

**Australian Government**  
**Comcare**

**GUIDELINES**

**LICENCE APPLICATION EVALUATION**

**SELF INSURANCE GROUP**

**January 2006**

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## **Guidelines for assessing an application for a licence**

An application for a licence will be assessed by the Safety, Rehabilitation and Compensation Commission (the Commission) from information provided in a written licence application, together with information collected in the application evaluation process. The following outlines the broad factors that will be considered by the Commission in assessing whether an applicant should be granted a licence to self-insure under the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act):

- (a) Ministerial Directions (Safety, Rehabilitation and Compensation Directions 2002) and Safety, Rehabilitation and Compensation Regulations 2002 as they relate to the granting of a licence under the SRC Act
- (b) statutory criteria as specified in section 104 of the SRC Act
- (c) the ability of the applicant to meet the conditions of licence as specified by the Commission pursuant to section 108D of the SRC Act
- (d) the ability of the applicant to perform the functions prescribed by section 108E of the SRC Act
- (e) the past performance of the applicant in complying with and conforming to applicable laws or statutory guidelines in relation to the health and safety of employees, rehabilitation of employees, premium payment and claims management obligations.

The Safety, Rehabilitation and Compensation Directions 2002 specify the matters to be considered by the Commission in deciding whether to grant a licence including certain conditions that are required to form part of the conditions of licence.

The Safety, Rehabilitation and Compensation Regulations 2002 prescribe the details and documentation required for licence applications.

In order for the Commission to be satisfied that it is appropriate to grant an applicant the licence sought, section 104(2) of the SRC Act specifies that the Commission must be satisfied of the following:

- (a) the applicant has sufficient resources to fulfil the responsibilities imposed on it under the licence; and
- (b) the applicant has the capacity to ensure (where the scope of the licence so provides) that claims that are to be managed either by the licensee, or by another person identified in the licence on the licensee's behalf, will be managed in accordance with standards set by the Commission for the management of claims; and
- (c) the grant of the licence will not be contrary to the interests of the employees of the licensee whose affairs fall within the scope of the licence; and
- (d) the applicant has the capacity to meet the standards set by the Commission for the rehabilitation and occupational health and safety of its employees.

The Commission may also have regard to any other matter that it considers relevant for the purposes of assessing whether a licence should be granted, as outlined in section 104(1) of the SRC Act.

Section 108D (Division 5 of Part VIII) of the SRC Act provides for the Commission to subject the licensee to any conditions that it considers are necessary to achieve the objects of the SRC Act. Without limiting the matters the conditions of licence may deal with, the conditions may include the following:

- (a) a condition that the licensee and any person acting on its behalf will comply with the requirements of the Act and any directions given by the Commission; and
- (b) a condition that the licensee will pay such licence fees and other fees, and payable at such times, as the Commission specifies;
- (c) a condition that the licensee will maintain such funds, and in such form, as the Commission directs for the purpose of discharging its liabilities under the SRC Act; and
- (d) a condition that the licensee will obtain bank or other guarantees for the discharge of liabilities as the Commission directs; and
- (e) a condition that the licensee will comply with the requirements of any applicable laws of the Commonwealth, States and Territories with respect to the safety, health and rehabilitation of employees; and
- (f) a condition that the licensee will not cause or permit to be made on its behalf to a court or tribunal any submission that Comcare or the Commission has requested the licensee not to make; and
- (g) conditions concerning performance of functions in relation to the licence by person other than the licensee; and
- (h) conditions requiring provision of information and notifications in respect of specified events.

An applicant who intends making arrangements with a claims management organisation to carry out claims management functions on its behalf under section 108B of the SRC Act will be required to provide details of such intended arrangements, including the administrative processes. The Commission will have to be satisfied that the arrangements and working relationship with the claims management organisation, and the capacity of the claims management organisation to undertake its responsibilities under the SRC Act, will enable the applicant to meet the Commission's criteria.

Section 108E (Division 6, Part VIII) of the SRC Act outlines the additional functions of a licensee to include the following:

- (a) to make payments accurately and quickly; and
- (b) to determine claims accurately and quickly and to take all necessary action in respect of the subsequent management of those claims; and
- (c) to maintain contact with the Commission and with Comcare to ensure that, as far as practicable, there is equity of outcomes resulting from administrative practices and procedures used by Comcare and the licensee in the performance of their respective functions; and
- (d) to do anything, and to meet any obligation that is incidental to the performance of either or both of the functions referred to in paragraphs (a) and (b) and

- would be required of Comcare if Comcare had responsibility for the performance of the function; and
- (e) to comply with the conditions to which the licence is subject.

Finally, in assessing an applicant for a licence, an evaluation will be undertaken of the applicant's performance over the previous 12 months in conforming and complying with:

- (a) the OHS(CE) Act or all the requirements of any applicable laws of a State or of a Territory with respect to the health and safety of employees
- (b) its obligations as a rehabilitation authority especially in relation to any rehabilitation guidelines issued by Comcare under section 41 of the Act or the requirements of any applicable laws of a State or of a Territory with respect to rehabilitation
- (c) claims management obligations including payment of premium, early lodgement of claims to its claims manager, provision of relevant employment information and quick and accurate payment of employee benefits in accordance with determinations made under workers' compensation legislation.

## **The Evaluation Process**

At a minimum, a desktop review of the documentation provided with the licence application will be assessed. Supplementary information may be requested to assist with the evaluation process and this may include such matters as reports relating to any previous audits of prevention, rehabilitation and claims management. The evaluation is conducted to assess whether the applicant has the capacity to comply with relevant legislative requirements, conditions of licence and Commission performance measures and standards. The evaluation may also include interviews with relevant staff including the claims management service provider if the claims management function is to be outsourced.

Comcare will arrange for an expert and independent external financial assessment to be performed to assess whether the applicant will have sufficient financial resources to discharge its liability to pay compensation under the SRC Act in respect of its employees.

The results of the on-site evaluation, together with the financial assessment and details of the applicant's proposals in relation to the prudential requirements will be presented to the Commission for consideration.

