

CITATION: *Inquest into the death of Monica Presley* [2007] NTMC 037

TITLE OF COURT: Coroner's Court

JURISDICTION: Tennant Creek

FILE NO(s): A0014/2005

DELIVERED ON: 28 June 2007

DELIVERED AT: Darwin

HEARING DATE(s): 27 & 28 April 2006
9 August 2006

FINDING OF: Mr Greg Cavanagh SM

CATCHWORDS: Unexpected death of child,
electrocution, Public Housing
maintenance, faulty or dangerous air
conditioning units.

REPRESENTATION:

Counsel:

Assisting: Ms Lyn McDade / Mr Michael Powell
Territory Housing: Ms Judith Kelly
Far Northern Contractors: Mr Ben O'Loughlin

Judgment category classification: B

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IN THE CORONERS COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. A0014/2005

In the matter of an Inquest into the death of

**MONICA PRESLEY
ON 6 MARCH 2005
AT TENNANT CREEK**

FINDINGS

(Delivered)

Mr Greg Cavanagh SM:

INTRODUCTION

1. Monica Presley (“the deceased”) was an Aboriginal female born on 9 May 1997 in Tennant Creek. Monica died shortly before 1:00pm on the afternoon of Sunday 6 March 2005 outside of Flat 13 Blain Street Complex, Tennant Creek.
2. At the time of her death, the deceased was the subject of an order under s 43 of the *Community Welfare Act* placing her under the joint guardianship of her parents and the Minister of Family and Community Services. The latest order had been made on 1 December 2004. The holding of this Inquest is thus mandated by subsection 15(1) (a) of the *Coroners Act*. However given the circumstances of this case I would have held an Inquest even had it not been required.
3. Pursuant to section 34 of the *Coroners Act*, I am required to make the following findings:

“(1) A coroner investigating –

(a) a death shall, if possible, find –

- (i) the identity of the deceased person;
- (ii) the time and place of death;
- (iii) the cause of death;
- (iv) the particulars needed to register the death under the Births, Deaths and Marriages Registration Act;
- (v) any relevant circumstances concerning the death.”

4. In addition to this, s 34 (2) provides that I may comment on a matter including public health or safety connected with the death being investigated. Additionally, I may make recommendations pursuant to section 35(1), (2) & (3):

“(1) A coroner may report to the Attorney-General on a death of disaster investigated by the coroner.

(2) A coroner may make recommendations to the Attorney-General on a matter, including public health or safety or the administration of justice connected with a death or disaster investigated by the coroner.

(3) A coroner shall report to the Commissioner of Police and Director of Public Prosecutions appointed under the Director of Public Prosecutions Act if the coroner believes that a crime may have been committed in connection with a death or disaster investigated by the coroner.”

5. Ms Lyn McDade appeared as Counsel Assisting on days 1 and 2 of this Inquest on 27 and 28 April at Tennant Creek. Mr Michael Powell appeared as Counsel Assisting on day 3 on 9 August 2006 in Darwin. Leave was granted to Ms Judith Kelly to appear as Counsel for Territory Housing. Leave was also granted to Mr Ben O’Loughlin to appear as Counsel for Far Northern Contractors Pty Ltd (trading as T&J Contractors).

FORMAL FINDINGS

6. Pursuant to section 34 of the *Act*, I find, as a result of evidence adduced at the Public Inquest as follows:

- (i) The identity of the deceased person was Monica Marie Presley, born on 9 May 1997. The deceased resided at Flat 13 Blain Street Complex, Tennant Creek.
- (ii) The time and place of death was outside Flat 13 Blain Street Complex, Tennant Creek, shortly before 1:00pm on 6 March 2005.
- (iii) The cause of death was electrocution.
- (iv) Particulars required to register the death:
 - (a) The deceased was female.
 - (b) The deceased's name was Monica Marie Presley.
 - (c) The deceased was an Aboriginal Australian.
 - (d) The cause of death was reported to the Coroner.
 - (e) The cause of death was confirmed by post-mortem examination carried out by Dr Terry Sinton.
 - (f) The deceased's mother was Maryanne Kurundi and his father's name was Desmond Presley.
 - (g) The deceased was a child at the time of death.
 - (h) The deceased was born on 9 May 1997.

CIRCUMSTANCES OF DEATH

Background information about the deceased

7. The deceased was a 7 year old Aboriginal girl, who had moved with her family to Tennant Creek a few weeks before her death. She was living at flat 13 of the Blain Street public housing complex in Tennant Creek. The official occupant of the flat was Marie Louise Murphy (the deceased's aunt)

who lived there with her partner, Brian Jakara, and her daughter, Chantelle Long. The mother of the deceased, Maryanne Kurundi and the deceased's three siblings were also living in the unit.

8. Family and Children's Services (FACS) have had extensive involvement with the deceased and her family since 1998. She had been subject to various orders since, including being placed in foster care for a time. The most recent order was made on 1 December 2004 by Little SM and it placed the deceased under the joint guardianship of her parents and the Minister of Family and Community Services. My ultimate findings are that the death of the deceased was not contributed to by any lack of care on behalf of anyone supervising her. Thus her involvement with FACS is not relevant to the cause of death and will not be discussed in any more detail in these findings.

