

BUILDING MANAGEMENT AND WORKS — SUBCONTRACTORS

Motion

HON MIA DAVIES (Agricultural) [11.26 am] — without notice: I move —

That this house notes with concern the collapse of a number of building companies that were contracted by Building Management and Works to deliver projects in Western Australia, and urges the Minister for Finance to swiftly put in place measures to investigate those subcontractors already impacted and improve protections for subcontractors engaged on projects run by Building Management and Works.

I rise on behalf of the Nationals to highlight the concerns of a number of subcontractors throughout the state. A number of these businesses have been adversely impacted by the collapse of principal building companies awarded tenders to deliver projects managed by Building Management and Works. Before I continue to outline the concerns that we have, I would like to acknowledge that the Minister for Finance made a commitment yesterday on a number of initiatives in relation to this matter. We welcome that announcement, because any move by the government to strengthen the protections in place for subcontractors is a positive move. In particular, we welcome the announcement that the Small Business Commissioner, David Eaton, will be required to appoint an independent investigator to investigate the claims of these subcontractors who have lost money on BMW Building the Education Revolution projects. I note that the minister has stated that only two companies have contacted his office since he went on radio and called for those subbies to make contact. I find this a bit difficult to believe, because there are at least six companies in or related to Northam, where I reside, that have been seeking assistance and, quite frankly, have found the interaction that they have had with BMW to be lacking.

These small businesses are subcontractors who were hired to complete work on projects put out to tender by the Department of Finance's Building Management and Works under the federal government's Building the Education Revolution schools building program. What was supposed to be a good news story for the building and construction industry—a stimulus package to get them through the global financial crisis—has left a number of subbies holding the can for works and services that they have provided without payment. As I have said, a number of subcontractors in my electorate have contacted me to seek assistance in recovering the funds that they are owed, and to raise their concerns in relation to contract management. Other subcontractors have stated that they are now wary or unwilling to enter into future works that are tendered by BMW because they simply cannot afford to take the risk.

It is a serious concern to me and the Nationals that businesses are actively avoiding contracts underwritten by government funds due to risk, which is perceived or otherwise. These small businesses employ locals, buy their materials locally and reinvest in the community, and they welcomed the opportunity to tender for jobs that were part of a project underwritten by the federal government and managed by the state government. What they did not expect was to be left in the lurch; and they did not expect to find out that some builders have allegedly signed statutory declarations saying that they had paid their subcontractors and received milestone payments from BMW, which subsequently collapsed. They were left without receiving payment for the work they had completed.

Questions have been raised publicly on several occasions about the management of the funding by BMW. I note that *The Australian's* Andrew Burrell reported on the issue in April last year. In his article, he quoted the managing director of MidCon, one of the builders that has fallen into administration, as saying that his company had been forced into voluntary administration due to the state government's management of the projects. He said that although the tenders were awarded on the basis that start dates would be staggered, projects ended up taking place concurrently. I am not commenting on what practices took place in that company prior to this issue, but this has been reported for some time and it has been in the public arena for some time. *Business News* followed up with an article on 7 April 2011. It quoted the Master Builders Association's Gavan Foster, who said that there had been warning signs of issues relating to the local Building the Education Revolution program, notably delayed payments as a result of variations, particularly as construction projects were entered into. *The Weekend West* picked up the issue in August this year, and one of my local newspapers has printed several editorials and articles about it. An article in *The Weekend West* of 11 August 2012 raised alarm bells for me because, in essence, a subbie alleged that BMW had advised him that it would not be investigating statutory declarations that had been fraudulently signed by builders that subbies were paid up to date. The latest in *The Australian* on Tuesday of this week states that Master Electricians Australia has added its voice to growing concerns that BMW has failed to carry out due diligence on builders that have failed to pay their subbies. In amongst all this, subbies in my electorate started to contact my office and the offices of my colleagues. To put a personal face on this issue, I will read some of the emails that I have received. I have received permission from the people

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concerned to read them without identifying their names. They are a little concerned about being named given that an investigation is underway. According to my notes, one email reads —

“I’m a 28 year carpenter from Northam, at the start of the year the company i was working for put all the trades off. So i was at the point of choosing go to the mines like the rest of my friends and enjoy the good money or start my own businnes and stay home and start the family that we wanted to. I choose to stay, i hired two other local young carpenters and have been working around the Avon valley (and somtimes further). About three months ago i did a fair bit of work for a Perth company that came to Northam to do an extention on a school ... Anyway three months later and only getting paid for half the work i have done there, the Perth company went bust, leaving me \$15,500 out of pocket. It may not seem that much to some people but to me it now means that i am now having to look for job on the mines had to let my two young workers go (who are now also looking for work up north) which was something i never wanted to do. Especially now when i have my first child due news years day. [It seems that the people that are living here working here are getting the blunt end of the stick this is not the first time this has happened here. This company new it was going under but kept us doing the work promising me id get paid. Now our town is down three young carpenters and money that would have been put back in the towns pocket (i am not the only local here to get stung by this company).

