

Legal obligations of employers and employees: An OHS overview

Occupational health and safety in the solar industry

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Solar Masterclass - October 2019



Importance of OHS obligations in the solar industry

Regulators join forces to support statewide solar rollout



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The rollout of 30,000 new solar power and hot water systems across Victoria is being reinforced with Worksafe, Energy Safe Victoria and the Victorian Building Authority joining forces to maximise safety for workers and householders.

Fatal fall while installing solar panels

An alert about fall hazards and risk controls associated with solar panel installation.

Incident background

A 21-year-old worker has died after falling from a ladder while performing works associated with solar panel installation on a single-storey residence.

NATIONAL VICTORIA RENEWABLES

THE AGE

Another solar installer suspended from Victorian government's rebate scheme

Audits & workplace safety



Our Audit Program ensures that solar installers and providers meet rigorous safety and quality standards.



SOLAR INSTALLER DUMPED OVER SAFETY FEARS

SOLAR PANEL INSTALLATION HORROR STORIES REVEALED

In the rush to make the most of generous government solar panel rebates, dodgy electricians are being caught out over dozens of unsafe installations as the details of workers suffering serious injuries are uncovered.

Relevant legislation



Other sources of legal obligations include:

- *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic)
- *Dangerous Goods Act 1985* (Vic)
- OHS also intersects with *Fair Work Act 2009* (Cth) and anti-discrimination federal and state legislation

While not legislation, also note:

- AS/NZS 3000:2018 Electrical Installations (Wiring Rules)
- AS/NZS 4836:2011 Safe working on or near low-voltage electrical installations and equipment

Occupational Health and Safety Act 2004 (Vic)

The *Occupational Health and Safety Act 2004 (Vic)* (**OHS Act**) is the main workplace health and safety legislation in Victoria. It sets out key principles, duties and rights about OHS.

The principles of 'health and safety protection' are outlined in section 4 of the Act:

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|---|--|--|---|--|
| <p>The importance of health and safety requires that employees, other persons at work and members of the public be given the highest level of protection against risks to their health and safety that is reasonably practicable in the circumstances.</p> | <p>Persons who control or manage matters that give rise or may give rise to risks to health or safety are responsible for eliminating or reducing those risks so far as is reasonably practicable.</p> | <p>Employers and self-employed persons should be proactive, and take all reasonably practicable measures, to ensure health and safety at workplaces and in the conduct of undertakings.</p> | <p>Employers and employees should exchange information and ideas about risks to health and safety and measures that can be taken to eliminate or reduce those risks.</p> | <p>Employees are entitled, and should be encouraged, to be represented in relation to health and safety issues.</p> |
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Obligations under the OHS Act

Employer

So far as is reasonably practicable:

- ✓ **Provide and maintain a safe working environment (including training)**
- ✓ Monitor the health of employees and conditions of the workplace under the employer's control
- ✓ Provide information to employees concerning OHS
- ✓ Keep records in relation to health and safety of employees
- ✓ Engage person suitably qualified in OHS to provide advice
- ✓ Ensure that other persons (e.g. visitors) are not exposed to risk
- ✓ **Consultation with employees**
- ✓ Report all incidents
- ✓ **Specific obligations under the OHS Regulations (e.g. in relation to working at heights).**

Self employed

- ✓ A self-employed person must ensure, so far as is reasonably practicable, that their conduct does not expose other people to risks to their health and safety.

Principal contractor

- ✓ Relevant for construction projects work ≥ \$350,000
- ✓ Required to display a sign with name and contact number
- ✓ Prepare a health and safety co-ordination plan
- ✓ Make plan available for inspection
- ✓ Ensure all new starters are aware of the plan.

Management or control

- ✓ A person who has, to any extent, the management or control of a workplace must ensure so far as is reasonably practicable that the workplace and means of entering and exiting are safe and without risks to health.

Employee

- ✓ Take reasonable care for their own health and safety
- ✓ Take reasonable care for the health and safety of others who may be affected by their acts or omissions
- ✓ Cooperate with their employer in respect to any action taken to comply with an OHS requirement
- ✓ Not intentionally or recklessly interfere with or misuse anything provided for OHS at the workplace.

