

NSW Work Health & Safety Act



Module: Reasonably Practicable

What is different in WHS Act in the use of reasonably practicable?

- Current NSW OHS Act includes reasonably practicable as a **defence** in any proceedings against a person for an offence
- Under the WHS Act the **prosecution** will have to prove the case thus abolishing the current reverse onus of proof situation
- Under the WHS Act the obligations of the PCBU will be **qualified by** reasonably practicable rather than the current **absolute duty** in the NSW Act





Overview of what WHS Act says about reasonably practicable

The PCBU has a duty to ensure, **so far as is reasonably practicable**, the health & safety of workers that are:

- engaged to carry out work for their business or undertaking
- placed with another person to carry out work for that person, or
- influenced or directed in carrying out their work activities by the person, while the workers are at work in the business or undertaking



Reasonably practicable includes:

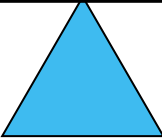




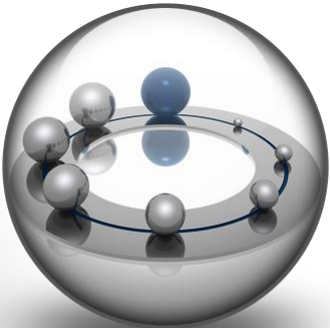
Reasonably practicable: Getting the balance

Likelihood, degree of harm, knowledge etc

Time, effort and cost to eliminate or reduce risk



Reasonably practicable is the balance between risk and time, effort and cost





Reasonably practicable: Getting the balance



High level of time, effort and cost to eliminate or reduce risk

E.G little likelihood of risk occurring risk/minimal harm

Level of time, effort and cost way out of proportion with benefits in risk reduction





Reasonably practicable in the workplace

- For **common hazards** such as noise, falls and manual handling there are regulations that define what has to be done to control risks. These common hazards also have supporting **codes of practice** to provide guidance on how to control risks.
- For **more complex or workplace specific risks a risk management approach** can be used to establish what is reasonably practicable
- The most common decisions about reasonably practicable relate to the type of risk control to be used (**the hierarchy of control**). In other words what is the highest level of protection that is reasonably practicable.



Reasonably practicable: the Hierarchy of Control

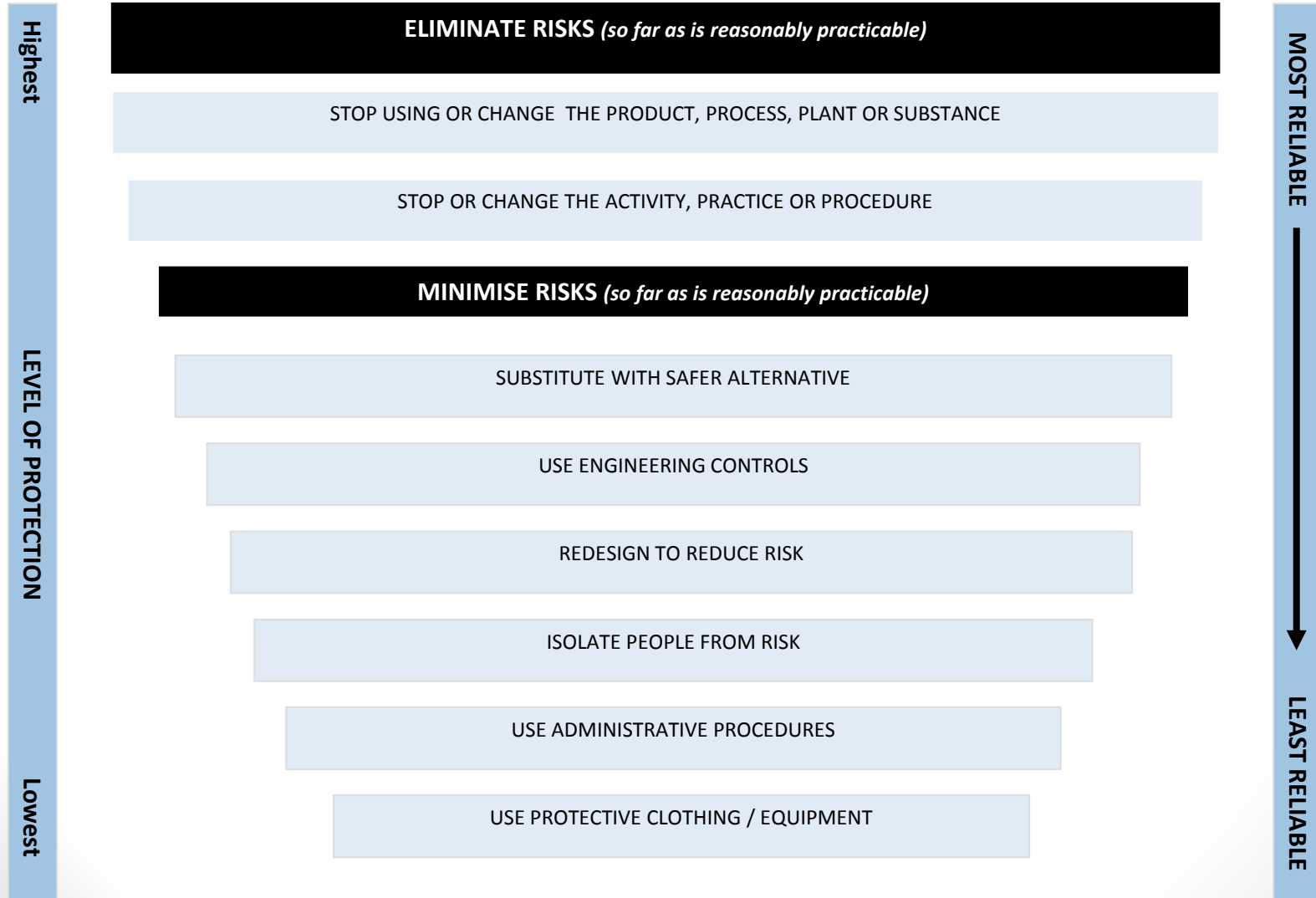
- The WHS Act advocates the **highest level of protection as is reasonably practicable** and the model regulations in many cases mandate a set of preferred controls consistent with the **hierarchy of control**
- Consequently the level at which controls are applied is subject to decisions about reasonably practicable.

For example, falls from height are regulated with a preferred set of controls from **design and engineering** down to **personal protection measures**.





Reasonably practicable: The hierarchy of control





What is the likely impact of these changes?

- Major change is the replacement of an **absolute** duty of care with a duty **qualified by what is reasonably practicable**
- The **reverse onus of proof** has been removed and the **prosecution has to make the case** that an offence has been committed
- Workplaces **currently complying** with NSW legislation will be well placed for the new laws
- Workplaces with a form of **risk management** to tailor their control measures to their particular circumstances will be well placed for the new laws

