

TRANSCRIPT

LEGISLATIVE ASSEMBLY ENVIRONMENT AND PLANNING COMMITTEE

Inquiry into Employers and Contractors Who Refuse to Pay Their Subcontractors for Completed Works

Melbourne – Monday 29 May 2023

MEMBERS

Juliana Addison – Chair

Martin Cameron – Deputy Chair

Jordan Crugnale

Daniela De Martino

Sam Groth

Martha Haylett

David Hodgett

WITNESSES

Ms Michaela Lihou, Interim Chief Executive Officer,

Ms Megan Peacock, Executive Director, Policy, Membership and Communications, and

Ms Diana Dajcman, Policy Adviser, Master Builders Association of Victoria.

The CHAIR: It is great to be here today, and our next witnesses come from the Master Builders Association. Today the committee is hearing evidence in relation to the Inquiry into Employers and Contractors who Refuse to Pay Their Subcontractors for Completed Works, and that evidence is being recorded.

All evidence today is protected by parliamentary privilege as provided by the *Constitution Act 1975* and further subject to the provisions of the Legislative Assembly standing orders. Therefore the information you provide during the hearing is protected by law. You are protected against any action for what you say during these hearings, but if you go elsewhere and repeat the same things those comments may not be protected by this privilege. Any deliberately false evidence or misleading of the committee may be considered a contempt of the Parliament.

All evidence is being recorded. You will be provided with a proof version of the transcript following the hearings. Transcripts will ultimately be made public and posted on the committee's website.

For the Hansard record, can you please state your name and the organisation you are appearing on behalf of. Do we want to start with you, Diana?

Diana DAJCMAN: Diana Dajcman from Master Builders Victoria.

The CHAIR: Thank you, Diana.

Megan PEACOCK: Megan Peacock, Master Builders Victoria.

The CHAIR: Hello, Megan.

Michaela LIHOU: Michaela Lihou, Master Builders Victoria.

The CHAIR: Thank you very much. Representing the Parliament of Victoria today, I am Juliana Addison and I am Chair and Member for Wendouree. With me I have the Deputy Chair, Martin Cameron, Member for Morwell. To my left we have Martha Haylett, the Member for Ripon; Jordan Crugnale, the Member for Bass; and Daniela De Martino, the Member for Monbulk. Would you like to start with some opening remarks?

Michaela LIHOU: Yes, I am happy to start. I guess it is important to put into context that Master Builders is here today as a member association. We are representing the subcontractors both from a residential and commercial perspective but then also the head contractors and the residential builders. The spectrum of our membership is quite broad, so we bring today from discussions that broader view. It is really important that any changes that are considered within this space are really taken with regard to a whole-system view, because you run the risk if you go and change something downstream between the builder and the subcontractor that can potentially have effects upstream with regard to the client and the builder as well. So that viewpoint that we have, I think, is really important here as to how those different sides work together.

What we have noticed through talking with our members et cetera is really around the complexities that lie within the contracts that our members are dealing with, and this really flows on to the challenges with regard to subcontractor payments. At the moment we know that cash within a project life cycle is critical, and that is where some of the pain points lie. In addition to that these onerous contracts that are in place, in particular if you are looking at some of the contracts that exist between government and the head contractors, the way they are drafted and written is really around allocating a lot of the risk that is then pushed down from the client to the builder. The builder then passes those risks on to the subcontractor who is having to bear them, and a lot of the time those subcontractors are much smaller businesses, who potentially do not have the legal knowledge or expertise as well to understand what they are signing up to and the implications.

We have been able, through talking with our membership and off the back of the Probuild collapse, to have an insolvency forum where we have been able to gather some data from our members and key stakeholders around some lessons learned there. We have also been working with our members to have a contract strategy working group, which really feeds into some of the discussion today, and we leverage off our sector committees as well. We have a subcontractor sector committee, we have a residential sector committee and we have a commercial sector committee as well, so we have got voices and views from all sides of the table there, and in addition to that we have had some specific conversations with subcontractors to inform our positions.

