

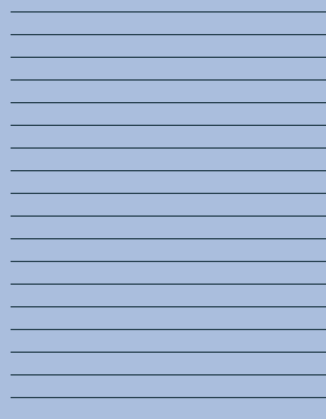


Workplace Standards  
Tasmania

Department of Infrastructure,  
Energy *and* Resources

**A Guide to  
developing**  
**CODES  
Of  
PRACTICE**

Policy Planning  
and Services Branch  
October 2001





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# INTRODUCTION

## Purpose

The purpose of this document is:

- to clarify the status of approved codes of practice under the *Tasmanian Workplace Health and Safety Act 1995*
- to explain the process by which industry may develop codes of practice and submit them for approval by the Minister under section 22 of the Act.

## Background

Over the past few years, Australian governments have responded to business concerns that productivity is being affected by the increasing burden of legislation, taxes and regulation. The response has been to adopt a reform approach that eases the regulatory burden in a way that is still consistent with meeting economic and social goals. Accordingly, any proposal for new legislation, subordinate legislation or new taxes must be submitted to a thorough investigation to determine the costs as well as the benefits of the proposal.

In the area of occupational health and safety, reviews of the legislative framework have produced a swing away from the detailed, prescriptive nature of workplace legislation and regulations. The occupational health and safety duties and responsibilities of employers and employees are now encapsulated in the concept of a general 'duty of care'. However, there have been calls from industry, as well as the regulatory authorities themselves, for clear, practical guidance to meet the needs of workplace safety.

Industry codes of practice offer this clarity and practicality. Through the legislative mechanism of ministerial approval, they also offer assurance to people in industry that if they follow the approved code of practice, they are complying with their legal obligations. These arrangements have the advantage of being industry-specific and of being tailored to the needs of both large and small enterprises.

Workplace Standards Tasmania (Workplace Standards) has produced this Guide in an effort to encourage businesses (with assistance and guidance from Workplace Standards) to develop and implement practical solutions to the problems identified in their own workplaces.

# WHAT IS A CODE OF PRACTICE?

There is some confusion about the difference between codes of practice, standards and the like.

To add to the confusion there are also 'guidelines', which some government departments issue. For example, the Department of Community and Health Services issues guidelines under the *Public Health Act 1997*. These provide guidance about how the requirements for public health may be met, and are very similar in intent to section 22 Codes of Practice under the *Workplace Health and Safety Act 1995*.

First, some explanations:

An **Act** is made by Parliament. It starts as a Bill and when it is passed by Parliament and signed by the Governor it is 'enacted'. It is law. There are penalties if you do not obey the law.

A **Regulation** is like an instruction given under the authority of an Act. The Act and Regulations go together to form the legal requirements that must be met.

A **Standard** is usually a document that sets out the specific requirements that need to be met to achieve a particular level of quality (or standard).

**Best Practice** describes a level of performance judged to be equal to the highest level of achievement attained. It is based on agreed performance measures or indicators. It is not intended that codes of practice should reflect best practice.

*An approved Code of Practice is created under section 22 of the Workplace Health and Safety Act 1995. It documents an agreed means of achieving compliance with the legislative requirements.*

In other words, if you follow an approved code of practice, you will achieve the **minimum** standards required to meet your obligations under the Act and regulations.

An approved code of practice should provide practical guidance on how to control risk. It does not have the same status as law, and you do not have to comply with the code of practice – BUT you may be required to show that the system you have chosen to use is **equal to or better than** the approved code of practice.

Part of section 22 of the Act is printed below:

- 22 – (1) For the purpose of providing practical guidance to employees, employers and any other persons on whom a duty of care is imposed under the Act, the Minister may approve a code of practice.
- (2) A code of practice may consist of any code, standard, rule, specification or provision relating to workplace health and safety formulated, prepared or adopted by the Director and may apply, incorporate or refer to any document formulated or published by any body or authority as in force at the time the code of practice is approved or as amended, formulated or published from time to time.
- (3) The Minister may approve any revision of the whole or part of a code of practice or revoke a code of practice.

