



Victorian Occupational Health and Safety Compliance Framework Handbook

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1. Introduction

The *Occupational Health and Safety Act 2004* (the Act) is the cornerstone of legislative and administrative measures to improve occupational health and safety in Victoria and to make WorkSafe a more constructive, accountable, transparent and effective regulator.

The Act sets out the key principles, duties and rights in relation to occupational health and safety. The general nature of the duties imposed by the Act means that they cover a very wide variety of circumstances, do not readily date and provide considerable flexibility for a duty holder to determine what needs to be done to comply.

However, effective OHS regulation requires that WorkSafe provides clear, accessible advice and guidance about what constitutes compliance. This can be achieved under the Act through regulations, Compliance Codes, WorkSafe Positions and non-statutory guidance (“the OHS compliance framework”).

1.1 What is this Handbook?

The Handbook explains:

- the key elements of the OHS compliance framework and the functions of key components; and
- WorkSafe’s approach to developing the various elements of the OHS compliance framework.

The Handbook documents an engagement strategy for the Victorian OHS compliance framework. Matters covered by the Handbook include:

- assessment of the need for intervention
- assessment of the case for regulatory or non-regulatory responses
- compliance with requirements for regulatory impact assessment of proposed regulations
- the respective roles of the Commonwealth, WorkSafe and other parties in the development of regulations, compliance codes and related documents
- decision-making processes
- engagement with stakeholders, and
- ongoing review and improvement and how this will occur.

1.2 Development of the Handbook

This Handbook has been developed by WorkSafe. It is modelled on, and is consistent with, the Australian Safety and Compensation Council’s National OHS Standards Framework Handbook¹, which documents an agreed governance strategy for the National OHS Standards Framework.

¹ Note: The National handbook and core elements document are still under development. It is intended that the Victorian handbook will evolve to maintain consistency with the National handbook.

2. The Victorian Compliance Framework

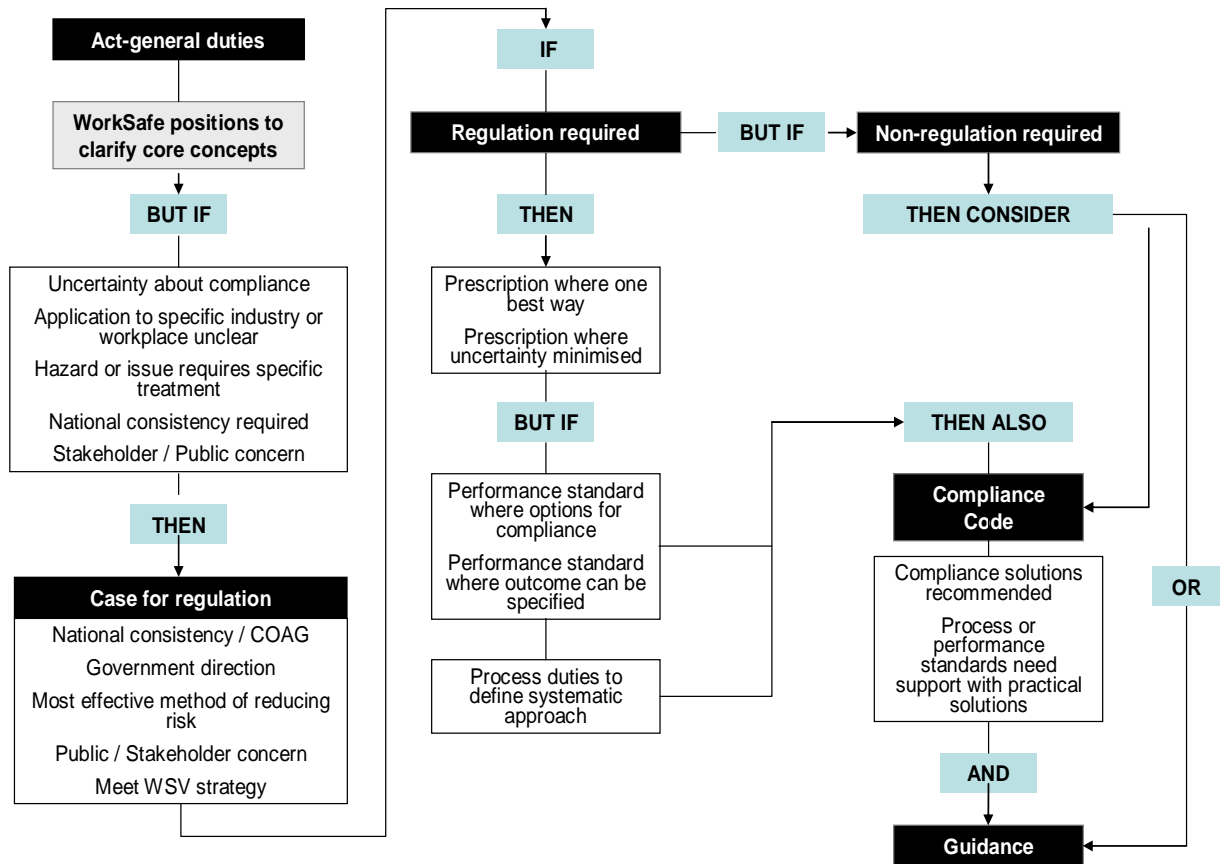
2.1 Description of the Framework

The elements of the OHS Compliance Framework are:

