

Information sheet

Codes of practice

Developing codes of practice

This information sheet provides details on the process for developing codes of practice including what codes of practice must include and what must be considered in approving codes of practice under the Environmental Protection Act 1994.

1. Purpose

The purpose of this information sheet is to guide the development of a code of practice. A code of practice for a particular industry is best developed by representatives from that industry. This gives operators from the industry greater ownership of the code of practice. It should result in a better code of practice as the operators have a thorough knowledge of the issues for that industry.

2. Introduction

Codes of practice provide guidance to operators to help them comply with the *Environmental Protection Act 1994* (the Act) by meeting their general environmental duty. They also outline environmental best management practices of leaders in the industry.

Under section 319 of the Act, all persons in Queensland must fulfil their 'general environmental duty', which states that 'a person must not carry out an activity that causes, or is likely to cause, environmental harm unless the person takes all reasonable and practicable measures to prevent or minimise the harm'.

A code of practice will describe the activity it was written for (whether or not it is an environmentally relevant activity licensed under the Act), the impacts on the environment, and how those impacts can be mitigated against in the interests of achieving environmentally sustainable development and complying with the Act.

Although codes of practice are voluntarily adopted standards for businesses in Queensland, complying with the code of practice provides the operator with a defence against a charge of unlawfully causing environmental harm and several other charges to the extent the code of practice is relevant. Non-compliance with a code of practice is not an offence under the Act.

A code of practice has effect for seven years after the day it is made, unless it is earlier repealed.

3. Purpose of codes of practice

Codes of practice should:

- describe environmental issues and challenges confronting the activity
- assist operators to better consider the environment with which they interact
- guide planning to ensure site, design and operations meet requirements of decision-making authorities
- provide advice to decision-making authorities to enable them to make consistent decisions in respect to operations of the activity
- suggest practical measures to minimise environmental impacts
- allow industry to establish a benchmark environmental performance.

4. Process for developing a code of practice

The Act does not limit who can develop a code of practice. Codes of practice can be developed by anyone, including the department administering the Act, industry associations and state government departments.

Codes of practice will only have effect (and provide a defence of complying with the general environmental duty) if approved by the Minister administering the Act and gazetted.

The following four key features distinguish a good code of practice and make it easy for both industry members and administering authority officers to apply:

- clearly identified environmental objectives for managing waste issues and the protection of the air, acoustic, water, and land environments
- clearly stated measures which are reasonable, practicable and measurable
- a clearly stated date for review or expiry
- evidence of a relevant level of consultation.

Compliance with a code of practice is a defence to offences under the Act. The Minister must be satisfied that:

- the code of practice requires a suitable level of care (i.e. an operator causes harm and it is appropriate to take no enforcement action because they have complied with the code of practice)
- compliance is measurable as the defence only applies if there was compliance with the code of practice.

Six key steps should be followed to prepare a code of practice:

- identify stakeholders (or relevant people and organisations that should be consulted)
- meet with relevant Department of Environment and Science (DES) officers (pre-lodgement meeting) and stakeholders (scoping meeting)
- prepare draft
- undertake consultation
- prepare a final draft
- submit for approval.

These six steps are discussed in more detail below.

4.1. Identify stakeholders

Stakeholders are those people or organisations who are either likely to be affected by the code of practice or who have some other interest in the subject matter with which the code of practice deals. They may include:

- industry members
- other industry bodies (where the organisation developing the code of practice does not represent all, or most, of the industry sector covered by the code of practice)
- suppliers and contractors
- customers and clients
- local governments
- state government departments, including DES

- related industry sectors
- special interest and community groups e.g. conservation and environment groups, indigenous groups.

As a general rule, the wider the range of activities intended to be addressed by the code of practice, the larger the pool of stakeholders.

The outcome of this phase will be an extensive list of those people whose input into the code of practice should be sought.

4.2. Pre-lodgement and scoping meetings

A pre-lodgement meeting should be held with DES officers to discuss the process and the DES's expectation of a code. This can be arranged by contacting Permit and Licence Management on 13 QGOV (13 74 68).

