QUEENSLAND
COURTS

OFFICE OF THE STATE CORONER

FINDINGS OF INQUEST

CITATION:	**Inquest into the death of Jason Jon GARRELS**
TITLE OF COURT:	Coroners Court
JURISDICTION:	Mackay
FILE NO(s):	2012/715
DELIVERED ON:	11 August 2015
DELIVERED AT:	Mackay
HEARING DATE(s):	13 February 2015 & 23 - 27 March 2015 & 2 April 2015
FINDINGS OF:	Magistrate David O'Connell, Central Coroner
CATCHWORDS:	CORONERS: Inquest – building site – death by electrocution after coming in contact with temporary construction wiring – breaches of Wiring Rules involved in temporary electricity supply

REPRESENTATION:

Counsel Assisting:	Mr John Aberdeen, Office of the State Coroner
Dayton Trading Pty Ltd & Mr Gary Labuschewski (Director of Daytona Trading Pty Ltd):	Mr Patrick Cullinane (Instructed by Kaden Boriss Solicitors Brisbane)

Mr Nathan Day (Director of Cold Spark Pty Ltd):	Ms Antoinette Morton (Morton Lawyers)
Office Fair Safe Work QLD:	Mr Andrew Herbert (Instructed by Crown Law QLD)
Representing the Garrels family	Mr Michael Garrels
QLD Building and Construction Commission:	Cheriden Farthing

Introduction

[1]. On 27 February 2012 Jason Jon Garrels was fatally electrocuted at a construction worksite in Clermont, Queensland. Mr Garrels was a general labourer who was electrocuted when he physically held a construction sub-board which was then being erected on site in an attempt to comply with a Workplace Health & Safety Queensland[1] issued Electrical Safety Protection Notice[2]. The site's construction wiring to that sub-board was still 'active'[3] whilst Mr Garrels was handling it. The electrocution caused Mr Garrels to have a cardiac arrest from which he was not revived.

[2]. There was a great deal of speculation surrounding the circumstances by which Mr Garrels came to be handling the construction sub-board, and whether the construction wiring at the building site was in accordance with regulations and standards, particularly as to the installation of a residual current device (RCD), or what the layman commonly terms a "safety switch".

[3]. This inquest examines the circumstances surrounding the construction site's then completed electrical work, specifically the site's electrical switchboards as at the date of the incident, what was necessary to make the site 'electrically safe' following the incident, whether the first-aid or resuscitative efforts involving Mr Garrels were provided at the earliest opportunity, and whether current licensing requirements for electrical contractors should be reviewed, including whether the imposition of immediate licence suspension where death or grievous bodily harm occurs as a result of an electrical incident should be imposed.

Tasks to be performed

[4]. My primary task under the Coroners Act 2003 is to make findings as to who the deceased person is, how, when, where, and what, caused them to die[4]. In Mr Garrels' case there is no real contest as to who, when, what or where Mr Garrels died, the real issue is directed to how[5] his death occurred.

[5]. Accordingly the List of Issues for this Inquest are:-

1. The information required by section 45(2) of the *Coroners Act 2003*, namely: who, how, when, where, and what, caused Mr Garrels' death,

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[1] Referred to simply as WHSQ, as it then was in 2012, throughout these Findings (although as at 2015 it is now properly called the Office of Fair and Safe Work Queensland)

[2] This is its' proper term, I shall also call it, and other notices of various titles issued, 'Safety Notices', throughout these Findings

[3] That is it was conducting electricity at 240 volts, or simply common domestic house supply voltage

[4] Coroners Act 2003 s. 45(2)(a) – (e) inclusive

[5] 'how' is directed to the circumstances which caused the death, whereas 'what' is directed to the medical reason for the death.

2(a). Whether resuscitate treatment was provided to Mr Garrels at the earliest opportunity consistent with ensuring safety on site?

2(b)(i) what was the layout of the main electrical switchboard at the time Mr Garrels received an electric shock on 27 February 2012?

2(b)(ii) whether the main electrical switchboard at the time Mr Garrels received an electric shock on 27 February 2012 complied with all applicable safety regulations?

2(c)(i) what was the layout of the temporary construction switchboard at the time Mr Garrels received an electric shock on 27 February 2012?

2(c)(ii) whether the temporary construction switchboard which came into contact with Mr Garrels at the time he received an electric shock on 27 February 2012 complied with all applicable safety regulations?

2(d) what action (if any) was necessary, following the electric shock delivered to Mr Garrels, to make the "construction wiring" at 47 MacDonald Flat Road safe for other persons on site?

2(e) what changes (if any) were made to the "construction wiring" at 47 MacDonald Flat Road, Clermont between the time that Mr Garrels received an electric shock on the 27th February 2012, and the arrival upon the site of officers from the Electrical Safety Office on the same date?

3. Whether it is desirable in the interests of public safety that the licensing requirements for an electrical contractor's license be reviewed?

4. Whether it is desirable in the interest of public safety, where death or grievous bodily harm occurs on a worksite as a result of an electrical incident, that the licensed individual responsible for the electrical installation involved in the incident should be subject to immediate licence suspension?

[6]. The second task in any inquest is for the coroner to make comments on anything connected with the death investigated that relate to public health or safety, the administration of justice, or ways to prevent deaths from happening in similar circumstances in the future[6].

[7]. The third task is that if I reasonably suspect a person has committed an offence[7], committed official misconduct[8], or contravened a person's professional or trade, standard or obligation[9], then I may refer that information to the appropriate disciplinary body for them to take any action they deem appropriate.

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[6] ibid s.46(1)
[7] Ibid s.48(2)
[8] Ibid s.48(3)
[9] Ibid s.48(4)

[8]. In these findings I address these three tasks in their usual order, Findings, Coroners Comments, and then Reporting Offences or Misconduct[10].

Factual Background & Evidence

The uncontentious matters

[9]. The incident occurred at a building site located at 47 MacDonald Flat Road, Clermont. This was a site just on the outskirts of the rural town of Clermont, which is located approximately 275 km south-west of Mackay, Queensland.

[10]. The developer[11] of the site advised that the site was initially zoned as industrial land, but the developer was encouraged by the local authority, due to the then rapid expansion of the coal industry, to change its development to provide for high density residential housing. Accordingly an application was made to the relevant local authority, the Isaac Regional Council, to develop 81 townhouses, which comprised 40 duplexes and one manager's residence. Accordingly it was a sizeable development, and the simple way to reflect this is that 81 townhouses were to be constructed along three internal roads[12]. The residential building construction works alone were worth some $16 million[13].

[11]. For such a sizeable development there is a very curious lack of contractual documentation I would ordinarily expect for such a large commercial venture. For instance the evidence was that there was no written contract entered for the civil construction works on site. In evidence the builder said that civil construction work is the providing of what the layman considers are essential services for residential allotments of land located in a town, namely bitumen roads, footpaths, underground stormwater drainage, electricity and sewerage, all connected to the town supply.

[12]. In addition the construction of the residential duplexes commenced and progressed before completion of the civil works[14]. This meant that the duplex construction work was occurring when the entire site, including the internal roads, were simply bare ground. This is material to two important issues, the state of how electricity was supplied for construction work, and the surface condition of the ground, particularly as to surface water drainage affecting what is essentially the ground conditions 'under foot'.

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[10] I have used headings, for convenience only, for each of these in my findings.
[11] SCN Pty Ltd A.C.N. 083 231 387 as trustee of the CS Family Trust (Mr Colin Street is the director)
[12] See exhibit D.21.2 which contains the registered DNRM (or more commonly known as the Land Titles Office) Survey Plan 242667
[13] T3-28 at 33 admission by Mr Labuschewski
[14] in Mr Labuschewski's evidence (T3-25 at 40) he described the site as being just a "paddock" before any work commenced

[13]. For construction purposes the electricity supply is brought to the site and connected to a construction switchboard on a pole[15]. This is the main switchboard where the Ergon meter is located for the site. That work was done by Cold Spark Pty Ltd, and the individual electrician who did this work was Mr Nathan Day[16]. The layout, or electrical componentry, that was set up within this construction switchboard on the day that Mr Garrels died is the central issue in contention which I must resolve. I deal with that issue later in my findings.

[14]. Importantly that construction switchboard should include the isolator switch for the entire site, a number of fuses determined to be of a certain amperage rating depending on the length and configuration of the circuit they serve, and residual current devices, or RCD's, as required.

[15]. The purpose of the isolator switch is that the simple flicking of that switch turns on and off the power to the entire site. The fuses are designed to 'blow', or fail, once a certain excess current passes through them, thereby cutting the circuit. It can take a few seconds of excess current flowing through it before it blows. Therefor they provide for electrical protection against an oversupply (or termed overcurrent) at a pre-determined electrical current (e.g. 40 amps).