- **The Occupational Health and Safety Act 2004:** The Act sets out the key principles, duties and rights in relation to occupational health and safety.
- **Regulations:** Regulations specify the way in which a duty imposed by the Act must be performed, or prescribe procedural or administrative matters to support the Act (e.g. requiring licences for specific activities, the keeping of records or giving notice).
- **Compliance Codes:** Compliance Codes provide practical guidance to duty holders. If a person complies with a provision of a Compliance Code, they are deemed to comply with the Act or regulation duty covered by the Code provision. However, Compliance Codes are not mandatory, and a duty holder may choose to use some other way to achieve compliance.
- **WorkSafe Positions:** These are guidelines made under Section 12 of the Act that state how WorkSafe will apply the Act or regulations or exercise discretion under a provision of the Act or regulations. WorkSafe Positions are intended to provide certainty to duty holders and other affected parties.
- **Non-statutory guidance:** Includes information published by WorkSafe aimed at building people's knowledge and awareness of OHS issues, risks to health and safety, and the disciplines and techniques that can be applied to manage and control risks. Non-statutory guidance is not mandatory, nor does it provide any "deemed to comply" outcomes for duty holders. This guidance does, however, form part of the 'state of knowledge' about OHS.

Figure 1 shows the criteria which should be adopted in deciding which of the OHS Compliance Framework elements would be appropriate in different circumstances. It should be noted that decisions to regulate are not based on precise formulations but on the balancing of several factors, most particularly the judgement that regulation is essential to eliminate or reduce risk.

FIGURE 1: Compliance Framework Decision Making Sequence



2.2 Relationship with the National OHS Framework

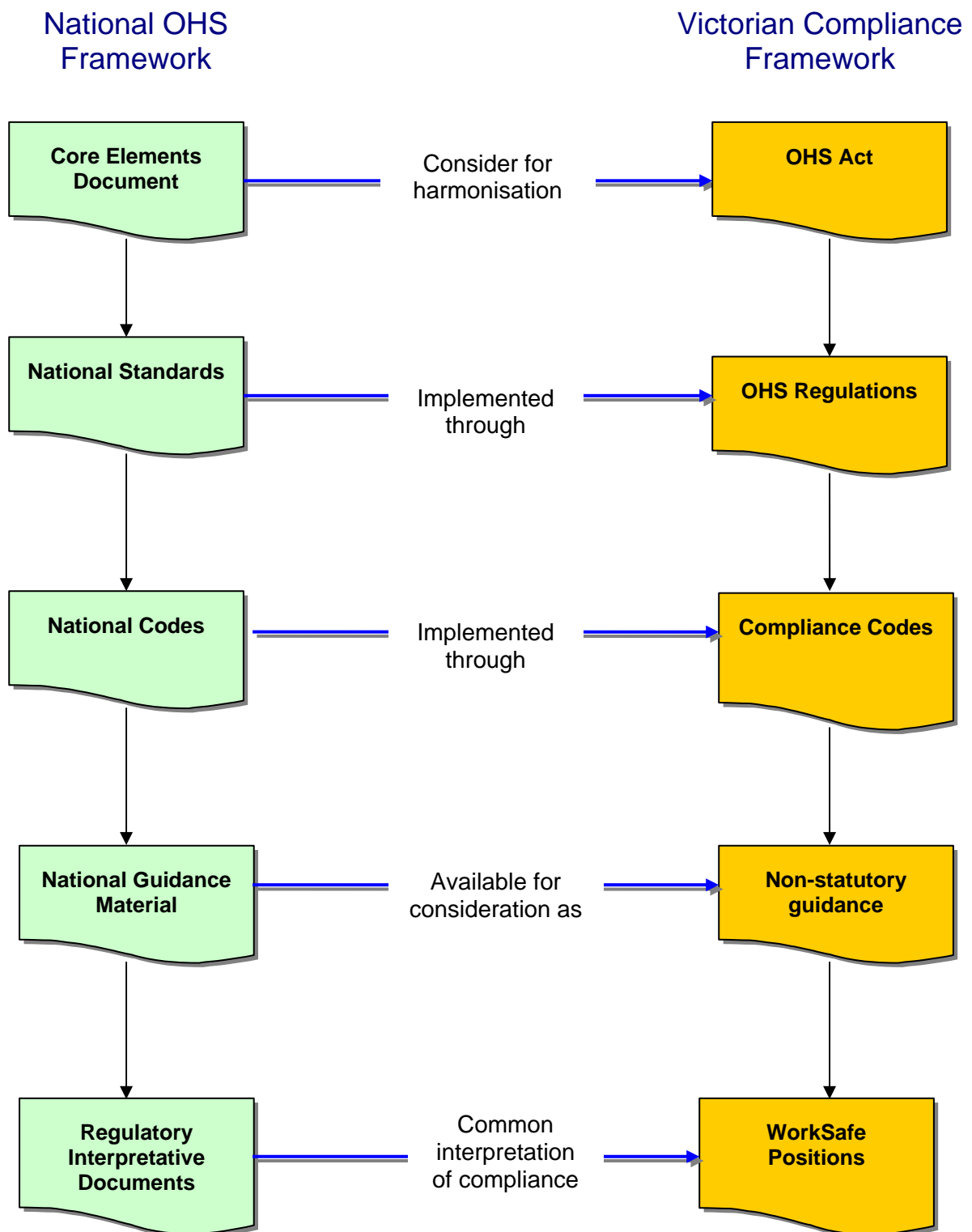
The National OHS Framework (“the National Framework”) is the primary mechanism through which Australia’s OHS jurisdictions cooperate to achieve a nationally consistent regulatory framework. The National Framework identifies a common suite of central provisions in OHS primary legislation, and sets out an agreed approach to the development of national standards and codes of practice for implementation through jurisdictional OHS regulatory regimes.

