CONSTRUCTION CONTRACTS AMENDMENT BILL 2016

Second Reading

Resumed from 22 September.

MS J.M. FREEMAN (Mirrabooka) [12.07 pm]: I have the privilege of being the opposition lead speaker on the Construction Contracts Amendment Bill 2016. Members in the house know that although we on this side of the house support the bill, we think that it has been a long time coming. Issues with subcontractors came to the fore and to the house's attention in 2012 when it was revealed that the Building the Education Revolution projects, which were managed by the Barnett government, combined with the financial failure of head contractors, resulted in family businesses paying the cost. It was very emotional for many people in this place and, clearly, it had a big impact on subcontractors and small business in our community.

Indeed, on 23 October 2012, the Leader of the Opposition, the member for Rockingham, moved a matter of public interest motion during which the issue of subcontractor non-payment was debated. He moved —

> That this house condemns the Barnett government, and particularly the Minister for Finance, for its failures in relation to the non-payment of moneys to subcontractors working on government-funded or government-managed construction projects.

During the debate, the opposition pointed out that the government in contracting two companies and managing the finances had a responsibility to ensure that the people on the ground doing the work were paid. The government simply saw the issue as one of contract disputes. That would be fine if it was an equal power situation.

However, when a contractor who has the government contract is paid the bulk of the contract money, the community as a whole fully believes that the system should be administered to ensure that contractors receive a fair day's pay for a fair day's work. It is pleasing to the opposition that after such a period this Construction Contracts Amendment Bill is in front of us. It will ensure that processes within the Department of Treasury ensure that progress payments are made. I stand here to say that the Labor Party agrees with the changes the bill seeks to make. But we say that more changes could be made and that the government has not been efficient and effective in ensuring that the problems raised in 2012 are being addressed.

I congratulate particularly Hon Kate Doust in the other house in her pursuit of this issue to gain fairness for subcontractors and workers in this industry. I congratulate also the Leader of the Opposition for pursuing this issue and highlighting the inequities in the industry and seeking to ensure fairness for workers delivering on the ground the projects we want to see, such as the Building the Education Revolution buildings, the projects at Princess Margaret Hospital for Children and other buildings that advantage our community. Hon Kate Doust and the Leader of the Opposition have led the way in seeking to ensure the government responds.

It was unsurprising when, on 2 August, the Leader of the Opposition and Hon Kate Doust, the shadow spokesperson for small business, announced Labor's proposed changes and weeks later the government announced its proposed changes to the bill to ensure limited progress payments would be paid for government contracts under a certain value. The government was reacting, and that is welcomed by this side of the house but was, in the words of the shadow spokesperson, too little too late. This bill was introduced over a year after the government had received the very comprehensive Evans report on the Construction Contracts Act 2004. Professor Evans completed the independent statutory review of the Construction Contracts Act in September 2015. The methodology behind that review was very comprehensive. I understand it made 28 recommendations, many of which the government has accepted and which we see before us in this bill.

We know that the building and construction industry accounts for 12.5 per cent of the state's gross domestic product. That may have increased somewhat since the decrease in the mining industry, but that is the latest figure I have. It employs some 10 per cent of the total workforce. The employment aspect of this industry has clearly changed over time. We have seen it being one of a direct employment relationship whereby companies have directly employed tradespeople and been able to deliver projects in total. Changes occurred to government contracting in the late 1980s when the Building Management Authority began contracting out its labour force and no longer employing people to deliver contracts. As a result, the government is now very much in the business of contracting to builders for delivery of buildings and facilities on the ground that we want for our community. In doing that, it is very clear that the government is still responsible for ensuring that buildings are up to standard, that people who are working on a building can have their disputes resolved and that contract provisions are not unfair and can operate effectively and efficiently in delivering projects to the head contractor. The Construction Contracts Act was passed in 2004, some 12 years ago, but clearly there are still some difficulties. The Western Australian act is different from those in other states, and I will talk about that shortly. As I said, the frequency of non-payment of contractors has been a key issue for the community in the last four or so years. It has certainly risen. In the time I have been a member of Parliament, problems arising from phoenix companies—companies that declare bankruptcy and re-emerge as a different company—have been an issue for

many small contractors in the housing industry. We have seen an increase in housing construction in many of our suburbs across the metropolitan area due to increased housing density.

As I said, we welcome the changes to the act introduced in this bill, which will reduce the maximum time a head contractor can take to pay subcontractors from 50 to 30 days. We remember the great controversy when BHP Billiton and Rio Tinto, as I understand it—I am happy to be corrected, but I believe it was those two companies—advised their subcontractors that they would not pay their accounts for 50 days; whereas, previously, they had paid within 30 days. There were many discussions on talkback radio about the impact of that practice on the community and the viability of many subcontractors. If they employ other workers or apprentices, this can have a knock-on effect, which is very distressing for small businesses managing very tight budgets to deliver projects.

Changes introduced in this bill will increase the time for rapid adjudication from 28 to 90 days. It appears that many small subcontractors would wait out the 28 days during which the payment was not being made, and would not take dispute resolution action because of the fear of retribution. We know that people who feel that they have been harshly treated by their boss in many instances will not necessarily take action for fear that that would undermine their security of employment. If we are really honest, we would see that subcontractors are placed in a situation in which, although they have established themselves as businesses with an Australian business number, for all intents and purposes they are reliant on the head contractor, as an employee would be reliant on an employer. I understand that the government made this determination based on the Evans report finding that increasing the period from 28 to 90 days would result in people not being disadvantaged. I understand that the report was extraordinarily comprehensive. A discussion paper was put out in the first instance, and thousands of businesses were contacted and advised that they could respond to the discussion paper. I understand that about 70 per cent of respondents to the discussion paper—quite an overwhelming majority—agreed with changing the adjudication time from 28 days to 90 days. However, that still leaves a number who felt that the status quo was appropriate.

In reading this bill, I was reminded that, under industrial relations legislation, an unfair dismissal application must be lodged within 28 days, but a complainant can apply for an extension of time if the circumstances are given. I did not see it in the Evans report, so I was wondering why no consideration was given to retaining that four-week period, which means that the evidence is more contemporaneous, and providing the capacity to seek an extension, which would be given unless the action was frivolous. I understand that adjudication is not determination; it is much more a mediation and conciliation process than an arbitrated process. However, one difficulty that is always faced when things are left for any length of time in a dispute is that it gives an advantage to the person with the greatest systems in place—often the head contractor, which, being a larger company managing projects and process, tends to have the capacity to document things and take contemporaneous notes of any on-site verbal discussions. The longer the time allowed for dispute resolution, the more disadvantaged the less resourced party to a dispute becomes. That is simply because, with the effluxion of time—that is a word I love, because it is a contract word—and the further away from an event we are, our recollection of an event assumes a certain manner. Someone with the procedures and resources to document the process tends to have an advantage. I acknowledge that this measure is based on Professor Evans' report and allows the rapid adjudication to take place within 90 days and I accept that it resulted from a feeling that within 28 days there was often still goodwill between a head contractor and a subcontractor, which would, within a three-month period, have deteriorated to such a point that a person would be seeking adjudication. The difficulty there is that if the goodwill has deteriorated to that point in that 90-day period, we start to get into the contract law aspects as well. I understand that that change is introduced through this bill. I just put it out there that there may have been a different way to do it, but the opposition is in agreement with the changes in the adjudication time.

