

Mr David Templeman; Mr Shane Love; Amber-Jade Sanderson; Mr Vincent Catania; Acting Speaker; Dr David Honey; Mr Peter Rundle; Ms Mia Davies; Ms Christine Tonkin

BUILDING AND CONSTRUCTION INDUSTRY (SECURITY OF PAYMENT) BILL 2021

All Stages — Standing Orders Suspension — Motion

MR D.A. TEMPLEMAN (Mandurah — Leader of the House) [4.10 pm] — without notice: I move —

That so much of standing orders be suspended as is necessary to enable the Building and Construction Industry (Security of Payment) Bill 2021 to be introduced forthwith without notice and to proceed through all stages without delay between the stages.

Obviously, the bill that we are seeking to deal with forthwith is a very important bill that will be under the Minister for Commerce’s portfolio area. I understand that the opposition has been briefed on the bill and its intention, and I look forward to robust debate throughout this afternoon and into the evening. I highlight that the intention, of course, is for the government to have this bill passed as soon as is practicable, but certainly before we rise tomorrow evening.

MR R.S. LOVE (Moore — Deputy Leader of the Opposition) [4.11 pm]: As the Leader of the House has said, the opposition will support the motion to bring the bill on for debate because of the topical nature of this matter with the collapse of a major construction company. I note that a number of bills were read into the house in the previous sitting weeks, but this was not one of those bills. It was not considered to be a matter of urgency at that time, but we are not going to stand in its way, given the topical nature of the issues. Many members would have dealt with this bill in the previous Parliament, but I note that a large number of new members in both houses most likely will not be across all the details of this bill. In supporting the motion that has been put forward, I flag that the opposition will not accept as normal practice the introduction of a bill and its passage through Parliament without the usual period of three calendar weeks between its introduction and further debate, but we will accept it for this bill.

The ACTING SPEAKER (Ms M.M. Quirk): As the motion is one without notice to suspend standing orders, it will need an absolute majority to succeed. If I hear a dissenting voice, I will be required to divide the Assembly.

Question put and passed with an absolute majority.

Introduction and First Reading

Bill introduced, on motion by **Ms A. Sanderson (Minister for Commerce)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MS A. SANDERSON (Morley — Minister for Commerce) [4.12 pm]: I move —

That the bill be now read a second time.

Today is a significant day for all participants in the building and construction industry in Western Australia with the reintroduction of this bill. In August 2016, the WA Labor Party, when in opposition, made a promise that if elected, it would pursue a bold reform agenda to provide a fairer system for all persons who carry out construction work or supply related goods and services in the industry. I would like to acknowledge my colleagues Hon Bill Johnston, MLA, for starting this significant reform, and Hon John Quigley, MLA, Attorney General, for his work in attempting to pass these important reforms in the last Parliament. It is with great privilege that I now seek to deliver on our promise to the people of this state. Aside from some technical drafting changes to improve the operation and clarity of various provisions, this bill is substantially the same as the bill which was introduced in the Legislative Council in November 2020 but which subsequently lapsed.

The building and construction industry is a vital part of our economy, providing the jobs, housing and critical infrastructure to meet the changing needs of Western Australians. The industry is also a significant source of employment and income for both the Western Australian and Australian economies. It hosts the largest number of small businesses in this state, with hundreds of thousands of people earning a living through the building and construction industry. Our election commitment was made in recognition of the fact that the state’s construction industry has a long history of businesses, employees and their families suffering significant financial losses due to non-payment and mistreatment at the hands of unscrupulous industry participants. In many cases, these businesses provide their own capital up-front for materials and labour, so when the person they are contracted to does not pay or goes bust, the consequences can be absolutely devastating and can have ripple effects throughout the community. These include not being able to pay staff; owing large debts, such that people cannot ever restart in the industry; relationship breakdowns; and even suicide. This is the problem of “security of payment” and it has been, and continues to be, a blight on our state.

The problem of security of payment is one with far-reaching ramifications not only for industry participants, but also across the broader community. It weakens the industry and fundamentally stifles innovation, investment and economic growth. It makes sense that if businesses could guarantee that they would get paid for the work they do, they would have more confidence to build and expand. If they could have security of payment, they would be in a financial position to create job opportunities for staff, tradespeople and apprentices. The end result would be

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getting even more Western Australians into jobs and providing more opportunities for our young people to get their first job. Security of payment can provide the certainty that businesses need to grow and thrive, irrespective of the particular economic situation of the day. Unfortunately, the current reality is that businesses, particularly small businesses, have to battle with the constant fear of not getting paid on time or at all, and without access to the most effective rights and protections under the law. If these businesses do not get paid, often their workers and suppliers do not get paid. Unfortunately, events over the past week, with the external administration of the Pindan Group and the uncertainty now facing its subcontractors, provide a clear indication of why reforms are needed. I am proud to be part of a Labor government that is doing something about this. I stand here today to deliver on our commitment. This bill will improve security of payment and fairness across the Western Australian building and construction industry.

This bill is the result of an incredible breadth and depth of consultation across sectors of the industry. I take this opportunity to thank those at all levels of the building and construction industry for their engagement in the consultation process and acknowledge the productive and constructive input provided by a large number of groups and stakeholders into the development of this bill. I also wish to thank Mr John Fiocco and Hon Matthew Swinbourn, MLC, for spearheading the initial review process, which was established by my colleague Hon Bill Johnston, MLA. Following his review, Mr Fiocco recommended a number of reforms to the government, including adopting many of the recommendations from the national review into security of payment laws, conducted by Mr John Murray, AM, on behalf of the commonwealth government. The fundamental cornerstone of Mr Fiocco's report is that businesses in the building and construction industry deserve a better deal in this state. Mr Fiocco recommended, and this government has accepted, that Western Australia's security of payment laws must change and should be made more consistent with the east coast model, which is based on New South Wales legislation. The principle of greater national consistency in this context is an important one, as it will ensure that if a person carries out the work, the law will support them to get paid, regardless of which state or territory they operate in. As a result, this bill will implement a substantial package of law reform to ensure all participants in the building and construction industry in Western Australia can be confident of getting paid on time, every time, for the work they do. It does not matter whether you are a small business or contracting with big companies, if you do the work, you will have equal rights to get paid.

I will now address some of the major reforms that will be introduced. The bill will establish for the first time in Western Australia a new framework of security of payment laws that over time will replace the existing Construction Contracts Act 2004. The Gallop Labor government introduced the first piece of security of payment legislation, the CCA, in Western Australia. It was a vital foundation for resolving construction disputes. Although the CCA was revolutionary at the time for Western Australia, it is clear that the many challenges faced by businesses in getting paid, and paid on time, are not adequately served by the existing legislation. It was made clear to Mr Fiocco, as well as to Mr Murray in his review, that legislation based on preserving the commercial bargain struck between parties has not always achieved the right outcome in an industry plagued by inequality of bargaining power, unfair risk allocation and lengthy and delayed payment times.

It was a Labor government that first addressed the problem of security of payment back in 2004. Seventeen years later, it is another Labor government that stands ready to further support the needs of Western Australian contractors. Contractors will now have access to the same rights and protections under security of payment laws that their eastern state counterparts have had for many years. Crucially, part 2 of the bill will establish a statutory right to receive payment and an effective process to recover delayed payments through rapid adjudication and/or court proceedings. That will provide more transparency and structure to issues such as dates for claims, approvals and payments. The bill will require timely engagement in the payment process and impose significant consequences for failure to do so.

One of the biggest criticisms of the CCA has been that often subcontractors are not properly informed as to why payments are being withheld or delayed. They are left to either wait until payment is due to find out whether they will be paid the full amount claimed or commence an adjudication to discover the full reasons for non-payment. This does not guarantee prompt payment and leaves the party who carried out the work in the unenviable position of chasing payment, or commencing an adjudication process with limited or no knowledge whatsoever of the case they will face and the likelihood of success.

Under this bill, a party who carries out, or who undertakes to carry out construction work or supply goods and services—the claimant—is entitled to make a progress payment claim at the end of each month. To ensure cash flows quickly through the contracting chain, payment claims made under the bill from head contractors to principals will need to be paid within 20 business days of the claim or any lesser period that is stipulated in the construction contract. Payment claims by subcontractors to head contractors, or between subcontractors, will now need to be paid within 25 business days or any lesser period that is stipulated in the construction contract. Payment claims for certain residential-related construction work will need to be paid by the date specified in the contract, or 10 business days if there is no date specified.

The party that receives a payment claim—the respondent—must issue a payment schedule within 15 business days of receiving the claim if they do not intend to pay the full amount claimed. The payment schedule must outline the

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amount to be paid and the reasons why payment is being withheld. Once presented with the payment schedule, the claimant can make an informed decision about whether to apply for rapid adjudication to recover the full amount that is considered owing. If the claimant elects to go to rapid adjudication, the respondent cannot raise reasons for withholding payment during that process that are not otherwise included in the payment schedule, such as set-offs or cross-claims. This means that the respondent must treat payment schedules with the utmost care.

Alternatively, if the respondent does not give a payment schedule within the time required or pay the full amount claimed, the claimant may elect to either recover the full amount as a debt owed through the courts or apply for rapid adjudication. Before applying for rapid adjudication, the claimant must give the respondent notice of their intent to do so and a further opportunity to give a payment schedule within five business days. If no second-chance payment schedule is received, the respondent is not entitled to provide a response or any submissions during the adjudication process.

The rapid adjudication process under part 3 of this bill, as under the CCA and elsewhere, remains a “pay now, argue later” scheme designed to deliver an interim, binding decision so that works can continue, but without affecting the parties’ legal rights to go to court or to use any other dispute resolution mechanism if unsatisfied with the decision. The adjudication process is to be carried out by an experienced, independent, registered adjudicator within a compressed time frame and with as minimum formality and technicality as possible.

Applications for adjudication are to be made by the claimant to a registered adjudicator specified in the construction contract, or if no adjudicator is specified, the claimant is free to lodge the application with an authorised nominating authority of its choice. An authorised nominating authority is an individual or organisation approved by the Building Commissioner to appoint adjudicators. There are currently a number of organisations performing in Western Australia a similar role under the CCA as appointors, and elsewhere across Australia. It is expected that these organisations will apply to be authorised nominating authorities under the bill.

The adjudication process is designed to ensure claims are determined with speed, efficiency and minimum formality and cost so that money continues to flow through the contracting chain with minimum disruption. Once an adjudication application is made by the claimant, the adjudicator—specified in the contract or appointed by the authorised nominating authority—can make a decision within as little as 10 business days if the respondent does not provide or is not permitted to provide an adjudication response, or within 10 business days after a valid adjudication response is provided.

Clauses 35, 36 and 38 of the bill detail the powers and functions of the adjudicator. The process is not judicial and decisions are to be largely based on the payment claim, payment schedule and adjudication application and response, but the adjudicator can request further submissions, call conferences and carry out inspections of the construction work. The adjudicator must decide the amount, if any, owed by the respondent to the claimant in respect to the payment claim—including the return or release of any performance security—the date on which the amount became or will become payable and any interest that is owed. The adjudicator must give brief reasons for their decision in the form of an adjudication determination.

As the parties retain their rights to go to court or commence other dispute resolution processes, adjudication determinations under the bill are not as a general rule open to appeal or review. However, part 3 of the bill will introduce a limited right to seek a review of an adjudicator’s determination by a senior adjudicator. This limited right of review will be available for only high-value disputes, but will provide an aggrieved claimant or respondent with an alternative remedy to be exhausted outside of curial proceedings. This review mechanism is based on similar laws in Singapore and the recommendations of Mr Murray’s review for the commonwealth government.

This bill will also introduce measures to improve the overall fairness of contracting practices in the building and construction industry. Too often, people find that the rules are stacked against them from the outset. If a party gets squeezed via the withholding of payment because they lack the same bargaining power as the other party, then some might invoke theories of free market economics to explain or even justify the situation. They may say, “Well, that’s just the way it is, and it’s always going to be like that.” I reject the notion that an enhanced bargaining position in a free market is a licence to withhold moneys from those who are entitled to it. As a community, there are certain standards that we all can and should expect when it comes to contracting practices in the building and construction industry.

This bill will introduce a range of mechanisms to improve the fairness of contracting practices across the industry. These include voiding unfair notice-based time bars, which operate to unfairly limit or restrict a contractor’s entitlement to claim or to receive payment under a construction contract; enacting a broader prohibition on pay-when-paid provisions; as well as requiring certain contracts to be put in written form and meet minimum standards to remove any uncertainty as to each party’s rights and obligations.

Another key pillar of reform is the introduction in part 4 of the bill of a retention trust scheme that will apply down the supply chain. This is a first of its kind in Australia. It will protect subcontractors’ retention money from being misappropriated or lost altogether in the event of insolvency. Often, retention money may equal or even exceed

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a subcontractor's profit margin for a construction project. But right now, under the law of this state, it is perfectly legal for a party holding or withholding retention money to use this money as they see fit. They can use it to prop up or increase their own cash flow or even apply it for purposes totally extraneous to the construction contract, such as buying a luxury car or financing an expensive holiday.

The McGowan government believes that subcontractor retention money should be protected. It should no longer be treated within the industry as an interest-free loan that one can use for whatever purpose they choose. For that reason, the bill will impress retention money with trust status by force of law and require that it be ring-fenced in a dedicated trust account to separate it wholly and completely from the trustee's general pool of assets. If a party fails to fulfil its obligations as a trustee of the retention money, beneficiary subcontractors will have access to existing general law remedies, and, in some cases, a statutory right to suspend ongoing construction work or the supply of related goods and services.

Another important feature of the bill is part 7, which will provide the building industry regulators—the Building Commissioner and Building Services Board—with new powers to remove from the industry building contractors with a history of insolvency or of not paying court-ordered or adjudication debts. It is the McGowan government's intention, by way of this bill, to impress upon the building and construction industry that the holding of a registration as a building contractor in this state is a privilege, not a right. Those with a history of ripping off subcontractors, or engaging in phoenixing activity by driving a construction business into the ground and then re-emerging from the ashes with a brand new business, will be placed squarely within the line of sight of the regulator's new powers. For too long now, the regulators have had insufficient powers to adequately deal with the poor and unscrupulous conduct displayed by some contractors who use the corporate form to avoid their responsibilities.

A person who wants to be a registered building contractor needs to play by the rules, make sure they run their business properly, and pay the subcontractors who work for them, or else they might rightly be required to show cause to the Building Services Board as to why they should be allowed to be a registered player in the industry. The Building Services Board's new powers will be extensive, and will include the ability to apply an exclusion even when shadow or straw directors are used.

I conclude by emphasising that this bill will introduce significant and long-overdue reforms to give confidence back to subcontractors. These reforms will promote business growth and innovation, and make this state a fairer and more desirable place for all to do business; safeguard the livelihood and wellbeing of the Western Australians behind our construction businesses; and complement measures that the McGowan government delivered in its first term in office through expanding the use of project bank accounts on government projects and enhancing the investigative powers of the state's Small Business Commissioner.

I commend the bill to the house.

Debate interrupted.

Appropriations

Message from the Governor received and read recommending appropriations for the bill.

Second Reading Resumed

Resumed from an earlier stage of the sitting.

MR V.A. CATANIA (North West Central) [4.32 pm]: Firstly, I would like to quote what the then Leader of the Opposition, Mark McGowan, said about subcontractors in 2016. The Minister for Commerce also used this same quote —

They are ordinary small businesspeople who need certainty because they spend money in order to undertake work, they have a line of credit with a bank, and they have a mortgage on the line for the work that they are undertaking. If they do not get paid, they lose their house and their business, and their workers do not get paid.

