



INTERPRETIVE GUIDELINE

# How to determine what is reasonably practicable to meet a health and safety duty

## Disclaimer

The information contained in this publication is guidance material only. It is provided in good faith and believed to be reliable and accurate at the time of publication.

To ensure you understand and comply with your legal obligations, this information must be read in conjunction with the appropriate Acts and Regulations which are available from the Parliamentary Counsel's Office <https://www.legislation.wa.gov.au/>

The State disclaims all responsibility and all liability (including without limitation liability in negligence) for all expenses, losses, damages and costs you might incur as a result of the information being inaccurate or incomplete in any way, and for any reason.

In this disclaimer:

**State** means the State of Western Australia and includes every Minister, agent, agency, department, statutory body corporate and instrumentality thereof and each employee or agent of any of them.

**Information** includes information, data, representations, advice, statements and opinions, expressly or implied set out in this publication.

**Loss** includes loss, damage, liability, cost, expense, illness and injury (including death).



**WorkSafe Commissioner**  
303 Sevenoaks Street, CANNINGTON WA 6107

**Telephone:** 1300 307 877

**NRS:** 13 36 77

**Email:** [commissioner@worksafe.wa.gov.au](mailto:commissioner@worksafe.wa.gov.au)

## Reference

WorkSafe Western Australia, 2021, How to determine what is reasonably practicable to meet a health and safety duty – Interpretive guideline: Department of Mines, Industry Regulation and Safety, Western Australia, 17 pp.

ISBN 978 1 920836 63 4 (web)

© State of Western Australia (Department of Mines, Industry Regulation and Safety) 2021

### Acknowledgement

This publication was produced by WorkSafe Western Australia using information originally developed by Safe Work Australia.

The State of Western Australia supports and encourages the dissemination and exchange of its information. The copyright in this publication is licensed under a Creative Commons Attribution 4.0 International (CC BY) licence.



Under this licence, with the exception of the Government of Western Australia Coat of Arms, the WorkSafe logo, any material protected by a trade mark or licence and where otherwise noted, you are free, without having to seek our permission, to use this publication in accordance with the licence terms.

We also request that you observe and retain any copyright or related notices that may accompany this material as part of the attribution. This is also a requirement of the Creative Commons Licences.

For more information on this licence, visit [creativecommons.org/licenses/by/4.0/legalcode](https://creativecommons.org/licenses/by/4.0/legalcode)

<b>1</b>	<b>Introduction.....</b>	<b>1</b>
1.1	What is the purpose of this guideline? .....	1
1.2	The duties of a person conducting a business or undertaking.....	1
1.3	The regulator .....	2
<b>2</b>	<b>The meaning of reasonably practicable.....</b>	<b>3</b>
2.1	How is 'reasonably practicable' defined?.....	3
2.2	What each of the 'relevant matters' in section 18 means .....	4
2.3	A risk management process helps to determine what is reasonably practicable.....	5
2.4	What is 'reasonably practicable' is an objective test .....	6
2.5	The relevance of control .....	6
<b>3</b>	<b>Step one – Identifying the circumstances, hazards and risks.....</b>	<b>7</b>
3.1	What are the circumstances? .....	7
3.2	What are the hazards arising from the work or the environment? .....	7
3.3	What are the risks associated with those hazards and how serious are they? .....	8
3.4	The importance of consultation .....	9
<b>4</b>	<b>Step two – Determine what you can do .....</b>	<b>10</b>
4.1	Deciding how risks can be eliminated or minimised (risk control).....	10
4.2	Is the control measure available and suitable? .....	11
<b>5</b>	<b>Step three – Determine what you are reasonably able to do.....</b>	<b>12</b>
5.1	Start by considering the highest level of protection.....	12
5.2	How to determine what is reasonable .....	12
5.3	Cost.....	13
5.4	Can you rely on someone else to take the necessary action? .....	14
<b>6</b>	<b>Step four – Reviewing risk controls.....</b>	<b>16</b>
6.1	When should risk controls be reviewed? .....	16
	<b>Appendix A List of cases relevant in determining reasonable practicability .....</b>	<b>17</b>

# 1 Introduction

## 1.1 What is the purpose of this guideline?

This document provides guidance on the standard of health and safety a person conducting a business or undertaking (PCBU) must meet under the *Work Health and Safety Act 2020* (WHS Act) and regulations. A PCBU must do what is 'reasonably practicable' to ensure health and safety.

