



23 November 2012

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The Research Director  
Finance and Administration Committee  
Parliament House  
George Street  
Brisbane Qld 4000

By email to : [fac@parliament.qld.gov.au](mailto:fac@parliament.qld.gov.au)



Dear Committee Members

I write in relation to your review and inquiry into the operation of the Queensland Workers' Compensation Scheme.

Master Builders is the peak industry association representing building and construction in Queensland since 1882. With approximately 8,000 members, Master Builders is the voice of the industry. Master Builders is a vocal advocate of WorkCover Queensland and the Queensland workers compensation scheme.

Master Builders extends our appreciation for the Committee's time on Wednesday 31 October 2012 and attach a brief **supplementary submission** aimed at providing additional support and clarification to our original submission. The purpose of this supplementary submission is to highlight a very real issue for our industry and to re-instate rights and protections that were taken off the industry in 1997. Amending the current legislation to include the previous protections would go a long way to improving the operation of the Act and protect all parties in the industry.

Regards

**John Crittall**

Director Construction and Policy

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**Master  
Builders**



Master Builders Submission to the  
Finance and Administration  
Committee' Inquiry into the  
Operation of Queensland's  
Workers' Compensation  
Scheme.



**A transparent and efficient worker definition is needed.**

Master Builders representatives before the Committee on the 31<sup>st</sup> October 2012, reinforced our submissions that the current unworkable system is in need of a clear and simple identifier of 'who is a worker'. Master Builders confirmed to the Committee that the industry has struggled with this issue for over ten years and acknowledge the 'results test' has failed. Master Builders continues to seek a definition that can be applied and understood, that if you are 'in business' you must have your own insurance placing the obligation where it should be on the person 'in business' and not their clients. For this reason we continue to support a further statutory exemption be extended to exclude all persons who charge GST for their services.

*Master Builders submits: 'A person 'in business' providing a service of any kind and charging GST are exempt from WorkCover'.*

A self-evident truth is that contractors who are 'in business' and engage others or have significant plant charge GST. Workers that are not 'in business' don't charge GST.



### **Extending common law indemnity coverage to Principal Contractors**

Master Builders representatives advanced this recommendation before the Committee reinforcing our submissions to extend common law coverage to host Employers/Principal Contractors in cases of injuries to workers employed by labour hire firms and subcontractors where the Host Employer/Principal Contractor has a policy with WorkCover.

The problem is very real for Principal Contractors on construction workplaces. A typical example of the problem is where an employee of a subcontractor is injured on site. The common law settlement often occurs years after the incident with the Principal Contractor left to pay tens of thousands of dollars. This payment usually results in a claim against its public liability insurance. The impact of this issue has seen huge increases in the excess payments under the public liability policies of the Principal Contractors. Some companies are finding it hard to even secure this form of cover leaving workers and companies exposed to significant financial risk and harm. The cost shifting causes a great deal of uncertainty without adding any benefit to the scheme or the injured worker. The settlement amounts can be very significant where WorkCover seeks to split the compensation payment between itself and the Principal Contractor's Public Liability insurer. The current burden on the Principal Contractors and the insurance industry has left some Principal Contractors unable to secure insurance or carry an unworkable \$100,000 excess from their public liability insurers.

Master Builders has always contended that Principal Contractors who have their own WorkCover policy should be indemnified against claims by third parties who also have their own WorkCover policy. The building and construction industry has a complex series of relationships, responsibilities, and contractual obligations. This in turn means that there is a high level of co-dependency by Principal Contractors and subcontractors. The current situation creates an untenable arrangement where both the Principal Contractor and the Subcontractor (employer of the injured worker) have their own WorkCover policies but WorkCover continues to seek compensation from the Principal Contractors public liability insurer rather than settle the matter between the two parties within the WorkCover process and legislative framework.

Master Builders supports the re-instatement of an indemnity for Principal Contractors whereby the Principal Contractor is "deemed" to be the "employer" of every person who carries out work for the Principal Contractor. This deeming provision was part of the *Workers Compensation Act 1990(Qld)* and removed in 1997. While acknowledging that this recommendation does come at a cost to the scheme, resolving this anomaly will dramatically improve the risk sharing arrangements between Principal Contractors and subcontractors and their employees.

Master Builders recommends apportioning liability between the two WorkCover policies. While this recommendation is strongly supported, both policy holders should be involved in that process to ensure a fair and just allocation of responsibility based on the differing contributions to the incident.

