

3M Transcript for the following interview: Ep-91 Managing Contractors

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Welcome to the 3M Science of Safety podcast presented by 3M Australia and New Zealand Personal Safety Division. This is a podcast that is curious about the science and systems of all things work, health and safety, that keep workers safe and protect their health. I am Mark Reggers, an occupational hygienist, who likes to ask the questions Why, How, and Please Explain. Whether you are a safety professional, occupational hygienist, or someone with any level of WHS responsibility in the workplace, maybe you are a user of safety equipment or maybe you are a bit of a safety nerd who finds this stuff really interesting, then this is a podcast for you.

(R) Today, we're talking all about contractor management with Sarah-Jane Dunford. Welcome back Sarah-Jane.

(D) Thank you for having me.

(R) We had a fantastic chat a little while ago about safety management systems and you mentioned about contractor management being one of those issues that a few businesses struggle with at times, so I thought it may be good to do an episode fully on contractor management. But for those that may not have listened to that previous episode, I do recommend you go back and listen to that if you haven't already. Can you please introduce yourself? Who are you? Where are you from and what do you do?

(D) Yeah, so, Sarah-Jane Dunford. I am a self-confessed safety nerd. I've been working in safety for 20 years. I've been running my own safety consultancy for the past eight, founder of the Hunter Safety Awards and chair of the Hunter branch for the Australian Institute of Health and Safety and the Australian Safety Awards.

(R) So, you're very busy and we've worked a few times on a few of those different things in the past and we mentioned last time about LEGO Play. What is LEGO Play? I find that incredibly fascinating. I loved my LEGO as a younger person. But how does that work in the safety space?

(D) Yeah so, I'm a LEGO Serious Play certified trainer, and what that means is usually traditionally, training is called instruction-ism where you've got teacher-student style and a lot of people don't learn through that way and a lot of my clients have ... for example blue collar workers, they come into a training room to learn about safety and they switch off within a couple of seconds knowing it's that instruction-ism style of training. So, walking in a room with a table full of LEGO, it really turns them in terms of interest with what's today about? So, it's called constructivism and constructionism; the science behind learning while using your hands, while watching somebody build, but then building yourself, and then the storytelling around what you've built.

(R) It's very interesting. I might have to you get back in the future and do something specifically on that. But today, we're talking about contractor management. So, who classifies as a contractor for a company or a PCBU, as we commonly use in most of Australia, a person conducting a business or undertaking? Who classifies as a contractor?

(D) Anybody that's not an employee or volunteer, that you employ or pay to come in and do work for you at your business. So, they're either a sole trader or a company or something like that, and they're coming in and doing work.

(R) So, that ranges from you engaging the electrician to come and fix the lights to the cleaner to come drive dump trucks to a consultant. They all classify as a contractor.

(D) Yes.

(R) So, who has the responsibility for the contractor, let's use the electrician, coming onto a site to change lightbulbs or an air conditioner? Is it the air conditioning company, or is it the company they're going to do work for? Who has that ultimate responsibility?

(D) That's where it's a little grey and that's where it gets a little bit complex. So, obviously the contractor has responsibilities for their own health and safety and addressing their own risks and making sure the people they have doing work at your workplace are trained and competent. But also, you as the employer need to make sure that your contractors have done that as well. So, what checks and balances have you done to check that they're at their level, that benchmark that you're prepared to accept in the workplace? So, it's a little bit grey. I was having the discussion with my husband this week around we have some farmland where we agist it to a farmer, so he comes onto our land to do farm stuff. But then, we've also talked next door into opening their pastures for us and the farmer to go next door and do work over there, so set up electric fencing so the cows can eat their grass. So, that's a corporation next door, and we were talking about the complexities of if something goes wrong with one of us, or the farmer who is from Scone and travels a couple of hours to come down to our farm, goes onto our farm, walks through the gate and goes into the corporation next door, or if one of their

employees gets injured by the stuff we've done, so for example, the electric fencing we've put up. So, it all comes down to it's a bit of a shared responsibility and a bit of greyness in terms of what went wrong to cause whatever it is that happened? Who was aware of it and who was responsible for it? So, it's a bit of a shared responsibility.