The standard of 'reasonably practicable' in health and safety duties only applies to a PCBU. Other duty holders are required to meet different standards. For example, officers must exercise 'due diligence' and workers and others at a workplace must take 'reasonable care'.

The 'reasonably practicable' standard is not new in Australian work health and safety law, and this standard is intended to be very high. This is reflected in the WHS Act, which states that workers and other persons should be given the highest level of protection from hazards and risks arising from work, so far as is reasonably practicable.

The WHS Act sets out the definition of reasonably practicable in relation to a duty to ensure health and safety, and the matters to be taken into account in determining what is reasonably practicable in the circumstances.

This guideline explains each of the elements of this definition and provides practical guidance on how to determine what is reasonably practicable.

*Note: As defined in the WHS Act, **health** means physical and psychological health.*

## 1.2 The duties of a person conducting a business or undertaking

The WHS Act imposes a duty on a person to ensure health and safety that requires the person to eliminate risks to health and safety so far as is reasonably practicable, and if it is not reasonably practicable to do so, to minimise the risks so far as is reasonably practicable.

The WHS Act requires a PCBU to ensure, so far as is reasonably practicable:

- the health and safety of workers who are engaged or caused to be engaged by the PCBU, or whose work is directed or influenced by the PCBU
- the health and safety of people who are not workers, such as members of the public, is not put at risk from work carried out as part of the conduct of the business or undertaking
- their own health and safety, if the PCBU is a self-employed person
- a workplace of which the PCBU has management or control is without risks to the health and safety of any person, including the means of entering and exiting the workplace
- the fixtures, fittings or plant at a workplace of which the PCBU has management or control are without risks to the health and safety of any person
- any item of plant, a substance or a structure the PCBU designs, manufactures, imports or supplies is without risks to the health and safety of any person described in the sections
- the way in which an item of plant or a structure is installed, constructed or commissioned by the PCBU ensures it is without risks to the health and safety of any person described in sections
- their services do not put at risk the health and safety of persons at, or in relation to, the workplace.

The WHS regulations also contain requirements for meeting the standard of reasonably practicable:

- when managing health and safety risks generally under the regulations
- in relation to particular types of hazards and risks, for example:
  - ensuring specified aspects of the workplace environment are without risks to health and safety
  - ensuring the provision and maintenance of welfare facilities, such as washing facilities and drinking water
  - minimising the risk of falling objects
  - minimising the need for hazardous manual tasks to be carried out when designing an item of plant or a structure
  - eliminating or minimising the need for entry into a confined space when designing, manufacturing, importing, supplying, installing or constructing an item of plant or a structure
  - ensuring a person does not enter a confined space before specific requirements of the regulations have been complied with
  - ensuring that work practices are arranged so that workers are protected from extremes of heat and cold.

### 1.3 The regulator

The WorkSafe Commissioner is the regulator under the WHS Act.

The WorkSafe Commissioner is responsible to the Minister for Industrial Relations for the administration of the WHS Act and any other law relating to health and safety administered by the Minister.

## 2 The meaning of reasonably practicable

### 2.1 How is 'reasonably practicable' defined?

The WHS Act defines the standard that is to be met and describes the process for determining this.

In relation to a duty to ensure health and safety, 'reasonably practicable' means that which is, or was at a particular time, reasonably able to be done to ensure health and safety, taking into account and weighing up all relevant matters including:

- (a) the likelihood of the hazard or the risk concerned occurring
- (b) the degree of harm that might result from the hazard or the risk
- (c) what the person concerned knows, or ought reasonably to know, about the hazard or risk, and about the ways of eliminating or minimising the risk
- (d) the availability and suitability of ways to eliminate or minimise the risk
- (e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

The process requires that all relevant matters, including those listed in the section, are taken into account and weighed up when determining what is reasonably practicable in particular circumstances.

There are two elements to what is 'reasonably practicable'. A duty holder must first consider what can be done, that is, what is possible in the circumstances for ensuring health and safety. They must then consider whether it is *reasonable in the circumstances* to do all that is possible.

Some of the matters listed will be relevant to identifying what *can be done*, for example, if control measures that will eliminate or minimise the risk are available and suitable. Other matters will be relevant to identifying whether what can be done is *reasonable* to do, for example, if the risk and degree of harm is grossly disproportionate to the cost of implementing the control measure.