Victoria’s Compliance Framework closely reflects the National Framework. Each element of the National Framework has a corresponding instrument/category in Victoria. The relationship is shown in **Figure 2**.

Development of the National Framework commenced in 2006 in response to the decision of the Council of Australian Governments (COAG) to improve the development and uptake of national standards, and to identify priority areas in principal OHS Acts that should be harmonised. COAG also decided that in progressing these objectives, there must be no reduction or compromise in standards for legitimate safety concerns in current OHS standards.

Each component of the National Framework is defined in the National Handbook. The Handbook sets out governance arrangements for the development of legislative and non-legislative instruments.

Figure 2: Relationship between National OHS Framework² and Victorian Compliance Framework



² Each National Framework component is defined within the National Handbook. Note: The National handbook and core elements document are still under development and are yet to be endorsed

3. Regulations

3.1 What are regulations?

Regulations are laws made by the Governor in Council (rather than Parliament) under authority granted by the Act.

Section 158 of the Act authorises regulations to be made on a range of matters including:

- how the OHS Act's policy, general principles and standards must be implemented;
- regulating or prohibiting specified activities or specified classes of activities;
- prescribing fees to be paid for various licences and other matters;
- prescribing forms, where necessary, for use in connection with the Act or regulations;
- prescribing penalties within specified limits for offences against the regulations;
- timeframes within which certain things must be done;
- record keeping requirements;
- requiring or prescribing circumstances, actions and standards that must be followed in particular circumstances; and
- prescribing exemptions of specified persons or classes of persons from complying with certain regulations or terms and conditions prescribed.

Regulatory proposals must also follow the requirements of the *Subordinate Legislation Act* 1994 (SLA) and the Guidelines issued under s.26 of that Act (the Guidelines) and the Victorian Guide to Regulation (the Guide).

The SLA also contains requirements concerning the form and content of regulations that must be complied with.

3.2 How are regulations under the OHS Act made?

The steps in the preparation of regulations are:

1. A draft of regulations and, and in most cases, a Regulatory Impact Statement (RIS) is prepared.
2. The draft regulations and the RIS are released for public comment.
3. The regulations are finalised having regard to the comment received during the public comment period.
4. The Office of the Chief Parliamentary Counsel certifies that the proposed regulations are suitable for making in accordance with section 13 of the SLA.
5. A recommendation is made to the Minister that the draft regulations be made.
6. The Minister makes a recommendation to the Executive Council that the regulations be made. If the Executive Council agrees, the Governor in Council makes the regulations and they become law.
7. After the regulations are made, the regulations together with other documentation required by the SLA are tabled in both Houses of Parliament.

8. The Regulations and a summary of any public comment and corresponding responses are sent to the Scrutiny of Acts and Regulations Committee of Parliament (SARC).
9. SARC has the power to scrutinise the regulations to ensure that the SLA has been complied with. SARC also has the power to report to Parliament on regulations if there are problems with them and the Parliament may disallow the regulations in whole or in part. The effect of disallowance is that the disallowed regulations were never part of the law.

3.3 When should a regulation be made to deal with an OHS matter?

To Implement National Standards in Victoria

WorkSafe is committed to the national harmonisation of OHS regulation and to giving effect to National Standards in Victorian regulations. Consequently, WorkSafe will make recommendations to the Minister to make regulations to give effect to a declared National Standard.

A National Standard is subjected to an economic impact assessment process (EIA) prepared by the Commonwealth Department of Employment and Workplace Relations. The EIA must be certified by the Commonwealth Office of Best Practice Regulation (OBPR) as adequately assessing the costs and benefits of a proposed National Standard.

Under section 9(1)(a) of the SLA, a Regulatory Impact Statement (RIS) is not required for a Victorian regulation that gives effect to a nationally uniform legislation scheme if the costs and benefits of that scheme have been assessed.

Note: the adoption of a National Standard will not negate a requirement under the Act to release the regulation for public comment.

If there is a compelling case to regulate matters not covered by National Standards

If the matter is not covered by a National Standard, WorkSafe may propose regulations about matters covered by s.158 of the Act if:

- regulation is the most effective way to deal with the health and safety issue; and
- the regulatory proposal is aligned with corporate and government strategies.

The case for development of a local regulation must be evidence-based, i.e. what is the evidence that a problem exists that warrants a regulatory response? What is the dimension of the problem and why is regulation the most effective way to deal with that problem?

