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**TRANSCRIPT OF PROCEEDINGS
TRANSCRIPT-IN-CONFIDENCE**

**INSPECTOR-GENERAL AUSTRALIAN DEFENCE FORCE
INQUIRY INTO THE CRASH OF A MRH-90 TAIPAN
HELICOPTER IN WATERS NEAR LINDEMAN ISLAND
ON 28 JULY 2023**

PUBLIC INQUIRY

**THE HONOURABLE M McMURDO AC
AVM G HARLAND AM CSC DSM**

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Counsel Assisting**

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SQNLDR J GILES, representing LT M Nugent
LCDR M TYSON, representing CPL A Naggs
SQNLDR C THOMPSON, representing WO2 J P Laycock
COL N GABBEDY, representing MAJGEN Jobson
SQNLDR M NICOLSON, representing D10
COL S THOMPSON, representing BRIG D Thompson
MS M ROLOGAS, representing Acting Senior Sergeant L Scells
MAJ M BARNES, representing LTCOL A Norton
SQNLDR T SCHMITT, representing COL D Lynch
MS K MUSGROVE, representing the Commonwealth**

0930, THURSDAY, 17 OCTOBER 2024

DAY 25

TRANSCRIPT VERIFICATION

**I hereby certify that the following transcript was made from the sound recording of the
above stated case and is true and accurate**

Signed	Date	(Chair)
Signed	Date	(Recorder)
Signed	Epiq Australia Pty Ltd	Date	30/10/24	(Transcription)

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MS McMURDO: Yes, COL Streit.

5 COL STREIT: Thank you, Ms McMurdo, good morning. And good morning AVM Harland. On screen is Acting Detective – well, Detective Sergeant Scells. I understand he may well have been recently promoted, but his Legal Officer, lawyer, will shortly deal with that particular matter. But I call the Detective Sergeant to give evidence today.

10 MS McMURDO: Yes, thank you.

<ACT SEN SGT LUKE WILLIAMS SCELLS, Sworn

15 **<EXAMINATION-IN-CHIEF BY MS ROLOGAS**

MS McMURDO: Yes, good morning.

20 MS ROLOGAS: Good morning, Ms McMurdo and Air Vice-Marshal. My surname is Rologas. That's spelt R-o-l-o-g-a-s, initials M V. I am a solicitor at Gilshenan & Luton. I appear on behalf of Acting Senior Sergeant Luke William Scells. I understand, through Counsel Assisting, leave has already been granted for my appearance this morning.

25 MS McMURDO: Correct, yes.

MS ROLOGAS: Acting Senior Sergeant, can you please confirm your full name?

30 ACT SEN SGT SCELLS: Yes. So it's Luke Williams Scells.

MS ROLOGAS: And your current rank?

35 ACT SEN SGT SCELLS: I'm currently Acting Senior Sergeant – well, my substantive position is Detective Sergeant.

MS ROLOGAS: And were you in that role as at 28 July 2023?

40 ACT SEN SGT SCELLS: Yes, that's correct.

MS ROLOGAS: At that time, and in that role, were you tasked to assist in the investigation into the incident involving the crash of an MRH-90 Taipan helicopter off the coast of Queensland?

45

ACT SEN SGT CELLS: Yes, I was.

MS ROLOGAS: Who was it that directed you to undertake that investigation?

5

ACT SEN SGT CELLS: So, that was my superior, Detective Inspector Emma Novosel.

MS ROLOGAS: And what did your role ultimately require you to do?

10

ACT SEN SGT CELLS: Basically, I was involved in coordinating information to try and determine what occurred. So, basically, the short version of that is, you know, obtaining statement of events, footage, all that kind of stuff.

15

MS ROLOGAS: Prior to coming to the Inquiry today, did you receive a section 23 Notice requiring you to appear and give evidence?

ACT SEN SGT CELLS: Yes, I did.

20

MS ROLOGAS: And before coming today, did you prepare a statement for the Inquiry?

ACT SEN SGT CELLS: Yes, I did.

25

MS ROLOGAS: Yes. Is that statement in front of you?

ACT SEN SGT CELLS: I have a printed out copy here, yes.

30

MS ROLOGAS: Have you reviewed that statement today?

ACT SEN SGT CELLS: Yes, I have.

MS ROLOGAS: Are the contents true and correct?

35

ACT SEN SGT CELLS: Yes, they are.

MS ROLOGAS: Do you wish to make any alterations, amendments or additions?

40

ACT SEN SGT CELLS: No.

MS ROLOGAS: Due to a non-publication order, has that statement been redacted to assign pseudonyms to certain persons?

45

ACT SEN SGT SCELLS: Yes, it has.

MS ROLOGAS: Are you satisfied that there have been no other amendments to your statement?

5

ACT SEN SGT SCELLS: Yes.

MS ROLOGAS: I seek to tender the redacted statement of Luke William Scells dated 4 October 2024.

10

MS McMURDO: And there are some annexures to that statement, are there?

MS ROLOGAS: Yes, Ms McMurdo.

15

MS McMURDO: Yes, the statement and annexures will be Exhibit 80.

**#EXHIBIT 80 – REDACTED STATEMENT OF
ACT SEN SGT SCELLS AND ANNEXURES**

20

MS ROLOGAS: That's the evidence of this witness.

25

MS McMURDO: Thank you, Ms Rologas. Yes, COL Streit.

<CROSS-EXAMINATION BY COL STREIT

30

COL STREIT: Thank you, Ms McMurdo.

Acting Senior Sergeant, apologies for having your rank incorrect earlier. Can I first just give you some level of confidence, just accept from me that the redactions in your statement which have been tendered accord – that is, the names that have been redacted and the pseudonym numbers that have been put in accord to the statement that you provided; that is, your unredacted statement that you have provided to the Inquiry. Just accept that from me for the purposes of your evidence here this morning.

35

40

ACT SEN SGT SCELLS: Yes, I do.

COL STREIT: Thank you. Now, do you have a copy of your statement in front of you?

45

ACT SEN SGT CELLS: Yes, and I'll grab it.

5 COL STREIT: Certainly happy for you to have your statement in front of you and I'll take you through various parts of your statement. Can I just confirm that your statement comprises Annexes A to E? Is that correct?

ACT SEN SGT CELLS: Yes, that's correct.

10 COL STREIT: Now, separate to your statement, the Inquiry provided, through your legal representatives, you a copy of your police diary and notes contained in that diary relevant to this Inquiry; is that correct?

ACT SEN SGT CELLS: Yes, that's correct.

15 COL STREIT: And the diary has been redacted, has it not, in parts where information was either not relevant to the investigation or concerned a name that had a pseudonym? Is that correct?

ACT SEN SGT CELLS: That's correct, yes.

20 COL STREIT: And do you have a copy of your redacted diary in front of you?

ACT SEN SGT CELLS: Yes, sir.

25 COL STREIT: And are you satisfied that the redacted diary contains the notes from your official police diary relevant to the MRH-90 investigation?

ACT SEN SGT CELLS: Yes.

30 COL STREIT: Ms McMurdo, I tender the redacted diary of then Detective Sergeant Luke Scells, with the reference number K30052.

MS McMURDO: Exhibit 81.

35

#EXHIBIT 81 - REDACTED DIARY OF ACT SEN SGT CELLS

40 COL STREIT: Next, Acting Senior Sergeant, were you provided, through your legal representative, a copy of a document titled, "Queensland Police Service Activity Log: Operation Victor Cloak – ADF Helicopter Incident"?

ACT SEN SGT CELLS: Yes, I was.

45

COL STREIT: And on the top of that log, was there a redacted letter from Queensland Police Service in response to a section 23 Notice issued by this Inquiry for production of police records?

5 ACT SEN SGT CELLS: Yes, there was.

COL STREIT: Now, the log, that is the Queensland Police Service Activity Log for Operation Victor Cloak. That is a log prepared – do you know who prepared that log?

10 ACT SEN SGT CELLS: Different people throughout the investigation. But, basically, it is just a summary of what's occurred throughout the day.

COL STREIT: And its purpose, was it, is to maintain a summary of police activities on a daily and sometimes hourly basis? Correct?

15 ACT SEN SGT CELLS: Yes, that's correct.

COL STREIT: And I take it during the course of the MRH-90 investigation that you were involved in, did you have a regard to the log? That is, did you access it from time to time to see what was happening?

ACT SEN SGT CELLS: Yes, sir, that's correct.

20 COL STREIT: Did you input any information into the log?

ACT SEN SGT CELLS: I don't believe I did, no.

COL STREIT: Now, having been provided with a redacted copy of the log from the Inquiry through your legal representative, are you satisfied – insofar as your attendance at various meetings identified in the log, are you satisfied that the summary contained in the log is accurate to the extent you recall?

30 ACT SEN SGT CELLS: Yes, I am.

COL STREIT: And have you observed that the log, on occasions, refers to a summary of information that you've provided in the course of a meeting to those present in the meeting? Correct?

40 ACT SEN SGT CELLS: Yes.

COL STREIT: And are you satisfied that where the log refers to you and attributes things that you said, are you satisfied that those summaries are accurate in terms of what you recall saying to persons in various meetings?

45

ACT SEN SGT CELLS: Correct.

5 COL STREIT: Ms McMurdo, I tender a redacted copy of the Operation Victor Cloak log under cover of a letter from Queensland Police of 16 June 2024 to the Inquiry in reply to a section 23 Notice issued under the Inspector-General Australian Defence Force Regulation 2016.

10 MS McMURDO: The covering letter and attached log will be Exhibit 82.

#EXHIBIT 82 - REDACTED QPS ACTIVITY LOG FOR OPERATION VICTOR CLOAK, AND COVER LETTER

15 COL STREIT: Now, Acting Senior Sergeant, you have set out in your statement, at paragraph 1 – sorry, at paragraphs 5 to 8, your background and qualifications in the Queensland Police Service. Is that correct?

20 ACT SEN SGT CELLS: That's correct.

COL STREIT: You have been a member of the Queensland Police Service for over 15 years; correct?

25 ACT SEN SGT CELLS: That's correct.

COL STREIT: And you have largely, on the face of what's contained in your statement, been engaged in the conduct of police investigations into criminal matters; is that correct?

30 ACT SEN SGT CELLS: That's correct.

COL STREIT: And in terms of your engagement in the conduct of investigations concerning Coronial matters, are you able to assist the Inquiry understand your level of experience in that area?

40 ACT SEN SGT CELLS: Well, it's pretty common, sadly, in my field of work, for a Coronial to take place. Basically, for me, pretty much most deaths that occur that have either an unexplained or unexpected – that occurred in those circumstances, that we will be called upon to investigate them.

45 COL STREIT: So most deaths, I take it – well, all deaths would require some level of engagement with the relevant Coroner in the area, wouldn't it?

5 ACT SEN SGT CELLS: Yes, as long as the death is what's called a "reportable death", and that's basically where it has occurred in violent or otherwise unexpected circumstances. So, obviously, like, people who have passed in the hospital as a result of disease or something like that, we won't get called to. So, basically, the short version is, it's for deaths that aren't expected.

10 COL STREIT: From April 2019 to 28 July 2023, you were the Detective Sergeant Officer in Charge of the Whitsunday Criminal Investigation Branch; is that correct?

ACT SEN SGT CELLS: That's correct.

15 COL STREIT: Now, in your experience in investigating incidents involving the death of a person, it is necessary, isn't it, to obtain statements from relevant witnesses as soon as possible to assist in the conduct of an investigation? Is that correct?

20 ACT SEN SGT CELLS: That's correct.

COL STREIT: And also, by obtaining that evidence, or those statements early, it assists police in identifying particular lines of enquiry where further evidence may exist. Is that correct?

25 ACT SEN SGT CELLS: That's correct.

COL STREIT: And also, it assists in - - -

30 ACT SEN SGT CELLS: Yes, that's - - -

COL STREIT: Sorry. And also, it assists in ensuring that the evidence that is obtained can be quarantined as early as possible, so the evidence isn't lost.

35 ACT SEN SGT CELLS: That's correct.

40 COL STREIT: And also, obtaining evidence from a witness early means that you're obtaining that witness's best recollection of events according to their memory. Do you agree with that?

ACT SEN SGT CELLS: Yes, that's right, before it begins to fade over time.

45 COL STREIT: And that's an accepted human condition, from a policing

perspective, is it, that memory fades over time?

5 ACT SEN SGT CELLS: Yes. And also, that not every person – like, people’s memories are not a recorder. So everyone has their own version of events. It doesn’t mean they are lying; it just means that they’ve remembered it in a certain way.

10 COL STREIT: Now, when investigating a death in Queensland, which, on the face of it, is not a suspicious death or something where clearly it is something that warrants an immediate criminal investigation, isn’t it the case that obtaining evidence from witnesses is conducted in a way that witnesses are invited to give evidence or statements to police?

15 ACT SEN SGT CELLS: (No audible reply).

COL STREIT: Sorry, is that correct?

20 ACT SEN SGT CELLS: Yes, that’s correct. You obviously can’t compel a witness to provide you with a statement.

COL STREIT: Yes. So - - -

ACT SEN SGT CELLS: Yes, that’s correct.

25 COL STREIT: Witnesses can’t be compelled, but witnesses can volunteer to provide information to police, can’t they?

ACT SEN SGT CELLS: That’s correct.

30 COL STREIT: And, sorry, I - - -

MS McMURDO: Or even agree when asked to supply information to police; correct?

35 ACT SEN SGT CELLS: (No audible reply).

MS McMURDO: Yes, thank you.

40 ACT SEN SGT CELLS: That’s correct, your Honour.

COL STREIT: So, Acting Senior Sergeant, there is a slight delay in the audio because I can see you nodding to a question in an affirmative way before I hear your response.

ACT SEN SGT CELLS: Yes, you're sort of jumping in and out a little bit, but - - -

5 COL STREIT: I'll just slow things down. All right, thank you. I'll just slow my questions down a little bit and give you more time to respond, noting that delay. Now, in the conduct of investigations, is it your experience that sometimes witnesses who may have observed matters relevant to the death of a person may want to speak to police immediately and give their statement?

10 ACT SEN SGT CELLS: Yes, that's quite a common situation.

15 COL STREIT: And in addition to that, there may be other witnesses who might not want to speak to police immediately, because of the trauma of what they've observed, but wish to speak to police shortly thereafter?

ACT SEN SGT CELLS: Yes, that's also commonplace.

20 COL STREIT: And is it your experience there also may be a category of witnesses who don't want to speak to police at all, irrespective of what police consider that witness may have viewed of the death of a person?

ACT SEN SGT CELLS: Yes, that's also common as well.

25 COL STREIT: Now, I am just going to turn briefly to matters concerning the overview of Queensland Police involvement in the crash of the MRH-90 on 28 July 2023. So, first, looking from paragraphs 11 onwards in your statement, you were contacted approximately 8 am on 29 July 2023 by Detective Inspector Emma Novosel. Is that correct?

30 ACT SEN SGT CELLS: That's correct.

35 COL STREIT: Was Detective Inspector Emma Novosel your direct supervisor?

ACT SEN SGT CELLS: Yes, that's correct.

40 COL STREIT: And Detective Inspector Novosel advised you of an incident involving an MRH-90 that had occurred the previous evening – that is, on 28 July 2023 – involving an Australian Defence Force helicopter in the Whitsunday's. Is that correct?

ACT SEN SGT CELLS: That's correct.

45 COL STREIT: And you were, in essence, engaged by Detective

Inspector Novosel to commence a Queensland Police investigation into that matter; is that correct?

5 ACT SEN SGT CELLS: That's correct.

COL STREIT: You then, at paragraph 16 of your statement, arranged for a Detective Senior Constable Lozach from the Whitsunday's CIB to commence his shift earlier to assist Detective Senior Constable Carland in the commencement of that investigation.

10 ACT SEN SGT CELLS: That's correct.

COL STREIT: Now, in terms of key actions that were already undertaken prior to your involvement, you deal with this at paragraph 21 of your statement. You say at approximately 1 pm on 29 July 2023 you arrived at Proserpine Airport; is that correct?

15 ACT SEN SGT CELLS: That's correct.

20 COL STREIT: Did you observe a campsite set up by the Australian Defence Force at Proserpine Airport?

ACT SEN SGT CELLS: Yes, I did.

25 COL STREIT: And that comprised a number of tents, did it?

ACT SEN SGT CELLS: Yes. Yes, lots of them.

COL STREIT: And that was located in a field on the eastern side of the civilian runway, is that correct, the campsite?

30 ACT SEN SGT CELLS: That's correct.

COL STREIT: Now, when you arrived at the airport – and that's Prosperine Airport – you were briefed by Detective Senior Constable Carland and Lozach in respect of what had occurred in the investigation prior to your arrival; is that correct?

40 ACT SEN SGT CELLS: That's correct.

COL STREIT: And they'd advised you they'd spoken to Australian Defence Force flight crew members at Proserpine Airport; is that right?

45 ACT SEN SGT CELLS: That's correct, yes.

5 COL STREIT: And if you have a look at paragraphs 25, 26, 27 and 28 of your statement, the effect of those paragraphs is that the two Detective Senior Constables advised you that they had spoken to three Defence members – D10, D12 and D11 – and obtained a version of events from those members concerning the MRH-90 crash. Is that right?

ACT SEN SGT CELLS: That's correct.

10 COL STREIT: So the version of events is not a written witness statement. Those version of events were not contained in a written witness statement, were they?

15 ACT SEN SGT CELLS: Yes, that's right, it was just a written version in a diary.

COL STREIT: And were you told why the versions were obtained that way as opposed to a written statement which would be signed by the individual?

20 ACT SEN SGT CELLS: Yes, because they were basically about to get on a flight and head back to Sydney, so there was no time to provide one.

25 COL STREIT: The witnesses were about to get on a flight out of Proserpine Airport. And so was the police response to do the best in those circumstances to obtain an overview or a version of events from three witnesses in a summary form to assist enquiries moving forward?

ACT SEN SGT CELLS: Yes, that's correct.

30 COL STREIT: When you were briefed by the two Detective Senior Constables and they were informing you that these witnesses are about to get on a flight and depart Proserpine Airport, were you surprised by that information; that is, the witnesses were leaving?

35 ACT SEN SGT CELLS: Yes, I was.

40 COL STREIT: Had you been told about that earlier in the day, before you arrived? Or was the first you learnt of it was when you arrived at Proserpine Airport?

ACT SEN SGT CELLS: Sorry, could you go again on that, sorry?

45 COL STREIT: Sure. In terms of witnesses, ADF witnesses, departing Proserpine on 29 July, did you learn of that only after being told by the two Detective Senior Constables when you arrived at Proserpine Airport on

29 July?

ACT SEN SGT CELLS: Yes, that's correct. I thought we'd be taking statements from most of them.

5

COL STREIT: Now, in terms of your involvement – I withdraw that. You'll see at paragraph 29 of your statement you say:

10 *On 4 August 2023, following a request from the ADF, I emailed a link to the body-worn camera footage taken by DCS Carland and Acting Senior Sergeant Aaron Webster to a COL Morrison. The link allowed COL Morrison to download a copy of the footage.*

Do you see that in your evidence?

15

ACT SEN SGT CELLS: Yes.

COL STREIT: Can you just assist the Inquiry understand why Queensland Police took that action? Why provide the body-worn camera footage to the Australian Defence Force?

20

ACT SEN SGT CELLS: It was a few days later. I believe it was because basically they requested it. So we were happy to provide it.

25

COL STREIT: Just stepping aside from the Australian Defence Force, in the conduct of a police investigation into the death of a person, or multiple fatalities, is it standard practice for Queensland Police to provide evidence they've obtained in the course of an investigation to the deceased person's employer?

30

ACT SEN SGT CELLS: No.

COL STREIT: Now, returning to the ADF, the Australian Defence Force is a part of the Department of Defence. Do you accept that?

35

ACT SEN SGT CELLS: Yes.

COL STREIT: And do you accept that the Department of Defence is a part of the Australian Government? Do you accept that the Department of Defence is a department forming part of the Australian Government?

40

ACT SEN SGT CELLS: Yes.

COL STREIT: Now, in relation to how QPS would engage in an investigation and not provide evidence to a deceased person's employer,

45

was the approach taken in relation to the Australian Defence Force different than what you would do with a civilian employer because the ADF formed part of the Department of Defence and part of the Australian Government?

5 ACT SEN SGT CELLS: Yes, that's correct.

COL STREIT: And was it also because Queensland Police understood a part of the Australian Defence Force was conducting its own investigation into the crash of the MRH-90?

10

ACT SEN SGT CELLS: That's correct.

COL STREIT: And did you understand at that time, on 29 July 2023, that internal to the Australian Defence Force was an internal Military Police Organisation that conducted military investigations? Did you understand that at that time? If you are not sure, just say so.

15

ACT SEN SGT CELLS: I'm sorry, I can't hear you. I missed all of that.

COL STREIT: All right. As at 29 July 2023, were you aware that there was an internal Military Police Organisation within the Australian Defence Force?

20

ACT SEN SGT CELLS: Yes, I was.

25

COL STREIT: And were you aware, as at 29 July, that that internal Military Police Organisation conducted investigations internal to the Department of Defence?

ACT SEN SGT CELLS: Yes, from my understanding.

30

COL STREIT: And were you aware that internal to the Australian Defence Force is an organisation which conducts Aviation accident investigations called the Defence Flight Safety Bureau?

35

ACT SEN SGT CELLS: I wasn't aware of that until this particular incident occurred, but I certainly was by 29 July.

COL STREIT: The question I – and you may not be able to answer this – but the question I have for you is this: did Queensland Police, at any time, draw any distinction between providing information to the internal Military Police Organisation in the Australian Defence Force as opposed to just giving police evidence obtained by police to Defence, as a whole organisation?

40
45

ACT SEN SGT CELLS: No, I assumed that – the answer to that is no.

MS McMURDO: I'm sorry, I didn't quite understand that answer.

5 COL STREIT: Sorry, could you just repeat your answer, please?

ACT SEN SGT CELLS: No, so I didn't understand the distinction. I thought we were just providing it to the Military Police so they can obviously conduct their investigation as well.

10

COL STREIT: I see. So your understanding was that the information that was being requested by the Australian Defence Force to be provided by the Queensland Police – and which was provided, according to your evidence at paragraph 29 of your statement – that that evidence was to go to the Military Police Organisation internal to the Australian Defence Force. Is that correct?

15

ACT SEN SGT CELLS: That's correct.

20

COL STREIT: Because it would be most unusual, wouldn't it, for Queensland Police to depart from its normal practice in not giving evidence in an investigation to a deceased's employer? It would be most unusual for police to depart from that practice and give evidence in an investigation to the Department of Defence, as a whole organisation, wouldn't it?

25

ACT SEN SGT CELLS: That's correct.

30

COL STREIT: Now, returning to your involvement on events on 29 July 2023, at paragraph 36 you say that after speaking with the two Detective Senior Constables, you then spoke with a BRIG Dean Thompson from the Australian Defence Force, 16 Avn Regiment. Can you just describe, the best you can, how that conversation came to be? So was the Brigadier introduced to your or did he introduce himself to your team?

35

ACT SEN SGT CELLS: I believe so, if I remember correctly. I believe he was, yes. I think it might've been Inspector Dyer who introduced me to him. But we had a conversation for probably 15 to 20 minutes, or so.

40

COL STREIT: And he told you at the time, the names of the four deceased airman; is that correct?

ACT SEN SGT CELLS: That's correct.

45

COL STREIT: You also say at paragraph 37 that BRIG Thompson advised you that the aircraft involved in the crash was situated in 40 feet of

water in the Whitsunday Islands; is that correct?

ACT SEN SGT CELLS: That's correct.

5 COL STREIT: And that it could be some time before the aircraft was recovered?

ACT SEN SGT CELLS: Correct.

10 COL STREIT: Did BRIG Thompson, in your conversation with him on 29 July, say anything to you about the fact that the ADF witnesses you wanted to speak to would be departing Proserpine that day?

15 ACT SEN SGT CELLS: I believe he is the one who informed me as well that a number had already left.

COL STREIT: I see.

20 ACT SEN SGT CELLS: But, yes, he did tell me that they were leaving.

COL STREIT: To the best you can recall the conversation, did he say anything – well, what do you recall of the conversation of what he said to you?

25 ACT SEN SGT CELLS: I believe what I was told was that the ADF had certain requirements around critical incidents, and witnesses were allowed to have a couple of days before they had to speak to investigators. So that was the reason why they were sent back to Sydney, to be with their families.

30 COL STREIT: Did he say anything in relation to whether witnesses had been offered the opportunity to speak to Queensland Police if they wanted to?

ACT SEN SGT CELLS: I can't recall that.

35 COL STREIT: You then, at paragraphs 38 and 39, I'll deal with two matters. You were introduced to CMDR Dominic Cooper from the Australian Defence Force and he explained to you that he was from a unit called the Defence Flight Safety Bureau which conducts investigations into
40 incidents involving ADF aircraft. Is that right?

ACT SEN SGT CELLS: That's correct.

45 COL STREIT: You then were introduced to PO Casey Theissen from the Military Police and you were advised that PO Theissen was to be your

counterpart in the ADF to assist you with information that you required; correct?

5 ACT SEN SGT CELLS: Correct.

COL STREIT: Now, at paragraph 41, 42 and 43 you say that the two DCS Officers you mentioned earlier, and PO Theissen, attended a nearby tent where the deceaseds' personal belongings were located. And you understand that their bags had been placed in a corner of a tent before
10 Queensland Police arrived. Is that right?

ACT SEN SGT CELLS: That's correct.

COL STREIT: And searches of those bags then occurred by Queensland Police; is that right?
15

ACT SEN SGT CELLS: That's correct.

COL STREIT: And certain items from the bags were taken for the purpose of obtaining DNA, or to see if those items you were able to obtain DNA – to assist in the obtaining of DNA samples; is that correct?
20

ACT SEN SGT CELLS: That's correct, yes.

COL STREIT: And that at paragraph 46 you say:
25

I am aware that on 9 August 2023 these personal belongings were returned to the DFSB by Senior Constable Cook from the QPS.

30 Is that correct?

ACT SEN SGT CELLS: That's correct.

COL STREIT: Do you know why the – are you able to assist the Inquiry to understand why the items were provided to the DFSB and not retained by QPS?
35

ACT SEN SGT CELLS: I can't recall exactly why the DFSB – yes, I can't exactly recall why they were provided directly back to DFSB. But the reason that we were given them back is because they were no longer
40 required in order to obtain DNA samples, basically.

COL STREIT: Now, at paragraph 48 you say - - -

MS McMURDO: Just before we leave that. Could I just ask you this? Can you understand me? Can you hear me okay?

ACT SEN SGT CELLS: Yes, your Honour.

5

MS McMURDO: Good, thank you. Were you surprised that the deceaseds' belongings had been moved before Queensland Police had an opportunity to examine the bedding and so forth?

10 ACT SEN SGT CELLS: Yes, I was. I didn't think anything untoward; I just thought, "Well, you know, the Army aren't investigators like us, so they can't really be expected to know what to do". That's my thoughts at the time.

15 MS McMURDO: Yes. So, the best practice would have been if it had been left untouched, for you to come and see it first?

ACT SEN SGT CELLS: Yes, for us to do a search, your Honour.

20 MS McMURDO: Rather than it being moved by others. So you say that you recall DSC Carland locating an empty Panadol blister packet and a vape in the rubbish bin. Was this a communal rubbish bin in the tent, the large tent that was used by a large number of aircrew?

25 ACT SEN SGT CELLS: I believe it was the rubbish that was used by everyone in there. Yes, I can only speculate, your Honour, but my understanding is it wasn't particularly for those airmen. It was everyone's rubbish.

30 MS McMURDO: So do you know whether those things even came from the deceased aircrew?

ACT SEN SGT CELLS: No, I don't.

35 MS McMURDO: You don't know. Okay, thank you. Yes, thank you.

COL STREIT: So just in relation to the searches that occurred – and you deal with this in your statement, that on 29 July, generally, you've given evidence about witnesses getting on flights and departing Proserpine. So
40 when you arrived, and at any time during the course of the day, did any ADF member escort you though the camp or the tents, apart from the one where you did a search in?

45 ACT SEN SGT CELLS: No. So not the rest of the tents. Casey – what was it – Theissen, he's the one who took me through the tents. And

BRIG Thompson did allow me to look through one of the ADF helicopters that was parked there. But apart from that, that was it.

5 COL STREIT: So was the camp in the process, to your observation, of being collapsed at the time during the 29th, when you were there at Proserpine? So the tents being taken down?

ACT SEN SGT CELLS: That was the impression I got, yes.

10 COL STREIT: So there was no opportunity, was there, for Queensland Police to do – well, I withdraw that. Ordinarily, when Queensland Police investigate a matter in relation to a death, and they attend an area, or a home, or a site, of an accident, Queensland Police will take video or photographs of the site as soon as they're able to, won't they?

15 ACT SEN SGT CELLS: That's correct, yes. Basically, an area is quarantined off so no one can access it. The police are the first ones in, we'll photograph it and document stuff as we go.

20 COL STREIT: And that's to obtain the best evidence available about where items were located that might be relevant, or might become relevant at a later stage, to an investigation; correct?

ACT SEN SGT CELLS: That's correct.

25 COL STREIT: So where an accident might occur away from a deceased person's home, examining a deceased person's home, including the rooms of the home they might occupy, their bedroom, their personal belongings and all of those things, is standard practice for police to do to identify what evidence might be relevant, and what might assist lines of enquiry; correct?

ACT SEN SGT CELLS: That's correct.

35 COL STREIT: It's a bit like searching for gold in the river. You use the sifting pan, and maybe nine-tenths of what's in the pan is discarded but there might be a piece of gold also found, correct? Sorry, is that correct?

ACT SEN SGT CELLS: That's correct, yes. Yes, that's correct.

40 COL STREIT: It would seem, on the evidence that's before the Inquiry, but also your statement, that that process, that standard practice, didn't occur in this circumstance, in this investigation. Correct?

ACT SEN SGT CELLS: That's correct.

45

COL STREIT: Are you able to assist the Inquiry, from your perspective, why that didn't occur?

5 ACT SEN SGT CELLS: Basically, because it was contaminated before we got there.

COL STREIT: When you say "contaminated", what does that mean? I know what you might think it means from a Queensland Police perspective, but can you assist the Inquiry what you mean by that word?

10 ACT SEN SGT CELLS: Basically, that it wasn't left how the deceased had left it. So someone else, a third party, had gone in, packed stuff up, moved it all, as opposed to just leaving it in situ where it was, so the police can come along and examine everything as it was left by the deceased.

15 COL STREIT: Now, it's important, isn't it, for police, when they're investigating a death of a person which might have occurred in a different location, to examine where that person was sleeping, and the items that they were accessing or using, because that might assist police in understanding or obtaining evidence relevant to explain what happened to the person?

20 ACT SEN SGT CELLS: That's correct.

COL STREIT: So not relevant to the circumstances of the crash of the MRH-90, but by way of example, if you were to unfortunately come across somebody who, on the face of it, appears to have passed by way of a drug overdose, standard police practice would be to go to their home and search their room to identify whether any items contained residual elements of a drug, or whether you in fact found drugs. Correct?

30 ACT SEN SGT CELLS: That's correct.

COL STREIT: And that might lead police to make further enquiries as to how the person obtained the drugs, particularly if they were illicit substances. Correct?

35 ACT SEN SGT CELLS: Correct.

40 COL STREIT: And so, relevant to the circumstances of the death of the individual, the police's parameters or boundaries for understanding relevant evidence and obtaining it starts to broaden because of lines of enquiry that police make. Correct?

45 ACT SEN SGT CELLS: Correct.

COL STREIT: Returning to this matter then involving the MRH-90 crash, is it the case to a large extent QPS relied upon information that was being conveyed to it by the ADF in relation to the investigation itself, and things that were being uncovered by the ADF?

5 ACT SEN SGT CELLS: Yes, that's correct.

COL STREIT: Was some of this – my word – “comfort” – was some of this comfort given to Queensland Police that the ADF would be a partner in this investigative process because of the involvement of, for example, PO Theissen, who you understood was a Military Police Officer?

10 ACT SEN SGT CELLS: That's correct, yes.

COL STREIT: And also the involvement of CMDR Dominic Cooper, who you learnt in the investigation was there to conduct an ADF Aviation aircraft accident investigation; correct?

15 ACT SEN SGT CELLS: That's correct.

COL STREIT: Was there an expectation on the part of Queensland Police – that is, you doing this investigation – that the Australian Defence Force, through either the Military Police or the Defence Force Aviation Safety Investigation Authority, would share information with Queensland Police, relevant to Queensland Police's investigation?

20 ACT SEN SGT CELLS: Yes, that's correct.

COL STREIT: And the sharing - - -

25 ACT SEN SGT CELLS: We thought that all the information would be forthcoming; it was the ADF.

COL STREIT: And that sharing of information by the Australian Defence Force organisations internal to doing the investigation would be conducted in a timely manner; correct?

30 ACT SEN SGT CELLS: That's correct.

COL STREIT: Because time is of the essence - - -

35 ACT SEN SGT CELLS: Yes.

COL STREIT: - - - in a police investigation. That's right?

40

45

ACT SEN SGT CELLS: That's correct.

MS McMURDO: So you were expecting to work in a cooperative way with the ADF investigators in this?

5

ACT SEN SGT CELLS: Yes, your Honour, that's correct.

MS McMURDO: And as the incident had occurred within Queensland jurisdiction, you understood you were the lead investigators, and with the responsibility of course to report to the Coroner?

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ACT SEN SGT CELLS: Yes, that's correct, your Honour. It's in our OPMs that when a military aircraft crashes in Queensland, that we're responsible for the investigation and reporting it to our Coroner.

15

MS McMURDO: Thank you. And were you asked about whether it was all right with you, with Queensland Police, for the witnesses to return to Sydney and to leave the jurisdiction?

20

ACT SEN SGT CELLS: I wasn't. I wasn't asked before they left, no.

MS McMURDO: Thank you.

COL STREIT: Now, can I just turn to the annexures in your statement. We'll go through them one by one. The first is Annexure A, which is an email that you send to a person identified there with a Defence email address. You've sent that email on 4 August 2023 at 1630; correct?

25

ACT SEN SGT CELLS: That's correct.

30

COL STREIT: And that email contains a summary of versions of events provided by D10, D12 and D11.

ACT SEN SGT CELLS: That's correct.

35

COL STREIT: Those versions of events had been obtained by Queensland Police in those QPS discussions with those members on 29 July 2023, before they departed Proserpine Airport; is that correct?

40

ACT SEN SGT CELLS: That's correct.

COL STREIT: Did you understand the person identified there in the Defence email address, that that was COL Morrison? The person you're sending the email to, was that a COL Morrison?

45

ACT SEN SGT CELLS: That's correct, yes.

5 COL STREIT: If you go to Annex B of your statement, you'll see that Annex B contains two emails. The first is an email from you of 30 July 2023 at 9.29 am, which is an email you were sending to PO Theissen in relation to setting out a list of questions for witnesses to be asked relevant to the QPS investigation. Is that correct?

10 ACT SEN SGT CELLS: That's correct, yes.

COL STREIT: Did you take that step – that is, to set out those questions and send them to PO Theissen – because PO Theissen was a Military Police Officer who had been liaising with you? Correct?

15 ACT SEN SGT CELLS: That's correct, and I believed this statement – I believed that these statements would be taken by Military Police in Sydney - - -

20 COL STREIT: Yes, I was about to - - -

ACT SEN SGT CELLS: - - - for all the witnesses.

25 COL STREIT: I was about to ask you that. So it was your understanding that the Military Police would take statements from the ADF witnesses, who are now located in Sydney. Correct? Sorry, is that correct?

ACT SEN SGT CELLS: Correct.

30 COL STREIT: And what you're doing is you're providing - - -

ACT SEN SGT CELLS: Yes, correct.

35 COL STREIT: Sorry, and what you're doing is you're providing PO Theissen 13 questions that you want answered, or put to witnesses to answer voluntarily, for the purposes of their statement. Is that right?

ACT SEN SGT CELLS: That's correct.

40 COL STREIT: PO Theissen responds to your email on 30 July 2023 at 9.34. He says:

45 *Hey, mate. I just sent the request through to DFSB. If I can get an investigator out there to assist, hopefully this will negate any RFIs that may come at a later date.*

You then replied to his email on 30 July. You sent a reply on 30 July 2023, at 10.08, where you say this:

5 *Hi, Casey. As discussed, I totally understand about the reservations from your superiors regarding statements. I have attached a QPS statement template. If possible over the coming days, would you please be able to arrange witness statements being taken from the following people –*

10 and then you list four people. That's correct?

ACT SEN SGT CELLS: That's correct.

15 COL STREIT: When you say, "I totally understand about the reservations from your superiors regarding statements", when you're saying that to PO Theissen, what was your understanding about reservations from PO Theissen's superiors concerning the taking of statements?

20 ACT SEN SGT CELLS: I can't recall exactly what the reservations were, but this was two days into the investigation now. We still didn't have any statements. So in that email, whilst I'm saying that I understand the reservations, I was more being polite. I still expected for us to get these statements at some point.

25 COL STREIT: I'm looking now at Annex C to your statement. On 30 July 2023, at 1040 hours, you send an email to PO Theissen, with a copy to Inspector Novosel, and in that email you set out by way of headings, including Witness Statements, Flight Data, Recordings, Medical Records, Mission Outline, Maintenance Records – by way of headings, you are
30 identifying to PO Theissen all of those things Queensland Police are interested in and wanting to obtain by way of evidence concerning the crash of the MRH-90. Is that right?

35 ACT SEN SGT CELLS: That's correct, yes. This is the stuff – that's correct. This is what you'd expect to put into a report for the Coroner.

40 COL STREIT: To this date, the ADF has not provided copies of witness statements to Queensland Police concerning the MRH-90 crash; is that correct?

ACT SEN SGT CELLS: To the best of my knowledge, yes, we've never received any statements.

45 COL STREIT: Are you aware whether or not the statements were provided by Defence to the Coroner directly?

ACT SEN SGT CELLS: I don't know. I can't answer that one, sorry.

5 COL STREIT: If I was to say to you there's some evidence before this Inquiry that witness statements were provided – that is, witness statements of the aircrew in the three other aircraft involved in the sortie on 28 July 2023 – that those statements were provided by Defence to the Coroner at the end of November 2023, apart from me saying this to you now, is this the first you learn of this information?

10 ACT SEN SGT CELLS: Yes.

COL STREIT: Now, it's Queensland Police's responsibility to prepare a report for the Coroner for the purposes of the Coroner's investigation into the death of the Defence members in this matter, isn't it?

15 ACT SEN SGT CELLS: Correct.

COL STREIT: And as far as you're concerned, a police report to the Coroner would, as a matter of standard practice, enclose all of the relevant information for the Coroner, including all witness statements?

ACT SEN SGT CELLS: That's correct.

25 COL STREIT: In this circumstance, the report to the Coroner would be deficient because it would not contain witness statements; is that correct?

ACT SEN SGT CELLS: If they haven't been provided, yes, that's correct.

30 COL STREIT: Can I suggest to you the other important thing that arises when a witness provides a statement to police in relation to the investigation into the death of a person is that statement might lead police to ask the witness further questions, generating a further statement. Correct?

35 ACT SEN SGT CELLS: That's correct, yes, or additional lines of enquiry.

COL STREIT: Or additional lines of enquiry; is that correct?

