

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**STANDING COMMITTEE ON LEGAL AFFAIRS**

**(Reference: sale and safety of fireworks)**

**Members:**

**MR B STEFANIAK (The Chair)  
MR J HARGREAVES  
MS K TUCKER**

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**FRIDAY, 31 MAY 2002**

**Secretary to the committee:  
Mr R Power (Ph: 62050435)**

**By authority of the Legislative Assembly for the Australian Capital Territory)**

## **The committee met at 2.04 pm.**

**THE CHAIR:** Welcome to the public hearing on the sale and safety of fireworks. I will read out a statement to witnesses which we give in every committee hearing, and then I will make some general opening comments in relation to this inquiry.

Witnesses should understand that these proceedings are legal proceedings of the Legislative Assembly protected by parliamentary privilege. That gives witnesses certain protections but also certain responsibilities. It means that they are protected from certain legal action, such as being sued for defamation for what they say at public hearings. It also means that witnesses have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter.

This is the first public hearing on this subject. We have received lots of submissions and there will be another public hearing next Friday, 7 June. Arrangements for that public hearing are still being finalised. There are yellow sheets on the chairs that show everyone who is appearing today. The committee will hear from members of the ACT Fireworks Association. Later on, after an adjournment, we will hear from the DPP—at about 5 pm.

The yellow page also sets out the terms of reference for this inquiry, which were set by the Legislative Assembly on 13 December last year. The reporting deadline is fairly tight, being 27 June. We hope to meet this deadline. The committee is aware of the controversial nature of this inquiry. That is indicated by the number of submissions we have received—some 226 in all.

Many of those are form letters, calling for the sale of fireworks to the public to be banned, or for firework sales to be permitted. So the committee is aware of the strong views in our community on this subject. All 226 submissions have been authorised for publication, except for five. Those five submissions raised sensitive claims about the conduct of named persons, and may be seen as reflecting adversely on those persons.

The committee has taken advice about the proper treatment of those submissions. We have received advice from the Clerk of this Assembly. We have made ourselves aware of the practices of both the House of Representatives and the Senate.

Based on that information, we have determined to treat the submissions as confidential at this stage. At the same time, we have written to the people who may be adversely named, to inform them that they may wish to provide the committee with a response to the claims made about them.

This means we have authorised the publication of the submissions to only those people. Once we see if any response is forthcoming, we will meet as a committee to determine if both the submissions and the responses should be authorised for publication.

I put this background on to the public record, in order to demonstrate that the committee is taking very seriously its responsibility to ensure procedural fairness to all those involved in an Assembly inquiry.

Whilst the committee does not want to constrain the forthright expression of views by citizens to an Assembly committee, we must ensure that the protections provided to submitters and witnesses by Parliament are exercised in a way that does not lead to unnecessary slanging-off about individuals named in evidence. We are therefore focusing our attention upon the exact terms of reference set by the Assembly—that is, an inquiry into the operation of the Dangerous Goods Act (1975), with particular reference to the sale of fireworks in the territory, and the general safety of setting-off fireworks.

We do not intend to be sidetracked into claims about who did what and to whom. I do not think that is appropriate for an Assembly committee—nor can we get involved in matters that are subject to current legal action.

The committee understands that sometimes it might be difficult to separate policy, regulatory and commercial issues from personal ones. If witnesses feel they must introduce material about the behaviour of any individuals, we would deal with such evidence in closed session. That is, the public and the media would be excluded from the committee room during that part of the proceedings.

I hope these remarks set the appropriate scene for the public hearings. Accordingly, I call forward, to the table, the witnesses for this part of the hearing. I understand there are four or five of you. Perhaps you would like to come forward, gentlemen.

**JOHN PATRICK DAVEY,**

**RAY SCHOFIELD,**

**TONY SOUTHWELL,**

**HAROLD SCOTT UPTON** and

**NIGEL WORTHLEY**

were called.

**THE CHAIR:** For the purpose of the record, perhaps each of you, I suppose starting with Mr Davey, could state your name and whom you represent.

**Mr Davey:** Thank you, Chair. My name is John Davey. I am the Public Affairs Officer for the ACT Fireworks Association.

**Mr Schofield:** Thank you, Chair. My name is Ray Schofield. I represent Red-Back Fireworks.

**Mr Southwell:** I am Tony Southwell, from The Fireworks King.

**Mr Upton:** My name is Harold Upton. I represent Australasian Spectaculars, ACT Fireworks, Global Pyrotechnics and KC's Fireworks.

**Mr Worthley:** My name is Nigel Worthley. I represent The Fireworks King.

**THE CHAIR:** Thank you gentlemen. With the constraints I have mentioned, and given especially that there are references to the general safety of setting-off fireworks and the sale of fireworks in the territory, I invite you to address the Assembly on those issues. Who wishes to start?

**Mr Davey:** Mr Chair, because we are appearing here in our individual capacities as well as for the association, the discussion we have had is that I will talk about the general policy and generic issues and, if the committee has any questions to us, specifically to address those. If it is useful to the committee, we will then distinguish between whether that is the position of the fireworks association, or if it is the view of the individual pyrotechnician here today.

Perhaps I could start with a small introductory statement. Mr Chair, and members of the committee, thank you for the opportunity for us to come and present our point of view here today. As I have said in my submission, it would be difficult to talk about fireworks in the ACT without talking about the political and economic context in which the debate has been conducted in previous years. By way of illustration, not 20 minutes ago the Supreme Court of the Australian Capital Territory issued three or four licences—I am informed it is eight licences—to the pyrotechnicians sitting at this table before you.

That would be an unremarkable thing if it was done in the context of the Supreme Court reviewing administrative action. Mr Chair, as former Attorney-General, you will know that that is part of the day-to-day business of government. It is remarkable that the licensing authority in this territory—ACT WorkCover—has failed to issue a licence to one pyrotechnician for the last two and a half, or possibly three, years without this sort of action.

We are now in a situation where, over the last three years, we have had vexed positions from both WorkCover and the ACT Fireworks Association, or the various traders there, to the point where I believe public safety is now at risk.

You cannot have a regulatory regime for anything that has to be resolved in the courts. These details are stipulated in my submission—I do not want to go through them unnecessarily. But, fundamentally, when you have the level of litigation and the level of non-success from the side of WorkCover on these issues, real public policy questions have to be raised.

I do not intend to take too much more time in my introductory statements. I will be happy for the gentlemen with me today, with the leave of the committee, to make a short statement about themselves and how they come to the inquiry. We can then open it to the committee to ask the questions about things in which they are interested.

**THE CHAIR:** I have one question of fact, initially. Are the licences you referred to for the sale of display fireworks, shopgood fireworks, or both?

**Mr Davey:** For all three, I believe. We do not yet have a copy of the Supreme Court order, but that will be drafted by this afternoon. We would be happy to provide that to the committee.

**THE CHAIR:** That might be handy. Do each of you gentlemen want to make a statement about what you do in the industry? It would be handy if you could also tell us how long you have been in the industry.

**Mr Schofield:** I spent 20 years in the armed forces—the army—prior to becoming involved in fireworks. Therefore, I have played with firearms and explosives for 30-odd years. I set up in business in the ACT in the fireworks industry as a stand-alone operator in 1998. That was probably at the same time as our present Commissioner for Occupational Health and Safety set up operations here.

That is basically it. I have been running a reasonably successful business, until more recent times. Figures indicate that, because of interference in one form or another, the business has started to progress downhill.

**MR HARGREAVES:** Mr Schofield, may I ask you a question? The same question applies to all of you for clarification. We are trying to draw a distinction between display fireworks and shopgood fireworks, for the purposes of making sure we understand exactly what is involved. What percentage of your business would apply to either of those two? When you talk about the downturn, is it in both areas, or in just one area?

**Mr Schofield:** No. Display fireworks are the larger type of fireworks. Shopgood fireworks are fireworks that represent no significant danger. They have 40 grams in powder and are suitable for families in backyards. By the way, we are very, very safety conscious. We have taken it so far that we have designed and invented a firing platform that stabilises a firework.

A multi-shot firework, which fires a number of shots into the air, had a tendency in the past to fall over. They were the fireworks that could create problems in a backyard situation. We have designed a little platform that the firework sits on, which stops any instability. As far as percentages go, out of the ACT, most of our business is in the lower end of the market—in consumer-type fireworks.

We run another operation from other states which concentrates more on the wholesaling of display-type fireworks. I took the opportunity to have a look at the Customs documents, made available only last week. There is a real indication that there was a downturn in the firework industry that coincides with the appointment of our present commissioner. Take that for what it is worth.

**MS TUCKER:** What—shopgood or display fireworks?

**Mr Schofield:** All fireworks. The Customs figures indicated only dollar values.

**THE CHAIR:** What percentage?

**Mr Schofield:** It has reduced by almost 50 per cent since 1999. There was a steady growth prior to 1999 and there has been a substantial decline since 1999.

**THE CHAIR:** At present—this was John Hargreaves's question to all of you—in respect of your business, what is the break-up as between shopgood fireworks and other types of fireworks?

**Mr Schofield:** Well, it has tended to change. Whereas it was probably 50/50 in the past, it is probably more in tune to say it is 75/25, as of this date.

**THE CHAIR:** Seventy-five per cent—

**Mr Schofield:** In display fireworks.

**MR HARGREAVES:** With the shopgood ones, what percentage of your business would be sales to people in the ACT and elsewhere? Very roughly—we do not want to throw numbers around. I just want to get a perspective.

**Mr Schofield:** Because of the regulatory regime here and the problems with WorkCover, we do not sell to ACT residents. We do not sell one single firework to ACT residents unless it is for an approved display—it is impossible to get a permit for that—or it is for use outside the jurisdiction of the ACT. In short, we do not sell to ACT residents. That would apply to all members of our association.

**MS TUCKER:** For how long has that been the case?

**Mr Schofield:** That has been on the go for between 18 months and two years.

**MR HARGREAVES:** Then where do people—ordinary residents—get their fireworks from?

**Mr Schofield:** There is a black market in fireworks—there is no doubt about that. A lot of the fireworks that are coming on to the marketplace are display fireworks—as well as shopgood fireworks. You see, the problem with not having shopfronts that are able to satisfy people’s general needs, is that you create, in effect, a black market. People will always get fireworks, and they always have.

Before we came on the scene, they got them from the larger operators, and people resell them. There is a profit in fireworks. There is no doubt in my mind that the majority of people want fireworks. You can have as many laws as you like but, when people do not perceive the goods as something that should be regulated, they do not care.

I have said to people in the past, “If I gave you fireworks, you could be fined a million dollars and put in jail.” Their response was, “Just give me the fireworks.” They do not care. They do not see it as being a crime. I think over-regulation will create a further imbalance in the whole situation.

**MS TUCKER:** People are acquiring fireworks and using them right through the year, but particularly around this holiday period. Are you telling me that none of those fireworks have been bought from your businesses?

**Mr Schofield:** No, I did not say that. We supply fireworks to the whole of Australia, to all the states. If we sell to someone who is licensed within another state, we do not have any control over what he does with those fireworks.

**MS TUCKER:** Are you saying that no-one who lives in the ACT is going to your business and buying directly from you to—

**Mr Schofield:** Unless they meet certain requirements. Those requirements are that they are not for use within the boundaries of the ACT—within the jurisdiction of the ACT. That is right.

**MS TUCKER:** Okay.

**Mr Schofield:** Let me qualify that. We get them to fill in a form. On that form, they have to make certain declarations. One of those declarations is that they are not for use within the boundaries of the ACT.

**MR HARGREAVES:** Would you be able to give the committee a copy of that form, please?

**Mr Schofield:** I can arrange to get one for you.

**MS TUCKER:** Is this the WorkCover form?

**Mr Schofield:** No, no. WorkCover does not design forms to assist the industry.

**THE CHAIR:** If you could get a copy to us of the form you speak about, that would be good.

**MS TUCKER:** I am sure people are purchasing fireworks from businesses. I have been told they have done that. You are telling me that when they purchase those fireworks, they are signing a form which says they will not use them inside the ACT.

