



# EMPLOYMENT SERVICES PROVIDER CERTIFICATION

*A single point of trust for the fresh produce industry*

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# Certified Employment Services Provider Standard

An open marketplace for labour in Australia is being exploited by illegal and unscrupulous labour contractors that place personal gain and profit ahead of the wellbeing of workers and interests of other industry participants. These poor practices are damaging the reputation of growers and legitimate and professional labour hire firms.

The Recruitment & Consulting Services Association (RCSA), as the peak industry body for labour hire, has created a certification program to support the integrity, compliance and professionalism of the employment industry and end-users of employment services, ranging from growers and packing sheds to markets and other fresh produce retailers.

Certification will give balanced assurance that an Employment Services Provider is making every effort to operate legally and honestly in its activities and transactions. The program will provide a high level of visibility and transparency for a buyer of labour hire, contracting and recruitment services that they are dealing with a reputable and certified provider. The program will, if supported by buyers, knock out the exploiters.

## The Employment Services Provider Certification program will:

1. undertake a rigorous and transparent independent audit of employment services providers that are required to achieve and maintain certification through initial and ongoing (biennial) audits.
2. provide a level of assurance for purchasers of labour and, those in a service value network; they are dealing with a reputable and certified employment services provider.
3. provide a widely available registry of certified employment service providers allowing buyers to make informed choices.
4. be available to all labour hire providers and labour contractors, regardless of RCSA membership.
5. be paid for by the employment services providers that seek certification.

## The Employment Services Certification program does NOT:

1. require the buyer of labour (e.g. a grower) or, those in the service value network, to be audited unless they are carrying on business as an employment services provider e.g. sourcing labour for the provider to employ and hire back to them.
2. guarantee every supplier of labour is certified. A buyer must satisfy themselves they are using a certified provider. The program will be as effective as it is supported by growers, packers and other buyers not to buy labour from an uncertified provider.
3. replace or supersede the need to meet existing audit, compliance and legal obligations.

## How it will work

1. An independent auditor will manage a biennial program of audits aligned to international standards that will provide assurance in the following fields:



2. High risk companies, either identified through the audit process or by the RCSA, will be required to have annual audits until they are confirmed as low risk.
3. Certified companies will be listed on an online register of *Certified Employment Services Providers*.
4. A 3-star rating system will rate providers based on their level of certification and period of certified operation.

# 1 Purpose

The purpose of Certification is to provide a measure of assurance, within an acceptable degree of residual risk, that an Employment Services Provider is reputable and will seek to meet its compliance obligations in accordance with the Certification **Guiding Principles & Criteria** contained within this Standard.

## 2 Approach

### 2.1 Systems Approach

Parties, who are in a business relationship with an Employment Services Provider, and supply key services, are part of its Service Network and can properly be considered to be within its sphere of influence.

It is neither fair nor practical to apply a certification requirement only to one party (e.g. an on-hire / labour hire firm) in a multi-party environment. That is because key roles may be played by many different parties - some of whom will be in a business relationship with the Certified Employment Services Provider and some of whom will not. The diagram at Appendix 1 depicts why this is so using the example of a hypothetical workforce services supply to a farm client. Neither is it fair or practical to impose responsibilities on an Employment Services Provider for matters that are beyond the scope of its effective control or influence.

RCSA certification therefore adopts a systems approach that focuses on a Certified Employment Services Provider's stewardship of its Service Network as a primary means of enhancing labour supply chain governance.

For the purposes of RCSA certification, we treat a **Service Network** as the set of contracts, arrangements or understandings for the performance of any two or more of the following **Service Network Roles** in relation to workers:

- selection
- engagement
- mobilisation
- performance of work (by workers)
- management & supervision
- accommodation
- payment
- demobilisation

**Service Network participants** are the persons with whom the Certified Employment Services Provider has a contract, arrangement or understanding for the performance of any of the Service Network roles necessary for it to fulfil its purpose and that can be controlled or influenced by the Employment Services Provider's owners or managers.

