangements.

Date: 5 February 2019

Status: Provisional

Usage: RCSA Code Guidelines are not mandatory.

However, they inform RCSA Members and the public about how the Code is likely to be interpreted and applied in specific situations involving Members.

They also assist Members to conduct themselves consistently with their commitments to develop values of personal professionalism and to embed those values in the conduct of their workforce services dealings, by measures appropriate to their size and circumstances.

They may be used to fashion Professional Conduct Recommendations under RCSA’s Disciplinary & Dispute Resolution Procedures and its professional Conduct Grievance Intervention Guidelines.

Focus: This Code Guideline relates to the following Code 5 standards

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|---------------------------|--|--------------------------------|-------------------------------|------------------------------|-------------------------------|-----------------------|
| Diligent & Competent | Trustworthy | Respectful | Knowledgeable | Co-operative | | |
| Confidentiality | Care | Certainty of Engagement | Effective Complaints Handling | Social Sustainability | Ascertain & Assure | Continuous Disclosure |
| Meet Code Standard | Avoid Unsatisfactory Professional Conduct | Assure accountability | | | | |

Authority: RCSA Board (date); ACCC Code Authorisation 8 August 2019

Review: *[insert date]*

Preamble

acknowledging concerns about the harm that may be caused to labour market participants by unsustainable and exploitative business models and practices

1. **recognising** that RCSA's membership of the World Employment Confederation (WEC) commits it to adhere to the WEC Code of Practice and promoting its principles to all relevant stakeholders to the extent consistent with national law and practice – including the WEC Code of Practice

acknowledging findings and advancements arising from the *Background paper for discussion at the Tripartite Meeting of Experts on Defining Recruitment Fees and Related Costs (Geneva, 14–16 November 2018)*

noting that the Australian Capital Territory, New South Wales, Queensland, South Australia, Western Australia and New Zealand each prohibit, to a greater or lesser extent, the charging of certain fees and charges to Workseekers

noting further that the prohibitions against the charging fees and charges to Workseekers, their extraterritorial operation, and key definitions differ

desiring as a Leader in the World of Work, to articulate personal and operational values and principles:

- to inform and guide the professionalisation of the on-hire, recruitment, contracting and consulting industry across Australia and New Zealand in the interests of its Members and the public;
- to encourage and strengthen Members' capacity for effective self-regulation; and
- to strengthen public confidence in identifying trusted and ethical professionals amongst the array of service choices, online and artificial intelligence models, and self-proclaimed experts

RCSA NOW PROVIDES THIS CODE GUIDELINE AND CALLS UPON MEMBERS TO EMBED ITS OPERATING PROVISIONS IN THE CONDUCT OF THEIR WORKFORCE SERVICES DEALINGS, BY MEASURES APPROPRIATE TO THEIR SIZE AND CIRCUMSTANCES, SO AS TO ASSURE THE OPERATIONAL INTEGRITY OF THEIR ORGANISATIONS.

Operating Provisions

2. Ascertain & Assure

- a. Members should ascertain the extent to which the following provisions apply to the charging of fees and charges in connection with Workforce Services Dealings in which they are involved:
 - *Agents Act 2000* (ACT) Div. 5.8 [s. 96](#)

- *Employment Agents Act 1976* (WA) [s. 34](#) and [s. 36](#)¹
 - *Employment Agents Registration Act 1993* (SA) [s. 20](#)
 - *Fair Trading Act 1987* (NSW) Part 4 Div. 3 see [s. 49](#)
 - *Industrial Relations Act 2016* (Qld) [s. 931](#)
 - *Private Employment Agents Act 2005 & Private Employment Agents (Code of Conduct) Regulation 2015* (Qld) [Sched. 1 Div. 3](#)
 - *Wages Protection Act 1983* (NZ) [s. 12A](#)
- b. Members who are corporate members of WEC should additionally ascertain the extent to which [Principle 3](#) of the [WEC Code: Respect for free-of-charge provision of services to jobseekers](#) applies to the charging of fees and charges in connection with Workforce Services Dealings in which they are involved.
- c. Members should establish and maintain adequate controls to assure to a reasonable standard of confidence that they comply with the applicable provisions of the legislation indicated in paragraph (a) above (and, if applicable, in paragraph (b)), and in any additional local or foreign laws that apply to the charging of fees and charges to Workseekers in connection with their Workforce Services Dealings.

3. Permitted Fee Arrangements with Workseekers

- a. Members should only enter into fee and costs arrangements with Workseekers that are lawful, appropriate to Workseekers' needs, and reasonable in amount.
- b. Members should only charge fees and charges to Workseekers if all the following conditions have been met:
- i. the charge is permitted by the law applicable to the transaction in respect of which it is made; and
 - ii. the charge is not prohibited by any applicable Code of Professional Conduct or contractual provision; and
 - iii. the Member has disclosed the charge in writing to its customer and to the Workseeker; and
 - iv. the charge is fair and reasonable; and
 - v. the Member keeps accurate records of all charges to and payments by Workseekers for six years or any longer period required by law.

¹ Note that the three-year period mentioned in ss. 36(1) has expired so that the prohibition is now fully operable.

