

INQUEST INTO THE DEATH OF KATIE BENDER ON 13TH JULY 1997

EXECUTIVE SUMMARY

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

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

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

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

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

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

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

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

MANNER AND CAUSE OF DEATH

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LANDSWAP TO TENDER

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ROLE OF REGULATORY AGENCIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

These are significant failures by the inspectors.

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

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

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

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

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

RECOMMENDATIONS

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

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

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

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

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

ENGINEERS

Does the Conduct of Mr. Gordon Ashley Constitute Criminal Negligence

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

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

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

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

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

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

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

Finding

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

THE PUBLIC EVENT – AN ISSUE OF PUBLIC SAFETY

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

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

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

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

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

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

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

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

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

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

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

"Who was the Client"

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

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

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

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

The Concept of a Public Event

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

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

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

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

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CONCLUSION

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

The Acton Peninsula project failed systemically in that: -

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

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

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

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

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

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

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

CORONER'S FINDINGS (SECTION 56 CORONERS ACT 1956)

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

RODNEY DOUGLAS MCCRACKEN – MANSLAUGHTER BY GROSS NEGLIGENCE

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

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

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

WARWICK LAVERS

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

TOTALCARE INDUSTRIES LTD AND PROJECT COORDINATION (AUSTRALIA PTY LTD)

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

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

ACKNOWLEDGEMENTS

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

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

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

THE BENDER FAMILY

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

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

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

THE COURT WILL BE ADJOURNED