

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 60(2)
Section 67 of the Coroners Act 2008

I, Jack Vandersteen, Coroner

having investigated the death of William Malcolm Warner without holding an inquest:

find that the identity of the deceased was William Malcolm Warner

born on 1 April 1955

and that the death occurred on 20 April 2011

at 2453 Wimmera Highway, Apsley, Victoria

from:

1a. Multiple Injuries

Pursuant to Section 67(2) of the Coroners Act 2008, I make findings with respect to the following circumstances:

1. Mr William Malcolm Warner was 56 years old at the time of his death. Mr Warner resided at 45 Mollison Street, Edenhope with his fiancée Ms Sydney Edney and was employed as a plant owner operator.
2. Mr Warner was the sole director and shareholder of W.M. Warner Pty Ltd (ACN 090 596 811)¹ a company that traded as Warner Earthmoving, situated on the Hinkley-Tansey Road, Edenhope. The company is a well-established family business operating in the Edenhope area, employing some seven to eight individuals on a casual basis.²
3. The type of work the company conducted included: dam building or construction, drainage works, stump removal, stacking of timber, cartage, laser levelling, deep ripping

¹ ASIC Historical Company Extract dated 21 April 2011

² Statement of Mr Noel Curran page 1, paragraph 6

and house site preparations whilst operating: dozers, loaders, scrapers, excavators, trucks, laser buckets and tractors.³

4. Mr Noel Curran, the officer manager of W.M. Warner Pty Ltd and long time friend of Mr Warner, stated to investigators that Mr Warner *“lived, breathed and slept this business”* and *“was always concerned about what his workers were up to and that they were ok doing the job.”* Mr Warner’s father, Mr John Warner, confirmed such comments in a statement made to investigators; *“...he (Mr Warner) was very capable with his work and very safety conscious. He would always look after himself and his men working for him.”*⁴
5. To this extent, Mr Warner held Civil Contractor Federation cards dated 18 November 2000⁵, 24 September 2003⁶ and 26 September 2003⁷. Mr Warner also held a Safety Induction Card from Civil Contractor Federation dated 13 June 2008.
6. There is no doubt on the evidence before me that Mr Warner was a well-regarded individual both professionally and personally.
7. W.M. Warner Pty Ltd were requested to remove some trees from a property owned and operated by the Hawker family known as “Newlands”, 2453 Wimmera Highway, Apsley. In October 2010, 20 mature pine trees were pushed over using a dozer.
8. In February 2011, Mr Richard Hawker requested that W.M. Warner Pty Ltd return to the property and remove some more trees. A D7H dozer was bought to the property however after pushing one tree over it became apparent that the ground was too wet for adequate traction⁸.
9. On 18 April 2011, Mr Warner returned to the property to complete the work. On this occasion an excavator, being a Caterpillar 325 was to be used, as the W.M. Warner Pty Ltd dozers had been leased out to the mines at Douglas. Two to three trees were felled

³ Statement of Mr Noel Curran page 1, paragraph 7

⁴ Statement of Mr John Warner page 1, paragraph 4

⁵ Equipment Class: (HSO) Front-end Loader & Dozer (CCF) Scraper & Grader

⁶ Equipment Class: (HSO) Excavator, Front-end Loader & Dozer (CCF) Scraper & Grader

⁷ Equipment Class: (HSO) Front-end Loader & Dozer (CCF) Grader

⁸ Statement of Mr Geoff Clayton page 1, paragraph 7

using the excavator by “ripping” around the base of the tree and using the boom to push the tree over on 18 April 2011. A further 15 trees were felled on 19 April 2011 also using the excavator.

