
**FINDINGS and COMMENTS of Coroner Andrew McKee
following the holding of an inquest under the *Coroners Act
1995* into the death of:**

ERIC CRAIG MARSHALL

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Record of Investigation into Death (With Inquest)

Coroners Act 1995
Coroners Rules 2006
Rule 11

I, Andrew McKee, Coroner, having investigated the death of Eric Craig Marshall, with an inquest held at Burnie in Tasmania, make the following findings:

Hearing Dates

21, 22, 23, 24 September 2020

Representation

Counsel Assisting the Coroner: Ms E Bill

Counsel for the partnership, D G & P A Brown and Mr Christopher Brown: Ms C Garwood

Introduction

1. On 2 October 2014, Mr Marshall, in the course of his employment, was thrown from a forklift he had been driving along a laneway on a farming property, situated at 408 Mount Street Romaine, ('the farm') owned and operated by his employer, the partnership of D G & P A Brown trading as Lochaven Produce. As he was being thrown from the forklift, it overbalanced. Mr Marshall landed on a gravel area and the roll cage of the forklift landed on his chest area, resulting in his death.
2. Because Mr Marshall died in the course of his employment, an inquest, subject to an exception in the *Coroners Act 1995* ('the Act'), was mandatory.¹

Scope of the Inquest

3. I determined that the inquest should focus on the following issues:
 - (a) The circumstances of Eric Marshall's death, including his movements and actions in the immediate period of time before;
 - (b) What caused the forklift to tip over, including how the forklift was being operated and whether there were any environmental factors and /or mechanical faults; and
 - (c) The existence and adequacy of Lochaven Produce's workplace supervision, instruction, training and policies including:

¹ Section 24 of the *Coroners Act 1995*.

- i. The supervision and instruction provided to Mr Marshall, and other employees, regarding the safe operation of the forklift including the use of seatbelts;
 - ii. Processes and procedures to ensure employees operating the forklift and other machinery held appropriate qualifications and licenses;
 - iii. Processes and procedures to ensure Mr Marshall's and other employee's compliance with work safe practices in respect of forklifts and other machinery; and
 - iv. Whether there was a culture of disobedience in respect of safety, in particular the extent and Lochaven Produce's knowledge, of Mr Marshall's prior unauthorised use of the forklift or failure to use a seat belt.
4. My role under the Act is to make factual findings surrounding Mr Marshall's death in accordance with section 28.
5. At the inquest hearing, nine witnesses gave evidence. Mr D Brown gave evidence concerning the management structure of the farm and an overview of workplace practices on the farm. Mr C Brown gave similar evidence regarding the structure of the farm and an overview of its workplace practices. He also gave detailed evidence regarding Mr Marshall's initial training after being employed at the farm and the training he had received in the use of the forklift.
6. Mr J Wells, a former employee at the farm, gave evidence regarding the workplace practices on the farm.
7. Mr B Stokes gave detailed evidence regarding the workplace practices on the farm, the management structure of the farm, and the movements of Mr Marshall in the hours preceding his death.
8. Mr K Stokes gave evidence regarding his longstanding friendship with Mr Marshall and his movements shortly prior to his death.
9. Mr J Stokes, Mrs J Stokes, Mr B Stokes and Mr K Stokes gave evidence regarding what steps were taken to provide assistance to Mr Marshall after the forklift rolled.
10. Mr G Templar, a former workplace inspector, gave evidence regarding the investigation conducted by WorkSafe Tasmania.
11. Mr P Haustein, a transport inspector, gave evidence related to an inspection of the forklift post-accident. He found the forklift to be in a serviceable condition.

12. Three police officers gave evidence: Senior Constable K Chivers who attended and photographed the scene; Senior Constable S Mason who produced a schematic diagram of the path travelled by the forklift prior to the rollover; and Senior Sergeant M Forteath who investigated Mr Marshall's death.
13. In making my finding below I am satisfied this matter has been comprehensively investigated and the relevant issues have been fully explored. I have taken into account and considered the evidence tendered at the inquest, namely:
- Police Report of Death;
 - Life extinct affidavit;
 - Affidavits of identification;
 - Autopsy report prepared by Forensic Pathologist, Dr D Ritchey who conducted the post-mortem examination;
 - Toxicology report prepared by Forensic Scientist, Ms M Connor;
 - Tasmania Ambulance report;
 - Affidavit of transport inspector, P Haustein;
 - Diagram regarding tyre pressure - transport inspector, P Haustein;
 - Affidavit of Mr B Stokes;
 - Affidavit of Mr K Stokes;
 - Affidavit of Mr J Stokes;
 - Affidavit of Mrs J Stokes;
 - Affidavit of Ms M Stokes;
 - Affidavits of Ms S Barker;
 - Affidavits of Mr C Brown;
 - Aerial map of the farm with mark-up – Mr C Brown;
 - Affidavit of Mr J Wells;
 - Affidavit of Constable J Dicker;
 - Affidavit of Constable L Kelly;
 - Affidavit of Senior Sergeant S Conroy;
 - Affidavit of Constable S Mason;
 - Survey diagram - Constable S Mason;
 - Affidavit of Sergeant M Forteath;
 - Two marked-up photos of the scene - Sergeant M Forteath;
 - Affidavit of Senior Constable K Chivers;
 - Affidavit of Constable C Lucas;

- Judgment of Magistrate T K Jago;
- Court documents relating to the conviction of D G & P A Brown. WorkSafe Tasmania report;
- State aerial photograph of 408 Mount Street, Burnie; and
- Affidavit of Mr D Brown.