Yet another email reads —

“Hi Mia, I am a contractor that has completed a BMW project in Northam. I have targeted this work believing that any monies owing were somewhat guaranteed given that the builder is to sign Stat decs indicating all sub-contractors working on these particular projects are paid, and more importantly paid on time. After being “burnt” twice in a week by both Stillcon and 1 week prior to that Briklay Building also on remote BMW work ... I am completely at loss to fathom how these Government Works can go so pear shaped. I have currently funded the partly completed the projects to a value exceeding \$180K. That is I have bought and paid for all of the specified items, labour and my dedicated team to provide a very high standard of works only to be kicked to the kerb by some very unscroupulous operators. It kills me that administrators are wheeled in to lay 100% claim on works the I have completed and paid for and for my efforts i dont receive a single cent. I have spoken at length to a number of SMEs that agree with my sentiments. My head tells me that my contemporaries, Plumbers, Carpenters, Bricklayers, painters and ourselves will be forgotten very quickly as the next Building Shark circles to feed off us, but my head tells me somwthing must be done to stop this from happening at the start. With respect to [project A] my business was requested to complete a variation to the head contract on the 17th of the month. Works were completed on the 19th to satisfaction of the school. My understanding is there is a very strong argument that the Builder was trading insolvent given the administrators indicate they were called on or around the 17th of Sept. I expect, no I demand that these Builders be placed under scrutiny to determine if they can complete these works on Government contracts for the future and not continually fail those that are left to pick up the pieces. I give forward thanks to you if you can spare the time to read my total disgust at the goings on on these projects.”

There are more, and their stories are equally distressing. They were all under the impression that because they were dealing with government contracts, they could assume a level of security for payment. It is my understanding that current contract management practice in Building Management and Works is for principal builders to sign a statutory declaration that subcontractors have been paid before they receive their cheques. I understand that practice has been going on for some time—indeed, it is not new. But it is quite clear to me that the subcontractors have not received payment, although Building Management and Works has paid out to the principal builder. Therein lies the problem with the system—it is flawed. I understand that BMW receives upward of 5 000 statutory declarations a year. Current practice is to check their validity only when there has been a complaint. A system that is reliant on checking only if there is a complaint is a bit like shutting the gate after the horse has bolted. I look forward to the minister’s explanation as to how providing more detail on the statutory declarations will improve outcomes for subcontractors as part of the initiatives that were announced yesterday. Our small businesses deserve better. They are the backbone of the communities I represent. According to my notes, one owner wrote to me —

The family problems and spouse arguments this causes forces me to question whether or not it’s all worthwhile (20 years of this little business that employs 10 local people). Why keep going when you keep losing big money?”

According to my notes, yet another says —

“... considering as many as twenty five families are directly reliant, as are many other businesses for their livelihood, and that we contribute greatly toward the communities in the region I appeal for your to help to achieve a positive outcome for my Company.”

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These are good people. I know them. They provide employment opportunities in regional towns. They take on apprentices and give young people a start in a trade. I have been left wondering why we have a system that is flawed. If it is not flawed, there must be an issue with the way the system is managed. The Nationals WA are seeking assurances from the minister that Building Management and Works has adequate checks and balances in place to minimise the risk of this happening again. We would like to know how the minister envisages that the changes announced yesterday will reduce risk for subcontractors. What is going to be done to ensure that all parties are held accountable for guaranteeing that information is accurate and that false or misleading statements will be dealt with in the appropriate manner? What will be done going forward to ensure that prompt payments are made to subcontractors? What process was undertaken in applying due diligence before awarding tenders to the principal builders? According to my notes, one email I received from a subbie contained the following statement —

“... this builder was awarded ... [project X] upgrade and within a month was in liquidation. Unsure what financials the BMW checked before awarding this contract—I did pose the question to staff at the BMW and besides passing the buck amongst themselves they would only state that they follow procedure with stat decs and we are covered by the Construction Industry Act 2004—and that we should use this for adjudication to obtain prompt payment.”

I can provide specific details to the minister about this matter. I will forward all the concerns of those who have contacted me in the last week and those of the ones with whom I have been dealing for some time and for whom I have been trying to get a response. I hope that they will be given a fair hearing if they contact the minister's office and the Small Business Commissioner. The state government has a responsibility to make sure our processes are robust and transparent. I have previously sought advice on actions the government was taking to assist a particular subcontractor in my electorate. I also sought the minister's advice on the action that was being taken to ensure that contractors engaged by BMW promptly and fairly honour their payments to subcontractors.

I welcome the initiatives that were announced by the minister yesterday to address this important issue. It will not go away and we cannot continue with business as usual. The ripple effect of a default payment to a small business has far-reaching consequences, especially in regional WA. A swift and transparent response from the government, particularly the appointment of an independent investigator to investigate claims by subbies who lost money is needed. Some clarification about the minister's timeline for this would provide some assurance to those businesses that are under pressure now.

I have a view, but I will wait to hear the outcome of this debate as to whether further inquiry needs to be made into the issue surrounding the entire management of tenders, contracts and fees. I know that the New South Wales government has commenced an inquiry, and it is looking at how it can make sure that it has a security-of-payment framework that ensures stronger protections for its subcontractors. I am not suggesting that we are in the same basket as New South Wales—it has had considerable difficulties—but I think that we should be striving for the best system possible. I look forward to the minister's feedback.

HON COL HOLT (South West) [11.40 am]: I rise in support of the motion and to reiterate that, as a government, we need to be doing as much as we can to support small businesses in our communities. They are an important part of the economy. They are the industry group that employs a lot of people, and they are vital in providing services in those communities, especially in regional communities where sometimes it is hard to get hold of a plumber or an electrician or a carpenter. Once they are in those communities, people want to keep them there and they want to be able to support them in the best way that they can in making their businesses profitable so that they will stay in the community and keep building things for people or fixing electrics or unclogging the sink. The government has a vital role in that. If the government is the builder or if it is contracting out the work to those smaller contractors or smaller trades companies in the region, there must be some certainty of payment, because when the government wants to get things built in communities in regional Western Australia, it will want to tap into and employ those exact same people to go around to the Government Regional Officers' Housing or the Homeswest housing to change a washer in a tap, change a light fitting or whatever it might be. It will need those tradesmen at a local level to do those sorts of things. Therefore, it is important that their businesses are sustainable and profitable so that they will remain there to provide a service for those local communities and for government itself.

