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

***Part VIII***

**JOHN HOLLAND PTY LTD**

**NOTICE OF VARIATION OF LICENCE**

**Notice No 28 of 2016**

**Background**

1. John Holland Pty Ltd, ABN 11 004 282 268 (**the Licensee**), was declared to be eligible to be granted a licence under Part VIII of the *Safety, Rehabilitation and Compensation Act 1988* (Cth)(**the SRC Act**) by legislative instrument dated 31 October 2006.
2. The Safety, Rehabilitation and Compensation Commission (**the Commission**), acting under sections 103 and 104 of the SRC Act, granted a licence to the Licensee on 13 December 2006 with a commencement date of 1 January 2007.
3. The Commission, acting under subsection 108D(2) of the SRC Act, varies the conditions of the licence as follows:
4. the format, parts, headings and condition numbers of the licence have been revised to reflect the new licence instrument template adopted by the Commission;
5. ‘Part 1 – Interpretation’ has been inserted, which includes both an ‘Interpretation’ and ‘Definitions’ condition of licence;
6. the ‘Grant of Licence’ condition has been replaced with a ‘Licence decisions’ condition which includes details of all extensions and variations of the licence since the licence was granted;
7. all ‘notes’ have been removed from the non-prudential conditions of licence;
8. the ‘Communication’ condition has been varied and a further condition has been inserted to clarify the communication conditions of licence;
9. the ‘Directions of Commission’ condition has been expanded to clarify that the condition relates to both general and direct directions;
10. a further ‘Fees’ condition has been inserted to impose a licence condition with respect to other fees of licence;
11. the ‘Audits’ condition has been replaced with a ‘Management systems’ condition which inserts a new condition regarding management systems;
12. the ‘Reviews and proceedings’ condition has been revised to clarify the Licensee’s obligations in this regard;
13. the ‘Information and reporting requirements’ condition has been expanded to include conditions regarding the provision and use of information and data;
14. the general ‘Specific Conditions’ condition regarding written undertakings has been removed;
15. the ‘Performance Conditions’ have been removed from Attachment B to the licence and a new ‘Performance conditions’ condition has been inserted into Part 4 of the licence instrument in its place;
16. the ‘Prudential Conditions’ of licence has been removed from Attachment A to the licence and inserted into Part 4 of the licence instrument; and
17. the ‘Licence certification’ condition has been amended to remove the prescribed date for certification.
18. The variations take effect at midnight on 1 July 2016.
19. The scope and conditions of the licence are as set out below.

**Licence**

**Part 1 – Interpretation**

***Interpretation***

1. Unless the contrary intention appears, expressions used in this instrument have the same meaning as in the SRC Act.[[1]](#footnote-1)

***Definitions***

1. In this licence:
2. *APRA* means the Australian Prudential Regulation Authority;
3. *Document* means document as that word is defined by section 2B of the *Acts Interpretation Act 1901;*
4. *Licensee* includes, where the context permits, the Claims Manager and the Reviewer.

**Part 2 – Grant of Licence**

***Eligible applicant***

1. The Licensee was declared to be eligible to be granted a licence under Part VIII of the SRC Act by legislative instrument dated 31 October 2006, registered as F2006L03636 on the Federal Register of Legislation on 6 November 2006.

***Licence decisions***

1. The Commission, acting under sections 103 and 104 of the SRC Act, granted a licence to the Licensee on 13 December 2006 for the period commencing on 1 January 2007

and ending on 30 June 2008 as notified by Notice No. 7 of 2006 in Commonwealth Gazette No. 50 on 20 December 2006.

1. Following its commencement, the licence has been varied or extended by the Commission on:
2. 26 March 2008, as notified by Notice No. 8 of 2008, Commonwealth Gazette No. S 66 on 27 March 2008;
3. 18 June 2008, as notified by Notice No. 22 of 2008, Commonwealth Gazette No. GN 25 on 25 June 2008;
4. 22 September 2008, as notified by Notice No. 37 of 2008, Commonwealth Gazette No. GN 37 on 17 September 2008;
5. 16 June 2010, as notified by Notice No. 12 of 2010, Commonwealth Gazette No. GN 24 on 23 June 2010;
6. 26 June 2012, as notified by Notice No. 2 of 2012, Commonwealth Gazette No. S 98 on 29 June 2012;
7. 16 July 2012, as notified by Notice No. 15 of 2012, Commonwealth Gazette No. GN 29 on 25 July 2012;
8. 3 February 2015, as notified by Notice No. 2 of 2015, Gazette reference number C2015G00191, published on 5 February 2015 ;
9. 10 March 2016, as notified by Notice No. 4 of 2016, Gazette reference number C2016G00471, published on 8 April 2016.