Mr B Stokes, Mr K Stokes and Mr C Brown

14. As outlined above, Mr B Stokes gave evidence regarding a number of significant issues, in particular, Mr Marshall's training in relation to the forklift and, more importantly, his movements and the manner of his driving prior to the forklift rolling over.
15. Mr B Stokes did not impress me as a witness. He was uncooperative when being led in his evidence in chief by counsel assisting and was unresponsive to questions. Under cross examination he was argumentative and avoided answering questions. His evidence was characterised by speculation rather than recollection. The reliability of his evidence was affected by a desire to deflect any responsibility for the events that lead to Mr Marshall's death from himself to his employer. Parts of his sworn evidence were inconsistent with his statement to police and his record of interview with Mr G Templar of Worksafe Tasmania.
16. Similarly, Mr K Stokes did not impress me as a witness. I accept that Mr Marshall's death had a profound effect upon him as they had been close friends. To a degree, his evidence was affected by his desire to conclude the process of giving evidence rather than attempting to recall the circumstances surrounding Mr Marshall's death. I also note that he was argumentative and evasive in cross examination. Parts of his sworn evidence was inconsistent with the statement he made to police.
17. In assessing the sworn evidence of Mr B Stokes and Mr K Stokes, I have given their sworn evidence little weight for the reasons articulated above. I place greater weight on the statements they made to the police immediately after the incident and, in Mr B Stokes' case, his record of interview with officers of Worksafe Tasmania on that day.
18. I have mentioned the matters regarding the credibility of Mr B Stokes and Mr K Stokes early in this finding because they were the only persons present when Mr Marshall was thrown from the forklift after it rolled.
19. I further note that in relation to a number of issues, their evidence conflicts with that of Mr C Brown. Where there is a conflict in the evidence between Mr B Stokes' evidence, Mr K Stokes' evidence and the evidence of Mr C Brown, I prefer the evidence of Mr C Brown. He gave his evidence in a calm and considered manner. He made appropriate concessions in

cross examination, he was careful to make sure the answers he gave to the Court were factually correct. For these reasons I prefer his evidence over the evidence of Mr B Stokes and Mr K Stokes in relation to any conflict in the evidence.

Mr Marshall's Background

20. Mr Marshall's mother, Ms J Barker, swore a comprehensive affidavit as part of the coronial investigation. That affidavit discloses that Mr Marshall was born on 10 November 1994 at the Mersey General Hospital. His mother described him as a 'healthy nine pound baby'.
21. He had seven siblings, six sisters and one brother, with whom he had a close relationship.
22. Mr Marshall was educated at Miandetta Primary School, Yolla Primary School and Boat Harbour Primary. He completed his secondary education at Wynyard High School.
23. Mr Marshall did not enjoy school. He struggled academically as a result of his intellectual disability.
24. Mr Marshall was an avid fisherman and enjoyed motorbike riding and playing video games.
25. He shared a close friendship with Mr K Stokes and Mr B Stokes. As a result of his friendship with Mr B Stokes he obtained employment at the farm as a farm hand. He was friendly with Mr C Brown.
26. He was described by Mr C Brown, as a 'hardworking, trustworthy and a reliable employee.'
27. In a supplementary affidavit sworn by Ms Barker and tendered at the conclusion of the inquest, Ms Barker commented that Mr Marshall, whilst having a mild intellectual disability, was able to be 'hands on with everything and was able to think for himself'.
28. Ms Barker outlined that Mr Marshall's death had a devastating effect upon his family.

The Farm

29. Mr Marshall was employed as a general farm hand at the farm which was owned and operated by the partnership of D G & P A Brown. The farm is situated at 408 Mount Street, Romaine.
30. The partnership consisted of Mr D Brown and Mrs P Brown. The partnership had been conducting farming operations for over 30 years at the date of Mr Marshall's death.
31. Mr D Brown had conducted farming operations for the same period. He had been responsible for the supervision of employees with varying farming experience.

32. The partnership had conducted farming operations at the property since 2003. Operations conducted at the farm were growing vegetables (including potatoes), operating a vegetable shop, agisting cattle, and raising pigs. The partnership also engaged in contracting work on external properties. The farming operations at the property were managed by the partners between 2003 and 2013.
33. Due to financial difficulties in 2013, the partners moved interstate and Mr C Brown became the manager of the farm.

Mr C Brown's Farming Experience

34. Mr C Brown is the son of Mr D and Mrs P Brown. He had previously worked on farming properties in New South Wales. He was involved in sheep farming and cropping. Upon his return to Tasmania he worked for a farming operation in North West Tasmania for one year. In that employment he was responsible for supervising a number of casual employees.
35. He commenced employment with the partnership in 2005. He worked largely unsupervised and at times he was responsible for the supervision of other employees in the task of vegetable planting and harvesting.
36. He managed the farm in his father's absence for two month blocks in 2010, 2011 and 2012. During these periods his mother was present in the State but she did not take an active part in the farming operations.
37. Mr C Brown took over management of the operations at the farm in January of 2013. The partners (his parents) were satisfied he had sufficient experience to manage the farm and supervise employees. There was no formal hand over between Mr D Brown and Mr C Brown. Mr and Mrs Brown were not involved in the day to day management of the farm after they left Tasmania. It was agreed that Mr C Brown could raise issues with his father and discuss them as the need arose. As such, issues would only come to Mr and Mrs Brown's attention if Mr C Brown raised them with them.
38. Both Mr and Mrs Brown returned periodically to Tasmania. Mr D Brown usually visited the farm on these occasions. Mr D Brown's evidence was that he was satisfied Mr C Brown was capable of managing the farm and supervising employees. He had mentored his son in managing the farm and Mr C Brown had obtained experience on other farms. Mr D Brown had observed his son on the farm supervising employees and he was satisfied employees would respond to and follow Mr C Brown's directions.

39. When Mr C Brown commenced management of the farm he was supervising a number of employees who had been employed at the farm for a substantial period of time. They had significant experience in farm work and working on the farm. By way of example, one employee, a Mr P Raynor, had been an employee at the farm since 2001.

