

**Internal Document**

# **Procedure for Internal Review of ASA Decisions**

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1.1	Included Appendix A; updated references to 'Director, ASA' to 'Executive Director, ASA'

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## 1. Introduction

The ASA, on behalf of TfNSW, performs a number of significant functions in relation to NSW Transport Assets which include administration of the Authorised Engineering Organisation framework, asset planning, and the setting and maintaining of requirements. Decisions made by the ASA can directly affect the rights and interests of individuals or organisations. ASA is committed to a fair decision-making procedure also known as procedural fairness.

Organisations affected by a decision of the ASA have an opportunity to express their views to the ASA during the decision making process. However, should the organisation remain dissatisfied, then at the request of the organisation, Internal Review and External Review process are available to examine the decision. The External Review process cannot be accessed directly; it must follow a mandatory Internal Review process.

## 2. Purpose

The purpose of this procedure is to ensure that a review applicant has access to a fair, reasonable and unbiased internal review process that can confirm or recommend an amendment to an ASA decision, deliver a timely response to the applicant and ultimately help to improve ASA decision processes.

### 2.1 Scope

This procedure is for the internal review of ASA decisions. This procedure differentiates between internal review and general complaint handling procedures. This procedure is specifically focussed on reviews relating to particular decisions affecting particular applicants.

### 2.2 Application

This procedure applies to decisions of the ASA which may limit the scope of operations of an applicant and where the applicant wishes to have that decision reviewed. The review is a process by which a person not involved in the original decision, reconsiders a decision by 'stepping into the shoes' of the primary decision maker.

## 3. Reference documents

Australian Government Administrative Review Council - Internal Review of Agency Decision Making Report No. 44, November 2000

## 4. Terms and definitions

The following definitions apply in this document:

Applicant: The organisation that has applied for a review of an ASA decision.

## 5. Internal Review

The Asset Standards Authority is committed to transparency, fairness, integrity and honesty in the development and implementation of ASA decision processes. Where a person believes that sufficient grounds exist for an ASA decision to warrant review then an Application for Review must be made on *the Application for Review of Decision by ASA* form (Appendix A) to the ASA within 28 days of the original decision.

### 5.1 Process Overview

- a) Opportunity to apply for an internal review is communicated to customers of the ASA.
- b) Applications for Review are registered by the ASA and a reviewing officer appointed.
- c) An initial assessment is undertaken to determine if satisfactory grounds for review exist and the applicant notified within 5 business days of receipt of the request.
- d) Review is undertaken and applicant notified of outcome and the reasons for the outcome, including any decision to escalate further, within 20 business days of receipt of request.
- e) Closing discussion is undertaken with primary decision maker and process owner to ensure that lessons learnt are incorporated into ASA processes

### 5.2 TfNSW Code of Conduct

All members of the ASA who participate in or are involved with a decision review are to ensure that their actions and intentions follow the requirements of the TfNSW Code of Conduct as the framework to guide decisions, actions and behaviours and the underpinning ethical principles expected of employees of TfNSW..

### 5.3 ASA policy and principles underpinning decision reviews by the ASA

The ASA, on behalf of TfNSW, performs a number of significant functions in relation to NSW Rail Assets which include administration of the Authorised Engineering Organisation framework, asset planning, and the setting and maintaining of requirements. Decisions made by the ASA in the exercise of its functions can, at the request of a review applicant, be subject to internal review. Persons who believe that they or their organisation have been unreasonably affected by an ASA decision can apply to have the decision reviewed. The applicant can elect to submit further information with the application for review or may, as part of the review process be requested to submit further information.

The ASA commits to being transparent, fair and honest in reviewing the decision and will appoint a review officer who is independent from the primary decision maker. Possible outcomes of the review process are that:

- the original decision is confirmed;

- a recommendation to reconsider the decision is made to the original decision maker; or
- the decision is set aside.

In all cases the reasons for the review outcome will be provided to the applicant and to the primary decision maker.

Subsequent to independent review the applicant might decide to pursue the matter through appropriate legal avenues.