Account must be taken of the Victorian Government's policy of reducing the regulatory burden. Where the evidence indicates a need for regulation, WorkSafe will propose regulations that do not impose a disproportionate administrative burden.

The RIS is the primary document for articulating the policy rationale for a regulatory response to the identified problem. The RIS must include:

- a statement of the objectives of the proposed regulation;
- a statement explaining the effect of the proposed regulation;

- a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
- an assessment of the costs and benefits of the proposed regulation and of any other practicable means of achieving the same objectives;
- the reasons why the other means are not appropriate; and
- an assessment on whether or not the regulatory proposal restricts competition.

The assessment of the costs and benefits must include an assessment of the economic, environmental and social impact and the likely administration and compliance costs including resource allocation costs.

Consistent with the National Competition Principles Agreement, a regulation should not restrict competition unless it can be demonstrated that:

- the benefits of the restrictions to the community as a whole outweigh the costs; and
- the objectives of the regulation can only be achieved by restricting competition.

3.4 Principles relating to regulations

The following principles will guide WorkSafe's approach to making regulations:

Specific mandatory risk controls or prohibition

A regulation may mandate a specific risk control or it may prohibit certain activities. This type of regulation will usually be appropriate where the risk and the means of control are well known, there are no viable alternatives and the risk is significant enough to warrant regulation. Examples of this type of regulation include prohibitions on the use of compressed air in the removal of asbestos and requirements to ensure that Roll Over Protection Systems are fitted to tractors.

Mandatory performance standard

A regulation may specify an outcome that must be achieved, but allow the duty holder flexibility on how to achieve the outcome. This type of regulation may be appropriate where the target or outcome can be clearly defined, measured, evaluated and verified and the risk is significant enough to warrant regulation. Examples of this type of regulation include maximum exposure standards for hazardous substances.

Mandatory process to be followed

A regulation may specify that a process must be followed in order to achieve a safety outcome. This type of regulation may be appropriate when it is unlikely that a duty holder will arrive at appropriate risk controls without following the prescribed process. An example of this type of regulation is the requirement to work through a hierarchy of controls.

Permissions

WorkSafe will make regulations to establish a licensing or other permissioning scheme (such as notifications, registrations, and permits) if:

- the proposed scheme forms part of a national agreement that is designed to assure national consistency of permissioning arrangements, e.g. through National Standards; or
- there is a clear, evidence-based case that, given the severity of the risk, there is a need to ensure that a certain standard is achieved prior to an activity being undertaken or undertaking being conducted; and

- there is a need to ensure that a sanction is available to prevent a duty holder engaging in an activity (through suspension or revocation of the permission) in the event of serious non-compliance.

Record keeping

Regulatory proposals requiring the recording or transmission of information may be appropriate in order to ensure the health and safety of persons or to facilitate the discharge of duties by others (e.g. where there is a demonstrated need for minimum data transfer to assist in the control of OHS risks such as documentation of areas of a workplace likely to contain asbestos).

Making the Act work

There are a number of areas where the Act sets out the general rule or procedure to be followed and leaves matters of detail to be prescribed in regulations. Examples are prescribing default issue resolution procedures and providing for the introduction of an infringement notice scheme.

3.5 Review of Regulations

Regulations that adopt National Standards will be reviewed whenever the ASCC declares new replacement National Standards or amendments to the Standards.

Other regulations will be reviewed:

- if the regulation becomes out of date,
- if the regulation is failing to achieve its purpose, or
- at intervals of no more than 10 years, whichever comes first.

4. Compliance Codes

4.1 What is a Compliance Code?

Compliance Codes provide practical guidance to duty holders on complying with a duty under the Act or regulation. If a person complies with a Compliance Code, they are deemed to comply with the Act or regulation duty covered by the Code. However, Compliance Codes are not mandatory and a duty holder may choose to use some other way to achieve compliance.

4.2 Principles relating to Compliance Codes

WorkSafe may make recommendations to the Minister about making Compliance Codes to provide duty holders with clarity and certainty about the most effective way to deal with the health and safety issues covered by the regulations.

WorkSafe will use Compliance Codes to communicate compliance information where there are known and effective means of achieving compliance. In other cases, WorkSafe will use other non-statutory guidance material.

Each Compliance Code will identify:

- the specific provision of the Act or regulations for which the Compliance Code deems compliance;
- which duty holder or duty holder may rely on compliance with the Compliance Code to deem compliance; and
- the extent to which reliance on the Compliance Code will discharge the duty holder's duties under the regulations or the Act.

As non-mandatory guidance documents, Compliance Codes will use the phrase 'needs to' as advisory language, unless they are directly referencing a mandatory duty in the Act or regulation.

Compliance Codes may include background, contextual information and general advice as well as specific guidance on how to comply with specific duties. They must be flexible enough to describe a range of practical measures for guiding the compliance effort, because what is understandable and practical for one person may not be so for another. Some codes will have specific information about compliance solutions, while others will include processes that can be followed so that appropriate decisions about how to comply can be made.

Where appropriate, Compliance Codes may incorporate or adopt by reference documents produced by reputable standards setting bodies.