Background information about Flat 13 Blain Street and its Evaporative Air Conditioner

9. The Blain Street complex was built in 1982 as workers accommodation and has since become public housing. Flat 13 Blain Street was one of many Housing Commission flats equipped with an Evaporative Air Condition (EAC). I am unable to determine the exact age of the air conditioner but it was at least 12 years old. Mr Keith Wilson, the Property Manager for Territory Housing, gave evidence that the air conditioners were 12-13 years old at the time of this incident (101) and was not challenged on this. However Mr Andrews, an electrical safety officer who inspected the scene, and on whose evidence I place more weight in regard to this issue, said he estimated the EAC to be 1980s vintage.
10. Territory Housing operates within the Department of Local Government, Housing and Sport and are responsible for public housing and for the maintenance of such housing. This includes the maintenance of air conditioners. Territory Housing fulfil this obligation by engaging contractors to carry out the maintenance and repairs. In 2002 Far North

Contractors Pty Ltd, trading as T&J Contractors, put in a tender and were engaged under a period contract to conduct maintenance and repairs to the EACs in Territory Housing units in the Tennant Creek area. This was in place at the time of this death.

11. T& J Contractors did work on EACs in response to complaints and also as part of an annual pre-season maintenance program. Complaints were lodged to Territory Housing by those who lived in the houses. This could be done by phone or in person. The Territory Housing staff manually completed a maintenance complaint form and then generated a maintenance order form on their asset information system. A facsimile copy of the maintenance order form was automatically generated and this was then sent to T&J Contractors.
12. A priority level was noted on the order form along with a deadline date for the completion of a request. Matters which might affect tenant safety or security were marked as 'immediate' and were to be done within 4 hours, other matters were 'urgent' and to be done within 2 days (tenants who were elderly or ill) and others 'normal' and to be done within 10 days.
13. Once a faxed maintenance order form was received by T&J Contractors, the administration manager at T&J Contractors put the data into the computer using MYOB software and created an electronic job card. A printed copy of that card was attached to the order received from Territory Housing. It was placed into a pigeon hole for incoming jobs. These jobs were then picked up by the tradesmen employed by T&J Contractors.
14. There were two levels of tradesmen; electricians and Trade Assistants, who were not qualified electricians. The routine pre-seasons and the bearing changes were done by the Trades Assistants. They were not electricians and so would not look inside any of the electrical components.

15. If the tradesmen thought that work was required that was not specified on the job card then they would bring it to one of the book keepers at T&J Contractors, who would call or fax Territory Housing to get permission to vary the job.
16. Once they completed the job, the tradesman updated the job card by completing sections called 'description of work completed' and 'hours worked'. The information was then collated by T&J Contractors and an invoice created which was forwarded to Territory Housing for payment.
17. T&J Contractors did annual pre-season maintenance of the EACs as well as responding to complaints. Territory Housing would generate maintenance order forms according to their own schedule requesting pre-season maintenance and from then on they were processed using the same system as that for complaints.

The History of the EAC at Flat 13

18. On 3 November 2003 Territory Housing ordered a repair of the EAC at Flat 13 including a 'motor replacement complete with pulley and adjustable fan belt'. There is an invoice from T&J Contractors dated 5 November 2003 charging Territory Housing for doing this work. There are no records with T&J Contractors confirming that this work was in fact carried out. However in his investigations of this death Detective Sergeant Board found that the motor in the EAC in Flat 13 was manufactured on 15 August 2003. Thus I find that it is likely that the motor was replaced in November 2003.
19. On 22 November 2004, Daryl Bertram-Murphy, a Trades Assistant for T&J Contractors, attended flat 13 and conducted the pre season maintenance service on the EAC (cleaned the pads, flushed the tank and flushed the lines) and also replaced the pump filter.
20. On 6 December 2004, Marie Louise Murphy (the occupant) complained to Territory Housing that the EAC in flat 13 was not working properly. The

complaint was taken in person in Tennant Creek by Jan Olsen, a Tenancy Officer with Territory Housing. Helen Marsh, a second Tenancy Officer, raised a maintenance order which said to 'clean, bleed off and adjust' the EAC. As a result of the complaint, Daryl Bertram-Murphy again attended at flat 13 on 7 December 2004 to clean, bleed off and adjust the EAC and to flush the lines.

