MAGISTRATES COURT TASMANIA

MAGISTRATES COURT *of* TASMANIA

CORONIAL DIVISION

Record of Investigation into Death (Without Inquest)

Coroners Act 1995
Coroners Rules 2006
Rule 11

I, Leigh Mackey, Coroner, have investigated the death of Raymond Ross Penney. Mr Penney was 64 when he died on 27 August 2021. At the time of his death, he was employed as an excavator operator and bush boss for PL & NR Voss ("Voss"). Mr Penney was an experienced forestry worker having worked in the industry for 45 years prior to his death, the last approximately 14 years with Voss. He was one of 10 full and half siblings and grew up around the Dover region. His family have remained close over the years. Mr Penney has had three significant relationships over his life and at the time of his death he was in a relationship with Sue Walker.

Mr Penney enjoyed sport, especially lawn bowls. Aside from having difficulty with his knees he was healthy and a hard worker. I have considered statements received from his family, employer, workmates, and associates, who describe Mr Penney as a highly experienced, cautious employee, and as a workmate and friend who was a well-liked and a valued member of the forestry industry and Dover community.

Mr Penney died when he was struck by a regrowth tree (regrowth tree) that had been brought down by the mechanical falling of an old growth tree (old growth tree) at the coupe at which he was working in the course of his employment with Voss. As such his death occurred at his workplace.

The holding of an inquest

The *Coroners Act* 1995 ("*Act*") was amended in 2005 to provide for specific powers and functions of a Coroner in the context of workplace deaths. By these amendments unnatural work place deaths were included in the definition of reportable deaths (s3),[1] the holding of an inquest into an unnatural workplace death was mandated (s24(1)(ea)) and the decision to hold an inquest into a workplace death was required to be communicated to the senior next of kin of the deceased providing an opportunity for them to object (s26A). If the senior next of kin requests the Coroner to not hold an inquest the Coroner may decline to hold the inquest unless to do so would be contrary to the public interest (s26A).

[1] A coroner has jurisdiction to investigate reportable deaths, s21.

The intention behind the amendments was, as explained in the second reading speech for the amending *Act*:

> "*In view of concerns, particularly from the union movement, that inquests were not being held in relation to certain workplace deaths on the west coast, it is proposed to insert in the act an obligation on coroners to hold an inquest in all cases where the work-related death is found, after autopsy, not to have occurred due to natural causes, unless the coroner agrees to a family request not to hold a formal hearing*". [2]

Mr Penney died at his workplace from an unnatural cause and accordingly his death was a reportable death and an inquest must be held under s24(1)(ea) unless his senior next of kin objects and it is not contrary to public interest to not hold an inquest. I have received advice from Mr Penney's senior next of kin, his sister, Ms Meg Wilson, that Mr Penney's family do not want an inquest to be held in respect of his death.

Mr Penney's death has been subject to significant investigation by Tasmanian Police, WorkSafe Tasmania (WST) and Sustainable Timber Tasmania (STT). The Coroner then seized of this matter. Officers from Tasmanian Police, STT and WST attended the scene of Mr Penney's death. I have had the benefit of considering the evidence produced by these investigations including witness statements, forensic photographs, body worn camera footage and documents relevant to the work being conducted at the time of Mr Penney's death and his employment and experience. I do not believe that I would be assisted in making the findings required by s28 of the *Act* by the holding of an inquest nor do I find that it would otherwise be in the public interest for an inquest to be held. I have accordingly determined to not hold an inquest into Mr Penney's death.

The Regulation of the Forestry Industry

The *Forest Practices Act* 1985 (*FPA*) establishes the Forest Practices Authority (FPA) (*FPA* s4AA). The *FPA* oversees the operation of the forestry industry in Tasmania. The objectives of the *FPA* include planning before forest operations, developing a forest practices code to provide practical standards for forest management, timber harvesting and other forest operations, self-regulation, and the conservation of threatened native vegetation communities (*FPA* schedule 7).

To meet these objectives the *FPA* establishes a system whereby forestry operations cannot be conducted without a certified forest practices plan (FPP) authorising forestry activity (*FPA* s17)

[2] Second reading speech Coroners Amendment Bill 2005 (no.62) 8 November 2005.

and a forest practices code which prescribes the way, amongst other things, timber is to be harvested, or trees cleared (*FPA* s31).

The *Forest Practices Code* 2020 (Practices Code) applied at the time of Mr Penney's death. The Practices Code identified broad principles of forestry management that applied to forestry operations generally. Specifically, in respect of felling operations, the Practices Code required trees to be felled in a:

> "*systematic, controlled manner that has taken into consideration:*
>
> - *resource utilisation and product recovery*
> - *efficient extraction*
> - *natural and cultural values*
> - *safety and fire safety*"[3]

and

> "*trees will be felled in a controlled manner to:*
>
> - *facilitate extraction*
> - *remain clear of watercourses and streamside reserves*
> - *reduce damage to retained trees and*
> - *improve recovery of useful products*".[4]

The Practices Code also required that trees should be felled away from Class 4 watercourses and harvesting machinery were not to enter streamside reserves except at designated crossings unless "*an FPO has specifically approved machines such as excavators to carry out restoration work (e.g. removal of slash or windthrow from watercourses by machines working from the streambank) when soils are dry or moist, or for CFPO-approved salvage works (see C8)*".[5] The focus of the Code is to manage forestry operations sustainably and in a way that is protective of the ecological values of flora, fauna and water on a logging site. Its focus is not on issues of safety.

The *Forest Safety Code (Tasmania)* 2007 (2007 Safety Code), regulated safety in the forestry industry at the time of Mr Penney's death. It was superseded by the Forest Safety Code (Tasmania) 2021 which was effective from 2 March 2022. The 2007 Safety Code was an approved code under the *Workplace Health and Safety Act* 1995 and its purpose was to provide

[3] Forest Practices Code C4.
[4] Forest Practices Code C4.
[5] Forest Practices Code C7.1, an FPO is a Forestry Practices Officer.

a practical guide to safe work practices on forestry worksites. Relevant to the operations being conducted at the time of Mr Penney's death it provided:

1. In the context of higher risk manual tree felling:
    a. Only fellers with the necessary Tasmanian Forestry Industry Training Board industry accreditation and relevant experience are to be permitted to fell trees deemed to be a higher risk felling operation (cl 6.1).[6]
    b. Only highly skilled personnel using methods assessed as safe should fell a hazardous tree (cl 6.4).[7]
    c. Appropriate safe felling methods are to be selected by the accredited feller in consultation with the person in charge (cl 6.5).[8]
2. In the context of excavator-assisted manual tree felling:
    a. Excavator assisted manual tree felling should only be carried out by an operator with relevant training or experience (cl 6.13.1).[9]
    b. Before starting all persons involved must have been consulted including an assessment of the tree to be felled and surrounding trees for any visible hazards that may present an unacceptable risk (cl 6.13.2).
3. In the context of mechanised felling:
    a. It is to be planned to ensure the safety of others in the working area (cl 7.1).
    b. The mechanised felling equipment must[10] be used in accordance with the design and operation and specification provided by the manufacturer, importer, designer or supplier (cl 7.4).
    c. The employer is to[11] ensure that the operator is trained in the operating limits of the machine including the maximum safe mass and diameter of the tree it can fell (cl 7.4).

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[6] The use of "are to" is explained in the Code as an instruction to "…do it, but in these situations, you have a choice…When an alternative solution is developed to that contained in the code, you will need to conduct a risk assessment to determine if the alternative is equal to or better than the instruction …" (s1).

[7] The use of "should" is explained in the Code as advice to do something "but it is up to you whether you do it or not. If you decide not to adopt the advice, then you need to have conducted a risk assessment to support your decision" (s1).

