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Australian Government
Defence

**OFFICE OF THE
INSPECTOR-GENERAL OF THE
AUSTRALIAN DEFENCE FORCE**

**INQUIRY INTO THE DEATHS OF FOUR AUSTRALIAN DEFENCE FORCE MEMBERS
IN THE CRASH OF A MRH-90 TAIPAN HELICOPTER ON 28 JULY 2023**

PRACTICE NOTE 01/2024

FOREWORD

On 28 July 2023, Captain Danniell Lyon, Lieutenant Maxwell Nugent, Warrant Officer Class Two Joseph Laycock CSM and Corporal Alexander Naggs were aircrew onboard an Australian Army MRH-90 Taipan helicopter. They were involved in a major multi-national military training exercise and were flying at night off the Queensland coast. Tragically, they lost their lives in service of their country when their aircraft crashed into the sea near Lindeman Island.

Mr James Gaynor CSC, the Inspector-General of the Australian Defence Force (IGADF) has appointed me to lead an inquiry into the incident (the Inquiry). I will be undertaking this important responsibility with help from Air Vice-Marshal Joe Iervasi AM CSC and other Assistants IGADF, who will fulfil particular roles and functions throughout the Inquiry.

I am mindful that the tragic loss of life has impacted many in the community especially the families and friends of the deceased aircrew. As far as practicable, the Inquiry will be conducted in a trauma informed manner.

The matters being examined by the Inquiry are complex and may take time to thoroughly and sensitively investigate. The Inquiry will endeavour to identify the causes of the incident as expeditiously as possible in the circumstances and make recommendations to avoid or limit the risk of such an event reoccurring.

The Honourable Margaret McMurdo AC
Assistant Inspector-General ADF

19 February 2024

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INTRODUCTION

1. On 31 October 2023 and under section 10(2) of the *Inspector-General of the Australian Defence Force Regulation 2016* (the Regulation), the Inspector General ADF directed an inquiry into the circumstances of the deaths of Captain Danniell Lyon, Lieutenant Maxwell Nugent, Warrant Officer Class Two Joseph Laycock CSM and Corporal Alexander Naggs.
2. The Inquiry is independent, including of the Australian Defence Force (ADF) and any other State, Commonwealth or other organisation. The Inquiry's Directions can be viewed [here](#).
3. This Practice Note provides general guidance as to the practices and procedures to be adopted in respect of the Inquiry's hearings and related matters. Its purpose is to advance the reasonably expeditious, flexible and efficient conduct of the Inquiry in a trauma informed way.
4. This Practice Note is issued under, and should be read in conjunction with, the Regulation and the Inquiry's Directions. It may be varied, changed or replaced. The Inquiry may depart from this Practice Note if it considers it appropriate to do so.

INQUIRY MEMBERS

5. The Inquiry is led and chaired by the Honourable Margaret McMurdo AC with help from Air Vice-Marshal Joe Iervasi AM CSC, both Assistants Inspector-General ADF.
6. Other Assistants Inspector-General ADF and their respective primary roles in the Inquiry are:
 - (a) Captain Jo Bastian, RAN—family and witness support;
 - (b) Colonel Jens Streit—senior Counsel Assisting;
 - (c) Group Captain Simon Braun MBE—head of the Inquiry's secretariat; and
 - (d) Flight Lieutenant Alexandra Rose—junior Counsel Assisting.
7. Additional Assistants Inspector-General may be appointed to help the Inquiry.

INFORMATION FOR PERSONS INVOLVED IN THE INQUIRY

8. Separate to this Practice Note, additional information to help persons involved in, or observing, the Inquiry's proceedings, can be found on the Inquiry's webpage at: www.igadf.gov.au and includes the following documents:
 - (a) Guide for witnesses giving evidence in the Inquiry;
 - (b) Guide for family and friends participating in the Inquiry; and

- (c) Guide for members of the public observing the Inquiry.

Counselling support

9. Counselling support may be available to help any person involved or participating in the Inquiry.
10. Any request for counselling support or recommendation of counselling support for another person is to be made through Captain Jo Bastian RAN using the contact details located at the end of this Practice Note.
11. Any written request is to be headed 'confidential request for counselling support' in the subject line of the email or other correspondence.