[16]. An RCD is a residual current device which trips, or turns the power off on that circuit, if it detects any difference in current between the energised wire and the return wire, which essentially detects any short-circuit or what may be expressed as an electrical anomaly in that electrical circuit. Throughout these findings I may use the term RCD[17], or safety switch, interchangeably, as it is essentially the same item.

[17]. The RCD's protective function is that it must meet the standard or requirement that it needs to trip, or cut the power, within just 0.4 of a second once it detects more than 30 mA of difference in the electrical circuit. The reason for this is to prevent the incidence of electrocution to an individual. Electrocution interrupts the heart's delicate electrical activity required for a rhythmic heartbeat. It is fatal if compromised. The very small 30mA electrical current and time of just 0.4 seconds (400/1000ths of a second) protects the human body's cardiac rhythm.

[18]. Fuses and RCD's are not interchangeable in their functions, rather they are complimentary to each other as they each protect against differing electric occurrences which can occur.

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[15] Frequently termed a builders pole

[16] Of some interest, to my thinking at least, was that in evidence Mr Day readily conceded that during his apprenticeship and work life he had done very little house wiring, or re-wiring, and mainly did service and repairs of fans, domestic appliances, what one may call 'whitegoods', and coldrooms, see T1-27 at 35-40, and see T1-31 at 40-45, yet here he was attempting to do an entire residential subdivision of 81 duplexes

[17] the term RCBO was also referred to in evidence and it is essentially an RCD with the additional function of a circuit breaker included

[19]. The building site, whilst containing 81 residences to be constructed, was divided into 81 allotments of land, and may be conveniently divided along the lines of the internal roads. The construction site had three internal roads, which persons on the site merely called first street, second street, and third street. I will use references to the internal streets and the allotment numbers from the Survey Plan as they are a convenient way to identify where certain incidents occurred, or where people were, at certain relevant times. A copy of the survey plan[18] indicates the 81 lots[19], and the three streets, with first street being at the northern end (or top of the plan by page orientation), and third street is at the bottom[20].

[20]. The mains electricity supply ran to the site from the Ergon power pole, with a transformer attached, on the other side of MacDonalds Flat Road. Power then fed down the construction power pole to the construction switchboard. From the construction switchboard the electrical contractor, Mr Day, then ran what he termed 'construction wiring' in a number of directions, on circuits, from the construction switchboard around the site. Essentially he ran it along the site's western boundary, parallel to MacDonalds Flat Road, and then down each street. In first street he ran it down each side of the street. There was construction wiring on the northern and southern side of first street, making two lines, then again in second street, and lastly in third street. Essentially there were four construction wiring supplies running from the construction switchboard.

[21]. The electrical contractor then established power outlets at various places as required for the construction work along the construction wiring. As ay 27 February 2012 this is represented on the survey plan[21] reproduced as Appendix 1 to these Findings.

[22]. Power outlets, as double general-purpose outlets (termed GPO's) within a weatherproof[22] box on timber stakes were located at various locations along each circuit.

[23]. The construction wiring, as at early February 2012 was simply running along the surface of the ground. Wiring standards require construction wiring to either be buried within conduit at least 600 mm below the ground surface level, or strung up on poles, well above the ground. Mr Day was the person

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[18] The exhibit is reproduced as Appendix 1 to these Findings

[19] in what is a community titles scheme, what people may call group title or building unit title (which is not the specific legal terminology, but is easily understood by the layman). I also use the term 'allotment' in these findings even though it strictly has a different legal use, but it is readily understood by the layman.

[20] I say this because the survey plan did not identify the streets, as they are simply internal streets not then named.

[21] the red dashed lines represent the construction wiring. The blue dots represent construction sub-boards. The construction power pole, and construction switchboard, is indicated by an 'X' in a blue circle seen in lot 75

[22] weatherproofing is designated by an "Ingress Protection" number, or termed an 'IP' number. The expert advised that this is a two digit number, with the first digit representing the ingress protection for dust or particles, and the second digit indicating water resistance protection. It is on a scale of 1 to 8. These weatherproof GPO's were given the designation IP 53, which meant they had a weatherproofing against water ingress of 3 in the scale of 1 to 8, where 8 represents the greater protection.

responsible for laying out the construction wiring along the ground at the site. I will comment later on how this came to be.

[24]. An anonymous written complaint[23] was made on 7 February 2012 to WHSQ regarding perceived breaches of health and safety laws at the site. It was appropriately referred to their Mackay office, and on 13 February 2012[24] the Mackay Regional Operations Manager assigned the issue to a Principal Inspector, Mr Hawley. He was able to travel to the site at Clermont the very next day to conduct a site inspection. This inspector[25], Mr Hawley, attended the site on 14 February 2012[26]. Clearly this was a timely response, and a site attendance some 275 kilometres away, was able to be undertaken promptly. On site in Clermont, he identified himself and spoke with the person he considered was the principal contractor, Mr Labuschewski. Mr Hawley then conducted an inspection of the site. A number of safety matters were concerning to Mr Hawley and so he issued a number of notices to Mr Labuschewski's company, Daytona Trading Pty Ltd.

[25]. Significantly there were two types of notices that were issued. Firstly, an '*Improvement Notice'* for work practices which were considered deficient. This included the site being untidy, and scaffolding considered inappropriate. Seven days were permitted for these matters to be addressed. Secondly notices, termed '*Electrical Safety Protection Notice*', under the Electrical Safety Act were issued for what Mr Hawley considered were electrical safety breaches. In this regard Mr Hawley had a number of options depending upon the severity of how he viewed the electrical safety situation. The first is to issue an Improvement Notice allowing time for the matter to be addressed. Secondly he could issue an Electrical Safety Protection Notice where he could mark the box allowing time for a matter to be addressed. Thirdly he could issue the same Notice with the notation that the situation poses 'an immediate electrical risk to person or property', which in my view requires the matter to be addressed 'immediately'[27], which is effectively the highest level of concern. He also had the authority[28] to have the power to the site switched off. Mr Hawley considered the situation before him and then consciously issued the 'highest level of concern'[29] notice, that circumstances were an immediate risk to persons or property. This 'assessment' of the then situation at the site was most telling. Power to the site was not immediately disconnected, although this could have been done by simply contacting the local electricity supplier in Clermont, Ergon Energy, who had staff who would have been able to attend to that task promptly.

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[23] see exhibit C-14, which was tended. By the consent of all parties the name and contact details of the person making the complaint were redacted (blacked out, in simple terms)

[24] See exhibit D-18 paragraphs 2 & 4

[25] He is identified in the Departmental Report exhibit C-2 as a 'senior construction inspector' but I presume Principal Inspector is a similar term. It is clear he would have been experienced in investigations whatever is his appropriate title may be.

[26] See exhibit C-2 at page 6, paragraph 4 (the Report is not paginated, nor paragraphed)

[27] as that is the term used in the Notice

[28] See Electrical Safety Act s. 154. (reprint 4D applicable at that time, and whilst various reprints occurred this section remained consistent in its operation). This is a particular issue I address later

[29] This is my term, not that specified in an Act

[26]. Daytona Trading then believed[30] they had until 20 February 2012 to attend to the issues in the various Notices. They commenced taking steps but could not do so within the initial period and so requested a further seven days. They were in contact with Mr Hawley who, by email, permitted them until 10.00 a.m. on 27 February 2012 to have the matters addressed (and in this regard I leave aside the electrical safety notices issued).

[27]. Daytona Trading were under considerable time pressure to address these matters. The electrical safety matters were discussed with Mr Day and it was decided, I find collectively agreed between Mr Day and Mr Labuschewski, that the defective construction wiring to the GPO's on timber stakes were to be replaced with temporary, freestanding, construction sub-boards located at the same points, and by placing the construction wiring 'underground' in a trench.

[28]. The reason given as to why temporary measures were taken rather than permanent measures was because the civil works were then yet to be done. Accordingly they believed that permanently locating the electrical wiring underground in conduit could not then be done as it may have to be relocated when the civil works were done later. This brings into sharp focus why the failure to complete the civil works at the outset becomes relevant.

[29]. There was a delay in Mr Day sourcing the appropriate temporary construction sub-boards but eventually these were delivered to the site on Friday, 24 February 2012. When these were delivered they did not have the appropriate PVC fitting, which consists of an adapter, which is a plastic tube shaped fitting, which is glued to the conduit, and then the adapter fitting is then fed through the base of the metal box, but importantly secured on the inside with a locking nut[31]. Mr Day noted that these were not delivered but proceeded to use the temporary switchboards. The PVC fitting would be readily obtained from many electrical suppliers. Mr Day then spent that Friday wiring up these 10 switchboards for them to be erected before the deadline of 10.00 a.m. on Monday morning, 27 February 2012. Both he and Mr Labuschewski believed that the safety inspector would be returning to site. They were working to a very tight timeframe.

