

**FORM 37**

Rule 60(1)

**FINDING INTO DEATH WITH INQUEST**

*Section 67 of the Coroners Act 2008*

**(Amended pursuant to s76 of the Coroners Act 2008  
on the 5th August 2010 at 3.30pm)**

**Court reference:** 1880/08

**Inquest into the Death of JENIFER ELLIOTT**

Delivered On: 5th August, 2010

Delivered At: Melbourne Magistrates Court, Melbourne

Hearing Dates: 1st June, 2009 to 19th June, 2009 (13 sitting days)

Findings of: PETER WHITE

Representation: Mr B. McTaggart (Anthony Elliott)  
Ms M. A. Hartley (Aussie Boat Sales)  
Mr A. Hill (Marija Groen)  
Ms J. Noy (Jan Grant)  
Mr P. Booth (Boating Ind. Assoc. of Aust),  
Mr J Crosby (Scott O'Hare)  
Mr B. Penno (Paul Collins)  
Ms M. Stylianou (Marine Safety Vic)

Place of death: Pier 35, South Wharf, Victoria 3008

PCSU: Mr David Dimsey, Acting/Senior Sergeant

**FORM 37**

Rule 60(1)

**FINDING INTO DEATH WITH INQUEST**

*Section 67 of the Coroners Act 2008*

**Court reference:** 1880/08

In the Coroners Court of Victoria at Melbourne

I, PETER WHITE, Coroner

having investigated the death of:

**Details of deceased:**

Surname: ELLIOTT  
First name: JENIFER  
Address: Napier Street, South Melbourne 3205

AND having held an inquest in relation to this death between 1st June, 2009 and 19th June, 2009 at Melbourne Magistrates Court, Melbourne find that the identity of the deceased was JENIFER ELLIOTT and death occurred on 3rd May, 2008

at Pier 35, South Wharf, Victoria 3008

from

1a. INJURIES SUSTAINED IN AN EXPLOSION

in the following circumstances:

**Background**

On this same day, that is Saturday the 3rd of May 2008, Mr Antony Elliott completed the purchase of the Leda II, from Aussie Boat Sales Pty Ltd, (ABS) at the Anchorage Marina in Williamstown, a deposit having been lodged 7 days previously.

Much evidence has been given about the circumstances in which this sale took place and the participation of certain employees and persons otherwise associated with ABS in both the sale and in the carrying out of certain maintenance on the Leda II, during the weeks prior to the accident and before. The evidence establishes to my satisfaction that these matters are directly relevant to the circumstances in which these two deaths occurred and accordingly, I now set out the most relevant sections of that evidence.<sup>1</sup>

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<sup>1</sup> See Section 67(1) Coroners Act 2008.

## The sale and preparation of the vessel prior to completion of the sale

### Janette Grant

Mrs Janette Grant testified that she purchased the vessel, in about 1998 for the sum of \$27,000. The boat was a Halvorsen, built in 1946 by the well known Sydney boat-building designers and boat building family, and was 38 foot long with twin Chevrolet V8 inboard petrol fuelled engines. Her further understanding was that at one time it had been previously owned by the Royal Australian Navy and had been used in air and sea rescue missions.<sup>2</sup>

Mrs Grant further testified that she arranged for a mechanic, Artur Enders, to service the vessel before she took possession, that he installed a battery powered bilge blower and fume detector and that these both worked effectively during her ownership. Her further testimony was that during the period she owned the vessel she had arranged for regular maintenance to be carried out, which included dry-docking and this work was completed under the direction of Mr Enders or a Mr Roger Penfold of Penfold Marine.<sup>3</sup> Mrs Grant also stated that she allowed both to do whatever they recommended, and that she did not feel constrained by financial considerations to limit the implementation of those recommendations.<sup>4</sup>

Both Mr Enders and Mr Penfold, who were witnesses to questions of fact, supported her testimony.

It is also relevant that during all but in 2007, the last year of her ownership, yearly maintenance and servicing was undertaken to the engine, but to the best of her knowledge, with no particular regard to the carburettors. Her further evidence was that the toggle switches for the bilge blower were located and clearly marked on the dashboard<sup>5</sup> and that a 9kg LPG gas cylinder was kept on board for cooking purposes and was stored in a forward locker.

Mrs Grant stated that she would usually have the bilge blowers on for 5-10 minutes before starting her vessel and for longer if starting following a refuelling. Her additional testimony was that the fuel gauges did not work and that she was used to testing the fuel levels by use of a dipstick, which she kept in the rear part of the boat. She also testified that she had never had any difficulty opening the fuel cap fillers on either tank and that no one had approached her from ABS or elsewhere, to discuss the performance characteristics of her vessel.<sup>6</sup>

<sup>2</sup> See Janette Grant statement, Exhibit 4.

<sup>3</sup> See discussion at transcript page 67, concerning the operation of the fume detector, which according to Mrs Grant, ran off the battery and was always left on.

<sup>4</sup> See transcript at page 72.

<sup>5</sup> See photograph at Exhibit 4a, and evidence at transcript page 66-70.

<sup>6</sup> See transcript at page 68.

She also stated that she had moored her vessel at the Royal Victorian Motor Yacht Club (RVMYC), but that there came a time when she personally found it difficult to access the boat, this following two knee reconstructions. Thereafter, she had not used the boat and that as her insurer, Club Marine Ltd, required an annual survey for re-insurance purposes, the vessel's insurance had lapsed during this period.<sup>7</sup>

It was in these circumstances that sometime in late 2007, she made contact with Aussie Boat Sales with a view to selling her boat, a decision made by her following a recommendation received from a person only known to her as 'Jaimilla' of the RVMYC.

To this end, she first spoke on the phone with ABS director, Scott O'Hare, who referred her on to employee, Mr Phil Grundy.

In (hearsay) evidence she additionally stated that, by arrangement, her son-in-law, Dominic Fletcher, met and spoke with Phil Grundy at ABS and handed him the keys after showing him over the boat. Whilst on board, Mr Grundy carried out an inspection of the vessel and later recommended to Mrs Grant a sale price of \$39,000, which recommendation she accepted. This price was before commission, which was said by Mr Grundy to be around \$2000.

According to Janette Grant she was also told by her son-in-law that, following his inspection, Mr Grundy said that the boat was a,

*'gem'*,

and that Halvorsen cruisers were,

*'classics'*,

and that he would have no trouble selling the boat.<sup>8</sup>

Her further evidence was that she was not quoted a sum of 8.8% commission and GST, which (alternative) arrangement was put to her by Counsel representing ABS.<sup>9</sup>

In further testimony, Mrs Grant stated that she had a number of phone conversations with both Mr O'Hare and Mr Grundy in late 2007 and early 2008. She additionally stated that she had informed Mr Grundy that her vessel had not been used for some time and that he undertook to

<sup>7</sup> At transcript page 80, Mrs Grant stated that she last used her vessel after Mr Penfold did his last work on it, which occurred in late 2006. I accept this estimate as a more reliable indicator of when she last used her boat, than her comment at transcript page 68, that she last used it in 2004.

<sup>8</sup> See Janette Grant statement, exhibit 4 at page 4.

<sup>9</sup> See transcript at page 74.

inform prospective purchasers of this matter and arrange for any work needed to be done. Discussions with Mr Grundy and Mr O'Hare were ongoing during late 2007 and early 2008 and, during this period, Mrs Grant agreed to reduce the price to \$29,000.<sup>10</sup>

*'Initially they suggested that they would have to get the motor going and I authorised them to do that and they said that they had done some work and that the cost of that work was about \$600 and that they would send me an account and I never received an account'*

and

*'Q. .... There was no understanding on your part that ABS would refurbish the boat?*

*A. .... No it was to be sold as is'.<sup>11</sup>*

It was not clear to Mrs Grant whether the vessel engines had been successfully started at this time, as in early March 2008, a call from Mr Grundy advised that the engines had been started while a call from Mr O'Hare advised her that they had not.<sup>12</sup>

Mrs Grant further stated that on a date which she believes was approximately two weeks before the accident, the 3rd of May, 2008, she received a call from Mr Grundy advising that the boat had been sold for \$18,000 to her, 'walk in walk out', and that she advised him to accept. Mr Grundy told her that ABS would do work for the new owners.

According to Mrs Grant, Mr Grundy further advised that he would 'get the paper work to me', which, it is common ground, did not in fact occur.

When later questioned about the date upon which Mr Grundy called to inform her of the sale, Mrs Grant stated that she was unable to say whether this call took place two weeks before, or at a point closer to the date of the accident.<sup>13</sup>

Counsel for ABS further suggested that following the receipt of what Counsel suggested was Mr Elliott's later bid of \$28,000, Mr O'Hare had tried unsuccessfully to communicate that improved offer to her. Mrs Grant, by inference, rejected the suggestion that Mr O'Hare had made any such attempt.

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<sup>10</sup> See Exhibit 4 at page 4.

<sup>11</sup> See transcript page 75

<sup>12</sup> See transcript page 76.

<sup>13</sup> See transcript at page 78.

*"Well may I suggest that I have a mobile telephone number which has a message bank on it, I have a home telephone number which has a message bank on it and I have a business number and there is somebody there seven days a week. I know nothing of the second offer.*

*Q. Did Mr Grundy and Mr O'Hare have those numbers? Yes, as far as I know they did, they certainly had my mobile number and Mr O'Hare had my business number as he contacted me on that on the day after the accident."*

and finally,

*"I was working here in Victoria at that time."<sup>14</sup>*

Mrs Grant also testified that at the time of the sale the vessel was not registered with VicRoads as she had allowed the registration to lapse and, as previously stated, the vessel was uninsured. Mr O'Hare did not dispute these matters.

#### Antony Elliott<sup>15</sup>

Antony Elliott and more specifically his partner, Marija Groen, had a long-standing interest and history of participation in leisure boating.<sup>16</sup>

Mr Elliott had been keen to purchase a Halvorson motor cruiser and had a previous, though limited, experience of cruising on Sydney Harbour in such a vessel.<sup>17</sup>

In March 2008, they travelled together to Sydney to view a Halvorsen Express Fly Bridge cruiser built in 1962, which had been offered for sale for the sum of \$80,000, on reduction from an initial price of \$100,000.<sup>18</sup> They were both happy with what they found and Mr Elliott started collecting information on the boat with a view to offering to purchase it for the sum of \$60,000.

On the afternoon of Sunday the 20th of April, (while the abovementioned plan was being developed), Mr Elliott and Ms Groen happened by chance across the Halvorsen built, Leda II,

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<sup>14</sup> See transcript at page 79

<sup>15</sup> I note that Antony Elliott has a background in accounting and business and holds a senior position in one of the countries largest transport companies. It is also the case that he is the only child of Jenifer and Alexander Elliott and that there was an extremely close relationship between himself and his parents. He was not licensed to operate (leisure) motor vessels, although Marija Groen was so licensed.

<sup>16</sup> See statement of Mr Elliott at Exhibit 9.

<sup>17</sup> Halvorsen boats were initially designed and built at Bobbin Head in Sydney. The brand has achieved an iconic standing amongst the leisure boat cruising community, throughout Australia. See the book *The Halvorsen Story* by Randi Svenson.

<sup>18</sup> See Exhibit 9 at page 2.

docked at the Anchorage Marina in Port Melbourne. This, after returning to the Marina following an enjoyable day's sailing on Ms Groen's part-owned yacht, the 'Storm Bird'.

Mr Elliott was immediately excited.

*"It was beautiful ... it caught my eye, I thought that it looked good. It was big, and had real classic lines to it. We ogled it for a while and then walked off. I thought it was too big but wouldn't this be nice."*

They then entered the Marina office where Ms Groen's attention was drawn to an advertisement.<sup>19</sup>

*"It was advertised at \$29,999 .... I couldn't believe that such a nice boat would be so cheap. I went back to have a look at it and realised it was the advertised boat. We went back to the office all excited and spoke to one of the guys in the marina office. He said we could go down and jump on."*

Later the sales representative, Phillip Grundy, joined them and told them that the owner had died some time ago and his widow did not want the boat.<sup>20</sup>

They were then taken back to the Marina office and given a brochure, which included several photographs.<sup>21</sup>

They spoke with Mr O'Hare about the engines who told them he,

*"thought the engines were in OK condition but the boat was being sold as is where is."*<sup>22</sup>

Both Mr Elliott and Ms Groen were keen and later arranged with Mr O'Hare to take the vessel out for a trial, the following Saturday April 26th at 10.00am.

On that day a family friend, John Gordon described by Mr Elliott as an 'experienced yachty', accompanied the couple to trial the Leda II.

Scott O'Hare met them and explained that the boat was an old Navy boat, which matter evidently impressed Mr Elliott. According to Mr Elliott, Mr O'Hare also told him that the firm's mechanics had inspected the engines and they seemed fine. He said however that while the boat was running

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<sup>19</sup> See Exhibit 9e.