The following, together with more detailed information in the appendices, describe the assessment criteria and tools that will be used by the Commission in assessing an application for a licence.

### ***Assessment against the General Conditions of Licence and Performance Standards***

The general conditions of licence and performance standards form the basis of the Commission's system of outcome based regulation of licensees. This system has been designed to foster continuous improvement in occupational health and safety, rehabilitation and claims management through the promotion of management systems that integrate

prevention, rehabilitation and claims management into the applicant's core business processes.

While the Commission needs to be satisfied that licence applicants have the capacity to perform effectively against the conditions of licence and performance standards, the Commission expects that this system will also provide applicants with the greatest possible freedom to manage health and safety issues, in consultation with their employees in a way which best suits the applicant's business objectives.

An evaluation of the Corporation's prevention, rehabilitation and proposed claims management systems will be made to assess whether the applicant will be able to perform to the following requirements (see **Appendix A** for more details of this process):

- (a) the applicant develops its prevention, rehabilitation and claims management policies and objectives in consultation with its employees and, where requested by any member in the undertaking, their representative organisations;
- (b) the applicant develops plans to fulfill its policies and objectives;
- (c) the applicant demonstrates the capabilities and support mechanisms that are necessary to achieve its policies and objectives;
- (d) the applicant measures, monitors and evaluates its performance and takes prompt corrective action when necessary; and
- (e) the applicant regularly reviews its prevention, rehabilitation and claims management systems, with the objective of improving their overall performance.

### *Assessment of Sufficiency of Financial Resources*

The Commission must be satisfied that an applicant has the capacity to meet all financial liabilities associated with its workers' compensation claims in the short, medium and long term. As part of the licence application assessment, the Commission will carry out an independent financial assessment of the applicant's financial viability. Applicants are also required to provide an independent actuarial estimate of the liabilities that the applicant is likely to incur over the first 12 and 24 months of the licence.

The assessment of financial sufficiency will draw upon the applicant's previous five years' audited financial statements and may consider a range of financially related matters such as accounting policies and procedures and whether the applicant has previously entered a scheme of arrangement with creditors. All information supplied with the licence application will be treated on a commercial-in-confidence basis.

The quality of assets and liabilities will be assessed and up-to-date independent valuations of plant, property and equipment assets may be required. Consideration will also be given to the nature and stability of the industry in which the applicant operates. Further details are provided at **Appendix B**.

Applicants are advised that clarification or further detail on balance sheet items may be requested. Prior to approval as a licence holder, an applicant will need to provide certification from the principal officer, acting on behalf of the applicant Corporation that they are not aware of any likely events which may materially impact on the suitability of the applicant for approval.

### ***Prudential Requirements Assessment***

Licence applicants must have an actuary prepare a liability report to the Commission's requirements. The liability report must estimate outstanding liability at the end of the first two years of licence and the level of required bank guarantee. The actuary must recommend, also in the liability report, a level of provisions to be made in accounts and appropriate reinsurance arrangements and comment on the suitability of these arrangements. (see Prudential Conditions of licence at Attachment A of **Appendix C**)

Where the actuary's estimates or quality of reporting fall outside expectations, a second liability report may be required. This second liability report must be provided by an actuary considered suitable by the Commission. The licensee would be required to meet the cost of obtaining the second report, subject to the Commission's decision on a case by case basis.

Applicants are required to obtain bank or other guarantees in the form required by the Commission. The guarantee is to be in place before commencement of the licence.

### ***Assessment of Attitude of Employees***

Evidence of the likely attitude of employees of the applicant to the grant of a licence will be required in order for the Commission to assess whether the grant of a licence will not be contrary to the interests of employees. Normally, written evidence that all employees or employee representatives have been informed of the corporation's intention to seek a licence, and reporting of written responses received from employees or representatives or tabling of relevant minutes of formal consultative processes will be sufficient.

### ***Assessment of previous 12 Months Performance under Health and Safety, Rehabilitation and Workers' Compensation Systems***

An assessment will be undertaken of the applicant's performance in the previous 12 months under its current OHS, rehabilitation and workers' compensation arrangements. In particular, the following will be examined:

- (a) its record under the *Occupational Health and Safety (Commonwealth Employment Act 1991)* (the OHS Act), or requirements of any applicable laws of a State or of a Territory with respect to the safety and health of employees, in relation to recorded injury rates, provision of notifications and reports, investigations/inspections, audits, and any breaches or prosecutions;
- (b) its obligations as a rehabilitation authority, especially in relation to any rehabilitation guidelines issued by Comcare under section 41 of the *Safety*,

*Rehabilitation and Compensation Act 1988* (the SRC Act) or all the requirements of any applicable laws of a State or of a Territory with respect to rehabilitation, particularly its performance in relation to achieving return to work outcomes of injured employees; and

- (c) its claims management obligations, including payment of premium, record of early lodgment of claims to its claims manager, provision of relevant employment information and quick and accurate payment of employee benefits, in accordance with determinations made under workers' compensation legislation.

Further information and assistance may be obtained from:

Manager  
Self Insurance Group  
Comcare  
GPO Box 9905  
CANBERRA ACT 2601  
Telephone: (02) 6275 0044  
Facsimile: (02) 6274 8726

## EVALUATION METHODOLOGY

### PREVENTION, REHABILITATION AND PROPOSED CLAIMS MANAGEMENT SYSTEMS

Outlined below are the steps involved in evaluating the capacity of an applicant to comply with the conditions of licence and performance standards. In compiling this assessment, Comcare is required to assess whether the requirement is met or not met against each of the questions below, and may seek an appropriate explanatory comment. The final evaluation will involve the provision of a qualitative report on the outcome of this evaluation for the consideration of the Commission.

#### STEP 1 – Examine the applicant’s management systems

This requires (in accordance with the Commission’s performance standards) an examination of the current prevention, rehabilitation and proposed claims management systems.

Unless otherwise stated, the following questions apply to OHS, rehabilitation and claims management arrangements.

