

MINISTER'S GUIDELINES FOR ASSESSING SUBSECTION 100(1) APPLICATIONS

Australian Government's Workers' Compensation Scheme Eligibility for Coverage for Non-Commonwealth Corporations

Background

1. Subsection 100(1) of the *Safety, Compensation and Rehabilitation Act 1988* (the Act) gives the Minister for Employment power to declare certain corporations as 'eligible' to apply for a workers' compensation self-insurance licence under the Act.
2. Subsection 100(1) states that if the Minister is satisfied that it would be desirable for this Act to apply to employees of a corporation that:
 - is, but is about to cease to be, a Commonwealth authority; or
 - was previously a Commonwealth authority; or
 - is carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority;the Minister may, by legislative instrument, but is not required to, declare the corporation to be eligible to be granted a licence under this Part.
3. If the Minister declares a corporation eligible, the granting of a licence is subject to approval by the Safety, Rehabilitation and Compensation Commission. The Safety, Rehabilitation and Compensation Commission has established criteria for granting of a licence which includes financial and other requirements.
4. The Guidelines were endorsed by the Minister for Employment in 2016 to assist the Minister in making decisions under subsection 100(1) of the Act.

Subsection 100(1) applications

5. In the event the Minister receives applications from non-Commonwealth corporations seeking a subsection 100(1) declaration, the Minister may consider whether or not the corporation should be declared eligible to apply to the Safety, Rehabilitation and Compensation Commission for the granting of a self-insurance licence under the Commonwealth's workers' compensation scheme.
6. To assist in consistent decision-making under the provision, and to provide guidance to applicants and potential applicants under subsection 100(1), the Minister may give consideration to the following areas of competition and public policy principles in deciding whether it is desirable for particular employees to be covered by the Act.

Threshold competition assessment

7. The threshold test for a non-Commonwealth corporation to be declared eligible is to satisfy the Minister that they are 'in competition' with a Commonwealth authority or a former Commonwealth authority. This is prescribed by subsection 100(1)(c) of the Act.
8. In making this judgement on competition, the Minister may have regard to evidence provided by the applicant, or available in the public arena, in the following two areas:
 - 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.
9. It is at the discretion of the Minister to make a judgement on the above areas or on any other factors the Minister considers relevant in the making of his or her decision.

Public Policy Principles

10. In addition to assessing threshold competition issues, the Minister will evaluate broad public policy considerations when deciding whether to declare corporations eligible under subsection 100 (1) of the Act. This discretionary power allows the Minister to make a declaration if the Minister is satisfied that it would be ‘desirable for this Act to apply to employees of a corporation’.
11. The Minister may consider the following public policy principles:
 - 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 corporations’ operations across jurisdictions (based on a minimum threshold of two jurisdictions).
12. The principles and threshold competition issues above are not intended to be exhaustive. Corporations, and other interested parties, are free to bring to the attention of the Minister any issues that bear on whether coverage under the Act is desirable.

Review mechanism

13. A declaration under subsection 100(1) is a pre-condition to granting an eligible corporation a licence under Part VIII of the Act. Corporations applying for a declaration under subsection 100(1) would be expected to apply for a licence within a reasonable period of time after being declared eligible to be granted a licence.
14. In the event that a corporation does not proceed with an application to the Safety, Rehabilitation and Compensation Commission for a licence to self-insure within 12 months of the date that a declaration has been granted, the Minister may review the need for the declaration and decide whether it should continue to be in force.