

## Guide

# Authorisation to use, handle or store prohibited or restricted carcinogens

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## Introduction

The Work Health and Safety (National Uniform Legislation) Regulations – the WHS (NUL) Regulations – provides that a person conducting a business or undertaking (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 the Regulator has authorised that use, handling or storage under Regulation 384 (and in the case of a prohibited carcinogen, is used for genuine research or analysis).

Under Section 43 of the *Work Health and Safety (National Uniform Legislation) Act* – the WHS (NUL) Act – it is an offence to carry out work if the regulations require the person carrying out the work to be authorised and the person is not so authorised.

The purpose of authorisations in work health and safety is to control work activities and the use of substances that are high risk and to provide risk based information to the Regulator so resources and target compliance and enforcement actions can be applied to areas of greatest risk to health and safety.

## Scope

Authorisation is required:

- To use handle or store a prohibited carcinogen referred to in Schedule 10, Table 10.1 of the WHS (NUL) Regulations, and
- To use handle or store a restricted carcinogen referred to in Schedule 10, Table 10.2 of the WHS (NUL) Regulations.

Regulations 380 and 381

## Who may apply for an authorisation

A PCBU at a workplace who intends to use handle or store a prohibited or restricted carcinogen may apply for authorisation – Regulation 383(1). “Person conducting a business or undertaking” is defined in Section 5 of the WHS (NUL) Act.

A PCBU may be an individual, a body corporate, a government agency, a partnership or an unincorporated association.

## Duration of authorisation

The authorisation is of unlimited duration unless cancelled by the Regulator.

A decision to cancel an authorisation to use, handle or store a prohibited or restricted carcinogen is a reviewable decision – Regulation 386.

## How to apply for an authorisation

An application for authorisation is to be made to the Regulator in the State or Territory or the Commonwealth in which the workplace that uses handles or stores a prohibited or restricted carcinogen is located. Application forms are available on NT WorkSafe’s website [www.worksafe.nt.gov.au](http://www.worksafe.nt.gov.au)

## Fees

There is no fee for the authorisation to use, handle or store a prohibited or restricted carcinogen.

## Granting / refusing

### What does the Regulator take into account when deciding whether to grant an authorisation

The Regulator will consider the following in making a decision to grant authorisation:

- Whether a prohibited carcinogen is used handled or stored for genuine research or analysis – Regulations 383(2)(g) and 384(2), or
- Whether a restricted carcinogen is used handled or stored for a purpose referred to in table 10.2 of Schedule 10 of the WHS (NUL) Regulations – Regulations 382 and 384(3), and
- The quantity of carcinogen to be used handled or stored at the workplace each year – Regulation 383(2)(f), and
- Number of workers that may be exposed to the carcinogen – Regulation 383(2)(h), and
- The risk management procedure that contains hazard identification, risk control measures and if elimination or substitution of the carcinogen is not reasonably practicable the reason why.

The Regulator requires that the risk management procedure should also include:

- Storage details
- Process description
- Control measures to prevent exposure
- Maintenance and testing procedures for control measures
- Atmospheric monitoring
- Biological monitoring
- Health surveillance program
- Spill and emergency procedures
- Employee training and information
- Decontamination and waste disposal.

Regulation 383(2)(i)

The Regulator may request additional information to assist in the decision process – Regulation 383(2)(j).

### **Granting of a conditional authorisation**

The Regulator may impose any condition it considers necessary on an authorisation to achieve the objectives of the WHS (NUL) Act or Regulations – Regulation 384(4).

### **Refusing to grant an authorisation**

The Regulator must refuse to authorise the use, handling or storage of a restricted or prohibited carcinogen for a use not referred to in the WHS (NUL) Regulations – Regulation 384(5).

The Regulator may authorise the person to use, handling or store a prohibited carcinogen only if it is to be used handled or stored for genuine research or analysis (Mandatory refusal) – Regulation 384(2).

The Regulator may only authorise the person to use, handling or store a restricted carcinogen if it is to be used handled or stored for a purpose described in Table 10.2 of the WHS (NUL) Regulations (Mandatory refusal) – Regulation 384(3).