PUBLIC AND PRIVATE HEARINGS

12. The Inquiry is not bound by the rules of evidence and subject to the Regulation will conduct its procedures in a manner the Inquiry considers appropriate having regard to the matters being examined,¹ procedural fairness, and trauma informed practice.
13. The Inquiry's hearings may take place in public or in private.² Subject to consideration of any relevant matters including Australian Government security classified information and/or other sensitive information, the Inquiry's hearings will take place in public at such locations and times as are notified. Where reasonably practicable, public hearings will be live streamed. The live stream cannot be recorded, transmitted or distributed (see Direction concerning Inquiry related information).
14. Ms McMurdo will chair the Inquiry's hearings, including determining applications or objections and issuing directions.
15. Any person who seeks a direction for a private hearing concerning particular evidence, must provide Counsel Assisting, as soon as practicable, a signed statement and/or submission as to the basis of the application, the content of the particular evidence, and whether the application should be determined on the papers or at a hearing. Ms McMurdo may determine the application on the papers without a hearing.

NOTICE TO AFFECTED PERSON OR ENTITY

16. A potentially affected person or entity is a person or entity whose interests, the Inquiry considers, may be adversely affected by:
 - (a) the matters being examined in the Inquiry; and/or
 - (b) a finding being considered by the Inquiry.

¹ [Inspector-General of the Australian Defence Force Regulations 2016](#), s 17 and the Inquiry's Directions

² Ibid s 19

17. Counsel Assisting, as soon as reasonably practicable, will notify in writing any person or entity considered to be potentially affected by the matters being examined in the Inquiry or who may be adversely affected by a proposed finding.

WITNESSES

Generally

18. After consultation with Ms McMurdo and Air Vice-Marshal Iervasi and subject to the directions of Ms McMurdo, Counsel Assisting will:
 - (a) identify, contact and call each witness whom they have determined should give evidence before the Inquiry;
 - (b) determine the order in which witnesses are to give evidence; and
 - (c) determine which documents or objects will be tendered through a witness during a hearing.
19. The Inquiry may:
 - (a) receive the evidence of a witness orally or by written statement or both;
 - (b) request persons to give evidence, or issue persons required to give evidence with a formal notice to attend to give evidence;³ and/or
 - (c) require a witness to give evidence concurrently with other witnesses.
20. Witnesses who receive a formal notice will be obliged to give their oral evidence on oath or affirmation unless the Inquiry directs otherwise.
21. Unless Ms McMurdo directs otherwise, a witness may have a support person sit with them when the witness gives evidence to the Inquiry in a public or private hearing. The support person cannot communicate with the witness while giving evidence nor address the Inquiry unless Ms McMurdo gives leave to do so.
22. Where a witness has given a written statement to the Inquiry and is called to give evidence at the Inquiry, the witness's evidence in chief will be their tendered written statement, with any additions or variations identified by the witness on oath or affirmation.
23. Any person who is likely to be a witness at the Inquiry is not to be present while another witness gives evidence to the Inquiry unless given leave to be present at that time.

³ Ibid 23(3)(c)

24. As soon as practicable, any person or entity granted leave to appear who wishes a witness to give evidence to the Inquiry or to have a document or object tendered in the Inquiry must notify Counsel Assisting in writing of the name of the witness and identify, and provide a copy of, the witness's statement, the document or object.

Preparation of witness statements

25. Where an individual gives a written statement to the Inquiry:
- (a) Counsel Assisting may provide a template for the format of the statement which the statement must follow, addressing each issue in the template; and
 - (b) a witness statement may be prepared with the assistance of the witness's lawyer.
26. Where an individual is not legally represented, Counsel Assisting may assist the individual to prepare their witness statement (though in doing so, Counsel Assisting does not act for the individual).

Formal notice to witness to give evidence

27. Individuals required to give evidence at a hearing will be issued a notice⁴ to appear including the date, time and location they are required to appear before the Inquiry.
28. Individuals unavailable to attend on a particular date must immediately give written notice to Counsel Assisting of the cause of their unavailability and the closest dates when they are available.
29. Individuals served with a notice to attend are not required to seek leave to appear when giving evidence.

Seeking leave to represent a witness giving evidence

30. A lawyer representing a witness before the Inquiry may apply for leave to address the Inquiry for the limited purpose of representing the witness.⁵
31. Any application for leave must be in writing in Times New Roman no smaller than 12-point font, not to exceed two A4 pages in length and provided to Counsel Assisting four days before the witness appears before the Inquiry.
32. Subject to any direction from Ms McMurdo, leave to appear is limited to representing the witness while the witness is giving evidence.