#### Element 1      Commitment and Policy

Has the applicant developed its prevention, rehabilitation and proposed claims management policies and objectives in consultation with its employees and, where requested by any member in the undertaking, their representative organizations?

- In particular, do the applicant’s policies:
  - accept the requirement for compliance with legislation and Regulations?
  - promote the principle of continuous improvement?
  - where appropriate, integrate with, and are they relevant to, the applicant’s management systems, activities and employees?
  - identify responsibilities and accountabilities for relevant employees?
  - promote communication of relevant information to employees?
  - recognise the applicant’s duty of care to all persons in the workplace? **(OHS)**
  - recognise a hazard management approach to prevention? **(OHS)**
  - recognise a commitment to effective rehabilitation of injured employees? **(Rehab)**
  - provide for fair and equitable outcomes? **(Rehab and Claims)**
  
- Is there evidence of policies which confirm the applicant’s commitment to effective management of health and safety, rehabilitation and claims?

- Are the applicant's policies communicated to employees?
- Is there evidence of consultation in accordance with the licence conditions?
- Is there evidence of prevention management systems which recognise continuous improvement and which are based upon a hazard management approach? **(OHS)**
- Are management plans for rehabilitation and claims management designed to ensure effective rehabilitation of injured employees, and equitable, efficient and effective claims management? **(Rehab and Claims)**
- Does the applicant have a proposed surveillance policy which satisfies the requirements of the *Privacy Act 1988* and any guidelines issued by the Privacy Commissioner? **(Claims)**

## **Element 2      Planning**

Has the applicant developed its plans to fulfill its policies and objectives?

- In particular, do the applicant's plans:
  - address compliance with relevant legislative and regulatory requirements?
  - identify program objectives and appropriate performance measures where relevant?
  - include programs to identify, evaluate and control hazards in the workplace? **(OHS)**
  - provide for corrective action identified through any incident investigation process? **(OHS)**
  - include programs to identify the applicant's core rehabilitation and claims management activities and to provide direction regarding performance outcomes? **(Rehab and Claims)**
  - identify appropriate training requirements and include relevant training plans?
- Are health and safety plans for each workplace risk based and take account of employee input? **(OHS)**
- Are health and safety training plans for each workplace consistent with health and safety plans? **(OHS)**
- Do the plans identify the applicant's core rehabilitation and claims management activities? **(Rehab and Claims)**

## **Element 3      Implementation**

Has the applicant demonstrated the capabilities and support mechanisms that are necessary to achieve its policies and objectives?

- In particular, in implementing its plans, does the applicant:
  - allocate adequate resources to support its programs?
  - implement relevant training programs?
  - ensure that internal or external rehabilitation service providers are approved or accredited by the Commission or Comcare (as appropriate)? **(Rehab)**
  - communicate defined responsibilities to relevant employees and service providers? **(Rehab)**
  - implement arrangements to ensure that employees are aware of their rights and obligations under the SRC Act? **(Rehab and Claims)**
  - maintain the relevant level of reporting, records and/or documentation to support the applicant's programs and legislative compliance and to ensure an appropriate audit trail?
  - establish procedures to maintain the confidentiality of information and appropriately apply the requirements of the *Privacy Act 1988*?
  - implement a hazard management process that includes identification, evaluation and control? **(OHS)**
  - implement a relevant prevention training program? **(OHS)**
  - implement programs to meet the applicant's duty of care for all persons in the workplace? **(OHS)**
  - implement programs to ensure that work-related injuries and diseases and relevant incidents are promptly reported, investigated and action taken when appropriate, including early assessment for rehabilitation? **(OHS and Rehab)**
  - propose mechanisms to inform employees of the status of their claims? **(Claims)**
  - propose mechanisms to give employees a reasonable opportunity to provide information or comment when claims for ongoing liability are being assessed or reviewed? **(Claims)**
  - propose cost effective mechanisms for determinations and reviews in respect of claims to be made accurately and promptly and guided by equity, good conscience and the substantial merits of each case without regard to technicalities? **(Claims)**
  - ensure consultation between persons responsible for managing claims, persons responsible for managing rehabilitation, and rehabilitation providers (as appropriate)? **(Rehab and Claims)**
  
- Are the health and safety plans for each workplace appropriately actioned? **(OHS)**
  
- Are health and safety training plans appropriately actioned? **(OHS)**
  
- Are rehabilitation management plans appropriately actioned? **(Rehab)**
  
- Are claims management plans appropriately actioned? **(Claims)**
  
- Are incidents investigated and, where appropriate, have fully documented incident investigation reports and, where appropriate, corrective action is implemented? **(OHS)**
  
- Is there evidence of proposed mechanisms for informing employees of their rights in respect of claims, and of the status of individual claims? **(Claims)**

## **STEP 2 – Examine the applicant’s internal measurement and evaluation processes**

This requires an examination of the processes used by the applicant to monitor, measure and evaluate prevention, rehabilitation and claims management performance against its program objectives. This examination will also address implementation of necessary corrective action arising from internal audit processes.

### **Element 4 Measurement and Evaluation**

Does the applicant measure, monitor and evaluate its performance and take prompt corrective action when necessary?

In particular, does the applicant (or propose in relation to claims management) to:

- maintain and monitor planned objectives and performance measures for key elements of its programs?
- conduct a program of internal audits to ensure performance of its prevention, rehabilitation and claims management systems and ensure that these audits are performed objectively by competent personnel?
- ensure that the outcomes of internal audits are appropriately documented and that necessary corrective actions are identified, prioritised and implemented?
- have the capacity to provide the Commission with accurate reports in relation to its performance in the form and at intervals as requested by the Commission?
- have the capacity to report to its employees on the outcomes?

## **STEP 3 – Examine the applicant’s management systems review processes**

This requires an examination of the applicant’s processes used to review its prevention, rehabilitation and claims management systems and the extent to which those processes promote continuous improvement.