As Hon Mia Davies indicated, a number of other jurisdictions around Australia have also been tackling the issue of flow-on payments from contractors who are contracted to the government through to subcontractors, who in most cases are doing the work at the local level. The New South Wales government introduced legislation in 1999; the Victorian government brought in something in 2003; the Queensland government in 2004; and the Western Australian government in 2005, to try to give those subcontractors certainty of payment, so that if they complete a job in good faith, they are paid for it.

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I also note that Hon Mia Davies talked about a recent inquiry that New South Wales has embarked on, which I think is a good idea. The New South Wales government obviously felt that the issue had reached a point at which it needed to look at the situation to see what it could sort out in order to provide that certainty for subcontractors. That inquiry is tasked to look at the extent and causes of insolvency in the New South Wales construction industry, and also what reforms are needed to minimise the adverse effects on subcontractors. I want to read out the terms of reference, because that could be a guide to help our own investigation of these matters. The terms of reference are —

The extent and cause of insolvency in the construction industry in NSW

Consider payment practices affecting subcontractors

Existing protections for subcontractors

Impacts of insolvency on subcontractors

Consider legislative or other policy responses that can be taken to minimise the incidence and impact of insolvency in the industry, including

- Opportunities to simplify debt collection processes
- Strategies to improve financial management skills in the industry
- A mandatory insurance scheme to secure payments to subcontractors
- A discretionary mutual fund to compensate contractors from losses arising from insolvency of a lead contractor or principal
- The effectiveness of trust arrangements in protecting subcontractor payments retained by a lead contractor or principal

They are the terms of reference that the New South Wales government will be working through. Maybe we can take some things from those terms of reference as a guide to how we might handle the situation in Western Australia. I note that there is a lot of difference between jurisdictions in how all these things are set up, but maybe those terms of reference could be one of the guides.

If we look at how WA is growing and continues to grow, we see that there is continual pressure on construction businesses and subcontractors in Western Australia, and it is just as prevalent in metropolitan Perth as it is in regional Western Australia, where we have been embarking on a large infrastructure program—not just some of the big-ticket items such as hospitals and arenas, but also many housing projects, playgrounds, and sporting and recreational facilities throughout the state. There are big programs and we want certainty. We want people to be paid and rewarded for the services that they provide for those building projects. We want to ensure that the small businesses of those people remain sustainable so that they will keep working for the government in those communities.

We are very pleased that the minister has charged the Small Business Commissioner, David Eaton, with the task of appointing an independent investigator to investigate the claims of subcontractors. I think that is a good thing. It gives the new Small business Commissioner a real opportunity to focus on building some relationships with the small business community and to continue the work that he has started.

I will leave it there. I reiterate that obviously the insolvency of subcontractors in the construction industry has a wide-ranging effect on all people in our communities. As Hon Mia Davies suggested, in regional communities in particular, it has a large impact because it affects the profitability of those businesses and their decisions about whether to stay in town and continue to provide those services. Often there may be only one person who provides those services in a town, or the closest tradesman might be 50 kilometres away. Therefore, once people get these tradesmen into their community, they really like them to stay. Anything that we can do to make the system a bit more certain so that everyone is rewarded for their services to the building industry would be welcomed by the Nationals.

HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition) [11.48 am]: I thank Hon Mia Davies for putting this motion up for discussion today. This is an extremely serious matter, and I know that there was a debate in the other place earlier today and that a number of these impacted subcontractors were present to listen to the debate. This federally funded Building the Education Revolution project was probably the most significant infrastructure project that we will see in the schools across the nation. We will probably never see anything like it again. Western Australia received more than \$1.2 billion to put into almost 2 500 projects in our schools. We have all seen the benefit of those projects in our electorates, and our communities certainly celebrate them.

In this state, Building Management and Works had the carriage of those projects, and for its efforts received about \$18 million in the form of administration fees. It appointed head contractors and project managers. One

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would have thought that that would have been the end of it. Thousands of people were engaged in the construction of these projects, and they would have had an expectation that, because they were doing work on behalf of the government, they would have been paid. Unfortunately, we now know that that was not necessarily the case. We now know, based on questions raised yesterday, that the government has known for two years that there were issues surrounding the statutory declarations that were provided by the head contractors to Building Management and Works; that single page stating, "Yes, we have paid everyone." BMW did not take any steps to actually check any of that fact; it just accepted, on its paper value, that that had indeed happened. We are now seeing thousands of people coming out and saying, "No, that is not the case; we have not been paid. In fact, we are losing our businesses. In some cases we are losing our homes and in some cases we are losing our investment for the future." That is a very serious problem. If the government was aware that there might have been something suspicious about those stat decs as far back as December 2010, a number of questions need to be raised as to why this government did not proceed to take direct action; why did it drag its heels; why did it only refer some of these matters to the police in August of this year? I have to ask whether it is only because this matter was canvassed in the media by Paul Murray? Is it only because the Premier was questioned about this on radio that he then sought to take action? Is that the only reason we are debating this motion in the house today? This is a serious issue that has the potential to drive a lot of small business people to the wall, not only in the metropolitan area, but also in regional areas. I am pleased Hon Mia Davies has referred to her constituents, which I will come back to.