<sup>20</sup> See Exhibit 9 at page 2. It is not in dispute that there was no basis in fact for the suggestion put by Mr Grundy, as to the vendor's reason for offering the vessel for sale.

<sup>21</sup> See Exhibit 9 at page 3 and Exhibit 9e.

<sup>22</sup> See Transcript at page 181.

it was running roughly and that the carburettor's needed re-tuning and clean fuel, as the fuel tanks were empty.<sup>23</sup>

They then went out on the vessel for about 5 minutes with the boat,

*"(running) badly, white smoke out the back, noisy as hell,.. Marija's face just collapsed...."*

Further, as they were coming in, the engines cut out. According to Mr Elliott, Mr O'Hare stated that this occurred because they had probably run out of petrol.

Mr O'Hare then left them on board to discuss the vessel, following which the group looked around and undertook a severely limited inspection.

Later, he rejoined them at the boat and Mr Elliott announced, in what must have appeared as a somewhat unexpected statement of intent, that

*"I was just going to buy it ."<sup>24</sup>*

Following a brisk negotiation, a price of \$28,000 was agreed. Thereafter, the rest of his party left and Mr Elliott remained at the office while a Contract of Sale was prepared.

A member of Mr O'Hare's staff, 'Ella', performed this exercise.

Evidently having some remaining reservations, however, Mr Elliott indicated to Ella that he required that the contract be written with a special condition that the sale be,

*"subject to survey."*

Soon after, Scott O'Hare returned to the office and took issue with this condition and, according to Mr Elliott, argued that it was not worth undertaking this expense on a vessel of this (little) value, which view Mr Elliott later accepted.

Mr O'Hare and Mr Elliott then spoke about what work needed to be done. It is relevant in this regard, that Mr Elliott and his partner were preparing for an overseas trip and were contemplating the possibility of a major upgrade to the mechanics of the vessel, which they proposed would take place in their absence.<sup>25</sup>

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<sup>23</sup> See Exhibit 9 page 3.

<sup>24</sup> See Exhibit 9 page 4.

<sup>25</sup> See Exhibit 9 page 5 and transcript from page 181, knowledge of which plan was referred to by Mr O'Hare in his evidence. I further note here that according to Mr O'Hare this work could not, in his view, include a possible cleaning or replacement of tanks because of the difficulty involved in such work. See transcript at page 383 and later



According to Mr Elliott, Mr O'Hare told him that the carburettors needed servicing and that there,

*"maybe dirt contamination in the fuel tanks as the fuel had been there for a while."*

A \$1000 deposit was paid and it was arranged that work would be undertaken,

*"to get the boat working well and running so we could see what else we needed done,"<sup>26</sup>*

Mr O'Hare said there was someone whom he could get to carry out this work, and Mr Elliott accepted this proposal.<sup>27</sup>

It was arranged that Mr Elliott would attend at the Marina at 11.00 am the following Saturday, May the 3rd, 2008 to take possession and pay the balance of the purchase price.

It is common ground that they also spoke about insurance at this time. Mr O'Hare told him that ABS had a relationship with a marine insurer, Nautilus, and that they could arrange it.

Mr Elliott also testified on the 26th, that there had been a considerable amount of talk from Mr O'Hare about both he and Ms Groen, undertaking lessons or training to improve their skills vis a vis cruising on the Leda II, this instruction to be arranged by ABS. The fact that these discussions took place was also not disputed.

Later in the week, Mr Elliott called ABS to see how the transfer arrangements were progressing and whether the work could be done at his expense, before he took possession. He stated that Mr O'Hare informed that the carburettors had in fact already been cleaned and serviced and that they had put some fuel into the tanks and that it was running

*"like a new boat."*

Mr Elliott expressed surprise that this work had been done before he had completed the purchase, (or agreed to pay for the maintenance), but was told that it was,

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at 597.

<sup>26</sup> See transcript 182. Mr Elliott further stated that Mr O'Hare told him that they needed to service the carburettors and to get some clean fuel in and that with clean fuel it would run better. Mr Elliott also stated that they spoke further of the condition of the petrol tanks and that he was told by Mr O'Hare that the most effective way to clean them was to take them out ... 'We agreed to do it if necessary'. See Exhibit 9 at page 5.

<sup>27</sup> According to Mr Elliott there was no pressure, (as far as he was concerned), to have this work done prior to his taking possession the following Saturday. In other words, his payment of the balance of the purchase price and his taking possession was not dependant on the successful completion of the engine maintenance to runabout stage.

*"his boat."*<sup>28</sup>

As a result of this advice it appears that further arrangements were then made by Mr Elliott and Ms Groen, to take his parents out on the following Saturday, to see and experience first hand, their new boat.<sup>29</sup>

Mr Elliott and Ms Groen arrived at the Anchorage Marina at around 11.15 am on the Saturday and walked down to the Leda II, and boarded. They noticed that the carpet had been pulled back and that the starboard engine hatch had been removed, indicating to Mr Elliott that work had been undertaken recently. They then attended on Scott O'Hare who had waited for them in his office.

According to Mr Elliott, they were informed that work on the carburettors had been completed and that the mechanics had had a look at the tanks ...,

*"and that the tanks were actually clean and that they didn't need to be cleaned or taken out and cleaned, which had been discussed the previous Saturday."*<sup>30</sup>

I further note here that it was not disputed that Mr Elliott again spoke to Mr O'Hare about insurance, before taking possession.

According to Mr Elliott, Mr O'Hare stated that,

*"we are talking to the insurer to try to avoid slipping it but you don't have to worry you can take it out today."*<sup>31</sup>

Mr Elliott additionally stated that Ms Groen, in particular, was adamant that an insurance cover be arranged, before a change of ownership and that it was she who primarily pursued that matter with Mr O'Hare.<sup>32</sup>

According to counsel for ABS, Mr O'Hare informed Mr Elliott that he was still working through the insurance matter:

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<sup>28</sup> See Exhibit 9 page 6.

<sup>29</sup> See transcript page 217-219.

<sup>30</sup> See Exhibit 9 at page 7. See also discussion at transcript page 184 and his statement at Exhibit 9 page 4, where Mr Elliott further testified that he was not able to recall whether this assertion from Mr Elliott was made on the Saturday or whether Mr O'Hare made it in a phone conversation earlier that week. See also transcript at pages 202-3 where Mr Elliott denied the suggestion put by Counsel for ABS that Mr Elliott spoke about stale fuel, *rather than, dirty fuel and the state of the tanks.*

<sup>31</sup> See Exhibit 9 at page 7 and at transcript pages 204 - 208, where Mr Elliott under questioning by Counsel for ABS, maintained that he believed he had insurance cover through Mr O'Hare and that he understood that Mr O'Hare was intending to seek to have the survey requirement for insurance cover, either waived or delayed. (Mr O'Hare was unable to recall any further discuss on the Saturday prior to the handover).

<sup>32</sup> See Transcript page 208. See also the evidence on this matter of Ms Groen at pages 794 -797.

Mr Elliott agreed and further stated his understanding was that Scott was telling him that the insurance was 'covered' and that he had heard Mr O'Hare respond to Ms Groen, that he was still talking to the insurer about the need for a survey but,

*"that we shouldn't worry about it."*<sup>33</sup>

It was also not disputed that Mr Elliott was neither asked about, nor volunteered, that he was not the holder of a leisure boat license.

Mr Elliott further maintained that it was in these circumstances that he paid the balance owing, and took possession.

Ms Groen then obtained some further flotation devices and went down to the Leda II, where they were joined by her sister and brother-in-law and their family. They all spent some time having a look and, during this period, Mr Elliott states that he brought to the attention of Mr Cullinane the V8 engines and that it was at this time Mr Cullinane observed a leak from one of the carburettors, which he then tightened.<sup>34</sup>

Thereafter, conscious that they had arranged to meet his parents at Pier 35 in South Wharf, Mr Elliott and Ms Groen set off in their newly acquired Halvorsen motor cruiser with the Cullinane family, first having lunch and then travelling to the same destination, separately in their own boat.<sup>35</sup>

#### Mr Michael Cullinane<sup>36</sup>

Mr Cullinane testified that on the morning of Saturday May 3rd he went with his wife and family to Pier 35 where he kept his own motor cruiser and then headed off to Anchorage Marina, to meet Antony Elliott and his sister-in-law, on board the Leda II.

Antony showed him over his new boat which inspection included the engines. Antony told him that work had recently been carried out on the carburettors. According to Mr Cullinane, it was at this time that he first noticed a fuel drip coming from the starboard carburettor.

<sup>33</sup> See Transcript at page 224 and later at 273 and discussion of The Nautilus Insurance email dated 29/4, (Exhibit 9c), which set out the companies documentary requirements made of ABS, before insurance cover would be provided.

<sup>34</sup> See Exhibit 9 page 9.

<sup>35</sup> See Exhibit 9 from page 9 as to the process followed by Mr Elliott.

<sup>36</sup> Michael Cullinane is married to Ruth Groen, and is the brother-in-law of Marija Groen. He is an engineer manager with British Petroleum Aust, with 'particular expertise in retail fuel systems design and construction.' See Exhibit 15 page 3.

*"This fuel was settling on the valley cover of the engine. It was a regular drip but wasn't rushing out. I think I noticed 7-8 drips falling in a regular manner. I mentioned this to Antony and he went and got some tools. On Antony's return, I grabbed a spanner and tightened one of the nuts on this carburettor, which stopped the leak. I am pretty sure this nut was on the port side and at the rear of the carburettor. It would have been about 8-10 millimetres in width".<sup>37</sup>*

Thereafter, he removed his family to his own boat and Antony and Marija set off on the Leda II, in the direction of Williamstown.

Before he was able to set off, Mr Cullinane observed that Antony had some trouble getting the starboard engine to start. Prior to departure, he went downstairs and took action, which resulted in the restoration of power. Thereafter, he started the starboard engine without difficulty and after a couple of failed attempts at starting the port engine, Mr Cullinane observed him pulling out the choke cable on the port side after which that engine also started.

*"The port engine wasn't idling properly so Antony had to rev it to keep it going. Whenever he brought the revs back to idle, it caused the engine to cut out. This occurred a few times...*

*When he took off, I noticed the boat was moving erratically which may have been caused by the differing engine speeds. I remember remarking to Ruth, "God he is all over the shop"... they took off and we stayed at the anchorage and had lunch on our boat ..."*

and

*"When I was untying Antony's boat I rang my mate Phillip and left a message on his voicemail saying, 'Listen to these engines they are the loudest things I have ever heard....'"<sup>38</sup>*

I note here that, despite an extensive cross-examination in which it was suggested that he could not have observed escaping fuel in the manner he described and that he had concocted this story in collaboration with Mr Elliott, Mr Cullinane maintained his version of events of his observations at the Marina as set out above.

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<sup>37</sup> Ibid page 3 and 4.

<sup>38</sup> Ibid pages 4 -5.

Mr Graham Dobson<sup>39</sup>

He testified that on Saturday the 20th of April 2008 he was at Anchorage Marina inspecting a Halvorsen, 24' with a view to purchase, when he was taken by Mr Grundy and shown over the Leda II. He had told Mr Grundy that he was looking for something at a price of around \$18,000 and was immediately suspicious when he was shown a Halvorsen of this size.<sup>40</sup>

He was told by Mr Grundy during what he estimated to be a 40 minute inspection of Leda II, that ABS had started the starboard engine but not the port engine. Mr Grundy was also said to have suggested that,

*"it would be a lovely boat if you put diesels in it",*

but Mr Dobson responded that it might cost \$30,000 per engine, which was well beyond his means.<sup>41</sup>

During his inspection, part of which occurred in the absence of Mr Grundy, he noticed that the spark arrestor had been removed from the port engine and placed on the engine block.

Apart from the engines, and his observation of salt build up, Mr Dobson concluded that the general condition of the fuel lines, wiring and bilge blowers was such that he suspected they would all need replacing.

Mr Dobson further observed that the fuel line had been disconnected from the port engine and that the fuel system looked dirty.<sup>42</sup>

Of the fuel lines the one which most concerned him was the neoprene or rubber line,

*"of some sort,"*

that came over the top of the engine block and into the carburettor, which he considered looked worn. He also noted that the one on the port carburettor had been removed. He further offered that this may have occurred to allow for the use of another source of fuel into the port carburettor, or to check to see if the fuel pump into that carburettor was working.<sup>43</sup>

<sup>39</sup> Mr Dobson aged 55, testified that he had owned boats since 1975 and is currently the owner of a yacht and a 24' Halvorsen Sea Skiff, both purchased through Mr Grundy. He is a qualified tradesman in the electronics field with a lengthy experience in management and training.

<sup>40</sup> Mr Dobson was interested in the Leda II principally because of its size, which when compared to a smaller vessel, might generally be expected to allow for better handling and greater comfort at sea.

<sup>41</sup> Transcript page 724.

<sup>42</sup> Transcript page 711.