Mr B Stokes' Employment on the Farm

40. Mr C Brown's evidence was that Mr B Stokes commenced employment on the farm in a cash-in-hand capacity from March of 2014 and on a more permanent basis from August of 2014. He initially worked 10 to 20 hours a week. His work was initially supervised but as time passed he worked unsupervised.
41. Mr B Stokes had previously worked on agricultural properties and had previously held a forklift license.
42. When Mr P Raynor retired, Mr B Stokes and Mr C Brown had discussions about Mr B Stokes taking over the role of Mr P Raynor. At the time, besides Mr C Brown, Mr B Stokes was the employee with the greatest farming experience.
43. Based on the evidence it would appear that no formal arrangements were put in place appointing Mr B Stokes to replace Mr P Raynor. It would appear that it was generally accepted by other employees that Mr B Stokes was the next most senior employee after Mr C Brown and in Mr C Brown's absence he was in charge of supervising and capable of issuing directions to employees.
44. He supervised employees on the potatoes harvester.
45. There is evidence before me that Mr B Stokes supervised employees on the farm during short periods when Mr C Brown was absent from the farming property.
46. Mr B Stokes was the son of Mr J Stokes who had previously worked for Mr D Brown. Mr C Brown was satisfied with Mr B Stokes' work performance. He viewed Mr B Stokes as generally complying with safety requirements. There was one occasion where Mr B Stokes had used an all-terrain vehicle ('ATV') inappropriately. Mr C Brown had directed that Mr B Stokes not use that vehicle for a two week period, this resulted in Mr B Stokes being required to walk for that two week period to perform his allocated tasks. The purpose of this was to reinforce in Mr B Stokes the need to use farm equipment appropriately.

Mr K Stokes

47. Mr K Stokes had worked at the farm on a casual basis. He had previously been banned from using the ATV as a result of driving it inappropriately (he had been performing what are colloquially known as “doughnuts”). Mr C Brown believed that Mr K Stokes interpreted his banning of him utilising the ATV as banning him from attending the property. Mr B Stokes had also raised with Mr C Brown that Mr K Stokes would not follow instructions. Mr C Brown preferred not to have Mr K Stokes on site. He had noted that Mr B Stokes and Mr Marshall behaved differently when he was on site.

Mr J Wells

48. Mr J Wells worked at the farm from February 2014 until 26 September 2014 to enable him to gain practical experience as part of his Certificate 4 in Agriculture. He swore an affidavit addressing his time at the farm with an emphasis on safety issues he observed at the farm.
49. In his affidavit he outlined that he was aware the forklift and the ATV were not to be used when Mr C Brown was “not there”. He went on to state that Mr B Stokes, Mr Marshall and himself had used the forklift and ATV when Mr C Brown was absent.
50. Mr Wells also referred to discussions he had with Mr C Brown regarding the speed at which the ATV was driven on the property and the storage of chemicals on the property not complying with safety requirements.
51. He also commented on a discussion he had with Mr Marshall about him nearly rolling the forklift. This discussion occurred a fortnight before the forklift rollover on 2 October 2014.
52. In his affirmed evidence he confirmed the contents of his affidavit were true and correct.
53. He stated that he was employed as a general farm hand. That required him to drive a tractor and help with the harvesting and sorting of potatoes.
54. Mr Wells’ evidence was that tasks were allocated on a daily basis. Employees would meet in the shed and Mr C Brown would allocate tasks to be performed that day. If Mr C Brown was going away for the day or would be absent he usually allocated tasks for the following day as well.
55. He stated that in Mr C Brown’s absence Mr B Stokes would give directions.
56. Mr Wells confirmed that he operated the forklift on five to 10 occasions in Mr C Brown’s presence and on two occasions when Mr C Brown was not present. He stated that Mr C

Brown would closely monitor him when he used the forklift. He used the forklift in the areas marked F and G on exhibit C28.

57. Mr Wells did not hold a high risk work license and Mr C Brown was aware of that fact.
58. Mr Wells had no recollection about the following matters:
 - a) Mr Brown directing the use of the seatbelt when using the forklift;
 - b) If other employees used the forklift in Mr C Brown's absence;
 - c) Whether there was any discussion about him obtaining a high risk work license; or
 - d) The area the forklift was to be used on the farm.
59. Under cross examination, Mr Wells indicated that because of his height, he needed extensions to operate the tractor. The extensions were placed on the tractor pedals. The extensions could not be used on the forklift. He indicated he drove the forklift by standing up. As he was standing he could not use the seatbelt.
60. He had no recollection of Mr C Brown observing him using the forklift in this manner and telling him to immediately cease use of the forklift and not to use it again.
61. Mr C Brown's evidence on this issue was that Mr Wells was not authorised to use the forklift. On one occasion he observed Mr Wells using the forklift in the manner Mr Wells described in his evidence in chief and he instructed Mr Wells to cease using the forklift and not to use it again. Mr C Brown was not aware of Mr Wells using the forklift again.
62. On this issue I prefer Mr Brown's evidence. Mr Wells indicated a number of times he had no recollection regarding important matters. He did not challenge the assertion that Mr C Brown told him not to use the forklift and to not use it again. One would think that if Mr Wells' position of Mr C Brown allowing him to use the forklift, without pedal extensions and wearing his seatbelt was correct, he would indicate no such conversation occurred rather than not recalling such a conversation.
63. Whilst I accept Mr Wells may well have used the forklift in the manner he described, it was in my view without his employer's or Mr C Brown's authority.

Safety and Supervision on the Farm Generally

64. Prior to the death of Mr Marshall, the farm had an appropriate safety record. Whilst Mr D Brown was managing the daily operations of the farm, he had terminated the employment of employees who failed to comply with safety requirements. As noted earlier, during the period Mr D Brown managed the farm, the workforce remained fairly stable with experienced

employees. After Mr C Brown took over the management of the farm, an experienced employee, Mr P Raynor, resigned. It was at this time informal discussions were had with Mr B Stokes about taking on the roles performed by Mr Raynor. Mr C Brown in his evidence indicated the in order for Mr B Stokes to take on the roles previously performed by Mr Rayner he would need to obtain a Heavy Vehicle Rigid License and be able to “work the stone harvester.” Based on the evidence, I can conclude that it was generally accepted by other employees that Mr B Stokes had become the senior employee and that in Mr C Brown’s absence Mr B Stokes was “in charge” and other employees accepted direction from Mr B Stokes.

