

LEGISLATION

Reasonably Practicable

This information bulletin provides guidance for employers and workers on the meaning and application of the concept of 'reasonably practicable' under the [Workplace Health and Safety Act](#). More information can be found in Section 5 of the Act.

Duties under the Act

A number of the duties of an employer under the Act are qualified by the words "so far as is reasonably practicable". This relates to the extent to which the employer must go in order to meet the duty and what is 'reasonably practicable' in a particular situation will vary depending on the circumstances.

These duties are framed in this way to take account of the range of circumstances that may apply and to provide the ability to consider all the relevant factors when determining what it is 'reasonably practicable' to do or to expect an employer to do.

The sections of the Act where 'reasonably practicable' qualifies the duties are:

Section 55 Employer's general statutory duty of care

- (1) An employer has a duty (the employer's general statutory duty of care) to ensure, as far as reasonably practicable, that workers and others are not exposed to risks to health or safety arising from the conduct of the employer's business.

Section 55

- (3) An employer carries out the general statutory duty of care by proceeding, in a systematic way, to:
 - (a) Identify hazards; and
 - (b) Identify, and assess the seriousness of, risks resulting from the hazards; and
 - (c) Determine appropriate risk management measures:
 - (i) to eliminate, as far as reasonably practicable, avoidable risks; and
 - (ii) to minimise, as far as reasonably practicable, unavoidable risks; and
 - (d) Carry the risk management measures into effect; and
 - (e) Monitor and review the effectiveness of the measures.

Section 56 Duties in regard to workplace

- (1) An employer has a duty to take all reasonably practicable measures to ensure that the workplace, and the means of entering and leaving it, are safe.

Section 57 Duties in regard to workplace infrastructure, equipment and materials

- (1) An employer has a duty to take all reasonably practicable measures to ensure that:
 - (a) workplace infrastructure or equipment, and workplace materials, are safe; and

- (b) workers are, where necessary, properly instructed in the use, and warned about risks involved in the use, of workplace infrastructure or equipment, and workplace materials; and
- (c) if workplace materials are poisonous – adequate toxicological information is available.

Definition of ‘reasonably practicable’

The Act provides a definition of this term as follows:

Section 5 Meaning of reasonably practicable

The question whether particular risk management measures are reasonably practicable is to be decided with regard to:

- (a) the likelihood that the risk could result in injury; and
- (b) the seriousness of any injury that could result from realisation of the risk; and
- (c) the availability, suitability, effectiveness and cost of the measures; and
- (d) any other relevant factors.

This definition sets the framework for judgements to be made about what is reasonably practicable in relation to meeting the duty and provides guidance to employers and to workplace safety officers when considering what will constitute compliance with the legal obligation in a particular circumstance.

Determining what is reasonably practicable

All of the provisions of the Act must be considered in the context of the stated Objects of the Act which aim, among other things, to achieve the highest possible standards of occupational health and safety and to achieve as far as possible elimination of avoidable risks, and control and mitigation of unavoidable risks, to the health or safety of workers and others.

The test for what is reasonably practicable is an objective test; that is, a duty holder is to be judged by the standard of behaviour expected of a reasonable person in the duty-holder’s position who is required to comply with the same duty and is:

- committed to providing the highest level of protection for people against risks to their health and safety; and
- proactive in taking measures to protect the health and safety of people.

When looking at what it is reasonably practicable to expect or require in a particular situation, all the elements of the definition of ‘reasonably practicable’ must be taken into account (as shown by the ‘and’ between the paragraphs rather than ‘or’). The elements are not ranked – each is of equal importance and must be given equal weight and each one must be balanced against each of the others.

No single matter determines what is (or was at a particular time) reasonably practicable in relation to ensuring health and safety. The test involves a careful weighing up of each of the matters in the context of the circumstances and facts of the particular case with a clear presumption in favour of safety.

The following are some examples of the questions that can be asked against each of the elements of the definition in order to identify their relevance in relation to the realisation of a risk:

The likelihood that the risk could result in injury

How likely is it to happen? How often are people exposed? Has it happened before (whether or not an injury resulted)? Has it happened in other workplaces in similar circumstances? How skilled or experienced are the workers who perform the task?

The seriousness of any injury that could result from realisation of the risk

What level of injury is possible? (For example, superficial injury, reversible injury such as strains, lacerations, bruising etc. or irreversible injury such as amputation, death or even multiple deaths.) Clearly this has a bearing on what it is reasonable to expect to be done to remove or mitigate risk.

