

Guide

Internal review of decisions

Background	1
Who can apply for an internal review	2
Application for review	2
Lodgement timeframes	2
Internal reviewers	2
Review process	2
Multiple applications	3
Invalid applications	3
Stays of reviewable decisions	3
External Review	3
Contact us	3
Appendix A	5
List of decisions which can be internally reviewed under the <i>Work Health and Safety (National Uniform Legislation) Act</i>	5
Appendix B	7
List of decisions which can be internally reviewed under the Work Health and Safety (National Uniform Legislation) Regulations.....	7
Appendix C	11
Decisions that are subject to external review under the <i>Work Health and Safety (National Uniform Legislation) Act 2011</i> (in addition to any internal review decision)	11
Appendix D	12
Decisions that are subject to external review under the Work Health and Safety (National Uniform Legislation) Regulations (in addition to any internal review decision).....	12

Background

Internal review allows an eligible person to seek review of a range of decisions made by Inspectors when dealing with health and safety issues in workplaces and by other officers in relation to licences, registrations and authorisations. The service is free and the decisions which can be internally reviewed are listed in the *Work Health and Safety (National Uniform Legislation) Act* – the WHS (NUL) Act – and the Work Health and Safety (National Uniform Legislation) Regulations – the WHS (NUL) Regulations.

Decisions made under the WHS (NUL) Act that are subject to internal review are listed in Appendix A. Decisions made under the WHS (NUL) Regulations that are subject to internal review are listed in Appendix B.

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

Who can apply for an internal review

Only an 'eligible person' can apply for internal review of a decision. The categories of eligible persons are listed in the WHS (NUL) Act and WHS (NUL) Regulations, specific to the relevant provision of the *Act* or the Regulation under which the reviewable decision was made. Eligible persons include the person to whom the notice or licence was issued, the person with management or control of the workplace (PMC), and persons whose interests are affected by the decision, such as a person conducting a business or undertaking (PCBU), or a worker or a health and safety representative (HSR) or a person affected by a decision involving registrations, assessors or training. Eligible persons for each specific category of decision are listed in Appendix A and Appendix B.

When applying for a review, you will need to identify which category of eligible person you fall within.

Application for review

Each application for internal review must be in writing on the Internal Review Application form provided by NT WorkSafe. If the form is incomplete, you may be contacted to provide more information or the application may be returned to be completed. The essential details needed for a review to begin are on the application form. The timeframe for the review will not start until the completed, valid application is received. You can withdraw your application at any time before a decision is made by the internal reviewer.

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 earlier. Applications for review of other notices and decisions made under the *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, NT WorkSafe 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.

Internal reviewers

The person who made the original decision cannot review that decision. Reviews are conducted by NT WorkSafe Internal Review team.

Reviewers aim to be consistent in their approach. They will follow best practice in decision making to ensure that their decision is correct in law and the facts are established based on evidence. All decisions must provide for natural justice (or procedural fairness) to all the parties, and deal with any real or perceived conflict 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.

Review process

The review considers all the material that was available to the original decision-maker at the time the decision was made and any new, relevant information that has become available since that decision, including information provided by you. The reviewer may contact you to seek clarification or additional information. In these circumstances the reviewer will indicate the timeframe for you to provide the information and the review process stops until you provide the information or the timeframe expires (whichever occurs first). A reviewer can also speak to the original decision-maker, as well as other relevant people, including experts if it's a technical issue. 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's necessary to help them make their decision and if it can be done within the timeframe.

The reviewer then decides, in light of all the material, what decision is the most appropriate – by confirming the original decision, or varying the original decision or setting aside the original decision and substituting another decision. You will be advised in writing of the reviewer's decision and the reasons for the decision.

Multiple applications

Sometimes, more than one 'eligible person' may apply for internal review of the same decision. Where possible, those applications will be considered by the same reviewer.

If an internal review has already been completed, the reviewer will decide whether another application on that same original decision is accepted. This will depend on 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 by the Work Health Court.

Invalid applications

If an application is invalid, it 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 (i.e. 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, or
- 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 given options to follow up your concerns through other avenues.

Stays of reviewable decisions

Improvement notices are automatically 'stayed' (or suspended) once an application for a review is lodged. That means they do not operate and can't be enforced during the internal review period and until a decision is made.

Decisions under the Regulations however cannot be stayed by an application for a review, nor can one be requested.

You need to request a stay of the operation of a prohibition or non-disturbance notice or the reviewer can decide to stay the operation of the notice on their own initiative.

On application for the stay, a reviewer must either grant or refuse it within one working day of the request being made. If a decision is not made within that time, the stay is automatically granted.

The reviewer will provide an applicant who wants a notice stayed (or suspended) with a decision in writing of the outcome of that application.

If granted, a stay continues until either:

- i. the end of the prescribed period for applying for an external review of the internal review decision, or
- ii. an application for external review is made, whichever is earlier.

External Review

If you are not satisfied with the decision made at internal review, you can apply to the Work Health Court for a review of the decision. As well, certain decisions made by the Regulator, while not available for internal review, can be the subject of external review. The decisions for which external review is directly available are listed in Appendix C and Appendix D.