**Mr Schofield:** Absolutely.

**MS TUCKER:** I understand you correctly?

**Mr Schofield:** Absolutely.

**Mr Davey:** Ms Tucker, it is nonsensical—the regulation. That certainly is the law, and the forms that these gentlemen have generated have been for the purpose of covering themselves. As it stands at the moment, the ACT law says they can have their shops as long as they are licensed to do that, but they cannot sell to residents in the ACT. We do not have a system of identicards in this country, where people have to determine where they come from. They do the best they can with the production of drivers licences and other basic ID, so that they are not in breach of the law.

I have seen, in each of their shops, clipboards with these forms on them. I have been there visiting, for some reason, when someone has come in and said, “Can I buy fireworks?” The first question they are asked is, “Do you live in the ACT?”

I think it is open for this committee to find—and certainly my argument would be—that that is not the best form of regulation. Part of the argument I wish to put to you today is that, if you are looking at the current regulatory regime—on this point we agree totally

with WorkCover—it is redundant. It is really out of step. It is a 1975 act. It is one of those pieces of legislation where the act is about that big and the regulations are about this big. That gives an enormous amount of power and discretion to public servants and statutory office holders.

That in itself is not remarkable, but what is remarkable is that this act is now so totally out of date, there are a whole series of fireworks which are not covered in the act and regulations. There are other dangerous goods which probably should be covered by the legislation which are not covered.

Where we differ from WorkCover and others, who will make representations to this committee in the form of submissions that fireworks should be banned, is that there is another way. The answer is not ‘the current system or no system’. There are other models of regulations which could be explored. I have particular admiration for Mr Tony Brown, from my previous incarnation with the EROS Foundation, who heads up the Office of Fair Trading. Fair Trading deals with a lot of licences. I am not sure whether there are gun licences here in the ACT.

**THE CHAIR:** Gun licences are with the police.

**Mr Davey:** There are a lot of things with Fair Trading like X-rated video licences, liquor licences and brothel licences—although I am led to understand they are a bit problematic these days. A whole lot of licences are dealt with there. My experience—certainly with the adult industry—was that they were treated fairly.

I am not saying that all the people I worked with were angels, and that they did not sometimes breach their licensing conditions, but they had respect for the authority that was issuing them. I would say that, in 99% of cases, they were willingly complying with the requirements of their licence agreements.

At the end of the day, if you are going to have a regulatory system, you need to have some goodwill on both sides. If it is left up to the police to monitor it, that is a huge public expense. If WorkCover inspectors have to go around every five minutes watching people, and other people are trying to duck and weave, that is not an ideal system of regulation.

The strongest point we would like to make to you today is this: aside from the public hysteria in some quarters about fireworks being akin to landmines—those allegations are patent rubbish—can we please look at an appropriate regime where dangerous goods can be properly regulated. People who, by and large, use fireworks safely, with proper intent for the purposes of entertainment and nothing more, can then enjoy the use of their fireworks, and people who are outside the law, who do have criminal intent, who do want to cause damage to property, animals or other people, can be addressed in the legislation in some other way.

My experience with the EROS Foundation with X-rated video licences was that there is no illicit material being produced in the ACT. One of the reasons for that is that these guys make a lot of money—and the pyrotechnicians here today used to make a lot of money. Mr Upton has been almost bankrupted by the litigation over which he has had to engage with WorkCover. The general motivation is that, if someone can lawfully make



a lot of money, why are they going to be motivated to do things illegally? Why would they? Why would they put themselves, their families and their businesses at risk?

If we look at the other systems of regulation for licensing in the ACT and properly construct best practice, then I believe there is a way of addressing a lot of the concerns which have come out of the community, the environmental lobby here in the ACT, and public safety concerns.

**THE CHAIR:** What type of regulatory regime do you guys see as being desirable? I now some of you will make some comments about that in your submissions, but that is obviously an important part of our terms of reference. What are you suggesting there? You have suggested where you would like to see it run from, but under what type of regulatory regime? Can you point to anything anywhere else—say interstate—that would be relevant?

**Mr Davey:** These gentlemen have more experience with the dangerous goods regulations in other states, because they trade and work there. Perhaps I could refer to one of them to give you some examples. In my personal experience with X-rated video licensing, I think we have got it right, in Canberra.

I was reading with some bemusement the other day that somebody had said that the ACT is like an island in the middle of Australia which permits all these illicit things like X-rated videos, fireworks and all that kind of thing. I would like to think that, here in the ACT, we are a bit more enlightened. I do not think we necessarily have to fall in line with everything the other states are doing.

I do not think the state governments and state parliaments in other places are any more enlightened about their positions than you people in this Assembly are. I do not think that is an argument at all. I think we have the opportunity here in the ACT to develop world best practices. Generally speaking, in Canberra I think we balance civil liberties and public concerns fairly well. This is one of those situations where we can try to apply those principles.

**MR HARGREAVES:** Can I go back and get some further clarification on the response you gave to Ms Tucker's question? If I remember correctly what you said—please correct me if I am wrong—you said that people who live in the ACT are not sourcing their fireworks from your members. So where are the retailers who sell fireworks on the Queen's birthday long weekend getting their fireworks from?

**Mr Davey:** Do you mean over this two-week period?

**MR HARGREAVES:** Yes.

**Mr Schofield:** The retailers.

**MR HARGREAVES:** You said that you are not selling to anybody who lives in the ACT.

**Mr Schofield:** No. I thought we were talking about year-round.

**MR HARGREAVES:** No, we are talking about ‘at all’.

**Mr Schofield:** If you are talking about this particular period—

**MR HARGREAVES:** Yes.

**Mr Schofield:** WorkCover have introduced a meaningless \$5,000 licence to sell shopgood fireworks. Shopgood fireworks fall under the categorisation of 1.4G fireworks, generally. Some of them are under 1.4S, so they are a lower grade classification. Harold is probably the most qualified person to talk on that.

Therefore, last year, we introduced a system where we did not sell to ACT residents. An ACT resident can choose to buy fireworks to take interstate. They can go across the border and bring them back in. There are no rules about them importing fireworks themselves.

Contrary to WorkCover’s beliefs, in New South Wales, people can buy shopgood fireworks for use in the ACT at this time of the year. You do not need a permit in New South Wales. They can go to a shopfront in New South Wales and buy fireworks on the basis that they are for use outside New South Wales. It is commonly known everywhere else, apparently, except in the hierarchy of WorkCover.

**MR HARGREAVES:** To go further down that track, in my travels along the Monaro Highway, I occasionally see a sign on the side of the road. It is a rather poor one—it is not attractive at all. It says “Fireworks for Sale”—that is not for this long weekend.

I understand you can buy them at the moment, but you cannot let them off until this long weekend. That is my understanding of it. Firstly, is that right? Secondly, if you cannot sell them to people who are living in the ACT, outside the Queen’s birthday weekend, how is it that those things can be for sale all year round?

**Mr Schofield:** Well, we run businesses which trade interstate. Most of my business is outside the ACT. In fact, all of it is outside the ACT.

**MR HARGREAVES:** How much trade would you get from the side of the Monaro Highway, in the ACT?

**Mr Schofield:** We are directing people to come to our businesses to do business, obviously. As long as the product is for use outside of this area, then there is not a problem. It basically means the person has to be aware that, whichever state they are going to use those fireworks in, they must have a permit. They sign a declaration to say they have been informed of that.

**Mr Upton:** Perhaps I can answer some of that. My name is Harold Upton. We gave some brief introductions of ourselves before. I was born in Canberra. I have a three-year-old son who was also born in Canberra—and I have a wife. We live just outside of Canberra, at the moment. My background is initially academic—an honours degree in science, and then five or six years with the Commonwealth government giving policy advice on science and technology issues. I then had a change of career into financial planning and investment areas.

In 1992, I entered fireworks, with a particular interest in risk management, safety training, and professional pyrotechnic displays. My main interest in this industry is conducting professional fireworks displays. One of the companies I run is currently doing the fireworks for the Britney Spears concerts in America. We do not have problems doing that. We do competitions in Hong Kong, fireworks in Europe—everywhere else in the world, and nearly everywhere else in Australia. We do not have the problems we have in the ACT.

The real problem we have in the ACT is that there is no-one, and has been no-one, in the administrative area who understands fireworks and has any qualifications, experience or competency. So, in drafting regulations and so forth, they confuse things quite markedly.

On the breakdown of fireworks, prior to the new Commissioner for WorkCover being appointed, the shopgood-type fireworks were exempt from the regulations because they fitted into a category that was considered insignificant, from a risk point of view. So it was not covered by the dangerous goods regulations. We were at liberty to sell them to people all year round, and people were at liberty to buy them.

A lot of businesses, including mine, which was predominantly a display company, sold retail fireworks to people because there was a good cash flow from it and it was fairly profitable. In the year to 1999, my business turnover was well in excess of \$1 million. That has now dropped to a turnover of about \$200,000 or \$300,000, and my administrative costs are over half a million a year. Seventy to 80 per cent of that is dealing with legal matters and ACT WorkCover.

My business differs from some of the others, in that I use a large percentage of the fireworks myself in public fireworks displays. We also provide fireworks to other people who work on behalf of the businesses I look after. In the last six or eight months, we have sent fireworks to South Australia, Tasmania, Victoria and Queensland, where we have either conducted fireworks displays or provided fireworks to people for use there.

Having entered the fireworks industry with an academic background and an interest in training and safety, I have recently completed the drafting of, and had accredited, a full competency-based training program in pyrotechnics at the diploma level. That is the only formally recognised qualification of pyrotechnicians in the world. It is also the only competency-based training program in the world. We train a lot of people, and many people have received training from some of the other businesses. I understand there are some 600 or 700 licensed fireworks operators in Queensland, 2,000 or 3,000 in New South Wales and, under the new regime in Victoria, 200 or 300 licensed operators.

Prior to WorkCover's current restrictive practices, the ACT-based industry used to supply 70 or 80 per cent of that market with their fireworks. We had done the same thing as the wine industry in South Australia—convinced the Australian population that Canberra was the place to get fireworks. Display operators throughout Australia were purchasing from us. We had done a very good marketing exercise in increasing the awareness of fireworks, training people, having them licensed, promoting events and so forth, to build a very, very big industry.

One of the difficulties we have in the ACT is reference to things like shopgood fireworks. Under our regulations, a shopgood firework is only a shopgood firework after the inspector says so. That is for only two weeks of the year, and not if it is used as a theatrical firework or display firework. So a particular firework can have 15 different definitions in the ACT but, as soon as it crosses the border, it is something different again.

That creates a problem that has concerned me since I first entered the fireworks industry. That is that, due to the excessive eagerness to overly regulate the safest thing contained in the regulation, the remainder of it is being left lacking and wanting. I fear that, if something is not done soon, we will have further disasters like the hospital implosion, and that would be the end of our industry. So there is a public safety reason, as well as a personal reason, for wanting to ensure that these safety issues are resolved.

A question was asked about how we should regulate and what we should do. World best practice, and a requirement of ACT regulation, which keeps being overlooked, is to consult with industry to do industry regulatory impact statements. Here, within the ACT, we have internationally recognised expertise in pyrotechnic risk management standards and so forth. The Australian standard of shopgood fireworks was written by a committee I sat on, and all the recommendations and requirements I put forward were accepted. The basis of that standard is work that I did.

The national training package for pyrotechnicians was written by me. Ray referred earlier to his work on safety of consumer fireworks, and that is world leading. We have some of the best expertise in the world here in the ACT, yet it is ignored and discounted. In some cases legislation has been passed to deliberately ignore it.

**THE CHAIR:** You mentioned that you used to supply a large percentage of fireworks interstate, and that that is very much less so now. My first question is: are they still getting fireworks from interstate and, if so, what is the source that has replaced the ACT? My second question is this: you talked about some fireworks that probably should be regulated more, which are quite dangerous. Perhaps you could elaborate on what types of fireworks you see as not being properly covered by regulations.

**Mr Upton:** On the first question, there were some figures asked of the Minister for Customs federally about importation. That showed that, leading up to the appointment of our current occupational health and safety commissioner, the quantity of fireworks imported into Australia was growing quite dramatically and was coming in predominantly through New South Wales.

