



ANZPAA GUIDE FOR

# MANAGING WORK HEALTH AND SAFETY IN AUSTRALIAN POLICING (OPERATIONAL) 2017

**ANZPAA**

Australia New Zealand  
Policing Advisory Agency

## CAVEAT

Regardless of the jurisdiction, the information in this Guide is designed to help police understand and meet their work health and safety duties. This Guide does not replace or override and is not to be relied on to the extent it is inconsistent with the:

- ▶ laws, including work health and safety laws, that are enacted, or operate, or have effect, in the relevant State, Territory or the Commonwealth
- ▶ approved codes of practice in operation in the relevant State, Territory or the Commonwealth
- ▶ guidance produced by the relevant police jurisdiction, including governance documents, policies, procedures, rules, general orders, documentation and/or practices.

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# PREFACE

The *ANZPAA Guide for Managing Work Health and Safety in Australian Policing (Operational)* (the Guide) was developed in 2014 to provide a contextual and practical understanding of model work health and safety laws<sup>1</sup> as they relate to police. It aims to provide police jurisdictions and their officers with an understanding of the responsibilities of duty holders under the model laws and what those duties involve. It is intended to foster cross-jurisdictional awareness of strategies for managing risk which are unique to the work demands and operational environment of police.

This Guide recognises that police do not undertake their duties in a controlled environment; as a consequence, work health and safety risks in a policing context can be unpredictable. Work health and safety practices must be dynamic and highly responsive to the environment, often requiring consideration of a wide variety of complex hazards in any given moment to ensure police safety.

The review of this Guide reflects the Police Commissioners of Australia's ongoing commitment to the safety of their staff. The content has been updated to reflect contemporary work health and safety challenges faced by police and provides guidance on the implementation of effective risk management strategies.

It is important to note that this Guide acknowledges the work of individual jurisdictions in the area of work health and safety. It is not intended as a replacement for existing jurisdictional policies and procedures but rather as a guide, reference and/or source document.

I would like to thank the nominated representatives who assisted ANZPAA in the review process. Their contributions ensure that the revised *ANZPAA Guide for Managing Work Health and Safety in Australian Policing (Operational)* meets the health and safety requirements of police in an increasingly complex world.



**Katherine Van Gorp**  
Chief Executive Officer  
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<sup>1</sup> It is noted that while Victoria has not adopted the national model workplace health and safety laws in their current form, and the model laws do not apply to New Zealand Police, this document may form part of a body of knowledge in all jurisdictions. All other Australian jurisdictions have adopted, or about to adopt the model WHS laws as at June 2017.

# SCOPE AND APPLICATION

This Guide provides practical information to support duty holders in Australia's Commonwealth, State and Territory police organisations in fulfilling their duties under the Model Work Health and Safety (WHS) Laws in this Guide.

Any compliance requirements should be considered in terms of jurisdictional WHS Laws. It aims to provide police organisations and police officers an understanding of what the duties involve and how risks can be managed in their unique working environment, including consultation and issue resolution.

This Guide particularly relates to police<sup>2</sup> undertaking operational activities, for example: general duties, search and rescue, dog handling, water police, protection, mounted police, aviation, special operations, forensics, fraud, drugs, and in the commonwealth jurisdiction, the specific activities of peace keeping, international law enforcement capability development (in-line policing), counter terrorism, human trafficking, sexual servitude, and other transnational and international crime. It recognises challenges faced operating in a work environment that can be located anywhere and often involves multiple, complex hazards and risks not created directly by the activities of the police organisation.

*This Guide acknowledges that police employees<sup>3</sup> can be involved in operational duties and the principles in this Guide may assist police employees in these circumstances.*

## WHO DOES THE GUIDE APPLY TO?

It is important to note that this Guide is based on the Model WHS Laws. These are not laws in their own right. For the Model WHS Laws to become legally binding they need to be enacted or passed by Parliament in each jurisdiction.

As at December 2013, the Australian Capital Territory, New South Wales, Queensland, the Northern Territory, Tasmania, South Australia and the Commonwealth harmonised their work health and safety laws. The work health and safety laws enacted in these jurisdictions are based on the Model WHS Laws but may contain some differences either through amendments or the inclusion of jurisdictional notes for example:

*The Work Health and Safety Act 2011 enacted by the Commonwealth contains provisions in section 12E that do not permit any action that would be prejudicial to certain Australian Federal Police operations.*

At the time of drafting this document, Western Australia had not implemented the Model Law however they have indicated that a Health and Safety Representative's (HSR) right to direct that unsafe work cease will not be included in their legislation.

While there are some differences between jurisdictions, police organisations and police officers are often subject to similar work health and safety laws.

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<sup>2</sup> Police includes but is not limited to protective service officers, special constables and police axillary officers.

<sup>3</sup> Police employees includes but is not limited to unsworn officers, police civilians and professional staff.

To date, Victoria and Western Australia have retained their current work health and safety laws that are not based on the Model WHS Laws. Please refer to your jurisdiction's work health and safety regulator's website (see Appendix A) for a complete list of the current work health and safety laws in your jurisdiction.

## CAVEAT

Regardless of the jurisdiction, the information in this Guide is designed to help police understand and meet their work health and safety duties. However, this Guide does not replace or override and is not to be relied on to the extent it is inconsistent with the:

- ▶ laws, including work health and safety laws, that are enacted, or operate, or have effect, in the relevant State, Territory or the Commonwealth
- ▶ approved codes of practice in operation in the relevant State, Territory or the Commonwealth
- ▶ guidance produced by the relevant police jurisdiction, including governance documents, policies, procedures, rules, general orders, documentation and/or practices.

## WHO WILL FIND THIS GUIDE USEFUL?

The following individuals and organisations may find this Guide useful:

- ▶ police officers and others in policing undertaking operational activities
- ▶ police organisations and police executives
- ▶ Health and Safety Representatives (HSRs)
- ▶ work health and safety regulators
- ▶ work health and safety professionals
- ▶ Work Health and Safety committees (HSC Committees)
- ▶ other committees, forums or working groups
- ▶ industry stakeholders.

## CODES OF PRACTICE

Codes of practice dealing with specific hazards may also apply to police workplaces. Please refer to your jurisdiction's work health and safety regulator's website for a complete list of codes of practice that apply to you (see Appendix A for your regulator's information).

## HOW TO USE THIS GUIDE

This Guide also includes references to provisions of the Model WHS Laws which set out the proposed legal requirements. These references are not exhaustive. The words ‘must’, ‘requires’ or ‘mandatory’ indicate that a requirement exists under the Model Laws. Compliance with these requirements should be considered subject to the WHS Laws enacted in the individual jurisdictions.

In providing guidance, the word ‘should’ is used in this Guide to indicate a suggested course of action.

Where a list is used, the word ‘and’ is implied, unless expressly stated otherwise.

## KEY TERMS

Key terms used in this Guide are set out below. The key terms are also explained in the relevant sections of this Guide, and are bolded throughout the body of this Guide to alert the reader.

Key Term	Meaning under the WHS Act
<b>Model WHS Act</b>	Refers to the Model Work Health and Safety Bill.
<b>Model WHS Regulations</b>	Refers to the Model Work Health and Safety Regulations.
<b>Model WHS Laws</b>	Collectively refers to the Model WHS Act and the Model WHS Regulations.
<b>Duty Holder</b>	Each person who owes a duty under the Model WHS Act is referred to as a duty holder.
<b>PCBU</b>	A ‘person conducting a business or undertaking’ or a PCBU is the main duty holder under the Model WHS Act. They are usually the employer and may be an individual person, a partnership, company, unincorporated body or association, a sole trader, a government department or a statutory authority. The PCBU in the police context is referred to as a Police PCBU in this Guide.
<b>Officer</b>	Important: the term ‘officer’ under the Model WHS Act does not mean someone who is called an officer because of their rank or title, such as a police officer.  Instead, an ‘officer’ under the Model WHS Act includes a person who makes, or participates in making, decisions that affect the whole, or a substantial part.
<b>Worker</b>	A ‘worker’ means anyone who carries out work in any capacity for the PCBU.
<b>Police Officer</b>	Section 7(2) of the Model WHS Act explicitly states that a police officer is defined as a worker, and further states that a police officer is considered to be at work when the officer is on duty or lawfully performing the functions of a police officer, but not otherwise.

# INTRODUCTION

Police have a unique role in the community and need to balance the demands of their role against the broader legal framework in which they operate, including the police oath of office and the relevant criminal code as it is sworn in each individual jurisdiction.

This includes balancing risks associated with reducing crime and protecting the public with the health and safety duties under the Model WHS Act. Police face the following challenges:

- ▶ Police have statutory obligation(s) to protect people and property, and may need to respond to situations that are dynamic, rapidly changing, time-critical, potentially expose them to risk and not of their own making.
- ▶ Police responding to an active armed offender incident may need to confront an active armed offender in a potentially high risk, and largely unpredictable environment to save lives.
- ▶ Police 'workplaces' are anywhere police go to fulfil their policing duties. These may be unfamiliar settings, widely divergent in layout, and may be subject to shared duties under the Model WHS Laws, as they are not often under the police organisation's control.
- ▶ Police require training that will equip them to make complex decisions in the kinds of scenarios they may find themselves in, even if they possess incomplete or inaccurate information about a particular situation. Police organisations deploy suitably trained officers to situations; however, there will be times when they encounter circumstances outside their training and experience.
- ▶ Police may undertake operational duties outside of Australia, which involves different challenges. For example, police participating in United Nations peacekeeping missions, capacity development programs or emergency responses in foreign countries.

# HEALTH AND SAFETY DUTIES IN OPERATIONAL POLICING

## WHO ARE THE DUTY HOLDERS?

The term duty holder in this Guide is used to refer to any person who has a work health and safety duty under the Model WHS Act.

