

Guide

Exemptions

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Introduction

The Work Health and Safety (National Uniform Legislation) Regulations – the WHS (NUL) Regulations – has a general power which provides for NT WorkSafe to grant an exemption from compliance with any of the WHS (NUL) Regulations.

The issuing of an exemption is based on the understanding that the alternative agreed course of action will provide at least an equivalent level of health and safety to that achieved by complying with the WHS (NUL) Regulations.

Exemption types

General exemption

Under Regulation 684, NT WorkSafe may grant a general exemption from compliance with any of the WHS (NUL) Regulations.

Hazard specific exemptions

Hazard specific provisions in the WHS (NUL) Regulations apply to the granting of an exemption:

- from holding a high risk work (HRW) licence - Regulation 686, or
- for a major hazard facility (MHF) – Regulation 688

Scope

General exemption provisions are set out in the Regulations 684 - 685 and exclude exemptions requiring a person to hold a high risk work licence, that are set out in Regulations 686 - 687 or relating to a MHF or a proposed MHF, that are set out in Regulations 688 - 689.

Who may apply for an exemption

General exemption

Any person or class of persons may apply to NT WorkSafe in writing for a general exemption – Regulation 684(1).

A person may be an individual, a body corporate (legal entity), a government agency (government department or government statutory body), a partnership or an unincorporated association.

A class of persons means a number of persons who have a common characteristic for example: operators of a specific tool or machinery.

NT WorkSafe may on its own initiative grant a general exemption – Regulation 684(2).

High Risk Work Licence Exemption

Any person or class of persons may apply to NT WorkSafe in writing for an exemption from the requirement to hold a HRW licence – Regulation 686.

Major Hazard Facility Exemption

The operator of a MHF or proposed MHF may apply to NT WorkSafe for an exemption from compliance with any provision in the Regulations relating to that facility – Regulation 688(1).

Regulation 533(1) defines the operator of a MHF to be a person conducting the business or undertaking of operating the facility who has:

- management or control of the facility; and
- the power to direct that the whole facility be shut down.

Regulation 533(2) defines the operator of a proposed MHF to be:

- the operator of a proposed facility that is an existing workplace; or
- the person who is to be the operator of a proposed facility that is being designed or constructed.

Duration of an exemption

The exemption will last the length of time stipulated by NT WorkSafe or until the regulation is amended and is no longer applicable, unless NT WorkSafe amends or cancels the exemption earlier – Regulation 692(h) and 697.

Recognition of interstate authorisations

An exemption issued by NT WorkSafe is valid in the Northern Territory only.

How to apply

Application forms are available on NT WorkSafe's website www.worksafe.nt.gov.au

Fees

There is no fee for an exemption.

Granting/amending or refusing an exemption

What does NT WorkSafe take into account when deciding whether to grant an exemption?

General exemption

NT WorkSafe may deem any matter relevant when making its decision to grant a general exemption but must consider the following:

- Whether granting the exemption will result in a standard of health and safety at the relevant workplace or in relation to the relevant undertaking, that is at least equivalent to the standard that would be achieved by compliance with the provision(s)
- Whether at least an equivalent standard of health and safety can be achieved by granting a conditional exemption
- Whether exceptional circumstances justify the granting of the exemption. Exceptional circumstances may include emergency situations, practicality of applying a regulatory provision and technological change
- If the proposed exemption relates to a particular thing, whether the risk associated with that thing is not significant if the exemption is granted
- Whether the applicant has carried out consultation in relation to the proposed exemption in accordance with Divisions 1 and 2 of Part 5 of the *WHS (NUL) Act*.

Regulation 685

Exemption from holding a high risk work licence

NT WorkSafe may deem any matter relevant when making its decision to grant an exemption from holding a HRW licence but must be satisfied that granting the exemption will result in a standard of health and safety that is at least equivalent to the standard that would be achieved without the exemption. NT WorkSafe will consider the following in making a decision:

- The impracticability of obtaining a HRW licence
- Whether the person's competencies exceed those required for the grant of a HRW licence; and
- Whether any plant used can be modified to reduce the risk associated with its operation.

Regulation 687

Exemption for a major hazard facility

NT WorkSafe must be satisfied about the following before granting an exemption:

- Whether one or more Schedule 15 chemical(s) are present or likely to be present at the facility; and
- Whether the quantity of the Schedule 15 chemical(s) exceeds the threshold quantity of the chemical/s periodically because:
 - the Schedule 15 chemical(s) are solely the subject of intermediate temporary storage; and
 - the Schedule 15 chemical(s) is in one or more containers with the capacity of each container to contain no more than a total of 500 kilograms of the Schedule 15 chemical.
- Whether granting the exemption will result in a standard of health and safety in relation to the operation of the facility that is at least equivalent to the standard that would be achieved by compliance with the relevant provision(s). NT WorkSafe will consider the following in making a decision:
 - Whether the applicant (operator of the facility) is complying with the *WHS (NUL) Act* and Regulations, including Part 7.1; and
 - Whether the applicant has processes and procedures in place which will keep the quantity of the Schedule 15 chemical(s) present or likely to be present at or below the threshold quantity for the Schedule 15 chemical(s) as often as practicable, and
 - Whether the applicant has implemented adequate control measures to minimise the risk of a major incident occurring.

