

DELIVERING QUALITY

FOR WA

Procurement Policy to deliver quality projects
up to a standard, not down to a price



UNIONS WORK.

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INTRODUCTION

The community expects the government to deliver the services and infrastructure we need, and to ensure work undertaken in the interests of the people is done so ethically, responsibly and in line with their expectations of proper behaviour.

While the government may outsource the delivery of projects, they cannot outsource the political risk, nor their obligations to the community. Yet in recent years, the government has increasingly outsourced delivery of services and projects to companies who behave unscrupulously.

Rife across outsourcing is price gouging, under-delivery, time and cost over-runs, exploitation of workers, unconscionable conduct towards subcontractors and threats to worker and community safety.

The public has lost faith in the delivery of essential services by the private sector in this State. They have emphatically expressed their view about the privatisation of public services, with their overwhelming endorsement of Labor's position not to privatise Western Power at the last State Election. The community expects the government to take responsibility for delivery of essential services.

In the 1980s the Western Australian government moved away from a centralised system for the delivery of large-scale infrastructure, maintenance and major services. The Public Works Department was dismantled, and there was an increase in commercial entities being charged with delivering contracts. By the 1990s this model had evolved to the point that the government had lost nearly all internal capacity, leaving it with little ability to effectively oversee service

or infrastructure delivery: they had become uninformed purchasers and negligent managers of the workforce that were now in charge of delivering government projects.

This poor oversight of the contracted arms of government has been to the detriment of workers, industry, the community and State finances.

Costs ballooned, worker's rights were dismantled, delays became commonplace and the community became desensitised to disappointment.

A string of recent failures underlines how broken the system has become in Western Australia, with competition on price delivering poorer overall outcomes for the community. The Perth Children's Hospital, Perth Arena and the Fiona Stanley non-clinical services contract are all etched in the public's memory as failures by the government in project delivery.

Competition on cost alone has driven adversarial relationships in the construction industry, with companies looking to drive down labour costs. There has been a growth in the use of pyramid contracting, labour on-hire and subcontracting arrangements, which has subsequently eroded worker's rights, wages and entitlements. There are now many layers between the government and the hired workers, with opaque company

structures making it so that the government has no line of site on how contracts are delivering in line with worker's rights and if legal and moral obligations are being fulfilled.

While other States have taken decisive action to reverse the trend in outsourcing and focus on total value measures. Western Australia continues to be an uninformed purchaser beholden to commercial interests and advancing a broken, self-interested outsourcing model that delivers insecure work for an increasingly fragmented workforce.

With large infrastructure projects being the few bright spots for the Western Australian economy in the coming years, the State has an opportunity to change how projects are delivered and value derived, while protecting worker's rights.

We seek to make an informed and sensible contribution to the development of a better way for the Western Australian Government. We believe it is time for the government to use some of the biggest levers it has – how it procures and delivers projects and services – to deliver long-term dividends for the State.

We hope this is the start of a conversation that will see better outcomes delivered for the community, cost savings over the longer-term and allow our hardworking members to have secure, long-term jobs.



SUMMARY OF RECOMMENDATIONS

TO BUILD A STRONGER ECONOMY, A BETTER CONSTRUCTION SECTOR AND A BRIGHTER, MORE SECURE FUTURE FOR OUR MEMBERS, THE WESTERN AUSTRALIAN GOVERNMENT MUST:

STOP THE WASTE IN CONSTRUCTION:

1. Explore the opportunity for use of the Alliance and other emerging models in delivering large and complex infrastructure, which would help restore public sector capability, ensure best outcomes for the community and minimise waste.
2. Restore a strong internal procurement capacity and small project delivery team, who would determine which model of procurement to use in which circumstance and ensure value is derived over all applicable performance measures.
3. Apply threshold tests that investigate and prepare business cases to determine whether external procurement is necessary and desirable – with a commitment to utilise the directly employed public sector workforce wherever possible.

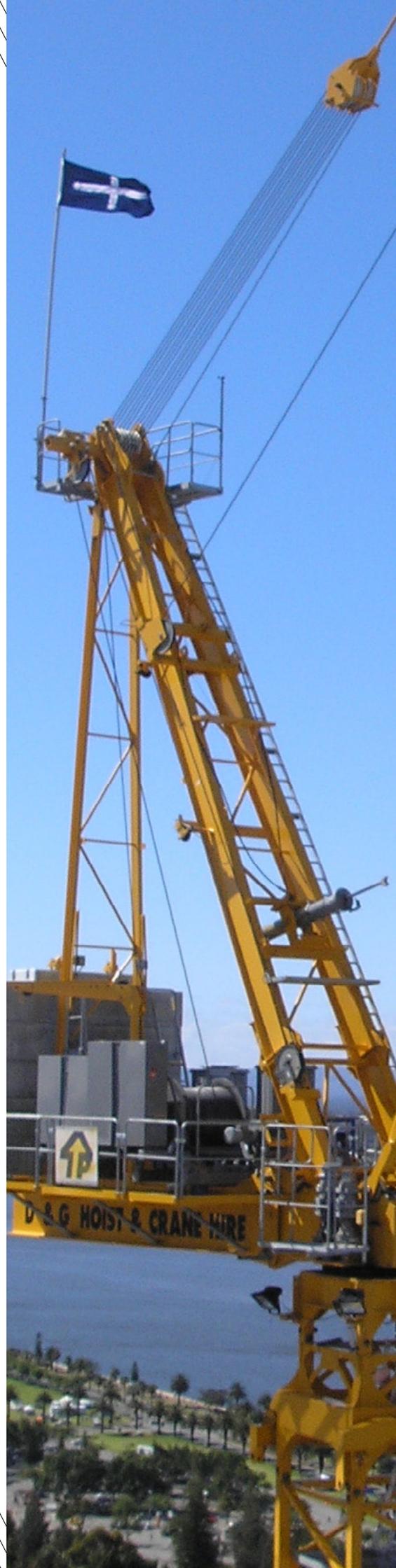
GET A BETTER DIVIDEND FROM THE HUNDREDS OF MILLIONS SPENT ON PRIVATE COMPANIES IN CONSTRUCTION:

4. Develop and enforce a new methodology for assessing value of tenders for government contracts above \$20m in value, with the aim of achieving a balance between social, environmental and financial factors.

5. Require companies on major infrastructure projects to only employ properly skilled and qualified persons, engage in skills development and provide detailed workforce/skills development plans, including a mandatory assessable target for the employment of apprentices, trainees and cadets.

TREAT WORKERS DELIVERING GOVERNMENT WORK LIKE GOVERNMENT WORKERS:

6. Ensure successful tenderers and the companies they contract to use best practice industrial relations and employment standards – consistent with Australia’s international obligations.
7. Provide employment security for workers on projects by requiring all parties in contract delivery to demonstrate financial capability throughout the life of the project, including subcontractors.
8. Act to ensure full transparency and disclosure of financial and workplace relation records for all parties that are to be included in the bid.
9. Ensure that all government projects incorporate a specialist derived mental health and suicide prevention program.
10. Develop, in consultation with industry and unions, an enforceable Memorandum of Understanding (MOU) which forms a pre-qualification requirement for tendering on government construction projects. This would protect the MOU in legislation when it is properly established.



A WORKPLACE RELATIONS MOU FOR MAJOR PROJECTS

The CFMEU believes that upcoming major projects, especially the Metronet project, represents an opportunity to drive better – and fairer – workplace relations in Western Australia. It can represent a break from the past and lay a fairer foundation for the future.

We understand the government proposes to use an Alliance model to deliver Metronet, with a joint project team established between the private and public sector to properly scope and deliver the job. This method will better utilise the levers of procurement to ensure dignity and security for workers, draw maximum financial benefit for the State and deliver long-term social benefits.

In the scoping process, where the government partners with proponents to determine the final design and total cost of the Metronet project, the government should develop appropriate benchmarks for workplace relations outcomes – with accompanying incentives, abatements and other penalties. A commitment to meeting or exceeding these benchmarks and targets in the contract should be mandated.

Later, these may form the basis for development of a Major Projects MOU, which could be used as a pre-qualification template for those wishing to tender for government construction projects in the future. Appropriate financial penalties for non-compliance must be established and a demerit points system should be considered which would be linked to the ability to bid for future work and/or the capacity to practice in the industry.

