

2nd August 2002

Employment and Workplace Relations Committee
House of Representatives'
Inquiry into Aspects of Workers' Compensation

Dear Committee Members,

As past employers in the construction industry we were extremely interested in your current "Inquiry into Aspects of Workers' Compensation" and would like to make the following submission in relation to -

- Over-insurance and "double dipping" by insurance companies covering sub-contractors who are now deemed "workers" under WorkCover's new terminology.
- The timing of WorkCover's new "worker" definitions in conjunction with the introduction of GST was unfair to small businesses already struggling to come to terms with the additional taxation paperwork and other legislation.
- WorkCover's definition of "worker" is an extremely "broad" one and is being widely misinterpreted within the construction industry.

Although we no longer operate our small business, we have recently undergone an audit by WorkCover for last financial year and under the new definition of "worker" have suddenly found ourselves with a \$2 688.61 back premium.

Our situation was an extenuating one in that the job in question went for three years whereby the clients would re-imburse us for all materials on a monthly basis, along with any claims from our sub-contractors. We were paid for our labour component on a weekly or fortnightly basis along with any sub-contractors' claims that had been submitted for payment as well. All fees, levies, insurances, etc were also met by these clients as a related "job expense" and we also paid for our own "builders all risk" policy (at \$3500) covering not only ourselves, but our sub-contractors on site as well.

As we are fully aware of families' financial commitments, we would pass on our sub-contractors' payments as soon as the client re-imbursed us for the expense. The main labour "workers" we engaged on the job, apart from myself, were employed via Torgas and we are of the understanding that whilst we provided these apprentices with valuable experience and training, Torgas met all insurances, WorkCover, etc. Payment was made to us by the client in some instances on a weekly or fortnightly basis in order to keep

accurate track of job costs. In other words, under WorkCover's terminology of "worker", the client realistically engaged us as "workers" as they re-imbursed for materials and paid only for the labour component!

Sub-contractors pride themselves on gaining continuous, steady work with the same principal contractors, so it is not an uncommon practise for the same people to be employed on the one project for the benefit of standardised quality. As the principal contractor is usually able to get materials at a reduced rate, there aren't many sub-contractors who are supplying the materials.

We were unaware of any wrong doing on our part or that of any of our sub-contractors. I, along with these sub-contractors (who are now deemed "workers") have all worked for other builders where we have in the majority only supplied our labour, tools of trade, etc. They, like myself, operate their own businesses with required ABN, insurances, etc – they are free at any time to refuse work and work for anyone else; they have substantial equipment including their work vehicle, nailguns, powertools, compressors, welders, trade knowledge, goodwill, reputation, etc; they supply the necessary materials and resources when required; they are assigned a certain task or stage of work to perform and they are required to rectify any defects in their "own time" at their own loss if the situation arises; payment was based on the results achieved and it was a known understanding that if the work was not achieved, their services would no longer be required.

These sub-contractors worked for premium sub-contract rates and all had their own private accident and sickness insurances in case of injury on the job site.

WorkCover's means of guesstimating what an employer will pay to "workers" the following year and then having a premium assessed on that basis is perhaps a very "hit and miss" affair. If all the questions had been appropriately asked at the start, then correct upfront premiums would have been paid and audits would not have to be made. If we were made aware of any wrong doing at the commencement of our insurance period, and then told that perhaps certain sub-contractors were now deemed as "workers", this additional cost would have been allowed for and we would have paid these sub-contractors the substantially lesser "wages" amount and passed this additional premium cost on to the client.

Over the past decade or so that we were in business, we always had a WorkCover policy. We have trained and employed apprentices, paying the appropriate premiums and when we were only engaging sub-contractors, have maintained our policy, although we as directors were the only ones being paid wages. We have never made any claims or had

any claims made against us, priding ourselves by adhering to the strictest Workplace, Health and Safety conditions and standards.

As you would be aware, the construction industry has faced numerous changes over the past couple of years. As a husband and wife trying to keep abreast of all the legislative changes, definitions, GST, costs, etc, it has basically necessitated the employment of a full-time accountant and lawyer to sift through this paperwork and "fine print" mine field – a luxury no small business can financially afford.