Since the changes to the regulation, restricting our ability to import and manage things, the total quantity of fireworks coming into Australia has dropped, but the quantity of fireworks coming into Brisbane, Melbourne, South Australia and Western Australia has increased. Therefore, not only has the overall quantity of fireworks imported into Australia dropped by about 50 per cent, but the fireworks imported by our members, and imported into this jurisdiction, has dropped by about 80 per cent.

I obtained rough figures from the financial experts in this area is. The Customs figures show a loss to our industry Australia-wide of about \$300 million. We believe that is due totally to misregulation by ACT WorkCover.

**THE CHAIR:** You mentioned certain types of fireworks that you think should have more restrictions or regulations placed on them. What are you talking about there?

**Mr Upton:** I did not, actually. I said other dangerous goods that are more dangerous. For instance, there are no testing procedures, and there are minimal licensing procedures, for high explosives. We saw what happened with the hospital implosion. That area of high explosives is not regulated.

For the public displays that are conducted by interstate people, they do not need the licences that we do to import. They do not have any of the licensing problems, but they are not able to comply. They can set up a fireworks display on the side of the lake without the appropriate precautions that are enforced upon us.

It makes things very, very difficult. The whole basis of the dangerous goods regulations is an old-fashioned legislative approach of prescribing certain things. There is a list of dangerous goods at the back, which are covered by the regulations. Seventy-five per cent of explosives in the world, 95 per cent of those used in high explosives fields and so forth, are recent chemical inventions or product modifications, and are not specified in our regulations.

If you want to create a bomb or build a bomb, you can do that in the ACT without breaching the Dangerous Goods Regulations, because they are outdated with the rest of the world. The Australian standards and the national explosives codes, are all-encompassing. They have a little clause at the bottom that refers to 'explosives not otherwise specified'—so it includes everything. Our regulations do not, and that creates a huge safety problem.

**THE CHAIR:** We have not yet heard from Mr Southwell, with regard to your business and the earlier question asked about—

**MS TUCKER:** I would like to ask a follow-up question before we turn to Mr Southwell. I think I misunderstood you. I thought you were saying that, even on this Queen's birthday weekend, people had to sign a form which said they would not use the fireworks in the ACT, but you meant for the rest of the year.

**Mr Schofield:** We specifically ask people if the fireworks are for use in the ACT. If they are, we do not supply them. We say, "Go to someone else."

**MS TUCKER:** Right, but I was looking at—

**Mr Schofield:** I know fireworks are going off in the ACT.

**MS TUCKER:** Yes. I am trying to understand the regulation, because I was confused. I was looking at WorkCover's explanation of the regulatory framework.

**Mr Schofield:** They do not understand it anyway, so there is no point in that.

**MS TUCKER:** I am interested in what is required. Under the framework, you are able to sell fireworks to people in the ACT, if they are using them over the Queen's birthday weekend, if you have a licence. Is that right?

**Mr Schofield:** On certain conditions. We need a licence and they require a permit. What happened here was that ACT WorkCover refused to issue permits because no-one in the ACT is licensed. It seems to me that that is illegal. Simply because interstate traders have a right to sell into the ACT, WorkCover seems to think they have all-encompassing powers.

**Mr Upton:** To clarify the issue of sale, I have a licence to sell shopgood fireworks, which was refused to be renewed by WorkCover. Higgins J, on 19 November last year, ordered that that licence continue—stay in force. So I have a licence to sell shopgood fireworks.

This morning, Higgins J ordered that an import licence and a licence to keep that I have continue in force. Both of those licences, by virtue of the legislation, also allow the sale of shopgood fireworks. So I have had, in effect, for the last three or four years, at least four licences that allow the sale of shopgood fireworks to people.

The difficulty I have, and the reason I cannot sell fireworks to people, is that WorkCover refuses to acknowledge the orders of Higgins J, and refuses to allow the public to get a permit to purchase fireworks from me.

**Mr Davey:** If I may, I will add something there by way of illustration, because the sheer material and experiences of these gentlemen is very difficult to get your head around. I have spent several months—and several folders have sat with me—trying to get across it.

I did an experiment, not because I disbelieved Harold, but I wanted to see how this was working. On Tuesday, when the Supreme Court order came down that he was entitled to continue to trade—that is, he had a licence—simultaneously there were negative comments from people within WorkCover saying, “There is no fireworks season this year—there are no licences.”

Okay, there might have been a time lag when the Supreme Court made its orders, but several days had passed. In the very same week, there were further orders allowing for these gentlemen to have their licences. I walked down here, crossed the road and went in to buy my permit for fireworks. I was refused. The people at the shopfront said there were no licences in the ACT.

On another point, there was an armed guard standing there. I have never been into the ACT shopfront, for anything, and seen an armed security guard there. I do not know why there is a security guard there now. I know these gentlemen have some views as to why that is. As a democratic and free citizen, it offends me, when I walk into an administrative front of this government to do some paperwork, to have an armed guard there and to be confronted by firearms.

I do not know whether that has anything to do with the fireworks season or the current political campaign being engaged in by WorkCover between this industry and others, but I am deeply offended. I want to register my objection to that.

**MR HARGREAVES:** Can you show—can you tell us how there is a direct connection—

**Mr Davey:** I am not the commissioner, Mr Hargreaves.

**MR HARGREAVES:** No, I know—I am sorry. You have made the statement that when you went into the shopfront, there was an armed guard there. The insinuation is that there is a linkage, necessarily, between the obtaining of a permit and the presence of the armed guard. How could you be sure of that—and that they are not needed to ensure the safety of people for other things?

**Mr Davey:** Look, Mr Hargreaves—

**MR HARGREAVES:** I do not know. I have not been there—you have to tell us.

**Mr Davey:** I do not know. The point is that I go into the shopfront, on average, once or twice every week. I am in there for a number of reasons, for other activities that I am involved in. I have never seen a guard there.

**MR HARGREAVES:** Did you ask why—

**Mr Davey:** No. I had a chat to the guy. He was quite friendly. They always look very bored because they are standing around doing nothing—those poor chaps. I feel sorry for them.

**MR HARGREAVES:** What about the people at the counter? Did you ask them? Did they indicate why the guard was there?

**Mr Davey:** No. My anger and frustration about being confronted with that developed as I went away. It struck me as unusual, because I had never seen it before. I have certainly seen security guards around more sensitive places like banks—and other places—but never in the shopfront. Given the background of the material I have been privy to, and the political campaign that I believe is being waged at the moment, I find that really unusual. I wanted to mention it here today.

**THE CHAIR:** I have seen armed guards in various ACT—and private—places around here. I am also well aware of government officials occasionally being assaulted for whatever. I think there is someone currently in jail for that. There are a number of people I know who have been before the courts, over a 20-year period, for that. I point that out. It could well have something to do with it. I suppose we are hypothesizing.

**Mr Davey:** We can only speculate.

**THE CHAIR:** In the 21 or so years I have worked around the Civic region, I have seen that from time to time, Mr Davey—so who knows? I hope no-one in that shopfront has been assaulted or has had problems with anyone. It is almost impossible to hypothecate what they might be doing there.

**Mr Davey:** Yes.

**THE CHAIR:** I note what you say. I just want to put that on—

**Mr Davey:** I mentioned it as an aside. I did not mean for us to spend a lot of time on it.

**MS TUCKER:** Can we move on with the subject? I am still trying to clarify this. Is the permit that you cannot get now—there is no licence, although there is a licence because the court just awarded it—to use fireworks in Canberra over the Queen's birthday weekend?

**Mr Upton:** Yes.

**MS TUCKER:** Okay. You said you already have some licences.

**Mr Upton:** I have had the licence since November, under the court order.

**MS TUCKER:** Yes. Would that allow me to go and purchase shopgoods from you, as long as I did not use them in the ACT?

**Mr Upton:** Yes, if you had some other authority to do that.

**MS TUCKER:** Do I need a permit to do that first?

**Mr Upton:** It depends what fireworks you are using, and where you are going to use them.

**MS TUCKER:** Yes, okay.

**Mr Upton:** It varies from state to state as to what rules or regulations apply, for which fireworks you want. Up until four or five months ago, or a bit earlier than that, anyone purchasing fireworks for use in South Australia did not require any permits in South Australia. We used to sell a lot of fireworks into South Australia until the regulations here made it more difficult. Businesses then opened in South Australia to take that on. The previous Minister for Urban Services wrote to his counterpart in South Australia, making certain allegations of our industry. As a result, fireworks were basically banned in South Australia. So that is no longer the case.

**MS TUCKER:** Do the rest of the businesses also have licences for the sale of shopgoods to be used outside, given those extra restrictions?

**Mr Upton:** Well, the licence I have covers a range of explosives—not only fireworks.



**MS TUCKER:** Yes, I understand that. I am interested to know whether people in the ACT can buy fireworks from all of you. You all have that licence. They do have that capacity, given that there are requirements, depending on the state in which they are going to be used. Is it the case that the rest of you are still able to sell shopgood fireworks, as long as they are not used in the ACT?

**Mr Schofield:** Certain types of shopgood fireworks can be sold—ones that are not covered by the regulation. Woolworths, Coles and the like sell party poppers and sparklers.

**MS TUCKER:** That is all?

**Mr Schofield:** They are fireworks, they are pyrotechnic devices. Therefore, they are able to be sold. They fall outside the regulation.

**MS TUCKER:** That is all you can sell? Are you saying that?

**Mr Schofield:** They are not—

**Mr Southwell:** I have something to add to that. I will give you my introduction first and then I can add to that.

I have lived and worked in Canberra all my life—in this area. I went to school in Yass. I grew up in Bowning. I started a business in 1985 in Canberra and had eight guys fully employed on the Parliament House job. I moved away from Canberra for a couple of years and came back. I started The Fireworks King after I met Ray in 1995. I currently employ five full-time staff.

I have no relationship now, nor have I had at any time in the past, with organised crime, drug or bike gangs. I find it extremely offensive that some of your members and senior public servants have made comments suggesting otherwise, from information they have received that has no substance and was designed simply to discredit some of us in the industry.

I have no criminal history whatsoever. I am a small business owner, part of the Canberra community and, most importantly, a family man with four children—Natalie, 16, who attends Woden College; James and Craig, 13 and 12, who are both at Mount Stromlo; and Kate, 7, at Rivett Primary. My wife, Michelle, is expecting an addition to our family in October.

I do not expect any special treatment from this committee. I want to be treated fairly and I want the Canberra community to hear our side of the story. All they have heard are disparaging comments about our industry, without any foundation at all. It is about time we were heard and the people of Canberra were told the truth. I would like to thank you guys for hearing us.

On the licence matter that you were talking about, we all had licences. I had to fight to get mine last year. This year, we applied for our licence again on 2 May. WorkCover have a duty to respond to our licences and issue them within 10 days. We have had no

response on any of the licences for our shop since that date—none. They have not even bothered to send us a letter.

The only letter we received was approximately 10 days later. They sent us a letter with new application forms—not mentioning that we had already applied. As to whether they are not smart enough to realise we had applied, or they decided they wanted to make it more difficult for me to reapply for my licence, I do not know the answer. This happens every year. We apply, then they give us the continual runaround. I had to stand in their office last year for four hours. I refused to leave, so they sent for the Government Solicitor to come and oversee the issuing of my licences.

**MS TUCKER:** Can you explain something to me? I do not want to cut you off. You may continue with what you are saying after I have asked this question—it is relevant. In the submission from Mr Davey, he points out two particular areas of the regulations—54(2)(d) and 54(5). I would like you to explain this, while you are discussing the issue of licences, the difficulty in getting them and the reasons for that. This is relevant—or is it? I am asking you.

Are the problematic points, from your perspective, firstly this 54 (2) (d) which says that where the application is for a general permit, had had adequate experience in and is fully competent in? In your submission, you say that ‘competent’ is a very broad criteria, and that that is used as an argument for disqualification, but it is very hard to test. The other one was 54 (5)—the test being any ground on which an application for a permit could be refused. In your submission you say that is also very broad and difficult to tie down.