### **Element 5 Management Systems Review and Improvement**

Does the applicant regularly review its prevention, rehabilitation and claims management systems, with the objective of improving its overall performance?

➤ In particular, does the applicant:

- analyse the level of achievement of documented objectives and performance measures to determine areas requiring corrective or preventive action and utilise the results to promote continuous improvement strategies?
- review, at appropriate intervals, the scope and content of its policy statements and supporting policies and procedures to ensure their continued suitability and effectiveness?

- is there evidence that the results of reviews of the applicant's performance against its policies and objectives are used to continually improve its prevention, rehabilitation and claims management systems?
- are the applicant's prevention, rehabilitation and claims management systems consistent with the Commission's performance standards?

## Assessment of Financial Viability for Self-Insurance

The Act establishes certain criteria for grant of self-insurance licences by the Commission. This includes a requirement that the applicant has sufficient financial resources to discharge its liability to pay compensation in respect of its employees. The Commission has developed and agreed on a range of issues to be considered in determining the financial viability of applicants.

The following financial indicators (see **Part A** below) are included as guide for potential applicants for the purpose of providing a reasonable indication of their financial strength. As such, they should provide potential applicants with a broad indication of the likely success of their application in terms of financial viability.

At the same time, however, it should be recognised that the Commission's financial evaluation is more comprehensive, addressing a wide variety of factors and reliance on the financial indicators should not be taken as conclusive evidence of financial viability. Indications of these wider financial factors are included below (see **Part B**).

### Part A

#### Evaluation against financial indicators

##### Net Worth

*Ratio of Total Tangible Assets: Total Liabilities*

Intangibles are to be excluded from assets for this purpose. A healthy result would be an excess of \$50m or more. However, a lesser result which is positive and when viewed over 3 to 5 years shows a generally rising trend would be considered further.

Applicants whose net assets were negative after excluding intangibles would not generally be considered viable unless there were other factors such as a parent guarantee of significant proportions coupled with healthy results in other factors (see below).

##### Liquidity Ratio (Working Capital)

*Current Assets: Current Liabilities*

A current ratio of 2:1 is considered satisfactory, though a lower ratio may be acceptable for companies that have a short Activity cycle. If the result is less than 1:1, there is cause for concern. When viewed over 3 to 5 years, the ratio should average not less than 1.3:1.0, with it being less than 1:1 for no more than one of such years, not being the latest year.

Given that self-insurance will have a detrimental effect on the liquidity ratio, the pre licence ratio must be healthy.

**Gearing Ratio** (Debt to Equity)

*Total Liabilities: Equity*

The lower the fraction the better. A figure of less than 1 is generally acceptable but a fraction of less than 0.6 is preferable. The result is an indicator of the applicant's stability on a long-term basis.

**Profit**

*Net Profit After Tax*

Net Profit (after tax) should show a positive trend over a 3 to 5 year period. The absolute figures are less important than the trends. One or two negative profit figures may not be cause for major concern provided that the retained profit is sufficient to cover such losses, and the trend does not point to exhaustion of retained profit within 5 years.

**Profitability Ratio** (Return on Equity)

*Net Profit after Tax: Shareholder's Funds*

This fraction should show an increasing trend, with a return on equity of 10% or more considered acceptable.

**Part B****Evaluation against wider financial factors**

The long-term nature of the liabilities involved makes it necessary to look beyond the applicant's current financial position and consider how the corporation is likely to perform over the longer term. In this latter regard, the environment in which the corporation is operating and its management are important considerations. Potential areas of support, government or otherwise, are also significant.

Accordingly, in performing an evaluation of the applicant, Comcare's financial advisers have been instructed to have regard to the following criteria in preparing an assessment for the Commission's consideration:

**Industry Risk**

- the industry's vulnerability to economic cycles
- domestic and global competition
- regulatory trends - the extent of current and proposed government regulation and its possible effect on competition
- ease of, and barriers to, market entry
- vulnerability to technological change
- cost factors, including the availability and distribution of raw materials.

### Management Quality

- philosophy and strategic direction
- track records
- balance between long term planning and short term programs
- rates of return achieved
- control systems in place, including internal auditing and financial controls.

### Basic Operating Position

- relative market share
- growth trends
- diversification by business lines
- diversification of revenue streams
- the applicant's cost structure compared to its competitors
- marketing and distribution network
- trends in product or technical cycles
- the potential for government support.

### Financial Position

- the nature and quality of assets
- the nature of liabilities
- current liquidity trends
- contingent liabilities
- equity and reserves.

### Organisational Structure

- the existence and nature of any support agreements or arrangements by Government or otherwise
- the financial position of other members in the group.

*Safety, Rehabilitation and Compensation Act 1988*  
*Part VIII*

**XYZ CORPORATION PTY LTD**

LICENCE AUTHORISING ACCEPTANCE OF LIABILITY AND MANAGEMENT OF  
CLAIMS UNDER THE SAFETY, REHABILITATION AND COMPENSATION ACT  
1988

**Notice No X of 2005**

**Part 1 – Grant and Scope of Licence**

*Note:* Under section 46(1) of the *Acts Interpretation Act 1901*, unless the contrary intention appears, expressions used in this instrument have the same meaning as in the SRC Act.

**Eligible applicant**

1. By notice dated \_\_\_\_\_, **XYZ Corporation Pty Ltd**, ABN 99 888 777 666 (“**the Licensee**”) was declared to be eligible to be granted a licence under Part VIII of the *Safety, Rehabilitation and Compensation Act 1988* (“**the SRC Act**”).

**Grant of licence**

2. The Safety, Rehabilitation and Compensation Commission (“**the Commission**”), acting under sections 103 and 104 of the SRC Act, grants a licence to the Licensee.

**Period of licence**

3. Subject to the SRC Act, this licence is for the period commencing on \_\_\_\_\_ and ending on \_\_\_\_\_ (“**the period of this licence**”).

**Scope of licence – acceptance of liability**

*Note:* “Employee” is defined in section 5 of the SRC Act.

