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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
 COL S THOMPSON, representing BRIG D Thompson
 LTCOL D HEALEY, representing BRIG J Fenwick
 SQNLDR T SCHMITT, representing COL D Lynch
 Lcdr M HAY, representing D19
 MS K MUSGROVE, representing the Commonwealth**

0930, MONDAY, 24 FEBRUARY 2025

DAY 32

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	27/02/25	(Transcription)

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MS McMURDO: I warmly and respectfully acknowledge the traditional custodians of this land, once known as Meanjin, the Turrbal and Yuggera peoples. For tens of thousands of years before European contact, they prospered here on the bountiful banks of the river Maiwar. They held meetings to work out ways to do things better in their communities, in essence, as we will be doing in the next two weeks.

This is the seventh block of hearings of this IGADF Inquiry into the crash of the MRH-90 helicopter off Lindeman Island on 28 July 2023 in which CAPT Danniell Lyon, LT Maxwell Nugent, WO2 Joseph Laycock and CPL Alexander Naggs were killed. As we participate in this hearing block, we are uniquely privileged as Australians to be able to reflect on our ancient indigenous heritage. Those following this Inquiry will recall that shortly before the commencement of our last hearing block, we learnt that the Defence Flight Safety Bureau (DFSB) Report into the cause of the crash would not be finalised by the end of December 2024, its then extended date for delivery. We were told the report would be delivered in the first quarter of 2025.

This Inquiry was very grateful to receive a confidential draft DFSB Report last December, and for that we sincerely thank the DFSB and all involved. We have not, however, received the final report or been told when in the first quarter of 2025 we will receive a copy.

Ms Musgrove, the first quarter of 2025 is disappearing fast. Are you able to provide further information to the Inquiry as to the anticipated date for delivery of the report?

MS MUSGROVE: Ms McMurdo, my instructions remain that it will be completed by the end of quarter 1, 2025.

MS McMURDO: All right then. Thank you. The Inquiry has now received 70 submissions. All submissions, including those received anonymously, have been read, seriously considered and, where possible and appropriate, investigated further. I should clarify that the Inquiry does not consider it appropriate to publicly read out anonymous submissions, even where this is requested by the submitter. Many submissions, particularly where we have been able to engage with the submitter, have greatly assisted our investigations. The Inquiry sincerely thanks all those who have made submissions.

As in previous hearings, some witnesses giving evidence to the Inquiry, because of the nature of their work, will do so by pseudonyms and with an order that no images of them be broadcast. For that reason, I have issued Non-Publication Order Number 19 of 2024 which will now be published on

our website. That brings the number of people benefiting from these orders to 144. During the testimony of these pseudonymised witnesses, the video will be paused and only audio will be streamed. It is an offence to breach those orders. If the media has any concerns, doubts, or queries, they should
5 contact the Inquiry's highly capable Media Officer, WGCDR Deanna Nott.

You may recall some discussion about a possible Inquiry view at Holsworthy Barracks. The Inquiry and the Commonwealth agree that this is not now necessary and that any relevant evidence can be sourced by
10 alternative means.

Once again, I remind anyone who is distressed by anything arising from the hearings that help is always available through the organisations whose contact details appear regularly on the livestream and on the Inquiry
15 website. Members of the ADF have the additional option of contacting their Chain of Command for assistance or reference on to support services.

Yes, COL Streit.

20 COL STREIT: Thank you, Ms McMurdo. First, can I invite LTCOL Healey to announce his appearance to the Inquiry.

LTCOL HEALEY: Ma'am, may it please the Inquiry, my name is LTCOL David Healey. I appear for BRIG John Fenwick, and I make the
25 oral application to seek leave to represent him in this proceedings, noting I've already submitted written submissions to the good COL Streit.

MS McMURDO: Thank you, LTCOL Healey. You have leave to appear.

30 LTCOL HEALEY: May it please. Thank you, ma'am.

COL STREIT: Good morning, Ms McMurdo and AVM Harland. Can I, with the Inquiry's permission, make some brief opening remarks as to the purpose of this hearing phase, with a focus on week 1. I'll say more about
35 week 2 at the end of this week. It's important in my submission to recall my submissions in previous hearings to this effect. Bushman 83 is the callsign of the MRH-90 Taipan aircraft in which CAPT Lyon, LT Nugent, WO2 Laycock and CPL Naggs were flying in at night on 28 July 2023.

40 The Inquiry is tasked to examine issues before the crash of Bushman 83 to find out what happened at the time of the crash and what happened after the crash. The Inquiry's Directions, which are available on the IGADF website, describe these broad areas as pre-incident issues, the incident, post-incident issues, and other issues. The term "the incident" refers to the
45 crash of Bushman 83 on 28 July 2023.

5 In the November hearing phase last year, the Inquiry heard evidence about the sortie on 28 July from D11, an aircrewman involved in the sortie. Also evidence concerning the medical support provided to 6 Avn Regiment personnel deployed to Exercise TALISMAN SABRE 2023, the notification process engaged in by the ADF led by Army Headquarters, evidence about the search and rescue for Bushman 83, including evidence from a QPS Assistant Commissioner about their engagement with the ADF during the investigation of the crash, evidence from senior aviation officers, namely
10 Commander 16 Aviation Brigade in 2023, the current Commander 16 Aviation Brigade and the current Commanding Officer of 6 Aviation Regiment, covering their command experiences, including managing workload and fatigue within the workforce in their commands.

15 The Inquiry also heard evidence about the benefits, limits and issues arising from the use of night-vision devices by MRH-90 aircrew, including the use of TopOwl, the helmet-mounted sight display used by MRH-90 pilots, evidence about how Air Force and Navy manage the career pathways for aircrew, including when they undertake command or regimental duties in
20 addition to their flying duties.

As I indicated during the last hearing phase, the Inquiry's hearings would continue in February/March of this year and also March/April of this year. There are two hearing phases remaining. This is the next hearing
25 phase. Witnesses to be called this week are as follows: LTCOL Tennille Marsh – that is today – will give evidence about Army's engagement with QPS and the Queensland Central Coroner; BRIG Andrew Thomas, who's the current Deputy Commander of Aviation Command, he will give evidence in relation to MRH-90 TopOwl symbology version 5.1 and its
30 coming into service within Army Aviation.

Tomorrow we'll see evidence from LTCOL Karl Hamlyn, LTCOL Cameron Satrapa, and LTCOL Gary Lamont, all in relation to MRH-90 TopOwl symbology version 5.1. That theme will continue into
35 Wednesday with LTCOL Anthony Norton and MAJ Glenn McCall.

On Thursday, COL Joel Domigan will give evidence about how Army manages the career pathways of aircrew, and his evidence will be followed again by LTCOL David Marshall, who will give evidence about matters
40 concerning MRH-90 TopOwl. The last witness for Thursday is Mr Michael Lysewycz. He is the Defence General Counsel of Dispute Resolution and Litigation Branch within Defence Legal. He will give evidence in relation to the obtaining of statements from the 12 aircrew involved in the sortie on 28 July 2023, and the processes Defence went through in obtaining those

statements and responding to a Coronial Direction to produce those statements to the Coroner.

5 On Friday there will be evidence from COL Tim Connolly in relation to MRH-90 TopOwl, followed by two witnesses, one currently from Airbus and one former employee of Airbus. The first is Ms Andrea House, who's the current Chief of Office of Airworthiness in Airbus. Her evidence will concern MRH-90 TopOwl symbology version 5.1. The final witness for Friday is Mr Andrew Dropmann, a former Airbus Head of Airworthiness in
10 October 2018, and he'll be giving evidence in relation to the MRH-90 TopOwl symbology 5.1.