**Mr Upton:** Perhaps I can clarify some of that.

**MS TUCKER:** I would be interested in understanding that more.

**Mr Upton:** Obviously, the larger a firework or explosive is, the more competence is required, the more expertise, the more qualifications and so forth. We do not require a licence for someone to have a pushbike, but we have very strict regimes for driving a public bus or truck—so you move up the scale.

The majority of the fireworks we are talking about here are shopgood fireworks. The introduction to the Australian standard states quite specifically that the purpose of that standard is to categorise, from a scientific and technical perspective, those fireworks which are suitable for use by untrained people, including children, in their own backyard. The concept we start with, with shopgood fireworks, is those fireworks that untrained people can use, including children, in their own backyard. Then there is a fairly complex regime on how someone like myself, or a government analyst, can go along and perform tests to make sure that a particular firework meets these standards.

The fireworks we are dealing with here and having problems with licence issues over are those that the Australian standard deems do not require training and qualifications, which the United Nations classifies as representing no significant risk—the lowest category of classification. They are fireworks which, up until the new commissioner took charge, were exempted from our regulations for the same reason. Anyone could use them without any licensing and they do not cause a problem, except when deliberately misused.

Fireworks deliberately misused which cause public nuisance and damage are generally display-type fireworks. According to the commissioner's submission, some of the things she had tested are outside the jurisdiction of display fireworks. They are items which have been manufactured specifically for a destructive purpose. They are not fireworks—they are not the sorts of things our industry has. They are not something you can buy from a manufacturer in China, America or Europe. So the licensing problems they are facing on these shopgood items are for products that do not require those tests, because it is pre-built into the definition.

**Mr Southwell:** The problem appears to be that the chief inspector who issues the licences is unable to do that because he is being puppeteered by the commissioner. He will not issue licences because she says not to. That appears to be how it is going. We cannot get a licence issued unless we go to court. We have had to go to court over and over again to get a magistrate or judge to issue our licences, because they will not do it.

**THE CHAIR:** Mr Upton, regarding the fireworks that do not need a licence—the ones that I suppose anyone could handle—up to how many grams of powder could be in those? Perhaps you could explain that to me. Like you, I grew up in Canberra—but probably a lot before you—where you could buy tuppenny bungers and things, going down to tom thumbs. That was a long time ago. What sort of fireworks are we talking about?

**Mr Upton:** The ACT definition of shopgood fireworks differs from the Australian standard in some areas, but basically the ACT version is less than 40 grams. The Australian standard has increased the level but added criteria to ensure safety—a fall-out zone and so forth. The majority of the Australian standard, from a performance criteria, has now been adopted by WorkCover as applying to the ACT as well.

The problem with the ACT regulations is that, when they were written in 1975, 40 grams of fireworks referred to 40 grams of a diluted black powder mix that had chemicals in it which slowed down its burning—and that was a fairly good indication. However, with advances in explosive technology, now 40 grams of explosive material is potentially dangerous.

It does not necessarily fit the definition of pyrotechnic or firework. There is a safety issue there. It is possible to classify some explosives under that definition, which could cause a problem. Those sorts of things, and what you have referred to as the tuppenny bungers and so forth, are still marketed throughout the world. A major market for them happens to be Germany and Holland. They are the main areas that use that kind of product now. In the definition in the Australian standard on shopgood fireworks, those types of products are defined and classified, as are skyrockets.

The reason is that, by classifying them perfectly, technically a competent administration, such as the Northern Territory, can then say, “We will adopt the Australian standard but we will exclude bungers and rockets, because we know they are misused.” So the standard includes some things which other jurisdictions remove, for particular reasons.

A lot of the fireworks you and I would have used when we were younger do not fit the definition of the Australian standard, nor of the ACT standard. That was done for safety reasons. It is just that things changed.

**THE CHAIR:** Yes, I can recall, within a few years, when that started to happen. Thank you for that—explaining the powder situation and that 40 grams now is very different from 40 grams 40 years ago. It explains the rationale behind that.

Mr Worthley, we have not heard from you.

**Mr Worthley:** My name is Nigel Worthley. Like Tony, I am a pretty honest citizen. I have no criminal record or anything. Every six months, I have to prove that to Jocelyn. Tony got his new police record. I do not know if he showed you, but it came through today, clean as a whistle. We like to think that we are good citizens.

**THE CHAIR:** For how long have you been in the industry?

**Mr Worthley:** About five or six years.

**THE CHAIR:** Where do you work from?

**Mr Worthley:** I work at the Fireworks King. ACT residents regularly ring me, wishing to buy fireworks, as they may choose to. I have to tell them to go to WorkCover—knowing full well that WorkCover will not issue them with a permit. WorkCover seem to tell them to ring me back to say, “They said that if I want to buy a \$25 bag, I come to you.” I do not sell to ACT residents.

**THE CHAIR:** Whom do you sell to?

**Mr Worthley:** I sell to anybody outside the ACT.

**THE CHAIR:** We had a question with John, about 50 minutes ago, which I think most people have answered. That is a break-up of your business—what percentage would be shopgood fireworks.

**Mr Southwell:** Can I answer that?

**THE CHAIR:** Yes.

**Mr Southwell:** Basically, with our business, we supply to all other operators throughout Australia—plus we supply for kids’ birthday parties, twenty-firsts or whatever. That may be in New South Wales but, wherever they go, we supply those. Most of our business now, because we do not sell in Canberra at all, is to pyrotechnicians throughout Western Australia. That is where most of our business goes.

**THE CHAIR:** Mr Worthley, what about you? What percentage break-up is there in your business now?

**Mr Worthley:** We do displays as well, all around Australia. At the moment, in Canberra it is zero. We are hoping to do something this long weekend. Given that our licences have come through, we might have a successful period. It might be a bit late, but that will be good. I sell Chinese crackers to Indonesian customers in Cabramatta who have licences to hold them and permits to let them off. As Harold said, there are nearly 3,000—there may be well over 3,000—New South Wales GP holders, who are entitled to ring me up and purchase fireworks every day.

**THE CHAIR:** Gentlemen, as you would expect with something like this, we have had a number of submissions, which I suppose you could say are form submissions, saying: yes, we like fireworks—keep selling them. We have had a number of other form submissions saying: no, very bad, they terrify animals, they are dangerous, there are all sorts of dramas every time we have the Queen’s birthday weekend—ban them. I cannot remember who—it might have been Mr Davey or possibly Mr Upton— but someone touched on this in relation to the problems raised by groups like the RSPCA and some of the people who say that there are all these problems, every time, with animals. They say that kids misuse them, and there are always a few injuries.

One of our main points here is safety. What do you as an industry, and indeed as individuals, say to that kind of criticism? Do you have any suggestions in terms of making the industry and the use of fireworks safer?

**Mr Worthley:** Perhaps I can answer that one. Say you banned fireworks and it went underground: would you rather your kids or someone buy fireworks out of the boot of some car, or that they went to Harold’s shop or Ray’s shop and have someone say, “Here is a nice little bag of fireworks which has been inspected by WorkCover. Here are the safety instructions. If you are not sure how to use it, you nail it up. There is a nail in there, this is how you do this.” What would you rather happen?

If you chose to buy a bag of fireworks to let off for your daughter’s 16th birthday, or something—a spinning wheel or a Catherine wheel—under Jocelyn’s regime, that is not possible.

**THE CHAIR:** Refer to WorkCover—it is easier.

**Mr Worthley:** WorkCover, yes. “Spinning wheel” does not fit the description now. If you chose to buy some fireworks, you would obviously like to buy them from a shop where you could walk up to someone like Ray or Tony and say, “Is this what I need?” We could explain to you that maybe it is—and that this is what it will do.

**MS TUCKER:** I think the concern is that there is a lot of illegal trading going on anyway. There are concerns about displays, legal events, legal use and the impact on animals. It is worrying to a lot of people that fireworks are being let off all year round, that damage is done and large amounts are being housed illegally, therefore creating a huge danger.

**Mr Worthley:** On that point—

**MS TUCKER:** I am interested to know what you think the solution is to that problem.

**Mr Southwell:** Can I answer that?

**MS TUCKER:** All of you can answer.

**Mr Southwell:** The solution to that is this: if we were regulated properly, where people could come and purchase fireworks legally, the smart guys out there who sell this stuff illegally would not have a market. They obviously have licences. They buy it from whoever they buy it from. Then they go and sell it illegally out of the boots of cars. If people could come and buy fireworks from genuinely licensed retailers, there would not be a market for those boot traders. There would not be a market for them to go out, because people could come and buy them.

**Mr Schofield:** By the way, that illegal trade has escalated since about 1999.

**MR HARGREAVES:** Whereabouts do they get their stuff from?

**Mr Schofield:** We suspect that a lot of it comes from us. Well, we know that a lot of it comes from us.

**Mr Southwell:** A lot of it would come from us.

**MR HARGREAVES:** The illegal stuff, that is coming in here, comes from you?

**Mr Southwell:** Yes.

**Mr Southwell:** You are misunderstanding what they are saying.

**MR HARGREAVES:** Yes,

**Mr Schofield:** Let me explain. We supply to licensed operators. They buy goods for their own use, but we do not know what the end use of that is. Some of the unscrupulous people go out and try to make a profit from it by reselling it at an inflated price. Okay? Yes, some of it comes from us. There are wholesalers in every state in Australia, so you cannot say it is all coming from the ACT because, quite frankly, it is not.

There are importers in every state of Australia. They import fireworks and they sell to licensed proprietors. There are now more general purpose licence holders than ever before. The reason is that more pressure is applied to the retail outlets in the ACT. As Harold said before, it took us a great deal of effort and time—and there was a great deal of input—to get people to want to come to the ACT to buy fireworks.

We were successful at what we did. We advertised—we did it right. What has happened is that, because they cannot come into the ACT and buy what they want, they have found another means of doing it. The black market has increased because of that—because of over-regulation here.

As Nigel said, if people can come in and buy a simple bag of fireworks that is suitable for use by everyone, they will do that. The difference is that the people who sell out of the boots of their cars will sell whatever they can get their hands on. Therefore, the more dangerous fireworks get into the community.

**Mr Upton:** There is one step which goes beyond that. When you look at Queensland, it has high restrictions on personal use, and it does not have the general permit holder system, where people can buy and sell, like New South Wales. Queensland has the highest rate of youth injury through home-made explosives in Australia—because they cannot get illegal fireworks very easily, and they cannot get legal fireworks.

Anyone in any industry in the world would be proud of the safety record of the ACT fireworks industry. The number of injuries reported to the hospitals, based on the percentage of people that use fireworks, is something to be incredibly proud of. It is so small and insignificant as to not warrant the sort of investigation we have. It is the misinformation and falsification of those records that goes with that. In fact, with one person who was hurt, illegally using an illegal firework last year, that appeared in WorkCover records as eight separate injuries. Those figures are there, if you go through the records through FOI. On the animal front, the largest users of fireworks in Australia are the Royal agricultural show societies—where there are animals present.

I know most of the members here have had, or keep, pets. I live on a rural property. We have ducks, chickens, horses, dogs, cats, budgies, parrots, a rat, a guinea pig and rabbits. It is a zoo. One of the dogs does not like fireworks but it loves sitting in the front seat of the car. If we put it in the car, it is happy when the fireworks go off. The rest of them—the little kitten we have and the rabbit—will sit there and watch the fireworks. Some animals like fireworks and some hate them. It is the same with everything—it is not all animals.

If fireworks were really as good for scaring things as people say, the airports would use them to get rid of the birds, and the farmers would use them to get rid of birds and kangaroos. It does not work that way. A rifle shot, or something going bang, will have an instant startle effect on some things. The problem is in the misuse of things to deliberately injure or damage—be it a letterbox or someone's pet.

From the research I have seen from England and America, the people who are mean and cruel to animals, or destroy property, are going to do that regardless of what their implement is. If they cannot get a firework to blow up a letterbox, they are going to hit it with a baseball bat.

I think we need to run public awareness campaigns on the safe use of things, and looking after pets. Our industry is doing that. All our safety brochures talk about not damaging property, and looking after pets and wildlife. We have a vested interest in trying to see this being safe, but it is when it is misreported that it is a problem.

