

WORKSAFE WESTERN AUSTRALIA COMMISSION

**GUIDELINES
FOR THE DEVELOPMENT
OF INDUSTRY CODES OF PRACTICE
FOR APPROVAL UNDER THE
*OCCUPATIONAL SAFETY AND HEALTH ACT 1984***

April 1998

FOREWORD

The *Occupational Safety and Health Act 1984* established the WorkSafe Western Australia Commission which comprises representatives of employers, unions, government and experts. The Commission has the function of developing the legislation and any supporting guidance material and making recommendations to the Minister for implementation. To fulfil its functions the Commission is empowered to establish advisory committees, hold public enquiries and publish and disseminate information.

The Commission's objective is to promote comprehensive and practical preventive strategies that improve the working environment of Western Australians.

The Act

The *Occupational Safety and Health Act 1984* provides for the promotion, co-ordination, administration and enforcement of occupational safety and health in Western Australia.

With the objective of preventing occupational injuries and diseases, the Act places certain duties on employers, employees, self-employed persons, manufacturers, designers, importers and suppliers.

In addition to the broad duties established by the Act, it is supported by a further tier of statute, commonly referred to as regulations, together with lower tiers of non-statutory codes of practice and guidance notes.

Regulations

Regulations have the effect of spelling out the specific requirements of the legislation.

Regulations may prescribe minimum standards. They may have a general application or they may define specific requirements related to a particular hazard or a particular type of work.

Regulations may also be for the licensing or granting of approvals, certificates, etc.

Codes of Practice

A code of practice is defined in the Act as a document prepared for the purpose of providing practical guidance on acceptable ways of achieving compliance with statutory duties and regulatory requirements.

Codes of practice:

- should be followed, unless there is another solution which achieves the same or better result; and
- can be used to support prosecution for non-compliance.

Guidance Notes

A guidance note is an explanatory document approved by the Commission providing detailed information on the requirements of legislation, regulations, standards, codes of practice or matters relating to occupational safety and health.

DEVELOPMENT OF INDUSTRY CODES OF PRACTICE

The WorkSafe Western Australia Commission welcomes the development of industry codes of practice that contain information which is technically and legally correct thereby enhancing standards of occupational safety and health within their industry. There are many positive aspects to be gained from having industry codes of practice recognised through the approval process of the *Occupational Safety and Health Act*. Industry groups are encouraged to submit their industry code of practice to the Commission seeking section 57 approval.

In the past, approved codes of practice have been developed by the Commission using expertise from the Chamber of Commerce and Industry, the Trades and Labor Council, WorkSafe Western Australia and elsewhere. Following recommendations from the Commission, the Minister has also approved National Occupational Health and Safety Commission codes of practice and other documents, such as Australian Standards, as codes of practice under the Act.

The Commission is aware that industry groups have been producing occupational safety and health information for members of their industries as a “self-help” measure. Except for one Technical Note, this information has not been formally acknowledged or approved under the Act. The Commission recognises that formal approval of the technical information in a code of practice reduces the legal uncertainties where this information is used as part of a safe system of work. In an effort to expand the range of approved codes of practice, the Commission encourages the development of codes of practice, initiated and developed by industry, to provide practical occupational safety and health guidance for high risk situations or sectors of an industry. These “industry codes of practice” may be recommended to the Minister by the Commission for approval under section 57 of the Act, thereby achieving the same status as other approved codes of practice.

These guidelines have been prepared to assist with the development of industry codes of practice that are to be submitted for approval under section 57 of the Act.

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1. THE ROLE OF CODES OF PRACTICE

The objectives of the *Occupational Safety and Health Act 1984* is to promote and improve safety and health standards in Western Australian workplaces. The Act sets out broad duties for people at workplaces and those who design, manufacture, import or supply plant or substances for use at workplaces. It also includes duties of those who design or construct buildings or structures for use at a workplace. The Act is supported by more detailed requirements in the *Occupational Safety and Health Regulations 1996*. The Act and Regulations are further supported by a range of guidance material such as approved codes of practice and guidance notes as shown below.

2. LEGISLATIVE FRAMEWORK IN WESTERN AUSTRALIA

OCCUPATIONAL SAFETY AND HEALTH ACT

Major provisions:

- The General Duties
- Resolution of Issues
- Safety and Health Representatives
- Safety and Health Committees
- Enforcement of Act and Regulations

supported by

OCCUPATIONAL SAFETY AND HEALTH REGULATIONS

The Occupational Safety and Health Regulations set minimum requirements for specific hazards and work practices, including reference to National Standards developed by the National Occupational Health and Safety Commission and Australian Standards developed by Standards Australia.

and

GUIDANCE MATERIAL

- Codes of Practice approved for Western Australia in accordance with section 57 of the Act
- Guidance Notes developed by the WorkSafe Western Australia Commission
- National Codes of Practice and National Standards developed by the National Occupational Health and Safety Commission
- Australian Standards developed by Standards Australia

Further information on the “Legislative Framework” is available in the WorkSafe Western Australia Commission Guidance Note on “General Duty of Care in Western Australian Workplaces” (pp 8-9).