**NOTE:** Control or influence might be exercised through the provisions of a contract or terms of business. It might simply consist of a power to refuse to do business with a recalcitrant or unco-operative participant or to suspend the supply of services to such a participant.

### 2.2 Employment Services Providers

An Employment Services Provider includes any of the following services, other than government contracted employment services:

- workforce contracting services;
- contract management services;
- on-hire services;

- placement services.

**NOTE:** Definitions of each of the above categories of Employment Services Provider are contained in the Key Terms (Part 6).

## 2.3 Accountability through Certification

RCSA certification is not intended, by itself, to impose or relax legal obligations.

A Certified Employment Services Provider remains responsible to meet all its compliance obligations and duties in accordance with law.

Certification is an additional means of holding an Employment Services Provider accountable, through its certification, to the RCSA Certification Guiding Principles & Criteria.

Apart from whatever legal liabilities might otherwise be incurred, the consequence of a Certified Employment Services Provider's failure to satisfy the RCSA Certification Guiding Principles & Criteria is only that certification may be lost, suspended, or downgraded; or that the Employment Services Provider may be required to undertake corrective action in order to maintain its certification.

## 2.4 Six Key Areas

Certification covers six key areas:

- fit & proper person
- work status & remuneration
- financial assurance
- safe work
- migration
- decent accommodation.

# 3 About Certification

## 3.1 RCSA Certification

RCSA certification means that an Employment Services Provider has been assessed against the RCSA Certification Guiding Principles & Criteria.

RCSA certification is not a guarantee of regulatory compliance. It is not a substitute for more rigorous compliance or due diligence audits.

RCSA certification is not a guarantee that a Certified Employment Services Provider will provide services that you may want or that its services will meet the specifications that you establish, or that are established by consumer laws.

Agreement about the scope of services to be supplied, their standard, and about procedures for monitoring performance is always a matter for the parties themselves.

Certification is never a substitute for clear agreements and effective contract management.

## 3.2 Who Can be Certified

Any Employment Services Provider lawfully carrying on business for the supply of Employment Services (as defined) can apply to be certified against the RCSA Certification Guiding Principles & Criteria.

## 3.3 Levels

Agencies may hold different levels of certification. We adopt a star rating system.

### 3.3.1 One Star

One star certification indicates that the Employment Services Provider has **controls** in place to meet the RCSA Certification Guiding Principles & Criteria and that the controls are:

- evidence based
- suitably documented
- regularly monitored
- providing feedback to support corrective action
- transparent
- supported by appropriate training and resources.

### 3.3.2 Two Star

Two-star certification indicates that all one star level controls are in place and have operated effectively for at least two continuous years.

### 3.3.3 Three Star

Three-star certification indicates that all one star level controls are in place to a standard equivalent to or exceeding RCSA's Service Delivery Standard.

## 4 Guiding Principles

Guiding Principles are objectives towards which the controls are directed. They are statements of what a reputable and well-governed Certified Employment Services Provider does and how it operates.

Corrective action should be directed ensuring that the Guiding Principles are satisfied.

### 4.1 Ascertain & Assure

A Certified Employment Services Provider applies resources to ascertain to a **reasonable standard of confidence** the **regulatory environment** that governs its Service Network.

A Certified Employment Services Provider has controls to assure to a reasonable standard of confidence that requirements of the regulatory environment that governs its Service Network are met.

### 4.2 Accountability

A Certified Employment Services Provider is accountable, through its certification, for assuring to a reasonable standard of confidence that its Service Network participants meet the requirements their regulatory environment.

### 4.3 Corrective Action

A Certified Employment Services Provider takes reasonable corrective action to address any failure to meet this standard or the requirements of the regulatory environment that governs its Service Network.

**Note:** Corrective action may include withholding or refusing supply of services.

### 4.4 Fit & Proper Person (Lawful Supply)

A Certified Employment Services Provider has adequate controls to assure to a reasonable standard of confidence that it and its Service Network participants are lawfully able to supply services in the state or territory, where the services are to be supplied.



