



Australian Government
**Safety, Rehabilitation and
Compensation Commission**

GUIDANCE ON SELF- INSURANCE LICENCE APPLICATION EVALUATIONS

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Guidance on assessing an application for a licence

The Safety, Rehabilitation and Compensation Commission (Commission) assesses applications for self-insurance from information provided in a licence application, together with information collected throughout the application evaluation process conducted by Comcare on behalf of the Commission.

The Commission considers the following broad factors in assessing whether an applicant should be granted a licence to self-insure under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act):

- a) Ministerial Directions (*Safety, Rehabilitation and Compensation Directions 2019*) and the *Safety, Rehabilitation and Compensation Regulations 2019* 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.

The *Safety, Rehabilitation and Compensation Directions 2019* (SRC Directions) 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 2019* (SRC Regulations) prescribe the details and documentation required for licence applications.

SRC Act Requirements

For the Commission to be satisfied that it is appropriate to grant an applicant a licence, 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.

Additionally, section 104(2A) specifies that the Commission must not grant a licence to the applicant if, because of past conduct, it is unlikely the applicant will meet the Commission's standards for occupational health and safety, rehabilitation and claims management. 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 impose any conditions that it considers are necessary to achieve the objects of the SRC Act. A copy of a generic

licence can be found at Attachment A – Standard Licence Template of the Commission’s Licence Compliance and Performance Model (LCPM) on the Commission’s website. Without limiting the matters that 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
- 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
- d) a condition that the licensee will obtain bank or other guarantees for the discharge of liabilities as the Commission directs
- 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
- 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
- g) conditions concerning performance of functions in relation to the licence by person other than the licensee
- h) conditions requiring provision of information and notifications in respect of specified events.

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.

SRC Regulation and Direction Requirements

Comcare will conduct an assessment on behalf of the Commission to identify the applicant’s compliance with the SRC Regulations and Directions, including:

- Sections 15-17 of the SRC Regulations, setting out the corporate particulars and other basic information requirements
- Schedule 1 of the SRC Regulations, setting out required information and documents for licence applications
- Section 7 of the SRC Directions, requiring satisfactory arrangements have been made to ensure that payments under the SRC Act will continue to be paid if the corporation is wound up;
- Section 7A of the SRC Directions, requiring the applicant to demonstrate that:



It is a member of a corporate group in which a majority of employees in the corporate group are, at the time of the application, covered by the SRC Act; and the licence would not result in an overall reduction in workers' compensation entitlements for the employees of the applicant to be covered by the SRC Act.

Stakeholder Engagement upon application for licence

A licence application must be received by the Commission no later than 12 weeks prior to the Commission meeting at which the application will be considered. Comcare is then able to verify that all information and documentation required to be assessed by the Commission has been provided. Following receipt of a complete licence application, Comcare will place a notice on the Commission's website which informs relevant stakeholders of the licence application.

In addition, Comcare will engage with the relevant employee representatives of the applicant to advise that an application has been received and to seek any feedback that they may wish to provide.

Evaluation Process

Comcare will conduct a desktop review of the documentation provided with the licence application. Supplementary information may be requested or provided throughout the evaluation process, eg reports relating to any previous audits of prevention, rehabilitation and claims management systems, evidence of ongoing consultation etc.

The evaluation is conducted to assess whether the applicant has the capacity to comply with relevant legislative requirements, conditions of licence and the Commission's performance standards and measures. The evaluation may also include interviews with relevant staff (including the claims management service provider, if the applicant is intending to outsource to a third-party administrator).

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, evidence-based regulation of licensees. This system has been designed to foster continuous improvement in work 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.

Details of the Commission's performance standards and measures for licensees are outlined in the LCPM, which is available on the [SRCC website](#).

Pre-licence Evaluation

Pre-licence evaluations of the applicant's prevention, rehabilitation and proposed claims management systems will be conducted to assess whether the applicant has the 'capacity to meet' the Commission's general conditions of licence and performance standards from licence commencement.

The [pre-licence evaluation system audit tools and the pre-licence evaluation audit workbooks](#) are available on the Commission's website. The workbooks provide an explanation of the pre-licence audit criteria and examples of evidence that may assist in demonstrating 'capacity to meet' or conformance.

