

BULLETIN

Codes of Practice and other Guidance Material

This bulletin explains the difference between codes of practice and other types of guidance material and outlines the development processes for a model code of practice.

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 (National Uniform Legislation) Act* and Regulations (WHS Act and Regulations).

Codes of practice have a special status because a code that has been approved in the Northern Territory is automatically admissible as evidence in court proceedings under the WHS Act and Regulations.

An approved code of practice applies to anyone who has a duty of care in the circumstances described in the code. In most cases, following an approved code of practice would achieve compliance with the health and safety duties in the WHS Act, in relation to the subject matter of the code. Like regulations, codes of practice deal with particular issues and do not cover all hazards or risks which may arise.

Courts may regard an approved code of practice 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.

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.

Who develops the model codes of practice?

Safe Work Australia is responsible for developing model codes of practice to support the harmonized WHS laws. This responsibility is outlined in the Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety (IGA).

A model code of practice developed by Safe Work Australia will only have evidentiary status under the Northern Territory's WHS laws once it is approved by the Northern Territory Minister responsible for work health and safety legislation, currently the Minister for Business.

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.

Safe Work Australia is a national policy body that works with the Commonwealth, state and territory governments to improve work health and safety and workers' compensation arrangements.

Safe Work Australia consists of representatives of the Commonwealth, state and territory governments, the Australian Council of Trade Unions (ACTU), the Australian Chamber of Commerce and Industry (ACCI) and the Australian Industry Group (AiGroup).

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.

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

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 focused 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 without any gaps 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 ACCI and the AiGroup. Unions are represented by the ACTU.

Alternatively a proposal can be submitted to the Safe Work Australia agency. For further information on how to make a submission contact Safe Work Australia on (02) 6121 5317 or by emailing info@safeworkaustralia.gov.au

Approving a Code of Practice

The WHS Act (Part 14, Division 2) outlines the requirements and process for a model code of practice to be approved in the Northern Territory and therefore automatically admissible as evidence in court. The Minister may only approve a code of practice if that code of practice was developed by a process that involved consultation between, unions, employer organisations and the Governments of the Commonwealth and each State and Territory.

The Minister may also vary and revoke a code of practice provided the consultation process outlined above has been completed.

Further information

The codes of practice that have been approved in the Northern Territory are available for free download from the publications section of the NT WorkSafe website www.worksafe.nt.gov.au.

Information on the model codes of practice, including codes currently under development, is available on the Safe Work Australia website www.safeworkaustralia.gov.au.

For further information please contact NT WorkSafe on 1800 019 115 or go to www.worksafe.nt.gov.au

This bulletin has been adapted with permission from material developed by Safe Work Australia for the model Work Health and Safety Act and Regulations.