#### 4.5 Fit & Proper Person (Tackling Exploitation)

A Certified Employment Services Provider applies resources and exerts influence to assure to a reasonable standard of confidence that it is not likely to be implicated in unlawful exploitation of workers either directly or through its Service Network.

#### 4.6 Work Status & Remuneration (Influence)

A Certified Employment Services Provider applies resources and exerts influence to assure, to a reasonable standard of confidence, that workers in its Service Network:

- are classified and remunerated correctly; and
- have access to important information about the work they are to perform and the arrangements under which they are to perform it.

#### 4.7 Financial Influence

A Certified Employment Services Provider plans and applies resources and exerts influence to assure, to a reasonable standard of confidence, the **financial stability** of its Service Network.

#### 4.8 Safe Work

A Certified Employment Services Provider plans, applies resources and exerts influence to assure, to a reasonable standard of confidence, that workers in its Service Network have a safe work environment.

#### 4.9 Migration

A Certified Employment Services Provider applies resources and exerts influence to assure, to a reasonable standard of confidence, that workers, employers and sponsors in its Service Network meet all conditions and restrictions imposed by Australian migration law and policy.

#### 4.10 Decent Accommodation

A Certified Employment Services Provider applies resources and exerts influence to assure, to a reasonable standard of confidence, that workers in its Service Network are decently accommodated.

### 5 Controls & Criteria

The RCSA Certification Standard draws on the concept of a control as it is developed in the field of control assurance and references HB 254, 3 ed 2005 *Governance, Risk Management & Control Assurance*.

Controls are the means by which an organisation assures that its intent is being implemented, through internal and external audit for financial matters, employment policies and all areas in which the organisation interacts with the public.

The meaning of *control* is broader than internal financial control and is expanded to include all planning and strategies put in place to support the Guiding Principles and Criteria. It would include policies, procedures and practices. Transparency and probity are also part of this control environment. (HB 254 3 ed (2005)).

Criteria are developed across six key areas (fit & proper person; work status & remuneration; financial assurance; safe work; migration; and worker accommodation). They are stated in the form of questions, each of which may be answered descriptively and by reference to the One star level requirements namely that such controls developed in respect of the criteria should be:

- evidence based
- suitably documented
- regularly monitored
- providing feedback to support corrective action
- transparent
- supported by appropriate training and resources.

## 5.1 Fit & Proper Person

### 5.1.1 Commitment

Does the Employment Services Provider have a policy approved by its owners/managers about how it ensures that:

- its Service Network participants are fit and proper persons to undertake the roles assigned to them?
- workers in its Service Network are free from unlawful exploitation

### 5.1.2 Ascertain & Assure

Does the Employment Services Provider have controls to ensure that:

- its Service Network participants are fit and proper persons to undertake the roles assigned to them?
- workers in its Service Network are free from unlawful exploitation?

### 5.1.3 Role Clarity

Does the Employment Services Provider have controls to ensure, to a reasonable standard of confidence, that customers, workers suppliers and members of the public who have dealings with the Employment Services Provider are sufficiently informed about the role of the Employment Services Provider and the type of employment services it provides?

### 5.1.4 Legal Entity

#### 5.1.4.1 Establishment

##### *Sole Trader*

Does the sole trader have:

- appropriate work rights?
- an ABN that matches its supply terms?
- GST registration?

##### *Partnership*

- Is the partnership agreement in evidence and current?
- Does the partnership agreement permit carrying on of relevant business in state or territory where services are supplied?
- Do all partners working in Australia have appropriate work rights?
- Does the partnership have an ABN that matches its supply terms?
- Is the partnership registered for GST?

##### *Corporation*

- Is the corporation registered?
- Are its returns and reports current?
- Does the corporation have an ABN or ARBN that matches its supply terms?
- Is the corporation registered for GST?
- Does the corporation's constitution permit carrying on of relevant business in state or territory where services are supplied?