40 ACT SEN SGT CELLS: That's correct.

COL STREIT: So even if the evidence was Defence provided statements to the Queensland Coroner some four months after the crash of Bushman 83 from the aircrew in the other aircraft, the lost opportunity to Queensland

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Police is that there's been no opportunity to conduct further investigations that might arise from what those witnesses said in their statements which were then given to the Coroner. Correct?

5 ACT SEN SGT CELLS: Sorry, it's just dropped out again. I missed that last bit you said.

COL STREIT: So if the evidence before the Inquiry establishes that Defence provided the Queensland Coroner the statements of the aircrew
10 from the other aircraft in the sortie on 28 July, and those statements were provided to the Coroner at the end of November 2023, the lost opportunity to Queensland Police by not being given the statements is that Queensland Police have lost the opportunity to conduct further investigations that might arise after reviewing those statements provided to the Coroner by Defence.
15 Would you agree?

ACT SEN SGT CELLS: Yes, that's correct.

COL STREIT: And therefore, even if the Coroner, upon receipt of these
20 statements in November of last year, provided them to the police, the reality is that we're four months down the road from when the accident happened, and police would already be behind the line in conducting an investigation because of that four-month delay. Would you agree?

25 ACT SEN SGT CELLS: Yes, that's correct.

COL STREIT: Can I take you to paragraph 75 of your statement, and through to 87?

30 ACT SEN SGT CELLS: Okay, yes.

COL STREIT: So paragraph 75 through to 87, you deal with the actions that you were involved in on 31 July 2023; is that right?

35 ACT SEN SGT CELLS: That's correct.

COL STREIT: Now, you also deal with the fact that two phones were obtained by police in the conduct of their investigation concerning CPL Naggs, and an iPhone concerning LT Nugent. Is that right?
40

ACT SEN SGT CELLS: That's correct.

COL STREIT: CPL Naggs' phone contents was downloaded by Queensland Police as part of the investigation.
45

ACT SEN SGT CELLS: That's correct.

COL STREIT: But LT Nugent's phone was not able to be downloaded; is that right?

5

ACT SEN SGT CELLS: That's correct, yes.

MS McMURDO: Were you aware that LT Nugent's phone was – well, the phone itself – or perhaps the material on it was damaged during that attempt to download?

10

ACT SEN SGT CELLS: No, I wasn't aware of that, your Honour.

MS McMURDO: Okay. So in your later dealings with the Nugent family, you didn't hear any concerns from them about the phone?

15

ACT SEN SGT CELLS: No, but I think my – no, no one commented at the time. That's the first time I've heard of it.

MS McMURDO: No, all right. Thank you.

20

COL STREIT: On 1 August, at paragraph 89, you say you commenced contacting the deceaseds' next of kin and that the purpose for the calls was to request family members provide DNA samples in order to assist with identifying the deceased members in the event human remains were located; is that correct?

25

ACT SEN SGT CELLS: That's correct.

COL STREIT: Prior to contacting the family members, was it your understanding that the Australian Defence Force had contacted family members to inform them of what had happened on 28 July 2023 to their loved ones?

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ACT SEN SGT CELLS: Yes.

35

COL STREIT: So you understood that a notification process had occurred before you rang the families?

ACT SEN SGT CELLS: That's correct.

40

COL STREIT: You contacted Mr Daniel Nugent and requested a DNA sample, and you say at paragraph 91 that Mr Nugent agreed, and you forwarded his details to another QPS Officer to coordinate that process. Correct? Is that right?

45

ACT SEN SGT CELLS: That's correct.

5 COL STREIT: You did the same in relation to contacting Joseph and Diane Laycock, the parents of WO2 Laycock, to request a DNA sample, and both agreed and you forwarded their details to the same QPS Officer?

ACT SEN SGT CELLS: That's correct.

10 COL STREIT: At paragraph 93, you contacted Beverley Johnson, the mother of CPL Naggs. You say you recall that during your conversation with Beverley she was upset and advised you that she hadn't been contacted by anyone from the ADF. You say you apologised, and after obtaining permission to obtain a DNA sample, you advised an ADF Officer that
15 Beverley hadn't been contacted by the ADF. Is that right?

ACT SEN SGT CELLS: That's correct, yes.

20 COL STREIT: Do you recall who the ADF Officer was that you advised and, if so, can do you recall their - - -

ACT SEN SGT CELLS: No, unfortunately. I believe it was a Captain.

25 COL STREIT: At paragraph 94 you say you contacted David Naggs, the father of CPL Naggs, and obtained permission to obtain a DNA sample, and Mr Naggs agreed and provided you details and you forwarded those to the QPS Officer dealing with that matter as well. Is that correct?

30 ACT SEN SGT CELLS: That's correct, yes.

MS McMURDO: Just before you go on, could I take you to 86 and 87, paragraphs 86 and 87. You did mention there that there a civilian couple who were on Dent Island at the time of the crash and that they gave a statement to police about what they saw. Do you remember what the effect
35 of that was, what the effect of their statements was?

ACT SEN SGT CELLS: Yes, your Honour. Basically, they were up late at night – I think it was about 10.30 – they were obviously interested in the military exercise that was going on because they could hear it. They didn't
40 see the crash specifically, but they heard helicopters flying over it and I believe, if I remember correctly, they heard a crash but they couldn't see it because it was dark, at night-time.

45 MS McMURDO: All right, thank you. That was really the extent of it?

ACT SEN SGT CELLS: Yes, your Honour.

5 MS McMURDO: Just taking you back to when you first went out to the camp, did you inspect the tent where the mission had been planned, where there were whiteboards and so forth?

ACT SEN SGT CELLS: Yes, I do remember a tent that was full of whiteboards and stuff like that.

10 MS McMURDO: Had that been quarantined when you arrived there?

ACT SEN SGT CELLS: I think we were allowed access to that. I don't recall anything that looked like it had been packed away or anything. I think it was all still in the position it was when the accident happened.

15 MS McMURDO: Do you remember if it was quarantined so that other personnel couldn't have access to it, to touch it or change it?

ACT SEN SGT CELLS: Yes, I believe there was guards on the front flap to it.

MS McMURDO: All right then, thank you. Did you take any, or have someone take any, photographs of that area?

25 ACT SEN SGT CELLS: Yes, we had the Scenes of Crime Officers, I believe, took photos of the boards.

MS McMURDO: Sorry, who was that?

30 ACT SEN SGT CELLS: The Scenes of Crime Officers.

MS McMURDO: Scenes of Crime Officer took photographs.

ACT SEN SGT CELLS: I can't remember who it was.

35 MS McMURDO: Yes, all right. That's fine. Thank you. Yes, thanks, COL Streit.

40 COL STREIT: Can I take you to paragraph 95 of your statement. You say you had some difficulty locating the next of kin for CAPT Lyon. He had a previous address in Western Australia, and after some effort, you managed to contact his mother, Mrs Holloway, and you spoke with her and that she agreed to provide a DNA sample. Is that correct?

45 ACT SEN SGT CELLS: That's correct.

COL STREIT: You provided those details to the QPS Officer handling the DNA matter for the investigation; is that right? Is that correct?

5 ACT SEN SGT CELLS: That's correct, yes.

COL STREIT: As at 1 August, you say on paragraph 98 that QPS still had not received any witness statements from the ADF or information in respect of the identities of the other ADF witnesses in helicopters 1 and 2; is that right?

10 ACT SEN SGT CELLS: That's correct.

COL STREIT: That you then took action to email the officer identified, the ADF Officer identified, at paragraph 99 of your statement, who told you he was the Chief of Staff of Aviation. He advised that the Chief of Staff of Aviation Command requested that you advise what you required from the ADF witnesses. Is that right?

15 ACT SEN SGT CELLS: That's correct.

COL STREIT: At paragraph 100, you say shortly afterwards you were contacted by LTCOL Marsh from ADF Legal, who wished to discuss with you what information QPS required from ADF witnesses; is that right?

20 ACT SEN SGT CELLS: That's correct, yes.

COL STREIT: At that point in time, though, your understanding was you had already provided information to the ADF through CPONPC Theissen as at 30 July 2023, with a series of questions of information that police were seeking; correct?

25 ACT SEN SGT CELLS: That's correct, yes.

COL STREIT: Now, Annexure E to your statement is an email between you on 1 August 2023, an officer you've identified there, a CAPT Moon, and LTCOL Marsh. That's right, that email, what I've just said?

30 ACT SEN SGT CELLS: Yes, that's correct.

COL STREIT: In that email, you set out now for the second time to the ADF the information that you are requesting be obtained from the witnesses relevant to the QPS investigation; is that right?

35 ACT SEN SGT CELLS: That's correct.

COL STREIT: Notwithstanding your request, given your evidence earlier, you never received back any witness statements in response to the request you had made to the ADF?

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ACT SEN SGT SCELLS: Correct.

COL STREIT: So I take it, as far as you're concerned, the matter remains unanswered by the Australian Defence Force insofar as Queensland Police Service is concerned?

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ACT SEN SGT SCELLS: Sorry, sir, I missed all that. It dropped out.

COL STREIT: Sure. So given that you haven't had a response from the ADF to the questions you've asked, by the provision of statements, it means that your request for provision of statements remains outstanding. Is that correct?

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ACT SEN SGT SCELLS: Correct.

20

COL STREIT: Your statement, and the balance of it, deals with the events that you undertook from 4 August through to 8 August. This is contained in pages 10 and 11 of your statement; is that right?

25

ACT SEN SGT SCELLS: That's correct.

COL STREIT: At paragraph 127 you say:

The ADF was still not providing the QPS with the information we requested, including witness statements, and I was still trying to run the Whitsunday Criminal Investigation Branch Office.

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At paragraph 128 you say:

Therefore, this was my last day investigating the incident and I returned to my duties at Whitsunday CIB thereafter.

35

So that's on 9 August 2023. Do you know who took over the QPS investigation of the crash of the MRH-90 when you ceased involvement in it?

40

ACT SEN SGT SCELLS: Well, I believe it was the FCU. They were the ones who had carriage of it from the start, but my whole role was simply just to assist them and obtain the information they needed. But by the time

that this has occurred, we weren't getting any information, so there was no benefit of me being around.

5 COL STREIT: Sure. You obviously had an important day job to do as running the Whitsunday Criminal Investigation Branch Office. That's correct?

ACT SEN SGT SCELLS: Correct.

10 COL STREIT: You've returned to your normal duties in that function on 9 August 2023; correct?

15 ACT SEN SGT SCELLS: Correct. I think I may have gone back to a couple of the briefings later, but I didn't have anything to offer to the investigation.

COL STREIT: You say at paragraphs 131 and 133 – some challenges in conducting the investigation:

20 *Overall, I had difficulty obtaining information from the ADF throughout the investigation.*

Correct?

25 ACT SEN SGT SCELLS: Correct.

COL STREIT: At 132, you say:

30 *At the time of completing this statement, I still have not received any statements from the ADF witnesses. I am unaware if these statements have been provided to the Forensic Crash Unit.*

Is that right?

35 ACT SEN SGT SCELLS: That's correct.

COL STREIT: At 133, you say:

40 *The absence of witness statements means that there was a delay in the report being provided to the Coroner.*

Is that correct?

45 ACT SEN SGT SCELLS: That's correct.

COL STREIT: Briefly, can I ask you, do you have access to the Victor Cloak Operations Log. Do you have a copy in front of you?

5 ACT SEN SGT SCELLS: Yes.

COL STREIT: Can I take you to the events of 31 July 2023 and the briefing on that day at 1700 hours, which commences with the words:

10 *1700 hours briefing. Briefing notes 1700 hours, 31 July 2023.*

ACT SEN SGT SCELLS: Yes, I've found that.

COL STREIT: So you'll see there some information attributed to the summary of what Superintendent Paine, Queensland Police Superintendent Paine, said at the start.

15 ACT SEN SGT SCELLS: Yes.

COL STREIT: You'll see the second dot point there. It says:

20 *QPS no take the lead of the operation to investigate on behalf of the Coroner.*

Is that a typo and it should read:

25 *QPS to take the lead of the operation to investigate on behalf of the Coroner.*

Is that your understanding?

30 ACT SEN SGT SCELLS: Yes, I believe it's a typo. That's what the intent of that comment is.

COL STREIT: Because it would be nonsensical for the ADF to take the lead on behalf of the Queensland Coroner; correct?

ACT SEN SGT SCELLS: Yes, correct.

COL STREIT: If you were to turn the page, the top of the page begins with a dot point:

40 *DVI had two teams today; one Leeding, and one at Mackay Morgue to photograph body matter.*

Then there's some other dot points. Then there is a summary of four dot points concerning words attributed to Assistant Commissioner Guteridge; correct?

5 ACT SEN SGT SCELLS: Correct.

COL STREIT: The first dot point says:

10 *The delay with the Coroner's Direction is because of the delay in receiving the statements from the witnesses.*

The second dot point says:

15 *Critical that these are provided to QPS. The Minister and high-ranking officers have stated that ADF will provide and be transparent. Need cooperation.*

Next dot point:

20 *There is an urgency from the Coroner to have these released.*

Next dot point:

25 *There has been engagement with Family Liaison Officers. We understand the sensitivity of process and issues and we want cooperation, not an investigation, not laying blame. We just want to assist the Coroner to understand what happened.*

Do you see those dot points?

30

ACT SEN SGT SCELLS: Yes.

COL STREIT: Do those dot point summary accord with your memory of what Assistant Commissioner said at that time?

35

ACT SEN SGT SCELLS: Correct.

COL STREIT: If you were to turn the page, you'll see some words attributed to DFSB Cooper. You'll see the fourth dot point of a summary of what's attributed to DFSB Cooper as follows:

40

45 *Statements that we want are specifically formatted and not like a "witness will say" statement. Request information. Some of these forms have been located today in personal bags left at the airport. They have been seized.*

Next dot point:

5 *Seven of 12 statements have been completed and received. Two from chopper 4 have been obtained.*

Next dot point:

10 *There needs to be a process completed prior to access to the statements, classified information, and names. This protects the soldiers and has the ability to get them to provide information they require.*

if you turn the page:

15 *Not be worried about getting into trouble. This helps to identify issues/problems and does not hide them.*

Next dot point:

20 *Request that DFSB remain separate from QPS investigation so that it does not scare off the soldiers to provide critical info.*

Next dot point:

25 *DFSB do not caution prior to obtaining statements and completing interviews.*

Next dot point:

30 *QPS need to do their own statements and interviews.*

35 So that summary of dot points attributed to words spoken by CMDR Cooper at that time, do those dot points accord with your recollection or your memory of what CMDR Cooper said?

ACT SEN SGT SCELLS: Yes, correct.

40 COL STREIT: So, in effect, CMDR Cooper is informing QPS that DFSB have obtained a number of statements from relevant witnesses, but those statements are obtained in a different format than what QPS would do. Correct?

45 ACT SEN SGT SCELLS: (No audible reply).

MR STREIT: And that the effect of what he was saying, was it, was that DFSB was not going to provide those statements to QPS and that QPS had to get its own statements?

5 MS MUSGROVE: I object to that. That's not a fair representation.

ACT SEN SGT SCELLS: Correct.

MS MUSGROVE: I object.

10

COL STREIT: I withdraw – rephrase.

MS McMURDO: Rephrase, please.

15 COL STREIT: Did CMDR Cooper say to you, do you recall, that DFSB would provide its statements to QPS?

ACT SEN SGT SCELLS: Not that I recall.

20 COL STREIT: You recall that CMDR Cooper said words to the effect that “QPS need to do their own statements and interviews”?

ACT SEN SGT SCELLS: I can't recall him specifically saying that.

25 COL STREIT: If you think back to the meeting, was that the impression that you were left with, was that QPS would have to get its own statements?

MS MUSGROVE: I object to that.

30 ACT SEN SGT SCELLS: Correct.

MS McMURDO: Yes, all right. Well, how about we just ask the witness what he does recall about the conversation?

35 COL STREIT: In relation to that conversation, if you think back to it – can you remember the conversation, or the effect of it?

ACT SEN SGT SCELLS: Yes, I do. Yes.

40 COL STREIT: At that time, when CMDR Cooper had finished speaking, was it your impression that QPS would not receive statements from DFSB? Was that your impression?

ACT SEN SGT CELLS: At the time, yes. I mean, it kept changing all the time. But at the time of this particular meeting, yes, that was the impression I got.

5 COL STREIT: Was it also your impression that that meant QPS would need to do and obtain its own statements from the ADF witnesses?

10 ACT SEN SGT CELLS: Yes. I remember there was discussions around us deploying to Sydney to try and go to the Army barracks. And the consensus, I think, at the end of that was that there was no point us going if once we got down there we were told we're not going to get statements anyway.

15 COL STREIT: That's my questions.

MS McMURDO: So the notes under DFSB Cooper there, are they accurate? Do they accurately reflect what happened?

20 ACT SEN SGT CELLS: To the best of my knowledge, yes, your Honour.

MS McMURDO: Thank you.

25 COL STREIT: They're my questions, Ms McMurdo.

MS McMURDO: So, generally, is it a fair summation then to say that in terms of cooperation between the ADF investigators and QPS investigators, you were cooperating and sharing all the information you had, but you weren't getting the same cooperation back?

30 ACT SEN SGT CELLS: Yes, your Honour. I think some people may have wanted to help, but for whatever reason they weren't allowed to – or they couldn't, for whatever reason.

35 MS McMURDO: Yes, thank you. Applications to cross-examine?

MS MUSGROVE: Yes, please.

40 MS McMURDO: Yes, Ms Musgrove.

<CROSS-EXAMINATION BY MS MUSGROVE

5 MS MUSGROVE: Officer, my name is Musgrove, and I appear for the Commonwealth in this matter. Can you hear me?

ACT SEN SGT CELLS: Yes, ma'am.

10 MS MUSGROVE: Thank you. It's the case that you were investigating on behalf of the Coroner, isn't it?

ACT SEN SGT CELLS: That's correct.

15 MS MUSGROVE: Were you aware that the Coroner had a phone conversation with an ADF Legal Officer on 1 August in which the Coroner said that there was no rush for the statements in question?

20 ACT SEN SGT CELLS: I believe so, yes. I believe I did hear about that at the time.

MS MUSGROVE: Are you aware that there was further correspondence between the Coroner and the ADF on 2 August that indicated that the Coroner was going on leave and, again, that there was no rush for the statements?

25 ACT SEN SGT CELLS: That's correct, yes. I believe he was having a week's leave.

30 MS MUSGROVE: Now, you arrived at the Proserpine Airport at approximately 1.30; is that correct?

ACT SEN SGT CELLS: I believe it was a little bit earlier. Might have been about 1, I believe.

35 MS MUSGROVE: Were you made aware that General Duties Police Officers from QPS had arrived at the base that had been set up there at approximately 12.30 am in the morning of 29 July?

40 ACT SEN SGT CELLS: I can't recall being told that specifically, but I'm sure I was at the time.

MS MUSGROVE: So you didn't make any enquiries with those General Duties Officers – and we have the names Aaron and Harris – who were there from approximately 12.30 am that morning?

45

ACT SEN SGT CELLS: No.

MS MUSGROVE: So you don't know what they may or may not have seen or recorded in their notebooks?

5

ACT SEN SGT CELLS: That's right. That's correct.

MS MUSGROVE: Were you aware that Senior Sergeant Dyer from Queensland Police arrived at the location at Proserpine Airport in the early hours on 29 July?

10

ACT SEN SGT CELLS: Yes, I was aware of that because he told me when I arrived at the airport. But I don't know how (indistinct).

15

MS MUSGROVE: So did he tell you what he had or had not observed in terms of what was going on at the location when he was there?

ACT SEN SGT CELLS: Yes, I believe he did, but I can't recall specifically what he said.

20

MS MUSGROVE: Did he tell you anything about any quarantining of evidence?

ACT SEN SGT CELLS: Not as far as I can remember.

25

MS MUSGROVE: So were you the second-most senior investigating officer under Officer Novosel in relation to this investigation?

ACT SEN SGT CELLS: Yes.

30

MS MUSGROVE: Did you make any notes about your conversations with Senior Sergeant Dyer when you arrived at Proserpine Airport?

ACT SEN SGT CELLS: No, I did not.

35

MS MUSGROVE: Were you aware that Senior Sergeant Dyer took over from Senior Sergeant McDowell, also of the QPS, when he arrived in the early hours of the morning of the 29th?

40

ACT SEN SGT CELLS: I believe it may have been mentioned, but I can't recall specifically.

MS MUSGROVE: As an investigating officer, is it not important for you to have a clear understanding as to what has occurred whilst other officers have been at a site that is obviously going to be under investigation?

45

ACT SEN SGT CELLS: That's correct.

5 MS MUSGROVE: Would it not have been best practice for you to have made notes about what you were informed had occurred by those other officers before you arrived?

10 ACT SEN SGT CELLS: Correct. But I don't believe they had any – they hadn't done an investigation. They were just basically at the scene.

MS MUSGROVE: So they were just basically at the scene from very early in Sunday morning – sorry, the morning of the 29th; correct?

15 ACT SEN SGT CELLS: Correct. Well, I don't know what time – yes, before me.

MS MUSGROVE: And that's the scene that is clearly of interest to your investigation as to what may or may not have happened at that camp?

20 ACT SEN SGT CELLS: Correct.

MS MUSGROVE: And you didn't take any notes?

25 ACT SEN SGT CELLS: No.

MS MUSGROVE: Now, the two detectives that you tasked to attend Proserpine Airport, they're trained detectives?

30 ACT SEN SGT CELLS: Correct.

MS MUSGROVE: What time did you task them to go out there?

35 ACT SEN SGT CELLS: In the morning, probably – maybe about 9 o'clock, 9.30.

MS MUSGROVE: They had training on how to take statements from witnesses?

40 ACT SEN SGT CELLS: Those officers, sorry?

MS MUSGROVE: Yes.

ACT SEN SGT CELLS: Yes, they have.

45 MS MUSGROVE: So if they're operating in the investigation unit,

they're skilled at taking witness statements?

ACT SEN SGT CELLS: That's correct.

5 MS MUSGROVE: They're skilled investigators?

ACT SEN SGT CELLS: Correct.

10 MS MUSGROVE: Did you tell them there was any level of urgency for them to get to the airport to commence their investigations?

ACT SEN SGT CELLS: I wasn't aware whether there was at that stage, if I can recall correctly. I think I was waiting for further instructions.

15 MS MUSGROVE: Sorry, did I just hear you say you didn't think there was any particular level of urgency for the investigators to get to the Proserpine Airport that morning?

20 ACT SEN SGT CELLS: I didn't say that. I said I wasn't aware of what the level of urgency was, I'm sorry. I was waiting for further instructions about what our particular involvement would be.

MS MUSGROVE: So you think you contacted them, what, around 9-ish? Is that right?

25

ACT SEN SGT CELLS: I believe so, yes.

MS MUSGROVE: There's evidence that they arrived around 11.30 am. How far is where they were located to Proserpine Airport?

30

ACT SEN SGT CELLS: It's about half an hour.

MS MUSGROVE: About half an hour, okay. So if they arrived at 11.30, can you explain why it took that long for them to get there?

35

ACT SEN SGT CELLS: Well, Detective Lozach wasn't working, so he obviously had to come in from whatever he was doing. He had started earlier. So I believe Detective Carland was waiting for him to arrive.

40 MS MUSGROVE: I see. You arrived at 1. That's correct?

ACT SEN SGT CELLS: Yes, I believe so.

45 MS MUSGROVE: And those two investigators had already spoken to three of the Bushman 84 crew. That's correct?

ACT SEN SGT CELLS: Yes, that's correct.

5 MS MUSGROVE: Do you know how long each of those investigations took?

ACT SEN SGT CELLS: To talk to them?

10 MS MUSGROVE: Yes.

ACT SEN SGT CELLS: How long the statements took?

MS MUSGROVE: Yes.

15 ACT SEN SGT CELLS: Off the top of my head, I think probably about 10 minutes each, I think. I think they were about to get on a flight.

MS MUSGROVE: How many other police officers were at the Proserpine Airport whilst those investigators were there talking to the crew members?
20

ACT SEN SGT CELLS: I couldn't tell you. There was one other officer with them at the time.

MS MUSGROVE: So there was three officers from your unit; is that correct?
25

ACT SEN SGT CELLS: No, there was two from mine, and there was one from the Forensic Crash Unit.

30 MS MUSGROVE: If it was the case that there were other police officers present at the airport during that morning, your officers could have tasked them to take other statements of other witnesses if they had wanted to do so, couldn't they?

35 ACT SEN SGT CELLS: Correct.

MS MUSGROVE: But they didn't do so, to your knowledge?

40 ACT SEN SGT CELLS: Not to the best of my knowledge, no.

MS MUSGROVE: You don't know what time it was that the crew –
6 Aviation actually left Proserpine Airport to travel back to Sydney, do you?

45 ACT SEN SGT CELLS: No, I don't.

5 MS MUSGROVE: So it would have been possible, wouldn't it, if QPS have had at least General Duties Officers there, from 12.30 approximately that morning, for further statements to be taken at the airport before any of 6 Aviation left? That's correct, isn't it?

ACT SEN SGT CELLS: That's correct.

10 MS MUSGROVE: But that didn't happen.

ACT SEN SGT CELLS: No.

15 MS MUSGROVE: Now, you said it would have been best practice for everything to be left in situ of the aircrewman who had passed away, for police to investigate. That's correct?

ACT SEN SGT CELLS: Correct.

20 MS MUSGROVE: Again, if there were QPS Officers there from 12.30 in the morning, it could have been open to them to go and investigate and quarantine if they'd wanted to; correct?

25 ACT SEN SGT CELLS: Well, that's correct. But they're all – which officer do you say was – Harris, was it?

30 MS MUSGROVE: There was two officers named as having arrived. They were General Duties Officers and they arrived at approximately 12.30. I'm not speaking about them in particular, because Senior Sergeant Dyer arrived in the early hours of the morning, along with other QPS Officers. So it was a general proposition that if they had have had concerns and had have wanted to, they could have gone into the crew tents and quarantined their items; correct?

35 ACT SEN SGT CELLS: That's correct, yes.

MS MUSGROVE: Did you make any enquiries with those people who did actually move the items to place into the quarantine area?

40 ACT SEN SGT CELLS: No.

MS MUSGROVE: No. But you were given the names of the ADF members who actually moved those items into the quarantine area, by PO Theissen, weren't you?

45 ACT SEN SGT CELLS: I believe so, yes.

MS MUSGROVE: So it could have been open to you, when he gave you those names, to go and speak to those personnel or make enquiries of those personnel?
5

ACT SEN SGT SCELLS: Correct.

MS MUSGROVE: You could have asked them if they took photos before they touched anything, couldn't you?
10

ACT SEN SGT SCELLS: Correct.

MS MUSGROVE: You didn't?

15 ACT SEN SGT SCELLS: Not as far as I remember.

MS MUSGROVE: That would have been best practice in policing, wouldn't it?

20 ACT SEN SGT SCELLS: Yes.

MS MUSGROVE: When your two detectives and PO Theissen went through the items that belonged to the deceased aircrew, did they take notes?
25

ACT SEN SGT SCELLS: I believe so, yes.

MS MUSGROVE: Did they take photos?

30 ACT SEN SGT SCELLS: I believe so, yes.

MS MUSGROVE: At least one of your officers had a body-worn camera on. Did they record what they did?

35 ACT SEN SGT SCELLS: I believe they did, yes.

MS MUSGROVE: Has that been provided to the Inquiry?

ACT SEN SGT SCELLS: I don't know whether it has or not.
40

MS MUSGROVE: Just in terms of – you were asked some questions by my friend about what Mr Cooper from DFSB had said, and that was on 31 July. It reads, and I'm just going to read this out to you:

ACT SEN SGT CELLS: Pretty much, your Honour. I mean, a lot of it's similar. But there's also things that we'll do in a criminal investigation that we won't do in a Coronial investigation.

5 MS McMURDO: So when you're taking statements for a Coronial Investigation, is it necessary to warn people that they don't have to answer questions, et cetera?

10 ACT SEN SGT CELLS: No.

MS McMURDO: No. Thank you.

15 MS MUSGROVE: It's the case, isn't it, that during a Coronial investigation, if you find evidence of illegal activity, the Coroner can pause their Coronial process and refer that for criminal investigation and criminal prosecution? That's the case, isn't it?

ACT SEN SGT CELLS: That's correct.

20 MS MUSGROVE: If that was to happen, it would be QPS that would be tasked to undertake that investigation. That's correct?

ACT SEN SGT CELLS: Correct.

25 MS MUSGROVE: So it's always a possibility, isn't it, depending on the evidence that comes out, that a Coronial investigation can actually lead to a criminal investigation and perhaps prosecution?

ACT SEN SGT CELLS: Correct.

30 MS MUSGROVE: No further questions.

MS McMURDO: Thank you. Yes?

35

<CROSS-EXAMINATION BY SQNLDR NICOLSON

40 SQNLDR NICOLSON: Good morning, Detective. My name is SQNLDR Nicolson. I appear for D10. So I've just got some very limited questions about D10. So can I take you to your statement, that's the Annexure A, which is the email that you referred to in evidence of 4 August that you sent through to a William Morrison at Defence.

45

ACT SEN SGT CELLS: One second, sorry. I'll just find it.

SQNLDR NICOLSON: Just let me know when you have that document in front of you.

5 ACT SEN SGT CELLS: Yes, Annexure A.

SQNLDR NICOLSON: Correct. So if we look at Annexure A – probably the first page refers to the pseudonym D10, in terms of in italics – a version of events that you replicated in the email and sent that to Mr Morrison. Correct?

10 ACT SEN SGT CELLS: Correct.

SQNLDR NICOLSON: Did you source that information from the police database, QPRIME?

15 ACT SEN SGT CELLS: Correct.

SQNLDR NICOLSON: Are you aware of who took the original notes that police – sorry, Plain Clothes Senior Constable Lozach had with D10? He would have done the notes handwritten into his police diary; is that how you understand it?

20 ACT SEN SGT CELLS: I believe so, yes.

SQNLDR NICOLSON: And someone would have taken those handwritten notes and put them into the police QPRIME database system?

25 ACT SEN SGT CELLS: Yes. Well, I believe it was him, because I think the annexure was from him.

SQNLDR NICOLSON: Do you know who did that? Was it Lozach himself? It wasn't you?

30 ACT SEN SGT CELLS: No, I'm pretty sure it was Lozach, that one.

SQNLDR NICOLSON: Have you seen the original handwritten notes that Lozach did on the day that he spoke with D10?

35 ACT SEN SGT CELLS: Yes.

SQNLDR NICOLSON: Are you able to source that information and provide that to this Inquiry? That's the original handwritten notes of Lozach in his diary.

40 ACT SEN SGT CELLS: Yes.

SQNLDR NICOLSON: Are you able to source that information and provide that to this Inquiry? That's the original handwritten notes of Lozach in his diary.

45

ACT SEN SGT CELLS: I may be able to. Obviously it's not my diary, so I don't have access to it, though I can certainly make enquiries to try and find it.

5 SQNLDR NICOLSON: Thank you. Also, just following up on that, can I take you to your police diary that was tendered as Exhibit 81 for the record this morning?

10 ACT SEN SGT CELLS: Yes.

SQNLDR NICOLSON: So we had obviously – that's your notes that you did on your commencement or recall to duty.

15 ACT SEN SGT CELLS: Yes.

SQNLDR NICOLSON: Can I just take you just to page 1 and 2 of your diary? Probably about halfway down the page of page 2 there's obviously the pseudonym D10 being blacked out? Sorry, I've got the first page - - -

20 ACT SEN SGT CELLS: Yes.

SQNLDR NICOLSON: Yes. So your page is your front cover of your diary. The second page contains, I think your recall to duty about – was it about midday on 29 July?

25 ACT SEN SGT CELLS: Yes.

SQNLDR NICOLSON: And then the second page, I think has a number 278 on that page, and about a third of the way down there's a black-out version with D10 there?

30 ACT SEN SGT CELLS: Yes, that's correct, yes.

35 SQNLDR NICOLSON: So from reading those first two pages of your diary, there's obviously a recall about – from your investigation about what information that you received when you commenced duty.

ACT SEN SGT CELLS: Yes.

40 SQNLDR NICOLSON: Was that source of the information from Plain Clothes Senior Constable Lozack when you were recalled to duty? Is that your understanding?

45 ACT SEN SGT CELLS: Yes, that's correct.

5 SQNLDR NICOLSON: And that would have been from what Plain Clothes Senior Constable Lozach had been told or informed by D10 at that stage? Is that your understanding?

ACT SEN SGT SCELLS: Correct.

10 SQNLDR NICOLSON: So basically from when you attended on recall of duty, you spoke to your junior officers and they were able to give you a bit of situational awareness about what they had spoken to and they had spoken to D10 at that stage and he provided an account, to the best of your knowledge?

ACT SEN SGT SCELLS: Correct.

15 SQNLDR NICOLSON: And in terms of that account, that obviously was replicated in Annexure A to your statement. That's the email that you sent to Mr Morrison on 4 August?

20 ACT SEN SGT SCELLS: That's correct.

25 SQNLDR NICOLSON: And there's no other information, in terms of D10, that you've got in terms of – apart from that Annexure A about the account that was given?

ACT SEN SGT SCELLS: Just from that, what he was – what he said to DSC Lozach.

30 SQNLDR NICOLSON: Thank you.

MS McMURDO: Thank you, SQNLDR Nicolson. Any other applications to cross-examine? Yes, COL Thompson.

35 **<CROSS-EXAMINATION BY COL THOMPSON**

40 COL THOMPSON: Senior Sergeant Scells, COL Thompson is my name. I represent the interests of BRIG Thompson, who is mentioned in your report. You can hear me all right?

ACT SEN SGT SCELLS: Yes, sir.

COL THOMPSON: Can I take you to paragraph 20 of your statement, and you mention the coordination of the investigation. Would you agree that - - -

5 ACT SEN SGT SCELLS: Yes.

COL THOMPSON: - - - the investigation had two components? Firstly, QPS were acting as agent for Queensland Coroner. You'd agree with that?

10 ACT SEN SGT SCELLS: Correct.

COL THOMPSON: Secondly, you would have been looking for any prima facie evidence of a crime?

15 ACT SEN SGT SCELLS: I mean, I wouldn't say we were looking for it, but obviously, yes, if we stumbled across anything like that as part of a Coronial investigation, then, yes, we'd definitely act on it.

20 COL THOMPSON: Thank you. Sorry, I missed that bit? "If we stumbled across something like that", is that what you said?

ACT SEN SGT SCELLS: Yes. If we had – in the course of our Coronial investigation, if we had come across evidence of a criminal investigation, then obviously we would get onto that as well.

25

COL THOMPSON: Yes. And, indeed, DI Novosel has given evidence to this Inquiry on two occasions, on 18 June 24 and 17 August 2024, and she used those words, "looking for prima facie evidence". They're not my words; they were the words that she used.

30

MS McMURDO: Well, what is he supposed to say about that, COL Thompson? That's a comment, isn't it? You can put that in your addresses. There's no - - -

35 COL THOMPSON: I was about to ask the witness whether he would agree with DI Novosel.

MS McMURDO: Well, we have already gone through this with other witnesses. You don't put to a witness, particularly in a hierarchical situation, what another witness said. You can ask him the question, would he agree blah, blah. Well, you've already done that now. You've already told him that Detective Inspector Novosel said this. It is not the way to ask questions.

40

You should simply have asked whether he would agree that they were looking for prima facie evidence, if that's what you want to say.

5 COL THOMPSON: I agree with you, ma'am. I withdraw the question.

MS McMURDO: Thank you.

10 COL THOMPSON: I think you have already answered the question, thank you, Senior Sergeant.

MS McMURDO: Well, he hasn't.

15 COL THOMPSON: I did ask him about his views in relation to looking for prima facie evidence of a crime.

MS McMURDO: Yes.

COL THOMPSON: Yes.

20 MS McMURDO: Yes.

25 COL THOMPSON: Now, if we can turn to paragraph – sorry, paragraph 21, you arrived on the scene at Proserpine Airport at 1 pm on 29 July 2023. Just remind me about how long your colleagues, your QPS colleagues, had been at the scene on that morning?

ACT SEN SGT CELLS: Do you mean as in my staff that I had sent there, or the QPS Officers in general?

30 COL THOMPSON: Yes. Yes, we heard evidence, I think, that they'd been there since 12.30 am that morning; is that right? Or did I misunderstand that?

35 ACT SEN SGT CELLS: No, I believe that's what was said before, yes. I can't recall that specifically, but I'm not surprised by it.

COL THOMPSON: Sorry, would you agree that your colleagues had been there since 12.30 am that morning?

40 ACT SEN SGT CELLS: To the best of my knowledge, yes. They'd been there early in the morning. I don't know what time, but I know they'd been there early.

45 COL THOMPSON: And they'd been working in their role as QPS investigators since the time that they'd arrived early that morning?

ACT SEN SGT CELLS: I don't think they were working as investigators. If it was three General Duties Officers, they would've been, for anything else, just to guard the camp.

5

COL THOMPSON: And they told you that they had taken a statement – “they” being Detective Senior Constable Carland, Detective Senior Constable Lozach – that they had taken statements from D10, D11 and D12.

10

ACT SEN SGT CELLS: Sorry, sir, I thought you meant that earlier, the officers that arrived first of all, yes. But in relation to my investigators, yes, they had arrived about 11 o'clock and they had obtained statements – or versions, sorry, from those three airmen.

15

COL THOMPSON: Now, at paragraph 36 on page 5 of your statement, you spoke to BRIG Dean Thompson and, in paragraph 37 there, did you get any sense of obstruction on behalf of the Army with regard to QPS's investigation from BRIG Thompson?

20

ACT SEN SGT CELLS: No.

COL THOMPSON: Thank you. Well, did you get a sense of cooperation by BRIG Thompson during that - - -

25

ACT SEN SGT CELLS: Yes, I believe – I didn't sense any untoward talking to BRIG Thompson.

COL THOMPSON: Thank you. At paragraph 39 you spoke to PO Theissen – I hope I am pronouncing it - - -

30

MS McMURDO: It's Theissen, I believe.

COL THOMPSON: Theissen, I beg your pardon, ma'am. PO Theissen?

35

ACT SEN SGT CELLS: Correct.

COL THOMPSON: Did he voice any complaints to you about frustration on his part in relation to obstruction by the Army with regard to his investigation, or QPS's investigation?

40

ACT SEN SGT CELLS: Do you mean at this time, at the airport?

COL THOMPSON: At this time, and this conversation in paragraph 39.

45

ACT SEN SGT CELLS: No, he didn't express anything like that.

COL THOMPSON: Can you turn to - - -

5 MS McMURDO: What about later, did he express any frustration later?

ACT SEN SGT SCELLS: Yes, your Honour, I believe there was some frustration later on.

10 COL THOMPSON: And have you dealt with that in your statement?

ACT SEN SGT SCELLS: I think it's clear in the emails that I'm sending him.

15 COL THOMPSON: We will get to those. At paragraph 52 of your statement, you arrived on scene at 7 am on 30 July 2023. And in paragraph 56 you say you requested typed statements from the witnesses from helicopter 4. Do you see that?

20 ACT SEN SGT SCELLS: Yes.

COL THOMPSON: To whom did you put that request? Was it PO Theissen? Was it someone else?

25 ACT SEN SGT SCELLS: I think it was PO Theissen, because he was basically the person that all my requests were going through to at this stage.

