



Safety, Rehabilitation and Compensation Act 1988

Part VIII

FLEETMASTER SERVICES PTY LTD

NOTICE OF VARIATION OF LICENCE

Notice No 21 of 2017

Background

- A. Fleetmaster Services Pty Ltd, ABN 57 106 648 293 (**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 16 October 2007.
- 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 10 December 2008 with a commencement date of 1 April 2009.
- C. The Commission, acting under subsection 108D(2) of the SRC Act, varies the conditions of the licence as follows:
 - (i) the 'Information and reporting requirements' conditions have been varied to allow both Comcare and the Commission to request the production of information (including data) and note the intended uses of this information;
 - (ii) the 'Prudential conditions' and 'Definitions' have been varied to reflect the new prudential conditions of licence adopted by the Commission; and
 - (iii) references to conditions have been updated where necessary to reflect these amendments.
- D. The variations take effect at the beginning of 1 July 2017 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.¹

Definitions

2. In this licence:
 - (a) *APRA* means the Australian Prudential Regulation Authority;
 - (b) *Balance Date* means the last day of the Financial Year immediately before the first Financial Year to which the Guarantee being obtained under condition 39 will relate;
 - (c) *Deed of Cross Guarantee* means a deed of cross guarantee approved by the Commission;
 - (d) *Deed of Personal Guarantee* means a deed of personal guarantee approved by the Commission;
 - (e) *Document* means document as that word is defined by section 2B of the *Acts Interpretation Act 1901* (Cth);
 - (f) *Excess Amount* has the meaning as defined in condition 51;
 - (g) *Financial Year* means the financial year that applies to the licensee under the *Corporations Act 2001* (Cth);
 - (h) *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;
 - (i) *Liability Report* has the meaning as defined in condition 28;
 - (j) *Licensee* includes, where the context permits, the Claims Manager and the Reviewer;
 - (k) *Outstanding Claim Liability* has the meaning as defined in the Institute of Actuaries in Australia Professional Standard 300 “Valuations of General Insurance Claims”, or any standard substituted thereof;
 - (l) *Recommended Excess Amount* has the meaning as defined in condition 30(c);
 - (m) *Reinsurance Policy* has the meaning as defined in condition 50; and
 - (n) *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.

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

Part 2 – Grant of Licence

Eligible applicant

3. The Licensee was declared to be eligible to be granted a licence under Part VIII of the SRC Act by legislative instrument dated 16 October 2007, registered as F2007L04175 on the Federal Register of Legislation on 23 October 2007.

Licence decisions

4. The Commission, acting under sections 103 and 104 of the SRC Act, granted a licence to the Licensee on 10 December 2008 for the period commencing on 1 April 2009 and ending on 30 June 2011 as notified by Notice No. 1 of 2009 in Commonwealth Gazette No. GN10 on 18 March 2009.
5. Following its commencement, the licence has been varied or extended by the Commission on:
 - (i) 15 June 2011, as notified by Notice No. 6 of 2011, Commonwealth Gazette No. GN 25 on 29 June 2011;
 - (ii) 1 October 2014, as notified by Notice No. 18 of 2014, Commonwealth Gazette C2014G01662 on 8 October 2014;
 - (iii) 2 July 2015, as notified by Notice No. 3 of 2015, Gazette reference number C2015G01076, published on 3 July 2015; and
 - (iv) 28 June 2016, as notified by Notice No. 26 of 2016, Gazette reference number C2016G00917, published on 4 July 2016.

Period of licence

6. Subject to the SRC Act, this licence is for the period commencing immediately after midnight (Australian Eastern Daylight Time) on 1 April 2009 and, in accordance with the most recent extension, ending at midnight (Australian Eastern Standard Time) on 30 June 2023 (**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 occur within the period of this licence.

Scope of licence – management of claims

8. The Licensee is authorised to manage 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.

Scope of licence – reconsiderations

9. For the purpose of any reconsiderations under Part VI of the SRC Act, except for reconsiderations of own motion of matters in respect of which the outcomes would be no less favourable to the employee than the original decisions, in respect of determinations made by the Licensee, the Licensee must arrange for the person specified below (**the Reviewer**) to carry out any reconsiderations of determinations on behalf of the Licensee:

The Reviewer: **Insurance Australia Ltd trading as CGU Self Insurance Services**, ABN: 11 000 016 722.

