



# **Safety, Rehabilitation and Compensation Regulations 2019**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 21 March 2019

Peter Cosgrove  
Governor-General

By His Excellency's Command

Kelly O'Dwyer  
Minister for Jobs and Industrial Relations

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## Part 1—Preliminary

### 1 Name

This instrument is the *Safety, Rehabilitation and Compensation Regulations 2019*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	28 March 2019

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under the *Safety, Rehabilitation and Compensation Act 1988*.

### 4 Schedule 3

Each instrument that is specified in Schedule 3 to this instrument is amended or repealed as set out in the applicable items in that Schedule, and any other item in that Schedule has effect according to its terms.

### 5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) Commonwealth authority;
- (b) injury;
- (c) licence;
- (d) licensed authority;
- (e) licensed corporation;
- (f) licensee;
- (g) normal weekly earnings.

In this instrument:

## Section 6

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*Act* means the *Safety, Rehabilitation and Compensation Act 1988*.

***final licence:***

- (a) in relation to a licensed authority—has the meaning given by subsection 21(1); and
- (b) in relation to a licensed corporation—has the meaning given by subsection 27(1).

***former licensed authority*** has the meaning given by subsection 21(1).

***former licensed corporation*** has the meaning given by subsection 27(1).

***guarantee*** means a guarantee for the due discharge of a licensee's liability to pay compensation and other amounts under the Act that is given by a bank or other body.

Note: Former licensed authorities and former licensed corporations are, during the preservation period, taken to hold a licence that is in force for the purposes of the Act: see paragraphs 22(1)(a) and (b) and 28(1)(a) and (b).

***indexation date*** has the meaning given by subsection 8(9C) of the Act.

***manage*** has the meaning given by section 99 of the Act.

***preservation period:***

- (a) in relation to a licensed authority—has the meaning given by subsection 22(2); and
- (b) in relation to a licensed corporation—has the meaning given by subsection 28(2).

***preservation period end day:***

- (a) in relation to a licensed authority—has the meaning given by subsection 22(2); and
- (b) in relation to a licensed corporation—has the meaning given by subsection 28(2).

***preserved licence:***

- (a) in relation to a licensed authority—has the meaning given by paragraph 22(1)(a); and
- (b) in relation to a licensed corporation—has the meaning given by paragraph 28(1)(a).

***quarter*** means a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October.

## 6 Entities and principal officers

- (1) For the purposes of paragraph (c) of the definition of ***Entity*** in subsection 4(1) of the Act, each person, body, organisation or group of persons mentioned in column 1 of an item in the table in Schedule 2 to this instrument is prescribed.
- (2) For the purposes of paragraph (c) of the definition of ***principal officer***, in relation to an Entity, in subsection 4(1) of the Act, the principal officer of an Entity mentioned in column 1 of an item in the table in Schedule 2 to this

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instrument is the person from time to time holding or acting in the office mentioned in column 2 of the item.

## **7 Forms of medical treatment**

- (1) For the purposes of paragraph (i) of the definition of *medical treatment* in subsection 4(1) of the Act, therapeutic treatment by, or under the supervision of, any of the following persons who meet the requirements of subsection (2) of this section is prescribed:
  - (a) an occupational therapist;
  - (b) an optometrist;
  - (c) a podiatrist;
  - (d) a psychologist;
  - (e) a speech therapist or speech pathologist.
- (2) A person mentioned in any of paragraphs (a) to (e) in subsection (1) meets the requirements of this subsection if the person is:
  - (a) registered by a national registration authority (within the meaning of section 8 of the *Healthcare Identifiers Act 2010*); or
  - (b) if there is no such authority—a member of a relevant professional association.

## Part 2—Compensation

### 8 Prescribed index—further annual increase in normal weekly earnings after cessation of employment

For the purposes of subsection 8(9B) of the Act, the Wage Price Index (total hourly rates of pay excluding bonuses/all sectors/all Australia/original) published by the Australian Statistician is prescribed.

### 9 Manner of calculating further annual increase—indexation after cessation of employment

For the purposes of subsection 8(9D) of the Act, the further increase in normal weekly earnings referred to in subsection 8(9B) of the Act is to be calculated, to 3 decimal places and rounded up to 2 decimal places, in accordance with the following formula:

$$\left( F \times WE \right) - WE$$

where:

*F* is the greater of the following:

- (a) the number (worked out to 4 decimal places and rounded up to 3 decimal places) obtained by dividing the index number by the previous index number;
- (b) 1.000.

*index number* is the index number of the Wage Price Index mentioned in section 8 for the quarter that ended on 31 December in the year immediately before the indexation date.

*previous index number* is the index number of the Wage Price Index mentioned in section 8 for the quarter that ended on 31 December in the previous year.

*WE* is the normal weekly earnings that applied immediately before the indexation date.

Note: Under this formula, there will be a further increase in normal weekly earnings only if *F* is greater than 1.000.

### 10 Prescribed index—further annual increase in normal weekly earnings in certain other cases

For the purposes of subsection 8(9F) of the Act, the Wage Price Index (total hourly rates of pay excluding bonuses/all sectors/all Australia/original) published by the Australian Statistician is prescribed.



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**11 Manner of calculating further annual increase—indexation in certain other cases**

For the purposes of subsection 8(9G) of the Act, the further increase in normal weekly earnings referred to in subsection 8(9F) is to be calculated, to 3 decimal places and rounded up to 2 decimal places, in accordance with the following formula:

$$\left( F \times WE \right) - WE$$

where:

**F** is the greater of the following:

- (a) the number (worked out to 4 decimal places and rounded up to 3 decimal places) obtained by dividing the index number by the previous index number;
- (b) 1.000.