For the review to be successful, It is imperative that the internal working areas of the ASA maintain open and free communication and that internal review processes can jeopardise efforts to maintain harmonious and effective open working relationships within the ASA. It is therefore imperative that review outcomes look at the procedural aspects of the decision process and should not be seen to be reviewing the judgement of the original decision maker.

It is also critical that the review process does not become too onerous or too unwieldy that it is no longer effective in contributing to the improvement of ASA processes.

## **5.4 Communication of Opportunity for Review of ASA Decisions**

The ASA policy on decision reviews is advertised in the following ways:

- The ASA website
- The Guidance to Decision-making within the ASA
- As necessary within verbal and written communications made as part of the ASA business operations

## **5.5 Appointing a Reviewer**

It is important that any Reviewer is able to undertake their work in an independent, transparent and unbiased manner and therefore the Executive Director, ASA needs to ensure that the purpose of internal review is to improve the decision making processes of the ASA, to ensure procedural fairness to the applicant and to ensure that the processes can withstand scrutiny. The ASA must be capable of demonstrating honesty, impartiality and good practice in decision processes which is achieved through independent and unbiased review.

The Executive Director ASA is to use their discretion in appointing the Reviewer and in managing their independence.

A Terms of Reference for the review will be drafted by the Executive Director ASA and shall use their discretion to appoint an independent Reviewer from within the ASA. The primary duty of the Reviewer is to establish whether or not procedural fairness is evident in the decision process for which the applicant has requested a review. In doing this, the original decision maker is to be involved in the process as far as practicable without prejudicing the independence of the Reviewer. During the review, the Reviewer shall observe the principles of natural justice and in particular:

- a) not be personally biased (actual bias) or be seen by an informed observer to be biased in any way (apprehended or ostensible bias) in the dealing with the review; and
- b) be ideally more senior and in a different functional area than the original decision maker.

Where necessary the Reviewer will engage experts in the area under review to assist them.

## **5.6 Registering Applications**

The Executive Director ASA shall appoint a manager within the ASA, to register, monitor and report on the progress of review applications. The manager shall report review KPIs to the Executive Director ASA who shall ensure that internal review outcomes are delivered in accordance with the timescales set out in this procedure.

## **5.7 Grounds for Review**

The Reviewer shall firstly assess whether grounds for review exist and shall notify the applicant of the outcome of this assessment within five working days of receiving the application for review.

Grounds for review include the reasonable possibility that the decision or an aspect of the decision:

- is inconsistent with statutory or contractual requirements;
- does not satisfy reasonable expectations;
- has unforeseen budgetary impacts (in relation to decisions affecting Rail Transport Agencies, AEO and applicants for AEO Authorisation);
- does not exhibit procedural fairness (in relation to decisions affecting AEOs or applicants for AEO Authorisation); or
- unfairly effects the interests of the applicant.

No grounds for review exist where it can be demonstrated that:

- the decision was made in accordance with relevant legislation;
- the decision was due to the natural outcome of policies or procedures that are outside the jurisdiction of the ASA (for example TfNSW policies or procedures);

- the review is requested solely on the grounds of difference of opinion between subject matter experts and procedural fairness has not been challenged; or
- the decision has already been reviewed.

## 5.8 Review Process

### 5.8.1 Establishing procedural fairness

The primary duty of the Reviewer is to establish whether or not procedural fairness is evident in the decision process for which the applicant has requested a review. Determining procedural fairness can be done by asking the following questions:

- a) Is the decision within the jurisdiction of the ASA to make?

The objectives, functions, powers and governance of the ASA are set down in The ASA Charter which provides guidance as to whether the decision is within the ASA's jurisdiction.

- b) Is the decision process reasonable?

The ASA, as a responsible and professional unit within Transport for NSW, has an obligation to ensure that decision processes, which might impact other government and non-government enterprises, can meet the reasonable expectations of those enterprises. It is a matter for the Reviewer to form an opinion as to what "reasonable expectations" is to mean. Such opinion should be informed by comparison with standards or accepted practice in other comparable areas, industries or disciplines. Examples include processes for audit, assessment, review, investigation and expert opinion.

Example tasks that might be reviewed include:

- the processes for determining the competency of the original decision maker
- the record keeping
- trade-off studies
- communication and consultation processes
- reasonableness of timelines.

