

GUIDE FOR APPLICANTS FOR EXEMPTIONS

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INTRODUCTION

The *Work Health and Safety (WHS) Regulations 20XX [jurisdiction]* has a general power which provides for [the WHS Regulator] to grant an exemption from compliance with any of the WHS Regulations.

The issuing of an exemption is based on the understanding that the alternative agreed course of action will provide at least an equivalent level of health and safety to that achieved by complying with the WHS Regulation.

EXEMPTION TYPES

General exemption

Under Regulation 684, [The WHS Regulator] may grant a general exemption from compliance with any of the WHS Regulations.

Hazard specific exemptions

Hazard specific provisions in the WHS Regulations apply to the granting of an exemption:

- From holding a high risk work licence [regulation 686]; or
- For a major hazard facility [regulation 688].

SCOPE

General exemption provisions are set out in the WHS Regulations 684 - 685 and exclude exemptions requiring a person to hold a high risk work licence, that are set out in WHS Regulations 686 - 687 or relating to a major hazard facility or a proposed major hazard facility, that are set out in WHS Regulations 688 - 689.

Who may apply for an exemption

GENERAL EXEMPTION

Any person or class of persons may apply to [the WHS Regulator] in writing for a general exemption. [Regulation 684 (1)-(2)].

A person includes a body corporate (legal entity) such as a corporation or incorporated association or government entity (government department or government statutory body) or an individual.

A class of persons means a number of persons who have a common characteristic for example: operators of a specific tool or machinery.

[The WHS Regulator] may on its own initiative grant a general exemption. [Regulation 684 (2)].

High Risk Work Licence Exemption

Any person or class of persons may apply to [the WHS Regulator] in writing for an exemption from the requirement to hold a high risk work licence. [Regulation 686].

Major Hazard Facility Exemption

The operator of a major hazard facility or proposed major hazard facility may apply to [the WHS Regulator] for an exemption from compliance with any provision in the WHS Regulations relating to that facility. [Regulation 688].

Regulation 533(1) of the WHS Regulation defines the operator of a major hazard facility to be: a person conducting the business or undertaking of operating the facility who has:

- management or control of the facility; and
- the power to direct that the whole facility be shut down.

Regulation 533(2) of the WHS Regulation defines the operator of a proposed major hazard facility to be:

- the operator of a proposed facility that is an existing workplace; or
- the person who is to be the operator of a proposed facility that is being designed or constructed.

Duration of an exemption

The exemption will last the length of time stipulated by [the WHS Regulator] under Regulation 692(h) unless [the WHS Regulator] amends or cancels the exemption earlier. [Regulation 697].

Recognition of interstate authorisations

An exemption issued by [the WHS Regulation] is valid in [jurisdiction] only.

How to apply

Jurisdictional Note 1.

Fees

Jurisdictional Note 2.

Granting/renewal/refusal

WHAT DOES THE REGULATOR TAKE INTO ACCOUNT WHEN DECIDING WHETHER TO GRANT AN EXEMPTION

Key Principles:

The agreed national principles which guide exemption decision making which underpin the exemption decision making process are:

Consistency: Regulators will apply common criteria for the issue, refusal and variation of exemptions from the WHS Regulations.

Constructiveness: Regulators will use national guidance material to assist applicants to understand the exemption decision making process.

Transparency: The principles on which exemption decisions are made will be published on the website of Safe Work Australia. Regulators will make decisions by applying documented policies neutrally and objectively, with integrity and fairness. Appropriate confidentiality considerations will underpin the decision making process. Documented policies will also be published on the website of each WHS Regulator.

Accountability:

At the time of refusing, cancelling, suspending or varying an exemption, an applicant will be advised of the right to apply for external review of the decision.

Proportionality: Exemption decision making should be proportionate to the risk and regulators should ensure that equivalent safety can be demonstrated.

Responsiveness: in making exemption decisions regulators will be timely and responsive to the needs of an applicant while ensuring that appropriate consultation has taken place.

Targeted: Regulators will only grant an exemption where exceptional circumstances justify the grant of the exemption and can grant an exemption on its own initiative, that is, without receipt of an application.

General exemption

[The WHS Regulator] may deem any matter relevant when making its decision to grant a general exemption but must consider the following:

- Whether granting the exemption will result in a standard of health and safety at the relevant workplace or in relation to the relevant undertaking, that is at least equivalent to the standard that would be achieved by compliance with the provision/s.
- Whether at least an equivalent standard of health and safety can be achieved by the Regulator granting a conditional exemption, where those conditions are complied with.
- Whether exceptional circumstances justify the granting of the exemption. Exceptional circumstances may include: emergency situations, practicality of applying a regulatory provision and technological change.

