



Codes of Practice and Guidance Material

INFORMATION SHEET

Overview

This information sheet explains the difference between model codes of practice and other types of guidance material and outlines the development processes.



What is the difference between a code of practice and other types of guidance material?

A code of practice is a practical guide on how to comply with the legal duties under the Work Health and Safety (WHS) Act and Regulations.

The WHS Act provides for the approval, variation and revocation of codes of practice by the relevant Minister. The Act also outlines how codes of practice can be used in court proceedings.

Codes of practice have a special status because an approved code is automatically admissible as evidence in court proceedings under the WHS Act and Regulations. Courts may have regard to a code as evidence of what is known about a hazard, risk or control and may rely on the code in determining what is reasonably practicable in the circumstances to which the code relates.

The *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* (IGA) gives Safe Work Australia responsibility for developing model codes of practice to support the harmonised WHS laws.

A model code of practice developed by Safe Work Australia will only have evidentiary status under a jurisdiction's WHS laws once it is approved by the Minister responsible for work health and safety legislation in that jurisdiction.

Codes of practice:

- deal with a duty or obligation under the WHS Act or Regulations
- include known information about particular hazards, risks and control measures
- help in determining what is reasonably practicable in the circumstances, and
- can be supplemented with other types of guidance material.

Other types of guidance documents also help duty holders comply with the law but differ from the authoritative advice of a code of practice by allowing

duty holders wider discretion to choose the options that best suit their circumstances. Guidance material contributes to the overall state of knowledge regarding hazards, risks and controls and may be tendered as evidence in court proceedings.

How are decisions to develop a model code of practice made?

Safe Work Australia's members decide whether guidance is needed on a particular topic and whether it should be developed as a code of practice or as guidance material. Safe Work Australia consists of representatives from the Commonwealth, state and territory governments as well as employer and union bodies.

A document is assessed as being suitable as a code of practice if the majority of the following criteria are met:

Criteria for determining a code of practice

1. Guidance is a necessary part of enabling compliance with the duties contained in the WHS Act and/or Regulations, particularly to support legislative provisions that are outcome focussed or do not provide much detail.
2. There is clear evidence of a significant risk or widespread work health and safety problem where evidentiary status of a code will elevate the importance of the issue.
3. There are certain preferred or recommended methods to be used (or standards to be met) to achieve compliance.
4. The information on the hazard, risks and control measures is well-established, reflects the state of knowledge and therefore will not require frequent updating.

Safe Work Australia's members may decide that a document is suitable as a code of practice or as a guide at any time during the development stage (i.e. before drafting begins, when considering a first draft or when considering a final version after public comment).

What is the process for developing codes of practice?

Developing a code of practice is a formal process that requires:

- consultation with governments, unions, employer organisations and the public
- consideration of regulatory impact
- approval by the Select Council of Workplace Relations (SCWR), and
- approval as a code by the relevant Minister.

The IGA requires that consultation is undertaken in developing model Codes of Practice, which includes releasing drafts for public comment.

Unlike other types of guidance material, codes of practice may need to be assessed for their regulatory impact on business or not-for-profit organisations. The decision on whether a Regulation Impact Statement is required for a code of practice is made by the Commonwealth Office of Best Practice Regulation.

Who can initiate a proposal for a model Code of Practice or guidance material?

A submission can be made by industry, unions or government bodies through their Safe Work Australia representatives. This is a preferred option as it may facilitate the process and support for the proposal.

Industry is represented on Safe Work Australia by the Australian Chamber of Commerce and Industry (ACCI) and the Australian Industry Group (AiGroup). Unions are represented by the Australian Council of Trade Unions (ACTU).

Alternatively a proposal can be submitted to the Safe Work Australia agency. For further information on how to make a submission contact us using the details below:

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