In order to avoid confusion it is again stated that it is the *decision process* which must be seen to be reasonable.

In the event that the Reviewer finds the decision process or aspects of the process do not align with reasonable expectations then this must be immediately raised with the Executive Director of the ASA. A deficient process is not necessarily grounds to withdraw the decision as the misalignment might not be critical to the decision outcome; (examples include record keeping and communication processes).

- c) Was the procedure or the decision process followed?

Having formed an opinion that the decision process is adequate the Reviewer must determine whether the process was followed or not.

In making this determination the Reviewer shall exercise reasonable, unbiased, independent, and informed judgement.

- d) Was the original decision maker competent to make the decision and did they have the capacity for making a reasonable decision based on information available and sources, expertise and available knowledge.

The Reviewer shall freshly consider the documented material that was available to the original decision maker as well as any additional material that may have been provided. The Reviewer may consult with the applicant, the original decision maker or other parties including subject matter experts as appropriate. Records of these consultations should be kept on the review file. Factors that should be considered include that the decision maker has:

- the authority and delegation to make the decision,
- that relevant consultation and communication was undertaken, and
- the competence to make the decision.

## **5.8.2 Procedural Basis for the Original Decision**

The review officer shall first establish the procedural basis for the decision. Typically this will commence with a reference to the ASA. Without a procedural basis for the original decision it will be difficult to demonstrate procedural fairness

The reviewing officer shall undertake a document based review to determine what part of the ASA charter the original decision process was made under.

## **5.8.3 Making recommendations**

The Reviewer shall, in light of available documented material, make recommendation to the Executive Director ASA to:

- confirm the decision
- amend the decision, or
- set the decision aside.

The Executive Director ASA shall act on the recommendation and may direct the original decision maker to accept decisions that are recommended to be amended or set aside. Alternatively, the Executive Director ASA may appoint a suitable decision maker, which may or may not be the Reviewer to implement any recommendation.

## **5.8.4 Internal review as a mandatory precursor to external review**

An internal review shall be conducted as a mandatory precursor to external review.

The Executive Director of the ASA shall take advice from the Reviewer and determine whether to withdraw the decision or proceed with the external review. Corrective actions for the decision process shall be registered by the Quality Manager and tracked through until completion.

## **5.9 Continuous improvement of decision making**

ASA values the Internal Review process as a valuable tool to improve decision making quality. The Internal and External Review processes are designed to enable errors to be corrected, to improve the way decisions are made, to ensure transparency, and to engender public confidence in the integrity of the ASA.

Data gathered from the internal review process will be analysed to monitor trends and identify problems. This data will then be used as the basis for lessons learned and to provide feedback to primary decision makers about their decision making.

## **Appendix A - Application for Review of Decision by ASA**

## Application for Review of Decision

This form is for organisations applying for a review of a decision in accordance with ASA Procedures.

Please read the *Procedure for Internal Review of ASA Decisions 8SA-PR-048* before completing this form. You must complete the fields and answer questions marked with an asterisk (\*).

### SECTION 1 APPLICANT (Organisation)

<b>Organisation name *</b>			
<b>Contact person</b>	Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Miss <input type="checkbox"/> Other: _____		
	Name: _____		
	Position in organisation: _____		
<b>Email</b>	_____		
<b>Telephone * / Fax</b>	Landline: (    ) _____	Mobile: _____	_____
	<b>Preferred method for receiving correspondence</b> Please select one * <input type="checkbox"/> _____ <input type="checkbox"/> Email: <input type="checkbox"/> <input type="checkbox"/> Post: <input type="checkbox"/>		

### SECTION 2 DECISION

<b>Date you received the decision you want reviewed *</b>	dd / mm / yyyy
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**Briefly describe the decision and any steps you have taken to resolve the decision with the decision maker.**

<b>Date the decision was made</b>	dd / mm / yyyy	<b>Decision reference</b>	
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**SECTION 3 REASONS FOR THE APPLICATION**

**Why do you believe that the decision should be reviewed? \***

**SIGNATURE****Signature****Date**

dd / mm / yyyy

\* Mandatory field/question