

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 5

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

[2.00 pm]

COX, MR PETER
Director, Concrete Logistics,
PO Box 165,
Mandurah, examined:

WAUGH, MR DONALD CLAYTON
Company Director/Accountant, Concrete Logistics,
PO Box 8,
Dowerin, examined:

EVANS, MR RODNEY FRANCIS
General Manager, RNR Contracting Pty Ltd,
PO Box 64,
North Fremantle, examined:

WHITE, MR LYNDON MARK
Technical Manager, RNR Contracting Pty Ltd,
PO Box 64,
North Fremantle, examined:

GRIFFITHS, MR PETER JOHN
Businessman, Marble Bar Travellers Stop,
PO Box 1813,
Midland, examined:

HARRINGTON, MR DONALD
Partner, Marble Bar Travellers Stop,
PO Box 1585
Busselton, examined:

PAECH, MRS FIONA
Partner/Subcontractor, N.W. & F.S. Paech,
PO Box 4047,
Rangeway, examined:

PAECH, MR WAYNE
Partner/Subcontractor, N.W. and F.S. Paech,
PO Box 4047,
Rangeway, examined:
[Details of Witness sheet not sighted by Reporting Services staff.]

BERRY, MR LINDSAY NEIL
Cartage Contractor, examined:

DUCAS, MR NOEL**Director, North Coast Holdings, examined:**

The CHAIRMAN: Welcome to the Public Accounts Committee hearing. The committee hearing is a proceeding of the Parliament and warrants the same respect as the 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 a contempt of Parliament. Have you completed the Details of Witness form?

The Witnesses: Yes.

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

The Witnesses: Yes.

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

Mr Cox: Yes.

Mr Evans: Yes.

Mr Griffiths: Yes.

Mrs Paech: Yes.

Mr Waugh: Yes.

Mr White: Yes.

Mr Berry: Yes.

Mr Ducas: Yes.

Mr Harrington: No.

The CHAIRMAN: Before we go any further, you need to read and understand that information sheet. I will leave you out of this until you have read the information sheet.

Mr Harrington: I know what I am in for.

The CHAIRMAN: I understand that, but we need to do this properly.

There are a couple of gentlemen in the public gallery. Do you want us to call you as witnesses as well?

Mr Berry: Not, necessarily. Later on, maybe.

The CHAIRMAN: That will be a problem. If you want to give us evidence, you need to tell me now.

Mr Berry: No.

The CHAIRMAN: A couple of people have made written submissions to us. Do you wish to make any amendment to that submission?

Mrs Paech: Not at this stage.

The CHAIRMAN: Is it your wish that the submission be incorporated in the transcript of evidence?

Mrs Paech: Yes.

The CHAIRMAN: Do you want to make any statement in relation to your submission?

Mrs Paech: No.

The CHAIRMAN: To start off, rather than my asking questions, the committee would like to know what has been your involvement with the contracts, what your exposure is and any undertakings you were given by the contractor, Main Roads and/or Consolidated Constructions Pty Ltd. I know that some of you were contractors to Carr Civil Contracting Pty Ltd and others were contractors to Consolidated. Can you tell us your involvement, which company you were subcontracted to, to what extent you were subcontracted and the amount of exposure; that is, the amount you are owed?

Mr Cox: As a concrete supply company we were subcontracted to Carr Civil to supply concrete. Our exposure was \$250 000.

The CHAIRMAN: Is that exposure owing now?

Mr Cox: Yes, what is owing now.

The CHAIRMAN: What was the total exposure for the job?

Mr Waugh: It was \$530 000 worth of work. We have been paid \$280 000 and roughly \$250 000 is still owing to us by Carr Civil.

The CHAIRMAN: You had no connection at all with Consolidated.

Mr Cox: No.

Mr Waugh: No, solely Carr Civil.

Mr M.G. HOUSE: Was anybody directly contracted to Consolidated?

Mr Harrington: Yes.

Mr J.L. BRADSHAW: Has this put your company at risk at all?

Mr A.J. DEAN: Do you have creditors backing up?

Mr Waugh: We started the company in June last year. We are four shareholders. We are just small business men. Yes, it has put the place at considerable risk. I have mortgaged a house to put in additional funds, otherwise the company would have folded. It was only seven months old.

[2.10 pm]

The CHAIRMAN: You said that you are owed \$200 000, or whatever. Obviously you had not been paid for a fair time.

Mr Waugh: We got paid for October and November's accounts. The accounts for December, January and February is our bone of contention. We were still working in February. Right up to the date Consolidated went into receivership, we were just about still on the job.

The CHAIRMAN: Why would you have continued -

Mr M.G. HOUSE: Can we get everybody's position before we go any further. We would like to get a handle on everybody's position.

The CHAIRMAN: We will go around and give everybody a chance to speak and then we will come back individually.

Mr Harrington: Once again, my name is Don Harrington from Marble Bar Travellers Stop. We were directly involved with Consolidated. We owned and ran the Marble Bar Travellers Stop roadhouse-motel in Marble Bar and we supplied meals and accommodation for the entire contract. In the contract we had with Consolidated, we supplied all workers' meals, three meals a day for up to 70 men, which included Carr's as well, and it was responsible for the payment of the total account.

The CHAIRMAN: Who was responsible; Consolidated?

Mr Harrington: Consolidated. That also included three MRD personnel. I have a written statement that I would like to read later, if you want to get the details as you go around.

The CHAIRMAN: What were you owed when the contractor went over?

Mr Harrington: The total owed to us now is \$93 465.76.

The CHAIRMAN: When was the last payment made to you?

Mr Harrington: The last payment was made to us in late January, but it was for up until the end of December.

Mr A.J. DEAN: Did Consolidated pay that, not Carr?

Mr Harrington: Consolidated.

The CHAIRMAN: Did it pay you at the end of January?

Mr Harrington: We had another account with Carr, which is quite separate. We are a creditor of Carr's as well but on a separate issue.

The CHAIRMAN: Is that not part of this job?

Mr Harrington: It is part of this job and Carr owes us about \$5 000 in rough terms.

Mr Evans: Are you just taking a bit of a brief overview now and will you come back to it?

The CHAIRMAN: Yes, we will come back.

Mr Evans: RNR Contracting was involved. We did the bitumen spraying on the job. We are like the icing on the cake at the end of the job. We never got paid a cent. I cannot remember the exact amount, but we are owed \$373 000 and some dollars and cents. We never drew a cent from the job.

The CHAIRMAN: You did not do the whole road in one hit, did you?

Mr Evans: That is correct; we did it in three visits.

The CHAIRMAN: So why were you not paid for the earlier ones?

Mr Evans: We went in and did the first visit in late November; then it was December and early January. It sounds like three months, but it is actually condensed into a short period, although it is over three invoice periods. However, the way the job was going with the pressure of the cyclone season building up and everything else, we made a commercial decision with Carr Civil that we would wait until the end of the job to receive full payment or any payment. We felt we had Carr Civil under control. We never sort of thought that the prime contractor would fold and expose everyone else the way it did.

The CHAIRMAN: Carr Civil was paid by Consolidated for work up to December; how come you were not paid?

Mr Evans: I cannot answer what they were paid for. As I said, we are basically the icing on the cake. The biggest portion of our account is on the tail end of the job.

Ms J.A. RADISICH: What kind of assurances did you get from Carr Civil and do you have any documentation?

Mr Evans: No. I will continue if you want to start going into this. In the early days, because the job had been running for some time, we were hearing on the grapevine that the job was not going terribly well and that progress, production and everything was pretty poor. It was getting close to us being required to put down the bitumen. Lyndon here had negotiated the contract with Carr Civil. We had worked for Carr Civil in the past and done some sizeable jobs. We had no reason to believe it would not honour its word. We were, however, concerned about hearing that the job was not going well and that Main Roads itself was going to take over the contract. So, on 12 November I placed a call to the regional manager in the Port Hedland division of Main Roads and explained to him that we were a private bitumen spraying company, our main competitors were all corporate and

we were hearing that Main Roads was going to take over the job. He told us Main Roads had restructured, it was going to carry on the job as it was and it had put certain assurances in place. We said to him, "Look, we are a private company. We cannot afford not to get paid for this job." His comment was, "Don't worry about that; there are provisions in place to ensure you will be paid." However, as you all have probably found out now, that is fine; when people put their hand out for their next progress payment, they have to ensure that they have paid everyone out for the previous month. However, there is nothing that protects the very last payment. Very often in our line of business, by the time we get there to spray the bitumen, if the job is already going bad or people are losing money, they are still desperate to get the bitumen on so that they can claim practical completion and put in their next progress. So we are exposed all the time. As it turned out, the last payment went to Consolidated, but it never flowed on. At this point in time it is easy to be wise -

The CHAIRMAN: We will come back and explore this more; we just want to get a handle on the issues. There are obviously a lot of issues about guarantees etc. What are your circumstances?