[8] The use of "are to" is explained in the Code as an instruction to "…do it, but in these situations, you have a choice…When an alternative solution is developed to that contained in the code, you will need to conduct a risk assessment to determine if the alternative is equal to or better than the instruction …" (s1).

[9] The use of "should" is explained in the Code as advice to do something "but it is up to you whether you do it or not. If you decide not to adopt the advice, then you need to have conducted a risk assessment to support your decision" (s1).

[10] The use of "must' is explained in the Code as a requirement and means "that you have no other option than to do what the clause requires" (s1).

[11] The use of "is to" is explained in the Code as an instruction to "…do it, but in these situations, you have a choice…When an alternative solution is developed to that contained in the code, you will need

The 2007 Safety Code did not specifically consider excavator assisted mechanical tree felling as a method for felling, prohibit the practice of digging around a tree to be mechanically felled to loosen its roots nor did it prohibit the leaning on trees by machinery, other than to the extent that to do so fell outside manufacturer's specifications.

The 2007 Safety Code was updated after Mr Penney's death in November 2021 to align with the *Workplace Health and Safety Act* 2012. The 2021 Safety Code now requires the type of felling method (manual, mechanised or a combination) to be determined at the planning stage of a new operation (cl 8) and recognises mechanical falling as a method to fell a hazardous tree if assessed as safe to fell by that method (cl 6.2). That assessment is to involve all operators involved in the felling and extraction (cl 8.1). The 2021 Safety Code requires that the weight and power of the mechanical harvester must be suitable for the site conditions and the tree size, the machine must be operated in accordance with manufacturer's specifications, have a suitable falling object protective structure fitted and be operated by a person who holds a statement of attainment in the relevant competency units, for example as a feller buncher, and is trained in the working limits of the machine.[12]

The role of STT

The harvesting of timber on public/crown land is conducted by Forestry Tasmania (FT). FT trades as Sustainable Timber Tasmania (STT) and is a government business enterprise. STT manages forestry operations in permanent timber production zones to achieve both commercial and sustainable outcomes. The responsibilities and expectations of STT are set out in the Forest Management Plan 2019 (FMP). Among other things STT is expected to:

- Facilitate a successful Tasmanian forest industry.
- Continually improve business operations, systems and processes.
- Be socially responsible and take all reasonable steps to reduce the risk of adverse environmental effects from Sustainable Timber Tasmania activities.[13]

One of the four strategic objectives of STT identified in the FMP is to "*achieve zero harm to our people and contractors"*[14] and it is intended that STT, "*throughout the course of"* an operation will conduct *"regular monitoring to confirm that harvesting is being conducted in accordance with the forest practices plan, product recovery is being maximised, and safety requirements are being met*".[15] The FMP recognises that where problems are identified STT can direct a contractor

to conduct a risk assessment to determine if the alternative is equal to or better than the instruction …" (s1).
[12] Safety Code 2021 p47.
[13] Forest Management Plan 2019 para 2.
[14] Forest Management Plan 2019 para 3.2.
[15] Forest Management Plan 2019 para 4.1.4.

to undertake remedial action or shut the operation down. The health and safety of STT workers and contractors are describe in the FMP as being of the "*highest priority*"[16] and managed with a system that requires:

- Work activities to be assessed for safety hazards and risks, and where necessary, appropriate controls are put in place;
- Contractors to have appropriate safety management systems;
- Relevant safety legislation, standards and codes of practice are identified and complied with; and
- Safety incidents are investigated, and corrective and preventative action is undertaken.[17]

A commercial forestry harvesting environment is inherently dangerous for those working within it. At times a tension exists between restrictions placed on the worksite to achieve ecological and sustainable objectives that impact and constrain the way forestry operations can be conducted and the safety of those working on that site.

In its 2021 Annual Report STT acknowledged that a significant cultural change was required in the forest industry to approach forestry operations with a "*new enhanced safety lens*".[18] To do this STT identified that it was working together with contractors and employees to provide "*greater support and resources to help empower and skill its employees and contractors by developing a revised safety strategy with culture as its core focus*".[19] Specifically in respect of contractors STT's stated intent was to ensure they understood the standards of safety management they needed to meet and to check to make sure they are meeting them.

Voss was in a contractual relationship with FT/STT to provide wood harvesting services in accordance with the administrative directions and policies of FT ("the harvesting contract").[20] The terms of the harvesting contract broadly provided that Voss were to fell any trees which were reasonably considered to be dangerous or unsafe in accordance with the Safety Code 2007, the Hazardous/Non Commercial Tree Report, recognised good industry practice, a FPP, or similar.[21] FT/STT could, if reasonably of the opinion that Voss was failing to adhere to the provision of any applicable law or regulation, or reasonably believed that the quality or standard of Voss' performance was inadequate in any respect, suspend the performance of the harvesting contract.[22]

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[16] Forest Management Plan 2019 para 4.8.2.
[17] Forest Management Plan 2019 para 4.8.2.
[18] STT Annual Report 2021 p13.
[19] STT Annual Report 2021 p13.
[20] Harvesting Contract H1819-023 dated 13 November 2018 cl 4.2(a).
[21] Harvesting Contract H1819-023 dated 13 November 2018 cl 5.2(b).
[22] Harvesting Contract H1819-023 dated 13 November 2018 cl 8.3.

STT had a role and a responsibility for safety on contractor forestry operations under its management. To enforce its aims for sustainability and safety STT induct contractors on to the coupe before works commence, review the contractors Forestry Operations Safety Plan (FOS) and, after handover of the site, whilst the site is operational, regularly attend on site to provide monitoring of the harvesting operation's compliance with the FPP, FOS and safety measures. If noncompliance is identified, STT, through the contractual arrangements, have the power to suspend the operation.

I find that in respect of the Voss operation, as with any other of its contractors, STT had a responsibility to educate, monitor and check that appropriate safety planning, measures and processes were in place, particularly noting that the coupe harvested by Voss was an environment where STT applied restrictions on where and how work was to be conducted to preserve ecological values.

The coupe

The coupe at which Mr Penney was working when he died was AR034F and was located at Spur 1 Arve Loop Road in Southwest Geeveston (Coupe). It had been substantially logged and was regrowth forest with scattered mature trees.

The relevant STT officer allocated to the coupe was Michael Casey (Casey). Casey conducted an induction into the coupe with Mr Penney on 21 June 2021. The induction included a discussion of the FPP, the FPP map relevant to the coupe, the Class 4 streams on site[23] and the special values of the coupe. Casey discussed the contractor guide which included photographs of cultural heritage and special values. Matters of special value included the swift parrot, wedge tailed eagle, masked owl and any other species listed in the FPP. The induction also included hazards. A Hazard Notification Form was provided which included hazards that had been identified during the planning for the coupe by STT.[24] One of the hazards identified in the Hazard Notification Form was the presence of dead stags/dry limbs throughout the coupe which required identification in the FOS. Once the induction was complete Voss took over control of the coupe.

A FOS including a map and Hazard Notification Form was produced by Voss after induction into the coupe by STT. Hazards identified in the FOS included snags and old growth with a high risk of serious injury or death. The control measure was that "*all snags and old growth will be inspected and if safe to be pushed over by a (sic) excavator or fell by a bushman – otherwise they will be blown*".[25] The FOS, in the context of felling, identified trees as a hazard where they had

[23] Class 4 streams are waterways identified as requiring protection.
[24] Affidavit of Michael John Casey sworn 1 November 2022 annexure A2.
[25] Voss forest operation safety plan (FOS) dated 21 June 2021.

a high risk of causing injury to a feller or operator. The control measure for that hazard was stated as, "*any dangerous trees in the coupe will be assessed- if the ground is not suitable for the feller buncher then they will be fell by hand if safe to do so*".[26] There is no indication that on reviewing the FOS at his post induction site visit any issues were raised by Casey on behalf of STT concerning the control measures for hazardous trees as outlined in the FOS, noting its focus on mechanical felling/push over by an excavator and the absence of a requirement for a qualified manual feller assessment or indeed specific risk management for each hazardous tree to be felled being undertaken.

