

PUBLIC ACCOUNTS COMMITTEE

INQUIRY INTO CONTRACTS ENTERED INTO BETWEEN CONSOLIDATED CONSTRUCTIONS PTY LTD AND MAIN ROADS WA AND THE PUBLIC TRANSPORT AUTHORITY

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
ON MONDAY, 24 MAY 2004**

SESSION 2

Members

Mr J.B. D'Orazio (Chairman)
Mr M.G. House (Deputy Chairman)
Mr J.L. Bradshaw
Mr A.J. Dean
Ms J.A. Radisich

[11.15 am]

HENNEVELD, MR MENNO

**Commissioner of Main Roads, Main Roads Western Australia,
Don Aitken Centre, Waterloo Crescent,
East Perth, examined:**

HUNT, MR BOB

**Manager, Contract Performance, Main Roads Western Australia,
Don Aitken Centre, Waterloo Crescent,
East Perth, examined:**

LOGUE, MR GLYNN

**Chartered Professional Engineer, Main Roads Western Australia,
Don Aitken Centre, Waterloo Crescent,
East Perth, examined:**

WALLWORK, MR MICHAEL DAVID

**Executive Director, Construction and Maintenance Services, Main Roads Western Australia,
Don Aitken Centre, Waterloo Crescent,
East Perth, examined:**

The CHAIRMAN: The committee hearing is a proceeding of Parliament and warrants the same respect that proceedings in the House itself demand. Even though you are not required to give evidence on oath, any deliberate misleading of the committee may be regarded as contempt of Parliament.

Have you completed the "Details of Witness" form?

The Witnesses: Yes.

The CHAIRMAN: Do you understand the notes attached to it?

The Witnesses: Yes.

The CHAIRMAN: Did you receive and read an information for witnesses briefing sheet regarding the giving of evidence before a parliamentary committee?

The Witnesses: Yes.

The CHAIRMAN: Have you made a written submission?

Mr Henneveld: We have.

The CHAIRMAN: Do you propose to make any amendment to it?

Mr Henneveld: No.

The CHAIRMAN: Would you like it to be incorporated as part of the transcript of evidence?

Mr Henneveld: Yes, please. There is an addition to that initial submission.

The CHAIRMAN: We will put that as one.

Mr Henneveld: Yes, thank you.

The CHAIRMAN: Before I ask any questions, would you like to make any statement on your submission?

Mr Henneveld: No; I would be happy to elaborate on the basis and the context of the submission, but it is pretty self-explanatory.

The CHAIRMAN: Will you give the committee a bit of a run-down on your role in these contracts?

Mr Henneveld: My role?

The CHAIRMAN: The role of Main Roads WA, in other words.

Mr Henneveld: That is the context I was speaking about. It must be recognised that Main Roads is a large infrastructure management agency. We look after some \$14.3 billion worth of the State's road network. To put that in context, it represents more than a third of all the State's infrastructure. We are a large infrastructure agency. We have annual expenditure of approximately \$800 million. Of that figure, \$250 million to \$300 million is spent on capital works. Since 1998-99, 100 per cent of our work has been done by contractors. We put a lot of effort into our contract management; we must do it right. We have a number of processes and systems to enable that to happen. That amount of money means that we initiate some 100 to 110 contracts a year. In the past 25 to 30 years, in undertaking the systems and processes we adopt, we have had only three incidents in which a contractor has gone broke during the course of a job. The committee should keep that in mind - it has happened in three cases.

Mr M.G. HOUSE: Did you say in the course of the past year?

Mr Henneveld: No, in the course of the past 25 to 30 years.

The CHAIRMAN: What value of contracts were they? Were they large or small contracts? We know what this one is, what are the other two?

Mr Henneveld: We spend about \$250 million a year on contracts. There are 100 contracts a year. Multiply that by 20 or 25 and you will get some idea. We are talking about 2 000 to 3 000 contracts, worth probably in excess of \$6 billion.

The CHAIRMAN: What were the two contracts, other than this one, that went down? What was the value of those?

Mr Henneveld: They were 25 to 30 years ago, before my time.

Mr Wallwork: They were in the order of between \$5 million and \$20 million. One was in the Kimberley, the other was on the Eyre Highway, and the other I could not have been involved with.

Mr Henneveld: Because of the number of contracts, and so on, we adopt a three-level approach to the way we deliver our contracts. We categorise them. We have what we call category 1 projects, which are large and complex, and worth more than \$20 million. We have a process for dealing with those. Category 2 contracts are up to \$20 million in value. Whereas the large contracts are generally done on a design and construct basis, the contracts in category 2, which are worth up to \$20 million, are usually done on a separate design or construct basis. It is a different type of contract; it is more routine, and the outcomes are known and easily specified. Generally speaking, there is not much room for innovation and so on. Category 3 projects are worth up to \$1.5 million. We have many of those; we call them minor improvement works.

