INQUEST FINDINGS,

COMMENTS AND RECOMMENDATIONS

into the death of

Katie Bender

on Sunday, 13th July 1997

on the Demolition of the Royal Canberra Hospital Acton Peninsula, ACT

Held at the Magistrates Court, Knowles Place, Canberra City,

Between 17th March 1998 and 11th November 1998 (118 days of sitting).

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EXECUTIVE SUMMARY

There are certain statutory requirements imposed upon a Coroner holding an Inquest to find if possible: -

a. the identity of the deceased,
b. how, when and where the death occurred,
c. the cause of death, and
d. the identity of any person who contributed to the death

(Section 56 of the *Coroners Act 1956*).

The Coroner has the discretion to comment on any matter connected with the death in addition to making any recommendations to the Attorney General on any matters connected with the death.

The Report into the death of Katie Bender is about 657 pages in length. It contains not only the findings, the recommendations and comments but also reviews the evidence and includes photographs, charts and a chronology of significant events in the history of the Royal Canberra Hospital buildings from the period of April 1991 to the date of the demolition on 13th July 1997. The final submissions were received on 23rd May 1999. There was in one case a submission received by me on Wednesday 9th June 1999. There were as many as 18 separate interests granted leave to appear during the Inquest.

The question of privilege against self – incrimination has been addressed in this Report. It should be noted that Counsel for Mr. Cameron Dwyer of PCAPL submitted on 23rd April 1999 no less than 163 submissions dealing with a claim against self – incrimination. There is no further reason to delay the presentation of the findings in this Inquest. Those specific claims for privilege will be examined by me in the next few weeks and a separate decision will be presented on those submissions.

I must emphasise that the executive summary is an overview only. It relates only to the statutory obligations of the Coroner. It should be read mindful that the Report contains the significant matters relating to this Inquest. Before I give a brief summary of some matters which I consider are significant and consistent with my statutory functions it is necessary to state one particular factor that stands out throughout through the whole of the Inquest. A primary consideration that should never be overlooked in this whole Acton demolition exercise is one of a matter of fundamental importance. The Acton Peninsula was a construction and demolition site utilising heavy machinery in an industrial project. It was a task assigned to persons with an expertise in those processes. Those persons had been appointed by the ACT and TCL on the basis of their professional experience. There was no need for any public official to become involved in any way in that process. There was set in place by the ACT and TCL what one at the time hoped to be a proper chain of accountability and responsibility. There was no need for any public official or civil servant to create or turn the project into a media promotion. It was inevitable that there would be such an occurrence as mere curiosity on the part of the public would have enticed them to

visit the demolition site on that day. But to have as many as 48 emails despatched by a government organisation describing themselves as Section Publications not having any knowledge of implosions and explosives and the inherent dangers of such methods and then for a radio station to offer incentives as a promotion of the project also having no knowledge or expertise in the potential dangers that might arise is nothing less than a disgrace. Persons in government and a commercial radio station were advocating the attendance of the public at an industrial project which had significant dangers not knowing fully the hazards or consequences that might follow. On any global view of all the evidence it was a total abrogation of responsibility to the safety and well being of the general Canberra community to have adopted such a position.

MANNER AND CAUSE OF DEATH

Katie Bender died at about 1.30pm on Sunday, 13th July 1997 when she was struck in the head by a fragment of steel expelled from one or other of the corner columns (C30 or C74) on the face of the East Wing of the Main Tower Block of Royal Canberra Hospital situated on Acton Peninsula.

Katie Bender was with her parents in a crowd estimated to be in excess of 100,000 spectators gathered on the foreshore of Lake Burley Griffin to watch the demolition by implosion of the Main Tower Block and Sylvia Curley House. Katie Bender was standing on the grass nature strip just down from Lennox Gardens near the roundabout leading from Flynn Drive to the northbound lanes of Commonwealth Avenue Bridge. The crowd in this area alone was estimated by Constable S. G. Howes of the Australian Federal Police Traffic Operations as between 30 – 40,000 people.

Katie Bender's death was instantaneous. Katie Bender's scalp and skullcap were severed from her head by the impact of the steel fragment which was in effect a high velocity missile. It was a massive penetrating wound to the head. Katie Bender weighed 47.5kg and was 160cm in height. It is not necessary to examine in any detail the autopsy performed by Doctor S. Jain which is set out in his report dated the 27th August 1997. Dr. Jain stated in his autopsy report that "death was caused by a head injury caused by missile injury".

The fragment which struck Katie Bender came from either the lower ground or ground floor portions of the column but more probably from the lower ground floor which was more highly charged with explosives than the ground floor.

The fragment travelled approximately 430 metres at subsonic speed and struck Katie Bender about 3.1 seconds after it was launched killing her instantly. The fragment broke into a shape that could be expected when an explosive charge is placed against steel backing plates and columns in the fashion used by the explosive subcontractor, Mr. Rod McCracken of Controlled Blasting Services. The impact velocity, calculated by Dr.. A. Krstic of the Defence Science and Technology Organisation, Department of Defence, Salisbury, South Australia was 128 – 130 metres per second. The associated kinetic energy was 8.172 kilojoules.

The lethal fragment was a section of deformed steel plate approximately triangular in shape, measuring 165mm x 130mm x 140mm with a weight of 999grams. It was classified as mild carbon steel. One edge exhibited shear characteristics and had a thickness of approximately 14.9mm. The remainder of the fragment had a relatively uniform thickness of 10.6mm. Two edges of the steel fragment exhibited fracture characteristics in the form of a chevron pattern. There was hair, blood and bone on the fragment with the bone matter adhering to edge B. This is clearly reflected in the photograph number 1 in Exhibit 10 being a book of photographs of various items of metal debris recovered from the blast.

Dr. A. E. Wildegger Gaissmaier also of DSTO engaged in a computer modelling process of a similar but not identical explosive. The lethal fragment was part of the webbed portion of a steel column. The fragmentation pattern on the steel and the surrounding piece showed the same qualitative characteristics that generally occur when steel is directly exposed to a sudden explosive impact. It seems the fragment fractured from another piece of steel and was originally part of the backing plate. This backing plate actually embedded itself in the ground within metres of the Simpson family of Chisholm ACT who were located about 15 metres from the edge of the Lake and about 400 metres from the hospital building. The plate was warm to touch. It is not necessary to review this evidence in detail but it is sufficient to state that the thickness of the fragment that killed Katie Bender matched the webb thickness of the corner columns, C30 and C74 on the front of the East Wing of the Main Tower Block. This conclusion that the steel fragment struck Katie Bender is also supported by the column orientation, the position of the two columns, the time lapse from the reddish orange fireball being visible and when Katie is struck down (see further the evidence of Mr. S. Alkemade on 23rd March 1998).

A great many columns in the Main Tower Block were not fully sandbagged including the two columns (C30 and C74) from whence in all probability the fatal fragment was expelled. The evidence in support of this conclusion is to be found in the photographs actually taken by the Work Cover inspectors about 2 hours before the implosion on Sunday, 13th July 1997. The photographs are persuasive evidence that there was simply no protection on the lakeside of the blast particularly in respect of C74 and where Katie Bender and hundreds of other spectators had gathered to view the event. An analysis of the protective measures or lack thereof is set out elsewhere in my Report.

The force with which the fragment of steel was expelled from the Hospital site, travelled the 430 metres striking Katie Bender, then, entangled in her scalp and hair, landed with an audible thud approximately 6 metres to the rear of Katie’s standing position immediately adjacent to the rear wheel of a spectator’s pushbike. The resultant impact is consistent with a massive force commensurate with a cricket bat being swung at 432 kilometres per hour. This force was also supported by Constable Howes observation of the "divot" that the fragment made on impact with the earth. There are two enlarged high-resolution photographs of the deceased at the time of the blast. The first photograph depicts the deceased standing looking towards the Hospital site 3.4 seconds after the first appearance of the orange fireball at the base of the Main Tower

Block. The second photograph is of the deceased on the ground at about 3.6 seconds after the detonation having been struck down by the fragment.

The most likely trajectory for the fragment of steel as determined by Dr.. A. Krstic was trajectory L. This trajectory had the fragment of steel coming from the lower ground floor column either C30 or C74. Those columns were loaded with a greater amount of explosives than the ground floor columns. The trajectory had the fragment of steel just clearing the curved brick wall some 92 metres away. The curved brick wall was on the extremity of the hospital building almost at the end of the Peninsula. The wall was 8.3 metres in height. The damage evident to the top of the curved brick wall supports not only the adoption of trajectory L as the most likely course taken by the fragment of steel but also that it originated from column C30. Dr. Krstic stated that it was likely the fatal fragment would have been prevented from leaving the Acton Peninsula if the bund wall had extended to a height of 2 – 3 metres all the way across the face of the building. Dr. Krstic, in his evidence on 24th March 1998 dealing with the base of the chimney stack, stated "that no amount of bund wall perhaps 5 metres or 4 metres would have caught those bits of debris, being so high".

The Australian Federal Police investigation team collected a considerable volume of evidence in the form of statements from many spectators, the donation of videos and photographic material. It was only necessary to adduce evidence from 5 civilian witnesses who were in close proximity to the deceased. The evidence was received from Messrs. B. Redden, P. Jermyn, M. Battye, G. Vasek and P. Muscat. Statements by many other bystanders were simply tendered in evidence.

The video material clearly shows that upon the reddish yellow fireball from the base of the building being discharged objects are observed being emitted not only from the centre of the fireball but other parts of the building. The objects are visible being projected across the lake in the direction of the spectators. The videos also clearly show the lake being peppered by the flying debris with a number of spectator craft resorting to evasive action.

The response by Mr. Malcolm Hayes of the ACT Fire Brigade, the Ambulance Service and the Police, especially Constable S. Howes at the scene was quick, efficient and sensitive. It should be remembered that a large crowd had gathered. Constable Howes had CPR continued until the crowd was cleared from the area although Katie Bender had obviously died at this stage. The actions of Constable Howes are deserving of special mention. The officer acted in a highly professional manner in extremely emotional circumstances. The crowd were confused, screaming and some were in a state of panic. Along with the fire officers Constable Howes solely worked in those initial minutes after Katie Benders death to secure the scene in the terms of the preservation of evidence, allaying the concerns of the public and assisting other people who were visibly distressed by the events. His statement to the Coroners Court is set out in this Report. Constable Howes acted in a controlled and responsible manner. The Court commends him for his significant community spirit in adverse circumstances.

There are an additional number of factors contributing to the cause of death, which are further analysed in this Report but it is useful to identify those factors in summary form. Those factors are: -

- Detonating explosive charges imploding the Main Tower Block of the Canberra Hospital cutting a fragment of steel of a high velocity,
- Employing an incorrect methodology, viz: -

i. The use of an excessive amount of explosives,
ii. The use of the wrong type of explosives,
iii. The use of a steel backing plate rather than a soft backing cover such as rubber,
iv. Incorrect cuts being made to the columns,
v. Failure to use cutting charges together with kick charges to correctly pre - weaken the steel columns,
vi. A failure to retain, on a continuing basis, for advice a structural engineer experienced in the implosion process of demolition,
vii. A failure to retain for consultation or advice again on a continuing basis an independent explosives expert having knowledge of the implosion method of demolition,
viii. Placing the explosives on the incorrect side of the steel columns so that the blast was directed at the spectators on the other side of the lake,
ix. Inadequate protective measures, and
x. Inadequate testing.

The contribution made by the Canberra community to the police investigation needs to be recognised. One only needs to view and listen to the video evidence to gain the sense of outrage and anger expressed by the spectators on that Sunday afternoon. Many hundreds of those spectators whose lives were at risk came forward and generously donated as evidence photographic and video material collected by them to assist the police work.

The treatment of the scene, the collection of all the fragments of steel and particles of the deceased's body, the gathering and compilation of all the public, AFP photographs and video material was done with great promptness and efficiency. The subsequent police investigation has been extremely detailed and thorough and broad based in the seizure and collation of the many documents so as to gain a sufficient understanding of them so that interviews could be carried out and conducted in a manner which focussed on the issues. The efforts of the Australian Federal Police to locate and engage the services of a variety of expert witnesses across a range of disciplines proved invaluable, to the extent that none of those experts were in any real sense challenged as to their expertise or their conclusions. In particular the efforts of Detective Constable Mark Johnsen who oversaw the majority of the investigations including travelling overseas and conducting many of the more crucial interviews deserves recognition for his commitment to his duties and the Inquest generally.

LANDSWAP TO TENDER

INTRODUCTION

The Inquest received a substantial volume of evidence in this segment. This phase of the Inquest commenced on 25th March 1998 and continued to its conclusion on 11th June 1998. The segment contains very valuable factual matter of a significant

nature yet this material does not directly impact in its relevance on the Coroner's function of making findings as to the cause of death and matters connected with the death.

There are many issues of historical importance but in my assessment are too remote to be of real assistance. Those matters are preserved now as part of the public record in the transcript of the proceedings. Some of these issues are matters for another place and time. Those issues have not been ignored by me during my review of the evidence but do not require a close scrutiny at this time.

The chronological table of significant dates and events in the Acton Peninsula demolition project is well documented in this Report. Accordingly, this chapter examines those issues of greater prominence in the total scheme of events prior to the commencement of the work on the site in April 1997.

The RGA report of July 1995 expressed caution about certain matters that ought to be thoroughly investigated before implosion was used. The following are some examples: -

a. "The issue to what extent a public information programme is put in place requires assessment of the risks involved particularly as to site security,
b. The management of a demolition site of this scale requires not only very careful attention to issues of safety and pollution control but to the mitigation of the possible impact of the works on the remaining residence,
c. It was recommended that tenders be called optionally for implosion and traditional methods with the final decision being made in November 1995. This will allow the Project Director and/or Project Manager sufficient time to fully canvass the implosion method,
d. Should implosion be adopted then close investigation of demolition techniques will be required at the west end of the Sylvia Curley House to minimise the potential for damage to the nearby childcare centre. It will be necessary for tenderers to provide a demolition plan and detailed programme which would address, but not be limited to those aspects covered in the work and site management areas of this study,
e. A building permit will be required together with statutory approvals including OH&S, Dangerous Goods, Environmental Protection etc,
f. Should implosion be employed this is usually undertaken at the least active time of the week and therefore the easiest to control. Approval to implode will therefore need to address the issue of Sunday working, however, since implosions are only contemplated for Sylvia Curley House and the tower of the Main Building only two Sundays will be affected and for a very limited time on those days, and
g. The demolition method adopted will affect the safety measures to be employed although general requirements regarding *Occupational Health and Safety* will apply whatever method is adopted. The use of implosion techniques will require additional measures during the implosion process as set out below.

The Cabinet submission of 4th August 1995 was fundamentally defective to the extent that vitally important advice was not included concerning the following areas: -

a. There is no mention of an overseas expert,
b. The cautions and safety issues and matters requiring further investigation raised by the RGA Report are not mentioned, and
c. The comment and advice that implosion was just as safe as conventional methods was not substantiated by reliable evidence.

The consideration of the RGA Report was inadequately handled for the purposes of preparing the Cabinet submission of August 1995. It could have been done substantially better. But as a substantial lapse in time then occurred between August 1995 and when the demolition project was re - enlivened in December 1996 it did not have a major consequence. However once en – livened it seems to me that at least the considerations of the RGA Reports should have been visited again to ensure those areas of concerns were investigated and were relevant to the immediate task. The Cabinet decision of August 1995 was well and truly overtaken by the events of December 1996 and did not require further consideration to any significant degree. Yet the RGA Reports were a critical factor relevant to the project between December 1996 until the implosion in July 1997. The witnesses in this vital pre – implosion segment left me with the impression that the RGA Reports were forgotten.

Implosion as a method of demolition was adopted in principle by the Cabinet in August 1995 but in my view it was only ever an option between December 1996 until the tenders had been let when this course of demolition was finally settled upon in April/May 1997. Implosion was not a favoured or preferred option during the period August 1995 to May 1997. It had only been adopted in principle. The implosion methods if properly handled required further evaluation.

What does disturb me about the evidence is that there was no further evaluation to any satisfactory degree as was suggested by the RGA Reports at any stage particularly at the time of the advertisement and the letting of the contracts. This was a major shortcoming in the whole process. All the RGA Report favoured was the use of implosion for the tall buildings. This was the recommendation from the feasibility report. It was not a suggestion or desirability that that method should necessarily be implemented. The critical defect in August 1995 was that Cabinet was not given full and accurate information on the implosion method for any number of reasons. The Cabinet was not invited to consider the need for an overseas expert or the fact that demolition of this nature was a novelty in Australia and any question of public safety although not mentioned by the RGA Report ought to have been a primary consideration being put to the Government.

There is a lengthy consideration in the Report of the Cabinet submissions of December 1996, the meetings of 11th and 13th December 1996 and the ultimate appointment of PCAPL pursuant to the single selection method.

The single selection and appointment of PCAPL as the Project Manager on Friday 13th December 1996 was reasonable, practical and appropriate having regard to the special factors being considered such as the protesters, the squatters, the necessity to erect a fence urgently and the general pressure being conveyed to the ACT

Officials from the Commonwealth Government. It is the continuation of this appointment of PCAPL as the Project Manager without any form of review which is unsatisfactory particularly as PCAPL did not have any relevant experience in implosion demolition. This inexperience in the implosion method was evident later when PCAPL did not take any steps to make a critical examination at the tender stage of the suitability of the implosion operator his experience and methods. TCL should never have permitted PCAPL to proceed beyond the expression of interest stage without ensuring that PCAPL had the credentials to assess the quality of the tenders especially in the implosion method. The continuation of the appointment of PCAPL on a long term basis was totally contrary to the recommendations made in the first RGA feasibility study.

The meetings of 11th and 13th December 1996 leave me with a great deal of concern. It is hard to gauge the genuineness of those involved in the appointment process. The meetings have all the hallmarks of a sham arrangement convened simply to lend credibility to the appointment process. The impression is one of a rubber stamp process. None of the persons involved with TCL or PCAPL had any ability, knowledge, appreciation, understanding or experience as to the magnitude of the project yet they were making final conclusive decisions some 4 to 5 months before the tender process had been finalised. Concerning Mr. Walker I must agree with the submissions made by Mr. Rushton, his Counsel, as it seems to me he was never examined about the meetings of 11th and 13th December 1996 nor was he recalled to give evidence on those circumstances. There is nothing per se on the evidence in the Inquest that suggests there is any fundamental problem with the single selection method provided it operates within specific criteria such as to meet immediate short term exigencies (the Acton Peninsula as at 13th December 1996 reflected such exigencies) but in any lengthy project a full and proper comprehensive examination needs to be given to the appropriate appointment after a close scrutiny is made as to the applicants credentials and suitability for the specific project or task. What was a sensible, reasonable and practical approach in December 1996 was something different by March/April 1997 when the contracts were let.

The single select method is a useful tool for a special purpose over a limited duration. It was sensible in the short term for the erection of a fence and such like activity but wholly impractical for a long - term complex project. I would recommend that this process be reviewed.

ROLE OF REGULATORY AGENCIES

The WorkCover inspectors have been the subject, quite properly in my view, of substantial criticism in this Inquest. There were at least two and probably three if not more occasions, when the WorkCover inspectors, having entertained doubts about the project continuing should have issued prohibition notices requiring the work to cease until certain aspects of that work were rectified to a satisfactory degree. The evidence of one (now former) WorkCover inspector at a senior level damming the degree of Government funding and raising concerns about the manner in which the legislation was administered was disturbing. It was embarrassing to hear such sweeping assertions. It is doubtful whether the ACT Government would permit such a circumstance to exist. I do not accept his assertions about the funding issues. It must also be stated that I place no weight on his comments about the lack of

government funding for the organisation having regard to the persuasive evidence given on this topic by Ms. J. Plovits, the General Manager which is reviewed in the chapter dealing with Regulatory Agencies at paragraph 76 (page 241)..

The administration, management and organisation of the ACT WorkCover unit in 1997 was most unsatisfactory. These criticisms raised by the former employee need to be balanced and viewed objectively in the context of this tragedy and the improvements that can be made and are being made by the ACT WorkCover organisation. This is well evidenced by Exhibits 526 and 526C which are described as a Summary of Actions arising from the Review of ACT WorkCover. The Government and the civil service are to be commended for taking such a positive and immediate response to Katie Bender's death. It should be stated that the need for such reform was seen shortly before the tragedy and steps were being taken to implement change when the death occurred.

It is important to appreciate that if a building is to be demolished by the implosion process then appropriate checks should be made of the qualifications and proven ability of the person to carry out such a demolition. It certainly concerned me as the Coroner, on the evidence, that those engaged in advertising and then embarking on the tender process themselves did not know to any substantial degree the structure of the building that it was a steel encased concrete structure of substantial solidity. If the regulatory agencies were to fulfill their statutory function effectively then without such basic details how could the independent assessment process possibly be of any value. It is very clear on the evidence that this did not happen. There was no examination of the demolition proposal itself either by the ACT Building Control, the National Capital Authority, the ACT Dangerous Goods Unit and ACT WorkCover. There are no other words to describe it other than the fact that it was never done. It should be stated that the two former bodies were never given the opportunity to examine the demolition process nor were they consulted on this aspect of the project. The latter two agencies failed to properly discharge their function.

This segment of the Report is critical of particularly ACT WorkCover and to a lesser extent the Dangerous Goods Unit. Yet there is no escape from the fact that the primary responsibility for the safety of the Acton demolition rested with the demolition contractors, those supervising them and those who employed them. Whatever the criticism I make of Mr. Purse, the Chief Inspector I agree with him that WorkCover was not TCL or PCAPL's safety officers.

THE ROLE OF THE ACT BUILDING CONTROLLER, THE NATIONAL CAPITAL AUTHORITY AND THE STATUS OF THE LAND

There is certainly a question as to the status of the land to be determined and whether in particular the Building Controller had any role to play in the approval of the demolition process. It is stipulated in the *Demolition Code of Practice* that the building controller must be consulted. It is my recommendation, that the regulatory agencies responsible for the administration of such demolition projects in the ACT must be consulted whether the project is proceeding on Commonwealth or Territory land. There are significant consequences in the terms of the common law, workers compensation and insurance liabilities. I do not have to consider the status of the land as to whether it belongs to the Commonwealth or the Territory. The simple fact

of the matter is that no regulatory authority effectively became involved in the process until mid May 1997, by which time a substantial amount of work and effort had already been commenced not only in the demolition phase but also government involvement. There was no examination of the demolition proposal itself by the ACT Building Controller or the National Capital Authority.

Mr. B. Collaery, Counsel for the Bender family, urged upon me during the Inquest and in his submissions that there should be a finding as to the status of the land on the Acton Peninsula. There are complex legal questions raised on this issue concerning the roles and functions of the ACT

Building Controller and the National Capital Authority. The National Capital Authority placed a lengthy submission concerning the status of the land before the Inquest. Those submissions will be of much greater value and weight at another time and place. It is quite clear on the evidence that neither the ACT Building Controller or the National Capital Authority had any involvement in the Acton demolition project especially on the issue of approvals. It was accepted practice in the Australian Capital Territory that the Building Controller was required to grant approval in the first instance before any construction or demolition could occur. It is, for example, a statutory requirement for the Building Controller to give certain approvals in relation to residential premises. It was never in dispute that the ACT Building Controller was not approached by any party at any stage to approve the demolition of the buildings on Acton Peninsula. It was an uncontroverted fact that the ACT Building Controller was not in any way consulted about the demolition of the buildings notwithstanding the requirements of the *Demolition Code of Practice* (paragraph 6.17). Accordingly there was no regulatory control exercised by either of these two bodies during the whole of the demolition process.

I do not consider it is necessary to make any determination about the status of the land but I am prepared to make certain recommendations for the future. The lack of involvement seems to stem from the perception that as the land at Acton Peninsula was under the control of the Commonwealth of Australia then the

Building Controller of the ACT had no jurisdiction. This perception was further reflected by Mr. Fenwick when he questioned Mr. Smith about his jurisdiction over Commonwealth land when he first attended the site. Mr. Dwyer had advised Mr. Fenwick on 21st April 1997 that a demolition permit was not required. The fact that the Building Controller was never approached for express permission to demolish the buildings by explosives as is required by paragraph 6.14 of the *ACT Demolition Code of Practice* demonstrates his complete lack of involvement in the project.

Although the National Capital Authority was approached by TCL for approval to demolish the buildings on Acton Peninsula and to erect temporary structures such as fences at no stage did the NCA undertake a formal examination of the demolition process. It was never contended by any party that it was their belief that the NCA would or did undertake any such examination. The simple fact of the matter was that neither the NCA or the Building Controller exercised any regulatory control over the demolition process and the fact remains that they did not and nobody on the site expected them to.

On 6th May 1997 the Honourable Warwick Smith, the Minister of State for Sport, Territories and Local Government, declared Acton Peninsula to be National land and approved the management of that land by the National Capital Planning Authority. The declaration which forms part of Exhibit 516 appeared in the Commonwealth of Australia Gazette on 28th May 1997.

All parties engaged on this project acted in accordance with the Demolition Licence Agreement so that the Acton Peninsula was treated as Commonwealth land and the ACT was permitted to occupy it for the purpose of having the buildings demolished. The mere fact that the Building Controller and the National Capital Authority had no involvement in vetting the proposed demolition process did not directly affect what ultimately occurred. The question as to the exact legal status of the land is a function for another tribunal at a later date.

It is recommended that the status of the land in the Australian Capital Territory should never again be permitted to confuse or cloud the respective roles of the government agencies in regulating activities on the land especially where the interests of public safety are paramount. The risk of confusion would be minimised if there was early close and continuing consultation and liaison at all government levels. Public safety is involved and as such a practical approach must be adopted. Legal complexities should not blur the need for sensible procedures to be created whereby a government entity, whether Federal or Territory, undertakes the appropriate regulatory control. The regulatory control must be to an efficient degree. Whoever exercises the function can be determined in the future but it must be resolved and not allowed to create so much uncertainty as occurred on this project.

Mr. G. F. Barker of Unisearch who was retained to undertake the review of WorkCover has made this observation that "the appointment of one agency to act as the regulatory authority for all demolition regardless of method ought to be made". This appears at paragraph 6.3 of attachment F in Exhibit 526C. This of course is only Mr. Barker's opinion concerning the review of the *ACT Demolition Code of Practice*. In any event mutual co – operation and understanding must prevail at all levels of government where the regulatory agencies are engaged, viz, the Building Controller, DGU, WorkCover and the NCA where Commonwealth land is involved.

The evidence of Ms. Plovits is sufficient to satisfy me that there was some difficulties in relation to Ms. Ford and rather than review those particular cicrumstances at this juncture the Report is commended to the readers.

CONCLUSION

The WorkCover inspectors, particularly Mr. Purse and Mrs. Kennedy, failed to meet the standards that could be reasonably expected of a competent WorkCover inspector. The failure by Mr. Purse on 13th July 1997 to stop the implosion by the issue of a prohibition notice until he was satisfied the reconfiguration of the blast was safe is directly linked to the death of Katie Bender. Mr. Purse expected protective measures to exist in the form of low bund walls and sandbagging. Their obvious

absence and then permitting the implosion to proceed are factors referable to Katie's death.

These are significant failures by the inspectors.

The actions of Messrs. Purse, Hopner and Kennedy warrant the gravest degree of censure in the way the project was approached having regard to the information provided to them. Their inexperience and lack of qualifications satisfies me that a jury properly instructed would not find them guilty beyond a reasonable doubt. Whether those failures amount to negligence to the civil standard of proof on the balance of probabilities is a question for another time and place. It certainly appears the case based on the evidence received by the Inquest.

The WorkCover inspectors were not safety inspectors. There was not a scintilla of evidence to suggest the inspectors had any form of qualification or expertise in the demolition process using explosives and Mr. Dwyer was fully cognisant of this fact. It was not the role of Workcover to double check the credentials or the experience of the contractors chosen by PCAPL and TCL. Workcover was entitled to accept the assurances that contractors had been competently chosen and adequately qualified. It was important to bear in mind that the legislative scheme imposed only powers and not statutory duties upon the Workcover inspectors. This is supported by Mr. Purse's assertion that whatever roles and responsibilities Workcover did have it was not its responsibility to act as a safety officer to those on site. The primary duty of the Workcover inspectors was to ensure the demolition was carried out safely and that it remained a safe project at all relevant times particularly with those performing it and those supervising it. Workcover unlike Mr. Fenwick, PCAPL and TCL was not in any contractual relationship with any party, which required it to constantly monitor the activities on site. Workcover was a wholly independent body removed from the demolition contractual obligations and responsibilities for the project.

The primary responsibility for the actions at the workplace fell to those controlling the contractor and the subcontractor. The principal responsibility in my view on the evidence and a proper consideration of the contracts falls to the Project Manager and Superintendent, Mr. C. Dwyer of PCAPL.

Finally WorkCover was not in a contractual or any other like relationship requiring it to constantly negotiate, supervise, monitor and control the activities being undertaken upon the site.

I am not persuaded that WorkCover inspectors contributed to or had any <u>direct</u> connection with the death of Katie Bender in the terms of Section 56(1)(d) and 56(4) of the *Coroners Act 1956*.

<u>RECOMMENDATIONS</u>

a. It is unsatisfactory to simply grant a Shotfirer's Permit that allows unregulated use for an extended period of time. The permit should be issued for a fixed and definite period capable of renewal and subject to review upon meeting specific criteria as to the suitability of the applicant.

b. The quantity of explosives, their storage, transport and use needs to relate to each specific project. An individual separate application should be filed for each explosive project. The balance or residue remaining upon the completion of each blasting or detonation should also be accounted for to the relevant authority. If a project requires a series of blastings or detonations over an extended period of time then the same approach should be applied in the terms of the quantity of explosives to be used, their storage, use and transport. The residue should be properly accounted for to the relevant authority.
c. A person seeking to use explosives for a particular purpose should be required to not only hold a Shotfirer's Permit but should apply for and obtain permission from the relevant authorities for each and every proposed project where detonation or blasting is required to be done by the use of explosives.
d. There should be a right vested in an inspector to come upon property to examine the use and storage of explosives on a regular basis.

It may be considered that these requirements present additional work in the terms of administration but in the long term the accountability factor is of greater importance. The need for such accountability by the Shotfirer to the Dangerous Goods Unit or the relevant authorities in the terms of the amounts and types of explosives imported, their storage, transport usage and what residue might exist after a particular project is completed far outweighs the administrative inconvenience created. It is the workplace and general public safety which is of paramount relevance.

WorkCover and DGU should be independent statutory authority with appropriate funding and resources. Both bodies should be created as one autonomous statutory unit independent of any departmental control answerable to a Minister of the Legislative Assembly. The models adopted in other states of Australia would seem to suggest that this is a practical way to ensure workplace and public safety is preserved. Consideration should be given to the adoption of the interstate models. All relevant stakeholders should constitute its Board again accountable to the Assembly.

The Postscript set out in the Report on these issues should be considered in the context of these remarks. It has been the subject of media discussion in recent days.

ENGINEERS

Does the Conduct of Mr. Gordon Ashley Constitute Criminal Negligence

The actions and advice of Mr. Ashley in this project fell well below those acceptable standards of a reasonably competent professional engineer.

There are a number of factors giving rise to this conclusion in addition to my general observations. Some of these factors are:-

a. The manner of cutting approved by Mr. Ashley was grossly negligent as it contributed to the death of Miss. Katie Bender,
b. The manner, circumstances and explanation for the advice given in the letter dated 30th May 1997 was irresponsible, to a gross degree, and
c. The failure to inquire and investigate the prior engineer's role.

The failure to supervise and attend the demolition site on a regular frequent basis to ensure that the approved method of cutting columns was being followed was an additional factor contributing to the death of the young girl. Mr. Ashley's involvement was inadequate. It is no excuse to simply make the claim that his role was one of a consultant and not that he was engaged or retained in a supervisory role.

The evidence is that Mr. Ashley did not know actually or contructively what quantity of explosives or the type of explosives that Mr. McCracken was proposing to use against the columns so as to achieve "a kick charge". It was his understanding that a kick charge was to be used in combination with the cutting of steel. The worst case scenario would have been that the columns would have meshed then jammed and the buildings may not have collapsed. It was Mr. Ashley's understanding of the nature of the kick charge that it was "to kick the column without causing any disintegration" and therefore there would be no question of steel becoming a projectile.

At this stage between late May and early June 1997 Mr. McCracken was not aware that he would not be able to obtain the lineal cutting charges or would have to use the demolition process by some other means. The evidence does not establish nor was it suggested that Mr. Ashley had a state of knowledge or that he had any particular duties in relation to the kick charges, the supervision of the protective measures that were to be employed or not employed nor the type or quantities of explosives to be used against the steel because if those factors were within his knowledge then it seems the requisite criminal standard could be demonstrated to such a degree that he contributed to cause of death directly.

In those circumstances Mr. Ashley could not be said to be directly causally connected to the death of Katie Bender that would warrant a recommendation that he be charged with manslaughter. It is inappropriate in those circumstances to make any recommendation that Mr. Ashley should be charged with a criminal offence. I specifically decline to do so on the evidence. The evidence does not meet the requisite degree of proof for criminal purposes. The evidence does satisfy me on the balance of probabilities that there are significant questions for Mr. Ashley to answer in the terms of his professional competence, his responsibilities and capacity as a structural engineer at least in relation to his engagement and performance on this project.

Finding

Mr. Gordon Ashley is a person who contributed to the death of Katie Bender within the meaning of Section 56(1)(d) of the *Coroner Act 1957*. It is my further recommendation that Mr. Ashley's right to practice as a professional engineer be further examined by the appropriate professional body.

THE PUBLIC EVENT – AN ISSUE OF PUBLIC SAFETY

It is an inescapable conclusion of fundamental importance, no matter what the form of the event may be, that all administrators and organising authorities ensure that the safety of the public is not compromised and is absolutely protected. The interests of the community in the terms of their safety is paramount where any large crowd is expected to assemble whether it be a sporting function for example, the suggested V8 car races for June 2000, a tourism promotion, a national festive occasion, a religious ceremony or generally any function or event that is publicly promoted by the government or organising authorities and designed to attract large numbers of spectators. There are many such events conducted in Canberra annually where not only the local community are encouraged to be involved but also occasions which are promoted nationally and internationally to draw visitors to the National Capital and in such circumstances the public interest demands their safety and welfare are not put at risk.

The Hospital site was situated in a prime location on a peninsula that protruded into Lake Burley Griffin in close proximity of the city. The site was merely 500 metres from the Commonwealth Avenue Bridge, which forms part of the city's primary arterial road, and in the clear view of traffic travelling over the bridge. The Hospital buildings were well-recognised city landmarks. A number of witnesses, notably Mr. Dawson and Mrs. K. Carnell the Chief Minister among others correctly assumed there would be public interest in the implosion of the hospital buildings. It was inevitable that this method of demolition would guarantee spectators would witness the event. People in large numbers would be attracted to such an occasion.

It is trite to say that any demolition of a building by implosion should be carried out with due consideration given to the safety of members of the public who might be expected to be in the vicinity of the demolition work. The very nature of the process demands that safety considerations should be a paramount consideration. Whilst safety considerations should be a major concern in any implosion, the fact that this implosion was to occur in the heart of the city, should have served to highlight further the need for the implosion to be carried out without exposing persons in the surrounding area to risk. If the issue had been addressed properly at the very outset then members of the public in the vicinity should not have been exposed to the risk. This failure is a matter of grave concern, and would be so whether or not any 'public event' was arranged.

A demolition in the form of an implosion as a public spectacle was fraught with risk. An implosion by its very nature would attract a large crowd. The public event was being staged as if it was a festive occasion to mark the destruction of a public building which was held in high regard by the Canberra community for the memories that it had created. The radio station, MIX 106.3, promoting the event, described the occasion in its proposal to Mr. Dawson as a "celebration of change". It was not appropriate on a global view of the evidence for a celebration to occur, in any form, in respect of the demolition of a building on what was in reality an industrial site.

There is no doubt that the events of Sunday the 13th July 1997 failed such a primary requirement of public safety. It is inevitable and regretful that accidents do sometimes occur despite the best precautions but what occurred when Katie Bender was killed was inexcusable. The public are entitled to expect that if they are attending or encouraged to attend such public spectacles or features especially with their families then they do so in the quiet confidence that their lives, their families, friends and others are not exposed to the risk of death or grave physical injury and their safety is secured.

No – one can seriously attribute to Mrs. Kate Carnell MLA, the Chief Minister for the ACT, personally or directly, any responsibility for or contribution to the death of Katie Bender. The evidence simply does not support such a conclusion being drawn or reached. The Acton Peninsula project was a National objective between the Commonwealth of Australia and the Territory. It was totally appropriate for Mrs. Kate Carnell MLA as the Chief Minister for the Territory to have a significant role.

Yet there is no doubt, based on all the evidence adduced during the Inquest, that the whole project could have been undertaken from its commencement to its conclusion, at all levels, in a more professional manner. There were systemic failures. The intrusions from the various sources outside the actual project site were unwarranted whilst the absence of the relevant Government regulatory agencies in monitoring the demolition progress on a constant basis is a matter for significant concern.

Mr. Gary Dawson of the Chief Ministers Office as her media adviser did have a major coordinating role in the demolition becoming a public spectacle. The Chief Minister did give her full approval to promote the implosion as a public event. I do not agree with nor do I consider there is evidence to support the submission made by Counsel Assisting the Inquest to the effect "that the public event was organised with at least one purpose being to enhance the political prospects of the government". The closest the evidence reaches on that point is the Liberal party brainstorming session at the Rydges Eaglehawk Resort in December 1995 where the reference appears on a piece of butchers paper of bombing the hospital. It may have been something said at that time in a jocular manner but the ultimate decision to demolish the hospital by implosion had dire consequences.

It must be said that Mrs. Carnell did agree, when giving her evidence, that the demolition of the Royal Canberra Hospital had the potential to cause some political backlash. She further agreed that the Government stood to gain publicity surrounding the demolition if the positive aspects were to be accentuated. Mr. Hopkins of the CMD agreed with the proposition that Mr. Dawson was seeking to use the media coverage to the best advantage he could as far as the Government was concerned.

The evidence points to a greater interest and involvement in the project by government officials especially from the CMD and CMO than was necessary for a project of this nature. There was simply no need for any involvement by this group of officials in respect of a construction site especially when TCL had been appointed the Project Director for the Territory. Acton Peninsula was an industrial project. The interest increased as the project advanced especially after 18th April 1997 when by then the decision to stage the demolition as a public event had been settled upon.

These administrators had no technical expertise. It was an unwarranted involvement. If the relevant branches of the regulatory agencies had been appropriately engaged at the outset, in whole or in part, and allowed to discharge their functions to their fullest capacity then it is possible the tragedy would have been averted. The evidence leads me to the view that the promotion of the demolition as a public event was an unnecessary intrusion and pressure upon the primary functions of Mr. W. Lavers of TCL as the key representative of the Project Director about which there is more detailed comment in the Report. Mr. Lavers was also the media liaison officer for the technical side of the project.

"Who was the Client"

A myriad of documentation was produced to the Inquest in the form of emails, correspondence, diary entries supplemented by the viva voce evidence of a number of witnesses as to the particular person or persons or group that constituted the classification of "the client". There were, by way of example, over 200 emails issued in a 5-month period by officers in the CMD. The identification was not made any easier when colloquial terms were used to describe and classify this entity such as "the loop" or "the client group". It was not particularly helpful to try to put an exact legal title to each category. It was really only a question of ones understanding or perception of the many facets of the project and those who were engaged in those various phases. These personnel were concerned with the practical side of the project rather than precise legal niceties or exact distinctions as to who were actually doing the work in whatever capacity even though sometimes they were clearly mistaken including the Chief Minister (see paragraph 27). It is unnecessary to dwell upon this issue at any great length.

I have previously stated that it is only practical and logical that the Chief Minister and her department should be involved in a project, which was of major importance for both the Commonwealth of Australia and the Australian Capital Territory. The relevant minister responsible for TCL from February 1997 and therefore technically the Minister responsible for the Acton demolition public works project was Mr. Trevor Kaine MLA who was the Minister for Urban Services. It was beyond question on the evidence that Mr. Kaine played no part in the direction of this project. There simply was no documentary evidence or briefing note or other government document produced to the Inquest that would suggest that Mr. Kaine ever played any practical role in the project.

The Minister assuming responsibility for the project was the Chief Minister. It is my assessment on the evidence that this was a sensible and practical reality for the reasons previously stated. I do not accept the proposition that Mr. Kaine was shut out of the project. The evidence seems to me that he was always at liberty to communicate and place his views to the Chief Minister. Mr. Kaine did not give evidence at the Inquest. I shall make further reference to Mr. Kaine in this Report.

The Chief Ministers Department was the client so far as the project was concerned.

The Concept of a Public Event

The Inquest heard evidence of many circumstances where the concept of a public event was developed in relation to the hospital demolition. The following references are just a few examples: -

a. "Sell the rights",
b. "Bomb the hospital",
c. "We can do something with it",
d. "A celebration of change", and
e. "Bring down the doomed Royal Canberra Hospital in a fitting fashion".

These expressions, were made in circumstances where the later tragic circumstances were simply unimaginable. It is regrettable, on reflection, that such casual terminology should be used. The statements can only be regarded as "a throwaway line" when used by the then Minister Mr. Tony de Domenico in January 1996 when talking about selling the rights or were used flippantly when "wiring up ideas" at a Liberal Party brainstorming session at the Eaglehawk Resort that the hospital site should be "bombed". The evidence does not persuade me that the concept of the demolition being a public spectacle was an idea of long standing or preplanned for some time. It developed after 4th January 1997.

I am satisfied that the evidence justifies the view that the contractors were made aware of the public event and only became involved at a later stage when meetings were convened in relation to the public event. The actions of Ms. Ford in relation to the WorkCover inspectors on the site was totally unnecessary. There was an intermeddling by certain officers of the Chief Ministers Department that was not warranted.

CONCLUSION

The weight of evidence satisfies me that implosion is a safe and satisfactory method of demolition. The demolition method requires competent persons at all levels of the process to discharge the function complying with the appropriate codes of practice applicable to a highly dangerous task.

The Acton Peninsula project failed systemically in that: -

a. The contractor and subcontractor were insufficiently skilled for a complex project to be completed in the time schedule applicable,
b. The Project Managers representative was inadequately skilled for the task which was not a simple routine construction site to which his prior experience applied,
c. The Government Regulatory bodies failed to exercise their roles in a visible fashion,
d. Senior officials of the CMD and the Chief Minister's Media adviser, with no knowledge of the demolition process, played a prominent intrusive role that was wholly unwarranted in what was a commercial industrial project, and

e. The project did not have the benefit of a structural engineer and an explosives demolition expert in accordance with the *Demolition Code of Practice* both independent of the contractor, subcontractor, Project Director and Manager – that is two experts at arms length from the total demolition process.

If a proper balance, as to their respective roles, had been struck and respected between: -

a. TCL,
b. PCAPL,
c. CCD,
d. CBS, and
e. WorkCover

then in all likelihood this tragedy would never have occurred or at least could have been averted.

There was no need for the demolition to become a media promotion generated by the Government and senior members of the public service. The promotion was unfair, particularly to Messrs. Lavers and Hotham of TCL, who in my assessment, have been assigned with responsibility for the failed project when all that was asked of them was to undertake a function well beyond their expertise, qualifications and skills. It was not made any easier when PCAPL appointed Mr. C. Dwyer to oversee Messrs. McCracken and Fenwick. Mr. Dwyer was unsuitable, in the terms of his qualifications and experience, for appointment to such a significant and complex project.

The death of Katie Bender was a consequence of the failure of those involved on the project to adequately comply with the standards and codes as well as the requirements of the contracts themselves. There is no problem with the standards and codes if they are properly complied with. It is appropriate and opportune, therefore, for those Codes to now be comprehensively reviewed. Mr. Loizeaux's analysis of these issues was clear and succinct. It was not the use of implosion as the method of demolition that caused Katie Bender's death but rather the use of that method by incompetent and inexperienced persons. Implosion is a cost effective demolition method in the terms of time saved as opposed to using the traditional demolition process. The evidence justifies a finding by this Inquest that implosion, if carried out competently, is at least as safe, if not safer than the traditional methods of demolition.

CORONER'S FINDINGS (SECTION 56 *CORONERS ACT 1956*)

Katie Bender died instantly at about 1.30pm on Sunday, 13th July 1997 on the foreshore of Lake Burley Griffin in the vicinity of Lennox Gardens Canberra whilst watching the demolition by implosion of Royal Canberra Hospital on Acton Peninsula with her family. Katie Bender died as a result of being struck in the head by a fragment of steel expelled from the Main Tower Block during the demolition process. I find that Rodney Douglas McCracken and Anthony Bruce Fenwick contributed to her death. Cameron Dwyer and Gordon Ashley also contributed to her death.

RODNEY DOUGLAS MCCRACKEN – MANSLAUGHTER BY GROSS NEGLIGENCE

Rodney Douglas McCracken will be committed for trial for the indictable offence of manslaughter by gross negligence. Anthony Bruce Fenwick will be committed for trial for being knowingly concerned in the commission of that offence by Rodney McCracken.

The evidence does not satisfy me at the prima facie level for the purposes of Section 59 of the *Coroners Act 1956* or Section 91 of the *Magistrates Court Act* as being capable of satisfying a jury beyond reasonable doubt that Mr. Dwyer has committed an indictable offence of being knowingly concerned in the offence of manslaughter. The Director of Public Prosecutions, on a further view of the admissible evidence, may reach a contrary view. It is open to the Director of Public Prosecutions to commence criminal proceedings against Mr. Dwyer by an ex officio indictment. Accordingly, I am not prepared to commit Mr. Dwyer for trial in respect of any criminal offence arising under the *Crimes Act 1900.*

The evidence does satisfy me to the prima facie level that there is a case against Mr. Dwyer for breaches of the *Occupational Health and Safety Act 1989.* It is recommended that the Director of Public Prosecutions consider the institution of proceedings against Mr. Dwyer in respect of breaches of the Part III of the Act.

WARWICK LAVERS

The evidence does not support in my assessment the institution of proceedings against Mr. Warwick Lavers. The evidence does not satisfy me to the requisite degree at a prima facie case level that Mr. Lavers has committed any breaches of the *Occupational Health and Safety Act*. Mr. Lavers was the representative of the Project Director TCL and did not maintain or control a workplace in the same sense as Mr. Dwyer nor did he have the requisite technical experience to be providing sound and reliable advice. The Report addresses in detail the fact that Mr. Lavers was designated as a supposed expert and was under significant pressure from certain Government officials to provide advice particularly as to the viability of the implosion being staged as a public event. Although Mr. Lavers could in all the circumstances have exercised a greater degree of supervision and authority in relation to Mr. Dwyer I do not consider on the evidence or the public interest that a prosecution is warranted against this official.

TOTALCARE INDUSTRIES LTD AND PROJECT COORDINATION (AUSTRALIA PTY LTD)

The question must inevitable arise by reason of these conclusions as to whether the evidence supports charges against the two companies acting in the positions as Project Director and Project Manager. Mr. Dwyer of PCAPL and Mr. Lavers of TCL were employees of those corporations. Neither person could be described as being in the controlling mind of the company (see DPP, Victoria Reference No 1 of 1996 (1997), 96 Australian Criminal Reports 513). Both men had certain reporting responsibilities to their organisations. It seems to me that neither company had any substantive knowledge as to the activities of Mr. Fenwick or Mr. McCracken. I am

inclined to the view advanced by Counsel for both companies that the evidence is insufficient nor does it warrant in the public interest any further consideration of whether the companies should be prosecuted.

ACKNOWLEDGEMENTS

Many individuals and their agencies invested a considerable amount of work and effort to assist in the investigation and Inquest. Their efforts are appreciated. I extend my thanks to Counsel and their Solicitors for their valuable assistance. The Police Investigation team are recognised elsewhere in this Report.

I would like to extend my thanks and appreciation to Counsel Assisting the Coroner, Mr. I. W. R. Nash of Counsel and Mr. S. Whybrow of the Office of the ACT Director of Public Prosecutions for their dedication and commitment to a difficult and complex proceeding. Both Counsel have worked under substantial pressure not only during the actual hearing but also in the preliminary period prior to the Inquest commencing and then later in the presentation of their comprehensive submissions.

It is also appropriate to recognise the patience and dedication of my two Associates during the period of the Inquest. Ms. Tina Stephenson acted as my Associate from January 1998 to April 1999 when she moved on to advance her legal career. Mrs. Linda Bundic has been my Associate since April 1999. She has conscientiously committed herself to the presentation of this Report. I extend my gratitude to them both for their support and assistance discharged in a professional manner. It is sincerely appreciated.

THE BENDER FAMILY

Mr. and Mrs. Bender and the family attended the Inquest almost on a daily basis, particularly Anna who provided substantial assistance to their legal Counsel. The dignified attendance on a daily basis has been noted. Their regular attendance underscores the importance of learning from this tragic incident.

I extend to the Bender family as the Coroner and on behalf of the Canberra community our sincere sympathy on the tragic death of their daughter and sister, Katie.

The contents of this Report may give them some understanding as to why Katie died on Sunday, 13th July 1997. The memories of Katie will always be cherished by her family. It is to be hoped in the interests of public safety for all Canberrans an incident of this type is never permitted to occur again.

THE COURT WILL BE ADJOURNED

GENERAL CHRONOLOGY AND OVERVIEW

Royal Canberra Hospital situated on the Acton Peninsula closed on 27th November 1991. On Sunday 13th July 1997 a large crowd estimated to be in excess of 100,000 people gathered in sunny conditions in the area of Commonwealth Avenue, Flynn Drive and Lennox Gardens adjacent to the south western foreshores of Lake Burley Griffin to witness the final stages of the demolition of certain of the Royal Canberra Hospital buildings.

The buildings to be demolished were the Main Tower Block (stage 1) and Sylvia Curley House (stage 4). The demolition of Bennett House and the Maternity Unit (stages 2 and 3) did not occur on this day and is not the subject of any inquiry by this Inquest.

The demolition which was scheduled to commence at 1.00pm was to be achieved by implosion. The buildings were to collapse inward on themselves (on their own footprint) after the detonation of an amount of explosives. A fireworks display was to precede the implosion event. A delay of about thirty minutes occurred. The delay was caused by falling debris from the pyrotechnic display on the roof of the tower block severing the electronic firing circuit. The explosives were ultimately detonated at 1.30pm.

Tragically Katie Bender was struck in the head by a fragment of steel killing her instantly. The fragment weighed 999 grams. It travelled a distance of 430 metres at a sub sonic speed in about 3.1 seconds after the blast first occurred. The fragment of steel was expelled from one or other of the corner columns (C30 or C74) on the outside row on the face of the East Wing of the Main Tower Block. There were a number of persons in her immediate proximity that witnessed this tragedy. A number of other spectators were injured by flying metal and debris. There was also damage to some motor vehicles.

The fragments of debris were propelled distances of up to 1km from the site of the demolition in the direction in which Katie. Bender was located and further round to and beyond the area of the Canberra Yacht Club. Items of debris were located in the area of the southern end of Commonwealth Avenue bridge, the lake foreshore, the National Library of Australia, the Treasury car park, the Hyatt Hotel, Lennox Gardens and the area towards and beyond the Canberra Yacht Club. An item of steel weighing about 16 kilograms was later retrieved from Lake Burley Griffin on the south western foreshore adjacent to the Yacht Club. It is trite to say that many hundreds of Canberra citizens drawn to this spectacle were at grave risk. A diagram and photographs of the significant items subsequently located and apparently ejected from the building is found in exhibit 10A and re-produced in this Report.

The true sequence in reality was that at 1.30pm the Main Tower Block was first detonated. I am satisfied that Katie. Bender died in this first procedure. Thereafter, within a short space of time, the fireworks were discharged and almost immediately Sylvia Curley House was detonated. I shall refer further to these procedures in the segment of the Report relating to the Manner and Cause of Katie Bender's death.

The Coroner attended the scene of the death within an hour of the detonation at the request of the Australian Federal Police. An investigation into the young girl's death was commenced immediately. Katie Bender was born in Canberra on the [redacted] September 1984. She was aged [redacted] years at the time of her death.

In April 1995 the Keating Government agreed in principle with the Australian Capital Territory Government to exchange certain sites of land within the Australian Capital Territory to facilitate the building of the National Museum of Australia. The ACT relinquished the Acton Peninsula site where the Royal Canberra Hospital was situated to the Commonwealth of Australia. The Australian Capital Territory Government received in return the foreshore area near the suburb of Kingston. The Chief Minister Mrs. Kate Carnell MLA announced the land exchange agreement on the 11th April 1995. In July 1995 a feasibility study was undertaken by Richard Glenn and Associates for the demolition and clearance of the buildings on Acton Peninsula. On the 4th August 1995 Cabinet approved a submission that the implosion method of demolition was recommended. It was estimated that the demolition time, if implosion was an option, would be reduced by a month. At this stage the suggested completion date for the demolition was the 3rd May 1996. The estimated cost of the demolition was assessed at $8.125 million dollars.

Although the chronology of significant dates relevant to the demolition of the Royal Canberra Hospital site (reproduced in this Report) would suggest that between August 1995 and December 1996 various studies and reports were being commissioned and prepared in relation to the site, in effect, the period from February 1996 to December 1996 was one of relative inactivity. In October 1996 the Keating Labor Government was defeated at the election by the Honourable Mr. John Howard. On 9th December 1996 the Acton Peninsula project was re-enlivened in an ACT Government Cabinet decision.

On Friday 13th December 1996 the Prime Minister, the Honourable Mr. John Howard announced the design work on Acton Peninsula would begin immediately. An amount of $750,000.00 was to be provided for the design work. On the same day as the announcement by the Prime Minister Project Coordination Australia Pty Ltd., by what is known as a single select method, was engaged as the project manager for the site. The next day, 14th December 1996 a fence was erected around the site. The Canberra Times attributes the Prime Minister as giving a direction "get on with it". The appointment of Project Coordination Australia Pty Ltd. as the project manager for the Acton site, pursuant to the single select method, was not formally approved in writing until six days after the oral appointment was announced. It should be noted that PCAPL had a wealth of experience as a project manager on various sites in the ACT but not specifically in a field of demolition by implosion. Such a method of demolition had never previously been undertaken in the Territory.

The ACT Hospice is located on the northern foreshore of Lake Burley Griffin. The Hospice was within 78 metres of SCH. The Hospice was opened in February 1995 and occupies the land on a licence. It is operated by the Little Company of Mary on behalf of Calvary Hospital, Bruce with a capacity of 17 beds for the terminally ill. There are two other groups sharing the Hospice facilities, the Home Based Palliative Care Nurses and the Hospice Palliative Care Society who are a volunteer organisation raising funds for the Home Based Palliative Care Nurses. It is of

significant relevance that the Hospice continued to operate during the demolition process but in particular remained occupied on Sunday, 13th July 1997 when the implosion was to occur.

The chronology of events set out within this report reflects the course of various actions undertaken by various persons and organisations throughout the course of the demolition project. Those events are discussed in detail in the report.

Mr. W Stoll, Assistant Commissioner of the Australian Federal Police, with a number of other senior officers commissioned a team of investigators led by Detective Sergeant Greg Ranse and Detective Constable Mark Johnsen to immediately conduct an investigation into the circumstances of Miss. Katie Bender's death and the demolition of the hospital building. Some 16 persons constituted the investigation team. The team received overwhelming support from the ACT community in the donation of videos and photographs of the events of that afternoon. The Australian Federal Police also arranged over a period of a number of days counselling for those spectators traumatised and suffering emotional effects as a consequence of the day's events. The investigation, as the subsequent evidence revealed during the Inquest, was broad based and thorough in the areas that were examined by the investigating team of police officers. A team of police divers searched Lake Burley Griffin to locate, plot and retrieve debris from the implosion. Members of the Bomb Response team were called on to provide assistance with interviews and with recovery of explosives.

The Inquest opened at a Directions hearing on the 5th September 1997 in accordance with the *Coroners Act 1956*. The *Coroners Act 1956* was the applicable legislation at the date of death of Miss. Bender on Sunday, 13th July 1997. It was replaced on the 9th October 1997 by the *Coroners Act 1997*.

The transitional provisions in Section 106 of the *Coroners Act 1997* provided that the earlier legislation (*Coroners Act 1956*) continued to apply to an Inquest into a death occurring prior to 9th October 1997 and which had not concluded before that time. It was common ground amongst all parties represented at the Inquest that the *Coroners Act 1956* was the applicable legislation.

A further four Directions hearings were convened before the Inquest formally opened on Tuesday 17th March 1998 for the reception of evidence. Thereafter the Inquest sat for 118 days. The formal evidence concluded on Wednesday 11th November 1998. A further 3 Directions hearings were held.

Counsel Assisting the Inquest Mr. I W R Nash and Mr. S Whybrow submitted the initial set of submissions on the 12th March 1999. The submissions made by the various interested parties were lodged on 23rd April 1999 and replies were received by 21st May 1999 save in one case where the submission was not received until Wednesday, 9th June 1999.

There were no less than 18 separate legal representatives involved in the Inquest at various times representing many diversified interests in the demolition project. Ms. Susan Leis of Koffels, Solicitors of Sydney for Mr. Gordon Ashley, a structural engineer from Leichhardt (Sydney) withdrew after appearing for a number of days in

the proceedings. Mr. J Kershaw and Mr. N Haberechet of the Canberra Community Action on Acton Inc. were granted leave in accordance with section 53 of the *Coroners Act 1956* to appear as they demonstrated sufficient community interest having urged Government, both Commonwealth and Territory, for a number of years earlier not to pursue the Acton demolition project. In fact CCAA had petitioned Mr. T. Kaine MLA and Minister for Urban Services to halt the project as late as Friday, 11th July 1997. The leave granted to CCAA was only for a limited interest.

The Inquest heard evidence from 47 witnesses and received 753 exhibits with an additional 82 documents being marked for identification. The transcript totalled almost 9900 pages.

The Inquest had a significant impact on all those engaged in the inquiry process, particularly Mr. Gary Hotham of Totalcare Industries Limited who on the sixth day of giving evidence was unable to continue for medical reasons. After about a month's recuperation Mr. Hotham was able to resume his evidence to its completion. The Inquest recognises that the death of Katie Bender had a significant impact on Mr. Hotham. It is to his credit that he was able to assist the inquiry by the completion of his evidence. The Inquest also recognises the assistance provided to it by the Totalcare Industries legal team to facilitate his evidence being completed without further detriment being rendered to Mr. Hotham's health. Mr. Tony Fenwick of City and Country Demolition (CCD) appeared during the first week of the Inquest and was represented from time to time by legal counsel but was also unable to attend the Inquest due to illness.

On the 30th July 1998 Mr. F. J. Purnell SC of Counsel for Totalcare Industries Limited instructed by Deacons Graham and James brought an application in the Supreme Court of the Australian Capital Territory seeking inter alia to review the conduct of the Coroner and in particular the failure of the Coroner to direct Counsel Assisting and the Director of Public Prosecutions to identify whether any of its officers servants or agents would or were likely to be charged with a criminal offence or subject to any other proceedings. The application was refused.

Another significant legal issue emerged during the latter stages of the Inquest in relation to the privilege against self-incrimination. It was claimed by witnesses called by Totalcare Industries Limited and Project Coordination Australia Pty Ltd. Mr. Rod McCracken of Controlled Blasting Services declined to give evidence to the Inquest, as did Mr. Tony Fenwick of CCD on the basis of self-incrimination. Counsel for PCAPL submitted no less than 163 applications for privilege on the basis of self – incrimination.

The Inquest hearing took longer than anticipated due to the large amount of material adduced, the number of witnesses, the technical and professional expertise that those witnesses brought to the proceedings. In November 1998 it was urged upon me to reopen the Inquest and call additional evidence in respect of certain demolitions conducted by Mr. J Mark Loizeaux of CCD in the central business district of Perth in 1992. It was alleged that a substantial amount of fly debris was emitted at those demolition projects. The request to reopen the Inquest was declined. The methodology employed by Mr. J Mark Loizeaux was never in any way substantially challenged. It was always recognised that debris can be emitted in any demolition

process whether it was done by the conventional means or by the implosion technique. The emission of fly material, debris and other items was clearly evident on the various video films of other demolitions admitted into evidence. In the end it was necessary to strike a balance between the degree of fine detail sought and a practical conclusion to the Inquest. It was necessary to conclude the Inquest otherwise to permit it to continue would have no longer served any useful purpose.

The Jurisdiction of the Coroner is threefold in its function: -

(a) To make certain findings as to the manner and cause of death (Section 56(1) of the *Coroners Act 1956*),

(b) To make comment on any matter connected with the death including issues of public safety (Section 56(4) of the *Coroners Act 1956*), and

a. To make recommendations to the Attorney General on any matter connected with the Inquest including matters relating to public safety (Section 58(2) of the *Coroners Act*).

I have examined these functions in some detail in the first segment of this Report. It is very necessary to state these principles at the outset and to develop these concepts for fear there is some misunderstanding of the Coronial process which is inquisitorial in its function, non – adversarial and not necessarily strictly reliant on the laws of evidence.

The rules of natural justice apply equally to the Coronial function. Accordingly, in the absence of specific statutory provisions the principles reflected in the High Court of Australia decision of Annetts v McCann (1990) 170 C. L. R. 596 are relevant to a Coronial hearing. The *Coroners Act 1997* has now incorporated those principles in the statute.

The approach that I have adopted in the preparation of this Report is to examine the process from the time there was the announcement of the in principle agreement by both the Commonwealth and Territory Governments of the Acton – Kingston land exchange on 10th April 1995 to the actual demolition on Sunday, 13th July 1997. The report attempts to examine in a logical progressive way the major significant events that occurred on the site in a chronological manner as the project evolved. The Report does not adopt the approach of working backwards in an endeavour to discover or pin point every piece of evidence that might suggest the process was fundamentally flawed. It is to be remembered at all material times the Acton Peninsula project was a commercial industrial site which over a number of months was in various stages of development. There has been no attempt to retrace the demolition project with a view to making some identification of any or every potential mistake in the project. The Coronial function is one of fact finding.

It is to be hoped that the scope of the Inquest and the detail developed will be reflected in the learning that may be derived from the death of Katie Bender. There

has been a substantial amount of work already contributed to learning from this tragedy. The efforts put into place already by ACT WorkCover to adopt better work practices is a classic example of the identification of problems. The protocol being developed will lead to a better application of the *Occupational Health and Safety* legislation.

There are some issues of a minor or of a peripheral nature that were considered by the Inquest. Those issues do not have any significant impact or direct relevance to the cause of death, my findings, comments or recommendations. The fact that the Report only makes a brief mention of that material should not detract from their importance. Those fields of interests generated by the Inquest can be addressed in the appropriate forum of government or private commercial enterprise. Two examples covered in this area are: -

a. The status of the land on Acton Peninsula as to whether it belongs to the Commonwealth or the Territory, and
b. Whether the Building Controller of the Australian Capital Territory has any relevance to a project being undertaken on land where it is controlled, operated or supervised by the Commonwealth of Australia.

Although it was an unusual step to take in the coronial process, I decided at an early stage that in view of the large number of interested parties in the proceedings and the fact that the ACT Government had convened a parallel inquiry pursuant to the *Inquiries Act 1991* that it was necessary to issue search warrants in accordance with Division 2 of the *Coroners Act 1956*. About 18 search warrants were issued on various government departments, corporations, other institutions and individuals. This course facilitated the preservation of various documentation particularly in relation to the tendering and contractual process and enabled the investigation team to focus on certain areas of inquiry. It should be recognised that there was full co – operation in this process by Government and all affected parties but it was a process issued as a matter of precaution.

There was in the early days after the tragedy the creation of the Tanzer and then the Smethurst Inquiry. It is appropriate to acknowledge the co – operation provided to myself and the Chief Magistrate, Mr. R. J. Cahill, OAM, by Major General Smethurst, AO, MBE particularly when it was clear that the *Inquiries Act 1991* had the potential to create problems with the Coronial function especially with the provisions contained in Section 19 of the *Inquiries Act 1991* relating to the admissibility of evidence. These difficulties were overcome in due course in a spirit of mutual agreement between the respective Inquiries. I acknowledge with appreciation the role-played by Major General Smethurst AO, MBE in resolving these problems. There was a real risk that the judicial process of the Coronial Inquiry would be hampered by the administrative arrangements under the *Inquiries Act.*

The Bender Inquest received an extensive volume of evidence in its 118 sitting days. It is only now upon reflection, having reviewed the evidence and the submissions lodged by the interested parties, that its duration could have been shorter. The circumstances of Katie Bender's death warranted a detailed investigation and review of the events leading to and culminating in the blast on Sunday, 13th July 1997.

The demolition by the implosion technique had never been implemented in the Australian Capital Territory and was relatively novel in Australia. The implosion method of demolition by its very nature would excite the interests of the public as a spectacle. The attraction of a large spectator group was an automatic consequence of such a demolition. The simple curiosity of human nature is such as to be sufficient to generate an interest in this method of demolition.

The Royal Canberra Hospital played a significant role in the lives of many Canberrans over a long period of time as the city and the Territory emerged from the status of a country town. There are now many areas that I consider quite properly could have been examined by the Smethurst Inquiry. A logical commencement point for the Coronial process may well have been from the period after the demolition site commenced operation in the period of April/May 1997 rather than as remote in time as the Cabinet decision of August 1995 when the first Glenn feasibility study was being considered. It is out of extreme caution that a wide ranging Inquiry was undertaken to ensure that no issue was missed and therefore it seems to me on review that there is no necessity now to reconvene the Smethurst Inquiry or any other Inquiry.

The Coronial Inquest has sufficiently recorded all the significant steps since the announcement was made by the Chief Minister Mrs. Kate Carnell MLA on the 11th April 1995 of the inprinciple land exchange agreement. There is no doubt that the Inquest traversed and reviewed many matters outside the normal parameters of the Coronial function. The evidence received, whether it constitutes any part of my findings, recommendations or comments, is open to public scrutiny and examination by not only Government, its agencies or instrumentalities but for the broader benefit of the community to analyse, accept or reject in the terms of adopting or implementing any of the suggestions or recommendations.

The Inquest had become extremely broad in its fact-finding role. The duration of the Inquest raised a real potential for an expansive result and therefore a serious risk of falling into jurisdictional error. The comments made by Nathan J in Harmsworth v the State Coroner of Victoria (1989) Victorian Reports 989 at 995 and 996 are particularly apposite. I quote, omitting various statutory references, "the Coroners source of power of investigation arises from the particular death or fire. A Coroner does not have general powers of inquiry or detection. The enquiry must be relevant, in the legal sense to the death or fire. This brings into focus the concept of "remoteness". Of course the prisoners would not have died, if they had not been in prison. The sociological factors which related to the causes of their imprisonment could not be remotely relevant. This can be tested by considering how wide, prolix and indeterminate the Inquest might be if each of the many facets of the individual personalities of all those involved were to be considered. The Coroner would be confronted with a need to inquire into the personal peculiarities of all of the prisoners who barricaded themselves in. Both those who relented and those who did not. Whether for example, one group or person suborned others and if so why and how. The personalities of all the prisoner officers who interacted with all of the prisoners could also be investigated".

"The power to comment arises as a consequence of the obligation to make findings. It is not free ranging. It must be comment "on any matter connected with the death".

"The powers to comment and also to make representations are inextricably connected with, but not independent of the power to inquire into a death or fire for the purposes of making findings. They are not separate or distinct sources of power enabling a Coroner to inquire for the sole or dominant reason of making comment or recommendation. It arises as a consequence of the exercise of a Coroners prime function, that is to make "findings"".

Needless to say having embarked on such a wide ranging Inquiry out of extreme caution to ensure no issue was overlooked there is now no need in my view to again convene the Smethurst Inquiry. It would be simply a duplication of the process with little or no cost efficiency.

I note the positive help of the various parties and the considerable assistance of Counsel and their Solicitors throughout the Inquest process. I am confident that at all times Counsel were endeavouring to assist the Inquest in their presentation of the evidence and their approach to their examination of witnesses. The Court had the benefit for the first time of high quality information technology from the outset of the Inquest, which substantially assisted the parties in the smooth running of the inquiry once the technical difficulties were overcome. The transcripts and exhibits were scanned into the system so that the legal representatives and the witnesses had available to them on the screen the actual document of relevance to their evidence.

The Court has had the benefit of Counsel's substantial written submissions and replies along with much material provided during the Inquest.

OVERVIEW OF TECHNOLOGY USED IN THE BENDER INQUEST

It was clear early on that the weight of Exhibits in the Bender Inquest would be a considerable burden if presented in the traditional hard copy format. Thus in an attempt to deal with this situation a solution was sought which would enable the timely presentation of materials to all parties in the proceedings. A solution from Auscript was selected. The Auscript team performed two major tasks. Scanning the Exhibits and photographs, supplying and setting up some of the hardware.

The court room used for the Inquest was a typical court with insufficient infrastructure to handle to multimedia presentation that would be used. However, as the court room would revert to a normal court after the Inquest there was a trade off as to the nature of the changes, permanent or temporary.

Televisions were attached to the walls for public viewing, five 21 inch computer screens were placed strategically around the court to be utilised by the Coroner, the Counsel Assisting, and the members of the profession.

Over 30,000 pages of Exhibits and 2000 photographs were scanned and loaded onto the computer. The Counsel Assisting the Coroner had control and was able to display, on every device, any of these items at any time. Counsel also had the ability to play videos with the picture being broadcast to every device in the court.

Transcripts were provided daily and loaded onto the PC as well. The software ISYS was used to successfully search and retrieve pertinent information from previous days.

At the completion of sitting the equipment was dismantled and the court was back to normal within a few hours.

This was the first serious attempt within the Magistrates Court to apply modern technology to a lengthy and complex case. The venture was successful. The fact that this first attempt was on such a large and high profile case added certain dimensions of pressure. The parties involved in supporting this endeavour provided an excellent service. Mr. Luke Magee, the Courts Senior Technology Officer deserves special mention in achieving the success. The Court extends its thanks to him for his efforts. A schedule of costings is attached for general information.

ACKNOWLEDGEMENTS

Many individuals and their agencies invested a considerable amount of work and effort to assist in the investigation and Inquest. Their efforts are appreciated. I extend my thanks to Counsel and their Solicitors for their valuable assistance. The Police Investigation team are recognised elsewhere in this Report.

I would like to extend my thanks and appreciation to Counsel Assisting the Coroner, Mr. I. W. R. Nash of Counsel and Mr. S. Whybrow of the Office of the ACT Director of Public Prosecutions for their dedication and commitment to a difficult and complex proceeding. Both Counsel have worked under substantial pressure not only during the actual hearing but also in the preliminary period prior to the Inquest commencing and then later in the presentation of their comprehensive submissions.

It is also appropriate to recognise the patience and dedication of my two Associates during the period of the Inquest. Ms. Tina Stephenson acted as my Associate from January 1998 to April 1999 when she moved on to advance her legal career. Mrs. Linda Bundic has been my Associate since April 1999. She has conscientiously committed herself to the presentation of this Report. I extend my gratitude to them both for their support and assistance discharged in a professional manner. It is sincerely appreciated.

THE BENDER FAMILY

Mr. and Mrs. Bender and the family attended the Inquest almost on a daily basis, particularly Anna who provided substantial assistance to their legal Counsel. The dignified attendance on a daily basis has been noted. Their regular attendance underscores the importance of learning from this tragic incident.

I extend to the Bender family as the Coroner and on behalf of the Canberra community our sincere sympathy on the tragic death of their daughter and sister, Katie.

The contents of this Report may give them some understanding as to why Katie died on Sunday, 13th July 1997. The memories of Katie will always be cherished by her

family. It is to be hoped in the interests of public safety for all Canberrans an incident of this type is never permitted to occur again.

Dated this day of 1999

Shane G. Madden

Coroner

APPEARANCES

LEGAL REPRESENTATIVES

Messrs. Ian W. R. Nash of Counsel and Steven Whybrow, assisting the Coroner (instructed by the Office of the Director of Public Prosecutions (ACT)).

Mr. P. Johnson, SC for the Australian Capital Territory instructed by Mr. John Henry of the ACT Government Solicitors Office.

Mr. F. J Purnell, SC with Mr. R. Refshauge until 23rd July 1998 and thereafter Mr. F. J. Purnell with Mr. N. Wareham for Totalcare Industries Limited instructed by Ms. Suzanne Falvi of Deacons Graham and James.

Mr. J. Ibbotson of Counsel for Project Coordination Australia Pty Ltd instructed by Mr.P. Coleman of Macphillamy Donald and Ms. S. Ibbotson, an employee of PCAPL.

Mr. Neil Adams and Mr. Garry Corr of Counsel until 5th November 1998 and thereafter Mr. J. V. Sabharwal of Counsel for Mr. Rod McCracken of Controlled Blasting Services instructed by Mr. L. Goldberg of Searle and Associates and from time to time by various students of the Australian National University, Faculty of Law, Legal Workshop course.

Mr. B. Collaery for the Bender Family instructed by Ms. Cheryl Cooke of the Legal Aid Office (ACT).

Mr. Alyn Doig of Counsel for Mr. A. Fenwick of City and Country Demolition (Australia) Pty Ltd instructed by Mr. Ian Bradfield of Porter Parkinson and Bradfield.

Mr. G. P. Walker for the ACT WorkCover Inspectors (Messrs Purse, Hopner and Mrs. M. Kennedy) instructed by Hunt and Hunt.

Ms. P. Bergin of Counsel and later Mr. D. Cowan of Counsel for Mrs. Kate Carnell, MLA, Chief Minister for the Australian Capital Territory instructed by Mr. Ken Grime of Elrington Boardman Allport.

Mr. S. Rushton of Counsel for Mr. J. W. Walker, AM, instructed by Ms. B. Markovic and Ms. C. Bush of Clayton Utz.

Mr. R. Livingston of Counsel for Mr. Gary Dawson and Mr. Ian Wearing instructed by Mr. J. Buxton of Barker Gosling.

Mr. P. Walker of Counsel for Ms. Moiya Ford instructed by Mr. J Stanwix and Ms. M. Moss of Mallesons Stephen Jaques.

Mr. Ian J. Nicol of Blake Dawson Waldron for Ms. Jocelyn Plovits.

Mr. F. M. G. Parker of Counsel for the CFMEU instructed by Mr. Gerard Rees of Gary Robb and Associates.

Ms. Susan Reis of Koffels for Mr. Gordon Ashley.

Mr. G. Brackenrigg of Meyer Clapham for Mr. Adam Hugill of Northrops Engineering Pty Ltd.

Mr. P. Vermeesch of the Australian Government Solicitors Office for the National Capital Authority.

Interested Party

Mr. J. Kershaw and Mr. N. I. Haberecht of Canberra Community Action on Acton Inc.

Australian Federal Police – Investigation Team

The persons listed hereunder constituted the Australian Federal Police investigation team into the circumstances of the tragedy of the Royal Canberra Hospital on Sunday the 13th July 1997.

The first six named officers were the primary members of the team whilst the other members assisted during various phases of the investigation.

Detective Constable Mark Johnsen (Team Leader)

Detective Sergeant Greg Ranse

Detective Constable Harry Hains

Detective Constable Peter Crozier

Constable Ian Faulds

Constable Chris Morgan

Detective Constable Ray Johnson

Detective Constable Liz Quade

Constable Cameron Mitter

Constable John Weldon

Constable Trevor Emerton

Constable David O'Meara

Sergeant Karen Hargraves

Federal Agent Ralph Strong (now retired)

Federal Agent Petra Clissold

Federal Agent Chirs Lennard

Federal Agent David Royds

Mr. Doug Aplin

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GLOSSARY OF ABBREVIATIONS AND ACRONYMS

ABC Australian Broadcasting Commission

ACTH The Hospice – (managed by Calvary Hospital, Bruce)

ACT.TLC ACT Trades and Labor Council

ACTWC ACT Work Cover

CAMMS Construction and Maintenance Management Service –

(Department of Urban Services)

CBS Controlled Blasting Services – (Mr. R. D. McCracken)

CCAA Canberra Community Action on Acton Inc

CCD City and Country Demolition (Australia) Pty Ltd – (Mr. A. B. Fenwick)

CFMEU Construction Forestry Mining Energy Union

CMD Chief Ministers Department

CMO Chief Ministers Office

DGU Dangerous Goods Unit

DUS Department of Urban Services

DSTO Defence Science and Technology Organisation, Department of Defence, Salisbury – South Australia

HSUA Health Services Union of Australia

MIX 106.3 Radio Station

NCA National Capital Authority

PCAPL Project Coordination (Australia) Pty Limited

RCH Royal Canberra Hospital

RGA Richard Glenn and Associates

SCH Sylvia Curley House

TCL Totalcare Industries Limited

TWU Transport Workers Union

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THE FUNCTION OF THE CORONER AND THE CORONIAL JURISDICTION

1. It is very necessary at the outset to state in unequivocal terms the function of the Coroner and the Jurisdiction of the Coroners Court.

2. The Jurisdiction of the Coroner is threefold in its functions;-

    a. To make certain findings as to the manner and cause of death (Section 56 (1) of the *Coroners Act 1956*),
    b. To make comment on any matter connected with the death including issues of public safety (Section 56 (4) of the *Coroners Act 1956*) and
    c. To make recommendations to the Attorney - General on any matter connected with the Inquest including matters relating to public safety (Section 58 (2) of the *Coroners Act 1956*).

    The Coroners role is primarily inquisitorial. It is a fact-finding function. It is not a method of apportioning guilt. It is a process of investigation. The question of criminal and/or civil liability is not a responsibility of the Coroner. These issues are to be determined in other jurisdictions. It is of critical importance that these principles are understood.

2. The Bender Inquest received an extensive volume of evidence which, upon reflection, was extremely valuable but extended well beyond the ordinary parameters of a Coronial Inquest. It also needs to be stated that certain submissions received at the conclusion of the Inquest: -

    a. Were not wholly founded on the evidence adduced at the Inquest,
    b. Were extremely subjective in their nature being unwarranted personal attacks on certain individuals, parties or corporations which had the potential, by reason of their adverse negative nature, to create great harm to the reputations of those persons or bodies for an enduring time with little or no avenue of correction or redress being available to the aggrieved person, party or organisation.

    In one instance a submission was couched in such terms that an inference could be drawn that the Coroner was expected to make certain specific findings under threat of other legal action. It is for the reasons set out above in (a) and (b) that I declined to release the submissions in July 1999. The submissions made by Counsel on this public release issue were extremely helpful to my ultimate decision in not releasing the material.

2. The Coroner has Jurisdiction to hold an Inquest into the manner and cause of the death of a person who is killed (Section 12(1)(a)).

3. The word "manner" is defined as being "the way in which something is done or takes place (Shorter Oxford dictionary 3rd edition). The word "cause" is defined as "that which produces an effect". The effect under consideration is death, so the Inquest must find if it can on the evidence, what has produced the death, and how the death took place (see Waller Coronial Law and Practice in NSW 3rd edition page 67). It was said by McClemens J. in ex-parte the Minister of Justice: re Malcolm; re Inglis and the *Coroners Act 1960 – 1963 (1965) N. S. W. R. 1598 at 1604* that where the *Coroners Act (NSW)* speaks of the cause of death, it means the real cause of death.
4. Freckelton in his article "Causation in Coronial Law" (1997) Journal of Law and Medicine at page 289 states "the primary role of the modern Coroner remains distinctively inquisitorial. It is to investigate death and variously to determine:-

    (a) Who died,

    (b) When they died,

    (c) How and in what manner they died, and

(d) What constituted their cause of death.

Freckelton continues by stating "it appears that the obligation to find "how" a person died and what the manner and or cause of death were, have been regarded by Legislative drafters as alternative formulations…it has been held that "how" a deceased died means not in what circumstances but by what means. The distinction between the Coroners function in determining "how" the deceased died and what was the cause of death becomes very blurred".

7. The critical functions of the Coroner are set out in the following Sections of the *Coroners Act 1956 (ACT):*

CORONERS FINDINGS

S58 (1) A Coroner holding an Inquest shall find, if possible: -

a. The identity of the deceased,
b. How, when and where the death occurred,
c. The cause of death,
d. The identity of any person who contributed to the death, and
e. In the case of the suspected death of a person – that the person has died.

1. (This provision has no application to this Inquest as it relates to an Inquiry into the causes and origins of a fire).

1. At the conclusion of the Inquest or an Inquiry the Coroner shall record his or her findings in writing.

2. A Coroner may comment on any matter connected with the death or fire, including public health or safety or the administration of justice.

Section 56(1) of the Act effectively describes those matters where formal findings need to be made by the Coroner. Those matters upon which the Coroner has a discretion to comment are found in Section 56 (4) of the Act.

7 (a) REPORT AFTER INQUEST OR INQUIRY

S58 (1). A Coroner may report to the Attorney General on an Inquest or Inquiry which the Coroner has held.

2. A Coroner may make recommendations to the Attorney General on any matter connected with an Inquest or Inquiry, including matters relating to public health or safety or the administration of justice.