On 26 August an old growth tree was added to the FOS. The hazard was described as "*Ray did not want to work under*", the possible consequence as death/injury, and the risk high. The control measure was contact with Casey to assess the large old growth and noted that permission was given at 3pm on 26 August to remove it as hazardous.[27] These entries relate to 26 August 2021[28] and the operation to fell the old growth tree identified as a hazard was directly causative of Mr Penney's death as discussed later in these findings.

The FOS acted as a risk assessment and was checked and signed off by all Voss employees working at the coupe.[29] As the coupe was progressively cleared the intent was to update the FOS with any new hazard added to it at the time it was identified.[30] Consideration of the hazards as identified on the FPP and carried onto the FOS were broadly described and the risk control appears somewhat generic. The FOS was updated twice, first by adding the old growth tree on 26 August 2021, as referred to previously, and then by adding as a risk, on 9 October 2021,[31] a hazardous tree that cannot be fallen mechanically with a high risk of causing serious injury or death and adopting a three-step control measure as follows:

1. Once hazard identified bush boss must be alerted immediately;
2. Bush boss to contact manual tree feller and organise inspection of the tree; and
3. Appropriate safe felling method to be selected by the accredited manual tree feller in consultation with the bush boss.[32]

Before 9 October 2021 the FOS did not include any clear direction as to when a licenced manual faller should be used for the purposes of assessment or felling. As the FOS was worded,

[26] Voss forest operation safety plan (FOS) dated 21 June 2021.
[27] Voss forest operation safety plan (FOS) dated 21 June 2021.
[28] The entry on the FOS of 26 August does not bear the year it was entered. Given that the entry of 26 August clearly refers to the old growth tree I find that the entry was made in 2021.
[29] Statement of Charni Harvey given to WST 4 June 2023 response to question 2.
[30] Statement of Charni Harvey given to WST 4 June 2023 response to question 2.
[31] The entry on the FOS of 9 October does not bear the year it was entered. Given that the evidence of Harvey that he did not see the 9 October entry on the FOS until after Mr Penney's death, (affidavit sworn 1 November 2021 page 2) I find that the entry was made in 2021.
[32] Voss forest operation safety plan (FOS) dated 21 June 2021.

the primary step in respect of hazardous trees prior to Mr Penney's death was to attempt mechanical felling and not involve manual felling unless the mechanical option was not available. Given the process required the FOS to be checked by STT and the relevance to STT of issues of safety as commented upon earlier in these findings, by not challenging the control measures in the FOS this method of dealing with hazardous trees, mechanically and without clear direction to include a qualified manual feller assessment, received STT's tacit acceptance as a safe work practice.

Voss had previously recorded a significant safety incident in 2019. That incident was investigated, and a request made by STT for Voss to update their safety management system including that the FOS show alternative safe felling practices where a tree is judged too big to mechanically fell, including by manual felling. This was not reflected on the FOS at the time of Mr Penney's death. Had it been it may have alerted the crew of the need to have the old growth tree, given its size, assessed by a qualified manual feller and of the potential that it was unsafe to be mechanically felled.

The coupe had been selected for a habitat tree retention trial[33] and as such felling restrictions applied to operations on the coupe and were reflected in the FPP.[34] The restrictions broadly protected nesting habitat trees and foraging habitat trees over a certain size from being felled. Authorisation was required to be obtained from STT if it was necessary to fell habitat trees for safety or to recover non-habitat trees. Four Class 4 waterways were located in the coupe and had been identified for protection. A machinery exclusion zone (MEZ) was placed around each waterway to protect it.[35] The area covered by the MEZ was marked with blue tape.

The felling undertaken by Voss at the coupe was largely by mechanical means. Voss did not routinely have a licenced manual faller on site. Mechanical felling was undertaken with a 40 tonne L822D Tiger Cat Feller Buncher (buncher). The buncher was operated by Chris Harvey (Harvey) who was employed by Voss as a feller buncher operator. He had worked for Voss for over 11 years by the time of these events. He held qualifications for chainsaw harvesting, feller buncher operations, mechanical processor operations, excavator harvesting and log classifier. The buncher was fitted with operator protection for falling objects and roll overs, and was designed for "*plantation thinning in natural stands and final felling applications*".[36]

Also on site was a machine operator, Tim Jones, working on the landing stacking timber and loading trucks, a logger and plant operator, Justin Richards and a skidder driver, Chris Vincent. Mr Penney operated a 22.5 tonne 2016 Doosan hydraulic excavator model DX225 (excavator)

[33] STT Incident Investigation Report re AR034F incident p7.
[34] Forest Practices Plan created 23 October 2017 updated 30 October 2020.
[35] The MEZ prevents machinery from coming within 10 metres of the protected site.
[36] STT Incident Investigation Report re AR034F incident p15.

on site. The excavator was fitted with a structure to protect the operator/cabin from falling objects and roll overs.

The buncher and excavator had been purchased new by Voss after investigations undertaken on machinery used in other forestry operations. Assessments undertaken after Mr Penney's death showed that the buncher and excavator were in good mechanical condition.

The old growth tree

The old growth tree has been estimated to have been 68 metres high, 50 – 60 tonne in weight, and 7 metres in diameter.[37] It was assessed by Mr Penney and Harvey to be hazardous because of:

1. The need for workers and their machinery to travel frequently under it;
2. The scarring on its trunk;
3. Evidence on its trunk that it had been touched by fire; and
4. Recent heavy winds affecting the coupe.

The old growth tree was recorded as a hazardous tree in the FOS on the 26 August 2021, as outlined earlier in these findings.

The regrowth tree

The regrowth tree was located approximately 2 metres away from the old growth tree. It was in a MEZ protecting a Class 4 waterway.[38] It was healthy. It was not identified as a hazard or dangerous tree until the mechanical falling of the old growth tree had commenced. At that point the risk it presented of being hit by the old growth tree as it fell became apparent to Harvey.[39] Discussions occurred as to how to respond to the regrowth tree. Harvey raised felling it. This option was considered by Mr Penney as not available to them given the regrowth tree's location in the MEZ.[40]

It was the regrowth tree that struck Mr Penney resulting in his death.

Mr Penney's qualifications

Mr Penney was employed by Voss as a "Bush Boss" or leading hand. He had lengthy experience working in forestry including as a licenced manual tree feller. He was the most senior worker

[37] Tasmanian Police Subject Report p2.
[38] Following Mr Penney's death it was found that the regrowth tree's position would have been accessible for felling by the buncher without breaching the MEZ.
[39] Affidavit of Christopher Thomas Harvey sworn 29 August 2021 p2.
[40] After Mr Penney's death the regrowth tree was found to be accessible by machinery without breaching the MEZ. Further the MEZ did not prevent manual tree felling.

on site at the coupe. His work tasks included operating an excavator and pushing over trees with an excavator when necessary.[41] Mr Penney was accredited as a manual tree feller until 2017 when he decided to not renew his licence.[42] As a result from that point on, the Voss operation was without a qualified manual tree feller on site.

At the time of his death Mr Penney had a Forest Operators License (FOL) verifying his competency in the following:

- Bushfire awareness;
- Chainsaw harvesting;
- Dozer harvesting;
- Excavator harvesting;
- Fire weather evaluation;
- FPC for machine operators;
- Log classifier sawlog;
- Machine familiarisation; and
- Skidder operations.