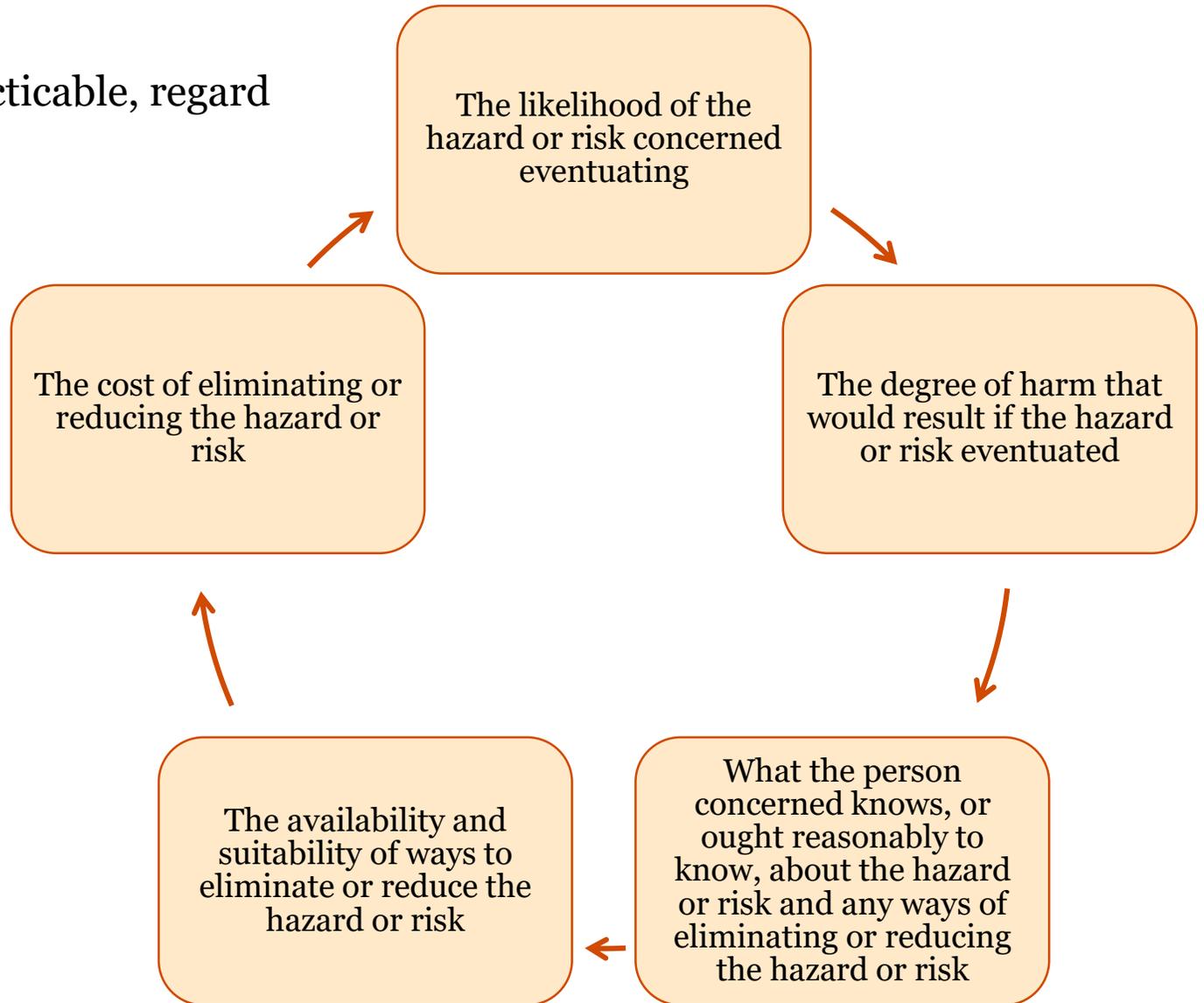
'Reasonably practicable'

When determining what is reasonably practicable, regard must be had to:

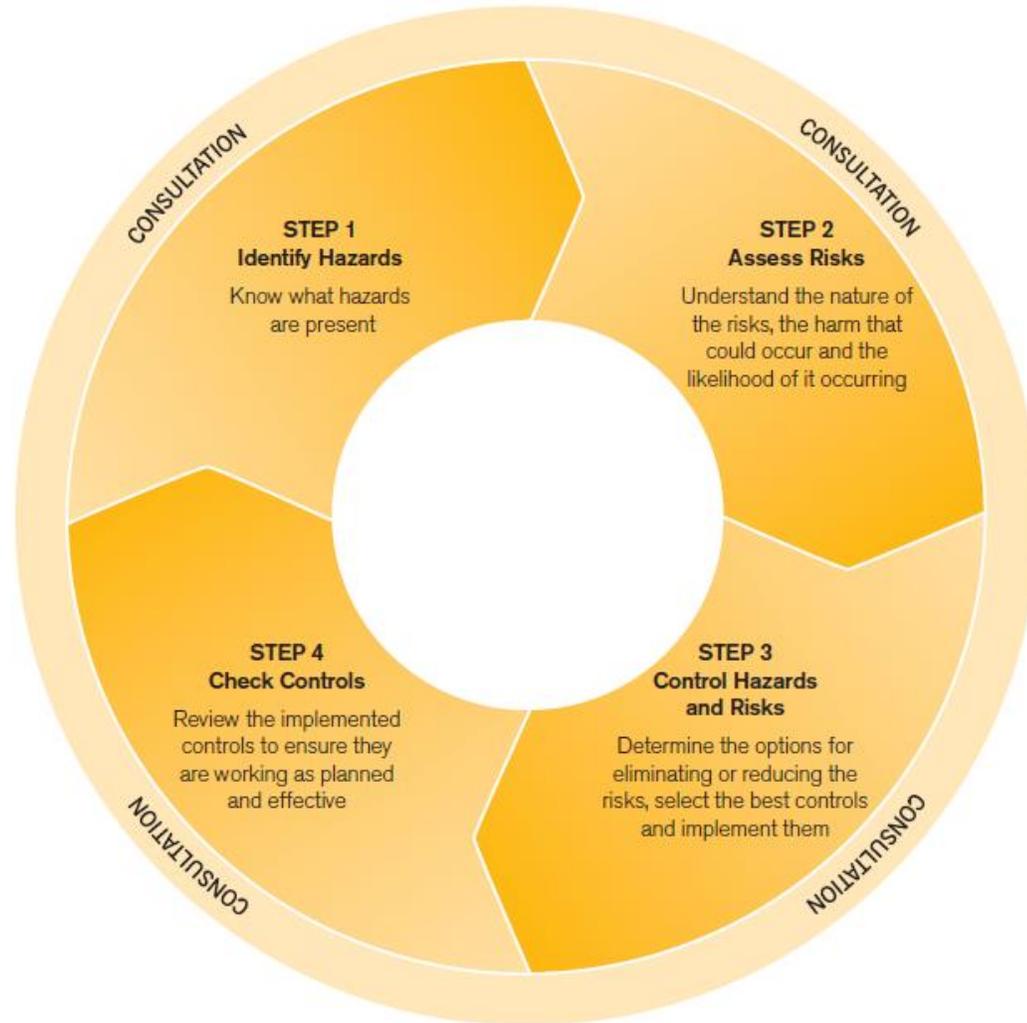


The test involves a careful weighing up of **each of the matters** in the context of the circumstances and facts of the particular case with a clear presumption in favour of safety.

No one matter determines what is reasonably practicable.



Steps in controlling OHS hazards and risks



Step 1 - Identify hazards

Common workplace hazards include mechanical hazards, chemical and biological hazards, sources of energy, body stressing or impact hazards, gravity and psychological hazards.

Step 2 - Assess risks

Undertake a risk assessment to understand the nature of the harm that could be caused by the hazard, how serious the harm could be and the likelihood of it happening.

This step may not be necessary if you are dealing with a known risk, with known controls.

Step 3 - Control hazards and risks

Implement the most effective *control measure(s)* that is reasonably practicable in the circumstances and ensure that it remains effective over time.

Step 4 - Check controls

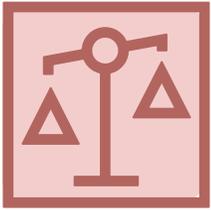
Review the control measures to ensure they are working as planned.

Resources:

- [Controlling OHS hazards and risks: A handbook for workplaces](#)
- [Working safely when installing photovoltaic \(PV\) systems](#)

Source: <https://www.worksafe.vic.gov.au/resources/controlling-ohs-hazards-and-risks-handbook-workplaces>

Consequences of breaching the OHS Act



Offences are risk based, not outcome based

Recent case: Sandarra Electrics Pty Ltd (in liquidation)

Fine \$120,000

No injury, but inspectors identified issues due to a lack of fall protection and Safe Work Method Statement.



The OHS Act provides significant financial penalties in respect of any breaches of duties. A breach of section 21 of the Act, being an employer's requirement to, so far as is reasonably practicable, provide and maintain a safe working environment without risks to health, can result in a penalty of up to \$1,486,980 for each charge for body corporates.



The maximum penalty available for a body corporate under the OHS Act is \$3,304,400, in relation to the duty not to recklessly endanger persons at a workplace and also carries a term of imprisonment of up to 5 years for individuals.

Both Victoria and Queensland have recently seen terms of imprisonment imposed for breach of OHS legislation.

Thank you

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