10. On 20 April 2011 at approximately 1.25 pm, Mr Warner was operating the Caterpillar 325. Mr Warner completed “ripping” around the base of a mature pine using a large spike attached to the boom of the excavator.
11. Mr Jamie Julian, an employee of Warner Pty Ltd stated to investigators “*The excavator was positioned away from the tree and was in position to push the tree over, the excavator was not moving at that stage. I then heard the tree go and looked up ...*”⁹. Mr Julian saw that the tree had fallen onto the cabin of the excavator. Mr Warner died immediately.
12. Mr Stephen Rainey employed by Civil Contractors Federation provided a statement to WorkSafe investigators. In summary he concluded that in respect to the use of an excavator, as in this case;
 - a) The cabin of the excavator was fitted with Roll Over Protection and Falling Object Protective Structure, that are designed for hazards associated with earthmoving operations only
 - b) There was no additional protection on the excavator to protect against risks associated with what the earth mover was doing at the time
 - c) The training provided for the use of the excavator relates only to using the machine in the earth moving industry
 - d) Given the height of the tree in this case it would have been impossible for there to be any proper control
 - e) The rock ripper attached to the quick hitch does not provide adequate purchase on the tree
 - f) No Falling Object Protective Structure would have survived the falling of the size of tree involved in this instance

⁹ Statement of Jamie Julian, page 2, paragraph 4

13. Further, Mr Les Kriesfeld¹⁰ provided as part of the WorkSafe investigation a report titled “*Report on Falling Object Protection Requirements for Excavators Applicable to Australian & International Standards*”.¹¹ Mr Kriesfeld calculated that the tree would have weighed 19,291 kilograms being 19.3 tonne with a height of 35 metres.

14. Having regard to this case Mr Kriesfeld noted, amongst other matters:

This practice means that the tree prior to locating the excavator into the correct position for pushing has had instability undermined and its continuing stability is reliant on the balance of the tree and any remaining groups creating an anchorage in the ground. This technique is very dependent on operator competency in determining the amount of root ripping that should occur, the condition and symmetry of the tree and the soil and weather conditions. Should the tree had branches in an out of balance position, the structure be too greatly undermined, or wind gusts occur at inopportune times the potential for the tree to fall unassisted exists.

Although the use of machinery to push trees over does provide protection to the operator when compared to a person away from the protective cover of a machinery canopy, such as when operating a chainsaw, the system of work with plant used was not appropriate.

All machinery used in the forest industry should have the operator protective structures risk assessed for the activity the plant is required to undertake. The work practice incorporated a deliberate activity whose purpose was to weaken the supporting group structure, a hazard identification process should have identified the potential for the tree to topple unassisted and fall onto the excavator cabin. This in turn should have initiated appropriate risk control mechanisms to either ensure that this would not occur by changing the method of operation, or by ensuring that should it occur, no damage to the plant or injury to persons would occur.

¹⁰ Senior Engineer of the Hazard Management Division, WorkSafe Victoria

¹¹ Dated 26 July 2011

Due to the requirement to firstly partially-destabilise the trees prior to pushing them over and the variability's that this introduces with respect to controlling two procedures to ensure that the operators remained safe at all times, this was not an appropriate system of work even should the excavator had been fitted with an appropriately strengthened operator protective guard.

The more appropriate system of work would be to eliminate the necessity of undermining the tree's stability prior to pushing it over. To achieve this heavier machinery such as a bulldozer D8 or D10 with a correctly designed and fitted operator protective guard would have provided a safe work environment.

The use of an excavator without this level of substantial operator protective structure was not an acceptable practice.

In the event that an operator protective structure had been fitted as designed to a relevant standard such as the ISO standard: ISO 10262:1998, earthmoving machinery - hydraulic excavators - laboratory tests and performance requirements for operator protective guards, the protective structure would have sustained severe damage during the toppling and direct impact of a 35 m pine tree with a mass of approximately 19.3 tonne.

15. Mr Stephen Hainey a Trainer/Assessor and Auditor in civil construction employed by Civil Contractors Federation was shown a copy of Mr Warner's Civil Contractors Federation Plant Operator Card together with photographs of the excavator in question. Mr Hainey stated:

I have determined from those photos that the cabin of the excavator was fitted with over protection (ROPS) and falling object protection structure (FOPS) that are designed to hazards associated with earthmoving operations only. There is no additional protection on the excavator to protect against risks associated with what the excavator was doing at the time of the final incident.

In terms of the training provided to operate an excavator that training only relates to using an excavator in the earth moving industry. There is no reference to using

an excavator to push over trees as this is not what an excavator is designed to do. There are excavators used in the demolition industry and those operators are given specific training to that industry. The training would talk to the capacity of the ROPS system to withstand a roll over, but only if there is no damage to the structure of the ROPS. There would be no mention of a FOPS system surviving a tree falling on it as this is not considered to be relevant to operation of an excavator when earthmoving.