**index number** is the index number of the Wage Price Index mentioned in section 10 for the quarter that ended on 31 December in the year immediately before the indexation date.

**previous index number** is the index number of the Wage Price Index mentioned in section 10 for the quarter that ended on 31 December in the previous year.

**WE** is the normal weekly earnings that applied immediately before the indexation date.

Note: Under this formula, there will be a further increase in normal weekly earnings only if **F** is greater than 1.000.

## **Part 3—Approved rehabilitation program providers**

### **12 Renewal date**

For the purposes of paragraph (b) of the definition of *renewal date* in section 34 of the Act, the following intervals are prescribed:

- (a) 21 months after the first renewal date determined by the Minister under paragraph (a) of the definition of *renewal date* in section 34 of the Act;
- (b) subject to paragraphs (c) and (d), each period of 3 years after the interval mentioned in paragraph (a) of this section;
- (c) the period of 4 years after 30 June 2016;
- (d) each period of 3 years after 30 June 2020.

### **13 Application fee for initial rehabilitation program provider approval**

For the purposes of subsection 34C(2) of the Act, the prescribed fee for processing an application for initial approval of a person as a rehabilitation program provider is \$2,000.

### **14 Application fee for renewal of rehabilitation program provider approval**

For the purposes of subsection 34K(2) of the Act, the prescribed fee for processing an application for renewal of a person as a rehabilitation program provider is as follows:

- (a) if the person provides a rehabilitation program in one State or Territory—\$1,000;
- (b) if the person provides a rehabilitation program in 2 or 3 States or Territories—\$3,000;
- (c) if the person provides a rehabilitation program in 4 or more States or Territories—\$5,000.

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## **Part 4—Licences to enable Commonwealth authorities and certain corporations to accept liability for, and/or manage, claims**

### **Division 1—Application for grant of a licence**

#### **15 Application for grant of a licence**

For the purposes of paragraph 102(1)(a) of the Act, any written form of application that:

- (a) contains the particulars prescribed under section 16 of this instrument; and
- (b) contains the information, and is accompanied by the documents, mentioned in section 17 of this instrument; and
- (c) contains a statement that the applicant certifies that the particulars and information provided are correct and that any copies of documents provided are true copies of the originals of those documents; and
- (d) provides for the application to be signed by:
  - (i) if the applicant is a Commonwealth authority—the principal officer of the authority; or
  - (ii) if the applicant is an eligible corporation—the principal executive officer of the corporation;

is prescribed.

#### **16 Particulars to be included in licence application**

For the purposes of paragraph 102(1)(b) of the Act, the particulars set out in the following table are prescribed.

<b>Item</b>	<b>Particulars</b>
1	The full name of the applicant
2	The business name (if any) used by the applicant, and the date and place of registration of such business name
3	The applicant's ABN
4	If the applicant: <ol style="list-style-type: none"><li>(a) is a Commonwealth authority—the name of the applicant's principal officer; or</li><li>(b) is an eligible corporation—the name of the corporation's principal executive officer</li></ol>
5	The full street address and postal address of the applicant's principal office, and of any other registered office
6	The name, email address and telephone number of an officer nominated by the applicant for communication relating to the application
7	The URL of any website operated by the applicant in relation to the applicant's business or undertaking
8	If the applicant is a Commonwealth authority—the name of the Act by which it is established
9	If the applicant is an eligible corporation—the date and place of its incorporation

**Part 4** Licences to enable Commonwealth authorities and certain corporations to accept liability for, and/or manage, claims

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<b>Item</b>	<b>Particulars</b>
10	The names of the directors or members of the governing body (if any) of the applicant
11	An organisational chart setting out: (a) the structure of the applicant; and (b) the subsidiaries (if any) of the applicant
12	Details of any parent guarantees or indemnities
13	Details of the applicant's employees to whom the proposed licence will apply
14	The total number of the applicant's employees, disaggregated by location and structure
15	The total salary and wage expenditure of the applicant for the last financial year, disaggregated by location and structure
16	The scope of the proposed licence

### **17 Information and documents required for licence application**

For the purposes of paragraph 102(1)(c) of the Act, the information that must be contained in, and the documents that must accompany, an application are as follows:

- (a) the information and documents set out in Parts 1, 2, 3 and 4 of the table in Schedule 1 to this instrument;
- (b) for an application for a licence to accept liability—the information and documents set out in Part 5 of the table in Schedule 1;
- (c) for an application for a licence in relation to only some of the applicant's employees—the information set out in Part 6 of the table in Schedule 1;
- (d) if the applicant will be responsible for managing claims by employees—the information set out in the Part 7 of the table in Schedule 1;
- (e) for an application by a Commonwealth authority—details of its consultation with the Minister responsible for the authority about the authority's intention to apply for a licence.

## **Division 2—Suspension and revocation of licences**

### **Subdivision A—Consequences of suspension or revocation of licence— licensed authorities**

#### **18 Purpose of this Subdivision**

This Subdivision is made for the purposes of section 107A of the Act and provides for the consequences of:

- (a) the suspension, under paragraph 106(1)(a) of the Act, of a licence held by a licensed authority; and
- (b) the revocation, under paragraph 106(1)(b) or section 107 of the Act, of a licence held by a licensed authority.

#### **19 Consequences of suspension of licence of licensed authority**

##### *Application*

- (1) This section applies if a licence held by a licensed authority is suspended under paragraph 106(1)(a) of the Act.