15 Today and later this week, I propose to play two videos. The first will be played today, which is the playing of the view undertaken by the Inquiry at Proserpine Airfield in the area which was occupied in July 2023 by elements of 6 Aviation Regiment. Chair, you dealt with this issue in the November hearing where you indicated as follows. As foreshadowed at the last hearing, the Inquiry has conducted an instructive view of Exercise
20 TALISMAN SABRE '23 campsite near Proserpine Airport and obtained a helpful video of the flight path of Bushman 83 leading up to the fatal crash site. These videos may be played, time permitting, later in these hearings, or otherwise in the February/March hearing.

25 In relation to the broad details concerning the Proserpine view, on 21 October 2024, the Inquiry conducted a visit to the area near Proserpine Airport that was utilised by 6 Aviation Regiment during Exercise TALISMAN SABRE. The Inquiry engaged a videographer to film the view. A number of Counsel representing, of course, attended the view. D13, a witness who had given evidence before the Inquiry, assisted
30 the Inquiry as a guide during the view. The film records Counsel Assisting's questions and D13 responses during the view. That is the video that will be played at conclusion of today's witnesses.

35 Further, on 22 October 2024, a civilian helicopter was engaged to fly a similar flight path as that taken by the 6 Avn Regiment sortie on 28 July 2023. The Inquiry engaged a videographer to travel in the civilian helicopter and film the flight. The video of that flight will be played later in hearing phase 7. It is important to note that information obtained during a view is not evidence; it's simply information that may assisted the Inquiry
40 better understand the evidence that's given by witnesses.

I note the Commonwealth's submissions in relation to the anticipated delivery of the final Aviation Safety Investigation Report. I recall my
45 comments and submissions made in the last hearing to the effect that receiving a copy of the final Aviation Safety Investigation Report, prior to

the completion of the Inquiry's planned hearings for February and March 2025, would be of assistance but is not necessarily critical.

5 In terms of security, I note, Chair, your guidance in previous hearings concerning security matters and the delineation between public and private hearings. Evidence above the classification "Official" cannot be led and/or heard in a public hearing. Counsel Assisting remains available to assist Counsel representing with security matters and will, at appropriate times, foreshadow to the Inquiry and Counsel representing if Counsel Assisting
10 considers that a witness's evidence may require a private hearing.

That concludes my opening remarks.

15 MS McMURDO: Thank you, COL Streit. Are we ready to call the first witness?

COL STREIT: I am.

20 MS McMURDO: Yes. Thank you.

COL STREIT: Ms McMurdo and AVM Harland, I call LTCOL Tennille Marsh.

25 <LTCOL TENNILLE MARSH, Affirmed

<EXAMINATION-IN-CHIEF BY COL STREIT

30 MS McMURDO: Please let me know if you need a break at any time.

LTCOL MARSH: Thank you.

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

COL STREIT: Thank you, Ms McMurdo.

40 LTCOL Marsh, please feel free to pour yourself a glass of water, if you would like to. I'll give you a moment to do that. Whilst that's being done, I will ask the Inquiry assistant to provide you two documents. First, before I ask you questions about those documents, can I just ask you some preliminary questions, please?

Did you receive a section 23 Notice from the Inquiry to be here today to give evidence?

5 LTCOL MARSH: Yes.

COL STREIT: Did that Notice contain a series of questions requiring you to answer those questions in the form of a written statement?

10 LTCOL MARSH: Yes.

COL STREIT: Did you also receive a copy of a Frequently Asked Questions Guide for Witnesses?

15 LTCOL MARSH: Yes.

COL STREIT: A copy of a Privacy Notice?

LTCOL MARSH: Yes.

20 COL STREIT: And a copy of the Inquiry's Directions?

LTCOL MARSH: Yes.

25 COL STREIT: Just in relation to the two documents that you have before you, one of those documents is at the "Official" classification; is that correct?

LTCOL MARSH: Yes.

30 COL STREIT: That comprises, on its face in any event, your statement?

LTCOL MARSH: Yes.

35 COL STREIT: The second document is a document which has the classification "Official: Sensitive"; is that correct?

LTCOL MARSH: Yes.

40 COL STREIT: It comprises information at that security level and information that is also the subject of claimed legal professional privilege; is that correct?

LTCOL MARSH: Yes.

COL STREIT: Can I just ask you to take a moment and go through, first, your statement, to satisfy yourself that it is a complete copy of your statement?

5 LTCOL MARSH: Yes, it is.

COL STREIT: Now, your statement attaches three annexures: Annexure A, Annexure B and Annexure C. Is that correct?

10 LTCOL MARSH: Yes.

COL STREIT: You're satisfied that the annexures are accurate in your statement?

15 LTCOL MARSH: Yes.

COL STREIT: Last, but by no means least, in relation to your statement, is there any addition or amendment you wish to make?

20 LTCOL MARSH: No.

COL STREIT: Thank you. Ms McMurdo, I tender the statement of LTCOL Tennille Marsh dated 7 February 2025, with Annexures A, B and C attached to the statement.

25 MS McMURDO: That's Exhibit 112.

COL STREIT: Can I ask you to pick up the "Official: Sensitive" document? The only question I'm going to ask you about that is just to confirm that it is accurate, that is a complete document that you provided to the Inquiry?

30 LTCOL MARSH: Yes, it is.

COL STREIT: Thank you. Ms McMurdo, I tender the "Official: Sensitive" document containing legal professional privilege information. And of assistance, perhaps it could be Exhibit 112A.

MS McMURDO: Well, I was going to make 112A the statement and Annexures A, B and C; and 112B the statement with the claimed legal professional privilege.

45 **#EXHIBIT 112A - STATEMENT OF LTCOL MARSH AND ANNEXURES**

#EXHIBIT 112B - STATEMENT WITH CLAIMED LEGAL PROFESSIONAL PRIVILEGE

5

COL STREIT: Thank you.

10 LTCOL Marsh, what we will do now is your statement will remain with you. I'd ask the Inquiry Assistant to gather Exhibit 112B. LTCOL Marsh, what we will do now is simply move through your statement from the front to the back, and I'll take you through various aspects of your statement and just ask you some questions. I understand that during the process of re-examination there's something you wish to say to the Inquiry and to the families assembled here. So if I don't remember to do that, please remind me.

15 Can I begin first on page 1, paragraph 4? You commissioned as a Captain in the Australian Army Legal Corps on 17 February 2011; is that right?

20

LTCOL MARSH: Yes.

25 COL STREIT: You'd previously worked in commercial litigation and insolvency as a lawyer from 2006 to 2011 at a national law firm; is that right?

LTCOL MARSH: Yes.

30 COL STREIT: Your first posting was as a Captain to 7 Brigade in Brisbane; is that right?

LTCOL MARSH: Yes.

35 COL STREIT: You've deployed on Operation SLIPPER in 2013. Correct?

LTCOL MARSH: Yes.

40 COL STREIT: That Operation SLIPPER is, at that particular point in time, a deployment to the Middle East?

LTCOL MARSH: Yes, to Afghanistan.

45 COL STREIT: Thank you. You've completed various postings that you've set out on the first page, including to the Chief of Defence Force

Commissions of Inquiry Cell; is that right?

LTCOL MARSH: Yes.

5 COL STREIT: Was that a role in relation to the conduct of or providing advice in relation to the conduct of CDF Commissions of Inquiry?

LTCOL MARSH: Yes. Although, at the time, we had no Commissions of Inquiry.

10 COL STREIT: You were promoted to Lieutenant Colonel in 2020; is that correct?

LTCOL MARSH: At the end of 2020, yes.

15 COL STREIT: In terms of your qualifications, if we turn to the next page, to paragraph 5, you have a Bachelor of Laws with First Class Honours, and Arts from the University of Tasmania, and a Master of Laws International from the University of Cambridge, and a Master of Military and Defence Studies from the Australian National University.

LTCOL MARSH: Yes, that's correct.

