ROLE OF REGULATORY AGENCIES

INTRODUCTION

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

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

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

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

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

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

3. The *Occupational Health and Safety Act 1989 (OH&S Act)* imposes general duties of care on employers and employees to ensure workplaces and work methods are safe and without risk of injury to any person at or near that workplace. The *Act* empowers inspectors to enter workplaces to examine systems of work (Section 62) and even to stop work if in the opinion of the inspector it is not being performed safely or the system of work is not safe. (PROHIBITION NOTICES) (Section 77). Inspectors also
have the power to issue Improvement Notices on reasonable grounds (Section 76) relating to safety issues.

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

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

5. It was suggested as WorkCover inspectors have power to enter workplaces and issue notices then they are therefore to some extent in control of the workplace and have a statutory obligation under Section 29 of the OH&S Act to ensure that the workplace is safe and without risk to health.

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

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

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

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

3. There are some 17,000 workplaces in the Australian Capital Territory. At the time of the Inquest there were only 8 WorkCover inspectors to enforce and insure the legislation was being complied with. There is no possible hope that
4. Inspectors are appointed who have certain functions and powers to be exercised pursuant to the legislation but these WorkCover inspectors as they are known are not subject to statutory obligations under the Act. The position is correctly summarised by Counsel Assisting the Inquest and supported by Mr. P. Johnson SC for the Territory on the question as to whether the OH&S Act imposes legal duties on the inspectors.

5. The Act does not mention any statutory duty being imposed on WorkCover which administers the legislation. Simply because an inspector has power to enter a workplace and exercise other powers in the nature of issuing notices, make enquiries or recommendations does not confer upon the inspector any form of control over the workplace. Such a proposition would be contrary to ordinary practical common sense. The legislation is directed at imposing a duty of care on those at the workplace or in control of the workplace. It is these persons who are required to meet the duties of care imposed on them under the Act irrespective of any role played by a WorkCover inspector. Counsel for PCAPL and to a lesser extent TCL constantly tried throughout the Inquest to attribute some form of responsibility for the tragedy at the Peninsula on WorkCover inspectors without regard to this statutory scheme.

6. The OH&S Act clearly sets out the principle and purposes of the legislation. WorkCover inspectors have a duty to uphold those principles of the legislation by dutifully applying the requirements to their tasks. The mere creation of certain powers and functions in a WorkCover inspector under the legislation does not thereby create statutory duties upon them. It is illogical to apply such an interpretation. It would mean that wherever there is a workplace in the ACT where there exists an unsafe system of work, then a WorkCover inspector is in breach of Section 29 of the legislation dealing with the duties of persons in control of the workplace whether or not they had attended or even were aware of such a workplace. Surely this is not the intention of the legislation.

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

7. The WorkCover inspectors have been the subject, quite properly in my view, of substantial criticism in this Inquest. There were at least two and probably three if not more occasions, when the WorkCover inspectors, having entertained doubts about the project continuing should have issued prohibition notices requiring the work to cease until certain aspects of that work were rectified to a satisfactory degree. The evidence of one (now former) WorkCover inspector at a senior level damming the degree of Government funding and raising concerns about the manner in which the legislation was administered was disturbing. It was embarrassing to hear such sweeping assertions. It is doubtful whether the ACT Government would permit such a circumstance to exist. I do not accept his assertions about the funding issues. It must also be stated that I place no weight on his comments about the lack of government funding for the organisation having regard to the persuasive
evidence given on this topic by Ms. J. Plovits, the General Manager which is reviewed shortly (see paragraph 65).

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

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

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

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

**STATUS OF THE LAND**

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

**PRE TENDER CONSULTATION**

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

12. The lack of consultation concerned Mr. Smith to the extent that he wrote to his superiors about the issue. Mr. Smith’s memorandum dated 16th April 1997 gave rise to a consultative meeting on 7th May 1997. Mr. Smith acted in a sensible fashion. Although the steps were not part of his statutory duties he
was taking a common sense approach in the best interests of the project and its safe performance.

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

"Developers and Managers are strongly recommended to discuss the likely use of explosives with the Chief Inspector, (ACT WorkCover) in the developmental or planning stages of a project. The use of explosives to demolish structures or structural items whether they are subsurface or above ground must be discussed with the Chief Inspector (ACT WorkCover) at the earliest opportunity.

As a general rule approval for the use of explosives near residences will not be granted unless the blast plan is 2km from the nearest house. However consideration is given to other factors such as the topography of the land and whether other buildings, embankments or engineered controls form a barrier to prevent flying material from impacting on the area".

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

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

A. "What tends to happen in practice if a company is considering demolition of a building and at the early stages is looking at different options one of which is the possible use of demolition by explosives?

A. They normally make a preliminary phone call to establish whether WorkCover would consider the implosion of the building in principle. Going back to your previous statement I would like to think that due consideration and planning is given to the building prior to the 21 days when they first look at the building that they have already decided and which manner their going to use. If one of the matters in which they want to use is the use of implosion, well, then they normally phone myself and they say we are going to do this, this and this, what’s your view? I would then give a consent in principle subject to their meeting all the criteria which they know or I say no. Then they have a few alternatives, one is a conventional demolition or they challenge WorkCover’s decision before the Chief Industrial Magistrate.
A. So if a particular demolition operator chose to leave it to 22 days before the scheduled implosion to contact WorkCover for the first time, that person would be doing it at his own risk and perhaps grave risk that there (would) be no approval given and that would present him undoubtedly with a major problem?

A. That’s correct.

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

A. Yes.

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

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

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

A. Absolutely”.

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

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


19. Mr. B. Collaery, Counsel for the Bender family, urged upon me during the Inquest and in his submissions that there should be a finding as to the status of the land on the Acton Peninsula. I have made some earlier remarks on this issue in the introductory segment of this chapter. There are complex legal questions raised on this issue concerning the roles and functions of the ACT Building Controller and the National Capital Authority. The National Capital Authority placed a lengthy submission concerning the status of the land before the Inquest. Those submissions will be of much greater value and weight at another time and place. It is quite clear on the evidence that neither the ACT Building Controller or the National Capital Authority had any involvement in the Acton demolition project especially on the issue of approvals. It was accepted practice in the Australian Capital Territory that the Building Controller was required to grant approval in the first instance before any construction or demolition could occur. It is, for example, a statutory requirement for the Building Controller to give certain approvals in relation to residential premises. It was never in dispute that the ACT Building Controller was not approached by any party at any stage to approve the demolition of the buildings on Acton Peninsula. It was an uncontroverted fact that the ACT Building Controller was not in any way consulted about the demolition of the buildings notwithstanding the Demolition Code of Practice (paragraph 6.17). Accordingly there was no regulatory control exercised by either of these two bodies during the whole of the demolition process.

