

Procedure

Deciding a request for an extension of time to lodge an application for review – *Work Health and Safety Act 2011*

Purpose:

To outline the policy and process to be undertaken by the Regulator to determine a request to extend the prescribed timeframe to lodge an application for review in accordance with section 224(1) of the *Work Health and Safety Act 2011* (the Act).

The Regulator delegates its functions in relation to the review of decisions under the Act, including whether to allow a longer period, to be undertaken by the Office of Industrial Relations.

Background:

Eligible persons are entitled to apply for a review of improvement and prohibition notices issued under the Act (Part 12 of the Act).

The Act prescribes time limits for:

- the applicant to lodge an application for review (14 days or less)
- the internal reviewer to make a review decision (within 14 days)
- the internal reviewer to provide the review decision to the applicant as soon as it practicable after reviewing the decision.

An application for review must be made within the prescribed timeframe after the day on which the decision first came to the eligible person's notice or the longer period the Regulator allows (section 224 of the Act). The application must be made in the way and in the form required by the Regulator.

The **prescribed timeframe** is:

- for an improvement notice, the period stated for compliance with the notice or 14 days, whichever is the lesser
- otherwise, 14 days.

The prescribed timeframe for applying for review gives the applicant sufficient time to:

- formulate grounds for review
- obtain independent advice (if required)
- gather information to support the grounds for review
- assess the prospects of having the inspector's decision overturned on review
- make an application for review that is fully compliant and accompanied by any supporting submissions.

The Act provides that the Regulator may allow a longer period to apply for review.

Policy on requests to allow a longer period to apply for review:

It is expected that applicants will typically be able to lodge a complete application for review within the prescribed time. Requests for a longer period to lodge an application for review will be considered if the Regulator is satisfied that **special circumstances** exist that prevented the lodgement of an application within the prescribed time.

When an applicant requests a longer period to apply for review, it is expected that the applicant will provide clear reasons for the request as well as supporting evidence of the special circumstances that have caused the request. Requests for a longer period to lodge an application should, where possible, be made within the prescribed time, however the review application should still be made at the earliest possible time.

When requesting a longer period to apply for a review, the applicant or their legal representatives should note the following:

- It is generally not sufficient for the applicant to state they were confused or did not understand the information provided on the notice.
- It is not sufficient for the applicant to state that they were not able to lodge an application for medical reasons – the applicant needs to supply medical evidence stating why they were not capable of, or competent to, lodge an application for review within the prescribed timeframe.
- Extensions granted are more likely to be for short periods given the potential for an unresolved contravention of a work health and safety duty to result in a risk to the health and safety of a person.
- An applicant's failure to consult a solicitor or otherwise seek advice until the time to lodge a review application is about to expire is not generally considered to constitute a special circumstance. Legal representation is not required for the review process and it is the applicant's responsibility to appropriately use the legislative timeframe to seek advice or representation.
- Ignorance of the ability to seek a review will not constitute special circumstances on the basis that review rights are included in the notice issued.

The decision making process:

When an application for review is received and determined to have been lodged outside the prescribed time, and the review applicant has not already done so, the applicant will be requested to provide reasons for the late lodgement and any evidence to support those reasons (the extension request).

A review applicant's extension request may need to address the following matters:

- the extent of the delay
- the reason for the delay in lodging the application for review
- the steps taken by the applicant to progress the application for review
- the reason for obtaining and submitting additional information

- the merits of the application.

Submissions and evidence supplied by the review applicant will be considered to determine whether or not to release that information to the inspectorate for consideration and response in the interests of natural justice. If information is released to the inspectorate, they will be given time to respond. If information is consequently provided by the inspectorate, this may be released to the applicant for consideration in the interests of natural justice.

When a decision about the request for a longer period to lodge an application for review has been made, either to grant or deny the longer period, the applicant and the inspectorate will be advised of the basis for that decision.

A decision about the request for a longer period is not a decision made, or taken to have been made, on an internal review and as a consequence there are no appeal rights available under the Act. However, you may be able to apply to the Supreme Court for a judicial review.

Further information

Any queries regarding this procedure should be directed to the Office of Industrial Relations (Review and Appeals Unit) on 1300 739 021.