

CONSTRUCTION CONTRACTS BILL 2004

Second Reading

Resumed from an earlier stage of the sitting.

MR N.R. MARLBOROUGH (Peel - Parliamentary Secretary) [2.44 pm]: I said before lunch that we had dealt with the issue of Consolidated Constructions Pty Ltd and I put it in its appropriate context. The issue we must concentrate on is endemic to the history of the construction industry in this State and throughout Australia - that is, the business of putting massive pressure on small contracting companies to reduce their prices when applying for major contracts. We all know how that pressure occurs. Initially when major companies apply for major jobs in the city centre or in major regional centres, they put out their electrical and plumbing contracts for tender. From the first time that contractors tender a price on which they can earn a profit, pressure is applied to them by those major companies to reduce their price. We all know that is how the system works, whether it be by a phone call or by a letter. Unfortunately, before it gets to the situation of unions demanding that workers be properly rewarded for their work, the appropriate margin that is needed for the smaller company to continue in plumbing or electrical work is further minimised. That means that any untoward activity in the construction industry on a particular job further marginalises the profits of those people. The mentality of the member for Kingsley is such that her line is that when those big companies fall into that sort of problem, they ought to be able to operate by cutting down on the wages and conditions of the people who work for them.

Ms K. Hodson-Thomas: That is not what she said. You are misrepresenting the member for Kingsley.

MR N.R. MARLBOROUGH: That was the mentality of Consolidated Constructions when it dealt with a local plumbing company or the local electrical company. It wanted to reduce the bottom line. It said that the contract was no longer worth half a million dollars, so it would find reasons to delay paying the contractor. Consolidated Constructions Pty Ltd was in that sort of situation for two years. One company that dealt with Consolidated Constructions on Christmas Island two years ago was Gregory Plumbing. That company is still owed \$1.7 million. Can members imagine what that does to a small company in a regional town such as Albany? How does such a company ever start again? Consolidated Constructions went on for two years under the previous Government's program. It still owes \$1.7 million to a company that it sent broke on Christmas Island. That is how it operated. Albany, and the rest of Western Australia, is going through a boom. The Minister for Police announced a \$20 million project. The Minister for Education and Training announced a half-million dollar upgrade of a local school. Co-operative Bulk Handling Ltd is increasing its work capacity. Millions of dollars of construction opportunities are coming into the town of Albany. When the big boys come to town to build - they are predominantly the ones that get the \$20 million contracts - we do not want the Albany plumber or the Albany electrician to be screwed by the contracting process. This legislation will ensure that that does not happen. This legislation will never allow a large company to have a contractor on a 90-day scheme. That happens when they are running well. If such a company owes a plumbing company a dollar, it will pay it in 90 days plus. That is how most of these fellas run small businesses. In and out of politics, they are used to that system. It does not affect them and they are able to earn interest on their money. Who cares about the plumbing company or the electrical company? If that approach is multiplied by the number of contractors on site, it increases the margin. The cancer of the industry is the problem. It has been a cancer in the industry for 50 years, since the Second World War, and it has become progressively worse. Governments across Australia have had to bring in this legislation to protect small business people. Members opposite look after only the top end of town.

Several members interjected.

MR N.R. MARLBOROUGH: They talk about protecting small business, but they look after only the big end of town. The member for Kingsley runs off about Consolidated Constructions and Pindan Constructions. One never hears the member for Kingsley mention companies such as Multiplex, John Holland Pty Ltd or Leighton Holdings Ltd. Why? It is because these companies are run properly. Those who run them know what they have to pay. They do not keep their small contractors waiting.

Several members interjected.

The **SPEAKER**: Order, members!

MR N.R. MARLBOROUGH: Multiplex is able to build a convention centre with Kevin Reynolds' labourers on time, under cost and ready to go. That is what members opposite do not want to tell us.