21. In the evening of 19 December 2004 Brian Morrison went to Flat 13 to visit Marie Louise Murphy, his mother-in-law. She wasn't there but as he stood outside he noticed burning and sparking coming from the wire on the side of the EAC. He made a triple-0 call. The transcript of the call reveals that he said 'the air conditioner here is burning'. He identified the unit as being in Blain St but being number '17 I think'. There was nobody home at flat 13 at the time. A fire crew attended at flat 17 but could not locate the fire or the person who reported it. Philip Noble from the fire brigade called Alice Springs police to see if he could get more accurate information on the location, stating that they had arrived and couldn't find either a flat fire or an air conditioner fire. He says they drove around the Blain Street complex at least twice but saw no evidence of fire and left. He said their lights were on and they were quite obvious. Mr Morrison says that he remained at the scene for about 20 minutes but did not see the fire crew.
22. The following day, 20 December 2005, Mr Morrison reported the matter to Marie Louise Murphy who in turn reported "a smoking smell" in her EAC to Helen Marsh of Territory Housing. Helen Marsh marked the complaint form 'at home' to indicate that Ms Murphy would be at home for an immediate repair. She then issued an order to T&J Contractors to replace the motor and pulley, to clean, bleed off and adjust the EAC and to check and provide a written report on the nature of the fault. The order was marked "immediate" which meant according to the contract that it was to be actioned within 4 hours. A job card was created with Job No 616981L (Exhibit 4). It stated 'check and repair aircon smoking smell'.

23. On the same day a maintenance order was raised by Territory Housing for the EAC in flat 12 of the complex. It gave instructions to 'replace motor complete with pulley and adjust fan belt' and 'carry out seasonal service to aluminium or polymer frame'. It was also classified as immediate. A job card was created with Job No 617017L (Exhibit 5). It stated 'replace motor with pulley seasonal service. aircon keeps switching itself off'.
24. Harry Howell was employed by T&J Contractors as an electrician and also as foreman with a supervisory role in relation to the other electricians. Both job cards were signed by Mr Howell. He is recorded as having spent 2 hours on 20/12 at Flat 13 and having spent 1 hour at Flat 12. He didn't specifically remember the jobs. He said he had probably replaced 20 motors in that complex over 3 years. When he was interviewed by police he said he may have done number 12 not 13 because the sequence of numbers is difficult and you can get lost. He said he'd since seen a photograph of the EAC in Flat 13 and didn't remember having ever worked on it. Mr Bertram-Murphy is recorded as having spent 2 hours at Flat 12 and as having done a typical preseason type job on it.
25. Mr Gary Andrews a qualified electrician who works as the Electrical Safety Officer for the NT Government in the Department of Training and Infrastructure examined the EAC at flat 12 on 14 September 2005. The unit had been vacant since March 2005. He concluded that in March 2005, when it was last used, the motor had been relatively recently installed. Mr Andrews examined the EAC at flat 13 on 7 March 2005. He found that the fan motor mounting screws and the wiring terminal cover screws were extremely tight which suggested that the motor had not been recently replaced or worked on. He also stated that the smoke mark above the fan motor combined with the smoke marks around the air outlet suggested that the air conditioner had been running for some time in this condition, and that the motor looked old (the paint was peeling and the motor was rusty). I

find based on this evidence, and the statement of Mr Howell, that Mr Howell did not in fact install a new motor in flat 13 on 20 December 2004.

26. There were no further complaints received from the occupants of flat 12 which would suggest that their motor was indeed fixed on 20 December 2004. No invoice was issued for payment for a motor for flat 12 and no payments were made for a motor for flat 12. An invoice was issued for a motor for flat 13 and it was paid.
27. I find that flat 12 received the new motor required by flat 13 and that work ordered for flat 13 on 20 December 2004 was not done. It is difficult to be sure about how this came about. A possible scenario is that Mr Howell received the job card for flat 12 early on 20 December 2004 and attended and identified the need for a replacement motor and passed the job on to Mr Bertram-Murphy to complete pre season maintenance work. Mr Howell then received the job card for flat 13 later in the day and assumed it was the same job and re-attended unit 12, there completing the repairs including replacing the motor, and then filled in the flat 13 job card. This receives some support from the fact that the job card for Flat 12 has 'needs new motor' written on it but does not indicate that the motor was in fact replaced, and the job card for Flat 13 has 'fit new motor + pulley, cleaned lines'. In any event I find that the failure to do the job on flat 13 was as a result of an error by Mr Howell, the exact nature of which cannot be determined.
28. In the early part of 2005 Marie Louise Murphy was admitted to Tennant Creek Hospital. On 4 February 2005, Jan Olsen from Territory Housing visited flat 13 to conduct a 12 monthly routine inspection. No one was home and she was unable to do it. She tried twice more over the next month to complete the routine inspection, but no one was home. She left a card each time. Her attempts to visit were documented on Territory Housing's Tenant Management System.