[30]. Around the time that the temporary electrical switchboards were delivered, and over the weekend prior to Mr Garrels' death on the Monday morning, a significant amount of rain fell in the Clermont area. This left the worksite very wet. In evidence Mr Day described the ground conditions near where Mr Garrels was electrocuted as being very muddy and in some places he would sink into the ground up to one metre deep[32]. No doubt the situation was compounded by the fact that no civil works to address the site's surface water

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[30] a somewhat perplexing assumption when certain notices specified an "immediate electrical risk to person or property has arisen"

[31] it has a threaded end over which a locking nut is used to secure it in place. Its' purpose is to cover the sharp metal edges of the entry point located through base of the metal housing of the switchboard to protect the plastic coating of the wires which pass through it

[32] The investigating police officer described the site conditions at the incident location as a 'quagmire', see exhibit B-1page 2, paragraph 5

drainage had then occurred. Perhaps correctly addressing surface water drainage was a reason the civil works were not yet done. Notwithstanding these wet and boggy conditions work at the site continued.

[31]. On Monday, 27 February 2012 Mr Day was working his way through the site replacing the double GPO outlets with the temporary construction switchboards. He was doing this work in conjunction with Mr Jason Kershaw who was operating a backhoe backfilling trenches as the electrical cable was laid. Mr Kershaw was specifically chosen by Mr Labuschewski for this job that morning because he was a proficient backhoe operator. Mr Kershaw described in his evidence that he felt comfortable when doing this work as he was working with the electrician. Accordingly, at all times he thought that the power supply would be rendered safe when he was working near the electrical cabling.

[32]. They worked their way along the first street erecting the temporary switchboards and backfilling over the electrical cable. The power was reportedly isolated whilst they undertook this task. Mr Day and Mr Kershaw then proceeded to the second street and undertook the same task. This all occurred without incident. Mr Kershaw was then advised by Mr Day to go to the third street to undertake the same activity. Precisely what was said between the two men I will resolve later in my Findings.

[33]. Mr Day then became delayed by a request from another tradesman onsite and did not isolate the power to the third street before Mr Garrels was electrocuted. Mr Day openly conceded this much.

[34]. Mr Garrels was working down near lot 51, with another young labourer. They were creating makeshift bins, from reinforcing steel, into which construction debris was to be placed to clean up the site. This was one of the requirements of an Improvement Notice issued.

[35]. Whilst Mr Kershaw undertook his activity of backfilling of the trenches he worked his way towards lot 51. When he got to lot 51 he asked Jason Garrels and the second labourer to hold the construction switchboard upright[33] so that he could fill in around its' legs so that it stood up. The two young labourers did as they were requested by Mr Kershaw, Mr Garrels holding the outside of the metal temporary construction switchboard, while the second labourer was removing pieces of timber lying over the trench. As Mr Garrels was holding the switchboard, attempting to position it in the trench, he was moving it back and forth when he was suddenly electrocuted. Mr Kershaw describes that he saw sparks fly from the base of the metal switchboard and that Mr Garrels held the switchboard for about three seconds before being thrown to the ground[34]. Mr Kershaw immediately identified that he had been electrocuted. Mr Kershaw called for assistance from other persons nearby and called for the power to be cut because to him it was evident that the power, to that part of the

[33] it was at that time simply lying on the ground, across some timber, over the unfilled trench

[34] Likely this occurred at 9.45am, as the 000 called is recorded by the QAS as being received at 9.46am (see exhibit K.1 and K.2)

site, was still active. Other tradesmen who were nearby immediately came to assist, and word spread around the site that a person had been electrocuted.

[36]. At this time Mr Day was in the vicinity of lots 5/6 (or called units 5 and 6) when he heard[35] that a person had been electrocuted. He immediately went to the main construction switchboard at lot 75 and turned off the power by simply flicking the isolator switch in the main switchboard. He then rode his quad bike[36] down third street towards lot 51 where Mr Garrels was. This distance is approximately 190 metres. On his way he was handed a mobile telephone and spoke with the emergency services operator to provide details of the incident and the address where they were. He continued to where Mr Garrels was to assist if he could. Nearby workmen had already commenced manual CPR.

[37]. Ambulance officers arrived approximately 7 minutes later. The ambulance vehicle was unable to drive directly to where Mr Garrels was lying due to the wet and muddy ground conditions. Not only could the ambulance not reach Mr Garrels, the paramedics had difficulty walking their equipment to him due to the boggy conditions underfoot. Accordingly one officer went to Mr Garrels, assessed him, and then he was carried back to where the ambulance was located, quite some distance from lot 51. Due to light rain falling at this time they placed Mr Garrels in the back of the ambulance, dried him as they were required to use a defibrillator, and then commenced appropriate resuscitation. They commenced resuscitation in the rear of the ambulance and then transported Mr Garrels to the local hospital. Workmen at the site had to push the ambulance to assist it to leave the site due to the boggy nature of the ground. When Mr Garrels arrived at the Clermont hospital, at 10.20 a.m., his mother, who had heard that a young man had been electrocuted on a worksite, was present as she is a registered nurse at the hospital. Medical personnel at the hospital continued efforts at resuscitation before ultimately it was declared that Mr Garrels had passed away. Mrs Garrels displayed thorough professionalism in the circumstances, even remaining in a presence of mind to conduct the handover from the ambulance officers. For this she has my admiration. It is a situation no person in a professional capacity ever wishes to find themselves in, and no doubt compounds her grief. It clearly affects her profoundly.

[38]. After the ambulance left the building site, approximately[37] 30 minutes after Mr Garrels was electrocuted, Mr Day went to the main construction switchboard as he decided he "wished to make it electrically safe". He readily admits he then removed every electrical component in that switchboard and says he placed those items in his work vehicle. After he had stripped the main

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[35] His evidence was that he received a call on his mobile telephone regarding the incident

[36] this gives some indication of the size of the entire worksite, as a quad bike is used by him for travel within the site, rather than simply travelling on foot. Eighty-one dwellings, all at ground level, also indicates the significant size of the site.

[37] I can only approximate this time as there is no recorded departure time in the eARF of the QAS records (not that I am critical of them, rather they had both ambulance officers working on Mr Garrels in the rear of the ambulance, whilst a QFRS member drove the ambulance unit, which likely explains why no radio call was made to advise of departure, and the hospital had already been notified well prior to this time to expect the patient)

construction switchboard all that was left was the empty metal box, the installed Ergon meter, and bare wires.

[39]. The police were notified of the incident and attended the site. Workplace Health and Safety Inspectors were on site late that afternoon. Even though it is a building site the QBSA, now Queensland Building and Construction Commission, were not notified of the incident until many months later when advised by Mr Garrels' father[38].

[40]. Investigations by the police and WHSQ ensued. The police investigation remains an open investigation should there be sufficient evidence to justify the commencement of any criminal prosecution.

[41]. WHSQ commenced prosecutions against Cold Spark and Mr Nathan Day. The proceedings against Mr Nathan Day were dismissed when no evidence was offered[39]. I find this decision not to proceed with the prosecution somewhat remarkable[40] as the proceedings against Cold Spark resulted in a guilty plea. The court on that charge imposed a fine.

[42]. WHSQ also proceeded against Daytona Trading which resulted in a guilty plea. Similarly the court imposed a fine against that entity.

[43]. The above matters are really non-contentious. There are a significant number of contentious matters that I am required to resolve on the evidence.

[44]. These include:-

a. Who was the principal contractor in control of the site?

b. Did Mr Day give a direction to Mr Kershaw to wait until power was isolated before commencing work on third street?

c. Was there an RCD in the main construction switchboard protecting the electrical circuit on third street?;

d. Why did Mr Day strip the construction switchboard following the incident, and was it then required to be done?; and

e. Was there a second person with Mr Day when he made the telephone call to Mr Kershaw?

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[38] why no notification to the QBSA was made at the time is very perplexing as a number of government agencies had attended (I understand an MOU between the QBCC (then QBSA) & OFSWQ (then WHSQ) addresses this today. I was advised there is no obligation on the principal contractor to notify the QBSA, an issue I address in my Recommendations.

[39] this was advised to me by Counsel for WHSQ see T5-93 at 17 - 25

[40] as I do not have all the information as to why the prosecution against Mr Day personally was not continued I cannot comment any further, but it is noted that the prosecution against his company, arising out of the same circumstances, did proceed, and he was the only electrician responsible for the particular electrical work in question.

The contentious evidence and issues to resolve

a. Who was the principal contractor in control of the site?

