



MAGISTRATES COURT *of* TASMANIA

CORONIAL DIVISION

Record of Investigation into Death (Without Inquest)

*Coroners Act 1995
Coroners Rules 2006
Rule 11*

(These findings have been de-identified in relation to the name of the deceased, family, friends, and others by direction of the Coroner pursuant to s57(1)(c) of the Coroners Act 1995)

I, Robert Webster, Coroner, having investigated the death of PL

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

- a) The identity of the deceased is PL;
- b) PL died in the circumstances set out below;
- c) PL cause of death was head injuries; and
- d) PL died on 24 February 2020 at Hobart, Tasmania.

In making these findings, I have had regard to the evidence gained in the comprehensive investigation into PL's death. The evidence includes:

- The Tasmania Police report of death for the coroner;
- The Tasmanian Health Service death report to the coroner;
- Affidavits establishing identity and life extinct;
- Affidavit of Dr Andrew Reid, forensic pathologist;
- Forensic Science Service Tasmania toxicological and analytical reports;
- Ambulance Tasmania electronic patient care record;
- Various affidavits from witnesses;
- Affidavit of Senior Constable Alistair King and his body worn camera footage;
- Affidavit of Senior Constable Scott Williams;

- Affidavit of Craig Vermey (rank not stated), Tasmania police;
- Affidavit of Senior Constable Matthew Smith;
- Affidavit of Paul Johns (rank not stated), Tasmania police;
- Affidavit of Sergeant Scott Kregor;
- Affidavit of First-Class Constable Dean Walker;
- Affidavit of Mr W, a copy of the electronically recorded interview of Mr W which was conducted by Senior Constable Alistair King and Senior Constable Todd Plunkett together with a transcript of that interview;
- Affidavit of Mr Peter Keyes, marine surveyor, together with his report;
- PL's medical records obtained from the Tasmanian Health Service;
- Letter from Mr Peter Hopkins, General Manager – recreational boating safety and facilities, Marine and Safety Tasmania (MAST) and attachments;
- Letter from Mrs Lia Morris CEO of MAST;
- Data obtained from MAST;
- Data obtained from the Bureau of Meteorology; and
- Miscellaneous photographs, videos, and GoPro footage.

This investigation concerns a fatal boating accident that occurred on the Prosser River west of the bridge at Orford on the Tasman Highway in the afternoon of 23 February 2020. At that time, Mr W was piloting his 2003 white aluminium runabout registered number 30299 on the river in an easterly direction towards the bridge. His son and daughter were passengers in that vessel. Mr W was towing a 2 person ski biscuit on top of which PL and his brother were positioned.

Tragically after approximately 10 laps of the river, and adjacent to the visitor information shelter on the southern side, Mr W lost control of the vessel which resulted in PL's brother falling into the water and PL being ejected from the ski biscuit after which he landed on the rocky shore. This impact caused PL to suffer catastrophic head injuries from which he sadly passed away.

Background

PL was born on the 8 August 2012 at Hobart in Tasmania and he was 7 years of age and resided with his parents, and his younger brother at the date of his death. He was the eldest of 2 children. He was in grade 2 at school and was an engaging and sensitive boy. PL was

close to his younger brother and together they participated in swimming, Aus-kick, and Taekwondo. PL was a big supporter of the Geelong Football Club.

PL was a healthy young boy. He had not attended hospital for any serious medical issues. He had previously suffered a mild case of hives as a result of eating certain foods and he also suffered from eczema which was treated with over-the-counter medications. He did suffer from allergies that were exacerbated by pollens, grasses and dust, but he had not been diagnosed with hayfever.

The Circumstances Leading to PL's Death

On 23 February 2020, Mrs L, PL and his younger brother visited a property situated on Old Convict Road at Orford which was owned by Mrs W and her husband Mr W. Mr L did not attend because he was at work. Mrs W was hosting a birthday party and barbecue for one of her friends, KB. Mrs L is a beauty therapist and knew Mrs W and Ms KB as they were her clients.

Mrs L says she and her sons arrived at the property in Old Convict Road at about midday and she and the boys walked down to the jetty on the riverbank. From the jetty, she observed Mr W driving a boat which was towing a sea biscuit upon which 2 children were laying. Mr W was the only person in the boat. The children were wearing life jackets but Mr W was not. TG, who resides in Old Convict Road, confirms he saw Mr W towing his children on the ski biscuit at about midday, that Mr W was the only occupant of the vessel and at that time he was not wearing a life jacket. In Mr TG's opinion he thought the vessel was being operated unsafely because the river was narrow and the vessel was travelling close to the riverbank. In addition, he noted there was no observer in the vessel but he did not think the speed was excessive for normal towing operations.

When PL and his younger brother saw the boat towing the ski biscuit they began to "pester" their mother to allow them to have a go. Approximately 10 minutes later, the boat returned to the jetty and Mr W offered to take PL and his younger brother out in the boat. Mrs L agreed and both boys were supplied with lifejackets by Mr W. Mrs L assisted both boys into the boat and remained on the jetty. She told them to listen to Mr W and do as he said. She says it was Mr W's daughter, aged 11, who told them where to sit in the boat. She says Mr W did not provide the boys with a briefing or any instructions with respect to any procedures or safety features of the boat while it was at the jetty. This was the first time PL

and his brother had been on a recreational boat. The boys were out on the boat for approximately 20 minutes after which she called them back in to have some lunch.

After lunch Mr W offered to take PL and his brother for a ride on the ski biscuit which Mrs L allowed. Mrs L recalls getting herself lunch while the boys went to the jetty with Mr W and his 2 children. When she walked down to the jetty with her lunch, Mrs L saw her boys on the ski biscuit in the river. Mr W was driving the boat but he was not wearing a life jacket. His children were with him in the boat and they were wearing life jackets. Both PL and his brother were wearing life jackets. Mrs L watched the boat and ski biscuit for a period of time and saw Mr W drive the boat in an anticlockwise direction on the river. As it was going away from the bridge, she says it was on her side of the river which is the northern side and when it was coming back towards the bridge it was closer to the southern side of the river. There was nothing erratic about the boat's motions and she estimates while she was watching the boat it completed approximately 10 laps.

VE resides at Paradise Court on the southern side of the Prosser River and has views of the western end where Mr W was piloting his boat. In the early afternoon on 23 February 2020, he observed Mr W's boat towing the ski biscuit with 2 people lying down on it. He saw the vessel a number of times travelling up the middle of the river before swinging around in front of his house, in an anti-clockwise direction, at which time it would come close to the riverbank. At one stage when he observed the boat, he estimated its speed to be in excess of 40km/h and he believed the boat operator was travelling too close to the shore. He heard a young boy shout out for the boat to slow down and the driver shout back words that sounded like instructions on how to communicate with him. Mr VE says he made a number of comments to his wife about how this activity was not a good idea and that it would not end well.

