



*Safety, Rehabilitation and Compensation Act 1988*

*Part VIII*

**AUSTRALIAN CAPITAL TERRITORY**

**NOTICE OF VARIATION OF LICENCE**

**Notice No 1 of 2020**

**Background**

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- A. The Australian Capital Territory, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) (**the Licensee**), is a Commonwealth authority and is therefore eligible to be granted a licence under Part VIII of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**the SRC Act**).
- B. 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 28 November 2018 with a commencement date of 1 March 2019.
- C. The Commission, acting under subsection 108D(2) of the SRC Act, varies the conditions of the licence as follows:
  - (i) The definition of 'Transition Period' has been amended to change the end of the 'Transition Period' to the earlier of the following: the end of 30 June 2021, or when the Commonwealth or Comcare pay an amount to the Licensee in relation to this licence (including the grant of this licence) that results in the Fund Value reaching or exceeding the Minimum Fund Value.
- D. The variations take effect at the beginning of 1 May 2020 (Australian Eastern Standard Time).
- E. The scope and conditions of the licence are as set out below.

## Part 1 – Interpretation

### *Interpretation*

1. Unless the contrary intention appears, expressions used in this instrument have the same meaning as in the SRC Act.<sup>1</sup>

### *Definitions*

2. In this licence:
  - (a) *APRA* means the Australian Prudential Regulation Authority;
  - (b) *Commencement Date* means 1 March 2019;
  - (c) *Document* means document as that word is defined by section 2B of the *Acts Interpretation Act 1901* (Cth);
  - (d) *Financial Year* means the reporting year that applies to a director-general annual report about the operation of the Chief Minister, Treasury and Economic Development Directorate under section 6 of the *Annual Reports (Government Agencies) Act 2004* (ACT);
  - (e) *Fund* means the Public Sector Workers Compensation Fund established by section 7 of the *Public Sector Workers Compensation Fund Act 2018* (ACT) (**PSWC Fund Act**);
  - (f) *Fund Money* means money in a PSWC Fund Banking Account;
  - (g) *Fund Money Event* means a circumstance where the Fund Money Value decreases from equal to or above the Minimum Fund Money Value to below the Minimum Fund Money Value;
  - (h) *Fund Money Value* means the total value in Australian currency of all Fund Money;
  - (i) *Fund Value* means the total value in Australian currency of all assets in the Fund (including Fund Money);
  - (j) *Fund Value Event* means a circumstance where the Fund Value decreases from equal to or above the Minimum Fund Value to below the Minimum Fund Value after the expiry of the Transition Period;
  - (k) *Guarantee* means a guarantee given by the Licensee and approved by the Treasurer of the Licensee in writing under section 47 of the *Financial Management Act 1996* (ACT);
  - (l) *Liability Report* has the meaning as defined in condition 32;
  - (m) *Licensee* includes, where the context permits, the Claims Manager;
  - (n) *Minimum Fund Money Value* means the value in Australian currency equal to:
    - (i) the current liability component of the Licensee's Outstanding Claim Liability as broken down under condition 34(b) in the most recent Liability Report; minus

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<sup>1</sup> For the purposes of this licence, the definition of *claim* prescribed by section 99 of the SRC Act applies.

- (ii) any compensation or other amounts the Licensee has paid under the SRC Act in accordance with the scope of this licence during the current Financial Year from Fund Money;
- (o) *Minimum Fund Value* means the value in Australian currency equal to:
  - (i) 95 per cent of the amount of the Fund Value recommended under condition 34(a)(i) in the most recent Liability Report; minus
  - (ii) any compensation or other amounts the Licensee has paid under the SRC Act in accordance with the scope of this licence during the current Financial Year from the Fund;
- (p) *Minimum Transition Fund Value* means the value in Australian currency equal to:
  - (i) 175 per cent of the current liability component of the Licensee's Outstanding Claim Liability as broken down under condition 34(b) in the most recent Liability Report; minus
  - (ii) any compensation or other amounts the Licensee has paid under the SRC Act in accordance with the scope of this licence during the current Financial Year from the Fund;
- (q) *Outstanding Claim Liability* has the meaning as defined in the Institute of Actuaries of Australia Professional Standard 302 "Valuations of General Insurance Claims", or any standard substituted thereof;
- (r) *PSWC Fund Banking Account* means a banking account opened and kept in accordance with section 9 of the PSWC Fund Act;
- (s) *Risk Free Rate* means the rates to be used in discounting the expected future claims payments of insurance liabilities denominated in Australian currency as determined in accordance with APRA Prudential Standard GPS 320 "Actuarial and Related Matters", or any standard substituted thereof;
- (t) *Transition Period* means the period commencing at the Commencement Date and ending at the earlier of the following: the end of 30 June 2021, or when the Commonwealth or Comcare pay an amount to the Licensee in relation to this licence (including the grant of this licence) that results in the Fund Value reaching or exceeding the Minimum Fund Value; and
- (u) *Transition Value Event* means a circumstance where the Fund Value decreases from equal to or above the Minimum Transition Fund Value to below the Minimum Transition Fund Value during the Transition Period.