Under the Model WHS Act, the duty holders are:

- ▶ persons conducting a business or undertaking (PCBU)
- ▶ officers
- ▶ workers
- ▶ other persons at the workplace, for example members of the public.

The standard of care required of these duty holders differs depending on their role in relation to work activities and the extent to which the duty holder is able to direct, control or influences the activities. Those with the most control or influence will have the most significant duties.

For information on where more than one person has the same duty for a matter see “Can more than one person hold the same duty?” on page 19 of this document.

## PERSON CONDUCTING A BUSINESS OR UNDERTAKING

A PCBU as defined by the Model WHS Act, refers to a person conducting a business or undertaking alone or with others, whether or not for profit or gain. The Crown may conduct a business or undertaking through its departments and statutory agencies.

A PCBU may or may not be an individual person. A PCBU may be a body corporate (company), unincorporated body or association or partnership.

Safe Work Australia has produced guidance on what a PCBU means, see the Interpretive Guideline – The Meaning of ‘Person Conducting A Business or Undertaking’ available at [www.safeworkaustralia.gov.au](http://www.safeworkaustralia.gov.au).

Police organisations throughout Australia are structured differently. They have different legal frameworks and ranking systems. It is beyond the scope of this Guide to state who the PCBU is in each jurisdiction. For the purposes of this Guide, the PCBU for any police organisation is referred to as ‘the police PCBU’.

## OFFICER

An officer, in this document, does not refer to a police officer, but rather to 'officer' as defined in the Model WHS Act. An officer is any person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the PCBU's activities. An officer can be an officer of the Crown or a public authority.

Under the Model WHS Act, officers are individuals who, through their decision making, influence the specific activities and behaviours that determine the performance of health and safety initiatives and compliance by the PCBU with Model WHS Law. Through their decisions and behaviour, they strongly influence the culture of the business or undertaking and accountability within it. They make important decisions on the resources that will be made available for the purposes of work health and safety and the policies that will be developed to support compliance.

A person who participates in decision making may also be considered an officer under the Model WHS Act. This may be the case even though they do not ultimately make, or have the authority to make, the relevant decisions. They 'participate' if they are actively involved in the process through which the decisions are made and occupy a role that may directly contribute to, promote, or affect the decisions. The decisions need not be directly related to work health and safety.

It's important to note that the position titles and level of authority of who is considered an officer may vary within different jurisdictional organisational structures.

An individual is not an officer if they are only involved in administration of a process or simply provide advice for the decision-makers' consideration.

Safe Work Australia has produced guidance on who is an officer under the Model WHS Act; see the Interpretive Guideline – The Health and Safety Duty of an Officer under Section 27, available at [www.safeworkaustralia.gov.au](http://www.safeworkaustralia.gov.au).

## WORKER

A worker is defined by the Model WHS Act to be anyone who carries out work in any capacity for a PCBU. They must take reasonable care of their own health and safety and that of others who may be affected by their actions or omissions.

For example, a worker may be an employee, a work experience student, a volunteer, an apprentice, a trainee, a contractor, a subcontractor or an employee of a labour hire company placed with the police organisation.

Section 7(2) of the Model WHS Act explicitly defines police officers as workers, and further states that a police officer is considered to be 'at work' when the officer is on duty or lawfully performing the functions of a police officer, but not otherwise. Unsworn members of police organisations are also workers.

PCBUs and Officers will also be workers under the Model WHS Act and will have the duties of a worker in addition to those of a PCBU or Officer.

### WHO IS NOT LIKELY TO BE AN 'OFFICER' UNDER THE MODEL WHS ACT?

- ▶ Several police officers are attending a crime scene, and one police officer is allocated responsibility for control of that crime scene. This person is not likely to be an 'officer' for the purposes of the Model WHS Act.
- ▶ An individual police officer is in charge of a cross-jurisdictional taskforce on organised crime. This person is not likely to be an 'officer' for the purposes of the Model WHS Act.
- ▶ Police officers are undertaking routine patrols and one police officer is recognised as the senior police officer. This person is not likely to be an 'officer' for the purposes of the Model WHS Act.
- ▶ An individual police officer is in charge of a single police station. This person is not likely to be an officer for the purposes of the Model WHS Act.

## OTHER PERSONS IN THE WORKPLACE

Other persons in the workplace, refers to any person in a workplace, including visitors to police premises. They must take reasonable care of their own health and safety and that of others who may be affected by their actions or omissions. They must also comply, so far as they are reasonably able, with any reasonable instruction that is given by the PCBU to comply with WHS laws. The public also must comply with any lawful direction issued by police officers under relevant legislation in the course of their policing duties.

## WHAT ARE THE DUTIES?

### ‘PRIMARY DUTY OF CARE’

The PCBU has the primary duty of care, under the Model WHS Act. This requires the police PCBU to ensure, so far as is reasonably practicable:

- ▶ the health and safety of workers, either directly employed, or influenced or directed by the Commissioner/police organisation in their work activities, while they are carrying out police work
- ▶ that other people’s health and safety is not put at risk from work carried out as part of the undertaking of policing.

The primary duty of care includes more specific duties which have been outlined below with examples relevant to a police PCBU. The Model WHS Act requires the PCBU to ensure, so far as is reasonably practicable, all of the following:

- ▶ The provision and maintenance of a working environment that is safe and without risks to health – for example, ensuring that there is safe access to, and exit from, police facilities.
- ▶ The provision and maintenance of safe plant and structures that do not pose health risks – for example, ensuring that police vehicles and police facilities are designed, constructed and maintained to be safe for their intended and likely use during work.
- ▶ The provision and maintenance of safe systems of work – for example, establishing arrangements that allow police officers adequate rest periods.
- ▶ The safe use, handling, storage and transport of plant, structure and substances – for example, ensuring that there is safe use, handling, transport and storage of police weapons and safe handling, storage and transport of confiscated drugs.
- ▶ The provision of adequate facilities for the welfare of workers at work – for example, ensuring that workers have access to washrooms, lockers and dining areas that are fit for use.
- ▶ The provision of any information, instruction, training or supervision necessary to protect workers and others from risks to their health and safety arising from the conduct of the business or undertaking – for example, providing police officers instruction and training on how to safely apprehend offenders threatening people with firearms, and providing intelligence on increased supply of illegal handguns in an area they will be working in.
- ▶ That the health of workers and the conditions of the workplace are managed to prevent injury or illness arising out of the conduct of the undertaking – for example, developing material and/or providing training that provides guidance on wellbeing and the prevention and treatment of psychological injury

including but not limited to anxiety, depression, post-traumatic stress disorder and fatigue management.<sup>4</sup>

In some circumstances, a worker is required to live at accommodation that is owned by, or under the management or control of the police PCBU, for the purposes of the worker's engagement because other accommodation is not reasonably available. In that case, the police PCBU must, so far as is reasonably practicable, maintain the premises so that the worker occupying them is not exposed to risks to their health and safety. For example, what is reasonably practicable in relation to accommodation for workers stationed overseas may differ from domestic standards.

There are additional duties placed on PCBUs with management or control of a workplace and PCBUs with management or control of fixtures, fittings or plant at a workplace. The PCBU with management or control of a workplace must ensure that, so far as is reasonably practicable, the means of exiting and entering the workplace, and anything arising from the workplace, are without risks to anyone's health and safety. The PCBU with management or control of fixtures, fittings and plant at a workplace, must ensure that, so far as is reasonably practicable, they do not cause risks to anyone's health and safety.

A police officer or other person being exposed to a risk arising from the undertaking of policing is not in itself a breach of the primary duty of care. A breach occurs when the police PCBU fails to do what is 'reasonably practicable' in the relevant circumstances to eliminate, or if that is not reasonably practicable, minimise the risks. The mobile, wide ranging and at times unpredictable nature of operational police work will have implications for what is reasonably practicable in complying with these duties.

This means the extent to which the police PCBU can ensure health and safety will depend not only on whether they have put in place safe systems of work and have adequately educated, trained, prepared and equipped police officers to undertake work safely, but on the extent to which the workplace is under their influence and control. Even in these circumstances the police PCBU must still comply with its duty to ensure the health and safety of its workers but what is reasonably practicable will be different from where your workers were working in a workplace that you have control over. Even though anywhere that police go to undertake police work becomes their workplace, the places they go are often workplaces where other PCBUs also have the same primary duty of care. See "Can more than one person hold the same duty?" on page 19

## WHAT DOES 'REASONABLY PRACTICABLE' MEAN?

*"THE [PCBU] DUTIES IN THE MODEL WHS ACT ARE QUALIFIED BY WHAT IS REASONABLY PRACTICABLE IN A PARTICULAR CIRCUMSTANCE, WHICH RECOGNISES THAT THERE MAY BE UNIQUE SITUATIONS, SUCH AS POLICING, WHERE IT IS NOT REASONABLY PRACTICABLE TO OPERATE IN AN ENVIRONMENT WITHOUT RISK."*

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*EXCERPT FROM LETTER OF THE OFFICE OF THE HON. JULIA GILLARD TO ANZPAA RECEIVED LATE APRIL 2010*

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As noted above, the Model WHS Act prescribes that PCBUs have a duty to ensure health and safety by eliminating health and safety risks so far as is reasonably practicable, and, if this is not possible, to minimise those risks so far as is reasonably practicable.

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<sup>4</sup> The topic of psychological health, wellbeing and safety is covered comprehensively in the 'Strategic Framework for the Management of Mental Health in the Policing Workforce – A Principles-based Approach 2016'.