At approximately 1.45pm, he looked towards the river and saw the vessel drifting on a wider section of river before it accelerated heavily towards the bridge and this caused the ski biscuit to swing out over the vessel's wake towards the southern side of the river. His estimate is the ski biscuit came within 10 to 15m of the shore as the vessel headed towards the bridge. He left home at approximately 1.55pm to pick up his son from the local supermarket. As he drove into Orford, he saw a number of people standing around what appeared to him to be a young boy lying on the ground in the car park next to the visitor information shelter which is situated on the southern side of the Prosser River.

OY says at about 1.00pm he was a passenger in a vehicle travelling east along Prosser River Road and over the Orford Bridge at which time he saw a vessel towing a person on a knee board on the river. I find, given Mr OY's description, the boat he saw was Mr W's boat. He took 3 photographs using his mobile phone because it was a nice summer's day. He says there was "*nothing untoward about the boat's mannerisms.*"

Given DN's description, I find that he also observed Mr W's boat just after he had driven across the Orford Bridge and was travelling towards Hobart. He says the boat was towing a tube and was travelling away from the bridge in the centre of the river. He says there was hardly a ripple on the water and what he observed did not cause him alarm. However, he did think if the boat "*did the standard fling move that boats towing tubes do that it would not end well*" as they would run out of room. He observed the boat for approximately 40 seconds prior to driving out of view.

Mrs L says that, just prior to the accident, she saw the boat on the other side of the river from where she was standing and west of the information shelter but travelling east towards the bridge. She says it made a slow turn towards her before straightening up back towards the bridge at which point it was in or about the centre of the river. It suddenly accelerated to a speed which she says was faster than she had seen it travelling prior to this point. She says when the boat was adjacent to the visitor information shelter it made a "*sharp, sudden turn to the left*" so it was pointing towards her on the jetty. It then turned around in a very small space and appeared to her to be out of control. The ski biscuit whipped around extremely fast and she observed one boy fall into the water and the other "*fly through the air and land on the shore.*" Although not being able to give an accurate estimate of either the boat or the ski biscuit from the shore at any stage, she recalls thinking the boat was too close to the shore. At the time of making her affidavit she guessed the distance was "*no more than the length of my living room and kitchen combined.*" Senior Constable King who was present in her kitchen at that time estimates that distance to be approximately 15m. She observed her youngest son swim to shore, she saw PL lying on the shore and Mr W standing on the shore waving his arms and screaming for help.

HB was standing on the jetty with Mrs L and observed the boat coming down the river towards her when it made a sharp right-hand turn. She thought the boat was going too fast, it would not make it around and it would hit the bank. She saw a body ejected from the ski biscuit and land on the rocky embankment. She believed the boat was over to the right hand side of the river just over halfway when it started this turn. She saw 2 kayakers on the river at this time.

FJ was one of those kayakers. The other was his partner and they were kayaking west up the Prosser River along the northern side when a boat passed him in the opposite direction towing a sea biscuit.¹ He heard a child on that biscuit say words similar to “*stop, stop.*” The male driver appears to shout either “*why?*” or “*what?*” and the child appears to reply by saying “*my arms are getting tired.*” Given Mr FJ’s description of the boat, I find that it was Mr W’s boat. Mr FJ believes the boat was being operated in a reasonably responsible manner and it was keeping away from their kayaks. About 40 minutes later they returned, this time paddling east along the northern edge of the river. As he approached the jetty in front of what I find was the property owned by Mr and Mrs W he saw a number of people standing on it. He then heard a child scream from behind him at which point he turned around and saw the same boat against the rocks. There were no other boats on the river. Mr FJ captured his journey up and down the river on a GoPro camera. The footage does not capture the accident and at no time does it depict where the boat ended up. However, what it does demonstrate is the fine, calm and benign conditions that existed at the time.

RI was standing on the jetty with Mrs L and Mrs KB. She observed the boat up on the rocks after the accident.

Mrs L was driven to the southern side of the river by QB. Mr W was observed carrying PL up from the river bank. PL was taken from Mr W and he was laid on the ground off the edge of the bitumen car parking area at the visitor information shelter but closest to the river. Mr QB telephoned 000 and Mrs L remembers Mr W saying words to the effect “*I can’t believe I did it, I knew it was too close,*” and “*I can’t believe it’s happened again.*” Mrs RI remembers Mr W saying something similar.

The records of Ambulance Tasmania indicate the initial call was received at 1.57pm and an ambulance was at the scene at 2.05pm. PL was initially treated by the intensive care paramedic, Harlin Butterley. On arrival he immediately requested backup and for a helicopter response. He conducted an assessment and provided treatment. Thereafter PL was placed onto a stretcher and transported to the recreation ground at Orford so that he could be transported by helicopter to the Royal Hobart Hospital. Mr Butterley provided further treatment en route to the recreation ground and on arrival the helicopter was landing on that ground.

¹ The GoPro footage itself appears to depict a male child on a kneeboard.

Senior Constable King was the first police officer to attend the scene arriving at 2.24pm. On his arrival Mr Butterley and another ambulance officer were treating PL. PL's head was laying on a small personal flotation device (PFD). He spoke to Mr W who advised him he had made a left turn but fell off the driver's seat and he lost control of the boat. Mr W said PL had crashed into the shore. Senior Constable King requested the assistance of marine and rescue services to retrieve the vessel and forensic services to photograph the scene. Senior Constable King took a number of photographs himself of the vessel and ski biscuit and a PFD in situ on the shore. He also requested the assistance of Constable Vermey from Swansea and he arrived at approximately 3.30pm. Constable Vermey transported Mr W to the Royal Hobart Hospital at which time a sample of blood was taken for analysis. That sample was later analysed at Forensic Science Service Tasmania by an approved analyst. The results of that analysis were that the blood sample neither contained any alcohol or prescribed illicit drugs. At 3.40pm Constable Walker from forensic services attended and at 4.30pm Senior Constable Johns and Senior Constable Smith from marine and rescue services attended and took photographs and video footage by drone and then they retrieved the vessel by placing it on the trailer, which was obtained from Mr W's residence.

Senior Constable Smith noted the ski biscuit was tied to the starboard side grab handle at the rear of the vessel with a basic knot. He placed the ski biscuit inside the vessel prior to moving it. He further noted the outboard motor was in gear and the key was in the 'on' position, however the motor was no longer running. Between where he retrieved the boat from and the boat ramp, Senior Constable Smith did not travel at a speed in excess of 5 knots. He noted during this trip, which he estimated to be about 500m, there were no issues with the vessel's operation, stability or performance. In addition, he did not touch or move the emergency kill switch or its attached cord. The vessel, its contents, the ski biscuit and the PFD found on the shore were seized and transported to the marine and rescue compound for storage.