##### *Liability*

- (2) If the licence authorises the licensed authority to accept liability under the Act for payments in respect of injury, loss or damage suffered by, or the death of, any of its employees:
  - (a) that liability is not affected by the suspension of the licence; and
  - (b) during the period of the licence suspension, Comcare may discharge a liability mentioned in paragraph (a); and
  - (c) the licensed authority must pay to Comcare the full amount of any liability discharged under paragraph (b), unless section 20 applies.

##### *Claims management*

- (3) If the licence authorises the licensed authority to accept responsibility to manage claims made by its employees:
  - (a) during the period of the licence suspension:
    - (i) the licensed authority must not manage those claims; and
    - (ii) Comcare must manage those claims in the name of the licensed authority; and
    - (iii) on receiving a claim, notice or other communication, or being served with any proceedings in relation to a claim, the licensed authority must give the claim, notice, communication or details of the proceedings to Comcare; and
    - (iv) the licensed authority must give to Comcare all documents, information and assistance reasonably required for Comcare to manage those claims; and

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- (b) the licensed authority must pay to Comcare an amount determined by Comcare to be the costs incurred by Comcare in managing claims under subparagraph (a)(ii) (including any costs incurred in transferring the claim from the licensed authority to Comcare), unless section 20 applies; and
- (c) Comcare is not liable to the licensed authority for any act or omission in managing claims under subparagraph (a)(ii).

Note: Under section 15 of the *Safety, Rehabilitation and Compensation Directions 2019*, the Commission may suspend a licence held by a licensed authority, but may not suspend a licence held by a licensed corporation.

## 20 Money payable under guarantee if licence of licensed authority suspended

### *Application*

- (1) This section applies if the Commission makes a demand for payment under a guarantee that is in force in relation to a licensed authority whose licence is suspended.

### *Dealing with guarantee money*

- (2) The money (**guarantee money**) payable in response to the demand must be paid to Comcare.
- (3) Comcare must pay all guarantee money it receives into a separate bank account until the money can be dealt with in accordance with this section.

Note: Money that is not immediately required for the purposes of Comcare may be invested: see section 59 of the *Public Governance, Performance and Accountability Act 2013* (which deals with investment by corporate Commonwealth entities).
- (4) To avoid doubt, Comcare holds guarantee money on its own account and not on behalf of the Commission or the Commonwealth.
- (5) Comcare may use guarantee money to do any of the following:
  - (a) discharge a liability mentioned in subsection 19(2);
  - (b) meet a cost mentioned in paragraph 19(3)(b);
  - (c) reimburse itself if it has discharged a liability, or met a cost, of that kind without using guarantee money.

### *Dealing with guarantee money when all outgoings paid*

- (6) If, after the end of the period of the licence suspension, Comcare determines that:
  - (a) there are unlikely to be any further outgoings of guarantee money under subsection (5); and
  - (b) there is any guarantee money remaining;Comcare must deal with the remaining money in the way provided for in the guarantee.
- (7) However, if the guarantee does not make any provision about how the remaining money is to be dealt with, Comcare must pay the remaining money:
  - (a) to the licensed authority; or
  - (b) if the licensed authority no longer exists:

- (i) in accordance with any law of the Commonwealth that makes provision about the distribution of the authority's assets; or
- (ii) in any other case—to the bank or other body that paid the money to Comcare.

## 21 Consequences of revocation of licence of licensed authority

### *Application*

- (1) This section applies if a licence (the **final licence**) held by a licensed authority (the **former licensed authority**) is revoked under paragraph 106(1)(b) or section 107 of the Act.

### *Liability*

- (2) If the final licence (as in force immediately before the revocation) authorised the former licensed authority to accept liability under the Act for payments in respect of injury, loss or damage suffered by, or the death of, any of its employees:
  - (a) the former licensed authority ceases to be liable under the Act for payments in respect of any injury, loss or damage suffered by, or death of, an employee occurring on or after the day when the licence is revoked; and
  - (b) the former licensed authority remains liable under the Act for payments in respect of injury, loss or damage suffered by, or the death of, an employee occurring before the final licence was revoked; and
  - (c) Comcare may discharge a liability mentioned in paragraph (b); and
  - (d) the former licensed authority must pay to Comcare the full amount of any liability discharged by Comcare under paragraph (c), unless section 24 applies.

### *Claims management*

- (3) If the final licence (as in force immediately before the revocation) authorised the former licensed authority to manage claims:
  - (a) the former licensed authority must not manage a claim in respect of an injury, loss or damage suffered by, or the death of, any of its employees, whenever occurring; and
  - (b) Comcare must manage any claims mentioned in paragraph (a); and
  - (c) the former licensed authority must:
    - (i) on receiving a claim, notice or other communication, or being served with any proceedings in relation to a claim—give the claim, notice, communication or proceedings to Comcare; and
    - (ii) give Comcare all documents, information and assistance reasonably required for Comcare to manage claims by employees of the former licensed authority; and
  - (d) the former licensed authority must pay to Comcare an amount determined by Comcare to be the costs incurred by Comcare in managing claims (including any costs incurred in transferring the claim from the former licensed authority to Comcare) in respect of an injury, loss or damage suffered by, or the death of, any of the former licensed authority's

**Part 4** Licences to enable Commonwealth authorities and certain corporations to accept liability for, and/or manage, claims

**Division 2** Suspension and revocation of licences

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employees that occurred while it held the final licence, unless section 24 applies.

- (4) An act done, decision made or notice or communication given, received or made by the former licensed authority in managing a claim before the day the final licence was revoked, is taken, on and after that day, to have been done, made, given or received by Comcare.

*Comcare taken to be party to proceedings*

- (5) If the former licensed authority was a party to proceedings in relation to a matter arising under the Act that had not been completed on the day of revocation, Comcare is, on and after that day, taken for all purposes to be the party to those proceedings in place of the former licensed authority.