7 (b) PROCEDURE where Evidence of Indictable Offence

Section 59

1. If a Coroner is of opinion, having regard to all the evidence given at an Inquest or Inquiry, that the evidence is capable of satisfying a Jury beyond reasonable doubt that a person has committed an indictable offence, the Coroner shall: -

a. If the person is present in court before him or her proceed in the same manner as the Magistrates Court proceeds under the *Bail Act 1992* or Part VI of the *Magistrates Court Act 1930* when it is satisfied that the evidence before it is capable of satisfying a jury beyond reasonable doubt that an accused person has committed an indictable offence; or
b. If that person is not present in Court before him or her, issue a warrant for the arrest of the person.

2. A warrant so issued shall be directed to all members of the Police Force and a member of the Police Force may execute the warrant as if it had been directed specifically to him or her by name.
3. The member of the Police Force who executes a warrant so issued shall, so soon as practicable after the arrest of the person named in the warrant, take the person before a Coroner.

4. When the person who has been arrested is brought before a Coroner, the Coroner shall proceed in the same manner as the Magistrates Court proceeds under the *Bail Act 1992* or Part VI of the *Magistrates Court Act 1930* when it is satisfied that the evidence before it is capable of satisfying a jury beyond reasonable doubt that an accused person has committed an indictable offence.

5. The provisions of the *Bail Act 1992* and Part VI of the *Magistrates Court Act 1930* apply, mutatis mutandis, to and in relation to a person who a Coroner has found that the evidence before the Coroner is capable of satisfying a jury beyond reasonable doubt that the person has committed an indictable offence.

6. In this section, "jury" means a reasonable jury properly instructed.

The Legal Issues

8. It is useful to consider a number of decisions concerning the proper construction of the *Coroners Act*. Those decisions are of significant relevance having regard to the width of the Bender Inquest. The decisions to be briefly considered relate to the five principal areas that a Coroner must address in the fact finding function, e.g.: -

a. The findings,
b. Comment,
c. Recommendations,
d. Contribution, and
e. Standard of proof.

Some of the categories, by necessity, overlap and therefore, should be considered taking that factor into account. The element of "recommendation" need not be addressed as it has a distinct and separate role to play in the scheme of the legislation and the Coroners function.

9. The tenor of certain submissions purport to attribute, primarily to Mrs. K. Carnell, MLA (the Chief Minister), Mr. J. W. Walker, A. M., (Chief Executive of the CMD); Mr. Gary Dawson (media officer of the CMO) and others either direct or indirect responsibility for Katie Benders death. It is in this context that the cases concerning "contributing to" or "connected with the death" are important as what appears later in the Report is of direct relevance to those principles.

10. The decisions of the Supreme Court of Victoria provide some valuable guidance on the construction of the Coroners legislation primarily as the provisions in Section 56 of the *ACT Act* are essentially in the same terms as Section 19 of the *Victorian Coroners Act 1985*. The provision in the latter legislation that considers the contribution issue is S19(1)(e). The comment power in the Victorian legislation is Section 19(2) and is identical to S56(4) of the *ACT Act*.

Findings and comments

11. The first decision of value is found in Harmsworth v The State Coroner (1989) V. R. 989 at page 996 where at line 10 Nathan J. said: -

"Enquiries must be directed to specific ends. That is the making of the findings as required and set out in Section 19(1). The power to comment arises as a consequence of the obligation to make findings Section 19(2). It is not free ranging. It must be comment "on any matter connected with but not independent of the power to enquire into a death or fire for the purposes of making findings. They are not separate or distinct sources of power enabling a Coroner to enquire for the sole or dominant reason of making comment or recommendation. It arises as a consequence of the exercise of a Coroner's prime function, that is to make "findings".

At line 40 His Honour said: -

"...but the power to comment is incidental and subordinate to the mandatory power to make findings relating to how the death occurred their causes and the identity of any contributory persons".

The decision of Hedigan J. in the Chief Commissioner of Police v Hallenstein (1996) 2 V. R. I. at page 3 line 19 is significant: -

"A number of matters are immediately apparent from the words of the section. A distinction is drawn between necessary findings and optional comment. Section 19(1) is the charter for necessary findings. The findings defined apart from (d) which is administratively driven, are concerned with the findings historically essential to the discharge of the Coroner's task, namely, identity of the deceased, contributors to death, and the manner and cause of death. The scheme of the balance of the section is to confer on the Coroner the freedom to comment about matters connected with the death, including public health, safety or administration of justice".

His Honour went on to say at page 7: -

"I intend no disrespect to the learned magistrate when I venture that the right to comment may easily be attended by philosophical self-indulgence…The power of the Coroner to make comments is wide but not without boundaries as the matters on which the comment may be made must be "connected" with the death"…But once the Inquest is held, the limits to the power to comment do not admit of easy definition. In this case it might appear to some minds that the Inquest was not so much an investigation into the death of YAP but an investigation of the policy and operations of the Victorian Police Force".

12. Mr. S. Rushton, Counsel for Mr. J. W. Walker, AM, makes the following submission which I consider is entirely appropriate in the context of this Inquest: -

> "Comments of a Coroner are frequently publicised extensively in the media and can inure to the considerable embarrassment and disadvantages of those who are the subject of them. The courts have stressed that the Coroner must recognise the damage to reputations and the aggravation on personal suffering which such comments may bring".

Counsel in support of his submission, cites Matthews v Hunter (1993)

2 N. Z. L. R. 683 at 687 – 688 as authority for this proposition.

13. This approach does require some qualification. Where a life has been lost in controversial circumstances the power to comment should not be limited or restricted. The parties must expect robust criticism and comment with a view to preventing or avoiding any such further occurrence. In any event there must be a causative flavour to the comments. The Coroner should be free to speak out provided those remarks are made within the law. One of the Coroners time honoured functions has been to speak for the dead, protect the living.
14. Finally, I adopt Mr. S. Rushton's submission that the ordinary meaning of the words "connected with" suggests there is some link or association between the matter which is the subject of the comment and "the death". Counsel refers to the Commissioner for Superannuation v Miller (1985) 63 A. L. R. 237 at 238 and 244 in support of this approach. It seems to me that if an individuals actions or omissions were sufficiently "connected with the death". (i.e.: not being too remote) it is open for a comment to be made including adverse comment on those acts or omissions. The power to make comment is wide, but not without boundaries, as the matters upon which comment may be made must be connected with the death. There is a significant risk of jurisdictional error on the part of the Coroner if there is a departure from these principles and then to engage upon a wide ranging report which is beyond power which I apprehend a number of persons or groups in the broader community are anticipating in my findings.

The concluding word on the issue of findings and comments comes from Hedigan J. at page 16 line 10: -

> "…the principle characteristic of the Inquest is that it is a fact – finding inquiry conducted by a Coroner to establish reliable answers to the five (5) questions raised by Section 19(1)(a) to (e)."

The ACT equivalent appears in Section 56 of the *Coroners Act*. Accordingly, it is with these precepts in mind one must approach the ambit of findings and comments with great care having regard to my earlier remarks about the width of the Bender Inquest. The need to avoid "philosophical self-indulgence" is of paramount importance.

15. The Report will specifically contain comment on the following areas:-

a. The role and action of ACT WorkCover and its officers is sufficiently connected with Miss Benders death to deserve comment,
b. The role and function of TCL and PCAPL on the demolition site over a period of 3 months is so closely related to Miss Benders death as to warrant comment,
c. The appointments of Mr. R. McCracken (CBS) and Mr. A. Fenwick (CCD) in the terms of their qualifications and capacity to engage in the demolition method of implosion are inextricably matters closely related to Miss Benders death and deserving of comment,
d. The on-site role of Mr. C. Dwyer of PCAPL, being the project manager and superintendent of the project, on site supervising CCD and CBS on a daily basis are issues relevant to the young girl losing her life,
e. The gradual development, from early January 1997,of the idea that the demolition could be promoted as a public spectacle whereby it could be expected that a large crowd of spectators would attend is significantly a public safety issue warranting comment.

<u>The Application of Natural Justice to the Coronial Process</u>

16. When a statute confers powers upon a public official to destroy, defeat or prejudice a persons rights, interests or legitimate expectations, the rules of natural justice regulate the exercise of that power unless they are excluded by plain words of necessary intendment (<u>Annetts v McCann</u> (1990) 170 C. L. R. 596 at 598). There is nothing in the *Coroners Act 1956* which suggests that the rules of natural justice have been excluded.

17. In <u>Annetts v McCann</u> (1990) 170 C. L. R. 596, the High Court considered whether the rules of natural justice had been excluded by the *Coroners Act 1920* of Western Australia. Pursuant to Section 43(1) of the Act, the Coroner had the power to express opinions outside the necessary findings in a "**rider**" to his principal findings in a manner similar to that which the Coroner in these proceedings can make comment. Although there was some disagreement as to whether it was appropriate for the High Court to make any order in relation to the Inquest there under consideration, each member of the Court agreed that the rules of natural justice applied. No distinction was drawn between matters which might be the subject of the necessary findings

or those which might find their way into a "**rider**". Justice Brennan said (608.7): -

> "*The nature of the power to make findings that are unfavourable (whether such findings are incorporated into the written inquisition or into a rider) is such as to import the requirement to accord natural justice as a condition governing the exercise of that power. Prima facie, before a finding is made, it is incumbent on a Coroner to accord natural justice to any person upon whose conduct the Coroner's finding may reflect unfavourably.*
>
> *Personal reputation has now been established as an interest which should not be damaged by an official finding after a statutory inquiry unless the person whose reputation is likely to be affected has had a full and fair opportunity to show why the finding should not be made. In Mahon v Air New Zealand (1984) A. C. 808 at p 820, Lord Diplock said in delivering the judgement of the Privy Council that the repository of a power to inquire and make findings and who contemplates making an unfavourable finding "must listen fairly to any relevant evidence conflicting with the finding and any rational argument against the finding that a person represented at the inquiry, whose interests (including in that term career or reputation) may be adversely affected by it, may wish to place before him or would have so wished if he had been aware of the risk of the finding being made".*

Contribution/Causation

18. A finding under Section 56(1)(d) of the *ACT Act* that any person contributed to the death requires that such contribution be at least a cause of that death.

In Keown v Khan (Victorian Court of Appeal, 1st May 1998 unreported) Callaway, J A said inter alia at page 9: -

> "The test of contribution is solely whether a person's conduct caused the death. It may have been the only cause or one of several causes in determining whether an act or omission is a cause or merely one of the background circumstances, that is to say, a non-causal condition, it will sometimes be necessary to consider whether the act departed from a norm or standard or the omission was in breach of a recognised duty…"

19. Hedigan J. in the Commissioner of Police v Hallenstein (1996) 2V. R. I. said at page 18: -

> "It is unwise and unnecessary to define in the abstract what contribution means in Section 19(1). It is preferable to leave evaluation of contribution to be made on a common sense, case by case basis, guided by the general principles…"

20. In conclusion it is helpful to refer to E and M H March v Stramare Pty

Ltd (1991) 171 C. L. R. 506 where at page 522 Deane. J. said: -

> "For the purposes of the law of negligence, the question of causation arises in the context of the attribution of fault or responsibility whether an identified negligent act or omission of the defendant was so connected with the plaintiff's loss or injury that as a matter of ordinary common sense and experience, it should be regarded as a cause of it…"

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The Standard of Proof

21. The standard of proof to be applied by the Coroner in investigating a death is the civil standard of the balance of probabilities. The degree of satisfaction can vary according to the gravity of the issue to be determined. A finding could have an extremely deleterious effect upon the character of a person, their reputation and employment prospects and accordingly, the weight of evidence demanded must be commensurate with gravity of the allegation (Anderson v Blashki (1993) 2 V. R. 89).

22. In Briginshaw v Briginshaw (1938) 60 C. L. R. 336 at 362 – 363, Dixon J. said of the civil standard: -

> "*Reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer*

to the question whether the issue has been proved to the reasonable satisfaction of the Tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences…When in a civil proceeding, a question arises whether a crime has been committed, the standard of persuasion is, according to the better opinion, the same as upon other civil issues…But, consistently with this opinion, weight is given to the presumption of innocence and exactness of proof is expected".

See also the Chief Commissioner of Police v Hallenstein (1996) 2 V. R. I. at 19 Hedigan J. said: -

"*The identification of the appropriate standards of proof and satisfaction is important, a matter that at all times must be borne in mind by any Coroner who has to consider findings of contribution which must not lightly be made and only be made when there has been established the necessary degree of satisfaction of mind*".

Hedigan J. continued at 19 – 20: -

"*In most cases, the determination that there has been contribution to the cause of death is likely to involve legal liability or culpability; but is not the intention of the Act that it must necessarily be so or pronounced to be such. It is enough to say that, since it is not simply an exercise in the logical progression of events, come element of departure from the reasonable standards of behaviour will ordinarily be thought to be required, and must be properly established".*

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A Summary of the Coronial Law

23. (a) The Jurisdiction of the Coroner is to enquire into the manner and cause of death of a person (Section 12(1)),

(b) The Coroner's duty is to make findings if possible under Section 56(1),

a. The Coroner may receive a substantial body of evidence at the Inquest. The Coroner may only make findings, comments or recommendations in accordance with the evidence and in so far as Sections 56 and 58 of the Act permit,
b. The power to make a finding concerning the identity of any person who contributed to the death under Section 56(1)(d) of the *ACT Act* should

be interpreted in accordance with the Victorian authorities having regard to the similarity of the legislation,

c. The power to comment in accordance with Section 56(4) of the *ACT Act* only applies to a "matter connected with the death". Such power is incidental and subordinate to the mandatory power to make findings relating to:-

    i. How the death occurred,
    ii. The cause of death, and
    iii. The identity of any contributory persons (Section 56(1))

It is not a separate and distinct source of power.

a. The term "connected with the death" in Section 56(4) of the *ACT Act* is narrower than the term "connected with an Inquest" in Section 58(2). It is not sufficient that the matter may merely be connected with the Inquest in the sense that evidence was given with respect to it at the Inquest. Section 56(4) requires an actual and direct connection with the death before comment may be made. It is sufficiently connected with the death if it is not too remote and there is a link or association with the subject matter of the comment and the death.
b. The power to report to the Attorney General on an Inquest pursuant to Section 58(1) of the *ACT Act* only permits a report with respect to permissible findings, comments and recommendations under the Act; and
c. The test for causation and contribution are so closely related and indistinguishable such that a common sense approach is warranted to the question whether a person's act or omissions are a cause of the death.

MANNER AND CAUSE OF DEATH

1. Katie Bender died at about 1.30pm on Sunday, 13th July 1997 when she was struck in the head by a fragment of steel expelled from one or other of the corner columns (C30 or C74) on the face of the East Wing of the Main Tower Block of Royal Canberra Hospital situated on Acton Peninsula.
2. Katie Bender was with her parents in a crowd estimated to be in excess of 100,000 spectators gathered on the foreshore of Lake Burley Griffin to watch the demolition by implosion of the Main Tower Block and Sylvia Curley House. Katie Bender was standing on the grass nature strip just down from Lennox Gardens near the roundabout leading from Flynn Drive to the northbound lanes of Commonwealth Avenue Bridge. The crowd in this area alone was estimated by Constable S. G. Howes of the Australian Federal Police Traffic Operations as between 30 – 40,000 people.
3. Katie Bender's death was instantaneous. Katie Bender's scalp and skullcap were severed from her head by the impact of the steel fragment which was in effect a high velocity missile. It was a massive penetrating wound to the head. Katie Bender weighed 47.5kg and was 160cm in height. It is not necessary to examine in any detail the

   autopsy performed by Doctor S. Jain which is set out in his report dated the 27th August 1997. Dr. Jain stated in his autopsy report that "death was caused by a head injury caused by missile injury".

4. The fragment which struck Katie Bender came from either the lower ground or ground floor portions of the column but more probably from the lower ground floor which was more highly charged with explosives than the ground floor.
5. The fragment travelled approximately 430 metres at subsonic speed and struck Katie Bender about 3.1 seconds after it was launched killing her instantly. The fragment broke into a shape that could be expected when an explosive charge is placed against steel backing plates and columns in the fashion used by the explosive subcontractor, Mr. Rod McCracken of Controlled Blasting Services. The impact velocity, calculated by Dr.. A. Krstic of the Defence Science and Technology Organisation, Department of Defence, Salisbury, South Australia was 128 – 130 metres per second. The associated kinetic energy was 8.172 kilojoules.
6. The lethal fragment was a section of deformed steel plate approximately triangular in shape, measuring 165mm x 130mm x 140mm with a weight of 999grams. It was classified as mild carbon steel. One edge exhibited shear characteristics and had a thickness of approximately 14.9mm. The remainder of the fragment had a relatively uniform thickness of 10.6mm. Two edges of the steel fragment exhibited fracture characteristics in the form of a chevron pattern. There was hair, blood and bone on the fragment with the bone matter adhering to edge B. This is clearly reflected in the photograph number 1 in Exhibit 10 being a book of photographs of various items of metal debris recovered from the blast.
7. Dr.. A. E. Wildegger Gaissmaier also of DSTO engaged in a computer modelling process of a similar but not identical explosive. The lethal fragment was part of the webbed portion of a steel column. The fragmentation pattern on the steel and the surrounding piece showed the same qualitative

characteristics that generally occur when steel is directly exposed to a sudden explosive impact. It seems the fragment fractured from another piece of steel and was originally part of the backing plate. This backing plate actually embedded itself in the ground within metres of the Simpson family of Chisholm ACT who were located about 15 metres from the edge of the Lake and about 400 metres from the hospital building. The plate was warm to touch. It is not necessary to review this evidence in detail but it is sufficient to state that the thickness of the fragment that killed Katie Bender matched the webb thickness of the corner columns, C30 and C74 on the front of the East Wing of the Main Tower Block. This conclusion that the steel fragment struck Katie Bender is also supported by the column orientation, the position of the two columns, the time lapse from the reddish orange fireball being visible and when Katie is struck down (see further the evidence of Mr. S. Alkemade on 23rd March 1998).

8. A great many columns in the Main Tower Block were not fully sandbagged including the two columns (C30 and C74) from whence in all probability the fatal fragment was expelled. The evidence in support of this conclusion is to be found in the photographs actually taken by the Work Cover inspectors about 2 hours before the implosion on Sunday, 13th July 1997. The photographs are persuasive evidence that there was simply no protection on the lakeside of the blast particularly in respect of C74 and where Katie Bender and hundreds of other spectators had gathered to view the event. An analysis of the protective measures or lack thereof is set out elsewhere in my Report.
9. Dr. Christopher James Lennard, a forensic scientist, examined no less than 12 metal objects and fragments emitted from the hospital blast. These items were located in various parts of the area bounded by Commonwealth Avenue, Flynn Drive, the Treasury Car Park and the area near the Canberra Yacht Club. His report dated 6th February 1998 was received into evidence.
10. The force with which the fragment of steel was expelled from the Hospital site, travelled the 430 metres striking Katie Bender, then, entangled in her scalp and hair, landed with an audible thud approximately 6 metres to the rear of Katie's standing position immediately adjacent to the rear wheel of a spectator's pushbike. The resultant impact is consistent with a massive force commensurate with a cricket bat being swung at 432 kilometres per hour. This force was also supported by Constable Howes observation of the "divot" that the fragment made on impact with the earth. There are two enlarged high-resolution photographs of the deceased at the time of the blast. The first photograph depicts the deceased standing looking towards the Hospital site 3.4 seconds after the first appearance of the orange fireball at the base of the Main Tower Block. The second photograph is of the deceased on the ground at about 3.6 seconds after the detonation having been struck down by the fragment.
11. The most likely trajectory for the fragment of steel as determined by Dr.. A. Krstic was trajectory L. This trajectory had the fragment of steel coming from the lower ground floor column either C30 or C74. Those columns were loaded with a greater amount of explosives than the ground floor columns. The trajectory had the fragment of steel just clearing the curved brick wall some 92 metres away. The curved brick wall was on the extremity of the hospital building almost at the end of the Peninsula. The wall was 8.3 metres in height. The damage evident to the top of the curved brick wall supports not only the

adoption of trajectory L as the most likely course taken by the fragment of steel but also that it originated from column C30. Dr. Krstic stated that it was likely the fatal fragment would have been prevented from leaving the Acton Peninsula if the bund wall had extended to a height of 2 – 3 metres all the way across the face of the building. Dr. Krstic, in his evidence on 24th March 1998 dealing with the base of the chimney stack, stated "that no amount of bund wall perhaps 5 metres or 4 metres would have caught those bits of debris, being so high".

12. The Australian Federal Police investigation team collected a considerable volume of evidence in the form of statements from many spectators, the donation of videos and photographic material. It was only necessary to adduce evidence from 5 civilian witnesses who were in close proximity to the deceased. The evidence was received from Messrs. B. Redden, P. Jermyn, M. Battye, G. Vasek and P. Muscat. Statements by many other bystanders were simply tendered in evidence.
13. The video material clearly shows that upon the reddish yellow fireball from the base of the building being discharged objects are observed being emitted not only from the centre of the fireball but other parts of the building. The objects are visible being projected across the lake in the direction of the spectators. The videos also clearly show the lake being peppered by the flying debris with a number of spectator craft resorting to evasive action.
14. The response by Mr. Malcolm Hayes of the ACT Fire Brigade, the Ambulance Service and the Police, especially Constable S. Howes at the scene was quick, efficient and sensitive. It should be remembered that a large crowd had gathered. Constable Howes had CPR continued until the crowd was cleared from the area although Katie Bender had obviously died at this stage. The actions of Constable Howes are deserving of special mention. The officer acted in a highly professional manner in extremely emotional circumstances. The crowd were confused, screaming and some were in a state of panic. Along with the fire officers Constable Howes solely worked in those initial minutes after Katie Benders death to secure the scene in the terms of the preservation of evidence, allaying the concerns of the public and assisting other people who were visibly distressed by the events. His statement to the Coroners Court is set out in this Report. Constable Howes acted in a controlled and responsible manner. The Court commends him for his significant community spirit in adverse circumstances.
15. There are an additional number of factors contributing to the cause of death, which are further analysed in this Report but it is useful to identify those factors in summary of my Report. Those factors are: -

    a. Detonating explosive charges imploding the Main Tower Block of the Canberra Hospital cutting a fragment of steel of a high velocity,
    b. Employing an incorrect methodology, viz: -

        i. The use of an excessive amount of explosives,
        ii. The use of the wrong type of explosives,
        iii. The use of a steel backing plate rather than a soft backing cover such as rubber,

iv. Incorrect cuts being made to the columns,
v. Failure to use cutting charges together with kick charges to correctly pre - weaken the steel columns,
vi. A failure to retain, on a continuing basis, for advice a structural engineer experienced in the implosion process of demolition,
vii. A failure to retain for consultation or advice again on a continuing basis an independent explosives expert having knowledge of the implosion method of demolition,
viii. Placing the explosives on the incorrect side of the steel columns so that the blast was directed at the spectators on the other side of the lake,
ix. Inadequate protective measures, and
x. Inadequate testing.

1. The contribution made by the Canberra community to the police investigation needs to be recognised. One only needs to view and listen to the video evidence to gain the sense of outrage and anger expressed by the spectators on that Sunday afternoon. Many hundreds of those spectators whose lives were at risk came forward and generously donated as evidence photographic and video material collected by them to assist the police work in this case.
2. The treatment of the scene, the collection of all the fragments of steel and particles of the deceased's body, the gathering and compilation of all the public, AFP photographs and video material was done with great promptness and efficiency. The subsequent police investigation has been extremely detailed and thorough and broad based in the seizure and collation of the many documents so as to gain a sufficient understanding of them so that interviews could be carried out and conducted in a manner which focussed on the issues. The efforts of the Australian Federal Police to locate and engage the services of a variety of expert witnesses across a range of disciplines proved invaluable, to the extent that none of those experts were in any real sense challenged as to their expertise or their conclusions. In particular the efforts of Detective Constable Mark Johnsen who oversaw the majority of the investigations including travelling overseas and conducting many of the more crucial interviews deserves recognition for his commitment to his duties and the Inquest generally.

LANDSWAP TO TENDER

INTRODUCTION

1. The Inquest received a substantial volume of evidence in this segment. This phase of the Inquest commenced on 25th March 1998 and continued to its conclusion on 11th June 1998. The segment contains very valuable factual matter of a significant nature yet this material does not directly impact in its relevance on the Coroner's function of making findings as to the cause of death and matters connected with the death.
2. There are many issues of historical importance but in my assessment are too remote to be of real assistance. Those matters are preserved now as part of the public record in the transcript of the proceedings. Some of these issues are matters for another place and time. Those issues have not been ignored by me during my review of the evidence but do not require a close scrutiny at this time.
3. The chronological table of significant dates and events in the Acton Peninsula demolition project is well documented in this Report. Accordingly, this chapter examines those issues of greater prominence in the total scheme of events prior to the commencement of the work on the site in April 1997. The convenient commencement point is an examination of the background and history of Totalcare Industries Ltd by reason of its significant role played as the Project Director in this phase of the demolition project.

BACKGROUND AND HISTORY OF TOTALCARE INDUSTRIES LTD

4. Totalcare Industries Limited (TCL) was incorporated in December 1991 and commenced operations on 1st January 1992. The company is wholly owned by the Australian Capital Territory, incorporated as an unlisted public company under the Corporations Law and operates pursuant to the *Territory Owned Corporations Act 1990*.
5. When it commenced corporate operations in 1992, TCL took over functions previously performed by the Health Services Supply Centre which had historically operated as a branch of the ACT Health Administration. The functions transferred comprise: -

    a. A linen hire and processing service,
    b. Sterilisation of surgical instruments,
    c. High temperature incineration of hazardous waste,
    d. Maintenance of buildings,
    e. Maintenance and operation of a bus fleet for the transport of people with disabilities, and
    f. Motor vehicle repairs.

    6. The major objectives of the corporate process was to expand the customer base, rationalise operating methods and cost structures with a view to turning initial trading losses to a profitable level. The consequences were: -

i. With effect from 1st January 1997, corporate operations of TCL also comprised the business units through which the Department of Urban Services (DUS) formally carried out the capital works program of the Territory.
ii. DUS (Contracts) remained at DUS and was not moved to TCL because DUS (Contracts) provided services to the ACT Government generally and was not confined to construction activities.

CAPITAL WORKS AND TCL

7. The Works and Commercial Services Group of DUS acted for the Territory in respect of the Government's capital works program. The Group provided technical advice and ensured the delivery of Projects in the program. It comprised a number of business units specialising in various facets of engineering, maintenance and related activities.

8. DUS was the contract delivery agency for the Territory for capital works Projects. It included a contracts section which provides a contracts service for Territory contracts. The contracts section is responsible for settling, signing and issuing those contracts.

9. In August 1996, the Government announced its intention to transfer a number of business units from the Works and Commercial Services Group of DUS to TCL with effect from 1st January 1997. It was effectively the engineering and technical expertise that was transferred. The technical and project delivery parts of CAMMS within DUS went to TCL. The business units proposed for transfer undertook the following functions: -

a. Capital works delivery incorporating architectural, engineering and landscape services,
b. Civil engineering maintenance,
c. Surveying services,
d. Property management,
e. Building maintenance, and
f. Fleet management.

10. Before the business units were transferred to TCL on 1st January 1997, the contracts section reported to the management of the Works and Commercial Services Group. After the transfer, the contracts section report to the management of DUS.
11. With the transfer of these functions from DUS to TCL, the Territory appointed TCL as its agent in the management of the capital works program. The Territory retained the status "principal" and continued as the principal as party to the contracts with the Project Manager and trade contractors.
12. TCL's appointment to fulfil this role is constituted by the correspondence passing between TCL and ACT Government on 27th December 1996, 31st December 1996 and 8th January 1997.
13. After 1st January 1997, DUS retained and carried out its roles and funding source through the contracts section, to ensure that Territory requirements

were reflected in the tendering and contracting documents for the Acton Peninsula project, and other projects. Tenders were issued and contracts executed on behalf of the Territory through the contracts section. The letters of acceptance to Project Coordination (Australia) Pty Ltd and City and Country Demolition Pty Ltd were issued by the contracts section of DUS not by TCL. I note the Assembly conducts through one of its Standing Committees a review of the tendering contract system of the Government authorities and its agencies. It is suggested that so much of the advertisement, tender selection and expression of interest phase of this project be revisited so as to invoke in the long term procedures that are more open to critical public scrutiny and accountability.

ROLE OF TOTALCARE (TCL)

14. TCL was at all relevant times the Project Director or Project Agent on the Acton Peninsula project. TCL's actions were undertaken by its officers, relevantly, Mr. Mike Sullivan, Mr. Warwick Lavers, Mr. Gary Hotham and Mr. Greg Mitchell.
15. The role of the Project Agent on the Acton Peninsula project involved the following functions: -

    a. TCL acting as agent for the Territory as principal and monitoring the project on behalf of the principal,
    b. TCL acting as interface between the principal and the Project Manager.

10. It was not the role of TCL, as the Project Agent, to undertake the project itself or to undertake the role of Project Manager and or Superintendent. As the Project Agent it approved the strategy for the project, suggested by the Project Manager, on behalf of the principal in accordance with the contractual arrangements and its quality assurance procedures. The Project Manager implemented that strategy in accordance with its contractual arrangements and quality assurance procedures.
11. TCL carried out the functions undertaken by the business units prior to 1st January 1997 but as agent and not principal. Because the business units had been taken over as a "going concern" and the project was already underway, the same staff performed essentially the same functions after 1st January 1997 as before that date. The significant difference was that before 1st January 1997, the business units had been a part of the Territory's Administration. After 1st January 1997, they were part of TCL, a separate legal entity from the Territory and acting as agent for, not as part of, the Territory. When contracts were executed between the Territory and the major contractors for the project, TCL (and its business units) was not party to them.
12. TCL carried on after 1st January 1997 essentially as it had before except that it was now a separate legal entity from the ACT.
13. The contractual framework in force in this project is best reflected in the flowchart set out herein.
14. There is one necessary comment to be made at this juncture having been in a position to consider all the evidence. TCL, to be a viable statutory corporation

of the Territory, needs to adopt a public profile status that generates confidence and competence. It was totally lacking in any sense

of control or prominence in this project. It was left, in a final analysis, to Mr. Lavers and Mr. Hotham. These officers did their best but their level of

impact and success as representatives for the Territory was of no significance.

15. The Glenn Report: - On 10th April 1995 the in principle agreement for the Acton/Kingston landswap was settled between the ACT and Federal Governments. Richard Glenn and Associates (RGA) had been commissioned by May 1995 by the Construction and Maintenance Management Services of DUS to undertake a feasibility study into the demolition and clearance of the Acton site. The feasibility study was undertaken with the assistance of PCAPL and WT Partnership. The role of the latter concerned costings. PCAPL considered alternative demolition methods. The study was expected to be for a duration of about 7 weeks. Mr. Deeble of RGA in fact had a period of some months extending from May 1995 to February 1996 to prepare the 3 Reports which addressed the Acton Peninsula project. Quite clearly he had ample time to make all necessary enquiries and address all relevant factors for the purpose of the Reports. Mr. Deeble is a Civil Engineer with 35 years experience. The implosion method of demolition was first mentioned in his July 1995 Report. No one had suggested the use of implosion to him let alone at this stage insisted upon its use.
16. RGA produced 3 Reports. The primary Report was produced in July 1995. An addendum report was issued in September 1995. A further report was produced in February 1996 which addressed specifically the impact on the Hospice. The first two reports were feasibility studies. The final report was not a feasibility study but an "extension of our brief" said Mr. Deeble of RGA. RGA was primarily a project management company dealing in the planning and management of large, multimillion dollar projects, primarily in the health field (see their 1991 report concerning the Canberra hospital).
17. Mr. Deeble raised implosion as a demolition method in his July report upon the basis of information provided to him by Mr. Andrew Derbyshire of the RGA Melbourne office particularly as a result of the successful implosion of St. Vincents Hospital in Melbourne in 1992 where there was no injury or damage sustained in an exclusion zone of only 50 metres. RGA had no prior implosion experience when conducting the St Vincents hospital demolition. The RGA reports favoured implosion by reason of considerations of time, dust and nuisance.

18. Yet the report expressed caution about certain matters that ought to be thoroughly investigated before implosion was used. The following are some examples: -

a. "The issue to what extent a public information programme is put in place requires assessment of the risks involved particularly as to site security,
b. The management of a demolition site of this scale requires not only very careful attention to issues of safety and pollution control but to the mitigation of the possible impact of the works on the remaining residence,
c. It was recommended that tenders be called optionally for implosion and traditional methods with the final decision being made in November 1995. This will allow the Project Director and/or Project Manager sufficient time to fully canvass the implosion method,
d. Should implosion be adopted then close investigation of demolition techniques will be required at the west end of the Sylvia Curley House to minimise the potential for damage to the nearby childcare centre. It will be necessary for tenderers to provide a demolition plan and detailed programme which would address, but not be limited to those aspects covered in the work and site management areas of this study,
e. A building permit will be required together with statutory approvals including OH&S, Dangerous Goods, Environmental Protection etc,
f. Should implosion be employed this is usually undertaken at the least active time of the week and therefore the easiest to control. Approval to implode will therefore need to address the issue of Sunday working, however, since implosions are only contemplated for Sylvia Curley House and the tower of the Main Building only two Sundays will be affected and for a very limited time on those days, and
g. The demolition method adopted will affect the safety measures to be employed although general requirements regarding *Occupational Health and Safety* will apply whatever method is adopted. The use of implosion techniques will require additional measures during the implosion process as set out below.

10. It is very clear that what was produced by RGA was purely a feasibility study inviting a much more thorough examination and consideration of the issues involved. References made to publicity and safety factors concerned protests that may occur on the site involving people possibly squatting as a means of protest against the demolition of the hospital. It is important to note that the matters raised in the report in this context were not intended to reflect upon "public safety generally if it were to be a spectator event". These publicity and safety concerns related to the security of the site having regard to the high community emotions which may lead to protests. Nonetheless it is clear from the first report that matters of general public safety needed to be explored before the project should continue.

11. The RGA Reports did not refer to the use of an overseas implosion expert nor was the issue of an overseas implosion expert referred to in the discussion between Mr. Deeble and the Steering Committee.
12. Mr. Deeble did agree that all demolition is dangerous but explained that if carried out by competent persons it can be made as safe as possible. There is no doubt the July 1995 report favoured implosion for the tall buildings. Mr. Deeble further agreed that he would not suggest that something should be favoured if it was unsafe yet he did agree he had nothing to indicate that implosion was anymore dangerous than any other method of demolition. Although it is repeated elsewhere in this Report it is worthy to note the comments of Mr. Loizeaux concerning the implosion method of demolition. In his evidence on 4th November Mr. Loizeaux said:-

> A. "Now you've been asked a number of questions about the use of implosion on the one hand, the use of conventional demolition on the other. If implosion is done competently by an experienced person are there any safety advantages in the use of implosion as opposed to the use of traditional demolition?
>
> A. Yes. Generally in the preparation of a structure for implosion you are not structurally dealing with or modifying the building that you are going to implode. Like conventional methods you are literally taking apart what you are standing on. If you're close enough to take apart the building with a hydraulic ram or a wrecking ball and a crane, you're close enough for the building to collapse and hit you. The use of explosives in demolition moves the worker far away from the building during the actual demise of the structure so he cannot be hurt and will not be hurt if the project is handled properly, number one. Number two, the fact that the demolition takes place over a very short predetermined period of time, extraordinary measures can be taken to protect the worker, adjacent properties, adjacent activities that cant be undertaken with the same diligence on a protracted contract for conventional demolition. Thirdly, once again, under the circumstances, I'd have to say that if its carried out properly the public is far safer in that when the actual demolition takes place all parties should be moved to an area which is clear of any risk of harm. Again in our experience we've never injured, in our 51-year history, a member of the public.
>
> A. Would you agree with the statement that implosion competently handled is just as safe as traditional demolition?
>
> A. Yes.

A. Is it possible to go further and say that implosion competently handled is safer than traditional demolition?

A. Industry records in the United States – I cannot speak for Europe – demonstrate on a unit basis per square foot. There is a far lower incidence of injury to workers and almost of nonexistence existing of injury to third parties using implosion. It is in fact safer.

10. It was Mr. Deeble's view that PCAPL brought the "technical input" to the reports. The alternative methods of demolition were well within PCAPL's "realm".
11. The involvement of PCAPL in the preparation of the RGA Reports in 1995 is highly relevant to this whole project having regard to their later selection as the Project Manager and Superintendent for the Acton demolition project.
12. RGA did not carry out any examination of the experiences held by Australian Demolition contractors in performing an implosion nor were any overseas specialist opinions sought that implosion was feasible and favoured for the tall buildings. Yet there is a note from Mr. Deeble to Mr. Rod Templar dated 18th July 1995 which contains the following note: -

"Specialist overseas implosion contractors will have left Australia. Ability to return subject to other commitments".

31. The evidence leaves me with the impression that Mr. Deeble did favour either consultation with or the likely need to have available an overseas implosion expert. In any event the evidence suggests that the issue of an overseas expert was widely known amongst public servants and their departments between October 1995 and December 1995.

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THE CABINET SUBMISSION OF 4TH AUGUST 1995 (EXHIBIT 63A)

32. Mr. Rod Templar worked in the Policy and Coordination area of the Department of Urban Services (DUS) in 1995 and as such was Chairman of the Acton Steering Committee. He played a part in the drafting of the Cabinet submission which led to the decision by Cabinet on 7th August 1995 to give in principle approval to the demolition of some of the buildings on Acton Peninsula by means of implosion. The Cabinet submission stated that copies of the RGA Report of July 1995 were available at the Cabinet office. Mr. Templar had no technical experience in engineering, construction or demolition matters as his expertise was in the area of policy.
33. There is no mention in the Cabinet submission of the likely need for an overseas demolition expert. The submission in draft form had been circulated within DUS and to other agencies for comment including to Mr. M. Sullivan of TCL who was at 24th July 1995 the acting Director of Works and Commercial Services. It was the recollection of Mr. Sullivan that he did not at that stage read the RGA Reports upon which the draft Cabinet submission was grounded. The Cabinet submission also failed to include any reference to the need for ongoing investigations that were suggested by the first feasibility study. The main considerations for Cabinet would

    appear to have been time and cost. Certainly Cabinet did not have the benefit as to whether an overseas expert would be needed and what cost and benefit that would bring to the project.

34. The Cabinet submission was fundamentally defective to the extent that vitally important advice was not included concerning the following areas: -

    a. There is no mention of an overseas expert,
    b. The cautions and safety issues and matters requiring further investigation raised by the RGA Report are not mentioned, and
    c. The comment and advice that implosion was just as safe as conventional methods was not substantiated by reliable evidence.

    Mr. Templar had no evidence to justify making a claim that the implosion method was just as safe as conventional demolition. The Cabinet was being asked to make a decision on incomplete and inadequate information.

32. The consideration of the RGA Report was inadequately handled for the purposes of preparing the Cabinet submission of August 1995. It could have been done substantially better. But as a substantial lapse in time then occurred between August 1995 and when the demolition project was re - enlivened in December 1996 it did not have a major consequence. However once en – livened it seems to me that at least the considerations of the RGA Reports should have been visited again to ensure those areas of concerns were investigated and were relevant to the immediate task. The Cabinet decision of August 1995 was well and truly overtaken by the events of December 1996 and did not require further consideration to any significant degree. The RGA Reports were a critical factor relevant to the project between December 1996 until the implosion in July 1997. The witnesses in this vital pre – implosion segment left me with the impression that the RGA Reports were forgotten.
33. Implosion as a method of demolition was adopted in principle by the Cabinet in August 1995 but in my view it was only ever an option between December 1996 until the tenders had been let when this course of demolition was finally settled upon in April/May 1997. Implosion was not a favoured or preferred option during the period August 1995 to May 1997. It had only been adopted in principle. The implosion methods if properly handled required further evaluation.
34. What does disturb me about the evidence is that there was no further evaluation to any satisfactory degree as was suggested by the RGA Reports at any stage particularly at the time of the advertisement and the letting of the contracts. This was a major shortcoming in the whole process. All the RGA Report favoured was the use of implosion for the tall buildings. This was the recommendation from the feasibility report. It was not a suggestion or desirability that that method should necessarily be implemented. The critical defect in August 1995 was that Cabinet was not given full and accurate information on the implosion method for any number of reasons. The Cabinet was not invited to consider the need for an overseas expert or the fact that demolition of this nature was a novelty in Australia and any question of public safety although not mentioned by the RGA Report ought to have been a primary consideration being put to the Government.

35. The Cabinet submission went to the Government cleared by Mr. Sullivan of DUS and coordinated by Mr. Templar. The first RGA Report was used by the Chief Minister Mrs. Kate Carnell and Mr. Walker as a safety study. I have dealt with this segment of their evidence in the Public Event aspect of the demolition. It seems to me that both Mrs. Carnell and Mr. Walker were acting in good faith in replying to the HSUA based upon what they were being advised from those engaged on the project. It was a misunderstanding by Mrs. Carnell and Mr. Walker as to the contents and purpose of the RGA Report. Regrettably they were using outdated information and materials for a purpose not designed or intended. Nothing further needs to be said concerning the misappropriate status given to the first Glenn Report in view of my later remarks.

THE APPOINTMENT OF PCAPL AS THE PROJECT MANAGER AND THE SINGLE SELECT METHOD

39. Mr. Warwick Lavers of CAMMS was appointed the Project Director on and from the 16th October 1995. Mr. Lavers had been requested sometime during the next month to draw up a shortlist of Project Managers and provide Mr. Sullivan with a draft of such eligible bodies by 8th December 1995. The project had by this stage gone into recess. There was no pressing demand upon Mr. Lavers to settle any form of recommendation with his superiors. Mr. Lavers own notes indicate that he was mindful of the task that he had yet to fulfil when he made an entry on 5th February 1996 to the effect that if Mr. Howard won the election there may be a delay in the landswap but: -

"If Keating wins – still on ∴ I still need to select PM".

40. It seems somewhere about 4th December 1996 Cabinet was required to consider the costs of the proposed demolition project if it should be reactivated. The announcement of the proposed Museum of Australia project proceeding was made on 11th December 1996. Although Mr. Sullivan of DUS was unable to recall it it would seem on the evidence that he did appear to have some involvement in the Cabinet submission of very early December 1996. Mr. P. Murphy of PCAPL recalled that there was contact initiated by either Mr. Sullivan, Mr. Lavers or Mr. Greg Mitchell so as to arrange a meeting on 11th December 1996.

41. Mr. Murphy arranged for Mr. O'Hara to draw a draft programme of the earliest completion date for the project on the 10th December 1996 prior to the meeting of the next day. The programme suggested that a Project Manager would be appointed on 13th December 1996. Thereafter there are other dates relevant to the demolition of the buildings. Despite denials and rejections made by PCAPL the reasonable inference that can only be drawn from this evidence was that PCAPL had been given some form of information about the reactivation of the project by people within the CAMMS organisation, otherwise how else would PCAPL come to be drawing a draft programme of the demolition before a public announcement. There is no doubt that PCAPL

had a good sound background in this type of Project Management but it is curious that no other Project Manager other than PCAPL attended the meeting on 11th December 1996 which apparently took place in Mr. Sullivan's office in Macarthur House. Mr. O'Hara clearly recalls being present at this meeting. The meeting is referred to in the diaries of Mr. Sullivan, Mr. Murphy, Mr. Mitchell, Mr. Lavers and Mr. O'Hara himself.

42. Mr. O'Hara says he attended the meeting at 9.30am on 11th December 1996 in Mr. Sullivan's room in Macarthur House. It was his recollection that there was present at that meeting according to his diary note for that day Mr. John Walker, Mr. John Turner and Mr. Mike Sullivan. Mr. O'Hara wrote down the names on the previous afternoon the 10th December 1996. The diary note is not a contemporaneous note made at the 11th December 1996 meeting listing the persons present. Mr. O'Hara could not recollect whether Mr. Lavers and/or Mr. Mitchell or anyone else was present at the meeting and his description of Mr. Walker is an inaccurate identification of that person. It is also highly unlikely in my view that Mr. Turner and Mr. Walker would meet in the offices of TCL rather than their own executive suites in Civic. The evidence leads me to the view that Mr. O'Hara is mistaken about who was in attendance at the meeting simply because he refers to "some Totalcare people" and in particular persons of a lower level of seniority to those of Mr. Turner and Mr. Walker. I am satisfied that a meeting did occur on Wednesday, 11th December 1996 and I am further satisfied that neither Mr. Walker or Mr. Turner were in attendance. Mr. Turner did not give evidence at the Inquest at any stage whilst Mr. Walker's attendance to give evidence was solely in relation to the Health Services Union Australia letter to the Chief Minister on 30th June 1997 and the Ford/Plovits controversy over the WorkCover inspectors. Mr. Walker did not give evidence nor did he reappear to give evidence concerning the meeting of 11th December 1996.
43. Mr. Sullivan and Mr. Murphy do not in any way corroborate Mr. O'Hara's version as to who attended this meeting whilst Mr. O'Hara has no contemporaneous note made of the meeting on 11th December 1996 concerning those who were present. The only reference is a diary note made on the previous day listing some names given to him by Mr. Murphy. When the note was compiled listing the names it was simply guess work as to who may or may not attend the meeting. I am satisfied that those attending the meeting were Mr. Sullivan, Mr. Paul Murphy of PCAPL, Mr. Greg Mitchell, Mr. Warwick Lavers and Mr. Greg O'Hara. It is my view that Mr. O'Hara's evidence on this aspect of the announcement concerning the National Museum of Australia is vague. It would be unsatisfactory to place any reliance upon it as having any probative value.
44. Mr. Walker's position in his ROI is that he could not recall attending a meeting on 11th December 1996 nor does he ever recall ever being in Mr. Sullivan's office. Mr. Walker said it was not his practice to go to someone else's office to have meetings about particular issues and in particular would recall if he had attended a meeting at Mr. Sullivan's office.
45. Mr. Turner who did not give evidence said in his ROI that he could not recall attending such a meeting. Secondly, it was very unlikely that he would have attended such a meeting and thirdly, he could not imagine why he would have gone to a meeting to discuss the re - enlivenment of the Acton Peninsula project. Moreover Mr. Turner could not remember having any meetings with

Mr. John Walker at that level of detail and certainly not in Mr. Mike Sullivan's office.

46. It all seems illogical viewed in an objective manner that if Mr. Walker and Mr. Turner had in fact been at the meeting of 11th December 1996 why then would Mr. Sullivan go to so much trouble of recommending to them two days later that PCAPL be appointed as the Project Manager. Mr. Sullivan put these issues to Mr. Walker and Mr. Turner at the meeting of 13th December 1996 which seems to support the view that neither Mr. Turner or Mr. Walker were at the earlier meeting two days before. There is no doubt the evidence as to this meeting of 11th December 1996 was extremely vague and conjectural. The ability of many of the witnesses in this segment of the Inquest to recall events left me with the impression that some were being less than forthright about their knowledge of this particular event.
47. It is also strange that a draft works program is drafted by the future Project Manager before the meeting has been conducted or any selection has been made. The oral evidence is in stark contrast to the documentary records kept by a number of the officials concerning the week of 9th December 1996. All those attending the meeting had made detailed meticulous diary entries on that day, secondly it was held in Mr. Sullivan's office. The third aspect of concern is that Mr. O'Hara had a clear recollection of some of those present at the meeting and fourthly Mr. Murphy recalled that CAMMS had contacted PCAPL on 10th December 1996 inviting the company to a meeting ostensibly to discuss PCAPL's appointment as a Project Manager. Mr. Lavers had made detailed handwritten notes of the meeting of 11th December 1996 which were entirely consistent with the discussion being held concerning the appointment of a Project Manager nominating PCAPL via another project and noting the 6th January 1997 as the start work date. The meeting of Friday, 13th December 1996 has all the hall marks of simply rubber stamping the earlier decision to appoint PCAPL as the Project Manager.
48. Mention must necessarily be made of the draft program drawn by Mr. O'Hara on 10th December 1996 and presented to the meeting on the next day. This demolition work program was tendered by Mr. Purnell SC for TCL from apparently the records of Mr. Lavers of TCL. After the document came into existence Mr. Murphy's position somewhat altered from that in his ROI with the Federal Police. He had made no reference to any possible contact between his company and CAMMS before the 13th December 1996. Mr. Murphy sought to clear his position only after the production of this document and when Counsel Assisting the Inquest pressed for the production of Mr. Murphy's diaries. The extension of this curious behaviour is reflected in the production of Exhibit 75A. In his ROI of 10th September 1997 Mr. Murphy said at question and answer 49: -

> A. "What was your next involvement – Project Coordination's next involvement following the completion of the Richard Glenn Feasibility studies?
>
> A. I did take one call to see if we could – this was in December 1996, took a telephone call to see if we could erect a fence fairly quickly on there because they wanted to get on with the – on – on with the works and so I

received this phone call and – the next morning we went out there and put the fences up. And that led then to an offer being made, not just because we put fences up, but it led to an offer being made on or about 20th December for us to lodge a Project Management submission. As – as a single select."

49. Then his position was qualified after the demolition plan was produced. As a consequence of the demolition plan being produced by Mr. Purnell it seems the answer to question 49 was corrected to read "I overlooked a diary entry that indicates that a meeting was to be held with Mr. Sullivan on 11th December 1996. I have no independent recollection of attending a meeting with Mr. Sullivan on 11th December 1996".

Then in a subsequent ROI on 27th October 1997 Mr. O'Hara says this:

A. "Ok can you just outline for me what happened following your well probably prior to that how were Project Coordination engaged in this particular project?

A. Mr. Murphy handled the engagement of it, or how that happened I got all that second hand, although I did attend a meeting in December with some Totalcare people where it was discussed".

50. The lack of recollection and the inconsistencies certainly leads one to believe that the Inquest was not given the full accurate events of that time. The only matters that I am prepared to conclude did happen was that a meeting did occur on 11th December 1996 in that there was a work demolition plan discussed and that PCAPL would be on a single select basis appointed as the Project Manager. This was subsequently confirmed at the meeting two days later on 13th December 1996. I am satisfied that at the latter meeting Mr. Turner and Mr. Walker were present whilst in all probability they were not in attendance at the earlier meeting. Mr. O'Hara is clearly mistaken about this. There is one thing clear about Mr. O'Hara's evidence and that is that the meeting was solely being convened to appoint PCAPL as the Project Manager.

51. The single selection and appointment of PCAPL as the Project Manager on Friday 13th December 1996 was reasonable, practical and appropriate having regard to the special factors being considered such as the protesters, the squatters, the necessity to erect a fence urgently and the general pressure being conveyed to the ACT Officials from the Commonwealth Government. It is the continuation of this appointment as the Project Manager without any

form of review which is unsatisfactory particularly as PCAPL did not have any relevant experience in implosion demolition. This inexperience in the implosion method was evident later when PCAPL did not take any steps to make a critical examination at the tender stage of the suitability of the implosion operator his experience and methods. TCL should never have permitted PCAPL to proceed beyond the expression of interest stage without ensuring that PCAPL had the credentials to assess the quality of the tenders especially in the implosion method.

52. One of the curious aspects of the demolition program presented at the meeting on 11th December 1996 by Mr. O'Hara somehow was found on a file in the Chief Ministers Department. There did not appear to be any copy of this program on a TCL file but rather in the possession of Mr. Lavers and unknown of until produced by Mr. Purnell on the 20th May. On 20th May 1998 Mr. Sullivan was giving evidence and responding to questions by Mr. Purnell SC for TCL when Mr. Purnell asked him this question: -

> A. "And likewise with the second document, the bar chart, accept would you also that it's only from Mr. Lavers that this document remains in Totalcare. Can you give any explanation in relation to the bar chart in Exhibit 358 as to why it would be only Mr. Lavers?
>
> A. No I cant.
>
> A. Would it be possible do you think that you would have seen this document in a conference with PCAPL people on the morning of 11th December 1996 at 9.30am?
>
> A. It is possible but I simply don't recall it. I don't recall the meeting with PCAPL as well. I know it is in my diary but I don't recall that particular meeting".

53. I have previously stated that I am satisfied that Mr. Turner and Mr. Walker were not at the Wednesday meeting and that the persons most probably there were Mr. Sullivan, Mr. O'Hara, Mr. Murphy, Mr. Mitchell and Mr. Lavers. There was no basis for any form of confirmation to be made of PCAPL's appointment as a Project Manager at the meeting on 13th December 1996 if Mr. Walker and Mr. Turner were at the earlier meeting. The only other purpose of the meeting on 13th December was to rubber stamp and to give some official recognition to the decision to appoint PCAPL on the previous Wednesday.

54. Mr. Sullivan did concede in evidence that he may have conveyed information to PCAPL about the re - enlivening of the project. The evidence certainly indicates that PCAPL were forewarned of the reactivation of the Acton project otherwise why would Mr. Murphy give instructions to Mr. O'Hara to draw a draft demolition works program. What seems to be regrettable about this decision to appoint PCAPL as the Project Manager was notwithstanding PCAPL's lack of experience in implosion which was conceded by Mr. Sullivan an oral appointment

was made which was not subsequently ratified in writing until some days and weeks later nor did TCL re – examine the credentials of PCAPL as to its suitability to manage this project.

13TH DECEMBER 1996 MEETING

55. The evidence of Mr. Sullivan is that he was informed on Wednesday, 11th December 1996 by Mr. Turner that there was to be a public announcement on 13th December 1996 by the Federal Government that the National Museum of Australia was to be constructed on Acton Peninsula. Mr. Sullivan considered the Acton Peninsula project on 4th December 1996 and contributed to the contents of a letter dated 5th December 1996 from Mr. John Turner of DUS to Mr. John Walker Chief Executive Officer of the Chief Ministers Department. Mr. Sullivan has no recollection of this letter or any input into it but does not dispute that he must have had some involvement.
56. It was Mr. Turner who informed Mr. Sullivan of the meeting at the Chief Ministers Department on 13th December 1996. Mr. Sullivan then read the RGA Reports.
57. Mr. Sullivan consulted Mr. Lavers and Mr. Greg Mitchell concerning the appointment of PCAPL as a possible Project Manager and satisfied himself that PCAPL would be suitable for appointment as a Project Manager for the Acton Peninsula project.
58. The meeting with Mr. Walker commenced at 3.00pm on 13th December 1996. Those in attendance were Mr. Turner, Mr. Walker, Ms. Linda Webb, Ms. Moiya Ford, Mr. Hopkins and Mr. Sullivan. It was indicated that action was desired by way of the erection of a fence around the Acton Peninsula. This was for symbolic purposes to show that action was being undertaken on the site. There was no method of demolition discussed at that meeting and implosion was not mentioned at all. I accept that fact.
59. Mr. Sullivan recommended the appointment of PCAPL as the Project Manager with the initial task to be the erection of the fence around the project site the next day. It is clear from the context of the meeting that the action desired at the meeting was to ensure the security of the site against possible occupancy by protesters, vandals or other expressions of dissatisfaction by members of the community including Trade Unions that the hospital was to be demolished. Signs were to be erected that the demolition process was underway.
60. The troubling aspect of the appointment of PCAPL for Mr. Sullivan was that no other potential Project Manager had been effectively considered for the project. I accept there was a valid reason for the appointment made on 13th December 1996 but as I have previously indicated there was then a failure when the initial pressure had been contained to consider other potential Project Managers, in particular, Richard Glenn and Associates. It seems that one explanation for the omission or failure to consider that firm was on the basis put by Mr. Sullivan that "if they're not pre - qualified they don't work for us". Here is an inconsistency in that the demolition contractors that were chosen never seemed, on my understanding of the evidence, to have undergone a testing process as to their pre – qualification and suitability to undertake the project. The inevitable inference that can be drawn from all this is that PCAPL on any

objective view of the evidence would appear to have been in some favoured position for its appointment. The critical aspect of PCAPL's ongoing appointment as the Project Manager really arises on and after the tender process because their capability of managing the project was never critically examined or assessed by the Project Directors or the ACT. The formal paperwork relating to the appointment was not prepared until early January 1997 despite the oral approval being given at the Friday meeting of 13th December 1996.

61. PCAPL were eminently suitable and satisfactory to undertake the early tasks on the project. It is well documented that the approval was unanimous by all those engaged in the negotiations of 13th December 1996 as it seemed to have the concurrence of both CAMMS and other senior Public Servants for the erection of a fence and the appointment of contractors for asbestos removal from the buildings. But then again there was no competition. There is an entry in Mr. Mitchell's diary of the 13th December 1996 corroborating the fact that PCAPL's appointment was confirmed on that day with Mr. Mitchell noting that Mr. Sullivan had informed him that "Walker/Turner have agreed to PCAPL as Project Manager – can advise Murphy informally". Nothing further needs to be said about this aspect of the matter. The matter of some significance to this Inquest is the appropriateness of the single select method of appointment and the relevant paperwork relating thereto.

THE SINGLE SELECT PAPERWORK

62. Mr. Gary Hotham prepared a submission dated 18th December 1996 recommending the appointment of PCAPL as the Project Manager. The submission was agreed and approved by Mr. Mike Sullivan Director of CAMMS on 19th December 1996. The submission recognises "the program for the project is extremely tight with a target completion date of August 1997. It is therefore necessary that hazard waste removal work commence by no later than mid January 1997. As a result a Project Manger needs to be appointed immediately. The Project Management firm appointed for this project will be required to meet the following criteria:-

a. Have a full understanding of the methodology and the construction/demolition issues detailed in the feasibility study (see Paragraph 24),
b. Already have extensive knowledge of the site,
c. Be able to produce a program immediately and have the ability to meet a tight program,
d. Have suitable resources to commence immediately,
e. Have proven ability to control a cost plan on difficult projects,
f. Have extensive experience with the removal of hazardous waste material,
g. Have a flexible and cooperative attitude and work closely with W & CS.

In consideration of the above criteria and a review of the database and performance files, Project Coordination (Australia) Pty Ltd (PCAPL) is the only firm that can meet all of the above criteria".

63. A close examination of this submission makes no mention of implosion. The only requirement is to have a full understanding of a methodology and construction/demolition issues detailed in the feasibility study. This required an examination of the Richard Glenn and Associates feasibility studies of July and September 1995. In my view there is nothing fundamentally flawed in the submission made by Mr. Hotham. The problem is the subsequent failure by the appointed Project Manager to fully examine critically their understanding of the methodology and construction/demolition issues set out in the feasibility report. This primarily fell to Mr. Dwyer to undertake. In fairness to Mr. Hotham he drafted this submission with no previous involvement in the project, as he had not been a party to any previous discussions about the Project Manager. It should be noted quite explicitly that the written approval of PCAPL as the Project Manager was not created until 18th December 1996 five days after Mr. Mitchell had been requested by Mr. Sullivan to inform

PCAPL that their appointment had been approved by Mr. Walker and Mr. Turner.

64. One of the significant defects of this submission is that having regard to Mr. Hotham's lack of involvement he had no way of assessing PCAPL's ability to meet the criteria referred to above. Mr. Hotham knew PCAPL had no experience as a Project Manager in the implosion/demolition method yet he considered no other firms against that criteria nor did Mr. Sullivan, Mr. Lavers or Mr. Mitchell ever consider any alternative firms. It goes without saying that the approval given by Mr. Sullivan was in respect of a company that had no prior experience in demolition work nor were any checks subsequently made as to whether the company acquired the relevant expertise for the project.
65. The National Capital Authority approved works on the site for the erection of a fence on the evening of 13th December 1996. Mr. Sullivan was acting on his own delegation to appoint a Project Manager. It was not a matter for the persons attending either the meeting of 11th or 13th December 1996 to make that decision. It seemed to me that Mr. Sullivan raised the issue at the meeting with Mr. Walker and Mr. Turner as a matter of caution seeking their approval to the proposal.
66. Although the meeting of 13th December 1996 did not determine any method or program for the timetable demolition it was fairly obvious that PCAPL were being given full recognition of their status long before the projects had been let and no serious consideration was given as to whether their qualifications were suitable to manage a demolition of this nature. There is no doubt that there were expressions of interests, advertisements and a tendering process put in place but TCL and the Government did not take any further steps to enquire as to the adequacy of PCAPL's skills to handle this project nor were enquiries made whether the contractor and the subcontractor had the ability to handle such a demolition.

67. The meetings of 11th and 13th December 1996 leave me with a great deal of concern. It is hard to gauge the genuineness of those involved in the appointment process. The meetings have all the hallmarks of a sham arrangement convened simply to lend credibility to the appointment process. The impression is one of a rubber stamp process. None of the persons involved with TCL or PCAPL had any ability, knowledge, appreciation, understanding or experience as to the magnitude of the project yet they were making final conclusive decisions some 4 to 5 months before the tender process had been finalised. Concerning Mr. Walker I must agree with the submissions made by Mr. Rushton, his Counsel, as it seems to me he was never examined about the meetings of 11th and 13th December 1996 nor was he recalled to give evidence on those circumstances. There is nothing per se on the evidence in the Inquest that suggests there is any fundamental problem with the single selection method provided it operates within specific criteria such as to meet immediate short term exigencies (the Acton Peninsula as at 13th December 1996 reflected such exigencies) but in any lengthy project a full and proper comprehensive examination needs to be given to the appropriate appointment after a close scrutiny is made as to the applicants credentials and suitability for the specific project or task. What was a sensible, reasonable and practical approach in December 1996 was something different by the time the events came to crystallise in March/April 1997 when the contracts were let.
68. The analogous position is found in the Cabinet submission of 7th August 1995 which despite no reference to the implosion process, on the assumption that the government advisers had properly considered the RGA Report number 1, was a wholly different circumstance by 9th December 1996. There was a substantially different position changed by the lapse of time. The only valid operative documents for the decision-makers really to continuously consider were the RGA Reports. The decision of 15 -16 months earlier was overtaken by the later reference to the Cabinet in December 1996. Implosion was not nominated as the demolition method in the later Cabinet submission. Yet by April 1997 the RGA Reports were still a relevant document for all involved at both government and private levels to be properly cognisant of. Sadly the facts reflect that the RGA Reports were either ignored or simply became a forgotten chapter in the project. The importance of these reports would ultimately come back to touch the minds of all those involved in the hospital demolition.
69. Mr. Collaery, Counsel for the Bender family, in his examination of Mr. Sullivan on 8th April 1998 adduced some valuable detail of the single select method of appointment of PCAPL as the Project Manager: -

> A. "Single select is where you don't go to public, either a public advertisement or an expression of interest stage you in fact look at the existing people…single select means going to the database, finding the pre – qualified tenderers that are on there and simply going to one for a proposal.

A. And do you say that those tenderers who are there are there because they are pre – qualified?

A. That's correct. They are not tenderers they are Project Managers.

A. They are Project Managers in this case and did you tell the Court that the only pre – qualified Project Manager at that time was Project Construction?

A. I did not.

A. Well who else to your recollection was a pre – qualified Project Manager?

A. Manteena, pre – qualified integrated, pre – qualified, I think WP Browns are pre – qualified, GE Shaw are pre – qualified.

A. Haskins?

A. Haskins are pre – qualified as a Project Manager but normally don't respond.

A. Civil and Civic?

A. Civil and Civic, I think at that stage were not pre – qualified.

A. Baulderstone Hornibrook?

A. Don't I think they were pre – qualified as a contractor not a Project Manager.

A. Are you saying you went and checked a list?

A. No. When you do the number of Project Management submissions that we do they are the same names that come up on because if people want to do business with the.

A. The answer is no, you didn't check the list, is that right?

A. I personally did not check the list.

A. Did you cause anyone in your orgainsation to check the list?

A. I didn't instruct anyone to check the list.

A. And you say that single select means pre – qualified?

A. In terms of the capital works delivery single select they must be pre – qualified before you start".

64. The evidence certainly leads one to the inevitable conclusion that the merits of any other potential candidates were certainly not considered. Although I have stated that the appointment of PCAPL for a limited purpose pursuant to the single select method was satisfactory in the long term it was totally inadequate particularly as Mr. Sullivan knew that the company could not meet at least some of the criteria relating to the full understanding of the methodology and construction/demolition issues detailed in the feasibility study nor did PCAPL have an intimate knowledge of all the methodology issues and problems associated with the project. It was the appointment of PCAPL on a long-term commitment which gives rise to the concerns as to their suitability ultimately in managing a project of this nature.
65. It was disappointing that Mr. Sullivan in his evidence during April 1998 was still relaxed with his recommendation to appoint PCAPL and would not even change the procedures that were in place. There certainly is potential to improve this appointment protocol for the future as the evidence clearly demonstrates that there were deficiencies in the method of appointment. Mr. Murphy of PCAPL had previously been involved in the preparation of the RGA Reports and was fully coginsant that his company did not have the necessary expertise and experience to properly manage a project without obtaining input from a consultant with experience in implosion and down to ground demolition such as Richard Glenn and Associates.
66. The evidence of Mr. Sullivan and so many of the witnesses in respect of whatever occurred in December 1996 is nothing less than opaque. The witnesses were unhelpful whether by reason of the lapse of time or their lack of involvement or simply being obstructive to the inquisitorial process. It is hard to gauge. The witnesses presented as open and frank but little or no substantive evidence of a reliable nature ever materialised that would assist the Inquest. I do not agree with Counsel Assisting the Inquest that some of the witnesses in this level were incompetent, as he describes Mr. Sullivan, but nonetheless the defensive role taken by so many unnecessarily prolonged this segment of the Inquest. One sensed the defensive barrier was created to protect what was not done or should have been done or was done badly so as to paint a picture which would deflect or minimise the gravity of their failures, deficiencies and omissions.
67. The single select method is a useful tool for a special purpose over a limited duration. It was sensible in the short term for the erection of a fence and such like activity but wholly impractical for a long - term complex project. I would recommend that this process be reviewed.

THE DUTIES OF PCAPL AS THE PROJECT MANAGER

68. Some of these duties and functions of PCAPL have been explored in other parts of this Report, however, the Project Management Agreement imposes

contractual duties upon PCAPL in addition to the demolition contracts. The obligations of PCAPL were not confined to the role of Superintendent under those demolition contracts.

69. Mr. Dwyer said that PCAPL had "no supervisory role" with respect to work methods or safety in relation to stage 1 and 4. Mr. Dwyer maintained his position that PCAPL were mere Superintendents of the contracts having a purely administrative role on site after the contracts were let. This position was also adopted by the Managing Director of PCAPL Mr. Murphy in his ROI with the police.
70. These two PCAPL officers difiantly maintained that view throughout the Inquest despite overwhelming evidence to the contrary. They were gravely mistaken as to the terms of their appointment. If their role was purely administrative then PCAPL should never have been appointed the Project Manager and TCL could have fulfilled a dual role as Project Director and Project Manager. It calls into question the calibre of judgement exercised by Mr. Sullivan in approving the appointment. The attitude of Mr. Murphy and Mr. Dwyer on this issue displayed an arrogance that defied any sense of reasonableness. The Government ought not be making any appointments of PCAPL to any future projects until clearly satisfied the company and its Board fully understand the nature of their appointment in both fact and law.
71. A disturbing feature of this function was that Mr. Dwyer did not see the Project Management Agreement until after the implosion date on 13th July 1997 although he had seen a copy of the Project Management Manual in his site office and that he used it as a reference tool.
72. The Project Management Agreement makes it perfectly clear in a number of provisions that PCAPL had a coordination and supervisory role in relation to the head contractors for stages 1 and 4. I propose to give a number of examples: -

    a. Clause 1(d) defines contractors as a person who enters a trade contract with the principal defined as the ACT,
    b. Clause 2(c) obliges PCAPL to "coordinate and supervise the activities of all contractors to ensure satisfactory completion of the works", and
    c. Clause 2(f) requires PCAPL to comply and ensure compliance with the express and implied provisions of the Project Management Manual. The document creates an obligation on the Project Manager in reviewing tenders to "address the history of claims or disputes and to address the knowledge of the tenderer within the industry amongst others".

64. In the Project Management Manual certain duties (particularly at paragraph 6.53) are cast upon PCAPL which mirror the statutory obligations that the company had in any event pursuant to Section 29 of the *Occupational Health and Safety Act 1989*. It is not proposed to examine each and individual Clause for the purposes of this Report suffice to say that the Clauses of particular application are Clause 3(f), 3(l), 3(m) and 4(c).
65. PCAPL tendered a submission to the Smethurst Inquiry which demonstrated that Mr. Dwyer had 5 years experience as a Project Manager and had

"acquired considerable knowledge and expertise in the management and administration of projects substantially through practical experience in dealing with day to day activities on a broad range and value of projects". This statement does not sit comfortably with Mr. Dwyer's claims of ignorance as he it would seem to me would have been well aquainted with his duties required by the contract.

66. There are two other provisions which I must comment upon in relation to Mr. Dwyer's attitude. Clause 29(c) of the Project Management Agreement talks about coordinating and supervising the activities of the contractors. I do not accept Mr. Dwyer's explanation and on any view one of the critical functions for PCAPL as the Project Manager was to do precisely that task of coordinating and supervising the contractor and subcontractor. Again Mr. Dwyer maintains that PCAPL was not required to supervise and ensure the contractors discharged their contractual obligations to the principal. This surely cannot be correct. I do not accept Mr. Dwyer's explanation. If that was not the function of PCAPL and Mr. Dwyer, then what was.
67. Even in the Smethurst submission PCAPL stated that "on and from 24th January 1997 PCAPL commenced to manage the project in accordance with the Project Management Agreement". It is also demonstrated in the Acton Peninsula organisation chart where the role of the Project Manager is described as "Project Manager to manage overall project and Superintendent on each of the four head contracts (Stages 1 – 4)".
68. PCAPL in my assessment of the evidence did supervise and exercise a managerial role or ought to have done so in relation to safety and methodology. PCAPL provided to TCL on a monthly basis reports on the

    progress of the demolition. These were provided to TCL and they contained material whereby Mr. Dwyer was giving directions and seeking compliances from the contractor and subcontractor. One of the best examples of Mr. Dwyer discharging this function is where he gave the written direction to Mr. McCracken that if he was proposing to use explosives to strip the concrete then written approval needed to be sought and granted by Mr. Dwyer in respect of safety factors. There is a further example of Mr. Dwyer's role when he wrote to Mr. Fenwick requiring him to provide written advice as to the safe viewing distance so as to avoid flying debris during the implosion.

69. Mr. Dwyer also directed both Mr. Fenwick and Mr. McCracken not to proceed with the cutting of steel columns until further notice following the receipt by Mr. Dwyer of the report from Mr. Hugill of Northrop Engineers. Another classical example of Mr. Dwyer exercising the function of supervising the contractor and subcontractor comes in the form of the direction that Mr. Fenwick was to provide the engineer from Queensland. Mr. Dwyer required written confirmation that such an engineer had been engaged by Mr. McCracken and that the engineer would then fully supervise the pre – weakening process.
70. The evidence given by Mr. Dwyer and Mr. Murphy on these issues cannot be accepted in any way as being plausible. This aspect of the evidence was a clear demonstration of an attempt to minimise and deflect the significance of the roles that the company was appointed to undertake in relation to the project. I do not propose to include in this aspect of the Report the precise evidence as to what Mr. Dwyer said about these issues but it is readily found

in the transcript of the 1st October 1998 at paragraphs 501 – 550. There is no doubt in my mind that at least the ACT was proceeding on the basis that PCAPL was fulfilling their contractual obligations to coordinate and supervise the contractors and that the contract was being complied with unless TCL, the Project Director, drew to the principals attention which did not happen that PCAPL was not fulfilling its responsibilities. There is nothing to suggest on the evidence that the ACT was ever appraised of these deficiencies.

IMPLOSION AS A METHOD OF DEMOLITION

86. There are no less than 37 separate references to the concept of implosion being a demolition method from when it first appears in the RGA Report of July 1995. Those specific references are set out below: -

18/7/95 RGA Report favours implosion for the tall buildings.

7/8/95 Cabinet decision approves use of implosion.

~/8/95 "Sid – Ron file note" mentions "international firm…The program dictates implosion".

~8 – 11/95 File note "Mike Sullivan to talk to Rod Templar about the insistence on implosion".

16/10/95 Fax Fenn – Templar "ACT is likely to use the implosion method".

16/10/95 E – mail Backhouse – Bedcoe "ACT is likely to use the implosion method…They are intending to bring out a US expert".

30/1/96 Note Sullivan to Mitchell "If we use implosion the Minister is interested in selling the right to the event".

5/2/96 Letter Lavers to Deeble "Implosion will still be the means of demolition".

13/2/96 New program issued with fixed implosion dates for both tall buildings.

11/12/96 Note of Lavers "Guilfoyles for implosion".

16/12/96 Briefing note by Ford to Carnell (via Webb/Walker) "The implosion method will be used for the taller buildings".

16/12/96 Note of Lavers. Sketch of an implosion with the notation "Positive event – do it as a celebration of passing".

17/12/96 Hopkins notebook entry "MS – if ANU out, SCH can be imploded".

4/1/97 Canberra Times article "Hospital ready to go out with a Blast". Comments attributed to Mrs. Carnell suggesting the demolition will be "almost certainly by implosion".

5/1/97 Canberra Times article "Implosion plan firms for old hospital". Indicates that Mr. Murphy "has implosion on his mind".

7/1/97 Lavers diary entry, advising Craig Allen of 10 News "clean simple approach, flexible time frame, implosive advantage".

8/1/97 Lavers notes from meeting with Dawson where media strategy planned out. That strategy assumed implosion.

9/1/97 Letter Sullivan to Ford enclosing Murphy advice that it was not advisable to remove plant from on roof as this would impact on the option of implosion.

9/1/97 Lavers Diary entry "Maybe – main bldg – conventional – need to start on low buildings first by conventional – Sylvia Curley = imploding".

15/1/97 Lavers diary entry referring to Rod McCracken and Tableland explosives.

31/1/97 Mitchell diary entry "Acton – formal advice will come from CMD – one bldg is to be imploded – Cba Theatre to arrange this as an 'event' – June long wk/end? *Final docs for Sylvia Curley to reflect this".

Feb 97 PCAPL Management Plan, p8 states "Stage 4 is most likely to be demolished using the implosion method" and on p12 states "Implosion 9 June" for Sylvia Curley House.

5/2/97 Lavers diary entry "I will be imploded – preferably tower. Sylvia Curley OK".

11/2/97 Lavers note "Gary not aware of implosion date…". Mr. Lavers stated this reference referred to Gary Dawson (653, 4/5).

12/2/97 Lavers diary entries: "Mike Sullivan. The implosion date requires extensive rework. Is it definite

that June weekend is a must. Better to delay". "Gary Dawson 1.00 phone call. Kate + John Walker say do it economical and in your own time. If implosion used – fine we can do something with it"

"TARGET – implosion, - date June + cost it".

17/2/97 Demolition Programme. Changed from exhibit 315 to indicate implosion of Sylvia Curley House on 9 June.

27/2/97 Hotham diary entry: "Weekend required implosion 9/6 Exercise 14/15 June 1997".

27/2/97 Lavers diary entry: "Gary Dawson: ESB Urban Services Search & Resue – probably June – media involvement".

1/3/97 Lavers diary entry: "Urban Search & Rescue. Must be a weekend *- media involvement to simulate reality". Such an exercise only make sense with an imploded building, i.e. rubble to search through.

3/3/97 Lavers diary entry: "Contact: Gary Dawson. Keep in touch with Sylvia Curley, e.g. – push the button – times move on".

~early/3/97 Project Managers report No 1 – point 1.1 "Construction program revised as at 17/2/97 to accelerate the demolition of Sylvia Curley House and reflect the implosion method".

5/3/97 Gary Hotham told tenderers meeting that implosion was the preferred method of demolition for Sylvia Curley House.

18/3/97 Tenders for Stage 1 close. Tenders for Stage 4 open and condition 11.28 makes it <u>mandatory</u> that tenderers price implosion method.

19/3/97 Lavers diary entry (day after tenders closed): "Gary Dawson – current timing, method – Agreed Kate would say assessing tenders + methodology commences April".

26/3/97 Lavers faxed to Dawson a copy of condition 11.28 tender documents for Sylvia Curley House.

8/4/97 Lavers diary entry. "9 June Kahboomm!! – 2 towers".

> 11/4/97 Lavers note: After the lowest priced bid for Stage 4 was rejected (a bid using the conventional method) Mr. Lavers noted "Technically – Delta didn't price implosion…non conforming".

Event though I have concluded on the evidence that implosion was an option it is self evident just how topical the issue was amongst a wide range of bureaucrats and other officials who on any realistic assessment knew nothing about the concept. There is no doubt the concept was being "talked up" over a lengthy period of time (see further paragraph 87).

87. There is discussion elsewhere in this Report concerning the implosion method as to whether it was a concluded decision reached at an early stage or whether it only emerged as a demolition method after the contracts were let.

    There is no doubt on the evidence that the officials of TCL (Messrs. Sullivan, Lavers, Hotham and Mitchell) maintained that implosion was an option.

    The same approach was adopted by Mr. Murphy and Mr. Dwyer of PCAPL.

    Mr. Walker, the Chief Executive Officer, did not have the opportunity to state his position on this issue and in that respect I do not propose to further consider Mr. Walker's position in relation to this matter.

    There is also no doubt that Mr. Gary Dawson the Chief Minister's Media Adviser had approached Mr. Lavers in January 1997 and again on 11th February 1997 in discussions with Mr. Lavers implosion was a likely option.

    Counsel Assisting the Inquest strenuously argues that from a very early point in time implosion was the preferred method of demolition. Counsel further argues that this preference firmed rather than weakened.

    There is no doubt that over a lengthy period of time from July 1995 to April 1997 the method of demolition by way of implosion was a much discussed concept. It seems to me that this concept of implosion was allowed to grow over a period of time so that it became accepted as the only viable demolition method. I do not accept that from the very outset it was the preferred method but rather an option that did become stronger in the effluxion of time leading up to the letting of contracts.

88. The possibility of using implosion should have appeared in a direct form in the advertisement and during the expression of interest phase whilst it again should have been fairly and squarely raised in the tender selection process. These were the critical vital stages when all those bidding for the contracts should have been fully aware that their tenders, their qualification and

experience should address this demolition method. The possibility of implosion as the method of demolition was apparent from August 1995 onwards. It was always a possible method of demolition which gradually grew particularly after the project was reinlivened yet I am no prepared to conclude that it was the preferred, favoured or likely method of demolition.

89. The failure is the fact that it was never brought home to the minds of those who possibly wished to be involved in the process that this factor needed to be addressed in their tenders. Simply because there has been a failure to refer to the implosion in the advertisement, the expression of interest documentation and the tender material does not lead me to conclude that implosion was a probability or likelihood. There is no doubt on the evidence that implosion was repeatedly mentioned as a possible option in the media yet no matter how much promotion it was receiving in the media did not in my view elevate it to a preference. The Stage 1 tender documents did not refer to the method of demolition at all. The Stage 4 process refers to both implosion and traditional demolition. It seems to me that until April 1997 notwithstanding the constant reference to this method of demolition of implosion especially in the media I am left with the impression that the majority of players in this Acton project were exercising an open mind as to what was the final method of demolition.

ADVERTISEMENT AND INFORMATION PACKAGE

90. The advertisement for the Acton demolition project was defective in two significant ways. One advertisement appeared in the Canberra Times and the other in the Australian newspaper on 25th January 1997. There were only two advertisements on the one - day. The advertisement needed to include sufficient information to attract the interest of demolition

contractors with expertise not only in the conventional methods of demolition but also implosion. The advertisement was inadequate insofar as it did not extend in sufficiently broad enough fashion to a wide range of potential applicants. It would have been appropriate for a project of this nature for advertisements to appear in every major daily newspaper circulating in each State and Territory. The advertisement needed to be considered as an important step in the whole process. The potential tenderers would express their interest in the demolition of the buildings by responding to the advertisement and requesting an information package.

91. If implosion was an option and having regard to its novelty in Australia in 1997 it was critical that sufficient information be contained in the advertisement to attract the interests of implosion experts to let them know that this method of demolition was at least being considered. No such information as to the demolition method was included. No mention was made of the implosion method nor did it provide any of the other information which Mr. Loizeaux indicated would be likely to alert those with implosion expertise to the suitability of that method of demolition for this project. Those issues are the height, area, speed or aggressive methodology. Mr. Loizeaux stated that he had an agent in Australia to look for implosion work and that agent did not become aware of the project until after the tragedy. The advertisement was

such that it would not attract the best available experience for this project. It was too narrow and limited in its advertising range. It was vitally necessary that the advertisement should appear in the major metropolitan dailies of each State and Territory so as to attract not only suitably qualified local but also overseas applicants.

