

GOVERNMENT BUILDING CONTRACTS — CONDITIONS ENFORCEMENT

Grievance

MR P. ABETZ (Southern River) [9.31 am]: My grievance is to the Minister for Commerce who in this chamber is represented by the Minister for Transport, and it relates to the lack of enforcement of conditions attached to state government building contracts.

The minister would be aware that in the early 1990s Hon Graham Kierath introduced a code for tendering, and set up a task force to enforce it. I understand that this worked well. The Howard government then introduced a national code of practice for the building industry, and set up the Australian Building and Construction Commission—ABCC. A builder tendering for or being awarded a project involving state or federal funding must be compliant with the National Code of Practice for the Construction Industry, established in 1997 under the then coalition government. In 2002, the Gallop government rewrote the code of practice for the building and construction industry in Western Australia and replaced the task force with a code monitoring committee, with very limited powers to enforce the code. Anyone could lodge a complaint in writing to this committee, which would then investigate. However, the monitoring committee died for want of being able to do anything worthwhile. Nevertheless, builders doing government work are required—I am told a section in the contract thus states—“to act in a certain manner as outlined in the contracts”. These codes set out the standards of conduct that builders, subcontractors, unions and so on need to abide by when they win a state government contract.

A constituent of mine, Mr Sasha Milosevic, who owns and operates a business known as Direct Tiles Mandurah, contacted me in July last year expressing concerns that some builders were engaging in conduct that was not permitted by the code of practice at both state and federal levels, and were contravening certain Australian standards relating to tendering, and using subcontractors who are not compliant with the national code of practice. More importantly, he stated that when he tried to lodge a complaint, no-one seemed to be able to accept the complaint.

Research revealed that in 2003 the then Labor government disbanded the state-appointed code monitoring committee, thus removing any mechanism for dealing with builders engaged in unscrupulous practices towards small and medium enterprises in the construction industry, apart from their possibly being removed from the list of prequalified builders that Building Management and Works uses. However, BMW does not have any investigative powers or investigative officers, and is therefore dependent on other bodies to do this work.

Given that the federal government is disbanding the ABCC, it is pleasing to see that the state government has established the office of the Building Commissioner and is in the process of developing the structures to be able to investigate reports of builders breaching the various codes. However, it would seem that this will take another year or more to become fully operational. It seems that the state government currently hands out contracts without any proactive mechanism to ensure that builders to whom it awards contracts comply with the terms of their contract; namely, to adhere to the code of practice.

I am appreciative that the minister arranged meetings between Mr Milosevic and representatives from BMW and the Department of Health for Mr Milosevic and his representatives to outline their concerns relating to Fiona Stanley Hospital and other contracts. I attended that first meeting, and I was encouraged by their willingness to look at the situation.

I appreciate that BMW is not a policing organisation. I further appreciate that the regulations for the Building Act still need to be finalised before the Building Commissioner can take a more active enforcement line. In talking to other people in the construction industry, I was made aware that the use of illegal labour on government and private projects is common knowledge. So-called “sham contracting” is a fairly widely used practice in the industry. It occurs because builders do not carry out due diligence on the subcontractors they engage, even though they promise to abide by either the national code of practice or the code of conduct for contractors in WA. Builders turn a blind eye to their subcontractors failing to pay state and federal award rates to their workers because it provides the builder a greater profit margin. Knowing that the government has no mechanism to investigate such practices instils confidence in the builders that they can get away with it. This leads to another dubious practice, which is in contravention of the Australian standards on tendering.

Since the Cole inquiry, the way tendering is supposed to work is that the government calls for tenders, prices are submitted, builders clarify the prices submitted by subcontractors and employ subcontractors in a relatively smooth process. Nowadays, builders put a tender out to market, subcontractors respond, and then the merry-go-round of unethical second-round bidding starts. Builders use the prices of dubious subcontractors to force down the market price of legitimate companies. They enter into protracted negotiations with subcontractors, making various comebacks to subcontractors and playing them off against one another. I am told that many subcontractors get phone calls and emails up to three or four times over a period of two to three months from

builders stating that they have just received a lower price from a rival subcontractor and asking them to beat it. This is illegal as it contravenes AS 2124 and other Australian standards on tendering.

I am told that a check of the tenders section in *The West Australian* reveals builder advertisements thanking subcontractors for submitting prices and informing the public who has been awarded certain commercial projects. In the following Saturday publication, the same builder asks the same subcontractors “to resubmit prices”—and not because they have lost the original documentation but because they are engaging in predatory behaviour. These sorts of practices continue to flourish because we do not have an active enforcement mechanism.

I urge the minister to review the Construction Contracts Act as a matter of urgency and expedite the setting up of an investigative and policing arm of the Building Commission so that those involved in the building industry can be held to account if they breach the code or fail to adhere to the terms and conditions of their contracts; and in the meantime, I urge BMW to remove certain companies from the prequalified list when sufficient evidence is presented to it, and use this stick to encourage builders to comply with the code.

