



March 2023

## How we use our exemption powers

### This policy's purpose

This policy sets out how we use our exemption powers.

It applies to all our statutory powers to grant exemptions, including under the Health and Safety at Work Act 2015 (HSWA), the Electricity Act 1992, and the Gas Act 1992.

### What exemptions are

We expect duty holders to comply with all relevant requirements. However, sometimes this isn't possible, reasonable, or practicable. In these circumstances we may consider granting an exemption.

An exemption is the legal permission for a duty holder to not comply with a particular legal requirement for a specified period of time. We can grant exemptions to a person, class of persons, and specific items.

An exemption only applies to a specific legal requirement. Duty holders still have to comply with other obligations. This includes the duty under HSWA to eliminate, or (where that's not reasonably practicable) minimise, risks to health and safety so far as is reasonably practicable.

### What exemptions are for

Exemptions help to ensure our regulatory framework:

- can operate and is balanced and reasonable
- maintains its integrity
- helps manage risks and prevent harm, and
- is flexible and helps us to achieve our purpose.<sup>1</sup>

<sup>1</sup> To secure a balanced framework for health and safety of workers and workplaces, and to promote and contribute to the safe supply and use of electricity and gas.

Exemptions also help us respond to situations where complying with a requirement may not be the best way to achieve its intended outcome.

### When we can use our exemption powers

We can only use our exemption powers within the limits set out in relevant legislation and regulations.

We won't grant an exemption just because we can. We use what we know and our discretion to decide if an exemption is appropriate.

### When we may grant exemptions

We may grant an exemption if we're satisfied there's a suitable alternative to complying with the requirement that gives:

- greater protection from health and safety risks, or
- a similar level of protection from health and safety risks, if there's also a good reason why it's not possible, reasonable, or practicable to comply.

We can grant exemptions:

- in response to an application, or
- proactively, without the need for an application, provided we have sufficient information and knowledge about the circumstances.

We may grant a class exemption if there are multiple duty holders that need the same exemption. The duty holders must be similar enough that the same description and exemption conditions (if any) can apply to all of them.

## Principles that guide our decision making

We use the following principles when making exemption decisions:

### We consider why compliance isn't possible, reasonable, or practicable

We assess whether there's a good reason why the duty holder shouldn't be required to comply. We know it may not always be possible, reasonable, or practicable to comply because:

- the requirement is out of date and no longer represents best practice
- of unforeseen circumstances outside the duty holder's control
- the requirement doesn't allow for the duty holder's unique circumstances
- the requirement has significant unintended consequences
- what is needed to comply (for example, cost) is grossly disproportionate to the risk associated with the non-compliance, or
- there are other, more appropriate means of achieving the requirement's intended outcome or managing risk.

### We grant exemptions that are only as broad as necessary

We ensure exemptions only address the reason they're required.<sup>2</sup> We may think about:

- why compliance isn't possible, reasonable, or practicable
- the gap between what's required and what the exemption would allow
- which aspects of the requirement it applies to
- the number of duty holders, sites, or specific items the exemption would apply to
- the expected impact of the exemption, including any flow-on effects
- any conditions we intend to impose, and
- how long the exemption is likely to be needed.

### We only grant exemptions that are consistent with the regulatory purpose

We ensure exemptions are consistent with the legislation's purpose<sup>3</sup> and the intended outcome of the requirement it relates to. The intended outcome is often to minimise risks to health and safety, but we may be aware of other purposes.

## We prioritise health, safety, and wellbeing

Harm prevention is our top priority. We won't grant an exemption if it doesn't provide a similar or greater level of protection from risks to health and safety compared to compliance.

### We consider other relevant factors

We use all of our insights to support our exemption decisions. This includes:

#### IF AN EXEMPTION IS THE APPROPRIATE INTERVENTION

We use the most appropriate intervention, or combination of interventions, to address a situation. We may choose to use an exemption or not.

#### WHAT WE KNOW ABOUT THE DUTY HOLDER

We take what we know about the duty holder into account, including:

- their circumstances and activities
- their overall standard of health and safety
- their relevant compliance history, and
- feedback from WorkSafe inspectors and other trusted sources.

