

January 2023

Policy

Design registrations

Policy statement

The purpose of this policy is to assist Resources Regulator staff and those who have a delegation to exercise the functions of the regulator in making decisions for registration under Part 5.3 of the Work Health and Safety Regulation 2017 (WHS Regulation) of design of items of plant, and as specified in section 187 of the Work Health and Safety (Mines and Petroleum Sites) Regulation 2022 (WHS (MPS) Regulation) (i.e., registrable plant), with the processing of applications

To ensure consistency of health and safety outcomes, the design of registrable plant must comply with any order of the regulator as published in the Gazette (i.e. design orders) pursuant to subsection 187(5) and (6) of the WHS (MPS) Regulation.

Purpose and principles

The purpose of this policy is to:

- Fulfil legislative or regulatory obligations under Part 5.3 of the Work Health and Safety Regulations 2017 and section 187 of the Work Health and Safety (Mines and Petroleum Sites) Regulation 2022
- Provide guidance for Resources Regulator staff on undertaking a review of an application for the registration of the design of an item of plant.

For the purposes of this Policy, registrable plant must:

- be designed to the requirements as stipulated in the legislation and other instruments,
- have the design verified by a design verifier.

The role of the Resources Regulator in the registration process is to confirm:

- the designer has provided a statement that the plant complies with any standards specified in any design order, or has used other technical standards or engineering principles to achieve an equivalent level of safety,
- an independent person has undertaken an appropriate design verification process, and
- the appropriate information about the plant is provided.

The principles on which this policy is based are:

- obligations to act ethically and observe standards of behaviour prescribed by legislation and policy,
- transparent and fair decision making,
- adequate, respectful community and stakeholder engagement, and
- financial accountability.

Key requirements

Application

1. The person applying for design registration must be a person conducting a business or undertaking (PCBU) that designs an item of plant or a person with management or control of an item of plant. The person with management or control of an item of plant may be the designer, manufacturer, importer, supplier or owner.
2. Applicants outside of NSW must provide justification why they cannot have a registered office in NSW.
3. Applicants outside of Australia must provide justification why they cannot have a registered office or reside within Australia.
4. The application will be assessed by an administrative officer to ensure:
 - it is in the manner and form required by the regulator,
 - it includes the information specified in clause 250(2) of the WHS Regulation, including a statement signed by the designer of the item of plant, and a statement signed by the verifier of the design of the item of plant; and
 - it is accompanied by the relevant fee set out in Schedule 2 of the WHS Regulation.
5. An administrative officer can return an incomplete application to the applicant for them to remedy the incomplete parts.
6. Where an application is incomplete there is no application under clause 250, and a decision cannot be made under clause 256 of the WHS Regulation. This is a separate and distinct process of failing to provide material information under clause 256(3)(b) or making a request for additional information under clause 255.
7. An application must address the whole design of an item of plant, including the component parts of that design, as required by any relevant design order made under subsection 187(5) of the WHS (MPS) Regulation.
8. An application must contain all the details required for the design registration under clause 250 of the WHS Regulation.
9. If the owner has decided to alter the design, a person must be engaged who is competent to assume the duties of a designer. The designer's statement and the verification report must cover the whole of the plant design, not just the modifications, unless specified otherwise by a design order.
10. The complete application will be recorded in ACES against the design's record and assigned a Plant Registration Number.

Assessment

11. An Inspector with knowledge in the relevant discipline will be required to conduct an assessment and issue a recommendation to the delegated decision-maker.
12. The Inspector is to consider if the design is eligible for registration under clause 256 of the WHS Regulation.
13. The Inspector can request additional information from the applicant to allow them to make a recommendation. This request must be sent by the Authorisation Team based on the Inspector's instructions.
14. A request for additional information can only be requested under clause 255 of the WHS Regulation where the application does not contain enough information to enable the delegated inspector to make a recommendation to the Regulator, and not in the case of an incomplete application.

