With all due respect to The Institution and those responsible for the preparation of the Report, it is unlikely that the statements contained in the Report are likely to be of great influence in determining the criteria for the establishment of legal liability. The criteria suggested does not necessarily match the criteria which would be used by the Courts to establish the existence or otherwise of liability. In certain circumstances, liability could arise in relation to inaction, as well as in relation to decisions and actions. Furthermore, in some circumstances, liability could arise despite or even because of absence.

4. CLAIMS AND DISPUTES RESEARCH PROJECT

Due to serious concern at the high level of claims and disputes in the construction industry, the Australian Federation of Construction Contractors initiated a research project to be carried out by representatives of the National Public Works Conference (at both Commonwealth and State level), the National Association of Australian State Roads Authorities, the consulting professions and AFCC.

The project has involved a study tour of Europe, Scandinavia, the United Kingdom, Canada and the United States. The purpose was to identify the underlying causes of claims and actions taken in other countries to address the world wide claims/disputes phenomenon. To lessen the time burden on study tour participants, AFCC carried out separate investigations in Singapore, the Philippines, Hong Kong, Taiwan and Japan.

It is intended that a Report shall be released in November 1988 and that it will include recommendations for changes to be instituted in Australia to contract strategies; tendering systems and procedures; contractual provisions, policies and practices; and to dispute resolution procedures to address the problem.

Australian Construction Law Newsletter subscribers shall be informed in due course of the content of the Report and its recommendations.

5. NEGLIGENT BUREAUCRATIC ADVICE

The recent New South Wales Court of Appeal decision in Parramatta City Council v Lutz (1988) ATT 80-159 has serious implications with respect to responses from Ministers, Government Departments and Local Authorities to people who seek a solution to problems. It is not unknown, when one writes to a Minister, to receive a polite response that the matter is being looked into and never to hear again, unless further action is taken to pursue the issue.

In Parramatta City Council v Lutz, an elderly lady, Mrs Lutz, purchased a weatherboard house adjacent to a burnt out cottage. Concerned at the fire danger presented to her house, she contacted the Local Council to have something done to safeguard her own house. When no action was taken, she returned to the Council on a monthly basis for ten months. It is relevant that Mrs Lutz was an elderly lady, who had a poor command of English, who had little understanding of the law and who took the view that the Council was the appropriate method of solving her problem. When her house was destroyed by a fire that began on the derelict property next door, Mrs Lutz brought an action against the Council for negligence.

The Court of Appeal took the view that the Council had acted reasonably when first contacted by Mrs Lutz. Council passed a resolution to notify the owner of the adjacent property to remove the hazard. In the second month, the Council gave notice to rectify the matter within 60 days. The owner of the adjacent property failed to comply with this notice and the Council did not enforce compliance in the intervening period, due to "ill directed activity by numerous officials". The Court of Appeal found that the Council failed to take reasonable care and that it was guilty of negligence.

Kirby P. considered that the Council was bound to act promptly after the expiration of the 60 day period and that, if it decided not to demolish itself, then it had a duty not to mislead Mrs Lutz by lulling her into a false sense of security which would result in her avoiding other action. Mahoney J. took the view that liability which arose on the part of the Council was of the Hedley Byrne type, i.e. liability for negligent advice. If the Council had not mislead her as to the likely period of its inactivity, then Mrs Lutz would have taken other action. McHugh J. took the view that Mrs Lutz was entitled to rely upon the Council to protect her and that it had a duty to take action within a reasonable time to demolish when the owner failed to comply with the notice. It might have been otherwise, if the Council had taken a decision not to demolish on the basis that the delapidated premises presented no risk to persons or to property, or if the Council's actions to demolish were suspended by legal challenge.

Mrs Lutz was awarded damages to the cost of restoration of her house, although this amounted to twice the value of the house at the time that it was destroyed.

It is salient to note that the basis of the Council's liability to Mrs Lutz was on the basis of negligent advice that, in effect, it was dealing with the matter. This advice mislead Mrs Lutz and she relied upon the Council to her own detriment, by not taking other action.

In the light of this decision, it would seem likely that Ministers, Government Department bureaucrats who prepare standard "the matter is being looked into" responses and Local Authorities will have to review the manner in which they deal with problems addressed to them for attention. Indeed, it is understood that one major Government Department is already considering the problem. With an awareness of this case, people who seek solutions from Government or Local Government, might seek to further assist their own chances of recovery by indicating, in response to a letter or advice that the matter is being looked into or that it will be attended to, that they are taking no further action in reliance upon this response. Whether such inaction by the complainant would be seen as reasonable would depend upon the circumstances.

6. INTEREST AS DAMAGES

If one were asked to select the most important case in 1987 for the Construction Industry, the choice would have to be Walker & Ors. v Hungerfords & Ors. (1987) Aust. Torts Reports 80-145, a decision of the Full Court of the Supreme Court of South Australia delivered on 2nd December, 1987. Special leave to appeal to the High Court has been granted (1988 A L M D April p171) and the decision of the High Court is likely to be more important than that of the South Australian Full Court.

The case concerned a claim by taxpayers against their accountants. Due to the negligence of the accountants, the taxpayers over a period of 7 years overpaid $47,469 in tax. The taxpayers claimed the amount of $47,469 and an additional $334,521 for loss of use of the $47,469. The additional $334,521 was calculated on the basis of compound interest at the highest rate which the taxpayers were paying Mutual Acceptance for loans used to finance the taxpayers' business.

The Court found that the taxpayers were entitled to damages for the loss of use of the $47,469 and that, had the money been available to them, it would have been used to repay the loans to Mutual Acceptance bearing the highest rates of interest or put into the business if that would have been more profitable than repaying the loans. However, taking into account the possibility