COL THOMPSON: In any event, it was someone in the Army, was it, rather than someone in QPS that you made that request?

30 ACT SEN SGT SCELLS: Yes. Yes, someone in the ADF, yes.

35 COL THOMPSON: And, of course, by that stage, the 6 Avn Regiment crew members had long gone back to their home base at Holsworthy in Sydney?

ACT SEN SGT SCELLS: That's correct, yes.

40 COL THOMPSON: And you say in paragraph 58 that the witness statements could be completed in the next few days. You were content with that?

MS McMURDO: Would be completed, yes.

45 COL THOMPSON: Sorry, would be completed in the next few days, yes, from 30 July. Were you - - -

5 ACT SEN SGT CELLS: I mean, I would've liked it sooner but, you know, I also can understand what these people had been through and that potentially – you know, seeing the deaths of some of their colleagues. So I was happy to wait a couple of days if need be.

10 COL THOMPSON: So you were content with the Military Police taking the statements in the next few days – that is, at the time – on 30 July 2023, you were content with that arrangement for the Military Police taking the statements?

15 ACT SEN SGT CELLS: Yes, like I said, only because they had obviously been through a traumatic incident. I didn't want to be breathing down their necks to get the statements. Obviously, you want to give these people a chance to think about what had happened before, you know, obviously having investigators talk to them and try and get every single little bit of information out that they recall.

20 COL THOMPSON: I am not so much asking about the timing of the statements. I'm asking about whether you were content with the Military Police effectively acting as agents for QPS in taking the statements from the aircrew?

25 ACT SEN SGT CELLS: Yes. Well, yes. Well, it sort of seemed like we didn't have much choice. If we were going to get any information, we thought, "Well, hopefully if the Military Police can provide it to us, then we might have half a chance of working out what's going on".

30 COL THOMPSON: You had no concerns about the competency, the ethics, or otherwise, of the Military Police to take the statements?

35 ACT SEN SGT CELLS: No, I mean, they're trained investigators as well.

COL THOMPSON: And so it made no difference whether the Military Police were taking the statements from the aircrew at Proserpine or at Holsworthy?

40 ACT SEN SGT CELLS: Ideally, yes, we would have preferred them at Proserpine, but if that's what we had to deal with, yes. So I was happy for ADF - - -

45 COL THOMPSON: Why would it have made it – sorry, why? Why would you prefer it to be at Proserpine?

ACT SEN SGT CELLS: Because we would've had the information a lot sooner.

5 COL THOMPSON: Now, can you turn to Exhibit A to your statement? This is an email of 4 August 2023, two pages long, and they are the statements taken from D10, D11 and D12 by your colleagues.

ACT SEN SGT CELLS: Mm-hm.

10

COL THOMPSON: And if you look at the top of the email, it says, in normal font:

15

Version obtained while aircraft was airside awaiting to depart with witness.

And that was the case with each of those three witnesses, wasn't it?

ACT SEN SGT CELLS: Yes, three versions, yes.

20

COL THOMPSON: Have you any concerns that the witness statements were taken in a rushed way, in a hurried way and therefore weren't as complete as they might otherwise have been if they weren't waiting to board aircraft?

25

ACT SEN SGT CELLS: Yes, correct. It was not the ideal circumstances, or ideal location to be taking statements from.

30

COL THOMPSON: But, Senior Sergeant, these statements, they look good to me. Would you agree that it's a good statement, with the statements from those three witnesses?

ACT SEN SGT CELLS: They're a - - -

35

COL STREIT: Just - - -

ACT SEN SGT CELLS: Yes, I agree it's a good start, but they're not as detailed as what we would have obtained if we sat down.

40

COL STREIT: I object. Counsel's opinion about the quality of an item of information is irrelevant. If the question could be put another way?

45

COL THOMPSON: I press it. I'm asking the witness about his opinion about the quality of the statement.

COL STREIT: You told him you thought they were good. That's what I'm objecting to.

COL THOMPSON: I will withdraw the question.

5

Is it your opinion that this was a good start? The quality of these three statements in your email of 4 August 2023, they're good quality given the circumstances that they were taken on 29 July 2023?

10 MS McMURDO: Whilst airside, awaiting to depart.

COL THOMPSON: Whilst airside, waiting to depart?

15 ACT SEN SGT CELLS: They're a good start, considering the circumstances they were taken in.

COL THOMPSON: Thank you. Now, if you can turn to Annexure B, which is your email of 30 July 2023, starting at; "Hi Casey". That's PO Theissen, and you're referring to D10, D11 and D12 there. When you sent that email on 30 July, did you know that your colleagues had already taken statements from D10, D11 and D12?

20

ACT SEN SGT CELLS: Yes, I did. Well, they had taken versions, not statements.

25

MS McMURDO: Were they signed, those versions that they had taken?

ACT SEN SGT CELLS: I don't believe they were, your Honour. They were just written in police diaries.

30

COL THOMPSON: Sorry, the statements we're talking about are at Annexure A. That's in your email – that they had been transcribed in your email, aren't they?

35 ACT SEN SGT CELLS: Yes.

COL THOMPSON: So my question - - -

40 ACT SEN SGT CELLS: Well, these aren't statements; they're versions. There's a difference.

COL THOMPSON: Well, they are still evidence taken from the three witnesses, aren't they?

45 MS McMURDO: Yes. Of course, they - - -

ACT SEN SGT CELLS: Yes, but they are very basic.

5 MS McMURDO: They weren't signed. Okay, can we move on?

COL THOMPSON: So, on 30 July when you sent that email at Annexure B to PO Theissen, did you know that the versions at Annexure A had been taken?

10 ACT SEN SGT CELLS: Yes.

COL THOMPSON: Thank you. So you are asking for further evidence beyond those versions? Perhaps signed statements or - - -

15 ACT SEN SGT CELLS: I was after a statement, yes.

COL THOMPSON: If you can go to your notebook, please, which is Exhibit 81, and on page 2, halfway down the page, you'll see a reference there to BRIG Thompson, Dean, and that would've been the note of the conversation that you had with him that we've spoken about in
20 paragraphs 36 and 37 of your statement.

ACT SEN SGT CELLS: Mm-hm.

25 COL THOMPSON: Your handwriting is a lot better than mine, but what does "CO BRIG Thompson" mean? "CO", is that an abbreviation for - - -

ACT SEN SGT CELLS: Commanding Officer.

30 COL THOMPSON: Commanding Officer. And just after the – in the line "Thompson, Dean", is that "16th" something. What does that say?

ACT SEN SGT CELLS: 16 Aviation.

35 COL THOMPSON: And then there's a redacted bit. Does the conversation with BRIG Thompson end at the redacted bit?

ACT SEN SGT CELLS: Where's the redacted bit?

40 COL THOMPSON: Sorry, you might not have – well, after the words, "Thompson, Dean", is that the end of your note of the conversation with BRIG Thompson?

45 ACT SEN SGT CELLS: No. No, it goes over to the next page.

COL THOMPSON: All right. Continuing on at the bottom of page 2, what does that say? “40”, or something?

5 ACT SEN SGT CELLS: The bottom of page 2? So underneath where we were just talking to BRIG Thompson?

COL THOMPSON: Yes. Sorry, to be precise, three lines after where you’ve written his name, “Thompson, Dean”, what would be written there?

10 ACT SEN SGT CELLS: Yes, okay. So, yes, the third one is his phone number, so I guess that’s why it’s been redacted.

COL THOMPSON: I see, all right. What’s after that?

15 ACT SEN SGT CELLS: “40 metres of water”.

COL THOMPSON: Yes, thank you.

ACT SEN SGT CELLS: And then “investigate”.

20 COL THOMPSON: “Investigate”.

ACT SEN SGT CELLS: Sorry, ‘investigator.’

25 COL THOMPSON: And after that, still a conversation with BRIG Thompson?

30 ACT SEN SGT CELLS: Yes. So he told the investigators – and, obviously, that’s where CMDR Dominic Cooper – who that was, and then I’ve gone into the deceased airmen.

COL THOMPSON: Thank you. So the end of the conversation with BRIG Thompson, is that on page 3 of your notebook?

35 ACT SEN SGT CELLS: Yes, I believe so.

COL THOMPSON: Approximately, where? What, halfway down?

40 ACT SEN SGT CELLS: Above the bit that says the names of the officers there, so “QPS on scene”.

COL THOMPSON: Thanks, Senior Sergeant. Nothing more. Thank you, ma’am.

MS McMURDO: Thank you, COL Thompson. Any other applications to cross-examine? Any re-examination?

5 MS ROLOGAS: No re-examination.

MS McMURDO: Any re-examination?

COL STREIT: Very briefly.

10

<FURTHER CROSS-EXAMINATION BY COL STREIT

15 COL STREIT: Acting Senior Sergeant, you were asked some questions by COL Thompson in relation to what you have described as a version of events given by three witnesses comprising Annexure A of your statement. Do you recall those questions from COL Thompson?

ACT SEN SGT SCELLS: Yes.

20

COL STREIT: If you go to Annexure E?

ACT SEN SGT SCELLS: Yes.

25

COL STREIT: Go to Annexure E. At Annexure E is the email you've sent to CAPT Scott Moon and LTCOL Tennille Marsh; correct?

ACT SEN SGT SCELLS: That's correct.

30

COL STREIT: And that email contains 13 questions or areas that you're asking for witnesses to answer and provide a statement to address; correct?

ACT SEN SGT SCELLS: That's correct.

35

COL STREIT: And one of those issues, number 5, is for a witness to address any fatigue issues; correct?

ACT SEN SGT SCELLS: Correct, yes.

40

COL STREIT: Another one is at 9, what each individual witness saw leading up to and including when the aircraft struck the water; correct?

ACT SEN SGT SCELLS: Correct.

COL STREIT: Number 12, for example, is if anyone had noticed any particular problems with any of the aircraft?

5 ACT SEN SGT SCELLS: Correct.

COL STREIT: So you gave some evidence that the versions of events provided by witnesses were a good start. Do you remember giving that response to COL Thompson?

10 ACT SEN SGT SCELLS: That's correct, yes.

COL STREIT: The answers to the 13 questions you were asking the ADF for witnesses to address, they would provide Queensland Police with a far more fulsome appreciation of the circumstances concerning the accident, wouldn't they?

15 ACT SEN SGT SCELLS: That's correct, yes.

COL STREIT: Thank you. Nothing further.

20 MS McMURDO: Yes. Thanks very much for your assistance, Senior Sergeant Scells. You're free to go now. Thank you.

ACT SEN SGT SCELLS: Thank you, your Honour.

25 **<WITNESS WITHDREW**

30 MS McMURDO: We'll call the next witness?

COL STREIT: Yes, thank you.

35 MS McMURDO: And whilst we're calling the next witness, could I just say, I know we're sitting very long hours to try and get through all the witnesses listed for these sittings and to progress the Inquiry, and could I just say for Counsel representing if, at any time, you feel you need to get up and have a stretch – I know the conditions are not terribly comfortable there that you're sitting at with the chairs and so forth – if you need to have a stretch or comfort break, feel free to go out and do that. If you actually need for an adjournment, please just contact COL Streit or one of the Counsel Assisting and let me know, all right?

COL STREIT: Thank you. Ms McMurdo, I call Mr James Noel Roberts. May I have the Inquiry's permission to depart the lectern to speak to our video people briefly?

5 MS McMURDO: Of course. Yes, of course. And I remind you too, there is a five-minute delay with the screening outside. So if you are worried about missing something, you could probably catch up outside.

10 <MR JAMES NOEL ROBERTS, Sworn

<EXAMINATION-IN-CHIEF BY COL STREIT

15 MS McMURDO: Have a seat please, and let me know if you need a break at any time.

MR ROBERTS: Thank you.

20 MS McMURDO: Thank you. Yes, COL Streit.

COL STREIT: Thank you, Ms McMurdo.

25 Mr Roberts, could you please state your full name?

MR ROBERTS: It's James Noel Roberts.

30 COL STREIT: And, Mr Roberts, you presently reside in Dalby; is that correct?

MR ROBERTS: That's correct, yes.

35 COL STREIT: And you are presently employed as a teacher in Dalby; is that correct?

MR ROBERTS: That's correct.

40 COL STREIT: You, in July 2023, were a volunteer with the Volunteer Marine Rescue in the Whitsundays; is that correct?

MR ROBERTS: That's correct.

45 COL STREIT: And as a consequence of you becoming aware of this Inquiry conducted by the Inspector-General of the Australian Defence

Force into the crash of an MRH-90 aircraft on 28 July 2023, did you make a submission to the Inquiry informing the Inquiry of information you had relevant to what the Inquiry was examining?

5 MR ROBERTS: Before today?

COL STREIT: Yes.

MR ROBERTS: Yes.

10

COL STREIT: And as a result of that submission, were you subsequently interviewed by representatives of the Inquiry and provided a statement to the Inquiry?

15 MR ROBERTS: Yes.

COL STREIT: Can I show you a document? Mr Roberts, just take your time to have a look at that document to satisfy yourself that it is a copy of your statement, including with annexures.

20

MR ROBERTS: Yes, that's the information that I supplied.

COL STREIT: Thank you. So, Mr Roberts, can I just ask you this: the document that you have just reviewed, is that your statement to this Inquiry signed by you on 14 October 2024?

25

MR ROBERTS: Yes.

COL STREIT: And does your statement contain four annexures?

30

MR ROBERTS: Yes, it does.

COL STREIT: And those annexures comprise information that you have provided to the Inquiry. Is that correct?

35

MR ROBERTS: That's correct.

COL STREIT: Ms McMurdo, I tender the statement of Mr James Roberts of 14 October 2024, inclusive of Annexures A to D.

40

MS McMURDO: I think it's actually E, isn't it?

COL STREIT: Sorry, I apologise, Annexures A to E.

MS McMURDO: Yes, the statement of Mr Roberts and the Annexures A to E will be Exhibit 83.

5 **#EXHIBIT 83 - STATEMENT OF MR ROBERTS
AND ANNEXURES**

10 COL STREIT: Thank you. Mr Roberts, I am going to move through parts of your statement. The entirety of your statement is now evidence before the Inquiry, and I will just ask you some questions relevant to particular parts of your statement. Before I do that, can I just confirm that you received a section 23 Notice to be here today?

15 MR ROBERTS: Yes.

COL STREIT: And also, a Guide for Witnesses Appearing in IGADF Inquiries?

20 MR ROBERTS: Yes.

COL STREIT: A Privacy Notice?

25 MR ROBERTS: Yes.

COL STREIT: A copy of Counsel Assisting's Instrument of Appointment?

30 MR ROBERTS: Yes.

COL STREIT: And did you also receive an extract of the Inquiry's Directions?

35 MR ROBERTS: Yes.

COL STREIT: Now, just dealing with matters in your involvement in the Volunteer Marine Rescue, and starting at paragraph 5 of your statement, you commenced volunteer service with the Volunteer Marine Rescue in June 2021. Is that correct?

40 MR ROBERTS: That's correct.

COL STREIT: And the Volunteer Marine Rescue is a non-profit volunteer organisation based at Airlie Beach; correct?

45

MR ROBERTS: That's correct.

5 COL STREIT: And the primary purpose is to ensure that the boating public remain safe in the Whitsunday area and that the Volunteer Marine Rescue Whitsunday volunteer boat crew provides a First Responders emergency service 24 hours a day, seven days a week. Is that correct?

MR ROBERTS: That's correct.

10 COL STREIT: And that the Volunteer Marine Rescue service who, from hereon in I'll refer to as VMR, they also assist Water Police – that is, Queensland Police Water Police – with search and rescue and assist ambulance crew with medical evacuations.

15 MR ROBERTS: That's correct.

COL STREIT: And in the Whitsundays, the VMR operates two vessels, VMR1 and VMR2, out of the Coral Sea Marina.

20 MR ROBERTS: That's correct.

COL STREIT: And where is the Coral Sea Marina located?

25 MR ROBERTS: In Airlie Beach. In Airlie Beach.

COL STREIT: At Airlie Beach, thank you.

MR ROBERTS: Yes.

30 COL STREIT: So, briefly, VMR1 is the main vessel. It's equipped with full medical supplies, including stretchers, oxygen and defibrillation packs, as well as search and rescue tools and equipment.

35 MR ROBERTS: Correct.

COL STREIT: It is a Noosa Cat 4400 FB Patrol, just under 12 metres long, and 4.5 metres across the beam?

40 MR ROBERTS: That's correct.

COL STREIT: Now, it has a capacity – or a range, rather, of 300 nautical miles?

45 MR ROBERTS: That's correct.

COL STREIT: It's able also to tow other vessels or items it obtains out of the water.

MR ROBERTS: Yes.

5

COL STREIT: It's fitted with state-of-the-art Furuno – have I pronounced that correctly?

MR ROBERTS: That's correct.

10

COL STREIT: Furuno electronics with touchscreen technology Forward-Looking Infrared radar which can pick up a person in the water up to 900 metres away from the vessel.

MR ROBERTS: That's correct.

15

COL STREIT: And VHF radio direction finder and forward-looking sonar.

MR ROBERTS: Yes.

20

COL STREIT: VMR2 is a purpose-built rescue vessel. It's 6.7 metres long. You say it's not as powerful as VMR1 but is capable of travelling at speeds up to 30 knots, making it an ideal emergency vessel. It is specifically efficient and effective with shallow areas; very capable of assisting vessels under eight metres long. It has foldout stepdown for beach landings and very useful in shallow bays. It's fitted with state-of-the-art Furuno electronics, radar and AIS, with touchscreen technology, equipped with life ring, harness-type life jackets, safety kit and medical kit. Correct?

25

30

MR ROBERTS: That's correct.

COL STREIT: And it has identical Furuno plotters, GPS, sonar, radar and AIS, which is automatic identification system to VRM1 to enable interchangeable crewing.

35

MR ROBERTS: Correct.

COL STREIT: It is also configured for towing.

40

MR ROBERTS: Yes.

COL STREIT: And it can operate approximately four to five hours of operating time within a safety margin, depending on the nature and the conditions.

45

MR ROBERTS: That's correct.

COL STREIT: You say at paragraph 8:

5

VMR is frequently activated by QPS and Queensland Ambulance Service or local assets who have received calls for assistance on the water, including such things as distress calls from other vessels - - -

10

MR ROBERTS: That's correct.

COL STREIT:

15

- - - providing other assistance to other vessels.

MR ROBERTS: Yes.

COL STREIT: "Search and rescue"; correct?

20

MR ROBERTS: Yes.

COL STREIT: "Medical emergencies"?

25

MR ROBERTS: Yes.

COL STREIT: And that:

30

Within VMR, there is a Management Committee headed by the Management Committee President which oversees radio communications and crew and the boat crew.

Just in relation to boat crew and everyone on the ship, are they all volunteers?

35

MR ROBERTS: Yes.

COL STREIT: In July 2023 you were part of the boat crew and at the time of the MRH-90 incident you had already progressed to the position of Skipper?

40

MR ROBERTS: That's correct.

COL STREIT: Skipper, is that to – does that mean Captain of the ship?

45

MR ROBERTS: Yes.

5 COL STREIT: And that before joining the Volunteer Marine Rescue, you set out at paragraph 11 some training that you needed to undertake; is that right?

MR ROBERTS: Yes, that's correct.

10 COL STREIT: Including local area knowledge tests, vessel familiarisation, on-board equipment location, general seamanship skills. That's right?

MR ROBERTS: Yes, that's correct.

15 COL STREIT: You have also completed, at paragraph 12, qualifications in marine operations and first aid.

MR ROBERTS: Yes.

20 COL STREIT: And coordinating search and rescue operations.

MR ROBERTS: Yes.

25 COL STREIT: You say at paragraph 12(c) that that training is ongoing. Is that training near completion?

MR ROBERTS: The training has been completed, there's just a little sign-off on one item.

30 COL STREIT: I see.

MR ROBERTS: That I would need to do.

35 COL STREIT: You say at paragraph 13 that at the VMR you train weekly with additional training sessions held occasionally on weekends. So that's, of course, in addition to the experiences crew would obtain in actually doing the job?

40 MR ROBERTS: Absolutely.

COL STREIT: And you've set out quite a number of training topics listed on page 3 and over onto page 4 of the nature of the training topic areas that are undertaken for VMR people on board its vessels.

45 MR ROBERTS: Yes, that's right.

COL STREIT: You also do training with other local VMR units and State Emergency Services in joint training exercises?

5 MR ROBERTS: Yes.

COL STREIT: You say at 14:

10 *Primarily, VMR assists with small injuries which occur overwater, medevacs from local islands or vessels, and towing vessels.*

However, you have previously assisted with search and rescue operations, including an example of a three-day search and rescue operation for a person who was missing and last seen at the marina in Airlie Beach, I take it?
15

MR ROBERTS: That's correct.

COL STREIT: Involved in search and rescue approximately 120 to
20 130 nautical miles on the outer reef to locate three missing persons as well.

MR ROBERTS: That's correct.

COL STREIT: You say at 15 that:
25

The Whitsundays is a complex area and should not be underestimated.

The local knowledge of volunteer VMR is, in your view, invaluable?
30

MR ROBERTS: Yes, it is.

COL STREIT: At 16, you say VMR is ultimately a volunteer organisation, and you work full-time as a teacher, and you identify the times you are able to volunteer for this service at para 16. Correct?
35

MR ROBERTS: Yes.

COL STREIT: I'm just going to take you to events on 28 July 2023 commencing at paragraph 17 of your statement. On 28 July 2023 you're the on-call Skipper for VMR from 6 pm – that's the evening of the 28th to 6 am the morning of the 29 July. Is that correct?
40

MR ROBERTS: That's correct.
45

5 COL STREIT: And the on-call is a readiness to respond to an activation. An activation refers to the process of responding to a call for assistance or emergency situation at sea or any of the Whitsunday Islands that encompasses the mobilisation of VMR vessels, crew and resources to provide aid, support or to rescue individuals or vessels in distress.

MR ROBERTS: That's correct.

10 COL STREIT: At about 11.46 pm, you received a call from the VMR emergency phone; correct?

MR ROBERTS: Correct.

15 COL STREIT: You missed the initial call but upon seeing it was VMR, you got up. I take it you were in bed at the time?

MR ROBERTS: Yes, fast asleep.

20 COL STREIT: Got up and got dressed and responded to the call; is that right?

MR ROBERTS: Yes.

25 COL STREIT: The consequence, ultimately, of the phone call was to alert you that there was a developing emergency situation in the Whitsundays involving an ADF aircraft; is that right?

MR ROBERTS: That's correct.

30 COL STREIT: And you then subsequently took actions to engage with and recall VMR members to assemble at the wharf to get on board a vessel.

35 MR ROBERTS: I'll correct that. The emergency phone holder makes those calls whilst we ready ourselves and make our way down to the boat.

COL STREIT: I see. So the emergency phone holder at the time was a different person, was it?

MR ROBERTS: Yes.

40 COL STREIT: And you undertook steps to attempt to contact that person. He was not reachable by phone, so you attended his residence, did you?

MR ROBERTS: No. Mike was the on-call – was the emergency phone holder. Ken is another Skipper but a senior Skipper.

COL STREIT: Okay.

5

MR ROBERTS: So we're just, at that point, pulling experience together.

COL STREIT: Ultimately, by your efforts and others, a crew was assembled and departed in VMR1, Airlie Beach mariner at 12.32 am?

10

MR ROBERTS: That's correct.

COL STREIT: So that is approximately about 45 minutes after receiving your first call.

15

MR ROBERTS: That's correct.

COL STREIT: At 11.46 pm.

20

MR ROBERTS: Yes.

COL STREIT: The crew of VMR1 comprised a senior Skipper, you, a member of senior crew, a Communications Officer, and a member of crew. The names of whom you've listed at paragraph 21(a) to (e). Is that correct?

25

MR ROBERTS: That's correct.

COL STREIT: Your role was as Assistant Skipper in the crew; is that correct?

30

MR ROBERTS: That's correct.

COL STREIT: Now, at paragraph 23 you say:

35

We'd been provided with the coordinates for the impact point.

MR ROBERTS: Yes.

40

COL STREIT: For those coordinates, you were able to plot a suggested search route using the Furuno navigation equipment?

MR ROBERTS: Yes.

45

COL STREIT: Correct?

MR ROBERTS: Yes.

5 COL STREIT: Do you recall, if you're not able to, it's okay, but do you recall how the coordinates for the impact point had been provided to you or to the crew?

10 MR ROBERTS: I personally cannot remember exactly how those coordinates came through, although they would've been provided from our 24-hour phone holder to us. And I do believe they came from QPS.

COL STREIT: Thank you.

15 MR ROBERTS: I'm not sure.

COL STREIT: Sure. Do you recall who it was that – and if you don't, that's fine – but do you recall who it was that initially contacted VMR to alert VMR to the activity?

20 MR ROBERTS: To the best of my recollection, I think the conversations where we've been asked by Queensland Police Services.

COL STREIT: I see. Thank you.

25 MR ROBERTS: So we were engaged on their behalf.

30 COL STREIT: At paragraph 24 of your statement you say the maps contained in Annex C, D and E were downloaded for Furuno, and then you identify a point of entry is represented by WP184 on Annex C and Annex D, and we'll come to those annexes shortly. But is it suffice to say that the annexes that you have provided – C, D and E – provide a representation – or they represent the route taken by VMR – I apologise, which vessel were you on board?

35 MR ROBERTS: VMR1.

COL STREIT: VMR1. So do the annexes contain a representation - - -

40 MR ROBERTS: Yes, they're a realistic track.

COL STREIT: - - - of the track of VMR1?

MR ROBERTS: Yes.

45 COL STREIT: As reflected in a map of the area.

MR ROBERTS: Correct.

5 COL STREIT: At paragraph 25 you say you left the marina at 0032, so
32 minutes past midnight.

MR ROBERTS: Yes.

10 COL STREIT: So we're now into the very early morning of 29 July 2023.

MR ROBERTS: Correct.

COL STREIT: The sea conditions, you say, were moderate to rough.

15 MR ROBERTS: Yes.

COL STREIT: There were 15 to 20 knots south-easterlies, and one to
two-metre swells.

20 MR ROBERTS: Yes.

COL STREIT: It was pitch black, with no source of illumination.

25 MR ROBERTS: That's correct.

COL STREIT: You say, to assist in the search, you used
Forward-Looking Infrared navigational equipment, as well as spotlights
and high-powered LED torches to view approximately 185 metres of either
side of the vessel.

30 MR ROBERTS: Yes.

COL STREIT: At paragraph 27 you say:

35 *We arrived at the debris field, which was at waypoint 185, as
depicted in Annexes C, D and E.*

That you arrived at approximately 1.15 am, so a transit of just under
45 minutes - - -

40 MR ROBERTS: Yes.

COL STREIT: - - - after departure from Airlie Beach. You arrived at
what you understood was the impact site?

45

MR ROBERTS: Yes. Well, slightly before. There's a backtracking point in time there. So we would've been – 1.15 is when we started a search pattern.

5 COL STREIT: I see. So 1.15, starting the search pattern. So you arrived just slightly before 1.15, to the best of your recollection?

MR ROBERTS: Yes.

10 COL STREIT: So from point of departure, 32 minutes past midnight, just an approximate time of something just under 45 minutes transit time.

MR ROBERTS: Yes.

15 COL STREIT: You say you were aware that your vessel was in contact with the search and rescue aircraft.

MR ROBERTS: Correct.

20 COL STREIT: Was that aircraft, to your eyesight, visible or could you hear it?

MR ROBERTS: No, it's not visible. You wouldn't be able to hear it either, but it may appear on AIS.

25 COL STREIT: You say that upon entering the debris field, you noticed a significant amount of aviation fuel on the water surface. You moved through the debris field on your way to the waypoint 184, but a decision was made to turn the vessel back around and further investigate at
30 waypoint 185, as it seemed to be the predominant area of debris on the water surface.

MR ROBERTS: That's correct. As we transited through the debris field, you could clearly see that we were leaving it behind, the aviation fuel.

35 COL STREIT: When you arrived on scene, and just immediately before you commenced the search, were there any other vessels that you could see, or in your vicinity, that were also participating in the search?

40 MR ROBERTS: No.

COL STREIT: So, to your understanding, you were it?

MR ROBERTS: That's correct.

45

COL STREIT: You were there as a single vessel?

MR ROBERTS: Correct.

5 COL STREIT: You say at paragraph 28:

At approximately 1.30 am, we commenced a creeping line search of the debris field at waypoint 185.

10 Could you just briefly explain what a “creeping line search” is?

MR ROBERTS: We set the motor so that we can work in lines to map or chart the seabed. So it’s to the land, and we work our way steadily across the sea, the water, in that area until we’ve covered that water to the best of our ability, and set the spacing of those lines to accommodate the vision, the visibility, of the equipment that we’ve got.

COL STREIT: I see. So the spacing of the tracking lines that you use in your search, or the pattern – the spacing between those lines we’ll shortly see on the screen – is simply reflective of the extension of the capabilities of the vessel’s lights, and other resources, to identify things in the water?

MR ROBERTS: Correct.

25 COL STREIT: You say at paragraph 29 that you were the only vessel in the area, and that you conducted the search at eight knots per hour, and that when you started the search, you say:

30 *I do recall seeing a helicopter inspecting a life jacket in the early hours of the morning.*

MR ROBERTS: Yes.

COL STREIT: Do you recall sort of approximately how far in time that was from when you first arrived?

MR ROBERTS: Yes. I’ve been thinking about that statement for some time, and particularly on the drive up. That we actually – when I say “early hours”, that was visible during daylight hours, so much later.

40 COL STREIT: I see. Much later.

MR ROBERTS: Yes.

45 COL STREIT: At paragraph 30 you say:

We were joined by private vessel Jupiter at approximately 0115.

So that's 1.15 in the morning?

5

MR ROBERTS: Yes.

COL STREIT: Private vessel Jupiter, you say:

10

Jupiter essentially acted as a second pair of eyes as we progressed the creeping line search.

You believe that Jupiter was in transit from Hamilton Island to Airlie Beach, but you don't know the names of the crew.

15

MR ROBERTS: No.

COL STREIT: So Jupiter was not a search and rescue vessel; is that right?

20

MR ROBERTS: No.

COL STREIT: It was simply a vessel that was conducting a private transit at that time?

25

MR ROBERTS: Correct.

COL STREIT: And it stopped to?

MR ROBERTS: To offer assistance.

30

COL STREIT: To offer assistance. So was that assistance conducted by way of radio communication or did the vessel come alongside?

MR ROBERTS: So the communications – Mike was on communications at the time – would take the call coming in through radio and he set the vessel up to the side of us so that we could actually have an additional set of eyes, if you like – more people looking at the water surface.

35

COL STREIT: You say at paragraph 31 and onwards that in the course of the search you located the tail and fuselage of the aircraft, conducted a thorough search, and did not locate any signs of casualties or human life. You tasked Jupiter to stay within the circle, to stay with – sorry, what did you task Jupiter to do – that last sentence of your statement?

40

MR ROBERTS: To stay with the fuselage and tail section as it presents a hazard.

5 COL STREIT: So Jupiter was tasked just to stay with the fuselage whilst your vessel continued the search?

MR ROBERTS: Correct.

10 COL STREIT: And that was because the fuselage itself presented a hazard to shipping?

MR ROBERTS: Correct.

15 COL STREIT: At paragraph 32 you say:

Once we completed the creeping line search of the debris field, we continued to waypoint 184.

20 And you believed the coordinates came from QPS or RCC via an emergency 24/7 phone. So "RCC", what does that stand for?

MR ROBERTS: Rescue Control Centre.

25 COL STREIT: Sorry?

MR ROBERTS: Rescue Control Centre.

COL STREIT: Thank you. And is that part of VMR?

30 MR ROBERTS: No, it's not.

COL STREIT: What do you understand the Rescue Control Centre to be part of?

35 MR ROBERTS: The government's response to incidents at sea.

COL STREIT: So you're not sure where RCC is based? For example, it's not based at Airlie Beach?

40 MR ROBERTS: No, it should be Canberra-based.

COL STREIT: I see. At paragraph 33 you say:

A summary of the first contact with the debris field and initial search, as well as a map outlining the creeping line, is at Annexure D.

5 I might turn to that now. Firstly, that's a copy of Annexure C; is that correct?

MR ROBERTS: Yes.

10 COL STREIT: Can you just describe to the Inquiry what Annexure C shows?

MR ROBERTS: So that's an overview of our actions, or the crew's actions, and the track of the vessel.

15 COL STREIT: So we'll see zoomed-in pictures in a moment in relation to Annexure C. So the red line that appears on Annexure C, as depicted, is moving through a blue-coloured area. I take it that's the ocean, or the sea?

20 MR ROBERTS: Correct.

COL STREIT: The red line depicts the track of your vessel; is that right?

MR ROBERTS: Correct.

25 COL STREIT: And in the top-left corner of the image you'll see two – you'll see a star to the far left of the image at the top with what appears to be a red ship-framed item. Do you see that?

30 MR ROBERTS: Yes.

COL STREIT: What does that represent? Is that the point of departure?

MR ROBERTS: Yes.

35 COL STREIT: So that's a representation of your vessel, so VMR1?

MR ROBERTS: Yes.

40 COL STREIT: And so the point of departure is from that vessel, which is that represented by the red item there, and the star, along a red trackline.

MR ROBERTS: Yes.

COL STREIT: Now, the stars in a circle which is yellow, what do they depict?

5 MR ROBERTS: They depict alignments for crew to pick through dangerous passage areas, so they are literally a navigational aid.

COL STREIT: You'll see that the red line goes around the top of what I'll say is a peninsula, where there are two stars, and then starts to track in a – if the top of the picture is north, it starts to track in a south-easterly direction.
10 Correct?

MR ROBERTS: Correct.

COL STREIT: Then you'll see, as the track moves along, there's a circle with yellow and a black dot in the middle. What does that represent?
15

MR ROBERTS: That's the waypoint we dropped in as we first contacted the debris field.

COL STREIT: If we were to follow the red trackline from the point of departure to the first waypoint, that represents the track of your vessel to the first waypoint?
20

MR ROBERTS: Correct.

COL STREIT: Then obviously there's a lot of what appears to be – my words – squiggly lines close to the second waypoint.
25

MR ROBERTS: Correct.

COL STREIT: What does that represent?
30

MR ROBERTS: That is a creeping line search pattern that we engaged in later on. That's not the debris field initially. Just bear in mind that the water is moving.
35

COL STREIT: Sure. And so that creeping line search is essentially the vessel moving on the image anyway of the diagram, moving from left to right, and then turning around and then moving back?
40

MR ROBERTS: Correct.

COL STREIT: And then turning around and then moving back?

45 MR ROBERTS: Yes.

COL STREIT: Slowly moving down in a south-westerly direction, an area of search?

5 MR ROBERTS: A waypoint.

COL STREIT: A south-easterly direction, sorry.

10 MR ROBERTS: On the second set of tracking, we were travelling north in that. So we started low because of the movement of the water.

15 COL STREIT: You'll see, if my eyes can strain a little bit – and we'll see this blown up in a moment – but there appears to be sort of blue wagon wheel circles or representative wagon wheel circles in the diagram. What does that represent?

20 MR ROBERTS: They actually represent a subsystem within Furuno, which is a star pattern. When you decide on the set-up of the spacings, et cetera, in there it will drop in a symbol that you can go back to, should you need to, or feel is necessary.

25 COL STREIT: I'm going to turn to Annexure B now. That's a little bit clearer on screen. So the left diagram is simply a blow-up or a zoomed-in version of Annexure C; do you agree?

MR ROBERTS: The one on the right?

COL STREIT: The one on the left.

30 MR ROBERTS: The diagram on the left is the overview. The diagram on the right is a close-up of the initial search of the debris field.

35 COL STREIT: I see. So the diagram on the left is the same, it's just slightly – do you accept it appears to be slightly closer because the creeping lines are easily identifiable?

MR ROBERTS: So are you talking about the creeping line, the pattern?

40 COL STREIT: Yes.

MS McMURDO: The right is a blow-up of - - -

MR ROBERTS: The one on the left.

45 MS McMURDO: The left, yes. A portion of the one on the left.

MR ROBERTS: But the one that is above is the initial search. The one below is the secondary search, as it separates up, going up the channel.

5 MS McMURDO: And the blow-up is of the primary search?

MR ROBERTS: Primary contact with the debris field.

10 COL STREIT: You will see down the bottom there is a circle, what appears to be red in it and a black dot. Do you see that?

MR ROBERTS: Yes.

15 COL STREIT: At the bottom of the screen on the left diagram, what does that represent?

MR ROBERTS: I believe that was the coordinates given as the point of impact.

20 COL STREIT: I'm just going to turn to Annexure E. What does Annexure E show the Inquiry?

25 MR ROBERTS: This was the secondary waypoint that was given to us to cover as the water – by the time we had arrived, the water would have moved to that position, and then the debris would have moved to that position, floating on the surface, or anybody floating on the surface would have moved to there.

30 COL STREIT: That can be taken down now.

AVM HARLAND: Just before we do, COL Streit, could I just ask a couple of questions? Can you bring that picture up again, please? On the islands, both Pine Head and also what appears to be called Cowrie Island – so on Pine Head, the island associated with that, there are a number of circles with numbers next to them, like the central one, “194 metres”. Can you see that?

35 MR ROBERTS: Yes.

40 AVM HARLAND: What does that represent?

MR ROBERTS: They would represent peaks or points on the land.

AVM HARLAND: Would they have lights on those peaks?

45 MR ROBERTS: No.

5 AVM HARLAND: Going across to the right, the top right of that picture, there are similar annotations with a circle, but some of them have, like, an elongated balloon coming out of them pointing to the south-east. What are they?

MR ROBERTS: At the top of Cowrie Island? A red - - -

10 AVM HARLAND: Yes. So the long island to the top right of the picture, up towards the very top of the image there, there's a circle with a red balloon-type thing pointing out to the south-east. What does that represent?

MR ROBERTS: That is a red navigation light.

15 AVM HARLAND: So that is a light?

MR ROBERTS: Yes.

20 AVM HARLAND: So each one of those – and there are some yellow ones to the right – would represent lights?

MR ROBERTS: Yes, they do. Yes, for navigation purposes.

25 AVM HARLAND: Thank you.

COL STREIT: Thank you, sir. If that could be taken down now, thank you?

30 I'll just return to your statement, Mr Roberts. At paragraph 34 you say:

At one point we were tasked to search the shoreline at the bottom end of Long Island as there had been a suspected strobe flash.

35 MR ROBERTS: That's correct.

COL STREIT: Do you recall how that task came about?

MR ROBERTS: I don't. I was – I'm sorry, no.

40 COL STREIT: That's okay. At that point in time, at least when that request came through, you say you were in contact with ADF and SAR aircraft. Is that a reference to a civilian search and rescue aircraft, or was the aircraft an ADF one, or do you not know?

45 MR ROBERTS: I don't recall that. I believe it was civilian.

COL STREIT: You say you did not locate any evidence of life jackets with strobes, or anything else which could have been mistaken as a strobe flash. You have a suspicion it may have been a drone.

5

MR ROBERTS: Potentially.

COL STREIT: You then say you rejoined the search pattern and continued to search throughout the night; is that right?

10

MR ROBERTS: That's correct.

COL STREIT: During the course of the night, and indeed, as daylight approached, at paragraph 35 you say you were joined by two commercial vessels.

15

MR ROBERTS: That's correct.