<sup>43</sup> Transcript page 712-714, and photo 30 of Book B.

Mr Dobson then testified about his belief that the bilge blower (which he could not operate in the absence of power) was not well positioned. He formed the view that the blower had a low capacity and given the size of the bilge, with only one bulkhead, it would need to be used for 10 minutes or so to clear the bilge of petrol vapour, before the engines could be started.<sup>44</sup>

He was also concerned about the age of fuel tanks and implications that its age had for the build up of dirt within.<sup>45</sup> He further testified that he believed the tanks were in poor condition because of the build up of contaminants indicated from his observations of the fuel system generally.

He also testified that from his observation of photographs in Ex 13c, he would expect that a visual examination of the tanks would have been possible, by the use of the inspection ports.<sup>46</sup>

Mr Dobson was also concerned about the state of the decking, which he believed might indicate that there had been some water egress.<sup>47</sup>

For these reasons, Mr Dobson quickly formed the view that he was not interested in the Leda II.

I note here that on the following Wednesday he went on to purchase, through Mr Grundy, a 24' Halvorsen, at a price of \$22,000.

#### Mr Paul Collins<sup>48</sup>

Paul Collins stated that, about two weeks prior to the making of his statement which took place at Williamstown police station on the day of the accident the 3rd of May 2008, he was asked to have a look at the engine of the Leda II and to start the engines.<sup>49</sup>

He stated that he was able to do so without difficulty.

Mr Collins further stated that the,

*"motor started fine, though they weren't idling properly, it was running rough." 50*

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<sup>44</sup> Transcript page 719-720.

<sup>45</sup> Transcript page 717.

<sup>46</sup> Transcript page 760-61.

<sup>47</sup> Transcript page 756.

<sup>48</sup> Paul Collins describes himself as a Marine Mechanic. His experience in the industry is set out at transcript page 420-421. He is self employed by his business PWC Marine. Marine Anchorage provided him with business premises and over the past two years most of his work (90-95%) was carried out under the direction of ABS. See transcript 431-432.

<sup>49</sup> I note that this timing coincides with Mr Elliott's first indication of interest.

<sup>50</sup> See statement Exhibit 12, at page 1.

Thereafter, he testified that he reported the matter to Scott O'Hare, telling him that the carburettors needed fixing. Approximately one week later Mr O'Hare instructed him to arrange for same and that as a result he and his apprentice Chris removed the two carburettor's from the Leda II on Tuesday or Wednesday, the 29th or 30th of April, and took them to Jeff (Vanprooyen) at Allcarb, in Hoppers Crossing.

According to Mr Collins, he collected them on Thursday the 1st of May and reconnected them on Friday May 2nd at approximately 10.00 am. At this time, he also replaced the spark arrestors. The spark arrestors in question were in fact the old ones, which were refitted,

*"and they were in good condition"*<sup>51</sup>

Mr Collins further stated that thereafter the engines both started right away and that he checked for fuel leaks and around the fuel line (with the assistance of a torch) and found none, with no smell of petrol or any flammable gas,

*"which was out of the ordinary when I was working on the boat and when it was running."*

His further evidence (again provided on the day of the accident) was that he believed there was no further work to be done on the motors of the vessel, which was in pretty good condition, and that at no stage did he inspect or have anything to do with the boat's batteries.<sup>52</sup>

It was also his evidence that when refitting the carburettors there was no need for him to use the blowers as he had the hatches off for ventilation.

In testimony, Mr Collins was also examined about his conversation with Mr Vanprooyen and stated that he could remember discussing the fuel, but could not,

*"remember discussing the fuel lines and fuel tanks."*<sup>53</sup>

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<sup>51</sup> Exhibit 12 at page 2.

<sup>52</sup> Ibid at page 3. I note here that in a further statement prepared following his sighting of other statements and reports prepared during the course of this investigation, Mr Collins specifically denied the possibility that there were any carburettor leaks, (as suggested in the evidence of Mr Cullinane and Mr Elliott). It is also the case that he denied the allegations made by Mr Vanprooyen, concerning their alleged conversation about the condition of the fuel lines and petrol tanks.

I also note that he makes further suggestions concerning the possibility that following refilling at Williamstown, fuel may have then escaped from rivet holes (subsequently) observed in the starboard tank. See Exhibit 12a and discussion below from page 28 (The investigation).

<sup>53</sup> Transcript page 425. See also his later evidence on this matter at Transcript 443.

Mr Collins then went on to testify about the fuel bowl in each of the carburettors and speaking to Mr Vanprooyen about the fact that fresh fuel had been put into the boat and that fuel in the fuel bowls was

*"actually quite clear."*<sup>54</sup>

I note here, however, that in later evidence he agreed there was in fact no clear fuel bowl from which such observations could have been made.<sup>55</sup>

Mr Collins' further testimony was that Mr Cullinane's statement appeared to relate to a manifold nut rather than part of the carburettor, that the nut would have been 13ml rather than 10ml and that tightening this nut would not stop a fuel leak.

Mr Collins further stated that there was no leak when he had finished re-attaching the carburettors on the Thursday evening or Friday morning and in hearsay evidence, that he thought Mr O'Hare and Mr Tink took the boat out on the Friday, and there was no leak then.<sup>56</sup>

In further examination, Mr Collins revealed that the condition of the fuel bowls as discussed with Mr Vanpooyen, might indicate the possibility that there was old stale fuel in the tanks causing contamination.

He also further revealed that because the boat was out of fuel, he had started the engines following the refit of the carburettors, by using a fuel substitute, rather than a supply through the tank.<sup>57</sup>

Mr Collins was then examined about the findings of the MFB Fire Investigation Unit and its finding of contaminants in both the fuel filters and port fuel pump.<sup>58</sup> Mr Collins testified that he hadn't checked the fuel filters because of the,

*"clear bowl"*<sup>59</sup>

and, additionally that the contaminants later found in the filters and pump may have been caused by the explosion. His further evidence was that he considered that his response was appropriate because he deduced that the engines were out of fuel, and he did not believe that his conversation

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<sup>54</sup> Ibid.

<sup>55</sup> See evidence and discussion from transcript 512-520.

<sup>56</sup> Transcript page 431.

<sup>57</sup> Transcript page 439.

<sup>58</sup> Transcript page 445 and Exhibit 25 at page 11, where a finding of minimal contamination in the starboard pump is also mentioned.

<sup>59</sup> Transcript page 445



with Mr Vanprooyen or any other information he had obtained should have caused him to examine the matter further.

He then gave further evidence about working on the boat the Friday before, i.e. on the 25th April, with a second mechanic, John Tyne, stating that when they had got the engines started, that had also been achieved by the use of a substitute fuel.<sup>60</sup>

In further examination by Counsel representing Mr Elliott, Mr Collins was questioned about Mr Tink's statement that he had added 80 litres of unleaded fuel a couple of days before work commenced on the motor and about the October 08 invoice to Mrs Grant suggesting 40 litres of fuel was added on or about the 12th of April.<sup>61</sup> Mr Collins, when asked for his explanation of why the engine wouldn't start on fuel from the tank, assuming the above stated that there may have been a variety of reasons which he didn't check because he believed the tanks were empty.

Mr Collins further testified that he had not previously seen the invoice from Allcarb Pty Ltd, which was sent directly, and that he *had* been told that the carburettors had been found in a tip or that they were in shocking condition.

He also confirmed that he had not been told about the likely condition of the fuel lines and stale fuel within the tanks, or that the tanks and fuel lines would need to be cleaned.<sup>62</sup>

Mr Collins was further questioned about his conversation with Mr Vanprooyen, and stated that he did not subsequently speak to anyone at ABS about a possible need to check the tanks or fuel lines.

His additional evidence was that the 'sooty' patches on the inside side of the starboard engine as photographed by Investigator Peter Raymond was not evidence of there having been petrol in that area, when the explosion occurred.<sup>63</sup>

He further testified that he was only responsible to do work on the vessel, as stipulated in the work cards contained in the boat file, exhibit 11c, and that he was pretty distraught when he made his first statement on the day of the accident.

Mr Collins then gave evidence about his subsequent testing, and the amount of fuel which may have been in the line, which he set at 30mls, as opposed to the litre of fuel, referred to by Mr Vanprooyen.<sup>64</sup> He also testified as to the method and tools needed to connect the carburettors

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<sup>60</sup> Transcript page 448-449.

<sup>61</sup> Exhibit 32 and Invoice to Mrs Grant at Exhibit 4b.

<sup>62</sup> See transcript page 485-486.

<sup>63</sup> See page 490 and Exhibit 12b.

<sup>64</sup> See transcript at page 499.

following their cleaning and how an over tightening of the carburettors may cause a fuel leak, which did not occur in this instance.<sup>65</sup>

After recanting on his evidence about his use of a fuel bowl to inspect the fuel, Mr Collins stated that he had in fact been referring to a water separator bowl, which he agreed he could not visually inspect, because they were made of hard plastic or metal.

His further evidence was that in order to inspect these items he,

*"got a shifter, I undid the nut and drained the fuel into my hand with the rag."*<sup>66</sup>

... which he found to contain clean fuel.

Mr Collins was then questioned about the M.F.B Fire Investigation report at Exhibit 25 which indicated a contradictory finding, which he did not seek to explain, other than to observe that the fuel he inspected in this manner was clean.

Mr Collins additionally testified that he was not aware if these were marine or automotive carburettors and that it was impossible for fuel to leak through the gaskets between the carburettors and the adaptor plate, to which they were each attached.

His further evidence was that he did not smell stale fuel, that he did not check the fuel level and that Mr Cullinane could not have witnessed a fuel drip.

Finally, in answer to a question posed on behalf of the Court by M.F.B. expert, Station Officer Alex Conway, Mr Collins agreed that it was possible that there had been a fuel leak as suggested by the evidence of Mr Cullinane.<sup>67</sup>

Mr Jeff Vanprooyen<sup>68</sup>

On Tuesday April 29th Jeff Vanprooyen received a call from Paul Collins, whom he described as,

*"a mechanic from ABS."*

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<sup>65</sup> Transcript 500-502.

<sup>66</sup> Transcript 520-521

<sup>67</sup> See transcript at page 533-535. See also the opinion evidence of Mr Vanprooyen at transcript page 166, concerning this matter.

<sup>68</sup> Mr Vanpoooyen testified that he was a fitter and turner by trade and the owner of All Carb Pty Ltd and had specialized in the refurbishing of carburettors over a period of 25 years.

Mr Collins told him that a pair of carburettors had been dropped off for reconditioning, the previous evening, after they were closed.

He knew Mr Collins was from ABS and assumed they were from a boat.

Mr Vanpooyen commenced work on the carburettors on the Tuesday morning, together with a colleague, Steve Varker.

His evidence was direct and his manner of delivery was very much to the point.

*"I originally thought they came from a tip, the outside was in pretty good condition though inside it was full of old stale fuel which turns into brown sludge and a bit of corrosion. The carbies were terrible, there is no way they would have come off a running motor. I could tell the fuel was stale, just from the smell and from my experience."* <sup>69</sup>

During what was an extensive cleaning and re-assembly Mr Vanpooyen had to reset the jets because the existing settings would have made the carburettor run too rich.

After completion, he stated that he tested both carburettors which included the use of a fuel pump tester and both passed.<sup>70</sup> He then rang up Mr Collins who stated they were in a bit of a hurry. Mr Collins later collected them between 5.30 and 6 pm and Mr Vanpooyen states that he stayed back to meet him.

*"I told Paul that there was no way the carbies had come off a running engine and Steve said it looked like he must have found them in a tip, I told him that because of the state of the carbies you will want to clean the lines and the tank. Paul replied that they already have put fuel in it. I told him that it had plenty of rubbish in the carby and the rest had to be clean. Paul definitely acknowledged what I was telling him."*

Mr Vanpooyen further testified that in his opinion if the rest of the fuel system wasn't cleaned that,

*"old fuel residue",*

would accumulate and jam the carburettor's needle and with seal open, allow the carburettors to flood.

<sup>69</sup> See Mr Vanpooyen's statement at Exhibit 6 at page 1.

<sup>70</sup> The apparently extensive procedure undertaken by Mr Vanpooyen is set out at transcript page 144.

*"This means that excessive fuel will pour down the throat of the carburettor which will fill the manifold and excess fuel on the throttle plates will allow excess fuel to run over the manifold and onto the engine." 71*

I note here that during a sometimes vigorous cross-examination on these matters by counsel for ABS and counsel for Mr Collins, that Mr Vanpooyen stuck to this version of his observations and of his conversation with Paul Collins.

Mr Scott O'Hare 72

Scott O'Hare's initial statement was made on the 16th of May 2008.