## **Part 2 – Grant of Licence**

### ***Eligible applicant***

3. The Licensee is a Commonwealth authority and is therefore eligible to be granted a licence under Part VIII of the SRC Act.

### ***Licence decisions***

4. The Commission, acting under sections 103 and 104 of the SRC Act, granted a licence to the Licensee on 28 November 2018 for the period commencing on 1 March 2019 and ending on 28 February 2027 as notified by C2018G00974, published on 6 December 2018.

5. Following its commencement, the licence has been varied or extended by the Commission on:
  - (a) 9 December 2019, as notified by Notice No. 7 of 2019, in Gazette reference number C2019G01142, published on 19 December 2019.

#### ***Period of licence***

6. Subject to the SRC Act, this licence is for the period commencing at the beginning of 1 March 2019 (Australian Eastern Daylight Time) and ending at the end of 28 February 2027 (Australian Eastern Daylight Time) (**the period of this licence**).

### **Part 3 – Scope of Licence**

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

7. 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; or
  - (b) occurred in the period commencing on 1 July 1989 and ending when this licence came into force.

*Note: For the purposes of the SRC Act and this licence ‘employees of the Licensee’ include ‘Territory staff’ as defined in subsection 22(1) of the A.C.T. Self-Government (Consequential Provisions) Act 1988 (Cth) for the period 11 May 1989 to 1 July 1994.*

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

8. Employers Mutual Limited, ABN 67 000 006 486 (**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 clause 7 of this licence.

### **Part 4 – Conditions of licence**

#### ***Conditions of licence***

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

#### **General conditions**

##### ***Communication***

10. 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 SRC Act prior to those employees becoming employees of the Licensee.

11. The Licensee must provide information regarding the operation of the SRC Act to all new employees as part of the Licensee's employee induction process.

#### ***Directions of Commission***

12. 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***

13. 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, with a particular focus on the statutory requirements for genuine consultation with employees and their representatives; and
  - (c) the relevant Privacy legislation.
14. The Licensee must have regard to guidelines issued by the Information Commissioner under the *Privacy Act 1988* (Cth) and must comply with any such guidelines dealing with covert surveillance of employees.

#### ***Fees***

15. 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.
16. 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***

17. 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.

#### ***Management systems***

18. 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.
19. 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***

20. 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.
21. 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 in respect of a claim managed by the Licensee under the SRC Act.
22. 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***

23. 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:
  - (a) the Licensee has not complied with, or is likely to fail to comply with, a condition of this licence; or
  - (b) 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
  - (c) changes to its legal structure, ownership or control; or
  - (d) 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***

24. On written request of the Commission or Comcare, the Licensee must give to the Commission or Comcare as specified, within the timeframe specified in the request, such information (including data) relating to the Licensee's operations under the SRC Act in the form and at the place specified in the request.

*Note: Comcare and the Commission will use information (including data) given to it by the Licensee under this condition for any authorised purposes. The uses that Comcare will generally make of this information (including data) are outlined in the Comcare and Self-Insured Licensee Information Protocol.*

### ***Claims Manager***

25. The Licensee is authorised to manage claims and is responsible for ensuring the Claims Manager complies with the relevant conditions of this licence

26. 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.
27. 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.
28. 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) 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
  - (f) 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.
29. 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.
30. 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**

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

### **Prudential conditions**

#### ***Liability report***

32. The Licensee must commission a written report (**the Liability Report**) in respect of each Financial Year and calculated as at the end of that Financial Year.

33. The Liability Report must:
- (a) be prepared by a Fellow of the Institute of Actuaries of Australia (IAA), or any body substituted thereof, with at least five years' post-qualification experience as an actuary in general insurance;
  - (b) 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;
  - (c) be prepared drawing on any available expert advice and substantially using IAA Professional Standard 302 "Valuations of General Insurance Claims", or any standard substituted thereof, as the basis of estimation, with any departure from this standard to be highlighted in the report;
  - (d) be prepared using the Risk Free Rate in discounting the expected future claims payments of insurance liabilities;
  - (e) be addressed by the actuary to the Commission; and
  - (f) be provided by the Licensee to the Commission within 131 days of the end of the Financial Year to which it relates.

