

**Submission to the
Senate Education, Employment
and Workplace Relations Committee**

Primary Schools of the 21st Century Inquiry

*“It’s a very sobering feeling to be up in space
and realize that one’s safety factor was determined
by the lowest bidder on a government contract.”*

Alan Shepard Astronaut, Apollo 14

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1.0 Introduction

The Prime Minister announced the “Building the Education Revolution” program as part of the \$42 Billion Economic Stimulus on February 3rd 2009.

I was the President of the Holland Park State School Parents & Citizens Association from Nov '06 to Nov '09. My interest in the BER was predicated on having been, for the preceding two years, instrumental in the conceptual development, design, documentation, funding, tendering, and project / site management of a Multi-Purpose Hall at HPSS in the Federal Electorate of Griffith. This project was funded by \$800,000 raised by the P & C and \$500,000 which was won from a competitive grant process called the Smart School Subsidy Scheme.

The majority of my time during 2008 was spent trying to restrict the outrageous variation claims from the appointed builder who was a preferred builder for Education Queensland (DET) and a pre-qualified contractor for the Department of Public Works (DPW).

I resigned my post out of disgust at the travesty being perpetrated on schools by State and Federal Governments; their unwillingness to listen to warnings of potential rorts, price gouging and rip-offs was palpable. Letters and discussions with numerous politicians and bureaucrats have now become quite prophetic.

My experience on this and other projects at Holland Park State School caused me to be very concerned about the implementation of the BER across Australia. Traditionally state and federal government departments responsible for these types of projects are so removed from reality, the prospect of massive rorting and price gouging increases dramatically. Even (DPW) identified this is their procurement and risk plan for the BER. Over 1.7 billion dollars in work has been allocated to builders without tender. Even the Minister for Education is confused as to what has, or has not, been tendered.

I have invested over 680 hours in the past 15 months sourcing and analysing publicly available documents and approaching every level of government and the bureaucracy to get them to look at the evidence. These documents highlight systemic problems with the implementation of the BER. It appears that there are numerous relationships at play that are causing the waste of billions of taxpayer dollars. State and Federal Governments continue to claim this is not happening.

The evidence proves otherwise.

Below is an extract from the Queensland Government's own procurement plan.

Failure to deliver value for money

In the drive to meet the tight timeframes for delivery and expenditure there is a heightened risk that the State may pay too much for what are relatively simple buildings.

In particular, there is a concern that excessive fees and charges will significantly reduce the amount of building delivered for the fixed budget.

Likelihood – high

Consequence – medium

2.0 Raising Concerns

My local Federal Member is Kevin Rudd, I rang his office in February 2009 to raise the alarm on what would happen if the program wasn't tightly controlled. I spoke with Mr Samuel Walker an Electoral Officer for the Prime Ministers Electoral Office. I was told that the rollout was the responsibility of the States and that the Federal Government had no input.

On March 9th 2009 I met with Senator John Hogg and Mr Cameron Dick (Labor candidate for state electorate of Greenslopes - subsequently became the Attorney General of Queensland). I put forward my concerns and provided a briefing document to Senator Hogg the following day. The only response to this has been an e-mail saying, "thanks Craig".

I have subsequently met and or written to federal politicians, state politicians as well as numerous state and federal bureaucrats raising the alarm. Highlighted in blue are one on one meetings black indicates letters or phone conversations