[45]. There is a difficulty in determining who the principal contractor was. There is a lack of formal contractual documentation between the site owner and builder to cover this situation. From the evidence presented at the inquest it was clear that the day-to-day activity on the site was directed by Daytona Trading, under the direction of Mr Labuschewski or his site supervisor. They were present on site each day. This was clearly the understanding of the tradesmen at the site.

[46]. I appreciate that when later prosecuted by WHSQ the agreed statement of facts presented to the court at the time of the plea of guilty did not concede that Daytona Trading was the principal contractor, as it was not directly relevant to that prosecution. Who was the principal contractor will need to be determined by consideration of a number of factors. Certainly there is a great deal of evidence which points to Daytona Trading being the principal contractor of that worksite, conducting matters for the then site owner SCN[41]. It was suggested to me that this is an issue I need not resolve. Ultimately I agree that I am not required to resolve that issue for this inquest. Certainly it may be an issue others need to resolve to determine any further proceedings, where relevant.

b. Did Mr Day give a direction to Mr Kershaw to wait until power was isolated before commencing work on third street?

[47]. Mr Day's evidence was that he spoke to Mr Kershaw as they completed the work on second street. He told Mr Kershaw to wait whilst Mr Day went to switch off the power. His evidence was that Mr Kershaw remained on the excavator, whilst Mr Day claims he said to him:-

> *"..... move over to the third street. I will de-isolate[42] the power. Wait for me until I get back. That is when somebody else came up to me – and I just can't recall who, came up to me and said we had this issue in the first street."*
>
> and
>
> *"So that is when I left Jason at 36. I had my quad bike in (sic) which I rode around to, let's say, 5/6. I dealt with the matter, being only five, 10 minutes detour. That is when I got – that's when I was informed that*

[41] and even though they are a number of land sale contracts entered, these contracts contained a clause that the 'risk', in legal terms, at the site remained with SCN until settlement, which would only occur after the buildings were constructed

[42] by use of the term 'de-isolate' I understood Mr Day meant to turn off the power, which is to 'isolate' the power, and I give him the benefit of this interpretation

there had been an incident in (sic) which I jumped on the quad bike and I rode up to the main switchboard[43]*."*

[48]. Mr Kershaw's evidence was that when he completed the work on second street he was to move to third street. He says there was no such discussion with Mr Day at that time. His evidence was:-

> *"Now, let's just pause there. Before Nathan left you on the excavator, did he give you – did he tell you to do anything after you finished doing that street? – No.*
>
> *Okay. Did he tell you not to do anything until he was back? – No.*
>
> *All right. When you'd finished assisting the boys, did you then go back to backfilling? – Correct, yes.*[44]*"*

[49]. Also in evidence, and of some assistance in determining each person's credibility, there was a telephone call one evening after the incident. On this occasion Mr Day rang Mr Kershaw to discuss Mr Garrels death. This was intriguing for a number of factors. Firstly it was Mr Day who rang Mr Kershaw, who had then returned to his residence near Rockhampton. Mr Kershaw, or perhaps his partner, commenced to record the conversation after it had commenced. In evidence Mr Day identified his voice on the recorded conversation. Mr Day, I observed, was very surprised that a recording of this conversation existed. It was not a conversation he volunteered to any investigators or the court, but once details of it were made known to him he conceded the conversation occurred.

[50]. The conversation is interesting for a number of factors, but particularly that Mr Day expressed that investigators would turn their attention to as to why Mr Garrels was electrocuted, and this would put him clearly in the 'spotlight' as the electrician. In addition, and quite significantly, Mr Day encouraged Mr Kershaw to see a solicitor, and in fact suggested a particular solicitor and that 'they all needed to have their story the same'. In this regard Mr Day went so far as to 'remind' Mr Kershaw what were the events which had occurred, that Mr Garrels had acted independently, and that he, Mr Kershaw, needed to remember these events this way. Mr Day went so far as to encourage him to write them down. These factors, and Mr Day's observed demeanour and reaction whilst in the witness box to the existence of this recorded telephone conversation, were all very telling against him on the issue of credibility when deciding between his version of events, and Mr Kershaw's version of events, as to their discussion when they completed work at the end of the second street.

[51]. There is no doubt in my mind that after Mr Kershaw completed the work with Mr Day on second street he was to go to the third street to continue the same backfilling work. There is nothing remarkable in that, he had been doing that

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[43] T1-59 at 17-30
[44] T3-107 at 21-29

all morning. The contentious issue is whether he was advised by Mr Day to wait until the power was switched off. On this issue I had the benefit of observing both men as they gave their evidence. Mr Kershaw presented as a very ordinary tradesman. At times his evidence was very direct, understandable based on his life experiences. At times he found giving evidence very difficult due to what occurred that morning involving Mr Garrels. I formed the view from listening to their evidence, and observing each of the men when giving their evidence, that the evidence of Mr Kershaw is clearly to be preferred on this issue. Factors in his favour were his demeanour, and the way he delivered his evidence, where I formed the view he was not in any way tailoring his evidence to benefit himself, in fact certain things he admitted were matters very detrimental to himself. Incidentally I note that after Mr Kershaw gave his evidence, and no time before, did Mr Garrels' father express to him that despite the circumstances which occurred the family did not hold him responsible for Mr Garrel's death.

c. Was there an RCD in the main construction switchboard protecting this circuit on the third street?

[52]. When the electrical safety office inspectors arrived at the site the main switchboard had already been stripped by Mr Day. In his words this was done "to make the site electrically safe". The investigation included having Mr Day draw a wiring diagram, being a sketch plan, representative of what he claims was present in the main construction switchboard at the relevant time Mr Garrels was electrocuted. There were also detailed photographs taken of the 'stripped out' construction switchboard.

[53]. Investigators obtained an expert[45] opinion on the setup of the construction switchboard as Mr Day alleged. That expert also tested the particular RCD's said to be protecting this circuit.

[54]. Reduced to its most simple terms Mr Day alleges that there was a 16 amp RCD, installed on the electrical circuit when Mr Garrels was electrocuted. For 'some unexplained reason' on this particular occasion the RCD simply did not operate in its intended function.

[55]. The electrical expert engaged by investigators had significant and extensive experience. His testing found that the particular RCD operated properly, and in fact 'tripped' in just 0.003 seconds, which is 3/1000 of a second or 3 ms, The Australian Standard requires a minimum performance of 400 ms or 0.4 seconds. The device tested was clearly operating well within the required standard. There was no reasonable explanation, nor alternate expert report nor testing, placed before me on behalf of Mr Day to suggest any reason as to why this particular RCD failed to operate as designed on the day in question.

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[45] there is no doubt as to the qualifications, and experience, of Mr D Browne, as an expert, with the necessary expertise to undertake the testing and tasks he did. His report is exhibit F.1

[56]. One issue canvassed before me was that the wiring diagram suggested by Mr Day could not have been in place because certain black insulation tape[46] was covering where components were allegedly fitted. The inspection report showed clear photographs of the black tape. In its' most simple explanation the inspectors said that the components could not fit without the black tape being pulled back to allow items to fit. Doubt on this issue was attempted to be raised by Mr Day's counsel through questioning that the RCD units were not tested for tape residue, which residue, it was submitted, would indicate they were fitted, but behind, or partially covered, by the tape. I do not consider this aspect, the lack of testing of residue on the RCD units, to be the only way to be determinative of the issue. It is very clear that if the items were fitted the black tape would need to be pulled back from its' position as to how it was found, and the tape would demonstrate stretching to indicate that components behind it were being covered[47]. The photos show clearly to me, and I find, no stretching of the tape. Accordingly this is an issue, amongst several, to consider in whether Mr Day's recollection of the switchboard layout is correct or not.

[57]. Helpfully the electrical expert also commented on the wiring diagram provided by Mr Day. The expert highlighted that the wiring diagram showed a number of telling deficiencies in compliance with the required regulations known as the Wiring Rules. These deficiencies included fuses which were rated 'too high' for the length of the cable of particular circuits[48].

[58]. To determine whether an RCD was on this circuit I need to consider whether Mr Day was being truthful in respect of this aspect of the evidence he gave to the inquest. He maintained there was an RCD[49] on the circuit. Against this is the following evidence:

a. the particular RCD was tested and found to be working properly[50];

b. The re-creation of the construction switchboard, using the specific components that Mr Day provided to inspectors, was found not to fit, unless electrical tape was 'pulled back' to permit the components to

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[46] Incidentally the use of tape to cover these areas of a switchboard is completely inappropriate. The appropriate method is to install hard plastic covers or 'blanks' over unused areas, as common electrician's tools such as a screwdriver can easily pierce tape and strike the live electrical components lying behind it.