4. The Licensee is authorised to accept liability to pay compensation and other amounts under the SRC Act in respect of all injuries, loss or damage suffered by, or in respect of the death of, any of the employees of the Licensee where such injuries, loss, damage or death:
  - (a) occur within the period of this licence;
  - (b) occurred in the period commencing on \_\_\_\_\_ and ending when this licence came into force.

*Note 1: "Claim" is defined in section 99 of the SRC Act.*

### **Scope of licence – management of claims**

5. ABC-Claims Manager Pty Ltd, ABN 11 222 333 444 (“**the Claims Manager**”) is authorised to manage, on behalf of the Licensee:
  - (a) claims under the SRC Act made by the employees of the Licensee who are covered by the scope of this licence so far as it relates to the Licensee’s acceptance of liability in accordance with clause 4 of this licence; and
  - (b) if immediately before this licence came into force the Licensee held a licence under the repealed Part VIIIA or Part VIIIB of the SRC Act, any claims made to the Licensee in its capacity as a licence holder under that Part that had not been finally and completely dealt with when this licence came into force.

*Note 1: “Manage”, in relation to a claim for payment of compensation and other amounts under the SRC Act, is defined in section 99 of the SRC Act to include determinations, reconsiderations and subsequent administrative action.*

*Note 2: Subsection 108B(4) of the SRC Act provides that if a Licensee enters into a contract with another person for the management, on the Licensee’s behalf, of the claims that the Licensee is authorised to manage, that contract does not come into force unless and until the Commission has varied the licence to note the identity of the person with whom the Licensee has contracted.*

### **Conditions**

6. This licence is granted subject to the conditions specified in Part 2.

### **Part 2 – Conditions**

#### **Definitions**

7. In this Part *Licensee* includes, where the context permits, the Claims Manager.

#### **General conditions**

#### **Directions of Commission**

8. The Licensee must comply with any written directions, whether general or in respect of a particular matter or class of matters, given by the Commission to the Licensee with respect to the performance by the Licensee of its functions or the exercise of its powers under the SRC Act.
9. If the Licensee’s claims are managed by a Claims Manager – the Licensee must give a copy of the Commission’s directions to the Claims Manager.

## Requirements

10. The Licensee must comply with the requirements of:
  - (a) the SRC Act, its Regulations and any applicable guidelines issued by the Commission under section 73A of the SRC Act;
  - (b) any applicable laws of the Commonwealth, States or Territories with respect to the safety, health and rehabilitation of employees; and
  - (c) the *Privacy Act 1988* (Cth) as are applicable to the Licensee.
11. The Licensee must have regard to guidelines issued by the Privacy Commissioner under the *Privacy Act 1988* (Cth), but must comply with any such guidelines dealing with covert surveillance of employees.

## Fees

12. The Licensee must pay the licence fee notified in writing to the Licensee under section 104A of the SRC Act — within one month of receiving the notification.

## Manner of managing claims

13. In managing claims, the Licensee:
  - (a) must be guided by equity, good conscience and the substantial merits of the case without regard to technicalities;
  - (b) is not required to conduct a hearing; and
  - (c) is not bound by the rules of evidence.

## Audits

14. The Licensee must co-operate with, and give reasonable assistance to, the Commission or its representatives in respect of any audits and evaluations of the Licensee to be conducted by the Commission or its representatives.

## Reviews and proceedings

15. The Licensee must not cause, or permit to be made on its behalf, any submission to a court or tribunal in relation to the interpretation of a provision of the SRC Act or associated transitional or consequential provisions that Comcare or the Commission requests the Licensee not to make.
16. If the Licensee brings court proceedings in relation to a matter arising in respect of a claim under the SRC Act, the Licensee must inform Comcare as soon as practicable that the proceedings have been brought and give Comcare a copy of the initiating process.

*Note:* If proceedings are brought against the Licensee, section 108C(8) requires the Licensee to inform Comcare as soon as practicable.

### **Failure to comply with conditions or change in circumstances**

17. The Licensee must notify Comcare in writing immediately that it becomes aware:
- (a) that the Licensee has not complied with, or is likely not to comply with, a condition of this licence; or
  - (b) of any event that may materially impact upon its suitability to hold a licence, including its capacity to meet its liabilities under the SRC Act or of any material change in its financial position; or
  - (c) of any material change to its legal structure, ownership or control; or
  - (d) of any significant change in its employee numbers or significant change in the risk profile of the work undertaken by its employees.

### **Information and reporting requirements**

18. On written request of the Commission, the Licensee must give to the Commission, within the timeframe specified in the request, such information relating to the Licensee's operations under the SRC Act in the form and at the place specified in the request.
- Note:* Information likely to be requested by the Commission includes information required for the Commission's annual report, Commission Indicators, CPM and Return to Work Monitor.

### **Specific Conditions**

#### **Previous licence holders**

*Note:* This condition applies if the Licensee held a licence under the repealed Part VIIIA or Part VIIIB of the SRC Act.

19. Where any claim that was made to the Licensee in its capacity as a licence holder had not been finally and completely dealt with at the time that this licence is granted, the terms and conditions of this licence apply to the management of such a claim in the same manner as they apply to any other claims within the scope of this licence.

#### **Claims Manager**

20. The Licensee is responsible for ensuring that the Claims Manager complies with the conditions in this licence.
21. In addition to other conditions in this licence which are applicable to the Claims Manager, the Claims Manager must:

- (a) not do, or omit to do, anything which would put the Licensee in breach of any term or condition of this licence;
- (b) not undertake, or cause to be undertaken, any surveillance of an employee, unless it has the prior written approval of the Licensee;
- (c) implement appropriate structures and mechanisms to ensure the consistent application of policy and procedures in respect of the management of claims;
- (d) when requested in writing by the Commission to provide information to it, to provide the information to the Commission in the timeframe specified in the request;
- (e) permit the Licensee to conduct at least an annual audit of the Claims Manager's performance ("Performance Audits") in accordance with audit methodology approved by the Commission or as otherwise required by the Commission;
- (f) provide the Licensee with reasonable access to the Claims Manager's records, premises and personnel to enable the Licensee to carry out Performance Audits;
- (g) provide the Commission or its representative with unrestricted access to documents and records in the possession or control of the Claims Manager in so far as the documents relate to matters arising under the SRC Act; and
- (h) inform the Licensee as soon as practicable after it becomes aware that the Claims Manager has done or omitted to do something which has the effect that the Licensee is, or is likely to be in breach of a term or condition of this licence.