[2.20 pm]

Mrs Paech: We were subcontractors to Carr Civil and we are owner-operators of a truck. Before going on the Marble Bar job, we had worked with Carr Civil for 12 months in Karratha and other jobs. They said they had a good job with Main Roads. We said yes, we would be there. We kept working. We had heard that things were not going well. Wayne went to Mark -

The CHAIRMAN: Who is Mark?

Mrs Paech: Mark is from Carr Civil - Mark Blayney. He is whom Wayne had personal contact with. He asked what was the story. This is getting back to the public perception of Main Roads holding the reins of the job, so to speak. Mark said to Wayne that if he had any problems with him and if he thought he was not going to get paid by him, he could go straight to Main Roads to get paid. That is the perception; that subcontractors have the ability to go to Main Roads if it is a Main Roads job and get the pay if they are worried about being paid by the main contractor.

The CHAIRMAN: What was the basis of that? I will come back to that.

Mr M.G. HOUSE: How much do they owe you?

Mrs Paech: Fifty thousand dollars.

Mr White: I am with RNR Contracting. I will elaborate more on RNR Contracting later.

Mr M.G. HOUSE: Did you have a written contract?

Mrs Paech: With Carr Civil? No.

Mr M.G. HOUSE: When you said it was the perception that you could go to Main Roads -

Mrs Paech: The perception is that Main Roads has a system in place whereby they get a statutory declaration to say that everything has been paid but if you are worried about being paid by the contractor you are working for, you can go to Main Roads and say that they are not going to pay you and you have done this much work on this job.

Mr M.G. HOUSE: Has somebody from Main Roads actually said that to you?

Mrs Paech: No.

Mr M.G. HOUSE: Do you just believe that that is the view?

Mrs Paech: It is the common belief among people who work for Main Roads jobs.

The CHAIRMAN: Before we go any further, I believe Mr Berry has made a written submission. He needs to come to the table so we can ask him and he can tell us a bit about his problem. I would like Mr Ducas to come forward as well as both gentlemen have different positions.

Mr Berry: We were subcontracted to Carr Civil on the Marble Bar section.

Mr Ducas: I am from North Coast Holdings, from Geraldton, did most of the earthworks on the site. We are in for \$100 000.

The CHAIRMAN: Are you a director of the company?

Mr Ducas: Yes.

The CHAIRMAN: Mr Berry made a submission. Has Mr Ducas made a submission?

Mr Ducas: No.

The CHAIRMAN: Does Mr Berry want to amend his submission?

Mr Berry: No.

The CHAIRMAN: Would you like it incorporated as part of the transcript of evidence of this committee hearing?

Mr Berry: Yes.

The CHAIRMAN: It goes before the Parliament and is presented as part of the process. Would you like to make a statement in relation to your submission?

Mr Berry: No.

The CHAIRMAN: Please advise the name of your company, your exposure in this and give details of your contract.

Mr Berry: We were trading as L.N. & C.A. Berry. At the time we were owed \$61 000. We have not received any of it.

The CHAIRMAN: Mr Ducas?

Mr Ducas: We were owed \$100 000. The rumour was out in early November that things were running amok. I went to the local Main Roads branch in Geraldton and talked to the management about my concern of what was going on in Marble Bar. I was told, to allay my fears, that they had procedures in place and this sort of nonsense would not happen on any of their jobs. I asked them whether they could look into it any further to allay my fears of what the rumour mill was putting out. They came back to me within three or four days and told me that everything was on track and there was no problem.

Mr M.G. HOUSE: Were the rumours about Carr or something else?

Mr Ducas: The whole job.

Mr M.G. HOUSE: I do not want to put words into your mouth. Were people talking about Consolidated or were they talking about Carr?

Mr Ducas: They were talking about the whole thing.

The CHAIRMAN: Because Hansard has to record today's proceedings, we will start with Mr Cox. Before witnesses give any information, can they please identify themselves for the record? It helps Hansard record whom you are and what you say.

What was your involvement, Mr Cox?

Mr Cox: Our involvement was for the concrete supply. We are owed \$250 000.

The CHAIRMAN: When was the first time you delivered to the site?

Mr Cox: Early September.

The CHAIRMAN: Were you paid for that job?

Mr Cox: We were paid for September, October and November. We received nothing from that point on. The last payment was made in December.

Mr J.L. BRADSHAW: Are you in receipt of an account for December?

Mr Cox: Yes.

Mr J.L. BRADSHAW: We were told that people who put in their accounts for December have been paid.

The CHAIRMAN: We have statutory declarations from Consolidated until the last one in January stating that all the subcontractors have been paid.

Mr Cox: We were never approached by anyone from Consolidated.

The CHAIRMAN: I know that they would have gone to Carr Civil.

Mr Cox: They may well have done, yes.

The CHAIRMAN: Have you dealt with Carr Civil before?

Mr Cox: I know of the guy who dealt with the claims, but not through our company. We were also given an undertaking by Main Roads in January because we were concerned that we were not receiving any payments. We got the same guarantees that everyone else in the room has mentioned - that there was a system in place. Everyone was referring to Carr falling over. We were told that the contract would be carried on and administered by Main Roads.

The CHAIRMAN: Who told you that?

Mr Cox: It was actually Richard Salt, the project manager on site.

The CHAIRMAN: Did he tell you that if Carr Civil fell over and you did not get paid, the project would continue and you would be paid by Main Roads?

Mr Cox: Correct.

Mr M.G. HOUSE: Did he actually tell you that?

Mr Cox: Yes. There were probably around 20 or 25 in that period. I would have to look back and check.

Mr M.G. HOUSE: Did he tell anybody else? It is a very important issue.

Mr Harrington: I said that in a written statement to four politicians. I have it in a written statement here today, which I am prepared to table.

The CHAIRMAN: Did Mr Salt give it to you in writing?

Mr Harrington: In my statement to you people.

The CHAIRMAN: We are reporting back to Parliament. The officers from Main Roads said this morning that was not what it said. They said they would get the statutory declarations from Consolidated. They did not actually say they would pay you independently of what happened through this process. Interestingly enough, we have a statutory declaration from Consolidated as late as 20 February stating that all the contractors had been paid. You are saying that you have not been paid on the Consolidated contracts since November.

Mrs Paech: The payment schedule needs to be clarified. If you finished work in November, the November invoice is handed in in December. It will not be paid on that. We got a December payment in January because of Christmas and new year. When they say they have paid December's invoices, do they mean they have paid the invoices for the work done in December or do they mean they have paid the invoices that were presented to them in December, which are actually the invoices for the work done in November? This is a bone of contention.

The CHAIRMAN: Do you work on 30-day credit?

Mrs Paech: Yes. Everybody does. You do a month's work and you hand in your invoices for November, which you expect to get paid by the end of December. To say that they have paid

December's invoices means they have actually paid only for work done until the end of November.

[2.30 pm]

The CHAIRMAN: I understand that. However, if this were true, Consolidated Constructions said that it had paid Carr Civil Contracting, which means that Carr has not paid his subcontractors, but if it is in February, it means that he has December's invoices.

Mrs Paech: Listening this morning to the way people were speaking -

The CHAIRMAN: Representatives from Main Roads were here this morning.

Mrs Paech: Yes, and the guy before that. The representatives from Main Roads were saying that they had a contract with Consolidated and Consolidated had a contract with Carr and that any subcontractors of Carr had their own agreement with Carr, and that was our business. Our agreement with Carr was that Consolidated would pay him and he would then pay us. To say that we had a separate agreement with Carr that had nothing to do with Consolidated -

The CHAIRMAN: Your contract was with Carr, not Consolidated.

Mrs Paech: That is right.