[Note: There are a number of administrative actions that comprise sub-sections (4) - (9), not included in this extract].

Tasmania's *Workplace Health and Safety Act 1995* does not mention any specific standards or codes of practice. However, the Regulations do adopt certain standards, rules, codes or specifications. For example, Regulation 62 (Manual Handling) states that an employer must take all reasonable steps to ensure that the National Standard for Manual Handling is complied with. Similarly, Regulation 71 states that '[a] supplier must not supply a chemical substance for use in a workplace unless the container in which it is held is labelled in accordance with the National Code of Practice for the labelling of workplace substances issued by Worksafe Australia'.

On their own, standards, codes, etc have no primary legal status. They may, however, have evidentiary status in any legal action (in other words, if you know that there is a code of practice that can help you to meet your duty of care under the Act, then it is a good idea to consider using it – unless, of course, you have implemented a system that is better than, or equal to, the code).

The Tasmanian *Workplace Health and Safety Act 1995* enables codes or standards to become law in different ways – through regulations and through codes of practice.

## Regulations

The Regulations may refer to Australian Standard AS 2865 (Safe Working in a Confined Space). Because this forms part of the Regulations, it **must** be complied with. Many of the Regulations in Part 4 – Hazards – Generalised – refer to national standards and codes of practice.

## Codes of Practice

A code of practice may be approved under section 22 of the Act.

Approved Codes of Practice should:

- be designed to provide practical guidance on achieving a safe work environment
- be developed by representatives of employers, employees and industry bodies
- be agreed by stakeholders
- contain an application or ‘scope’ clause that clearly outlines the limits of the code
- be written clearly in plain English, without ambiguity, using the same definitions for terms that are used in the Act
- be relevant and up to date
- in most cases, be specific to an industry or sector
- be visual and practical
- be backed up by training and education wherever possible – by industry, trainers and the relevant government agencies – to spread the message and strengthen commitment to the approved code
- require users to adhere to them – unless they can demonstrate that their method of achieving the required outcome is just as effective as, or more effective than, the approved code of practice.

## Other Issues to Consider

People or industry groups wishing to develop a code of practice for approval should also consider the following points:

- The Tasmanian Government is a signatory to the Competition Principles Agreement and cannot allow the approval of a code of practice that restricts competition.
- The Government is unlikely to approve a code of practice unless there is strong stakeholder (employer and employee) support for it, so the consultative development process is very important.
- Because of section 54(2) of the *Workplace Health and Safety Act 1995*, an approved code of practice may be used in evidence. This will place an obligation on any person who has not followed the steps set out in the approved code of practice to satisfy the court that they have achieved the requirements of the Act in another suitable way.
- The development process is likely to be more important than the actual approval, in that it will encourage a clear understanding of the hazards of a particular industry and ways in which they may be addressed. For this reason Workplace Standards will place a heavy emphasis on the development of codes by industry rather than by Government.
- Approved codes of practice must be regularly reviewed and updated.

# HOW TO DEVELOP AN APPROVED CODE OF PRACTICE

Following a coordinated process for developing an approved code of practice will avoid problems later on. Workplace Standards Tasmania has developed this process for use either to convert any existing codes of practice or standards into approved codes of practice, or for developing new codes from scratch.

Where to start? First, have a look at the products that are available.

- **National codes of practice and national hazard-based standards are declared and issued by the National Occupational Health and Safety Commission (NOHSC).**

Tasmania (through Workplace Standards) intends adopting several national codes of practice and standards as approved codes of practice under section 22 of the *Workplace Health and Safety Act 1995*. These will need to go through the same process as any new codes.

- **National industry groups develop standards or guidelines. These may be Standards Australia (AS) standards, and are usually highly technical documents.**

It is becoming more common nowadays to refer to International Standards as Australia enters into international agreements for trade purposes. However, industry must know what the minimum set of requirements are; Australian Standards can provide this set.

- **Industry associations develop national industry-based standards.**

These associations will often notify their members of the adoption of such standards; however, adopting them is not a legal requirement unless they are referred to in the Regulations. If the standards become approved section 22 codes of practice, it will be necessary to demonstrate a system equal to or better than the code.