COL STREIT: At paragraph 35, the Ocean Explorer and the Reef Explorer, as well as a private vessel named Laura Jay.

20

MR ROBERTS: That's correct, yes.

COL STREIT: The Ocean Explorer and Reef Explorer are 24-metre dive/snorkel/cruise vessels in transit from Airlie Beach to Hamilton Island, and Laura Jay is a privately owned large motor vessel transiting the same area, and often commercial Skippers will offer support when en route to their destination, and that happened here.

25

MR ROBERTS: Yes, that's right.

30

COL STREIT: You say at 35:

Initially set the vessels up to the side of the VMR so we could increase the coverage of the search area as we continued the creeping line search. The two commercial vessels then had to leave after the first one or two sweeps. The private vessel continued to assist while we searched a significant area, until we concluded the search area.

35

40

Is that correct?

MR ROBERTS: That's correct.

COL STREIT: At this point in time, during this course, no ADF vessels are present in the search?

MR ROBERTS: No.

5

COL STREIT: At 37, you say VMR2 arrived in the early hours of the morning and it was crewed by the Skipper you identify there, and two others.

10 MR ROBERTS: Yes.

COL STREIT: You say at 38 that as far as you're aware, the first ADF vessel to assist in the search was HMAS *Brisbane*, which arrived at approximately 7 am; is that correct?

15

MR ROBERTS: Correct.

COL STREIT: And your ship, your vessel, had been conducting a search effectively from 1.30 am in the morning?

20

MR ROBERTS: Correct.

COL STREIT: As you say, as the HMAS *Brisbane* had a higher vantage point than VMR1, they were able to direct your vessel to a significant debris area, including, towards the end of the search, to retrieve the tail and fuselage. Is that correct?

25

MR ROBERTS: That's correct.

30 COL STREIT: At 39, you say QPS vessel Damien Leeding arrived around the same time as HMAS *Brisbane*.

MR ROBERTS: I believe so, yes.

35 COL STREIT: And that Damien Leeding launched their rigid-hulled inflatable boat to assist in the search.

MR ROBERTS: Yes. Whether it was launched from their craft or it was in the harbour, it was available.

40

COL STREIT: At paragraph 40 you say, "While we held the responsibility for the search", your vessel worked cooperatively with the ADF and QPS during the period.

45 MR ROBERTS: Correct.

COL STREIT: And that at some point after the arrival of the ADF and QPS vessels, you towed the tail section and fuselage section of the aircraft to HMAS *Brisbane*?

5 MR ROBERTS: That's correct.

COL STREIT: And it was held there for inspection, and you were then asked by QPS or HMAS *Brisbane* what to do with the item, and you offered to take it to Shute Harbour but QPS decided the particular pieces of debris should be taken to the QPS vessel, which is what happened?

10

MR ROBERTS: That's correct.

COL STREIT: At approximately midday on 29 July, VMR passed over all search and rescue coordination activities to the ADF and QPS.

15

MR ROBERTS: That's correct.

COL STREIT: You say at 44 that throughout the course of the search you had ongoing communication with a number of organisations, including ADF, QPS, Rescue Control Centre in Canberra, vessel tracking systems, as well as other local assets; correct?

20

MR ROBERTS: Yes.

25

COL STREIT: And at approximately 2 pm the crew of VMR1 – that's the crew that you were the Assistant Skipper for – determined you were too tired to continue, and you returned to shore; is that right?

MR ROBERTS: That is correct.

30

COL STREIT: So you had been conducting a search since 1.30 in the morning?

MR ROBERTS: Correct.

35

COL STREIT: At 6.38 pm, you were advised that VMR's role in the search and rescue operation had been completed; is that correct?

MR ROBERTS: That's right, yes.

40

COL STREIT: You, at paragraph 49, list some items that were recovered from the water by VMR. In addition obviously to the fuselage you've referred to, there was a helmet, which was damaged, a night-vision binocular case, instrument panels and parts of the door?

45

MR ROBERTS: Correct.

5 MS McMURDO: The primary focus of your search was looking for human life?

MR ROBERTS: Correct, yes.

10 COL STREIT: At paragraph 53 you say you've not been interviewed by ADF, QPS, Defence Flight Safety Bureau, or Comcare in respect of your involvement in search and rescue efforts in relation to this incident; is that correct?

15 MR ROBERTS: That's correct.

COL STREIT: You recall being contacted by QPS after the incident and being offered counselling support; is that right?

20 MR ROBERTS: That's right.

COL STREIT: And you say that the search and rescue was arduous and impacted crew members differently.

25 MR ROBERTS: Yes.

COL STREIT: They're my questions.

30 MS McMURDO: Any applications to cross-examine? No. Thank you very much, Mr Roberts, for assisting the Inquiry. Thank you also to you and all who took part in the voluntary rescue mission, and for the wonderful work that your organisation does. It was obviously quite dangerous work that night, and challenging, and it's a great community service. And I'm sure the families of the deceased, and certainly all involved in this Inquiry, really appreciate the work you've done. Thank you.

35

MR ROBERTS: Thank you for your time.

40 MS McMURDO: We'll adjourn now until 10 past 1.

<WITNESS WITHDREW

45 **HEARING ADJOURNED**

HEARING RESUMED

5 MS McMURDO: Yes, COL Streit.

COL STREIT: Thank you, Ms McMurdo. I call CMDR Nigel Shaw.

10 <CMDR NIGEL SHAW, Sworn

<EXAMINATION-IN-CHIEF BY COL STREIT

15 MS McMURDO: Please let me know if you need a break at any time.

CMDR SHAW: Yes, ma'am.

20 COL STREIT: CMDR Shaw, can you please state your full name?

CMDR SHAW: It's Nigel Shaw.

25 COL STREIT: You're currently a Commander in the Royal Australian Navy; correct?

CMDR SHAW: That's correct, sir.

COL STREIT: What's your current role in the Navy?

30 CMDR SHAW: I'm currently the Deputy Director of Security, Navy.

COL STREIT: Deputy Director of Security?

35 CMDR SHAW: Navy.

COL STREIT: Navy. In broad terms, what does that role encompass?

40 CMDR SHAW: So I'm responsible for the Director of Policing and the Security of Navy for the provision of security advice, support, guidance, direction and services across the Navy estate.

45 COL STREIT: Thank you. Now, just to orientate you, in front of you is a document which contains a list of names and of corresponding pseudonyms. One side of the document is in order of pseudonym and the other side, if you were to turn it over, is in alphabetical order of name. So

in the course of giving your evidence, in circumstances where you're not sure whether a person has a pseudonym or not, please feel free to consult that document before responding to a question.

5 CMDR SHAW: Yes.

COL STREIT: Second, I'm going to show you some documents and I'll do it in essentially three bundles, and this is the first.

10 CMDR SHAW: Thank you.

COL STREIT: Just take a moment to satisfy yourself of the nature and contents of the document in front of you. Is that your statement made for the purposes of this Inquiry?

15 CMDR SHAW: Yes, it is, sir.

COL STREIT: Did you sign that statement on 27 September 2024?

20 CMDR SHAW: Yes, I did.

COL STREIT: Did you prepare that statement as a consequence of receiving a section 23 Notice from the Inquiry?

25 CMDR SHAW: Yes, sir, I did.

COL STREIT: Did that section 23 Notice also require you to appear here today to answer questions?

30 CMDR SHAW: Yes, it did.

COL STREIT: Did you also, in relation to the section 23 Notice, receive a Frequently Asked Questions Guide for Witnesses?

35 CMDR SHAW: Yes, I did.

COL STREIT: Your Privacy Notice?

CMDR SHAW: Yes, sir.

40 COL STREIT: A copy of my Instrument of Appointment?

CMDR SHAW: Yes.

45 COL STREIT: An extract of the Inquiry Directions?

CMDR SHAW: That's correct.

5 COL STREIT: Now, as a consequence of receiving that section 23 Notice, you prepared and signed this statement. Are there any amendments or additions you wish to make to the statement?

CMDR SHAW: No, sir.

10 COL STREIT: Just put the statement to one side for the moment. As a consequence of making your statement, it's correct, isn't it, that in your statement you identify a number of policy documents?

CMDR SHAW: That's correct, sir.

15 COL STREIT: You received, did you, a request from the Inquiry to provide copies of those policy documents?

CMDR SHAW: That's correct, sir.

20 COL STREIT: Can I show you the second bundle. Just take your time to look at that second bundle. Each individual document is separated by an unidentified tab; that is, a non-marked tab. Can I take you to paragraph 7 of your statement, please?

25 CMDR SHAW: Yes, sir.

30 COL STREIT: What you've said at paragraph 7(a) through to (d), and the documents you just have, does what you say at 7(a) though to (d) represent the documents you've just had regard to?

CMDR SHAW: That's correct, sir.

35 COL STREIT: Put your statement and those documents to the one side for the moment. I provide you a third bundle. Just take your time to go through that third bundle of documents. And I note that third bundle of documents contains some material that is at the "Official: Sensitive" level and you will not be asked questions in relation to "Official: Sensitive" information in relation to the contents of those documents in a public hearing.

40 First, as a consequence of providing your statement, you refer throughout the body of your statement to various email exchanges with various persons; is that correct?

45 CMDR SHAW: That's correct, sir.

COL STREIT: You received a request from the Inquiry to provide the copies of the emails that you refer to in your statement; is that right?

5 CMDR SHAW: That's correct, sir.

COL STREIT: The bundle of documents that you have before you, do they represent copies of some of the email communications you refer to in your statement?

10 CMDR SHAW: Yes, they do.

COL STREIT: Are you satisfied, having reviewed that bundle of documents, that those documents you've reviewed are copies of the emails referred to in your statement?

15 CMDR SHAW: Yes, sir.

COL STREIT: For the purpose of assisting an identification of the nature of each email, I simply propose to identify the date and time and the addressee of each email, and just ask you to confirm that that corresponds to what you have in front of you. First, is an email with, at the top of the page, "Coroner O'Connell to RUS AHQ Legal, re ADF and CCQ protocol, dated Wednesday, 2 August 2023 at 5.52.27". Is that correct?

25 CMDR SHAW: That's correct.

COL STREIT: Moving to the next tab, does it contain an email or email chain commencing at the top of the page from you, CMDR Nigel Shaw, to various addresses, with the start addressee being GPCAPT Jason Pont, with a subject heading being, "Forward ADF Point of Contact to the Queensland State Coroner, MRH-90 Incident 28 July 2023", with a date time group of Saturday, 5 August 2023, 10.23 am?

35 CMDR SHAW: That's correct, sir.

COL STREIT: Moving to the next document, is it an email from you to an email address, Emma Novosel "@police", and the address goes on; "Subject: ADF Single Point of Contact to Coroner and QPS, Provost Marshal ADF"; date time group: Wednesday, 2 August 2023, 4.47 pm?

40 CMDR SHAW: That's correct, sir.

COL STREIT: If you were to turn the page to the next tab, is it a tab that is from you to various addresses, commencing with GPCAPT Jason Pont;

45

subject is, "Forward ADF Point of Contact to Queensland State Coroner, MRH-90 Incident 28 July '23"; date time group: 5 August 2023 at 10.23 am?

5 CMDR SHAW: That's correct, sir.

COL STREIT: If you move to the next tab, is it a document with the information at the top being "Kristy Stroop, Warrant Officer", to the person that's identified there. The cc is the "Headquarters JMPF Policing
10 Operation" and other addresses. The subject heading is, "Forward 230730 JMPS-TS23QPSRFA", and then other information; with a date time group Monday: 31 July 2023 at 8.27.17 am?

15 CMDR SHAW: That's correct, sir.

COL STREIT: Moving to the next tab. At the top of that tab, does it read, "SQNLDR Woodward". I won't refer to the first name to you. The subject heading, "Forward IR-ADF01-XTS-2023-8, Request for Information"; date time group: Tuesday, 1 August 2023 at 9.56.06 am?

20 CMDR SHAW: That's correct, sir.

COL STREIT: Moving to the next tab. Is it a document at the top with the name, "From LTCOL Tennille Marsh", to you and other addressees; "Subject: Re DCA Directions Switch of POC for Coroner to ADF
25 Legal/DRL"; date time group: Tuesday, 1 August 2023, 4.42.32 pm?

CMDR SHAW: That's correct, sir.

30 COL STREIT: Are you satisfied the documents and the descriptions that I have given them are the copies of emails referred to in your statement?

CMDR SHAW: I am, sir.

35 COL STREIT: Ms McMurdo, I'm in your hands as to whether you wish for the bundle, or policy documents, and the emails to be tendered together with the statement as one document?

MS McMURDO: I think I will do that.

40 COL STREIT: Thank you. I then request that be done.

MS McMURDO: The statement of CMDR Nigel Shaw, and the documents referred to in paragraph 7 of that statement, and a bundle of email exchanges referred to in that statement, are Exhibit 84.
45

**#EXHIBIT 84 - STATEMENT OF CMDR NIGEL SHAW, AND
BUNDLE OF DOCUMENTS, AND BUNDLE OF EMAILS**

5

COL STREIT: First, CMDR Shaw, can I ask you be reference to your statement, if you have that in front of you? You commenced life in the military as a member of the United Kingdom Royal Navy; is that right?

10

CMDR SHAW: That's correct, sir.

COL STREIT: Initially, you spent six years in the Mine Warfare Branch. You subsequently transferred to Royal Navy Police in October 1990.

15

CMDR SHAW: Yes, I did.

COL STREIT: You held various policing positions within general duties and investigative disciplines until you discharged from the Royal Navy, and you entered the Royal Australian Navy in February 2009. Is that correct?

20

CMDR SHAW: That's correct, sir.

COL STREIT: You've been employed in policing and security positions in the Royal Australian Navy since that time; is that right?

25

CMDR SHAW: That's correct, sir.

COL STREIT: You've completed all relevant policing and leadership courses in the Royal Navy as you progressed up the promotion ladder, which included positional prerequisite professional development, and incorporated external courses within two of the United Kingdom's civilian police forces. Correct?

30

CMDR SHAW: That's correct, sir.

35

COL STREIT: Upon entry to the Royal Australian Navy, the majority of your previous Service qualifications and competencies were recognised, and you were only required to complete the Australian Defence Force Investigators' Course?

40

CMDR SHAW: That's correct, sir.

COL STREIT: You were later awarded a Diploma in Government Investigations for successful completion of the Australian Defence Force

45

Investigators' Course; is that right?

CMDR SHAW: Yes, sir.

5 COL STREIT: You also hold a Diploma in Security Risk Management?

CMDR SHAW: That's correct, sir.

10 COL STREIT: In relation to your current role as the Deputy Director Security Navy, you're responsible to the Director for managing the provision of security advice and support by DPS Navy staff across the Navy estate?

CMDR SHAW: That's correct, sir.

15

COL STREIT: Now, on 28 July 2023, you were the Commanding Officer of the Joint Military Police Force; is that correct?

CMDR SHAW: That's correct, sir.

20

COL STREIT: So that's a unit comprising members from all three Services: Army, Navy, Air Force?

CMDR SHAW: Yes, sir.

25

COL STREIT: In military terms, it's described as a tri-service unit?

CMDR SHAW: Yes, sir.

30

COL STREIT: Now, the JMPF is the Tactical and Operational Wing of the Joint Military Police Unit; correct?

CMDR SHAW: Yes, sir.

35

COL STREIT: The Joint Military Police Unit is commanded by the Provost Marshal of the Australian Defence Force?

CMDR SHAW: That's correct, sir.

40

COL STREIT: The position of Provost Marshal of the Australian Defence Force is a tri-service position?

CMDR SHAW: Yes, sir.

45

COL STREIT: That can be filled by an Army, Navy or Air Force qualified

and selected individual?

CMDR SHAW: Yes, sir.

5 COL STREIT: Now, the Joint Military Police Unit is directed by the Chief of the Defence Force – that’s the CDF – to provide policing effects across Defence; correct?

CMDR SHAW: Yes, sir.

10

COL STREIT: In addition to your role as the CO of the Joint Military Police Force, on 29 July you were also the Acting Provost Marshal of the Australian Defence Force?

15 CMDR SHAW: I was, sir.

COL STREIT: That’s as a consequence of GPCAPT Terrence Lewis, the then Provost Marshal ADF, being on leave the period 29 July to 7 August 2023?

20

CMDR SHAW: That’s correct.

COL STREIT: That was planned leave that he had. That’s correct?

25 CMDR SHAW: Yes.

COL STREIT: Indeed, you and he, did you have a discussion immediately following your notification of the events of 28 July 2023 involving Bushman 83 – you had a discussion with GPCAPT Lewis as to whether or not he should return from leave at that time?

30

CMDR SHAW: No. So GPCAPT Lewis called me that morning, I would say it was approximately 8 o’clock, and asked me if I had it in control or there was any concerns. I said, “No, there wasn’t”.

35

COL STREIT: Thank you. Now, in your statement at paragraph 7, which we’ve touched on before, you have confirmed that the documents you’ve identified at 7(a) to (d) are policy documents; correct?

40 CMDR SHAW: Yes, sir.

COL STREIT: The first is a protocol between the ADF and the Queensland State Coroner concerning the investigation of deaths of ADF members. The protocol was signed by the CDF and the Queensland State Coroner on 26 May 2007 and 6 July 2007, respectively. To your

45

knowledge, is that document regarded as being current by the Australian Defence Force?

CMDR SHAW: I believe it is, sir, yes.

5

COL STREIT: The next document you provide is a letter of exchange between the Commonwealth of Australia, represented by the Joint Military Police Unit, and the State of Queensland, represented by the Queensland Police Service. This was signed by the Commissioner of Police, Queensland Police Service, and PMADF, on 30 October 2019 and 21 November 2019, respectively. Just in relation to that letter of exchange, could you just turn that up in the material you have?

10

CMDR SHAW: Yes, sir.

15

COL STREIT: You'll see there that paragraph – I'll start again. The first paragraph says:

20

The Joint Military Police Unit and Queensland Police Service exchanged this letter formalising in writing their interests in and intent to strengthening relations and interoperability between their respective organisations on the conduct of investigations and other policing matters.

25

Correct?

CMDR SHAW: That's correct, sir.

30

COL STREIT: You'll see that 2 says:

Where reasonably practicable and within the resources, capabilities and priorities of both the Joint Military Police Unit and the Queensland Police Service, undertake to explore opportunities and implement arrangements as appropriate.

35

And there's a list of (a) through to (d); is that right?

CMDR SHAW: That's correct, sir.

40

COL STREIT: (c) says:

For enhancing cooperation and interoperability on investigations, operational policing, Coronial Inquiries. This might include, but is not limited to:

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- 5
- (i) *The formal arrangements for the referral of allegations for investigation between participants;*
 - (ii) *The development of protocols for exchange of information and policing criminal intelligence; and*
 - (iii) *The development of protocols on inter-party operational matters and assistance in Coronial matters subject to orders, instructions or policies as appropriate.*
- 10

Do you accept what I've read out as correct?

CMDR SHAW: Yes, sir.

15 COL STREIT: So is it your understanding the intent of this letter of exchange, its basis is, where reasonably practicable and within resources, for the Joint Military Police and Queensland Police Service, effectively, to work together on matters?

20 CMDR SHAW: That's correct, sir.

COL STREIT: And that includes working together in relation to assistance on Coronial matters.

25 CMDR SHAW: Yes, sir.

COL STREIT: We'll put that to one side for the moment. Can I return to 7(a), which is the protocol. Could you just turn that up for a moment, please, the protocol of 24 July 2007?

30 CMDR SHAW: Yes, sir.

COL STREIT: Paragraph 7, the protocol identifies certain matters concerning the operation of Defence Force Regulation 1952. Are you aware that that Regulation has been repealed?

CMDR SHAW: No, sir, I'm not.

40 COL STREIT: The protocol also refers, at paragraph 8, to the Defence (Inquiry) Regulations 1985. Do you see that?

CMDR SHAW: Yes, sir.

45 COL STREIT: Are you aware that that Regulation has been repealed?

CMDR SHAW: No, I'm not, sir.

COL STREIT: At paragraph 9 through to 12, is the effect of paragraph 9
5 through to 12 that the ADF will appoint an ADF Liaison Officer where there
is a reportable death, and that ADF Liaison Officer is a Liaison Officer
between the ADF and the Coroner?

CMDR SHAW: Yes, sir.

10 COL STREIT: There's also a reference at paragraph 10 that the ADF
Liaison Officer will be provided with contact details for the QCS, which is
the Queensland State Coroner, the Officer in Charge of the Queensland
Police Service Coronial Support Unit, and the Queensland Chief Forensic
Pathologist.

15

CMDR SHAW: Yes, sir.

COL STREIT: At paragraph 11 it says:

20

*As soon as possible after the death, the Liaison Officer will advise
QCS whether the ADF has or intends to exercise its power to
assume full responsibility for investigating the death and make an
order under Regulation 27 ousting the jurisdiction of the
Queensland State Coroner.*

25

Just in relation to that, you're not certain, I take it now, given what I've
indicated that Defence Force Regulation 1952 has been repealed, you're not
certain now, I take, that that power that paragraph 11 refers to as the ADF
having, that that power actually still exists?

30

CMDR SHAW: That's correct, sir.

COL STREIT: Put that document to one side, thanks. In relation to the
Chief of the Defence Force Directive 9 of 2022, Provost Marshal Australian
35 Defence Force Commander Joint Military Police Unit Responsibilities and
Accountabilities dated 4 August 2022, in broad compass, what does that
Directive do?

40 CMDR SHAW: This is directing the Provost Marshal to conduct his
duties for the Commander in the Joint Military Police Unit and provide an
advice and guidance to the senior leadership group, and providing – or
having techcon over all Military Police investigations.

45 COL STREIT: Were there Military Police as at 29 July 2023 conducting
an investigation into the crash of the MRH-90 aircraft?

CMDR SHAW: No, there weren't.

5 COL STREIT: In relation to your duties as the Acting Provost Marshal in the period that GPCAPT Lewis was away, is the Directive 9 of 2022 – that Directive applies to you?

CMDR SHAW: Yes, sir.

10 COL STREIT: Just put that Directive to one side for the moment. At paragraph 8 you say:

All guidance and direction to Military Police in relation to witness management is provided within the Military Police Manual.

15 You identify the volume, part and chapter. The Inquiry's ability to access that manual is something that has to be authorised by another person; is that right?

20 CMDR SHAW: That's correct, sir: the Provost Marshal.

COL STREIT: The Provost Marshal. And that, at this point in time, is GPCAPT Lewis?

25 CMDR SHAW: Yes.

COL STREIT: And that's why it's not part of your information that you can provide the Inquiry at this stage?

30 CMDR SHAW: Yes.

COL STREIT: Can I just turn to paragraph 9 and onwards in your statement? So during the period 20 July 2023 to 8 August, you deployed to Townsville, Queensland, in your capacity as the CO of the Joint Military Police Force to oversee the execution of Military Police support to Exercise TALISMAN SABRE. So just pausing there, what in broad compass is the nature of Military Police support to Exercise TALISMAN SABRE?

40 CMDR SHAW: So, basically, sir, we police the Force, we provide policing support to the Force, any investigations that are required to be conducted we would – we'd conduct those in accordance with the Defence Force Discipline Act. We also conducted road traffic exercises, general duties policing of the actual barracks itself where all the Service personnel were staying, and we also conducted close protection activities for senior
45 VIPs that were visiting Lavarack Barracks.

5 COL STREIT: On Friday, 28 July at paragraph 10, approximately 1600 in the afternoon, you received a call from GPCAPT Lewis, who gave you a final brief on matters and you then assumed the role of the Acting Provost Marshal ADF?

CMDR SHAW: That's correct, sir.

10 COL STREIT: On Saturday, 29 July and throughout 29 July, you made and received numerous telephone calls/emails in relation to Joint Military Police Force, TALISMAN SABRE, and the MRH-90 incident?

CMDR SHAW: That's correct, sir.

15 COL STREIT: You've set out in the following paragraph thereafter, and through the balance of your statement, matters you considered relevant in relation to what this Inquiry is examining.

CMDR SHAW: That's correct, sir.

20 COL STREIT: I take it, also in relation to responding to the specific questions asked of you in the section 23 Notice issued by the Inquiry?

CMDR SHAW: Yes, sir.

25 COL STREIT: Thank you. At paragraph 12 you detail the preliminary information that you were provided by the Colonel that you identify there, who was the then Army Sensitive Issues Manager within Army Headquarters who gave you some information that at approximately 30 2300 hours on 28 July 2023 an Army MRH-90 Taipan helicopter had ditched in the sea off Lindeman Island and that, further, four MRH-90 aircrew on board, and potentially passengers – that there were four aircrew on board and potentially passengers. Is that correct?

35 CMDR SHAW: That's correct, sir.

40 COL STREIT: Immediately after that call, you contacted a member of your staff, SQNLDR O'Reilly, and you briefed him and instructed him to put together JMPS TS23 on standby to support pending confirmation of the crash. So what's "JMPS"?

45 CMDR SHAW: So that's the Joint Military Police Station, sir. So the Joint Military Police Force has eight Joint Military Police Stations around Australia that run operations for those specific areas on there. For TALISMAN SABRE, we set up a standalone Joint Military Police Station

specifically for TALISMAN SABRE. So we brought MPs in from around the country to run policing operations for that exercise.

5 COL STREIT: You stood that up, did you, because, given the information that you had received, you were taking pre-emptive action in the event you needed to task Service police to conduct an investigation?

CMDR SHAW: Yes, sir.

10 COL STREIT: At paragraph 14 you say, “Approximately 0505” – so 5 minutes past 5 am in the morning, you received a further call from the Colonel identified in the paragraph, who confirmed that an MRH-90 had crashed and for the JMPF to be stand down in regards to the notification assistance, as families had been informed.

15 CMDR SHAW: Yes, sir.

COL STREIT: But wasn't the JMPF stood up to do other things other than notification to families?

20 CMDR SHAW: That's correct, sir. So the JMPS was already there, sir. We were already conducting policing operations.

25 COL STREIT: Yes.

CMDR SHAW: When I received the call from COL Wilson to say that they believed a helicopter had ditched in the sea, then I put them on standby to provide additional assistance to the emergency services in regards to the recovery effort for that ditched helicopter.

30 COL STREIT: So immediately after the phone call with COL Wilson ended, you called SGNLDR O'Reilly and directed him to ascertain the facts in respect to the MRH-90 crash site and, further, to deploy Military Police to the vicinity to provide support to the search and rescue operation, and respective civilian emergency services.

CMDR SHAW: That's correct, sir.

40 COL STREIT: The respective civilian emergency services, did that include Queensland Police?

CMDR SHAW: Yes, sir.

COL STREIT: Is that a standard protocol when an event involving a possible fatality of an ADF member, Service police will provide assistance to a relevant State policing agency?

5 CMDR SHAW: Yes, sir.

COL STREIT: In this case it was the Queensland Police?

CMDR SHAW: That's correct, sir.

10

COL STREIT: That gives effect really, doesn't it, to the protocol we referred to earlier?

CMDR SHAW: Yes, sir.

15

COL STREIT: At paragraph 17 you say between 0700 and 08 that morning, and following the reports from a variety of sources in regards to the potential severity of the situation, you directed SQNLDR O'Reilly to deploy an ADF investigator to Proserpine Whitsunday Airport to provide assistance to QPS. And that shortly after that conversation, you informed PONPC Casey Theissen – you were informed, I apologise, that PONPC Casey Theissen was being deployed from the Joint Military Police section TALISMAN SABRE '23, which was at Lavarack Barracks. So you were sending – indirectly, you were sending him down as the Service Police Representative.

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25

CMDR SHAW: Yes, sir.

MS McMURDO: I think it's Theissen.

30

COL STREIT: Theissen, I apologise. Thank you.

Paragraph 19 you say, on that same morning you contacted Senior Sergeant Ritchie Callaghan, who was the Queensland State Police Disaster Victim Identification and Forensic Capability Coordinator, to give him prior warning that he would likely be called out by QPS Command to conduct DVI operations. Now, I take it you took that step because you knew Senior Sergeant Ritchie Callaghan. That's correct?

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40

CMDR SHAW: That's correct, sir.

COL STREIT: You knew him because he's also an Australian Defence Force Royal Australian Air Force Reservist?

45

CMDR SHAW: That's correct, sir.

COL STREIT: Military Police member.

CMDR SHAW: Yes.

5

COL STREIT: And given what you knew of his role as a Queensland Police member, you knew that there was a strong likelihood his services would be required?

10 CMDR SHAW: That's correct, sir.

COL STREIT: You informed Senior Sergeant Callaghan that JMPU would provide DVI support upon receipt of a formal request from QPS.

15 CMDR SHAW: Yes, sir.

COL STREIT: Although there was no requirement for JMPU to provide DVI support on this occasion, the Senior Sergeant Callaghan provided you daily updates on the QPS DVI operation in his capacity as QPS DVI Commander for this operation.

20

CMDR SHAW: That's correct, sir.

COL STREIT: So there's a recognition on the part of – I withdraw that. The information that Senior Sergeant Callaghan provided to you, did you just retain that for your situational awareness or did you pass that on to anyone?

25

CMDR SHAW: No, I retained that, sir. I kept it within the JMPF.

30

COL STREIT: Approximately 1230 – and this is paragraph 21 – of that afternoon, which is the afternoon of 29 July 2023, you were informed by SQNLDR O'Reilly that PO Theissen, in company with a Private identified there in your statement, who was a General Duties Military Police member, had arrived at the non-Defence training unit at Proserpine Airport where 6 Aviation Regiment were located. That's correct?

35

CMDR SHAW: That's correct, sir.

COL STREIT: During that afternoon, you received several telephone conversations – you had several telephone conversations with PO Theissen to get an appreciation of the status and of updates on the recovery operation.

40

CMDR SHAW: That's correct, sir.

45

COL STREIT: Later that day, in the evening, at 1952 PO Theissen sent you an email with a summary of what had occurred from his actions and observations that day, including his conversation and interaction with QPS, and his conversation with 6 Avn Regiment and 16 Aviation Brigade staff, and the positive control he had taken of the assets associated with the MRH-90 operations and MRH-90 crew's personal belongings. He informed you that he would remain in control of this scene until handover with the Defence Flight Safety Bureau, who were due to arrive that evening to commence an air crash investigation. Is that correct?

5

CMDR SHAW: That's correct, sir.

COL STREIT: Was there anything said by PO Theissen about handing over the site to Queensland Police?

15

CMDR SHAW: There was a long conversation throughout the afternoon. I believe when PO Theissen got down there, or Casey got down there, there was a bit of confusion in regards to the QPS, what they were actually doing, what they were taking charge of. The flight crew were leaving at the time, they were packing up the camp and going. And I believe that PO Theissen encouraged the Queensland Police Service to become more involved in regards to stopping things from leaving.

20

At that point, I believe Casey Theissen took the initiative – and correctly so – to secure everything that was still there to prevent anything from being lost. There was a discussion between himself and the Queensland Police Service, I believe the Assistant Commissioner, and I think he encouraged them to crack on and start looking at the actual belongings and what was left there before it disappeared. He then secured the area to make sure nothing left before the Defence Flight Safety Bureau arrived, and he looked after it to that point, sir.

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30

COL STREIT: Having regard to your training and experience as a police investigator, there is, is there not, a level of importance attached to quarantining a scene as soon as possible when you're investigating an incident, or an incident has occurred?

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CMDR SHAW: That's correct, sir.

COL STREIT: And there's a level of importance attached to identifying individuals who may be prospective witnesses to the matter you're examining?

40

CMDR SHAW: That's correct, sir.

45

COL STREIT: There's also a level of importance attached to, as soon as possible, obtaining evidence by way of statements from those witnesses in relation to matters under investigation?

5 CMDR SHAW: That's correct, sir.

AVM HARLAND: Just regarding the incident scene, does that include just the immediate scene of accident or incident, or might that include other areas such as accommodations or working areas that had important information?
10

CMDR SHAW: I think it would be on a case-by-case, sir. In this case, it was the actual initial operations area where the belongings were that was secured.
15

AVM HARLAND: And the accommodations of the crew?

CMDR SHAW: I think if we were conducting the investigation ourselves, then we would start moving that perimeter out to secure the area.
20

AVM HARLAND: Thank you.

COL STREIT: At paragraph 25 you say:

25 *At approximately 1355 that afternoon, I was made aware by PO Theissen that QPS had requested JMPF obtain statements from aircrew of the 6 Avn Regiment helicopter that was flying behind the MRH-90 at the time of the incident. QPS provided a statement template and a list of 13 questions they requested be covered during the witness interview.*
30

PO Theissen also advised you that DFSB were in the process of engaging witnesses. Is that correct?

35 CMDR SHAW: That's correct, sir, on Sunday, 30 July.

COL STREIT: Sure. And so the engagement by QPS, and the request made to PO Theissen as a representative of your organisation, is simply, again, reflective of the protocol we referred to earlier?
40

CMDR SHAW: That's correct, sir.

COL STREIT: Also reflective of the assistance referred to in that protocol, that the Joint Military Police Unit would provide to QPS in relation to Coronial investigations.
45

CMDR SHAW: That's correct, sir.

5 COL STREIT: And it was suspected – at that time of course, that's what was about to be embarked upon, wasn't it?

CMDR SHAW: Certainly, sir.

10 COL STREIT: Now, at paragraph 26 you say you were aware that 6 Aviation Regiment and 16 Brigade had returned the crews of the three other helicopters that were flying with Bushman – or the MRH-90 at the time of the incident back to the unit Headquarters at Holsworthy, Sydney, on 29 July. That's correct?

15 CMDR SHAW: That's correct, sir.

COL STREIT: When did you become aware that that had occurred?

20 CMDR SHAW: On Saturday, 29 July, sir.

COL STREIT: So do you recall whether you were informed of it occurring, that it was a planned activity yet to occur, or were you informed at the time it was occurring, or were you informed after it had occurred?

25 CMDR SHAW: I was informed by PO Theissen that afternoon that they were packing up and getting on the plane, sir.

COL STREIT: You say in paragraph 26 – you say:

30 *As such, I instructed the JMPS TS23 Station Manager, WO1 Kenneth Fenton, to direct the JMPS Sydney Team to obtain the witness statements from 6 Avn Regiment members.*

Why did you take that action?

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CMDR SHAW: Because the witnesses had left, sir. So we were obviously – the Coroner that – the QPS were preparing a report for the Coroner. We were then asked by them to assist them with statements interstate, so therefore I put the Sydney station on alert to go and obtain those statements. The thing is, sir, we do this overseas, so in the operational deployment area, the operational theatres overseas, we have jurisdiction to conduct the investigation and prepare the report for the Coroner. So we do this overseas, so we know exactly how it works. On domestic soil we don't have jurisdiction; the relevant State or Territory police do. And then we support them in that investigation.

40

45

COL STREIT: So the intent that you had in supporting QPS and providing assistance to the Coroner, as identified in the protocol between QPS and your organisation, noting that the witnesses that you needed – Military
5 Police needed to talk to were now in Sydney, you’ve exercised your authority to instruct the JMPS Sydney Office Team, headed by WO1 Fenton, to obtain witness statements?

10 CMDR SHAW: That’s correct, sir.

COL STREIT: That’s a reflection, is it, of your experience of the importance of getting witness statements completed as close to when an incident occurred as reasonably practicable?

15 CMDR SHAW: That’s correct, sir.

COL STREIT: You say, also in paragraph 26, you made it absolutely clear that any contact with the aircrew was to be through the 6 Avn Regiment chain of command?

20 CMDR SHAW: Yes, sir.

COL STREIT: And that, further, a JMPU social worker was to be in attendance during the witness interviews; correct?

25 CMDR SHAW: That’s correct, sir.

COL STREIT: Why did you take that step, for a social worker?

30 CMDR SHAW: I just wanted to make sure that we supported the witnesses through the interview process as required.

COL STREIT: You also say at paragraph 26, you later – that’s on 31 July 2023 – authorised the travel of the JMPS Brisbane SW to Sydney,
35 and the JMPS Sydney SW was on leave. So “SW”, what does that stand for?

CMDR SHAW: Social worker, sir.

40 COL STREIT: Thank you. At paragraph 27 you say:

45 *The JMPF has a Sexual Response Team capability which comprises of a fully qualified social worker and a sexual offender qualified investigator. Each JMPS have a social worker embedded with respective JMPS Teams and the social worker’s primary role*

is the provision of social work services to vulnerable persons during the reporting, investigation and judicial process.

5 CMDR SHAW: That's correct, sir.

COL STREIT: Turning to Monday, 31 July, you say through 31 July 2023 you made and received numerous telephone calls and emails in relation to the JMPS TALISMAN SABRE MRH-90 incident. And you've set out some paragraphs there that summarise that engagement. Can I take you to paragraph 30. You say:

At 1013 that morning, I was copied on an email from PO Theissen to a Major –

15 who's identified there as the Brigade Legal Officer of Headquarters 16 Aviation Brigade –

and a Corporal –

20 who was identified in your statement, who was an ADF investigator. There was a trail of emails and discussion between the Petty Officer and the Major regarding the requirement to interview the helicopter crew witnesses, and concerns from the Major in regards to the timing for the conduct of the witness interview of the helicopter crew behind the MRH-90 at the time of
25 the incident, the Protected Identity Status of all helicopter crews involved in the incident, and the requirement to include a Lieutenant Colonel, who was the Chief of Staff Headquarters Aviation Brigade, in the full correspondence.

30 So is this – I withdraw that. If you turn quickly to paragraph 37 – I'll return to paragraph 30 shortly. Paragraph 37, without going into the detail of it, because I'll deal with it a little later, but you say there that –

*potential concerns and delays by QPS, and now what appear to be
35 reluctance to provide information or access to witnesses by Army –*

you took certain actions. You see that?

40 CMDR SHAW: Yes, sir.

COL STREIT: Turning back now to paragraph 30, when dealing with this situation at 1013 that morning, and the views expressed described by that Legal Officer, was this effectively the start of the reluctance that you later refer to concerning Army and the provision of statements?

45

CMDR SHAW: I wasn't overly concerned at that time, sir. It was quite normal, probably, for the Brigade Legal Officer to start asking those questions. So my concern didn't come until later in the day.

5 COL STREIT: The issues relating to protected identity, they could, could they not, be easily resolved by the assigning of pseudonyms to witnesses?

CMDR SHAW: Absolutely, sir.

10 COL STREIT: So it doesn't prevent a statement being taken, does it?

CMDR SHAW: No, it doesn't, sir.

15 COL STREIT: What it does do, is it means that there needs to be a pseudonym list established relevant to the witnesses' names and the assigned pseudonym?

CMDR SHAW: That's correct, sir.

20 COL STREIT: So when the statement is signed, it can be redacted to include the witness's pseudonym but not their name?

CMDR SHAW: Yes, sir.

25 COL STREIT: So a fairly standard process when you're dealing with some aspects of the ADF where they have an applicable protected identity status?

30 CMDR SHAW: That's right, sir. I had no concerns at all about the protected identity.

COL STREIT: It's no new business, is it?

CMDR SHAW: No, sir.

35 COL STREIT: So it's not in and of itself, can I suggest, really something that should hold up the production of statements?

40 Can I take you to paragraph 33? Now, paragraph 33 is where you say, "Shortly after arrival". That's a reference to you travelling from Townsville to the Whitsundays. Is that correct?

CMDR SHAW: Yes, sir.

COL STREIT: And “arrival” is you arriving at the Whitsundays Police Station?