**Mr Davey:** Fundamentally, a lot of allegations have been made about this industry. We are not here to represent to you that fireworks are not dangerous—they are. And they can be extremely dangerous if put to an illegal or improper use—but so can cars.

It is as unjustified to say that a motor vehicle manufacturer is responsible for an armed hold-up, or for the road toll, as it is to say that these gentlemen here are responsible for cruelty to animals, criminal activity and illicit trade. Many other allegations have been vented in public, in the media, in other places and, I am led to believe, even within this Assembly. It is not fair, and it is not justified. The reason we can say that with enormous

amounts of confidence is that WorkCover has prosecuted, particularly, Mr Upton with criminal charges. Is it 74 times, Harold?

**Mr Upton:** There have been 74 charges—71 through the courts, with no convictions recorded—at a cost to me of \$1 million.

**Mr Davey:** We are not speculating. The accusations have actually been made in the context of the criminal justice system—and they have never been substantiated.

It is unfair to stigmatise business people who are dealing in not the only dangerous goods in the ACT. They are dealing with dangerous goods in a way that denigrates them. The thing that disturbs us more than anything else is that so much of this is being sourced out of WorkCover.

That is not an unsubstantiated allegation. I have the media reports, which quote the commissioner and various officers within WorkCover as stating that these gentlemen are as good as terrorists, that they are trading in landmines, and that they are associated with drugs.

**MR HARGREAVES:** Will you table those media release reports?

**THE CHAIR:** Yes, you can table those.

**Mr Worthley:** No better than heroin dealers, was one.

**MR HARGREAVES:** If you can table those for us, that will be helpful.

**Mr Davey:** I think you have some of those.

**THE CHAIR:** We might have some.

**MS TUCKER:** They are attached to your submission, aren't they?

**THE CHAIR:** They may be.

**MS TUCKER:** Are they the ones you are talking about—the ones that are attached to the submission?

**Mr Davey:** Yes.

**MR HARGREAVES:** I would like to see the ones from your statement, Mr Davey. Correct me if I am wrong, but I heard you say just now that you can source a comment from WorkCover suggesting that your industry is associated with landmines.

**Mr Davey:** I might be able to help you out with that straightaway, Mr Hargreaves, but I am very conscious of time.

**MR HARGREAVES:** Do not do it straightaway—take your time.



**MS TUCKER:** In terms of the impact of legal activities, I am assuming you have seen submissions that have been published. If you have not, I can tell you. For example, one community council was expressing concern at the power of the explosions. They are so powerful that they are having an impact on neighbours.

**Mr Upton:** In the US, that sort of product is illegal.

**MS TUCKER:** This is what happens at the displays that are legal—for example, at EPIC. I am wondering if you have a comment on that—if it is legal to have displays which have that kind of impact on neighbours, where their houses are vibrating. Do you think that is appropriate?

**Mr Upton:** It is a difficult question to answer, but there is the perspective that if your house is right near a showground, where these sorts of events are going to happen, that has to be expected. If you are going to live near a main road, you will have the same sorts of vibrations. If you are under a flight path, that will happen. There are regulations. EPIC has specific rules because of its inner city location. We do conduct fireworks at Exhibition Park for Summernats and other events.

They have a quota for the number of evenings on which they can have different sorts of noise. I know at the Summernats there are complaints about fireworks, the noise of vehicles and other similar things. The worst vibrations caused in the ACT are either the 21-gun salute for Australia Day or the over-flying of the RAAF aircraft, which cause significantly more vibration and noise than the fireworks do.

It is something that needs to be moderated, I guess. Maybe a useful set of regulations would limit the amount of noise, or the timing of noises that we can have. We have difficulty, if we want to conduct a fireworks display after 10 o'clock, because of noise concerns.

**MS TUCKER:** I was not quite clear on your response to the animals issue. The RSPCA and Animal Liberation have documented the increase in incidents related to animals.

**Mr Upton:** I can answer that because I have the FOI figures on it. This is a very emotive issue for me because of the animals we keep and the trouble we go to. I have done fireworks displays at Flemington Racecourse. There were specific requirements on doing that for an Olympic event, because there were hundreds of millions of dollars worth of livestock there. So I know that fireworks can be compatible with animals.

I was concerned about the figures from the RSPCA. I wrote to the Animal Welfare Advisory Committee—a body of the ACT government—and got figures from them under FOI. Their figures show, quite clearly, that the RSPCA misled on the figures last year by killing—murdering—the animals in their shelter to make room, so the numbers would look bigger for the Queen's birthday long weekend.

**MR HARGREAVES:** That is a very strong allegation.

**THE CHAIR:** That is amazing—go on. I have read that.

**Mr Upton:** I have the RSPCA figures. The word used by the Animal Welfare Advisory Committee was that the animals were euthanased. I am saying murdered and killed, because that is what they did. Their policy said they should not have been killed at that stage.

Every long weekend in Canberra, irresponsible owners of pets, who do not register them and do not look after them, go away—down the coast, or wherever. Every long weekend, the RSPCA shelter is at capacity, or near capacity. The figures from the RSPCA as to what animals they can take in are based not on how many animals people bring to them, but on how many empty kennels they have.

Last Queen's birthday long weekend they euthanased every dog that had been there for more than seven days, to make room.

**THE CHAIR:** Don't they have a policy though? That is an amazing statement. I know there have been a lot of things said between you guys and WorkCover. With regard to the RSPCA, I found it amazing that the RSPCA would have falsified figures. I think you stated, or alleged, that in one of your submissions.

**Mr Upton:** Misled.

**THE CHAIR:** Are you talking about the fact that they said that, after seven days, they then killed all the animals that were there?

**Mr Upton:** Any animal in their shelter that had been there longer than seven days was euthanased.

**THE CHAIR:** I might be wrong on this, but I seem to recall that there is some general rule that the RSPCA tends to keep animals for seven days, and often for longer. But they have a rule of thumb that, if they cannot find a home within seven days, the animal might die. Can you comment on that? I may be wrong, but I seem to recall that.

**Mr Upton:** If they were pets owned by responsible pet owners they would be registered, so they would not be stuck in the RSPCA. All I have is the quote from the senior vet who heads up the Animal Welfare Advisory Committee. He said that the figures from the RSPCA are misleading because, prior to that weekend, they euthanased all the animals to make room for more. So the fact that they showed an increase was not a normal statistical figure.

**THE CHAIR:** You might have, but someone has provided us with statistics relating to various holiday times, including the Queen's birthday weekend, over a period of time. Are you referring just to the last long weekend, or is this something that you are saying occurs—

**Mr Upton:** If you look at the previous long weekend, there was not a statistical increase. On previous Queen's birthday long weekends, the number of dogs brought in was consistent with any holiday weekend—Anzac Day, Easter, whatever—when fireworks are not used.

Last Queen's birthday long weekend, there was a significant increase in animals brought in. That coincides with the significant culling of the RSPCA's animal population.

**THE CHAIR:** We can check the figures on that, anyway.

**MR HARGREAVES:** If they are creating a vacancy within the accommodation at the RSPCA and that slack is not instantly taken up, isn't that therefore a statement about the predictability of an intake increase?

**Mr Schofield:** No.

**Mr Upton:** Every long weekend.

**MR HARGREAVES:** Why would you do it?

**Mr Schofield:** We are talking about unregistered animals. These are strays running the streets, in most instances. Perhaps more time should be spent prosecuting the people who had these pets, who did not care for them. The problem is not the fireworks, the problem is that the noise of the fireworks alerts the authorities to pick up dogs—animals—and take them into the pound. It is not a fireworks issue.

**MR HARGREAVES:** Are you suggesting that what happens on the—

**Mr Schofield:** I am suggesting that the people who own these animals should be prosecuted.

**MR HARGREAVES:** Are you suggesting that, on the Queen's birthday long weekend, the dog control people get their act together a little bit more, and that all of these strays and non-registered animals come out of the woodwork on that particular weekend and are picked up and put into the RSPCA—by coincidence?

**Mr Schofield:** Do you have another explanation?

**MR HARGREAVES:** Yes, I do.

**Mr Upton:** The dog control people take the dogs somewhere else. The government has a pound. We are talking about the RSPCA here.

**MR HARGREAVES:** Yes, that is what I am talking about.

**Mr Upton:** Yes, they do roster extra people for the long weekend to promote that. We have literature from the RSPCA about what a good snow job they are doing on the figures. The point I was making is that it is a travesty. It is not a fireworks travesty, it is a mistreatment of pets travesty. In Canberra, on every long weekend, the RSPCA shelter is full. If it was twice the size, it would still be full. On long weekends, people leave Canberra in droves and just dump their pets.

That happens throughout the year, it is not just the long weekends. We are not saying that some animals are not terrified by fireworks—they are. The same ones are terrified by a whistle at a kids' party, a thunderstorm, or a car backfiring.

**Mr Worthley:** John, there is a personal friend of mine, Simon Tadd, who works with the CSIRO.

**MR HARGREAVES:** Yes, I know Simon.

**Mr Worthley:** Soon after the Queen's birthday long weekend, he came on TV with a sad little girl who had lost a puppy. That was straight after the long weekend, not before. Now they are running ads which I commend them on. I rang his wife, Angela Tadd, whom I know.

**MR HARGREAVES:** I know Angie.

**Mr Worthley:** I rang her to say what a good job Simon did on TV, and that he came across very well on TV. I asked Angela if it was the case. She said, "Well, no. We are always busy on long weekends." She works at the RSPCA.

**MS TUCKER:** The ACF submission talks about figures from the Occupational Health and Safety Commission.

**Mr Upton:** They all come back to the WorkCover report.

**MS TUCKER:** That is a WorkCover source, is it?

**Mr Upton:** Yes—and they are double and triple counted. For instance, three years in a row, there is a horse killed at Murrumbateman. It is the same horse.

**MS TUCKER:** They have figures there and—

**Mr Southwell:** It is a very famous, dead, Murrumbateman horse.

**Mr Upton:** Yes. It is not an ACT thing.

**MS TUCKER:** It says that, on three days on the 2001 Queen's birthday weekend, two horses were frightened, and ran into barbed wire.

**Mr Upton:** Yes. That goes back about three years. It was a Murrumbateman incident.

**MS TUCKER:** You are saying it was not 2001?

**Mr Schofield:** Absolutely—no way.

**Mr Upton:** It is an allegation. We have no substantiation. We just know that if you go back—

**Mr Schofield:** It is like the possums being run over on Northbourne Avenue.

**MS TUCKER:** Yes—Limestone Avenue.

**Mr Schofield:** Limestone, sorry.

**Mr Upton:** That is not fireworks. I was speaking to people who know. Possums stop when they hear a loud noise—they do not run.

**MS TUCKER:** If you are challenging the source of those figures, I do not want to go into that now.

**THE CHAIR:** Mr Davey has been trying to say something, so we will let him.

**MS TUCKER:** I want to raise an environmental question, when you are ready.

**Mr Davey:** I have never been so quiet for so long!

**MR HARGREAVES:** That is true.

**Mr Davey:** Thank you, Mr Hargreaves. I will take that as a compliment. The reality is that, with regard to both environmental and animal welfare concerns, fireworks are incompatible with animals. This not a quantum leap in logic. Anybody who is silly enough to let fireworks off, to see if they are going to startle an animal, is the sort of person who is engaged in the abuse of animals. We cannot warrant to you that people do not abuse animals, or that they do not use fireworks to abuse animals.

We say not to do that. I have seen the literature that these gentlemen put out from their shops. It is not fair for the allegation to be levied against this industry that they are therefore somehow complicit, or conspiring, in the abuse of animals, or in damage of property.

One other point of clarification—

**MR HARGREAVES:** That is a very serious issue. You are saying statements have been made that the industry is complicit in that. Can you substantiate that?

**Mr Davey:** Certainly.

**MR HARGREAVES:** From my reading of the submissions, it seems people are saying that fireworks are being used for that. As far as I can see—I am not going to refer to the WorkCover report rather than to other submissions—nobody has suggested any individual person within the industry is particularly involved, complicit or deliberately doing all this sort of thing.

