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# Injury claims

*Why owner builders need more than just 'workers compensation' insurance*

BY MARK ADAMS

Planning an owner builder project is an all-consuming process. It's exciting and sometimes even a little scary. Owner builders can find themselves putting all their energy into planning for the building process and sometimes forget one of the absolute basics which should be attended to before starting: insurance. Some owner builders end up seeking insurance part-way through the project (which is extremely difficult to obtain), while others get caught up in the excitement and don't spot the oversight at all. In doing so they not only leave themselves dangerously exposed but can be in breach of legal and/or statutory requirements.

Most owner builders are well prepared, having considered the risks, and aware of the need to insure. But here's where prior experience can lead people astray. Before embarking on their first construction project most people are familiar with straightforward insurance: you have a house – you get house insurance, you have a car... Well, you can see where this example is going. But construction is not so simple.

## **Risk assessment**

When considering the risks involved with an owner builder project most people realise that the insurance should cover the building and the building materials against fire, theft, storm, vandalism, etc. during the course of the project. This insurance is called 'Contract Works' and is essential.

The second realisation is that you'll need some insurance in case someone gets injured on the site. This is the complex part and it is where the owner builder can potentially make some incorrect assumptions.

## **What claims can arise out of someone being injured?**

1. Workers compensation
2. Public liability
3. Personal accident

The biggest source of confusion is the difference between points 1 and 2. It is commonly assumed that if someone is injured on a work site that they will automatically lodge a workers compensation claim. However this is not always the case.

### **1. Workers compensation**

In order for the injured party to successfully claim workers compensation from you they need to:

- a) have been injured while working on your project, and
- b) qualify as a 'worker' as defined under the relevant state or territory's workers compensation legislation.

### **2. Public liability**

Public liability claims can arise out of damage to someone else's property or an injury to a third party. For the purpose of this article we'll only be discussing the latter; however it's important to note that if you have a public liability policy in place you'll be covered for both.

Injury-related public liability claims arise when, for whatever reason, the injured party believes that you are responsible for their injury by way of negligence. Since an owner builder is effectively in charge of all activities undertaken on the construction site, in addition to being responsible for ensuring the safety of the site, this can often make you somewhat of an easy target. Having said that, the onus is

then on the claimant to prove their case against you, and they may or may not be successful in doing so.

For this reason the claimant (if they are also a worker) will generally attempt to claim workers compensation as their first option. A public liability claim may then be made if they are unsuccessful in getting workers compensation, or if they obtain workers compensation but wish to claim against you for amounts above and beyond limitations within the workers compensation system.

If the injured party is definitely not a worker (for example a visitor, whether invited or not), then there will be no such confusion. The claim will always be a public liability claim.

### **3. Personal accident**

If you, your spouse or friends ('volunteer workers') are intending to be involved in the physical labouring on your project without receiving payment, you may wish to take out personal accident insurance. This is important to consider since you will generally not be able to claim under either workers compensation or public liability.

This insurance can be obtained either individually or as a group policy. You may already have an income protection or a personal accident policy in place and these may be suitable (ask your broker or insurer). If you don't already have a policy of this type, or if you expect to have volunteer workers, then a group personal accident policy may be the most suitable option. This type of policy generally covers the owner builder and declared spouse while performing work at the project site, and any other person carrying out work on the same site who does so without being paid. Contact your owner builder insurance advisor/broker for further details.

## When to take out workers compensation cover

In each state and territory of Australia, workers compensation legislation provides owner builders with the following advice:

*'Homeowners who are building their own homes should take out a workers compensation insurance policy to make sure they are fully covered. Any contractors engaged by an owner builder may be deemed to be a worker of that owner builder.'*

While the wording of this advice varies slightly from state to state the message remains the same; owner builders need to take out a workers compensation policy.

Patrick Talty, from National Workers Compensation Services, has provided us with a more detailed explanation:

1. If the local government body who issues planning permits requires you to have a workers compensation policy as part of documents submitted to Council, you will need to have a workers compensation policy in force for the duration of the project – end of story.