To identify what would be reasonably practicable to do, all of the relevant matters must be taken into account and a balance achieved to provide the highest level of protection that is both possible and reasonable in the circumstances. No single matter determines what is or was at a particular time reasonably practicable to be done to ensure health and safety.

Although the WHS Act sets out a number of relevant matters, they are not the only things that may be relevant. Other matters may also need to be considered. For example:

- there may be other legislation that requires or prohibits certain activities and therefore limits what a PCBU can do – in that case, a PCBU must do what it is reasonably practicable for them to do while complying with other legislation
- a PCBU may or may not have the ability to control or influence a particular thing or another person's actions – see section 2.5 of this guideline.

The WHS Act makes it clear that a person cannot avoid responsibility for their obligations under the WHS Act by contracting them out to someone else.

## 2.2 What each of the 'relevant matters' in section 18 means

Factor	Relevance
The likelihood of the hazard or the risk concerned occurring	<p>The greater the likelihood of a risk occurring, the greater the significance this will play when weighing up all matters and determining what is reasonably practicable. If harm is more likely to occur then it may be reasonable to expect more to be done to eliminate or minimise the risk.</p> <p>The frequency of an activity or specific circumstances will be relevant to the likelihood of a risk occurring. The more a worker is exposed to a hazard, the more likely they are to suffer harm from it.</p>
The degree of harm that might result from the hazard or the risk	<p>The greater the degree of harm that could result from the hazard or risk, the more significant this factor will be when weighing up all matters to be taken into account and identifying what is reasonably practicable in the circumstances. Clearly, more would be expected of a duty holder to eliminate or minimise the risk of death or serious injury than a lesser harm.</p>
What the person concerned knows, or ought reasonably to know, about the hazard or risk, and ways of eliminating or minimising the risk	<p>The knowledge about a hazard or risk, and any ways of eliminating or minimising the hazard or risk, will be what the duty holder actually knows, and what a reasonable person in the duty holder's position (e.g. a person in the same industry) would reasonably be expected to know. This is commonly referred to as the <i>state of knowledge</i>.</p> <p>The courts have consistently stated a duty holder must consider all reasonably foreseeable hazards and risks when identifying what is reasonably practicable.</p>
The availability and suitability of ways to eliminate or minimise the risk	<p>This requires consideration of not only what is available, but also what is suitable for the elimination or minimisation of risk. A risk control that may be effective in some circumstances or environments may not be effective or suitable in others, because of things such as the workplace layout, skills of relevant workers or the particular way in which the work is done.</p> <p>Equipment to eliminate or minimise a hazard or risk is regarded as being available if it is provided on the open market, or if it is possible to manufacture it.</p> <p>A work process or change to a work process to eliminate or minimise a hazard or risk is regarded as being <i>available</i> if it is feasible to implement.</p> <p>A way of eliminating or minimising a hazard or risk is regarded as <i>suitable</i> if it:</p> <ul style="list-style-type: none"> <li>• is effective in eliminating or minimising the likelihood or degree of harm from a hazard or risk</li> <li>• does not introduce new and higher risks in the circumstances, and</li> <li>• is practical to implement in the circumstances in which the hazard or risk exists.</li> </ul>

Factor	Relevance
The cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk	<p>Although the cost of eliminating or minimising risk is relevant in determining what is reasonably practicable, there is a clear presumption in favour of safety ahead of cost.</p> <p>The cost of eliminating or minimising risk must only be taken into account after identifying the extent of the risk (the likelihood and degree of harm) and the available ways of eliminating or minimising the risk.</p> <p>The costs of implementing a particular control may include costs of purchase, installation, maintenance and operation of the control measure, and any impact on productivity as a result of the introduction of the control measure.</p> <p>A calculation of the costs of implementing a control measure must take into account any savings from fewer incidents, injuries and illnesses, potentially improved productivity and reduced staff turnover.</p>

## 2.3 A risk management process helps to determine what is reasonably practicable

Risk management involves a systematic process to:

- identify hazards associated with the activity or environment
- if necessary, assess the risks associated with the hazards
- identify and implement available and suitable control measures to eliminate or minimise the risks
- review the effectiveness of the control measures.