25 COL STREIT: You're presently posted as a Chief of Army Scholar to Army Headquarters where you'll be commencing a Doctor of Philosophy on the topic of Command Responsibility?

LTCOL MARSH: Command Accountability.

30 COL STREIT: Command Accountability. Thank you. Have you started that work?

LTCOL MARSH: I've started that work, but not formally commenced the PhD.

35 COL STREIT: Can I turn to matters concerning what you were doing on 28 July 2023? So on that day you were the Staff Officer Legal 1 – well, you were a Staff Officer at Army Headquarters. Is that correct?

40 LTCOL MARSH: Yes, that's the official posting position.

COL STREIT: The more fulsome title is Senior Legal Advisor to the Chief of Army.

45 LTCOL MARSH: That's correct.

COL STREIT: Now, you managed in that role a small team, which you've set out at paragraph 8.

5 LTCOL MARSH: Yes.

COL STREIT: Now, you say at paragraph 8 that you also have a technical Chain of Command where your technical Chain of Command was directly to the Director-General of the Military Legal Service.

10

LTCOL MARSH: Yes.

COL STREIT: Can you just explain, to assist the Inquiry, what you mean by "technical Chain of Command".

15

LTCOL MARSH: So as a specialist in the ADF, we have our general Chain of Command, and then we have our legal technical Chain of Command. So they're two separate things. We almost wear two hats. My technical Chain of Command is responsible for the quality of my legal advice.

20

COL STREIT: And just to assist the Inquiry, in terms of all Army officers or all ADF officers, there's an annual performance assessment process that's stepped through.

25

LTCOL MARSH: Yes.

COL STREIT: That's correct?

30

LTCOL MARSH: Yes.

COL STREIT: Just in relation to the technical Chain of Command, does the technical Chain of Command have any input into an Army Legal Officer's annual report?

35

LTCOL MARSH: Yes, they do.

COL STREIT: And that's based on that technical Chain of Command's engagement with that Army lawyer during the course of the year.

40

LTCOL MARSH: Yes.

COL STREIT: Yes. Essentially on matters of law.

45

LTCOL MARSH: Yes.

COL STREIT: Your role as the Senior Legal Officer to the Chief of Army was to provide legal advice and staff advice within the Office of the Chief of Army. Correct?

5 LTCOL MARSH: Yes.

COL STREIT: But that wasn't just to the Chief of Army though, was it?

10 LTCOL MARSH: No.

COL STREIT: It's actually quite a large span of individuals who you might be providing assistance to; is that right?

15 LTCOL MARSH: Yes, it was.

COL STREIT: But the hat that you wear when you're providing that assistance is you are the Commonwealth's lawyer?

20 LTCOL MARSH: Yes.

COL STREIT: That is, your client is the Commonwealth.

LTCOL MARSH: Yes.

25 COL STREIT: And so in circumstances where an individual who you might otherwise be providing assistance to as the Commonwealth's lawyer, if they sought individual assistance about a matter that was impacting them, if they were involved in an inquiry or something of that nature, what would

30 you do or what would you need to do?

LTCOL MARSH: In my career, that has happened on a couple of occasions, and we refer them to Defence Counsel Services for legal assistance and legal advice.

35 COL STREIT: And is that because the Director of Defence Counsel Services, do you understand, was established to be able to provide independent advice to Defence members using primarily an ADF Reserve legal force?

40 LTCOL MARSH: Yes.

COL STREIT: You also mention at the bottom of paragraph 9 that a significant proportion of your role was engaging with Defence Legal's Dispute Resolution and Litigation Division regarding various Coronial

45

investigations, Comcare investigations and prosecutions, and general litigation. Why, in broad terms, was that the case?

5 LTCOL MARSH: Very unfortunately, at the time, Army had had a number of people pass away while in service. I think during my three-year tenure during Army Headquarters, I think we were dealing with about five to seven Coronial Inquiries. So it was a particularly heavy litigation load.

10 COL STREIT: Sure. Perhaps my question was a little bit clumsy. Why was it necessary to go to Defence Resolution and Dispute to deal with those matters?

15 LTCOL MARSH: Because they are the Defence lead for dealing with those matters, and they will then engage external lawyers or external Counsel as appropriate.

20 COL STREIT: Now, paragraphs 10, 11 and 12, we've dealt with that issue in relation to your role and the distinction in providing advice in your capacity as a Commonwealth lawyer or lawyer for the Commonwealth, and where you would not give advice to individuals who asked you for legal advice, but they would be referred to DCS. Correct?

LTCOL MARSH: Yes.

25 COL STREIT: Now, ADF policy, can I just turn to that please, briefly? As at 28 July, you say at paragraph 13 you were aware there were five applicable ADF policies and guidance in relation to engagement with QPS and the Queensland Coroner. Correct?

30 LTCOL MARSH: Yes.

35 COL STREIT: And you list those out there. Now, was it the case, did you have a familiarity with those policies as at 28 July 2023, or did the familiarity arise as a result of information-gathering that you engaged in to understand the framework that might apply?

40 LTCOL MARSH: So perhaps I could divide them into various subsets. I was aware of the Directive for PMADF, Directive 17 of 2018, and Directive 9 of 2022 prior to. In relation to the Chief Counsel's Directive, while I was aware of it in broad terms, it was brought to my attention by the lawyer for DRL in the course of this matter. In relation to I think D, which is the MOU between PMADF, I think I addressed that further in my statement, that I was aware of the broad existence of such an MOU.

45 COL STREIT: At paragraph 14, if I could take you to - - -

MS McMURDO: Could I interrupt for a minute - - -

COL STREIT: Of course.

5

MS McMURDO: - - - and just take you back to paragraph 9 where you talk at the bottom of paragraph 9 about a significant proportion of your role was engaging with Defence Legal's Dispute Resolution and Litigation Division, and that included Coronial investigations. Did you see then, or do you see now, any anomaly with having Coronial investigations lumped in there as Dispute Resolution and Litigation with Comcare, prosecutions and general litigation?

10

LTCOL MARSH: The majority of the Coronial investigations that we were dealing with prior to this incident had gone to a formal hearing. So we were already in Court, essentially, before a Coroner for the majority of those matters, or we were preparing for them.

15

MS McMURDO: So you saw Coronial investigations as falling within Dispute Resolution and Litigation.

20

LTCOL MARSH: Yes, and that is the current practice.

MS McMURDO: Okay, thank you. Yes.

25

COL STREIT: Can I take you to paragraph 14 of your statement, please. There, you describe the information concerning the Memorandum of Understanding between the PMADF – i.e. Provost Marshal Australian Defence Force – and the Queensland Coroner. That's correct?

30

LTCOL MARSH: Yes.

COL STREIT: In the body of paragraph 14, you say this:

35

I was, however, aware that there were MOUs between PMADF and other State Coroners as a result of other Coronial Inquiries I've been involved in, and the work that we were doing on the draft Coronial chapter for CASMAN.

40

First, CASMAN? Casualty Manual?

LTCOL MARSH: Yes.

COL STREIT: And in relation to drafting a Coronial chapter for the

Casualty Manual, do you know, as you sit there today, whether that's progressed in any way from July of last year?

5 LTCOL MARSH: So we passed that on to ADF Headquarters to start. It was unclear. It may have moved from HEALTHMAN into the – sorry, CASMAN into HEALTHMAN. I'm not aware of whether it has been formally published or not.

10 COL STREIT: And when I say, "July of last year", that's an error. It's as of July 2023.

LTCOL MARSH: Correct.

15 COL STREIT: So your understanding is – well, first, if we can deal with it this way. It's not, to your knowledge, that a Coronial chapter has been completed and issued in CASMAN?

LTCOL MARSH: Not to my knowledge. I posted out of the position at the end of 2023 and the role that I went into does not work in that area.