[47] as the components would protrude, that is they sit 'proud' or forward, of the electrical housing panel which was taped over

[48] The science of electricity has been well studied and a number of reliable formulas are used to calculate various aspects of appropriate wiring and circuits. One of these can be used to calculate the level of impedance for a given length of wiring. It is based on the cable's diameter or thickness and length. The calculation made essentially says that the fuses provided on this circuit meant that the wire should have been no longer than 120 metres. The actual length was measured as some 190 metres. This meant that the setup of the main construction switchboard, for this circuit, was inappropriate (the fuse used was too high a rating). It was inappropriate even leaving aside the question of whether or not there was an RCD on this circuit.

[49] or an RCBO

[50] In fact well within permitted tolerance

be fitted. There was no evidence[51] that the tape had ever been pulled back prior to the incident, nor stretched;

c. Mr Garrels was observed to hold the construction switchboard for about three seconds before he let it go and was thrown to the ground;

d. There is evidence of electrical scorching at the base of the electrical switchboard that Mr Garrels was holding when electrocuted, and the wires in that location had a 'cut' through their protective plastic coating; and

e. The first electrical component to 'fail' (or more properly 'blow') was the 50 amp fuse located in the Ergon transformer located across the road from the worksite.

What Mr Day asks me to do, unsupported by any other witness, nor independent evidence or testing, is to accept his word against that of accepted electrical science, independent and proven testing of components, and the fact that the first component to fail was a 50 amp fuse located in the Ergon transformer across the road from the worksite. It is very clear to me, in fact it is the only logical and reasonable conclusion that can be drawn, that no RCD was on the circuit at the time Mr Garrels was electrocuted.

d. Why did Mr Day strip the construction switchboard following the incident;

[59]. As I said above the first step Mr Day took was to turn off the power at the main switchboard using the isolator switch. He then attended to Mr Garrels before returning to the switchboard after about 35 minutes or so. During this 35 minutes the construction switchboard was unattended. There was no suggestion that in this period of time that any person had attempted to switch the power back on.

[60]. Mr Day's next step was to then return to the switchboard and remove every electrical component except the Ergon meter. What is of interest is that evidence was given that there was eleven other options available to Mr Day to make the site 'electrically safe', as opposed to stripping the switchboard. Of course at the time the site was then electrically safe as he had switched off the power. Of course the easiest, quickest, and in fact the most common practise used amongst electricians, is to just 'lock and tag' the isolator switch. This involves the electrician placing a padlock, with their personal tag[52] over the isolator switch so that it cannot be operated without that particular electrician using their key to unlock it. Mr Day gave evidence that he did have such a lock and tag in his work motor vehicle located at the construction site. It was

[51] as I have found as set out in paragraph 54 above

[52] The tag has noted on it that electrician details so they can be contacted to remove it

perhaps a thirty second task to obtain this lock and tag and the place it over the isolator switch. If done, then nothing more needed to occur.

[61]. Why this is important is that the law provides that the electrical items must be maintained for investigators to conduct their enquiries. The only exception is in making the site electrically safe. Mr Day's explanation for stripping the switchboard is that at that time he was "very emotional". An insight into Mr Day's thoughts on that day are gleaned from the fact that he saw that Mr Garrels had been electrocuted, that he was the only electrician on site, that he had installed the construction wiring, and that he was installing the temporary switchboards along that circuit. In fact Mr Day later stated to Mr Kershaw, in his recorded telephone conversation, that as he was the electrician on site responsible for this wiring investigators would turn their attention to him.

[62]. Whilst Mr Day may have described his thoughts on 27 February 2012 as 'very emotional', there is only one reasonable conclusion I can draw from the evidence, which is that Mr Day deliberately stripped the switchboard with the specific purpose of concealing, interfering, or perhaps more properly, deliberately removing evidence of what electrical componentry was then on that circuit[53]. The only logical conclusion for this is that he then well knew that there was no RCD on that circuit. What is particularly telling against Mr Day in this matter is that even though he did not regularly use a lock and tag method, his approach to isolating power was to remove the electrical tails of an item and then place an isolator over the end of the wire, thereby rendering the circuit safe. This was a method open to him which would have preserved the make-up, or layout, of the electrical componentry. Tellingly he did not even follow his own 'usual' practise.

e. Was there a second person with Mr Day when he made the telephone call to Mr Kershaw?

[63]. The particular telephone conversation was said to occur on the Tuesday afternoon or evening after the incident occurred on Monday, 27 February 2012. Mr Kershaw, likely at the instigation of his wife, began recording the telephone conversation with Mr Day shortly after it commenced. There is nothing sinister in Mr Kershaw recording this conversation, rather it was merely recorded opportunistically very likely due to the seriousness of the incident that had occurred. Two voices which are clear on the recording, and identified at the inquest, were that of Mr Jason Kershaw and Mr Nathan Day. In evidence regarding this telephone conversation it was very interesting to observe Mr Day's demeanour when cross-examined about the telephone conversation. Firstly he was very surprised, to the extent of being shocked, that any recording of this conversation existed. Interestingly, notwithstanding that he would have had many telephone conversations about the incident, he could actually remember when this particular conversation took place, including the day, time, and even where he was at that particular moment of the day. This is somewhat

[53] and in making this finding it should be clearly understood that no inference of civil liability or criminal responsibility should be inferred, rather it is a required coronial findings necessary for me to make

extraordinary unless of course the telephone conversation had a little more importance than all the other numerous telephone conversations he had about the incident.

[64]. The telephone conversation[54], at this point in my findings, has significance as to whether there was a second person physically present, or with whom Mr Day was consulting with, during the telephone conversation. Listening to the telephone recording is significant as it includes pauses, and inflections of voice, which are not apparent when simply reading the transcript. The critical moment in that telephone conversation is when Mr Day refers to a person by the name of 'Gary'. Throughout the inquest there was only one person mentioned with the name of Gary, being Mr Labuschewski of Daytona Trading. In evidence Mr Day confirmed that this was the person to whom he was referring, and this is entirely logical in the context of the conversation.

[65]. The critical issue for me is determining if Mr Labuschewski was either present with Mr Day, or if Mr Day was consulting him during the telephone conversation. In considering all of the evidence, listening to the evidence of the tape recording, and particularly from observing Mr Day's demeanour in the witness box when answering questions on this issue I find that Mr Labuschewski was certainly consulted by Mr Day during this telephone conversation, but whether he was physically present in the vehicle next to Mr Day as he spoke, or in some way the telephone conversation was being relayed to him, I am unable to determine. This is a matter which will require others to investigate further for any provable ramifications which may flow from that, but certainly I hold grave concerns as to whether Mr Day has been open with the court in his evidence regarding that telephone call.

[66]. Lastly I turn my mind to the actions of the WHSQ safety inspector, Mr Hawley who issued the notices. Whilst he issued a number of notices it is only the Electrical Safety Protection Notice no. EP 19435 which is relevant. This notice dealt with the power outlets being required to be in switchboards with isolating switches and that the construction wiring to be installed in accordance with the appropriate Australian Standard. As I said he crossed the box marked "*circumstances causing an immediate electrical risk to persons or property have arisen*"[55]. He then simply left the site knowing of this electrical danger which presented as an immediate risk.

[67]. He had the authority[56] to have the power to the site disconnected[57] immediately. Tellingly in his evidence at the inquest he did not believe he had

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[54] Exhibit A.8 is the recording

[55] I appreciate that he did not hand the notices over at the time of his inspection, rather posted and emailed them, but in his mind at the site he had formed an opinion as the non-compliant construction wiring which posed an immediate danger

[56] see Electrical Safety Act 2002, section 154, Reprint 4D which was then current as at 27 February 2012. Reprint 4E commenced 23 February 2012, but the authority to disconnect is unchanged and the relevant date is as at the date of inspection by Mr Hawley

[57] and it could be disconnected by the electrical contractor on site, Cold Spark Pty Ltd, or the licensed electrician, Mr Day, or the power supplier, Ergon Energy. All of these options are available under the Electrical Safety Act section 154

this authority[58], and then when presented with the fact that he did, he said he was not an electrician so it was something he could not do[59]. That presumption by him is wrong, and is simply not good enough. As I said earlier the very simple step was for him to contact the local electricity supplier Ergon Energy[60], who have a depot in Clermont and who could easily, one would expect, have arranged for a licensed electrician to attend at the site, turn off the isolator switch and place a lock and tag over it. If that action had been taken then Mr Garrels would never have been electrocuted[61].

[68]. What was most telling against Mr Hawley was that at the inquest he still did not understand he had the authority to do this. In his evidence he was actually quite combative about this issue. Indeed some of his answers, for instance that he did not know where the electrical box for the site was[62], which would only take moments to find, is quite telling against him.