It is claimed by Voss that they had re-inducted Mr Penney on 1 March 2019 and he had been given training at that time on internal policies and procedures including mechanised tree falling, dealing with stag cull trees and procedures for trees which sit back during falling. Verification was provided of this in the form of a copy of a signed "safety induction/re-induction program for workers" document. The signature purported to be that of Mr Penney on that document was compared with known examples of his signature by handwriting expert, David Black. Mr Black is a forensic scientist employed at the Document Examination Unit of the Victoria Police Forensic Services Department and has expertise and experience in handwriting and signature comparisons. Mr Black's opinion was that whilst the signature on the document was "significantly dissimilar" to the other examples of Mr Penney's signatures both on that document and on the comparison documents, his examination was limited by low resolution of the copy, the simplistic nature of the signatures and the small quantity of specimen signatures for comparison. The assessment was accordingly inconclusive. In the absence of any evidence that Mr Penney did not undergo the reinduction program as claimed, I find that Mr Penney did have exposure in 2019 to the content of the re-induction program as outlined above.

[41] Statement of Charni Harvey given to WST 4 June 2023 response to question 2.
[42] Statutory Declaration Phillip Lewis Voss dated 12 October 2021 p2.

The events leading up to Mr Penney's death

As part of his work duties, Mr Penney assessed the area used for a crossing by machinery at the coupe and found the ground to be soft and unstable. This caused him to consider repositioning the crossing a short distance. To discuss the crossing Mr Penney called Casey to request he come onto the site. Casey arrived at the coupe on 26 August 2021 at approximately 3pm. He met with Mr Penney and Harvey. Harvey describes that meeting to Sergeant Fogarty on 27 August 2021 as a discussion about the crossing and Mr Penney's concern as to how wet and boggy it was. Casey responded that it would be right if they "*just cord it*" and then they:

> "*…discussed this tree. Ah Ray said I don't want to work underneath it cause it's too big and dangerous…Michael and I come up and assessed the tree…it was deemed a dangerous tree so we were given permission to get it down even though it was right on the side of where we were allowed into and where we're not allowed into.*"[43]

This description of Casey's visit accords with that given by Casey.

STT concluded, following its investigation, that the purpose of the onsite visit was to "*preserve the stream's water quality, and the environment*", being a reference to the Class 4 waterway that was being protected by the MEZ in question, over which the crossing was to be constructed and in which the regrowth tree was located.[44] Whilst that may have been the purpose as a result of Casey's visit, authorisation was also given by Casey for removal of the old growth tree "*if safe to do so*".[45]

STT investigated and prepared a report into the incident. In that report they make the point that Casey, when providing authorisation to fell the old growth tree, was not required to consider the safety implication of falling the tree as it was not "*relevant to the authorisation to be provided*".[46] They assert that when giving the authorisation, "*Mick Casey was only required to assess the tree's proximity to the C4 stream and the environmental impacts and pollution which may result from felling the tree*".[47] Given the dangerous environment in which the operation was being conducted, the imposition by STT of restrictions into the environment on the basis of environmental protections and STT's stated interest in ensuring forest operations were undertaken safely, I find that this view of the role of Casey on the 26 August 2021 whilst at the coupe to be too narrow. As I note further in these findings his presence on the coupe on 26 August 2021, his knowledge of the nature of the Voss operations and risk controls in the FOS and understanding of the restriction raised by the MEZ ought to have led to a greater

[43] Transcript of Body Worn Camera recording of Harvey dated 27 August 2021.
[44] STT Incident Investigation Report re AR034F incident p7.
[45] STT Incident Investigation Report re AR034F incident p7.
[46] STT Incident Investigation Report re AR034F incident p41.
[47] STT Incident Investigation Report re AR034F incident p41.

discussion as to how the tree was intended to be felled and the associated risks, including the regrowth tree, in light of STT's obligations to promote safe work environments and practices for its workers and contractors.

After Casey left the site and for the rest of the workday Harvey and Mr Penney set about laying down cord[48] across the waterway to allow machines to traverse it whilst still protecting it. Having received authorisation to fell the old growth tree Mr Penney and Harvey set to work on that task on the following morning, 27 August 2021. Mr Penney and Harvey met at the coupe at approximately 6.30am to discuss the tree's removal, and I think it reasonable to infer that in a significant respect that discussion considered the risks presented by felling the old growth tree as they understood them to be. They did not, however, have the benefit of an assessment by a licenced manual tree feller. This is likely because of the absence of a manual tree feller onsite, the decision to use mechanical means to fell the tree and possibly a belief that, given his previous but now lapsed qualification as a manual tree faller, Mr Penney could use his own judgement.

Mr Penney and Harvey commenced work on the old growth tree at approximately 7.30am by firstly removing growth from around its base to allow their machines access to it. Once the area had been cleared, Harvey located the buncher behind the old growth tree and used the arm of the buncher to lean on it to "*see if it would budge*".[49] At this point Mr Penney was operating the excavator and was well clear. The old growth tree did not budge. Harvey called Mr Penney via UHF radio to bring the excavator to the old growth tree to provide "*more muscle*".[50] Mr Penney responded and positioned the excavator also at the topside of the old growth tree where it and the buncher again attempted to push on the tree. The old growth tree did not budge. After further discussion Mr Penney used the excavator to dig around the roots of the old growth tree to try and "*free it up*"[51] before again attempting to push the tree. The old growth tree remained unmoved. Harvey moved the buncher backwards and Mr Penney used the excavator to dig further around the tree's roots at the back and right side of the old growth tree before both machines again attempted to push the tree without success.

At this point Mr Penney believed the old growth tree could not be left given the works that had been undertaken would have further weakened it, compromising its stability. Mr Penney decided to dig further around the old growth tree's roots but on the tree's left side. This brought into focus the regrowth tree which Harvey noticed was to the left of the buncher and now posed a hazard to the felling of the tree. Harvey raised the regrowth tree with Mr Penney.

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[48] Heavy timber.
[49] Statutory Declaration of Christopher Thomas Harvey dated 3 September 2021 p1.
[50] Statutory Declaration of Christopher Thomas Harvey dated 3 September 2021 p1.
[51] Statutory Declaration of Christopher Thomas Harvey dated 3 September 2021 p1.

Mr Penney believed the regrowth tree was located in the MEZ and as a result they could not enter the MEZ to remove it. The existence of the regrowth tree in close proximity to the old growth tree and the risk it posed of being brought down by the felling of the old growth tree ought to have been identified and considered during the initial risk assessment undertaken for felling the old growth tree and a subject that should have been considered with Casey when the authorisation to fell the old growth tree was given noting that safe forestry practices on the worksite was within STT's supervisory remit as discussed earlier in these findings. Had it been discussed it may have been clarified to Mr Penney and Harvey that the regrowth tree was able to be approached and felled by machinery without encroaching onto the MEZ or that, considering safety, permission was given for the buncher to enter the MEZ to fell the regrowth tree.