CMDR SHAW: Yes, sir.

5

COL STREIT: So moving on:

Shortly after arrival, I was introduced to a number of QPS Senior Officers, including Assistant Commissioner Guteridge.

10

Correct?

CMDR SHAW: Yes, sir.

15 COL STREIT: “Detective Inspector Emma Novosel”?

CMDR SHAW: Yes, sir.

20 COL STREIT: And you describe Detective Inspector Emma Novosel as the lead investigator for the Coroner’s report.

CMDR SHAW: That’s correct, sir.

25 COL STREIT: Do you therefore understand or take away from that that her role was to conduct an investigation and prepare that investigation and potentially a report for the Coroner?

CMDR SHAW: That’s correct, sir.

30 COL STREIT: At that point in time, when you’ve arrived at the Whitsundays Police Station, who was it you understood had primacy of jurisdiction to investigate the deaths of the aircrew?

CMDR SHAW: Queensland Police Service, sir.

35

COL STREIT: At paragraph 34 you say:

Approximately 1445 that afternoon, whilst travelling back from Airlie Beach to Townsville –

40

you received a phone call from PO Theissen who stated he’d been in contact with a LTCOL Marsh, the Senior Legal Officer to the Chief of Army.

CMDR SHAW: That’s correct, sir.

45

COL STREIT: That Theissen informed you that LTCOL Marsh had a number of questions in relation to the QPS/JMPF jurisdiction, and their relationship with, and their authority in relation to, the Coroner. Is that correct?

5

CMDR SHAW: That's correct, sir.

COL STREIT: Further, the reason the Military Police were wishing to speak to the 6 Avn Regiment witnesses and whether the witnesses could be compelled to provide statements.

10

CMDR SHAW: Yes, sir.

COL STREIT: So subsequent to receipt of that information from PO Theissen – paragraph 35 – at about 1556 that afternoon, you were copied on an email from PO Theissen to SQNLDR Woodward that outlined the QPS requirements in relation to the identification of the crews of the other helicopters in company with the MRH-90 at the time of the incident.

15

CMDR SHAW: That's correct, sir.

20

COL STREIT: That email, did that email contain a list of questions that the QPS wanted the Service Police to use as the basis for obtaining witness statements?

25

CMDR SHAW: Yes, that's correct, sir.

COL STREIT: At paragraph 36 you say at approximately 1730 that afternoon you were briefed by PO Theissen that a Corporal had reached out by phone to a Lieutenant Colonel, identified there, to arrange for witness interviews to be conducted with four 6 Aviation Regiment personnel by JMPS Sydney ADF investigators and the social worker, preferably on 1 August 2029 (sic). That's correct?

30

CMDR SHAW: That's correct, sir.

35

COL STREIT: So were some steps being taken to set up timings for the conduct of these interviews that we're seeing?

CMDR SHAW: That's right. So the information went through to the JMPS Sydney station late Sunday, early Monday. I moved the social worker from the Brisbane station down to Sydney, because the Sydney social worker was on leave. And then the investigators made contact with the Regiment to arrange for the statements to be taken, or the witnesses to

40

be approached to discuss taking their statements, if they wished to do so, the following day, which was Tuesday the 1st.

5 COL STREIT: So all intents and purposes, is the Inquiry to understand your evidence in this way, and that is, as a consequence of things PO Theissen had told you, and your own experience, you had taken steps to ensure your organisation, Service Police, was ready to respond and obtain statements from witnesses at 6 Aviation Regiment?

10 CMDR SHAW: That's correct, sir. We were taking statements on Tuesday, 1 August.

15 COL STREIT: But, ultimately, despite your intent and the preparation you took, including making arrangements for a social worker to travel down from Brisbane, ultimately no statements were taken, were they?

CMDR SHAW: No, sir.

20 COL STREIT: Why is that?

CMDR SHAW: I believe that Army were reluctant to allow us access to the witnesses.

25 COL STREIT: You deal with this in part at paragraph 37 of your statement, don't you?

CMDR SHAW: Yes, sir.

30 COL STREIT: Yes. You also took the step, at paragraph 37, to direct SQNLDR O'Reilly to deploy to Airlie Beach on 1 August to assume the role of the Military Police Liaison Officer. You say this was no criticism of the great work conducted to date by PO Theissen; you simply required a more experienced officer in the stakeholder engagement at the strategic level to manage relationships and expectations within the MRI. "MRI" is?

35 CMDR SHAW: The Incident Room, sir.

40 COL STREIT: Thank you. While SQNLDR Woodward and you engaged with the relevant legal services, PO Theissen would continue to assist SQNLDR O'Reilly to manage the tactical-level requirements. I take it also, having SQNLDR O'Reilly there, by simply a reflection of the rank level, might make things a bit easier for SQNLDR O'Reilly to do what needed to be done; whereas PO Theissen – and no disrespect to him – might have had some difficulties achieving what needed to be done.

45

CMDR SHAW: I just needed someone a bit more experienced to manage those senior sirs, sir.

5 COL STREIT: Ultimately, throughout the rest of your statement, you deal, don't you, from paragraph 39 onwards, with various engagements between PO Theissen, SQNLDR O'Reilly and individuals within the ADF concerning the issue of the provision of – obtaining and the provision of witness statements to QPS?

10 CMDR SHAW: Yes, sir.

COL STREIT: Ultimately, those statements were not obtained, at least in the early days of the investigation?

15 CMDR SHAW: No, they weren't, sir.

COL STREIT: Are you aware that ultimately statements were taken and provided to the Coroner at the end of November 2024?

20 CMDR SHAW: No, I wasn't, sir.

MS McMURDO: '23.

25 COL STREIT: I apologise. Start again. Were you aware that statements, witness statements, concerning the MRH-90 incident were ultimately provided by Defence to the Queensland Coroner at the end of November 2023?

30 CMDR SHAW: No, sir. I believe they weren't taken by the Joint Military Police Force.

COL STREIT: Apart from me saying this to you, had you learnt of this earlier, before your evidence here today?

35 CMDR SHAW: No, sir.

40 COL STREIT: Now, at paragraph 44 you say at 1643 that afternoon – so the afternoon of 1 August 2023 – you say you received an email from LTCOL Marsh, who stated Army Headquarters were waiting for a decision on their proposal to CDF that either Army Headquarters or DRL – what does “DRL” stand for?

45 CMDR SHAW: It stands for Resolution Disputes Litigation – Disputes Resolution and Litigation, yes.

COL STREIT: Essentially Defence Legal?

CMDR SHAW: That's correct, sir.

5 COL STREIT: Waiting on information from – it's CDF's decision, in effect, is it, as to who would take the lead with the Coroner in relation to witness statements?

CMDR SHAW: That's correct, sir.

10 COL STREIT: You say that LTCOL Marsh declared in the email that you received that she had been in contact with the Coroner that day and she reported, in the email, he did not see a rush with the statements.

15 CMDR SHAW: That's correct, sir.

COL STREIT: Do you recall, in effect, what was reported of the Coroner's position was that a two to three-week delay in provision of statements was acceptable?

20 CMDR SHAW: I can't remember that, sir.

AVM HARLAND: Just a question. Is it normal that, in this case, Army HQ would refer a decision about the taking of witness statements all the way up to CDF?

25 CMDR SHAW: No, it's not, sir. I think it was because the Queensland Police Service have asked us to take the statements on their behalf, and I think Army were trying to control the narrative. So I think they were trying to make sure that they could get in there with their Legal Officers and actually brief those witnesses and control what was actually said, rather than us going in there. I think they wanted to keep it within the Army, sir.

35 AVM HARLAND: Okay. Thank you.

COL STREIT: If I may just have a moment, please? At paragraph 45 you say:

40 *I was later, on 2 August, provided emails by LTCOL Marsh of her advisement –*

to the officers identified in your statement –

45 *of her discussion with QPS in relation to statements from witnesses and her enquiry to QPS as to whether the questions could be*

provided to the witness and a statement prepared, rather than JMPF conducting witness interviews.

5 CMDR SHAW: That's correct.

COL STREIT: Do you recall that exchange?

CMDR SHAW: Yes, sir.

10 COL STREIT: Did you understand the Legal Officer's concern was about the witnesses being interviewed or the witnesses providing a statement, or both?

15 CMDR SHAW: I think it was both, sir. I think they were concerned about what might be said by the witnesses.

20 COL STREIT: So the concern was more about, was it – at least your impression of the conversation, the concern was more about ensuring that the witnesses were informed of their legal rights before they provided a statement?

25 CMDR SHAW: I think that may be part of it, sir. I think they also wanted to make sure that anything that was said was checked by the relevant legal services prior to being given to the Coroner.

COL STREIT: Which is the Legal Services Department employed by the Commonwealth?

30 CMDR SHAW: That's correct, sir.

MS McMURDO: So it wasn't simply a security issue; there was a concern – they were actually concerned with what the narrative was?

35 CMDR SHAW: I believe so, ma'am. Looking at the questions, there were a number of questions on that list that I think would have caused concern, and I think they wanted to control what was said, going back, to make sure that it was checked.

40 MS McMURDO: Thank you.

CMDR SHAW: That's my personal opinion, ma'am.

MS McMURDO: Thank you.

COL STREIT: Wednesday, 2 August, you identify a number of things set out there commencing at paragraph 46. Can I take you to paragraph 51? You say:

5 *At 1500 that afternoon, a telephone meeting was held with myself and the Legal Officers from Defence Legal, Army Headquarters, JMPU and DASA.*

Which is the Defence Aviation Safety Authority; is that correct?

10

CMDR SHAW: That's correct, sir.

COL STREIT: And the Office of the CDF. And you've identified the officers and individuals in your statement, haven't you?

15

CMDR SHAW: Yes, sir.

COL STREIT: You say:

20 *The purpose of this meeting was to discuss the most appropriate process to provide the information required by the Coroner.*

You say you made it clear that you did not own the information assets, therefore you'd be the gatekeeper and facilitator for all information requests to and from the Coroner, or their delegate QPS. You advised all requests would be sent to Defence Legal, Army Headquarters for action and any response, in particular, from 6 Aviation Regiment, 16 Aviation Brigade, would be cleared through Army Headquarters, and then Defence Legal, prior to yourself forwarding to the Coroner or their delegate. This was agreed by all parties present; correct?

25

30

CMDR SHAW: That's correct, sir.

COL STREIT: So the effect of that was that the provision of information to the Coroner, did that include the provision of information including witness statements from individuals?

35

CMDR SHAW: This will be for everything, sir.

COL STREIT: So that means that an individual witness statement which would ordinarily be obtained through a QPS investigator, or a Military Police qualified investigator, and then provided to, in this case, Queensland Police Service direct, was in fact the statement was being moved through the ADF Service Headquarters for Army and other stakeholders. Correct?

40

45

5 CMDR SHAW: So what happens, sir, we'd moved on then from the Military Police taking the statements, so all doors had been closed to us. I think there was a communication piece – or a communication issue between the Brigade and Army Headquarters, and at one point I had to speak to CDF's lawyer to say there was a problem with giving us the names of the witnesses for QPS, because we couldn't confirm who was in the fourth cab – the fourth helicopter on that one.

10 So when it came through to CDF, Army obviously tried to take it. They wanted to take control of the whole piece with the Coroner. CDF directed that I had it, as the Provost Marshal. The Provost Marshal had it on there, but he also directed that – and it's in para 47, sir, of my statement – liaising with Defence Legal to establish a working process. So we'd already gone past the MMPs at this point.

15 Every lawyer going was involved in this space now. We had lawyers running around, Defence Legal Services, the Director-General for those had jumped in there, and everybody was involved. So Army Headquarters had also dispatched two lawyers – and it's in my statement who they were – to go straight to see the witnesses in the helicopter to brief them on their rights in regards to providing it. So everybody had lined up. It was a closed shop.

20 COL STREIT: Those two lawyers, one was COL James Field, is that right, in your statement?

25 CMDR SHAW: That's correct, sir.

COL STREIT: And the other one, LTCOL Sam Duffy?

30 CMDR SHAW: That's correct.

35 COL STREIT: So the upshot, if I understand your evidence correctly – and if I have it wrong, tell me – is that initially the Service Police were engaged by QPS to obtain statements from witnesses involved in other aircraft, together with Bushman 83; correct?

CMDR SHAW: Yes, sir.

40 COL STREIT: That process did not occur as a consequence of actions taken collectively by Army?

CMDR SHAW: That's correct, sir.

45 COL STREIT: The Joint Military Police Unit, in the end, was not the vehicle by which statements were taken, but another method was used?

CMDR SHAW: That's correct, sir.

5 COL STREIT: And the role that your organisation was then confined to was simply the provision of what information was cleared through Army Headquarters and Defence institutions to be provided to the Coroner?

CMDR SHAW: Yes, sir.

10 COL STREIT: Did you have any involvement in the ultimate vehicle that was used by Defence or Army to get the statements from the witnesses?

CMDR SHAW: No, sir.

15 COL STREIT: Did you have any awareness that it was Defence Legal that took that role?

CMDR SHAW: Yes, I was informed, sir.

20 COL STREIT: Subsequently, in paragraph 55, you'd been in communication with the Queensland State Coroner; is that correct?

CMDR SHAW: That's correct, sir.

25 COL STREIT: And you informed him that CDF had directed the Provost Marshal ADF to be the Australian Defence Force point of contact to the Queensland State Coroner in relation to the MRH-90 incident?

CMDR SHAW: That's correct, sir.

30 COL STREIT: That point of contact was really just limited to providing the Coroner the information that Army and Defence Legal gave you?

CMDR SHAW: Yes, sir.

35 MS McMURDO: You were really just the post box?

CMDR SHAW: Gatekeeper, ma'am, yes.

40 COL STREIT: Thursday, 3 August 2023, your evidence commences at paragraph 56. At paragraph 59, 1326 that afternoon, you say Magistrate O'Connell, who was the Coroner in this matter, emailed you to advise he'd been informed the flight data recorder for the MRH-90 was due to be recovered; correct?

45

CMDR SHAW: Yes, sir.

5 COL STREIT: And that he'd been informed that DFSB, along with the Australian Transport Safety Bureau, required the flight data recorder to preserve the integrity of the unit and to extract information contained within it.

CMDR SHAW: That's correct, sir.

10 COL STREIT: Magistrate O'Connell stated that before he released the flight data recorder he required confirmation that the recovered information and investigation report into the circumstances of the accident be provided to him in a timely manner; is that right?

15 CMDR SHAW: That's correct, sir.

20 COL STREIT: And you forwarded the email to Defence Legal, the representative you've identified there, for consideration and action. Ultimately, the Coroner issued a Direction, didn't he, releasing the flight data recorder to DFSB?

CMDR SHAW: Yes.

25 COL STREIT: But it was on the basis, was it, having regard to paragraph 59 of your statement, that the information from the recording would be shared with the Coroner?

CMDR SHAW: That's correct, sir.

30 COL STREIT: To your knowledge, given that you're effectively providing information to the Coroner that Defence gives you as the point of contact, has that included the flight data recorder information?

CMDR SHAW: Yes.

35 COL STREIT: It has?

40 CMDR SHAW: Yes, sir. The Coroner asked for confirmation from Defence that they would share the information. Defence Legal prepared the acknowledgment letter to the Coroner to say they agreed to it, and I provided that back to the Coroner.

45 COL STREIT: Sure, but has the flight data recorder information been given to the Coroner?

CMDR SHAW: I have no idea, sir.

COL STREIT: It hasn't come through you to provide to the Coroner?

5 CMDR SHAW: No, sir. It may have gone through GPCAPT Lewis.

COL STREIT: Ultimately, you handed over to GPCAPT Lewis, did you, your role in this matter, in the sense of relinquishing your responsibilities as Acting Provost Marshal ADF?

10

CMDR SHAW: Yes, sir.

COL STREIT: And that occurred on Monday, 7 August.

15 CMDR SHAW: That's correct, sir.

COL STREIT: That's correct? On page 14 of your statement, at paragraph 70, you deal with information concerning an Interim Defence Instruction, which is Defence Support to Coronial Inquiries, signed and released by the Chief of the Defence Force Secretary on 19 March 2024. To your understanding, was that Interim Instruction prepared and released as a consequence of the crash of Bushman 83?

20

CMDR SHAW: Yes, sir.

25

COL STREIT: Sorry?

CMDR SHAW: Yes, sir.

30 COL STREIT: That instruction, to your recollection, it doesn't provide any guidance, does it, about the removal of witnesses from an incident scene?

35

CMDR SHAW: No, it doesn't, sir.

COL STREIT: It also doesn't provide any guidance, does it, that a witness to an incident can volunteer information to an investigative agency?

CMDR SHAW: No, sir.

40

COL STREIT: Thank you, Commander. Those are my questions.

MS McMURDO: Applications to cross-examine? Yes, Ms Musgrove.

45

<CROSS-EXAMINATION BY MS MUSGROVE

5 MS MUSGROVE: Sir, my name is Musgrove, and I appear for the Commonwealth. You gave some evidence that your opinion was that Army wanted to control the narrative. That's correct?

CMDR SHAW: That's correct, ma'am.

10 MS MUSGROVE: That's your personal opinion?

CMDR SHAW: It is.

15 MS MUSGROVE: To your awareness, QPS, acting for the Coroner, had no power of compulsion to require a statement from any of the witnesses. That's correct?

CMDR SHAW: That's correct, ma'am.

20 MS MUSGROVE: And so any engagement that any witnesses had in providing a witness statement would be purely voluntary. That's correct?

CMDR SHAW: That's correct.

25 MS MUSGROVE: In your experience, it's not unusual, is it, for someone who's going to voluntarily give evidence in the form of a witness statement to whatever investigative agency it is, they're entitled to seek legal advice, aren't they?

30 CMDR SHAW: They are, ma'am, yes.

MS MUSGROVE: And no one said to you that the reason Army Legal wanted to speak to the witnesses was to control the narrative, did they?

35 CMDR SHAW: No, they didn't.

MS MUSGROVE: That's just your supposition?

CMDR SHAW: Yes, it is.

40 MS MUSGROVE: And no one said to you that they wanted to only provide certain evidence, and they wanted to control the evidence, did they?

CMDR SHAW: That's correct.

45

MS MUSGROVE: And as you said, there's nothing unusual in a witness, who is going to voluntarily give information, to obtain legal advice before doing that?

5 CMDR SHAW: That's correct.

MS MUSGROVE: I have no further questions.

10 MS McMURDO: Any re-examination? Did you have something, COL Thompson?

SQNLDR THOMPSON: I do, ma'am.

15 MS McMURDO: Thank you.

<CROSS-EXAMINATION BY COL THOMPSON

20 COL THOMPSON: CMDR Shaw, COL Thompson for BRIG Dean Thompson, Commander of 16 Aviation Regiment last year. Can I take you to paragraph 22 of your statement where you say that during that afternoon/evening – that's of 29 July 2023 – you had several telephone
25 conversations with PO Theissen, when he told you about conversations and interactions with 16 Aviation Brigade staff, among others?

CMDR SHAW: Yes, sir.

30 COL THOMPSON: Did BRIG Thompson's name come up during that conversation with PO Theissen?

CMDR SHAW: Yes, it did, sir.

35 COL THOMPSON: In what regard?

CMDR SHAW: He just said that he'd had a brief conversation with him on that day. He didn't give any specific details, sir.

40 COL THOMPSON: Now, correct me if I'm wrong, but I think you said during examination-in-chief with my friend, COL Streit, that it was 31 July 2023 was the first time you were aware of any concern about a reluctance by Army to facilitate QPS taking evidence from 6 Aviation Regiment members. Is that correct?

45 CMDR SHAW: That's correct, sir.

COL THOMPSON: At paragraph 26, halfway through paragraph 26, the sentence beginning:

5 *I made it absolutely clear that any contact with the aircrew was to be through the 6 Aviation Regiment chain of command.*

You made that clear to WO1 Fenton.

10 CMDR SHAW: Yes, sir.

COL THOMPSON: Anyone else did you make it clear to?

15 CMDR SHAW: No, sir. He was my representative that would go to the Sydney station, sir.

20 COL THOMPSON: And did you mean by that that QPS were not to have access to 6 Aviation Regiment members in Sydney, or anywhere else, to take statements, rather that 6 Aviation Regiment was to be the gateway?

CMDR SHAW: I just wanted to make sure, sir, that we went through their Command, to make sure that witnesses were supported.

25 COL THOMPSON: Well, did you understand at that stage, when you made it clear, to WO1 Fenton that JMPU was to take the statements on behalf of QPS?

CMDR SHAW: Yes, I was aware of that, sir. So WO1 Fenton is JMPU, sir.

30 COL THOMPSON: Yes, I was aware of that, sir.

35 CMDR SHAW: So, yes, my team were going to engage with the Aviation Regiments to obtain the statements, but I also made it crystal clear to my team in Sydney, they would go through the Command rather than going straight to the witnesses themselves.

40 COL THOMPSON: You were not minded to arrange for QPS to have access to the witnesses in Sydney?

CMDR SHAW: No, QPS had asked us, sir.

COL THOMPSON: Say that again?

CMDR SHAW: QPS had asked us to obtain them, so therefore we were their representative.

5 COL THOMPSON: Thank you. Just finally, in paragraph 32, in the second sentence, you refer to a welfare check. Now, without identifying the person mentioned in that paragraph, why did you have concerns about that person's welfare?

10 CMDR SHAW: It was PO Theissen; I can say that. It was PO Theissen, sir. I went down there. It was just – yes, it was a Command check to make sure he was fine. I wanted to go down there and get an appreciation of the actual situation itself, and to make sure that my representative was fine, he was okay.

15 COL THOMPSON: Why did you have concerns?

CMDR SHAW: I didn't have any concerns; it's just a normal Command duty of care, welfare check, on my people.

20 COL THOMPSON: I see.

CMDR SHAW: I'd sent him down there into the organisation to be my representative, I wanted to make sure he was okay.

25 COL THOMPSON: Thank you, ma'am.

MS McMURDO: Any other applications to cross-examine? Any re-examination?

30 COL STREIT: No, thank you.

MS McMURDO: No. Thank you very much, Commander. You are free to go.

35 CMDR SHAW: Thank you, ma'am.

<WITNESS WITHDREW

40 MS McMURDO: Yes, COL Streit.

COL STREIT: Ms McMurdo, can I call GPCAPT Terrence Lewis, please?

45

MS McMURDO: Yes.

<GPCAPT TERRENCE JOHN LEWIS, Sworn

5

<EXAMINATION-IN-CHIEF BY COL STREIT

10 MS McMURDO: Please let me know if you need a break at any time.

GPCAPT LEWIS: Thank you, ma'am.

MS McMURDO: Help yourself to some water, if you'd like some.

15

COL STREIT: GPCAPT Lewis, please state your full name.

GPCAPT LEWIS: Terrence John Lewis.

20 COL STREIT: Where are you presently posted?

GPCAPT LEWIS: To the Joint Military Police Unit in Canberra, as the Provost Marshal.

25 COL STREIT: So your role is the Provost Marshal, Australian Defence Force?

GPCAPT LEWIS: Yes, that's correct.

30 COL STREIT: How long have you been in that role?

GPCAPT LEWIS: Since December 2022.

35 COL STREIT: You received a section 23 Notice from the Inquiry to be here today?

GPCAPT LEWIS: Yes, I did.

40 COL STREIT: Did that Notice also contain a Frequently Asked Questions Guide for Witnesses?

GPCAPT LEWIS: Yes, it did.

45 COL STREIT: A Privacy Notice?

GPCAPT LEWIS: Yes.

COL STREIT: An extract of the Inquiry's Directions?

5 GPCAPT LEWIS: Yes.

COL STREIT: A copy of my Instrument of Appointment?

10 GPCAPT LEWIS: Yes.

COL STREIT: And as a consequence of receiving that section 23 Notice, did you – I'll start again. The section 23 Notice contained a series of questions for you to answer?

15 GPCAPT LEWIS: Yes.

COL STREIT: And as a consequence of receiving that notice, did you prepare and sign a witness statement for the purposes of this Inquiry?

20 GPCAPT LEWIS: Yes, I did.

COL STREIT: Did you also, with that witness statement, attach a series of annexures?

25 GPCAPT LEWIS: Yes, I did.

COL STREIT: I'm just going to show you a document. Just take your time, GPCAPT Lewis, to work your way through the documents I provided to you to satisfy yourself of your familiarity with those documents and their content, and the originator.

30

GPCAPT LEWIS: That's the statement I provided for this.

COL STREIT: So that is the statement made by you comprising 10 pages?

35

GPCAPT LEWIS: Yes, that's correct.

COL STREIT: Did you digitally sign that statement on 7 October 2024?

40 GPCAPT LEWIS: Yes, I did.

COL STREIT: Does the statement contain a series of annexures?

45 GPCAPT LEWIS: Yes, it does.

COL STREIT: Does that annexure list, or the number of annexures, run from A through to G?

GPCAPT LEWIS: Yes, it does.

5

COL STREIT: In relation to your statement, Annexure G, you say at paragraph 44, is a running log of key engagements concerning the MRH-90 incident. Is that correct?

10 GPCAPT LEWIS: That's correct.

COL STREIT: You identify, at paragraph 44, that the document – that is, the running log – refers to information which is marked “Sensitive” in relation to personal privacy and some legally privileged information?

15

GPCAPT LEWIS: That's correct.

COL STREIT: It also, does it, covers information that's at the “Official: Sensitive” level?

20

GPCAPT LEWIS: Yes, it would.

COL STREIT: So, in those circumstances, I won't be asking you any questions in relation to Annexure G in a public forum.

25

GPCAPT LEWIS: Yes.

COL STREIT: Are you otherwise satisfied that the annexures, or the copies of the annexures you have, Annexures A to G for your statement?

30

GPCAPT LEWIS: Yes, I am. I will also note that Annex E is from Defence Legal, and has “Official: Sensitive – legal” on its subject title.

COL STREIT: Yes, thank you for drawing that to our attention. I will also not ask you questions in relation to the specific contents of Annexure E in a public – about the contents of Annexure E in a public forum. Ms McMurdo, I tender GPCAPT Lewis' statement of 7 October 2024, comprising Annexures A to G.

35

40 MS McMURDO: The statement and the Annexures A to G will be Exhibit 85.

**#EXHIBIT 85 - STATEMENT OF GPCAPT LEWIS
AND ANNEXURES**

45

COL STREIT: GPCAPT Lewis, the process I'm about to embark upon is to just take you to various parts of your statement chronologically, unless
5 it's necessary to briefly deviate for other reasons, but chronologically, and I'll ask you questions in relation to some aspects, but not all aspects, of your statement. First, can I begin with your background and qualifications, commencing at paragraph 4? You enlisted in the ADF in May 2000, correct - - -

10

GPCAPT LEWIS: That's correct.

COL STREIT: - - - as a Security Police member? And you were
15 commissioned as a Security Police Officer in 2002?

15

GPCAPT LEWIS: Yes, that's correct.

COL STREIT: And you've been a Security Police Officer since 2002?

20

GPCAPT LEWIS: Yes.

COL STREIT: You are a qualified investigator, having completed all
ADF Investigation Courses.

25

GPCAPT LEWIS: Yes.

COL STREIT: And in 2013 you also completed the Management of
30 Serious Crimes Course, which is administered by the Australian Federal Police?

30

GPCAPT LEWIS: That's correct.

COL STREIT: At paragraph 5, relevantly to this Inquiry you say you have
35 filled a number of key military policing and investigative roles during your career, including as J3, the Director of Operations of the Australian Defence Force Investigative Service from January 2013 to 2016. I pause there. The Joint ADF Investigative Service is the ADF's premiere investigative service in relation to investigating alleged offences under the Defence Force Discipline Act?

40

GPCAPT LEWIS: Yes, that's correct.

COL STREIT: And that incorporates offences under the Crimes Act
45 1914?

45

GPCAPT LEWIS: Through the DFDA, yes.

COL STREIT: Through the DFDA, and through the DFDA incorporates offences in the Commonwealth Criminal Code 1995?

5

GPCAPT LEWIS: Yes.

COL STREIT: The ACT Crimes Act?

10

GPCAPT LEWIS: Yes.

COL STREIT: For all intents and purposes, the ADF Investigative Service is a Police Investigative Service conducting investigations pursuant to legislation that I have just mentioned, in relation to allegations of disciplinary offences. Is that right?

15

GPCAPT LEWIS: Yes, that's correct.

COL STREIT: And that can include, domestically, offences comprising an act of indecency; correct?

20

GPCAPT LEWIS: Yes.

COL STREIT: And when deployed overseas, it potentially can also include investigating offences involving murder?

25

GPCAPT LEWIS: Yes, that's correct. But that applies to all Defence Force members under the DFDA, wherever they are in the world – so in Australia and overseas.

30

COL STREIT: Yes. You describe your role as the J3 for ADFIS during that period of time during which you conducted serious and sensitive policing investigations, and you were the Director of ADFIS from 5 December 2019 (sic) to January 2019, which you managed and had a leadership role for the conduct of Military Police investigations responsible to the PMADF?

35

GPCAPT LEWIS: So I was Director ADFIS from December 2016 through to January 2019. That's correct.

40

COL STREIT: Thank you. One of the roles of ADFIS – well, one of the outcomes of ADFIS conducting serious and sensitive policing investigations is potentially the preparation of briefs of evidence for the Director of Military Prosecutions?

45

GPCAPT LEWIS: Yes, that's correct.

5 COL STREIT: And subject to the Director's discretion, those matters may then be prosecuted – members may be charged and prosecuted before a Defence Force Magistrate or a Courts Martial?

GPCAPT LEWIS: Yes, that's correct.

10 COL STREIT: Can I turn now to your background involvement in the incident? Now, at paragraph 6, you were actually on approved leave from 29 July to 6 August 2023; is that correct?

GPCAPT LEWIS: That's correct.

15 COL STREIT: That had been planned leave, planned approved leave?

GPCAPT LEWIS: Yes, it was.

20 COL STREIT: Your planned leave was going to take you to a location where phone communications weren't the best; is that right?

GPCAPT LEWIS: Yes, that's correct.

25 COL STREIT: So you handed over the performance of your duties as Provost Marshal ADF to CMDR Shaw on Friday, 28 July 2023?

GPCAPT LEWIS: Yes, that's correct.

30 COL STREIT: At the time, CMDR Shaw was your Deputy?

GPCAPT LEWIS: He was the CO of the Joint Military Police Force.

35 COL STREIT: Thank you. You became aware of the incident involving Bushman 83 on the morning – you became aware of that matter on the morning of 29 July 2023?

GPCAPT LEWIS: That's correct.

40 COL STREIT: At that time, you'd had a brief phone conversation with CMDR Shaw and you were satisfied that he had the matter in hand and you did not need to cancel your approved leave?

GPCAPT LEWIS: Yes, that's correct.

COL STREIT: You knew at that time, I take it, that you would be picking up the work on that matter when you returned from leave?

GPCAPT LEWIS: Yes.

5

COL STREIT: Given your role, assuming your role again as the Provost Marshal?

GPCAPT LEWIS: Yes, that's correct.

10

COL STREIT: Now, at paragraph 8, you refer to a number of Defence policies applicable and guidance documents applied to the ADF engagement with Queensland Police Service and the State Coroner's Office, and they're annexed to your statement, Annexure A. Annexure A comprises a summary that you have prepared, is it?

15

GPCAPT LEWIS: Yes, that's correct. It's a summary of the various policies.

20

COL STREIT: Thank you. So you had regard to the various policies you've identified in Annexure A; correct?

GPCAPT LEWIS: Yes, that's correct.

25

COL STREIT: You have provided a summary of what you regard as the salient points from those various policies and instructions?

GPCAPT LEWIS: Yes, that's correct.

30

COL STREIT: You have identified in red, each of the policies and instructions that you the provide the summary about?

GPCAPT LEWIS: Yes, that's correct.

35

COL STREIT: Thank you. Now, you say in paragraph 9 also that Annexure B is a summary prepared of written Defence welfare policies and protocols; is that correct?

GPCAPT LEWIS: Yes, that's correct.

40

COL STREIT: I take it, similarly, the policies and protocols that you've identified in red in Annexure B, you similarly have provided what you regard are the salient points from those various policies?

45

GPCAPT LEWIS: Yes, that's correct.

COL STREIT: In the body of Annexure B?

GPCAPT LEWIS: Yes, that's correct.

5

COL STREIT: Now, those documents, they concern, do they, how Defence – that is, the ADF – will deal with obtaining evidence from an individual in the context of an ADF investigation?

10 GPCAPT LEWIS: The documents are primarily the ADF policy, with the exception of a letter between the Queensland Coroner and the Chief of Defence Force, at the end of Annexure A. The rest are about the policies for the reporting of incidents and how Defence will interact with those, and the liaison between the ADF's Coronial Liaison Officer and other
15 investigative agencies.

COL STREIT: There is, of course, is there not, a letter of protocol in existence between the ADF Military Service Police and Queensland Police?

20 GPCAPT LEWIS: A letter of agreement between those; yes, there is.

COL STREIT: Letter of agreement. Now, just in relation to what you said about the existence of a protocol between the Queensland State Coroner and the Australia Defence Forces – and it was in Annexure A you mentioned
25 – so at the back of Annexure A is a document titled, "Protocol between the ADF and Queensland State Coroner concerning investigation of deaths of the ADF members".

GPCAPT LEWIS: Yes, that's correct.

30

COL STREIT: Is that, to your knowledge – I appreciate you're not the author of the document – to your knowledge, as far as the ADF is concerned, is that document still current?

35 GPCAPT LEWIS: The document would still be current and in line with subsequent documents that have been engaged later and the intent is the cooperation without limiting any of the statutory authorities.

40 COL STREIT: Are you aware that some legislation or legislative instruments referred to in the protocol have been rescinded?

GPCAPT LEWIS: Yes, I am.

45 COL STREIT: Are you aware that the Defence Force Regulations 1952, which is set out at paragraph 7 of the protocol, is rescinded?

5 GPCAPT LEWIS: The specific protocol I'm not aware of, but I'm aware that some of the legislation has changed and subsequent Regulations or legislation have been in place.

10 COL STREIT: You may not have any knowledge about this and, if you don't, please say so, but do you have any understanding as to whether any attempt has been made to update this protocol, given that it's 2007 and it's nearly 20 years old?

15 GPCAPT LEWIS: I haven't seen any attempts to update this protocol.

COL STREIT: Sorry, you haven't yourself, but I'm just asking, do you have any awareness within the Defence organisation as to whether any attempt has been made?

GPCAPT LEWIS: No, I'm not.

20 COL STREIT: All right, thank you. Can I return now to your statement and paragraph 10. Following on from paragraph 10, and the subsequent paragraphs to 13, you were asked to set out when you became involved in the crash investigation, how you became involved, and who you reported to. So you returned from leave on 7 August 2023; is that correct?

25 GPCAPT LEWIS: That's correct.

COL STREIT: CMDR Shaw provided you a handover in relation to events that had occurred while he was the Acting Provost Marshal, including the MRH-90 matter?

30 GPCAPT LEWIS: Yes, that's correct.

COL STREIT: Did he brief you at that time also, or express anything to you in the context of issues in relation to statements being provided to Queensland Police Service?

35 GPCAPT LEWIS: Yes, he did.

40 COL STREIT: The effect of what he said to you, what was the takeaway for you?

45 GPCAPT LEWIS: So my understanding was that there had been some discussions about how the statements should be gathered and who should gather them, with a result of Defence Legal were facilitating the gathering of some statements.

COL STREIT: Now, you, as a trained investigator, I'm just going to ask you your opinions about some matters. So in relation to an investigation where you were providing effectively Coronial assistance, in those
5 circumstances, would you agree that the obtaining of witness statements as early as possible proximate to an incident is good practice?

GPCAPT LEWIS: Yes, it is.

10 COL STREIT: That's because, is it, that that is the opportune time to capture a witness's memory before their memory might be impaired by other things?

GPCAPT LEWIS: Yes, that's correct.

15 COL STREIT: Do you accept, as an investigator, that human memory fades over time?

GPCAPT LEWIS: Yes, I do.

20 COL STREIT: So providing other things can be managed, for example, the provisional welfare assistance, it is important, is it, to obtain or capture a witness's version of events in a statement as close to an incident as possible?
25

GPCAPT LEWIS: Yes, it is.

30 COL STREIT: In terms of the handover from CMDR Shaw, and subsequently in relation to the issue about obtaining statements from Service members to be provided to the QPS, what did you understand, after speaking with CMDR Shaw, was the role that your organisation had in that space?

35 GPCAPT LEWIS: So from the handover and some subsequent discussions throughout the period, my understanding was that for the initial gathering of the statements, we offered in Sydney to provide some investigators and a social worker to help gather statements. That wasn't required and Defence Legal were appointing some Counsel to assist members to prepare a statement that would then be provided to the Coroner.
40

COL STREIT: When you say "Counsel", do you mean legal Counsel?

GPCAPT LEWIS: Sorry, Defence Legal; yes, legal counsellors.

45 COL STREIT: Counsel is also a reference to a barrister. You're not sure?

GPCAPT LEWIS: I'm using it in the general terminology.

COL STREIT: General terms.

5

MS McMURDO: Lawyers. You mean lawyers?

GPCAPT LEWIS: Yes, ma'am.

10 MS McMURDO: Yes. Do you know if these lawyers were representing the Defence Force or the individuals?

GPCAPT LEWIS: I wouldn't be able to answer that question.

15 MS McMURDO: No. Thank you.

COL STREIT: Now, you identify at paragraph 12 that your role as PMADF is to manage the liaison with and assistance to Coroners and Police, and for policing matters, you're responsible to the Chief of the Defence Force. You're required to exercise judgment as the senior policing member in Defence as to who you engage with in regard to particular matters. You refer to a Chief of the Defence Force Directive that provides you an authority?

25 GPCAPT LEWIS: Yes, that's correct.

COL STREIT: Also at paragraph 12, you conclude by saying you report similarly to Service Chiefs on matters within their respective Commands.

30 GPCAPT LEWIS: Yes.

COL STREIT: Now, at paragraph 15 onwards, you identify key personnel that you have engaged with in relation to your role concerning the MRH-90 investigation. That's correct?

35

GPCAPT LEWIS: Yes, that's correct.

COL STREIT: I turn to paragraph 18 and onwards. You say at paragraph 18:

40

On 2 August 2023, after internal consultation in Defence, CMDR Shaw informed the Queensland Coroner that CDF had directed PMADF was to be the ADF point of contact in relation to the MRH-90 incident.

45

GPCAPT LEWIS: Yes, that's correct.

5 COL STREIT: Now, put aside the CDF's Direction at that point in time, is it the case that Defence's policy was always that the PMADF was the point of contact for Coroners?

GPCAPT LEWIS: Yes, that's correct, at the time of the incident.

10 COL STREIT: Sure. So do you know why it then required the CDF to issue a Direction about something which is already in place?

GPCAPT LEWIS: I can't speak for CDF and the reason he made those decisions.

15 COL STREIT: Sure.

20 GPCAPT LEWIS: But from the incident in general, I'd say that there were a number of areas that wanted to ensure that the incident was dealt with, and the Army Headquarters' staff had the view that, as an Army incident, they should be leading on the engagement to ensure that the Services could understand the information and provide support for it.

25 COL STREIT: So the Direction that was issued by CDF, I take it, was simply reinforcement of a protocol that already existed concerning the role of PMADF and engagement with Coroners about the country?

GPCAPT LEWIS: Yes, that's correct.