92. The explanation offered to the Court by the officials of PCAPL and TCL was to the effect that the industry itself would decide the most appropriate method of demolition. This evidence was given by Messrs. Murphy, Dwyer, Sullivan and Hotham. The reasoning process by these officials in my assessment is illogical and totally flawed. There was no explanation as to why the advertisement only appeared in 2 newspapers on the same day.
93. The advertisement made no mention of the size of the buildings or the possibility that implosion techniques might be utilised.
94. The advertisement was not only narrow but poorly worded in so far as it did not contain words that might attract experts in the implosion method. The consequence was that there was only a relatively small number of applicant tenderers who were primarily locally based. This advertisement was issued in full knowledge of the recommendations in the RGA Report that overseas expertise was in all likelihood a vital necessity for the project. Mr. Murphy knew of this factor by reason of his contribution to the RGA Report. This was a clear deficiency on the part of PCAPL and reflects the poor decision made by TCL in permitting a continuation of PCAPL as the Project Manager into a realm where the company had no experience.
95. The deficiencies then extended to the content of the information package issued to those who replied to the advertisement. The package was only issued to those that responded to the advertisement. The package did give the height and areas of the Main Tower Block and Sylvia Curley House yet the description of the structural configuration of Sylvia Curley House was inaccurate. The building was described as being a concrete structure. There was no mention of the steel columns within the building. A glaring omission from the selection criteria chosen by Mr. Dwyer related to expertise in implosion as a factor to measure in the assessment of potential tenderers. The best statement that can be attributed to this is described as "experience in undertaking similar works" with no mention being given to implosion as a "similar work".
96. There is only one organisation from the short listed tenderers to express any expertise in implosion and this company had a relationship with Canberra via Irwin and Hartshorn. It is not clear how Irwin and Hartshorn came to learn of implosion as a possible method of demolition but one can only surmise that it was gained via the media who had given the matter some promotional attention in the weeks and months earlier. This conclusion is reached by virtue of the fact that there was a lack of information in the advertisement and the information package relating to implosion and as such could only have been gained by reference to the media publicity that the matter had received in Canberra in January 1997 (see the Canberra Times article and photograph of 4th January 1997).
97. The pool of expertise from which the demolition contractor was to be chosen can only be regarded as disappointing. It was disappointing and inadequate in that it failed to attract a broader range of personnel experienced in both methods of demolition. The only conclusion that can possibly be made on this

issue is that TCL and PCAPL issued an advertisement and information package with a paucity of detail about the actual project. TCL had the benefit of two feasibility studies by RGA which raised a number of considerations. If these considerations had been followed then it is highly likely that the project would have attracted demolishers of sufficient expertise to ensure that the tendering bids were competitive and were being competitively tendered for by organisations with a dearth of knowledge on both methods of demolition.

THE NEED FOR ACCESS TO EXPERTISE

98. The RGA Report and the *Demolition Code of Practice* makes the requirement for experience mandatory for projects of this nature. It is common ground that none of those in Government, TCL or PCAPL had any experience in large-scale demolition projects particularly by the novel method of implosion in Australia. Implosion was to be utilised on this project for the first time in the Australian Capital Territory. It seems to me that a duty existed to ensure that those involved in the project had access to expertise in implosion at all relevant stages of the project commencing with the advertisement and information package through to the assessment of the potential tenderers and finally in the months and days leading up to the implosion. Without that expertise it is abundantly clear that no one handling this project could understand or have any knowledge as to what they were directing or managing.
99. It is in this respect that I have elsewhere referred in the Report to a systemic failure because it starts at the Government as the client and then permeates to the Project Director, the Project Manager and ultimately to those directly responsible for the detonation being the contractor and sub contractor. The Government went so far through its Public Service to encourage the public to attend even though as I have previously mentioned in the Public Event segment it was inevitable given the novelty of this method and the number of buildings that a large crowd would wish to view the demolition even out of curiosity.
100. There is no escaping the fact that the project did not have the benefit of the relevant expertise in explosives or engineering capabilities. It is not necessary to review all the evidence on this issue but in fairness this must be said of Mr. Lavers.
101. On the 17th December 1996 he asked Mr. Sullivan whether Mr. Deeble whose firm had been the Project Director at the St Vincents Hospital in Melbourne whether a sub - consultant should be engaged to PCAPL. Mr. Sullivan declined the suggestions made by Mr. Lavers on this issue telling him that it was matter for PCAPL and "market forces" to decide whether such consultancy should be engaged. I am confident having regard to the observations I have made in this Report of Mr. Lavers that this discussion did take place and I place considerable reliance on Mr. Lavers evidence in this

regard. It is my view that the suggestion made by Mr. Lavers was prudent, resasonable and sensible and should have been adopted. One is unable to determine what benefit this very practical observation by Mr. Lavers would have brought to this whole project.

102. The ACT had an expectancy that it was able to rely upon processes which had been set in place on and after December 1996. TCL had been appointed as the Project Director. TCL possessed a degree of technical and engineering expertise in the Capital Works area. It had inherited that function through its former connection with the Department of Urban Services. The Territory was entitled to proceed upon the basis that TCL would take all the requisite steps including the obtaining of such expert advice as was necessary to allow the project to proceed efficiently, safely and effectively.

103. PCAPL was the Project Manager and Superintendent under the demolition contracts. The ACT had an expectancy that PCAPL would comply with its contractual obligations as Project Manager and Superintendent as it had done in the past and would include obtaining such expert advice as was required.

104. The tender process was undertaken by TCL and PCAPL which led to the ultimate selection of CCD and CBS and Mr. McCracken as the two contractors and subcontractors respectively. It was genuinely assumed by the ACT and fairly in my assessment that both those organisations would competently perform the task of selecting an appropriate and experienced contractor and ultimately an appropriate method of demolition. It was also to be expected on behalf of the ACT that CCD, CBS and Mr. McCracken were holding the appropriate expertise. TCL and PCAPL would monitor that expertise and provide such advice as required from time to time. The evidence is such that there was never any report to the ACT by TCL or PCAPL that any expert independent advice was required yet if that advice had been provided by the Project Director and Project Manager I am confident that the ACT would have taken appropriate steps to act upon that information. In early January 1997 it was generally expected that if implosion was selected then a public event was a necessary consequence of that decision. In April that fact had become a reality known to both TCL and PCAPL. Mr. McCracken, as I have previously discussed in my assessment of the Public Event, fully appreciated that a crowd was going to attend and the media would be in place to promote that day. It is not necessary to say any more about the lack of expertise factor other than it was clearly stipulated in the contractual documents which PCAPL was bound to comply with.

EXPRESSIONS OF INTEREST

105. It was the particular responsibility of Mr. Dwyer to assess the expressions of interest and to make recommendations in relation to a short list of potential tenderers to TCL. Mr. Dwyer after consultation with Mr. Hotham assessed those expressions of interests drawn up by him based on criteria from a previous construction project. Just how relevant and appropriate that

was in a project using implosion by explosives and never handled before by PCAPL is simply beyond comment (see paragraph 109).

106. It is quite disturbing that there is no mention of the option of implosion or any other factor to suggest an interest in implosion either in the advertisement or the selection criteria in the information package even though as of 13th January 1997 Mr. Hotham and Mr. Dwyer were informed that implosion was an optional method of demolition. The evidence by Mr. Dwyer on this topic is inadequate. I do not accept his evidence as having any reliability. I am firmly of the view that those persons making any tender offer should have been appraised either by the advertisement or the expressions of interest or the information package that implosion was an option of demolition.

107. Mr. Dwyer, despite expecting the industry to decide how the buildings were to be demolished, did not at any stage expect to get any information on implosion from those replying to the advertisement or the information package. He further conceded that just because a demolisher was experienced in demolition of multi – storey buildings this implied nothing at all about a persons ability or knowledge of the implosion method of demolition. It is difficult to know what Mr. Dwyer expected to achieve out of this exercise in drafting and assessing the expressions of interest because despite having read the first RGA Report in about Christmas 1996 Mr. Dwyer did not know that implosion was a favoured method of demolition for the tall buildings despite it appearing in the executive summary at the front of that document.

108. It leads one to the conclusion that Mr. Dwyer and possibly Mr. Hotham in drafting the advertisement and selection criteria simply ignored the first RGA Report which favoured implosion of the tall buildings. The least that could have been expected was that those replying to the advertisement could have been told that implosion was an option. The end result in my assessment is that there was a pool of potential implosion demolishers who simply responded to both the advertisement and information package and were inadequately advised as to the possible likely options that might be available.

109. Mr. Dwyer did say that it may have been better to re - advertise at the time but his explanation for not doing so was that he was not requested to do so. He further conceded that using the selection criteria he had chosen from a previous construction project he was not really able to measure or assess any expertise in implosion in the expressions of interest. An updated demolition program dated 17th February 1997 came into existence yet there was never any further reassessment of the selection criteria or any consideration given to re - advertising the program with the reference to implosion being inserted. It is doubtful in my mind whether TCL was ever appraised of this factor when Mr. Hotham met with PCAPL on 28th February 1997 to approve PCAPL's recommendations.

110. It is not necessary to go into every aspect of this expression of interest phase but it was certainly inadequate and demonstrated a significant degree of incompetency in the way it was handled insofar as no further consideration was given to the advertisement, the method of demolition or the tenderers.

111. It was suggested at one stage that the expression of interest phase was an alternative to pre - qualification and as such if that is maintained then it completely failed to achieve a proper result. The option of implosion was totally overlooked. Mr. Dwyer in his evidence on 11th June 1998 said that it

may have been helpful to have an expert consultant in demolition available to assist in the preparation and assessment of the tender documentation. It was at this critical stage that PCAPL and TCL should have exerted some proactive initiative in relation to the project given their lack of knowledge and experience in implosion. It certainly reflects a degree of ineptitude in failing to ensure that expertise was made available.

THE TENDER SELECTION PROCESS

112. The tender selection process has been examined in a chronological and factual manner by Counsel Assisting the Inquest. Save for certain aspects of that summary which contain comment upon matter in respect of which I hold some reservations concerning the conclusions drawn from those facts and which have been omitted or ignored by me this segment of the Report adopts those submissions.

113. The meeting between PCAPL, Totalcare and the shortlisted tenderers was held on the Acton site on 5th March 1997. This was the day that the tender documents for Stage 1 were released to those proposed tenderers. This was the first real opportunity for those on the short list to properly and fully inspect the site and the buildings. It was reasonable, prior to 5th March 1997, for those on the short list to rely for the purpose of projections in their expressions of interest, on the material provided, such as it was, in the advertisement and expressions of interest package.

114. Some technical drawings were provided by PCAPL on 5th March 1997 to those on the short list, but these were not ones which indicated to any extent the size or quantity of steel in the support columns of Sylvia Curley House and the Main Tower Block.

115. The tenders for Stage 1 of the project opened on 3rd March 1997 and closed on 18th March 1997. It was not until 13th March 1997 that the structural drawings provided to those on the short list were made

available by way of addendum to the tender documents. These, together with exhibit 71B (structural drawings for Sylvia Curley House) were the only structural drawings of relevance provided to those on the short list. These drawings did indicate the presence of structural steel in the buildings.

116. It will be recalled that Canberra Day was a Public Holiday and fell on Monday 17th March 1997. Effectively, this meant that the tenderers had only one working day after the probable receipt of the structural drawings, to inspect the site in any depth as to the steel mentioned in the columns and then to price their tender to take account of the size and quantity of steel in the columns in Stage 1. In the circumstances this was clearly an inadequately amount of time.

117. The Stage 4 tenders opened on 18th March 1997 and closed on Thursday, 27th March 1997, the last day before the Easter break. This was still a very brief period in which those on the tender short list could return to Canberra, inspect the steel columns and to take account of the size and quantity of steel in any tenders they chose to submit.

118. Given that PCAPL and Totalcare knew in February 1997 (i.e. about a month before the onsite meeting on 5th March 1997) that the

Commonwealth deadline for the site clearance on the Acton Peninsula was 31st December 1997, the timetable was too tight to give proposed tenderers a reasonable opportunity to inspect the steel prior to the tenders closing, particularly for Stage 1 but also Stage 4.

119. This shortness of time did not relieve the tenderers of their obligation to satisfy themselves of the construction of both buildings prior to submitting a tender; or, to adopt the approach suggested by Mr. Loizeaux to put in a conditional indication that the timetable was too tight as is seen from the fact that the Guilfoyle bid included a method statement based on the assumption that Sylvia Curley House was of concrete construction (as advised in the information packages).

120. In light of the inaccurate information relating to the structure of Sylvia Curley House contained in the information packages, TCL and PCAPL had a duty to inform the tenderers that the buildings were steel framed, regardless of the time at which, or the extent to which, the drawings assisted in that regard. It was a duty both organisations failed to discharge.

THE ADEQUACY OF THE TENDER PROCESS AND THE DOCUMENTATION/INFORMATION REQUIRED

121. According to Clause 3(f) of the Project Management Agreement the Project Manager was to submit tenders and quotes received for the approval of the principal together with a written report regarding those tenders, which report should contain "specific advice as to the capacity and ability of the relevant persons, firms or companies". In purported compliance with this Mr. Dwyer read and assessed all the tenders when they came in and, after consultation with Mr. Hotham he prepared a report recommending City and Country Demolition's (CCD) tender bids for Stages 1 and 4 be accepted. At the request of Mr. Hotham he wrote a further report summarising the advantages and disadvantages of implosion. These recommendations were provided to the principal's agent, TCL for its perusal and approval and were discussed at a meeting of representatives of PCAPL and TCL on 11th April 1997. None of this detail went to the ACT.

122. Mr. Sullivan's evidence was that TCL staff would have overseen the tender process to ensure that the bids conformed with the tender requirements. He stated that it was probably Mr. Hotham on behalf of TCL who, as a matter of normal procedure, would have had the responsibility to check the tenders before TCL supported the recommendations at the tender approval meeting on 11th April 1997.

123. He further expected that Mr. Hotham and PCAPL would bring to his notice any non – conformities in the tender documents submitted and that Mr. Hotham would look at some of the tender documents so as to be in a position to satisfy himself that the PCAPL recommendations were fair and reasonable. Mr. Sullivan accepted that the expertise in project delivery and in engineering that had been previously a part of the CAMMS area prior to 1st January 1997 transferred to TCL on that date. The expertise was available within TCL to check these very issues.

124. Despite this expectation, neither Mr. Hotham nor Mr. Sullivan noticed (contrary to the requirements of the tender documents), by the time of the tender approval meeting of 11th April 1997 and despite the tender interview with the principal of CCD, Mr. Fenwick on 24th March 1997, no method statement or list of prior projects from his explosives contractor had been produced by Mr. Fenwick. Further, Mr. Hotham admitted that he did not read in any detail any of the bids other that the CCD bids. Accordingly on his own evidence he was not in any position at all to "review" the PCAPL recommendations.

125. Any examination of the tender documents lodged by CCD and accepted by Messrs. Sullivan and Hotham indicated that this documentation was deficient in at least the following respects.

First CCD's failure to list its subcontractors (including the implosion subcontractor) in the tender bid may have made its bid a non - conforming one. The only mention by Mr. Fenwick of his proposed subcontractor was the name Controlled Blasting Services

Secondly, CCD's bid for the Stage 4 contract does not set out sufficient detail in the method statement. The bid only mentions the word "implosion" in Clause 11.28 of Exhibit 105. Mr. Sullivan indicated that this may have made the bid a non - conforming one. Mr. Hotham also did not accept that to be an adequate method description.

126. Mr. Hotham's justification for not requiring more detail of the proposed implosion method at that stage was that this detail would have to be provided, under the conditions of the contract, by a workplan within seven days of the contract being awarded.

Mr. Dwyer also adopted this approach as to why no method statement was insisted upon at the time the CCD tender was approved on 11th April 1997. He, like Mr. Hotham, conceded that the method statement in Clause 11.28 of CCD's tender bid lacked in any detail and was "bare bones".

127. Mr. Dwyer and Mr. Hotham at the time of the contract approval meeting on 11th April 1997 knew of, and relied on, that provision of the contract which required provision of a workplan within seven days of the letting of the contract as a substitute for the inadequate and non – conforming information provided by Mr. Fenwick about his intended demolition method statement. Yet, as addressed below, neither TCL nor PCAPL required CCD to comply with this contractual provision relating to a workplan until 16th May 1997 one month after work had in fact commenced; and only after Workcover had issued a prohibition notice. These steps were done in blatant disregard to the contractual provisions. There is no excuse for such conduct.

128. Had Mr. McCracken not attended the site meeting on 5th March 1997 where he happened to hand around his promotional "portfolio", the result would have been that the only information known to PCAPL and TCL about the implosion "expert" as at 11th April 1997 would have been the

bare names "Controlled Blasting Services" (CBS) and "Rod McCracken". The willingness of TCL and PCAPL to overlook the inadequate method statement in CCD's bids meant that they were not only ignorant as to who was to conduct the implosions but also as to how he was going to go about it. This approach was inconsistent with the exhortation in the discarded draft Project Brief of the need for the Project Director to "fully canvass the implosion method".

129. Despite expressing himself to be satisfied in his letter of recommendation that the bid by CCD satisfied all the criteria included in the tender documentation, Mr. Dwyer conceded in his oral evidence that: -

a. The CCD bid did not provide a construction program and the staged cost data required by Clause 11.27 and this should have been obvious to Mr. Dwyer at the time,
b. His failure to notice this was less than satisfactory, and
c. The CCD bid had "no detail whatsoever" in the method statement as to how the implosion method was to be put in place.

128. The evidence in this respect of Messrs. Hotham and Dwyer supports the view that the material provided by CCD in its tender bid did not make the bid a conforming one. The information provided, particularly in relation to method statement and program of works, was so deficient that not to have noticed this and required further information, or alternatively to have excluded the bid from consideration, indicated a failure by PCAPL (and TCL through Mr. Hotham) to do the assessment adequately and properly.

129. Mr. Dwyer conceded that it might have been beneficial if his procedure for assessing the tender bids had included objective checking of prior projects of the tenderers. Mr. Loizeaux outlined the checking procedure that should have occurred. This objective checking was vital. It was starkly illustrated by Mr. Loizeaux's later evidence where he indicated that if proper checking of not only CCD, but also CBS had occurred, Mr. McCracken "never would have been given permission to do this job". Mr. Loizeaux summarised the failure to make any objective checks in this case as a "lack of diligence" which extended from CCD through to the ACT. Mr. Loizeaux was emphatic that the owner's representative and Project Manager were not entitled simply to rely for their checking on the demolishers general reputation within the industry. They were "legally obligated to see whether or not he (was) in fact competent, not the industry".

130. Checking, if properly done by Mr. Dwyer (and if insisted on by TCL in its review of the PCAPL recommendations) would probably have brought to light the fact that Mr. McCracken had been excluded from a previous demolition job, based on the observations of Messrs. Roderick and Powis. Mr. McCracken also had no prior experience in imploding steel framed buildings.

131. Mr. Sullivan and Mr. Hotham's evidence made it plain however that TCL did not, as a matter of procedure as a Project Director, impose any external checks on the expertise or ability of the proposed successful tenderer, prior to accepting PCAPL's recommendation. Yet such a duty was seen by Mr. Loizeaux as imposed on the Project Director (in this case the ACT's agent TCL). By the time of the tender meeting on 11th April, Mr. Fenwick had not, since his tender interview on 24th March 1997 even provided a method statement or a list of previous projects done by the explosives contractor. Further, Mr. Hotham conceded that at the meeting on 11th April 1997 he had no idea how Mr. Fenwick was going to implode these buildings. These deficiencies in information and procedure and the concession by Mr. Hotham referred to above make apparent the extent to which TCL and PCAPL failed as a matter of procedure and care to vet or require appropriate level of information form those tendering. These failures should never again be allowed to occur.

132. Despite these deficiencies being put to Mr. Sullivan, his evidence, and that of Mr. Hotham was that the procedures were best practice and that neither of these men would in hindsight change them. Mr. Sullivan maintained the position that the tender meeting of 11th April 1997 was "an extra step" despite the apparent failure of any of the people at that meeting to address with any consistency the questions of tender conformity, identity and expertise of the implosion expert. There was a failure on the part of everyone present to ensure that adequate objective checks of the contractor and explosives expert had been undertaken prior to approval of PCAPL's recommendation of the successful tenderer.

133. Mr. Lavers' role in this process was, on the evidence, not an active one. Although he was certainly involved in the tender meeting on 11th April 1997, he was not "the main player in that discussion". The detailed discussion at that meeting was between Mr. Sullivan, Mr. Hotham and PCAPL. This accords with the respective position of Mr. Sullivan as the head of the relevant area and Mr. Hotham as the onsite representative. However, given Mr. Lavers' position as the nominated Project Director for TCL, the conclusion is open that the passive role adopted by Mr. Lavers in relation to the tender assessment process permitted his proper role to be overtaken by Mr. Sullivan, resulting in the conclusion that Mr. Lavers then did not take any adequate steps himself to perform the duties of Project Director during the tender assessment process.

134. Mr. Lavers described Mr. Sullivan's increasing interest and involvement in the tender stage as "usurping" his own role. This was because Mr. Sullivan was senior to Mr. Lavers. Mr. Lavers also said in his ROI that during the tender process, he, Mr. Hotham and Mr. Mitchell gave a series of informal status reports to Mr. Sullivan and on occasions, Mr. Lavers reported directly to Mr. Sullivan.

135. Despite that evidence, Mr. Lavers did not recall seeing any other documents at the 11th April meeting except the PCAPL letters of

recommendation and the document on the advantages and disadvantages of implosion. He further stated that he may not even have seen these documents at or before the meeting.

136. Mr. Lavers, like Mr. Sullivan maintained the position that despite the lack of detailed discussion about the variation in tender prices, despite the pre - signed approval letter and expenditure form, despite the lack of documentation seen by him at or prior to the meeting and despite having "very little" knowledge of the identity or experience of the implosion expert proposed the review meeting of 11th April was not just a formality. This is contrary to the evidence.

137. The approval meeting on 11th April 1997 was a rubber stamp meeting, at which the failure properly to address those issues resulted in the meeting accepting the lowest priced tenders for the preferred option of implosion. The exclusion of Delta for the Stage 4 bid raises many unanswered questions. The handling of the tender selection process was nothing less than appalling. The Assembly Committee on the tender process needs only to examine this case as a basis for any review.

INSURANCE COVER

138. The issues raised here are not matters for the Coroner. Another Court and jurisdiction is the appropriate forum for these matters to be resolved.

FAIRBAIRN PARK

139. This issue is in my assessment of the evidence collateral to the Coroners function. I do not propose to embark on a consideration of this evidence. If it becomes necessary to consider at some later stage the volume of evidence received on this topic such evidence is sufficiently recorded on the public record to be revisited.

RECOMMENDATION AND JUSTIFICATION TO USE IMPLOSION – EXHIBIT 256

140. As part of his assessment of the tender bids, Mr. Dwyer created exhibit 256, a summary of the advantages and disadvantages of implosion. This document was brought into existence for consideration by those present at the tender meeting on 11th April 1997 by Mr. Dwyer at the request of Mr. Hotham. It was an assessment with a view to minimising the inconvenience to the Hospice.

141. The unusual aspect in drafting the document was that Mr. Dwyer confined himself to the following matters: -

a. The RGA Report and its contents which by that stage were almost 2 years old, and
b. The contents of the tender bids.

128. Despite Mr. Dwyer confining his attention to the RGA Report, there is no reference in his summary to the advantages and disadvantages of implosion or to the relative novelty of the implosion procedure in Australia,

despite mention of that in the RGA Report. There was no reference in Mr. Dwyer's summary to any safety issues; nor were such issues included in the request from Mr. Hotham to Mr. Dwyer to draft this document.

129. Mr. Dwyer's creation of this document was a logical and sensible attempt to examine the benefits of the implosion method but having regard to his inexperience and his failure by this stage to follow at a much earlier point in time the suggestions made in the first RGA Report to investigate the whole demolition process so as to have a sound knowledge of the method the whole exercise was really a waste of time. For Mr. Dwyer to recommend and TCL to accept implosion bids over conventional bids based on this superficial analysis is evidence of incompetence in both PCAPL and TCL, or simply that the 11th April meeting was a further rubber stamp approval of the already preferred method.

FAILURE TO CONSIDER ANY OTHER BIDS

130. The Guilfoyle joint venture bid was not considered at the meeting of 11th April 1997. It was not discussed at all. The Guilfoyle tender documents set out its expertise in implosion and detailed projects on which that method had been used. Its price for implosion of Stage 4 was only $56,000.00 more than CCD – a proportional amount described by Mr. Sullivan as "fairly marginal" and about the same "pretty marginal" difference of $50,000.00 between the excluded Delta bid and successful CCD bid. If the conditional nature of CCD's Stage 4 bid was taken into account (i.e. extra $104,000.00 if Fairbairn Park was unavailable), the Guilfoyle joint venture bid in fact would have been using the words of Mr. Sullivan, the "lowest conforming suitable contract".

131. No one went beyond the CCD bid at the tender meeting on 11th April because the basis for accepting that bid was described by Mr. Sullivan as the "lowest, conforming suitable contract. Best value for money for the ACT Government". Mr. Hotham himself never read in detail any other bid other than the one PCAPL recommended as the final successful tenderer.

MEETING 11TH APRIL 1997 – RUBBER STAMP

132. Mr. Sullivan said that the tender meeting was a real review of the PCAPL recommendations for Stage 1 and Stage 4. Yet there are some serious inconsistencies about this statement, viz: -

a. Mr. Hotham was already satisfied that the PCAPL recommendation should be accepted,
b. Mr. Sly of TCL had already authorised goods or services in an amount of $741,000.00 on 10th April 1997, the day before the meeting granting the approval, and
c. Letters of acceptance for Stage 1 had been signed off by Mr. Gowing of DUS also on 10th April 1997.

Mr. Sullivan was questioned in these terms: -

A. So the review was really not much of a review at all?

A. It was still a review based on the fact that the letter of acceptance…

Mr. Sullivan said it was a serious review but most of the discussion concerned Stage 4.

128. Mr. Sullivan said there was "nothing unusual" in Mr. Hotham having had a pre – signed letter of acceptance for Stage 1 dated the day before the meeting to approve the recommendation. Yet he later conceded in cross – examination by Mr. Fenwick's legal representative that such a course was unusual.

129. This procedure surely cannot be regarded as sound government business practice and should be reviewed. It seems to me that if such practice exists it places the government at serious risk in terms of the potential for fraudulent conduct by unethical operators. The whole process of assessment and review of the tender bids contained flaws and deficiencies. The process amounted in effect to a rubber stamping of what had already been agreed between Mr. Hotham and Mr. Dwyer as the most appropriate recommendation. The pre signing of the letter of

acceptance and the pre approval of finance for one stage of the successful bid confirms that position.

DISPARITY IN STAGE 1 TENDER PRICES

130. Where there is a wide ranging disparity in tender prices an examination is made for a reason for the disparity. Such a course of action is reasonable and to be commended. The explanation given by Mr. Sullivan as to the method by which this disparity was assessed on this occasion was unsatisfactory. Rather than comparing the different prices in different tenders and looking at the other competing tenders to see what they offered for the price quoted, Mr. Sullivan said that only the lowest conforming tender is looked at: and if there is a concern about the price the tenderer is interviewed about it. This on Mr. Sullivan's evidence was the extent of the examination of disparity in tender prices.

131. The result of this method adopted by Mr. Sullivan is that, without reference to the contents of other more expensive tender bids, any interview of the lowest tenderer would probably rely (as it did in this case) only on his assurances about price, rather than his being required to justify his low price against the content of other tender bids and prices. Mr. Loizeaux stated that it would have been logical for PCAPL and TCL to "look at the prices that were brought in where the lowest bidder was half the price of the other bidders and question whether or not he was in fact competent at that price".

CONCLUSION

132. The final result of the assessment of the tenders by Mr. Dwyer and the review by the TCL officers on 11th April 1997 was that, as Mr. Dwyer said in evidence he "assessed the tenders on what was provided" with no process at all for any external or objective checks. The assessment of the implosion

subcontractor was "superficial" in that context. Given the evidence of Mr. Loizeaux as to the extent and importance of checking referees and past projects, the tender assessment procedure in this instance as performed by Mr. Dwyer, approved by TCL at the meeting on 11th April and by Mr. Hotham fell well below the standard that should have been applied by a reasonable competent Project Manager and Project Director. The responsibility for these shortfalls lies equally with PCAPL and TCL. This result was the final link in the chain of procedural deficiencies which commenced with the appointment of the Project Manager on 13th December 1996, through to and including the letting of the contracts on 11th April 1997 which resulted in CCD and throughout it CBS being permitted to take charge of the implosion of both the tall buildings.

133. The actions of Mr. McCracken and Mr. Fenwick on site contributed to the death of Katie. Bender. The process by which those persons were appointed, was connected to that death. If proper efforts had been made to check that these people were qualified, they would never have been given the job. There was a failure by particularly PCAPL to adequately monitor the conduct of Mr. Fenwick and Mr. McCracken. Although there were varying degrees of responsibility the inescapable conclusion is that these poor work practices of PCAPL and TCL in the appointment process permitted two persons to be assigned to the demolition project who were entirely unqualified for the task (see my comments at paragraph 161 and 162).

THE ROLE OF DUS CONTRACTS SECTION

134. DUS contracts section had no technical engineering expertise at the relevant time The qualitative assessment of the tenders was done by the Project Manager and reviewed, such as it was, by TCL. Mr. Sullivan maintained that the DUS contracts section had the "ultimate decision and responsibility in relation to the content of the contracts". This is not the case for the following reasons: -

a. The relevant expertise in relation to the engineering and technical contents of any contract resided with TCL and PCAPL,
b. DUS were not given at any time all the tender documents, nor the expressions of interest, and were not present at the tender meeting of 11th April 1997. DUS were given the file only "for most of one day" and their job was only "to make sure all the documentation was there",
c. Mr. Gowing's statements and Mr. Hotham's evidence indicated that in relation to the drafting of the contracts for demolition and in relation to the approval of the successful tenderer, it was very much a case of DUS reacting to and relying on the advice forwarded to it by TCL. As Mr. Hotham expressed it, DUS had only "all the formal documents that would make up the formal acceptance of the recommendation". It was purely a formal check by DUS to see that the relevant paperwork was in order so as to permit the formal acceptance of the tenders.

128. Mr. Hothams's evidence was that DUS contracts section had a role in looking through the recommendations from the Project Manager. DUS required certain documents to accept the tender. The documents

provided by TCL to DUS contracts section at that stage were the purely formal ones: -

a. PCAPL recommendations,
b. The tender form, and
c. Annexure of the contract documents.

These amounted only to a small portion of the documents of the TCL file at that time.

128. The file forwarded to Mr. Gowing at DUS on 9th April 1997 indicated in Mr. Hotham's own hand by his signature on the "Instruction to Award Contract" form that the awarding of the contract had been completed by Mr. Hotham on that date with the result that Mr. Gowing's letter of acceptance dated 10th April 1997 was only the formal notification to the successful tender. Mr. Hotham's evidence also made clear that DUS were not requested to review the merits of the tender recommendations.

129. There was no technical expertise within DUS, so that the technical aspects of the contents of the contract documents were advised to DUS by TCL and PCAPL for inclusion in those documents.

Although the letters of acceptance to the successful tender bids were signed by Mr. Gowing of the DUS contracts section, all the qualitative assessment and expertise resided in TCL, upon whose advice DUS contracts section acted, and upon whose expertise it relied.

INITIAL ON SITE ACTIVITIES

130. Counsel Assisting the Inquest made some significant submissions concerning these activities. I do not propose to re visit these considerations in any detail because they have been dealt with in other aspects of the Report. Counsel primarily examines the various specifications that appear in the contracts. I have previously made a consideration of those specifications in the segment on Methodology.

131. The duty fell on Mr. Dwyer as the Superintendents representative on the site to ensure that the contractor met his obligations under the contracts. This is not only clear from the Project Management Agreement but also from Mr. Dwyer who continually asserted that he was the Superintendents representative on the site. That role included ensuring the contractor complied with the requirements of his contract, a point which Mr. Dwyer was well aware of.

132. TCL as the agent of the ACT and the Project Director also had a role to ensure that the requirements of the contracts between the Territory and the demolition contractor were being met. Mr. Sullivan told the Inquest that as Project Director TCL had a role to monitor the work of the Project Manager. Mr. Dwyer further stated the Project Director had some input through the Project Manager as to what the contractor did and did not do and that if he

saw some difficulty with the contractor he would issue a directive to the Superintendent (see my comments at paragraph 154).

133. TCL took steps to actively meet its obligations as Project Director and principals agent. Mr. Hotham spent up to 30% of his average working week on the site attending on a daily basis at times. Mr. Hotham had an office site, attended site meetings and received copies of correspondence sent by Mr. Dwyer to Mr. Fenwick. Mr. Hotham also received a copy of the Project Managers report. Mr. Hotham was in a position to act if he became aware the requirements of the contract were not being met.

134. The total obligations arising out of the contracts are well documented at Specification 5, 7, 11 and 18 of the contract. It is not necessary to reproduce those particular provisions in this aspect of the Report as I have previously examined those factors in detail elsewhere (see segment on Methodology).

135. This Report documents in detail elsewhere those circumstances where Mr. Fenwick and Mr. McCracken simply failed or defied the requests being made by the project team for information or the explicit directions coming from the Project Manager. Those failures are well documented in this Report covering such areas as:-

a. The failure to provide a method statement previously promised at the tender interviews on 24th March and 14th April 1997 by Mr. Fenwick. No method statement was ever forthcoming until after WorkCover had intervened. The workplan was finally prepared on 16th May 1997 nearly a month after the work had commenced,
b. Mr. Dwyer told Mr. Fenwick on 21st April 1997 that he needed to submit his demolition plan before commencement of work. The request was ignored,
c. The site meeting minutes clearly indicate a number of examples where Mr. McCracken failed to meet the deadlines or provide information requested during the period 23rd April, 29th April, 6th May and 20th May 1997, and
d. Mr. McCracken failed to provide the video until early June.

128. A classic example of the failures of Mr. McCracken are reflected in the site meetings involving Mr. Dwyer's staff held on 26th May, 2nd, 16th and 23rd June 1997 where Mr. McCracken was to submit a detailed status report. No such status report was ever provided. These ongoing failures by Mr. McCracken were issues that required constant scrutiny and proactive intervention by Mr. Dwyer on the project. Mr. Hotham was also in a position to intervene in support of Mr. Dwyer if he was aware the requirements of the contract were not being met.

129. The engineering debacle reflects another episode in the history of this whole project previously referred to in this Report. On 29th May 1997 Mr.

Dwyer wrote to Mr. Fenwick on the question of getting explosives. No reply was made. The request was ignored.

130. On 2nd June 1997 Mr. Dwyer again wrote to Mr. Fenwick requiring information about flying debris and safe viewing distances. No written information on this crucial matter was ever received. On the same day Mr. Dwyer wrote to Mr. Hotham indicating that he believes some of the problems that existed on the site rested with CBS and that he should monitor CCD's progress over the next week. On 12th June 1997 Mr. Dwyer wrote to Mr. Fenwick raising concerns about Mr. McCracken's performance.

131. Mr. Dwyer must be commended for these steps. What concerns me and did so not only during the evidence adduced in the Inquest but also whilst

preparing these reasons is why Mr. Dwyer did not take stronger affirmative action in the form of having his employer (PCAPL) account to TCL as the Project Director so as to invoke the contractual provisions against Mr. McCracken and Mr. Fenwick requiring them to comply with their obligations. One is left with the impression that Mr. Dwyer was simply ignored and bluffed by the contractor and subcontractor.

132. The video of Mr. McCracken's prior demolition work when it was finally provided and viewed by Mr. Dwyer and Mr. Hotham should have raised concerns immediately about the risk of flying debris. As I have previously stated in the Report the video depicts large amounts of debris being thrown great distances at great speed from demolition sites. Many of these demolition sites were only concrete and did not involve any steel. It is not necessary to further demonstrate these inadequacies and failures. The performance and attitude of Mr. Fenwick and Mr. McCracken in relation to their obligations under the contracts was disgraceful. The efforts made by Mr. Dwyer to have them comply with the contracts were treated with absolute disdain and total disregard.

ROLE OF REGULATORY AGENCIES

INTRODUCTION

1. The *Occupational Health and Safety Act 1989* is an *Act* to promote and improve standards of occupational health, safety and welfare. The *OH&S Act* is the principal piece of legislation regulating workplace safety. The objects of the legislation are: -

a. To secure the health, safety and welfare of employees at work,
b. To protect persons at or near work places from risks to health or safety arising out of the activities of employees at work,
c. To promote an occupational environment for employees that is adapted to their heath and safety needs, and
d. To foster a cooperative consultative relationship between employers and employees on the health, safety and welfare of employees at work.

The legislation commenced in the Australian Capital Territory on 14th November 1989. The legislation explicitly imposed duties upon Mr. Rod McCracken (CBS), Mr. Tony Fenwick (CCD) and Mr. C. Dwyer of Project Coordination Australia Pty Ltd in respect of the Acton Peninsula project. These persons had responsibility for the workplace.

2. Mr. Purse, Mr. Hopner and Mrs. Kennedy were inspectors under various pieces of legislation. The legislation was: -

a. The *Occupational Health and Safety Act 1989, (ACT)*,
b. The *Scaffolding and Lifts Act 1957 (ACT)*,
c. The *Scaffolding and Lifts Act 1912 – 1948 (NSW)* in its application to the ACT, and
d. The *Scaffolding and Lifts Regulations (NSW)* in its application to the ACT.

ACT WorkCover was not a separate legal entity. It was an administrative unit within the Government of the ACT.

3. The *Occupational Health and Safety Act 1989 (OH&S Act)* imposes general duties of care on employers and employees to ensure workplaces and work methods are safe and without risk of injury to any person at or near that workplace. The *Act* empowers inspectors to enter workplaces to examine systems of work (Section 62) and even to stop work if in the opinion of the inspector it is not being performed safely or the system of work is not safe. (PROHIBITION NOTICES) (Section 77). Inspectors also

have the power to issue Improvement Notices on reasonable grounds (Section 76) relating to safety issues.

Mr. Purse purported to exercise such a power on 8th May 1997 when he issued the Improvement Notice to Mr. Dwyer. It will also be remembered that he gave consideration to a significant degree to issuing such a Prohibition Notice on the 2nd July 1997 during the course of the meeting at the Hospice.

4. Sections 27 – 30 of the legislation also imposes general duties of care on employers, third parties, persons in control of workplaces and employees to take all reasonable practical steps to ensure that the workplace is safe. Section 27 is intituled "Duties of Employers in Relation to Employees". Section 28 is styled "Duty of Employers in Relation to Third Parties". This provision is not as wide as Section 29 but it creates an offence for employers not to take all reasonable steps to ensure that persons at or near a workplace under their control are not exposed to risk to their health or safety. Section 30 of the legislation deals with "Duties of Employees".
5. It was suggested as WorkCover inspectors have power to enter workplaces and issue notices then they are therefore to some extent in control of the workplace and have a statutory obligation under Section 29

of the *OH&S Act* to ensure that the workplace is safe and without risk to health.

Section 29 of the *OH&S Act* provides under the heading "Duties of Persons in Control of Workplaces" that: -

"A person who has, to any extent, control of: -

a. A workplace,
b. A means of access to, or egress from, a workplace, or
c. Plant or a substance at a workplace, shall take all reasonable practicable steps to ensure that it is safe and without risk to health.

There is a substantial penalty imposed for a breach of the provisions. Section 29 is an extremely broad provision capable of having an application to any number of the parties engaged in the Acton project.

3. There are some 17,000 workplaces in the Australian Capital Territory. At the time of the Inquest there were only 8 WorkCover inspectors to enforce and insure the legislation was being complied with. There is no possible hope that

every workplace in the Territory can possibly be inspected on a regular and frequent basis.

4. Inspectors are appointed who have certain functions and powers to be exercised pursuant to the legislation but these WorkCover inspectors as they are known are not subject to statutory obligations under the *Act*. The position is correctly summarised by Counsel Assisting the Inquest and supported by Mr. P. Johnson SC for the Territory on the question as to whether the *OH&S Act* imposes legal duties on the inspectors.
5. The *Act* does not mention any statutory duty being imposed on WorkCover which administers the legislation. Simply because an inspector has power to enter a workplace and exercise other powers in the nature of issuing notices, make enquiries or recommendations does not confer upon the inspector any form of control over the workplace. Such a proposition would be contrary to ordinary practical common sense. The legislation is directed at imposing a duty of care on those at the workplace or in control of the workplace. It is these persons who are required to meet the duties of care imposed on them under the *Act* irrespective of any role played by a WorkCover inspector. Counsel for PCAPL and to a lesser extent TCL constantly tried throughout the Inquest to attribute some form of responsibility for the tragedy at the Peninsula on WorkCover inspectors without regard to this statutory scheme.
6. The *OH&S Act* clearly sets out the principle and purposes of the legislation. Worrkcover inspectors have a duty to uphold those principles of the legislation by dutifully applying the requirements to their tasks. The mere creation of certain powers and functions in a WorkCover inspector under the legislation does not thereby create statutory duties upon them. It is illogical to apply such an interpretation. It would mean that wherever there is a workplace in the ACT where there exists an unsafe system of work, then a WorkCover inspector is in breach of Section 29 of the legislation dealing with the duties of persons in control of the workplace whether or not they had attended or even were aware of such a workplace.Surely this is not the intention of the legislation.

   The legislation is directed at WorkCover inspectors ensuring by whatever remedial measure is open to them including prosecution that those who administer and control the workplace do so in the best interests of employees, visitors and any other person that may have a genuine right to be present.

7. The WorkCover inspectors have been the subject, quite properly in my view, of substantial criticism in this Inquest. There were at least two and probably three if not more occasions, when the WorkCover inspectors, having entertained doubts about the project continuing should have issued prohibition notices requiring the work to cease until certain aspects of that work were rectified to a satisfactory degree. The evidence of one (now former) WorkCover inspector at a senior level damming the degree of Government funding and raising concerns about the manner in which the legislation was administered was disturbing. It was embarrassing to hear such sweeping assertions. It is doubtful whether the ACT Government would permit such a circumstance to exist. I do not accept his assertions about the funding issues. It must also be stated that I place no weight on his comments about the lack of government funding for the organisation having regard to the persuasive

evidence given on this topic by Ms. J. Plovits, the General Manager which is reviewed shortly (see paragraph 65).

The administration, management and organisation of the ACT WorkCover unit in 1997 was most unsatisfactory. These criticisms raised by the former employee need to be balanced and viewed objectively in the context of this tragedy and the improvements that can be made and are being made by the ACT WorkCover organisation. This is well evidenced by Exhibits 526 and 526C which are described as a Summary of Actions arising from the Review of ACT WorkCover. The Government and the civil service are to be commended for taking such a positive and immediate response to Katie Bender's death. It should be stated that the need for such reform was seen shortly before the tragedy and steps were being taken to implement change when the death occurred.

8. It is important to appreciate that if a building is to be demolished by the implosion process then appropriate checks should be made of the qualifications and proven ability of the person to carry out such a demolition. It certainly concerned me as the Coroner, on the evidence, that those engaged in advertising and then embarking on the tender process themselves did not know to any substantial degree the structure of the building that it was a steel encased concrete structure of substantial solidity. If the regulatory agencies were to fulfill their statutory function effectively then without such basic details how could the independent assessment process possibly be of any value. It is very clear on the evidence that this did not happen. There was no examination of the demolition proposal itself either by the ACT Building Control, the National Capital Authority, the ACT Dangerous Goods Unit and ACT WorkCover. There are no other words to describe it other than the fact that it was never done. It should be stated that the two former bodies were never given the opportunity to examine the demolition process nor were they consulted on this aspect of the project. The latter two agencies failed to properly discharge their function.

   This segment of the Report is critical of particularly ACT WorkCover and to a lesser extent the Dangerous Goods Unit. Yet there is no escape from the fact that the primary responsibility for the safety of the Acton demolition rested with the demolition contractors, those supervising them and those who employed them. Whatever the criticism I make of Mr. Purse, the Chief Inspector I agree with him that WorkCover was not TCL or PCAPL's safety officers.

9. One positive development arising from the death of Katie Bender has been the process of review conducted by the ACT Government into the role of WorkCover and the Dangerous Goods Unit. The evidence is that WorkCover and Dangerous Goods Unit are now part of the same administrative unit. A review of both organisations has been commenced and is continuing as is evidenced by two reports tendered to the Inquest setting out the summary of actions arising from the review of WorkCover. The problems which arose early in the 1990's which apparently flowed from a personality conflict no longer exist. WorkCover and Dangerous Goods are operating in a co–

ordinated way under the direction of a new Chief Inspector and General Manager.

STATUS OF THE LAND

10. There is certainly a question as to the status of the land to be determined and whether in particular the Building Controller had any role to play in the approval of the demolition process. It is stipulated in the *Demolition Code of Practice* that the building controller must be consulted. The Inquest is not the time or the place to engage in such complex legal questions. It is my recommendation, that the regulatory agencies responsible for the administration of such demolition projects in the ACT must be consulted whether the project is proceeding on Commonwealth or Territory land. There are significant consequences in the terms of the common law, workers compensation and insurance liabilities. I do not have to consider the status of the land as to whether it belongs to the Commonwealth or the Territory. The simple fact of the matter is that no regulatory authority effectively became involved in the process until mid May 1997, by which time a substantial amount of work and effort had already been commenced not only in the demolition phase but also government involvement. There was no examination of the demolition proposal itself by the ACT Building Controller or the National Capital Authority. There are more detailed remarks later in this segment.

PRE TENDER CONSULTATION

11. There was a great deal of confusion among all those involved in the demolition as to the role they expected Dangerous Goods and WorkCover to discharge. The Dangerous Goods Unit (DGU) had limited functions under the statutory scheme existing at the time. DGU's role was simply issuing licences and permits relating to dangerous goods. The DGU inspectors were Mr. Tony Smith and Mr. Bill McTernan. In any future project of this nature there should be close liaison between the project team and all regulatory agencies at an early stage to clarify the respective lines of responsibility. There should be a joint co – ordinated team approach from both the private and public sector involving full and frank consultation. A close liaison in future projects should address the problems that occurred on this project. Neither DGU nor WorkCover were consulted by PCAPL or TCL before the tenders were let for the demolition of the hospital by implosion even though such a demolition had never previously been undertaken in the Australian Capital Territory. Mr. Smith of DGU and Mr. Purse of WorkCover both indicated in their evidence that if they had they been approached they would not have objected to implosion taking place but at least there would have been some early liaison between the relevant parties and perhaps a better understanding of what the role of each organisation might be.
12. The lack of consultation concerned Mr. Smith to the extent that he wrote to his superiors about the issue. Mr. Smith's memorandum dated 16th April 1997 gave rise to a consultative meeting on 7th May 1997. Mr. Smith acted in a sensible fashion. Although the steps were not part of his statutory duties he

was taking a common sense approach in the best interests of the project and its safe performance.

13. The interim arrangement presently in operation in the Australian Capital Territory includes the following: -

> "Developers and Managers are strongly recommended to discuss the likely use of explosives with the Chief Inspector, (ACT WorkCover) in the developmental or planning stages of a project. The use of explosives to demolish structures or structural items whether they are subsurface or above ground must be discussed with the Chief Inspector (ACT WorkCover) at the earliest opportunity.
>
> As a general rule approval for the use of explosives near residences will not be granted unless the blast plan is 2km from the nearest house. However consideration is given to other factors such as the topography of the land and whether other buildings, embankments or engineered controls form a barrier to prevent flying material from impacting on the area".

The content of the ACT interim arrangements has been largely based upon the current NSW WorkCover practice. It includes a minimum requirement of 21 days notice.

17. Mr. Rick Rech gave evidence on 10th November 1998 as to the NSW practice concerning approval for the use of demolition by explosives.

> A. "What tends to happen in practice if a company is considering demolition of a building and at the early stages is looking at different options one of which is the possible use of demolition by explosives?
>
> A. They normally make a preliminary phone call to establish whether WorkCover would consider the implosion of the building in principle. Going back to your previous statement I would like to think that due consideration and planning is given to the building prior to the 21 days when they first look at the building that they have already decided and which manner their going to use. If one of the matters in which they want to use is the use of implosion, well, then they normally phone myself and they say we are going to do this, this and this, what's your view? I would then give a consent in principle subject to their meeting all the criteria which they know or I say no. Then they have a few alternatives, one is a conventional demolition or they challenge WorkCover's decision before the Chief Industrial Magistrate.

A. So if a particular demolition operator chose to leave it to 22 days before the scheduled implosion to contact WorkCover for the first time, that person would be doing it at his own risk and perhaps grave risk that there (would) be no approval given and that would present him undoubtedly with a major problem?

A. That's correct.

A. And the practical response to that is that the industry contacts your office early in the piece?

A. Yes.

A. To determine whether its going to be feasible or not?

A. Well they need to contact me early in the piece because 21 days is not enough for the imploder to get all the approvals and the get all the engineering controls. I mean he needs a lot more than 21 days. Three weeks on a building of this nature would be not enough to secure all the approvals from EPA, Rail Transport, Road and Traffic Authority, the Police, the local Council, the State Emergency Services and the Ambulance. It's a fairly major task to get approval in writing from all these people.

A. So although the black letter (of the) law of your procedures in NSW talks about 21 days notice in practice its done a lot earlier?

A. Absolutely".

18. Mr. Johnson SC for the Territory informed the Inquest and it is reiterated in the following statement drawn from his submissions: -

"The ACT Interim Arrangements largely follow the current NSW procedure. In practice, there is an early consultation between a project team and WorkCover which allows consideration as to whether demolition by way of explosives may be undertaken. That early consultation also allows for appropriate consideration of the functions and responsibilities of the project team and WorkCover with respect to the project itself. Early identification of the lines of responsibilities may occur. In so far as the current ACT procedures pursuant to the interim arrangement

follow the NSW procedures the early consultation and clarification of functions is now occurring".

THE ROLE OF THE ACT BUILDING CONTROLLER, THE NATIONAL CAPITAL AUTHORITY AND THE STATUS OF THE LAND

19. Mr. B. Collaery, Counsel for the Bender family, urged upon me during the Inquest and in his submissions that there should be a finding as to the status of the land on the Acton Peninsula. I have made some earlier remarks on this issue in the introductory segment of this chapter. There are complex legal questions raised on this issue concerning the roles and functions of the ACT Building Controller and the National Capital Authority. The National Capital Authority placed a lengthy submission concerning the status of the land before the Inquest. Those submissions will be of much greater value and weight at another time and place. It is quite clear on the evidence that neither the ACT Building Controller or the National Capital Authority had any involvement in the Acton demolition project especially on the issue of approvals. It was accepted practice in the Australian Capital Territory that the Building Controller was required to grant approval in the first instance before any construction or demolition could occur. It is, for example, a statutory requirement for the Building Controller to give certain approvals in relation to residential premises. It was never in dispute that the ACT Building Controller was not approached by any party at any stage to approve the demolition of the buildings on Acton Peninsula. It was an uncontroverted fact that the ACT Building Controller was not in any way consulted about the demolition of the buildings notwithstanding the *Demolition Code of Practice* (paragraph 6.17). Accordingly there was no regulatory control exercised by either of these two bodies during the whole of the demolition process.
20. I do not consider it is necessary to make any determination about the status of the land but I am prepared to make certain recommendations for the future. The lack of involvement seems to stem from the perception that as the land at Acton Peninsula was under the control of the Commonwealth of Australia then the Building Controller of the ACT had no jurisdiction. This perception was further reflected by Mr. Fenwick when he questioned Mr. Smith about his jurisdiction over Commonwealth land when he first attended the site. Mr. Dwyer had advised Mr. Fenwick on 21st April 1997 that a demolition permit was not required. The fact that the Building Controller was never approached for express permission to demolish the buildings by explosives as is required by paragraph 6.14 of the *ACT Demolition Code of Practice* demonstrates his complete lack of involvement in the project.
21. Although the National Capital Authority was approached by TCL for approval to demolish the buildings on Acton Peninsula and to erect temporary structures such as fences at no stage did the NCA undertake a formal examination of the demolition process. It was never contended by any party that it was their belief that the NCA would or did undertake any such examination. The simple fact of the matter was that neither the NCA or the Building Controller exercised any regulatory control over the demolition process and the fact remains that they did not and nobody on the site expected them to.

22. It should be noted that on 6th May 1997 the Honourable Warwick Smith, the Minister of State for Sport, Territories and Local Government, declared Acton Peninsula to be National land and approved the management of that land by the National Capital Planning Authority. The declaration

    which forms part of Exhibit 516 appeared in the Commonwealth of Australia Gazette on 28th May 1997.

23. All parties engaged on this project acted in accordance with the Demolition Licence Agreement so that the Acton Peninsula was treated as Commonwealth land and the ACT was permitted to occupy it for the purpose of having the buildings demolished. The mere fact that the Building Controller and the National Capital Authority had no involvement in vetting the proposed demolition process did not directly affect what ultimately occurred. The question as to the exact legal status of the land is a function for another tribunal at a later date.
24. It is recommended that the status of the land in the Australian Capital Territory should never again be permitted to confuse or cloud the respective roles of the government agencies in regulating activities on the land especially where the interests of public safety are paramount. The risk of confusion would be minimised if there was early close and continuing consultation and liaison at all government levels. Public safety is involved and as such a practical approach must be adopted. Legal complexities should not blur the need for sensible procedures to be created whereby a government entity, whether Federal or Territory, undertakes the appropriate regulatory control. The regulatory control must

    be to an efficient degree. Whoever exercises the function can be determined in the future but it must be resolved and not allowed to create so much uncertainty as occurred on this project.

    Mr. G. F. Barker of Unisearch who was retained to undertake the review of WorkCover has made this observation that "the appointment of one agency to act as the regulatory authority for all demolition regardless of method ought to be made". This appears at paragraph 6.3 of attachment F in Exhibit 526C. This of course is only Mr. Barker's opinion concerning the review of the *ACT Demolition Code of Practice*. In any event mutual co – operation and understanding must prevail at all levels of government where the regulatory agencies are engaged, viz, the Building Controller, DGU, WorkCover and the NCA where Commonwealth land is involved.

    <u>THE ROLES OF DANGEROUS GOODS AND WORKCOVER ON ACTON PENINSULA – THE RESPONSIBILITY FOR THE SUPERVISION OF THE USE OF EXPLOSIVES</u>

25. There is no doubt that one of the more serious issues that arose in the Inquest was the total confusion that existed as to who carried the responsibility for the supervision and use of explosives on the Acton Peninsula. Counsel Assisting the Inquest describes it as the biggest failure of

the ACT regulatory agencies. The confusion was exacerbated by the total lack of liaison between the Dangerous Goods Unit and

WorkCover. The end result was that there was practically no regulatory supervision of the use of explosives on the Acton Peninsula site. The responsibility for supervising the use of explosives lay with WorkCover and not DGU. The weight of evidence is such that the responsibility for supervising the use of explosives on a workplace site actually rested with WorkCover and had done so for some time.

26. It is possible to draw this conclusion from an examination and a proper construction of the relevant legislation applicable in the Australian Capital Territory during the time of the demolition process. The legislation that applied including the *OH&S Act* was the *Dangerous Goods Act 1984 (ACT)*, the *Dangerous Goods Act 1975 (NSW)* in its application to the Australian Capital Territory, the *Dangerous Goods Regulations 1978 (NSW)* in its application to the Australian Capital Territory, the *Scaffolding and Lifts Act 1957,* the *Scaffolding and Lifts Act 912 – 1948 (NSW)* in its application to the Australian Capital Territory and the *Scaffolding and Lifts Regulations (NSW)* applying in the Australian Capital Territory.
27. The role of DGU was to issue the licences to Mr. McCracken for importing and keeping explosives and to evaluate his suitability for a Shotfirer's Permit. The *ACT Demolition Code of Practice* at paragraph 6.14 makes a

certain requirement as to the use of explosives. Mr. Tony Smith construed this to mean that anyone wishing to use explosives for demolition had to get the appropriate licences. It was also his understanding that from the time that explosives on a work site left the magazine, their use was regulated by WorkCover.

28. The terms of Australian standard AS2187 also makes it clear that at least as at the 20th July 1993 the Director of the ACT OH&S office (the previous name for ACT WorkCover) regarded explosives being used in workplaces as a matter for his organisation to deal with. This understanding was confirmed by virtue of a letter from DGU dated 10th August 1993.
29. There was a significant meeting on 7th May 1997 convened by Mr. Smith of DGU and as a consequence of that meeting, for whatever reasons probably only confusion, WorkCover took no further steps to thereafter involve DGU in any issues concerning the use of explosives on the project including the relevant Hospice meeting on 2nd July 1997 and the further consideration of the Appendix K response. This material makes it explicitly clear that the understanding on the part of the WorkCover inspectors was that the matters being raised were for WorkCover and not DGU.
30. Mr. Peter Hopner of ACT WorkCover accepted the legal responsibility for dealing with the use of explosives on a worksite rested with WorkCover. Yet Mr. Hopner, Mr. Purse and Mrs. Kennedy still maintained their understanding was that in practice WorkCover played no role in relation to the supervision of explosives. This position was not only contrary to the weight of evidence but also inconsistent with the actions that WorkCover took on 25th June 1997

when they again became involved with the project following concerns raised by the Health Services Union of Australia.

It is regrettable that WorkCover failed to involve DGU at the meeting on 2nd July 1997 concerning the Hospice more so as Mr. Tolley of HSUA had directed a formal letter of concern to the Chief Minister, Mrs. Kate Carnell. Once Mr. Smith had issued the various licences to Mr. McCracken, DGU played no further part in the project at all other than issuing a letter dated 30th May 1997 confirming what licences had been granted. Once the HSUA raised its concerns it was WorkCover that took sole responsibility for any issue concerning explosives on the site including the revised methodology when the blast was reconfigured.

EXPECTATIONS THAT DGU WERE TAKING A GREATER INTEREST IN THE PROJECT THAN THEY DID

31. After DGU issued the various licences by 30th May 1997 to Mr. McCracken the unit played no other active role on the project. A number of parties to the Inquest assumed that DGU was actively involved with what was happening on the site and had some ongoing function simply because the DGU unit was to be supplied with a copy of the explosives workplan. This assumption was incorrectly founded. The evidence suggests that such false assumptions were held by Mr. Dwyer, Mr. Purse, Mr. McCracken, Mr. Fenwick and even Mr. Smith. But there was sufficient evidence that as time progressed any involvement by DGU was significantly decreased so that there was no basis for holding such a view that DGU was having any ongoing involvement in the project.
32. The submission made by Counsel for the Territory in my assessment is correct. Counsel submits, in these terms, with substantial force in my assessment when he says "there is no reasonable and tenable basis upon which it could be submitted that PCAPL, Mr. Fenwick (CCD), Mr. McCracken (CBS) and TCL or even the WorkCover inspectors could have proceeded from mid May 1997 upon the basis that DGU was in some way critically examining the methodology for (the) use of explosives on the project". Even if the initial silence from DGU could be taken as approval of

    the workplan, when the methodology started to change and DGU was obviously not involved or consulted such a belief could not have been maintained by anyone, in fact, it was at that point in time that serious questions should have been asked by the Project Manager and the Project Director in relation to the absence of DGU.

33. WorkCover failed to involve DGU after 25th June 1997 by not inviting them to the 2nd July meeting or giving them a copy of the Appendix K response. From

2nd July 1997 WorkCover knew that significant aspects of the explosives workplan were being changed. WorkCover was not entitled to assume that it played any role in monitoring the set up on the Acton Peninsula from that time without consulting the DGU. Although Mr. Smith was advised from time to time of minor blasting taking place he was never advised of any changes to the original workplan. It was obvious to all parties as of 2nd July 1997 that DGU was not present at the Hospice meeting or otherwise taking any steps to assess the changes to the explosives workplan that had been made or were being proposed, e.g. the fact that the use of specially designed cutting charges had been confined to only the bracing columns. Mr. McCracken and Mr. Fenwick would have been aware there was no visit to the site by DGU since 7th May 1997 not even to examine the magazine. PCAPL as the body controlling entry to the site would or at least should have been aware that DGU had not returned to the site or otherwise taken any active role in the demolition since May 1997.

34. There is no evidence to support the existence of a belief that DGU was playing an ongoing role with respect to the use of explosives on the project. Mr. Dwyer said that he did not know if anyone was overseeing the use of explosives by Mr. McCracken. Mr. Dwyer occupied the position as the Superintendent's representative for the purpose of the demolition contracts and in pursuance of the Project Management Agreement. It is useful therefore to examine an exchange of questions and answers between Mr. Johnson SC for the Territory and Mr. Dwyer as it seems to me, on a close examination, Mr. Dwyer should have taken steps to ensure that someone was overseeing the use of explosives by Mr. McCracken and should have known the identity of the person or organisation which was carrying out such an oversight function.
35. The evidence of Mr. Dwyer's perception of the role of DGU as at early July 1997 appears on 1st October 1998 paragraph 668 – 692 which is reproduced hereunder.

"You were asked some question about Exhibit 179 which was the Appendix K response date 4th July 1997. That was addressed to

WorkCover?…That is correct. They requested that information, yes.

Did you enquire as to whether Dangerous Goods were involved at that stage in the process?… No, I did not because the situation was that WorkCover facilitated the meeting on 2nd July and they called the people who they wanted at the meeting and they also requested the information and if they thought it was appropriate to pass on to Dangerous Goods I would have thought they would have done so.

Did you turn your mind at that stage as to whether Dangerous Goods should be invited to either of these meetings?…Well no, I didn't, because I didn't arrange the meetings and as I said I would have expected WorkCover to pass on information if they thought it was necessary.

Did you talk to anyone from WorkCover saying are you inviting Dangerous Goods to these meetings?…No. Mr. Johnson, WorkCover took control of that

meeting, asked who they wanted and ran the meeting. It wasn't up to me to direct WorkCover who they wanted to attend the meeting.

Did you ask them if they were providing the information to

Dangerous Goods?…No, and I don't believe that was my responsibility and I didn't believe it was at the time.

But you were the Project Managers representative on this site from January through to July of 1997?…I was the Superintendent's representative for the demolition contract which is a different role.

You were wearing two hats, weren't you, Project Manager's representative and Superintendents representative?…That is correct, sir yes.

You were on site each and every day for a period of months?…Yes, most days I was on the site that's correct.

WorkCover – Dangerous Goods had been provided, in early to mid May, with a copy of a workplan?…By Mr. McCracken directly, yes.

And thereafter there were significant discussions and provision of significant documents in early July 1997 about this project, weren't there?…Yes well, at the meeting on 7th May it was WorkCover who requested the workplan and I believe that Dangerous Goods were in attendance and they certainly didn't note to me that they required a copy. It was WorkCover who requested the copy.

So you didn't consider that well it was appropriate for you to even ask whether Dangerous Goods knew what was happening in early July in relation to this project, is that so?…With all due respect, Mr. Johnson I mean I don't advise Dangerous Goods what their role is. I mean they were aware the project was occurring and I'm sure they would have intervened or taken actions necessary if they thought (it) was required.

If they knew it was on, Mr. Dwyer?…Well, Mr. Tony Smith had had liaison with Mr. McCracken long before I ever had any involvement with Dangerous Goods or any conversations so I'm sure they knew what was happening.

Did you get on the phone to Mr. Tony Smith in late June, early July to have a talk to him about what he thought concerning the project?…I cant recall doing that. Are you suggesting I did or…

I'm asking if you did?…Right. I don't recall if I did.

I'm not suggesting you did. In fact, it doesn't appear that you did?…That's correct and if Dangerous Goods obviously were involved from the very outset on 7th May I'm sure they would have taken whatever steps they needed to in terms of the legislation in the ACT I would have thought.

Didn't you think that you had some role to play, given the functions you had on the site, in initiating contact with these authorities to let them know that something significant was happening on the site?

Mr. Ibbotson: Objection on privilege grounds.

His Worship: Noted. Thank you.

The Witness: On 7th May as I – to answer your question, Mr. Johnson – on 7th May a meeting was called by WorkCover and Dangerous Goods attended the meeting. From that moment on both of those parties knew exactly what was happening on the site and I understand that they basically took over the role of the approving body as WorkCover requested the information.

Mr. Johnson: Did you consider that Dangerous Goods was a significant authority in relation to this project in early July of 1997?…Well, I believed they had a role to play as they requested certain information and obviously the issuing of a licence and so forth is a role I suppose that they played.

And the licences and permits had been issued in May of 1997?…I couldn't recall the exact time but it would be around then, yes sir.

You'd got a letter date 30th May listing the permits and licences that had been provided. It's a copy of a letter given to you. It was, in fact, addressed to Mr. McCracken, do you remember that?…Yes, I've got a copy of it, yes.

And I've suggested to you there was one visit by Mr. Smith on 25th June when he attended and left in the circumstances I've put to you (an inspection visit organised by the Bomb Squad which was called off). There was that visit by Mr. Smith?…I believe so. There could have been others, I don't know. He was liaising directly with the contractor.

Apart from that in your record of interview of September last year you refer to Dangerous Goods' interest in fuel tanks?…as I've stated before I'm not quite sure if Dangerous Goods had further involvement with Mr. McCracken, that would have to be question you have to direct to that person.

You don't know, that's the case, isn't it?…No, that what I've stated in my record of interview".

36. This passage of evidence given by Mr. Dwyer is disturbing for many reasons. The evidence is an attempt to minimise his role on the site. Mr. Dwyer on many occasions in the Inquest sought to draw a distinction between the Project Manager and Superintendent. There is no doubt that for the purpose of certain duties undertaken and discharged by Mr. Dwyer on the site he did so in either one or both of those capacities. It is of no assistance to him to abrogate his overall site responsibility in making such petty distinctions. It was a classic example of harm minimisation. If that assessment is unfair it further demonstrates his incompetence and inexperience in failing to exercise any authority or initiative in his particular function on the site. It reflects an inability

to assess the whole scene of the project. One is left with the impression of a person endeavouring to distance himself from his responsibilities.

37. It should be firmly stated that this evidence again, like so many other facets of the Inquest, leaves one with an overall impression that not only was there a lack of experience and competence demonstrated by so many of the relevant parties engaged on the project but an unrealistic expectation or perception held by so many of those participants that issues had been properly examined or had been complied with or were being undertaken by others and so there was no need to be concerned or intrude. The evidence, considered globally, is to the contrary and demonstrates ineptitude to a significant degree (see further the comments under the title "PCAPL and ACT WorkCover" paragraph 58 and continuing).

THE DANGEROUS GOODS UNIT

38. Mr. Smith and Mr. McTernan said they had no experience in demolition with explosives and very little experience with explosives per se. Mr. Smith who was the inspector for DGU involved in the project held a NSW Powderman's Certificate but was never engaged in a job where using explosives was part of his work. Mr. Smith was frank and honest about his experience indicating that only approximately 5% of his time as a DGU inspector involved issuing permits or inspecting magazines for (non – firework type) explosives.
39. It was Mr. Smith who sent a memorandum to Mr. Dwyer dated 7th May 1997 which contains an interesting comment: -

> "Following our site meeting on 7th May 1997 to discuss most of the issues relating to the above with the relevant sections of Government, site managers and principle contractors the following matters will need to be addressed, in order to satisfy the requirements of the ACT Dangerous Goods legislation: -
>
> Demolition: -
>
> i. Master workplan is to meet the approval of ACT WorkCover, and
> ii. Workplan for explosives phase is to be submitted to the Dangerous Goods Unit (DGU).

40. Mr. Smith did not use the words "for approval" when a workplan for the explosives was to be submitted to Dangerous Goods. He says to Counsel for the Territory as to the reasons why such words are absent: -

> Mr. Johnson: "Workplan for explosives phase is to be submitted to
>
> Dangerous Goods Unit".

A. You didn't use the words "for approval"?

A. No.

Q. Why not?

A. Because I - like I think I said before that I didn't really think that I had any power to demand a workplan, it's the area of jurisdiction of WorkCover and if I could almost bluff my way into actually getting a copy, like I said, as a matter of interest. I don't think we'd ever had an implosion in the ACT before, so it was as much a matter of interest as anything else".

41. There was no legal basis for DGU insisting upon the explosive workplan. In the same way as the general public ultimately massed on the foreshores of Lake Burley Griffin to watch the implosion so it was in the case of Mr. Smith who as a matter of curiosity and interest wanted to inform himself about it. Mr. Smith wanted to take the opportunity provided by this demolition in the ACT simply to educate himself in a number of ways which he thought might enhance the better performance of his duties with the DGU. It should also be noted that Mr. Smith was quite explicit in his evidence that no one from the project teams sought any advice from him after the meeting of 7th May 1997. No criticism can be made of Mr. Smith in his efforts to learn more about the implosion process.

42. The evidence is overwhelming that DGU had no involvement in the use of explosives on the Acton Peninsula project after mid May 1997. There is no basis for holding any belief to the contrary. No WorkCover inspector consulted with DGU. Mr. Dwyer had no knowledge of any such consultation nor did he observe DGU on the site for any purpose relating to the use of explosives nor did Mr. Dwyer take any steps to enquire of DGU what their involvement was or was not nor did Mr. Dwyer inquire of Mr. McCracken, Mr. Fenwick or the WorkCover inspectors as to any involvement of an ongoing nature by DGU. There is no doubt on the evidence that Mr. McCracken, Mr. Fenwick, PCAPL and the WorkCover inspectors would have been aware of the limited role of the DGU on and after 7th May 1997.
43. The licences granted to Mr. McCracken on his application were issued on the basis of the information provided by Mr. McCracken only. Mr. Smith of the DGU unit simply relied on the interstate licences that Mr. McCracken held as well as his portfolio and that Mr. McCracken had presented to him. Mr. McCracken was very a confident person in Mr. Smith's assessment who seemed to know exactly what he was talking about and seemed to understand the procedure intended to be used. It was reasonable for Mr. Smith to act on those credentials having regard to the limited statutory powers that prevailed at the time to make other enquiries or even take other action.
44. It is important to consider regulation 52 of the Regulations under the *Dangerous Goods Act 1975 (NSW)* insofar as Mr. Smith only needed to be satisfied that Mr. McCracken was fully competent in the use of explosives not

that he knew how to implode a multi - storey steel framed building. Mr. Smith could be criticised for not taking independent advice on the information being provided by Mr. McCracken but it would seem in all likelihood he would still have been satisfied in accordance with the legislation that Mr. McCracken was an appropriate person to be granted the licences even if such checks had been made.

45. Mr. Smith said in evidence that he did take into account why Mr. McCracken wanted these licences and the licences on their face did not indicate that they had only been granted for any particular or limited purpose. The licences were valid for periods extending well beyond the life of the Acton project. Mr. Smith did not make a close examination of the methodology to be used nor did he have, in my view, any expertise to do so even if he had wanted to. Mr. McCracken had demonstrated that he was competent in the use of explosives stating he wanted to do an implosion and was granted the necessary permits. There is little scope for DGU to monitor what people with shotfirer's permits do with them once they are granted let alone being in a position to independently verify their experience.
46. The licences did not limit the amount of explosives that could be brought into the Australian Capital Territory over any given time. DGU did not go out and physically inspect the premises or the site at any stage. DGU had no knowledge and no way of acquiring such knowledge as to how much explosives had been purchased or imported into the Australian Capital Territory or the amount of explosives to be used without conducting an inspection. The only information Mr. Smith had was Mr. McCracken's indication on 5th May 1997 when he applied for licences that he would probably not need any more than 250kg of explosives in total. When the WorkCover inspectors and others knew of the reconfiguration of the blast in July 1997 and the amount of explosives to be used that in itself would have warranted the re – engagement and involvement of DGU in the whole explosives process.
47. A system of mutual recognition existed between the States and Territories in respect of the recognition of an equivalent licence possessed from that other jurisdiction. It was a process of granting a permit and licence on the basis of the previous credentials and did not involve any assessment or examination as to the competency of Mr. McCracken to demolish the buildings by means of implosion.
48. The *ACT Demolition Code of Practice* stated "<u>buildings should not be demolished by explosives without the express permission of the ACT Building Control and the ACT Dangerous Goods Unit</u>". It was the understanding of Mr. Smith that this requirement was for persons using explosive demolitions in the ACT should obtain the necessary licences and permits under the Dangerous Goods legislation. This understanding was both legally and practically correct. DGU could do no more than perform a statutory function of issuing licences and permits pursuant to the relevant legislation. These statutory provisions did not involve the assessment of methodology in the use of explosives. <u>Secondly</u>, the practical reality was that DGU personnel did not possess the expertise to assess the implosion methodology.

    I make no criticism of the actions of Mr. Smith as I consider them reasonable and prudent in all the circumstances. It was the lack of action by others more

directly concerned with the Acton demolition site that warrants criticism for failure to actively involve DGU after 7th May 1997.

49. No criticism of Mr. Smith can be reasonably sustained for not undertaking independent checks of the information provided to him by Mr. McCracken concerning his background. It seems to me Mr. Smith would still have been satisfied that Mr. McCracken was an appropriate person even if such checks were made. Mr. McCracken had provided a copy of his current unrestricted NSW demolition licence issued by NSW WorkCover together with copies of his NSW and Queensland Powdermans licence. Mr. Smith was provided with Mr. McCracken portfolio. Mr. Smith spoke to Mr. McCracken on 23rd April 1997. It seemed to Mr. Smith that Mr. McCracken was confident and possessed a good understanding of the use of explosives.

50. The unsatisfactory features of the operation of the Dangerous Goods legislation in the ACT have been identified in the Inquest. WorkCover has reviewed and continues to review the whole process. The approach adopted by Mr. Smith in my view was practical. It is regrettable that his assessment was not taken up by other after mid May 1997. It was not his responsibility for arranging consultative meetings. This circumstance was better handled by those more actively engaged on the site particularly Mr. Dwyer of PCAPL who should have taken a more assertive role and made such arrangements. In any event I have considerable doubts whether the efforts of Mr. Smith would ever have been listened to having regard to some of the evidence received from certain witnesses in this Inquest.

51. The consultative meetings should have been arranged by Mr. Dwyer of PCAPL. It was part of PCAPL's contractual functions pursuant to the Project Management Agreement and as Superintendent of the demolition contracts. It was also part of the practical arrangements which Mr. Dwyer sought to put in place himself as he was the point of contact, the co – ordinator for the purpose of the project particularly as it would appear from the 7th May site meeting it had been agreed that all correspondence in any event would be directed through the Project Manager.

52. Mr. Smith said about these arrangements made at the 7th May 1997 meeting: -

A. "Did you have any difficulty getting the people to participate in this meeting on site?

A. I tried to actually include Mr. Warwick Lavers but he said that Mr. Cameron Dwyer was his project co – ordinator on the site and that all of my dealings would be through Cameron Dwyer".

53. I find this failure to arrange subsequent consultative meetings after 7th May 1997 as a significant failure on the part of Mr. Dwyer of PCAPL.

ACTIONS OF WORKCOVER AND THOSE ON THE ACTON SITE

54. Four inspectors from WorkCover had direct roles in the Acton Peninsula project. They were Mr. Kevin Purse, the then Chief Inspector of ACT WorkCover, Mr. Hopner who within WorkCover had the most experience with demolition projects, Mr. Adams whose area of expertise related to asbestos removal and Mrs. Kennedy who had no experience at all in demolition type work.
55. In my introduction to this segment mention is made of two specific actions taken by Mr. Purse in relation to his powers as an inspector (paragraph 3).
56. The primary duty of ensuring the implosion was conducted safely fell directly upon Mr. McCracken. Mr. McCracken was required to take all reasonably practical steps to ensure the health and safety of persons at or near this worksite was not compromised. The duty rested with Mr. McCracken both at common law and pursuant to the statute. Mr. Fenwick of CCD as the person who recommended and employed Mr. McCracken also had a primary duty both at common law and under the *Occupational Health and Safety Act* as well as the contracts negotiated with the ACT to properly supervise the activities of Mr. McCracken.
57. PCAPL was the Project Manager and Superintendent of the contracts and as such were responsible for permitting, supervising and controlling the activities being carried out on the Acton Peninsula site and as such had a relevant duty to ensure that the project was carried out safely and without risk to others. The issuing of a general invitation to the public to view the implosions is a situation whereby all the parties engaged in the project had at least some level of duty of care to ensure that people were not placed at risk. As to how far that duty of care extends beyond PCAPL to perhaps TCL and the ACT Government is not a function for the Coroner to assess but rather is a matter for another time and place. It is no answer to say simply because WorkCover inadequately performed and discharged its duties and responsibilities, therefore that absolved the parties who had control of the site from meeting their duties and responsibilities whether they arose pursuant to the common law, contract or statute.

PCAPL AND ACT WORKCOVER

Generally

58. PCAPL cannot deflect or minimise their own statutory obligations and responsibilities by seeking to transfer them erroneously to WorkCover or the DGU. DGU had no involvement on the project after mid May 1997. It was perfectly obvious when a new methodology was being suggested in July 1997 and DGU had in no way been consulted. It is a self-serving submission for Mr. Dwyer and PCAPL to now claim it had no duties or responsibilities merely because WorkCover and DGU were involved to some extent.

59. The regrettable position is that Mr. Dwyer did not know who was overseeing Mr. McCracken's methodology. Mr. Dwyer was aware that Mr. Purse and Mrs. Kennedy had no prior experience with implosion. DGU were not attending the meetings of 2nd and 8th July 1997 and therefore Mr. Dwyer had no rational basis for concluding that DGU was playing any role with respect to Mr. McCracken's amended methodology. Mr. Dywer was prepared to proceed upon the most unsafe assumption that both he and PCAPL had no obligations and responsibilities in these circumstances. ACT WorkCover was an organisation that had no contractual or statutory duties with respect to the demolition or any consistent ongoing presence on the site. Yet it is TCL and PCAPL and their respective officers who did have the commitment to the site by reason of their statutory, contractual, and common law duties to the demolition.

60. It cannot be seriously sustained that Mr. Dwyer was led by the actions of the WorkCover inspectors to believe that certain things were their responsibility. This simply does not genuinely focus upon their obligations and responsibilities under the legislation. The obligations and responsibilities under the *OH&S Act* rested with those persons in control of the site or having an ongoing commitment to the what was occurring on the site, namely Mr. McCracken, Mr. Fenwick and Mr. Dwyer to ensure workplace safety was protected. The fact that inspectors may perform certain functions under the legislation did not and does not justify PCAPL or anyone else shifting responsibility to those inspectors. It is not a justifiable position even on the basis of common sense.
61. It will be recalled that a prohibition notice was served on Mr. Dwyer on 8th May 1997 which contained the following words printed in capital letters: -

> "THE ISSUE OF THIS NOTICE DOES NOT INDICATE THIS WORKPLACE COMPLIES WITH ALL SAFETY REQUIREMENTS NOR DOES IT AFFECT THE CONTINUING OBLIGATIONS TO ENSURE WORKPLACE SAFETY".

62. On 1st October 1998 Mr. Dwyer attempts to explain the significance of these words: -

> A. "You remember this is the notice dated 8th May which was served on you and I think you accepted service under protest effectively?

A. Under duress, absolutely.

A. Did you read it when you got it?

A. Yes I did because it stated that WorkCover required plans.

A. If you look towards the bottom of the page do you see the words (the above words appear),

A. Yes I can read that there, yes.

A. And you read that back then?

A. I cant recall if took particular notice of it, but I may have.

A. You understood though that the issue had been noticed and was not taken to be a tick of approval for everything else on site didn't you?

A. My understanding at the time was that the notice was issued as WorkCover wanted to review and approve the workplan provided by the contractor and that was stated very strongly by Mr. Purse at the meeting.

A. But you understood that because a notice issues with respect to item A that that does not mean that WorkCover are saying items B to Z are fine, you understood that is a way this worked, you understood that then didn't you?

A. No I understood then that the contractor had responsibilities under his contract in terms of health and safety. And I understand at the time and believed at the time that it was stated to me by WorkCover that they had a role in approving that Workplan".

This was a very unconvincing explanation creating even a further difficulty for Mr. Dwyer in that he did not even know if anyone was overseeing Mr. McCracken's methodology concerning the use of explosives and further that he was aware that the WorkCover inspectors had no experience with implosion.

63. The WorkCover inspectors were given various assurances by Mr. McCracken through Mr. Dwyer between 2nd and 13th July 1997 in the same way that Mr. Dwyer and others claimed that they were entitled to rely upon the advice being provided by the specialist implosion expert for the project. Why was it not appropriate then for the WorkCover inspectors who had no obligations (statutory or contract) on the site to accept what was being put to them by the Project Manager.

64. I have previously stated that WorkCover and DGU were not safety officers for the project nor were they overseeing the project and it is difficult to accept or understand how Mr. Dwyer came to conclude such a view on any objective rational basis. Mr. Dwyer, in his own ROI, stated that he did not have a belief that either agency was overseeing the project. The inspectors were performing statutory obligations. I do not accept the contention advanced by PCAPL's Counsel that WorkCover gave an impression that it was stepping in to the approval role. Nor do I accept the submission by PCAPL that the conduct of WorkCover's inspectors and the DGU inspectors "conveyed to Mr. Dwyer the indisputable impression that the work being carried out by CCD and CBS was being overseen by WorkCover and the DGU particularly in relation to safety and that the role expected of PCAPL was one merely of coordination.
65. It is not a helpful submission by PCAPL to state that in view of WorkCover's total lack of experience or expertise in demolition or implosion that it would have been better had they not become involved. Mr. Dwyer was fully aware that Mr. Purse and Mrs. Kennedy had no experience in demolition by means of implosion nor did he seek any information from Mr. Purse as to what steps if any Mr. Purse was taking to scrutinise and assess the material being provided to him. Mr. Dwyer repeatedly contended in his evidence particularly on 1st October 1998 at paragraph 705 – 751 that it was not for him to tell Mr. Purse how to do his job.
66. The following is a short example: -

    "Well they are ACT WorkCover and they (are) experienced in these sort of issues. I would have expected them to seek outside advice if they didn't have it within their organisation. But it is not for me to tell Mr. Purse how to do his job. But I would expect if they didn't have they expertise in their own organisation that WorkCover would go elsewhere I'm sure".