I understand that the flexibility and enforcement of adjudication will be amended by this bill. It is interesting that, given that adjudication is not determination as such, it means that there is a capacity for the adjudication to be taken to the next stage in seeking resolution. There is no doubt that the less complex and less legally difficult situation for a subcontractor, given that their resources are less than those of the head contractor, is very important. There are many buildings along the Terrace built by law firms that have made contract law their speciality, so the capacity to avoid being caught up in the legal technicalities of contracts is extraordinarily important in situations involving a head contractor and a subcontractor. I am sure that, when I am sitting in the Speaker's chair after my speech, I will get a greater understanding of how other people view this matter. That may happen at the end of my speech.

Ms L.L. Baker interjected.

Ms J.M. FREEMAN: Thank you, member for Maylands!

I also understand that the changes introduced in this bill will exclude normal construction work on processing facilities, as is explained in the explanatory memorandum, which I highlighted, although now I cannot find the bit that is highlighted.

I understand that section 4(3)(c) of the Construction Contracts Act will be refined to make clear that only the fabricating and assembling of items of plant used for extracting or processing oil, natural gas or minerals will be excluded from the definition of construction work, not the normal construction work on a processing facility. I ask the minister to outline that a bit more during his second reading reply, because the difficulty we often have after excluding from, or including in, areas of acts is that sometimes things fall between the gaps. The member for Eyre would be only too aware of that, having taken part in the inquiry into fly in, fly out workers. The Mining Act does not cover the mining industry if the accommodation camp is off the mining tenement area. A camp is not covered for the purposes of occupational health and safety, even though a company requires its workers to live there. From my perspective, and certainly that of the Education and Health Standing Committee, for legal purposes those workers would be under the confines of the duties of work, but because a camp is outside a tenement area, the workers are not covered, nor are they covered by the general Occupational Safety and Health Act. I am keen to get a better understanding of what that means in this process. If it includes a certain section of the work but not another and a dispute were to arise with a subcontractor, under what terms and conditions would that subcontractor have the opportunity to pursue and have adjudicated a dispute?

I have said that the Construction Contracts Amendment Bill 2016 is based on Professor Evans' review. I thank the advisers for giving me a briefing, but I definitely wrote down, during the discussion with the advisers, that 11 of the 13 recommendations of the Evans review were accepted; however, I see that 28 recommendations were made. I asked during the briefing which two of the 13 recommendations were not accepted. I seek clarification from the minister of how many of the 28 recommendations were accepted, and I would like an understanding of why the others were not. I think that would benefit the house should any future legislation arise around this issue.

I understand that one of the things from the recommendations of the Evans review not accepted for this legislation was that contracts should be in writing; Professor Evans recommended that. The advisers told me that the current act covers oral contracts and implies certain duties for a subcontractor and a purchaser and that there can be both oral and written contracts or there can be a combination of the two. The advisers said that the Evans recommendation was not appropriate, given that some contracts are small and cover subcontractors having discussions on-site. I accept that if a small business subbie comes to my house to fix a fence that blew over in a big storm, I may not want a legalistic contract, but an exchange of the work to be done and the agreement around it seems completely appropriate. In this day and age of emails, I think that is really important.

I represent a really large culturally and linguistically diverse community, and many of those people work as subbies in the construction industry, particularly on the cottage housing industry. They may not have an understanding of oral agreements. I think it is really important to have a simple contract that shows the implied terms that are very much a part of this legislation and, I understand, the recent changes in consumer laws federally. In this day and age lots of people own a smart phone—I have not seen the figures, but I think a vast number of Western Australians do—and press "agree" to a contract with their smart phone software provider. Every time we download a telephone upgrade or an app, we press "agree". People understand that the terms and conditions of engagement are commonplace, and it is not always about an oral agreement. As to the recommendation for written contracts, more importantly written contracts could be in a format defined in the regulations and could outline the adjudication of dispute resolution procedures.

One of the greatest problems with dispute resolution is not knowing how we can quickly and effectively resolve a dispute. The quicker that is done, the less likely it is that there will be a breakdown in relationships and the goodwill can continue. I think it would be detrimental to the ongoing relationship between a contractor and subcontractor if an ongoing dispute festered. A subbie may be saying, "You need to pay my interim payment", but the contractor may be saying, "No, you haven't completed this part of the work", to which the subbie may say, "Yes, I think I have." It is detrimental to the ongoing quality of the work if the subbie feels badly treated. If there is a written contract that outlines how someone is to be paid and a dispute arises about staged payments, it can be quickly and easily adjudicated in a manner that can maintain an ongoing relationship. The last thing we want to happen is for a subbie to say, "I don't have to provide a quality job for this bloke. I don't have to mix the cement properly or add the right amount of lime." Later on I will talk about white set plaster. I have previously raised in the house the issue of white set plaster, and I will use it as a good example of what can happen in the cottage industry around contractors and subcontractors. I simply do not agree with the idea that written contracts are cumbersome. If an agreement between a subbie and a contractor is written down, it mitigates risk. I think that is really important.

I note the changes to consumer law that relate to this issue. Can the minister clarify whether we have to make changes to the Western Australian consumer legislation that reflect the amendments to the national Australian consumer law? This is an area of standalone legislation, and we cannot simply adopt the national consumer law.

I am interested to know how the consumer law has been adopted. Professor Phil Evans wrote a letter to the editor in *The West Australian* of 29 August 2016. It states —

> … recent amendments to the Australian Consumer Law … will apply to any standard form contract entered into or renewed on or after November 12 this year.

That would be in 2016 —

> A standard form contract is one that has been prepared by one party to the contract and where the other party has little or no opportunity to negotiate …

The letter explains that, and I quote from further on —

> If a court or tribunal finds that a term is "unfair", the term will not be binding on the parties.

This is a protection for small businesses. I wonder whether that perspective will apply given how our consumer law takes a bit more time to adopt.

