

Internal review of decision - guidance for applicants

Background

Internal review is a mechanism for a person to seek review of a range of decisions made by inspectors or the regulator dealing with health and safety issues in workplaces. The service is free and the decisions which can be internally reviewed are listed in the *Work Health and Safety Act 2011* and *Safety in Recreational Water Activities Act 2011*. Under the *Electrical Safety Act 2002*, any person whose interests are affected by an *original decision* may apply for the decision to be reviewed.

The decisions made that are not open to internal review may be subject to external review. An external review of decision is completed by either the Queensland Civil and Administrative Tribunal (QCAT) or Queensland Industrial Relations Commission (QIRC) depending on the decision. The different decisions reviewable by QCAT and those by the QIRC are outlined at www.worksafe.qld.gov.au.

This guidance explains the principles of internal review and how internal reviewers conduct reviews and make their decisions. Internal review seeks to be an authoritative and transparent process, which is robust and consistent while promoting accountability.

Internal reviewers

The internal review is undertaken by an 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 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 conflicts of interest or bias.

Reviewers must act independently and exercise their own judgment while having regard for 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.

Under the *Electrical Safety Act 2002*, the internal reviewer for a decision made by the regulator about the issue, renewal or reinstatement of an electrical licence is the Electrical Licensing Committee.

Eligibility to make an application

Applications for a review of decision under the *Work Health and Safety Act 2011* and the *Safety in Recreational Water Activities Act 2011* can only be made by an 'eligible person'.

There are different categories of 'eligible persons' for each reviewable decision, including:

- a worker or his/her representative who is affected by the decision
- a person conducting a business or undertaking who is affected by the decision
- the person with management control of the workplace, plant or substance
- a health and safety representative who represents a worker who is 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.

These Acts outline the category of 'eligible person' that applies to each reviewable decision.

Under the *Electrical Safety Act 2002*, any person whose interests are affected by an *original decision* may apply for a decision to be reviewed.

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 must be made in writing using the *Application for Internal Review of decision* form. If the form is incomplete, you may be contacted to provide information or the application may be returned to you to be completed. The timeframe for the review does not start until the completed application is received.

Incomplete applications

It is your responsibility to ensure you have completed the required fields and submitted all required documents. Incomplete applications will be returned to you and will result in delays in the review process. The review timeframes only apply from the date when all required information is received.

Invalid applications

An application with all of the required fields will be forwarded to a reviewer; however it may still not be considered to be a valid application for the purposes of the internal review process. An application can be invalid for a number of reasons, including:

- 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 per reviewable decision)
- it is a complaint about the behaviour of the decision maker
- there is disagreement about what the compliance requirements of the reviewable decision entail.

You will be advised of the alternative avenues available to address your concerns if any of these apply.

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 should be lodged before the compliance date on the notice or within 14 days of the date on which you became aware of the notice, whichever is earlier.

Applications for all other reviewable decisions under the *Work Health and Safety Act 2011*, the *Electrical Safety Act 2002* and *Safety in Recreational Water Activities Act 2011* should be lodged within 14 days of the date on which you became aware of the reviewable decision.

Applications for all reviewable decisions under the *Work Health and Safety Regulation 2011* should be lodged within 28 days of the date on which you became aware of the reviewable decision.

Lodgement outside these timeframes may be permitted in some circumstances. The reviewer will consider a number of factors including your explanation for the late lodgement, whether it would adversely affect anyone else if it were 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
- set aside the original decision and substitute it for another decision.

For reviews of electrical licensing decisions, the Electrical Licensing Committee may also refer the decision back to the regulator for further consideration.

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 it 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 clarify the reasons, in addition to the written decision. You will also receive information about the procedure for seeking an external review of the decision.

For reviews of electrical licensing decisions, the Electrical Licensing Committee will advise you of their decision as soon as is practicable.

Stays of reviewable decisions

You may seek a stay (that is suspension) of a decision under the *Work Health and Safety Act 2011*, *Electrical Safety Act 2002* and *Safety in Recreational Water Activities Act 2011* while the review is being undertaken.

Stays relating to non-disturbance notices, or prohibition notices, electrical safety protection notices or unsafe equipment notices must be applied for while 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.

Note: You cannot apply for a stay of a reviewable decision under Chapter 11 of the Work Health and Safety Regulation 2011.

External review

If you are not satisfied with the decision made at internal review, or the original decision was made by the regulator, you can apply for an external review of the decision. An external review of decision is completed by either the Queensland Civil and Administrative Tribunal (QCAT) or Queensland Industrial Relations Commission (QIRC) depending on the decision.

The different decisions reviewable by QCAT and those by the QIRC are outlined at www.worksafe.qld.gov.au.

If the decision falls within the decisions reviewable by QCAT you must submit your written notice of appeal to QCAT within 28 days of receiving the notice of decision. If the decision is within the decisions reviewable by QIRC, you must file a written application for a review with the industrial registrar. Your application must be filed within 30 days after the day on which the decision first came to the applicant's notice.

The external reviewer may:

- confirm the decision being appealed
- vary the decision being appealed
- set aside the decision being appealed and make a substitute decision
- return the issue to WHSQ.

A person applying for external review may also have a right to seek that review by the Queensland Ombudsman where there is no right of external review by QCAT or QIRC.

An application for review by the Queensland Ombudsman should be made within 12 months of the day the applicant received or became aware of the original decision.

If the application for review is accepted, the Queensland Ombudsman will try to informally resolve your complaint with the agency concerned and where possible, negotiate a mutually satisfactory outcome.

Outcomes from a Queensland Ombudsman review may be:

- recommendations to the agency to rectify any unlawful, unfair or unreasonable actions in making a decision
- recommendations aimed at improving the agency's policies and practices.

Further information

For further information about how to apply for an external review of decision, including a stay, visit:

- www.worksafe.qld.gov.au or call the WHS Infoline on 1300 362 128
- www.qcat.qld.gov.au or call QCAT on 1300 753 228
- www.qirc.qld.gov.au or call QIRC on 1300 592 987
- www.ombudsman.qld.gov.au.