29. On 7 February 2005 an unknown person complained to Territory Housing that the EAC in Flat 13 was not working. As a result of this complaint, an order was issued to T&J Contractors on 8 February 2005 to replace fan bearings, replace water pump and filter sand clean lines. The order number was 622464. The order was marked “urgent”. Thus it should have been completed within 2 days. The job card read ‘check and advise housing’. This meant to tell Territory Housing what the problem was before work was done.
30. Mr Bertram-Murphy went to flat 13 on 9 February 2005 and identified the need for new bearings. On 22 February 2005 Mr Bertram-Murphy attended flat 13 and removed the old bearings. He stopped work due to rain. Mr Bertram-Murphy returned the following morning, 23 February 2005 and installed the new bearings. An unidentified man in the flat told him that the EAC was not blowing air. Based on this Mr Bertram-Murphy recorded on the job card “evap needs new motor”. The invoice stated “may require motor or pump”. Mr Bertram-Murphy couldn’t remember the particular job but stated he would have had a look at the motor in response to what the man told him that if something had looked out of place he would have gone straight back and told the electrician.
31. The normal practice would have been to leave the isolator switch turned off pending the next visit to install the new motor. However the isolator switch was on at the time of the incident and this meant there was power to the unit. I am unable to determine from the evidence whether Mr Bertram-Murphy mistakenly turned it back on or someone in the unit turned it on after he left.
32. There is no evidence that anyone from T&J Contractors advised Territory Housing about the condition of the EAC at Flat 13 as a result of Mr Bertram-Murphy’s advice that a new motor was required.

33. On 28 February 2005 Marie Louise Murphy again complained to Territory Housing that the EAC was not working. Helen Marsh of Territory Housing took the complaint. She checked their records and found job 622464 (the request of 7 February 2005) as an outstanding order. She contacted Sheena Baker of T&J Contractors by fax requesting advice as to its status. The request reads 'Can you please advise if this order has been done. If it has, I will need to raise a new order'.
34. Ms Baker couldn't remember the particular job. She said she would have looked at the time sheets first. However time sheets were often not done properly. Then she would have talked to Mr Bertram-Murphy and asked him if he had done the job yet. If the invoice had not been done then the original job could be varied, if an invoice had been issued then a new job would need to be raised. Ms Baker gave evidence that she must have said it wasn't invoiced because Ms Marsh was able to vary the order. Ms Marsh can't recall getting a response from T&J Contractors to her request of 28th February. There is no documentary evidence that a new job card was issued or that T&J Contractors did anything in response to this fax.
35. On 3 March 2005 Ms Murphy again complained that she had come out of hospital and the EAC was still not working. She said she had turned it on but there was no air blowing. Her complaint was taken by Jan Olsen. Ms Olsen gave evidence that to her no air blowing meant the motor was not working and she wrote down that a motor was required. She marked the order as being an 'immediate priority' that is to be done within four hours. She gave it this priority because Mrs Murphy was unwell and because an order had been raised previously and the unit hadn't been fixed properly. She told Mrs Murphy that she needed to be at home that afternoon to await the contractors. She then passed it onto Helen Marsh.
36. Helen Marsh followed this up by contacting T&J Contractors about the status of the previous job. She faxed them the original order with a

handwritten note 'Sheena, can you please advise me if this done as the tenant has been in hospital and reckons the air con is not working, Helen. 2:20 pm 3/3/05'.

37. Sheena Baker does not remember the particularly request. She agreed that she spoke to Natalie Fraser that afternoon. She is 'pretty sure' a new motor was authorised. Essentially her evidence was that she can't remember what she did but she would have attempted to get the motor replaced.
38. Natalie Fraser, the Housing Manager at Territory Housing, and Helen Marsh's supervisor, gave evidence that she received a phone call that day from T&J Contractors stating that workers had been out to the EAC, it needed a motor and could the order be varied. She said yes because they were going to do it that day. She then e-mailed Helen Marsh authorising the variation of the order to include replacing the motor. She didn't change the priority of the request, so it remained as urgent rather than immediate, because 'they told me they were attending the unit that day'.
39. Helen Marsh gave evidence that she got an e-mail advising her to update the order. She said then updated the existing order by adding the item for a motor. The copy of the varied order requests a water pump rather than a motor. It seems the most likely explanation is that there was a typing error by Territory Housing and the code for a pump was entered rather than the code for a motor. However the evidence is clear that oral authorisation was given for a motor.
40. It was anticipated that the work would be done immediately that is within 4 hours. The order itself required it to be done 'urgently' that is within 2 days. There was no job card from T&J Contractors in evidence and I must assume that there was no such card created. No tradesman went to Flat 13 on the afternoon of Thursday 3 March, on Friday 4 March or on Saturday 5 March. Thus the job was not done within either the 'immediate' or 'urgent' time frames.

41. On Friday 4 March 2005 Mr Ronald Terei a data collection contractor for HOMES (Housing Assets Management System) inspected flat 13. Mr Terei worked for an engineering company contracted by the Northern Territory Department of Planning and Infrastructure. He was in Tennant Creek inspecting Government houses and reporting back on the conditions of the buildings. The information was taken back to the Department. He said he would only report to Territory Housing, Tennant Creek if there was an obvious safety concern in the house that required an immediate response. Whilst he was inspecting flat 13 he was told by Ms Murphy that the air conditioner wasn't working, that she had already reported it to Territory Housing and got no response and that there was a sick child in the house. She asked him if he would report it again to Territory Housing. Mr Terei said that he would. However, he didn't get around to reporting it. He said 'I had another 3 or 4 inspections after that and it slipped my mind'. He says that he looked at the air conditioner and he couldn't see any obvious signs of danger. He says he was not qualified or able to determine what the problem was. He stated that it was not his role to report to local housing department unless the situation was dangerous.
42. On Sunday 6 March 2005 it was a very hot day. The Bureau of Meteorology records the minimum temperature as 25.2 degrees Celsius and the maximum temperature as 37.3 degrees Celsius. Brian Murphy, and his wife, Bessy Graham, came round to visit Flat 13. Brian Murphy was Marie Louise's sister. The two cooked lunch in the kitchen. Marie Louise said that the last time the air conditioner had been used was before Christmas and that it had been broken since there. She said that after Brian Morrison told her it was sparking then they just turned it off and left it and it wasn't used.
43. The EAC was switched on by an unknown person. As a result the EAC unit and supporting metal frame became live with 221 volts. There is conflicting evidence about how the air conditioner came to be turned on and I am unable to determine who turned the air conditioner on, nor when it was