65. It is clear from the evidence that there was no formal process for Mr B Stokes to report to Mr C Brown, failure by employees to follow directions and more importantly what was to occur if basic safety instructions were not complied with by those he was supervising. In his evidence in chief, Mr C Brown stated “If employees are not following directions Ben was to let me know, I relied on him to tell me about safety issues.” At its highest the arrangement could only be described as an informal process. It is unclear from the evidence if any meeting occurred between Mr C Brown and all employees outlining Mr B Stokes’ authority and an expectation that employees would comply with his directions.
66. Whilst such an informal process may have been appropriate for when Mr C Brown was absent from the farm for short periods of time, it did not address what was to occur during a lengthy absence if employees failed to comply with Mr B Stokes’ directions.
67. Of more relevance to this inquest is the fact that I have no evidence before me that Mr C Brown met with all employees prior to leaving the state and outlined to them the extent of Mr B Stokes’ authority and the fact that his reasonable lawful directions were to be followed. This was the first time he had left Mr B Stokes in charge of the farm for a sustained period that he would be absent.
68. I accept that Mr C Brown made it clear to Mr B Stokes that only nominal duties were to be undertaken in his absence but in my view he was still required to outline to all employees that Mr B Stokes was managing the farming operations in his absence and his directions were to be followed (even if the only employee potentially on site performing farming duties was Mr Marshall.)
69. I note that after taking over management of the farm, Mr C Brown and his wife, Mrs H Brown, took steps to further improve safety on the farm. I note the implementation of policies and procedures for the farm shop operated by the partnership. I also note that they had liaised with Primary Employers Tasmania to obtain a workplace manual for farming operations on the

property. Mr C Brown's evidence was that, from a practical perspective, the farming operations were 95% compliant with the policies contained within the workplace manual, despite the manual not having been formally adopted.

70. The evidence allows me to conclude, and I find that, in a general sense, safety on the farm was taken seriously by the partnership, Mr C Brown and Mrs H Brown. The farm had an adequate safety record. Safety breaches were dealt with appropriately. New employees underwent appropriate inductions, in a practical hands-on sense, if not a formal sense. New employees were appropriately supervised in the initial stages of their employment. Employees were verbally reminded of the safe operation of machinery on the farm.
71. The only relevant deficiency in the general safety aspects of the farming operations have been identified by me at paragraphs 65-68 above.

The Late Mr Eric Marshall

72. Mr Marshall commenced working at the farm as a general farm hand on a casual basis a few weeks after Mr B Stokes. According to Mr C Brown's evidence, that was in March of 2014. He obtained the position because of his friendship with Mr B Stokes.
73. Mr Marshall received an informal induction when he commenced his employment with the partnership. The informal induction was conducted by Mr C Brown. In his evidence in chief, Mr C Brown indicated that he commenced Mr Marshall's induction at the shop, pointed out to him the various sheds, and took him around the property generally.
74. Mr C Brown described Mr Marshall as a hardworking, honest and a reliable employee. It is clear based on the evidence before me that Mr Marshall was on a disability support pension. His mother states he suffered from an intellectual disability. I am satisfied that neither the partnership nor Mr C Brown were aware that he suffered from an intellectual disability.
75. Mr C Brown's evidence was that Mr Marshall was required to attend to raising the pigs, working in the raspberry patch, and assisting in the harvesting and packing of potatoes. The level of supervision required depended upon the task being performed by Mr Marshall.
76. Mr C Brown's evidence was that Mr Marshall responded appropriately to direction. He was satisfied that Mr Marshall followed instructions from Mr B Stokes. He noted that he occasionally responded to direction from Mr B Stokes in a cheeky manner but he would comply with instructions. Mr C Brown noted that Mr B Stokes never raised with him any issues regarding Mr Marshall following instructions given by him.

77. Mr B Stokes indicated in his sworn evidence that he had told Mr C Brown that he did not want Mr Marshall on site on 2 October 2014 as he would not follow instructions. I do not accept Mr B Stokes' evidence on this point. It is contrary to earlier statements he had made. I have already expressed reasons as to why I have approached Mr B Stokes' sworn evidence with caution. Mr C Brown has no recollection of that issue being discussed.
78. Mr B Stokes in his first record of interview with WorkSafe inspectors on 2 October, indicated Mr Marshall was accepting of his instruction.² Mr B Stokes did note a continued issue with Mr Marshall failing to wear his seatbelt when using the forklift.
79. Based on the evidence I am satisfied that Mr Marshall was adequately supervised throughout his employment and both Mr C Brown and Mr B Stokes provided correction and reminders to him regarding performing his duties in a safe manner.

The Forklift

80. After Mr Marshall's death, the forklift he was driving was seized by officers of Tasmania Police. The forklift was subsequently inspected by Mr P Haustein, a transport inspector employed by the Department of State Growth. Mr Haustein opined that prior to, and at the time the forklift rolled over, it would have been classed as being mechanically sound. In a subsequent statement and in his sworn evidence he opined that a difference in tyre pressure in the rear tyres of 11 PSI could have been a factor in the rollover of the forklift on an uneven surface (such as a small pot hole), but it was unlikely that would be the sole contributing factor.
81. I am satisfied the forklift was in a mechanically sound condition prior to the rollover.

Mr Marshalls Training in the Use of the Forklift

82. It was agreed between Mr C Brown, Mr B Stokes and Mr Marshall that Mr Marshall would be trained in the use of the forklift on the property.
83. Neither Mr C Brown nor Mr B Stokes held a high risk work license at the date of the forklift rollover. Mr C Brown had previously obtained a forklift license. Due to legislative amendments, his license lapsed. It was confirmed by Mr Templar that he could obtain a high risk work license without undergoing any further practical instruction and simply paying the appropriate fee to obtain the license.
84. Similarly, Mr B Stokes did not hold a high risk work license. He did have extensive experience in the use of forklifts and had previously been licensed to operate forklifts. Mr Templar

² Record of interview between B Stokes and Work safe Tasmania 2/10/2014 lines 147 to 155)

confirmed that Mr B Stokes could obtain a high risk work license without undergoing further practical instruction and simply paying the appropriate fee to obtain the license. Mr B Stokes had not informed his employer or Mr C Brown that he did not hold a high risk work license.