10. The Licensee is to enter into and maintain a written contract with the Reviewer for the performance of the Reviewer's reconsideration function and if requested to do so, give a copy of the contract to the Commission.

Part 4 – Conditions of licence

Conditions of licence

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

General conditions

Communication

12. 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.
13. 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

14. 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

15. 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.

16. 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

17. 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.
18. 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

19. 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

20. 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.
21. 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

22. 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.
23. 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.
24. 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

25. 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

26. 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.

Performance conditions

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

Prudential conditions

Liability report

28. 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.
29. The Liability Report:
- (a) must 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) 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;

- (c) be prepared drawing on any available expert advice and substantially using IAA Professional Standard 300 "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) must be prepared using the Risk Free Rate in discounting the expected future claims payments of insurance liabilities;
- (e) must be addressed by the actuary to the Commission; and
- (f) must 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.

30. 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 30(a);
- (c) contain a recommendation of the maximum reinsurance policy retention amount (**Recommended Excess Amount**) referred to in the Reinsurance conditions; and
- (d) make an assessment of the financial capacity of the Licensee to meet amounts, from the balance sheet, up to the Recommended Excess Amount; and
- (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 50; and contain the calculations used to determine the required amount of the Guarantee pursuant to conditions 45 and 46.

31. The Commission may at its discretion submit a Liability Report to a peer review process.

32. 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.

33. If any of the changes in circumstances outlined in condition 25(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 28 to 30.
34. The Commission may direct the date for provision of a Second Liability Report and/or an Updated Liability Report.
35. Unless the Commission directs otherwise, the Licensee must pay for a Second Liability Report and/or an Updated Liability Report.
36. 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).

Yearly Accounts

37. The Licensee must:
 - (a) lodge with the Commission a copy of:
 - (i) 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* (Cth) within 131 days of the end of that Financial Year;
 - (ii) 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* (Cth) (for example, in respect of the Australian Stock Exchange this would be information that must be given under Listing Rule 4.3B) within 131 days of the end of that Financial Year. 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;
 - (iii) if the Licensee is not required to report in accordance with Division 1 of Part 2M.3 of the *Corporations Act 2001*(Cth) because its parent company is required to report in accordance with Division 1 of Part 2M.3 of the *Corporations Act 2001*(Cth), 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* (Cth)within 131 days of the end of that Financial Year;
 - (iv) 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* (Cth) 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* (Cth), including having that report audited in accordance with that Part, and must give the report to the Commission within 131 days of the end of the Financial Year;
- (b) include, and identify, in any report or information referred to in condition 37(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 or information relates.
38. The Licensee must ensure that:
- (a) the provision mentioned in condition 37(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
- (b) any apparent discrepancies in the provision mentioned in condition 37(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 37(b) is included and identified.

Guarantee

39. 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 unless:
- (a) the Commission determines that the Licensee is currently a low-risk licensee;
- (b) the current required Guarantee amount for the Licensee (as calculated under conditions 45 and 46) is less than \$300,000*; and
- (c) Romaly Holdings Pty Ltd, ACN 001 094 837, has an issuer credit rating of or equivalent to a Standard and Poor's AA- or better.
- * Note: The \$300,000 value is subject to indexation (based on CPI) annually.*
40. Subject to the exceptions in conditions 41 and 42, if the Licensee is required to obtain a Guarantee under condition 39 it must obtain a new Guarantee under that condition each Financial Year.
41. 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 39 that Financial Year unless:
- (a) the required Guarantee amount for the Licensee for that Financial Year (as calculated under conditions 45 and 46) increases by \$500,000* or more from the required Guarantee amount for the Licensee for the Financial Year in which it obtained its existing Guarantee under condition 39 (as calculated under conditions 45 and 46); or
- (b) 5 years have elapsed since the Licensee last obtained a new Guarantee under condition 39.