The CHAIRMAN: The question is whether there is some connection between Carr being paid and you being paid.

Mrs Paech: Yes, definitely. If we sat down and added up all the money Consolidated owed to Carr, it would add up to the money that Carr owed to his subcontractors for the job.

The CHAIRMAN: I understand that. If we look at the publicity that has since occurred, we learn that Consolidated owes Carr only about \$1.2 million. That is disputed; it is plus or minus a couple of hundred thousand dollars. Carr Civil has debts of \$3 million.

Mrs Paech: Yes, but that was not on that job.

The CHAIRMAN: I understand that.

Mr Ducas: John, if Consolidated had paid the \$1.2 million or whatever it is, Carr would not have had its credit rating cut off. It would have kept trading. There is no problem about that.

The CHAIRMAN: It is interesting that you say that. Carr was paid but it did not pay you.

Mrs Paech: No, it did not get paid.

The CHAIRMAN: An amount of \$1.2 million is all that it is owed. It was paid the money before that, but it did not pay you.

Mrs Paech: Yes, we were paid up to what it got paid.

Mr Evans: Some of us had an arrangement. I will clarify what this lady has said. For example, if I worked for you now in May, you would not owe me that money until July. It sounds a long way off. I would give you the invoice at the end of May and then basically, as any business is run, it would not be until bloody 15 July that I got it out of you, if I was lucky. In our case, we stand -

The CHAIRMAN: We pharmacists are very prompt in paying our bills.

Mr M.G. HOUSE: Has any of you guys been burnt before?

Mrs Paech: Yes. This is our third time.

Mr M.G. HOUSE: Was it on a Main Roads job?

The Witnesses: No.

Mr M.G. HOUSE: Was it on a government job of any sort?

Mr Ducas: I pulled out of the Mt Magnet-Leinster one, because that started smelling pretty bad.

Mr M.G. HOUSE: I want to know whether any of you guys have been burnt by other government jobs.

Mr Waugh: I am an accountant in Dowerin. Although I have not been burnt, I refer to the Silverthorne saga in Cunderdin-Meckering, in which one of our fellow directors in Concrete Logistics Pty Ltd was involved. All the guys who subbed on that lost money. Silverthorne went broke.

The CHAIRMAN: Was that a Main Roads job?

Mr Waugh: That was a Main Roads job. That is when the supposed Main Roads guarantee came in, as a result of the Silverthorne debacle in Cunderdin-Meckering. I am guessing that it was about six years ago.

Mr White: It was in 1995.

Mr Waugh: Right.

The CHAIRMAN: Was that when the subbies did not get paid?

Mr Waugh: The subbies did not get paid.

Mr Ducas: And Patience Bulk Haulage Pty Ltd is still fighting the one that I thought was starting to smell bad. That was a Henry Walker Eltin one. He is still owed \$700 000. He is just starting to look over the top.

Mr M.G. HOUSE: Was that another Main Roads contract job that went bad?

Mr White: Main Roads contract No 0001/00.

Mr M.G. HOUSE: We need to take note of that. We need to get details, given Main Roads' evidence today.

The CHAIRMAN: Was that the 1995 one?

Mr White: No. This is the current design and construct contract awarded to Henry Walker in 2002.

The CHAIRMAN: Is this the one that has the problems?

Mr White: This is the one Ducas is talking about for Patience.

Mr M.G. HOUSE: This is a different job altogether. They did not tell us about it this morning. They claimed that they had not had one go bad for 25 years.

Mr White: I moved here from New South Wales in 1993 and I am aware that there was a similar issue on the freeway south job. I think there was a fair amount of debacle about the seal lifting and the job itself. There was also a job contractor - I am not sure whether it was a contractor or subcontractor - who went broke and owed other backhoe operators and drainage contractors on that job as well.

The CHAIRMAN: Getting back to your claim that this job created this problem with the connection, how has it been solved? We understand that the guy who wins the contract, which was Consolidated, must provide Main Roads with a statutory declaration that the subcontractors have been paid. However, if the contractor subcontracts to a major company like Carr Civil, there is no connection.

Mr Waugh: Back in the Silverthorne job? Silverthorne declared itself to be in receivership and paid 5c or 10c in the dollar, if that. Everybody whistled for their money.

The CHAIRMAN: So did Main Roads instigate the statutory declaration process?

Mr Waugh: That was our understanding. Main Roads instigated the statutory declaration process after that.

The CHAIRMAN: A statutory declaration is no good unless you get the major subcontractor, which in this case was Carr Civil, to do the same thing. If they do not, there is no guarantee that you will be paid.

Mr Waugh: I have not seen the statutory declaration. I was aware of the rumour that MRD would pay. You think it has been done; it probably is in hindsight. At the end of the day, that was my understanding of the situation.

The CHAIRMAN: It changes a little if Main Roads actually said that it would pay, because it has then given you a commitment that it would take that risk. That is why it is so critical that you tell us. Do you want to read out your statement?

[2.40 pm]

Mr Harrington: I would like to. My name is Donald Harrington and I am from Marble Bar. The statement probably waffles a little, but I will read it as I have it here, if you do not mind. I am a self-employed businessman and a very experienced remote area roadhouse operator. I am executive manager of five Eyre Highway-Nullarbor roadhouses, so I know a fair bit about what I have been doing. I was a senior partner of Marble Bar Travellers Stop - that is, a 50 per cent owner - until 16 April this year when Marble Bar Travellers Stop was sold. We provided services to all patrons of our business. We built it into a successful business over 16 years. My partners were Peter Griffiths and Mark Smith. Both were 25 per cent owners of the business. Peter Griffiths was a working partner in the business until it was sold, and is in the gallery today. The business is a roadhouse-motel-licensed restaurant. Over the years we have provided good service to many road construction companies and enjoyed good mutual business from that arrangement. For the last part of the Marble Bar road construction, performed under the Consolidated Constructions contract, we were engaged to provide meals for up to 73 workers, three times a day, and some motel accommodation for engineers, senior staff, surveyors and three MRD personnel. We also provided overflow budget accommodation to construction workers, even though that was contrary to our initial quotation for supply for the term of the agreement. Our staff had to begin work at 5:00 am to prepare breakfast and cook for the workers. We did not finish work until after 10:30 at night. This pushed our business to the limits with staffing. We had to do dinners in two sittings, with 70 men to feed plus any locals or tourist trade. Being the only place in town that provided meals, we were very pushed. We are one of the many businesses that has suffered financially from the downfall of Consolidated Constructions, to the amount of \$93 465.76. We stretched our business to the limit to accommodate the numbers for the Marble Bar road project for some five months, and I know we are not the only victims. When it was obvious that Consolidated would not finish the project on time and we were having problems getting paid on a regular basis, I had a number of discussions with Bob Lyons, who was the manager in Perth of Consolidated Constructions. I made an approach to MRD's Marble Bar project manager, Mr Mark Salt - Peter said it was Richard Salt, but I still believe his name is Mark Salt - and advised him that this contract would be good business for us but no fun if we did not get paid. He responded that we were guaranteed payment by MRD as the contractor had to sign off that all suppliers and subcontractors were paid before MRD would make progressive payment, thereby ensuring that we were paid. Our bad debt also consists of between \$15 000 and \$20 000 for the accommodation and meals etc of the MRD project manager and two supervisors. The due diligence performed on Consolidated prior to awarding this contract was not only poorly assessed but also totally irresponsible. The personnel who awarded and assessed this contract would also have been aware that the next closest contractor, Brierty Contractors Pty Ltd, was some \$2 million dearer and had done a number of road sections on the Marble Bar project. It had an intimate knowledge of the costing and work variations required to complete the last section responsibly. To award a contract by so much lower may have seemed to have saved the Government money, but it must have been very obvious that it would send Consolidated Constructions broke. A Main Roads Western Australia work supervisor who was overseeing part of the project said later that it was only a matter of time before Consolidated went broke. The

Government saved money, the contractor became insolvent and the subbie and suppliers went broke. Surely blind Freddy, let alone those involved in Main Roads' due diligence process, knew that this was a recipe for disaster. The response in Parliament through Hon Ken Travers for the Minister for Planning and Infrastructure did not satisfy an in-depth due diligence assessment of Consolidated Constructions' financial position. Our concern is survival in business, and recovery from the Government is required to support us. We should not be a consequence of government department shortcomings, mistakes and inefficiencies. I understand that legislation has been before Parliament for nearly three years - I will stand corrected on this - to protect suppliers and subcontractors for government contract projects. It is timely to say that too little, too late is not good enough. I do not have to explain how hard it is to survive in small business. Today we have done it in a harsh and remote environment. We have provided goods and services to not only the community, but also the travelling public. We built our business from nothing and over the past 16 years it has grown with hard work and a desire to be successful, an ingredient that most successful businesses are built on. I feel it is only proper that the Government acts to protect us when its department was irresponsible in letting this contract to Consolidated Constructions. That clearly created this situation and allowed it to implode and cause financial hardship to our business. I am sure each individual business has its own set of circumstances, and I believe in being treated fairly. Like most Marble Bar businesses and businesses at this committee today, I do not think we have been treated fairly in this instance. I therefore implore you to assess our position, particularly that of our business.