Section 18 of the Model WHS Act defines reasonably practicable as what is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety. This section also states that in determining what is reasonably practicable all relevant matters must be taken into account and weighed up, including:

- ▶ the likelihood of the hazard or the risk concerned occurring
- ▶ the degree of harm that might result from the hazard or the risk
- ▶ what the person concerned knows, or ought reasonably to know, about the hazard or the risk and 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.

This list is not exhaustive. Other factors may also need to be considered.

Police need to balance the demands of their role against the broader legal framework in which they operate, for example:

- ▶ the police oath of office as it is sworn in each jurisdiction
- ▶ the relevant criminal code or law in each jurisdiction
- ▶ human rights obligations – international conventions that Australia is a signatory to or individual human rights charters within local jurisdictions.

### **WHAT IS 'REASONABLY PRACTICABLE' IS AN OBJECTIVE TEST**

The test of what is 'reasonably practicable' is an objective test, that is, a person is to be judged by the standard of behaviour expected of a reasonable person in the duty holder's position who is required to comply with the same duty. Police have a duty to respond to situations that may involve hazards and risks, often caused by the actions of others in situations where they cannot control all aspects of the physical environment. What is reasonably practicable in undertaking operational policing may not be the same as what is reasonably practicable in undertaking work in a more static and predictable environment.

## **POLICE PCBU: PLANNED VERSUS UNPLANNED OPERATIONS**

What is 'reasonably practicable' in a police operation that can be planned in advance may be not be the same as it is in a situation where police are called to react immediately, or when new or unforeseen hazards emerge quickly and the level of risk escalates without warning.

### **Scenario 1**

The police PCBU is notified that a motorcycle gang member has died and that a funeral will be held three days later in a small rural town where the police station is staffed by four police officers (two members on patrol, one on watch house duties and an officer in charge).

### **Scenario 2**

A motorcycle gang member dies suddenly and other gang members converge and meet in a public place such as a local licensed venue, in the same town, with the same four police officers.

### **In both scenarios**

- ▶ there would be the same expectation from members of the public living in the town for police to act to ensure public safety was maintained
- ▶ similar hazards and risks would exist.

Once notified, the police PCBU must ensure that the safety of workers and others is not put at risk from work carried out as part of the undertaking as far as is reasonably practicable.

In scenario 1, it may be considered 'reasonably practicable' for the police PCBU to have in place systems and processes that include consideration of relevant risk controls, such as adequate resources, communication strategies, assistance from specialist groups, available intelligence and the development of operational orders (if appropriate).

In scenario 2, it is unlikely to be considered 'reasonably practicable' for the police PCBU to have undertaken the same measures ahead of time. Instead, it would be considered 'reasonably practicable' for the police PCBU to have adequately trained the police officers to respond appropriately to a dynamic situation and put in place appropriate risk controls, for example 'contain and isolate' the incident until backup arrives.

## WHAT MUST BE TAKEN INTO ACCOUNT AND WEIGHED UP?

To identify what is or was reasonably practicable, the Model WHS Act sets out a list of factors that must be taken into account and weighed up to achieve the highest level of protection that is both possible and reasonable in the circumstances. As noted above, this list is not exhaustive and other factors may also be considered.

### LIKELIHOOD OF THE HAZARD OR RISK CONCERNED OCCURRING

The greater the likelihood of a hazard or risk eventuating, the greater the significance that should be given to it when weighing up all the relevant matters in determining what is reasonably practicable in the circumstances.

If harm is more likely to occur, then it may be reasonable to expect more should be done to eliminate or minimise the risk.

A process of risk assessment can assist with deciding how likely it is that a hazard or risk will occur before and during operational policing situations. For police, this is often a dynamic process. More detail is provided in “Assessing Risks” on page 26 of this Guide.

### DEGREE OF HARM THAT MIGHT RESULT FROM THE HAZARD OR RISK

The greater the degree of harm that could result from a hazard or risk, the greater the significance that should be given to it when weighing up all the matters relevant to determining what is reasonably practicable in the circumstances.

Police may enter situations where a threat is initially assessed as having a low risk because of insufficient or inaccurate intelligence. If new intelligence indicates that the threat to health and safety may be higher than anticipated, the adequacy of the associated risk control measures should be reassessed.

A police PCBU should provide training to assist police officers to deal with dynamic situations such as these.

### WHAT THE PERSON KNOWS, OR OUGHT REASONABLY TO KNOW ABOUT THE HAZARD OR RISK AND WAYS TO ELIMINATE OR MINIMISE THE RISK

The determination of what a PCBU should know is based on what the PCBU actually knows about a hazard or ways to eliminate or minimise a risk and what a reasonable person in the PCBU’s position would be reasonably expected to know.

This means that at an organisational planning level, police PCBUs should look at all available information about policing and the hazards and risks that can occur in a range of situations, then develop a safe system of work, including training and education systems, standard operating procedures and policies, and prepare and equip its officers to undertake their duties as safely as reasonably practicable. Information may be obtained by a number of means including:

- ▶ consulting workers, subject matter experts, work health and safety regulators
- ▶ doing risk assessments of operational policing scenarios
- ▶ reviewing results of compliance audits, validation tests on operational procedures and equipment, data on incidents, injuries and safety investigations
- ▶ considering the outcomes of training and training evaluations and/or accreditations
- ▶ learning from previous operational activities and incidents in the organisation and from other comparable organisations
- ▶ reading relevant Regulations, Codes of Practice, and research on injury and death prevention in policing.

Police PCBUs understand that although a police officer may not know the full details of a particular situation until they arrive, it is expected they would still have an awareness of what they would do if they were faced with the types of hazards or risks that could occur in similar situations.

## **AVAILABILITY AND SUITABILITY OF WAYS TO ELIMINATE OR MINIMISE THE RISK**

The police PCBU must consider whether a risk control measure is available, and if it is, whether it is suitable for the work that police are performing in the different circumstances in which they are performing it.

Equipment to eliminate or minimise a hazard or risk is regarded as being available if it is provided on the open market, or if it is possible to manufacture it.

A work process (or change to a work process) to eliminate or minimise a hazard or risk is regarded as being available if it is feasible to implement.

In determining whether a risk control measure is suitable, the police PCBU should consider, among other relevant factors, if it will:

- ▶ be effective in eliminating or minimising the possibility of harm from a hazard or risk or the degree of that harm
- ▶ not introduce new and higher risks in the circumstances
- ▶ be practical to implement in the circumstances.

For the police PCBU, this means considering the above in relation to operational activities undertaken by police.

At times, there may be no available or suitable ways to eliminate a hazard or risk. The police PCBU must then minimise the risk, so far as is reasonably practicable, in accordance with the hierarchy of control measures as outlined in “Controlling risks” on page 29 of this Guide.

## **COST ASSOCIATED WITH AVAILABLE WAYS OF ELIMINATING OR MINIMISING THE RISK**

All risks can be controlled and it is always possible to do something, such as stopping the activity or providing instructions to those who may be exposed to the hazard. There will normally be a number of different options between these two extremes.

The cost of controlling a risk may be taken into account in determining what is reasonably practicable, but cannot be used as a reason for not taking any action.

In determining whether a particular level of expenditure is reasonable in the circumstances, a police PCBU should consider the likelihood and degree of harm of a hazard or risk, and the reduction of the likelihood and/or degree of harm that will result if the control measure is implemented.

Where the hazard or risk has the potential to cause death, serious injury or illness, stronger emphasis should be given to those controls that eliminate or reduce the level of harm, than those that reduce the likelihood of harm occurring.

Cost cannot be used as a reason for adopting controls that rely exclusively on changing people’s behaviour or actions when there are more effective controls available that can change the risk through substitution, engineering or isolation.

A police PCBU may choose the least costly risk control measures, if the measures will achieve the same reduction in the risk’s likelihood and degree of harm as more costly risk control measures. Choosing a low cost option that provides less protection simply because it is cheaper is not a reasonably practicable means of eliminating or minimising a risk.

## OFFICER'S DUTY TO EXERCISE 'DUE DILIGENCE'

The Model WHS Act places a duty on 'officers' to exercise due diligence to ensure that the PCBU complies with its duties under the Model WHS Laws.

An officer's role includes establishing and maintaining overarching systems and procedures based on sound, up to date knowledge from both internal and external sources. This does not necessarily mean physically inspecting the workplace or supervising work that is carried out. If the police PCBU fails to comply with the primary duties of the Model WHS Act, this does not automatically mean an officer has also failed to comply. There is no 'attributed liability.' Conversely, an officer can be found to have failed to exercise due diligence even if the police PCBU has not breached the primary duty of care under the Model WHS Act.

### WHAT IS 'DUE DILIGENCE'?

Due diligence is a proactive duty, which means that an officer must take reasonable steps to:

- ▶ acquire and keep up to date knowledge of health and safety matters – for example, looking at published research, or commissioning research into particular hazards and risks that affect police, analysing injury and incident data, comparing approaches with other jurisdictions or other emergency services agencies, environmental scanning
- ▶ gain an understanding of the nature of police operations and generally of the hazards and risks associated with those operations – for example, looking at information and experience from past police operations, undertaking surveys of police officers, comparing experiences with other jurisdictions or with other emergency services agencies, undertaking pilot programs to evaluate different approaches to identified problems
- ▶ ensure appropriate resources and processes are available, and used, to enable hazards associated with police work to be identified and risks associated with those hazards to be eliminated or minimised – for example, establish standard operating procedures or other policies and procedures, ensure that education and training are adequate, and ensure that necessary equipment is provided to enable operational duties to be carried out safely
- ▶ ensure that appropriate processes are in place for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information – for example, providing a way for police officers to pass on information about incidents, hazards and risks easily and ensuring that action is taken in response
- ▶ ensure that the organisation has, and implements processes for complying with any duty or obligation of the organisation under the Model WHS Act – for example, establishing systems for consultation with workers, ensuring that consideration of the requirements of the Model WHS Act is included when developing policies and procedures, or education and training.

