PUBLIC ACCOUNTS COMMITTEE

INQUIRY INTO PUBLIC SECTOR CONTRACT MANAGEMENT PRACTICES

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 26 JUNE 2019

SESSION ONE

Members

Dr A.D. Buti (Chair)
Mr D.C. Nalder (Deputy Chair)
Mr V.A. Catania
Mr S.A. Millman
Mrs L.M. O'Malley

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Hearing commenced at 9.16 am

Mr SHELDON KRAHE
Chair, WA Executive Committee, Consult Australia, examined:

Mr STEVEN COGHLAN
State Manager, Western Australia, Consult Australia, examined:

The CHAIRMAN: Welcome and thank you very much for appearing today to provide evidence related to the committee's inquiry into public sector contract management practices. My name is Tony Buti and I am the committee Chairman and member for Armadale. To my right I have Lisa O'Malley, member for Bicton, and to my left I have Mr Simon Millman, member for Mount Lawley. Unfortunately, the committee's Deputy Chair, Dean Nalder, member for Bateman, and Vince Catania, member for North West Central, are late apologies this morning. Thank you for your submission to the inquiry, which is very comprehensive. We would like to publish it after today's hearings but I wanted to check whether you have any concerns that you would like us to take into account before we do so.

Mr Coghlan: No, that is fine.

The CHAIRMAN: It is important that you understand that any deliberate misleading of this committee may be regarded as contempt of Parliament. While your evidence is protected by parliamentary privilege, this privilege does not apply to anything that you may say outside today's proceedings. As I said, thank you very much for very comprehensive submission. Before we ask you some questions, do you want to make a general opening statement?

Mr Coghlan: If I can, Mr Chairman and fellow committee members. First and foremost, thank you for the opportunity. These sorts of issues pertaining to our submission are longstanding within the state and not only state-specific but national issues, which are starting to come to the fore, especially on the building and major projects. With respect to our actual submission, the crux of it is that when it comes to dealing and working with government on major infrastructure projects, and even smaller ones to that effect, there are real issues pertaining to risk management and risk apportionment when it comes to contract management practices within the state. In particular, I refer to the allocation of risk right through the supply chain when it comes to designing, as our consultants do, and then consequently delivering and maintaining things like Perth Stadium and Elizabeth Quay and the main roads and their upkeep.

[9.20 am]

To that effect, I know that there are a couple of specific recommendations that we put within our submission, but the crux of it is risk management and risk allocation within the state, driven, and no disrespect to the State Solicitor's Office and RiskCover, but they really drive a culture which sets up an adversarial contracting framework, unfortunately, even though fundamentally they are looking to do their job. Again, no disrespect to them, but they look at it with a very blinkered, legalistic approach when the reality is there are standard forms of contract, as we have alluded to, and better terms and conditions that you can engage industry, including our members, on a better footing from the get-go, which translates to better bottom line and cost savings for government. It also sets up the delivery of major projects in a far smoother and more collaborative approach for all concerned. There are benefits not only to the taxpayer and government in general in terms of better line and costings, and we alluded to some 3.6 per cent of savings in some of our recent research in this area,

but also it sets up better long-term sustainability for industry to deliver on projects in future because you have sustainable industry partners like our consultants who are key to the design and delivery of some of these major projects.

Mr S.A. MILLMAN: I think the evidence that we have had earlier in the proceedings has tended to suggest that where there exists a sophisticated relationship between the public sector entity and the contracting service providers and there is not as much involvement from the State Solicitor's Office and RiskCover, there is a better working relationship. I think Main Roads has a well-established method of operating when it comes to working with contractors and the contracts that they use are not really front and centre of the State Solicitor's Office day-to-day work. Would that be a fair comment?