MR T.R. BUSWELL (Vasse — Minister for Transport) [9.38 am]: As the member for Southern River pointed out, he has met previously with the Minister for Commerce’s representatives to discuss this matter. I can pretty much only provide the member with a summary of the information provided at that meeting, which I am now going to do.

I should also point out that the member made a number of pretty serious allegations about behaviour in the Western Australian building industry. I think that, by and large, we have an excellent building industry in Western Australia, and I just need to put on the record that I think some of the member’s comments were of a very general nature about the building industry and I do not accept them. I think that we have a good building industry in Western Australia. Of course, there will always be cases in which laws and/or codes of conduct are pushed at the margins by some, but it is foolhardy to make statements that indicate that the behaviour of a few is a reflection on the many. I just wanted to state my personal position, and I am sure the government’s position, in and around the nature of the building sector in Western Australia.

The member also made a number of comments in which he used the word “illegal”. I think that we need to be very careful when we claim things are illegal, when in this case they may well be breaches of a code. However, unless a code has requirements under law, breaches of the code are not always illegal. It is often easy to stand in this place and make those sorts of broad sweeping statements; namely, the building industry is bad and people in the building industry are operating in an illegal way, when in fact, even though they may be breaching a code, they are not breaching a law. I think the member may know that. I reject those sorts of statements. I think that they are very unwise statements to make in a broad sweeping way about an industry.

In relation to the member’s grievance, this is an issue on which the member has had meetings with the minister’s office, and he has already been provided with the information that I am about to provide him with again—as follows. The Department of Commerce, as the member knows, has established the Building Commission and the Building Commissioner has powers to investigate complaints in relation to issues around the code of conduct. I think this is a much better mechanism to deal with issues than the previous situation. The member was right to point out some of the history of the different bodies that have been set up in Western Australia. I am trying to recall the exact names of the ones that Mr Kierath set up. They included a task force, as I recall, which the incoming Labor government abandoned. That task force was designed to enforce the code from a predominantly industrial relations point of view. We have to remember that post the election of the Gallop government in 2001, WA building sites were terrorised by minivans full of thugs who would go around and do all sorts of outrageous things. I will not go into that. It is on the public record from when it was presented as evidence to the Cole inquiry, which the member referenced. Terry Cole conducted the inquiry. Of course, sealed sections of the inquiry were provided to the state government but never saw the light of day. That is a completely different issue.

The member made some comments about illegal workers. I think he is right; that happens. My suggestion would be that the member passes on those concerns. The commonwealth Fair Work Ombudsman, the toothless tiger, has replaced the Australian Building and Construction Commission. Last year someone put up horrible posters about individuals at Fremantle port. I tabled one of those posters in this place. I do not think anyone on either side of the house would condone the sort of language that was used to vilify individuals. That has been referred to the Fair Work Ombudsman, the toothless tiger, and we have heard zip, zero and nothing. Yet the Fair Work Ombudsman was provided with closed-circuit television footage of the individual who stuck up those posters. He was a particularly smart individual because he happened to position himself in full view of a very good quality CCTV camera! Yet not even the evidence of someone putting up those filthy, vile posters has got this toothless tiger, the Fair Work Ombudsman, to get off his backside and investigate. That is not the member’s grievance, but I would not hold my breath if I were the member.

What is happening with the establishment of the Building Commission? My advice from the Department for Commerce is that it has recently got a senior person on board. That person is reviewing the code of practice as we speak. Advice will certainly come to government shortly so that we can better understand how the code needs to be changed to ensure fair practices and proper behaviour in the building industry. The new system with the commissioner will work a lot better. Having a committee or a task force over here is just too difficult. The Building Commissioner has responsibility. The minister also advises me that the Construction Contracts Act will be reviewed as the member has requested. That review will run in parallel with the review of the code of practice. I know that this will not help circumstances in the short to medium term, but in the not-too-distant future the code and the Construction Contracts Act will be reviewed with an eye on the issues that the member's constituents raised. It is important that the member raises these issues with the minister and with the Parliament. It helps us understand the context in which the review will be conducted and, I suppose, the benefits that industry is looking for.

From what the member is saying, I gather that nobody is worried about competition. We always have to be careful in government to regulate away the competitive juices from processes. The only person who is ultimately disadvantaged from that is the person who pays for the building, whether they are a home owner or, as in this case, taxpayers through the government. There have to be fair and transparent processes and an effective mechanism to ensure that they are enforced. We will get on to that. I do not have any information on the time lines. I am sure that if the member corresponds with the minister, he will provide that information to the member.

Again, the member should not hold his breath if he has to make any complaint at all to the commonwealth Fair Work Ombudsman. I think the member has a keen interest in that because of family connections. I am sure they would advise him that what has happened federally in industrial relations enforcement is nothing short of despicable. We have seen that at Fremantle. All I want from the Fair Work Ombudsman is for him to tell us that he is not going to do anything. Then we can promptly stick the photo of the individual in the newspaper. I will definitely do that. People will be surprised when they find out who it was. I am looking forward to that day, because if we cannot get justice one way, we can at least let people know who is responsible for that behaviour.