**Mr Davey:** I beg to disagree, Mr Hargreaves, from the point of view that the logic stream which follows from that is: fireworks hurt animals and, therefore, fireworks should be banned. These gentlemen just happen to be involved in the commercial trade of fireworks. If that outcome were determined, it would involve the destruction of their businesses. It is inferentials—

**MR HARGREAVES:** That is a consequence of it, but we are not talking about the complicity here as to damage to animals, et cetera. I will go back to what Mr Schofield was talking about. It is possible, is it not, that, despite the best efforts the individual businesses involved in this industry are trying to make, there is some hurt being

perpetrated on animals, there is misuse of fireworks, there are significant numbers of letterboxes being blown up, and things like that. It is true, is it not, that there is concern out in the community that these things are happening?

**Mr Davey:** Actually, Mr Hargreaves—

**MR HARGREAVES:** What I wanted to pick you up on was whether or not you still want to stand by the statement that there are people suggesting that the people in the industry are deliberately involved in this sort of thing.

**Mr Davey:** Yes, there has been a suggestion of that. Mr Hargreaves, to answer your direct question, I agree with you, but we need to look at the evidence in a proper, scientific way. We contest a lot of the figures that have been presented to WorkCover. There needs to be a thorough and proper investigation of those allegations.

Notwithstanding that, we do not have a proper system of regulation operating. It is our submission to you—and WorkCover agrees—that the regulatory regime is deficient. You are not going to get a decent administrative outcome from a deficient piece of legislation. It is just not possible. Even on the most benign interpretation of the way fireworks are regulated and the conduct of people with regard to it, it is certainly not world's best practice. In fact, it quite possibly could be world's worst practice.

It is very difficult for us to form the conclusions when we do not have the appropriate evidence. Secondly, we do not have a regulatory regime which we can say we are proud of. Superimposed over that—which are our substantive allegations—is the lack of goodwill and the animosity that has existed from the independent statutory office of WorkCover, which makes for an entire disaster of regulations with regard to fireworks. How can we then sensibly look at the entire thing and say, “Who can we blame? How can we do this better? Who is responsible for this?”

We could put in place a decent piece of legislation with proper monitoring—I know that often happens in legislation at the federal level, and I know this Assembly does it—in a system where industry has contributed to the development of the legislation. We may later find that there was generally goodwill restored to the trade of fireworks. However, if the results showed, after a defined period—a sensible period—that fireworks were in fact causing too much damage to the community and there were too many people misusing them, then I think this Assembly would rightly be in a position to say that they would consider taking them out of public circulation. But until we have that information, until we have a proper regulatory regime, we are not in a position to do that.

A lot of this debate has been structured around the question: should we ban or should we permit fireworks? Very little of it has been based upon the question: how do we properly regulate dangerous goods? I am hoping the outcome is that this committee will look at that. Fundamentally, the thing that I, personally, as a citizen of the ACT, am offended at is that the decision to ban fireworks, if that decision happens, will come from seven democratically elected members of this Assembly.

That is what you guys have been elected for. It is your prerogative, in the forum of the Assembly chamber and the politics that occur in this place, to make that decision, if that is where you would like to go. It is not for other people, particularly independent statutory office holders, to pre-empt that decision.

That is our chief allegation against WorkCover—that they have been conducting a political campaign to bring that about, and usurping the proper democratic role of this Assembly.

This is my final comment. The reality is that I am really shocked at the animal welfare stuff. It offends me personally, as a pet owner, that animals are hurt. I certainly would not be sitting here with these gentlemen, or working with them, if I thought they had even the slightest inclination towards abuse of animals.

In the RSPCA's submission it says that, while some RSPCA members and staff have personally experienced the effects that fireworks can have on animals, we do not claim to have the evidence that all of the following comments about the availability and use of fireworks are based on fact. That is their submission. It continues that the inquiry will appreciate that the RSPCA's investigative powers are limited by provisions in the ACT's animal welfare legislation, and rightly so. Nevertheless, we are directly concerned with the consequences of any action detrimental to animal welfare.

That is a perfectly reasonable position for them to arrive at. Mr Upton has told me several times that he would be happy to fund a proper inquiry into animal welfare and the use of fireworks by an independent body. To give the RSPCA credit, but also a bit of criticism, they have been involved in a campaign to have fireworks banned. They have formed the view—and they fall on the other side of the fence—that fireworks are not acceptable from an animal welfare position. They are entitled to that view. That is their job.

**MS TUCKER:** Can I ask a question?

**THE CHAIR:** Probably just one—I note the time.

**MS TUCKER:** Focusing on the regulatory question, there are particular concerns being expressed in the community. There are also environmental concerns about the heavy metals involved.

**Mr Upton:** There are no heavy metals in fireworks.

**MS TUCKER:** Sorry, toxic.

**Mr Upton:** Not toxic—they have all been outlawed.

**MS TUCKER:** Well, strontium, copper compounds, magnesium, titanium, aluminium, sodium chloride—

**Mr Upton:** Sodium chloride is salt.

**MS TUCKER:** You have seen the list.

**Mr Upton:** Yes, I have looked at the list. It talks about heavy metals and the radioactivity in coal. Coal is not used as a source of carbon in fireworks. We use charcoal, which must come from a tree of some sort. We burn trees to make charcoal, but the chemicals referred to there—strontium is used but it is not toxic, nor is it a heavy metal. Heavy metals are cadmium and the like, which come from coal, but are not in fireworks. That document is totally inaccurate and misleading.

**MS TUCKER:** It would be useful to get a response to that document, if you want to put one in.

**Mr Upton:** I can do that.

**MS TUCKER:** That is interesting. This is what I would like to know from you—and obviously you are qualified to answer this, although we may have other qualified people who have a different view. Do you say there are no environmental issues related to the use of fireworks?

**Mr Upton:** No.

**MS TUCKER:** You are not saying that?

**Mr Upton:** No, there are not. There is a big debate on that in America at the moment, because it is easier to make fireworks out of plastic than cardboard. However, you have an environmental problem, because plastic does not biodegrade. That is a significant issue. There are noise concerns, and there is a pollution concern. But the basic chemical compound for fireworks is fertiliser—so it is not a chemical poisoning problem.

**MS TUCKER:** There is the question of the soil that plugs them—the clay that plugs the fireworks.

**Mr Upton:** Yes. Quarantine now check on that. The plugs in fireworks stay with the fireworks and are disposed of when we take them to landfill.

**MS TUCKER:** But people let fireworks off and it gets left—wherever.

**Mr Upton:** On the ground?

**MS TUCKER:** Yes.

**Mr Upton:** It should not, though.

**Mr Schofield:** Only on WorkCover sites.

**Mr Upton:** That is a litter problem.

**MS TUCKER:** Are you saying that that soil is checked—

**Mr Upton:** Soil is not allowed in now—by Quarantine.



**MS TUCKER:** There is no soil coming in now, plugging fireworks?

**Mr Upton:** It is supposed to be a modified chemical clay.

**MS TUCKER:** What does that mean? It is not soil?

**Mr Upton:** That means you do not go to the back yard of the factory in China and dig it up. It has to be certified and checked as not having a problem—bringing in a disease and so forth.

**MS TUCKER:** Has that been checked by Customs and Quarantine?

**Mr Upton:** It is. I believe, from the figures we have, that not one container of fireworks has come in, through our group, that has not been checked by either Customs or Quarantine.

**MS TUCKER:** The soil is examined?

**Mr Upton:** They test for different things. They will randomly select—sometimes looking for insects. Some of the fireworks have wooden components. They want to check to see whether that has borers or bugs in it. The shipping agent at the other side has to certify—make a quarantine declaration—as to what types of material have or have not been used. Random sampling is done on that.

That does not mean that, on occasions, things do not come through. We found a lot that had raw cotton plugging the top of it. That is a great concern. My honours degree was in entomology, so I am aware of where the problems are in that and where the problems are with soil and so forth. That is why there are specifications.

Part of what our group is doing now is going to China to oversee the manufacturing process—to say, “We want a chemical cement in the bottom of that. We do not want you digging up the soil out the back.” There is a range of processes. Poisonous metals are illegal and radioactivity-type things are illegal. Lead, arsenic and cadmium are all illegal compounds in fireworks.

It is illegal to bring in things that have raw vegetable product or natural soil-type product attached to them. That does not mean that, on occasions, they do not come through. It is a matter of ensuring that the manufacturer, the importer, the wholesaler and the regulators are all aware of that. When there is a problem, it can be detected and solved, as it is with all other imports.

**MS TUCKER:** Would you say that there is no impact on people with respiratory problems, when a lot of fireworks are being let off?

**Mr Upton:** It is unusual to get respiratory problems from a normal firework-type compound. Special effects and theatrical stuff tends to have a bigger effect on respiratory problems, because they are using different chemicals—as do some of the smoke machines at discos and so forth.

In the normal outdoor fireworks displays, the sorts of chemicals used are relatively inoffensive. I will use that term. It is not much different from your standard kind of fire. The compounds are meant to be burnt, and there is resulting residue. That is why you have certain distances as to where fireworks go.

I know lots of people—I am included—who love the smell of fireworks going off. Some people like the smell of whatever their industries are—a steam train too. In fact, a steam train is vastly more problematic than an environmental problem, because it is burning coal. It is still nice to see a steam train. I love them.

**THE CHAIR:** Thanks for that. Mr Davey earlier wanted to source and tender a *Canberra Times* article. He has shown me that. The committee already has that as evidence before it. I make the note that that source is already before the committee.

**Mr Upton:** There is one other thing John—that fax I showed you. Are you going to do something with that?

**Mr Davey:** Mr Chair, I have a question about time. I realise that the agenda says we are to finish up at 3:30.

**THE CHAIR:** Yes.

**Mr Davey:** I am sure members of the committee have a lot more questions. If there is another opportunity, we will be happy to attend. If you have any questions that you would like to give us on notice, that might help expedite matters.

**THE CHAIR:** I thank you for that, Mr Davey. I was going to suggest that, if we did have some more questions, we could put them in writing to you and you could respond to them. Perhaps, if need be, you, yourself, could come back. The idea of questions on notice, put in writing, would be a very good way of expediting everything and helping us to keep to the timeframe which has been set by the Assembly.

Gentlemen, I thank you very much for your attendance before the committee.

**Mr Davey:** I did have one other thing, Mr Chair. Further to your introductory comments, there is some material we wanted to present to the committee in camera. I do not think time will allow us to do that.

**THE CHAIR:** No.

**Mr Davey:** Could you please indicate to us—

**THE CHAIR:** We could make another time, yes. We will check the diaries. Yes, we can arrange that.

**Mr Davey:** We make that request.

**THE CHAIR:** The secretary will arrange that with you.

**Mr Davey:** Thank you, Mr Chair and members of the committee. We wish you well in the deliberations.

**THE CHAIR:** Thank you for your attendance.

**The committee adjourned from 3.39 to 4.56 pm**

**RICHARD CHRISTOPHER REFSHAUGE** was called.

**Mr Refshauge**: Richard Christopher Refshauge, Director of Public Prosecutions.

**THE CHAIR**: Thank you, Mr Refshauge. I understand you wish to make a submission to this inquiry, and we thank you very much for taking the time out of your busy schedule to do so.

**Mr Refshauge**: Thank you, Mr Chairman. I did not make a written submission to the inquiry, although some of the material that I would have wanted to put before the inquiry has come, I think, to it indirectly.

**THE CHAIR**: Just before you start, given that this is a restart of the inquiry, I should read out the material we read to everyone giving evidence before an inquiry. So I'll do that. You should understand that these hearings are legal proceedings of the Assembly, protected by parliamentary privilege. That gives you certain protections but also entails certain responsibilities. It means that you are protected from certain legal actions, such as being sued for defamation for what you say at this public hearing. It also means you have the responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter.

As I indicated at the start of the public hearings earlier on today—you may be aware—there have certainly been a number of allegations and indeed some issues in relation to a few of our submissions where individuals are named, and the committee is taking a certain course and taking advice in relation to that and giving people the opportunity there, if they are so named, to respond, and then we will look at the issue further and take advice in relation to publishing those submissions.