The CHAIRMAN: Would this one fit into the second category?

Mr Henneveld: That would be the second category. That is the area where we seek prequalification of contractors. That is the first step in the contracting strategy that we adopt for contracts in the category 2 process. There are a number of reasons for prequalifying. It is intended to save the industry money. Because we have so many contracts, every time we go to tender it puts a contractor under a fair bit of pressure and time if it must put in a proper submission. That is

expensive. Rather than do that every time, we have a virtual panel of contractors, who are expected to go through a prequalification process. That also minimises the work for Main Roads to some extent, because we know that we do not have to go into a whole process of determining the capability of prequalified contractors.

[11.10 am]

Mr M.G. HOUSE: Do you go through that same process at the next level? In this case Consolidated on-let the contract. You went through the whole process of looking at Consolidated and it on-let the contract.

Mr Henneveld: Yes.

Mr M.G. HOUSE: Do you take part in that next process as well?

Mr Henneveld: We do on some. On contracts that have roadworks and bridgework structures, if the main contractor is prequalified for roadworks, and then uses subcontractors to do bridgeworks, we expect those bridge contractors to be prequalified.

The CHAIRMAN: In this case Carr Civil got \$6 million out of the \$7.6 million for this contract. Was it prequalified?

Mr Henneveld: No. We did not require prequalification in that case, because the main contractor had the prescribed level of prequalification for roadworks and it was subcontracted to an organisation that would do roadworks.

Mr A.J. DEAN: Would you presume in that situation that Consolidated Constructions would have its own internal processes in place to make sure that it would have a de facto prequalification for Carr Civil so that it would not go broke?

Mr Henneveld: We would presume that it would, but it would ultimately make commercial decisions. However, we do have a say in the subcontractors that are appointed. They have to be submitted. First, if it is the condition that I mentioned earlier, they need prequalification and that needs to be satisfied. However, if they do not need prequalification, the main contractor has to submit that to us and we have to approve the subcontractor.

Mr A.J. DEAN: You had no hesitation in approving Carr Civil.

Mr Henneveld: We did not have much hesitation because we knew the principal of the company and in the end, Carr did a good job. Make no mistake either, Consolidated Constructions did a good job. We were happy with the contract.

The CHAIRMAN: In other words, the contract was done; it was just that some people did not get paid.

Mr Henneveld: Yes, that is right.

The CHAIRMAN: The work was completed and Main Roads was happy with the end product, but some contracts did not get paid.

Mr Henneveld: That is right.

Mr M.G. HOUSE: In this case you let a contract to a bridge builder - Consolidated. Most of the work it had done for you was bridge building. It had not done a lot of roadworks and it on-let that to an organisation that had been involved in roadworks. You did your original investigations into organisations that had largely been construction operators in building bridges.

Mr Henneveld: It would have had prequalification in roadworks.

The CHAIRMAN: In the contract with Consolidated, Main Roads requested a statutory declaration to make sure that the subcontractors would be paid. The evidence we have is that statutory declarations were not required of Consolidated for the first three payments in August, September and October. Thereafter, statutory declarations were required of Consolidated for the

payments in November, December and February. Can you explain to the committee why, all of a sudden, halfway through this job you wanted statutory declarations from Consolidated that everybody would be paid?

Mr Henneveld: The process that we followed is that the contract was let under standard conditions of contract AS2124, of which clause 43 is quite directive in terms of clients seeking statutory declarations from main contractors to ensure that both their employees and subcontractors have been paid. That is a requirement. In the past we have not, as a matter of routine, used that on all our contracts. The experience that I outlined earlier indicated that that has not been a requirement. We went through the contract and the contract was awarded and, because of the writ that had been served on Consolidated in July, rumours started going round the industry that Consolidated might have been in trouble. These were rumours. There seemed to be concerns in about August-September and those concerns mounted, so we reacted to that by seeking statutory declarations. I think Glynn might be able to correct me on the timing of the request for that statutory declaration.

Mr Logue: That happened in October.

The CHAIRMAN: The one we have is dated 13 November. Your own documentation indicates that the first one you received was on 13 November.

Mr Logue: In October the superintendent approached the contractor and advised the contractor that it would need to comply with clause 43 and provide statutory declarations. Accordingly, after it submitted its claim for payment in November, it submitted the statutory declaration, and that is the first that appeared in November.