The CHAIR: Thank you very much, Michaela. Questions: who would like to start?

Martin CAMERON: I can start. With all those sectors that you spoke about, is there one in particular where it is a struggle for them to get any help at all, or is it more broad ranging across all the areas? If there is a financial issue, are they coming to you for a resolution, or what are you finding and hearing?

Michaela LIHOU: I guess it depends what the issue is. If you break it down, you sit there and you say from a contract risk perspective, if you start at that higher level you are talking bigger companies who potentially have the financial means to go and access legal firms et cetera and help with that. Their challenge is getting traction with government departments for movement in any changes, and we have heard stories from members whereby it is a matter of, 'This is the contract, pretty much, take it or leave it. Other builders are prepared to wear those risks, so you should wear them as well.' Alternatively if they do speak up, what does that mean for future projects? Will that become an issue? When you then look further down the chain at potentially some of the subcontractors and things like that, when they potentially are having financial troubles with a builder you have still got that relationship piece once again that comes into play. So if you go and speak up to the builder, is that going to impact your ability to get work in the future? We do know there are avenues which some of our members are using, but they would be through mixed results.

Megan PEACOCK: Yes, so it is a mixed result right through the chain. We know the resi sector, which I think as HIA were highlighting, do not tend to use SOPA. There is a misconception out there that you need a lawyer to engage with SOPA, and again it is also as a builder much less sophisticated, so you do not have contracts with your subcontractors. It is word of mouth: 'You have given me a quote,' 'Yep, you're good to go; let's do the job.' I think in the commercial sector, it is different. I think it is a much more rigorous process, and where we have seen SOPA enacted it is often a bit of, 'Hey, if you don't pay me, I'm going to use SOPA,' and then they sort of pay up. But again, it is very relationship based. We have had feedback from some members saying they do not like to enact SOPA because it might destroy their opportunity to get work with those head contractors again.

Martha HAYLETT: I have just got a few questions of all the questions brewing in my head. You have put here that non-payment relates to so many different things, and it is a holistic approach to tackle it. But just on the point-of-contract variations, I am just wondering, are you seeing contract variations increase in frequency? Like, over time is that happening more, or what sort of percentage of contracts for your members are you seeing change to have contract variations?

Michaela LIHOU: I would say it would probably be hard to quantify, but given the environment that we have had over the last few years, with the challenges with supply chain, skills shortages and price increases, you would anecdotally expect that there would have been more variations just off the back of that. But I do not think we would have necessarily data at this point in time.

Martha HAYLETT: Yes. No, that is okay. And just on the point around contract conditions as well, it is a big question, but how do you think we strengthen contract conditions in your view, to be able to have that flow-on benefit to payments?

Michaela LIHOU: I guess part of it is around – there is the Australian contract standard. So if we are talking especially in that commercial space, there is a standard contract there, but over time that has been changed, and different government departments use it very differently. So if there was actually, going back to the way it was, a more stock-standard contract in which businesses understood the risks and the risks were shared across the industry, so it is not all borne by the builder and then down to the subcontractor, that would definitely assist from that side of things, and also having a bit more of a framework which could be used, which I think the

Department of Defence has got examples of. Things like that, whereby the builders understand the clauses in the contract as would the subcontractors.