Safe Work Australia has produced guidance on the officer duty and due diligence, which can be found in the Interpretive Guideline – model Work Health and Safety Act - the health and safety duty of an officer under section 27 available at [www.safeworkaustralia.gov.au](http://www.safeworkaustralia.gov.au).

## WORKERS AND OTHER PERSONS' DUTY TO TAKE 'REASONABLE CARE'

### WORKERS' DUTY

Under the Model WHS Act, a worker has a duty, while at work, to:

- ▶ take reasonable care for his or her own health and safety
- ▶ take reasonable care that his or her acts or omissions do not adversely affect other people's health and safety
- ▶ comply, so far as he or she is reasonably able, with any reasonable instruction to comply with the WHS Act given by the police PCBU
- ▶ follow any reasonable policy or procedure relating to work health and safety the PCBU has notified to workers.

Even though individual police officers of a police organisation have a high standard placed upon them in relation to how they undertake their policing duties, particularly when they have sworn an oath of office, their legal duty to take reasonable care in relation to work health and safety is not the same standard as that placed on the police PCBU or officer. The primary duty of care rests with the police PCBU to provide a safe workplace and to ensure that police work does not cause risks to the health and safety of police or others.

This means that the duty placed on individual police to take reasonable care for their own and other's health and safety applies within the context of the police PCBU providing them with appropriate standard operating procedures, education and training, instruction and supervision, equipment and other resources necessary to undertake police duties safely. What constitutes taking 'reasonable care' in an operational role will depend on the individual circumstances; it may include, but is not limited to:

- ▶ applying the competencies gained through relevant education and training, such as exercising sound situational awareness and decision making skills and being resourceful, ethical and responsible
- ▶ following operational orders and working within standard operating procedures and policies
- ▶ maintaining regular and effective communication with command, colleagues and members of the public using the systems provided
- ▶ undertaking risk assessments as a situation progresses to undertake timely and appropriate responses to health and safety risks to themselves and others in police workplaces
- ▶ seeking information and making informed decisions before acting.

### EXAMPLES

#### TAKING REASONABLE CARE

Detectives attend a property to execute a search warrant for child pornography. Upon arrival, the police officers find a person with a firearm, threatening to harm police and members of the public. The police officers assess the threat level and attempt to resolve the situation, maintain communication and request back up assistance. The level of threat suddenly becomes serious and imminent, and the police officers believe it is necessary to physically intervene to protect their own and other's lives. The police officers have taken steps outlined above and then act in accordance with their education and training, appropriate to the situation.

#### FAILING TO TAKE REASONABLE CARE

A police officer is issued with a firearm and given clear instructions and training in relation to how to store and handle the firearm when it is not in use. The police officer disregards these instructions and unloads the firearm in an open plan office risking injury to the officer and other colleagues within the vicinity.

## OTHER PERSONS' DUTY

Under the Model WHS Act, all people at workplaces must:

- ▶ take reasonable care for his or her own health and safety
- ▶ take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons
- ▶ comply, so far as the person is reasonably able, with any reasonable instruction that is given by the PCBU to allow the PCBU to comply with this Act.

This means that even if a person is not a PCBU, an officer or a worker they must comply with the work health and safety duties as far as they are reasonably able to do so, e.g. these duties would need to be complied with by any member of the general public who is at a police station or at the scene of a crime.

## CAN MORE THAN ONE PERSON HOLD THE SAME DUTY?

More than one person can have a duty for the same matter and in these circumstances each person retains responsibility for their duty and must discharge their duty to the extent to which the person has the capacity to influence and control the matter or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

A duty holder cannot contractually assign responsibility for work health and safety to a third party to avoid an obligation under the Model WHS Act. A contract does not release the duty holder from the responsibility of discharging their duty, but may acknowledge a shared duty.

The police PCBU is not expected to control all hazards and risks caused by other businesses or undertakings. However, they must, so far as reasonably practicable, anticipate the kinds of hazards and risks that could occur within different environments and prepare police as much as possible to deal with those hazards and risks if they arise.

If more than one person has a duty in relation to the same matter under the WHS Act each person with the duty must, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with all other persons who have that duty.

Consultation, co-operation and co-ordination duties are discussed on page 35 of this Guide.

### EXAMPLE

#### MANAGING RISKS FACING OVERSEAS WORKERS

Notwithstanding the exemptions for the Australian Federal Police (AFP) under section 12e of the Work Health and Safety Act 2011 (Cwlth), the duties of the AFP PCBU and an Officer's due diligence obligations in respect to managing workers overseas are identical to those in Australia.

Due to the nature of AFP overseas operations and missions, the AFP PCBU will often operate alongside other Australian government agencies, e.g. DFAT, ADF, AusAID etc. It should be noted that a 'workplace' is defined under section 8 of the WHS Act to be a place where work is carried out for a PCBU and includes any place where a worker goes, or is likely to be, while at work. A workplace can therefore include a place of residence.

Under section 16 of the WHS Act, more than one person can have a duty in relation to the same matter. This duty must be discharged to the extent to which a person has the capacity to influence and control the matter. The AFP PCBU must consider, take reasonably practicable steps, and document those steps to address the health and safety risks of managing overseas operations and missions. Where appropriate, the AFP PCBU and other Australian government PCBUs should collaborate with and share information relevant to health and safety risks of joint operations and missions.

# THE RISK MANAGEMENT PROCESS IN THE POLICING CONTEXT

Risk management is a systematic approach to eliminating or minimising risks in workplaces. It requires duty holders to consider what could go wrong in policing at work, what the consequences could be, and how the risks could be eliminated or minimised, as far as reasonably practicable.

This process will assist a police PCBU in ensuring that it does whatever it can (what is 'reasonably practicable') to eliminate or minimise health and safety risks arising from the business or undertaking. Similarly, the information obtained through the risk management process will assist officers to exercise due diligence to ensure the police PCBU is meeting its duty.

The risk management process involves the following steps (see Figure 1<sup>5</sup>):

- ▶ identify hazards — find out what could cause harm
- ▶ assess the risks associated with these hazards — understand the nature of the harm that could be caused by the hazard, how serious the harm could be and the likelihood of it occurring
- ▶ implement the most effective control measure that is reasonably practicable in the circumstances
- ▶ review control measures to ensure they are working as planned.

Note: it is not necessary to complete a formal risk assessment for hazards for which the risk and control measures have already been documented.

Risk management processes will assist police organisations to respond to change and to build safety into standard operating procedures, systems of work, and police education and training.

There are many circumstances when a risk management process is necessary, but it should always be undertaken when:

- ▶ starting a new corporate or operational unit
- ▶ changing work practices or procedures
- ▶ purchasing new or used equipment or using new substances

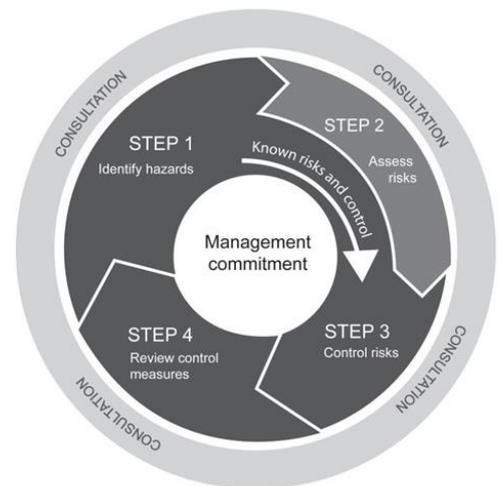


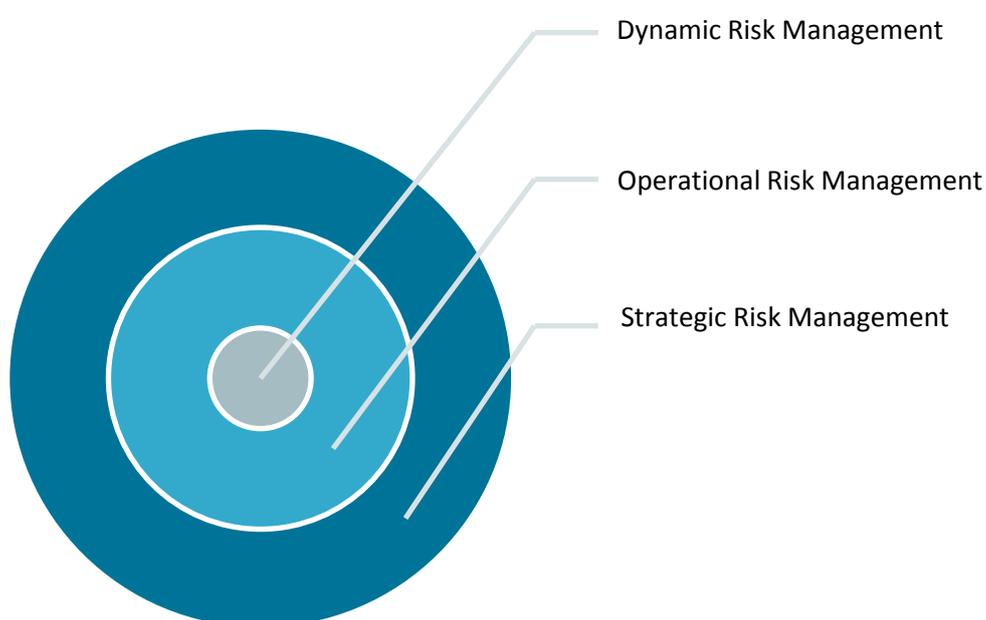
Figure 1: The risk management process

<sup>5</sup> Sourced from Safework Australia.