Mr Coghlan: I would say yes in some ways but no in others. I will clarify those statements in this regard: Main Roads, absolutely, in terms of industry engagement, as you are probably aware, run what they call the Western Australian Main Roads industry advisory group or the Road Construction and Maintenance Industry Advisory Group. Consult Australia is represented on there, together with representatives of the tier 1 contractors, the concreters association, the Civil Contractors Federation and the like. Industry engagement from that perspective absolutely is very good. They are, to their credit, and it must be noted, driven by the likes of the managing director there, Mr Peter Woronzow, is driving more collaborative forms of contract, namely, and I think we have alluded to it, the likes of NEC—new engineering contract—version 4 they are up to. They are trialling that at the moment. They undertake alliance-style contracting, which is having all key players including consultants in on a major project in order to deliver on works. All key players are in the room so that they can work through issues as opposed to getting litigious from the get-go. So, absolutely, and all due credit to Main Roads because they are leading the charge in that area and I strongly support that continuing.

I guess the key is, though, that our members feel that they are still beholden to the State Solicitor's Office and RiskCover advice. You can have a collaborative form of contract, in name at least, but when it comes to reviewing the terms and conditions, which ultimately underpin that more collaborative framework, unfortunately, the changes that are being made, and by example in the model client policy they refer to—the primary onerous terms we are talking about are on pages 12 to 14 of the Model Client Policy. They tend to get mixed up after being reviewed by the likes of the State Solicitor's Office and RiskCover. Again, no disrespect to them—I appreciate that they are doing their job as legal professionals—but at the end of the day it undermines the fundamental premise of a more collaborative approach to contracting within the state. You sort of have a disconnect. In one way, key departments like Main Roads have great ways in promoting those more collaborative forms, but then it goes to legal review and it comes back highly amended. I will not use the Main Roads as an example. What is a good example?

In another government department we promote the use of AS 4122-2010, which is an Australian Standard contract "General Conditions of Contract for Consultants". We have had some key government departments utilise that, or our members have, but in doing that, it goes to the State Solicitor's Office and there is a standard set of amendments which is 18 pages long, to a 14-page standard contract form. Remember, as an Australian Standard, to get that stamp or mark, it has to go through an extensive review process with both industry and government, which it did back in 2010 because that is the latest iteration. But in terms of the actual result of what comes out of it, it does not end up looking anything like its original form. The key one that they put in there is that risk apportionment. They change the risk apportionment to the extent that sometimes our members, certainly our smaller members, cannot get insurance whether knowingly or unknowingly they then go into contracts where they are at risk. If it comes to a failure, even with our smaller member firms, and something does go to litigation, then nobody is going to get anything at the end of the day and

the risk is not mitigated; it is actually increased. Whilst in legal terms risk is mitigated, in practical terms it has been increased as a consequence.

The CHAIRMAN: You talk about practicality and maybe commercial realities. The state solicitors are obviously lawyers. Are you basically saying that they are lacking in some commercial reality or knowledge—well I am sure they have knowledge of it, but they do not see it through a frame of commercial reality, but they see it purely through a legal framework, so they are removed?

Mr Coghlan: Would that be fair?

Mr Krahe: I think it is around the management of risk and who is the best party to manage the risk. Their approach is to shift that risk to industry rather than looking at who the best party is to manage it. That is my view.

Mr Coghlan: In answer to your question, Mr Chairman, I think generally, yes. I think you have explained it very well. There is the commercial reality and then there is the legal—I say it is blinkered, but, again, I mean no disrespect to them. I understand that they are doing their job, but it does not look at the broader context as to how you set up a contract and how, if you are putting in these onerous terms, which are potentially uninsurable—or if they are, you are paying a premium, and then the consequence is that it sets up a very adversarial tone from the get-go. In our recommendations, it is very simple as you probably can see. Standard form contracts have gone through a rigorous process so let us use them.

