October 2022

Application for internal review of certain WHS
decisions in relation to a mine or petroleum site

# About this form

Complete this form to apply for an internal review of specific reviewable decision, which are listed in the:

* *Work Health and Safety Act 2011* – sections 223 and 224
* Work Health and Safety Regulation 2017 – clauses 676-682
* Work Health and Safety (Mines and Petroleum Sites) Regulation 2022 – section 186

Part 11.1 of the WHS Regulation deals with internal review. Certain decisions made under the WHS (Mines and Petroleum Sites) Regulation 2022 are decisions that are reviewable under Part 11.1 of the WHS Regulation.

An eligible person may apply to the regulator for internal review of certain decisions made by WHS inspectors and the regulator. It is free to apply for internal review.

If the decision was made by SafeWork NSW or a SafeWork NSW inspector, the application must be made on the SafeWork approved form and lodged with SafeWork. The relevant form and guide are available on the SafeWork NSW website: www.safework.nsw.gov.au

Please read the Guide for applicants - Application for internal review of a WHS decision before completing this form. Please note that applications for internal review must be made within specified timeframes. It is your responsibility to ensure you have completed the required fields and supplied all required documents. Incomplete applications may be returned to you and may result in delays in the review process. The review timeframes apply from the date when all required information is received.

# Applicant details

Provide your details below – If you are the applicant’s legal representative you will also need to provide your details.

|  |  |
| --- | --- |
| Name of applicant |       |
| ACN if a company or ABN (if applicable) |       |
| Legal representative (if applicable) |       |
| Office telephone |       | Mobile |       |
| Name of contact officer  |       |
| Name of organisation if different to applicant |       |
| Role of contact officer  |       |
| Email address of contact officer  |       |
| Telephone |       | Mobile |       |
| Name of mine or petroleum site operator (if different) |       |
| Email address of mine or petroleum operator |       |
| Name of mine or petroleum site |       |
| Address of mine or petroleum site |       |

Can we send the decision by email?

[ ]  Yes [ ]  No

Details of decision to be reviewed

* The decisions that can be reviewed are set out below under the following headings:
* A WHS inspector’s decision under the WHS Act
* A decision of the Regulator under the WHS Act
* A decision of the Regulator under the WHS Regulation
* A decision of the Regulator under the WHS (Mines and Petroleum Sites) Regulation

Please tick the box in the first column for the decision you want reviewed. Then tick the box in column 2 to show your eligibility to apply. If the decision is not on the list it cannot be reviewed. Only an eligible person (as shown in column 2) can apply for an internal review of a decision.

A WHS inspector’s decision under the WHS Act

|  |  |
| --- | --- |
| Column 1: Decisions that may be reviewed | Column 2: Eligible person to apply for internal review |
| **Tick one box only** | **Tick the box that applies to you** |
| [ ]   | Decision following failure of negotiations | s 54(2) | [ ]  A worker whose interests are affected by the decision or his or her representative |
| [ ]   | Decision in relation to training of health and safety representatives | s 72(6) | [ ]  A worker whose interests are affected by the decision[ ]  A person conducting a business or undertaking whose interests are affected by the decision[ ]  A health and safety representative who represents a worker whose interests are affected by the decision[ ]  A health and health representative at a coal mine who represents a worker whose interests are affected by the decision[ ]  An industry safety and health who represents a worker at a coal mine whose interests are affected by the decision |
| [ ]   | Decision relating to health and safety committee | s 76(6) |
| [ ]   | Decision on review of provisional improvement notices (PINs) | s 102 | [ ]  The person to whom the PIN was issued.[ ]  The health and safety representative who issued the PIN[ ]  The mine safety and health representative at a coal mine who issued the PIN[ ]  The industry safety and health representative at a coal mine who issued the PIN[ ]  A worker whose interests are affected by the decision.[ ]  A person conducting a business or undertaking whose interests are affected by the decision[ ]  A health and safety representative who represents a worker whose interests are affected by the decision[ ]  A mine safety and health representative at a coal mine who represents a worker whose interests are affected by the decision[ ]  An industry safety and health representative who represents a worker at a coal mine whose interests are affected by the decision |
| [ ]   | Decision to forfeit a seized thing | s 179 | [ ]  The person entitled to the thing |
| [ ]   | Decision to return a seized thing | s 180 | [ ]  The person entitled to the thing |
| [ ]   | Decision to issue of an improvement notice | s 191 | [ ]  The person to whom the notice was issued[ ]  A worker whose interests are affected by the decision[ ]  A person conducting a business or undertaking whose interests are affected by the decision[ ]  A health and safety representative who represents a worker whose interests are affected by the decision[ ]  A mine safety and health representative at a coal mine who represents a worker whose interests are affected by the decision[ ]  An industry safety and health representative who represents a worker at a coal mine whose interests are affected by the decision |
| [ ]  | Decision to extend the time for compliance with improvement notice | s 194 |
| [ ]   | Decision to issue of prohibition notice | s 195 | [ ]  The person to whom the notice was issued[ ]  A person with management or control of the workplace[ ]  A worker whose interests are affected by the decision[ ]  A person conducting a business or undertaking whose interests are affected by the decision[ ]  A health and safety representative who represents a worker whose interests are affected by the decision[ ]  A health and safety representative who gave a direction under section 85 to cease work, that is relevant to the notice[ ]  A mine safety and health representative at a coal mine who represents a worker whose interests are affected by the decision[ ]  An industry safety and health representative who represents a worker at a coal mine whose interests are affected by the decision[ ]  A mine safety and health representative at a coal mine who gave a direction under section 85 to cease work, that is relevant to the notice[ ]  An industry safety and health representative who gave a direction under section 85 to cease work, that is relevant to the notice |
| [ ]   | Decision to issue a non-disturbance notice | s 198 | [ ]  The person to whom the notice was issued[ ]  A person with management or control of the workplace[ ]  A worker whose interests are affected by the decision[ ]  A person conducting a business or undertaking whose interests are affected by the decision[ ]  A health and safety representative who represents a worker whose interests are affected by the decision[ ]  A mine safety and health representative at a coal mine who represents a worker whose interests are affected by the decision[ ]  An industry safety and health representative who represents a worker at a coal mine whose interests are affected by the decision |
| [ ]   | Decision to issue a subsequent notice | s 201 |