4.3 When should a Compliance Code be developed?

To give effect to a National Code of Practice

WorkSafe is committed to the national harmonisation of OHS law, including a consistent approach to compliance. National Codes of Practice that set out practical guidance for managing identified occupational hazards are an important element in harmonising OHS. Consequently, where possible WorkSafe will make recommendations to the Minister to approve Compliance Codes that give effect to a declared National Code of Practice.

WorkSafe's recommendations will be directed at adopting National Codes of Practice by reference to the maximum extent possible. Generally, when adopting a National

Code of Practice, a Victorian Compliance Code will only make those changes to National Codes that are necessary to meet the criteria set out for Victorian Compliance Codes and to avoid inconsistency with the Act or its Regulations and to ensure that established OHS standards are not diminished.

Note: the adoption of a National Code will not negate a requirement under the Act to release the Compliance Code for public comment.

To provide practical guidance to duty holders on matters not covered by a National Code of Practice

Compliance Codes may be developed to:

- fulfil commitments given to prepare Compliance Codes during the development of Victorian OHS Regulations 2007;
- give effect to government policy and commitments; or
- provide practical guidance to a segment of duty holders under the Act or regulations who have needs that are not met by National Codes of Practice or other Compliance Codes

and there is a need to:

- set out how compliance with the duty can be achieved either by following a process or by implementing a solution; or
- assist with the enforcement of a duty through the availability of authoritative compliance information that is sponsored by the Act and Ministerial approval of the Code.

A Compliance Code will only be developed if its contents are capable of being practically applied and will achieve compliance outcomes. There must be a strong presumption that the particular method or methods of compliance in a Code are available and are generally applicable to the circumstances covered by the Code. A Compliance Code is not appropriate if compliance strategies or solutions are largely unknown.

4.4 Review of Compliance Codes

Compliance Codes that adopt National Codes of Practice will be reviewed whenever the ASCC declares new replacement Codes of Practice or amendments to the Codes.

Other Compliance Codes will be reviewed:

- if the Compliance Code becomes out of date due to the introduction of new technological solutions to the hazard being addressed by the Compliance Code, new Australian or industry standards, or the development of an amendment of a corresponding regulatory chapter; or
- at intervals of no more than 10 years, whichever comes first.

4.5 Parliamentary scrutiny of Compliance Codes

The Minister's order approving a Compliance Code, or a variation order must be tabled in both houses of Parliament and the order may be disallowed by the Parliament. SARC has a role to review the order and may subsequently recommend to Parliament that the order be suspended or disallowed in whole or in part.

4.6 How Compliance Codes are made

The steps in the preparation of a Compliance Code are:

1. Prepare a working draft of the code and engage with stakeholders. (The nature and extent of engagement will depend on the individual code.)
2. Finalise a draft Code having regard to stakeholder comment and release for public comment.
3. The Code is finalised having regard to the comment received during the public comment period.
4. A recommendation is made to the Minister that the draft Compliance code be made.
5. The Minister makes an order approving the compliance code. The order takes effect when notice of it is published in the government gazette, or any later date included within the code.
6. A notice of the making is published in the Government Gazette and a statewide newspaper.

5. WorkSafe Positions

Section 12 of the Act empowers WorkSafe to make guidelines on:

- the way in which a provision of the Act or the regulations would, in WorkSafe's opinion, apply to a class of persons or to a set of circumstances; and
- the way in which discretion of WorkSafe under a provision of the Act or regulations would be exercised.

Guidelines under section 12 of the Act are published under the title "WorkSafe Positions".

WorkSafe Positions are not mandatory and do not give rise to any duties, rights or obligations that a person would not otherwise have under the Act or its regulations. WorkSafe Positions do not give rise to a defence that a person would not otherwise have.

Improvement Notices or Provisional Improvement Notices cannot be issued for a failure to comply with a WorkSafe Position. However, the interpretation set out in a WorkSafe Position may be taken into account in determining whether there is a breach of the duty to which it relates.

WorkSafe Positions on the exercise of WorkSafe's discretions will guide WorkSafe and its staff in how these discretions are exercised.

5.1 Objectives of WorkSafe Positions

The objectives of making WorkSafe Positions are:

- to provide certainty about how occupational health and safety law will be interpreted and applied by WorkSafe in order to give effect to the principles of health and safety protection set out in section 4 of the Act; and
- to provide transparency, certainty and predictability for the community in relation to WorkSafe's application of the law and the exercise of the discretions provided to WorkSafe under the Act and its regulations.

Principles applying to WorkSafe Positions

WorkSafe will apply the following principles in formulating WorkSafe Positions on the application of the law:

- WorkSafe's opinion must be consistent with a reasonable interpretation of the provision to which the WorkSafe Position relates;
- WorkSafe's opinion must be consistent with the principles of health and safety protection in Section 4 of the Act;
- a WorkSafe Position must provide clarity about the provision to which it relates.

WorkSafe will adhere to the following principles in formulating WorkSafe Positions on the exercise of discretion:

- the WorkSafe Position must be formulated consistent with any requirements of the Act or the regulations that affect how the discretion is to be exercised, and with administrative law principles;
- the WorkSafe Position must be clear enough to enable a person who may be affected by the discretion to understand how the discretion is exercised, the circumstances in which the discretion may be exercised and all of the relevant matters that may be taken into account during the exercise of the discretion; and

- the WorkSafe Position must specify the possible outcomes from the exercise of discretion and make clear the reasons that may lead to each of those outcomes.