Megan PEACOCK: And I think the Department of Defence have kind of exemplar contracts, and I think the conditions, as Michaela has said, are really around that risk allocation and what that kind of looks like. But really thinking about what extensions of time mean. Latent conditions by their very nature are unknown, but that risk often falls to the head contractor and then that risk falls onto the subcontractor. So really being much more open and transparent in that about who bears the burden for, you know, things like, 'We've just dug up a whole bunch of asbestos' or 'The soil's contaminated', and what does that kind of look like? I think with those extensions of time we have seen a lot of that and quite a bit of pushback within the VSBA around extensions of time through COVID, so we have had some real difficulties with not being able to have enough workers on site to then kind of get works completed but also understanding that schools need to be built within a very tight time frame and it just needs to get done, but actually what is the negotiation? So some much better negotiations, and it seems that it is not standard across government. It depends on the department and the people that you are working for, so again it is very relationship based as opposed to contracts. And I think, as Michaela also said, the contracts have been – excuse my expression – bastardised to a point by whoever has got control of them, that the lawyers then kind of rule that as opposed to having a standard contract where there is a fairer allocation of risk so it does not continue to push down to the people that are the least sophisticated to deal with that risk.

The CHAIR: The HIA were talking more about obviously resi, but in terms of just thinking about the VSBA, the VHBA, obviously we have got a huge agenda with building hospitals. I am very excited about our redevelopment in Ballarat. How much of an impact is our Big Build having on the sector in terms of skills shortages and challenges that might impact?

Michaela LIHOU: We know that we have skill shortages and labour shortages across the board. Big Build projects naturally pay more, so there is a tendency for workers to transition from other jobs across to where the money is, which is one of the challenges. And, you know, for regional projects with the Comm Games, those sorts of things can also have an impact just because of the dollar perspective.

Megan PEACOCK: And I think getting labour in regional areas is difficult at the best of times. There is a reluctance for people to come from Melbourne into regional areas – it is usually the other way around, but there are just not the numbers of people going in because baby boomers are leaving the industry. COVID pushed a lot of builders that were going to see out their twilight years by doing less work and kind of ease out to just sort of shut up shop and leave. So while we have got insolvencies, we have also got numbers of businesses that are closing, and it is hard to keep track of how many are happening. Skills are leaving the market at quite a rapid rate.

The CHAIR: Looking at the data in terms of the adjudication, people who go through that process, we see that is very predominantly metro as opposed to the regions; Ballarat, I think, only had two on the table. There were a few in the Latrobe Valley. Is it because of all of this stuff that is going on in the regions – whether it be future Commonwealth Games or school builds and everything like that – that subcontractors are getting more paid in the regions? What is your sense in terms of underpayment? Is there a regional–metro divide from your membership?

Michaela LIHOU: I would have said part of it comes back to what Megan mentioned before. Part of it is around knowledge and understanding. If there is a perception that for adjudication you need a lawyer and it is complex and difficult, that is going to be a natural deterrent for people. Probably the size of your business and therefore the resources you have available are going to impact that as well.

Megan PEACOCK: I think also the nature of work in regional areas. You would know that in regional areas it is very relationship based, less so in metro areas. I think it is still relationship based, but you are not living next door to the guy that you are subcontracting with. Your kids are not going to school with the guy down the road. So your relationships are going to be much more –

The CHAIR: You are not going to run into them at junior footy.

Megan PEACOCK: Yes. Correct.

Jordan CRUGNALE: There is a reputational risk.

Martha HAYLETT: That happens all the time. There are a lot of regional MPs on here.

Megan PEACOCK: I was at local footy actually. They were saying that somebody at school, one of the builders, is actually having financial troubles, and he is building for somebody at school. I remember saying to my partner, 'Oh, God, that is just fraught.' You just want to make sure the kids are not fighting in the playground.

Martin CAMERON: It is amazing in the regional areas how many of the builders have their children working for the tradesperson going through, so it is a very, very married-up type of thing. It does get very difficult.

The CHAIR: We recently did a big gym at Delacombe Primary School, and not only was one of the dads of kids at the primary school working on the job but a former student was working on it. There was this lovely symmetry that they are all at Delacombe Primary School building this amazing gym with H Troon, one of our local builders. And it was just this great story of it cannot get any more local than this, that there are degrees –

Jordan CRUGNALE: There is probably a lesser amount of defects at the end of the build too because of the whole –

The CHAIR: Connections.

Jordan CRUGNALE: connectivity and reputation. I have got a question.