    Mr. Dwyer continues: -

    "No I don't believe that that my role to tell ACT Government's, ACT WorkCover what their role is in the project. Now how they were going to go about that role is their responsibility I would have thought".

    These comments reflect not only arrogance but an abrogation of his own function as the Project Manager.

67. There are approximately 6 pages of transcript with similar responses made by Mr. Dwyer which in my view are most unsatisfactory. Mr. Dwyer's approach was on the basis that Mr. Purse was in some way or another approving the methodology. There can be no reasonable foundation for any such belief when Mr. Dwyer knew that Mr. Purse did not have any relevant experience relating to methodology nor did he make any enquiries as to what steps if any Mr. Purse was taking to obtain such advice.
68. The statutory obligations under the *OH&S Act* in my view fell squarely with PCAPL. The whole obligation in relation to the Acton project to provide

satisfactory safe systems of work under the *OH&S Act* lay with Mr. McCracken (CBS), Mr. Fenwick (CCD) and Mr. Dwyer (PCAPL) to ensure that the demolition proceeded with safety. The involvement of ACT WorkCover did not serve to shift those statutory responsibilities.

THE GENERAL EFFICIENCY OF WORKCOVER IN 1997

69. A number of WorkCover inspectors contended in evidence that WorkCover was grossly under - resourced or lacking in adequate funding. There is no evidence before the Inquest that would justify or support such an assertion particularly being made by Mr. Purse who advocated an increased in funding for the WorkCover organisation. There is no doubt in 1997 that the ACT WorkCover office was an inefficient run organisation insofar it was fragmented and disjointed in the terms of its administration. At the time of the tragedy ACT WorkCover resources were inefficiently used by the inspectors. The practices of the WorkCover office at the time contributed to the inadequate way the inspectors responded to the problems that arose on the project.

70. A classical example is the failure to open a file or otherwise have some central point whereby information pertaining to a project could be collated, synchronised or co – ordinated. It meant inspectors were frequently not aware what others were doing, had been doing or were intending to do. Notes and diary entries made by one inspector were not available to others. It appeared in the majority of cases the work was being conducted in some loose-leaf form. The information gathered from the site was not evaluated until after the implosion. I refer particularly to the photographs and the circumstances of Mrs. Kennedy's visit of 10th July 1997.

71. On 7th May 1997 both Mr. Purse and Mr. Hopner visited the site without realising the other was even there. The practice referred to by Mrs. Kennedy whereby the inspector answering a telephone call could not pass that enquiry onto an inspector familiar with the site or the type of work without permission of the Chief Inspector was unacceptable and illogical.

72. An external review of ACT WorkCover commenced on 2nd July 1997 prior to the implosion. The review has continued since the implosion and has encompassed a wide range of issues. Ms. Plovits gave oral evidence and produced some significant documentary material concerning this process of review and reform. The preparedness of the ACT Government to promptly and widely review and reform the structures and procedures of both WorkCover and the operations of DGU Unit is to be commended. Their early recognition of the need for reform contrast most favourably with the position adopted by TCL that their procedures, notwithstanding the tragedy and the evidence presented to the Inquest, already reflected best practice. TCL did not propose considering any changes unless recommended by the Coroner. This segment of evidence given on 6th April 1998 by Mr. M. Sullivan of TCL

created a certain amount of controversy between a number of Counsel. Some Counsel argued that Mr. Sullivan was non – responsive. Mr. Sullivan said "I believe that the processes we have been tested over 25 – 30 years as being at or at least achieving best practice". Mr. Sullivan went on to say that at this stage it was not proposed to implement any change.

73. The WorkCover review process in my assessment has been thorough and comprehensive. The representation on the review committee is cross sectional and diverse. It is representative of all stakeholders including the Unions (CFMEU and ACTTLC), business, commercial, insurance and employer/employee interests. This continuous consultative process should be maintained to ensure the best delivery will be provided to the community by ACT WorkCover. The ACT WorkCover should ensure that the new structure of WorkCover is adequately funded and resourced.
74. Some of the more relevant improvements already implemented are found in attachment A of the Review of WorkCover and are listed hereunder: -

    a. The merging of DGU and WorkCover and other structural reorganisation,
    b. Improve staff recruitment and training and liaison with NSW WorkCover in this respect,
    c. Contract arrangements to retain a panel of experts including explosives experts,
    d. Interim arrangements concerning the use of explosives in the ACT implemented pending an enactment of further legislative provisions,
    e. Regular forum contact,
    f. Implementation of a proper filing system and better record keeping procedures generally, and
    g. Developing improved forms for Dangerous Goods applications and licences.

75. The Court is confident that this review process will continue. The final determinations of the review process should be published so as to give a formal open recognition that a review has occurred, changes have been made and are now being implemented. Such a process is transparent and is open to public scrutiny.

THE FUNDING AND EXPERTISE OF ACT WORKCOVER – JULY 1997

76. A number of general assertions were made by the inspectors during their evidence that ACT WorkCover was under resourced in the terms of the availability of funds to obtain expert advice. It was never precisely clear to me in what respect the lack of resources impacted upon the performance of the inspectors concerning the demolition between May and July 1997. There is no doubt Mr. Purse, Mr. Hopner and Mrs. Kennedy were engaged on the project but it was in a disorganised fragmented manner with no sense of accountability between each other. There was a total lack of a team effort.

77. Ms. Jocelyn Plovits gave some considerable evidence as to the WorkCover budget for the financial years 1996 –1997, 1997 – 1998 and 1998 - 1999. She said this in evidence on 4th August 1998: -

> "Well the other part of managing – I mean managing money is about doing it efficiently. Its not just a matter of, you know, having a cost and therefore meeting the costs just in the first way you think how. So by implementing these better systems within WorkCover more strategic ways forward instead of having, I mean a simple thing, instead of having inspectors all making their own notes and never talking to each other and then having to have major meetings about it and so on you can get a better productivity by just slotting this all into the one car. Well that means that the inspectors are free to do another workplace visit where they wouldn't otherwise have been free. So managing smarter, I guess, is what we are talking about there. The other part is that some of the funding for WorkCover comes from industry".

78. Ms. Plovits always made it clear that so long as a reasonable request was made for an expert then funding would have been approved.
79. Ms. Plovits was never informed prior to the implosion that the inspectors were unable to properly assess the material provided to them by PCAPL or Mr. McCracken. It seems that the Chief Inspector, Mr. Purse, was always forthright in letting her know if he had a need and certainly he did not tell her whether he had any need in relation to the Acton demolition until after the implosion. She said on 4th August 1998: -

> "Nobody identified to me that they were out of their depths and I certainly was making myself available for those kinds of comments to be made if need be".

80. It seems that after the implosion the WorkCover inspectors complained to her that they had no experience with explosives but as she quite rightly stated nobody expressed any concern to her about issues going to the assessment of the Appendix K document.

81. Ms. Plovits commenced at WorkCover on 24th June 1997. Mr. Purse had been employed by WorkCover between July 1994 and November 1997. He presided over the operations of WorkCover during this period when the so-called inefficiencies existed. The process and review of WorkCover as I have previously identified commenced on 2nd July 1997. Ms. Plovits became aware that the reputation of WorkCover was not very positive at the time. It was her assessment of Mr. Purse that she did not have much confidence in him because to use her words "it went more to the matter of matching the rhetoric with reality". She further explained that remark of her lack of confidence in this way: -

> "It means that if you talk to someone and they say they are examining Appendix K you work on the theory that that's what they are doing (but) when you later on find out that they didn't have any knowledge of explosives at all and they had hired in an explosives expert to him then post implosion, well then you have to revise your opinion about whether they had the expertise to understand the Appendix K, prior to the implosion".

82. Ms. Plovits explained the approach of the inspectors in these terms: -

> "What I would say to you is the model that they work under the *Act* is that the employer has the duty of care, he (Mr. Purse) had an expectation that the employer was exercising that".

83. Ms. Plovits impressed as a witness who was firm and frank. I am confident, with her guidance and the support of her superiors, that the process of review of ACT WorkCover, which I consider to be a continuous function, will be successful. Ms. Plovits needs every support in achieving this task in the immediate future.

84. It will be recalled that Mr. Hopner and Mr. Purse said that they had Buckley's chance of getting funds to employ an expert. Ms. Plovits was asked her response to that assertion and she said: -

> "Its nonsense. If someone had come to me with that request I would have organised it.

A. And do you say therefore that you would have organised the finances as well for that?

A. If it was necessary, yes.

85. She later said: -

> "If an inspector had come to me and said I know nothing about explosives and there are explosives in the site and I need more information, I would have arranged it".

86. Ms. Plovits even went further when it was put to her that there was no precedent for doing such a thing at that time. Ms. Plovits would have obtained such funding and an expert notwithstanding any prior precedent that existed within the organisation to the effect that it would not be or could not be approved and granted.
87. The position can be best summarised in this manner. Mr. Purse did not bring to the attention of Ms. Plovits in the period late June to 13th July 1997 that there was a lack of experience on his part with respect to the use of explosives which restricted his ability to assess the Appendix K response. Mr. Purse only indicated this position to Ms. Plovits after the implosion.

88. It is the uncontested evidence of Ms. Plovits that if this state of affairs had been brought to her attention prior to the implosion then she would, if the request had been reasonable for either funding or advice, ensured that it would occur. I am quite confident that Ms. Plovits would have arranged for the funding and the expertise to be provided if she had been informed of the particular circumstances concerning the inspectors.
89. The inspectors like so many others engaged in this project operated upon the basis they could rely solely upon the Project Manager and contractor (Mr. Dwyer and Mr. Fenwick) to provide specialist expert information and advice. This was in effect relying on Mr. McCracken, Mr. Fenwick and Mr. Dwyer.
90. The evidence does not convince me that funding for the inspectors was an issue precluding them from seeking expert opinion. It seems that as a matter of practice the inspectors relied upon the expert advice being provided by the Project Manager and contractor. There is no evidence that they turned their mind to the provision of independent expert advice as inspectors under the *OH&S Act*. The issue of funding was an attempt by particularly Mr. Purse to minimise their own inadequacies and failures.

    The inspectors never at any stage indicated that they were inexperienced in the use of explosives or that they required any assistance to assess the material being provided to them by PCAPL and Mr. McCracken.

91. The inspectors were exercising statutory powers and functions under various pieces of legislation already identified. There is no doubt they had no experience of demolition by the use of implosion and explosives. There was no communication by the inspectors with their superiors in ACT WorkCover nor were there any requests for further assistance nor did they express concern about their own inexperience with demolition by the implosion method. It is clear in my view that if they had sought further assistance or additional resources from their superiors and made out a strong case then I am confident funding would have been forthcoming to retain an expert. I am also satisfied if the inspectors had made such a request for funding or assistance and the request had been refused then there may be an occasion to consider whether the response by WorkCover was inadequate. This did not occur.
92. The inspectors went about the performance of their duties with two particular periods of activity in the first half of May 1997 and then in the period late June to 13th July 1997. The inspectors were inefficient in their work methods. There was no consistent efficient record keeping system or appropriate systems for the allocation of inspector's functions and duties. These inefficiencies do not only relate to the tragedy on the Acton Peninsula. The work practices identified by the tragedy are now in the process of review. I am not satisfied about the lack of resources issue. There is no direct evidence of a funding problem. What the Inquest heard were simply assertions. I prefer the evidence of Ms. Plovits, the General Manager of ACT WorkCover on this issue.
93. A final word on the Ford/Plovits issue. The evidence is that there was no interference with the activities of the WorkCover inspectors as they were active on the site in the first half of May 1997 and again between 25th June and 13th July 1997 when they performed their duties as they saw appropriate

for the particular circumstances. If there was some exchange between the two women it was not apparent in the manner the WorkCover inspectors went about their work on the final days leading to the implosion.

94. There is no evidence to satisfy me that the inspectors were forced to rely on their own nonexistent knowledge of the demolition by the implosion method by using explosives. It seems to me that the inspectors relied upon the expert advice of the Project Manager and contractor. It is clearly demonstrated on the evidence of Ms. Plovits if the inspectors had sought her assistance for funding then it would have been forthcoming.

DEMOLITION CODE OF PRACTICE (EXHIBIT 84A)

95. The *Demolition Code of Practice* is presently subject to review. Counsel for the Territory assured the Court that a number of issues arising in the course of the Inquest are being taken into account as part of the review. The *ACT Demolition Code of Practice* (Code) second edition effective 11th June 1993, is issued under the auspices of the *ACT OH&S Act 1989* with the purpose: -

> "To provide practical guidance on measures to be taken to prevent injuries to persons engaged in work on demolition sites and to any other persons who might be exposed to risks arising from the demolition process".

The approach being taken on the review was an examination of the total code read in conjunction with the Australian Standard, the demolition of structures AS2601 – 1991. The review concentrates on policy and does not address the detail involved with the demolition methods. The review is being undertaken by Mr. G. Barker of Unisearch. Mr. Barker holds the following qualifications - BE, MEngSc, MIE Aust, CP Eng.

96. Mr. Barker makes the following statement in his review under the heading Risk: -

> "All construction work and in particular demolition involves risk. Risk is often taken to be a result causing damage to personnel and property but it is often much deeper. The design and construction of a structure involves many professions and quality checks to ensure the result is safe, efficient and effective for the given life.
>
> The demolition of the same structure is often left to a small team of individuals who may have limited engineering qualifications, without access to professional advice or quality checks often arising because of contract procedures, pride, time or financial constraints. Hence the supposed system of control for demolitions that allows

these actions to occur is by its very nature producing risk for all parties involved. This should be a consideration in both the Standard and Code of Practice".

Consistent with what has been previously stated in this Report the reviewer states that the scenario applied was the demolition of an important structure involving a tender process with contractors who most likely would be familiar with the Australian Standard AS2601 1991 but not aware of ACT procedures. These remarks of Mr. Barker are extremely relevant for the following reasons.

97. Section 6.17 of the *Demolition Code of Practice* states "buildings should not be demolished by explosives without the express permission of the ACT Building Controller and the ACT Dangerous Good Unit". The evidence about this provision centres upon Mr. Smith and Mr. McTernan. Mr. McTernan was the then Chief Inspector of DGU and was not aware of the provision and further stated that so far as he was aware DGU had not been consulted about its inclusion in the Code.

Mr. Smith's position was that he was generally aware of the requirement in the *Demolition Code of Practice* but identified it with the need for DGU to obtain the necessary permits. No such permission was granted by the ACT Building Controller in relation to the Acton demolition project. No express permission was ever given by DGU. Mr. Dwyer admitted that he never saw any such document.

98. There clearly was a lack of liaison between WorkCover and DGU in relation to the application of this provision of the Code. DGU was confused as to its existence and what should constitute it. Very clearly PCAPL, CCD, CBS, ACT WorkCover and to a lesser extent TCL failed to ensure that permission was ever obtained not withstanding the fact that compliance with Exhibit 84A was both a condition of the contracts and a requirement of WorkCover. The comment made by Mr. Barker has even more relevance to the situation prevailing at the Acton Peninsula demolition site having regard to the above evidence.

99. The following topics are by and large merely factual and save to some small extent most parties are in agreement with the issues raised in this area. The topics concern: -

a. The approach adopted by WorkCover to the workplace,
b. WorkCover's response to the Health Services Union of Australia concerns,
c. The Hospice meeting of 2nd July 1997,
d. The amount and type of explosives including risk assessment, sand bagging for safety, reconfiguring the blast and the exclusion zone,

e. Appendix K response, the specifics of the Appendix K response including Section K5 explosives, bund walls, and
f. The visit by Mrs. Kennedy on 10th July 1997 to the demolition site.

I propose to summarise these factual situations which will include the observations made by various Counsel in their submissions on how these areas should be interpreted.

THE APPROACH ADOPTED BY WORKCOVER TO THE WORKPLACE

100. Mr. Purse the Chief Inspector of WorkCover said in evidence that it was necessary for WorkCover to prioritise its inspection duties having regard to the large number of workplaces and the small number of inspectors available to carry out the function. Dangerous enterprises or more significant workplaces would receive higher priority than the less potentially dangerous activities. Mr. Purse further said that in determining the level of attention given to this demolition he had regard to the level of supervision that was already in place with CCD, PCAPL and TCL exercising supervisory roles together with the assurances given by those organisations concerning the expertise of Mr. McCracken. Mr. Purse took the view that allocating extensive time and resources for this workplace would in those circumstances not be justified. It was the concerns raised by the Health Services Union of Australia that caused WorkCover to have some significant role to play in relation to the site in July 1997. The first visit to the site on 7th and 8th May 1997 and the subsequent workplan of 17th May 1997 caused WorkCover little concern with the activities on the Peninsula so much so that WorkCover did not become involved until HSUA raised its own issues on 25th June 1997. Mr. Purse conceded that but for this call WorkCover may not have ever returned to the site at all.

101. Although there were a number of layers of supervision ostensibly in place a number of factors special to this particular project required WorkCover to take a more significant interest than they did: -

a. The project involved undertaking an inherently dangerous process of demolition,
b. The scale of demolition was large by ACT standards,
c. It was proposed that this dangerous activity be carried out using explosives,
d. This type of demolition was highly specialised and had never before been carried out in the ACT, and
e. The number of persons potentially at risk from the activities of the work site was significant given that the general public were being invited to watch the demolition.

None of these factors were ever considered by WorkCover in determining the level of resources to allocate to the project. Then again

on the evidence of Ms. Plovits no details of the resources required for the project were ever communicated to her.

102. WorkCover was not there to supervise or monitor the work on site or to approve the work methodology but rather it was to go onto the site and ensure that proper steps were being taken to identify and rectify potential hazards. When a hazard was identified by the WorkCover people its responsibility was to take appropriate action to ensure those on site dealt with the hazard. When visiting other work sites where other inspectors had some familiarity with the work such an approach may be justified. WorkCover in this case had no experience at all either of the explosive demolition or implosion. They were in no position therefore to identify any hazards peculiar to this type of work. Without seeking any guidance from either DGU or elsewhere and in no position to test anything they were told WorkCover simply relied on those on site to properly identify and deal with the potential hazards.

103. WorkCover assumed the demolition contractors were properly qualified and experienced in such a way as to be sufficiently able to identify potential hazards. WorkCover assumed that PCAPL as the Project Manager would have had some competence in the area otherwise they would not have been appointed. Nothing could have been further from the truth. Although such expectations of expertise were not unreasonable it left WorkCover having to accept the word of those on site. It was acknowledged by WorkCover that safety is not always accorded the priority it ought to be on a work site. WorkCover, being congnisant of that fact, it was unsatisfactory for WorkCover then to simply accept the assurances of those on the site that the job was being done safely.

104. The Inquest was told that it was not WorkCover's practice to accept verbal assurances on issues going to safety. On 8th May 1997 when Mr. Purse visited the site he required Mr. Fenwick to provide him with written certification that it was safe to use bobcats on the suspended slab floors. Even though Mr. Fenwick told Mr. Purse and Mr. Hopner that he had already obtained such advice from Mr. Hugill (Northrops) and they had no reason to disbelieve him they nonetheless required written proof. It was only after seeing this proof that Mr. Purse was prepared to allow the work to continue from 8th May 1997 until the workplan was submitted on 16th May 1997.

105. This sensible refusal to accept verbal assurances was not consistently enforced. When it came to an even more significant engineering issue likely to impinge on safety in the nature of pre – weakening of the buildings, WorkCover did not require an engineers report certifying the proposed method was safe. A verbal assurance was given as being enough. This provided a telling example of the danger of relying on such assurances. It also demonstrates the lack of consistency on the part of WorkCover. No engineer was engaged before the steel cutting commenced and the initial cutting was assessed by Mr. Hugill as dangerous.

106. WorkCover stated it could only take positive action where it identified a hazard yet none of its inspectors possessed the necessary experience to be able to identify a hazard. They had to rely on those on site to advise if a hazard arose or somebody to raise a concern for e.g. the Health

Services Union of Australia. This was not a reliable hazard identification system. And a major hazard was identified on site e.g. the unsafe cutting method used without engineering advice. WorkCover was never informed. Both Mr. Purse and Mr. Hopner stated they would have immediately stopped work on the site if they had become aware of these engineering reports and the deficiencies.

107. The same way that Mr. Lavers relied upon the assurances given to him by those on site concerning safety issues so also did WorkCover rely upon the integrity of the advice and in particular that Mr. McCracken knew exactly what he was doing having regard to the special circumstances of this unique project. It was a wholly unsatisfactory basis of reliance.

WORKPLAN (EXHIBIT 109)

108. The demolition work commenced on 22nd April 1997 despite no workplan having been prepared as was required by the contracts and directed by Mr. Dwyer.

109. On 8th May 1997 Mr. Purse issued a prohibition notice to Mr. Cameron Dwyer as the Superintendent that on its face prohibited work from continuing until a satisfactory workplan had been prepared and provided to WorkCover. In practice what happened was that work was allowed to continue as long as the workplan was submitted by the 16th May 1997. An engineering certification was received concerning the use of bobcats on suspended floors. The power to issue a prohibition notice is found in Section 77 of the *OH&S Act 1989* to the following effect:-

> "Where an inspector believes on reasonable grounds that activity carried on at a workplace involves a risk of imminent and serious injury to a person at or near the workplace, the inspector may, by notice in writing given to the person who is, or whom the inspector reasonably believes to be, in charge of activity direct that person to ensure that: -
>
> a. The activity is not carried on,
> b. The activity is not carried on accept in accordance with the directions specified in the notice".

Criminal sanctions apply in respect of a failure to comply with the notice.

110. The workplan was received by WorkCover on 17th May 1997. It incorporated both CCD and CBS proposed workplans.

111. WorkCover maintained consistently that it had no role in approving workplans. Mr. Purse stated that its role was to ensure one was prepared and

to ensure it appeared to comply with the *Demolition Code of Practice*. Mr. Purse and Mr. Hopner read the workplan and were satisfied that it met the requirements of the *Demolition Code of Practice* in respect of paragraph 4.6 which deals with the contents of a workplan. The explosives part of the workplan prepared by Mr. McCracken failed to meet the requirements set out in 4.6 in two critical respects and was otherwise lacking in important details.

112. Section 4.6 of the *Demolition Code of Practice* states that:-

> "The workplan should include, but not be limited to documentation of the following (inter alia):-
>
> a. Plans, illustrations, written documents or specialist reports as may be necessary to clearly define or substantiate the proposals made, and
> b. Certification statement by a competent person that the proposals contained in the workplan comply with the safety standards set out in this code".

111. What in effect happened was that WorkCover was accepting a workplan totally framed by Mr. McCracken. The *Demolition Code of Practice* requires that the report of a specialist implosion expert must come from some person independent of the whole process. It was Mr. McCracken's proposal that required substantiating not the individual assertions made by Mr. McCracken.

114. Section 4.2 of the Code states: -

> "Prior to commencement of demolition, the qualified structural engineer should have investigated the structure by whatever means necessary and have determined as accurately as possible the "likelihood that the proposed methods and sequence of demolition can be executed without causing accidental collapse of the whole or part of the structure"".

115. It is very clear that no such independent investigation had been conducted by a qualified structural engineer and to WorkCovers knowledge demolition work was already well under way. Mr. Hugill's reports previously referred to under the topic of Engineers dealing with the use of bobcats did not meet this requirement especially considering that weakening of the actual frame of the building itself was planned. Mr. Purse and Mr. Hopner should have insisted that the workplan included certification by a structural engineer that the pre – weakening proposed was safe.

116. WorkCover's examination of the workplan should have provided another opportunity to rectify the failure of Mr. McCracken to get proper engineering advice. It seems to me that PCAPL had knowingly disregarded this requirement of the contract. WorkCover simply failed to appreciate the

requirements of its own code of practice. Accordingly there were two significant failures in this checking process.

117. The workplan contained no information about matters relating directly to safety. If WorkCover had decided to properly examine the proposal themselves they would not have had sufficient information to do so. The Workplan did not:-

a. Identify the quantity or the location where the explosives would be placed in each building,
b. Nor did it say anything about any proposed exclusion zone except there would be one,
c. It did not include engineering advice about any aspect of the proposal, and
d. Did not outline what fly control measures would be implemented.

There were some references to dust, noise and vibration.

115. It is quite clear WorkCover failed in its responsibility to ensure that the workplan required by the *Demolition Code of Practice* was satisfied. The primary failure rested with the man who prepared the plan, viz: Mr. McCracken and the man who supposedly supervised his work, Mr. Fenwick. However as WorkCover demanded workplans to be filed it had an obligation to ensure that such workplans once filed met the requirements of its own *Demolition Code of Practice*.

116. Mr. Dwyer of PCAPL as the Superintendent of the contracts also had a responsibility to ensure that Mr. Fenwick and Mr. McCracken sufficiently documented their demolition plan and obtained structural engineering advice before commencing any demolition work. This responsibility remained notwithstanding any failure by WorkCover to comment on the plan. Specifications 11 and 18 made it clear that the demolition work and the plan had to be submitted to the Superintendent for approval and that advice from a structural engineer was to be obtained prior to any demolition work being commenced.

117. Mr. Dwyer when asked if he had ever read the workplan said he only read it "in terms of issues to do with programming, timing of the works, issues to do with the fact that he said he was going to comply with the codes that were in the contract document, but not in the terms of technicalities because I don't have the experience".

The level of examination given by Mr. Dwyer to approve this document was inadequate. There is no evidence that Mr. Dwyer ever did formally approve the plan. Mr. Dwyer's evidence on these issues must be considered evasive and highly unsatisfactory.

WORKCOVER RESPONSE TO HSUA CONCERNS

118. The involvement of WorkCover after 25th June 1997 only occurred because the Health Services Union of Australia raised certain issues concerning the safety of its members at the Hospice. WorkCover

response to those concerns, although well intended, involved people without relevant experience and was uncoordinated and fragmented. A meeting was held on 2nd July 1997 and what is know as the Appendix K response was provided but the assessment of the information provided therein was characterised by a lack of expertise and undue reliance on assurances again given by those on the site.

119. On 25th June 1997 Mrs. Kennedy answered a phone call from the HSUA raising concerns the union had about staff and patients remaining in the Hospice during the implosion. She should have directed this call to Mr. Hopner who was near by and had some experience in both demolition and the Acton site. She failed to do so and it again reflects poorly on the procedures that were in place in WorkCover at the time. Mrs. Kennedy had no back ground in the building industry at all. It certainly would have been preferable had she never become involved. To her credit she contacted Mr. Dwyer. Mr. Dwyer told her that the buildings would fall in their own footprint with rubble only going about 10 metres. She also sent an email to Mr. Purse advising him of the concerns raised.

120. Telephone enquiries conducted the following day by Mrs. Kennedy were intended to find out more about the implosion process rather than about the individual contractors experience. The information provided about Mr.

McCracken previous experience "just came up in the conversation". Mr. Hopner's assertion that these enquiries amounted to a phone audit of Mr. McCracken's competency does not stand up to scrutiny. It was only by chance that WorkCover ever obtained any information about Mr. McCracken's prior experience including the suggestion that a prior demolition in Queensland by him had damaged a police station.

121. These telephone enquiries resulted in WorkCover becoming aware of the Appendix K of Australian Standard 2187.

122. Mr. Hopner obtained about this time a copy of the United Kingdom Health and Safety Executive guidance note dealing with the demolition techniques (520). The note was issued in 1984 and dealt with such topics as safe distances, blast protection and firing programs for explosive demolitions. Paragraph 45 of the document deals with exclusion zones:-

"For a building rectangular in plan the exclusion zone will be approximately elliptical so that no one is in the distance of one and half times the height from any part of the building. Where explosives are to be used, persons should be excluded from a larger zone".

Paragraph 55 states: -

"<u>An exclusion zone should be determined by the competent person,</u>

<u>and should depend on factors such as the type and condition of building being demolished, the position and size of the charges and the blast protection provided</u>. A typical exclusion zone around a tall building where explosives are in use would be a circle or radius of twice the height of the building".

WorkCover never brought the existence of this information to the attention of anyone on the site even though it was provided to others within WorkCover.

123. On 27th June 1997 Mrs. Kennedy and Mr. Hopner visited the Acton site for the purpose of arranging a meeting to discuss the possible impact of the demolition on the Hospice. On that visit they spoke at some length with Mr. McCracken and Mr. Fenwick. Mrs. Kennedy made it clear that she knew nothing about explosives or demolition. They were given a reasonably detailed explanation by Mr. McCracken as to how he intended to drop the buildings and were told by Mr. Fenwick that Sylvia Curley House would drop in its own footprint with fly/rubble not going any further than 10 metres. Mr. Hopner was advised there would also be pyrotechnics.

124. Three days later on 30th June 1997 Mr. Hopner took further steps to arrange the meeting of 2nd July. A meeting did take place on 2nd July concerning the Hospice at which Mr. McCracken and all other relevant parties except the Dangerous Goods Unit were present. Mr. Hopner was not present.

THE HOSPICE MEETING OF 2ND JULY 1997

128. A meeting was convened at the Hospice on 2nd July 1997. It is not clear whether the Chief Executive Officer Mr. Stone gave a long speech about whether a prohibition notice should be issued. The WorkCover inspectors adjourned certainly once if not twice to consider whether a prohibition notice should be issued.

129. The focus of the meeting was the safety of the residents and staff at the Hospice. Mr. Purse in explaining to the Inquest the lack of attention to crowd safety stated at that meeting that if the Hospice was situated some 78 metres distant from the demolition then it was safe and everybody else would be safe. The focus on the Hospice was so narrow that it ended up at the expense of the safety of everybody else. This is a point which I have previously stressed that the safety of the Hospice was of such paramount interest that it detracted from any other considerations that might flow from the demolition. The Appendix K response of Exhibit 119 was so strongly focussed upon satisfying WorkCover that the Hospice would be safe preoccupied all those involved in the whole project to the detriment of the general public safety in what might occur on the other side of Lake Burley Griffin. There is no question raised by WorkCover let alone PCAPL or TCL seeking information about how the safety of persons coming to view the implosion would be ensured. WorkCover's attention was so primarily linked to the safety of the Hospice that it ignored the issues of whether other persons in other directions would be safe. It is best summarised by the evidence of Mr. Hopner who actually agreed that WorkCover and others had "tunnel vision in this respect".

THE AMOUNT AND TYPE OF EXPLOSIVES

130. Mr. McCracken told the meeting on 2nd July 1997 that he was going to use 130kg of explosives. Mr. Purse and Mrs. Kennedy

understood this amount related to the entire project and not simply Sylvia Curley House. Mr. Dwyer said he could not recall precisely what this amount related to. Mr. McCracken stated after being questioned by Mr. Purse that he would be using approximately 100kg of Riogel, 12kg of Powergel and 18kg of PE4. There is a fundamental failure on the part of Mr. Purse in this regard in that having received this information he should have realised that it was inconsistent with what Mr. McCracken had stated in the workplan, that the workplan only referred to using specially designed shaped charges.

131. The failure of Mr. McCracken to use shaped charges as he had originally indicated undoubtedly contributed to the large amount of steel that left this site. Mr. McCracken conceded that steel fly was much less likely if cutting charges were used. It should have been obvious on 2nd July 1997 to WorkCover, in addition to Mr. Fenwick and Mr. Dwyer, that Mr. McCracken was proposing to use different charges and therefore a different demolition method from those originally set out in his workplan of May 1997. It was essential that those involved with WorkCover should seek clarification at this stage or at least when assessing the information in the workplan.

RISK ASSESSMENT

132. Mr. Dwyer, at the meeting on 2nd July 1997, tabled a risk assessment. The document was prepared by Mr. Dwyer in consultation with either Mr. Hotham and/or Mr. Lavers. That is his evidence on 6th October 1998. None of those persons possessed any knowledge or experience in the implosion technique and were unqualified to prepare a true risk assessment of the demolition. The so-called risk assessment plan was a failure. The plan did not address the issues that were required by such a scheme e.g. the specific methodology to be used, the experience of the contractor in undertaking similar implosions of similar buildings and finally the protective methods intended to be used. The risk assessment plan assumed that the implosion would be safely conducted because other implosion had been safely conducted.

133. The safety of implosions as a demolition method was not an issue. The relevant critical question was whether the implosion of these buildings by Mr. McCracken using the method that he had proposed was going to be safe. It seems to me that Mr. Purse had a duty to ensure that the risk assessment plan addressed all the relevant issues. It was a major failing in this entire project that Mr. McCracken was permitted to implode the buildings with no expert check of an independent nature being made at any stage that his methodology was infact appropriate and safe.

SANDBAGGING FOR SAFETY

134. At the meeting on 2nd July 1997 Mr. McCracken told the meeting he would "put in place 50% more sandbags than he originally planned, to give higher safety". From that time all present were on notice that there may be a link between sandbags and safety. There also seems

to me to have been an obligation to check that the sandbagging had actually been placed to the requisite degree required for a project of this magnitude.

135. During the course of the meeting of 2nd July 1997 Mr. McCracken was challenged to explain why windows in a police station in a task undertaken by him in Queensland were broken. The accuracy of certain notes made by Mrs. Kennedy on this issue were never challenged. Mr. McCracken said words to the effect that he had to: -

> "Put explosives up high, could not sandbag, consequently broke windows but that's very different to this job. The columns will (be) sandbagged and buildings will fold towards the other way".

136. All those present at this meeting were then on notice that there may be problems if charges could not be fully sandbagged. The video evidence clearly shows many columns free of sandbagging with no form of protection. The evidence shows columns C30 and C74 being the two columns that most likely expelled the fatal fragment are exposed with no sandbag protection.

The photographic evidence indicates that there was nothing between the webs of those columns and where Katie Bender was standing. The lack of protection on the lakeside of C74 was obvious yet no one raised that factor as a primary consideration. WorkCover took a close up photograph of column C74 about 2 hours before the implosion in the course of purporting to do a final inspection and failed to appreciate what was evident in the photograph. The absence of any protective measure on the crowd side of the blast should have been sufficient in the minds of Mr.

Purse and Mrs. Kennedy to raise concerns as to the adequacy of the exclusion zone.

137. Finally, I should make this additional observation about the preparation of the structures for implosion. The ledges around the columns on the upper floors were removed so it was not possible to sandbag the total circumference of many of the external columns. There is evidence to support this view given by Mr. Bob Leeson. This was specifically known to Mr. Fenwick who even casually raised the issue with Mr. McCracken during the course of the preparation. Mr. Dwyer also conceded that it was apparent that when he walked around the lakeside of the buildings that there was no sandbagging on any four of the sides.

138. The importance of sandbagging should have been apparent to all who had heard Mr. McCracken explain at the meeting only days before how the damage was caused to the police station in Queensland. It is

regrettable that this statement had no impact upon Mrs. Kennedy or Mr. Purse or Mr. Dwyer.

THE RECONFIGURATION OF THE BLAST

139. This topic has been considered at some length under the heading of "Methodology" and "Implosion as a Method of Demolition", however, it further needs to be considered in the context of the actual role played by WorkCover.

140. At the 2nd July 1997 meeting concerning the Hospice Mr. McCracken advised the meeting that Sylvia Curley House would fall away from the Hospice. It was also raised by Mr. McCracken that he may need to change the configuration of the blast to ensure this happens. It seems that nobody questioned Mr. McCracken about this comment. It should have been apparent that such a comment changed the original workplan and if it was being considered then more information was required as to what was involved. This was particularly important especially when this comment was taken in combination with Mr. McCracken's further comment that the building would fold towards the other way. Yet no one reacted. It is as if the comment fell on deaf ears.

141. On 13th July 1997 Mr. McCracken when speaking to Mr. Purse about one hour before the actual demolition blast confirmed that there had been indeed "a change in the blasting configuration".

This admission was a significant disclosure.

Mr. Purse said in evidence that he understood Mr. McCracken to mean that he had changed the blasting configuration to "to blow it away from the hospital". Even so why did he not out of abundant caution issue a prohibition notice? It may have been embarrassing and inconvenient to the dignitaries and spectators but it may have saved a young girls life. If he was prepared to take and consider such action on two prior occasions in the life of the project, why not now?

142. A direction away from the Hospice simply meant a direction towards the crowd. Such a change involved a significant departure from the workplan and had the potential to impact on the safety of those viewing the implosion from across the lake. Mr. Purse's response was simply to ask Mr. McCracken if it could be done safely. Mr. Purse like many others involved in this project relied on Mr. McCracken's assurances it could be done safely because he did not seem like a dishonest person. The evidence as to this issue is reflected at paragraphs 480 – 490 on the 14th July 1998. It was clear that no one else had checked the safety of what Mr. McCracken was proposing. It was a proposal made in full knowledge that the blast would be directed towards the crowd. It had nothing to do with the honesty of Mr. McCracken but rather a matter of grave importance in the interests of public safety.

143. This response was inadequate. It was a proper opportunity for Mr. Purse to take some form of positive action to ensure the project was

being handled in a satisfactory manner even at such a late stage. Whether it was a matter of inconvenience to the project operators or public embarrassment to the government and its public servants here was the appropriate opportunity for a prohibition notice to be issued in accordance with the *OH&S Act* to ensure the methodology was safe not only to workplace employees but also to the public at large.

EXCLUSION ZONE

144. At the meeting of 2nd July 1997 WorkCover was advised that a 200-metre exclusion zone would apply. Although it was undoubtedly the responsibility of the shotfirer Mr. McCracken to set the exclusion zone WorkCover at no stage question him or anybody else as to how the distance was determined. WorkCover simply noted that it was greater than twice the height of the buildings. I have previously made mention of this evidence. Never at any stage at any meeting before or after the 2nd July 1997 did WorkCover take into account the question as to assessing whether the exclusion zone was appropriate.

145. The Canberra Hospital buildings were steel framed structures. Cartridge explosives had been placed against the steel in such a way that the direction of the blast faced the crowd. The final amounts of explosives on each columns ranged from between 1kg - 8kg with no fly protection provided in any areas. The bund walls were inadequate in height. WorkCover should have been questioning as to the viability of the exclusion zone of 200 metres. The setting of the zone had been made in a casual manner. A proper scrutiny of the methodology proposed and independent advice on what was being proposed may have caused WorkCover to rethink the whole programme.

146. There are two further issues that need further consideration (a) the Appendix K response and (b) the site visit by Mrs. Kennedy on 10th July 1997.

APPENDIX K RESPONSE

147. There are a number of issues in this response that require a factual consideration. I first propose to deal with these considerations on a general basis and then deal with specific provisions of each response that have relevance to this implosion. It was a requirement of WorkCover that the demolition team, being the contractor and subcontractor, provide some form of response that was sensible, reasonable, prudent and practical. The project team should have also provided a proper independent risk assessment for the project.

148. Mr. Dwyer ultimately agreed to collate such information in the terms of a risk assessment and forward it to WorkCover. The response contains statements that should have put Mr. Purse on notice that a number of issues needed further consideration before the implosion took place. Many of the items addressed in this response did not require specialist implosion knowledge in order to be understood or verified upon inspection. None of the

other inspectors, Mrs. Kennedy or Mr. Hopner, had read the document before the implosion and in case of Mrs. Kennedy she had never seen the workplan before the demolition on the Sunday, 13th July 1997.

149. I am left with the impression from the evidence that it fell to Mr. Dwyer to prepare a substantial part of this response from information developed by himself as well as from handwritten notes provided by Mr. McCracken and oral advice received from both Mr. McCracken and Mr. Fenwick.

150. Mr. Dwyer clearly knew of the contents of the Appendix K response. Mr. Dwyer undertook to provide it and did so provide it under his signature on a PCAPL letterhead stating that if further information was required he would be the appropriate contact person. Mr. Dwyer went to considerable length in his evidence to suggest that he had not infact read in any detail, if at all, the information that was set out in the document. He stated that it was a mere "glue and paste". Mr. Dwyer is in considerable difficulties in this aspect of his evidence and attempts to minimise his degree of responsibility. In any event I am not convinced about Mr. Dwyer's evidence on this issue. Mr. Dwyer's evidence is most unsatisfactory to a significant degree. It is unreliable and unconvincing. Mr. Dwyer's conduct

> in this regard amounts to an abrogation of his duties as the Project Manager. Mr. Dwyer's demeanour in the witness box on some issues was puzzling. I am inclined to attribute some of his diffident answers to the pressures created by the tragedy and the demands of the Inquest in that he did give evidence on 2 separate occasions for lengthy periods.
>
> The conclusion that I have reached is that, overall, Mr. Dwyer was an unsuitable choice as a Project Manager for such a complex task.
>
> 151. There are some categories of the Appendix K response that needs some specific comments upon which I shall now make some brief observations.

<u>Section K1 – Generally</u>

> 152. In his evidence on 30th September 1998 (at paragraph 871) Mr. Dwyer conceded that he was responsible for the completion of this segment. PCAPL had taken steps to ensure that the demolition contractors were suitably qualified particularly as they had specifically undertaken projects of a similar size and complexity. The evidence given to the Inquest leads me to a contrary view. PCAPL were well and truly qualified in the terms of demolition experiences as a Project Manager. Yet PCAPL and its staff particularly Mr. Dwyer had no experience in any form of demolition by way of implosion using explosives. It was critical for Mr. Dwyer and PCAPL, once appointed, to either have acquired or sought out advice to confirm what the contractor and subcontractor were proposing to do, how it was to be done, whether it was safe and were the contractors competent for the Acton project. Mr. McCracken and Mr. Fenwick had never ever imploded a steel-framed concrete encased building. PCAPL had never

conducted any external checks to verify their background. This was in full knowledge of the Glenn Report of 1991 that the Canberra Hospital buildings were a steel structure.

Section K4 – Preparation of the Structure

153. Section K4 in Appendix K indicated that "supporting documentation from a structural engineer should be supplied to verify the stability of the structure". The Gordon Ashley drawings attached to Exhibit 179 did not meet this requirement. The "partial hinge" drawing (diagonal cut) was a method specifically not to be used and should never have been included in the Appendix K response. The drawings set out in Exhibits 116 and 117 only indicate that if cutting was carried out as indicated the stability of the building would not be compromised. There was no document that verified the cuts had been made in accordance with the advice or which otherwise contemporaneously certified that the buildings would be stable. Mr. Purse should have inquired further on this issue.

154. There is a heading on page 9 of the document styled "Design Blast to Minimise Adverse Fly Material". The response was:-

"In respect of the location of the Hospice, charges on the northern side of the Sylvia Curley House will be positioned to eliminate the possibility of adverse fly material towards the Hospice. The balance of the charges will be placed to contain any fly within the buildings where possible to do so".

155. The statement suggests a guarantee has been given that no fly material will be directed towards the Hospice. It also acknowledged a possibility of fly material travelling in other directions. It was known that spectators would be gathered to watch the implosion from all vantage points around the lake. Nobody at any stage appreciated the significance of this statement. Mr. Purse should have appreciated the impact of this statement especially when taking into account the reconfiguration of the blast discussions and comments made on 2nd and 11th July 1997.

156. Mr. Dwyer should also have been put on notice by this response because he had drafted it on the advice of Mr. McCracken. Mr. Dwyer was subsequently told by Mr. McCracken on 9th July 1997 that "minimal fragments go that way (towards the Hospice) more fragments go that way (towards the lake)". At that point Mr. Dwyer should have told Mr. McCracken that the implosion should not occur until he could guarantee that no fly would travel in any direction not simply just towards the lake but in any direction where spectators may be gathered. It was an extraordinary remark to make to the Project Manager yet Mr. Dwyer seems to have allowed it to pass by. One is at a loss to understand why Mr. Dwyer did not react to this situation. Surely Mr. Dwyer must have had sufficient presence of mind to consider this was both a grave and serious potential problem as a consequence of the blast.

157. It seems to me Mr. Dwyer's response to these factors was inadequate and negligent. It seems to me also that Mr. Fenwick was also negligent

because he was the person responsible for supervising Mr. McCracken's work and as such although he may have had a minimal role in preparing the documentation he should have been at least aware of what was contained in the documents. Again like Mr. Dwyer he should have taken up these considerations with Mr. McCracken.

Section K5 – Explosives

158. Section K5 considered the need to use the correct explosive for the specific task. The response in Exhibit 179 makes this statement:-

> "Cartridge explosives will be used as kick out charges on all columns except rows 2 and 5 (bracing columns) on lower ground floor and ground floor blocks of the Main Tower Block. PE 4 LCC will be used to cut flanges on bracing columns allowing forward movement".

This is a very different statement from that which appears in Exhibit 109. Mr. Purse should have sought clarification. The departure from the original workplan was of great significance and it should have been apparent to Mr. Purse without any great need to have any expertise.

159. The WorkCover authority should have noticed these changes. The WorkCover authorities particularly Mr. Purse should have followed up these changes with Mr. McCracken and Mr. Fenwick to satisfy himself over and above all those assurances being given by Mr. McCracken that the new method was totally safe.

BUND WALLS

160. The K5(d) response indicated that "all columns will be sandbagged in the Main Tower Block and Sylvia Curley House…bund walls will be constructed around both buildings to deflect sound and air rush from blast and building collapse".

161. Mr. Purse read this and made the following note "how high, suggests 4 metres – slightly higher than one floor". This notation was based on the bund walls completely covering the lower ground floor and partly on the second floor thereby containing explosive charges and providing sufficient fly protection. Mr. Purse also expected, upon reading this, that both buildings would be entirely surrounded by bund walls.

162. The bund walls were not there simply to provide fly protection but also to deflect air blast. There is no doubt in my mind that if a bund wall was high enough and thick enough around the buildings then the fatal fragment would have been prevented from leaving the site. There was also the consideration of maintaining in place the podium. Mr. McCracken told police that he believed the bund walls were for reducing flying debris. Mr. McCracken listed them as one of the protective measures along with the sandbags that he had employed. Mr. Dwyer's understanding was that they were to prevent flying material. All those engaged on the site believed the bund walls were there to provide some fly protection.

163. There is some significant correspondence on the bund walls issue between Mr. Dwyer and Mr. Purse in the very late stages of the demolition. On 9th July 1997 Mr. Purse wrote to Mr. Dwyer wishing to confirm that the bund walls will be at least 3 metres high.

Mr. Dwyer responded on 10th July 1997 stating:-

"We confirm bund walls approximately 2.5 – 3 metres high will be constructed to the northern side of Sylvia Curley House where required. Our contractor has advised that the bund walls are not required along the full length of the building and will be formed where necessary to eliminate fly rock and minimise noise".

This is the position only 3 days before the implosion date. One is left in some doubt as to the state of preparedness for the demolition.

164. This response by Mr. Dwyer is in total contrast to what had been set out in the Appendix K response where it said the bund walls would be only around both buildings and were merely to deflect sound and air rush. The bund walls should have been surrounding both buildings and at a height capable of catching any fly not simply as a means of deflecting flying debris.

165. There is no dispute on any examination of the evidence that there was no bund wall in front of and around column C74 at any stage. The column C30 requires further consideration. There was only a small bund wall that did not provide any protection from any fly emanating from the ground floor. The bund wall contained a gap in the vicinity of C30 to allow space for the chimney to fall.

166. The bund walls that were in place were inadequate if they were to have any fly protection purpose. They were simply not high enough at any point to stop fly from the upper floors. Moreover they were in a place which was either too low or too far away from the edge of the building to catch any other trajectory flying from the lower floors other than that which was emanated or emitted or projected at a low height.

167. It was always Mr. Purse's understanding that sandbagging would be inadequate protection. He did not give much consideration to what impact bund walls would have. Not withstanding whatever Mr. Purse may have considered the position to be it is beyond dispute on the facts that sandbagging was not placed around all of the columns, particularly the external faces of C30 and C74, and as such there was no sandbag protection whatsoever on the lakeside which was the side opposite the explosives. In this respect the evidence of Mr. Leeson must carry some weight. Mr. Purse's failure in this regard to require the full sandbagging must be considered negligent.

Section K7 - Submission to the Regulatory Authorities.

168. The evidence in this aspect of the Inquest is of great significance. It was always a requirement that a plan of the structure showing the weight and type of charges, their placement and their time delays should be provided. The drawings were not very detailed but they did indicate the quantities apparently to be used on each building in the form of charges per column. If anyone had totalled these figures they would have discovered that the total amount of explosives intended to be used according to these drawings was well over 240kg. This was almost double the total 130kg referred to by Mr. McCracken at the meeting on 2nd July 1997. The Administration Checklist attached to the workplan indicated that the maximum charge per delay was 2.5kg. This was inconsistent with the quantities indicated in the drawings A and B of Exhibit 144 and were over 100% greater again.

169. It is my view that Mr. Purse, Mr. Fenwick and Mr. Dwyer should have raised these discrepancies with Mr. McCracken well before the implosion. It was simply a matter of common sense and basic mathematics.

170. There is a requirement at K7(j):-

a. That carpet will be wrapped around columns in certain locations,
b. Chain wire mesh will be hung from the building in certain locations, and
c. All columns to be blown will be sandbagged.

171. There was an absence of all these forms of protection. It was apparent and it did not require any great form of expertise to confirm this state of ordinary common sense observation. It was obvious that all columns were not fully sandbagged. There was only a minimal amount of carpet wrapped around a few columns in Sylvia Curly House. The chain wire mesh was not present in any form whatsoever.

172. Mr. McCracken had rejected the chain wire fencing meshing as being too expensive and yet provided nothing in substitution. There were no appropriate measures taken to prevent debris escaping the site, moreover, on inspection of the site immediately after the implosion it was evident that certain fencing had been demolished or damaged by debris flying through the fencing. Mr. McCracken and Mr. Fenwick, when asked by the police, could not point to any measure besides the inadequate bund walls and the incomplete sandbagging that had been used for the protection of the general public.

THE MARGARET KENNEDY SITE VISIT ON 10TH JULY 1997

173. Mrs. Margaret Kennedy visited the site on Thursday, 10th July 1997. It was a waste of time. She had no knowledge of explosives or demolition procedures nor the safety considerations that might arise from such a demolition. On that day she took a number of photographs which even to an untrained observer would have required some questions and explanations.

174. This is well documented in the evidence about which I shall give some brief examples. A classic case concerns a photograph of a backing plate clearly visible on a charged column. The use of backing plates had never previously been mentioned and called for questions and an explanation. There is a photograph of explosives strapped to a column below the oxy – acelytene cut. This was contrary to the "kick out" method referred to by Mr. McCracken. Mrs. Kennedy had no appreciation of the significance of such matters as she considered herself a "tourist" on that day. This demonstrates the futility of the visit. The photographs were not developed until after the implosion.

175. Mrs. Kennedy did not ask about the explosives set up. And even if she had, she would have accepted anything Mr. McCracken had told her as long as it sounded reasonable given her lack of knowledge and expertise. It would have been apparent to any person who had any dealings with Mrs. Kennedy on the site that she had no understanding of demolition. She had told at least Mr. Dwyer and Mr. McCracken that she did not know what she was doing. No one could possibly accept or gain any impression that Mrs. Kennedy's presence on the site was with a view to approving a final methodology.

176. There are at least two matters in respect of which she could have made further enquiries with other WorkCover inspectors.

177. On 10th July she made a note in her diary of a conversation with Mr. McCracken to the following effect: -

"Mr. McCracken spoke to me, said when he put tender in did not realise what was in the columns, said they were running behind, working 18 hours a day, had not started on Sylvia Curley yet, had to go to draw up firing plan for Sylvia Curley".

178. Mr. Purse when asked about this conversation said that it would have concerned him. Mrs. Kennedy on the other hand gave evidence that these comments did not concern her as it was not unusual for persons on construction sites to be running behind schedule, yet she did not repeat this conversation to anyone else at WorkCover. The second matter that must have raised concern related to one of the columns that Mrs. Kennedy saw on her visit to the site on 10th July 1997. The photograph of this column appeared on the front page of the Canberra Times the next day, 11th July 1997. Mrs. Kennedy took the trouble to cut the photograph from the newspaper along with the article and paste it in her diary. It is not unreasonable to expect that having cut the article out she would have at least passed it on to Mr. Purse or at least noticed that Mr. McCracken was quoted as intending to use almost twice as much explosives (225kg) as he had told her on 2nd July 1997 that he was intending to use. Yet she took no action about this. It is inexplicable to me as to why someone having regard to such a difference in the volume of

explosives being used at one particular time seven days earlier is then advised that a greater amount would be used and then did not question the necessity for such an increase in the volume of explosives. This is of great concern having regard to the fact that the implosion was only three days away.

179. Mr. Purse, Mrs. Kennedy and Mr. Adams attended the Acton demolition site at 10.30am on Sunday, 13th July 1997. At no stage did any of these three inspectors raise concerns about the lack of sandbagging or the nonexistence of chain mesh protection. The photographs show the end of the building facing towards Katie Bender including columns C30 and C74 as they were set up at the time of the implosion. These columns had no real protection. The buildings were not protected in any respect on the lakeside of those columns.

180. Dr. Krstic of Defence Services Technology (Salisbury S.A.) indicated that the fatal fragment most likely came from four possible areas of this part of the building either the lower ground or ground floors of C30 or C74. I have previously stated that I am satisfied that the lethal projectile did emanate from this part of the building. Only one of those areas had any possible protection from fragmentation being expelled, being the lower ground area of columns C30 (assuming the bund wall was high enough and the gap did not come into play). The failure to trap the fragment expelled from the building before it could leave the Acton Peninsula site directly caused the death of Katie Bender. Nobody addressed the fact that there was inadequate protection in this area.

CONCLUSION

181. The WorkCover inspectors, particularly Mr. Purse and Mrs. Kennedy, failed to meet the standards that could be reasonably expected of a competent WorkCover inspector. The failure by Mr. Purse on 13th July 1997 to stop the implosion by the issue of a prohibition notice until he was satisfied the reconfiguration of the blast was safe is directly linked to the death of Katie Bender. Mr. Purse expected protective measures to exist in the form of low bund walls and sandbagging. Their obvious absence and then permitting the implosion to proceed are factors referable to Katie's death.

182. These are significant failures by the inspectors. These failures amount to negligence on the balance of probabilities but not to the requisite standard to a criminal degree.

183. The actions of Messrs. Purse, Hopner and Kennedy warrant the gravest degree of censure in the way the project was approached having regard to the information provided to them. Their inexperience and lack of qualifications satisfies me that a jury properly instructed would not find them guilty beyond a reasonable doubt.

184. The WorkCover inspectors were not safety inspectors. There was not a scintilla of evidence to suggest the inspectors had any form of qualification or expertise in the demolition process using explosives and Mr. Dwyer was fully cognisant of this fact. It was not the role of Workcover to double check the credentials or the experience of the contractors chosen by PCAPL and TCL. Workcover was entitled to accept the assurances that contractors had been competently chosen and adequately qualified. It was important to bear in mind

that the legislative scheme imposed only powers and not statutory duties upon the Workcover inspectors. This is supported by Mr. Purse's assertion that whatever roles and responsibilities Workcover did have it was not its responsibility to act as a safety officer to those on site. The primary duty of the Workcover inspectors was to ensure the demolition was carried out safely and that it remained a safe project at all relevant times particularly with those performing it and those supervising it. Workcover unlike Mr. Fenwick, PCAPL and TCL was not in any contractual relationship with any party, which required it to constantly monitor the activities on site. Workcover was a wholly independent body removed from the demolition contractual obligations and responsibilities for the project.

185. The primary responsibility for the actions at the workplace fell to those controlling the contractor and the subcontractor. The principal responsibility in my view on the evidence and a proper consideration of the contracts falls to the Project Manager and Superintendent, Mr. C. Dwyer of PCAPL.

186. Finally WorkCover was not in a contractual or any other like relationship requiring it to constantly negotiate, supervise, monitor and control the activities being undertaken upon the site.

187. I am not persuaded that WorkCover inspectors contributed to or had any <u>direct</u> connection with the death of Katie Bender in the terms of Section 56(1)(d) and 56(4) of the *Coroners Act 1956*.

<u>RECOMMENDATIONS</u>

a. It is unsatisfactory to simply grant a Shotfirer's Permit that allows unregulated use for an extended period of time. The permit should be issued for a fixed and definite period capable of renewal and subject to review upon meeting specific criteria as to the suitability of the applicant.
b. The quantity of explosives, their storage, transport and use needs to relate to each specific project. An individual separate application should be filed for each explosive project. The balance or residue remaining upon the completion of each blasting or detonation should also be accounted for to the relevant authority. If a project requires a series of blastings or detonations over an extended period of time then the same approach should be applied in the terms of the quantity of explosives to be used, their storage, use and transport. The residue should be properly accounted for to the relevant authority.
c. A person seeking to use explosives for a particular purpose should be required to not only hold a Shotfirer's Permit but should apply for and obtain permission from the relevant authorities for each and every proposed project where detonation or blasting is required to be done by the use of explosives.
d. There should be a right vested in an inspector to come upon property to examine the use and storage of explosives on a regular basis.

It may be considered that these requirements present additional work in the terms of administration but in the long term the accountability factor is of greater importance. The need for such accountability by the Shotfirer to the Dangerous Goods Unit or the relevant authorities in the terms of the amounts and types of explosives imported, their storage, transport usage and what residue might exist after a particular project is completed far outweighs the administrative inconvenience created. It is the workplace and general public safety which is of paramount relevance.

WorkCover and DGU should be independent statutory authority with appropriate funding and resources. Both bodies should be created as one autonomous statutory unit independent of any departmental control answerable to a Minister of the Legislative Assembly. The models adopted in other states of Australia would seem to suggest that this is a practical way to ensure workplace and public safety is preserved. Consideration should be given to the adoption of the interstate models. All relevant stakeholders should constitute its Board again accountable to the Assembly.

POSTSCRIPT

On 30th September 1999 the following Regulations were made: -

a. The *Occupational Health and Safety* Regulations Amendment (No 21 of 1999),
b. The *Dangerous Goods* Regulations Amendment (No 20 of 1999), and
c. The *Scaffolding and Lifts* Regulations Amendment (No 19 of 1999).

The primary amendments appear in the *OH& S* Regulations covering the following areas of concern raised by the Inquest and the general review of WorkCover namely: -

a. Use of explosive at workplaces,
b. Use of explosives – obligations or employer and occupier,
c. Applications for a permit to use explosives,
d. Requirements of a blast plan,
e. Eligibility for a permit,
f. Permit to use explosives,
g. Variation of a permit,
h. Statutory periods of a permit,
i. Registrar may require further information,
j. Provision of false or misleading information to a Registrar,
k. Suspension or revocation of a permit, and
l. Review of Registrars decision.

The Amendments would appear to address many of the concerns of the Inquest. The amendments are a step in rectifying the deficiencies in the legislation identified by the Inquest and the death of Katie Bender.

ENGINEERS

The Necessity for Structural Engineering Advice

1. In early May 1997 Tony and Karen Fenwick as directors of City and Country Demolition (Australia) Pty Ltd signed contracts with the Australian Capital Territory in respect of the Demolition works to be staged on the Main Tower Block (Stage 1) and Sylvia Curley House and associated structures (Stage 4) of the Royal Canberra Hospital situated on the Acton Peninsula. It is clear from both contracts that the demolition contractor was to comply with the requirements of the *ACT Demolition Code of Practice*. Specification 2 of the Contracts obliged the demolition contractor to further comply with that code of practice. Specification 18 of the contracts set out the obligations upon the contractor in relation to structural engineering advice.
2. Specification 18 provides: -

   Structural Engineer

   "The contractor shall obtain professional advice and direction from a qualified structural engineer prior to commencement and during the works, to ensure the demolition is carried out in a safe manner.

   The contractor shall, prior to commencement of the works, obtain written approval from a qualified structural engineer as to the method of demolition to be adopted on the project and submit evidence to the Superintendent. The structural engineer is to certify the contractors demolition plan prior to lodgment with the Superintendent for approvals".

   The Superintendent for the purposes of this project was PCAPL and in particular the contact officer was Mr. Cameron Dwyer.

3. Specification 2 and 18 makes clear the obligation to obtain structural engineering advice prior to the commencement of any work and throughout the duration of the demolition work. The whole object of the requirement in specification 18 is that the advice of a structural engineer was designed to insure the demolition was carried out safely.
4. The *ACT Demolition Code of Practice* contains the following provisions in relation to structural engineering advice. In paragraph 2.2 of the Code described as Assessment and Planning the following appears: -

   > "Prior to the commencement of any demolition, the occupier should ensure that an investigation of the structure to be demolished and of the site is carried out by a qualified structural engineer and workplan prepared and documented".

   The provision continues inter alia that the structural engineer should determine: -

   a. The type of structural system involved,

b. Composition of structural components,
c. The current load – carrying capacity of the structure,
d. The proposed methods and sequence of demolition,
e. The location and condition of such services as drainage, sewerage, electricity, gas, water, telephone cables etc,
f. The general condition of structures on adjoining properties, and
g. The potential effect demolition may have on people working in, or seeking access to, and egress from adjoining properties.

1. Paragraph 6.17 is critical. It is styled Demolition by Explosion and contains the following requirements: -

"A specialist experienced in the controlled application of explosives for the purpose of carrying out the demolition of building structures should be consulted before deciding whether explosives are to be used for demolition. Account should be taken of the type of structure and its situation. An explosive specialist should be employed, experienced in this type of work. Tests may have to be conducted in a place remote from the actual demolition site. Things which have to be considered are air shock, noise and dust if the explosives are to be used above ground. Also the type of day has to be considered. Air shock will vary with cloud cover.

Prior to the blasting of any structure or portion thereof, a complete survey should be made by a qualified person of all adjacent improvements and underground utilities. When there is a possibility of excessive vibration due to blasting operations, seismic or vibration tests should be taken to determine proper safety limits to prevent damage to adjacent or nearby buildings or other property.

Utilities require special consideration, and the proximity of underground and overgrown services should be carefully considered before blasting operations are carried out. Consultations should be carried out with the authorities responsible for concealed underground works (e.g. pipes, cables, etc.).

The preparation of a structure for demolition by explosives may require the removal of structural columns, beams or other building components. This work should be directed by a structural engineer or a competent person qualified to direct the removal of these structural elements. Extreme caution should be taken during the preparatory work to prevent the weakening and premature collapse of the structure.

The explosive specialists should decide the charges to be used and their placing. In the event of a misfire the area should remain cleared until the explosives specialist has dealt with the situation. It, after blasting operations, a misfire charge is found during the subsequent removal of debris the area should be cleared and entrance restricted until the explosive specialist has rendered the misfire safe.

Buildings should not be demolished by explosives without the express permission of the ACT Building Control and the ACT Dangerous Goods Unit.

Neither of these two regulatory bodies gave any form of approval or permission for the demolition of the buildings situated on Acton Peninsula by the use of explosives.

The Building Controller simply played no role in the Acton project at any point in time. The role of the ACT Dangerous Goods Unit is discussed elsewhere in this Report under the heading "The Role of Regulatory Agencies".

2. "The Code of Practice contains two significant definitions. A contractor and a occupier are specifically defined. A contractor means, "in relation to any demolition work, the person who directly or by means of an agent carries out that work". In this case the contractor is clearly Mr. Tony Fenwick of City and Country Demolition who engages, by a subcontract, the services of Mr. Rod McCracken of Controlled Blasting Services.

> "The occupier of a workplace means a person who has the management or control of the workplace". There is clear evidence that the occupier managing or controlling the Acton Peninsula demolition site either in the capacity of Project Manager or Superintendent was Project Co – ordination Australia Pty Ltd. Their representative on the site was Mr. Cameron Dwyer.
>
> 7. The purpose of the *ACT Demolition Code* is to provide practical guidance as to measures which can be taken to prevent injury and ill health to persons engaged in work on demolition sites and to any other persons who might be exposed to risks arising from the demolition activities.
>
> 8. Paragraph 4.2 of the Code of Practice relates to Engineering Investigation. There is a frequently repeated emphasis on the need for a structural engineer to be involved in the whole process including inter alia "prior to commencement of demolition the qualified structural engineer should have investigated the structure by whatever means necessary and have determined as accurately as possible: -
>
> a. The type of structure system involved,
> b. The "as constructed" details of the component members,
> c. The current load carrying capacity of the structure,
> d. The likelihood that the proposed methods and sequence of demolition can be executed without causing accidental collapse of the whole or part of the structure, and
> e. Any other details of the structure regarding strength, construction or contents which will influence the selection or demolition procedures given in the workplan.
>
> 9. The provisions are precise and unambiguous. There was simply no compliance with these requirements prior to the commencement of the

work and only superficial adherence to the provisions during the duration of the project.

The Role of Mr. Adam Hugill of Northrop Engineers Pty Ltd from Engagement to Termination.

10. Mr. Adam Alexander Hugill graduated from the University of NSW with a degree in civil engineering in 1986. In 1997 he was employed by Northrop Engineers Pty Ltd as a Senior Structural Engineer providing structural engineering advice to clients. In August 1997 he was the manager of the Structural Engineering section for Northrop. Although he was experienced in Structural Engineering of steel-framed buildings his experience in relation to a building of the magnitude of the Main Tower Block of the Royal Canberra Hospital was limited. It should be noted that Mr. Adam Hugill had no involvement with the Sylvia Curley House project. His previous experience was limited to one demolition of a multi – storey steel frame building. The advice to be provided to Mr. Fenwick on the Acton project initially related to floor loadings for bobcats, in their application to stresses on the building structure and equipment in addition to the demolition procedure.
11. The precise date of engagement of Mr. Adam Hugill is not readily determinable by an exact date. The engagement would appear to have occurred in the following manner. It seems Mr. Adam Hugill and Northrop Engineers Pty Ltd had worked with Mr. Cameron Dwyer and PCAPL on other projects in the past where structural engineering expertise was required. It seems at about a week before the 15th April 1997 Mr. Tony Fenwick of City and Country Demolitions spoke to Mr. Adam Hugill. Mr. Adam Hugill can identify that period by reference to the fact that he had received certain correspondence from Mr. Fenwick on the 15th April 1997. I am satisfied that the engagement of Mr. Hugill came about by the direct approach of Mr. Tony Fenwick to Mr. Hugill in early to mid April 1997.
12. Some weeks later, on or about Monday the 5th May 1997, Mr. Hugill first met Mr. Rod McCracken of Controlled Blasting Services. Mr. McCracken approached Mr. Hugill at the Hospital site to inspect cuts to a column. The contact was made on the initiative of Mr. McCracken out of his concern for the possibility that a column had been overcut.
13. There are two significant matters of concern that ought to be raised at this early stage (that is between mid April 1997 and early May 1997); namely: -

    a. Mr. Hugill had limited or no knowledge of the *ACT Demolition Code of Practice*, in fact, he stated he would have engaged in the pre – weakening process in accordance with the Steel Structures Code AS4100, and
    b. Mr. Cameron Dwyer of PCAPL would have been alert to the fact that the engineer engaged on the site at that time, namely Mr. Adam Hugill, was not the engineer that was to be engaged apparently from Queensland.

10. Mr. Adam Hugill stated in evidence that he obtained a limited set of drawings from the PCAPL site office. There were conversations, it would seem, on the site in the weeks thereafter between Mr. Hugill and Mr. McCracken. The

engagement of the services of Mr. Hugill related to structural engineering advice on the pre - weakening of the building in the interests of its stability. It was the clear understanding of Mr. Hugill that there was to be no pre – weakening or cutting of any columns of the building until the engineering advice was provided. The subsequent cutting occurred between 5th and 21st May 1997, was done without Northrop's involvement or advice and was greater than expected, in fact, Mr. Hugill who inspected the cutting to the column on two separate occasions was horrified. The column was photographed by Mr. Hugill.

11. The evidence is that not only was a cut made to a column prior to Mr. McCracken's engagement of Mr. Hugill on 5th May 1997 but again prior to the inspections on 21st and 22nd May 1997. Mr. Hugill had tendered no advice on these cuts, they were done without any knowledge or approval on Mr. Hugill's part. These are serious breaches of the contract by both Mr. McCracken and Mr. Fenwick by commencing the cutting of a column prior to the provision of structural engineering advice. The question must be asked as to why PCAPL and TCL permitted the work to commence and then continue without compliance with the contract. These actions were a total disregard to the safety considerations on the project at such an early stage. PCAPL had permitted work to continue for a month before any work plan was submitted.
12. Nobody, in particular Messrs. McCracken, Fenwick or Dwyer, had referred Mr. Adam Hugill to the *ACT Demolition Code of Practice* at this early stage of mid April to early May 1997. Perhaps Mr. Hugill, by virtue of his professional status, should have known of the Code in any event. Mr. Hugill stated that if he had been permitted to give the advice that he had originally proposed to give there would have been a reasonable amount in written form supplemented by oral material. Mr. Rod McCracken would ordinarily have received the written advice. It was not nor had it ever been the practice for such advice when prepared by Mr. Hugill to be provided to Mr. Cameron Dwyer of PCAPL or to a person in an equivalent position. In this case because Mr. McCracken was from out of town and as some steel columns had already been cut before there had been any formal engagement of Northrop's it was considered by Mr. Hugill, having regard to these circumstances, expedient for Mr. Dwyer to be informed of these issues. This was a proper course of action in my assessment. It was prudent in all the circumstances. The column had been pre cut and readied for use with explosives. Mr. McCracken had cut steel columns without any structural engineering advice as to the cutting impact on the buildings stability.
13. It must be said that in April and by early May 1997 no work plan had yet been tendered by Messrs. McCracken and Fenwick to Mr. Dwyer of PCAPL yet work was permitted to commence even at a basic level without the intervention of advice from a structural engineer. Work had actually commenced as early as 22nd April 1997. The workplan for the Acton project was being prepared on 10th and 11th May 1997 and on 13th May 1997 the workplan was handed over to Messrs. Fenwick and Dwyer. This reflects poorly on the management control and skills of Mr. Dwyer who was the Project Manager and Superintendent on behalf of PCAPL. The work on the columns was a serious breach of safety. The responsibility for such action being permitted to occur lies fairly and squarely with Messrs. McCracken, Fenwick and Dwyer for it having commenced and then permitting such work

to continue. The requirements of the contract were being ignored at this early stage.

14. I do not agree with the submissions made by Counsel Assisting that Messrs. Hotham, Lavers and TCL should be targeted with this defect. I have serious reservations about their state of knowledge, acquiescence or involvement in these work actions. At the very least Mr. Dwyer should have informed TCL that the work had commenced at this stage without the prior requisite approvals.
15. Mr. Dwyer knew in early May 1997 that Mr. Hugill was not a structural engineer from Queensland with experience in implosion techniques. Mr. Dwyer did express some reservations and concerns about Northrop's level of experience in the terms of whether it was appropriate for Mr. Hugill to provide structural advice. Mr. Hugill cleared these issues with the Northrop directors. Mr. Dwyer accepted that position with some reservations. Mr. Hugill goes on to make it clear in his evidence that "he (Dwyer) really wanted to have a structural engineer who had more experience with blasting". If this statement really reflects Mr. Dwyer's position it defies logic why he took no action to achieve securing a person of the appropriate skills but continued with the status quo. This is the closest attempt to comply with the *ACT Demolition Code of Practice*.
16. It was the evidence of Mr. Hugill that he had no prior experience in assessing steel framed buildings being cut for demolition nor did he have experience in explosives. It was his view that such experience was necessary in order to ensure that a building maintained its strength and stability up to the time of implosion. In his evidence on the 3rd August 1998 Mr. Hugill stated that he had discussed with the directors of Northrop Engineers whether he was suitable and able to give the advice sought as to the stability of the building until the implosion before agreeing to advise Mr. McCracken. His directors assured him that it was appropriate for him to provide the advice and such advice was within his range of experience.
17. When Mr. Hugill obtained the plans from PCAPL he made two copies one for Mr. Rod McCracken and the other for himself as Mr. McCracken at this stage (5th May 1997) had no drawings. It should also he noted that Mr. Hugill only accepted a limited set of drawings numbering no more than twenty. Mr. Hugill had expected that there would be considerably more for a building of this type, possibly there would be hundreds of drawings.
18. The manner of the engagement or involvement of Mr. Adam Hugill of

    Northrop Engineers on the project by either or both Mr. Fenwick or Mr. McCracken can only be described as less than satisfactory. It was certainly casual lacking the necessary formality or professionalism that one would expect of an engagement for such a major project. One can understand why Mr. Hugill sought to regularise the relationship on a sounder professional basis. It would appear the engagement came as a matter of coincidence on the recommendation of Mr. Dwyer of PCAPL to Mr. Fenwick having regard to the credentials of and his prior working relationship with Mr. Hugill. It is only when Mr. Adam Hugill sought to properly formalise and regularise the engagement that his services were brought to an end in a less than satisfactory manner.

19. I have previously referred to the entry in the diary of Mr. McCracken dated Monday, 5th May 1997. It is necessary to mention other entries appearing in his diary at about the same time. On Wednesday 7th May the following entry appears "strip column for test cutting, continue working on ground floor level knocking out walls and stripping timber, roof sections, pipe etc". And on the 8th May 1997 the following entry appears in Mr. McCracken's diary "cut column as test cutting method found that it required 2 hours to cut, main problem was that the cut continued into support beam, may have to grind final breakthrough". The engineers and Mr. Dwyer should have been appraised of these issues. It would have assisted their role on the project.
20. A close examination of Mr. McCracken's diary for the first three weeks of May 1997 indicates that in addition to the Royal Canberra Hospital project he was engaged in or had some connection with as many as four other demolition projects, namely viz, the Wang Power Station, Toowoomba, Waterford and the Dulwich Hill Silos. It also appears that about Thursday 22nd May 1997 the proposed implosion date was possibly to be as early as 30th June 1997. It seems this advice emerged from discussions between Messrs. Dwyer and Fenwick. Mr. McCracken was then informed of this prospective date. There were also, it should be noted, union problems on the site during mid May when work had apparently ceased and Mr. McCracken had laid off certain staff. A notation appears in his diary that the strike ended on Friday 16th May 1997. Mr. McKenzie, the Queensland engineer, mentions these problems in his statement.
21. The next involvement by Mr. Hugill was about the 21st May 1997 when he inspected a column that was cut and as a consequence Mr. Hugill sent a facsimile to Controlled Blasting Services with a copy to Mr. Dwyer. The Facsimile reads: -

> "We carried out an inspection of the first column which you have cut in preparation for explosives demolition.
>
> We make the following comments: -
>
> 1. We have not yet carried out detailed calculations to determine the amount of steel in (the) columns which it is safe to remove. We have carried out some indicative calculations of the load on (the) column which indicate that it has been overcut. The diagonal cuts in the steel UB at (the) centre of (the) column should be butt welded together.
> 2. We have some concerns as to the overall stability of the building and need to work out a suitable mechanism for stabilising the building prior to cutting steel from columns.
> 3. The cutting of the steelwork is not being carried out in a careful and controlled manner and is being carried out without our involvement.
> 4. We cannot take any responsibility for any work carried out by the contractor without our involvement.

5. All future cutting of the steel columns should only be carried out under the direct written instruction of Northrop Engineers.
6. The cutting of the first few columns must be observed by Northrop's to ensure that the columns are not being overcut.

We confirm from our discussion this morning that you will be taking more care in (the) future for preparation of columns for demolition".

10. The terminology used by Mr. Hugill in paragraph (1) was that he calculated the load in the column by assessing all the loads up the building and then calculated the stress in the steel at the location where it had been cut. The advice is based on those calculations that brought him to the conclusion that the column had been overcut.
11. The second paragraph of the facsimile in summary form means that there needed to be an assessment as to what bracing elements were essential to maintain the stability of the building.
12. Paragraph (3) of the facsimile expresses the view of Mr. Hugill that the cutting had been carried out without the involvement of Northrop Engineers, it had been overcut and it had been cut in Mr. Hugill's opinion fairly roughly. The concerns were these: -

    a. The lack of involvement of Northrop Engineers in the first instance without any consultation or engagement,
    b. The method of cutting the column,
    c. The column being overcut,
    d. The consequential general stability of the building.

    Mr. Hugill said that in these circumstances it would have been necessary for advice to be provided by Northrop Engineers.

10. The final paragraph of the advice with the comments provided by Mr. Hugill is to this effect that "the cutting of the first few columns must be observed by Northrop's to ensure that the columns are not being overcut". The facsimile goes on to provide a general admonition to both CBS and to Mr. Dwyer that "we confirm from our discussions this morning that you will be taking more care in future for preparation of columns for demolition". It should be noted that by this time the workplan had been handed over to Mr. Tony Fenwick and Mr. Dwyer on Tuesday, 13th May 1997 by Mr. Rod McCracken. This facsimile is a clear message to Mr. Dwyer to ask some critical questions of Mr. Hugill as to what is happening, to then advise and involve TCL to a much greater degree than previously but rather it leads ultimately to Mr. Hugill's services being terminated in an arbitrary fashion.
11. Mr. Dwyer, to his credit, immediately on 21st May 1997 issued a direction to Messrs. Fenwick and McCracken. The direction annexes Mr. Hugill's advice. The direction given by facsimile is written in precise direct and unequivocal terms. What is regrettable is that there is no continuing affirmative action undertaken by Mr. Dwyer. The facsimile reads: -

"I have received a copy of a fax sent to Rod from Adam Hugill of Northrop Engineers dated 21st May 1997.

The comments made by Adam are very concerning and require your immediate action and response.

As requested by fax yesterday I require a written status report of what work has been carried out to date, Authority approvals, programme etc.

In addition please note that until I receive written Engineer's confirmation of what steel columns can be cut and the extent you are not to proceed with this work until further notice.

Your urgent action is required on this matter.

12. The very next day Thursday, 22nd May 1997 Mr. Hugill again inspected the column and took five photographs. Mr. Dwyer and Mr. McCracken were both provided with further advice on the overcut column by Mr. Hugill by a facsimile of the same date. It should be noted that at this point in time any discussion apparently about the cuts in the column had been of a general nature, no sketches had been provided nor had any other material of a precise nature been offered that would have assisted Mr. Hugill or the other parties. There was never any request made by Messrs. McCracken, Fenwick or Dwyer at any stage after the 21st May 1997 seeking any written confirmation as to the columns that should be cut and the extent to which the cuts should be made. Messrs. Fenwick and McCracken did not provide Mr. Dwyer with the advice that he had sought of them in his facsimile of 21st May 1997.
13. The advice given on 22nd May 1997 reads inter alia "with the current arrangement the column is significantly over – stressed at the location of the cuts. To put this in perspective, the cutting of the column has resulted in stresses of approximately 350 Mpa at the cut section of steelwork. The yield stress of the steel is likely to be in the order 250 Mpa. The design stress that is permissible for this structure with no live load is 160 Mpa. The steel column is more than two times overstressed and at the upper limit of the ultimate capacity of the steel. Close examination of the column at the cut indicates that one of the cuts appears to have moved slightly as a result of the high stresses. The only reason that the column has not yet collapsed is due to some load shedding to other columns. It is possible the column could collapse during welding repair works or due to bobcats driving on floor over columns".

    It is a clear direct message to Messrs. McCracken and Dwyer that there were some problems to be addressed.

14. Mr. Hugill makes the following recommendations: -

    1. The area surrounding the column should be cordoned off,
    2. No demolition work above (the) column should carried out until (the) column has been repaired,

3. 4 Trishore props should be installed adjacent to the column to temporarily prop the column whilst repairs are being carried out,
4. We will advise of suitable repairs when (the) Trishores are in place.

10. Mr. Hugill stated that he had measured up both the dimensions of the cuts, the spacing of the columns and the sizes of the cuts. This exercise took about a half-hour. Mr. Hugill further stated in evidence that when he says if the steel column is more than two times overstressed and at the upper limit of the ultimate capacity of the steel this simply means that the column was in danger of collapse because of the stress upon it and by reason of the amount of steel that had been removed. When Mr. Hugill spoke of load shedding he meant that "the building being steel framed and the way it has been indicated it has been constructed on the drawings is that other columns would carry – would assist in carrying the load if one column was damaged in this way".
11. Mr. Hugill does qualify this advice in these terms when he says "the risk really wasn't an extreme risk". The advice provided was "a bit conservative" but he viewed it as necessary to try and alert them to the seriousness of the situation. I do not accept the suggestion that Mr. Hugill was attempting to frighten those working on the site into referring the engineering aspect of the project to Northrop's.
12. Mr. Hugill further stated that the repair work to this column, the supervision and inspection of the repair work would normally be something that Northrop Engineers would be expected to be involved in. Mr. Hugill stated that it is a consequence of that advice that their involvement was ended. It was the opinion of Mr. Hugill that any subsequent engineer being engaged on the project would be advised of Northrop's prior involvement and the advice given by any previous engineers as to the structural stability of the building. Mr. Hugill was not able to say whether any external regulatory authority would need to be involved but it was his view even though his contract was with Mr. Rod McCracken "I thought the need to go further when I saw the columns had been cut so I sent a copy to Project Co – ordination. As far as I was concerned I went further than would have been normally done in a contractual arrangement". Mr. Hugill further stated that he had worked with Mr. Dwyer previously and trusted him "to do the right thing" with the information he had provided. The subsequent inaction of Mr. Dwyer in this regard indicates that Mr. Hugills trust was misplaced.
13. A final facsimile was sent to Mr. Rod McCracken on the 22nd May 1997 by Mr. Hugill in an effort to place the engagement of Northrop Engineers Pty Ltd on a proper business and/or professional basis. The facsimile reads:-

    "We would like to firm up our consultancy arrangements with you with regard to our engagement for provision of structural advice on this work. 1. We require a letter of engagement from you confirming that we will be engaged on a time basis as discussed. 2. We have carried out five hours to date at $90.00 per hour that is $450.00. 3. Due to the short nature of the project we will be requiring payment in advance of $5000.00 and we will advise you of our costs on a weekly basis".

