



GUIDE FOR APPLICANTS FOR AUTHORISATION TO USE, HANDLE OR STORE PROHIBITED OR RESTRICTED CARCINOGENS

SAFEWORK NSW

MARCH 2017

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This publication may contain information about the regulation and enforcement of work health and safety in NSW. It may include some of your obligations under some of the legislation that SafeWork NSW administers. To ensure you comply with your legal obligations you must refer to the appropriate legislation.

Information on the latest laws can be checked by visiting the NSW legislation website www.legislation.nsw.gov.au

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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Catalogue No. SW08449

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INTRODUCTION

The Work Health and Safety Regulation 2011 (WHS Regulation) provides that a person conducting a business or undertaking (PCBU) must not use, handle or store, or direct or allow a worker at the workplace to use, handle or store a prohibited or restricted carcinogen unless SafeWork NSW (the Regulator) has authorised that use, handling or storage under clause 384 of the WHS Regulation (and in the case of a prohibited carcinogen, is used for genuine research or analysis).

Under section 43 of the *Work Health and Safety Act 2017* (WHS Act), it is an offence to carry out work if the regulations require the person carrying out the work to be authorised and the person is not so authorised.

The purpose of authorisations in work health and safety is to control work activities and the use of substances that are high risk and to provide risk based information to the Regulator so it can apply resources and target compliance and enforcement actions to areas of greatest risk to health and safety.

SCOPE

Authorisation is required:

- to use handle or store a prohibited carcinogen referred to in Schedule 10, Table 10.1, column 2 of the WHS Regulation; and
- to use handle or store a restricted carcinogen referred to in Schedule 10, Table 10.2, column 2 of the WHS Regulation.

(Clauses 380 and 381 of the WHS Regulation).

WHO MAY APPLY FOR AN AUTHORISATION

A person conducting a business or undertaking at a workplace who intends to use handle or store a prohibited or restricted carcinogen may apply for authorisation. (Clause 383 (1) of the WHS Regulation). Person conducting a business or undertaking (PCBU) is defined in section 5 of the WHS Act.

A person conducting a business or undertaking may be an individual, a body corporate, a government agency, a partnership or an unincorporated association.

DURATION OF AUTHORISATION

The authorisation is of unlimited duration unless cancelled by the Regulator.

A decision to cancel an authorisation to use, handle or store a prohibited or restricted carcinogen is a reviewable decision. (Clause 386 of the WHS Regulation).

HOW TO APPLY FOR AN AUTHORISATION

An application for authorisation is to be made to the WHS Regulator in the state or territory or the Commonwealth in which the workplace that uses handles or stores a prohibited or restricted carcinogen is located.

PCBUs that intend to use handle or store a prohibited or restricted carcinogen in workplaces located within NSW must apply for authorisation to the Regulator.

To apply for authorisation, complete the *Authorisation to use, handle or store prohibited and restricted carcinogens - application (ACU)* (catalogue no. SW08114) available on the SafeWork NSW website. Lodgement instructions are on the form.

Where there is a change to the information provided in an application for authorisation, the authorisation holder must advise the Regulator using the *Authorisation to use, handle or store prohibited and restricted carcinogens – application* (ACU) (catalogue no. SW08114).

FEES

There is no fee for the authorisation to use handle or store a prohibited or restricted carcinogen.

GRANTING/REFUSING

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

The Regulator will consider the following in making a decision to grant authorisation:

- Whether a prohibited carcinogen is used handled or stored for genuine research or analysis (Clause 384 (2) of the Regulation); or
- Whether a restricted carcinogen is used handled or stored for a purpose referred to in table 10.2 of Schedule 10 of the WHS Regulation (Clause 384 (3) of the WHS Regulation); and
- The quantity of carcinogen to be used handled or stored at the workplace each year (Clause 383 (2)(f) of the WHS Regulation); and
- The number of workers that may be exposed to the carcinogen (Regulation 383 (2) (h) of the WHS Regulation); and
- The risk management procedure that contains hazard identification, risk control and, if elimination or substitution of the carcinogen is not reasonably practicable, the reason why. The Regulator requires that the risk management procedure includes:
 - storage details
 - process description
 - control measures to prevent exposure
 - maintenance and testing procedures for control measures

- atmospheric monitoring
- biological monitoring
- health surveillance program
- spill and emergency procedures
- employee training and information
- decontamination and waste disposal.

(Clause 383 (2) (i) of the WHS Regulation).

The Regulator may request additional information to assist in its decision process. (Clause 383(2) (j) of the WHS Regulation).

GRANTING OF A CONDITIONAL AUTHORISATION

The Regulator may impose any condition it considers necessary on an authorisation to achieve the objectives of the WHS Act or Regulation (Clause 384 (4) of the WHS Regulation).

REFUSING TO GRANT AN AUTHORISATION

The Regulator must refuse to authorise the use, handling or storage of a restricted or prohibited carcinogen for a use not referred to in clause 384 of the WHS Regulation.