(R) So, if I think of it in very simplistic terms, because I am a simple fellow as you very well know, the electrician coming in, obviously that company needs to understand that they've got tradespeople who are qualified in that space and they're not just going to go leaving wires hanging down in a room as an example. But obviously that company needs to check the electrician company they've engaged has got those right things in place and they have a safe system of work. Is that what you're saying? It's that dual responsibility to look after yourself, but then check who you're engaging to do the work?

(D) Yes.

(R) It's a very simplistic way, an analogy to try and break that down.

(D) Yeah, there's a lot of confusion out there about how far you drill down a check. So, all it is, you must ensure that they've addressed all their risks, they're trained and competent and they've got their insurance. But a lot of businesses go through so many hoops in terms of, "We need to check your whole safe work method statements, your system of work, your history, your reference checks," all of that. The more that the employer gets involved and checks that paperwork, the more obligation of risk they take on. So, it's a bit complicated but there's either arm's length where you're just, "Okay, you've told me that you've addressed your risks, and you're trained and competent and you've got your insurances. Great. We've employed you because we're not an expert in what you do. You're an electrician, so therefore, we're trusting that you say you've addressed them. Come in and do

it." Whereas if we have gone in and checked all their paperwork, what if there's something wrong with their paperwork and we've missed it? Therefore, that obligation comes back to us. The only time that legislation states that you have to check the paperwork is when it's construction work, so construction work involving high risk, so high risk being work at heights where your feet are above two metres, working on live electricity, in close proximity to a traffic corridor. Those things that are high risk the legislation says you have to check their safe work method statements. Other than that, you don't. So, the contractor space for a lot of businesses has become an absolute nightmare because people are asking for everything and the amount of hoops and the amount of work to submit all of that paperwork is a nightmare.

(R) We did an episode last year about rules and procedures and David Provan spoke about an 800-page worker precheck package and that's not really actually adding to health and safety. So, what you're saying here is you could make this thing huge, but you're maybe missing the actual outcome and the points of why we're trying to do what we're trying to do.

(D) Yeah, so what I always recommend with my clients is they can do that and check all the paperwork if they want and have some systems around, "This is what we're going to do to check our contractors." But you don't have to. The legislation doesn't say that you have to unless it's high-risk contractors. If it's low risk, you just need something off them in writing to say they've addressed the hazards and the risks, that they're trained and competent and they've got their insurances. The more they check, the more obligation they take on. So, there were some really interesting cases that went through the High Court and I'd encourage everybody to look these up and have a good read of them. They're very interesting, but it changed the landscape of contractor management in terms of, "We've outsourced it because we're not a specialist, so why should we be checking the paperwork of a job we don't know anything about?" which is a question I get asked a lot. How can

we check work at heights, when we don't even know how to put a harness on, let alone check the paperwork? So, it's the Baiada case, the Kirks case and Fortescue Metals' case. So, if you Google those, and have a good read of them, and it gives you a good understanding of that arm's length versus all in with checking the paperwork.

(R) I'm sure there's some light reading there for those that do want to go down that path. So, what would be a good baseline of checks that you'd be ... obviously not going into that depth maybe ... what are the baseline things that workplaces should be checking? So, you've mentioned insurances. What other things should they be doing?

(D) Yeah, so insurances are important in terms of public liability. If for example they're doing stuff that could damage your property, you've got insurance for that, professional indemnity if they're doing any recommendations to you or design, so their advice is wrong that causes an incident, and their workers' comp. The interesting thing is sole traders can't get workers' comp and there is a loophole where if they don't have it and get injured, they can claim through your workers' comp. So, a lot of businesses, particularly larger corporations, don't hire sole traders, but you just need to make sure they have income protection insurance.

(R) So, we've engaged this contractor. We've checked an amount of paperwork, depending on what path they want to go down. They're coming on site doing the job, the task, whatever they've been engaged to do. What can the business be checking in that aspect, because they've submitted, how they're going to do it. What can they do in that space?

(D) So, you still have an obligation when they're working in your workplace that they're safe. So, a level of supervision to make sure, "Okay well, I know that you were going to get up on this tall ladder and do some electrical work. You're

standing on a ladder that is not insulated, so therefore, what are you doing up there?" So, I would call them down and say, "Hey, have you addressed the ladder that you're using? It doesn't look that safe?" "Oh yeah, I forgot mine. I just got this one from around the corner." "Okay, well, can you go off site and get the correct ladder and come back when you're going to be working safely?" Because I've seen it, I'm aware of it, I can't walk past it and ignore it, because I then know that that contractor is working unsafely. The same as any other employee; I need to pull them up and correct that action so then they can work safely.