I also advise that we have on-sold our business to a new owner. We were very generous in the sale negotiations, which were conducted and concluded prior to Consolidated going into administration and most definitely would not have been as generous in our negotiations if we knew we were not going to get paid our \$93 000 odd. It has been suggested that future MRD projects let in the Marble Bar region should be loaded and preferentially given to those who have suffered at the fate of Consolidated Constructions going broke. This will not and cannot be of any assistance whatsoever to us because we no longer have a business in Marble Bar. I fear that others may find themselves in that situation - if not now, then into the future. Some may even go broke. I will table for your concern, perusal and record correspondence I sent to the minister, the Premier, the shadow Minister for Planning and Infrastructure and the shadow Minister for Small Business, together with a copy of outstanding accounts. I thank you for the opportunity to put our situation to you and I welcome any questions that the committee might like to ask. I humbly seek compassion and consideration in your deliberation and fairness and justice in your recommendations. Thank you.

The CHAIRMAN: Thank you. That will be recorded. I will point out a couple of things. The fact that Consolidated was \$2 million short did not lead to it going down. The evidence presented to us so far is that this job did not cause Consolidated to go under. That is an aside and is not important to the issue here.

Mr Harrington: I can provide other circumstances that will indicate the way it was performing. I know that this meeting has nothing to do with Consolidate Constructions trading insolvent, but it was trading insolvent.

The CHAIRMAN: Your case is different from the others because you were directly contracted to Consolidated.

Mr Harrington: Yes.

The CHAIRMAN: What are the dates of the invoices you gave Consolidated?

Mr Harrington: Would you like me to table them?

The CHAIRMAN: Absolutely, because they are critical. What period is covered by the invoices you gave Consolidated?

Mr Harrington: They were all for January and February.

The CHAIRMAN: Consolidated signed a statutory declaration on 24 February stating that all the outstanding accounts had been paid.

Mr Harrington: It was getting accounts weekly and fortnightly.

The CHAIRMAN: Would it have these accounts?

Mr Harrington: Absolutely.

The CHAIRMAN: It had these accounts -

Mr Harrington: Absolutely. They were signed off by Vince Collova. He was the engineer on site. He signed off on every one of those accounts.

The CHAIRMAN: What is the earliest account that has not been paid for?

Mr Harrington: January.

The CHAIRMAN: January the what?

Mr Harrington: The latest or the earliest?

The CHAIRMAN: The earliest. Was it 1 January or 2 January?

Mr Harrington: From 1 January.

The CHAIRMAN: How did you invoice them? Was it every month?

Mr Harrington: No, it was every week and then every fortnight. We had problems with Consolidated. In fact, I took it on myself to talk to Bob Lyons in Perth because we were not getting paid and I was not too happy with management on the site. I live in Busselton. I spoke to Bob Lyons. After three phone calls I even threatened that if we did not get paid - this was in October/November - his men would not get fed so he should get some bread up there in a real hurry. That seemed to get action because we ended up getting paid within 24 hours. I had another similar conversation four weeks later to get some money. It just went on and on. Unfortunately, we were a victim of that.

The CHAIRMAN: When did your contract with Consolidated start?

Mr Harrington: At the end of July or the first week of August.

The CHAIRMAN: Okay. So you had no problems until January.

Mr Harrington: Oh, we had problems!

The CHAIRMAN: Yes, but even with those other hassles you were paid up to then. Did you get paid in 60 days or 30 days? How long did it take?

Mr Harrington: It was supposed to have been 30 days. However, Consolidated was stretching it out to 60 days.

The CHAIRMAN: When would you have expected to have been paid for the invoice that you gave in January?

Mr Harrington: In the first week of February.

The CHAIRMAN: Consolidated signed a statutory declaration on 24 February stating that it had paid and yet it had not.

Mr Harrington: It had not paid us.

Mr M.G. HOUSE: When you guys move in with a truck or whatever, if you thought that things were going wrong and you left a job, did that lessen the chance of being paid?

The Witnesses: Yes.

Mr M.G. HOUSE: When you have done \$50 000 worth of work and there is another \$50 000 worth of work to complete, you are almost caught, are you not? Is that assessment correct?

The Witnesses: Yes.

Mr M.G. HOUSE: So you are buggered; they have really got you.

Mr Evans: Yes. On the other side of it, we try to give people the benefit of the doubt. We all come from a long line of people who have got to where they are because they have done it hard. We come from a long line of battlers. You try to do the right thing. In our case, we do a lot of direct contracts for Main Roads that involve straight-out bitumen sealing. We had worked for the hierarchy that was on this job many times before. We were actually going to them and saying "Is this is all going to work out?" They were saying that it would be okay. We put faith in the guys we had worked with on other contracts. At the end of the day it bloody was not okay

Mr J.L. BRADSHAW: Do you have names of the MRD people who were giving these assurances?

Mr Evans: Yes.

The CHAIRMAN: Can you give us those names? We obviously want to drag them before the committee to have a chat with them.

Mr Evans: Just on the defence, the guy's name who has come up is Mark Salt. He used to be in the Geraldton division of Main Roads and we have done a lot of small contracts with him. He is a very good man to get along with. I have spoken to Mark since this took place. The biggest thing he did wrong was fast-track payment to Consolidated Constructions because he was focusing only on the Marble Bar project. You have to draw the circle and cut it in half. Carr Civil Contracting and the Marble Bar project are on one side - that is what we all represent - and then he has his normal run of the mill whatever he did in Karratha. None of us is interested in what he did in Karratha. It is more than \$1.2 million. To start off with, when Consolidated got this job it had to put up a guarantee to Main Roads. When Carr Civil got the contract - it was 80 per cent of the value of the whole contract - it handed over \$225 000 in cold hard cash to bloody Consolidated, and it could not get its own cash back. Mark Blayney and Carr Civil could have gone broke in another six months - who knows. Maybe they would have done. If Consolidated had not shut the doors and had paid Carr Civil, I believe everyone around this table would have got paid out for the Marble Bar project.

The CHAIRMAN: From our point of view, Main Roads has paid out the whole contract, other than a small percentage to Consolidated, which should have flowed through. Main Roads has a statutory declaration from Consolidated that it has paid the subcontractors.

Mrs Paech: It had not.

Mr Cox: How did it make that payment when we were still on site doing the work? We were one of the last, along with Rod.

Mr Evans: It is saying final payment and yet we were all still out there bloody working.

Mr Waugh: It is pretty important that we have written down that we were pouring concrete on 1,3,4,5,6,7 and 8 February. That might have been \$30 000 or \$40 000 worth of concrete for which I had to write cheques the next month to pay the bloke who gave us the concrete when I knew I was not going to get paid.

[2.50 pm]

The CHAIRMAN: According to this, the statutory declaration says that the contractor was being paid on 20 February and the final payments were paid by Main Roads Western Australia on 24 February.

Mr Evans: Consolidated Constructions shut the doors on about 26 February, soon as the Main Roads money was -

The CHAIRMAN: Excuse me, but we can only have one person talking at a time otherwise Hansard does not know who is saying what. My apologies for that.

Mr A.J. DEAN: According to the notes Main Roads gave to us, it paid out \$8.2 million.

The CHAIRMAN: A full contract, other than minor retentions. Someone has not flowed on, even though Consolidated Constructions said that it paid Carr Civil Contracting.

Mrs Paech: It has not.

