

**Applying for a
Ministerial Declaration of Eligibility
to self-insure under
the Comcare Scheme**

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What is self-insurance?

An employer who self-insures for workers' compensation makes provision in its accounts to cover possible claims and manages all claims made by its own workforce, either directly or through an outsourcing arrangement with an external claims manager.

Self-insurance under the Comcare scheme

The *Safety, Rehabilitation and Compensation Act 1988* allows certain Commonwealth authorities and corporations to apply to the Safety, Rehabilitation and Compensation Commission for a licence to self-insure their workers' compensation liabilities and manage claims. To become a licensee, an employer must meet strict prudential and financial requirements and is obliged to adhere to compliance measures, including performance standards and reporting requirements.

For businesses, self-insurance under the Comcare scheme allows for coverage under one set of workers' compensation arrangements nationally, removing the regulatory burden of complying with the requirements of multiple workers' compensation schemes. Coverage under the Comcare scheme also removes the variations in compensation payable and administration requirements which currently exist because of coverage across multiple states and territories.

Becoming a self-insurer under the Comcare scheme

Eligibility for self-insurance

There are two main eligibility requirements to become a self-insurer under the Comcare scheme:

1. An applicant must be declared eligible by the Minister for Employment under section 100 of the *Safety Rehabilitation and Compensation Act 1988* to apply for a licence to self-insure;
2. An applicant must then apply to the Safety, Rehabilitation and Compensation Commission for a self-insurance licence. During this process, it must demonstrate that it is, and would be capable of, meeting its claims liabilities as and when they fall due, together with meeting obligations in regard to injury prevention, claims management and the rehabilitation of employees.

Steps to becoming a self-insurer

Step 1: Lodging an application for a Ministerial declaration of eligibility

The first step in the application process is to lodge a written application with the Minister for Employment for a declaration of eligibility. Declarations are only made for an individual company and cannot be granted for a group of companies. Each company within a group must seek a separate declaration.

To receive a declaration, applicants must:

1. demonstrate that the applicant corporation is in competition with a Commonwealth authority or former Commonwealth authority; and
2. demonstrate that it would be desirable for employees of the applicant to be insured under the Comcare scheme, by addressing certain Public Policy Principles.

The Department of Employment provides advice to the Minister on the competition requirement and Public Policy Principles to inform the Minister's decision on declaring an organisation eligible to apply for a self-insurance licence. Further information on these assessments is available under the *Ministerial Declaration of Eligibility* chapter.

Unsuccessful applications may seek a review of the decision under the *Administrative Decisions (Judicial Review) Act 1977*.

Step 2: Applying for a self-insurance licence

Once an applicant has been declared eligible to apply, it must then submit a full written application with the required documentation to the Safety, Rehabilitation and Compensation Commission for approval as a self-insurer under the *Safety, Rehabilitation and Compensation Act 1988*. In assessing the application the Commission will have regard to the information contained in the application, as well as any further information or matter that the Commission considers relevant. The applicant must pay a licence application fee which will reflect the costs involved in assessing the licence application.

