



Safety, Rehabilitation and Compensation Act 1988

Part VIII

Notice of Variation of Continuing Provisions of Licence - Avanteos Pty Ltd (No 20 of 2022)

Background

- A. Avanteos Pty Ltd ABN, 99 066 862 977 (**the Licensee**), was declared to be eligible to be granted a licence under Part VIII of the *Safety, Rehabilitation and Compensation Act 1988* (**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 (**the Licence**) to the Licensee on 19 March 2008 for a period commencing on 31 March 2008.
- C. The Licence was subsequently extended or varied by the Commission on:
- 18 June 2008 as notified by Notice No. 12 of 2008, Gazette reference number GN25, published on 25 June 2008;
 - 23 March 2010 as notified by Notice No. 2 of 2010, Gazette reference number GN12, published on 31 March 2010; and
 - 25 June 2014 as notified by Notice No. 8 of 2014, Gazette reference number C2014G01054, published on 1 July 2014.
 - 8 March 2017 as notified by Notice No. 1 of 2017, Gazette reference number C2017G00309, published on 17 March 2017.
- D. On 1 October 2015, the Commission acting under section 107 of the SRC Act revoked the Licence (**the Revoked Licence**) with effect on and from 12.01am on 1 October 2015.
- E. Section 107A of the SRC Act provides that regulations of the *Safety, Rehabilitation and Compensation Regulations 2002* (**SRC Regs**) may deal with the consequences of revocation of a licence under section 107 of the SRC Act.
- F. Accordingly, by virtue of regulation 15 of the SRC Regs, the licence provisions that are relevant to the performance of obligations under regulation 15(2)(b) and 15(3)(a) and (c) are taken to survive the revocation of the Licence. Those provisions are referred to below as the 'continuing provisions of licence'.
- G. As indicated by regulation 15(4) of the SRC Regs, the SRC Act continues to apply in relation to the performance of obligations under regulation 15(2)(b) and 15(3)(a) and (c).
- H. One of the continuing provisions of licence in the Revoked Licence is Prudential Condition 4.4. Prudential Condition 4.4 deals with the quantum of the guarantee (**the Guarantee**) that the Licensee is required to obtain for the due discharge of its liability to

pay compensation and other amounts under the SRC Act. It is now proposed that the Guarantee required by Prudential Condition 4.4 not be subject to a minimum amount.

Variation of continuing provisions of licence

1. The Commission, acting under section 108D(2) of the SRC Act, and for the purposes of section 108D(1) of the SRC Act, varies the continuing provisions of the Revoked Licence as follows:
 - (i) Condition 6.2 is amended to record the new Deed of Guarantee and Indemnity dated 30 September 2022 which is required to be maintained under condition 6.1.
2. The variation of this continuing provision of licence takes effect from 12.00am on 10 October 2022.
3. The Revoked Licence (as varied) is set out below.

Revoked Licence (as varied)

Part 1 – Grant and Scope of Licence

Note: Under section 46(1) of the *Acts Interpretation Act 1901*, unless the contrary intention appears, expressions used in this instrument have the same meaning as in the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act).

Eligible applicant

1. Avanteos Pty Ltd, ABN 99 066 862 977 (“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 F2007L04180 on the Federal Register of Legislative Instruments on 23 October 2007.

Grant of licence

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 19 March 2008 for the period commencing on 31 March 2008 and ending on 30 June 2010.

Period of licence

3. Subject to the SRC Act, this licence is for the period commencing on 12.01am (Australian Eastern Daylight Time) on 31 March 2008 and in accordance with the most recent extension ending at midnight (Australian Eastern Standard Time) on 30 June 2018 (“the period of this licence”).

Scope of licence – acceptance of liability

4. 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.

Note: “Employee” is defined in section 5 of the SRC Act.

Scope of licence – management of claims

5. Commonwealth Bank of Australia, ABN 48 123 123 124 (“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 4 of this licence.

Note 1: “Claim” is defined in section 99 of the SRC Act.

Note 2: “Manage”, in relation to a claim for payment of compensation and other amounts under the SRC Act, is defined in section 99 of the SRC Act to include determinations, reconsiderations and subsequent administrative action.

Conditions

6. This licence is granted subject to the conditions specified in Part 2.

Part 2 – Conditions

Definitions

7. In this part *Licensee* includes, where context permits, the Claims Manager and the Reviewer.

General conditions

Communication

8. The Licensee, when bringing employees under its self insurance licence, must provide information to those employees regarding the *Work Health and Safety Act 2011* (WHS Act) and SRC Act prior to those employees becoming employees of the Licensee.