Mr Harrington: We were also feeding it right up to the last hour when it did this.

Mr M.G. HOUSE: Is it reasonably normal for a contractor to be contracted like this?

Mr Evans: It is not uncommon.

The CHAIRMAN: Is it normal for a big contractor like Carr Civil to take 80 per cent of the contract?

Mr Evans: That has happened before, but do not forget that when we work directly for Main Roads, we fill out a contract, and in there it asks whether we intend to use subcontractors. If I won the contract and then put it out to a bitumen spraying company, I would have to nominate that company and get approval from Main Roads to use that company. I do not just bring that company in off my own bat.

Mr M.G. HOUSE: Consolidated Constructions must have got approval to use Carr Civil.

Mr Evans: That is correct.

The CHAIRMAN: That is not what we were told.

Mr Evans: That is how I see it. I could be wrong but I cannot -

Mr White: In every Main Roads contract - I could pull out a contract for you if I had one here - is a requirement under its specification and its contract document that anyone who enters a job must be either inducted by the head contractor and/or approved as a subcontractor or a sub-subcontractor. No-one is allowed on site without that approval because we have to have priority access registration, which everyone in this building would probably have. For our training and employment we have to have quality certification for our management system as well as for environmental and safety. There is no way we can enter that site without the superintendent and the superintendent's representative being aware of us. They have to give the head contractor confirmation in writing that their subcontractor has engaged a sub-subcontractor.

Mr M.G. HOUSE: In writing?

Mr White: Yes, in writing; there is no two ways about it. At one point, Vince Collova from Consolidated Constructions dealt with us directly because he needed to get an approval to Main Roads. I do not have a copy of his submission to Main Roads to say "We want to use RNR Contracting via Carr Civil". Carr Civil, at whatever point, had probably not submitted that, so Consolidated Constructions took it upon itself to engage us via Carr Civil on its own letterhead. We do not have access to that documentation, but the Main Roads contract also refers to - you are probably aware of it - Australian Standard 2124 and the annexures that apply to 2125, 2127 and 2545, which are subcontract conditions. Clause 14 of AS2124 says that all contractors that are contracted under that standard to a head or a principal must comply with all relevant statutory requirements of the commonwealth legislation. In actual fact, if you read clause 14, you could say that as of 30 June last year, Consolidated Constructions was not, if it was truly insolvent, complying with the requirements of the commonwealth legislation. That is one point. The second point is that if we get further down the line and we are a subcontractor to a subcontractor who has been approved by Main Roads for 80 per cent of the value of the contract, then there is a responsibility under AS2545 for the superintendent's representatives to take that to another company that can follow through on this contract. In all cases, if you follow that through, particularly on this project

or any project, the evidence at this stage is that we have done our due diligence on Consolidated Constructions and then Carr Civil, then anyone else, whether it be Concrete Logistics or RNR Contracting. Before Mark Salt, the superintendent's representative, will let anyone spray any bitumen or lay any dirt, he tests the site material, which would have been done by Western Geotechnics (WA) Pty Ltd, and it is not allowed there unless it has that approval.

Mr M.G. HOUSE: Do any of you do any credit checks or do you just presume that if you have been awarded the contract by Main Roads, it has done the checks? Is that correct, Lindsay?

Mr Berry: No, we think that the checks would have been done if -

Mr M.G. HOUSE: So you presume that once the contract has been let, the checks have been done by the department.

Mr Berry: That it has all been put in place.

Mr Ducas: Just to do local work in the mid west region where I am from, if Main Roads ends up owing anything up to \$100 000, you have to front up left, right and centre and produce it. You have to have the financial capability to carry out the job and to pay all the subcontractors, if that is applicable. When you go into a situation like that in the Pilbara region, I assume that all the checks have been done without me doing that.

Mr M.G. HOUSE: I can understand that.

Mr Ducas: When I do work for Main Roads and it gives me the raspberry, I have to do this and that and adhere to its rules. When something like this blows up like that, I ask Main Roads whether it can explain what is going on. The rumours were pretty crook. Main Roads said to me that all four things were in place and that everything is nice and rosy.

The CHAIRMAN: Rod, you seem to have the biggest outstanding debt of about \$0.5 million -

Mr Evans: For this project, \$373 000.

The CHAIRMAN: If the rumour mills were going, why did you not think that there was a problem?

Mr Evans: Let me go to the start and I will work through it.

The CHAIRMAN: As a businessperson, if someone tells me that there is a problem, I make sure that I will get paid by the person with whom I have the contract.

Mr Evans: Basically, we earn about 20 per cent of our revenue in the metropolitan area and 80 per cent outside that area. For the 80 per cent earned outside, our biggest client is local government - the shire councils - and then there are some direct Main Roads projects. The balance of it is with private contractors, but nine times out of 10 it is indirectly government funding anyway because they are working on a contract. We know a lot of people; we basically know who is whom. We give people the benefit of the doubt, and we take some commercial risks. In this case, as I said earlier, we knew the job had started but we had heard rumours that it was not going well. By November, when we thought that the company was getting close to requiring product, we were getting a bit nervy and we were thinking, "Bloody hell, the Marble Bar cyclone season is approaching. These guys have to get a move on there." Eventually, on 12 November I rang the regional manager of the Pilbara division and said to him that I heard on the grapevine that the job was not going well and that the contractors - Consolidated Constructions - were about to be removed off site and it was going to take over the job. He then got back to me a couple of hours later and said, "No, I have checked into it. We have had meetings and we think we have got things sorted out. Production has picked up and things are going well. It will be business as usual and the contractor will be remain."

Mr M.G. HOUSE: Excuse me for interrupting, but when you said the job was not going well, I presumed that previously you had been talking about financial consequences. However, I understand that you are now saying that the production was not up to speed -

Mr Evans: We were hearing financial and -

Mr M.G. HOUSE: You were hearing both.

Mr Evans: Yes, production and everything was going slow. There was already enough shaky shit around about Consolidated Constructions and we were hearing that the productivity was not going well. I could see it getting whacked with it. Luckily, we did not get a cyclone to pull it undone. However, it could have been really disastrous. I do not know where the department would have ended up then. The gentlemen I spoke to then came back to us and said "No, we have checked it all out; everything is fine." That is when I explained to him that we are private contractors who had been engaged and that we were not one of the big three corporates around town. We could not afford to not be paid if things were to go bad. He said, and I quote, "Don't worry about that. There are procedures in place that will ensure you get paid." I said to him that we will stay in touch. At different times we rang people. As we got closer to the job, I started to liase with Mark Salt on the site and virtually asked him how it was going and whether everything was happening. We went on-site, and the first time we sat there for about a week and did not do a thing because they were not ready. We tried not to be hard on things, but we did not know whether to continue to sit there or to go. We did what we could to assist the project because we knew Carr Civil was a family company that did not have a lot of money to throw around; it was our commercial decision to support it. We were trying to manage our client, which was not Consolidated Constructions. However, at the end of the day, as I said, I feel that had Consolidated Constructions paid up, Carr Civil would have paid everyone else. While we were on the project, Main Roads asked us a couple of times if we would not mind hanging around because it would get the next couple of kilometres of road ready. If we had gone, the road could not be sealed. In the interest of the contractor, we did what we could. At one stage we mobilised out. We did a bit of work for Mt Newman for the Shire of East Pilbara. We mobilised out, did a bit of work, and came back a week later and tried to catch up with the work that it had ready for us. Eventually, when we first quoted the contract, I think we quoted only twice -

Mr White: Yes.

Mr Evans: It was meant to be two mobs, and the job would be all over. However, the job was progressing slowly, so we probably went in four or five times. A lot of it was just to try to get -
[3.00 pm]

Mr J.L. BRADSHAW: Did you mention the name of the person who gave you the verbal guarantee?

Mr Evans: No, it was Jim Mahoney, regional manager, Port Hedland. I have since fired a letter at him and got a pretty horrible response.

Mr J.L. BRADSHAW: Somebody else also mentioned a verbal agreement.

Mr Cox: I spoke to Mark Salt on about 20 or 25 January, because we were also concerned that we had not received payment. We were virtually guaranteed that we would receive our payment as soon as Consolidated paid Carr Civil.

The CHAIRMAN: What payments had not been paid in your case?

Mr Cox: We were not paid for December, January and February.

