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# OHS in Contractor Management

Presented by Compliance Assistance

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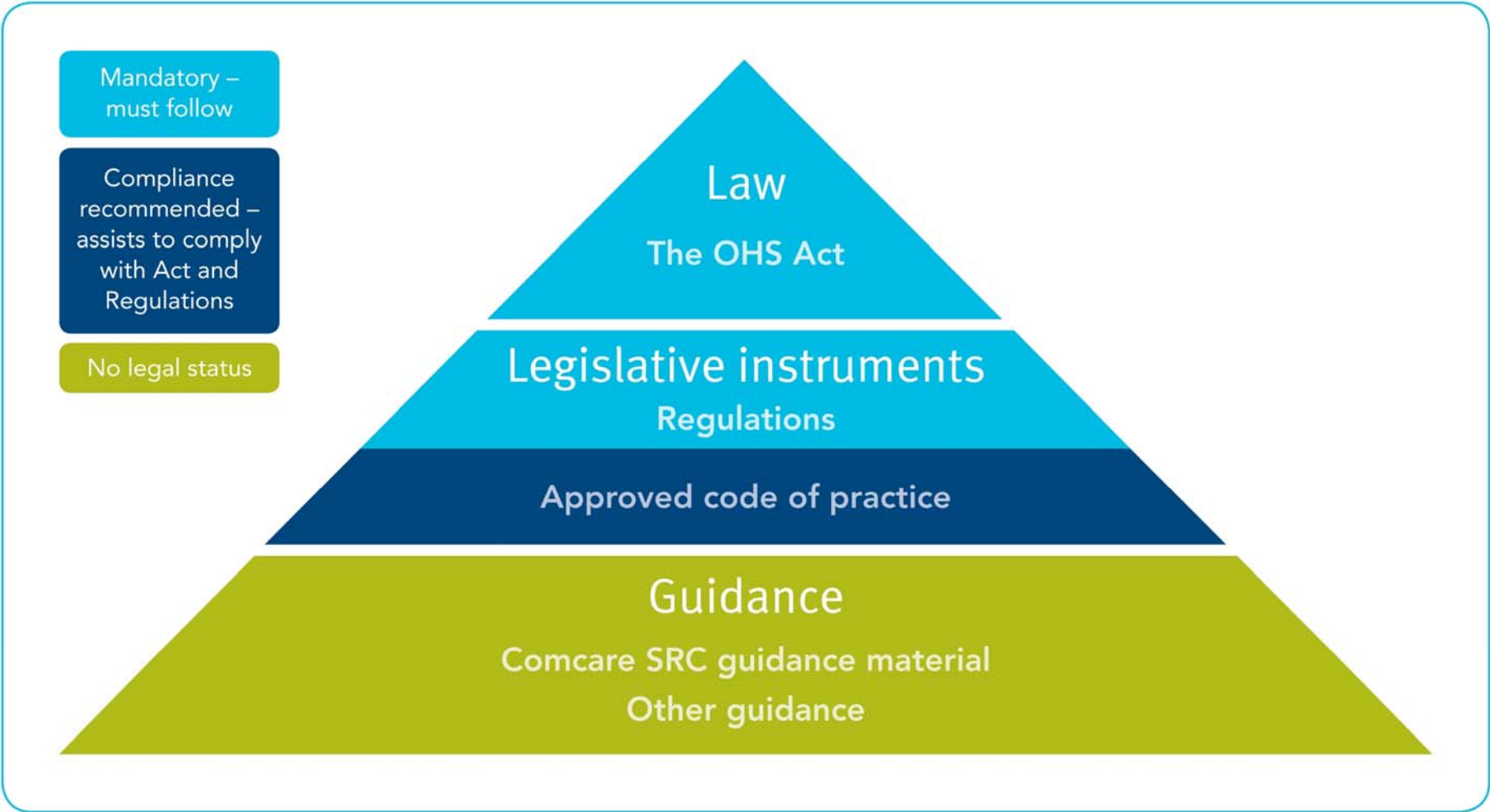
# Workshop Overview

- Myths about OHS in Contractor Management
- Legislation relevant to today's topic
- Common mistakes
- Scenarios
- The next steps – where to from here

# Urban Myths about OHS and Contractors

- OHS responsibilities can be passed on to other parties.
- Using an expert contractor removes any responsibility for OHS.
- A contractor is responsible for their own safety.
- Contracts are for goods or services only, not OHS.
- Only management needs to know what's in the contract.
- Monitoring the contractors is procurements job.
- Employers have no responsibilities to sub-contractors.

