

The ITCRA Code of Conduct

Introduction

The ITCRA Code is a key element in ITCRA's strategy of promoting professionalism within the professional contracting and recruitment industry. Unlike previous versions, the current ITCRA Code is stated as a guideline - not as a rule. It articulates a standard of conduct that ITCRA believes is becoming of ITCRA Members, and in the interests of ITCRA. It does this by stating eight core commitments to: ethical conduct; competence & care; training & development; the taking of remedial measures; open disclosure; co-operation; confidentiality; and honesty.

These commitments, which are essential to maintaining ethical and professional standards of conduct, are reflected in separate but interlocking frameworks for managing three key relationships: relationships with Members; with work seekers; and with clients. The ITCRA Code also provides a framework to assist in the ethical and professional management of contractor transitions.

Each of these frameworks consists of a positive statement about how an ITCRA Member acts in meeting ethical and professional standards. These positive statements are supported by what we like to call, "**boundary markers**". They help to provide clear guidance about what a Member should do and, in some cases, about what a Member should avoid.

All elements of the Code work together to support the single notion that Members conduct themselves ethically and professionally, having regard to the important work which they do, and the internationally recognised role which they play in a well-functioning labour market.

Not a rule...a standard of conduct...

The ITCRA Code is not a "rule" in the sense that it strictly binds you to a single way of doing things. There is a rule about Member conduct; but it is not the ITCRA Code.

The "rule" is the contractual obligation that binds every Member to act in a manner that is becoming of an ITCRA Member and not in a way that is prejudicial to the interests of the Association.

The Code provides guidance about what standard of conduct ITCRA considers is most likely to meet the requirements of that simple rule.

The Code therefore gives context and substance to what would otherwise be a very broad obligation.

It points you in the right direction; but you will still have to navigate channels and reefs that you encounter along the way.

The guidance provided by the Code comes in the form of a statement of general commitments to ethical and professional practice covering eight core commitments operating in three key relationship areas: relationships between Members and ITCRA; relationships with clients; and relationships with work seekers.

All that is necessary is that you understand that the Code is not a rule; but a guideline to an acceptable standard of ethical and professional conduct.

Flexibility & Harmony Principle

You would probably agree that flexibility and harmony would be important features of an industry Code intended to operate in a dynamic environment. We have therefore not attempted to codify every ethical and professional obligation of an ITCRA Member.

You will no doubt be able to think of things that are not in the ITCRA Code. For example, one might ask why a recruitment industry code does not prohibit people smuggling. There is no need to; because the Code imposes upon Members' obligations to act professionally and ethically. It is therefore not necessary to include an express provision about people smuggling. Neither is it necessary to reproduce the provisions of every law that regulates the way in which business may be carried on.

This design approach allows ITCRA to "fill gaps" where the Code is silent on any point – e.g. ITCRA could determine the acceptability of particular conduct by reference to ILO conventions and recommendations, tendering codes and the like.

Importantly, it leaves scope for other codes where a Member holds dual Membership of ITCRA and some other organisation. Moreover, it attempts to restrict its operation to that part of a Member's business undertaking that constitutes its professional contracting and recruitment business.

Some Members have already asked whether the ITCRA Code is to be applied strictly in accordance with its wording – a bit like the Criminal Code. Again the answer is, "No". That is because, as we have already noted, the Code is a guideline; not a rule.

The design approach adopted for the Code gives ITCRA the ability to harmonise its requirements of Member conduct with those of other organisations including clients, where, say in a tender, a client has stipulated standards of conduct that must be met.

It represents one framework for providing confidence that ITCRA Members operate their ICT businesses ethically and professionally with regard to the ITCRA Code and to any other relevant statement of principle to which effect may lawfully be given.

The Core Commitments

Core Commitment #1 - professional and business conduct

The first core commitment relates to professional and business conduct.

It states that ITCRA Members conduct themselves in professional life and operate their ICT industry businesses ethically and professionally so as to ensure that they comply with the rules; that their conduct is becoming of an ITCRA Member; and that their conduct is not prejudicial to the interests of ITCRA.

Note that the core commitment relates to professional life and not private life. Note also that the commitment relates to the operation of Members' professional contracting and recruitment industry business and not to any other business in which they might be involved. Some Member agencies may work across a number of different sectors. Other Member agencies may be "multi-disciplinary"

in the sense that they may form part of the larger organisations that are not recruitment firms at all and which may operate according to different professional and ethical principles. The core commitment focuses upon the professional contracting and recruitment component of a Member's business.

You will see that there are three objects to the core commitment. Those are to ensure that Members comply with the rules. The reference here is a reference to the ITCRA Rules, which you will find published separately on ITCRA's web site. The second objective is to ensure that Members' conduct is becoming or befitting of a Member. The third object is to ensure that Members conduct is not prejudicial to the interests of ITCRA. That does not mean that you have to see eye to eye with ITCRA on every issue of policy; but it does require that you take care to ensure that your conduct does not prejudice the interests of ITCRA by reason of any unethical or unprofessional practice on your part.

Core Commitment #2 - competence and care

The second core commitment relates to competence and care.

In this case the commitment to exercising reasonable skill, care and diligence has been drawn from a statutory code of conduct passed by the Queensland Parliament in 2005.

"Competence and care" implies a measure of professional responsibility.

You will see that only a reasonable standard of skilled care and diligence is required. What is "reasonable" may vary according to the circumstances in which Members conduct may be called into question. However it is important to remember that what is "reasonable" may be shaped by what is expected of a professional person, who has made a commitment to the standard of professional conduct articulated by the ITCRA Code.

Core Commitment #3 - training and development

The third core commitment relates to training and development.