For class exemptions we take into account what we know about the group of duty holders the exemption will apply to and their sector.

#### IMPACT OF THE EXEMPTION

We consider the likely impact of the exemption, including on:

- workers and others, such as health and safety risks
- the duty holder, such as from conditions, monitoring, or other activities
- the regulatory environment, such as related duties, both to the duty holder and to others in the system
- the administrative burden on us (including monitoring compliance with the exemption and its conditions), and
- the level of regulatory risk the exemption would pose to us.

#### VIEWS OF OTHERS

We may consider the views of others, including duty holders, other agencies, and external stakeholders. For class exemptions, this may include public consultation.

#### PREVIOUS EXEMPTIONS

Each exemption is assessed on its own merits, with reference to the most up-to-date information, and the specific circumstances.

<sup>2</sup> We can only grant exemptions from provisions of regulations under HSWA if they're not broader than is reasonably necessary to address the matters that gave rise to them.

<sup>3</sup> We can only grant exemptions from provisions of regulations under HSWA if they're consistent with HSWA's purpose: to provide for a balanced framework to secure the health and safety of workers and workplaces.

We won't grant an exemption simply because we've granted a similar one in the past.

## We consider what conditions are needed

We may put conditions on exemptions to:

- require specific controls or actions ensure at least a similar level of protection from health and safety risks
- provide assurance that risks will be managed
- limit the scope or period of the exemption, or
- assist us to monitor the exemption and its implications.

We ensure conditions:

- are reasonable, proportionate, and fair for the exemption holder
- minimise health and safety risks
- can be monitored and enforced, and
- only apply to matters within the scope of the exemption.

We identify what failure to comply with a condition means, and what actions we may take as a result.

## We expect applicants to explain why they need an exemption and how they'll manage risk

We expect people applying for an exemption to provide all the information, documentation, and evidence needed to justify the proposed exemption, including:

- why it isn't possible, reasonable, or practicable to comply with the requirement, and
- how they'll mitigate risks to health and safety.

## We make decisions appropriately

We apply good decision-making principles and have a consistent, timely, and robust process for making decisions.

We follow WorkSafe's internal risk management policy and framework to ensure that risks, including regulatory risks, are identified, owned, managed, monitored and reported on effectively.

Our decision maker receives enough information to make an informed and balanced decision. This includes technical, policy, legal, and other relevant internal advice.

## After we decide

### When we grant an exemption

When we grant an exemption, we:

- share our decision and the reasons for it, and
- monitor it, including compliance with any conditions, over the exemption's duration.

We may also inform the Ministry of Business, Innovation and Employment (MBIE) of the exemption, and the circumstances that gave rise to it. This provides them with insights to consider if the requirement is reviewed in the future.

We don't generally monitor class exemptions. We expect duty holders who want to use a class exemption to:

- determine if it applies to them, and
- ensure they meet any conditions.

We may impose a condition that requires duty holders to inform us if they think a class exemption applies to them. This helps us know who's using it.

## IF WE BECOME AWARE OF NEW INFORMATION

We may review an exemption and decide if we should keep, amend, or revoke it. In deciding what to do, we apply the principles in this policy, and also consider:

- what the exemption aimed to achieve, and if it's having the effect we want it to
- if there've been any relevant changes (including to the requirement), and
- the impact our decision may have on the duty holder and others.

We can revoke an exemption if we believe it's no longer appropriate or necessary. When considering whether to revoke an exemption, we:

- are clear about the impacts
- inform the exemption holder of our intention and the reasons for it
- give the exemption holder a reasonable opportunity to comment, and
- make it clear when we expect the duty holder to comply with the requirement.

If we become aware that an exemption holder isn't complying with a condition, we may take action.

## WHEN AN EXEMPTION ENDS

We set end dates for each exemption we grant. Once an exemption ends, duty holders must comply with the requirement, or they can apply for a new exemption. Each request is considered a new application and this policy applies.

## When we decide not to grant an exemption

When we decide not to grant an exemption, we:

- inform the applicant of our decision and the reasons for it
- identify the impact of our decision, including on the duty holder and us
- monitor the situation and the applicant's compliance, as appropriate, and
- consider if other interventions are necessary, including enforcement.