

Mr Rob Johnson; Acting Speaker; Mr Tony McRae; The Acting Speaker (mr J.P.D. Edwards); Mr John Hyde; Mrs Cheryl Edwardes; Mr Paul Omodei; Mr Norm Marlborough; Mr Arthur Marshall; Mr Eric Ripper; Mr Colin Barnett; Ms Sue Walker

CONSTRUCTION CONTRACTS BILL 2004

Second Reading

Resumed from 3 March.

MR R.F. JOHNSON (Hillarys) [10.49 am]: I have been looking at the screen in the Chamber that gives people in the gallery an idea of what we are debating, and it says “Construction and Contracts Bill 2003 - Second Reading Debate”. As we are in Albany, and this is the first parliamentary sitting in a regional setting, it is incumbent on me as the lead speaker for the Opposition to explain to the public in the gallery what that actually means, because the screen does not actually tell them a great deal. In simple terms, it deals with security of payments to subcontractors in the construction and building industry. That is what we are debating today. I think all members would agree that I am a very charitable person. I will be charitable and say that the introduction of this Bill is better late than never. It has taken this Government three years to bring this very important Bill into this House.

Mr J.N. Hyde: And in the four years you were a minister, you did nothing.

Mr R.F. JOHNSON: To correct the member for Perth - I do that all the time because he does not know what he is talking about - I was a minister for 15 months. I was responsible for setting up the first task force into the security of payments.

Several members interjected.

Mr R.F. JOHNSON: We did all the hard work.

The DEPUTY SPEAKER: Order, members!

Mr R.F. JOHNSON: I am hearing interjections in stereo. I can hear a high-pitched voice and a low-pitched voice. I cannot take this bullying; I am a very sensitive person.

As I said, I set up the first task force to look into the security of payments. The former Government was ready to go. If we had won the last election, we would have been in a position to run with the legislation. We would have set up the legislation and introduced it into Parliament within, I suggest, six months after the election. Under the direction of the member for Perth, who was made chairman of the task force - I thought that he must know a great deal about the construction industry to be appointed as the chairman of that task force; he must really know what he is talking about -

Ms A.J. MacTiernan: He knows as much as the barrow boy.

Mr R.F. JOHNSON: Madam Deputy Speaker, I seek your protection from the Minister for Planning and Infrastructure. She insults me every day that Parliament sits. When I go home at night my wife says, “How did she treat you today, Robbie?” I tell my wife that the minister has bullied me again.

Ms A.J. MacTiernan: There is nothing wrong with being a barrow boy.

Mr R.F. JOHNSON: My wife tells me to stand up to that lady. I say, “What lady?” I do not say that. I told my wife that I can take whatever the minister wants to give.

Several members interjected.

The DEPUTY SPEAKER: Order! Members are quite aware of how they respond to each other in this place. The member for Hillarys has the call.

Mr R.F. JOHNSON: Madam Deputy Speaker, I thank you for your patience.

Mr A.J. Carpenter: You should bring your wife next time and sit her in here. She would have more bottle than you.

Mr R.F. JOHNSON: My wife is a very jealous woman.

Mr R.C. Kucera: I don’t know why.

Mr R.F. JOHNSON: And so she should be. There is an old saying in my family, and I will tell members what it is.

Mr A.J. Carpenter: Get out!

Mr R.F. JOHNSON: That might be the saying in the member’s family, but it is not the saying in mine. The saying in my family is that to marry a Johnson is to win first prize in the lottery of life.

Several members interjected.

Mr Rob Johnson; Acting Speaker; Mr Tony McRae; The Acting Speaker (mr J.P.D. Edwards); Mr John Hyde; Mrs Cheryl Edwardes; Mr Paul Omodei; Mr Norm Marlborough; Mr Arthur Marshall; Mr Eric Ripper; Mr Colin Barnett; Ms Sue Walker

Mr R.F. JOHNSON: That is the way it works. I would like members to let me get back to the Bill we are debating. Let us talk about the Bill. I have highlighted the fact that it has taken the Government three long years to introduce this Bill. In that three years, subcontractors have gone without payment for the honest work they have done and for the goods they have supplied. There is no acceptable reason for the Government taking three years to introduce this legislation. As members are aware, we have read in the newspapers and seen on television that one of the major construction companies has, to put it mildly, gone belly up. I suggest that many people in the construction industry will lose hundreds of thousands of dollars because this lacklustre Government did not introduce this legislation into Parliament in time. Why are we debating this Bill today? I will tell members why: it is because, unfortunately, a lot of the rhetoric from the Government about the regional sitting of Parliament is, in many ways, being produced for political reasons. We have seen the Premier and his ministers release “good news” stories. They have made a lot of promises. The Government doubled back on itself last night during the debate on the Finance Brokers Control Amendment Bill. The Government did not come out of that debate looking very good because it did not address the real issues. I think the people of Albany, particularly the seniors who lost money and for whom I have great sympathy, will see the Government for what it is.

It is a similar situation with this Bill today. I know that even three years ago there was a problem in the construction industry in Albany. While I was the minister in the dying days of the last Government, if I can put it that way, there was a problem in Albany with one of the schools. A major contractor went into liquidation. I desperately tried to organise matters so that the subcontractors could carry on and do their work. Unfortunately, the election was held, and that never came to pass. Therefore, the work had to go out to tender again. However, we certainly tried to look after the subcontractors who were doing the work, which, at the end of the day, was government work.

Mr J.N. Hyde: Your task force never came to Albany. We did; we have listened.

Mr R.F. JOHNSON: My task force, my friend, did not need to go around the State on the jolly trips that the member has undertaken. I will tell the member what we did. We lined up the importance of this area of concern - that is, security of payments - at the same time as I went around the State rolling out the buy local policy. That was to help people in Albany and other regional areas with the mandatory supply of goods and services to government departments through the buy local policy. It was accepted by everybody -

Mr A.D. McRae: Was this after privatisation?

Mr R.F. JOHNSON: The member for Riverton just talks rubbish.

Mr A.D. McRae: You privatised the port here.

Mr R.F. JOHNSON: I will ignore what he says because he is just a bit of a pain. The security of payment task force, or my task force, rather, was established -

Mr J.N. Hyde: You're still on the first sentence.

Mr R.F. JOHNSON: I want to give the member value for money. If he does not keep interjecting, I will get on with it. Okay?

Mr J.N. Hyde: You haven't even read the Bill, have you? 'Fess up.

Mr R.F. JOHNSON: The member should not be so silly.

Mr J.N. Hyde: How many pages does it have?

The DEPUTY SPEAKER: Order, members on my right! Member for Perth, the member for Hillarys has the call.

Mr R.F. JOHNSON: Thank you, Madam Deputy Speaker. As I said, the security of payment task force was established by the previous Government in 2000. The Minister for Planning and Infrastructure is not aware of what is in the Bill, because it is not her portfolio area. She is handling the Bill in this House for the Minister for Housing and Works. I accept that. She has picked things up very quickly.

Ms A.J. MacTiernan: I ran this issue for many years during the term of your Government.

Mr R.F. JOHNSON: The minister did; I accept that. That is why we got on with the job. Unfortunately, we had an election, following which the lot opposite came into government. As I said, it then took three years to get anything done.

Mr Rob Johnson; Acting Speaker; Mr Tony McRae; The Acting Speaker (mr J.P.D. Edwards); Mr John Hyde; Mrs Cheryl Edwardes; Mr Paul Omodei; Mr Norm Marlborough; Mr Arthur Marshall; Mr Eric Ripper; Mr Colin Barnett; Ms Sue Walker

The structure of the building and construction industry has changed since the early 1950s, as have the contractual relationships of persons working in the industry. The various works required to construct a building, whether it be a residence, an office or an industrial building, are subcontracted to persons who may in former times have been employees of the builder. Bricklayers, carpenters, plumbers, plasterers, electricians and other suppliers of services and materials are now usually independent subcontractors. Very often, they are the people who miss out - the ones at the lower end of the chain who are doing the manual work, the bricklaying, the carpentry, the labouring or whatever else they might be doing. They are normally the ones who miss out. Others miss out, but they are the people whom it probably affects more than anybody else. It is a bit like a pyramid. At the top there is the project manager or the builder, in the middle is the head contractor, and at the lower end of the scale, which is the base of the pyramid, are the subcontractors. If the project manager does not get paid or if the builder gets into financial difficulties, or if the head contractor uses the money to meet payments on other projects - that happens very often - the subcontractors may receive partial payment, slow payment or, on occasions, no payment at all. That becomes a security of payment issue. This Bill will address that.

