

GUIDE ON AUTHORISATIONS TO USE, HANDLE OR STORE CARCINOGENS

How to apply for an
authorisation to use,
handle or store a prohibited
or restricted carcinogen as
required by the *Work Health
and Safety Regulations
2011 (Cth)*



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INTRODUCTION

This guide is to help you understand and comply with your obligations under the *Work Health and Safety Regulations 2011* (Cth) (WHS Regulations) if prohibited or restricted carcinogens are used, handled or stored at your workplace.

Under section 43 of the *Work Health and Safety Act 2011* (WHS Act), it is an offence for a person to carry out work at a workplace if the WHS Regulations require the work or class of work to be carried out by, or on behalf of, an authorised person and that person is not so authorised. It is also an offence for a person conducting a business or undertaking (PCBU) to direct or allow a worker to carry out unauthorised work.

Authorisations under the WHS Regulations must be obtained for the use, handling or storage of prohibited and restricted carcinogens.

More particularly, the WHS Regulations provide that a PCBU must not use, handle or store, or direct or allow a worker at the workplace to use, handle or store a prohibited or restricted carcinogen unless Comcare has authorised that use, handling or storage (regulations 380 and 381).

SCOPE

The WHS Regulations distinguish between prohibited carcinogens and restricted carcinogens.

Prohibited carcinogens are those referred to in Schedule 10, table 10.1, column 2 of the WHS Regulations. Comcare's authorisation must be obtained before use, storage or handling but the use, storage or handling must be for genuine research or analysis (regulation 380).

Restricted carcinogens are referred to in Schedule 10, table 10.2, column 2. Comcare's authorisation is required for an item in table 10.2 where the use, handling or storage is for a use referred to in column 3 against that item (regulation 381).

Note that the prohibitions and restrictions apply to the listed carcinogens as pure substances or in a mixture at a concentration greater than 0.1 per cent unless otherwise specified (see regulation 5 which defines 'prohibited carcinogen' and 'restricted carcinogen').

WHO CAN APPLY FOR AN AUTHORISATION?

The obligation to apply for an authorisation falls on the PCBU at a workplace if a prohibited or restricted carcinogen is to be used, handled or stored. Section 5 of the WHS Act defines a 'person conducting a business or undertaking'.

For practical purposes, a PCBU in Comcare's jurisdiction can be a body corporate licensed to self insure with the Comcare scheme (referred to in the WHS Act as a 'non Commonwealth licensee'), the Commonwealth (for example, a department or agency) and a Commonwealth public authority or Commonwealth company.

For more information about PCBUs that fall within Comcare's jurisdiction, refer to the fact sheet "[PCBU in the Commonwealth Jurisdiction](#)" under the "Safety and Prevention" section of the Comcare website.

DURATION OF AN AUTHORISATION

An authorisation is of unlimited duration unless the authorisation is cancelled by Comcare. A decision to cancel an authorisation to use, handle or store a prohibited or restricted carcinogen is a reviewable decision, as provided in the note to regulation 386.

Information about how you can apply for a review of a decision is set out later in this guide.

FEES

There is no fee for an application or amendment to an application for Comcare's authorisation to use, handle or store a prohibited or restricted carcinogen.

APPLICATION FOR AN AUTHORISATION

Regulation 384(5) provides that, if an application is made to Comcare for an authorisation to use, handle or store a prohibited or restricted carcinogen for a use not referred to in that regulation, Comcare must refuse the authorisation.

Therefore, when applying for an authorisation, it should be noted that Comcare may authorise a person to use, handle or store:

- > a prohibited carcinogen **only** if it will be used, handled or stored for genuine research or analysis (regulation 384(2))
- > a restricted carcinogen **only** if it will be used, handled or stored only for a use referred to in column 3 of Schedule 10, table 10.2, and column 2 for the relevant item (regulation 384(3)).

For the purposes of this guidance publication, the uses in regulations 384(2) and 384(3) will be referred to as 'permitted uses'.

FORM OF THE APPLICATION

A PCBU seeking an authorisation to use, handle or store a prohibited or restricted carcinogen must apply to Comcare in writing (regulation 383(1)), providing information about the matters referred to in regulation 383(2) plus any other information that Comcare requests.

