

12 December 2019

WHAT

If you disagree with a decision of the Scheme Administrator, you may have a right to have that decision reviewed.

This fact sheet provides information on the administrative review process available to Accredited Certificate Providers (**ACPs**) and applicants for accreditation for some Scheme Administrator decisions.

Seeking review of an ESS decision is distinct from making an enquiry about an ESS matter. For information on how to make an enquiry, refer to the separate fact sheet “How to make an enquiry about an ESS matter”.

WHY

Administrative review allows for the reconsideration of an original decision. The reviewer can replace a decision if it was incorrect or if they consider that another decision would be preferable.

The *Electricity Supply Act 1995*, which establishes the ESS, provides ACPs with a right to seek administrative review of certain categories of ESS decisions. The categories are:

- ▼ A decision to refuse an application for accreditation
- ▼ A decision to cancel or suspend an accreditation
- ▼ A decision to refuse the registration of Energy Savings Certificates (**ESCs**)
- ▼ A decision to impose or vary a condition of accreditation, and

- ▼ A decision to make a claim on or realise any financial assurance provided by an ACP.

If you disagree with such a decision of the Scheme Administrator, you may seek administrative review of that decision.

HOW

In general, the first step in seeking administrative review is to lodge an application for internal review with the Scheme Administrator.

An application for internal review must:

- ▼ Be in writing
- ▼ Be addressed to the Scheme Administrator, and
- ▼ Specify your preferred contact address.

Applications for internal review may be lodged electronically to ess@ipart.nsw.gov.au.

WHEN

In general, an application for internal review must be lodged with the Scheme Administrator within 28 days of being notified of the reviewable decision.

WHAT NEXT

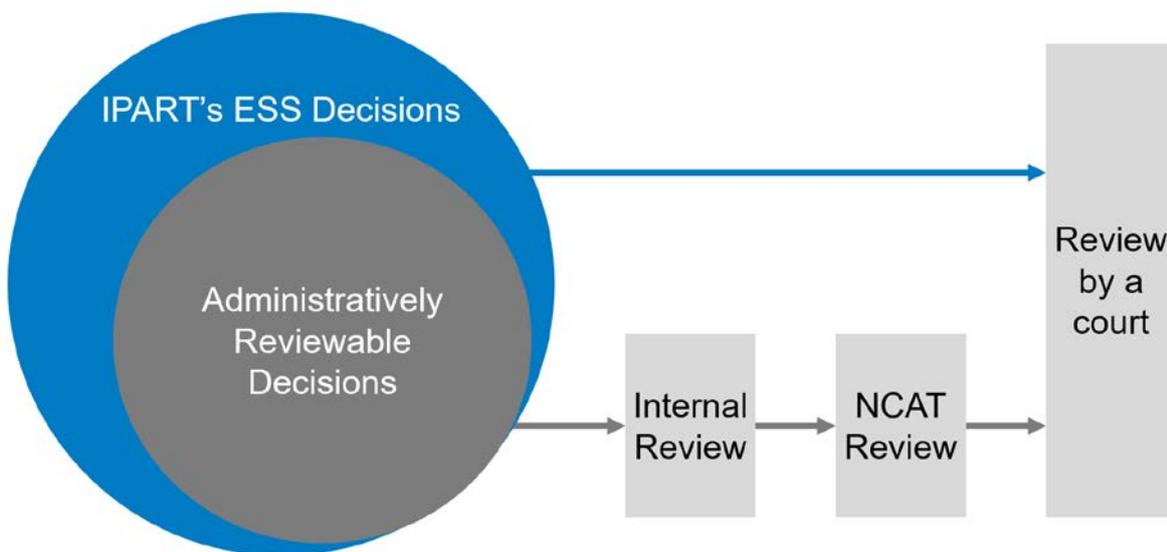
If you still disagree with the decision after an internal review, you can seek external review by the NSW Civil and Administrative Tribunal. The internal reviewer will inform you how to do that.

1 Overview of review options

Generally speaking, there are two types of review available for ESS decisions:

1. Administrative review, and
2. Judicial review.

Administrative review is only available for certain categories of Scheme Administrator decisions. Judicial review, on the other hand, is generally available for most ESS decisions. However, where administrative review is available, it is generally the most appropriate first step.



This fact sheet is provided as general guidance only. If you are considering seeking review of an ESS decision, we recommend that you discuss your options with your professional advisors.