(R) So, that contractor's going to have probably a document that you may have reviewed or they've said they're going to do it in this way, so it's checking that they're actually doing what they say they're going to do, essentially in very simplistic terms there. But it may be a bit more complex, but obviously there's things you can check and ask them to explain.

(D) Yeah, if you have decided to ask for that paperwork, like their safe work method statements, it might say, "Right, we're going to be up on a harness. We're going to have insulated tools. We're going to have all our tools connected to ourselves so they don't fall." If you see that they're just up there with nothing, then you can use that documentation to say, "Hey, you said in this documentation that you submitted to me that you were going to wear a harness. You were going to have this, this and this in place. You don't."

(R) So, it's not a case of, there's the document and forget about them, but doing those checks.

(D) Yep, definitely.

(R) Now, there's a lot here that may be quite confusing in the contractor space. Are there any other common things that you see regularly that people get mixed up with this whole space?

(D) Yes. A big one is WHS management plans.

(R) Is that different to a system or the same thing?

(D) No, it's different. So, within a system, you've got all your policies and documents and forms and all of that.

(R) Like we spoke in our last episode about, yep.

(D) Yes. The legislation has requirements for certain work or construction work, that the whole project is worth more than a certain amount. So, in most states and territories, 250,000. In Victoria, 350,000. If it's over that amount, the principal contractor, so not just a normal contractor but your principal, the one that has complete control of the site ... they've taken the keys, got control of it ... must have a WHS management plan. A management plan is like a mini system that sits within your system. So, it's, "Right, we've got all these policies and procedures and all of that, but for this one project, this is what's different. This is how we manage our emergencies. This is how we manage our incidents. In that instance, we must go to the site shed to the first aid kit. We must notify the client of particular incidents." So, it's a mini system.

(R) Very specific to the job, the project obviously on construction sites.

(D) Yeah, so the confusion is either what a plan is. A plan, people think is your whole system. It's not. It's a mini system that usually quotes or references or links to your bigger system, to say, "We manage our incident management as per our

incident management procedure. But in this instance, a little bit different is the first aid kit's in the site shed and we report in a different way."

(R) Versus using our electrician example, we've got a system and that system ... wherever the work site electricians are going will be different day-to-day and multiple times during the same day versus a system which is a plan for that one specific location or project.

(D) Yeah. So, the only person that's supposed to have a WHS management plan is your principal contractor. So, if you're a contractor that's reporting into that principal contractor, you don't have to have a plan. You work under their plan which is their overarching system for that project. The thing that I find a lot of people are confused about is they ask everybody to submit a plan. So, then you've got 10, 20 contractors all with mini systems off that one job, which makes it complex.

(R) A lot of systems and a lot of paperwork.

(D) Yeah, so a lot of the times, my clients say, "Look, I've been asked to submit a plan," so I'll ring their clients and say, "What do you mean? Do you need just a sample of what their system is that they're working under, or do you need an actual plan?" And they'll say, "An actual plan." I say, "But we're not the principal contractor. The principal contractor should have the plan that we work under."

(R) That's why understanding these nuances are very important for businesses that they're not putting extra burden. We need to do what we need to do. Of course, there's those requirements, but that can have a huge impact on business viability as well.

(D) Yeah, definitely and it makes it more complex and complex safety just doesn't get followed.

(R) I mean consultation, as you just mentioned there, about getting that information, how important is that in this whole process, because that could save a lot of pain for a lot of people if that consultation piece is right.

(D) Yeah, very much. So, a lot of people forget to consult with contractors, or the contractors forget to consult with either the client or the other contractors that they're working around. So, the work that they're doing could have an effect, for example, dust or they're turning the electricity off, or they're doing hot work that has sparks while somebody else has flammable vapour in the air. So, consultation is so important, but also consultation about the systems and the management plan or the overarching system that they need to work under. If something changes, letting people know that it affects ...

(R) Is that this vertical and horizontal consultation you hear about?

(D) Yes.