PL was provided with further treatment by the aeromedical retrieval team and by medical staff at the Royal Hobart Hospital. PL sustained a very significant brain injury together with extensive comminuted depressed skull fractures, a laceration of the scalp, a right proximal femoral shaft spiral fracture, a left forearm laceration and right midfoot laceration. His fractures were stabilised by way of surgery and his lacerations treated. Neurosurgical and paediatric intensive care doctors provided treatment and undertook a number of tests and performed a number scans after which they formed the view PL would not survive the brain injury. He was declared deceased at 8.43pm on 24 February 2020.

Post Mortem Examination

On 27 February 2020, the forensic pathologist, Dr Andrew Reid, performed a post-mortem examination. He determined the cause of death by an external examination, a review of medical records and ante mortem radiology reports and images together with toxicology results. Dr Reid's opinion is PL's cause of death was head injuries as a result of a boating incident whereby he was being towed behind a boat on a ski biscuit when he was ejected from that device coming to rest on the adjacent rocky river bank. I accept Dr Reid's opinion.

Investigation of the Incident

(i) The Scene

The Prosser River flows from the hills to the west of Levendale into Prosser Bay on Tasmania's East Coast at Orford. The river is dammed approximately 3.7km inland from Prosser Bay and the lower 2.8km or so is heavily influenced by tides. The section of the river between the Prosser River Bridge and the dam has a width between 137m at the bridge and 40m below the dam. The river banks are comprised primarily of rock with little or no sandy areas which drop off sharply into deeper water of between 4 to 5m at the low water mark. The rock is varied in size and shape.

West of the bridge are approximately 4 private jetties on the northern side which extend for short distances into the river. There are 2 recreational boat launching ramps the first of which is located on the eastern side of the Prosser River bridge at the end of Riverside Drive. This ramp is the most heavily utilised with jetty facilities and a double width concrete boat ramp. Next to this ramp there are 2 speed limit warning signs which clearly display a 5 knot speed limit on the river, seaward, or to the east of the bridge. No signage is displayed at this point to indicate any vessel or activity restrictions west of the bridge. The second ramp is located on the southern side of the Prosser River, on the western side of the bridge and it is accessed via Prosser River Road. It is narrow and does not have jetty/pontoon facilities. Next to this ramp is what appears to be an old and quite small sign warning of the danger, particularly to those engaged in watersports, of the rocky nature of the river banks which may cause personal injury or damage to property in the event of an accident.

The Tasman Highway runs along the southern shore of the Prosser River into Orford where it becomes Prosser River Road at the intersection of Alice Street before merging back to the Tasman Highway at the intersection of Charles Street and the Esplanade. The highway then crosses the river at the Prosser River Bridge approximately 1km inland from the river

mouth. About 300m west of the bridge on the southern side of the river is located a visitor information shelter on the left-hand side of the roadway. This incident occurred adjacent to that shelter. The width of the river at this point is approximately 112m at the low water mark and 118m at the high water mark.

On 23 February 2020, the weather was fine with little or no cloud cover and a slight breeze blowing from the north to the north-west at about 4 knots. The maximum daytime temperature was 23°C and the surface of the river was calm. The tide was receding during the afternoon with low tide at 3.44pm whereas high tide had previously occurred at 8.49am.

(ii) Inspection and Testing of the Vessel, Ski Biscuit and Rope

The vessel involved in this incident was a white aluminium Mariner runabout with a cuddy cabin whereby the forward controls were behind a dashboard and windscreen. There was a maroon bimini cover running back from the top of the windscreen to provide shade and weather protection. The vessel was powered by a 75hp Mercury 2 stroke outboard motor. At the time of this incident the vessel was registered. The vessel is of a monohull design with a length of 4.6m, a beam of 2.15m and a draft of .4m.

CK, who was involved in the construction of this vessel in 2003, was spoken to. He could not recall if the vessel was constructed with or without the cuddy cabin as his business built this sized vessel in both configurations. Mr CK believed the addition of the cabin would not affect its handling.

The previous owner of the vessel, Mr EN, advised he purchased the vessel in or about February 2015 and had used it on many occasions as a family runabout for fishing trips. It was used at least once every school holiday and often on multiple occasions each school holiday. He used it in all sorts of weather conditions and it handled them all well. He has operated the vessel at top speed and conducted many turns to port and starboard and experienced no difficulties. It also handled well when going into and down the back of swells. He did not modify the vessel in any way. He sold it on 23 December 2019 to Mr W who purchased it without testing the vessel on the water.

Senior Constable Johns and Senior Constable Smith conducted an inventory and safety equipment inspection and determined that the safety equipment on board was compliant with the relevant by-laws.

The vessel was inspected by Mr Peter Keyes, who is a very experienced marine surveyor. Mr Keyes is of the view the cuddy cabin had been added at some point. In addition, he classified the condition of the vessel as average, the fuel system in particular was sub-standard and the ski biscuit and tow rope were in very good condition. He said the following were possible contributing factors to the cause of this incident:

- Design issues with the boat including a high free board, swivelling seats and chine extensions;
- Possible aftermarket alteration fitting the cuddy and revised helm station which had the effect of raising the vertical centre of gravity thereby reducing the vessel's stability;
- Possible distraction or driving inexperience; and
- A bridle was not used as the towing arrangements were conducted from one side of the transom.

He said the incident was most likely the culmination of a number of small occurrences.

Senior Constable King's inspection did not reveal any issue with the hull's structural integrity or the functionality of the vessel but he did observe the following:

- The VHF radio did not have a functioning aerial;
- The depth sounder transducer was not affixed to the transom in a sturdy manner;
- The kill switch was a toggle switch located underneath the key and the key was permanently attached to the lanyard which was clipped to cables below the throttle control;
- The RPM indicator was stuck between 1100 and 1200rpm;
- There was a maximum capacity sticker on the inside left side of the cabin however the capacity numeral sticker was not attached to this sticker;
- There were a number of other faded stickers on the vessel;
- The trailer winch used a flat strap that did not have a hook or clip on the end of it to hook onto the bow of the boat. This was frayed and tied onto the tow point on the bow;
- The trailer was dented in a number of places suggesting it had been reversed into numerous objects;

- There were pieces of tree branches cut to the length of firewood, old oil containers and pieces of plasterboard in the transom motor well;
- The marine carpet was worn and frayed in places;
- The bow line was approximately 1.5m long which is far too short for this type of line;
- The stern light was broken off the starboard gunwale; and
- The helm station appeared to be too cramped to be a safe and effective place from which to control the vessel.