*Master Builders strongly recommends extending common law indemnity coverage to host employers and Principal Contractors who have a WorkCover policy with some additional processes to ensure the allocation of apportionment of claims are conducted fairly. Principal Contractors should be deemed to be the employer of all workers performing work under contract to enable settlement between the Principal Contractor and the subcontractor within the WorkCover process and framework.*

**Diagram 1: The current cycle of proportionate liability between WorkCover and Principal Contractor's Public Liability Insurance**

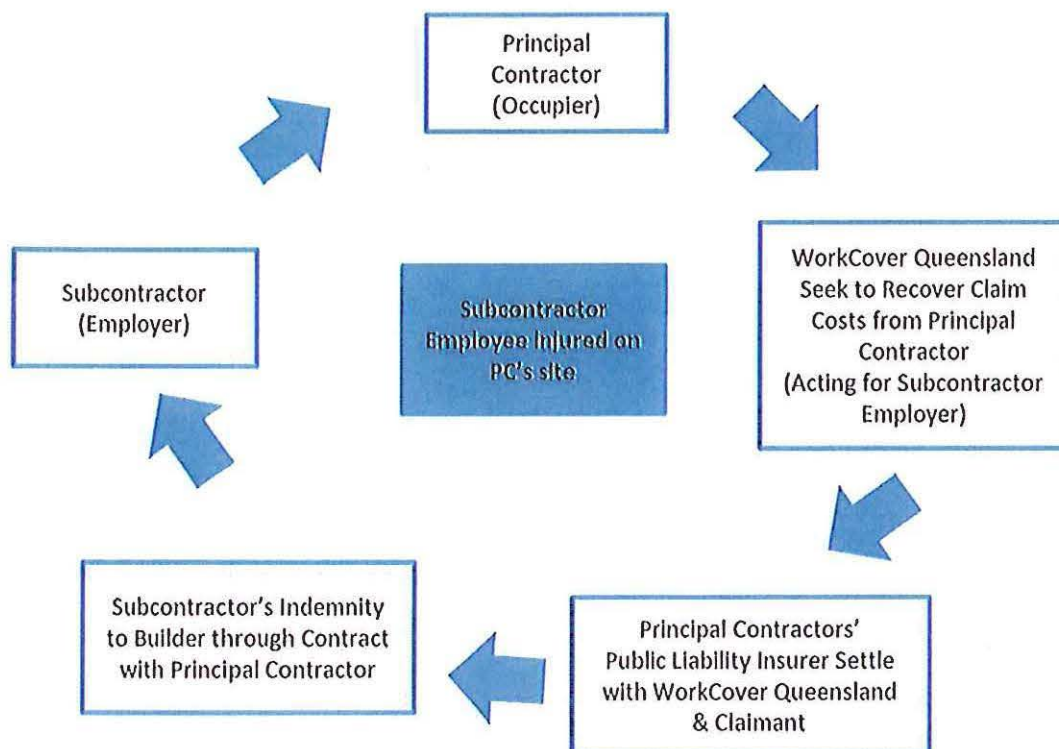
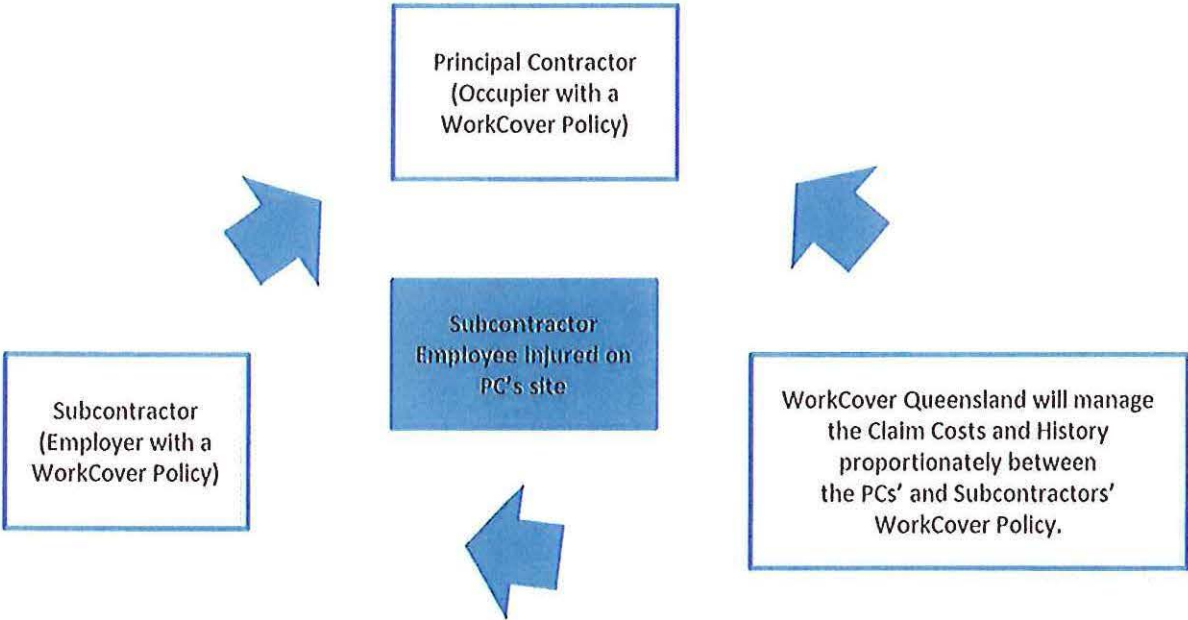


Diagram 2: Proposed joint and proportionate cover under WorkCover insurance.





