

How to have a Safeguard schemes decision reviewed

May 2024

If you disagree with a Safeguard schemes decision you may have a right to have that decision reviewed.

This fact sheet provides information for Accredited Certificate Providers (**ACPs**) and applicants for accreditation about reviews of Scheme Administrator decisions, with a focus on internal administrative reviews. Section 1 explains the broad types of reviews available. Section 2 details decisions that can be administratively reviewed. Sections 3–5 focus on the internal administrative review process for Scheme Administrator decisions.^a

The information in this fact sheet is general guidance only. We recommend discussing your options with your professional advisors if you are considering seeking review of a decision.

1 Available review options

Some Scheme Administrator decisions are reviewable. The review options are administrative review and judicial review. Administrative review is only available for certain types of Scheme Administrator decisions, while judicial review is available for most Scheme Administrator decisions (Figure 1).

Administrative reviews involve reconsidering the original decision. The reviewer can vary or replace the decision with the correct and preferable decision if they determine the decision made was incorrect. There are 2 stages of an administrative review:

- internal review by IPART
- external review by the NSW Civil and Administrative Tribunal (**NCAT**).

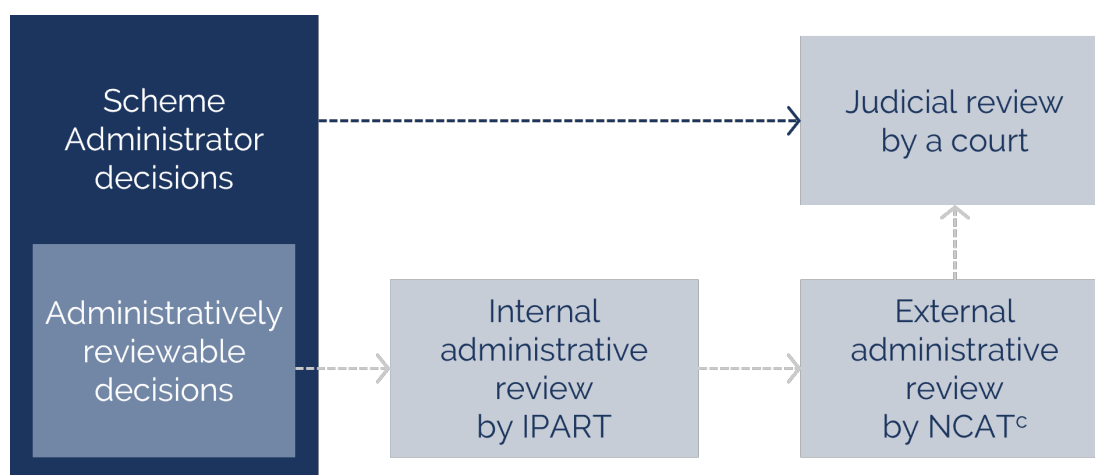
Typically, an administrative review begins with an internal review. If you are not happy with the outcome of the internal review, you can seek an external review. Following an external review you may be able to appeal the decision further or seek judicial review.

Judicial review is done by a court and involves reviewing a decision for *legal* errors, not whether the decision was the correct and preferable decision. If the court identifies a legal error, it can send the matter back to the original decision-maker to remake the decision according to law.

Judicial review can be an expensive process for the parties involved. We recommend discussing your options with your professional advisors if you are considering seeking judicial review.

^a Scheme Participants may also apply for administrative review of certain Scheme Regulator decisions. [Contact us](#) to discuss your situation if you are considering seeking review of a Scheme Regulator decision.

Figure 1 Review options for Scheme Administrator decisions



NCAT = NSW Civil and Administrative Tribunal.

2 Decisions that can be administratively reviewed

You have a right to seek administrative review of decisions to:

- refuse an application for accreditation
- refuse an application to vary the activities for which you are accredited
- cancel or suspend an accreditation
- refuse the registration of certificates
- impose or vary a condition of accreditation
- make a claim on or realise any financial assurance you provided
- order the surrender of certificates
- make a civil penalty order.^b

If you wish to seek review of a decision not included in this list you can contact us to discuss your options.

