



WorkCover WA Bulletin for Approved Insurers, Self Insurers and Insurance Brokers (02/2012)

SUBJECT: CONTRACTUAL INDEMNITIES

Purpose

To clarify WorkCover WA's position regarding contractual indemnities for personal injury damages.

Information

Concerns have been raised with WorkCover WA regarding an emerging demand by principal contractors in large scale projects seeking much broader workers' compensation policy extensions to the traditional 'upward indemnity' from contractor to principal.

The arrangements observed by WorkCover WA involve an upward indemnity between principal and contractor and also a sideways indemnity between all contractors engaged on the same project. The arrangement is established by a 'mutual indemnity' and 'hold harmless' scheme between the contracting parties. The contract between the parties is accompanied by a waiver of subrogation against any other party or the principal.

The intention is that each party will bear their own costs and will not sue or seek recovery or contribution from other signatories to the agreement.

There are specific insurance obligations for common law liabilities and certain statutory rights of recovery under the *Workers' Compensation and Injury Management Act 1981 (the Act)*. Mutual indemnity arrangements are not contemplated by the Act and threaten the viability of the workers' compensation scheme.

These arrangements should not be adopted in commercial contracts or endorsed via extensions to employer indemnity insurance policies.

WorkCover WA is concerned that mutual indemnity arrangements may transfer liabilities from the public liability market to the workers' compensation scheme, present an unquantifiable risk for underwriters, and undermine recovery provisions in the Act.

Approval

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