# The Framework



# OHS Legislation overview

## Definition of a contractor *(condensed from OHS Act 1991)*

A **contractor** is a **natural person (other than a Commonwealth employee or a Commonwealth authority employee or a non- Commonwealth licensee employee)** who **performs work** on Commonwealth/Commonwealth Authority or non – Commonwealth Licensee **premises** in connection with a contract between:

- (a) The Commonwealth/Commonwealth Authority or non-Commonwealth Licensee ; and
- (b) that person or another person (whether a natural person or not);

which is in connection with an undertaking being carried on by the Commonwealth.

# OHS Legislation overview

## **Duty of care** - *Section 16(4) OHS Act (to contractors)*

The obligations of an employer in respect of the employer's employees that are set out in subsections (16)(1) and (16)(2) apply also in **respect of persons who are contractors** of that employer but only in relation to:

- (a) matters over which the employer **has control**; or
- (b) matters over which the employer **would have had control** but for an express provision in an agreement made by the employer with such a contractor to the contrary, being matters over which the employer would, in the circumstances, usually be expected to have had control.

# OHS Legislation overview

**Who has “control” of the activity which gives rise to the risk?**

## **Contractual Control**

Does the contract provide the Employer with a legal right to direct the Contractor to perform work in a certain manner?

## **Practical Control**

In the absence of a legal right to direct the Contractor, do you as the Employer believe you have the power to direct the Contractor to perform work in a certain manner and if given an instruction, would it be accepted and acted upon by the Contractor?

*Reilly v Devcon Australia Pty Ltd [2008] WASCA 84 - [www.austlii.edu.au](http://www.austlii.edu.au)*

# OHS Legislation overview

## Commonwealth vs State/Territory OHS legislation

- Duty holders who come under our jurisdiction must follow Commonwealth OHS legislation
- Contractors who are not duty holders under the Commonwealth OHS legislation must follow State/Territory OHS laws

*Note: Contractors will be duty holders under the Commonwealth OHS legislation where they are Manufactures, Suppliers or Installers (s18, 19 and 20 of the OHS Act 1991)*

# OHS Legislation overview

## How do we manage this interaction?

- Select the right contractor for the activity
- Engage the Contractor
  - Get them on site
  - Meetings
- KNOW each others OHS obligations by
  - Effective communication
  - Who has control over the activity
- Monitor and evaluate performance

# Common OHS Contractor Management Mistakes

- Conducting hazard *inspections* instead of system-based *audits* of contractor's work
- Not prescribing in the contract the *frequency* of contractor "inspections"
- Not training employees on internal *hazard or incident reporting* obligations as they relate to contractor's work

# Scenario 1





XYZ  
Cleaning



# Scenario 1

1. Answer questions individually from your own experiences
2. Discuss your responses as a group
3. Record your group responses on the group form that will be collected
4. We will then ask you for some examples from the groups