15. Requesting additional information is a delegated function and cannot be sent on the administrative officer's initiative.
16. A request for additional information must specify a date to provide the information, not less than 28 days from the date the request is sent.
17. If an applicant does not provide the additional information by the date specified in the request for additional information, the application is taken to have been withdrawn (clause 255(3) of the WHS Regulation).

Assessment of the designer's statement and design verification statement

18. The application must provide a design verification statement in accordance with clauses 251-254 of the WHS Regulation.
19. For the purposes of clause 250(2)(e)(i), if there are any design orders published in a Gazette specifying standards in respect of the design of the item of plant to which the application relates, the design verification statement must state that the design was produced in accordance with the standards contained in the orders.
20. The design verifier must not have been involved in the plant design process but may be either in-house or a contractor.

Decision

21. The power to grant design registration is delegated to appointed officials in the instrument of delegation. The Authorisation Team will ensure the decision to grant or refuse to grant is made by an officer with the appropriate delegation.
22. The decision-maker can impose any conditions they consider appropriate on the registration. The template registration document contains standard conditions; the decision-maker may amend, remove, and add to the conditions placed on a registration.
23. The decision-maker must be satisfied of the matters set out in clause 256(2) of the WHS Regulation to grant the registration.
24. Before refusing to grant registration of a design based on material information omitted from the application, additional information should be requested in accordance with clause 255 of the WHS Regulation.
25. If an applicant does not provide the additional information by the date specified in the request for additional information, the application is taken to have been withdrawn.
26. If the registration is to be refused, a notice of intention to refuse with a reason for the decision must be provided to the applicant. The notice must specify a date not less than 28 days after the date the notice is sent, by which the applicant can make a submission in relation to the proposed refusal.
27. Any submissions are to be gathered, recorded, and assessed in a timely manner.
28. The decision-maker is to consider any submission by the applicant and decide if to grant or refuse to grant the registration.
29. All recommendations and decisions in relation to the design registration will be recorded in ACES as per the *Design of item of plant registrations procedure* and the administrative processing manual.
30. The decision not to grant an item of plant registration is a reviewable decision under clause 676 of the WHS Regulation.

Notification of decision

31. The registration document or refusal letter will be signed electronically by the decision-maker.
32. The registration document or refusal letter will be kept within ACES in electronic format.

33. The Authorisations Team will send the registration document/s or refusal letter via email to the applicant within 2 working days of a decision being made.

Refund of monies

34. Refunds of registration fees will only be issued in the following circumstances:

- application made in error and subsequently withdrawn,
- where an application is incomplete or withdrawn,
- duplicate fees are paid for the same design registration application, or
- exceptional cases identified and justified, where not refunding would be regarded as unfair.

35. The regulator cannot hold any monies and must issue a refund as soon as reasonable.

36. Manager level approval is required to refund any monies received (6.1 of Schedule 2 of the Government Sector Finance Act 2018 Instrument of delegation).

Alteration of a registered plant design (the plant)

37. An altered plant design is one that changes the original plant design.

38. Application for registration of an altered plant design will need to be made where changes to a plant design, which is already registered, may affect health and safety. Circumstances where this may be required for registrable plant include the following:

- changes are made to an already registered plant design so that it requires new risk control measures, or
- a person with management or control of plant requiring design registration (for example, an importer, supplier, or owner) alters the plant design by modifying the plant in such a way that existing risk controls are altered, or
- the introduction of new, or the modification of existing, control measures, to those covered by the original registered design.

39. Registration of an altered plant design does not affect the original plant design registration or items of plant manufactured to the original design. An original plant design and altered plant design co-exist. The altered plant design will be issued a new registration number. The original plant design registration remains current for an unlimited duration unless it is cancelled under clause 288B of the WHS Regulation.