- If the proposed exemption relates to a particular thing whether the risk associated with that thing is not significant if the exemption is granted.
- Whether the applicant has carried out consultation in relation to the proposed exemption in accordance with Divisions 1 and 2 of Part 5 of the WHS Act.

[Regulation 685].

Exemption from holding a high risk work licence

[The WHS Regulator] may deem any matter relevant when making its decision to grant an exemption from holding a high risk work licence but must be satisfied that granting the exemption will result in a standard of health and safety that is at least equivalent to the standard that would be achieved without the exemption.

[The WHS Regulator] will consider the following in making a decision:

- The impracticability of obtaining a high risk work licence;
- Whether the person's competencies exceed those required for the grant of a high risk work licence; and
- Whether any plant used can be modified to reduce the risk associated with its operation.

[Regulation 687].

Exemption for a major hazard facility

[The WHS Regulator] must be satisfied about the following before granting an exemption:

- Whether one or more Schedule 15 chemicals are present or likely to be present at the facility; and
- Whether the quantity of the Schedule 15 chemical/s exceeds the threshold quantity of the chemical/s periodically because:
 - the Schedule 15 chemical/s are solely the subject of intermediate temporary storage; and
 - the Schedule 15 chemical/s is in one or more containers with the capacity of each container to contain no more than a total of 500 kilograms of the Schedule 15 chemical.
- Whether granting the exemption will result in a standard of health and safety in relation to the operation of the facility that is at least equivalent to the standard that would be achieved by compliance with the relevant provision/s. [The WHS Regulator] will consider the following in making a decision:
 - Whether the applicant (operator of the facility) is complying with the WHS Act and Regulations, and
 - Whether the applicant has processes and procedures in place which will keep the quantity of the Schedule 15 chemical/s present or likely to be present at or below the threshold quantity for the Schedule 15 chemical/s as often as practicable; and
 - Whether the applicant has implemented adequate control measures to minimise the risk of a major incident occurring.

[Regulation 689].

The WHS Regulation defines 'in transit' in relation to a thing, means that the thing:

- is supplied to, or stored at, a workplace in containers that are not opened at the workplace;
and
- is not used at the workplace; and
- is kept at the workplace for not more than 5 consecutive days.

[Regulation 5].

GRANTING OF A CONDITIONAL EXEMPTION

[The WHS Regulator] may impose any conditions it considers appropriate on an exemption. Conditions that may be imposed include:

- Monitoring risks;
- Monitoring the health of persons at the workplace who may be affected by the exemption;
- Keeping certain records;
- Using a stated system of work;
- Reporting certain matters to [the WHS Regulator]; and
- Giving notice of the exemption to person/s that may be affected by the exemption.

A decision to impose condition/s on an exemption is a reviewable decision. [Regulation 691].

GRANTING AN EXEMPTION

If the [The WHS Regulator] grants an exemption on consideration of a written application or on its own initiative, it must provide written notice of the exemption within 14 days after making the decision to grant the exemption.

The WHS Regulator must provide the notification to the person who applied for the exemption or to each person to whom the exemption applies, if the regulator grants the exemption on its own initiative. If the exemption applies to a class of persons the WHS regulator must publish a copy of the exemption in the [jurisdiction] Government Gazette. [Regulation 694 and 695].

REFUSING TO GRANT AN EXEMPTION

[The WHS regulator] may refuse to grant an exemption. If it refuses to grant an exemption, it must give the applicant written notice of the refusal within 14 days after making that decision and the notice must state the reasons for the refusal. [Regulation 696].

A decision to refuse to grant a general exemption, a high risk work licence exemption or a major hazards facilities exemption is a reviewable decision. [Regulation 684, 686 and 688].

Obligations

A person to whom an exemption is granted must comply with the conditions of the exemption and ensure any person under their management or control complies with the conditions of the exemption. [Regulation 693].

CANCELLATION/AMENDMENT OF AN EXEMPTION

[The WHS Regulator] may amend or cancel an exemption at any time.