A Guidance Note is an explanatory document providing more detailed information on the requirements of the legislation. Codes of practice contain practical information on how to comply with legislative requirements. They describe safe work practices that could be used to reduce the risk of work-related injury and disease. Codes of practice may also contain explanatory information.

The safe work practices included in a code of practice may not represent the only acceptable means of achieving the standard to which the code refers. There may be other ways of setting up a safe system of work and, provided the risk of injury or disease is reduced as far as practicable, the alternatives should be acceptable.

3. THE LEGAL STATUS OF CODES OF PRACTICE

The point of reference for approval of codes of practice is section 57 of the Act which states in part:

(1) For the purpose of providing practical guidance to employers, self-employed persons, employees and other persons on whom a duty is imposed under Part III of this Act, the Minister may, upon recommendation of the Commission, approve any code of practice.

Section 57 sets out processes associated with the approval and revision of codes of practice and the status of approved codes of practice in relation to legal proceedings. The following points are included:

- * a person is not liable to any civil or criminal proceedings simply because of non-compliance with a code of practice; and
- * where it is alleged that a person has contravened a provision of the Act or Regulations, the information in a code of practice may be used as evidence. However, demonstration that the person has complied with the Act or Regulations by some other means would be a satisfactory defence.

Codes of practice show there is a practicable means of reducing the risk of work-related injury or disease. They may not provide exact solutions to occupational safety and health problems in all workplaces in an industry, but following the practical guidance in a code of practice should help to reduce the legal uncertainties associated with the way that safe working environments are established and maintained.

Members of industry groups are advised to carefully consider references to “codes of practice” in section 57 of the Act as part of their preparation for the development of industry codes of practice.

4. THE DEVELOPMENT PROCESS

4.1 Preparation and Planning

It is important to gather some background information before the industry code of practice is actually written. It may also be useful to contact the Commission Secretary for further information on the development process and direction as to reference material and similar codes of practice that may guide the industry group.

In situations where the subject area is covered by an existing code of practice, or by a standard that has been developed nationally or internationally, the first preference would be to adopt that code of practice or standard rather than introduce a new one. In some situations, an industry code of practice may modify an existing standard to suit Western Australian legislation.

Industry groups need to identify relevant occupational safety and health legislation in the subject area of the proposed industry code of practice. The safe work practices included in the code of practice should be consistent with the Act and any Regulations that may apply. This would include Standards cited in Regulations. For example, an industry code of practice that referred to work in confined spaces should be consistent with the general duties in the Act, Regulations in Part 3, Division 8 “Work in Confined Spaces” and AS 2865 “Safe Working in a Confined Space” (Reg. 3.85).

Codes of practice should also be consistent with other relevant legislation. For example, an industry code of practice that referred to the disposal of hazardous waste should be consistent with public health, transport and environmental legislation as well as the relevant occupational safety and health legislation.

In the planning stage, industry groups should consider ways to produce, distribute and promote their codes of practice. This will remain the responsibility of the industry group. It is important that copies of every approved code of practice are available within a reasonable time and the distribution is not restricted to certain sectors of an industry, such as membership of an organisation. Once it is approved, the industry code of practice may be sold to recover the publication and distribution costs. WorkSafe Western Australia is willing to publish approved industry codes of practice, free of charge, in “SafetyLine” on the Internet. This is an option that could be considered.

4.2 Consultation

Groups developing industry codes of practice should consult with others in their industry to gauge the extent to which the safe work practices to be included in the code of practice are accepted and used. Widespread consultation early in the development process may avoid delays in the review of the code of practice by the Commission, especially where some items are controversial.

Each industry code of practice should be legally and technically correct. The involvement of individual experts and industry groups in the planning and review of draft material could help to ensure the information is complete and accurate before it is submitted to the Commission.

4.3 Drafting

Industry codes of practice should be as “user friendly” as possible. Plain language is essential. Legal and technical jargon should be avoided or very clearly explained. Good quality drawings and photographs should be used to illustrate key points and add interest to the text.

When drafting information for an industry code of practice, industry groups are encouraged to follow the hazard identification, risk assessment and risk reduction approach that is set out in the Regulations:

Identification of hazards, and assessing and addressing risks, at workplaces

Regulation 3.1 states

A person who, at a workplace, is an employer, the main contractor, a self-employed person, a person having control of the workplace or a person having control of access to the workplace must, as far as practicable —

- (a) identify each hazard to which a person at the workplace is likely to be exposed;
- (b) assess the risk of injury or harm to a person resulting from each hazard, if any, identified under paragraph (a); and
- (c) consider the means by which the risk may be reduced.

Penalty: \$25 000.

There should be emphasis on those hazards most likely to cause injury or harm to people in the work situations covered by the industry code of practice.

It is also important to note that risks should be reduced in the first instance by means other than the use of protective clothing and equipment (see Regulation 3.32). The emphasis should be on establishing a safe system of work using the hierarchy or preferred order of control rather than recommending personal protective clothing and equipment as the first and only means of reducing risks.