The CHAIRMAN: You asked for the statutory declaration, but we understand that the statutory declaration was for only the subcontractor. Only Carr Civil had to be paid, not the little guys who were contracted to Carr Civil. The statutory declaration was to say only that Consolidated had paid Carr Civil. There was no follow-up to the next stage to see that the little people who worked for Carr Civil had been paid. Is that true?

Mr Henneveld: My understanding is that Carr was asked by Consolidated to provide statutory declarations to show that it, in turn, had paid its subcontractors.

The CHAIRMAN: The evidence we had from Consolidated is that it did not get those statutory declarations.

Mr Henneveld: That is something between Consolidated and Carr.

The CHAIRMAN: I understand that. However, there is also some evidence - we will talk to some people in Karratha and Marble Bar - that Main Roads had told the small contractors that they would be looked after and that is why they continued to work. If that is the case, on what basis did that occur?

[11.30 am]

Mr Henneveld: Any discussions of that nature with the main contractor's subcontractor's subcontractors would have been on the basis of concerns that were being expressed in the industry. In one instance, one of Carr's subcontractors was proposing to remove plant from the site. That would have been of enormous concern to Main Roads because of the impending rain. Time would have been taken to explain to the subcontractors the process that Main Roads had adopted with the issue of the statutory declarations. In other words, we explained that we were now seeking statutory declarations from the main contractor to show that the subcontractors had been paid. The nature of the discussion would have been to speak like that to the sub-subcontractor to explain the processes we were undertaking.

The CHAIRMAN: Can you understand the situation of some small subcontractors who were told by Main Roads that it would ensure payments would continue to come through? They continued to

work on that basis. That created, first, a problem for Main Roads, and, second, a perception that it was guaranteed by Main Roads that people would be paid.

Mr Henneveld: We are concerned about that perception. We undertook to advise sub-subcontractors of the approach we were taking to the collection of money from the main contractor. If sub-subcontractors had commercial arrangements with Carr in this case, they would have had to make a commercial decision with the information we provided.

The CHAIRMAN: I understand that. If I were a contractor and I was told that Main Roads will ensure I would be paid, and that it will be through statutory declaration from these people that I would be paid, I would be reassured and continue to work because Main Roads would ensure that I was paid. I refer especially to the February instance involving \$1.2 million. Who was the superintendent who had discussions with the staff? I refer to the Main Roads person.

Mr Henneveld: The supervisor who had the discussions with the sub-subcontractors -

The CHAIRMAN: Yes.

Mr Henneveld: - is a gentleman by the name of Mark Salt. I mention discussions in the way that we were speaking to the sub-subcontractors and telling them the arrangement we had with the main contractor. In us telling them the arrangement with the main contractor, there was still the link the sub-subcontractors had to make to ensure the contractor was paying Carr, the subcontractor.

The CHAIRMAN: As an independent person, that is true. In reality, once Main Roads was aware that the sub-subcontractors had not been paid and were going to take plant off the site, would it not be logical for you to say to Consolidated, "I want you to make sure that Carr Civil has paid these guys"? Is that not logical? The people were going to take plant off the site because they had not been paid. Consolidated may give a statutory declaration saying that Carr had been paid, but would Main Roads not say, "Hang on; we should talk to these people who have a real problem"? Before any more was paid by Main Roads, would you not see whether these people were paid by Carr Civil?

Mr Henneveld: It is conjecture on my part, and I do not know whether others can add to this, but the advice that Consolidated would have given us if we had asked that question was: we are getting statutory declarations from Carr to ensure they have paid their subcontractors. I do not know whether someone could add to that.

Mr Wallwork: I think there is an element beyond which the superintendent would not go into that sort of thing. On these contracts, there are all sorts of relationships that superintendents would not be -

The CHAIRMAN: That is great. If you talk directly to a subcontractor and stop him taking plant off the site and give him some comfort by saying Main Roads is doing X, Y, Z, you would ensure that the contractor who was going to take his plant off the site would be looked after; is that not logical?

Mr Wallwork: It is logical. In this case, the person who is alleged to have given that undertaking to the sub-subcontractor has denied that he did it, and he does not have the authority, obviously, to do it.

The CHAIRMAN: Do you have the statutory declarations given to you by Consolidated?

Mr Logue: Yes.

The CHAIRMAN: The committee would like a copy of those statutory declarations. It was indicated in earlier evidence this morning by an independent consultant who has looked at this matter that the form of the statutory declaration signed by Consolidated changed. The last one presented to you contained the words "to the best of my knowledge". That would ring warning bells to anyone reading the statutory declaration. "To the best of my knowledge" the accounts have been paid. They have either been paid or not been paid. If Main Roads accepted that declaration

and it then made the final payment of \$1.2 million, I would find a problem. Who approved the final payment, especially if the statutory declaration changed from the previous three statutory declarations? I want to verify that point. The consultant acting for the State Supply Commission indicated that he saw on Friday that the wording had changed to include "to the best of my knowledge," which is a helluva lot different from saying that the contractors had been paid.