Some of the great things about Albany are its people and its environment. That is why we all love coming down here, whether for a political reason or just for holidays. People come from all over Australia to enjoy holidays here. During my time in Albany over the past few days I have been fortunate to meet some of those people on the streets. For example, Mary and Dennis McGowan are in the gallery. They have driven all the way from

Coffs Harbour, New South Wales. It is lovely to see them here today with their son, Mark McGowan, the member for Rockingham. They have driven from Coffs Harbour to attend this parliamentary sitting and also because they love Western Australia. Mark's father Dennis so loves Western Australia that, the last time he came to Western Australia - four years ago at the age of 62 - he cycled over! He is here today to enjoy the proceedings. However, he does not want to see Albany's small businesses being screwed because of the way the member for Kingsley wants to see the construction industry work. This legislation protects the industry. Desperate Dan here - which electorate is he the member for?

The SPEAKER: Order! The member for Peel knows that he should address members by the name of their electorate.

Mr N.R. MARLBOROUGH: The member for Mitchell, known as Desperate Dan -

The SPEAKER: I call the member for Peel to order for the first time.

Mr N.R. MARLBOROUGH: Thank you, Mr Speaker. The member for Mitchell intervened and said that they knew how good the legislation was and that is why the previous minister introduced the legislation.

Mr R.F. Johnson: I started the process.

Mr N.R. MARLBOROUGH: Started the process. I will just finish on this point. This is how he started the process: as the minister responsible, he put in place a committee process. When that committee process reported to his caucus room, they rejected the direction in which he was going. When he was confronted with that evidence and, as the minister he had started to go down that path, he said, "Look, it was not the proper parliamentary process. As the minister, I thought there was a need to look at the issue." That is why nothing happened for eight years. That is how he handled it.

Several members interjected.

The SPEAKER: Order, members!

Mr N.R. MARLBOROUGH: It went to the second room.

Mr R.F. Johnson: No, it did not. How do you know?

Mr N.R. MARLBOROUGH: It went to his caucus room.

Several members interjected.

The SPEAKER: Order, members!

Mr N.R. MARLBOROUGH: It went to his caucus room and it was rejected. The evidence of its rejection is simply this: how long was he the minister?

Mr R.F. Johnson: Fifteen months.

Mr N.R. MARLBOROUGH: Fifteen months. He brought nothing to Parliament on this matter. My case rests. Everybody on the opposition side wants to take the opportunity of using this to attack Australian workers and their right to decent wages and conditions. They want to attack the trade union movement that supports them. Thank God we have the trade union movement in place against this mob. Thank God we have some balance in the workplace. The truth of the matter is that every small business involved in the construction industry supports the Government on this legislation. They are sick of being robbed. It is as simple as that. That is what has been happening.

Mr R.F. Johnson: I agree with you.

Mr N.R. MARLBOROUGH: "I agree with you", he says. They are sick of being robbed and we will introduce the legislation that stops them being robbed.

MR B.J. GRYLLS (Merredin) [2.54 pm]: A strong building and construction industry is critical to the growth of this State, and it is especially critical to the growth of regional Western Australia. We have heard many examples in this regional Parliament of regional economic growth being stifled through lack of infrastructure. I am happy to report that private enterprise and construction projects are continuing in my electorate. I am sure it is the case in many inland electorates in this State. Security of payment for construction work is fundamental to that growth and the accelerated growth of development in the regions.

The National Party will support the Construction Contracts Bill 2004. It brings forward some very relevant points. The three main provisions of the Bill cover the prohibition of payment provisions in contracts that slow or stop the movement of funds through the contracting chain, which means that a party cannot make a payment contingent on its being paid first under a separate contract. Every member in the House will understand what that means; it is the pay-when-paid philosophy that so badly affects subcontractors in this world. Aside from what members on the other side said, I was a small businessman before I entered this place, so I know all about

the problem. It affected my business. Government departments were usually the worst offenders when it came to getting paid on time in the small business sector. I hope that members on the other side take that into consideration. Although this is not a part of this Bill, it is very simple for government departments to be directed to make payments to small businesses promptly and efficiently, which does not always happen. Members can bring forward many examples of it. We support the legislation because it will be good if this Government can guarantee that all government departments ensure that payments are made promptly.