He stated that Mrs Grant's boat was,

*"seaworthy and structurally sound ... needed a bit of sprucing up. As far as I was aware it was very sound mechanically and had been well serviced and maintained." 73*

His further evidence was that the boat was not running and was towed to the Anchorage marina,

*"because it had been idle for some time had flat batteries and only a little stale fuel." 74*

He further testified that Mr Grundy was the designated sales person and file manager for this vessel and that he was responsible for the preparation of the condition report.<sup>75</sup> He did not understand that Mr Grundy had any particular qualifications for this task.<sup>76</sup>

Mr O'Hare further stated that after lowering the price to \$30,000,

*"we had contact with a person who made an offer of \$18,000."*

<sup>71</sup> Exhibit 6 at page 2. See also his evidence from transcript page 141 of his observation that unused unleaded fuel had a shelf life of approximately three months and how it then deteriorates and its effect upon a carburettor, when in that condition. See also the photograph at Exhibit 10a which shows a plug of foreign matter blocking the outlet valve from one of the fuel tanks examined by investigators.

<sup>72</sup> Scott O'Hare stated that he owns a 50% interest and is in partnership with his father Terry O'Hare in the business Aussie Boat Sales Pty Ltd. He is also the manager of the Anchorage Marina, which is a marina restaurant business that is owned by his father.

Mr O'Hare further stated that that while he has no formal mechanical qualifications that he has been around engines all his life and considers himself to be, 'fairly knowledgeable in this area'.

<sup>73</sup> See Scott O'Hare statement Exhibit 11 at pages 1-2.

The word 'seaworthy' is used in this finding to describe a situation in which the so described vessel is fit for its intended purpose.

<sup>74</sup> Ibid page 2.

<sup>75</sup> The condition report Ex 9e was the basis upon which ABS promotional material including Exhibit 9e, was prepared.

<sup>76</sup> See Transcript from 375.

Mr O'Hare's further evidence was that at around the same time, Antony Elliot saw the boat advertised at \$30,000, and that he made an appointment to return on April 26th,<sup>77</sup>

*"and again looked over the boat."*<sup>78</sup>

Mr O'Hare further stated that,

*"before Antony arrived,"*

he ran the blowers for about 10 minutes and started up the boat which was,

*"normal procedure."*

He also stated that he dealt with them because Mr Grundy was not present. He further stated that he formed the opinion that Mr Elliott

*"knew a bit about boats"*

and that he was very thorough.

According to Mr O'Hare at the end of the sea trial,

*"they appeared to run out of fuel."*<sup>79</sup>

Mr O'Hare stated that he was not aware that the fuel gauges did not work;<sup>80</sup> further, he testified concerning Mr Elliott's subsequent purchase of the vessel, his intention to go overseas and to slip the boat and to have various renovations carried out.

When asked about the condition of the tanks, he stated,

*"Well, I've never removed a tank from a boat. I've never removed fuel lines from a boat, um, apart from portable tanks, obviously to fill boats up, but ah, I had no particular concerns about the fuel tanks or fuel lines, no."*<sup>81</sup>

Mr O'Hare further testified that no written agreement was signed by an ABS representative and Mrs Grant, concerning the terms of their contract, which he conceded was unusual. He was not

<sup>77</sup> Exhibit 11 at page 2 and transcript from page 376, where Mr O'Hare testified that this sort of result following an earlier agreement at a lesser price, was common place.

<sup>78</sup> Ibid page 3.

<sup>79</sup> Ibid page 3.

<sup>80</sup> Transcript page 379.

<sup>81</sup> Transcript page 383.

aware that she had made several requests for this to be done and denied that any such request had been made to him.<sup>82</sup>

His further testimony was that he had no personal interest in the purchase of the boat himself.<sup>83</sup>

Mr O'Hare agreed that following the accident, he did discuss with Mrs Grant his views as to what may have been the cause. He further testified that he was not aware and did not recall that he told Mrs Grant after the accident, that persons took delivery of the boat and drove it to Pier 35, and that they,

*"filled it to overflowing and it blew up."*

Mr O'Hare also agreed that Mrs Grant was finally invoiced for work undertaken on the boat while it was in his possession and that she was not earlier contacted about these charges, which were billed to her as deductions from a sale price of \$28,000.

His further evidence was that these charges included the cost of the carburettor reconditioning, although he had initially envisaged that Mr Elliott would meet these expenses.<sup>84</sup>

He also offered that part of the difficulty in returning the proceeds of sale to her was that they didn't have instructions from her and that he didn't know if they had her address.

When questioned further on this matter, he was not able to say whether he had access to her address and whether or not it had been written up as part of the sales file, Ex 11c, as at the date of completion of the sale.<sup>85</sup>

Mr O'Hare also agreed that there was no documentation within the sales file which suggested receipt of an offer at \$18,000. When further questioned on this matter he stated that in regard to some sales, a file might not be created until after completion of the sale.

His further evidence was that there was no record of the identity of the person making this offer or the salesperson, to whom it was made, and that the vessel remained for sale until a deposit was received.

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<sup>82</sup> Transcript 404-05.

<sup>83</sup> At transcript page 559, the Court put to Mr O'Hare an out of court suggestion raised by Snr Sergeant Dimsey, that Mr O'Hare may himself have been the unknown buyer of the Leda II at a price of \$18,000. Mr O'Hare denied this suggestion and accordingly I direct myself to ignore this suggestion.

<sup>84</sup> See transcript 408-9 where the witness explained that this was a decision made by the group's financial controller, Mr Rick Webber.

<sup>85</sup> Transcript page 411-12 and at 559-560.

He further stated that he did not know if this person would have been rung to be given advice of Mr Elliott's offer before the agreement to sell at the higher price was reached.<sup>86</sup>

When questioned by Counsel representing Mr Elliott, Mr O'Hare did not recall doing an inventory on the boat himself, as suggested by the statement of his then personal assistant, Ms Limbach.<sup>87</sup>

In regard to the sea-trial conducted on the 26th of April, Mr O'Hare further stated that he told Mr Elliott that the fuel gauges were nearly empty. He then stated that it is possible that he was aware 20-40 litres of petrol had been added at some time prior to the trial.<sup>88</sup> He agreed that it was not good practice to take out a prospective purchaser and then run out of petrol and reiterated that all he did in regard to assessing the amount of petrol in the tanks, was to check the fuel gauges.

Mr O'Hare further testified that he was not aware that the boat had a fuel vapour detector, and that he did not discuss that matter with either Mrs Grant or Mr Elliott.

Mr O'Hare further denied any recollection of a discussion with Mr Elliott on the 26th about the 'grunge' in the petrol tanks, or that he told Mr Elliott that there may be,

*"Dirt or contamination in the fuel tanks as the fuel had been there for a while."*

Mr O'Hare further denied recollection of any discussion with Mr Elliott and Ms Groen, in which the possibility of taking out the fuel tanks while Mr Elliott was overseas, was raised<sup>89</sup>

Mr O'Hare was questioned about the arrangements in regard to insurance. He stated that the Elliott party had raised the matter on the 26th of April after which he commenced, through Ms Limbach, to pursue the matter via email.<sup>90</sup>

He had no recollection of discussing insurance on the following Saturday and he further confirmed that while the matter had not been concluded with Nautilus Insurance, he had no recollection that he specifically brought that fact to the attention of Mr Elliott.

And further,

*"None of the normal process of providing insurance for somebody was evident here so*

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<sup>86</sup> Transcript page 562-564.

<sup>87</sup> See Exhibit 32 at page 127 as discussed in the evidence of Mr O'Hare at transcript page 566-567.

<sup>88</sup> As to his subsequent assessment of the fuel added to the tanks while the vessel was at Marine Anchorage, see Mr O'Hare's evidence at page 649-50.

<sup>89</sup> Transcript page 576-80.

<sup>90</sup> See Exhibit 9c.

*why he would think that the boat was insured is beyond me, I don't know.*"<sup>91</sup>

Mr O'Hare was then examined about Mr Elliott's evidence that he had informed him, that the mechanics had now assured him that they had had a look, and that the tanks didn't need to be taken out or cleaned, as discussed the previous Saturday.

Mr O'Hare responded that he didn't believe he could have said that, because the taking out or even the checking of the tanks, was such a difficult (and expensive) job.<sup>92</sup>

Mr O'Hare further denied Counsel for Mr Elliott's suggestion, that he hadn't told Mr Elliott to run the blowers for 10 minutes and further denied any significance in the fact that this matter was not referred to in his statement.

He further alluded to the unsuccessful efforts made to get the vessels engines started,

*"in December when the batteries had been put in."*<sup>93</sup>

Mr O'Hare was later very properly invited by Counsel to address a statement from Sgt Kerr, which suggested that Mr O'Hare must have been aware of Mrs Grant's address at or about the date of the accident. Mr O'Hare responded that he could not be sure when he came into possession of this information.<sup>94</sup>

Mr O'Hare gave further evidence about his high-end boat sales business and testified that it was illogical to suggest that he might sacrifice his professional reputation, by seeking to obtain a \$10,000 (secret) profit.<sup>95</sup>

He also further stated that he was not aware of any adverse comments coming from Mr Vanprooyen about the condition of either the tanks or the fuel lines.

When further questioned by the Court about the failure to record in the file or elsewhere, both the name of the person making the \$18,000 offer and the name of the salesman who received that offer, Mr O'Hare commented,

*"Often you're testing the vendor to see where they're prepared to let the boat go so it could be Mrs Grant was prepared to accept \$18,000 so we knew that was her - you know,*

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<sup>91</sup> Transcript page 587.

<sup>92</sup> Transcript 597.

<sup>93</sup> Transcript page 650. See also Invoice 656 dated 14/12, within Exhibit 11c, which suggests an earlier expenditure in regard to attempts to start the vessels engines.

<sup>94</sup> Transcript page 653-54.

<sup>95</sup> Transcript page 668.



*she was prepared to go there, which gave us a lot more flexibility to be able to negotiate with people."*<sup>96</sup>

Mr Phillip Grundy<sup>97</sup>

Mr Grundy stated that he was employed as a salesman by ABS at Anchorage Marine, Port Melbourne, from September 2006. His major experience had been with yachts and he was in charge of the sale of yachts for ABS, under the direction of Scott O'Hare.

Mr Grundy further stated that he first had contact with Janette Grant in late 2007 in regard to the sale of her Halvorsen cruiser.

He was put in charge of the matter by Scott O'Hare and had an inspection meeting with Mrs Grant's son-in-law and later conversations with Mrs Grant. Following his initial inspection, which took place over a period of approximately one hour after the vessel had been towed to Anchorage Marina in October 2007, he prepared Exhibit 9(d).<sup>98</sup>

Mr Grundy further testified as to how the sales brochure for the Leda II, Exhibit 9(e), came to be prepared by the sales secretary 'Ella', and how it was posted on the internet and made available to visitors to ABS, of whom Antony Elliott was one.<sup>99</sup>

At this point, Mr Grundy, states that he assumed the vessel was registered, although he had not queried that matter with Mrs Grant.<sup>100</sup> He was also aware that she wanted to sell it,

*"as is."*<sup>101</sup>

A price of \$39,000 was then recommended to Mrs Grant, which recommendation she accepted.<sup>102</sup>

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<sup>96</sup> Transcript page 700.

<sup>97</sup> At my instigation, Mr Grundy made a statement to Police on the 20th of April 2009. See Exhibit 10. It is relevant to note that this was some 11 months after the occurrence of the incident, the subject of this investigation. Mr Grundy testified that he had been employed within the boating industry for many years before joining ABS and that his particular passion was for yachting. He was put in charge of the sale of the Leda II, and was responsible for managing the file, but that it was Mr O'Hare who affected the actual sale to Mr Elliott.

<sup>98</sup> Transcript page 298, and Exhibit 9 (d), a document in parts in error, (See Transcript page 335), referred to by the parties as the vessels, 'specifications'. I note here that the evidence about Mr Grundy's contribution to the preparation of the listing is by inference contradicted by the statement of Danielle Limback at Exhibit 32 page 127.

<sup>99</sup> Transcript page 347.

<sup>100</sup> Transcript page 300. See also Mrs Grant's uncontradicted evidence that she had informed Mr Grundy that the vessel had not been used for some time and his own acceptance of that matter at Transcript page 301, and Mr O'Hare's evidence indicating his own awareness that the vessel was no longer covered by insurance.

<sup>101</sup> Transcript page 302

<sup>102</sup> Transcript at page 308, which evidence I note contradicted his earlier statement Exhibit 10 that the price was set by Mrs Grant.

Mr Grundy further testified, in response to Counsel representing Mr Elliott, that he was aware that stale fuel in vessels, which hadn't been used for some time, could cause difficulty when used again.

Mr Grundy also informed that he had not sought to establish whether the vessel was in running order by use of an outside battery and a portable source of petrol, and nor had he tried to establish how much, if any, stale fuel remained in its tanks. Mr Grundy's explanation for his failure to make these inquiries was that he was not a mechanic.