A committee to oversee and enforce these benchmarks and targets should be established. This way, any non-compliance with the Major Projects MOU can be reported

by any effected person: workers, contractors and the public, with the identity of complainants protected. This committee will comprise representatives from peak industry bodies, unions and government and would provide updates to the Minister on progress in meeting targets, reported breaches and sanctions. Abatements aside, enforcement mechanisms would include warnings and prohibitions in performing future work for the government. It will apply to all participants in the project.

At the end of the Metronet project, the Major Projects MOU will be evaluated by the proponent, industry, unions and government, with the government further consulting to establish a model for use on future major projects.



DEVELOPING THE MAJOR PROJECTS MOU

STEP 1

Occurs before project scoping period.

- Project proponents selected, provided with key information by government.
- Proponents provided with 'Metronet workplace relations outcomes'.

STEP 2

Occurs during project scoping period.

- Proponents develop benchmarks, targets and key outcomes to assess delivery of 'Metronet workplace relations outcomes', with government, unions and industry.
- Proponents, government, industry and unions to agree makeup of Major Projects Oversight Committee.

STEP 3

Occurs at end of project scoping period.

- Major Projects Workplace Relations Oversight Committee established.
- Benchmarks and targets for 'Metronet workplace relations outcomes' become Major Projects MOU for use on future projects.
- First used as trial on Metronet project.

STEP 4

Evaluation shapes further use/ changes.

- Revised instruments develop for wider use:
 - Major Projects Oversight Committee.
 - Major Projects MOU.



KEY FEATURES OF THE MOU

The chequered past of infrastructure delivery in Western Australia and the increased reliance on the private sector means we must find new ways to deliver better outcomes for workers. Our primary goal is to 'weed out' from the industry the unethical and unscrupulous players who have compromised safety, vacated their responsibility as employers and gouged the taxpayer. Proper enforceable mechanisms and penalties would be established for failing to meet agreed benchmarks – these mechanisms may include things like financial penalties and a demerit points system linked to permission to bid and practice in the industry. This would underpin a system which would drive good behaviour and cultural change in the industry.

We propose that the Major Projects MOU, which covers all projects over \$20m in value, would have the following key features enforced on all relevant proponents and the subcontractors that they engage:

A COLLABORATIVE, SAFE WORKPLACE

A commitment to ensure the safety and entitlements of all workers employed directly or indirectly on the project.

BEST PRACTICE INDUSTRIAL RELATIONS

Proponents must hold a past history and future commitment to

cooperative workplace behaviours, be signatories to collective agreements and provide unions with right-of-entry, freedom of association and the ability to effectively organise.

A commitment to negotiating new agreements when undertaking new projects, under Western Australian jurisdiction, should be promoted rather than the 'calling up' of interstate or historical agreements, as has been the case in previous major projects in this State.

SAFE WORKING CONDITIONS

Proponents will demonstrate and maintain:

- a. Compliance with all provisions of the Occupational Safety and Health Act, with a further commitment to:
 - i. Union access for the purpose of inspecting the work environment, and consulting with employees;
 - ii. Allowing training for all health and safety representatives;
 - iii. Consulting with relevant employees in relation to resolving issues, including setting up representative committees that link up relevant unions and management.

WAGES AND CONDITIONS DERIVED FROM GENUINE COLLECTIVE AGREEMENT PROCESSES

Proponents will demonstrate and maintain:

- a. A history of best practice industrial relations, with below industry standard levels of disputation and reported occupation health and safety incidents. There needs to be a commitment to maintain that record and not breach employment statutes;

- b. An assurance that no worker's wages will be lower than that offered under the most common collective agreement.

SECURE EMPLOYMENT

Benchmarks will be developed that include a commitment to security of employment for all workers on the project:

- a. Direct and permanent employment being the preferred model of employee engagement and that any casual, contracted or labour on-hire workforce will be a predetermined small percent;
- b. Guaranteeing employment security for workers, by requiring all parties involved in delivery to demonstrate financial capability throughout the life of the project, including subcontractors. The proponent will bear responsibility for ensuring this.

MEANINGFUL TRAINING OPPORTUNITIES

The project will include measures to ensure we derive a long-term social benefit from this vital infrastructure project:

- a. A requirement to engage in onsite training and provide detailed workforce/skills development plans, including a mandatory assessable target for the employment of apprentices, trainees and cadets;
- b. The development of a diversity plan, with targets for engagement to include disadvantaged members of the community. The plan will contain agreed programs, measures and targets with the expectation of union and community involvement in delivery.

THE ILLUSION OF VALUE

The State Government of Western Australia are the biggest clients for construction firms in the State and is charged with delivering the services which underpin our wellbeing and prosperity.

The State Budget of 2017-18 demonstrates the government's commitment to investing in infrastructure which will deliver vital services for future generations while creating employment opportunities. The focus on local content and jobs is to be commended.

The WA Jobs Law and local participation plans will deliver long-term benefits to the community from increased employment, social cohesion and a more robust, diverse economy that is able to withstand the cyclical changes in the fortunes of the resources industry in years to come. Aimed especially at infrastructure delivery, these laws are a demonstration that the government understands the total value that our investment in infrastructure can deliver.^{1,2}

The billions budgeted in infrastructure delivery by the government across transport, health and education represents key planks of economic activity in Western Australia in years to come – acting as an important bulwark to underperformance in key industries, such as the resources sector, with the first upturn in engineering construction since 2015 being driven by government investment³. This investment has several direct beneficiaries – those companies engaged to perform work and their employees not least amongst them. However, the current trend in Western Australia, towards a drive for value based primarily on price, will not yield a long-term dividend for the State.

Evidence has accumulated in recent years that the State Government has made a few ill-considered, ideological decisions which will cost the State over the longer-term. Whether it be the calamitous delivery of the Perth Children's Hospital, where the principal and head contractor delivered a project with both asbestos and lead representing barriers to opening; the ideological, costly and opaque services contract at Fiona Stanley; or the over-time and over-budget Perth Arena – it is clear that the State of Western Australia is neither an informed purchaser of infrastructure nor has the capacity to make impartial, value-free judgements in delivery models or the involvement of the private sector^{4,5}. The folly in government infrastructure procurement has been highlighted by the government's Special Inquiry into Government Projects and Programs, released earlier this year, while the Auditor General also found the "governance, oversight, project management and administration of the (Perth Arena) project were all flawed"^{6,7}.

THE STATE GOVERNMENT AS AN UNINFORMED PURCHASER

Western Australia has been an uninformed and ideological purchaser of infrastructure and services. The private sector has been the crux of infrastructure delivery, with their involvement deemed a necessity by successive governments. This fervour for private sector delivery at all costs reached its zenith with the more than \$4 billion demonstration project at Fiona Stanley for the conveyance of non-clinical services. Government project delivery now largely consists of contracted work arrangements that seek to shift risk and responsibility to the private sector. Procurement practices have been aimed at minimising the costs to government from this approach and maximising community outcomes.