2. If a policy is not required as above, and if you are in NSW or Vic you may in some cases be exempt from taking out a workers compensation policy if the value attributable to labour is less than \$7,500.

From the total estimated cost of the project, deduct the cost of materials, and also payments to plumbers and electricians. These two trades in NSW/Vic at least are generally exempt from considerations. Deductions can also be made for any contractor who is incorporated (Pty Ltd). If the amount remaining exceeds \$7,500, a workers compensation policy should be taken out for the duration of the project.

If the amount attributable to direct labour is less than \$7,500, the workers compensation system (as of 30 June 2008) automatically holds the employer covered – if an injured party then succeeds in identifying himself as a deemed worker (and therefore entitled to workers compensation), a policy automatically then comes into force and the 'employer' is asked to pay a nominal premium of \$175 and the claim will be processed.

*\* If you are in any state other than NSW/Vic the above does not apply. You will have the same requirement to take out a workers compensation policy even on small projects.*

3. If you engage any workers who provide labour only (no materials), even if payments for services are sometimes made in cash, ignore point 2 above. In these cases the likelihood of them being shown to be a deemed worker are significantly greater, and you should always obtain a workers compensation policy.

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**Please note that, while this information is currently accurate, workers compensation legislation changes fairly regularly. You should always consult with an expert prior to commencing your project.**

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### **Can't I just confirm that contractors all have their own workers compensation insurance?**

This is a very common fallacy, perpetuated by word of mouth and even many websites that provide advice like:

*'Generally, people carrying on their own business, or trades people, have their own workers compensation insurance. To be sure that you are protected always check that any licensed contractors you hire have their own workers compensation policy.'*

This advice is why so many people get it wrong. It's not actually that the information is altogether incorrect, but it is ultimately wrong by way of omission. It is vital for you to remember that when you take out a workers compensation insurance policy it does not cover you,\*\* it covers your workers. So by having the contractor show you his own insurance policy you only ensure that his workers are covered if they claim against him. It does nothing to change your potential responsibility for any injury to the contractor himself, or any other 'deemed worker.' It will not have any impact on your need to obtain a workers compensation policy.

*\*\* The exception to this rule is where you engage incorporated companies (Pty Ltd) to do the work, as discussed earlier. However it is very unlikely that you will be able to use this type of contractor exclusively, so again this tends not to help.*

## Conclusion

If all of this has left your head spinning you may get just a little comfort from knowing that you're not alone. The following is all you really need to remember – practically every owner builder has an exposure to potential claims under the workers compensation system. If you are an owner builder you must seek individual advice from an expert who is dealing with owner builder insurance on a daily basis. And you will almost always need to get a workers compensation policy in addition to contract works, public liability (and personal accident if applicable). You'll then have one significant thing less to worry about while you get on with the actual project. ■

*Mark Adams is an account manager with Trades Essentials. He has several years experience in the owner builder insurance market. Trades Essentials are a specialist broker for Owner Builder Insurance Australia-wide. Call Mark on 1300 664 923 for Contract Works, Public Liability and Personal Accident insurance. See advert p.39.*

*For more information on workers compensation, contact Patrick Talty from National Workers Compensation Services on 0423 651 516.*



• **ACT : WorkCover**  
02 6207 3000,

[www.ors.act.gov.au/workcover](http://www.ors.act.gov.au/workcover)

• **NSW : WorkCover NSW**  
131 050,  
[www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

• **NT : NT WorkSafe**  
1800 019 115,  
[www.worksafe.nt.gov.au](http://www.worksafe.nt.gov.au)

• **QLD : WorkCover Qld**  
1300 362 128,  
[www.workcoverqld.com.au](http://www.workcoverqld.com.au)

• **SA : WorkCover SA**  
131 855, [www.workcover.com](http://www.workcover.com)

• **TAS : WorkCover Tas**  
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[www.workcover.tas.gov.au](http://www.workcover.tas.gov.au)

• **VIC : WorkSafe Vic**  
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