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What is a “Reasonably Foreseeable Hazard”?

As you know, a PCBU has a duty under Section 19 of the WHS Act to ensure, so far as “reasonably practicable”, the health and safety of workers and others in the PCBU’s workplace. Thankfully, “reasonably practicable” is well explained in the WHS Act in Section 18. If you apply the 6 steps that are packaged there you should end up having satisfied the “reasonably practicable” requirement.

But there is no handy 6-step package or explanation for the term “reasonably foreseeable” in the WHS Act or WHS Regulation or in a Code of Practice. WHS Regulation 34 requires that a PCBU or other duty holder, who is managing health and safety risks, must identify “reasonably foreseeable hazards” and their health and safety risks.

And SafeWork NSW’s *Code of Practice: How to Manage Health and Safety Risks*, at page 5, advises that;

“Risk management is a proactive process that helps you respond to change and facilitate continuous improvement in your business. It should be planned, systematic and cover all reasonably foreseeable hazards and associated risks.”

But what does the term “reasonably foreseeable hazard” mean? Perhaps it is a hazard that is reasonably easy to see?

Background of “Reasonably Foreseeable”

The evolution of the term “reasonably foreseeable” and its meaning began in 1903 when the concept of a “reasonable man” was raised in an English court case. And in 1932 the Judge in the frequently quoted “Snail in the Bottle” court case said; *“It is sometimes said that liability can only arise where a reasonable man would have foreseen and could have avoided the consequences of his act or omission.”*

Today, when a question of whether a hazard or risk was reasonably foreseeable or not comes up in a present day court case, the judge considers the facts of the case and the established principles that judges used in past comparable situations.

The rest of this article deals with examples of some workplace situations where “reasonably foreseeable” was considered by judges and some of the principles or observations that were referred to and applied by judges in current day court cases. We hope you find them useful in enhancing understanding and working with “reasonably foreseeable hazards”.

Examples of “Reasonably Foreseeable”

The consideration of “reasonably foreseeable” tends to be seen most in cases involving injury and negligence or in determining the culpability of the person being prosecuted for the accident.

1. A 2-man team from a waste removal company was removing litter from the side of the road. One man collected the litter and the other slowly drove the van behind him. A lorry collided with back of the van and propelled it into the man collecting litter. The judge concluded that the risk of injury was “reasonably foreseeable”

2. Boxes of documents that were not needed on a day-to-day basis were stored underneath a worker's desk. The worker endeavoured to pull one of these boxes out of the stack of boxes and was injured. The judge decided that the boxes jammed tight under a desk were a reasonably foreseeable hazard.

3. A worker unloading stone slabs from the back of a truck was seriously injured when 9 slabs fell on him. The judge considered the circumstances of the incident and concluded that the slabs had been incorrectly loaded and the risk of injury was foreseeable.

Example of Not "Reasonably Foreseeable"

A disability support worker and her co-worker were supervising children at a community pool. One of the children jumped into the pool and landed on the neck of the disability support worker who was injured by the impact. The judge noted that there was nothing in the boy's history to suggest that his behaviour had the potential of injuring others, particularly while swimming which was an activity he enjoyed. The judge concluded that it was not reasonably foreseeable that the worker would be injured.

Some Principles & Observations by Judges

The following examples of principles or observations by judges when considering whether an incident was "reasonably foreseeable" may improve understanding and be useful when looking for reasonably foreseeable hazards in your workplace.

1. *"The question of foreseeability of the risk is to be determined objectively". Ref.1*
2. A risk could be foreseeable in that the defendant knew or ought to have known of it. Ref. 2
3. *"The question of foreseeability is not to be measured by reference to an expectation that workers will exercise reasonable care for their own safety. Rather the employer is obliged to take into account the possibility of thoughtlessness, or inadvertence, or carelessness, particularly in the case of repetitive work or mundane tasks". Ref. 3*
4. *"A risk is real and foreseeable if it is not far-fetched or fanciful, even if it is extremely unlikely to occur." Ref. 4*
5. *"It was reasonably foreseeable that a cage gate might jam and that through inadvertence, or a misguided desire to complete the job, a worker would attempt to force the issue by repeatedly pulling at it to free it. The foreseeable consequences of such a sudden release of force include the person exerting the force, losing his balance, falling and suffering injury, especially when the fall is from a height." Ref. 5*

Legal References

1. Paragraph SafeWork NSW v Cosentino Australia Pty Ltd (No. 2) [2018] NSWDC 182 (6 July 2018)
<http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWDC/2018/182.html>
2. Paragraph 83, Andonovski v Park-Tec Engineering Pty Ltd and Barbeques Galore Pty Ltd; Andonovski v East Realisations Pty Ltd (No 6) and Anor [2015] NSWSC 341 (31 March 2015)
<http://www5.austlii.edu.au/au/cases/nsw/NSWSC/2015/341.html>
3. As in ref. 2 above.
4. As in ref. 2 above
5. Paragraph 84, ref.2 above.

5th September 2018