**NOTE:** Pay special regard to any limitations on the ability of incorporated associations to carry on business.

## Other

There may be a range of other entities and business models that will be encountered.

These may include co-operatives, limited partnerships, various forms of joint venture, and franchises.

In any such case, refer to advisors.

### 5.1.4.2 Accessibility

- Does the Employment Services Provider have reliably accessible business premises or virtual premises?

**NOTE:** Accessibility extends to language and disability access.

- Does the Employment Services Provider provide reliable means of contacting a responsible owner/manager or consultant during working hours, as well as outside working hours in case of emergency?

### 5.1.4.3 Licence

- Is the Employment Services Provider suitably licensed to carry on relevant business in state or territory where services are supplied and not otherwise disqualified from doing so?
- Any there any conditions attaching to carrying on relevant business?
- Are conditions attaching to carrying on business are being complied with?
- Are conditions attaching to carrying on business suitable transparent?
- Is the Employment Services Provider under expulsion or suspension restriction from applying for membership by RCSA or similar industry association?

## 5.1.5 Owners/ Managers

### 5.1.5.1 Disqualification

- Are all owners or managers, who are actively participating in the business, free of any circumstance of disqualification?

### 5.1.5.2 Professional Knowledge

- Do all owners or managers, who are actively participating in the business have a reasonable degree of professional knowledge relating to the business and its regulatory environment?

## 5.1.6 Consultants

### 5.1.6.1 Disqualification

- Are all consultants free of any circumstance of disqualification?

### 5.1.6.2 Professional Knowledge

- Do all consultants have a reasonable degree of professional knowledge relating to the business and its regulatory environment?

## 5.1.7 Customer/Worker Facing Administrative Staff

### 5.1.7.1 Disqualification

- Are all customer or worker facing administrative staff free of any circumstance of disqualification?

### 5.1.7.2 Professional Knowledge

- Do all customer or worker facing administrative staff have a reasonable degree of professional knowledge relating to the business and its regulatory environment?



## 5.1.8 Service Network Participants

### 5.1.8.1 Disqualification

- Does the Employment Services Provider have controls to assure to a reasonable standard of confidence that its Service Network participants are free of any circumstances of disqualification with regard to their legal entities, owners/managers, consultants, or customer/ worker-facing administrative staff?

## 5.1.9 Workers

### 5.1.9.1 Disqualification

- Does the Employment Services Provider have controls to assure to a reasonable standard of confidence that workers in its Service Network are not disqualified from working due to:
  - ✗ absence of a right to work?
  - ✗ failure to comply with any condition attaching to a right to work?
  - ✗ lack of security clearance?
  - ✗ enforceable contractual restraint?

### 5.1.9.2 Fitness

- Does the Employment Services Provider have controls to assure to a reasonable standard of confidence that workers in its Service Network are fit and competent to perform their work safely and without undue risk to themselves or others?

## 5.2 Work Status & Remuneration

### 5.2.1 Commitment

- Has the Employment Services Provider made a visible commitment, approved by its owners/managers, about ensuring that workers in its Service Network:
  - ✓ are classified and remunerated correctly; and
  - ✓ have access to important information about the work they are to perform and the arrangement under which they are to perform it?

### 5.2.2 Ascertain & Assure

- Does the Employment Services Provider ascertain the regulatory environment that governs the work status and remuneration of workers in its Service Network?
- Does the Employment Services Provider have controls to assure that workers in its Service Network are classified and remunerated correctly?

### 5.2.3 Employment Established in Accordance with Award

- Does the Employment Services Provider have controls to assure that employment is established in accordance with award requirements?

**NOTE:** Some awards require particular types of work e.g. day labour, casual work or part time work to be established in a particular manner.