His further testimony was that in any event, he would have expected a new owner would want to replace the two V8 petrol engines with diesel engines.<sup>103</sup>

Mr Grundy also testified that he did not examine the tanks and was not aware of the fact that a vent in one of the tanks had been blocked by a wasp's nest.<sup>104</sup>

Because of the condition of the batteries, Mr Grundy stated that he also did not seek to establish whether the electrical fittings and instrumentation on board, were in working order.<sup>105</sup>

Thereafter, the matter of the condition of the vessel and getting it in running order was turned over to the mechanics.

Concerning the possible sale of the vessel Mr Grundy testified that the only person he spoke to during the following months was Mr Graham Dobson, a person known to him through a previous sale, who had mentioned that he was interested in the purchase of a Halvorsen, of which there were then two in the marina. It is relevant to note that this contact took place on April 20th, 2008, after the vessel had been at Anchorage Marina for a period of not less than 6 months, not running under its own power, and with little or no interest having been shown in its purchase.

During Mr Dobson's inspection, I note that Mr Grundy did not dispute that he advised that the boat would require some significant work to bring it up to a standard that he, Dobson, would be satisfied with and this included reference to the vessels engines.<sup>106</sup>

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<sup>103</sup> See transcript at pages 309-11.

<sup>104</sup> See transcript at page 340.

<sup>105</sup> See transcript at page 342.

I note here that the statements set out in Exhibit 9e that the vessel, 'though in need of some TLC she is very seaworthy' and in 'excellent condition for its age', are at odds with what was in fact actually discovered during the inspection carried out by Mr Grundy. They are also at odds with the later more carefully conducted inspection carried out by Mr Dobson.

It is also the case that Exhibit 9e did not include the fact, known to ABS, that the boat was being sold on an 'as is' basis.

<sup>106</sup> Transcript page 358-359.

It is also not in dispute that Mr Dobson did not make an offer on the Leda II and that he told Mr Grundy that he was looking for a motor cruiser, which he could buy for around \$18,000.

### **Arrival of the Leda II at Pier 35 and the events following**

#### Mr Antony Elliott

The Leda II and the Cullinane owned boat 'Candy Pants', arrived at the refuelling wharf within minutes of each other.

Mr Cullinane had used the system previously and instructed Mr Elliott in how to operate the bowser. At this time, Mr Elliott and then Mr Cullinane tried unsuccessfully to undo the port filler cap. Ms Groen then rang ABS for advice and was advised to refuel via the starboard tank only.

The refuelling was carried out without persons other than Mr Elliott standing in the boat and he continued to fill what were 100 gallon tanks until he believed he could observe that fuel had reached the top of the starboard tank.

Soon after, Mr Elliott loaded his passengers with his parents seated on a cushion in the helm section of the boat. Mr Elliott then went forward and turned on the master switches, which he had earlier turned off, before he started refuelling. He then returned to the helm and turned the blowers on. He could not hear them clearly but presumed they were on as they had worked previously on the crossing.

Mr Elliott then returned to the helm and asked his parents to move to the stern section so that he could access the engine hatches. He smelt the area and satisfied himself that there were no fumes, this process taking approximately 5 minutes.

Mr Elliott then returned to the helm and started the starboard engine. Shortly afterwards, he pushed the button to start the port engine. The pushing of the port starter button was followed by a large explosion, which destroyed the boat and threw its four occupants into the water.

Mr Elliott, no doubt in a state of shock, was immediately concerned for the welfare of Ms Groen and his parents. He observed someone, (a Mr Nicholas Power, a Pier 35 employee), pull Ms Groen up out of the water and he too was then pulled out.

Mr Elliott then immediately looked for his parents, at once believing that they were dead. He was comforted and restrained by concerned Marina staff and later taken to the Alfred hospital where he was treated for his injuries.

## Mr Michael Cullinane

The Cullinane family left for Pier 35 about 15 minutes after the Leda II. When they arrived, they saw the Leda II at the fuel dock with Mr Elliott swiping his credit card to activate the fuel bowser. Mr Elliott got the starboard cap off but was unable to unscrew the port cap. Mr Cullinane sought to assist but was also unable to remove the port cap. Ms Groen then rang ABS and relayed to Cullinane and Elliott the ABS advice that there was a siphon between the two tanks and that both tanks could only be filled through use of the starboard tank fuel entry.

Mr Elliott then purchased \$400 worth, roughly 217 litres, partially filling the two tanks, which each had a capacity of 100 gallons.<sup>107</sup>

On completion of the fuelling, Mr Elliott placed a cushion against the stern board of the vessel and assisted his parents on to the boat and to sit on this cushion facing the helm area towards the front of the vessel which, at the time, was facing up stream in an easterly direction.

Mr Cullinane and his wife took positions on the dock, at the bow and stern respectively, and undid the lines in preparation for casting off.

At this time (Mr Cullinane stated), Mr Elliott said words to the effect that he had no power and that he could not hear the bilge. He was then observed to go down stairs into the helm area, which was the same position he had moved towards when he had apparently turned on the master switches, before setting off from Port Melbourne.<sup>108</sup>

*"After a short while I heard another noise which I assume had something to do with a bilge component. I then heard another noise 5-10 seconds later. This noise was a lot louder and sounded like an engine firing. I think one of the engines started up; then again this noise may have been during the starting process ... About 5-10 seconds later I heard a loud pop, I saw a piece of what looked like the roof... fly past. I instinctively ducked and then looked to where the boat had been.*

*There were bits of boat everywhere."* <sup>109</sup>

## **The Investigation**

During the investigation, experts from the Metropolitan Fire Brigade, Victoria Police Forensic Services Centre, Victoria Police Mechanical Investigation Unit and Marine Safety Victoria,

<sup>107</sup> I note here that 217 litres of petrol represents slightly in excess of 50% of the capacity of 2 tanks each with a capacity of 100 gallons.

<sup>108</sup> See discussion above at page 17-18.

<sup>109</sup> See Exhibit 15 page 7.

conducted inspections of the remains of the vessel (including an inspection of recovered parts disconnected by the force of the explosion), in order to identify the source and underlying cause of the explosion and ensuing fire.

A helpful adjunct to this joint investigation was the recovery of CCTV footage, which displayed an uninterrupted video recording of the marina refuelling pontoon from an elevated position on the western corner of the marina restaurant.

Agreed evidence adopted from that footage establishes that the explosion occurred at 13.47.45 and that in the several minutes before the explosion Antony Elliott had gone below to the vicinity of the engines on three occasions and had returned to the helm area at 13.46.45, approximately one minute before the explosion.<sup>110</sup>

#### Mr George Xydias

Forensic Chemist Mr George Xydias attended the scene on Saturday the 3rd of May 2008, and again on the following day and examined the scene and the CCTV footage.<sup>111</sup>

I note here that Mr Xydias gave expert evidence concerning the explosion and how it occurred and specifically distanced his expertise from the expertise offered by other experts.<sup>112</sup>

His opinion was that, the explosive event was faithfully recorded and clearly verified the occurrence of a dispersed type flammable liquid vapour/air explosion, as distinct from a condensed (commercial military or improvised) high explosive associated incident. He further opined that the point of initiation and seat of the explosion was inside the bilge area.<sup>113</sup>

The exteriors of both fuel tanks were examined and were found to be heavily corroded with several small holes noticed about the surface of each tank. The fuel gauge fittings of each tank were heavily corroded.

Fuel samples collected from the starboard tank revealed heavy corrosion, the expected presence of petrol and a slushy mixture of heavily corroded metal flakes mud and probably seawater. Later analysis revealed high levels of copper, lead and traces of iron. A similar test was not carried out in respect of the contents of the port tank.

<sup>110</sup> See photograph of helm area and covered stern area above engines at Exhibits 4a, (post explosion), 4c and 9f.

<sup>111</sup> Exhibit 3 and still frames at Exhibit 32 Attachment A.

<sup>112</sup> Transcript 974, 975, 981 and 983 set out instances where the witness sought to establish the limits of his expertise.

<sup>113</sup> See Exhibit 24 at pages 2 and 3.

Because both tanks had been submerged following the explosion with fuel, spilling into the water, it was not possible to establish how much fuel had been in each prior to the explosion.<sup>114</sup>

Similar samples were recovered from both fuel filters and indicated the remnants of fuel evaporated by 30% from an unevaporated unsullied sample.<sup>115</sup>

Both carburettors were also examined with a white crystalline matter adhered to the inner surface of the carburettor components.<sup>116</sup>

According to Mr Xydias vaporised petrol was the likely flammable liquid which caused the explosion and that in vaporised form it can ignite at a low temperature. He also opined that this must have occurred when the petrol vapour was within the requisite volatility range of 7.4 to 7.6 % against air.

The more probable sources for the petrol vapour, were identified by Mr Xydias and included the carburettors and inlet manifolds. His further opinion was that there were numerous potential sources for ignition, which included the electric bilge pumps, the starter motor of each engine, electrical or frictional sparks as well as loose batteries or glowing carbon.<sup>117</sup>

He further offered that there was more pronounced blast damage evident on the port side of the engine room, which I note is consistent with ignition occurring with the pressing of the port starter motor.<sup>118</sup>

Mr Xydias was unable to offer an opinion as to whether the blowers on the vessel were able to service the bilge, which was 16 cubic metres by volume. He did, however, state that it was quite possible that the circulation created by the blowers being turned on, added to the level of fuel evaporation by causing any fuel dropping on to a hot surface to be pushed through the bilge, thereby allowing for more room, for further evaporation to occur at that place.<sup>119</sup>

It was also his view that circulation of air in the bilge might have caused a reduction in the vapour to air ratio, which could bring that ratio down to the level where ignition can occur, but otherwise would not.<sup>120</sup>

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<sup>114</sup> Transcript page 974.

<sup>115</sup> Ibid page 4.

<sup>116</sup> Exhibit 24 at page 5.

<sup>117</sup> Exhibit 32 from page 346. I note here that Mr Xydias did not give his evidence in collaboration with other investigating witnesses, and confined himself to setting out the nature of the blast and the potential sources of leakage of fuel into the bilge and the process by which the fuel so collected turned into petrol vapour.

<sup>118</sup> See transcript at page 975 and 980, where Mr Xydias discusses the connection between the starting of the port engine and the ignition of the petrol vapour and the centre of damage, on the port side of the bilge.

<sup>119</sup> Transcript page 982.

<sup>120</sup> Transcript page 991.

Mr Xydias was also able to confirm that the stored LPG Gas cylinder and its contents played no part in the explosion.

The evidence of Mr Xydias, together with our viewing of the CCTV, also tended to establish that the wind level on the day of the explosion was such that any petrol vapour released at the time of the filling of the starboard tank was blown away from the entry to the bilge, rather than into it.<sup>121</sup>

Mr Xydias was further questioned by Counsel representing Mr Elliott, about his summation as to the amount of petrol in the tanks before refuelling commenced. His evidence was that there was an odour to the fuel which indicated earlier evaporation had occurred. It also smelt,

*"like a mixture of petrol and mineral turpentine."*<sup>122</sup>

He was unable to say how much such fuel was present before refuelling commenced.

Mr Xydias was also questioned about the condition of the tanks, specifically the rivet holes in the starboard tank as shown in the photograph at Exhibit 29 page 28.

His evidence was that *if the holes were indeed present* prior to the explosion the stale fuel in the starboard tank would, together with air, create petrol vapour which could have escaped into the bilge from the rivet holes referred to above.<sup>123</sup> He further stated that when the level of petrol passed over these holes, as may occur in a refuelling, that petrol would also escape from such holes and drop to the floor of the bilge again adding to the potential for further fuel evaporation.<sup>124</sup> His further explanation for why the explosion didn't occur at an earlier point in time is set out from Transcript page 1001.

Mr Xydias also testified that the vapour from new fuel was more volatile than from old fuel, and more likely to ignite.<sup>125</sup>

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<sup>121</sup> See Exhibit 3 and discussion at transcript page 993-94.

<sup>122</sup> Transcript page 997.

<sup>123</sup> Mr Conway's view from transcript page 1028, largely discounts the possibility that the holes were present prior to the explosion.

<sup>124</sup> Transcript page 1000.

<sup>125</sup> Transcript page 1003

Snr Sgt Leguier, M.F.B. Station Officers Conway<sup>126</sup> and East, Mr Peter Raymond and his Report to Marine Safety Vixctoria<sup>127</sup> and the MFB Fire Investigation Report<sup>128</sup>

Further police investigations also revealed that the Leda II was unregistered and uninsured and that Antony Elliott was not the holder of a Victorian Recreational Boating License and was therefore unlicensed.

A mechanical inspection of the vessel engines and components were conducted by Snr Sgt Robert Leguier of the Victoria Police, Mechanical Examination Unit, Station Officer Alex Conway of the MFB, Station Officer Rod East and Mr Peter Raymond. Their inspection revealed that the vessel's engines were two small block Chevrolet engines each fitted with a Holly 350cm dual barrel non-marinised carburettor.<sup>129</sup>

Mr Conway further likened the system to engines used in the 70's and 80's.