30 COL STREIT: Can I take you to paragraph 22 of your statement, please. You say:

35 *On 25 September 2023, in an attempt to coordinate investigative activities, and after discussions with Defence Legal and Army Headquarters, I sent four letters; one to each of the separate investigative authorities: Coroner, Comcare, IGADF and DFSB. The letter sought a meeting collectively to enable all stakeholders to share in a discussion about differing organisation requirements and how Defence might facilitate them, while balancing health and welfare of personnel involved.*

40

GPCAPT LEWIS: Yes, that's correct.

45 COL STREIT: Did you know at that time, or were you aware at the time, that statements were already in the process of being obtained from the aircrew of the three other MRH-90s involved in the sortie?

GPCAPT LEWIS: There were statements being gathered by Defence Legal to assist.

5 COL STREIT: Sure.

GPCAPT LEWIS: Part of the reasoning for this letter was there are four different investigative authorities, all with different obligations or statutory requirements, and some of those were in order to minimise the impact on individuals and be called for repeat interviews or providing different statements. We were seeking to facilitate that discussion to find out the requirements and trying to minimise the impact on individuals involved.

10 MS McMURDO: Did you come out with any agreed outcome as to how you might do that?

GPCAPT LEWIS: No, we didn't, ma'am. One of the letters that we received back was from Comcare, identifying that they would decline to participate in the meeting. They did acknowledge the concerns raised and said as part of their normal requirements for dealing with the welfare of individuals, they'd take that into consideration, but at that point they wouldn't be partaking in a joint discussion.

20 MS McMURDO: So they didn't take part in the meeting?

25 GPCAPT LEWIS: No.

MS McMURDO: So it was really boiled before it got anywhere and fizzled out.

30 GPCAPT LEWIS: Yes.

MS McMURDO: It was a good idea, but it fizzled out. You were obviously trying to minimise trauma to the witnesses who were involved in the incident?

35 GPCAPT LEWIS: Yes, that's correct.

COL STREIT: Can I take you to paragraph 29 of your statement, which is in response to a question:

40 *Describe any issues arising in the provision of ADF witness statements to QPS and the Office of the Central Queensland Coroner, including the factual circumstances giving rise to those issues and how well they were resolved, if at all?*

You say at paragraph 26:

5 *There were a number of issues relating to the gathering of statements for this incident. Initially, and before I became aware personally –*

10 you say you understand there was a lack of clarity over the lead agency, whose jurisdiction would be involved and what they would require. Most of these issues were identified in the first week post the incident and were managed by the Acting PMADF, CMDR Shaw. You understand part of the confusion arose because members involved returned to Sydney as part of the unit's consolidation and welfare activities which meant they were no longer physically located in Sydney as a result. Further, to engagements between Defence Legal and the Coroner, you were informed that Defence Legal undertook to have the statements compiled and, on the basis of a Form 25 request from the Coroner, would provide them to the Coroner.

20 GPCAPT LEWIS: That's correct.

COL STREIT: Sorry, you agree what I've just read out is your evidence?

GPCAPT LEWIS: Yes.

25 COL STREIT: At paragraph 27 you say:

These statements were also intended to address requirements for other investigative processes.

30 After the agreement was reached, you wrote to Coroner O'Connell on 26 October asking for a full-week extension of time; is that correct?

GPCAPT LEWIS: Yes, that's correct.

35 COL STREIT: That extension was granted, was it?

GPCAPT LEWIS: Yes, it was.

40 COL STREIT: And that the completed statements from witnesses were sent directly to the Coroner's Office email address on Thursday, 30 November 2023 at 0717 hours?

GPCAPT LEWIS: That's correct.

COL STREIT: Now, there's some evidence before the Inquiry to the effect that the Queensland Police Service members involved in the conduct of an investigation, and in preparing a report for the Coroner, did not receive and still have not received copies of the witness statements provided to the
5 Coroner by Defence on 30 November 2023. What's your understanding of that matter?

GPCAPT LEWIS: I understand that the Queensland Police, in their capacity acting on behalf of the Coroner as investigators, weren't emailed
10 those statements. I did not cause them to be forwarded to the Queensland Police because they had been sent directly to the Coroner. My understanding would have been had they – through their internal process with the Coroner, they would have had access to those.

COL STREIT: So is it your organisation that's providing the statements – the Office of the PMADF that's providing the statements to the Coroner?

GPCAPT LEWIS: No, they were emailed from Defence Resolution and Litigation in Defence Legal and they were emailed directly to the Coroner.
20

COL STREIT: Were you sent a copy on your email?

GPCAPT LEWIS: Yes, I was.

COL STREIT: So from that email, you could discern that there was no Queensland Police addressee?
25

GPCAPT LEWIS: That's correct.

COL STREIT: So the assumption you made was that someone within the Coroner's Office would realise that the police didn't have the statements, and then forward the statements to the police?
30

GPCAPT LEWIS: Yes.

COL STREIT: At that time you saw that email, would it not have been your expectation that Defence, whichever part of Defence it was, would provide copies of the statements to the Queensland Police Service, who were doing the investigation for the Coroner?
35

GPCAPT LEWIS: At the time, no, because it was the lawyers from Defence Legal providing the information to the Coroner. I would not have expected the lawyers to email the Queensland Police because the request from the Queensland Police were to – on behalf of the Coroner for his
40 Inquiry.
45

COL STREIT: The Coroner is the investigative decision-maker; correct?

5 GPCAPT LEWIS: Yes, that's correct.

COL STREIT: So is it your experience the Queensland Police would need those statements to prepare their report for the Coroner?

10 GPCAPT LEWIS: Yes, they would.

COL STREIT: They would also need those statements to review because potentially, would you agree, those statements could give rise to other lines of enquiry the police may wish to explore?

15 GPCAPT LEWIS: Yes, that would be correct.

COL STREIT: I'm not suggesting, nor am I being critical of you in any way, but did you consider or did you take the step of informing Defence Legal that the statements should go to QPS?

20 GPCAPT LEWIS: No, because the Form 25 requirement for production is to the Coroner. So my understanding at the time was Defence Legal had met the obligation of the Coroner's request.

25 COL STREIT: Did, to your knowledge, anyone in Defence Legal drop a line to QPS to say, "The statements have gone to the Coroner. We can't give them to you because they're subject to a Coronial Direction, but they've gone to the Coroner"?

30 GPCAPT LEWIS: No, I'm not aware of that.

MS McMURDO: Could you just explain to those listening what a Form 25 Notice is?

35 GPCAPT LEWIS: Sorry, the Form 25 Notice is the Queensland's jurisdiction that a Coroner issues. It is essentially a notice to produce documentation that, under the *Coroners Act*, is the compellable item.

40 MS McMURDO: In this case, it was a statement.

GPCAPT LEWIS: Yes, it was the request for the statements from the members.

MS McMURDO: So whilst there's no obligation for any of the witnesses before that Notice is issued to provide a statement, once that Notice is issued, they are compelled to provide a statement?

5 GPCAPT LEWIS: I wouldn't be able to answer the technical definition of that, but my understanding is a statement that has been gathered and the Form 25 is requesting those statements, those statements then fall under the Form 25 for production.

10 MS McMURDO: But once that statement is issued, certainly the witnesses are compellable to provide the statement requested in the Form 25 Notice?

GPCAPT LEWIS: Yes, I agree.

15 MS McMURDO: Thank you.

COL STREIT: Was there a requirement, to your knowledge, by Defence for the Coroner to issue a Direction before Defence would provide witness statements?

20

GPCAPT LEWIS: Sorry, can you restate that question?

COL STREIT: Sure. Well, let me put it this way. The witnesses were always available to give a statement post the incident on 28 July 2023. You would accept that? Whether or not they choose to do so is a different matter.

25

GPCAPT LEWIS: Yes.

30 COL STREIT: But they're available. Do you accept that? They've got capacity?

GPCAPT LEWIS: Yes, they have capacity to provide a statement, like any person does.

35

COL STREIT: Sure.

MS McMURDO: And they were asked to do so by the Queensland Police?

40 GPCAPT LEWIS: I can't answer whether the witnesses directly were asked, but Defence was asked.

MS McMURDO: And you, through the Military Police, were available to take those statements in Sydney once they'd been removed by Defence out of the jurisdiction, in the presence of a social worker to assist them.

45

GPCAPT LEWIS: Yes, that's correct.

MS McMURDO: If they became distressed?

5

GPCAPT LEWIS: Yes, that's correct.

MS McMURDO: Or to look after their interests. Yes?

10 GPCAPT LEWIS: Yes, ma'am.

COL STREIT: There's some evidence before the Inquiry that some of the
aircrew of one of the aircraft – I can't remember if it was 81, 82 or 84, but
certainly some evidence before the Inquiry to the effect that they started
15 working on their witness statement shortly after the incident, including
engagement with Defence Legal early on. So having regard to that matter,
are you aware as to any reason why it took until 30 November 2023 for
provision of statements by Defence to the Coroner?

20 MS MUSGROVE: Just before that's answered, could I ask my friend if he
can point to the evidence that says that they started working on their started
for the Coroner or for QPS, where that evidence is?

COL STREIT: D2.

25

MS MUSGROVE: Because it's not my recollection.

COL STREIT: D2.

30 MS MUSGROVE: Thank you.

MS McMURDO: It is my recollection that there was some evidence of
that.

35 COL STREIT: Let's put it this way. At paragraph 27 you say that there
was a requirement for an extension of four weeks to provide the statements;
correct?

GPCAPT LEWIS: Yes, that's correct.

40

COL STREIT: Do you know why there was a request for an extension of
four weeks to provide the statements?

45 GPCAPT LEWIS: Earlier in the piece, when we'd been discussing the
provision of the statements to the Coroner, his Form 25 issued at the time

would have fallen due around that time. The Defence Legal team that were coordinating the request, stated that due to some of the details and information they were gathering for it, the statements wouldn't be completed to meet that deadline. So they sought, through me, to ask the
5 Coroner for a four-week extension. The Coroner agreed to that and that's why the new Form 25 was issued.

COL STREIT: Can I take you to paragraph 29?

10 MS McMURDO: Just before you do that. Do you know the date or the approximate date of the 25 Notices?

GPCAPT LEWIS: Sorry, the date of the last one?

15 MS McMURDO: Yes, of all 25 Notices to the witnesses?

GPCAPT LEWIS: I suspect the email chain – so Annexure E has the Queensland Coroner who is responsible replying on 26 October approving the four-week extension and that Form 25 had a compliance date of
20 30 November as a result.

MS McMURDO: 30 November. Thank you.

COL STREIT: Coming to paragraph 29 of your statement, which
25 commences with your answers to the question set out at paragraph 28, which is:

*From an investigative perspective, describe the risk and/or potential risk, if any, to the QPS investigation and the Central Queensland Coroner's investigation arising from any delay in
30 obtaining and providing statements from ADF witnesses about the crash of Bushman 83?*

Do you see that?

35

GPCAPT LEWIS: Yes, I do.

COL STREIT: You say you're not able to comment on the risk to the QPS investigation or the Coronial investigation directly because you're not
40 involved in those matters. You then say this at paragraph 30:

*I can say from my general military policing experience that there are a number of issues pertaining to the timeliness of statements for an investigative process. The key issue is that an initial
45 statement taken in a speedy manner allows the key who, where,*

5 *what, how and why descriptions to be available, enabling the
investigator to form an initial view of the incident, and areas of
interest to focus on for the ongoing investigation. As time
progresses, and if statements have not been gathered, the
likelihood increases of witnesses talking to each other, often in
good faith, about the incident with a consequential risk of
accidental contamination of an individual's recall of events. This
can be as simple as if one witness says to another that if they are
certain of a detail and another witness is unsure, they may both
come to think the detail is accurate.*

Is what I read out, paragraph 30, correct? Is what I read out comprising
paragraph 30 of your evidence correct?

15 GPCAPT LEWIS: Yes, paragraph 30 is.

COL STREIT: Thank you. At paragraph 31, you continue.

20 *Further, the more time that passes between an individual
witnessing an event and providing a written statement, the risk
increases that the individual will be able to recall this detail due to
the impact of time on memory. Recall, to my experience, is
particularly diminished over time for details the individual did not
consider significant.*

25 Correct?

GPCAPT LEWIS: Yes, that's correct.

30 COL STREIT: 32:

*Another risk is that individuals may no longer be available to
provide a statement, having moved overseas, suffered a medical
episode, gone missing, or having passed away.*

35 Correct?

GPCAPT LEWIS: That's correct.

40 MS McMURDO: And other risks are if, for example, a witness statement
reveals that a photograph of a scene might be important, time has passed
and you can't get the most up-to-date photograph of the scene. That's
another risk?

45 GPCAPT LEWIS: Yes, that's correct, ma'am.

5 MS McMURDO: Another risk is if a witness statement identifies another witness's evidence could be useful, time has already passed and it's more difficult to contact and may be less reliable when taking a statement from other witnesses. That's another problem?

GPCAPT LEWIS: Yes, that would be correct.

10 MS McMURDO: So it has a ripple effect really in terms of the problems that can arise through late statements.

GPCAPT LEWIS: Yes, ma'am.

15 MS McMURDO: Would you agree that there's a concern in Defence Legal taking these statements, that there is potentially a conflict of interest between the interests of the witness and the interests of the ADF, given the questions that were being asked – or some of the questions being asked by Queensland Police? For example, questions about fatigue, questions about preparation for the flight, et cetera.

20 GPCAPT LEWIS: Yes. I think anyone who is taking a statement and assisting someone to provide a statement needs to take into consideration the advice that they're providing them and what role they're providing that advice in.

25 MS McMURDO: But are you therefore agreeing with me that there could be a potential conflict of interest arise in that situation?

30 GPCAPT LEWIS: Are you referring to a Legal Officer who is representing the Commonwealth and an individual?

MS McMURDO: Commonwealth, yes.

35 GPCAPT LEWIS: Yes. There may be a conflict in that they would have to separate their roles.

MS McMURDO: Thank you.

40 COL STREIT: Can I deal finally with a matter you raise at paragraph 36 of your statement concerning the issuing of an interim Defence Instruction titled, "Defence Support to Coronial Inquiries", which is dated 19 March 2024. Is that right?

45 GPCAPT LEWIS: Yes, that's correct.

COL STREIT: Is it your understanding – well, I start again. Do you understand that the instruction was issued as a consequence of the MRH-90 incident?

5 GPCAPT LEWIS: It wasn't the MRH-90 incident, it was a series of matters that we'd dealt with. The MRH-90, the engagement with a Coroner over an Osprey accident for the US, and a - - -

10 COL STREIT: That's in the Northern Territory?

GPCAPT LEWIS: That's correct.

COL STREIT: Yes.

15 GPCAPT LEWIS: And a New South Wales incident for a military freefall incident.

COL STREIT: Thank you. They're my questions.

20 MS McMURDO: Yes, thank you. Applications to cross-examine? Yes, COL Gabbedy.

<CROSS-EXAMINATION BY COL GABBEDY

25

COL GABBEDY: Just briefly, ma'am. Afternoon, Group Captain. I'm COL Nigel Gabbedy, I appear for the interests of MAJGEN Jobson, the Commander of Army Aviation. You were asked some questions by
30 Ms McMurdo in relation to paragraph 22 of your statement, which refers to this letter you wrote to the various agencies inviting them to a joint conference.

GPCAPT LEWIS: Yes.

35

COL GABBEDY: And you said that Comcare responded, basically saying, "No". Did the conference go ahead?

GPCAPT LEWIS: No, it did not.

40

COL GABBEDY: Did you receive responses from any of the other three agencies that you wrote to?

45 GPCAPT LEWIS: So I received an email from DFSB to support the discussion. I had a discussion with IGADF in the initial part for – they were

interested in the meeting but would wait to see what the other responses were. Once I'd received a response from Comcare that they weren't proceeding, I didn't proceed further with it.

5 COL GABBEDY: And the intent, I understand it, was to try and see whether statements could be standardised across all four agencies to avoid each witness being spoken to multiple times in relation to these events.

10 GPCAPT LEWIS: That was part of the intent. It was about getting the – a statement that would cover the majority of requirements and perhaps that would allow the different agencies to prioritise their efforts for who they needed to talk to to get further detail if required. So the initial intent was to minimise the exposure of the individuals to telling four different interviews and statements.

15 MS McMURDO: And having to repeat the traumatic incident time after time, so that at least some of the material wouldn't have to be repeated. If specific elements needed to be examined they could be limited to that rather than repeating the whole thing.

20 GPCAPT LEWIS: That's correct, ma'am.

MS McMURDO: Which is trauma-informed practice, correct?

25 GPCAPT LEWIS: Yes, ma'am.

MS McMURDO: Yes.

30 COL GABBEDY: Thank you very much.

MS McMURDO: Yes, COL Thompson.

35 **<CROSS-EXAMINATION BY COL THOMPSON**

COL THOMPSON: I'll be even briefer, Provost Marshal, good afternoon.

40 GPCAPT LEWIS: Good afternoon.

COL THOMPSON: COL Thompson for BRIG Dean Thompson, Commander, 16 Aviation Brigade in 2023. Can I take you to paragraph 22 of your statement, where in the last line you refer to, "Balancing the health

and welfare of personnel involved”. And in a similar vein, in paragraph 26 of your statement on the next page, you say that:

5 *The members involved returned to Sydney as part of the unit’s consolidation and welfare activities.*

Are you satisfied now that the sole reason for returning the members on 29 July 2023 from Proserpine to Sydney was for the psychosocial risk concerns, their welfare?

10 GPCAPT LEWIS: I wouldn’t be able to answer that question. That’s a Command decision on the reasons they did it.

15 COL THOMPSON: Very good. You’re aware that BRIG Thompson was on the scene in the very early hours of 29 July 2023 and Proserpine Airport?

GPCAPT LEWIS: Yes, I am.

20 COL THOMPSON: Would you say that it’s reasonable for there to be a delay of, say, a day or two, till 30 or 31 July 2023, before the 6 Aviation Regiment members continued with giving evidence to QPS, either directly or indirectly, through JMPU?

25 GPCAPT LEWIS: So I take what you’re saying is it would it be a reasonable delay to start giving evidence or gathering statements?

30 COL THOMPSON: Well, the Inquiry’s heard evidence that they had started the process or three of the members had started the process of giving evidence directly to QPS on the morning of 29 July 2023. I don’t know if you’re aware of that.

GPCAPT LEWIS: I am aware that QPS did talk to some members.

35 COL THOMPSON: Talk to some members, yes. So my question to you is would you regard it as reasonable that the 6 Aviation Regiment members involved delay giving further assistance to the QPS by providing evidence for a day or two until, say, 30 or 31 July 2023?

40 GPCAPT LEWIS: I think it depends on the circumstances of the individuals and what exposure they’ve had. If it’s something traumatic for that individual, then a delay for their circumstances is reasonable. Otherwise, gathering the initial information as quickly as possible helps to shape the further - - -

COL THOMPSON: Certainly. Final question, a delay of a day or two I'm suggesting to you. In the context of your answer you've just given, a delay - - -

5 GPCAPT LEWIS: Yes. So in the context of the delay, for the individual if there's circumstances that are causing them stress, then yes.

COL THOMPSON: Thank you, Provost Marshal. Thank you, ma'am.

10 MS McMURDO: Thank you. Yes, Ms Musgrove.

<CROSS-EXAMINATION BY MS MUSGROVE

15 MS MUSGROVE: You were asked some questions if witnesses started compiling their statements earlier, why there was an extension sought? D2, in his evidence, said that he started compiling his statement in approximately September 2023. To your understanding, is it that all of the
20 statements that had been sought were being compiled so they could go in one lot rather than in dribs and drabs to the Coroner?

GPCAPT LEWIS: I would have to have that question asked of Defence Legal.

25 MS MUSGROVE: Okay. Thank you, there's nothing further.

MS McMURDO: Thank you. Any re-examination?

30 COL STREIT: No, thank you.

MS McMURDO: Thanks very much, Group Captain. You're free to go.

35 GPCAPT LEWIS: Thank you.

<WITNESS WITHDREW

40 MS McMURDO: We might have a 10-minute break now.

COL STREIT: Yes, thank you.

45 **HEARING ADJOURNED**

HEARING RESUMED

5 COL STREIT: Thank you, Ms McMurdo. MAJ Luke Chapman will take the remaining two witnesses on the list but before that occurs, I understand there may be two short applications for leave to appear.

MS McMURDO: Yes, thank you.

10 MAJ BARNES: Good afternoon, ma'am, sir. MAJ Michelle Barnes.

MS McMURDO: Yes.

15 MAJ BARNES: I seek leave to appear for LTCOL Anthony Norton, who has been served with a potentially affected person's notice and I anticipate that that will involve me seeking leave to cross-examine MAJ Wilson tomorrow.

20 MS McMURDO: Yes, certainly I will grant you leave to appear for LTCOL Norton.

MAJ BARNES: Thank you, Ms McMurdo.

25 MS McMURDO: Thank you, MAJ Barnes.

COL STREIT: Ms McMurdo, can I indicate that the procedural fairness notice was only in relation to MAJ Wilson and that, in my submission, the leave should be limited for that purpose.

30 MS McMURDO: For the cross-examination of MAJ Wilson?

COL STREIT: Only, yes.

35 MS McMURDO: Yes. You are content with that?

MAJ BARNES: Yes, thank you.

MS McMURDO: So that the leave to appear, it will be limited to that. Yes.

40 SQNLDR SCHMITT: Sir, ma'am, my name is Travis Schmitt.

MS McMURDO: Yes.

SQNLDR SCHMITT: I seek leave to represent COL Lynch. He has been issued a similar notice as to Ms Barnes' client, in similar terms in terms of cross-examining MAJ Wilson tomorrow.

5 MS McMURDO: So you are only asking for leave for cross-examination of MAJ Wilson tomorrow?

SQNLDR SCHMITT: So far, yes.

10 MS McMURDO: Yes. Well, there are no submissions to the contrary from anyone? No. I will give you leave to appear on that limited basis, yes. Thank you, Mr Schmitt.

SQNLDR SCHMITT: Thank you, ma'am.

15 MS McMURDO: Yes.

MAJ CHAPMAN: Thank you, Ms McMurdo. I call MAJ David Lamb.

20 <MAJ DAVID STEWART ANTHONY LAMB, Sworn

25 <EXAMINATION-IN-CHIEF BY MAJ CHAPMAN

MS McMURDO: MAJ Lamb, help yourself to water and let me know if you need a break at any time. Thank you.

30 MAJ LAMB: Thank you, ma'am.

MAJ CHAPMAN: Can you please state your full name?

35 MAJ LAMB: David Stewart Anthony Lamb.

MAJ CHAPMAN: And just as a preliminary matter, MAJ Lamb, can I just confirm you have received each of the following documents prior to today. The first is a section 23 Notice requiring your appearance today to give evidence?

40 MAJ LAMB: Yes.

MAJ CHAPMAN: The second, is an extract of the Inquiry Directions?

45 MAJ LAMB: Yes.

MAJ CHAPMAN: The third is a copy of my appointment as an Assistant IGADF?

5 MAJ LAMB: Yes.

MAJ CHAPMAN: The fourth is a Frequently Asked Questions Guide for Witnesses in IGADF Inquiries?

10 MAJ LAMB: Yes.

MAJ CHAPMAN: And the last is a Privacy Notice for Witnesses Giving Evidence.

15 MAJ LAMB: Yes.

MAJ CHAPMAN: Thank you. And, MAJ Lamb, have you prepared and signed, for the purpose of the Inquiry, a statement?

20 MAJ LAMB: I have.

MAJ CHAPMAN: Can I hand you a copy of the document?

MAJ LAMB: Thank you.

25 MAJ CHAPMAN: Do you recognise that as your statement to the Inquiry, which is 12 pages in length?

MAJ LAMB: I do.

30 MAJ CHAPMAN: And is that your signature which appears on page 12?

MAJ LAMB: It is.

35 MAJ CHAPMAN: And do you wish to make any amendments to the document?

40 MAJ LAMB: For clarification, I note just in the experience level there is a secondment to CASA just for two years in paragraph 6(m). Just for clarity, that secondment was still whilst I was at the Air Warfare Centre.

MAJ CHAPMAN: Thank you for that.

45 MAJ LAMB: Thank you.

MAJ CHAPMAN: Ms McMurdo, can I tender the statement of MAJ Lamb dated 4 October 2024, with three annexures.

MS McMURDO: The statement and three annexures will be Exhibit 86.

5

#EXHIBIT 86 - STATEMENT OF MAJ LAMB AND ANNEXURES

10 MAJ CHAPMAN: Thank you. MAJ Lamb, I'd like to begin, if I may, with an overview of your Service and professional experience. So can I start by asking this, when were you commissioned in the ADF?

MAJ LAMB: April 1994.

15

MAJ CHAPMAN: And you are currently posted, you say, as a Staff Officer Grade 2 Headquarters Test and Evaluation Directorate at the Air Warfare Centre, RAAF Edinburgh in Adelaide. Is that correct?

20 MAJ LAMB: Correct.

MAJ CHAPMAN: And when did you take up that posting?

MAJ LAMB: January '22.

25

MAJ CHAPMAN: And you say at paragraph 4 of your statement that in your current role you provide governance, oversight and assurance on behalf of the Defence Aviation Safety Authority, DASA, in respect of categorised flight testing for RAAF and Army. Is that correct?

30

MAJ LAMB: So, for absolute clarity, it is assurance advice to the DoSA-FT who has the delegation on behalf of DASA.

35 MAJ CHAPMAN: Thank you. And just to unpack that a little, could you just give us a sense of what governance, oversight and assurance in this context is?

40 MAJ LAMB: So the assurance is that it is a quality function that's delegated by DASA. So when the undertaking of categorised flight test is done by either the Air Force or the Army, we ensure that the policies and procedures are adhered to and that there is a technical rigor and appropriate qualified staff, and the right organisation is undertaking that task.

45 That does two things in the assurance function. It ensures that the task is undertaken safely but it brings rigor into the test methodology and then the

confidence for the findings and recommendations which come out of those trials.

5 MAJ CHAPMAN: So do we take it that it is a reference also to where there is a test proposal that is forwarded to your function, you make an assessment as to the test category that testing would fit within, generally?

10 MAJ LAMB: That is exactly correct, and that is actually a requirement of the DASRs.

MAJ CHAPMAN: And, in the broad, could you just give us an outline of the differences between the testing categories, just very briefly.

15 MAJ LAMB: Yes. So four categories, effectively. Category 1: flight testing. The simplest way, for the purposes of today, is the testing of an aircraft which is not yet certified. So that might be something like Boeing, if they've got a new design. But it has more meaning than that.

20 Category 2 testing ordinarily would be a certified aircraft, but we are going to add a new system to it and I think that is where we will lead to today. And so that has specific oversight requirements and functions.

25 Category 3 flight test is for the purposes of a production aircraft. So something which as been manufactured in accordance with the design requirements, and so the production acceptance of that before it is released for Service.

30 And Category 4 is categorised flight tests, which is not actually Category 1 or 2, but is required for the purposes to meet requirements.

MAJ CHAPMAN: And I think your words just now was that in reference to Category 2, that's where you think we will get to today. So do I take it from that that – do you recall the version 5.10 AATES testing to be a Category 2 test?

35 MAJ LAMB: I do. That is correct.

MAJ CHAPMAN: And why was it set at that level?

40 MAJ LAMB: So that is a really pertinent question. So a part of the delegation under the Defence Aviation Safety Policy Network – and there's a reference for that – it delegates/ordains the ADF Flight Test Organisations as the only organisations that have the approval to do Category 2 flight tests. Specifically, a part of that in the base crew procedures, the expertise

for performance, flying qualities, a human machine interface and systems falls into that category, and so the 5.1 fell neatly in the middle of that.

5 And the reason that it is ordained under the DASR Defence Requirements Manual is because the Flight Test Organisations have the organisational structure and qualified persons, expertise and training to do that.

10 MAJ CHAPMAN: So I take it from within that answer you said that it was Category 2 in part because it involved – that is, 5.1 testing – involved human machine interface testing?

MAJ LAMB: That is correct, yes.

15 MAJ CHAPMAN: Just returning briefly to your experience. In terms of MRH, you say at paragraph 5 that you are a qualified test pilot and you maintain your MRH currency up until the cessation of flying operations. That's correct?

20 MAJ LAMB: That is correct.

MAJ CHAPMAN: And in addition to being a qualified Category A test pilot, you are also a qualified Category A helicopter instructor; correct?

25 MAJ LAMB: That is correct.

MAJ CHAPMAN: And a qualified Category B Flight Instructor; correct?

MAJ LAMB: That is correct.

30 MAJ CHAPMAN: Now, your extensive Aviation experience is detailed at paragraph 6. And I am not going to repeat it. Though, suffice to say, it includes in excess of 8000 flying hours, of which there are in excess of 4000 military hours over some 58 aircraft types. Is that correct?

35 MAJ LAMB: That is correct.

40 MAJ CHAPMAN: And I see from your statement you have been conferred a number of degrees, a number at the Masters level – which you also list at paragraph 6 – though notably it includes achieving course dux at the National Test Pilot School. Is that correct?

MAJ LAMB: That is correct.

45 MAJ CHAPMAN: And just so we are clear, the National Test Pilot School being, you would agree, a specialised school attached to the US Military,

where the ADF sends their test pilots for formal qualification.

MAJ LAMB: For clarity, the National Test Pilot School is actually a civil school.

5

MAJ CHAPMAN: Right.

MAJ LAMB: Yes. But it is where the ADF, Army, Navy and Air Force send their nominated personnel to undertake test pilot or Flight Test Engineer training.

10

MAJ CHAPMAN: And that's because the ADF doesn't itself have that organic capability; is that correct?

MAJ LAMB: That is correct. And, for context, there is really only six schools worldwide where you can do this. Yes.

15

MAJ CHAPMAN: Thank you. And your experience, you say, includes Special Operations experience as well as specific experience with respect to Plan Palisade, which you refer to at paragraph 6(h). Is that correct?

20

MAJ LAMB: That is correct. The request for my return was premised on the testing that we had undertaken at ARDU for which I initially was the primary test pilot but then became the flight test lead and if you – for want of a better term, the project lead for following the 2006 *Kanimbla* accident. And it was a like-for-like activity.

25

MAJ CHAPMAN: I'll just ask you to pause that and explain what ARDU is? That's another Flight Test Organisation?

30

MAJ LAMB: That's the Air Force Aircraft Research and Development Unit.

MAJ CHAPMAN: And while we're here, just to clarify, the Navy equivalent is AMAFTU; is that correct?

35

MAJ LAMB: That is correct.

MAJ CHAPMAN: And that is the - - -

40

MAJ LAMB: Aircraft Maintenance and Flight Trials Unit.

MAJ CHAPMAN: Thank you. And just in relation to Plan Palisade, in general terms, you'd agree, wouldn't you, that it refers to the use of the MRH in a Special Operations context?

45

MAJ LAMB: That's exactly what the purpose was for.

5 MAJ CHAPMAN: Now, as a senior qualified test pilot for Plan Palisade, you developed, did you not, an in-depth understanding as to how the Taipan was to be deployed in a Special Operations setting?

MAJ LAMB: Intimately.

10 MAJ CHAPMAN: And you refer in your statement, at paragraph 6(i), to being, between 2019 and '21, posted as the Executive Officer of what I'll refer to as AATES, which is the Army Test and Evaluation Section; is that correct?

15 MAJ LAMB: That is correct, yes.

20 MAJ CHAPMAN: You refer at paragraph 6(j) to having a dual appointment while at AATES, as being both the XO, Executive Officer, as well as the DoSA-FT. Can you just explain what the DoSA-FT stands for, and then the function?

25 MAJ LAMB: Yes. So the Delegate of Safety Authority Flight Test – and that's the assurance function that I alerted to, that act on behalf of DASR for the permission, the approval to undertake categorised flight test. Under that, as a conduit, from the Flight Test Organisation to the DoSA himself, there is a Flight Conditions Delegate, so someone who is within the Flight Test Organisation, either being ARDU or AATES, and they act as that conscience to ensure that the application meets the DASR requirements.

30 MAJ CHAPMAN: Thank you. We're going to get to some of that in a bit more detail.

MAJ LAMB: Yes.

35 MAJ CHAPMAN: I'll just turn now to the topic of flight testing and ask you some questions about your involvement with specifically version 5.10 testing, which you deal with at paragraph 7 and following. So you say there that as the XO of AATES, you have responsibility to apply to the DoSA-FT to obtain a Military Permit to Fly in respect of all testing activities; is that
40 right?

MAJ LAMB: So, to be absolutely clear, the function was as the Form 18 delegate, the Flight Conditions Delegate.

MAJ CHAPMAN: Just so we understand the process, it's the case, isn't it, that AATES is, as a Flight Test Organisation, frequently called on to test aircrafts and systems beyond their military certification?

5 MAJ LAMB: That is correct. "Outside" is probably outside the certification, and that is what triggers the requirement for a Military Permit to Fly.

10 MAJ CHAPMAN: So you have an aircraft is – any type is approved for certain conditions and to fly within certain parameters, but when there's a testing exercise involved, you need to apply to the DoSA-FT to operate outside of the otherwise approved limits, generally, in general terms?

15 MAJ LAMB: That's correct. If the new system under test changes the certification and it's not yet certified, it falls into that Category 1, Category 2, potentially Category 4 flight test.

20 MAJ CHAPMAN: Yes. And that permission is obtained through what you've just referred to as Military Permit to Fly?

MAJ LAMB: That is correct.

25 MAJ CHAPMAN: I think you've just referred to this in your previous answer, or earlier answer, that you had a role as the Flight Conditions Delegate for AATES to make applications for a Military Permit to Fly?

MAJ LAMB: That is correct, I had the delegation.

30 MAJ CHAPMAN: Another way of describing that delegation was that you were the Form 18 Conditions Delegate?

MAJ LAMB: Correct.

35 MAJ CHAPMAN: In the case of the version 5.10 testing, you made that application?

MAJ LAMB: I did.

40 MAJ CHAPMAN: It was approved?

MAJ LAMB: It was.

MAJ CHAPMAN: You say further, at paragraph 11, that a Military Permit to Fly, you say, almost will invariably be approved, subject to flight

conditions being imposed on the test activity as set out in the Flight Test Plan. Is that correct?

5 MAJ LAMB: That is correct.

MAJ CHAPMAN: It's your recollection, is it, what occurred in this case is that conditions were imposed on the approval?

10 MAJ LAMB: They were, and others mandated.

MAJ CHAPMAN: When, generally, you say that a Military Permit to Fly would almost be invariably approved, subject to conditions, are those conditions generally lifted from a Flight Test Plan, if I can put it like that?

15 MAJ LAMB: So it's twofold. Flight conditions are to allow the safe conduct of the flight test activity, whilst the modelling and expected results are yet to be proven airborne. So that's Part A of the flight conditions. Part B of the flight conditions is that it's expected or anticipated through the flight test that they will carry through to Service release. So there's a
20 twofold function in that.

MAJ CHAPMAN: Just dealing with the first part about the conditions on the testing which form part of the Flight Test Plan, are they proposed to the DoSA delegate to be included as conditions for the conduct of the activity?
25

MAJ LAMB: Absolutely.

MAJ CHAPMAN: So in a practical sense, AATES sets the conditions which are then formally approved by the DoSA-FT?
30

MAJ LAMB: Considered and approved, that's correct.

MAJ CHAPMAN: Thank you.

35 MAJ LAMB: I would go so far as to say it's not endorsed. So he has a voice at the table if he or she – it's been a he of late – but feels that additional controls are required. But in this circumstance, the DoSA-FT was satisfied with the conditions applied.

40 MAJ CHAPMAN: Which was my next proposition, that presumably the DoSA-FT retains a discretion to include other conditions in addition to those?

45 MAJ LAMB: That is correct.

MAJ CHAPMAN: It's fair to say, isn't it, that the imposition of the conditions is a control on the testing?

5 MAJ LAMB: It's a deliberate control.

MAJ CHAPMAN: In other words, the conditions are intended – the imposition of the conditions are intended to maximise safety, given you're operating outside of certification.

10 MAJ LAMB: That's correct.

MAJ CHAPMAN: Now, at paragraphs 12 and 13 of your statement you refer to particular conditions that were set out in the AATES Flight Test Plan.

15 MAJ LAMB: Yes.

MAJ CHAPMAN: I take it those were the conditions that you, perhaps with others, drafted?

20 MAJ LAMB: That's correct.

MAJ CHAPMAN: When we talk about conditions in this context which are endorsed by the DoSA-FT, these are conditions which must be followed?

25 MAJ LAMB: That's correct.

MAJ CHAPMAN: Do we also take it that if they are not followed or are breached, that would amount to conducting a testing activity outside the scope of the Military Permit to Fly?

30 MAJ LAMB: That is correct. That's a violation.

35 MAJ CHAPMAN: Thank you. It would just not be authorised?

MAJ LAMB: That's correct, it would not be authorised.

40 MAJ CHAPMAN: In the case of – you recall the version 5.10 testing by AATES, the conditions imposed for that testing, as you identify at paragraph 12, included that it be conducted by day and night under visual meteorological conditions only. Is that correct?

45 MAJ LAMB: That is correct.

MAJ CHAPMAN: Just in layman terms, VMC, or visual meteorological conditions means, does it not, that the pilot has adequate or sufficient visibility to fly using visual cues.

5 MAJ LAMB: That is correct.

MAJ CHAPMAN: Is that a fair summary?

MAJ LAMB: It is, yes.

10 MAJ CHAPMAN: By day, VMC might be navigating by reference to terrain; correct?

MAJ LAMB: That is correct.

15 MAJ CHAPMAN: Obstacles or horizon?

MAJ LAMB: Yes. So you're looking for ground contextual cues. Specifically in this testing, what those cues provide you is pitch, roll and your attitude information.

MAJ CHAPMAN: By night, VMC might be navigating by reference to a clear horizon or other cultural lighting?

25 MAJ LAMB: Yes, that is correct. But also, the Night-Vision Imaging System provides that context for you on the terrain relief to determine attitude, and that's a really important part of that. The correlation is the aircraft attitude.

30 MAJ CHAPMAN: Operating VMC is to be contrasted, for instance, with operating in degraded visual environment conditions. Would you agree with that?

35 MAJ LAMB: So it's slightly different but it's one and the same. It can be considered a Venn diagram. What the visual meteorological conditions do with the requirement for the visibility of 5000 metres is it offsets the textural contrast that you'll get on the terrain. So I know that's probably a lot of information there, but it is there to attend to the low light environment, yes.

40 MAJ CHAPMAN: So, in effect, was the imposition of this, it was required so that the testing be conducted in relatively clear conditions by day and night?

45 MAJ LAMB: Absolutely, yes.

MAJ CHAPMAN: These conditions were set prior to any issue having been identified about attitude ambiguity?

MAJ LAMB: That is correct.

5

MAJ CHAPMAN: Is it the case that if the conditions for a particular day of testing fell below VMC, that the testing could not proceed as it would amount to a breach of the MPTF?

10 MAJ LAMB: You are correct, and the authorisation's sequence or activity would prevent that from occurring.

MAJ CHAPMAN: You might need to seek further authorisation on an Amended Flight Plan?

15

MAJ LAMB: No. So the activity would have to wait for a clear day.

MAJ CHAPMAN: Right.