That was the view expressed by the now Premier back in August 2016. That led the Labor Party to incorporate into its platform a policy to improve the protections for subcontractors in the building and construction industry. The legislation that we are debating now in 2021 was first put forward in September 2020. That legislation was an election commitment by the Labor Party in 2017. It was never fulfilled by the Labor Party in its first four years in government. I will go into the time line and the history, because a few mistruths have been told on radio by the new Minister for Commerce, and even in the minister's press release today there are quite a few untruths about what has unfolded.

The now Premier made those comments in 2016. This was off the back of the behaviour of construction companies such as Cooper and Oxley and Diploma Group. It even includes John Holland because of the way it conducted

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itself in the construction of Perth Children’s Hospital. I was a member of the Public Accounts Committee, along with Hon Dr Tony Buti, the member for Armadale and chair of the committee at the time, when it inquired into Perth Children’s Hospital. The committee uncovered a lot of issues around contracts and variations and how subcontractors often do not get paid. This is a good lead into the legislation that we need in order to be able to protect subcontractors as much as possible when it comes to instances such as what occurred at Perth Children’s Hospital. That is a classic example of a company that does not go under, but gets the cheapest possible contract, at cost, and then looks at variations to be able to make up that money. The loser out of those variations is often the subcontractor.

This legislation, which has been presented again for the second time, this time as an urgent bill, will protect a lot of subcontractors into the future. This bill was not mentioned in the Governor’s speech. The need to introduce this bill again has come to light only because Pindan has gone into administration. The reason that Pindan is not paying its subcontractors is not because of disputes about whether they have done the job. This company has gone into administration; therefore, it is not able to pay its debts.

As I have said, this legislation, which has now been declared urgent, was first presented in September 2020. I will go through the members who spoke on this legislation in 2020. It was not declared an urgent bill in the last term of government, but it has now suddenly been declared an urgent bill, after yet another construction company has gone under. The difference with this construction company is the amount of work that it did for the government and the taxpayer. That is very different, members, and I will go through the difference.

The then Minister for Commerce, the member for Cannington, commissioned an inquiry on 22 February 2018 into security of payment reform. The inquiry was conducted by John Fiocco, a very good and experienced barrister. The report comprised over 300 pages detailing what needed to occur to protect our subcontractors into the future. The assistant chair of that inquiry was Hon Matthew Swinbourn, who is in the other place. He assisted greatly in making sure it was a comprehensive report. The report was commissioned by the Premier of Western Australia, Mark McGowan, and the member for Cannington as the then Minister for Commerce, and the legislation was introduced into this chamber on 21 September 2020 by the former Minister for Commerce and now Attorney General—I am trying to think of his seat —

Mr J.R. Quigley: Butler.

Mr V.A. CATANIA: Butler—that is right. The former Minister for Commerce introduced that legislation. But before that legislation was introduced, there had been a lot of commentary about how the Fiocco report would influence the legislation. The consultation that was undertaken by John Fiocco was extensive. It did not leave anyone out in terms of unions and associations such as the Master Builders Association of WA and so forth. Everyone had been involved in coming up with a solution to the systemic problems in the construction industry that had time and again resulted in subcontractors being left out of pocket, losing their homes, having mental breakdowns and sometimes, ultimately, committing suicide. It was absolutely devastating and that was why legislation was needed.

After John Fiocco presented his report, there was a lot of commentary by the then Minister for Commerce, the member for Butler, the Attorney General. I turn to *The Australian Financial Review* of 3 June 2020 and an article titled “WA backflips on subcontractor protection” that states —

WA has backflipped on plans announced a year ago to introduce the country’s first trust scheme to protect payments to subcontractors.

Newly-released draft laws aimed at improving conditions for subcontractors—who do as much as 90 per cent of the work on building sites—exclude so-called cascading statutory trusts, which would protect money owed to subcontractors when builders fail.

The article quotes the WA Attorney General, John Quigley. It states —

Subcontractors have long called for the ring-fencing of payments that head contractors receive from clients and often use as working capital before passing them on. Groups such as Master Builders Australia and the Housing Industry Association oppose change and WA Attorney-General John Quigley last year said: “a lot of governments are scared about doing it”.

WA’s Building and Construction Industry (Security of Payment) Bill 2020 released last week omits any reference to the trusts, despite Mr Quigley’s promise to do so. It’s a huge blow for subcontractors, particularly at a time when the pandemic-hit Australian economy will need the extra protection they would bring.

The article continues —

There are different ways to protect payments for subcontractors. Queensland has adopted a system of project bank accounts, which require builders and subcontractors to open and manage a separate account for each project. A single statutory trust account is less onerous, but builders oppose them because of the loss of cash flow and extra administration needed.

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Builders are pleased.

“We welcome the fact that they —

That is, the WA government —

aren’t in there,” said John Gelavis, executive director of the Master Builders Association of WA, who said the government had taken a consultative approach to the issue.

“They’ve continued to take on board our feedback and advice, which is very good.”

That, to me, is saying that the Master Builders Association had done its job of protecting its members and was ensuring that the legislation included cascading trusts, which was one of the key recommendations. The government’s own report stated and recommended that cascading trusts could ultimately protect subcontractors. The Master Builders Association of WA said —

“They’ve continued to take on our feedback and advice, which is very good.”

The article continues —

John Murray, the author of a 2017 federal government review into security of payments for subcontractors, has long argued for the trusts.

The John Fiocco report constantly referred to the John Murray report that was commissioned by the federal government. The article continues —

“It seems to be a unique feature in Australia that politicians just seem to kick the can [down the road] in terms of introducing a statutory trust,” Mr Murray said.

The Australian Financial Review states also —

Attorney-General John Quigley, who also took on the commerce and industrial relations portfolio in December, said his departmental staff are drafting a cabinet submission on imputed statutory trusts that he will present to cabinet in September, and which could be submitted to parliament early next year.

WA plans to be the first state to set up statutory trusts to protect funds that building subcontractors often lose when builders fail or run out of money, with legislation to be introduced to parliament early next year.

It continues —

This would make WA the first state to implement the trusts, which would ring-fence money intended for subcontractors, but which is currently paid by clients into head contractors’ operational accounts. Australia’s construction industry leaves an estimated \$3 billion-worth of unpaid bills each year.

When we are talking about unpaid bills, we are talking about Pindan construction. Pindan asset maintenance had a government contract to carry out maintenance on behalf of taxpayers on social housing and government department offices. The government directly paid Pindan, by way of a \$35 million contract, to ensure it could do asset maintenance in a lot of regional centres. That money was never passed on to plumbers, electricians and glaziers for completing that work. They were not paid for months for completing those government contracts. I will keep going on about these government contracts and about the work that has not been paid for. This legislation will not fix what happened with Pindan. If a construction company goes into administration or becomes insolvent in the future, this legislation will not protect subcontractors.

I will now read from *Hansard* and the opening remarks of the former Minister for Commerce when the Building and Construction Industry (Security of Payment) Bill 2020 was introduced. He said —

Today is a historic day for all participants in the building and construction industry in Western Australia. In August 2016, the Western Australian Labor Party, when in opposition, made a promise that if elected it would pursue a bold reform agenda to provide a new and fairer system for all persons who carry out construction work or supply related goods and services in the construction industry.

He continued —

Our election commitment was made in recognition of the fact that the state’s construction industry has a long history of businesses and their families suffering significant financial losses due to non-payment and mistreatment. In many cases, these businesses provide their own capital up-front for materials and labour; therefore, when the person they are working for does not pay or goes bust —

The former minister made a lot of references to businesses going bust; even the current Minister for Commerce refers to it —

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the consequences can be absolutely devastating. These include not being able to pay staff, owing large debts such that people cannot ever restart in the industry, and suicide and relationship breakdowns. This is the problem of “security of payment”, and it has been, and continues to be, a blight on our state.

They were the comments of the then minister. The second reading continued —

Under this bill, a party who carries out or undertakes to carry out construction work or the supply of goods and services—the claimant—is entitled to make a progress payment claim at the end of each month. To ensure that cash flows quickly through the contracting chain, payment claims made under the bill from head contractors to principals will need to be paid within 20 business days of the claim or any lesser period stipulated in their construction contract.

There were contracts the government undertook, say with Pindan, and subcontractors were not being paid in the prescribed time of 20 days. Where were the checks and balances of the department overseeing these contracts? This department is not just overseeing those contracts, so how is it checking whether the work has been completed? If it has been completed, what checks and balances are there to ensure that money is actually paid to the subcontractor? These are some questions that need to be asked. How has the government allowed this situation that, as the minister said, has been highlighted for years and years on end? The then opposition blamed the former government, yet in its first term in office the now government allowed contracts not to be checked for whether subcontractors were being paid. That is taxpayers’ money. The government should have ensured the checks and balances of the so-called statutory declarations that a company makes to say a job has been completed and the subcontractor will be paid, as in “Can you give us our money?” Who was checking that? How did Pindan’s situation get so it owed tens of millions of dollars? More importantly, it had a \$35 million asset maintenance contract to look after some of our disadvantaged people in some of the poorest houses, with a lot in regional Western Australia, where toilets still get blocked, pipes break and burst, gas leaks occur and windows get smashed. That is the type of maintenance that a lot of the subcontractors do in my electorate in regional Western Australia. I know quite a few of those subcontractors, and some of them have not been paid \$150 000-plus. We talk about payment terms, but after reading the Fiocco report, when company after company has gone belly up, we would think that in the drafting of the bill, the government would change the way it operates to ensure that subcontractors were being paid. How did Pindan get so far in debt with government projects, paid for with taxpayers’ money, without the government picking up on the fact that Pindan was not paying subcontractors? That is a question the government needs to answer.

I will read the conclusion of the former Minister for Commerce’s second reading speech, because this situation is happening right now. He said —

I conclude by emphasising that this bill will introduce historic reforms to give confidence back to subcontractors. These reforms will promote business growth and innovation, and make this state a fairer and more desirable place for all to do business; safeguard the livelihood and wellbeing of the Western Australians behind our construction businesses; and complement measures the McGowan government has already delivered through the expanded use of project bank accounts on government projects and enhancing the investigation powers of the state’s Small Business Commissioner.

Where are those powers? Where are those checks and balances? How the hell did Pindan get into this situation with subcontractors yet again having lost? These historic reforms were to give confidence back to subcontractors, but the problem is that subcontractors out there now have no confidence in the government or in doing government jobs, because they are owed tens of millions of dollars on government projects. Why is the government not obligated to pay those subcontractors who are owed hundreds of thousands of dollars? It is not simply about having a trust and putting five per cent in a bank. When subcontractors go to do a job, they do not just rock up and say, “I’ll take the profit, thanks.” They have to supply the toilet, the pipe and the glass, screws, the gyprock, the roof or the tin. They have to buy those things out of their own pockets. The Premier said in 2016—I will read it again —

They are ordinary small businesspeople who need certainty because they spend money in order to undertake work, they have a line of credit with a bank, and they have a mortgage on the line for the work that they are undertaking. If they do not get paid, they lose their house and their business, and their workers do not get paid.

This is a comment by the now Premier. This is May 2021, mind you, not 2016, when the Premier was in opposition, but he is now the Premier. In an article published last week, he was quoted as saying —

“But the good thing is for subbies and workers, there is so much work across the state ...

To say that there is so much work out there, and just to get another job, shows a lack of understanding. What about the \$150 000 that I know one plumber is owed? What about when he has to go to Mitre 10 to pay the account for those toilets he had to put in social housing in Carnarvon, for example? Who will pay for those toilets? They are toilets that were installed for the state government. Who will pay that bill? Who will pay the bill for the workers

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or their superannuation? At tax time, the subcontractor will say, “Sorry, Mr Taxman; I can’t pay, because the state government hasn’t paid me.” Who will pay those subcontractors who have outlaid the money to do the job for the state government? Who will pay?

It is interesting that on 6PR radio the new Minister for Commerce started to go on about how the government introduced this legislation in September 2020. It was introduced by the former Minister for Commerce the member for Butler. She said, “I note that Vince Catania didn’t speak on the bill, so that’s how much he cares.” I thought I would do a bit of digging to see who spoke on the bill. There was an agreement in place to get the bill through as quickly as possible so it could be passed before the end of the term of government. At that time, the opposition gave an undertaking to allow the passage of the bill as quickly as possible, so we limited the number of speakers. Who spoke? The Minister for Commerce, obviously; the then member for Hillarys, who was the lead speaker for the opposition; my good friend the member for Roe representing the Nationals WA; the member for Armadale; the member for Belmont; the member for Forrestfield, the now Deputy Speaker; and the then member for Dawesville all spoke on the bill. I did not see the name of the member for Morley, who is now the Minister for Commerce and who was quick to get on radio to say that the member for North West Central did not speak on the bill.

The ACTING SPEAKER: I think the member for Girrawheen spoke on it, too!

Mr V.A. CATANIA: I was just getting to that, former member for Girrawheen!

Here we go; the member for Morley, the now Minister for Commerce, did not even bother to speak on the bill. How did she make up those complete lies on radio?

I will continue.

Withdrawal of Remark

Ms A. SANDERSON: The member has essentially accused me of making up complete lies. That is unparliamentary and untrue, and I ask that the member withdraw.

Mr V.A. CATANIA: I withdraw. We have to keep going on.

The ACTING SPEAKER (Ms M.M. Quirk): Member, if you are going to make a point of order, I do not think the member actually said “complete lies”. He said “lies”; he did not say “complete lies”, but he has withdrawn it, so we can move on.

Debate Resumed

Mr V.A. CATANIA: Thank you, Madam Acting Speaker.

They are the members who spoke on the bill. I will read out what the then member for Hillarys indicated on Tuesday, 3 November 2020. He stated —

I indicate at the outset that the Liberal Party will be supporting the passage of this bill. Let us be under no illusion about whether this bill is likely to be implemented any time soon. Quite some time ago now, I think it was either in September or October, the Leader of the Government in the Legislative Council, Hon Sue Ellery, gave the Liberal Party a list of legislation that the government intended to pass through the Legislative Council prior to the completion of this parliamentary session to ensure that that legislation could become law before Parliament is prorogued for the 2021 election. The government included some 16 bills on that list, including some bills that had yet to be introduced to the Legislative Assembly, lest it come up with that excuse now.

I will read the email listing the bills that were presented as urgent and that needed to get passed. It states —

Dear Party Leaders,

The Government intends to list the following Order of Business in the Legislative Council sitting week of 24–26 November 2020.

1. Criminal Law (Unlawful Consorting) Bill 2020
2. Children and Community Service Amendment Bill 2019
3. Appropriation (Recurrent 2020–21) Bill 2020
4. Dog Amendment (Stop Puppy Farming) Bill 2020
5. Swan Valley Planning Bill 2020
6. Births, Deaths and Marriages Registration Amendment (Change of Name) Bill 2018
7. Mutual Recognition (Western Australia) Bill 2020
8. Criminal Law Amendment (Uncertain Dates) Bill 2019
9. Ticket Scalping Bill 2018

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- 10. Legal Profession Uniform Law Application Bill 2020
- 11. National Disability Insurance Scheme (Worker Screening) Bill 2020

I did not see the Building and Construction Industry (Security of Payment) Bill 2020 on the list. The minister went on radio to say that the Liberal and National Parties held it up in the Legislative Council. I thought that I had better look at the debate that occurred in the Legislative Council. I could find only the second reading speech of Hon Alannah MacTiernan. It was read in on Wednesday, 11 November, when there were three weeks of Parliament left. It was never declared an urgent bill; it was never on the priority list, yet the minister wanted to play politics, firstly, by saying that I did not speak in Parliament, even though she did not speak in Parliament, because it was an urgent bill that we wanted to get through. We gave that guarantee. Secondly, she said that the Liberal Party and the National Party opposed the bill, when we clearly supported the bill. In fact, the member for Roe highlighted how cascading trusts should be in the legislation because it is part of the recommendations of John Fiocco's report. This is the Labor Party's report that recommended cascading trusts as a way to protect against what just happened with Pindan.

