



Policy on revocation and suspension of a self insurance licence

Introduction

1. This policy outlines the broad steps the Safety, Rehabilitation and Compensation Commission (the Commission) may take in considering to revoke or suspend a self insurance licence. It is expected that self insurance licensees, be they Commonwealth licensees or licensed corporations, will seek to voluntarily rectify any breaches of the conditions of licence and to address any regulatory concerns on the part of the Commission. As such, revocation and suspension are regulatory tools of last resort.
2. Regulatory decisions made by the Commission, including decisions to revoke or suspend a self insurance licence, are subject to the *Administrative Decisions (Judicial Review) Act 1977*.
3. By publishing this policy, the Commission has ensured that licensees and other interested parties are aware of the type of issues that the Commission will take into account when making any decision to suspend or revoke a self insurance licence. This policy does not set out an exhaustive list of the issues that the Commission may take into account—this will depend on the circumstances before it at the time.
4. This policy is intended for use where the consideration of a revocation or suspension is at the behest of the Commission; not where a licensee may request the licence be revoked.
5. This policy is not legally enforceable.

Who does this policy apply to?

6. This policy applies to all self insurance licensees under the SRC Act. The policy applies to both Commonwealth licensees and non-Commonwealth licensees (licensed corporations).

What can the Commission do?

7. Section 106 of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) gives the Commission a broad power to revoke or suspend a licence where it considers it appropriate to do so.
8. Section 106(1) states:
If the Commission considers it appropriate to do so, the Commission may, by written notice given to the licensee:
 - a) *suspend the licence for a specified period; or*
 - b) *revoke the licence.*
9. Section 106(2) sets out that the Commission must follow such procedures, if any, as set out in Ministerial Directions.

10. The Ministerial Directions (Clause 16) set out the procedure to be applied in the case of a suspected breach of condition. The procedure states that the Commission may give a written notice to a licensee regarding a suspected breach, and invite the licensee to make a written submission to the Commission within 30 days after receiving the notice.
11. Clause 15 of the Ministerial Directions provides that, for a Commonwealth authority, the Commission may suspend or revoke a licence. For a licensed corporation however, the Commission may only revoke a licence (i.e. it is not open for the Commission to suspend the licence of a licensed corporation).

The principles underpinning this policy

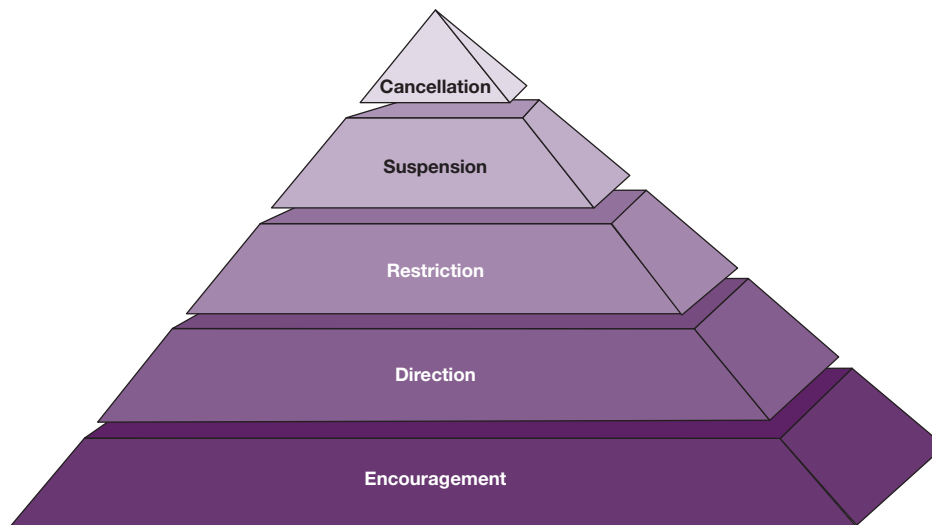
12. There are several principles of successful regulation which underpin the drafting and application of this policy. These principles will inform any decision by the Commission to revoke or suspend a self insurance licence.
 - **Consistent:** The application of this policy will provide for consistent outcomes for licensees, providing greater certainty.
 - **Constructive:** This policy will ensure that advice and assistance is provided to licensees, before any decision is made to revoke or suspend a licence. The focus is on improving outcomes, rather than punishment.
 - **Transparent:** Publication of this policy will allow for transparency of the process.
 - **Accountable and documented:** Reasons for any decision will be documented and communicated to affected licensees.
 - **Lawful:** This policy will assist lawful decisions to be made—that is, taking account of relevant considerations, and not considering irrelevant ones.
 - **Proportionate:** The Commission’s response to any compliance and enforcement issues will be proportionate to the seriousness of the non-compliance.
 - **Timely:** The Commission should ensure that any regulatory response is made and implemented in a timely manner.

In what circumstances does this policy apply?

