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Practice Group(s):

*Labour Employment  
Workplace Safety*

## Where do you sit in the Hierarchy?

*Australia Labour Employment Workplace Safety Alert*

*By Robert King*

Training, signage and personal protective equipment (**PPE**) are some of the more visible and "go to" risk control measures adopted throughout workplaces.

These types of controls are often the first that come to mind because they are more visible, more easily recognised and easier to implement quickly. Everyone recognises the need for steel cap boots, or safety goggles, or in a noisy work environment, everyone immediately thinks of earmuffs or earplugs.

In a similar way, everyone recognises the need for training and instructions. Indeed, following an incident, a regulator's first request to the employer or business is very often for a copy of the relevant worker's training records. One of the most often adopted immediate responses after an incident is to retrain workers.

Of course, using PPE, undertaking training or erecting warning signs is a good thing to do. Administrative or PPE controls are an integral part of any safe management system. Administrative and PPE controls can however become a trap, that can lull a business or employer into a sense of having complied with the work health and safety obligation when that may be far from the truth.

A recent South Australian decision<sup>1</sup> reaffirmed the importance of employers and businesses reminding themselves of the importance of the hierarchy of controls when developing risk control measures.

This South Australian decision, provides a timely reminder of the need to consider and implement administrative controls such as training and signage, and PPE controls, in the proper place within the entire mix of controls adopted in a safe work method statement.

### What Risk Management Processes were Implemented?

A small family timber business (operating for almost 50 years) used a large rotating blade saw. The saw was fitted with side guards and a barrier top guard around the saw blade. In 2013, following a "safety assessment", the business was concerned that flimsy aluminum material used in the side guards could dent easily (as it had in the past) and come into contact with the blade and create sparks. The business' safety review concluded that in the "interests of safety", especially because of the risks associated with a potential fire hazard from the sparking, the saw's guarding should be removed.

The business still recognised that controls were needed. So, the business placed warning signs both at the side and at the top of the saw. The signs were in full view of the operator, and stated "keep hands clear of the blade".

An employee had to clear an exhaust hose positioned behind the blade. The saw blade was still running when he put his hand behind the blade. As he did so his hand

<sup>1</sup> Soulio v Aston Newman Timbers Pty Ltd [2016] SAIRC 4 (2 March 2016)

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came into contact with the blade. He suffered significant damage to his hand and amputation of this thumb.

### The Greater Culpability

Now, there are a number of clear safety deficiencies associated with the business' action to remove the guarding. The court identified this as well, but interestingly, the court also identified business' disregard of the hierarchy of control as a significant breach of the work health and safety obligation. Consideration of the controls to be adopted to eliminate or minimise risk must be done as provided in the hierarchy of controls given that the hierarchy is mandated by the State's work health and safety regulations. These regulations are adopted by all states other than Western Australia or Victoria, although the hierarchy is still applicable in those jurisdictions.

The work health and safety regulations make it clear that risk controls must be considered and implemented in an order - elimination, substitution, isolation and engineering controls – before moving onto a consideration of administrative or PPE controls. In fact, the regulation provides that administrative control and PPE are only to be considered to the extent that any risk remains after the higher order controls are implemented.

In the South Australian decision, the business' culpability was exacerbated by its failure to apply and follow the mandated hierarchy of controls.

### The Lessons For Us

This case is a timely reminder that relying on quick and easy steps such as issuing safety goggles, safety gloves, earplugs or other PPE will not necessarily achieve compliance with the statutory health and safety duty. It is easy to retrain people, or put up additional warning signs and issue PPE.

The work health and safety regulations however, and the general duty to eliminate or minimise risk to workers however, makes it clear that administrative controls and PPE will almost certainly never be the first or complete answer to compliance. Businesses and employers must first consider, and if reasonably practicable, implement higher level hierarchy of control steps first, such as elimination, isolation, substitution or engineering controls.

PPE and administrative controls must follow on from the higher order controls. They cannot be the first response.

The second lesson is that when the business or employer audits or reviews its safety procedures, it should consider the extent to which the risk controls it currently uses meets the hierarchy of controls. If on reviewing the current controls you identify that the controls are substantially administrative or PPE controls, aim to implement a greater number of isolation, substitution or engineering controls.

Perhaps one of the ways that a business might do this is to ask itself the question '*if I couldn't use PPE what would I do differently?*'. Only after consideration of higher orders controls is complete, should the business or employer consider the additional administrative and PPE controls to add to the overall mix of risk controls to be implemented.

The courts recognise the statutory obligation behind adopting the hierarchy of controls. Businesses and employers must do the same and review where they sit in that hierarchy.

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