## History of extending common law coverage to Principal Contractors

Master Builders now seeks to clarify to the Committee the history of extending common law coverage to Principal Contractors in Queensland.

We advocated to the Committee that the cost of providing this extension has been previously estimated at \$19 million.

The *Workers' Compensation Act 1990(Qld)*, provided under section 47 a deeming provision that Principal Contractors are the employer of every worker used in carrying out work in performance of a contract for performance of work.

However section 534 of the *WorkCover Queensland Act 1996(Qld)* repealed the previous act from 1 February 1997 with a saving provision until 30 June 1997.

Extract from the *Workers' Compensation Act 1990(Qld)*

### Extent of indemnity for principals and contractors<sup>10</sup>

#### 47.(1) In this section—

“contractor” means a person who by a contract undertakes to carry out, or to secure the carrying out of, work for another.

“principal” means a person for whom work is to be carried out by another under a contract to which the person is a contracting party.

(2) A contractor under a contract for performance of work can also be a principal under any other contract for performance of the same work or any part of that work.

(3) When a contract is made between a principal and a contractor for

Restoring common law coverage for Principle Contractors will deliver a number of key advantages to the industry and the Workers Compensation Scheme in Queensland including:

- a) Removes the operation of the *Personal Injuries Proceedings Act 2002(Qld)* preventing the recovery of plaintiff lawyers' costs and ensures damages are assessed under the *Civil Liability Act 2003(Qld)*.
- b) Significant efficiencies and cost reductions are gained through dealing with one insurer (WorkCover Queensland) delivering faster claim resolution, capturing additional premiums for the insurer, delivering larger claim payments to workers, and proportionate liability split between the Principle Contractor and subcontractor employers allowing for premium assessment on claims history.
- c) The advantage of a single insurer will allow joint responsibility for rehabilitation where the Principal Contractors are better resourced to manage the process and possess a wider range of alternative duties producing a better return to work outcome for the industry.

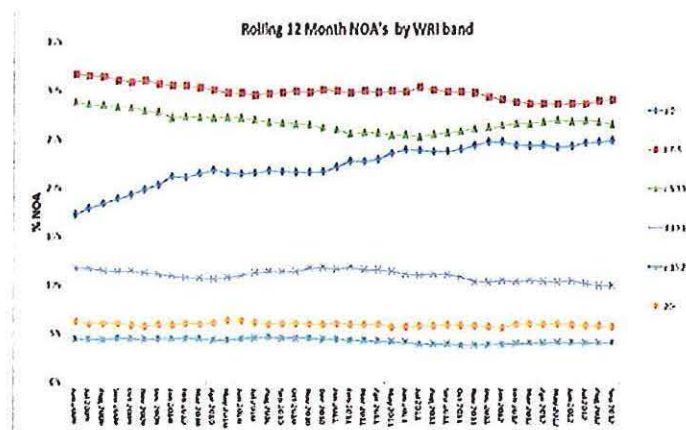
### Exclude workers from common law who have a low impairment.

Master Builders continued to advocate before the Committee for a WPI exclusion to common law for workers with a low WPI percentage between (0-1%). A low WPI percentage threshold would deliver a 25% reduction in common law claims by workers who have recorded a 0% WPI. The actuary data for November 2012 continues to identify an increasing number of claims with a 0% WPI.

Master Builders acknowledged in its discussion with the Committee the harsh and negative impact a combination of impairment and WPI can have for injured workers in the building and construction industry. For example a carpenter who suffers a finger (3% WPI) or minor back injury that prevents him from operating a nail gun, operating an electric saw or lifting timber, but may not impair him from performing many other day to day duties at work. His inability to do these functions would massively restrict his ability to obtain work in our industry and his personal attributes may not lend themselves to retraining as a supervisor or sales representative.

Extract from the 'Q-COMP and WorkCover Queensland fifth actuary workers' compensation presentation to stakeholders' on Wednesday 21 November 2012.

### Common law – Notice of Assessments





## Solar Claims

At the announcement of the Committee's enquiry there was an alarming increase in 'Solar Claims' causing some commentators to raise concerns. However the November 2012 actuary data below reflects a decline in such claims that we anticipate will now level off. Master Builders continues to advocate for a 30% reduction in compensation for non-work related diminution of solar claims to ensure fairness in our Workers Compensation System for all.

Extract from the 'Q-COMP and WorkCover Queensland fifth actuary workers' compensation presentation to stakeholders' on Wednesday 21 November 2012.

Solar claim intimations have been lower in last six months.