Let me say from the word go that that is why members on this side of the House support this legislation.

Mr J.N. Hyde: Can we vote on it today?

Mr R.F. JOHNSON: I will not stifle debate on this Bill.

Mr J.N. Hyde: So after question time we can vote on it?

Mr R.F. JOHNSON: I am telling the House that we support the legislation. However, there are some areas of concern. As opposition members, we are contacted by people in industry on most Bills that go through the Parliament. The Master Builders Association supports the Bill, although it has some reservations. The Electrical Contractors Association supports the Bill, although it also has some concerns. The airconditioning industry supports the Bill. The Housing Industry Association supports the Bill. However, all of these organisations feel that this Government has misled them and has not taken adequate notice of their concerns, particularly in the past six months. They were part of the consultative process, and they had meetings with the task force; and that is how it should be, because the Government should consult with the people in this industry if it wants to get the best possible legislation. I will run through some of the concerns of these organisations. The Electrical Contractors Association is concerned that it has taken the Government this long to get to where we are today.

Ms A.J. MacTiernan: They were happy you took eight years and did not get a piece of legislation into the Parliament to deal with this matter!

Mr R.F. JOHNSON: What a stupid and puerile comment! The Labor Government had 10 years during the WA Inc period when it could have dealt with this matter. How far back does the minister want to go? Does the minister want to go back to Dowding, Lawrence and Burke? I started this when I became the Minister for Works and Services.

Mr P.B. Watson: As usual, you were gunna do it!

Mr R.F. JOHNSON: No, I was not "gunna do it" at all. I actually physically started doing it. I set up the first task force. However, of course the Labor Government then wanted to rewrite history, and it took it three years to do it.

Mr A.D. McRae: Did the task force report to you? Just answer the question.

Mr R.F. JOHNSON: Of course it reported to me.

Mr A.D. McRae: Did it?

Mr R.F. JOHNSON: Of course it reported to me. I am sure it did.

Mr J.N. Hyde: Are you sure? You can't remember!

Mr R.F. JOHNSON: Come on! The member is going back about three and a half years.

Mr A.D. McRae: You cannot remember that far back!

Mr R.F. JOHNSON: I got reports about the task force. I got them through the former Department of Contract and Management Services, which organised the task force and supplied the secretarial and research staff.

Mr J.N. Hyde: But you cannot remember what was in them!

Mr R.F. JOHNSON: What a stupid comment! I have already told the House that we were virtually ready to go. We had consulted widely with subcontractors in the building and development industry over the course of about six months.

Extract from *Hansard*
[ASSEMBLY - Wednesday, 24 March 2004]
p1040a-1056a

Mr Rob Johnson; Acting Speaker; Mr Tony McRae; The Acting Speaker (mr J.P.D. Edwards); Mr John Hyde;
Mrs Cheryl Edwardes; Mr Paul Omodei; Mr Norm Marlborough; Mr Arthur Marshall; Mr Eric Ripper; Mr Colin
Barnett; Ms Sue Walker

Ms A.J. MacTiernan: Can you just clarify one thing?

Mr R.F. JOHNSON: I have a feeling this will be a rather nasty question!

Ms A.J. MacTiernan: No. I am just wondering whether you had actually taken it to Cabinet.

Mr R.F. JOHNSON: I will be perfectly honest. I think it may have gone to Cabinet. I set up the task force. I may have done that off my own bat.

Ms A.J. MacTiernan: So you were going to introduce legislation without going to Cabinet?

Mr R.F. JOHNSON: As my colleague the member for Kingsley has said, it is a ministerial prerogative to set up a task force. Members opposite have set up about 300 task forces, commissions and committees - all sorts of little quangos - in three years. That has cost millions of dollars, yet what has it achieved? Nothing!

The ACTING SPEAKER (Mr J.P.D. Edwards): Member for Hillarys, I draw your attention to the fact that you should address your remarks through the Chair rather than have an across-Chamber conversation. If the members on my right wish to speak, they will have an opportunity at a later time. The good order of the Parliament needs to be respected.

Mr R.F. JOHNSON: Thank you, Mr Acting Speaker. I want to quote some comments from the Electrical Contractors Association, because I believe they are important. The association supports the Bill, but it makes the comment -

Despite regular contact with the Government this vital piece of legislation has been delayed well beyond the promised and acceptable deadlines.

That is a criticism of this Government, and probably also of the member for Perth, because he is the one who headed the task force. It then compares the situation in Western Australia with the situation in Victoria and states -

The Security of Payment Task Force in Western Australia commenced within one month of the Task Force in Victoria. By contrast, legislation has been passed in Victoria and is now shortly to undergo its annual review.

The legislation has been in place in Victoria for well over a year, yet there is still no legislation in this State.

Mr J.N. Hyde interjected.

Mr R.F. JOHNSON: Self-praise is no recommendation, my friend.

Mr J.N. Hyde interjected.

Mr R.F. JOHNSON: Of course they want it passed quickly. They wanted to do it a year ago, but they wanted it done properly.

Mr J.N. Hyde: Well, do it today.

The ACTING SPEAKER (Mr J.P.D. Edwards): Order, member for Perth!

Mr R.F. JOHNSON: The trouble is, Mr Acting Speaker, that the Government, the minister and probably, in the chain of command, the task force chairman, the member for Perth, have not been in contact with these people in the past six months, because there are other concerns. I will tell the member for Perth something else. I read him another quote. I have a quote from Advanced Air Systems, which states -

We write to express our concern at the State Government's undue delay in passing the Construction Contracts Bill.

It further states -

In this financial year, Advanced Air Systems have had two (2) head contractors enter into liquidation with no recourse for us to reclaim funds due for goods and services provided under the credit terms of our standard building contracts. The resultant consequences are the builder receives payment from their customer and utilises these funds at their discretion instead of transferring funds to the indebted subcontractor.

The current law, via unethical manipulation of loopholes, appears to be in favour at all times to the unscrupulous operators who fail to manage contract income for the intended purpose.

This highlights what I was saying earlier. This is a critical letter from this Government. It continues -

Mr Rob Johnson; Acting Speaker; Mr Tony McRae; The Acting Speaker (mr J.P.D. Edwards); Mr John Hyde; Mrs Cheryl Edwardes; Mr Paul Omodei; Mr Norm Marlborough; Mr Arthur Marshall; Mr Eric Ripper; Mr Colin Barnett; Ms Sue Walker

Five debtors of Advanced Air Systems have been liquidated within the last three years with all able to seek financial shelter under the current legislation. Of these five we have been unable to recover the majority of outstanding debt.

Whilst the above issue does not have the electoral glamour of many of the other populist issues such as Ningaloo Reef, Southwest Forests and the Mandurah Railway -

Mr A.D. McRae: It is popular.

Mr R.F. JOHNSON: It must be popular if the Government is spending \$1 million just to tell people they will have a rail track. It must be popular, at least in the minds of government members.

it is, as illustrated, impacting substantial numbers of employers and workers.

...

We understand similar legislation was past in Queensland, NSW and Victoria, and note that once again Western Australia has failed join the progressive philosophy of these states.

That is a pretty critical letter from this Government. This letter is basically saying that the Government has been sitting on its hands for three years and -

Mr A.D. McRae: Are you going to table that?

Mr R.F. JOHNSON: No, I cannot table this stuff.

Mr A.D. McRae: Why not?

Mr R.F. JOHNSON: Because I cannot; I am not a minister. Not yet; maybe in a few months.

Point of Order

Mr A.D. McRAE: The document from which the member has been quoting is vital information.

Mr R.F. JOHNSON: I would like to be a minister at the moment, but I am not. If ministers are quoting from official documents -

Ms S.M. McHale interjected.

Mr R.F. JOHNSON: I can seek leave.

The ACTING SPEAKER: Order, members! I will rule on the point of order. There is no point of order. The member does not have to table the document.

Debate Resumed

Mr R.F. JOHNSON: This is a very critical letter from somebody who is very active in the industry. I want to move onto the Housing Industry Association, because it obviously represents a very important group of builders. It thought this legislation would start off really well. It was really pleased that the task force was meeting, that it was consulted, that the Government was consulting and that there was an air of urgency about getting some legislation before Parliament that would actually protect their livelihood.

Mr J.N. Hyde: And it will if we pass it by 5.00 pm today.