*Act continues to apply*

- (6) Subject to this section, the Act continues to apply to the former licensed authority and its employees.
- (7) Comcare is liable under the Act for payments in respect of injury, loss or damage suffered by, or the death of, an employee of the former licensed authority occurring on or after the date of revocation.

*Continued liability to pay premiums in certain circumstances*

- (8) The former licensed authority is liable to pay premiums under the Act in respect of liability mentioned in subsection (7).

## **22 Effect of revocation—former licensed authorities**

- (1) The following provisions have effect in relation to the former licensed authority during the preservation period despite the revocation of the authority's final licence:
- (a) the former licensed authority is taken to hold a licence (the ***preserved licence***) with the same scope as the final licence held by the authority immediately before the final licence was revoked;
  - (b) the preserved licence:
    - (i) is taken to be a licence that is in force for the purposes of the Act in accordance with this Division; and
    - (ii) is subject to the same conditions as the final licence;
  - (c) the functions, powers, rights, obligations and liabilities of the former licensed authority under the Act that applied in relation to the authority immediately before the revocation of the final licence continue to apply in relation to the authority;
  - (d) unless Comcare arranges for another person to act as the rehabilitation authority for the authority's employees in accordance with section 25—the principal officer of the former licensed authority is taken to be the rehabilitation authority for the authority's employees and sections 36, 37, 38, 39, 41 and 41A of the Act apply;



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- (e) the former licensed authority is, for the purposes of section 40 of the Act, taken to be the relevant employer of the authority's employees;
  - (f) Comcare and the Commission may perform their respective functions and exercise their respective powers under the Act:
    - (i) in relation to the preserved licence as if the preserved licence were the final licence; and
    - (ii) in relation to the former licensed authority as if the former licensed authority were a licensed authority.
- (2) For the purposes of subsection (1), the *preservation period* is the period beginning on the day the final licence is revoked and ending on the day (the *preservation period end day*) determined by the Commission under subsection 23(2).
- (3) On and after the day the final licence is revoked, the Act ceases to apply to the former licensed authority and its employees, except as provided by this Subdivision.

### **23 Commission to determine end of preservation period**

- (1) A former licensed authority may, in writing, request the Commission to notify the authority when the preservation period for the authority has ended.
- (2) If the Commission receives a request under subsection (1), the Commission must determine, in writing, the preservation period end day for the former licensed authority if it is satisfied that all of the following are true:
  - (a) the former licensed authority has no remaining liability (whether actual, contingent or prospective) to pay compensation or any other amount under the Act in accordance with this section;
  - (b) the principal officer of the former licensed authority has no remaining functions, obligations or responsibilities as a rehabilitation authority under the Act in accordance with this section;
  - (c) the former licensed authority has no remaining functions, obligations or responsibilities as a relevant employer under the Act in accordance with this section.
- (3) The Commission must provide the former licensed authority with a copy of the determination as soon as practicable after making the determination.
- (4) However, if, after making the determination, the Commission becomes aware that one or more of the matters mentioned in paragraphs (2)(a), (b) and (c) is or are not true in relation to the former licensed authority:
  - (a) the Commission must revoke the determination and must notify the authority of the revocation; and
  - (b) upon revocation:
    - (i) the determination is taken never to have been made; and
    - (ii) the preservation period in relation to the authority continues to apply.
- (5) The former licensed authority may, at any time after being notified of a revocation under subsection (4), make a further request under subsection (1).

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- (6) The Commission may also make a determination under subsection (2) on its own initiative if it is satisfied that all of the matters mentioned in paragraphs (2)(a), (b) and (c) are true in relation to the former licensed authority, and if it does so:
  - (a) it must provide a copy of the determination to the former licensed authority as soon as practicable after making the determination; and
  - (b) subsection (4) applies in relation to the determination.

### **24 Money payable under guarantee if licence of licensed authority is revoked**

#### *Application*

- (1) This section applies if the Commission makes a demand for payment under a guarantee that is in force in relation to a former licensed authority.

#### *Dealing with guarantee money*

- (2) The money (**guarantee money**) payable in response to the demand must be paid to Comcare.
- (3) Comcare must pay all guarantee money it receives into a separate bank account until the money can be dealt with in accordance with this section.

Note: Money that is not immediately required for the purposes of Comcare may be invested: see section 59 of the *Public Governance, Performance and Accountability Act 2013* (which deals with investment by corporate Commonwealth entities).

- (4) To avoid doubt, Comcare holds guarantee money on its own account and not on behalf of the Commission or the Commonwealth.
- (5) Comcare may use guarantee money to do any of the following:
  - (a) discharge a liability mentioned in paragraph 21(2)(b);
  - (b) meet a cost mentioned in paragraph 21(3)(d);
  - (c) reimburse itself if it has discharged a liability, or met a cost, of that kind without using guarantee money;
  - (d) reimburse itself for the cost of any arrangements made by it under subsection 25(1) that is not paid directly to Comcare by the former licensed authority.
- (6) If Comcare has received an actuarial report assessing the total value of any amounts of a kind mentioned in paragraph (5)(a), (b) or (d) that are likely to become payable in the future, Comcare may take from the guarantee money an amount equal to the assessment.

#### *Dealing with guarantee money when all outgoings paid*

- (7) If Comcare determines that:
  - (a) there are unlikely to be any further outgoings of guarantee money under subsections (5) and (6); and
  - (b) there is any guarantee money remaining;Comcare must deal with the remaining money in the way provided for in the guarantee.