That is the end of the facsimile.

14. Mr. Hugill anticipated that his involvement would be at an hourly rate so that it would be very difficult for a fixed fee to be settled upon. It was also the view of Mr. Hugill that he envisaged being engaged for a reasonably substantial amount of time. "I expected to visit the site on quite a few occasions. I expected a reasonable amount of site measurement of bits that weren't infact indicated on the drawings and then our series of calculations and then providing sketches so it was a fairly substantial involvement". When Mr. Hugill spoke of a fairly substantial involvement he was unable to give a fixed fee. It was based on an hourly rate and he said further "certainly more than a few hours and probably more than 30 hours. Probably I wouldn't expect to be up to a hundred hours though it would be probably less than a 100 hours I'm trying to ball park it". The estimate was somewhere between 30 and 100 hours of work in total.
15. Counsel Assisting the Inquest showed Mr. Adam Hugill certain drawings made by Mr. Gordon Ashley. These drawings were of half moon cuts to a number of columns. Mr. Hugill said in evidence that he did not talk about the half moon method of cutting used on level 4 of the building with Mr. McCracken. The discussion concerned the cutting method on the lower ground and ground floor. The only methods discussed by Mr. Hugill with Mr. McCracken were: -

    1. The diagonal cutting process, and
    2. The removal of material in a circle from the web.

10. There was no discussion by Mr. McCracken with Mr. Hugill of the methods set out in Exhibit 117, which indicates "hinges to be formed at ground and lower ground levels". It was the view of Mr. Hugill that so long as compliance with the *Demolition Code of Practice* was met there was no difficulty in either using the diagonal method of cut or the half moon method.
11. The services of Mr. Hugill of Northrop Engineers Pty Ltd effectively concluded on Thursday, 22nd May 1997. Mr. Hugill was never even consulted about the termination of his services despite leaving as many as six telephone messages for Mr. Dwyer in an attempt to clarify or confirm his retainer. There was no inquiry by PCAPL of Mr. Hugill or any other engineer to establish that experience in the implosion technique was a prerequisite for the provision of structural engineering advice. Mr. Hugill's evidence was that experience in the implosion technique was not a necessary requirement but instead it was a requirement for straight structural engineering advice only. The breakdown would appear to be the failure to retain the necessary explosives expert as is required by the *Demolition Code of Practice*. The events of the first three weeks of May 1997 in all the circumstances should have brought home to the mind of Mr. Dwyer that there were some problems already occurring on site with the tendency of Mr. McCracken and Mr. Fenwick to act without first obtaining advice.

The matters for critical consideration were that: -

a. Between 5th May and 21st May 1997, after discussions on the site between Mr. McCracken and Mr. Hugill on the earlier date, when Mr. Hugill returned on the 21st and 22nd May 1997 substantial cutting had occurred to a column which was so serious as to warrant Mr. Hugill advising Mr. Dwyer, and
b. The advice given by Mr. Hugill on 21st and 22nd May 1997 was in writing on two issues in relation to the method of cutting and the fact that it had been undertaken without prior consultation or advice by an engineer.

10. Mr. Hugill said in evidence that he would provide, if he had been retained, written reports to Mr. Rod McCracken on the progress of the cutting. If it was his view that something was not being done properly despite his advice then he would have gone further and advised Mr. Dwyer. This course of action would have been reasonable and a sound professional approach.
11. Mr. Hugill impressed me as a witness. He was frank and honest in the terms of the limitations on his level of experience. Mr. Hugill stated where he did not have the requisite knowledge. Mr. F. J. Purnell SC for TCL properly tested him in cross – examination on his level of expertise as a structural engineer with experience of demolition using explosives and he openly conceded that was beyond his ability. I considered that Mr. Hugill knew his subject matter as a structural engineer. It was in that capacity his advice was sought. It was clearly not demolition by the use of explosives. The advice that he was prepared to offer Messrs. McCracken and Fenwick was considered, measured and responsible. It seems in the limited period of his engagement his concerns for the project were well founded. The actions initiated by him including the advice provided to Messrs. McCracken and Dwyer was both responsible, prudent and practical in all the circumstances. His candour in the witness box was such that there is no reason to disbelieve him nor should I disregard the probative value of his evidence.
12. However despite this advice there was further cutting of columns undertaken by Mr. McCracken between the time of Mr. Hugill's departure on 22nd May 1997 and the subsequent engagement of Mr. Gordon Ashley on or about 30th May 1997. It is reasonable to expect that Mr. Dwyer would have responded to the advice offered by Mr. Hugill. Mr. Dwyer issued only one direction to Messrs. McCracken and Fenwick in this respect being the facsimile of 21st May 1997. Certainly Mr. Hugill believed Mr. Dwyer would take some action but as I have previously stated this trust and regard held by Mr. Hugill of Mr. Dwyer did not eventuate but rather Mr. Dwyer issued a most unusual facsimile dated 23rd May 1997.
13. It is an extraordinary facsimile in that it fails to address the concerns of Mr. Hugill. It is only sent to Mr. Fenwick whereas one would have expected it would have also included Mr. McCracken. The facsimile was copied to Mr. G. Hotham of TCL. Hugill's advice is simply ignored. The facsimile reads:-

"The client and I are concerned that the original advice from Rod McCracken regarding the use of a Consulting Engineer during the project has changed.

The advice, which was taken into account when assessing your tender, was that he was engaging an engineer from Queensland who had been involved in the process of weakening the building structure prior to implosion.

It now appears that he is utilising a Canberra Engineer with no prior experience in this area. This is not acceptable to either the Client or PCAPL.

It is critical that all work carried out in respect of weakening the structure is supervised by an experienced Structural Engineer with a particular area of expertise in implosion.

I have no objection to the use of Northrop's for measuring column/beam sizes, however the specification for size of cuts into steelwork and the like must be carried out by his originally nominated engineer.

Please ensure that the above instruction is followed. In addition, I require written confirmation from your organisation that the engineer originally nominated by Rod McCracken is engaged on the project and is fully supervising the works carried out in relation to the pre – implosion preparation.

Your urgent response in writing is required on this matter".

14. The thrust of the message is centered upon the engagement of a Queensland engineer with structural engineering experience in implosion. There is no further mention or direction about complying with the contract or the workplan or ceasing or prohibiting the continuation of the work until the engineer has been engaged, inspected the site and provided the appropriate advice. Mr. Hugill's advice has been both ignored and rejected. What Mr. Dwyer does simply misses the critical areas that needed to be addressed. In fact, Mr. Dwyer ignores his own advice. Surely this would have been an appropriate opportunity for Mr. Dwyer to reiterate his advice of 21st May 1997 so that the contractor and subcontractor appreciated his serious concerns.
15. I agree with the submission made by Counsel Assisting at paragraph 363 on page 133 that the involvement of Mr. Hugill should have been welcomed by PCAPL. PCAPL should have insisted that Mr. McCracken and Mr. Fenwick comply with Hugill's ongoing advice and directions in relation to the pre weakening of the steel columns as required by the contracts. The facsimile of the 23rd May 1997 was a considered direction and deliberate action by PCAPL and Toatalcare Industries Ltd to a lesser extent. The document indicates on its face "the client and I" are concerned that the original advice from Mr. McCracken about a consulting engineer has changed" in other words the directive was coming jointly from Totalcare and PCAPL to Mr. Tony Fenwick.
16. It should be noted that there appears an entry in the diary of Mr. Rod McCracken on Saturday, 24th May 1997 to the effect "ring Neil Mckenzie book ticket". Mr. Neil Mckenzie was the originally nominated Queensland structural engineer to be involved on the project. There never was written confirmation made by Mr. Tony Fenwick to Mr. Dwyer that the original engineer mentioned by Mr. McCracken during the tender process had ultimately or actually been

engaged. The termination of the services of Mr. Adam Hugill simply because he provided reliable expertise is an extraordinary occurrence in the scheme of the project.

17. On the 26th May 1997 Mr. Fenwick advised Mr. Dwyer by facsimile "we have been advised by Mr. Rod McCracken from Controlled Blasting Services that he will be employing an engineer from Queensland for the Canberra Hospital project". This facsimile was copied to Mr. Gary Hotham of TCL. The disturbing feature about this message is that it would appear that whatever had occurred in the nature of advice by Mr. Hugill up to the 22nd May 1997 was being disregarded simply on the basis of expediency that the Queensland engineer must be engaged as previously required.
18. The engagement of the Queensland engineer was purely an oral assertion made to PCAPL and TCL during the tender negotiations. There is no document or any other evidence offered by Mr. Fenwick or Mr. McCracken to confirm or support the proposed involvement of a Queensland engineer in any of the expressions of interests, the tender documents or the contracts themselves. Mr. McCracken had mentioned to Mr. Dwyer a Queensland engineer at the site meeting on the 5th March 1997. At the time of the site meeting on the 5th March 1997 no tenders had been let nor were any in existence. Mr. McCracken at that stage could only be described at the very least as a possible subcontractor. Neither Mr. Dwyer or PCAPL could produce any record of such a comment being made by Mr. McCracken at that meeting.
19. The other disturbing aspect of Mr. Dwyer's facsimile of 23rd May 1997 is that up until that date Mr. Dwyer of PCAPL and to a lesser extent Totalcare had relied upon the only engineer engaged to give the structural engineering advice. Mr. Dwyer took some time to address the issue of the Queensland engineer being engaged in that at least sixteen days and perhaps even a longer period had elapsed before he moved to notify Mr. McCracken that he was to engage his Queensland engineer knowing full well that he had made a recommendation or at least a suggestion that Mr. Hugill could probably advise on the structural steel and pre – weakening process. Counsel for TCL argues that once the Project Manager/Superintendent (PCAPL) became aware of Mr. Hugill's lack of relevant experience it was incumbent upon PCAPL to insist on the engineer who had been nominated by Mr. McCracken. PCAPL did precisely take that action. The significant difficulty with this submission, as I have already mentioned, is that between sixteen days and almost three weeks elapsed before Mr. Dwyer of PCAPL took any steps to act and when he did so it was without any further consultation or notice to Messrs. Hugill, McCracken or Fenwick. PCAPL knew full well what was actually occurring in the circumstances as did Mr. Gary Hotham of TCL who from time to time was being informed by Mr. Dwyer. I do agree with the suggestion made by TCL's Counsel that it was appropriate for the Project Manager to seek clarification about the status of the engineer and even to go as far as asking for the appropriate engineer to be employed but to go so far as immediately terminating the services of Mr. Hugill in an arbitrary manner in full knowledge that neither Messrs. McCracken or Fenwick were complying with directions or the contracts was not a sensible course for Mr. Dwyer to adopt in the circumstances. A direction was then given by Mr. Dwyer to both Messrs. McCracken and Fenwick to stop work until the repairs were made to the pre cut columns in accordance with Mr. Hugill's advice. Despite Mr. Hugill's

services being terminated Mr. Dwyer wasstill relying on the advice given by Mr. Hugill in making the direction to Mr. Fenwick and Mr. McCracken to stop work.

20. I agree with the submission made at paragraph 368 of Counsel Assisting that had Mr. Hugill been permitted to continue as the structural engineer he would have been less inclined to permit Messrs. McCracken and Fenwick to continue their manner of work that had been carried out in the earlier 3 weeks. The dismissal of Mr. Hugill by Mr. Dwyer and TCL was a premature over reaction to the negative advice being provided by Mr. Hugill about the state of their work. Mr. Hugill came highly recommended so it is rather unclear as to what the motivation was for this course of action. The actions of Mr. Dwyer lacked any necessary enquiry as to the suitability of Mr. Hugill or Northrop's, the nature and quality of his advice, what he had actually done and what he was proposing should be done.
21. There is further evidence of the lack of attention by PCAPL and TCL to compliance with the contract and the safety issues on the demolition in spite of the specific directive given in the facsimile of Mr. Dwyer dated 23rd May 1997. There was no subsequent effort made to ensure that the engineer from Queensland had infact been actually engaged by Mr. Fenwick. PCAPL and TCL were apparently satisfied that the facsimile reply from Mr. Fenwick dated the 26th May 1997 was an adequate response and therefore did not require any follow up. It is significant to note that:-

    a. This facsimile did not provide the written confirmation required by Mr. Dwyer that the engineering engaged would fully supervise the pre – weakening process, and
    b. PCAPL and TCL failed to ensure as they had directed that the new engineer had experience in the implosion techniques using explosives. No independent check was made as to who the engineer was and his qualifications. Mr. Dwyer simply accepted that Mr. Ashley was the relevant engineer to whom Mr. McCracken had referred.

    This was despite the list of projects supplied by Mr. Ashley making no reference to implosion experience and making it clear on the face of his document that he was from Leichhardt in Sydney and not Queensland. Neither Mr. Dwyer nor Mr. Civitovanovic ever asked Mr. Ashley about his prior demolition experience when they spoke to him prior to the implosion. Mr. Ashley was not asked whether he came from Queensland after his previous job list had been forwarded to them from Mr. McCracken. The total impression one is left with is that Mr. Dwyer assumed and believed that Mr. Ashley had the relevant qualifications of the person who fitted the description of (a) "structural engineer experienced in implosion".

10. Counsel for PCAPL argues that the letter of 23rd May 1997 ought not be interpreted as a dismissal of Mr. Hugill. The purpose of Mr. Dwyer's letter, argues Counsel for PCAPL, is to keep Mr. Fenwick to the assurance, given by his subcontractor at the time of the tender, that the subcontractor would be using an engineer with "experience in the process of weakening the buildings

structure prior to implosion". The purpose of Mr. Dwyer's letter was to alert the contractor that his subcontractor was not using the experienced structural engineer as previously indicated. Counsel for PCAPL argues it does not purport to be referable to the alleged unsatisfactory attention being given to safety issues as is implied by Counsel Assisting the Inquest. Mr. Dwyer knew, Counsel argues, that Mr. Hugill did not have experience with explosives and expressed reservations that Mr. McCracken was using a structural engineer without explosives experience. It is a simple matter that one month after the tenders are let Mr. Dwyer has no knowledge nor would it appear that he has taken any steps to establish the true identity of the structural engineer engaged on the project or if he did he was slow to react to do anything to establish that the engineer previously indicated was one and the same person. This surely is something that Mr. Dwyer could or should or ought to have been following up with Messrs. Fenwick and McCracken.

11. Mr. Ibbotson of Counsel for PCAPL argues there is no evidence of what transpired between Mr. Fenwick and Mr. McCracken following this correspondence, however, Mr. McCracken's diary indicates an intention to contact the Queensland engineer. An inference can be drawn from the evidence that the first genuine effort made by Mr. McCracken to fulfil his promises to Mr. Dwyer concerning the engagement of a Queensland engineer is 24th May 1997. It seems on the evidence that until this point in time when Mr. Dwyer makes a firm direction to both Mr. McCracken and Mr. Fenwick it would appear Mr. Dwyer was simply being ignored on his requirements. Mr. Ibbotson argues it was not Mr. Dwyer's responsibility as the Superintendent of the project to verify the engineer's identity or credentials. He was entitled to accept Mr. Fenwick's assurance that the problem had been addressed. I do not accept this submission as Mr. Dwyer by this time was surely on notice that there was a need for vigilance on his part to ensure Mr. McCracken and particularly Mr. Fenwick followed the contractual requirements. The lack of reliability of the contractor and subcontractor had already been demonstrated at this early stage of the project. Simply to rely upon Mr. Fenwick's assurance was fraught with risk. As an experienced Superintendent and Project Manager Mr. Dwyer should have been actively pursuing Mr. Fenwick and Mr. McCracken about why there was such an element of vagueness as to the true identity of the structural engineer. Even if the letter of 23rd May 1997 from Mr. Dwyer to Mr. Fenwick is not a direct intention to dismiss Mr. Hugill the inference can be drawn from any ordinary interpretation of the words that Mr. Hugill's services were no longer required.

<u>The Queensland Engineer</u>

12. I previously mentioned of a Mr. Neil McKenzie. Neil McKenzie is the Manager of Neil McKenzie and Associates an engineering firm

specialising in civic and structural engineering. Mr. McKenzie did not give evidence in the Inquest but did provide a statement. Mr. McKenzie stated that he met Mr. Rod McCracken about 1995 after Mr. McCracken had contacted him requesting engineering advice on a demolition project on a wharf on Fisherman's Island. Mr. McKenzie is based in Queensland. The engineering advice provided in relation to the demolition of Fisherman Wharf related to the

machinery being operated on the Wharf. The advice involved structural calculations on what machinery could operate on the deck during the demolition work. Mr. McKenzie gave no engineering advice to Mr. McCracken at this time on any type of explosive demolition. Mr. McKenzie visited the demolition project on the Wharf on about three occasions and he was not aware of any problems associated with this particular project.

13. The next involvement by Mr. McKenzie with Mr. McCracken was in April 1997 when he recalls that he had a conversation with a Mr. Tony Fenwick in relation to demolition of the Waterford bridge which is located in the suburb of Logan just outside Brisbane. Mr. McCracken visited the McKenzie office with the documentation relating to the method of demolition of the Waterford Bridge. Mr. McKenzie provided advice in relation to that project. During this meeting Mr. McCracken asked him whether he would be prepared to travel to Canberra for the purposes of providing advice on the pre – weakening of a Hospital Building. Mr. McCracken is reported to have told Mr. McKenzie that it is possible that he (McCracken) would win a contract to demolish a Hospital Building. Mr. McCracken said that the building consisted of a steel frame but at the time he was not fully aware of the size of the steel. Mr. McCracken knew that the Hospital Building consisted of universal steel beams encased in concrete. Mr. McCracken said that there were no drawings of the Hospital structure available at this time although he said he believed he would be able to obtain drawings. Mr. McCracken advised Mr. McKenzie that he was considering using an oval cut on the supporting beams in preparation for an explosive demolition of the Hospital. Mr. McKenzie was asked to comment on this idea. Mr. McKenzie refused to comment or provide any engineering advice until he had seen the drawings and inspected the building.
14. There was a conversation about 15th April 1997 with Mr. McCracken about the proposed trip by Mr. McKenzie to Canberra to inspect the demolition project. It was Mr. McKenzie's understanding in discussing these issues with Mr. McCracken that delays were being experienced on the project. At that time Mr. McCracken could not use Mr. McKenzie's services as he had not obtained the structural drawings of the Hospital Building. In June 1997 Mr. McKenzie was advised by Mr. McCracken that he was experiencing problems in obtaining explosives and detonators.
15. It is sufficient to say that at no time did Mr. McKenzie attend the Canberra project to provide advice to Mr. McCracken relating to the demolition nor was he contacted by any other person associated with the demolition project in Canberra. Mr. McKenzie was never provided with any information or drawings of the hospital building nor was he involved with any process of weakening the building structure prior to the implosion nor has there been any conversation between Mr. McKenzie and Mr. McCracken since the 13th July 1997 in relation to the demolition project. Mr. McKenzie had no involvement at all with Mr. McCracken or the project.

The Engagement, Involvement and Advice of Mr. Gordon Ashley

60. Mr. Gordon Ashley holds a bachelor of engineering degree having graduated from the University of Sydney in 1962. Since that time he has practised as a structural engineer. On Tuesday, 27th May 1997 he

was contacted by Mr. Rod McCracken and arrangements were made for Mr. Ashley to travel to Canberra on Thursday 29th May 1997. Mr. Ashley attended the Acton Peninsula construction site at 8.00am on Friday 30th May 1997. An inspection was made of the Main Tower Block and Sylvia Curley House over a period of 3 – 4 hours for a fee of $1000.00. The inspection revealed that: -

a. Some of the columns were still encased in concrete, and
b. Some columns had been stripped of the concrete encasement more in the Main Tower Block than Sylvia Curley House.

61. Mr. Ashley's role or at least the understanding of his function from Mr. McCracken was to ensure the columns remained as structurally stable and integral or with as much structural capacity as possible right up to the time the charges were exploded. It should again be firmly stated that Mr. Ashley never claimed to have experience in the use of explosives. His retention was solely on the basis of being a structural engineering expert. The end result is there was no specialist in explosives retained to work on the demolition of the Hospital buildings. TCL's Counsel in fact went so far to submit that "if in fact the structural engineer that was employed on the project did have expertise in implosion it may be that the matter would never have finished up as an Inquest". This submission is consistent with my earlier comment on a fundamental failure to comply with paragraph 6.17 of the *ACT Demolition Code of Practice.*

62. In paragraph 61 I referred to Mr. Ashley's understanding of his role on the project site. Mr. Ashley says further that he was to advise Mr. McCracken on "the preparation of an amended cutting detail" but "it would have been only in the vaguest terms".
63. This was the first time that Mr. Ashley had been asked to advise on the preparation of a steel framed multi storey building for demolition by explosives. His only prior experience in demolition of such buildings was by induce collapse. He gave evidence that he believed Mr. McCracken's proposed method of demolition was induced collapse and the preparation of a building for demolition by implosion is all together different in form from what was occurring on the site. The induced collapse process involves pushing and pulling the building over by having it collapse by pulling the columns out.
64. Mr. Ashley had no experience in the use of explosives let alone in their application to the demolition of a building. Yet Mr. Ashley in question 36 of the Record of Interview is fully aware that Mr. McCracken was intending to induce the collapse of the two buildings by using explosives. It is not clear when Mr. Ashley acquired such state of knowledge from Mr. McCracken.

65. Mr. F. J. Purnell SC for TCL does not disagree with the majority of the submissions made by Counsel Assisting concerning the functions of Mr.

Ashley. Mr. Purnell makes two additional submissions of some persuasion when he says: -

a. It was the Superintendent (PCAPL) on the project who was to require a written approval from a structural engineer prior to the commencement of work, and
b. The duty to ensure that an approval from a structural engineer was obtained prior to commencement lies initially with Mr. Fenwick and then with Mr. McCracken. The Superintendent PCAPL had a role to ensure that this approval was obtained and given.

I agree with Mr. Purnell's submission.

62. Mr. Ashley's evidence was that the preparation of the building for implosion would have involved a significant number of diagonal ties welded to the main structural elements of each building. These would have been visually obtrusive. He described it as either being a cable or something from the ceiling to the floor welded to the main structural elements of the building and these ties would be in the nature of steel cables.
63. Mr. McCracken informed Mr. Ashley the building was going to fall "along the long axis". No mention was made to Mr. Ashley of the building falling within its own footprints or any similar description. Neither did Mr. Dwyer or Mr. Cvitanovic of PCAPL describe anything of a similar nature. It is absolutely amazing that during the whole engagement of Mr. Ashley in this process from the beginning of May to the demolition of Hospital that he did not know that the pre – weakening process upon which he was giving advice was for an implosion demolition rather than an induced collapse. Mr. Ashley gave evidence that he was only ever asked by PCAPL as to whether he had experience in implosion demolition after the tragedy on the 13th July 1997.
64. Mr. Ashley gave evidence that the only conversations that he had with Mr. Dwyer prior to the implosion were a series of telephone conversations between the 30th May and 4th July 1997. In those conversations Mr. Dwyer merely asked if Mr. Ashley had finished the work for Mr. McCracken and further that it was urgent. Mr. Ashley said that he did not even meet Mr. Fenwick prior to the implosion not were there any telephone conversations between the two men. Mr. Ashley first met Mr. Fenwick after the implosion.
65. Mr. Ashley was engaged and continued his engagement without being advised by Messrs. Fenwick, McCracken or any official of PCAPL or TCL of the prior involvement and advice of Mr. Adam Hugill. Mr. Ashley himself made no effort of his own to ascertain what if any previous engineering advice had been given about the pre – weakening of the buildings, despite observing that on his attendance on site up to four columns had already been pre – cut.
66. I accept the evidence of Mr. Ashley that he was not given any prior advice but to blatantly fail to make his own personal independent enquiries upon seeing columns pre – cut is nothing less than a total abrogation of the position that he adopted in giving evidence. He said when questioned by Mr. Purnell SC for TCL that no work should as a matter of practice commence on a demolition site without there being structural engineering advice. Surely any reasonable person would have made enquiries about the four cut columns before

embarking on any action to ascertain and check with the person that either made the cuts or gave the advice about the cuts or at least how the columns came to be in that condition. The curiosity of an experienced engineer of 37 years in the profession must surely have been sufficiently excited to such a degree as to warrant further investigation or questions.

67. A greater responsibility for failing to take any action over the cut columns must rest with Messrs. Dwyer, Fenwick and McCracken who were fully cognisant of the safety concerns raised by the previous engineer Mr. Hugill in the previous three weeks. It must be regarded as a disturbing state of affairs in the terms of the structural stability of the building let alone the potential impact that it may have had upon the safety of the workers if the building should collapse or subside or by some manner become distabilised.
68. Mr. Ashley counters that contention by stating that the cutting of the columns did in no way weaken the columns for the purpose of which they had been designed (i.e. carrying prescribed dead loads). Mr. Purnell SC for TCL in his submissions says it very appropriately: - "the question would have to be asked; why would Mr. Ashley, with his vast experience in demolition and his long experience as an engineer, not know that there would have to be a structural engineer involved in this demolition? Why did he not ask who is the structural engineer if it is not me?" Mr. Ashley states that he should have been advised of the other engineer's advice when he first came on site. Mr. Ashley believed that another structural engineer had been involved in the project. Why then did he not ask for it?
69. Mr. Ashley saw his role as simply to approve the shapes of the cuts proposed by Mr. McCracken so that there was no interference with the structure of the building. It was also his view that it was not necessary for engineers to do demolition supervision. Mr. Ashley claims that the nominated licensed demolisher or the principal of the demolition company could exercise the supervisory function. This view is inconsistent with the *ACT Demolition Code of Practice*. A recommendation has been made arising from this aspect of the project. The recommendation for the explosive specialist and structural engineer to be independent of and at all relevant times at arms length from the personnel on the project i.e. the Project Manager, contractor and subcontractor may give rise to financial implications but in the overall interests of both the public and general work safety, which is paramount in a project of this kind, those separate roles would ensure that there is no conflict of interest and on would then hope that the expert advice would be acted upon in the best interests of all involved.
70. It must be said in fairness to Mr. Ashley that his assessment of Sylvia Curley House in the terms of the difficulty in demolishing that building was perfectly correct. I accept the evidence of Mr. Ashley on this issue.
71. Mr. Ashley stated that on 30th May 1997 he told Mr. McCracken of his concerns. Sylvia Curley House simply did not break up when it was detonated. It remained a mass of twisted steel and concrete. The concerns expressed to Mr. McCracken by Mr. Ashley are set out in his Record of Interview of 31st July 1997.

72. Mr. Ashley said inter alia; -

    a. Sylvia Curley House could be more difficult than the Main Hospital Tower Block because of the types of connections,
    b. The connections in Sylvia Curley House were fully welded continuous connections such that the building was less likely to break up,
    c. Sylvia Curley House is more rigid than a bolted connection type building as existed in the Main Tower Block, and
    d. Bolted connections usually sheer off causing the building to fall into rubble.

62. It was clear what the distinction was in the terms of the structure of the two buildings. Mr. Ashley did not say anything to Mr. McCracken as to what approach he should adopt with respect to Sylvia Curley House to ensure it would break up. What Mr. Ashley was doing was simply drawing to the attention of Mr. McCracken from his observations a potential problem and his obligations pursuant to the contract. Mr. Ashley's approach was perfectly fair and reasonable. The advice was correct.
63. This area of evidence created some debate in the Inquest about a certificate against self-incrimination being granted to Mr. Ahsley in the terms of Section 128 of the *Evidence Act 1995*. A certificate was not granted then and will not be granted now for the reasons stated previously on my assessment of Mr. Ashley and his evidence on this aspect of the demolition. The advice was soundly based on his knowledge and expertise in relation to steel structured buildings. It is my view that Mr. Ashley was reliable in this aspect of his evidence.
64. It is now a matter of history in any event that the potential problem identified by Mr. Ashley became an absolute reality. Mr. Ashley did not meet Mr. Tony Fenwick of City and Country Demolition at any stage prior to the 13th July 1997 and only met him after the implosion failed. Mr. Ashley has no recollection of meeting Mr. Dwyer of PCAPL on his first visit to the site on the 30th May 1997 or subsequently however he does recall that he had some telephone communication with Mr. Dwyer between the 30th May and the 4th July 1997 to the effect that he advised Mr. Dwyer that he had not finished the work for Mr. McCracken. There was no discussion about a demolition by implosion or the building falling within its own footprint or boundaries. The only thing he could remember was that Mr. Dwyer made some reference to the fact that the work was urgent.
65. On or about 11th June 1999 Mr. Ashley sent to PCAPL (Mr. Cvitanovic) a list being a representative sample of the demolition projects where he had provided consultative advice. Mr. Ashley went on to say that:-

    a. He was never asked by Mr. Dwyer or Mr. Cvitanovic whether he had previous experience with the implosion demolition or its techniques,
    b. He did not volunteer such information,

c. He was never asked by Mr. Dwyer or Mr. Cvitanovic whether he came from Queensland, and
d. He was never advised prior to the 13th July 1997 by Mr. McCracken or Mr. Dwyer that another structural engineer had previously on the site on behalf of Mr. Rod McCracken.

The first time that Mr. Ashley became aware of the prior involvement of a structural engineer was during his second interview with the Australian Federal Police in September 1997. I have previously commented on Mr. Ashley's failure to investigate the circumstances of the pre – cut columns.

62. It must be stated very specifically that when Mr. Ashley went on to the site on the 30th May 1997 he was shown by Mr. McCracken a trial cut to one steel column that had been cut at some earlier point in time. This column was in the Main Tower Block. In the assessment of Mr. Ashley there was no problem. It was not the column as depicted in the series of photographs made by Mr. Hugill on the 21st/22nd May 1997. It was the recollection of Mr. Ashley that: -

a. The whole of the flange plate had not been cut as far as those columns that appeared cut in Exhibit 111,
b. The cuts seen in the columns in Exhibit 111 were lower on the column to those shown to him by Mr. McCracken,
c. The column seen by him on the 30th May 1997 was still in its cut state and had not been repaired, and
d. The shape of the cut seen by him was "more symmetrical".

82. The columns seen by Mr. Ashley on 30th May 1997 are sketched at Exhibit 547. A visual inspection of the cuts in the two Exhibits reveals a significant difference. In Exhibit 111 the cuts are substantial and run diagonally downwards in a left to right or right to left fashion depending upon the angle from which the photograph is examined. In the sketch of the columns the cuts are less severe and are cut across the column parallel to floor. Mr. Ashley saw as many as four such columns on 30th May 1997.

83. The critical aspect of this inspection is that: -

a. Mr. Ashley did not say or ask anything about the cuts to the columns that he saw on 30th May 1997 in the terms of who may have provided any advice on the cuts or who in fact made the cuts, and
b. Mr. McCracken did not say why the cuts had been made, the method of the cutting, when the cuts were made, why the cuts were made in the particular fashion in which that was done or who made the cuts.

These failures or omissions, however viewed, are serious.

84. Mr. Ashley explanation was that he believed the cuts were made in accordance with an approved detail as part of his "work method". Moreover Mr. Ashley explained that his function was to assess and examine the building, not the cutting of columns, with the ultimate objective being "to assist him (ie: McCracken) in developing an alternate cut in order to minimise or eliminate the need for cutting charges".
85. On 30th May 1997 this was the first visit to the site by Mr. Ashley. What is extraordinary about his visit is that these four cuts were made apparently some time after the termination of the engagement of Mr. Hugill. Now surely Mr. Dwyer saw these columns in that cut state and if so why did he not raise his concerns or suspicions about them at that stage knowing that he had demanded by facsimile on the 23rd May 1997 that a structural engineer be engaged before any further work was carried out. If he did not see the cuts in this 10-day period between the time of the termination of Mr. Hugill and the engagement of Mr. Ashley then what precisely was he doing in his capacity as the Project Manager.
86. One explanation offered by Mr. Ashley in the terms of not asking whether a structural engineer had been employed on the job was simply because the project had proceeded quite some length into its operation. The second explanation was that he had not seen Mr. McCracken's workplan.

    I must agree with the submission made by Mr. Purnell SC for TCL in this regard. I quote "this claim in itself seems extraordinary for a man who has been involved as an engineer for so many years with the list of demolition projects provided to the Project Managers. Mr. Purnell SC asks the question "why didn't he ask for it (i.e. the workplan)". Mr. Ashley replies that Mr. McCracken told him that the methodology in the proposed workplan was induced collapse and that he could see from what was being done that that was the demolition method that was being prepared. Mr. Ashley says "a lot of information was in the half a dozen plans he gave me and little more was required". Mr. Ashley never at any stage saw a "work method plan" of Mr. McCracken.

87. The next most significant and disturbing action undertaken by Mr. Gordon Ashley appears in a letter of advice dated 30th May 1997 written to Mr. Rod McCracken. The letter reads:-

    "The use of four simultaneous charges each of approximately four grams to strip a column of the concrete encasement will not compromise the stability of the building. The charges are to be positioned in pairs on opposite sides of the web of the structural steel column".

    What is more serious about this correspondence is that it again appears in a photocopy form where the four grams has been changed to twenty – four grams. One photocopy of the letter comes into the hands of PCAPL whilst the other reaches ACT WorkCover. The evidence does not permit a definite conclusion as to who it was that altered the original letter from 4 grams to 24 grams of explosive . The original letter is written by an engineer who had absolutely no experience in explosives authorising the use of explosives to remove concrete casing from the columns not knowing what impact those

explosives might have on either the concrete or the steel. When he was asked upon what basis did he have the expertise to write the letter knowing nothing at all about explosives Mr. Ashley says, "as far as I'm concerned that is not reflecting on any knowledge of explosives. It's a specification associated with the use of explosives to strip a column of concrete encasement. I was able to write that letter because I had been shown actual examples of that procedure having been completed successfully without damaging the columns at all". Although he did not witness the testing Mr. Ashley says that he bases his opinion upon what he saw of the columns on 30th May 1997.

88. Mr. Ashley later provides a further explanation when questioned by Mr. Ibbotson of Counsel for PCAPL. The explanation is both self serving and exculpatory. It simply defies belief. It was offered by a witness who now has some appreciation of the gravity of his error.
89. The witness was granted a certificate in the terms of Section 128 of the *Evidence Act 1995* and directed to answer the question. He goes on to say "I could definitely have been – I could have been certainly wrong about the four versus twenty-four because quite frankly I was essentially taking a transcription of a specification from Rod to put into writing so he could formally approve". The explanation provided by Mr. Ashley is quite extraordinary and untenable. It is alarming in the extreme. One is left with the complete impression of absolute incompetence in providing such reckless advice to the subcontractor.
90. There is no basis for Mr. Ashley writing such a letter containing such advice about the amount of explosives that could be used on steel or concrete or both. Mr. Ashley had absolutely no expertise in explosives. I do not accept Mr. Ashley's explanation. Mr. Ashley deserves serious condemnation for what on the evidence is irresponsible advice.
91. The concrete stripping using explosives commenced about 2nd June 1997.
92. The half moon method of cutting the steel columns was approved by Mr. Ashley. This method contributed to the shattering of the web of the columns when the kick charge was used. The expert evidence of both Mr. Loizeaux and Mr. Rick Rech was unchallenged that the two halves of the column would mesh together and "jam" when the cartridge explosives were detonated. This method of cutting was not appropriate for implosion.
93. The half moon method of cutting was further approved on the basis that there was no threat to the stability of the building, i.e. the amount of column remaining was still adequate to hold up the load on the building. The removal of the "wedge" would assist in making the charge effective.
94. Mr. Ashley had no expertise in implosion or explosives which would have entitled him to give such advice or approval. It was grossly negligent to rely upon Mr. McCracken's views only as to the likely affect of the removal of the wedge in giving his approval. His evidence was at the only other time he had used this type of cut was for an induced collapse of a steel framed building in Sydney without the use of explosives.
95. The approval of the wedge drawing in Exhibit 117 again by Mr. Ashley

was confined only to the cutting of the columns and not to any intended approval of explosives. Yet he knew that explosives were to be placed against the columns as kick charges.

96. The diagonal cut did not indicate anywhere that it was a final and approved method of cutting steel columns. There was a telephone conversation between Mr. McCracken and Mr. Ashley between the period of 12th June and 23rd June 1997 in which it was agreed that the drawing was not a final document. Not withstanding this arrangement the drawing was passed to Mr. Dwyer by Mr. McCracken for inclusion in the Appendix "K" response. The seriousness of this act is that it conveyed the impression to Mr. Dwyer that this was an approved and proposed method of cutting steel despite this method being superseded by the "half moon cuts". There is evidence to establish that the unapproved diagonal cutting method was in fact used by Mr. McCracken. Mr. Ashley gave evidence that he would not have expected Mr. McCracken to have attached the diagonal cut drawing to the Appendix K response in those circumstances. The passing of the

    diagonal drawing must primarily and significantly remain the responsibility of Mr. McCracken yet it does Mr. Ashley no credit that he sent, signed and dated drawings to Mr. McCracken without any indication as to whether that method of cutting was approved or not. The drawings bear the dates 12th, 18th and the 23rd June 1997.

97. There are a series of photographs taken by a Mr. Bob Leeson. Mr. Leeson is a drilling and blasting contractor operating a number of businesses described as Bob Leeson Blasting, Table End Explosives and some others. Mr. Leeson's explanation for the tragedy was that both the sandbagging and the explosives were placed on the inside columns. The consequence is that the force of the blast was projected across the Lake. It was his view that the sandbagging and explosives should have been placed on the outer side columns thereby forcing the column inwards by virtue of the force of the explosion. It is significant to note that the explosives were placed between the sandbags and the column on the right hand side of the column so that the force of the explosion would move the column to the left. This is inconsistent with the diagram prepared for Mr. McCracken. It is the outer side column facing the Lake which is totally unprotected. Mr. Leeson says this means that the metal would be blown towards the spectators over the lake rather than blowing inwards into the building. There was great confusion and incompetence shown by Mr. Ashley in the way he

    permitted Mr. McCracken to suggest methods to him which he then failed to follow up exactly and precisely whether those methods were being adopted and put into practice and which methods were not.

98. The critical problem here is that as the structural engineer Mr. Ashley was not adequately supervising the cutting methods being adopted by Mr. McCracken. The additional problem was that there was no demolition explosive expert then in a position to examine where the explosives were being placed on the columns in the ground and lower ground floors and whether those positions of the explosives were appropriate in all the circumstances.

    <u>The Adequacy of Mr. Ashley's Advice</u>

99. There is no doubt that Mr. Ashley was a qualified structural engineer with a far greater length of experience than Mr. Hugill in the demolition of both concrete re – inforced and steel framed structures but save for the one example that I have previously identified one must hold grave concerns as to the reliability of his advice for the purposes of the Acton project. The Acton demolition was a major capital works project involving two large steel framed concrete encased buildings.

100. Counsel for PCAPL, Mr. J. Ibbotson, argues that: -

a. Mr. Ashley's advice was suitable for the purpose for which he was engaged by Mr. McCracken being to approve a method of cutting the steel columns which would retain the structural integrity of the buildings prior to the detonation of explosives, and
b. That the method of cutting the columns did not contribute to the death but rather "the cause of the steel projectile was the excessive force caused by the large quantity of explosives used on the columns".

84. It is inappropriate to simply identify that fact as giving rise to the cause of death as being the excessive volume of explosives placed on the columns thereby creating such force that the steel projectile was emitted with a great velocity. This factor cannot be isolated or divorced from so many other considerations such as the method of cutting the columns, the laying of the explosive charges in such a way that the blast was directed out across the Lake in the direction of the spectators and the absence of specialists in specific areas to mention just a few.

85. Mr. Ashley visited the site on three occasions. The visits occurred on 30th May, 4th July and 13th July 1997. He provided the sketches and drawings. They were all prepared in a short space of time of three to four hours upon his return to Sydney. This contribution by a professional person is grossly inadequate for a project of this magnitude. It clearly required a much greater commitment in the terms of supervision and advice to the contractor and subcontractor. The engineer needed to be making regular and frequent examinations of the building as the work progressed. The same comment applies in relation to the availability of an explosive expert being in regular attendance to provide advice and to work with the structural engineer so that one knows what the other might be proposing. There was a real need for a mutual exchange of opinions by the two experts as the demolition work proceeded but it was a very much an "ad hoc" arrangement for the provision of any expert opinion.

86. It virtually meant that Messrs. Fenwick and McCracken could work in an unfettered manner with absolutely no controls, guidance, supervision or advice. The only person who could be identified as fulfilling any supervisory role was Mr. Dwyer. This function was beyond his expertise. For example there were buckled columns in existence as at 4th and 13th July 1997. On the 4th July 1997 Mr. Ashley saw these two buckled columns which he knew were the results of test blasts. One column was buckled beyond the allowable stretch limit and he gave instructions on the repair to the other damaged column. This raises the following questions:-

a. Did not this signal or alert him or create some concerns for him as to the prospect of a successful demolition,
b. Should he not have alerted at least Mr. McCracken about the need for a structural engineer with experience in implosion or induced collapse where explosives are to be used, and
c. The need for such person or persons to be in full time attendance when there were only nine days before the ultimate demolition.

84. The submissions made by Counsel for PCAPL in respect of the role played by Messrs. Hugill and Ashley in relation to the cause of death should not be accepted. Mr. Ibbotson argues that Mr. Hugill s advice did not contribute in any way to the cause of death. I agree with this comment. The role of Mr. Hugill on the site between 5th and 22nd May 1997 are matters relevant to issues concerning public safety. I agree with the submission made by Mr. Ibbotson relating to the excessive quantity of cartridge explosives used by Mr. McCracken on 13th July 1997 combined with the unsuitable method designed to kick out the columns. The method of cutting the columns as specified and advised by Mr. Ashley are a factor which contributed to the steel objects being projected from the columns out across the Lake thereby fatally injuring Miss. Katie Bender. Mr. Ashley's advice cannot be ignored. It is my view on the evidence that his advice is a relevant factor to the ultimate issue to be determined.
85. There are some interesting observations made by Mr. J. Mark Loiseaux of Controlled Demolition Inc (Maryland USA) about the half moon cuts at the top and bottom of the columns and used by Mr. Ashley in regard to not so much the structural integrity of the building but the ability of the columns once cut to move forward when a kick charge was put behind the web of the column. Mr. Loiseaux said on 4th November 1998:-

> "No competent structural engineer would design that cutting with fore knowledge of the intent that that segment which is isolated needs to be physically removed. This is what we call a socket cut in the industry which is installed to permit rotation of the structure above the lower cut and the upper cut is designed to release, once rotation is effected at the lower cut, and generally speaking this type of cut or variation thereon would be used when someone is going to try to trip the structure or pull it over with a cable or push it over with decent equipment".

Mr. Loiseaux further said that method of cutting would have no affect if it was intended that it was to be used in relation to being placed against the web with a view to kicking or pushing the columns forward so that it moves forwarded and away from the bottom cut. Mr. Loiseaux further went on to say:-

> "You really do need to have a cut condition, by pre – cutting or by linear explosive cutting or a combination of

the two which sets the stage for a kick charge, a small kick charge simply to bump a section out. The problem with this socket cut which you designed for static support of a structure until the time that you want to trip it or pull it over, is that there is no way for this to be kicked out because in order to do so with the half moon configuration at the top and bottom the flanges which represent the majority of the cross sectional area, the steel and the column, are going to jam. Furthermore, these cuts were not made with a laser, they were made with a flame torch".

106. It was a mandatory condition of the contract that the advice of a structural engineer should apply to every phase of the demolition project. Secondly the *ACT Demolition Code of Practice* was a further fundamental requirement that the contractor and subcontractor needed to comply with in relation to the expert advice being available from not only a structural engineer but an explosive demolition specialist. None of this occurred in the terms of an explosive demolition expert and it leaves open the question as to the quality and adequacy of the advice that was being delivered by the engineer ultimately retained for the project (Mr. Ashley).

107. It seems to me a matter of some grave concern that the following inadequacies existed in relation to the engineering function on the site:-

a. The time that Mr. Ashley spent on the site for inspection and assessment was 3 – 4 hours on one occasion only and then two later occasions viz; 4th July and then fleetingly on the 13th July 1997, the actual day of the demolition,
b. The provision of advice and the resultant calculations was far too brief, and
c. There was a failure by Mr. Ashley to ensure that he knew or alternatively Mr. McCracken failed to inform him what the precise method of demolition that he was to provide advice upon.

108. The end result was that Mr. Ashley believed he was advising on pre – weakening the columns for an induced collapse rather than an implosion. The consequence was that he approved the half moon cuts which in my assessment of the evidence contributed to the death of Miss. Katie Bender. The drawings and sketches set out in Exhibits 116 and 117 lacked sufficient content and failed to set out what were the approved methods of cutting. Mr. Ashley failed to make clear in those drawings that the diagonal method of cutting the columns was not a method approved by him following his discussions with Mr. McCracken.

<u>Submissions to the Inquest by Mr. Gordon Ashley</u>

109. Mr. Ashley tendered submissions to the Inquest dated the 26th March 1999. The submission sets out a general summary of his position in relation to his engagement on the project. Eight specific submissions are made by Mr. Ashley responding to Counsel Assisting the Inquest. The submissions summarise his involvement and make one recommendation. I briefly propose to examine Mr. Ashley's submission before concluding as to whether his actions would constitute sufficient evidence of negligence to the requisite criminal standard.

110. Mr. Ashley argues that his role has been completely misunderstood. Mr. McCracken engaged him as a consulting structural engineer for the specific purpose of advising him on the stability implications of varying the specified methods of stripping and cutting the columns in the two buildings.

Mr. Ashley states that he had not been commissioned to do any more than advise on the variations to the work method statement in as far as they involve stripping and cutting the columns. The difficulty with this submission is that there was no detail work method plan made available to him upon his engagement. Mr. Ashley admits that Mr. McCracken advised him on that first inspection "Mr. McCracken proposed using explosives to strip the concrete from the columns and then a variation in the cutting method using oxy - acetylene rather than special explosives (cutting charges)". This submission demonstrates the knowledge held by Mr. Ashley that explosives were being used on the site but yet no explosive expert had been retained despite the requirements of the *ACT Demolition Code of Practice*.

Duration on the Site

111. Mr. Gordon Ashley submits that he spent more than sufficient time on the site for the limited purpose for which he was engaged "All I had to do was to familiarise myself with the buildings and pick up the plans from Mr. McCracken. My subsequent structural investigation involved me in more than 15 hours of calculation and analysis". It is Mr. Ashley's submission that the estimate of 30 – 100 hours envisaged by Mr. Hugill in an ongoing role in supervising the cutting of the columns was unnecessary. Mr. Ashley submits that when cut as proposed, the stresses in the columns would not exceed those permitted under the code. The structural stability of the building would be maintained. "I was aware that the Project Managers were supervising Mr. McCracken's work and that they would ensure that the columns were cut as directed".

This is very clearly, on the evidence, a mistaken belief. Mr. Ashley says that at all times he was conscious of providing advice in relation to the cutting of columns so that there would be no slippage or jamming of the building.

112. Mr. Ashley makes this point in his submission that his assigned task was to ensure that the buildings remained structurally stable during the demolition process to the point of detonation. He continues "whether or not the method or style of cutting had any affect on the explosive stage of the demolition process was not a matter I felt I was required to consider. I satisfied myself that if the columns were cut in this way then structural stability

would be preserved up until the point of detonation. Whether or not the cutting in this fashion would in some manner impede the demolition of the columns was of consideration for the demolisher and not for me. I am not qualified to determine whether the kick charge proposed by McCraken would cause the steel in the column to disintegrate. The fact that it did suggests that the explosive expert was in error and perhaps a charge much larger than a "kick charge" shown by Mr. McCracken to him in the diagram attached to Exhibit 117 had been applied".

Mr. Ashley has relied solely upon the competence of Mr. McCracken as did so many other people engaged in this demolition process. The whole project was flawed in so far as there was no independent explosive demolition expert engaged to provide any advice to complement or supplement what was being given by the structural engineer. No one knew at any stage whether the cutting method was consistent with the capability of the charges to actually bring down the building.

Letter of 30th May 1997 (Exhibit 499)

113. Mr. Ashley argues that his specifications set out in the letter dated 30th May 1997 were prepared after consultation with Mr. McCracken who was the demolisher and explosive expert. Essentially the opinion sought from him was whether the stripping of the concrete would compromise the stability of the building. The information as to the necessary charge was based on Mr. McCracken's expert opinion. The *ACT Demolition Code of Practice* clause 6.17 provides:-

> "The explosives specialist should decide the charge to be used and their placing".

It is my view that the effect of this provision is to require an independent expert to be engaged who would provide advice wholly separate and distinct from those engaged on the project. Both Mr. Hugill and Mr. Ashley fell into this category as structural engineers. The critical words appear in the opening sentence of paragraph 6.17 of the Code "A specialist experienced in the controlled application of explosives for the purpose of carrying out the demolition of building structures should be consulted before deciding whether explosives are to be used for demolition". The provision is not directed at persons being experts who are actually contracted to do the work on the site. A consultant is one who provides professional advice for a fee. The provision is clear and explicit that a person unrelated to the whole project is required to be engaged to provide independent autonomous expert explosive advice. In my view Mr. Ashley is clearly mistaken as to the application of this provision of the *ACT Demolition Code of Practice*. He did not appreciate that the person providing the independent explosive advice ought to have been a person other than Mr. McCracken, the actual demolisher.

The Pre – Weakening Process/ Induced Collapse

114. The submission by Counsel Assisting the Inquest on this issue, supported by Counsel for TCL is to the effect that the most disturbing aspect of the whole involvement of Mr. Gordon Ashley was that he did not know that the pre – weakening process upon which he was giving advice was for an implosion demolition rather than an induced collapse.

Mr. Ashley argues that he had no commission for consulting with Mr. McCracken "or for advising him on the proposed method of demolition. It was not part of my brief, he says, to determine whether the method proposed by Mr. McCracken would be effective or not. That was a matter for him, the demolisher head contractor and ultimately for the Project Managers". The real argument about this submission is that Mr. Gordon Ashley made no enquiries as to what the precise method of demolition was to be. Therefore he could not have any sound base for his advice as to the cutting method in the terms of maintaining the structural stability of the building in the event of one or more or other methods of demolition were undertaken.

115. It is critical to note that Mr. Ashley, on his own admission, in his submission says "I was never told that the pre – weakening process was for "an implosion demolition" rather than an "induced collapse" or that it was proposed the building would "fall within its own footprint". I believe that Mr. McCracken planned an induced collapse". Mr. Ashley was either very mistaken or misled about the method of the collapse to be utilised in the weeks prior to the implosion. The evidence is clear that having seen the video clips Mr. Ashley was even after the implosion still mistaken as to what form of demolition he was providing advice upon. Mr. Ashley relied upon the expertise and competence of Mr. McCracken by virtue of his previous experience in demolition work and the fact that they had worked together in previous demolition work. Those demolitions were carried out by the induced collapse method where the building would move and collapse upon its longitudinal axis. The evidence reveals and Mr. Ashley confirms that "an induced collapse is precipitated by the application of force to produce lateral movement. Whether that lateral movement is the product of mechanical or explosive means is not material". It should be noted that Mr. Ashley demonstrated this in his evidence, as did other witnesses. In such a situation there can be no "binding factor" because once the lateral movement begins the columns lose structural stability. Mr. Ashley argues that what went wrong here was that no lateral movement was induced because there was some last minute attempt to have the building "fall within its own footprint".

116. The problem about this argument was that three circumstances have occurred: -

a. Mr. Ashley was confused, or
b. Mr. Ashley failed to make adequate inquiry of Mr.

McCracken, and/or

c. Mr. Ashley was misled by Mr. McCracken's representations.

This has already been discussed in the earlier segment of this Report dealing with the engineer's role. If Mr. Ashley solely relied upon induced collapse as the demolition method and provided the figures then he should have gone further in any event because none of this adequately explains why he wrote the letter of 30th May 1997.

Previous Engineering Advice about the Pre – Weakening of the Buildings

117. Mr. Ashley accepts "that I did not make any effort to ascertain whether any previous engineering advice had been given about the pre – weakening of the buildings. I assumed I was dealing with professional people, engaged to carry out a demolition project who would have provided me with details of any previous engineering advice they had taken on the issue about which they were consulting me. At the very least I believe I was entitled to expect that Mr. McCracken would have informed me of the previous involvement of Mr. Hugill".

118. It is very clear that none of this occurred nor did Mr. Ashley make adequate enquiries about any engineer's previous involvement particularly having inspected the cuts and the work done prior to his involvement on the 30th May 1997. It seems to me that to proceed without having made those enquiries given what he saw and observed was nothing less than sheer folly and deserving of serious censure.

Half Moon Cuts and Katie Bender's Death

119. Mr. Ashley's response to this contention made by Counsel Assisting is to state that "an engineers specification is an expert opinion on the manner in which a particular task is to be carried out. It is often prepared after consultation with expert's in particular fields. I am not an explosives expert nor a demolisher". Why then write the letter of 30th May 1997?.

120. Mr. Ashley further argues the parties involved were chosen as part of a tender process conducted by the Government authorities. "I was entitled to rely" "on that process to have resulted in the selection of reliable and suitably qualified people". Mr. Ashley asks "why then was "I grossly negligent" in relying on Mr. McCracken's views. "The demolisher is responsible for determining the method and techniques involved in the demolition and it is up to him to develop an effective technique and produce an appropriate work methods statement".

There is some merit in these observations about the tender process but notwithstanding these inadequacies surely some professional duty reposed in a person to make their own separate independent inquiries as to the integrity of the prior process rather than simply rely blindly on what has been done

previously in the terms of processes and systems. The submissions made by Mr. Ashley fail to convince me that he was not grossly negligent in this respect. It was professionally irresponsible to give such advice at all and if given it should have been given in qualified terms.

Wedge Drawings

121. Again Mr. Ashley stresses that his advice was limited to the effect of the stripping and cutting of the columns and its affect upon the stability of the buildings. Any question of the effect on the columns of charges detonated in the final explosive demolition was a matter for the explosive expert, the subcontractor, Mr. McCracken and not within Mr. Ashley's competence. This submission has some merit and goes some way to minimise possible criminal conduct on his part in that it seems to me a factor of only remote causation rather than a direct contribution. Mr. Ashley does say that McCracken had a plan to place "kick charges" against the columns but Mr. Ashley further argues how does that knowledge imply some intended approval of the explosives on his part. How then could Mr. Ashley ever possibly give reliable advice in full knowledge that explosives were to be used not knowing anything about explosives, the volume to be used and the possible consequences. This to me demonstrates an element of gross negligence in the handling of the whole advice process.

122. Mr. Ashley summarises his submissions and argues his position in the following terms: -

a. The time spent by him on the site was sufficient to obtain the information and provide the advice for which he had been commissioned (note that Mr. Ashley makes a distinction or comparison that Mr. Hugill was exercising a supervisory function not a consultancy role and accordingly, his fee/quotation reflected that component),
b. His advice was not on demolition techniques so it was really irrelevant to know of the precise method of demolition,
c. The half moon cut was approved and designed to ensure structural stability. It was considered from the aspect of stability not how it might react during the detonation. It was not part of the brief to consider the effect on the columns to the application of explosives,
d. Mr. Ashley made it clear to Mr. McCracken that the diagonal method of cutting was an equally structural acceptable method. It was up to him to decide which method he preferred. The sketches were forwarded of both methods to him about 12th June 1997, and
e. There was no commission to supervise and the attendances upon the site were sufficient to acquire the information needed to complete the brief.

The difficulty with these submissions is very simple. If Mr. Ashley had spent more time on the site and developed a knowledge of the activities that were being undertaken by Messrs. McCracken and Fenwick then he would have come to know and been in a better position to advise, consult or seek or provide further opinions or directions in relation to what the contractor and subcontractor were doing or not doing particularly as his advice was only being provided over a short duration, in isolation, without the benefit of an explosive demolition experts opinion. Moreover, Mr. Ashley was not sufficiently familiar with the site. The changes being made on a daily basis by Mr. McCracken to the demolition process over any number of days or weeks had a material affect in the long term as to how successful the implosion was to be. If the arguments advanced by Mr. Ashley concerning the duration of time that he should need to spend on the site were to be accepted then the inevitable conclusion is that the project never had a structural engineer involved on the project for any substantial period of time which is a clear breach of the contract and the *ACT Demolition Code of Practice*.

These comments are made as the evidence leaves me with the view that both Mr. McCracken and Mr. Fenwick were effectively operating in an unfettered manner with little or no control, influence or impact being exercised by Mr. Dwyer.

123. Mr. Ashley urges me to reject the submission that he was a person who contributed to the death of Miss. Bender. Mr. Ashley continues "I do not wish to attribute blame to others nor do I have an opinion as to the cause. I submit that Counsel's opinion as to my competence and function is based on very limited experience. On my understanding the only structural engineer who gave evidence was Mr. Hugill. I am aware that his experience is limited. In any case I do not believe that he was examined as to the duties and responsibilities of an engineer retained, as I was, for consultation on a specific issue. I am in no doubt that any suitably qualified and experienced structural engineer, examined on the question, would agree that my actions and advice were professionally proper and competent". The difficulty with this submission is that it fails to appreciate the Coronial function is a fact finding task designed to ascertain the manner and cause of death and the contributing factors thereto. The question as to whether his actions and advice were professionally proper, sound and competent may well be issues to be determined in another jurisdiction when experts may or may not be called to give evidence on the protocols to be adopted and applied in a building demolition of this magnitude.

124. Mr. Ashley attempts to draw a distinction between himself and Mr. Hugill (see paragraph 122). That distinction is that he was retained as a consultant whereas Mr. Hugill was engaged as a structural engineer in a supervisory role until his limited experience with steel framed buildings curtailed his further commitment to the project. I do not accept that argument. Messrs. Hugill and Ashley were both retained as expert structural engineers.

Both were independent professionals exercising a consultancy role. Their engagement was for the duration of the project not an intermittent commitment. It is the only occasion, albeit to a superficial degree, where compliance with that portion of the *ACT Demolition Code of Practice* dealing with "Demolition by Explosives" is attempted.

125. Mr. Ashley invites me to make a recommendation concerning protective measures where there is a risk of flying debris. A recommendation will be made that where blasting is occurring protective devices ought to be employed as a matter of public safety. Such measures might be bund walls, raised earth mounds, protective sheeting, timber and other firm materials to prevent the emission of flying debris.

Does the Conduct of Mr. Gordon Ashley Constitute Criminal Negligence

126. The actions and advice of Mr. Ashley in this project fell well below those acceptable standards of a reasonably competent professional engineer.

There are a number of factors giving rise to this conclusion in addition to my general observations. Some of these factors are:-

a. The manner of cutting approved by Mr. Ashley was grossly negligent as it contributed to the death of Miss. Katie Bender,
b. The manner, circumstances and explanation for the advice given in the letter dated 30th May 1997 was irresponsible, to a gross degree, and
c. The failure to inquire and investigate the prior engineer's role.

124. The failure to supervise and attend the demolition site on a regular frequent basis to ensure that the approved method of cutting columns was being followed was an additional factor contributing to the death of the young girl. Mr. Ashley's involvement was inadequate. It is no excuse to simply make the claim that his role was one of a consultant and not that he was engaged or retained in a supervisory role.

125. The evidence is that Mr. Ashley did not know actually or contructively what quantity of explosives or the type of explosives that Mr. McCracken was proposing to use against the columns so as to achieve "a kick charge". It was his understanding that a kick charge was to be used in combination with the cutting of steel. The worst case scenario would have been that the columns would have meshed then jammed and the buildings may not have collapsed. It was Mr. Ashley's understanding of the nature of the kick charge that it was "to kick the column without causing any disintegration" and therefore there would be no question of steel becoming a projectile.

126. At this stage between late May and early June 1997 Mr. McCracken was not aware that he would not be able to obtain the lineal cutting charges or would have to use the demolition process by some other means. The evidence does not establish nor was it suggested that Mr. Ashley had a state of knowledge or that he had any particular duties in relation to the kick charges, the supervision of the protective measures that were to be employed

or not employed nor the type or quantities of explosives to be used against the steel because if those factors were within his knowledge then it seems the requisite criminal standard could be demonstrated to such a degree that he contributed to cause of death directly.

In those circumstances Mr. Ashley could not be said to be directly causally connected to the death of Katie Bender that would warrant a recommendation that he be charged with manslaughter. It is inappropriate in those circumstances to make any recommendation that Mr. Ashley should be charged with a criminal offence. I specifically decline to do so on the evidence. The evidence does not meet the requisite degree of proof for criminal purposes. The evidence does satisfy me on the balance of probabilities that there are significant questions for Mr. Ashley to answer in the terms of his professional competence, his responsibilities and capacity as a structural engineer at least in relation to his engagement and performance on this project.

Finding

127. Mr. Gordon Ashley is a person who contributed to the death of Katie Bender within the meaning of Section 56(1)(d) of the *Coroner Act 1957*. It is my further recommendation that Mr. Ashley's right to practice as a professional engineer be further examined by the appropriate professional body.

THE PUBLIC EVENT – AN ISSUE OF PUBLIC SAFETY

1. Counsel Assisting the Inquest has made submissions on this issue to the following effect: -

a. The decision to hold a public event was made without any regard to safety,
b. The decision to promote the implosion as a public spectacle and to actively invite the public to attend was not necessarily an inappropriate decision, however, with the potential risk of flying debris associated with the use of explosives in the proximity of the public, then it would have been a prudent course not to actively promote an implosion,
c. If a public event is to be held then appropriate steps must be taken to ensure that the safety of the public is not compromised,
d. Notice of the event should be given to the contractor before he finalises his tender bid as a public event has the potential to impact on his costs because extra precautions may be required,
e. There should be adequate insurance coverage with proper independent checks being made with double checking of the precautions undertaken by the contractor as significant public liability risks are assumed by those authorising the event,
f. Close ongoing liaison about all aspects of an implosion and the public event should be maintained with the demolition contractor in case of unforeseen changes,
g. The regulatory authorities such as WorkCover, the Dangerous Goods Authorities, the Building Controller should be kept informed of what exactly is planned,
h. It is important to ensure the contractor has successfully imploded a number of similar sized and constructed buildings before inviting the public to attend, and finally
i. Police, ambulance and other emergency services should be fully consulted as such a public spectacle will invariably create traffic congestion in addition to the safety considerations.

2. One may not necessarily agree with all or any of those submissions made on public safety by Counsel Assisting the Inquest. It is however an inescapable conclusion of fundamental importance, no matter what the form of the event may be, that all administrators and organising authorities ensure that the safety of the public is not compromised and is absolutely protected. The interests of the community in the terms of their safety is paramount where any large crowd is expected to assemble whether it be a sporting function for example, the suggested V8 car races for June 2000, a tourism promotion, a national festive occasion, a religious ceremony or generally any function or event that is publicly promoted by the government or organising authorities

and designed to attract large numbers of spectators. There are many such events conducted in Canberra annually where not only the local community are encouraged to be involved but also occasions which are promoted nationally and internationally to draw visitors to the National Capital and in such circumstances the public interest demands their safety and welfare are not put at risk.

3. The Hospital site was situated in a prime location on a peninsula that protruded into Lake Burley Griffin in close proximity of the city. The site was merely 500 metres from the Commonwealth Avenue Bridge, which forms part of the city's primary arterial road, and in the clear view of traffic travelling over the bridge. The Hospital buildings were well-recognised city landmarks. A number of witnesses, notably Mr. Dawson and Mrs. K. Carnell the Chief Minister among others correctly assumed there would be public interest in the implosion of the hospital buildings. It was inevitable that this method of demolition would guarantee spectators would witness the event. People in large numbers would be attracted to such an occasion.

4. It is trite to say that any demolition of a building by implosion should be carried out with due consideration given to the safety of members of the public who might be expected to be in the vicinity of the demolition work. The very nature of the process demands that safety considerations should be a paramount consideration. Whilst safety considerations should be a major concern in any implosion, the fact that this implosion was to occur in the heart of the city, should have served to highlight further the need for the implosion to be carried out without exposing persons in the surrounding area to risk. If the issue had been addressed properly at the very outset then members of the public in the vicinity should not have been exposed to the risk. This failure is a matter of grave concern, and would be so whether or not any 'public event' was arranged.
5. A demolition in the form of an implosion as a public spectacle was fraught with risk. An implosion by its very nature would attract a large crowd. The public event was being staged as if it was a festive occasion to mark the destruction of a public building which was held in high regard by the Canberra community for the memories that it had created. The radio station, MIX 106.3, promoting the event, described the occasion in its proposal to Mr. Dawson as a "celebration of change". It was not appropriate on a global view of the evidence for a celebration to occur, in any form, in respect of the demolition of a building on what was in reality an industrial site.
6. There is no doubt that the events of Sunday the 13th July 1997 failed such a primary requirement of public safety. It is inevitable and regretful that accidents do sometimes occur despite the best precautions but what occurred when Katie Bender was killed was inexcusable. The public are entitled to expect that if they are attending or encouraged to attend such public spectacles or features especially with their families then they do so in the quiet confidence that their lives, their families, friends and others are not exposed to the risk of death or grave physical injury and their safety is secured.

7. No – one can seriously attribute to Mrs. Kate Carnell MLA, the Chief Minister for the ACT, personally or directly, any responsibility for or contribution to the death of Katie Bender. The evidence simply does not support such a conclusion being drawn or reached. The Acton Peninsula project was a National objective between the Commonwealth of Australia and the Territory. It was totally appropriate for Mrs. Kate Carnell MLA as the Chief Minister for the Territory to have a significant role.
8. Yet there is no doubt, based on all the evidence adduced during the Inquest, that the whole project could have been undertaken from its commencement to its conclusion, at all levels, in a more professional manner. There were systemic failures. The intrusions from the various sources outside the actual project site were unwarranted whilst the absence of the relevant Government regulatory agencies in monitoring the demolition progress on a constant basis is a matter for significant concern.
9. Mr. Gary Dawson of the Chief Ministers Office as her media adviser did have a major coordinating role in the demolition becoming a public spectacle. The Chief Minister did give her full approval to promote the implosion as a public event. I do not agree with nor do I consider there is evidence to support the submission made by Counsel Assisting the Inquest to the effect "that the public event was organised with at least one purpose being to enhance the political prospects of the government". The closest the evidence reaches on that point is the Liberal party brainstorming session at the Rydges Eaglehawk Resort in December 1995 where the reference appears on a piece of butchers paper of bombing the hospital. It may have been something said at that time in a jocular manner but the ultimate decision to demolish the hospital by implosion had dire consequences.
10. It must be said that Mrs. Carnell did agree, when giving her evidence, that the demolition of the Royal Canberra Hospital had the potential to cause some political backlash. She further agreed that the Government stood to gain publicity surrounding the demolition if the positive aspects were to be accentuated. Mr. Hopkins of the CMD agreed with the proposition that Mr. Dawson was seeking to use the media coverage to the best advantage he could as far as the Government was concerned.
11. The submissions made by Mr. Johnson SC for the Territory place the above arguments in their proper perspective and as a matter of basic common sense have some persuasive value when considered in an objective manner. Counsel says "every government wishes to display government projects in as positive light as possible. There is nothing wrong with that. However, it is quite another thing to say that a demolition undertaken in this way is carried out for political advantage".
12. The role of Mr. Gary Dawson is then assessed in this way. "The fact that Mr. Dawson played a part in the decision to promote the implosion as a public event does not suggest that it was a political exercise in the interests of the Chief Minister. However, given the scale of government in the ACT, this role led him to be a point of contact with the media on a wide range of government issues. The ACT Government is small compared to the Federal and State Governments in Australia and does not possess media or public relation units of the types found in large governments".

The evidence supports the adoption of this approach as a logical explanation of the way a small government might handle its media function in ordinary conventional circumstances. I do not accept that this procedure was necessarily correct or even appropriate for a project of an industrial nature such as was being carried out on the Acton Peninsula. For example an email had been sent on 4th July 1997 by Section Publications to no less than 48 organisations in the ACT Public Service. This is just one example of the Gary Dawson/CMD promotional push.

13. Mr. Sullivan of TCL and other senior government officials had sufficient concerns about squatters and protesters when the decision to proceed with the demolition was made at the high level meeting on 13th December 1996. "Immediate action was wanted". The site was subject also to a TLC black ban. A fence was erected in 24 hours. CCAA for some time had been protesting about the development on the Acton site and their protestations continue to this day.
14. The evidence points to a greater interest and involvement in the project by government officials especially from the CMD and CMO than was necessary for a project of this nature. There was simply no need for any involvement by this group of officials in respect of a construction site especially when TCL had been appointed the Project Director for the Territory. Acton Peninsula was an industrial project. The interest increased as the project advanced especially after 18th April 1997 when by then the decision to stage the demolition as a public event had been settled upon. These administrators had no technical expertise. It was an unwarranted involvement. If the relevant branches of the regulatory agencies had been appropriately engaged at the outset, in whole or in part, and allowed to discharge their functions to their fullest capacity then it is possible the tragedy would have been averted. The evidence leads me to the view that the promotion of the demolition as a public event was an unnecessary intrusion and pressure upon the primary functions of Mr. W. Lavers of TCL as the key representative of the Project Director about which I shall make some further references. Mr. Lavers was also the media liaison officer for the technical side of the project.
15. It should be noted in this case that Mr. Dwyer of PCAPL acting as the Project Manager and Superintendent first became aware that the implosion was to be a public event on the 30th April 1997. It was in his words "a fait accompli". The reality of the matter is that formal discussions to hold a public occasion started between Mr. Gary Dawson of the CMO with Mr. Warwick Lavers of TCL as early as 8th January 1997. The formal decision to hold a public event came from Mr. Gary Dawson on 18th April 1997 when he authorised and approved the proposal from Mr. Rohan Chabaud of MIX106.3.
16. It was recognised and acknowledged at an early stage that if the demolition was to proceed on an ordinary working day (a Wednesday had been considered) then it presented significant logistic problems to the authorities in that many persons would be drawn to the event from the Government office blocks located in the nearby vicinity whilst at the same time it would create major traffic congestion on Commonwealth Avenue, a major arterial road crossing Lake Burley Griffin linking the North and South of the City. If a demolition was to occur by the implosion method as a matter of public safety it ought not have occurred at a time when a large number of spectators would

gather to witness the event or in a manner whereby people were encouraged to view such an event which on any reasonable view would pose significant risk to those who were in attendance. St. Vincents Hospital was demolished by implosion in October 1992. It was located in the heart of Melbourne (Victoria) in close proximity to other buildings. It was demolished in the early hours of the morning without publicity and with a minimum of disruption to the inner city.

17. It is necessary to examine how the concept of a public event developed. There are a number of important segments.

> An essential ingredient of that examination is the conduct of the Chief Minister and the administrators within the ACT based upon the information provided to them and how that information changed or varied at particular stages as the project moved along to its completion. The critical period is effectively the last three months prior to the implosion.
>
> In my opening chronology and overview I have explained how I have approached my task as the Coroner. It is my view that circumstances and events, particularly in government, do not remain static. The best example to cite in support of this contention is reflected in the Cabinet submission and decision of August 1995 then to consider how the circumstances changed in 16 months by the time the Cabinet Submission and Minute was raised in December 1996 when the decision was made for the project to be revived.

A. <u>Historical and Chronological Perspective</u>

2. Mr. P. Johnson SC for the Territory submits that it is appropriate to view the matter through the eyes of the administrators who were without technical experience as at the first half of 1997. Counsel argues that the following chronological detail is relevant to the submission: -

    a. Totalcare Industries Limited ("TCL") was the Project Director. TCL possessed a degree of technical and engineering expertise in the capital works area. Mr. Warwick Lavers expresses this expertise in this particular way in his record of interview "They [the Chief Minister's Department] don't know anything about demolition, they hire us to do that". TCL's expertise included a management role as the Project Director and the delivery of the engineering component for Government capital works projects. <u>Although TCL had no experience of demolition by implosion, they had technical knowledge and experience and the ability to determine what technical and other steps were required for the project to proceed if implosion was to be used</u>. It was always within the capacity of TCL to acquire from time to time, as may be required, independent expert technical or specialist advice either on the implosion process of demolition or

the use being made of explosive devices in the course of the demolition project. At the very least, administrators within the ACT were entitled to expect that this was the case.

b. PCAPL was the Project Manager and Superintendent under the contracts. PCAPL had been directly involved in the preparation of the RGA reports and its name appeared on

the cover of those reports. PCAPL was known to be an experienced Project Manager in the ACT. Although it had no experience in demolition by implosion, PCAPL possessed the ability to take appropriate steps in its role of Project Manager and Superintendent in a project utilising implosion to acquire that expertise. It is noteworthy that RGA was the Project Director for the St Vincents implosion in Melbourne in 1992 despite the fact that RGA had no prior experience in demolition by implosion. PCAPL should have been able to do likewise in its role of Project Manager and Superintendent. The ACT was entitled to expect that PCAPL, as Project Manager and Superintendent, would take all appropriate steps as part of its contractual functions and obligations to ensure that demolition by implosion, if implosion was selected, proceeded appropriately and safely. These obligations included those contained in the project management agreement.

In the same way as it was within the capacity of TCL to seek independent expert technical or specialist advice on either the implosion process as a demolition method or the use of explosive devices so also the same comment is applicable to

PCAPL and probably more so having regard to their unique role and prior experience on demolition sites.

c. A process was undertaken that led to the selection by PCAPL and TCL of a demolition contractor, City & Country Demolitions ("CCD"), and, effectively, a specialist implosion sub-contractor, Controlled Blasting Services ("CBS") and Mr. Rod McCracken. The ACT was entitled to expect that the processes in place led to the selection of appropriate persons to undertake the project. It is reasonable for a principal to proceed upon this basis.

i. The three RGA reports are significant documents. The third report of February 1996, in particular, requires specific consideration. Its status should be noted. The first two reports of July and September 1995 were

feasibility studies. The February 1996 report should be read together with the other reports, from the perspective of a reasonable and prudent administrator without technical expertise. The following propositions are put by Mr. Johnson SC in relation to the report of February 1996 which I consider are soundly based and in respect of which there is no basis on the evidence to reject: -

i. The report is not described as a feasibility study. It is written some seven months after Mr. Deeble's principal feasibility study which favoured the use of implosion for the tall buildings. The authors are identified as RGA "in association with" PCAPL and WT Partnership.

ii. It is entitled "Possible Impact on Hospice Activities". The impact under consideration is the impact of demolition by implosion.

iii. The report states at page 1.1, "that demolition is proposed to take the form of "implosion, alternatively called blow-down, for the two high rise buildings being

Sylvia Curley House and the old hospital Main Building tower".

It was not a feasibility study only.

iv. Thereafter, the report proceeds to provide, in some detail, technical information concerning vibration, debris, exclusion zones, safety sirens, loud speaker messages etc. It says, inter alia, at page 4.5 "On each implosion day an exclusion zone, expected to be in the order of 50m will be established around the building to be demolished."

v. The report does contain a note at page 5.3 in the following terms: -

"The method of undertaking the demolition and clearance works will be defined and considered in detail after engagement of a Project Manager and in particular as a result of a subsequent appointment of a specialist implosion contractor. The information given above is therefore an early, but realistic, consideration of the issues that could possibly impact on the Hospice."

vi. There is an "impact assessment" at page 6 of the report involving a numerical rating of the potential impact on the Hospice of a number of features arising from the use of implosion". This aspect of the Report is a specific technical assessment.

vii. The "Summary" at page 7.1 of the report refers to the "descriptive and matrix assessment" of the possible impacts of the demolition on activities of the Hospice and

expresses the view that there is no need to contemplate relocation of patients and staff to alternative accommodation.

viii. There is in the Report a photograph of the Acton Peninsula site with lines indicating distances of 78m and 88m between the Hospice, Sylvia Curley House and the Main Tower Block. Mr. Deeble agreed that the purpose of that drawing was to emphasise to the reader that both the buildings were well over 50m away from the Hospice (709, 31/3), and

ix. There are also photographs of the demolition by implosion of the St Vincents building in Melbourne on 25th October 1992. Explanatory notes which accompany the photographs indicate that the "building has dropped within the preplanned ground zone" and that a six-storey research building closely adjacent to the demolished building "remained occupied during the implosion".

19. The intention of the writer of the Report was to convey to the reader not only a hope but also a strong suggestion that the Acton demolition would proceed in a similar manner and achieve the same result. It was upon this basis that the Territory administrators would have advanced the Acton Project especially the implosion method.

20. Mr. Johnson SC for the Territory makes this submission: -

> "The RGA report of February 1996 is described as an "early, but realistic, consideration of the issues that could possibly impact on the Hospice". A reasonable and prudent administrator without technical experience would be entitled to treat this report as a document instilling a degree of confidence concerning the use of implosion on the Acton Peninsula site. This degree of confidence would be further supported by the fact that the RGA reports were available to the Project Director and Project Manager. Indeed the Project Manager, PCAPL, was directly involved in the preparation of the RGA reports. Administrators would be entitled to expect that TCL or PCAPL or both would have provided the RGA reports to CCD, CBS and Mr. McCracken. Administrators would be entitled to expect that, unless they were informed to the contrary, the "early, but realistic, consideration" contained in the February 1996 report was the basis upon which implosion, if selected, would proceed.

> This was not a report written hastily. It was written some nine months after Mr. Deeble was first approached to report upon the Acton Peninsula demolition project".
>
> I agree with the submission save in two respects.

21. Unfortunately a serious defect emerges here on the evidence in that the Reports and study were not read or considered by the people at the critical levels of responsibility for the project until the project had advanced someway to completion or until it was too late to apply solutions to the problems. Moreover, the status of the Hospice even at this early stage was a matter of some significant importance. The evidence adduced at the Inquest suggested that the Hospice dominated the attention of those involved in the project to the detriment of the safety considerations on the Lake and its foreshores.

22. DUS and TCL held the technical expertise or at least were in a position to acquire that degree of expertise for the project. There was simply no logical basis for personnel in the CMD or the CMO to become involved in the technical aspects of the project. It was an unwarranted interference. When and where appropriate the personnel of the calibre of Mr. Lavers and others could, would and did provide the briefings but to then turn the event into a public occasion placed an unnecessary onerous burden on Messrs. Lavers, Hotham and Dwyer in the discharge of their duties.

"Who was the Client"

23. A myriad of documentation was produced to the Inquest in the form of emails, correspondence, diary entries supplemented by the viva voce evidence of a number of witnesses as to the particular person or persons or group that constituted the classification of "the client". There were, by way of example, over 200 emails issued in a 5-month period by officers in the CMD. The identification was not made any easier when colloquial terms were used to describe and classify this entity such as "the loop" or "the client group". It was not particularly helpful to try to put an exact legal title to each category. It was really only a question of ones understanding or perception of the many facets of the project and those who were engaged in those various phases. These personnel were concerned with the practical side of the project rather than precise legal niceties or exact distinctions as to who were actually doing the work in whatever capacity even though sometimes they were clearly mistaken including the Chief Minister (see paragraph 27). It is unnecessary to dwell upon this issue at any great length.

23. In the terms of understanding and perceptions the following examples are representative of the various different concepts held by people engaged on the project. Mr. O'Hara was the PCAPL

> director responsible for the project until 19th May 1997. Mr. O'Hara regarded, for practical purposes, TCL as the client for the project. He saw his function as the PCAPL director in charge of the project as including "liaison with the client" and "meetings with the client". He

meant actual liaison and meetings with TCL. This was Mr. O'Hara's perception of how things worked in practice.

25. Mr. Murphy the managing director of PCAPL regarded TCL as the client. Mr. Dwyer who was intimately involved in the project on the site for PCAPL considered the client was TCL but in his evidence given on 3rd June 1998 at paragraph 1098 he said in answer to a question "you understand now that the client was the ACT Government? Answer: Yes I do". It can be seen from this evidence the perceptions of Messrs. Dwyer, O'Hara and Murphy was that TCL was the client. That represented the practical reality of the situation as they saw it.

26. Mr. Lavers said in his record of interview that TCL carried on much the same as it did when it was within Works and Commercial Services as part of DUS. This is consistent with the impression arising from the evidence that with the transfer of the CAMMS

    function to TCL from 1st January 1997 things continued to operate more or less as they had before. In a real and practical sense TCL acted as the decision-maker in important areas of the project. TCL was the Project Director. It was a separate legal entity. However for practical purposes things proceeded as if TCL was the effective decision-maker in most respects.