The most recent research conducted by Ashurst, in 'Scope for Improvement 2014' with Infrastructure Partnerships Australia and the Australian Constructors Association, has found disputation is driven by "poorly scoped projects, resulting in variations, rework and interface issues between trades, unclear contract drafting... poor contract

1 Department of Jobs, Tourism, Science and Innovation, Jobs Bill passes through State Parliament, <http://jtsi.wa.gov.au/news-media/news-detail/2017/12/07/jobs-bill-passes-through-state-parliament>

2 Government of Western Australia, WA State Budget 2018-19, <https://www.ourstatebudget.wa.gov.au/2018-19/fact-sheets/economy.pdf>

3 Greg Jericho, The Guardian, 'It's still public infrastructure projects keeping the economy afloat', <https://www.theguardian.com/business/grognomics/2018/jun/28/its-still-public-infrastructure-projects-keeping-the-economy-afloat>

4 ABC News, 'Perth Children's Hospital report finds brass fittings likely caused lead contamination', <http://www.abc.net.au/news/2017-08-11/perth-childrens-hospital-lead-contamination/8797848>

5 WA Today, Scathing report finds Barnett government spent 'large buckets of money' on poorly planned projects, <https://www.watoday.com.au/national/western-australia/scathing-report-finds-barnett-government-spent-large-buckets-of-money-on-poorly-planned-projects-20180220-h0wdwq.html>

6 WA Today, Late, over cost: Auditor-General slams Perth Arena, <https://www.watoday.com.au/national/western-australia/late-over-cost-auditor-general-slams-perth-arena-20100310-pykq.html>

7 Public Sector Commission, Inquiry into Government Programs and Projects, <https://publicsector.wa.gov.au/public-administration/sector-performance-and-oversight/reviews-investigations-and-special-inquiries/special-inquiries/inquiry-government-programs-and-projects>

administration (and) overly optimistic scheduling and cost estimates”⁸, especially as it relates to the most commonly used procurement methods in Western Australia. Disputation in the construction sector has been estimated to cost up to \$7billion per year, with that figure likely to have grown since this 2009 estimate⁹. Meanwhile, a report by Deloitte Economics, the ‘Economic Benefits of Better Procurement’, compiled for Consult Australia “found that conservatively, public sector clients could save 5.4% on professional services costs alone through better procurement”¹⁰.

Solely for Metronet, we would estimate the government to waste in the order of \$380m of the \$4billion budget in disputation, changes to scope, delays and blowouts – if the procurement practices of the WA government do not change.

Waste is rife in infrastructure delivery as a result of procurement practices which remain unchanged regardless of the consequences. The Australian Constructors Association report by Deloitte Economics identified cost blow-outs at between 6.5% and 12.7% on projects¹¹. Accounting solely for Metronet, we would estimate the government to waste in the order of \$380m of the \$4billion budget in disputation, changes to scope, delays and blowouts – if the procurement practices of the WA government do not change^{12 13}.

More than half of the public sector engineering construction work performed in Australia is delivered by the private sector, with this figure increasing year-on-year as government recedes as a major delivery partner¹⁴. This diminished role has been reflected in the evolution of procurement models:

- ‘Public Private Partnerships (PPP)’ has been a favoured procurement methodology for many governments, especially New South Wales and Victoria, where there is a large and active private capital market and a diverse construction industry. This model has been criticised and yielded some very public failures¹⁵. Bid costs and risk for industry are high. Unlike other models, the ongoing operation and upkeep of infrastructure falls to the private sector, which recoups cost through contractual terms while assuming the greatest share of risk^{16 17}.
- ‘Construction Management’, a model utilised often for building construction, allows the project owner to maintain control of the project, with design and trade contractors engaged directly alongside a construction manager¹⁸.
- The ‘Managing Contractor’ model is a relationship-style model, with the “head contractor being engaged as the ‘managing contractor’ to manage the development of the design, coordinate production of construction documentation, enter into contracts and manage the delivery of the work on behalf of the project owner”¹⁹.
- The ‘Construct or Design and Construct (D&C)’ model has evolved from the client designing a project for private sector construction, to where it is now common for both the design and construction components to go to market, with a fixed date and price. This evolution has contributed to a complete erosion of public sector capacity, which has helped drive adversarial behaviours, unforeseen costs and delays. Industry is wary of the costs when bidding for D&C projects, with risk often not commensurate to reward^{20 21}.
- The ‘Alliance’ model has emerged as a favoured model for many jurisdictions in the delivery of complex, costly projects – as a way to minimise cost delays, maximise innovation and improve skills sharing. It brings together the proponent and private sector partner(s) for the delivery of a project, with a joint team established. Innovation is said to be maximised as is skills sharing, underpinned by a ‘no-fault, no-blame culture’ with a commitment to avoid disputation^{22 23}.

8 Ashurst, Scope for Improvement 2014 (2015), p. 20, Ashurst, Melbourne, Sydney

9 Australian Construction Industry Forum, Boosting Construction Productivity, Fact Sheet 1, <https://www.acif.com.au/documents/item/786>

10 Deloitte Access Economics, Economic benefits of better procurement practices (2015) (i), <http://www.consultaustralia.com.au/docs/default-source/infrastructure/better-procurement/dae---consult-australia-final-report-050215---96-pages.pdf>

11 Professionals Australia, Better Infrastructure (2016), p. 6, Professionals Australia, Melbourne

12 Using an average figure of 9.25% for cost over-runs and a figure for construction of Metronet of \$3bn

13 Jacob Kagi, ABC News, The \$4 billion bet on Metronet as Perth passengers step off public transport, <http://www.abc.net.au/news/2017-12-10/metronet-a-big-bet-as-passengers-step-off-perth-public-transport/9238300>

14 Australian Construction Industry Forum, Boosting Construction Productivity, Fact Sheet 1

15 Dallas Rogers, The Conversation, Funding the future after the demise of PPPs, <http://theconversation.com/funding-the-future-after-the-demise-of-ppps-18869>

16 Building the Education Revolution Implementation Taskforce (2011), pp. 58-59, Final Report, Commonwealth of Australia, ACT

17 Austroads, (2014), pp. 21-35, Building and Construction Procurement Guide – Principles and Options, Sydney, <http://www.apcc.gov.au/ALLAPCC/Building%20and%20Construction%20Procurement%20Guide.pdf>

18 Ibid., p. 25

19 Ibid., p. 26

20 Australian Construction Industry Forum, Boosting Construction Productivity

21 Building the Education Revolution Implementation Taskforce (2011), pp. 58-59

22 Ibid., p. 34

23 Queensland Government, Project Assessment Framework, (2015), p1, <https://s3.treasury.qld.gov.au/files/paf-alliance-establishment-management.pdf>

The ‘Alliance’ model has emerged as a favoured model for many jurisdictions in the delivery of complex, costly projects – as a way to minimise cost delays, maximise innovation and improve skills sharing.

While a great deal of work has gone into examining procurement models and best approaches across the country, it is apparent from the litany of failures in this State that this work was studiously ignored by the previous government. A continued focus on private sector delivery has caused government capacity to erode over time to the point that scope, design and monitoring of projects cannot be done effectively. This in turn means that industry deals with a customer that is difficult. In using methods of procurement such as D&C or Managing Contractor, the government effectively allows the private sector to take charge of human resources, occupational health and safety, environmental impacts and community safety. This has resulted in the failures previously identified and will continue to do so until there is a change of approach.

The Western Australian Government cannot – and should not – seek to outsource core responsibilities to the private sector. It must take the lead in determining best practice procurement models which allow the community to be assured that projects are being delivered not only at lowest price but at greatest dividend. To do that, we must invest in our central agency procurement capacity, as they have in Victoria – through Projects Victoria, the Office of the Chief Engineer and Infrastructure Victoria. This has been called for repeatedly by the industry ^{24 25}.

Western Australia has focussed solely on the development of a secure and visible plan for infrastructure through Infrastructure Western Australia, sitting within the Department of Premier and Cabinet. This plan will do little to ensure value for money unless the Western Australian Government becomes an informed purchaser of infrastructure ²⁶. Improved procurement capacity within government could easily be funded from the savings that would come about from becoming an informed purchaser – due to the minimisation of waste in procurement.

The Queensland Government has maintained an informed purchaser capacity with a significant standing workforce ²⁷. The benefits of this have been reduced waste in procurement, an ability to respond rapidly to emergencies and a more calculated approach to procurement. Restoring some standing capacity and allowing the government to directly monitor more projects through a Construction Management or other more direct model of procurement, would go some way to restoring government capability. In time, it would allow real monitoring of projects and give the public sector opportunity to directly deliver projects.