Several members interjected.

Mr V.A. CATANIA: Members will all have a chance to speak.

The issue is that this election commitment was made off the back of the then Leader of the Opposition, Mark McGowan, the now Premier, in 2016, off the back of John Fiocco's report in 2018, off the back of the then Minister for Commerce championing the report and its recommendations, in particular, the cascading trusts, and then, clearly, being lobbied by the industry. I want to know whether that is the bill that went to cabinet. Was there another foreman lobbying? Perhaps even a close relationship with a few builders and developers played a part in amending the bill. Am I getting close, members? That is what it looks like when we look at the commentary and when we look at the government's own report, the John Fiocco report, that clearly outlined the recommendations needed to protect subcontractors.

When we look at the comments made by the Premier, the then Leader of the Opposition, in 2016, we see that the issue around subcontractors was based on companies going broke, yet this legislation does not protect those subcontractors who are owed hundreds of thousands of dollars. They are owed amounts from \$2 000 and \$4 000. They have all contacted me. I have a massive list of contractors. One in Karratha is owed \$100 000. A plumber in Carnarvon is owed \$150 000. Someone else is owed \$40 000. I will not mention all the names because they will be concerned that their creditors will not be paid. Many subcontractors out there are concerned that they cannot meet their obligations, especially those in small regional towns, to pay their bills, hence why the government needs to step up and pay the money owed to the contractors who have done their job. But only today a newspaper report stated —

The McGowan Government has refused to toss a lifeline to subcontractors employed on government projects run by the failed Pindan Group, fearing it would set a "dangerous" precedent.

It certainly has set a dangerous precedent because no subcontractor tradie will do any work for the government. If the government cannot guarantee payments to subcontractors, what hope do the subcontractors have? I know there are union members in this chamber. I know there are members of the Construction, Forestry, Maritime, Mining and Energy Union here. How can they sit here and accept a piece of legislation that will not protect the tradie, the subcontractor, the worker? That is what they are doing. The government's report clearly outlined the need to have cascading trusts to protect the subcontractor from the very thing that happened a week ago. The report continued —

Finance Minister Tony Buti dropped the bombshell today, one week after the collapsed building and property giant called in administrators from EY, potentially leaving 500 subcontractors \$30 million out of pocket.

...

"If the Government is going to guarantee that they will be paying for any bad developer or business operator, that would be a precarious position," Mr Buti said.

"We are not the guarantor of businesses in Western Australia. That would set a very dangerous precedent and wouldn't be a good use of taxpayers' money.

The "good use" of taxpayers' money has just gone to a company that is not paying for the work undertaken for the state government. The state government is saying, "Bad luck, subcontractor. You've just now become the bank for the failed Pindan Group. Therefore, ha, ha, ha. It is not a good use of taxpayers' money to pay for work that you have undertaken for us." How ludicrous are those comments, members? How do we accept that comment by the new finance minister?

When we go through the *Hansard* and look at what members who spoke previously on the Building and Construction Industry (Security of Payment) Bill 2020 said, we can see that they said very much the same things. All the speeches

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were clearly drafted by the same person because they are very supportive of the bill. They spoke about commitment. The member for Belmont said —

We committed to these reforms back in 2016 while in opposition ... The reforms will result in a very positive and dramatic improvement in the outcomes for subcontractors and will ensure that greater protections will be in place for those industry participants.

She listed companies that have gone bankrupt due to unpaid debts. She goes on, but it is no different from what has just happened with Pindan. The Minister for Commerce commented that the bill had not been passed in the other place because the Liberal and National Parties did not want to pass it, after we had clearly indicated that we supported it. I will read out the words of the former member for Dawesville, who said —

The only failure in this case is that the bill will not get passed. This is not a criticism of the minister who has brought the bill to this place, because I know that the Minister for Commerce; Attorney General has been exceptionally busy in bringing legislation to this place ... We know that the bill will not be a priority for the Legislative Council if and when it reaches it. I suspect it is unlikely for it to get out of this place until the end of this week, which means that, given it is not a priority of this government in the Legislative Council, it will have to be put off until the forty-first Parliament and the priority is assumed within that. Within this time, all the practices that members have spoken about, that I have seen happen with my own family and that have been experienced across my district will likely continue. This is at a time when I am most concerned about the level of uncertainty in our economy.

The member for Belmont interjected —

The upper house has been invited to sit for an extended time and the opposition has agreed with that.

There you go. The former member for Dawesville replied —

I appreciate that, member for Belmont, but, as the member would be aware, there are 16 pieces of legislation that this government has indicated are priorities, and this was not one of them. I expect that if that was the case, we would see as much cooperation in that place as possible, but the legislation was not one of the priorities. With that, I commend the bill to the house.

There you go, members. The then opposition clearly supported the bill and clearly outlined its concerns that it would not be passed in the other place. It was clearly not shown as a priority on the list presented to the opposition last year. Clearly, it was not indicated in the Governor's address as priority legislation for the government, but now it suddenly is. Members, the public of Western Australia has started to wake up to the spin this government is known for—spin without substance. The government is a one-trick pony that is now putting hundreds of subcontractors in a huge amount of debt and potentially costing them their livelihoods due to doing jobs for the government. That is the difference.

Despite this all being highlighted and the government having a report that says X, Y and Z should be done to protect subcontractors, the government's own bill has been introduced without some of those protections included. The government must ask: What has the department been doing? Should there not be greater oversight of the contracts the government was awarding, especially to Pindan, a company that, since 2018, had question marks over it? Surely, there should have been greater oversight and greater checks and balances to ensure that taxpayers' money would not be lost. More important, given how you guys championed subcontractors prior to the 2017 election, surely even greater attention should have been paid to ensure that subcontractors were paid. Clearly, it is all just talk, all just spin. If the government wanted to pass the legislation and believed in protecting subcontractors, tradies and employees, it would have passed the legislation during its last term of government, as the then opposition, the Liberal and National Parties, supported it. Why did it not pass the bill? Why did it not make it a priority for this term of government—not after another company has gone bust under this government's watch this time, when legislation and report after report have been laid out? There have been no checks and balances on these construction contracts that this government has given out.

As I said, there have been no checks and balances. A media report states —

Pindan said at the time that the deal would give it access to capital and Asian investors but the company admitted in 2018 it was experiencing cash flow problems and relying on asset sales to pay its bills.

Why did this not ring alarm bells back in 2018? It is heartbreaking because members will know that in their electorates, particularly regional electorates, tradies and subcontractors are a huge part of the community. They sponsor nearly every event, be it footy club, bowls club, darts club or fishing competitions. They participate; they are members of chambers of commerce and they keep the economy going because they buy local. When speaking to one of the subcontractors, I said, "Why didn't you bring this to my attention earlier?" He said, "Vince, because it's become the norm that they may be late in paying or we don't hear from them for a while but they pay. We're

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all too busy doing all this maintenance work on government housing to go back and make sure that they pay every single time. At the end of the day, we're tradespeople."

That really sums up how we have a major issue here; there is a major disconnect between government, contractors and subcontractors. It has been highlighted for years and the government has made a song and dance about it, but we have seen no action other than lip-service from this government. At the end of the day, people who can least afford it are paying the ultimate price. As I said, the Premier is saying, "Don't worry; there's plenty of work out there." The minister is saying that there is a trust system into which they can potentially put five per cent; however, no amount is set in this legislation. We will have to wait for some sort of agreement on price to be included in a regulatory requirement. The minister clearly stated that if the profit margin is in the bank account, contractors should be happy; they can forget that they owe tens of thousands of dollars to the local hardware store or in wages. The government is saying, "You're taking one for the team." The team is the state government: "You're taking one for the state government taxpayer, but don't worry; there's plenty of work out there!" There is a bit of a myth. Yes, there is absolutely a housing boom, but we are seeing anything but a boom in the construction industry. The Minister for Commerce scoffs at that and shows her lack of knowledge in this area, because there is no boom in construction.

Ms A. Sanderson interjected.

Mr V.A. CATANIA: There is no boom in the construction industry, but there is a housing boom. Because the government paid Pindan but Pindan did not pay its subcontractors, they cannot go back to work for Pindan. What is the government going to do? They are not going to walk back to Pindan and say, "Yeah, no worries; I'll go and unblock that toilet. What about my \$150 000?" "Oh, I can't pay you for that, but can you go and unblock my toilet?" I mean, really! There is no subcontractor or tradie —

Dr A.D. Buti: Your toilet would need some cleaning!

Mr V.A. CATANIA: Perhaps the Minister for Finance needs to clean between his ears, given his comments today.

Clearly, no-one is going to work for Pindan; therefore, government housing is not going to be fixed. I hear that the department of housing is doing some direct contracts with emergency trades such as plumbers and electricians so that people do not get hurt or killed if there is a problem with their wiring. That is the concern we have. As the minister said, there is plenty of work out there and they need to be able to pay the bills. The government has not paid for their work, but they have to go out and pay their bills, so they are going elsewhere. They are leaving regional communities to find work and there will be no-one left to do government asset maintenance. The government needs to urgently work out how it can get out of the Pindan contract to ensure that work that needs to be done on housing is carried out before any potential injuries occur, such as from broken glass. Like I said, someone could get electrocuted because of delays or because they cannot get a tradie to do the work.

The government needs to look at ways of maintaining contracts that will service our communities. It needs to look at ways of breaking up the Pindan contract. Instead of being a \$35 million project, it could be broken up into \$5 million lots. The government needs to allow locals to tender for contracts and to employ other locals to carry out its work. The government needs to look at its options going forward. That should have been done yesterday—that is how urgent it is. The fear of houses not being worked on is a major concern. My office is being inundated with people saying, "We need this work; it hasn't been done", and by subcontractors who have not been paid. It will start to sink in when people start calling for their money.

The government will appreciate that that is what led to the Building and Construction Industry (Security of Payment) Bill 2021 being introduced, but it does not fulfil all the recommendations of the government's own report. The report of the inquiry chaired by John Fiocco is a fantastic, very well considered and widely consulted-on report, and it has the answers. However, it may not help the Pindan subcontractors. In fact, it will not help subcontractors who have lost money through Pindan, but it may help avoid a future Pindan situation if it is amended to include cascading trusts. That is what we are working towards: how do we help subcontractors into the future?

I ask the Minister for Commerce and the Minister for Finance how they can sit there and allow these subcontractors not to be paid for work undertaken on behalf of the state government. Under the government's Pindan asset management contract, worth \$35 million, subcontractors are owed tens of thousands of dollars—in some cases, hundreds of thousands of dollars—for work which they did for the state government but for which they were not paid by the contractor, Pindan. In my view, and, I would imagine, in the view of all opposition members, the state government needs to come to the party and pay out those subcontractors.

That is the language that the Labor Party used prior to 2016, and was used by the former Minister for Commerce and the current Minister for Commerce in their second reading speeches. I say to the Minister for Commerce: it is fair go, fair pay. In this day and age, we have seen what happens when people go under—how lives are lost and relationships are wrecked. The effect on regional communities is huge. I plead with the government to act on what it has said—act on the words it has used to protect our subcontractors. It needs to pay out the Pindan subcontractors

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to ensure that they can keep operating and working for the government. It needs to give them the confidence to one day work for the government again. Some construction companies will go bust in the future; it is a fact of life that we have this cycle of companies that go bust. But the government can lead the way; I think I saw that in *Hansard*. The government needs to lead the way. Here is the government's opportunity to lead the way, to do what is right, and to do what is in its own report to protect those subcontractors.

When issuing contracts, the cheapest price is not always the best price. I am glad the member for Armadale is here, because that is what happened with John Holland at the Perth Children's Hospital. The cheapest price was clearly not the best. The government should not think that it is saving money, because it will end up costing. We have seen that time and again, and we are starting to see it again now.

What needs to happen? There needs to be a proper inquiry into how Pindan has got into this situation, given that the company had large contracts with the state government. How did Pindan slip through the eyes, ears and fingers of the state government, given what has been said in the past, the reports that have been commissioned in the past, the parliamentary inquiries that have been held in the past, and this legislation? How did Pindan slip through the fingers of a government that should have been awake at the wheel? It should have made sure that every account was paid and that it met its obligations in a timely fashion within the 20-day period.

The government needs to call an independent inquiry into how Pindan slipped through its fingers, given everything that has gone. That way, we can start to learn and amend the legislation—learn from the practices of companies that go into administration. We are talking about being able to protect subcontractors, their workers, their families and their houses, and regional communities. The opposition fully supports this legislation. We did not have an issue with it during the last term of government, but we are highlighting the need to truly protect subcontractors. Can the minister answer this question: if this legislation were to pass and Pindan were to go into administration in six months' time in the same set of circumstances, would the moneys owed, whether it be \$4 000 or \$150 000, to the subcontractors that had done work on government housing be protected?

Dr A.D. Buti interjected.

Mr V.A. CATANIA: If this legislation were to be passed by both houses and the Pindan situation were to occur in six months' time, would those subcontractors be protected? In answer to that question, the minister's advisers said that no, they would not be. In the minister's answer to the question today, she stated that no, they would not be. We need to work together as a Parliament to make sure that those subcontractors are protected, because the Pindan situation will not be the first and it will not be the last; there will be many more. That is whom this legislation should protect, but it will not. The minister should not stand and say that this bill is urgent because of what has just happened. The time for urgency has passed. The government has missed its moment. The bill should have been passed in the last term of government, but it was not. All those subcontractors have potentially missed out—I say "potentially" because I hope the government comes to the party and pays them out—on hundreds of thousands of dollars.

Dr A.D. Buti: Do you know anything about insolvency laws?

Mr V.A. CATANIA: It was on your watch, not the previous government's. You have let down subcontractors in this state, which you championed but never did. You started to use spin because you are a one-trick pony. You have nothing behind you. You are a piece of cardboard! If you actually cared about subcontractors, you would follow the John Fiocco report and put cascading trusts in it.

Dr A.D. Buti interjected.

The ACTING SPEAKER (Mr D.A.E. Scaife): Minister for Finance! The member on his feet will be heard.

DR D.J. HONEY (Cottesloe — Leader of the Liberal Party) [5.32 pm]: I rise to make a brief contribution to debate on the Building and Construction Industry (Security of Payment) Bill 2021. As has been pointed out by the lead speaker for the alliance, we support this legislation. I want to highlight a point. I had a lecture earlier today from the Minister for Health about the importance of what we say in this place and elsewhere being correct and true. I was most surprised to receive a report from my colleagues that the Minister for Commerce had said on radio 6PR that the opposition had held up this legislation in the previous Parliament. Obviously, she was caught up in the moment and was embarrassed by Liam Bartlett on his program when he asked why the Labor Party had not introduced protection legislation in the last Parliament, given that it had said that it was a priority, as highlighted in the Fiocco report. The minister said that the opposition held it up. I will not waste this chamber's time by going through the genealogy of all this. I think the member for North West Central did an excellent job of highlighting that the opposition will do everything it can to facilitate the proper and urgent passage of important legislation when the government asks it to do so. A few of the members opposite I see in the chamber now were in the chamber in the last Parliament, but many were not. We acceded to the government's demands on every single occasion by every single deadline. I sat here then and I can tell members that some of the debate was quite galling given the nature

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of the legislation. On every single occasion, we sat in this place until the late hours and, as necessary, curtailed our contributions to the debate to enable the government to get its urgent legislation through.

The simple truth is that the government did not prioritise this legislation in the last Parliament, and that is why it was not passed. I heard some merriment about the puppy farming bill. We all know that puppy farming is illegal in this state now. We know that that bill was introduced for other reasons. I know that some members feel very passionately about it, and it is very important, but this is more important, given that puppy farming is already illegal and anyone who is doing it can be prosecuted if they are found out, but that is the problem—often they are not.