Kevin Rudd	Prime Minister of Australia (local member)
Julia Gillard	Federal Minister for DEEWR
Rod Welford	State Minister for DET (pre April 2009)
Geoff Wilson	State Minister for DET (post April 2009)
Senator John Hogg	President of the Federal Senate
Cameron Dick	Attorney General (local Member)
Peter Bentley	Senator Mark Arbib's Office
Rachel Hunter	Director General – DET
Julie Grantham	Director General – DET
Alan Wagner	Deputy Director General – Infrastructure Services - DET
Nick Seeley	Office of Director General – DET
Andrew Jolly	Ministers Senior Policy Advisor – Facilities – DET
Don Wilson	Premier's Senior Policy Advisor – Education - Dept Premier and Cabinet
Jenny Cranston	Deputy Director General – DET
Jenny Hadrill	Assistant Director General - Head of Schools – DET
Craig Robinson	Project Director - Corporate Strategy and Resourcing – DET
Andrew Jagers	Assistant Secretary – Coordinator Generals Office – DPMC
Brian Reeve	BER Liason to DEEWR – DET
Jan Brown	Facilities Manager – Brisbane South – DET
Max Pedroni	Project Coordinator BER – Greater Brisbane – South of the River – DET
Jim Trappett	Senior Project Manager - Corporate Strategy and Resourcing – DET
Jo Deisel	Regional Executive Director – Greater Brisbane Region – DET
Shane Kruse	Project Coordinator - Greater Brisbane – South of the River – DET
Chris Berry	Project Coordinator BER – Greater Brisbane – South of the River – DET
Evan Pickering	Architect/ Project Manager – BER NSP Project
Kirsten Barfoot	Design Coordinator – Baulderstone P21 ManagingContractor

3.0 Queensland Governments allocation and reporting practices

The Commonwealth Government has set dates for the delivery of key milestones within each program. These dates have been agreed to by all States at the February meeting of the Council of Australian Governments. These milestones are summarised as follows:

P21

Round 1 (20% of eligible school projects) to be approved by the Commonwealth Government in April 2009 for commencement in May/June 2009 and completion by 20 December 2010;

Actual figures are \$674,200,182 across 641 projects representing 37.74% of committed funds, 38.57% of projects at an average project cost of \$1,051,794. None of these projects were put to tender.

Round 2 (40% of eligible school projects) to be approved by the Commonwealth Government in June 2009 for commencement in July 2009 and completion by 31 January 2011; and

Actual figures are \$602,700,043 across 481 projects representing 33.74% of committed funds, 28.94% of projects at an average project cost of \$1,253,015. All of these projects were allocated to managing Contractors without tender. In fact the fees to be paid by the Government were negotiated by the 8 managing contractors acting as a group and represented by the Master Builders Association.

Round 3 (40% of eligible school projects) to be approved by the Commonwealth Government in July 2009 for commencement in August/September 2009 and completion by 31 March 2011

Actual figures are \$511,000,034 across 540 projects representing 28.61% of committed funds, 32.94% of projects at an average project cost of \$946,296. These projects have been allocated to managing Contractors without tender. In fact the fees to be paid by the Government were negotiated by the 8 managing contractors acting as a group and represented by the Master Builders Association.

I am in possession of a letter from the Office of Coordinator General, Department of Prime Minister and Cabinet that states that DPMC has been advised by DPW that all projects in Queensland have been put to tender. Minister Wilson in a press release on 27/03/10 details that only smallest part of P21 was allocated without tender. The figures above completely disprove that claim.

At the July 30th 2009 reporting deadline 141 projects from round 1 were still not allocated to a builder. These projects were to be commenced no later than May/June 2009. Departmental documents show that at April 1st 2010 only 153 projects from a total of 1662 have been completed in Queensland. In NSW the numbers are 187 projects from a total of 2375. This is 9.2% and 8% respectively. It would appear that effect of staving off the "global financial crisis" might be overstated. A comparatively low amount of the \$16.2 billion dollars is actually in circulation.

The Deputy Prime Minister starts every press conference or press release stating that there are 24,000 projects across 9500 schools. This is indeed true, what is not stated is how many of them have actually been commenced. On October 16th she stated "*The National Coordinators Implementation report confirms that there have been 55 complaints out of 25,489 applications and 24,382 projects funded. This amounts to 0.22% of applications and 0.23% of projects funded October*

These figures are completely spurious, at the time the announcement was made very few if any BER projects were complete in fact more than 70% hadn't even been commenced. Now that financial data is becoming public, serious questions have been raised by me and many others. I have not seen a single project that truly represents good value for money for any Australian.