85. As I understood Mr Templar's evidence, for Mr Marshall to obtain a high risk work license he was required to register with a registered training authority and he could then commence to use a forklift under the supervision of a person who held an appropriate high risk work license.
86. Mr Marshall had not enrolled with a registered training authority and Mr C Brown and Mr B Stokes were not holders of high risk work licenses. I am satisfied that both were proficient in the use of forklifts and had they simply obtained the high risk work license they would both have been suitable to supervise Mr Marshall in being trained in the use of a forklift.
87. Mr C Brown gave evidence as to the training Mr Marshall received in the use of the forklift.
88. He inducted Mr Marshall over a two day period in August of 2014.
89. Mr C Brown outlined potential risks to be wary of when using a forklift. He supplemented his oral discussion with a YouTube video.
90. Mr C Brown then took Mr Marshall on a physical walk-round of the forklift outlining the controls. Mr C Brown then had Mr Marshall observe him using the forklift. Then Mr C Brown closely monitored Mr Marshall using the forklift.
91. According to Mr C Brown he made it clear to Mr Marshall he was to only use the forklift under his or Mr B Stokes' supervision. He was instructed that he was to wear his seatbelt at all times and was only to use the forklift in the area of the packing shed, in the farm yard near the packing shed, and the occasional trip to the vegetable shop.
92. According to Mr C Brown, Mr Marshall had accrued approximately 15 to 20 hours of use prior to 2 October. Mr C Brown was of the view he was relatively competent in the use of the forklift.
93. Mr C Brown accepted that Mr Marshall had been spoken to on multiple occasions for not wearing his seatbelt when using the forklift. He had also driven the forklift into an area where it became bogged and he had an incident when he was driving the forklift "a little too fast."
94. On both occasions Mr Marshall was spoken to by Mr C Brown about his use of the forklift. Mr C Brown did not recall Mr B Stokes raising any issues with him regarding Mr Marshall's use of the forklift.

95. Mr B Stokes in his record of interview with officers of WorkSafe on 2 October, indicated that Mr Marshall had a “bad habit of not wearing his seatbelt”. He indicated that he and Mr C Brown had spoken to Mr Marshall about his failure to wear a seatbelt. He also stated Mr Marshall was in the habit of driving around with the “forks up.”
96. Mr B Stokes believed there was an issue with Mr Marshall not wearing his seatbelt.
97. I am satisfied that the initial training given to Mr Marshall in the use of the forklift was satisfactory. The level of supervision applied during the training is questionable. There were times when Mr Marshall utilised the forklift when he was out of sight of Mr C Brown and Mr B Stokes. I am satisfied that Mr C Brown and Mr B Stokes addressed safety issues regarding Mr Marshall’s use of the forklift as they arose.

Preparations for Mr C Brown Being Absent from the Property

98. The evidence discloses that Mr C Brown had left a number of tasks to be undertaken when he was absent from the farm. This was the first time that Mr C Brown was going to be absent from the farm for an extended period. I have previously commented that Mr C Brown did not meet with employees advising them that Mr B Stokes was “in charge” and that his directions were to be followed.
99. I accept Mr C Brown’s evidence that he deliberately limited the work to be performed on the farm in his absence to the general tidying of the property. The tasks included:
- a) Cleaning inner tubes for the tractor;
 - b) Repairing potato bins;
 - c) Cleaning the packing shed; and
 - d) Moving a tractor tyre (which Mr C Brown had directed Mr B Stokes to do by utilising a tractor).
100. I do not accept Mr B Stokes’ sworn evidence and the comments he made in the second record of interview with officers of WorkSafe that Mr C Brown had produced a written list of tasks to be undertaken by Mr Marshall and left them in the ute.
101. I have previously outlined why I prefer the evidence of Mr C Brown over Mr B Stokes.
102. I am satisfied that a list of tasks had been left on the whiteboard in a shed.

Mr Marshall's Presence at the Property on 2 October 2014

103. There is a clear conflict between the evidence of Mr B Stokes and Mr C Brown as to who directed Mr Marshall to attend work on 2 October 2014.
104. Mr B Stokes has stated in his sworn evidence and in the second record of interview between himself and officers of WorkSafe, that Mr Marshall was at the farming property on that day because he had been instructed by Mr C Brown to attend. He also stated that he had raised with Mr C Brown that he did not want Mr Marshall on the property in his absence as he would not follow his directions.
105. His sworn evidence and comments in the second interview is contrary to the comments he made in the first interview between himself and officers of WorkSafe.
106. Mr C Brown indicated that he had left it to Mr B Stokes to contact Mr Marshall if he required him to work at the property.
107. I again prefer Mr C Brown's evidence over Mr B Stokes' evidence as to how Mr Marshall came to be at the property on 2 October 2014.

The Presence of the Stokes Family at the Farming Property on 2 October 2014

108. A significant number of the Stokes family members were at the property on 2 October 2014.
109. Other than Mr B Stokes and Mr J Stokes, their presence at the property was not authorised or expected by the partnership or Mr C Brown in his absence.
110. I was left with the impression that members of the Stokes family were present at the farm because Mr C Brown was absent. The evidence does not allow me to make a finding to that effect, however, I am satisfied that other than Mr B Stokes and Mr J Stokes, their presence on the farming property was unauthorised.

Mr Marshall's Movements on the Day of his Death

111. Mr B Stokes attended work as usual on 2 October 2014. Mr B Stokes undertook a number of vegetable deliveries in the morning. When he returned, Mr Marshall was present at the farm.
112. Mr B Stokes directed Mr Marshall to tidy up the farmyard, which included stacking potato boxes. This task involved the use of the forklift.
113. At some point prior to midday, Mr Marshall caused the forklift to become bogged. Mr B Stokes pulled the forklift out using a tractor.

- I 14. Around midday, Mr J Stokes and Mr K Stokes arrived at the farm. Mr K Stokes, Mr B Stokes and Mr K Stokes went to move an irrigator on another part of the property.
- I 15. Mr J Stokes observed Mr Marshall using the forklift. He noted he was not wearing a seatbelt. Mr J Stokes' evidence was that he raised with Mr Marshall the fact he was not wearing a seatbelt but he is unsure if he heard him. Mr J Stokes' evidence was that Mr Marshall was driving the forklift at speed and he told him to slow down.
- I 16. At some point, Mr Marshall made a decision to move a tractor tyre utilising the forklift. He drove the forklift with the tyre loaded on the front of the forklift to a fence line.
- I 17. Mr B Stokes and Mr K Stokes came across Mr Marshall on the laneway as he was trying to place the tyre over the fence. Mr B Stokes stopped to give Mr Marshall advice. He noted the forklift was in a ditch. According to his sworn evidence, Mr B Stokes was in a hurry to get back to the farm because cattle had escaped and had entered a crop paddock.