The CHAIRMAN: Would the work for December have been invoiced at the end of December?

Mr Cox: Yes, due to the holidays, it would have been on or about 3 or 4 January.

The CHAIRMAN: Would you have expected to be paid for it at the end of January?

Mr Cox: Yes.

The CHAIRMAN: You have said that four or five times you received no payment. When was the first time?

Mr Evans: The first time was in November, then December and then January, so it was those three months.

The CHAIRMAN: Did you send an invoice at the end of November?

Mr Evans: Yes, at the end of each month we sent an invoice.

The CHAIRMAN: You sent an invoice at the end of November.

Mr Evans: Yes, which technically was not due until the end of December or over the Christmas break. I think we mobilised back in on 5 January or something like that to finish off. Basically we went into do our last completion when our first lot of money was due. I am not hiding behind this at all. We had also made a commercial decision that we would support Carr Civil to the end of the contract. That was our commercial decision, but that is not allowing for Consolidated not to pay Carr Civil.

Mr White: If I could just add to that, the reason we made that commercial decision was that in the discussions with Jim Mahoney, he gave us an assurance that there were provisions under the contract to ensure that subcontractors would be paid. Rod and I had a discussion 12 November, and Jim was aware. We had both speakers on and we recorded it. He gave us a response to our record of it. If you would like a copy of that, we are more than happy.

The CHAIRMAN: Could you bring it to us?

Mr White: Yes, it is here.

The CHAIRMAN: We need that tabled, because we obviously need it tomorrow when we go to Karratha and Marble Bar.

Mr White: This is the original. It is a compilation of facts.

Mr Evans: It becomes a bit difficult for us because we work directly with a lot of these guys. We do not want to start banging heads with them. That is not our desire. There is nothing personal in it, but for 373 000 reasons I could be unpopular. We have to think about our relationship as well.

Mr M.G. HOUSE: This might sound like a silly question, but I have to ask you because we have asked the guys from Main Roads this morning. From your perspective can you see a system that would work to guarantee that you do get paid and that this would not happen again?

Mr White: Yes.

Mr Cox: You would follow through on the fact that subcontractors are being paid.

Mr M.G. HOUSE: I understand that, and I think I could work out a system, but the government department people told us this morning that they did not think it was possible. They think there is some legal reason.

Mr Cox: I disagree with that.

Mr M.G. HOUSE: I understand why they might say that, because they do not want to be responsible for people thinking that there might be a way that this need not have happened.

Mr Cox: It is the same case that was put up a second ago. People must comply with all the requirements of Main Roads to be able to tender and get on site. That was the case with this project. We dealt direct with Main Roads to get approval to be able to supply concrete. It is the second project we did with Main Roads, so naturally Main Roads was a bit hesitant to award it to us straightaway and awarded it through Carr Civil. We dealt directly with Main Roads during the

whole process of getting approval to be a supplier. If Main Roads can deal with me to that end, I am sure Main Roads people could phone up and ask me if I got paid.

Mr White: I am a big opponent of AS2124 because it is based on the building industry as opposed to the road, pavement and construction industry. If you go back over the history of it, I am sure you will see that the standard was adopted for road, pavement and construction just because it was convenient and was there. I have lobbied the Civil Contractors Federation and the Australian Asphalt Pavement Association for the past couple of years to change it. I believe that Main Roads and the Government are the next to be lobbied, because it is not fair to either the client or to the supplier. There are many reasons for that. Building upwards is not the same as building downwards, because cyclones and so on affect it.

The second thing is that in any case, as Peter was saying, you have the collateral effect of other people discussing things outside their contract terms. Everyone wants to get on the job and do the right thing, so Mark Salt - I am a supporter of Salty - when he gets down there, just wants to get the job done. He is a good employee of Main Roads and he has done nothing wrong. However, in the process of doing that he has probably exposed himself and/or Main Roads in some areas, which maybe under the contract he should not have. People want to go directly in a contractual sense. If we walked out to a job site, we would rather be able to speak to everyone up the tree and down the tree as opposed to somebody shutting the door, because if that happens on a job like Graham Farmer Freeway or something similar, we start to get problems with people not being honest with each other. That is another issue. The point I wanted to make on the payment system is that everyone wants to get paid. The Government, as the principal, wants to construct the job. I do not know the value of the budget for the project. Does anyone know that?

The CHAIRMAN: No.

Mr White: If we get back to that, let us say that the budget for the project was \$10 million, which is a realistic project budget, and the price came in at \$8 million. I believe that Main Roads people must assess that. If their best guess was \$10 million, and they are educated people, and the best contract price is \$2 million below, that is part of the assessment process. However, in order that people get paid, that must be taken into account, because if somebody in a revolutionary way can go out there and do the work for \$2 million less or 20 per cent less, as in this case, they must know something that nobody else does.

The CHAIRMAN: That is not necessarily the case. Some companies buy the work because they do not want to sack people -

Mr White: Or because of market share, utilisation of plant or whatever.

The CHAIRMAN: The Government will always try to get the best deal for the consumer. Guess what? They are your taxes we are spending. I can remember when I was mayor that I used to make sure we got the cheapest price. I would then go and negotiate to see if I could get it even lower.

Mr Ducas: Did anybody go broke?

The CHAIRMAN: No.

Mr White: Every single road we have in Australia right now is the cheapest. It does not matter how you look at it, it is the cheapest; that is the fact. We all know we can do it for that price because we go out there and do it for that price every day. In the process of being paid though, if somebody has been exposed to other things, such as Consolidated and Carr Civil to other projects that did not go so well, it becomes a commercial risk that the principal cannot take into account. Let us not get lost in the payment side of things, because we need a standard or contract that is workable as well. We do not want everyone signing a bit of paper to walk across the road; we need something that asks if we can effectively do the work for a period without being paid. If we can do it for 45 or 60 days, or whatever the commercial risk period, we are happy to do it. However, if we cannot be paid past that point, the contractor does not get paid past that point - thank you very

much. It would apply to the principal or head contractor too. I know it sounds a little bit convoluted and you would have to explore it a bit further, but the people at most risk are the ones, as Monty said before, who have the job and are owed \$50 000. They must sit there for the \$50 000 that they could be owed as well as what is coming up, and those people are coming last. That is where we are most at risk as pavement surfacing contractors. Sometimes we have no inkling whatsoever of what has gone on with the job. It might be only a six-week job. In contractual terms, we must not make it harder or more convoluted with extra clauses; it is getting back to the blood and guts of what we are trying to achieve on the road, and that is to seal the pavement.

Mr J.L. BRADSHAW: Do you have a contract with Carr Civil?

Mr White: We have a fax quotation that has been accepted.

Mr Waugh: We were working on the job in February and Main Roads made the final payment in February just about as we were walking off the site. A simple retention - why would Main Roads pay right there and then?

The CHAIRMAN: It is not money retained but the normal retention. Main Roads had paid for the completion of the job.

Mr Evans: What Don is getting at is that there is what is called the practical completion of the job. You cannot put in your final claim and receive payment until you have been granted practical completion. His argument is: how could they have granted Consolidated practical completion when he was still out there working on the job after the day that the money changed hands? I have taken that one step further and I have rung several guys I know who have held the position of regional manager in Main Roads - probably five - and asked what is their definition of practical completion. No surprise, I have had five different answers.

Mr M.G. HOUSE: Does that have to be signed off by the regional engineer?

Mr Evans: Yes.

[3.10 pm]

The CHAIRMAN: That would be Salt, would it? Who would sign off on it?

Mr Evans: How it has worked is that when they do a contract like this, Main Roads then puts it under what they call a superintendent, so you will have Jim Mahoney, who is the regional manager of the Pilbara, where the work is being carried out, but he is actually not in charge of the job. There is a superintendent in the Perth office here, and in this case it was Arthur Phillips. Mark Salt was a project engineer, but he was referred to as a super's rep, so it is Arthur Phillips here in the Perth office who would be doing all the signing off.

The CHAIRMAN: You just mentioned the name of a person who you thought was signing off.

Mr Evans: I said that the signing off, as far as we were concerned, was done by Vince.

The CHAIRMAN: The Consolidated guy?