### 5.2.4 Information

- Does the Employment Services Provider have controls to assure to a reasonable standard of confidence that information about work status and remuneration is readily accessible to workers in its Service Network and includes provision of:
  - ✓ a Fair Work Information statement where applicable?
  - ✓ any award or enterprise agreement applicable to the work they perform?

- ✓ a copy of a contract of engagement or summary of terms of engagement in their first language where reasonably available?
- ✓ a copy of applicable workplace policies relating to such matters such as drug & alcohol use and testing; workplace bullying; workplace discrimination and sexual harassment, vilification - given in their first language where reasonably available?
- ✓ information about training that may be available to workers to improve their skills?
- ✓ Information about how workers may contact relevant support agencies for them, which may include representatives of any culturally and linguistically diverse community to which they belong, a trade union, a or a community/ faith based organisation to which they belong or a consumer affairs authority?

### 5.2.5 Records

- Does the Employment Services Provider have controls to assure to a reasonable standard of confidence that engagers and payers of workers in its Service Network maintain true records of:
  - ✓ time and wages
  - ✓ leave accruals
  - ✓ worker authorised deductions from pay including the due application of such deductions
  - ✓ tax and superannuation and tax remitted
  - ✓ back charges, rectification costs and liquidated damages claimed against independently contracting workers.

### 5.2.6 Standard Form Contracts (Independent Contractors)

- Does the Employment Services Provider have controls to assure to a reasonable standard of confidence that workers in its Service Network engaged as independent contractors under standard form small business contracts are engaged under terms that are not void for unfairness or otherwise harsh or unfair?

### 5.2.7 Volunteers, Interns, Trainees and Supported Wages

- Does the Employment Services Provider have controls to assure to a reasonable standard of confidence that workers in its Service Network engaged as volunteers, interns, trainees or under disability or supported wage arrangements are engaged and remunerated consistently with the lawful requirements of such arrangements?

## 5.3 Financial Assurance

### 5.3.1 Commitment

- Has the Employment Services Provider made a visible commitment, approved by its owners/managers, about ensuring that its Service Network is:
  - ✓ financially stable;
  - ✓ able to meet financial obligations as they fall due; and
  - ✓ able to meet financial contingencies arising from reasonably foreseeable business risks.

### 5.3.2 Planning

- Does the Employment Services Provider plan for the financial stability of its Service Network using suitable tools including:
  - ✓ financial risk analyses?
  - ✓ balance sheets?
  - ✓ budgets?
  - ✓ cashflows?

### 5.3.3 Revenue Obligations

- Does the Employment Services Provider have controls to assure to a reasonable standard of confidence that it and its Service Network participants have met and can continue to meet their revenue (including superannuation and payroll tax) obligations?

### 5.3.4 Worker Related Accruals

- Does the Employment Services Provider have controls to assure to a reasonable standard of confidence that it and its Service Network participants have provided for and can meet their worker related accruals (including any paid leave or redundancy entitlements)?

### 5.3.5 Pricing

- Does the Employment Services Provider have controls to assure to a reasonable standard of confidence that it sets genuine prices that are arrived at after diligent costing of the services to be supplied, taking into account any likely rise or fall in the cost of services and any terms and conditions that allow for variation during the lifetime of its supply arrangement?

### 5.3.6 Credit Control

- Does the Employment Services Provider have controls to assure to a reasonable standard of confidence that its debtors pay their accounts on time or within reasonable extension arrangements?

### 5.3.7 Trust Monies & Property

- Does the Employment Services Provider have controls to assure to a reasonable standard of confidence that trust money or other property that it receives and holds on account of another person are held and accounted for in accordance with relevant laws, including its fiduciary obligations?

### 5.3.8 Insurance

- Does the Employment Services Provider purchase and maintain (and require that its Service Network participants purchase and maintain) appropriate insurance, or enter into permissible self-insurance arrangements, taking into account the size of their establishment and the nature of the activities and risks they undertake and including, where relevant:
  - ✓ business interruption insurance?
  - ✓ comprehensive motor vehicle insurance?
  - ✓ directors & officers' insurance?
  - ✓ employment malpractice insurance?
  - ✓ fidelity insurance?
  - ✓ key person insurance?
  - ✓ marine insurance?
  - ✓ professional indemnity & broad form liability insurance?
  - ✓ property insurance?
  - ✓ public liability insurance?
  - ✓ workers' compensation insurance?

