



Government of **Western Australia**
Department of **Commerce**

Guidelines for the development of
industry codes of practice
for approval under the
Occupational Safety and Health Act 1984

2009

Foreword

These guidelines are issued by the Commission for Occupational Safety and Health. The introduction of the *Occupational Safety and Health Act 1984* (the OSH Act) enabled the establishment of the Commission, which comprises representatives of employers, unions and government and experts. It has the function of developing the legislation and 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. These guidelines have been developed through a tripartite consultative process and the views of employees and unions, along with those of government and experts, have been considered.

Legislative framework for occupational safety and health

The Occupational Safety and Health Act 1984

The OSH Act provides for the promotion, co-ordination, administration and enforcement of occupational safety and health in Western Australia. It applies to all industries with the exception of mining and petroleum.

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

The broad duties established by the OSH Act are supported by further legislation in regulations, together with lower tiers of non-statutory codes of practice and guidance notes.

Occupational Safety and Health Regulations 1996

The Occupational Safety and Health Regulations 1996 (the OSH Regulations) have the effect of spelling out specific requirements of the legislation.

They may prescribe minimum standards and have a general application or define specific requirements of the legislation related to a particular hazard or a particular type of work. They may also allow licensing or granting of approvals and certificates.

Codes of practice approved under the OSH Act

A code of practice is a document prepared for the purpose of providing:

- practical guidance on how to comply with a general duty under the OSH Act or specific duties under OSH Regulations;
- practical guidance on safe work practices that can be used to reduce the risk of work-related injury and disease, without being prescriptive; and
- a practical means of achieving any code, standard, rule, provision or specification relating to occupational safety and health in Western Australia.

A code of practice may contain explanatory information. However, work practices included may not represent the only acceptable means of achieving the standard to which the code refers. Compliance with codes of practice is not mandatory but a code may be used by courts as the standard when assessing other methods or practices used. A code of practice does not have the same legal force as a regulation and non-compliance with it is not sufficient reason, of itself, for prosecution under the OSH Act.

Further information

Further information on the legislative framework is available in the Commission's *Guidance note: General duty of care in Western Australian workplaces*. This is available at: www.worksafe.wa.gov.au

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1. Introduction

The Commission welcomes the development of industry codes of practice containing technically and legally correct information to enhance standards of occupational safety and health within an industry. These guidelines have been prepared to assist with the development of industry codes of practice, where it is intended that will be submitted for approval under section 57 of the OSH Act.

In Western Australia, approved codes of practice have been developed by the Commission and, following recommendations from the Commission, the Minister responsible for the OSH Act has also approved industry developed codes and National Occupational Health and Safety Commission (Safe Work Australia) codes of practice and standards as codes of practice.

Industry groups are encouraged to submit their industry code of practice to the Commission for its review and recommendation to the Minister that it be approved as a code of practice in Western Australia under section 57 of the OSH Act.

There are many positive aspects to be gained from having industry codes of practice and industry developed technical safety and health information recognised through the approval process. Formal approval of these as codes of practice reduces the legal uncertainties where this information is used as part of a safe system of work. When approved under section 57 of the OSH Act, the documents achieve the same legal status as other approved codes of practice in Western Australia.

2. The legal status of codes of practice

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

Approval of codes of practice takes place under section 57 of the OSH Act. This states in part:

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

Section 57 also sets out processes for the approval and revision of codes of practice and the status of approved codes of practice in relation to legal proceedings. Under this:

- 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 OSH Act or regulations, the information in a code of practice may be used as evidence. However, demonstration that the person has complied with the OSH Act or regulations by some other means would be a satisfactory defence.

Members of industry groups are advised to carefully consider section 57 of the OSH Act, as part of their preparation for the development of industry codes of practice.

3. The development process

3.1 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 WorkSafe's Policy and Education Directorate for further information on the development process and some direction on reference material and similar codes of practice that may guide your industry group.

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

Industry groups need to identify relevant parts of the OSH Act and OSH Regulations that apply to the subject area of the proposed industry code of practice. The safe work practices included in the code of practice should be consistent with parts of the legislation that may apply. This includes any standards that may be referred to in relevant regulations.