20. I do not consider it is necessary to make any determination about the status of the land but I am prepared to make certain recommendations for the future. The lack of involvement seems to stem from the perception that as the land at Acton Peninsula was under the control of the Commonwealth of Australia then the Building Controller of the ACT had no jurisdiction. This perception was further reflected by Mr. Fenwick when he questioned Mr. Smith about his jurisdiction over Commonwealth land when he first attended the site. Mr. Dwyer had advised Mr. Fenwick on 21st April 1997 that a demolition permit was not required. The fact that the Building Controller was never approached for express permission to demolish the buildings by explosives as is required by paragraph 6.14 of the ACT Demolition Code of Practice demonstrates his complete lack of involvement in the project.

21. Although the National Capital Authority was approached by TCL for approval to demolish the buildings on Acton Peninsula and to erect temporary structures such as fences at no stage did the NCA undertake a formal examination of the demolition process. It was never contended by any party that it was their belief that the NCA would or did undertake any such examination. The simple fact of the matter was that neither the NCA or the Building Controller exercised any regulatory control over the demolition process and the fact remains that they did not and nobody on the site expected them to.
22. It should be noted that on 6th May 1997 the Honourable Warwick Smith, the Minister of State for Sport, Territories and Local Government, declared Acton Peninsula to be National land and approved the management of that land by the National Capital Planning Authority. The declaration which forms part of Exhibit 516 appeared in the Commonwealth of Australia Gazette on 28th May 1997.

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

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

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

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

25. There is no doubt that one of the more serious issues that arose in the Inquest was the total confusion that existed as to who carried the responsibility for the supervision and use of explosives on the Acton Peninsula. Counsel Assisting the Inquest describes it as the biggest failure of
the ACT regulatory agencies. The confusion was exacerbated by the total lack of liaison between the Dangerous Goods Unit and WorkCover. The end result was that there was practically no regulatory supervision of the use of explosives on the Acton Peninsula site. The responsibility for supervising the use of explosives lay with WorkCover and not DGU. The weight of evidence is such that the responsibility for supervising the use of explosives on a workplace site actually rested with WorkCover and had done so for some time.

26. It is possible to draw this conclusion from an examination and a proper construction of the relevant legislation applicable in the Australian Capital Territory during the time of the demolition process. The legislation that applied including the OH&S Act was the Dangerous Goods Act 1984 (ACT), the Dangerous Goods Act 1975 (NSW) in its application to the Australian Capital Territory, the Dangerous Goods Regulations 1978 (NSW) in its application to the Australian Capital Territory, the Scaffolding and Lifts Act 1957, the Scaffolding and Lifts Act 912 – 1948 (NSW) in its application to the Australian Capital Territory and the Scaffolding and Lifts Regulations (NSW) applying in the Australian Capital Territory.

27. The role of DGU was to issue the licences to Mr. McCracken for importing and keeping explosives and to evaluate his suitability for a Shotfirer’s Permit. The ACT Demolition Code of Practice at paragraph 6.14 makes a certain requirement as to the use of explosives. Mr. Tony Smith construed this to mean that anyone wishing to use explosives for demolition had to get the appropriate licences. It was also his understanding that from the time that explosives on a work site left the magazine, their use was regulated by WorkCover.

28. The terms of Australian standard AS2187 also makes it clear that at least as at the 20th July 1993 the Director of the ACT OH&S office (the previous name for ACT WorkCover) regarded explosives being used in workplaces as a matter for his organisation to deal with. This understanding was confirmed by virtue of a letter from DGU dated 10th August 1993.

29. There was a significant meeting on 7th May 1997 convened by Mr. Smith of DGU and as a consequence of that meeting, for whatever reasons probably only confusion, WorkCover took no further steps to thereafter involve DGU in any issues concerning the use of explosives on the project including the relevant Hospice meeting on 2nd July 1997 and the further consideration of the Appendix K response. This material makes it explicitly clear that the understanding on the part of the WorkCover inspectors was that the matters being raised were for WorkCover and not DGU.

30. Mr. Peter Hopner of ACT WorkCover accepted the legal responsibility for dealing with the use of explosives on a worksite rested with WorkCover. Yet Mr. Hopner, Mr. Purse and Mrs. Kennedy still maintained their understanding was that in practice WorkCover played no role in relation to the supervision of explosives. This position was not only contrary to the weight of evidence but also inconsistent with the actions that WorkCover took on 25th June 1997.
when they again became involved with the project following concerns raised by the Health Services Union of Australia.

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

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

31. After DGU issued the various licences by 30th May 1997 to Mr. McCracken the unit played no other active role on the project. A number of parties to the Inquest assumed that DGU was actively involved with what was happening on the site and had some ongoing function simply because the DGU unit was to be supplied with a copy of the explosives workplan. This assumption was incorrectly founded. The evidence suggests that such false assumptions were held by Mr. Dwyer, Mr. Purse, Mr. McCracken, Mr. Fenwick and even Mr. Smith. But there was sufficient evidence that as time progressed any involvement by DGU was significantly decreased so that there was no basis for holding such a view that DGU was having any ongoing involvement in the project.

32. The submission made by Counsel for the Territory in my assessment is correct. Counsel submits, in these terms, with substantial force in my assessment when he says “there is no reasonable and tenable basis upon which it could be submitted that PCAPL, Mr. Fenwick (CCD), Mr. McCracken (CBS) and TCL or even the WorkCover inspectors could have proceeded from mid May 1997 upon the basis that DGU was in some way critically examining the methodology for (the) use of explosives on the project”. Even if the initial silence from DGU could be taken as approval of the workplan, when the methodology started to change and DGU was obviously not involved or consulted such a belief could not have been maintained by anyone, in fact, it was at that point in time that serious questions should have been asked by the Project Manager and the Project Director in relation to the absence of DGU.

33. WorkCover failed to involve DGU after 25th June 1997 by not inviting them to the 2nd July meeting or giving them a copy of the Appendix K response. From
2nd July 1997 WorkCover knew that significant aspects of the explosives workplan were being changed. WorkCover was not entitled to assume that it played any role in monitoring the set up on the Acton Peninsula from that time without consulting the DGU. Although Mr. Smith was advised from time to time of minor blasting taking place he was never advised of any changes to the original workplan. It was obvious to all parties as of 2nd July 1997 that DGU was not present at the Hospice meeting or otherwise taking any steps to assess the changes to the explosives workplan that had been made or were being proposed, e.g. the fact that the use of specially designed cutting charges had been confined to only the bracing columns. Mr. McCracken and Mr. Fenwick would have been aware there was no visit to the site by DGU since 7th May 1997 not even to examine the magazine. PCAPL as the body controlling entry to the site would or at least should have been aware that DGU had not returned to the site or otherwise taken any active role in the demolition since May 1997.

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

35. The evidence of Mr. Dwyer’s perception of the role of DGU as at early July 1997 appears on 1st October 1998 paragraph 668 – 692 which is reproduced hereunder.

“You were asked some question about Exhibit 179 which was the Appendix K response date 4th July 1997. That was addressed to WorkCover?...That is correct. They requested that information, yes.