I note that the minister made an announcement yesterday in which he canvassed a range of options to address these issues into the future. Most of them were fairly sensible, but I say to the minister that they will not actually do much to help those people who are, in some cases, hundreds of thousands of dollars out of pocket. In fact, one fellow I spoke to this morning is \$1.3 million out of pocket. These people are very concerned; they have done the work, they have not been paid, and they are about to lose everything they own. They are about to lose their businesses and livelihoods. I spoke to another fellow today whose nephew has lost \$300 000. He has been in business for 30 years; he is quite desperate now.

The minister needs to tell us—I am sure he will—what will happen with this inquiry, because I want to make sure, as I am sure everyone in this chamber does, that all those people impacted by this disastrous effort by BMW will have the opportunity to raise their case.

Hon Simon O'Brien: Who hasn't paid these people?

Hon KATE DOUST: The contractors, who were being managed by government.

Hon Simon O'Brien: The contractors with whom they had a contract arrangement.

Hon KATE DOUST: At the end of the day this comes back to BMW, which has actually washed its hands and said, "This is not my problem." I have seen letters that have been sent to people stating, "This is not our issue; you might need to seek legal advice."

This comes back to government. BMW took on the job of managing this project; it took the administration fee. I have always thought that if someone is managing a project, they manage it from start to finish and make sure everything is done, and they would make sure that if people do work, they get paid for it. But that has not happened and that is the problem and that is what the government has to deal with. I think the minister needs to make sure that this inquiry is urgent and does not go over an extended period of time; in fact, a number of these contractors have said to me today that they hope to God that it is over by Christmas because they want to know where they stand. They want to know if there is going to be any form of assistance provided by this government to help those businesses survive. I know the minister has not canvassed that in his public discussions, but it is a significant concern. These people are saying, "What are we going to do? Do we just shut up shop? Do we go to the wall? Do we have to look for jobs in the mining sector or do we have to move our families?" This is a major problem that comes back to the fact that BMW, on behalf of the government, has not delivered on its commitments as part of managing this program. I think there are a series of questions that need to be answered. We know the Auditor General has raised serious questions about how BMW is managing other programs. I can tell the minister that it is not just the Building the Education Revolution program that BMW has had problems with; we are starting to get other matters raised.

The minister has canvassed how he will deal with stat decs in the future; he has canvassed how he is going to deal with withholding moneys from contractors; and he has talked about education programs so that subcontractors know how to go about getting better information or advice. But at the end of the day the subbies say, "That doesn't help us now; we're about to hit the wall. It does not help us now; we want somebody to tell us how we're going to get our money." The minister needs to give a fixed time period, so that people have some certainty as to when this inquiry will start and finish, what its terms of reference are going to be, and who will be

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eligible to be part of that inquiry. I know that the 40-odd people who were here today are very keen to participate, and I understand there are many, many more out in the community.

In the short period of time I have left, I thank Hon Mia Davies for raising this and I note that she referred to meetings with a range of constituents. But I note that this goes back to about April of last year, and I know a range of these subbies have met with Hon Brendon Grylls in his capacity as a local member, and that they have written to him on numerous occasions, and, to date—eight months after they commenced their formal writing process—they have not had any feedback from him on what he was going to do to fix this.

Hon Mia Davies: That is absolutely untrue. He has organised meetings with the minister. That is absolutely untrue. What were you doing 18 months ago?

Hon KATE DOUST: There was not one piece of feedback from him about what he was going to do to take this up on behalf of his constituents.

Hon Mia Davies: What were you doing 18 months ago?

Hon KATE DOUST: I think it is very interesting that Hon Mia Davies has only raised this today.

Several members interjected.

Hon KATE DOUST: What has Hon Mia Davies been doing to raise this on behalf of her constituents in the past? Nothing! They have not had the feedback! So it is a bit cute for the National Party to get up today, hand on chest very concerned about these constituents, when their leader in the other place, who sits in cabinet and could have alerted the minister by saying, “Jeez, we’ve got a real problem out here”, did nothing! He has not got back to them! In the meantime, Hon Mia Davies’ constituents are going down the gurgler.

Hon Simon O’Brien: The allegation of Mr McGowan that you have just repeated is a falsehood! You are telling falsehoods!

Hon KATE DOUST: No! The minister has a serious issue here; his eye has been off the ball, and BMW has not been doing its job!

Hon Simon O’Brien: What you have just said is false; what you caused the Leader of the Opposition to say is false!

Hon KATE DOUST: BMW has said, “It’s not our problem; we’ve got the project up. We’ve got our money; we don’t care about these people”, and the minister has some serious issues. This problem is not going to go away.

Hon Simon O’Brien: That’s a stupid thing to say! That’s a silly thing to say!

Hon KATE DOUST: It is not silly!

Hon Simon O’Brien: What you’re saying is silly!

Hon KATE DOUST: It is not silly! This is a serious issue, and we are going to continue raising these questions!

Hon Simon O’Brien: As if we have said we don’t care! As if we’ve said, “Just go away.”

Hon Ken Travers: You’re acting like a guilty man, minister.

Hon Simon O’Brien: You’re acting like a dill!