The CHAIR: No, you jumped in ahead.

Daniela DE MARTINO: You jump in. I will go next.

Jordan CRUGNALE: Just around being that holistic – obviously the non-payment is a symptom of something, you know. I appreciate you have written here and listed a number of factors such as fair risk allocation in contracts, more frequent payment terms, education. Can you just sort of drill in on that education aspect? And also the project – having that trust. Because we are hearing if there is potentially a trust – we are just sort of exploring. I just want to drill in a bit deeper on that education aspect and project trusts.

Michaela LIHOU: I am happy to kick off with the education piece. I think education with our industry – it is a highly regulated industry. There is so much regulation and change occurring all the time. Getting the right information out to our members and out to the industry is critical. Things like CPD training and enforcing that sort of stuff within the industry will really help to lift up the skill sets and the knowledge within the industry, and having some financial acumen and understanding would be, I think, critical to some of that CPD scenario, so I think that is an opportunity. Also, with the potential around registering trades, there is another avenue there about how you try and upskill and educate. But from our perspective we are keen. We already do that – we work with the VBA and other regulators, WorkSafe et cetera, to really get out messages that from their perspective need to get out to our membership and out to the industry, so we act as that funnel from a communications perspective.

Megan PEACOCK: I think the other thing is we were talking about the fairer allocation of risk, couple that with education but that education also lifting the culture of the industry. So often we do not talk about the culture: we try to legislate the change, and that does not work. I think we do not need more regulation. I think we have regulation there. It is more about that continuing professional development, lifting that and then making sure through that that we are actually building the culture and that there are respectful relationships. It is even down to bringing women into the workforce, bringing in First Nations people, you know, all of that move to shift the culture of building and construction so it is not running on the smell of an oily rag, it is not a handshake across the table. It is a whole bunch of things. But I will throw to Diana about trusts. She is our guru in that space.

Diana DAJCMAN: I guess the biggest thing about project trust accounts that we have received from a lot of our conversations is that we do not want, like Queensland has done, just to put it plainly, for it to be heavily legislated. There are a lot of administration burdens, and it is quite difficult to comply with. There are a lot of different, confusing factors, I suppose, on who gets paid and how the money goes in and out, and it just sort of restricts the flow of money and does not necessarily help with cash flow. One of the things we have heard is that the first contractor with a project bank account has gone insolvent and no-one actually understands what to

do next. There is not much money in there, and I think that is the issue. I guess when we are looking at trust accounts, there is a variety of different trust accounts that we can look into, so we touch into like a whole sort of project trust as well as trusts for retentions because we think this is where the key issues with payments occur. It is often the loss of retention, which is about 10 per cent of the contract. It is held by a builder or a commercial head contractor and that is often held until the end of the defect liability period, so after the end of the project if there are not any issues then that money can go back to the subcontractor. But often that just sort of gets lost in the process and forgotten about. I guess if we had to break it down a little bit, we are sort of looking at what – and I notice that John Murray is coming in after us. He can probably talk to you a little bit more –

The CHAIR: I think everyone has noticed he is coming in.

Diana DAJCMAN: What he looked at was cascading trusts, so making sure that everyone in that process is subject to that and not just locking it at just the head contractor level, because essentially when you lock money and funds at one level you are restricting the cash flow at that level when in fact the clients are the ones that are bankrolling the project, not the head contractor. We looked at client project trusts as one potential avenue of exploring, but I think it is really important that we understand that the money comes from a client, not the head contractor specifically and then look at how we can cascade that so everyone can get paid and get that security throughout the process.

The CHAIR: Diana, New South Wales obviously redid their Act in 2021. They are not Queensland. Is there anything we can learn from the New South Wales model that would be a better way forward from your perspective?