Examination, cross examination and re-examination of a witness

33. Ms McMurdo and Air-Vice Marshal Iervasi may ask questions of a witness at any time.
34. Questions asked of witnesses must be relevant to the Inquiry.

⁴ Ibid 23(3)(c)

⁵ Ibid s 20

35. Questions must also be courteous and non-repetitive. Questions must not contain comment, which should only be dealt with in submissions.
36. Unless Ms McMurdo directs otherwise, the procedure for questioning a witness is as follows:
 - (a) If the witness is not legally represented:
 - (i) Counsel Assisting will take the witness through their evidence in chief, including having them adopt any written statement with any additions or variations on oath or affirmation before tendering the statement;
 - (ii) other persons with leave to appear may, with leave, cross-examine the witness (see below); and
 - (iii) Counsel Assisting may then re-examine the witness.
 - (b) If the witness is legally represented:
 - (i) After Counsel Assisting has called the witness, their legal representative will take the witness through their evidence in chief, including having them adopt any written statement with any additions or variations on oath or affirmation before tendering the statement;
 - (ii) Counsel Assisting may then ask questions of the witness;
 - (iii) other persons with leave to appear may, with leave, cross-examine the witness (see below);
 - (iv) the legal representative for the witness may re-examine the witness; and
 - (v) Counsel Assisting may then re-examine the witness.

Seeking leave to cross examine a witness

37. A person or entity applying for leave to cross examine a witness must first apply and be granted leave to appear (refer to Application for Leave to Appear before the Inquiry).
38. An applicant must identify a sufficient interest to warrant cross examining the witness and must:
 - (a) identify the purpose of the cross examination;
 - (b) set out the issues to be canvassed; and/or
 - (c) provide the Inquiry with copies of any documents to which they propose to take the witness.

39. The Inquiry may give conditional or limited leave to cross examine.
40. Insofar as it is practicable, where a person or lawyer granted leave to appear intends to question a witness about a document or object, the person or lawyer should provide Counsel Assisting with a copy of the document or article seven days prior to the hearing.

Sequence in which lawyers may question a witness

41. The Inquiry will determine the sequence in which a witness will be cross examined by lawyers given leave to appear.
42. Ordinarily lawyers acting for the interests of a deceased person will cross examine prior to Counsel Assisting's re-examination and in the order determined by Ms McMurdo.

Tendering documents or objects

43. Ordinarily Counsel Assisting will tender all documents and objects during hearings before the Inquiry.
44. Before the commencement of a hearing, each person granted leave to appear at that hearing may be given confidential access to documents that are likely to be tendered as exhibits at the hearing.
45. Additional documents may be tendered by Counsel Assisting during the course of a hearing. If a person has a special interest in the issues to which an additional tendered document relates, as soon as is practicable, the person will be provided with a copy of the document insofar as it is relevant to the issues that may give rise to that special interest, unless the Inquiry determines otherwise in the public interest.
46. Any person granted leave to appear and wishing to have any documents or objects placed before the Inquiry is to notify Counsel Assisting in writing, including identifying the document or object and the basis on which the tender is sought.
47. The Inquiry's secretariat will maintain control of documents and objects tendered as exhibits before the Inquiry.

Notice of legal issues

48. Lawyers given leave to appear shall give as much advance notice to Counsel Assisting as is reasonably practicable of any legal issues they propose to raise at any hearing.
49. Counsel Assisting will give lawyers with leave to appear as much advance notice as is reasonably practicable of any relevant legal issues which Counsel Assisting proposes to raise.

Application for access to evidence

50. Ordinarily, evidence to be presented at a hearing will not be published or provided in advance.
51. A person or entity may make a written application to Ms McMurdo for access to documents and/or objects, which Counsel assisting intends to tender at the Inquiry and which are held in the custody of the Inquiry's secretariat.
52. Ms McMurdo may grant a person, entity, or their lawyer access to a document, object or exhibit and may specify the terms and limits of that access.

Application to call evidence

53. An application during an Inquiry hearing to call witnesses or place any documents or objects before the Inquiry may be made only where:
 - (a) an application has been made first to Counsel Assisting and refused; and
 - (b) the applicant has given Counsel Assisting written notice of the reasons why the application should be granted and Counsel Assisting has again refused the application.