List of Inquest Issues Answers

Coroners Act s. 45(2): 'Findings'

[69]. Dealing with the list of issues my findings are as follows.

[70]. Issue 1. My primary task is the information required by section 45(2) of the *Coroners Act 2003*, namely:

a. Who the deceased person is - Jason Jon Garrels[63],
b. How the person died – Mr Garrels died due to electrocution when he handled a construction site sub-board, or switchboard, of which the metal housing was in contact with live mains electricity,

c. When the person died – 27 February 2012[64],

d. Where the person died – 47 MacDonald Flat Road, Clermont, Queensland[65], and

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[58] See T4-16 at 34-35, although shortly after this he attempts to clarify his response, but ultimately he agrees that the installation should not to be used again, which is the construction wiring, which means power to the site be turned off

[59] in his evidence he said he had training in electrical safety from the Department back in 1999, see T4-15 at 32-34, although he said he was a carpenter by trade, and not a qualified electrician (see 4-26 at 34-34)

[60] this is presuming Mr Day would not act as directed to turn off the power

[61] And there is no reason that the power needed to remain connected such as a safety issue (operating temporary traffic lights or emergency equipment). In fact after power was disconnected following Mr Garrels death generators were brought onto the site for construction work to continue. It should be kept in mind that Mr Garrels was electrocuted from power running 'upstream' of the construction sub-board.

[62] T4-30 at 7

[63] See exhibit A1 QPS Form 1

[64] See exhibit A2 Life Extinct Form

[65] See exhibit A2 Life Extinct Form

e. what caused the person to die – electrocution[66], which caused cardiac arrest.

[71]. Issue 2(a). Whether resuscitative treatment was provided to Mr Garrels at the earliest opportunity consistent with ensuring safety on site?

[72]. The evidence before me was that immediately after Mr Garrels was electrocuted certain workmen nearby on site then attempted manual CPR. In the circumstances of Mr Garrels being electrocuted the best resuscitative efforts would have been with the use of a defibrillator. Whilst portable defibrillators are available they are not common on building sites. Whether they are viable for building sites was not an issue specifically canvassed at the inquest as it is more properly an issue best explored by regulatory bodies.

[73]. What was very evident was that access by the Queensland Ambulance Service paramedics was very severely hampered by the then worksite's ground conditions. In my view work should not have been occurring that day due to the ground conditions which were described as very muddy, even a quagmire, and even Mr Day in his evidence said that the trenches they were backfilling were 'half- filled with water', very surprising then that he would be laying electrical cables in these conditions.

[74]. Standard builders contracts do include a term to allow for work to be suspended, without penalty, due to a 'wet day', but as I have pointed out earlier there was little, to no, contractual documentation of the kind usually expected for this particular building site, and in my view there appears to have been an unusually close association[67], indeed a financial arrangement[68], between landowner and builder, and in turn the builder and the electrical contractor[69].

[75]. Issue 2(b)(i) What was the layout of the main electrical switchboard at the time Mr Garrels received an electric shock on 27 February 2012?

[76]. The layout of the main electrical switchboard was that reconstructed by the investigators, and did not include an RCD on the electrical circuit servicing third street, for the reasons I have outlined above.

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[66] See exhibit A3, Form 3 Autopsy Certificate

[67] They had a commercial relationship of landlord, SCN, and tenant, Daytona Trading, where certain 'off-setting' of rental payments would occur. SCN also had a financial interest in the successful completion of the building work as SCN received a very substantial monetary payment from the total amount payable under the building contract, as distinct from the separate land sale contract.

[68] and in this regard the builder was the only builder of duplexes on the site and SCN received a financial payment from the builder, calculated at a set amount of the total building contract, a most surprising arrangement

[69] the director of the builder, and director of the electrical contractor, had a degree of consanguinity commonly termed 'brother-in-law'. Mr Day wished to introduce a new term for this degree of relationship which he termed 'a distant brother-in-law', a term I am not familiar with as I did not realise there existed varying 'degrees' of brother-in-law

[77]. Issue 2(b)(ii) Whether the main electrical switchboard at the time Mr Garrels received an electric shock on 27 February 2012 complied with all applicable safety regulations?

[78]. Clearly the main electrical switchboard did not comply with all applicable safety regulations at 27 February 2012. As I have found there was no RCD protecting the circuit servicing the third street, and the length of the electrical wiring to third street meant that the circuit breakers on this circuit were incorrect in accordance with the Wiring Rules. There may be other non-compliant aspects[70], but these two were readily apparent on the evidence.

[79]. Issue 2(c)(i) What was the layout of the temporary construction switchboard at the time Mr Garrels received an electric shock on 27 February 2012?

[80]. It is unnecessary for me to determine the layout of the temporary construction switchboard in terms of its interior electrical components, other than to focus on the wiring at the base of the switchboard. The reason for this is that the point from which the electricity 'escaped' was at the base of the temporary construction switchboard. The components within the switchboard were downstream of this point, and so electrically irrelevant.

[81]. It is clear that the securing of the wiring into the base of the temporary construction switchboard was not in compliance with the electrical safety regulations, or standards, as there was no secured PVC fitting, affixed to the housing by a lock nut, to protect the wiring from the sharp edges of the construction switchboard. It astounds me that any experienced electrician could have forsaken such elementary electrical safety, and the regulations, for the sake of a simple PVC fitting, which would only cost a few dollars and would be readily available at any electrical component supplier.

[82]. Issue 2(c)(ii) Whether the temporary construction switchboard which came into contact with Mr Garrels at the time he received an electric shock on 27 February 2012 complied with all applicable safety regulations?

[83]. It is clear to me, on the evidence, that the temporary construction switchboard did not comply with electrical safety regulations due to the absence of the secured PVC fitting[71] required in the base of the construction switchboard.

[84]. Issue 2(d) What action (if any) was necessary, following the electric shock delivered to Mr Garrels, to make the "construction wiring" at 47 MacDonald Flat Road safe for other persons on site?

[85]. As I have found in my reasons above, all that was needed to be done was for the main isolator switch to be turned off, which occurred, and to that isolator switch to then be 'tagged and locked'. Whilst I appreciate there was identified numerous other methods which could have been undertaken, the tag and lock

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[70] for example the use of black tape instead of hard plastic 'knockout' blanks or tabs to isolate live electrical circuitry located at the rear of the switchboard from accidental contact

[71] the device was given various names throughout the inquest, including 'grommet', but it is the same item

method is the most customary, and simplest. It was a method readily available[72] to Mr Day on 27 February 2012. There was no requirement for him to then take any other step whatsoever before the arrival of inspectors.

[86]. Issue 2(e) What changes (if any) were made to the "construction wiring" at 47 MacDonald Flat Road, Clermont between the time that Mr Garrels received an electric shock on the 27th February 2012, and the arrival upon the site of officers from the Electrical Safety Office on the same date?

[87]. The changes made to the construction wiring between the time Mr Garrels was electrocuted and the arrival on site of inspectors was that the entire construction switchboard was stripped out, that is every electrical component was removed except for the Ergon meter. Mr Day admitted in evidence that he undertook this task immediately after Mr Garrels departed the building site in the ambulance en-route to the Clermont hospital. Accordingly he would have commenced this task at approximately 10:20 a.m.. Inspectors arrived on site very late that afternoon. Mr Day undertook this task before even the police were able to arrive on site.

[88]. Issue 3. Whether it is desirable in the interests of public safety that the licensing requirements for an electrical contractor's license be reviewed?

[89]. This case highlights how a licensed electrician, merely an employee under the supervision of others, is able to move from, in his own words, fixing fans, whitegoods and coldrooms, to being responsible for the wiring of 81 duplexes and providing the mains electrical supply to those 81 residences. Mr Day explained that the only additional training, education, or competency, which he undertook for the move from licensed electrician to electrical contractor, was to complete a simple Diploma course at a TAFE college. This Diploma course was really directed to accounting and business related practises, and had nothing at all to do with electrical qualifications or demonstrated electrical competencies.

[90]. I found this remarkable, and shall comment on this further in my Recommendations.

[91]. Issue 4. Whether it is desirable in the interest of public safety, where death or grievous bodily harm occurs on a worksite as a result of an electrical incident, that the licensed individual responsible for the electrical installation involved in the incident should be subject to immediate licence suspension?

[92]. The evidence established that following Mr Garrels' death the electrical supply to the building site was disconnected. Generators were then brought on site for any power required for construction activities. Mr Day then continued on site with the wiring of the 81 duplexes and providing the mains electrical supply to those duplexes. He advised that he sought assistance for this and engaged a number of apprentices, a practice I find concerning as they would have even less experience than he. He also said he consulted an electrical

[72] he stated in his evidence that he had a tag and lock in his vehicle at the worksite on that day

engineer but could not detail what that consultation was for, or what it achieved. It was clear on the evidence that no electrical engineer actually visited the site following Mr Garrels death.