The Deputy Prime Minister stated on August 28th 2009, the day after having to increase funding to the BER by \$1.5 billion due to more schools wanting free buildings than the Minister envisioned, she said "*Primary Schools of the 21st Century, which is the biggest element of our Economic Stimulus Plan, is a runaway success*". It's a runaway alright, a runaway train about to derail.

4.0 Relationships with Managing Contractors

The relationship between the State Labor Government, DPW and the managing contractors raises serious questions of probity. The State acknowledges that Rounds 2 and 3 worth \$1,158,789,081 have been allocated to the 8 managing contractors. Of Round 2 projects 57% were allocated to two groups, Leighton Holdings and Baulderstone. Interestingly searches of the Australian Electoral Commission show that both were sizable donors to the State Labor Party in the most recent audit period.

Major Sports Facilities Authority Corporate Patronage records show that numerous representatives from these anointed eight companies have been guests of the Premier, Deputy Premier and various Ministers at major sports and entertainment events in Queensland in recent years. An opportunity not afforded small to mid sized builders in Queensland.

5.0 Potential price collusion - Managing Contractors

Both the Master Builders Association and DET acknowledge that the fees paid to the Managing Contractors were negotiated as a pact / agreement between the Managing Contractors and aided by the Master Builders Association.

The industry standard fee is 2%. The Federal Government saw fit to **strictly cap** the fee at 4% and in Queensland the Government accepted 6% as a fee negotiated by a cartel. As I understand it this is being investigated by the Australian Competition and Consumer Commission (ACCC).

6.0 Principals Representative and IPO fees

The federal Guidelines identify a payment of 1.5% over and above the funding allocations to schools. This extra payment is to cover the administrative overhead of individual State Governments role in administering the program and its roll out.

My investigations have revealed that at least two States are being paid administration costs by Managing Contractors. In Queensland this is referred to as a Principals Representative Fee (principal being the initiator of the contract not of the school).

In New South Wales this fee is referred to as the IPO management fee. On the face of it this would appear to be a direct contravention of the agreement between the States and the Federal Government.

7.0 Independent report by PriceWaterhouseCoopers

In August 2009 the Minister for Education, Mr Geoff Wilson engaged PriceWaterhouseCoopers to undertake an investigation into the implementation of the BER in Queensland. This report was tabled in the Queensland Parliament at 10:11am on September 2nd 2009.

This report has been used to justify the Ministers continued denial that there are any problems with the implementation of the BER or the underlying value for money proposition. The Executive summary outlines the terms of reference of the report.

This report itself is full of factual inaccuracies.

“The Department of Education and Training (DET) engaged PricewaterhouseCoopers (PwC) to carry out a review of systems and processes put in place by DET to plan, coordinate and deliver the BER Program in Queensland state schools and to advise on the improvement of these systems and processes.

Department of Education and Training – Building the Education Revolution Program – PriceWaterhouseCoopers Sept 09

This report was to look at procedure and processes and determine that a reasonable degree of probity was undertaken. The issue of value for money was only superficially looked at.

7.1 Value for Money

Scrutiny of all project costs by the independent Quantity Surveyor ensures that costs are in line with competitive benchmarks. Currie and Brown has reported that for as many as 55% of Project Development Plan submissions it has been necessary to query and where appropriate re-negotiate costs.

Department of Education and Training – Building the Education Revolution Program – PriceWaterhouseCoopers Sept 09

7.2 Conclusions

As far as can be ascertained from the high level scan undertaken by PwC an appropriate range of measures has been adopted by DET for ensuring value for money focus on ensuring that the assets constructed under the P21 and SLC elements and the minor works, refurbishment and equipment procurement meet product quality requirements.

