

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. Historical and Chronological Perspective

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. 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. 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 some way 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.

The Failure to Consult the Contractors

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. Dawson 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 damning 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 endeavouring 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".

This was a very proper position for the Chief Minister to adopt. The questioning of Mrs. Carnell continued.

"Mr. Dawson, I suppose ought not to have been in possession of that information if the process had been kept at arms length?"

It would have been better if that had been the case.

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.

The So Called Exclusion of the Responsible Minister – Mr. Trevor Kaine MLA
Minister for Urban Services

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.

Concerns of the Health Services Union of Australia (HSUA)

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 Government's 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 original 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 in fact 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 in fact 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.

The Evidence of Mr. John Walker AM

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.

An Examination of the Evidence of Mrs. Carnell the Chief Minister

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 apprised 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. It was my view that crowds would inevitably turn up and therefore it would inevitably be something that people would want to see.
- 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".

Mrs. Carnell's Evidence Concerning the HSUA letter of

30th June 1997

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 Minister 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.