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

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

Did you talk to anyone from WorkCover saying are you inviting Dangerous Goods to these meetings?...No. Mr. Johnson, WorkCover took control of that
meeting, asked who they wanted and ran the meeting. It wasn’t up to me to
direct WorkCover who they wanted to attend the meeting.

Did you ask them if they were providing the information to

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

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

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

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

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

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

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

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

Did you get on the phone to Mr. Tony Smith in late June, early July to have a
talk to him about what he thought concerning the project?…I can’t recall doing
that. Are you suggesting I did or…

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

I’m not suggesting you did. In fact, it doesn’t appear that you did?…That’s
correct and if Dangerous Goods obviously were involved from the very outset
on 7th May I’m sure they would have taken whatever steps they needed to in
terms of the legislation in the ACT I would have thought.
Didn’t you think that you had some role to play, given the functions you had on the site, in initiating contact with these authorities to let them know that something significant was happening on the site?

Mr. Ibbotson: Objection on privilege grounds.

His Worship: Noted. Thank you.

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

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

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

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

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

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

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

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

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

THE DANGEROUS GOODS UNIT

38. Mr. Smith and Mr. McTernan said they had no experience in demolition with explosives and very little experience with explosives per se. Mr. Smith who was the inspector for DGU involved in the project held a NSW Powderman’s Certificate but was never engaged in a job where using explosives was part of his work. Mr. Smith was frank and honest about his experience indicating that only approximately 5% of his time as a DGU inspector involved issuing permits or inspecting magazines for (non – firework type) explosives.

39. It was Mr. Smith who sent a memorandum to Mr. Dwyer dated 7th May 1997 which contains an interesting comment:

"Following our site meeting on 7th May 1997 to discuss most of the issues relating to the above with the relevant sections of Government, site managers and principle contractors the following matters will need to be addressed, in order to satisfy the requirements of the ACT Dangerous Goods legislation: -

Demolition: -

i. Master workplan is to meet the approval of ACT WorkCover, and
ii. Workplan for explosives phase is to be submitted to the Dangerous Goods Unit (DGU).

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

Mr. Johnson: "Workplan for explosives phase is to be submitted to Dangerous Goods Unit".
A. You didn’t use the words "for approval"?

A. No.

Q. Why not?

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

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

42. The evidence is overwhelming that DGU had no involvement in the use of explosives on the Acton Peninsula project after mid May 1997. There is no basis for holding any belief to the contrary. No WorkCover inspector consulted with DGU. Mr. Dwyer had no knowledge of any such consultation nor did he observe DGU on the site for any purpose relating to the use of explosives nor did Mr. Dwyer take any steps to enquire of DGU what their involvement was or was not nor did Mr. Dwyer inquire of Mr. McCracken, Mr. Fenwick or the WorkCover inspectors as to any involvement of an ongoing nature by DGU. There is no doubt on the evidence that Mr. McCracken, Mr. Fenwick, PCAPL and the WorkCover inspectors would have been aware of the limited role of the DGU on and after 7th May 1997.

43. The licences granted to Mr. McCracken on his application were issued on the basis of the information provided by Mr. McCracken only. Mr. Smith of the DGU unit simply relied on the interstate licences that Mr. McCracken held as well as his portfolio and that Mr. McCracken had presented to him. Mr. McCracken was very a confident person in Mr. Smith’s assessment who seemed to know exactly what he was talking about and seemed to understand the procedure intended to be used. It was reasonable for Mr. Smith to act on those credentials having regard to the limited statutory powers that prevailed at the time to make other enquiries or even take other action.

44. It is important to consider regulation 52 of the Regulations under the Dangerous Goods Act 1975 (NSW) insofar as Mr. Smith only needed to be satisfied that Mr. McCracken was fully competent in the use of explosives not
that he knew how to implode a multi-storey steel framed building. Mr. Smith could be criticised for not taking independent advice on the information being provided by Mr. McCracken but it would seem in all likelihood he would still have been satisfied in accordance with the legislation that Mr. McCracken was an appropriate person to be granted the licences even if such checks had been made.

45. Mr. Smith said in evidence that he did take into account why Mr. McCracken wanted these licences and the licences on their face did not indicate that they had only been granted for any particular or limited purpose. The licences were valid for periods extending well beyond the life of the Acton project. Mr. Smith did not make a close examination of the methodology to be used nor did he have, in my view, any expertise to do so even if he had wanted to. Mr. McCracken had demonstrated that he was competent in the use of explosives stating he wanted to do an implosion and was granted the necessary permits. There is little scope for DGU to monitor what people with shotfirer’s permits do with them once they are granted let alone being in a position to independently verify their experience.

46. The licences did not limit the amount of explosives that could be brought into the Australian Capital Territory over any given time. DGU did not go out and physically inspect the premises or the site at any stage. DGU had no knowledge and no way of acquiring such knowledge as to how much explosives had been purchased or imported into the Australian Capital Territory or the amount of explosives to be used without conducting an inspection. The only information Mr. Smith had was Mr. McCracken’s indication on 5th May 1997 when he applied for licences that he would probably not need any more than 250kg of explosives in total. When the WorkCover inspectors and others knew of the reconfiguration of the blast in July 1997 and the amount of explosives to be used that in itself would have warranted the re-engagement and involvement of DGU in the whole explosives process.

47. A system of mutual recognition existed between the States and Territories in respect of the recognition of an equivalent licence possessed from that other jurisdiction. It was a process of granting a permit and licence on the basis of the previous credentials and did not involve any assessment or examination as to the competency of Mr. McCracken to demolish the buildings by means of implosion.

48. The ACT Demolition Code of Practice stated "buildings should not be demolished by explosives without the express permission of the ACT Building Control and the ACT Dangerous Goods Unit". It was the understanding of Mr. Smith that this requirement was for persons using explosive demolitions in the ACT should obtain the necessary licences and permits under the Dangerous Goods legislation. This understanding was both legally and practically correct. DGU could do no more than perform a statutory function of issuing licences and permits pursuant to the relevant legislation. These statutory provisions did not involve the assessment of methodology in the use of explosives. Secondly, the practical reality was that DGU personnel did not possess the expertise to assess the implosion methodology.

I make no criticism of the actions of Mr. Smith as I consider them reasonable and prudent in all the circumstances. It was the lack of action by others more
directly concerned with the Acton demolition site that warrants criticism for failure to actively involve DGU after 7th May 1997.

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

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

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

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

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

A. I tried to actually include Mr. Warwick Lavers but he said that Mr. Cameron Dwyer was his project co – ordinator on the site and that all of my dealings would be through Cameron Dwyer".
53. I find this failure to arrange subsequent consultative meetings after 7th May 1997 as a significant failure on the part of Mr. Dwyer of PCAPL.

ACTIONS OF WORKCOVER AND THOSE ON THE ACTON SITE

54. Four inspectors from WorkCover had direct roles in the Acton Peninsula project. They were Mr. Kevin Purse, the then Chief Inspector of ACT WorkCover, Mr. Hopner who within WorkCover had the most experience with demolition projects, Mr. Adams whose area of expertise related to asbestos removal and Mrs. Kennedy who had no experience at all in demolition type work.