A decision by the Regulator under the WHA Act

|  |  |
| --- | --- |
| Column 1: Decisions that may be review | Column 2: Eligible person to apply for internal review |
| [ ]   | Decision to vary or cancel a notice | s 207 | [ ]  The person to whom the notice was issued[ ]  A person with management or control of the workplace[ ]  A worker whose interests are affected by the decision[ ]  A person conducting a business or undertaking whose interests are affected by the decision[ ]  A health and safety representative who represents a worker whose interests are affected by the decision[ ]  In the case of a prohibition notice, a health and safety representative whose direction under section 85 to cease work gave rise to the notice[ ]  A mine safety and health representative at a coal mine who represents a worker whose interests are affected by the decision[ ]  An industry safety and health representative who represents a worker at a coal mine whose interests are affected by the decision[ ]  In the case of a prohibition notice, a mine safety and health representative at a coal mine whose direction under section 85 to cease work gave rise to the notice[ ]  In the case of a prohibition notice, an industry safety and health representative whose direction under section 85 to cease work gave rise to the notice |

|  |  |
| --- | --- |
| Provision of the WHS Regulation under which a reviewable decision is made  | Eligible person in relation to reviewable decision |
| **Plant registration** |  |
| [ ]   | 256 – Refusal to register plant design | [ ]   | Applicant  |
| [ ]   | 257 – Refusal to register plant design | [ ]  | Applicant  |
| [ ]   | 258 – Imposition of a condition when granting registration of plant design | [ ]  | Applicant  |
| [ ]   | 269 – Refusal to register item of plant | [ ]  | Applicant  |
| [ ]   | The person with management or control of the item of plant |
| [ ]   | 270 – Refusal to register item of plant | [ ]   | Applicant |
| [ ]   | The person with management or control of the item of plant |
| [ ]   | 271 – Imposition of a condition when granting registration of item of plant | [ ]   | Applicant |
| [ ]   | The person with management or control of the item of plant |
| [ ]   | 271 – Imposition of a condition when renewing registration of item of plant | [ ]   | Registration holder |
| [ ]   | The person with management or control of the item of plant |
| [ ]   | 279 – Refusal to renew registration of item of plant | [ ]   | Registration holder |
| [ ]   | The person with management or control of the item of plant |
| [ ]   | 283 – Amendment of registration, on regulator’s initiative | [ ]   | Registration holder |
| [ ]   | The person with management or control of the item of plant |
| [ ]   | 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 |
| [ ]   | 288 – Refusal to issue replacement registration document | [ ]   | Registration holder |
| [ ]   | The person with management or control of the item of plant |
| **Hazardous chemicals and lead** |  |
| [ ]   | 384 – Refusal to grant authorisation to use, handle or store a prohibited or restricted carcinogen | [ ]   | Applicant |
| [ ]   | 386 – Cancellation of authorisation to use, handle or store a prohibited or restricted carcinogen | [ ]   | Authorisation holder |
| [ ]   | 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 |
| [ ]   | 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 the lead process |
| [ ]   | A worker whose interests are affected by the decision |
| **Exemptions** |  |
| [ ]   | 684 – Refusal to exempt person (or a class of persons) from compliance with any of this Regulation | [ ]   | Applicant |
| [ ]   | 686 – Refusal to exempt person from requirement to hold a high-risk work licence | [ ]   | Applicant |
| [ ]   | 691 – Imposing condition on an exemption granted on application under Part 11.2 | [ ]   | Applicant |
| [ ]   | 696 – Refusal to grant exemption | [ ]   | Applicant |
| [ ]   | 697 – Amendment of an exemption granted on application under Part 11.2 | [ ]   | Applicant |
| [ ]   | 697 – Cancellation of an exemption granted on application under Part 11.2 | [ ]   | Applicant |