- **Local Tasmanian industry groups may also develop standards, guidelines or codes of practice.**

**UNLESS THEY ARE APPROVED ACCORDING TO THE ACT,  
NONE OF THE ABOVE HAVE LEGAL STATUS.**

## **NEXT STEP**

Before starting work on developing a code of practice, it is strongly advised that you read this Guide to ensure that each step in the process is complete. Any questions? Contact the Policy, Planning and Services Branch or phone the Helpline number on 1300 366 322.

# DEVELOPMENT PROCESS

This checkbox guide has been developed to help with the development of your code of practice.

## STEP 1 – IDENTIFY THE NEED FOR A CODE OF PRACTICE



The development of a code of practice for approval under section 22 may be initiated either by industry or by Workplace Standards. If industry decides that there is a need for a specific code of practice, then Workplace Standards should be advised of this intention. They can then determine whether there may already be relevant, suitable material available. Research by industry groups and/or Workplace Standards is required to complete this step.

*Research has determined that there is/is not relevant material available for adoption.*

It is worth bearing in mind that codes of practice that have been developed nationally – for example, those codes developed by the National Occupational Health and Safety Commission (NOHSC) – have already been through an exhaustive public consultation process, and regulatory impact assessment and must not be amended, except to refer, where appropriate, to Tasmanian legislation.

Material developed by industry in other jurisdictions must be examined carefully to see that it is compatible with our legislation, regulations and Government policy, and that it meets the requirements of those who will use it. If in doubt, consult the Policy Section of Workplace Standards for advice.

*Policy Section consulted to determine compatibility with Tasmanian legislation.*

## STEP 2 – FORM A DEVELOPMENT COMMITTEE AND PREPARE A PROJECT PLAN

### Form a Development Committee

A development committee (or project team) needs to represent **employers and employees alike**, and should preferably include a Workplace Standards inspector. It is important that representation on the development committee is broad enough to encompass the concerns and interests of all stakeholders. At the very least, the development committee should include the following representatives:

- **Employers**

Employers should be representative of the specific industry that will be affected by the code of practice. If it is not possible to have representatives of the wider industry group on the development committee, every effort should be made to consult with other employers.

Name .....

Address .....

Contact .....



- **Employees**

Employees of a specific industry, or workplace, should be involved because of the practical experience they have to offer. Employee representatives (unions) may also be involved; these must have a clear knowledge of Tasmanian workplace circumstances. If a union representative is not available, consider inviting an employee safety representative to be a member of the group.

Name .....

Address .....

Contact .....

- **Workplace Standards Inspector**

It is recommended that a Workplace Standards inspector be included on the development committee to provide expert technical advice as well as to advise on the appropriate language and format of the code; however, it is not the role of the inspector to be chairperson, or indeed, to 'drive' the development process – the code must be industry-driven if possible. The Workplace Standards Inspector, in consultation with the Policy Section, will act as the conduit between the working group and Workplace Standards, and provide the working group with expert technical advice.

Name .....

Address .....

Contact .....

- **Other**

If it is recognised that another person or persons can contribute to the development process, consider asking them to join the development committee.

Name .....

Address .....

Contact .....

- **Chairperson**

The working party elects the Chairperson from its members.

Name .....

Address .....

Contact .....

## **Prepare a Project Plan**

Before going any further, it is important to clarify exactly what you want to achieve (i.e. the scope of the proposed code of practice and the desired outcomes). Other issues such as resources, stakeholders, end users, time-lines and budgets will need to be identified at this stage. This is the project plan that documents the agreement of industry and stakeholders and guides the process right through to the approved product. You will need to refer to this as you go along to ensure that the project is 'on track'. Use this Guide to assist you in putting together the project plan.

Identify early in the Project Plan whether the code of practice will be operational only, or will include design components (i.e. refer to matters which may involve alterations to buildings etc.). If you intend to include design components, it is important to highlight this to the audience, preferably in the preface to the code. This can include a statement to the effect that there may be other matters and/or risks at the workplace which have not been specifically addressed in the code of practice, and which the stakeholders will have to take into account. For instance, using the example above, the code might state that certain equipment will need to be installed, which may subsequently require building alterations, additions etc. It should be stated 'up front' that this requirement does not absolve the employer/ building owner and/or any other responsible person from having to follow building regulations, local council requirements and possibly Department of Health and Human Services requirements or any other relevant law.