5.2 Criteria for the development of WorkSafe Positions

The following priorities and criteria will be used to guide decisions about whether to develop WorkSafe Positions.

WorkSafe Positions on the application of the law

A WorkSafe Position may be made about how a provision of the Act or the regulations applies to a class of persons or a set of circumstances if:

- it is considered that provision may be applied inconsistently because of varying interpretations; or
- the principles of health and safety protection will be best served by the certainty created by issuing a WorkSafe Position.

Many provisions of the Act and the regulations are straightforward and capable of being understood either directly or together with non-statutory guidance. WorkSafe Positions are not needed for these provisions.

There are, however, provisions in the Act and the regulations that contain complex concepts or which are capable of being interpreted differently by different readers. Uncertainty and potential inconsistencies in how the law applies occurs with these types of provisions.

WorkSafe Positions on the exercise of discretion

A WorkSafe Position may be developed on the exercise of WorkSafe's discretions in circumstances where:

- there is the potential for a significant impact on members of a class of people or organisations as the consequence of the exercise of a discretion; and
- the making of the guideline provides clarity, certainty and predictability on how WorkSafe exercises the discretions or conducts its operations as a consequence of the exercise of the discretions.

While WorkSafe Positions may be made in relation to WorkSafe's discretions, they cannot be issued in relation to inspectors' discretions under the Act.

Section 12(2) of the Act provides a wide definition of 'discretion'. The term includes forming an opinion, attaining a state of mind, exercising a power or refusing or failing to do any of these things. There are a large number of discretions in the Act and regulations that fall within this definition, including discretions in relation to the issue of licences and permissions in the regulations or how compliance and enforcement action is to be undertaken.

WorkSafe Positions in relation to the exercise of these discretions will achieve transparency in how WorkSafe will administer the Act and regulations, thereby providing another means for holding WorkSafe accountable.

5.3 When should a WorkSafe Position be developed

WorkSafe Positions will be developed where there is a need:

- to clarify the interpretation of a core concept within the Act or regulations; and
- to provide certainty and consistency in the application of the law

5.4 How WorkSafe Positions are made

The steps in the preparation of a WorkSafe Position are:

1. Prepare a working draft of the Position and engage with stakeholders.
2. A draft WorkSafe Position is finalised having regard to stakeholder comment and released for public comment.
3. The WorkSafe Position is finalised having regard to the comment received during the public comment period.
4. WorkSafe then makes the WorkSafe Position by causing notice of it to be published in the Government Gazette.
5. Notice of the WorkSafe Position is then published in a statewide newspaper

5.5 Review of WorkSafe Positions

WorkSafe Positions that adopt Regulatory Interpretative Documents will be reviewed whenever the ASCC declares new replacement documents or amendments to the documents.

Other WorkSafe Positions will be reviewed:

- if they become out of date due to legislative amendment or a decision of a tribunal or court; or
- at intervals of no more than 5 years.

6. Non-Statutory Guidance

This section covers the development of non-statutory guidance.³

6.1 What is non-statutory guidance?

The Act requires WorkSafe to promote public discussion of OHS and welfare issues and raise public awareness in order to assist people to better understand and accept the principles of health and safety. In order to do so WorkSafe must coordinate and promote the sharing of OHS information, ensuring at all times that the information is in a form and language that is appropriate for those to whom the message is directed.

Sitting outside OHS legislative regimes is a range of information that can provide valuable guidance to people working in particular industries and occupations on what is reasonable and practicable. This includes:

- guidance in WorkSafe publications other than Compliance Codes and WorkSafe Positions. Titles include “Your Health & Safety Guide to”, “Health & Safety Solutions”, and “handbook for workplaces” (soft & hard copy formats);
- industry standards;
- Australian Standards (AS) and International Standards (ISO); and
- guidance material produced by regulatory agencies in other jurisdictions.

6.2 Objectives of non-statutory guidance

The objectives of non-statutory guidance include:

- providing context and background material on hazards, risks and issues;
- alerting workplace parties to new, emerging and/or immediate risks;
- providing explanations of the provisions of the Act and its regulations;
- providing information to assist with the understanding of the nature of hazards and risk and the factors that contribute to them;
- providing guidance about the processes/techniques that can be used to make decisions about the elimination or control of risks;
- providing compliance solutions;
- increasing knowledge amongst duty holders, workers and others about OHS hazards, risks, and the means of eliminating or reducing them; and/or
- encouraging the implementation of optimum strategies for improving OHS performance (for example information about good management practice or describing ‘state of the art’ technical solutions).

6.3 Criteria for development of non-statutory guidance

Non-statutory guidance will be developed when there is a need to:

³ Information that is not directly aimed at supporting the Compliance Framework is not addressed in this Handbook (e.g. press releases and general VWA promotional material).

- provide information about significant OHS issues in circumstances where regulations, Compliance Codes and WorkSafe Positions are not the appropriate instruments;
- support WorkSafe operational and strategic initiatives;
- harmonise guidance with other jurisdictions to ensure consistency in the type and level of practical advice provided;
- support legislative and regulatory initiatives where different levels and layers of guidance are required; or
- support WorkSafe promotional campaigns including advertising and media campaigns.