Mr R.F. JOHNSON: We cannot pass this Bill by 5.00 pm today.

Mr J.N. Hyde: Yes, we can.

Mr R.F. JOHNSON: We cannot, because we will not be going into consideration in detail in Albany.

Mrs C.L. Edwardes interjected.

The ACTING SPEAKER (Mr J.P.D. Edwards): Order, members! I give the member for Perth due warning. I have given him a fair bit of latitude and I will be calling him to order the next time he interrupts.

Mr R.F. JOHNSON: Although we want to see this legislation go through as quickly as possible because we want subcontractors in this State to be protected, there are some deficiencies in the Bill. Some areas of concern need to be investigated, which can be done only during the consideration in detail stage. If we get back to Perth next week and the Government decides to bring on this Bill for consideration in detail, we will get on with it; we will not waste time or filibuster. However, I lay odds on the Government not bringing on this Bill for some time, regardless of whether we are back in Perth to deal with it, because there are some concerns there -

Mr A.D. McRae: Tell us what they are.

Mr Rob Johnson; Acting Speaker; Mr Tony McRae; The Acting Speaker (mr J.P.D. Edwards); Mr John Hyde; Mrs Cheryl Edwardes; Mr Paul Omodei; Mr Norm Marlborough; Mr Arthur Marshall; Mr Eric Ripper; Mr Colin Barnett; Ms Sue Walker

Mr R.F. JOHNSON: I will tell the House what those concerns are because it is important that the House be aware of them, otherwise it would be flying blind and it would not have a clue, and we do not want deficient legislation in this State. The Housing Industry Association - a very large organisation - has some concerns about the Bill. I have with me a three-page letter that I am more than happy for members to see because it is addressed to the minister from HIA; it is not a secret message to me. I simply got a copy of the letter that went to the Minister for Housing and Works, Hon Nick Griffiths -

Mrs C.L. Edwardes: I wonder if the minister has read it?

Ms A.J. MacTiernan: The minister has read it. We have had discussions with the minister and we have got a very comprehensive response to it.

Mr R.F. JOHNSON: I am pleased about that. Is the Minister for Planning and Infrastructure talking to that particular minister?

Ms A.J. MacTiernan: I am talking to all ministers.

Mr R.F. JOHNSON: Are you?

Ms A.J. MacTiernan: Absolutely.

Several members interjected.

The ACTING SPEAKER: Order, members!

Mr R.F. JOHNSON: Some ministers do not talk to each other - it depends on what faction they are in. I bring to the attention of the House some of the paragraphs in the letter - I will not read out the whole letter - that are cogent with regard to the concerns about this Bill. The first part of the letter from HIA to the minister tells us when the Bill was introduced and about HIA's support for the Bill in many ways. It welcomes the opportunity and scope of the Bill, and the way in which it impacts specifically on the building and construction industry etc. The letter then states -

However, the above concerns were addressed satisfactorily through the release of Draft 7 of the Bill and with the exception of some minor issues and a point of clarification Draft 7 closely resembled what HIA had contemplated for security of payment legislation in WA.

The point of clarification surrounded the Bill's incorporation of provisions for the prescription of certain matters by way of regulation.

Now remember those words "by way of regulation". The letter continues -

Significantly, one of the examples given by HIA was that it may be possible to exclude all 'home building work contracts' from the jurisdiction of the Act through enactment of a regulation. The response from Department of Housing and Works was that all proposed regulations are reviewed by the Standing Sub-Committee on Subordinate Legislation before being subjected to a disallowance period when tabled in Parliament. Furthermore, it was stated that these provisions are important for 'fine tuning' and are a quicker method when compared to changing existing legislation.

Which it is, of course. It is much easier to bring in a new regulation than to make an amendment to a Bill. This is where HIA has a problem. The letter continues -

On receiving clarification, HIA endorsed in principle Draft 7 of the Bill and received an undertaking from the Department of Housing and Works, that the Bill to be presented before Parliament would be based on Draft 7.

HIA has not been invited to provide further comment since the release of Draft 7 of the Bill and the introduction of the Parliamentary Bill.

Rather perplexingly, on reviewing the Bill introduced to Parliament, it has come to HIA's attention that s.7 of the Bill now contains an exclusion for 'home building work contracts' as defined in the *Home Building Contracts Act 1991*. This exclusion was never advised to HIA and is contrary to this undertaking given by the Department of Housing and Works. It was always conceivable that HIA would take exception to this exclusion as HIA has already gone on record in expressing its concerns that the Bill allowed for the enactment of regulations, with these regulations having the ability to exempt certain building work, including the express example used by the HIA - 'home building works contracts'.

Ms A.J. MacTiernan: It's your draft legislation.

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Mr R.F. JOHNSON: No. We did not have draft legislation.

Ms A.J. MacTiernan: So you were not that ready.

Mr R.F. JOHNSON: We were ready to go for draft legislation the moment the election came.

Mr J.N. Hyde: That exclusion is covered by another Bill already.

Mr R.F. JOHNSON: I am fully aware of the Bill the member is talking about. People are not happy with what this Government has done. I will explain as I go along why and what has been done. Okay?

Mr J.N. Hyde: You're being deceptive.

Mr R.F. JOHNSON: I would never be deceptive - never.

The document further reads -

If rapid duplication were to be made available in relation to 'home building contracts' as defined in the *Home Building Contracts Act 1991*, this would result in enhanced dispute resolution and relieve some of the pressure placed on the BDT. Builders, contractors and clients can then get on with the job of building new homes and renovations without the focus being on protracted litigation.

They are not happy at all. The Government has not kept in touch with people.

Mr J.N. Hyde: Yes, we have.

Mr R.F. JOHNSON: Not lately. The Government did to start with. It started with good intent - I am sure it is not a problem - for which I commend members opposite, but I am not happy that it waited so long before introducing the legislation.

I paused for a moment to check whether my colleague will refer to something of great interest in this Bill, but she is happy for me to raise it. I know members opposite always love to hear me speak in Parliament. I bring to the attention of the House problems arising because this Bill did not come to the House earlier. The legislation refers to the Minister for Planning and Infrastructure, who may want to come back into the Chamber. I have in my possession an e-mail relating to problems that have arisen since the collapse of Consolidated Constructions Pty Ltd. The e-mail reads -

On the 6th February 2004, The Minister for Planning & Infrastructure, Ms Alannah MacTiernan, opened the completed Marble Bar Road.

A government member: You were about to build that, too.

Mr R.F. JOHNSON: Yes. The e-mail continues -

Late last week the Main Project Contractor Consolidated Construction, awarded by State Government in Aug 2003, to complete this project, filed for Bankruptcy.

It outlined that this was less than one month after the grand opening by the minister, and that the ripple effect has hit many businesses in the Pilbara. It continues -

Yesterday, the 4th March 2004, Carr Civil Contractors, the Project Constructor, called in the Administrators.

This is the ripple effect seen when a main project corporation like Consolidated Constructions goes into liquidation and many firms under it that have invested hundreds of thousands of dollars in work are affected. I remember that when I was a minister, the main contractor would not be paid by the government department under a government contract unless that firm signed a statutory declaration indicating that it had paid its subcontractors. One member opposite is nodding his head and another is shaking his head. Which one is right? I think one is right and the same member is wrong again.

Mr J.N. Hyde: No, he has got the affliction.

Mr A.D. McRae: I was shaking my head at you.

Mr R.F. JOHNSON: I know that the member for Riverton has a problem; he never knows whether he is coming or going.

When I was a minister, main contractors were not paid for work done until they had signed a statutory declaration stating that they had paid the subcontractors.

Mr J.N. Hyde: Yes.

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Mr R.F. JOHNSON: I am glad that the member for Perth agrees with me. I am sure that system continues, and so it should. I want to know what has happened to this major government development.

Mr J.N. Hyde: It's because the Howard Government hasn't enacted the bankruptcy provisions that would directly reimburse contractors.

Mr R.F. JOHNSON: The interjection from the member for Perth does not address the issue.

This Government does not have to pay main contractors for work done by subcontractors if the main contractors have signed a full statutory declaration stating that they have paid them. I suggest that it would be fraudulent for main contractors to ask the Government to pay for work done by subcontractors if they had signed a full statutory declaration stating they had paid those subcontractors for the work done. We therefore do need some protection.