- ▶ planning to improve productivity or reduce costs
- ▶ new information about hazards and risks becomes available
- ▶ responding to workplace incidents, even if they have caused no injury or illness
- ▶ responding to health and safety concerns raised by workers, HSRs or others at the workplace.

So far as is reasonably practicable, the police PCBU must ensure the risk management process is undertaken in advance of policing operations which may present foreseeable risks to police and others. Police will at times be required to conduct or revise a risk assessment during a police operation.

The risk management process described above is a generic process. In policing, the risk management process is undertaken at strategic, operational and dynamic levels (described below). The case studies in this Guide address the process under three levels:



**Figure 2: The risk management process undertaken at strategic, operational and dynamic levels**

## STRATEGIC RISK MANAGEMENT

Strategic risk management is undertaken by police organisations to manage work health and safety risks that may impact workers, including police officers and other people affected by the conduct of police organisations. It involves consideration of how police officers are prepared through training and the provision of equipment to address situations likely to occur as part of their duties. This process is the responsibility of the police organisation and a key step to fulfilling the primary duty of care.

## OPERATIONAL RISK MANAGEMENT

Operational risk management builds on the strategic risk management process to determine the suitable application of resources, training and equipment to specific operations. This may be undertaken during operational planning, by supervisors, managers or more experienced police officers, where additional information is available.

## DYNAMIC RISK MANAGEMENT (POLICING CONTEXT)

Dynamic risk management is the continuous cognitive (thinking) process of identifying hazards, assessing risk, taking action to eliminate or reduce risk, monitoring and reviewing, in the rapidly changing circumstances within an operational incident relying on their situational awareness. It is often undertaken by police officers according to established procedures (not necessarily through formal reporting). Police officers are trained in dynamic risk management as part of their basic training which is reinforced throughout their careers as part of their overall training.

**Operational and dynamic risk management are not substitutes for strategic risk management.**

**A dynamic risk assessment is not a formal documented process; it is about being able to articulate the thought processes of the likelihood and consequences of a proposed course of action.**

Case studies will be used in the following risk management sections to illustrate how the risk management process may be undertaken at a strategic, operational and dynamic level in a policing context.

Police work within a dynamic and often uncontrolled environment.

An emerging terrorism and general policing threat relates to active armed offenders. Incidents involving active armed offenders have increased in the Australian context.

Active armed offenders display the characteristics of attempting to harm as many people possible within a short time frame, and often target places where people gather, such as crowded market places, shopping centres, education facilities and night clubs.

In such dynamic situations, risk mitigation can be underpinned by training and the development of appropriate protocols.

# IDENTIFYING HAZARDS

A hazard is any situation, object or environment that may cause harm or injury. Hazards generally arise from the following aspects of work and their interaction:

- ▶ the physical work environment
- ▶ the equipment, materials and substances used
- ▶ work design and management
- ▶ the work tasks and how they are performed.

The first stage of risk management is identifying hazards in relation to the tasks that police are required to undertake (see Table 1 for examples). Methods of identifying hazards in policing include, but are not limited to:

- ▶ Finding information from the workplace – completing a hazard checklist, consulting with workers and HSRs, using experience gained through review of similar operations, conducting surveys of police officers, analysing and reviewing work processes.
- ▶ Finding and applying available information – looking at published information from a variety of sources, seeking advice from specialists, reviewing information on equipment from designers and manufacturers.
- ▶ Testing and measuring – some hazards, such as noise and atmospheric contaminants, require measurement to decide if action is required.
- ▶ Analysing records and data – looking at accident and injury data and the results of any investigations to identify any trends.

**Table 1: Common Workplace Hazards in Policing**

<b>Mechanical hazards</b>	Plant, equipment and items (and parts of them) that have the potential to cut, rip, tear, abrade, crush, penetrate, produce projectiles or cause sudden impact – for example, using firearms or vehicles and doing work that involves standing and walking near traffic.
<b>Hazardous chemicals</b>	Chemicals, materials, powders, dusts and vapours that have the potential to cause disease, or have explosive, flammable, toxic or corrosive properties – for example, exposure to hazardous chemicals used in illicit drug manufacture, chemical spills, exposure to lead during firearms training.
<b>Biological</b>	Micro-organisms that have the potential to cause infectious disease such as hepatitis, legionnaire’s disease, Q fever, HIV/AIDS or allergies – for example, contracting infectious diseases from contact with saliva or blood.
<b>Sources of energy</b>	A range of sources of energy that have the potential to cause harm, including electricity, heat, cold, noise, high powered light and damaging radioactive sources – for example, being exposed to extreme weather conditions and fallen live power lines.
<b>Manual tasks</b>	Activities that cause overexertion or repetitive movement have the potential to cause muscular strain– for example, carrying equipment, apprehending an offender who is resisting arrest.
<b>Gravity</b>	Activities that are carried out where a person can fall or an object can fall onto people – for example, attending a private property and moving around in unfamiliar conditions, where

	the fall hazards may not be immediately apparent.
<b>Noise</b>	Exposure to loud noise have the potential to cause hearing damage – for example, firearm training, crowd control at music events.
<b>Psychosocial hazards</b>	Events, systems of work or other psychosocial issues and circumstances that have the potential to lead to psychological and associated illness,– for example, exposure to potential traumatic events, experiencing a life threatening situation, fatigue, poor leadership / management, poor work organisation and/or work overload.
<b>Physical working environment</b>	Unpredictable and rapidly changing work locations and environments including vehicles, remote and isolated locations, extreme weather, fire, contaminated air, hazardous building materials, heights, confined spaces and marine environments.

## CASE STUDY: FAMILY & DOMESTIC VIOLENCE – IDENTIFYING HAZARDS

	Strategic	Operational	Dynamic
<b>Information Available</b>	Police officers are often called to attend reports of family violence	Police officers are often called to attend reports of family violence.  A call for assistance is received. This is not the first time police have been called to this address. Three children are thought to reside at the home. Alcohol consumption has been an issue in a previous incident.	Police officers are often called to attend reports of family violence.  A call for assistance has been received. This is not the first time police have been called to this address. Three children are thought to reside at the home. Alcohol consumption has been an issue in a previous incident. On arrival at the scene there are several neighbours on the footpath on the front of the premises. There is a large dog in the front lawn of a fenced single story house. A man and a woman can be seen arguing through the front window. Three small children are standing in the front doorway of the house.
<b>Hazard Identification</b>	<p>A strategic identification of hazards faced by the police organisation may include:</p> <ul style="list-style-type: none"> <li>▶ providing information systems to capture data to assist in hazard identification</li> <li>▶ reviewing available information to determine the frequency of family violence incidents attended by the police organisation</li> <li>▶ considering previous information from investigations into police attendance at family violence incidents</li> <li>▶ engage with family welfare and support agencies.</li> </ul>	<p>Identification of hazards in the operational sense may include consideration of:</p> <ul style="list-style-type: none"> <li>▶ who is likely to be present at premises and what is known about them</li> <li>▶ previous history of firearm use and ownership</li> <li>▶ whether drugs/alcohol are involved or whether there is a known history of drug/alcohol issues</li> <li>▶ any mental illness</li> <li>▶ threats to self or others</li> <li>▶ intervention orders</li> <li>▶ any children likely to be present</li> <li>▶ identification of appropriate methods of tactical intervention</li> <li>▶ previous successful resolution techniques</li> </ul>	<p>Dynamic identification of hazards at the scene of the incident may include:</p> <ul style="list-style-type: none"> <li>▶ validation of issues previously identified in the operational hazard identification (e.g. there are children at the address)</li> <li>▶ identification of any factors not known/identified through the strategic and operational hazard identification e.g.</li> <li>▶ presence of external parties known or unknown to the people involved or police</li> <li>▶ condition of premises</li> <li>▶ weather conditions</li> <li>▶ traffic conditions</li> <li>▶ escalation of any factors previously considered, including but not limited to the emotional state of people involved</li> <li>▶ identification of appropriate methods of entry</li> <li>▶ previous successful resolution techniques</li> </ul>

# ASSESSING RISKS

A risk is the possibility that harm (death, injury or illness) might occur. A risk assessment involves considering what could happen should someone be exposed to a hazard (consequence) and the likelihood of it happening. A risk assessment can help determine:

- ▶ how severe a risk is
- ▶ whether existing control measures are effective
- ▶ what action should be taken to control the risk
- ▶ how urgently the action needs to be taken.

Risk assessment does not always have to be a long, complex process. It is a means to an end, not an end in itself. As such, it should be straightforward, purposeful and actionable. All the factors that affect the risk should be examined, this may include looking at:

- ▶ the number of people exposed to the risk
- ▶ the different types of people who are exposed - e.g. inexperienced workers, pregnant workers, members of the public
- ▶ how they are exposed to the risk
- ▶ how often they are exposed - e.g. daily or infrequently
- ▶ how long they are exposed for - e.g. throughout a whole shift
- ▶ the combination of hazards they are exposed to - e.g. psychosocial risk and traffic hazards in attending accident scenes
- ▶ how serious the harm could be -e.g. a fatality, a chronic injury, or first aid only
- ▶ what the law says about risk control - e.g. some risks have mandatory risk control measures
- ▶ how well current control measures work.

Assessing risks helps to ensure that the most serious problems are addressed first. Codes of Practice have advice about how to assess the risks of different hazards, e.g. the Hazardous Manual Tasks Code of Practice includes a risk assessment checklist.

## WHEN SHOULD RISKS BE ASSESSED?

A risk assessment is mandatory under the WHS Regulations for high risk activities such as entry into confined spaces, diving work and live electrical work. In other instances, risk assessments should be undertaken whenever:

- ▶ there is uncertainty about how a hazard may result in injury or illness
- ▶ the work activity involves a number of different hazards and there is a lack of understanding about how the hazards may interact with each other to produce new or greater risks
- ▶ changes at the workplace occur that may impact on the effectiveness of control measures.