55. In my introduction to this segment mention is made of two specific actions taken by Mr. Purse in relation to his powers as an inspector (paragraph 3).

56. The primary duty of ensuring the implosion was conducted safely fell directly upon Mr. McCracken. Mr. McCracken was required to take all reasonably practical steps to ensure the health and safety of persons at or near this worksite was not compromised. The duty rested with Mr. McCracken both at common law and pursuant to the statute. Mr. Fenwick of CCD as the person who recommended and employed Mr. McCracken also had a primary duty both at common law and under the Occupational Health and Safety Act as well as the contracts negotiated with the ACT to properly supervise the activities of Mr. McCracken.

57. PCAPL was the Project Manager and Superintendent of the contracts and as such were responsible for permitting, supervising and controlling the activities being carried out on the Acton Peninsula site and as such had a relevant duty to ensure that the project was carried out safely and without risk to others. The issuing of a general invitation to the public to view the implosions is a situation whereby all the parties engaged in the project had at least some level of duty of care to ensure that people were not placed at risk. As to how far that duty of care extends beyond PCAPL to perhaps TCL and the ACT Government is not a function for the Coroner to assess but rather is a matter for another time and place. It is no answer to say simply because WorkCover inadequately performed and discharged its duties and responsibilities, therefore that absolved the parties who had control of the site from meeting their duties and responsibilities whether they arose pursuant to the common law, contract or statute.
58. PCAPL cannot deflect or minimise their own statutory obligations and responsibilities by seeking to transfer them erroneously to WorkCover or the DGU. DGU had no involvement on the project after mid May 1997. It was perfectly obvious when a new methodology was being suggested in July 1997 and DGU had in no way been consulted. It is a self-serving submission for Mr. Dwyer and PCAPL to now claim it had no duties or responsibilities merely because WorkCover and DGU were involved to some extent.

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

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

61. It will be recalled that a prohibition notice was served on Mr. Dwyer on 8th May 1997 which contained the following words printed in capital letters:

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

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

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

A. Did you read it when you got it?

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

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

A. Yes I can read that there, yes.

A. And you read that back then?

A. I can't recall if took particular notice of it, but I may have.

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

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

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

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

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

63. The WorkCover inspectors were given various assurances by Mr. McCracken through Mr. Dwyer between 2nd and 13th July 1997 in the same way that Mr. Dwyer and others claimed that they were entitled to rely upon the advice being provided by the specialist implosion expert for the project. Why was it not appropriate then for the WorkCover inspectors who had no obligations (statutory or contract) on the site to accept what was being put to them by the Project Manager.
I have previously stated that WorkCover and DGU were not safety officers for the project nor were they overseeing the project and it is difficult to accept or understand how Mr. Dwyer came to conclude such a view on any objective rational basis. Mr. Dwyer, in his own ROI, stated that he did not have a belief that either agency was overseeing the project. The inspectors were performing statutory obligations. I do not accept the contention advanced by PCAPL’s Counsel that WorkCover gave an impression that it was stepping in to the approval role. Nor do I accept the submission by PCAPL that the conduct of WorkCover’s inspectors and the DGU inspectors "conveyed to Mr. Dwyer the indisputable impression that the work being carried out by CCD and CBS was being overseen by WorkCover and the DGU particularly in relation to safety and that the role expected of PCAPL was one merely of coordination.

It is not a helpful submission by PCAPL to state that in view of WorkCover’s total lack of experience or expertise in demolition or implosion that it would have been better had they not become involved. Mr. Dwyer was fully aware that Mr. Purse and Mrs. Kennedy had no experience in demolition by means of implosion nor did he seek any information from Mr. Purse as to what steps if any Mr. Purse was taking to scrutinise and assess the material being provided to him. Mr. Dwyer repeatedly contended in his evidence particularly on 1st October 1998 at paragraph 705 – 751 that it was not for him to tell Mr. Purse how to do his job.

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

Mr. Dwyer continues: -

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

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

There are approximately 6 pages of transcript with similar responses made by Mr. Dwyer which in my view are most unsatisfactory. Mr. Dwyer’s approach was on the basis that Mr. Purse was in some way or another approving the methodology. There can be no reasonable foundation for any such belief when Mr. Dwyer knew that Mr. Purse did not have any relevant experience relating to methodology nor did he make any enquiries as to what steps if any Mr. Purse was taking to obtain such advice.

The statutory obligations under the OH&S Act in my view fell squarely with PCAPL. The whole obligation in relation to the Acton project to provide
satisfactory safe systems of work under the OH&S Act lay with Mr. McCracken (CBS), Mr. Fenwick (CCD) and Mr. Dwyer (PCAPL) to ensure that the demolition proceeded with safety. The involvement of ACT WorkCover did not serve to shift those statutory responsibilities.

THE GENERAL EFFICIENCY OF WORKCOVER IN 1997

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

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

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

72. An external review of ACT WorkCover commenced on 2nd July 1997 prior to the implosion. The review has continued since the implosion and has encompassed a wide range of issues. Ms. Plovits gave oral evidence and produced some significant documentary material concerning this process of review and reform. The preparedness of the ACT Government to promptly and widely review and reform the structures and procedures of both WorkCover and the operations of DGU Unit is to be commended. Their early recognition of the need for reform contrast most favourably with the position adopted by TCL that their procedures, notwithstanding the tragedy and the evidence presented to the Inquest, already reflected best practice. TCL did not propose considering any changes unless recommended by the Coroner. This segment of evidence given on 6th April 1998 by Mr. M. Sullivan of TCL...
created a certain amount of controversy between a number of Counsel. Some Counsel argued that Mr. Sullivan was non-responsive. Mr. Sullivan said "I believe that the processes we have been tested over 25 – 30 years as being at or at least achieving best practice". Mr. Sullivan went on to say that at this stage it was not proposed to implement any change.

73. The WorkCover review process in my assessment has been thorough and comprehensive. The representation on the review committee is cross sectional and diverse. It is representative of all stakeholders including the Unions (CFMEU and ACTTLC), business, commercial, insurance and employer/employee interests. This continuous consultative process should be maintained to ensure the best delivery will be provided to the community by ACT WorkCover. The ACT WorkCover should ensure that the new structure of WorkCover is adequately funded and resourced.

74. Some of the more relevant improvements already implemented are found in attachment A of the Review of WorkCover and are listed hereunder: -

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

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

THE FUNDING AND EXPERTISE OF ACT WORKCOVER – JULY 1997

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

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

78. Ms. Plovits always made it clear that so long as a reasonable request was made for an expert then funding would have been approved.