*Note: "Documents" and "records" have the same meaning as in the Acts Interpretation Act 1901.*

22. The Licensee must:

- (a) conduct at least once every year a Performance Audit of the Claims Manager; and
- (b) within six weeks of the completion of each Performance Audit, give the Commission a written report on the Claims Manager's performance for the period covered by the audit.

23. The Licensee must be accountable for all claims management policies issued by the Claims Manager.

24. The Licensee must notify the Commission in writing as soon as practicable after it becomes aware that the Claims Manager has done, or omitted to do, something

which has the effect that the Licensee is, or is likely to be, in breach of a term or condition of this licence.

25. The Licensee must enter into and maintain a written contract with the Claims Manager and if requested to do so, give a copy of the contract to the Commission.
26. The Licensee must ensure that each of the obligations imposed by this licence on the Claims Manager are included in the contract between the Licensee and the Claims Manager and that the Claims Manager warrants, under the contract, to comply with the conditions imposed by this licence.

**Prudential Conditions**

27. The Licensee must comply with the Prudential Conditions of Licence.

**Performance Conditions**

28. The Licensee must comply with the Performance Standards.

Dated the        day of

Chairman  
Safety, Rehabilitation and Compensation Commission

## PRUDENTIAL CONDITIONS OF LICENCE

These conditions are “the Prudential Conditions”

### 1. LICENSEE CERTIFICATION

1.1 The principal officer of the Licensee must certify in writing to the Commission, by 30 September of each financial year, that the Licensee has:

- (a) arranged, in accordance with Prudential Condition 2, for the estimation of the liability of the Licensee to pay compensation and other amounts under the SRC Act in accordance with the scope of this licence; and
- (b) made, in accordance with Prudential Condition 3, provision in its accounts, in accordance with the estimates in the Liability Report required by Prudential Condition 2, for meeting its liabilities; and
- (c) the capacity to meet any single claim up to the reinsurance policy retention amount (excess amount) determined in accordance with Prudential Condition 5.

### 2. LIABILITY REPORT

2.1 The Licensee must commission a written report (“the Liability Report”) in respect of each financial year and calculated as at the end of that year.

2.2 The Liability Report:

- (a) must be prepared by a Fellow of the Institute of Actuaries of Australia (IAA), or any body substituted therefore, with at least five years’ post-qualification experience as an actuary in general insurance; and
- (b) must be prepared by an actuary who is not an employee or a partner of the organisation which provides financial audit services to the licensee or who in any way has a material financial dependence on the auditor; and
- (c) be prepared drawing on any available expert advice and substantially using IAA professional standard P300, or any standard substituted therefore, as the basis of estimation, with any departure from this standard to be highlighted in the report; and
- (d) must be addressed by the actuary to the Commission; and
- (e) must be provided by the Licensee to the Commission by 1 July of the financial year to which it relates.

2.3 The Liability Report must:

- (a) estimate the liability of the Licensee to pay compensation and other amounts under the SRC Act in accordance with the scope of this licence as follows:
  - (i) contain a recommendation for the level of provisions in the licensee's accounts which must be made to at least the 50<sup>th</sup> percentile (net central estimate); and
  - (ii) contain a valuation of current outstanding liability and the projected liability in 12/18/24 months\* time; and

\*[Note: actual licence will specify: 12 months for licensees in the 6<sup>th</sup> or more year of licence; 18 months for licensees in the 4<sup>th</sup> -5<sup>th</sup> year of licence; 24 months for licensees in the 1<sup>st</sup> -3<sup>rd</sup> year of licence]

- (b) contain a recommendation of the maximum reinsurance policy retention amount (excess amount) referred to in Prudential Condition 5; and
- (c) make an assessment of the financial capacity of the Licensee to meet amounts, from the balance sheet, up to the excess amount recommended by the actuary; and
- (d) describe the arrangements for compliance with Prudential Condition 5 and provide an assessment by the actuary of whether the arrangements are appropriate to meet the Licensee's obligation under Condition 5.1.

*Note:* The Commission will have regard to the matters in (b) and (c) in determining the excess amount in accordance with Prudential Condition 5.

2.4 The Commission may at its discretion submit a Liability Report to a peer review process.

*Note:* The Commission will organise and pay for any such peer review process.

2.5 After receiving a peer review assessment of a Liability Report, the Commission may by written notice to the Licensee require a Second Liability Report by an actuary approved by the Commission.

2.6 The Commission may direct the date for provision of a Second Liability Report.

2.7 Unless the Commission directs otherwise, the licensee must pay for a Second Liability Report.

2.8 If the Commission receives a Second Liability Report, it replaces the original Liability Report and:

- (a) references in Prudential Conditions 3-5 to the 'Liability Report' are to be construed as references to the Second Liability Report; and

- (b) references in Prudential Conditions 3-5 to the actuary who prepares the Liability Report are to be construed as references to the actuary who prepares the Second Liability Report.