If it is not reasonably practicable for a duty holder to eliminate risks to health and safety, the hierarchy of control applies in the following order:

- substituting (wholly or partly) the hazard giving rise to the risk with something that gives rise to a lesser risk
- isolating the hazard
- implementing engineering controls
- implementing administrative controls
- ensuring the provision and use of suitable personal protective equipment.

Under the WHS regulations, a duty holder is required to step through a process by which risks can be minimised so far as is reasonably practicable. This can be achieved by identifying particular types of control measures in terms of their effectiveness and reliability.

## 2.4 What is 'reasonably practicable' is an objective test

The courts have on numerous occasions noted that what is 'reasonably practicable' is to be determined objectively.

This means that a duty holder must meet the standard of behaviour expected of a reasonable person in the duty holder's position and who is required to comply with the same duty.

This objective test is demonstrated by the requirement of the WHS Act to take into account what the person *ought reasonably* to know.

As part of the objective test, the courts will look at what was reasonably foreseeable by someone in the position of the duty holder at the particular time.

## 2.5 The relevance of control

Control is not explicitly stated in the WHS Act's definition of what is reasonably practicable. The capacity to exercise influence and control over a relevant matter is, however, something that is taken into account when determining what is reasonably practicable.

A person may be found to have control over a relevant matter if they have the capacity to do so, whether that capacity is exercised or not.

Control may arise from the legal ability to take control of the work activity, for example, under the terms of a contract, or from the practical ability to do so, for example, by being able to direct people on site and have those directions followed. That is, what a person does and what they are able to do will determine if they have control.

Under the WHS Act, if more than one person has a duty for the same matter, each person must discharge the person's duty to the extent to which the person has the capacity to influence and control the matter or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

This clearly sets out that a duty holder is expected to comply with their duties only so far as they have the capacity to influence and control relevant matters.

The more control or influence over the work, the greater the steps that need to be taken by the PCBU to discharge the duty. It may not be reasonable to require a person to do things that are beyond their control or to require them to acquire the necessary control. An inability to control relevant matters must necessarily imply that it is either:

- not possible for duty holders to do anything
- it is not reasonable to expect them to do so.

Control is therefore an implied element in determining what is reasonably practicable.

### Control has been considered by the courts as a relevant factor

The intention that control is implicit in identifying what is reasonably practicable is consistent with the decisions of courts in Australia. Most of these decisions have assumed the relevance of control and have dealt with questions about whether, in the particular circumstances, the duty holder had control or whether the duty holder should have exercised the control they had.

# 3 Step one – Identifying the circumstances, hazards and risks

The first step in determining what is reasonably practicable is to identify the relevant circumstances, hazards and risks.

## 3.1 What are the circumstances?

What is reasonably practicable to do will depend on a number of factors present at the particular time in question, for example:

- the physical environment in which the activity occurs as this can affect:
  - how activities may be carried out
  - the hazards and risks that may arise
  - the availability of things necessary to minimise risk (e.g. energy sources or communication systems)
- the suitability of particular control measures (e.g. whether plant can be moved to ground level to eliminate the need to work at a height)
- the people involved in the activity, including whether there are multiple parties
- the processes that are already in place or need to be in place
- legislation that limits or directs how an activity may be carried out (e.g. conditions on licences or requirements to comply with regulations or by-laws relevant to the particular activity or place)
- the time allowed for the activity to be carried out.

## 3.2 What are the hazards arising from the work or the environment?

A hazard is a situation or thing that has the potential to harm a person. Hazards at work can include noisy machinery, a moving forklift, chemicals, electricity, working at heights, and bullying or violence at the workplace.

The PCBU must identify each hazard associated with particular work, the work environment and things used to carry out the work. Hazards can be identified through various means, including:

- workplace inspections
- consulting with workers
- obtaining and considering information about the work, including from:
  - relevant codes of practice
  - the regulator
  - reputable technical standards (e.g. those published by Standards Australia)
  - industry publications
  - published scientific and technical literature.

### 3.3 What are the risks associated with those hazards and how serious are they?

Having identified the hazards that may cause harm, it may be necessary to identify and assess the risks associated with each hazard to determine what control measures should be used.

Each hazard may cause different types of harm, each of which may be more or less likely.