No FOPS system would have survived the size of that tree striking it as it did, including those fitted to the dozers. The FOPS on a dozer are only designed to take the weight of the machine if it rolls the FOPS would survive tree limbs and rocks and boulders but not a mature 30 ton plus tree trunk.

By the end of the day the excavator should not have been used to push over trees as it was primarily designed in its hydraulic systems to pull towards the excavator.

16. Mr Geoff Clayton a long time employee of W.M. Warner Pty Ltd observed that the soil around the tree that fell onto Mr Warner's excavator was of a different type than the other trees. Mr Clayton described the soil being red clay with limestone with next to no root system, whereas the others had an extensive root system with a loamy soil.¹²
17. On 5 May 2011, pursuant to section 111 of the *Occupational Health and Safety Act* 2004, an improvement notice was issued and served on W.M. Warner Pty Ltd. The basis of the notice was that WorkSafe investigators were unable to establish that documented safe systems of work are in place for the task of felling trees. As a result, WorkSafe concluded that employees might be at risk of serious injury if felling of trees is conducted in remote locations and in an unsafe manner by W.M. Warner Pty Ltd.
18. On 9 June 2011, WorkSafe met with representatives of W.M. Warner Pty Ltd. As a result of the meeting WorkSafe were satisfied that W.M. Warner Pty Ltd had developed a system of work for the task of felling trees with mobile plant and that W.M. Warner Pty

¹² Statement of Mr Geoff Clayton pages 3& 4, 1 paragraphs 4 & 1 respectively

Ltd had a documented system in place to reduce the risk of injury when the task of felling trees with mobile plant is required.

19. A document was provided to the WorkSafe investigator titled: *W.M. Warner Earthmoving Safe Work, Titled: Tree Amenity Works*.
20. From perusing the document WorkSafe were satisfied that appropriate measures were in place for future operations by W.M. Warner Pty Ltd that addressed adequately work safe issues, thereby complying with the s 111 Notice. Further, WorkSafe were advised that excavator type plant equipment would not be used for the task of felling large trees.¹³
21. I am satisfied on the material before me that adequate steps have been put in place by W.M. Warner Pty Ltd to prevent the re occurrence of an incident subject to this investigation, and that no comment is required pursuant to section 67 (3) of the *Coroners Act 2008*.
22. I am further satisfied that industry standards as reflected in the documents produced by WorkSafe and Victoria Police titled *Safety in Forestry Operations – Harvesting and Haulage* – and *Working Safely with Trees- Recommended Practices for the Amenity Tree Industry* - are both adequate, and that no comment is required pursuant to section 67 (3) of the *Coroners Act 2008*.
23. As part of the Victoria Police investigation recommendations were sought as follows:
 - (a) compulsory ‘Arboriculture for Beginners’ training for operators and work site managers/supervisors, in the tree removal industry
 - b) compulsory training in tree removal with excavators or heavy machinery for operators and work site managers/supervisors; and
 - (c) the recommendations be developed and adopted by WorkSafe and any other stakeholder.

I endorse these recommendations pursuant to section 72(2) of the *Coroners Act 2008*.

¹³ Statement of Dallas Braam dated 17 June 2011 and Exhibit – Entry Report dated 9 June 2011

24. The Victorian Institute of Forensic Medicine conducted a DNA test to confirm the identity of Mr Warner. The testing involved comparing the profile of Mr Warner with that of Mr John Warner which concluded that the probability of parentage was 99.99990%. I am satisfied on this evidence together with the location where Mr Warner was located and the observations of witnesses of Mr Warner operating the excavator just prior to the tree falling that Mr Warner's identity is established.
25. Associate Professor David Ranson of the Victorian Institute of Forensic Medicine carried out a medical investigation into the death of Mr Warner and concluded that the cause of death was from multiple injuries. I accept Associate Professor Ranson's opinion. Routine toxicology did not reveal the presence of alcohol or any drug.
26. Based on the evidence before me I find that Mr Warner, whilst in the process of felling a large pine tree, died from multiple injuries following the tree falling.

Dated this 15 May 2013

Jack Vandersteen
Signature:

Jack Vandersteen , Coroner