***Period of licence***

1. Subject to the SRC Act, this licence is for the period commencing immediately after midnight (Australian Eastern Daylight Time) on 1 January 2007 and, in accordance with the most recent extension, ending at midnight (Australian Eastern Standard Time) on 30 June 2024 (**the period of this licence**).

**Part 3 – Scope of Licence**

***Scope of licence – acceptance of liability***

1. 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:
2. occur within the period of this licence; or
3. occurred during a period for which a previous SRC Act licence was in force.

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

1. John Holland Group Pty Ltd, ABN 37 050 242 147 (**the Claims Manager)** is authorised to manage, on behalf of the Licensee, 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 condition 7 of this licence.

**Part 4 – Conditions of licence**

***Conditions of licence***

1. The licence is granted subject to the following conditions.

**General conditions**

***Communication***

1. The Licensee, when bringing employees under its self-insurance licence pursuant to any consolidation or amalgamation process, must provide information to those employees regarding the *Work Health and Safety Act 2011* (Cth)(**the WHS Act**) and the SRC Act prior to those employees becoming employees of the Licensee.
2. The Licensee must provide information regarding the operation of the WHS Act and the SRC Act to all new employees as part of the licensee’s employee induction process.

***Directions of Commission***

1. 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 generally, or to the Licensee directly, with respect to the performance by the Licensee of its functions or the exercise of its powers under the SRC Act.

***Requirements***

1. The Licensee must comply with the requirements of:
2. the SRC Act, its Regulations and any applicable guidelines issued by the Commission under section 73A of the SRC Act;
3. any applicable laws of the Commonwealth, States or Territories with respect to the safety, health and rehabilitation of employees, with a particular focus on the statutory requirements for genuine consultation with employees and their representatives; and
4. the relevant Privacy legislation.
5. The Licensee must have regard to guidelines issued by the Privacy Commissioner under the *Privacy Act 1988* (Cth) and must comply with any such guidelines dealing with covert surveillance of employees*.*

***Fees***

1. The Licensee must pay the licence fee notified in writing to the Licensee under section 104A of the SRC Act within one monthof receiving the notification.
2. On written request from the Commission, the licensee must pay other fees relating to the Licensee’s operations under the SRC Act, in the amount and within the timeframe, specified by the Commission.

***Manner of managing claims***

1. In managing claims, the Licensee:
2. must be guided by equity, good conscience and the substantial merits of the case without regard to technicalities;
3. is not required to conduct a hearing; and
4. is not bound by the rules of evidence.

***Management systems***

1. The Licensee must co-operate with, and give reasonable assistance to, the Commission or its representatives in respect of any targeted reviews and evaluations of the Licensee to be conducted by the Commission or its representatives.
2. The Licensee must report to the Commission as required in accordance with the Performance Standards and Measures to demonstrate that it has maintained its Claims Management, Rehabilitation and WHS management systems, as advised to Comcare.

***Reviews and proceedings***

1. The Licensee must inform Comcare as soon as practicable of any court or tribunal proceedings in relation to a matter arising in respect of a claim managed by the Licensee under the SRC Act.
2. The Licensee must give to Comcare, within the timeframe specified in the request, any information or documents that Comcare requests in respect of any court or tribunal proceedings in relation to a matter arising is respect of a claim managed by the Licensee under the SRC Act.
3. The Licensee must not cause, or permit to be made on its behalf to a court or tribunal any submission that Comcare or the Commission requests the Licensee not to make.