27. Counsel for the ACT acknowledged at the hearing that "the Chief Ministers Department was the part of the ACT which constituted the client for the purposes of the Acton Peninsula project". The same position was adopted by Counsel for TCL Mr. Purnell SC. Counsel Assisting in the Inquest is in agreement with this position and the foundation for that concession can be traced back to the Cabinet submission of 6th December 1996. The only persons to dispute that this was the true position to any degree were Mrs. Carnell, Mr. Walker and Mr. Wearing. Again it was their understanding and perception but one would have expected that such senior personnel both in Government and the Executive would have at least known the correct position.
28. The submission of 6th December 1996 emanated from the Chief Ministers Department and related to the government negotiating position concerning the Acton Kingston land swap. The land swap was part of a process leading to the construction of the National Museum of Australia which although it was a Commonwealth project it was of vital significance to the ACT. There was a degree of contact between TCL and the Chief Ministers Department from January 1997 onwards.
29. I have previously stated that it is only practical and logical that the Chief Minister and her department should be involved in a project, which was of major importance for both the Commonwealth of Australia and the Australian Capital Territory. The relevant minister responsible for TCL from February 1997 and therefore technically the Minister responsible for the Acton demolition public works project was Mr. Trevor Kaine MLA who was the Minister for Urban Services. It was beyond question on the evidence that Mr. Kaine played no part in the direction of this project. There simply was no documentary evidence or briefing note or other government document

produced to the Inquest that would suggest that Mr. Kaine ever played any practical role in the project.

30. The Minister assuming responsibility for the project was the Chief Minister. It is my assessment on the evidence that this was a

sensible and practical reality for the reasons previously stated. I do not accept the proposition that Mr. Kaine was shut out of the project. The evidence seems to me that he was always at liberty to communicate and place his views to the Chief Minister. Mr. Kaine did not give evidence at the Inquest. I shall make further reference to Mr. Kaine in this Report.

31. The Chief Ministers Department was the client so far as the project was concerned.

The Concept of a Public Event

32. The Inquest heard evidence of many circumstances where the concept of a public event was developed in relation to the hospital demolition. The following references are just a few examples: -

a. "Sell the rights",
b. "Bomb the hospital",
c. "We can do something with it",
d. "A celebration of change", and
e. "Bring down the doomed Royal Canberra Hospital in a fitting fashion".

26. These expressions, in my assessment of the evidence, were made in circumstances where the later tragic circumstances were simply unimaginable. It is regrettable, on reflection, that such casual terminology should be used. The statements can only be regarded as "a throwaway line" when used by the then Minister Mr. Tony de Domenico in January 1996 when talking about selling the rights or were used flippantly when "wiring up ideas" at a Liberal Party brainstorming session at the Eaglehawk Resort that the hospital site should be "bombed". The evidence does not persuade me that the concept of the demolition being a public spectacle was an idea of long standing or preplanned for some time. It developed after 4th January 1997.
27. It was inevitable that the demolition would attract a great public interest. It was a novel form of demolition never previously used in the Territory and something only ever seen on the television media from interstate or overseas. A public event was effectively guaranteed by the inevitable large numbers of people wishing to view the collapse. A mid week collapse, suggested for a Wednesday, would have made the prospect of excluding the public an impossibility due to the close proximity of the City and the large number of government office blocks in a close vicinity as well as the main arterial road of Commonwealth Avenue.
28. The idea of a public spectacle simply evolved as the demolition work continued. It was a sound practical decision to have a media liaison officer appointed from the Project Director, TCL. The Canberra Times article of 4th January 1997 reported the demolition was to be "a major event". It was

reported that this description was referable or attributable to Mrs. Carnell. It was claimed she further said words to the effect that she "was seeking suggestions on how to bring down the doomed Royal Canberra Hospital in a fitting fashion". I am not prepared to make any finding, even on the balance of probabilities, as to who was the source of this article or the alleged comments. A factor in reaching that conclusion is that the journalist writing the story, Mr. Metherall, did not give evidence in the Inquest. Accordingly the legal representatives for Mrs. Carnell did not have an opportunity to cross - examine and test the journalist about the article. The source could have been any number of persons and to make any observation or finding is a matter of speculation.

29. Within four days of that article appearing in the Canberra Times a meeting occurred on 8th January 1997 over coffee between Mr. Lavers and Mr. Dawson. The meeting was initiated by Mr. Warwick Lavers. The meeting between Mr. Dawson and Mr. Lavers was

    primarily to settle a media strategy. The possibility of a public event taking place was discussed between the two men if an implosion was selected as the appropriate method of demolition. The question as to whether implosion was to be selected was a topic of consideration upon which a determination would only be concluded at some future time as part of the tendering process.

30. It is also appropriate to note that by this time Mr. Dawson had already been approached by Mr. Rohan Chabaud of MIX106.3, a radio station, concerning a possible media promotion. Mr. Chabaud's approach to Mr. Dawson was effectively put off for a number of months until a decision had been made about the demolition method. Once it was decided that implosion was to be used Mr. Dawson was prepared to talk to Mr. Chabaud about the matter. It was further agreed at that meeting between Mr. Lavers and Mr. Dawson that Mr. Dawson would handle the political aspects of the project. Mr. Lavers was responsible for the technical aspects in the terms of the media strategy. During the period between January 1997 and April 1997 when the tenders were ultimately let there were contacts between the two men relating to the possibility of a public event being held.

    Decision to Hold a Public Event

31. If any decision was made to conduct a public event then it came on 18th April 1997 from Mr. Dawson when he authorised and approved Mr. Rohan Chabaud's proposal. Mrs. Carnell endorsed this decision. Mr. Dawson had her complete authority to make this decision on behalf of the Government. The decision was made the same day that the proposal was received from MIX106.3.
32. On 18th April 1997 Mr. Rohan Chabaud of MIX106.3 put a proposal to Mr. Gary Dawson of the Chief Ministers Office for a "Celebration of Change" – "a Proposal to the ACT Government". The document is headed "The Making of History". It contains clear evidence that the demolition was to become a spectacular event. It was not simply to be a competition to find a person to push the plunger and raise funds for charity. The document contains the following types of references to suggest to the reader that the event of the

demolition would be something that all members of the community should witness. It states amongst other things: -

a. "This will be an emotional and visually spectacular moment, but happily it is a celebration of change in which all of Canberra can participate,
b. MIX106.3 would like to offer the ACT Government a chance to truly bring this event to the people,
c. By giving every radio listener the opportunity to be the one to "press the button" that ignites the explosives, we feel our city will be united in wanting to be a major part of this moment,
d. Between now and June 1st MIX106.3 would begin building the tension associated with the demolition,
e. The popular breakfast club would also give editorial coverage of these developments, whether from people "in the know" from the ACT Government or the demolition company together with the broadcasting of any phone calls that may come in from listeners with thoughts and feelings of their association with the hospital". The article talks about playing and broadcasting generic vignettes from prominent Canberrans about their thoughts on the making of history and technical aspects being carried out by the engineers on site, and
f. "Incorporating a charity fund raising angle is also very attractive". It continues: -

> "We understand that clean bricks from the demolition will be used for a local charity and MIX106.3 may be able to raise money for our stations supporting charity the Newborn Intensive Care Foundation at the new Canberra hospital. There would be bands, VIP areas and stagings set up as close as possible to both the hospital and the spectators".

26. MIX106.3 was embarking on a large-scale promotion. One part of the letter to Mr. Dawson reads "Gary we hope this proposal makes you as excited as it does us".
27. There is no doubt on the evidence that Mr. Dawson, as the public media advisor to the Chief Minister, was contemplating a large-scale public event. Mr. Dawson responded to the MIX106.3 proposal on 18th April 1997 in the following terms: -

"Dear Rohan,

Thank you for your proposal (of a) celebration of change regarding the demolition of buildings on Acton Peninsula to make way for the National Museum of Australia.

A number of other radio stations in Canberra have expressed keen interest in running promotions centered on the demolition of the old Royal Canberra Hospital and associated buildings since the announcement of the demolition contracts earlier this week. I have advised them that I feel it is only fair that MIX 106.3 be given the right to run the competition to select who gets to "push the button" since you have expressed interest in the project since January (1997).

Accordingly, I look forward to working with you to develop promotional and charity fundraising opportunities relating to the demolition project. Your suggestion that the Newborn Intensive Care Foundation be the beneficiary of fundraising associated with the project is an excellent idea, and I have gained the Chief Ministers approval that the Foundation should be the recipient of funds raised through all charity activities relating to the demolition project. With regard to events on the day of the implosion, including signage, seating, entertainment and so forth there will be need to be further discussions with the demolition contractor.

Yours sincerely

Gary Dawson

Media Advisor to the ACT Chief Minister".

28. There is no suggestion in that letter of authorisation that the promotion was being limited to running a competition or fund raising nor that the proposal to have the band, the staging etc set up as close as possible to the hospital was unacceptable, dangerous or any impression that the day was going to create any risk to the general public. The proposal for a large public event was accepted with the details to be worked out after further discussions with the contractor. There clearly had been no consultation with the contractors at this stage (18th April 1997).
29. The evidence is quite clear that the Chief Minister's media advisor authorised and approved the MIX106.3 proposal. The letter clearly states that the Chief Minister had approved of the whole concept of fund raising for this particular day. Mr. R. Livingston of Counsel for Mr. Gary Dawson does not accept the submission made by Counsel Assisting the Inquest that a formal decision to hold a public event came from Mr. Dawson on 18th April 1997 claiming that it is a misleading submission because if one thing is clear from the evidence there was no formal decision to hold a public event. Mr. Livingston argues that this is simply because of "the inevitability of public spectators was treated by many as a "given"". He argues that the letter of approval from Mr. Dawson to

Mr. Chabaud acknowledged that MIX106.3 would be allowed to conduct a competition to select who gets to push the button and that the Chief Minister's approval had been given to the radio station suggestion that the Newborn Intensive Care Foundation be the nominated beneficiary of fundraising associated with the implosion project". If there was never any formal decision to hold a public event then certainly the letter makes it perfectly clear to MIX106.3 that the Media Advisor to the Chief Minister and the Chief Minister herself had given full imprimatur to the radio station promoting the demolition for Sunday 13th July 1997.

30. I am satisfied on the evidence that Mr. Dawson's letter dated 18th April 1997 was not only a decision approving a public promotion of the demolition but also a formal recognition that Mrs. Carnell approved and authorised the promotion. The letter also recognises for the first time that the Chief Minister accepted the method of demolition was to be by implosion.

31. I make this observation about Mr. G. Dawson and the role of Counsel for the Territory. The approach taken by Mr. Johnson SC for the Territory in relation to the evidence of Mr. Dawson is very interesting. A vigorous defence of Mr. Dawson is made by Mr. Johnson SC in the face of mounting criticism of Mr. Dawson by Counsel Assisting the Inquest. It is certainly curious, bearing in mind, that Mr. R. F. Livingston of Counsel appeared to represent the interests of both Mr. Dawson and Mr. Wearing at the Inquest. Mr. B. Collaery of Counsel for the Bender Family, not only in the Inquest but in his submissions, takes particular exception to the role and conduct of Counsel for the Territory. The approach by Mr. Johnson SC is that much more interesting having regard to my comments prior to the commencement of the Inquest in the context of legal appearances where the potential for conflicting interests to exist was a significant risk but nonetheless the submissions are helpful and need to be fully considered in the role of Mr. Dawson's function as the Media Advisor to the Chief Minister.

<u>The Failure to Consult the Contractors</u>

32. There is no escaping the fact that neither Mr. Dawson or Mr. Lavers consulted the contractors in any way before the letter of 18th April 1997 was forwarded to Mr. Rohan Chabaud of MIX106.3. Mr. Dawson never at any stage spoke to either Mr. Fenwick or Mr. McCracken. The only contact was with Mr. Lavers who it would seem himself never raised any question of a large public event with anyone on the site including Mr. Hotham before Mr. Dawson issued his letter on the 18th April 1997.
33. Mr. Dawson's attention was drawn to his submission made to the Smethurst Enquiry about which in evidence he said "I saw no reason to refuse the media request providing the contractors were fully consulted and the arrangements did not breach safety requirements". This was a sensible approach but one which he did not adopt or apply in practical reality. The contractors were never fully consulted and there was no evidence of safety requirements being considered by Mr. Dawson before deciding to accept or refuse the media request.

34. It seems that after 18th April 1997 he did take steps to establish a group to ensure there was full consultation with the people involved in the project. This group contained representatives from all possible interested groups except those doing the implosion (the contractors) and those regulating the public or industrial safety (WorkCover). These sentiments expressed by Mr. Dawson reflected the standards apparently that he believed needed to be met before a public event could be authorised but he failed to meet his own standards.
35. Yet it was argued Mr. Dawson was entitled to act upon the basis that Mr. Lavers, the media liaison officer and Project Director for TCL, was the point of contact for the purpose of the project in respect of technical matters. Mr. Dawson was entitled to approach the project upon the basis that Mr. Lavers was putting forward proposals concerning a public event and would not have been taking this course if there had not been appropriate consideration as to the technical and safety aspects with those who were engaged in the project.
36. The classical piece of evidence of the failure to consult must relate to Mr. Dwyer of PCAPL, the Project Manager and Superintendent. Mr. Dwyer first found out about the public event on 30th April 1997. Mr. Dwyer said it seemed a "fait accompli". This comment by Mr. Dwyer fairly reflects the reality of the situation. I accept Mr. Dwyer's evidence on this issue. It should also be added that nobody else had been properly consulted including the contractors to the effect that the demolition was to be a public event. Mr. Dwyer was left in a situation that the decision had been made and he understood that all persons who were concerned with this issue had been consulted. No adverse influence can be drawn against Mr. Dwyer on this aspect of the evidence.
37. The Territory argues that Mr. Dwyer and Mr. Lavers were having discussions on 15th April 1997, i.e. 3 days before the letter from Mr. Dawson to Mr. Chabaud of MIX106.3, foreshadowing the need for a public viewing area and the involvement of a charity. The transcript of 1st October 1998 at Paragraph 775 – 778 needs to be considered.

    "Might the witness be shown Exhibit 386 which is an e-mail…This e-mail, Mr. Dwyer, its not to you or from you I stress, but it appears to be from Mr. Lavers to Mr. Dawson on 15th April. Do you see the PS down the bottom 'It will be a few days before we can get feedback on the safe positioning of seating should a charity or other want to arrange a viewing area. Dust could be a problem?'…That's correct, yes.

    Have you got your diary note there for 15th April?… Yes thank you.

    You it says, 'check safe distance and location for watching implosion' and the work 'dust', is underneath it?…That's correct, yes.

    Is your recollection assisted as to whether there was any conversation between yourself and Mr. Lavers on 15th April 1997 on the topic?…I cant recall any specific discussion with Mr. Lavers. I did know that they wanted to – they were looking at where people could be located on the peninsula."

    I am prepared to conclude that the real significance of this conversation did not impact on Mr. Dwyer until a fortnight later. The conversation could have any number of connotations. The tenders had only formally been let. There

were more pressing factors for Mr. Dwyer's consideration without having to concern himself at this early stage to a fleeting reference to what was meant by locating people on a peninsula, safe distance and such like terms.

38. Counsel Assisting the Inquest says in his submission that Mr. Dawson's decision allowing the implosion to become a public event and to encourage the public to attend imposed on the Territory a duty to ensure that it was carried out without risk to those persons invited to watch. Mrs. Carnell acknowledged that she could have overridden such a decision if she wished but she did not do so. This decision, involving potentially far-reaching consequences for the Territory, was made in a publicly unaccountable fashion by a political staffer argues Counsel Assisting the Inquest.
39. Mr. Johnson SC takes issue with this proposition arguing that it is not clear from the submissions what type of duty is said to arise. The submission by the ACT is that no relevant duty was cast upon the ACT. It is not for the Coroner to define any particular duty. It seems to me that question is a matter for another court and is not a Coronial function.
40. The Territory argues that a process was set in place whereby a Project Director, a Project Manager, a demolition contractor and a specialist in implosion subcontractor was selected. "The ACT was entitled to rely upon this process which has been adverted to earlier. Even if some legal duty did fall upon the Territory no breach of duty is established. The Territory repeats the submission made concerning the process established in reliance upon these processes". It is all very well to make that submission and one may question the appropriateness of the words used by Counsel Assisting the Inquest as to what is meant by the words "publicly unaccountable fashion by a political staffer".
41. There is a logical explanation as to why Counsel Assisting the Inquest has used that terminology. Mr. Gary Dawson was not a Public Servant but a political appointment. Mr. Dawson reported directly to his employer Mrs. K. Carnell, the Chief Minister, rather than to anybody else in the Chief Ministers Office or the Chief Ministers Department. Given his own admitted role in overseeing the political aspects of the demolition it is open to conclude and draw the inference that one of the reasons that Mr. Daswon approved the public event was to obtain maximum political benefit for the Chief Minister.
42. I have previously stated that in essence this is not a damming feature. There is no evidence to suggest that Mr. Dawson was doing the radio promotion as a political motive to benefit the Chief Minister. The only conclusion one can draw upon from the evidence was that this event was an attempt to display a government project in the best positive light as possible given that it had created some strong feelings within the community.
43. A failure to consult or communicate with the contractors concerning a public event is within the jurisdiction of the Coroner to comment upon when it deals with issues of public safety. Counsel Assisting the Inquest argues "that all potential contractors should therefore have been specifically made aware during the tendering phase of the probability that any implosion would become a public event as such information had the potential to impact on cost". Neither prospective tenderers nor the successful tenderers knew of this public event discussion in their bids let alone any financial consideration that it might carry. This was the clear evidence of Mr. J. Mark Loiseaux.

44. I do not consider that it is relevant to make any comment on the potential financial burden that any decision to hold a public event and an implosion might have but I am quite clear that the public event issue became ultimately a primary safety consideration for the Government and the Canberra community. Once the decision had been made that the demolition was to be a public event then there was a duty on those who held that knowledge to inform all other relevant bodies engaged on the project of that fact. It was a simple matter of commonsense and public duty that all the relevant personnel from CMO, CMD, TCL, PCAPL, CCD and CBS should have been informed.

45. The same advice needed to be communicated to the regulatory and safety agencies such as Dangerous Goods, WorkCover, AFP, Ambulance, Fire Brigade and Emergency Services. The evidence only needed to be provided in broad terms on a preliminary basis. The precise terms of the safety arrangements could be settled as the project advanced. The advice to such public safety bodies only needed to state that the demolition would be implosion using explosives and as such would be a public spectacle. The question of public safety in mid April 1997 was simply not a realistic consideration for the project operators. One is left with the impression that save for the welfare of the Hospice and its patients and possible traffic congestion any forward planning was absolutely non existent in the terms of concern for general public safety. This aspect of the project simply meandered along in a very casual manner. The possibility of debris flying across the Lake in the direction where the public were later being encouraged, by the public promotion, to congregate was simply not considered. The question of safety was only first seriously addressed in early June 1997.
46. The question of additional costs is not an issue contributing to the death of Katie Bender in the terms of Section 56(1)(d) of the *Coroners Act* nor is it a matter connected with her death. Financial issues are outside the scope of my function as the Coroner. The costing function would only be relevant to my function on the safety issue if the cost of the proposed demolition method caused a diminution of funds available to provide for public safety. No evidence was adduced at the Inquest to suggest that this circumstance ever occurred and accordingly, requires no further consideration.
47. Counsel Assisting the Inquest submits that the failure to provide information concerning a public event to prospective tenders rested with Mr. Lavers of TCL. Mr. Lavers knew as of the 8th January 1997 that if implosion was selected as the method of demolition it was highly likely that it would be promoted as a public event. Mr. Lavers, as the Project Director, should in those circumstances, argues Counsel, have ensured that the prospective tenderers were made aware of this. It would have been a simple task to insert a conditional notice into the tender documents as to the effect that if implosion was to be selected as the method of demolition then the public may be invited to attend the demolition and the tenderer should take this information into account should they choose to tender for implosion. I agree yet Mr. Lavers was in an unenviable position between Government, the tenderers and PCAPL.

48. There is nothing that Mr. Lavers could reliably or properly inform any potential tenderer at either the expression of interest or tender stage concerning a public event. No decision or preference for implosion as a method of demolition had been settled upon. Implosion was simply an option. Secondly, even if implosion was selected there was no certainty that a public event would necessarily follow. Up until the time the tenders were let nothing had occurred between Mr. Dawson or Mr. Lavers other than endevouring to settle upon a media strategy so therefore there was nothing that Mr. Lavers or Mr. Dawson for that matter would be able to advise the potential tenderers. One must feel for the difficult position Mr. Lavers was required to address, more so, on reflection, as a death thereafter occurred.
49. There is no doubt that after the tenders had been let and a decision made on the 18th April 1997 for a public event to be held that the appointed contractors, Messrs. McCracken and Fenwick, should then have been informed at this early stage. Not only should McCracken and Fenwick have been advised but also Mr. Dwyer should have been advised earlier than the 30th April 1997 in a more formal way (see earlier my comments about 15th April 1997). There is no real evidence that Mr. Hotham of TCL or Mr. Dwyer of PCAPL had ever been informed about this likelihood. Mr. Hotham and Mr. Dwyer were at the site meeting on the 23rd April 1997 where it was agreed to hold implosions at a quite time (see my earlier comments concerning the St. Vincents Hospital demolition). There was nothing said about a public event.
50. On 8th April 1997 Mr. Lavers is recorded as calling the Chief Minister's Chief Political Advisor, Mr. Ian Wearing, and asking him a number of questions but in particular whether he wanted an event. This issue of an event was not raised at the site meeting on 11th April 1997 at which Mr. Lavers colleagues from TCL and PCAPL discussed and approved the final tender recommendations. Even though no decision had yet been made to hold a public event Mr. Lavers should have at least informed his colleagues at the site meeting that there was a suggestion that the demolition was to be promoted as some form of spectacle. His failure to do so raises some serious questions. Counsel Assisting the Inquest suggests "it would seem the only logical explanation for the failures was because of his lack of expertise. He failed to see the impact that a public event would have on the planning requirements and the costs of the project". I am not concerned about the project costs at this stage for the reasons earlier stated but certainly the long term planning requirements in the interests of public safety are a factor of significant importance. The concept of a public event and the resultant should have been first raised at this April meeting. The cost issue has been considered in the tender process.
51. The submissions particularly made by Counsel for the Territory are directed at a more general broad failure to consult with the contractors per se. There is no doubt on the evidence that the contractors were consulted on many various issues such as safety distances, exclusion zones, viewing locations and coordinating the organisation of the public.
52. Counsel for the Territory argues that there was consultation with the contractors and gives the example of Mr. Dwyer noting in his diary as early as the 15th April 1997 that it was necessary to consult the contractors concerning a safety distance and a location for watching the implosion. The evidence indicates that there was consultation between Mr. Dwyer, Mr. Fenwick and

Mr. McCracken in this respect. According to Mr. Fenwick and Mr. McCracken there were meetings at which the exclusion zone and other issues were discussed with Mr. Dwyer. The evidence also reveals that Mr. McCracken and/or Mr. Fenwick did not attend the consultation meetings with respect to public event issues, nonetheless, there is evidence that there was a consultation process between Messrs. Dwyer, Fenwick and McCracken.

53. The real point of the submission made by Counsel Assisting which is the distinguishing feature from those arguments made by the Counsel for the Territory relates only to a narrow area of concern. It is a simple failure to advise or consult with the contractors before the decision was taken in the letter of the 18th April 1997 to hold a public event. There was consultation on so many other matters but as at 18th April 1997 Messrs. McCracken and Fenwick in addition to Mr. Dwyer were not informed that the demolition was to be a public event. No amount of words or explanation can escape this aspect of the evidence.
54. The chronology as to the manner in which the implosion became a public spectacle can be best summarised in this way: -

    a. MIX106.3 FM had as early as January 1997 communicated with Mr. Gary Dawson of the Chief Ministers Office on the concept of a celebration of change which was then implanted in the minds of at least Mr. Rohan Chabaud and Mr. Gary Dawson,
    b. It was not clear that there was ever going to be anything appropriate for a public event until the tender process had been completed,
    c. Once the tender process had been completed Mr. Dawson invited Mr. Chabaud of MIX106.3 to put a proposal in writing from the radio station,
    d. On or about 18th April 1997 Mr. Gary Dawson approved the proposal of a celebration of change, with the authorisation of the Chief Minister, to be undertaken by the radio station,
    e. Mr. Dawson arranged for Mr. Michael Hopkins an officer of the Chief Ministers department to liaise with MIX106.3 so as to link up with Mr. Cameron Dwyer and Mr. Warwick Lavers,
    f. A number of meetings then took place with representatives of the Chief Ministers department, TCL, PCAPL, MIX106.3, Australian Federal Police and other persons who as a group made decisions or arrangements concerning the public event (e.g.:- although the project team preferred a Wednesday the AFP and MIX106.3 preferred a Sunday and a Sunday was settled upon as the agreed day),
    g. PCAPL's role was one of liaison with the demolition contractors particularly in relation to settling the exclusion zones and being at meetings,
    h. A channel of communication to those undertaking the demolition then existed between the event group and the

demolition contractors on which the event group were entitled and did rely, and

i. The invitation to attend the event did not originate from TCL.

The Level of Control Exerted Over the Project by "The Client Group"

26. The Client for this demolition project was the Chief Minister's Department. It was appropriate that the Chief Minister's department should be engaged in the management of the Acton demolition as it was the Chief Minister's department involved in the Acton Kingston landswap. The project was of primary national significance, both to the Commonwealth of Australia and the Territory, in relation to the building of the National Museum of Australia. I have previously stated this approach in my Report.
27. As the demolition project increased in its activity one would have expected some involvement, interest or activity from the relevant Ministers department. The relevant Minister from February 1997 was Mr. Trevor Kaine MLA. I have previously stated he had no input or involvement in the project nor did he choose apparently on the evidence to in any way become involved with the Chief Minister or her Department in the progress of the demolition during the weeks and months of the project even though he was the responsible minister for TCL.
28. There is no objective evidence to explain the political/ministerial relationship between Mrs. Carnell or Mr. Kaine. One might expect that in such an important project there would have been some inter-action as members of the Government managing such a significant national project. I am simply, on the evidence, unable to reliably conclude why the Chief Minister and the Minister for Urban Services did not communicate on this project. Accordingly, without such evidence, I am therefore unable to draw any inference or make any finding of fact, suffice to say, the volume of evidence points to the fact that as a National project the Chief Minister was the proper representative of the Territory to be identified as being responsible for the project.
29. It is yet another thing to then say that Mrs. Carnell should bear the burden for the many significant defects in the project. In the same vein there is no evidence to satisfactorily conclude that Mr. Kaine, MLA was "shut out" of the demolition. Even though Mr. Kaine MLA was the Minister responsible for TCL it is curious that Mr. Sullivan of TCL then reported to the CMD. It is also interesting to note that CCAA considered Mr. Kaine MLA was the responsible Minister to the very end when on Friday, 11th July 1997 the organisation wrote to Mr. Kaine virtually imploring him to halt the implosion on public interest and quality assurance grounds.
30. The key personnel in the Chief Ministers Department for the purposes of the demolition project were Mr. John Walker, Ms. Moiya Ford, Mr. Michael Hopkins, and Ms. Linda Webb. In the Chief Ministers Office there was Mr. Gary Dawson, her Media Advisor and Mr. Ian Wearing a Political Advisor. Counsel Assisting the Inquest frequently refers to the level of control exhibited by this client group. I have previously stated my uneasiness about adopting these particular words. The evidence relating to the level of control is not in my view very satisfactory. There clearly was an over involvement and pre occupation with the Acton demolition project exhibited by some of these

senior officials but to go so far as to say it was a level of control is not truly reflected on the evidence. One is left with the impression that some of the activity

engaged upon by these government personnel was nothing short of inquisitiveness whereas those officials with some level of technical expertise were not sufficiently drawn into the project.

31. Ms. Linda Webb was not called as a witness at the Inquest nor interviewed by the Australian Federal Police. Procedural fairness dictates that no adverse comment can be made in respect of this person's role in relation to the Chief Ministers Department's involvement in the Acton project. From time to time there has been and will be reference to Ms. Webb. I do not propose to make any comment that might reflect adversely upon her role as a Public Servant in this project.

The Relationship between Totalcare and The Chief Ministers Department - The Question of Client Group Control

32. The Acton Peninsula demolition was a public works project. The actual work site was constituted by heavy industrial machinery. I am not prepared to adopt the proposition that a so called client group constituted by Messrs. Walker, Hopkins, Webb and others of the Chief Ministers Department and Messrs. Dawson and Wearing of the Chief Ministers office were in some form of control group.
33. The evidence does demonstrate to an unsatisfactory degree that the interest shown in the project by some of the persons referred to far exceeded what was reasonably necessary by public officials in a project where TCL and PCAPL had a wealth of experience in managing the demolition program with the requirement of reporting back to the principal in appropriate circumstances. I am not convinced the evidence supports a contention that some form of control was being exerted by these officials but the evidence does point to a preoccupation by these officials with the project which was unwarranted.
34. The volume of emails that was generated over many weeks is sufficient evidence to support this view. There is also not one single person that could be classified as being in a control situation. If Mr. Michael Hopkins was that person then it was certainly not demonstrated by the amount of interest and involvement undertaken by others over the many weeks of the project.
35. Counsel Assisting has submitted that the public event would be managed by the so called "client group" in such a way as to reflect favourably on the Government and the Chief Minister. Counsel for the Territory replies in these terms that "if what is meant by this is

that, for the reasons explained by Mr. Dawson and by Mr. Hopkins, it was desired that a government project be presented in the best light, this is a total unremarkable attitude for government officials to adopt". It is understandable, for the reasons previously expressed, for the Government to show this project in a favourable light as the hospital had played a significant role in the history of Canberra and its people as the Territory developed because it touched the

lives of so many of its families. Yet great care and vigilance needs to be exercised by the executive arm of Government, in the terms of the Separation of Powers doctrine, not to be drawn into or used as a tool in the political arena. It is a function that requires a significant sense of balance and objectivity.

36. The following examples demonstrate the relationship between TCL, CMO and CMD. I am not persuaded that these contacts represent an element of control being exercised by or a submission to the wishes of the so called client group but rather it reflects, at least on the part of Messrs. Sullivan and Lavers of TCL an attempt to be accountable and responsible as agents to the principal both as key officers of the Project Director. The evidence does support on one view not control but a degree of involvement by the government officials that maintains, in my assessment, a subtle pressure particularly on Mr. Lavers in setting and then meeting a specific deadline for the demolition so that in the long term the concept of a public event would crystallise from an idea in January 1997 to a reality by July 1997. It is a question of both perception and degree based on ones assessment of the evidence of the involvement by the government officials.
37. I now provide some examples in support of this view: -

    a. In December 1996 Mr. Walker the Chief Executive of the CMD indicated he wanted prompt action on the site. Mr. Sullivan quickly responded for the reasons which I have earlier stated in this report. A Project Manager was appointed on a single select basis with instructions to get on the site the very next day and erect a fence. Mr. Sullivan conceded that he might not have taken such a course if urgency had not been indicated. Again Mr. Sullivan provides a plausible explanation as to why the matter was dealt with in such an urgent fashion, and
    b. In January 1997 Mr. Lavers met with Mr. Dawson of the Chief Ministers Office and settled a media strategy for the demolition.

    There are subsequent indications in Mr. Lavers and Mr. Mitchell's diaries of the requirements and requests with respect to the direction of the project. Mr. Lavers was so concerned about the unrealistic expectation as to how quickly the demolition could be completed which he believed came from "John Walker and Kate Carnell" he took the trouble of raising his concerns with Mr. Dawson. This is the form of subtle pressure that I have previously referred to.

26. There were extensive contacts in this early period between Mr. Lavers of TCL, Mr. Hopkins, Mr. Dawson and Mr. Wearing of both the Chief Minister's Department and Office. The contacts made by Mr. Lavers, it seems to me, from his technical responsibility, was to obtain information about matters pertinent to the project from the other areas of government. Mr. Lavers was seeking information about the Fairbairn Park Motor Sports project. I agree with Counsel for the Territory the evidence does not support the proposition

that the contact constituted "an unusual degree of influence and an unusual degree of deference by Totalcare". The question that needs to be asked is why Mr. Trevor Kaine and his Department of Urban Services was not involved on at least the technical aspects of the project particularly as TCL was the successor in early 1997

to those functions which previously fell within the umbrella of the Department of Urban Services to which the responsible Minister was Mr. Kaine.

27. One can very well understand why Counsel Assisting the Inquest has put this submission as to the unusual degree of influence and deference when one considers the evidence given by Mrs. Carnell, the Chief Minister, on 9th September 1998 as to whether she was aware of any information coming out of the tender process into her department about the budget price or matters of that kind about the time of 10th/11th April 1997. She said: - "a couple of days earlier Gary Dawson ran past me the fact that with regard to the tender what was, I suppose, shaping up was that Sylvia Curley would be $50,000.00 more expensive for implosion. That the tower block would be cheaper for an implosion and did we have or did I have any, you know, any feel on that. I said I'm not – I do not ever become involved in tender process/projects and they had to make the appropriate decision".
28. Mrs. Carnell was then asked: -

"When was it, as best as you can remember, that that conversation took place between you and Mr. Dawson?

She replied "it was just a couple of days. I mean I would have assumed. I mean I understand it was about the 11th that it was announced. It would have been three days, four days before that".

And is the thrust of the conversation that you were advised by Mr. Dawson of the actual price differential of $50,000.00 between the two bids?

Yes.

Were you asked for your view as to whether one or the other might be accepted?

I was asked for a view. I said I wasn't willing to and nor would I even become involved in tender processes. That was a matter for the people involved".

<u>This was a very proper position for the Chief Minister to adopt</u>. The questioning of Mrs. Carnell continued.

"<u>Mr. Dawson, I suppose ought not to have been in possession of that information if the process had been kept at arms length</u>?

<u>It would have been better if that had been the case</u>.

Did he indicate from where he obtained that information?

No.

I take it you did not ask him?

No.

Did you know, at that stage, whether he had been liaising with those involved in assessing the tenders or did you not know that?

No.

You didn't know that?

No".

29. Mrs. Carnell agreed that this aspect of the tender process had not been negotiated at arms length from the government officials. There is no doubt that this particular aspect of the tender process should have been conducted in a more responsible manner in terms of its independence from the Government. There is no evidence to suggest that Mrs. Carnell was being untruthful about this segment of the process. No criticism can be made of Mrs. Carnell on this issue, yet, the management of this aspect of the process by Mr. Dawson of her staff was unsatisfactory.
30. I do not accept that it demonstrates an unusual degree of influence but rather an inappropriate involvement by the government officials. I am satisfied on the evidence that although Mr. Dawson and others had knowledge of this additional cost differential of $50,000.00 in the tender process which was totally inappropriate Mrs. Carnell did act with the utmost propriety in accordance with her stated position on these matters.
31. Parties are said to negotiate at arms length when one is not under the control or influence of the other. If the parties are not at arms length the possibility of some form of undue influence being exerted by one party on another must arise. Undue influence is any influence, pressure or domination in such circumstances that the person acting under that influence may be held not to have exercised his free and independent volition in regard to the act (see Jowitt's Dictionary of English Law).
32. Mr. Dawson said in evidence on 24th August 1998 that he believed he was acting at arms length in obtaining the information of the differential price of $50,000.00 during the tender process. Mr. Dawson said "I cant recall any other occasion - that's why I mean I saw myself at arms length from it and my recollection is that in conversations with Mr. Lavers I stressed to him that we were at arms length from it". What he stressed to Mr. Lavers and what was a matter of factual reality are two entirely different issues.
33. Mr. Dawson goes on to say "I was certainly aware of the way a tender process should run and I believe I made it clear to Mr. Lavers in discussion it was to be at arms length from our office. In other words the people doing the tender assessment had to call it the way they saw it". The evidence on this aspect is clear and unequivocal. There was an involvement by Mr. Dawson which broke the concept of an arms length arrangement, at least, Mrs. Carnell saw it in those terms. Mr. Dawson compromised the independence of the

Chief Minister in a government tender process in respect of which he had no right to be engaged let alone as her media advisor and thereby caused her to become involved, albeit indirectly.

34. It is very easy to conclude that there was this unusual degree of influence and interference particularly during the closed tender process when a close examination is made of the questioning of Mr. Gary Dawson by Mr. F. J. Purnell SC for TCL on 27th August 1998 and again by Mr. Nash of Mr. Michael Hopkins of the Chief Ministers Department on 28th August 1998. Both Mr. Dawson and Mr. Hopkins endeavour in their evidence to distance themselves from their conduct by transferring the responsibility for this information wholly to Mr. Lavers. Mr. Dawson was engaging in an intrusive media exercise to obtain information which in my view at that stage was wholly inappropriate for the Government to be appraised of when the tender process had not been formally let or the process concluded. Mr. Dawson's answers to the questions, on the issue of arms length dealings in the tenders, were less than convincing. The answers were defensive and less than forthright. Mr. Dawson either did not know what was meant by the concept of arms length or was simply being vague and evasive in my assessment. In the case of Mr. Hopkins this would seem to be a clear breach of the confidentiality aspect of the process and an intrusion by the government officials in what was solely the function of TCL and PCAPL. The cross-examination by both Mr. Purnell SC and Mr. Nash on these issues fully supports this degree of involvement. I have made greater reference to this issue in discussing the tender process elsewhere in the Report.
35. The email message number 24095 clearly indicates that as at 26th February 1997 implosion was still only an option. The subject heading is "To implode or not to implode". It is an email from Mr. Michael Hopkins to Ms. Linda Webb and Ms. Moiya Ford. The email reads "Mike S (Sullivan) advises that the tender document is not going to seek quotes for implosion for the tower. If we still want it included, we'll have to let him know ASAP".
36. Mike Sullivan of TCL was simply seeking to know as was proper as the agent for the principal what was the position concerning implosion. I do not see this as a form of influence or control but simply a matter of taking instructions on behalf of the principal.
37. It is evident when Mr. Sullivan contacted Ms. Webb from the Chief Ministers Department on 11th April 1997 to have her approval to pay an extra $50,000.00 to accept the City and Country Demolition bid for Stage (4). This would appear to be a matter of simply taking instructions on the suitability of this differential figure but the question must be asked why the approval was not being sought of DUS (Contracts). It does again indicate that the CMD was involved in an area outside their responsibility. TCL and PCAPL had reached a decision and were simply seeking clarification from Ms. Webb of the Chief Ministers Department why the lowest tender bid was not being selected for stage (4). I do not consider that it reflects control.
38. On 17th April 1997 Mr. Hopkins advised Ms. Webb that TCL had indicated to him that they would arrange any events etc if requested. The only requirement would be that CMD was to work out with the CMO exactly what is wanted and then ask them to do it as our demolition contractors. The action taken by Mr. Sullivan in telephoning Ms. Webb on 11th April 1997 was responsible in all the circumstances. There is nothing unusual in my view about that contact by Mr.

Sullivan. I am left with the impression on the evidence that the approach by TCL to Mr. Michael Hopkins on 17th April 1997 was an effort to take control of the public event rather than the need for TCL to be constantly liaising with Mr. Dawson of the Chief Ministers Office.

39. The authorisation by Mr. Hopkins on behalf of the Government to change the date of the implosion from Wednesday 9th July 1997 to Sunday 13th July 1997 resulted in an extra cost to the Territory of $8,000.00. The decision to accept this extra cost was made by Mr. Hopkins for financial reasons. It was Mr. Hopkins who had the final say about the change of date when the topic was informally canvassed at the meeting of the group on 5th June 1997. Mr. Hopkins had the final say because there were financial implications. Mr. Hopkins had a final veto along with TCL, PCAPL, CCD, Mr. Fenwick, Mr. McCracken and the AFP but as no one expressed any concern or qualification or contrary view about the change the new date went forward. Any decision to change the date rested with TCL, PCAPL, Messrs. McCracken and Fenwick. This single act of a public servant in the whole project warrants the highest disapprobation even though it might be argued that the financial factor was not a significant amount. It was totally inappropriate for this officer to exercise a function properly reserved for TCL.
40. It was suggested that the final date and the time of implosion needed to be adjusted to meet the personal convenience of the Chief Minister. It was argued this reflected some form of control. The truth of the matter is that the changing of the date was wholly inconvenient to the Chief Minister as she had planned to be absent from Canberra on a holiday on Sunday 13th July 1997 and which she had been planning for quite some time. Mrs. Carnell was going

    to the Southern Highlands for a few days. Mrs. Carnell was not consulted about the change of date until after the decision had been made to move the date. She was expected to fit into the revised programme. Any suggestion that this was a Kate Carnell stunt or staged event for her convenience as some form of political grandstanding is not supported on the evidence. There are other reasons why the date was changed which are considered elsewhere in the Report.

41. The evidence satisfies me that Mrs. Carnell had no influence on the change of date. The reality is the date was changed and Mrs. Carnell was expected to then change her own arrangements to meet the new schedule despite the inconvenience to her personal life. When the date was changed the evidence does suggest some influence was being exerted on TCL, PCAPL and the two contractors by government officers so that the public event could be achieved.
42. There was an interest and intrusion by the government officials in what in essence was a commercial industrial building project. It was not control, direction or power. TCL was properly entitled to take advice, guidance and instructions from the CMD/CMO before making any further plans on the project in relation to the media event but this did not warrant the subsequent involvement of the CMD/CMO to the degree that did occur in relation to the actual demolition.

    <u>The So Called Exclusion of the Responsible Minister – Mr. Trevor Kaine MLA Minister for Urban Services</u>

43. The so-called exclusion of the responsible Minister, Mr. T. Kaine, MLA as the Minister for Urban Affairs was an issue of unnecessary proportions during the Inquest. A number of parties agitated for his presence to give evidence. It was only peripheral and subsidiary to the more central substantive issue to be decided by the Inquest. If Mr. Kaine had no involvement, as seems on the facts to be the case and which is not disputed, what more can possibly be said about the matter. It is really a matter for the Government of the day as to how the respective ministerial portfolios are to operate in practical terms.
44. Some comments have previously been made by me in this Public Event segment of the Report concerning the significance of the National Museum of Australia development on the Acton Peninsula to both the Commonwealth and the Territory. It was a high profile construction warranting the involvement of the respective Heads of Government. It was entirely appropriate for the Chief Minister, Mrs. Kate Carnell MLA to be identified with the Prime Minister Mr. J. Howard in relation to this project. There was nothing improper in the Chief Minister fulfilling this role. In fact the role of Mrs. Carnell in obviously deciding to adopt this prominent position would not be uncommon in Territory politics and government arrangements.
45. Mr. Kaine became the Minister for Urban Services in the Fourth Carnell Ministry on Monday, 3rd February 1997 by a special Gazette notice of that day. The responsibility for Totalcare (TCL) fell within the portfolio of the Minister. Mr. Rod Woolley was retained as his Chief of Staff and Principal Adviser. It is an inescapable fact that as the weeks and months progressed towards the demolition dates Mr. Kaine received no briefings on the Acton demolition not even on the technical aspects of the project. There is no evidence to suggest otherwise. It was certainly curious. There is no evidence, without having Mr. Kaine called as a witness, to show that he took any positive steps on his part to become engaged in the project. The only evidence comes from Messrs. Woolley, Wearing and Dawson. That evidence is either disputed or denied or unsafe to be relied upon. I shall briefly summarise some examples but the issue is not one that is remotely a factor contributing to the death of Ms. Bender or necessarily directly connected with it (see Sections 56(1)(d) and (4) of the *Coroners Act.*
46. The evidence given by Mr. Woolley needs to be approached with great caution as does the contrary versions proffered by Messrs. Dawson and Wearing. The divergent views held by these three men of the political process is interesting but is largely, on reflection of their evidence, irrelevant to my statutory function as the Coroner. There are clear factual disputes between Mr. Woolley on the one hand and Mr. Dawson and Mr. Wearing on the other. I do not consider that it is necessary to resolve these factual disputes in favour of any particular individual. I am not prepared, therefore, to make any finding on the issue of this so - called exclusion of Mr. Kaine. It is necessary however to give a summary of their differing contentions. It is also my view in the interests of procedural fairness, that no resolution of those factual issues is necessary having regard to my earlier remarks. Mr. Woolley appeared unrepresented by legal counsel at the Inquest.
47. In early March 1997 Mr. Woolley approached Mr. Wearing (Mrs. Carnell's Chief of Staff) and enquired why Mr. Kaine appeared to be excluded from any involvement in the Acton project. Mr. Wearing is reported to have replied that "its best that you keep your nose out of this, its none of your business" .

48. In late June 1997 Mr. Woolley learnt that there were delays and problems on the Acton project site and made further enquiries about these issues with Messrs. Dawson and Wearing. Mr. Dawson provided Mr. Woolley with a similar response that Mr. Wearing had earlier given Mr. Woolley in March 1997. It seems Mr. Woolley was not satisfied about this response and again spoke to Mr. Wearing to the effect that he was unhappy about the way the project was developing, that there was potential for government embarrassment and that he did not want Mr. Kaine to be the scapegoat. Mr. Wearing is alleged to have replied "that it was Kate's project you really don't have to bother your head about this".
49. Mr. Woolley's notebook had been admitted in evidence and contains an entry on 27th June 1997 to the effect that there were "Acton implosion problems". It will be remembered that at about this time the Health Services Union of Australia had raised concerns with WorkCover about the safety of the patients at the Hospice and that WorkCover apparently was responding to these concerns.
50. Mr. Woolley said that in his assessment he got on quite well with both Messrs. Wearing and Dawson and had no reason to be untruthful in his evidence about these conversations. It must be observed that the evidence of Mr. Wearing was adduced at short notice. I accept the description given to his evidence by Mr. Johnson SC for the Territory when he says that "Mr. Wearing was propelled into the Inquest as a witness at short notice". One of the curious aspects of Mr. Woolley's evidence is that apparently at no time did he advise his Minister to go to Cabinet on the issue or to put anything in writing to the Chief Minister concerning the matter despite the fact that by late June 1997 he was alarmed at the problems at the Acton demolition project and in fact he agreed that he informed his Minister to keep away from the project despite agreeing that his Minister's interests were a paramount concern to him. Mr. Woolley further agreed that there would be no better form of protection for his Minister than having that concern expressed in writing yet this was not done.
51. It has been previously stated that neither Mr. Woolley nor in particular Mr. Kaine were never actually involved in or briefed about the Acton project other than a short briefing by Ms. Moiya Ford on 7th July 1997. There is no other evidence to suggest that Mr. Kaine endeavoured to engage himself in the project. On 17th August 1998 Counsel Assisting the Inquest stated to the court "and nor were any documents subsequently produced" to suggest that Mr. Kaine was involved in the project. Mr. Kaine stated in his interview with the Police that "no departmental officer felt it necessary to brief me or inform me on what was going on. I took that to be a reflection of the fact that the managerial responsibility had been assumed within the Chief Ministers organisation". Mr. Kaine further stated that neither the media nor the Chief Minister contacted him after the tragedy a step that would have no doubt been taken if he was in any practical sense the minister responsible.
52. There is no evidence to support any contention that Mr. Kaine should be considered the "scapegoat" as a consequence of the tragedy. Any such suggestion is rejected as it is a proposition made without any proper substance or foundation.
53. Yet if Mr. Woolley's concern was as alarming as he would have one believe his inaction and failure to advise his Minister to take appropriate steps to

intervene or at least obtain a briefing is inexplicable. Neither Mr. Dawson nor Mr. Wearing in my assessment were satisfactory witnesses in the sense that one could comfortably rely upon their evidence with any confidence. Mr. Wearing was Mrs. Carnell's Chief of Staff. Although I have previously referred to this fact he did decline to accept in the face of admissions made by Counsel for the Territory and TCL in addition to the very persuasive evidence adduced in the Inquest that in fact the Chief Ministers Department was the client for the purposes of the Acton project. It is my view that as the Chief Advisor to the Chief Minister it was of paramount importance that he should understand the status of the particular groups engaged in the Acton demolition.

54. Mr. Dawson was interviewed by the Australian Federal Police on 14th August 1998 and did not recall the conversation as alleged by Mr. Woolley but in giving his evidence he did not deny having had such a conversation although he did not recall and did not believe that such a conversation took place. Mr. Dawson's legal representative never made any suggestion to Mr. Woolley that this conversation did not take place.
55. Mr. Dawson said for the first time that he did have a conversation with Mr. Woolley about the role of Mr. Trevor Kaine and that the conversation had taken place between the 8th and 10th April 1997 in the Legislative Assembly whilst the Assembly was sitting. The substance of the conversation Mr. Dawson recalled was that Mr. Woolley indicated that Mr. Kaine was the one who did not have any involvement in the Acton project.
56. Mr. Dawson had been interviewed by the police about the Woolley allegations on 15th August 1998 but made no mention to the police about the alleged Assembly conversation although it would have directly answered the allegations made earlier by Mr. Woolley and put to him by the police. Mr. Dawson said he recalled the substance of the conversation by the afternoon of Monday, 17th August 1998 and that was before Mr. Woolley was cross - examined by Mr. Dawson's Counsel, Mr. Livingston on 18th August 1998. The conversation was only raised by Mr. Dawson after he had been interviewed by the police and had denied the conversation with Mr. Woolley but after he had read the transcript of Mr. Woolley's evidence. I have grave reservations about whether there was any conversation in the Assembly as alleged by Mr. Dawson in April 1997 particularly in view of the fact that his initial concession to the police was that he did not recall the conversation alleged by Mr. Woolley.
57. Mr. Dawson's evidence was given without the benefit of any note, diary or any other record of this or any other conversation about which he gave evidence other than what he described as a "hanging file" which was produced to the court but which contained no documents of significance. The reader is entitled to draw their own conclusions about the reliability of Mr. Dawson's evidence and his recollection generally. It should be noted

    that the alleged Assembly conversation in April 1997 was never put to Mr. Woolley in the terms of the rule in Browne v Dunn (1894) The Reports page 67 and Allied Pastoral Holdings Pty Ltd v The Commissioner of Taxation (1983) 1 N.S.W.L.R.1.

58. It should in fairness be stated that Mr. Dawson was first interviewed by the police without notice on 15th August 1998. His recollection may have been impaired. It must be conceded that he had little time to refresh his memory or draw upon his recollection about the matters raised. I am quite satisfied a conversation did take place but where and when and the true nature of its contents I am unable to make any finding.
59. The evidence suggests that Mr. Kaine had no briefing on the demolition project between January and July 1997 or at least Mr. Woolley would have the Inquest accept that this was, in fact, the real position. The evidence is to the contrary that Mr. Kaine in those final days prior to the implosion did have one briefing and received a submission from CCAA. I am prepared to accept that Mr. Kaine did not personally seek any briefing from or challenge the Chief Minister as to what her role was in the demolition process.
60. Ms. Ford, however, gave evidence in the following terms on 5th August 1998 that in the early days of July 1997 Mr. Kaine did have some knowledge of what was occurring on the project. A note appears in Ms. Ford's notebook relating to 7th July 1997. An entry appears in the following terms: -

    "Minister for IR

    CMD – check Hospice/implosion".

    Ms. Ford said she was at a meeting with Mr. Kaine and an unnamed person from the CMD was telling the Minister about the demolition project. Mr. Woolley was also present at the meeting. Mr. Woolley made a note, consistent with his recollection, indicating that the information concerning the "check Hospice/implosion" was from Ms. Ford to Mr. Kaine rather from anybody else.

    Mr. Woolley said Departmental Heads would individually brief the Minister each Monday morning on "hot issues" of the week. Ms. Ford was the acting Departmental Head briefing the Minister on the Hospice informing him that the department was attending to the matter.

61. I have previously made mention of the letter written by Mr. Kershaw of CCAA to Mr. Trevor Kaine on 11th July 1997. Mr. Kaine's reply reads: -

    "Thank you for your letter of 11th July 1997 regarding public interest and the demolition at Acton Peninsula. Your letter is receiving attention and I will respond to your concerns as quickly as possible.

    Yours sincerely

    Trevor T. Kaine

    MLA"

    Certainly CCAA considered that Mr. Kaine was the responsible Minister. CCAA were virtually imploring him on the Friday, on the basis of public interest and quality assurance, to halt the demolition. Mr. Kaine did not deny

he was the responsible Minister. All he does is simply indicate that he will reply to Mr. Kershaw's letter. Yet the signing of the letter on 11th July 1997 in reply to the submission made by CCAA does not suggest he was keeping away from the project. It was a reasonable inference to be drawn from the letter that Mr. Kaine was the responsible Minister to consider the requests of CCAA. CCAA received Mr. Kaine's reply in the week after the tragedy.

62. The following questions must be asked: -

a. Why was Mr. Kaine being briefed by the CMD at such a late stage, on an issue which his political adviser, Mr. Woolley claims that his Minister was being actively excluded,
b. Why did the briefing come from the CMD, in particular Ms. Ford, at such a late stage, when the briefing could have been made by TCL to their own Minister, and
c. Even at this point of the project why did Mr. Kaine remain inactive if there were issues which were exciting the concerns of either himself or his political adviser, Mr. Woolley.

The role of Ms. Ford is examined in the next phase of this Report.

26. There is no doubt that the absence of Mr. Kaine from the project was an extraordinary occurrence. The truth of the matter is that he took no particular role in the management of the project. I am not prepared without hearing evidence from Mr. Kaine to conclude that he was actively excluded. Mrs. Carnell, Mr. Wearing and Mr. Walker asserted that the project in fact was a responsibility of Mr. Kaine. For the reasons previously stated these persons are mistaken on this issue. At all material times it was a CMD project. Mrs. Kate Carnell was the Minister accepting responsibility at Territory level for the project as the Chief Minister.

There is no direct evidence to conclude that Mr. Kaine was actively excluded from any involvement in the project. Why he did not become involved remains unanswered? I am not prepared to make a finding in either positive or negative terms on the exclusion issue.

<u>Concerns of the Health Services Union of Australia (HSUA)</u>

27. On 30th June 1997 Mr. A. C. Tolley the Secretary of the Health Services

Union of Australia wrote to the Chief Minister in the following terms: -

"Dear Mrs. Carnell,

I am writing in relation to your Governments stated plans on the implosion of the Royal Canberra Hospital and Sylvia Curley House and your limited options to protect ACT Hospice staff and patients. Calvary Hospital have

advised the HSUA that they have been advised that the industry standards over the use of explosives will be adhered to and combined with covering the Hospice with tarpaulins and covering the air ventilation's will provide enough security for staff and patients. This begs the question as to which industry standards will be adhered to that make it safe to have staff and patients less than 70 metres from the explosion?

You have rushed into the demolition without proper consideration of all the issues, and in particular, the safety of the workers and patients. It appears no risk assessment has been carried out on the possible dangers to those who would be inside the Hospice, yet your government declares it is safe.

The HSUA demands that the implosion be delayed until a full risk assessment is carried out and the patients and staff are either transferred for the day or other adequate safety measures are taken.

Clearly it is ridiculous to secure the building, cover it with tarpaulins and close the air ventilation leaving the staff and patients inside when two tower blocks are being demolished with dynamite less than seventy metres away.

You are once again proving your Government has little regard for Occupational Health and Safety issues in the workplace.

The HSUA seeks your urgent response by close of business Wednesday, 2nd July 1997.

Yours sincerely

A. C. (Bert) Tolley"

26. The Chief Minister replied to Mr. A. C. Tolley in the following terms on 1st July 1997: -

"I refer to your letter of 30th June 1997 concerning the impending implosion of Sylvia Curley House and the Tower building of the former Royal Canberra Hospital.

The ACT Government, through its agent Totalcare Industries Ltd, has undertaken a number of detailed studies regarding the demolition of the buildings on Acton Peninsula, assessing all aspects of the demolition including potential risk to patients and staff at the ACT Hospice. It is simply not accurate to suggest that the Government has "rushed" into the demolition.

The major report, prepared by Richard Glenn and Associates for the Government in February 1996, indicated that the distance between the Hospice and Sylvia Curley House and the Tower building did not pose a threat in the event that implosion was the preferred method of demolition and that a distance of 50 metres was acceptable. Indeed, I am advised that when St Vincents Hospital Convent in Melbourne was demolished by implosion, a major building only 15 metres away was occupied at the time of the implosion, and that within a zone of less than 50 metres, Hospital patients were present without any protection.

Throughout both the planning and implementation phase of the demolition, risks to Hospice staff and patients have been constantly assessed. Indeed, it was as a result of this work, and the Governments wish to protect the safety and amenity of the Hospice, that implosion was chosen as the preferred method of demolition. This has included an assessment of potential hazard from noise, dust and shock.

A major reason for choosing implosion over a conventional demolition is to minimise the disruption to the Hospice. While implosion will result in approximately thirty seconds of noise followed by a dust cloud, mechanical demolition will require at least an additional six weeks of exposure to both unnecessary noise and dust. The use of implosion, however, was contingent on there being no threat to the Hospice. If there was any danger to Hospice patients or staff, the Government would have ruled implosion out. The tarpaulins used to cover the Hospice are not required to protect the buildings. Indeed, given the distance is 78 metres to the nearest point of the Hospice, the Government technical consultants have indicated that no formal measures need to be taken to protect the Hospice building. Despite this, the Government is using tarpaulins to reduce the amount of dust effecting the Hospice to minimise cleaning and disruption to (the) amenity. The sealing of windows is being used to minimise dust penetration as a matter of convenience to staff and patients.

In short, the Government has had an ongoing process of risk assessment in place, and it was as a result of this assessment by the Governments expert advisers that implosion was chosen as the method of demolition. The demolition of these buildings by implosion will cause some disruption to the Hospice with the volume of noise, albeit brief and the level of dust. The alternative was to have unnecessary levels of noise and dust for an additional 6 weeks.

Any reasonable person would, I am sure, agree that the Government has had paramount regard for Occupational Health and Safety issues in its approach it is taking in relation to this matter. HSUA’s is rather belated interest suggests an opportunistic approach on its part, in stark contrast to the work which the Government has been undertaking since February 1996 to ensure full consideration of all factors.

I understand that officers of WorkCover will be examining the site and meeting with officers of Calvary Hospital and Totalcare Industries Ltd on Wednesday, 2nd July 1997.

I hope this has answered your concerns.

Yours sincerely

Kate Carnell

MLA"

This letter was received into evidence as Exhibit 173.

27. The HSUA letter dated 30th June 1997 and the reply by the Chief Minister are relevant factors to the safety issues in the running of a public event. The HSUA letter raised legitimate genuine matters of safety concerns. The concerns related to the industry standards being applied to the project as it appeared to the Union that no risk assessment had been conducted concerning possible dangers to those inside the Hospice. There is no doubt the letter carried political overtones because the evidence reveals that even before the letter had been delivered a HSUA representative was disclosing its contents in a radio interview. The HSUA was demanding that the implosion be delayed until a full risk assessment had been carried out. It was also appropriate and reasonable for the Government to give a prompt response to the letter. The letter was referred to Mr. Warwick Lavers of TCL. This course of action was entirely appropriate as TCL was the Project Director and had the technical expertise or at least was in a position to acquire such expertise. If the administrators had not referred the letter to TCL at all then valid criticism could have been made about this issue. The referral of the letter to TCL for technical advice was entirely reasonable and appropriate.
28. Mrs. Carnell to her credit said in evidence that as she had signed the reply to the HSUA letter she would accept and bear the ultimate responsibility for its contents but she further stated that she had relied upon the competence of those who had provided the advice. Mrs. Carnell said she took the contents of the letter to be accurate because it was cleared by Mr. Walker, yet when she signed this letter she knew there was no expertise in implosion either within her own office, her department, WorkCover, TCL or PCAPL. Mrs. Carnell in an open and frank manner said that she was never advised at any time that there was no independent expert with experience in implosion on any part of the project from the pre tender stage through to the day of the failed implosion.

    Q: "And you knew I suppose just from your knowledge of the ACT in recent years that Totalcare had no experience in implosions prior to this particular example?

    A: That’s true.

Q: Because there had been none and I suppose the same applies to Project Co – ordination because there had been no implosion in Canberra at least and of course your department had had no prior experience in implosion and ACT WorkCover for the same reason you would have known had no experience in implosion, correct?

A: That's right".

29. The advice received by the Chief Minister was provided to her orally. The HSUA letter focussed on safety concerns for patients and staff in the Hospice. The Chief Minister was not advised of any potential risk to spectators on the lake or its foreshore. The regrettable aspect of the Chief Ministers reply to Mr. Tolley was that the advice that she had received did not emanate from anyone who possessed any expertise in implosions or explosives. The reply of 1st July 1997 was drafted, amended and settled in final form for Mrs. Carnell's signature within six hours of its origninal receipt. The Chief Minister and the senior officers of her department in my view were entitled to rely upon the information provided to them by Mr. Lavers of TCL. The HSUA letter was a serious written enquiry made by the Union even though it appeared to have political overtones. It was a letter written not only in the interests of the patients at the Hospice but also the staff some of whom were no doubt union members.

30. The manner in which the response was prepared for Mrs. Carnell's signature occurred in this fashion: -

    a. There were a series of emails which demonstrated the urgency in providing a prompt reply dismissing the concerns raised by the union,
    b. Mr. Hopkins who was asked to draft a reply stated that the speed at which the reply was drafted and finally prepared for Mrs. Carnell's signature was unusual. Mr. Hopkins agreed that WorkCover may have been asked to draft a reply rather than him,
    c. The draft reply was discussed by Mr. Hopkins with Mr. Lavers who had already had a copy forwarded to him from Mr. Latimer of the Chief Ministers Office. Mr. Hopkins made notes during his conversation with Mr. Lavers who provided technical input to Mr. Hopkins. This information was then incorporated into Mr. Hopkins draft reply.

26. The next significant step is that the draft was delivered to Mr. Walker who made some alterations and added what Mrs. Carnell agreed was the political content to the final document. Mr. Walker made no checks himself about the accuracy of the information in the letter regarding

ongoing risk assessments and such like matter. Mr. Walker assumed, probably correctly, that TCL had the input into the draft by virtue of Mr. Hopkins conversation with Mr. Lavers. Mr. Walker's attitude to the HSUA letter was that he regarded it as a "political stunt". The letter in settled final form went to Mrs. Carnell who simply signed the letter without any further consultation with any other member of her department. It seems to me that it was reasonable for Mrs. Carnell to sign the letter containing so many assurances of Government assessments and ongoing safety checks because she was entitled to rely upon the integrity of the advice being provided by her department. Mrs. Carnell had no independent evidence or material that would support the claims made in the letter. Mrs. Carnell assumed the letter was accurate. The assumption was based on the advice of people whom she knew had no relevant experience in explosives or implosions and the fact that the letter had also been cleared by Mr. Walker. Mr. Walker's only real input was to add the political flavour to counter what he perceived to be a political stunt in the first place. Again Mr. Walker assumed that TCL had been involved in the drafting. Mr. Hopkins in fact involved TCL only through Mr. Lavers in the drafting process. There is no evidence that Mr. Lavers made any attempt to seek input from anybody on the site particularly the actual contractors doing the job before speaking to Mr. Hopkins.

27. The various claims made in the letter to the Union were either inaccurate or misleading or false. The only studies ever made were the RGA reports of July 1995 and February 1996 at a time when TCL was a part of the Department of Urban Services. The reports were merely feasibility studies that recommended more detailed examination of issues to be undertaken at a later stage. There is no evidence that TCL undertook any independent studies regarding the demolition to assess what the risks were nor were any such studies undertaken by PCAPL.
28. The risk assessment had not even been completed by 30th June 1997. The risk assessment, when completed, could not be described as a study in all aspects of the demolition process. The assertions made in the correspondence about the "risk to the Hospice staff and patients being constantly assessed" and "the Government having an ongoing process of risk assessment" were inaccurate and misleading.
29. It was quite proper for Mrs. Carnell, Mr. Walker, and Mr. Hopkins to consult with and rely upon Mr. Lavers of TCL. It was necessary and appropriate to seek his advice. On the basis of the advice provided by Mr. Lavers there were reasonable grounds for framing the letter of reply. I am quite confident that if any expression had been made of safety concerns particularly by those involved in the technical side of the project then ordinary commonsense would have dictated not only to the Government and her department but more particularly to those actually engaged on the demolition site that the implosion ought not to proceed and should be delayed until those considerations had been adequately addressed.
30. A golden opportunity was presented not only to the Chief Minister but also the Chief Ministers Department, through their agent TCL, the Project Director, upon receipt of the letter from HSUA, to engage in a full consultative process with the relevant experienced personnel engaged on the project. The opportunity was lost as advice was received from Mr. Lavers. The critical

difficulty again was the absence of advice from a structural engineer and a demolition explosives expert as required by the *ACT Demolition Code of Practice*. If these two independent experts had been available to Mr. Lavers, the CMD and the Government to provide such substantive advice then the tragedy may well have been averted.

The Role of Ms. Moiya Ford and WorkCover in Relation to the Demolition Site

31. Jocelyn Plovits was the manager of WorkCover in July 1997. She reported directly to the Chief Executive of the Department of Business, Arts, Sports and Tourism (BASAT). Ms. Moiya Ford was acting Chief Executive of BASAT whilst Ms. Annabelle Pegrum was overseas. Ms. Ford commenced her acting duties in BASAT on 17th June 1997. She was a senior officer within the Chief Ministers Department prior to that appointment and in that capacity had direct access to the Chief Minister if necessary. She had been closely involved with the demolition project from an early stage and was until her departure Mr. Michael Hopkins supervisor. Ms. Ford in turn reported to Ms. Linda Webb. It should be noted that even after she left the Chief Ministers Department she was in a position to obtain a place on the roof of the Maternity building to view the implosion. There is other evidence which demonstrates her continuing close involvement with the project.
32. It is necessary to go back some three months prior to the implosion to April 1997 to obtain a proper appreciation of Ms. Ford's involvement. Ms. Ford was the contact officer for the possible parliamentary question and answer for use by the Chief Minister. The PPQ was drafted by her subordinate Mr. Michael Hopkins on 8th April 1997 upon information obtained from Mr. Lavers. The PPQ was created prior to the letting of any tenders yet contained the statement that "it appears that the demolition at Acton will come in substantially under budget, due to the way in which the project is being managed". Mr. Hopkins conceded that the information from Mr. Lavers may have related to the "dollar values" of the bids in which case that information should not have been conveyed to him. Mr. Dawson even agreed that to pass on such information before the tender process was complete would be unusual.
33. Ms. Plovits contends that on 7th July 1997 Ms. Ford approached her after a meeting and directed her "at the high end of her vehemence" to "get the inspectors off the site" adding words to the effect that "John (Walker) is pretty angry and its your job". This direction from her acting departmental head required Ms. Plovits as the manager of WorkCover, to take action to ensure that the inspectors were removed from the site. Ms. Plovits stated that she took Ms. Ford's direction very seriously and felt under pressure by it particularly as it contained reference to the Chief Executive of the Department, Mr. John Walker.
34. The WorkCover inspectors were not subject to direction in relation to the way they exercise their statutory powers but Ms. Plovits reframed the direction into something she could act upon. Dr. Greg Ash, the Registrar of WorkCover, was immediately spoken to and asked to check "that the inspector's processes were okay". On the same day the 7th July 1997 by coincidence Mr. Kevin Purse had received the Appendix "K" response and in the light of its contents had decided not to issue any stop work notices. This coincidence of

events permitted Ms. Plovits to immediately assure Ms. Ford that the inspectors would not be a problem without having to act on Ms. Ford's direction.

35. Ms. Ford strongly denied she had given such a direction to Ms. Plovits. She conceded she had spoken to Ms. Plovits about what the inspectors were doing on the site and that the conversation may have occurred on the 7th July 1997. Ms. Ford agreed that if such a direction had been given by her it could only have amounted to an attempt, using Mr. Walker's name, to interfere with the statutory exercise of the WorkCovers inspector's powers.
36. There is independent corroborative evidence which lends credence to Ms. Plovits version of events actually occurring. The Plovits/Ford issue occupied some considerable time during the Inquest and unlike the issue concerning Mr. Woolley and Messrs. Dawson and Wearing this issue did have some significance in the terms of the issue of public safety upon which I am in a position to make comment pursuant to the Coroner's Legislation.
37. On Thursday 10th July 1997 subsequent to the conversation on the Monday between Ford and Plovits, Ms. Plovits attended a meeting with Ms. Pegrum, Ms. Ford and some other officers. At the meeting Ms. Ford mentioned John Walker's name in the context of derogatory remarks about WorkCover inspectors only causing delays on the project site to get free tickets to the implosion. Ms. Plovits said that she became particularly annoyed with those remarks whilst Ms. Ford totally denied making any such comment.
38. Ms. Pegrum gave evidence corroborating Ms. Plovits on this issue. She said that Ms. Ford did infact make the comments (including the reference to John Walker) and that the comments seem to make Ms. Plovits "very anxious and upset". This surprised Ms. Pegrum as she thought they had been said almost jokingly. Ms. Pegrum further said that after the meeting of the 10th July 1997 Ms. Plovits approached her and spoke of "difficult exchanges" between herself and Ms. Ford in relation to the role of the WorkCover inspectors indicating "that there had been some tension in discussions about what the WorkCover inspectors had thought would be necessary to do in relation to safety for the implosion around the Hospice". The evidence not only contradicts Ms. Ford's denials about the events of 10th July 1997 but is consistent with the evidence given by Ms. Plovits. The reactions described by Ms. Pegrum are consistent with Ms. Plovits version of what occurred on the 7th July 1997. The complaint

    of "difficult exchanges" only three days later is only consistent with Ms. Plovits version of events.

39. There is no doubt on the evidence that in those early days of July 1997 the WorkCover inspectors especially Mr. Purse were creating some serious management and safety issues for all those involved on the Acton site and at the Hospice. Reference should be made to the segment on the Role of the Regulatory Agencies for a further understanding of these issues.
40. Ms. Pegrum was an impressive witness whose recollection could be relied upon. Her demeanour in Court was such that one felt confident in accepting her independent version of events. I have no reason to doubt the integrity of the evidence given by this witness. She genuinely endeavoured to assist the Inquest on this narrow issue.

41. There is no reason for me to call into question the integrity of the evidence given by Ms. Plovits in relation to the circumstances with Ms. Ford in early July 1997. It is supported by Ms. Pegrum.
42. The only area of evidence given by Ms. Ford that may be safely relied upon concerns her briefing of Mr. Kaine. I do accept that she briefed Mr. Kaine whilst the acting Departmental Head of the Chief Ministers Department.
43. Generally Ms. Ford's evidence was defensive, evasive and less than open with the Inquest. It is not as if as a senior public servant she would have been nervous in this situation but one is left with the impression conveyed by her demeanour in the witness box of a person reluctant to divulge her knowledge on some misguided belief that she was protecting a particular interest either of the public service or government. I could not detect any improper motive in the allegations raised by Ms. Plovits and infact none were suggested by any Counsel at the Inquest.
44. The allegations made by Ms. Plovits did not surface until the 28th July 1998. Her previous statements were not inconsistent with her ultimate evidence. I agree with Counsel Assisting the Inquest that she was careful in the way she answered earlier police questioning yet there was still a hint that there had been contact with Ms. Ford. Her first Record of Interview with the police she returned with a letter on 13th October 1997 indicating that she had not fully answered question 278 that related to whether any pressure had been applied to her or her inspectors. She stated she should have mentioned the fact that Ms. Ford had contacted her on 7th July 1997 raising questions about what the inspectors were doing in relation to Hospice. Her initial reluctance to outline the allegations she ultimately made was not surprising given that they concern improper approaches by her acting Departmental Head.
45. I have previously mentioned that Ms. Pegrum corroborates Ms. Plovits version of events. There is further corroboration in that Mrs. Margaret Kennedy a WorkCover inspector on the evening of the tragedy 13th July 1997 noted that Ms. Plovits said words to the effect that "she had a phone call from Moiya Ford last week asking her to stop WorkCover inspectors from interfering at the Hospice". Mr. Purse confirmed that he also became aware of this comment either directly or via Mrs. Kennedy very soon after it was made. Mrs. Kennedy's note is consistent with the allegations subsequently made by Ms. Plovits.
46. Ms. Ford's credit was severely impugned in relation to the meeting of 7th July 1997. It will be recalled that it is alleged that a direction was given to Ms. Plovits by Ms. Ford at a meeting on that date attended by herself, Mr. Rayner, Mr. Smeal. In her second interview with police Ms. Ford stated she could not recall meeting with those people on that day and it was not in her appointments diary. Ms. Ford at the request of the police sent her personal diary notes which contained reference to a meeting only with Raynor and Smeal on 7th July 1997. There was no mention of Ms. Plovits in those notes.
47. In the appointment diary of Ms. Pegrum in whose position Ms. Ford was then acting at the time there is a reference to the meeting of 7th July 1997 with Mr. Rayner and Ms. Plovits. Although aware of the contents of that diary within 2 days of telling the police that she could not recall the presence of Ms. Plovits at that meeting she made no effort to fax to the police that further diary entry which showed that her recollection was in error. One wonders whether this

failure was more than oversight to use the words of Counsel Assisting the Inquest.

48. I shall refer further to the evidence of Mr. John Walker shortly in this segment on the public event issue.
49. It is not a matter of mere coincidence or surprise that this issue concerning the role of the WorkCover inspectors on the site emerged at the same time that the HSUA letter had been written by Mr. Tolley to Mrs. Carnell. I have previously discussed the circumstances of this letter.
50. On 2nd July 1997 a meeting was conducted with WorkCover on the site concerning the issues raised by the HSUA. It would appear the Chief Ministers Department was being kept closely informed of those developments by Mr. Lavers which was quite proper in my view. Mr. Purse was at a point of issuing the prohibition notice that would have stopped any further demolition and thereby delayed the implosion. Mr. Purse was asked to hold off intervening with the prohibition notice until the Appendix K response was prepared. The response was due on Friday 4th July 1997. There was a real possibility that the prohibition notice could have been issued if Mr. Purse was unhappy with the Appendix K response but more importantly Ms. Ford was in a position to exercise some influence over WorkCover thereby interfering with their statutory responsibility.
51. There certainly was a conversation between Ms. Ford and Ms. Plovits concerning the activities of the WorkCover inspectors on the site. Both women considered the conversation may have occurred on 7th July 1997. The question of whether a direction was ever issued by Ms. Ford remains unresolved but the evidence of Ms. Plovits is to be preferred on this issue. Any such direction would have been improper as it had the potential to impact on safety at the Acton Peninsula operations. Ms. Ford's action in seeking the removal of the inspectors failed but should it have succeeded there would have then been a direct causal link to the death of Katie Bender in so far as safety checks would not have been undertaken.

    Nonetheless this conduct reflects an intrusion, interference and involvement by CMD individuals that was unwarranted. I do not accept the concept of control as is suggested by Counsel Assisting but it was an intermeddling to a significant degree that was wholly unnecessary as it impacted on public safety issues.

    <u>The Evidence of Mr. John Walker AM</u>

52. Mr. John Walker AM was represented by Mr. Steven Rushton of Counsel instructed by Clayton Utz Solicitors of Canberra. Mr. Walker was the Chief Executive Officer of the Chief Ministers Department in July 1997. There is a significant question of procedural fairness to be recognised when it comes to a consideration of the evidence given by Mr. Walker. The area of evidence given by Mr. Walker was in a narrow compass. It does not warrant lengthy comment.
53. On 6th August 1998 the solicitors acting for Mr. Walker received a letter from the office of the Director of Public Prosecutions stating inter alia : -

"After discussion with the Coroner and other parties represented at the Inquest it has been agreed that Mr. Walker will only be asked questions relating to the so called "Plovits/Ford" conversation and circumstances surrounding that. In practical terms, Mr. Walker will be asked questions about things he may have said, learnt, or passed on to other persons concerning the implosion between the dates 30th June 1997 and 13th July 1997.

At this stage I cannot say whether this will be the only time Mr. Walker will be required to give evidence at the Inquest".

153. Those specific issues and surrounding circumstances encompass the following three areas: -

a. The Plovits/Ford conversation,
b. The response by the Chief Minister to the HSUA letter of concern as to the welfare of the patients and staff at the Hospice, and
c. Whether Mr. Walker directly or indirectly brought any pressure or any influence to bear on the WorkCover inspectors.

These three issues all fall within time frame referred to in the DPP correspondence so as to be relevant to the evidence of Mr. Walker.

154. There is no doubt that "a return role" was envisaged by me at a future time in the Inquest for Mr. Walker in at least four other areas namely: -

a. The meetings of 11th and 13th December 1996,
b. Landswap to Tender,
c. Implosion as the preferred method of demolition, and
d. What role if any did Mr. Walker play in the concept of a public event.

Mr. Walker gave evidence on 10th August 1998 for most of the day and was not recalled to give any further evidence on these other matters. It would therefore be unfair to make any comment, adverse or otherwise, against Mr. Walker in respect of these later four circumstances as he was not present to give evidence or be questioned by Counsel about those issues. Therefore there is only a limited scope for considering the evidence delivered in the Inquest by Mr. Walker. Mr. Walker in the context of (c) above did say that the timing of the implosion was not a matter of high priority to him.

155. The involvement of Mr. Walker in the Coronial process was less than satisfactory or helpful to the fact-finding function of the Coroner. There were a number of unresolved issues and based on the Briginshaw principle of proof it

would be unreliable to make any finding of fact on those matters or make further comment.

156. There is no evidence that Mr. Walker ever instructed Ms. Ford to use his name to have WorkCover inspectors removed from the site. Mr. Walker himself denied that he had ever made such a suggestion to Ms. Ford to have WorkCover inspectors removed in his name. Mr. Walker was unable to recall whether he had ever spoken to Ms. Ford in these terms and further denied that it was even possible that he had such a conversation.

Mr. Walker explained in his evidence that he did not recall any discussion with Ms. Ford prior to or on 7th July 1997 relating to removing the WorkCover inspectors from the Acton peninsula site. Mr. Walker continued at paragraph 234 – 235 of the 10th August 1998: -

> A. "Did you say or imply to anyone that including Ms. Ford that you were not happy with WorkCover inspectors being involved on that site in late June or early July?
>
> A. No I can't recall saying that to anyone.
>
> A. Again you say you can't recall, I take it, do I, that that is short of a straight denial which leaves open a possibility that you may have?
>
> A. It's highly unlikely because I did not have a concern. I was not surprised by any of the events which I was hearing about".

157. Mr. Walker continued saying that he did not see the project of demolition as being within his Department's responsibility and in any event it was only a number of projects that the Department was monitoring. Mr. Walker continues: -

> "Certainly my department was monitoring the progress particularly as it related to the consequence for occupance of the site and those adjacent to the site what I referred to earlier as the broader issues".

The evidence is not very strong on this question of whether Mr. Walker infact authorised or even influenced Ms. Ford to give the direction. Mr. Walker was careful not to deny that he had spoken to Ms. Ford in those terms. The closest he came to a denial was to state his belief that "it should have been highly unlikely that I would needed to have had that discussion". Mr. Walker clearly understood the distinction between not recalling and a denial in giving those answers. If he had not given such a direction, knowing as he did that he had no power or authority to give it, it is unlikely that he would have denied it outright. I prefer the evidence of Mr. Walker to Ms. Ford on this issue.

158. The question will remain unanswered whether Mr. Walker ever gave such a direction to Ms. Ford. There certainly is no evidence suggesting Mr. Walker ever made such a direction. Notwithstanding the observations made in the previous paragraph it seems unlikely that such a direction was ever given by Mr. Walker. In any event why would Mr. Walker give such a direction when he had no involvement, on the evidence, with the WorkCover inspectors. Ms. Ford may have acted of her own volition and in a unilateral way. It is a matter of speculation. If the statement was actually made by Ms. Ford and for the reasons previously advanced by me and in all likelihood the words were said by her, then what motivation did she have in making a statement introducing a reference to Mr. Walker. There will be no finding made on this issue in relation to Mr. Walker.

159. The drafting of the letter in reply to the concerns raised by the HSUA could have been prepared in a more objective format for the Chief Ministers signature. The evidence of Mr. Walker is that he was of the belief that the safety issue was being resolved by WorkCover. I do not agree with the submission of Mr. Rushton, Counsel for Mr. Walker, that "risks to and the safety of the Hospice had no connection to the death of Katie Bender". Counsel argues that it is a collateral issue. Whether collateral or otherwise it is a factor relevant to the approach later implemented by the subcontractor when there was a reconfiguration of the blast.

160. The answers given by Mr. Walker to the questioning of Counsel were made in a broad general manner. Those answers suggested that he either had no involvement in the Acton project in any active continuous way as it was one of a number of many projects being handled by the Department or rather his recollection of the events at the time was vague by reason of the lapse in time. Mr. Walker had no expertise in the art of

explosives. It was proper for him to rely upon the advice provided by Mr. Hopkins who had been given information from Mr. Lavers. It is unreasonable to suggest or believe that it was necessary for Mr. Walker, at his level, to delve into the technical detail. It was proper to rely on TCL.

161. Mr. Walker did regard the HSUA letter as a political stunt. The letter was written in the knowledge that WorkCover inspectors would be on site with TCL who knew of the HSUA concerns on safety. Counsel for Mr. Walker argues that his client was not alone in regarding the HSUA letter as a political stunt as it was a view shared by others within the Ministers Office including Mr. Dawson. No matter what the motives of the HSUA were in writing the letter or even how the HSUA letter was regarded by the CMD it deserved a professional and objective response on the basis that it was advice being provided by senior officers of the CMD to the Territory's most senior Minister. The Chief Minister acted on that advice in then providing a response to the Union which no doubt would be later relied upon and used in some public way by the Union.