### **3. YEARLY ACCOUNTS**

3.1 The Licensee must:

- (a) lodge with the Commission a copy of:
  - (i) any report that it is required to prepare or obtain for a financial year under Division 1 of Part 2M.3 of the Corporations Act 2001 within 7 days after it is required to be lodged with the Australian Securities and Investments Commission or it is in fact lodged, whichever is the earlier;
  - (ii) any periodic financial information regarding the affairs of the Licensed Corporation for a financial year that it is required to give to any financial market as defined in the Corporations Act 2001 (for example, in respect of the Australian Stock Exchange this would be information that must be given under Listing Rule 4.3B) within 7 days after it is required to be given to the financial market or it is in fact given, whichever is the earlier. For the avoidance of doubt this condition does not require the Licensed Corporation to provide information that is released to the financial market pursuant to the Licensed Corporation's continuous disclosure obligations;
  - (iii) if the Licensee is not required to report in accordance with Division 1 of Part 2M.3 of the Corporations Act 2001 because its parent company is required to report in accordance with Division 1 of Part 2M.3 of the Corporations Act 2001, then the Licensee must provide any report that the parent company is required to prepare or obtain for a financial year under Division 1 of Part 2M.3 of the Corporations Act 2001 within 7 days after it is required to be lodged with the Australian Securities and Investments Commission or it is in fact lodged, whichever is the earlier;
  - (iv) if the Licensee (or its parent company) is not required to report in accordance with Division 1 of Part 2M.3 of the Corporations Act 2001 and the parent company is a company not subject to the laws of Australia then the Licensee's parent company must prepare a financial report and directors' report as if it was required to comply with Division 1 of Part 2M.3 of the Corporations Act 2001, including having that report audited in accordance with that Part, and must give the report to the Commission within three months after the end of the Licensee's financial year.
- (b) include, and identify, in any report or information referred to in Prudential Condition 3.1(a), provision for meeting the Licensee's accrued and

contingent liability as at the end of the accounting period for claims made under the Act in the accounting period.

- 3.2 The provision mentioned in 3.1(b) must be consistent with a written evaluation, by an actuary, of the Licensee's current and non current liability for the accounting period and the actuary's evaluation must be lodged with the Commission.
- 3.3 The Licensee's accounts must also make provision for the Licensee to meet its accrued and contingent liability as estimated by the actuary in accordance with Prudential Conditions 2.2 and 2.3.
- 3.4 It will be sufficient compliance with Prudential Condition 3.2 if the Licensee provides the Commission with a statement at the time of lodging its accounts that the actuary's written evaluation required by this Prudential Condition is contained in the Liability Report provided to the Commission, and identifying the location of the information in that Report.
- 3.5 For the purposes of Prudential Condition 3.2, "actuary" means the actuary who prepares the Liability Report referred to in Prudential Condition 2.1.

#### **4. BANK GUARANTEE**

- 4.1 The Licensee must, for each financial year, obtain a bank guarantee for the due discharge of its liability to pay compensation and other amounts under the SRC Act in accordance with the scope of this licence.
- 4.2 The bank guarantee in respect of each financial year must be:
- (a) in the form and subject to the terms agreed in writing by the Commission; and
  - (b) for an amount calculated by the actuary in accordance with Prudential Condition 4 and specified in the Liability Report for that financial year; and
  - (c) obtained from a bank which has a credit rating of, or equivalent to, Standard and Poor's AA group or better.
- 4.3 The Licensee must provide the original of the bank guarantee to the Commission by 1 July of the financial year to which it relates.

For the purpose of this condition:

"Balance Date" means the last day of the financial year immediately before the year to which the bank guarantee relates.

"Outstanding Claims Liabilities" includes accrued and contingent liabilities.

- 4.4 The bank guarantee must be for an amount calculated by the actuary as the greater of:

- (a) the 95<sup>th</sup> percentile of Outstanding Claims Liabilities at the Balance Date and the addition of one reinsurance policy retention amount specified in Prudential Condition 5; or
- (b) the 95<sup>th</sup> percentile of projected Outstanding Claims Liabilities in 12/18/24 months\* time from the Balance Date and the addition of one reinsurance policy retention amount specified in Prudential Condition 5,

subject to a minimum amount of \$2,500,000.

\*[Note: actual licence will specify: 12 months for licensees in the 6<sup>th</sup> or more year of licence; 18 months for licensees in the 4<sup>th</sup> - 5<sup>th</sup> year of licence; 24 months for licensees in the 1<sup>st</sup> - 3<sup>rd</sup> year of licence]

*Note:* The liability estimates are to include an allowance for the cost of administering claims and be calculated net of reinsurance recoveries.

4.5 In preparing the level of bank guarantee, the Licensee must direct the actuary to:

- (a) calculate existing and projected estimates of outstanding claims liabilities plus costs of administering claims to the 95<sup>th</sup> percentile and to include this result in the Liability Report; and
- (b) base the calculation on a full statistical analysis of data, trends and variability and according to any relevant IAA standards and guidelines on liability valuation for general insurance.

## **5. REINSURANCE**

5.1 The Licensee shall maintain an appropriate level of reinsurance to limit its liability to pay compensation and other amounts under the SRC Act in accordance with the scope of this licence for any single event in excess of an amount determined by the Commission (“excess amount”).

*Note:* The Commission will have regard to the maximum excess amount recommended by the actuary in the Liability Report.

5.2 The reinsurance policy must be with an insurance company granted an authority to carry on insurance business by the Australian Prudential Regulation Authority under the Insurance Act 1973.

5.3 The Licensee must:

- (a) provide a copy of the reinsurance policy to the actuary and the Commission within seven days of the issuing of the new policy; and
- (b) seek the prior approval of the Commission to any reinsurance amount which is in excess of the amount previously determined by the Commission under 5.1 above.

## PERFORMANCE STANDARDS AND MEASURES FOR LICENSEES

The Licensee's prevention, rehabilitation and claims management systems will be consistent with the Performance Standards set out below. The degree to which the Licensee meets the Standards will be judged against the Performance Measures, also set out below.

### 1. COMMITMENT AND POLICY

The Licensee develops its prevention, rehabilitation and claims management policies and objectives in consultation with its employees and, where requested by any member in the undertaking, their representative organisations.

#### 1.1 Performance Standards

##### 1.1.1 Policies will:

- (i) accept the requirement for compliance with legislation and regulations;
- (ii) promote the principle of continuous improvement;
- (iii) where appropriate, be integral with and relevant to the Licensee's management systems, activities and employees;
- (iv) identify responsibilities and accountabilities for relevant employees;
- (v) promote communication of relevant information to employees;
- (vi) recognise the Licensee's duty of care to all persons in the workplace;
- (vii) recognise a hazard management approach to prevention;
- (viii) recognise commitment to effective rehabilitation of injured employees; and
- (ix) provide for fair and equitable outcomes.