turned on. It seems likely that it was someone attempting to cool down the premises. Whoever turned it on would have had no way of knowing that it would result in the metal frame becoming live.

44. The deceased was playing with her siblings and other children outside flat 13. They were making mud pies and running into the kitchen to get water in billy-cans. The deceased went around the back of the flat to get water from the garden tap next to the air conditioner stand. Shortly before 1:00pm the deceased came into contact with the metal frame and was electrocuted and died. No one saw this happen. She was discovered by Helen Limbiari who had come to visit people in an adjacent flat. Helen Limbiari alerted Louise Murphy and her partner Brian Jakara, who immediately went over to the deceased. She was not breathing. Brian Jakara touched the deceased and got a shock. He told everyone to stay away from the deceased and went inside and turned off the main switch inside the door which turns all the power off.
45. Dr Terry Sinton, a forensic pathologist, performed an autopsy on the deceased. She had electrical burns to the back of her right shoulder and to her right arm and he concluded that she died as a result of electrocution.
46. Mr Justin Chambers, a Linesman with Power and Water, attended the scene at 1:19 pm on 6 March 2005 and tested the air conditioner stand with the main switch on, and measured 221 Volts between the air conditioner stand and an independent earth.

CAUSATION

47. The report of Mr Gary Andrews dated 19 April 2005 outlines the cause of the EAC and support frame becoming live. Essentially there were 3 discrete faults. First, the motor itself failed. Secondly, the rubber mount supporting the motor burned away. This caused the motor to contact the metal mounting cradle resulting in a short circuit. Thirdly, the earth circuit should have returned the current and tripped the circuit breaker but the earth lug

had corroded and broken free from the connection. The earth wires for the pump and fan motors would normally have been connected to the main earth terminal separately but in this case they had been joined together with a single screw insulated connector and connected to only one of the two available spade terminals on the main earth terminals. Thus when the earth wire became separated from its lug on the main earth terminal it left both the motors without earth protection.

48. These faults combined meant that when the EAC was switched on there was a potential difference between the air conditioner stand and the ground of 221 volts. This is sufficient to cause death. The victim received an electric shock by simultaneously coming into contact with the ground and the live metal stand.
49. Mr Andrews gave evidence that the motor was in 'very bad condition' and that when he opened the unit it was a 'very visible fault'. He described severe burn marks on the right hand side of the motor. He was unable to give a time frame for how long the motor had been damaged. His evidence was that anyone who removed the pads, or who turned off the isolator (which would be required before doing any job on the EAC) would have had a good view of the motor.
50. The occupant had exercised due care in ensuring that the EAC was switched off thus posing no danger and in repeatedly complaining about it not working. The person who turned it on could have had no way of knowing that it would cause the stand to become live. There is nothing more that the family members of the deceased could have done to prevent her death.
51. However this death was a preventable death. It is of great concern that the occupant and others had made repeated complaints from 6 December 2004 about the EAC and that in the three month period between the first complaint and the death of the deceased the EAC was not examined by a qualified electrician. I find based on the evidence from the occupants about

the state of the EAC that the motor needed replacing from at least 20 December 2004 and possibly earlier. If an electrician had done this, or had looked at the EAC, then it is likely that the death would have been prevented. This raises questions about the performance of T&J Contractors and the performance of Territory Housing.

PERFORMANCE of T&J CONTRACTORS

52. T&J Contractors had received numerous maintenance orders over a three month period in relation to the EAC at Flat 13. Despite this the motor was not replaced, and the other electrical errors with the EAC were not picked up. An error by an electrician employed by T&J resulted in an entirely different unit being examined and repaired on 20 December 2004 and the EAC in question not even being looked at. The systems in place in T&J Contractors did not prevent this nor pick this up. In addition T&J Contractors were extremely slow to respond to the various maintenance orders in February, with 15 days passing between the order being issued on 8 February 2005 and the bearings actually being replaced on 23 February 2005. At that date T&J Contractors were aware that a new motor was required. The correct procedure was to contact Territory Housing to get approval for the motor but there is no evidence they did anything about getting such approval until the second fax from Territory Housing on 3 March 2005. There is no evidence of any tradesman being sent out at all in response to the two faxes from Territory Housing on 28 February and 3 March 2005. Thus T&J Contractors had known that a new motor was required for 12 days before the death occurred but nonetheless an electrician was not sent out and the motor was not replaced. Over this time the priority levels were not being complied with at all.
53. The systems of T&J contractors were flawed in that a) they did not ensure a timely attendance in response to orders received from Territory Housing, b) they did not ensure a timely follow up in response to problems noted by

tradesman who looked at EACs in response to orders and c) they did not prevent nor detect the significant mistake of 20 December 2004 where the wrong EAC had its motor replaced and an EAC that had been complained about was not even looked at.