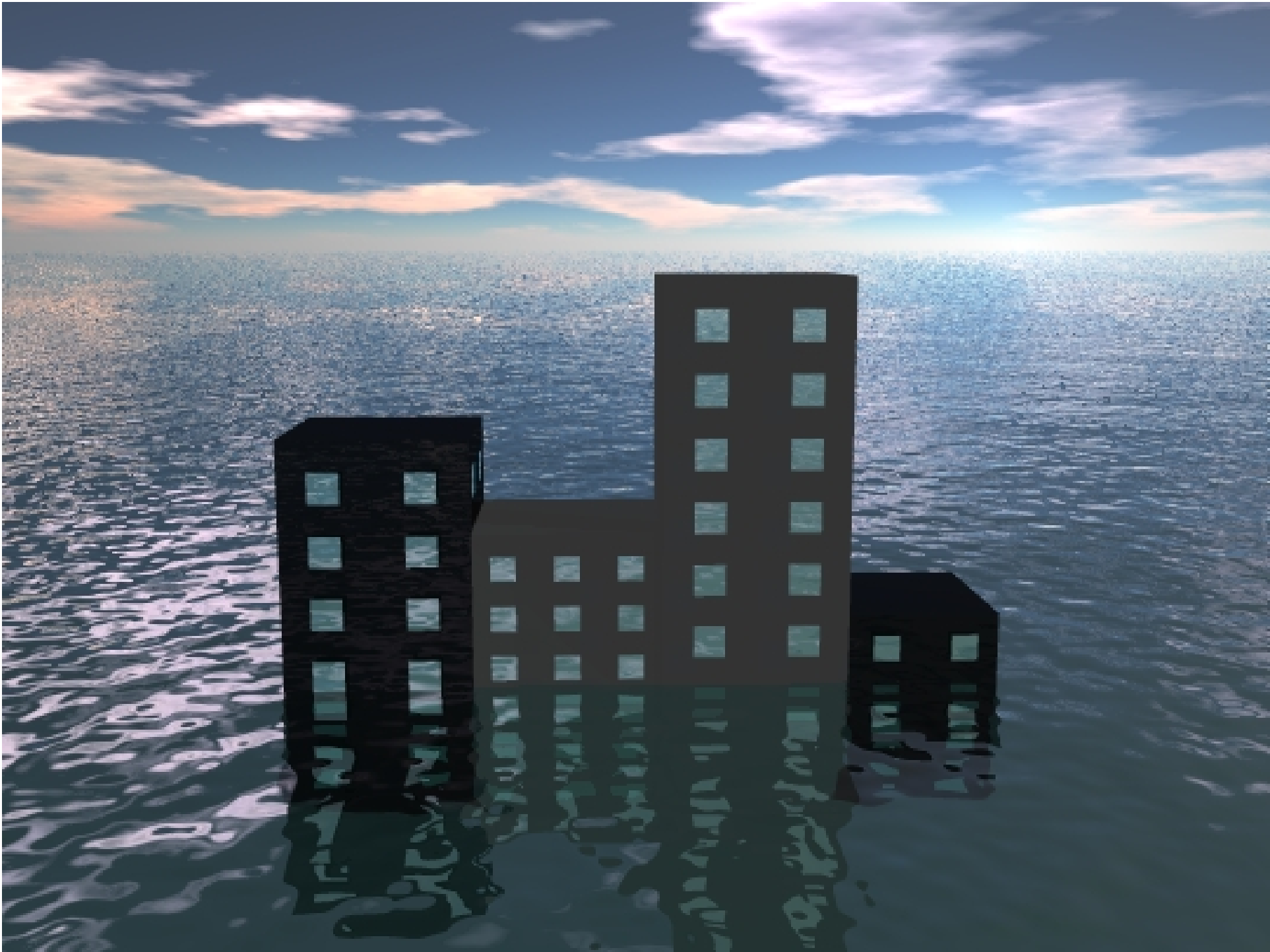
# Common OHS Contractor Management Mistakes

- Not *maintaining* a preferred supplier list (e.g. how do non-conformances feed back into the preferred supplier appraisal process?)
- No prescription regarding on-site *record keeping*
- Not applying risk management principles to *short duration* or low dollar value contracts
- Not *re-inducting* contractors when there are material changes to work site

# Scenario 2









# Scenario 2

1. Answer questions individually from your own experiences
2. Discuss your responses as a group
3. Record your group responses on the group form that will be collected
4. We will then ask you for some examples from the groups

# Common OHS Contractor Management Mistakes

- Not verifying that *persons* working on site are those persons nominated in tender or site safety documentation
- Failing to incorporate longer term contractors into established *consultative* mechanisms
- *Vague* requirements in contract offer regarding the contractor's OHS obligations