For example, an industry code of practice that referred to work in confined spaces should be consistent with the general duties in Part III of the OSH Act, regulations in Part 3, Division 8 of the OSH Regulations and Australian/New Zealand Standard, *AS/NZS 2865 Safe working in a confined space*, which is referred to in regulation 3.85 of the OSH Regulations.

Codes of practice should also be consistent with other relevant legislation. For example, an industry code of practice that refers 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, promote and evaluate 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 to people who require them 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 by its developers to recover the publication and distribution costs. WorkSafe will include a copy of the approved code of practice on its web site for download.

3.2 Consultation

Groups developing an industry code of practice should consult with:

- others in their industry to gauge the extent to which the safe work practices to be included in it are accepted and used;
- experts and industry groups in the planning and review of draft material to help ensure its information is complete and accurate before it is submitted to the Commission; and
- relevant bodies representing employer and employee groups.

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.

3.3 Writing the code


When writing an industry code of practice, it should be worded as “user friendly” as possible. Plain language is essential. Legal and technical jargon should be avoided or very clearly explained in a glossary. Good quality drawings and photographs may be used to illustrate key points.

The information should be legally and technically correct. It is recommended that groups refer to current Commission codes of practice to familiarise themselves with the categories and format for drafting legal and technically correct codes of practice. These are available from WorkSafe or its website at www.worksafe.wa.gov.au

Industry groups are encouraged to follow the risk management approach in their codes ie hazard identification, risk assessment and risk control. See regulation 3.1 of the OSH regulations.

With addressing hazards, there should be emphasis on those most likely to cause injury or harm to people in the work situations to be covered by the 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. The emphasis should be on establishing a safe system of work using the hierarchy or “preferred order” of control measures rather than recommending personal protective clothing and equipment as the first and only means of reducing risks. The hierarchy is outlined below.

Table 1 Hierarchy or preferred order of control measures to eliminate or reduce the risk of injury or harm	
1. Elimination — removing the hazard or hazardous work practice from the workplace.	<p>Most effective control measure</p>  <p>Least effective control measure</p>
2. Substitution — substituting or replacing a hazard or hazardous work practice with a less hazardous one.	
3. Isolation — isolating or separating the hazard or hazardous work practice from people involved in the work or people in the general work area.	
4. Engineering controls — if the hazard cannot be eliminated, substituted or isolated, an engineering control is the next preferred measure.	
5. Administrative controls — this includes introducing work practices that reduce the risk, such as providing procedures, instruction and training.	
6. Personal protective clothing and equipment — these should be considered only when other control measures are not practicable or to increase protection. While essential for some work procedures, these should be last in the list of priorities.	
In some instances, a combination of control measures may be appropriate	

4. The approval process

As a first step, an industry code of practice should be submitted to the Commission for its consideration and recommendation to the Minister that it become an approved code.

When a code is submitted, the covering letter should include:

- the names of the industry group and/or people who have developed it;
- the proposed method of publication, distribution and promotion of it; and
- the extent to which the authors have consulted with others in their industry.

As part of the approval process, the Commission will seek advice on:

- the need for the new code of practice;
- the accuracy of the 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 the industry code of practice for comment to 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 on 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 an industry code of practice and recommend it to the Minister for approval or return it for amendment. The Commission will provide written feedback and may nominate an officer to meet with your 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 OSH 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 OSH Act, until WorkSafe has arranged for publication of a notice stating the Minister's approval in the *Western Australian 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 Library.

5. Copyright and revising the code

Copyright for industry codes of practice will remain with the original authors.

The Commission recommends that industries review their codes of practice at least every five years. If a code is revised, then the amended code will need to be submitted to the Commission and approved in accordance with the original approval process. Where approval of the new code is supported, the Commission will also recommend to the Minister the original code is revoked as an approved code in Western Australia.

To maintain approval of the code by the Minister, it should be revised whenever there are significant changes to the work practices in the industry.