- (8) However, if the guarantee does not make any provision about how the remaining money is to be dealt with, Comcare must pay the remaining money:
- (a) to the former licensed authority; or
  - (b) if the former licensed authority no longer exists:
    - (i) in accordance with any law of the Commonwealth that makes provision about the distribution of the assets of the former licensed authority; or
    - (ii) in any other case—to the bank or other body that paid the money to Comcare.

## **25 Performance of employer functions by former licensed authority following revocation of licence**

- (1) If Comcare considers that it would be appropriate to do so, Comcare may arrange for the employer functions of a former licensed authority in relation to affected employees to be performed by a person:
- (a) whom Comcare considers suitable to perform those functions; and
  - (b) who is willing to enter into an arrangement with Comcare for the performance of the functions.
- (2) For the purposes of this section:

*affected employee* means an employee of a former licensed authority to whom a liability mentioned in paragraph 21(2)(b) relates.

*employer functions*, in relation to an affected employee, are the following:

- (a) acting as the rehabilitation authority for the employee;
- (b) acting as the relevant employer, within the meaning of subsection 40(2) of the Act, of the employee;
- (c) acting for the former licensed authority in making:
  - (i) a request for reconsideration of a determination under paragraph 62(2)(c) of the Act; or
  - (ii) an application for review of a reviewable decision under paragraph 64(1)(c) of the Act.

## **Subdivision B—Consequences of revocation of licence—licensed corporations**

### **26 Purpose of this Subdivision**

This Subdivision is made for the purposes of paragraph 107A(b) of the Act and provides for the consequences of the revocation, under paragraph 106(1)(b) or section 107 of the Act, of a licence held by a licensed corporation.

Section 27

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**27 Consequences of revocation of licence of licensed corporation**

*Application*

- (1) This section applies if a licence (the **final licence**) held by a licensed corporation (the **former licensed corporation**) is revoked under paragraph 106(1)(b) or section 107 of the Act.

*Liability*

- (2) If the final licence (as in force immediately before the revocation) authorised the former licensed corporation to accept liability under the Act for payments in respect of injury, loss or damage suffered by, or the death of, any of its employees:
- (a) the former licensed corporation ceases to be liable under the Act for payments in respect of any injury, loss or damage suffered by, or death of, an employee occurring on or after the day when the final licence is revoked; and
  - (b) the former licensed corporation remains liable under the Act for payments in respect of injury, loss or damage suffered by, or the death of, an employee occurring before the final licence was revoked.

*Claims management*

- (3) If the final licence (as in force immediately before the revocation) authorised the former licensed corporation to accept responsibility to manage claims under the Act:
- (a) the former licensed corporation must manage a claim under the Act (regardless of when the claim is made) in respect of an injury, loss or damage suffered by, or the death of, an employee occurring before the revocation of the final licence as if the final licence had not been revoked; and
  - (b) the former licensed corporation must not manage a claim under the Act in respect of any injury, loss, damage or death occurring on or after the day of revocation of the final licence; and
  - (c) the former licensed corporation remains a party to proceedings in respect of any matter arising under the Act that, on the day of revocation of the final licence, had not been completed.

**28 Effect of revocation—former licensed corporations**

- (1) The following provisions have effect in relation to the former licensed corporation during the preservation period despite the revocation of the corporation's final licence:
- (a) the former licensed corporation is taken to hold a licence (the **preserved licence**) with the same scope as the final licence held by the corporation immediately before the final licence was revoked;
  - (b) the preserved licence:
    - (i) is taken to be a licence that is in force for the purposes of the Act in accordance with this Division; and

- (ii) is subject to the same conditions as the final licence;
  - (c) the functions, powers, rights, obligations and liabilities of the former licensed corporation under the Act that applied in relation to the corporation immediately before the revocation of the final licence continue to apply in relation to the corporation;
  - (d) unless Comcare arranges for another person to act as the rehabilitation authority for the corporation's employees in accordance with section 31—the principal officer of the former licensed corporation is taken to be the rehabilitation authority for the corporation's employees and sections 36, 37, 38, 39, 41 and 41A of the Act apply;
  - (e) the former licensed corporation is, for the purposes of section 40 of the Act, taken to be the relevant employer of the corporation's employees;
  - (f) Comcare and the Commission may perform their respective functions and exercise their respective powers under the Act:
    - (i) in relation to the preserved licence as if the preserved licence were the final licence; and
    - (ii) in relation to the former licensed corporation as if the former licensed corporation were a licensed corporation.
- (2) For the purposes of subsection (1), the **preservation period** is the period beginning on the day the final licence is revoked and ending on the day (the **preservation period end day**) determined by the Commission under subsection 29(2).
- (3) On and after the day the final licence is revoked, the Act ceases to apply to the former licensed corporation and its employees, except as provided by this Subdivision.

- Note: Under subsection 108A(7) of the Act, while a licensed corporation is authorised to accept liability to pay compensation in respect of a particular injury, loss or damage suffered by, or in respect of the death of, some or all of its employees:
- (a) no law of a State or Territory relating to workers compensation applies to the licensee in respect of such injury, loss, damage or death; and
  - (b) any liability or obligation of the corporation under State or Territory law for such injury, loss, damage or death occurring before the licence came into force is unaffected.