There are other issues pertaining to proportionate liability. I gave you an additional fact sheet. We ended up surveying our member firms and, for the record, we have got 240-odd firms, which represents 38 000 people nationally. They are consulting engineers, architects and surveyors. They sit in that sweet spot where they are helping to design these major projects before they are actually built. But when it comes down to it, things like risk apportionment, in particular we are under section 4A(1) of the Civil Liability Act, there is the ability to contract out of proportionate liability. I know that a number of you have a legal background. Under the Civil Liability Act, that is actually expressly prohibited in other states, namely Queensland, and the world has not fallen in, yet these onerous terms are put in there with a view: "If the state ends up in litigation, then we can sue everybody." Those are the thoughts on it, but is that really fair and does it set up a good tone to deliver on a project?

The CHAIRMAN: It is an interesting one, isn't it. Obviously the state solicitors will see their duty as lawyers to do X, Y or Z. Obviously, that is one issue, but it comes back to the client maybe showing a bit more leadership or having more confidence.

Mr Coghlan: I think you have hit the nail on the head, Mr Chairman. The departments I think are well beholden to the State Solicitor's Office advice. Again, I am at pains to say that I understand what they are doing and, again, no disrespect, but at the end of day, and I think you probably alluded to it before, member, relationships are a key aspect to the delivery of major projects, regardless of what the legal footing or commercial setting is.

The CHAIRMAN: And maybe the capability of the public service. If there is a greater capability then maybe they have greater confidence.

[9.30 am]

Mr Coghlan: Again, you have touched on another recommendation there with respect to centralising and getting some consistency of government procurement expertise across the public sector. I do not think it would be unreasonable to state that over the last few years, or at least 10 or so years, some of those skills have been lost. Due credit to the current government that, I believe, out of the Department of Finance, this is being looked at across government as to how we can better

procure projects on behalf of the state. We strongly encourage that investigative process. We just hope that it has a wide-reaching remit such that you get consistency across states. Some of our member firms, and I will certainly let our Chair talk to it, have multiple government clients. If you go to Main Roads, they are progressive and doing great things on the collaborative forms of contract, but when it comes to it, if you go to another department it is completely the opposite. That lack of consistency of being more progressive and collaborative in engagement and getting better value for taxpayers' money as a result is inconsistent across those departments.

Mrs L.M. O'MALLEY: Some of the common themes that we have come across our investigation so far definitely speak to things like capacity within the public sector. This centre of excellence idea has popped up more than once and we have seen some examples in other jurisdictions where they are moving towards that. Common language is another idea, so ensuring that that is a really important key part. My question comes to something that the Chair was talking about or alluding to around fairness and opportunity and how, as a government, we are certainly encouraging more players within the market. What impact do these challenges around risk apportionment and a desire to play it safe—for want of a better term—have on the market more generally? Is it very broad?

Mr Coghlan: I will give an example again. In the fact sheet we provided to the committee, "Contracting Out of Proportionate Liability", we did that survey of our smaller to medium enterprise firms and 69 per cent of those who responded are unlikely to tender on works where this one onerous term, albeit probably the worst in terms of unfair terms, is placed within a contract. This "contracting out of proportionate liability" onerous term is included in just about every contract. In terms of the impact on small-to-medium enterprise, which I know from a government perspective it is doing great things in that regard in trying to encourage better participation, I would say that out of that 69 per cent, they are the ones who are aware of—noting, unlike our Chairman, who is part of a multinational Australian-born, privately owned consulting engineering firm who has in-house legal counsel or can go to external providers, we are talking mum-and-dad engineers and architects and the like who, at the end of the day, do not have potentially access to that on-call legal advice. They do not have the pockets to be able to ask for that legal advice. Whilst it is 69 per cent, I would hazard a guess and say it is probably higher because there are a number at least who go in unknowingly and sign up to these onerous terms. It has quite a big impact especially on small-to-medium enterprises. But from a larger firm perspective —

Mr Krahe: I think the important thing is that a lot of these contracts are set up with the thought that it is between a government department and a contracting entity. Where those contracts are for things like design and construct, they flow all the way down through the chain. They go down to the smaller firms and I think a lot of the smaller firms do not understand the terms and conditions that they are signing up to. A lot of the insurances are actually really difficult for smaller firms to get and there is a really large cost. We are seeing the level of insurances go up. Where they are capped, we are now starting to see $25 million entering the limit for capped liability. We often see unlimited liability. As a firm, we will not sign up to certain conditions. We are an employee-owned firm. We are not going to put the firm at risk, particularly where we are signing up with a contracting organisation and not with government because whilst government might show some restraint, certainly a lot of these other firms are headquartered outside of Australia and, at the end of the day, we are under no illusion that they will not go for us.