*Note: If the actuary determines the Risk Free Rate using instruments other than Commonwealth Government Securities that relate to the term of the future claim liability cash flows of the Licensee, the actuary must justify the reason for doing so in the Liability Report.*

34. The Liability Report must:
- (a) estimate the Outstanding Claim 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 Fund Value which must be made to at least the net unbiased estimate of the mean (statistical expectation) of the Outstanding Claim Liability;
  - (b) contain a breakdown of the current and non-current liability components of the Licensee's Outstanding Claim Liability as estimated in accordance with condition 34(a); and
  - (c) recommend whether the Commission should amend this licence to require the Licensee to 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.
35. The Commission may at its discretion submit a Liability Report to a peer review process.
36. 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.
37. If any of the changes in circumstances outlined in condition 23(b), (c) or (d) occur, the Commission may, by written notice to the Licensee, require the Licensee to obtain an Updated Liability Report that is to be prepared in accordance with conditions 32 to 34.



38. The Commission may direct the date for provision of a Second Liability Report and/or an Updated Liability Report.
39. Unless the Commission directs otherwise, the Licensee must pay for a Second Liability Report and/or an Updated Liability Report.
40. If the Commission receives a Second Liability Report or an Updated Liability Report, it (or, where the Commission receives both a Second Liability Report and an Updated Liability Report, the most recent of these reports) replaces the original Liability Report and:
  - (a) references in this licence to the Liability Report are to be construed as references to the Second Liability Report or the Updated Liability Report (whichever is applicable); and
  - (b) references in this licence to the actuary who prepares the Liability Report are to be construed as references to the actuary who prepares the Second Liability Report or the Updated Liability Report (whichever is applicable).

### ***The Fund***

41. The Fund must contain:
  - (a) Fund Money; or
  - (b) Fund Money and other assets owned by the Licensee.
42. If a Transition Value Event occurs, the Licensee must:
  - (a) notify the Commission of the date of the Transition Value Event in writing as soon as practicable;
  - (b) within 14 days of the Transition Value Event either:
    - (i) return the Fund Value to at least the Minimum Transition Fund Value and confirm in writing to the Commission that this has occurred; or
    - (ii) notify the Commission of the following in writing:
      - a. the current Fund Value;
      - b. the value in Australian currency of any compensation or other amounts the Licensee has paid under the SRC Act in accordance with the scope of this licence to date during the current Financial Year from the Fund;
      - c. the difference between the Minimum Transition Fund Value and the current Fund Value;
      - d. how the Licensee intends to return the Fund Value to at least the Minimum Transition Fund Value; and
      - e. the date by which the Licensee expects to return the Fund Value to at least the Minimum Transition Fund Value (**Expected Transition Value Date**); and
  - (c) if the Licensee does not return the Fund Value to at least the Minimum Transition Fund Value within 14 days of the Transition Value Event – return the Fund Value to at least the Minimum Transition Fund Value by the earlier of the following:
    - (i) the Expected Transition Value Date; or
    - (ii) an alternative date specified by the Commission in writing to the Licensee.

43. If a Fund Value Event occurs, the Licensee must:
- (a) notify the Commission of the date of the Fund Value Event in writing as soon as practicable;
  - (b) within 14 days of the Fund Value Event either:
    - (i) return the Fund Value to at least the Minimum Fund Value and confirm in writing to the Commission that this has occurred; or
    - (ii) notify the Commission of the following in writing:
      - a. the current Fund Value;
      - b. the value in Australian currency of any compensation or other amounts the Licensee has paid under the SRC Act in accordance with the scope of this licence to date during the current Financial Year from the Fund;
      - c. the difference between the Minimum Fund Value and the current Fund Value;
      - d. how the Licensee intends to return the Fund Value to at least the Minimum Fund Value; and
      - e. the date by which the Licensee expects to return the Fund Value to at least the Minimum Fund Value (**Expected Fund Value Date**); and
  - (c) if the Licensee does not return the Fund Value to at least the Minimum Fund Value within 14 days of the Fund Value Event – return the Fund Value to at least the Minimum Fund Value by the earlier of the following:
    - (i) the Expected Fund Value Date; or
    - (ii) an alternative date specified by the Commission in writing to the Licensee.
44. If a Fund Money Event occurs, the Licensee must:
- (a) notify the Commission of the date of the Fund Money Event in writing as soon as practicable;
  - (b) within 14 days of the Fund Money Event either:
    - (i) return the Fund Money Value to at least the Minimum Fund Money Value and confirm in writing to the Commission that this has occurred; or
    - (ii) notify the Commission of the following in writing:
      - a. the current Fund Money Value;
      - b. the value in Australian currency of any compensation or other amounts the Licensee has paid under the SRC Act in accordance with the scope of this licence to date during the current Financial Year from Fund Money;
      - c. the difference between the Minimum Fund Money Value and the current Fund Money Value;
      - d. how the Licensee intends to return the Fund Money Value to at least the Minimum Fund Money Value; and
      - e. the date by which the Licensee expects to return the Fund Money Value to at least the Minimum Fund Money Value (**Expected Fund Money Date**); and
  - (c) if the Licensee does not return the Fund Money Value to at least the Minimum Fund Money Value within 14 days of the Fund Money Event – return the Fund Money Value to at least the Minimum Fund Money Value by the earlier of the following:
    - (i) the Expected Fund Money Date; or
    - (ii) an alternative date specified by the Commission in writing to the Licensee.