The availability, suitability, effectiveness and cost of the measures

Is a solution already available? Is it suitable to this application (or can it be made suitable)? Can a solution be developed? Is it effective in eliminating or reducing the likelihood or degree of harm from a hazard or risk, without introducing new and potentially higher risks? What would be the cost?

NT WorkSafe is the administrative arm of the Work Health Authority and administers the *Workplace Health and Safety Act*, the *Workers Rehabilitation and Compensation Act*, the *Dangerous Goods (Road and Rail Transport) Act*, the *Dangerous Goods Act* and the *Radioactive Ores and Concentrates (Packaging and Transport) Act* and related Regulations on behalf of the Northern Territory Government. 09.01.14 – 11/2008
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Cost is only one of the factors to be taken into account in deciding what needs to be done to meet the legal obligation – it must not be the determining factor as to whether or not risk must be controlled.

Any other relevant factors

There are a range of other factors that may be relevant to a particular circumstance. Among these is what is referred to as the 'state of knowledge'. This has been defined as: "What the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard.

Knowledge about the hazard or risk, or any ways of eliminating or reducing the hazard or risk, must be determined objectively by reference to what the person concerned actually knows and what a reasonable person in the duty-holder's position who is required to comply with the same duty should know."

The state of knowledge about a particular hazard or risk and ways to eliminate or reduce it is also formed by what could be called the 'industry standard'; essentially if others in the same or similar industries have eliminated or controlled a risk then it is reasonable to take the view that it is 'reasonably practicable' for others to do the same.

The state of knowledge in relation to a particular hazard or risk is also informed by:

- Regulations made under the Act
- Other laws that relate to the control of hazards and risks
- Relevant Codes of Practice and publications issued by NT WorkSafe
- Relevant reputable technical standards, such as those published by Standards Australia
- Material published by other Australian occupational health and safety regulators
- Industry practice and publications
- Relevant published scientific and technical literature etc.

Once the likelihood and seriousness of potential injury from a hazard or risk is understood and the availability, suitability and effectiveness of a relevant safety measure to eliminate or reduce the hazard or risk is established, that safety measure should be implemented unless the cost of doing so is so disproportionate to the benefit (in terms of reducing the severity of the hazard or risk) that it would be clearly unreasonable to justify the expenditure.

The greater the likelihood of the hazard or risk concerned eventuating, and/or the greater the degree of harm that would result if the hazard or risk eventuated, the less weight should be given to the cost of eliminating the hazard or risk. If the degree of harm is significant, for example death or serious injury is highly likely, then it is extremely unlikely that the cost of eliminating or reducing the risk would ever be so disproportionate to the risk to justify a decision not to implement an available and suitable control measure.

As indicated previously, the question of what is 'reasonably practicable' is to be determined objectively and not by reference to the duty holder's capacity to pay or other particular circumstances. If two dutyholders are faced with the same hazard or risk in similar situations, one cannot expose people to a lower level of protection simply because it is in a lesser financial position than the other.

If a particular dutyholder cannot afford to implement a control that is not so disproportionate to the risk as to be clearly unreasonable, the duty-holder should not engage in the activity that gives rise to that hazard or risk.

If there are options available for eliminating or reducing a risk that achieve the same level of reduction in likelihood or degree of harm, a dutyholder may choose the least costly option. However, 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 reducing risk.

The costs of implementing a particular control may include costs of purchase, installation, maintenance, operation of the control measure and any impact on productivity as a result of the introduction of the control measure. A calculation of the costs of implementing a control measure must also take into account savings from fewer incidents, injuries and illnesses, potentially improved productivity and reduced turnover of staff.

However, simply because a particular solution is arguably not 'reasonably practicable' this doesn't mean that no action is required. If there is a risk of injury then the risk must be controlled (so far as it is reasonably practicable) and the judgement to be made is only about exactly what it is reasonably practicable to do. ***Doing nothing does not meet the legal requirement.***

If it is determined objectively that the best or highest order control is not reasonably practicable, the workplace should then implement lower order controls such as restricting the task to qualified and experienced workers, increased levels of training and supervision, personal protective clothing or equipment etc. These options are not necessarily alternatives; a combination of a number of them may be required to reduce the risk so far as it is reasonably practicable.

In addition, just because the higher order control is not reasonably practicable at present doesn't mean that the workplace should not be working toward it; making allocations in new budget periods, removing risk when equipment is replaced or upgraded and so on, and using lower order controls as interim measures only.

For further information please contact NT Worksafe on 1800 019 115 or go to worksafe.nt.gov.au