

Environment Protection (Automotive Trades) Code of Practice 2019

DI2019-267

Regulatory Impact Statement

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Introduction

This regulatory impact statement (RIS) provides an analysis of the regulatory impact of the Environment Protection (Automotive Trades) Code of Practice 2019 (the code), made and accredited by the Minister for the Environment and Heritage under Part 5 of the *Environment Protection Act 1997* (the Act).

The code is designed specifically for automotive trade industry operators (including mobile services) and establishes best management practices to support compliance with the general environmental duty under the Act. It sets out the minimum requirements for environment protection through the development and implementation of an environmental management plan.

The authorising law

The objects of the Act are to protect and enhance the quality of the environment and prevent environmental degradation and risk of harm to human health and the environment (section 3C). There are environmental risks associated with motor vehicle trade activities. Airborne contaminants and odours released from fuel, dust, paint, solvents, and other chemicals can impact human health and the environment. Contaminated runoff can pollute waterways and contaminate the land. Noise

pollution can cause nuisance to nearby sensitive receptors. Inappropriate waste disposal can be inappropriately disposed or become litter and contaminate the environment.

Under the Act, the automotive industry has a general environmental duty to take practical and reasonable steps to prevent or minimise environmental harm or nuisance (section 22). The Act provides for offences and penalties related to knowingly or negligently causing environmental harm. The code fills a gap where no industry-specific control measures are required to be met by an operator in meeting their general environmental duty.

Policy objectives

The objective of the code is to minimise the risk of environmental harm and to assist operators in meeting their general environmental duty under the Act.

Assisting operators within the automotive trades industry to improve standards and progress towards best management practices can be achieved through improved policy guidance. Provision of the clear and explicit minimum requirements to protect the environment can help businesses demonstrate that they have taken reasonable care to avoid causing environmental harm and meeting their general environmental duty.

The Act and its relevant environment protection policies set out the measures that industry should comply with to avoid offences related to environmental harm and pollution. The Act is administered and regulated by the Environment Protection Authority (EPA). No industry-specific performance outcomes or control measures are currently in place to regulate the activities within the automotive trades industry that might cause environmental harm.

Alternative ways of achieving the policy objective

Three options were identified in considering how the desired outcome might be achieved:

- Option 1: Do nothing
- Option 2: Non-statutory guidelines
- Option 3: Code of Practice (statutory).

Option 1: Do nothing

This is a non-regulatory option that would see no implementation of specific requirements to be met by operators within the automotive trades industry to demonstrate compliance with their general environmental duty.

In the absence of industry-specific conditions, regulators rely on the broader environment protection policy and legislative framework but have no mechanism to formally educate and regulate automotive trade activities.

Option 1 is not supported because it weakens the capacity for environment protection officers to determine whether a person has taken all reasonable care to avoid environmental harm and meet their environmental duty. It also does not support the industry in demonstrating how it can achieve this objective. It is therefore not conducive to the effective administration of the Act in its enforcement and compliance, and in meeting the objects of the Act which seeks to educate and work with activity managers to minimise impacts on the environment.

Option 2: Guidelines

This is a non-regulatory option that involves the provision of non-statutory guidance (through the form of written guidelines) for the development of an environmental management plan, implementation of control measures, and the achievement of performance outcomes. Industry-specific standards and best management practices relating to releases to air, land and water, waste management, and noise pollution are not a specific requirement under the Act. Implementation of control measures would be voluntary and standards across the industry may vary. The absence of a statutory authority, such as licensing of the activities under the Act, means that guidelines provide little punitive mechanism to regulate non-compliance. This option is therefore not preferred.

How the policy objective will be achieved

Option 3: Code of Practice

A code of practice (code) is a regulatory option provided for under Part 5 of the Act. A code provides specific actions to evidence that a person has taken all reasonable care to avoid causing environmental harm and in meeting their general environmental duty. A code would set out methods for achieving compliance specific to the automotive trade industry. A person is considered to have complied with their environmental general duty in conducting an activity if the person has substantially complied with the code.

Option 3 is determined as the most appropriate regulatory model. A code was requested from within the industry itself. Self-regulation through implementation of a code at the operator level has dual benefit of reducing the likelihood of committing an offence and receiving a penalty and minimising the risk of environmental harm (which is the overall objective). This option also holds the same benefits that Option 2 in the provision industry-specific information and guidance for operators. Impact analysis; consistency with the authorising law and other territory laws

The overall impact of a code is expected to be positive. A code supports the objects of the Act in seeking to protect and enhance the quality of the environment, prevent environmental degradation and risk of harm to human health and the environment, and require people engaging in polluting activities to make progressive environmental improvements.

It does not impact on existing environment protection legislation, and implementation of a code would not affect the penalties and fees associated with committing an offence under the Act.

Conditions set out under a code are unlikely to significantly divert from standard automotive workshop practices that are required by operators to meet their environment protection obligations. Additional costs to industry are not expected, as the requirements of a code should already be incorporated as part of usual business practices by responsible automotive operators. Therefore, additional costs may be greater for those operators that need to improve their standards because they do not adequately meet their obligations under the Act.

Benefits likely to accrue from environmental management plans developed and administered at the operator level included reduced events of environmental harm and increased compliance within the automotive trade industry under the Act.

Costs and Benefits associated with Option 3: Code of Practice

An analysis of the costs, benefits and impacts to the relevant stakeholder groups related to the implementation a code demonstrates that costs and detrimental impacts are low relative to the anticipated benefits. The relevant stakeholders are identified as automotive trade operators (the target industry), the EPA (the regulator), the community (in their right to wellbeing/clean environment) and taxpayers (that have an expectation of adequate industry regulation).