20 COL STREIT: It may be that this Coronial chapter has been completed and published, it's just that you're not – are you not - - -

LTCOL MARSH: I am not aware.

25 COL STREIT: Not sure. All right. Now, at paragraph 15 you say that in respect of the Bushman 83 incident you recall the MOU was raised with you during a telephone call you had with the Coroner, the Central Queensland Coroner, on 1 August 2023. Is that correct?

30 LTCOL MARSH: Yes.

COL STREIT: And it's the case he raised it?

35 LTCOL MARSH: Yes.

COL STREIT: And subsequently he's provided a copy of the MOU to you via email?

40 LTCOL MARSH: Yes.

COL STREIT: And that's one of the annexures you have to your statement, ie a copy of the email.

45 LTCOL MARSH: Yes.

COL STREIT: Now, when you received a copy of the MOU from the Coroner, you took steps to make it available, did you, to Dispute Resolution Litigation Branch?

5

LTCOL MARSH: Yes.

COL STREIT: Now, without going into the details of the MOU – it's Annexure A, effectively, to your statement – it does, on its face, refer to legislation at paragraph 7 and 8 – or regulations, rather, at paragraph 7 and 8, that are no longer in force?

10

LTCOL MARSH: That's correct.

MS McMURDO: It's now 18 years old, the protocol. It clearly needs review and revision.

15

LTCOL MARSH: Yes, ma'am.

COL STREIT: Are you able to say, prior to leaving your role at Army Headquarters, whether any steps were being taken internally within Defence to review the MOU with the Queensland Coroner?

20

LTCOL MARSH: My recollection is that DRL and PMADF were having conversations about it.

25

COL STREIT: Can I turn now to paragraph 18. You say as at 28 July 2023 you understood the role of the ADF Military Police and Provost Marshal ADF to be as per CDF Directive 17, 2018, which you've referred to above. Correct?

30

LTCOL MARSH: Yes.

COL STREIT: Can you just describe in broad terms what CDF Directive 17 of 2018 required?

35

LTCOL MARSH: That the PMADF was to be the point of contact for the Coroner, and then the further directive also provides he has a role in DVI, Disaster Victim Identification.

40

COL STREIT: Now, at paragraph 19 you say:

45

I am aware that on 1 August 2023 the Deputy Chief of Army directed Army Headquarters to take steps to assume the lead as ADF person or contact for the Queensland Coroner.

That's right?

5 LTCOL MARSH: Yes.

COL STREIT: Is that the explanation as to why you ended up being the person engaging with the Coroner?

10 LTCOL MARSH: For a very short period, yes.

COL STREIT: Was it also the explanation as to why you, in addition to the Coroner, engaged with Queensland Police officers, who were involved in the investigation?

15 LTCOL MARSH: Yes.

COL STREIT: Now, subsequently, your engagement as the single point of contact with the Coroner, that was only short-lived, wasn't it?

20 LTCOL MARSH: Yes.

COL STREIT: Is that because, as you say at paragraph 21, on 2 August 2023 you received an email from the legal adviser to CDF and that the email stated that the CDF directed adherence to the CDF Directive 17 of 2018 and for PMADF to be the point of contact with the Queensland Coroner?

25 LTCOL MARSH: Yes.

COL STREIT: Just in relation to the Deputy Chief of Army at the time, who directed Army Headquarters to take steps to assume the lead as the ADF person of contact for the Queensland Coroner, is that a reference to MAJGEN Cheryl Pearce?

30 LTCOL MARSH: Yes.

COL STREIT: Subsequently, the position, however, was changed on the basis of CDF directing adherence to his directive that the PMADF be the point of contact with the Queensland Coroner?

40 LTCOL MARSH: Yes.

COL STREIT: That's what then happened?

45 LTCOL MARSH: Yes.

COL STREIT: The PMADF at the time was GPCAPT Lewis?

LTCOL MARSH: No, at that time it was an acting PMADF and it was
CMDR Nigel Shaw. GPCAPT Lewis returned from leave on the 7th.

5

COL STREIT: At that point in time, what role did you have in engaging
with PMADF for their engagement with Queensland Coroner?

LTCOL MARSH: Are we talking the Acting PMADF?

10

COL STREIT: Sorry, the Acting PMADF.

LTCOL MARSH: So CMDR Shaw and I would be on the phone regularly
discussing the matter. I would also be talking to the JMPU Legal Officer
as well.

15

COL STREIT: That handover as the point of contact to the Coroner from
you to the PMADF was on 2 August 2023; is that right?

20

LTCOL MARSH: Yes.

COL STREIT: Return to paragraph 24. Now, in summary, what you say
at 24 by way of evidence is that in essence you don't consider any particular
body as primary legal jurisdiction over others to investigate the crash of
Bushman 83 and the deaths of those four aircrew. Is that correct?

25

LTCOL MARSH: I would say that there were three organisations who had
legal authority to investigate the matter.

30

COL STREIT: In terms of those organisations, is that a reference to
IGADF, Comcare and the Queensland Coroner?

LTCOL MARSH: Yes.

35

COL STREIT: Now, in relation to the Defence Flight Safety Bureau, you
observe that the DFSB does not have a statutory basis for its investigation.
Correct?

LTCOL MARSH: Yes.

40

COL STREIT: But you say there are clear principles contained within
RAAF, internal policies, and regulations, to allow for a safety investigation
to occur; is that right?

45

LTCOL MARSH: Yes.

COL STREIT: You say at paragraph 25 that on your initial involvement after being informed of the crash, you held the opinion that the deaths occurred in Queensland and QPS controlled the scene. You understood the ADF's role was to cooperate with QPS and provide expert advice as needed.

LTCOL MARSH: Yes.

COL STREIT: You understood that the Coroner, Comcare, and IGADF were to hold legislative or regulatory power to compel individuals to provide statements.

LTCOL MARSH: Yes.

COL STREIT: Just briefly in relation to the role of Army Legal Officers, you set that out commencing at paragraph 27. In broad terms, is it the case that the role of the Army Legal Officers is really just to facilitate the provision of advice to the Commonwealth by performing functions within a Chain of Command consistent with that?

LTCOL MARSH: Broadly, yes.

COL STREIT: So, in other words, the permanent Army lawyers are the Commonwealth lawyers. Their existence is not for the purpose of providing individual legal advice to an individual ADF member?

LTCOL MARSH: The SERCAT 7 workforce, yes.

COL STREIT: Yes, the permanent force. So is it the case that whilst an Army Legal Officer or an ADF Legal Officer might provide guidance to an ADF member in relation to a statutory process, that would not be regarded as legal advice to the member? Is that right?

LTCOL MARSH: Correct.

COL STREIT: In that context, it would be important, would it, to ensure that the ADF member who's receiving that guidance understands that it's not legal advice?

LTCOL MARSH: Yes.

COL STREIT: It would also be important to ensure that the ADF member understands that if they did want confidential legal advice, then that would be available to them by engaging with the Directorate of Defence Counsel Services?

LTCOL MARSH: Yes, with the caveat that DRL could also provide them advice if their members' interest did not diverge from the Commonwealth.

5 COL STREIT: Sure, we'll come to the DRL a little later. But just in relation to Army's permanent Legal Officers as I've summarised it to you, do you accept those principles?

LTCOL MARSH: Yes.

10

COL STREIT: At paragraph 35 you set out and describe your understanding of actions undertaken by the Chief Legal Officer of Forces Command and the Deputy Chief Legal Officer Forces Command attending Headquarters 6 Aviation Regiment to provide a legal briefing to 6 Avn members. Is that correct?

15

LTCOL MARSH: Yes.

20

COL STREIT: It's your understanding that the Chief Legal Officer Forces Command explain to relevant aircrew witnesses what it means to be compelled as a witness, and that the witnesses were not to discuss this matter or their statements?