Mr Henneveld: We actually pointed that out to the consultants.

The CHAIRMAN: I am not interested in whether you pointed it out; I am interested in why, if you at Main Roads had seen those words, they did not ring warning bells so you did not make the \$1.2 million payment to Consolidated as the money was not being paid on to the subcontractors.

Mr Henneveld: When we get a statutory declaration, and it is correct, we have to assume that the person who signed it has the authority and the ability to sign it. Okay? When that person puts a rider on it, "to the best of my knowledge", it still does not limit the value of the statutory declaration in our opinion. It was to the best of his knowledge, and the person was in the best position in the company to have that knowledge. Although we were - not alarmed - a little concerned that it was there, it did not change the value of the statutory declaration.

The CHAIRMAN: In my opinion it creates a perception that someone has signed that declaration without the full knowledge of whether people had been paid. That is the question. You guys asked whether the payments had been made. "To the best of my knowledge" is not good enough; otherwise, what is the point of the exercise? You need to know that payments are made so you can make your payment, especially as other people rely on your vigilance.

Mr Henneveld: When we get a statutory declaration, it is from a person in a position who is signing on behalf of the company.

Mr M.G. HOUSE: I think it could be argued that it is not a statutory declaration but a qualified declaration. I am not a legal person, but I always thought that a statutory declaration was a statement of absolute fact. You have a qualified statement. I would argue that it is not even a proper statutory declaration.

Mr Henneveld: Glynn, would you like to comment? You have been looking at the issue.

Mr Logue: That is entirely my view.

The CHAIRMAN: What?

Mr Logue: That the statutory declaration presented to the superintendent in February was qualified. It is probably so that, being qualified, it is not a statutory declaration as such.

The CHAIRMAN: Then why did we make the payment?

Mr Logue: The fact that this particular declaration was worded differently from those previous ones, to my knowledge, came to Main Roads' knowledge, as the principal, only on Friday. To elaborate, I made inquiries on Friday morning as to what made up the earlier statutory declarations, and the Pilbara region facsimiled copies of earlier statutory declarations to me. That is when I noticed the difference between the last statutory declaration and the earlier declarations.

Mr J.L. BRADSHAW: Who authorised the change to the declaration - was it Consolidated, Main Roads or a combination of both?

Mr Logue: It was Consolidated Constructions. It would have been Mr Lyons, I suspect, or one of the other staff of Consolidated.

The CHAIRMAN: Are you suggesting at the point it was given to Main Roads, you were not aware that they were having problems? Was it thought that as you had the statutory declaration, you should make the payment? No-one verified the wording until after the event when we got wise that there was a problem. Is that what happened?

Mr Logue: Personally, I did not know, in my position, that Consolidated was having financial difficulties in February when the statutory declaration was presented to our superintendent, as it ought to have been.

The CHAIRMAN: The superintendent got the statutory declaration, and said he had the statutory declaration, so pay them. What was the process for releasing the \$1.2 million in February?

Mr Logue: I do not really know the practice of this particular superintendent after having received the statutory declaration. It was certainly forwarded to Main Roads by the principal in the Pilbara region from whence payment was made to Consolidated Construction.

Mr A.J. DEAN: Would there be a covering letter or memo saying, "I, the undersigned superintendent, recommend payment"?

[11.40 am]

Mr Logue: The superintendent does not recommend payment in those terms. The superintendent recommends payment simply by the issuance of the payment certificate. The superintendent does that independently of the statutory declaration in that the statutory declaration is submitted by contractors after the superintendent has issued his payment certificate.

The CHAIRMAN: Is this superintendent Salt?

Mr Logue: No, Mark Salt was the superintendent's representative. He was accountable to the appointed superintendent, Mr Arthur Phillips.

The CHAIRMAN: Is Arthur Phillips in Perth?

Mr Logue: Yes, he is domiciled in Perth.

The CHAIRMAN: The committee will obviously want to talk to him at some time in this process.

Mr M.G. HOUSE: I am interested in this process. You are the person in charge of contracts, as I understand it?

Mr Logue: No, I am not in charge of contracts, as such.

Mr M.G. HOUSE: I will ask a question and you can tell me whether I have directed it at the wrong person. I am interested in the process by which Main Roads Western Australia accepts a tender for a contract from somebody to do a job and that person on-lets that contract to another company. I presume it could happen multiple times. In this case, Consolidated Constructions got the contract. Carr Civil Contracting then subcontracted and the subcontractors contracted to Carr Civil. Is that a fairly normal practice? Does it happen a lot in Main Roads, that the principal contractor, the person who is awarded the contract, is not the person actually doing the work? It seems a bit sloppy to me. If it were my business and I was dealing with person X, I would want to be pretty sure that the person had some hands and fingers on the job. However, you seem to be a bit divorced from the job in the process of on-letting contracts. Does that, in percentage terms, happen regularly?