As I understand it, the Western Australian Construction Contracts Act applies to contracts to perform construction work or provide related goods and services on a site in WA. "Construction work" is defined in section 4 of the act, and there are exclusions at section 4(3), which will be amended. As stated previously, a contract for work can be oral, written, or a combination, but it cannot include pay-when-paid provisions. A contractor cannot say that they will pay a subcontractor when they get paid. That seems a bit odd but I think it is perfectly reasonable and a good way to do contracts. Of course, there is also no capacity to contract out of the rights under the WA act.

I understand that the act is based on the Northern Territory model as compared with the east coast. The east coast model is security of payment legislation. I would appreciate the minister giving me a better understanding of the differences between the east coast legislation and ours. It seems to me that with increasing numbers of head contractors who are big, Australia-wide, if not multinational, companies, having different contract laws for subbies should be a thing of the past. We should have consistent contract laws across Australia and not differences based on being in one state or another. That seems to me to be anathema to harmonisation and good, effective and efficient business. I am really interested to know why we have not followed the model of consumer law or the previous Minister for Health's model. He is in the chamber; he has done that with many occupations in health, including some of the requirements in public health. That seems to me to be somewhat anathema.

My understanding, and I am happy to be corrected, is that the difference between the Western Australian model and the east coast model is that we focus on adjudication of payment disputes and the east coast focuses on resolving payment claims. Professor Evans argues that adjudication of payment disputes is a "pay now argue later" type of process in which adjudication payments are interim in nature and do not affect the parties' rights under the common law of contract. He argues that the emphasis is on maintaining cash flow. However, in the east coast model, a claim can be made by a party for payment due under agreement. I wonder whether that is where the differences lie.

The minister's second reading speech states that the current bill provides —

> … building contractors, subcontractors and suppliers with a right to be paid within a reasonable period of time, and a low-cost method of enforcing that right.

However, that is clearly not the case as the speech goes on to highlight a second raft of reforms that are clearly needed for security of payments. My understanding from the advisers is that it is seen as the beginning of changes that may be required in other areas of the Construction Contracts Act. I spoke before about how the time for adjudication will change from 28 days to 90 days.

This shows that people can learn a new thing every time they come across a new act; I was really interested to learn something about this sort of adjudication system. I come from a workplace that dealt with workers' compensation and industrial relations in which conciliation, mediation, arbitration and review systems are always done within government departments. For example, if a consumer wants a dispute to be looked at by the Building Disputes Tribunal, a determination is made within the tribunal. I was really surprised to find out that adjudicators are independent people who stand outside of government and there is no regulation on how they do their adjudication—none whatsoever. They are appointed by contract. Often, two builders can go to an organisation—I have forgotten what it is called, but it is often the Housing Industry Association or Master Builders Australia—to ask for an adjudicator. That adjudicator is then appointed to them. I was really quite surprised that adjudicators are not with a government department; they are simply part of a contract for dispute resolution. If I were a head contractor and I had a written contract with every one of my subbies, I would put an adjudicator whom I worked with all the time in my contracts so that if I had a dispute with a subbie, that adjudicator would understand my ongoing business because they would have adjudicated my issues previously. They would understand the processes that I undertake. They would also have an ongoing goodwill relationship with me because they would need to resolve disputes in other areas. I am not suggesting at all that there is bias—and certainly the report by Professor Evans did not find any—but a head contractor cannot have an ongoing

relationship with someone like an adjudicator who is independent and not expect that the resolution would have a certain frame and perspective because of that ongoing relationship. In a dispute, there are two sides to a merit-based argument and the adjudicator has to decide which one has more accuracy in the way that it describes how the business operates. If an adjudicator has an ongoing relationship with one particular entity—the head contractor—and they do not with the subcontractor, they will clearly have a previous history of thinking that their perspective is more accurate than the subcontractor's. I imagine that that would lead, in some cases, to a feeling by the subcontractor that they did not get a fair "hearing"—this is an adjudication not an arbitration. They may feel that they did not have a fair capacity to put their case about why a dispute is ongoing. The independence of these adjudicators is a real issue. I also understand that there is a 50–50 payment for adjudicators; both a head contractor and the subcontractor have to pay for the adjudicator if there is a dispute.

The situation seems to be that someone who can least afford it has to pay half the cost. It would be far better if this process was undertaken in a manner that is done in other workplace disputes, such as industrial relations and workers' compensation disputes—within the capacity of somewhere like the Western Australian Industrial Relations Commission. It is not as though the Western Australian Industrial Relations Commission does not have the capacity. I would like to put on record that that is clearly not the policy of the opposition.

I understand that the area around adjudicators will be further reviewed. My initial view is that we need to look at a more formalised structure because that is fairer for subcontractors. An adjudicator must determine the dispute within 14 days. The application can be dismissed on technical grounds, but I understand there is no right of appeal. The matter could always be pursued under common law rights. The determination is binding. The reasons must be in writing, including the amount to be paid, which may include interest, and the date for payment. The contractor can suspend work if the payment is not met. The situation now is that there will be a review of that process.

It is an area that still needs attention. It is not enough to simply extend the time for adjudication. We also need to think about how that adjudication can be done so that both parties to the dispute feel the outcome has been a good one. I also understand that the Evans report refers to an education program to promote the act. He found that part of the problem was that the adjudication and dispute resolution provisions were not well known. That could be made part and parcel of a written contract. We recently debated the Residential Tenancies Amendment Bill. We have gone from tenancy agreements written by individual tenants. The Department of Commerce has a good understanding of agreements and contracts. It decided to supply prescribed tenancy agreements. The parliamentary secretary said the importance of prescribed tenancy agreements was so that both parties, particularly tenants, understood the dispute resolution process. It would seem to me that that justification would probably apply in this instance. I am interested in the minister providing an outline of how that recommendation has been acted upon in terms of educating and promoting the act.

The government has introduced limited project bank accounts. Part of the Minister for Finance's media release of 30 September states —

> Project bank accounts will be applied to projects tendered by Building Management and Works from September 30, 2016, with a construction value of more than $1.5 million and involving one or more subcontractors.

I understand that is a move forward from the 2012 debate when a certain position was taken by the Treasurer in the first instance. I note that an article in *The West Australian* on 12 August 2016 stated —

> But the biggest government construction jobs, run by Treasury's Office of Strategic Projects, will not adopt them.

That is the project bank accounts. It is WA Labor's view that it certainly should. Hon Kate Doust's media release states, in part —

> Unlike WA Labor's plan, the Liberals have not included the creation of Project Bank Accounts … on State Government projects worth more than $100million, such as the Perth Children's Hospital.