LTCOL MARSH: Yes.

25

COL STREIT: You say that the Chief Legal Officer Forces Command provided a copy of a set of questions provided to JMPU by QPS to the relevant aircrew witnesses. Correct?

30

LTCOL MARSH: Yes.

COL STREIT: JMPU, Joint Military Police Unit?

LTCOL MARSH: Yes.

35

COL STREIT: And QPS, Queensland Police Service?

LTCOL MARSH: Yes.

40

COL STREIT: You also say at paragraph 34 that the Chief Legal Officer Forces Command requested that the questions be responded to; that is, the questions from QPS?

LTCOL MARSH: Sorry, that was paragraph 35.

45

COL STREIT: Apologies. Para 35. So the nuts and bolts of it is, is it your understanding on 1 August the Chief Legal Officer of Forces Command and the Deputy Chief Legal Officer Forces Command attended Headquarters 6 Aviation Regiment. Yes?

5

LTCOL MARSH: Yes.

COL STREIT: Provided a legal briefing to 6 Avn Regiment members. Yes?

10

LTCOL MARSH: Yes.

COL STREIT: Part of which was to provide them a copy of a set of questions that had come from the Queensland Police Service?

15

LTCOL MARSH: Yes.

COL STREIT: And to indicate to those aircrew witnesses that – or requesting, rather, the aircrew witnesses respond to the questions that QPS were asking?

20

LTCOL MARSH: That’s my understanding of what occurred.

COL STREIT: You say at the bottom of paragraph 35:

25

I had been provided these questions by DS Scells and I provided them to the Chief Legal Officer Forces Command on 1 August 2023 to be distributed to the aircrew witnesses.

30

LTCOL MARSH: Yes.

COL STREIT: So DS Scells, Detective Sergeant Scells?

LTCOL MARSH: Yes.

35

COL STREIT: So he, at the time, was a Detective Sergeant in the Queensland Police Service that you were engaging with?

LTCOL MARSH: Yes.

40

COL STREIT: At paragraph 37 you say that you were also aware that on 8 September 2023 6 Aviation Regiment held an information day for members of the Regiment and their families regarding the Bushman 83 incident. You did not attend the information day. Correct?

45

LTCOL MARSH: Correct.

5 COL STREIT: But you were aware that the Chief of Staff Aviation Command requested that a component of the information day included a legal brief on the various inquiries – including Comcare, Coroner, DFSB and IGADF – underway.

LTCOL MARSH: Yes.

10 COL STREIT: At paragraph 38 you say you were aware that the Director of Defence Counsel Services had coordinated the provision of legal support by SERCAT 5 Legal Officers to ADF members who may be appearing before this Inquiry. Is that right?

15 LTCOL MARSH: Yes.

COL STREIT: And SERCAT 5 is a reference to an Australian Defence Force Reserve Legal Officer?

20 LTCOL MARSH: Yes.

25 COL STREIT: Can I turn to page 9, paragraph 41? This is in relation to your engagement with persons involved in the investigation of Bushman 83. Your first substantive involvement in the incident was on Monday, 31 July 2023. That's right?

LTCOL MARSH: Correct.

30 COL STREIT: You say it was agreed by the Acting DGMLS – so Director-General Military Legal Service. Is that right, just in terms of the acronym?

LTCOL MARSH: Yes.

35 COL STREIT: It was agreed by the Acting DGMLS that you would be the Military legal lead and provide a coordination function for all Defence lawyers involved in the matter.

40 LTCOL MARSH: Yes. That occurred after Army had been handed the lead for management of the entire incident, and that occurred on the Monday.

45 COL STREIT: Sure. But when the point of contact lead transitioned back to the PMADF, did your role as the Military legal lead, did that remain?

LTCOL MARSH: Yes.

5 COL STREIT: I'm going to deal now with your engagement with Queensland Police and the Coroner. Down at paragraph 47 you say your first engagement with QPS and the Coroner occurred following the direction that AHQ should be the single point of contact. You go on to say at paragraph 48 that on 1 August 2023 you telephoned Detective Sergeant Luke Scells and spoke to him and his superior, Detective Inspector Emma Novosel. Is that right?

10 LTCOL MARSH: Yes.

15 MS McMURDO: So how did that marry with – you are aware that on 1 August, the same day, the Chief Legal Officer Forces Command and the Deputy Chief Legal Officer Forces Command gave the legal briefing to 6 Aviation Regiment and handed out the questions that QPS - - -

20 LTCOL MARSH: So this conversation happened beforehand and – with the Detective Scells beforehand and, as I address in paragraph 48, the detective gave me authority for the questions to be given to the members. And I then emailed those questions to the Chief Legal Officer of Forces Command.

25 MS McMURDO: And they acted on it very quickly.

LTCOL MARSH: Yes.

30 MS McMURDO: The very same day they gave a briefing and handed those questions out. So that was 1 August.

LTCOL MARSH: Yes.

35 MS McMURDO: So a very long time though before the statements were finally prepared.

LTCOL MARSH: Yes.

40 MS McMURDO: That doesn't seem to be entirely consistent with the Memorandum of Understanding that the ADF agrees generally to assist with Coronial investigations and comply with all reasonable requests for information and access to witnesses. It seems to be a very – a disconnect there. Something went wrong here. I'm not being critical; I'm just trying to work out what happened and how it can be improved on in the future.

5 LTCOL MARSH: I believe, ma'am, the request from the QPS at that stage was for voluntary statements. After the members received legal advice from DRL, the members all declined to provide voluntary statements. They exercised their legal right in that regard. After that, there was a short delay while the Coroner issued a compulsory notice and then DRL and our external legal team were providing the witness statements with the members.

10 MS McMURDO: Thank you.

COL STREIT: The effect of your discussion with Detective Sergeant Scells and Detective Inspector Novosel was they provided you the questions that they wanted the aircrew to answer; is that right?

15 LTCOL MARSH: Yes.

COL STREIT: You subsequently provided those questions to the Chief Legal Officer of Forces Command. Yes?

20 LTCOL MARSH: Yes.

COL STREIT: And it's your understanding that person has then briefed the aircrew in relation to those questions; that is provided it to them?

25 LTCOL MARSH: Yes.

COL STREIT: Coming back to the conversation with Detective Sergeant Scells and Detective Inspector Novosel, you say in the body of paragraph 48 on page 10 that Detective Inspector Novosel stated that:

30

If the witnesses decline to provide a voluntary statement, they may be compelled to provide one.

35 You say you explained to DS Scells and DI Novosel that the statements would likely be prepared by giving the relevant QPS questions to the witnesses and asking them to prepare the statements. You asked if they had any concerns with this approach. And you say that DS Scells stated that he had no difficulty, whilst Detective Inspector Novosel stated they would confirm with the Coroner. DC Scells also stated there was no issue with
40 the witnesses being provided the questions in the meantime; is that correct?

LTCOL MARSH: Yes.

COL STREIT: Was it your understanding at that point in time that, in the event statements were provided by one of the aircrew or a number of them, that the statements would then be sent back to QPS?

5 LTCOL MARSH: I think there were a number of mechanisms currently being considered on how to take the statements and I don't think a firm decision had been made at that point in time.

10 COL STREIT: But certainly they're seeking statements, aren't they?

LTCOL MARSH: Yes.

15 COL STREIT: They're providing you a series of questions to be on-forwarded to the relevant aircrew witnesses to respond to?

LTCOL MARSH: Yes.

20 COL STREIT: Novosel says, in effect, that if the aircrew don't provide voluntary statements, then they can be compelled to provide a statement?

LTCOL MARSH: Yes.

25 COL STREIT: What I'm asking you is, did you have the impression in the conversation with the two police officers that the provision of witness statements would be sent back to them, given they're the ones asking the questions?

LTCOL MARSH: In relation to a voluntary statement?

