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Ben Hawkins  
Chair, Ministerial Council Subcommittee – Fairness in Contracting  
C/o Department of Energy and Public Works

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Dear Ben

### **Ministerial Construction Council Subcommittee – Fairness in Contracting**

Master Builders has been pleased to be a member of the Ministerial Construction Council Subcommittee (MCC Subcommittee) on Fairness in Contracting and requests this letter be annexed to the Subcommittee's report to the MCC.

The MCC Subcommittee was established to develop a list of beneficial and problematic contract terms that could be prescribed in a regulation under the *Queensland Building and Construction Commission Act 1991* (QBCC Act) for consideration by the MCC. The Subcommittee's aim is to achieve greater consistency in contractual terms, reduce the prevalence of unconscionable or unfair contract provisions, and improve fairness in the building and construction industry.

The legislative head of power in the QBCC Act for prohibited or mandatory contract terms imposes an offence and penalty on the building contractor. However, there is no corresponding offence or penalty for a principal imposing an unfair term on a head contractor.

By the very nature of the legislative provision (ss 67GA and 67GB QBCC Act), fairness in the building and construction industry cannot be achieved by prescribing a list of beneficial and problematic contract terms. The head contractor is placed in an unfair situation of being the party at risk of committing an offence where the head contractor is typically not able to control the relevant contract terms.

In addition to the above, we also raised concerns regarding the impact of the Commonwealth legislation expanding the application of unfair contract terms laws (*Treasury Laws Amendment (More Competition, Better Prices) Act 2022*) on any proposed Queensland laws.


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These concerns have not been addressed in the MCC Subcommittee's considerations.

Any Queensland legislation on unfair contract terms must apply equally to all industry participants including the principal under the contract. Further, any Queensland legislation should align with the Commonwealth legislation on unfair contract terms.

Regards,

**Paul Bidwell**  
**CEO**