This legislation was not prioritised by the government at all. What I find really disturbing is that I would like to make a much more substantial contribution to the debate on this bill. It is an important bill. It has some 130 pages, but it was delivered into this chamber only an hour and a half ago. We were given no preview of the bill as it has been presented. We have been told that it is the same as the previous bill and we are supposed to review this bill because it is urgent. Pindan has already collapsed. This is more of what we saw at the end of the last Parliament—that is, utterly chaotic management of the legislative program by the government not prioritising its own bills that it now says are critically important. Members can correct me, but I think that 14 other bills were introduced into Parliament before this bill. This bill was introduced only after there were media articles about the collapse of Pindan. This is an attempt at media management, not an attempt to have proper scrutiny and review of legislation in this Parliament. It is really disappointing. The government has 53 out of 59 members in this house and 24 out of 36 in the other house, yet it still cannot get its affairs in order properly to introduce legislation and give the opposition the opportunity to properly scrutinise legislation, which, given our numbers, is more important than ever.

Mr D.T. Punch interjected.

Dr D.J. HONEY: Why does the member for Bunbury not just listen?

Mr D.T. Punch interjected.

Dr D.J. HONEY: Why does the member for Bunbury not just listen?

The ACTING SPEAKER: Minister!

Mr D.T. Punch interjected.

Dr D.J. HONEY: I can tell the member for Bunbury that we acceded to every single request —

Mr D.T. Punch interjected.

The ACTING SPEAKER: Minister, I ask to hear from the member for Cottesloe.

Dr D.J. HONEY: We acceded to every single request from the government to pass legislation by the deadline that it had set. That is what I know and if the member says the opposite, he is not being truthful in this chamber. The other chamber in particular did everything it could to accede to the request of this government to pass legislation. As was pointed out, of the 16 bills on the priority list, this was not one of them. It is simple, members. It is entirely in the control of this chaotic government, which could not manage its own legislative program properly in this house or, in particular, in the Legislative Council, and it looks like we are on the same footing now. The government is ascendant. It has a thumping majority; in fact, it has an absolute majority in both houses, so it can do whatever it likes. It can change the Constitution, but it cannot get its affairs in order.

Mr D.T. Punch interjected.

Dr D.J. HONEY: We in this chamber are not getting the opportunity to review this legislation properly and I think it is disingenuous of the minister in particular, when she is caught short or embarrassed by a question from a journalist, to blame the opposition. As with all the other bills, we will do our best to accede to the government's demands. I do not understand how this legislation is so urgent that we had the opportunity to review the bill for only an hour and a half before it was introduced in this place. I do not understand that. Pindan has collapsed. That failure has occurred.

As the member for North West Central pointed out, there is at least the opportunity for some scrutiny. The opposition will have an opportunity to review how late it was that the government was still entering into contracts with Pindan and whether it was completely solvent. In fact, it may be that Pindan had been insolvent for some time. We will find out whether or not that was the case, members, because a company like that does not go broke overnight. The Minister for Finance was interjecting earlier. Companies of this size do not go broke overnight—there is warning. What due diligence did the government do when it was entering into ongoing contracts with the company? What did it do to help protect all those small subcontractors?

This is an important bill. As we did in the last Parliament, we will support this legislation. The minister has interjected a number of times about cascading trusts or the like. For some reason she is obsessed with whether the Liberal Party supports cascading trusts or the like. I will say that cascading trusts are certainly an appealing idea. If they could

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work, that would be a good thing. I understand that there are technical complexities with that. But I think there is another solution here and another issue that is far broader than what will be dealt with by this legislation. I see the member for Kimberley is in the chamber—welcome. In the more remote parts of the state, there is a fundamental issue with the way that government is structuring contracts. In the past, with large projects, such as, say, the Narrows Bridge, the government would manage the contract and farm out parts of that work to contractors, and the government would pay them directly. What we have seen over time is the morphing of projects into mega-contracts. The issue is broader than just construction or housing projects, as we have seen in this case. Ongoing maintenance programs, particularly in remote communities—the member for Kimberley would know how critical those programs are in communities—are done under large head contract arrangements. Therein lies a fundamental problem: workers and smaller contractors in those communities cannot get work. I was talking to a plumber in Halls Creek who is now training to be a nurse because they could not get any plumbing work in Halls Creek. As the member would know, Halls Creek is a big community; there is lots of plumbing work in Halls Creek. But it is all managed by a large head contractor and staff come in from Broome or wherever, so the Halls Creek community is absolutely struggling with unemployment. The shire is doing good work and the local Aboriginal corporations are doing what they can, but they are missing out on important work because of these head contract arrangements.

I appreciate that it is not within the scope of this bill, but I say to the Minister for Commerce and the Minister for Finance that this is something that this government and this Parliament need to look at. How do we break up these contracts so that government is not effectively held hostage by these large head contract arrangements? I think the Metronet project is being built by two Spanish companies. Are they both Spanish, or is it only one? Anyway, it is two European companies.

Mr D.T. Punch: You don't know what you're talking about.

Dr D.J. HONEY: I tell you what, member for Bunbury, compared with you, I am Einstein!

Seriously, Minister for Commerce and Minister for Finance, the way these contracts are structured with large head contractors and principals is a structural issue that not only prevents workers in smaller communities getting work, but also lays government, if you like, open to the fact that the subcontractors doing the work do not get paid when the principal or the head contractor fails. I think there is another way to solve, or at least mitigate, this problem—that is, to look at having more project management resources in government. Members know that I am not normally one to argue for bigger government, but I think what is required in this case is more project management capacity in government and dividing up that work more. Not to belabour the point for the member for Kimberley but I think that, especially in remote communities, it would be a key enabler for providing critically needed work in smaller communities.

I think the idea of instituting payment schedules and making sure that has to be done within 15 days is clearly a very positive step forward. Formalising adjudication when there are disputes is a way to minimise the cost of litigation or hopefully avoid court litigation over unpaid bills, and is certainly a step forward. Making sure that that process can be resolved in a very short time frame—in as little as 10 days as described by the minister in her second reading speech—will go towards making it fairer for contractors. Much has been made about the retention trust scheme that will apply. Again, not to repeat the excellent contribution from the member for North West Central, this is presented as a solution to contractors not being paid. It comprises only five or 10 per cent of the potential amount owed. Yes, the contractors may get some payment back, and under the bill that amount will be quarantined, but it still represents only a small amount of the total amount owed.

Ms A. Sanderson: Do you support cascading trusts?

Dr D.J. HONEY: I have already addressed that, minister. I spoke to that. The minister can read *Hansard* for my exact response on cascading trusts, which she is clearly fascinated by. Quite what that has to do with the passage of this bill —

Mr P.J. Rundle: The Attorney General used to support it.

Dr D.J. HONEY: The Attorney General is clearly a fine member.

Ms A. Sanderson interjected.

Dr D.J. HONEY: The minister can read my contribution on that in *Hansard*. I think the minister will be satisfied with my response.

Several members interjected.

Dr D.J. HONEY: I am trying to get this done for you guys in time and to give my colleague an opportunity to speak.

A notable and good feature of part 7 of the bill is the ability to identify bad players and especially those who hide behind the process of dissolving one company and then forming another company. I think that is an excellent part of this legislation. All too often bad players have been able to re-participate in bidding for government work when

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in fact they are dishonourable people and should never be allowed to do it. That certainly has very strong support from me and members on this side of the chamber, as does the bill. Thank you very much.

MR P.J. RUNDLE (Roe) [5.46 pm]: I rise to briefly contribute to the Building and Construction Industry (Security of Payment) Bill 2021. I might in some ways be plagiarising my speech on this bill last year because we have had such little time to prepare. As the member for Cottesloe pointed out, we were given the bill 90 minutes ago and received a briefing this morning. The changes pointed out were a few commas and a few full stops, member for North West Central. We are obviously looking at exactly the same scenario as the one some months ago, but it has been prompted by the situation with Pindan. It is really disappointing that the government has rushed back in with almost exactly the same piece of legislation and dumped it on us when, as the member for North West Central pointed out, 11 priority bills were lined up in the Legislative Council at the end of the last term of government. Funnily enough, the security of payment bill was not among them. That is disappointing. There has been no time for briefings. “Lip-service” is what I would call the time the opposition has had for preparation. Our new commerce spokesperson has done very well. He read the 350-odd pages of the Fiocco report in a short space of time to get himself up to speed. It was quite disappointing to read in the minister’s press release today that in the last term of government it was the fault of the Liberals and the Nationals that this legislation did not go through. It was not our fault at all, because the bill was not even on the list of priority bills at the end of the last Parliament. Those are my first points. I am disappointed in the Minister for Commerce’s press release trying to blame the Liberals and the Nationals.

As I said in my previous speech on this when I was the commerce spokesperson, it is a good first step, but there is room for improvement. What probably disappoints me the most is that the government has tried to use a cascading trust, or some similar wording, or a five per cent retention trust, as some way of covering up and saying, “Here we go. We’re taking into account cascading trusts. We’re sort of blending it all in together, and this is going to be a solution.” We have seen that when subcontractors get left high and dry, a five per cent retention will not be the solution. The disappointment for me is that the Murray and Fiocco reports have all implied that the cascading trust scenario is the way to go. However, as we heard in estimates last year from the Attorney General when he was Minister for Commerce —

Without that all being clarified by legislation, the risk was that if we had cascading trusts, money would get glugged up in the system. Although, as in the reports of Collins, Murray and Fiocco, it may be done with good intent and academically, the practical effect would be that unless the problem with payment schedules and the way to sort out payments was cleared up first, money would just get locked up in trusts and people would go bust.

That is the real disappointment for me. Those three reports identified it. The minister identified it. A WA Labor document in 2016, *WA Labor: A government for you*, spoke about cascading statutory trusts and how WA Labor would deliver that as an election commitment. That has not yet been seen. Protection for subcontractors was meant to be part of that. Apparently, a demerit point system is the way the government is going to fix it. That is a real disappointment. As Josh Zimmerman pointed out on 25 September 2020 in an article in *The West Australian* —

WA subcontractors are furious over proposed laws designed to protect payments to tradies working on big projects, saying they leave small business owners exposed to crippling losses.

Before drafting the Bill, Commerce Minister John Quigley had been outspoken in his support for the introduction of “cascading statutory trusts”.

The trusts would force head contractors to set aside progress payments for subcontractors.

Currently, there is nothing to stop project managers using that money however they see fit.

This is a disappointment, Minister for Commerce. This was identified by the previous minister. The new minister has had the opportunity to make some changes. What the minister has done is just dump on us exactly the same bill in response to the Pindan situation. The minister has had the opportunity. The minister could have worked on this and made some changes. As I said, we will be supporting the bill. We believe it is a step in the right direction. But time and again, our contractors in regional areas have been caught out. I do not believe that this legislation, with its five per cent retention trust, will do the job.

I want to outline again a couple of examples that really upset me over my first three or four years as the member for Roe. I have had constituents come to me who have done the hard work and have been let down by the head contractor. Some of these head contractors are making an art form out of doing this. Firstly, they work from variation claims, which on some occasions are substantially less than the actual cost of the work that is done. The head contractor then decides whether the invoices submitted by the subcontractors will be paid in full or partially. They also decide whether they will pay some of the external costs like tip fees, licence fees and travel costs. The other example is small errors in paperwork, which then extend the payment period for many months. This is becoming an art form in the regions and no doubt also in the metro area.

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I will give a couple of examples in my electorate of Roe. Marine and Civil was the lead contractor on the Arthur River bridgeworks. It went into voluntary administration, which left at least two businesses in Narrogin waiting on large payments. A simple google search found that Marine and Civil has been in voluntary administration at least once before. It was a real disappointment that this government appointed that company to do those bridgeworks at Arthur River, when it had actually phoenixed from the same company on a previous occasion. These are the sorts of examples that upset our constituents, and upset our subcontractors. We had two examples at the Katanning and Narrogin hospital projects. They were good royalties for regions projects. The money came through, and those head contractors then left all of our local contractors out of pocket.

As far as I am concerned, the other one that really upsets me when we talk about a state government contract is the scenario that happened at Matagarup Bridge. The Minister for Transport said that the government would ensure that all payments would be honoured as a result of yet another lead contractor, York Civil, going into voluntary administration while the project progressed. Member for North West Central, what I am asking is: why will this government not ensure that all payments are honoured as a result of Pindan going into administration?

Mr V.A. Catania: Good question.

Mr P.J. RUNDLE: Why is it good enough that York Civil, when working on Matagarup Bridge, went into administration and the government backed it up and made all the payments to the subcontractors, yet when it happens to Pindan, the Premier says, “No, no. There’s a lot of work out there; you can fend for yourselves”? It just does not add up to me. Why is it okay for one but not the other? I would be curious if the minister in her response could give us an answer to that question.

Just a couple of other points if I can before I wrap up, because we are coming to that time of the evening. We had a project in Dumbleyung, and I was very concerned that, once again, our subcontractors had been left high and dry. Luckily, Main Roads WA had not done the land acquisition. The subcontractors had to put a sign on the farmers’ land either side of the two truck bays involved saying that Main Roads and the head contractor were not entitled to access that land because Main Roads had not transferred the land across. They had to physically use those sorts of tactics to find a way of getting paid. That was a real eye opener for me. When they asked me what I thought about it, I said that as far as I was concerned, if those farmers still owned that land and it had not been transferred, maybe it was a good way to leverage a result, and, as it turned out, funnily enough the money was paid to those subcontractors straightaway, because Main Roads wanted to get those truck bays done before 30 June. That was quite a learning experience for me.

I want to point out in closing that for me, the highlight of this bill is the extra powers that will be given to the Building Services Board, as it was pre-Christmas. It will be given the power to exclude individuals, non-corporate bodies and corporate bodies from registration when an insolvency event occurs. That is a really good step in the right direction in a scenario when people say, “We’ve gone into liquidation over here. Let’s just register in another name, and we’ll fire up again and we’ll do exactly the same thing to another group of subcontractors and local community people in another name.” Minister, I have not had time to read it, obviously, but I am assuming that the Building Services Board will have an opportunity to stop this scenario of phoenix companies starting up again and leaving local contractors stranded.

Part of it is that we need an education process. We need to make sure that the whole industry is well educated on these changes when this bill does eventually—I am assuming—go through the Legislative Council. It is certainly a good step in the right direction when it comes to making a start. However, the contrary nature of some of the statements made by this government when it was in election mode back in 2016—that it was going to bring in cascading trusts and the like—is a real disappointment to me. I would like to close there.

Sitting suspended from 6.00 to 7.00 pm

MS M.J. DAVIES (Central Wheatbelt — Leader of the Opposition) [7.01 pm]: I rise to make a brief contribution. I do not intend to extend the second reading stage of the Building and Construction Industry (Security of Payment) Bill 2021, but the opposition will be going into consideration in detail. It is an important bill. But, to reiterate what the shadow Minister for Commerce put on the record, I make it clear that the opposition has no intention of opposing the bill. We are fully supportive of the legislation, as we were when it came through the house in the last Parliament—we certainly did not stand in its way the last time around. I think the member for Roe articulated our position as our spokesperson in the previous Parliament; certainly, the shadow has done the same in this iteration. We understand how important the building sector is from a Western Australian point of view. The Western Australian construction sector is valued at around \$17.6 billion and its many, many jobs represent about nine or 10 per cent of the total WA workforce. We are talking about a significant part of the Western Australian economy.