30 COL STREIT: Voluntary, yes.

LTCOL MARSH: Potentially, yes.

35 COL STREIT: Was there a distinction in your mind at that time, on 1 August, in this phone call, a distinction between what would happen with a voluntary statement and what would happen with a statement that had been compelled?

40 LTCOL MARSH: I don't believe there was a distinction. I hadn't turned my mind to it at the time. However, once we received the compulsory notice, the compulsory notice had a "Return to the Coroner" on it and we were complying with that direction.

45 COL STREIT: Sure. Now, paragraph 49, on 1 August you speak with the Queensland Central Coroner. That's correct?

LTCOL MARSH: Yes.

5 COL STREIT: And the upshot of that discussion, which you set out at paragraph 49, is that the Coroner advised you he did not require the statements to be obtained urgently, that he understood it was a distressing time for people and there was no difficulty if the statements were provided two or three weeks later.

10 LTCOL MARSH: Yes.

COL STREIT: So conversation on 1 August. Two or three weeks later is either mid-August or towards the end of August. Would you accept that?

15 LTCOL MARSH: Yes.

COL STREIT: He also stated, you say in your statement, that if the witnesses didn't voluntarily provide a statement, he may seek to compel the witnesses if he considered they had critical information.

20 LTCOL MARSH: Yes.

25 COL STREIT: At paragraph 51 you say, again on 1 August 2023, you received an email from Detective Inspector Scells. Do you mean Detective Sergeant Scells?

LTCOL MARSH: Yes.

30 COL STREIT: Asking, in the event that any statements were actually to be provided by the relevant witnesses, how such statements will be provided to QPS.

LTCOL MARSH: Yes.

35 COL STREIT: You say to Detective Sergeant Scells – asked if they would – sorry, he asks you whether they would be emailed directly to him, and if they would be provided in tranches or all together. You don't set out in your statement what you said in reply to what he was asking. Do you recall?

40 LTCOL MARSH: I believe I set that out at paragraph 52, that I replied to him advising that this was being still considered internally and that I would revert to him.

45 MS McMURDO: Did you revert to him?

LTCOL MARSH: We changed over the next morning and PMADF then had the lead with QPS and the Coroner, ma'am.

5 MS McMURDO: Did you brief the person you handed over to?

LTCOL MARSH: Yes, and I included all of the email exchanges.

MS McMURDO: Mm-hm.

10

COL STREIT: At paragraph 53 you say on 1 August, subsequent to a time where you've responded to Detective Sergeant Scells, you emailed the Coroner advising the internal arrangements within the ADF were still being confirmed "to ensure that we were able to respond appropriately and efficiently to the Coroner's request". You say you also stated that responding to the Coroner was a priority for Defence and that you noted the Coroner would be on leave from 2 August and enquired who would be (indistinct) in his absence. That's correct?

15

20 LTCOL MARSH: Yes.

COL STREIT: And then on 2 August 2023 you received an email from the Coroner where he advised that he would remain contactable while on leave and was of the view that "these arrangements will permit continuity of information as matters developed".

25

LTCOL MARSH: Yes.

COL STREIT: Ultimately though – I withdraw that. At paragraphs 57 and onwards you deal with your engagement with the Joint Military Police Unit; is that right?

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LTCOL MARSH: Yes.

COL STREIT: Is it accurate to say that the Joint Military Police Unit ultimately were seeking to set up a process to interview the aircrew and take statements themselves?

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LTCOL MARSH: Yes.

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COL STREIT: But that didn't occur.

LTCOL MARSH: Correct.

5 COL STREIT: And, indeed, at paragraph 59 you say that it was you that made the request on behalf of Army Headquarters that the Joint Military Police Unit pause any attempt to interview the witnesses until the Chief Legal Officer Forces Command and the Deputy Chief Legal Officer Forces Command had conducted their briefings to 6 AVN. Is that right?

LTCOL MARSH: Yes. And that there was also an opportunity to clarify with QPS and the Coroner's requirements.

10 COL STREIT: You say, "At the time" – this is the bottom of paragraph 59:

15 *At the time there was still a significant degree of uncertainty regarding this process and what QPS were seeking on behalf of the Coroner and timeframes for doing so.*

You say you were attempting to gain clarity on that point.

20 LTCOL MARSH: Yes.

25 COL STREIT: Can I just ask – I appreciate there was a lot of moving parts at that time, but in circumstances where the QPS, in your conversation with Detective Sergeant Scells and Detective Inspector Novosel have already provided the questions that they wanted answered of the witnesses, and in circumstances where the Coroner has said, as of 1 August, in effect that a period of two or three weeks for the furnishing of the statements was – my words – fine by him given the circumstances, what was the clarity that you were wanting to obtain which you've talked about at paragraph 59 about what was required?

30 LTCOL MARSH: So those conversations actually occurred after I sent this email. I sent this email at 9.03, and those conversations actually occurred I think – I'd have to go back to the precise time, but 11.57 and then 12.30-something to the Coroner. So that was actually the clarification that I was seeking.

40 COL STREIT: I see, I apologise. No, that's my mistake. I can see you've dealt with that earlier, and the times. So is the Inquiry then on safe ground to understand your evidence that initially you sought clarity about the circumstance, you spoke with Scells, you spoke with Novosel, you spoke with the Coroner on 1 August in the afternoon, and then you received the clarity about what was required – what they had hoped would be done?

45 LTCOL MARSH: Yes.

COL STREIT: You say at paragraph 60 that, “At the same time” – I take it that’s a reference to still 1 August 2023. Is that right?

LTCOL MARSH: Yes.

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COL STREIT: You say:

10 *At the same time, I was acutely aware that there was a strong desire from the Chain of Command to support individual members concerned who had just been involved in the incident and who were grappling with the possible deaths of their colleagues and friends. I understand that this part of this support was seen to include gaining clarity around the legal process, what the legal timeframe requires, and ensuring that the individuals knew what their legal rights and obligations were.*

15

You requested that JMPU Legal Adviser advise PO Theissen of this request.

LTCOL MARSH: Yes.

20

COL STREIT: So concurrently with the furnishing of statements, there’s a bit of work in the background that has to go to provide that information to the aircrew so that when they come to potentially respond to the questions by QPS that have been communicated to them, they’ve already been briefed as to their legal rights and obligations.

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LTCOL MARSH: Yes.

COL STREIT: Is that right? The briefing of legal rights and obligations, is that the provision of legal advice or is that just simply a briefing about guidance of an individual’s legal rights and obligations?

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LTCOL MARSH: It was the view that it was the latter.

35 COL STREIT: The guidance.

LTCOL MARSH: It was guidance on a legal process, not providing specific legal advice to individuals.

40 COL STREIT: At paragraph 64 you say:

45 *I engaged with DCS regarding how legal advice and assistance was going to be provided to ADF members for all the inquiries arising out of the incident.*

Is that right?

LTCOL MARSH: Yes.

5 COL STREIT: And in effect is that really just engaging with Director of Defence Counsel Services to ascertain whether there's sufficient reserve ADF lawyers to be individually allocated to individual witnesses to provide assistance?

10 LTCOL MARSH: That was part of the conversation. The conversation also included whether DDCCS would be the right organisation to provide the legal support for the Comcare and Coronial process as well.

15 COL STREIT: Okay. And did ultimately that happen though?

LTCOL MARSH: No. The legal support for the Coronial and Comcare investigation went to Defence Dispute Resolution and Litigation.

20 COL STREIT: Is it your understanding the Director of Defence Dispute Resolution engaged the Australian Government Solicitor to provide individual legal support to individual witnesses?

25 LTCOL MARSH: They were engaged to provide legal advice to the Commonwealth. The individual members were considered part of the Commonwealth unless their interest diverged from the Commonwealth.

COL STREIT: What does that mean?

