

Inquest into the death of Timothy James McPhee

Mr McPhee was employed as a house re-stumper. On 19 April 2011 he was working on a relocated building. As the building was being lowered by a hand operated jack, the operator lost control of the jacking handle, and the jack, under the weight of the house, immediately dropped. The house then collapsed to the ground. Mr McPhee attempted to escape from under the collapsing structure but was trapped and crushed. He died at the Bundaberg Hospital from his injuries.

Coroner David O'Connell delivered his findings of inquest on 30 September 2013.

The Queensland Government responds to recommendations directed to government agencies at inquests by informing the community if a recommendation will be implemented or the reason why a recommendation is not supported. Further information relating the implementation of recommendations can be obtained from the responsible agency named in the response.

Recommendation/comment, page 9

At the inquest I was not presented with sufficient information to formulate what appropriate regulations, or work practices, should be. This is an area for regulators and industry to consult together.

What I can recommend is that the regulatory authority commit to a review of the industry work practices in consultation with industry. They need to take submissions, prepare regulations, and most importantly then implement them. I appreciate this process will take time but it cannot be an endless timeframe. I envisage that 12 months is adequate time for initial consultation, preparation of regulations, consultative review, and then the implementation of regulations to occur.

I would like to see regulations implemented by 1 October 2014. I appreciate that the regulations which may be implemented by that time may not be ideal, but they will be a vast improvement on the unregulated and varying industry practices presently operating in Queensland. No doubt after a period of time, with industry input, those regulations can be reviewed and refined. It is a simple matter to have a continuous improvement program in place but, in the plainest of terms, the talk must stop and the action must commence. At the inquest no party expressed any dissent with this approach. All agreed that the unregulated industry must have appropriate work practices implemented and doing this by regulations will assist in their enforcement.

The regulations need to include, and focus attention upon, the discrete processes of raising and lowering of a building. It is on these occasions when the building is in motion which encompasses the times of greatest danger.

The challenge is to obtain a useful cross-section of opinion, which could be examined by the regulatory authority, to lead to appropriate industry regulation. It is acknowledged that the house relocation, house removal/re-stumping/raising/lowering industry is largely operated by small businesses. Accordingly any regulations must be practical and cost-effective. Of note at the inquest was that even Mr Herbener, who appeared to me to favour a high level of fiscal responsibility, conceded that certain safety aspects could be implemented readily, and in a very cost-effective way, even though they would add some more time and expense to the house raising/lowering process. Importantly he also saw that these practices could be implemented very promptly without departing greatly from present work practices.

Whilst it is a matter for the regulatory authority to review, what was able to be identified at inquest were the following safety steps.

The safety sty concept is relatively affordable. It is not a 'high-tech' alternative. It would necessarily involve costs in obtaining and cutting the 150 x 150 timbers required, and necessary time and labour in assembling/disassembling, and in transport. Against the possibility of loss of life, it seems a reasonable safeguard. Mr Herbener saw benefits with it, and did not consider it an unreasonable cost.

There was no indication that there is anything preventing the possibility that the pig sties, including safety sty, themselves be positioned outside the alignments of the building in question. This will obviously require longer girders. It will still require safety sties under the building to reduce flex or other vertical movement in the girders. Engineering advice would determine appropriate spacing. In such a case, the girder would necessarily protrude past the extremities of the building at every external pig sty.

The Trewhella jack should simply not be used for the lowering of houses. Its design does not permit any level of appropriate safety when it is lowering under load. Where the load permits they may be a suitable jack for raising. Mr Herbener says he does still use the Trewhella jack in circumstances where he wishes to simply raise a corner of a house, such as for replacing a single stump, but it is only that corner of the house which is unsupported, the remainder of the house is supported on all of its other stumps.

Hydraulic jacks, such as bottle jacks, should be used for raising and lowering. Hydraulic jacks have the important feature of being able to control their lowering rate by the controlled release of the hydraulic fluid within the jack. In addition the handle controlling the opening and closing of the release valve is not under any load. Clearly the valve could be a readily implemented 'restrictor valve' so that no matter how 'open' the operator releases the valve the restriction valve controls the lowering rate.

Put at its most simple, it would appear obvious that to reduce the time workers spend under the house, particularly during times when the house is in motion by way of being lowered, or raised, will in and of itself, reduce risk to those workers.

Appropriate training and qualifications of licensed personnel needs to be considered. At present it appears that one need only hold a Building Services Authority licence, presumably based upon a carpentry licence, to become a house removalist.

The process of house removal/restumping/raising/lowering necessarily requires the knowledge of engineering principles involving static and dynamic loads. Clearly an appropriate formal education course would teach and train these skills to allow person to hold an appropriate qualification. Any industry review needs to look at how this can be implemented and whether it applies for all persons, or simply new applicants, with existing licensed persons having their licence 'grandfathered' exempting this educational requirement for a limited period (for example three years) to allow those existing licensed persons time to successfully complete the course or exit the industry.

The regulatory authority will need to identify and determine the appropriate issues for review and regulation.

I am confident that with the correct motivation this can be completed within 12 months. At the inquest the Office of Fair and Safe Work Queensland offered to keep me informed as to the progress

of this review and its' implementation. I very much welcome this offer and I look forward to being informed of the timetable proposed for the review and implementation, and in turn, notification as progress is made towards implementation by 1 October 2014.

Response and action: the recommendation is agreed in part and implementation is complete.

Responsible agency: Queensland Treasury.

On 12 September 2015, the Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships responded:

The Office of Industrial Relations agreed to review the industry work practices in consultation with industry, however the introduction of additional regulation in this area was not supported in view of the then government's red tape reduction strategy and lack of support from industry for additional regulatory intervention. Feedback from stakeholders identified that most either did not use Trewhalla jacks or did not use them in the manner used when the fatality occurred. Any regulatory prohibition on the use of Trewhalla jacks in the way used at the time of the incident would achieve little.

Consultation with the industry continued throughout 2014 and the Office of Industrial Relations Queensland, in conjunction with industry, prepared guidance material for the house restumping, house relocation and house raising/lowering industry that addresses the coroner's concerns about safe work practices.

The guide aims to raise the awareness of persons conducting a business or undertaking (PCBUs) about risk management and high risk construction work regulatory requirements. The guide provides PCBUs with a checklist and a sample safe work method statement (SWMS) to assist with the development of their own risk management processes.

It is also important to note that Queensland's current work health and safety laws include house removal/relocation work as 'construction work'. Part 6 of the *Work Health and Safety Regulation 2011* provides specific regulatory requirements for construction work and high risk construction work such as safe work method statements, construction induction training, and mandatory controls for risk of falls when working at certain height thresholds.

The Office of Industrial Relations Queensland continued to keep the central coroner informed of the actions taken in relation to this recommendation.

The *Working safely in the house relocation industry* guide is published [here](#).