This is a deficiency. Obviously it is not in the bill, but I am happy to be guided to where it is in the bill. I am sure that it has not been included in this bill. Those areas are some of the biggest. They include some of the big projects where subcontractors have been out of pocket, such as the Perth Children's Hospital. We know that is being worked on. It would be interesting to hear from the minister why that has been limited. The context might be that the minister wants to do a bit of a "suck it and see" how these operate to see whether they are effective. The reality is that this issue has been ongoing at least since 2012, if not longer, and therefore needs immediate action.

Another recommendation was a building industry code of conduct for tenders on government-funded construction projects. I am interested to know where that is at. I am happy to hear whether it has been released.

Codes of conduct tend to need a bit of time. I am not aware of it being around but I am happy to be corrected if I am wrong.

I refer to the first issue I raised about phoenix activities; that is, companies that rise again under a different guise after going bankrupt. Members from the community that I represent have given me examples of that and I have raised that in this house. People are left with no legal recourse when that happens. Sham contracts are another issue. I suppose I cannot really call them sham contracts as such; it is that whole aspect of how people manipulate the bankruptcy legislation. I note that an article published on 26 September 2016 in *The Conversation* by Helen Anderson, a professor at the University of Melbourne, stated —

> A Productivity Commission report last year found there were between 2,000 to 6,000 phoenix companies operating in Australia, costing A$1.8 billion to A$3.2 billion per annum.

She went on to say that a research team from the University of Melbourne and Monash University, in contributing to this Senate Economics References Committee, recommended that directors be forced to undergo a 100-point identity check. She said that would enable tracking of directors who have been involved in multiple failed companies.

Certainly, the issue was not directly referred to in the Evans report, or maybe I just did not see it. I must admit that the report was very comprehensive and extensive and I gave it a reasonable read, but I cannot say that I gave it the comprehensive read that it has been given by the minister. I did not see a comment on that sort of phoenix and, frankly, predatory behaviour of businesses that use the bankruptcy laws to avoid paying subcontractors. I noted in the government's response to the Evans report that it is very aware that the pyramid of subcontractors means that payment default or business failure higher up the contracting chain continues to put those businesses further down the chain under significant financial pressure. If that is the case, we need to ensure that they have every recourse possible. If companies are using laws to avoid those sorts of payments, clearly the government needs to respond to that not just in the manner before us, but in a manner that will ensure that all those workers are protected.

My belief is that this business model of contractors, subcontractors and sub-subcontractors is detrimental to workers and, frankly, to consumers. Recently, my back fence blew down in a big storm. I rang the insurance company and I was asked whether I wanted to go through the company's contractors. I thought that sounded like a good idea, as I thought it would happen quicker. Those contractors did not get back to me, so I got on to the insurance company and then the contractors got back to me. They sent out their subcontractor to look at it and that subcontractor then sent out his subcontractor to fix it, but, unfortunately, his subcontractor's subcontractor had a bad back. The actual worker was four levels down in the insurance process. I know who is paying the premiums. The head contractor subcontracted to the subcontractor who subcontracted to another subcontractor who subcontracted to the person on the ground who installed my fence. There has to be a cost to that, apart from the inconvenience of doing the different work between the four levels. During that time, I did not know what the contractual arrangements were, including times and dates. Of course I was contacted to set up times, but it was quite an interesting process. The next time an insurer asks me whether I want to go through its contractors, I will say, "No; thanks very much. I will get someone out myself and when I get the bill, you can pay the bill." That is the arrangement that can be made.

At page 12 of his report, Professor Evans quoted from the report of the inquiry into the building industry of Western Australia and he stated —

> It is interesting that … Mr C H Smith QC in 1973 … noted that the growth of the subcontracting system has brought with it a 'waning of the traditional master builder and the entry of the entrepreneurial builder.' Clearly these observations can be confirmed 40 years later.

That is the case and I think that has a detrimental effect on apprentices in our community. If we are to continue with this head contractor model, under which subcontractors subcontract to various other subcontractors, parties of both persuasions need to consider placing a responsibility on them to ensure there is long-term security of employment for people. The idea of the trickle-down effect whereby someone at the bottom will be able to make money is just not the case. As far as we can see, there is no commitment to compensation for the subcontractors who are out of pocket from working on government projects including the new Perth Children's Hospital, Elizabeth Quay, the new Perth Stadium and the public works undertaken by the now insolvent CPD Group, which had 17 state government contracts worth $17.6 million. What we can see from that is that not only is it not sustainable in how our community trains people—that is my personal view—but also this new entrepreneurial model of builders is not a sustainable financial model. We as policymakers need to address that in a way that clearly delivers the best and most efficient product for taxpayers and does not undermine the wellbeing of the community as a whole in terms of training, providing appropriate services and developing our community.

In saying that, I point out to the minister that this is what is happening in the cottage industry with white set plaster. The Minister for Commerce and the Building Commission received a report on white set plaster that outlined that 2 000 new homes are affected each year, with plaster walls that are soft, crumbly or cracked instead of being hard and durable. That is about 10 per cent of all Western Australian homes. When I asked during the estimates committee what the Building Commission was doing to inform consumers, I was told that it was working only with builders and was not informing consumers. The report that the minister has before him highlights that the white set plaster problem is almost completely restricted to Western Australia, because the eastern states tend to use plasterboard. The difficulty is that a group of people in the community have subcontractors who are doing substandard work and the consumer has no understanding of it. When the painters come in, they blame the finishing trade, when that is not the case. If the minister wants to hear more about this and other issues in our building industry, there is a Facebook site called Shonky Builders WA. It is a major concern for many consumers that substandard products are being used in their most expensive investment—that is, their home. This government has been asleep at the wheel not only with its response to the Construction Contracts Act, but also with what it is doing for those consumers.

MS L.L. BAKER (Maylands) [1.07 pm]: I rise to pursue a different angle on the Construction Contracts Amendment Bill 2016, and I will explain why in a moment. This is the second reading debate of the Construction Contracts Amendment Bill, which is really about the relationship that the Crown has with service providers, be they building contractors or anyone else under the construction contracts umbrella. The bill has some very good technical improvements for the sector. I am sure that builders who have complained to me that they have not been paid or that instalments have been delayed for an unacceptable time will be looking forward to seeing the passage of this bill.

The relationship between the Crown and service providers or contractors or, indeed, anyone who has a government contract is an interesting one and can be somewhat tumultuous. I want to put on record a particular example of an activity that is currently underway that I find fairly incredible. This issue relates to a contract or a memorandum of understanding between the Department of Agriculture and Food Western Australia and the RSPCA. I want to talk about it because I think it is a good example of dispute resolution processes that are not clearly functioning effectively or MOUs that are not working effectively for whatever reason.

