



## FACT SHEET

# APPEALING A RENEWABLE ENERGY REGULATOR'S DECISION OR LODGING OBJECTIONS

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A person who has received a decision from the Regulator may be able to lodge a formal review request for the Renewable Energy Regulator (Regulator) to reconsider the decision under Part 6 of the *Renewable Energy (Electricity) Act 2000* (the Act).

For example, an assessment made under the Act (eg. an assessment of renewable energy certificate shortfall or not to register a renewable energy certificate) may be reviewed. A table of reviewable decisions is provided under the [Reviewable Decisions](#)<sup>1</sup> heading of this Fact Sheet.

In some cases, it may be possible to resolve issue(s) with the Regulator and/or the Office of the Renewable Energy Regulator (ORER) contact officer without a formal review. While there is no requirement for you to do so it may be that the issue(s) can be resolved more easily and quickly through an informal approach<sup>2</sup>. An informal approach may be useful if you feel there has been a misunderstanding or some relevant information was not taken into consideration before a decision was made.

If the informal approach is unsuccessful in resolving the issue(s), you may ask for a review of the decision under the Act, subject to the requirements of the Act. The process for requesting a formal review of a decision under the Act is explained further in this Fact Sheet.

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<sup>1</sup> Where the decision made by the Regulator is not a reviewable decision under the Act, the affected person may wish to contact the Regulator to discuss what other options, if any, are available.

<sup>2</sup> If taking an informal approach you may limit your time to request a formal review. Therefore you may decide to request a formal review while using the informal process to meet legislated timeframes. See "How do I Lodge a Review Request?" heading of this Fact sheet.

## ***REVIEWABLE DECISIONS***

The following table sets out the other reviewable decisions and, for each decision that is reviewable, sets out the provision of the Act under which it is made and the person who may seek a review (i.e. the 'affected person').

<b>Table of reviewable decisions</b>			
<b>Item</b>	<b>For a decision ...</b>	<b>made under ...</b>	<b>the affected person is ...</b>
1	to refuse to register a person	section 11	the person.
1A	in relation to an application under section 12A (about provisional accreditation of power stations)	section 12B	the applicant.
2	in relation to an application for accreditation of a power station	section 14	the applicant for accreditation.
3	to refuse to accredit a power station	section 15	the applicant for accreditation.
3A	to amend, or to refuse to amend, an electricity generation return	section 20A	the nominated person for the accredited power station concerned.
4	not to register a certificate	section 26	the person who created the certificate.
5	to suspend a person's registration	section 30 or 30A	the registered person.
5A	to refuse to approve a person as the nominated person for an accredited power station	section 30B	the person.
5B	to vary, or to refuse to vary, a determination under paragraph 14(1)(a)	section 30C	the nominated person for the accredited power station concerned.
5C	to suspend the accreditation of an accredited power station	section 30D or 30E	the nominated person for the power station.

<b>Table of reviewable decisions</b>			
<b>Item</b>	<b>For a decision ...</b>	<b>made under ...</b>	<b>the affected person is ...</b>
5D	to vary the 1997 eligible renewable power baseline for an accredited power station	section 30F	the nominated person for the power station.
5DA	to vary the 2008 WCMG limit for an accredited power station	section 30G	the nominated person for the power station
5E	to amend, or to refuse to amend, an energy acquisition statement	section 45A	the liable entity concerned.
5F	to amend, or to refuse to amend, a partial exemption certificate	section 46C	the person to whom the certificate is issued.
6	assessing penalty charge	section 102	the liable entity that is liable to pay the penalty charge.
7	not to remit, or to remit only a part of, penalty charge	section 103	the liable entity that is liable to pay the penalty charge.

### ***WHICH REVIEW PROCESS APPLIES TO ME?***

There are two separate processes for review of decisions.

If you are an entity which may be liable to pay a renewable energy shortfall charge (i.e. if you make an acquisition of electricity that is either a 'wholesale acquisition' or a 'notional wholesale acquisition' as defined in the Act), and you are not satisfied with an assessment made under the Act, then please see the [Special Appeal Processes for Liable Entities](#) heading in this Fact Sheet.

Review of other reviewable decisions is done under the process described immediately below.

## ***HOW DO I LODGE A REVIEW REQUEST?***

Your request for a review must be lodged in writing. To assist the Regulator in reviewing the decision, your request should state fully, and in detail, the grounds for your request. Your request for a review of the decision must be given to the Regulator within 60 days after the decision is made.