Part of the Bill deals with retention moneys. I am pleased that it does, because it is very important that there be a provision for retention moneys. The question is where those retention moneys will be held. On my reading of the Bill, builders must keep retention moneys in a trust account. That is fine if builders actually do that; however, there would be a problem if they did not. A suggestion was made to me a few days ago by a company that has been on both sides of the fence as contractor and subcontractor and therefore knows about the problems from both points of view. The Government might want to consider the company's suggestion - we can certainly discuss it during the consideration in detail stage - that the Master Builders Association of WA or the Housing Industry Association hold the retention moneys in trust.

Mr J.N. Hyde: But within 28 days, not two years, a problem will be exposed.

Mr R.F. JOHNSON: No, not necessarily. Retention moneys are different from the normal payment flow of contractual obligations.

The good parts of the Bill mean that unscrupulous main contractors cannot insert a clause in their contracts with subcontractors that they will pay the subcontractors if they are paid - in other words, "pay if paid". That is a good aspect of the Bill. I agree that it was an unscrupulous practice. It was an important matter that I considered when I was a minister, as it was an area of concern that I had. It would have been addressed in legislation, whether brought in by my previous Government or this Government. It is a great thing to see deemed unreasonable in the Bill the provision in contracts that requires payment to be made more than 50 days after it is claimed and that such a provision will automatically revert to payment being required to be paid within 28 days after it is claimed. That is a good provision because people will get early warning if somebody is having trouble paying. One of the worst things that subcontractors go through is the delaying tactic used by main contractors in paying them. A subcontractor may be a little nervous about doing another job for a main contractor when he has not been paid for the first job. A main contractor who asks a subcontractor to do another job while waiting for his money for the first job really is using a "pay if paid" tactic and that should be illegal.

Mr J.N. Hyde: It will be once we pass this legislation.

Mr R.F. JOHNSON: Yes, it will be illegal to do that when this legislation is passed. As I said, I support that provision because it is very important. Retention money was another area brought to my attention. The chairman of the task force gave me a strange look when -

Mr A.D. McRae: Your task force or the Government's task force?

Mr R.F. JOHNSON: The chairman of the task force in the Chamber today. He always gives me strange looks.

Mr A.D. McRae: Who was the chairman of your task force?

Mr R.F. JOHNSON: It is not important.

Mr A.D. McRae: I do not believe you.

Mr R.F. JOHNSON: The member does not believe me? I do not believe the member either. It is mutual. As I was saying, I was referring to the present chairman of the task force. The member gave me a strange look when I mentioned an organisation holding retention moneys. As I said, retention moneys could be held for a lot longer than 50 days because it may be necessary to go to the quick resolution process, which is the rapid adjudication process. That is the other essential part of the Bill, because if there is a problem between a contractor and a subcontractor, something must be in place to allow for rapid adjudication so that the problem can be sorted out and the payments made, if they are deemed correct. It would be for the adjudicator to decide that. The adjudicator would be impartial and would say what was right and what was wrong. The concern I have is whether we will find enough people to fill that position. I suggest that there will be many ongoing problems in the building industry with the security of payments. The problem will be in finding people with sufficient

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expertise. They will require expertise in not only business, but also the building industry. That expertise could be in surveying, architecture or whatever. The Government must find people who can sit as adjudicators and come up with the right decisions.

Ms A.J. MacTiernan: There are hundreds of these people around.

Mr R.F. JOHNSON: The Government must find the ones who will be prepared to sit and adjudicate. There are also hundreds of problems in the building industry. If rapid adjudication is to be successful, we must make sure that there are adjudicators who can sit and adjudicate quickly, so that these problems can be resolved.

I could go on for much longer, as my colleagues know, but in deference to the chairman of that task force it would be good to get this Bill through the House as soon as possible. We may get through only the second reading stage today, but hopefully the Government will bring the Bill back on when we are in Perth so that we can consider it in detail. We will then be able to consider the clauses about which these industries have concerns. I hope that the minister who will be handling the Bill on behalf of her colleague in the upper House will take note of those concerns and be prepared to accept amendments along the way. The minister may also bring in some amendments of her own on behalf of the minister in the other place.

Other members want to talk on this important issue. At the end of the day, the legislation will help people. I repeat: it is better late than never.

MR J.N. HYDE (Perth) [11.28 am]: I begin by thanking members opposite, because a number of them support this legislation, as do all my colleagues behind me. An important part of the Gallop Government's election commitments was to introduce security of payments legislation to help guarantee the timely payment of subcontractors involved in the construction industry. Soon after the election I was delighted when the Premier, Dr Geoff Gallop, appointed me chair of the security of payments task force. Consultation has been a hallmark of this Government in making sure that we get things right. During the three years of extensive consultation with the community, the task force found that subcontractors around the State were demanding new legislation. In the extensive time that this has been available for public comment, the feedback we have received from those involved with the industry has been not only rewarding, but also quite amazing: they love the legislation and want us to put it in place quickly. I think that is an indication that the construction industry in this State, and all the subcontractors, particularly in regional WA, know how important this legislation is. I welcome the comments from the Opposition that it will assist us in completing all second reading debate speeches before the Parliament leaves Albany. That will lead to the rapid progression of this Bill.

Many workers in the construction industry rightly collect a weekly pay cheque, but many subcontractors in the industry are waiting up to 10 months for payment. Often, they are not paid at all or anywhere near in full. Many of the subcontractors are self-employed, but many are also small employers employing a number of workers. Their livelihoods are put in jeopardy when there is a major bankruptcy or a large company up the pay chain does not fulfil its duty.

Strong unions protect the rights of workers. Western Australia has the highest rate of self-employed workers. The Gallop Government went to the state election promising to introduce legislation to provide timely payment for subcontractors and all contractors involved in the construction industry. Let it be said that many contractors and companies treat their subcontractors well. In boom times, particularly those experienced under the Gallop Government and this Treasurer, the market forces assist in ensuring that good subcontractors get paid quickly. After three years of consultation throughout Western Australia, particularly regional Western Australia, it has been genuinely shocking to see the plight of subcontractors, self-employed people and others involved - even in boom times - who are not being paid or who have to accept part payment in order to get another job from a dominant contractor.

Paramount in today's debate is that we be able to pass this legislation as quickly as possible with bipartisan support. I will not dwell on us coming into government and not finding any paperwork, fundamental legislation or cabinet endorsement to introduce this Bill to Parliament. In the past three years the Government has been stymied somewhat in the upper House with other legislation. This Bill has been going progressively up the queue. We have ended up with a piece of legislation that is the world's best. The comments and advice we are receiving from people around the world on this legislation is phenomenal. It builds on the best parts of the groundbreaking United Kingdom legislation and also takes from the New South Wales and New Zealand Acts. It enhances the best parts and removes any dysfunction and lack of clarity in those Acts. The key issue we must address is that, because of the very tight margins in the construction industry, restricted cash flow and payment default can force good operators into bankruptcy. That reduces the number of skilled operators in the industry, which can then flow on to skill shortages, subsequent delays and price rises. There are macro and micro effects on the whole Western Australian economy.

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As chairman of the task force, I conducted a number of official interviews in Albany in late 2001. In particular, I thank Robin Knotts from Knotts Plumbing, and the local chamber of commerce and industry. The chamber has about 30 to 35 members and we met across the road in York Street. The task force received tremendous feedback.

The ACTING SPEAKER (Mr J.P.D. Edwards): I know that my hearing is not very good. I do not mind seeing the member's back, but I would like him to address some of his speech to the Chair.

Mr J.N. HYDE: I also thank Greg Elliott from Albany Refrigeration; Dave Palmer, who is involved in earthmoving; and a number of other subcontractors and those involved in the construction industry in Albany. I was absolutely horrified to hear of one contractor with about 34 employees in Albany who was carrying \$974 000 of debt from late and non-payers. He was having to get an extra bank loan to cover payments that were not forthcoming in a timely fashion from subcontractors above him. The spin-off for the whole economy, and more importantly a regional economy in a place such as Albany, is quite profound. When everybody is paid promptly, cash turns over quickly. It means more economic development, more goods and services tax, more jobs and more money in the government system producing hospitals, police stations, schools and other infrastructure that Governments spend taxes on. Our legislation was certainly inspired by the United Kingdom Housing Grants, the Construction and Regeneration Act 1996, as well as the New South Wales Building and Construction Industry Security of Payment Act 1999 and the New Zealand Construction Contracts Bill 2001.