6. Deciding whether to seek approval

Industry groups can continue to provide occupational safety and health information they have developed as they have in the past. It is not compulsory for this information to be checked by the Commission or formally approved by the Minister as a code of practice under the OSH Act. However, the option is available.

Obtaining approval of your safety and health information under section 57 of the OSH Act will demonstrate to an industry and the community that its legal and technical content 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 injuries and disease.

7. Checklist of what to do

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.	When writing the code, use plain language and refer to the general duties in Part IV of the OSH Act and the risk management approach ie hazard identification, risk assessment and risk control approach. See regulation 3.1 of the OSH regulations. Refer to other codes approved under the OSH Act.	
5.	Check the accuracy of the legal and technical content.	
6.	Submit the industry code of practice to the Commission with the names of authors, the plans for publication, distribution and promotion and information on consultation that occurred during its development process.	
7.	Await written advice from the Commission and the Minister regarding approval under section 57 of the OSH Act.	
8.	On receiving advice from WorkSafe that the Minister has approved the code and a notice of this been published in the Western Australian Government Gazette, publish the code of practice. It should contain a statement saying it is an approved code of practice under section 57 of the OSH Act.	
9.	Carry out distribution and promotion plans.	
10.	When there are significant changes to the work practices in the industry, review the code. The Commission recommends that a general review of a code should be carried out at least every five years.	
11.	If revising an approved code, submit the final amended code to the Commission for its consideration and recommendation to the Minister that it become an approved code of practice.	

8. Relevant publications

Legislation

- *Occupational Safety and Health Act 1984*
- *Occupational Safety and Health Regulations 1996*

Available from the State Law Publisher. Refer to the website at www.slp.wa.gov.au or telephone (08) 9426 0000.

Commission codes of practice

- *Control of noise in the music entertainment industry*
- *Excavation*
- *Occupational safety and health in call centres*
- *Prevention of falls at workplaces*

Industry codes of practice

- *Ferry and charter boat industry: Code of practice* published by the Department for Planning and Infrastructure (now the Department of Transport)

Commission guidance notes

- *The general duty of care in Western Australian workplaces*
- *Occupational safety and health management in contaminated workplaces*

Commission documents, including a listing of codes of practices approved under the OSH Act, are available from www.worksafe.wa.gov.au or by telephoning WorkSafe on 1300 307 877

9. Contacts

Executive Officer

Commission for Occupational Safety and Health

PO Box 294, West Perth WA 6872

Tel.: (08) 9327 8777 – ask to speak to the Commission’s Executive Officer in Policy

Fax: (08) 9321 2148

Department of Commerce

WorkSafe Division

Level 5, 1260 Hay Street

WEST PERTH WA 6005

Tel.: 1300 307877

Fax: (08) 9321 8973

Email: safety@commerce.wa.gov.au

Internet site: www.worksafe.wa.gov.au/

TTY: (08) 9327 8838

The relevant union or employer association.

Department of Mines and Petroleum

Resources Safety

First Floor, 303 Sevenoaks Street (cnr Grose Avenue)

CANNINGTON WA 6107

Tel.: (08) 9358 8002

Fax: (08) 9358 8000

Email: ResourcesSafety@dmp.wa.gov.au

Internet site: www.dmp.wa.gov.au/ResourcesSafety

Chamber of Commerce and Industry Western Australia

180 Hay Street

EAST PERTH WA 6000

Tel.: (08) 9365 7415

Fax: (08) 9365 7550

Email: osh@cciwa.com

Internet site: www.cciwa.com

UnionsWA

Level 4, 445 Hay Street

PERTH WA 6000

Tel.: (08) 9328 7877

Fax: (08) 9328 8132

Email: unionswa@unionswa.com.au

Internet site: www.unionswa.com.au

Chamber of Minerals and Energy of Western Australia Inc

Level 7, 12 St Georges Terrace,

PERTH WA 6000

Tel.: (08) 9325 2955

Fax: (08) 9221 3701

Internet site: www.cmewa.com.au

A1177707

ISBN: [978-1-920836-38-2]