Diana DAJCMAN: Yes. I think looking at what WA and New South Wales have done, that is a little bit more simple I suppose. Looking at the Queensland act, it is something like 200 pages long. Even with the security of payment Act I noticed that the way that the legislation is written here in Victoria is very complicated for, I guess, just an average subcontractor to look at. Even I cannot understand it. I have to actually spend time and read through it to understand who is who and what it is talking about. I think that looking at the New South Wales legislation, it is very clear and it is very easy to read, and I think looking at something like that would be definitely worth exploring here in Victoria.

The CHAIR: I think John Murray in his submission to us described it as incredibly complicated and referred to a 1936 Act in Canberra, about turning at a set of traffic lights, so it is going to be an interesting time. But obviously having complex legislation that is inaccessible is not good for anyone. So that is good: WA and New South Wales are better than Queensland. Other questions? Daniela.

Daniela DE MARTINO: I am just going to ask – obviously we have got the statistics that the VBA has been able to produce on the amount of claims under SOPA and where they have all ended up. Have you been able to capture at all people who do not engage with that system – who refuse to or who have tried it and gone, ‘I’m not going back there again’ or who are so unaware of it that they do not even enter into it. I know that is really hard, because I am putting a question to you about finding out information that we do not actually have the data on, but is there any way that you have been able to glean that information?

Michaela LIHOU: We have heard stories of the scenario whereby somebody has found an adjudicator, did not particularly like that adjudicator and so then they have pulled the claim, gone and found another one, pulled the claim, found another one and then gone, ‘Yes, I like this adjudicator’ and then proceeded with the matter. That is not ideal because you are shopping around for the outcome that you are after. But once again it comes back to it being hard to tell and hard to quantify, because either it is too complex so they do not to use it – there is that relationship side of things; you do not want to burn a relationship – versus stories of some people who have used it and who have not had issues, so it is that sort of mixed bag.

Megan PEACOCK: We have not heard of people that have not used it. Master Builders provides legal, OHS and EIR advice. They do not tend to come to us in terms of financial issues particularly. We would advise them if they did. We know we need to do further education to send people to the Victorian small business commissioner, in terms of their business-to-business mediation, and we know that more funding into that space would be a really good way of stopping people having to use the SOPA and actually being able to go to mediation before having to enact that as well – because of its complexity at this stage.

Martha HAYLETT: How much success do you think your members have had with mediation? I do not know if there are statistics on how many go to mediation and whether that saves things and it is all good or if the mediation is terrible and they have to go more strongly onto something else. How have you found mediation with your members?

Megan PEACOCK: I have not had feedback from members. I think they are going to the Victorian small business commissioner directly around that business to business. I mean, it is different if is sitting at the DBDRV. I think there are publicly available stats on that, but we have not had any of that.

Martha HAYLETT: Just on the suggestion around more frequent payment terms, are you able to elaborate a bit more on that suggestion?

Michaela LIHOU: I guess if we think about the *Domestic Building Contracts Act* – so this is a scenario where we are talking more in that residential space – at the moment the payments are predetermined based upon certain stages within the build, and the reality of it is you get a small deposit up-front and then you have got a lot to actually build until you get your next staged payment. That Act in its own right is outdated for the way we build. It also does not lend itself to new ways of building. So modular building and things like that do not fit under this piece of legislation, because you are not doing it in the stereotypical way.

The CHAIR: Going quite broad now, what do you see as the consequences of non-payment of subcontractors for the construction sector and the economy more broadly?

Michaela LIHOU: I guess the consequences of non-payment are that you run the risk that some of those subcontractors are also going to go insolvent or leave the industry, because it is just not worth it – the flow-on effects, I guess, or the multiplier effect that the building and construction industry has on the broader economy. I think for every dollar it is three dollars that then go outwardly from there. So it is critical to get this right because of those broader flow-on effects; it is not just limited specifically to our industry.

The CHAIR: Sure. In terms of systematic issues, we heard from the Department of Transport and Planning today about how big an issue it is – that you cannot just look at one aspect of non-payment of subbies, but that there is a whole system that needs to be addressed. Can you talk to us about some of the things that you have seen and what you hear from your members that really should be top priority in terms of us trying to address this issue of non-payment for subcontractors?