The Work Health Court has information and advice on the criteria and process for applying for an external review. The Work Health Court website can be found at <http://www.nt.gov.au/justice/ntmc/about.shtml>

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.

Appendix A

List of decisions which can be internally reviewed under the *Work Health and Safety (National Uniform Legislation) Act*

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	<ol style="list-style-type: none"> 1. A worker whose interests are affected by the decision or his or her representative appointed for the purpose of section 52(1)(b). 2. A PCBU whose interests are affected by the decision. 3. A HSR 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	<ol style="list-style-type: none"> 1. A PCBU whose interests are affected by the decision. 2. A HSR whose interests are affected by the decision.
3	Section 76 (6)	decision relating to health and safety committee	<ol style="list-style-type: none"> 1. A worker whose interests are affected by the decision. 2. A PCBU whose interests are affected by the decision. 3. A HSR who represents a worker whose interests are affected by the decision.
4	Section 102	decision on review of provisional improvement notice	<ol style="list-style-type: none"> 1. The person to whom the provisional improvement notice was issued. 2. The HSR who issued the provisional improvement notice. 3. A worker whose interests are affected by the decision. 4. A HSR who represents a worker whose interests are affected by the decision. 5. A PCBU whose interests are affected by the decision.
4A	Section 134	decision to refuse to issue a WHS entry permit	<ol style="list-style-type: none"> 1. The relevant union. 2. The person for whom the entry permit is sought.
4B	Section 140	decision to revoke, suspend or take other action in relation to a WHS entry permit	<ol style="list-style-type: none"> 1. The relevant union. 2. The WHS entry permit holder.
5	Section 179	forfeiture of thing	The person entitled to the thing.
6	Section 180	return of seized things	The person entitled to the thing.
7	Section 191	issue of improvement notice	<ol style="list-style-type: none"> 1. The person to whom the notice was issued. 2. A PCBU whose interests are affected by the decision. 3. A worker whose interests are affected by the decision. 4. A HSR who represents a worker whose interests are affected by the decision.
8	Section 194	extension of time for compliance with improvement notice	<ol style="list-style-type: none"> 1. The person to whom the notice was issued. 2. A PCBU whose interests are affected by the decision. 3. A worker whose interests are affected by the decision. 4. A HSR who represents a worker whose interests are affected by the decision.

Item	Provision of Act under which reviewable decision is made		Eligible person in relation to reviewable decision
9	Section 195	issue of prohibition notice	<ol style="list-style-type: none"> 1. The person to whom the notice was issued. 2. The PMC of the workplace, plant or substance. 3. A PCBU whose interests are affected by the decision. 4. A worker whose interests are affected by the decision. 5. A HSR who represents a worker whose interests are affected by the decision. 6. A HSR who gave a direction under section 85 to cease work, that is relevant to the prohibition notice.
10	Section 198	issue of a non-disturbance notice	<ol style="list-style-type: none"> 1. The person to whom the notice was issued. 2. The PMC of the workplace. 3. A PCBU whose interests are affected by the decision. 4. A worker whose interests are affected by the decision. 5. A HSR who represents a worker whose interests are affected by the decision.
11	Section 201	issue of subsequent notice	<ol style="list-style-type: none"> 1. The person to whom the notice was issued. 2. The PMC of the workplace. 3. A PCBU whose interests are affected by the decision. 4. A worker whose interests are affected by the decision. 5. A HSR who represents a worker whose interests are affected by the decision.
12	Section 207	decision of regulator to vary or cancel notice	<ol style="list-style-type: none"> 1. The person to whom the notice was issued. 2. The PMC of the workplace. 3. A PCBU whose interests are affected by the decision. 4. A worker whose interests are affected by the decision. 5. A HSR who represents a worker whose interests are affected by the decision. 6. In the case of a prohibition notice, a HSR whose direction under section 85 to cease work gave rise to the notice.
13	–	a prescribed provision of the Regulations	A person prescribed by the Regulations as eligible to apply for review of the reviewable decision.

Appendix B

List of decisions which can be internally reviewed under the Work Health and Safety (National Uniform Legislation) Regulations

Item	Regulation under which reviewable decision is made	Eligible person in relation to reviewable decision
High risk work licences		
1	89	Refusal to grant licence Applicant
2	91	Refusal to grant licence Applicant
2A	91A	Imposition of a condition when granting licence Applicant
2B	91a	Imposition of a condition when renewing 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
7A	106	Variation of licence conditions Licence holder
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