The Sequence of Events Leading to the Forklift Rollover

- I 18. Only Mr B Stokes and Mr K Stokes were present when Mr Marshall was thrown from the forklift and it rolled over.
- I 19. Mr B Stokes made a statement to police on 2 October 2014 which he declared to be true and correct. He was interviewed by Mr Templar, a workplace inspector, at 5.55pm on 2 October. A further interview was conducted on 19 March 2015 between inspector Templar and Mr B Stokes. Mr B Stokes gave sworn evidence at the inquest.
- I 20. As I noted earlier, Mr B Stokes did not impress me as a witness. I formed the view that his version of events had evolved with a view to minimising his involvement in the circumstances leading to Mr Marshall's death. I am satisfied that the first statement he made to workplace inspector, Mr G Templar, is the most accurate representation of the circumstances leading up to Mr Marshall's death. The statement was made within hours of Mr Marshall's death. In my view, subsequent statements and Mr B Stokes' sworn evidence had been affected by his desire to minimise his involvement in Mr Marshall's death and to shift responsibility to his previous employers and Mr C Brown.
- I 21. I have repeated, in full, a lengthy answer given by Mr B Stokes in response to a question from Senior Inspector Templar:

'Well this morning I had to start early because I had to do the stock run to Devonport um so I went up there picked up the vegetables brought them back to the shop um when I got back Karen

was really busy in the shop like heaps of customers um so I helped her pack away the produce and re stock the shelves in the shop. Um Eric come down while I was down there and took his 15 minute break in the morning and this was around 9:30 um. Eric came back up here probably 25-30 minutes after he arrived down there to pack some more potatoes cause the shop was running low um I was down the shop for probably 2 hours after that um Eric came down then again to have his lunch break um. Just as I was going down town to do deliveries to some local businesses um as I got back me and Eric were talking about what the plans were for the rest of the day um because Chris left us a list of things to do so I asked Eric to finish tidying up the yard which involved using the forklift um. While I went and moved the irrigator over the back um my brother Kerry arrived 5 minutes after me and Eric had that conversation and I asked him to give me a hand moving the irrigator so me and Kerry jumped on the bike went to the flat paddock over the back um and I realised the cows were out so I got Kerry to move the tractor up the track while I tried getting the cattle back in their yard um but I couldn't find the hole in the fence where they got through to push them back through so I came back up the track and me and Kerry stopped just down the track where the irrigator is parked now just up past the chemical shed um I told Kerry to get on and put his helmet on and then we rode probably 20 metres and Eric was in the process of putting a tyre over the fence behind the chemical shed with the forklift um he was having trouble doing it so I offered him a bit of advice and he listened and did it and he got the tyre over there and he was joking around at the same time and then he backed out in front of the forklift just after I started going down to the shop to get the phone so I could ring the fella who has the cattle to tell him that they were out again um and I had to jump on a brake so I was probably only doing 15kms an hour and I swore (sic) at the same time and slid to the left hand side the track cause Eric backed out onto the right hand side and I stopped and waited for Eric and he started moving so I thought I'd be able to go then so I started going on the bike and he was swerving back and forth in front of me blocking my path um we weren't going very fast at all um Eric was probably 3, 3-4 meters in front um I seen an opening to get around him um so I went round him to the left cause he was over to the right hand side of the track at this time um and then I was probably 5-6 metres in front of him and I heard him yell out "fuck" and at the same time me and my brother both turned our heads and looked back as I stopped the bike to see what was going on and at this time the bike the four wheeler was at a 45 degree angle and Eric was just falling off of it and sliding across the ground he slid probably 2 feet before the forklift landed on top of his rib cage um and me and my brother both jumped off the bike immediately to see if he could get Eric out from underneath of the forklift but we could not um and then I ran to the edge of the packing shed to the corner to get someone to call an ambulance um Eric was conscious at this time I ran back less than 30 seconds later and Eric was not conscious and he had no pulse um my Dad wanted to lift the forklift off of him immediately but I had done my forklift ah I've done my um first aid certificate and it said that in most circumstances its best not to move the person just in case they have spinal problems so I told Dad not to lift the forklift off of him until

the ambulance arrived or until we were told otherwise um and Mum was getting emotional on the phone to the emergency services so she put me on the phone and they asked me if he was and breathing and I said no and then they told me to well they asked me if there was any way we could get him out from underneath the forklift and I said yes and they asked how and I told them that we would lift the forklift up with the tractor um so we did that and I had trouble pulling Eric out from underneath the forklift by myself so I called out to my brother Kerry to come and give me a hand we both together were able to pull Eric out from underneath the forklift um. It was a short time after that probably 2 minutes and the ambulance arrived by this time I already knew that Eric had passed away because I had been checking his pulse um and that and then shortly after that two fire trucks arrived followed by two police cars um and then they interviewed us and took us down to the station for a formal interview.’³

122. In his first record of interview, Mr B Stokes gave the following answer regarding the speed at which Mr Marshall was driving the forklift:

‘BS: So I did proceed past him and then I turned back um he was going probably as fast as the forklift would go which is unsafe on un level ground um and because the forklift steers from the back the steering at that speed is very sensitive

GT: So there was no issue with the steering that would of caused this is what I'm trying to get at?

BS: No there was not

GT: Yeah good

DL: So you're saying he was driving as quick as he could?

BS: Yes

DL: Flat out’

123. In his statement to police declared as true and correct, Mr B Stokes provided the following description of the incident:

‘Kerry then jumped on the bike and I drove the tractor to the bottom of the hill and parked it. After this I jumped back on the bike, I was the driver and Kerry was on the back. I drove the bike north along the track about 20 meters to where Eric was driving a Forklift putting a tyre over the fence on the western side of the laneway behind the chemical shed.

Eric then backed out in front of me from the left hand side of the track to the right hand side of the track. I was coming down the right hand side of the track so had to jump on the brakes to avoid him. Eric then kept on trying to block me from getting past with the forklift.