Hon KATE DOUST: The only reason the minister has taken action is because he has been caught out! If Paul Murray had not raised this issue on radio and put the questions to the minister, if he had not put those opinion pieces in, the minister would not have done a thing! Not a thing! He would not have come out and made an announcement; he would not have put in place this investigation; he would have just hoped that it, and these people, would have all gone away. So the only reason the minister is doing this is because he has been caught out. Go back to the annual report of the Department of Finance and have a look at the BMW unit’s comments; it talks about BER being a significant project in that last 12 months. Not a single mention is made in that annual report about any difficulties, about any problems with stat decs, about any referrals to police, about any investigation into stat decs—not a single word!

I say to the minister that he needs to go back and talk to those people and ask them what they have been doing. We now have somewhere between 1 500 and 2 000 subbies who are going out of business and are going to lose their homes.

Hon Simon O’Brien: What do you base that on?

Hon KATE DOUST: That is the information given to me by the people working in that area. They have said that to me today, and they say they think there is more than \$100 million worth of business that needs to be paid for.

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Hon Simon O'Brien: Give me a list of those 1 500—I want to talk to them.

Hon KATE DOUST: The minister has a serious issue; this government has again failed to deliver for people in small business, and as the Minister for Small Business the minister has not provided the appropriate responses to provide them with a remedy so that they can stay in business, and he should be ashamed of that.

HON SIMON O'BRIEN (South Metropolitan — Minister for Finance) [11.57 am]: I thank Hon Mia Davies for raising this matter today; it is a matter of concern, and some things need to be cleared up. I am also concerned with collapses of builders anywhere in our economy, whether it is part of the BER program, which the member specifically mentioned, or for any other cause. That is, in part, because of the ripple effect it has on subcontractors, suppliers and their families, and the communities they are active in. I, too, am concerned, as is the government, and the government is doing things about this and it has been doing things about this, which stands in contrast with the opposition, which is doing absolutely nothing.

Several members interjected.

Hon SIMON O'BRIEN: This is an important matter, and I would like to address the house.

The DEPUTY PRESIDENT (Hon Col Holt): While you are gathering your breath, minister, it would be best if you would direct your comments to me.

Hon SIMON O'BRIEN: I want to raise a couple of things in the brief time available to me. Problems have been identified with the statutory declaration situation, and members need to understand that the statutory declaration form being spoken of is actually something that is prescribed as an Australian standard. It is not an invention of this government for the BER program or anything else. It is an industry standard right across the country. However, there has been a deficiency noted in it. We are moving to address that deficiency. The deficiency is that when a statutory declaration is given to say that all subcontractors have been paid all moneys due and payable to them at the date of this progress claim, in 99 per cent of cases, when everything has gone smoothly, that has happened and there is no need for this statutory declaration—that is belt and braces. We strike a problem with a statutory declaration deficiency when there is a dispute between the contractor and his subcontractor and it says that all moneys payable at this time have been paid. It is silent on matters such as moneys that are in dispute or are yet to be decided by a court or some other tribunal. We need to fix that, and I will explain how in a moment.

When I investigated some of these matters that Hon Mia Davies and Hon Brendon Grylls have brought to my attention—despite what the opposition says—we have discovered that one of the problems —

Hon Sue Ellery interjected.

Hon SIMON O'BRIEN: I am not responding to the Leader of the Opposition; I have limited time.

Several members interjected.

The DEPUTY PRESIDENT: Members! I suggest the minister keeps directing his comments to me.

Hon SIMON O'BRIEN: One of the problems we found is that subcontractors engaged in disputes have a tendency not to come forward. In many cases they have a tendency to take the “hit” when there is a disagreement with their principal contractor so they do not spoil their relationship with their head contractor. Not only do they leave it too late to raise a concern with, in this case, Building Management and Works, but also they do not use the government assistance available for the rapid adjudication of claims and all the rest of it. Indeed, when BMW has had matters raised with it by some of the subcontractors who have complained, those subcontractors have declined to give further information so that BMW can confront builders about payments in dispute. These are the things that we find when specific complaints have been brought to notice.

What are we doing about it? In the case of statutory declarations, it is proposed to change the statutory declaration to make it part of the pro forma that notice be given as to whether any payments have not been made because the parties are in dispute. That will do a number of things. First, it will give an early warning to BMW of a potential problem. It is not unusual for payments to be in dispute. It does not mean that people are going to go to the wall, but it may be an indication that there is a deeper problem, particularly if a lot of payments are being disputed by the one head contractor. We are going to change that. That will provide us with some other benefits. We are also going to make it a future requirement that contractors inform BMW of the names and contact details of subcontractors working on a particular job so that we actually know who they are. The government does not have a contractual relationship with the subcontractors. The relationship between the builder and the subcontractor is between two private parties. As a government, we are the ones requesting the work. We have a contract with the head contractor; we do not know who the subcontractors are. We have not entered into an arrangement with subcontractors, but I want to find out who they are so we can extend some protections.

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One of the key reasons for doing that relates to the education campaign that we will run to make subcontractors aware of their rights. Once we know who they are, we can ensure that there is an effective education campaign to make them aware that they have to notify of disputes early in order to receive assistance. They can talk to BMW, and they have to understand what the Building Commission can provide by way of assistance through the Construction Contracts Act and so on. Situations that have been reported by members—even if they have not hit the public domain—have been examined and in many cases we have found that the failure of subcontractors to communicate, to follow up on advice or to take the steps necessary within a suitable time frame has actually left their own interests in an unfortunate state.

Building Management and Works handled the Building the Education Revolution program very well. It was a \$1.26 billion program, with over 2 200 individual projects, or more, in 600 or 700 schools. It was a program initiated by the federal government as a stimulus exercise. Indeed, there is some evidence—anecdotally at least—in the sector that indicates that some of the problems that some builders experienced has not been from the BER program coming along, but from it finishing and work drying up—QED, Mr Deputy President.