## 29 Commission to determine end of preservation period

- (1) A former licensed corporation may, in writing, request the Commission to notify the corporation when the preservation period for the corporation has ended.
- (2) If the Commission receives a request under subsection (1), the Commission must determine, in writing, the preservation period end day for the former licensed corporation if it is satisfied that all of the following are true:
  - (a) the former licensed corporation has no remaining liability (whether actual, contingent or prospective) to pay compensation or any other amount under the Act in accordance with this section;
  - (b) the principal officer of the former licensed corporation has no remaining functions, obligations or responsibilities as a rehabilitation authority under the Act in accordance with this section;

**Part 4** Licences to enable Commonwealth authorities and certain corporations to accept liability for, and/or manage, claims

**Division 2** Suspension and revocation of licences

### Section 30

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- (c) the former licensed corporation has no remaining functions, obligations or responsibilities as a relevant employer under the Act in accordance with this section.
- (3) The Commission must provide the former licensed corporation with a copy of the determination as soon as practicable after making the determination.
- (4) However, if, after making the determination, the Commission becomes aware that one or more of the matters mentioned in paragraphs (2)(a), (b) and (c) is or are not true in relation to the former licensed corporation:
  - (a) the Commission must revoke the determination and must notify the corporation of the revocation; and
  - (b) upon revocation:
    - (i) the determination is taken never to have been made; and
    - (ii) the preservation period in relation to the corporation continues to apply.
- (5) The former licensed corporation may, at any time after being notified of a revocation under paragraph (4)(a), make a further request under subsection (1).
- (6) The Commission may also make a determination under subsection (2) on its own initiative if it is satisfied that all of the matters mentioned in paragraphs (2)(a), (b) and (c) are true in relation to the former licensed authority, and if it does so:
  - (a) it must provide a copy of the determination to the former licensed authority as soon as practicable after making the determination; and
  - (b) subsection (4) applies in relation to the determination.

### **30 Money payable under guarantee if licence of licensed corporation is revoked**

#### *Application*

- (1) This section applies if the Commission makes a demand for payment under a guarantee that is in force in relation to a former licensed corporation.

#### *Dealing with guarantee money*

- (2) The money (**guarantee money**) payable in response to the demand must be paid to Comcare.
- (3) Comcare must pay all guarantee money it receives into a separate bank account until the money can be dealt with in accordance with this section.

Note: Money that is not immediately required for the purposes of Comcare may be invested: see section 59 of the *Public Governance, Performance and Accountability Act 2013* (which deals with investment by corporate Commonwealth entities).

- (4) To avoid doubt, Comcare holds guarantee money on its own account and not on behalf of the Commission or the Commonwealth.
- (5) Comcare may take from the guarantee money:
  - (a) any amounts needed:
    - (i) to discharge any liability mentioned in paragraph 27(2)(b) that Comcare decides to discharge; and

- (ii) to meet claims management costs, for any claims mentioned in paragraph 27(3)(a) (*relevant claims*) that Comcare decides to manage or arrange to be managed, that are not paid directly to Comcare by the former licensed corporation; and
- (iii) to enable Comcare to meet the cost of any arrangement mentioned in subsection 31(1) that Comcare decides to make; and
- (b) if Comcare has received an actuarial report assessing the total value of any amounts needed for a purpose mentioned in paragraph (a) that are likely to become payable in the future—an amount equal to the assessment.

*Dealing with guarantee money when all outgoings paid*

- (6) If Comcare determines that:
  - (a) there are unlikely to be any further outgoings of guarantee money under subsection (5); and
  - (b) there is any guarantee money remaining;Comcare must deal with the remaining money in the way provided for in the guarantee.
- (7) However, if the guarantee does not make any provision about how the remaining money is to be dealt with, Comcare must pay the remaining money:
  - (a) to the former licensed corporation; or
  - (b) if the former licensed corporation no longer exists:
    - (i) in accordance with any law of the Commonwealth that makes provision about the distribution of the assets of the former licensed corporation; or
    - (ii) in any other case—to the bank or other body that paid the money to Comcare.

*Comcare may manage relevant claims*

- (8) Comcare may decide:
  - (a) to manage relevant claims; or
  - (b) to arrange for some, or all, relevant claims to be managed by a person:
    - (i) whom it considers suitable to manage the claims; and
    - (ii) who is willing to enter into an arrangement with Comcare for the management of the claims.
- (9) If Comcare manages a relevant claim under paragraph (8)(a), Comcare must determine an amount as the costs incurred by Comcare in managing the claim.
- (10) Each of the following is a *claims management cost*:
  - (a) the cost of an arrangement mentioned in subparagraph (8)(b)(ii);
  - (b) the amount mentioned in subsection (9);
  - (c) the amount determined by Comcare as the costs incurred by Comcare in transferring the claim from the former licensed corporation to Comcare.

*Former licensed corporation must notify Comcare of relevant claims received*

- (11) The former licensed corporation must:

**Part 4** Licences to enable Commonwealth authorities and certain corporations to accept liability for, and/or manage, claims

**Division 2** Suspension and revocation of licences

## Section 31

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- (a) on receiving a claim, notice or other communication, or being served with any proceedings in relation to a claim—give the claim, notice, communication or proceedings to Comcare; and
- (b) give Comcare all documents, information and assistance reasonably required for Comcare to manage the relevant claim or proceedings.

### **31 Performance of employer functions by former licensed corporation following revocation of licence**

- (1) If Comcare considers that it would be appropriate to do so, Comcare may arrange for the employer functions of a former licensed corporation in relation to affected employees to be performed by a person:
  - (a) whom Comcare considers suitable to perform those functions; and
  - (b) who is willing to enter into an arrangement with Comcare for the performance of the functions.
- (2) For the purposes of this section:

*affected employee* means an employee of a former licensed corporation to whom a liability mentioned in paragraph 27(2)(b) relates.

*employer functions*, in relation to an affected employee, means either or both of the following:

- (a) acting as the rehabilitation authority for the affected employee;
- (b) acting as the relevant employer, within the meaning of subsection 40(2) of the Act, of the affected employee.