RECOMMENDATIONS

That the Western Australian Government:

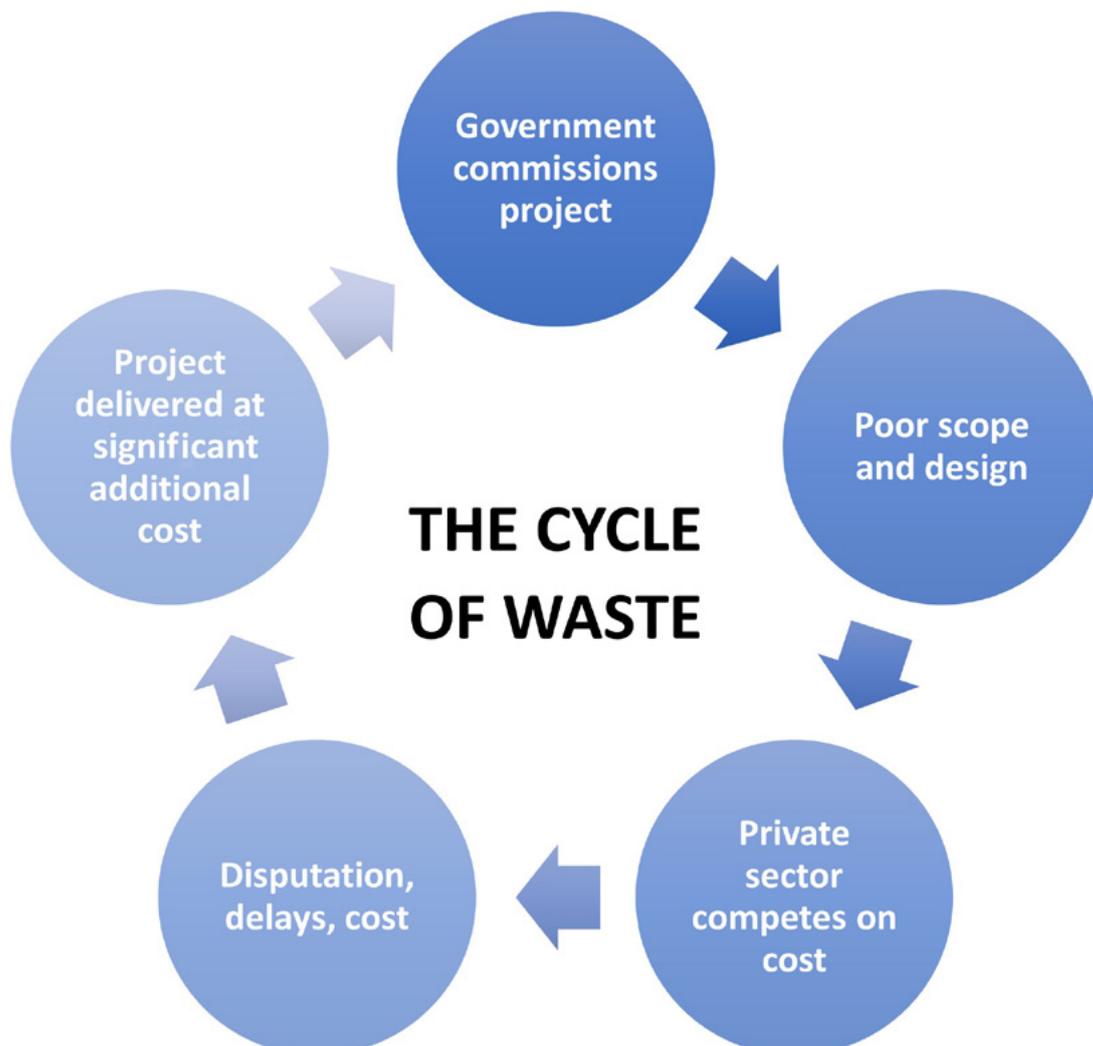
1. Explore the opportunity for use of the Alliance and other emerging models in delivering large and complex infrastructure, which would help restore public sector capability, ensure best outcomes for the community and minimise waste.
2. Restore a strong internal procurement capacity and small project delivery team, who would determine which model of procurement to use in which circumstance and ensure value is derived over all applicable performance measures.
3. Apply threshold tests that investigate and prepare business cases to determine whether external procurement is necessary and desirable – with a commitment to utilise the directly employed public sector workforce wherever possible.

24 Australian Construction Industry Forum, Boosting Construction Productivity, Fact Sheet 1

25 Government of Victoria, Office of Projects Victoria, <https://www.vic.gov.au/publicsectorreform/people/office-of-projects-victoria.html>

26 Government of Western Australia, Infrastructure Western Australia, <https://www.dpc.wa.gov.au/ProjectsandSpecialEvents/infrastructurewa/Documents/IWA-factsheet-FINAL.pdf>

27 Building the Education Revolution Implementation Taskforce (2011), p. 11



A BROADER MEASURE OF VALUE

As a jurisdiction, Western Australia still lags behind in Australian best practice when it comes to properly harnessing taxpayer investment for long-term dividends.

Our steadfast commitment to the involvement of the private sector at the lowest price possible, in both project and service delivery, meant we have failed to gain the maximum return from the billions of dollars we invested.

The Victorian Government’s Social Procurement Framework ensures that companies who employ disadvantaged groups in tendering gain an advantage during the procurement process, since it “will create jobs for those facing barriers to employment including Aboriginal people, long-term jobseekers, at-risk women, victims and survivors of family violence, people with a disability and young Victorians”²⁸. The Victorian Government has a record of harnessing its spend on major projects, such as the Level Crossings Removals and the Metro Tunnel, to allow for mandated levels of social enterprise investment ²⁹. While we may not yet have as vibrant a social enterprise in Western Australia as in the Eastern States, we will never do so without getting the right regulatory framework.

In assessing whether a project is delivering value for money for Western Australia, a very narrow set of criteria is used, all of them project specific: “fitness for purpose; technical and financial issues; supplier capability; sustainability; risk exposures; availability of maintenance, service and support; compliance with specifications; and ease of inspection, communication and delivery”,³⁰ and that agencies should only ‘consider sustainable procurement’ when preparing to procure. It’s hard to believe that John Holland would have been able to fulfil on any of these additional criteria, given their lack of experience in ‘soft’ infrastructure projects: a cursory examination of their capability or delivery record would have shown them to be the wrong candidate for the Perth Children’s Hospital contract.

28 Government of Victoria, Social Procurement to Create Jobs for all Victorians, <https://www.premier.vic.gov.au/social-procurement-to-create-jobs-for-all-victorians/>

29 Ibid.

30 Government of Western Australia, Department of Finance, Value-for-Money, Policy: Procurement, http://www.finance.wa.gov.au/cms/uploadedFiles/Building_Management_and_Works/Policy/Value-for-Money%20Policy%201%201%20internet%20version.pdf

A cursory examination of (John Holland's) capability or their delivery record would have shown them to be the wrong candidate for the Perth Children's Hospital contract.

The Department of Finance states that “sustainable procurement involves an organisation meeting a need for goods and services in a way that achieves value for money and generates benefits not only to the organisation, but also to society and the economy, while minimising damage to the environment”³¹, and yet, it would seem that this has been poorly applied – if at all – in Western Australia on all of their major projects in the last few years.

In this State, our malaise is further demonstrated by the relative impotence of the Building Commission, who have failed to enforce the delivery of major projects according to agreed standards and by the appropriately qualified tradespeople – as demonstrated by the Perth Children's Hospital case which had disastrous consequences. The issue of quality assurance goes not just to labour but products, as the public has become acutely aware through the various mishaps that occurred at the Perth Children's Hospital.

The issue of non-compliant building products being used in the construction industry in Western Australia highlights a broader problem within the procurement process for the State's infrastructure projects. For too long, there has been an accepted position that the State Government awards infrastructure projects to principal contractors with the lowest price. This environment induces principal contractors, in the formulation of their tenders, to use poor quality materials in the construction of the project. In the CFMEU's experience this 'race to the bottom' has the effect of producing poor outcomes for the State Government – from both an economic and political perspective.

Developers, principal contractors and subcontractors should be required, during the tender process, to disclose the source, quality and standards of the building materials to be used on the proposed project. If principal contractors are found to have previously used non-compliant building materials or engage with subcontractors who use/have used non-compliant materials, they should be restricted or banned from tendering on State Government work.

The Queensland Government's proposed legislation, the Building and Construction Legislation (Non-Conforming Building Products-Chain of Responsibility and Other Matters) Amendment Bill 2017 will, once enacted, confer responsibilities on the building product supply chain individuals (such as suppliers, importers and manufacturers) to ensure building products adhere to the relevant Australian standards. If a similar legislative framework is established in Western Australia, all parties involved in the supply chain would be accountable to the Building Commission, rather than just the individual or company. In our view, this will stop the use of cheap, imported and substandard products which put the health and safety of Western Australians at risk.