Sufficiency of Financial Resources assessment

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, Comcare will arrange for an external financial assessment to be performed to assess this capacity.

To assist with this process, applicants are 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
- a copy of consolidated financial statements for the year to date
- copies of full annual reports and audited financial statements for the previous five years' (clarification or further detail on balance sheet items may be requested)
- any deed of cross guarantees that are currently in place.

The assessment of financial sufficiency 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. This includes assessments of liquidity, financing, profitability, market performance and activity. Consideration will also be given to the nature and stability of the industry in which the applicant operates.

An applicant also must provide certification from its 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 to hold a licence.

Assessment of Liability Report

Applicants must have an actuary prepare a liability report to the Commission's requirements. The liability report must estimate the Outstanding Claim Liability of the applicant to pay compensation and other amounts under the SRC Act in accordance with the scope of licence and:

- estimate outstanding liability at the end of the first two years of licence
- specify the level of bank guarantee required
- recommend a level of provisions to be made in accounts
- recommend appropriate reinsurance arrangements and comment on the suitability of these arrangements (for full details see the LCPM Prudential Conditions of licence at Attachment A – Standard Licence Template on the SRCC website).



The actuarial assessment should also address:

1. the range of exposure of employees to different benefit types in each state/territory scheme; and
2. the degree of exposure to these benefits, and differences across jurisdictions.

This aspect of the liability report provides information to the Commission to support its assessment of how the applicant meets the requirements of section 7A(b) of the SRC Directions.

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 applicant may 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) and reinsurance arrangements. Both must be in place before commencement of the licence.

Assessment of Consultation with Employees

Evidence of consultation with employees and their representatives is required to enable the Commission to assess whether the grant of a licence will not be contrary to the interests of employees. Applicants should ensure that all employees and employee representatives are consulted about the licence application. Under the performance standards and measures in the LCPM, the Commission defines consultation as:

"Consultation means to appropriately inform employees, inviting and considering their response prior to a decision being made. Employees' opinions should not be assumed. Sufficient action must be taken to secure employees' responses and give their views proper attention. Consultation requires more than a mere exchange of information. Employees must be able to contribute to the decision-making process, not only in appearance but in fact."

Assessment of Past Performance

In assessing a licence application, an evaluation will be undertaken of the applicant's past performance in conforming and complying with relevant Commonwealth or state or territory laws relating to work health and safety, rehabilitation and claims management.

This can include, but is not limited to the applicant's previous:

- WHS prosecutions, incidents, notifications and notices
- premium rates and payments of premiums
- number of claims and claims costs
- financial performance
- claims duration
- rehabilitation performance
- audit performance

The applicant will be requested to provide consent for Comcare to contact relevant state and territory authorities. Information received from the state jurisdictions is compiled and analysed with the result provided to the Commission as part of the application assessment. While Comcare will make all reasonable efforts to obtain this information, it is at the discretion of the state jurisdictions as to whether they respond to this request for information.

Evaluation outcomes

Upon completion of the evaluation, Comcare will draft a paper that details its assessment (providing links to the application and all additional evidence provided) and makes clear recommendations against each of the areas noted above for final consideration by the Commission.

Should there be changes to an applicant's circumstances that alter its capacity to comply with relevant legislative requirements, conditions of licence and/or the Commission's performance standards and measures, the applicant must inform the Commission and Comcare of these changes.

The Commission may request that Comcare further review the application and seek additional information from the applicant in order to consider the application.

When a licence is granted, the Commission will determine the date of commencement of licence in line with the scope sought.

Where the requested commencement date is between 6 and 12 months post grant of licence, the Commission may direct further verification activities prior to the commencement date to ensure the evidence provided in the original application remains valid. A commencement date of later than 12 months following the grant of licence will generally not be considered.

Applicants should note that a licence must commence within the valid period of the Ministerial declaration.

Stakeholder engagement post grant of licence

Should the Commission grant a licence, additional communication will occur between the Secretariat and the applicant leading up to licence commencement to ensure all identified activities have been completed. In addition, communication will occur with key stakeholders, including relevant unions, to advise of the grant of licence and to also provide information about key contact points within Comcare.

Further information

Further information and assistance may be obtained from:

Director
Secretariat & Scheme Support Services
Telephone: 1300 366 979
secretariat@comcare.gov.au