### **Subdivision C—Compensation for acquisition of property**

#### **32 Compensation for acquisition of property**

- (1) If the payment of money by Comcare under subsection 20(6) or (7), 24(7) or (8) or 30(6) or (7) would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia or the Supreme Court of a State or Territory for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.



## **Part 5—Application, saving and transitional provisions**

### **Division 1—Provisions for this instrument as originally made**

#### **33 Definitions**

In this Division:

*commencement day* means the day this instrument commences.

*old regulations* means the *Safety, Rehabilitation and Compensation Regulations 2002*, as in force immediately before the commencement day.

#### **34 Pre-commencement application for grant of a licence**

- (1) This section applies in relation to an application by an eligible applicant for the grant of a licence in accordance with section 102 of the Act if:
  - (a) the application was made before the commencement day; and
  - (b) immediately before that day, a decision on the application has not been made.
- (2) Despite the repeal of the old regulations, Part 4 of, and Schedules 1, 2 and 3 to, those regulations continue to apply in relation to the application as if the repeal had not happened.

#### **35 Suspension and revocation of licences**

- (1) This section applies in relation to the suspension or revocation of a licence if the licence was suspended or revoked before the commencement day.
- (2) Despite the repeal of Part 5 of the old regulations, that Part continues to apply in relation to the suspension or revocation on or after the commencement day as if the repeal had not happened.

Clause 1

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## Schedule 1—Information and documents for licence applications

Note: See section 17.

### 1 Information and documents for licence applications

The following table sets out the information that must be contained in, and the documents that must accompany, an application for the grant of a licence.

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#### Part 1—Finance and insurance

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Item	Information or documents
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|---|--|
| 1 | A summary of financial statements:<br>(a) if the applicant has been established for 5 years or more—for the last 5 years; or<br>(b) if the applicant has been established for less than 5 years—for the period since the applicant was first established or incorporated   |
| 2 | Copies of full annual reports and audited financial statements:<br>(a) if the applicant has been established for 5 years or more—for the last 5 years; or<br>(b) if the applicant has been established for less than 5 years—for the period since the applicant was first established or incorporated  |
| 3 | A copy of the applicant's consolidated financial statements for the year to date   |
| 4 | If staff are not currently covered under the Act—details of the applicant's current arrangements to meet workers' compensation liabilities   |
| 5 | A statement by:<br>(a) the directors or members of the governing body (if any); or<br>(b) if there are no directors or governing body—the principal officer;<br>of any event or likely event that may affect the applicant's suitability to hold a licence, including details of any likely change to the legal structure or ownership of the applicant and the effect of any such change on the workers' compensation entitlements of the applicant's staff |
| 6 | A statement by a Fellow of the Institute of Actuaries of Australia of the liabilities that the applicant is likely to incur over the first 12 months of the period of the licence  |
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#### Part 2—Consultation

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Item	Information or documents
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| 7 | Evidence that the applicant has consulted staff about the applicant's intention to apply for a licence. Examples of such consultation include the following:<br>(a) any written notice to staff or staff representatives of that intention;<br>(b) written responses to the notices;<br>(c) minutes of any consultative meetings |
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#### Part 3—Rehabilitation management

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Item	Information or documents
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| 8 | The proposed arrangements for the rehabilitation and return to work of injured staff |
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**Part 3—Rehabilitation management****Item Information or documents**

9	Evidence of the applicant's rehabilitation policy
10	The existing or proposed arrangements for ensuring that management and staff of the applicant are aware of their rights and responsibilities in relation to rehabilitation
11	The proposed number, location, classification and expertise of staff of the applicant with responsibility for rehabilitation case management
12	The applicant's proposed arrangements for training staff who have responsibility for rehabilitation case management
13	Evidence of the applicant's policy in relation to the redeployment of injured staff
14	A report of the applicant's performance in relation to injured staff rehabilitation and return to work programs during the 12 months before the date of the application

**Part 4—Preventive measures and work health and safety management systems****Item Information or documents**

15	Evidence of the applicant's policy in relation to work health and safety
16	The applicant's risk profile, including documentation of risk management strategies that address the applicant's key risks and preventive measures for identified key risks
17	Details of every notifiable incident, compliance measure and conviction under the <i>Work Health and Safety Act 2011</i> , or a corresponding WHS law (within the meaning of the <i>Work Health and Safety Act 2011</i> ), in relation to the applicant's business or undertaking occurring in the period of 5 years preceding (and including) the date of the application
18	Details of the applicant's work health and safety management system

**Part 5—Proposed arrangements to secure liabilities****Item Information or documents**

19	Whether, for the purpose of securing its liabilities under the Act, the applicant: <ol style="list-style-type: none"> <li>(a) will either:           <ol style="list-style-type: none"> <li>(i) arrange for a guarantee acceptable to the Commission to be provided; or</li> <li>(ii) arrange for a guarantee acceptable to the Commission to be provided and secure appropriate reinsurance or some other form of excess of loss insurance; or</li> </ol> </li> <li>(b) will lodge securities guaranteed by the Commonwealth or a State or Territory and secure appropriate reinsurance or some other form of excess of loss insurance; or</li> <li>(c) will arrange for a guarantee acceptable to the Commission to be provided and lodge securities guaranteed by the Commonwealth or a State or Territory and secure appropriate reinsurance or some other form of excess of loss insurance; or</li> <li>(d) will establish a captive insurance company (as a wholly owned subsidiary), incorporated or to be incorporated in Australia</li> </ol>
20	If the applicant states that it will arrange for a guarantee acceptable to the Commission to be provided and, if required, secure appropriate reinsurance or some other form of excess of loss insurance: <ol style="list-style-type: none"> <li>(a) details of the proposed guarantee and reinsurance or excess of loss arrangements, including the name of the issuing body, name of the insurer and amounts of the guarantee and reinsurance or excess of loss insurance; and</li> <li>(b) a copy of the proposed guarantee and reinsurance or excess of loss policy</li> </ol>
21	If the applicant states that it will lodge securities guaranteed by the Commonwealth or a State