The vessel was put through numerous tests on the Derwent River by Senior Constable Williams and Senior Constable King. The tests were conducted to determine the vessel's handling while in turns and straight lines at approximately 40km/h on flat water and also driving into, and down, the wash of the vessel. Tests were also conducted at approximately 25km/h towing the ski biscuit, with a human shaped dummy with a mass of approximately 50kg lying on the top of the ski biscuit. The same ski biscuit, the same tow rope and length tied off to the starboard side transom grab rail, as used on the day of the incident, was used in the trials. The vessel's maximum speed was recorded at 51 km/h in a straight line. The weather and sea conditions at the time of the tests were very similar to those on the Prosser River on 23 February 2020. As a result of those tests, the officers found no issues with the way the vessel handled and manoeuvred in the conditions both with and without the ski biscuit being towed.

The vessel did not perform erratically and nor did it “dig in” to the water, with any part of the hull, at any stage. It was noted, however, the key and kill switch on the throttle control were set up incorrectly. The lanyard was permanently attached to the key which meant the lanyard was unable to be attached to the kill switch at one end and to the operator at the other end and there was no other lanyard in the vessel. It was the view of Senior Constable Williams that the throttle control was mounted in a poor position because when it was set between cruising speed and full throttle there was no room for the operator to turn the steering wheel to starboard without contacting the throttle control. This he says has the potential to inadvertently increase the speed of the vessel when not desired if the operator is not paying proper attention.

The ski biscuit was a two-person “Tahwalhi” branded triangle 78inch tow tube. It is inflatable and similar in construction to an inflatable life ring. It has 2 doughnut style holes in it and is covered by a removable protective cover. This cover is made of synthetic material and is

yellow, green and purple in colour and it has 2 synthetic grab handles in front of each hole or 4 handles in total. This allows 2 people to ride the device by lying, stomach down, on top of it, with their legs hanging off the back of the device into the water. The tow rope is attached to the front of the device by a rubber hook– loop that is sewn into the removable protective cover. The tow rope is green and black and also “Tawalhi” branded. It has a spliced eye at one end and a plastic and foam handle at the other. The tow rope is designed to be hooked onto either a towing bridal or a ski pole at the rear of the boat, using the spliced eye whereas the skier or knee boarder holds the handle at the other end. In this case, the rope was tied off to the starboard side, transom grab rail on the vessel in about the middle of the rope. The length of tow rope that was towed behind the vessel was 13.71m and its total length was 23.41m. Accordingly, a section of tow rope with the handle was on the floor of the vessel. The method used in this case to secure the tow rope is contrary to common practice of using a central, pivoting fixed point such as a tow pole or towing bridal which permits the vessel to be turned without undue interference from the tow rope. Mr Keyes says in his report that by towing from one side of the vessel turning could become “difficult and possibly unpredictable.” In addition, due to the high freeboard of this vessel, that is the distance from the waterline to the lowest point of the vessel’s deck, this would be “exacerbated through reduced stability in the turn.”

The ski biscuit has a warning label, approximately A4 paper sized, affixed to the top side in front of the forward grab-handles. The warning label is prominently displayed and was in good condition. The warning label has the following safety recommendations:

- A maximum capacity of 1-2 persons;
- A maximum combined weight of 154kg; and
- A maximum boat speed of 32km per hour for adults, and a maximum boat speed of 24 kilometres per hour for children.

The warning label also states the following:

“WATERSPORTS INVOLVE RISKS OF SEVERE INJURY OR DEATH. Follow all instructions and safety information below and in owner’s manual to reduce risks:

DRIVER IS RESPONSIBLE FOR SAFETY. Tube cannot be controlled by rider!

Signal boat driver to stop or slow down if you are not comfortable!

- *ALWAYS WEAR A PROPERLY FITTED LIFE JACKET (PFD) approved by your country's agency.*
- *NEVER EXCEED 20 MPH (32 km/h) for adults, 15 mph (24 km/h) for children.*
- *Never exceed skill level of the riders and use experienced boat driver.*
- *Never tow more than one tube at a time, or use tube as a personal flotation device.*
- *Never tow in shallow water or near shore, docks, pilings, swimmers, watercrafts, or other obstacles.*
- *ALWAYS ENSURE TOW ROPE IS CLEAR OF ALL BODY PARTS prior to and during use.*
- *Never place any body part through handles, under cover, bladder, towing harness or tie rider to tube.*
- *Always have a person other than the driver as an observer to watch the rider.*
- *Never operate watercraft or ride under the influence of alcohol or drugs.*
- *NEVER MAKE SHARP TURNS which may cause the tube to rapidly accelerate.*
- *Beware of submarining when towing at idle speed.*
- *Always supervise children when using this tube.*
- *Never allow riders' bodies to collide. Towing at slower speeds, in calm water and cautious driving will reduce injuries.*
- *Rider should keep feet out of the water.*
- *Do not exceed the manufacturers recommended number of riders for your particular tube.*
- *Use a tow rope of at least 680 kg average tensile strength for pulling a single person, 1077 kg average tensile strength for pulling two people, 1520 kg average tensile strength for pulling three people on an inflatable tube. The tow rope should be at least 15.24 metres in length but not exceed 19.81 metres.*
- *Read owner's manual before use.*
- *Deflate when not in use. Do not expose to direct sunlight over a long period of time."*

(iii) Other Witnesses

HF has operated recreational boats since 1969 and is therefore very experienced. On 23 February 2020, he had taken his boat out into Spring Bay with a friend and at 12.30pm, he entered the Prosser River and because it was such a nice day he decided to go up river thereby passing underneath the bridge. He went under the middle span which had “No Anchoring” signage on it. Because of the description he provides in his statement, I am satisfied that just prior to passing under the bridge he saw Mr W’s vessel coming towards him on the plane, on the western side of the bridge. Mr HF says that vessel was in the middle of the river. As he passed underneath the bridge, the runabout came off the plane and did a 180° turn and it was floating in the river as he passed. At this point, he saw an inflatable tube behind the boat with more than one person on it. He cannot recall how many people were on the tube or whether they were adults or children or whether there was anybody else in the boat. He travelled up the northern side of the river at about 10km/h and when he reached a point in the river, just past Mr VE’s home, he performed a U-turn and came back down the southern side of the river. At the time he was on the river he noticed the tide was extremely low, the banks were exposed on both sides and the shores of the river were very rocky. He thought the driver of the boat he observed was driving appropriately.

SE and UA both drove past the scene of this incident between 12.30pm and 1.30pm on 23 February 2020. They saw the vessel conducting anticlockwise laps of the river and they both believed it was travelling too close to the shore with the ski biscuit. Mr SE also was of the view the vessel was travelling too fast for the area. His view of the vessel lasted for approximately 30 seconds as he drove south through Orford.