A decision to amend or cancel an exemption is a reviewable decision. [Regulation 697]

If [the WHS Regulator] decides to amend or cancel an exemption it must give written notice to the applicant, or each person to whom an exemption has been granted by the regulator on its own initiative, of the amendment or cancellation within 14 days after making that decision and the notice must state the reasons for the decision. [Regulation 698 (1) and (3)]

If the exemption affects a class of persons, [the WHS Regulator] must publish a notice of amendment or cancellation of the exemption in the [jurisdiction] Government Gazette. [Regulation 698 (2)].

The amendment or cancellation takes effect on the publication of the notice in the [jurisdiction] Government Gazette or on a later date specified in the notice or if a notice is not required to be published in the [jurisdiction] government gazette, on the giving of the notice to the applicant or on a later date specified in the notice. [Regulation 698 (4)]

Application for review of decision relating to an exemption

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 the following decisions:

- to refuse to grant an exemption [Regulation 684, 686 and 688]; or
- to impose a condition on an exemption (Regulation 691); or
- to refuse to grant an exemption [Regulation 696]; or
- to amend an exemption [Regulation 697]; or
- to cancel an exemption [Regulation 697].

INTERNAL REVIEW

A written application for the internal review of a reviewable decision is made using the application form provided by [the WHS Regulator]. The application must be lodged within 28 days after the day on which the decision first came to the eligible person's notice or such longer period as [the WHS 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 WHS Regulator] will give the applicant written notice of the decision and reason for the decision within 14 days of the decision being made [Regulation 681].

An application for an internal review does not affect the operation of the reviewable decision or prevent the taking of any lawful action to implement or enforce the decision, [Regulation 682].

EXTERNAL REVIEW

If the applicant is not satisfied with the internal review process, they can apply to the **Jurisdictional Note 3: [External review body]**.

Further information

Jurisdictional Note 4.

LEGISLATION

Jurisdictional Note 5.

LIST OF JURISDICTION CONTACTS

Jurisdiction	Name of regulator	Telephone	Website
New South Wales	SafeWork NSW	13 10 50	www.safework.nsw.gov.au
Victoria	WorkSafe Victoria	1800 136 089 or (03) 6166 4600	www.worksafe.vic.gov.au
Queensland	Workplace Health and Safety Queensland	1300 307 877	www.worksafe.qld.gov.au/
South Australia	SafeWork SA	1300 365 255	www.safework.sa.gov.au
Western Australia	WorkSafe WA	1300 307 877 or 1800 678 198	www.commerce.wa.gov.au/worksafe/
Australian Capital Territory	WorkSafe ACT	13 22 81	www.worksafe.act.gov.au
Tasmania	WorkSafe Tasmania	1800 136 089 or (03) 9641 1444	www.worksafe.tas.gov.au/
Northern Territory	NT WorkSafe	1800 019 115	www.worksafe.nt.gov.au
Commonwealth	Comcare	1300 366 979	www.comcare.gov.au

Checklists

CHECKLIST FOR GENERAL EXEMPTION

Checklist for general exemption	
	Application form is complete including a signature in the declaration.
	If the proposed exemption relates to a thing, evidence that the risk associated with the thing, is not significant if the exemption is granted has been submitted.
	Evidence that consultation in relation to the proposed exemption has been undertaken in accordance with Divisions 1 and 2 of Part 5 of the WHS Act has been submitted.

CHECKLIST FOR EXEMPTION FROM HIGH RISK WORK LICENCE

Checklist for exemption from high risk work licence	
	Application form is complete including a signature in the declaration.
	Copies of documents showing successful completion of competencies exceeding those required for the grant of the high risk work licence has been submitted.
	Documents that demonstrate that the plant used by the person or class of persons can be modified to reduce the risk associated with its operation has been submitted.

CHECKLIST FOR EXEMPTION FOR A MAJOR HAZARD FACILITY

Checklist for exemption for a major hazard facility	
	Application form is complete including a signature in the declaration.
	Documents that demonstrate that the Schedule 15 chemical/s present or likely to be present will periodically exceed the threshold quantity because they are in intermediate temporary storage and in containers with a capacity to contain no more than 500 kg of the chemical has been submitted.
	Documents that the operator of the facility is complying with the WHS Act and Regulations, including Part 7.1 has been submitted.
	Documents that evidence processes and procedures are in place which will keep the quantity of the Schedule 15 chemical/s present or likely to be present at or below the threshold quantity as often as practicable has been submitted.
	Documents that evidence that that operator of the facility has implemented control measures to minimise the risk of a major incident occurring has been submitted.