At the heart of this is the issue of conflict of interest and whether it is appropriate to have animal welfare being monitored by an organisation that is about agribusiness. Let me just put this as briefly as I can. About three and a half to four years ago Roxy, who is a borzoi dog, was the subject of a call to prosecution and was subsequently forfeited to the Crown when her owner was found guilty of animal cruelty under the Animal Welfare Act 2002. She was found locked in the back of a panel van at Carousel shopping centre on a 37.8 degree day in December 2012. The dog was immediately taken to the vet and diagnosed as suffering from heat stroke. The owner was prosecuted by the RSPCA inspector for an offence of animal cruelty under section 91 of the Animal Welfare Act 2002 and was convicted in the Magistrates Court on 20 June 2014. The owner was legally represented at the trial. Sentencing was on 19 September, so several months later. The sentencing happened in 2014 and included a fine and an order that Roxy be forfeited to the Crown, with the magistrate making this order based on the persisting attitude of the accused that she did not do anything wrong. The next month, on 24 October 2014, the owner commenced an appeal to the Supreme Court against that conviction and sentence and again was legally represented. The appeal was dismissed by the Supreme Court on 5 January 2016 and the order forfeiting Roxy to the Crown upheld. In handing down his judgement on that appeal, Justice Corboy noted the denial of the wrongdoing to Roxy by the owner. The record states —

> The magistrate noted that the appellant had shown no remorse or insight into her offending: 'perhaps the most troubling aspect of the offending is the complete and utter absence of any remorse' and 'even today, the accused seems to be in denial of having done anything wrong' (19 September 2014, ts 196). His Honour gave detailed consideration to the sentencing factors prescribed by s 6 of the *Sentencing Act 2004* (WA) and found that general and personal deterrence were significant factors in sentencing the appellant.

There is no legal implement stopping the RSPCA from continuing to rehome the dog. The forfeiture of 19 September allowed it to do that. This dog has been in the care of the RSPCA for more than three and a half years. The dog did not do anything wrong. This is a conviction under the Animal Welfare Act and the heart of that act is about protecting animals from cruelty and making sure they are treated correctly. That is what that act is about. It is a prosecution under that act. What is the issue? The issue is that the Department of Agriculture and Food Western Australia has now asked that the RSPCA not rehome the dog. In fact, I understand that DAFWA has directed that the dog be returned to it. I find this completely insane, and I do not understand on any level how DAFWA considers this is an appropriate course of action. Since the sentencing, the owner has been aware that the RSPCA proposed to rehome Roxy and it was submitted to the magistrate by the RSPCA prosecutor that following a forfeiture order, Roxy would be immediately rehomed. The RSPCA identified a suitable carer for

her and she was placed in temporary care with an experienced borzoi dog owner in South Australia. Indeed, the RSPCA often finds homes for dogs, cats and the like. When the owner goes to the eastern states, it does not stop the dog from being rehomed—there are no impediments there. The carer that Roxy now has has agreed to make sure she has the daily medications and behavioural support monitoring that she needs. To date, the care and treatment of this dog, which under veterinary terms has special needs, has cost the RSPCA tens of thousands of dollars. From February 2013—this is three years ago—the owner has lost various complaints with the Department of Agriculture and Food about the case. She raised allegations of abuse of process and lack of procedural fairness in her appeal, but again these have all been dismissed in a court of law, not once, not twice but, I believe, three times, along with all other grounds of the appeal. However, the owner's complaints cannot change the binding legal effect of her conviction and sentence, including the order that Roxy is forfeited to the Crown. The former owner ceased to be the legal owner of Roxy on 19 September 2014.

I think throughout this matter the RSPCA WA has demonstrated that it has conducted procedural fairness according to the letter of the law at all times. I was told in my regular briefings from the RSPCA that for some reason DAFWA has now contacted the RSPCA and told it that it needs to return the dog to the state and that DAFWA will accept all the charges involved in doing so. We do not know whether DAFWA will rehome the dog; there is a question mark over that. DAFWA just wants the dog back home in the state and it will pay all the bills for it. I am sorry, but there is a contract with the Crown in which the memorandum of understanding specifically states that the RSPCA is the agency that has the right to move these prosecutions forward. The Animal Welfare Act is government legislation enforced by public officers and the RSPCA are public officers under the act. There is no sensible legal argument that I can see on which DAFWA can pursue this, yet it is spending money with this agreement that it should probably have spent, one would argue, on protecting farmers in Harvey who cannot get milk contracts and the like. This is not an acceptable form of government contracting. It is not acceptable when a body under the Crown has a relationship with a not-for-profit organisation in this instance and is clearly pursuing it for matters that I find completely inexplicable. I think it is time that DAFWA got on with protecting farmers in WA, not prosecuting cases against the RSPCA.

MR C.J. TALLENTIRE (Gosnells) [1.17 pm]: I rise to speak to the Construction Contracts Amendment Bill 2016 and make a contribution to the debate. I note that the issue of relationships between contractors and subcontractors is often fraught. There are many challenges and a definite power imbalance occurs because the head contractor has a very strong relationship with a client who expects a service to be delivered in a timely fashion, that a certain quality of work will be delivered and that all sorts of time lines and regulatory obligations are met. They have their relationship with the head contractor and they assume that the relationship that then exists with the subcontractors is of a similar level of detail. I suspect that that is not really the case and too often the relationship between the subcontractors and the head contractor is not at all similar to the relationship between the head contractor and the client. That leads to many, many problems with the quality of work delivered to the client, the customer, and it also goes to the primary focus of this bill—that is, problems with the manner in which the subcontractors are paid. A lot of this gets back to the philosophical position of parties when it comes to good regulation. If good regulation is in place, many of these problems can be avoided. We know that this current government makes great fanfare out of getting rid of anything that resembles regulation. It loves to talk about how red tape is such an impediment to the successful, flourishing business opportunities in this state, when in reality if there is not some degree of regulation in place, there are problems; that is when there are all the sorts of troubles that I am going to address in this speech.

There are some really interesting examples in the construction industry, especially as it relates to the housing sector. We know that roughly some 20 000 units are built every year in Western Australia; of course, there is fluctuation on that, but we have gone through a period of great activity in the residential property construction sector and that is slowing down quite dramatically. There is a definite correlation between the movements of the economy as a whole and activity in the resources sector, and we are seeing a displacement of the workforce from the resources sector into the construction industry in general. Not only is there workforce flow-on, there is also flow-on in terms of the amount of investment and activity in the sector. I am very concerned about the quite rapid slowdown we are seeing in the construction sector, which is also a reflection of the level of interest we have in the general property market and the slowdown we are seeing there. Overall, we have a slowing down of our economy.

Perhaps, though, this can provide us with an opportunity to catch up and check that we have the right regulatory framework in place and that we have the relationship between contractors and subcontractors properly organised and properly developed, and that it is done in such a way that our subcontractors' financial commitments are properly met and, most importantly of all, that consumers' and clients' needs are properly met.