The Bill also establishes a rapid adjudication process that will allow for experienced and independent adjudicators to review claims and make binding determinations on conflicts that arise from the methods by which contractors are paid. The National Party has gone through the Bill. We believe that it is a good Bill and we look forward to supporting it at the consideration in detail stage. We have one concern with clause 7, which has been raised already with the minister. However, rather than take up the limited time of the House, we will debate it during the consideration in detail stage when we are again in Perth.

The National Party supports the Bill, which raises a very important issue. I thank the member for Peel for his interesting contribution to this debate, but it has left me somewhat confused. Members on the government side spent all their time yesterday blaming the finance brokers scandal on the previous minister and the previous Government. They accused the previous Government of being asleep at the wheel while innocent Western Australians were being ripped off. They said that the previous minister sat on his hands while dodgy finance brokers ripped off investors. I draw members' attention to the collapse of Consolidated Constructions Pty Ltd and refer to the press release put out by the Minister for Planning and Infrastructure on 6 February in which she announced being in the Pilbara with 100 Pilbara residents, including a big group of Marble Bar schoolchildren, to attend that morning's official opening of the sealed road from Marble Bar and again enjoy the opportunity of a photograph and story in the newspaper. At about the same time, Main Roads was making preparations for the final \$1.2 million payment to Consolidated Constructions. Therefore, while the minister was enjoying the opportunity of a photo shoot, Consolidated Constructions was about to get the \$1.2 million final payment on the contract.

It is very important that the House recognise that the contract with Consolidated Constructions was let in August 2003. When we reflect on this we need to bear in mind the comments of the member for Peel. He spent 20 minutes explaining to us the disastrous actions of Consolidated Constructions. Consolidated Constructions still owes \$2 million to Cocos Island contractors. Over two years ago the member for Peel was very aware of the disastrous activities of Consolidated Constructions, and still subcontractors are out of pocket. Obviously, the member for Peel has not managed to have a discussion with the Minister for Planning and Infrastructure and has not mentioned to her the great troubles Consolidated Constructions has had in paying the accounts to its subcontractors. While the minister is here crowing about this new legislation that supports subcontractors, she was letting a contract to a business that one of her senior members of Parliament knew did not pay its subcontractors in August 2003. History tells us that, on 2 March, Consolidated Constructions was placed in the hands of liquidators.

Ms A.J. MacTiernan: Are you claiming that Consolidated Constructions was trading while insolvent?

Mr B.J. GRYLLS: The minister should let me get to my claims. Is the minister responsible for her department?

Ms A.J. MacTiernan: Absolutely.

Mr B.J. GRYLLS: The minister's press release of 6 February supports Consolidated Constructions winning the contract. Did the minister talk to the member for Peel about Consolidated Constructions being awarded that contract?

Ms A.J. MacTiernan: Of course I did not talk to the member for Peel.

Mr B.J. GRYLLS: Perhaps she should have, because that could have saved these subcontractors \$1.2 million. Where are the checks and balances?

Ms A.J. MacTiernan: How could we have done that?

Mr B.J. GRYLLS: By not awarding the contract to that company. The member for Peel has just explained to us about the debacle. He spent 20 minutes telling us it is a disgraceful company.

Mr J.C. Kobelke: Is it your position that the member for Peel should have veto over all government contracts?

Mr B.J. GRYLLS: I am saying that, if the member for Peel is correct in his assumptions about Consolidated Constructions, he raises some very serious allegations. If these allegations had been conveyed to the Minister for Planning and Infrastructure and Main Roads, I would suggest that they would have had a fairly serious impact on the decision about who would win that contract in August 2003. This obviously has not happened. While the minister posed for a photo opportunity in Marble Bar, her department was signing a cheque for \$1.2 million, which should have been used for payment to a number of subcontractors. I will list the companies: Carr Civil

Contracting Pty Ltd in Karratha, with 30 or 40 employees, has lost \$1.6 million to Consolidated Constructions; an Albany business is owed \$61 000 by Consolidated Constructions; a plant hire services company in Perth is owed \$200 000; Northcoast Contractors Pty Ltd in Geraldton is owed \$40 000; and RNR Contracting Pty Ltd in Perth, which laid the bitumen, is owed \$420 000. Has the minister ordered an urgent inquiry into the impact of the collapse of Consolidated Constructions on subcontractors; and, if not, why not? What was the minister doing? Why did she not ensure that there was a watertight protocol to ensure subcontractors were paid?