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

1. The Licensee must notify Comcare in writing as soon as practicable of any event or likely event that is relevant to the application of the SRC Act to the Licensee, this may include but is not limited to:
2. the Licensee has not complied with, or is likely to fail to comply with, a condition of this licence; or
3. any change that may impact on the Licensee’s capacity to meet its liabilities under the SRC Act, including change to the Licensee’s underlying financial position; or
4. changes to its legal structure, ownership or control; or
5. 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***

1. 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.
2. The Licensee must give to Comcare, within the timeframe and in the manner specified in the request, such data as requested by the Commission in relation to the Licensee’s operations under the SRC Act.
3. The Licensee agrees that all information and data that the Licensee provides to the Commission and Comcare pursuant to this licence may be used by Comcare for the due performance of its functions and powers, including for scheme reporting purposes.

***Claims Manager***

1. The Licensee is authorised to manage claims and is responsible for ensuring the Claims Manager complies with the relevant conditions of this licence.
2. The Licensee must enter into and maintain a written contract with the Claims Manager and give a copy of the contract to the Commission if requested.
3. 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.
4. In addition to other conditions in this licence which are applicable to the Claims Manager, the Claims Manager must:
5. not do, or omit to do, anything which would put the Licensee in breach of any term or condition of this licence;
6. not undertake, or cause to be undertaken, any surveillance of an employee, unless it has the prior written approval of the Licensee;
7. implement appropriate structures and mechanisms to ensure the consistent application of policy and procedures in respect of the management of claims;
8. 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;
9. 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
10. 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.
11. The Licensee must be accountable for all claims management policies issued by the Claims Manager and the recording and forwarding of claims management data to Comcare as requested.
12. 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.

**Performance conditions**

1. The Licensee must comply with the Performance Standards and Measures approved by the Commission from time to time.

**Prudential conditions**

***Licensee certification***

1. The principal officer of the Licensee must certify in writing to the Commission each financial year that the Licensee has:
2. arranged, in accordance with the Liability Report conditions (conditions 35 to 42 inclusive), 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
3. made, in accordance with the Yearly Account conditions (conditions 43 to 47 inclusive), provision in its accounts, in accordance with the estimates in the Liability Report required by the Liability Report conditions, for meeting its liabilities; and
4. the capacity to meet any single claim up to the reinsurance policy retention amount (excess amount) determined in accordance with the Reinsurance conditions (conditions 53 to 55 inclusive).

***Liability report***

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. The Liability Report:
3. 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
4. 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
5. be prepared drawing on any available expert advice and substantially using IAA professional standard PS300, or any standard substituted therefore, as the basis

of estimation, with any departure from this standard to be highlighted in the report; and

1. must be addressed by the actuary to the Commission; and
2. must be provided by the Licensee to the Commission by 28 February of the financial year to which it relates.
3. The Liability Report must:
4. 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:
5. contain a recommendation for the level of provisions in the Licensee’s accounts which must be made to at least the 50th percentile (net central estimate); and
6. contain a valuation of current outstanding liability and the projected liability in 12/18/24\* months time; and

\**Note*: 12 months for Licensees in the 6th or more year of licence; 18 months for Licensees in the 4th-5th year of licence; 24 months for Licensees in the 1st-3rd year of licence.

1. contain a recommendation of the maximum reinsurance policy retention amount (excess amount) referred to in the Reinsurance conditions; and
2. 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
3. describe the arrangements for compliance with the Reinsurance conditions and provide an assessment by the actuary of whether the arrangements are appropriate to meet the Licensee’s obligation under condition 53.

\**Note*: The Commission will have regard to the matters in (b) and (c) in determining the excess amount in accordance with the Reinsurance conditions.

1. 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.

1. 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. The Commission may direct the date for provision of a Second Liability Report.
3. Unless the Commission directs otherwise, the Licensee must pay for a Second Liability Report.
4. If the Commission receives a Second Liability Report, it replaces the original Liability Report and:
5. references in conditions 43 to 55 to the Liability Report are to be construed as references to the Second Liability Report; and
6. references in conditions 43 to 55 to the actuary who prepares the Liability Report are to be construed as references to the actuary who prepares the Second Liability Report.