162. It is an unsatisfactory explanation offered by Mr. Walker's Counsel when he suggests that it was necessary for a speedy response to be issued

to the HSUA letter as any delay would bring criticism upon the Minister and it is for this reason the letter was, considered, a "political stunt".

163. I have previously made comments about the status of the RGA reports. It is not necessary to add any further remarks about the HSUA letter.

164. There has been more than adequate comment and observations made about "who was the client" or "the client group" or "the loop". The weight of evidence adduced during the hearing is of such strength that clearly the client was the CMD. There is no escape from that fact. The submission made by Mr. Rushton of Counsel at paragraph 66 of his submissions is unnecessarily argumentative and adversarial in its approach. The submission reads: -

"Findings of fact which impact upon parties who were not represented at the time cannot be made on the basis of concessions by Counsel. Concessions made by Counsel for the Territory, Mr. Johnsen SC do not bind Mr. Walker nor do concessions by Counsel for TCL, Mr. Purnell SC. It is hardly surprising that TCL would accede to the proposition that the CMD was "the client"".

I again make the observation that there were a number of witnesses called at the Inquest who held mistaken beliefs or were confused or had different perceptions or understanding of the various roles being undertaken in relation to this project.

165. No attempt has been made to examine every facet of the submissions advanced by Mr. Rushton on behalf of Mr. Walker as the submissions made as to the ambit of the Inquest, in its application to Mr. Walker, are correct in fact and law in my assessment. Therefore my jurisdiction and function as the Coroner, in the interests of procedural fairness, is limited and no comment is permitted. I have previously set out those areas.

166. There is no evidence that Mr. Walker influenced or brought any pressure to bear upon the WorkCover inspectors, directly or indirectly, in relation to their activity on the demolition site. There was not even a hint of personal contact by Mr. Walker. No evidence was adduced at the Inquest which connects or suggests that Mr. Walker contributed to or was responsible for or was remotely connected with the death of Katie Bender.

<u>An Examination of the Evidence of Mrs. Carnell the Chief Minister</u>

167. Mrs. Carnell, the Chief Minister, was entitled to proceed and accept that the implosion was being competently performed in accordance with what she understood to be the implosion methods mentioned in the August 1995 Cabinet decision and the various RGA reports. This report has previously referred to the fact that the events giving rise to the Cabinet

decision of August 1995 substantially changed by December 1996 when the Prime Minister reactivated the Acton demolition project. There is no doubt that a meeting occurred on 13th December 1996 when Mr. Walker was present. I accept that Mrs. Carnell was not fully appraised in full detail about the method of demolition that may have been discussed at that meeting. Needless to say what ever was discussed at the meeting was presented to the Inquest in very vague and general terms. There was really only one substantive conclusion

reached that a fence was to be erected immediately the next day so the project could move forward.

168. Mrs. Carnell said she had read the first and third RGA reports before 13th December 1996. The first and second reports were a feasibility study. The second report was nothing more than an overview of what was sought to be achieved. The third report related to the impact on the Hospice. Mrs. Carnell considered these documents to be risk assessment documents.

169. The Canberra Times article of 4th January 1997 is inconclusive in the terms of whether Mrs. Carnell was responsible for its comments. She could not remember doing the interview. She was asked about her understanding as to the methods of demolition and she explained that the RGA reports had proposed implosion for the tall buildings. It was her view that when the matter went to tender "our minds were open". Nothing further needs to be said about the article appearing in the Canberra Times on 4th January 1997. I am unable to make any reliable finding as to the source of the material appearing in the article.

170. Mrs. Carnell is clearly mistaken along with other senior Government officials as to who was the client. The general question as to the identity of the client has been addressed in a comprehensive way in this Report on a number of occasions and whether or not Mrs. Carnell and others are mistaken on this issue the clear fact is that the Chief Ministers Department was the client. The overall responsibility for the project fell to the Chief Minister Mrs. Kate Carnell.

171. The Acton Peninsula project was a National initiative. I have discussed its status on a number of times in the Report. The CMD was responsible for the Cabinet submission of 6th December 1996 concerning the Government negotiating position with respect to the Acton – Kingston landswap and the National Museum of Australia project. The CMD undertook a broad whole of government role directed towards the successful completion of the landswap negotiations and thereafter, the National Museum project. Mr. Hopkins was the officer within CMD who was given the responsibility of carrying out CMD activities in this respect. It was necessary for the site to be cleared to facilitate the National Museum construction proceeding. The attendance by Mr. Hopkins at various meetings was an essential function

so as to keep the CMD informed of developments concerning the project including its promotion. These activities were incidental to the interests of the CMD in assisting the governments broader objectives concerning the landswap and National Museum project. The evidence is quite clear that this role then went further than was reasonably necessary.

172. It was Mrs. Carnell's recollection that Mr. Dawson spoke to her about the interest of a number of radio stations soon after the announcement of the select tenders. She said there had been discussion of the potential charity back in 1995 in the context of the first RGA report if the demolition went ahead.

173. Mrs. Carnell was asked on 9th September 1998 at paragraph 671 – 673 in the following terms: -

A. "Did you expect that Mr. Dawson would not agree to any media event without coming back to you on issues of public safety or without going to those on site with respect to public safety?

A. I'd be confident that those sorts of issues would have been addressed.

A. Did you speak to Mr. Dawson at any stage during the time after (the) mid April 1997 announcement of tenders through to implosion about the crowds expected and things of that kind as the time of the implosion drew closer?

A. I'm sure I would have yes.

A. At any stage did you ascertain from him whether he had sought particular advice from those on site or elsewhere about proper stand off distances, public safety?

A. I understand…it certainly was my understanding from Gary Dawson that discussions were occurring between the police and the various people involved with regard to safety procedures".

She was also asked at paragraph 686 – 689 of 9th September 1998: -

A. "You told me shortly ago that he (Mr. Dawson) was given authority to make the decision on behalf of the Government making it a public spectacle or event?

A. No. You asked me, as I understood it, did I give him authority to negotiate with 106 and to make the appropriate decisions with regard to that.

A. On behalf of the Government I put to you and you have agreed?

A. Well on behalf of the Government to negotiate with one 106 and to determine what was appropriate in the terms of the media, yes.

A. And further from that to agree to such a proposal on behalf of the Government I put to you and you agree?

A. <u>It was my view that crowds would inevitably turn up and therefore it would inevitably be something that people would want to see</u>.

A. Well I suppose that's right if the date and time is widely publicised you'd expect that even bigger crowds obviously wouldn't you it just follows?

A. That's true".

<u>Mrs. Carnell's Evidence Concerning the HSUA letter of</u>

171. Mrs. Carnell said that she takes advice for such purposes and assumes the persons who give that advice are competent. Mrs. Carnell indicated that Mr. Tolley, the author of the HSUA letter of 30th June 1997, was already talking to the media about the issue before the letter had arrived. She indicated that the letter was turned around very quickly because Mr. Tolley had gone to the media before he sent the letter to her. Mrs. Carnell indicated that she had signed the letter which referred to safety and risk assessments and matters of that kind "because that was my advice".

172. Mrs. Carnell was taken to certain substantive statements made in her reply of 1st July 1997: -

> A. "Mrs. Carnell would you go the second paragraph in it and it is said that 'the ACT Government through it agent TCL has undertaken a number of detailed studies regarding the demolition of the buildings on Acton assessing all aspects of the demolition including potential risk to patients and staff'. What do you understand that paragraph to be based on, what studies do you understand it refers to?
>
> A. Well I understand that that would be referring to I suppose initially the Richard Glenn reports and other work that TCL had done in the mean time".

176. She gave a similar explanation with respect to other parts of the letter. The Chief Ministers approach to this letter was reasonable. TCL had undertaken and had already provided technical advice concerning the reposed reply. I have previously mentioned this in my Report that she was entitled to assume that her advisors and in particular TCL had undertaken or confirmed the assessments which the letter asserted had taken place. The letter had been approved by the Chief Executive of the CMD, Mr. Walker. The Chief Minister was entitled to proceed upon the basis that it had been drafted and settled by competent persons in the department after appropriate consultation with those possessing the relevant technical knowledge concerning the project. It is regrettable that Mrs. Carnell was not being properly advised. The evidence on this topic leads me to conclude the Mrs. Carnell was poorly briefed and advised on this subject matter. The quality of the reply to the HSUA was sacrificed in the interests of speed and expediency. Mrs. Carnell said in her ROI: -

> "If it had dawned on us, if we had even thought there was minute one percent chance of something that was dangerous, that this was dangerous well of course we would not have done it, why would we…from where we sit there was no indication at all of what was being done had any more than any normal demolition would have".

177. In my view this was a reasonable position to adopt having regard to the processes put in place by the ACT in the selection of the Project Director (TCL), the Project Manager (PCAPL), the contractor (Mr. Tony Fenwick) and the specialist implosion subcontractor (Mr. Rod McCracken of

Controlled Blasting Services). There was no event that had ever occurred which could reasonably have put the Chief Minster on notice of any safety concerns on the part of those involved on the demolition side of the project with respect to the planned implosion.

178. On Sunday evening, 13th July 1997 and on the subsequent days the Chief Minister was subject to many and various questions concerning safety checks or risk assessments undertaken in respect of the project. There is no doubt that the Chief Minister was considerably moved by the tragedy of this occasion. She had received advice about the matter. Mrs. Carnell was sincere and genuine in her evidence that the tragedy was extremely regrettable. A project team statement was issued on 13th July 1997. The project team comprised not only her own office but also the Chief Ministers Department, TCL, PACPL, City and Country Demolitions and Controlled Blasting Services. There is no doubt that the statement set out in this document is one of genuine sorrow. There is also no doubt in my mind that the Chief Minister, personally, regrets that a young girl has lost her life in horrific circumstances.

MR. MCCRACKEN'S ATTITUDE TOWARDS PUBLICISING THE IMPLOSION

179. Mr. McCracken had an expectation that crowds would attend the implosion. It was inevitable, as I have previously stated, that a crowd would attend to witness the demolition of the hospital. There is evidence that Mr. McCracken embraced the idea of publicity being given to the implosion. It will be recalled that he arranged for a pyrotechnics display to be conducted prior to the actual detonation so as to make the implosion more spectacular. Mr. McCracken was asked: -

> A. "What was the purpose of the pyrotechnics on the roof?
>
> A. Just to actually to give a bit more to the building as it was going down seeing that there was so much publicity given to the implosion".

Mr. McCracken explained further to the interviewing police officer "that we added a bit more onto the roof to just spice it up a bit. Well it started off that we were talking about it with a couple of other companies and then Bob Leeson had said you know he was happy to put them in it at a cost for the pyrotechnics on the roof".

180. Mr. Appel, a former senior New South Wales WorkCover Officer, in his statement to the police said: -

> A. "Were any complaints made or any problems found with the safety aspects?
>
> A. No I think it might be an appropriate time here that when he first started doing his work he was always concerned about the public. A friendly suggestion from us that rather than to try to hide the work from the public that he create a public relation exercise with the people in the area. In my experience that the media can be a big problem if they're not allowed in or not getting good places to come to and also children trying to get in for a better viewing areas. Regardless of how well you secure an area you wont keep a child out if they want to sneak in. And he adopted this public relations exercise and went to the extent of running raffles with all his blasts and money went to charity. Good crowd control, he knew where they were, he had the security people set up and it seemed to work wonderfully".

181. Mr. Appel basically said that for Mr. McCracken public relations was extremely important and that crowds would attend any demolition where explosives were being used because it is a secret one cannot keep away from them.

Conclusion on the Issue of a Public Event

182. Counsel Assisting the Inquest has made certain submissions to the effect the client group exercised a significant degree of control over the Acton demolition project. This control was tight and continuing and extended into the management role of the project. The actions of Messrs. Wearing and Dawson excluded any input from the relevant portfolio Minister (Mr. Kaine) and from the contractors in relation to public safety. The control resulted in the dismissal of legitimate safety concerns raised by others and extended to an improper attempt by Ms. Ford to stop any continuing involvement from WorkCover on the site. The purpose of this degree of control was to avoid any compromise or interference with the objective being to make the demolition a smoothly run public event and to be achieved on the designated day, Sunday 13th July 1997 argues Counsel Assisting.

183. The individuals, described as the client group, having exercised such a degree of control over the project and invited the public to attend the demolition as spectators, imposed upon the Territory, a duty to ensure the safety of all those who chose to attend. Counsel argues that there was a failure to inform the contractors of the public event before letting the contracts or to involve them at all in the subsequent co – ordination of that event or to obtain any considered advice on the appropriate exclusion zone. Counsel argues that these failures were connected to the death of Katie Bender and justify certain recommendations being made. I am unable to agree with the

views reached by Counsel Assisting the Inquest in what he argues is the position in respect of client control and the exclusion of Mr. Trevor Kaine MLA. Those reasons have been previously canvassed in various segments of this public event aspect of the Report.

184. I am satisfied as to the following matters: -

a. Mr. Dawson generated the concept of a public event being promoted through MIX 106.3,
b. There was an unnecessary intrusion by Mr. Gary Dawson when he acquired knowledge of certain aspects of the tender process, and
c. There was a failure to inform the contractors of the public event before or even during the letting of contracts phase.

185. I am satisfied that the evidence justifies the view that the contractors were made aware of the public event and only became involved at a later stage when meetings were convened in relation to the public event. The actions of Ms. Ford in relation to the WorkCover inspectors on the site was totally unnecessary. There was an intermeddling by certain officers of the Chief Ministers Department that was not warranted.

Recommendations

182. Some of these recommendations overlap and are repeated elsewhere in the Report. The following measures ought to be implemented in any future large scale public works project or any public event that is promoted or managed in the Australian Capital Territory to minimise the risks to public safety: -

Generally

a. No matter what form the event may take all administrators and organising authorities should ensure that the safety of the public is not compromised and is absolutely protected whether it be at a sporting function, tourism promotion, a national festive occasion, a religious ceremony or a public works project of the magnitude of the Acton demolition site where it was inevitable that a large crowd would attend in any event notwithstanding the public promotion that was given to it in the weeks prior to the implosion. (This was to be a demolition carried out in the heart of the city where the community were encouraged to attend as part of a celebration of change),
b. If any doubt or confusion should prevail as to the status of the land or the particular area within which the public

spectacle is to be convened particularly as to the degree of supervision or control to be exercised by public regulatory agencies (police, ambulance, emergency services, WorkCover) then those issues need to be resolved in a consultative fashion in advance of the event. The suggested V8 super cars event represents a classical example of such a circumstance,

Specifically

c. The public participation by spectators in such projects should be actively discouraged,
d. The tender process should remain at arms length from the Government,
e. Any special requirements or conditions sought by the Government or the organising authorities that may affect public safety in the presentation of a public event should be made known prior to the tender or selection process commencing and be specifically included in the tender and contractual documents,
f. Any claims made by the tendering body as to their ability to meet any special requirements must be independently and objectively checked before the letting of the contract,
g. The degree to which any special requirement is ultimately implemented should be at the ultimate discretion of the contractor,
h. WorkCover should be established as an independent statutory authority completely removed from any departmental or government influence or control,
i. WorkCover should be appropriately funded so that it can exercise its statutory functioning independently of any influence of Departmental or Government control in the same way as other statutory corporations are created and this would minimise the type of attempts made by Ms. Ford to become involved in the project,
j. The creation of WorkCover as an independent statutory body would overcome the potential for a conflict of interest where WorkCover might be called upon to investigate an incident or an accident involving a particular government department,
k. the funding of an independent statutory body representing WorkCover should come directly from government or combined with a levy on insurers engaged in workers compensation or the public liability fields of insurance,
l. If any special requirements or conditions are unable to be disclosed to the tenderers or the contractor prior to the tender selection or the contractual process being negotiated then at the earliest practical opportunity the

relevant parties and authorities should be identified and advised of those special requirements, and

m. Where any government contract is let of a significant nature where the public are likely to attend or congregate for the purpose of a public event the relevant government department, its regulatory agencies and their legal representatives should engage in a full constructive consultative process to ensure proper safe guards have been complied with and implemented to minimise the risk of accidents occurring.

METHODOLOGY

1. The Inquest devoted a significant proportion of its time not only to the concept of a public event but also to the issue of methodology. The weight of evidence relating to this topic was such that the methodology utilised by Mr. Rod McCracken of Controlled Blasting Services of Controlled Blasting Services was the primary factor contributing to the death of Katie Bender.
2. The attempted demolition on Sunday 13th July 1997 of the Main Tower Block and Sylvia Curley House became an explosion rather than an intended implosion. The explosion was simply due to the volume of explosives used in the detonation. There was also a reconfiguration of those explosives which was a substantial departure from the original proposed methodology. An additional factor relevant to the large amount of steel and debris being projected across the lake in the direction of thousands of spectators was the lack of protective measures on those portions of the building exposed to the general public.
3. The methodology issue is primarily a factual matter. There is very little or no substantial factual controversy between the principal parties to the Inquest as it solely relates directly to the manner in which the explosives were applied to the Main Tower Block and Sylvia Curley House. There is no real dispute that the amount of explosives and the configuration of those explosives was not only a factor in the causation process but also in identifying the persons who caused or contributed to Katie Bender's death.
4. There were a number of factors which relate to the demolition procedure utilised by the demolition subcontractor, Mr. McCracken, which caused the death of Katie Bender. Those factors were: -

    a. The difference in the method initially proposed and the methodology that was ultimately applied,
    b. The increased quantity of cartridge explosives,
    c. The reconfiguration of the blast,
    d. The failure to use specialised cutting charges,
    e. The failure to set a safety exclusion zone,
    f. The lack of protective measures, and
    g. The failure to test the methods used.

    The significance of certain observations made by some of the on site visitors also requires consideration in the terms of the methodology employed by Mr. McCracken.

The Proposed Workplan and Methodology

1. The contract for the demolition of the Main Tower Block (Stage 1) was Exhibit 106. The contract for the demolition of Sylvia Curley House and associated structures (Stage 4) was Exhibit 107. Under the heading Investigation and Planning (Specification 5) there is a requirement for a workplan. It reads, "obtain approval of the workplan by both the regulatory authority and the Superintendent before commencing demolition or stripping work".
2. Specification 11 is headed "Demolition Plan".

> "The contractor is to submit within 7 days of the letter of acceptance, a 'Demolition Plan' as required by the Code of Practice (the *ACT Demolition Code of Practice*).
>
> "The Demolition Plan is to be submitted to the Superintendent for approval. The contractor shall not commence any work on the site until such time as the 'Demolition Plan' has been approved by the Superintendent and the relevant statutory authorities.
>
> The Demolition Plan is to include: -
>
> a. Method statement for the removal/disposal of spoil and the removal and recycling of materials,
> b. Dust control plan,
>
> (c) Pollution control measures,
>
> (d) Noise control measures,
>
> c. Safety plan,
> d. Method of demolition,
> e. Demolition programme,
> f. Organisational chart for the project, and
> g. Other relevant information".

1. Both contracts clearly imposed upon Mr. Fenwick of CCD an obligation to file with PCAPL for their prior approval a detailed workplan and then having that plan certified by a structural a engineer (Specification 18 previously discussed) before starting any work on site. There is no escaping the fact that the work did commence without such documents being filed or the requisite approvals or certifications being obtained. The first real opportunity for PCAPL or TCL to inform themselves in an objective way about the proposed

methodology of CCD and CBS occurred only after the workplan was finally provided to PCAPL on 16th May 1997. It required the intervention of ACT WorkCover before the document was ultimately provided. The work had been continuing for almost three weeks before the arrival of the methodology plan.

2. Mr. Dwyer of PCAPL as the Project Manager and Superintendent was responsible to the principal (the Australian Capital Territory) for the proper administration of the contract. It is clear evidence that the work had commenced and was permitted to continue in clear breach of the contract. Mr. Dwyer had full knowledge that the work was being carried out. No matter how the submission is expressed by Counsel for PCAPL very clearly his client had failed to comply with the contract in permitting the work to go forward without Mr. Fenwick or Mr. McCracken providing a workplan or methodology. Any number of reasons may be available for the delay but there simply is no excuse for what occurred. It is not a satisfactory explanation to say that Mr. McCracken's methodology changed gradually between 29th May 1997 and 2nd July 1997. Even though the changed methodology was presented at a meeting with WorkCover on 2nd July 1997 the fundamental problem existed from about 23rd April 1997 when the work had commenced without a plan being submitted and approved not only by PCAPL but also the government regulatory bodies.

    9. When the workplan was eventually submitted there were essential items of methodology absent. There was for example no information regarding:-

        a. The quantity and configuration of explosives to be used,
        b. The safe exclusion zone, except that there would be one at a time when all concerned knew there were going to be spectators in attendance,
        c. Protection to be employed to control flying debris other than items such as sandbags and carpets around the individual columns, and
        d. Any other type of explosives to be used as "kick charges".

    10. The only mention of engineering advice was a statement that it would be obtained before any cutting of steel took place. The evidence is that when Mr. Adam Hugill of Northrop Engineers attended on the site in the period prior to 23rd May 1997 certain columns had been cut without engineering advice. Mr. Hugill was also critical the cutting of columns could give rise to an instability in the structure.

    11. Any reader of the workplan would conclude that the methodology to be adopted was of the following nature: -

        a. Supervised pre – weakening of the steel columns in order to minimise the amount of specially designed shaped

charges and therefore the overall quantity of explosive to be used,

b. That the specially designed shaped charges would be placed at the top and bottom of each column after pre – weakening,

c. That in order to reduce air blast and fly, the location of each charge would be surrounded by sandbags and in some cases carpet although this was never identified, and
d. That no other type of explosive was contemplated.

THE LATER WORKPLAN AND METHODOLOGY

12. The differences in the workplan and the methodology as originally submitted were: -

a. Cartridge explosives were used exclusively in quantities well exceeding the kick charge levels and no cutting charges were used,
b. Mr. McCracken stated on 2nd July 1997 at the meeting convened by WorkCover concerning the Hospice that he intended using 130kg of explosives whereas he used 500kg's, about 385% more explosives than originally planned (see further paragraph 18 herein),
c. The direction of the blast was reconfigured away from the Hospice to ensure its protection and consequently directed towards and across the lake. The damage to the dining room apparent on the video, the public compilation video, the public photographs and the lack of debris in the direction of the Hospice dramatically show that this configuration resulted in the blast being directed towards the lake where thousands of spectators had gathered,
d. A lack of protective measures when sandbags, carpet chain wire and bund walls were proposed to be used,
e. Backing plates were inserted into the webs and used without ever having been tested as a method,
f. The quantity of explosives actually used with the backing plate methodology was never the subject of any testing by Mr. McCracken prior to the 13th July 1997. The only testing carried out was on a smaller column that was not under compression,
g. The exclusion zone was determined by a means of rough opinion rather than specific calculation. It was never reassessed after the configuration nor after acknowledgement by Mr. McCracken to both Channel 10 and Mr. Dwyer that the columns may shatter and material may be directed away from the building,

h. On the evidence of Mr. Ashley the half moon cuts were designed for an induced collapse not an implosion. On the evidence of Mr. Loizeaux and Mr. Rech the columns could

never have kicked out as planned. Mr. McCracken also included in the Appendix K response the diagonal cut diagram, representing it as an approved method of pre – weakening despite his agreement with Mr. Ashley that this method would not be used,

i. The comments made by Mr. Ashley in that the building was liable to shatter became true on the day of the implosion,
j. Specialised cutting charges changed from being the only proposed method of severing steel and the only type of explosive mentioned, to not being used at all, despite Mr. McCracken's representation to the contrary only days prior to the implosion, and
k. The general failure to comply with the ACT Demolition Code of Practice.

12. The methodology required a close and meaningful scrutiny by Mr. Fenwick (CCD) of the methodology being employed by Mr. McCracken. It was CCD who contracted with the ACT to demolish the Main Tower Block and Sylvia Curley House and who had recommended Mr. McCracken. The contracts with CCD made it clear the ACT was the principal and that PCAPL was the Superintendent. The contractor Mr. Fenwick CCD was legally bound to work in consultation with PCAPL.

<u>Increased Quantity of Cartridge Explosives</u>

14. Mr. McCracken was solely responsible for deciding the quantity of cartridge explosive to be used on each column of the buildings.

Mr. McCracken acknowledged his responsibility in this task. He was unable to produce any contemporaneous record detailing to any extent how much explosives were actually placed on each individual column. The failure to keep such records was said by Mr. McCracken to have been a deliberate decision and part of his normal practice not to keep such records.

15. Mr. J. Mark Loizeaux of Controlled Demolition Incorporated gave some important evidence on this issue. He said that most corporations do keep in-house secrets. He outlined at some length the importance of keeping detailed records of all projects for future reference. An example was the information publicly released about his implosion of the Hudson building in Chicago which contained specific details about the exact amount and the type of explosives used.

16. The overall level of record keeping by Mr. McCracken was inadequate. An example is the piece of cardboard with notes. There is also the documentation of Mr. Robinson regarding his dealings with Mr. McCracken particularly concerning insurance coverage.
17. The best method of determining the actual amount of explosives used by Mr. McCracken in this project is a combination of receipts from explosives suppliers indicating amounts of explosives purchased by him in the lead up to the implosions and what he told the police on 13th July 1997 within hours of the implosion. When Mr. McCracken was interviewed by the police in September 1997 he attempted to reconstruct on a plan the amount of explosives used on each column. This was not the most reliable guide as to the quantities actually used because his memory was not fresh and by that time he had already acknowledged on 15th July 1997 in a video walk around of the site that "I think I'm in deep shit here". No doubt by September 1997 he was downplaying his estimates of the amount of explosive he had used on 13th July 1997. Mr. McCracken's answers to questions in the later interviews of September and October 1997 were in my assessment evasive and defensive containing many exculpatory explanations given in a verbose manner. The answers lacked the specificity that was first apparent in his interview, given frankly, on the evening of the tragedy of 13th July 1997. Mr. McCracken declined to give evidence to the Inquest exercising his right to silence.
18. Mr. McCracken used at least 400kg of explosive. An amount of 175kg of explosive was purchased within 48 hours of the implosion. These figures take no account of any further explosives he may have brought with him or obtained from other sources due to his general lack of poor record keeping. On 13th July 1997 Mr. McCracken told police that he believed he had used between 480 – 500kg of explosives. He indicated that he had used between 1.8 - 2.2kg per column. Note the amount of explosives used in the 1998 car bombing at Omagh in Northern Ireland was estimated at 600kg's.
19. On the 1st September 1997 he indicated that he used between 5 – 8kg on each of the main bracing columns as per the plan set out in Exhibit 142. And he again confirmed a total of 500kg on the whole project. These totals are significantly greater than any figure previously mentioned by Mr. McCracken before the implosion and nearly four times greater than the amount that he advised the Hospice meeting on 2nd July 1997 that he was going to use. At the meeting on 2nd July 1997 convened at the instigation of ACT WorkCover he indicated to the persons gathered there that the amount of explosive was to be 130kg.

20. Mr. Loizeaux described the application of this quantity of explosive as "a huge excess of energy". Mr. Loizeaux's assessment is both consistent with the known consequences and with Mr. McCracken's own acknowledgement to Sergeant Brodie of the Australian Federal Police on 13th July 1997 immediately following the implosion that "its been an overcharge – clearly" and to the interviewing police later on in the evening "that like in hindsight now I would consider that the charges were too heavy…its obviously been too

powerful". Counsel for PCAPL descibes the loading of the explosives as "the massive overload of bulk explosives".

21. The amount of explosives finally used significantly exceeded all prior indications by Mr. McCracken, whether orally or in documentary form, as to the amount of explosives he intended to use. This is best illustrated by the following brief chronology from which it is readily apparent that the amounts increased dramatically over the final few days.

    23/4/97 Mr. McCracken advised Mr. Smith (DGU) that there was steel in the columns and that the type of explosives to be used would be "shaped charges & PETN". No quantities were mentioned.

    5/5/97 Mr. McCracken told Mr. Smith when applying for his licenses that he "probably wouldn't need more than 250 kilograms in total".

    16/5/97 Workplan provided to PCAPL, WorkCover and DGU. No mention of cartridge explosives or kick out charges, no quantities mentioned. Only type of explosive specified was "specialised shaped charges".

    Late June Undated drawings from PCAPL file that appear to be precursors of Drawings A & B. Notes "Approx. 150 kilograms of explosives to be used".

    2/7/97 Meeting with WorkCover about Hospice. Mr. McCracken advised those present that he would be using 130kg in total made up of 112kg of cartridge type explosives and 18kg of "PE4" explosive. WorkCover inspectors were of the belief that these figures related to both buildings.

    4/7/97 Drawings A & B, included in the Appendix K response. Note quantities for Main Tower Block: LG floor – 1.3kg/column and ground floor – 0.75kg/column; and for Sylvia Curley House ground floor – 1.1kg/column and 1st floor – 0.70kg/column. Based on Mr. McCracken's indication that there were in total 250 columns, 150 in the Main Tower Block and 100 in Sylvia Curley House. The amount referred to in Exhibit 144 add up to a total of 243.75kg (153kg for Main Tower Block). There is no distinction as to the amount of explosives noted as between internal or external columns.

    10/7/97 The Canberra Times of 11th July 1997 indicated that "Mr. McCracken said yesterday that the 225kg of explosives to be detonated has all been laid, spread throughout the Tower Block and Sylvia Curley House in 280 positions" (see copy in Mrs. Kennedy's diary, Exhibit 534). That article included a picture of a single column with at least 7 separate charges attached to it.

    11/7/97 Mr. McCracken told Mr. Mazzer that for the Main Tower Block he had used: LG floor – 1.7kg/column and ground floor – 1.3kg/column. This totals 224.5kg for the Main Tower Block alone.

    11/7/97 Mr. McCracken purchased another 100kg of Riogel.

12/7/97 Mr. McCracken purchased another 75kg of Riogel.

13/7/97 Mr. McCracken told police he used a total of 480 – 500kg of Riogel.

22. Mr. McCracken stated that his overall plan had changed four or five times. But at no stage did he formally advise anybody of the final amount of explosives used or the changes in the quantity that he had made. Mr. McCracken never advised anybody that he had completely abandoned the use of specialised shaped charges which he originally had advised would be used exclusively for the demolition task.
23. Mr. Loizeaux described it in this manner: -

    "A change in quantity or a change in basic approach towards the explosives operation would certainly be a significant change, changing the risks associated with the adjacent approvements and the general public, linear charges do not throw large pieces of debris as bulk charges might so anything that would impact (upon) safety or the roles of regulatory agencies or the contractors representatives should certainly be brought to their attention and dealt with accordingly.

24. Mr. Loizeaux indicated that he would expect a change in quantity of as little as 10% would require a formal notification to the relevant parties.
25. Mr. McCracken's failure to formally advise anybody of these changes particularly in light of the significance of them and his knowledge that there would be a large crowd in attendance in itself constitutes gross negligence on his part.
26. There were a number of persons in a position of responsibility who would be sufficiently aware of the significant changes that Mr. McCracken was making to his methodology to have initiated some enquiries about the reasons for the changes and what were the issues of public safety as a consequence of the changes. These persons were present at the meeting on 2nd July 1997 involving the Hospice when Mr. McCracken said he was going to use 130kg of explosives. The persons in my view who would have had some appreciation of the changes, despite having no notification of any amendment to the workplan, were Messrs. Fenwick, Dwyer, Lavers and the inspectors of WorkCover.
27. Mr. Fenwick as the principal contractor and Mr. Dwyer as the Project Manager were both present and observed a cutting charge test being made on 25th June 1997 and the subsequent loading of cartridge explosives on 9th July 1997. Accordingly they must have been aware of the absence of cutting charges and the sharp increase in cartridge explosives being utilised on the site at least after 2nd July 1997. The failure to observe these fundamental matters, even by persons of limited experience who had been on the site and inspected it on an almost daily basis, was negligent. Mr. Dwyer should at the very least have enquired or informed himself as to what was the configuration and the volume of explosives being utilised on the blast. The acquisition of such critical detail by the Project Manager and Superintendent stands out as a matter of basic commonsense especially after the 2nd July 1997 meeting and the WorkCover involvement.

28. There is no doubt that these were technical issues but why would they simply be ignored or taken for granted given that Mr. Dwyer and Mr. Fenwick had been briefed by Mr. McCracken on the various changes. Why, then, did they not ask or enquire about the reasons for the changes in the methodology programme. As technical issues and as I have previously stated they were well outside any knowledge held by Mr. Dwyer in respect of the type, quantity and use of explosives but he had been shown over the site on a number occasions and seen the explosives placed against the columns of the building. Mr. Dwyer controlled the site for PCAPL. Surely he was not doing his duties in a vacuum. It is all very

    well to make a submission that it was not for Mr. Dwyer to second guess the experts but basic commonsense as the Project Manager and Superintendent who had been on the site since early to mid April would at least dictate that he should inform himself in a constructive and objective way as to the nature of the demolition methodology. This function was a clear responsibility for the site manager.

29. Mr. Lavers, whose responsibility was to advise those organising the public event on technical matters and conceding that was not his strict true brief on the demolition site, was present on 10th July 1997 when Mr. McCracken told Mr. Tim Noonan of the Australian Broadcasting Corporation that he was using a total of 230kg of explosives involving 500 separate Riogel charges, the size of which was demonstrated in his presence and on which he commented. This figure was almost double what he had been told would be used as recently as the meeting at the Hospice on 2nd July 1997. It should have alerted Mr. Lavers to the need to make some further enquiries of Mr. McCracken (or Mr. Fenwick or at least Mr. Dwyer) as to the reasons for this significant increase in the quantity of explosives and its possible impact on public safety. In the course of his role in advising those organising the public event on technical matters a failure to enquire or inform himself could amount to negligence. The amount of explosives used by Mr. McCracken was more than double the amount Mr. Lavers was aware of on the 10th July 1997. Mr. Lavers had a lesser supervisory role but the lack of adequate enquiries being made on his part as to why so much extra explosives were being used was a contributing factor but not sufficiently causally connected to the death of Katie Bender.
30. There is no doubt that the same sort of similar failures and criticism can also be attributed to ACT WorkCover which has been discussed under the heading of <u>The Role of the Regulatory Agencies</u>. In my view the lack of attention to this detail by WorkCover inspectors was a contributing factor yet not causally connected to the death of Katie Bender.

    <u>the Reconfiguration of the Blast</u>

31. The reconfiguration involved: -

    a. Substituting cartridge explosives for specialised cutting charges,
    b. Increasing the quantity of those cartridge explosives,

c. Inserting backing plates between the explosives and the seal, and
d. Directing the blast towards the lake where the spectators had gathered with little or no protection between them and the blast.

It should be noted that Appendix K makes a specific requirement that cartridge explosives are not to be used in the cutting of steel.

K5 EXPLOSIVES

Particular attention should be paid to the following: -

a. Use only the correct explosives for a specific task, e.g. cartridged explosives are not suitable for cutting steel.
b. Use a higher powder factor than normal. It is better to overcharge than undercharge to positively ensure the intended result. A structural member that is not cut, removed or weakened as intended can cause a structure to twist.
c. Conduct a small test to ascertain the strength/suitability/powder factor of an explosive for its designated task.
d. Provide adequate cover around the charges to prevent/minimise fly of debris and airblast.

16. The possibility that these changes may involve debris being ejected beyond the site and across the lake was well within the knowledge of Mr. McCracken and Mr. Fenwick. I have some doubts as to whether Mr.

    Dwyer would have had such knowledge (yet see paragraph 33(c), 58 and 59 hereof).

17. Mr. McCracken of Controlled Blasting Services knew that there was a risk of debris being ejected for the following reasons: -

    a. He conceded the possibility that fly may not be confined within the building for directions other than the Hospice ("in respect of the location of the Hospice, charges on the Northern side of Sylvia Curley House will be positioned to eliminate the possibility of adverse fly material towards the Hospice. The balance of charges will be placed to contain any fly material within the buildings where possible to do so"),
    b. He had conducted test blasts with lower quantities of explosives that had blown through the web and fragmented the steel,
    c. Mr. McCracken told Mr. Dwyer on 9th July 1997 when explaining the methodology to him that some debris would be ejected away from the building. Surely this

would have excited Mr. Dwyer's concerns as to the possibility of the debris being ejected beyond the Hospital bounds,

d. Mr. McCracken told Mr. Messenger of Ten Capital on 10th July 1997 that the columns would shatter which he expected them to do, (this advice was provided earlier by Mr. Ashley),
e. When interviewed by the police on 13th July 1997 Mr. McCracken agreed that the force of the implosion was targeted in the direction of where Katie Bender was standing. Mr. McCracken further told the police that because of the risk of being struck by flying debris he was not prepared to permit anybody to observe the demolition from anywhere on the Peninsula on the lake side,
f. In most cases there were no protective measures between the steel and the public to prevent the flying debris leaving the site (see the photograph at Exhibit 84B generally but in particular 137 – 10 – 1 and 2) see also (Exhibit 132 and statements concerning the lack of chain wire Exhibits 164 and 165),
g. Mr. McCracken had abandoned the use of specialised charges that to his knowledge would reduce fly where other charges would not, and
h. Mr. McCracken told Mr. Mazzer on 11th July 1997 the charges were on the inside of the columns so it blows the column forward away from the Hospital. So all movement of any material, apart from the sandbags that were going (to) surround it, will go forward so that if there is a bit of shrapnel it will fly in the same direction to where no one is standing.

If Mr. McCracken had any concerns that a piece of steel would be transmitted across the lake into the crowd of spectators he would not have proceeded with the blast. Mr. McCracken's confidence of a successful demolition is reflected in his comments to the various visitors in the week before the demolition.

16. Mr. Fenwick of CCD was certainly aware of this detail set out in the above points at (b), (f) and (g). Mr. Fenwick was further aware of these risks described at points (a) and (e) because of his supervisory responsibilities.
17. The following comments can be made of the responsibilities of Mr. Dwyer. Those responsibilities did not include and could not have included supervision of the demolition methodology of the demolition contractor or subcontractor. Mr. McCracken was performing specialist work. The

assessment of technical matters such as the quantity of explosives, type of charge used, the space between the backing plates and the web were not matters for the Superintendent or a Project Manager, however, the Project Manager and Superintendent was in a position to require and to ensure that the contractor and subcontractor were complying with the appropriate codes

of conduct. Otherwise what is the purpose of having a Superintendent or Project Manager on a demolition site if they were not going to control, supervise, direct or manage the persons retained to undertake the demolition task. It is certainly more than being a simple conduit of information.

18. It is not possible for Mr. Dwyer and PCAPL to now walk away from that responsibility as the site controllers on the basis that they had no experience in or understanding of technical issues regarding the use of explosives. It is all very well to claim that the contractor and his specialist implosion subcontractor held demolition licences which required the completion of an approved course or other experience or training to satisfy WorkCover NSW. This surely does not give the contractor and the subcontractor complete liberty to do as they please without some form of control or supervision by the corporation contracted to the principal. The greater burden in respect of this supervisory responsibility rested squarely with Mr. Cameron Dwyer (PCAPL).

37. The submission made by PCAPL now seeks to diminish its role and distance itself from their proper responsibilities. PCAPL was selected initially in December 1996 and confirmed in January 1997 that it was to control the activity on the site. PCAPL cannot minimise its involvement to any extent in its dual role as the Project Manager and Superintendent. To accept such a contention would be a complete departure from the weight of the evidence and further to do so and to accept such a proposition would mean that Messrs. Fenwick and McCracken were virtually at total liberty to undertake the work unchecked and in any manner suitable to them.

<u>The Failure to Use Specialised Cutting Charges – The Substitution of Cartridge Explosives for Cutting Charges</u>

38. On 5th March 1997 Mr. Rod McCracken attended the tenderers meeting on the site and walked through and inspected the buildings. The evidence suggests that Mr. McCracken suspected as early as that time that the concrete columns may have had RSJ's encased within them. There is a recording in his diary that he rang Cameron (Dwyer) on 6th March 1997 and wrote that it looked like "the hospital may have RSJ encased in concrete".

39. On 8th April 1997 Mr. McCracken became aware that Mr. Fenwick (CCD) had won the hospital contract.

40. Mr. McCracken first went onto the site to commence work on Monday, 21st April 1997. Two days later, Wednesday 23rd April 1997, he had confirmed the presence of steel within the columns and had met with Mr. Smith from the Dangerous Goods Unit. During that meeting he told Mr. Smith he intended using shaped charges and gave a concise and accurate description of how those charges worked. At the time of those conversations the date for the implosion had been fixed for 9th June 1997. Mr. McCracken told Detective Johnsen that he had never before used such cutting charges.

41. On or about 5th May 1997 the implosion date was subsequently changed to 25th June 1997. On 23rd May 1997 this date was again changed to 2nd July 1997.
42. The evidence suggests that the first enquiry Mr. McCracken made about the availability of these specialised shape charges was by facsimile to the US firm OEA Aerospace (formally Explosive Technology) on 28th May 1997. The reply from a OEA Aerospace dated 6th June 1997 indicated that depending on the quantities required it could take between 4 and 6 months to produce the product if not already in stock and even if in stock up to 30 – 60 days to have the charges ready for shipment. Shipping was described as being expensive and slow.
43. It is apparent from this chronology that at the time Mr. McCracken lodged his workplan on 16th May 1997, indicating that he would be using specialised shaped charges, the schedule date for the implosion was then 25th June 1997 only six weeks away. Mr. McCracken had still made no enquiries about shaped charges and did not do so for another 12 days. This is critical evidence omitted by Counsel for PCAPL.
44. Counsel for PCAPL attempts to assign the blame and responsibility to others. Counsel frequently alters, varies or modifies his expressions so as to cast doubt on the integrity of others who may have had some involvement in the process thereby seeking to reduce and protect the impact on his client and further lessen damage to its integrity. That approach may be well suited to the adversarial process but not to the fact – finding role of the Coroner. The comments as to this role should be considered in the segment dealing with the "Function and Role of the Coroner" and elsewhere in the Report.
45. Counsel for PCAPL ignores at paragraph 199 of their submissions what occurs in the time between the commencement of the work and the occupancy of the site on or about 23rd April 1997 to what ultimately happened on 16th May 1997. There is no assuming of any responsibility for what occurred in this period of time by PCAPL. There is an attempt to sheet home to Mr. McCracken and to WorkCover responsibility for these actions on the basis that WorkCover and later Mr. Loizeaux considered the workplan as appropriate. Mr. McCracken was entitled as the demolition specialist to change his methodology from time to time. That may very well be the case but the simple fact of the matter is Mr. Dwyer as the Superintendent and Manager of the project was and should have known or taken steps to ascertain precisely what Mr. McCracken was doing as the project advanced. The submissions made by Counsel for PCAPL are sound in substance but are selective and lack the necessary chronological detailed narrative to give the reader a proper view of the events as they unfolded from the time the contract was let, when the site was occupied until the morning of the actual demolition on 13th July 1997. The submissions by Counsel for PCAPL need to be approached with caution.
46. The delivery times referred to in the response from OEA Aerospace obviously ruled out that source for cutting charges for this project. On 7th –

    8th June 1997 Mr. Appel attended the site at Mr. McCracken's request to discuss his methodology. During that visit Mr. Appel formed the belief that Mr. McCracken had not yet decided on the explosives he intended to use. Within a few days of this visit Mr. Appel made some enquiries on Mr. McCracken's

behalf with Mr. Sean Miller about obtaining cutting charges. These enquiries ultimately proved fruitless.

47. On 30th May 1997 Mr. McCracken had made some general enquiries about cutting charges with Mr. Murray of Applied Explosive Technology. The 30th May 1997 was the same day that Mr. Ashley made his first and only visit to the site. It was this once only visit upon which he eventually based his advice about the method to be used to pre – weaken the building. Between 30th May and 20th June 1997 Mr. McCracken had further discussions with Mr. Murray about cutting charges but did not place an order. On 20th June 1997 Mr. McCracken finally requested Mr. Murray to quote him a price for the supply for 500 to 700 cutting charges. Mr. Murray provided that quote the same day.
48. Mr. Murray attended the site for the first time on 25th June 1997 and again on 27th June 1997 where he tested and demonstrated cutting charges to Mr. McCracken in the presence of Messrs. Fenwick and Dwyer. Mr. Dwyer took some photographs before and after the cutting charge tests. This evidence is extremely relevant to Mr. Dwyer's state of knowledge. Mr. Dwyer at least has some knowledge of the activities of what was happening on the site with Mr. McCracken in relation to the demolition project with respect to cutting of columns and the use of explosives.
49. On 1st July 1997 Mr. McCracken deposited $10,000.00 into the AET account when he placed an order for cutting charges with Mr. Murray to supply the same charges that had been demonstrated. Indeed both Mr. McCracken and Mr. Murray told police that these were successful. No fly resulted from these tests. Mr. Murray produced the steel from the first of those tests. Mr. Loizeaux also inspected this steel and gave evidence that in his opinion the only reason the charge did not completely sever the steel was because of misalignment in setting the charges rather than any failure of the charges themselves.
50. Despite expressing satisfaction with the tests and having no other possible source of obtaining such specialised cutting charges Mr. McCracken then waited a further 4 days from 27th June 1997 to 1st July 1997 before placing a final order and then only after Mr. Murray advised him on 1st July 1997 that that was the last day he could order and still have a good chance of getting the goods on time. Mr. Murray indicated that the order was for "option A" referred to in his quotation of "1st July 1997". This order would have allowed Mr. McCracken to use cutting charges on 42.5 columns. Mr. Murray said the usual time to fill such an order would be 5 – 8 weeks but he accelerated this process by pulling out all stops and would have been in a position to deliver the explosives on 8th July 1997 and the casings on 9th July 1997. This would have permitted Mr. McCracken to have progressively placed the charges on the columns as they were being made. Mr. Murray advised Mr. McCracken of this on 8th July 1997 when Mr. McCracken phoned him and told him he was running out of time and he would use the charges on a later job. When asked what he would do instead Mr. McCracken said he would "use Riogel, whatever".
51. The validity of Mr. McCracken's excuse of 8th July 1997 that he was "running out of time" as a reason for not using the ordered charges does not bear close examination. Mr. McCracken had firmly committed himself by that time to a method of cutting the steel that was completely incompatible with the use of cutting charges. This commitment had been made by Mr. McCracken before

Mr. Murray set foot on site, let alone tested and offered to provide cutting charges for the demolition. The Ashley drawings of the "half moon cuts" were provided to Mr. McCracken before Mr. Murray's visit on 25th June 1997. These cuts were not compatible with the use of cutting charges and were only consistent with his proposal to use cartridge explosives to kick the columns out. In fact Mr. McCracken's diary indicates that on 30th June 1997, the day before he placed the order with Mr. Murray, he had started loading explosives in the Main Tower Block and had men cutting columns in Sylvia Curley House. The diary entries relating to the loading of the Main Tower Block continue on 1st and 2nd July 1997 by which time his diary records "ground floor almost loaded, except around lift area".

52. This factor together with his failure to mention any extensive use of cutting charges at the meeting on 2nd July 1997 leads to the conclusion that by the time he placed his order on 1st July 1997 Mr. McCracken had decided not to use cutting charges at all. His subsequent decision to use them on the few basic columns in the Main Tower Block on 4th July 1997 together with his demonstration to Mr. Messenger of Ten Capital TV on 10th July 1997 as to how the cutting charges would be used can therefore be seen only as an intentional deceit. This is particularly so as the charges he ordered were never designed to be used on the bracing columns, had not been tested on them and he had in any event told Mr. Murray on 8th July 1997 that he was not going to use them.
53. According to Mr. Dwyer, he became aware "at least six weeks roughly, before the implosion" that Mr. McCracken had decided against using cutting charges. If Mr. Dwyer held such knowledge some 6 weeks before the demolition without taking any further action to at least inform himself of the reason for the change in circumstances then it seriously reflects poorly on his management and supervisory skills. Mr. Dwyer offers no reasonable or plausible explanation for his inaction or lack of ability to identify or address this issue.
54. Mr. McCracken's explanation to the police on 13th July 1997 was untrue. This series of facts demonstrates that he was obliged to redesign the explosives methodology only after ascertaining that he could not get linear cutting charges either from the United States or Mr. Murray in time. It was an attempt to mislead the police as to when it was that he had changed his plan and to minimise his responsibility for such a change.
55. Mr. Fenwick put forward the same explanation to the police when he said "if he cut the column another way, those cutting charges would be ineffective. So the delays in the cuts, the columns were not cut until he knew what he was going to do". According to Mr. McCracken's diary the half moon cutting to the Main Tower Block commenced on 25th June 1997 and the fact must have been known to Mr. Fenwick. Mr. Fenwick's men commenced cutting backing plates on 23rd June 1997. Mr. Fenwick knew that these plates were only going to be used in combination with kick charges. From 23rd June 1997 therefore, on the basis of his own answer, Mr. Fenwick must have known that Mr. McCracken had committed himself to the cartridge explosives/kick out method from that time forward.
56. Accordingly, when Mr. Murray arrived on 25th June 1997 for the first time and in the presence of Mr. Fenwick to test the cutting charges, Mr. Fenwick would have had a duty to at least ask or interrogate Mr. McCracken as to which method he was infact going to use. This was because Mr. Fenwick knew by

that time that the method of cutting that had already commenced and the preparation of backing plates was inconsistent with any use of cutting charges. He failed to discharge this duty.

57. There is a specific reference in the Appendix K document sent by PCAPL to WorkCover concerning the restricted use of cutting charges. Mr. Fenwick failed on 4th July 1997 to take any steps to ensure that even this restricted use of cutting charges infact took place. The lack of supervision he exercised over his subcontractor is graphically illustrated by his absence from the site from the morning of Friday 11th July 1997 until 10.30am Sunday 13th July 1997. This was a critical period of time in the demolition process. This absence coincided with the final loading of the cartridge explosives and significantly with the purchase and loading by Mr. McCracken of an additional 175kg of Riogel.
58. Mr. Fenwick and Mr. Dwyer were both familiar by 13th July 1997, by their presence at the test sites in late June 1997, with the appearance and application of cutting charges. It must have been obvious at least to Mr. Fenwick and possibly to Mr. Dwyer that there were no indications of the presence of any such charge having been placed in either of the buildings on or before 13th July 1997. Neither man raised any questions about this failure to use cutting charges. There is no evidence that Mr. Fenwick ever made any enquiries about the method Mr. McCracken was using in lieu of cutting charges. The enquiries about the method made by Mr. Dwyer on 9th July 1997 should have alerted him immediately to the real possibility of fly material being ejected from the building.
59. Mr. Dwyer told the police that Mr. McCracken had abandoned the use of cutting charges at least six weeks prior to the implosion. He further told the police that on becoming aware of the changes to the original plan

    (particularly the non-use of cutting charges) he asked Mr. McCracken if the building could still be imploded safely and was advised it could. Given this fundamental change in method and his knowledge that a large-scale public event was being organised Mr. Dwyer was bound to go further than mere reliance on the assurances of Mr. McCracken. Mr. Dwyer must have been at least disturbed therefore when Mr. Murray attended the site to test cutting charges in late June and their use was being proposed on 4th July 1997. Mr. Dwyer certainly had knowledge as to what was happening in late June 1997. The clear indecision being exercised by Mr. McCracken as to the explosives to be used was a matter of vital importance. Mr. Dwyer should have at least requested an updated workplan be filed. The performances by Mr. Dwyer of his duties in this particular phase of the process is disappointing and his evidence is unconvincing and less than satisfactory.

60. The failure to use any cutting charges on 13th July 1997 was:-

    a. An abandonment of the initially proposed method as set out in the workplan submitted on 16th May 1997,
    b. A revision of that original plan as set out in the Appendix K response on 4th July 1997,
    c. A departure from the public presentation to Mr. Messenger on 10th July 1997, and

d. The approved "half moon" cutting method was inconsistent with the use of such charges in any event.

61. The following circumstances in my assessment demonstrates gross negligence by Mr. Rod McCracken in his methodology: -

a. A failure to take steps at an early stage to obtain the correct explosives in time,
b. Having tested and ordered charges that would cut the steel as planned either failing to use those charges rather than bulk charges (in combination with appropriate pre – weakening) or failing to delay the implosion until those charges could be obtained and applied as Mr. Loizeaux stated would have been a prudent practice,
c. A failure to properly advise at least Mr. Fenwick or Mr. Dwyer of the extent of his departure from his original plan, and
d. A failure to ensure that the method ultimately used had been properly tested and assessed as safe.

62. The uncontradicted expert evidence of Mr. Loizeaux was that it would have been preferable to have used the cutting charges rather than the bulk charges. Mr. Loizeaux stated that such charges were safer and were "100% used" amongst experienced demolishers of steel structures in 1997 and 1998.

63. Mr. Fenwick and Mr. Dwyer, to a lesser extent, knew what cutting charges were and how they worked. Both men were either actually or constructively aware of the contents of the workplan. The same comment applies in respect of their knowledge of the Appendix K response. It seems to me that they should have taken steps to determine why the original method was not being used and that the method proposed on 2nd July 1997 and the method ultimately used on 13th July 1997 were properly tested and assessed as safe. What sort of an answer did Mr. Dwyer expect when he asked Mr. McCracken whether the process was still safe. Mr. McCracken was not going to denigrate his own work as an expert by denying that the process was not safe. It was insufficient for Mr. Dwyer to rely on the assertions made by Mr. McCracken as to the safety factors and to do so was either naive or stupid or both. Mr. Fenwick as the contractor, and Mr. Dwyer were both exercising supervisory responsibilities. They were doing so in full

knowledge that a large public event was to occur. The failure particularly by Mr. Fenwick and to a lesser degree by Mr. Dwyer to allow these departures from the workplan to go uncorrected amounts on the evidence to negligence.

EXCLUSION ZONES

64. There was never any doubt that a large crowd would attend the hospital demolition having regard to the advance publicity and the significance of the building to the Canberra people. An email had been sent on 4th July 1997 by Section Publications to no less than 48 organisations in the ACT Public Service. It was just another example of the Gary Dawson/Chief Ministers Department promotional push. The setting of an exclusion zone, became a critical step in the demolition process. It was a step designed to fix the safe limits beyond which the public could gather to view the spectacle. There was always the possibility that something may go wrong with material being projected from an implosion site. The emission of projectiles from such a demolition using the implosion method was well documented and was even substantiated in the video material tendered at the Inquest including the promotional tape produced for the Loizeaux group. It is clear from this promotional tape that notwithstanding the considerable safeguards that are made from time to time by this expert on each project there is the risk that projectiles will be emitted from such a demolition.

65. It was reasonable therefore that persons who were without technical knowledge or expertise could assume the exclusion zones were being fixed by those personnel with the detailed technical knowledge and accordingly, it would be safe for persons to gather in whatever numbers outside the exclusion zones as spectators. Many persons had confidence in Mr. McCracken's ability to discharge his functions as a specialist implosion expert safely and competently. The responsibility for safety issues generally and the setting of exclusion zones clearly lay with Mr. McCracken. Mr. McCracken accepted this responsibility. Mr. McCracken said that he would be responsible for explaining and indicating a safety zone for the amount of explosives to be used. Mr. McCracken continued: -

> A. "Did you have overall responsibility for safety issues?
>
> A. Yes, Yes.
>
> A. And what was the procedure with those safety issues? Who's involved?
>
> A. Safety issues are that when someone asked me "where would be a safe viewing distance?" we had a look around, we thought that on the other side of the lake would be ok, and that where they suggested originally – was too close, that we'd move out into the park".

Not only was there a responsibility in setting the zone but a necessity to communicate that exclusion zone to those involved in the project in a clear and precise way. This was not done. It was vague and imprecise.

66. Mr. Loizeaux confirmed this responsibility ultimately rested with the shotfirer when he was asked about the "blaster" being in charge having the final say: -

> "He is the only person who actually controls what is happening in terms of (the) detonation of explosives. He has to look at the material he is blasting. He has to look at the likelihood of fly of debris, he has to look at his protective measures that he has put into the project and he must determine the minimum exclusion zone. The regulatory authorities can always increase that zone and frequently do in order to use existing building lines, streets, etcetera, as lines of sight whereby local authorities, police officials, if you will, can see the line and keep people back as they would in a parade. I should say, however, that once the blaster has determined his minimum zone if the client has a problem with that zone for whatever reason as I mentioned in response to an earlier question you raised they may request a smaller zone".

Mr. Loizeaux cited his experience with Hollywood movies making particular mention of the Mel Gibson film, Lethal Weapon 3.

67. The submissions made by Counsel for the Territory in my view succinctly encompass the relevant considerations on this topic of the exclusion zone. Save for some minor departures those submissions will be adopted by me as they accurately summarise the evidence.

68.

a. Mr. Dwyer, Mr. Lavers and Mr. Fenwick said a 200 metre exclusion zone was fixed in consultation with Mr. McCracken. The evidence of Sergeant Brodie confirms that Mr. McCracken was aware of and participated in the setting of a 200 metre zone. Mr. McCracken said that there were virtually daily meetings with Mr. Dwyer and apparently others where issues including the exclusion zones were discussed.
b. A month before the implosion a decision was reached that the Hospice could remain occupied when he wrote to Mr. Dwyer. Those involved on the project were entitled to proceed upon the basis that Mr. McCracken had given adequate planning in this area. In June 1997 Mr. Dwyer asked whether the lake needed to be cleared. Mr. McCracken said it was not necessary. Clearly Mr. McCracken knew boats would appear on the lake at implosion time.

69. It is necessary to go to certain questions and answers provided by Mr. McCracken in his record of interview with the police. It would appear on the evidence that Mr. McCracken never infact calculated an appropriate exclusion zone. At the highest he only gave rough estimates as a reaction to the suggestion of others. He first rejected a

suggestion put to him that spectators be permitted to stand just outside the site perimeter fence. Mr. McCracken rejected that suggestion because he acknowledged that "there was a possibility of flying material there". Mr. McCracken further said: -

> "At no stage and especially in the direction that I could see it was going to go, would I say someone could stand behind the fence out on the area of the Peninsula on the edge of the lake. The safest way…was behind the structure and that anyone who is going to stand around the edge of the lake within 100 metres of it obviously had a chance of being hit by a brick".

70. Mr. McCracken was asked: -

> A. "With this implosion what did – prior to this implosion taking place, what was the worst possible case scenario that you could have seen if something had have gone wrong? Did you give any consideration?
>
> A. Virtually what had happened today that the building – my main worry was two things. One would be noise and the other would be that the structure wouldn't break up completely because of the way it was manufactured or put together, especially Sylvia Curley because it was – it was not bolted up – it was bolted but it was also bolted and welded and there was no way the beams can snap from the column. The beams would bend before you snap them away and virtually what's happened that part of the structure stood up. That was the worst – I didn't have a problem with the people. I just thought they were so far away that we would never have had a problem with the people. And that the site, I think, I have written it on the bottom here, that the site is well isolated. I mean normally we don't go any where near that distance away or we have never had trouble in 30 years".

This was a significant answer. Mr. McCracken had no difficulty with people being on the other side of the lake. It is also significant because Mr. McCracken is actually acknowledging in the result what he had been told by Mr. Gordon Ashley i.e. the building would buckle but not break up or shatter. It is important then also to consider his answers at question 545, 546 and 551 where he adopted a suggestion put to him by others about the far side of the lake should be an exclusion zone for spectators on the basis that it "should be a relatively safe distance to be able to view it from". The difficulty one finds with these three answers is the uncertainty and the lack of precision in setting a precise distance and certainly it would appear that his opinion was qualified in some way.

71. A distance of 500 – 700 metres is referred to by Mr. McCracken in two particular exhibits tendered to the Inquest. This distance would appear to be purely an estimate made by Mr. McCracken from the Acton site to the other side of the lake. Mr. McCracken could see as much in his record of interview when he was asked: -

> A. "How far from you seeing it would you estimate that that distance would be?
>
> A. To across the lake?
>
> A. Yes.
>
> A. I think it was written down here it's between 500 – 700 metres".

There is no evidence that Mr. McCracken ever told anyone that the exclusion zone was 500 – 700 metres. Why did he not tell someone on the project. The answer seems to be there was no need for an exclusion zone at this stage. The suggestion of "the other side of the lake" was really because it was a safe and convenient vantage point. It was not an indication that the exclusion zone should extend to the other side of the lake.

72. There was an additional obligation to properly communicate the exclusion zone to persons involved in the project. If Mr. McCracken is now asserting that he had in mind an exclusion zone of 500 - 700 metres it was not a proper means of communication by a mere footnote to the "CBS Administration Checklist". If he was proposing an exclusion zone of 500 - 700 metres there was an onerous burden upon him to properly communicate that advice to those involved in the project so that appropriate steps could be taken to clear the lake and ensure that persons were not within the zone. If an exclusion zone of 500 - 700 metres was what he really had in mind then there has been a serious dereliction of duty on his part in failing to communicate that exclusion zone in proper and clear terms to those involved on the project.
73. It is my view on the evidence that he did not consider an exclusion zone of that distance to be necessary. It was the settled view of Mr. McCracken that an exclusion zone of 200 metres would apply so with boats being on the lake they would be beyond that distance. No alarm or protest was made by Mr. McCracken about boats being on the lake on 13th July 1997. This was because the presence of the boats on the lake was consistent with his advice concerning an exclusion zone of only 200 metres. The boats were beyond the 200 metre exclusion zone.
74. Counsel Assisting the Inquest makes the submission that the figure should not be treated as having been carefully determined and any suggestion that it was a recommended exclusion zone should be rejected. Counsel continues in his submission to state "first it would be incongruous to suggest that an exclusion zone could be constituted by what is in reality a range of distances; and secondly if these figures were seriously meant to reflect Mr. McCracken's considered minimum exclusion zone then every spectator boat on the lake on

Sunday 13th July 1997 was within this zone and permitted by Mr. McCracken to remain there".

75. In a later record of interview with the police on 2nd September 1997 there is a critical answer as it would seem that Mr. McCracken had no safety concerns about the project when he said: -

> "I have said all along if I didn't know what happened in hindsight, I'd press that button again tomorrow. I was quite confident – and the thing with this building here, everyone seemed to think that somewhere along the line, we either cheated on safety aspects, that we didn't consider the planning, that it was rushed. I mean, we've had all this on media, we've heard lots of stuff come out, but with $400,000.00 or so of the work pending straight after this job, the people who are giving us that work were coming to the meeting, our families were sitting on the other side of the lake, the whole thing on this job was put into place the best that we could put it into place.
>
> A. Would you agree that the planning wasn't all that great in the preparation for the implosion?
>
> A. No I wouldn't".

72. The only time Mr. McCracken indicated a safe viewing distance was on the very confined issue of the VIP viewing platform proposed for the North West side of the site. It was a location well away and almost behind the way the blast was ultimately directed. The figure mentioned at that time was 150 metres which was later extended to 200 metres by the Australian Federal Police.

77. No further consideration was given to these estimates by Mr. McCracken after: -

a. Abandoning the use of cutting charges,
b. Reconfiguring the blast towards the lake,
c. Using large amounts of cartridge explosives in combination with the untried backing plates, and
d. Employing a minimal amount of protective measures.

78. The role of MIX106.3 in the discussions on the exclusion zone was purely in the area of publicity and advertising of the demolition rather than any formal decision making. The real decision rested with those in control of the site.

79. The role of the Australian Federal Police in fixing the exclusion zone concerned public access, crowd control and site security. Sergeant Kirby of the AFP said the 200 metre exclusion zone was settled after a consultative meeting attended by him in early July. Mr. Lavers and Mr. Hotham of TCL Mr.

Dwyer of PCAPL, Mr. Chabaud of MIX106.3, Mr. Hopkins of the Chief Ministers Department and Sergeant Kirby were in attendance. Sergeant Kirby described how a bigger safety zone than the one originally spoken about was set. His view was that taking the exclusion zone much further afield than that satisfied me that we were in a

safe zone. Sergeant Kirby said the exclusion zone of 200 metres from the base of the building was extended to 200 metres from the foreshore. Sergeant Brown was the AFP operational commander on 13th July 1997. Both AFP officers decided to extend the exclusion zone to 200 metres from the Acton Peninsula foreshore. No one can seriously contend that MIX106.3 had any role in setting the exclusion zone. The primary concerns of the Australian Federal Police related to crowd control, parking, congestion, public access and dealing with possible demonstrators.

80. No criticism can be directed at or made of the Australian Federal Police in relation to their handling of the event. The following points should be made:-

    a. The police had no control over the methodology or protective measures employed on the site,
    b. The police were only included in the co – ordination meetings at a later stage primarily from 12th June 1997,
    c. The police interest in the public event was restricted to crowd control, traffic direction and the preservation of peace in the terms of demonstrators, and
    d. The police involved had no ostensible expertise in demolition whilst their only active role in relation to the final exclusion

zone was to offer the services of the Water Police to secure the exclusion zone restricting access to the site by possible protestors.

At the meetings attended by the AFP no report relating to safety zone was provided whilst the only advice came from PCAPL. TCL and the police were not informed of the source of that advice.

79. The safe viewing distance set by Mr. McCracken was notified only to Mr. Dwyer following his request. Mr. Dwyer passed on that information in the form of a 200 metre exclusion zone from the buildings to Mr. Hopkins and Mr. Lavers and to WorkCover at the meeting on 2nd July 1997. WorkCover had no role to play in any decision setting the exclusion zone. Mr. Dwyer made a file note which related to a conversation he had with Mr. Hend of the ACT Water Police where Mr. Hend advised that boats will be kept to a minimum distance of 200 metres off the Peninsula.
80. It seems to me that all parties were entitled to rely upon the exclusion zone fixed by the specialist implosion subcontractor who had knowledge of all relevant facts. An additional 200 metres had been extended as an abundant precaution. Nothing was communicated by TCL or PCAPL which suggested

the exclusion zone was not an appropriate one. An exclusion zone of 200 metres from the buildings was extended by the Australian Federal Police to 200 metres from the Acton Peninsula Foreshores and this additional extension came about in the following manner as described by Sergeant Brown "it was agreed that we'd set a greater distance of 200 metres around it in case there was room for error there somewhere because on the water its hard to tell distances across the water".

81. This distance of 200 metres relied upon by the AFP was communicated to them by the Project Director (TCL) and the Project Manager (PCAPL). The AFP were relying, as was the Territory, upon the advice being provided by the Project Director and the Project Manager responsible for technical information. The AFP then for more abundant caution extended the zone to apply to 200 metres from the foreshore. The evidence does not suggest that WorkCover was involved in setting the exclusion zone but rather the evidence suggests that the inspectors were informed about the exclusion zone that had been set and relied upon those indications being given from people involved in the technical side of the project particularly Mr. McCracken the explosive demolition expert.

EXCLUSION ZONE – MR. W. LAVERS AND TCL

82. It is unfortunate that Mr. Lavers has been assigned during the Inquest and in the submissions with the status of the technical adviser for the project. It seems to me that Mr. Lavers unfairly acquired that status the moment he had any dealings with Mr. Dawson and others in the CMD. Mr. Lavers is an architect with two degrees with a personal liking for the role of a media liaison person. Any suggestion that Mr. Lavers was an expert in explosives or the demolition process in my assessment is a total fallacy. Mr. Lavers presented during the Inquest, as I have frequently mentioned, as being a conscientious and meticulous officer who made copious notes in his diary of various commitments that he was required to discharge on a daily basis in his public life. The difficulty confronted by both Mr. Lavers and Mr. Dwyer of PCAPL is simply that they were acting as conduits in respect of information being provided to them or requested of or by them from the contractor and/or the subcontractor, Mr. McCracken, or others especially Mr. Dawson or the CMD. The evidence establishes that the information provided over the months of the project was either factually inaccurate or totally unreliable causing both men a great deal of difficulty as a consequence of the tragedy. Mr. Lavers was simply an employee of TCL acting as the agent for the principal. Mr. Lavers was a man possessed of considerable management skills and was left with the burden of answering all enquiries in relation to the project whether technical or otherwise. Invariably it necessitated Mr. Lavers seeking information from Mr. Dwyer of PCAPL whose company had the contract with the Territory. I am quite confident that Mr. Lavers would not have accepted this function of having to liaise with Mr. Gary Dawson, the media adviser to the Chief Minister, if he was to later know that by virtue of those actions he was accredited with a role inconsistent with his qualifications, expertise, knowledge and skills.
83. The project team statement issued by TCL, PCAPL, CCD and CBS on the evening of the tragedy the 13th July 1997 made the following statement:-

"In formulating plans for the demolition, an extensive and rigourous process of risk assessment was implemented. This risk assessment was commenced 18 months ago as part of the feasibility study into the clearing of Acton Peninsula. A component of the risk assessment process including extending the acceptable implosion safety margin of 50 metres to 200 metres as an added precaution for onlookers".

The initial advice provided to those co – ordinating the public event came from Mr. Lavers who advised of an exclusion zone in the vicinity of 50 metres. No doubt this advice was founded upon the reference in the February 1996 report of Richard Glenn and Associates which at page 4 makes the following statement: -

"On each implosion day an exclusion zone, expect to be in the order of 50 metres, will be established around the building to be demolished". This report by Richard Glenn and Associates was entitled "Possible Impact on Hospice Activities".

84. It will be appreciated that at that stage there was no detail as to the actual methodology proposed, the type of explosives or protective measures nor was implosion a settled form of demolition. No advertising had been made nor were the contracts let or the contractor or subcontractor appointed so that when Mr. Lavers provided this information in January 1997 it was at a very early stage and could only be regarded as preliminary information. I do not believe that Mr. Lavers should be criticised for providing this detail. It seems to me that all Mr. Lavers was seeking to achieve was to point out to Mr. Hopkins when he provided that information what the RGA Report actually had said on this issue. Again what Mr. Lavers provided Mr. Hopkins for the purpose of drafting a response by the Chief Minister to Mr. Tolley of the Hospital Services Union of Australia was simply the advice provided by RGA.
85. What is critical, however, is that Mr. Lavers was present at the meeting on 2nd July 1997 and later on the site explaining the methodology in some detail to the media on 10th July 1997. It was this knowledge of the changes in the methodology and the reconfiguration of the blast away from the hospital that should have warranted some attention being given to reassessing the exclusion zone. It was clearly a lack of attention to detail. I reiterate that I do not consider Mr. Lavers to be the absolute technical adviser for the organised public event. Mr. Lavers was also somewhat removed from any supervisory role. His conduct and actions can be regarded as careless. I agree with Mr. Purnell's submission where he quotes Lieutenant Woodcock who came to the view that Mr. Lavers "didn't know very much about the whole explosion process at all". It is for that reason that I do not view Mr. Lavers as giving technical expert advice but rather providing information contained in a briefing report to him prior to the enlivenment or shortly after the reactivation of the project and later when he passed advice to Mr. Hopkins to facilitate the Tolley reply.
86. Mr. Lavers did become aware of the exclusion zone of 200 metres but it is not sufficiently clear in my view when Mr. Lavers became appraised of that detail. It possibly occurred on 2nd July 1997 but it was more likely to have been made known to him as late as 10th July 1997 by which time it was probably too late

for him to take any action about the matter or realise its significance. It should also be remembered that the Inquest did not have the benefit of Mr. Lavers giving evidence on this issue in any detail so that the only material available comes in his record of interview and what others may have said about the role of Mr. Lavers. In any event I do not propose to continue labouring this issue of Mr. Lavers state of knowledge or involvement in the exclusion zone issue as the sole responsibility for setting and reassessing exclusion zones lay primarily with Mr. Rod McCracken as the explosives expert and subcontractor and then with Mr. Fenwick as the supervising contractor.

87. Two answers given by Mr. Lavers in his record of interview are of considerable importance: -

> A. "Was a second opinion sought in regard to safety exclusion zones based on the Glenn report?
>
> A. At the time of the report I don't believe so, however, during the course of the project, ultimately it was the – Rod McCracken was the person who advised PCAPL.
>
> A. And what did he exactly did he advise?
>
> A. From my discussions with Cameron Dwyer he originally talked of 50 metres as being normal, 100 metres as being convenient and lets make it 200 metres to be on the safe side, which virtually meant that the Peninsula was – they didn't want anyone standing on the Peninsula. We went into greater detail just before the implosion about the safety of the Hospice and whether it should be occupied because the Hospice is only 78 metres from Sylvia Curley House".

This is the understanding of Mr. Lavers and what he was telling Mr. Hopkins and Mr. Dawson. This was reasonable conduct on Mr. Lavers' part. Again the lack of precision in the terms of the safe distance is apparent.

EXCLUSION ZONE - MR. M. SULLIVAN AND MR. R. WADE

79. This segment was an unsatisfactory area of the Inquest where a substantial amount of time was lost on an issue which depended upon the credibility of Messrs. Wade and Sullivan as to who was to be believed. I do not propose to make any finding about this issue. The evidence on this topic ranged well outside the scope of the Inquest and touched upon matters in the nature of a professional dispute between the two men which at its very highest the topic was peripheral or collateral to the Inquest and upon reflection largely irrelevant when one considers that a decision on an exclusion zone rested with the shotfirer. The professional issue went back to a point in time prior to Katie Bender's death.

80. Mr. Purnell SC for TCL made some lengthy submissions concerning what he describes as the Wade allegations. I shall endeavour to deal with them as succinctly as possible.
81. The suggestion is that on 5th June 1997 Mr. Russell Wade a former senior Military Officer spoke to Mr. Sullivan at a social function and told him in essence that because of the steel I beams in the columns, the use of steel cutting charges would be involved and the stand off distance when such charges were used in military demolitions was 1000 metres. Mr. Wade further stated that an independent safety officer should be appointed by the government and that the Chief Inspector of Dangerous Goods should be involved. Mr. Wade volunteered his advice should it be required. If this was the advice offered then it was of some significance and worth consideration, if not adoption.
82. Mr. Sullivan denied the conversation.
83. Counsel Assisting the Inquest argues that Mr. Wade's version of the conversation should be accepted for the following reasons:-

    a. It was well known as at 5th June 1997 that steel was in the building columns (I agree. This fact was known as far back as 1991 when an earlier feasibility study had been prepared by the ACT Board of Health with Richard Glenn and Associates),
    b. Mr. Sullivan agreed that he did have a conversation with Mr. Wade that evening with only himself and Mr. Wade present which lasted about 1 minute or slightly longer in duration,
    c. There were concessions made as to the length of their conversation sufficient for Mr. Wade to have passed on to Mr. Sullivan the information that he claims to have provided,
    d. Mr. Sullivan would not attribute Mr. Wade's involvement in the writing of the letter by Mr. O'Donnel of APESMA to the

       then Minister Mr. David Lamont as a motive for Mr. Wade to fabricate the conversation, and

    e. Mr. Wade remained unshaken and credible despite lengthy and trivial attempts to attack his credit.

79. The counter argument advanced by Mr. Purnell of Counsel is to this effect, viz; why would one in a position of Mr. Wade responsibly wait for a social occasion to raise such a serious issue as public safety, and secondly, why would one in a position of Mr. Wade take only 1 – $1^{1/2}$ minutes only in duration to convey an issue of public safety to Mr. Sullivan and then not discuss or raise it with him again. If Mr. Sullivan allegedly made no reply to the comment then why did not Mr. Wade at least repeat his comments to ensure that Mr. Sullivan heard or understood the import of those allegations or seek some response or assurance that he Mr. Sullivan would do something about these grave matters. Why, if Mr. Wade was so serious about safety, did he not

follow up the alleged conversation with at least a written memorandum to Mr. Sullivan to ensure Mr. Sullivan remembered, heard or was at least considering and conscious of this important matter.

80. There certainly was a conversation between the two men and as to the exact content there is total conjecture. I am not prepared to make any definitive finding primarily because I do not accept that it directly or even indirectly contributed to the death of Katie Bender. There is no doubt that Mr. Sullivan, if this conversation had occurred, could have alerted Mr. Lavers to the issues. TCL were relying on persons more closely involved in the project as the experts and who were exercising a supervisory role. Then again for Mr. Sullivan to become involved would be just another unnecessary intrusion on the responsibilities of Mr. Lavers which by this time in late June/early July in my assessment of the evidence had become somewhat onerous. The Inquest heard a great deal of interesting evidence about this conversation but which in reflection was only remotely connected with the fact-finding function of the Coroner.

97. Finally the evidence on such issues as the brochures for the engineering conference in Queensland, the lack of confidence in senior management, the union issues, the references to Mr. Whitecross MLA and Mr. Kaine MLA make for interesting anecdotal information but in essence are not helpful issues in determining the more substantive matters in this Inquest. Accordingly I do not propose to make any findings about this conversation or the two men, Mr. Sullivan or Mr. Wade. It may become relevant to other litigation at a future time in another place.

EXCLUSION ZONE – MR. DWYER (PCAPL)

98. Mr. Dwyer of PCAPL is frequently described by his Counsel as the conduit of information between the contractor and subcontractor, the Project Director and the principal. Mr. Dwyer was an administrator lacking any technical expertise in the demolition of buildings using the implosion method and explosives. Yet there is no escape from the simple fact that PCAPL and Mr. Dwyer had been appointed the Project Manager and Superintendent by virtue of their experience in management. I do not accept that role solely involves the exercise of passing on information in a routine manner without any form of examination or scrutiny. Nor do I accept the proposition that it would have been irregular or inappropriate for Mr. Dwyer to intrude on the issue of whether an exclusion zone had been properly established. The evidence is such that it required the Project Manager and Superintendent to be taking an active controlling and supervising role in relation to what the contractor and subcontractor were actually undertaking on the site.

99. Mr. Dwyer was asked about the setting of the exclusion zone in his record of interview which was adopted by him on oath: -

A. "Did he Mr. McCracken say that there was a possibility that there would be some fly rock at any stage to you?

A. He advised that there could be and the exclusion zones were set up to eliminate any safety issues associated with

that. I think his original advice was the 50 metre zone and then it was increased according to his advice.

A. So you said 50 metres for – to have people therefore – within the 50 metres is that what he initially said?

A. No. What happened – he advised the exclusion zone in a meeting of 200 metres.

Q. Right.

A. And that was also the position where the perimeter fence was set on the site.

A. That's 50 metres we're talking about here?

A. No.

A. The perimeter site – the perimeter fence, how far was that from the – was that 200 metres was it?

A. No it would be – what happened was, we asked Rod to advise a safe distance on the Peninsula and he advised a position 20 metres I think it's the western road which is up near the Hospice end.

A. Right.

A. And the fence was put in position. Then the distance of 150 metres was set from the shoreline which put the overall exclusion zone well over 200 metres which was his advice to us.

A. Ok, and did you accept that exclusion zone?

A. On his advice, yes.

A. On his advice?

A. A contractor sets those limits".

100. Mr. Dwyer confirmed in evidence that in his discussions with Mr. McCracken an exclusion zone was set at 200 metres from the building and that a distance of 150 metres from the shore was set which put the effective zone at more than 200 metres.

101. Not one single document was provided to Mr. Dwyer by Mr. McCracken or Mr. Fenwick formally advising him of the appropriate exclusion zone either in answer to Mr. Dwyer's directive of 27th June 1997 or otherwise. It was meritorious and entirely proper for Mr. Dwyer to issue the directive but he omitted to follow up the failure of Mr. Fenwick or Mr. McCracken to respond to this crucial request. The only record relating to this issue is a hand written note by Mr. Dwyer written two days after the implosion outlining oral advice that he had received. He agreed in evidence that the advice only related to the safe distance for a VIP viewing platform, which I have previously mentioned. Indeed he agreed with the proposition put by Mr. McCracken's Counsel that he did not "specifically seek Mr. McCracken's advice as to the precise distance from which it would be safe for members of the public to view this implosion".

102. Mr. Chabaud stated that information concerning the exclusion zone was provided at the co – ordination meetings by Mr. Dwyer and Mr. Gaskin. Mr. Hopkins agreed with a proposition put by Mr. Ibbotson of Counsel for PCAPL that it was Mr. Dwyer's role to obtain information about the exclusion zone from the contractor and provide it to these meetings. This was the concept of being a conduit. The fact that neither of the demolition contractors were even invited to a single one of these meetings nor did they apparently seek to attend effectively meant that whatever advice Mr. Dwyer gave would probably be accepted and therefore become the exclusion zone.

103. At the meeting of 2nd July 1997 at which Mr. Dwyer was present Mr. McCracken indicated he might reconfigure the blast. People were on notice at that meeting of the risk of flying debris and the fact that cutting charges were not being used. Mr. Dwyer should have ensured in my assessment after the meeting of the 2nd July 1997, given that he was the conduit for information to Mr. Lavers and to the officers of the Chief Ministers Department, that Mr. Fenwick and Mr. McCracken had given him sound advice on the safe viewing area in the interests of general public safety. This was a clear failure on the part of Mr. Dwyer and was a factor in the death of Katie Bender.

<u>EXCLUSION ZONE – MR. TONY FENWICK (CCD)</u>

104. There is no evidence that Mr. Fenwick took any steps to ensure that Mr. McCracken gave considered and calculated advice as to the appropriate exclusion zone. On 2nd June 1997 when Mr. Dwyer directed him to provide such information in writing, Mr. Fenwick never bothered to respond in writing and his oral advice given some time later related only to dust. There was a duty on Mr. Fenwick as the contractor to supervise his explosives subcontractor. The importance of this issue in my assessment is a relevant factor contributing to the death of Katie Bender.