#### 1.2 Performance Measures

##### 1.2.1 There is evidence:

- (i) of policies which confirm the Licensee's commitment to effective management of health and safety, rehabilitation and claims;
- (ii) that these policies are communicated to employees;
- (iii) of prevention management systems which recognise continuous improvement and which are based upon a hazard management approach;

- (iv) of consultation in accordance with the licence conditions; and
- (v) that management plans for rehabilitation and claims management are designed to ensure effective rehabilitation of injured employees, and equitable, efficient and effective claims management.

## **2. PLANNING**

The Licensee develops plans to fulfil its policies and objectives.

### **2.1 Performance Standards**

2.1.1 The Licensee's plans will:

- (i) address compliance with relevant legislative and regulatory requirements;
- (ii) identify program objectives and appropriate performance measures where relevant;
- (iii) include programs to identify, evaluate and control hazards in the workplace;
- (iv) provide for corrective action identified through any incident investigation process;
- (v) include programs to identify the Licensee's core rehabilitation and claims management activities and to provide direction regarding performance outcomes; and
- (vi) identify appropriate training requirements and include relevant training plans.

### **2.2 Performance Measures**

2.2.1 There is evidence that:

- (i) health and safety plans for each workplace are risk based and take account of employee input;
- (ii) health and safety training plans for each workplace are consistent with health and safety plans; and
- (iii) plans identify the Licensee's core rehabilitation and claims management activities.

## **3. IMPLEMENTATION**

The Licensee demonstrates the capabilities and support mechanisms that are necessary to achieve its policies and objectives.

### **3.1 Performance Standards**

3.1.1 In implementing its plans the Licensee will:

- (i) allocate adequate resources to support its programs;
- (ii) implement relevant training programs;
- (iii) ensure that only rehabilitation service providers approved by Comcare under Part III of the SRC Act are utilized;
- (iv) communicate defined responsibilities to relevant employees and service providers;
- (v) implement arrangements to ensure that employees are aware of their rights and obligations under the SRC Act;
- (vi) maintain the relevant level of reporting, records and/or documentation to support the Licensee's programs and legislative compliance and to ensure an appropriate audit trail; and
- (vii) establish procedures to maintain the confidentiality of information and appropriately apply the requirements of the *Privacy Act 1988*.

3.1.2 In implementing its prevention plans the Licensee will implement:

- (i) a hazard management process that includes identification, evaluation and control;
- (ii) a relevant prevention training program;
- (iii) programs to meet the Licensee's duty of care for all persons in the workplace; and
- (iv) programs to ensure that work-related injuries and diseases and relevant incidents are promptly reported, investigated and action taken when appropriate, including early assessment for rehabilitation.

3.1.3 In implementing its claims management plans the Licensee will:

- (i) implement mechanisms to inform employees of the status of their claims;
- (ii) implement mechanisms to give employees a reasonable opportunity to provide information or comment when claims for ongoing liability are being assessed or reviewed;
- (iii) implement cost effective mechanisms for determinations and reviews in respect of claims to be made accurately and promptly and guided by equity,

good conscience and the substantial merits of each case without regard to technicalities; and

- (iv) ensure consultation between persons responsible for managing claims, persons responsible for managing rehabilitation, and rehabilitation providers (as appropriate).

### **3.2 Performance Measures**

3.2.1 There is evidence:

- (i) that health and safety plans for each workplace are appropriately actioned;
- (ii) that health and safety training plans are appropriately actioned;
- (iii) that rehabilitation management plans are appropriately actioned;
- (iv) that claims management plans are appropriately actioned;
- (v) that incidents are investigated and where appropriate have fully documented incident investigation reports and where appropriate corrective action is implemented; and
- (vi) of appropriate mechanisms for informing employees of their rights in respect of claims, and of the status of individual claims.

## **4. MEASUREMENT AND EVALUATION**

The Licensee measures, monitors and evaluates its performance and takes prompt corrective action when necessary.

### **4.1 Performance Standards**

4.1.1 The Licensee will:

- (i) maintain and monitor planned objectives and performance measures for key elements of its programs;
- (ii) conduct a program of internal audits to ensure performance of its prevention, rehabilitation and claims management systems and ensure that these audits are performed objectively by competent personnel;
- (iii) ensure that the outcomes of internal audits are appropriately documented and that necessary corrective actions are identified, prioritised and implemented;

- (iv) if granted self audit status, ensure all self audits are conducted in accordance with the requirements of the Commission by competent personnel;
- (v) if granted self audit status, ensure that self audit reports and corrective action plans are certified at an appropriate senior executive level;
- (vi) provide the Commission with accurate reports in relation to its performance in the form and at intervals as requested by the Commission; and
- (vii) report to its employees on outcomes and results of audits – both internal and external.

## **4.2 Performance Measures**

- 4.2.1 Results of self audits conducted by the Licensee during the relevant licence period.
- 4.2.2 Reporting against jurisdictional indicators adopted by the Commission.

## **5. MANAGEMENT SYSTEMS REVIEW AND IMPROVEMENT**

### **5.1 Performance Standards**

The Licensee regularly reviews its prevention, rehabilitation and claims management systems, with the objective of improving its overall performance.

#### 5.1.1 The Licensee will:

- (i) analyse the level of achievement of documented objectives and performance measures to determine areas requiring corrective or preventive action and utilise the results to promote continuous improvement strategies; and
- (ii) review, at appropriate intervals, the scope and content of its policy statements and supporting policies and procedures to ensure their continued suitability and effectiveness.

### **5.2 Performance Measures**

#### 5.2.1 There is evidence that:

- (i) the results of reviews of the Licensee's performance against its policies and objectives are used to continually improve its prevention, rehabilitation and claims management systems.