Directions of Commission

9. 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 to the Licensee with respect to the performance by the Licensee of its functions or the exercise of its powers under the SRC Act.

Requirements

10. 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.
11. 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

12. 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.

Manner of managing claims

13. 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.

Audits

14. The Licensee must co-operate with, and give reasonable assistance to, the Commission or its representatives in respect of any audits and evaluations of the Licensee to be conducted by the Commission or its representatives.
15. The Licensee must:
 - (a) conduct at least once every year a Performance Audit of the Claims Management, Rehabilitation and WHS functions, as advised to Comcare; and
 - (b) report to the Commission as required in accordance with audit methodology as approved by the Commission or as otherwise required by the Commission.

Reviews and proceedings

16. Comcare must be informed as soon as practicable of court or tribunal proceedings in relation to a matter arising in respect of a claim managed by a Licensee under the SRC Act. The Licensee must not cause, or permit to be made on its behalf, any submission to a court or tribunal in relation to the interpretation of a provision of the SRC Act or associated transitional or consequential provisions that Comcare or the Commission requests the Licensee not to make.

Note 1: If proceedings are brought against the Licensee, subsection 108C(8) requires the Licensee to inform Comcare as soon as practicable and the court or tribunal before which the proceedings have been brought must, on application by Comcare, join Comcare as a party to the proceedings.

Note 2: Section 108D(1)(f) provides licences may include a condition that, in all circumstances or specified circumstances, the Licensee will not cause or permit to be made on its behalf to a court or tribunal any submission that Comcare or the Commission has requested the Licensee not to make.

Failure to comply with conditions or change in circumstances

17. 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 and the WHS 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

18. 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 or WHS Act in the form and at the place specified in the request.

Note: Information likely to be requested by the Commission includes information required for the Data Warehouse, the Commission's annual report, Commission Indicators, the Comparative Performance Monitor and the Return to Work Monitor.

Specific Conditions

19. The Licensee must provide to the Commission, prior to commencement of the licence, written undertakings that it will not treat employees injured before the date of commencement of the licence less favourably than employees injured on or after that date as far as management of their claims and their rehabilitation is concerned.

Claims Manager

20. The Licensee is responsible for ensuring that the Claims Manager complies with the conditions of licence.

Prudential Conditions

21. The Licensee must comply with the Prudential Conditions of Licence at Attachment A.

Performance Conditions

22. The Licensee must comply with the Performance Standards at Attachment B.

Dated the 4th day of October 2022.

Peter J Richards
Chairperson
Safety, Rehabilitation and Compensation Commission

PRUDENTIAL CONDITIONS OF LICENCE

These conditions are “the Prudential Conditions”.

1. LICENSEE CERTIFICATION

- 1.1. The principal officer of the Licensee must certify in writing to the Commission, by 30 September of each financial year, that the Licensee has:
- (a) arranged, in accordance with Prudential Condition 2, 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
 - (b) made, in accordance with Prudential Condition 3, provision in its accounts, in accordance with the estimates in the Liability Report required by Prudential Condition 2, for meeting its liabilities; and
 - (c) the capacity to meet any single claim up to the reinsurance policy retention amount (excess amount) determined in accordance with Prudential Condition 5.

2. LIABILITY REPORT

- 2.1. 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.
- 2.2. The Liability Report:
- (a) 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
 - (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; and
 - (c) be prepared drawing on any available expert advice and substantially using IAA professional standard P300, or any standard substituted therefore, as the basis of estimation, with any departure from this standard to be highlighted in the report; and
 - (d) must be addressed by the actuary to the Commission; and
 - (e) must be provided by the Licensee to the Commission by 31 August of the financial year to which it relates.
- 2.3 The Liability Report must:
- (a) 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:
 - (i) 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
 - (ii) 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.

- (b) contain a recommendation of the maximum reinsurance policy retention amount (excess amount) referred to in Prudential Condition 5; and
- (c) 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
- (d) describe the arrangements for compliance with Prudential Condition 5 and provide an assessment by the actuary of whether the arrangements are appropriate to meet the Licensee's obligation under Condition 5.1.

Note: The Commission will have regard to the matters in (b) and (c) in determining the excess amount in accordance with Prudential Condition 5.

2.4 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.

2.5 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.