40. Where a design order allows, only the altered parts of the plant need to be designed to comply with the current design order requirements. In this instance an assessment must be undertaken, and documented, by the designer to assess the impact that the design alteration has on unaltered parts of the plant. Where the assessment shows there has been a reduction in the effectiveness of existing control measures of any other parts of the plant, that is, there has been a detrimental effect on health and safety caused by the alteration, these parts must also be redesigned to comply with the design requirements in the current design order. Any parts of the plant which are not affected by the alteration must continue to comply with the design requirements of the design order that was in effect on the date that the registration for the design of the plant was granted.

41. Under clause 263 of the WHS Regulation, confidential information provided by an applicant in registering the original plant design must not be disclosed to any person. This includes providing information about a registered plant design to a person for the purposes of registering an altered plant design. However, the regulator may disclose information about a plant design to any person authorised by the applicant for the registration of the design.

Changes to plant design registration and the registration document

42. Changes to a plant design registration should not affect the plant design, only the information contained in the registration.
43. A registration holder has a duty under clause 282 of the WHS Regulation to give the regulator written notice of any change to:
- the registration holder’s name, or
 - the information provided in the original application for registration of the plant design referred to in clause 250 of the WHS Regulation, or
 - any additional information that the regulator requested under clause 255(1) of the WHS Regulation.
44. Documents which may serve as evidence of the change to registration holder’s name include the following:
- Transfer documents verifying the purchase of the designs or design registration
 - Documents which verify the transfer or assignment of the intellectual property of the designs
 - A statutory declaration from an authorised person (such as a director or company secretary) that the company is the appropriate entity to be registered as the design registration holder.
45. For the purposes of making changes to an existing design registration, the registration holder may be the original applicant or, where applicable, the registration holder subsequently notified under clause 282 of the WHS Regulation.
46. The registration holders need to apply for an amendment if they are making changes to the information listed on the registration document.
47. Changes to the plant designs that do not affect health and safety, but change the information on the registration document, are to be accompanied by a statement from the designer stating that the changes made do not affect health and safety and a corresponding statement from a design verifier that supports the designer’s statement.
48. A design registration may also be amended by the regulator:
- on its own initiative under clause 283 of the WHS Regulation, or
 - by application from the registration holder under clause 284 of the WHS Regulation
 - to make minor corrections in accordance with clause 285 of the WHS Regulation.
49. Amendments made under clause 283 or clause 284 may include imposing, varying or deleting a condition of the registration (for example, to change the way the plant is used or change a system of work associated with the plant) or specifying that new or additional documentation is required by the registration holder to provide to the end user (e.g. a change of torque settings, inspection requirements, tolerance for safe use specifications, etc, or that original testing did not provide the necessary protection expected in the field, e.g. discovery of a surface temperature greater than 150 degrees C).
50. Written notice of any proposed decision of the regulator to amend a registration on its own initiative or refuse to amend a registration must be given to the registration holder, as required under these clauses.
51. If the regulator amends a registration and considers the registration document requires amendment, the regulator must give the registration holder an amended registration document in accordance with clause 286 of the WHS Regulation.
52. As registration documents are provided in electronic form (as determined by the regulator in accordance with clause 261 of the WHS Regulation), a registration holder will not be required to return the registration document to the regulator.

53. The Resources Regulator will maintain an appropriate system to ensure the most recent version of a plant design registration is readily identifiable to both Resources Regulator personnel and PCBUs that operate and use design registered plant.

Responsibilities

- Chief Inspector of Mines will:
 - Review the recommendation by the Inspector and Principal Inspector and grant/refuse design registrations.
- Principal Inspector – Mechanical/Electrical/Mining will:
 - Review and approve/reject the assessment/s undertaken by the Inspector according to this policy and procedure.
 - Endorse the recommendation by the Inspector as to whether the design registration should be granted or refused.
- Inspectors will:
 - Assess applications according to this policy and procedure.
 - Make a recommendation to the Principal Inspector as to whether the design registration should be granted or refused.
- Manager Mining Competencies & Authorisations will:
 - Review and approve/reject assessments by Administrative Officer of applications according to this policy and procedure.
 - Consider any refunds.
 - Ensure a register of designs is maintained.
- Administrative Officers will:
 - Administer applications according to this policy and procedure.
 - Maintain and request publication of a register of designs.
 - Reconcile payments.

