

# GUIDANCE FOR APPLICANTS

Internal review of decisions



**Australian Government**

**Comcare**

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## BACKGROUND

Internal review allows an eligible person to seek review of a range of decisions made by inspectors under the *Work Health and Safety Act 2011* (WHS Act) when dealing with health and safety issues in workplaces and by other Comcare officers in relation to licences, registrations and authorisations under WHS laws.

The service is free and the decisions which can be internally reviewed are listed in the WHS Act and the Work Health and Safety Regulations 2011 (WHS Regulations). Decisions made under the WHS Act that are subject to internal review are listed in Appendix A. Decisions made under the WHS Regulations that are subject to internal review are listed in Appendix B.

Some decisions made under WHS laws that are not open to internal review may be subject to external review. An external review of a decision made under the WHS Act is conducted by Fair Work Australia (FWA), and a decision made under the WHS Regulations by the Administrative Appeals Tribunal (AAT).

This guidance explains the principles of internal review and how internal reviewers will conduct reviews and make their decisions. Internal review seeks to be a transparent process, consistent, promotes accountability and is independent of the original decision maker and their operations area.

## INTERNAL REVIEWERS

The internal review is undertaken by a Comcare review officer who was not involved in the original decision.

Reviewers aim to be consistent in their approach. They follow best practice in decision making to ensure their decision accurately reflects the law and the relevant facts are established based on the evidence. All decisions must provide for natural justice (or procedural fairness) to all the parties, and deal with any real or perceived conflicts of interest or bias.

Reviewers must act independently and exercise their own judgment while having regard to the legislation, the regulator's policies and procedures and where relevant, accepted technical standards or guidance material. They must provide written reasons for their decisions within a strict timeframe.

## WHO IS ELIGIBLE TO APPLY FOR AN INTERNAL REVIEW?

An application for an internal review of decision can only be made by an 'eligible person'. There are different categories of 'eligible persons' for each reviewable decision, including:

- > a worker whose interests are affected by the decision, or their representative
- > a person conducting a business or undertaking whose interests are affected by the decision
- > the person with management control of the workplace, plant or substance
- > a health and safety representative who represents a worker whose interests are affected by the decision
- > a health and safety representative whose interests are affected by the decision
- > a person who received a notice
- > a health and safety representative who issued a provisional improvement notice or directed work to cease, and
- > A person prescribed as eligible by Regulation 676 of the regulations

The WHS Act and regulations outline the category of 'eligible person' entitled to seek review of each reviewable decision. Eligible persons for each specific category of reviewable decision are listed in Appendix A and Appendix B.

When applying for a review, you will need to identify the category of 'eligible person' under which the application is being made.

## APPLYING FOR A REVIEW OF DECISION

An application for internal review should be made in writing using the *Application for Internal Review* form available through the Comcare website at [www.comcare.gov.au](http://www.comcare.gov.au). It is Comcare's preference for applications to be either lodged by email or fax. If you are unable to lodge your application by either one of these methods please contact Comcare on 1300 369 979. You can withdraw your application at any time before a decision is made by the internal reviewer.

## INCOMPLETE APPLICATIONS

It is your responsibility to ensure you have completed the required fields and submitted all required documents. If the form is incomplete, you may be contacted to provide the relevant information or the application may be returned to you to be completed. The review timeframes only apply from the date when all required information is received.

## INVALID APPLICATIONS

An invalid application cannot be determined by the internal review process. Insufficient information does not itself make the application invalid. An application can be invalid for a number of reasons which include:

- > you are not an eligible person;
- > the application seeks review of a decision which is not reviewable
- > your application has been determined previously—for example, you can only lodge one application in relation to one decision -your next step may be external review)
- > it is a complaint about the behaviour of the decision-maker
- > there is disagreement with what the compliance requirements of the reviewable decision look like.

You will be advised if the application is invalid and if appropriate be provided alternative avenues to follow up your concerns.

## MULTIPLE APPLICATIONS

At times, more than one 'eligible person' may apply for an internal review of the same decision. These applications will be considered by the same reviewer wherever possible.

If an internal review has already been completed, the reviewer will decide whether another application on the same original decision will be accepted. In making this decision the reviewer will consider the nature of the application and the review decision already made.

Where a valid application is refused, you will be advised of your right to seek an external review.

## LODGEMENT TIMEFRAMES

An application relating to an 'improvement notice' must be lodged before the compliance date on the improvement notice or within 14 days of the date on which you became aware of the notice, whichever is the earlier. Applications for review of other notices and decisions made under the WHS Act must be lodged within 14 days of the date on which you became aware of the notice or decision.

An application relating to a decision made under the regulations must be lodged within 28 days of the day on which the decision first came to your notice.