79. Ms. Plovits was never informed prior to the implosion that the inspectors were unable to properly assess the material provided to them by PCAPL or Mr. McCracken. It seems that the Chief Inspector, Mr. Purse, was always forthright in letting her know if he had a need and certainly he did not tell her whether he had any need in relation to the Acton demolition until after the implosion. She said on 4th August 1998: -

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

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

81. Ms. Plovits commenced at WorkCover on 24th June 1997. Mr. Purse had been employed by WorkCover between July 1994 and November 1997. He presided over the operations of WorkCover during this period when the so-called inefficiencies existed. The process and review of WorkCover as I have previously identified commenced on 2nd July 1997. Ms. Plovits became aware that the reputation of WorkCover was not very positive at the time. It was her assessment of Mr. Purse that she did not have much confidence in him because to use her words "it went more to the matter of matching the rhetoric with reality". She further explained that remark of her lack of confidence in this way:
"It means that if you talk to someone and they say they are examining Appendix K you work on the theory that that's what they are doing (but) when you later on find out that they didn't have any knowledge of explosives at all and they had hired in an explosives expert to him then post implosion, well then you have to revise your opinion about whether they had the expertise to understand the Appendix K, prior to the implosion".

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

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

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

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

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

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

A. If it was necessary, yes.

85. She later said: -

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

86. Ms. Plovits even went further when it was put to her that there was no precedent for doing such a thing at that time. Ms. Plovits would have obtained such funding and an expert notwithstanding any prior precedent that existed within the organisation to the effect that it would not be or could not be approved and granted.

87. The position can be best summarised in this manner. Mr. Purse did not bring to the attention of Ms. Plovits in the period late June to 13th July 1997 that there was a lack of experience on his part with respect to the use of explosives which restricted his ability to assess the Appendix K response. Mr. Purse only indicated this position to Ms. Plovits after the implosion.
88. It is the uncontested evidence of Ms. Plovits that if this state of affairs had been brought to her attention prior to the implosion then she would, if the request had been reasonable for either funding or advice, ensured that it would occur. I am quite confident that Ms. Plovits would have arranged for the funding and the expertise to be provided if she had been informed of the particular circumstances concerning the inspectors.

89. The inspectors like so many others engaged in this project operated upon the basis they could rely solely upon the Project Manager and contractor (Mr. Dwyer and Mr. Fenwick) to provide specialist expert information and advice. This was in effect relying on Mr. McCracken, Mr. Fenwick and Mr. Dwyer.

90. The evidence does not convince me that funding for the inspectors was an issue precluding them from seeking expert opinion. It seems that as a matter of practice the inspectors relied upon the expert advice being provided by the Project Manager and contractor. There is no evidence that they turned their mind to the provision of independent expert advice as inspectors under the OH&S Act. The issue of funding was an attempt by particularly Mr. Purse to minimise their own inadequacies and failures.

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

91. The inspectors were exercising statutory powers and functions under various pieces of legislation already identified. There is no doubt they had no experience of demolition by the use of implosion and explosives. There was no communication by the inspectors with their superiors in ACT WorkCover nor were there any requests for further assistance nor did they express concern about their own inexperience with demolition by the implosion method. It is clear in my view that if they had sought further assistance or additional resources from their superiors and made out a strong case then I am confident funding would have been forthcoming to retain an expert. I am also satisfied if the inspectors had made such a request for funding or assistance and the request had been refused then there may be an occasion to consider whether the response by WorkCover was inadequate. This did not occur.

92. The inspectors went about the performance of their duties with two particular periods of activity in the first half of May 1997 and then in the period late June to 13th July 1997. The inspectors were inefficient in their work methods. There was no consistent efficient record keeping system or appropriate systems for the allocation of inspector’s functions and duties. These inefficiencies do not only relate to the tragedy on the Acton Peninsula. The work practices identified by the tragedy are now in the process of review. I am not satisfied about the lack of resources issue. There is no direct evidence of a funding problem. What the Inquest heard were simply assertions. I prefer the evidence of Ms. Plovits, the General Manager of ACT WorkCover on this issue.

93. A final word on the Ford/Plovits issue. The evidence is that there was no interference with the activities of the WorkCover inspectors as they were active on the site in the first half of May 1997 and again between 25th June and 13th July 1997 when they performed their duties as they saw appropriate
for the particular circumstances. If there was some exchange between the two women it was not apparent in the manner the WorkCover inspectors went about their work on the final days leading to the implosion.

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

DEMOLITION CODE OF PRACTICE (EXHIBIT 84A)

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

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

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

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

"All construction work and in particular demolition involves risk. Risk is often taken to be a result causing damage to personnel and property but it is often much deeper. The design and construction of a structure involves many professions and quality checks to ensure the result is safe, efficient and effective for the given life.

The demolition of the same structure is often left to a small team of individuals who may have limited engineering qualifications, without access to professional advice or quality checks often arising because of contract procedures, pride, time or financial constraints. Hence the supposed system of control for demolitions that allows
these actions to occur is by its very nature producing risk for all parties involved. This should be a consideration in both the Standard and Code of Practice”.

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

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

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

98. There clearly was a lack of liaison between WorkCover and DGU in relation to the application of this provision of the Code. DGU was confused as to its existence and what should constitute it. Very clearly PCAPL, CCD, CBS, ACT WorkCover and to a lesser extent TCL failed to ensure that permission was ever obtained notwithstanding the fact that compliance with Exhibit 84A was both a condition of the contracts and a requirement of WorkCover. The comment made by Mr. Barker has even more relevance to the situation prevailing at the Acton Peninsula demolition site having regard to the above evidence.

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

a. The approach adopted by WorkCover to the workplace,
b. WorkCover’s response to the Health Services Union of Australia concerns,
c. The Hospice meeting of 2\textsuperscript{nd} July 1997,
d. The amount and type of explosives including risk assessment, sand bagging for safety, reconfiguring the blast and the exclusion zone,
e. Appendix K response, the specifics of the Appendix K response including Section K5 explosives, bund walls, and

f. The visit by Mrs. Kennedy on 10th July 1997 to the demolition site.

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

THE APPROACH ADOPTED BY WORKCOVER TO THE WORKPLACE

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

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

a. The project involved undertaking an inherently dangerous process of demolition,

b. The scale of demolition was large by ACT standards,

c. It was proposed that this dangerous activity be carried out using explosives,

d. This type of demolition was highly specialised and had never before been carried out in the ACT, and

e. The number of persons potentially at risk from the activities of the work site was significant given that the general public were being invited to watch the demolition.

None of these factors were ever considered by WorkCover in determining the level of resources to allocate to the project. Then again
on the evidence of Ms. Plovits no details of the resources required for the project were ever communicated to her.

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

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

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

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

106. WorkCover stated it could only take positive action where it identified a hazard yet none of its inspectors possessed the necessary experience to be able to identify a hazard. They had to rely on those on site to advise if a hazard arose or somebody to raise a concern for e.g. the Health
Services Union of Australia. This was not a reliable hazard identification system. And a major hazard was identified on site e.g. the unsafe cutting method used without engineering advice. WorkCover was never informed. Both Mr. Purse and Mr. Hopner stated they would have immediately stopped work on the site if they had become aware of these engineering reports and the deficiencies.