The Regulator may authorise the person to use, handle or store a prohibited carcinogen only if it is to be used handled or stored for genuine research or analysis (Mandatory refusal). (Clause 384 (2) of the WHS Regulation).

The Regulator may only authorise the person to use, handle or store a restricted carcinogen if it is to be used handled or stored for a purpose described in Schedule 10, Table 10.2 column 3 of the WHS Regulations for the item (Mandatory refusal) (Clause 384 (3) of the WHS Regulation).

A decision to refuse to grant an authorisation to use, handle or store a prohibited or restricted carcinogen is a reviewable decision (Clause 384 of the WHS Regulation).

OBLIGATIONS

CHANGE OF DETAILS

A person who applies for authorisation to use handle or store a prohibited or restricted carcinogen must advise the Regulator in writing of any change in the information given in the application for authorisation before the change or as soon as reasonably practicable after the person becomes aware of the change (Clause 385 of the WHS Regulation).

RECORDS TO BE KEPT

The person authorised to use handle or store prohibited or restricted carcinogens must keep the following records for 30 years after the authorisation ends:

- A copy of each authorisation given to the person including any conditions imposed; and
- The full name, date of birth and address of each worker likely to be exposed to the prohibited carcinogen or restricted carcinogen during the period of the authorisation.

(Clause 388 (2) of the WHS Regulation).

STATEMENT OF EXPOSURE

The person authorised to use handle or store prohibited or restricted carcinogens must give to the worker, at the end of the workers engagement by that person, a written statement of the following:

- The name of the prohibited or restricted carcinogen to which the worker may have been exposed during their engagement.
- The time the worker may have been exposed.
- How and where the worker may obtain records of the possible exposure.
- Whether the worker should undertake regular health assessments, and the relevant tests to undertake.

(Clause 387 of the WHS Regulation).

CANCELLATION

The Regulator may cancel an authorisation to use, handle or store a prohibited or restricted carcinogen if satisfied that:

- the person granted the authorisation has not complied with a condition on the authorisation; or
- the risk to health and safety of a worker using, handling or storing a prohibited or restricted carcinogen has changed since the authorisation was given. (Clause 386 of the WHS Regulation)

The decision to cancel an authorisation to use, handle or store a prohibited or restricted carcinogen is a reviewable decision (Clause 386 of the WHS Regulation).

APPLICATION FOR REVIEW OF DECISION

The table in clause 676 of the WHS Regulation 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 a decision to refuse to grant an authorisation to use handle or store a prohibited or restricted carcinogen (Clause 384 of the WHS Regulation).

The authorisation holder is the eligible person to request a review of the decision to cancel an authorisation to use, handle or store a prohibited or restricted carcinogen (Clause 386 of the WHS Regulation).

INTERNAL REVIEW

An application for internal review allows the Regulator's decision to be reviewed and possibly changed by a person who was not involved in the original decision. A written application for the internal review of a reviewable decision is made using the application form provided by the Regulator. The application must be lodged within 28 days of the day on which the decision first came to the eligible person's notice or such longer period as the Regulator allows (Clause 678 (1) of the WHS Regulation).

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.

(Clause 680 (2) of the WHS Regulation).

If the reviewable decision is not varied or set aside within the 14 day period, the internal decision is taken to have been confirmed (Clause 680 (6) of the WHS Regulation).

The Regulator will give the applicant written notice of the decision on the internal review and reasons for the decision within 14 days of making the decision (Clause 681 of the WHS Regulation).

An application for an internal review does not affect the operation of the original decision or prevent the taking of any lawful action to implement or enforce the decision, though once the decision on internal review is made if a new decision is substituted then that new decision takes effect (Clause 682 of the WHS Regulation).

EXTERNAL REVIEW

If the applicant or authorisation holder is not satisfied with the decision on internal review, they can apply to the Administrative Decisions Tribunal of NSW.

FURTHER INFORMATION

For authorisation enquiries contact SafeWork NSW on 13 10 50 or email sssg.notifications@safework.nsw.gov.au

LEGISLATION

The WHS Regulation is located on the SafeWork NSW website www.safework.nsw.gov.au

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	www.worksafe.vic.gov.au
Queensland	Workplace Health and Safety Qld	1300 369 915	www.justice.qld.gov.au
South Australia	SafeWork SA	1300 365 255	www.safework.sa.gov.au
Western Australia	WorkSafe WA	1300 307 877	www.worksafe.wa.gov.au
Australian Capital Territory	WorkSafe ACT	02 6207 3000	www.worksafety.act.gov.au
Tasmania	Workplace Standards TAS	1300 366 322 (inside Tasmania) 03 62337657 (outside Tasmania)	www.tas.gov.au
Commonwealth	Comcare	1300 366 979	www.comcare.gov.au
Northern Territory	NT WorkSafe	1800 019 115	www.nt.gov.au