At this point of the operation to bring down the old growth tree, the decision making relevant to risk was influenced by the urgency of the moment, the old growth tree having been weakened by earlier efforts to fell it, and the policies and procedures that had been put in place for environmental protections, specifically the MEZ. Priority was inappropriately placed on environmental restrictions despite the safety concerns raised by Harvey regarding the regrowth tree. Mr Penney and Harvey believed that they did not have the option to fell the regrowth tree given its location in the MEZ. Whilst in hindsight this belief was incorrect as the buncher could have accessed the regrowth tree without entering the MEZ, it was, nevertheless, an inappropriate ranking of priority. To ensure that forestry workers understand the appropriate priority for safety, the induction processes into a coupe by STT and employer directions including in the FOS, should emphasise that whilst there may exist protected areas and responsibilities regarding flora and fauna and exclusion zones, a need to undertake actions/activities contrary to those restrictions for the protection of immediate risks to health and safety of workers are recognised and permitted. STT have advised that "*the safety of personnel will always prevail over any concerns regarding environmental impacts*" and permission will always be granted by STT to remove an old growth tree for safety reasons "*even if it is located near a protected area*".[52]

The regrowth tree remained in place. As Mr Penney dug at the roots to the left of the old growth tree Harvey rested the buncher on the tree putting weight on it to direct its fall downhill. Shortly after Mr Penney commenced digging into the roots on the left side of the tree Harvey felt the old growth tree shift and commence to fall. He radioed Mr Penney telling him to brace himself as the old growth tree was coming down. From his position in the buncher Harvey saw Mr Penney open the door of the excavator and exit the cabin. He yelled

[52] Letter of Sustainable Timbers Tasmania dated 2 April 2025 para 15(d).

over the radio for him to stay in the machine and sit down. Mr Penney either did not hear or, in the panic of the moment, did not heed the advice and left the excavator's cabin protection.

As the tree fell it twisted at its roots and brought down the regrowth tree with it. The old growth tree landed on the excavator and the regrowth tree landed on Mr Penney. Others on the coupe made their way to where Harvey and Mr Penney were. Efforts were made to locate Mr Penney under the regrowth tree. Later STT employees also entered onto the work site as did Tasmanian Police. Mr Penney was found and the regrowth tree cut to enable access to him. At this time, it was determined that Mr Penney was deceased.

Forensic Pathologist Dr Christopher Lawrence, following his examination of Mr Penney, concluded that he died from chest and abdominal injuries sustained due to being crushed by the regrowth tree.[53] I accept his opinion. Sadly, given the protective measures in place in the excavator's cabin designed to protect operators from falling objects, had Mr Penney remained within the excavator's cabin he may well have survived the impact of the old growth tree landing on the excavator, and would not have been struck by the regrowth tree. Photographs of the internal cabin of the excavator taken after Mr Penney's death reveal very little by way of cabin incursion from the old growth tree falling on it, despite the tree's considerable size and weight.

The absence of a qualified manual tree feller

The old growth tree had been identified as hazardous by Mr Penney and Harvey. Both have significant and lengthy experience in the bush. Casey, also a person of significant experience, authorised its removal if safe to do so. Their concern regarding the tree was understandable. Significant machinery traffic was intended to operate around it. The tree appeared to have been weakened given the fire damage and scarring on its trunk. The area had experienced significant wind. I do not criticise the identification of the old growth tree as a hazard nor the decision made to remove it.

The Voss operation was a mechanical felling operation. As such it primarily used machinery to harvest trees. Harvey was a qualified mechanical tree feller but was not a qualified manual tree feller. Mr Penney had been, until 2017, a qualified manual tree feller but had let the qualification lapse. Voss claims its approach on site was to use a contractor who held an advanced manual tree felling licence when manual felling of a tree was required.[54] This was not however reflected by Voss in their FOS at the time of Mr Penney's death. Had it been so workers at the coupe would have had clear direction and authority to engage a qualified tree feller to

[53] Affidavit Dr Lawrence MB BS, FRCPA sworn 14 October 2021.
[54] Statement of Charni Harvey given to WST 4 June 2023 response to question 2.

come onto the coupe and assess, risk manage and possibly fell the old growth tree. Voss claims it was its policy to inform STT of any hazardous trees and to have those trees assessed by a qualified manual advanced tree feller.[55] If it was indeed its policy at the time, it was not reflected in the FOS nor by Mr Penney and Harvey's approach to the hazardous tree. Voss further identifies that the mechanical felling of a tree over 2.5 metres in girth at chest height was a common practice on any mechanised logging operation[56] and notes that the Safety Code did not preclude the pushing over of trees mechanically of that dimension.[57]

Casey was not a qualified manual advanced tree feller[58] and his specific task on site was not to advise on how the tree ought to be removed. Casey should have been aware of who was working on the coupe and that there was not a licenced manual feller among them. He was aware of the methods employed on site for the felling of hazardous trees as outlined in the FOS, which he had checked, and which identified the preferred method as mechanical. Whilst I find that assessing and mandating the method of how specific trees were to be felled on the coupe fell outside his ambit, Casey's knowledge of the Voss operation, the expertise available on site and what was proposed regarding the large old growth tree ought to have alerted him to a potential safety risk on site. Whilst he provided authorisation for the old growth tree to be felled safely and it was not for him to assess or direct Voss as to the method by which the tree was to be felled, given the safety focus of STT, the meeting on 26 August 2021, when the felling of the old growth tree was discussed, was a lost opportunity to raise with Mr Penney and Harvey if they intended to engage a qualified manual tree feller for assessment and/or to fell the old growth tree, if the pushing of the old growth tree was outside the limits of the buncher and excavator, if the digging of roots was a reasonable activity, if the regrowth tree ought to be felled prior to the old growth tree, if the regrowth tree fell within the MEZ and if so could it be accessed to be felled if safety issues arose, and, at the minimum, if a full risk assessment had been undertaken and documented. As Casey reflected in his statement to WST regarding the regrowth tree, "*I was upset that they had not contacted me about the tree and discussed options for removing the tree*".[59] Whilst this comment, made shortly after Mr Penney's death, may have come from the exigencies of the moment, it does reflect that Casey felt that he had something he could have contributed had there been a discussion with him regarding the "*options*" for felling the old growth tree.

[55] Statement of Charni Harvey given to WST 4 June 2023 response to question 2.
[56] Statement of Charni Harvey given to WST 4 June 2023 response to question 7.
[57] Statement of Charni Harvey given to WST 4 June 2023 response to question 7.
[58] There is some dispute regarding this. Voss claim that he was an accredited manual tree feller and STT claims that he was not. Given the employment relationship that existed between STT and Casey I prefer their view in this respect.
[59] Affidavit Michael Casey sworn 1 November 2021 p2-3.

In accordance with the Voss safety policy and the 9 October 2021 control inserted into the FOS as discussed further in these findings, if the tree was considered hazardous it ought to have been assessed by a qualified manual tree feller. This was not done in this instance. If it had of been done it is unknown whether a qualified manual tree feller would have found that the old growth tree was inappropriate for mechanical felling. It is further unknown whether a qualified manual tree feller would have recognised the old growth tree had a solid root structure, would be resistant to mechanical felling and was liable to drop in the direction that it ultimately did, clipping and bringing down the regrowth tree. However, the presence of a manual tree feller would have opened the opportunity to manually fell the old growth tree when it revealed itself as resistant to mechanical falling, and the regrowth tree when it became an apparent risk. The fact that the old growth tree was not assessed by a manual tree feller may reflect that a policy requiring such an assessment did not in fact exist at the time, or if it did, was not adhered to given the predominance of mechanical felling at the coupe and the absence on site of a qualified manual feller.