Ms A.J. MacTiernan: Are you asking a question or not? Are these just rhetorical questions?

Mr B.J. GRYLLS: The minister will be able to have her say in reply to this debate. How many government contracts, in particular those of Main Roads - the minister mentioned this earlier - are currently let to Consolidated Constructions? The minister is asleep at the wheel - the very thing of which she accused the former minister over the finance brokers scandal. She has presided over a main roads department that let a contract in August 2003, to Consolidated Constructions, which is now in administration.

Ms A.J. MacTiernan: You tell me what evidence was available to Main Roads in August 2003 that Consolidated was in trouble. You tell me.

Mr B.J. GRYLLS: The member for Peel said that the company had been ripping off its subcontractors for two years.

Ms A.J. MacTiernan: He got that material out of the paper this morning.

Mr B.J. GRYLLS: The member for Peel just told us that Consolidated Constructions was a very dubious company. Is he wrong?

Ms A.J. MacTiernan: There was absolutely no reason whatsoever that either Main Roads or the Public Transport Authority should not have let contracts to either of those companies on the basis of the information that was publicly available.

Mr B.J. GRYLLS: So the member for Peel was incorrect. Someone is wrong - either the member for Peel or the minister's department.

Ms A.J. MacTiernan: He is making the point that it is a nonsense to pretend that the issue was the Construction, Forestry, Mining and Energy Union.

Mr B.J. GRYLLS: The loss of \$1.2 million to subcontractors could have been averted if the minister had not been asleep at the wheel. That is the very thing she accused the Minister for Fair Trading in the previous Government of in the finance brokers scandal. The minister is asleep at the wheel, and this issue will not go away. Hundreds of contractors will lose money from this deal that the minister signed off on in 2003.

Ms A.J. MacTiernan: When did you raise this in Parliament? We raised the finance brokers issue day after day in Parliament, and the Government did nothing about it.

Mr B.J. GRYLLS: My whole argument has been developed in the minute between when the member for Peel sat down and I stood up. The member for Peel made it very clear that there were major problems with Consolidated Constructions. It is obvious that the minister has not spoken to him. I would have thought that, as the member for Peel had those concerns, the minister's department would have had a closer look at the issues.

As I said, the National Party will support this legislation. However, it is very concerned that a \$1.2 million contract could be let to Consolidated Constructions. The final payment was made a matter of three or four days before Consolidated Constructions went into administration. Many subcontractors have been left hundreds of thousands of dollars out of pocket. The Minister for Planning and Infrastructure presided over the whole sorry process. Some \$1.2 million has been lost. We have not heard the end of this.

MS K. HODSON-THOMAS (Carine) [3.09 pm]: This Bill introduces security of payment legislation for the building and construction industry. I have been in contact with a number of subcontractors who have been caught up in the collapse of Consolidated Constructions Pty Ltd. I will not make a long address today. I will raise a number of issues that the subcontractors have raised with me, particularly in light of the collapse of Consolidated Constructions, which we have heard a lot about today.

I have received a number of e-mails from subcontractors over the past couple of weeks. I received correspondence from Mr Mark Blayney, Mr Rob Lundie, Mr Rod Evans and also from Arrowsmith Transport. I refer to these matters today because of the issues that have been raised, and to put some of the facts on the record. I will speak about the e-mails and paraphrase them as best I can. Mr Mark Blayney wrote to me on 24 March. He is the owner/manager of Carr Civil Contracting Pty Ltd, which is a civil earthmoving contractor based in Karratha. He said that the company had recently completed works in the role of principal subcontractor for Consolidated Constructions on Main Roads contract No 706/02, the Marble Bar Road, which the minister

opened in February. Works on the project were completed in early February. The final process claim was for approximately \$1.5 million and was due for payment on 29 February 2004. With the appointment of the administrator at Consolidated Constructions on 2 March 2004, it now appears that the company will not receive any payment from Consolidated Constructions. Therefore, the company will be out of pocket by \$1.5 million. He said also that this is a major concern, given that Main Roads released payment of all moneys due and payable, including security and retention moneys, to Consolidated Constructions on 25 February, which was barely one week prior to the appointment of the administrators. However, his concern rests not solely with his organisation and his employees, but also with the myriad companies that performed works on behalf of Consolidated Constructions. He is concerned about the domino effect that will have on not only the subcontractors, but also the people who live in that region.