One of the greatest dividends we can expect from large construction projects is a highly skilled workforce. In other States, such as Victoria and Queensland, there are enforceable targets for the employment of apprentices, traineeships and cadets – as part of the requirement for consideration on bidding for construction projects. Major projects in Victoria “must use local apprentices, trainees or engineering cadets for at least 10 per cent of the project's total labour hours”³². In the previous years, large government departments may have engaged with apprentices, trainees and cadets. Now, however, the industry has no incentive to do so – choosing instead to compete on a project-to-project basis and use temporary labour 'fixes' in its place. This will erode our expert base over time and increase skills shortages into the future.

RECOMMENDATIONS

That the Western Australian Government:

4. Develop and enforce a new methodology for assessing value of tenders for government contracts above \$20m in value, with the aim of achieving a balance between social, environmental and financial factors.
5. Require companies on major infrastructure projects to only employ properly skilled and qualified persons, engage in skills development and provide detailed workforce/skills development plans, including a mandatory assessable target for the employment of apprentices, trainees and cadets.

31 Government of Western Australia, Department of Finance, Social Procurement, http://www.finance.wa.gov.au/cms/State_Supply_Commission/Procurement_Policy/Sustainable_Procurement.aspx

32 Victorian Government, Major Projects Skills Guarantee, <https://jobs.vic.gov.au/about-jobs-victoria/major-projects-skills-guarantee>

PROJECT DELIVERY HAS FAILED CONSTRUCTION WORKERS

Time and time again, the Barnett Government left principal contractors to their own devices when undertaking State Government funded projects, with no regard to the social and environmental outcomes of that work. These principal contractors were not properly scrutinised, nor was there any consideration for the rights of workers when contract was awarded or during project delivery. No requirement was placed on the principal contractor to monitor the practices of subcontractors (and in many cases, second and third tier subcontractors). This subsequently led to workers being mistreated and exploited.

A drive for 'value' and a fierce competition on price has created risk and uncertainty for Western Australian workers and small business. The Western Australian Government remains responsible for the welfare of workers and the community, regardless of who delivers the infrastructure. The government must ensure that employees on government projects enjoy comparable conditions to that which the government provides to its own employees.

The government must ensure that employees on government projects enjoy comparable conditions to that which the government provides to its own employees.

The commercial construction industry in Western Australia has changed over the years – especially when it comes to procurement of contracts and labour-hire. It used to be dominated by large construction companies that had their own employed workers. Now, it is a highly complex 'pyramid' of contractual relationships, otherwise known as a hierarchical system of contracting, which involves a head contractor with multiple layers of smaller subcontractors underneath³³.

Pyramid contracting occurs when a subcontractor engages another subcontractor to perform part of the work within their respective contract, (sometimes) without the knowledge of the principal contractor or the client.

This practice is primarily used in two ways:

1. To create efficiencies for the head subcontractor by hiring subcontractors who are experts in a given field. This may include equipment and/or qualified labour.
2. The offsetting of employment obligations, whereby employees of the second subcontractor are receiving lesser entitlements in comparison to the workers employed by the first subcontractor. In many cases this is done to circumvent the wages and conditions within an Enterprise Agreement.

In some scenarios, a subcontractor can contract out 2-3 times within a block of work or contract out to a number of contractors for the same block of work. The practice of pyramid contracting leads to poor outcomes for workers' wages and entitlements, workmanship, quality assurance systems and facilitates insecure work through the use of labour hire, which encourages employment of non-citizens who are working without a valid visa or working in breach of a visa condition. This encourages non-compliance with statutory employment requirements, poor health and safety and contributes to the high rate of insolvency in the industry, specifically amongst the subcontractors. Subcontractors further down the contracting chain normally don't have the capacity to undertake the work or are forced to cut labour costs and quality assurance to meet the contract requirements of the lead subcontractor.

This is a consequence of private companies being forced to compete on price for work, without proper weight given to their employment practices, business conduct or record of delivery. The largest – and easiest – overhead to reduce in this environment is that of wages for workers.

Unions are often sidelined when there is a race to the bottom. The casualty of this is often safety. As submitted by our union, Senate Education and Employment Committees' inquiry into the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia, it is a demonstrable fact that unionised workers suffer less injuries than non-unionised workers. They are 70 percent more likely to be aware of OHS hazards and issues than in a non-unionised workplace³⁴. In the United Kingdom, trade union health and safety committees had

33 CFMEU Construction, Security of Payment Reform – Industry Advisory Group Submission 1, April 3 2018, p. 1, https://www.commerce.wa.gov.au/sites/default/files/atoms/files/cfmeu_submission.pdf

34 ACTU, What has the Union movement done for OHS?, <https://www.actu.org.au/ohs/about-us/union-movement>

half the injury rate of employers who managed safety without unions and workers in unionised workplaces were less likely to have a fatal injury³⁵. A 2013 study of 31 industrialised countries found that union density is the ‘most important external determinant of workplace psychosocial safety climate, health’ and that ‘eroding unionism may not be good for worker health or the economy’³⁶. Research also finds that unionised workers are more likely to receive safety instructions, have regular safety meetings, be made aware of dangerous work practices and be less likely to perceive that taking safety risks is part of their job³⁷.

WHAT IS A SUBCONTRACTOR?

It is an individual and/or company that has an arrangement with the head contractor. The set-up is a business-to-business relationship, with the subcontractor usually providing a service like labour, tools, materials and/or expertise. No employment contract exists in these relationships, which means the subcontractors have total discretion on how they go about delivering the service and may even delegate some or all of their tasks to others³⁸, which results in more layers in the system. This takes the employee relationship and the welfare of those performing the work, increasingly further away from government.

Subcontractors have full reign on how they deliver the service on the project - from setting the number of hours to assessing performance. They are also not obligated to remain focused on the one project – so may accept and work on multiple projects at any given time.

Since the relationship is business-to-business, there are no minimum pay rates and it is up to the subcontractor to negotiate payment and conditions with the principal or head contractor, which includes terms of trade for payment on the work that is performed and materials that may be provided during the project³⁹.

LABOUR ON-HIRE ARRANGEMENTS

Another outcome of the hierarchical system of contracting has been the growth of labour on-hire arrangements in the construction industry.

Labour on-hire is the practice of utilising the worker of a labour hire agency to work for a host business (the firm to which the worker is on-hired). These workers can be casual or on a fixed contract. The crucial aspect of these arrangements is the splitting of contractual and control relationships – when the worker is on-site they are under the direction of the host business, especially in regards to performance of work; the labour hire agency is responsible for the wages and other matters for the worker, since they have the direct contract with them; and the host business has the contract with the labour agency, so it pays them directly⁴⁰.

The increase of labour hire in the commercial construction industry was inevitable with the influx of subcontractors. The nature of the arrangements is ideal in these situations because they are flexible; provide the opportunity to change workers; and management of labour costs, as wage and all other employment related benefits have already been set by the labour hire agency⁴¹. The use of labour hire workers undermines the pay and working conditions of directly employed working people.

The CFMEU membership and that of all construction unions, believes that labour hire is used to circumvent industrial agreements and to avoid paying employee entitlements. Recent policy announcements by the Federal ALP acknowledge that those employed under labour hire arrangements are paid less than those in permanent employment⁴².