Mr Wallwork: I can answer that. Main Roads contracts can be road or bridge contracts, or a combination of both - that is just a small group - and one particular skill might dominate in any one of those contracts. In fact, there may be other skills, like expertise with bitumen, for example. Bitumen is a high component in many of our cases. However, in every individual case, the head contractor's qualifications are approved through our system, and we rely on his qualifications in terms of quality, finance and technical ability, as well as a number of other lesser qualifications, to complete those works. In this case, as you pointed out earlier, Consolidated Constructions had a very good reputation from previous works with Main Roads. That was not only bridge works though; those works on Roe 3, which I think was their largest contract in recent times, had a large road component too. We were not, therefore, walking in with a bridge contractor to do a road job. Having said that, the subbies that Consolidated Constructions took on reflected a whole scope of

works, including earthworks, pavement construction, bitumen and culvert works. All those segments were given to different people who had reputations in and knowledge of those areas. It depends overall on the individual project.

The CHAIRMAN: In this case \$6 million of a \$7.6 million project went to Carr Civil.

Mr Wallwork: Yes, it was basically an earthworks job. I think Carr Civil, out of that \$6 million, would have certainly had a bitumen subcontractor. That would have been a major component of the \$6 million.

Mr M.G. HOUSE: What did Consolidated do for \$1.6 million? Do you reckon it did \$1.6 million worth of work in reality?

Mr Wallwork: All I know is that when I visited the site on a number of occasions it was represented there by a senior site supervisor who had his own staff. I cannot say in detail what Consolidated did, but it obviously assumed it had control over all the works.

Mr M.G. HOUSE: It was not just a process of paper shuffling. Did it actually deliver a reasonable service for the money?

Mr Wallwork: I cannot go into specifics. However, we have other contractors who operate in this way, and have done for a long period of time. They have been quite successful in delivering works to us; we have not had problems of that nature with them.

The CHAIRMAN: Can you table as evidence those four statutory declarations? We obviously need to look at them. Do you have them there?

Mr Logue: Yes, I have three of them.

The CHAIRMAN: Can you table what you have? Is the last the February one?

Mr Logue: Yes. I have November, December and February.

The CHAIRMAN: I return to checking Consolidated's financials. You said Consolidated was prequalified. However, there were some rumours going back a year about Consolidated before it got the contract about it not paying contractors on Christmas Island. Did anybody do a financial check of Consolidated before you awarded it the contract, although it was prequalified?

Mr Henneveld: There is a requirement in the prequalification process, which is ongoing and conducted on an annual basis, that we need to determine the financial status of the company, even if it is not awarded contracts. In this case, a financial analysis and report was done by Priestleys, which came up with a conclusion on the financial status. That was done in April and that was when we made the recommendation to award the contract to Consolidated; so a financial report was done on Consolidated Constructions by Priestleys.

The CHAIRMAN: Did that report basically say Consolidated was okay?

Mr Henneveld: It indicated that out of a mark of - I am sorry, I have forgotten the figure.

Mr Hunt: Out of a mark of 30, it achieved 18.

Mr Henneveld: And that is based on a number of criteria.

Mr M.G. HOUSE: Where does 18 sit in the spectrum?

Mr Hunt: It is a pass.

Mr M.G. HOUSE: Is it a good pass? What do most people rate?

Mr Hunt: They range. In the few I have been involved in, some have been up at 30; they tend to be the very large companies. Some have been down around 18. If they get down below 18, that is when we start looking at them.

Mr M.G. HOUSE: So, were these guys borderline, right on the limit?

Mr Hunt: Yes.

The CHAIRMAN: In other words you would not deal at all with anybody at 18.

Mr Hunt: No, rather than saying we want 15, we say 18 is a pass mark. We have a serious look at anybody who falls below that mark. It is usually existing contractors we would look at to see how we would sort them out and decide then if they have problems.

Mr M.G. HOUSE: Was the court case in which Consolidated was being sued for about \$2.5 million taken into account at that time?

Mr Hunt: No, not at that time.

The CHAIRMAN: Because that happened in July.

Mr M.G. HOUSE: It occurred afterwards

Mr Hunt: It was April when we did the assessment, so it was afterwards.

Mr Henneveld: The writ was served in July and this analysis was done in April.

The CHAIRMAN: Was the contract awarded in June?