Guidance material developed by other jurisdictions will be adopted if it is developed as part of national harmonisation initiatives or is appropriate for other reasons. These reasons may include where the guidance provides information relevant to the circumstances in Victoria and where Victoria has agreement to use it.

6.4 Form of non-statutory guidance

Non-statutory guidance can take many forms, including:

- overarching or umbrella explanations and summaries of OHS issues, that will provide background, contextual and “state of knowledge” information, and a “road map” to the elements of the Compliance Framework that apply to that issue (i.e. relevant parts of the Act, regulations and relevant Codes, Guidelines and other information);
- plain English explanations of legal obligations and duties, including summaries that provide a simpler description of obligations under the Act or a regulation. Examples are the *Summary of the Occupational Health and Safety Act 2004* and *Prevention of Falls – the New Regulations* on the WorkSafe Web Site;
- Alerts - a mechanism to quickly alert duty holders and stakeholders about serious risks that come to WorkSafe’s notice;
- “state of knowledge” material such as standards and codes published by other bodies;
- guides about processes and techniques for managing specific hazards or risks; and
- publications that promote public awareness and discussion of health, safety and welfare issues and an understanding and acceptance of the principles of health and safety protection set out in the Act.

6.5 Review of non-statutory guidance

Non-Statutory guidance will be reviewed:

- if the guidance becomes out of date due to factors such as the introduction of new technology, changing work practices within an industry, and production of new material in other jurisdictions; or
- at intervals of no more than 5 years, whichever comes first

7. Stakeholder Engagement

7.1 Public comment and Stakeholder engagement on elements of the Compliance Framework

Regulations

Part 2 of the SLA sets out the formal process for developing the regulations made under the *Occupational Health and Safety Act 2004*. (See section 3.2 of this Handbook.) In part, this requires that the Minister ensure that there is consultation with any sector of the public on which an appreciable economic or social burden may be imposed by a regulation.

Figure 3 illustrates the formal development process as well as indicating those points in the process where stakeholder involvement will be actively sought.

In addition to the formal period of public review and comment required by the SLA, WorkSafe will, as part of its stakeholder engagement process ensure that stakeholders are consulted as early as possible in the development of substantial regulatory proposals. WorkSafe will not normally engage with stakeholders on proposed regulations which are of a “machinery” nature or which involve no significant new policy or change to existing policy in the regulations, i.e. one that does not impose any appreciable burden on a sector of the public.

WorkSafe will develop a Stakeholder Engagement Plan for each regulatory proposal which will include identification of:

- what the topic of engagement is;
- the process for engagement including the establishment of External Stakeholder Reference Groups;
- the mechanism for seeking stakeholder representation;
- the administrative arrangements for the engagement including meeting schedules, provision of draft documents, provision of notes of meetings and how documents will be made available.

Stakeholder engagement will focus on policy positions to be included in the proposed regulations rather than drafts of proposed regulations.

Compliance Codes

WorkSafe is required by the Act to issue proposed Compliance Codes for public review and comment before it makes recommendations to the Minister for approval. The only exception is when the Minister considers it in the public interest to approve a Compliance Code as soon as possible.

As part of its stakeholder engagement processes, and as a general rule, WorkSafe will issue proposed Compliance Codes for public review and comment.

WorkSafe will engage with stakeholders when a satisfactory working draft of a Compliance Code has been prepared. The nature and the extent of engagement will depend on the particular Compliance Code being prepared.

Stakeholders will be engaged in the development of harmonised National Codes of Practice. Upon the making of a NCoP, it will be referenced without amendment as a Compliance Code in Victoria, provided it is consistent with the Victorian Act and Regulations, capable of enforcement and developed as part of a tripartite process.

A Stakeholder Engagement Plan similar to the one described above for regulations will be prepared.

WorkSafe Positions

The Act requires formal public consultation to be conducted before a WorkSafe Position is made. This includes advertising the proposal in the Government Gazette and a state-wide newspaper and inviting submissions and comment. A WorkSafe Position may be made after consideration of the comment. If a WorkSafe Position is made, a notice to this effect must be published in the Government Gazette and in a state-wide newspaper.

The Act also requires that withdrawal of a WorkSafe Position must be advertised in the Government Gazette and in a state-wide newspaper.

In addition to the Act's formal process, engagement with stakeholders during development will occur to ensure that stakeholders' views are taken into account before the formal public comment process takes place.

As part of its stakeholder engagement processes, WorkSafe will engage with stakeholders when a satisfactory draft of a WorkSafe Position has been prepared. WorkSafe will seek representation for the engagement through the relevant employer associations and the VTHC.

This stakeholder engagement may take place without the formation of an External Reference Group where the issue is straight forward. A draft WorkSafe Position will be circulated for written or verbal comment. If a Reference Group is established, a Stakeholder Engagement Plan will be developed.

