



Memorandum of Understanding

Information sharing to facilitate a well-functioning labour market in Australia protecting the rights of workers and employers

Between

FWO	Name	The Office of the Fair Work Ombudsman ("The Fair Work Ombudsman")
	Michael Campbell	Level 6 414 La Trobe Street Melbourne VIC 3000

- and -

RCSA	Name	Recruitment and Consulting Services Association
	Charles Cameron	PO Box 18028 Collins Street East Melbourne VIC 8003

Recitals

A. The RCSA is the leading industry and professional body for the recruitment and human resources services sector in Australia and New Zealand. It represents over 3300 company and individual members.

B. The Office of the Fair Work Ombudsman (FWO) is a Commonwealth agency established by the *Fair Work Act 2009* (Cth) and is responsible for promoting harmonious, productive and cooperative workplaces and ensuring compliance with the *Fair Work Act 2009*, the *Fair Work Regulations 2009* and fair work instruments.

1. Interpretation

1.1 For ease of description, this Memorandum uses the following terms:

CEO RCSA means the person appointed to, holding or acting for the time being in the position of CEO of the RCSA.

FWO means the Office of the Fair Work Ombudsman.

Labour hire (on hire employee services) means commercial services where an employment services provider, in return for a fee, assigns one or more of its employees to perform work for a customer under the customer's instruction.

Memorandum means this memorandum of understanding.

Parties means the RCSA and the FWO.

RCSA means the Recruitment and Consulting Services Association.

Recruitment (placement services) means commercial services where an employment services provider, in return for a fee, sources, presents a work seeker or provides personal information about work seekers for employment, appointment or engagement by a customer.

2. Purposes of memorandum

2.1 The purposes of this memorandum are:

- i. To assist the FWO fulfil its responsibilities in promoting and monitoring compliance with Commonwealth workplace relations laws including the *Fair Work Act 2009* (the Act), the National Employment Standards (NES) and relevant industrial instruments within various industry sectors.
- ii. To establish an information sharing pathway for RCSA members and other interested parties through the RCSA to the FWO. For example, this may be the identification of an illegally operating labour hire provider, serious breaches of workplace laws or the identification of serious discriminatory or otherwise illegal hiring practices.
- iii. To set out a common statement of intent and the commitment of both parties.
- iv. To send a strong message to the supply chain in any industry sector that when RCSA members become aware of illegal practices they have a direct information sharing pathway via the RCSA to the Australian workplace regulator - the FWO.

2.2 This memorandum records the parties' shared understanding and expectations about their respective roles and responsibilities in relation to:

- i. The RCSA's responsibility to their members, the wider industry they represent and their obligations under their endorsed charter and industry codes of conduct.
- ii. The FWO's role in promoting harmonious, productive and cooperative workplace relations and ensuring compliance with Australian workplace laws.

2.3 This memorandum is not intended to restrain the RCSA or the FWO in the way it investigates any matter, or how they take decisions to pursue matters to court, or other outcomes, such as code of conduct proceedings.

3. Obligations

3.1 The RCSA and the FWO will give effect to the arrangements and procedures set out in Annexure A.

3.2 Subject to legal restrictions on information disclosure, the RCSA and FWO will exchange information and respond to requests where relevant, to assist each other in their roles.

3.3 The RCSA and the FWO will establish and maintain liaison contacts to ensure the effective operation of this memorandum.

4. Variation and termination

4.1 Variation

This memorandum may be varied at any time by agreement of both parties. Any variations must be in writing and signed by both parties.

4.2 Termination

Either party may terminate this memorandum by providing 28 days notice in writing to the other party.

5. Constraints imposed by laws

5.1 The RCSA and the FWO acknowledge that from time to time the other may be unable to fully comply with all the requirements of this memorandum due to constraints imposed by laws (including but not limited to Commonwealth and State privacy legislation). Each party agrees to use its best endeavours to exchange information to the extent permissible by law.

6. No intention to enter legal relations

6.1 The parties:

- i. Agree that by entering this memorandum they have no intention to enter legal relations.
- ii. Confirm that this memorandum is not a legally binding document and is not enforceable as such, and neither party shall be entitled to any compensation or make any claim on the other before a court or any other person or body arising out of a breach by a party of this memorandum.

7. Privacy

7.1 RCSA and FWO respectively undertake that any disclosure of information, and any use, storage or transfer of such information, shall only be made to the extent permitted by law and, in particular:

- i. Assure each other that any personal information as defined in the relevant privacy legislation disclosed by one to the other in connection with this

memorandum has been collected in accordance with applicable privacy legislation.

- ii. Assure each other that the disclosure of the information to, and its use by, the organisation to which it is disclosed is authorised by the individual or by law.
- iii. Agree not to use, disclose, store, transfer or handle personal information collected in connection with this memorandum except in accordance with applicable privacy legislation.
- iv. Agree to cooperate with any reasonable request of the other relating to the protection of personal information or the investigation of complaint of personal information.

8. Communication

8.1 The RCSA and the FWO agree to meet when requested by the responsible officers to discuss issues arising in relation to areas of mutual interest or concern, including issues arising under this memorandum.

8.2 The exchange of information outlined in this memorandum will, unless agreed otherwise, occur at an operational level between the operational officers.

8.3 The RCSA and the FWO will publish this memorandum on their respective websites.

9. Confidential information

9.1 With respect to any information designated as confidential (e.g. relating to a company) and supplied by one party to the other in connection to this memorandum, each party agrees to:

- protect the confidential information in a reasonable and appropriate manner and in accordance with any applicable professional standards
- use and reproduce confidential information only for purposes set out in this memorandum
- not disclose or otherwise make available confidential information other than to its personnel who have a need to know the information to give effect to the purpose set out in this memorandum.