*"They were partially marinised motors and were mainly drawn directly from vehicle's.*

*Q... Are you able in relation to the safety aspect between automotive parts and marinised parts.*

*A they are not fit for purpose the sparks are generated by the alternator which are ignition sources if any flammable liquid is available, or fumes are available within the engine. The starter motor is of the same, it provides a spark and if you have any flammable gases within the engine bay they could be ignited by that ..."<sup>130</sup>*

The two engines that had been fitted in place of the original engines, were smaller in capacity and fitted with a different gearbox. The existence of the different machinery was evident from the non-matching original cutting, which had previously been carried out on the vessels bearers.

Fuel was held in two 100 gallon tanks situated in the aft compartment just under the deck. A stamped plate on each tank indicated a test date of 15th of November 1944, with one re-testing only occurring in 1955. The tanks were fitted with a vent, which consisted of a small bore copper tube fitted at the top outer corner of each tank and then bent over to lie parallel to the top of each tank. The vents were inspected by Mr Raymond and appeared to have been blocked by wasp

<sup>126</sup> Mr Conway's background and qualifications as an expert witness are set out at Exhibit 25(g).

<sup>127</sup> Peter Raymond, a consultant marine surveyor, was the author of a report into the explosion prepared at the request of the Director of Marine Safety Victoria. See Exhibit 29.

<sup>128</sup> See Exhibit 25.

<sup>129</sup> See Exhibit 25 at page 12 as discussed at Transcript page 1016 where Mr Conway stated the system did not include any flame arrester or spark arrester fitted to the starter motor.

<sup>130</sup> Transcript page 1018.



necks.<sup>131</sup> They released to the under deck area and not to the atmosphere and there were also plugs of compacted powdery material located in the outlet pipes from the tanks to the filters.

The port tank was cut open and found to be badly contaminated.<sup>132</sup> The fuel lines which drew from the same fuel source were also badly contaminated and the floats were badly corroded and had separated from the sender unit and were found in the bottom of the tanks. The tanks contained a murky watery and partly oily sludge along the bottom. In addition to petrol the slushy material appeared to be a mixture of heavily corroded metallic flakes and seawater.

A sample of the sludge was collected by Mr Xydias for the purpose of analysis. An inspection of the fuel tanks carried out by Mr Raymond established that the starboard tanks had two holes in the shell where rivets appeared to have worked themselves loose.

These were located in the upper half of the tanks and would not have caused a leaking of liquid fuel until the tanks were filled above the lower hole.

Both water separators appeared to have recent fitments. Both lower bowls of the filters were found to be holding fuel and scale contaminants. Samples of the contaminants were also taken for analysis. Both fuel pumps were removed from the engines and dismantled. The starboard fuel pump diaphragm and valves were serviceable and the bowl contained clean fuel. The port fuel pump diaphragm and valves were serviceable. The pump bowl held fuel and contaminants.

The analysis of the samples seized from both fuel filters and pumps were indistinguishable and corresponded to partly evaporated petrol. The analysis of the samples obtained from the fuel tanks revealed the presence of high levels of copper lead and traces of iron. This was consistent with the corroded condition of the fuel tanks.

Mr Conway further testified that the carburettors were lower than the tanks and provided a gravitational fall of fuel and a low pressure leak which occurred while the engines were not running. He also opined that because the engine was tilted back towards the stern, that any fuel that would leak from the carburettor would run down the back of the engine and to the floor, and that it would be seen in the position described by Mr Cullinane, where he tightened the nut.

*"While filtration systems are very effective they are not completely fail proof and sometimes contaminants... come through... (causing) the needle and seat not to be able to close correctly... and then a siphon effect and... (a filling of the bowl) which would then leak on to the butterfly plates of the carburettor which are closed because the engines in a non operating condition..."*

<sup>131</sup> See Peter Raymond Report Exhibit 29 page 4

<sup>132</sup> Ibid, photographs showing condition of starboard tank at page 29.

(Mr Conway further surmised that this could have happened over a number of hours),

*"and the leak would be then running off the manifold, pooling off the manifold as seen, but because of the tilt of the engine it doesn't pool as much before it starts to run off the back of the engine and down onto the floor of the boat"<sup>133</sup>*

Both carburettors were removed by Senior Sergeant LeGuier and were inspected at the MFB workshop in Thornbury. Both carburettor fuel bowls were removed and inspected. There were no contaminants found in either bowl similar to what was found in the fuel tanks, filters or port side fuel pump. There was a white substance in both bowls the origin of which, could not be established.

There was no abnormality with the needle and seat or floats of either carburettor. The carburettors were re-assembled and pressure tested. There was no evidence of flooding from the carburettors indicating that the needles were functioning correctly.

I also note however Mr Conway's further opinion in answer to questions put by Counsel for ABS, that Mr Cullinane's tightening of a nut would not have inhibited the dripping and that the onset of the problem would have occurred after the starboard engine was last run.<sup>134</sup>

It is also relevant that the function of the fuel pump valves was not tested and therefore in agreement with Counsel for ABS, Mr Conway stated that it could not be established whether they operated to prevent fuel passing through them and into the carburettors when the engines were not working. Mr Conway further testified however that it was not a primary function of the pump valves to prevent a back flow to the carburettors and (against his hypothesis), that the carburettors would have eventually flooded if fuel had gone back into the carburettor.

I further note that Mr Conway reached his conclusions based upon a process of elimination and that despite concerns raised about his hypothesis by Counsel for ABS, Mr Conway maintained his view as to the probable cause of the explosion, and was supported in regard to different aspects by both Mr Peter Raymond and Senior Sergeant Leguier.<sup>135</sup>

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<sup>133</sup> Transcript 1037-38. See also the supporting opinion of Senior Sergeant Leguier at Exhibit 28 and at Transcript 1170.

<sup>134</sup> See transcript at page 1081.

<sup>135</sup> Senior Sgt Leguier testified as to how flooding may initially cause the engine to run rough and when completely flooded, to stop.

Senior Sergeant Leguier disagreed with the suggestion of Counsel for ABS that the pump valve would remain closed (and not allow for the escape of fuel from the carburettor), when the engine was not running.

He also disagreed with Counsels proposition that siphoning could not occur in these circumstances. Transcript 1172-79. See also, Mr Peter Raymond's supporting testimony concerning the carburettor leak at transcript 1197-99, as supported by his diagram Exhibit 29(b), which I note was given without access to the reports of other experts.

Mr Raymond, a consultant marine surveyor, was the author of a report into the explosion prepared at the request of the Director of Marine Safety Victoria.<sup>136</sup>

It was the opinion of Mr Raymond that submersion in the river and subsequent handling may have dislodged any foreign material, which could have (earlier) prevented closure of the carburettor valve.<sup>137</sup>

It was the opinion of Mr Conway that such contaminant was dislodged from the starboard carburettor through pressure created once the starboard engine was started.<sup>138</sup>

## Findings

- 1) I find that on Saturday the 3rd of May 2008, at 13.47 hours, Alexander and Jenifer Elliott formerly of Napier Street, South Melbourne; both died as a result of injuries sustained when the 1946 built, 38' Halvorsen Motor Cruiser, the Leda II, exploded following a refuelling at the refuelling wharf, at Pier 35, Yarra River in the vicinity of Beacon 43.

I further find that the explosion was caused by the ignition of flammable petrol vapour which had accumulated in the bilge of the Leda II, and that said vapour was ignited when Mr Antony Elliott unwittingly attempted to start the port engine.

As to the circumstances in which this incident occurred, I direct myself concerning the law on the burden and standard of proof and as to how and in what situations it is legally permissible to draw inferences from circumstantial evidence.

- 2) Having so directed myself I find that in approximately August 2007, Ms Janette Grant spoke with Aussie Boat Sales Director, Scott O'Hare about the sale of her Halvorsen motor cruiser, which up until that time had been moored at the Royal Victorian Motor Yacht Club.
- 3) Scott O'Hare passed the matter on to ABS employee, Phillip Grundy who subsequently met with and accepted the vessels keys from Mrs Grant's son-in-law, Dominic Fletcher. At this time, Mr Fletcher, informed Mr Grundy that the vessel had not been used for some time and that Mrs Grant wanted advice as to its market value and as to whether ABS would accept responsibility to act as her agent concerning the sale.

Mr Grundy, though primarily experienced in yachts and yacht sales, was a long time admirer of Halvorsen motor cruisers.

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<sup>136</sup> See Exhibit 29.

<sup>137</sup> See Exhibit 29 at page 5

<sup>138</sup> Transcript 1077.

He was immediately enthusiastic about the vessel and the prospect of making a successful sale and after a cursory inspection, he spoke in highly encouraging terms to Mr Fletcher:

- 4) Following consultation with Mr O'Hare, he later arranged to have the Leda II towed from the RVMYC. Thereafter either Mr Grundy or Mr O'Hare directed ABS staff, which may have included general hand Brian Tink, to get the vessels engines started. Certain unspecified work was later carried out on the engines and based on the hearsay evidence of Mr Dobson, concerning what Mr Grundy had told him, I am satisfied that at some point, the starboard, though not the port engine, could be started.

I am further satisfied that during this period and following consultation with Mr O'Hare, Mr Grundy recommended an offer price of \$39,000, which recommendation Mrs Grant accepted on an, '*as is where is*' basis.

- 5) Thereafter, the Leda II was offered for sale by ABS, over the internet and by a brochure, without reference to the fact that it was being offered '*as is where is*'. Both Mr O'Hare<sup>139</sup> and Mr Grundy, who had conducted the initial inspection, contributed and I further hold that the listing and advertising materials prepared at the direction of Mr O'Hare, falsely described both its intrinsic quality and its level of seaworthiness.<sup>140</sup>

It is also relevant that no mention was made in this material or in any other communication with Mr Elliott, as to the existence of a fuel vapour detector.

- 6) I further find that Mr Scott O'Hare was an unreliable witness and that I did not believe his evidence, concerning his assessment of the vessel and other matters<sup>141</sup> and similarly I find that I did not believe the evidence of marine mechanic, Phillip Collins.<sup>142</sup>

It follows that absent corroboration from a credible source that little or no weight properly attaches to their evidence.

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<sup>139</sup> See Danielle Limback's statement at Exhibit 32 page 127-130, as discussed in the evidence of Mr O'Hare at transcript page 565-568.

<sup>140</sup> See Exhibits 9d and 9e. I have used the term 'seaworthy' to apply to a vessel, which 'is safe for its intended purpose'.

<sup>141</sup> These include the alleged offer for the vessel at a price of \$18,000 and his alleged attempted communication of that matter to Mrs Grant, together with his evidence about his belief as to the condition of the vessel, up to and including the time of sale. They also include his evidence concerning the separate conversations he had with Mr Elliott and Ms Groen, (whose evidence I believe), about the condition of the petrol tanks and the position concerning insurance cover.

<sup>142</sup> Mr Collins contradicted himself on the issue of how he came to assess the quality of the fuel being run from the vessels tanks. He was also contradicted on the matter of fuel quality by the evidence of the investigators who examined the tanks and fuel lines following the explosion and by extension, the testimony of Mr Vanprooyen whose evidence I find to be wholly credible.

- 7) I am satisfied that despite their earlier high hopes, the efforts made to sell the 1946 built Ledar II, were frustrated at least to some extent by the inability of ABS, to get the vessel up to 'runabout' stage. As a consequence, what first appeared to be an attractive proposition, had by April of 2008, become a burden to both Phillip Grundy and Scott O'Hare.
- 8) It was in these circumstances that on the morning of Sunday the 20th of April 2008, Mr Grundy determined to show the vessel to an old client, Mr Graham Dobson.

Mr Grundy knew client Graham Dobson as someone who had the professional skill needed to make a reasonable evaluation of the condition of the vessel. Mr Grundy alluded during their conversation, to some of its problems and specifically to their inability to get the port engine started.<sup>143</sup>

I find that his inspection established in Mr Dobson's mind that there were likely to be considerable problems with the vessel's fuel delivery, as well as with the electrical system. Mr Grundy's suggestion that a purchaser could replace its V8 petrol engines with diesel engines further alienated Mr Dobson.<sup>144</sup>

Sometime thereafter, Mr Grundy left Mr Dobson to his inspection, understanding that his chances of making a sale that day were at best slim.