Mr Lundie and Rod Evans wrote to me on 11 March. Their e-mail is interesting and goes to the heart of the comments by the member for Merredin. Again, I would like to place this on record because I believe it is important to do so during discussion about this important legislation. Mr Lundie and Rod Evans state -

Quite a few sub-contractors undertook work on the project, including our company RNR Contracting. We are exposed to the tune of almost \$400,000 through a sub-contract to Carr Civil Contractors. Carr Civil are exposed to about \$1.5M, -

I have already alluded to that -

and have already appointed administrators.

This is the important part that I want to raise -

We pointed out to MRWA personnel that we would not be able to suffer a loss of such a magnitude, and we continued to work on the project only after first confirming with MRWA personnel that the contractors were solvent.

Ms A.J. MacTiernan: What date was this?

Ms K. HODSON-THOMAS: That was on 11 March. They had obviously gone to Main Roads with concerns.

Ms A.J. MacTiernan: When? I am trying to get some idea of the timing.

Ms K. HODSON-THOMAS: Yes. I will just read the e-mail. I say to the minister that this is only brief, and it would be important to find out what discussions they had with Main Roads Western Australia regarding their concerns about the solvency of this company.

Ms A.J. MacTiernan: So you are saying that before the company went into administration -

Ms K. HODSON-THOMAS: These people raised concerns with Main Roads, not about Carr Civil Contracting Pty Ltd, but about Consolidated Constructions Pty Ltd. They were concerned that the company would not be solvent and that they would ultimately pay the penalty of not being paid at the end of the contract.

Ms A.J. MacTiernan: Can you tell me when they raised those concerns with Main Roads?

Ms K. HODSON-THOMAS: I cannot, because it is not in the detail of this e-mail. However, let me just complete what they have told me. The e-mail continues -

We at times related to MRWA personnel that rumours abounded . . .

They were rumours, but, as we now know, the company has gone into liquidation and administrators have been appointed. They were obviously very concerned that they would not be paid. They go on to say -

. . . that rumours abounded with the considerable risk that Consolidated would not be permitted to complete the project, and that we understood that MRWA were considering taking over the management and direct sub-contracting of the works from Consolidated Constructions. We were given verbal assurances that MRWA had decided to not take over the works, and that in any event there were provisions in the contract to ensure that sub-contractors would be paid . . .

We now know that that is not the case. They have not been paid. As a result, Carr Civil Contracting is now also going into voluntary administration.

Ms A.J. MacTiernan: Who was the contractor who made the claims in the letter?

Ms K. HODSON-THOMAS: Mr Rod Evans and Mr Rob Lundie from RNR Contracting Pty Ltd. They are owed in the vicinity of \$400 000. That goes to the heart of this legislation. That is why we all support this legislation, with a view to ensuring that subcontractors are paid. We all agree that Marble Bar Road is an important piece of infrastructure. When the minister opened it, I am sure she hoped that Consolidated

Constructions would honour its obligations to the small business companies, because there will be a domino effect.

Ms A.J. MacTiernan: Quite frankly, if this company has traded while insolvent, I hope that the full force of the law is directed against it, that the directors who were responsible are personally taken to task under the provisions of the Corporations Act, and that any shortages in the money that is available will be reimbursed by the directors, if the directors have behaved in such a way that they traded while the company was insolvent.

Ms K. HODSON-THOMAS: In seeking further information and clarification from the minister, I ask her for some assurances. In her summation of the second reading debate, I am sure that she will be able to give us some clarification of this legislation. Will it deal with those issues?