***Yearly Accounts***

1. The Licensee must:
2. Lodge with the Commission a copy of:
3. 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;
4. Any periodic financial information regarding the affairs of the Licensee 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 Licensee to provide information that is released to the financial market pursuant to the Licensee's continuous disclosure obligations;
5. 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;
6. 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;
7. include, and identify, in any report or information referred to in condition 43(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.
8. The provision mentioned in condition 43(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.
9. 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 conditions 36 and 37.
10. It will be sufficient compliance with 44 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 condition is contained in the Liability Report provided to the Commission, and identifying the location of the information in that Report.
11. For the purposes of condition 44, “actuary” means the actuary who prepares the Liability Report referred to in condition 35.

***Guarantee***

1. The Licensee must, for each financial year, obtain a 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.
2. The guarantee in respect of each financial year must be:
3. in the form and subject to the terms agreed in writing by the Commission; and
4. for an amount calculated by the actuary in accordance with the Guarantee conditions (conditions 48 to 52 inclusive) and specified in the Liability Report for that financial year; and
5. obtained from a corporation that is authorised by APRA to carry on:
6. banking business in Australia under the *Banking Act 1959* (Cth) and has an issuer credit rating of or equivalent to a Standard and Poor’s AA- or better; or
7. insurance business in Australia under the *Insurance Act 1973* (Cth) and has an issuer credit rating of or equivalent to a Standard and Poor’s AA- or better and a financial strength rating of or equivalent to a Standard and Poor’s AA- or better.
8. The Licensee must provide the original of the guarantee to the Commission by 31 March of the financial year to which it relates.

For the purpose of the Guarantee provisions:

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

“Outstanding Claims Liabilities” includes accrued and contingent liabilities.

1. The guarantee must be for an amount calculated by the actuary as the greater of:
2. The 95th percentile of Outstanding Claims Liabilities at the Balance Date and the addition of one reinsurance policy retention amount specified in the Reinsurance conditions; or
3. The 95th 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 the Reinsurance conditions, subject to a minimum amount of $2,500,000.

\*Note: 12 months for Licensees in the 6th or more year of licence; 18 months for Licensees in the 4th-5th year of licence; 24 months for Licensees in the 1st-3rd 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.

1. In preparing the level of guarantee, the Licensee must direct the actuary to:
2. calculate existing and projected estimates of outstanding claims liabilities plus costs of administering claims to the 95th percentile and to include this result in the Liability Report; and
3. 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.

***Reinsurance***

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.

1. The reinsurance policy must be with an insurance company granted an authority to carry on insurance business by APRA under the *Insurance Act 1973.*
2. The Licensee must:
3. provide a copy of the reinsurance policy to the actuary and the Commission within seven days of the issuing of the new policy; and
4. seek the prior approval of the Commission to any reinsurance amount which is in excess of the amount previously determined by the Commission under condition 53 above.

***Deed of Guarantee***

1. The Licensee:
2. must at all times be a party to a Deed of Cross Guarantee in accordance with conditions 56 to 58 of this licence; and
3. must not engage in any act or omission that may compromise the enforceability of a Deed of Cross Guarantee.
4. In this licence a reference to the Deed of Cross Guarantee is a reference to:
5. the Deed of Cross Guarantee, made on 16 November 2006, as amended or varied from time to time in accordance with its terms, to which the Licensee is a party; or
6. where the Commission, in its absolute discretion, notifies the Licensee in writing that another, alternative, Deed of Guarantee will satisfy the requirements of conditions 56 to 58 of this licence, that Deed.
7. In relation to the Deed of Guarantee referred to in condition 57 above the Licensee must:
8. be a party to that Deed for at least seven (7) years following the period of this licence, as varied from time to time;
9. if that Deed is amended or varied, including if:
10. another entity becomes a party to that Deed; or
11. a party to that Deed ceases to be a party, provide a copy of the document amending or varying that Deed to the Commission;
12. notify the Commission if:
13. the Australian Securities and Investments Commission informally or formally raises any issues in relation to that Deed; or
14. the Licensee becomes aware of any reason why a creditor of the Licensee may not be able to enforce that Deed.

Dated 28th day of June 2016.

Barry Sherriff

Chairperson

Safety, Rehabilitation and Compensation Commission

1. For the purposes of this licence, the definition of *claim* prescribed by section 99 of the SRC Actapplies. [↑](#footnote-ref-1)