- 9) Sales and discussion about sales and their progress were the norm between Mr O'Hare and his staff. From this and from all of the other relevant evidence I draw the inference that at sometime that day Mr O'Hare became aware that Mr Dobson was looking for a vessel for around \$18,000 and that he was unlikely to be making an offer to take on what he saw as the considerable challenge presented by the Leda II.
- 10) By coincidence at around 5.00 pm the same afternoon, (i.e. Sunday the 20th of April), Mr O'Hare and Mr Grundy were present in their office, when Mr Antony Elliott and Ms Marija Groens came in after an enjoyable day's sailing. They had noticed the Leda II on their walk to the office and Mr Elliott in particular was immediately excited when he learnt from Mr Grundy that the vessel was for sale at \$29,999,- a price which seemed to both, to be very

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<sup>143</sup> See transcript at page 709. I further note that Mr Dobson testified that on the day of his inspection the batteries appeared to be flat. See Transcript page 757, which evidence was accepted by Mr Grundy at transcript page 359. Timing aside, there appears to be a possible conflict between the hearsay evidence of Mr Dobson, concerning the port engine, and the untested statement of Ms Danielle Limback at Exhibit 32 page 127, about her own observations which focused on the noise levels which emanated from both engines when they were started, (with similar observations later also made by Mr Cullinane).

The observations made by Mr Grundy, (who was immediately involved with the problems then presented by the vessel), as reported by Mr Dobson, are accepted as an accurate overview of at least part of what ABS personnel knew about the condition of the vessel at the time of Mr Dobson's inspection.

<sup>144</sup> See transcript page 759 where Mr Dobson states that he believed Mr Grundy shared his opinion of the boat.

attractive given what they had learnt from a recent trip to Sydney, to view another Halvorsen.

Mr Elliott's interest in particular, was evident to both Mr Grundy and Mr O'Hare and was reinforced after they returned from climbing on to the boat and conducting a brief inspection.<sup>145</sup>

- 11) Arrangements were then made to take the vessel for a trial run the following Saturday and Mr O'Hare who effectively took over the negotiation from Mr Grundy, determined to bring his own energy and experience to that matter.

During the course of the following week Mr O'Hare, who had been aware of the difficulty with the port engine in particular, made arrangements to clean up the engine and re-charge the batteries in preparation for Mr Elliott's inspection the following Saturday.

This work was undertaken and I am satisfied that prior to the inspection on the 26th of April, some success was achieved with the port engine, which while now able to be started, also ran roughly.

- 12) I have not been able to establish what was done to get the engines to start for the trial on the 26th April. I note here the short duration of that trial as managed by Mr O'Hare with the engines apparently started before the Elliott party arrived. I also note that the revised evidence of Mr Collins in particular together with other relevant evidence and the inferences drawn from that evidence, establishes that on the previous day, he and Mr Tyne had resorted to the use of a substituted fuel source to get the engines started.
- 13) Mr Dobson's evidence as to what he had been told about the port engine on the 20th April, and his observations in regard to the possibility that fuel had been fed to the port engine from a non-tank source, are also relevant.
- 14) I also note Mr Collins' stated belief that the tanks had been empty and were consequently filled, and the evidence suggesting an earlier substantial refuelling from Mr Tink, and the Invoice for the April petrol purchase of 40 litres, later sent to Mrs Grant.

It is also the case that a post accident examination confirmed Mr Dobson's suspicions that the tanks, fuel lines and at least the port fuel pump contained significant contamination.

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<sup>145</sup> Mr Elliott's demeanour in court was that of an open and honest individual and I am entirely satisfied that on the afternoon of Sunday the 20th of April 2008, he openly displayed a state of excitement, concerning what he believed he had found.

- 15) The result is that I find that I cannot exclude the possibility that Mr O'Hare, in fact undertook the trial on the 26th April, with fuel provided to either one or both engines from a substituted source.

Accordingly, I find that I do not know and can make no finding as to the source of the fuel used on this occasion.

- 16) I further find that I am satisfied that the vessel's history while with ABS informed those working on the problem which included Mr O'Hare, Mr Grundy and Mr Collins, of the poor condition of the tanks and the probability of contamination of the fuel passing from that source.

I am also satisfied that their experience was such that they each understood that the contamination of fuel delivered from these tanks, was likely to impact upon the safety with which the vessel could be used.

- 17) Following a poor trial on the 26th April, which involved the engines backfiring and giving off a lot of smoke and finally cutting out, Mr Elliott and Mr O'Hare came to terms on a purchase price.<sup>146</sup>

- 18) Thereafter, Mr O'Hare directed Mr Collins to go ahead with a reconditioning of both carburettors.

It is also relevant that Mr Collins worked under the almost exclusive direction and control of Mr O'Hare and ABS and that there was a sense of urgency about the manner in which this particular carburettor reconditioning was to be undertaken.<sup>147</sup>

Mr Vanprooyen undertook the reconditioning on the instructions of Mr Collins and I find that after completion of this work, he specifically brought to Mr Collins attention, his view that,

*'the petrol tanks supplying petrol to these carburettors, must have been like a 'tip', and of the need for these to be cleaned.'*

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<sup>146</sup> I note that achieving this result became a simple matter, as a result of Mr Elliott's announcement of his intention to purchase.

<sup>147</sup> See the evidence of Mr Vanprooyen.

It is also the case from the evidence of Ms Grant, that I cannot exclude the possibility that work undertaken at or about this time included engineering designed to effect a permanent closure of the petrol 'in', access to the port tank, with input maintained only through a cross valve from the starboard tank. Accordingly, I reach no finding about this matter.

Mr Collins, like other ABS insiders, was already conscious of this matter, may or may not have passed this information back to his employer at ABS:

- 19) On Friday May 2nd the newly cleaned carburettors assisted Mr O'Hare and Mr Tink to take the vessel out for a run. I find however that this improvement was only cosmetic.
- 20) I further find that during their earlier conversations Mr Elliott informed Mr O'Hare that he wanted a survey undertaken, that he would soon be going overseas and that it was their plan that over this absence, that a full slipping and renovation would take place.
- 21) Additionally, I find that either on the morning of Saturday May 3rd or possibly earlier that week, Mr O'Hare knowingly and falsely informed Mr Elliott that the petrol tanks had been inspected and were clean and would not need to be taken out in future to be cleaned or replaced.

At the time I am satisfied that Mr O'Hare was driven by a concern that any such work would be costly and was impractical, and may become an impediment to the sale.

- 22) On Saturday May 3rd, Mr Elliott and Ms Groen also questioned Mr O'Hare, about the boats insurance cover. Notwithstanding the contrary indication ABS had already received by email from Nautilus, Mr O'Hare responded in a manner which was intended to convey the message that insurance was or would be put in place without a survey and that they should not be troubled about it.

In the excitement of the moment, neither Mr Elliott nor Ms Groen sought written confirmation of that fact.

- 23) I am also satisfied that training in the use of the vessel was offered by Mr O'Hare to Mr Elliott and Ms Groen, and that Mr O'Hare and Mr Grundy were fully cognisant of the minimal level of experience of both Mr Elliott and Ms Groen, in regard to the operation of motor powered cruisers.
- 24) I also find that at about the time of Mr Elliott's indication of interest, and with the connivance of Mr Grundy, Scott O'Hare arranged for Mr Grundy to inform Mrs Grant that an offer of \$18,000 had been received, which it was recommended she accept.

At the time, both men knew that this advice was false.

- 25) I further find that at no time following and indeed not until he was contacted by her solicitors some months after the accident, did Mr O'Hare attempt to inform her either



directly or indirectly, that he had earlier entered into an agreement with Antony Elliott and had sold her boat to him for the sum of \$28,000.<sup>148</sup>

- 26) From the investigation carried out in this matter, I further find myself satisfied that, on Saturday the 3rd of May, 2008:
- a) At approximately 11.15 am, Antony Elliott and Marija Groen took delivery of the Leda II. Shortly thereafter they were joined at the Anchorage Marina by Michael Cullinane and Ruth Groen and their children. While inspecting the vessel, Mr Cullinane observed petrol dripping from the carburettor of the starboard engine, which appeared to settle on the manifold. This was a regular dripping which had continued for an uncertain period and, when vaporized, contributed to the build up of petrol fumes which had accumulated in the engine bilge at that time.<sup>149</sup> Mr Cullinane took steps to tighten the nut nearest the petrol drip and was able to arrest that dripping, though I find not the increased danger this and earlier dripping had created.<sup>150</sup>
  - b) After some initial difficulty, Mr Elliott was able to start both engines and set off, which he did although he was unlicensed to do so. This occurred with Ms Groen, who was licensed, standing nearby and observing his actions.

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<sup>148</sup> In this regard see the evidence of Mr O'Hare, that he was unable to identify the maker or the recipient, of the \$18,000 offer, which he instructed Mr Grundy to communicate to Mrs Grant, and that no record at all had been kept concerning this offer.

See also his comment referred to at Page 28 above about his method of sometimes seeking approval for early vendor acceptance of a particular price, although no such offer at that price may in fact have been received.

See also the evidence, of Mrs Grant on the timing of Mr Grundy's communication of the \$18,000 'offer' and her evidence that no advice about any other offer was received by her, and the undisputed evidence concerning Mr Elliott's emergence on the 20th of April, as an interested party, at which time the asking price remained at \$29,000.

I further note, Mr Grundy's evidence at page 344-345 and at page 357, that he spoke with Mr Dobson about the vessel the same day or the day before he spoke to Mr Elliott, which according to Mr Dobson was the 20th of April.

See Mr Dobson's statement Exhibit 13, at page 1, which matter was also not disputed. I also note Mr Dobson's evidence that he told Mr Grundy that he was looking to purchase at around \$18,000.

See also Mr Grundy's denial as the responsible sales agent, of any knowledge that an offer for \$18,000 was received, and his evidence that no one else had shown any real interest or made an offer, and his further denial, (which I disbelieve), that he had in fact communicated such an offer to Mrs Grant.

<sup>149</sup> Mr Collins and his apprentice had replaced the reconditioned carburettors on the Friday following the work undertaken by Mr Vanpooyen. Thereafter, the evidence of Mr Collins suggests Mr O'Hare and Mr Tink took out the vessel on the Friday.

In this regard, I also note the statement of Mr O'Hare, that the engines were started on the Saturday prior to the arrival of the Elliott party, which was consistent with the observation made by Mr Elliott that he found the carpet up and the starboard engine hatch away from its normal position at the time of his arrival.

The result is that the evidence does not disclose at which point following the reconnection of the starboard carburettor, that the drip leak later observed by Mr Cullinane and then Mr Elliott, first commenced (or later recommenced). It follows that the volume of petrol, which may have vaporised or was still available to vaporise prior to the involvement of Mr Cullinane, remains uncertain.

<sup>150</sup> Unfortunately, it appears that little or no further consideration was then given to the potential threat posed by the unknown volume of petrol, which had escaped prior to this time.

- c) The Leda II arrived at the Shell bowsers operated by D'Abora Marina Pty Ltd (Pier 35), at approximately 1.30pm and, as previously arranged, there met with Mr Elliott's parents. A short time later, Mr Cullinane and his party, who had arrived aboard their own vessel, again met the group.
- d) Thereafter, Mr Elliott began to refuel his vessel adding 217.78 litres of unleaded petrol through the starboard tank, to an uncertain quantity of fuel, that included dirty fuel, which was already located in both tanks. As each tank had a capacity of 100 gallons, it follows that when Mr Elliott commenced refuelling to a position where he believed he had reached capacity in the starboard tank, there was already a substantial quantity of fuel in both tanks.<sup>151</sup> I find this to be the case and that this fuel was at least partly comprised of what had then become stale fuel and dirty fuel, which had been added to the deteriorating tanks on earlier occasions.

It has been suggested that the filling process caused a further leaking of an unknown quantity of fuel vapour into the bilge, part of which escaped through a series of small holes, which had earlier formed at or near the upper level of the starboard tank. However, having regard to the evidence of Mr Conway to the effect that he believed, on examination of the starboard tank, that the holes occurred at the time of the explosion, I make no finding that these holes were either a source of fuel or fuel vapour, escaping into the bilge.<sup>152</sup>

- e) It is also relevant that, at this time the process of evaporation of fuel (which had earlier escaped from the starboard carburettor by a low pressure leak into the bilge in the manner described above by Mr Conway), was later elevated by a combination of the heating of the engines, manifolds and engine blocks, and the absence of a cooling system at the refuelling wharf, whilst the engines were turned off.

I also note Mr Conway's evidence concerning the relatively minimal quantity of flammable vapour which would be needed to cause this explosion.<sup>153</sup>

On a consideration then of all of the evidence I find myself satisfied that, by the time the vessel was ready for departure from Pier 35, the petrol vapour in the bilge had reached a flammable proportion to air and was in a highly volatile condition.

- f) At approximately 1.45 pm, Mr Elliott prepared to set off from the refuelling wharf. He turned on the bilge blowers in order to vent any accumulated fuel vapour from the

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<sup>151</sup> Transcript page 1098.

<sup>152</sup> Transcript page 1024 -1028. Further I did not find Captain McDonald to be credible on this matter and attach little or no weight to his evidence.