The use of labour hire workers does not improve productivity, as it undermines long-term skill development and motivation. Further, labour hire companies that exist in the construction industry exploit foreign workers under temporary

35 TUC, How unions make a difference on health and safety: The Union Effect, https://www.tuc.org.uk/sites/default/files/Union%20effect%202015%20%28pdf%29_0.pdf

36 Ibid.

37 Gillen, M., et al., (2002), ‘Perceived safety climate, job demands, and co-worker support among union and non-union injured construction workers’, *Journal of Safety Research*, 33(1), pp. 33-51

38 Government of Western Australia – Department of Finance, Subcontracting in the building and construction industry – Understanding your rights and obligations, September 2013, p. 4, [https://www.finance.wa.gov.au/cms/uploadedFiles/Building_Management_and_Works/New_Buildings/subcontractor_awareness_brochure\(1\).pdf?n=7460](https://www.finance.wa.gov.au/cms/uploadedFiles/Building_Management_and_Works/New_Buildings/subcontractor_awareness_brochure(1).pdf?n=7460)

39 Government of Western Australia – Department of Finance, Subcontracting in the building and construction industry – Understanding your rights and obligations, September 2013, p. 5

40 The Parliament of the Commonwealth of Australia, House of Representatives Standing Committee on Employment, Workplace Relations and Workforce Participation, *Making it Work: Inquiry into independent contracting and labour hire arrangements*, August 2005, pp. 57-58

41 F. Ortiz, *Contract Workers or Labour Hire? What’s the Difference?*, <https://bluecollarpeople.com/contract-workers-labour-hire-whats-difference/>

42 Australian Financial Review, Bill Shorten promises to change sot increase labour pay and conditions, <https://www.afr.com/news/policy/industrial-relations/bill-shorten-promises-to-increase-labour-hire-pay-and-conditions-20180716-h12r6x>

visa programs such as the 417 and 462 working holiday visas or the 457 temporary (skilled) work visa. In the end, the use of labour hire serves to undercut existing conditions and worker rights.

SHAM CONTRACTING IN CONSTRUCTION

One of the negative side-effects of the current procurement system that utilises subcontractors and labour on-hire arrangements, has been an alarming increase in sham contracting.

Sham contracting is when an employment relationship is disguised as one of 'client and independent contractor'. It has become quite prevalent in the construction industry and seriously undermines the employment standards as set by the Fair Work Act 2009. It allows employers to avoid dealing with items like annual and sick leave, redundancy payments, payroll tax, workers compensation insurance and superannuation payments⁴³.

The true nature of sham contracting is to ultimately shift the responsibility and costs to the worker so they are responsible for the management of their own employment benefits and insurance, which in turn allows employers to enjoy more freedom and obtain higher profits.

SUICIDE PREVENTION IN CONSTRUCTION

The mental health of construction workers is of acute concern to the CFMEU. According to MATES in construction, every year 190 construction workers take their own lives in Australia, with suicide twice as prevalent among younger workers in construction than elsewhere in the workforce⁴⁴.

Specialist programs, such as those provided by MATES in construction have reach and impact which the government can harness to lower the incidence of suicide in construction. The MATES model, in raising awareness in the industry and providing necessary training for tiers of assistance, is a model with demonstrated efficacy that has been supported by the McGowan Government. Industry must play its part in combatting suicide in construction, especially when they are in receipt of tens of millions in government funding.

A BETTER WAY

There are examples throughout the Commonwealth of jurisdictions acting to protect workers and improve their job security on government projects.

The Queensland Government has been lauded by many as the Australian jurisdiction with the best practice model in procurement. They mandate not only for companies to uphold Occupational Health and Safety standards (their commitment to secure employment), but also to employ 'best-practice industrial relations' on projects above \$100m (as carried in a set of procurement principles which are being developed for the public sector). These explicitly state that "value for money assessment must also include application of all of the following best practice principles: workplace health and safety systems and standards; commitment to apprentices and trainees; best practice industrial relations; history of compliance with procurement, tendering and other government policy"^{45 46}.

The ACT Government and the Victorian Governments have both developed a MOU or Supplier Code of Conduct respectively, which aims to ensure basic standards from those performing works. The ACT's MOU aims to ensure:

- Reliance on and compliance with awards and collective agreements;
- Best practice industrial relations;
- Relevant laws, including equal opportunity, taxation and anti-discrimination are complied with;
- The role and rights of unions are recognised;
- Occupational Health and Safety legislation is adhered to;
- Job security is promoted, with specific endeavour to limit transmission of business and contracting;
- Employers entitlements are protected, by ensuring that contracted companies – and those they contract to – remain financially viable.

43 CFMEU Construction & General, Race to the Bottom - Sham Contracting in Australian's Construction Industry, March 2011, p. 6, https://www.cfmeu.org.au/sites/cfmeuvc-7-x.com.au/files/uploads/shamcontracting_%20racetothebottom_2011.pdf

44 MATES in construction, Why MATES exists, <http://matesinconstruction.org.au/about/why-mic-exists/>

45 Jared Owen, The Australian, <https://www.theaustralian.com.au/national-affairs/state-politics/queensland-labor-contract-rules-for-public-works-to-hand-power-to-unions/news-story/3e870a4878a2b6503addeeb43bdc2199>

46 Queensland Government, Procurement Policy, <http://www.hpw.qld.gov.au/SiteCollectionDocuments/QLDProcurementPolicy.pdf>

The Barr Government has recently introduced legislation to give effect to the MOU, with the 'Jobs Code' to supersede the MOU in time, making "no apologies for using its purchasing power to protect workers' rights, to ensure workers in companies that we contract with are treated fairly, that their rights are upheld and that they go home safe to their families at the end of every day"⁴⁷.

Given the chequered history of procurement and corporate behaviour in the Western Australian construction industry, we believe the government should look to the MOU developed in the ACT as a model for adoption. Given the scale of unethical and irresponsible behaviour in this State, we believe that such an instrument needs to be policed: with breaches reported to a representative industry body, drawn from union, government and industry. A demerit point system, that contains thresholds to prevent future bids on government work, as well as having the ability to recommend the revocation of a building licence, warrants close examination.

The Transport Worker's Union (TWU) has discussed a demerit point system, while the system employed by the Queensland Building and Construction Commission is also worthy of note^{48 49}.

A detailed model for an MOU and accompanying co-regulatory framework can be determined through stakeholder consultations in upcoming months, through the Alliance model for the delivery of the Metronet project, which will bring together the private and public sector in a collaborative delivery team.

In the development of the MOU, the government will need to ensure that contracting arrangements are not used to evade its intent. Construction companies will make all endeavours to compete on cost, such is the culture of the industry, and may seek to establish corporate structures which evade mechanisms designed to improve outcomes for workers in construction. The Federal Building Code (Code for Tendering and Performance of Building Work 2016) ("the Code") addresses this issue. In circumstances where the decision by the Minister is to impose an exclusion on a company from tendering for Federal Government funded work, under section 19 of the Code, any associated entity can also be excluded from tendering from Federal Government funded work. In defining what an associated entity is, the Code defers to the definition found at section 50AAA of the Corporations Act 2001⁵⁰.

In delivering the non-clinical services contract at Fiona Stanley, Serco was required to obtain approval for subcontractors engaged to undertake work Serco was contracted to deliver themselves. This a practice which should be examined for wider application.

RECOMMENDATIONS

That the Western Australian Government:

7. Ensure successful tenderers and the companies they contract to use best practice industrial relations and employment standards – consistent with Australia's international obligations.
8. Provide employment security for workers on projects by requiring all parties in contract delivery to demonstrate financial capability throughout the life of the project, including subcontractors.
9. Act to ensure full transparency and disclosure of financial and workplace relation records for all parties that are to be included in the bid.
10. Ensure that all government projects incorporate a specialist derived mental health and suicide prevention program.
11. Develop, in consultation with industry and unions, an enforceable Memorandum of Understanding (MOU) which forms a pre-qualification requirement for tendering on government construction projects. This would protect the MOU in legislation when it is properly established.

47 Katie Burgess, The Canberra Times, ACT Labor's controversial MOU with Unions ACT to be written into law, <https://www.canberratimes.com.au/national/act/act-labors-controversial-mou-with-unionsact-to-be-written-into-law-20170731-gxm0nb.html>

48 Transport Worker's Union, TWU Calls for three strikes laws for employers, <http://www.twu.com.au/home/media/twu-calls-for--three-strikes-law-for-employers-on/>

49 Queensland Building and Construction Commission, Contractual Obligations, Demerit Points and Bans, https://www.qbcc.qld.gov.au/sites/default/files/Contractual_Obligation_Demerit_Points.pdf

50 Australian Government, Code for the Tendering and Performance of Building Work 2016, <https://www.legislation.gov.au/Details/F2017C00668>

PROJECT AND SERVICE DELIVERY FAILURES IN WESTERN AUSTRALIA

The government in Western Australia is reliant on the private sector in delivering major projects in this State. They have mostly relied on D&C contracts, where there is a single contract with the construction contractor who then subsequently deals with subcontractors to get the job done. The disadvantages this model poses are significant, including the inability to determine life-cycle costs and the Government being liable for time and cost overruns⁵¹.