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

WORKPLAN (EXHIBIT 109)

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

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

"Where an inspector believes on reasonable grounds that activity carried on at a workplace involves a risk of imminent and serious injury to a person at or near the workplace, the inspector may, by notice in writing given to the person who is, or whom the inspector reasonably believes to be, in charge of activity direct that person to ensure that: -

a. The activity is not carried on,
b. The activity is not carried on accept in accordance with the directions specified in the notice".

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

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

111. WorkCover maintained consistently that it had no role in approving workplans. Mr. Purse stated that its role was to ensure one was prepared and
to ensure it appeared to comply with the *Demolition Code of Practice*. Mr. Purse and Mr. Hopner read the workplan and were satisfied that it met the requirements of the *Demolition Code of Practice* in respect of paragraph 4.6 which deals with the contents of a workplan. The explosives part of the workplan prepared by Mr. McCracken failed to meet the requirements set out in 4.6 in two critical respects and was otherwise lacking in important details.

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

"The workplan should include, but not be limited to documentation of the following (inter alia):-

a. Plans, illustrations, written documents or specialist reports as may be necessary to clearly define or substantiate the proposals made, and

b. Certification statement by a competent person that the proposals contained in the workplan comply with the safety standards set out in this code".

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

114. Section 4.2 of the Code states: -

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

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

116. WorkCover’s examination of the workplan should have provided another opportunity to rectify the failure of Mr. McCracken to get proper engineering advice. It seems to me that PCAPL had knowingly disregarded this requirement of the contract. WorkCover simply failed to appreciate the
requirements of its own code of practice. Accordingly there were two significant failures in this checking process.

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

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

There were some references to dust, noise and vibration.

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

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

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

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

**WORKCOVER RESPONSE TO HSUA CONCERNS**

118. The involvement of WorkCover after 25th June 1997 only occurred because the Health Services Union of Australia raised certain issues concerning the safety of its members at the Hospice. WorkCover
response to those concerns, although well intended, involved people without relevant experience and was uncoordinated and fragmented. A meeting was held on 2nd July 1997 and what is know as the Appendix K response was provided but the assessment of the information provided therein was characterised by a lack of expertise and undue reliance on assurances again given by those on the site.

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

120. Telephone enquiries conducted the following day by Mrs. Kennedy were intended to find out more about the implosion process rather than about the individual contractors experience. The information provided about Mr. McCracken previous experience "just came up in the conversation". Mr. Hopner’s assertion that these enquiries amounted to a phone audit of Mr. McCracken’s competency does not stand up to scrutiny. It was only by chance that WorkCover ever obtained any information about Mr. McCracken’s prior experience including the suggestion that a prior demolition in Queensland by him had damaged a police station.

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

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

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

Paragraph 55 states: -

"An exclusion zone should be determined by the competent person,

and should depend on factors such as the type and condition of building being demolished, the position and size of the charges and the blast protection provided. A typical exclusion zone around a tall building where explosives are in use would be a circle or radius of twice the height of the building".
WorkCover never brought the existence of this information to the attention of anyone on the site even though it was provided to others within WorkCover.

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

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

THE HOSPICE MEETING OF 2ND JULY 1997

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

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

THE AMOUNT AND TYPE OF EXPLOSIVES

130. Mr. McCracken told the meeting on 2nd July 1997 that he was going to use 130kg of explosives. Mr. Purse and Mrs. Kennedy
understood this amount related to the entire project and not simply Sylvia Curley House. Mr. Dwyer said he could not recall precisely what this amount related to. Mr. McCracken stated after being questioned by Mr. Purse that he would be using approximately 100kg of Riogel, 12kg of Powergel and 18kg of PE4. There is a fundamental failure on the part of Mr. Purse in this regard in that having received this information he should have realised that it was inconsistent with what Mr. McCracken had stated in the workplan, that the workplan only referred to using specially designed shaped charges.

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

RISK ASSESSMENT

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

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

SANDBAGGING FOR SAFETY

134. At the meeting on 2nd July 1997 Mr. McCracken told the meeting he would "put in place 50% more sandbags than he originally planned, to give higher safety". From that time all present were on notice that there may be a link between sandbags and safety. There also seems
to me to have been an obligation to check that the sandbagging had actually been placed to the requisite degree required for a project of this magnitude.

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

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

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

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

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

138. The importance of sandbagging should have been apparent to all who had heard Mr. McCracken explain at the meeting only days before how the damage was caused to the police station in Queensland. It is
regrettable that this statement had no impact upon Mrs. Kennedy or Mr. Purse or Mr. Dwyer.

THE RECONFIGURATION OF THE BLAST

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

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

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

This admission was a significant disclosure.

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

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

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

**EXCLUSION ZONE**

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

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

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

**APPENDIX K RESPONSE**

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

148. Mr. Dwyer ultimately agreed to collate such information in the terms of a risk assessment and forward it to WorkCover. The response contains statements that should have put Mr. Purse on notice that a number of issues needed further consideration before the implosion took place. Many of the items addressed in this response did not require specialist implosion knowledge in order to be understood or verified upon inspection. None of the
other inspectors, Mrs. Kennedy or Mr. Hopner, had read the document before the implosion and in case of Mrs. Kennedy she had never seen the workplan before the demolition on the Sunday, 13th July 1997.

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

150. Mr. Dwyer clearly knew of the contents of the Appendix K response. Mr. Dwyer undertook to provide it and did so provide it under his signature on a PCAPL letterhead stating that if further information was required he would be the appropriate contact person. Mr. Dwyer went to considerable length in his evidence to suggest that he had not in fact read in any detail, if at all, the information that was set out in the document. He stated that it was a mere "glue and paste". Mr. Dwyer is in considerable difficulties in this aspect of his evidence and attempts to minimise his degree of responsibility. In any event I am not convinced about Mr. Dwyer’s evidence on this issue. Mr. Dwyer’s evidence is most unsatisfactory to a significant degree. It is unreliable and unconvincing. Mr. Dwyer’s conduct in this regard amounts to an abrogation of his duties as the Project Manager. Mr. Dwyer’s demeanour in the witness box on some issues was puzzling. I am inclined to attribute some of his diffident answers to the pressures created by the tragedy and the demands of the Inquest in that he did give evidence on 2 separate occasions for lengthy periods.

The conclusion that I have reached is that, overall, Mr. Dwyer was an unsuitable choice as a Project Manager for such a complex task.

151. There are some categories of the Appendix K response that needs some specific comments upon which I shall now make some brief observations.

Section K1 – Generally

152. In his evidence on 30th September 1998 (at paragraph 871) Mr. Dwyer conceded that he was responsible for the completion of this segment. PCAPL had taken steps to ensure that the demolition contractors were suitably qualified particularly as they had specifically undertaken projects of a similar size and complexity. The evidence given to the Inquest leads me to a contrary view. PCAPL were well and truly qualified in the terms of demolition experiences as a Project Manager. Yet PCAPL and its staff particularly Mr. Dwyer had no experience in any form of demolition by way of implosion using explosives. It was critical for Mr. Dwyer and PCAPL, once appointed, to either have acquired or sought out advice to confirm what the contractor and subcontractor were proposing to do, how it was to be done, whether it was safe and were the contractors competent for the Acton project. Mr. McCracken and Mr. Fenwick had never ever imploded a steel-framed concrete encased building. PCAPL had never
conducted any external checks to verify their background. This was in full knowledge of the Glenn Report of 1991 that the Canberra Hospital buildings were a steel structure.