I have had the benefit of the joint opinion of two experienced forestry workers and qualified manual tree fellers, Gerard and Neil Bennett. Gerard and Neil Bennett are the general manager and director of TP Bennett and Sons and have been in the industry for over 30 years. They are qualified manual tree fellers and have been involved in a working group reviewing a hazardous non-commercial tree removal policy. They are contractors of STT and provide services which have been identified by STT as "*substantially the same*" as those provided by Voss under the harvesting contract.[60] The Bennetts were interviewed by investigating members of Tasmanian Police and I have reviewed the transcript of that interview. They express the view that dealing with a hazardous tree requires assessment by an accredited manual tree feller. If it is assessed as safe for manual felling a hazardous tree can be downed by them and/or with mechanical assistance. If it is assessed as unsafe for manual or mechanical felling the STT supervisor should be notified and the option of using explosives to bring down the tree would be discussed. If the option for manual felling is not available, mechanical felling could be used which would take the form of weakening the side spurs with the mechanical saw. The benefits they identify of a qualified manual feller were:

1. If a manual feller was used and the tree didn't go after pushing, a manual faller could use a chainsaw to fell it;
2. A manual feller could have entered the MEZ and removed the regrowth tree; and
3. Without a manual feller digging out the roots became an option.

[60] Letter of Sustainable Timbers Tasmania dated 2 April 2025 para 23.

Having considered the photographs of the old growth tree and regrowth tree and a 3D model prepared by Constable Archer they concluded in respect of the old growth tree that:

1. The tree ought to have been assessed by a manual tree feller to identify if it was safe to fall and how it ought to be felled.[61]
2. The tree could have and should have been manually felled.
3. The regrowth tree should have been removed prior to falling the old growth tree.
4. Mr Penney should not have entered onto the side of the old growth tree in the direction that the tree was leaning and wanted to fall.[62]

The Safety Code suggested the use of manual tree fellers with Tasmanian Forest Industry Training Board accreditation and relevant experience to fell dead or hazardous standing trees (s6.1), highly skilled personnel to assess the method of bringing down the tree (s6.4) and the accredited feller in consultation with the person in charge to select the method to be used, other than manual felling, if the risk is too high for the tree to be felled manually (s6.5). The Safety Code did not, however, mandate these measures but gave a choice for an alternative method to be used if it was shown on a risk assessment to be equal to or better than the measure stated. There is no evidence suggesting that a risk assessment had been conducted by Mr Penney or anyone at Voss supporting the decision to not use an accredited manual tree feller in preference to an excavator assisted mechanical felling of the old growth tree.

The methods for hazardous tree removal in the FOS had been reviewed by STT without criticism. A licenced tree feller was not on site. Whilst there is no direct evidence, I think it is reasonable to find that the calling onto the site of a licenced tree feller would have caused the operation delay and cost. Until 2017 Mr Penney held a manual tree feller licence. The FOS risk control did not require the bringing in of a qualified manual tree feller, it was believed that the old growth tree was suitable to be felled mechanically. These considerations may well have influenced Mr Penney not to call on a qualified manual tree feller to assess the old growth tree. Had a qualified manual tree feller been on site and assessed the old growth tree this would have, at least, given greater flexibility to use manual tree felling methods to fell it either as a more appropriate method or when the mechanical method wasn't working, to manually fell the old growth tree to avoid bringing the tree down by its roots and, as a result, with a more predictable fall, and to access the MEZ to fell the regrowth tree to avoid the risk of it falling in an uncontrolled manner.

[61] Transcript of interview with Gerard and Neil Bennett and Constable Belbin dated 21 January 2022.
[62] Transcript of interview with Gerard and Neil Bennett and Constable Belbin dated 21 January 2022.

The use of the buncher

Harvey was a qualified buncher operator and as such had the skills to determine if the old growth tree was within the capacity of the buncher to be mechanically felled. The manufacturer's specifications for the buncher stipulated that the buncher was not to be used to lean on or push trees over. The Safety Code mandated that operators of mechanical harvesters have an understanding as to the limits of the capacity of the machine to fell by reference to a tree's weight and size. Harvey regularly used the buncher to push trees over and at times this included large old growth trees. As he stated on the 27 August 2021 "*around this whole bush we've probably dropped seven or eight of these*".[63] I take this to mean that prior to the 27 August 2021 he had used the buncher to mechanically fell seven to eight old growth trees of a size comparable to the old growth tree, albeit the old growth tree he agrees was "*the biggest one*" he had pushed over.[64] He also noted that using the cutting and grabbing function of the buncher was only workable on smaller trees and not on a tree the size of the old growth tree. On trees that size the buncher was used to push as opposed to hold and cut the tree to fell it. He describes it as "*standard*" to use tree harvesting excavators to push trees over.[65]

The buncher was designed for "*harvesting trees, thinning and final felling, limbing and debarking applications in plantations and natural stands*".[66] The manufacturer's manual for the buncher relevantly provided the following warning:

> "*Do not operate this machine to lift or move any objects other than what it is designed to lift or move. The boom system is intended for use in tree felling applications only...Do not use the attachment for any purpose other than the intended felling function… Failure to follow the above instructions could result in serious injury or death"*[67]

and specified "*do not push hard with the saw against anything except a standing tree to be cut".*[68]

At the time of these events the buncher was being used to push on and not cut the old growth tree. That use was contrary to the manufacturers' specifications. Voss states that the buncher and excavator were appropriate and suitable for the task of felling trees at the coupe.[69] Prior to the purchase of the machinery Voss undertook a process of due diligence by investigating what machinery were being used by other contractors, gaining an understanding as to issues

[63] Transcript body worn camera recording 27 August 2021.
[64] Transcript body worn camera recording 27 August 2021.
[65] Transcript body worn camera recording 27 August 2021.
[66] Tigercat 822D/L822D Feller Buncher Operator's Manual pV.
[67] Tigercat 822D/L822D Feller Buncher Operator's Manual p1.17.
[68] Tigercat 822D/L822D Feller Buncher Operator's Manual pA.14.
[69] Statement of Charni Harvey given to WST 4 June 2023 response to question 17.

of suitability, quality, performance and safety features, and discussed appropriate machinery for use on Voss forestry operations with experienced forest industry sales representatives.[70] The buncher was purchased by Voss due to their belief that it provided top of the range capability to work in Tasmanian native forest operations and at the coupe.[71] The buncher was compliant with the International Organisation for Standardisation (ISO) standards for machinery for the following:

- Machinery for forestry – self-propelled machinery – safety requirements;
- Earth moving machinery – access systems;
- Self-propelled machinery for forestry – roll over protective structures – laboratory tests and performance requirements;
- Machinery for forestry – tracked special machines – performance criteria for brake systems; and
- Agricultural and forestry machinery – electromagnetic compatibility – test methods and acceptance criteria.[72]

However, the ISO does not specifically identify the pushing limits of the machinery including by reference to tree dimensions.

The Safety Code assumes the operator will have sufficient information to enable a clear understanding of the capacity of the machine. Harvey was or ought to have been aware of whether the old growth tree, given its size, was capable of mechanical felling using the buncher. The fact that this is what he and Mr Penney sought to do suggests either that he was of the view the buncher had the capacity to fell a tree the size, weight, and girth of the old growth tree and that mechanical over manual was the preferred method for felling it given his previous experience and practice, or that he failed to heed that the tree fell beyond the limits of the buncher. Given the manufacturer's limitations placed on the buncher's capacity to push on trees and the consequent absence of knowledge of the upper tolerances of the machines ability to fell trees through pushing by reference to the size, girth and weight of the tree, confidence in the capacity of the buncher to push over the old growth tree may have been in error.