As opposition members have talked about—I know this is shared by all members here—we all have examples of subcontractors who have had payments fail to come through. I think it is incredibly difficult when those contracts are linked back to the government and when due diligence has not been done. Businesses, particularly small businesses,

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put themselves through a rigorous process when they put up their hands to participate in government contracts. I know that when we were in government, we spent a great deal of time trying to ensure opportunities for small contractors to participate. Certainly from the Water Corporation's perspective, as a previous Minister for Water, we looked at ways of breaking down some big contracts to allow different businesses, and particularly regional businesses, to either collaborate or qualify to participate. When a business gets a contract that is backed by government dollars, there is certainly a view that it will get that payment. That view has been expressed on a number of occasions, and we all have examples in our electorates of when that has not occurred.

There has been some suggestion—again, it has been well canvassed by the member for North West Central, the Leader of the Liberal Party and the member for Roe—that the opposition played some role at the time to block the progress of this legislation. I think the member for North West Central forensically laid out that that was not in fact the doing of the opposition, that there was no intention and that, in fact, it fell to the government to prioritise its legislation in the last year of the last term of government. We have the emails that came from the office of the Leader of the Government in the Legislative Council identifying the legislation that had priority and proving that this legislation was not on the priority list. The government missed its chance to bring in this legislation. As the member for North West Central said, legislation such as the Dog Amendment (Stop Puppy Farming) Bill 2020 was fourth on the list. The Criminal Law (Unlawful Consorting) Bill 2020 was first on the list. The Children and Community Services Amendment Bill 2019 was also on the list. The Ticket Scalping Bill 2018 made it into the top 10. The Legal Profession Uniform Law Application (Levy) Bill 2020 was there, amongst others. The Swan Valley Planning Bill 2020, the Birth, Deaths and Marriages Registration Amendment (Change of Name) Bill 2018 and the Mutual Recognition (Western Australia) Bill 2020 were considered to be urgent, and the government wanted to get them through in the last few sitting weeks of the last Parliament in November 2020. This bill was not on the list, despite various ministers on numerous occasions patting themselves on the back and saying that they were the saviours of subcontractors and small businesses that had been impacted by the inaction of previous governments. It was with some disappointment that we saw the current Minister for Commerce deflecting and accusing us of playing some role in preventing that legislation from coming to fruition. It could not be further from the truth.

We now turn our minds to what bills have been introduced as the priority of the new Parliament, with its new set of ministers and new cabinet. I was in the chamber when the Attorney General stood up to read in the Legislation Bill 2021. I remember Madam Speaker making a comment about the second reading speech and how enthralling it was. The Legislation Bill 2021, for members who were not listening to the extraordinarily long second reading speech on the day, had already been introduced into the Legislative Assembly in June 2018 and passed without amendment in October 2018. It then lapsed in the upper house awaiting a second reading. Essentially, it was a bill to update the way that we draft legislation. That, I think, was the first piece of legislation that was read in by this government—a bill to update the way in which we publish, draft and make legislation available to the public.

Mr P.J. Rundle: Very important.

Ms M.J. DAVIES: It is important, but I would not have said that it has the highest priority when there are issues like this one, on which the government previously made such strong statements about our subcontractors and the reforms that it needed to introduce.

In the two weeks that we have sat so far we have also had introduced procedural and money bills. We understand that they are important. We understand that the Treasurer's Advance Authorisation Bill needed to be read in. I presume that we will get to the Supply Bill 2021 at some point, but we have also had introduced into the house the Veterinary Practice Bill 2021, the Sunday Entertainments Repeal Bill 2021, the Metropolitan Region Scheme (Beeliar Wetlands) Bill 2021, the Aquatic Resources Management Amendment Bill 2021 and the Conservation and Land Management Amendment Bill 2021. I went to the briefing on the Financial Legislation Amendment Bill 2021 with Hon Dr Steve Thomas. That legislation has been around in one form or another for a very long time. Again, it is a little like the Legislation Bill—it will improve the way that financial reporting is done for all government departments. That made the cut before we got to the legislation that we are debating today. By my count, 11 bills have been read in. As the member for North West Central said, I question the urgency or priority that has been given to some of this legislation. Off the back of the Pindan collapse over the course of the last couple of weeks, we have seen the introduction of the Building and Construction Industry (Security of Payment) Bill 2021, a bill that this government had the opportunity to bring in, but chose not to prioritise. That is very disappointing. There are definitely some politics around this. The member for North West Central outlined very clearly that we can debate this. We do not oppose any of the legislation being proposed. We are very supportive of trying to strengthen legislation to support our subcontractors and the people who rely on them for their employment, but it would not have fixed the problem for Pindan, so the urgency of this legislation escapes me somewhat.

We are dealing with legislation tonight, having had a briefing at 9.00 am with the shadow minister and having been unable to access the second reading speech or the bill. In fact, I think my office tried to access it, and we were not able to get it. Again, I go back to the fact, which we have discussed, that this government has an enormous majority,

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and with that comes responsibility. That responsibility should extend to allowing the opposition to do more than stand and speak to what we know has been introduced previously in this house, because there are new opposition members of Parliament—not in this house but in the Legislative Council—who should be given the opportunity to familiarise themselves with the legislation. We should have been given the opportunity to contact key stakeholders and have a discussion with them now in the context of a new Parliament and a new opposition. That has not been able to happen to any great degree. The expectation that we are able to provide at least some semblance of critique on a piece of legislation that was announced less than 24 hours ago and which we are now debating again is somewhat reminiscent of when we were dealing with emergency legislation during the last 12 months, and that was related to COVID. As the Leader of the Liberal Party said, the opposition was very amenable to supporting emergency legislation to ensure that the government had the power it needed to deal with issues that arose as a result of the pandemic and how they needed to be managed. We understood that that was a special set of circumstances. We are now three weeks in, and this is a second-term government, so, quite frankly, I expect a little bit better. It is disappointing, and we should not go any further without making that known. This is not a short piece of legislation.

Ms A. Sanderson: It is the same.

Ms M.J. DAVIES: That is right, minister, it is the same, but, as I have said, we have a new opposition, we have a new shadow minister, we have new members in the Legislative Council and we have not been given the opportunity to touch base with key stakeholders. Anyone who has been in our position or in government understands that the duty of everyone in this place is to make sure that we assess legislation, ask questions, have the opportunity to talk to people about how it is going to impact them and then, potentially, have a discussion in our party room and make sure that we are making a sensible contribution. I point out that the opposition has not been able to do that in less than 24 hours, and we will go to consideration in detail and ask questions of the minister. I trust that when we are asking those questions, they are taken in the good faith that we turn up as the opposition trying to do our best with the numbers we have and the time we have been afforded by a government that I do not think has managed its legislative agenda very well in the first three weeks we have been back in this Parliament. Again, I will sit down and let us go to consideration in detail.

Of course, we will not have any significant issue with the content of the bill. We support it. As I said, we supported it in the last Parliament. For us it is about making sure that we are putting protections in as much as we can. We have raised the issue of cascading trusts and strengthening that provision in the future. I note the minister has said that that is not in the bill because the government does not think it can be achieved at present. I suspect that there are other reasons for it not being included in this legislation, and I think the shadow minister will explore it as we go through consideration in detail. With that, I will sit down and we can move on to the next stage of the bill.

MS C.M. TONKIN (Churchlands) [7.14 pm]: I have been listening to the opposition this evening, and I feel I have something to contribute to the debate on this Building and Construction Industry (Security of Payment) Bill 2021. I have worked in the field of public procurement for over 25 years now, including as the head of the Queensland government's central procurement agency, so I have a great deal of experience in understanding the construction industry and the problems of subcontractor payments. My most recent international consulting experience has been in developing a procurement strategy for a sewage treatment plant and network in the capital city of a populous developing country, so I understand complex projects as well and the risks that arise under them. Closer to home, my son has worked in the building industry for almost 20 years, so I fully understand how the subcontractor end of the building and construction industry works. Indeed, I have done his books and I have looked at the books of companies he has worked for, so I have a very good understanding of how that segment of the market operates. I understand that head contractors work on very, very fine margins and that cash flow is very important to the sustainability of their businesses. However, without discipline, juggling cash flows can get out of hand, and I understand how easy it is for otherwise successful businesses to get into financial difficulties.

This legislation will bring Western Australia into line with other Australian jurisdictions, and it will provide key rights and protections to contractors by providing a statutory right to receive payment and an effective process to receive delayed payment through rapid adjudication and/or court proceedings. This is very important, because without this kind of discipline being imposed on contractors, they are inclined to string subcontractors along. We have all heard the stories of subbies being told, "It's all right, you've worked with us for a long time, your payment is guaranteed. Don't worry about it." They keep working and they keep investing time and energy into a contract—and money, because they are buying goods et cetera and paying their own staff—and they then find themselves out in the cold when it comes to payment. Head contractors can easily lose track. It is so easy, because they are on such fine margins and they are therefore juggling their cash flows very carefully.

This legislation will bring discipline on both sides. It will bring better communication with subcontractors about when payment is not going to be received and the reasons for it. It will allow communication with them in a timely fashion so they are not strung along or do not continue investing when there is no prospect of them being paid. This is a very important element of the bill. Critically, the bill will also impose discipline on contractors. They must

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manage their cash flows more intensely and effectively so they are able to make payments when they are due. This is an excellent bill in that regard. Some would say that all the funds under a contract should be put into trust. That would never work in this industry because of the fine margins on which it operates and the importance of cash flow, but this bill will provide some very important disciplines on the industry. Greater discipline in cash flow management is also likely to reduce the incidence of contractors bidding low to win business simply to buy cash flow, so they will be much more aware of their cash flow needs and will not enter into that sort of game. That is a game that many who are desperate and mismanaged will enter into.

Going back to my public procurement experience, perceptions of risk concerning payment also give rise to contractors and subcontractors charging risk premiums. If people do not think they will get paid, they will charge an extra amount to cover themselves in those circumstances. Greater certainty around cash flow management will result in better economy and efficiency in the building and construction industry in this state, which is good for the economy generally.

MS A. SANDERSON (Morley — Minister for Commerce) [7.22 pm] — in reply: I want to thank all members for their contribution to the debate on the Building and Construction Industry (Security of Payment) Bill 2021 and I appreciate that members of the house are supportive of the reforms contained in this historic bill. It is a very important bill that touches on the lives of some 140 000 Western Australians who earn a living in the building and construction industry in this state and on the 42 361 local businesses that operate in the industry. The McGowan government is acutely aware of the plight faced by many subcontractors and suppliers in getting paid for the work that they do and strongly believes that participants in the building and construction industry should be paid more promptly for the work that is performed on time, every time. It does not matter whether it is a big business or a small business; at the end of the day, anyone who carries out construction work under a contract deserves the rights and protections of this bill. In the lead-up to the March 2017 election, WA Labor made a firm set of policy commitments to drive much-needed change across the industry, and this bill delivers on those express commitments. I will go through some of the members' specific questions and the issues that were raised.

In response to the comments of the Leader of the Opposition and the members for North West Central, Roe and Cottesloe on the priority of the bill, since 2017 the government has advanced a number of separate reforms that have all complemented each other in line with the election commitments we made in this space. That includes an immediate move to the extended rollout of project bank accounts for government-funded projects, which are now being used on the majority of government projects valued at over \$1.5 million. Under the previous Liberal–National government, they were only being used on projects managed by the Department of Finance. We expanded the powers of the Small Business Commissioner. The member for North West Central asked what that was! We expanded those powers to include investigative and coercive powers. They are significant powers of the Small Business Commissioner. The Small Business Development Corporation has not received reports of non-payment from Pindan's contractors. I would say to members that if they have those reports, the very best and most useful thing would be to refer those constituents to the Small Business Commissioner for investigation so that the commissioner can investigate those reports instead of opposition members using this to promote their own position.

Mr V.A. Catania: Will you take an interjection?

Ms A. SANDERSON: No, I am not taking interjections at this point.

I refer to the creation of a supply debarment regime. This government passed the Procurement Act in 2020. Under the previous government, there was no capacity, essentially, to bar companies with poor contract practices from applying for government contracts. We have now built that capacity in.

Mr V.A. Catania interjected.

Ms A. SANDERSON: The bill before the house delivers on the remainder of the McGowan Labor government's election commitments to introduce industry-wide laws that protect the payments of subcontractors working on both government and private projects.

The SPEAKER: Member for North West Central, your interjections are not welcome by the minister. You will have an opportunity in consideration in detail should you wish to ask further questions.

Ms A. SANDERSON: The government committed to providing long-term solutions, not short-term fixes, to address the longstanding problem of security of payment in the construction sector. This necessitated undertaking meaningful consultation through the preparation of the Fiocco report, consultation on the vast suite of recommendations made in this report and the release of a green bill in May 2020 to over 50 stakeholders, including peak groups, government agencies and prominent individuals in the industry. The bill did not pass through the other place last year, and that is a shame.

Mr V.A. Catania: Because you didn't prioritise it.

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Ms A. SANDERSON: What was not mentioned by the opposition was that the Liberal and National members in the other place were given the opportunity and were asked to sit more weeks of the session to pass it, and they said no!

Mr V.A. Catania: We said yes.

The SPEAKER: Member for North West Central, you have been asked not to interject. You have been advised that it is unruly and you have been told that you can ask your questions during consideration in detail. I ask you to desist once more.

Ms A. SANDERSON: The offer to sit more weeks to deal with this legislation and other important legislation was declined.

I make the point about managing the legislative program to date that the standing orders of this place dictate that the first two weeks of Parliament are dedicated to the Address-in-Reply. That is contained in the standing orders. This is the first opportunity to deal with this bill outside of those standing orders, and that is exactly what the government is doing.

This bill is very much a priority for the government. The member for North West Central commented on trust accounts, and throughout his contribution consistently contradicted himself and insisted on reading one single clause in isolation, when the clauses work in operation together. Let me be clear: our commitment was to increase the use of project bank accounts, or trust accounts, on government-funded projects and to introduce a retention scheme for all projects, and that is what we are doing. In July 2019, we delivered on our project bank account commitment and part 4 of this bill now delivers on the retention trust scheme commitment.

Members opposite have been critical of this bill because it does not contain the construction trust scheme. This criticism is a little galling, given when members opposite were in government they did nothing for subcontractors in this state. The best they could manage was a half-hearted review of the Construction Contracts Act, which recommended next to nothing, and a trial of project bank accounts on a handful of government projects. This is despite a wave of insolvencies taking place in the industry under the former Liberal–National government’s watch, the Building the Education Revolution fiasco, the collapse of Diploma Group, BiltonCorp group and CPD Group, and the well-publicised payment issues on the Perth Children’s Hospital. It has taken a Labor government to deliver meaningful reform, roll out the use of project bank accounts on government projects, and give the Small Business Commissioner the powers needed to help subbies. If it were up to members opposite, we would have no change and the status quo would continue in this state. Despite what members opposite believe, they are certainly not the friend of subcontractors in Western Australia.

Once passed, these laws will be the best of their kind in the country. They will establish a monthly right to progress payments, a maximum 25-business day payment period and an effective process to recover disputed, delayed payments. They will create a retention trust scheme that will cascade down the entire supply chain. This is the first of its kind in Australia that will better protect subcontractors’ retention money from being misappropriated or lost altogether in insolvency. It will provide building industry regulators with the necessary powers to remove from the industry builders with a history of insolvency or not paying their subcontractors.

Government properly and thoroughly considered the recommendation made by Mr Fiocco to legislate a construction trust scheme for all subcontractor payments on government and private projects. I met with Mr Fiocco on taking on this portfolio so that I could understand the thinking behind those trusts and to hear his views directly from him. On reading the report, which I doubt the member has done, there were varying reviews on construction trusts. When one reads those varying reviews, it was the view of the government that to implement the cascading trusts, when there are such disparate views and uncertainty around the implementation of those trusts, would have been a step too far.