Several members interjected.

Hon SIMON O'BRIEN: The BER program was set up by the federal government. This is the same federal government —

Hon Sue Ellery: Who managed the contracts? You did!

The DEPUTY PRESIDENT: Order, members!

Hon SIMON O'BRIEN: Mr Deputy President, am I going to have any protection? I have limited time and these idiots opposite are using it up.

The DEPUTY PRESIDENT: Order!

Hon Sue Ellery: What a disgrace!

Hon SIMON O'BRIEN: You're an idiot, and you're a disgrace as well!

The DEPUTY PRESIDENT: Order!

Hon SIMON O'BRIEN: You don't care about these people!

Withdrawal of Remark

Hon KATE DOUST: This minister seeks to ridicule members by constantly referring to them as “idiots”. I think it is inappropriate. He needs to change his language and apologise to the Leader of the Opposition for referring to her as such.

Hon SIMON O'BRIEN: Mr Deputy President, as the member has objected, I unreservedly apologise and withdraw.

The DEPUTY PRESIDENT (Hon Col Holt): Thank you, minister. If the minister would like to continue and direct comments to me, I am sure all members in the chamber will respect his right to speak directly to the Chair.

Motion Resumed

Hon SIMON O'BRIEN: There were some very difficult parameters put in by the federal government around the BER program. It was a massive program of expenditure to be given in a very tight time frame. That in itself produced pressures on the building sector and on BMW, as the manager of the projects. But it did it very well and delivered those projects. Yes, in such a massive program there will be disputes between contractors and subcontractors, but I ask members opposite: who would they want running a BER program of that scale in Western Australia? Would they like the New South Wales government running it? Would they like the federal Gillard or Rudd government running it?

Several members interjected.

The DEPUTY PRESIDENT: Order!

Hon SIMON O'BRIEN: No, of course they would not. I am getting a bit fed up with hearing members of this opposition attack a quality agency in Building Management and Works when I have heard nothing from them or any of their spokespeople about this. They have been telling us that some members on this side have been ignoring the problem. I just advise the opposition, in respect of a debate and some public comments —

Hon Kate Doust: As soon as we became aware of it, we raised it. We didn't sit on it for 18 months!

Hon SIMON O'BRIEN: It shows how unaware members opposite are!

Hon Mia Davies; Hon Col Holt; Hon Kate Doust; Hon Simon O'Brien; Deputy President; Hon Max Trenorden;
Hon Ken Travers

The matters raised two years ago were most certainly taken note of and pursued by this government because we had to pick up the building projects and finish them. I confirm that the matters referred to by Hon Brendon Grylls and Hon Mia Davies were followed up. They were referred to me and they were investigated. There have been some falsehoods peddled today. The measures that we announced yesterday will provide relief in this situation.

The DEPUTY PRESIDENT (Hon Col Holt): Given that Hon Max Trenorden has stood on three occasions, I will give him the call.

Several members interjected.

HON MAX TRENORDEN (Agricultural) [12.09 pm]: Members opposite may not be too happy about me getting the call because the fault here lies —

Hon Ken Travers: Are you with the National Party or not?

Hon MAX TRENORDEN: The member can ask me that question if he gives me a chance to make my speech in the nine minutes now left.

We are talking about the total collapse of the true function of the public service. If the Minister for Commerce is telling me that the Department of Commerce is going to carry out an investigation, I will have nil confidence in that investigation, not because the department is not competent but because we have allowed a group of public servants in this state to run the game, taking it away from us and from the people of Western Australia. The reality is that there needs to be an inquiry into how our public service works in Western Australia. We have a situation between the Labor Party and our side. We have allowed head contractors to run contracts. This has not just occurred in the stimulus packages; it has occurred in a range of contracts.

Hon Simon O'Brien: You are actually right and I agree with you, and if I had had the opportunity, I would have discussed this.

Hon MAX TRENORDEN: I want to say a couple of things because they are important, perhaps not as far as the election is concerned, but in terms of the structure of government they are absolutely critical. We have a group of Western Australian agencies that are setting up compliance systems that suit them. These systems allow them to tick things off with the Auditor General and the minister. Who does not get the service? It is the people of Western Australia. Hon Bill Marmion had been in Parliament for only a short time before he became the Minister for Housing, with responsibility for the lead contract in the central wheatbelt. At the time, I put out a press release saying that it would not work because it cannot work. We say that we will give a lead contractor these state government contracts then wash our hands of them, like Pontius Pilate. For three years those subcontractors have been pouring into my office. They are getting paid after 90 days because of this nonsense legislation called the Construction Contracts Act 2004. I would love to have the time now to walk through the provisions of this act. Subcontractors wishing to get a result out of this act need 10 years. The Mr and Mrs Smiths—the husband and wife teams from either the metropolitan area or the regions—have to put things in triplicate and go through a whole raft of requirements. It is impossible for those people to do. The legislation has been written for the big contractors, who have someone sitting in an office and sitting on a phone with the capacity to respond within 28 days. We are trying to represent these people today. I am seriously saying that members of the Liberal Party and the Labor Party are trying to represent these people. Members may want to have a bit of fun and have a shot at the minister or at Hon Mia Davies but the problem is that collectively we have allowed the system to degenerate to a point where it is totally unaccountable. It is not accountable.