30 LTCOL MARSH: So this was the standard practice for representation before all Coronial Inquiries, and we had had probably three at that time where this model was used for Coronial Inquiries. If it came out either in preparation – or, actually, we even had one matter during the course of the actual hearing that the individual would give an answer that was against Commonwealth interest, then we would seek separate legal representation from them. And we normally worked with other Defence Counsel services or we used – the old term is “legal assistance at Commonwealth expense”. I think it has a new term now. But we always referred to it as LAFS.

40 COL STREIT: Sure. And there's a determination, is there not, that deals with decision-making concerning applications for legal assistance at Commonwealth expense?

LTCOL MARSH: Yes.

45 COL STREIT: It's an Australian Government determination.

LTCOL MARSH: Yes.

COL STREIT: So there's a process, isn't there?

5

LTCOL MARSH: There is a process, yes.

COL STREIT: Can I just come back to, so the Inquiry understands, the process that the Commonwealth has adopted here in taking statements from witnesses. So is the Inquiry to understand – and if I have this wrong, please correct me – is the Inquiry to understand that the Commonwealth – that is, the Department of Defence – engaged in a process whereby it retained the Australian Government Solicitor? Correct?

10
15 LTCOL MARSH: Yes.

COL STREIT: To engage with aircrew witnesses, individually?

LTCOL MARSH: Yes.

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COL STREIT: And obtain statements from those aircrew witnesses?

LTCOL MARSH: Yes.

25 COL STREIT: Review those statements?

LTCOL MARSH: Yes.

COL STREIT: If the contents of those statements somehow diverged from the Commonwealth's interest – whatever they may be – then the response would be that that individual aircrew witness would no longer be under the umbrella of Commonwealth legal advice. Correct?

30
35 LTCOL MARSH: Correct.

COL STREIT: They would have to get independent legal advice from another lawyer, not related to the Commonwealth?

LTCOL MARSH: Correct. In the past, that has happened in the midst of a Coronial hearing and we were able to provide them with legal advice and Counsel on the same day.

40
45 COL STREIT: Do you know whether that assessment concerned whether the contents of a witness's statement – that that review as to whether or not it was consistent or diverged from the Commonwealth's interests when in

the process, that step occurred; i.e. was it a draft statement or a final statement?

5 LTCOL MARSH: It was an ongoing process. At any stage, if there was any concern that there was an interest, a divergence of interest, then that would be when it would happen. But the assessment was ongoing.

AVM HARLAND: How do you make that assessment?

10 LTCOL MARSH: So, we would rely on expert advice not only from our DRL team but also our external lawyers and their counsel involved. And if they informed us that they believed that there was a divergence, then we would heed their advice. In this matter, during my time working on it – bearing in mind I posted out at the end of 2023 – there was no divergence
15 that we were informed of.

AVM HARLAND: But, like, I'm not a legal person, but if I look at it, what we're really asking from a witness here is to describe, from the list, a bunch
20 of facts. So how can that diverge from the Commonwealth interest, when they're just providing facts?

LTCOL MARSH: In this case, it didn't diverge from the Commonwealth interest. And when we spoke – sorry, I'm just pausing because I'm very
25 conscious of legal professional privilege in this forum. This issue - - -

COL STREIT: Sorry, if I can help you?

LTCOL MARSH: Yes.

30 COL STREIT: There's no need to discuss legal professional privilege matters. We have the annex. And indeed, if any of the questions are outside your lane and you don't have first-hand knowledge of it, can I ask you just to indicate that to the Air Vice-Marshal, the Chair, or me.

35 LTCOL MARSH: Because we weren't doing the interviews with the witnesses ourselves, we were separate from that, we were relying on the professional expertise of DRL, AGS and Counsel.

40 AVM HARLAND: I just have another question. Just to clarify again, in my mind, up until the point that Counsel was appointed to a witness to assist them and then they became their legal representative, the conversations that you've described that you had with the Coroner, were you acting as an employer, effectively?

45 LTCOL MARSH: As an employer?

AVM HARLAND: Yes, on behalf of the employer?

5 LTCOL MARSH: I was acting on behalf of the Commonwealth, yes.

AVM HARLAND: Yes.

LTCOL MARSH: Does that answer your question, sir?

10 AVM HARLAND: I think so, yes. Thank you.

MS McMURDO: You, at this time, had been involved in a number of Coronial Inquiries?

15 LTCOL MARSH: Yes.

MS McMURDO: That had, and were, in the process of being full-blown hearings.

20 LTCOL MARSH: Yes.

MS McMURDO: And you obviously were acting on behalf of the Commonwealth and looking after their interests and were keen, in those proceedings, not to have adverse findings made against the Commonwealth.

25 LTCOL MARSH: I wouldn't say we were keen. Sometimes we acknowledged of the factual situation that there would be adverse findings made.

30 MS McMURDO: Yes.

LTCOL MARSH: Because they were simply the facts.

MS McMURDO: Yes. But where possible that was what you wanted to do, was in the Coronial Inquiries acting for the Commonwealth, you wanted – where it wasn't appropriate at least – that adverse findings would not be made and that the Commonwealth would be presented in less favourable view as possible.

35 LTCOL MARSH: Ma'am, I would say, having worked on a number of them, I'm not sure we would go that far. The primary aim was always for the Commonwealth to fully cooperate with the Inquiry. And if there were adverse findings, then there were adverse findings. That was the attitude that my instructors generally took. And they considered that the Commonwealth – if there was a choice between the Commonwealth

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receiving an adverse finding, or an individual unfairly receiving one, they would choose for the Commonwealth to receive the adverse finding. That was consistent with my interactions with the Chain of Command.

5 MS McMURDO: But you would, in appearing for the Commonwealth in those Coronial Inquiries, in the actual Court hearings, you were there to represent the interests of the Commonwealth and to ensure that, as far as possible, no adverse findings that shouldn't be made against Commonwealth were made. Correct?

10

LTCOL MARSH: Yes. I would just say, ma'am, I didn't appear in the matters.

15 MS McMURDO: No. That, you saw as the role of the Commonwealth. Yes. So when this Coronial investigation arose, that seems to be the mentality that was approached at that early stage. Whereas, I have to say, I would have expected, in accordance with that protocol, that what would happen is the Commonwealth would encourage the eyewitnesses, the Army eyewitnesses, to give those statements as soon as possible to the Coroner. In essence, that's what I would have expected, with proper support with, you know, moral and mental support and legal support, but to give those statements as soon as possible. That's what I would've expected in accordance with the protocol.

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25 LTCOL MARSH: Yes, ma'am. And my understanding is that was very much what everyone wanted and intended to do.

MS McMURDO: But it didn't seem to happen, did it? The statements weren't given for months.

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LTCOL MARSH: There was a delay, ma'am, yes.

MS McMURDO: All right. Thank you, COL Streit.

35

COL STREIT: Thank you, Ms McMurdo.

Can I ask this question? And if you don't know the answer, please say. But in terms of this process of obtaining of the statements using an external law firm – AGS in this case – and then the furnishing of those statements initially in draft and then signed and a review being done by Commonwealth lawyers as to whether or not the contents of the statement diverge from the Commonwealth's interests, if you accept that as the premises of what I understand your evidence is, what, to your knowledge, were the aircrew witnesses told about that process?

45

LTCOL MARSH: As I detailed in my statement, I didn't conference with the witnesses at all. There was an email sent out which I refer to as my confidential statement.

5 COL STREIT: Sure.

LTCOL MARSH: And that confidential statement details the divergence issue. But in terms of the conversations between DRL and the individual aircrew witnesses, I simply wasn't present to those conversations.

10 COL STREIT: Do you know whether, in the furnishing – or, ultimately, the preparation and the furnishing of the statements, whether there was any interaction back with QPS to seek clarity about any of the questions they asked?