Mr Coghlan: If I can, member, with respect to insurances, another example the other day in trying to engage with one of our local government councils to provide some information as to why we should be looking at the levels of insurance that you are asking for in trying to mitigate any potential risk when it comes to contracting with them as a client, we were not even able to get in the door to chat to them unfortunately. But the reality is, and I will give you an example, and it is very common,

especially amongst local councils. They will be asking—I kid you not—for $20 million worth of professional indemnity cover for a $5 000 job. The insurance premium to get $20 million cover for a smaller firm, which may consist of five, 10 or 12 people—whatever the current ATO ruling is on the category of a smaller firm, when at the end of the day they are asking for $20 million on a $5 000 job, that is just —

The CHAIRMAN: Ludicrous.

Mr Coghlan: Yes, but to their credit, there are one or two councils out there where we have engaged and simply put it on the table: "You're going to get better value for money and you're going to get better competition because you're not asking for $20 million on a $5 000 job", and some have actually changed their PI insurance requirements for those types of smaller jobs. Again, I think leadership is a key aspect, as you alluded to, Mr Chairman, but also the skillset, as you also said, is a big factor. Again, no disrespect to our local councils because they deliver great services to the community, but in this sort of area, some, or, on the whole, most, really lack the skills to understand the implications when they are asking for $20 million PI cover on a $5 000 job.

The CHAIRMAN: In your submission, which I said is a very good submission, you have the model client proposal. Can you give us a summary of the general principles of that policy?

Mr Coghlan: There are quite a number. I guess in general it is about being fair, reasonable and collaborative in the approach and a team focus to delivering for the state and the community's requirements on major projects and minor projects as well—the scale does not matter—but they are the fundamentals. It is about value for money ultimately for the taxpayer, when it comes down to it, and all the other associated things that come with that good approach, which is ethical behaviour, good collaboration, not using status and power to essentially beat down industry on price. Ultimately, that drives a culture which is unsustainable longer term.

The CHAIRMAN: We have found that. This race to the bottom —

Mr Coghlan: Yes, "race to the bottom" is the key phrase. Do you want to talk to that, Sheldon?

Mr Krahe: The eastern states in particular are having a huge infrastructure boom, but it has been now dubbed "the profitless boom" because of that race to the bottom, signing up to terms and conditions, one thing goes wrong and then, suddenly, there is this chain of companies that really hurt after those projects. That then affects their ability to bid for projects here as well. When a project comes out, we try to line up well in advance. It is really difficult to get tier 1 contractors to commit that they are going to bid for these jobs because they will also weigh it all up.

One of the other experiences that we certainly have is that the first two or three weeks when a job comes out are about arguing terms and conditions rather than trying to understand the project and how we are going to win it together or save the state money, because unless we have an agreement, we are not working together. I think there is a lot of wasted energy and effort in trying to navigate through contracts rather than trying to get together and think of clever ways to deliver that project efficiently for the government.

[9.40 am]

Mr Coghlan: It is unsustainable in the longer term. The overhead costs that ultimately businesses have to recover because of the time spent negotiating contracts that invariably end up being one-sided because of all those onerous terms—you are going to accept it or forget it—has a massive cost. As we said, we have quantified that—3.6 per cent—but for that one proportionate liability or contracting out of proportionate liability, we actually quantified that using a lateral economics report back in 2011—there is a footnote to that fact sheet. We have estimated that that alone will have a $644 million impact to government in Western Australia over the four-year forward

estimates. I know that is a four-year cumulative total, but even if it is half of that, at the end of the day, that is $250 million that you can put towards another couple of schools at $80 million a pop, so to speak, in round figures. It is a big saving that the government —

The CHAIRMAN: Are there any jurisdictions in Australia that you would give a good mark or rating to?

