

Safety, Rehabilitation and Compensation Act 1988
Part VIII

Notice of Variation of Licence – Australian National University (No 8 of 2021)

Background

- A. Australian National University, ABN 52 234 063 906 (**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 4 December 2017 with a commencement date of 1 July 2018.
- C. The Commission, acting under subsection 108D(2) of the SRC Act, varies former Condition 23 - Information and Reporting Requirements (now renumbered to Condition 24), of the licence and adds two new subset requirements.
- D. The variations take effect at the beginning of 5 July 2021 (Australian Eastern Daylight 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.¹

Definitions

2. In this licence:
 - (i) *APRA* means the Australian Prudential Regulation Authority;
 - (ii) *Balance Date* means the last day of the Financial Year immediately before the first Financial Year to which the Guarantee being obtained under condition 42 will relate;
 - (iii) *Document* means document as that word is defined by section 2B of the *Acts Interpretation Act 1901* (Cth); and
 - (iv) *Excess Amount* has the meaning as defined in condition 54;
 - (v) *Financial Year* means the reporting period that applies to the licensee under the *Public Governance, Performance and Accountability Act 2013* (Cth);
 - (vi) *Guarantee* means a bank guarantee, letter of credit, unconditional payment undertaking or such other instrument issued by an entity acceptable to the Commission in accordance with this licence;
 - (vii) *Liability Report* has the meaning as defined in condition 31;
 - (viii) *Licensee* includes, where the context permits, the Claims Manager;
 - (ix) *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;
 - (x) *Recommended Excess Amount* has the meaning as defined in condition 33(c);
 - (xi) *Reinsurance Policy* has the meaning as defined in condition 53; and
 - (xii) *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.

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.

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

Licence decisions

4. The Commission, acting under sections 103 and 104 of the SRC Act, granted a licence to the Licensee on 4 December 2017 for the period commencing on 1 July 2018 and ending on 30 June 2026 as notified by C2017G01313, published on 6 December 2017.
5. Following its commencement, the licence has been varied or extended by the Commission on:
 - (i) 9 December 2019, as notified by Notice No. 9 of 2019, Gazette reference number C2019G 01148, 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 July 2018 (Australian Eastern Standard Time) and ending at the end of 30 June 2026 (Australian Eastern Standard 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:
 - (i) occur within the period of this licence; or
 - (ii) occurred during a period prior to this licence coming into force.

Scope of licence – management of claims

8. Comcare, ABN 41 640 788 304 (**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 6 of this licence.

Part 4 – Conditions of licence

Conditions of licence

9. This 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 *Work Health and Safety Act 2011* (**the WHS Act**) and SRC Act prior to those employees becoming employees of the Licensee.

11. 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

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:
 - (i) the SRC Act, its Regulations and any applicable guidelines issued by the Commission under section 73A of the SRC Act;
 - (ii) 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
 - (iii) 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:
 - (i) must be guided by equity, good conscience and the substantial merits of the case without regard to technicalities;
 - (ii) is not required to conduct a hearing; and
 - (iii) 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:
 - (i) the Licensee has not complied with, or is likely to fail to comply with, a condition of this licence; or
 - (ii) 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
 - (iii) changes to its legal structure, ownership or control; or
 - (iv) any significant change in its employee numbers or significant change in the risk profile of the work undertaken by its employees.

Information recording, retrieval and reporting requirements

24. The Licensee must keep all material brought into existence in connection with the Licensee's operations under this Licence and the SRC Act, including but not limited to, all files, correspondence, data, manuals, policies, records, reports, opinions, audits, receipts and any other information identified by the Commission as relevant to the operation of this Licence.
 - 24.A This information may be requested in writing by the Commission with at least 14 days' notice.
 - 24.B The Licensee is to ensure the information is maintained in a form accessible by the Commission or Comcare for a period of at least seven years.

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 level of provisions in the Licensee's accounts which must be made to at least the net unbiased estimate of the mean (statistical expectation) of the Outstanding Claim Liability; and
 - (ii) contain a valuation of current Outstanding Claim Liability and the projected Outstanding Claim Liability in 12/18/24* months' time;
**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.*
 - (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 33(a);
 - (c) contain a recommendation of the maximum reinsurance policy retention amount (**Recommended Excess Amount**) referred to in the Reinsurance conditions;

- (d) make an assessment of the financial capacity of the Licensee to meet amounts, from the balance sheet, up to the Recommended Excess Amount;
 - (e) 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; and
 - (f) contain the calculations used to determine the required amount of the Guarantee pursuant to conditions 48 and 49.
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 22(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 31 to 33.
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 conditions 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).