Mr Henneveld: In July.

The CHAIRMAN: Before or after the writ?

Mr Henneveld: It was before we were aware of the risk.

The CHAIRMAN: Again, in relation to the problems with Carr Civil, is there some way that you as Main Roads can give the committee some recommendations on how to address this issue? To us there seems a huge anomaly here. You have given the contract to Consolidated, yet more than three-quarters of it went to someone else, which then engaged a whole pile of contractors, who were exposed. Are there some recommendations you could give the committee for a process to stop small contractors being exposed to the will of these bigger companies?

Mr Henneveld: We were concerned about the collapse. We have done an internal review and we have listened to what the auditors had to say. There are a number of areas we believe that might help if we adopted a different approach. There is an approach that we could take at tender time, not necessarily at prequalification. There is a range of suggestions that we could follow, perhaps for prequalification as well. At tender time, we should perhaps look at whether a significant proportion of the work - say, 50, 60 or 70 per cent - is going to a single subcontractor; and, if so, insist that the subcontractor be prequalified. We do that for some works now, but not all works; I explained the difference earlier. I believe that is something that we should apply.

[11.50 am]

The CHAIRMAN: May I suggest that it might be more advisable, rather than doing that with 50 or 60 per cent, that you apply your small job criteria? In other words, if it is worth more than \$1.1 million or \$2 million, any company liable to get that level of money needs to be prequalified. A company that is getting 20 per cent or \$3 million or \$4 million worth of work should be able to provide some comfort to its subcontractors that it has prequalified. Would that be too great an onus to place on you?

Mr Henneveld: It would be an onus on the industry, not an onus on us. It might be a little onerous because there are always companies that want to be prequalified. The only way they can become prequalified is to take on work when they are not prequalified. In the case of Carr, that was the view we had. We felt that, given a few contracts like that, it could seek prequalification and ultimately become prequalified. If you took that approach in a very strict or structured way, you might in fact stop people from becoming prequalified.

The CHAIRMAN: I know that but in the case of Carr, Main Roads supposedly owes it just over \$1 million. According to the reports we have seen, it has debts of \$3 million. Obviously, it had an underlying problem other than this contract.

Mr Henneveld: Yes.

The CHAIRMAN: Getting it prequalified would guarantee that its subcontractors would be looked after, especially if it were a Main Roads job. Do you understand what I am saying?

Mr Henneveld: Yes. That was the decision we made to run with Carr, on the basis that, from a technical point of view, they were satisfactory. In other words, they could produce the work we would want a quality licence on. From a financial point of view, we were not taking that risk. It was the risk that Consolidated was taking.

Mr M.G. HOUSE: You gave evidence earlier that all your work is done by contract. Correct me if I have any of this wrong.

Mr Henneveld: Yes, that is right.

Mr M.G. HOUSE: How many contracts a year do you let?

Mr Henneveld: Over 100.

Mr M.G. HOUSE: That is 100 contracts a year on which only three have gone belly up in 25 years. Is it fair to say that this is just an aberration? Do you see it as just one of those things that happen in the blip of business? If the answer to that is yes - I am not trying to put words into your mouth - can you identify what went wrong in this case so that it does not happen again? As the Chairman said, we are concerned about the little guys on the jobs out there.

Mr Henneveld: We see it as an extraordinary aberration. If you look at the chain of events that occurred and the measures we put in place to deal with it, it was quite an extraordinary chain of events. I would say it was quite an aberration. The suggestions we have come up with and the suggestions the auditor will come up with, if they had been put in place beforehand, would not have stopped the collapse that occurred with Consolidated and the impacts it has had.

Mr M.G. HOUSE: Given all that and that a lot of little guys got hurt, do you think it would be fair for Main Roads to make an ex gratia payment to the small contractors and therefore get them out of trouble so that they are back on the job? I am referring to the little guys, not the big companies - go past them and go to the guys who were losing their sweat on the job. Do you think Main Roads should make an ex gratia payment to them so they can keep operating? Would that be fair?

Mr Henneveld: No, it would not be fair at all.

The CHAIRMAN: Some of your superintendents spoke to the subcontractors and gave them reassurances that they would be paid -

Mr A.J. DEAN: Allegedly.

The CHAIRMAN: Yes, allegedly, and the fact that the statutory declarations, in some opinion, are not worth the paper they are written on, is there not a case for Main Roads to look after the interests of the people that it gave a commitment to?

Mr Henneveld: I do not believe there is a commitment by or liability on Main Roads. I explained before the discussions that our site superintendent's representative had with some of the subcontractors. The discussions were to explain to them what Main Roads was doing. Any arrangements that the sub-subcontractors had with the subcontractors are commercial arrangements. It is what business is; it is what life is all about.