20 MAJ LAMB: Yes, it's not permitted under the MPTF to vary that.

MAJ CHAPMAN: Understood. Now, you say at paragraph 13 of your statement – you refer to the Flight Test Plan including a further condition, that it must be completed without any unacceptable findings prior to commencement of night testing. Do you see that?

25

MAJ LAMB: That's correct.

MAJ CHAPMAN: Is that, in your experience, a standard condition?

30

MAJ LAMB: So it's normal to put a gate between sequencing testing. So what the gate does is it forces the Flight Test Team to go back to the authority, which is effectively represented in my case – in this case, to the CO of the unit, which is LTCOL Reinhardt, and myself as the XO Form 18 delegate. It is a protection measurement because as you go through the test activity, you want to get to the end of the testing but not invoke risk by doing that.

35

So it's very deliberate and we call that an incremental approach. So you have to prove competency – sorry, you have to prove sufficiency and safety in one small, confined envelope before it's appropriate to go to the next point.

40

MAJ CHAPMAN: In a graduated sense?

45

MAJ LAMB: That's it, and if you don't meet that, you stop.

5 MAJ CHAPMAN: Understood. So AATES needed to be satisfied by reference to these conditions that there were no unacceptable findings prior to commencing night serials?

MAJ LAMB: Correct.

10 MAJ CHAPMAN: Was the rationale for that – and I'm asking if you agree or disagree with this – that testing at night carried inherently more risk than testing by day?

MAJ LAMB: That is correct.

15 MAJ CHAPMAN: Right. So this was just another safety control?

20 MAJ LAMB: It was absolutely a suitable control, yes. It's something that's been applied in other helmet-mounted display testing in other activities previously, one that I was personally involved with with Black Hawk, yes.

25 AVM HARLAND: Just a question. For the night testing, should you have gone through that gate? Were there any proposed limitations on illumination conditions at all?

30 MAJ LAMB: Yes, there is. And you'll see that we deliberated over that after the day conditions. So we would apply good sense in that circumstance. So "Yes" will be the answer when we get to that gate subsequent in there, if I could defer that if that's okay, sir.

AVM HARLAND: Absolutely. Thank you.

MAJ LAMB: Yes.

35 MAJ CHAPMAN: So, MAJ Lamb, I just want to turn now to discuss the conduct of the testing itself and your involvement in it. You say in your statement that the testing was conducted at Oakey.

40 MAJ LAMB: That's correct.

MAJ CHAPMAN: Between 7 and 11 June 2019. That's correct?

MAJ LAMB: That is correct, yes.

45 MAJ CHAPMAN: You were at Oakey at the time?

MAJ LAMB: That's correct, yes.

5 MAJ CHAPMAN: You describe your involvement, around paragraph 15, as the XO; that you were closely involved in the planning and approval processes, though you did not fly yourself?

10 MAJ LAMB: That is correct. So I go back to how that occurred was the return of my appointment for the mentor and supervision for this activity with MAJ Wilson, so that's correct.

15 MAJ CHAPMAN: So where you say you were closely involved in the planning, that's all the matters that we've been discussing in terms of preparing the Flight Test Plans, seeking the necessary approvals. That's what you're talking about?

MAJ LAMB: Yes, and determining the risk mitigation to the task. I'm sure we're going to get to that, Luke, yes.

20 MAJ CHAPMAN: At paragraph 16 you refer to the activity at Oakey being planned for multiple sorties?

MAJ LAMB: Correct.

25 MAJ CHAPMAN: Although, ultimately, as we know, only two sorties were completed prior to termination of the testing?

MAJ LAMB: That's correct, yes.

30 MAJ CHAPMAN: It's the case, isn't it, that the Aircraft Captain for each of those sorties was your colleague, MAJ Ian Wilson? Is that right?

MAJ LAMB: That's correct, yes.

35 MAJ CHAPMAN: And that the flight engineer was CAPT Jordan Zahra?

MAJ LAMB: Correct.

40 MAJ CHAPMAN: And there are a number of aircrew also on the serial?

MAJ LAMB: That's correct.

45 MAJ CHAPMAN: MAJ Wilson at that time, you'd agree, would you, that he was a highly experienced MRH-90 Aircraft Captain and test pilot?

MAJ LAMB: That's correct. And Category A Qualified Flying Instructor, so he understood the role.

5 MAJ CHAPMAN: Possibly with the exception of yourself, was there anyone else at AATES at that time who had more experience than MAJ Wilson in terms of conducting testing for the MRH?

MAJ LAMB: No, not for this particular activity.

10 MAJ CHAPMAN: So we can take it you'd agree that there was no hesitation on your part, or AATES, in MAJ Wilson conducting this testing based on his own experience?

15 MAJ LAMB: Yes. So more to the point, DASR requires us to use the most appropriate and qualified people as part of risk – to risk mitigate the test conduct and add rigour and integrity to the test methodology. So the CO, being LTCOL Reinhardt, would deliberate over who in his playbook he has to put forward, and this was the appropriate crew.

20 MAJ CHAPMAN: Thank you. Now, in terms of the testing itself, you say at 18 that you were attending to other duties while MAJ Wilson and the team were flying the first sortie. Is that right?

25 MAJ LAMB: Yes, and that's quite routine.

MAJ CHAPMAN: Sure. It was during the first sortie you recall that MAJ Wilson identified what he described later in a post-flight briefing as this misleading attitude issue with the HMSD?

30 MAJ LAMB: That's correct.

MAJ CHAPMAN: Do we take it that he identified the issue in flight?

35 MAJ LAMB: Yes.

MAJ CHAPMAN: He landed the aircraft and then briefed senior staff at AATES as to that issue?

40 MAJ LAMB: Yes, and that was myself and LTCOL Reinhardt.

MAJ CHAPMAN: Did he do that – that is, the briefing – proximate to or soon after he landed the aircraft? It was the same day?

45 MAJ LAMB: That's correct.

MAJ CHAPMAN: You say at paragraph 20 that following that meeting there was a desire on the part of AATES to plot a path forward; is that right?

MAJ LAMB: That's correct, and that's appropriate.

5

MAJ CHAPMAN: Sure. And that decision was taken to confirm the existence of the symbology ambiguity by conducting a second daytime sortie?

10 MAJ LAMB: Correct.

MAJ CHAPMAN: So just so we have this right, there was a decision, was there, taken ultimately by LTCOL Reinhardt as the SO1, that MAJ Wilson, having identified the symbology issue, that it needed to be confirmed by a
15 second sortie?

MAJ LAMB: So that's Part A of it, yes. I can offer Part B.

MAJ CHAPMAN: Please.

20

MAJ LAMB: So Part B is the obligation to comply with the MPTF, so the conscience of complying with the limitations in the approval that we had, yes.

25 MAJ CHAPMAN: So in terms of the second sortie, was that conducted within a day or so, to your recollection?

MAJ LAMB: My recollection, it was done in the next few days.

30 MAJ CHAPMAN: Next few days. It was during that second sortie, and you refer to this at paragraph 23, that MAJ Wilson again confirmed the existence of this misleading attitude symbology - - -

MAJ LAMB: Correct.

35

MAJ CHAPMAN: - - - that he had identified in the first sortie?

MAJ LAMB: That's correct. So specifically, within the test plan there is the ability to go out and focus on that anomaly, and so he went out
40 specifically on that second sortie to conduct manoeuvres to focus on the anomaly to give us the confidence, the statistical and engineering confidence, that what he had perceived in the first sortie was actually there.

MAJ CHAPMAN: So with respect to the first sortie, that was directed
45 really to the distance to run issue or feature; whereas, as you say now, that

the second sortie focused in on the problem that had been identified in the first sortie?

5 MAJ LAMB: That is correct. And that is a normal course of continuance in a flight test activity.

MAJ CHAPMAN: So by now in time, you're now following the second sortie.

10 MAJ LAMB: Yes.

MAJ CHAPMAN: You knew, did you not, that this was not some aberration, and it was a significant issue?

15 MAJ LAMB: Correct.

MAJ CHAPMAN: At paragraphs 24 and 25 you explain why it ultimately – or AATES ultimately took the decision to terminate testing with respect to 5.10. Is that correct?

20 MAJ LAMB: That is correct. The Military Permit to Fly and the flight conditions were very specific about not being able to proceed because of the unacceptable finding.

25 MAJ CHAPMAN: As you say, they reflected a requirement to terminate testing where AATES had determined there was an unacceptable finding?

MAJ LAMB: That's correct.

30 MAJ CHAPMAN: So that, in a practical sense, wasn't discretionary once that had been determined in terms of the unacceptable nature of the issue? You were required to terminate the testing?

35 MAJ LAMB: That's right. And the collegiate approach between AATES and the DoSA-FT – that information was relayed to him as the authority, yes.

40 MAJ CHAPMAN: Just in terms of making the assessment of this issue being unacceptable to safety, that was, was it, a collective decision of LTCOL Reinhardt, MAJ Wilson as the Aircraft Captain, and yourself?

MAJ LAMB: So, in essence, the short answer to that is that is correct, but we go through a far more deliberate consideration of the results found in flight tests. So it's not taken lightly and it's not a conclusion that's jumped

to at all. There's a very, very deliberate and conducted process where we go through – it's called a complication.

5 MAJ CHAPMAN: Can I ask the witness be shown Exhibit 41 and that's the statement of LTCOL Reinhardt. Although, I'm specifically wanting to direct him to the annexures to that statement, and it's Annexure C – sorry, D.

10 MS McMURDO: So we'll just open it up.

MAJ CHAPMAN: Yes, please. Can I just check that? Yes, thank you.

MAJ LAMB: Thank you.

15 MAJ CHAPMAN: MAJ Lamb, do you recognise that to be the report that you signed on 14 June 2019 arising from this activity?

MAJ LAMB: Yes, I do. That's correct, yes.

20 MAJ CHAPMAN: Can I just invite you to go to, please, page (iii) at the top? It should be the second – it starts with, "Advice for readers". Do you see that?

25 MAJ LAMB: Yes.

MAJ CHAPMAN: Just in the context of what your evidence has been about the unacceptable nature of the issue, "unacceptable" has a particular meaning within the testing framework. That's right, isn't it?

30 MAJ LAMB: That is correct.

MAJ CHAPMAN: If you go to that page, we'll see there at the bottom, three-quarters of the way down, "Conclusion: unacceptable". Do you see that?

35 MAJ LAMB: Sorry, my apologies, Luke. Could you say that again?

MAJ CHAPMAN: So we're now at the third page into this document.

40 MAJ LAMB: Yes, okay.

MAJ CHAPMAN: Do you see there's a table below, "Terms used in conclusions and recommendations"?

45 MAJ LAMB: Yes.

MAJ CHAPMAN: Do you see there, “Conclusion: unacceptable”?

MAJ LAMB: Yes, I do.

5

MAJ CHAPMAN: So “unacceptable”, as it appears in the hierarchy of conclusions and recommendations, do you agree that it is the lowest possible outcome in terms of testing?

10 MAJ LAMB: Yes. So it’s the most – if I could use the term please, Luke – it’s the most significant term.

MAJ CHAPMAN: Yes, it carries with it the most significant implications in terms of AATES cannot reach a more negative assessment than “unacceptable”.

15

MAJ LAMB: That’s correct, yes.

MAJ CHAPMAN: It’s described there as:

20

Description of deficiency includes prevents weapons systems performing operation task, or liable to cause accidents.

MAJ LAMB: Correct.

25

MAJ CHAPMAN: So, in this context, there was a view taken, was there, that this misleading symbology issue – on the basis that you concluded it would be liable to cause accidents, then you come to an “unacceptable” finding?

30

MAJ LAMB: That is correct.

MAJ CHAPMAN: You can put that aside for a moment. It was for that reason that, as you say, at paragraph 25, DASA was advised and you terminated the testing?

35

MAJ LAMB: That’s correct.

MAJ CHAPMAN: At paragraph 27 and following you refer to drafting an amended Flight Test Plan; is that right?

40

MAJ LAMB: That is correct.

MAJ CHAPMAN: Can you just explain what the purpose of that testing – that amended plan was in the light of AATES’ earlier conclusion that testing was to be terminated?

5 MAJ LAMB: So in order for us to reapply for a Military Permit to Fly, we needed to consider the plausibility of whether there was any further restrictions we could apply or put in place that would allow us to go and fly the configuration as we had been. So we had two – so we did that concurrently, as we were deliberating over the findings that we had at the
10 time. I guess, probably that’s enough for the moment.

MAJ CHAPMAN: Yes. Notwithstanding the “unacceptable” outcome, there was still some residual, I suppose, desire to continue testing, but in doing so you wanted to introduce additional safety controls?

15 MAJ LAMB: Yes. So we hadn’t yet drawn the conclusion that it was “unacceptable”. We had drawn the conclusion at this point in the continuum that it was a significant safety concern that required us to stop testing under the current approval that we had. So we looked to see whether
20 there was efficacy to continue into night testing and, if so, how we would do that. So we explored that path.

MAJ CHAPMAN: Though you proposed and included additional controls to reflect the risk that had been identified by MAJ Wilson?

25 MAJ LAMB: That’s correct, yes.

AVM HARLAND: Luke, could I just ask a question there? The attitude ambiguity, which is really central to what we’re talking about here, was that
30 documented in any publications that you had reviewed in the lead-up to the flight test?

MAJ LAMB: Not in the lead-up to this flight test, no.

35 AVM HARLAND: Thank you.

MAJ LAMB: Well, that’s actually not true. We knew of it anecdotally through the AMAFTU trial, and so we could see – and that’s in their test report. So we had understanding of that. The implications of that were not
40 realised until it was seen by MAJ Wilson during the test activity. Yes.

AVM HARLAND: Understood. So the documentation you had an inkling of an attitude ambiguity was that previous flight test done by AMAFTU?

45 MAJ LAMB: That’s correct. Yes, is my recollection.

AVM HARLAND: Okay. Thank you.

5 MAJ CHAPMAN: At paragraph 29 of your statement you describe one of the additional controls to include that if the testing was to resume at night, it only be conducted overland with a distinct horizon cue, and conducted at greater than 10 millilux illumination. Is that right?

10 MAJ LAMB: That's correct.

MAJ CHAPMAN: At paragraph 30 you also describe including another control, which was a "Knock it off" call; is that right?

15 MAJ LAMB: That's correct, yes.

MAJ CHAPMAN: And the "Knock it off" call would be made if there was a loss or unexpected degradation in situational awareness?

20 MAJ LAMB: That's correct, yes.

MAJ CHAPMAN: Can you just briefly describe for us what a "Knock it off" call means in this context, please?

25 MAJ LAMB: So any of the crew members – and specifically in this circumstance it would most likely come from one of the two flying pilots – that there is a conflict of information presented to them in the system under test versus the real world environment, and so if that was to become prevalent in the airborne sequence, they are required to call "Knock it off", which is their perception, that's unquestioned, and then the sortie would be terminated, yes.

35 MAJ CHAPMAN: By including the "Knock it off" call and the other condition, the distinct horizon, the "Knock it off call", you were seeking again to increase the safety profile of the testing?

40 MAJ LAMB: That is correct. We were moving towards more terrestrial attitude information by the visual horizon, but also by the terrain relief with the high illumination, that they'd be able to look through the goggles and, despite what the ambiguity was displaying, you would have confidence to the pitch and roll, and your attitude of the aircraft.

MAJ CHAPMAN: As you say back at paragraph 29, the Amended Test Plan that you had formulated was approved by COL Reinhardt; is that right?

MAJ LAMB: So, yes, my recollection is we put a test plan – we had a test plan amendment that we signed at that point, but we did not then submit that to the DoSA-FT for a Military Permit to Fly, which you're leading into now.

5

MAJ CHAPMAN: Because, as you say at 31, the decision was taken not to proceed with further testing; is that right?

MAJ LAMB: That is correct, yes.

10

MAJ CHAPMAN: I'm at paragraph 32 and 33, and you say that while testing could have proceeded, AATES determined instead it would move directly to producing a test report?

15 MAJ LAMB: Correct.

MAJ CHAPMAN: And that was based on the “unacceptable” outcomes, as identified by MAJ Wilson in his two sorties?

20 MAJ LAMB: That is correct. So it's in the remit of every Flight Test Organisation, and particularly upon the qualified test pilot who's making an assessment to forecast and extrapolate what the meaning of the deficiency that you identify will be in the intended role and environment. You don't have to go there to do it.

25

MAJ CHAPMAN: And your understanding of the basis for going directly to reporting, as opposed to further testing, was that it reflected the significance of the ambiguity issue that had been identified?

30 MAJ LAMB: That is correct. And COL Reinhardt, in my mind, correctly wanted to communicate the finding as early as possible to the stakeholders.

MAJ CHAPMAN: You also say at 36 and 37 that informing AATES' “unacceptable” conclusion was the fact that this upgrade was being rolled out as part of Plan PALISADE. Do you see that?

35

MAJ LAMB: That is correct. Yes.

40 MAJ CHAPMAN: Just to pause there, I think you've given a previous answer to this. Why was it that Plan Palisade had any bearing on your determination of whether or not this upgrade was “unacceptable” or “acceptable”, if that makes sense?

MAJ LAMB: We had an intimate understanding of the intended role and environment to which this would be – if this was to move to Service release in the configuration that was assessed, what the impact of that would be.

5 MAJ CHAPMAN: If I could put that a bit differently, you were concerned, were you, that if the upgrade was released into Service with this attitude ambiguity, that it represented an unacceptable risk given the complex nature of Special Operations flight activities?

10 MAJ LAMB: That is correct.

MAJ CHAPMAN: And this was because, as I think you continue to say at 38, that:

15 *Symbology ambiguity is fundamental to safe flying operations, which if not remedied appropriately are liable to put the crew at risk of controlled flight into terrain.*

Is that correct?

20

MAJ LAMB: That is correct.

MAJ CHAPMAN: So you and your colleagues at AATES were really attempting, by this “unacceptable” finding, to shine a light on the risk inherent in introducing into Service a system with a known attitude ambiguity?

25

MAJ LAMB: Correct, and noting our DASR obligations.

30 MAJ CHAPMAN: And that could not have been made more plain than the unacceptable finding made by AATES in your report?

MAJ LAMB: That’s correct.

35 MAJ CHAPMAN: I’m next going to take you to some questions, MAJ Lamb, concerning the drafting of the AATES report and your peer review of it. So we’re at a stage where following the termination of the flight test activities at Oakey, and the decision taken to proceed to reporting, MAJ Wilson prepared the AATES report. Is that right?

40

MAJ LAMB: So it was done – so normally that’s done in harmony with the Flight Test Engineer. So for context, we would always pair a Flight Test Engineer with a test pilot together, and they would draft planning and reports together.

45

MAJ CHAPMAN: Do you still have Annexure D to Exhibit 41 there? It's a document I handed you. It looks like that. It's the report itself.

MAJ LAMB: Yes.

5

MAJ CHAPMAN: Got it? So if you go to (ii), so this is the second page, it reflects there that MAJ Wilson was involved in reviewing this report?

MAJ LAMB: So this is where I believe COL Reinhardt correctly highlights to the IGADF that he sought independent review, and so that was delegated to me. Yes.

MAJ CHAPMAN: So the reason that your name appears there, "Reviewed by", is that you were essentially peer reviewing this document?

15

MAJ LAMB: So peer is correct, but also as a supervisory review before going to COL Reinhardt, so he had confidence of the independence of the report.

MAJ CHAPMAN: Though it's your understanding, is it, that while MAJ Wilson doesn't have a signature on this page, he was intimately involved in preparing this document?

MAJ LAMB: Absolutely, yes.

25

MAJ CHAPMAN: Is it your recollection that this particular report was the subject of pretty close scrutiny within AATES during its drafting process?

MAJ LAMB: Yes.

30

MAJ CHAPMAN: Were there discussions which took place in and around the "unacceptable" finding, and the reasoning supporting that finding?

MAJ LAMB: Could you clarify, please? Are you talking internally within AATES or - - -

35

MAJ CHAPMAN: Correct.

MAJ LAMB: - - - in AAvnTC?

40

MAJ CHAPMAN: Correct, internally in AATES.

MAJ LAMB: So we would formalise the discussion. We don't do what I call Crew Room conversations. We take it into a formal environment, which is managed by a quality control system, so that we objectively look

45

at the system under test, what we have found, the data that substantiates that, how we forecast that will be applied in the role and environment. We do that. We do that in the environment of debating.

5 We include in those convocations other qualified flight test professionals from in the unit that may have not participated on it. I can't recollect for you in the convocation who was at that meeting, but certainly it would have included COL Reinhardt, myself, MAJ Wilson and CAPT Zahra, as a minimum. Yes. And that's required by – the Flight Test Operations
10 Manual requires that.

MAJ CHAPMAN: And I think you've given evidence previously that you all arrived – that group, and you named a few of them – arrived at a consensus, which is reflected in the report, that the upgrade represented the
15 unacceptable risk to flight safety?

MAJ LAMB: That's correct.

MAJ CHAPMAN: Was it the practice at AATES during your time that
20 when reports were produced by test pilots, they were subject to review by other pilots within AATES? It was a group activity, or it was - - -

MAJ LAMB: No. So it's very deliberate and controlled. So it's drafted, it's then independently reviewed, and it's gone to – sorry, the testing
25 conduct has taken place, the data is analysed and reduced, the convocation takes place, the report is drafted. It can be peer reviewed. The quality control system would require that in its normal narrative and compliance to the reporting style, that it goes to someone separate outside that test activity, and they'll put their independence on it. So, you know, there's a lot of
30 coverage in this to give it the rigour.

MAJ CHAPMAN: Yes, to give it the rigour, and also to ensure, I think you say in your statement, the integrity of the outcome?

35 MAJ LAMB: That's correct, yes.

MAJ CHAPMAN: You've just given some evidence that you, among others, agreed with the proposed "unacceptable" finding. Do you have any
40 different view about that conclusion now?

MAJ LAMB: Not at all, no.

MAJ CHAPMAN: Do you see that the report which includes the
45 "unacceptable" finding – and I ask you to just pull that up again – was distributed widely?

MAJ LAMB: Distribution list, yes, page 11. Yes. I'll just turn that up.

5 MAJ CHAPMAN: And that included to 6 Aviation Regiment, DACM, various other senior stakeholders on that distribution list?

MAJ LAMB: Correct.

10 MAJ CHAPMAN: Was this distributed, so far as you're aware, to the then Director-General Army Aviation?

MAJ LAMB: Look, I could only assume that it was distributed as per what's presented to us, in front of us on page 11, yes.

15 MAJ CHAPMAN: Thank you. I want to now ask you some questions about the operational evaluation that was conducted by Standards Branch. So as you know, the Inquiry has received some evidence concerning an operational evaluation testing activity that was conducted by Standards Branch in about November 2019. Are you aware of what I'm referring to?

20 MAJ LAMB: I am.

MAJ CHAPMAN: This was a series of tests which resulted in a report being produced by Standards Branch in about February 2020?

25 MAJ LAMB: Correct.

MAJ CHAPMAN: Can I ask the witness to be handed Annex E to Exhibit 41, please?

30 MS McMURDO: Annexure E, yes.

MAJ CHAPMAN: Which is the Operational Evaluation Report which is dated 29 February 2020. Just to confirm, MAJ Lamb, do you recognise that to be the Operational Evaluation Report?

35 MAJ LAMB: I do.

40 MAJ CHAPMAN: Just before we get to the substance of that report, you refer at paragraph 45 of your statement to in the days and weeks following the release of the AATES test report you became aware personally that there were elements of Army Aviation structure which took issue with the "unacceptable" outcome that had been determined by AATES. Do you recall that?

45

MAJ LAMB: I do.

5 MAJ CHAPMAN: In plain language, is that statement to suggest that parts of the chain of command were, if you will, upset with the unacceptable AATES outcome?

MAJ LAMB: Look, I think that's a fair conclusion to draw.

10 MAJ CHAPMAN: You go on at paragraph 46 to indicate that while you had previously encountered some opposition at times to AATES testing reports, that the opposition from Army Aviation in respect of this testing, being the 5.10 testing, was, as you put it, particularly vocal.

15 MAJ LAMB: That is correct.

MAJ CHAPMAN: Can you provide some examples of how it was particularly vocal?

20 MAJ LAMB: So I guess the enthusiasm expressed at the Army Aviation Training Centre by staff you would not necessarily encounter in a meeting, but you might encounter them in passing. There appeared to be an enthusiasm to express their views on other findings of this report.

25 MAJ CHAPMAN: "Enthusiasm", you use that term to mean a dissatisfaction; is that right?

MAJ LAMB: That's correct.

30 MAJ CHAPMAN: You were then, at some stage later, made aware, were you not, that Standards Branch had been directed to conduct a separate test and evaluation exercise themselves?

MAJ LAMB: I was, yes.

35 MAJ CHAPMAN: Are you aware, then or now, who had directed them to conduct that activity?

40 MAJ LAMB: I'm not, no. The test plan to that OPEVAL report may provide that information for you.

45 MAJ CHAPMAN: When you say "Standards Branch had been directed to conduct a test and evaluation exercise", just to be clear, that was not a test and evaluation exercise to be conducted by AATES as the Flight Test Organisation. That's right, isn't it?

MAJ LAMB: That's correct. So if I may put some explanation to this interceding period? Would you like that, Luke?

MAJ CHAPMAN: Sure.

5

MAJ LAMB: Yes. Okay, so that is correct. But, in parallel, our report had been - or the AATES report, had been released. We had engaged with the AMAFTU, the Navy Flight Trial Unit, and they too had identified the deficiency. It wasn't categorised as significant as what had been categorised for the AATES' environment, but because of the role and environment that they were going to operate it to, a large ship structure that has lighting and it's got horizontal and vertical cueing, so it gives you pitch and roll attitude information, they do say very clearly in their correspondence that they recognise distinctly that the role for maritime operations overwater is different. That is in their correspondence.

10
15

So we had that on one hand, about how to progress. On the other hand, we could also see the organisational need for continuity for parallel capabilities to be progressed - to have continuance in their progression. So with that in mind, we're going to lead into where we're heading to, yes.

20

MAJ CHAPMAN: So the operational evaluation activity, which I keep referring to as the OPEVAL, was to be conducted by Standards Branch alone; is that right?

25

MAJ LAMB: Correct.

MAJ CHAPMAN: To be clear again, Standards Branch is not a Flight Testing Organisation as recognised by DASA?

30

MAJ LAMB: That's correct.

MAJ CHAPMAN: And that AATES was then, and is today, the only recognised Flight Test Organisation for Army for the purposes of DASA?

35

MAJ LAMB: That's correct, and that's stated in the Operational Airworthiness Management Plan, para 4.8.4.

MAJ CHAPMAN: When you found out about the OPEVAL activity being proposed, did it come as a surprise to you personally that Standards were conducting further testing?

40

MAJ LAMB: It came as a disappointment. That's probably the best way to describe it.

45

MAJ CHAPMAN: Was it at all unusual that they'd be conducting testing following the conduct of testing by the Flight Test Organisation?

MAJ LAMB: So, yes, we could see the - - -

5

MAJ CHAPMAN: Sorry, was it unusual?

MAJ LAMB: It was. It is. Well, it was an awkward – it was a difficult circumstance. We could understand that an interim capability may be required, yes.

10

MAJ CHAPMAN: At paragraph 49 and following you refer to:

A draft proposal for the OPEVAL was considered by AATES.

15

Do you see that?

MAJ LAMB: That's correct.

MAJ CHAPMAN: When you say "considered", are you referring to AATES being asked to provide input into the planning for the OPEVAL activity?

20

MAJ LAMB: So the LMP requires – doesn't give voting rights to AATES, as directed by the chain of command for them to go and do an OT&E or an OPEVAL activity. What it does require the Flight Test Organisation to do – and this is the same for the Air Force – is to provide the governance oversight and assurance to that activity. So that's very different, providing the assurance and governance oversight to that activity is within the delegation. The voting rights to say that this activity can go ahead or not is not within our remit, and was not within COL Reinhardt's remit.

25

30

AVM HARLAND: So you could provide input on whether you thought the governance arrangements relating to the OPEVAL were appropriate or not, but you didn't have the power to stop it, effectively?

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MAJ LAMB: So what we couldn't do was stop the activity, but what we could do under the LMP, and what we did do, is we took ownership of the test plan and the risk management, and the flight conditions for the approval to undertake the activity.

40

AVM HARLAND: So, effectively, you put an AATES overlay on the OPEVAL?

MAJ LAMB: That is correct, yes.

45

AVM HARLAND: Can I ask what category this was conducted under?

MAJ LAMB: Category 4. Yes.

5

AVM HARLAND: Given that in your initial discussion about categories you said it was a modification to type, it would normally be Category 2?

MAJ LAMB: That's correct, yes.

10

AVM HARLAND: So how did this become Category 4, as an OPEVAL, when it was Category 2 as an evaluation?

MAJ LAMB: So the distinction is in the delegation from the Design Requirements Manual. So the Category 2 designation had the requirement to do Human-Machine Interface testing. We had done that. So we had done that, and we had found it to be an unacceptable deficiency for the projected role and environment. What this particular activity – I'm taking this away from Luke, and I apologise – is that the Category 4 testing was to enable the potential for an interim capability so other project milestones could be met. And so it did not include the staff and the qualified staff to do the HMI assessment.

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20

The way that I'd describe this visually – if I could, Luke – is so we put – if you can imagine a sphere, we put a really tight control around what they were doing, and that is really important in the context of the OPEVAL. We had done an assessment that was the size of a beach ball, and the assessment that we allowed through the approval process was something the size of a soccer ball. And that's really important contextually because when you have two reports at the end of that, an OPEVAL report and a Flight Test Organisation report, they're not one and the same. They're very different.

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30

And so in the test plan – and I'm sure Luke will get to it – you will see in numerous times we called that out and said the unacceptable deficiency stands, but if you wish to go forward and use this as an interim capability for training, for the training environment, then you're only going to be allowed to do it in the manner to which we looked at providing the constraints for our own trial. And I'll talk to that, I'm sure, through Luke. Sir, does that answer your question that you had before that I'd deferred?

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40

AVM HARLAND: It does. I won't ask any follow-on.

MAJ LAMB: No, thanks, sir. Sorry, Luke.

45

AVM HARLAND: I'll let you and MAJ Chapman get back to it.

MAJ CHAPMAN: Yes, thank you, sir.

5 At paragraph 50 – and you've just touched on this in your exchange with the Air Vice-Marshal – you refer to the OPEVAL being a mechanism to enable the interim capability, and what was the interim capability that you're referring to?

10 MAJ LAMB: Aircrew development and then moving towards milestones for Plan Palisade.

MAJ CHAPMAN: But did the interim capability include the purpose of the testing to start with, which was this distance to go or run function?

15 MAJ LAMB: That attended to that requirement, certainly. When I wrote this part of the statement, what was in my mind is the development of the crew, and the Squadron, and the TTPs to do that in a highly controlled environment so that they didn't have to stop, because HMSD 5.1 was
20 already on the railway tracks and coming into the organisation, and our job was to help enable the capability development. But we put a bookend on it very clearly. We put a bookend on it, "This will allow you to move forward in the next 12 to 18 months, but it's not to go to Service release for the intended role and environment for the 6 Aviation Regiment".

25 MAJ CHAPMAN: Which ultimately – and we'll get to this – it did.

MAJ LAMB: It did, that's correct.

30 MS McMURDO: For example, I think there's been some evidence that although there was this error, that pilots could be trained to deal with it. Is that what you had in mind with this limited testing?

MAJ LAMB: So training, not to the end state, ma'am, that I think you
35 might be considering to get into release for Service.

MS McMURDO: Not for release for Service.

40 MAJ LAMB: No.

MS McMURDO: But did you have in mind that you could test to see whether you could train to get over the problem?

45 MAJ LAMB: Amongst six or seven other very strict controls.

MS McMURDO: Other matters, yes.

MAJ LAMB: And I'll wait for Luke to bring that up, ma'am, if I could?

5 MS McMURDO: That's what we should all do, just be quiet and let - - -

MAJ LAMB: Sorry, I'll - - -

10 MAJ CHAPMAN: I'll get there.

MS McMURDO: We might get home earlier.

MAJ CHAPMAN: Thank you, Madam Chair.

15 At paragraph 54, MAJ Lamb, you reproduce paragraph 30 of the test plan, and it includes this statement:

The philosophy behind this flight test activity is to allow use of the HMSD version 5.10 symbology in controlled environments.

20

That's correct?

MAJ LAMB: That's correct.

25 MAJ CHAPMAN: Do we take it from that statement that that reflects an intention to impose specific controls, or I might describe them as guardrails, to be put around the further testing?

MAJ LAMB: That's correct.

30

MAJ CHAPMAN: That was to ensure, was it not, the conduct of that OPEVAL testing was as safe as reasonably practicable?

MAJ LAMB: That's correct.

35

MAJ CHAPMAN: And that as part of the planning for the testing you say, at paragraph 55 of your statement, that you and COL Reinhardt were involved in setting a significant number of flight conditions and strict controls on the conduct of the OPEVAL?

40

MAJ LAMB: That's correct.

MAJ CHAPMAN: And again, the setting of those controls was for the purposes of ensuring that, in the face of the earlier finding of risk, that further testing was to be conducted safely?

45

MAJ LAMB: Correct.

5 MAJ CHAPMAN: How many controls do you recall you and
COL Reinhardt imposed on that activity – a number?

10 MAJ LAMB: Yes, so paragraph 56 talks about 24 flight conditions. It's
actually significantly more than that. There's 65 paragraphs in the test plan
alone. And then there is the Risk Management Plan. Of the 65 paragraphs,
15 there are 24 paragraphs that directly and indirectly attempted to control the
risk. So I go back to my analogy again, if you can imagine the Service flight
envelope of the airbus, of the aircraft, what it can do, we contracted it down
to the size of a softball. And so that is what allowed the activity to go
through safely. And remember, this is the application to the DoSA Flight
20 Test, who, himself, then did his own due diligence that they were sufficient
to attend to the deficiency. And I can talk to that as well.

MAJ CHAPMAN: And you've referred to 24 additional controls that you
set out at paragraph 56. But just taking you through a small sample of
20 those. So we've got:

(a) testing at night was to be in VMC greater than two millilux.

25 MAJ LAMB: That's correct.

MAJ CHAPMAN: Another was that the symbology set was to be used in
decluttered mode?

30 MAJ LAMB: That's correct.

MAJ CHAPMAN: That there was to be applied, in a testing activity,
maximum use of AFCS. And by that, we refer to the Auto Flight Control
System.

35 MAJ LAMB: That is correct.

40 MAJ CHAPMAN: And just pausing there. Does the maximum use – was
the intent behind that condition to suggest that in a very complex aircraft
such as the MRH, that the pilots, while testing, would be given every
possible assistance from the computer systems on the aircraft?

MAJ LAMB: That's correct.

45 MAJ CHAPMAN: The next was that when making use of the full
HMSD 5.10 symbology, there must be a visual horizon.

MAJ LAMB: Correct.

5 MAJ CHAPMAN: And when making use of the full HMSD 5.10 symbology, it was only to be conducted in greater than two millilux conditions.

MAJ LAMB: That is correct.

10 MAJ CHAPMAN: Now, you go on to say at paragraph 57 that of the 50 plus activities that you've been involved in – and these are testing activities – in your career, never have you, up until this point, or since - - -

MAJ LAMB: Correct.

15

MAJ CHAPMAN: - - - imposed on a testing activity that number of flight controls and conditions. That's correct?

MAJ LAMB: Correct. Disproportionate.

20

MAJ CHAPMAN: And that reflects, does it not, the serious risk to flight safety that you and your colleagues at AATES considered was associated with the further testing and the use of the symbology?

25 MAJ LAMB: That's correct.

MAJ CHAPMAN: And that by imposing these guardrails, as I've referred to them, to the OPEVAL testing, again, you were only seeking to maximise safety controls to be put in place for the testing.

30

MAJ LAMB: That's correct.

MAJ CHAPMAN: Though it is also true, isn't it, that you were not retreating in any way from the earlier AATES' "unacceptable" finding?

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MAJ LAMB: Not at all. So, from mem, sir, the differentiation: this was only a Category 4 flight test activity by comparison to the Category 2 test activity. That "unacceptable" finding was set in concrete, yes.

40 AVM HARLAND: A question about limitations. Was there any limitation or consideration on formation flight?

45 MAJ LAMB: So not specifically for that particular OPEVAL activity. The context – I've got a list of things, if I may, that helps give you kind of the significance of the controls. The context was for an interim

capability only. That's the first thing. The second thing is, that the test category could only be, and appropriately it was, Category 4.

5 So that is done by survey. So, you know, "How do you feel about this?"
And remember too, that the folk that are providing the responses, they have a valued opinion but is an unqualified opinion when it comes to the basis of it. "We value your input. You're experienced aircrew", but we also contextualise and contain that.

10 The environment was very specific. So it was a known local training area. So when we drive around a local suburb, we're very familiar where the road bumps and the speed bumps are. It is similar for aircrew. It creates their capacity for them to do that and that gives them decision-making and judgment skills.

15 The role was very deliberate. So it wasn't for the role for the end state for release into Service. It was only for the role for an engine capability. Crew qualifications: I was very strict on the crew qualifications and the composition, so not everyone had the same permission. You know, there
20 were two test pilots involved in the activity. They were allowed to do more than the line pilots and it was graduated. And COL Reinhardt and myself were very deliberate in what we allowed. And the Annex A kind of gives you a snippet or an insight of those controls.

25 I use that visualisation, use of the automation. And then the other side of it too was to give them an increased understanding of the system under test. The system that they were going to operate. So we had a training package developed – well, we recommended that that be included and captured in OIP before they went to fly. So it was very deliberate.

30 And so I think the testament to that – did those controls work – which was approved by the DoSA-FT – yes, they did. We didn't have any incidents. But then I would expect, to be frank, that they would be carried through in reporting.

35 AVM HARLAND: So getting back to the formation. I guess what I'm trying to understand here is if you're testing a visual system which will aid you at night and it has also got some attitude information in there. If you
40 were to fly formation as part of Service release, would you test that during the test?

MAJ LAMB: So ordinarily you would, yes, sir.

45 AVM HARLAND: And was that during the OPEVAL?

MAJ LAMB: I'd have to have a look if they did formation testing. It's a question that I should know, and I don't. We'd have to look at the report, the test plan. I need the test plan not actually the test report, to be honest with you. I'd have to find out for you, sir. Take it on notice.

5 AVM HARLAND: Do we have the test plan?

MAJ CHAPMAN: The OPEVAL test plan?

10 AVM HARLAND: Yes.

MAJ LAMB: Yes.

MAJ CHAPMAN: I'll just check, sir. I'll make enquiries, sir.

15 AVM HARLAND: Okay, great.

MAJ CHAPMAN: I might come back to that if it is convenient?

20 AVM HARLAND: Yes, please.

MAJ LAMB: Sir, could I say, it's a really salient point that you make because the difference between flying as a single aircraft and flying in formation is the addition of the geometry. So your task – and you notice yourself, the task is amplified, absolutely.

25 AVM HARLAND: And it's not linked to a particular horizon because you've got changing references.

30 MAJ LAMB: Correct. So this is a conformal display, not a body axis display, yes. And there is science around that which we can discuss, if you wish.

AVM HARLAND: Okay.

35 MAJ CHAPMAN: If I could just return now to the actual conduct of the OPEVAL testing. So as for the testing serials themselves, you did not yourself participate in any of the serials?