As I said earlier, people obviously have the ability, if they feel it is essential to name individuals, for us to go to a private hearing—that is, the media go out and the members of the public go out. In this inquiry, we certainly offer people that opportunity. I simply make that comment to you, if in fact that should apply. If you are making general comments and not dealing with individuals, just any of these groups, fine, but you just need to be aware of that, if in fact anything you wish to tell us falls into the realms of actually naming specific individuals.

**Mr Refshauge**: Well, at this stage, I don't propose to. The secretary has very kindly forwarded to me a confidential submission which makes some assertions about my office and I propose to respond to that in writing by the deadline of next week. Some of the material that I will be talking about today might address some of those issues, but it seemed to me that it was important for the inquiry, particularly in relation to a number of issues that have arisen from questions on notice and the like, to understand the prosecution context of the dangerous goods, and that's what I want to address at this stage. And obviously, I'm happy to answer any questions.

**THE CHAIR**: That would be very helpful to us.

**Mr Refshaug:** I will start from a general point of view, and that is that the situation established by the Director of Public Prosecutions Act is a regime that is somewhat different from the regime that pertained prior to that time. In particular, it meant that prosecutions were under the control of a group of professional lawyers, trained and expert in that area, with responsibilities to do that. In doing so, it changed some of the dynamics of prosecutions, so that there was the opportunity for a body of prosecutors to assess whether a prosecution should proceed, and to do so quite free from, on the one hand, the possibility of political interference and, on the other hand, the inevitable pressure from investigators to prosecute.

And that is a difference from the position that pertained, for instance, in this jurisdiction when police prosecutors were prosecuting, where there was a belief—and it was perhaps, in most cases, a perception rather than a reality—that police prosecutors, being part of the disciplined force that comprised the investigators, were more likely to proceed with prosecutions, and believe or proceed as though the investigators had identified someone who was inevitably guilty, than was appropriate in the public interest.

And so it is important, in the Director of Public Prosecutions' offices here in this territory and around the country, for our role to be understood. Having said that, it also needs to be clear that it is not the role of the Director of Public Prosecutions to replace the judiciary. The judiciary are, in our system of government, those who are placed to determine issues of guilt and innocence and to determine the consequences if there is a finding of guilt. It is not the role of a prosecutor to replace that and to determine, him or herself, whether someone is guilty or whether someone is innocent.

Why that is important, apart from the difference in pay, is to ensure that it is not the role of the Director of Public Prosecutions or his prosecutors to have a 100 per cent strike rate. And therefore it is not the role of the prosecutor to ensure that only those cases where it is guaranteed that there will be a conviction are prosecuted. It is important, in the public interest, that cases are prosecuted where—and this is the long-established tradition—there are reasonable prospects of securing a conviction.

That test is a test that was forged through discussions between Directors of Public Prosecutions throughout Australia in the late 1980s, after considerable discussion and debate and so on, and that has become the standard national test for consideration of prosecutions. There are then, in addition to that, questions of public interest, which flow in various directions. These matters are set out in my policy, which is a public document and is published every year as an appendix to my annual report.

Obviously, however, there is another side to that, and it would be inappropriate and indeed inconsistent with the task of the public prosecutor as I have defined it if every prosecution were to fail, because clearly there would be a problem in that circumstance. And it is clear that the record of prosecutions in relation to prosecutions under the Dangerous Goods Act and its regulations has not been very successful. There has been one conviction, there is currently a plea of guilty to charges under the Dangerous Goods Act and there are a number of prosecutions that have been commenced and have failed.

The details of that have been put in material which has been a response to a question on notice. Unfortunately I came with the wrong file. I don't have those figure details, but approximately the situation is this—

**THE CHAIR:** You can send those through, if need be.

**Mr Refshauge:** I can send those through for incorporation, if that's appropriate. In broad terms, the situation is this: prior to 1998, there was a period when there were no prosecutions under the act, and I can only speculate as to that. I suspect that there are a whole range of issues relating to the management of the area, the Bender inquest and other areas.

Before 1995, there were a number of prosecutions that did not come to court, and they were resolved before coming to court in a manner that, so far as I understand them, given the change in the professionalism and the increasing professionalism of public prosecutions, would not be appropriate today.

Since 1998 there have been a number of prosecutions. Since that time we have received—and I'll get the figures precisely checked—approximately 25 briefs from WorkCover to consider prosecution. Of those, my recollection is that we have indicated in six cases that in our view there were no prospects of securing a conviction, and it would be inappropriate, for that reason or otherwise in the public interest, to proceed. And that is something that doesn't come to public attention in the sense that that's all done between WorkCover and our office. And it's a situation which shows that there is professional assessment of the material that has come.

One of the issues is that the process of investigation and the preparation of briefs from WorkCover has been of an evolving standard, and early briefs were not of the standard that we now expect, and there were deficiencies from time to time in the material that was provided. I have to say to you that working with WorkCover, as my officers have, and also WorkCover taking up a suggestion that they get some independent legal assistance, has meant that the quality of briefs that we have been receiving in more recent times has been very substantially improved. Indeed, that is clear from the fact that we have already had a plea of guilty to charges that we have been prosecuting more recently, because the case is better investigated, better prepared, and more appropriately prosecuted.

**THE CHAIR:** Did they get their own separate legal advice, apart from the DPP?

**Mr Refshauge:** We don't provide legal advice.

**THE CHAIR:** No, no, I was just thinking that—

**Mr Refshauge:** We provide assistance in advice, but they have retained private legal practitioners to assist them in the preparation of briefs.

**THE CHAIR:** That's probably far better. I can recall when I was in the DPP a long, long time ago I had to go and train the parking inspectors because of similar difficulties but you just—

**Mr Refshauge:** That's right. I mean, we do some work in the training, but we don't act for any other agency, and it's important that they get their assistance and they've done that.

**THE CHAIR:** I think that's a very sensible course.

**Mr Refshauge:** Of the 19 briefs where our advice was that prosecution should be commenced, prosecutions were commenced in relation to those, and again I don't have the precise figures but a significant number of those have proceeded. In each case, apart from one that I've indicated, they were dismissed or withdrawn. They were withdrawn largely because, as I've indicated, there were some deficiencies in the briefs, and when the full brief was finally received it was clear that information that we had been led to believe was there, or information that turned out not to be there, or information that we had understood to be so, was unable to be proved to be so.

And, in accordance with our policy, and our responsibility, where that happened and it was determined that the prosecutions were unable to succeed, we offered no evidence and the proceedings were dismissed, and that has happened in a number of cases. A number of cases have proceeded and, after hearings, at this stage we have not been successful in securing a conviction in any of those, other than, as I say, there have been more recently some prosecutions commenced and we have received a plea of guilty. And the view is that, in relation to the remaining ones, having regard to the experience we have had on the earlier prosecutions, it is appropriate for us to proceed with those further cases. I have briefly reviewed those, and I am happy to say to the committee that I am satisfied, in accordance with the policy, having regard to the history, it is appropriate to proceed with the current set of prosecutions.

Now, in order to prepare for the comments that I have made tonight, I have also reviewed the cases where we have proceeded and been unsuccessful. And, in large measure, there are a number of cases where simply there was a view by the judicial officer that was different from the view from the prosecution. But, in particular, there has been one that has caused me some concern, and that relates to the method whereby evidence is secured in certain places. One of the difficulties in regulatory prosecutions, and that is not restricted to dangerous goods prosecutions but also tobacco—

**THE CHAIR:** Just before you get into the thing in relation to regulatory prosecutions, I take it these dismissals have not been in front of just the one judicial officer; it's been in a spread of courts. My understanding—correct me if I'm wrong—is that you've had prosecutions dismissed in the Magistrates Court as well as the Supreme Court.

**Mr Refshauge:** No, there have been no prosecutions in the Supreme Court. All the charges are summary. But if I may just—

**THE CHAIR:** Yes, certainly.

**Mr Refshauge:** There have been a range of magistrates who have heard them, but there have been no Supreme Court proceedings because they are all summary matters.

**THE CHAIR:** Right.

**Mr Refshauge:** But there have been a range of magistrates. One of the significant difficulties that we have had is that we come in respect of regulatory prosecutions where there is a mutuality of offence in relation to a transaction. That is to say—for instance, in

tobacco regulation—it is an offence to sell to a minor, and it is also an offence for a minor to buy. And we have that in relation to liquor prosecutions and so on.

Now, it is standard practice, certainly in other jurisdictions, for those regulations, and as a process of regulatory review, for what might be called “sting” or test offences to be committed. So in Victoria, for instance, it has been practice for minors to be sent by the regulatory agency into tobacconists and to purchase tobacco, and then the tobacconist is charged if the tobacconist commits the offence. There is some Supreme Court authority for the proposition that that is legitimate because of the nature of the task of regulation, and the difficulty of identifying offences when the person who has committed the offence would be the principal witness. And that has been a policy that has been followed, as I say, in regulatory agencies throughout Australia.

The position may be different, however, since the High Court decided a case of *R v Ridgeway*, in which a drug prosecution was initiated by a police force which actually imported, I think it was heroin, from overseas and supplied it to a person that they believed was a major distributor, Mr Ridgeway. And the High Court held that, because of the close involvement of the police in an illegality in the participation in the offence, the evidence of the AFP there should be excluded, and therefore the offence could not be made out.

As a result of that, where there was the approach that had been previously adopted of testing the regulatory framework by having inspectors or others—investigators—purchase fireworks without a permit in order to test whether retailers were selling fireworks to people without a permit, the Magistrates Court held that that evidence should be excluded, following *Ridgeway*, and that was the cause for a significant number of our prosecutions not proceeding.

In fact, when we got the decision in the first of those prosecutions, we reviewed the position, decided not in the circumstances to appeal, and to seek other review for that approach, and offered no evidence in relation to the balance of the prosecutions that relied on that kind of evidence.

So that occupied six of the 19 cases that I earlier referred to, for that one particular process which was decided by the courts no longer to be appropriate as a way of regulating fireworks in—

**THE CHAIR:** *Ridgeway* way would replicate what the situation was legally about 20 years ago, would it? Is that fair to say, or does it break new ground?

**Mr Refshaug:** I think it does break new ground. Before *Ridgeway* the law was really from *Bunning v Cross* and from *Cleland*, which said that there was a discretion. And, in fact, the Supreme Court in Victoria had followed that discretion and said: where you’re talking about a regulatory offence and where the only way in which you can have evidence of the commission of the offence would be from someone who would have to incriminate themselves—and we’re talking, as I say, about a regulatory offence—then it was not inappropriate to allow that evidence to be admitted

**THE CHAIR:** Thanks for refreshing my memory on that.



**MS TUCKER:** We were given evidence that just one person had 74 charges. So is a brief something that can have a lot of charges within it?

**Mr Refshauge:** Yes, it is. I've seen that figure—

**MS TUCKER:** And that's criminal offences within a brief; is that right?

**Mr Refshauge:** Well, the difficulty is that the submission in which that reference is made is singularly opaque about the nature of those offences. I can say to you that my office has not prosecuted 74 offences under the Dangerous Goods Act 1975, the Dangerous Goods Act 1984 and the dangerous goods regulations altogether since 1998. I don't know where that figure comes from. The figure of the charges under that legislation is 35. There have been 35 prosecutions resulting from the 19 cases that I referred to.

**MS TUCKER:** Okay.

**Mr Refshauge:** Now, it may be that there are in addition to that Crimes Act or other offences. For example, more recently, I have prosecuted a person who is in the fireworks industry for an assault. And I happen to know that because that case resulted in a conviction—I'm sorry, I withdraw that; that resulted in a finding of guilt and no conviction was in fact recorded because of the circumstances.

**THE CHAIR:** Was that a 556A?

**Mr Refshauge:** A 556A—well, it's not 556A now; it's something else. It has been renumbered.

**THE CHAIR:** 7 January renumbering, that's right.

**Mr Refshauge:** I'm sorry, I was just going to finish that. I know about that because that was an appeal to the Supreme Court and then to the Federal Court and that appeal was dismissed. Now, that would not be included ordinarily within prosecutions under the Dangerous Goods Act because it was under the Crimes Act, not under that act. And I don't know whether there are offences that are included in that—and we don't keep information in this territory that would enable me to identify whether a particular defendant was part of the fireworks industry or not.