³ Paragraphs 88-138 of the transcribed WorkSafe Tasmania Record of Interview with Mr B Stokes dated 2 October 2014

I was eventually able to get past Eric on the left hand side of the track. At the time I went past Eric was on the right hand side of the track I was about three meters in front of Eric when I heard him yell "Fuck." I turned my head to see the forklift starting to rollover, I saw it roll so I stopped the bike before it even hit the ground.

When the forklift was about on a 45 degree tilt I saw Eric fall off and slide about two feet across the gravel on his left side and then the roll cage fell across his right side just below his ribs.

I immediately jumped off the bike and ran back to him, he was still conscious for around 45 seconds, he was breathing at the time but he wasn't moving. I ran around to the other side of the shed to get someone to call the Ambulance, my mum and my sister were there I don't know who called the Ambulance.⁴

124. Mr K Stokes made a statement to Tasmania Police on 2 October 2014 which he declared to be true and correct. I am satisfied that the statement he made is an accurate representation of his observations of Mr Marshall driving the forklift prior to his death.

125. Mr K Stokes provided the following description of the incident:

I got out of the tractor and got on the back of the 4 wheeler seated behind Ben, we both had our helmets on. Ben and I didn't go far before Ben had to stop and wait as Eric was blocking the dirt Road with the Forklift. Eric was parked across the dirt road and the back of the forklift was facing towards Mount Street. Eric had a Tractor tyre on the front of the forks of the forklift. Eric was sitting the tyre over the fence. Ben and I were stopped on the 4 wheeler still waiting for Eric. We were probably a couple of meters away from the forklift. Ben and I were both seated. Eric was having a bit of trouble moving the tyre so Ben was giving him instructions to back back and sit the forks down to allow the tyre to sit towards the end of the forks. Eric did what Ben told him. Eric then got the tyre off the forks on to the other side of the fence. Eric then backed back so he could drive back down the dirt road towards the packing shed. Eric has started to drive the forklift back down the dirt road and was trying to block Ben from going past. Eric was swerving side to side trying to block us.

Ben waited and let Eric continue forward. When there was a bit of room on the left hand side of the road Ben went up the left had side of the forklift, we weren't going very fast. We managed to get past Eric in the forklift. Once we were in front of the forklift I turned my head around I saw Eric turn the steering wheel of the forklift on a sharp right. The forklift then began to tip over and

⁴ Exhibit C9 – Affidavit of B Stokes sworn 2 October 2014.

Eric flew out the left hand side like a piece of paper under the forklift and the forklift landed on top of his ribs. As the forklift landed on Eric I heard a noise come [from] him like he felt the pain.

Ben and I both jumped off the 4 wheeler and ran over to the forklift to try and move it off Eric, but obviously we weren't going to be able to do it. Once Ben and I realised that we weren't going to be able to move the forklift off Eric I tried to get a response from him. I was yelling/talking to him, but I wasn't getting any response. The last think (sic) I remember seeing when I knew he was dead was when I saw him bleeding from the mouth.⁵

126. The descriptions given by Mr B Stokes and Mr K Stokes of Mr Marshall's driving and the subsequent rollover of the forklift are consistent with the observations made by Senior Sergeant Forteath and Senior Constable Sven Mason's inspection of the incident scene.
127. On the day of the incident, Senior Sergeant Forteath attended and inspected the scene. He is a qualified crash scene investigator. He used yellow spray paint to mark the tyre marks created by the forklift.
128. He gave the following description of the scene:

'Just before 2:00pm on Thursday the 2nd of October 2014 I was on duty when I was notified of a crash at Lochaven Produce which is situated at 408 Mount Street, Burnie, involving a forklift. The initial call suggested the operator may have been deceased. Lochaven Produce is a commercial farming property.

I immediately attended the scene, arriving a few minutes later. On my arrival I spoke with Constable Dicker and Senior Sergeant Conroy. They informed me that the operator, Eric Craig Marshall was deceased.

I then organised scene security at the gate and examined the scene. I observed a red and black coloured Wecan forklift lying in its side with a deceased male lying nearby. On a north south running gravel roadway, just behind the forklift, I observed a number of tyre marks which led from a tractor tyre which was over a fence to the resting position of the forklift.

I used a can of yellow road marking paint to mark the relevant tyre marks on the gravel roadway as well as the position of the forklift and the position of the deceased. I was able to identify an area next to the forklift on the gravel roadway where it was apparent that the operator had lost control during a right hand turn. There was evidence of the tyres sliding in a yaw motion and then the rear left tyre digging into the surface, causing the forklift to roll. Prior to this, a couple of

⁵ Exhibit C10 – Affidavit of Mr K Stokes dated 2 October 2014

metres away, there was evidence of an initial loss of traction by the forklift suggesting Marshall had been operating the forklift in such a manner to cause it to slide on the surface as he drove it.

From examining the path of the forklift from the position of the tractor tyre over the fence to the point the forklift rolled it was evident that Marshall had been swerving somewhat along the road and had lost control due to the manner in which he was operating the forklift. The forklift had rear wheel steering and weighs approximately 4 tons. Such a vehicle being operated on a slippery gravel surface would have considerable momentum and slide as it turned if not operated correctly. The forklift was fitted with a seatbelt but an inspection revealed it to be in the fully retracted position and although it appeared to be working correctly, there was no evidence that it had been worn during the crash.

A short time later the deceased male was identified to me as Eric Craig Marshall by another employee, Benjamin Stokes.

I then gave direction to Senior Constable Chivers in relation to the taking of photographs throughout the scene.

I was present when tow trucks attended the scene and removed the forklift for later examination. Prior to it being loaded onto a tow truck, but after it was lifted and put back on its wheels, I took two photographs (F1 and F2) of the fork position which were found in line with the front wheel axis. There was no evidence of the forks making contact with the roadway prior to, or during the crash.

On attendance of the mortuary ambulance I identified the deceased to Colin O'Connor, the mortuary ambulance driver.

I then attended the Burnie Police Station and completed a number of reports in relation to the matter before concluding duty.