Mr Coghlan: As I said, with respect to one of those key onerous terms, mainly contracting out of proportionate liability, Queensland is the one because they expressly prohibit it. Although I understand that law in its base terms, you have to have freedom to contract and all that sort of stuff, but there is a line, and the other one is unlimited liability.

Mr Krahe: The other thing that Queensland has introduced is the unreasonably low bids.

Mr S.A. MILLMAN: Policy?

Mr Krahe: Yes, trying to look at if someone does low ball a tender price, there is a mechanism to deal with that.

Mr Coghlan: That is a good point. Due credit again to some of the key departments like Main Roads. They have instituted an unusually low bids policy. Our take is that if it does not have a quantitative aspect to it, which some of these policies within the departments do not, it is less effective. If you are not putting a bar or a lower limit—if a tender is 15 per cent out on average, then it triggers an alarm and they go through a subsequent review process to see whether there is an innovation that has been brought to the fore which allows them to deliver that project at 15 per cent less than your next tenderer. If there is not a quantitative aspect included within the policy, which a number of these low-bid policies in the state currently are—they are qualitative only—at the end of the day, it is not as strong as it should be really. To that effect, Queensland's department of transport has a very good unusually low bids policy because it has both a quantitative and qualitative barrier, which raises issues, and then they go through an alternate review process.

The CHAIRMAN: In Queensland, do you know the politics behind these good measures and how they came about?

Mr Coghlan: I think it was industry bringing it to the fore originally. In answer to your question, honestly I do not know the specifics. Certainly the push is coming from industry to have that in place here in WA, but in Queensland I could not say outright.

Mr S.A. MILLMAN: It is a good signal to militate against the race to the bottom if you introduce that as a signal.

The CHAIRMAN: It is a really good idea.

Mr Coghlan: It is. It is not the panacea because there are broader cultural issues.

Mr S.A. MILLMAN: It is not purely symbolic but it has a strong symbolism to it.

Mrs L.M. O'MALLEY: I like what the policy contains. There is a trigger or a switch to hit if there is an unusually low bid, but then there is a mechanism to ask why, because you could unfairly be knocking innovation out of the process.

Mr Coghlan: Yes, and that is the last thing you want to do. I mean, you are building a main road. The innovation could be that one of the tier 1s has a quarry next door and they can mine directly from that rather than shipping it from down south. It is a basic example, but, yes, you do not want to stifle innovation in the process.

Mr S.A. MILLMAN: Other jurisdictions: New South Wales gets a mention in your policy.

Mr Coghlan: That is the one in respect of reviewing contracting out, was it?

Mr S.A. MILLMAN: Yes.

Mr Coghlan: Yes, I believe they are currently investigating whether or not—they are looking to either expressly prohibit it as well, but we made the same representations in other states where contracting out is still allowed under their respective jurisdictions.

Mr S.A. MILLMAN: Sorry, not merely contracting out, but also model client.

Mr Coghlan: Okay. Sorry.

Mr S.A. MILLMAN: It is at page 5 of your Model Client Policy. You quoted the Public Works and Procurement Act 1912 as —

> The centrepiece of the Government's procurement reforms, which streamline … deliver simpler contracts and easier requirements to register for government business. This makes it easier to do business with the NSW government.

Mr Coghlan: Because there is that centralised approach which we have provided as a recommendation, yes. From my understanding, that is quite progressed, but it still has a way to go. That is my understanding currently. I could not talk more to that, unless you have something, Sheldon?

Mr Krahe: No. I think it is evolving, particularly after Sydney Light Rail. I think that is the project that —

Mr Coghlan: Yes, that triggered it all off.

Mr Krahe: How is the risk, and who is best to manage that risk? I think there will be some good outcomes from that.