The Government's sole objective is to achieve timely payments. This legislation is fashioned in such a way that everybody involved in the construction chain can be paid in a timely fashion. It outlaws paid-when-paid clauses in contracts that mean that a subcontractor is paid at the whim of someone further up the chain. It is important that we look at Britain and how such legislation operates in the real world. A number of Australian companies, such as Multiplex, are involved in the construction industry in London. With some trepidation I visited a number of the building construction bodies in London that handled contracts and budgets that we in the antipodes can only dream about. The real advantage of this legislation is not that it is creating a massive number of adjudicators and bureaucrats or that we are playing big brother and making an impost on business. The beauty of this legislation is that it is a deterrent. In New South Wales such legislation operates with virtually one government employee. Because of such legislation, the building industry is able to self-regulate and the Government is further removed from the equation because it is not involved in checking dodgy statutory declarations or bankruptcies, such as those that occurred three years ago. The Government is made aware of problems within 28, 30 and 40 days. Because of that deterrent effect, the industry is cleaning up its act. The very fact that the Gallop Government has shown firm commitment, in not only promising this legislation but also setting up the task force within nano seconds of government and getting legislation into the Parliament, means that the industry is already self-regulating and payment in many sections has improved. Of course, for the vast majority of the industry, payment has never been a problem.

When I was in the United Kingdom, I was able to speak with a major construction lawyer, Tony Bingham, QC. I guess I am in the minority as one of the few members who has not got legal experience and who has a jaundiced view of that profession, but I heard a lawyer and QC say that he loves the legislation because less work is going to the higher courts. That is what will happen in Western Australia instead of disputes over \$20 000 and upwards being put on hold for two years and a subcontractor, a self-employed person, having to weigh up whether to go to the expense of going to the Supreme Court to get his money. A subcontractor must now consider whether to take two years out of his life, and put up with the expense and worry of going through this process to get what is his. Lawyers are saying that they are now being employed at the mediation stage. The moment there is a dispute between a subcontractor and a contractor up the chain, the lawyers are getting in as mediators. The result of mediation is that, as proposed under this legislation and as is the case already in the United Kingdom and to a lesser extent in New South Wales and New Zealand, disputes are not even getting to adjudication. The mediation is getting rid of the problems early. The huge benefit of this Bill, as it stands, is in the deterrence. That is why it is very important that the level of regulation be as contained in the Bill, so that the minister of the day is able to react to a number of issues that may flow from it. Again, deterrence is a huge benefit.

I was able to speak with John Wright, vice-president of the Royal Institute of British Architects in London. His attitude to this legislation is that it has given the industry security. Anybody involved in the construction industry, be it in building an entertainment centre in Albany or a new high school in Mt Lawley, knows that everybody in the chain, from someone providing saws and hammers to a carpenter, will be able to be paid quickly. John Wright, and a number of people in the United Kingdom Chamber of Commerce and Industry have told me that it has now become a status symbol in the construction industry to pay somebody within 24 hours. Many firms are paying within a day. The whole system has led to quicker payment. When the turnover happens

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quickly, people have the money for ongoing expenses and the investment capital to go on and tender confidently for future contracts. That is how is it possible to sustain, not a boom in the construction industry, but ongoing consistent and steady employment, and steady cement and brick production and supply.

I was also fortunate to be able to visit a number of other places in regional Western Australia, including Kalgoorlie, where I spoke to the Kalgoorlie Chamber of Commerce and Industry chief executive officer Hugh Gallagher. The member for Kalgoorlie supported our visit and talks there. They have experienced the direct impact, during the establishment of the Mining Hall of Fame and other things in Kalgoorlie, of the effect on the local economy of this legislation. I was delighted when the member for Eyre joined us in a bipartisan way and was able not only to direct us to a number of local subcontractors in his electorate, but also to support some of the incidents related by the member for Kalgoorlie. It is important when members from both sides of the House, particularly in places like Kalgoorlie know they are getting a ridgy-didge fair story and realise that this legislation is very important.

The construction industry has a number of groups, such as pest control, involved in it. A whole group of self-employed people and small contractors depend on a lead contractor being able to pay a lead subcontractor, so they can all be paid. A furphy given by the member for Hillarys was the example of the exclusion. This is a slight change from version 7. The legislation is already there in existing legislation brought in by the Gallop Government. In fact, I think it was my good friend, comrade and colleague, the member for Peel, who worked on this under the Minister for Housing and Consumer Affairs at the time -

Ms A.J. MacTiernan: It was Yvonne Henderson.

Mr J.N. HYDE: It was Yvonne Henderson originally. Those changes were brought in. Those small contracts in the housing industry are already covered and catered for. This legislation will cut down on bureaucracy, which will make for cleaner and better government. This is world-best legislation. It is something of which Western Australia should be very proud. Not only the Government but also the Parliament should be proud of it. It appears that the government has bipartisan support for it, particularly in regional Western Australia.

Cabinet has accepted the recommendations of the task force. I hope that Parliament will also endorse those recommendations, which were made after the task force conducted extensive research into the industry. I pay credit to the members of the task force. The Gallop Government put on the task force representatives from the Master Builders Association, the Housing Industry Association and a number of small subcontractors. It comprised the gamut of workers in the construction industry. It was an eye-opening experience for me to work in those industries, sometimes daily. It was important for the people in those industries to see that the Gallop Government has a genuine interest in looking after small businesses and self-employed people and in making sure that their payments are made secure. It was quite rewarding to see the degree of agreement among members of the task force by the time it had drafted the seventh draft of its report. I found that process remarkably rewarding.

I pay credit to the Department of Housing and Works. Many of its staff were involved when the task force was but a dream of the former Minister for Works of the previous Government, and they have seen it come into fruition under the first Minister for Works of this Labor Government, Hon Tom Stephens, and under the current Minister for Works, Hon Nick Griffiths. I thank members, a number of building industry groups, subcontractors and self-employed people for the independent support I received from them when I travelled around regional Western Australia. Most importantly, I thank the Parliament for giving a commitment to finish the second reading stage today so that this legislation can be passed quickly. I hope that Consolidated Constructions Pty Ltd, which has gone bankrupt, will be the last major construction company to collapse in Western Australia. I implore members opposite to join in our recommendation, which was endorsed by the HIA, the MBA and others, to place pressure on the federal Government to introduce parallel legislation into federal Parliament so that important issues of bankruptcy can be addressed at the federal level. We must ensure that the working, payment and moral rights of subcontractors and others involved in the construction industry in regional Western Australia are respected.

MRS C.L. EDWARDES (Kingsley) [11.48 am]: The purpose of the Bill is to give some security of payment to the construction industry. The previous speaker was at pains to talk about the small margins of profit in the building construction industry and some of the problems the industry faces in receiving payment for work that has been completed. He also said that he hoped the collapse of Consolidated Constructions Pty Ltd would be the last one. I can tell the member that this legislation will not stop the collapse of construction companies. I hope to be able to show the member why that is the case. I will explain to him why the Government's legislation will not provide security of payment to people in the industry. The Government has got it wrong. It does not understand.

Mr Rob Johnson; Acting Speaker; Mr Tony McRae; The Acting Speaker (mr J.P.D. Edwards); Mr John Hyde; Mrs Cheryl Edwardes; Mr Paul Omodei; Mr Norm Marlborough; Mr Arthur Marshall; Mr Eric Ripper; Mr Colin Barnett; Ms Sue Walker

The Opposition supports that part of the legislation regarding the adjudication of payment disputes and it supports outlawing the notorious pay-if-paid and pay-when-paid clauses etc. However, the companies must have the money to pay. This Bill has come far too late for the contractors and subcontractors of Consolidated Constructions Pty Ltd. It is an absolute disgrace that it went under. Members on the other side of the House should hang their heads in shame, because one of the top construction companies in this State went under, owing tens of millions of dollars to other companies and subcontractors. This legislation would not have stopped that or even helped in any way. Do members know why it would not have stopped that? It is because, under this Government, the union movement will not stop its intimidatory tactics on building sites. Until the Government understands that it is its responsibility to control those intimidatory tactics on building sites, collapses such as that of Consolidated Constructions will happen time and again.

Let us talk about what happened with Consolidated Constructions and some of the collapses that have hit other companies. *The West Australian* of Friday, 12 March 2004 states that -

The failure last week of . . . Consolidated Constructions has triggered the collapse of two of its suppliers on major State Government contracts and is threatening the financial health of other companies.

Many contractors and subcontractors have contacted me and other members on this side of the House.

Mr A.D. Marshall: And in Mandurah.