Advance notice regarding witnesses

54. Where a witness is to give evidence to the Inquiry as a result of a request made to Counsel Assisting, or after Ms McMurdo allows an application to call a witness, Counsel Assisting will make reasonable endeavours to give the person who made the request, or the applicant, reasonable advance notice of when that witness is to give evidence.

Notice of adverse evidence to affected person

55. Counsel Assisting will ordinarily notify potentially affected persons of potentially adverse evidence likely to be given to the Inquiry so as to provide the affected person a reasonable opportunity to contest that adverse evidence.

LEAVE TO APPEAR BEFORE THE INQUIRY

Application for leave to appear

56. A person or entity may seek leave to appear before the Inquiry if they consider their interests may be adversely affected by matters being examined in the Inquiry, or otherwise consider they have a sufficient and real interest in those matters.
57. Where practicable, an application by a person or entity for leave to appear is to be made in writing delivered to Counsel Assisting and supported by a signed statement or submission identifying the basis, nature and extent of their interest.

58. Ms McMurdo may grant a person or entity leave to appear before the Inquiry.

Directions to persons granted leave to appear

59. A person or entity granted leave to appear before the Inquiry is subject to the directions of Ms McMurdo as to the terms of the grant of leave, for example the topics, issues or time allowed for cross examination; requiring any submissions to be in writing and limited in length; and if contending for an adverse finding against another, requiring the identification of the opportunity afforded to respond to that contention.

DIRECTION CONCERNING INQUIRY RELATED INFORMATION

60. The live streaming of the Inquiry's public hearings, the transcript of a hearing before the Inquiry and any document or object admitted into evidence and marked as an exhibit, comprises Inquiry-related information.⁶
61. The following Inquiry-related information must not be recorded, transmitted, distributed or otherwise disclosed to any person without prior authorisation from the Inquiry:
- (a) the live streaming of the Inquiry's public hearings;
 - (b) the transcript of a hearing before the Inquiry; and
 - (c) any document or object admitted into evidence and marked as an exhibit.⁷
62. Only persons who have been authorised by the Inquiry may be given access to exhibits and transcript and then only for the purposes of the Inquiry, unless the exhibit or transcript has been made public.

DEFENCE AVIATION SAFETY INVESTIGATION

63. The Department of Defence, through the Defence Flight Safety Bureau (DFSB), is conducting an aviation safety investigation into the impact with water of the MRH-90 Taipan Helicopter on 28 July 2023. As a matter of policy when conducting an Australian Defence Force aviation accident investigation, the conduct of the DFSB investigation is aligned to International Civil Aviation Organisation (ICAO) standards and recommended practices (SARPs) provided in:

⁶ Ibid s 28K

⁷ Ibid 28M

- (a) Annex 13—Aircraft Accident and Incident Investigation to the Convention on International Civil Aviation concluded at Chicago on 07 December 1944 (the Chicago Convention);⁸
 - (b) Annex 19—Safety Management (Amendment 1) to the Chicago Convention; and
 - (c) ICAO Document 9756 Manual of Aircraft Accident and Incident Investigation.
64. The DFSB investigation may vary from ICAO SARPs as considered necessary or appropriate.
65. The Inquiry will observe the guidelines concerning the protection of accident and incident investigations records as provided in Annex 13 to the Chicago Convention, unless the Inquiry considers it necessary or appropriate to depart from them.
66. Should such departure be contemplated, Counsel Assisting will invite DFSB to provide written submissions concerning the matter. The Inquiry may decide the matter with or without a hearing, which may be conducted either publicly or privately as determined by the Inquiry.

CONTACTING THE INQUIRY

67. Any person wishing to contact the Inquiry about any matter should email: igadf.mrh-90inquiry@resources.defence.gov.au. If the email is confidential it should be clearly marked CONFIDENTIAL.
68. Hard copy documents are to be mailed to the address below. If the document is confidential it should be clearly marked CONFIDENTIAL.

MRH-90 Inquiry
Office of the Inspector-General of the Australian Defence Force
Level 4, BP25
PO Box 7924
Canberra BC ACT 2610

69. Questions regarding the operation of this Practice Note are to be raised at first instance with Counsel Assisting in advance of any hearing.

⁸ The Chicago Convention was ratified in Australia by amendment to the *Air Navigation Act 1920* (Cth); see s 3A