OS was a passenger in a vehicle travelling north over the Orford Bridge between 1.00pm and 1.30pm on 23 February 2020. From the description of the vessel he saw I find it was the vessel involved in this incident. He observed it towing a ski biscuit and heading away from the bridge in the middle of the river. The vessel was up on its plane and he saw it conduct a left-hand turn after which the ski biscuit swung out to the right over the vessel’s wake. The vessel then steered back towards the centre of the river and he lost sight of it as he left the bridge.

CY works for Inland Fisheries and is an authorised officer under the *Marine and Safety Authority Act 1997*. He was driving south across the Orford Bridge at about midday when his vision was drawn to a vessel on the Prosser River. Given Mr CY’s description, I find it was

Mr W's vessel. Mr CY says the vessel performed a U-turn and its proximity to the shore and the suitability of the location for such an activity went through Mr CY's mind. He saw the vessel conduct a controlled turn in close proximity to the bridge and he believed at that point it's speed was about 15 knots. He saw the ski biscuit approach within about 50m of the riverbank and at the conclusion of that turn it was going considerably faster than the vessel. He saw no other vessels on the water at the time.

(iv) Interview of Mr W

Mr W participated in an electronically recorded interview and at the conclusion of that interview he signed an affidavit declaring the contents of the interview were true and correct. During the interview he was visibly upset and although his responses to some questions were sometimes incoherent and he often mumbled his answers, the officers who conducted the interview believed he appeared genuine in the answers he provided.

Mr W confirmed his wife had a party for a friend and he towed his boat to Orford the next day to take his children knee boarding and ski biscuiting on the Prosser River. He arrived in the middle of the day and took his children out straightaway. Later PL and his brother arrived with their mother and when they saw him on the river they wanted to have a go. Mr W says their mother agreed and he gave them lifejackets to wear and he took them out on the ski biscuit.

The only safety instruction he provided to PL and his brother was to raise their hand if they wanted to slow down and stop. His daughter, who was 11 years old, acted as the spotter although Mr W appeared unsure of what she was required to do in the event of someone coming off the sea biscuit. Mr W said he repeatedly towed the boys up the middle of the river before conducting a left-hand turn and returning towards the bridge in the middle of the river before conducting another left-hand turn. He also did a number of circles while towing the ski biscuit to swing it out behind the boat, down near the bridge. Mr W said he towed the boys for between 10 and 15 minutes and his manoeuvring was fairly consistent.

Just prior to the accident he drove the boat up the middle of the river, away from the bridge, before conducting another left-hand turn whereafter he headed back towards the bridge in a straight line. Mr W said that after he had straightened up, the boat made a sudden turn and he was thrown into the back of the boat where his children were and he lost control. He remembered hearing his children scream and the boat conducting a full loop. He had to force his way back to the controls where he turned off the motor and

looked around. When he did so, he saw PL's brother holding onto the ski biscuit in the water and PL lying on the shore. During the interview, Mr W indicated he did not understand how he lost control, he could not remember parts of the incident but he might have hit his own wake. He believed he was travelling at about 30km/h at the time and he recalled the ski biscuit skimming across the surface of the water. He said he thought the speed he was travelling at, on the river, was between a quarter to a third of the vessel's top speed. He was going just fast enough for the boat to be on the plane. Prior to commencing a turn, Mr W said he would reduce his speed so the boat could be turned around in a small area. He then powered on "*gunning it to the planing speed*" before heading back in the opposite direction.

When he made the turns, he was watching the ski biscuit by glancing out the back of the boat so that he would "*have a general idea what's going on.*" When he fell into the back of the boat he thought he ended up in the rear left and that the boat was doing a tight left turn. As he fell he thought he probably turned the steering wheel and at that point it felt to him as though the boat was going faster than it was prior to the turn. Mr W said he had not experienced anything like this before and that the boat is quite stable. He thought he had been up and down the river about 30 times during the day.

He confirmed he held a recreational motorboat licence and he had used boats for about 20 years. This is corroborated by documentation obtained from Marine and Safety Tasmania (MAST). In addition, he did a personal watercraft course a few years ago so he could use jet skis. He had owned this vessel for about 3 to 4 months prior to the incident and had used it about a dozen times in that period. He had used that boat on the Prosser River about 6 times and he had used the boat and jet skis on the river at Orford, at Carlton and around Rosny and that he had towed friends and family on ski biscuits and knee boards for the past 10 to 12 years. He said he was standing at the controls, the vessel was fine and he had no issues with it but he was not wearing the safety lanyard kill switch. He believed the vessel was seaworthy. He had bought the ski biscuit and rope new one to 2 weeks before this incident and had used them, together with the boat, 2 or 3 times prior to the incident.

Mr W said he was aware there were safety instructions for the ski biscuit but he did not know what they were as he had not read them. He was unaware of the person size limit on the sea biscuit. He also said he deliberately did not use the whole length of the tow rope, to keep the sea biscuit quite close to the boat, and when questioned about this he thought he had used about 10m. In addition, he thought the river was about 100m wide where he was using it and he was not aware of any recreational boating restrictions other than "*being the*

normal skiing distances from things.” He said he was aware he had to be 50m away from the shore but he was not aware of a speed restriction at this distance. He did not see any other boats on the river at the time of this accident. He used ski biscuits about a dozen times a year but he was unaware if PL, or his brother, had any experience with boats. He was asked whether he had been involved in any other boating incidents and he advised his father tipped over a vessel many years ago in a freak wave and was washed ashore. The officers concluded that this incident was what Mr W was referring to when he made the comment about it happening again at the scene on 23 February 2020.

Other Coronial matters of potential relevance

The first of these cases involved a family boating tragedy which occurred on Arthur’s Lake in central Tasmania on 29 August 1999. In that case, Mrs Colleen Hanlon instituted proceedings under the *Fatal Accidents Act 1934* for the benefit of her children and herself. She was the widow of the first defendant’s son. The second defendant was Kevin Bird and the third defendant was his wife, Heather. It was alleged Mr and Mrs Bird manufactured the vessel involved, although there was no evidence Mrs Bird had anything to do with its manufacture. The case against these 2 defendants failed because there was no evidence that they were negligent and that their negligence caused the death of the plaintiff’s husband and son. The similarities of this case to the present one are the vessel was manufactured by the same manufacturer, the design was similar and in the accident on Arthur’s Lake the vessel performed a manoeuvre at high speed which caused 3 out of the 4 passengers to be ejected from it and into the lake where 2 of them died. This case is reported as *Hanlon v Hanlon* [2006] TASSC 1.