A risk assessment may not be necessary if a risk is well known and the solution is obvious. Given the nature of policing work, risk assessments will often be necessary. Three levels of risk assessment should be considered, strategic, operational and dynamic (as described on page 22).

## RISK ASSESSMENT METHODS

An analysis and evaluation that considers the consequence and likelihood of any risk should include:

- ▶ working through a sequence of events to determine where things could go wrong and how this could result in harm
- ▶ evaluating the way operations are planned, organised, resourced and performed
- ▶ the adequacy of education and training or knowledge required to perform duties
- ▶ considering the types of equipment to be used and risks involved
- ▶ using information systems and technology to predict risk to police, where such systems are available
- ▶ conducting debriefings of operations, post-operation assessments, workshops and desktop and field exercises
- ▶ taking into account different situations or conditions that could alter the risks or risk levels, such as changes to operations.

## CASE STUDY: FAMILY & DOMESTIC VIOLENCE – ASSESSING HAZARDS

	Strategic	Operational	Dynamic
<b>Information Available</b>	Police officers are often called to attend reports of family violence.	Police officers are often called to attend reports of family violence.  A call for assistance is received. This is not the first time police have been called to this address. Three children are thought to reside at the home. Alcohol consumption has been an issue in a previous incident.	Police officers are often called to attend reports of family violence.  A call for assistance has been received. This is not the first time police have been called to this address e and three children are thought to reside at the home. Alcohol consumption has been an issue in a previous incident. On arrival at the scene there are several neighbours on the footpath on the front of the premises. There is a large dog in the front lawn of a fenced single story house. A man and a woman can be seen arguing through the front window. Three small children are standing in the front doorway of the house.
<b>Risk Assessment</b> <i>Determine the likelihood of hazards identified occurring and the likely consequences</i>	A strategic risk assessment may include assessment of: <ul style="list-style-type: none"> <li>▶ how often family violence is encountered by police officers</li> <li>▶ the training undertaken by police</li> <li>▶ the legislative obligations of the police organisation.</li> </ul>	An operational risk assessment may include assessment of: <ul style="list-style-type: none"> <li>▶ the level of supervision</li> <li>▶ the level of experience, training and skills of the involved officers</li> <li>▶ any previous interaction with the resident and what occurred</li> <li>▶ any information known that is likely to cause an escalation e.g. alcohol or drug consumption, threats of violence</li> <li>▶ potential hazards created by tactical options considered.</li> </ul>	A dynamic risk assessment may include: <ul style="list-style-type: none"> <li>▶ situational awareness</li> <li>▶ specific assessment of new information e.g. the presence of a large dog and the presence of neighbours</li> <li>▶ validation of the Operational Risk Assessment (if available).</li> </ul>

# CONTROLLING RISKS

The most important step in managing risks involves eliminating them so far as is reasonably practicable, or if that is not possible, minimising the risks so far as is reasonably practicable.

The various ways of controlling risks are ranked in a hierarchy from the highest level of protection and reliability to the lowest as shown in *Figure 3: Hierarchy of risk control measures*. Duty holders are required to work through this hierarchy when managing specific risks under the WHS Regulations.

**Level 1** – These control measures are the most effective. They involve eliminating the hazard and associated risk. The best way to do this is by not introducing the hazard into the workplace. Risk can also be eliminated by removing the hazard completely.

**Level 2** – If it is not reasonably practicable to eliminate the hazards and associated risks, the risks must be minimised using a Level 2 control measure. These attempt to address the hazard and associated risks by substitution, isolation or using an engineering control such as mechanical or physical aid.

**Level 3** – These control measures include the use of personal protective equipment and administrative controls such as training. They do not control the hazard at the source. They rely on human behaviour and supervision, and used on their own, tend to be least effective in minimising risks. For this reason, Level 3 control measures should only be used:

- ▶ when there are no other practical control measures available (as a last resort)
- ▶ as an interim measure until a more effective way of controlling the risk can be used
- ▶ to supplement higher level control measures (as a back-up).

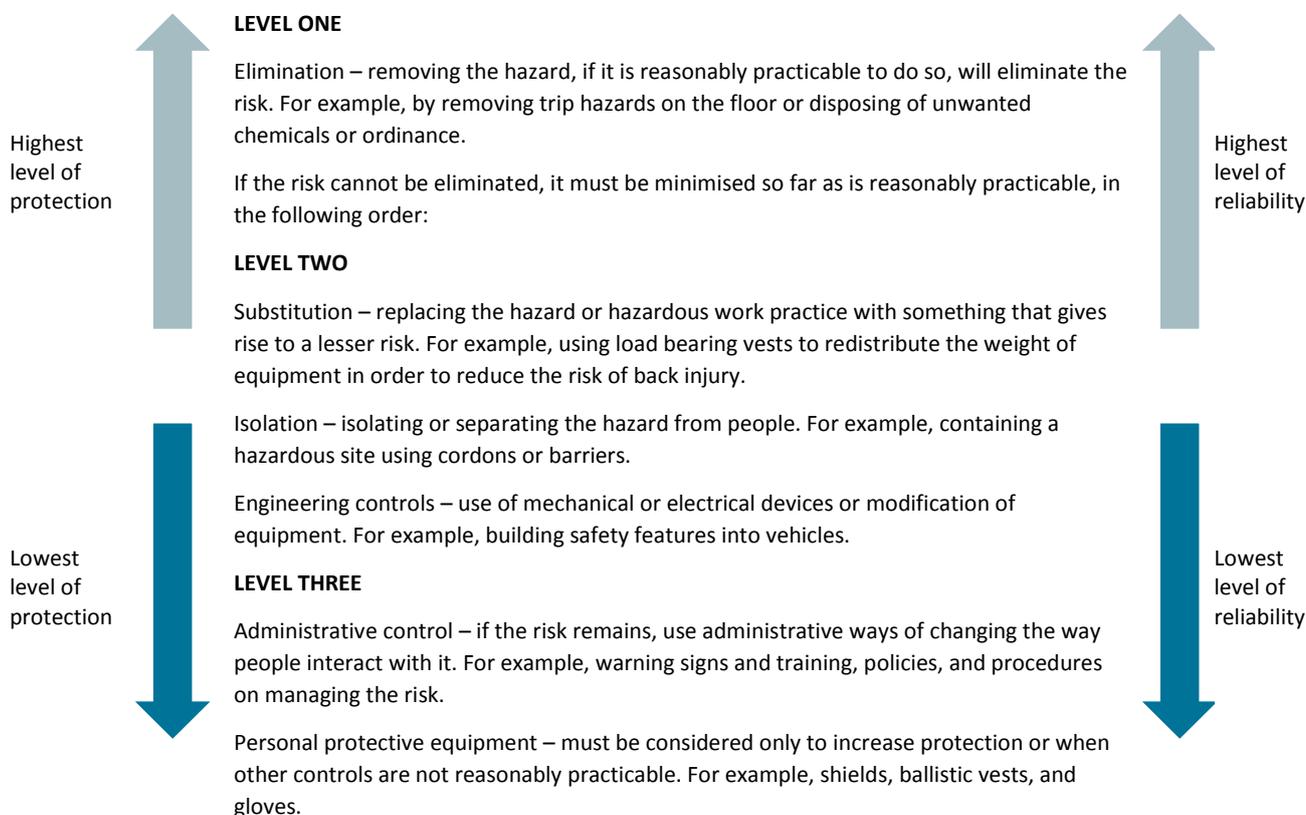


Figure 3: Hierarchy of risk control measures

Due to the nature of police work, it will not always be possible to fully eliminate all hazards from the workplace and in some instances, a combination of risk control measures in the hierarchy may be the most effective.

The type of control measures that can be implemented will depend on what is reasonably practicable to do at the time. There may be particular circumstances where it is not reasonably practicable to use the highest level of risk control.

During the course of police operations, if effective risk controls are being used, operational orders are in place where appropriate, regular and effective communication is maintained, and police are adequately resourced, trained, prepared, and supervised, the risks of complex operating environments can be minimised so far as is reasonably practicable.

## CASE STUDY: FAMILY & DOMESTIC VIOLENCE – CONTROLLING RISKS

	Strategic	Operational	Dynamic
<b>Information Available</b>	Police officers are often called to attend reports of family violence.	Police officers are often called to attend reports of family violence. A call for assistance is received. This is not the first time police have been called to this address. Three children are thought to reside at the home. Alcohol consumption has been an issue in a previous incident.	Police officers are often called to attend reports of family violence. A call for assistance has been received. This is not the first time police have been called to this address and three children are thought to reside at the home. Alcohol consumption has been an issue in a previous incident. On arrival at the scene there are several neighbours on the footpath on the front of the premises. There is a large dog in the front lawn of a fenced single story house. A man and a woman can be seen arguing through the front window. Three small children are standing in the front doorway of the house.
<b>Risk Control</b>	Risk controls that may be considered at the strategic level include developing organisational policies that consider: <ul style="list-style-type: none"> <li>▶ accountability for different actions such as assessments, operational safety</li> <li>▶ organisational requirements for action (recording and forms to be completed)</li> <li>▶ key actions to be undertaken based on known hazards</li> <li>▶ external agencies and support.</li> </ul>	Based on the operational assessment of knowledge of situation, persons involved and operation safety principles, controls considered may include: <ul style="list-style-type: none"> <li>▶ whether backup or extra supervision is required</li> <li>▶ whether a meeting point to assess situation 'on site' and consider the use of incident management principles should be arranged</li> <li>▶ whether medical back up is likely to be required</li> <li>▶ whether specialist assistance is required.</li> </ul>	Risk control at the scene of the incident may involve: <ul style="list-style-type: none"> <li>▶ validating the operational risk control measures identified</li> <li>▶ considering the allocation of specific roles to address any new risks assessed (isolation/containment of neighbours, support of children)</li> <li>▶ considering additional risk controls specific to the situation e.g. assistance from dog handlers (either police or council rangers) if required</li> <li>▶ monitoring risk controls while the incident is resolved in case of escalation.</li> </ul>

# MAINTAINING AND REVIEWING RISK CONTROL MEASURES

Deciding on and implementing a risk control measure is not the end of the risk management process. It is important to constantly monitor and review control measures to ensure they continue to prevent or control exposure to hazards or hazardous work practices.