## ***WHAT HAPPENS AFTER I LODGE A REVIEW REQUEST?***

1. The Regulator will ask an officer of ORER who was not involved in the original decision to assist in the review. The reviewing officer will:
  - a. look at the information used for the original decision;
  - b. where possible, talk to you in person, or by phone, to discuss the matter;
  - c. check whether any new, relevant information is available;
  - d. clear up any misunderstandings;
  - e. correct any mistakes in the information on which the original decision was based;
  - f. consider the original decision in light of any new information provided by you and any corrections that have been made as a result of discussions with you; and
  - g. recommend to the Regulator that the original decision be confirmed, varied or set aside.

Once the Regulator has reviewed the original decision, having regarded the reviewing officer's recommendation, and made a decision (the 'review decision') to confirm, vary or set aside the original decision, you will be informed in writing, explaining the reasons for the review decision.

2. The Regulator is taken to have confirmed the original decision if the Regulator does not give written notice of the review decision within 60 days of the request.

## **CAN I TAKE FUTHER ACTION IF I AM UNSATISFIED WITH THE REVIEW DECISION?**

If after receiving the review decision and you are not satisfied with that decision, you can then apply to the Administrative Appeals Tribunal (AAT) for a review of the decision.

The AAT is an independent body that is empowered to review certain decisions made by government agencies, including decisions made by the Regulator.

The AAT may confirm, vary or set aside the decision of the Regulator. Where the AAT decides to set aside the Regulator's decision, the AAT may either make a decision in substitution for the Regulator's decision, or ask the Regulator to reconsider the decision in accordance with the AAT's directions or recommendations.

## ***SPECIAL APPEAL PROCESSES FOR LIABLE ENTITIES***

If you are an entity which may be liable to pay renewable energy shortfall charge (i.e. if you make an acquisition of electricity that is either a 'wholesale acquisition' or a 'notional wholesale acquisition' as defined in the Act), and you are not satisfied with an assessment made under the Act, then you may apply for a review under the following process.

### **HOW TO MAKE AN OBJECTION?**

Any objection must be made in writing, and must state fully and in detail the grounds that you object.

If you wish to object to an amended assessment, you may do so only in relation to alterations or additions made as part of the amendment of the assessment.

### **WHEN TO MAKE AN OBJECTION?**

If you wish to object to an assessment, you must lodge a written objection within 60 days. However, you can apply for an extension of time. To obtain an extension, you are required to lodge the objection with the Regulator together with a request asking the Regulator to deal with the objection as if it had been lodged within the 60 days. The request must clearly explain the reasons for the failure to lodge the objection within 60 days.

Once the application for an extension has been lodged with the Regulator, the Regulator will consider and decide whether or not to allow an extension of time to lodge an objection. The Regulator will give you written notice of his decision. If the Regulator refuses your request for an extension, then you may apply to the AAT for a review of this refusal decision.

## **WHAT HAPPENS AFTER AN OBJECTION HAS BEEN LODGED?**

Where a written objection has been lodged with the Regulator within the 60 day period (or any extended period), the Regulator will consider the objection and decide whether or not to allow it. The Regulator's decision on an objection is referred to as the objection decision.

The consideration of the objection will follow a similar process to that for other reviewable decisions, as described in paragraph 1 under [What Happens After I Lodge A Review Request?](#). You will be notified in writing of the Regulator's objection decision.

## **WHAT IF YOU ARE NOT SATISFIED WITH THE OBJECTION DECISION?**

If you are not satisfied with the objection decision, then you may either apply to the AAT for a review of the decision or appeal to the Federal Court against the decision.

Any application to the AAT must be made within the time limits provided in section 29 of the *Administrative Appeals Tribunal Act 1975*. In most cases, any application to the AAT must be made within 28 days after the objection decision is given to you. The AAT is able to affirm, vary or set aside the decision of the Regulator.

Any appeal to the Federal Court must be lodged by you within 60 days of being served notice of the objection decision. The Federal Court is able to make such order as it sees fit, including an order confirming or varying the decision of the Regulator.

If you take your appeal to the AAT or Federal Court you must base your appeal on the grounds that you stated in your original objection, unless the AAT or Federal Court orders otherwise, and you must prove that the Regulator's objection decision was incorrect.

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For further information you can:

- visit the ORER website ([www.orer.gov.au](http://www.orer.gov.au))
- contact the ORER by email on [orer@orer.gov.au](mailto:orer@orer.gov.au) or phone (02) 6159 7700
- read Part 6 of the Act