It is very sad when we hear about some of the things that are going on. Reports appeared yesterday in WAtoday on the collapse of Collier Homes. That has already had one major consequence: a Family First Senator, Mr Bob Day, has resigned from federal Parliament because of the collapse of Collier Homes, a company that he

was intimately involved with. We know that there are currently some 30 homes across Perth under construction with Collier Homes. I am sure that Collier Homes was a major user of subcontractors, so I am very concerned about how those subcontractors will be treated through this process and how they are going to fare when they try to get paid for work they have already undertaken. There is a real risk that some of those subcontractors could be left without payment for the work that they have already done for Collier Homes, and meanwhile we have a terrible situation in which people who have invested substantially in new homes that are partially built are going to be left with all kinds of difficulties in getting their homes completed. I understand that there is a form of building indemnity insurance that is administered, I think, by the Building Commission, but it provides a maximum payout of $100 000, and I would imagine that for many of the 30-odd people who have unfinished constructions for which Collier Homes is the head contractor, their homes would be in a state that would make it very expensive and difficult to find a new builder prepared to come in and take on the completion of the project. That is a problem that our building industry has long had difficulties with: when people need to switch from one building firm to another, there is reluctance in the industry to take on the work of others. On the other hand—this is where the subcontracting system could be of great assistance—the new building firm could in fact rely on the same subcontractors that were engaged by Collier Homes. I do not know how viable that would be, because so much of the pricing that is agreed upon between contractors and subcontractors is specific to the particular relationship between the two companies. There is a serious problem there, and I really do feel for these 30-odd homebuilders who are now going to be in a very stressful situation.

I am told that Collier Homes has an office in Osborne Park with 20 staff who are now out of a job. This is a multimillion-dollar collapse across Australia, and former Family First Senator Bob Day has to share some of the responsibility for this. He is perhaps doing the correct thing in admitting his involvement and resigning from federal Parliament, but it is a very serious matter. I note that some subcontractors are owed amounts of $25 000. WAtoday reported the case of subcontractor Ron van Zoelen and his wife, Tracey, who actually went to the former federal senator's office in South Australia just before learning about the closure of Collier Homes to press their claim for $25 000. Of course, they have all sorts of financial commitments, and that is what happens with subcontractors: they so often are left shouldering the burden of the procurement of all sorts of goods that are required for a particular home construction project, and they wear the cost of that stock. It is not just payment for their labour and their expertise; it is also payment for the goods they are required to procure as part of the delivery of their work. That is where so much of their financial burden falls. It really is a devastating thing for all concerned when these sorts of problems arise.

I think this example starts to paint the picture of just how much we need better regulation of our building and construction industry, yet I hear so much talk about having an industry that is less regulated. We cannot do that. If we have an industry that is fragmented with contractors, subcontractors and clients, that is very volatile and is slowing down, we have to protect the interests of the people involved. This is an industry that is driven by small investors—individual people as investors. We have to protect their interests. If we do not do that, we are going to undermine the community's confidence in the industry. That is why we so often hear people say, "Gosh, I'd never build a new home again. That was a horror experience. I'm never going through that again." Already we are hearing those kinds of charges from people in the community—people who have gone through incredible stress and disappointment. They have had to face up to budgets way in excess of what they were originally quoted and it is an amazingly stressful experience.

That is the situation as it is already, but with a slowing market and the government's political philosophy of getting rid of the last vestiges of a regulatory framework, we are going to find that confidence is further undermined. I think people eventually will just say, "I don't want to build a new home." They will perhaps be prepared to enter into some sort of contractual arrangement with a builder who will renovate, but they will be dissuaded from building new homes. To counter that, we have things like first home buyer grants through which we give $10 000 to a first home buyer who is buying a brand-new home, so maybe there are opportunities there, but we have to look at what is fundamentally at stake with this industry, and it is all about people's confidence in the industry. If we do not have the right regulatory framework, we are going to see that confidence undermined.

Over the weekend I saw another very interesting article, totally unrelated to the Collier Homes episode, that appeared in the Saturday edition of the local newspaper. The article in *The Weekend West* discussed a particular building company, this time Benchmark Designer Homes Pty Ltd, and the trauma faced by one particular owner-builder, Mr Nigel Hanwell. It outlined the costs he has faced and the difficulty he has had getting the Building Commission to take action on his behalf. The Building Commission does not seem to have the capacity to get involved at an early stage because it does not have the staff. The political party that is in government not only does not like regulation even when it is needed, but also does not believe in providing adequate resources to the public service so it can use what little there is of a regulatory framework to get the right results. This disastrous combination will undermine people's confidence in the quality of our housing sector. In addition, our housing sector is unable to really be innovative. When it comes to things such as energy efficiency in homes, we

see a huge lag between the realisation of what is achievable and what technology currently allows for and its rollout on a wide scale.

People only have to drive through parts of my electorate, where supposedly we have the benefit of the six-star home energy efficiency rating system that came in when Hon Simon O'Brien was Minister for Commerce, to see this inability. The subdivisions were not even in existence when the six-star system came into play, but they have been created, construction contracts have been signed, builders have got the jobs and people have paid their money. If people were to look at the end product, they would see that there is no way these homes are meeting that six-star energy efficiency target. There are masses of black roofs and homes facing the wrong way so the solar orientation is completely wrong. No effort has been made to get it right.

Property developers tell me that it is very easy for them to make sure that 90 per cent of the blocks in a subdivision can be correctly aligned to get optimum solar access. This means homeowners will have the very best of solar access; they can get the warming winter sun into the house and the eaves can be angled to keep out the hot summer sun. It is very easy to do; 90 per cent of the lots can be angled to optimise that very important design consideration. When I drive through some of the new areas in my electorate, I do not see any sign of that at all. Clearly, the regulatory framework that is in place for the construction sector is failing consumers and subcontractors. Subcontractors are being let down; it is not their fault that they are being asked to work on homes that are facing completely the wrong way, where all the windows face in a way that will catch the hot summer sun, causing the poor property owner to put on their air conditioner to have any semblance of a comfortable temperature in their home. It is not the subcontractor's fault at all. We have a lazy process in place that allows people to become involved in situations in which they will pay over the odds for the home and also for the running of that home. Heating and cooling costs will be totally beyond what they should have been had we put in place and respected the correct regulatory framework.

[Member's time extended.]

Mr C.J. TALLENTIRE: This is a widespread problem. Our building industry needs to be supported by good regulatory frameworks in which oral contracts may exist between the subcontractor and the head contractor. We need to make sure that the industry has an underpinning of both a good regulatory framework and government agencies that have the capacity to go out and inspect things and do that job properly.