Regulation 689

Granting of a conditional exemption

NT WorkSafe may impose any conditions it considers appropriate on an exemption. Conditions that may be imposed include:

- Monitoring risks
- Monitoring the health of persons at the workplace who may be affected by the exemption
- Keeping certain records
- Using a stated system of work
- Reporting certain matters to NT WorkSafe, and
- Giving notice of the exemption to person(s) that may be affected by the exemption.

A decision to impose condition(s) on an exemption is a reviewable decision – Regulation 691.

Amendment or cancellation of an exemption

NT WorkSafe may amend or cancel an exemption at any time.

A decision to amend or cancel an exemption is a reviewable decision – Regulation 697.

If NT WorkSafe decides to amend or cancel an exemption, it must give written notice within 14 days after making its decision to:

- Where a person applied – the applicant; or
- If NT WorkSafe granted the exemption on its own initiative – each person to whom the exemption applies

Regulation 698(1)

If the exemption affects a class of persons, NT WorkSafe must publish notice of the amendment or cancellation of the exemption in the Northern Territory Government Gazette – Regulation 698(2)

The notice must state the reasons for the amendment or cancellation – Regulation 698(3)

The amendment or cancellation takes effect on the publication of the notice in the Northern Territory Government Gazette or on a later date specified in the notice or if a notice is not required to be published in

the Northern Territory Government Gazette, on the giving of the notice to the applicant or on a later date specified in the notice – Regulation 698(4).

Refusing to grant an exemption

NT WorkSafe may refuse to grant an exemption. If it refuses to grant an exemption, it must give the applicant written notice of the refusal within 14 days after making that decision and the notice must state the reasons for the refusal – Regulation 696.

A decision to refuse to grant an exemption is a reviewable decision – Regulation 684, 686 and 688.

Obligations

A person to whom an exemption is granted must comply with the conditions of the exemption and ensure any person under their management or control complies with the conditions of the exemption – Regulation 693.

Application for review of decision

The table in Regulation 676 sets out decisions that are reviewable (reviewable decisions) and who is eligible (eligible person) to apply for the review of a reviewable decision.

The applicant is the eligible person to request a review of the following decisions:

- to refuse to grant an exemption – Regulation 684, 686 and 688, or
- to impose a condition on an exemption – Regulation 691, or
- to refuse to grant an exemption – Regulation 696, or
- to amend an exemption – Regulation 697, or
- to cancel an exemption – Regulation 697.

Internal review

A written application for the internal review of a reviewable decision is made using the application form provided by NT WorkSafe. The application must be lodged within 28 days after the day on which the decision first came to the eligible person's notice or such longer period as NT WorkSafe allows – Regulation 678(1).

The internal reviewer may:

- confirm or vary the reviewable decision, or
- set aside the reviewable decision and substitute another decision that the internal reviewer considers appropriate.

Regulation 680(2)

If the reviewable decision is not varied or set aside within the 14 day period the internal decision is taken to have been confirmed – Regulation 680(6).

NT WorkSafe will give the applicant written notice of the decision and reason for the decision – Regulation 681.

An application for an internal review does not affect the operation of the reviewable decision or prevent the taking of any lawful action to implement or enforce the decision – Regulation 682

External review

If the applicant is not satisfied with the internal review process, they can apply to the Work Health Court.

Further information

Legislation

The Work Health and Safety (National Uniform Legislation) Act and Work Health and Safety (National Uniform Legislation) Regulations are available on NT WorkSafe's website www.legislation.nt.gov.au.

List of jurisdiction contacts

Jurisdiction	Name of Regulator	Telephone	Web site
Commonwealth	Comcare	1300 366 979	www.comcare.gov.au
New South Wales	WorkCover NSW	13 10 50	www.workcover.nsw.gov.au
Victoria	WorkSafe Victoria	1800 136 089 or (03) 9641 1444	www.worksafe.vic.gov.au
Queensland	WorkCover QLD	1300 362 128	www.worksafe.qld.gov.au
South Australia	SafeWork SA	1300 365 255	www.safework.sa.gov.au
Western Australia	WorkSafe WA	1300 307 877	www.worksafe.wa.gov.au
Australian Capital Territory	WorkSafe ACT	(02) 6207 3000	www.worksafe.act.gov.au
Tasmania	WorkSafe Tasmania	1300 366 322 (Inside Tasmania) (03) 6166 4600 (Outside Tasmania)	www.worksafe.tas.gov.au

Contact us

For further information please contact us on 1800 019 115, via email at ntworksafe@nt.gov.au or go to the NT WorkSafe website at www.worksafe.nt.gov.au.

DISCLAIMER

This publication contains information regarding work health and safety. It includes some of your obligations under the *Work Health and Safety (National Uniform Legislation) Act* – the WHS (NUL) Act – that NT WorkSafe administers. The information provided is a guide only and must be read in conjunction with the appropriate legislation to ensure you understand and comply with your legal obligations. NT WorkSafe does not warrant the information in this publication is complete or up-to-date and does not accept any liability for the information in this report or as to its use.