Michaela LIHOU: I think that that contract piece is up there as high priority, so if we can get the contract environment correct, have the risk allocation throughout those contracts and the risk shared, rather than it being, as I said, that notion of pushing it down. Also if it is not the race to the bottom – if we are sitting here saying that it is putting your best and final offer, that is not a productive way. We need to be thinking as an industry beyond that to make sure that it is viable and we are not just trying to squeeze the last dime out of everyone in the process.

The CHAIR: Because ultimately that is unsustainable for the industry, yes.

Michaela LIHOU: Correct.

The CHAIR: And for the state, yes.

Megan PEACOCK: I think insolvencies are going to continue to be a problem in the industry, and I think that sits across all segments. I think subcontractors are the ones left holding the can, really, and I think we saw that with Porter Davis. We see very clearly that they have got subcontractors that are unsecured creditors that are probably not going to see any money at all. We have heard stories, all anecdotal, that they have lost their house – subcontractors have lost their house. There was that really big hoo-ha around the consumers, but actually we had forgotten about the subcontractors, who are consumers as well, who are left with nothing in here. I think that is the bit that we kind of miss. I think some of those subcontractors are picked up if builders can pick up that work, but as we have seen with Porter Davis, they would use what we classify as method B contracts – their staged payments were set up differently and so had taken more money up-front than work was done. So builders are going and seeing those and saying, ‘Well, we can’t finish it with that envelope of money.’ So where does that leave subcontractors that already had that pipeline of work, let alone consumers?

I think there needs to be a standardised contract, fairer sharing of risk and then payment terms. Payment terms need to be standardised across the payment cycle for people so that it is not 45 days here or 15 days here – because suppliers are demanding. We saw that during COVID suppliers were demanding cash on delivery, and then that really held up a lot of builders, because they just did not have the cash because they were unable to make claims on payments. So I think it is standardising those payment terms as well.

Daniela DE MARTINO: Can I just ask: the graph that you provided showing pre-COVID and post-COVID insolvencies across construction is actually quite fascinating. Do you know what the narrative is there between about April 2019 and March 2020, because that is a significant jump? I can almost understand the jump after COVID, because it is almost like it has brought up things that may have just been held in a pattern, but that is quite significant.

Megan PEACOCK: Yes, so the ATO and banks were not calling in debt during COVID, and they started doing that post COVID. So that jumped.

Daniela DE MARTINO: Yes, thank you. But I mean the jump prior to COVID.

Megan PEACOCK: Oh, prior to COVID.

Daniela DE MARTINO: Yes. It is almost a similar trajectory to post COVID, and I am trying to understand what was happening in that space, in that year leading up to COVID, which precipitated that. Do you have any data behind that?

Diana DAJCMAN: I think there was a big building boom.

Megan PEACOCK: I think there was a big building boom, as Diana was just saying, during that time, but insolvencies in building and construction tend to be quite high. They are actually quite high across all industries at the moment. Building and construction tends to be higher than most. But if we have a look at the stats, I think about 98 per cent of building and construction businesses in Victoria have 20 employees or less, so they are often less sophisticated in that space. I think people are starting and falling over and starting and falling over.

Daniela DE MARTINO: Financial literacy might be an issue?

Megan PEACOCK: Absolutely.

Jordan CRUGNALE: In our schools.

Daniela DE MARTINO: Yes, well, everywhere, I think.

Megan PEACOCK: Yes.

Daniela DE MARTINO: I will leave that there. Okay. Thank you.

Martin CAMERON: Can you see a squeeze coming on the other side, when the Big Build finishes in Melbourne, with the tradespeople that have exited and gone to work there – trying to get them to come back, because they are not going to be able to get the wages they are getting at the moment? Are builders going to put themselves on the line to pay extra to get them to come back? Can you see that being an issue? Has there been any thought towards what post the Big Build is going to bring to us – because all our tradies are underground at the moment?