Section K4 – Preparation of the Structure

153. Section K4 in Appendix K indicated that "supporting documentation from a structural engineer should be supplied to verify the stability of the structure". The Gordon Ashley drawings attached to Exhibit 179 did not meet this requirement. The "partial hinge" drawing (diagonal cut) was a method specifically not to be used and should never have been included in the Appendix K response. The drawings set out in Exhibits 116 and 117 only indicate that if cutting was carried out as indicated the stability of the building would not be compromised. There was no document that verified the cuts had been made in accordance with the advice or which otherwise contemporaneously certified that the buildings would be stable. Mr. Purse should have inquired further on this issue.

154. There is a heading on page 9 of the document styled "Design Blast to Minimise Adverse Fly Material". The response was:-

"In respect of the location of the Hospice, charges on the northern side of the Sylvia Curley House will be positioned to eliminate the possibility of adverse fly material towards the Hospice. The balance of the charges will be placed to contain any fly within the buildings where possible to do so".

155. The statement suggests a guarantee has been given that no fly material will be directed towards the Hospice. It also acknowledged a possibility of fly material travelling in other directions. It was known that spectators would be gathered to watch the implosion from all vantage points around the lake. Nobody at any stage appreciated the significance of this statement. Mr. Purse should have appreciated the impact of this statement especially when taking into account the reconfiguration of the blast discussions and comments made on 2nd and 11th July 1997.

156. Mr. Dwyer should also have been put on notice by this response because he had drafted it on the advice of Mr. McCracken. Mr. Dwyer was subsequently told by Mr. McCracken on 9th July 1997 that "minimal fragments go that way (towards the Hospice) more fragments go that way (towards the lake)". At that point Mr. Dwyer should have told Mr. McCracken that the implosion should not occur until he could guarantee that no fly would travel in any direction not simply just towards the lake but in any direction where spectators may be gathered. It was an extraordinary remark to make to the Project Manager yet Mr. Dwyer seems to have allowed it to pass by. One is at a loss to understand why Mr. Dwyer did not react to this situation. Surely Mr. Dwyer must have had sufficient presence of mind to consider this was both a grave and serious potential problem as a consequence of the blast.

157. It seems to me Mr. Dwyer’s response to these factors was inadequate and negligent. It seems to me also that Mr. Fenwick was also negligent
because he was the person responsible for supervising Mr. McCracken’s work and as such although he may have had a minimal role in preparing the documentation he should have been at least aware of what was contained in the documents. Again like Mr. Dwyer he should have taken up these considerations with Mr. McCracken.

Section K5 – Explosives

158. Section K5 considered the need to use the correct explosive for the specific task. The response in Exhibit 179 makes this statement:-

"Cartridge explosives will be used as kick out charges on all columns except rows 2 and 5 (bracing columns) on lower ground floor and ground floor blocks of the Main Tower Block. PE 4 LCC will be used to cut flanges on bracing columns allowing forward movement".

This is a very different statement from that which appears in Exhibit 109. Mr. Purse should have sought clarification. The departure from the original workplan was of great significance and it should have been apparent to Mr. Purse without any great need to have any expertise.

159. The WorkCover authority should have noticed these changes. The WorkCover authorities particularly Mr. Purse should have followed up these changes with Mr. McCracken and Mr. Fenwick to satisfy himself over and above all those assurances being given by Mr. McCracken that the new method was totally safe.

BUND WALLS

160. The K5(d) response indicated that "all columns will be sandbagged in the Main Tower Block and Sylvia Curley House…bund walls will be constructed around both buildings to deflect sound and air rush from blast and building collapse".

161. Mr. Purse read this and made the following note "how high, suggests 4 metres – slightly higher than one floor". This notation was based on the bund walls completely covering the lower ground floor and partly on the second floor thereby containing explosive charges and providing sufficient fly protection. Mr. Purse also expected, upon reading this, that both buildings would be entirely surrounded by bund walls.

162. The bund walls were not there simply to provide fly protection but also to deflect air blast. There is no doubt in my mind that if a bund wall was high enough and thick enough around the buildings then the fatal fragment would have been prevented from leaving the site. There was also the consideration of maintaining in place the podium. Mr. McCracken told police that he believed the bund walls were for reducing flying debris. Mr. McCracken listed them as one of the protective measures along with the sandbags that he had employed. Mr. Dwyer’s understanding was that they were to prevent flying material. All those engaged on the site believed the bund walls were there to provide some fly protection.
163. There is some significant correspondence on the bund walls issue between Mr. Dwyer and Mr. Purse in the very late stages of the demolition. On 9th July 1997 Mr. Purse wrote to Mr. Dwyer wishing to confirm that the bund walls will be at least 3 metres high.

Mr. Dwyer responded on 10th July 1997 stating:-

"We confirm bund walls approximately 2.5 – 3 metres high will be constructed to the northern side of Sylvia Curley House where required. Our contractor has advised that the bund walls are not required along the full length of the building and will be formed where necessary to eliminate fly rock and minimise noise".

This is the position only 3 days before the implosion date. One is left in some doubt as to the state of preparedness for the demolition.

164. This response by Mr. Dwyer is in total contrast to what had been set out in the Appendix K response where it said the bund walls would be only around both buildings and were merely to deflect sound and air rush. The bund walls should have been surrounding both buildings and at a height capable of catching any fly not simply as a means of deflecting flying debris.

165. There is no dispute on any examination of the evidence that there was no bund wall in front of and around column C74 at any stage. The column C30 requires further consideration. There was only a small bund wall that did not provide any protection from any fly emanating from the ground floor. The bund wall contained a gap in the vicinity of C30 to allow space for the chimney to fall.

166. The bund walls that were in place were inadequate if they were to have any fly protection purpose. They were simply not high enough at any point to stop fly from the upper floors. Moreover they were in a place which was either too low or too far away from the edge of the building to catch any other trajectory flying from the lower floors other than that which was emanated or emitted or projected at a low height.

167. It was always Mr. Purse’s understanding that sandbagging would be inadequate protection. He did not give much consideration to what impact bund walls would have. Notwithstanding whatever Mr. Purse may have considered the position to be it is beyond dispute on the facts that sandbagging was not placed around all of the columns, particularly the external faces of C30 and C74, and as such there was no sandbag protection whatsoever on the lakeside which was the side opposite the explosives. In this respect the evidence of Mr. Leeson must carry some weight. Mr. Purse’s failure in this regard to require the full sandbagging must be considered negligent.
Section K7 - Submission to the Regulatory Authorities.