Further information

For further information contact the Competencies and Authorisation Unit at mca@regional.nsw.gov.au.

Related documents

Other documents that should be read in conjunction with this policy:

- Any design order gazetted in accordance with subsection 187(5) of the WHS(MPS) Regulation (as amended from time to time), and any related technical standards, as published on the Resources Regulator’s website
- WHS Laws (Mines and Petroleum Sites) Instrument of Delegation 2022 (as amended from time to time)
- [Manual - Mining Authorisation Unit - Administrative staff](#)
- [Request for internal review procedure](#)

Approval

Name	Date	Approval
Andrew Palmer Manager, Mining Competencies and Authorisations Unit	04/07/2022	Approved
Garvin Burns Chief Inspector of Mines	02/12/2022	Approved
Peter Day Executive Director, Resources Regulator	5/12/2022	Approved

Version control

Version number	Date issued	Changes
0.1	04/09/2018	New document
0.2	05/09/2018	Internal feedback addressed in all sections. Requires review by Legal
0.3	01/11/2018	Post Legal Review
1	09/11/2018	Approval
2	28/02/2019	3-monthly review - no changes recommended
2.1	26/02/2020	Moved to new template and removed clauses that repeat what is in the regulations.
2.2	02/12/2022	Updated for currency, clarifying alteration versus amendment, and reflect changes to design orders that allows for part alterations of winders and booster fans.

Document control

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This document applies to			
All staff			
Mine Safety Inspectorate	✓	Mining Competencies & Authorisations	✓
Major Investigations		Mining Act Inspectorate	

Appendices

Ref	Description
Appendix 1	Relevant legislation detail
Appendix 2	Definitions and terms

Appendix 1 – Relevant legislation detail

Legislation	Relevant sections or clauses
<i>Work Health and Safety Act</i>	<u>Section 42</u>
<i>Work Health and Safety Regulation 2017</i>	<u>Part 5.3</u>
<i>Work Health and Safety (Mines and Petroleum Sites) Regulation 2022</i>	<u>Section 187</u>

Appendix 2 – Definitions and terms

All references have the same meaning as defined in the regulations.

Word	Definition
Additional information	<p>Information to enable the regulator to make a decision whether or not to grant the registration (clause 255 of the WHS Regulation). Clarification of technical and/ or material information. This should only be information that supports or clarifies what has been provided in accordance with the application form. It is not additional information beyond what is required to be provided with the application.</p> <p>For clarity, additional information must be requested before an application is rejected for failing to have material information.</p>
Alteration	A change to the design that affects any design requirement, test or performance parameter that is specified in the design order, or the standards called by the design order.
Amendment	Changes that do not affect health and safety of the design. This includes changes to documentation on the registration document such as change of conditions, ownership, address, drawing numbers, parts numbers.
Braking system	Includes all components which combine to stop or hold the transport.
Complete application	A complete application includes all the information that has been identified on the application form as being required to process a registration. This includes the receipt of any additional information requested to provide support to, or clarification of, information provided as part of the registration process.
Incomplete application	Missing information an administrative officer or inspector can identify e.g., phone number or missing attachment such as a report or a drawing. An administrative person can contact the applicant to seek information to make the application complete.
Independent person	A person who was not involved in the production of the design.
Material information	Any information that enables the Regulator to make a decision.
Material particular	Any matter of relevance and significance
Representational drawing	<p>A general arrangement drawing that represents the complete design. For complex plant such as a winding system, this may be several drawings.</p> <p>A general arrangement drawing that represents the complete design, identifies key parameters, safety functions, controls systems, and mechanisms of the design, makes reference to other relevant drawings.</p>

Transport	Means mobile plant used for the purpose of transporting persons and includes: (a) a locomotive, or (b) rubber tyres or tracked vehicle, propelled by electrical and/or mechanical means.
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