3 How to have a decision reviewed

The first step in seeking administrative review is usually lodging an application for internal review with the Scheme Administrator.^c Your application must:

- be in writing
- be addressed to the Scheme Administrator
- specify your preferred contact address

^b *Electricity Supply Act 1995*, Schedule 4A, clauses 63G, 63H, 73, 132G, 132H, 139, 205, 206 and 220; *Electricity Supply (General) Regulation 2014*, clauses 59 and 62ZH.

^c The NSW Civil and Administrative Tribunal may allow you to proceed directly to external review where it is satisfied that IPART has unreasonably refused to consider a late application, or where it necessary to protect your interests: *Administrative Decisions Review Act 1997* s 55(4).

- generally be lodged within 28 days of you being notified of the decision (if you are unable to lodge the application within 28 days, please contact us or provide supporting information about why you could not meet this deadline with your application).^d

Applications for internal review should be lodged by email through ess@ipart.nsw.gov.au.

Your application should be accompanied by a submission including:

- a clear description of the decision for which you are seeking administrative review
- a statement as to what you think the correct and preferable decision is
- an explanation of why the decision that was made was not the correct and preferable decision and the reasons your preferred decision is the correct and preferable decision
- any other information you would like the internal reviewer to consider.

A template application is included at **Appendix A**. You do not need to use this template, but it could help you make sure you have included all of the relevant information in your application.

4 How we deal with your application

After you make an application the Scheme Administrator will direct an internal reviewer to consider the application.

The internal reviewer will be an individual employed by the Scheme Administrator. The law requires that, where possible, the internal reviewer be a suitably qualified individual who was not substantially involved in the process of making the original decision.

The internal reviewer will consider all the material that was before the Scheme Administrator as well as your application and submission. The internal reviewer may contact you to seek further information or arrange a meeting.

Once the internal reviewer has considered the matter they will:

- affirm the decision or
- vary the decision or
- set aside the decision and make a substitute decision.

The Scheme Administrator will notify you of the outcome of the internal review and the reasons for that outcome within 21 days of your application being lodged. This period may be extended with your agreement.

5 If you disagree with the review outcome

If you disagree with the outcome of an internal review you can seek an external review by NCAT. NCAT deals with a broad and diverse range of matters in addition to administrative review of Scheme Administrator decisions. It is independent of the Scheme Administrator and was set up to resolve issues justly, quickly, cheaply and with as little formality as possible.

If you wish to seek an external review you should seek professional advice.

^d The Scheme Administrator may allow a longer period (except for civil penalty order reviews): *Administrative Decisions Review Act 1997* s 53(2)(d).

Appendix A

Application to the Scheme Administrator for internal administrative review of a Safeguard schemes decision

Applicant *[Insert the name of the ACP or person applying for internal review.]*

Preferred address *[Insert your preferred address where we can contact you and notify you of the outcome of the review. This can be an email address.]*

Decision *[Describe the decision for which you are seeking review.]*

Category of decision *[Tick the box below to identify the relevant category of decision for which you are seeking review.]*

- A decision to refuse an application for accreditation
- A decision to refuse an application to vary the activities for which you are accredited
- A decision to cancel or suspend an accreditation
- A decision to refuse the registration of certificates
- A decision to impose or vary a condition of accreditation
- A decision to make a claim on or realise any financial assurance you provided
- A decision to order the surrender of certificates
- A decision to make a civil penalty order.

Reasons why this decision is not the correct and preferable one *[Explain why the decision that was made was not the correct and preferable one. You may include this in a separate document.]*

Preferred decision *[Explain what you consider the correct and preferable decision to be.]*

Reasons why your preferred decision is the correct and preferable one *[Explain why your preferred decision is the correct and preferable one. You may include this in a separate document.]*

Other information *[Provide any other information that you would like the internal reviewer to consider. Where relevant, this may include supporting information about why you were unable to lodge your application within 28 days of being notified of our decision.]*