It was found by Underwood CJ that the first defendant was driving his boat powered by a new engine which was 40% more powerful than his previous engine and with which he had less than 10 hours experience driving his boat. In addition, he was travelling at a speed in excess of 60km/h and without reducing that speed he executed a very sharp turn to starboard which was a manoeuvre he had not previously made with this engine. His honour found that the speed and degree of the turn to starboard caused the keel to lift out of the water and thereafter the boat slid sideways before dropping back in again which in turn caused the boat to tip very violently to port and eject all but one of the occupants. This decision demonstrates that this accident was caused by driver error. That is, it had nothing to do with the design and manufacture of the vessel and therefore it is of little relevance to my investigation.

The second case involved another family boating tragedy in January 1990, but this time in the very same location as the incident involving PL. It also occurred in very similar circumstances. In this case, a child died as a result of head injuries sustained while being towed on a ski board behind a 15 foot runabout which was powered by a 85hp motor. The father who was piloting the vessel on that occasion was very experienced in towing water skiers and people on other devices in this part of the river. His son who passed away was a very strong swimmer and very proficient on water skis and on the ski board, involved in this incident, which he had used for over 3 years. This child died as a result of head injuries sustained when he collided with rocks on the northern riverbank of the Prosser River west of the bridge after he was ejected from the board. This occurred after the vessel had been travelling towards the bridge and had executed a turn to the left. The turn was executed short of where it ordinarily would have been because of another boat near the bridge. As the boat turned the child skidded around on the board with the turn and as the boat straightened it went a little faster to get the child up onto the plane again. At that stage, the child was on the starboard side of the wake and was watching the direction of the boat and appeared not to realise how close he was putting himself to the shoreline. I consider this case to be relevant to my investigation. In that case the coroner made the statutory findings he was required by law to make but he made no recommendations.

Regulations

The operation of recreational vessels in Tasmania is governed by the *Marine and Safety (Motorboats and Licences) By-laws 2013* (the By-laws). The By-laws are made by MAST pursuant to s42(1)(f) of the *Marine and Safety Authority Act 1997*. The relevant provision is clause 33 which provides for the navigation of motorboats and speed limits. Subclause (1) deals with any area specified in Schedule 2. The Prosser River is not contained in Schedule 2 and so that subclause is not relevant. Subclauses 2, 3 and 4 are as follows:

“(2) A person, in any area specified in subclause (3), must not-

(a) drive or be in charge of the motorboat, except when the boat is being propelled wholly by sail, at a speed exceeding 5 knots; or

(b) ride upon or cause any aquaplane, waterski or similar device to be towed, pulled or propelled at a speed exceeding 5 knots.

Penalty: Fine not exceeding 5 penalty units.

(3) For the purpose of subclause (2), the areas are as follows:

- (a) *waters specified in Schedule 3;*
- (b) *within 60 metres of-*
- (i) *any shore line, river bank, diving platform or marine facility; or*
 - (ii) *any boat under way, at anchor, moored or engaged in fishing or in rowing; or*
 - (iii) *...;*
 - (iv) *any person on water skis, an aquaplane or similar object being towed by another boat;*
- (c) *when passing within 120 metres of –*
- (i) *any person bathing; or*
 - (ii) *...;*
- (4) *It is a defence in proceedings for an offence under subclause (2) in relation to areas referred to in subclause (3) for a person to prove that-*
- (a) *there was no reasonable likelihood of injury, nuisance or annoyance to persons or damage to property; or*
 - (b) *...; or*
 - (c) *...; or*
 - (d) *....*
- (5) *....;*
- (6) *.....”*

Prosser River west of the bridge is not specified in Schedule 3. Prosser River east of the bridge is specified in Schedule 3.

Under clause 35, it is an offence for a person driving or in charge of a motor boat on any waters to drive negligently or carelessly or at a speed or in a manner that is dangerous or likely to cause injury to any person.

Unless written permission is obtained from MAST, clause 39 prohibits the driving of a motor boat that is towing more than 3 persons on water skis, aquaplanes or similar objects.

Clause 40 prohibits a person from driving or being in charge of a motor boat for the purpose of towing any person on any water ski, aquaplane or similar object unless that person is accompanied by another who has attained the age of 10 years and “*who is responsible for communicating, to the person driving or in charge of the motor boat, any mishap occurring to the person being towed on the waterski, aquaplane or other object.*”

Clause 44 enables MAST to declare an area of water to be a designated ski area for vessels towing people on water skis, aquaplanes or similar devices. The Prosser River west of the bridge is not a designated ski area.

Apart from the By-laws which place a minimum age of 10 on the observer and which limit skiing and other such activities to daylight hours, it seems ski biscuiting and similar watersports are relatively unregulated. The *Tasmanian Safe Boating Handbook* published by MAST provides the following further advice:

1. The observer should watch the skier at all times and that person should transfer messages from the skier to the vessel driver. This, it says, allows the driver to concentrate on operating the boat;
2. Boaters should always ski in an anticlockwise direction and also make sure they are familiar with any other local rules and requirements such as 5 knot zones;
3. Every waterskier or person being towed in any other manner must wear an approved lifejacket. Recommendations are made as to the level of lifejacket to be worn; and
4. It is noted ski boats often travel at high speeds so boat operators should acquaint themselves with local operating rules and guidelines. Such activities account for the majority of injuries and hospitalisations from boaters so extreme care should be taken.

Correspondence with MAST

The investigating officer, Senior Constable King, met with Mr Peter Hopkins who is the General Manager – recreational boating safety and facilities of MAST. Mr Hopkins wrote to Senior Constable King by letter on 24 June 2020 and referred to that meeting. His letter analyses the By-laws and correctly points out there is a speed limit of 5 knots on the Prosser River eastward or down river of the Orford Bridge. To the west of the bridge, where this boating incident occurred, this speed limit does not apply. He says “[h]istorically, this area has been used for towing water skiers and other devices for many years. It has been common practice that once the north easterly sea breeze is established, usually around lunchtime, that people may, if they wish, revert to this section of the river for watersports as opposed to using the rougher waters of Prosser Bay.” He refers to clause 33, subclauses 2, 3 and 4. Mr Hopkins then says the following:

“MAST has discussed the issue of the Prosser River and considers existing by-laws are sufficient to manage the area provided boats are operated within this legislation. MAST is currently undertaking a review of all signage and will ensure an existing sign on the Tasman Highway side of the river (photo attached) is duplicated and displayed more prominently on either side of the river and at the boat ramp.

Whilst undertaking discussions on the Prosser, MAST also took into account other areas around the State where water skiing and towing has been prominent for decades. These areas include but are not limited to the South Esk at Longford and Hadspen, Millbrook Rise at New Norfolk and Prices Straight at Upper Scamander. These areas were discussed during our meeting and a power point copy was left with you.

Distance to the shorelines in these areas are similar or in some instances shorter than those areas used for towing on the Prosser.”