Mr Coghlan: Yes. I am trying to remember which recommendation we put in there. It was recommendation 2, which is the sharing of knowledge and culture. I guess that goes to the issue you have raised before, which is the consistency across departments. There are a couple of recommendations there. Again, it is not anything terribly innovative or illogical in what we are recommending; it is just, I guess, trying to get those mechanisms or internal departments to talk to each other as well, and get that consistency. It would be such a win for both industry and, at the end of the day, the end client, because you are not going from one client to the other, having to review different contracts for different departments.

The CHAIRMAN: The five recommendations we have here seem to be all sensible and achievable—not pie in the sky stuff. I am not sure—I did not read it anywhere—have you actually commenced negotiations with this government in regards to putting these recommendations forward?

Mr Coghlan: This is almost like the abridged version of a previous submission to the Langoulant Inquiry into Government Programs and Projects. We made quite an extensive submission, which we co-badged with Master Builders, the Institute of Architects and the Association of Consulting Architects. That submission mirrors this, essentially. This was borne out of that submission. This is the national policy which is borne out of that earlier Langoulant inquiry submission that we did. Yes, we have made a number of submissions and we have made representations, particularly on the risk allocation stuff, and namely contracting out. But you can have these meetings ad nauseam, and you present the data, but it is just trying to get traction on, well, can we get it on the legislative agenda, or, at least, if there is a requirement for government to look at it more closely and then make a decision on whether legislation changes. I guess that is our next step. That is why we are very grateful to be able to appear before you today. I know, for at least the last four years, Consult Australia have been saying the same things. It is just great that now an inquiry is looking into the detail. It is very encouraging.

The CHAIRMAN: Your submission—I speak for myself here—really reinforces things that we have been hearing in other places.

Mr Coghlan: Okay.

The CHAIRMAN: But you have probably articulated it better, in some respects, as a theme.

Mr Coghlan: Thank you, Mr Chairman.

Mr S.A. MILLMAN: Yes, you have made it clear.

The CHAIRMAN: It was a great submission; that is why we do not have as many questions as we may normally have. Is there anything else you would like to say?

Mr Krahe: I think it is a fantastic opportunity for the current government to show that leadership. We have established Infrastructure WA; we are going to get that visibility of the pipeline coming down. If we had a consistent suite of contracts that were not amended across government, the amount of time that would be saved, the small businesses would be comfortable in engaging with government, and I think it would just give you that playing field where we could really innovate. I think you would attract particularly tier 1s to really bid in this state. When there is a lot of competition for projects across the country, if they knew there was a fair contracting environment here, I think they would not hesitate to be bidding for Western Australian projects. That would also ensure that we get the right talent. In the next boom, it will stop, but at least the next five or 10 years, with us trying to build Metronet, roads and key water infrastructure, I think it is really important that we get that playing field, and it would be a great place to work.

Mr Coghlan: That is a good summary.

[9.50 am]

Mr S.A. MILLMAN: What you say is perfectly reasonable in terms of having a standard contract. We are Parliament rather than government. What do you think the response from government is going to be on how easy it is to have one set of standard contracts? Has the government indicated to you in the past that having one standard contract across the field is difficult, or that contracts need to be idiosyncratic?

Mr Coghlan: Yes, so different projects call for different engagement terms; that is noted. In forming a contract—given your legal background, I am sure you are aware—obviously, you have the standard form. Then you can have a schedule or annex to that, which may be project-specific. The problem is that standard form is the one that is being amended with a list of amendments behind it.

Mr S.A. MILLMAN: Perhaps I did not ask the question properly.

Mr Coghlan: How easy would it be?

Mr S.A. MILLMAN: No, what do you anticipate will be the arguments from, say, the State Solicitor's Office or other elements of government if this committee recommends that we look to have a standard form contract? Just playing devil's advocate, we may well say, in light of your submission, it would be great to have a standard form contract. If we anticipate what the arguments are going to be against that, we can speak to those as well.