Mrs C.L. EDWARDES: Mandurah, in particular. Maybe the member for Dawesville will talk about that. It is terrible when companies that have a strong record in the industry, and are like families to their workers and suppliers, no longer have the money to pay their workers and suppliers. They feel as though they are in disgrace, yet they had nothing to do with the collapse of their companies. Even today, many contractors and subcontractors are visiting liquidators. They are owed money by Consolidated Constructions, and they want to know what this means for their liquidity and when they are likely to receive payments from Consolidated Constructions. The Government's legislation will not stop that. Until the Government takes other action in the industry, it will not help or provide security in the industry. If it were just one step along the way to providing security in the industry, it would be a good thing. However, it will not help those people who are suffering under the collapse of Consolidated Constructions. *The West Australian* went on to state -

The directors of Karratha-based Carr Civil Contracting and Pinjarra-based AW & C Day Contractors -

It cuts right across the State. It mentions Mandurah -

both called in administrators this week to help them deal with the effects of more than \$2 million in bills owed to them by Consolidated.

Mr A.D. Marshall: Alan Day has gone for \$2 million, and his family in Mandurah is shot, all because of it, and there is no recompense.

Mrs C.L. EDWARDES: The member for Dawesville said that Alan Day from Mandurah has gone for \$2 million, and his family is shot because of the disgrace that has come upon them. *The West Australian* continues -

The Day, Carr and Consolidated collapses are putting pressure on other businesses.

The ripple effect will be awesome. That is the major concern that this legislation is supposed to address; that is, how we can ensure that there is security of payments to companies. However, when a company goes under, it will not help at all. An article in *The West Australian* of 5 March states -

One contractor working for Consolidated . . . who asked not to be identified, said he now had to sack all his staff and would call in an administrator.

He said he was owed more than \$300,000 by Consolidated and was unable to pay his major supplier, who was also likely to go into administration within days.

The ripple effect of the collapse of Consolidated Constructions is enormous. The article continues -

It is believed the directors have partially blamed Consolidated's failure on a running battle with the Construction, Forestry, Mining and Energy Union over its use of contract labour. But, CFMEU chief Kevin Reynolds said the company had been undercutting rivals in contract bids by using cheap labour.

What is the story? Yes, some contracts had gone bad for Consolidated Constructions - one in Perth and a couple in Sydney - so the company thought, "How can we get our head above water in this situation?" Consolidated Constructions had been recognised by the Cole royal commission as having paid the CFMEU for casual tickets. Casual tickets are tickets for union membership that can just be handed around from one person to another.

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They are not real membership of a union. They are just to put money into the union's coffers. That action was a disgrace, and that was recognised by the Cole royal commission. Therefore, Consolidated Constructions said to the CFMEU, "Mate, we have been paying you for peace on building sites for about 18 months. We need a bit of help now. We need to get our head above water. We have had a few contracts that have gone bad. We have looked around at who has been getting the contracts in Perth, and they are the companies that do not have an enterprise bargaining agreement, because they are able to tender at a lower cost than we can, because we have to keep paying you." The response from Kevin Reynolds was, "Hang on, but you have been undercutting other companies". Yes, that is true, but the company was trying to keep its contracts. Is that wrong? The union then started its intimidating and bullying tactics on all the company's sites, until a couple of weeks before the company went under, when the company initiated an action in the Supreme Court against the union. An article in *The West Australian* of 10 February states -

Construction company Consolidated Constructions lodged a writ with the District Court alleging Mr McDonald and the CFMEU had unlawfully interfered with its business.

The company is seeking damages and costs.

The dispute was alleged to have occurred at the \$32.8 million RAC headquarters construction site near the new Harbour Town shopping complex last Monday.

Consolidated Constructions was one of the biggest companies in Perth. It is a Perth-based company. It has built landmark buildings in the Perth central business district. The article states also -

But according to Consolidated's writ, Mr McDonald and the union had unlawfully interfered with the company's relationship with contractors and subcontractors and had intimidated contractors.

The writ also says that they had conspired to intimidate, to cause nuisance and to harm Consolidated's business.

The company had had a pretty close working relationship with the union movement. It went to the union movement 18 months ago and said, "Mate, we have a problem. We need to get our head above water." What was the union's response? The union said, "No way, mate." The union put its foot on that company's head to make sure it would never get its head above water unless it was prepared to do things the union's way. The company had paid for industrial peace. That was noted in the Cole royal commission report. However, as soon as the company wanted to step outside the EBA, the union movement attacked and intimidated it.

Tomorrow is the 12-month anniversary of the handing down of the Cole royal commission report. The Government in this State has absolutely and totally ignored each of the recommendations of the Cole royal commission. The federal Labor Government has refused to support the Howard Liberal Government in its reform of the construction industry. The labour relations laws of this State are being totally ignored by the unlawful actions of the union movement. The Cole royal commission identified 392 separate instances of unlawful conduct, 230 of which occurred in Western Australia. What has been the Government's response? The Government has said that it will not support the federal Government's legislation and the task force that it has established. The Government has refused to recognise the fact that the Building Industry and Special Projects Inspectorate - BISPI - which was set up to oversee the industry after this Government had abolished the task force that we had in place, has no teeth. This Government does not want it to have teeth. It does not want it to have the resources to enforce the rule of law in the construction industry in Western Australia.

Ms A.J. MacTiernan: This Bill is not about unions. This is about contractors ripping off subcontractors.

Mrs C.L. EDWARDES: It is about security of payments within the industry. I am telling the minister it will not work; there will be no security of payments within the industry until such time as she gets the unions under control, because the union movement had a major impact on the collapse of Consolidated Constructions Pty Ltd.

Ms A.J. MacTiernan: That is not the issue here. The problem is that the subcontractors have no union.

Mrs C.L. EDWARDES: The minister should stop pussyfooting around her union mates and start taking control of industrial relations in this State. She is pussyfooting around, supporting the unions. The Premier comes out every now and then and attacks Kevin Reynolds, but it is all talk and no action.

Ms A.J. MacTiernan: This is about the subcontractors who have been left unprotected because of your mates. This is about the people who funded your election campaigns, that ripped the workers off.

Mrs C.L. EDWARDES: This is about security of payments in the construction industry.

Point of Order

Mr Rob Johnson; Acting Speaker; Mr Tony McRae; The Acting Speaker (mr J.P.D. Edwards); Mr John Hyde; Mrs Cheryl Edwardes; Mr Paul Omodei; Mr Norm Marlborough; Mr Arthur Marshall; Mr Eric Ripper; Mr Colin Barnett; Ms Sue Walker

Mr P.D. OMODEI: I know that the member for Kingsley can handle herself fairly well in this Parliament, but I am battling to hear what she has to say above the interjections from members opposite.

The ACTING SPEAKER (Mr A.P. O’Gorman): There is a difficulty in hearing the member for Kingsley. The member for Kingsley has the floor. Members on my right should please refrain from interjecting.

Debate Resumed

Mrs C.L. EDWARDES: After the February election in 2001 the unions started to engage in their intimidatory and bullying tactics and have continued to fly their flag of defiance ever since. I said back then it was only the tip of the iceberg. Consolidated Constructions is starting to be the iceberg - the big iceberg - because when a major company like that goes under, those on the government side ought to start hanging their heads in shame. Without government intervention, this will only continue to cause more companies to go under and more jobs to be lost. I will point out to members how bad the Building Industry and Special Projects Inspectorate and this Government are about following through on complaints by employers and contractors against the intimidatory and bullying tactics of the union movement on site. They do not want to investigate unless there is a formal complaint. A letter to the minister is not sufficient; there must be a formal complaint. What absolute nonsense! On 6 and 24 October last year there was a dispute down south and a complaint was lodged with BISPI by the Master Builders Association. BISPI started the investigation and thought it was a bit too hot and wondered how to get out of it. BISPI thought it would get advice from the Crown Solicitor. This is the most outstanding piece of legal advice I have ever seen, to get a Government out of investigating an industrial dispute. The advice came back that if the strike was about a political issue, BISPI had no powers. This strike that was being investigated in October 2003 was about bringing in contract labour from overseas. If that is not a dispute between employers and employees, I do not know what is, but the Crown Solicitor advised that it was not. The lawyers worked their way around it and came up with the advice that it was a political matter and, as such, fell outside the terms of dispute resolution, and BISPI had no powers. Therefore, the Government will not investigate or intervene in any strike by any union in this State based on this piece of advice: that if the strike is about a political issue, the department does not have the powers to investigate.