For instance, I wouldn't know whether traffic offences were prosecuted against members of the fireworks industry, and that 74 might include traffic offences, I don't know. But, so far as the dangerous goods acts, now act, and the Dangerous Goods Regulations are concerned, I have not prosecuted 74 offences—certainly not since 1998. It may be that prior to that, that's so, but certainly since 1998 that's not so.

**MS TUCKER:** And with the other cases in which you were not successful, can you explain to us what the problem is there? Why were you not successful?

**Mr Refshauge:** There's a range of reasons. One of the difficulties is that the legislation is extremely complicated. It requires one to undertake reverse proof, there are difficulties of definition, and difficulties of definition, in particular, lead to difficulties of

interpretation; so that one might commence with an expectation of a particular interpretation of a way in which legislation was to be understood but there may be a different view by a judicial officer.

We have had some difficulty with the concept of vicarious liability and there have been amendments in the current legislation that overcome difficulties in relation to that. Proving that someone is, for example, an employee is not easy to do—and, even though one can expect that one is an employee, the identity of the employer can sometimes be difficult. Bear in mind that, unlike in civil proceedings, we are not in a position to make coercive demands for information about any stuff like that, unless, for example, inspectors are given special powers to do that.

So there has been a difficulty in relation to vicarious liability. There have been difficulties in relation to the identity of the employer and the identity of proprietors, and sometimes there has been a case where we have believed that we have had the correct evidence and at the hearing it has turned out that that in fact has not been so—that the evidence we've had has been incorrect and that's turned out.

One of the other difficulties that we have is that there is a time limit effectively on the commencement of prosecutions. That is to say, when fireworks are seized, they have to be returned if prosecutions are not commenced within 60 days, and that's not a long period of time for complicated investigations to take place. That has led to pressures being placed on both WorkCover and on my office to commence prosecutions in an artificial time limit, which doesn't necessarily allow justice to be done to the assessment of the case and whether it should proceed or whether it should not proceed.

I have referred to difficulties of the legislation, and that's one of the things that I do want to emphasise here—that the legislation is extremely complicated and, in some cases, unnecessarily complicated. One of the difficulties with that is definitions. Definitions in the legislation are almost exclusively exclusionary definitions. That is to say, fireworks do not include x, y, z and so on, and then it is difficult to understand what it is that they do include and how that's to be treated. And that causes difficulties because of the issue of how you prove that and what information you need to prove that.

And again, coming back to the 60-day time limit, sometimes it's not possible to obtain the necessary information to make a clear decision and you then have to look at the information you've got and see whether it's reasonable to proceed on the basis of the information that you've got or not.

**MS TUCKER:** Can you give me an example of the definition problem?

**Mr Refshauge:** Yes, I can—if you'll just bear with me a moment.

**MS TUCKER:** If it's difficult to find now, you could just give it to us later.

**Mr Refshauge:** No, no. Well, I can give you one clearly. I was going to go to the regulation, but I can do it. Under the regulations, it is an offence to keep fireworks in other than a licensed depot. Now "depot" is defined to mean "a building, structure, room, compartment, tank, store area or receptacle in or on which dangerous goods are kept". But a "licensed depot" means "a depot in or on licensed premises and specified as

a depot or magazine in the licence for the premises”. Now, it’s really difficult to understand what is meant by a depot, which is a building, structure, room on licensed premises because licensed premises would normally be a building or a structure and so there’s an inconsistency there which leads to—

**MS TUCKER:** Is that within the regulations?

**Mr Refshauge:** That’s within the regulations, the dictionary of the regulations.

**MS TUCKER:** Right. Okay.

**Mr Refshauge:** And it’s that kind of issue that creates some difficulties. If I—

**MS TUCKER:** Well, that’s okay. I was just trying to get another example.

**Mr Refshauge:** Well, can I give you another example?

**MS TUCKER:** Yes.

**Mr Refshauge:** “Firework” means an article that is designed to produce a sound or visual display or signal by means of an ignition or explosion of an explosive substance. Now, prima facie, that seems very easy, but how do you know that something is designed to produce a sound or visual display?

**MS TUCKER:** So has that been challenged in proceedings?

**Mr Refshauge:** Well, it has been challenged because we’ve been put to strict proof about that issue, and how do you prove that it’s designed for that production? I mean, it produces that, but how do you prove that that is what it is designed for—unless you are using what might be called the commonsense view, which is that that’s what a firework fundamentally is and you don’t need the definition and you don’t need to prove anything? But it creates that difficulty, whereas if you indicated that a firework was an explosive with a certain characteristic, then that would be an objective rather than one that required some understanding of the mind of the manufacturer, as it were, to put on it.

Most of these cases are hard fought, and that’s perfectly acceptable; I’m not suggesting for one moment that that’s inappropriate. One of the issues that has arisen is about the rights of inspectors. Now, the provision is that the Chief Executive—and that happens in this case to be the commissioner for safety, the WorkCover Commissioner—must issue an inspector with an identity card that shows a recent photograph of the person and the name of the person.

The question has arisen as to whether “issue” means that the Chief Executive has to personally hand the identity card over, whether the Chief Executive has to sign it and so on. And these are matters of proof that become quite complicated and difficult—whereas in police legislation, for example, where you’ve got an identity card, that’s prima facie evidence unless it can be shown to be other, or the signature of the Chief Executive is taken to be and so on. So there are difficulties such as that which make it difficult.

**THE CHAIR:** So you would support a rewriting of the legislation along with everyone else then, Mr Refshauge, it seems?

**Mr Refshauge:** Absolutely, absolutely, absolutely. I mean, it's really, really difficult. For example, 9 (1), which is the usual offence provision, says: "A person shall not keep dangerous goods except ... in or on premises licensed ... or in such quantities and in such manner and subject to such conditions as may be prescribed for the purposes of this section ...". Then you've got to go through all the regulations to find out the prescriptions. Most of the prescriptions and conditions are expressed in the negative and so it becomes quite complicated to actually work that out. And then, as you try to work that out, the circumstances become extremely complicated.

**THE CHAIR:** Yes.

**Mr Refshauge:** I mean, the point of regulation is that those who are regulated understand what the game is and those who are doing the regulation understand what the game is, and I don't think that this legislation gives either of those a fair go. I think it is very difficult for people to understand what it is they have to do in order to comply with the law and I think the regulators find it equally difficult. I think the regulation is very difficult.

**THE CHAIR:** Is there any place in Australia where there would be better legislation or something you could point to which would perhaps be something the ACT could adopt?

**Mr Refshauge:** In general terms, I think I'd have to say—and this is a fairly superficial view—

**THE CHAIR:** Sure, sure.

**Mr Refshauge:** In general terms, I think the Victorian legislation is a better improvement. South Australia has quite reasonable legislation. However, it's with this caveat, and that is that of course both of those jurisdictions ban the sale of shopgood fireworks. So, whilst I think the legislation is on the whole better, it is not necessarily tested in the furnace of prosecutions in relation to this issue, because they are not regulating quite the same issue. But, in general terms, I think Victoria and then probably South Australia have better legislation than we do.

**THE CHAIR:** How many prosecutions—of the 35, I think, in the 19 cases you refer to—would have related to shopgood fireworks, or can't you access that?

**Mr Refshauge:** Look, it would be impressionistic, and I'd say that most of them would be.

**THE CHAIR:** Most of them?

**Mr Refshauge:** Yes. But I couldn't be absolutely certain. I haven't done that, and that would require manual inspection of all the files at some detail. So, in summary, it seems to me that, whilst the situation is one where gross statistics could be said to say that there was a difficulty in seeing how my office had discharged its obligation under its Act, I think one needs to take a wider picture and look at two situations. One is a very

complicated piece of legislation which provides for opportunities for dispute about the meaning of the legislation and areas of the legislation that are subject to challenge, and which is unfair to both the regulated and the regulators.

Secondly, although the situation to date has been difficult, that is to be seen in the context of, in the first place, a growing body of expertise in the regulator, which I think has been absent prior to more recent times. And if we were to take a longer view, as I say, we are already finding that the better prepared and better advised inspectors are currently producing briefs which have already resulted in a plea of guilty and our expectation is will result in some convictions—as I say, we don't expect 100 per cent; that's not what we're there for—that would bring a better balance to the prosecution record to show that the obligations were being properly discharged.

**THE CHAIR:** What was the plea of guilty? What was the offence there?

**Mr Refshauge:** Just pardon me a moment. They were three charges in relation to keeping explosives without a licence to keep.

**THE CHAIR:** Right, thank you. Kerrie, do you have any more questions of Mr Refshauge?

**MS TUCKER:** I wouldn't mind your comment on a couple of concerns that were raised by other witnesses. One was whether it's appropriate or not for WorkCover to deny a licence or permit to someone, claiming them to be not fit or proper because there is some allegation made by WorkCover. The suggestion was made that the presumption of innocence should apply, and that that isn't fair. I wondered if you had a comment on that.

**Mr Refshauge:** That's not really within my area of expertise in the sense that I don't issue permits and I don't have any—

**MS TUCKER:** I guess it's a bit like that discussion we had with the new bail law. If you have an allegation that someone has done something, based on that allegation you deprive them of a right, but it is only an allegation and hasn't been proven. So I just wondered if, just as a general principle of justice, you might have a comment, but you don't have to if you don't have a comment on that.

**Mr Refshauge:** Yes. Certainly I think the presumption of innocence is important, and I suppose I don't think one should put that to one side lightly. In terms of an assessment of whether someone is, for instance, a fit and proper person, then the only way in which I can see that to operate in the circumstances that you describe is this. If it is decided that to be a fit and proper person you must have no convictions, then the fact that you have been charged is irrelevant because the presumption applies and there is no conviction.

However, if the question of whether you're a fit and proper person goes to matters relating to conduct which might also be conduct that amounts to an offence, then you get into the really difficult area where there are different standards of proof in relation to the two. In relation to an offence, the standard of proof is of course proof beyond reasonable doubt. But in relation to civil matters—and that includes disciplinary matters—the standard of proof is of course on the balance of probabilities.

And so it may be that it is appropriate to say on the balance of probabilities this person has done something that amounts to something inconsistent with them being a fit and proper person, even though applying the higher standard of proof it may not be possible to actually find them guilty of a criminal offence. In that circumstance, I can see a situation where it might be appropriate.

And you see that every day. I mean, that happens in disciplinary matters in employment, where it is appropriate to terminate the employment of someone for fiddling the till, but it may be that you couldn't prove beyond reasonable doubt that they had actually stolen money. You know that they have, and on the balance of probabilities there is no reasonable explanation that is consistent with innocence, but if it was actually a judge-and-jury issue there might well be other circumstances. And that is well known in employment law, for example, where those circumstances apply. But I hasten to add, I don't administer that legislation—

**MS TUCKER:** Yes, I understand that.

**Mr Refshauge:** I don't have to do that, and I'm not saying it is appropriate or not. I am simply saying that that is the interaction between the two. And that's where it might be appropriate for the two to sit side by side. I hope that's helpful.

**MS TUCKER:** Yes, I need to do more work on it. That is interesting. I have other questions but I know we don't have time, so I think we better finish.

**THE CHAIR:** If you do, would you like to give them to Richard in writing perhaps?

**MS TUCKER:** Quite a few of them are actually to do with the act, so if we are agreeing that it needs to be reviewed anyway in some way, then maybe we don't need to go into all of this.

**THE CHAIR:** I think everyone that has appeared before us seems to suggest that.

**Mr Refshauge:** In that sense, I am happy to respond in writing if you want to do that.

**THE CHAIR:** Yes, that might help.

**Mr Refshauge:** And I will provide the statistics that I referred to to the secretary on Monday.

**THE CHAIR:** Mr Refshauge, thank you very much for attending here this afternoon. The committee inquiry into fireworks is adjourned until 9 am on Friday 7 June.

**The committee adjourned at 5.41 pm.**