To ensure a control measure remains effective it should be properly maintained by checking that it is still:

- ▶ fit for purpose, e.g. whether the personal protective equipment issued to police for use during crowd control is affording them adequate protection
- ▶ suitable for the nature and duration of the work, e.g. whether the quality and frequency of debriefing and other support given to police on covert operations is sufficient
- ▶ functional, e.g. a duress alarm is installed in an appropriate location and is regularly tested.

## WHEN SHOULD CONTROL MEASURES BE REVIEWED?

Regulation 38 of the WHS Regulations requires that when the PCBU is managing risks under the Regulations they review, and as necessary, revise control measures so as to maintain, so far as is reasonably practicable, a workplace that is free from risks to health and safety. A review of control measures required under the WHS Regulations must be undertaken in the following circumstances:

- ▶ when the measure does not control the risk it was implemented to control so far as is reasonably practicable
- ▶ before a change that is likely to give rise to a new or different risk that the measure may not effectively control
- ▶ a new hazard or risk is identified
- ▶ the results of consultation with workers and other duty holders indicate that a review is necessary
- ▶ a health and safety representative (HSR) requests a review.

For example the police PCBU should:

- ▶ Have a planned program of inspections and maintenance. Due to the wide range of places police attend that become a workplace, police can plan inspections and maintenance within police occupied buildings and of police owned equipment, however they cannot be responsible for inspecting and maintaining other businesses. Police could, however, work with other businesses or undertakings for example, if a large event is planned, police could check to ensure safety evacuation procedures are adequate, liaise with other emergency services or government agencies and work together to ensure a high standard of safety.
- ▶ Undertake a review every time the work environment changes, where the changes may impact on health and safety. For police, as the work environment changes constantly, this does not mean a review would be triggered every time an officer was deployed to attend to an incident in a new or different location. However, it would mean ensuring that reviews were undertaken in response to new and emerging issues

impacting on how police undertake their duties, for example, changes in patterns of crime, deinstitutionalisation or new drugs of dependence.

In determining the frequency of the review process, the police PCBU should consider:

- ▶ whether control measures for high risk activities should be reviewed more often
- ▶ whether there may be particular stages in the life of a structure, item of plant or equipment where more frequent reviews are required, for example manufacturer's instructions or technical standards stating how often they must be inspected and serviced
- ▶ whether there are specific review requirements under the WHS Regulations, e.g.:
  - ▶ Regulation 401 of the Model Regulations requires the PCBU, to ensure that any measures for the control of health risks from exposure to lead at the workplace (e.g. from firing weapons at an indoor firing range) are reviewed, and as necessary, revised in certain circumstances
  - ▶ Regulation 213 of the Model Regulations requires the PCBU with management or control of plant at a workplace to maintain, inspect and test plant in certain ways
  - ▶ Reviews of risk controls should also be built into operational debriefs.

## REVIEW METHODS

The same methods as in the initial hazard identification step can be used to review control measures. Police and their HSRs should be consulted as part of the review. The following questions should be considered:

- ▶ Are the control measures working effectively in both their design and operation?
- ▶ Have the control measures introduced new problems?
- ▶ Have all hazards been identified?
- ▶ Have new work methods, new equipment or chemicals made the job safer?
- ▶ Are safety procedures being followed?
- ▶ Has instruction and training provided to police on how to work safely been successful?
- ▶ Can training include learnings from previous incidents to inform and improve practice?
- ▶ Are police actively involved in identifying hazards and possible control measures? Are they openly raising health and safety concerns and reporting problems promptly?
- ▶ Is the frequency and severity of health and safety incidents reducing over time?
- ▶ If new legislation or new information becomes available, does it indicate that current controls may no longer be the most effective?

Should challenges be identified, undertake the management process, review information and make further decisions regarding risk control.

## CASE STUDY: FAMILY & DOMESTIC VIOLENCE – MAINTAINING AND REVIEWING RISK CONTROL MEASURES

	Strategic	Operational	Dynamic
<b>Information Available</b>	Police officers are often called to attend reports of family violence.	Police officers are often called to attend reports of family violence. A call for assistance is received. This is not the first time police have been called to this address. Three children are thought to reside at the home. Alcohol consumption has been an issue in a previous incident.	Police officers are often called to attend reports of family violence. A call for assistance has been received. This is not the first time police have been called to this address e and three children are thought to reside at the home. Alcohol consumption has been an issue in a previous incident. On arrival at the scene there are several neighbours on the footpath on the front of the premises. There is a large dog in the front lawn of a fenced single story house. A man and a woman can be seen arguing through the front window. Three small children are standing in the front doorway of the house.
<b>Review of Risk Control Measures</b>	<p>The review of risk controls at the strategic level may include:</p> <ul style="list-style-type: none"> <li>▶ collation of feedback from operational level</li> <li>▶ analysis of likelihood of occurrence of incidents</li> <li>▶ consideration of further risk controls based on experience and outcomes of incidents e.g. changes in policy and/or training.</li> </ul>	<p>The review of risk controls at the operational level may include:</p> <ul style="list-style-type: none"> <li>▶ debrief of police employees exposed from an operational perspective</li> <li>▶ consideration of police employee wellbeing</li> <li>▶ identification of any hazards or associated risks not identified as part of the process and assessment of the likelihood of regular occurrence</li> <li>▶ consideration of a hazard register to inform future assessments</li> <li>▶ provision of input to strategic assessments/reviews where required.</li> </ul>	<p>The review of risk controls at the scene of the incident may include:</p> <ul style="list-style-type: none"> <li>▶ debrief of police employees exposed from an operational perspective</li> <li>▶ consideration of police employee wellbeing</li> <li>▶ Identification of any hazards or associated risks not identified as part of the process and assessment of the likelihood of regular occurrence</li> <li>▶ provision of input to operational debrief.</li> </ul>

# CONSULTATION, REPRESENTATION AND PARTICIPATION

## CONSULTATION, CO-OPERATION AND CO-ORDINATION WITH OTHER DUTY HOLDERS

Police often undertake operational duties away from their own police stations and may find themselves at workplaces managed or controlled by other PCBUs, who will also have a primary duty of care. Under the Model WHS Act, if more than one person has a duty in relation to the same matter, each person with the duty must, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with all other persons who have that duty.

Talking to, and co-operating and co-ordinating activities with others at the workplace will make the control of risks more effective and help each duty holder comply with their duty. The police PCBU should consult with other PCBUs to deal with predictable circumstances that would involve a police presence and provide input into risk management plans where it is appropriate to do so. This may be, for example, with PCBUs of:

- ▶ other organisations that assist during emergencies, such as fire brigades, ambulance services, emergency services, defence forces, and other police organisations
- ▶ workplaces where police attendance is planned due to the numbers of people that congregate there or the nature of people's activities there. These may include:
  - > operators of hospitals, disability group homes, child and aged care centres, evacuation centres, schools and universities
  - > operators of entertainment venues, such as stadiums, clubs, theatres
  - > organisers of entertainment events, such as concerts and festivals
  - > operators of retail precincts such as shopping centres
  - > administrators of transport infrastructure, such as bus and train stations, airports, seaports and road traffic network
  - > operators of major hazard facilities
  - > administrators of public spaces such as parks
  - > regulatory authorities, such as local governments and liquor licensing authorities.

## CONSULTING WORKERS

Consultation with workers and HSRs is a key part of managing work health and safety risks. Involving workers and HSRs in the risk management process provides insight into how hazards and risks can come about, and about the workability and effectiveness of potential risk controls.

The Model WHS Act requires a PCBU to, so far as is reasonably practicable, consult with workers who are, or are likely to be, directly affected by a matter relating to work health and safety. Consultation must include all of the following:

- ▶ if workers are represented by a HSR, the consultation must involve that representative
- ▶ sharing relevant information with workers/HSRs
- ▶ giving workers/HSRs a reasonable opportunity to express their views, and contribute to decision making
- ▶ taking into account the views expressed
- ▶ advising workers/HSRs of outcomes in a timely manner.

While the police PCBU should aim to reach agreement with workers and HSRs as a result of consultation, agreement is not a required outcome of the consultation provisions in the Model WHS Act. The police PCBU is still ultimately responsible for making decisions about health and safety, and controlling risk so far as is reasonably practicable.

The Model WHS Act also places obligations on the PCBU in relation to the process for electing HSRs and establishing work groups, consulting with and training HSRs and setting up health and safety committees. The WHS Act also sets out powers and functions for HSRs.

Safe Work Australia has provided guidance on HSRs and health and safety committees in the *Worker Representation and Participation Guide*, available at:

[www.safeworkaustralia.gov.au/doc/worker-representation-and-participation-guide](http://www.safeworkaustralia.gov.au/doc/worker-representation-and-participation-guide)

### WHEN SHOULD CONSULTATION OCCUR?

The Model WHS Act requires consultation whenever the following activities are undertaken:

- ▶ identifying and assessing hazards and risks
- ▶ making decisions about controlling risks
- ▶ making decisions about the adequacy of welfare facilities for workers
- ▶ proposing changes that may affect the health or safety of workers
- ▶ making decisions about procedures consulting with workers, resolving health and safety issues, monitoring the health of workers, monitoring workplace conditions, or providing information and training to workers.