### 5.3.9 Hold Harmless

- Does the Employment Services Provider have controls to assure, to a reasonable standard of confidence, that it does not enter into improvident hold harmless agreements?

**NOTE:** Such controls may include:

- ✓ insurance cover extending to contractual liabilities assumed under hold harmless arrangements
- ✓ terms and conditions under which parties remain responsible to the extent of their contribution to claims giving rise to civil liabilities.

## 5.4 Safe Work

### 5.4.1 Commitment

- Has the Employment Services Provider made a visible commitment, approved by its owners/managers about ensuring that workers in its Service Network have a healthy and safe work environment?

### 5.4.2 Ascertain & Assure

- Does the Employment Services Provider ascertain the regulatory environment that governs the health and safety of workers in its Service Network?
- Does the Employment Services Provider ascertain the nature of health and safety hazards to workers in its Service Network?
- Does the Employment Services Provider conduct regular risk assessments of health and safety hazards to workers in its Service Network?
- Does the Employment Services Provider have controls (including adequate arrangements to conduct site inspections and to address hazards) to assure that workers in its Service Network have a healthy and safe work environment?

### 5.4.3 Roles & Responsibilities

- Does the Employment Services Provider have a defined structure for the management of work health and safety responsibilities within its Service Network?
- Are roles with respect to health and safety responsibilities clearly and appropriately allocated, documented and made known to Service Network participants?
- Does the Employment Services Provider have clear and appropriate processes for consultation, cooperation and co-ordination of work health and safety activities between work health and safety duty holders within its Service Network?

## 5.5 Migration

### 5.5.1 Commitment

- Has the Employment Services Provider made a visible commitment approved by its owners/managers about ensuring that workers, employers and sponsors in its Service Network meet all conditions and restrictions imposed by Australian migration law and policy?

### 5.5.2 Ascertain & Assure

- Does the Employment Services Provider ascertain the regulatory environment that governs the rights to work of workers in its Service Network?
- Does the Employment Services Provider have controls to assure that workers, employers and sponsors in its Service Network meet all conditions and restrictions imposed by Australian migration law and policy?

### 5.5.3 Eligibility

- Does the Employment Services Provider check or otherwise assure the eligibility to work in Australia (and to perform work of the type for which they are engaged) of all workers in its Service Network?

### 5.5.4 Monitoring

- Does the Employment Services Provider regularly monitor the work performed by workers in its Service Network to ensure that it is consistent with all relevant visa conditions?

## 5.6 Decent Accommodation

### 5.6.1 Application

This section only applies to an Employment Services Provider that arranges for a worker in its Service Network to take up a position if, in order to take up that position, the worker has to occupy living accommodation owned or stipulated by the Employment Services Provider.

### 5.6.2 Commitment

- Has the Employment Services Provider made a visible commitment, approved by its owners/managers about ensuring that workers in its Service Network are decently accommodated.

### 5.6.3 Ascertain & Assure

- Does the Employment Services Provider ascertain the regulatory environment that governs the accommodation of workers in its Service Network?
- Does the Employment Services Provider have controls (including means of inspection) to assure that the accommodation of workers in its Service Network meets the requirements of the regulatory environment?

### 5.6.4 Accommodation Charges

- Does the Employment Services Provider have controls to assure to a reasonable standard of confidence, that accommodation provided to workers through its Service Network is provided at rates that are not extravagant having regard to the quality of the accommodation?

### 5.6.5 Fringe Benefits

- Does the Employment Services Provider have controls to assure to a reasonable standard of confidence that any fringe benefit tax or revenue imposed on accommodation provided by it (or by or through its Service Network) to workers is accounted for and remitted?

