

Regulator's compliance and enforcement model

What does 'reasonably practicable' mean?

How is it achieved?

Small Mine Roadshow

February / March / April 2025



What is covered in this presentation



NSW Resources Regulator – About us !



Vision and mission



Compliance and enforcement model



Reminder of the elements of duty of care



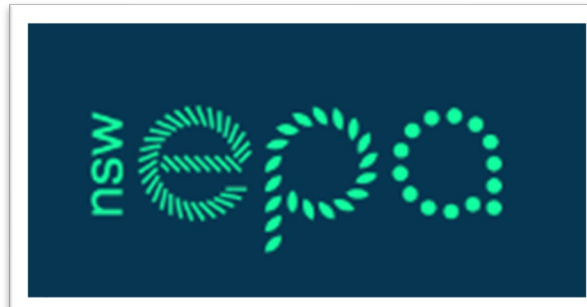
Reasonably practicable – (definition)



How is it achieved



Take home messages





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[Mining and Exploration](#) ▾

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NSW Resources

Supporting the growth of safe and sustainable exploration and mining in NSW





Safety →


Regulating for a safe and responsible mining, extractive and petroleum industry


Report an incident or injury	Certification	Events and education programs
Health and safety management	Inspection Programs	Licences and registrations
Notifications	Resources	Presentations
Safety alerts and bulletins	Weekly incident summary	





Our role...


 receiving and considering complaints, alleged breaches of safety incident notifications


 providing information and guidance about safety and other regulatory obligations to protect and support industry, workers, the community and the state


 conducting inspections and investigations

 assessing licensing, registration applications and grants applications for occupational licences (practising certificates and certificates of competence)

 regulating exploration activities including issuing activity approvals and ensuring compliance with title conditions and codes of practice

 taking enforcement action, such as issuing prohibition and other statutory notices and taking prosecution action

 supporting and administering the NSW Mine Safety Advisory Council and NSW Mining and Petroleum Competence Board, and

 administering the mine and petroleum site safety fund (mine safety levy)

Our Vision and Mission

VISION

A safe and responsible mining, extractive and petroleum industry

MISSION

To enable and support industry to understand and fulfil its obligations



Increase

stakeholder and community confidence in our compliance programs



Support

the responsible operation and development of regulated industries



Minimise

harm to workers, the environment and the community



Industry performance goals



Reduce the risk of serious injuries and fatalities to mine workers



Reduce the risk of occupational illness arising from airborne contaminants



Reduce the risk of mine disasters and improve first response capabilities



Increase the amount and quality of progressive rehabilitation undertaken over mine life



Reduce incidence of serious non-compliance across WHS laws and the Mining Act





Reduce the risk of injuries and fatalities to mine workers

Strategies:

- Focus on principal mining hazards and validation of critical controls.
- Maintain high levels of proactive inspection and assessment activities.
- Concentrate on the root causes and maximum reasonable consequence of an incident, not being distracted by surface causes and the severity of any resulting injuries.
- Examine human and organisational factors.
- Focus on quality data collection and analysis.
- Promote a culture of chronic unease about risk control effectiveness.



NSW RESOURCES REGULATOR STRATEGIC PLAN | 2021 - 2024



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Reduce the risk of occupational illness arising from airborne contaminants

Strategies:

- Constantly review the regulatory framework for managing airborne contaminants.
- Maintain high levels of proactive inspection and assessment activities.
- Assess and validate critical controls.
- Improve awareness among workers, supervisors and mine operators.
- Examine human and organisational factors.
- Focus on quality data collection and analysis.



Reduce the risk of mine disasters and improve first response capabilities

Strategies:

- Focus on principal mining hazards and validation of critical controls.
- Maintain high levels of proactive inspection and assessment activities.
- Focus on first response preparedness, as opposed to protracted rescue.
- Examine issues occurring internationally and across Australia, not just in NSW.
- Facilitate a collaborative approach with industry and emergency services.
- Promote a culture of chronic unease about risk control effectiveness.

Compliance and enforcement approach

Our compliance and enforcement approach sets out the principles that underpin our regulatory actions.