** Note: The \$500,000 value is subject to indexation (based on CPI) annually.*

42. The Licensee is not required to obtain a new Guarantee under condition 39 for a Financial Year if the required Guarantee amount for the Licensee for that Financial Year (as calculated under conditions 45 and 46) is less than or equal to the Guarantee amount of the Licensee's existing Guarantee under condition 39.
43. The Guarantee obtained under condition 39 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 39 to 49 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.
44. 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.
45. 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 Recommended 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 Recommended 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 45 are to include an allowance for the cost of administering claims under this licence and be calculated net of reinsurance recoveries.*
46. 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.
47. If the Licensee obtained a Guarantee under condition 39, the Licensee may at any time provide to the Commission a new Guarantee obtained under condition 39 that, if

prepared in accordance with conditions 43, 45 and 46, will replace the existing Guarantee obtained under condition 39.

48. 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 39 and requests, after consulting with the Licensee, that the Licensee obtain a new Guarantee under condition 39, 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 43, 45 and 46.
49. If the guarantor under a Guarantee obtained by the Licensee under condition 39 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

50. 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**).
51. 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.
52. The Licensee must:
- (a) if an amended reinsurance policy or a reinsurance policy from a new provider is obtained under condition 50, 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 50 with an excess of loss amount that exceeds the Recommended Excess Amount if the Commission provides prior approval.

Deed of Cross Guarantee

53. The Licensee:

- (a) must at all times be a party to the Deed of Cross Guarantee in accordance with conditions 53 to 55 of this licence; and
 - (b) must not engage in any act or omission that may compromise the enforceability of the Deed of Cross Guarantee.
54. In this licence a reference to the Deed of Cross Guarantee is a reference to:
- (a) the Deed of Cross Guarantee, made on 17 June 2008, as amended or varied from time to time in accordance with its terms, to which the following were parties at the date of execution:
 - (i) Fleetmaster Services Pty Ltd, ACN 106 648 293
 - (ii) Romaly Holdings Pty Ltd, ACN 001 094 837
 - (iii) Jim Pearson Holdings Pty Ltd, ACN 001 253 729
 - (iv) Jim Pearson Transport Pty Ltd, ACN 065 187 064
 - (v) JPH1 Pty Ltd, ACN 101 619 596
 - (vi) Fleetmex Pty Ltd, ACN 101 573 666
 - (vii) James P Pty Ltd, ACN 124 779 166
 - (viii) JPH3 Pty Ltd, ACN 101 619 587
 - (ix) JPH4 Pty Ltd, ACN 101 619 578
 - (x) JPH5 Pty Ltd, ACN 102 549 119; or
 - (b) where the Commission, in its absolute discretion, notifies the Licensee in writing that another, alternative, Deed of Guarantee will satisfy the requirements of conditions 53 to 55 of this licence, that Deed.
55. In relation to the Deed of Cross Guarantee referred to in condition 53 above the Licensee must:
- (a) be a party to that Deed for at least seven (7) years following the period of this licence, as varied from time to time;
 - (b) if that Deed is amended or varied, including if:
 - (i) another entity becomes a party to that Deed; or
 - (ii) a party to that Deed ceases to be a party,provide a copy of the document amending or varying that Deed to the Commission within 30 days of the amendment or variation; and
 - (c) notify the Commission within 7 days if:
 - (i) the Australian Securities and Investments Commission informally or formally raises any issues in relation to that Deed; or
 - (ii) the Licensee becomes aware of any reason why a creditor of the Licensee may not be able to enforce that Deed.

Deed of Personal Guarantee

56. The Licensee is required to obtain a Deed of Personal Guarantee from James Gordon Pearson (the Guarantor) for the due discharge of the Licensee's liability to pay compensation and other amounts in accordance with the SRC Act and the scope of the licence.

57. The Guarantor unconditionally and irrevocably indemnifies the Commission against all losses, damages, costs, charges, liabilities and expenses which the Commission may at any time suffer or incur directly or indirectly because the Guarantor fails to pay the Licensee any of the liabilities under the Deed of Personal Guarantee when payable.

Dated the 28th day of June 2017.

Barry Sherriff
Chairperson
Safety, Rehabilitation and Compensation Commission