I find that the practice of pushing trees over in forestry operations including the coupe is common. It is a practice that was known to STT and was described by Mr Harvey Watson, Forest Officer employed by STT, as having been performed by him "many times".[73] Despite the imperative contained in the Safety Code for employers and operators of the machinery to have a clear understanding as to the machine's operational limits, there was here a lack of

[70] Statement of Charni Harvey given to WST 4 June 2023 response to question 15.
[71] Statement of Charni Harvey given to WST 4 June 2023 response to question 15.
[72] Statement of Charni Harvey given to WST 4 June 2023 response to question 15.
[73] Body worn camera recording Constable Belbin on 27 August 2021 at 18:31.

understanding as to the capacity of the buncher to push or lean on trees by reference to the size of the tree. This lack of knowledge may have arisen from an inability to obtain a clear answer as to the buncher's capacity to lean on or push trees from its manufacturer given that these functions are not endorsed. There is an apparent disconnect between what I find to be a common forestry practice to use such machinery to lean on and/or push trees, the manufacturer's prohibition of that practice and consequent inability to provide an accurate understanding as to the limits of the capacity of the machinery to undertake that task by reference to a tree's dimensions and the Safety Code's call for employers and operators to have knowledge of the machine's operational limits.

The use of the buncher in felling outside of its manufacturer's limitations was contrary to the Safety Code which required the buncher to be used in accordance with the manufacturer's specifications (s7.4). The tree was a large tree. In practice the use of the buncher to lean or push on trees had not given rise to issues and trees had been felled by that method. It is not known given the manufacturer's view that no leaning/pushing is to be undertaken, what the actual capacity of the buncher was to push on trees by reference to the weight, height or girth of a tree. The fact that it did have that capacity is known by the fact that it was regularly used to undertake that task by Harvey including in respect of trees similar in proportions to the old growth tree. Nevertheless, the inability of Harvey to have felled the old growth tree by leaning on it and pushing it with the buncher and the excavator, leading to Mr Penney digging at its roots, is likely to have been caused by the buncher not having the capacity to bring down the old growth tree and therefore being the wrong felling method for the task.

Removal of the regrowth tree

The 2021 Code now makes it clear that when engaging in mechanical felling, an assessment of surrounding trees needs to be undertaken. That Code had not yet commenced at the time of Mr Penney's death. If an assessment of the surrounding trees had been undertaken before the mechanical felling of the old growth tree had commenced, the regrowth tree would likely have been identified as an issue given its proximity to it. In those circumstances clarification from STT via Casey could and should have been sought and given as to whether the regrowth tree could be felled given its location in the MEZ prior to commencing to fell the old growth tree.

Given that the 2007 Code did not mandate this type of assessment and the regrowth tree was not considered until the failed attempts to push over the old growth tree, weakening it, Mr Penney and Harvey did not perceive they were in a position to stop, reassess and deal with the regrowth tree due to the now increased risk of the weakened old growth tree. Their capacity to deal with what had become an emerging issue was limited with no resources on site given the absence of a qualified manual tree feller and their assumption that they could

not access the regrowth tree using mechanical means due to their belief that it was in the MEZ.

STT'S Response

An opportunity has been provided to STT and to Voss to respond to these findings. Voss has chosen not to provide a response. A response by letter dated 2 April 2025 was provided by STT. Relevant to the issue of the extent of STT's responsibility to oversee safe practices on forestry operations conducted by its contractors, STT relies on its obligations as a "Principal" as defined under the 2007 Safety Code cl 6.2 to "*ensure that operational procedures are implemented to ensure all fellers have adequate training and competence to adequately assess and safely fell hazardous trees".* [74] This statement is limited to higher risk felling operations and does not derogate from STT's general obligations, as I have earlier found, to ensure that appropriate risk identification, assessment and planning processes were in place generally and reinforces that the obligation of STT to ensure that such processes, at least in respect of tree fellers on higher risk manual operations, are being implemented.

STT claims that it was not necessary for the FOS to state that an accredited manual tree feller would be engaged to fell the old growth tree in circumstances where, as a dead tree it was a hazardous tree under the 2007 Safety Code and as such was required to be felled in accordance with the higher risk felling operations provisions of that Code. Those provisions called for the engagement of an accredited manual tree feller to fell the old growth and to select the method to fell it. Compliance with the 2007 Safety Code was a term of the Harvesting Contract between STT and Voss. As noted earlier in these findings STT had available to it a mechanism under the Harvesting Contract to mandate Voss' compliance with the legislative scheme, regulatory Codes and "*recognised good industry practice*" by suspending or terminating the contract at times of noncompliance. This is what it did do after Mr Penney's death when STT suspended the harvesting contract on 27 August 2021 and terminated it in December 2021.[75] Voss has not performed any forestry services for STT since this time.

However, compliance with the 2007 Safety Code was not, at that time, black and white. It incorporated flexibilities and tolerances for alternative methods other than those which it stipulated. By providing that manual tree fellers "*are to"* fell hazardous trees, and "*are to*" select appropriate safe felling methods the Code preserved, as previously noted, the flexibility to use an alternative method where a risk assessment has been conducted that demonstrated the alternative to be equal to or better than the instruction in the Code.[76] This was to enable

[74] Letter of Sustainable Timbers Tasmania dated 2 April 2025 and cl 6.2 Forestry Safety Code (Tasmania) 2007.
[75] Letter of Sustainable Timbers Tasmania dated 2 April 2025 para 19-20.
[76] 2007 Safety Code cl 1.

"*flexibility ... to allow practical and innovative solutions to be developed in the workplace*".[77] Failure to refer to the method of dealing with hazardous trees in the FOS deprived STT from the ability to adequately monitor what processes were being used on site for the felling of hazardous trees, whether by accredited manual tree feller or some other innovative method, and to ensure the implementation of safe practices in this regard.

STT further claim that it was not necessary to include the requirement for a qualified manual feller to be stated in the FOS as it "*went without saying*". This is asserted on the basis that Voss directed its employees at a toolbox meeting on 26 February 2020 to "*use a manual tree faller if they deem a tree too large when mechanically tree felling*"[78] and to "*use a manual tree feller if you deem a tree unsafe*" together with Voss' use of a qualified tree feller, Mr Lovell, on its coupes to fell trees. In a high-risk commercial environment, nothing ought to be assumed or "*go without saying*". The toolbox meeting referred to occurred 18 months prior to Mr Penney's death and is equivocal, seemingly not to call for the use of a qualified feller prior to deeming a tree to be too large for mechanical falling but requiring a faller if they deem a tree to be unsafe.

A FOS is a risk management tool in which hazards on site are identified, risk assessment of methods to deal with them documented, and the outcome of how the risk is to be managed identified. The effective discharge of STT's supervisory role in overseeing the site as part of its duty to ensure the implementation of safe work practices is hamstrung by the absence of the specific identification of the methods to be used to respond to hazards being articulated in the FOS. The use of an appropriately qualified tree feller to assess and possibly fell the old growth tree ought to have been stated in the FOS. As is now recognised by STT in its Hazardous Tree Guide, the management of such trees should be considered during the planning of the forestry operation and the development of the FOS.

In its response to my draft findings, STT identified Mr Geoffrey Lovell as a licensed commercial tree faller used by Voss on its commercial operations at the time of Mr Penney's death and that he had been present at the coupe on the day prior to the old growth and regrowth trees being brought down. As a result an affidavit was obtained from Mr Lovell regarding his involvement with the Voss forestry operation.

Mr Lovell was employed by Voss as a licensed tree faller on Voss coupes for three years until 2011. From that point Mr Lovell worked on a fish farm however continued to perform work for Voss as a licensed tree feller on his days off from time to time. Mr Lovell was consulted by Voss in respect of some, not all, of the coupes and only if there was timber on the coupe that

[77] 2007 Safety Code cl 1.
[78] STT Investigation Report p20.