Item	Regulation under which reviewable decision is made	Eligible person in relation to reviewable decision	
Registration of Plant Designs			
17	256	Refusal to register plant design	Applicant
18	257	Refusal to register plant design	Applicant
19	258	Imposition of a condition when granting registration of plant design	Applicant
20	269	Refusal to register item of plant	Applicant The PMC of the item of plant
21	270	Refusal to register item of plant	Applicant The PMC of the item of plant
22	271	Imposition of a condition when granting registration of item of plant	Applicant The PMC of the item of plant
23	271	Imposition of a condition when renewing registration of item of plant	Registration holder The PMC of the item of plant
24	279	Refusal to renew registration of item of plant	Registration holder The PMC of the item of plant
25	283	Amendment of registration, on regulator's initiative	Registration holder The PMC of the item of plant
26	284	Refusal to amend registration on application (or a decision to make a different amendment)	Registration holder The PMC of the item of plant
27	288	Refusal to issue replacement registration document	Registration holder The PMC of the item of plant
27A	288B	Decision to cancel registration	Registration holder The PMC of the item of plant
General Induction Training (Construction)			
28	322	Refusal to issue general construction induction training card	Applicant
29	322	Refusal to issue general induction construction induction training card	Card holder
30	323	Cancellation of general construction induction training card	Card holder
Hazardous chemicals and lead			
31	384	Refusal to grant authorisation to use, handle or store a prohibited or restricted carcinogen	Applicant
32	386	Cancellation of authorisation to use, handle or store a prohibited or restricted carcinogen	Authorisation holder
33	393	Deciding a process to be a lead process	A PCBU that carries out the lead process A worker whose interests are affected by the decision

Item	Regulation under which reviewable decision is made		Eligible person in relation to reviewable decision
34	407	Determining a different frequency for biological monitoring of workers at a workplace, or a class of workers, carrying out lead risk work	A PCBU that carries out lead risk work A worker whose interests are affected by the decision

Item	Regulation under which reviewable decision is made		Eligible person in relation to reviewable decision
Asbestos removal licences and asbestos assessor licences			
35	497	Refusal to grant licence	Applicant
36	501	Refusal to grant licence	Applicant
37	502	Imposition of a condition when granting licence	Applicant
38	502	Imposition of a condition when renewing licence	Applicant
39	508	Amendment of licence, on regulator's initiative	Licence holder
40	509	Refusal to amend licence on application (or a decision to make a different amendment)	Licence holder
41	513	Refusal to issue replacement licence document	Applicant
42	517	Refusal to renew licence	Applicant
43	520	Suspension of licence	Licence holder
44	520	Cancellation of licence	Licence holder
45	520	Disqualification of licence holder from applying for another licence	Licence holder

Appendix C

Decisions that are subject to external review under the *Work Health and Safety (National Uniform Legislation) Act 2011* (in addition to any internal review decision)

Item	Provision of Act under which reviewable decision is made		Eligible person in relation to reviewable decision
5	Section 179	Forfeiture of thing	The person entitled to the thing.
6	Section 180	Return of seized things	The person entitled to the thing.
12	Section 207	Decision of regulator to vary or cancel notice	<ol style="list-style-type: none"> 1. The person to whom the notice was issued. 2. The PMC. 3. A PCBU whose interests are affected by the decision. 4. A worker whose interests are affected by the decision. 5. A HSR who represents a worker whose interests are affected by the decision. 6. In the case of a prohibition notice, a HSR whose direction under section 85 to cease work gave rise to the notice.

Appendix D

Decisions that are subject to external review under the Work Health and Safety (National Uniform Legislation) Regulations (in addition to any internal review decision)

Item	Regulation under which reviewable decision is made		Eligible person in relation to reviewable decision
Major hazard facilities			
Determination of facility to be major hazard facility			
46	541	Determination of facility to be a major hazard facility, on making inquiry	Operator of facility
47	541	Decision not to determine proposed facility to be a major hazard facility	Operator of facility
48	542	Determination of major hazard facility	Operator of facility
49	543	Determination of suitability of operator	Operator of facility
50	544	Imposition of a condition on a determination of a major hazard facility	Operator of facility
Licensing of major hazard facility			
51	580	Refusal to grant licence	Operator of facility
52	584	Imposition of a condition when granting licence	Operator of facility
53	584	Imposition of a condition when renewing licence	Operator of facility
54	589	Amendment of licence, on regulator's initiative	Operator of facility
55	590	Refusal to amend licence, on application (or a decision to make a different amendment)	Operator of facility
56	594	Refusal to issue replacement licence document	Operator of facility
57	598	Refusal to renew licence	Operator of facility
58	600	Refusal to transfer licence, on application	Operator of facility Proposed operator of facility
59	601	Refusal to cancel licence, on application	Operator of facility
60	602	Suspension of licence	Operator of facility
61	602	Cancellation of licence	Operator of facility
62	602	Disqualification of licence holder from applying for another licence	Operator of facility
Exemptions			
63	684	Refusal to exempt person (or a class of persons) from compliance with any of these Regulations	Applicant
64	686	Refusal to exempt person from requirement to hold a high risk work licence	Applicant
65	688	Refusal to exempt operator of MHF from compliance with any of these Regulations, on application	Operator of facility
66	691	Imposing condition on an exemption granted on application under Part 11.2	Applicant
67	696	Refusal to grant exemption	Applicant
68	697	Amendment of an exemption granted on application under Part 11.2	Applicant
69	697	Cancellation of an exemption granted on application under Part 11.2	Applicant