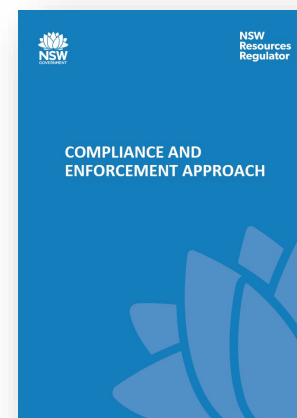
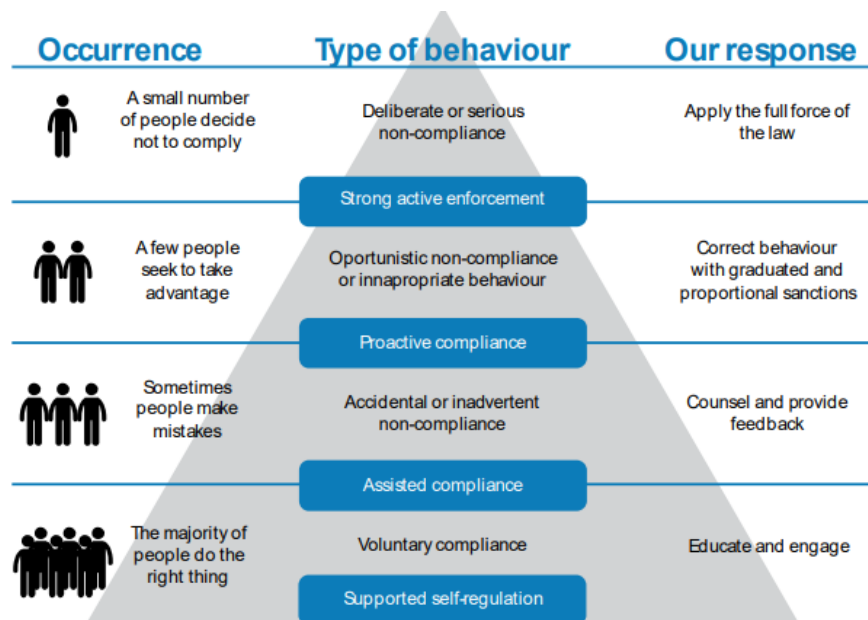
The framework is designed to ensure a consistent and responsive regulatory approach and to provide increased transparency and community confidence in relation to our regulatory activities.

As part of that approach, we produce regular reports on our activities, identify and publish our compliance priorities.

Applies escalating enforcement action to;

More serious, repeated or sustained contraventions

Other misconduct inconsistent with community expectations and public interest



Primary Duty which lays the foundation on which a business or undertaking should be built upon.

All persons have a duty.

Encompasses all aspects of work.



Main Elements of the Duty of Care (PCBU)

Safe work environment,

Safe machinery and equipment,

Safety systems of work, (RA or procedures covering people, equipment, material, work environment)

Chemicals are used, handled and stored safely (e.g. explosives, diesel etc)

Information, training, instruction and supervision are provided

Adequate workplace facilities are available

Workers' health and workplace conditions are monitored



A duty imposed on a person to ensure health and safety requires the person

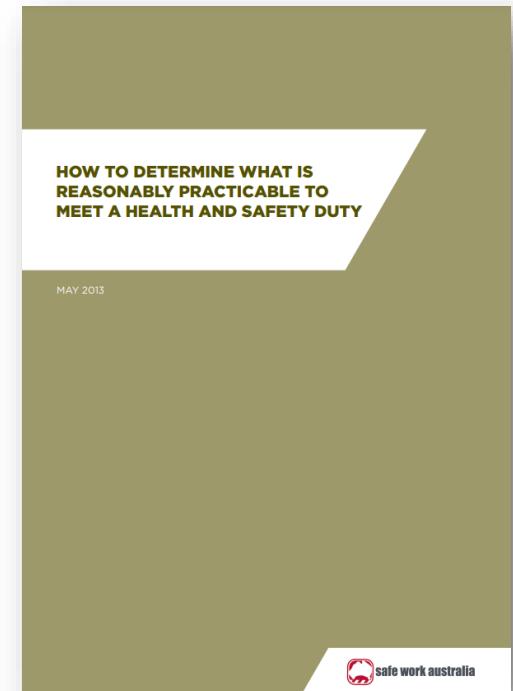
(b) if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.