**Code of Practice will include design features**      **YES**       **NO**

It is also important at this stage for the development committee to identify the main target audience that will be using the code of practice. This will impact on the language you use in the code.

**Target Audience:**       **Employers**       **Employees**  
 **Others (specify)** .....

**Workplace Standards Inspector** .....

You should consult with the Policy Section of Workplace Standards to ensure that the agreed plan will conform to the requirements of Approved Codes of Practice. Early coordination at this stage could prevent delays later on and should help both the Inspectorate and Policy Section to plan ahead to manage the workload involved.

**Project Plan forwarded to Policy Section** ...../...../.....

**Workplace Standards Inspector** .....

**STEP 3 – FIRST DRAFT AND STAKEHOLDER CONSULTATION**

**3A – First Draft**

You will be guided by your project plan. As far as possible, the code of practice should be 'self-contained'. It should contain all the information the user needs in one document. It is confusing and often difficult for users if they have to refer to other documents, but if you must refer to a standard or part of a standard, it should be possible to make this available for display in the workplace alongside the finished code of practice. Updating a code of practice can become a difficult management problem if it contains references to multiple standards. If you are planning to incorporate any material developed elsewhere, ensure that you have copyright permission to use the material and that appropriate acknowledgements are made in the draft code. There may be several bodies that you have to approach for copyright clearance.



**Copyright permission required from:** .....

**Copyright permission obtained on** ...../...../.....

**Copyright permission required from:** .....

**Copyright permission obtained on** ...../...../.....

## Language

In a Code of Practice, certain words are used that determine the level of choice available to the user. To assist in clarifying this specific word usage, the following definitions and examples are provided:

### MUST

Where a clause contains the word **must**, then the requirement is contained within the *Workplace Health and Safety Act 1995* (the Act) or the **Workplace Health and Safety Regulations 1998**. This means that you have no other option than to do what the clause requires.

**Example:**

A person must not operate a docking saw unless that person has been instructed in the dangers and received training in the safe operating procedures of the saw [*Workplace Health and Safety Act 1995* – s.9(1)(a)].

### IS TO/ARE TO

If a clause says a person **is to**, or persons **are to**, do something, then you are being instructed to do it, but in these situations you have a choice. This situation is unique to codes of practice approved under s.22 of the Act.

Codes of practice provide flexibility in this instance to allow practical and innovative solutions to be developed in the workplace. When an alternative solution is developed to that contained in the code, you will need to conduct a risk assessment to determine if the alternative is **equal to or better than** the instruction within the Code of Practice, and you could be required to prove it.

**Example:**

Circular saws are to be guarded.

### SHOULD

When **should** is used in a clause, you are being advised to do something but it is up to you whether you do it or not. If you decide not to adopt the advice, then you need to have conducted a risk assessment to support your decision.

**Example:**

Start buttons should be green.

Some clauses in a code of practice refer to other documents, such as Australian Standards. If this occurs, then the application of the specific provision of the Standard is determined by the words used in the particular referencing clause of the code of practice.

If the code says you **must** comply with the Standard, then you interpret the standard just like the code. 'Must', 'is to' and 'should' have exactly the meanings shown above.

If the code requires that the Standard **is to** be complied with, then a reference in the Standard to **must** is to be read as **is to** in the Standard.

If the code says a Standard should be complied with or used as guidance, then you may treat every provision contained in the Standard as a **should** provision.

## Presentation

Consider the presentation of the code of practice. The code does not necessarily have to conform to a standard A4 format document, with lots of text and small diagrams. Instead, it might be in the form of a large laminated poster or sequence of smaller ones, depending on the nature of the workplace and the contents of the code. If using mainly text, it is strongly recommended that the document be broken up with visuals - e.g. diagrams, cartoons, photographs and illustrations. This not only helps to provide emphasis but, when used correctly, makes the product more user-friendly. One effective picture can often portray a concept or action more clearly than many words.

