

HOW HEALTHY IS YOUR BUSINESS?

By Sonya Elmiger, Blackburne Group LP

THE INDUSTRY HAS GREATLY INCREASED its focus on physical health and safety matters in recent years using a carrot and stick approach.

The carrot being increasing awareness by forest owners of the benefits of employing contractors with robust H & S systems and a willingness to reward accordingly. The stick being the reducing work options for those who do not 'scrub up', plus significantly increased penalties e.g. for directors and the new Persons Controlling Business Units (PCBU's); those penalties, under the new legislation, are now up to 5 years in jail and/or fines of up to \$600,000.

For contractors just trying to do their job and manage their everyday activities, the extra pressures being put on the business need to be recognised and properly managed.

As industry specialists, our focus is more on the financial side, although our Whangarei Manager, Kristy Kewene, is involved in some of the hands-on issues as a member on the Forest Industry Safety Council (FISC) Contractor Certification TAG. However, our core role of managing financial issues gives us a detailed insight into the direct and indirect impacts on H & S as we assist our clients to manage their financial risk:

- Direct – as well as operational procedures, focus on H & S often involves increasing levels of mechanisation in many cases greatly increasing the debt, and thereby risk, carried by the business

- Indirect – a business that is struggling financially is unlikely to have the resources, time and energy to input into the operational H & S side of the business.

While we cannot wave a magic wand to make risks go away, it is possible to identify and minimise many risks faced by contractors. Here are some of the common risks that are overlooked, plus strategies for reducing those risks.

CASHFLOW

The old 'cash is king' remains as true as ever. When cash-flow is tight it is tempting to cut corners, both in physical and financial H & S. However, a shortcut may actually

If you think it's expensive to hire a professional to do the job, wait until you hire an amateur.

turn out to be the longest distance between two points! Strategies to avoid getting into trouble include:

- Starting point is costing your jobs properly so you know there is a (potential) profit

- Making sure you have cash or an overdraft in place to cover fluctuations in cash-flow

- Monitoring daily production against target. Consider remedial production action (or rate negotiations) sooner rather than later if things change on the ground. Experience suggests contractors can take a "she'll be right" approach, meaning the hole can quickly become too deep to crawl out from. Lost production is hard to make up, notwithstanding the eternal optimism of contractors

- Profit and cash-flow are two different things – there may be money in the bank, but it soon gets swallowed up by overheads. Increased mechanisation means bigger HP payments, so making sure the term of the loan/s is appropriate to the cash-flow and costing is essential to avoid pressure building up. It is not uncommon for us to need to restructure inappropriate finance packages.

EMPLOYMENT ISSUES

Basic procedures are frequently overlooked, exposing contractors to both financial costs and considerable time wasting dealing with unnecessary issues. Feedback from contractors is that the time and stress of dealing with these potentially avoidable issues is just as bad as the dollars involved. Basic steps to take include:

- Written employment agreements. While it has long been a legal requirement, it remains frequently ignored. MBIE is now very unsympathetic for failure to comply, with associated penalties likely

- Simple agreements that meet the minimum statutory requirement are available. While meeting statutory requirements, they will not cover some of the specific issues affecting the industry e.g. stand-down/drug testing/NTAs. It may be worthwhile investing in a specialist package so these issues are covered

- Understand and comply with disputes procedures in the employment agreement. Employment tribunal/court cases regularly award significant damages (think \$5,000 upwards, before legal fees, and that is just the dollars let alone the time/stress) against employers who may have had justification for dismissal but handled the process incorrectly.

INSURANCE

Always expensive, until you need it! It is important to make sure you are getting bang for your buck and have the cover you expect/need. Steps to take include:

- Value assets regularly. Premiums are calculated on the value you nominate, contractors are often optimistic about values, whereas insurers will pay out on their estimate of market value. Be realistic

- The flipside of this is some late model high value imported gear may go up in price with exchange rate movements. Some insurance policies offer an appreciation clause to cover this and it's worth checking with your insurance company/broker

- Have policies reviewed regularly. If using an experienced broker he/she should be doing that for you. Policy terms, and costs, can change from year-to-year; it's a competitive market so you need a broker who is keeping up with the changes, not just sticking with the old familiar

- Use a broker with real forest industry experience. We have seen examples where contractors have rural-based policies rather than contractor plant oriented policies covering the real issues that can affect contractors e.g. transporting costs, replacement machinery options, loss of profits etc

- Make sure policy covers legal costs of fighting claims. This is especially important, unfortunately, in the new H & S environment. Note that cover can only be for legal costs, not against possible penalties that may arise.

