

Reasonable practicability in practice

A practical understanding of a legal concept

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“Acceptable level of risk”

What is an acceptable level of risk?

“Acceptable level of risk”

- within acceptable limits; and
- as low as reasonably achievable.

So what does that mean?

“Reasonably Practicable”

- The likelihood of the hazard or risk occurring;
- The degree of harm that might result from the hazard or the risk;
- What the person knows, or ought reasonably to know about:
 - the hazard or the risk; and
 - the ways of eliminating or minimising the risk,
- The availability and suitability of ways to eliminate or minimise the risk;
- After assessing the extent of the risk and the available ways of eliminating or minimising the risk, the costs associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

Roger Billingham v Thalanga Copper Mines Pty Ltd

Two lock out devices on vehicle, one manual and one automatic.

- Manual device not engaged;
- Automatic device failed.

Worker died as a result of vehicle movement while he was outside the vehicle at a time when both devices should have been engaged.

Management of Risk

- The manufacturer of the vehicle required that the safety device be checked every day.
- There were voluminous audit checklists in place for plant and equipment.
- Checklists appeared to have been filled-out in a “tick and flick” fashion.
- A contractor was engaged to maintain plant despite concerns about its safety performance.
- Management gave the contractor a verbal warning in about its safety performance prior to the incident.

Arguments on behalf of Thalanga Copper

1. Obligation to ensure device operating imposes strict liability;
2. Defendant took reasonable precautions to prevent the contravention;
3. Another party had responsibility for maintaining machinery; and
4. Deceased worker deliberately attempted to defeat the safety system.

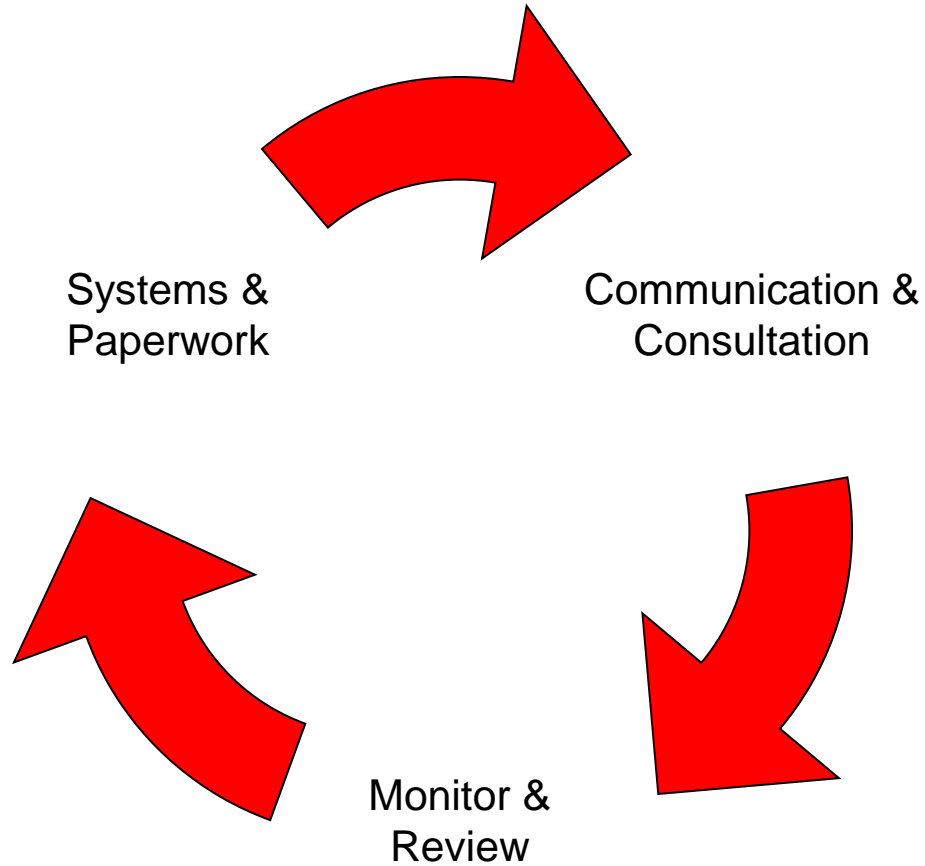
Judge's finding

In that state of knowledge, the defendant could not rely on its contractor to perform its obligations under the Act and it should have done more. It could have engaged an independent third party to look at the entire safety system. In the circumstances, that would not have been unjustified. A lower level of risk was reasonably achievable. The inadequate response to the audit report, for example...the sloppy manner of completion of checklists and the failure to recognise the need for daily operational checks of fail-safe safety devices are such that I consider a lower level of risk was reasonably achievable.

The Court further stated:

The question to be asked is whether Thalanga could have and should have done more than they were doing to address safety issues so that the level of risk was within acceptable limits and as low as reasonably achievable...

How can incidents like this be avoided?



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