Information on “Workplace Hazard Control” is available in the WorkSafe Western Australia Commission Guidance Note on “General Duty of Care in Western Australian Workplaces” (pp 68-69).

4.4 Submission

When an industry code of practice is submitted to the Commission for consideration, the following information should be included in a covering letter:

- * the name of the industry group or the individuals who have developed the industry code of practice;
- * the proposed method of publication, distribution and promotion of the industry code of practice; and
- * the extent to which the authors have consulted with others in their industry.

5. THE APPROVAL PROCESS

In the first instance, industry codes of practice should be submitted to the WorkSafe Western Australia Commission for consideration. As part of the approval process, the Commission will seek advice on the following areas:

- * the need for the new code of practice;
- * the accuracy of legal and technical information; and
- * the extent to which the industry accepts the safe work practices included in the code of practice.

The Commission may circulate an industry code of practice for comment to individual experts and industry groups, such as professional associations, employer organisations, unions and training organisations. On some occasions, the Commission may call for public comment. The breadth of comment sought by the Commission will depend upon whether the code of practice has been tested in the field prior to submission and the extent to which the industry group has consulted with others during the development process.

Following consideration of comment received, the Commission may endorse the industry code of practice and recommend it to the Minister for approval or return it to the original industry group for amendment. The Commission would provide written feedback to the industry group and may nominate an officer to meet with the group to assist with further development of the industry code of practice.

When the Minister approves an industry code of practice under section 57 of the Act, the industry group will be advised in writing. The code of practice cannot be circulated with any endorsement or statement that infers that it has been approved under section 57 of the Act until notice of the approval has been published in the Government Gazette.

A copy of the industry code of practice, and any document referred to in it, will be laid before each House of Parliament by the Minister. These documents will also be made available for public inspection, usually by holding copies in the WorkSafe Western Australia Library.

6. THE REVIEW PROCESS

Copyright for industry codes of practice will remain with the original authors. To maintain approval by the Minister, industry codes of practice should be revised whenever there are significant changes to the work practices in the industry. The Commission recommends that industry review their codes of practice at least every five years. Amendments would need to be submitted to the Commission and approved in accordance with the original approval process.

7. SUMMARY AND CHECK LIST

DEVELOPING AN INDUSTRY CODE OF PRACTICE		
1.	Establish the need for a new code of practice.	
2.	Identify relevant legislation and Standards.	
3.	Consult with others in the industry regarding recommended safe work practices.	
4.	Using plain language, draft an industry code of practice based on the general duties of the <i>Occupational Safety and Health Act</i> and hazard identification, risk assessment and risk reduction approach.	
5.	Check the accuracy of legal and technical content.	
6.	Submit the industry code of practice to the WorkSafe Western Australia Commission with the names of authors, the plans for publication, distribution and promotion and information on consultation that occurred during the development process.	
7.	Await written advice from the Commission and the Minister regarding approval under section 57 of the <i>Occupational Safety and Health Act</i> .	
8.	Produce the code of practice with an endorsement of the approval by the Minister after notice of the approval has been published in the Government Gazette.	

8. A FINAL WORD

Industry groups can continue to provide occupational safety and health information as they have in the past. It is not compulsory for this information to be checked by the Commission or approved by the Minister. However, the option of seeking formal approval of the information in a code of practice is now available. Approval under section 57 of the Act would demonstrate to industry and the community that the legal and technical content of the code of practice has been independently reviewed and endorsed by the Commission. Industry groups are encouraged to pursue this option as part of an information strategy aimed at reducing work-related injury and disease.

OTHER PUBLICATIONS

The following publications can be purchased from WorkSafe Western Australia, Westcentre, 1260 Hay Street, West Perth [Tel. (08) 9327 8777]:

- Occupational Safety and Health Act 1984*
- Occupational Safety and Health Regulations 1996*
- Codes of Practice published by the WorkSafe Western Australia Commission:
 - * Excavation
 - * First Aid, Workplace Amenities and Personal Protective Equipment
 - * Legionnaires Disease
 - * Manual Handling
 - * Management of HIV/AIDS, Hepatitis B & C at Workplaces
 - * Prevention of Falls at Workplaces
 - * Styrene
- Guidance Notes published by the WorkSafe Western Australia Commission:
 - * The General Duty of Care in Western Australian Workplaces
 - * Election of Safety and Health Representatives, Representatives and Committees and Resolution of Issues
 - * Electricity: Residual Current Devices

These documents are also available via the Internet Service on Safetyline [<http://www.safetyline.wa.gov.au>].

The following publications are under development or are expected to commence development during 1997/98 and when available will be listed in "What's New" on the Internet Service:

- Codes of Practice:
 - * Abrasive Blasting
 - * Control of Noise in the Music Entertainment Industry (Review)
 - * Demolition
 - * Isocyanates
 - * Legionnaires Disease (Review)
 - * Spraypainting
 - * Steelwork
 - * Young Workers
- Guidance Notes:
 - * Competent Persons
 - * Powered mobile plant
 - * Communication with isolated employees
 - * Registration of plant design
 - * Registration of individual items of plant