4. Avoidance of Involvement in Non-Permitted Arrangements with Workseekers

- a. Members should avoid involvement in fees and charges arrangements with Workseekers that do not meet the standards and conditions in paragraph 2 of this Guideline.
- b. For the purposes of this Guideline, involvement in fees and charges arrangements with WorkSeekers includes:
 - i. aiding, abetting, counselling or procuring;
 - ii. inducing or attempting to induce; or
 - iii. being in any way, directly or indirectly, knowingly concerned in, or party to, the fees and charges arrangement.

Definitions & Interpretation

Fees and charges -

- a. means any fee or charge of a type that is prohibited by the applicable provisions of the legislation indicated in paragraph 1(a) (and, if applicable, in paragraph 1(b)), and in any additional local or foreign laws that apply to the charging of fees and charges to Workseekers; and
- b. includes *Recruitment Fees* and *Related Costs*, which are more specifically described below and which refer to any or all fees, charges, expenses or financial obligations incurred in the recruitment process in order for Workseekers to secure employment, regardless of the manner, timing or location of their imposition or collection, and whether they are deducted from wages, paid back in wages or benefit concessions, remitted in connection with recruitment, or collected by an employer or a third party, including but not limited to agents, labour recruiters, staffing firms, subsidiaries/affiliates of the employer and any agent or employee of such entities; but
- c. does not include any fee lawfully charged by a registered migration agent.

Recruitment Fees –

- a. include:
 - i. payments for Workforce Services offered by providers of Workforce Services, whether public or private, in matching offers of and applications for employment, or in employing Workseekers with a view to making them available to a third party which assigns their tasks and supervises the execution of these tasks;
 - ii. payments made in the case of direct hire by employers; and
- b. may be one-time or recurring and cover services for advertising and disseminating information, arranging interviews, submitting documents for government

clearances, and organising travel and transportation, including in the case of migrant Workseekers, placement into employment and return to the country of origin where applicable.

Related Costs –

- a. means expenses integral to the recruitment process within or across national borders; and
- b. depending on the recruitment process and the context, these costs could include:
 - i. **Costs for medical tests:** these refer to payments for the obligatory medical examinations and specialised tests that are necessary to complete any stage of the recruitment process.
 - ii. **Costs for skills and qualification tests and training:** these include the costs incurred for verification tests on Workseekers' level of skills and qualifications. This may also comprise examinations for language proficiency, particularly in the context of cross-border recruitment. Moreover, these costs include the expenses incurred when employers and their representatives require additional training courses/measures to upgrade Workseekers' skills as a condition of their recruitment.
 - iii. **Costs for internal travel:** these refer to expenses incurred for travel within national borders in a specific recruitment process. These costs can also include the relocation of Workseekers, when required for a specific recruitment situation, from the place of usual residence to the new residence and place of work and back to the place of usual residence upon termination of contract.
 - iv. **Costs for introduction and orientation programmes:** these include expenses for the basic preliminary installation and orientation of newly recruited Workseekers, including on-site job orientation and training, for example on occupational safety and health. There may also be further obligatory medical screening and tests.
 - v. **Other administrative costs:** these include fees for notary and other legal, language, drafting and translation services aimed at preparing, obtaining or legalising Workseekers' identity documents, education and training credentials and employment contracts; and the cost of obtaining government clearances, including obligatory police and security clearances.
- c. **In addition to the costs listed under points (i) to (v) above, the following specific costs are attributed to international recruitment.**
 - vi. **Costs for international travel and transportation and accommodation:** these refer to expenses incurred for international travel in a specific cross-border recruitment process. These may include expenses for:

1. the relocation of Workseekers from the place of usual residence to the new residence and place of work;
 2. health and accident insurance costs covering the transportation period;
 3. lodging and subsistence during transit;
 4. Workseekers' requirements to obtain a passport or visa and costs for other clearance documents specifically required for international travel.
- vii. **Costs attributed to return:** these include transportation, lodging, health care and subsistence to ensure the foreign Workseekers' return home upon contract completion or in certain situations requiring an early end to the employment contract for various reasons.
- viii. **Costs for clearances and permits payable in the country of origin, transit and destination:** these refer specifically to the expenses incurred to meet the requirements imposed by the:
1. country of origin for verification and vetting of employment contracts and enrolment into migrant welfare funds; and
 2. prospective employer or country of destination for entry and residence approvals, the cost of the visa, its application and grant, work and residence permits (including renewals).

This may also include costs for the authentication of documents to ensure compliance with the requirements of the country of origin, transit and/or destination.

- ix. **Costs for pre-departure orientation:** these refer to payments for migrant Workseekers' attendance in seminars prior to foreign employment, organised to better prepare selected Workseekers for the living and working conditions at destination.
- x. **Costs for post-arrival information and orientation:** these include expenses incurred for programmes designed for newly recruited foreign Workseekers on arrival in a destination country, for example, obligatory post-arrival information and orientation programmes.

Equality of Treatment

In no case should the distinctions made in the definitions above be interpreted to undermine the principle of equality of treatment for both national and migrant Workseekers.