<sup>153</sup> Transcript 1201-02.

bilge. This continued over a period of between three and four minutes. During this period he walked along the gunwales of the vessel and checked the vents. He then re-entered the cabin and turned the bilge blowers off and on again, once more walking along the vessel and checking the vents for evidence of fuel vapour. He then returned to the cabin, lifted the engine hatches, and inspected the engines for fuel vapour.<sup>154</sup>

- g) I am satisfied that at this time Mr Elliott took great care to try to ensure that there was no smell of vapour prior to his starting of the engines. Having satisfied himself concerning that matter he then started the starboard side engine.<sup>155</sup> He then pressed the port engine starter button, which resulted in the immediate ignition of the vapour in a flammable proportion, that had collected within the bilge and an explosion which was centred near and around the port engine.
- h) This explosion caused the immediate deaths of Jenifer and Alexander Elliott.<sup>156</sup>
- i) Employees of the refuelling centre rendered invaluable assistance to those in the water as well as to other persons injured at the scene. Individuals within the group also acted with great courage by isolating the fuel tanks and assisting to put out the resulting fire.
- j) A police vehicle was travelling across the Westgate Bridge at the time of the explosion. As a result, the occupants observed the explosion and reported the matter to Police communications before hurrying to the scene. A Water Police Squad immediately dispatched a vessel to the scene containing three members of the Search and Rescue Squad. Harbour Control had contacted a passing tugboat, the Garbo, and requested their assistance in putting out the blaze. Upon the arrival of the Water Police and Search and Rescue Squad the bodies of Mr and Mrs Elliott were pointed out by the tug crew and recovered and placed onto the Search and Rescue vessel.

The fire was extinguished and the remainder of the vessel was secured to Pier 35.

- k) On Sunday the 4th of May 2008, members of the Water Police and Search and Rescue Squad undertook a complex dive operation in order to search for and obtain evidence, and to secure the vessel in preparation for removal from the water.

<sup>154</sup> It is relevant that Mr Elliott had not been informed and was not aware of the existence of the vessels fuel vapour detector. (I also note that Mr O'Hare testified that he was similarly unaware of its existence).

<sup>155</sup> Mr Elliott's failure to detect vapour occurred because of the confusing smell of what was in part stale fuel and in part dirty fuel, and because of his on going proximity to fresh fuel. See the evidence of Mr Xydias from Transcript page 1006.

<sup>156</sup> I also note that Marija Groen and her sister Ruth Groen, suffered severe injuries which necessitated lengthy periods of hospitalisation, for both.

## COMMENTS:

Pursuant to section 67(3) of the **Coroners Act 2008**, I make the following comment(s) connected with the death:

- 1) Having regard to all of the evidence and to Counsel's submissions, I find that the decision to start the vessel following refuelling, with passengers aboard, was inconsistent with appropriate instructions provided by the refuelling wharf manager.<sup>157</sup> The evidence does not establish to my satisfaction whether Ms Groen, who was licensed, collaborated with Mr Elliott in regard to this decision and I make no findings as to this matter.
- 2) I find that the vessel's non-marinated carburettors and non-marinated alternator and ignition systems were sub optimal.

I also find that the venting system was poor and that there was a failure by ABS to collect in a systematic way, relevant information about the vessel to be passed on to the purchaser, which included the existence of a fuel vapour detector and Mrs Grant's manner of use of the bilge blowers and vapour detector.<sup>158</sup>

- 3) Mr Elliott was unlicensed. His lack of understanding about the immediate past history of the Leda II in particular, and lack of training in the safe use of petrol run inboard vessels generally, contributed towards his inability to recognize the threat he faced arising from Mr Cullinane's earlier discovery.
- 4) Further I find that the most significant factor in Mr Elliott's lack of understanding referred to in 3) above, was the decision of Mr O'Hare to keep from Mr Elliott and Ms Groen, relevant matters concerning the immediate past history of the Leda II, which matters pertained to its seaworthiness.<sup>159</sup> This includes what I find was a pressing need to clean out (or to replace) the petrol tanks and fuel system, which I note is consistent with the advice earlier given to Mr Collins by Mr Vanpooyen.
- 5) Putting to one side the reasonable requirements of the insurer, it is also the case that if Mr O'Hare had a concern about the issue of tank contamination and the impact that was likely to have upon vessel safety, (and I find that he was aware of this matter as a positive fact),- that he then had a duty to inform Mrs Grant and Mr Elliott.

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<sup>157</sup> See Exhibit 9a.

<sup>158</sup> This was especially important information having regard to the vessels age and the absence of an owners guide or handbook, in respect of this vessel.

<sup>159</sup> The only available inference to draw from all proven facts, establishes to my satisfaction that the position in regard to the contamination of the petrol tanks (and its potential impact on linking systems), was understood by Mr O'Hare, well before the completion of the purchase.

Rather I find that he misinformed Mr Elliott concerning the condition of the tanks, and set out to avoid a pre-sale survey. I find that his actions in this regard were contrary to the community interest in public safety.

- 6) I find that Antony Elliott and Marija Groen were normally prudent people.
- 7) Mr O'Hare was aware of their collective inexperience and I am satisfied that his actions effectively denied both the opportunity to make informed decisions about their use of the vessel, and that this denial of opportunity contributed to the tragedy which then occurred.

#### RECOMMENDATIONS:

Pursuant to section 72(2) of the **Coroners Act 2008**, I make the following recommendation(s) connected with the death:

- A) I have considered the submissions made concerning the present regulatory framework for the licensing of leisure motor vessels and operators as well as the registration of ownership generally, in the State of Victoria.<sup>160</sup>

I am informed that Marine Safety Victoria and Victoria Police have recently carried out a review, in connection with plans to amend the existing legislation. I am not aware of the results of that review and I do not believe that I should further comment on it, save for two matters of concern, which arise from the evidence before me.

The first matter of concern to me is that Marine Safety Victoria has argued in this inquest that the best way to ensure ongoing compliance with existing safety requirements is to maintain the Governments present emphasis on educating the public about the dangers involved in careless boating practise.

I note that this emphasis has apparently been maintained over many years in a climate where anecdotal evidence suggested that we have had an understaffed and under resourced Marine Police Unit, tasked to investigate and prosecute instances of regulatory non-compliance.

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<sup>160</sup> Helpful submissions have been received from Aussie Boat Sales, The Boating Industry Association Ltd, Graham Dobson, Marine Safety Victoria, Peter Raymond and Associates, MFB and Victoria Police. I have tried to give particular weight to the views provided by Marine Safety Victoria, this having regard to the ongoing commitment to public safety and the considerable collective pro-safety experience, which exists within that organisation. See Exhibit 34, Seaworthiness of recreational vessels in Victoria by Lisa Feldon and the Victorian Rec Safety Handbook, Jan 2009.

I would simply observe that in my view a combination of enforced regulatory control supported by adequate policing and prosecution in appropriate cases, (together with ongoing public education), is far more likely to achieve the Marine Safety Victoria's objectives in this area, than that which has been secured under current arrangements.

- 1) To this end, I recommend that the resources currently available to the Police Marine Units be reviewed and that going forward adequate resources be made available to Victoria Police to allow for an increase in the level of policing in this area.
  - 2) Having regard to all of the evidence, I also recommend that Marine Safety Victoria and Victoria Police Marine Division continue their campaign and further highlight the dangers involved in the use of petrol driven inboard motor cruisers, particularly following a period of disuse.
- B) The second matter of concern relates to present arrangements in regard to issues of public safety pertaining to design and maintenance standards, of petrol fuelled inboard leisure vessels.

In my view, the evidence provided in this inquest reveals that the present arrangements pay insufficient regard to the need to establish enforceable parameters, which broadly standardise our approach to boat safety. An unintended result of this omission is that important and reasonable basic safety requirements have been compromised in a manner, which has created an ongoing threat to leisure boat enthusiasts.

- 1) To meet this threat I recommend that the State of Victoria introduces legislation which will require that all non-commercial, petrol powered inboard motor cruisers, boats or other similar vessels, operated within Victorian waters, which are greater than 15 years old, be surveyed by a suitably qualified marine surveyor.<sup>161</sup>
- 2) I further recommend that all new non-commercial petrol powered inboard motor cruisers boats or other similar vessels be surveyed on first registration, and thereafter on each occasion that a change of ownership registration in respect of any such vessel is sought.<sup>162</sup>

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<sup>161</sup> I have considered the concerns, which have been expressed about the numbers of suitably qualified persons presently available to carry out this work. See particularly the views expressed in the submission made by the Boating Industry Association Ltd.

This evidence does not establish that the numbers of such vessels which are 15 years or older, is so great as would preclude the carrying out of this work.

I further recommend that a transitional provision might reasonably require such an initial 'fit for purpose' survey, be carried out within two years of the enactment of the amended legislation.

<sup>162</sup> In the case of new vessels which have been produced as a class, the initial survey might at the discretion of the Director of Marine Safety, be undertaken by the manufacturer under the broad supervision of Marine Safety Victoria personnel, this at the option of the owner and at the owners expense..

Having regard to liability issues, I see little risk that such a survey will be compromised by a lack of independence.

3) I also recommend that the State of Victoria introduce legislation to establish general design standards, which include as a minimum requirement for the registration of all petrol fuelled leisure vessels,

- that all engines and fuel delivery systems are maronised;
- that petrol tanks are easily accessible and are capable of being cleaned and tested;
- that petrol tanks have adequate venting to atmosphere outside the boat, by reference to volume;
- that flammable fuel detectors are attached;

and

- that carburettors are properly fitted to drip trays with collected fuel directed to absorbent material which prevents fuel evaporation.<sup>163</sup>

4) Further I recommend that such legislation make it an absolute offence punishable by the imposition of a significant financial penalty,

*'to own at sea, or to sell, rent, or take to, or to control at sea, any petrol driven inboard powered leisure vessel',*

which has not passed survey in accordance with these requirements.

5) To further support the interests of public safety I also recommend that the Boating Industry Association continue its work with Marine Safety Victoria, to set up an appropriate dealer accreditation programme.

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Where that is not possible or acceptable to either party or the Director, the initial survey should be carried out by a person approved by the Director, any of which class of persons should also be responsible for the survey of vessels which are 15 years or older, or (other) second hand vessels which are offered for sale.

A sale within 12 months of the last survey might be accepted as a reasonably proximate survey for the purpose of such a requirement.

<sup>163</sup> If adopted these legislative changes would become part of wider requirements made of those seeking to register their vessels and also therefore form part of the guidelines provided to those entrusted by the Director with the responsibility of conducting surveys. By extension they would also become an integral part of the design process, in regard to vessels intended for sale to the Victorian market.

This recommended approval list at least in regard to how it applies to marine surveys, is not of course intended to be complete. Rather a full list of complimenting guidelines (for both designers and surveyor's consideration), should be determined by the Director following consultation between the Boating Industry Association, Surveyors Representatives, and Marine Safety Victoria. Other areas, which I would expect to see made a part of such guidelines include hull and superstructure, and mechanical and electrical systems.

The emphasis of such guidelines should be to ensure that basic safety standards are required to be met across all classes of petrol powered in board leisure vessels, having regard to reasonable industry views of what constitutes 'fit for purpose' and the financial implications of meeting same.

In my view a useful model for that scheme would involve a consideration of the accreditation scheme currently applicable to traders in the new and used car industry and accordingly I recommend that approach.

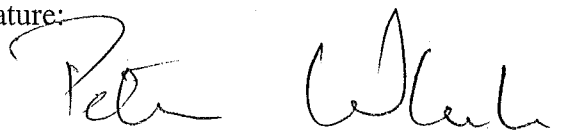
## CONCLUSION

I take this opportunity to thank all Counsel and those instructing, together with Coroners Officer, Senior Sergeant Dimsey, for their assistance with this inquest. I am also grateful to the witnesses who testified and to those who provided written submissions and to the informant Senior Constable Blakeley and to those others who contributed to the investigation and to brief preparation.

I also wish to acknowledge the resourcefulness and courage demonstrated by Nicholas Power, James Keeran, John Campbell, Toby Mathews, Anthony Edwards, Naomi Goldberg and Gary Patrick, all of d'Albora Marine Pty Ltd. Each of these people threw themselves into a confused situation to assist victims and prevent further catastrophe, without regard to the possible personal consequences of a further explosion of the refuelling centre, and its holding tanks.

I commend each for that conduct.

Signature:



Peter White

Coroner

Date:

3/8/2010

### Distribution:

Mr Antony Elliott.

Ms Mairja Groen.

The Attorney-General in the State of Victoria.

Mr and Mrs Michael Cullinane.

Mr Scott O'Hare.

Aussie Boat Sales Pty Ltd.

Mr Paul Collins.

Mr Phillip Grundy.

Mr Jeff Vanprooyen.

Mrs Janette Grant.

The Director Marine Safety Victoria.

The Commissioner for Police in the State of Victoria.

The Chief Fire Officer Metropolitan Fire Brigade.

Mr Graham Dobson.

D'Albora Marine Pty Ltd.

The Manager of the Coroners Court Prevention Unit, (Attn Mr Joe Vitale).