Administrative review

Administrative review involves a reconsideration of the original decision. If the reviewer determines that the decision that was made was not the best one, they may vary or replace the decision with the correct and preferable one.

Administrative review typically happens in stages. The first stage is internal review which may be followed by external review. If you are still not happy with the outcome, you may be able to appeal the decision further or seek judicial review.

Judicial review

Judicial review involves the review of a decision for *legal* errors. It is not concerned with whether the decision was the correct and preferable one but rather whether the decision was lawfully made. Examples of the types of legal errors that may be identified in judicial review are:

- ▼ That the decision-maker did not provide procedural fairness
- ▼ That the decision-maker applied a policy without regard to the merits of the case, or
- ▼ That the decision was so unreasonable that no reasonable person could have made it.

If the court identifies a legal error with a decision, it may send the matter back to the original decision-maker to be remade according to law. Judicial review can be an expensive process for the parties involved.

The focus of this fact sheet is administrative review. If you are considering seeking judicial review, we recommend that you discuss your options with your professional advisors.

2 What ESS decisions are subject to administrative review?

Administrative review is only available for the following categories of ESS decisions:

- ▼ A decision to refuse an application for accreditation
- ▼ A decision to cancel or suspend an accreditation
- ▼ A decision to refuse the registration of ESCs
- ▼ A decision to impose or vary a condition of accreditation, and
- ▼ A decision to make a claim on or realise any financial assurance provided by an ACP.¹

If a decision does not fit within one of these categories, administrative review is not available.

For example, you cannot seek administrative review of a decision by the Scheme Administrator to prosecute you for the improper creation of ESCs; however, you may seek administrative review of a related decision to cancel your accreditation or vary your audit conditions.

Administrative review is not available for a decision not to impose or vary an accreditation condition.

3 How to make an application for administrative review

The first step in making an application for administrative review is to lodge an application for internal review with the Scheme Administrator. This application must generally be lodged within 28 days of being notified of the reviewable decision.²

Your application should be accompanied by a submission. Your submission should include the following information:

- ▼ A clear description of the decision for which you are seeking administrative review

¹ *Electricity Supply Act 1995* s 171(2); *Electricity Supply (General) Regulation 2015* cl 59. A Scheme Participant may also apply for administrative review of certain decisions of the Scheme Regulator: see *Electricity Supply Act 1995* s 171(1).

² The Scheme Administrator may allow a longer period: *Administrative Decisions Review Act 1997* s 53(d). The NSW Civil and Administrative Tribunal may allow an ACP to skip internal review and 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 the ACP's interests: see *Administrative Decisions Review Act 1997* s 55(4).

- ▼ A statement as to what you think the correct and preferable decision is, and
- ▼ An explanation of why the decision that was made was not the correct and preferable decision and the reasons your preferred decision is the best one.

A template application is included at **Appendix A**.

4 How will 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 face to face meeting.

Once the internal reviewer has considered the matter, they may do one of the following:

- ▼ Affirm the decision
- ▼ 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.

If you disagree with the outcome of the internal review, you have a right to seek further review by the NSW Civil and Administrative Tribunal. The NSW Civil and Administrative Tribunal deals with a broad and diverse range of matters in addition to administrative review of ESS 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.

Appendix A

Application to the Scheme Administrator for internal administrative review

Applicant	<i>[Insert the name of the ACP or person applying for internal review.]</i>
Preferred address	<i>[Insert your preferred address where we can contact you and notify you of the outcome of the review. This can be an email address.]</i>
Decision	<i>[Describe the decision for which you are seeking review.]</i>
Category of decision	<i>[Tick the box below to identify the relevant category of decision for which you are seeking review.]</i> <input type="checkbox"/> A decision to refuse an application for accreditation <input type="checkbox"/> A decision to cancel or suspend an accreditation <input type="checkbox"/> A decision to refuse the registration of ESCs <input type="checkbox"/> A decision to impose or vary a condition of accreditation <input type="checkbox"/> A decision to make a claim on or realise any financial assurance provided by an ACP
Reasons why this decision is not the correct and preferable one	<i>[Explain why the decision that was made was not the correct and preferable one. You may include this in a separate document.]</i>
Preferred decision	<i>[Explain what you consider the correct and preferable decision to be.]</i>
Reasons why your preferred decision is the correct and preferable one	<i>[Explain why your preferred decision is the correct and preferable one. You may include this in a separate document.]</i>
Other information	<i>[Provide any other information that you would like the internal reviewer to consider.]</i>