The CHAIRMAN: I understand that, but if I were one of the subcontractors who had spoken to one of your people who said this is the process we are going to go through and that there is a guarantee of payment, and, on that basis, I made the decision to do the work, but the payment is not

actually made - it comes back to the question of the statutory declaration - there must be some liability on Main Roads.

Mr Henneveld: If a person is a sub-subcontractor and he is worried about the person paying him - that is, that the subcontractor might be a little bit dodgy, but the subcontractor is telling the sub-subcontractor that he is okay and will get payments from the main contractor, Consolidated - the subbie would go to the client and ask whether that is true. He will ask what is the situation with Consolidated and how likely it is that he will receive his payments from his contractor. The answer would have been that the arrangement we have with Consolidated is that we have started collecting statutory declarations that are a mechanism to make sure that the main contractor is paying his subcontractor, that is, Carr. Having made that or having heard that from the client, the question is then what impact it will have on that person getting payment from Carr, in this case. Out of all this, Carr is at the heart of a lot more people potentially going broke than the impact that Consolidated had. Therefore, I believe that the subcontractors to Carr had to make a commercial decision themselves.

The CHAIRMAN: I understand that but I am speaking for the small contractors. I know the argument about who is liable and who is not. If someone from Main Roads told the small guy on the street to finish the work and he would ensure he got paid -

Mr Henneveld: They did not say that.

The CHAIRMAN: I am just saying if it were said. Some contractors said in their submissions that they were told by Main Roads to finish their work and that they would be looked after. If that did occur, would you not say that Main Roads has some responsibility?

Mr Henneveld: If it had occurred like that, there might be some moral responsibility, but it did not occur like that.

The CHAIRMAN: We have not got evidence at this stage but we know from some of the submissions of the subcontractors that there was some inkling of that. We will talk to those people this afternoon as well as tomorrow and Wednesday. Hopefully, we will get some evidence that we can bring back. I was just trying to make the point that some other people are saying, because of the conversations they had with Main Roads staff, that it is the reason they continued to work. You supported that by saying that one person was going to take his equipment away until he spoke to someone from Main Roads. In my opinion, that gives you some indication of responsibility. Otherwise, that person was going to take his equipment off the site.

Mr Henneveld: Yes, but the guy involved had a commercial arrangement with Carr. He was concerned that Carr was not going to pay him. The discussions that would have happened on site would have been, "Look, any arrangement you have with Carr is your business but Main Roads can tell you that we have got a stat dec in place that confirms in our mind before we pay Consolidated that Consolidated has paid Carr." That is the only thing. We could not have gone further than that. If a subcontractor to Carr hears that, it still has to make up its own mind about how likely it is it will get money from Carr. In the end, it is a commercial decision.

Mr M.G. HOUSE: I know that sounds all very well when you are talking to people at a sophisticated level. I stress that I am not demeaning these people in any way. However, you are dealing with people who, by their own sweat and toil, have worked their way up from being truck drivers and grader drivers and a whole range of very menial tasks. They have gathered together some money through their own sweat and bought themselves some equipment. They have gone out to try to better themselves in the world. They will lose everything. They are not sophisticated in a business sense. What you have said is legally accurate; I accept that. However, you are dealing with people in the bush who take people's word for things. They do things because the boss told them it would be okay. They do not read legal documents. A case could be made that they should.

At the end of all that, a lot of the little people will get badly hurt. A person would have to be less than human if he did not have some compassion for them.

Mr Henneveld: We have enormous compassion for them. That has affected us far more than what has happened on the job with Consolidated.

Mr M.G. HOUSE: But you are still telling me that you do not feel any need to look at some sort of ex gratia payment to enable them to keep their businesses operating.

[12 noon]

Mr Henneveld: The case in point is KG Stubbs Earthmoving and Mining Contractors Pty Ltd, which has a subcontractor - Carr. They are very shrewd and very commercially savvy operators. They were the ones who were most concerned with the arrangement they had with Carr. Our supervisor would have spoken to them about the arrangements we had with Consolidated Constructions. I take the member's point that if someone heard that a large client such as Main Roads was spreading the word that people would get paid, that is a fine assumption. However, the situation with KG Stubbs was that Main Roads explained the arrangements that it had with Consolidated Constructions about the statutory declaration. That was enough. KG Stubbs was very suspicious of the ability of Carr Civil Contracting to pay. KG Stubbs had had a few nasty experiences earlier. Carr Civil Contracting was coming quite hard and strong. KG Stubbs then made a commercial decision based on what Main Roads said its arrangement was with Consolidated Constructions.