This model of delivery has delivered multiple failures in this State. Undeterred by these failures, the State has relied on the private sector not only for project delivery, but for essential service delivery.

The following case studies illustrate how poor procurement and project oversight has undermined faith in government project delivery in Western Australia.



51 Government of Western Australia, Centre for Excellence and Innovation in Infrastructure Delivery, Infrastructure Procurement Options Guide, November 2010, p. 31, https://www.finance.wa.gov.au/cms/uploadedFiles/Building_Management_and_Works/CEIID_PMO/procurement_infrastructure_guide.pdf?n=6890

CASE STUDY: SALINI FORRESTFIELD AIRPORT LINK EBA

BACKGROUND

In 2016, Italian company Salini engineered a situation where a vote of just three workers delivered wage outcomes well below industry standard on the Forrestfield Airport Link.

Salini's workers on the Forrestfield Airport Link Project were paid \$60,000 less than on these comparable projects^{64 65}.

Even if the structural adjustment of wages and conditions arising from the end of the resources boom is considered, employees working on the Forrestfield – Airport Link Project were approximately \$40,000 worse off than equivalent workers engaged on the Perth Stadium project.

The industrial instrument applicable to the Forrestfield – Airport Link project (Company Enterprise Agreement 2016-2020) was significantly less than industry standards. This was the outcome of just three workers voting on the agreement and a concerted effort by the company to target worker's wages and entitlements unscrupulously.

WHAT WENT WRONG

Salini sought to disguise their application to FWC to avoid scrutiny, with the title of the Enterprise Agreement making no reference to the actual company employing workers or the project on which they were engaged.

KEY LEARNING

This is a prime example of unscrupulous behaviour by a contractor on a government site, which would be best addressed by providing the enabling procurement framework for best-practice industrial relations.



64 Derived by indexing the rates paid on the New Metro City Project using Average Weekly Earnings for each year since 2005

65 Derived from comparative EBA figures on these sites in agreements available at <https://www.fwc.gov.au/documents/documents/agreements/fwa/ae419903.pdf>, <https://www.fwc.gov.au/search/document/agreement>

SUPREME COURT OF WESTERN AUSTRALIA - ILLEGAL EMPLOYMENT PRACTICES

BACKGROUND

The Supreme Court Project delivered by Broad Construction was plagued with illegality – with workers, the community and the State’s finances suffering.

Unconscionable, unethical and unlawful behaviour included the non-payment of wages to workers, cash-in-hand payments, illegal use of foreign workers, tax avoidance, non-payment of superannuation and long service leave and the underestimation of wages on workers compensation policies. These practices were all underpinned by sham-contracting at its worst.

In 2015, the CFMEU made both the State Government and the Department of Finance aware of concerns which we had, based on evidence provided from our members on site. What had become clear was that through layers of contracting arrangements on the project, Broad were engaging in prohibited practices, most notably the underpayment of subcontractors and staff.

The CFMEU raised concerns at the project level with Broad. The company had failed to conduct a rigorous audit of their contractors to ensure they complied with their statutory obligations. Broad engaged labour-hire firms who breached the Award to the extent of tens of thousands of dollars per worker.

The underpayment of workers on this job amounted to an estimated \$339,168.50 ⁶⁶.

WHAT WENT WRONG

An entity called Broad Construction Services had been developed which sat between the State Government and Broad Construction Services (WA) Pty Ltd, which created distance between illegal employment practices, the Principal Contractor and the State Government. Subcontractors A.M. Land Pty Ltd and Wood Sky Pty. Ltd performed much of the work on the project, engaging in unscrupulous employment practices.

1. On 10 December 2015, the CFMEU wrote to the Department of Finance requesting an urgent assessment of subcontractors A.M. Land Pty Ltd and Wood Sky Pty Ltd ⁶⁷.
2. On 10 December 2015, the CFMEU wrote to the then Minister for Finance Bill Marmion seeking an urgent assessment ⁶⁸.
3. On 15 December 2015, the received a response from the Department of Finance, which stated (in effect) that as a result of BMW having no contractual relationship with the associated companies, they are not contractually empowered to act ⁶⁹.
4. On 16 February 2015, the CFMEU received a response form Minister for Finance Bill Marmion confirming the position taken by the Department of Finance.

The Government did not have a contractual relationship with the companies allegedly involved in these practices and in their view therefore could not act. Sham contracting had put sufficient layers between the State and their project to allow workers to be systematically exploited.

KEY LEARNINGS

The behaviour on this project demonstrates that there is no monitoring of contractors and their employment practices on government projects. Commonly 80% of the work on any project of scale is undertaken by subcontractors. This project clearly demonstrated the need for principal contractors to disclose all information on subcontractors as part of pre-tender qualification mechanisms.

66 CFMEU estimates based on comparison of payments made versus legal entitlements

67 Document: Building Management and Works Correspondence Supreme Court Project WA available on request

68 Document: Minister Marmion Supreme Court of WA Project 10 December 2015 available on request

69 Document: Building Management and Works – Correspondence – 181215 available on request

CASE STUDY: PERTH CHILDREN'S HOSPITAL

BACKGROUND

In 2004 the Health Reform Committee suggested the replacement of Princess Margaret Hospital as the State's designated paediatric hospital. On 25 November 2010 the Barnett Government approved a \$1.17 billion business case for the Perth Children's Hospital (PCH) project – with three companies shortlisted for the project contract in April 2011.

On 1 July 2011 John Holland Pty Ltd was announced as the Managing Contractor (MC) for the project. Construction commenced in early 2013 and was scheduled to complete by 30 June 2015⁷⁰.

THE CONTRACT

The project had a Two-Stage MC with a fixed price MC for Stage Two that was overseen by John Holland Pty Ltd.

This approach required that 80% of the value of the project work be designed and tendered prior to the submission of Stage Two offer, which meant that 20% of the value was not fully designed and market priced by the Contractor. These types of contracts had been utilised by the State to manage exposure to rapid cost escalation in projects (something they experienced during the construction of Fiona Stanley Hospital in 2013)⁷¹.

The State had accepted an extremely competitive bid, with small margin for error, from a company it had not previously used to manage construction projects of such scale and complexity – which was why they set up a governance structure that was to proactively oversee and manage the contractor.

The governance structure established to oversee the PCH project had the added complexity of dual governance / dual accountability where the Department of Treasury were responsible for the construction, while Department of Health managed all aspects of commissioning⁷².

Whilst the hospital was still in construction, the State changed scope of the project, by adding an additional 24-bed Surgical Short Stay Unit for another \$37.1 million. The Cabinet approved the additional funding for the PCH project.

Meanwhile, Leighton Holdings confirmed a deal to sell John Holland Pty Ltd to a Chinese construction company and not long after that issues started to emerge and completion of hospital was delayed.

By October 2015 there had been 122 variation to the MC – worth a total of \$38.5 million⁷³.

WHAT WENT WRONG

As the PCH was undergoing construction, significant non-compliance issues started creeping up. Some of these were:

- Asbestos
- Fire safety
- Plumbing – a major issue being lead contamination in the water which required a large scale investigation
- Other construction issues⁷⁴

Internal Government reports, produced between October 2015 and March 2016, demonstrated the growing

70 A. Buti, PCH – A long waiting period, Western Australia Legislative Assembly, Report No.3, March 2018, p. 5, [http://www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/A5D4EC94C80CBC3048258258000A42FB/\\$file/60282652.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/A5D4EC94C80CBC3048258258000A42FB/$file/60282652.pdf)

71 A. Sanchez, K. Hampson, S. Mohamed, Perth Children's Hospital – Case Study Report, National Research Centre, July 2015, p. 8, <http://sbenrc.com.au/app/uploads/2014/09/PCH-case-study-for-public-110815.pdf>

72 A. Buti, PCH – A long waiting period, Western Australia Legislative Assembly, Report No.3, March 2018, p. 10

73 A. Buti, PCH – A long waiting period, Western Australia Legislative Assembly, Report No.3, March 2018, p. 32

74 Government of Western Australia – Department of Commerce, Final Report – Perth Children's Hospital audit, April 2017, p. 10, https://www.commerce.wa.gov.au/sites/default/files/atoms/files/final_report_-_perth_childrens_hospital_audit.pdf

problems of the project which included lax reporting, poor quality control, and construction defects ⁷⁵.