Mr Evans: Yes. We are talking about approvals. Just one other thing before we go - and I do not know whether you guys heard about it this morning, but the union can give you the exact amount - is the due diligence. I have had a reasonably lengthy conversation with Mike Wallwork from Main Roads, whom I have known for quite a few years. I asked him a bunch of questions. I sort of wanted to get in touch with him when this first happened. When it came back, they had their legal eagle, who is Glynn Logue, and he was there listening to everything I was saying. At the end of the day, I asked them two questions, because they confirmed that everything had been done correctly, which naturally they would. Question number one that I asked at the end of the day was if there was nothing to protect the very last payment. There is nothing that says the contractors will get paid. My other question was -

Ms J.A. RADISICH: Just before you go on, Rod, you referred to Glynn Logue. Is it your understanding that he is a lawyer?

Mr Evans: Not a lawyer, but he sort of acts for Main Roads.

Ms J.A. RADISICH: As a management consultant?

Mr Evans: When I knew Glynn, he was virtually the contracts guru for Main Roads, if you like. If you wanted to go and butt heads about something, he is the guy you went and did it with. Also, one of the other things I asked was, "Do you guys do a due diligence before you award these contracts?", and the answer was, "Yes, everything was done". I then said, "Well, how come you awarded Consolidated this contract in July last year when there was \$2.4 million worth of writs taken out against them?"

The CHAIRMAN: We asked that question of the Main Roads officers this morning, and they claimed that at the time they awarded the contract that writ had just been issued and they were not aware of it, and they were not sure that it would have made any difference.

Mr Evans: But since then our minister has also admitted that they were using a 2002 balance sheet and it did not have any -

The CHAIRMAN: They did a due diligence in February under their normal process. We also asked the same questions of the Public Transport Authority officers just before you came in, and they said again that they used the same data, and there would not have been any other data available to them to do it any later. I understand where you are coming from. Main Roads told us that it was not aware of the \$2.3 million writ; it happened a couple of days before Main Roads awarded the contract, and it was not part of the process.

Mr Evans: That is very convenient.

The CHAIRMAN: It is not convenient. It is the normal process. Let us put the other case. They are saying that they have dealt with Consolidated for 20 years. They have done a lot of work for the Government. There was no reason to believe that Consolidated was not going to be okay. Its due diligence came out at moderate, 18 out of 30, which means it passed, so there was no reason to believe it was not going to do the process. It was asked to sign statutory declarations, and it signed them. The problem is that Carr Civil did not do -

Mr M.G. HOUSE: All of that is all right, except that it is the payment process that is the problem here. Everybody takes a commercial risk, as Rod said earlier. It is how you get the payment from a government department to the little guys.

The CHAIRMAN: I understand that, and there is a problem here, but I am saying that if you look at the Main Roads process, you can understand how it has happened. We need to make sure it does not happen again. Also, if there have been direct commitments by Main Roads to individual people, it changes the ball game totally.

Mr Evans: You asked earlier about how you could perhaps stop some of this from happening, or whatever. As you have seen, I have got a colleague here who is pretty switched on and knows what is going on.

The CHAIRMAN: Sounds like a good member of Parliament!

Mr Evans: Do not worry! It will not be long! You are the next minister for transport, mate!

Mr M.G. HOUSE: The Labor Party is looking for some good people!

The CHAIRMAN: The National Party does not have any, so it does not matter!

Mr Evans: One of the things I would not like to see is a total over-the-top sort of procedure put in that then becomes counterproductive and no-one can get on with the job. We mostly work in the country. You like to be able to deal with the guys and take them at face value. If winning contracts

gets down to every time you talk it has to be put in writing backwards and forwards, it will just get counterproductive.

The CHAIRMAN: I understand. We need to find a balance.

Mr Waugh: John, I am looking at the first part of the process - the awarding of the contract and the due diligence. Every public company has to have its accounts in by the end of October, I am pretty sure, in a year. If you have got enough substance to be dealing with Main Roads directly on a contract, is it unreasonable to say you should be able to provide accounts that are seven months old, if it is February, rather than 12 or 19 months old?

The CHAIRMAN: The system that Main Roads has for the smaller projects - this is smaller to it; it is the middle category - is that a company has to be prequalified, and once it is prequalified and gets a pass mark it is in the ball game, and that is done on the financials.

Mr Waugh: But the financials were 19 months old, were they not, when they looked at them? That is my point.

Mr Ducas: They had a classification of R10.

The CHAIRMAN: Are you saying you also get classified?

Mr Ducas: We are classified as R2, so we can go anywhere up to about \$2.3 million or maybe \$3 million or \$4 million worth of work. That is reviewed every six months.

Mr Evans: I just spoke about a superintendent who is here in Perth, and then you have a region. It would not be hard for the department to look at all the ingredients in the recipe and say, "Right, a lot of the work that is being done out there is by people within the region". You will know people like us from Perth, no matter whom it is. It would not be that hard for a regional manager to also look at it and say, "Right, the bigger players in this RNR contract are in bitumen; yes, that will be worth quite a bit of money; concrete will be worth quite a bit of money", instead of it being up to a guy sitting in an office here in Perth to simply sign off and say, "Pay the contractor". It would not be that hard for a regional manager up there to have to give a clearance, if you like, to contact some of the major players and say, "How are you travelling, boys, have you been paid?"

Mr M.G. HOUSE: I think the issue here, though, is that Consolidated has told us that it had the cheques written out. If you look at the way big companies operate, there was no way it was going to issue those cheques prior to its being paid, so what it has really done is minimise its damage by getting the payment from Main Roads prior to all those last payments going down. You can see exactly what it has done. Despite the fact that it is going to get only 15c in the dollar recovery, it would probably get only 5c or 10c if it had not done that. Would you stop that happening, if you did that? I doubt it, quite frankly, because that is the way companies like that tend to operate.

Mr Evans: There must be something in the contract so that you would not let the money go. I have spoken to two or three guys who have held the position of regional manager, or district engineer, as we used to call them, up in the Kimberley and all that. One guy I spoke to said when there was a contract on, he always rang the locals and said, "Have you guys been paid?", and then, before the final payment went out, when the prime contractor came in and put his hand out, he would say - he said he was out of line - "It is on the grapevine that you have not paid them, and you have not paid them. I am not approving payment until I get some proof of payment". It is not all that hard. It is protecting your region.

Mr M.G. HOUSE: It is a management issue, is it not?

Mr Evans: Yes, but also there are a lot of people hurting out of all of this.

The CHAIRMAN: I know, but the problem as I see it is the statutory declarations that Consolidated signed saying it has paid them, yet it is not true.

Mr Paech: But the wording in that statutory declaration had been changed.

The CHAIRMAN: We got that. We have already nailed them all on that this morning.

Mr M.G. HOUSE: I asked Glynn Logue the question - I think you guys were in the gallery at that stage - and he agreed with me that it really was not a statutory declaration. It is a qualified statement. It is not a statutory declaration when you say, "To the best of my ability".

The CHAIRMAN: It either is or it is not.

Mr M.G. HOUSE: We will have some more to say about that. Do not worry.

Mr Paech: They have not shown due diligence.

The CHAIRMAN: I do not think that has to do with due diligence. This is about accepting something as a fact when it is not a fact. If you combine that with somebody being told they are going to pay it, Main Roads may have a problem. We are not legal people, but -

Mr Ducas: On the Water Corporation side, we do deep sewerage and that sort of stuff in Geraldton. You have got to sign a statutory declaration to say that all the subcontractors, if you have got them on site, are paid, and you must issue the Water Corporation with that statutory declaration otherwise you will not get one red cent.

Mr M.G. HOUSE: That is really interesting, because you might or might not know that the current Commissioner of Main Roads came from the Water Corporation.

Mr Ducas: I did not know.

Mr Waugh: Did you know, John, that the receivers said Consolidated had \$4 million in the bank when it declared itself?

[3.20 pm]

The CHAIRMAN: Yes.

Mr Waugh: And they waited for that Main Roads payment, which was part of it.

Mr M.G. HOUSE: That is the point I was making before to Mr Evans.

Mr Waugh: The opinion is that they got that money in. The money is in the bank, and therefore their directors' guarantees are probably null and void with the bank, and the \$4 million goes to the creditors.

The CHAIRMAN: The reason the directors gave us was that the banks went and paid out their guarantees. The company has a number of jobs, and there were bank guarantees on all those jobs.