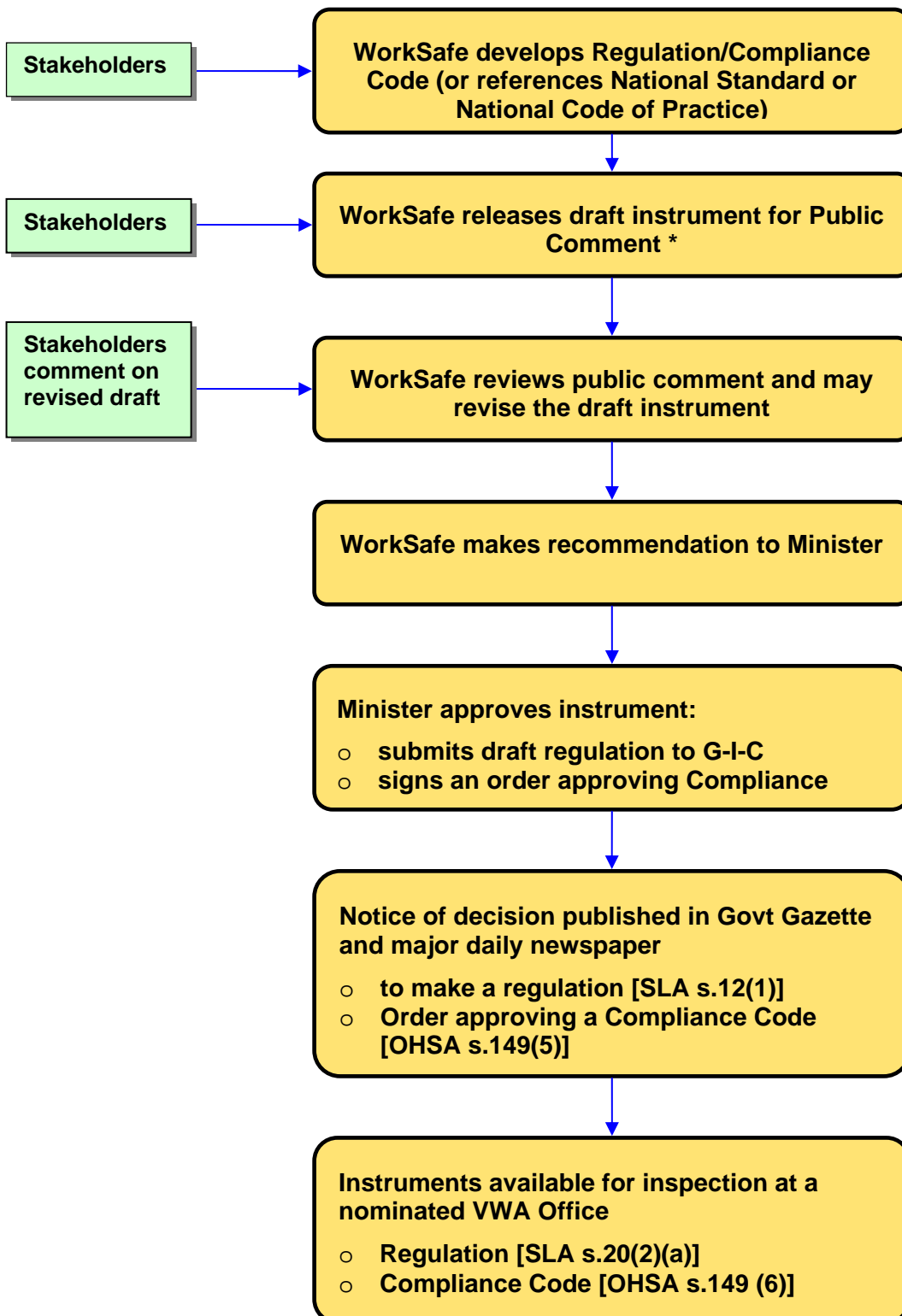
Non-statutory guidance

The Act does not require WorkSafe to issue non-statutory guidance for public comment before it is issued. However, it has been WorkSafe's practice to engage stakeholders during the preparation of most forms of non-statutory guidance and this will continue.

The mode and frequency of stakeholder engagement on non-statutory guidance will be determined by WorkSafe on a case by case basis. The level of engagement will reflect the scope, novelty, technicality and purpose of this information or guidance material.

Figure 3: Development of Regulations and Compliance Codes

Stakeholder input



* The Act does not prescribe the length of the public comment period of a Compliance Code. As a matter of policy, WorkSafe will mirror the requirements applying to regulations set out in section 11(2)(d) of the SLA, i.e. not less than 28 days. However, as for a proposed regulation, this will depend on the complexity of the issue being addressed by the Compliance Code.

Abbreviations used in this Handbook

AS	Australian Standards
ASCC	Australian Safety and Compensation Council
COAG	Council of Australian Governments
DEWR	Commonwealth Department of Employment and Workplace Relations
EIA	Economic Impact Assessment
GIC	Governor in Council
ISO	International Organization for Standardization
OBPR	Office of Best Practice Regulation
OHS	Occupational Health and Safety
OHSAC	Occupational Health and Safety Advisory Committee
RIS	Regulatory Impact Statement
SARC	Scrutiny of Acts and Regulations Committee
SLA	Subordinate Legislation Act 1994
SRG	Stakeholder Reference Group
VTHC	Victorian Trades Hall Council