54. The Directors of T&J Contractors, Jean and Antonio Civatarese, were asked about the delays. Their evidence was that at the start of 2005 they were running behind in the Housing contract and there was a lot of backlog. This was because of staff shortages due to one electrician having left and another having annual leave. Antonio Civatarese said he was advertising all over Australia looking for qualified staff but he could not get anyone. Mr Howell, their foreman at the time, gave evidence that he was unable to respond to routine request in a timely manner at that time of year because he was so flat out and every second job coming in was either urgent or immediate so as a result the routine ones got pushed further and further back. In addition the Directors gave evidence that they were having issues at the time with Territory Housing raising things as urgent and immediate which turned out to be just general repairs when they go to the job.
55. There are some indications that there were widespread problems with the state of EACs in Tenant Creek. In response to this death checks were done at all the other EACs in the Blain Street Unit complex. Flat 2 needed a new fan belt, Flat 3 had a loose control switch and surplus live arcing in the isolator switch, Flat 4 needed a new motor, pulley and fan belt, Flat 9 had a loose lug from the pump meaning it was not properly earthed, Flat 10 had an isolator that couldn't be opened, although the isolator itself was fine, Flat 18 had the earth connection point corroded off and earth hanging loose, Flat 22 had a faulty circuit breaker, Flat 24 had squeaky motor bearings and in Flat 31 the EAC was not wired to the switchboard or control switch. When Mr Andrews examined the EAC in Flat 12 that did have its motor replaced on December 20, 2004 he found that the water distribution system of the air conditioner was incorrectly set up. In addition there was evidence that

sometime before this death a faulty EAC caused a fire at a house in Tennant Creek.

56. Antonio Civatarese, one of the Directors, states in a statement that ‘we were no contracted to do any testing or safety audit of the EACs. It is for specific jobs...essentially we were required to do pre-season maintenance (this did not involve any electrical work or testing) or to fix any faults as they arose. Naturally if we saw something additional that was unsafe we would take steps to fix it. However, often if we did not obtain prior approval for this from Housing, we would not be paid for any work. No general safety audit was expected from the contract, we were only to identify known faults, repair faults or do pre-season maintenance’.
57. I accept that the lack of a general safety audit is a Territory Housing issue rather than being the responsibility of T&J and it may explain the condition of some of the other EACs listed above.
58. However in this particular instance multiple complaints had been received and orders had been issued for the EAC, so the lack of general testing or safety audits was not the cause of the condition of the EAC in this case.
59. Another matter of concern was the level of tradesman that was going out in response to complaints. I find that it is likely that by 8 February 2005 the motor was not working, based on the complaints leading up to that time that the EAC was not working. Mr Bertram-Russell identified the need for ‘bearings’. He was only able to identify the need for a new motor on 23 February 2005 because someone happened to mention to him that the EAC was not blowing air. Mr Andrews as part of his investigations set up a ladder and removed the filter pad frames from the air conditioner. He said that a burn mark on the left hand side of the fan motor and a black mark consistent with smoke damage directly above the left hand end of the fan motor were ‘immediately evident’. When he removed the cover from the 3-pole isolator, he saw the terminal bar used for the earth connectors showed

‘significant corrosion as thought it had been sitting in pooled water’. When he removed the cover from the original Tekelek brand isolator, he found that the earth terminal was in badly corroded condition and the cable that provided an earth for the fan and water pump motors had become detached from its lug. The question remains whether the contractors should have found these things in response to the repeated complaints about the unit not working or as part of the pre season maintenance.

Unfortunately I am unable to determine to what extent this is a result of the orders being sent through by Territory Housing. It may be entirely a result of Territory Housing requesting a pre season. The system seemed to result in people going out who may have had had limited ability to pick up faults. It is unclear why on 6 December 2004 a second pre season was requested in response to a complaint when there had been pre season just done on 22 November 2004.

60. Mr Howell was unlicensed to work as an electrician at the relevant time. He had been working for T&J Contractors for about 3 years. He became the foreman for the company. The directors of the company said that they found out that he wasn't licensed after the deceased died, when Mr Howell told them. They didn't do any checks on whether he was licensed when he started working with them. They said they relied on the fact that he had worked at Power and Water so they assumed he was licensed. As soon as they found out he wasn't he was not given work while he did not have a licence. On 4 October 2005 Mr Howell was convicted and fined \$250.00 in the CSJ at Tennant Creek. Is responsibility of T&J to provide licensed tradesman and they failed in this instance to do so. Of particular concern in this instance because it was their foreman who was unlicensed. As the evidence is that Mr Howell did not see the EAC over the relevant three month period, it cannot be said that the death was related to the fact he was unlicensed. The evidence was that Mr Howell was well qualified and subsequently obtained a licence without difficulty. Nonetheless it points to

another failure by T&J Contractors to ensure that contractual requirements were met.