ITCRA Members ensure that they, and their staff, are provided with training and development reasonably considered to be necessary to attain the standard of ethical and professional conduct articulated by the ITCRA Code. This requires that training and development be undertaken both organisationally and individually.

Again, you will note that no more is expected than that which may reasonably be considered necessary to obtain the requisite standard. At a minimum, this would mean that your organisation and your staff should be able to demonstrate a sound knowledge of the ITCRA Code and its operation; and a degree of familiarity with those regulatory requirements, business models and practices necessary to ensure that the core commitment to competence and care be met.

ITCRA provides training resources for the benefit of Members. If you wish to obtain information about those resources, or to access them, you may do so via the ITCRA web site.

Core Commitment #4 – remedial measures

The fourth core commitment states that an ITCRA Member, upon becoming aware that its conduct does, or may, not meet the standard of conduct required of an ITCRA Member, immediately takes all reasonable steps to conform its conduct to a standard becoming of an ITCRA Member.

Often the tendency, when finding oneself in a professional dispute or responding to a professional conduct complaint, is to become defensive. The core commitment here contemplates quite a different response from ITCRA Members.

It contemplates that ITCRA Members will remain open minded and receptive to advice, which may come from a number of different sources, so that they can make the most of any opportunity that may be presented to remedy the potential for, and consequences of, any breach.

One means of becoming aware that conduct may not meet the required standard is provided through ITCRA's conciliation process in the course of which a Conciliator may make a recommendation to a Member about steps that might be taken to remediate conduct.

Of course the Member is not obliged to follow that recommendation. The Member is only expected to take reasonable steps to conform its conduct to the required standard. A Member might have good reasons for declining to follow such a recommendation; but in declining it, the Member may be exposed to a subsequent complaint that it failed to follow a clear recommendation; and, if its failure to do so cannot be justified, the consequence may be that sanctions will be imposed.

However, the purpose of this core commitment is not to create an opportunity for the imposition of sanctions. It is to create an opportunity for the giving and receiving of independent conduct recommendations and some imperative to consider them seriously in order to assist a Member to view its conduct more clearly, to adjust its conduct accordingly if necessary; and to minimise harm that may come to it, to others and to the industry as a result of proceeding down a slippery slope.

Core Commitment #5 - disclosure

The fifth core commitment states that ITCRA Members, upon becoming aware of any conduct (or future conduct) of an ITCRA Member that falls short, or is likely to fall short, of the standard required of an ITCRA Member, or is prejudicial to the interests of ITCRA, take all reasonable steps to report the conduct or circumstances to ITCRA or to a proper public authority.

Note that the disclosure obligation relates to your own conduct as well as to conduct of other Members of which you become aware. It is a self-reporting as well as a third party reporting commitment.

You do not have to report every possible shortcoming. An ITCRA Member would only report clear failures or conduct that seems likely to fall short, of the requisite standard.

Once again, you are only committed to do what is reasonable. And you may report either to ITCRA or to a proper public authority.

A "proper public authority" in this case means some body that has a public statutory responsibility to receive information about and deal with the matter that is the subject of the complaint. It might include a policing, regulatory, licensing or registration authority. But it would not include the news media or a blog site. Neither would it include another industry association, which does not exercise public authority.

Core Commitment #6 – co-operation

Core Commitment six provides that ITCRA Members co-operate in meeting the standard of conduct required of an ITCRA Member and with any investigation of a failure to act in a manner becoming of an ITCRA Member; or of any conduct that is prejudicial to the interests of ITCRA.

The duty of co-operation is stated broadly and is subject to some requirements that any request made by ITCRA for co-operation needs to be reasonable and practicable. This co-operation is essential in order to support the work of ITCRA in developing, implementing and upholding the ITCRA Code.

Note particularly the commitment to co-operating with ITCRA investigations. This would contemplate that you should provide information requested of you in a timely and candid fashion – provided that there was no legal impediment to your doing so.

Core Commitment #7 - confidentiality

The seventh core commitment states that ITCRA Members take reasonable steps to ascertain the degree of confidentiality to be afforded to information obtained in the course of business.

Many difficult problems could be avoided if this commitment were met consistently. Often, recruiters will get into difficulty because of assumptions made about what information is, and is not, confidential – it could be information about a client's identity, an adverse reference, a remuneration range, a candidate's intention to seek a new position; client proprietary information etc.

By taking reasonable steps to ascertain whether that information is confidential and any restriction that may be imposed as to its subsequent use or disclosure, you position yourself to be able to discharge your ethical, professional and legal responsibilities with greater confidence.

Obviously, the best time to ascertain the confidentiality that attaches to information that you may receive is BEFORE you receive it.

Core Commitment #8 - honesty

Core commitment number eight is stated in broad terms, indicating that ITCRA Members are diligent to avoid conduct that is misleading or deceptive or likely to mislead or deceive.

This expression “*misleading or deceptive or likely to mislead or deceive*” is drawn from consumer protection that operates throughout Australia and New Zealand.

Note that the term “*conduct*” is a very broad term. It extends beyond the things you say to include the things you do and even the things you don't say or do – deliberate silence about some important matter can be a form of misleading conduct.

The term “*diligent*” indicates that ITCRA Members are serious and careful in professionally monitoring their own conduct and in avoiding marginal conduct and “sharp practice” that is likely to mislead or deceive others. It extends to honesty in that, not only must a Member's communications and statements be literally true, they must not create a false or misleading impression.

The statement that ITCRA Members will avoid such conduct means not only that they will not engage in it, but that they will not be involved in it either directly or indirectly, whether it be conduct of another Member or conduct of a client.

In short, the commitment to “honesty” requires that ITCRA Members steer well clear of such conduct.