Michaela LIHOU: Look, I guess you have got the scenario where when we are an environment with skill shortages we have the potential that we going to have an influx back of skills who are shifting off from those projects. But it is also around that expectation that people have become accustomed to a certain amount of money that they have been living off and therefore are going to have some of those expectations onto jobs that they move to in the future. That is going to be the challenge for that cohort who have come off things like the Big Build as to: would they go and work in the resi space? The wages are not going to be the same. The terms and conditions are not going to be the same, but there is still going to be a pipeline of work within the industry. It just depends where that is. If it is Comm Games or if it is social and affordable housing, there are still going to be other projects. It just depends what happens potentially in those lull times when people go into that next job.

Martin CAMERON: Yes. Thank you.

The CHAIR: There are discussions, particularly in the Murray report, about having national consistency. Does the master builders have a view on a national, consistent approach to this? Is that something that you would like, or do you see different states and different industries as quite different?

Megan PEACOCK: No, there has been quite a lot of work done with Master Builders Australia to look at standardising SOPA in particular across states, because we know that particularly tier 1 and tier 2 builders are working in more than one state, and I think that just makes it easier if everybody knows. Even subcontractors are working in different states. So I think a national standard does make it much easier for people to move around and understand the legislative requirements in each state.

The CHAIR: Any other questions? We might get an early lunch. Martha, did you have anything else that you wanted to add or ask?

Martha HAYLETT: We have sort of touched on this more broadly, but just on that adjudication process: you were taking earlier about the assumption that you need a lawyer, so therefore it acts as a deterrent. That is obviously a concern, but are there other key concerns about the process and how you think it could be strengthened, going forward, with SOPA?

Diana DAJCMAN: I think there was a lot of work done on the security of payment Act and the adjudication process before I started at master builders, so probably a couple of years ago. From those conversations, I think there was a lot of feedback from members that they would not know what an adjudicator would determine until the day of. I think some of the words used were that it kind of just felt like it depended on what side of the bed they got up on that morning. I have not been involved in those conversations directly, but that was previous sort of feedback on the whole process. More generally speaking, I think a lot of people, from my conversations, do not pursue SOPA. I think some of them opt to go straight for litigation, because I guess you are paying for someone that you know will represent you. Also, I guess with adjudication as well, I think we are looking at: is there some way we can guarantee to members and all industry players that these people are really operating as an independent third party, and is that getting regulated the way that they would like it to be? I think having a well-resourced regulator in that space is really important for that.

Daniela DE MARTINO: Would you say that potentially it is the multiple carve outs in SOPA, because there is a range of payments you cannot claim in SOPA –

The CHAIR: Excluded payments.

Daniela DE MARTINO: Yes, excluded payments, and the time frames. Do you think that they are possibly the deterrents from them using SOPA as well? Compared to other states, it actually seems to be quite narrow.

Diana DAJCMAN: It is interesting you say that, because in some of our recent conversations with head contractors, they mention that things like variations did not get included in SOPA, which I thought was quite interesting. Because when you compare the tough contractual conditions that come up from the commercial head contractors, a lot of those types of clauses are not included in the SOPA, so it is quite interesting that where they are having the most issues with payments or claiming those payments is actually with the toughest contracts, the clauses that you see. I feel like it is quite interesting that that is mirrored almost in that area, so I think it might be worth looking into that, actually, and going, ‘Okay, well, do we need to get variations as part of SOPA?’ Because if that is where payment issues are happening the most, then we probably need that to be included in SOPA.

The CHAIR: I think we are all done, which is terrific. Thank you so much for coming in today and answering all our questions – really, really informative. I would just like to remind you that you will receive a copy of the transcript in a few weeks for proofreading. We really look forward to getting on with this inquiry, and hopefully we will get some really good outcomes for Victoria and all the stakeholders. So thank you very much.

Witnesses withdrew.