I can run through a whole raft of issues that have occurred in my electorate in the past four or five years. I could give examples of situations in which people have quoted on contracts only to find out later that the head contractor had won the contract and had not kept to the specifications of the contract. The locals could not win the contract because they kept to the specifications. This is in Housing, not the minister's area. Guess what? Who goes out and checks whether the job has been done? Absolutely nobody checks. Who knows that nobody will check on those jobs? The head contractor knows. A cleaning contractor came into my office two or three weeks ago. He is getting paid on 90-day terms. He is a cleaner, part of a husband-and-wife team. I hate using words such as "average" and so forth, but he is just a citizen of Western Australia who has decided to carry out cleaning in the central wheatbelt. He is mainly cleaning government offices. The head contractor that we appointed will not pay him. They do not pay him because they do not have to. There is not a dispute. This cleaner is on 90-day terms. He is \$9 000 out of pocket. This is a husband-and-wife team living in my electorate. How will that person make an application within 28 days, having to fill in the forms and wait to meet the adjudicator? He will go through all of that nonsense, and for what? He would be required to put deposits down and get into an argument when there is no dispute about the job; it is just a problem with the head contractor deciding not to pay. We have done that—we have allowed the agencies to write contracts, write acts and put

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specifications before us, and we have accepted them on the argument that it will do them good. If we went through some of these agencies and looked at their net result, we would see that they have been able to reduce their costs by 10 or 15 per cent. Why? It is because they are not doing the job any more. Is anyone else doing the job? The answer in general is no. Where I live there is problem after problem with the head contracting system that Labor introduced with our support and we introduced with its support.

We can have a go at the minister today and have a lot of fun with that but the problem is that we have allowed a range of public servants to take hold of this and run their own agenda without us challenging them. The committees of this house or the other house, or a range of people, have not called them in and asked whether they are running to the contract. We do not call in these agencies and ask whether they are abiding by the act or adhering to the contracts they sign. We do not do that. I ask members to name one committee in this house that has done that, including mine, although we have done it with Western Power. We get half a tick. In this case there is a serious breakdown in the process of serious deliberation by cabinet, whichever side may be in government, to decide to deliver a program. Then we allow the management of that process to break down to a point where the agencies act like Pontius Pilate and wash their hands of the action, saying it is not them who is messing this up; it is the terrible head contractor who is not doing his job. Who put in the head contractor? The state government did. What are the requirements of those head contractors? The requirements are legal but they are not social and there are no time lines. The situation is that we in this chamber have allowed the ball to be dropped.

Hon Kate Doust: No; the state government has allowed it to be dropped.

Hon MAX TRENORDEN: No; we have. I have not heard Hon Kate Doust making speeches about this.

Hon Kate Doust: I haven't heard anything being raised in your party in this chamber questioning your minister about what they're doing to fix the problems for your subbies in your electorate.

Hon MAX TRENORDEN: I will give the member a list of 20 or 30 subcontractors who have been in my office in the past three years trying to get some resolution to this matter. When we go to the agencies, they quote the legislation. The whole mechanism is unworkable for small business. We allowed an agency to construct this bill and we allowed that bill to go through this house. The member cannot say that we do not have responsibility for it.

HON KEN TRAVERS (North Metropolitan) [12.18 pm]: I make it very clear that the opposition is not in here today having fun. We are raising serious issues about the incompetence of this government. We also raised these issues about the incompetence of this government in the other place today. The reason that the motion has been moved today is it was brought on by the government. One of the two partners in this coalition—the National Party—brought it into the house today. As they always do, National Party members sit at the cabinet table making decisions and when it all goes wrong, like it did with the grain rail freight, they suddenly try to extract themselves from it. I do not envy members of the Liberal Party having to deal with people like that, who sit there with the Liberal members making the decisions and then, when those decisions turn bad, want to distance themselves from them. Yet, the National Party is as much a part of the problem as anybody else. The issue we raise in this place today is why —

Hon Simon O'Brien: You've not raised it; you've been asleep!

Hon KEN TRAVERS: — the minister and his government have failed to act. People have asked why Labor has not done anything. This is an issue for the government to have dealt with.

Several members interjected.

Hon KEN TRAVERS: What we know, members on the other side, is that they have known —

Hon Mia Davies interjected.

Hon KEN TRAVERS: Hon Mia Davies, National Party members and their leader in the other place knew about the problems of this issue for months and months—for years.

Hon Mia Davies: It is a matter of public record what the honourable member in the other house has done.

Hon KEN TRAVERS: Hon Mia Davies has known about this issue for months and months. And why, minister —

Several members interjected.

Hon KEN TRAVERS: Then we get to this place today —

Several members interjected.

The DEPUTY PRESIDENT (Hon Matt Benson-Lidholm): Members, please, I am finding it difficult to follow the debate now.

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Hon Ken Travers

Hon Simon O'Brien: I had to put up with this crap when I was on my feet.

The DEPUTY PRESIDENT: Excuse me, minister. I am finding it difficult to follow the debate because of the series of interjections. I do not mind the robust debate, but I am sure that Hansard is finding it very difficult as well. So, robust debate by all means, but I think that level of interjection is just over the top and I would ask the member on his feet to continue to direct his comments through the Chair, as I am sure he has been.

Hon KEN TRAVERS: I am more than happy to.

Members on the other side have known about this issue. They could have taken the actions and the government could have taken the actions to address these matters, which were outlined in the minister's press release, up to 18 months ago. What did members opposite do? Nothing. They sat on their backsides, got the letters into his electorate offices—sent them off to Hon Simon O'Brien. They knew he was not going to fix it and they sat around and did nothing.