Interestingly, post release of the report, when a number of subcontractors and subcontracting representative groups realised that they would also be held to the cascading trust—because let us be clear, it runs through the entire chain—they walked back their support because it has the potential to impose a significant administrative and cost burden on small businesses, often run by mum-and-dad or husband-and-wife operators who are also busy raising families and paying their employees. When people realised the potential cost across the entire chain, a lot of that support evaporated. This bill will strike the right balance and it will go further than anything else. It will strike a balance between regulating that security of payment and not imposing onerous and costly administrative processes on small business. To suggest that in some way the government was influenced by property developers is simply untrue and, frankly, outrageous. That was absolutely the suggestion from the member for North West Central. Although cascading trusts have a theoretical attraction, the administrative burden is potentially too much for small business. The steps that we will take in this bill will take us further than any other jurisdiction. It is also evidenced that cascading trusts could potentially drive up financing costs for businesses, particularly small businesses, and be administratively cumbersome in payment processes, record keeping and auditing.

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The business model in the building and construction industry is heavily reliant upon cash flow, as the new member for Churchlands outlined. Like other industries, businesses use money received on one job to pay debts as they arrive. During our last term in government, the Liberals seemed to understand this. When the Building and Construction Industry (Security of Payment) Bill 2020 went through the Legislative Assembly, the lead speaker for the Liberal Party, the former member for Hillarys, said —

... the government has chosen not to go down the path of statutory deemed trusts. On balance, I think that is probably a good thing because those sorts of schemes can have as many problems as they purport to solve.

If these funds were no longer available to businesses that rely on the use of the funds, they may face an increased risk of insolvency. It is therefore the government's view that although such a scheme can be contemplated, before it can be, the reforms in this bill are needed to ensure that there is an effective dispute resolution process, so that payments will not be held up in trust accounts and the industry has the time to adapt and understand the use of trust arrangements and retention money. This bill is as much about regulating the construction sector as it is about changing behaviours in the construction sector. This industry is too big, too important and too key to the state's economy to destabilise it with reforms that are not yet well understood. The reform process must be evolutionary and focus on areas where change is absolutely critical. Once this change has taken place, we can consider whether further reform is needed, which is precisely why the bill includes a review clause.

In response to the comments from the members for North West Central and Roe regarding Pindan Group and payment on government projects, the situation is extremely upsetting for those subcontractors. Although the government accepts that this legislation cannot apply retrospectively to assist those subcontractors, the situation they now face is the very reason that we seek to introduce these laws and progress with haste. Unfortunately, the current commonwealth government's insolvency laws do not permit the state government to preferentially direct payments to the subcontractors of Pindan for money owed on government projects. Insolvency laws prevent the government from doing that, and any payment that the government might make to those subcontractors would likely be clawed back by the administrators and put back in the pool. By law, we are not able to pay those subcontractors directly. These laws have been designed to protect the interests of all creditors equally and do not make allowances specifically for subcontractors. Any preferential payments of this nature would likely be clawed back by administrators in their consideration of all the debts to Pindan companies. We are working closely with subcontractors and the administrators on the best way to ensure that payments are made fairly and within the confines of commonwealth laws.

In response to the member for North West Central's question about whether this bill will protect subcontractors into the future, yes, of course it will. The bill will provide a holistic set of protections in respect of funds held by contracting parties. The opposition insisted on reading one single clause in isolation; however, a series of clauses work together to protect subcontractors. The reduction in allowable payment times that will be introduced by this bill will mean that the contracted parties should get paid more promptly. This will reduce the risk of a contracted party not being paid in circumstances in which the contracting party has received payment on account of the contracted party's work and has become insolvent before passing the payment on.

The requirement for contracting parties to respond to a payment claim made under the bill with a payment schedule will give contracted parties greater certainty and clarity over what they are going to get paid and will allow them to refer any payment disputes for rapid adjudication at a much earlier stage. This is well complemented by the fact that in the absence of a payment schedule being issued, the amount claimed becomes deemed due and recoverable as a debt in a court of competent jurisdiction. Therefore, if a schedule is not released, that amount is automatically deemed due. The restrictions of what counterarguments can be raised in an adjudication response under the bill will make the adjudication process more certain for contracted parties and will also make the process cheaper.

The right to monthly statutory payment claims under the bill will mean that contracted parties have an enshrined right to regular payments for their work. This serves to limit the extent of outstanding trade debts at any given time. The bill will introduce a number of measures to drive contracting parties that are building service providers to act as responsible market participants by promptly paying their debts and those with a history of financial failure may be removed from the industry by the Building Services Board.

Finally, the retention trust scheme has been included as an important first step to allow the industry to adapt to trust arrangements. As I said in my second reading speech, this retention scheme is the first of its kind in Australia and it will apply down the contracting chain on the project, rather than only at certain levels—for example, head contract and first-tier contractors. The scheme will better protect subcontractors in the event of insolvency by ring-fencing retention money from the general pool of creditors.

In response to the comments from the members for Cottesloe and Roe regarding the level of protection afforded by retention trust schemes, I advise that the retention trust scheme in part 4 of the bill is a game changer for the building and construction industry in this state. It is the first of its kind in Australia and will protect subcontractors' retention money from being misappropriated or lost altogether in the event of insolvency in the supply chain.

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Retentions are a common feature of construction contracts in the industry. In practice, they often take the form of a percentage of payment held back by the client or a contractor to act as security that the project will be completed to the requisite standard. Often, retention funds are deducted at the rate of five to 10 per cent of each progress claim until the requisite cap is met. This amount may represent most, if not all, of the subcontractor's profit margin on the project. Across the industry, the amount of retention money held at any one time would most certainly not be an insignificant figure.

Last year, the government asked Deloitte Access Economics to conduct an analysis on the bill. It found that the holistic package of reforms to be delivered by the bill, inclusive of the retention trust scheme, would yield a positive net benefit to the WA economy of \$363.9 million over an 11-year period. The retention scheme will also drive long overdue cultural change within the building and construction industry by requiring high standards of commercial behaviour.

In response to the member for Roe's comments about phoenixing activity in the industry, I thank the member for his support of part 7 of the bill. I agree with him completely. Phoenixing is an absolute blight on the industry and it is high time that the Building Services Board be granted the necessary powers to address it. The bill will do this and I know that the Building Services Board is very keen to have the powers it needs.

I thank the member for Churchlands for her contribution and note her extensive experience in the procurement and construction industry. She is probably the most qualified person in this chamber to talk on this subject and she made a very constructive contribution.

I thank honourable members again for their contributions and I look forward to providing more detail on the provisions in the bill during consideration in detail.

Question put and passed.

Bill read a second time.

[Leave denied to proceed forthwith to third reading.]

Consideration in Detail

Clauses 1 and 2 put and passed.

Clause 3: Object of Act —

Mr V.A. CATANIA: Clause 3(1), "Object of Act", states —

The object of this Act is to provide an effective and fair process for securing payments to persons who undertake to carry out construction work, or to supply related goods and services, in the building and construction industry.

In light of what was said in the second reading debate about what has occurred with Pindan, the latest company to bite the dust, the minister said that this legislation will provide protection to subcontractors, and in the second reading speech she said that this legislation will help a company such as Pindan that goes into administration or becomes insolvent in the future. Will this legislation protect subcontractors in light of what happened with Pindan? In the future, if there is another situation like what has happened with Pindan, will this legislation protect subcontractors that have done work for the government, as I said in my second reading contribution, such as providing maintenance works on government housing?

Ms A. SANDERSON: The legislation will apply across both private industry and government, so those particular contractors will be covered under the government framework, I suppose, that we put in place around those project bank accounts, and they will have this legislation to fall back on as well. It will apply across government contracts as well as private contracts.

Mr V.A. CATANIA: "Project bank accounts"; is that the term?

Ms A. SANDERSON: Correct.

Mr V.A. CATANIA: In six months' time, after this legislation has been passed and has been proclaimed and signed off by the Governor, if another company such as Pindan were to go into administration, would the money held in the project bank account be enough to pay the subcontractors? For example, it has been reported that some subcontractors have lost up to \$150 000 due to Pindan going into administration. Would the project bank accounts be enough to be able to pay those contractors if the situation that occurred with Pindan happened with another company in the future?

Ms A. SANDERSON: Project bank accounts do not come under this bill; they come under a regulation managed by the Department of Finance for government procurement. This bill does not contemplate project bank accounts.

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The bill provides for two mechanisms that will protect those subcontractors. The first is the enshrinement in law of regular monthly payments and the ability of subcontractors to demand those payment schedules on a monthly basis. The second mechanism is the retention trust, and that amount will be negotiated between the parties. As long as subcontractors exercise their right under this legislation to demand that payment and the contractors are paying it, that, together with the retention trust, should essentially cover any outstanding payments that would otherwise have occurred if that party had not been paid for months on end.

Mr V.A. CATANIA: The minister mentioned trusts. Clause 3(2)(c) states —

ensuring money is held on trust if it has been retained to secure the performance of the contractual obligations of those persons ...

I go back to what the minister has said, which is that the money held in trust will be an agreed amount between the head contractor and the subcontractor. That agreement could be for \$1 or it could be for \$1 million. Will there be any regulation to set a floor on an amount, whether it is five per cent, 10 per cent, 20 per cent or 50 per cent? Going back to the Pindan situation, if this legislation were in place and there was an agreed amount, and if a subcontractor lost \$150 000 because of failure of payment over the last two months, how much would that subcontractor realistically recover? Would it be five per cent or 10 per cent? I suppose that is the question: into the future, how can we prevent another situation such as that with Pindan and protect those subcontractors and the moneys that are owed to them?

Ms A. SANDERSON: There are two parts to that question. The first is whether the bill contains a standard weight, or a floor, if you like, for the retention money. No, it does not. Essentially, retention moneys are currently used to manage risk on a contract. If a subcontractor has a long and good relationship with another contractor, they might deem a smaller amount. If a subcontractor does not know or has concerns about the contractor they are dealing with, they may build in a risk premium. We have not sought to dictate that; that is about managing risks within the contract and between those parties.

The second part is the retention trust. By law, those moneys would be required to be held in a separate trust account and the head contractor would have to demonstrate that.

Mr V.A. CATANIA: In the future, after this legislation has passed, a head contractor may be looking for subcontractors to assist him with massive maintenance work, or building a school, or whatever the case may be. Subcontractors will try to successfully win the work. Can a head contractor state that if a subcontractor wants the job, the agreement will have to be that no money be put into a trust? Is there any legal obligation under this legislation for there to be some agreement between the head contractor and subcontractor that some money is put into a trust, whether it be \$1 or \$1 million?

Ms A. SANDERSON: The perfect situation would be that subcontractors would not have to give retention moneys because there was no risk in the contracting arrangement and they would be able to use that money as part of the cash flow, so we did not designate a specific amount. In a perfect world, we would not have to require subcontractors to hold back some of their cash flow, which is why we have not put a floor in the bill.

Mr V.A. CATANIA: I suppose that defeats the purpose of having an agreement between the head contractor and the subcontractor. How many incidents does the department get of subcontractors complaining that they have not been paid? Does the minister have a percentage or figure of how many subcontractors are not being afforded the goodwill of being paid on time or, potentially, not being paid out in full, because if they do not take it, they will never get a job again? They are told, “That’s what it is. That’s what you’re getting. See ya later.” Does the minister have the number of complaints her department receives?

Ms A. SANDERSON: If a subcontractor does not have to provide retention money, that is a good outcome for them. It is a good outcome for the contract; it means they have that money in the cash flow and they do not have to put aside the money. Regarding whether we have a scale of the numbers of subcontractors, the department does not because it is a regulatory department, not a public works department. Primarily, it would go through to the departments managing those contracts. Alternatively, the Small Business Development Corporation also has a subcontracting unit that tends to deal with those complaints, so that question is better directed at the Minister for Small Business. Regarding the third part around subbies being put off applying for jobs, there is an express provision in the bill around threatening and intimidating conduct. People can be referred anonymously to the Building Commissioner, and can be prosecuted and held to those standards.

Ms M.J. DAVIES: Looking at clause 3(2)(c), have regulations been drafted to accompany the bill at this stage? Given that it is an urgent bill, and one that has already been introduced previously, I presume that some of the work has commenced. We have spent a fair bit of time talking about the fact that the bill has been brought on at fairly short notice and I presume the government wants to see it enacted, so I presume work has been done on regulations to create or allow for the operation of the trust accounts and other aspects of the legislation.

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Ms A. SANDERSON: The Parliamentary Counsel's Office takes a very firm view on drafting regulations before any bills are passed, so, no, regulations have not been drafted. The department has done some early work on what they might look like, but certainly no regulations have been drafted. I think the Leader of the Opposition probably understands that from her experience in government. Parliamentary Counsel is very firm about that, despite the fact that we might like them to get started.

Ms M.J. DAVIES: Given that some work has been done, at least in anticipation of this bill passing, how extensive does the minister think the regulations will be? What consultation will be conducted by the government on bringing about the regulations, given that the devil is in the detail when we start talking about bringing this reform into play?

Ms A. SANDERSON: It will take around 12 months to draft the regulations. As the Leader of the Opposition quite rightly pointed out, the bill is a big piece of work with quite complex reform. The consultation on those regulations will be the same consultation that occurred with the green bill, so it will be with those stakeholders. Upon becoming Minister for Commerce, I reiterated the commitment that they will be consulted in the same manner as they were with the green bill.

Ms M.J. DAVIES: It will take 12 months to develop the regulations, so, in reality, it will be another 12 months before this comes into play. The protections that we are talking about, which have been on the cards for this government at least for the last four and a half years, we will not see for another 12 months.

Ms A. SANDERSON: It is going to take around 12 months to draft the regulations. This is an enormous change for the sector with a huge learning curve. We are changing entrenched behaviours. We also have to educate industry and provide resources to make sure that people are educated. There are multiple operators and also very small operators. Of itself, that is a really big task. The Fiocco report, *Security of payment reform in the WA building and construction industry*, also recommended around 12 months to implement the reform because of the education required. Mr Fiocco also highlighted some of the lack of understanding of accounting and regulations that the industry currently operates under. The industry itself has requested a long lead time on this. It is a huge reform and we are changing the very nature of the way people operate in this sector. The very loud and clear message from industry was that it wanted to be consulted and wanted a long lead time to make sure that we get this right because the penalties are severe and businesses could lose their ability to operate. When the penalties are severe, we have to make sure that we get that right.

Mr V.A. CATANIA: The minister said there will be a 12-month lead time. Yes, it is in the Fiocco report, because I have read it. It talks about the lead time. The policy was put forward back in 2016, leading up to the 2017 election. It will be nearly six years before this legislation potentially starts to be activated. Is 12 months a hard and fast deadline, or could it potentially grow to 14, 15 or 16 months, or perhaps never? Is there a time frame for this legislation to be enacted? More importantly, is the department funded to be able to do those education campaigns and provide workshops and so forth? Is a fund available for the department to start the education process?

Ms A. SANDERSON: The last government allocated quite a significant portion of funding to the department to commence the education and reform process. It was allocated \$2.8 million in that financial year to start that process. We are looking at around 12 months for the first tranche of reforms, but that is contingent on a range of factors, including parliamentary counsel, which writes the regulations. We are currently in the budget process and putting in submissions. We are in that process to ensure that we have the funding to implement this legislation when it passes.

Clause put and passed.

Clauses 4 to 11 put and passed.

Clause 12: Model forms of construction contracts —

Mr V.A. CATANIA: Subclause (1) states —

The Building Commissioner may, for the purpose of assisting participants in the building and construction industry, prepare and publish model forms of construction contracts.

Can the minister please elaborate on the support that the Building Commissioner may give the building and construction industry?