## Schedule 1 Information and documents for licence applications

### Clause 1

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#### Part 5—Proposed arrangements to secure liabilities

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Item	Information or documents
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|    | or Territory and secure appropriate reinsurance or some other form of excess of loss insurance:<br>(a) details of the nature of the proposed securities and reinsurance or excess of loss arrangements, including the name of the insurer and face value of the securities and amount of reinsurance or excess of loss insurance; and<br>(b) a copy of the proposed reinsurance or excess of loss policy |
| 22 | If the applicant states that it will arrange for a guarantee acceptable to the Commission to be provided and lodge securities guaranteed by the Commonwealth or a State or Territory and secure appropriate reinsurance or excess of loss arrangements, the information and documents mentioned in table items 20 and 21   |
| 23 | If the applicant states that it will establish a captive insurance company:<br>(a) the name or proposed name of the captive insurance company; and<br>(b) the date when, and place where, the captive insurance company was incorporated or is proposed to be incorporated; and<br>(c) a copy of the proposed contract between the applicant and the captive insurance company.                          |
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Note: A captive insurance company mentioned in items 19 and 23 will be subject to the *Insurance Act 1973*, the *General Insurance Supervisory Levy Imposition Act 1998* and to regulation by the Australian Prudential Regulation Authority under the *Australian Prudential Regulation Authority Act 1998* and the *Insurance Act 1973*.

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#### Part 6—Staff to whom the licence will relate

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Item	Information or documents
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| 24 | A description of the applicant's staff to whom the licence will relate, disaggregated by location and structure |
| 25 | The number of the applicant's staff to whom the licence will relate, disaggregated by location and structure    |
| 26 | Details of the workers' compensation arrangements that are to apply to the applicant's other staff              |
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#### Part 7—Claims management and benefit delivery

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Item	Information or documents
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| 27 | Whether the applicant proposes to manage claims by staff, or whether the applicant proposes to engage another person for that purpose  |
| 28 | If the applicant proposes to engage another person to manage claims:<br>(a) the name of the person to be engaged; and<br>(b) a statement of capacity and credentials of the person to be engaged and of the arrangements proposed for the management of claims by the person |
| 29 | The proposed number, location, classification and expertise of staff of the applicant who will manage claims   |
| 30 | The applicant's proposed administrative procedures for ensuring that staff are aware of their rights and of the process for lodging claims for compensation  |
| 31 | The applicant's proposed procedures for lodging and deciding claims for compensation   |
| 32 | The applicant's proposed administrative and financial limitations for each level of claim managers   |
| 33 | The applicant's proposed arrangements for training claims management staff   |
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**Part 7—Claims management and benefit delivery**

<b>Item</b>	<b>Information or documents</b>
34	Details of the applicant's system that will be used to manage and monitor claims and to provide management information on the performance of the claims management function
35	The applicant's proposed arrangements for developing and implementing policy, practices and procedures, including arrangements for consulting staff
36	The applicant's proposed arrangements for ensuring the confidentiality and security of claims management information in individual claims, including: <ul style="list-style-type: none"> <li>(a) whether the applicant is subject to the Australian Privacy Principle or any approved privacy code under the <i>Privacy Act 1988</i>; and</li> <li>(b) evidence of the applicant's policy in relation to dealing with personal information</li> </ul>
37	The applicant's proposed policy on the use of covert surveillance in claims management
38	The applicant's proposed arrangements and procedures for the reconsideration and review of decisions, including: <ul style="list-style-type: none"> <li>(a) the location, classification and expertise of persons who will have responsibility for those functions; and</li> <li>(b) the situation of those persons within the applicant or external agency in relation to the primary decision makers</li> </ul>
39	The applicant's proposed procedures for paying compensation to injured staff, dependants of deceased staff, providers of medical treatment and other recipients
40	How the timely processing of decisions will be assured by the applicant
41	The administrative practices that will be put in place by the applicant to maintain confidentiality of claims payment information and to restrict access to claims and payment information
42	Details of the applicant's data management system to be used and data to be kept
43	The proposed number, location, classification and expertise of staff of the applicant who will perform the claims payment function

Clause 1

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## Schedule 2—Entities and principal officers

Note: See section 6.

### 1 Entities and principal officers

The following table sets out:

- (a) the persons, bodies, organisations or group of persons that are prescribed for the purposes of paragraph (c) of the definition of *Entity* in subsection 4(1) of the Act; and
- (b) the person that is prescribed as the principal officer of each Entity for the purposes of paragraph (c) of the definition of *principal officer* in subsection 4(1) of the Act.

	Column 1	Column 2
Item	Entity	Principal Officer of Entity
1	Australian Federal Police	Commissioner of Police
2	Australian Signals Directorate	Director-General of the Australian Signals Directorate
3	Australian Secret Intelligence Service	Director-General of the Australian Secret Intelligence Service
4	Australian Security Intelligence Organisation	Director-General of Security
5	Commonwealth Grants Commission	Chairperson
6	High Court of Australia	Chief Executive and Principal Registrar
7	Office of Official Secretary to the Governor-General	Official Secretary

## **Schedule 3—Repeals**

### *Safety, Rehabilitation and Compensation Regulations 2002*

#### **1 The whole of the instrument**

Repeal the instrument.