9.2 The above paragraph shall not apply to any information which is publically available or permitted to be disclosed to a third party without restriction.

10. Term

10.1 This memorandum has effect from the date it is signed on behalf of the last party to sign it for a period of three years, unless varied or terminated in accordance with paragraph 4 or by any right at law.

11. Contacts

11.1 Responsible officers

The parties acknowledge that the persons appointed to, holding, or acting for the time being in, the following positions will use their best endeavours to facilitate the efficient implementation of this memorandum.

- i. For RCSA: Ethics Compliance and Risk Manager.
- ii. For FWO: Director - Regional Services and Young Workers, Dispute Resolution and Compliance Group.

11.2 Operational officers

The parties acknowledge that the persons appointed to, holding or acting for the time being in the following positions will be responsible for the exchange of information at the operational level to enable the implementation of this memorandum:

- i. For RCSA: Ethics Compliance and Risk Manager
- ii. For FWO: Director - Regional Services and Young Workers.

11.3 Change in responsible officers and operational officers

The RCSA and FWO may change their responsible officers or operational officers by notifying the other party in writing.

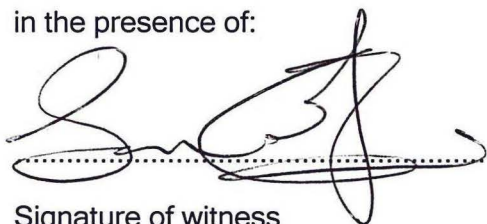
SIGNED by



Charles Cameron, Chief Executive Officer

Recruitment and Consulting Services Association

in the presence of:



Signature of witness

SIMON SCHOLGER

Name of witness (block letters)

DATED: 15/8/2016

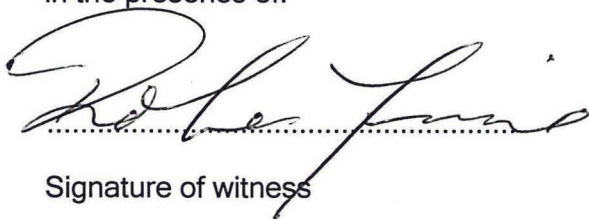
SIGNED by



Michael Campbell

Deputy Fair Work Ombudsman (Operations)

in the presence of:



Signature of witness

ROBERT PRICE

Name of witness (block letters)

DATED: 15/8/2016

ANNEXURE A

1. PRINCIPLES

The following general principles will apply in relation to the RCSA and FWO with respect to the sharing of mutually suitable and beneficial information in line with the agreed purpose of the MOU.

- 1.1 RCSA and FWO will exchange information, to the extent possible that will assist both organisations in the delivery of their services, enforcement of relevant laws and the advancement of productive and compliant workplace practices in Australia.
- 1.2 RCSA and FWO will provide mutual assistance and support, to the extent possible, when assessing complaints, allegations or issues raised relating to labour hire or recruitment practices by individuals, companies or industry sectors.

2. RESPONSIBILITIES - statutory, corporate and governance

- 2.1 The FWO is a statutory office created by the *Fair Work Act 2009*. Its jurisdiction under the *Fair Work Act 2009* is to promote harmonious, productive and cooperative workplace relations and ensure compliance with Australian workplace laws. It does this by:
 - providing education, assistance and advice to employers and workers
 - promoting and monitoring compliance with workplace laws
 - investigating workplace acts and practices that are suspected to be contrary to workplace laws
 - enforcing relevant Commonwealth workplace laws.
- 2.2 The RCSA is a voluntary membership based organisation. A condition of membership is that all RCSA members are required to abide by, and adhere to, the RCSA Code for Professional Conduct. The code provides best practice guidelines to RCSA members and, in the event of a complaint against a RCSA member, the code is supported by the RCSA's Disciplinary & Dispute Resolution Procedures (D&DRP). The RCSA Code has been authorised by the Australian Competition and Consumer Commission (ACCC) since 2003. The Code and D&DRP were re-authorised by ACCC for a further five years on 6 March 2014.

3. ARRANGEMENTS

To give effect to the principles outlined above:

3.1 Information Sharing

- 3.1.1 On a regular basis, FWO will provide information to the RCSA on significant education, compliance and enforcement activities and outcomes involving employers, industry sectors or regions of mutual interest.
- 3.1.2 On a regular basis or as suitable, RCSA will provide information to the FWO on issues relating to labour hire or recruitment businesses of concern, industry sectors or regions of concern and/or new initiatives whereby they may wish to seek the feedback or input of the FWO.
- 3.1.3 The FWO undertakes to contribute to RCSA newsletters, web content, conferences or seminars as appropriate.
- 3.1.4 Any outcomes resulting from referrals, investigations or prosecutions of incidents covered by this annexure will be made available to both parties (subject to legislated restrictions on disclosure of any outcomes resulting from investigations or prosecutions of incidents).
- 3.1.5 RCSA will provide information held on their database on a case-by-case basis on request subject to any legal requirements or restrictions.
- 3.1.6 When using information, the parties acknowledge each party's primary responsibility is to comply with the confidentiality requirements of the Acts and privacy policies under which each party operates.

3.2 Formal meetings

- 3.2.1 RCSA and FWO will meet formally at least twice a year to share information and discuss strategic and operational issues concerning areas of mutual interest.