Ms A. SANDERSON: Clause 12 will empower the Building Commissioner to assist industry participants to improve their contracting practices by way of the publication and promotion of simple standard form construction contracts for them to use. This head of power will also complement clause 13 of the bill because any contracts that are developed and published will no doubt assist registered building service contractors to comply with their new obligations under clause 13 to use written contracts that contain certain mandatory information. The powers conferred by clause 12 are not intended to be utilised by the Building Commissioner to replicate the vast range of contracts that are already available through Standards Australia and industry trade groups. These contracts serve a useful purpose and their use should be promoted. Instead, it is envisaged that the Building Commissioner will

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utilise the powers in clause 12 to prepare very simple contracts that meet the requirements of clause 13 of the bill and assist parties to improve their contracting practices. Contracts will be prepared on a risk-neutral basis and published on the Department of Mines, Industry Regulation and Safety website for use by anyone who desires to use them.

Mr V.A. CATANIA: Subclause (3) states —

The use of a model form of construction contract is not mandatory.

If a subcontractor wants to use the Building Commissioner’s model form as a guide, is there any room for a dispute in that the head contractor may want to use their own form or contract but the subcontractor wants to use a model form, which the government supplies? Is there any ability to —

Ms A. Sanderson: Is there a weighting, almost?

Mr V.A. CATANIA: Yes. A subcontractor does not have the resources to do their own work on it and will take the easy option of getting a form. Who will win in that scenario if there are scenarios like that?

Ms A. SANDERSON: The member asks a good question. The parties will essentially need to negotiate; the contract will need to be negotiated. There is no weighting as such, but the subcontractors will be empowered by having access to those form contracts, which are otherwise not available. If a party engages in threatening and intimidating conduct, they can be referred under the powers of this bill by the Building Commissioner.

Clause put and passed.

Clause 13: Construction contracts that are to be in writing and contain mandatory information —

Ms M.J. DAVIES: I am looking at the penalty provided in subclauses (3), (4) and (5). Is this a new penalty; and, if not, what is the current penalty? If the current penalty has increased, is that increase substantial and how will this be discovered? Obviously, there will be a self-reporting function within this process.

Ms A. SANDERSON: The penalty in this clause is a brand new penalty for the sector; there is no current penalty. The set fine of \$2 000 is consistent with the same fine penalty in section 4 of the Home Building Contracts Act 1991. The subcontractor will report to the Building Commissioner and the Building Commissioner will bring the prosecution, not the subcontractor. The Building Commissioner will also have powers to audit.

Ms M.J. DAVIES: What will the audit process entail, because I presume that we are talking about hundreds, if not thousands, of contracts? How will that be conducted so that there are checks and the appropriate stick approach, I guess, which is what the government is trying to create, albeit it is a \$2 000 fine. No doubt some will flout that provision. I am trying to understand what the audit process will be; and, if it is not caught in the audit, is it incumbent on the subcontractor, as the minister said, to report to the Building Commissioner?

Ms A. SANDERSON: The Building Commissioner has auditing powers and they are risk based, if you like. They are not random. When the Building Commission believes that there are issues, it goes in and looks at those particular builders. As part of that additional funding, extra people were put on to assist with the auditing process and they can pick up these offences in a range of audits. They might be auditing a range of other matters and be able to pick up these offences. There are also offences under this bill for when a contractor may obstruct an audit.

Mr V.A. CATANIA: I think I said this in the second reading debate. This issue of subcontractors not getting paid has been around for a long time. Plenty of large, well-known companies have gone into administration. There were media reports back in 2018, for example, about the Pindan construction company and some of the issues surrounding that. In the meantime, we have seen the government award new contracts to Pindan, whether for a construction site to build schools, day care centres or whatever the case might be, as well as for asset management of social housing. Clause 13 relates to the ability to conduct an audit. The report by John Fiocco was started in February 2018 and completed six months later, with drafting of legislation occurring from that moment on and the original bill being introduced late last year. I know the minister is new, but has her department ever conducted any audits and, based on all the information, said, “Warning, warning, warning! We need to ensure that we have legislation that says we can conduct those audits”? Knowing that perhaps we did not need the legislation, did the department prior to this legislation have the ability to go and audit to make sure that work was being conducted and subcontractors were being paid?

Ms A. SANDERSON: The current audit powers of the Building Commissioner do not extend to payments—I should be clear about that. They extend to building work and the quality of building work. This bill expands those audit powers to payments. Does that make sense? Although I said it has audit powers, it does not have financial audit powers but it will under this bill.

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Mr V.A. CATANIA: I might be completely off track here, but do the statutory declarations that one would sign to say that the job has been completed and that the subcontractor has been paid come under this clause? It is not a financial audit, is it?

Ms M.J. Davies: It is completion of work.

Mr V.A. CATANIA: It is completion of work. Does it come under this clause? Was an audit of that completed work conducted based on that stat dec being handed over so that moneys could be released prior to this bill being introduced?

Ms A. SANDERSON: The statutory declarations around the payment of subcontractors is a matter for the agency that is managing that contract. It does not fall under this legislation or the current framework of the department. It is a matter for the agency managing that. Falsified stat decs are really a matter for only the police and should be referred to the police.

Mr V.A. CATANIA: Currently, the department cannot have oversight of, or monitor, the company to make sure that the checks and balances show that it has completed the works. Is the minister's department geared up to undertake those investigations to make sure that work has been completed, or even look at work that is in dispute? Does the department have the ability to go around and check on it site by site under the current framework?

Ms A. SANDERSON: The Department of Mines, Industry Regulation and Safety does not manage government projects. It would be up to the departments that are managing those projects—Transport, Main Roads, Finance—to manage the contract in its entirety. The government arm, if you like, that would have responsibility for dealing with the falsification of stat decs is the Small Business Development Corporation. With its broader powers of investigation and coercion, it would deal with those stat decs and refer them to the police because it is then a criminal matter.

Mr V.A. CATANIA: Is the minister aware of any referrals of falsified stat decs and whether other departments are aware of that?

Ms A. SANDERSON: Like many members in this chamber, I have heard rumours of false statutory declarations having been reported. They have not formally been reported to either me or my agency. I encourage any person who either has knowledge of or is in receipt of those stat decs to make them available to the Building Commissioner.

Clause put and passed.

Clause 14 put and passed.

Clause 15: Other prohibited terms prescribed by regulations —

Ms M.J. DAVIES: I note the catch-all clause in clause 15(1) that states —

The regulations may prohibit other provisions of construction contracts.

The previous clause that we just passed referred to the “pay if paid” provisions, which makes perfect sense. I wonder what the minister anticipates here. Perhaps there are examples of what the minister believes we might see captured in the regulations. Can the minister provide some of those?

Ms A. SANDERSON: The Construction Contracts Act currently provides that a provision in a construction contract has no effect if it prescribed by the regulations to be prohibited. Accordingly, clause 15 carries over to the bill what is fundamentally existing law in Western Australia. To date, no provisions have been prescribed under the Construction Contracts Regulations 2004. Nevertheless, situations may arise from time to time when contract provisions will be developed and gain currency in the industry that unfairly alters risk allocation or significantly prejudices a party's right to payment or operates to undermine the purpose of the bill or a specific clause. To address such developments as expeditiously as possible, clause 15 provides a head of power to prescribe prohibitions for other terms in construction contracts. Without clause 15, the bill would lack the necessary flexibility to regulate provisions in construction contracts that it may become desirable to prohibit in the future on either a temporary or ongoing basis. The government will consult further with industry before prescribing any prohibited terms. However, examples could include uncapped liquidated damages clauses, or clauses capped at 100 per cent of the contract value, or contract provisions that seek to undermine the operation of the act, such as a clause whereby parties agree that a time bar is not an unfair-notice based time bar for the purpose of clause 16. Those types of clauses can expose the contracted party to significant and unjustified risk and are typically imposed on small subcontractors.

Ms M.J. DAVIES: I thank the minister. Excuse my ignorance, but the minister referred to a temporary regulation in construction contracts on either a temporary or ongoing basis. Can the minister give me an example of what a temporary prohibition could be used for?

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Ms A. SANDERSON: A temporary regulation could be, for example, something that is related to COVID or other incidents. It is anticipated that the prohibitions would be permanent in most cases and that industry would be well consulted.

Ms M.J. DAVIES: When the minister says “consulted”, how will that be done? Will there be a formal process? Will it be done at the discretion of the minister of the day? Will something be laid out so that there is a well-understood process for when regulations of this type are introduced so that there will be some consistency across industry and everybody will know that they have the right to ask for those regulations to be instituted?

Ms A. SANDERSON: Essentially, the development of those regulations will be released to stakeholders for consultation, along with the discussion paper. That will be done under the framework of the better regulation unit, for which consultation is key.

Clause put and passed.

Clauses 16 to 19 put and passed.

Clause 20: Due date for payment —

Mr V.A. CATANIA: In terms of the due payment, clause 20(1) states —

- (a) in the case of a progress payment to be made by a principal to a head contractor — on the date that is 20 business days after a payment claim is made under Part 3 for the progress payment; or
- (b) in the case of a progress payment to be made to a subcontractor — on the date that is 25 business days after a payment claim is made under Part 3 for the progress payment.

Can the minister explain what the time frame will be for a construction contractor to pay the subcontractors, and how is that different from this clause? Perhaps the minister can explain the purpose of the 20 and 25 business days.

Ms A. SANDERSON: Essentially, the current payment under the CCA provides for 42 calendar days. That is the current framework. Clause 20 is designed to ensure that payments flow down the contracting chain as fast as possible by creating a slightly shorter time frame for principals—that is the 20 days—to pay head contractors so that they can in turn pay subcontractors. This will create a small buffer that will allow the head contractor the benefit of additional time to improve its cash flow position to pay subcontractors. This clause implements the recommendations made in the Fiocco report and is broadly consistent with the recommendations of the Murray report that there should be an across-the-board 25 business day time frame for payment. Mr Fiocco noted that in commonly used Australian Standards framework contracts, the principal is required to pay the head contractor within 28 calendar days of receiving the progress claim. Under the back-to-back contract, the head contractor is then required to pay the subcontractor within 35 calendar days of receiving the progress claim. As stated by Mr Fiocco, these payment times have, for many years, been the agreed gold standard in the industry and they should be legislated to promote prompt payment and increased cash flow. Mr Fiocco considered that such time frames were achievable in practice, given that they have been adopted in standard-form contracts since at least the early 1990s and legislated for in New South Wales since 2001.

Mr V.A. CATANIA: Am I correct that under this clause a subcontractor will be paid within 45 business days?

Ms A. Sanderson: It is 42 calendar days.

Mr V.A. CATANIA: Is there no other direction from government? I think I have heard before that the payment terms can be 15 days for some government contracts. I am wondering whether there is any variation within government in terms of the number of days to pay. I do not know whether that was done over the COVID period to ensure that money was being moved around as quickly as possible. I may be completely incorrect, but I have it in my head that the payment terms were for 15 days. Is there any advice from any other government department or from the Department of the Premier and Cabinet for a 15-day period; and, if so, why is it different from the due date of payment under this legislation?

Ms A. SANDERSON: I am not sure what 15 days the member is referring to. There was recently a Council of Australian Governments agreement that contracts had to be paid within 10 business days, and that is consistent. There was also a Treasury instruction that those contractors be paid within 20 days.

Clause put and passed.

Clauses 21 to 32 put and passed.

Clause 33: Disqualification of adjudicator with conflict of interest in adjudication application —

Mr V.A. CATANIA: Clause 33(2) states —

An adjudicator has a conflict of interest in relation to an adjudication application if the adjudicator —

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- (a) is a party to a relevant contract; or
- (b) prepared (or was involved in the preparation of) a relevant contract or the payment claim, payment schedule, adjudication application or adjudication response; or
- (c) has a material personal interest in the outcome of the adjudication; or
- (d) has a conflict of interest of a kind prescribed by the regulations for the purposes of this paragraph.

Could the minister explain who would be an adjudicator and some of the criteria around that person or persons?

Ms A. SANDERSON: Adjudicators will essentially be drawn from the professional industry, and they can be lawyers or engineers. They would have to have a minimum qualification in adjudication and undertake a course of training under the specific legislation to be able to adjudicate under this legislation. An adjudicator could be a lawyer who helped prepare a construction contract, for example. In this instance the lawyer would be disqualified from adjudicating under that contract.

Mr V.A. Catania: How many adjudicators are normally in the pool?

Ms A. SANDERSON: There are currently 103 in the pool, and is anticipated that the number would be between 80 and 100 at any one time.

Clause put and passed.

Clauses 34 to 68 put and passed.

Clause 69: Terms used —

Mr V.A. CATANIA: We keep speaking a lot about retention of money trusts, cascading trusts and trusts in general. Line 20 on page 75 of the bill states —

retention money trust end date, for retention money, means the earliest of the following —

- (a) the date on which the retention money is paid to party B for carrying out construction work, or supplying related goods and services, under the construction contract;

When an agreement is struck between the two parties for a retention trust and there is an agreement that five per cent will go, is there a time frame for that money to go into a trust? Who oversees the trust to ensure that the money has gone into the trust and that it is protected?

Ms A. SANDERSON: The moment that money is withheld between the parties, the moment that contract is entered into, the money must immediately go into the retention trust. Under this legislation, there is no period when it is not in trust. The subcontractor who has provided the retention trust moneys can request access to view records of the other party at any time. If at any moment they are uncertain or have concerns about the money in the retention trust, they can lodge a dispute with the adjudicators.

Mr V.A. CATANIA: I imagine that the trust account earns interest. I cannot remember whether the interest is retained by the trust holder or the construction company. Does the company keep the interest, is it split 50–50 or is it negotiated? What are the criteria for the interest earned on the trust moneys?

Ms A. SANDERSON: By default, the party holding the money is entitled to the interest. That is intended to be a counterbalance to some of the administrative costs in managing the retention trust. If they hold the money beyond the agreed amount in the time frame in the contract, they are not entitled to the interest beyond that agreed amount.

Mr P.J. RUNDLE: I cannot locate this information anywhere. Is there an ability anywhere in the bill to increase the retention money above five per cent?

Ms A. SANDERSON: There is no stipulated amount in the bill. The retention money is negotiated purely between the two parties. It could be any amount. It could be one per cent or 20 per cent, depending on the risk profile of those parties.

Clause put and passed.

Clauses 70 to 78 put and passed.

Clause 79: Trust records —

Mr V.A. CATANIA: We started to touch on the trust records. The minister referred to the two parties, the head contractor and the subcontractor. She said that the subcontractor could look at the trust at any time. Will the government or the department view those accounts to make sure this legislation is adhered to? Will the government have any ability to perhaps conduct an audit or from time to time go through the trust records to make sure the two parties are doing the right thing?

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Ms A. SANDERSON: The bill provides an enshrined right for a party to view the trust and the records around that trust. The Building Commissioner has a regulating role but is not a debt collector as such. Subcontractors have a right to view trusts, and there are already significant legal rights in managing those trusts that they can rely on. There could be millions of these contracts at any time in a busy construction period. It is not the role of the commissioner to audit those trusts; it is up to the subcontractor to understand the risk they may be exposed to, to seek the information from the contractor and then exercise their rights under law in managing that trust. Under this bill, they will also have the right to suspend work when they think trust money is not being managed or they have concerns around the management of the contract.

Clause put and passed.

Clause 80: Power to employ agents —

Ms M.J. DAVIES: The clause refers to the power to employ agents. I guess this is when a subcontractor has multiple contracts and can subcontract the role out to someone else. I assume that is the role of the agent. Can the minister give me an idea of who that might be and what their qualifications would be, or is it entirely up to the individual who they employ? Will there be a pool as there is with adjudicators? I am trying to understand who these people will be.