The WHS Act requires the likelihood and degree of harm to be weighed up when identifying what is reasonably practicable. This is commonly known as assessing the risk. Where the risk will be higher, the more likely the harm is to occur or the greater the degree of harm that may occur. The higher the risk, the more a duty holder should do to eliminate or minimise the risk.

#### Example

Keeping cash on premises provides the potential for a robbery to occur (a hazard) and this may cause physical harm (e.g. being assaulted) or psychological harm (e.g. post-traumatic stress disorder). The work environment, including physical barriers, may mean the likelihood of serious injury from being assaulted is low. The likelihood of psychological trauma may be much higher.

Each of the types of harm and the likelihood of them occurring should be considered when identifying what should be done to control the risks.

Eliminating or minimising the potential for exposure to the hazard will lower the likelihood of harm. Implementing control measures may lower the degree of harm that might result.

#### Example

Removing the need to work at height will eliminate the risk of a fall, that is, it will eliminate the hazard. Providing perimeter protection will lower the likelihood of a fall occurring. The placement of nets or other devices will lower the degree of harm that may be suffered if a fall occurs.

A risk assessment may not be necessary for all risks, but will be needed in most cases to allow the duty holder to consider what steps may reasonably be required to eliminate or minimise the risk.

A risk assessment should be done when:

- there is uncertainty about how a hazard may result in injury or illness
- the work activity involves a number of different hazards and there is a lack of understanding about how the hazards may interact with each other to produce new or greater risks
- changes at the workplace occur that may impact the effectiveness of control measures.

A risk assessment is mandatory under the WHS regulations for high risk activities such as entry into confined spaces and diving work.

### 3.4 The importance of consultation

Consultation with workers and others who are or may be involved in the particular work or workplace is an important means of obtaining relevant information. This is one of the reasons why consultation is a requirement under the WHS Act.

The WHS Act requires a PCBU to consult, so far as is reasonably practicable, with workers who carry out work for the business or undertaking and who are, or are likely to be, directly affected by a matter relating to work health and safety. A PCBU must consult with a health and safety representative if the workers are represented by one, so far as is reasonably practicable, and should also consult with any health and safety committee established for the workplace.

Furthermore, the WHS Act requires a duty holder consult, cooperate, and coordinate activities, so far as is reasonably practicable, with all other persons who have a work health and safety duty in relation to the same matter.

It should never be assumed that someone else is taking care of a health and safety matter. A PCBU must find out which duty holders are doing what, and work with them in a cooperative and coordinated way so that risks are eliminated or minimised so far as is reasonably practicable.

When entering into contracts, a duty holder should review the job to be carried out, discuss any safety issues that may arise and how they will be dealt with, and communicate their safety requirements and policies. Remember that a duty holder cannot transfer their responsibilities to another person.

## 4 Step two – Determine what you can do

Once the duty holder understands the hazards and risks, the next step is to ask what can be done to eliminate or minimise the risks.

The WHS Act requires a duty holder to consider the ways of eliminating or minimising risks. There may be a number of different ways to minimise a risk, each of which may reduce the likelihood or severity of harm to a different degree. Some of these control measures may operate effectively on their own, while others may need to be used in combination.

It is therefore necessary to identify options for eliminating or minimising risk to determine what can reasonably be done in the circumstances. The duty holder should identify as many control measures as possible to give them the greatest scope to choose and apply the most appropriate means to eliminate or minimise a risk in the particular circumstances.

### 4.1 Deciding how risks can be eliminated or minimised (risk control)

The hierarchy of control identifies the various types of control measures that should be used and is set out in the following diagram.