2.6 The Commission may direct the date for provision of a Second Liability Report.

2.7 Unless the Commission directs otherwise, the Licensee must pay for a Second Liability Report.

2.8 If the Commission receives a Second Liability Report, it replaces the original Liability Report and:

- (a) references in Prudential Conditions 3-5 to the 'Liability Report' are to be construed as references to the Second Liability Report; and
- (b) references in Prudential Conditions 3-5 to the actuary who prepares the Liability Report are to be construed as references to the actuary who prepares the Second Liability Report.

3. YEARLY ACCOUNTS

3.1. 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* 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;

- (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* (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;
- (iii) 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;
- (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* 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;

(b) include, and identify, in any report or information referred to in Prudential Condition 3.1(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.

- 3.2. The provision mentioned in 3.1(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.
- 3.3. 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 Prudential Conditions 2.2 and 2.3.
- 3.4. It will be sufficient compliance with Prudential Condition 3.2 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 Prudential Condition is contained in the Liability Report provided to the Commission, and identifying the location of the information in that Report.

3.5 For the purposes of Prudential Condition 3.2, “actuary” means the actuary who prepares the Liability Report referred to in Prudential Condition 2.1.

4. GUARANTEE

4.1. 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.

4.2. The guarantee in respect of each financial year 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 Prudential Condition 4 and specified in the Liability Report for that financial year; and
- (c) obtained from a corporation that is authorised by the Australian Prudential Regulatory Authority (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.

4.3. The Licensee must provide the original of the guarantee to the Commission by 30 September of the financial year to which it relates.

For the purpose of this condition:

“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.

4.4. The guarantee must be for an amount calculated by the actuary as the greater of:

- (a) the 95th percentile of Outstanding Claims Liabilities at the Balance Date and the addition of one reinsurance policy retention amount specified in Prudential Condition 5; or
- (b) the 95th percentile of projected Outstanding Claims Liabilities in 24 months time from the Balance Date and the addition of one reinsurance policy retention amount specified in Prudential Condition 5.

*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

4.5. In preparing the level of guarantee, the Licensee must direct the actuary to:

- (a) 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
- (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.

5. REINSURANCE

5.1 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.

5.2 The reinsurance policy must be with an insurance company granted an authority to carry on insurance business by the Australian Prudential Regulation Authority under the *Insurance Act 1973*.

5.3 The Licensee must:

- (a) provide a copy of the reinsurance policy to the actuary and the Commission within seven days of the issuing of the new policy; and
- (b) seek the prior approval of the Commission to any reinsurance amount which is in excess of the amount previously determined by the Commission under 5.1 above.

6. DEED OF GUARANTEE

6.1 The Licensee must also ensure that a Deed of Guarantee and Indemnity from the Commonwealth Bank of Australia ABN 48 123 123 124 (the Commonwealth Bank) is in place and remains so in accordance with the conditions of licence.

6.2 In this condition, 'Deed of Guarantee and Indemnity' means the Deed of Guarantee and Indemnity, dated 30 September 2022 from the Commonwealth Bank.

6.3 The Commission grants this licence on the condition that the Deed of Guarantee and Indemnity:

- is and remains binding on the Commonwealth Bank; and
- remains in full force and effect, and is not varied,
- for the period of this licence and for at least seven (7) years following the period of this licence.

6.4 The Licensee must notify the Commission within three (3) business days if the Licensee becomes aware that any aspect of the Deed of Guarantee and Indemnity is not, or will not any time in the future be, enforceable by any beneficiary of the Deed of Guarantee and Indemnity.

6.5 The Deed of Guarantee and Indemnity includes any subsequent novation of or variation of any of those documents.

PERFORMANCE STANDARDS AND MEASURES FOR LICENSEES

The Licensee's prevention, rehabilitation and claims management systems will be consistent with these Performance Standards. The degree to which the Licensee meets the Standards will be judged against the Performance Measures.

1. COMMITMENT AND CORPORATE GOVERNANCE

Sound corporate governance is the process by which organisations are directed, controlled and held to account. The Licensee's executive will provide stewardship for its prevention, rehabilitation and claims management systems and commit adequate resources to ensure continuous improvement.

The Licensee will document its commitment to prevention, rehabilitation and claims management. This documentation will benchmark the organisation's objectives, be used to formulate strategic direction and be reviewed to ensure it remains relevant to the Licensee and strives for continuous improvement. It will be endorsed and supported at the executive level and be relevant to the organisation's overall values, vision and business objectives.