According to the Crown Solicitor and the Department of Consumer and Employment Protection, when the union movement said over a week ago that it was going to strike about the Government’s workers compensation legislation, the Government did not have the power to either investigate or take any action over the dispute, because it would be a political strike and not an issue between employers and employees.

I will read out some comments. I have with me a letter written by the Department of Consumer and Employment Protection to the Director of the Master Builders Association dated 11 March 2004. I am happy for anybody to have a copy of it because it makes simply amazing reading. On page 2 of the letter, the crown sols is quoted as saying -

[Leave granted for the member’s time to be extended.]

Mr R.C. Kucera: Member for Kingsley, it is referred to as the State Solicitor not crown sols.

Mrs C.L. EDWARDES: The minister has raised an interesting point but it obviously has not got to the Crown Solicitor yet because the department refers to it as crown sols. Perhaps the minister would like to let it know. The letter refers to the Crown Solicitor’s Office as stating -

“ . . . insofar as the utilisation of the dispute settlement clause contained in an industrial agreement regulating the conditions of employment is concerned, is that there can be no outcome from that process to deal with what is a political issue. Put simply the employer is powerless to resolve the union’s dispute with the government over its legislation program concerning employment. ”

There is no outcome from that process to deal with what is a political issue. The letter continues -

“The situation you have outlined -

That is, contract labour coming from overseas -

is not a dispute between employer and employee and not subject to any of the dispute resolution clauses you have provided me with.”

Therefore, even if there is an agreement or a dispute resolution clause in that agreement and workers go out on strike over just about any issue whatsoever, which is then termed a political issue, there is no power and certainly no willingness on the part of this Government or the Building Industry and Special Projects Inspectorate to intervene. The letter goes on to state that it is possible under only two agreements; the electrical contracting industry award and the Construction, Forestry, Mining and Energy Union standard agreements. A clause in the electrical contracting industry award refers to 24-hours notice etc. Even if 24-hours notice was not given, the

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department could not pursue it as a breach of the dispute resolution clause. What does the department actually do? What does a person have to do when there is a clause in an agreement that says that 24-hours notice has to be provided and it is not? With regard to the CFMEU agreement, the letter states -

The DSP -

That is, dispute resolution procedure -

within the CFMEU standard agreements contains a clause that preserves the right to take action for matters of national or state significance with the giving of notice to the other parties.

A person might think that the bringing in of contract labour from overseas might be regarded as having national or state significance. It continues -

Whilst it could be claimed that this may apply to the two stoppages and therefore could be a technical breach, -

So we have got that far -

CSO believes this clause is still about disputes specifically between the employer and employee(s) of that employer which are of state or national significance. CSO commented "*the capacity to provide for dispute resolution procedures in awards must relate to matters arising under or concerning the award between the parties or persons subject to it and an employer or employers.*" Therefore, CSO believes that neither of the two stoppages falls within the scope of this provision.

So the department has managed to work its way through to the nth term of those agreements and come up with the fact that if there is a strike dealing with a political issue, which can be about almost anything, then there is no role for BISPI to get involved. With regard to the CFMEU agreement, the letter states -

The CSO stated that the DSP is "*intended to apply to a dispute between employer and employee which is not the case here and one relating to a matter arising under the Agreement which is of State or National significance.*"

The department has worked its way around the fact that it might be a technical breach but it cannot intervene because the matter does not fall within the terms of having national or state significance. The department probably said to the Crown Solicitor's Office, "Get us out of this. We do not want to be involved in investigating this matter." The closing statement of this letter reads -

The department's legal advice is that a dispute at a level above that of employer-employee falls outside the intention and scope of the DSPs contained in the various industrial instruments analysed. Based on this, the department is unlikely to be able to bring a successful prosecution.

That was because the department did not wish to do so. It concludes -

In any event, there are sufficient avenues for the MBA, the CCI and employers to pursue this under state and federal labour relations legislation and civil action.

No wonder the likes of Consolidated Constructions and Pindan Constructions are taking action against the union movement; they have no support whatsoever from this Government.

Ms A.J. MacTiernan: What about how we protect subcontractors?

Mrs C.L. EDWARDES: The minister cannot do that until she starts to take the unions under control. That is the point. This legislation refers to security of payment to contractors and subcontractors. However, until such time as the Government gets unions under control in the building and construction industry, no form of security will be provided in the industry. The Government could bring in whatever legislation it wanted, but it will not provide security in the industry until the minister starts to take on the unions. The Government will never take on the unions. That is proved. This Government will never act. The Cole royal commission said last year that the Building Industry and Special Projects Inspectorate was a toothless tiger and lacked resources. Also, it lacked commitment to take action because this Government gives BISPI no support to carry out its role. The department stated that the employers themselves can take action, and that is exactly what they are doing. George Allingame from Pindan also issued a writ alleging that intimidation was used by several unionists at its sites over the past five months.

Ms A.J. MacTiernan: What about the subcontractors, then?

Mrs C.L. EDWARDES: What does the minister think is happening with the contractors and subcontractors from Consolidated Constructions? They are going under, and their suppliers are going under. Did the minister not hear a word I said? Why is that? For the past 18 months, the union movement has not let Consolidated

Mr Rob Johnson; Acting Speaker; Mr Tony McRae; The Acting Speaker (mr J.P.D. Edwards); Mr John Hyde; Mrs Cheryl Edwardes; Mr Paul Omodei; Mr Norm Marlborough; Mr Arthur Marshall; Mr Eric Ripper; Mr Colin Barnett; Ms Sue Walker

Constructions get its head above water. People from Consolidated Constructions went to the unions and said, "Mates, we've been partners together. We want to know what you can do to help us." Does the minister know the response? The unions said they would kick them even harder.

Let me finish outlining these writs. They detail a history of incidents at the Perth Beaufort Central site, the Emporium Apartments site in Subiaco, the Zenith Apartments site in West Perth, and the Aria Apartments site in Rockingham. George Allingame said the action is a reaction to unwarranted stoppages. Industrial action has taken place. McDonald made comments in a response from the union movement. He said that he was amazed that companies would spend money taking on lawyers to fight the unions. Excuse me! We have seen Consolidated Constructions go right under. We have heard the member for Perth say that there is a narrow margin of profit in the construction industry. Mr McDonald has said that this industrial action has taken place, and that some builders are paying workers less than some of the reputable builders who pay properly.

Ms A.J. MacTiernan: The reason we have unions is that people were not being properly paid.

Mrs C.L. EDWARDES: Yeah, right!

Although this legislation may sound good, it will not provide security to any major company - such as Consolidated Constructions Pty Ltd, which is trying to get its head above water paying all its contractors and subbies, but which finds itself at the tip of the toe of the union movement - until this Government is prepared to intervene on behalf of employers to bring unions under control and to prevent intimidatory and bullying tactics, and until the federal Labor Party is prepared to support the legislation introduced by the federal Government to expand the task force and tighten up the law against these actions. Tens of millions of dollars -

Mr R.C. Kucera: I know what else you will be doing next.

Mrs C.L. EDWARDES: Yes, looking after some young head-injured people stuck in nursing homes, and I will be calling on the minister to support them.

The Crown Solicitor's advice is an absolute disgrace. The mere fact that the department is using it to delay the investigation of actions, strikes or disputes that are not resolved through dispute resolution provisions is an absolute disgrace. Companies in this State may take some comfort from this legislation in the knowledge that a regulator can ensure they are paid. However, I want to hear from the minister how it will help the contractors and subcontractors that are owed money by Consolidated Constructions. It will not help them. How better could this Government have responded to the cries of help from Consolidated Constructions, which lost a lot of money when it was intimidated and bullied and incurred stoppages on all its sites? How could this Government have prevented the loss of tens of millions of dollars that could have been paid to contractors and subcontractors and would have prevented them from going down the drain? The Government should hang its head in shame.

MR N.R. MARLBOROUGH (Peel - Parliamentary Secretary) [12.17 pm]: Anybody listening to the member for Kingsley would think that the matters that concern the construction industry have occurred only in the time of this Government. The tragedy is that this legislation sets out to correct a wrong that has been in place in the building industry for many years. Anybody who has any understanding of the building industry would know why this legislation is needed. Even the member for Kingsley, with her biased view of the world, supports the legislation. She then takes the opportunity of attacking the trade union movement through Consolidated Constructions. I will come back to Consolidated.