Applicant PCBUs are encouraged to use Comcare's form, 'Application for authorisation to use, handle or store prohibited and restricted carcinogens', which is available at www.comcare.gov.au.

Note that a separate application must be made for each prohibited or restricted carcinogen for which Comcare's authorisation is being sought.

INFORMATION TO BE INCLUDED IN THE APPLICATION

Provided the use, handling or storage is for the relevant use for which Comcare may grant an authorisation, the application must include the information listed in regulation 383(2) as follows:

- > the applicant's name and business address
- > the applicant's business name
- > the name and address of the supplier of the carcinogen
- > the address at which the carcinogen is to be used, handled or stored
- > the name of the carcinogen
- > the quantity of carcinogen to be used, handled or stored at the workplace each year
- > the purpose and activity for which the carcinogen will be used, handled or stored
- > the number of workers who may be exposed to the carcinogen
- > information about the PCBU's health and safety risk management arrangements including a summary of steps taken or to be taken regarding the following:
 - hazard identification
 - control measures to prevent exposure
 - if elimination or substitution of the carcinogen is not reasonably practicable—the reason why.

In accordance with regulation 383(2)(j), Comcare requires applicants to provide the following additional information about the PCBU's risk management arrangements:

- safety data sheets (SDS)
- safety work method statements
- storage details
- process description
- maintenance and testing procedures for control measures
- atmospheric monitoring
- biological monitoring
- health surveillance program
- spill and emergency procedures
- worker training and information
- decontamination and waste disposal
- internal policies and/or procedures that are referenced as part of the application.

AMENDING AN APPLICATION

A person who applies for an authorisation to use, handle or store a prohibited or restricted carcinogen must advise Comcare in writing of any change in the information given in the application for authorisation. This information should be provided to Comcare before the change or as soon as practicable after the person becomes aware of the change (regulation 385).

GRANTING AN AUTHORISATION WITH OR WITHOUT CONDITIONS

If a PCBU applies for an authorisation in accordance with regulation 383, Comcare may grant the authorisation provided it is for a permitted use (regulation 384).

Comcare may impose any conditions on the authorisation that it considers necessary to achieve the health and safety objectives of the WHS Act and Regulations (regulation 384(4)).

Under section 45 of the WHS Act, a person commits an offence if the person does not comply with the conditions of an authorisation.

REFUSING TO GRANT AN AUTHORISATION

A decision to refuse to grant an authorisation is a reviewable decision, as provided in the note to regulation 384.

CANCELLING AN AUTHORISATION

Comcare may cancel an authorisation to use, handle or store a prohibited or restricted carcinogen if satisfied that either:

- > the person granted the authorisation has not complied with a condition of the authorisation
- > there has been a change, since the authorisation was granted, to the risk to the health and safety of a worker who could be affected by using, handling or storing a prohibited or restricted carcinogen.

(Regulation 386).

APPLICATION FOR REVIEW OF DECISION

Regulation 676 sets out decisions that are reviewable and who is eligible to apply for the review of a decision (the eligible person) as follows:

Decision	Who is an eligible person and can apply for a review
Item 31: Regulation 384—refusal to grant an authorisation to use, handle or store a prohibited or restricted carcinogen	The applicant (PCBU)
Item 32: Regulation 386—cancellation of authorisation to use, handle or store a prohibited or restricted carcinogen	The authorisation holder

In the above table, 'applicant' is the PCBU that applied for the authorisation.

INTERNAL REVIEW

The person seeking the review of a decision must first seek an internal review by Comcare (regulation 678).

An application for internal review allows Comcare's decision to be reviewed and possibly changed by a person who was not involved in the original decision. A written application for the internal review of a reviewable decision is to be made using the "Application for internal review" form provided by Comcare, available on the Comcare website.

The eligible person (as per the above table) seeking an internal review of a decision must lodge an application for review within:

- > twenty-eight (28) days after the day on which the decision first came to the eligible person's notice
- > any extended time that Comcare allows (regulation 678).

An internal review cannot be conducted by the same person who made the reviewable decision (regulation 679).

The internal reviewer may either:

- > confirm or vary the reviewable decision
- > set aside the reviewable decision and substitute another decision that the internal reviewer considers appropriate (regulation 680(2)).

The internal reviewer may ask the person seeking a review for additional information and specify a timeframe of not less than seven days in which this information must be provided (regulations 680(3) and (4)).