A decision to refuse to grant an authorisation to use, handle or store a prohibited or restricted carcinogen is a reviewable decision – Regulation 384.

## **Obligations**

### **Change of details**

A person who applies for authorisation to use handle or store a prohibited or restricted carcinogen must advise the Regulator in writing of any change in the information given in the application for authorisation before the change or as soon as reasonably practicable after the person becomes aware of the change – Regulation 385.

### **Records to be kept**

The person authorised to use handle or store prohibited or restricted carcinogens must keep the following records for 30 years after the authorisation ends:

- A copy of the authorisation including any conditions imposed, and
- The full name, date of birth and address of any worker likely to be exposed during the period of the authorisation.

Regulation 388

## Statement of exposure

The person authorised to use handle or store prohibited or restricted carcinogens must give to the worker, at the end of the workers employment by that person, a written statement of the following:

- Name of the prohibited or restricted carcinogen to which the workers may have been exposed during their 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 the relevant tests to undertake.

Regulation 387

## Cancellation

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

- the person given the authorisation has not complied with a condition of the authorisation, or
- the risk to health and safety of a worker using, handling or storing a prohibited or restricted carcinogen has changed since the authorisation was granted – Regulation 386.

The decision to cancel an authorisation to use, handle or store a prohibited or restricted carcinogen is a reviewable decision – Regulation 386.

## 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 a decision to refuse to grant an authorisation to use handle or store a prohibited or restricted carcinogen – Regulation 384.

The authorisation holder is the eligible person to request a review of the decision to cancel an authorisation to use, handle or store a prohibited or restricted carcinogen – Regulation 386.

## Internal review

An application for internal review allows the Regulator'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 made using the application form provided by the Regulator. The application must be lodged with 28 days of the day on which the decision first came to the eligible person's notice or such longer period as the Regulator 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)].

The Regulator will give the applicant written notice of the decision on the internal review and reasons for the decision within 14 days of making the decision – Regulation 681.

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 the decision, though once the decision on internal review is made if a new decision is substituted then that new decision takes – Regulation 682.

## External review

If the applicant or authorisation holder is not satisfied with the decision on internal review, 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.worksafe.nt.gov.au](http://www.worksafe.nt.gov.au)

### List of jurisdiction contacts

Jurisdiction	Name of Regulator	Telephone	Web site
Commonwealth	Comcare	1300 366 979	<a href="http://www.comcare.gov.au">www.comcare.gov.au</a>
New South Wales	WorkCover NSW	13 10 50	<a href="http://www.workcover.nsw.gov.au">www.workcover.nsw.gov.au</a>
Victoria	WorkSafe Victoria	1800 136 089 or (03) 9641 1444	<a href="http://www.worksafe.vic.gov.au">www.worksafe.vic.gov.au</a>
Queensland	Workplace Health and Safety Qld	1300 362 128	<a href="http://www.worksafe.qld.gov.au">www.worksafe.qld.gov.au</a>
South Australia	SafeWork SA	1300 365 255	<a href="http://www.safework.sa.gov.au">www.safework.sa.gov.au</a>
Western Australia	WorkSafe WA	1300 307 877	<a href="http://www.worksafe.wa.gov.au">www.worksafe.wa.gov.au</a>
Australian Capital Territory	WorkSafe ACT	(02) 6207 3000	<a href="http://www.worksafe.act.gov.au">www.worksafe.act.gov.au</a>
Tasmania	WorkSafe Tasmania	1300 366 322 (Inside Tasmania) (03) 6166 4600 (Outside Tasmania)	<a href="http://www.worksafe.tas.gov.au">www.worksafe.tas.gov.au</a>
Northern Territory	NT WorkSafe	1800 019 115	<a href="http://www.worksafe.nt.gov.au">www.worksafe.nt.gov.au</a>

## Contact us

For further information please contact us on 1800 019 115, via email at [ntworksafe@nt.gov.au](mailto:ntworksafe@nt.gov.au) or go to the NT WorkSafe website at [www.worksafe.nt.gov.au](http://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.