### 5.6.6 Information

- Does the Employment Services Provider have controls to assure to a reasonable standard of confidence that workers in its Service Network receive reliable information (including relevant warnings) in their first language where practicable about accommodation options available to them?

## 6 Key Terms

### *Accommodation*

includes buildings, tents, structures, rooms, fittings, furnishings, equipment, facilities and amenities. It also includes the provision of food and transport to and from the work site.

### *Career development services -*

means services intended to assist individuals, of any age and at any point throughout their lives, to make educational, training and occupational choices and to manage their careers. These may include services in schools, in universities and colleges, in training institutions, in public (government contracted) employment services, in companies, in the voluntary/community sector and in the sector. They include career information (in print, ICT based and other forms), assessment and self-assessment tools, counselling interviews, career education and career management programs, taster programs, work search programs, and transition services that do not directly involve placement of the individual in employment, self-employment or work as an independent contractor.

### *Contract management services -*

means commercial services where an employment services provider, in return for a fee, undertakes responsibility for managing the performance of any obligation under a contract for the performance by a worker of work without undertaking the direct employment or engagement of the worker or the direct performance of the work; but excludes a service that is solely a pay roll service.

### *Controls*

See Part 5

### *Conviction*

does not include a spent conviction.

### *Decently accommodated*

means accommodated to reasonable levels of safety, decency, privacy, hygiene and comfort, in the light of local conditions and consistently with the requirements of the relevant governing regulatory environment.

### *Disqualification circumstance*

Each of the following is a disqualification circumstance:

1. having a conviction of:
  1. a serious sexual offence;
  2. a serious offence involving violence;
  3. an offence of slavery or a slavery-like offence;
  4. a tax offence prosecuted under Ch 7 of the *Criminal Code*; or
  5. a serious offence involving dishonesty.
2. being bankrupt or, at any time in the last three years—
  1. having been bankrupt; or
  2. having executed a personal insolvency agreement; or
3. at any time in the last three years having being involved in the management of a corporation when—
  1. the corporation became the subject of a winding-up order; or
  2. a controller or administrator was appointed; or
4. having a mental incapacity that may affect the exercise of the person's functions; or
5. being unlicensed (if licensing is required) or having contravened, or currently contravening, an order of a court or tribunal having a licensing jurisdiction or jurisdiction to impose a banning order; or
6. holding a licence (if licensing is required) that is suspended; or
7. being disqualified in the state or territory where the services are to be supplied (or another state or territory in Australia) from being licensed, or registered, or from being an employee in the business; or
8. being in partnership with a person who is disqualified in the state or territory where the services are to be supplied (or another state or territory in Australia) from being licensed or registered; or
9. if the entity is a corporation, being banned or disqualified from being involved in managing the corporation; or
10. being under expulsion, suspension or restriction from applying for membership by RCSA or similar industry association.

However, a person is not affected by any such circumstance if relief against disqualification has been granted by a competent authority and any conditions attaching to the grant are transparent and being complied with.



### *Employment services -*

means any of the following services, other than government contracted employment services:

- workforce contracting services;
- contract management services;
- on-hire services;
- placement services.

### *Employment services provider -*

means a person or entity providing Employment services, as defined.

### *Financial stability*

means in relation to any entity, that the entity is able to meet its obligations as they fall due and able to meet financial contingencies arising from reasonably foreseeable business risks.

### *Government contracted employment services -*

means a service or services procured by the Commonwealth Government as part of a declared program of work or program of support under the *Social Security Act 1991 (C'th)*, including Jobactive, Disability Employment Services, Remote Jobs and Communities Program (Community Development Program), Work for the Dole, Green Army Program and other such programs as may be declared by the Secretary of the Department of Social Services from time to time.