Table 1 summarises the key identified costs and benefits associated with affected parties.

Table 1 Summary of costs and benefits associated with the relevant stakeholders affected by the implementation of the code.

SECTOR	COSTS	BENEFITS
Business (automotive trade operators and businesses)	<ul style="list-style-type: none">• Administration: development of an environmental management plan, ongoing record keeping, and incident reporting.• Workshop assessment to determine gaps in meeting conditions of the code and any existing sources of pollution or contamination. May include contractors.• Costs related to the one-off installation of infrastructure/equipment to implement control measures.• Ongoing costs related to maintaining equipment and infrastructure required to meet the conditions of the code.	<ul style="list-style-type: none">• Improved ability to meet environmental obligations and self-regulate through increased clarity around expectations and standards.• Ongoing maintenance of standards provided by the code.• Reduced cleanup costs and incidences of environmental harm.• Reduced unsafe or ethical behavior.• Improved health and wellbeing of staff due to reduced exposure to noise, wastes, odors, dust, etc.• Improved levels of service from the EPA.• Increased operator protection afforded by increased transparency and record keeping demonstrating compliance.• Reduced likelihood of fines and penalties.• Improved reputation for demonstrating environmental care.
EPA and ACT Government	<ul style="list-style-type: none">• Changes to administration and resource allocation related to inspection, compliance, enforcement and prosecution.• Review of the code in the future.	<ul style="list-style-type: none">• Improved capacity to assess compliance through increased clarity of standards and expectations.• Increased transparency in decision-making.• Increased efficiency in government processes as supported by compliance transparency.
Community	<ul style="list-style-type: none">• Higher prices for goods and services (highly unlikely).	<ul style="list-style-type: none">• Protection of public health and environmental values.• Improved health and wellbeing outcomes associated with reduced likelihood of pollution.

Consultation

A draft ACT Environment Protection (Automotive Industry) Code of Practice was released for public consultation in June 2019. This meets the requirement under section 31 of the Act, which provides that a code of practice must be prepared in consultation with those affected, as well as the public.

The draft code was prepared in consultation with the ACT Motor Trades Association as the key stakeholder group and the Environment Protection Authority which administers and regulates the Act. External communication methods included:

- emails and letters to targeted stakeholders (e.g. mechanics) inviting them to comment on the draft code
- provision of the draft code and information on the Environment, Planning and Sustainable Development Directorate website
- advertisement as a latest news item on the EPSDD website
- talking points to Access Canberra.

One comment was received and is incorporated in the final version of the code.

Conclusion

The regulatory option to develop and implement the code is the preferred option that yields the greatest net benefit (i.e. improved health/environmental outcomes resulting from improved standards and compliance). Not only was this option requested directly from industry, it provides the following key benefits, all of which lead to improved health and environmental outcomes:

- increased clarity with industry operators around obligations, expectations and standards
- improved transparency through record keeping, monitoring and reporting
- increased transparency of regulator decision-making.

The absence of this code, or the publication of non-statutory guidelines, means that uptake of best practices and standards is voluntary. Under the code, operators do have the option to meet the stated requirements by alternative means if necessary, providing flexibility.

Since the automotive industry is already required to meet their obligation of general environmental duty, this RIS assumes that most operators in the automotive industry already take necessary action to mitigate pollution. Since the code does not introduce any new offences or increased obligations, it is not expected that the costs to the industry will be significant if they are already attempting to meet their environmental protection obligations. If an operator identifies a gap in their operations in meeting the standards of the code, it is likely to be a one-off cost and reflects the value of the code in its ability to assist operators comply with legislation.

Implementation and enforcement

The code will be implemented by the EPA, who are already responsible for administering environment protection legislation in the ACT, including within the automotive trade industry. No additional activities are expected following the publication of the code. Rather, improved efficiencies are anticipated related to the ability to compare actions of industry operators with the requirements set out by the code.

The code is an accessibility-designed document that is clear and easy-to-understand.

It is consistent with existing environmental protection regulatory policy.

The code will be made available on the Access Canberra webpage (consistent with other environment protection documents). In addition to email correspondence to stakeholders providing a link to the digital copy, a hard-copy version of the code will be made available on request.

If a business assesses themselves as not meeting the requirements set out in the code, there may be some costs and impacts associated with changes to practices or installation of equipment/infrastructure. Once established, the maintenance of an environmental management plan and requirements of the code are not expected to place significant additional burden on businesses. In the instance of an inspection or audit, the code should ease compliance and paper burden through improved clarity of expectations and resources for record keeping and checklists.

There is no provision under the Act or within the code requiring review or revocation. While environment protection regulatory policy remains relatively consistent, the code will be updated as needed as best practice management standards and expectations improve over time. If new legislative requirements affect the code, or if the inherent intention of the code is not being achieved, it will be reviewed as needed.

Consistency with Scrutiny of Bills Committee's principles

The code is consistent with the Scrutiny of Bills Committee's terms of reference. The code provides guidance on best management practices for businesses to meet their general environmental duty under the Act. It does not impact personal rights. Nor does it make rights, liberties, or obligations unduly dependent upon insufficiently defined administrative powers or non-reviewable decisions. The code does not affect the measures provided for by the Act to require compliance with the general environmental duty, through actions such as issuing environment protection orders. Serving an environment protection order is a reviewable decision under schedule 3 of the Act. The code does not delegate any function and, as a disallowable instrument, it is subject to scrutiny in the Legislative Assembly.