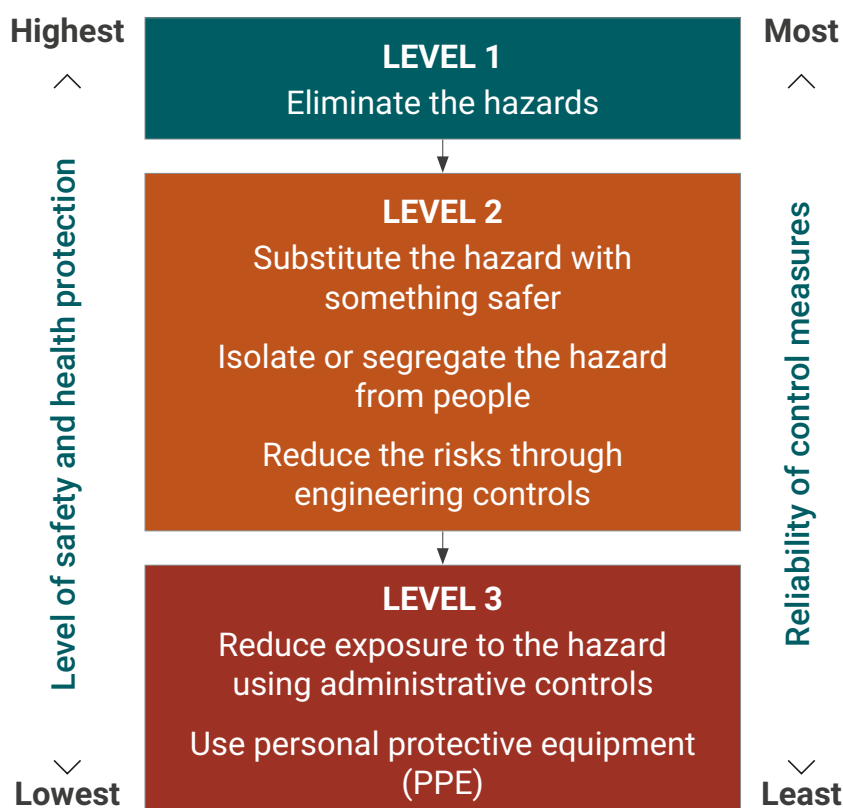


Figure 1 Hierarchy of control

The WHS regulations require a duty holder to start at the top of the hierarchy and move down through it, considering at each stage whether any risk remains and whether further control measures will minimise the risk.

The hierarchy commences with Level 1 control measures. These are the measures most likely to eliminate the risk or hazard. Each subsequent level in the hierarchy refers to control measures that are less likely to minimise the likelihood, or the degree, of harm.

The WHS regulations require specific control measures for some types of risks. These include removal of people from lead risk work, fall arrest systems, guarding on plant, provision of air-supplied respiratory equipment for emergency entry into confined spaces, and instruction and training.

Codes of practice also include detailed information about control measures that may be applied to specific hazards. While duty holders are not obliged to comply with codes of practice, they are expected to identify and consider this information. A court may have regard to a code of practice approved under the WHS Act as evidence of what is known about a hazard or risk, associated risk assessments and control measures. They may rely on the code in determining what is reasonably practicable in circumstances to which the code relates.

There are numerous other sources from which a duty holder may obtain information on control measures, for example:

- the regulator
- reputable technical standards, such as those published by Standards Australia
- industry publications
- published scientific and technical literature.

## 4.2 Is the control measure available and suitable?

Investigations and inquiries may identify many ways to eliminate or minimise a particular type of risk. Some of these may, however, not be available to the PCBU or may not be suitable in the particular circumstances.

### Examples

- A control device may not have been introduced into the Australian market, or may be incompatible with Australian operating conditions.
- Radio communication to minimise risks from people working in isolation or in remote locations may not be suitable in areas where the signal is poor or there is none.
- Mechanical lifting aids may not be able to operate in areas where there is insufficient room to move them around.
- Equipment may not be able to be used in areas where the necessary energy source, such as electricity or gas, is unavailable.
- Particular processes may not be able to be used if they rely on circumstances, including the behaviour of others, over which the duty holder has no control.

A duty holder is only required to do what they are reasonably able to do at the particular time and in the particular circumstances. In determining whether a person has breached a duty, a court will consider the control measures that were available at the particular time of the activity or event, not those that may have subsequently become available.

It is also important to ensure a particular risk control will work before relying on it. In some cases, additional control measures may be needed to minimise the risk so far as is reasonably practicable.

## 5 Step three – Determine what you are reasonably able to do

A PCBU is not required to do all that can be done in the circumstances, only what they are *reasonably able to do*.

### 5.1 Start by considering the highest level of protection

The WHS Act requires a PCBU to first eliminate the risk if it is reasonably practicable to do so. If not, the risk must be minimised so far as is reasonably practicable. The hierarchy of control demonstrates how this process should be managed, as covered earlier in this guideline.

After identifying available and suitable control measures, the duty holder should consider whether the control measure that is most likely to eliminate the risk, or minimise it the most, is able to be applied.

If the control measure that will provide the highest level of protection is possible, a duty holder should implement that control measure, unless it is not reasonably practicable to do so in the particular circumstances.

