THE 4 PILLARS OF CONTRACTOR SAFETY MANAGEMENT 2020

PRESENTED BY: Director Sue Bottrell
1.00 – 1.45 Session 1 – Legal Liability - Who’s Holding The Bag?”
1.45 – 2.30 Session 2 – Pillar - Prequalification “What It Is Not”
2.30 – 2.40 Break
2.40 – 3.25 Session 3 – Pillar 2 - Onboarding “How To Suck Eggs?”
3.25 – 4.00 Session 4 – Pillar 3 - Monitoring “What You Lookin’ At Willis?”
4.00 – 4.10 Close
(1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of—
(a) workers engaged, or caused to be engaged by the person; and
(b) workers whose activities in carrying out work are influenced or directed by the person;
while the workers are at work in the business or undertaking.
APPLICATION TO CONTRACTORS

How does this apply to contractors?
Are the duties different for contractor's vs employees?
Is the interpretation of the duties different?
What are the important terms in the clause?

1. Engaged by
2. Influenced or directed
3. While are work
4. Reasonable practicability
REASONABLE PRACTICABILITY

1. LIKELIHOOD
2. SEVERITY
3. KNOWLEDGE
4. SUITABILITY
5. COST
“just because a Principal has a legal right to issue instructions and it is possible to take that step, this does not establish that it is a step which was reasonably practicable to provide and maintain a safe working environment, even where the Principal has knowledge of the risks and knows of ways to control such risks.”

What are the important elements of this quote?
“once an activity has been organised and its operation is in the hands of independent contractors, liability for negligence by them within the area of their responsibility is not borne vicariously by the Principal Contractor".
“Whilst the respondents could not delegate or contract out of their duties, they could perform them by ensuring that an appropriately experienced and qualified person was retained to deal with matters beyond their own knowledge and ability.”
• the common law does not impose a duty of care on PC’s for independent contractors engaged by them of the same kind which they owe their employees;

• a PC who subcontracts work to a competent subcontractor is not subject to an ongoing general law obligation with respect to the safety of the work methods employed by the subcontractor;

• PC’s are entitled to rely upon the expertise of competent and experienced contractors;

• the use of expert contractors is a practicable method by which a PC may discharge its H&S obligations; and

• it is not reasonably practicable to require a PC to implement, review or monitor the work methods of independent contractors.
• In an operational sense what do you as a Principal Contractors have control over?
  List

• In an operational sense what do your Contractors have control over?
  List
4 PILLARS OF CONTRACTOR SAFETY MANAGEMENT
PILLAR 1 - PREQUALIFICATION “WHAT IT IS NOT”

- Establish legal relationship
- Confirm obligations of parties
- Clarify operational responsibilities
- Set expectations

PREQUALIFICATION IS NOT A MEANINGFUL PROCESS TO ASSESS OPERATIONAL SAFETY
ESTABLISH THE RELATIONSHIP

• What do you want to do?
  • Appoint Principal Contractor
    • State you are appointing (refer to regs if you want)
    • State what their role is and what they are expected to do (everything)
    • State what your role and what you will NOT do
  • Engage Independent Contractor
    • Confirm your role and obligations as a Principal Contractor
    • Confirm their role and obligations as an Independent Contractor
    • Highlight separation of obligations and activity
    • Confirm your reliance on them as the independent expert to manage risks
WHAT TO ASK AND WHY

• Confirm safety arrangements of contractor (yes/no)
• Yes you can rely on assurances without evidence!
• Put others on notice of core safety obligations under OHS legislation
• Not elements of ISO 450001
• Confirm management of critical safety concerns for your business
• Focus on outcome not process
• Verification of truth
• Agreement to conditions
SafeWork NSW v Lend Lease Pty Ltd [2018] NSWDC

Worker killed by contractor operating a forklift. Contractor and Lend Lease prosecuted

Contractor guilty of failing to confirm licensing

Principal guilty of failing to ensure appropriate traffic management systems were implemented at the premises to prevent pedestrians coming into contact with forklift trucks or their loads when undertaking work in areas where forklift trucks and other vehicles operated,
IN SUMMARY

• Prequalification is a legal process NOT a safety management process.

• It cannot provide evidence of anything more than the ability to prepare paperwork.

• Prequalification should be efficient and establish clear liability, roles and expectations to inform monitoring if/when undertaken.

• Prequalification should be efficient (15 – 30 min)
• In pairs write examples of questions for contractors confirming critical safety management activities.
  • NOTE – focus on getting affirmation of outcome not process
BREAK
PILLAR 2 - ONBOARDING
“HOW TO SUCK EGGS?”

GENERAL LEGAL DUTY

WHS Legislation requires that PCBU/ employers
1. provide information and instruction to enable workers to undertake their work safely.

Contractors are “workers” but what is the extent of the duty above?
“a Principal Contractor owes no stringent or strict common law duty to train subcontractors engaged to work on a site in the way the subcontractor is to perform its speciality work”
The focus of induction must be on providing information to contractors about matters you control e.g.

1. Site safety
2. Specific hazard management (relevant to your operations)

Induction should focus on what the Principal Contractor influences and directs.
SETTING EXPECTATIONS

1. Set expectations in respect of matters that you have competence to confirm
2. Consider carefully when you are straying into matters the contractor controls
3. Identify when a contractor specifically impacts on a matter relevant to you e.g. isolating works from your staff/ others
• In your pair list example of specific matters that you would include in a contractor induction at your workplace.

• Focus on matters you control
PILLAR 3 - MONITORING
“WHAT YOU LOOKIN’ AT WILLIS?”

• Is it the responsibility of Principal Contactors to audit the safety arrangements of contractors in respect of a contractors speciality work.
• Why Not? (consider Baiada decision)
• What are Principal contractors are required to monitor?

COMPLIANCE WITH PC SAFETY ARRANGEMENTS
“supervision by a Brodribb employee of the independent contractors while they were working could have been prescribed but it might have been an irritating distraction to those engaged in loading. At all events, it would have been unreasonable to prescribe supervisors of experienced contractors.”
WHY NOT MONITOR?

Because it is not reasonably practicable;
1. Knowledge?
2. Suitability to monitor experienced contractors
3. The cost monitor all contractors is prohibitive

Because it
1. Undermines the PC /contractor relationship
2. Potentially increases liability
3. It is of questionable value
WHY & WHAT TO MONITOR?

1. To seek information and cooperate with contractors
2. To identify issues for PC management
3. To confirm
   i. Representations made by contractors in prequalification
   ii. Contractor compliance with induction and PC risk management
      a. Site safety
      b. Specific hazards
   iii. Management of critical risks impacting on PC operations
• Everyone can stick to their knitting
• You can rely on assurances from your contractors
• You are no responsible for safety management arrangements of contractors in respect of their work
• You are responsible for safety management arrangements in respect of your work
• The relationship between PC and Contractors must change
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