(R) So, vertical's going up and horizontal is the people you're working side by side with? Is that what that roughly means?

(D) Yeah, so that whole 360 consultation.

(R) Now, if you're a principal contractor or a larger company, you could have hundreds, thousands of contractors. I think about shopping centres as an example. I used to do a little bit of work in that particular space. If you're a Westfield or a Stockland, how do you manage all these amounts of contractors, because you could have hundreds of different businesses you're dealing with?

(D) So, the first thing is you need to get clear with what paperwork you're going to ask and what checks you're going to do. So, is it that you're going to have your low-risk contractors, you're asking for a small amount of things and your high-risk, you're going to ask for all the bells and whistles? So, what is it that you're going to require off them and then proceduralise that, send that out prior to them starting work to say, "These are the requirements for working at our business," and then making sure that you've got enough resources to check that? Then when they're here or they're working with you, that particularly your high-risk work that's happening, that somebody does do a check to think, 'Okay, they're doing what they're say they're doing,' or, 'They're doing it within the rules.' Another thing you need to do is also induct them onto site.

(R) Of course. Makes obvious sense, we've all done inductions where we've been out in different locations, yeah.

(D) Yeah, so for example ... and this is where businesses fail and can take on a lot of that liability if something goes wrong. For example, a cleaner, cleaning machinery, have they been told, "Don't touch that button? Don't dust it off," because of whatever could happen. So, have you inducted them into the workplace, particularly if they're working alone? What happens if something goes wrong and they're alone?

(R) Cleaning's a great example. All the cleaning's happening overnight when the shopping centres are empty, so it's a huge consideration for lone worker stuff.

(D) Yes. So, you need to give them the benchmark as to these are the rules when you're on our site.

(R) So, the system is to help manage that? I mean, I get the process of what you're saying, but trying to manage that would be overwhelming for most businesses.

(D) Yes, it would depend on how many contractors you've got. So, you might outsource to a business, for example, or have somebody internal like a contract manager that does the hiring of the contractors, the tender requirements, the contract signoff, the documentation and the supervision. So, you just need to make sure that you have adequate resources.

(R) So, to try to wrap this all up Sarah-Jane, because there's obviously a lot here, but what are some of those key takeaway points you think our listeners should know?

(D) Determine whether ... if you're hiring contractors, do you need a principal contractor where they take on a lot of the responsibility? They pretty much take over that site and give you the keys back when they're finished. Or are you hiring just a normal contractor? Then what are the procedures around your principal contractors and your normal contractors? Are you splitting them into low risk and high risk? I would recommend looking at the legislation in terms of contractor management to look at if they're low risk, you don't have to ask them for all the bells and whistles of the paperwork. The more you check, the more obligations you take on. I would highly recommend you simplifying your low risk contractor requirements. Your high risk; getting really clear on what you require of them and induct all of them.

(R) And that's going to come back to the organisation knowing what path they want to take that's suitable for them, because obviously every organisation is different and can be very different in many circumstances. But for those that do want more information they want to go find online, where can they go?

(D) To the regulator or to the Australian Institute of Health and Safety. They've got some good stuff as well.

(R) Do that Google, but there is plenty of information out there. Now, for those that do want to get in contact with yourself and may want help in their business, what's the best way to do that?

(D) Yeah, so my business is called One Touch Contracting, so www.onetouchcontracting.com.au so we offer a free contractor preapproval process which we have a lot of happy clients that do, or you can ring us on 1300 2 BESAF.

(R) Excellent. Well thank you so much for your time today, Sarah-Jane.

(D) Thank you.

(R) Well, thanks for listening, everyone. You can get into contact with the show by sending an email to scienceofsafetyanz@mmm.com if you have any questions, topic suggestions or guests you think would be great to get in the studio. 3M are certainly here to help if you need assistance around PPE in your workplace. You can also visit our website 3m.com.au/sospodcasts for further resources on managing contractors, as well as all the transcript of the chat that Sarah-Jane and I have just had, plus all the other previously recorded episodes. Be sure to rate, subscribe, review and share through Apple Podcasts, Spotify, Google Podcasts or wherever you get this podcast from. And as Oscar Wilde said, "The only thing to do with good advice is to pass it on. It never is any use to oneself." Thanks for listening and have a safe day.