A decision of the Regulator under the WHS (Mines and Petroleum Sites) R

|  |  |
| --- | --- |
| Column 1: Decisions that may be reviewed | Column 2: Eligible person to apply for internal review |
|  | **Eligible person to apply for internal review**  |
| [ ]  | Decision to give a direction that one or more mine operators be appointed | s. 9(1) | [ ]   | The mine holder |
| [ ]  | Decision to give a direction that one or more petroleum site operators be appointed  | s. 13  | [ ]   | The petroleum site holder |
| [ ]  | Decision that a high-risk activity (HRA) notification is inadequate | s. 35(4) | [ ]   | The operator of the mine or petroleum site |
| [ ]  | Decision in relation to HRA waiting period | s. 35(7) | [ ]  | The operator of the mine or petroleum site |
| [ ]  | Decision in relation to health monitoring | s. 112 | [ ]   | The mine operator of the mine |
| [ ]  | Decision in relation to requirement for a mine survey plan | s. 116(3) | [ ]   | The mine operator of the mine |
| [ ]  | Decision to grant a practising certificate | s. 140 | [ ]   | The applicant for the practising certificate |
| [ ]  | Decision to impose conditions on a practising certificate | s. 142 | [ ]   | The holder of the practising certificate |
| [ ]  | Decision to suspend or cancel a practicing certificate | s. 143 | [ ]   | The holder of the practising certificate |
| [ ]  | Decision to grant a certificate of competence | s. 149 | [ ]   | The applicant for the certificate of competence |
| [ ]  | Decision to cancel a certificate of competence | s. 151 | [ ]   | The holder of the certificate of competence |
| [ ]  | Decision to grant of a licence | s. 158 | [ ]   | The applicant for the licence |
| [ ]  | Decision to impose conditions on a licence | s. 159 | [ ]   | The holder of the licence |
| [ ]  | Decision to suspend or cancel a licence | s. 160 | [ ]   | The holder of the licence |

Details of the decision (copy must be attached)

Include details of the decision including:

* the date the decision was made or the notice was issued
* the name of decision maker or Inspector issuing notice
* notice/certificate/licence number (if applicable)
* provide a description of the decision in relation to which you are seeking internal review
* attach a copy of the decision (e.g. notice, letter, etc) in relation to which you are seeking internal review.

|  |
| --- |
|       |

Application outside of prescribed time limit

If this application is lodged outside the prescribed time limit (see section 224 of the WHS Act or cl 678 WHS Regulation for the times) you must provide a reasonable explanation for the delay before it will be accepted. Please give your explanation:

|  |
| --- |
|       |

Why do you think the decision should be reviewed?

You may attach other information to support your request.

|  |
| --- |
|       |

Are you seeking a stay of a decision to issue a prohibition notice or non-disturbance notice under the WHS Act?

[ ]  Yes [ ]  No

If yes, why should the operation of the decision be stayed during the determination of the review?

|  |
| --- |
|       |

Notes:

* An application for internal review automatically stays a reviewable decision under the WHS Act (other than a decision to issue a prohibition notice or non-disturbance notice) – see s 228(1) of the WHS Act.
* Stays of a decision made under the WHS Regulation or WHS (Mines) Regulation are not generally available – see clause 682 of the WHS Regulation. This means decisions made under these regulations continue to operate even if an application for internal review is made.

Declaration

I declare that, to the best of my knowledge, the information provided in this application and supporting documentation is true and correct in every particular.

|  |
| --- |
| Tick one box only[ ]  I am the applicant [ ]  I am authorised by the applicant to make this application and declaration  |
| Name |       |
| Position/title |       |
| Signature |  | Date |       |

## Submitting the form

Mine operators can request a review by using the Regulator portal. Requests made by using this form must only be sent to the addresses below.

Email: cau@regional.nsw.gov.au

Mail: Central Assessment Unit

NSW Resources Regulator

PO Box 344, HRMC NSW 2310

© State of New South Wales through Regional NSW 2022. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute Regional NSW as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (October 2022) and may not be accurate, current or complete. The State of New South Wales (including Regional NSW), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.