The CHAIRMAN: Was the conversation along the lines that Carr Civil Contracting would sign a statutory declaration to say that Consolidated Constructions had also being paid?

Mr Henneveld: Main Roads is not aware of that.

The CHAIRMAN: If that is the case, the chain of command will lead back to Main Roads.

Mr Henneveld: If Consolidated Constructions has a statutory declaration from Carr Civil Contracting -

The CHAIRMAN: If it was going to get one - if a conversation occurred that there was a commitment for that to happen. Whether it happened is not relevant. From the submissions that the committee has heard, it seems that the only reason people worked with Consolidated Constructions was that Main Roads said it would ensure payments were made. That is the crunch. There is no legal requirement for Main Roads to make these payments. However, if there is some indication that Main Roads told the workers that they would be covered and said that they would get paid, there could be a problem; otherwise, there is no problem.

Mr J.L. BRADSHAW: As was pointed out earlier, Main Roads would have been under pressure to have the work done before the wet season began. I wonder whether the perception was that they would get paid. I know you are saying that they were told there was another system in place. Sometimes people say things but do not quite cover the whole gamut. I wonder whether that is the case because the guy was keen to get the job done and did not like to see the subcontractor take his gear away. Were others involved in that meeting, or just that company that was facing the -

Mr Henneveld: I am not sure of the details of the meeting.

Mr Hunt: I do not know either.

Mr J.L. BRADSHAW: Do you not know whether other subcontractors may have had doubts and wanted to pull out too?

Mr Henneveld: I cannot comment.

The CHAIRMAN: We will ask those officers to attend the committee so that we can quiz them directly.

Ms J.A. RADISICH: Following from what Menno was discussing with the Chairman some time back, can you please clarify for me what date the contract was awarded to Consolidated Constructions?

Mr Henneveld: The actual date?

Ms J.A. RADISICH: It is probably in the submission.

Mr A.J. DEAN: It was 19 June.

Ms J.A. RADISICH: Was it 19 June?

Mr Henneveld: We received what is called preferred tenderer status on 19 June. That means it would be awarded the contract after some checks were done. It was awarded on 16 July.

Ms J.A. RADISICH: You mentioned earlier that you became aware of the writ that had been served against Consolidated Constructions. On what date did Main Roads become aware of that?

Mr Henneveld: My understanding is that we heard about it through rumours in the north west in August.

Ms J.A. RADISICH: Do you know on what date the writ was actually served?

Mr Henneveld: No. Sorry, that is not part of our submission.

Mr A.J. DEAN: The statutory declaration that was received about which we have asked questions this morning said that the previous payment had been paid out and then a payment was issued for the \$1.2 million. Because everything cut out after that, did you never receive a statutory declaration to say that \$1.26 million was paid out? That has never been an issue has it, because everything went pear-shaped after that?

Mr Henneveld: The statutory declaration in February -

Mr A.J. DEAN: Was that for the December payment?

Mr Henneveld: - was about all subcontractors having been paid to the end of December.

Mr A.J. DEAN: That is okay.

The CHAIRMAN: For the record, can we get the assistant supervisor on site? Is he still on the site?

Mr Logue: He is in the Port Hedland office.

The CHAIRMAN: Can we make sure that over the next two days when the committee is up north that he attend one of the hearings? We will want to speak to him personally.

Mr Wallwork: That is on the condition that he is on duty. I cannot guarantee that he is on duty right now.

The CHAIRMAN: If he is not, we will subpoena him. We need to see him. The committee is flying up there tomorrow and Wednesday. The committee will want to talk to him either tomorrow or on Wednesday, whether or not he is on duty.

Mr Henneveld: He might be on leave; it does not mean that he does not want to speak with the committee.

The CHAIRMAN: The committee will spend two days up there. We want the gentleman to speak to us. We can make an arrangement for him to come to Perth, but we need to get evidence from the gentleman.

Mr Henneveld: We will make sure that he is there.

The CHAIRMAN: Thank you, gentleman. If we need to speak to you again - and we might - we will call you back.

Mr Henneveld: Can I just say one thing that was going through my mind as we were speaking? It must be recognised that when the final payment was made, Carr, who had a \$6 million subcontract, had received - this was what the statutory declaration said - more than \$5 million. The question that remains in my mind is: what the hell did he do with the \$5 million?

The CHAIRMAN: We understand that and we understand that he had a debt of between \$3 million and \$1 billion. The committee will quiz them too. The problem we have is that we need to understand the accusation that has been made about Main Roads. That is why we are giving you the opportunity to speak this morning about the weaknesses and the arguments being put about Main Roads. That is why the statutory declaration has come to light. That is fundamental to the issues. However, the committee understands that other players need to be quizzed quite strongly, and we will do that.