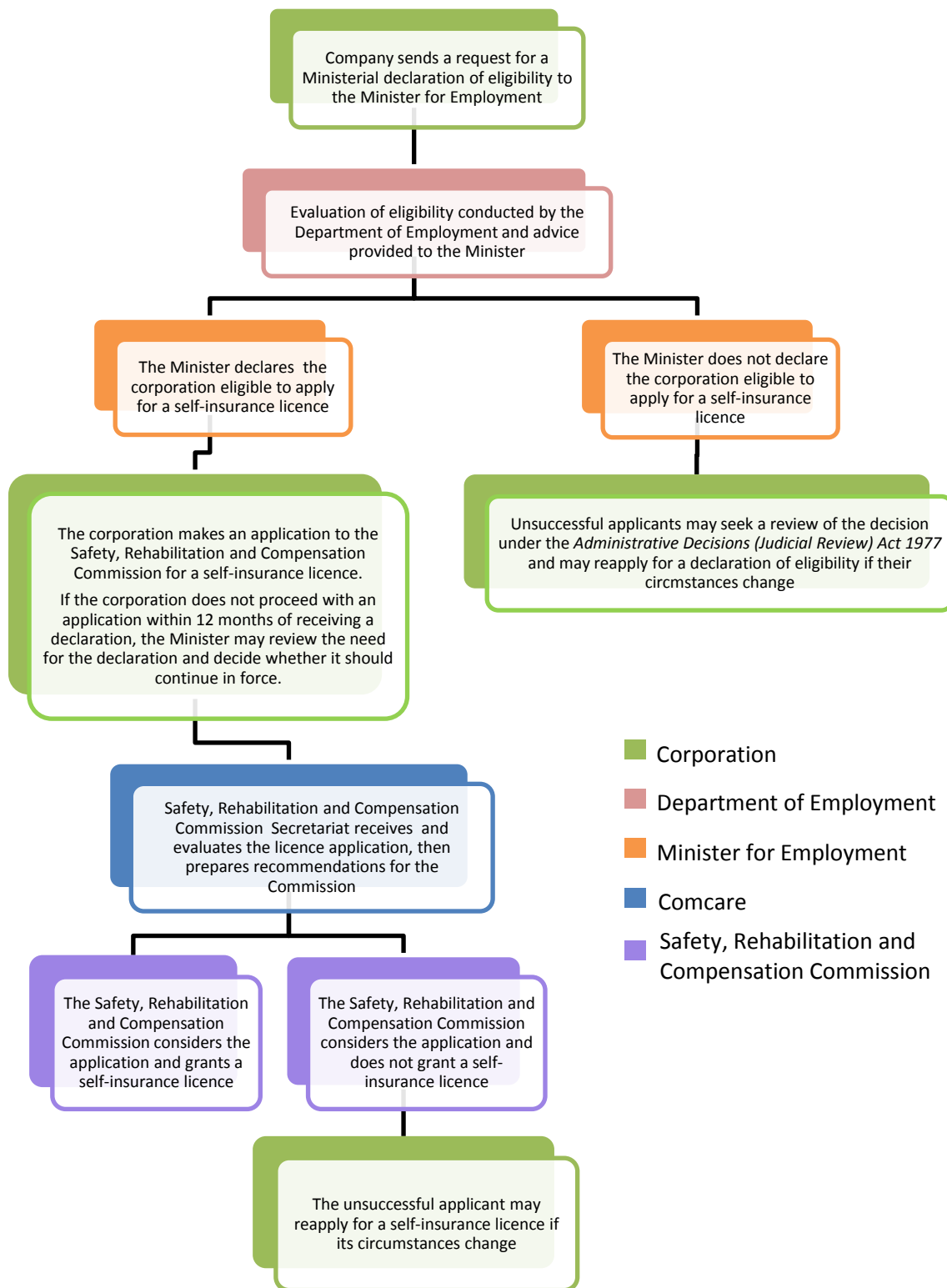
More detailed information on the requirements for a licence application, licence application fees and how the application is assessed is available at www.srcc.gov.au.

Step 3: Granting a self-insurance licence

Where the Commission decides to grant a self-insurance licence, the applicant is notified in writing of the outcome of the decision and the licence notice is published in the Commonwealth gazette (which is available at www.comlaw.gov.au/content/gazettes). Licences, including an initial licence, are granted for a period of up to eight years. In granting a licence, and each year thereafter, the Commission will also determine the annual licence fee that will apply to the applicant to cover the costs incurred by the Commission and Comcare in carrying out their respective functions of regulation under the *Safety, Rehabilitation and Compensation Act 1988*.

The Commission may, at any time while a licence is in force and on the written application of the licensee, vary the scope of the licence or extend its term. At any time while the licence is in force the Commission may also vary the conditions of the licence or revoke a licence if it considers it appropriate to do so.

Self-insurance process flowchart



Ministerial Declaration of Eligibility

Competition test

Section 100 of the *Safety, Rehabilitation and Compensation Act 1988* provides that the Minister for Employment may, but is not required to, declare a corporation eligible to be granted a licence for the purposes of the Act if the following two tests are met:

- 1) The corporation is carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority; and
- 2) The Minister is satisfied that it would be desirable for the *Safety, Rehabilitation and Compensation Act 1988* to apply to employees of that corporation.

“Competition” as it relates to section 100 of the Act has a limited scope, requiring the current or former Commonwealth authority and the applicant corporation to compete for demand for their respective goods or services in a market or industry as rivals for the same customers. Two entities operating in the same industry do not necessarily carry on business in competition with each other; it is relevant whether they display rivalrous market behaviour.

The size and scope of a “market” is dependent on the market participants (producers and consumers) and the nature of the goods and services. Determining whether substitution of goods and services can, and does, occur is relevant to defining a market.

The *Safety, Rehabilitation and Compensation Act 1988* is available at www.comlaw.gov.au.

Minister's Guidelines for assessing section 100 applications

The Minister's Guidelines for assessing section 100 applications are intended to assist in consistent decision-making under the provision and to provide guidance to current and potential applicants.

The Guidelines stipulate that the Minister for Employment may give consideration to areas of competition and Public Policy Principles in deciding whether it is desirable for particular employers to be self-insurers under the *Safety, Rehabilitation and Compensation Act 1988*.

The Guidelines further describe competition, with respect to:

- the market in which the applicant and the Commonwealth authority operate, including the composition of the market and/or the market share of the applicant and the Commonwealth authority; and
- the substitutability between the goods and services provided/produced by the applicant and those of the Commonwealth authority.