Department of Education and Training – Building the Education Revolution Program – PriceWaterhouseCoopers Sept 09

It is evident that PwC have not looked in detail at the value proposition and how it is affected by the DPW benchmarking values. Previous experience with projects administered by DPW would indicate that the benchmarking values would be significantly above that one would expect in a true competitive and commercial environment.

The PwC report is full of factual inaccuracies.

7.3 Consultation with key stakeholders

PwC acknowledge the help of several individuals, agencies and schools. If we actually look at their sample size for analysis of stakeholder perceptions, it becomes apparent that only positive perspectives were sought. For example, based on their report, PwC only spoke with one builder, Northbuild Constructions. Of the overall expenditure of the BER in Queensland, work allocated to Northbuild represents only 1.3% of the total. Discussions with Mr Neil Dickinson are noted but he is not identified as the Managing Director of Dickinson Constructions Pty Ltd.

Northbuild only has been allocated 15 projects from a total of 1662. Not a large sample by anyone's standards. Of the 50 builders allocated work over the program PwC only talked to Northbuild. It is worth noting, Northbuild are a long-standing contractor to DPW. It would be highly unlikely that they would provide any negative feedback. You do not bite the hand that feeds you.

PwC identify contributors to their report:

Queensland Teachers Union – Steve Hart

CORE Architecture Pty Ltd – Caroline Treacy

Queensland Secondary Principals Association

Queensland Association of State School Principals – Norm Hart

Northbuild Construction Pty Ltd

Queensland Council of Parents and Citizens Association – Margaret Black

Neil Dickinson – (Managing Director of Dickinson Constructions but not identified in the report).

It appears that they have not sought any independent experts to look at the issues of real value for money proposition. Dickinson Constructions are a large recipient of Government work as are Northbuild Constructions. DET is the primary funding source of QCPCA. QCPCA President, Margaret Black is on the record as seeing no problems with the BER implementation or the value for money proposition. The consultation process would seem to have been weighted towards favourable perspectives from the identified stakeholders.

7.4 Independent Quantity Surveyors – Currie & Brown

From the Governments own documents it would appear that the so-called independent Quantity Surveyor has to use the DPW existing benchmark pricing for projects. This means that Currie & Brown are measuring value for money, not against commercial industry standards but those pricing benchmarks determined by the department (DPW).

Robert McCallum a Director of Currie Brown has also been a guest of Minister Robert Schwarten DPW from time to time at the Governments hospitality suite at The Gabba cricket ground. Not that this indicates any wrongdoing but highlights a relationship not afforded other Quantity Surveyors.

Analysis of projected costs Hendra State School		Comparative Commercial Value
Allocated amount under BER	\$850,000	\$200,000
Professional design changes	\$ 63,140	\$ 2,700
Site Services	\$130,515	included
Food and Health act compliance	\$ 1,500	N/A
Queensland Fire and rescue Service	\$ 3,000	\$ 851.60
Contingency	\$ 57,524	included
Design and Construction (offsite)	\$128,528	included

8.0 Examples of Overcharging & price gouging

8.1 Contingencies

Contingency amounts are being treated as if they are line items on an invoice, evidence from the NSW experience shows that in most cases the contingency sum is ultimately payable to the builder without any evidence of its expenditure. Contingency amounts are actually provisional sums for budgeting purposes. Contingencies are monies set aside for unforeseen circumstances should they arise on the project. The 8% figure allowable by the Federal Government totals \$1.296 billion across the entire program. Rigorous questioning and proof should be required before any of these amounts are paid.

8.2 Incentive fees

Managing Contractors are being paid incentive fees for the delivery of the project on time and budget. How can they not deliver on budget when budget is perhaps 40% - 50% above a real commercial value? It would be more normal to have a contract that imposes liquidated damages for non-delivery of the project on time or budget. We are paying 1.37%, across the program this represents \$194 million.