Subsequently representatives of all stakeholders should be invited to a scoping meeting. This meeting will provide all stakeholders with an opportunity to raise and discuss the issues they think should be addressed in the code of practice with those proposing it. Having identified all the relevant issues, the scoping meeting may decide that the range of issues is too broad to be addressed in one code of practice. If a key issue has emerged, such as the industry's management of a particular activity or environmental value e.g. water, the scoping meeting may decide to restrict the scope of the code of practice to this issue.

The scoping meeting will also help identify motivated stakeholders who might contribute to a small working group. This working group would develop a plan for developing the code of practice.

The outcome of this phase will be a list of environmental issues facing the industry and consensus on the code of practice's scope and general direction.

4.3. Prepare draft

The code of practice would be expected to address the following environmental objectives:

- the activity will be operated in a way that protects the environmental values of air
- the activity will be operated in a way that protects the environmental values of waters
- the activity will be operated in a way that protects the environmental values of land
- the activity will be operated in a way that protects the environmental values of the acoustic environment
- any wastes generated, transported, or received as part of carrying out the activity are managed in a way that protects environmental values.

These environmental objectives are considered for the activity to develop a list of issues that impact on the environmental objectives. From this a list of performance outcomes is developed. Suggested control measures can then be proposed to meet the performance outcomes.

The following resources would be useful in drafting the code of practice:

- similar documents from other states or overseas
- industry guidelines
- consultants.

A code of practice template (ESR/2015/1687¹) is available for use.

¹ Available at www.qld.gov.au, using the publication number ESR/2015/1687 as a search term.

Existing codes of practice developed using the code of practice template (such as the motor vehicle workshop code of practice) can be used as examples when developing a code of practice with the template. These are available at www.business.qld.gov.au/business/running/environment/industry-codes.

It would be useful to develop the code of practice in conjunction with an explanatory guide to accompany the draft code of practice for consultation and submission of the draft for approval by the Minister. An explanatory guide must at least be submitted with the draft code of practice to inform the Minister's decision on approval of the code of practice. The explanatory guide must:

- identify the source of content where appropriate
- justify the proposed measures, especially where they depart from usual practice
- demonstrate that the draft code of practice appropriately deals with the matters in section 4 that the Minister must consider when deciding whether to approve the code of practice.

4.4. Consultation

Comment on the draft would be sought from relevant stakeholders (including the public where considered necessary). It is important to demonstrate that the code has acceptance by all or the majority of an industry, and not just one particular industry body.

4.5. Final draft

The results of the consultation would be considered. Where reasonable, the matters raised would be addressed in preparing the final draft.

4.6. Approval

The final draft will be submitted to DES with the explanatory guide and including links to, or copies of, appropriate source documents. If the Minister approves the code of practice DES will gazette the code of practice. The code of practice has effect when gazetted.

5. Approval requirements for codes of practice

Under section 551 of the Act, the Minister may, by gazette notice, make codes of practice stating ways of achieving compliance with the general environmental duty for an activity that causes, or is likely to cause, environmental harm. Once the code has been gazetted it may also be amended by gazette notice.

In approving a code of practice, the Minister must consider:

- the nature of the harm or potential harm
- the sensitivity of the receiving environment
- the current state of technical knowledge for the activity
- the likelihood of successful application of the different measures that might be taken
- the financial implications of the different measures as they would relate to the type of activity.

Version	Date	Description of changes
1	27 March 2014	Document first published
2	29 July 2014	Replaced reference to the example code of practice with reference to using existing codes of practice as examples.
2.01	15 August 2016	Updated corporate style and added publication number ESR/2015/1695 – previously EM1121
2.02	15 June 2018	Document rebranded to align with machinery of government changes
2.03	23 Sep 2021	Section 318E(1) of the EP Act updated to s551. Reference to pre-March 2013 codes removed from section 2 of this document.