168. The evidence in this aspect of the Inquest is of great significance. It was always a requirement that a plan of the structure showing the weight and type of charges, their placement and their time delays should be provided. The drawings were not very detailed but they did indicate the quantities apparently to be used on each building in the form of charges per column. If anyone had totalled these figures they would have discovered that the total amount of explosives intended to be used according to these drawings was well over 240kg. This was almost double the total 130kg referred to by Mr. McCracken at the meeting on 2nd July 1997. The Administration Checklist attached to the workplan indicated that the maximum charge per delay was 2.5kg. This was inconsistent with the quantities indicated in the drawings A and B of Exhibit 144 and were over 100% greater again.

169. It is my view that Mr. Purse, Mr. Fenwick and Mr. Dwyer should have raised these discrepancies with Mr. McCracken well before the implosion. It was simply a matter of common sense and basic mathematics.

170. There is a requirement at K7(j):-
   
   a. That carpet will be wrapped around columns in certain locations,
   b. Chain wire mesh will be hung from the building in certain locations, and
   c. All columns to be blown will be sandbagged.

171. There was an absence of all these forms of protection. It was apparent and it did not require any great form of expertise to confirm this state of ordinary common sense observation. It was obvious that all columns were not fully sandbagged. There was only a minimal amount of carpet wrapped around a few columns in Sylvia Curly House. The chain wire mesh was not present in any form whatsoever.

172. Mr. McCracken had rejected the chain wire fencing meshing as being too expensive and yet provided nothing in substitution. There were no appropriate measures taken to prevent debris escaping the site, moreover, on inspection of the site immediately after the implosion it was evident that certain fencing had been demolished or damaged by debris flying through the fencing. Mr. McCracken and Mr. Fenwick, when asked by the police, could not point to any measure besides the inadequate bund walls and the incomplete sandbagging that had been used for the protection of the general public.
Mrs. Margaret Kennedy visited the site on Thursday, 10th July 1997. It was a waste of time. She had no knowledge of explosives or demolition procedures nor the safety considerations that might arise from such a demolition. On that day she took a number of photographs which even to an untrained observer would have required some questions and explanations.

This is well documented in the evidence about which I shall give some brief examples. A classic case concerns a photograph of a backing plate clearly visible on a charged column. The use of backing plates had never previously been mentioned and called for questions and an explanation. There is a photograph of explosives strapped to a column below the oxy – acetylene cut. This was contrary to the "kick out" method referred to by Mr. McCracken. Mrs. Kennedy had no appreciation of the significance of such matters as she considered herself a "tourist" on that day. This demonstrates the futility of the visit. The photographs were not developed until after the implosion.

Mrs. Kennedy did not ask about the explosives set up. And even if she had, she would have accepted anything Mr. McCracken had told her as long as it sounded reasonable given her lack of knowledge and expertise. It would have been apparent to any person who had any dealings with Mrs. Kennedy on the site that she had no understanding of demolition. She had told at least Mr. Dwyer and Mr. McCracken that she did not know what she was doing. No one could possibly accept or gain any impression that Mrs. Kennedy’s presence on the site was with a view to approving a final methodology.

There are at least two matters in respect of which she could have made further enquires with other WorkCover inspectors.

On 10th July she made a note in her diary of a conversation with Mr. McCracken to the following effect:

"Mr. McCracken spoke to me, said when he put tender in did not realise what was in the columns, said they were running behind, working 18 hours a day, had not started on Sylvia Curley yet, had to go to draw up firing plan for Sylvia Curley".

Mr. Purse when asked about this conversation said that it would have concerned him. Mrs. Kennedy on the other hand gave evidence that these comments did not concern her as it was not unusual for persons on construction sites to be running behind schedule, yet she did not repeat this conversation to anyone else at WorkCover. The second matter that must have raised concern related to one of the columns that Mrs. Kennedy saw on her visit to the site on 10th July 1997. The photograph of this column appeared on the front page of the Canberra Times the next day, 11th July 1997. Mrs. Kennedy took the trouble to cut the photograph from the newspaper along with the article and paste it in her diary. It is not unreasonable to expect that having cut the article out she would have at least passed it on to Mr. Purse or at least noticed that Mr. McCracken was quoted as intending to use almost twice as much explosives (225kg) as he had told her on 2nd July 1997 that he was intending to use. Yet she took no action about this. It is inexplicable to me as to why someone having regard to such a difference in the volume of
explosives being used at one particular time seven days earlier is then advised that a greater amount would be used and then did not question the necessity for such an increase in the volume of explosives. This is of great concern having regard to the fact that the implosion was only three days away.

179. Mr. Purse, Mrs. Kennedy and Mr. Adams attended the Acton demolition site at 10.30am on Sunday, 13th July 1997. At no stage did any of these three inspectors raise concerns about the lack of sandbagging or the nonexistence of chain mesh protection. The photographs show the end of the building facing towards Katie Bender including columns C30 and C74 as they were set up at the time of the implosion. These columns had no real protection. The buildings were not protected in any respect on the lakeside of those columns.

180. Dr. Krstic of Defence Services Technology (Salisbury S.A.) indicated that the fatal fragment most likely came from four possible areas of this part of the building either the lower ground or ground floors of C30 or C74. I have previously stated that I am satisfied that the lethal projectile did emanate from this part of the building. Only one of those areas had any possible protection from fragmentation being expelled, being the lower ground area of columns C30 (assuming the bund wall was high enough and the gap did not come into play). The failure to trap the fragment expelled from the building before it could leave the Acton Peninsula site directly caused the death of Katie Bender. Nobody addressed the fact that there was inadequate protection in this area.

CONCLUSION

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

182. These are significant failures by the inspectors. These failures amount to negligence on the balance of probabilities but not to the requisite standard to a criminal degree.

183. The actions of Messrs. Purse, Hopner and Kennedy warrant the gravest degree of censure in the way the project was approached having regard to the information provided to them. Their inexperience and lack of qualifications satisfies me that a jury properly instructed would not find them guilty beyond a reasonable doubt.

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

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

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

187. I am not persuaded that WorkCover inspectors contributed to or had any 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.

POSTSCRIPT

On 30th September 1999 the following Regulations were made: -

a. The Occupational Health and Safety Regulations Amendment (No 21 of 1999),
b. The Dangerous Goods Regulations Amendment (No 20 of 1999), and
c. The Scaffolding and Lifts Regulations Amendment (No 19 of 1999).

The primary amendments appear in the OH& S Regulations covering the following areas of concern raised by the Inquest and the general review of WorkCover namely: -

a. Use of explosive at workplaces,
b. Use of explosives – obligations or employer and occupier,
c. Applications for a permit to use explosives,
d. Requirements of a blast plan,
e. Eligibility for a permit,
f. Permit to use explosives,
g. Variation of a permit,
h. Statutory periods of a permit,
i. Registrar may require further information,
j. Provision of false or misleading information to a Registrar,
k. Suspension or revocation of a permit, and
l. Review of Registrars decision.
The Amendments would appear to address many of the concerns of the Inquest. The amendments are a step in rectifying the deficiencies in the legislation identified by the Inquest and the death of Katie Bender.