

What is deemed to be reasonably practicable

22 Meaning of reasonably practicable

In this Act, unless the context otherwise requires, reasonably practicable, in relation to a duty of a PCBU set out in subpart 2 of Part 2, means that which is, or was, at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters, including—

- (a) the likelihood of the hazard or the risk concerned occurring; and
- (b) the degree of harm that might result from the hazard or risk; and
- (c) what the person concerned knows, or ought reasonably to know, about—
 - (i) the hazard or risk; and
 - (ii) ways of eliminating or minimising the risk; and
- (d) the availability and suitability of ways to eliminate or minimise the risk; and
- (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.



International Certification and Accreditation ASCB

We again remind all clients of the benefits of certification. We can issue certificates for management systems and for training to AS/NZS standards. Our system certificates are recognised by nearly all Local Authorities (the exception is Auckland). Our company is also able to train and qualify auditors to ISO 19011, 17021 and 17024. We can also do training to international standards for hazardous work such as heights and confined spaces.

We are pleased to announce that we can now arrange for a very economical additional audit that will cost \$200 plus a similar fee for audit time. This certificate has international status and this means that NZ and Australian buyers are likely to be much more impressed with the additional qualification and certification presented by the client.

SSL Manager Name _____

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News & views from Summit October 2015



What to do before 4 April 2016 when the new Act starts

Most people do not know, but the new Act for Health and Safety at Work started mid September by assent of the Governor General and the HSE Regulations are automatically in full force ie both the old ones and any new ones. If we continue to follow Australia, there will be about 800 pages of Health and Safety Regulations.

The intelligent managers will take action to minimise their risks from both a staff and subbie point of view. The most important thing that you can do right now is to review your JTAs or job task analysis for all machinery, plant and complex jobs that can involve potential hazards. Make sure you have a **sufficient list of JTAs** and get them signed by all members of staff and all contractors or subbies that work at your site. Contact us to get help with any new JTA sheets you may need for unusual or technical tasks.

Secondly, but equally important, make sure that when you hire a worker or engage a Sub-Contractor, you have high quality screening systems to weed out the John Profumos (pretenders) that will crash you and your business. There are now many individuals with drug problems. They can hide the addiction more cleverly than you think. There are others that cannot use any logic and can cause havoc in your business. **HR tests and HSE tests** are important to detect the potential workers who can wreck your plant and equipment because they do not care about the cost to you and they think that you have an obligation to them. They will probably have serious accidents and bring you huge fines. Contact us for tests that we can issue to you provided you do not let the workers get to keep them. They must be returned to us for marking.

Step three is to make sure you also have and use **survival tests to test out the logic** of potential workers so that you do not end up having to deal with accidents that make a mockery of common sense. Many workers do not care one iota about whether you sink or swim. Get our survival series and run your own tests or get a Consultant to help you.

Then step four is relatively simple and you need to do this one too. Did you know that there are **29 year olds that have had 29 ACC claims** and you are about to get the next batch. You must make sure that you have our HR forms in use to detect the ACC traveller or the ACC professional. You must identify the ACC claim specialists before they get you.



2.

No Contracting Out, means what it says and says what it means

Sec 28 No contracting out

A term of any agreement or contract that purports to exclude, limit, or modify the operation of this Act, or any duty owed under this Act, or to transfer to another person any duty owed under this Act—

- (a) has no effect to the extent that it does so; but
- (b) is not an illegal contract under the Illegal Contracts Act 1970.

In plain language, it is possible to have a contract that requires the offeree (recipient) to perform his or her obligations to comply with the law. It is not lawful to have a contract that endeavours to transfer your obligations to another person. Our office can provide clients with up to 20 different agreements that are designed to enforce safety performance.

Notification of small accidents is important

We have many clients who consider that minor accidents should not be reported. They think that it is drawing too much attention to their site for a report to be made. They usually do not understand the law and classify a minor accident as a NOT serious harm that does not need to be reported. Any serious cut that requires a stitch at the local Doctor must be reported. Furthermore, it is good practice to make a report as this indicates to the Dept of Labour MBIE, that you are "on the ball" and diligent in counting small injuries and not just dealing with the big ones. This will always augur well for you when you do have a big one. The best way to report a minor serious harm is to call our office and let us do it. Sometimes, the official who answers will make things much easier for us and will tell us whether we need to go further and the direction to take to produce the best result in terms of satisfying the Inspector. It is always important to freeze the scene of the accident until we get the "all clear" or release from MBIE. You need to help us fill in FORM 1 which is the serious harm report. You need to know that our role is to help identify incidents or events that also need reporting at the time such as explosions, electric shock or minor falls that are now reportable.

We also act for Staff (the workers)

The new Health and Safety at Work Act brings in major fines or potential major fines for all individuals regardless of whether they are Managers or Workers. The maximum fine is \$600,000 for an individual plus up to five years in prison.

It is not commonly known that we also help defend workers and this is a special part of our service. Naturally enough our first job is to work out a proper defence for the client who pays our bills.

But after we prepare a defence for the company and the managers we also help prepare a defence for the workers that were involved as they can easily be implicated and can face huge fines. So far about 30 workers have been given personal fines under the Occ Safety laws and have had to face severe hardship for years to come.



3.

Duties of Officers – Health & Safety Warrant of Fitness

Section 44 All officers must exercise due diligence.

If a PCBU has a duty or an obligation under this Act, an officer of the PCBU must exercise due diligence to ensure that the PCBU complies with that duty or obligation. An officer of a PCBU must exercise the care, diligence, and skill that a reasonable officer would exercise in the same circumstances, taking into account (without limitation)—

- (a) the nature of the business or undertaking; and
- (b) the position of the officer and the nature of the responsibilities undertaken by the officer.

Due diligence includes taking reasonable steps—

- (a) to acquire, and keep up to date, knowledge of work health and safety matters; and
- (b) to gain an understanding of the nature of the operations of the business or undertaking of the PCBU and generally of the hazards and risks associated with those operations; and
- (c) to ensure that the PCBU has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking; and
- (d) to ensure that the PCBU has appropriate processes for receiving and considering information regarding incidents, hazards, and risks and for responding in a timely way to that information; and
- (e) to ensure that the PCBU has, and implements, processes for complying with any duty or obligation of the PCBU under this Act; and
- (f) to **verify the provision and use of the resources and processes** referred to in paragraphs (c) to (e).

Extension of time for compliance with improvement notices

Section 104

- (1) This section applies if a person has been issued with an improvement notice.
- (2) An inspector may, by written notice given to the person, extend the compliance period for the improvement notice.
- (3) However, the inspector may extend compliance period only if the period has not ended.
- (4) In this section, compliance period—
 - (a) means the period stated in the improvement notice under section 103(1); and
 - (b) includes any extension of that period under this section.

NB: you should note that if the time given by a Safety Rep in an improvement notice is not sufficient for the work to be implemented, you must appeal to the Secretary of Labour or a Local Inspector for an extension of time. We believe that Safety Reps in some cases will demand an immediate and unrealistic response from the employer and the time will elapse and this will mean that an Inspector is not able to grant an extension and instead must now look at a prosecution for an obvious failure to complete the work on time. For the record, we need to state that we have never been denied an extension of time by DoL.

Warning Signs are now Available

Summit Systems Ltd has designed three signs to help Clients comply with the new laws.

- a) Large warning sign for front of site 392x550
- b) Medium size sign for hazardous area 392x470
- c) Small info sign for rear entrance 392x400

Contact your Local Consultant or our Office.