Under some circumstances, Comcare may permit lodgement outside these timeframes. The reviewer will consider a number of factors including your explanation for the late lodgement, whether it would adversely affect anyone else if the application were to be accepted, and the views of the original decision maker.

## REVIEW PROCESS

The review is what is known as a 'merits review'. This involves the reviewer 'standing in the shoes' of the original decision maker and considering the material that was available to the original decision maker at the time the decision was made as well as any new, relevant information that becomes available during the review. If a reviewer asks you for more information, you will need to provide it within the timeframe specified by the reviewer. The review remains suspended until the requested information is provided.

A reviewer can also liaise with the original decision maker and other relevant people such as technical experts. They may also refer to written documents such as codes of practice or industry standards. Sometimes a reviewer might arrange a meeting with you or a visit to the workplace if they think it is necessary to help them make their decision and if it can be achieved within the review timeframe.

The reviewer considers the available information and makes a decision on the matter. This decision may:

- > confirm the original decision
- > vary the original decision, or
- > set aside the original decision and substitute it for another decision.

You can withdraw your application at any time before a decision is made by the internal reviewer.

## NOTIFICATION OF REASONS FOR DECISION

The regulator is required to advise you in writing of the decision and the reasons for the decision within 14 days of receiving a complete application. The written reasons should be clear about the relevant issues and processes which led to the decision.

If a decision is complex, a reviewer may contact you by phone to help explain the reasons, in addition to the written decision.

You will also receive information about the procedure for seeking an external review of the decision.

## STAYS OF REVIEWABLE DECISIONS

You may seek a stay (that is suspension) of a decision under the WHS Act while the review is being undertaken. Decisions under the regulations however cannot be stayed by an application for a review, nor can one be requested.

Stays relating to non-disturbance notices or prohibition notices must be applied for, or the reviewer can decide to stay the operation of the notice on their own initiative. Stays are automatically granted for all other reviews of decisions. The decision to grant or refuse the stay is made within one working day of the request being received. If a decision is not made within that time, the stay is automatically granted.

The reviewer will provide an applicant for a stay with a decision in writing of the outcome of that application.

If a stay is granted, it remains in effect until a decision is made by the regulator and whichever of the following is earlier—an external review is applied for or 28 days have elapsed since the person became aware of the regulator's decision. A stay continues until the end of the prescribed period for applying for an external review of the internal review decision or an application for external review is made, whichever is earlier.

## EXTERNAL REVIEW

For information about the external review of decisions refer to Comcare's publication *Guidance for applicants—External review of decisions* (WHS-032) found on the Comcare website at [www.comcare.gov.au](http://www.comcare.gov.au).

# APPENDIX A

## LIST OF DECISIONS WHICH CAN BE INTERNALLY REVIEWED UNDER THE *WORK HEALTH AND SAFETY ACT 2011*

Item	Provision of Act under which reviewable decision is made	Eligible person in relation to reviewable decision
1	Section 54 (2) (decision following failure to commence negotiations)	(1) A worker whose interests are affected by the decision, or their representative appointed for the purpose of section 52 (1) (b). (2) A person conducting a business or undertaking whose interests are affected by the decision. (3) A health and safety representative who represents a worker whose interests are affected by the decision.
2	Section 72 (6) (decision in relation to training of health and safety representative)	(1) A person conducting a business or undertaking whose interests are affected by the decision. (2) A health and safety representative whose interests are affected by the decision.
3	Section 76 (6) (decision relating to health and safety committee)	(1) A worker whose interests are affected by the decision. (2) A person conducting a business or undertaking whose interests are affected by the decision. (3) A health and safety representative who represents a worker whose interests are affected by the decision.
4	Section 102 (decision on review of provisional improvement notice)	(1) The person to whom the provisional improvement notice was issued. (2) The health and safety representative who issued the provisional improvement notice. (3) A worker whose interests are affected by the decision. (4) A health and safety representative who represents a worker whose interests are affected by the decision. (5) A person conducting a business or undertaking whose interests are affected by the decision.
7	Section 191 (issue of improvement notice)	(1) The person to whom the notice was issued. (2) A person conducting a business or undertaking whose interests are affected by the decision. (3) A worker whose interests are affected by the decision. (4) A health and safety representative who represents a worker whose interests are affected by the decision.
8	Section 194 (extension of time for compliance with improvement notice)	(1) The person to whom the notice was issued. (2) A person conducting a business or undertaking whose interests are affected by the decision. (3) A worker whose interests are affected by the decision. (4) A health and safety representative who represents a worker whose interests are affected by the decision.
9	Section 195 (issue of prohibition notice)	(1) The person to whom the notice was issued. (2) The person with management or control of the workplace, plant or substance. (3) A person conducting a business or undertaking whose interests are affected by the decision. (4) A worker whose interests are affected by the decision. (5) A health and safety representative who represents a worker whose interests are affected by the decision. (6) A health and safety representative who gave a direction under section 85 to cease work, that is relevant to the prohibition notice.
10	Section 198 (issue of non-disturbance notice)	(1) The person to whom the notice was issued. (2) The person with management or control of the workplace. (3) A person conducting a business or undertaking whose interests are affected by the decision. (4) A worker whose interests are affected by the decision. (5) A health and safety representative who represents a worker whose interests are affected by the decision.
11	Section 201 (issue of subsequent notice)	(1) The person to whom the notice was issued. (2) The person with management or control of the workplace. (3) A person conducting a business or undertaking whose interests are affected by the decision. (4) A worker whose interests are affected by the decision. (5) A health and safety representative who represents a worker whose interests are affected by the decision.