105. In conclusion the failures of Mr. McCracken in this regard constituted gross negligence. Those failures contributed to the death of

Katie Bender, simply because it was Mr. McCracken's responsibility as the explosives demolition expert to set the safety standards. It was a further failure in the terms of providing an adequate exclusion zone having full knowledge that the public were invited to attend as spectators. The fact that Mr. McCracken never set a specific exclusion zone for the spectators demonstrates a failure on his part to exercise proper responsibility for the blast.

LACK OF PROTECTIVE MEASURES

106. There was no protection at all between the webbing of C30 and C74 and where Katie Bender was standing. The complete lack of any protective measure, other than the inadequate bund walls and the incomplete sandbagging, should have been apparent to all who spent any time on the site either on 13th July 1997 or in the days leading up to the blast. When taken in conjunction with the reconfiguration of the blast towards the crowd and the indications that flying debris was a real possibility, the lack of protective measures ought to have been obvious even without expert knowledge. They were factors relevant to the death of Katie Bender.

Failure to Test the Method Used

107. The final configuration of the explosives used on 13th July 1997 consisted in essence of the following: -

a. Use of Riogel cartridge explosives only in large quantities,
b. Placed against steel backing plates,
c. Which in turn were placed directly against the steel webs of the columns,
d. With the columns having being cut in the "half moon" method, and
e. With no protective measures in the direction of the blast.

108. Mr. McCracken himself acknowledged that: -

a. He had never used Riogel before,
b. He had never used backing plates in this manner before and it was his idea to do so,
c. He had never imploded a steel framed building of the kind in question before, and
d. Consequently he had never previously experienced the use of explosives to kick out steel columns that had been cut in this fashion.

109. It was imperative that before conducting the implosion Mr. McCracken surely would have tested the method or at least would have had an independent assessment made of the method by someone with expertise. This was because he had no prior experience on which to base a forecast of what might happen particularly in the light of his knowledge that a crowd was

expected to be present in the direction of the blast. It was critical that an independent check of the capacity of the explosives be made. There was no suggestion that he did either. Mr. McCracken agreed with the police that at the time of the detonation he did know what the result would be yet when specifically asked by the police whether he should have sought a second opinion he dismissed this as unnecessary saying "I honestly don't think we would have had a different scenario at all". This certainly was a curious response possibly indicating Mr. McCracken's own inability to assess his own methodology.

110. This very same methodology was put to Mr. Loizeaux for his expert comment. Mr. Loizeaux said, "there would have been no spectators. I wouldn't have permitted it…because the likelihood/probability, not possibility – the probability of fly of very large elements was so high, I would not have done it at all…I wouldn't have detonated it".

111. Mr. McCracken did claim that he had sought other opinions although the only person he had nominated was Mr. Appel. The highest that Mr. McCracken put any consultation with him was that he might have mentioned that the webs were thin and that he proposed to insert backing plates. Mr. McCracken further stated that Mr. Appel never made any "decision" about the use of the plates as he was overseas at the relevant time. Mr. Appel never saw the size of the plates proposed to be inserted by Mr. McCracken. Nobody "physically did the calculations" before the plates were inserted. At the time of Mr. Appel's visit on 6th and 7th June 1997 Mr. McCracken was still searching for cutting charges and even involved Mr. Appel in the search. Mr. Appel could not be regarded as providing a second expert explosives demolition opinion. Mr. McCracken has to be regarded as being reckless intending to proceed with the demolition in the light of those particular circumstances.

112. The fact that Mr. Ashley believed the cutting method he approved was for an induced collapse rather than implosion demonstrates the inadequacy of any consultation Mr. McCracken may have had with Mr. Ashley.

113. The test blasts conducted by Mr. McCracken did not involve any testing of the steel backing plates. Those tests were effectively worthless as prognostic tools as Mr. McCracken himself conceded. Only one of these tests was of Riogel against steel. This test involved a smaller column that did not have the weight of the structure upon it and consequently had more freedom to move. This test resulted in some fly being produced. A portion of the web was found near the bund wall about 6 metres away. Mr. McCracken only used 1kg of Riogel to facilitate this test.

114. Mr. Loizeaux was of the firm view that it was imperative to test the method that was actually to be used on the day of the implosion. Whilst acknowledging there are some types of construction (e.g. post tensioned or pre - cast and pre – stressed reinforced concrete) on which it would be inadvisable to conduct a test blast he indicated that such test blasts could have been conducted in this case on concrete encased steel. The testing of the method ultimately used would have in his opinion shown that the method

was an inappropriate one to kick columns out. In the Appendix K response at K5c it is stated that it was not possible to conduct a full test blast perhaps based on the advice of Mr. Ashley and that to do so would have affected the structural integrity of the building. This proposition was never put to Mr. Loizeaux. The weight of evidence suggests that Mr. Loizeaux's point of view should be accepted.

115. It is no excuse for Mr. McCracken to rely on an alleged inability to conduct a full test blast as the reasons for not conducting any tests at all involving

backing plates. Mr. McCracken was aware from the test blast he did perform that portions of the web may be projected. It was as a consequence of this that he conceived the idea of using a backing plate to strengthen the web. He did not know that the plates would deform and push against the web at the time of detonation yet he did not even test his theory on a small non-structural column. It would seem that he was content to use this method, not knowing what the final result would be, just hoping that it would work out.

116. The best evidence is that the backing plates, rather than strengthening the webs, instead pushed through, fractured them and they then became projectiles. This is illustrated by the sheer amount of web and backing plates including the fatal fragment that were thrown such large distances from the site. This result could have been predicted even without testing had Mr. McCracken bothered to consult an expert prior to employing this method for the first time on 13th July 1997. It must again be said that those responsible for the conduct of Mr. McCracken should also have been alert to obtain specialist expert demolition advice in relation to the use of such explosives.

117. Mr. Loizeaux described the method as ill-conceived. The backing plates were steel just as dense as the web itself. Accordingly rather than strengthening the web as hoped by Mr. McCracken these unsecured plates transmitted almost the full force of the explosive energy straight into the web making projectiles of both the webbing and the plate itself.

118. Mr. Loizeaux explained the method by which the plates transferred this energy through his croquet analogy.

"So that the explosives were not pushed through the web?---Mm.

Take that as the assumption in general terms?---I think that is ill conceived because the backing plate as you are referring to this---

Yes?---is made of material just as dense as the web itself and this steel is a perfect medium for the transmission of energy through the backing plate into the web regardless so not only are you still going to put virtually the same amount of energy into the web of the column which they are intending to remove and that web probably would become a projectile and this would be come a very effective projectile as well because it has been flame cut on all four sides. The analogy – do you play croquet?

Well personally I don't but it is neither---?---I do not mean personally, but you use the same description?

Yes?---The small ball, the wickets, you smash the ball around.

Yes?---When you sting you opponent what you do is you place your ball against their ball. The balls are quite similar in material, quite dense, hard not like steel but hard – put your foot on your ball, take your mallet, strike your ball and their ball, energy passes through your ball into their ball and their ball goes as far as possible in the wrong direction. What would happen if you put energy behind this dense plate the energy would pass right through it much the same as the energy would pass through a croquet ball and would still go into the web and fly. Likewise the energy into the backing plate would make it fly, evidenced by the concave shape and the cupping. Its not only cupped one direction, its cupped the other direction and I would say it was done by explosives because if you turn the plate over you can see that the striations in the back of the plate showing energy that was pumped into it and energy from explosives will actually modify, to some extent, the structure of the steel. Impact explosives were used in mating different types of metals together explosively and again a metallurgist would be more qualified to describe that but I would think that this would be ill advised and not serve a purpose. Rather than strengthen the plate it would have been a better process – something that we do – is

cushion the plate and we will take a piece of rubber conveyor belting, which we already have on the job, as mentioned previously, a piece of plywood, something soft and the intent of that is to remove the brisance which is a term that reflects shattering power of an energetic explosive and by removing the brisance out of the impact of the detonation and then transmission of energy into the web you're likely to minimise or mitigate the shear tearing along the flanges where the web attaches to the flanges which are much thicker. You're going to get shear lines which was very evidence in the columns that I saw yesterday and also as seen in the photographs this morning. That would have mitigated that tearing, possibly had a mitigating effect on the amount of fly by reducing the energy imparted to the web in the backing plate".

119. Mr. McCracken knew that the first time his final method would be tried would be on the day of the implosion itself. He also knew that integral to this system was the placement of large amounts of explosives directly against steel. There was no effective protection in the direction of the blast. Mr. McCracken should therefore as a matter of reasonable precaution for public safety have adopted and insisted upon at least the standard accepted military exclusion zone of 1000 metres being adopted when using explosives in such circumstances. The evidence in support of this conclusion comes from Dr. Krstic on 24th March 1998, Mr. Russell Wade on 31st July 1998.

120. Mr. Fenwick as the head contractor had the duty to properly supervise Mr. McCracken's activities on the site on the site. He conceded that he knew that one test blast conducted by Mr. McCracken resulted in explosive charge blowing a small hole in the beam. He further believed that Mr. Dwyer had attended that test blast. Mr. Fenwick was aware of the need to strengthen the centre of the column and infact it was his workers who cut 200 odd backing plates that were used by Mr. McCracken for this purpose.

121. Mr. Fenwick knew the importance of conducting test blasts. Mr. Fenwick had assisted Mr. McCracken in conducting one blast in relation to shock waves. He also knew the purpose of the backing plates was to stop the web blowing out. Therefore he must have been aware that if this proposal failed to work on a test it was likely again that holes would be blown through the column webs. Yet he did not bother to ensure that Mr. McCracken's proposed solution for strengthening the webs was tested at all or otherwise assessed as safe and effective before being used for the first time on the 13th July 1997.

122. Mr. Dwyer was also in my view aware of Mr. McCracken's purpose of using steel backing plates. Mr. Dwyer told the police that he had been advised by Mr. McCracken that the backing plates were to be used to "strengthen up the centre of the column so the effect would be that the explosive didn't blow a hole in the column" and thus to help push the columns out of position. He, like Mr. Fenwick, failed to take any steps to ensure that this proposal was tested or otherwise assessed safe before being used for the first time.

123. There are a combination of failures evident here by both Mr. Fenwick and Mr. Dwyer which combined with their other failures amount to negligence. Mr. Fenwick was in a greater position than Mr. Dwyer to prevent these circumstances occurring. If I was required to attribute any degree to these failures it must primarily fall upon Mr. Fenwick. Mr. Dwyer bears a lesser level of responsibility but he at least had constructive knowledge of Mr. McCracken's methodology and importantly the late changes. It should be said in relation to Mr. Dwyer that he, as the Project Manager and Superintendent on the site for a considerable number of months, was in a position and should have ensured that the *ACT Demolition Code of Practice* was rigidly complied with including the *Australian Code of Practice* in relation to the use of explosives. The evidence satisfies me that Mr. Dwyer was totally unsuited for appointment to the role of a Project

Manager on a site the size of the Acton project involving a demolition using explosives. The evidence also demonstrates a lack of capacity in Mr. Dwyer to manage and supervise the work practices of Mr. McCracken and Mr. Fenwick.

<u>Visit to the site by military personnel</u>

124. In the days shortly before the implosion occurred there were a large number of persons who attended the site and observed the work being undertaken by Mr. McCracken.

125. On 1st July 1997 there was a courtesy briefing provided to the Australian Federal Police Bomb Squad including the officer in charge Sergeant Gary Brodie. Mr. McCracken discussed details of his methodology with these persons including the difficulty in obtaining the cutting charges he wanted to use, his consequent decision to use cartridge explosives with pre cut columns and his intention to kick out the columns. The visitors also inspected the half moon cuts to the columns, the application of the explosives to the steel backing plates and the effect of the gap between the web and those backing plates to

lessen the possibility of fragmentation of the web in accordance with "accepted principals".

126. There was a visit by defence experts on 10th July 1997 at about 2.00pm. It was a technical tour. It comprised officers from the Australian Army and the Royal Australian Navy. These persons were accompanied by Mr. Mike Sullivan and Mr. Warwick Lavers of TCL with some media personnel including the Australian Broadcasting Corporation. About 14 – 18 persons were involved in the tour.

127. There were frequent exhortations made by Counsel for TCL and PCAPL for these two Military Officers to be called as witnesses in the Inquest on the issue of methodology. Counsel for TCL has made a competent and exhaustive analysis of the Records of Interview provided by the two officers. I have adopted the majority of those submissions with some additional excerpts included. Counsel for TCL made particular prominence of the Record of Interview provided to the police by Major K. J. Cuthbertson who is a Project Officer with the Directorate of Trials Department of the Defence (Army).

128. Lieutenant R. J. Woodcock has been a member of the Royal Australian Navy for 21 years and holds a Masters in Explosive Ordnance Engineering from Cambridge University. His responsibility is to look at magazines on board Royal Australian Navy vessels. Lieutenant Woodcock explained that he overheard a conversation and indicated to his colleagues that he would like to join a visit for his own knowledge. Lieutenant Woodcock made it perfectly clear in his Record of Interview that the demolition work at Acton Peninsula did not relate to his own military work. The officer said it was like "on the job training, sort of backing up what I had learnt". The officer continued that it was "an information excursion" and did not consider it a technical thing. Lieutenant Woodcock was not sure whether the person that conducted the tour was actually Mr. Rod McCracken but did say that "he then took us through a tour of the site showing us various test cuts that he had done, where he had put the explosives, he explained the process, he explained the problems that he had with the entire job and going into detail how he couldn't get explosives and how well he didn't have the plans and how he – the building was a lot stronger than he first thought and how he got around the problems with those things".

129. It seemed that Mr. McCracken handed around the linear cutting charges for the visitors to inspect. Lieutenant Woodcock saw the sandbagging strapped around particular columns. Lieutenant Woodcock saw the work being done at the Hospice, the various test blasts on the RSJ's and the cutting to various columns. Lieutenant Woodcock made it perfectly clear in his record of interview that what is done in a military demolition is totally different in a civil atmosphere.

130. When asked by the police "did you discuss any safety distance that he was going to include on the day" Lieutenant Woodcock replied "he did and

> I cant remember the exact distances but he – the limit they had established with the police boats were going to be out of bounds was well and truly far beyond where anything would fall far beyond". Lieutenant Woodcock was asked: -

A. "Did you pass any approvals or advice?"

A. "Oh no basically no".

131. Lieutenant Woodcock attended the demolition on Sunday 13th July 1997 with his wife in an area west of the Yacht Club. Lieutenant Woodcock said in his evidence that he sensed something was wrong. He made this judgment by virtue of the amount of splashes and the distance the debris was falling in the water beyond the police boats. Lieutenant Woodcock explained that the army are more familiar with demolition work. He did not see any person conducting any inspection or ticking off figures whereas in the military (sphere) the people are very rigorous with that sort of thing in the terms of taking notes. The officer said "I go off regularly and do inspections of ships and we have check lists and we have all sorts of things to talk about and I saw no evidence of that sort of thing at all".

132. Lieutenant Woodcock further said, "we were there on what I would call an excursion. Not any fact finding, just general interest sake. I found it intensely interesting. I dragged my wife by push – bike there and I would have got a lot closer but I was only stopped by (the) crowds. This was my very first experience with contracting type work that was interesting. It wasn't done how Navy people would probably do it but I went away with overwhelming feeling that this guy has done this many many times and knows what he's about, so I would have gone to where Katie or where I would have got as close as I could which would have been around by the site except I found out earlier that part was roped off and I couldn't get there so I would have gone to where Katie Bender was but I couldn't get through the crowds".

133. Two engineers accompanied Major Cuthbertson to the demolition site on 10th July 1997. They were Messrs. David Kemp and Lindsay Vickers. Mr. Kemp had experience not only as an engineer in the construction of buildings but also demolition work. Mr. Vickers is a person who assisted Major Cuthbertson on another project involving the use of explosives. The arrangements for the visit had been initially made by Captain Leo Monkovich an ammunition technical officer based in Sydney.

134. Major Cuthberton's function with defence "is testing the safety and useability of explosives stores where we clarify and amend current safety procedures and safety distances". Major Cuthbertson explained that an "implosion is the use of explosives in very, very small quantities on a building prepared for demolition. An implosion is the resultant collapse of a building using the smallest amount of explosive and most of the fragment that normally results from an explosion, an explosion is massive quantities of explosive that you expect massive debris and fragments to be thrown clear of the building. The implosion minimises fragmentation and debris and virtually uses the weight of the building to collapse itself". The reason for the site visit was on a "professional basis, were interested to see how the construction industry complied with an implosion activity. We were interested in the placement of

charges, the preparation of the building, the safety procedures, how they anticipated the building would collapse and most of our demolitions are huge".

135. Major Cuthbertson provides a very significant answer in relation to the difference between a civil demolition and a defence type demolition. Major Cuthbertson says: -

"The difference between a defence demolition, the simplest example I can give you, I conduct trials to test the fragment throw, that is the velocity which a fragment travels through the air, the exact point on the ground where it lands and the collection of that data, in some instance we will construct a purpose built magazine, place a set quantity of explosives inside it knowing that it will totally demolish or destroy the building and then proceed to collect the data. The data is what the blast pressure builds up and occurs when the explosive is initiated, the velocity the fragment travels after the blast commences to tear the building apart, the distance that the fragments travel before they strike the ground and the condition of the fragment after it hits the ground".

"This is filmed and instrumented down to the nth degree to get the maximum benefit so that we can understand what happens during a demolition. That information is then used on the various formulas to calculate safety distances. That's our role. The charges, the size charges, anything that we use can vary. My last trials were from 10kg, I fired up to 75 tonne in a single blast, total demolition and destruction of the building. The difference between that and a civil demolition such as the implosion, what my belief was, small quantities of explosive are used to shift, not to cut the steel girders that were to hold the building. I believe that it is the same as a stack of cards, if you cut out a layer of the lower cards then the weight and the volume of whatever mass rests above that point will collapse and if you continue to knock out those lower cards then obviously the weight at the top will crumble and push the building down. Minimum – the blast does the work, you are not cutting steel, that was my understanding of this civil demolition.

136. Major Cuthbertson said that Mr. McCracken explained to them the surprise that he experienced when they started to clear away the reinforced concrete from the brickwork and found that additional steel had been added to the outer edges of each of the flanges. He showed a little bit of dismay at that because he apparently was not expecting it.

137. Major Cuthbertson said that Mr. McCracken made a claim that the methodology was on "United States" advice. "He said that the plans were late or unavailable at the time but they proceeded in the manner that the US had advised. He said his proposed demolition of the set up, the testing that was used to cut and remove excess steel from these girders had been sent to the States and verified by some company over there". It should be noted that during the course of the interview Major Cuthbertson was shown a number of photographs by the interviewing police officer and asked to make comments. It should also be stressed that he didn't pass any comments at the time about the amount of explosives. It was the officers understanding that at the time that he left the demolition site that Mr. McCracken was using Riogel as a kick charge and a shaped cutting charge. The officer continued "the Riogel is used where all the steel had been cut through using the gas axe. The shape charge

was used on a couple of the major beams that were well underneath the building.

138. Major Cuthbertson was asked "did yourself or any person in the group give an opinion on what he had set up at the time to Mr. McCracken?"

A. "No not myself no. Kemp and Vickers who were with me, no some of the others were discussing other points but I was more interested in the exposed charge. I wanted to see the positioning and the placement, hence, this photograph".

A. "Do you know if Mr. McCracken asked for any approval of what he was doing?"

A. "No I wouldn't".

A. "Do you know if any person in the group was there to give approval to Mr. McCracken of what he was doing?"

A. "Not from us, we were there purely as a professional group we were interested to see what his procedures were, how he was placing the charges and how he anticipated the building to fall".

139. Major Cuthbertson was unaware of the strength of Riogel. It was a new explosive in his field and he used a different high explosive. Major Cuthbertson was professionally interested to find out how the Riogel worked and in particular whether Riogel was designed to cut the steel which would result in fragmentation or whether it would simply act as a pushing type. When asked about whether Mr. McCracken informed the group of any safety distances Major Cutherbertson said "not as such. We asked what the anticipated throw was and in a general conversation, "what's your safety distance?" He said that "they did not expect any fragment or debris to go outside the earthen mark which was probably 10 foot – 10, 12 foot outside the wall".

140. Major Cuthbertson was asked at question 57: -

Q. "Have you got any comment in relation to – concerns or that opinions expressed that both Army and Police that experts had attended the site and given approval for it?"

A. "It was wrong. Our group was there simply to get an understanding of how he had planned it, what had been done. Media being media, if there's not a story there, there've invented, it sounds good. Obviously they were attracted because

> there were two media representatives there in that group who reported as being there. None of us were there to give any form of approval one way or the other. I think that if – if more of the charges had have been positioned, the possibility may have been but it wasn't and no comment was made in that field. We were there as interested onlookers if you like, experienced in the field of explosive but not there to check on his work.

141. Counsel for PCAPL endeavours, in making the following submission, to place another interpretation on the purpose of the visit and the possible outcome. Their attendance on the site and the absence of any comment by the visitors, favourable or otherwise, does in no manner enable a conclusion or inference to be drawn that whatever was occurring on the site had some form of approval on their part. It is misleading for Counsel to suggest otherwise.

> "The submission by Counsel Assisting that these visitors "had no duty or place to comment on the methodology they observed" surely misses the very important point that none of them raised any concern about that methodology. Had any of these experts had the slightest quarm that the methodology they observed might cause pieces of metal to be projected onto, let alone over the lake, they would and should have said so (indeed, it is arguable that they did have a duty to do so). Moreover there is no doubt given the presence of the media during some of these visits that had any such doubts or concerns being expressed they would have become public".

142. Clearly the answers given earlier by Major Cuthbertson lays to rest any suggestion that the military personnel were there to provide advice let alone any type of approval to the methodology. It is consistent with their position that they were there on an information-gathering basis. The military personnel were simply curious onlookers with a common interest in demolition and explosives.

143. The military personnel who visited the site were not called as witnesses to the Inquest as they had no role to play in relation to the cause and effect of the tragedy. Counsel for PCAPL wants to attribute duties, responsibilities and obligations to anybody that had any connection with the demolition except for his own client Mr. Dwyer. Counsel for PCAPL in my view is simply clutching at straws. It is an attempt to minimise the omissions of Mr. Dwyer and to deflect harm away from his client.

144. Major Cuthbertson further said: -

> "Military wise as soon as we do one of those, place any explosive be of high or low velocity then we set an automatic 1000 metre exclusion zone. I was quite surprised how close people came in". He continues "probably that goes against the grain but we use bigger charges. We use higher velocity charges and it's professionally something we wouldn't do but in this case we believe that the precautions had been taken. McCracken had explained his procedures. The charge breaks that he said, 803kg were the two charge weights that stick in my mind and with the amount of preparation, that is the cutting of the girder, all these were designed to do was push, not shatter and it could have worked".

145. Major Cuthbertson felt that the use of Riogel by Mr. McCracken was correct. It appears from other answers given in the record of interview that Major Cuthbertson had thought that the methodology employed by Mr. McCracken with the protective measures that he had taken with the exclusion zone were reasonable in the circumstances of a civilian demolition.

146. Major Cuthbertson continued: -

> "The moment a military target is established from an individual metal target, it is 1000 metres. That would be calculated – the outside girders of that building – all around that building would be a minimum of 1000 metres. That's an unwritten law that we utilise because we know that the stuff will fly that far".

147. Counsel for PCAPL attempts to ascribe a role to the military personnel that was wholly inconsistent with the purpose of their going to the site. The military personnel were not there to check on the methodology or to

> detect issues as to safety. The military personnel were dealing with demolitions using explosive devices in a military context. The military visitors were there simply to gain some understanding of the procedure and protocol that was undertaken in a civil demolition. It simply is not open to make any suggestion that the attendance by the military personnel on the site and their lack of adverse comment on the methodology amounted to some sort of tacit approval to what was actually occurring on the site. It needs to be made perfectly clear that the military personnel were not on the site to examine Mr. McCracken's method of demolition or assist in the loading of explosives and therefore they were not there to consider the possibilities that something might go wrong.

IMPLOSION AS A METHOD OF DEMOLITION

1. On Sunday afternoon 13th July 1997 the Australian Federal Police informed me as the Coroner that a death had occurred during the course of the hospital demolition. The police further advised me that a number of persons had been injured, that property had been damaged by flying debris and that there were many thousands of spectators still present in the vicinity of the tragedy. A number of those spectators were dismayed and in a state of shock. The police requested my attendance at the scene immediately as the Coroner and then later at the hospital site during the course of that Sunday afternoon.
2. The attendance by the Coroner was in accordance with a time honoured tradition of fulfilling an inquisitorial function of fact – finding where there was a sudden unexplained death in extraordinary circumstances. The death of Katie Bender certainly met those historical criteria. These days the Coroner only attends in exceptional circumstances. A period of 4 hours was spent in the vicinity of Katie's death and then later inspecting the hospital buildings accompanied by senior police officers. Thereafter the buildings and rubble were again inspected with Counsel Assisting the Inquest (Mr. Whybrow), Detective Constable Mark Johnsen and other police officers in late July and again in August 1997. Upon my inspection of the hospital buildings one of my primary concerns was to identify an expert in the implosion method of demolition who was totally independent of any party involved in the Acton Peninsula project and able to give evidence about the implosion process.
3. A few short days after the demolition failure it came to my notice that probably the best available expert of international renown was Mr. J. Mark Loizeaux, the President of Controlled Demolition Incorporated of Phoenix, Maryland USA. The Loizeaux family had been involved in the demolition of buildings and structures for 43 years and had imploded close on 2000 buildings of which at least 400 were steel framed encased structures. The Loizeaux group of companies had demolished approximately 7000 structures including bridges, buildings, chimneys offshore and nuclear facilities over a period of 51 years. In that time no member of the public had ever been killed or injured in the course of any of those demolitions. This segment of the Inquest was never seriously challenged save for some attempts to discredit Mr. Loizeaux in respect of a demolition in Perth in 1992 about which I shall shortly make some comments.
4. There was extensive video and documentary material tendered in the Inquest establishing that implosion, if undertaken competently, is a safe and effective method of demolition. The videos depicted a large number of implosions across the world. The structures imploded varied enormously in height, construction and locality. In some cases the implosions were conducted with the utmost speed and under extremely difficult circumstances such as arose after the devastating Mexico City earthquake in 1985 when it was necessary to bring down 26 damaged buildings.
5. Implosion is a violent bursting inward. An implosion has nothing to do with "blowing up" a building, a notion associated with thousands of pounds of explosives that are frequently applied in terrorist bombings. Only enough explosives are used to eliminate the critical structural supports. The weight of the edifice then produces its own collapse. It is the placement of the charges and the detonation timing which is of vital importance rather than the quantity

of explosives used. Mr. Loizeaux describes the controlled collapse as the "sequential elimination of vertical structural supports".

6. Mr. Loizeaux assessed the implosion method, competently handled, as being just as safe as traditional demolition. Mr. Loizeaux assessed it as safer because implosions involve a far lower incidence of injury to workers and almost a nonexistent incident of injury to third parties. He justified that assessment on the following basis when he was asked these question by Mr. Johnson SC for the Territory: -

> A. "Now you have been asked a number of questions about the use of implosion on the one hand, the use of conventional
>
> demolition on the other. If implosion is done competently by an experienced person are there any safety advantages in the use of implosion as opposed to the use of traditional demolition?
>
> A. Yes. Generally in the preparation of a structure for implosion you are not structurally dealing with or modifying the building that you are going to implode. You may saw strip it or you may remove salvage but your not sawing off the limb that your sitting on as is the case with demolition. Like conventional methods you're literally taking apart what you are standing on. If you are close enough to take apart the building with a hydraulic ram or a wrecking ball and a crane, you are close enough for the building to collapse and hit you. The use of explosives in demolition moves the worker far away from the building during the actual demise of the structure so he cannot be hurt and will not be hurt if the project is handled properly, number one. Number two, the fact that the demolition takes place over a very short predetermined period of time, extraordinary measures can be taken to protect the worker, adjacent properties, adjacent activities that cannot be undertaken with the same diligence on a protracted contract for conventional demolition. Thirdly, once again, under the circumstances, I would have to say that if it is carried out properly the public is far safer in that when the actual demolition takes place all parties should be moved to an area which is clear of any risk of harm. And again in our experience we have never injured, in our 51-year history, a member of the public…
>
> A. Would you agree with the statement that the implosion competently handled is just as safe as traditional demolition?
>
> A. Yes.

A. Is it possible to go further and say that implosion competently handled is safer than traditional demolition?

A. Industry records in the United States – I cannot speak for Europe – demonstrate on a unit basis per square foot. There is a far lower incidence of injury to workers and almost of non - existing incidence of injury to third parties using implosion. It is infact safer".

1. The undoubted expertise of Mr. Loizeaux was never really challenged. His evidence regarding prudent demolition practice and procedure also passed without challenge as did his assessments of the particular short comings in the methodology adopted for these implosions. The criticisms, on a close analysis, did not relate to the methodology applied but rather to the fact that the implosion process raises consideration of safety. It was self evident from the video material produced in evidence to the Inquest that any form of a high rise demolition whether it be undertaken by conventional means or the implosion method produced or had the potential to produce fly material in the form of debris in the nature of rock, steel, dirt, concrete, brick or other items simply by reason of the force applied in the process. On any view of the demolition method unless conducted with safety and expertise, it is dangerous. No other party to the Inquest offered to the enquiry a witness of similar standing as Mr. Loizeaux on this issue as to the best available method of a demolition. The Court, from the outset, was amenable to any suitable expert witness being called upon to give evidence if so nominated by the parties.
2. It must be said the efforts made by some Counsel in their cross-examination of Mr. Loizeaux were less than satisfactory. I shall explain this comment further. The only attempts to challenge Mr. Loizeaux's evidence did not relate to these matters or his own methodology but were directed to alleged failures by him or his companies in various projects they had undertaken. The allegations put to Mr. Loizeaux were generally, inaccurate and frequently based on hearsay causing Mr. Loizeaux at one stage to comment to Mr. Purnell SC for TCL: -

   "If half of the effort had been made to see whether or not Mr. McCracken was qualified that you apparently made to find out every little job that may be less than perfect even with all of the inappropriate and wrong data that you approached me yesterday, he would never have been given permission to do this job".

3. It should also be noted that all Counsel had from 7th October 1998 to 2nd November 1998, a period of just over 3 weeks, to prepare and cross-examine Mr. Loizeaux who travelled from America especially for the purpose of giving evidence at the Inquest. The Inquest had adjourned for this period to await his arrival in Australia. It could not be achieved in a more expeditious manner due to his commitments. Mr. Loizeaux had arrived in Canberra from the United States on Tuesday, 3rd November 1998. His evidence commenced at 9.00am on Wednesday, 4th November 1998 and continued into the following day. The Court sat until 6.00pm on the Wednesday 4th November 1998. On Thursday,

5th November 1999 the evidence of Mr. Loizeaux resumed shortly after 9.00am and continued to about 10.45am when his evidence was concluded.

4. During the previous 3-week adjournment period there was considerable doubt held in my mind as to whether Mr. Loizeaux would actually attend the Inquest. The Coroner had no power to secure his attendance in Australia by the conventional summons method due to jurisdictional issues with an overseas witness.
5. It is necessary to mention at this juncture some serious concerns entertained by me during this three-week period. It needs to be stated in the public interest that Mr. Purnell SC for TCL raised in his submissions an article published in the Melbourne Age newspaper of 21st March 1999 relating to the fact that Mr. Loizeaux had met with me.

   Mr. Purnell SC sought clarification.

6. On 2nd October 1998 I had written to Mr. Loizeaux concerning his attendance in Canberra to give evidence. A copy of this letter is included in the Report. During the early part of the adjournment period Detective Constable Mark Johnsen, the Officer in Charge of the Bender investigation and Counsel Assisting the Inquest informed me that due to international business commitments there were some real difficulties in Mr. Loizeaux attending the Inquest. The concern about Mr. Loizeaux's attendance culminated in an email being received from him dated 20th October 1998 explaining his business pressures and the inconvenience in travelling to Australia. This information was provided to me at a conference with Detective Johnsen, Mr. I. W. R. Nash and Mr. S. Whybrow of Counsel at 2.00pm on 22nd October 1998.
7. The busy schedule of Mr. Loizeaux is evidenced by reference to two implosions about to be conducted by him at that time. On 23rd October 1998 his company imploded the Pirates Cove Holiday Inn, Paradise Island, Bahamas. It was 19 level structure of 178 feet. These buildings were the tallest ever to be demolished in the Bahamas or the Caribbean. Then on 24th October 1998 the J. L. Hudson Department Store in Detroit, Michigan was demolished. It was the tallest steel framed building ever imploded at 435 foot with an additional 110 - foot tall flag pole with a total square footage of 2.2 million square feet.
8. The potential unavailability of Mr. Loizeaux to give expert evidence presented a significant concern to me in that the Inquest was drawing to a close. Any further delay in the hearing was not in the interests of the parties yet the problem was where would a suitable expert be found to give evidence at such short notice. It should be stated that with a view to saving expense and inconvenience the viability of receiving his evidence on the closed circuit video system had been explored by me. This course was abandoned due to practical difficulties in the terms of a suitable venue

   in Phoenix (Maryland), the time differences between the two countries in addition to the fact that certain Counsel wished to personally confer with Mr. Loizeaux upon his arrival in Australia. The course of action agreed upon was

that the Coroner would telephone Mr. Loizeaux in Phoenix (Maryland) and express to him the importance of his attendance in Australia to give evidence.

9. Shortly after midnight on Tuesday, 27th October 1998 I telephoned Mr. Loizeaux's company Controlled Demolition Incorporated in Maryland. I was only able to speak to Mr. Loizeaux's secretary who asked me to call back within an hour when she expected Mr. Loizeaux to be in attendance at his office. At 1.10am on Tuesday, 27th October 1998 I spoke to Mr. Loizeaux for a period of about 23 minutes concerning the importance of his evidence to the Inquest. In summary the following issues were discussed with Mr. Loizeaux: -

    a. The Court understood and appreciated his busy schedule,
    b. It was grateful to him giving of his time to come to Australia,
    c. It was important that the Court had the benefit of his expertise as the people of Canberra and the deceased's family were anxious to know what went wrong with the implosion on Sunday, 13th July 1997,
    d. It was most probable that Mr. Rod McCracken, the shotfirer, would not give evidence to the Inquest on the grounds of self - incrimination and he was entitled to exercise his right to silence. Mr. Loizeaux's evidence was of critical importance at this late stage as no other person of similar expertise was readily available,
    e. The role of the Coroner in Australian Law was explained to Mr. Loizeaux in that it was a fact finding function, not adversarial and has powers to make recommendations to the authorities in relation to safety factors for future demolitions, and
    f. Administrative matters relating to his airfares, accommodation and incidental expenses in addition to his consultancy and expert witness fees in respect of which the latter amount was to be funded from the Coroner's budget for the Inquest.

1. Mr. Loizeaux was advised that he would be provided with further details on the latter issue at the conclusion of his evidence. Mr. Loizeaux was advised of the difficulties in having the evidence taken on the video system due to fact that there were a number of Counsel involved in the Inquest who had extensive questions. His personal presence made that task easier as it would involve some duration in time. There were also logistic difficulties in being able to show videos or physical items or Exhibits to him in these circumstances.
2. Mr. Loizeaux, upon his arrival in Canberra, sought, on Tuesday 3rd November 1998, before giving his evidence an interview with the Coroner. This request was declined. Mr. Loizeaux was given by Detective Johnsen a letter dated 3rd November 1998 and advised that if time permitted the Coroner would meet with him to discuss the letter after the conclusion of his evidence. A copy of this letter is reproduced in the Report. Subsequently, on Thursday, 5th

November 1998 I met Mr. Loizeaux at lunch at an Asian restaurant in West Row, Canberra City accompanied by Mr. I. W. R. Nash, Counsel Assisting, Mr. S. Whybrow of the DPP and Detective Johnsen. The question of his fees was discussed including the necessity for itemised detail in his memorandum of fees.

3. Mr. Loizeaux commenced a conversation in the terms referred to in the Age article but was not advanced beyond those terms by me. I declined to be engaged in further conversation on the subject. There was no further discussion concerning the Inquest or the evidence. Thereafter, the conversation was in general terms covering such broad topics of family and mutual sporting interests particularly his golfing interests. An invoice for his fees was subsequently received in my Chambers on 23rd November 1998.
4. Mr. Loizeaux was a non-compellable witness. There had been a substantial degree of cooperation by him in coming to Australia at some personal inconvenience. It was a matter of professional courtesy that I joined with Counsel and Detective Johnsen to acknowledge his attendance in Canberra. The Coroner, both traditionally and historically, has a judicial and ministerial duty to discharge in relation to his inquisitorial function particularly in relation to the attendance of witnesses.
5. Mr. Loizeaux frankly and fully responded to each matter put to him. These allegations related only to collateral credit issues rather than to any issue of substance and in any event Mr. Loizeaux answers only further emphasised what a competent and credible witness of an expert nature he was. It should be emphasised that no other expert was called to challenge the substance of Mr. Loizeaux's evidence, despite all the parties having had several months notice of his attendance, his detailed record of interview with the police and access to the video material set out in Exhibit 161.
6. The following excerpts represent just some of the credit issues canvassed with Mr. Loizeaux by Counsel:-

> (a) Ever been involved in a serious injury?---During the demolition of a structure, no.
>
> During the preparation of demolition?---Of a building, no.
>
> During the work after the demolition?---We had one of our employees who broke several of our rules and he was killed in an accident putting explosives away, yes.
>
> And that was Chris Keegan?---Right. You're well informed.
>
> And was there an inspector from a regulatory authority who was killed in Florida 15 years ago with the Loizeaux group?---Yes. It's generally recognised that basically he committed suicide.

And that was during an implosion, wasn't it"---No it wasn't.

What part of the process was that involved in?---That was when I was preparing to dispose of explosives after the completion of a project. We'd ejected him twice from the site, he was in fact an inspector, because twice he tried to steal explosives. He came in at the site behind me and came up, according to our pilot, to be standing about 100 yards away, leant over behind me, and the explosives detonated.

Has there been some injury done during the implosion process with the Loizeaux group – injury caused, physical injury?---The only two injuries that have occurred during implosion that I'm aware of were two inspectors that used their badges to get inside of a safety zone after we had checked that zone, were in an approved area, trying to get a picture or get a better view, ironically both of them were struck in the foot with a piece of concrete. And that's the only injury that I'm aware of.

In Baltimore, Marylands, was there an injury to a young girl who was a spectator?---Not that I'm aware of.

When you said that frequently in terms of buildings not going according to plan in terms of the implosion method, did that happen with one of your buildings, the K25 Oaks Ridge in Tennessee for the Department of Energy?---That's correct.

And how long ago did that mishap occur?---I don't know the exact date. It's been a year or two.

Right and another one, again for the Department of Energy, at the Fenaldo, Ohio site?---Yes.

(b) But was there not damage done to the people mover?---Accordingly to the structural engineer it sustained minor damage, yes.

And were there not 50,000 involved in watching that implosion?---I heard estimates much lower than that.

I see and well, what estimated number of people do you say saw that implosion?---The police estimated the crowd that assembled around the safety perimeter was around 20,000.

How many?---20.

Now, were the people that watched that implosion enveloped in a dust cloud?---there was the down – those that were down wind were definitely inundated, yes.

And was there concern in relation to the dust that it was a hazard so far as public health was concerned in relation to lead and asbestos?---That's expressed frequently on projects, yes.

But in relation to this project?---Yes. It happens frequently.

And was not the Department of Health involved in that project following complaints by spectators?---I don't know. The dust associated with the implosion is outside of our contract scope.

EMU BREWERY IMPLOSION – 23RD FEBRUARY 1992

22. The Emu Brewery was demolished by implosion on 23rd February 1992. The Brewery was a multi – storey steel structure located in Mounts Bay Road and Spring Street, Perth (WA). Cutting charges were used on the project by the Loizeaux Brothers. There was a mishap when a piece of steel struck the truncheon of a police officer apparently standing outside the exclusion zone. Although it was not within the knowledge of Mr. Loizeaux it was acknowledged by Controlled Demolition Incorporated in a letter dated 11th March 1992 to the Department of Occupational Heath and Safety (WA) stating: -

"Two pieces of steel which were identified as pieces of the web section of the steel columns were ejected some considerable distance as a result of this blast.

Both pieces landed within the evacuation area, concern was expressed due to the potential for injury to personnel and/or property damage within the evacuation area.

It is probable that the occurrence of the displaced pieces of steel was due to an unused high carbon or manganese content in the structural steel which would have given the steel less malleability resulting in it becoming brittle. The small kicking charge tore the brittle steel from the column section."

SCOTTISH AMICABLE/GRE BUILDINGS IN ST GEORGES TERRACE –

2ND NOVEMBER 1998

23. These were reinforced concrete structures. It must be acknowledged that property damage was sustained by reason of projectiles being emitted from the demolition.

The statement supplied to the Inquest by Mr. C. C. MacCarron, a special investigation with Worksafe, Western Australia remained untested by cross - examination. Mr. McCracken was not called as a witness in the Inquest. Again the assertions made need to be approached with caution before placing any reliance upon the statement to have any probative value.

CANTERBURY COURT AND COMMONWEALTH BANK DEMOLITIONS

24.

(a) The Commonwealth Bank was successfully demolished by the Loizeaux group in late 1988. The demolition received the approval of the Department of Mines (WA). The building collapsed in it's own footprint.

This was significant as the historic Wesley Church was located across the road. There was concern about potential for damage being occasioned to that building. It is interesting to note that Mr. Loizeaux sought to comply with and know the statutory requirements for future projects. Mr. Purnell SC for TCL is critical of Mr. Loizeaux for not knowing that using a wrecking ball was forbidden in demolitions pursuant to the *ACT Demolition Code of Practice*. Mr. Loizeaux was called to give evidence on the

basis of his long-term success with the implosion process of demolition not the particular practice prevailing in the Australian Capital Territory. Mr. Loizeaux conceded that he had not read the Code (see also the observations of Mr. G. Barker in attachment F of Exhibit 526C at pages 1 and 2 previously referred to in the segment on the "Reviews to ACT WorkCover"). Mr. Barker refers to the contractors in the tender process most likely being familiar with the Australian

Standard, the Demolition of Structures AS2601 – 1991 but not aware of ACT procedures. I have considered this submission but it is really of no assistance to me in the fact - finding function.

(b) Canterbury Court was demolished in Perth on 10th June 1990. Bulk explosives were used on this project not linear shaped charges.

25. Even after Mr. Loizeaux was excused and had left Australia further attempts were made to collaterally attack his credit using only hearsay material and on issues upon which he had largely been cross examined and had fully responded. The manner in which this was done showed lack of preparation and was unhelpful to the Inquest because Mr. Loizeaux had left the country and was in no further position to respond even if he wished to do so. Again I have had regard to this material but it does not affect the manner in which I have assessed the reliability of his evidence. Mr. Loizeaux was a compelling witness. The substance of his evidence and the helpful clear manner in which it was presented assists the Inquest generally. I am prepared to accept his evidence without reservation.
26. The statutory framework, standards and codes applicable to implosion are essentially sound. Mr. Loizeaux stated "it's a good code. I think its well thought out to the extent that it describes the practices and the responsibilities". His only recommendations for improvement in this regard related to better clarifying the lines of responsibility. Mr. Loizeaux said this: -

    "I think you have an excellent code and standards. I think it would be extremely helpful if in both cases, venting of contractors and the definition of experience, prior experience and superintendency were more clarified. That they were clearer in terms of sights specific involvement and I think the responsibility should be passed up through some means, some idiom to the owner so that there is a clear linkage in terms of communication, financial and legal responsibility".

    ADVERTISING IMPLOSION AS A PUBLIC EVENT

27. These comments are an extension to my earlier remarks under the title "The Public Event – An Issue of Public Safety".

It is the blaster in charge, says Mr. Loizeaux, who must have the final say on whether the demolition is to be a public event. Mr. McCracken bore that responsibility. The final say was clearly not afforded to him. The decision to hold a public event had been made at a very early point in time. It did not give Mr. McCracken a reasonable opportunity to consider his options. The concept of a public event was on the table in early January 1997 generated thereafter by Mr. Gary Dawson, the media

adviser to the Chief Minister long before the tenders were let or contracts settled at a time when implosion was only an option. It is regrettable that Mr. Lavers became locked into that programme. When Mr. McCracken embraced the concept as a good idea he later found himself unable to withdraw from such an event when the project became too burdensome to adequately manage. Mr. McCracken simply acquiesced in an impossible deadline.

28. The final word on the idea of advertising an implosion as a public event comes from Mr. Loizeaux in the J. L. Hudson Department store demolition of 24th October 1998 in Detroit Michigan. This extract is taken from the Detroit News.

"Watch it on TV

These are plans for local TV coverage of the Hudson's building implosion Saturday.

- Channel 2 (WJBK): One – hour special begins at 5.00pm, with Huel Perkins and Monica Gayle.
- Channel 4 (WDIV): Will cut in immediately before the implosion, with Carmen Harlan and Emery King anchoring.
- Channel 7 (WXYZ): Live coverage from about 5.30 – 6.00pm
- Channel 50 (WKBD): Will go live several minutes before blast.

The sequence of the blast occurs in this fashion: -

Viewing the Implosion

City official stress that the best – and safest – place to watch the implosion is at home. Live telecasts are planned on channels 2, 4, 7 and 50.

If you want to come downtown

Bring the following to protect yourself: -

- Ear plugs,
- Dust mask,
- Safety goggles

OPTION OF INDUCED COLLAPSE

29. Mr. J. Sabharwal of Counsel for Mr. R. McCracken (CBS) asserts "the level of control exerted over Mr. McCracken cannot be more clearly demonstrated than by the refusal of Mr. Dwyer of PCAPL to acquiesce to the proposal made to him by Mr. McCracken that the Main Tower Block and Sylvia Curley House structures be demolished by an induced collapse and not by way of implosion. Effective control of the matter was clearly not entirely in the hands of Mr. McCracken". Counsel in his conclusions contends his client discharged his duty of care when he says "Mr. McCracken's own preference at a late stage was to carry out the demolition by way of an induced collapse. When the offer was rejected, he still ensured that all recognised safety measures were put in place".

30. The claim is made by Mr. McCracken that he was being scrutinised by various nominated bodies and persons. Mr. McCracken was granted the contract on his credentials as a specialist implosion expert with lengthy experience in this field of work. The primary obligations lay with him to safely carry out the implosion. The fact that various persons and bodies to varying extents may have given consideration to what he was doing does not pass any responsibility to them nor allow Mr. McCracken to minimise the obligation and responsibilities which properly lay with him. I do not believe that this argument about "control" being exerted over Mr. McCracken is supported by any evidence.
31. I propose to briefly examine this issue of the induced collapse method in the context of how Mr. Dwyer of PCAPL considered the matter. These assertions need to be considered from the perspective of Mr. Dwyer noting that he was not questioned by Counsel then appearing for Mr. McCracken on this issue. The only evidence on this matter comes from Mr. Dwyer on 7th October 1998 where he simply says: -

"Right. Besides what you've mentioned in your evidence in that record of interview, was the topic ever raised besides that occasion?---No, I don't believe it was.

And am I correct it was never put to you as a proposition that firstly that the buildings had to be induce collapsed?---That's correct, yes.

It wasn't?---That's correct, yes.

Or should be induce collapsed?---That's correct, yes.

That wasn't put either?---No.

Was Mr. Fenwick present when Mr. McCracken, can you recall was Mr. Fenwick present when Mr. McCracken mentioned the topic of induced collapse on that occasion?---No, I don't believe he was, no.

32. In his record of interview Mr. Dwyer says: -

A. At any stage, did Rod McCracken mention to you that, um, it was possible that he could induce the building?

A. Yes he did.

Q. Induce collapse?

A. Yes he did.

A. Right. What was the – what was that conversation, how did that come about?

A. He advised me that, er, the way in which they were cutting the columns, they could induce, um, the building. Um, but he advised that, um, he could, not that it should, be induced collapse.

A. Right.

A. Um, and I want to stress at this point in time, that at no point in time during the project, did they say, up until the Thirteenth of July, the building couldn't be imploded successfully and safely.

A. So they didn't say that at all?

A. No, they didn't say it couldn't be successfully imploded.

A. Right.

A. Using the method they did.

Q. Was it ever asked of them whether it could be?

A. Could be?

A. Imploded safely? Was it ever a concern to you or anybody else that you're aware of, whether he had sufficiently prepared the buildings for – for implosion prior to the detonation?

A. The only – the only question that I asked when he changed from the cutting charges to the other charges he used, would, um, um, it still, um, be successful and safe,

and, um, there was no adverse comments in that regard made to me.

A. Okay, and the issue that I mentioned to you before about a conversation between yourself and Rod relating to inducing the building, was that – was that anything – was that in – depth or was that just in passing?

A. A passing comment, um, as I said to you before, um, because of the way they, um, were cutting the steel, he advised that the building could be not should be induced collapse.

A. Okay, and what was your answer to his – to that comment made by him?

A. Basically, um, he had a contract, ah, a contract to implode the buildings. Um, if he wanted to change his work methodology, ah, he would have to go back through City and Country Demolition and request it through him. I had no power to tell him what to do.

A. Right, so he – he was contracted to City and County Demolition?

A. I wouldn't agree to him changing his work methodology.

A. So it would be fair to say he – at no stage did he say, "I want to induce it instead of imploding it"?

A. No.

A. Okay, it was just a passing comment?

A. As I – as I said – as I said, he stated that the building could be, not should be induce collapsed.

A. Right.

A. There's a difference there.

A. Yes.

A. It's a big difference and at no time did, um, did he state to me after changing his methodology in terms of changing the charges did he state to me that he couldn't implode the building successfully or safely".

30. At all material times prior to and during the Inquest the position of Mr. Dwyer was crystal clear that "at no time did CCD or CBS ever state to me that there

was going to be a safety problem with the way they were undertaking the implosion. Neither did they say that the implosion could not be carried out successfully". No proposal, formal or otherwise, was ever made that the buildings be demolished by "induced collapse" nor was

> it ever stated by the contractor or subcontractor that they should be. The submission of Mr. Sabharwal for Mr. McCracken carries no weight on my assessment of the evidence. If the suggestion was to be taken seriously by Mr. Dwyer then a formal written proposal should have been made as it seems to me that such a course would have had, at the very least, an impact on the contractural arrangements.
>
> I accept the evidence of Mr. Dwyer on this issue without any qualification.

34. The ultimate responsibility for the correct application of the methodology rested solely with Mr. McCracken. It seems to me that this submission is made in an attempt to minimise or shift the obligations from the shotfirer which I must reject.

CONCLUSION

35. The weight of evidence satisfies me that implosion is a safe and satisfactory method of demolition. The demolition method requires competent persons at all levels of the process to discharge the function complying with the appropriate codes of practice applicable to a highly dangerous task.

36. The Acton Peninsula project failed systemically in that: -

a. The contractor and subcontractor were insufficiently skilled for a complex project to be completed in the time schedule applicable,
b. The Project Managers representative was inadequately skilled for the task which was not a simple routine construction site to which his prior experience applied,
c. The Government Regulatory bodies failed to exercise their roles in a visible fashion, whereas
d. Senior officials of the CMD and the Chief Minister's Media adviser, with no knowledge of the demolition process, played a prominent intrusive role that was wholly unwarranted in what was a commercial industrial project, and
e. The project did not have the benefit of a structural engineer and an explosives demolition expert in accordance with the *Demolition Code of Practice*.

37. If a proper balance, as to their respective roles, had been struck and respected between: -

a. TCL,
b. PCAPL,
c. CCD,
d. CBS, and
e. WorkCover

then in all likelihood this tragedy would never have occurred or at least could have been averted.

38. There was no need for the demolition to become a media promotion generated by the Government and senior members of the public service. The promotion was unfair, particularly to Messrs. Lavers and Hotham of TCL, who in my assessment, have been assigned with responsibility for the failed project when all that was asked of them was to undertake a function well beyond their expertise, qualifications and skills. It was not made any easier when PCAPL appointed Mr. C. Dwyer to oversee Messrs. McCracken and Fenwick. Mr. Dwyer was unsuitable, in the terms of his qualifications and experience, for appointment to such a significant and complex project.
39. The death of Katie Bender was a consequence of the failure of those involved on the project to adequately comply with the standards and codes as well as the requirements of the contracts themselves. I have previously identified these failures. There is no problem with the standards and codes if they are properly complied with. It is appropriate and opportune, therefore, for those Codes to now be comprehensively reviewed. Mr. Loizeaux's analysis of these issues was clear and succinct. It was not the use of implosion as the method of demolition that caused Katie Bender's death but rather the use of that method by incompetent and inexperienced persons. Implosion is a cost effective demolition method in the terms of time saved as opposed to using the traditional demolition process. The evidence justifies a finding by this Inquest that implosion, if carried out competently, is at least as safe, if not safer than the traditional methods of demolition.

SUPPLEMENTARY RECOMMENDATIONS

These supplementary recommendations need to be considered with those segments of the Report dealing with the specific subject matter.

ENGINEERS AND THE *ACT DEMOLITION CODE OF PRACTICE*

1. The explosives specialist and structural engineer retained for a project where the demolition is to be achieved by the use of explosives should both be at all material times independent of and "at arms length" from the personnel engaged in the demolition project.

THE BUILDING CONTROLLER AND BEPCON

2. Counsel for PCAPL has made certain constructive suggestions and recommendations concerning the approval process for demolition work in its application to the *Building Act 1972*. The Inquest did not examine the approval processes but it would be useful for the ACT Regulatory Agencies to consider the merits of the submissions made by Counsel which are set out below: -

    a. Prior to the commencement of demolition work, an application for approval of plans is required to be produced to BEPCON (s 34), the Regulatory Agency which administers the performance of the Building Controller's duties and powers under this Act. The form is included in Appendix 2 of the *Demolition Code.* The application must include, inter alia:

        - Particulars of the existing building,
        - Details of the proposed methods to be employed in the execution of the work, and
        - Details of public safety measures and protection of adjacent structures,

    a. When plans have been approved by BEPCON, an application is made to it for a building permit by a person who holds an appropriately endorsed builders licence. This application will not be granted unless the Building Controller is satisfied, inter alia, that the work is insured,
    b. BEPCON, armed from the start with this information, its approval of plans and the building permit, is empowered to issue "Stop notices" where work on the project is being carried out otherwise than in accordance with the approval plans for that work (s 34(1) *Building Act 1972*),
    c. Where the work is being carried out at or near a street or place that is open to or used by the public, and the building inspector finds, on inspection, that:

        i. The safety precautions, particulars of which were submitted with the application for

approvals of the plans…are inadequate to protect the safety or persons using that street or place, or

ii. In a case in which particulars of safety precautions were not so submitted, inadequate safety precautions…are being taken to protect the safety of such persons.

the building inspector may specify such safety precautions to be taken in respect of that building work as are reasonable in the circumstances (Section 36A).

1. A comparative reading of the various regimes (NSW, WA) and of AS 2601 and AS2187.2 provides some insight into similarity between the various regulatory processes, as well as their rationale. The approval of plans and licensing of the works by a competent Regulatory Authority sets in train a process to centralised regulatory supervision, dealing directly with the contractor, and coordination between Regulatory Agencies, neighbours and other concerned parties.
2. It can be seen that in each instance: -

    a. It is contemplated that the first step in any demolition be an "assessment" or "investigation" by someone with sufficient expertise to determine the nature of the site, structure, any hazards or concerns, the appropriate method of demolition, and notification of the proposed works to be given to the Regulatory Authority (s 27A of the *Occupational Health and Safety Act 1983* New South Wales),
    b. Before any demolition work is commenced, a report, "survey" or "plan" detailing the proposed work methods and particulars relating to safety must be submitted to a competent regulatory body for approval, which may be subject to conditions.,
    c. The application for a permit must be made by a person who hods a relevant licence and necessary experience. In order to obtain such licence a person must have demonstrated his/her knowledge of safe working methods relating to demolition work, and have completed an approved course relating to carrying out demolition work or satisfied the Regulatory Authority that he/she possessed appropriate experience or training in carrying out demolition work (see reg 8 *Occupation Health and Safety* (Demolition Licencing) Regulation 1996 NSW; ss 14, 15, 16 *Building Act 1972*),
    d. The applicant must provide with such application certain information, including: -

i. Particulars of the existing building,
ii. Details of the proposed methods to be employed in the execution of the work, and
iii. Details of public safety measures and protection of adjacent structures.

a. A "permit", "licence" or the like for the work is granted subject to specified conditions to a person holding an appropriate licence – that "competent person" (the demolisher) then bears responsibility for communicating with the appropriate authorities and others concerned,
b. Demolition work must be carried out in accordance with approved plans and the conditions – the regulatory body oversees this in direct communication with the demolisher who is responsible for the safety of his work,
c. The regulatory body overseeing the demolition will continue to do so throughout, including ensuring other concerned parties or authorities are contacted and any concerns raised and addressed – this includes involvement in test blasting and setting of stand – off distance, and
d. The regulatory body will oversee stages of the work, and any deviation from the approved "plan" must be explained and justified by the "competent person" to the regulatory authority for approval.

5. The initial approval process is the keystone of the regulatory checking system designed to protect public safety in the ACT, as it is in NSW by the construction section of WorkCover and in Western Australia by DOSHWA. The New South Wales body conveys to the demolisher during the first contact that the demolition should take place out of hours and not be advertised.

CORONERS FINDINGS AND CONCLUSIONS

CORONER'S FINDINGS (SECTION 56 *CORONERS ACT 1956*)

1. Katie Bender died instantly at about 1.30pm on Sunday, 13th July 1997 on the foreshore of Lake Burley Griffin in the vicinity of Lennox Gardens Canberra whilst watching the demolition by implosion of Royal Canberra Hospital on Acton Peninsula with her family. Katie Bender died as a result of being struck in the head by a fragment of steel expelled from the Main Tower Block during the demolition process. I find that Rodney Douglas McCracken and Anthony Bruce Fenwick contributed to her death. Cameron Dwyer and Gordon Ashley also contributed to her death.

RODNEY DOUGLAS MCCRACKEN – MANSLAUGHTER BY GROSS NEGLIGENCE

2. Rodney Douglas McCracken will be committed for trial for the indictable offence of manslaughter by gross negligence. Anthony Bruce Fenwick will be committed for trial for being knowingly concerned in the commission of that offence by Rodney McCracken.
3. The elements required to establish the offence of manslaughter by gross negligence are set out in the decision of R v Adomako (1995) 1AC171 at 187. Lord Mackay with whom the other Law Lords agree said: -

> "The ordinary principles of the law of negligence apply to ascertain whether or not the defendant has been in breach of a duty of care towards the victim who has died. If such a breach of duty is established the next question is whether that breach of duty caused the death of the victim. If so, the jury must go on to consider whether that breach of duty should be characterised as gross negligence and therefore as a crime. This will depend on the seriousness of the breach of duty committed by the defendant in all the circumstances in which the defendant was placed when it occurred".

4. A breach of the relevant duty is constituted by either an act, an omission or both. The NSW Court of Criminal Appeal, has said: -

> "D(efendant) may also incur liability for an offence which is defined in terms of the doing of a positive act, by virtue of an omission to act, where the common law or a statute expressed or by implication imposed upon the defendant a duty to act. Thus, although manslaughter is usually defined in terms of the doing of an act causing death, and indeed, it is usually committed by a person so acting, it can be committed by an omission to act".
>
> See R v Taktak (1988) 14NSWLR 226 at 237.

5. The requisite intent required to establish the offence is set out in the decision of Nydam v The Queen (1977) VR430 at 444 where the Full Court of the Supreme Court of Victoria said: -

> "The requisite mens rea is, rather, an intent to do the act which, in fact, caused the death of a victim, but to do that act in circumstances with a doing involves a great falling short of the standard of care required of a reasonable man in the circumstances and a high degree of risk or likelihood of the occurrence of death or serious bodily harm if that standard of care was not observed, that is to say, such a falling short and such a risk as to warrant punishment under the criminal law".
>
> The High Court of Australia endorses these remarks in Wilson v The Queen (1991 – 1992) 174 CLR313 at 333.

6. There is in my view a strong basis for finding that Mr. McCracken and Mr. Fenwick owed a duty of care towards Katie Bender. The duty arises in a number of ways under the common law and/or the *OH&S Act*, the various Standards and Codes referred to in this Report and under the various contracts negotiated by CBS and CCD. Mr. McCracken and Mr. Fenwick were well aware of the presence and location of the crowd of spectators. Under the *OH&S Act* there are duties to ensure that workplaces are safe and without risk to health or harm to people. The duties are imposed on employers and any person who has any form of control of the workplace. PCAPL under its contract appointed Mr. Dwyer to act on its behalf and as such had a duty pursuant to Clause 2F and Paragraph 6.5.3 of the Project Management Manual where it states "to take all reasonably practical steps to ensure that persons at or near a workplace under the Project Managers control, including those who are not employed on the site, are not exposed to risk to their health or safety arising from the conduct of the Project Managers responsibilities". Mr. Fenwick in signing his contract between CCD and the Territory had a similar duty of care imposed upon him.

7. The acts and omissions amounting to gross negligence on the part of Mr. McCracken contributing to the death of Katie Bender were: -

a. The amount of explosives (480 to 500kg) used on 13th July 1997 compared to what he indicated he would use only days earlier (note, as a comparison, the amount of explosives used the 1998 car bombing in Omagh, Nothern Ireland was 600kg),
b. The failure to take prudent steps to ensure that the cutting charge methodology as set out in his workplan was in fact used,
c. Never having used Riogel before,
d. Mr. McCracken had never used backing plates in this manner on any prior demolition,

e. Mr. McCracken never tested the backing plates before testing them,
f. Mr. McCracken's failure to properly advise Mr. Ashley that the method of demolition was implosion in order to ensure the pre – weakening was appropriate for that method,
g. Mr. McCracken's failure to obtain any independent expert advice of an engineering nature or a demolition explosives expert to confirm that his final method was in fact safe, given all the changes he had made to his methodology and the fact that he had never before imploded steel framed buildings of this kind,
h. His failure never to calculate and set a precise exclusion zone which took into account the significant changes he made from time to time to his methodology,
i. Mr. McCracken's failure to properly inform Mr. Fenwick, PCAPL, WorkCover and TCL of the changes to his methodology by either amending his workplan or the Appendix K response to fully detail and explain the consequences of these changes.
j. The failure to ensure that in accordance with his own methodology all explosive charges at the lower level of each column were placed above the half moon cut, despite stating it was his responsibility to conduct the final checking,
k. Apparent duplicity in providing information on explosive quantities and cutting charges at times when he was well aware these figures were not accurate and that he had abandoned any intention to use cutting charges,
l. Mr. McCracken was fully cognisant of the possibility of flying debris being produced as a result of:-

    i. His admissions to police that when using explosives on steel there was a possibility of steel fragments being ejected,
    ii. His possession of the Du Pont Blasters handbook 15th Edition that specifically warned or the "very definite danger" from flying fragments of metal when blasting iron or steel. The handbook warned that pieces could be expected to travel several hundred feet with the chance of severe injury to people. For that reason the handbook stressed the need to provide ample protection against that hazard. It further warned that the charges should be located in such a way as to blow the fragments away from people,

iii. His statement that the outside columns and the upper floors were loaded more lightly because of the possibility of fly,

iv. His statement to Mr. Dwyer on 9th July 1997 that "minimal fragments go that way (towards the Hospice), more fragments go that way (towards the lake),

v. His comments to Mr. Messenger on 10th July 1997 that he expected the columns to shatter,

vi. His use of the backing plates specifically because of his belief that the charges might otherwise blow through the web,

vii. Mr. McCracken conceded the possibility in Section K4(e) that fly may not be able to be confined within the building for directions other than the Hospice,

viii. His concession during the video walk around that he would expect that fly material around the site and perhaps as far as 200 metres,

ix. The test blast he conducted under different conditions to those ultimately employed resulted in some fly,

x. The fact that he used cartridge explosives on steel

instead of specially designed shaped charges whether or not for the purposes of cutting despite being contra indicated in the *Demolition Code of Practice*, and

xi. The comments made to Mr. Mazzer on 11th July 1997 that the charges had been placed on the inside of the columns "so it blows the columns forward away from the hospital…so that if there is a bit of shrapnel it will fly in the same direction to where no one is standing".

8. Mr. McCracken had 30 years experience in the use of explosives and his understanding of their effect on steel so therefore he must have been or ought to have been aware of what Mr. Loizeaux describes as the "ever present real probability, not possibility, that (throwing projectiles) is one of the ways that excess energy will be dissipated under any detonation". Mr. McCracken's own promotional video graphically demonstrates this proposition.
9. Mr. McCracken despite all indications of the risk of flying debris reconfigured the blast in such a way that it was to his knowledge in the direction of the crowd. He failed to take any steps to ensure that adequate protective measures were in place between the explosives, the column

web and the crowd. The only measure that he could possibly be described as being protective on the lake side of the building facing Katie Bender was the bund wall that was too low to capture any debris coming from the ground floor, was too low to catch all material from the lower ground floor and in any event had a gap in the vicinity of column C30 and did not even extend across C74. The photographs show the absence of any protective measures along the face of the building. The photographer was taking these photographs standing in a position directly between the unprotected columns and where Katie Bender was standing when struck by the fatal fragment of the web on 13th July 1997.

10. The methodology used on Sunday, 13th July 1997 was a disaster in waiting for these reasons: -

    a. The evidence was that the steel was mild steel of the kind generally used in the construction of buildings of this type,
    b. The use of this type and amount of explosives against steel in this fashion resulted in fragmentation entirely consistent with what would be expected,
    c. The method of cutting the columns (the half moon cuts) combined with the gearing effect of oxy - acetylene cuts and the weight of the building meant that the columns could never have kicked out as intended,
    d.
    e. The quantities used were clearly excessive,
    f. The protective measures were virtually non existent, and
    g. The blast was in the direction of the crowd across the lake and the possibility of flying fragments being produced was well known to Mr. McCracken.

11. Section 59 of the *Coroners Act 1956* provides if the Coroner is of the opinion that the evidence is capable of satisfying a jury beyond reasonable doubt that a person has committed an indictable offence the Coroner shall proceed in accordance with the *Magistrates Court Act 1930* and commit the person for trial in the Supreme Court. I am satisfied that Mr. Rodney Douglas McCracken should be committed to stand his trial in the Supreme Court of the Australian Capital Territory for the offence of manslaughter of Katie Bender as provided for in Section 15 of the *Crimes Act 1900.*

ANTHONY BRUCE FENWICK – KNOWINGLY CONCERNED IN MANSLAUGHTER BY GROSS NEGLIGENCE

12. The evidence is such as to satisfy me that Mr. Fenwick was knowingly concerned in the manslaughter of Katie Bender by Mr. Rod McCracken by reason of: -

    a. his knowledge that a large crowd of spectators would be present to witness the demolition,

b. the failure to ensure that his subcontractor was properly experienced and competent to undertake the demolition when such enquiries would have revealed that his subcontractor had no previously imploded a multi – storey steel framed building of any type before,
c. the absence of any real or effective supervision of his subcontractor Mr. McCracken in the following material respects:-

i. Permitting his subcontractor to commence work without having prepared a workplan,
ii. The failure to ensure that the subcontractors proposed method of demolition had been approved by a qualified structural engineer prior to the commencement of work as required by Specification 18 of the contracts or at any time thereafter,
iii. The failure to ensure that the subcontractors workplan complied with the *Demolition Code of Practice,*
iv. The failure to ensure that the subcontractor either used specially designed shaped charges to cut the steel as proposed in his workplan or alternatively to ensure that any method used in substitution for

collapsing the steel columns had been competently assessed as safe,

v. After becoming aware of the Hospice meeting on 2nd July 1997 that his subcontractor then proposed to use 130kg of explosives in total for both buildings he failed to take any steps either to ensure that the subcontractor did not exceed that quantity or alternatively that any proposal to increase that quantity of cartridge explosives had been competently assessed as safe,
vi. The drawings indicated an amount of explosives significantly greater than 130kg being used and as such he failed to ensure that this additional quantity had been competently assessed as safe,
vii. Mr. Fenwick's absence from the worksite from the morning of Friday 11th July 1997 until 10.30am on Sunday 13th July 1997 during a critical stage of the implosion process in which time the subcontractor

was loading increased quantities of cartridge explosives against the steel columns,

viii. The failure to ensure that the method of cutting and

pre – weakening the steel columns was consistent with the proposed method of demolition and safe,

a. The failure to ensure that his subcontractor provided considered advice as to the appropriate exclusion zone to ensure the safety of the crowd and his further failure to comply with the direction of Mr. Dwyer to advise him of the "safe viewing distance",
b. The failure to ensure that the method finally used by his subcontractor to collapse the steel columns had either been tested or otherwise competently assessed as safe prior to detonation including the use of backing plates, prepared by Mr. Fenwick's own workmen to strengthen the columns,
c. Given such test blasting as had been performed by Mr. McCracken had resulted in steel fragments being projected, Mr. Fenwick then failed to ensure that the method finally adopted had sufficient protective measures in place to prevent any debris emitted by the demolition escaping the site,
d. Given that the blast had been reconfigured by the subcontractor in the direction of the crowd Mr. Fenwick failed to ensure that sufficient protective measures were in place to prevent any debris being emitted by the demolition escaping the site, and
e. Having regard to the Appendix K response he conceded the possibility of debris flying in directions other than towards the Hospice, Mr. Fenwick failed to ensure that sufficient protective measures were in place to prevent any such debris escaping the site.

13. Mr. Fenwick owed a duty of care to Katie Bender as a member of the crowd of spectators on the other side of Lake Burley Griffin. The matters set out above demonstrate a large number of omissions rather than positive acts on Mr. Fenwick's part. These acts and omissions contributed to the death of Katie Bender.
14. The High Court of Australia sets out the principles dealing with accessorial liability in the decision of Giorgianni v The Queen (1985) 156CLR 473 and accordingly it must be stated that Mr. Fenwick knew: -

a. A large crowd was present as spectators in the vicinity of the implosion,

b. The blast had be reconfigured away from the Hospice and towards the crowd,
c. There was a possibility of fly material being expelled by the implosion in the direction of the crowd,
d. There was no adequate protective measures in place to prevent any such fly material from leaving the implosion site, and
e. Mr. Fenwick knew the final implosion methodology employed by Mr. McCracken had changed significantly in the early days of July 1997 and had not been tested prior to the implosion itself.

15. It should be noted that I have disregarded Mr. Fenwick's ROI with the Australian Federal Police as I have some reservations as to its admissibility. That is a consideration for the Director of Public Prosecutions. Section 59 of *Coroners Act* again applies. Anthony Bruce Fenwick will be committed to stand his trial in the Supreme Court of the Australian Capital Territory for the offence of being knowingly concerned in the offence of the manslaughter of Katie Bender on 13th July 1997.

CAMERON DWYER

16. Mr. Cameron Dwyer is in a totally unrelated set of circumstances to those of Mr. McCracken and Mr. Fenwick. Mr. Dwyer presents a number of complex legal issues primarily as to his state of knowledge. There are a number of significant failures by Mr. Dwyer during the life of the project. The failures were in the nature of omissions rather than positive acts. The Project Management Agreement imposed upon Mr. Dwyer and PCAPL supervisory functions and responsibilities over the demolition contractor Mr. Fenwick and the implosion subcontractor Mr. McCracken. These responsibilities existed notwithstanding the position adopted by Mr. Dwyer and his company during the Inquest.

17. Mr. Dwyer's evidence on many occasions throughout the Inquest was far from satisfactory. One gained the impression from Mr. Dwyer's demeanour during his evidence that he had no appreciation of the significance of what was occurring or what he was being told about the site which would warrant some assertive action on his part. Mr. Dwyer frequently stood by and did nothing or very little to examine the various circumstances that arose from time to time directly applicable to his functions. Mr. Dwyer seemed blind to the real issues facing the project. He failed to respond to the constantly changing situations on the site being created by the contractor and subcontractor on a daily basis. There were times in his evidence that the only inference one could draw about Mr. Dwyer's lack of management of the project was that he was incompetent. I have previously stated that it was really more a lack of skill and capacity to handle Messrs. Fenwick and McCracken and to follow through on his own initial actions to produce positive outcomes.
18. The additional problem which should no longer delay the presentation of these findings of this Inquest concerns the claims of privilege made on the grounds of self incrimination not only during the Inquest but subsequently

submitted to me in Chambers during the course of the deliberation of this decision. Counsel for PCAPL in a separate presentation to their general submissions made on the evidence tendered on 23rd April 1999 no less than 163 submissions seeking privilege. Accordingly that material will be considered after the publication of these findings. The claims have not yet been taken into account.

19. The inadequacies of Mr. Dwyer's management of the project are reflected in various chapters of this Report but in particular I should itemise some of the more poignant facts: -

    a. Mr. Dwyer's decision to recommend City and Country Demolition as the successful tenderer in circumstances where there was simply no inquiry made about the experience and capability of the proposed implosion subcontractor. The tender documents by CCD did no more than mention a name nor was nothing known about the actual method proposed to be used,
    b. Mr. Dwyer permitted work to commence and continue notwithstanding his own direction of 21st April 1997 and the contractual requirements that no work should occur until Specifications 11 and 18 had been complied with,
    c. Mr. Dwyer well knew by early June 1997 that a large crowd of spectators would be present to witness the implosion,
    d. After Mr. Hugill ceased his involvement and Mr. Dwyer required the substitution of a structural engineer with implosion experience he failed to ensure that Mr. Gordon Ashley had the requisite experience nor did he fully supervise the cutting of columns and the failure to ensure the method of cutting and pre – weakening the steel columns was consistent with the proposed method of demolition being safe,
    e. Mr. Dwyer failed to ensure that every time Mr. McCracken changed his methodology he made no enquiry, directly or indirectly, personally or by any other agency, to ensure that the changes were competent and safe, (I refer in particular to the change in type and quantity of explosive, the reconfiguration of the blast and the failure to employ the protective measures in the nature of bund walls and wire meshing fence in addition to the cladding to the columns).

19 (a) Mr. Dwyer fully acknowledged as did his Counsel that he was to act as a conduit between the demolition contractors, the people organising the public event and the general co – ordination of meetings knowing full well that people would rely on his advice particularly having regard to his own direction of 2nd June 1997 requiring Mr. Fenwick to comply with advice as to the safe viewing distance,

    a. Mr. Dwyer was present when Mr. McCracken told the Hospice meeting on 2nd July 1997 that he might reconfigure the blast. This was a classic

circumstance where Mr. Dwyer should have maintained constant pressure upon Mr. McCracken to ascertain in what way the blast was to be reconfigured and if it was to be reconfigured was it then safe to proceed with the demolition on Sunday 13th July 1997. The end result of all this was Mr. Dwyer took an active role in drafting the Appendix K response which went out under his name and in particular specific mention is made in that document to the possibility that flying debris would not be able to be contained within the buildings except in the direction of the Hospice.

17. On 9th July 1997 Mr. McCracken told Mr. Dwyer that flying debris would be generated from the implosion some of which would go in the direction of the lake. Mr. Dwyer had viewed the promotional video of Mr. McCracken upon the demolition of the Ryde (Sydney) convent where there was an exclusion zone of 500 metres. An examination of that video depicts a large amount of brick and debri being thrown large distances at great speed. There were other demolitions depicted on the video e.g. wheat silos where there were no protective measures taken and debris was observed flying from the demolished buildings. Mr. Dwyer, despite this knowledge, failed to ensure that sufficient protective measures were in place to prevent any such debris escaping the site.

21.

a. Mr. Dwyer directed that no test blasting should take place without his prior written approval. Mr. McCracken simply did not comply with this direction. Mr. McCracken went ahead in total defiance of Mr. Dwyer's very proper demands. Yet Mr. Dwyer failed to take any action on this conduct. Mr. Dywer noted after the implosion that Mr. McCracken had advised him orally prior to the occurrence of each test blast. The test blast performed by Mr. McCracken had resulted in steel fragments being projected. It must be said that Mr. Dwyer failed to ensure the method finally adopted had sufficient protective measures in place to prevent any debris being omitted and escaping from the demolition site.
b. There was a failure by Mr. Dwyer to ensure the method used by Mr. McCracken including the use of backing plates had been either tested or otherwise competently assessed as safe prior to the detonation.

22. Many of these failures reflect a lack of knowledge of the *Demolition Code of Practice.* Some of these failures would not have occurred if the code had been strictly enforced by Mr. Dwyer.

23. Mr. Dwyer owed a duty of care to Katie Bender as one of the members of the crowd of spectators. These few examples demonstrate the acts of omission on his part. The real concern is not only his state of knowledge but the extent of the admissibility of the matters of which are set out above. Strictly those are not issues for the Coroner but rather a jury and the Director of Public Prosecutions.

24. Despite my reservations about Mr. Dwyer's state of knowledge I am satisfied that his knowledge did extend to the following areas: -

a. A large crowd was present as spectators in the vicinity of the implosion,
b. The blast had been reconfigured away from the Hospice across the lake towards the crowd,
c. The possibility of fly material being expelled by the implosion in the direction of the crowd,
d. There was no adequate protective measures in place to prevent any such fly material from leaving the implosion site, and
e. Generally he knew that Mr. McCracken had significantly altered the implosion methodology.

25. The evidence does not satisfy me at the prima facie level for the purposes of Section 59 of the *Coroners Act 1956* or Section 91 of the *Magistrates Court Act* as being capable of satisfying a jury beyond reasonable doubt that Mr. Dwyer has committed an indictable offence of being knowingly concerned in the offence of manslaughter. The Director of Public Prosecutions, on a further view of the admissible evidence, may reach a contrary view. It is open to the Director of Public Prosecutions to commence criminal proceedings against Mr. Dwyer by an ex officio indictment. Accordingly, I am not prepared to commit Mr. Dwyer for trial in respect of any criminal offence arising under the *Crimes Act 1900.*

26. The evidence does satisfy me to the prima facie level that there is a case against Mr. Dwyer for breaches of the *Occupational Health and Safety Act 1989.* It is recommended that the Director of Public Prosecutions consider the institution of proceedings against Mr. Dwyer in respect of breaches of the Part III of the Act.

27. The *Occupational Health and Safety (Amendment) Act 1999* (No 24 of 1999) and the *Dangerous Goods (Amendment) Act 1999* (No 25 of 1999) commenced on the 6th May 1999. The publication of this legislation appeared in the ACT Gazette S22. This amending legislation which occurred during the course of the Inquest amidst some considerable controversy would permit prosecutions being commenced after Coronial findings have been handed down or an Inquest or an Inquiry is concluded. The position with such prosecutions prior to these Amendments was that Section 31 of the *Magistrates Court Act 1930* required the prosecutions be commenced within 1 year after the commission of an offence. The *Occupational Health and Safety Act* had no specific provision and was bound by the 1 year limitation period. Amending legislation now allows a prosecution to be commenced in the Magistrates Court within 1 year after the day in which a Coronial Report is made or a Coronial Inquest or Inquiry is concluded.

WARWICK LAVERS

28. The evidence does not support in my assessment the institution of proceedings against Mr. Warwick Lavers. The evidence does not satisfy me to the requisite degree at a prima facie case level that Mr. Lavers has committed any breaches of the *Occupational Health and Safety Act*. Mr. Lavers was the representative of the Project Director TCL and did not maintain or control a workplace in the same sense as Mr. Dwyer nor did he have the requisite technical experience to be providing sound and reliable advice. The Report addresses in detail the fact that Mr. Lavers was designated as a supposed expert and was under significant pressure from certain Government officials to provide advice particularly as to the viability of the implosion being staged as a public event. Although Mr. Lavers could in all the circumstances have exercised a greater degree of supervision and authority in relation to Mr. Dwyer I do not consider on the evidence or the public interest that a prosecution is warranted against this official.

TOTALCARE INDUSTRIES LTD AND PROJECT COORDINATION (AUSTRALIA PTY LTD)

29. The question must inevitable arise by reason of these conclusions as to whether the evidence supports charges against the two companies acting in the positions as Project Director and Project Manager. Mr. Dwyer of PCAPL and Mr. Lavers of TCL were employees of those corporations. Neither person could be described as being in the controlling mind of the company (see DPP, Victoria Reference No 1 of 1996 (1997), 96 Australian Criminal Reports 513). Both men had certain reporting responsibilities to their organisations. It seems to me that neither company had any substantive knowledge as to the activities of Mr. Fenwick or Mr. McCracken. I am inclined to the view advanced by Counsel for both companies that the evidence is insufficient nor does it warrant in the public interest any further consideration of whether the companies should be prosecuted.
30. It is my recommendation that neither corporation should be liable to prosecution for any criminal offence. I am not prepared to advance any views as to whether the actions of either corporation would warrant a finding of negligence on the civil standard of proof as it is my view that the question needs to be determined at another time and place in a different tribunal and jurisdiction.

GORDON ASHLEY

31. The comments made at Paragraph 130 of this Report in the topic headed Engineers should be considered.

WORKCOVER INSPECTORS

32. The comments made under the Role of Regulatory Agencies should be considered.

Dated this day of 1999

Shane G. Madden

Coroner