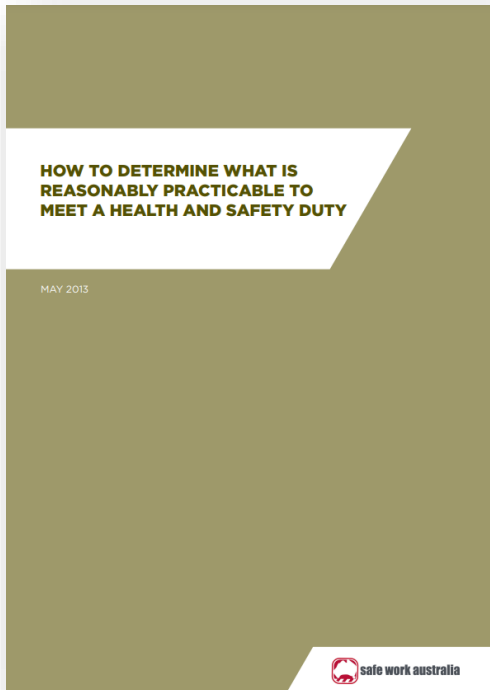


“Reasonably practicable” - definition

WHS Act 2011 –section 18... *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 ways of eliminating or minimising the risk
- (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**.





What is ‘**reasonably practicable**’ is 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.

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.

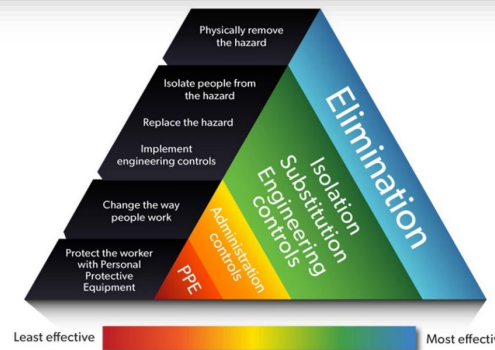
This means that what can be done should be done unless it is reasonable in the circumstances for the duty-holder to do something less.

Hierarchy of Controls

- When looking for **reasonably practicable** ways of “what can be done” the PCBU must consider the hierarchy of controls
- The PCBU must also know what a reasonable person should know, e.g. The ‘**Health and Safety at Quarries**’ guide is an excellent place to start

GOOD PRACTICE GUIDELINES

This guideline gives practical advice on health and safety control measures at quarries. The guideline also applies to surface sand, gemstone and alluvial mines and dredging operations.



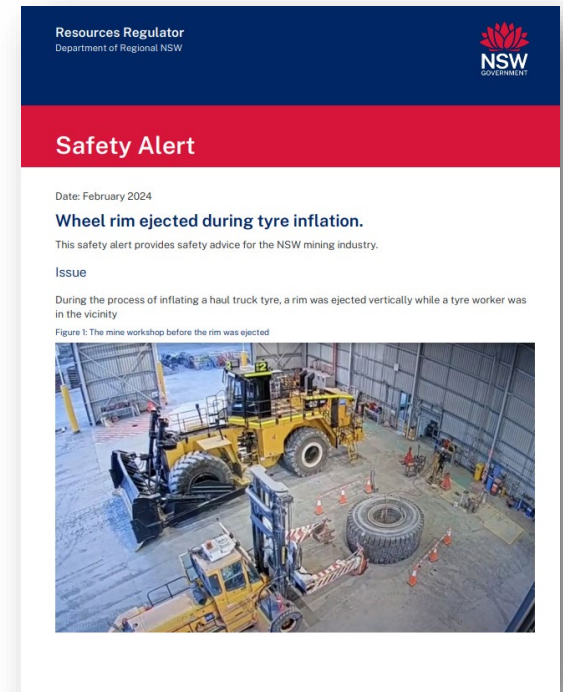
So, what is reasonably practicable?



- Eliminate - ?? (is it possible)
- Substitute - Alternative crusher circuit
 - Blend feed (wet/dry, balance PI)
- Isolate –
 - Enclose crushing plant
 - Pressurised control room
 - Airconditioned HME
- Engineer – Pre -condition ROM
 - Water sprays – additives (foam)
 - Dust extraction system
 - Engineer transfer & discharge points
 - Covered screens and conveyors
- Admin –
 - Work procedures
 - Inspection system
 - Job rotation
 - Training
 - Workplace monitoring (personal and static)
- PPE –
 - Correctly selected RPE
 - Fit testing
 - Bath Booth

Take home messages...

- **Must** ensure that access to information is available to maintain knowledge for decision making
 - Guidelines
 - Codes of Practice
 - Australian Standards
 - Legislation
 - Safety Alerts & Bulletins
 - Weekly safety incident reports
- **Must** ensure that the 'hierarchy of controls' is considered through the decision-making process
- **Must** ensure that supervisors have access to information and are trained in the agreed standards and processes e.g. 'what is reasonably practicable'
- **Must** ensure that the acceptance and rejection of control decisions are recorded – PHMP, RA, SWMS, SWP, JSA, Take 5



Questions ?

Thank you