I note the concerns of my local government area, the City of Gosnells. It has talked to me about its concerns about the proposed Instant Start system. I understand that the Instant Start idea would mean that people would simply lodge a building approval application with their local government and they would be allowed to go ahead and construct. There would be none of the checking we would normally expect. The argument the building industry makes is that the system would free up extra capacity and eliminate the inconsistency in the time taken for building approval that exists between one local government and the next. If there are inconsistencies, that is an issue. I can understand how that could be irritating. It must be a bit annoying for Perth's major project home builders to find that one local government takes double the time of another to process applications. That inconsistency might just be a reflection on the number of officers in the planning department of that local government, which is a choice that the people in the local government have made to not properly resource that area. It might be a reflection of other peculiarities about the complexity of construction in a particular area. The idea that we should have a uniform standard right across the Perth metropolitan area and the state is not realistic at all; it is quite unrealistic. It is especially unrealistic when we add in some of the other design considerations that we now have to have, such as making homes fire safe and ready for the very unfortunate event of fire. It is probably the case that the home should never have been built if it is in a fire-prone area, but the government is allowing homes to be built in such areas, which puts people's lives at risk.

It is expected that the checks on the standards will be done by some sort of Instant Start process. I do not see how that could possibly work. The Instant Start process will not allow us to do the necessary checks. We will find out only after the event, after the footings have been poured and the house pad has been laid. Maybe a building inspector will get out on site and see that there is a problem with the location—that the cadastral boundaries have been misunderstood. That sort of thing happens; this is what I hear about. The standard of the works relating to those footings and concrete pouring may not have been up to scratch, so homeowners get dreadful subsidence. Homeowners may find out that the building works have not been of a satisfactory standard, so a wall starts to dip down once it has been built. Sometimes these problems only become apparent well after the keys have been handed over to the poor buyer. Who then gets responsibility of remediating things? In theory, the Building Commission has a good process for doing this. I have the utmost respect for the Building Commissioner, Peter Gow. He is dedicated to the task of repairing these sorts of problems. However, I do not believe there are enough staff to cover the number of problems we have right across the Perth metropolitan area.

Returning to the example that was reported over the weekend—the situation that Mr Hanwell is facing with his Mt Lawley home—it is clear that he has been the one who has had to do all the work arguing his case with the building firm. I think that is totally unreasonable. It is unreasonable that a technical issue is argued by someone who is simply a purchaser of a service—the construction of a new home. Why should the new homeowner have to argue the case? I note some comments by the Auditor General, Colin Murphy, on this issue. He has noted that despite the growing workload, the time taken to resolve complaints has fallen significantly. However, 40 per cent of complaints are still resolved after the commission's target of 150 days. Imagine that: a person has a problem with their building firm, and they probably have a very hefty mortgage or bridging finance or whatever in place while they are building this new home, but they have to wait 150 days for their complaint to be resolved. It is often the case when these complaints are in play that the person building the house cannot move into the house and other contractors cannot get their part of the job done. Let us say it is a problem with the wiring or the quality of the plasterwork in the home, once a problem like that has been found and the person has to wait 150 days for it to be resolved, what can they do in the meantime? Perhaps they can get on with the landscaping or something, but there are many things that they simply cannot get on with or get done. I think amongst many in the building industry there is a high degree of perhaps wilful ignorance about the various amendments we have made in this place to the Building Act. In the time that I have been here, we have made amendments to the Building Act.

A property of nine units on an 800 square metre block was constructed next door to me. The builder, who seemed like a very nice, organised, capable and knowledgeable fellow, who has built a good product, saw fit to say to me that I had to work out how I was going to render and paint the dividing parapet wall between his property and mine, because he was finished. When he said that to me, I recalled that when we were amending the Building Act in this place I was sure it contained a provision that the builder of the new property is responsible for finishing the wall facing into a neighbouring home. That is reasonable after all, because I had a perfectly adequate boundary fence and it had not really been my choice to remove that fence. I accepted that it was part of the construction works. I had to argue the case and quote the relevant part of the Building Act to the builder in question. Fortunately, I think he might have got some legal advice somewhere, because he then contacted me and asked me how I would like the wall rendered and what colour I would like it painted. One of the benefits of working in this place is that we get to know little details like that. The builder had also failed to advise me about his need to access my property at certain stages. I cannot remember its number, but there is a form that has to be given to people on adjoining properties to advise them and to ensure that there is some sort of paper trail of what should be a relationship between the builder and the neighbouring property owners. This builder was not aware of that either, and had not bothered to do it.

We clearly have problems when it comes to the way in which these contractors work. One of the great excuses that they use is to back away and say that it was the subcontractor who was doing it and that they are the main person—the subcontractors did not know about the problem. Those sorts of arguments should not be allowed to come into play at all. That is something else that I am particularly concerned about in relation to this issue. I was very pleased to read Hon Kate Doust's comments. She talked about this issue and the company Benchmark Designer Homes, and made the point that we clearly have an issue with the level of resourcing at the Building Commission. She is quoted in *The West Australian* as saying —

> "The minister appears to value the building companies over the consumer …
>
> "The bottom line is that the Barnett Government has ensured the Building Commission is under-resourced and not focused on providing assistance to the West Australian consumer.
>
> "There needs to be a full review into the Building Commission focusing on resourcing and function."

I think that is exactly right. Mr Hanwell, the gentleman who has had the particular problem in Mt Lawley, is quoted in the article as saying —

> "It's really not protecting consumers' interests," he says.

The article continues —

> The commission itself is of the view it should favour neither builders nor consumers but give each a fair hearing.

I think we have to do better than that. It is about having the right regulatory framework and ensuring that the relationship between building firms and their subcontractors is properly determined and properly regulated. We need to make sure that subcontractors have confidence that they will be paid without time delays and within time frames that work for their businesses. That is a key issue.

Finally, I have heard about the attitude of some of our major resources companies—some the biggest and wealthiest mining companies in Western Australia and, indeed, the world—towards their subcontractors. It

seems that because they are not getting the same price for iron ore that they were getting two years ago, they are sorry, but they are extending the time that they withhold funds from their subcontractors for their services. That is just not good enough either. I believe one of the points of this legislation is to seek to remedy that situation so that people are paid within a reasonable time frame. I trust that that is the case. I am sure that during the course of further discussion on this bill, we will be able to test the claim that the bill intends to make sure that people receive payment in a more timely fashion.

This bill tackles some of the issues facing people in the construction sector, but I fear that it does not go anywhere near providing the regulatory and legislative changes that we really need to make sure that the community has confidence in the construction sector, particularly in the construction of private homes. I do not think any attempt has been made to tackle that issue. In fact, I fear that there is a push completely the other way to remove the regulatory controls that are essential to make sure that people have confidence in our construction sector. I look forward to hearing more about how this bill will be applied and I trust that we can provide subcontractors with confidence in the future.