The timing of WorkCover's new definitions also provided small business with additional paperwork to digest at a time when they were already struggling to come to terms with the introduction of the GST.

Because of the ongoing costs and paperwork associated with our small business, when our contract in Townsville ended (despite being named state construction industry award winners), we decided to close down the business we had spent the last twenty years building. We sold our family home to pay outstanding business debts and decided to move to Brisbane to start afresh, working for someone else. We have had to accept welfare "hand-outs" for the first time in our lives and are now struggling to raise our four children in a rented house with subsidised Centrelink rental assistance.

We simply cannot afford the \$2 688.61 that WorkCover (Townsville) has just levied against us and no doubt there are other similar cases out there.

To clearly discuss our full situation, we met with Brisbane WorkCover staff, [redacted] and [redacted] instead of costly and lengthy telephone conversations with [redacted] in Townsville. Our face-to-face meeting was pleasing in that we were able to establish that even departmental staff was struggling to come to grips with the new "worker" terminologies contained in the "telephone book" thick volume which was their work bible.

The fact that the Q-Comp Review and Appeals brochure states "if you are appealing a decision made in relation to your premium, you will need to pay your premium before lodging the appeal" is an appalling mistreatment of justice.

It seems a "no win" situation on our part as we are struggling to live from week to week, let alone spend time and money (which we don't have) and have the added stress of fighting WorkCover. We are no longer in business and cancelled our policy, although we were still required to pay the next premium, which has now been re-assessed to the said \$2 688.61 because we apparently "under-estimated our wages".

We have no money to pay this additional premium that has now been levied against us under the new “worker” definitions, so obviously according to the Q-Comp Review and Appeals brochure, have no right of appeal – a real “catch 22” situation for us.

We believe the most crucial fact of “double dipping” by insurance companies needs to be immediately addressed.

The money these insurance companies have been falsely rorting from all these sub-contractors whose principal contractors are now being hit with WorkCover penalties and additional premium notices should be either refunded, or alternatively handed over to WorkCover, if WorkCover is now deemed the provider of coverage!

There is a massive “over insurance” and these insurance brokers and agents must be laughing all the way to the bank by sitting back collecting accident/sickness/injury policy premiums for nothing whilst employers and small business owners are being hit with additional costs.

It appears that Australia is sadly becoming like America whereby everyone is suing everyone and no one is accountable for his/her own actions. We have always had our own insurance and we have always made it clear to all of our sub-contractors that they have needed to have their own insurances, regardless of their preferred way of operating their business for taxation purposes. We only hired sub-contractors who were privately covered.

In Brisbane, I have worked on a sub-contract basis for other builders who stipulate and openly advertise that “you must have your own insurance and tools” – you only have to pick up a Courier Mail on Saturday and check out the “Situations Vacant” to witness this.

We also contacted insurance brokers listed in the yellow pages to gain this insurance and have the quotations to prove it. They will gladly sign you up, accept your premiums, collect their commission, etc, whilst you are now apparently covered by WorkCover under the new “worker” definitions. Not one agent asked if we had checked to see whether we were already covered by an employer or not!

Obviously WorkCover needs to advertise the fact that private insurance is no longer necessary (the insurance industry most certainly won't do it!) and the whole building industry needs to understand the complete workings of WorkCover's new laws.

WorkCover obviously make their money through premiums and for the benefit of budgets and viability, also have certain revenue quotas that must be met.

However it would seem that WorkCover seems to be pursuing the employers who have been loyally paying premiums for years instead of the ones who are not even on WorkCover's books (obviously audits can't be done on those who aren't!).

Perhaps an "amnesty" period is necessary for those legitimate contractors like ourselves who have genuinely thought they have been doing the right thing and have been totally misled by the varying opinions of industry leaders, sub-contractors, insurance companies and the overall general terminology of a "worker".

We thank you for taking our submissions into consideration and look forward to a response from your committee.

Regards,

Danny & Jeanette Garvey,