13. This policy should be applied by the Commission when considering whether to revoke or suspend a licence for any reason, including a suspected breach of condition of licensee. This may include:
 - a breach of the general conditions of licence
 - a breach of the special conditions of licence
 - a breach of the prudential conditions of licence
 - performance issues
 - a breach of the *Occupational Health and Safety Act 1991* (OHS Act) or the SRC Act.
14. This policy sets out broad stages that may be applied to any of the above situations. Of course, this broad approach can be modified depending on the exact circumstances.
15. The Commission will usually only consider revocation or suspension for serious or systemic issues, or where a licensee has resisted or been unable to achieve voluntary compliance. The Commission, with the assistance of Comcare, will seek to resolve minor or technical non-conformance through means other than suspension or revocation. If this is unsuccessful and the issues are not satisfactorily resolved, then suspension or revocation may be considered.

A staged approach

16. Where the Commission considers that it may be appropriate to suspend or revoke a licence, it is proposed that a set of staged responses be considered by the Commission.¹



17. The benefits of a set of graduated responses include that the Commission is able to impose a response that is proportionate to the risk, escalate or de-escalate regulatory action, and minimise the costs associated with a response. The use of a graduated set of responses also means that the financial, health and time costs of employers and employees can be minimised.
18. Once Comcare and the Commission have identified that there is a problem, in the normal course of events, the licensee would be notified of the issue in writing and given an opportunity to resolve the problem. Depending on the circumstances this communication may be undertaken by Comcare acting on behalf of the Commission.
19. The lowest level of the pyramid, encouragement, focuses on education and voluntary compliance. This is usually the domain of Comcare and includes activities such as the provision of educational information and presentations.
20. If *encouragement* activities are unsuccessful or the Commission considers them to be inappropriate, the Commission could consider activities in the *direction* category. This will depend on the issue. The Commission may:
- issue a letter of statutory warning to the principal officer
 - issue a letter requesting an action/direction (such as a report)
 - issue a request that the principal officer of the licensee appear in front of the Commission
 - visit a licensee (the Chair and/or the CEO of Comcare)
 - direct that further audits and/or investigations be undertaken to address the issue (this may include Tier movement within the Tier Model)
 - report the licensee's poor performance/breach of the conditions of licence in the Commission's Annual Report
 - report the licensee's poor performance/breach of the conditions of licence on the Commission's website.
21. In the *restriction* category, the Commission may consider reviewing and amending the licence of a licensee by varying the conditions of licence under section 108D(2) of the SRC Act to remove or add specific conditions. It is also open to the Commission to determine the duration of a licence. In exceptional circumstances, the Commission may consider issuing or extending licences for a shorter period of time than the standard term.

¹ This staged approach is consistent with the Australian National Audit Office (ANAO) *Better Practice Guide to Administering Regulation*.

22. It is at the Commission's discretion to undertake a simultaneous mix of the actions identified in the *encouragement*, *direction* and *restriction* categories, depending on the breach or issue. Using a combination of these steps is likely to communicate the seriousness with which the Commission views non-compliance.
23. It might be the case that the Commission may not implement steps relating to *encouragement* if it considers that Comcare has already implemented such a step via, for example, targeted compliance assistance activities. It may then be appropriate for the Commission to move straight into *direction* or *restriction*. Another factor that could be taken into account is enforcement action, including prosecutions, being taken by Comcare in response to an alleged breach of the OHS Act.
24. If actions under these categories have not resulted in any substantial change or improvement, the Commission will then consider whether it is appropriate to take action under the final two categories.
25. At all stages, the Commission will seek to be open with an affected licensee and inform them of regulatory decisions that affect them.
26. At any point during the process it is open to an affected licensee to make written representations to the Commission regarding the matters in question, and the appropriateness and effectiveness of the Commission's proposed regulatory response.

Steps to implement a revocation or suspension

27. As set out in the Ministerial Directions, if the Commission believes on reasonable grounds that a licensee may have breached a condition of licence, the Commission may give written notice to the licensee. The notice would include details of the suspected breach and invite the licensee to make a written submission to the Commission within 30 days.
28. In the interests of procedural fairness, where the Commission is considering revoking or suspending a licence for a matter not relating to a suspected breach of conditions of licence, the Commission will also provide written notice to the licensee and seek a response within 30 days.
29. In drafting a written notice for the licensee, the Commission will have due regard to providing sufficient details and specificity of the matter, and an opportunity for the licensee to clarify matters in contention, before providing a written response to the Commission.
30. If the Commission revokes or suspends a licence under section 106 of the SRC Act, the Commission must give the licensee written notice. That notice must state the date of effect of the revocation or suspension (and the period for which the licence is suspended) and set out the reasons for the decision to revoke or suspend.
31. The Commission must also publish a notice in the Gazette stating the date of effect of the revocation or suspension and the period of suspension, if relevant.