RESPONSE BY T&J CONTRACTORS

61. T & J Contractors were represented at the inquest. They have now employed a couple of additional electricians and no longer have the same staff shortages. Evidence was given of changes they have made in response to this death. They are now ensuring that all EACs have an additional earth connecting the chassis of the EAC to the main earth. A checklist has been developed for their employees of tasks to be performed on each job and one task is to check the quality of the earth connection to the chassis of the EAC. Their tradesmen now remove redundant isolator boxes thereby reducing the probability that a corroding earth connection may go unnoticed. Finally they have now agreed on a protocol with Territory Housing whereby all pre season check ups are performed in advance of the hotter months thereby freeing up the staff to attend promptly to repairs.

ACTIONS OF TERRITORY HOUSING

62. It was Territory Housing employees who took the complaints. Helen Marsh gave oral evidence that it was an unusual number of complaints that were made by Marie Louise Murphy and that they were indicative that the air conditioner was not functioning correctly. Marie Louise Murphy gave evidence that 'well like when I go to housing and try to report that air con not working and some people just ignoring me, just because I'm Aboriginal lady' and that 'I used to go round there, to Housing, and try to report but they wouldn't listen to me'. Natalie Fraser gave evidence that staff of Territory Housing well aware of the need for sensitivity in dealing with aboriginal clients and it is not the case that Territory Housing would not have listened to a client because she was an Aboriginal lady. I find that there is no evidence that Territory Housing did not believe Ms Murphy. However it is clear that despite the multiple complaints received by

Territory Housing and their clear knowledge that the air conditioner was not working, the air conditioner did not receive proper repairs. This brings into question the systems that Territory Housing had for ensuring that the repairs and maintenance that they requested of their contractor actually happened.

63. Evidence was led about this at inquest. The first system was one of random audits. Keith Wilson, the Property Manager at Territory Housing, gave evidence that property managers perform random audits to check that maintenance work has been performed on 10% of jobs and these are done once or twice a month to properties selected at random. He gave evidence neither himself, nor anyone else attached to Territory Housing, were able to check the standard of electrical work done on EACs and that their job is to check the quality of the work to the extent possible by a knowledgeable and experienced lay person.
64. Wilson gave evidence that there were supposed to be monthly meetings between Territory Housing and contractors. Presumably issues like failure to comply with priority levels and the backlog of work could be raised at such meetings. In court Mr Wilson admitted that sometimes three or more months would go by without such a meeting.
65. Finally the only other follow up was through clients complaining that work hadn't been done after they had requested it. This case demonstrates the problems with this. Even when multiple complaints were received in late February 2005 and early March 2005, it did not result in a timely resolution of the problem.
66. There used to be a government employed Electrical Inspector but Mr Wilson's evidence was that there hadn't been one based in Tennant Creek for four or five years. One was supposed to be coming up about once a month from Alice Springs but that hadn't been happening and in fact there had been no visit by an Electrical Inspector for 18 months when this death occurred.

67. Overall it appears no one with any ability to evaluate the electrical work being done was reviewing T&J Contractors. Territory Housing submitted that current legislative requirements are for 'self-certification' of electrical work by qualified tradesmen and it relied on its self-certifying contractor to ensure that electrical work performed on the air conditioners was up to standard. However the manager of Territory Housing, Fiona Chamberlain, gave evidence that it would be desirable for qualified electrical safety officers to conduct random audits of work done by contractors.
68. In addition it appears that there were no systems in place to ensure that repairs were done within the time frames required by the contractor. Jan Olson, a tenancy officer with Territory Housing, gave evidence that there was nothing in place to ensure the work that was ordered actually happened or that it happened within the time frame requested. Maintenance orders come through an electronic asset information system and she gave evidence that it didn't allow a tenancy officer to type in notes about orders that hadn't been done or follow ups on orders that have been attended to. Helen Marsh at the inquest gave evidence that the ability to do this would be beneficial as it would mean she could check up on what she had done with orders. On the existing system it was apparent when an order was looked at that it hadn't been done but it wasn't clear what follow up has been done on it. Ms Marsh's evidence was that the only way to follow up orders on the current system would be by keeping handwritten notes separately.
69. The evidence establishes that there was a backlog of work at the relevant time with a lot of outstanding orders and that Territory Housing was aware of this. The response of Territory Housing seems to have simply been to continue to contact T&J Contractors in response to client complaints.
70. There was evidence led that Territory Housing do not attempt to minimize the amount of maintenance work when there is a 'health, safety or security issue' due to cost pressures. Helen Marsh at 64 says not under constraints

to save money. Evidence from Fiona Chamberlain that no budgetary constraints in regard to 'any work required or [of] a maintenance nature where there is a health, safety and security issue'. There was evidence that too many Pre-Season Maintenance orders were being raised by Territory Housing in the hotter months which meant they overlapped with the busy season for complaints.