Hon Mia Davies: Were you in the meetings? Have you actually been part of any of that? That is an outrageous statement.

Hon Phil Edman interjected.

Hon KEN TRAVERS: Hon Phil Edman has to understand that members opposite are the government. The government is in charge of fixing the problems. Members opposite can get upset now, but they are the people who should have been fixing their problems over the last 18 months. When did the minister know that there was a problem with statutory declarations? When did he know? There is silence. The minister has known for a long time, but he has only just decided to take action because it has become a media issue. It has gone into the public domain and is starting to cause the government problems out there because people are seeing how incompetent it is. Then it tries to put out a press release to say it is fixing the problem, but for 18 months it did nothing. The government has known about the problems with the statutory declarations and it did not do anything about it. There are the issues about the options to hold back money. When did the government know about that? When did it take action? That is the problem with this government.

Hon Simon O'Brien: You obviously do not know anything about this issue—you are just trying to pick up on it, stand up and flap your gums!

Hon KEN TRAVERS: I will tell the minister another thing I heard when I was listening to discussion on this issue on Paul Murray's show the other day. A subcontractor rang in who had bought \$40 000 worth of lights specifically to meet the criteria that were specified by this government. The head contractor then went bust. The subcontractor was left with \$40 000 worth of lights. They wrote to the Building Management Authority and asked to it buy the lights from them at wholesale price—they did not want to be paid at a premium or anything. They said they would sell the lights for the price at which they were bought, and could they be given to the person —

Hon Simon O'Brien: Is that really what happened? That is what you heard on the radio, but have you inquired with me as to what the truth of that matter is? You might find it is very different, because I have followed it up, unlike you and unlike your spokesperson.

Hon KEN TRAVERS: We will suspend standing orders, minister, to continue the debate. The minister is getting aggressive because he knows he is under pressure on this issue. I suspect that this is not the first time he has failed as a minister and he knows he is under pressure. Did the BMA buy those lights from the subcontractor so that they would not wear the cost? Simple things like that could have been done to assist the people being impacted by the failures of government on these issues. This is not just about the head contractor being responsible; the government also needs to do its bit to try to help people to make sure they are not suffering as a result of all these issues. For 18 months the minister sat on his hands. It is fine for Hon Mia Davies to come into this place today and try to pretend she is not part of the government and to try to wash her hands of responsibility, but she and Brendon Grylls have sat there and done nothing for 18 months about these matters, even though these matters have been brought to their attention. It is only now, because the opposition has been taking this issue up and because the media has been taking this issue up, that we are starting to see something. People out there are hurting. This is the real picture of what is happening in Western Australia. People are hurting. What do we get? Deflection to try to push the issue away. The government tells us to look at the bigger picture because it does not want us to look at the real picture about what is happening. It says look at the bigger picture of the Building the Education Revolution. The BER is a great program; it was funded by the federal government. We think it is great, but when implementation of it was put into place by this government, it failed to do it.

Hon Simon O'Brien: Come on; that is an absolute nonsense.

Hon Mia Davies; Hon Col Holt; Hon Kate Doust; Hon Simon O'Brien; Deputy President; Hon Max Trenorden;
Hon Ken Travers

Hon KEN TRAVERS: The minister knows there are people out there hurting. When did the minister become aware of all of the issues indicated in his press release?

Hon Simon O'Brien: It finished two years ago.

Hon KEN TRAVERS: When did the minister become aware of these issues and what did he do to fix them?

Hon Simon O'Brien: I started on 10 —

Hon KEN TRAVERS: December.

Hon Simon O'Brien: — December and —

Hon KEN TRAVERS: The minister started on 14 December and I think the issue —

Hon Simon O'Brien: — Sizer went into administration on 17 December, one week later, and we took over its work, reappointed the subcontractors and got on with the job; that's what we did.

Hon KEN TRAVERS: In all that time, why had he not done things to help them? Why did it take —

Hon Simon O'Brien: That is what we did do.

Hon KEN TRAVERS: Is the minister telling us that since the day he arrived in office he has known there have been problems, and it was only in October 2012 that he finally put out a press release saying that the government would do something about this issue and that it was finally going to address the issue? The government has finally worked out that the issue related to the statutory declarations, even though it has done nothing about it and even though the issue had been raised with the members in the Central Wheatbelt and the Agricultural Region, Hon Mia Davies and her leader Brendon Grylls. It has taken until October 2012 for the government to say not that it has done something, but that it is going to do something. Why could the minister not have done that within a couple of months of taking office? Why could he not have? Quickly!

Hon Simon O'Brien: If you knew anything about this issue at all, which clearly you do not, you would know that the liquidations —

Hon KEN TRAVERS: This is classic O'Brien—try to deflect, try to blame everybody else, do not accept responsibility. This is why the minister is in the position he is in. He does not accept responsibility as a minister for the issues going on in his portfolio. All he has done today is try to throw abuse across the chamber. What he has not done is actually address the issues. He has not got down into telling us why he took over 18 months to do anything about the issue and why it is only now that the government is doing something once the issue has been raised in the media and once it has been raised in the other place. The minister knows he is under watch because this is another failure by him.

The DEPUTY PRESIDENT: Order, members, the vote on that motion falls away.

Hon Simon O'Brien: Scratch my eyes out! Is that the best you've got, Ken?

The DEPUTY PRESIDENT: Members, I do not appreciate the tone and some of the commentary that is going on. I have indicated before that I am prepared, in the spirit of robust debate, to let things go, but I will not let this continue any further, so could members please desist.

Motion lapsed, pursuant to standing orders.