



# **Online Safety (Internal Review Scheme) Instrument 2022**

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I, Julie Inman Grant, eSafety Commissioner, make the following notifiable instrument.

Dated 13 January 2022

Julie Inman Grant,  
eSafety Commissioner

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## Contents

1 Name.....	1
2 Commencement.....	1
3 Authority.....	1
4 Definitions .....	1
5 Application for internal review .....	2
6 Assessment of application .....	2
7 Internal review .....	2
8 Original decision remains in effect until applicant is notified .....	3
9 Status of reviewer’s decision.....	3
10 Timelines and communication with applicant.....	3

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## 1 Name

This is the *Online Safety (Internal Review Scheme) Instrument 2022*.

## 2 Commencement

Note: This provision relates only to the commencement of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
The whole of this instrument	Immediately after the commencement of section 220A of the <i>Online Safety Act 2021</i> .	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under subsections 220A(1), (2) and (3) of the *Online Safety Act 2021*.

## 4 Definitions

Note: Expressions used in this instrument that are defined in the definitions section of the Act have the same meaning in this instrument.

In this instrument:

*Act* means the *Online Safety Act 2021*.

*application* means an application for internal review made under section 5.

*internal review*, of a reviewable decision, means a review in accordance with section 7.

*reviewable decision* means a decision of a kind referred to in section 220 of the Act.

Note: Section 220 of the Act sets out kinds of decision of the Commissioner that are reviewable by the Administrative Appeals Tribunal.

*reviewer*, in relation to an internal review, means the person nominated under subsection 7(2).

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## 5 Application for internal review

- (1) An application may be made to the Commissioner for an internal review of a reviewable decision.
- (2) The application may be made by any person who would be able to make a corresponding application to the Administrative Appeals Tribunal under section 220 of the Act (whether on the person's own behalf or on behalf of someone else).
- (3) The application must be made in writing in a form approved by the Commissioner.
- (4) The application must be made within 30 days after notice of the reviewable decision was received by the person to whom it was given, or such longer time as the Commissioner allows.

## 6 Assessment of application

- (1) On receiving an application, the Commissioner must arrange for an internal review of the reviewable decision unless the Commissioner is satisfied that an internal review is not appropriate in the circumstances.

Note: Circumstances in which an internal review might not be appropriate include:

- where the reviewable decision was made by the Commissioner directly rather than by a delegate; or
- where specific independent expertise is needed to evaluate the merit of the decision.

- (2) If the Commissioner is satisfied that internal review is not appropriate, the Commissioner must inform the applicant of that fact and reject the application and, where appropriate, invite the applicant to apply directly to the Administrative Appeals Tribunal.

## 7 Internal review

- (1) This section sets out the process for an internal review of a reviewable decision.
- (2) The Commissioner must nominate a person to be the reviewer of the decision.
- (3) The reviewer must be the Commissioner or a person to whom the Commissioner has delegated the Commissioner's powers under subsection 220A(2) in relation to the decision.
- (4) As far as practicable, the reviewer must be a person who:
  - (a) was not substantially involved in making the decision; and
  - (b) is not less senior than the person who made the decision;
- (5) The reviewer must review the decision and determine the correct and preferable decision in the circumstances that applied as if the reviewer were the original decision maker.
- (6) In conducting the review, the reviewer must consider:
  - (a) the facts, law and policy issues as they related to the decision; and
  - (b) any new information in relation to the facts, law and policy issues that has become available.

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- (7) The reviewer may request further information and documents from the applicant or other sources.
  - (8) The reviewer must accord the applicant procedural fairness and conduct the review in accordance with guidelines approved by the Commissioner and published on the Commissioner's website.
  - (9) The reviewer must, in the light of the review, affirm, vary or revoke the decision.
  - (10) The reviewer must:
    - (a) notify the applicant that the decision has been affirmed, varied or revoked; and
    - (b) provide written reasons for the affirmation, variation or revocation; and
    - (c) advise the applicant of any further review options that may be available.
  - (11) If an application is withdrawn at any time, this section ceases to apply in relation to that application.

## **8 Original decision remains in effect until applicant is notified**

- (1) A reviewable decision that is subject to internal review remains in effect until the applicant is notified of the affirmation, variation or revocation in accordance with subsection 7(10).
- (2) The affirmation, variation or revocation takes effect when the applicant is so notified.

## **9 Status of reviewer's decision**

For the purposes of subsection 220A(3) of the Act, the decision by the reviewer under subsection 7(9) has effect as if it had been made under the provision under which the original decision was made.

Note: This has the effect that the decision is reviewable by the Administrative Appeals Tribunal.

## **10 Timelines and communication with applicant**

- (1) An application must be acknowledged within 3 business days after it is received.
- (2) An assessment under section 6, and any resulting communication to the applicant, must be made as soon as practicable.
- (3) An internal review must be completed as soon as practicable. If it appears that it will not be practicable to complete the review within 30 days after receipt of the application, the reviewer must notify the applicant of when the completion can be expected, with brief reasons for the time that will be taken.