My associate, Senior Constable Alisha Barnes, wrote to the chief executive officer of MAST, Mrs Lia Morris, in Mr Hopkins absence on leave on 20 December 2021. That letter referred to Mr Hopkins letter and also enclosed a copy of an aerial photograph of the Prosser River which depicts 3 red lines marked thereon labelled site 1, site 2 and site 3. The letter was in the following terms:

“This photograph depicts that part of the river being used by the people involved in this boating incident on 23 February 2020. Using a laser measuring device Senior Constable King took measurements at the 3 sites both at low tide and high tide. The measurements taken at low tide were taken at a time when the tide level was of a similar height to that on the day of the incident. Only one measurement was taken at site 3 because that measurement was taken on the western side of the Prosser Bridge at the foot of the concrete pylons. Site 1, on the southern side of the river, was where a PFD worn by PL was located on the shore and site 2, on the southern side of the river, was where the vessel was grounded after the incident. The maximum measurement taken at low tide at site 1 was 113 m whereas at high tide it was 119 m. At site 2 the maximum measurement taken at low tide was 104 m whereas at high tide it was 109 m. The measurement at site 3 was 137 m. Approximately 50% of the watercourse used on this day by those involved in this incident is 119 m or less in width at high tide and 113 m or less in width at low tide.

In addition to this information you should be aware there was a previous death of a child who was ejected from a ski board being towed by his father who was piloting his 15 foot runabout at this location but on the northern side of the Prosser River and further east of the site of PL’s accident towards the bridge. The father who was piloting the vessel on that occasion was very experienced in towing water skiers and people on other devices in this part of the river and his son who passed away was a very strong swimmer and very proficient on water skis and on the ski board, involved in this incident, which he had used for over 3 years. This child and PL died as a result of head injuries sustained when they were both ejected onto the northern and southern riverbanks which are comprised primarily of rock.

It is noted Mr Hopkins’ letter mentions the Prosser River at the location of these accidents and the other areas he identifies have been regularly used for water skiing and towing for decades. He also says that the “[d]istance to the shorelines in these areas are similar or in some instances shorter than those areas used for towing on the Prosser”. In addition he says that historically, this area (where this boating incident occurred) has been used for towing water skiers and other devices for many years and it is commonly used instead of the rougher waters of Prosser Bay when the north-easterly sea breeze commences at about lunchtime.

Mr Hopkins’ letter also analyses the relevant legislation contained in the Marine and Safety (Motorboats and Licences) By-Laws 2013 (the By-laws). As he correctly points out there is a speed limit of 5 knots on the Prosser River eastward or down river of the Orford Bridge. To the west of the bridge, where this boating incident occurred, this speed limit does not apply. However, clause 33(3) of the By-laws prohibits a motor boat travelling at a speed in excess of

5 knots or a person towing any water ski or similar device at a speed exceeding 5 knots “within 60 metres of any shoreline, riverbank...”. A boat towing people on skis or other devices at this location is clearly travelling at a speed well in excess of 5 knots.

Given the measurements of the Prosser River set out above it is not possible to tow water skiers or people on knee boards or ski biscuits in that part of the Prosser River depicted in the photograph and comply with clause 33(3) even if the pilot of the vessel uses the middle of the river. The distance to the shore is reduced further each time the vessel turns and the distance between the person on the water skis, knee board or ski biscuit and the shore is far less than the distance between the boat and the shore because of the length of the ski rope. In addition when towing water skiers or people on other devices at this location it is not possible to comply with the prohibition in clause 33(3)(c) of the By-laws of not exceeding a speed of 5 knots within 120 metres of any bathers. Although not included in this provision there were other vessels using this part of the Prosser River on 23 February 2020 at the time of this boating incident.

That leaves the defences in clause 33(4) of the By-laws which Mr Hopkins has mentioned in his letter. It seems the only relevant defence in this case is provided for in paragraph (a) of that clause. By that clause it is a defence to travel at a speed or tow a person on water skis or similar devices such as a knee board or ski biscuit at a speed in excess of 5 knots within 60 m of any shoreline or riverbank or within 120 metres of any person bathing if a defendant can prove “that there was no reasonable likelihood of injury, nuisance or annoyance to persons or damage to property”.

Given the width of the river, the composition of the shoreline and the 2 deaths that have occurred at this location it seems it is inherently dangerous to tow people on skis or other such devices in this part of the Prosser River. Do you agree?

In addition, do you agree the defence referred to in the last paragraph has little prospect of success if death or injury occurs on this part of the Prosser River in the future?

Finally, should a speed limit of 5 knots be imposed on this part of the Prosser River and/or should it be included in Schedule 2 of the By-laws?

The Coroner will assume MAST agrees with these propositions unless you, in your response, indicate to the contrary. If MAST disagrees with all or any one of these propositions would you please indicate what proposition is not accepted and why.”

MAST responded on 11 January 2022 in the following terms:

“MAST agrees with the propositions contained in the correspondence, namely:

- given the width of the river, the composition of the shore and the 2 deaths that have occurred at this location, it seems inherently dangerous to tow people on skis or other such devices; and*
- the defence contained in clause 33(4)(a) of the Marine and Safety (Motor Boats and Licences) By-laws 2013 has little prospect of succeeding in the future if death or injury occurs on this part of the Prosser River.*

MAST suggests a speed limit of 5 knots be imposed on this part of the Prosser River, noting that the area can be safely navigated at a speed of up to 5 knots and is regularly used for recreational fishing. As you would be aware Schedule 3 clause 1 of the Marine and Safety (Motor Boats and Licences) By-laws 2013 currently imposes a 5 knot limit on “waters of the Prosser River between the bridge on the Tasman Highway (commonly known as the Prosser River Bridge or the Orford Bridge) and the seaward end of the training walls.” The 5 knot zone could be applied to the whole of the Prosser River with a simple amendment to this clause. MAST is currently in the process of remaking these by-laws and such an amendment can be readily incorporated.”

Discussion

A speed of 5 knots is equivalent to 9.26km/h. This speed is, in my view, similar to a slow running pace or a fast walking pace. It is clear from the GoPro footage and Mr W's record of interview he was driving at a speed well in excess of 5 knots on the Prosser River on 23 February 2020. Where a vessel such as his is on the plane, it is travelling in excess of that speed.