In one of the reports it was revealed that 15-20 per cent less tradespeople were on site than planned for — causing progress to be slower than projected. Some subcontractors went into receivership ⁷⁶.

A parliamentary inquiry was carried out in September 2017, in which a representative from CFMEU claimed that focus on cost-efficiency led to sub-standard subcontractors because reliance on price was the main determining factor on which companies were awarded contracts, which in turn led to unskilled workers like backpackers being employed to work on site.

The union became aware of the standard of workers when the subcontractors, including a few labour hire agencies, contacted the union complaining of non-payment from John Holland Pty Ltd ⁷⁷. However, during their investigation they uncovered that these subcontractors were under paying their workers and these workers were too scared to speak out about the unsafe working conditions during the hospital construction ⁷⁸.

KEY LEARNINGS

This project brought into sharp focus the performance of the MC and the taskforce responsible for the project. All parties involved in the governance arrangements for such projects need to share information, work collaboratively and have active oversight from government.

The loss of public faith in the MC and the previous government's oversight of the project emphasises the importance of proper governance and best practice procurement of infrastructure. There is an expectation from the community that contractors delivering projects will meet agreed timeframes, budgets and agreed standards. A failure to do so erodes confidence in them and the government that has outsourced delivery.



75 G. Parker, The detail hospital contractor John Holland didn't want you to see, *The West Australian*, January 10 2017, <https://thewest.com.au/news/wa/the-detail-hospital-contractor-john-holland-didnt-want-you-to-see-ng-b88347847z>

76 G. Parker, Perth Children's Hospital defects: Report reveal depth of problems, *The West Australian*, January 10 2017, <https://thewest.com.au/news/wa/10000-hospital-defects-but-government-defends-its-oversight-ng-b88345174z>

77 J. Daly, 'Backpackers and unskilled workers' employed to build Perth Children's Hospital, *WA Today*, September 13 2017, <https://www.watoday.com.au/national/western-australia/backpackers-and-unskilled-workers-employed-to-build-perth-childrens-hospital-20170913-gygug3.html>

78 G. Roberts, 'Culture of fear' at Perth children's hospital site, *WA News*, September 13 2017, <https://www.perthnow.com.au/news/wa/culture-of-fear-at-perth-childrens-hospital-site-ng-139a2c30d3f64daf9ae2a9e71460fb5e>

CASE STUDY: FIONA STANLEY HOSPITAL

BACKGROUND

In 2008 the Cabinet endorsed a business case (for a public hospital) with limited reference to facilities management services. When the new Government was sworn-in in 2009, the Cabinet committed to outsourcing the facilities management services of the hospital and finally in 2011 it approved a \$4.3 billion contract with British-owned service provider Serco⁵².

THE CONTRACT

Serco's tender was the only one able to adequately address all of the demands of the proposed contract with its large bundle of services⁵³.

Under the contract, Serco was allowed to engage with subcontractors to perform their obligations with the State's approval. It entered in approved subcontracts with Siemens Ltd and BT Australasia Pty Ltd – for managed equipment services and information and communication technology services⁵⁴.

The construction of the Fiona Stanley hospital was built on time and within budget⁵⁵.

WHAT WENT WRONG

After the contract was awarded to Serco in 2011, the Public Accounts Committee found issues with the procurement process which included the bundling of services in one contract – which limited the competitors on price⁵⁶. It also bought attention the level of secrecy surrounding the contract details – which included the failure to make public the 'public comparator' and business case used in the contract decision making. They also utilised commercial confidentiality to prevent scrutiny of the contract which had the intentional effect of reducing public accountability, transparency and democratic control⁵⁷.

The outsourcing of facilities management and support services for a public hospital was the first of its kind in Western Australia. Since it was a new concept, there was no stand-alone business case to support the decision to outsource, nor was there any assessment on the potential impact the decision could have on the Department of Health. No cost benefit analysis was carried out or assessment of clinical and other risks on the decision⁵⁸. This meant the State had no idea of the potential problems that could arise once the contract took effect.

When the facilities management and support services contract commenced, a number of complications popped up, the most serious being the sterilisation service contract, which the Department of Health had to withdraw not even a year after the hospital opened⁵⁹.

Currently there are seven ongoing contractual disputes between Serco and the South Metropolitan Health Service, with a potential retrospective cost to the State of \$6 million to \$7 million⁶⁰.

52 Government of Western Australia, Special Inquiry into Government Programs and projects – Final report, Vol. 2, February 2018, p. 99, https://publicsector.wa.gov.au/sites/default/files/documents/special_inquiry_into_government_programs_and_projects_volume_2.pdf

53 Legislative Assembly Parliament of Western Australia, Public Accounts Committee, Building Foundations for Value: An analysis of the processes used to appoint Serco to provide non-clinical services at Fiona Stanley Hospital – Western Australia's largest ever services contract, Report No. 16, June 2012, p. ii

54 Government of Western Australia, Special Inquiry into Government Programs and projects – Final report, Vol. 2, February 2018, p. 104, https://publicsector.wa.gov.au/sites/default/files/documents/special_inquiry_into_government_programs_and_projects_volume_2.pdf

55 Ibid., p. 100

56 Ibid., p. 99

57 Serco Watch, Submission to the inquiry into the decision to award Serco Australia the contract for the provision of non-clinical services at Fiona Stanley Hospital, October 2011, p. 27

58 Government of Western Australia, Special Inquiry into Government Programs and projects – Final report, Vol. 2, February 2018, p. 101

59 Ibid.

60 Western Australian Auditor General's Report, Non-Clinical Services at Fiona Stanley Hospital, Report 14, August 2017, pp. 7-9

KEY LEARNINGS

The Department of Health failed to prepare a stand-alone business case for the outsourcing of facilities management and support services at Fiona Stanley Hospital, which contributed to inadequate attention given to non-financial issues, such as the quality of services, and a lack of clarity about the scope of services the hospital was contracting ⁶¹.

The quality of service issues was most likely a by-product of actions like cost cutting – something corporations like Serco do to increase their profits. They do this by reduced staffing and using casual or contract staff at lower pay levels, which leads to hiring under-qualified and experienced personnel ⁶².

Serco Watch tried to address these issues by providing some recommendations to the Education and Health Standing Committee during their inquiry into the transition and operation of services at Fiona Stanley Hospital. These were :

- WA Health should seek regular updates and briefing from Serco and independent financial analysts to assess impact of Serco's financial troubles on the Fiona Stanley contract
- The Committee should investigate and report on risks that come about from incentive-based contracts and no-fail contracts between WA Health and Serco and subcontractors used for the hospital
- Increased transparency and accountability by enforcing processes that would normally be applied in the public sector on private corporations like Serco e.g. reports on internal investigations on contract, management and operations be made public
- Regular evaluation of KPIs for both Serco and its subcontractors ⁶³



61 Government of Western Australia, Special Inquiry into Government Programs and projects – Final report, Vol. 2, February 2018, p. 122

62 Serco Watch, Submission to the inquiry into the decision to award Serco Australia the contract for the provision of non-clinical services at Fiona Stanley Hospital, October 2011, p. 29, <http://www.parliament.wa.gov.au/Parliament/commit.nsf/%28Evidence+Lookup+by+Com+ID%29/0953AB1DC865D1BF4825793D0014D355/%24file/Submission+06+from+Serco+Watch.pdf>

63 C. Penter - Serco Watch, Submission to the Education and Health Standing Committee inquiry into the transition and operation of services at Fiona Stanley Hospital, June 2015, pp. 10-11, [http://www.parliament.wa.gov.au/parliament/commit.nsf/\(Evidence+Lookup+by+Com+ID\)/076612B1615D6A,1848257EAD002225DA/%24file/33006903.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/(Evidence+Lookup+by+Com+ID)/076612B1615D6A,1848257EAD002225DA/%24file/33006903.pdf)