45. The Licensee must ensure that:
  - (a) the PSWC Fund Act is complied with; and
  - (b) the PSWC Fund Act and any guidelines made under section 17 of the PSWC Fund Act are consistent with the conditions of this licence.
46. The Licensee must inform the Commission in writing of any proposed amendment to or repeal of the PSWC Fund Act or any guidelines issued under section 17(1) of the PSWC Fund Act at least 124 days before any such amendment or repeal occurs.

### ***Guarantee***

47. The Licensee must at all times have in place 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.
48. The Guarantee obtained under condition 47 must be:
  - (a) in a form and in terms acceptable to the Commission; and
  - (b) for an unlimited amount.
49. The Licensee must provide the original of the Guarantee obtained under condition 47 to the Commission before the Commencement Date.

### ***Yearly Accounts***

50. Each Financial Year the Licensee must lodge with the Commission a report for the Financial Year that:
  - (a) contains evidence of the following:
    - (i) what assets were in the Fund and the value of those assets as at the end of the Financial Year;
    - (ii) the value of Fund Money as at the end of the Financial Year;
    - (iii) the value in Australian currency of any compensation or other amounts the Licensee paid under the SRC Act in accordance with the scope of this licence during the Financial Year from the Fund; and
    - (iv) the value in Australian currency of any compensation or other amounts the Licensee paid under the SRC Act in accordance with the scope of this licence during the Financial Year from Fund Money; and
  - (b) if the Financial Year coincides (either partly or wholly) with the Transition Period – contains evidence of the following with respect to each Transition Value Event that occurred during the Financial Year:
    - (i) the date of the Transition Value Event;
    - (ii) the Fund Value as at the time of the Transition Value Event;
    - (iii) the value in Australian currency of any compensation or other amounts the Licensee paid under the SRC Act in accordance with the scope of this licence during the Financial Year from the Fund as at the time of the Transition Value Event;
    - (iv) the difference between the Minimum Transition Fund Value and the Fund Value as at the time of the Transition Value Event;

- (v) the lowest value of the Fund Value between the Transition Value Event and the date on which the Fund Value returned to at least the Minimum Transition Fund Value;
- (vi) how the Licensee returned the Fund Value to at least the Minimum Transition Fund Value; and
- (vii) the date on which the Fund Value returned to at least the Minimum Transition Fund Value; and
- (c) if the Transition Period expired before the end of the Financial Year – contains evidence of the following with respect to each Fund Value Event that occurred during the Financial Year:
  - (i) the date of the Fund Value Event;
  - (ii) the Fund Value as at the time of the Fund Value Event;
  - (iii) the value in Australian currency of any compensation or other amounts the Licensee paid under the SRC Act in accordance with the scope of this licence during the Financial Year from the Fund as at the time of the Fund Value Event;
  - (iv) the difference between the Minimum Fund Value and the Fund Value as at the time of the Fund Value Event;
  - (v) the lowest value of the Fund Value between the Fund Value Event and the date on which the Fund Value returned to at least the Minimum Fund Value;
  - (vi) how the Licensee returned the Fund Value to at least the Minimum Fund Value; and
  - (vii) the date on which the Fund Value returned to at least the Minimum Fund Value; and
- (d) contains evidence of the following with respect to each Fund Money Event that occurred during the Financial Year:
  - (i) the date of the Fund Money Event;
  - (ii) the Fund Money Value as at the time of the Fund Money Event;
  - (iii) the value in Australian currency of any compensation or other amounts the Licensee paid under the SRC Act in accordance with the scope of this licence during the Financial Year from Fund Money as at the time of the Fund Money Event;
  - (iv) the difference between the Minimum Fund Money Value and the Fund Money Value as at the time of the Fund Money Event;
  - (v) the lowest value of the Fund Money Value between the Fund Money Event and the date on which the Fund Money Value returned to at least the Minimum Fund Money Value;
  - (vi) how the Licensee returned the Fund Money Value to at least the Minimum Fund Money Value; and
  - (vii) the date on which the Fund Money Value returned to at least the Minimum Fund Money Value.

51. On written request of the Commission or Comcare, the Licensee must give to the Commission or Comcare as specified, within the timeframe specified in the request, such evidence (whether specific or general in nature) relating to any of the matters referred to in condition 50(a), (b), (c) or (d) specified in the request.

52. The Licensee must lodge with the Commission the report required under condition 50 within 131 days of the end of the Financial Year to which the report relates.

Dated the 28th day of April 2020.

Rosemary Vilgan  
Chairperson  
Safety, Rehabilitation and Compensation Commission