Ms A. SANDERSON: The purpose of clause 80 is to provide trustees with flexibility in the administration of a trust created under part 4 of the bill by empowering them to employ, at their own cost, the services of an agent for this purpose or to delegate certain functions. In most cases, an agent is likely to be an employee of the company or a person who regularly handles the banking and financial transactions of the business. Clause 80 is necessary to support the effective operation of part 4 of the bill by authorising a trustee to employ an agent to carry out the day-to-day administration of a retention trust account in an efficient, effective and accountable manner. The cost of engaging the agent will be worn solely by the trustee and, ultimately, the trustee will be responsible for any acts or omissions of their agent. Subclauses (2) and (3) are designed to displace the operation of section 51 of the Trustees Act 1962, which would entitle the trustee to the costs and expenses of employing an agent and limit their liability for breaches of trust by the agent to only instances where the agent has not acted in good faith.

Clause put and passed.

Clauses 81 to 132 put and passed.

Clause 133: Part 5A inserted —

Dr D.J. HONEY: I go to proposed section 63B, “Excluded contractors not to be registered”, which is self-explanatory. Can the minister explain the relationship when a person is not suitable and the Building Services Board cancels the registration? What is the ability for that person or body to then go to the State Administrative Tribunal to argue their case?

Ms A. SANDERSON: There is no capacity for an excluded contractor to apply to the board for something in the nature of special consideration. Once a declaration takes effect, should they had wish to seek registration or renewal of a registration, the appropriate avenue of appeal available to a person aggrieved by a decision of the board to issue the declaration is to appeal the decision to SAT under proposed section 63G of new part 5A. So, yes, if the board does apply an exclusion, then the natural justice in that process is to apply to SAT to have that decision reviewed.

Mr V.A. CATANIA: Under proposed section 63C —

The Board may at any time revoke a declaration under the section.

Even if they go to SAT to start a fair process, the board at any time can revoke the declaration under this section. Is that not a furphy to say there is an independent oversight when at the end of the day the board has the ultimate say over any decision that is made?

Ms A. SANDERSON: The purpose of proposed section 63C under part 5A is to allow the Building Services Board flexibility to revoke an exclusion if more information came to light or if the board came to the view that it was not appropriately made. That in and of itself is an avenue of natural justice because it has serious implications for people’s livelihoods, so the board needs to have flexibility to withdraw that. On top of that, the individual who is aggrieved can also have a decision reviewed by the State Administrative Tribunal.

Mr P.J. RUNDLE: I have a further question on proposed section 63D, “When individual or non-corporate body may be declared excluded contractor”. Obviously this relates to phoenixing and it refers to those people within those organisations. Proposed section 63D(1)(a) states —

the individual or an officer of the non-corporate body became an insolvent on at least one occasion;

Does this mean that if someone becomes insolvent once and then it happens a second time, they will be an excluded contractor or excluded non-corporate body?

Also, proposed section 63D(1)(b) states —

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the period of 3 years has not elapsed since the insolvency event that resulted in the insolvency.

Can I have more clarity on proposed section 63D(1)(b) as well because I do not quite understand that paragraph.

Ms A. SANDERSON: The proposed section is quite explicit. Proposed section 63D(1) outlines that if an individual has one insolvency in three years, they are liable for a temporary exclusion. If an individual has a minimum of two insolvencies within five years, they are looking at a permanent exclusion.

Mr P.J. RUNDLE: I have a question about proposed section 63D(2). Proposed section 63D(1) refers to temporary exclusion; however, subsection (2) refers to permanent exclusion. Basically, if an individual has been insolvent on two separate occasions, or, according to paragraph (b), if the second insolvency occurs within five years after the first insolvency event, is there any ability for that person or body to appeal—not that I personally think that there should be? If a person or body has undergone either of those occasions in paragraphs (a) or (b), I personally do not think that they deserve to be re-registered, but do they have any comeback if they have been permanently excluded?

Ms A. SANDERSON: In terms of whether a person is insolvent or not, that is not an appealable position; that is a fact. They either are or they are not. That is established. But if the board moves to exclude a person permanently, that is also appealable by the SAT, whether it is under this proposed section or another.

Mr P.J. RUNDLE: If I may, proposed section 63E(2) refers to a temporarily excluded contractor again. This proposed section refers to an officer of a corporation being temporarily excluded, whereas subsection (3) refers to a permanent exclusion. If I am a managing director of a corporation, but I was not aware of insolvency events, is there any ability to appeal in that case?

Ms A. SANDERSON: I think, member, you are trying to establish what an officer is. Is that the question: what constitutes an officer under this bill?

Mr P.J. Rundle: That's right. How far down the chain, if you like.

Ms A. SANDERSON: An officer is defined in the bill. It states —

officer —

(a) of a corporation —

(i) means an officer of the corporation as defined in the Corporations Act section 9; and

(ii) includes an influential person for the corporation; and

(iii) does not include an administrator, receiver or liquidator appointed under the Corporations Act;

Therefore, an officer is defined under the Corporations Act. It would not be one of the junior members of the construction sector; it would be someone with influence over the company. The board has a process that it goes through in which it issues a show-cause notice to explain the event and the insolvency, and that is the opportunity for those officers or that organisation to explain to the board that the insolvency was due to matters out of their control, or there may be further matters that the board would look into.

Mr P.J. RUNDLE: In my speech at the second reading stage, I mentioned that Main Roads employed Marine and Civil Pty Ltd, which had already been delisted once or twice before. How will the Building Services Board monitor that someone has not just phoenixed again using the same name or operating under a different name?

Ms A. SANDERSON: When an individual or an organisation applies for a building registration, they have to provide a list of all directors. Those individuals are all screened. There is also an Australian Securities and Investments Commission investigation—an ASIC screening. The bill also provides a new requirement in proposed section 32A that any changes in directorship must be notified to the board immediately, and those new directors will then also go through that screening and ASIC process. The penalty for not notifying any change of directorship of the board is \$5 000.

Ms M.J. DAVIES: I have a quick question. How does this compare with other jurisdictions? This is a general question across this section about what is being introduced. Are we sitting in the middle? Are we introducing stronger penalties? Is this consistent with other jurisdictions or are we out on a limb?

Ms A. SANDERSON: The key point of difference is that the Queensland scheme adopts what may be described as a guillotine approach to determining whether a person is an excluded individual or excluded company. If the Queensland Building and Construction Commission considers that an individual has experienced a relevant event, the QBCC must advise the individual of this in writing. The individual is given 28 days to notify the QBCC whether they consider no relevant event has occurred. If they do not respond or do not satisfy the QBCC that the relevant event did not occur, they automatically become an excluded individual.

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In contrast, proposed part 5A of the Building Services (Registration) Act will provide the board with flexibility. If the board issues a show cause notice to a person in connection with an insolvency, the respondent may provide a submission to the board addressing whether they considered the insolvency event to have occurred and whether there were any circumstances that they wish the board to consider in deciding whether to apply an exclusion. The board will have complete discretion as to whether to apply the exclusion in the particular circumstances of the respondent's case.

Essentially, the answer to the member's question is that the only two jurisdictions that have passed this law are Queensland and Western Australia. The Queensland legislation is a very blunt instrument indeed and it has created issues in Queensland. Obviously, it impacts on people's livelihood. Our clauses provide more flexibility in understanding the circumstances of an insolvency rather than it just being black and white.

Stakeholders were unanimous in their support. The Fiocco report recorded that all stakeholders emphatically indicated that any new regulatory power enabling the Building Services Board to exclude persons from registering as building contractors must have flexibility to consider individual cases.

Mr P.J. RUNDLE: I have a further question on proposed section 63F(3), which states —

The Board must not declare a corporation to be an excluded contractor because a particular individual is an officer of the corporation if the corporation satisfies the Board that the individual is no longer an officer of the corporation.

If the directors convince the board that that person was a rogue accountant when in fact they may have instructed that person to do what they did, what ability does the board have to convince themselves that the corporation should be declared able to continue?

Ms A. SANDERSON: Member, with respect, that is not what this clause says. I think the member might be referring to proposed section 63F(2). Under proposed section 63F(3), essentially, the corporation needs to satisfy the board that the individual is no longer a member of the corporation. It can provide evidence that that individual has left the organisation.

Clause put and passed.

Clauses 134 to 141 put and passed.

Title put and passed.

Third Reading

MS A. SANDERSON (Morley — Minister for Commerce) [9.05 pm]: I move —

That the bill be now read a third time.

MR V.A. CATANIA (North West Central) [9.05 pm]: I rise to thank the minister for introducing a much-needed bill that will hopefully do what it is intended to do—that is, protect subcontractors. I know that this will not help the situation that we experienced just a week ago, when the Pindan Group went into administration. I think that situation could have been completely avoided. Those subcontractors are now facing some serious heartache and financial issues, especially after the government made the announcement that it will not be bailing out Pindan and paying those subcontractors the moneys owed to them. Those subcontractors did work for the government and spent money on government property, yet they are going to miss out. I believe the intent of this legislation is to protect subcontractors such as those that are now hurting financially because Pindan has gone into administration.

As I said, this legislation is good. Is it perfect? Absolutely not. Does it need to be amended? Absolutely, and I hope that the government will look at ways it can introduce a cascading trust into the future that will protect subcontractors from situations such as what happened with Pindan. As I said in my second reading contribution, the reality is that there will be another Pindan scenario in the future. I think we can all agree that, unfortunately, that is the way the cycle goes. We have seen a lot of construction companies go to the wall, but we have to get to the root of the cause: why are we seeing these construction companies go into administration? The government can lead the way. The government can ensure that contracts that are awarded are realistic. We know what happened with the Perth Children's Hospital: a report conducted by the Public Accounts Committee showed that that contract was bought. As I think the minister said, everyone keeps talking about the cash flow that is needed, so companies buy these contracts basically at cost to be able to keep that cash flow going. We have to break that cycle. We have to allow the right contracts to be given because they are the right quotes.

We have to change the way that companies are bidding for these contracts, because it ultimately costs the taxpayer and the government. It costs the subcontractor because they have not made sure that the amount of money that is needed to fulfil the build is in the contract. Like what happened with the Pindan Group a week ago, we see too often that subcontractors become the bank and the battering ram. They are the ones who really suffer because we

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know that the directors of the companies and big construction firms just walk away. It is great that this legislation will hopefully prevent those directors from ever going to another company and winning any contracts in the future. That is why the opposition supports the legislation. It is absolutely vital moving forward, but we want to put on record that it does not go far enough to protect subcontractors from what happened with the Pindan Group. I hope that the government can work out a way to get rid of that contract and, for example, look at opportunities to break up Pindan's \$35 million maintenance contract, simply because it had not fulfilled the contract with the state government. The government needs an option to be able to get rid of Pindan and break up its contract into more manageable ones, so we do not have large contractors going into administration, which causes a huge amount of pain, as I said, for people in regional communities who rely on subcontractors so much. They are the small businesses that sponsor the football team and the darts club. Now, those subcontractors really have to tighten their belts if they can get out of the situation in which they are owed lots of money—tens of thousands of dollars. In one instance, like I said, a business in Carnarvon is owed \$150 000. It will take a while to process that, after the government's announcement, and it will potentially not get its money. That stinks. It is not fair, especially when these are government contracts that are being issued. There is a sense of security around those subcontractors doing that work because they are government-owned houses. That is the difference compared with the private construction industry, which is a little bit different.

Mr P. Papalia: Member, what is important, because I don't think they know, is if subcontractors are not being paid—in this case with a government contract—they should report that to the Small Business Commissioner and it will be investigated. He has the powers now to compel evidence. He can do it anonymously; he can protect anonymity. I haven't seen any evidence that actually people did know in advance, but if they did, they should be reporting and that could prevent it.

Mr V.A. CATANIA: I totally agree and the minister would be aware of that as a former Minister for Small Business, absolutely. But also remember that the housing market is an extremely busy environment at the moment. It is very difficult to keep pace with what is going on. So small businesses, everyone —

Mr P. Papalia: They all want to get paid.

Mr V.A. CATANIA: Everyone does want to get paid, but, at the end of the day, plumbers are not just plumbers; they are also business managers. Sometimes the skills are not there to be able to keep on top of the accounts and so forth. In this instance, potentially on both sides—definitely on Pindan's side for not fulfilling its obligations—the subcontractors needed to be more aware and astute to keep on top of their payment dates. The subcontractors need to be aware—perhaps this will be through the education process from the bill—that there will be mechanisms into the future. However, that is no solace for the people who have just lost a lot of money.

The opposition will continue to pursue the government on this question: how did this government allow Pindan to get in that position of not paying subcontractors, knowing that they were doing work for the government? I think there needs to be an inquiry to work out how that occurred so it cannot be replicated in the future, knowing that this legislation will not protect subcontractors who are in that Pindan situation. It is imperative that the government conducts an independent review so that it can find out why Pindan went into administration.

Members, we have had enough. I think we have drawn it out long enough. It is important that the opposition asks those questions. It is important that we ensure that we have good legislation going forward. We have achieved probably seven out of 10 with this legislation, but, hopefully, in the future, we will see amendments that provide true protection for subcontractors. I think that was the original intent in 2016 when the Premier was very sympathetic towards subcontractors and the part they played. However, his language now is very dismissive when he says that there is plenty of work out there. But who is going to pay the moneys owed to those subcontractors? Can the government not suddenly find \$150 000 or \$200 000? That is the issue. That is where the government has not been sympathetic or empathetic about what has happened with Pindan. The opposition will continue to pursue the government to find out exactly why Pindan has got into this situation and exactly why it did not foresee this when there was so much information out there that questioned the viability of Pindan.

MS A. SANDERSON (Morley — Minister for Commerce) [9.16 pm] — in reply: I rise to make my contribution to the third reading of the Building and Construction Industry (Security of Payment) Bill 2021. I want to thank all members who have contributed to every stage of the progress of this bill—the first bill I have passed in Parliament. I was hoping to ease in with something slightly smaller and less controversial, but there you go; that is how we learn.

This bill will provide absolutely the right balance. These will be significant reforms in the construction sector. To reflect on some of the comments from the member for North West Central, this is about educating and changing the culture of the construction sector inasmuch as it is about regulating it. It is about changing that culture. The member was quite right to point out that having qualifications in plumbing or an electrical trade does not make

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someone a business manager and give them what they need to negotiate and manage finances properly. That has been well recognised by the government and in the Fiocco report.

We want to make sure that subcontractors can access their rights under this legislation, and that is why the department will be appropriately resourced to allow them to understand their rights. Their rights under the retention trust scheme, the rapid adjudication process and the provision for the minimum monthly payments are seismic shifts in this sector. I have met with John Fiocco, and he is very passionate about this sector and extremely experienced. We have very carefully considered the cascading trusts. What was not evident was the overall benefits versus the cost; that is what we could not see evidence of. As a government, when we are legislating and reforming and making changes to an industry, we have to understand the evidence and we have to weigh up the costs and the benefits, and we simply were not able to do that with the cascading trusts at this point. This is an important step. This is the furthest that any jurisdiction will go in allowing that money to be retained, and I am really proud to be part of delivering that commitment.

With regard to the government contracts and Pindan, it would be ideal for government to be able to step in and become the head contractor of the contractors with those maintenance contracts, but we have to operate under the commonwealth insolvency legislation. That is simply a fact. We cannot do that. They are now creditors, and to provide payments to any of those creditors would essentially put us in breach of the insolvency laws, and those payments would be clawed back by the administrators anyway. I want to ensure that, going forward, those protections are in place for subcontractors. It is devastating. These operations run on small margins. We absolutely acknowledge that and that is why we do not want to impose an unnecessary, complex burden of regulation on them as well. We want this to be a useable system for those subbies just as much as it is useful for changing the culture of the practices in the construction industry.

I commend the bill to the house. I am very proud to be part of this reform by the Labor government and I hope that it gets a good passage through the Legislative Council.

Question put and passed.

Bill read a third time and transmitted to the Council.

House adjourned at 9.19 pm