The internal reviewer must make a decision within 14 days after receipt of the application for internal review or receipt of the additional information (regulation 680(1)).

The internal reviewer must give the applicant written notice of the decision and reasons for the decision within 14 days of making the decision (regulation 681).

If the internal reviewer fails to make a decision within the 14 day period or the person seeking a review fails to provide the additional information within the specified timeframe, then the reviewable decision is taken to have been confirmed (a deemed confirmation) (regulations 680(5) and (6)).

An application for an internal review does not affect the operation of the original decision or prevent the taking of any lawful action to implement or enforce that decision. However, once the decision on internal review is made and a new decision is substituted, then that new decision takes effect (regulation 682).

EXTERNAL REVIEW

The person eligible to seek an internal review may apply to the Administrative Appeals Tribunal (AAT) for the external review of a decision or a deemed confirmation made on an internal review (see above for the reference to 'deemed confirmation').

The application may be made within 28 days after the day on which the decision first came to the applicant's notice or any extended time that the AAT allows (regulation 683).

OBLIGATIONS OF A PCBU

STATEMENT OF EXPOSURE TO BE GIVEN TO WORKERS

At the end of a worker's engagement, the PCBU authorised to use, handle or store a prohibited or restricted carcinogen must give to each worker who uses, handles or stores the prohibited or restricted carcinogen, a written statement containing the following information:

- > the name of the prohibited or restricted carcinogen to which the worker may have been exposed during the engagement
- > the time the worker may have been exposed
- > how and where the worker may obtain records of the possible exposure
- > whether the worker should undertake regular health assessments, and what tests should be undertaken.

The requirement to give a worker a written statement in the above terms applies also if that worker used, handled or stored a prohibited or restricted carcinogen before the requirement for the PCBU to obtain Comcare's authorisation came into force on 1 January 2013.

It is an offence not to provide the written statement (regulations 387 and 751).

REQUIREMENT TO KEEP A RECORD OF THE AUTHORISATION

If a PCBU is authorised under regulation 384 to use, handle or store a prohibited or restricted carcinogen at a workplace, the PCBU must keep the following records for 30 years after the authorisation ends:

- > the full name, date of birth and address of any worker likely to be exposed to the prohibited or restricted carcinogen during the period of the authorisation
- > a copy of each authorisation, including any conditions imposed, given to the PCBU.

It is an offence not to keep such records (regulation 388).

OFFENCES

Note that it is an offence not to comply with each of the duties in Part 7.1 of the WHS Regulations.

ADDITIONAL INFORMATION

LEGISLATION

Work Health and Safety Act 2011 (WHS Act)

Work Health and Safety Regulations 2011 (WHS Regulations)

A copy of the WHS Act and WHS Regulations can be obtained via <http://www.comlaw.gov.au>.

The table below may assist PCBU's in finding provisions in the WHS Act and Regulations that relate to authorisations required for the use, handling and storage of prohibited and restricted carcinogens. The table also contains information about relevant Codes of Practice.

Definitions, relevant provisions	Relevant legislation or guidance
Person conducting a business or undertaking (PCBU)	WHS Act – Section 5 Information sheet 'PCBU in the Commonwealth Jurisdiction'
Reasonably practicable	WHS Act – Section 18
Workplace	WHS Act – Section 8
Prohibited carcinogen	WHS Regulations - Regulation 5; Schedule 10, table 10.1, column 2
Restricted carcinogen	WHS Regulations - Regulation 5; Schedule 10, table 10.2, column 2 for a use listed in column 3
Provisions relevant to authorisations for prohibited and restricted carcinogens	Part 7.1, Division 8 of the WHS Regulations
Related Codes of Practice	http://www.comcare.gov.au/laws_and_regulations/Work_Health_and_Safety_Act,_Regulations_and_Codes_of_Practice <i>Work Health and Safety Codes of Practice 2011</i> > Code of Practice on Labelling of Workplace Hazardous Chemicals > Code of Practice on Preparation of Safety Data Sheets for Hazardous Chemicals

CONTACT DETAILS

For any further enquiries on lodging or completing applications for authorisations, please contact the Authorisations and Audit team on 1300 366 979 or alternatively email WHS.Carcinogens@comcare.gov.au.



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