### HOW SHOULD CONSULTATION OCCUR?

There is no prescribed format for consultation. This means the police PCBU can negotiate with workers to establish consultation mechanisms that are suited to the needs of operational policing. Where HSRs have been elected and/or committees have been formed, consultation can occur through HSRs and/or health and safety committees. Other ways to consult could be to include health and safety as a standing agenda item on any regular scheduled meetings, or ensure work health and safety is an item to be covered in any pre-operational briefings.

The establishment of effective consultation processes will enable a shared understanding about how health and safety will be managed during various police operations. When unexpected matters arise during a police

operation, there may not be time to consult. However, consultation in the early stages of a planned operation or in the development of standard operating procedures means that workers will already have had input when quick decisions about risk control measures are needed.

SWA has produced the model Code of Practice: *Work Health and Safety Consultation and Co-operation and Co-ordination*, available at [www.safeworkaustralia.gov.au](http://www.safeworkaustralia.gov.au).

## ISSUE RESOLUTION

The Model WHS Act includes provisions for resolving work health and safety issues that arise in the workplace or from the conduct of a business or undertaking.

An 'issue' is any concern about health and safety at the workplace that remains unresolved after consultation with the affected workers and the relevant PCBU has occurred. For example, an issue could include a difference in opinion on whether something is a potential risk to health and safety or whether a particular control measure is adequate. Other issues may involve the means by which workers are consulted or participate in health and safety decisions.

In many instances, issues will be resolved without using the issue resolution provisions of the Model WHS Act. This is more likely to be the case if risks are proactively managed and workers are encouraged to discuss any concerns as they arise.

Where informal resolution does not occur, the issue resolution provisions of the Model WHS Act apply. Among other things, they:

- ▶ require parties to make reasonable efforts to resolve issues in a timely, effective and final way, in accordance with an agreed issues resolution procedure, or if there is no agreed procedure, the default procedure set out in the WHS Regulations
- ▶ allow representatives of the parties to enter the workplace to attend discussions for resolving the issue
- ▶ enable parties to request a work health and safety inspector attend the workplace to assist with resolution of the issue, should the parties cannot reach a resolution after making reasonable efforts to do so
- ▶ enable the work health and safety inspector to use any of their compliance powers provided by the Model WHS Act when they attend the workplace due to a party requesting their attendance to assist with issue resolution.

If the issue is resolved, and any party to it requests that the resolution be in writing, the details of the issue and its resolution must be set out in a written agreement and:

- ▶ all parties must be satisfied that it accurately reflects the resolution
- ▶ the agreement must be provided to all people involved with the issue and, if requested, to the workplace's health and safety committee (HSC), if there is one.

At any stage in the issue resolution process, a worker can still bring the issue or related ones to the attention of their HSR, if their workplace has one. An agreed issue resolution procedure, and any issue resolution, must also be consistent with other requirements in the Model WHS Act and Model WHS Regulations and all other law.

Agreed resolution procedures and any issue resolution cannot, for instance:

- ▶ override the work health and safety duties of the police PCBU or any other duty-holder; or
- ▶ take away any of the legal entitlements and rights of police officers or unsworn members either as workers or HSRs.

Safe Work Australia has produced guidance on HSRs, HSCs, and other worker representation and participation in work health and safety matters in the *Representation and Participation Guide*, available at: [www.safeworkaustralia.gov.au](http://www.safeworkaustralia.gov.au)

## WHAT WOULD AN AGREED ISSUE RESOLUTION PROCEDURE LOOK LIKE IN POLICING?

The Model WHS Act requires parties to make reasonable efforts to resolve issues in a timely, effective and final way, in accordance with an agreed procedure, or if there is no agreed procedure, the default procedure set out in the Model WHS Regulations 22 and 23.

The Model WHS Regulations specify what type of information to include in an agreed issue resolution procedure. If agreement cannot be reached on an issue resolution procedure, then the default procedure in the regulations must be used.

The minimum requirements set out for an agreed procedure for issue resolution are that it must:

- ▶ be in writing
- ▶ include terms requiring that the parties must firstly determine the nature and scope of the issue, the relevant matters to be considered by the parties and specify a process for reporting outcomes to affected workers
- ▶ not prohibit disclosure by any party of the outcome to any union or employer organisation that represents the party.

As long as these minimum requirements are met, the police PCBU can negotiate with workers to develop an agreed procedure that is suitable for the police working environment and takes into account operational issues. However, an agreed issue resolution procedure must be consistent with other requirements in the Model WHS Act – it cannot override the duties placed on the police PCBU or take away any of the rights given to workers or HSRs.

## RIGHT TO CEASE UNSAFE WORK

### WORKER'S RIGHT TO CEASE UNSAFE WORK

The Model WHS Act gives workers a right to cease or refuse to undertake unsafe work should the worker have a reasonable concern that to undertake the work would expose the worker to a serious risk to their health or safety, emanating from an immediate or imminent exposure to a hazard.

The Model WHS Act requires a worker who ceases work for this reason to:

- ▶ notify the PCBU that they have ceased work because of the reasonable concern, unless the worker has been directed to cease work by a HSR
- ▶ remain available to undertake suitable alternative work.

What constitutes a 'reasonable concern' in relation to immediate and imminent exposure to a hazard will be different depending on the relevant circumstances and on an individual worker's role, education and training, background and level of experience and the level of supervision and support workers are provided in the work they are carrying out.

During the course of police operations, police and command should be able to effectively make decisions on a case by case basis about whether new risk control measures are required, e.g. to keep risks at acceptable levels, options such as tactical withdrawals from situations and seeking alternative means of resolving situations that will be less dangerous should be considered as operations progress.

If a police officer is adequately prepared and supported in the role they are carrying out, they may not feel it is necessary to cease work even if they are faced with a serious risk to their health or safety from immediate and imminent exposure to hazard, if the risk can be controlled and it is considered necessary to accept that risk in order to fulfil their duties and oath of office, particularly if this means protecting a life.

If a police officer has exercised the right to cease unsafe work, and has complied with a direction to undertake suitable alternative work, the continuity of their employment should not be affected.

### **HEALTH AND SAFETY REPRESENTATIVE'S RIGHT TO DIRECT THAT UNSAFE WORK CEASE**

In addition to a worker's right to cease unsafe work, the Model WHS Act gives HSRs the right to direct a worker to cease unsafe work. This provision has not been taken up by all jurisdictions (refer to your jurisdictional WHS Laws for details on any provisions for HSR's ability to direct that unsafe work cease). The HSR may exercise this right if:

- ▶ the HSR has completed approved HSR training
- ▶ the HSR has a reasonable concern that work would expose a worker or workers to a serious risk to his or her health and safety, emanating from an immediate or imminent exposure to a hazard
- ▶ that worker or workers are in a work group that the HSR represents
- ▶ the HSR has consulted with the police PCBU (or a person appointed as a delegate) and has tried to resolve the matter using the issue resolution procedures required by the Model WHS Act, and the issue is not resolved, unless the risk is considered so serious, immediate and imminent that it is not reasonable to consult before giving the direction.

If a worker ceases work under the direction of a HSR, they must remain available to undertake suitable alternative work. In operational policing, there are police activities that present hazards and risks. Police training, equipment, resources and other controls are used to eliminate/minimise risks as far as reasonably practicable. A direction by a HSR to cease unsafe work, because residual risk exists, may cause tension between the obligations of a police officer under the Model WHS Laws and their oath of office. Maintaining effective communication with HSRs and workers they represent and undertaking consultation is the best way for the Commissioner/police organisation to ensure there is a clear understanding of the steps that will be taken to ensure the health and safety of police is maintained and avoid the need for HSRs to direct that unsafe work be ceased.

#### **EXAMPLE**

Before commencing a shift, a police officer identifies that a vehicle has defective brakes. The police officer has a reasonable concern this would cause serious injury and expose them to an immediate and imminent exposure to a hazard and advises their supervisor. The police officer is told they must drive the vehicle anyway and a replacement cannot be provided. The police officer would be entitled to refuse to drive the vehicle.

# APPENDIX A: FURTHER INFORMATION

## WORK HEALTH AND SAFETY REGULATORS FOR POLICE

Commonwealth and ACT	Comcare – <a href="http://www.comcare.gov.au">www.comcare.gov.au</a>
New South Wales	SafeWork NSW – <a href="http://www.safework.nsw.gov.au">www.safework.nsw.gov.au</a>
Northern Territory	NT WorkSafe – <a href="http://www.worksafe.nt.gov.au">www.worksafe.nt.gov.au</a>
Queensland	WorkCover Queensland (Workplace Health and Safety Electrical Safety Office Workers' Compensation Regulator) – <a href="http://www.worksafe.qld.gov.au">www.worksafe.qld.gov.au</a>
South Australia	SafeWork SA – <a href="http://www.safework.sa.gov.au">www.safework.sa.gov.au</a>
Tasmania	WorkSafe Tasmania – <a href="http://www.worksafe.tas.gov.au">www.worksafe.tas.gov.au</a>
Victoria	WorkSafe Victoria – <a href="http://www.worksafe.vic.gov.au">www.worksafe.vic.gov.au</a>
Western Australia	WorkSafe Western Australia – <a href="http://www.worksafe.wa.gov.au">www.worksafe.wa.gov.au</a>

### SAFE WORK AUSTRALIA

Safe Work Australia has the primary responsibility to lead the development of policy to improve work health and safety and workers' compensation arrangements across Australia. It performs its functions in accordance with strategic and operational plans agreed annually by the Select Council on Workplace Relations. Further information on Safe Work Australia can be found at: [www.safeworkaustralia.gov.au](http://www.safeworkaustralia.gov.au)