### *On-hire services -*

means services where an employment services provider makes a worker engaged by the provider available to perform work, whether under a contract of service or a contract for services, for a customer of the provider; and:

- a. the worker works (or is to work) under the customer's direction, or under the direction of another person for the customer's benefit; and
- b. the employment services provider is responsible (through itself or through its appointees) for performing the obligations of the engagement owed by the provider to the worker, including paying the worker for the work.

### *Pay roll service -*

means services to facilitate the payment of wages or remuneration by an employer or engager of a person to perform work, where the commercial service is provided by a person who is not the employer or engager of the person performing the work and includes escrow services and services to remit money in order to meet revenue and superannuation obligations.

### *Placement services -*

means services where an employment services provider presents, or represents workers; and includes services for finding work for a worker. However, services are not placement services by reason only that they are career development services.

**NOTE:** A job board that is more than a mere platform for advertising job vacancies or work seeker availability but which matches worker to work opportunities would provide placement services.

### *Present a work seeker -*

in relation to a worker includes the disclosure of any information about the worker whether on an identified, anonymous or pseudonymous basis.

### *Reasonable standard of confidence*

a reasonable standard of confidence in relation to a matter, circumstance, or state of affairs means that, after reasonable inquiry, you are comfortably satisfied, within an acceptable degree of residual risk, as to its existence and that you can demonstrate the reasonable basis for your satisfaction.

### *Regulatory Environment*

includes statute based law at all levels of government, as well as regulatory policy, common law duties and contractual duties.

### *Serious offence*

means a criminal offence that is chargeable on indictment

### *Service Network*

the set of contracts, arrangements or understandings for the performance of any two or more Service Network roles.

### *Service Network participants*

means the persons with whom the Certified Employment Services Provider has a contract, arrangement or understanding for the performance of any of the Service Network roles.

### *Service Network roles*

any of the following roles in relation to workers:

- selection
- engagement
- mobilisation
- performance of work (by workers)
- management & supervision
- accommodation
- payment
- demobilisation

### *Structure*

includes a transportable hut, a caravan, sleeping tube and pod.

### *Worker*

where the context permits, includes a work seeker.

### *Workforce contract –*

means a contract which is wholly or principally for the supply of labour.

For the purposes of this definition, a contract is **principally for the supply of labour** if more than half of the direct costs properly attributable to deliverables to be supplied under the contract is for labour.

### *Workforce contracting services -*

means services where an employment services provider uses a prescribed worker as part of a workforce engaged or deployed by the employment services provider to perform work in meeting the requirements of a workforce contract that the employment services supplier has with a customer.

For the purposes of this definition:

- (1) A person is a **prescribed worker** if:
  - a. the person does not genuinely operate their own business and perform the work in that business;  
AND
  - b. one or more of the following apply:
    - i. a modern award covers the person or would cover the person as an employee if employed to do the work;

- ii. an enterprise agreement applies to the person in relation to the work; or would apply to the person if employed to do the work.
- (2) An employment services provider **uses a prescribed worker** if the employment services provider:
  - a. makes arrangements with the work seeker that require the worker to follow its instructions or work under its general guidance; or
  - b. determines where, when, or how the work seeker carries out their work; or
  - c. requires the worker to sell or supply their work product to it (or its nominee) as the first link in a buying or supply chain in relation to that work product.
- (3) Sub-paragraph (2) applies regardless of whether the employment services provider makes the arrangements directly with the worker or indirectly through another person.
- (4) A **workforce** is group of two or more workers who are working or available to work to meet the requirements of a workforce contract.

### *Work status & remuneration*

concerns the:

- status of the worker as an employee, independent contractor or other category of worker (e.g. volunteer, bailee etc.);
- type of work (e.g. full time, part time, casual, daily hire etc.);
- terms and conditions on which work is performed (e.g. hours, shifts, spread of hours, breaks etc.);
- work related pay and other entitlements (e.g. leave, loadings and penalties, allowances, expense reimbursement etc.);
- allowable deductions from pay; and
- workers' freedom of association and general protections.

# Appendix 1

