

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 best practice environmental management for the activity by 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, 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.

Generally, a code of practice will be written for an activity that is not an environmentally relevant activity (ERA) licensed under the Act. This is because the associated environmental authority for the ERA would provide the conditions for managing environmental harm associated with the activity.

A code of practice has effect for seven years after the day it is made, unless it is earlier repealed.

The same process applies to developing a new code of practice to developing a replacement code of practice. There is no ability to extend or replace existing or expiring codes of practice, so in practice a new one is developed each time. There are two ways to transition to a new or replacement code. Either it is finalised and gazetted prior to the existing one expiring, in which case the gazettal process can also announce the repeal of the existing code. Alternatively, the existing code reaches its expiry prior to the finalisation and gazettal of the new/replacement code. In this instance industry operators may no longer be afforded the protections of operating in accordance with a code of practice during the interim period where no code exists.



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; and
- 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, groundwater, wetlands 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.

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

- identify stakeholders (or relevant people and organisations that should be consulted, including cultural engagement) and meet with them to scope the appetite for a new code of practice;
- meet with relevant Department of Environment, Science and Innovation (DESI) officers and stakeholders;
- prepare draft;
- undertake consultation;
- prepare a final draft; and
- 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 DESI;
- related industry sectors; and
- 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 meeting

A pre-lodgement meeting should be held with DESI officers to discuss the process and the DESI's expectation of a code.

The proponent may wish to also invite relevant stakeholders to a pre-lodgement meeting. This meeting will provide the proponent (and stakeholders) with an opportunity to raise and discuss the issues they think should be addressed in the code of practice. Having identified all the relevant issues, the 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 meeting will also help identify stakeholders who might contribute to a working group to develop a plan for developing the code of practice.

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

You can request a pre-lodgement meeting by completing and returning the form [Application for pre-lodgement services \(ESR/2015/1664\)](#). If you have any questions or for more information, contact Permit and Licence Management on 1300 130 372 (select option 4) or by emailing palm@des.qld.gov.au.

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 wetlands;
 - the activity will be operated in a way that protects the environmental values of groundwater and any associated surface ecological systems;
 - the activity will be operated in a way that protects the environmental values of land, including soils, subsoils, landforms and associated flora and fauna;
 - the activity will be operated in a way that protects the environmental values of the acoustic environment;
- and

- 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; and
- consultants.

A non-compulsory code of practice template (ESR/2015/1687¹) is available for use or alternatively industry may develop their own document template to suit their specific industry needs. Existing codes of practice may also be used as a guide on developing a code of practice. These are available at www.business.qld.gov.au/business/running/environment/industry-codes.

The draft code of practice should include explanatory material either as a standalone document or incorporated into the code of practice itself. The explanatory material will be used to inform the Minister's decision on making of a code of practice and will also provide users of the code of practice additional information on the operation of the code of practice. The explanatory material must:

- identify the source of content where appropriate;
- justify the proposed measures, especially where they depart from usual practice; and
- 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 DESI with the explanatory information in the draft code of practice itself or within standalone explanatory material and including links to, or copies of, appropriate source documents. If the Minister approves the code of practice DESI will gazette the code of practice. The code of practice has effect when gazetted. See Section 5 for approval requirements for codes of practice.

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.

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

In making (i.e. 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; and
- the financial implications of the different measures as they would relate to the type of activity.

Version History

Version	Date	Description of changes
1.00	27 March 2014	Document first published
2.00	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.
2.04	15 June 2023	Updated to current Queensland Government corporate template.
3.00	28 September 2023	Numerous minor updates throughout the document.
3.01	16 February 2024	Document rebranded to align with machinery of government changes.