SECOND READING SPEECH

SMALL BUSINESS DEVELOPMENT CORPORATION AMENDMENT BILL 2019

I move that the Bill be now read a second time.

The McGowan government recognises the contribution to economic growth and job creation made by small and medium businesses in Western Australia. Regrettably for some businesses, the exposure to heavy financial losses as a result of insolvencies, unfair behaviour and poor payment practices is significant and it affects the entire state economy. As a cohort, construction industry subcontractors are especially vulnerable to these risks. In recent times we have witnessed shameful behaviour by some businesses who have used their positional power to delay or withhold payments rightfully due to subcontractors. Worse still, some of this behaviour has occurred on projects that are commissioned by government for the benefit of the public. This intolerable situation has been recognised by the McGowan Government and we are committed to introducing multiple initiatives to provide greater security for subcontractors.

One of the key initiatives is the expansion of the role of the Small Business Commissioner (Commissioner) to oversee and investigate complaints made to the Small Business Development Corporation (SBDC) into the poor behaviour experienced by subcontractors in construction industry supply chains. This Bill seeks to add tools for the Commissioner to use when inquiring into business practices that adversely impact on small businesses. These measures will enhance the Commissioner's ability to seek information, offer resolution services and protect complainants from retribution by preserving the identity of subcontractors and other businesses who experience late payments, coercive behaviour and breaches of contract terms in their commercial dealings with larger entities.

The Bill expands the amendments to the *Small Business Development Corporation Act 1983* (SBDC Act), which were put through this place eight years ago. At the time, Parliament recognised that an imbalance of knowledge, resources and power between small and large businesses limited access to justice when disputes arose. Many small business operators simply gave up on seeking a remedy, bearing the financial and emotional losses incurred when things went wrong in their commercial dealings, often through no fault of their own.

To address this, the role of a Small Business Commissioner was introduced and a non-litigious, low-cost dispute resolution service to assist business owners to achieve speedy outcomes and get back to doing business was established. This service was aimed at disputing parties that voluntarily participated in the process as an alternative to pursuing matters in the courts.

Today, the Commissioner has been successfully established as the focal point for small business dispute resolution. Importantly, the integration of services for individual business owners, with the policy oversight provided by the SBDC, has meant the knowledge gained and advice provided to government can turn a solution for one business into a solution for many.

In the last financial year, the Commissioner's dispute resolution service finalised 76 per cent of commercial tenancy disputes and 90 per cent of all disputes through case management by SBDC staff. This service was provided at no cost to business owners in dispute. Eight per cent of cases were escalated to independent mediation at a subsidised low fee. In most cases, parties to the dispute voluntarily entered into agreements that both resolved the dispute and preserved the business relationships.

There is no doubt that this small business–friendly approach by the Commissioner is successful.

Although the existing SBDC Act clearly describes the role of the Commissioner in the provision of voluntary dispute resolution services, the amendments contained in the Bill enhance and clarify the Commissioner's additional statutory role to make inquiries, conduct investigations and provide meaningful reports to government.

It is clear that additional measures are necessary when a party will not volunteer information that is crucial for the Commissioner to effectively undertake the statutory functions.

The provision being proposed to enable the Commissioner to issue notices to compel information from parties, with penalties for non-compliance, is commensurate with powers that are now available to Small Business Commissioners in other jurisdictions. We have learnt from the experience of the other Commissioners that these measures are effective in prompting otherwise reluctant entities to cooperate when their behaviour is subject to a complaint.

This Government has made no secret of its commitment to drive change to protect subcontractors working on government-funded construction projects. When subcontractors are working on publicly funded projects, we want to be confident that they are being paid on time. If they are not being paid, we want someone to have the authority to ask questions and demand an explanation. We want works agencies to know whether a head contractor has a history of poor payment practices before contracts are issued. This is what the McGowan Government stands for: every job is worth protecting; every business is worth protecting.

With the amendments contained in this Bill, the Commissioner can support these goals by exercising the ability to obtain proof of payment, make inquiries regarding claims of oppressive behaviour, protect the confidentiality of complainants and identify negative impacts arising from unfair contract terms, including those contracts issued by government principals. Although the initial focus will be on behaviours that impact on construction subcontractors, these amendments will benefit all small businesses experiencing injustices, including franchisees subjected to grossly unfair contract terms, tenants being sold electricity by shopping centres at inflated profit margins, and any business experiencing bullying arising from the imbalance of power in commercial dealings.

It is important for members to note that the amendments proposed will not alter the service culture of the SBDC, which has proven to be highly effective in providing services directly to business owners in a timely and personalised manner. The Commissioner will not duplicate or replace functions already delegated to regulators such as the Building Commission, nor will it challenge procurement policies or agencies' decisions unless those policies and decisions have contributed to unfair outcomes for small businesses.

Additionally, this Bill does not compromise the voluntary nature of the SBDC's dispute resolution service, which has the support of both large and small businesses alike. The Government wants only to improve the Commissioner's ability to conduct investigations, draw conclusions and provide advice that is based on the best possible information and evidence, while protecting, if necessary, the identity of complainants.

In the other place, four amendments to the Bill were accepted by the Government. The Member for Darling Range considered the proposals would provide additional clarity to the amendments contained within the Bill. As these amendments support the intent of the Government's proposed changes, they have been incorporated into the Bill put

before this House today. On behalf of the Minister for Racing and Gaming, I'd like to thank the Member for Darling Range for her contribution and her work with the Government on this important initiative.

Through the establishment of a Commissioner, a great benefit was delivered to the 224 000 small business operators who contribute much to our economy, often at great risk to their personal capital and assets. We know that no group is more affected by that risk than construction subcontractors, and the time has come to ensure that when things go wrong for subbies, there is someone empowered to ask why.

The amendments in this Bill achieve that by going above and beyond previous actions to create a fair operating environment for small and medium-sized businesses. When parties refuse to provide an explanation of their behaviour, or will not participate in voluntary dispute resolution, the Commissioner will now have the ability to ask the difficult questions and hold entities to account. The McGowan Government is proud to stand behind Western Australian small businesses with its full support. This is a positive outcome for all small businesses.

Pursuant to Standing Order 126(1), I advise that this Bill is not a uniform legislation Bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the Government of the State is a party. Nor does this Bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the Commonwealth.

In introducing this Bill today, I would like to emphasise the level of stakeholder engagement that has occurred in reaching these amendments and remind the House that this is not matter that we should dwell on – this has the potential to make or break small business in WA. We know there were significant losses in the past and we do not want to see any more. I urge Members to support this Bill and a swift passage of the Bill through the House.

I commend the Bill to the House and table the Explanatory Memorandum.