

Internal Decision Review Guide for Applicants

Overview

Where a decision was made by a delegate of the Clean Energy Regulator and you are not satisfied with the outcome, you may request the Clean Energy Regulator to review that decision. However, you may only apply for a review if the original decision is a reviewable decision specified in the relevant legislation, and the original decision was made by a delegate of the Clean Energy Regulator.

We recognise and value the importance of independent internal decision review. A different officer from the original decision maker will review the original decision in an impartial manner. However, given the relatively small size of the Clean Energy Regulator, there may be a need from time to time to use the expertise of staff working in the area where the primary decision was made. We will ensure that this will not compromise the independence of the reviewer.

How to request an internal decision review

If your application for a mandatory internal decision review is made under the *Clean Energy Act 2011* (CE Act), the *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act), the *Australian National Registry of Emissions Units Act 2011* (ANREU Act) or the *Clean Energy Regulations 2012* (CE Regs), it must:

- a) be made within 28 days after you have been informed of the original decision (unless you have requested the Clean Energy Regulator extend the time period and you have been granted an extension of time);
- b) be in a form approved by the Clean Energy Regulator; and
- c) must set out the reasons for the application.

If your application for an internal decision review is made under section 66 of the *Renewable Energy (Electricity) Act 2000* (REE Act) or under regulation 49 of the *Renewable Energy (Electricity) Regulations 2001* (REE Regulations), it must be made within 60 days of making the original decision. The application must be in writing.

If your application for an internal decision review is made under section 54 of the REE Act, it must be made within 60 days after the assessment you are objecting to was made and your application must state fully and in detail the grounds that you rely on for your objection.

Extension of time

You may nevertheless lodge your application after the 60-day period has passed together with a written request, asking the Clean Energy Regulator to deal with the application as if it had been lodged within the 60-day period.

The request must state fully and in detail the circumstances concerning, and the reasons for, your failure to lodge the application within the 60 days.

If the Clean Energy Regulator decides to agree to the request, then the application is taken to have been lodged within the 60-day period.

If the Clean Energy Regulator decides to refuse the request, you may apply to the Administrative Appeals Tribunal (AAT) for review of the Clean Energy Regulator's decision.

Please note that an extension of time will be granted only in exceptional circumstances. There are five factors the Clean Energy Regulator will consider in determining whether or not to grant an extension of time:

- the length of the delay;
- the applicant's explanation for the delay;
- the circumstances of the delay;
- whether any prejudice is caused to the Clean Energy Regulator or other parties as a result of the delay; and
- whether the applicant has an arguable case for their objection of the primary decision.

We encourage you to lodge a detailed submission with your application which sets out your objection to the original decision and the evidence to support your objection. Failure to do so may result in the internal decision review being delayed.

You may use a representative

You can always authorise someone to lodge an application or make representations on your behalf. If you wish to do so, please fill out and sign the Nomination of a Representative form, which is attached to the Application Form.

How we process your request for internal decision review

Once we receive your application and supporting documents, we conduct a thorough analysis of your objection. We may need to request further information from you.

At the completion of the analysis, you will be sent a Notice of Intention to Make a Decision, setting out the preliminary findings. You will be given 14 days in which you may respond to the notice.

Following receipt of your response to the Notice or after the expiry of the 14-day period, and consideration of any response you have provided, the Clean Energy Regulator will make a decision to either revoke, vary or uphold the original decision.

Timeframe for the Clean Energy Regulator's decision

If your application for internal decision review was made under the CEA, the CFI Act, the ANREU Act or CE Regs, the Clean Energy Regulator makes their decision within 90 days after receiving your application. If your application for internal decision review was made under the REE Act or the REE Regulations, the Clean Energy Regulator makes their decision on review within 60 days after receiving your application.

The Clean Energy Regulator is taken to have made a decision affirming the original decision if you have not been informed of their decision before the end of the 90-day period (in the case of reviews related to the CE Act, CFI Act, ANREU Act or CE Regs) or 60-day period (in the case of reviews related to the REE Act or the REE Regulations).

You will be informed of the Clean Energy Regulator's decision in writing (by letter or e-mail) as soon as the decision has been made. You will also be informed of the reasons for the Clean Energy Regulator's decision and your right to take the matter to the AAT or the Federal Court for external merits review or on appeal.

Filling in and submitting the application form

The application form has four parts:

Part A – This section requires the applicant to supply information to confirm their eligibility for an internal review of a decision.

Part B - This section requires the applicant to specify their personal information and contact details.

Part C - This section allows the applicant to specify the decision they are seeking to have reviewed, why they disagree with the original decision and detail the information being attached in support of the request for review.

Part D - This section contains the applicant's declaration that will need to be signed and dated.

Mark the boxes with a or . If you are filling out the form manually, please use black or blue ink.

When the form has been completed, check that all the questions have been answered, all supporting documents have been listed and attached, and that the declaration at the end of the form is signed and dated.

Lodge the form and attachments by **post** to:

Internal Decision Review
Clean Energy Regulator
GPO Box 621
Canberra ACT 2601

or e-mail to:

decision.review@cleanenergyregulator.gov.au