MR W.J. JOHNSTON (Cannington) [1.47 pm]: I rise to make some remarks on the Construction Contracts Amendment Bill 2016. What is the saying, Madam Acting Speaker (Ms L.L. Baker)? A drowning man will grab anything. I suppose that is what we are doing here. There are serious, serious problems in the construction industry in Western Australia and given that the Construction Contracts Amendment Bill 2016 will not solve those problems, is it better that we support this legislation, because otherwise there will be no improvements? One of the challenges for construction contractors in Western Australia is that the Attorney General has been the responsible minister in this area—the laziest minister in a lazy government. The number of reports on this issue that have been sitting on the minister's desk since the time that he took office in this role is extraordinary, yet here we are, in the dying days of a tired and worn out government, before we get any legislative action.

I sat in the home of a contractor to whom a head contractor had not paid his bill. The contractor is a cabinet-maker. He had a couple of apprentices and some subcontractors who worked with him, and a small factory unit where he made his cabinetry. He had a contract with a large head contractor that was working on a government project. The cabinet-maker was not paid by the head contractor. It is not just the labour content; it is also the materials, because now head contractors, as a way to reduce the amount of capital that they put into a project, get their subcontractors to purchase the materials that will go into the building. Of course, the head contractors pay for the concrete to go into the building, but they expect the subcontractors to finance the cost of the fit-out. This particular guy was on the hook for hundreds of thousands of dollars because he had to pay his suppliers for the material that he was then providing to the builder. Because the builder was not paying him for his invoice, he therefore had to come to an arrangement with his supplier for all the material that went into the cabinetry that he was putting into the building that he was engaged on. When he got into trouble like that, his whole life was on the hook. Interestingly, at the same time he also had trouble with his accountant. That is obviously just the luck of the draw, but it meant that the accountant had not been properly handling the financial affairs of the subbie, who then ended up with a large tax debt at the same time that he had significant outstanding invoices from his supplier. The problem for him was that this would prevent him from doing any other work, because obviously the suppliers would not provide him with ongoing credit if this very large contract had not been paid and they would not let him buy materials for other jobs on credit, so he would have to pay cash for the materials for other jobs. This was terribly confronting for him. Sadly, he is not the only one; I am sure many members of this chamber have had subcontractors come to them to talk about very similar situations. This is a serious problem. We saw it come out very strongly during the Building the Education Revolution during the first term of the Barnett government, when head contractors for government projects were not paying their subcontractors for the work that was being commissioned.

I was recently listening to talkback radio. A number of subbies were ringing in to tell of their experiences. One of the common experiences is that when they had a job from a large contractor, the large contractor would make variations to the project. Let us say that the subcontractor has $200 000 or $300 000 worth of work on the project. The head contractor would come along and say, "Listen, I want you to do an extra $30 000 work on the project." This was not originally included in the contract. When the time comes for the subcontractor to get their last payment, the head contractor would come back and say, "Look, you remember that work you did three months ago? We weren't satisfied with that work, so we're now going to withhold the final payment because we had to get the work rectified", even though the subcontractor continued to work on site doing the originally contracted work plus the additional variation. According to the people in the industry, the head contractor will often say, "I will pay you the base amount that we originally contracted, but I'm not going to pay you for the variations." Suddenly there is this massive power imbalance between the head contractor and the subcontractor and there is no practical way forward for them. They have all their bills to pay and, as I explained with the cabinet-maker, they have to make sure that their trade creditors are being paid regularly otherwise the trade creditors will not let them get anymore materials—then it is not just that job that the subcontractor is not able to do; it is every job they are

not able to do. This is a massive problem in this industry. Of course, we are not the only people to identify this problem. I refer to the December 2015 report of the Senate Economic References Committee, headed "I just want to be paid", which looks at many of these situations in the construction industry right across Australia. I quote from the executive summary of the Economic References Committee report. It states—

> The industry's rate of insolvencies is out of proportion to its share of national output.

That is the construction industry. It continues —

> Over the past decade the industry has accounted for between 8 per cent and 10 per cent of annual GDP and roughly the same proportion of total employment. Over the same period, the construction industry has accounted for between one-fifth and one-quarter of all insolvencies in Australia.

This is another problem that subcontractors have. My good friend the member for Gosnells outlined the problems with Colliers International, which went into receivership this week, in which the subcontractors cannot be paid because the head contractor has gone into insolvency. There are many problems for people in this industry that need to be dealt with. The Construction Contracts Amendment Bill 2016 will not solve these problems. Of course, it is a step forward but it will still not solve the problems. The Senate committee report states —

> The structure of the Australian building and construction industry, as well as the contractual relationships between people working within it has transformed in the past decade or so.

It then explains the move from employment relationships to contract and subcontractor relationships and the greater proportion of that work then being let to even smaller contractors. The report continues —

> One witness who gave evidence to the inquiry likened the culture to a battlefield, where subcontractors get mowed down and fresh bodies are just poured in. Evidence to the inquiry demonstrates that head contractors are often more than willing to abuse their market power to the detriment of those further down the subcontracting chain.

That is a serious problem identified by this report. The report also discussed phoenixing, in which a company is improperly put into administration or receivership or another form of arrangement and the same directors of that company then open another company in exactly the same business, carrying out exactly the same activities. To quote the report again —

> Phoenix company schemes have been a longstanding concern of regulatory agencies, parliamentary committees and a more than usual number of inquiries. However, despite the prevalence of inquiries and recommendations that followed, illegal phoenix activity remains a significant issue not only in the construction industry, but throughout the economy.
>
> …
>
> This culture is reflected in the number of external administrator reports indicating possible breaches of civil and criminal misconduct by company directors in the construction industry. Over three thousand possible cases of civil misconduct and nearly 250 possible criminal offences under the *Corporations Act 2001* were reported in a single year in the construction industry. This is a matter for serious concern. It suggests an industry in which company directors' contempt for the rule of law is becoming all too common.

I have heard a story of a phoenixed company in Perth, in which the director of that company had a history of phoenixing in England before he moved to Australia.

Mr D.J. Kelly interjected.

Mr W.J. JOHNSTON: Obviously. He had been involved in phoenixing in the United Kingdom and when things started catching up with him, he moved to Australia. He then simply engaged in the same activity here until recently, when things caught up with him, and he has now decamped back to England. This is a serious problem. Again I say that the Construction Contracts Amendment Bill 2016, although an acceptable small step, is not the solution to the problems of this sector.

Debate interrupted, pursuant to standing orders.

[Continued on page 7395.]