Voss needed him to fall.[79] Mr Lovell became aware of Mr Penney's death on the afternoon of 27 August 2021. He had been present on the coupe the day prior to pick up a load of blocks to use for wood cutting practice. He was not asked to look at the old growth tree whilst he was present at the coupe at that time. He believed that Mr Penney, Harvey and STT had already conducted a risk assessment on the old growth tree and that it was considered suitable to be felled by mechanical pushing.[80]

After Mr Penney's death Mr Lovell cut the tree away from the excavator. He noted that it had a large flat root. He believed that had the root not been there it would have been possible to push the old growth tree in the direction Mr Penney and Harvey had intended.[81]

In 2023 STT issued a Hazardous Tree Guide it had developed to provide guidelines on how to identify and deal with hazardous trees on permanent timber production zones lands. The guide is to be read in conjunction with the Forest Safety Code 2021 and calls for the management of hazardous trees to be considered during planning for forestry operations and the development of the FOS. The guide whilst specifically recognising the use of mechanical felling prohibits the digging of roots, requires the assessment of the tree by an accredited manual tree feller or a bush boss in concert with the qualified machine operator. Further a hazardous tree is defined as including a tree located within 2 tree lengths of a hazardous tree. Had this requirement been in place the regrowth tree by virtue of its location within 2 metres of the old growth tree would have automatically become designated as hazardous and a tree to be dealt with in the initial planning of the operation to remove the old growth tree. The guidelines provide better clarity and introduce appropriate systems and processes to be employed when dealing with hazardous trees.

Conclusions

Following its investigation STT concluded that Mr Penney's death was contributed to by several system and process failures which they identified as:

1. Relevant to Voss
    i. Inappropriate use of machinery.
    ii. Not recognising the solidity of the root which caused the tree to pivot from the intended direction of fall.
    iii. Multiple attempts being made to push the hazardous tree with two machines with no success, prior to digging around roots.
    iv. Inadequate or poorly conducted risk management process.

[79] Affidavit of Geoffrey Lovell sworn 8 May 2025 p1.
[80] Affidavit of Geoffrey Lovell sworn 8 May 2025 p1.
[81] Affidavit of Geoffrey Lovell sworn 8 May 2025 p2.

v. Alternative safe methods of falling not clearly identified in Safety Management System.
vi. Forest Operation Safety Plan not clear on the process to follow to deal with hazardous trees.
vii. Corrective actions from previous incidents not applied.
viii. Perceived delay in the availability of a qualified manual tree faller.
ix. No one on site competent to assess safe felling methods.
x. Overlapping or conflicting procedures.
xi. Inconsistent compliance and performance monitoring and review.
xii. Lack of planning to recognize the need for a manual faller.
xiii. Work could have continued in another area of the coupe whilst alternative options were assessed.

2. Relevant to the Forest Industry
   i. Hazardous tree removal steps not clearly identified in industry regulations/codes of practice.
   ii. Inconsistent compliance and performance monitoring and review.

These findings were appropriate and reasonable given the facts as I have found them. WST did not prosecute any person or body in respect of Mr Penney's death.

As discussed earlier in these findings, STT have responsibly sought to clarify and remove omissions in the approach to be taken to the categorisation and removal of hazardous trees through developing and distributing to its workers and contractors a guide to hazardous trees. The Safety Code 2021 which came into operation after Mr Penney's death also introduces improvements in the provision of safe systems and practices within the forestry environment.

The facts of this matter highlight the pressures associated with modern forestry practices in this State. There is significant and justifiable importance placed on health and safety given the risks associated with the nature of the work being undertaken. Further there is a commendable intention to observe and protect the ecological value of our commercial forestry zones resulting in forestry worksites being modified to allow for greater protections of waterways and wildlife. At times these aims can conflict. It is important that this potential for conflict be recognised, and systems put in place to ensure that those on the worksite are able to resolve that conflict quickly and with safety as a priority. A way for this to occur may be to merge the Practices and Safety Codes so that both aspects of the industry are incorporated in the one document and guidance given as to options and approaches for those times when conflict arises between safety and conservation-based restrictions.

I Find, pursuant to Section 28(1) of the *Coroners Act* 1995, that

a) The identity of the deceased is Raymond Ross Penney;

b) Mr Penney died as a result of chest and abdominal injuries due to or following being crushed by a regrowth tree whilst assisting to mechanically fell another tree;

c) Mr Penney's cause of death was chest and abdominal injuries; and

d) Mr Penney died on 27 August 2021 at South West Geeveston, Tasmania.

In making the above findings, I have had regard to the evidence gained in the investigation into Mr Penney's death. The evidence includes:

- The Police Report of Death for the Coroner;
- Affidavits confirming identity;
- Opinion of the forensic pathologist Dr Christopher Lawrence;
- Toxicology report of forensic scientist Neil McLachlan-Troup;
- Affidavit of Susan Walker;
- Affidavit of Meg Wilson;
- Affidavit of David Penney;
- Affidavit of Christopher Harvey;
- Affidavit of Justin Richards;
- Affidavit of Harvey Watson;
- Affidavit of Micheal Casey, including annexures;
- Affidavit of Constable Timothy Miller;
- Affidavit of Constable Andrew Belbin;
- Affidavit of Sergeant Andrew Fogarty;
- Affidavit of Constable Scott Hartill;
- Affidavit of Sergeant Paul Johns;
- Affidavit of Constable Heidi Woodhead;
- Affidavit of Senior Sergeant Adam Archer;
- Statutory declaration of Timothy Jones;
- Statutory declaration of Phillip Voss;
- Interview and transcript of Christopher Harvey;
- Interview and transcript of Gerard and Neil Bennett;
- Records of PL & NR Voss;
- Records of Sustainable Timbers Tasmania, including investigation report, policies, codes, induction records and audit records;

- Annual report of Sustainable Timbers Tasmania (2021);
- Forest Safety Code 2007;
- Forest Practices Code 2020;
- Report of handwriting expert David Black;
- Operator's manual for Tigercat L822D Feller Buncher;
- WorkSafe investigation records, including statements, a response from PL & NR Voss and reports;
- Photos and forensic evidence;
- Affidavit of Geoffrey Lovell sworn 8 May 2025; and
- Letter of Sustainable Timbers Tasmania dated 2 April 2025, including enclosures.

Comments and Recommendations

I extend my appreciation to investigating officer Constable Andrew Belbin for his investigation and report, and the investigations and reports undertaken by WST and STT.

Since Mr Penney's death the Forest Safety Code Tasmania 2021 has commenced operation and STT have developed a hazardous tree guide which they circulated to their employees and contractors.[82] Considering the circumstances of Mr Penney's death I make the following **recommendations** pursuant to Section 28 of the *Coroners Act* 1995:

1. STT continue to promote the health and safety of forestry workers generally and specifically by:
    a. Ensuring that a FOS appropriately and with precision identifies all hazardous trees on a coupe and provides for appropriate control measures for the risk including the engagement of and assessment by qualified manual tree fellers.
2. Consideration be given to the Forestry Safety and Practices Codes be merged and include clear directions regarding:
    a. The procedures to apply to hazardous trees.
    b. The circumstances in which mechanical felling is not to be used.
    c. A process for resolving issues of immediate threat to safety and site environmental restrictions.
3. Voss to ensure that its work policies, practices and the FOS include the following:

[82] Letter of Sustainable Timbers Tasmania dated 2 April 2025 para (d).

a. Specific risk assessments on hazardous trees be undertaken and documented.
b. That a qualified manual feller be onsite or readily available to be on site as required.
c. That a qualified manual faller assess all hazardous and the surrounding trees as to the method of removal.

4. All forestry workers to be given practical demonstration of the effectiveness of operator cabin protection systems for overhead falling objects and clearly warned to stay within the cabin if in the proximity of a falling tree.

I convey my sincere condolences to the family and loved ones of Mr Penney.

Dated: 14 July 2025 at Hobart, in the State of Tasmania.

Leigh Mackey
Coroner