## Display

Bear in mind the practicality of the document. If the code is to be displayed prominently in the workplace, consider the font size of the text and use only a few well-chosen words. It must be large enough, for example, to be easily read when displayed on a wall.

The final 'sanity test' for any code of practice is its ability to attract the interest of a typical worker who has not been involved in the development process.

## Brevity

The code should be brief. The aim is to produce a code that will be **used** to provide practical guidance. Lengthy and complex documents are not going to appeal to the people on the job. You do not want your code to be filed away and forgotten.

## Style

There will be varying standards of literacy among users, so consider how the target audience will react to your choice of words and the format you have selected. For example, a 'regulatory style', using paragraph numbering, may detract from the readability and flow of the document, and should be avoided.

It is common practice in the publishing industry for authors to forward, say, the first 6-8 pages of a draft to the publisher for evaluation. This gives the opportunity for the author to be given advice on writing style, language used etc. and has the potential to save time before the project is too far advanced. It is recommended that the first few pages of the draft be forwarded to the Policy Section of Workplace Standards for this reason.

***Early example of the draft forwarded to  
Policy Section on***

...../...../.....

***Returned from Policy Section on***

...../...../.....

Upon completion of the first draft, circulate it for internal scrutiny within Workplace Standards, as other Sector Leaders, the Building Standards and Regulation Group and the Electrical Safety and Standards Group, may also provide input as to suitability:

***Draft forwarded for internal  
Workplace Standards comments***

...../...../.....

***Building Standards and Regulation Group  
Comments received***

...../...../.....

***Electrical Safety and Standards Group  
Comments received***

...../...../.....

***Other (specify)***

.....  
.....

**Comments received**

...../...../.....

Consider the internal comments received and make appropriate changes. You may need to refer the draft back to these areas for checking before proceeding.

At this stage, the working group should have reached agreement on matters such as:

- how the approved code will be published and distributed, and how these costs will be met. Workplace Standards is required to maintain copies of approved codes of practice for public access and to publish an approved code of practice on its Web site (this may be in read-only format) to allow access by as many people as possible.

**Decision:** .....

.....  
.....

- the implementation plan, which will enable all stakeholders to see how the code is to be promoted and implemented. Carefully consider any training needs and whether these can be met.

**Decision:** .....

.....  
.....

- the time-frame for future review of the code

**Decision:** .....

- how the use of the code of practice is to be evaluated against the specific objectives of the code

**Evaluation Plan Agreed** .....

Once all these matters have been resolved, and you have completed the previous steps, you are ready to go out for consultation on this draft.

**First Draft Finalised** .....

**3B – Stakeholder Consultation**

For the purposes of a code of practice, a ‘stakeholder’ is any individual or organisation that will use the code or be affected by it. The list of stakeholders identified in your project plan will be used in your consultation.

Workplace Standards is obliged by National Competition Policy requirements to consult the Regulatory Review Unit of the Department of Treasury and Finance on drafts of codes of practice to ensure compliance with National Competition Policy principles. Contact the Policy Section to arrange this.

**Draft forwarded to Treasury** .....

**Advice from Treasury received** .....



Under section 22 of the *Workplace Health and Safety Act 1995*, the Minister must consult with Unions Tasmania and appropriate employer organisations. This should also include the Tasmanian Chamber of Commerce and Industry, as the peak employer body. The Policy Section will undertake this task.

*Copy forwarded to TCCI* ...../...../.....

*Copy forwarded to Unions Tasmania* ...../...../.....

*Copy forwarded to specific employer organisation* ...../...../.....

*Date for receipt of comments* ...../...../.....

#### STEP 4 – PREPARATION OF THE FINAL DRAFT

At this stage, the development committee has considered all comments received on the draft and made appropriate amendments.

Where any comments indicate that the code needs to be reconsidered, it may be appropriate that Step 3 be repeated.