In addition to assessing competition issues, the Guidelines also evaluate broad Public Policy Principles, including:

- the likely impact on the integrity of the Commonwealth workers' compensation scheme;
- the likely impact on the operations of the state and territory workers' compensation schemes; and
- the scope of the corporation's operation across jurisdictions (based on a minimum threshold of two jurisdictions).

Assessment against the Guidelines is not intended to be exhaustive and corporations are free to bring to the attention of the Minister any further issues related to their application.

The Minister's Guidelines for assessing section 100 applications are available at www.employment.gov.au.

Commonwealth authorities

Definition of “Commonwealth authority”

A “Commonwealth authority” for the purposes of the *Safety, Rehabilitation and Compensation Act 1988* includes:

- a body corporate that is incorporated for a public purpose by a law of the Commonwealth;
- a body corporate that is incorporated under a Commonwealth, State or Territory law, in which the Commonwealth has a controlling or substantial interest and which has been declared by the Minister to be a Commonwealth authority; and
- the Australian Capital Territory Government.

The *Safety, Rehabilitation and Compensation Act 1988* distinguishes between Commonwealth authorities and other bodies, including Commonwealth “entities” (which includes Departments or Agencies which are not Commonwealth authorities).

Current Commonwealth authorities

The following is a list of Commonwealth authorities. Applicants are encouraged to conduct their own research in identifying current and former Commonwealth authorities with which they may be in competition. Please note that the list may be subject to change.

Aboriginal Hostels Limited*
ACT Government
Airservices Australia
Anindilyakwa Land Council
Army and Air Force Canteen Service Board of Management
Australian Broadcasting Corporation
Australian Commission on Safety and Quality in Health Care
Australian Crime Commission
Australian Curriculum, Assessment and Reporting Authority
Australian Film, Television and Radio School
Australian Financial Security Authority
Australian Grape and Wine Authority
Australian Hearing
Australian Institute of Aboriginal and Torres Strait Islander Studies

Australian Institute of Health and Welfare
Australian Institute of Marine Science
Australian Maritime Safety Authority
Australian National Maritime Museum
Australian National University
Australian Nuclear Science and Technology Organisation
Australian Postal Corporation (Licenced self-insurer)**
Australian Pesticides and Veterinary Medicines Authority
Australian Rail Track Corporation Ltd*
Australian Reinsurance Pool Corporation
Australian Renewable Energy Agency
Australian Strategic Policy Institute Limited*
Australian Sports Commission
Australian War Memorial
Central Land Council
Civil Aviation Safety Authority
Clean Energy Finance Corporation
Coal Mining Industry Long Service Leave Funding Corporation
Comcare
Commonwealth Scientific and Industrial Research Organisation
Commonwealth Superannuation Corporation
Cotton Research and Development Corporation
Creative Partnerships Australia*
Defence Housing Australia
Director of National Parks
Export Finance and Insurance Corporation
Fair Work Ombudsman
Fisheries Research and Development Corporation
Food Standards Australia New Zealand
Grains Research and Development Corporation
Independent Hospital Pricing Authority
Indigenous Business Australia
Indigenous Land Corporation
Infrastructure Australia

Murray-Darling Basin Authority
National Disability Insurance Agency
National Film and Sound Archive
National Gallery of Australia
National Health Performance Authority
National Library of Australia
National Museum of Australia
National Offshore Petroleum Safety and Environmental Management Authority
National Portrait Gallery of Australia
National Transport Commission
NBN Co*
Northern Land Council
Note Printing Australia Ltd
Reserve Bank of Australia (Licenced self-insurer)**
Royal Australian Air Force Veterans' Residences Trust
Royal Australian Air Force Welfare Trust Fund
Royal Australian Navy Central Canteens Board
Rural Industries Research and Development Corporation
Screen Australia
Special Broadcasting Service
The Australia Council for the Arts
Tiwi Land Council
Torres Strait Regional Authority
Tourism Australia
Wreck Bay Aboriginal Community

*Commonwealth Companies. A 'Commonwealth company' is defined by section 89 of the *Public Governance, Performance and Accountability Act 2013* as a Corporations Act company that the Commonwealth controls. Whether an entity is a Commonwealth Company is a separate question from whether or not they are Commonwealth authorities for the purposes of the SRC Act.

**Australian Postal Corporation and the Reserve Bank of Australia have self-insurance licences under the SRC Act but also are Commonwealth Authorities.

