

LEGISLATION UPDATE

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RANGE OF OHS SUPPORTING MATERIAL WITH LEGAL STATUS

Occupational health and safety (OHS) laws aim to promote and secure the health and safety of persons at work.

As well as having strict requirements under Acts and Regulations, the legal framework has developed in a way that recognises the need for some flexibility for industry to address individual circumstances.

Over time, a range of supporting material has been developed. This material takes the form of codes, standards or guidelines, which may collectively be called OHS supporting material.

Although it is not strictly speaking the law, this material usually has some legal status. This status will vary with the nature of the material and its relationship to the law.

The Table overleaf summarises the range of instruments which may influence OHS from a legal perspective. This includes not only Acts and regulations themselves but also examples of the supporting material.

The content of this Table is intended for general guidance only and should not be relied upon as a source of legal advice.

**FURTHER INFORMATION CAN BE OBTAINED FROM MR CHRIS ELLICOTT - (02) 9901 8412
OR YOUR LOCAL DEPARTMENT OF MINERAL RESOURCES OFFICE:**

Sydney: 9901 8888 Armidale: 6770 2100 Broken Hill: (08) 8080 0625 Cobar: 6836 4392 Gateshead: 4942 2300
Lightning Ridge: 6829 0678 Lithgow: 6351 3052 Orange: 6392 6333 Singleton: 6572 1899 Wollongong: 4227 1699

RANGE OF SUPPORTING MATERIAL WITH LEGAL STATUS

INSTRUMENT	GENERAL PURPOSE	APPLICATION	LEGAL STATUS
Act of Parliament	Creates powers, authorities, duties or rights (including power to make regulations)	Binding – requirements must be complied with (unless a valid exemption is held).	Acts are statutory law.
Regulation made under an Act	To give expression to an Act – to say what is to be done or achieved.	Binding – requirements must be complied with (unless a valid exemption is held).	Regulations are subordinate legislation.
Condition of Exemption or Approval	To allow imposition of conditions.	Binding – requirements must be complied with.	Delegated administrative law .
Standard (AS ISO IEC)	To define accepted practice or minimum standard.	Depends on relationship with regulation – may be binding (if called up by regulation) or persuasive (by existence of the Standard itself).	Depends on relationship with regulation – may be binding (if called up by regulation) or informative (by existence of the standard itself).
Approved Industry Code of Practice under the Occupational Health and Safety Act	To provide practical guidance on how to meet general OHS requirements.	Persuasive – indicates what to do but does not mean it has to be done. Alternative measures may be used.	Admissible in support of allegation that general duty of care has been breached.
Applied Code, Standard or Guideline ¹	To provide practical guidance on how to do or achieve requirements of regulations.	Persuasive – indicates what to do but does not mean it has to be done. Alternative measures may be used.	Most likely admissible in support of allegation that general duty of care has been breached.
Published Guideline	To provide guidance on how to assess and manage a particular risk or set of risks.	Advisory – provides advice on how to manage the relevant risk(s).	May be admissible in support of allegation that general duty of care has been breached.
Guidance Note	To provide background information that may be used in developing risk controls.	Informative	Could be admissible in support of allegation that general duty of care has been breached.
Technical Reference Document	To convey technical information.	Informative	May support expert evidence.
Safety Alert	To make industry aware that something has happened.	Informative	May provide evidence of the 'foreseeability' of risk of injury.

¹ Under clause 14 of the Coal Mines (General) Regulation 1999.