8.3 Design Fees

Design fees being levied on schools are a nothing short of a complete rip-off. As an example we can use the minor changes to a standard design (Res 1 Library). The cost of the minor design change is projected at \$63,149. This is not to affect the construction change just the design. Dixon Homes, a respected Brisbane based home builder will do the same on a significantly larger building for just \$2600. The fees being levied across the BER are nothing short of theft of public monies. There are many examples of these charges.

8.4 National School Pride - Project management fees

DET with the help of DPW decided that the payment of a project management fee of 10.5% was acceptable for minor works projects in Queensland. In many cases this entailed taking a plan of the school and marking on it where electronic white boards should be installed, followed by ordering the said electronic white boards from standard DET supplier contracts.

Work was packaged into lots of gross value of \$5,000,000 plus GST and then allocated. Individual sole operators were being paid up to \$525,000 for a maximum of 8 months work. This work would not have taken anywhere near this amount of time. Even NASA for its space program purchases all components from the lowest tenderer.

The 10.5% fee was arrived at by calling tenders for a percentage fee from architects for the provision of a combined Project Manager, Principal Consultant and Quantity Surveyor role. Approximately 40 submissions were considered for a range of project sizes. An analysis was then undertaken of the combined fees received in the \$0 to \$500,000 project range by excluding those that were more than 30% above or below the median fee and averaging the remaining fees. This led to the 10.5% fee for Project Manager, Principal Consultant and Quantity Surveyor.

Nation Building – Economic Stimulus Plan - Queensland Procurement Plan - Office of State Coordinator Department of Public Works June 2009

8.5 Allocation of \$55 million to builders being prosecuted by the ACCC

By July of 2009 the DPW had allocated \$55 million of BER work in Central Queensland to 3 companies being prosecuted by the Australian Competition and Consumer Commission (ACCC). \$10,500,004 was allocated to Carmichael Builders Pty Ltd, \$25,200,011 to JM Kelly (Project Builders) Pty Ltd and \$20,300,007 to TF Woollam & Son Pty Ltd.

Whilst everyone is entitled to the presumption of innocence, it appears that DPW were not even aware of the prosecutions. ACCC are taking action against these builders for price fixing on government contracts.

9.0 Conclusion

The issues raised highlight systemic failings within Queensland DET and DPW, The use of inflated benchmark pricing is a means of hiding the true comparison of what is being paid on projects and what they should actually cost. I have numerous examples of specific overcharging, too many to form part of this submission. I am happy to provide these should they be useful.

In this submission I have tried to concentrate on the underlying conflicts of interest and sloppy reporting by both the Departments as well as their independent auditors. Federal and State governments have successfully created cultures of fear within the ranks of their staff. Very few, if any, are willing to put their heads above the parapet. Should they do so, they would likely lose their jobs.

When the independent auditor is a regular guest in the Government's hospitality suite at various Stadiums, it raises serious questions as to what relationships exist and if any persuasion has been used to produce desired outcomes.

Conservatively I would expect even at this stage of the process several billion dollars could be saved from the program by having true independent analysis of the BER program. This money would be reinvested in respective schools to add better and more resources. I have never in my lifetime seen so many snouts in the trough.

The fact that the funds are supplied by the government seems to abrogate peoples responsibility to act ethically and behave as if they were spending their own money.

Should it be useful, I would happily make myself available to help with any future analysis and investigation.