71. I find that at the time Territory Housing had a reactive approach to their responsibility for the EACs. The system they had set up focussed on pre-season maintenance and fixing faults as they arose. They did not provide any testing or safety audits of the EACs. They did not require the pre-season maintenance to be done by an electrician which meant that the only time an electrician looked at any EAC in Tennant Creek public housing was in response to a particular type of complaint by a householder. In my view this approach was not able to ensure a sufficient level of safety.

RESPONSE BY TERRITORY HOUSING

72. Immediately following the accident, Territory Housing ordered a safety audit to be conducted on the air conditioning units in all flats in the Blain Street Complex. This was done between 7 March 2005 and 14 March 2005. This was followed by a safety audit of all evaporative air-conditioners in Territory Housing properties. As of 21 April 2006 certificates of compliance had been issued for all public housing in Tennant Creek and Elliot and for 85% of public housing in Alice Springs and Ti Tree, the other 15% they had not yet been able to gain access to. The audit did not reveal any major safety issues.
73. The general manager of Territory Housing, Ms Fiona Chamberlain, requested Territory Housing's Director of Asset Services, John Gleeson, to investigate what measures might be taken by Territory Housing to avoid a similar incident occurring in future. This review looked at the installation of pool fencing around EAC units and replacing EAC unit with refrigerated

air-conditioning units. It was decided that these measures were not financially viable. Even had the supply of refrigerated units been affordable, the running costs of equivalent refrigerated air conditioning units were about seven times more expensive and not affordable for a tenant on benefits.

74. The review came up with seven recommendations. The first was to install residual current devices (RCDs) in all Territory Housing assets across a three to five year period. The cost is approximately \$9 million.
75. A second recommendation stated that Territory Housing is 'shifting its emphasis from a reactive to a pro-active approach by increasing the emphasis, and expenditure, on planned maintenance, in the expectation of decreasing the level of unplanned repairs'. Ms Chamberlain gave evidence that this not something new in response to the accident, but had been part of the strategic priorities of Territory Housing since 2005.
76. A third recommendation was to update the reporting mechanisms for urgent and immediate maintenance repairs by amending the Territory Housing Information Technology System to incorporate a protocol for the recording and follow-up of completion of immediate and urgent work orders. A prompt would come up on the computer screen of the Territory Housing employee who raised the work order when the designated time for actioning the order has expired. If that prompt isn't acknowledged, one would be raised on the computer of that person's supervisor. The receipt of the prompt would require the Territory Housing employee to telephone the contractor. Future contracts will require contractors to confirm completion of immediate work orders. Ms Chamberlain gave evidence that this would mean that if the contractors were unable to do the work, Territory Housing could then contact the Tenant direct and take steps to ensure safety.
77. A fourth recommendation is to formalise an agreement between Territory Housing and DIPE to 'regularise auditing of electrical contractors licensing

and quality of works', that is procuring qualified electrical safety operators to conduct random audits of the work done by contractors.

78. A fifth recommendation is to develop and implement a planned maintenance and replacement program in conjunction with other jurisdictions in Australia. The consultative process to start this had already commenced.
79. A sixth recommendation was to develop and implement a health and safety plan for the Assets Services Division, including establishment of a database to record accidents and incidents, as well as fires.
80. Finally a seventh recommendation was to investigate the quality of standards of new air coolers to ensure safest models are selected for future installations.
81. Territory Housing has already commenced some additional initiatives. They have formed an Asset Services/Operations subcommittee to improve the interface between Asset Services and Tenancy Management which had met in July 2006. The Property Managing positions were being transferred from Operations to Asset Services and a Property Manager Supervisor position had been developed.
82. Finally the Counsel for Territory Housing informed me that a protocol had been put in place between Territory Housing and T&J Contractors to ensure that preseason maintenances were spread over a longer period of time to reduce the likelihood of a build up of work over a particular period of time meaning there were insufficient staff to do urgent jobs within the time frames required.
83. It is not a solution to not provide air conditioning. Ms Chamberlain gave evidence that I accept that air conditioning is required in Tennant Creek because the temperatures range from 37 to 41 degrees Celsius for around eight months of the year and there are many sick and infirmed people living in the housing.

CONCLUSIONS

84. Territory Housing has a duty to provide safe public housing. If they are unable to make Housing safe then they should not be renting it out. This case highlights failings in the systems of T&J Contractors and Territory Housing that sadly have resulted in the untimely death of the deceased. I am satisfied that Ms Chamberlain gave frank and open evidence to the inquest and it is apparent that Territory Housing has made real efforts to look into what went wrong and how to improve it. I adopt their seven recommendations as set out above.

RECOMMENDATIONS

85. I adopt the seven recommendations put forward by Territory Housing
86. I find that there is insufficient evidence of a crime that may have been committed in connection with the death and accordingly no report is required under subsection 35(3) of the *Coroners Act*.

Dated this 28 day of June 2007.

GREG CAVANAGH
TERRITORY CORONER