TAX

Often when cash-flow is tight and creditors are screaming for payment it is easy to kick the (much quieter) IRD payments for touch, and then stick the head in the sand when IRD eventually comes knocking. This seemingly easy option comes with real costs and risks e.g:

- The first 12 months of IRD penalties and interest on unpaid commitments increases the amount owing by over 26%, compounding
- The second 12 months is 'only' 22%

- Monitor results and plan for tax before year end

- While the IRD is traditionally slow off the mark, the clock keeps ticking. Ignoring the issues is usually terminal to a business when IRD finally catches up. They may be slow to get going but they carry a very big stick

- Dealing with the issues is time-consuming and expensive

- Failure to account for PAYE/GST is a criminal offence with penalties including jail

- IRD is taking an increasingly aggressive approach to collecting outstanding monies, including appointing liquidators and taking civil actions against directors and shareholders, especially those with 'history'.

Summary – you do not want to go down this path. Actions to avoid this:

- Refer to the cash-flow comments made earlier. Do not let yourself get into this position to start with

- If the unforeseen happens, do not ignore it and hope it will go away. It won't. Communicate, either yourself or through your accountant. By dealing with IRD before amounts become overdue and setting up an acceptable term repayment programme it is possible to reduce the cost of penalties/

interest to just over 10% per annum.

Remember, if you do not take control of the situation IRD will (eventually).

NON-TAXABLE ALLOWANCES

In 2015, the IRD reviewed industry treatment of NTAs and found some contractors were overpaying NTAs. This increases worker take-home pay at the expense of required PAYE payments. The IRD takes a dim view of this and has put the industry on notice that it will be actively policing this area. We are aware of increased enforcement action already taking place.

Implications for contractors are significant, with potential for large penalties. In addition, calculations show that increases in man-day rate of up to \$40 per day may be required to maintain current levels of take-home pay and retain experienced workers. The following links to IRD guidelines and our own commentary may be useful for you to consider:

<http://www.ird.govt.nz/technical-tax/questions/questions-general/>

http://www.blackburnegroup.co.nz/files/4514/4296/2207/NTA_Newsletter_April_15.pdf

What to do?

- Review your current NTA situation. Hint – all employees being paid the same NTAs is a real flag to the IRD of inappropriate treatment with potential to increase likelihood of detailed review/penalties

- Look to adjust NTAs between workers based on their roles e.g. full chainsaw allowance to a machine operator will be hard to justify

- Going back again to cash-flow/costing issues, make sure any required increase in the man-day rate is included in your rate.

ACC

With rates coming down it's easy to forget the impact on the business. Here are some simple issues to remember:

- Structure the business so that non-logging personnel e.g. administration/mechanics are paying ACC at lower rates

- Any professional logger with a good H & S programme should be able to qualify for WSMP discounts

- Shareholders in a start-up contracting business, or one that has had a bad year, might not have any effective ACC cover due to low income. Consider taking CoverPlus extra to ensure there is a realistic cover.

SIMPLE RISK REDUCTION STEPS

If the worst happens and a contractor is being prosecuted under H & S legislation



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or has financial difficulties, there are some simple steps that might assist. Caution – the following comments are general in nature, every situation will be specific to its own circumstances and expert advice should always be sought. These suggestions are not a magic bullet, but may assist with providing some protection:

- Minimise the number of directors. Under both commercial and H & S legislation directors are in the spotlight for liability. Many contracting companies are set up with husband and wife as directors. This just increases potential exposure

- Minimise assets personally owned, as these are subject to attack. The use of trusts to own assets is recommended

- Consider having key equipment assets owned by a company/trust that leases to the operating company. If the operating company gets into difficulty this increases the opportunity to preserve equity that may still be in these assets

- Have a separate trust for personal assets and one for owning business assets

- Asset protection through use of trusts is very dependent on running the trusts properly i.e. don't just set them up and forget, this makes them easier to be treated as a sham and overturned

- Complete trust gifting, otherwise you still have personal assets that can be attacked.

While effective practical Health & Safety policies are crucial to a successful business, financial management and protection of the business is also important to have a long-term future. Today, it is more important than ever.

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