[93]. As to whether Mr Day possessed the necessary competency to continue with the work can best be demonstrated by the fact that an audit was conducted of the site before the power was reconnected. That audit found serious, and potentially fatal, defects. One was that small ground level pillar boxes were located slightly below ground level which would allow the ingress of surface water. They are required to be placed on a small concrete pad to prevent this. This particular installation contains a critical electrical component in the earthing system known as a MEN[73] link. Certain of these pillar boxes were found to be constructed too low, and there was no MEN link present[74]. Also concerning was that the switchboard located at the pool, on the common property, did not have the appropriate PVC fitting with lock nut[75], to prevent wires or conduit from being cut by the sharp edges of the metal housing of the switchboard. Why this is concerning is because it is precisely the same breach of safety standard which led to Mr Garrels electrocution. To my mind Mr Day simply did not have the appropriate competency to be in charge of such a project, particularly where he repeated precisely the same safety deficiency which led to Mr Garrels death.

[94]. I comment further on this aspect below in my Recommendations.

Coroners Act s. 46: 'Coroners Comments' (Recommendations)

[95]. This incident does provide the opportunity to recommend important improvements aimed at trying to avoid the incident occurring in the first place, and safety at work places.

[96]. Counsel Assisting highlighted a number of areas where recommendations could be made. Mr Garrels, on behalf of his family, indicated quite an extensive list of areas where he would like to see reform. One recommendation Mr Garrels made was that the State Government establish an appropriate 'Victims Forum' to assist families of workers killed or seriously injured in workplace incidents. I understand this and I note that since the inquest the Queensland Government have already commenced steps in this regard. Clearly, if established, that should be attached to the relevant Minister's Department, that is the Department of Industrial Relations[76].

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[73] a MEN link is a term meaning 'Multiple Earthed Neutral'. Its function is critical to the operation of protection devices such as RCDs and acts as an earthing system in an electrical circuit.
[74] T5-50 at 21
[75] T5-46 at 14
[76] In my view this is an industrial relations issue, rather than a justice department issue, and the Office of State Coroner needs to maintain its' independence from any Victims Forum. A coroner's independent judicial role cannot be compromised by any executive issue of government.

[97]. The defects found by the Electrical Safety Office inspection before reconnection of the power do cause me great concern. It would be prudent for that department to conduct an audit of the 81 units, and the common property, to determine if any of the electrical work at the site at present fails to meet the appropriate standards and regulations. Accordingly I make this recommendation. This should occur within the next three months, and of course sooner in that period rather than later is preferable.

[98]. An issue for the inquest was whether licensing requirements for an electrical contractor's licence be reviewed. I am firmly of the opinion that Mr Day's lack of experience, and knowledge, in relation to the wiring requirements of the subdivision led to the incident occurring. I was amazed to find that a licensed electrician whose own admitted experience related to "fixing fans and domestic white goods, and coldrooms", could simply apply for an electrical contractor's license which allowed him to be the responsible electrician for the wiring of an 81 lot duplex subdivision. What has occurred in this case demonstrates a failure of this licensing system. The inquest did not have sufficient evidence before it, nor input from representative parties, to conclude how the law should change, but in my view clearly there needs to be change of the required qualifications, and most importantly demonstrated competency, to obtain an electrical contractor's license[77].

[99]. Clearly the government should examine, and review, the qualifications required to be obtained to allow persons[78] to be the holder of an electrical contractor's licence. Any such review should also examine whether demonstrated proficiencies in certain disciplines of electrical work requires specialist training units to be undertaken, and successfully completed. Perhaps electrical qualifications come with a 'tiered' approach reflecting competency in certain disciplines? Perhaps that is appropriate, perhaps not. That is an area that the government, in consultation with industry, needs to consider. Accordingly I recommend that the government review the licencing qualifications (including demonstrated competency) required for obtaining an electrical contractor's license. After review it shall be up to the government to decide what appropriate action, if any, should be taken. Clearly the situation can be improved, and no action being taken may be disappointing to some.

[100]. A further issue is whether, if it can be proven, that the individual licensed electrician responsible for a workplace incident, resulting in death or grievous bodily harm to an individual, should have their licence immediately suspended. Of course any suspension has very serious employment and financial implications for the individual, but that must be balanced with the fact that a person has suffered very serious injury or death. I can certainly see reasons for the immediate suspension of the individual's electricians' licence such as in the circumstances that occurred in Mr Garrels case in the light of the

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[77] A general practitioner doctor does not contemplate complex surgery unless they have obtained the appropriate surgical qualifications. An employed solicitor in Queensland cannot be a principal of a legal firm without undertaking, and appropriately completing, further study, in the disciplines required to be the principal of a legal firm

[78] whether that be as a director, or trustee, of the controlling entity that will hold the electrical contractor's license

serious defects and faults found later on the site. It really does perplex me as to how Mr Day could continue working on that site without the direct supervision of a senior, competent electrician, on the site, and he then repeats precisely the same error that led to Mr Garrels death. There are important issues to be considered, and be balanced, before implementation of any such reform. That would be best considered by the government with appropriate input from all interested industry parties. Accordingly I recommend that the government consider and undertake such a review.

[101]. At the inquest the evidence was that the Safety Notices, as I will collectively call them, were provided to the representative thought to be the principal contractor. The Safety Notices received were not made known to those workmen on the site[79], and the evidence of Mr Kershaw was that if he knew there were serious electrical safety concerns he would have immediately left the site until they were attended to[80]. Whilst not a great deal of the evidence at the inquest went into this issue, and accordingly I do not have sufficient information to make a formal recommendation in regard to this, clearly inspectors need to be vigilant to ensure that the principal contractor at the site ensures compliance with the current obligations regarding notification, or what might be termed 'broadcasting', or notification, of any Safety Notices received for that site.

[102]. In addition the inspector who attended the site did not think he had that legislative authority to disconnect the power immediately[81]. That is simply incorrect. Whilst I was assured by the representatives of the Department of WHSQ that this is no longer an issue as there is better education of inspectors, and the Electrical Safety Office now falls within the Department, it was concerning that the particular inspector involved at the inquest still did not understand that he had the authority to disconnect power immediately if he held concerns. It appeared to me that this was an issue of education with that particular inspector, rather than a broader understanding within the Department, and accordingly I will not make a formal recommendation that there be further education but clearly this issue needs to be correctly understood by investigators. The 2003 Briefing Paper also needs to be stated in clearer, possibly mandatory, terms to require power to be disconnected in certain circumstances.

[103]. Accordingly these three issues, ensuring that the principal contractor 'broadcasts'[82] the safety notices received, revision of the 2003 Briefing Paper, and education of the individual inspector involved, remain as observations for

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[79] except to those workmen doing tasks to attend to these items, but the serious nature of the electrical safety breaches were certainly not made known to those workmen

[80] leaving a worksite is the practical way that workmen ensure that safety issues are attended to promptly

[81] It is telling against him as to whether he had a 'discretion' to take one of two actions under the *Electrical Safety Act* s.154(2) as he clearly did not realise he had the authority to disconnect the supply of electricity. In his evidence it appears that even with hindsight, and the passage of time, he does not comprehend he has this authority in appropriate circumstances.

[82] if 'broadcast' is the appropriate term, but it is directed to ensuring that the principal contractor notifies the workmen on site, whether by 'posting up' or similar, of any Safety Notices on site

action by the Department as better practices, but I will not make a formal recommendation as such.

[104]. The Electrical Safety Protection Notice, in my view, needs to be changed. Clearly if the inspector 'reasonably believes circumstances causing an immediate electrical risk to persons or property have arisen' then they need to immediately arrange to have power to the site disconnected until the safety concerns are addressed. Whilst this may seem elementary to a competent inspector there is no harm in the form containing a prompt, immediately next to that box 'ticked' that power must be immediately disconnected and will only be reconnected when the safety issues are addressed. Cutting power to the site has the effect that the electrical safety concern will receive immediate attention. I recommend that the department review their form for this within two months.

[105]. Finally if the law[83] does not already provide that the principal contractor, and building contractor, are not obliged to notify the Queensland Building and Construction Commission of any death or serious injury on site then the law needs to be amended to impose this obligation on them. Accordingly I make this a recommendation.

Coroners Act s. 48: 'Reporting Offences or Misconduct'

[106]. The Coroners Act imposes an obligation to report offences or misconduct.

[107]. It needs to be clearly understood that any referral made is merely a referral for investigation, and determination by that agency, if any proceedings should be instigated. It is important to remember that even though a referral may be made, I make no comment whatsoever as to whether any person or entity may be guilty of an offence or civilly liable for something[84].