### 5.2 How to determine what is reasonable

Just because something can be done does not mean that it is reasonably practicable for the duty holder to do it. What is required is an assessment of what a reasonable person in the position of the duty holder would do in the circumstances, taking a careful and prudent approach and erring on the side of caution.

As indicated above, to determine what is reasonably practicable, the PCBU must take into account all relevant matters. Other matters that might be relevant are:

- the duty holder's ability to rely on the skill and expertise of others and what is required for that reliance
- the extent to which each possible control measure or combination of control measures lowers the likelihood or degree of harm
- the capacity to influence and control the particular activity.

The aim must be to keep trying to lower the likelihood and degree of harm until further steps are not reasonable in the circumstances. Questions a PCBU should ask to identify if they are doing enough are:

- Is there more I can do to either:
  - minimise the risks myself?
  - ensure another party with the relevant skills and expertise can properly implement health and safety measures and minimise risks?
- If the answer is yes to either of the above, is it reasonable for me not to do so?

The more likely the risk, the more that is required to be done to eliminate or minimise it. The greater the degree of harm, the more that is required to be done to eliminate or minimise it. If there is at least a moderate likelihood of death or serious injury, then the highest level of protection should be provided. If there is a high likelihood of repeated or multiple injury (even of a low degree such as strains and cuts) then a high level of the risk controls should be applied.

It may not be reasonable to require expensive and time-consuming controls (e.g. some engineering controls) to be applied to minimise or further minimise a low likelihood of minor harm. It may, however, be reasonable to apply less expensive controls such as training and supervision to further lower the likelihood of the risk.

When considering each control or combination of controls, a duty holder must take into account the likelihood of a particular control being effective. Guards may be removed, systems of work may not be understood and followed, and personal protective equipment may not always be worn. Further controls, such as signs or supervision, may be needed to make a control more likely to be effective.

### 5.3 Cost

While the WHS Act specifies cost as a matter to be taken into account and weighed up with other relevant matters to identify what is reasonably practicable, this must only be done after assessing the extent of the risk and the ways of eliminating or minimising it.

The cost of implementing a particular measure may include the cost of purchase, installation, maintenance and operation of the control measure, and any impact on productivity as a result of the introduction of the control measure.

A calculation of the cost of implementing a control measure should also take into account any savings it will yield in reductions in incidents, injuries, illnesses and staff turnover, as well as improvements in staff productivity.

Before determining whether expenditure to eliminate or minimise a risk is reasonably practicable in the circumstances, the PCBU must consider:

- the likelihood and degree of harm of the hazard or risk
- the reduction in the likelihood or degree of harm that will result if the control measure is adopted.

The more likely the hazard or risk, or the greater the harm that may result from it, the less weight should be given to the cost of eliminating the hazard or risk.

If there are several available options for eliminating or minimising a risk and they would achieve the same level of reduction in the likelihood or degree of harm, a duty holder may choose to apply one or more of the least costly options. Using more expensive control measures may not be required to minimise a risk that is low in likelihood or severity of harm.

It may not be reasonable to require control measures that are expensive to apply in terms of time or money, such as engineering controls, to minimise or further minimise a risk that has a low likelihood of occurring and would cause minor harm. It may, however, be reasonable to apply less expensive controls, such as training and supervision, to further lower the likelihood of the risk.

Choosing a low-cost option that provides less protection, simply because it is cheaper, is unlikely to be considered a reasonably practicable means of eliminating or minimising risk.

Where the cost of implementing control measures is grossly disproportionate to the risk, it may be that implementing them is not reasonably practicable and therefore not required. This does not mean however that the duty holder is excused from doing anything to minimise the risk so far as is reasonably practicable. A less expensive way of minimising the likelihood or degree of harm must instead be used.

### Example

The cost of engineering changes to plant will be high and there is only a slight risk of minor sprains. The engineering changes may therefore not be reasonably required. What may be required instead are detailed instructions on how to safely use the plant, provision of training and a higher level of supervision to ensure the system of work is followed. Each of these measures will lower the likelihood of the risk occurring and may lower the degree of harm that may be suffered.