Key Contacts

For more information on Ministerial declarations of eligibility please contact:

The Department of Employment

Director, Workers' Compensation Policy Team

Phone: 1300 488 064

Email: WorkersCompensationPolicy@employment.gov.au

Written applications for a Ministerial declaration of eligibility should be lodged with:

Senator the Hon Michaelia Cash

Minister for Employment

Parliament House

CANBERRA ACT 2600

For more information on self-insurance licences please visit:

The Safety, Rehabilitation and Compensation Commission website

www.srcc.gov.au

The Comcare website

www.comcare.gov.au

Appendix 1: Ministerial Declaration of Eligibility

Application Form

	Question	Governing Provision									
1	<p>Provide details demonstrating that the applicant is a corporation, including: corporation's name(s); previous trading names (if any); ABN(s); ACN(s); corporate structure (eg, parent/subsidiary companies) and legal status of each corporation; and financial relationship between corporations.</p> <p><i>The applicant must be a corporation. If the applicant is a group of corporations, the declaration must be sought in the name of the employing corporation. If there are a number of employing corporations within the group, each corporation must apply for a declaration and be assessed on its own merits.</i></p>	s 100(1)									
2	<p>Is the applicant <i>(mark X in the applicable box)</i>:</p> <table border="1" data-bbox="256 1218 1241 1541"> <tbody> <tr> <td data-bbox="256 1218 304 1326">a)</td> <td data-bbox="309 1218 1166 1326">A Commonwealth authority that is about to cease to be a Commonwealth authority? <i>If yes, skip ahead to Question 3.</i></td> <td data-bbox="1171 1218 1241 1326"><input type="checkbox"/></td> </tr> <tr> <td data-bbox="256 1332 304 1440">b)</td> <td data-bbox="309 1332 1166 1440">A corporation that was previously a Commonwealth authority? <i>If yes, skip ahead to Question 3.</i></td> <td data-bbox="1171 1332 1241 1440"><input type="checkbox"/></td> </tr> <tr> <td data-bbox="256 1447 304 1541">c)</td> <td data-bbox="309 1447 1166 1541">A corporation that is carrying on business in competition with a Commonwealth authority or a previous Commonwealth authority?</td> <td data-bbox="1171 1447 1241 1541"><input type="checkbox"/></td> </tr> </tbody> </table>	a)	A Commonwealth authority that is about to cease to be a Commonwealth authority? <i>If yes, skip ahead to Question 3.</i>	<input type="checkbox"/>	b)	A corporation that was previously a Commonwealth authority? <i>If yes, skip ahead to Question 3.</i>	<input type="checkbox"/>	c)	A corporation that is carrying on business in competition with a Commonwealth authority or a previous Commonwealth authority?	<input type="checkbox"/>	s 100(1)(a) – (c)
a)	A Commonwealth authority that is about to cease to be a Commonwealth authority? <i>If yes, skip ahead to Question 3.</i>	<input type="checkbox"/>									
b)	A corporation that was previously a Commonwealth authority? <i>If yes, skip ahead to Question 3.</i>	<input type="checkbox"/>									
c)	A corporation that is carrying on business in competition with a Commonwealth authority or a previous Commonwealth authority?	<input type="checkbox"/>									
2A	<p>List the Commonwealth authority/ies or the former Commonwealth authority/ies that the applicant is carrying on business in competition with.</p> <p><i>This form of competition requires the current or former Commonwealth authority and the applicant corporation to compete for demand for their respective goods and services in a market or industry as rivals for the same customers.</i></p>	s 100(1)(c)									

2B	<p>Describe how the applicant is carrying on business in competition with the Commonwealth authority (or former Commonwealth authority) listed in 2A.</p>	s 100(1)(c)
2C	<p>Provide details of the market in which the applicant and the Commonwealth authority (or former Commonwealth authority) operate, including the composition of the market (<i>Please refer to the competition test information in the package</i>).</p>	Guidelines
2D	<p>Provide details of the substitutability between the goods and services provided/produced by the applicant and those of the competing Commonwealth authority (or former Commonwealth authority).</p>	Guidelines
3	<p>Provide details of the applicant's current workers' compensation arrangements, including the total number of employees in each state or territory and if the corporation currently pays premiums or self-insures under each state or territory scheme (<i>Please note the minimum threshold of two jurisdictions as stated in the Minister's Guidelines</i>).</p>	Guidelines
4	<p>Provide details of any event or likely event that may affect the applicant's suitability to be declared eligible to apply for a self-insurance licence, including details of any change to the legal structure or ownership of the applicant.</p>	Guidelines

5	Provide details of the likely impact on the corporation to the grant of a licence (eg, the benefits of one set of workers' compensation arrangements nationally. This may be an estimated cost in terms of reduction in compliance burden and/or administrative savings).	Guidelines

Written applications and supporting documents should be lodged with:

Senator the Hon Michaelia Cash
Minister for Employment
Parliament House
CANBERRA ACT 2600