40 MAJ LAMB: No.

MAJ CHAPMAN: And your involvement of that, of COL Reinhardt's was – well, it concluded at the planning phase; is that correct?

45 MAJ LAMB: That's correct, yes.

MAJ CHAPMAN: What about MAJ Wilson, was he involved, to your knowledge, in the OPEVAL testing or planning?

5 MAJ LAMB: Not so much. I mean, I value his wise and informed and qualified counsel but really, under the LMP, this delegation fell into the CO, being COL Reinhardt and myself as the Form 18 delegate.

10 MAJ CHAPMAN: But to answer my question, which was, was he, to your knowledge, involved in it?

MAJ LAMB: As in the conduct of it?

15 MAJ CHAPMAN: Or the planning?

MAJ LAMB: Not the conduct, certainly. For the planning, if I was to think about how I go about business day to day, I always value the input of experts, and I would always use them as a sound board.

20 MAJ CHAPMAN: Let me put it this way. You've said in your evidence that you were involved closely with COL Reinhardt in the plan; correct?

MAJ LAMB: Yes.

25 MAJ CHAPMAN: Is it your recollection that MAJ Wilson was involved in that somewhere?

MAJ LAMB: Not to my recollection.

30 MAJ CHAPMAN: So at paragraph 60 you say that it appears, from what you understand, that the OPEVAL testing was conducted applying the conditions that you had imposed; is that right?

35 MAJ LAMB: I would assume – that's right.

MAJ CHAPMAN: And you're aware that the final OPEVAL report, essentially – and I am not quoting – came to a different view to AATES, in that they did not consider there was a significant issue with attitude ambiguity?

40 MAJ LAMB: So I'm hoping you were going to lead into the next question, if I say yes to that. So, yes. And I can explain that. So it was within their limitation of scope, which was outside the purview of the Human-Machine Interface testing.

45

MAJ CHAPMAN: Do you agree that the OPEVAL report, when you read it, essentially disagrees with the AATES' findings with respect to unacceptable risk by - - -

5 MAJ LAMB: It doesn't explain it clearly, is what I would say, yes.

MAJ CHAPMAN: And you make the point – and we are at paragraph 61 – that:

10 *It's important to appreciate that the OPEVAL testing was conducted in a controlled environment.*

MAJ LAMB: Correct.

15 MAJ CHAPMAN: And that was to say, conducted in accordance with controls that had been imposed by AATES?

MAJ LAMB: And, more importantly, the Military Permit to Fly. So the DoSA-FT who sits up here. We're the Flight Test Organisation down
20 here. So, yes, the Flight Test Plan is an artefact that goes into the Form 18 application, which goes to the Military Permit to Fly approval.

MAJ CHAPMAN: Though it was conducted in accordance with the controls which had been endorsed by the DoSA?

25 MAJ LAMB: Yes, correct.

MAJ CHAPMAN: The OPEVAL's conclusions that the symbology upgrade did not, essentially, present an unacceptable risk could only apply
30 to the extent of the testing limitations?

MAJ LAMB: Correct, yes.

MAJ CHAPMAN: Is it correct that right up until the time of the accident
35 on 28 July 2023, there had been no testing of the upgrade – that is, the version 5.10 upgrade – without the OPEVAL controls imposed?

MAJ LAMB: That's correct.

40 MAJ CHAPMAN: So beyond the OPEVAL controls.

MAJ LAMB: Yes, correct.

MAJ CHAPMAN: So, for example, there is not testing of the version 5.10
45 upgrade below two millilux; is that right?

MAJ LAMB: That's correct.

5 MAJ CHAPMAN: Another example, there's no testing of 5.10 in conditions other than night VMC?

MAJ LAMB: Correct.

10 MAJ CHAPMAN: Another example, no testing of version 5.10 in DVE conditions at all?

15 MAJ LAMB: DVE has a scale. And, yes, it's been tested in the DVE, that's the night environment but not the useable cue environment that would be prevalent in poor weather overwater, at night.

MAJ CHAPMAN: And would you agree, MAJ Lamb, that it is a significant issue because, as you say at 61, ultimately we now know that version 5.10 was approved for Service release generally.

20 MAJ LAMB: Correct.

25 MAJ CHAPMAN: And the Service release was not, to your understanding, then or now, the subject of any specific controls with respect to the use of the upgrade in particular conditions?

30 MAJ LAMB: Certainly, Luke, not the flight control conditions that were mandated in the test plan that I would have expected to be carried through. There may have been others, you know, that's been incorporated through other OIP, but not what we're talking about here today.

35 MAJ CHAPMAN: So is it then a correct statement to suggest that the pilots and all the ships – 81, 2, 3 and 4 – at the time of the accident were using software which, although released, had not been the subject of full airworthiness certification?

MAJ LAMB: For the configuration, it had been assessed and it was found unacceptable.

40 MAJ CHAPMAN: And that the controls that had been imposed by AATES on the OPEVAL could have, though were not, included as limitations or controls on Service release when that occurred?

MAJ LAMB: That's correct.

45 AVM HARLAND: Is that typical?

MAJ LAMB: No. No, so - - -

AVM HARLAND: Have you seen that before or since?

5

MAJ LAMB: No. So, in fact, there is a Memorandum of Understanding between DIA with DASA – Director of Initial Airworthiness – where they have a Memorandum of Understanding of where applications for systems like this come to the Air Warfare Centre, specifically to me, as the Staff Officer Test Pilot. That position is ordinarily only ever posted for someone who is very experienced, so the people that spend a lot of time at ARDU and a lot of time at AATES.

10

And to ensure that when the DASA provides Service release to an item, that it's in the context of the due diligence and quality assurance function that has been undertaken by flight test. So we do that quite routinely. So, no, it's not. And so it is disconcerting to learn that these controls were not carried through.

15

AVM HARLAND: So if that's the case, when the separate action after the testing is done of going through a process of establishing whether the aircraft should be Service-released and what conditions would be put on that, how did that happen?

20

MAJ LAMB: So I don't know the answer to that, sir. What normally happens in terms of communication and what's been routine before that and since then is that the Director of Aviation Capability Management chairs a meeting – or his delegate – to undertake a TERC, which is Test and Evaluation Review Committee.

25

30

So what would happen is, sir, I would hand you the test report a week out and then we would offer you – or you would table a meeting, which you would have time to digest the meeting, and then we would come and provide plain language explanation, if you felt that that was suitable, so that we could transfer/communicate the findings and give you an explanation. That's always best done in person. That might just be a little bit of my age at the moment because it's the non-verbal inclinations I can see in the eyes of the recipient, whether they have actually comprehended the gravity of the finding.

35

40

So that's normally the pathway. And then I think you'll find – well, in fact, I know you'll find in COL Reinhardt's response to the OPEVAL report that he quite clearly stated it should be captured in the OTCRM and reiterates that this is an interim approval only. That can't be reinforced enough, yes.

45

AVM HARLAND: Who signs off on Service release?

5 MAJ LAMB: That would normally be done – you would probably need to ask the Avn Command who did it in this case because I wouldn't wish to make an assumption of who would do that. Yes, so I think you would be able to find the signature block.

10 MAJ CHAPMAN: MAJ Lamb, can you just, if you can, identify the position responsible for giving effect a Service release without mentioning any name?

MAJ LAMB: Service release would normally be the military-type certificate holder.

15 MAJ CHAPMAN: Sorry, say again?

MAJ LAMB: The military-type certificate holder is my understanding.

20 MAJ CHAPMAN: And you just referred, in an answer to the Air Vice-Marshal, to a reference that was made in the response to the OPEVAL report, which is 16 March 2020. And just for everyone's awareness, is in evidence at Exhibit 41, Annexure F. And you refer to the hazard being tracked in the OTCRM.

25 MAJ LAMB: Yes.

MAJ CHAPMAN: And I'll just quote what is said here – it's paragraph 7:

30 *If the modification is progressed to Service release, then AATES recommend two things: (a) the hazard is tracked in the OTCRM.*

Can you just explain what "the OTCRM" is?

35 MAJ LAMB: Yes. So I can't remember the acronym offhand. As you're voicing that, I was realising that. But what it would capture under controls is to manage the risk, and that is where I would expect to see the flight conditions and the controls of the guardrails – in your language – to be carried through to manage that.

40 MAJ CHAPMAN: And the second aspect was:

It is considered an interim solution while a fix is designed for incorporation on the Australian MRH-90 fleet.

45 I've got two questions about that.

MAJ LAMB: Yes.

5 MAJ CHAPMAN: The first one is, are you aware of whether this hazard was tracked in the OTCRM?

MAJ LAMB: I'm not aware. I don't know is the answer to that question.

10 MAJ CHAPMAN: The second is, are you aware of whether anyone from Army Aviation took up this suggestion by COL Reinhardt from the Flight Test Organisation to approach the original equipment manufacturer for a fix – to design a fix for incorporation on the Australian fleet?

15 MAJ LAMB: I am aware that enquiry was made with the OEM. What the content of that, I think you would probably best to ask the author of that enquiry.

20 MAJ CHAPMAN: Just moving to a final topic, you're highly experienced, not only as a pilot, though you also have in-depth knowledge, as has been demonstrated today, in the DASR – Defence Aviation Safety Regulation – that's from past and your current role?

MAJ LAMB: Yes.

25 MAJ CHAPMAN: You would say one of your principal roles is to have in-depth knowledge of the DASR and safety Regulations?

MAJ LAMB: That's correct. Yes, correct.

30 MAJ CHAPMAN: Now, you've given some reflections at paragraph 66 of your statement and following concerning what I'll describe as culture within Army Aviation.

MAJ LAMB: Yes, that's correct.

35 MAJ CHAPMAN: And you say at 66 that you have observed what you describe as a "drift"?

MAJ LAMB: That's correct.

40 MAJ CHAPMAN: In terms of Army Aviation increasingly seeking to challenge the advice of the Flight Test Organisation, and you compare that to former times when the testing capability sat independently from Army?

45 MAJ LAMB: That is correct.

MAJ CHAPMAN: And within ARDU, which is the RAAF equivalent?

MAJ LAMB: That's correct.

5

MAJ CHAPMAN: And you raise the concern, I think, at paragraph 67, that while debate – and I quote here:

Debate is always healthy, argument is not.

10

Correct?

MAJ LAMB: That's correct.

15

MAJ CHAPMAN: And is it in that context that you are referring to a debate between the Flight Test Organisation and the chain of command?

MAJ LAMB: That's correct. So debate enables education, whereas argument becomes emotive.

20

MAJ CHAPMAN: And you go on to say that “constructive debate is often at times” – well, I'm paraphrasing – “is lost to AATES having to constantly justify their test findings”. Is that right?

25

MAJ LAMB: That's correct.

MAJ CHAPMAN: And is that reference to “constantly having to justify findings”, your experience at AATES dealing specifically with this upgrade?

30

MAJ LAMB: This was one of quite a few.

MAJ CHAPMAN: And you go on at paragraph 68 to say that it was your experience in relation to a number of other flight test activities concerning the MRH, including those which you list at 68?

35

MAJ LAMB: That's right. And it's really quite interesting because in the improved search and landing light, we found that capability to be enhanced and to offset the deficiencies we had identified during NVG testing and during 5.1 testing. That too, well, it was described to us there were commercial limitations to that – funding limitations. But we found something favourable that we thought would foster safe and operational flight.

40

45

MAJ CHAPMAN: And that was more of a collaborative experience, was

it?

5 MAJ LAMB: So that was done independently. But the findings in that report were quite favourable for the system under test. So, you know, it's unique. Whereas in all those other ones which are highlighted there, certainly there was resistance to the expert advice under the DASA-ordained organisation not to be taken in good faith. But that doesn't mean there is not a responsibility on us to give education or provide and explain that, but that too was very difficult. There was a reticence to listen.

10 MAJ CHAPMAN: And at paragraph 69, which is the penultimate paragraph of your statement, you then draw a comparison by saying, by stark contrast, you have observed in your current role that sits within RAAF - - -

15 MAJ LAMB: That's correct.

MAJ CHAPMAN: - - - that advice is ultimately accepted by the chain of the command, even if debated.

20 MAJ LAMB: Correct.

MAJ CHAPMAN: And that's because you go on to say, in your experience, the RAAF chain of command perhaps better recognises the expertise and advice of their Flight Test Organisation professionals.

25 MAJ LAMB: That's correct.

MAJ CHAPMAN: Do you have anything further that you want to add to that?

30 MAJ LAMB: Look, I do. I think it's partly because the RAAF, as a larger organisation, benefit from being populated with a number of postgraduate-qualified people throughout the Command structure. So they have walked the ground and they understand, you know, Aviation is an inexact science; it is extremely complex. And so within the partitioning and the various Directors of the Air Force, there are specialists.

40 But being a specialist yourself, recognising that listening is a part of that because you've had that experience yourself, I think that is really an opportunity for this Military Air Operator, is to look at the model of true diversity. So technical diversity in their command structure, so interpretation can be made.

45 And so things like this – you know, the MOU, sir, that I alluded to you

about capturing the full experience, or the full project continuum and being provided – I think that is a really worthwhile construct. Navy have that same construct. You know, if you just look at the past and current appointments, they've had qualified test pilots, there's COMFAA, you've had flight test system specialists, which are code for FTE as COMFAA.
5 The Air Force has two-star Generals which have been test pilots. They've got the Chief of Air Force, the current Air Commander – they're Fighter Combat Instructors. The Deputy Air Commander is a qualified test pilot and Flying Instructor. So they understand language. They can see it. So,
10 that has a couple of things, you know, briefing remotely and communication only has so much effectiveness in a structure which has a command chain.

They can see not what's necessarily being said to them but they well understand when things aren't being said through omission, maybe through innocence, maybe naively, and I think that's a good structure and they benefit from that. The capability benefits from that. And that's only my professional opinion.
15

MAJ CHAPMAN: And you say that it was concerning to you that your experience at AATES you felt that the testing that was undertaken by that organisation was essentially under attack a lot of the time?
20

MAJ LAMB: Well, I'll keep the word soft; we had to explain ourselves often.
25

MAJ CHAPMAN: And you say, finally, at paragraph 70 that in your view the RAAF approach – and I quote here –

reflects and promotes a positive safety culture, which in turn builds and optimises capability.
30

MAJ LAMB: That is correct.

MAJ CHAPMAN: And in making that observation, you're contrasting your own experiences at AATES - - -
35

MAJ LAMB: That is correct.

MAJ CHAPMAN: - - - with what you are now experiencing at the RAAF?
40

MAJ LAMB: Mm.

MAJ CHAPMAN: And finally, is it – well, perhaps not finally – but is it fair to say that you consider that it would be more productive if the Army Aviation were to accept advice of their own subject-matter experts as
45

opposed to going around in this OPEVAL fashion?

MAJ LAMB: Yes, and it's not the only project where they did this.

5 MAJ CHAPMAN: And just bouncing to another topic, very briefly. You're aware, are you, that as a result of the OPEVAL, there was included in it, the Standardisation Manual, a warning. You're aware of what I'm talking about?

10 MAJ LAMB: I believe I am. It's the warning which relates to the use of the AFCS for the unusual attitude go around. Is that the warning?

MAJ CHAPMAN: It's the warning that states, in effect, that changes of attitude are only to take place when looking straight ahead.

15 MAJ LAMB: Yes. Yes, I'm aware of that warning.

MAJ CHAPMAN: Just in the context of the risk that we've been discussing during your evidence, do you have a view of whether the inclusion of such a warning is a sufficient mitigation against risk?

20 MAJ LAMB: It's not. It's not. So one of the distinctions for this role and environment, sir, you alluded to it, is the formation. So if I can give just some explanation for the room? When a P9 Poseidon or a P3 pilot operates in the maritime environment overwater, that pilot only has one task to do and that is to fly off the Primary Flight Display.

25 In the NVG environment, you have two tasks to do. You have to fly off the Primary Flight Display and you have to fly with the visual environment provided by the Night-Vision Imaging System.

30 In the NVG formation task environment, you've got three tasks to do. So now your task is divided in time and one offsets the other because you have station-keeping to uphold in terms of your position in the formation.

35 So with that in mind, to expect or require or have as an enduring risk control that you will look forward in flight, in my professional opinion as an experimental test pilot, is not an appropriate control for this configuration role and environment, being maritime overwater, in formation, low level, at night, because of the other responsibilities.

40 If you are closing in on an aircraft in front of you and you have ambiguous information displayed to you, without a visual horizon, in a low cue environment, at night, you can't take your eyes off the apparent closure to the aircraft in front of you because if you do, you run the risk of losing sight

with that aircraft – worse than that, running into it. So it is not an appropriate control. Hence the reason for the “unacceptable” finding to which we considered was exactly in this circumstance: maritime, overwater, at night, low level, degraded visual environment, in formation.

5

And enduring approval is required to be mindful of that, and that’s the context.

10 MAJ CHAPMAN: And when you say “not appropriate”, you could also say it’s not realistic?

MAJ LAMB: It’s also not realistic. Yes, I accept that terminology.

15 MAJ CHAPMAN: And just, lastly, MAJ Lamb, I understand that you would like to direct some remarks to the families.

20 MAJ LAMB: I certainly would. And so my sincerest condolences to who they are. I was absolutely shattered personally when I learnt of your loss. I can’t even imagine the grief you are going through, and I am very sorry for the outcome and the pain you are going through.

MAJ CHAPMAN: Thank you, MAJ Lamb, that’s the evidence.

25 MS McMURDO: Thank you. Applications to cross-examine? Yes.

<CROSS-EXAMINATION BY LCDR TYSON

30 LCDR TYSON: Sir, my name is LCDR Tyson. I am representing CPL Alex Naggs, one of the deceased aircrew.

MAJ LAMB: I’m sorry.

35 LCDR TYSON: Sir, I would like to focus in, if I can, on some flying control issues in relation to the MRH-90. Can you go, please, to paragraph 56 in your statement? And can you see the reference there to, in subparagraph (c):

40 *Maximum use of the automatic flight control system upper modes.*

Do you see that, sir?

45 MAJ LAMB: I do, yes.

LCDR TYSON: Can I start, sir, with tactical mode in an MRH-90. So in the context of flying an MRH-90, what is tactical mode?

5 MAJ LAMB: TAC mode is an attitude reference system mode, but it removes the trim feedback, force feedback. It has a trim follow-through feedback. So if I move the stick from centre position to a forward position, rather than providing resistance, the trim will follow-up and give a “Null”. So that’s the pitch aspect or axis.

10 The roll axis remains in an attitude mode. So if you push to a 30 degree angle of bank, for example, it will hold a resistance against that but it won’t display that cueing system through the Primary Flight Display. What’s interesting about the TAC mode is, it doesn’t enable, in the design, to have an upper mode for barometric or RADALT hold, which is what protects the
15 aircraft or maintains the aircraft at a given height.

LCDR TYSON: So it’s inconsistent with setting the RADALT hold?

20 MAJ LAMB: It doesn’t enable it. So the design doesn’t enable it Deliberately, by design.

LCDR TYSON: And that phrase that you use in 56(c), “maximum use of the AFCS” - - -

25 MAJ LAMB: AFCS, yes.

LCDR TYSON: How does tactical mode relate to that? I assume that tactical mode means that you are not getting maximum use of AFCS; is that correct or not?
30

MAJ LAMB: So it prevents that access. So you would have to be in attitude mode to activate that access.

LCDR TYSON: I’ll state a proposition, and please tell me if this is wrong
35 or whether it is correct. There are three ways one can fly an MRH-90: (1) would be flying it manually, i.e., hands and feet flying; (2) would be in tactical mode; (3) would be in full AFCS. Is that correct or incorrect, and why, please?

40 MAJ LAMB: It’s a general – so the two modes that you could fly this aircraft over terrain would be in attitude mode, okay. And that gives you attitude hold and it will give you roll – sorry, attitude holding pitch and roll, and heading hold or coordinated turn. And then in TAC mode, which is the matter which I just described to you, the TAC mode I will say should only
45 be used in a high cue environment because of the trim follow-up function.

LCDR TYSON: What do you mean please, sir, by a “high cue environment”?

5 MAJ LAMB: So one where there are exceptional ground cue environments, visual horizon, such that you can discern the attitude, either looking out to the front of the aircraft through the windscreen or down to the ground, where you can orientate the aircraft cockpit designed geometry with the terrain beneath you.

10 LCDR TYSON: So if you are flying at night, say, 30 per cent moon illumination, 200 feet overwater, on one side of the aircraft you can make out the horizon, on the other side it’s very hard to make out the horizon, you wouldn’t be using tactical mode in that scenario?

15 MAJ LAMB: So my professional opinion is the mode that should be used overwater at night – and, in fact, in a way is now mandated through the SI Avn Operates, is attitude mode. Because the overwater at night is mandated to fly with a barometric or a RADALT hold function. It’s in the SFI-3/2019, which I understand is post this accident. But it’s been extant, in my knowledge, since the late 1990s, that requirement to be overwater at night.

25 LCDR TYSON: Assume you are in a situation where you are flying an MRH-90, you’re the third ship in a four-ship package, there’s a left turn and again, you are flying at about 80 knots, altitude of about the 200 feet. Let’s say you do encounter some spatial disorientation, perhaps just a simple case of ambiguous attitude. You’ve encountered a situation of ambiguous attitude, perhaps caused by the symbology, the misleading symbology. If you’re in that scenario, what sort of flying control set-up is the best mode that you would want to be in, or does it not matter?

35 MAJ LAMB: It absolutely matters. It needs to be in attitude mode, so there is a force feedback if you are pushing unconsciously against the trims. That’s deliberate certification design in pitch and roll and then the upper mode of the barometric or RADALT hold engaged. But you make an interesting point because the subtleness of ambiguity assumes recognition, and for recognition to occur you need a plane of reference.

40 So hence the visual horizon, to give you that conflict of information, or in your instrument scan, which is part of a normal NVD scan. You look down at the Primary Flight Display, which is truth data that tells you, in your example, you are in a 30 degree level bank turn.

45 LCDR TYSON: And in that scenario that I’ve given, if you suffer spatial

disorientation, is it fair to say that you are in a very difficult crisis situation?

5 MAJ LAMB: Absolutely, because of the nature of having to recognise the spatial disorientation. Once inside the spatial disorientation, it's very confronting in the knowledge of where you are in proximity to certainly terrain or in the case that you have described to me, overwater, other aircraft as well in terms of your geometry closure and departure rates.

10 So, equally, whilst closure rates are a concern for safe separation of the aircraft from which you are formatting off, also moving away in a very dark environment has a degree of concern because of the challenge of the task to reacquire your plane of arc.

15 LCDR TYSON: And did I understand your evidence correctly, sir, that scenario that I've given you there, for ships in the formation, 200 feet, at night, overwater, was your evidence that AATES has not certified the MRH-90 for that scenario?

20 MAJ LAMB: So the evidence, for absolute clarity, is in forecasting the condition, we found that the ambiguity of version 5.1, which is a software function of the ANVIS helmet was unacceptable.

LCDR TYSON: Thanks, sir. They're my questions. Ma'am, sir.

25 MAJ LAMB: Yes.

MS McMURDO: Thank you. Any other applications to cross-examine? LCDR Gracie?

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<CROSS-EXAMINATION BY LCDR GRACIE

35 LCDR GRACIE: MAJ Lamb, my name is LCDR Malcolm Gracie. I represent the interests of CAPT Danniell Lyon - - -

MAJ LAMB: Yes, I'm sorry for your loss.

40 LCDR GRACIE: - - - who was in Bushman 83. Thank you. I want to ask something about the role of the engineer, the Flight Test Engineer. And you've referred to him as CAPT Jordan Zahra.

MAJ LAMB: Yes.

45 LCDR GRACIE: What role does the engineer have relative to the test

pilot?

5 MAJ LAMB: So, look, that's a really good question. Thank you for bringing that up. So the Flight Test Engineer is to ensure the integrity of the test conduct. So from the approval process to the test plan a number of flight test data cards will be produced and that Flight Test Engineer ensures that the test pilot, when they are going to undertake the assessment airborne and that test point, that they comply with all the reduced requirements onto a single A5 piece of paper.

10 That's his job. His job also is to challenge the pilot on the findings and what they see. So what would happen when you get airborne typically, if I may, ma'am, is you will get airborne, you would brief the test pilot what you're about to undertake. The test pilot would then go and conduct the test method or the test sequence that has been agreed to.

15 You would then bring the aircraft off condition and then the Flight Test Engineer would engage, you know, in communication with the test pilot about what they had seen and observed. And there might be rating scales in there that they would ask them to give an initial inclination. We would go back to the complication and we would challenge that.

20 Their function is also flight safety. Because we are now in an aircraft system that is not yet certified, so to have that expertise. Yes.

25 LCDR GRACIE: Is there a different approval process whether or not you're looking at engineering-related matters as opposed to in-flight matters?

30 MAJ LAMB: No, it's for – so what will happen ordinarily – and this is interesting about 5.1, is that there's documentation which is indicative, and the minute is signed on 29 May 2017, that says that the system, 5.1 system, should be purchased and released into Service, which is an engineering assessment. But it had not yet had the benefit of the due diligence and the quality assurance oversight.

35 And specific and really relevant in this matter is the high end, high task, high gain environment of the Special Operations role. So for that reason, that would trigger due diligence and conscience would trigger a test activity like this to make the assessment to – there's no question around the engineering design of the system, but is it suitable for what we need to do it in the Australian context?

40 LCDR GRACIE: So if I understand it correctly, there's been an approval from an engineering perspective of the upgrade. And that's by DG DASA?

45

MAJ LAMB: So delegated down, but yes.

5 LCDR GRACIE: Delegated down. So there's that approval. But in terms of the in-flight issues that you've referred to, in terms of Special Ops and other things, that would be something that AATES, as the Flight Test Organisation, would have to approve?

10 MAJ LAMB: Yes. That's correct.

15 LCDR GRACIE: I just want to clarify one other matter. You touched on it with sir in relation to the issue of being distracted. If I can just put it in that most broadest sense, if you're utilising this symbology for attitude – sorry, I withdraw that. I'll start again. There's been some evidence before the Inquiry that the pilots are trained or prefer to take their attitude from the Primary Flight Display. Is that part of the training scenario that you were looking at as part of the Flight Test Plan amendments?

20 MAJ LAMB: So it's the divided attention, I think, is what you're alluding to. Certainly that is part of a good radial scan between the Primary Flight Display, the outside visual scene, which itself, internal to the NVG scene, has its own internal scan, it's not just look through and stare, and then station-keeping with the aircraft in front.

25 Where the testimony of those – and I haven't been watching the IGADF, and that's appropriate, under instruction. But what I would say to you is it goes back to who is qualified to make the assessment around this. Well, under the Defence Aviation Safety Design Review Manual, it's the Flight Test Organisation. So is a very experienced instructor able to make that
30 assertion? Well, if that was the case, for a number of people, including myself, I was a Category A Black Hawk instructor, I would have just gone straight to ARDU. But I didn't, and nor does anybody.

35 You go and you do a course that qualifies you to make these assessments, and then you come back as a Category D test pilot. It's a licence to learn. So I would counsel – I would personally – and I've said this many times when I've been mentoring test aircrew where there's been a composite crew, where we've had an experienced instructor fly with the test pilot, to take with a degree of reservation any advice or observations that
40 are made.

It's valued, absolutely. We appreciate the participation. But they don't have the competency of a qualification to draw the definitive conclusion that's required under DASR, and the integrity to give the findings and

recommendations. That's the remit only of the Flight Test Organisation, the test pilot.

5 I can give an example of where the Air Force did this right. But I would probably have to ask for the button to be pressed.

LCDR GRACIE: Understand.

10 MAJ LAMB: Yes.

LCDR GRACIE: So just dealing with that then, one of the factors that you're dealing with with a line pilot, or a Qualified Flying Instructor, is that they're already trained to operate within a safe environment, if it's been properly evaluated by - - -

15 MAJ LAMB: That's correct. They don't know what they don't know. That's a really good way to describe it. That's correct.

LCDR GRACIE: Whereas you're operating outside those existing or approved safety environments.

MAJ LAMB: Boundaries. That's right. We're able to project the implications.

25 Lcdr GRACIE: So a Qualified Flying Instructor that tells a more junior pilot that, "You're only going to be setting your display. You're not to look off-axis", they're not necessarily aware of the overlying complications that a test pilot in this scenario might have established.

30 MAJ LAMB: They're not, that's correct. So that's correct, and so the question was asked of me earlier, who was the most suitable person to undertake this trial. It's MAJ Ian Wilson, because he was a Category A Flying Instructor, had been for many years and had an enormous - I can't remember, he'll probably tell you tomorrow the hours he's got on type, but a significant amount. And he was also a Category B test pilot. So that's a very unique set of circumstances, because you understand both worlds.

40 So the way I describe this to people, and it's often said on Test Pilots' Course, is that if I give you a task to do as an instructor and you can't do that, that's your fault. But if I give you a task to do as a test pilot, it's not your fault, it's likely the system, the task I've asked you to do is too difficult and it's unreasonable. So that's the difference.

45 Lcdr GRACIE: Just if you're flying in formation, as we've talked about here, in a heavy left, and you're only two rotor di's apart.

MAJ LAMB: Okay.

5 LCDR GRACIE: And you do have the degraded environment, low, overwater, at night. Would you be inclined to look at your Primary Flight Display if you had to look down and check your attitude or you had to try and re-orientate your loss of situational awareness, or would you – would it be more compelling to utilise the symbology that’s there on your visor? Is there a - - -

10 MAJ LAMB: You are left with looking at the symbology because of the proximity to the other aircraft, you can’t afford to take your – you can take your eyes off that aircraft and glance at the Primary Flight Display, and that’s part of the composite scan that I was talking about, the divided attention. That’s certainly appropriate. But in terms of what is right, what right is, is that it’s a body axis display and it doesn’t display any ambiguity. So if you look at, again – actually, that’s probably enough. Yes.

20 LCDR GRACIE: Some witnesses said something to the effect of, “Look, no, I utilise the Primary Cockpit Display because it only takes me a second to look down and look up”.

MAJ LAMB: Correct, yes.

25 LCDR GRACIE: A lot can happen in a second in a formation with only two rotor di’s apart in a degraded environment.

30 MAJ LAMB: Yes. That’s right. So what I will say there is – and I was this person when I was a Category A Instructor – so often the certification basis is not premised on the normal circumstance. The certification basis is actually in a degraded circumstance. So what is the consequence when things go wrong? So under the approval process, the system to which Service release is to apply is to have consideration of a non-normal circumstance, not just the normal circumstance.

35 And a Flying Instructor may have the presence of mind in their response to an OPEVAL questionnaire to have that in their mind? Not likely. And so that would be something that I would counsel test aircrew, saying, “The responses that you have received in terms of the system under test that you’ve asked for their opinion on, is that also considerate of when you’re in a degraded mode or you’re out of a formation position or something else has distracted you?” Because that is actually the baseline. And what that actually provides you is protection should you end up, inevitably, in that circumstance through the lifecycle.

45

5 So we describe that as the operational – not “we”, the Mil Standard which applies, even though this is a FAA 29 aircraft, applies directly for this role and environment. The Mil Standard ADS-33 calls this out as a differentiation between the Service flight envelope and the operational flight envelope. The operational flight envelope is that sphere that I was relaying to you. The Service flight envelope is what the aircraft can do.

10 But in the role and environment, the operational flight envelope is not only what you would do normally, but it accounts for and anticipates human error, judgment, non-normal behaviours of the aircraft, malfunctions. Because success is – what is right is that the aircraft is able to enter those conditions and safely recover. That’s really important. That’s a real distinction that the Category 4 flight test activity, by survey, is not considerate of. Whereas the Category 2 flight test, which is HMI, is
15 profoundly considerate – is mindful of.

LCDR GRACIE: Is it also important to appreciate the difference between what a Qualified Flight Instructor is teaching people, for example at 5 Avn, with those undertaking Special Ops at 6 Avn?
20

MAJ LAMB: So that is exactly right. And, ma’am, I alluded to this in the OPEVAL. One of the flight conditions that we put in the test plan is that I scale, quite deliberately, who could do what. And what 5 Regiment pilots, at that time in their continuum – It didn’t mean that they wouldn’t
25 become expert later in their – with time and experience. But at that snapshot in time, I significantly limited what they could do as part of that OPEVAL.

LCDR GRACIE: Just one final thing. I’d like your comment on this, just
30 as an expert test pilot. Some witnesses have said that because of the training to only look forward, even if they’re turning to – doing a left angle of bank, 15 degrees, or right 15 degrees, that they don’t look off-axis. Can I have your comment on that in two scenarios? First is in formation and the other one out of formation.
35

MAJ LAMB: So I would say that’s unrealistic, in my professional opinion as a test pilot, and you should anticipate that unconscious and unintended behaviour. That’s straight out of the mass brief. And we all endeavour to do what is theoretically correct. There are unconscious responses, the human behaviour that we can’t control. So there might be a flicker of a
40 light that attracts our attention.

There might be other aspects in the mission that cause you to detract from what is, ideally, the appropriate place to make attitude changes on. To
45 declare – from a Service-release perspective, to rely on that, is erroneous.

So that's what the unacceptable finding states, is that is erroneous to do that because it's not considerate of human error, human judgment. Yes, there's hope and intention to do it correctly. But that's not sufficient in terms of approval.

5

LCDR GRACIE: And if you're using other aircraft in a formation, for a pseudo-horizon and you lose one of them, I imagine you're going to be scanning.

10 MAJ LAMB: You absolutely are. It becomes your – of the divided task, it becomes your – it's the primary concern, "Where is that aircraft?" Because I stated it before, you don't want to have – you don't want to impact with that aircraft, but you also don't want to fall out of that formation. So it does attract – become your priority in attention, and that's
15 appropriate to do that. That is an appropriate thing to do. That is the biggest risk or error that now needs – I'll retract the word "error" – that's the highest priority that you would do. And we've all done it. We've all done it; that's reality.

20 LCDR GRACIE: And of course you're no longer looking at your Primary Flight Display if you're looking left or right.

MAJ LAMB: No, you're not. You're absolutely not. Exactly right.

25 AVM HARLAND: So you're effectively describing a dilemma where you're in a close formation, you have avoidance responsibility.

MAJ LAMB: Correct.

30 AVM HARLAND: 3 avoids 2, 2 avoids 1. You have a low – a degraded visual environment. You may or may not have situational awareness in terms of your attitude.

MAJ LAMB: Correct.

35

AVM HARLAND: And so disorientation might be moving in here.

MAJ LAMB: Yes.

40 AVM HARLAND: And you now are in this dilemma situation where you want to maintain separation from an aircraft which is very close to you, your defence against disorientation and getting reoriented mandates that you look forward.

45 MAJ LAMB: Yes.

AVM HARLAND: Which is potentially away from where the aircraft is, which is off-axis.

5 MAJ LAMB: Yes.

AVM HARLAND: I'd suggest that's a very difficult situation to be in when you've only got sub-seconds to be able to deal with it.

10 MAJ LAMB: You're absolutely right, sir. And it's a trained unconscious response to do that because the gravity is in the back of your mind as to the need to reacquire that formation. And so that's the distinctions that I was describing from the role of the P-8 pilot or the P-3 pilot, which has a single task. That's absolutely correct what you say.

15 AVM HARLAND: So this is the basis for why you're saying that that's an inappropriate control.

20 MAJ LAMB: Absolutely, yes. Yes, it doesn't account for all circumstances, yes.

AVM HARLAND: Thank you.

25 LCDR GRACIE: Thank you, sir. Thank you, ma'am. And, MAJ Lamb, thank you.

MS McMURDO: Thank you, LCDR Gracie. Just how many more applications are there to cross-examine? Only you.

30 MS MUSGROVE: It's not an application to cross-examine.

MS McMURDO: It's not. Yes?

35 MS MUSGROVE: I just wanted to raise a potential procedural fairness issue. I note that the representative for TopOwl is not present this afternoon and this witness was slated to give evidence tomorrow morning.

MS McMURDO: He was informed.

40 MS MUSGROVE: I just wanted to raise it to make sure that he was informed.

MS McMURDO: Yes. No, he was informed. Would you just like – MAJ Chapman, would you just like to tell us what the position is there?

45

5 MAJ CHAPMAN: The representatives of Thales and Airbus were informed that MAJ Lamb would be giving evidence this afternoon. In terms of cross-examination that would be conducted, it may be – I don't know what their position is, but it may be appropriate that the witness be adjourned so that the representatives can cross-examine MAJ Lamb, if that's their instructions, tomorrow. But they're not here. I can make an enquiry about that, if it's - - -

10 MS McMURDO: They were informed and you didn't really get any feedback from them as to whether they wanted to be here or not for cross-examination?

15 MAJ CHAPMAN: I didn't get any feedback – sorry, I withdraw that. The position was that they may seek to cross-examine MAJ Lamb, which is why, Chair, I'd be either inviting MAJ Lamb at the conclusion of this to stand down to tomorrow morning to enable them to then appear to cross-examine.

20 MS McMURDO: So we don't know if – I see.

MAJ CHAPMAN: The alternative, with respect, is that I could make an inquiry, given they are listening - - -

25 MS McMURDO: They are listening?

MAJ CHAPMAN: Yes, I understand they are.

MS McMURDO: Right.

30 MAJ CHAPMAN: And enquire whether or not they propose to cross-examine. In which case, if they do, we can adopt a course where MAJ Lamb comes back possibly tomorrow. Or if not, he can be, with your leave, excused as a witness.

35 MS McMURDO: So, MAJ Lamb, were you planning to be here tomorrow in any case?

MAJ LAMB: I am, ma'am. I can be, yes.

40 MS McMURDO: I'm not asking you to be, but I'm thinking if you were going to be here anyway when the next witness gives evidence, who is a colleague of yours, we might just leave it at that and come back.

45 MAJ LAMB: I can.

MS McMURDO: But if you were hoping to go and do other things, we can make some enquiries. It shouldn't take very long.

5 MAJ LAMB: Ma'am, if I could, I think it would be prudent to give them the opportunity. I think the procedural fairness, that's absolutely appropriate, and I would be available to you.

10 MS McMURDO: We're not – I think you can leave the procedural fairness to me, MAJ Lamb. I'm going to make sure there is procedural fairness done here. But I'm asking you, is your convenience to be finished and come back tomorrow if you're not required, or are you going to be coming back tomorrow anyway to hear - - -

15 MAJ LAMB: If I'm not required, I'll leave.

MS McMURDO: All right. Now, there were no other applications to cross-examine from Counsel representing. Well, we'll just have a short adjournment and we'll find out what Thales's attitude is. We might be able to let you go tonight. Thank you.

20

HEARING ADJOURNED

25 **HEARING RESUMED**

MS McMURDO: Yes, MAJ Chapman.

30 MAJ CHAPMAN: Ms McMurdo, thank you for that opportunity. I have contacted, in the break, the representatives for Thales and Airbus and both have indicated they do not propose to cross-examine MAJ Lamb.

MS McMURDO: Thank you. And thank you, Ms Musgrove, for raising the issue. So that's good news for you, MAJ Lamb.

35

MAJ LAMB: Thank you.

MS McMURDO: Thank you very much for your assistance to the Inquiry, and you're free to go.

40

MAJ LAMB: Thank you, ma'am.

45 **<WITNESS WITHDREW**

MS McMURDO: We'll adjourn until 9.30 tomorrow morning.

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**PUBLIC INQUIRY ADJOURNED UNTIL
FRIDAY, 18 OCTOBER 2024 AT 0930**