**Repeat Step 3? YES/NO**

Forward the draft to the Policy Section. A covering letter should accompany the draft:

- **confirming tripartite membership of the development committee**
- **including a brief background to the development of the code**
- **confirming that appropriate consultation has taken place and all significant comments have been addressed**
- **confirming advice that printing and distribution arrangements have been resolved and providing advice on the organisation responsible for printing and distribution costs**
- **confirming that all contentious issues have been identified and addressed**
- **confirming which organisation has copyright ownership of the document**
- **confirming how it is proposed to implement the code – including advice on how the code is to be promoted, advertised, distributed, etc. (implementation plan).**
- **including advice on a future date for review/updating of the code.**



The Chairperson of the development committee, the Workplace Standards Member and the Regional Manager of the Inspectorate should sign off your written advice. This information is required to advise the Minister.

...../...../.....  
*Chairperson*

...../...../.....

.....  
*Workplace Standards Member*

...../...../.....  
*Regional Manager*

*Draft forwarded to the Policy Section on*

...../...../.....

**Include the following:**

- a high-quality hard copy suitable for forwarding to the Minister.
- an electronic copy of the draft code for the Workplace Standards Internet site
- a copy of any copyright authorisations which are required.


The Policy Section will arrange for the document to be proofread. Tick this box when the proofread copy returns.

**STEP 5 – PUBLIC COMMENT PERIOD**

Under section 22(4)(b) of the *Workplace Health and Safety Act 1995*, the Minister must give 30 days’ notice of intention to approve the code of practice. The Policy Section will advise the Minister on the development committee’s request and prepare appropriate draft Gazette and newspaper advertisements to allow for public comment on the final draft. Workplace Standards will publish the draft on the DIER Internet site to allow broad public access to the code for the purpose of making comments.



*Gazette advertisement will appear:*

...../...../.....

*Newspaper advertisements will appear:*

...../...../.....

*DIER Internet version will appear:*

...../...../.....

During the public comment period, the development committee is likely to receive a number of comments from interested persons. These comments will be considered carefully and, where necessary, changes to the code of practice will be negotiated.

***Comments received and final draft completed***

...../...../.....

**STEP 6 – FINAL APPROVAL PROCESS**

Forward the final draft to the Policy Section with advice of any revisions made and any unresolved issues. An electronic copy of the revised draft will enable the Policy Section to make the necessary preparations for Internet publication once the code of practice is approved. Please include any advice which has changed from that notified to the Policy Section under Step 4.

*Forwarded to the Policy Section on*

...../...../.....

*Proof-read on*

...../...../.....



## STEP 7 – NOTIFICATION OF APPROVAL OF CODE OF PRACTICE

If the Minister approves the final code of practice,

- *Minister’s approval received* ...../...../.....
- the Policy Section will arrange:
- *Publication of the Ministerial approval in newspaper advertisements* ...../...../.....
  - *Publication of the Ministerial approval in a Gazette Notice* ...../...../.....
  - *Appropriate storage of the original* ...../...../.....
  - *Public access copies in the Workplace Standards Library* ...../...../.....
  - *Internet publishing of the approved code* ...../...../.....
    - *Advice to Helpline* ...../...../.....
    - *Minister’s Press Release* ...../...../.....
    - *Article in Workplace Issues Magazine* ...../...../.....
    - *Advice to the Workplace Safety Board* ...../...../.....



## STEP 8 – IMPLEMENTATION

The code of practice will then be implemented according to the plan agreed by the development committee and stakeholders.