Mr Coghlan: They will say two things. Firstly, the standard form contract that industry is recommending—or at least ours—is not good enough because it does not have all our suite of amendments. That is one. Again, the whole basis for that is they are looking at it with a very legalistic view. The second one is I think they would say, "Well, different projects require different terms."

The CHAIRMAN: Diversity.

Mr Coghlan: Correct; diversity of projects required to be delivered for government and the community. Again, we are not saying that you are not going to have to have different terms, but we are saying the actual standard form, which they are currently amending—the example being 18 pages to a 14-page standard form—there is no compromise. To that effect, I guess, in answer to your question, that second bit is that they have a standard form. They do not like it, and they will argue ultimately that different projects always require amendments. I guess that is the second argument.

Mr Krahe: They will all say, "We are different and we need to have our own." But I think if you set up the framework that allows for the different forms of contract delivery, whether it be an alliance, head contract, design and construct or a managing contractor, if you have the suite of contracts where this works, they all have different risk profiles. If they are doing a proper project delivery review, they will understand that this project suits this form.

Mr S.A. MILLMAN: This project needs this contract, and then this form can be amended in these three ways, not 18 pages, and away you go.

Mr Coghlan: There is no centralised agency that does that for government. I understand there is an attempt to be doing that, or at least a review being undertaken, which is very encouraging, but there is no consistency across those departments.

I was going to say one more thing. The risk allocation is one thing, but we forget that that is the stick approach. Whilst you can solve the risk-allocation issue, what about the reward issue? Some of these more collaborative forms that we have been recommending in industry—not just Consult but other industry players—in alliance-style contracting, NEC3, you have a risk–reward share, which, if you do a good job, you are going to get added payment potentially as a percentage of the overall contract value, which drives a collaborative behaviour from the get-go, because people are not scared to be wanting to work together, because that reward is given to all within that structure on a certain percentage basis. That is just not here. Currently it is a D&C environment—a design and construct contract environment—and risk allocation is pushed right through down the supply chain to those that are least capable of managing it, to those lower-end subcontractors. If a major project failure occurs, I fear—and this is my concern, having advocated for this for some time—it is going to take a major project failure to occur and end up in litigation for us to look at the culture associated with how we contract in this state.

Mr S.A. MILLMAN: We are trying to stay ahead of that curve. That is why we are doing this.

Mr Coghlan: Yes, which is wonderful.

The CHAIRMAN: Also, if there is fear, you are going to stifle innovation.

Mr Coghlan: Absolutely. From a consultant's perspective, in terms of innovation, there is some amazing building information. One example is the 3D modelling platforms that are out there, that create massive efficiencies and better accuracy in the design of some of these projects. When it comes to risk profile and how that lays when using some of these more innovative approaches, again, there are questions surrounding that as well. But long story short, as Sheldon said, I think, in summary to our submission, risk allocation is the big one. In terms of standard form contract, I strongly encourage it, and whether or not that is driven through regulation or otherwise, or generally departments having a more consistent approach because there is a centralised area of procurement, at the end of the day, just creating a more collaborative contracting environment will ultimately provide for better value for money for the taxpayer.

The CHAIRMAN: Just before I do the concluding comment, in regards to the standard form contract, you say there is an 18-page amendment. I suppose the other issue there is to make sure that standard form contract is a robust standard form of contract.

Mr Coghlan: Yes, correct; so understand there has to be some consultation in getting to that stage where both industry and government client can agree on that, but it is very one-sided, currently.

The CHAIRMAN: Thank you. I have a formal set of closing words. Thank you for your evidence before the committee. We will forward a copy of this hearing to you for the correction of transcription errors. Please make these corrections and return the transcript within 10 working days of receipt. If the transcript is not returned within this period, it will be deemed to be correct. New material cannot be introduced via these corrections, and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on any particular points, please include a supplementary submission for the committee's consideration when you return your corrected transcript of evidence. Once again, thank you very much.

The WITNESSES: Thank you.

Hearing concluded at 9.57 am

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