At 9:45am on Friday the 3rd of October 2014 I attended the scene with Senior Constable Mason and I assisted him in completing a laser survey of the scene.⁶

129. The tyre marks created by the forklift were photographed by Senior Constable Chivers. There are various photographs of the tyre marks left by the forklift and they are included in exhibit C22.
130. Senior Constable Mason attended the scene of the incident on 3 October 2014. Utilising Senior Sergeant Forteach's yellow markings he produced a map of the path of travel

⁶ Exhibit C21 – Affidavit of Sergeant Forteach dated 10 October 2014

undertaken by the forklift utilising a Laser Technology Quick Map Survey Instrument and a Crash Zone 9 Computer Programme.

- I31. Senior Constable Mason also measured the gradient of the roadway at various points and those points are also identified on the map. Attached to this finding is a copy of the map which clearly shows the path taken by Mr Marshall when driving the forklift.
- I32. The most significant matter identified by Senior Sergeant Forteach is that the forklift made a sharp right hand turn prior to rolling. Senior Sergeant Forteach has identified the sharp right hand turn by way of a square box (depicted in photograph 21).
- I33. Based on the evidence, I find that Mr Marshall drove the forklift in the manner described by Mr B Stokes and Mr K Stokes. I find that Mr Marshall made a sharp right hand turn prior to the forklift rollover. I am not able to make any finding as to why he made that sharp right hand turn.

The Cause of the Forklift Rollover

- I34. Based on the evidence before me, the primary cause of the forklift rolling over was the manner in which Mr Marshall drove it on 2 October 2014.
- I35. The only reliable evidence I have regarding the forklift rollover are the police statements of Mr B Stokes and Mr K Stokes and the first record on interview between Mr B Stokes and officers of Worksafe Tasmania. Their description of Mr Marshall's driving leads to the conclusion he was driving the forklift in an inappropriate manner. He was driving it at an excessive speed and was swerving over the roadway.
- I36. I accept that he was inexperienced in the use of the forklift and his inexperience may have lead him to believe that he could execute a sharp right hand turn, however, the sharp right hand turn was a continuation of his prior driving of swerving over the roadway.
- I37. I am of the view that the absence of Mr C Brown and the unauthorised presence of Mr K Stokes caused Mr Marshall to drive the forklift in a manner that he would not have done so had Mr C Brown been present. No criticism can be made of Mr C Brown or the partnership for allowing Mr C Brown to be absent from the property. Aside from the matters outlined in paragraph 65-68, appropriate arrangements had been made for the supervision of Mr Marshall given the tasks that Mr C Brown expected him to perform in the event Mr B Stokes requested he attend the farm. Moving the tractor tyre was not a task Mr C Brown had expected Mr Marshall to perform. That task had been assigned to Mr B Stokes and he had been instructed to use a tractor to move the tyre.

138. In my view, Mr C Brown's absence from the property was not causative of Mr Marshall's death. It was not foreseeable to Mr C Brown that Mr Marshall would:
- a) Operate the forklift without supervision;
 - b) Operate the forklift in the manner that he did;
 - c) Operate the forklift without wearing a seatbelt;
 - d) Operate the forklift in the area that he did; or
 - e) Utilise the forklift to move the tractor tyre.
139. If Mr C Brown could not foresee the matters listed at paragraph 122, then one could hardly expect the partnership to foresee these matters.
140. Whilst it is open to be critical of Mr B Stokes and his supervision of Mr Marshall on 2 October 2014, as to the forklift rollover itself, the reality is that Mr B Stokes was unaware (according to him) that Mr Marshall was not wearing a seatbelt. Mr Marshall's act of driving in the manner he did appears to have been a spontaneous decision and was of short duration. There was little Mr B Stokes could have done to prevent him from driving in the manner he did over the relatively short distance he drove.
141. According to Mr B Stokes in his sworn evidence, he told Mr Marshall to stop acting in the manner he was (albeit in much stronger terms with the use of expletives).
142. Unfortunately a momentary act of less than diligent driving by Mr Marshall has resulted in his death.

Post-Mortem Examination

143. A post-mortem examination was conducted by Dr Christopher Lawrence. Dr Lawrence provided the following opinion as to Mr Marshall's cause of death:

"This 19 year old man, Eric Craig Marshall, died as a result of chest and abdominal injuries due to being trapped under a forklift which rolled over."

144. I accept Dr Lawrence's opinion as to Mr Marshall's cause of death.

Plea of Guilty to Breach of Section 43(2) of the Work Health and Safety Act 2012

145. The partners of the partnership pleaded guilty to breaching section 43(2) of the *Work Health and Safety Act 2012*. The factual basis of the plea and the factual basis upon which the defendants (the partners) were sentenced, was that the breach of the Work Health and Safety Act (not having the appropriate license or being supervised by a person with such a license)

was not causative of Mr Marshall's death. The breach related to Mr Marshall using the forklift earlier in the day, when he was authorised to do so without a high risk work license or in so far as he was being supervised, he was not under the supervision of a person who was licensed to carry out high risk work.

146. That plea is consistent with the evidence lead at the inquest.

Findings Required by Section 28(1) of the Coroners Act 1995

- a) The identity of the deceased is Eric Craig Marshall;
- b) Mr Marshall died as a result of chest and abdominal injuries sustained by him when a forklift rolled over and he became trapped underneath it;
- c) Mr Marshall's cause of death was chest and abdominal injuries; and
- d) Mr Marshall died on 2 October 2014 at Romaine in Tasmania.

I am satisfied that as a result of this tragic incident, the partnership has taken appropriate steps to prevent a similar incident occurring in the future. The partnership has reduced its farming operations. Appropriate policies and procedures have been implemented. Appropriate licenses are now held.

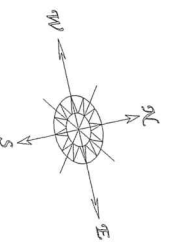
As such I do not need to make any recommendations.

I wish to thank Ms Emily Bill, Counsel Assisting, and Ms Garwood, Counsel for the partnership and Mr C Brown for their helpful submissions.

Finally I offer my condolences to Ms Barker and her family on the loss of a much loved son and brother.

Dated: 5 November 2020 at Hobart in the State of Tasmania

Andrew McKee
Coroner



SCENE OF A FATAL FORKLIFT CRASH
LOCHAVEN FARM - BURNIE
THURSDAY 2 / 10 / 2014
DECEASED: MARSHALL - ERIC CRAIG, 19 YEARS
SCALE 1 : 200