Yearly Accounts

41. The Licensee must:
- (a) lodge with the Commission a copy of its annual report for the Financial Year prepared under the *Public Governance, Performance and Accountability Act 2013* (Cth) within 7 days after it is first tabled in Parliament; and
 - (b) include, and identify, in any report referred to in condition 40(a) provision for meeting the Licensee's Outstanding Claim Liability (current and non-current) under the SRC Act in accordance with the scope of this licence as at the end of the Financial Year to which the report relates.
42. The Licensee must ensure that:

- (i) the provision mentioned in condition 40(b) is consistent with the written evaluation in the Liability Report of the Licensee's Outstanding Claim Liability (current and non-current) for the Financial Year; and
- (ii) any apparent discrepancies in the provision mentioned in condition 40(b) and the written evaluation in the Liability Report of the Licensee's Outstanding Claim Liability (current and non-current) for the Financial Year are explained in the notes section of the financial report or information in which the provision mentioned in condition 40(b) is included and identified.

Guarantee

- 43. 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.
- 44. Subject to the exceptions in conditions 44 and 45, the Licensee must obtain a new Guarantee under condition 42 each Financial Year.
- 45. If the Commission determines that the Licensee is a low-risk licensee for a Financial Year, the Licensee is not required to obtain a new Guarantee under condition 42 that Financial Year unless:
 - (a) the required Guarantee amount for the Licensee for that Financial Year (as calculated under conditions 48 and 49) increases by \$300,000* or more from the required Guarantee amount for the Licensee for the Financial Year in which it obtained its existing Guarantee under condition 42 (as calculated under conditions 48 and 49); or
 - (b) 5 years have elapsed since the Licensee last obtained a new Guarantee under condition 42.

** Note: The \$300,000 value is subject to indexation (based on CPI) annually.*

- 46. The Licensee is not required to obtain a new Guarantee under condition 42 for a Financial Year if the required Guarantee amount for the Licensee for that Financial Year (as calculated under conditions 48 and 49) is less than or equal to the Guarantee amount of the Licensee's existing Guarantee under condition 42.
- 47. The Guarantee obtained under condition 42 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 the Guarantee conditions (conditions 42 to 52 inclusive) and specified in the Liability Report for that Financial Year; and
 - (c) obtained from a corporation that is authorised by APRA to carry on:
 - (i) 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
 - (ii) 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.

48. The Licensee must provide the original of the Guarantee to the Commission within 170 days of the start of the first Financial Year to which the Guarantee relates.
49. The Guarantee must be for an amount calculated by the actuary as the greater of:
 - (a) the 95th percentile of the Licensee's Outstanding Claim Liability under the SRC Act in accordance with the scope of this licence at the Balance Date and the addition of the Excess Amount; or
 - (b) The 95th percentile of the Licensee's projected Outstanding Claim Liability under the SRC Act in accordance with the scope of this licence in 12/18/24 months* time from the Balance Date and the addition of the Excess Amount.

**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 calculations under condition 48 are to include an allowance for the cost of administering claims under this licence and be calculated net of reinsurance recoveries.

50. In calculating the amount of the Guarantee, the Licensee must direct the actuary to:
 - (a) calculate existing and projected estimates of the Licensee's Outstanding Claim Liability under the SRC Act in accordance with the scope of this licence to the 95th 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.
51. If the Licensee obtained a Guarantee under condition 42, the Licensee may at any time provide to the Commission a new Guarantee obtained under condition 42 that, if prepared in accordance with conditions 46, 48 and 49, will replace the existing Guarantee obtained under condition 42.
52. If the Commission identifies a financial risk with respect to the suitability of the financial institution from which the Licensee has obtained its current Guarantee under condition 42 and requests, after consulting with the Licensee, that the Licensee obtain a new Guarantee under condition 42, the Licensee must:
 - (a) comply with this request within 3 months or, if applicable, an alternative timeframe specified in the request; and
 - (b) ensure that the new Guarantee is prepared in accordance with conditions 46, 48 and 49.
53. If the guarantor under a Guarantee obtained by the Licensee under condition 42 discharges its financial obligation under that Guarantee by making payment to Comcare of its total liability or amounts which when aggregated equal its total liability, Comcare must return that Guarantee to the guarantor.

Reinsurance

54. The Licensee must 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 from an insurance company that is authorised by APRA to carry on insurance business under the *Insurance Act 1973* (Cth) (**the Reinsurance Policy**).
55. The excess of loss amount applicable under the Reinsurance Policy for any single event (**the Excess Amount**) must not, unless the Commission directs otherwise, be higher than the Recommended Excess Amount.
56. The Licensee must:
 - (a) if an amended reinsurance policy or a reinsurance policy from a new provider is obtained under condition 53, provide a copy of that reinsurance policy to the actuary and the Commission within 130 days of the start of the first Financial Year to which that reinsurance policy relates;
 - (b) provide a copy of the current certificate of currency for the Reinsurance Policy to the Commission within 130 days of the start of the first Financial Year to which the certificate of currency relates;
 - (c) notify the Commission of any increases to the Excess Amount in the Reinsurance Policy; and
 - (d) only obtain a reinsurance policy under condition 53 with an excess of loss amount that exceeds the Recommended Excess Amount if the Commission provides prior approval.

Dated the 29th day of June 2021.

A handwritten signature in black ink, appearing to read 'P. Richards', with a horizontal line underneath.

Peter J Richards
Chairperson
Safety, Rehabilitation and Compensation Commission