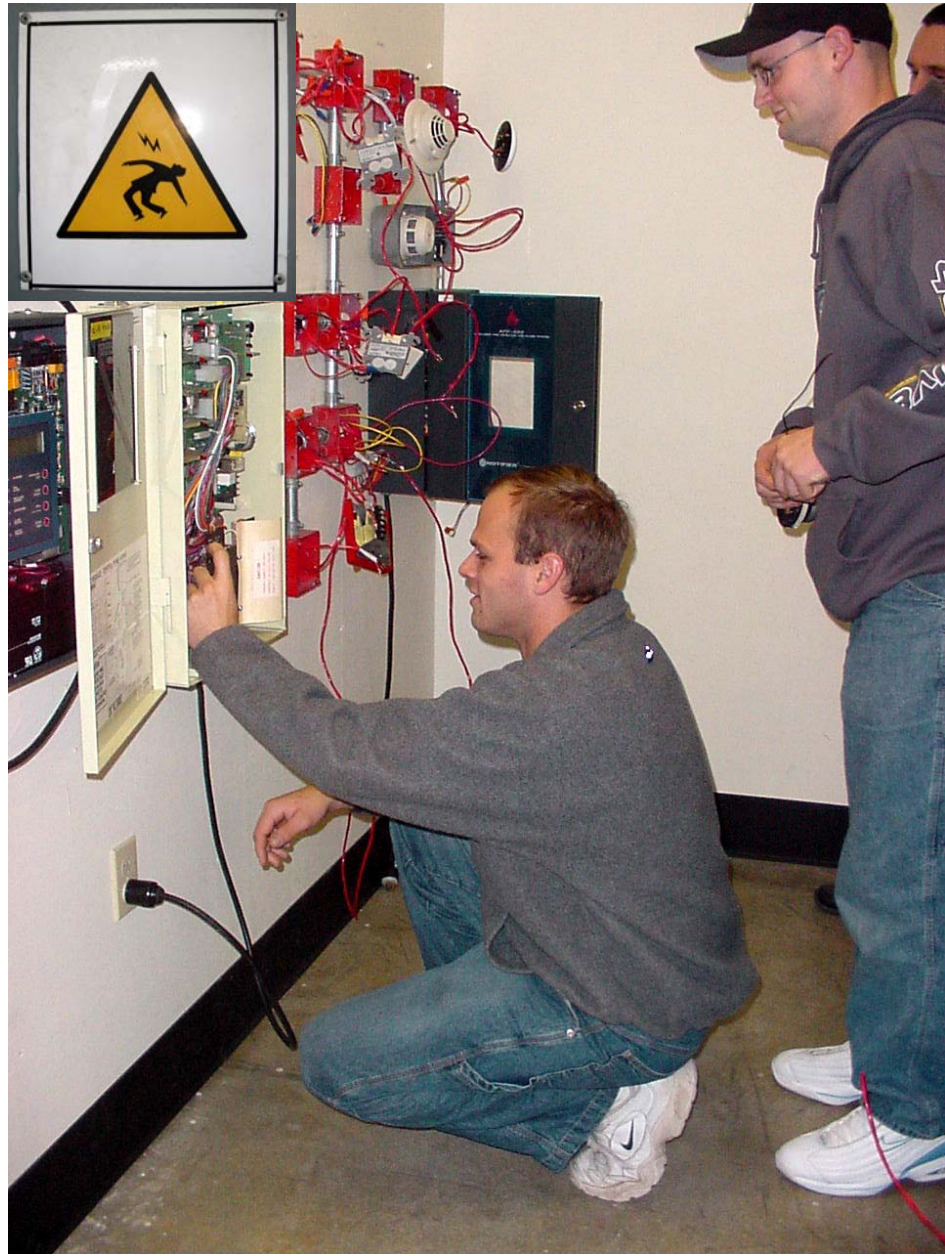
and last but not least.....

# Common OHS Contractor Management Mistakes

- Accepting a *quote based on price alone*

# Scenario 3









## Scenario 3

1. Answer questions individually from your own experiences
2. Discuss your responses as a group
3. Record your group responses on the group form that will be collected
4. We will then ask you for some examples from the groups

# Summary

## Key points for consideration

- Select the right contractor for the activity
- Engage the Contractor
  - Get them on site
  - Meetings
- KNOW each others OHS obligations by
  - Effective communication
  - Who has control over the activity
- Monitor and evaluate performance

# The Next Steps

- Collation of feedback and ideas
- Develop support mechanisms that could include
  - Guidance
  - Web Portal
  - FAQs
  - Networks
  - Forums



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