Ms A.J. MacTiernan: It will deal with them in two ways. Part one is that it will enable the retention moneys that are held by the principal to be taken into account. Therefore, there will be the capacity for the retention moneys to be characterised as being in trust for the subcontractors. Part two is that because this legislation provides for a speedy dispute resolution process, there will not be a build-up of debts, and any problems will emerge much earlier in the piece. The problem was that the debts had been allowed to build up over time, and the contractors tried to cover them with cash flow, so the debt problem compounded. This legislation will prevent that debt from accumulating.

Mr P.G. Pandal interjected.

Ms K. HODSON-THOMAS: I am sorry, Madam Deputy Speaker. I did seek some clarification from the minister, and I apologise to my colleagues on both sides if they cannot hear what the minister is saying. I realise that members of the Albany community may also not be able to hear. I take this opportunity to also do what other members have done while they have been at the microphone, and that is to thank the people of Albany for the hospitality that they have afforded to me. Albany is a great place. I cannot wait to come back to Albany. It is a beautiful location. Do not keep it a secret.

The minister will probably address my concerns later in the second reading debate, so I will conclude my remarks at this time.

MR R.C. KUCERA (Yokine - Minister for Small Business) [3.16 pm]: I support the Construction Contracts Bill 2004 in my role as Minister for Small Business. Many of the issues that members have talked about today have revolved around the collapse of Consolidated Constructions. This is not an issue that I particularly wanted to raise, but I must mention it because it has been raised by many other members. The article that was referred to by the member for Peel earlier today highlights what has taken place with that company. The whole issue relates back to what the member for Merredin talked about; namely, taking on contracts on the word of the people who have applied for them. What the Minister for Planning and Infrastructure has said is quite right. If companies trade while they are insolvent, the full weight of the law should be brought to bear upon them. It is as simple as that.

An article in today's *The West Australian* by Neale Prior is very interesting and insightful. It states -

Administrator Gary Anderson said the East Perth-based company, whose March 2 collapse has rocked the construction industry, has been operating on increasingly small margins and very high overheads.

In a report recommending creditors put the company into liquidation, Mr Anderson has backed away from estimates he made after being appointed administrator . . .

He estimated that the return to unsecured creditors could be in the range of 18.5¢ to 27.5¢ in the dollar . . .

The key issue is how the company was trading. As has been highlighted by the member for Peel, and as is also stated in that article -

More than 50 staff and 400 contractors have been hit by the failure that followed a tumultuous two years for the company . . .

I thank the member for Carine for bringing the plight of small business to the Table of the House in a proper, sensible and balanced way -

Several members interjected.

Mr R.C. KUCERA: - and without the kind of histrionics that we are hearing from members opposite, as we usually do on a Thursday.

Mr M.J. Birney: You do not even know what day it is!

Mr R.C. KUCERA: The building and construction industry -

Mr P.D. Omodei interjected.

Mr R.C. KUCERA: Obviously the member for Warren-Blackwood does not know what day it is, because he usually gets thrown out on a Thursday. However, seeing that it is a Wednesday, we will give him some latitude.

The building and construction industry in Western Australia contains a vast array of small business operators who work as consultants, contractors, subcontractors and suppliers. These people build our hospitals, our schools and a range of other things, but above all they provide considerable employment for a range of young Western Australians, particularly in the regions. Security of payment is absolutely vital for the cash flow of all small business operators. This legislation is essential for those in the building and construction industry owing to the often long and complex contracting process that they are involved in, and the many links of the contracting chain. Failure to pay at any link of the contracting chain can be absolutely disastrous. Again I thank the member for Carine for highlighting that matter, particularly as it affects the smaller operators. The need for this Bill has arisen because of events like the recent collapse of Consolidated Constructions, and that has certainly been highlighted today. However, the important point is the one that was made by the Minister for Planning and Infrastructure; namely, that after this legislation comes into effect, these processes will kick in after 28 days, and the build-up of debt that has occurred in the past will no longer continue to occur.

After listening to this debate, the people of Albany will have a fair idea of what happens when the Opposition actually supports a Bill. They can probably imagine what it is like trying to get a Bill through the Parliament when the Opposition does not support it.

[Leave granted for the member's speech to be continued.]

Debate adjourned, pursuant to standing orders.