Allocated Projects by DPW Queensland*Appendix A*

Contractor	Total	Projects
A Gabrielli Constructions Pty Ltd	\$ 16,500,006	12
A.J. Homes Pty Ltd	\$ 11,000,003	8
Abigroup Contractors Pty Ltd	\$ 62,250,002	51
ADCO Constructions Pty Ltd	\$ 27,500,007	18
Badge Constructions (Qld) Pty Ltd	\$ 17,000,004	12
Boulderstone Queensland Pty Ltd	\$ 87,250,003	82
Broad Construction Services (Qld) Pty Ltd	\$ 9,500,001	8
Built Qld Pty Limited	\$ 16,000,005	13
Canstruct Pty Ltd	\$ 3,000,001	2
Carmichael Builders Pty Ltd	\$ 10,500,004	10
Construction Engineering (Qld) Pty Ltd	\$ 14,000,005	11
Devine Constructions Pty Ltd	\$ 12,000,002	7
DG Wilson	\$ 5,000,000	3
Dickinson Constructions Pty. Ltd.	\$ 29,350,004	18
Evans Harch Pty Ltd	\$ 30,200,012	28
F.K. Gardner & Sons Pty. Ltd	\$ 29,500,010	28
FKP Constructions Pty Ltd	\$ 3,000,001	2
FKP Constructions Pty Ltd	\$ 12,350,004	12
Glenzeil Pty. Ltd	\$ 24,850,005	17
Grindley Construction Pty. Limited	\$ 15,000,003	12
Hansen Yuncken Pty Ltd	\$ 76,900,004	67
Hindmarsh Construction Queensland Pty Ltd.	\$ 8,350,001	6
J. Hutchinson Pty. Ltd. Trading as Hutchinson	\$ 29,000,010	24
J.M. Kelly (Project Builders) Pty. Ltd	\$ 25,200,011	24
John Holland Pty Ltd	\$ 89,350,013	67
Kane Constructions Pty Ltd	\$ 14,000,005	10
Laing O'Rourke Australia Construction Pty Ltd	\$ 49,050,003	51
Laurie Lindner Constructions Pty Ltd	\$ 7,500,002	6
Leighton Contractors Pty Ltd	\$ 75,550,002	52
Matrix Projects (Qld) Pty Ltd	\$ 25,850,007	19
Max Bryant Pty Ltd	\$ 6,500,000	5
McNab Constructions Australia Pty Ltd	\$ 12,250,004	13
Metrobuild Constructions Pty. Limited	\$ 21,500,006	15
National Buildplan Group Pty Ltd	\$ 8,000,002	5
Northbuild Construction Pty. Ltd. And Northbuild	\$ 24,000,006	15
Paynter Dixon Queensland Pty Ltd	\$ 20,750,007	19
Reed Constructions Australia Pty Limited	\$ 16,500,003	13
Sommer & Staff Constructions Pty Ltd	\$ 9,000,004	8
St Hilliers Contracting Pty Limited	\$ 16,500,005	12
Statham Qld. Pty. Ltd	\$ 5,500,001	4
Symour Whyte Constructions Pty Ltd	\$ 4,100,000	4
T. & M. Buckley Pty. Ltd. Trading as Shailer	\$ 6,000,002	4
T. F. Woollam & Son Pty. Ltd. Trading as	\$ 20,300,007	21
TCS (Qld) Pty Ltd	\$ 9,000,002	8
Thiess Pty Ltd	\$ 85,650,009	60
Thomas & Coffey Limited	\$ 15,700,005	13
VCCQ	\$ 5,000,000	4
Walton Construction (Qld) Pty. Ltd	\$ 18,850,008	16
Watpac Construction (Qld) Pty Ltd	\$ 76,700,007	51
Wiley & Co. Pty. Ltd.	\$ 14,850,003	11
Not Allocated in Round 1 tranferred to Round 2	\$ 43,750,004	141
Round 3 Not Allocated at Report	\$ 511,000,034	540
Grand Total	\$ 1,787,900,259	1662

Round by Round Comparison

Round	Value	No. Projects	% of Value	% of Projects	Average project cost	Carried over to Round 2
1	\$ 674,200,182	641	37.71%	38.57%	\$ 1,051,794	\$ 43,750,004
2	\$ 602,700,043	481	33.71%	28.94%	\$ 1,253,015	
3	\$ 511,000,034	540	28.58%	32.49%	\$ 946,296	
Grand Total	\$ 1,787,900,259	\$ 1,662	100%	100%	1,083,701.79	\$ 43,750,004

Round breakdown agreed with DEEWR

- Round 1 - 20%
- Round 2 - 40%
- Round 3 - 40%