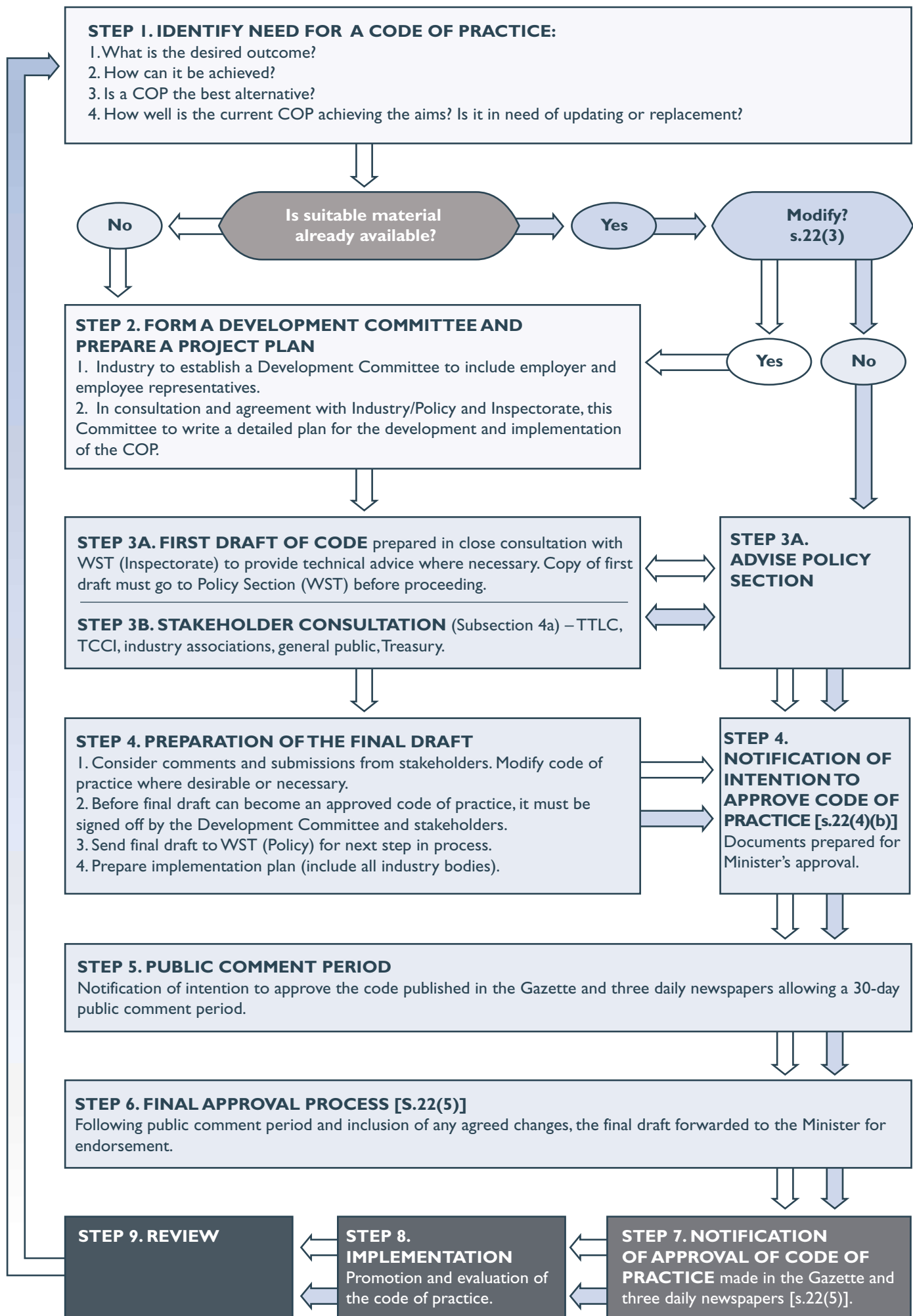
The implementation plan is important because it ensures that:

- as many industry members and enterprises as possible are aware of the code of practice and its purpose
- industry members and individual enterprises can publicly signal their intention to adopt the code of practice, thus indicating their commitment
- the impact of the code on occupational health and safety can be evaluated at enterprise level according to the agreed evaluation plan after its implementation
- the code may be reviewed and updated according to the plan.

The development committee will need to meet, after the code has received ministerial approval, to discuss matters such as distribution, promotional activities and the timetable for evaluation of the code.

*Meeting re Implementation Plan* ...../...../.....





**For more information contact:  
Workplace Standards Tasmania**

**Hobart  
30 Gordons Hill Road (PO Box 56)  
ROSNY PARK TAS 7018**

**Launceston  
Henty House, 1 Civic Square  
LAUNCESTON TAS 7250**

**Burnie  
Reece House, 46 Mount Street (PO Box 287)  
BURNIE TAS 7320**

**1 300 366 322 (inside Tasmania)  
(03) 6233 7657 (outside Tasmania)**

**Fax: (03) 6233 8338**

**Website: <http://www.wsa.tas.gov.au>**

**Email: [WorkplaceStandardsinfo@dier.tas.gov.au](mailto:WorkplaceStandardsinfo@dier.tas.gov.au)**