If the degree of harm is significant, for example where death or serious injury is at least moderately likely, then it is unlikely the cost of implementing available and suitable control measures to eliminate or minimise the risk would ever be so disproportionate as to justify not doing so. In these circumstances, it may be reasonable to expect and require a duty holder to eliminate the risk by ceasing the relevant activity if, after all 'affordable' control measures have been considered, there remains a significant risk of serious injury or illness.

### Capacity to pay is not relevant

The question of what is reasonably practicable is determined objectively, not by reference to the particular PCBU's capacity to pay or other individual circumstances. A PCBU cannot expose people to a lower level of protection simply because it is in a lesser financial position than another PCBU facing the same hazard or risk in similar circumstances.

If a PCBU cannot afford to implement a control measure that should be implemented after following the weighing up process set out in the WHS Act, they should not engage in the activity that gives rise to that risk.

## 5.4 Can you rely on someone else to take the necessary action?

While the duties prescribed by the WHS Act require the PCBU to ensure certain health and safety outcomes, they do not necessarily require the PCBU to provide everything necessary to achieve these outcomes. For example, a PCBU must ensure the provision of safe plant, but does not need to provide the safe plant itself if someone else is doing so.

It is common practice for a PCBU to engage a specialist or technical expert to carry out work. In these situations, the PCBU is entitled to rely on the expertise of the specialist or technical expert.

However, the PCBU still carries some responsibility for ensuring the requirements of the WHS Act are met. For example, it is still incumbent on the PCBU to ensure, so far as they are reasonably able, the specialist or technical expert:

- does in fact have the required expertise to ensure the work can be carried out safely
- has in place the systems, processes and procedures to ensure the work can be carried out safely
- is carrying out the work in a manner that does not create a health and safety risk for the PCBU's own workers or others at the workplace.

There may be situations where a duty holder has no option but to rely on someone else.

### Example

Rules relating to rigging require a rigger who is competent and properly authorised to do the work to have exclusive control over a lift. Other duty holders involved in the activity may have no option but to rely on the rigger to carry out this task safely.

To demonstrate it is reasonably practicable to rely on the rigger to eliminate or minimise risks associated with use of the lift, a PCBU must be able to show they have, so far as they are reasonably able, checked the rigger:

- has the relevant skills, experience and licence (if required)
- has systems, procedures and equipment that will enable them to eliminate and minimise risks
- is applying those systems to the particular task, for example applying processes for risk assessment, induction or inspection.

The duty holders may have control over other aspects of the activity such as the work environment in which the lift is operating, including where their workers are situated on the ground during the lift and scheduling the lift's operation. The duty holders must still do what is reasonably practicable to eliminate or minimise the risks associated with those things over which they have control.

## 6 Step four – Reviewing risk controls

The duties in the WHS Act and regulations are ongoing and must be complied with at all times.

Circumstances can change over time and this may result in a change in the hazards and risks, or the ways in which they may be eliminated or minimised. This may mean that what was reasonably practicable at an earlier time is no longer so, and something more or different may need to be done to control the hazards and risks.

Relevant changes include:

- a change in a work process
- a change in the physical environment
- different people undertaking the work with different skills or means of coordination of activities
- new hazards are identified through advances in science or through experience
- new ways to eliminate or minimise risks are identified or invented.

Therefore, the control measures a duty holder puts in place must be reviewed regularly to make sure they continue to meet the standard of what is reasonably practicable.

### 6.1 When should risk controls be reviewed?

There are certain times when a duty holder must review control measures and revise them if necessary. Reviewing a control measure is required under the WHS regulations:

- when the control measure is not effective in controlling the risk
- before a change at the workplace that is likely to give rise to a new or different risk that the control measure may not effectively control
- if a new hazard or risk is identified
- if the results of consultation indicate a review is necessary
- if a health and safety representative requests a review.

# Appendix A List of cases relevant in determining reasonable practicability

*Chugg v. Pacific Dunlop Ltd* [1990] HCA 41; (1990) 170 CLR 249

*Slivak v. Lurgi (Australia) Pty Ltd* [2001] HCA 6; (2001) 205 CLR 304

*Reilly v. Devcon Australia Pty Ltd* [2008] WASCA 84; (2008) 36 WAR 492

*Tobiassen v. Reilly* [2009] WASCA 26; (2009) 178 IR 213

*Baiada Poultry Pty Ltd v. The Queen* [2012] HCA 14

*Kirwin v. The Pilbara Infrastructure Pty Ltd* [2012] WASCA 99