# APPENDIX B

## LIST OF DECISIONS WHICH CAN BE INTERNALLY REVIEWED UNDER THE WORK HEALTH AND SAFETY REGULATIONS

Item	Regulation under which reviewable decision is made	Eligible person in relation to reviewable decision
<b>High risk work licences</b>		
1	89—Refusal to grant licence	Applicant
2	91—Refusal to grant licence	Applicant
3	98—Refusal to issue replacement licence document	Applicant
4	104—Refusal to renew licence	Applicant
5	106—Suspension of licence	Licence holder
6	106—Cancellation of licence	Licence holder
7	106—Disqualification of licence holder from applying for another licence.	Licence holder
<b>Accreditation of assessors</b>		
8	118—Refusal to grant accreditation	Applicant An RTO that engages the applicant
9	120—Refusal to grant accreditation	Applicant An RTO that engages the applicant
10	121—Imposition of a condition when granting accreditation	Applicant An RTO that engages the applicant
11	121—Imposition of a condition when renewing accreditation	Applicant An RTO that engages the applicant
12	127—Refusal to issue replacement accreditation document	Accredited assessor An RTO that engages the accredited assessor
13	132—Refusal to renew accreditation	Applicant An RTO that engages the applicant
14	133—Suspension of accreditation	Accredited assessor An RTO that engages the accredited assessor
15	133—Cancellation of accreditation	Accredited assessor An RTO that engages the accredited assessor
16	133—Disqualification of assessor from applying for a further accreditation	Accredited assessor An RTO that engages the accredited assessor
<b>Registration of Plant Designs</b>		
17	256—Refusal to register plant design	Applicant
18	258—Imposition of a condition when granting registration of plant design	Applicant
<b>Registration of Plant</b>		
19	269—Refusal to register item of plant	Applicant The person with management or control of the item of plant
20	270—Refusal to register item of plant	Applicant The person with management or control of the item of plant

Item	Regulation under which reviewable decision is made	Eligible person in relation to reviewable decision
<b>Registration of Plant</b>		
21	271—Imposition of a condition when granting registration of item of plant	Applicant The person with management or control of the item of plant
22	279—Refusal to renew registration of item of plant	Registration holder The person with management or control of the item of plant
23	283—Amendment of registration, on regulator's initiative	Registration holder The person with management or control of the item of plant
24	284—Refusal to amend registration on application (or a decision to make a different amendment)	Registration holder The person with management or control of the item of plant
25	288—Refusal to issue replacement registration document	Registration holder The person with management or control of the item of plant
<b>General Induction Training (Construction)</b>		
26	321—Refusal to issue general construction induction training card	Applicant
27	322—Cancellation of general construction induction training card	Card holder
<b>Hazardous chemicals and lead</b>		
28	384—Refusal to grant authorisation to use, handle or store a prohibited or restricted carcinogen	Applicant
29	386—Cancellation of authorisation to use, handle or store a prohibited or restricted carcinogen	Authorisation holder
30	393—Deciding a process to be a lead process	A person conducting a business or undertaking that carries out the lead process A worker whose interests are affected by the decision
31	407—Determining a different frequency for biological monitoring of workers at a workplace, or a class of workers, carrying out lead risk work	A person conducting a business or undertaking that carries out lead risk work A worker whose interests are affected by the decision
<b>Asbestos removal licences and asbestos assessor licences</b>		
32	497—Refusal to grant licence	Applicant
33	501—Refusal to grant licence	Applicant
34	502—Imposition of a condition when granting licence	Applicant
35	502—Imposition of a condition when renewing licence	Applicant
36	508—Amendment of licence, on regulator's initiative	Licence holder
37	509—Refusal to amend licence on application (or a decision to make a different amendment)	Licence holder
38	513—Refusal to issue replacement licence document	Applicant
39	517—Refusal to renew licence	Applicant
40	520—Suspension of licence	Licence holder
41	520—Cancellation of licence	Licence holder
42	520—Disqualification of licence holder from applying for another licence	Licence holder