1.1 Performance Standards

1.1.1 The Licensee will

- (i) set the direction for its management systems through a documented commitment by senior executive
- (ii) establish systems that
 - recognise legislative obligations
 - promote the principle of continuous improvement and provide for effective prevention, rehabilitation and workers' compensation arrangements
 - promote communication of relevant information to employees
 - provide for internal and external accountability
 - put in place appropriate control structures to manage risk.

1.2 Performance Measures

1.2.1 There is evidence of

- (i) communication of senior executive commitment to sound prevention, rehabilitation and claims management systems

- (ii) the Licensee monitoring and satisfying legal requirements related to prevention, rehabilitation and workers' compensation
- (iii) continuous improvement of the management systems
- (iv) ongoing consultation with employees regarding prevention, rehabilitation and workers' compensation
- (v) an audit program for the prevention, rehabilitation and claims management systems.

2. PLANNING

In consultation with relevant stakeholders the Licensee develops plans to support its management systems.

2.1 Performance Standards

2.1.1 The Licensee's plans will

- (i) provide for legislative compliance
- (ii) include objectives, targets and performance measures,
- (iii) provide for prevention programs including hazard management
- (iv) provide for effective rehabilitation and equitable, efficient and effective claims management
- (v) provide for appropriate training requirements.

2.2 Performance Measures

2.2.1 There is evidence that

- (i) plans address legislative and regulatory compliance
- (ii) plans identify the Licensee's core prevention, rehabilitation and claims management activities and provide direction regarding performance outcomes
- (iii) training plans are consistent with identified requirements.

3. IMPLEMENTATION

The Licensee ensures that sufficient resources and supporting mechanisms are provided to achieve its strategic plans

3.1 Performance Standards

3.1.1 The Licensee will

- (i) allocate adequate resources to support its programs

- (ii) implement relevant training programs
- (iii) define and communicate responsibilities to relevant stakeholders
- (iv) ensure that employees are aware of their legislative rights and obligations
- (v) maintain the relevant level of reporting, records and/or documentation to support the Licensee's programs and legislative compliance
- (vi) maintain the confidentiality of information and apply legislative requirements
- (vii) implement a hazard management process that includes identification evaluation and control
- (viii) inform employees of the status of their claims
- (ix) provide employees with a reasonable opportunity to provide information or comment when claims for ongoing liability are being assessed or reviewed
- (x) ensure timely claim determinations and reviews, which are made accurately and guided by equity, good conscience and the substantial merits of each case without regard to technicalities
- (xi) ensure consultation between all parties in regards to the prevention, claims management and rehabilitation process.

3.2 Performance Measures

3.2.1 There is evidence that

- (i) health and safety, rehabilitation and claims management plans are implemented
- (ii) incidents are investigated and appropriately documented, corrective actions implemented as required, including early assessment for rehabilitation
- (iii) employees are informed of their rights in respect of health and safety, rehabilitation and claims
- (iv) employees are kept informed of the status of their claim.

4. MEASUREMENT AND EVALUATION

The Licensee measures, monitors and evaluates its performance and takes prompt corrective action when necessary.

4.1 Performance Standards

4.1.1 The Licensee will

- (i) monitor planned objectives and performance measures for core prevention, rehabilitation and claims activities
- (ii) establish an audit program to measure performance of its prevention, rehabilitation and claims management systems
- (iii) ensure that these audits are performed by competent personnel
- (iv) ensure audit outcomes are appropriately documented, actioned and reviewed at appropriate senior executive level

- (v) ensure all audits are conducted in accordance with the requirements of the Commission
- (vi) communicate to its employees on the outcomes and results of audits
- (vii) provide the Commission with reports as requested.

4.2 Performance Measures

4.2.1 There is evidence of

- (i) audits conducted by the Licensee and implementation of corrective actions
- (ii) reporting against the Licensee's own internal and the Commission's performance indicators.

5. MANAGEMENT SYSTEMS REVIEW AND IMPROVEMENT

5.1 Performance Standards

The Licensee regularly reviews and continually improves its systems.

5.1.1 The Licensee will

- (i) analyse performance outcomes against documented objectives to determine areas requiring improvement
- (ii) promote continuous improvement strategies.

5.2 Performance Measures

5.2.1 There is evidence

- (i) that the results of reviews of the Licensee's performance are used to continually improve its prevention, rehabilitation and claims management systems.