[108]. On the evidence presented at the inquest I make the following referrals:-

a. that Mr Nathan Day be referred to the Queensland Police Service to investigate whether there is sufficient available[85] evidence to justify a prosecution under the Criminal Code for an offence relating to the construction wiring at the site, the active stripping of the construction

[83] and the collective submission from the parties was that the law does not already provide for this, rather there is a Memorandum of Understanding between WHSQ (or OFSWQ) and the QBCC which puts an obligation on WHSQ to notify the QBCC of any such event

[84] see s.46(3) Coroners Act, and Mr Garrels needs to clearly understand that I can make no such findings, or comments, regarding any possible criminality or civil liability

[85] and certain evidence given at the inquest under compulsion may not be available in a criminal prosecution, see s.39 Coroners Act

switchboard, and the "circumstances" surrounding the recorded telephone conversation[86];

b. that Mr Nathan Day be referred to the Director of Public Prosecutions to investigate whether there is sufficient evidence to justify a prosecution for perjury[87] in the evidence that he gave at the inquest specifically relating to whether an RCD was present in the construction switchboard protecting the relevant circuit at the time Mr Garrels was electrocuted;

c. that Mr Nathan Day and Cold Spark Electrical Pty Ltd be referred to the Electrical Licensing Committee to investigate if the company has sufficient competency to remain as a licenced electrical contractor, and Mr Day to remain[88] a licensed electrician;

d. that Daytona Trading Pty Ltd, and Mr Gary Labuschewski, be referred to the Queensland Building and Construction Commission to enquire into their respective conduct at the building site both before, and after, Mr Garrels death to determine if any offences[89] occurred, and whether Mr Labuschewski[90] is a fit and proper person to hold a building contractor's licence.

e. That the Office of Fair and Safe Work Queensland investigate whether any new, or further, charge can properly be instigated against Mr Day personally arising out of the construction wiring which he solely undertook, and his actions in stripping the main construction switchboard. Of course the prior charge against Mr Day for which no evidence was offered, and the charge dismissed, cannot be re-commenced, and the OFSWQ will need to liaise with the Queensland Police Service to ensure there is no duplicity in any offence or charges to be pursued.

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[86] that being between Mr Nathan Day and Mr Jason Kershaw, exhibit A-8, as the circumstances may amount to attempting to pervert the course of justice, or obstructing a coroner or other person performing a function under the Coroners Act

[87] and all evidence given at the inquest, whether under compulsion or not, is available for such a criminal charge, see s.39 (3) Coroners Act

[88] See exhibit G-1 and as at 4 June 2013 Mr Day's electrical contracting licence (licence No. 73390) was merely suspended for 24 months (as from a certain date), but I note that if he satisfied certain conditions Mr Day's electrical contractor's license would be reinstated, but perhaps properly that should be a reference to Cold Spark Pty Ltd as it held the electrical contractor's license, and Mr Day held an electrician's license. The committee may also wish to review Mr Day's suitability following his evidence given to the inquest and these findings

[89] and specifically to consider whether there is sufficient evidence to prosecute in respect of failing to supervise building work

[90] It is noted that Daytona Trading Pty Ltd has not renewed its' building licence with the QBCC, accordingly it holds no current licence to be acted on, but it was established in evidence that a new building licence was established in the name of *Hapax Legomenon Pty Ltd* (which curiously is a transliteration of Greek terminology meaning something said only once in a context, usually in the works of an author, or the written records of an entire language, not that it is suggested that this meaning is of great significance, but the name was 'thought up by' Mr Labushewski's son and daughter (see T3-5 at 8) and so not randomly chosen). The representative of the QBCC advised the inquest that they had the authority to take collective action against any building licences in the name of, or associated with, the individual person as builder involved.

f. That the Office of Fair and Safework Queensland intra-departmentally[91], investigate the actions, and any possible inactions, by Mr Douglas Gilbert Hawley to determine if he took all appropriate steps in the circumstances then known, or available to be known, in the conduct of his duties in February 2012 in respect of Mr Garrels' death.

[109]. In relation to SCN Pty Ltd as trustee[92] I simply note that before me there was not presented sufficient evidence to determine if any referral was warranted in relation to that entity. Of course that does not prevent any regulatory authority continuing, if not statute barred, with any investigation that is justified.

[110]. Accordingly I shall notify those relevant authorities of the referrals that I make for them to take any appropriate action.

[111]. I now close the inquest.

Magistrate O'Connell
Central Coroner
Mackay
11 August 2015

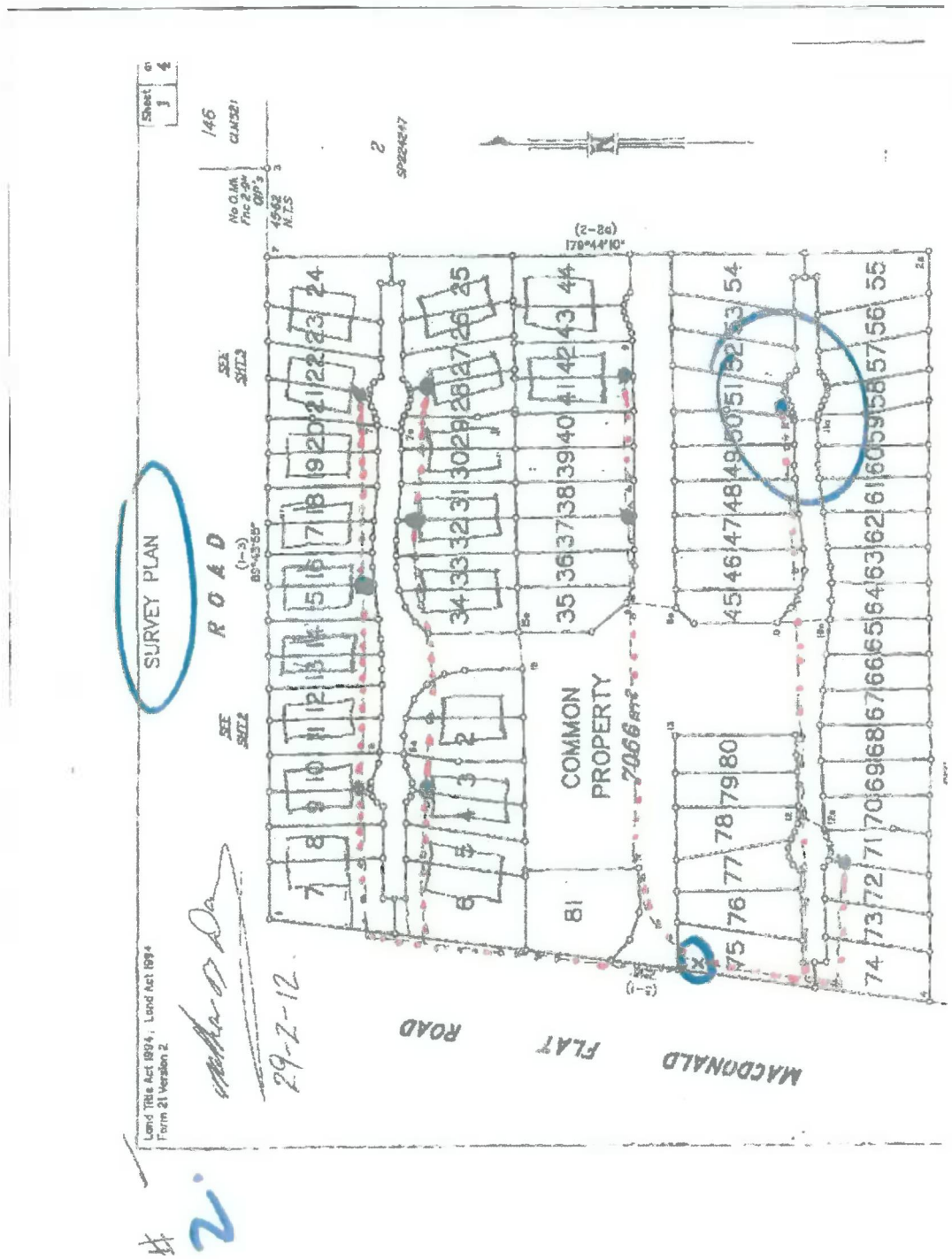
Appendix 1

Survey Plan

[91] The Department determines, approves, and appoints, persons to be as an Inspector, so they are the appropriate 'body' to refer him to to review his actions/inactions. I do not consider his actions (or inactions) to be referrable to the Queensland Police Service or the Crime & Corruption Commission as his conduct does not appear to be 'official misconduct'

[92] the land owner at the relevant time

[is reproduced on the following page]



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