Mr M.G. HOUSE: That was Consolidated, but you are talking about Carr Civil, are you not?

Mr Waugh: I am talking about Consolidated. They had \$4 million in the bank.

The CHAIRMAN: So all those bank guarantees were paid out, which basically created the problem they are in now. Otherwise, if that money had been there, and all those bank guarantees had not even been called on, the problem would be much less.

Mr Waugh: Dramatically less.

Mr M.G. HOUSE: I do not think they could actually get their hands on the \$4 million. I think it was tied up somehow or other.

Mr Waugh: It was in their bank account.

The CHAIRMAN: The ANZ paid out the bank guarantees.

Mr M.G. HOUSE: It covered their personal guarantees, is that the point you are making?

Mr Waugh: Yes, that is the point I am making.

Mr M.G. HOUSE: That is what I was trying to make a point about before, obviously not very well. Once their personal guarantees are covered, that saved their houses, and whatever else was

part of those personal guarantees. That is the difficulty you have with the payment structure. There is no question that that money came into their account. They had those signed cheques there that looked like they had no intention of paying; none whatever. It is as clear as the nose on your face.

Mr Waugh: You could have a retention system -

Mr M.G. HOUSE: Sorry to interrupt, but that is what we have to work out. We have to work out a recommendation to that which will make sure that this does not happen again, that we come past that point.

The CHAIRMAN: We have three things to do. First, we have to try to get your circumstances sorted out, and find out what we can and cannot do. Second, we need to make sure that it does not happen again. We must make sure that government processes are such that the risk is minimal. You are never going to cover every loophole, because that is just not possible, but we need to try to get a process in place to at least make sure that there is some guarantee for those people who are hurt, if what happened happens again. We have a few things to do. First, we need to find out some of the deliberate things that were said, whether Main Roads is exposed, and is liable, and then we need to also put in recommendations about what should happen. So tomorrow we are flying to Karratha and Marble Bar, and hopefully we will get a bit more information, and at the end of it we will hopefully report back to Parliament. Thank you for your contributions. Is there anything else anybody wants to say? If there is anything you want to tell us, just put it in writing to us and we will take it on board.

Mr White: Can I just ask a question?

The CHAIRMAN: Which party do you want to join?

Mr White: Ten years ago, Main Roads went into a system of partnering. In their contracts they wanted to establish partnering arrangements. Was 706/02, which is the Marble Bar road, actually a partnering contract? What I mean by that is, when you go into a partnering contract, everyone has a love-in. They all sit around a table and they sign a charter that says that we all love each other and want to get the job done properly. It is everyone's commitment to everyone - Main Roads' commitment to the contractors, and the contractors' commitment to Main Roads etc. I believe firstly it is an absolute sham, the way it happens, because it just wastes time. Secondly, when you come out of it, and something like this happens, where is the partnering agreement?

The CHAIRMAN: Was it a partnering arrangement?

Mr White: I do not know; I believed it would be, because it is covered by the State Supply Commission requirements for that rating.

The CHAIRMAN: No, the State Supply Commission explained today that Main Roads is totally separate and its requirements do not apply.

Mrs Paech: It is not goods or services; it is work. They do not cover works.

Mr White: Would there be a partnering arrangement in place on this one? That might be something for the committee to check out.

The CHAIRMAN: We could ask, but I doubt it

Mr White: If there is, someone has a lot to answer for.

The CHAIRMAN: I do not think you will get that one up.

Mr M.G. HOUSE: One of the questions is whether we bring this sort of contract under the jurisdiction of the State Supply Commission. This morning they were running for cover, as Mrs Paech said, trying to differentiate between works and services. One of the recommendations we need to look at is whether we make the State Supply Commission responsible for everything. That is something we will have to debate, but we need to look at whether we create extra complications.

I think that is a really important point, because, once you get down to the paper crossing the road example that you used, you break the whole structure apart. It will never work.

The CHAIRMAN: Main Roads indicated to us this morning that, in 25 years, only three contractors have gone this way.

The Witnesses: That is not true.

The CHAIRMAN: If you can give us information to contradict that, we will be happy to receive it.

Mr Ducas: If they had only had three, does that mean they would not mind double paying on this one? I was about to say that I would prefer to see as little as possible tabled, because then there would be a bigger chance of pulling something out of this.

Mr M.G. HOUSE: I actually asked them that this morning - whether they had some responsibility to make an ex gratia payment - but they went a bit white and funny-looking and I decided not to pursue it.

Mr Ducas: I also asked them if they were liable and they ran away. That was before we found out that they had actually told someone they were physically liable.

Mr M.G. HOUSE: We will also follow that through. It depends what responsibility we can sheet back to the system and how it is administered.

Mr Evans: I have already rung Main Roads in Port Hedland and asked whether we could please have it when the Marble Bar road is ready for its second sealing coat? We deserve to get paid for at least one part of the bloody job.

The CHAIRMAN: Does it need another coat?

Mr Evans: Yes. This is what they call a primer seal. In the next summer another coat of bitumen and 14 millimetre stone will go on top of that. If you want to recommend that we get the work, at a premium rate, you may do so.

The CHAIRMAN: It is quite good to tell us that. If there are some other avenues like that that some of the contractors see as a possibility for recovery, we could actually look at trying to make a recommendation.

Mr Evans: Some time ago, the minister put out a memorandum that said that anyone stung by this Consolidated collapse would get some preference for work.

The CHAIRMAN: I understand that, but there is a difference between preference and actually getting the work.

Mr Evans: We have already jumped in and said that we were putting our hand up for the sealing of that one, plus there is 22 kilometres of sealing at Tom Price that we primer sealed last year. We have put our hand up for that, but so far no-one has responded.

Mr Cox: There are some bridges that need replacing from the cyclone, which is a lot of concrete work if you can handle it. We have approached them on that issue, and were told they would be put out to tender.

The CHAIRMAN: I understand that. Can you present it to us in writing if there are these opportunities that you see? If we have them, we can recommend to the Parliament that that happen. Do not forget that this is a cross-party committee. We have the National Party, Liberal Party and the Labor Party here. We are reporting to the Parliament, so it does not become a political issues, it becomes a Parliament issue. It is important that you give it to us in writing, so that we might look at incorporating it in our final report. You may not win everything, but you might get some hope out of it.

Mr Ducas: Alannah let out that she was going to look after people in the Pilbara who had been hurt by this debacle, so I rang Main Roads and asked if this was applicable to the mid west region. I was told no. If I wanted to be looked on favourably- those were the words that were used - I had to quote on work in the Pilbara region.

The CHAIRMAN: Can you give us your individual circumstances and what you think could help in those circumstances, and we will see what we can do in our reporting process. Anything you can give us in writing, we can put in our report, and it becomes part of the public record, and we can recommend that this should happen. It does not necessarily mean that you will get it.

Mr Harrington: We have dropped our sail, though. We will not be there to get anything.

The CHAIRMAN: But you are in different circumstances.

Mr Harrington: No I am not; I am still owed \$100 000.

The CHAIRMAN: I understand that, but your circumstances were directly with Consolidated. The difference is that these people were subcontractors to Carr Civil. There is a difference, and yours will have to be treated differently, and we will do that through our process. You have a direct contract and we have statutory evidence that that did not happen.

Mr White: In the reference I gave you before, there is a statement from the regional manager saying that he does not recall the phone conversation with Rod Evans on 5 March. I know that that happened, and we can demonstrate that because he referred Rod Evans to Arthur Phillips on that day. If you present that to them and they come back, the reason we know it was a different day is that was the day of the entry.

Ms J.A. RADISICH: Do you have your telephone record that states the number that was dialled from your office?

Mr White: We were on a mobile phone at the time, but we can demonstrate that. Main Roads actually rang us back, though. That is the only other side. Our initial phone call was placed at about 8.15 from Kellerberrin. The phone call we received was about 11.15 back to us, as opposed to us calling them, but he has acknowledged the conversation and basically the content of the discussion.

Mr Ducas: I reiterate that we are not trying to dump on anyone in Main Roads. We are trying to survive in business.

The CHAIRMAN: We are not gunning for anyone in Main Roads. We want to be fair as well. Thank you very much for giving us your evidence, and we look forward to coming up with some recommendations that will help. I declare this session closed.

Committee adjourned at 3.29 pm