This legislation has been required for many years. I am a fitter and turner by trade. When I was paid by the hour, it was important to me to know that at the end of a 40-hour week plus overtime I was taking back to my home the proper award remuneration. When I was a blue-collar worker for many years, nothing irked me more than being screwed by the boss when I was not paid the appropriate award conditions. The member for Kingsley goes on about the enterprise bargaining agreement system in the construction industry that has been ticked off by the John Howard Government, as well as State Governments all over Australia. The member for Kingsley does not tell us about the hundreds of companies, many of which are key builders in this State - the Multiplexes, the Mirvac Finis, the John Hollands and the Leightons of this world - that never have any problem with EBAs. Why is that? It is because they are properly managed companies that are able to survive by running their books properly. Unfortunately, too many companies in the building industry do not run their books properly. The truth of the matter is that Consolidated Constructions has had problems for more than the past 12 months. Two years ago in federal Parliament -

Mrs C.L. Edwardes: What did the union movement do? It put the head on them and made them drown.

Mr N.R. MARLBOROUGH: The member for Kingsley uses 18 months as the measure by which she says the unions have been kicking the hell out of Consolidated Constructions. I will outline the facts. Two years ago the

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role of Consolidated Constructions Pty Ltd on Christmas Island was raised in federal Parliament. It is in *Hansard*. The member should read the federal transcript. Consolidated Constructions did not pay its contractors on Christmas Island. It did not pay appropriate wages to its workers. That is on the record. It is nothing to do with the unions in the past 18 months. That company has been in trouble for a long time. What the member for Kingsley would have us all believe is that this company has been brought down because the unions chased people to sign up with them and then demanded that they be paid a wage rate equivalent to an enterprise bargaining agreement that applies across Australia. She argued that the unions singled out Consolidated Constructions and brought it down. The transcript of two years ago of the federal Parliament puts a lie to that. Consolidated Constructions did not pay its contractors on Christmas Island, nor did it pay the Christmas Island workers their proper wages. I will outline the tragedy of Consolidated Constructions over the past eight months. In December, while insolvent, Consolidated Constructions was still able to trade and to win government and private contracts.

Mr B.J. Grylls interjected.

Mr N.R. MARLBOROUGH: Absolutely; that is the question. It was able to win these contracts in December, which was at a time when the member for Kingsley would have us believe the unions were absolutely killing it. The contracts that Consolidated Constructions won in December while it was insolvent were for the Osborne Park Hospital, Armadale railway, Gosnells railway and the Gosnells shire offices. That continued. It also won private contracts. The question is: why did it continue to operate? That company has a legal question to answer. I will bring members right up to date. I refer to page 53 of the business section of today's *The West Australian* and to the article headed "Builder 'saw a long decline'", which states -

VINCE YOVICH'S Consolidated Constructions had been in decline for several years and may have traded insolvently from December 31 until its collapse this month, -

Mrs C.L. Edwardes interjected.

Mr N.R. MARLBOROUGH: This is what the member for Kingsley would have us believe. The article also states -

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

The member for Kingsley said it has been only 18 months. She has not done her research. What has happened with the member for Kingsley, because her record goes back a long way? She shares it with her husband. The member for Kingsley is now trying to handball into Parliament -

Point of Order

Mr A.D. MARSHALL: We have all agreed to obey the code of conduct. For about six months we put up with the member for Peel denigrating a partner of a member of this House in a disgraceful manner. I do not want nor do I expect it to be brought up again in this debate because he lost the earlier session on unionism.

Mr E.S. RIPPER: I understand that the gentleman in question is a Liberal candidate. I would have thought that his record is a perfect subject for political debate.

Mr C.J. Barnett: Charming. So the sleaze machine is at work!

Several members interjected.

The ACTING SPEAKER (Mr A.P. O'Gorman): There is no point of order. No protection is given to people outside this Chamber for comments made in this Chamber. The member for Peel still has the floor.

Debate Resumed

Mr M.J. Birney: Sleaze on!

Several members interjected.

Mr N.R. MARLBOROUGH: It is amazing! I am a sleaze! The member for Kingsley spent 20 minutes condemning the trade union movement, and Kevin Reynolds in particular, but when I raise the issue of the role she and her husband have played in the Liberal Party, I am a sleaze! All I was going to point out was that she would of course know all about the sorts of dealings that she accuses Kevin Reynolds of. They are the same dealings that she is now entering into to get her husband to replace her in her seat in Parliament. She would know all about it.

Several members interjected.

Mr Rob Johnson; Acting Speaker; Mr Tony McRae; The Acting Speaker (mr J.P.D. Edwards); Mr John Hyde; Mrs Cheryl Edwardes; Mr Paul Omodei; Mr Norm Marlborough; Mr Arthur Marshall; Mr Eric Ripper; Mr Colin Barnett; Ms Sue Walker

Point of Order

Mr C.J. BARNETT: Everyone in this hall would know that was an attempt by the member for Peel to intimidate a female member. It was a clear attempt at bullying and intimidation. The member referred to Kevin Reynolds. People know there has been illegal, corrupt and immoral conduct in the building industry. The member implied the same. Is this the standard of the Gallop Labor Government?

Mr E.S. RIPPER: Clearly, the Leader of the Opposition wants to make a political point. I think it is an abuse of standing orders to make that sort of comment. My understanding of the position of a member taking a point of order is that he needs to draw attention to the particular way in which a standing order of this House has been breached. The Leader of the Opposition has made no such argument; therefore, there is no point of order.

Mr R.F. JOHNSON: The point of order in question is that of relevance. The member for Peel was not addressing his comments to the Bill before the House. The Leader of the House knows that and the member for Peel knows that. To make a disparaging assertion against a member opposite that has nothing to do with the Bill before the House is the point of order. I ask that Mr Acting Speaker direct the member for Peel to confine his comments to relevancy to the Bill and not enter into a slanging match and attack other members.

The ACTING SPEAKER (Mr A.P. O’Gorman): The member for Peel has to take responsibility for his own comments in this House. There is no point of order. I warn members that interjections are reaching an unacceptable level and I will clamp down on them.

Debate Resumed

Mr N.R. MARLBOROUGH: I thought my comments were absolutely relevant to the situation before us. The member for Kalgoorlie thinks that, on the basis of the comments I have made, I am a sleazebag. I am no orphan because most of his colleagues who have spoken to me share my views on the role of the member’s husband in politics. I tell members that. He knows that because it has been raised in his party room. When it is appropriate, I will be more than happy to name the colleagues who have told me so. What we have seen from this politically dying member of Parliament - the best thing she will do is to leave the House at the end of this term - is 20 minutes of a biased assassination of the trade union movement and a biased assassination of Kevin Reynolds of which none of the facts she used about Consolidated Constructions stands up. It was not paying contractors two years ago -

Point of Order

Ms S.E. WALKER: The member keeps referring to the member for Kingsley as “she”. Could he refer to her in an appropriate manner?

The ACTING SPEAKER: It is protocol and required in this place to refer to a member by his or her electorate. I ask that the member do that.

Debate Resumed

Mr N.R. MARLBOROUGH: I believe I have put the issue of Consolidated Constructions into perspective. It is a company that, unfortunately, the member for Kingsley used and it was unable to pay its contractors on Christmas Island two years ago. That is a matter on the public record in the federal arena. It was neither able nor willing to pay its workers an appropriate rate of pay. That was its decision. What concerns me is that the company has been touting for business while insolvent.

Let us put Consolidated Constructions to one side; we have handled that issue. The issue facing the industry is why this legislation needs to be in place. This is how the construction industry works: a major contractor wins a contract for a multimillion-dollar job. Unfortunately, when calling for tenders, the industry plays one tenderer off against another. Many small business owners in the construction industry will state that, from the time they submit their first tender for plumbing, electrical, brick and cement work -

The ACTING SPEAKER: Time, member for Peel.

Mr N.R. MARLBOROUGH: I seek leave to continue my remarks at a later stage of today’s sitting.

Several members interjected.

The ACTING SPEAKER: Order, members!

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

Debate interrupted, pursuant to standing orders.

[Continued on page 1063.]

Extract from *Hansard*
[ASSEMBLY - Wednesday, 24 March 2004]
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Mr Rob Johnson; Acting Speaker; Mr Tony McRae; The Acting Speaker (mr J.P.D. Edwards); Mr John Hyde;
Mrs Cheryl Edwardes; Mr Paul Omodei; Mr Norm Marlborough; Mr Arthur Marshall; Mr Eric Ripper; Mr Colin
Barnett; Ms Sue Walker

Sitting suspended from 12.30 to 2.00 pm