It is clear from the evidence of Mr W that his vessel made a sudden turn, he was thrown back into the rear of the boat and he lost control of it. I cannot determine however, given

the state of the evidence, what caused the vessel to make the sudden turn which ultimately led to Mr W being thrown back into the rear of the boat and losing control. Mrs L and Mr W both say the vessel did a full loop at which point Mrs L agrees the vessel was out of control. They both say during this manoeuvre the vessel was travelling faster than it had previously. Mrs KB does not describe the same manoeuvre although she does say the vessel was travelling too fast and was travelling too close to the southern riverbank. The only other person who may have seen the events immediately prior to the accident is Mr VE, but he does not mention the loop described by Mrs L and Mr W. He does describe heavy acceleration which led to the ski biscuit swinging out over the vessel's wake towards the southern side of the river within a distance of 10 to 15m from the shore. Mrs L describes a similar distance from shore and Mr W describes a speed of about 30km/h. Mr W says as he fell he thinks he turned the wheel which would explain why the vessel performed the loop. It is a possibility that, as that occurred, there was contact between the steering wheel and the throttle and/or between Mr W and the throttle which resulted in an increase in the vessel's speed.

The evidence demonstrates Mr W did not adequately maintain his vessel. However, the thorough investigation which has been conducted has revealed there were no issues identified with the hull, the manoeuvrability of the vessel or the motor which contributed to this accident. While the layout of the throttle control with respect to its proximity to the steering wheel may contribute to an increase in the vessel's speed if a hard starboard turn is conducted I am not, given the state of the evidence, in a position to find that this contributed to the accident. In any event, the evidence from Mrs L and Mr W is that the vessel made a sharp turn to the left, that is to port rather than to starboard.

The only sign warning of the danger of boating activities on this part of the river is situated at the boat ramp on Prosser River Road which is the least used boat ramp and, in fact, was not used by Mr W on this particular day. This sign is not a MAST sign and is signed off "*Harbour Master Marine Board Hobart.*" A recent visit to this site confirmed that this sign has been replaced with a sign in identical terms the only difference being it is signed off by MAST. There was no such signage at the main boat ramp warning of any danger to persons engaging in watersports on the Prosser River on the western side of the bridge at the time of this incident.

In this case, PL and his brother had never been on a recreational vessel let alone a ski biscuit. The evidence discloses they were given little or no instruction on the use or operation of the ski biscuit or any safety briefing other than to raise their hand if they wanted the boat to

slow down or stop. This, given their respective ages, would have been very difficult if not impossible while they were holding onto a ski biscuit with both hands that, by Mr W's own admission, was travelling at a speed of up to 30km/h. Despite this instruction, it is clear from the GoPro video footage that voice communications were used but due to the noise of the outboard motor this was not effective and a number of attempts at communication were required before any communication was acted upon. Although Mr W's 11 year old daughter was acting as the observer, it seems her input was negligible. There was no discussion between Mr W, PL and his brother and/or their mother as to their experience in participating in this type of activity. In addition, Mr W failed to read and implement the manufacturer's safety warnings provided with the ski biscuit.

Mr W has had a Tasmanian recreational boating licence for approximately 20 years and, in more recent years, he obtained a personal watercraft endorsement so that he could use jet skis. He had owned the vessel involved in this accident for approximately 3 months and had used it on approximately a dozen occasions. He had owned the sea biscuit for about 2 weeks and had used it on approximately 3 occasions in that period. He had used a sea biscuit approximately 6 times per year over the years. He was not using a towing bridle. On 23 February 2020, he was operating his vessel at speeds in excess of 5 knots within 60m of the river bank and also at speeds in excess of 5 knots within 60m of 2 kayakers. It is also clear from the record of interview with Mr W that he had a cursory understanding of speed limits and distance obligations when operating a recreational vessel near to a riverbank and/or other vessels.

The evidence establishes Mr W operated his vessel too close to the riverbank having regard to the arc of the tow rope behind the vessel, that he towed the ski biscuit too close to the shore having regard to the rocky composition of the river banks, he operated his vessel in excess of 5 knots within 60m of a shoreline or riverbank and of other vessels on the river when he concedes that he knew he was too close to the riverbank. He also, in my view, was not wearing a PFD at the time of the accident and he failed to use the operational kill switch while operating the vessel because it was not set up correctly.

Comments and Recommendations

The Prosser River west of the bridge at Orford is an inherently dangerous place to undertake water skiing, knee boarding and ski biscuiting activities. I acknowledge it has been common practice, over the years, for these watersports to be conducted on this part of the river. However, its narrow width, the rocky composition of the river banks, and the shared

nature of the waterway all lead to the likelihood of an increased risk of injury and/or death. This conclusion is not only demonstrated by this case but in the previous coronial investigation which I have referred to and which involved far more experienced participants than in this case. This danger is increased in circumstances where the rider has little or no control of their own direction and speed where ski biscuits or boards are fixed to the vessel as distinct from a situation where the tow rope, for example, is held by the water skier.

I therefore **recommend** that a maximum speed of 5 knots be imposed on the Prosser River west of the Prosser River Bridge and that skiing, ski boarding and/or ski biscuiting and such similar sports at this location be prohibited. The By-laws will therefore require amendment.

I also **recommend** clause 40 of the By-laws be amended so that the minimum age of the observer is increased from 10 years to 16 years of age.² The circumstances of this case, and the evidence which has been obtained in the investigation, lead to the conclusion that the responsibilities cast on the observer are too great for somebody as young and as inexperienced as Mr W's daughter.

I **comment** that, because of the reasons expressed by Mr Keyes, it would be wise that those who wish to tow people behind motor boats on water skis or ski biscuits or the like either have a towing poll or bridal attached to each side of the transom.

What I am about to say is obvious and they are matters of common sense, but given what occurred in this tragic case it seems some in the boating community need to be reminded that the following simple precautions should be followed.

Owners of boats should ensure their vessels are well maintained and if they choose to tow people behind their motor boat that they read, understand and implement the instructions of the manufacturer of the equipment being used, that they assess the experience of the person being towed, and that they provide a full safety briefing to that person so, amongst other things, it is clear what the system of communication between the pilot of the boat and the person being towed is.

² This is the minimum age in both South Australia and New South Wales. In New South Wales, a person is also qualified to be an observer if they have a motor boat or personal water craft licence. The minimum age of an observer in all other States is in excess of 10 years.

The speed at which people are towed should be commensurate with the age and experience of the person being towed.

An observer must be present and must watch the skier or person being towed on a board or sea biscuit at all times and that person must transfer messages from the skier to the driver of the vessel. This allows the driver to concentrate on operating the boat.

Pilots should always drive their boat in an anticlockwise direction and also make sure they are familiar with the By-laws and any signage in and around the area in which they are boating. In addition, everybody in the vessel and those being towed by it must wear an approved lifejacket.

Finally the kill switch should be properly configured and used - given its purpose is to stop or kill the engine if the helmsman becomes separated from being able to control the boat.

I extend my appreciation to the investigating officer Senior Constable King for his very thorough investigation and report.

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

Dated 14 March 2022 at Hobart Coroners Court in the State of Tasmania.

Robert Webster
Coroner