15 LTCOL MARSH: Not that I can recall. That would have been through PMADF. Not that I can recall at this moment. Bearing in mind that the statements were provided in response to the compulsory notice from the Queensland Coroner, not the questions from QPS.

20 COL STREIT: Sure. I'll take you to paragraph 85 in a moment. But can I just ask you about that transition from the Coroner? You were having a discussion with the Coroner at the start of August; the Coroner indicating two to three weeks for provision of the statements effectively would be fine in all the circumstances. That didn't happen though, did it?

25 LTCOL MARSH: It did not.

30 COL STREIT: Are you able to assist the Inquiry to understand, in this forum, what led to ultimately the Coroner issuing a direction to compel the production of statements?

LTCOL MARSH: The individual witnesses all decided not to provide a voluntary statement.

35 COL STREIT: I see. The Coroner then, as the Coroner can, issued a direction for compelling production of the statements.

40 LTCOL MARSH: Yes.

45 COL STREIT: And then the process by which that was engaged in was, as you have given evidence earlier, with AGS engaging with the individual preparation of a statement in draft, the review of the statement as to whether or not it diverges from the Commonwealth's interests, and then ultimately the signing of the statement and submission to the Coroner.

5 LTCOL MARSH: Yes. Although, I wouldn't say the divergence of
interest was a single step. As I said before, it was a continuance monitoring
process.

10 COL STREIT: Sure. But a necessary consequence – well, a consequence
of that process means, does it not, that the Commonwealth is then aware if
there – let's say there is a divergence of interest for whatever reason. The
Commonwealth is then aware, is it not, of what the divergence is before the
investigator; that is, the Coroner?

15 LTCOL MARSH: I think they would be aware of the start of a divergence,
and I would rely on the professional ethics of the lawyers involved. If they
saw the start of a divergence, they would immediately stop the process and
provide legal assistance to the member.

20 COL STREIT: Sure. You may not be able to answer this – and if you
can't, please say so – do you know why the Commonwealth then utilised
an external law firm to do all of the witnesses rather than different legal
advisers to do each individual witness? Because we're only talking about
12 aircrew.

25 LTCOL MARSH: That was – sorry, I'm just thinking about the forum that
we're in. I don't think I can answer it because it is - - -

COL STREIT: That's fine. That's fine, yes.

LTCOL MARSH: There was a reason.

30 COL STREIT: Sure. If you can't answer that in this forum, that's okay.

LTCOL MARSH: Yes.

35 COL STREIT: And there was also – sorry, I get ahead of myself here. At
paragraph 85 you say you've not been able to identify any particular cause
of delay. Now, what we're talking about there is the request from the
Coroner. And ultimately a direction from the Coroner was in September of
2023, was it?

40 LTCOL MARSH: That's my understanding, it was around that time.

COL STREIT: And that ultimately the statements were provided on or
around the end of November 2023 to the Coroner?

45 LTCOL MARSH: Yes.

COL STREIT: So September, October, November; three months, roughly?

5 LTCOL MARSH: Yes, roughly.

COL STREIT: If we just forget about August, three months. Now, in relation to that time period, in terms of paragraph 85, you say you've not been able to identify any particular cause of delay. Is that a reference to
10 delay in production of the statements?

LTCOL MARSH: Yes.

COL STREIT: You say from your observations "it is possible that a combination of the below factors may have been relevant to the date of completion", and then you list out a number. Is that right?
15

LTCOL MARSH: Yes.

COL STREIT: And that includes, does it, at paragraph 87, in terms of the preparation of the witness statement, the process was DRL, then to AGS would conduct a witness conference involving an interview with the witness and would subsequently draft a statement based off that conversation. AGS and Counsel may also be provided the draft statements for review and possible comments. The draft statements would then be provided back to the witness for their review and ultimate completion as part of an iterative process.
20
25

LTCOL MARSH: Yes.

COL STREIT: Who was providing – if you're able to answer in this forum – who was providing Defence Resolution and Litigation the advice in relation to whether or not the contents of a witness statement diverges from the Commonwealth's interest?
30
35

LTCOL MARSH: So that would have been every lawyer in that witness process, I imagine, would have been involved if anyone had a concern. So that would be DRL, AGS and Counsel.

COL STREIT: In practical terms, does that process effectively result in Defence Resolution and Litigation, and potentially AGS, wearing two hats; one is advice to the Commonwealth about issues relating to divergence of interests, and the other is advice to the individual member about the preparation of their statement?
40
45

5 LTCOL MARSH: I would not necessarily see it that way because as soon as they realise there was a potential divergence, they would receive – we would facilitate access to their own individual lawyers. I will say that this is the process that Defence had adopted for a number of Coronial Inquiries that I've been involved in.

10 COL STREIT: Sure. The final step in it is paragraph 90, is that there's a security review, isn't there, in relation to that – before the statements were furnished to the Coroner, they were the subject of a security review?

LTCOL MARSH: Correct.

COL STREIT: Now, the security review was undertaken by whom?

15 LTCOL MARSH: It was principally by the Chief of Staff of Avn Command and his Intelligence Officer.

20 COL STREIT: So that means that the Chief of Staff of Aviation Command, who works for the Commander of Aviation Command. Correct?

LTCOL MARSH: Yes.

25 COL STREIT: Is informed about the contents of the statements of the aircrew?

LTCOL MARSH: Yes.

30 COL STREIT: And conducts a security review of those statements?

LTCOL MARSH: Yes.

35 COL STREIT: Was there any, to your knowledge, particular reason why Aviation Command – effectively, the Headquarters – was engaged in that security review process and not a different part of Defence who's not involved in the investigation of the crash of Bushman 83?

40 LTCOL MARSH: They possessed the specialty knowledge to be able to comment on whether there was a security risk.

COL STREIT: I have no further questions, and I haven't forgotten the matter to deal with in re-examination, thank you, Lieutenant Colonel.

45 MS McMURDO: Thank you. Yes, applications to cross-examine?

LCDR GRACIE: Ma'am, I seek leave. I know it's not directly involving my client's interest, but it does touch on the eyewitness accounts.

MS McMURDO: No, that's all right. Yes.

5

<CROSS-EXAMINATION BY LCDR GRACIE

10 LCDR GRACIE: Ma'am, my name is LCDR Malcolm Gracie.
I represent the interests of CAPT Danniell Lyon from Bushman 83. I just
wanted to clarify a couple of things. And it may be in the privileged
documentation, so just in paragraph 59, you make reference to a direction
you received from Army Headquarters Chain of Command on 1 August. Is
15 that a direction that you received by email or verbally?

LTCOL MARSH: I believe it was verbally.

LCDR GRACIE: And I know that there were two limbs to your answer.
20 The first was to pause any interview until the briefing, and the second was
until there was an opportunity to clarify QPS and Coroner's requirements. I
imagine it's the latter that caused the delay once the interviews of the
witnesses had been stopped on 1 August?

25 LTCOL MARSH: The delay in?

LCDR GRACIE: Obtaining the statements until the end of November?

LTCOL MARSH: There was a number of reasons why the statements
30 were delayed, which I've addressed.

LCDR GRACIE: But the direction was, on 1 August, to stop the interview
process, was it?

35 LTCOL MARSH: It was to stop the JMPU proposed interview process,
yes.

LCDR GRACIE: Just touching on something that the Air Vice-Marshal
40 raised with you, and I just wanted to go through it in a little bit of detail. In
Annexure C to your statement, if you could look at that, please. That's the
13 questions provided by – I think it was Luke Scells in relation to the topics
to be covered. If you were looking at this before the statements are being
taken and you're trying to perhaps provide some demarcation between
eyewitness accounts, or – to use AVM Harland's words – “a bunch of
45 facts”, and the Commonwealth's interests with which you're concerned,

which of those 13 items would trigger some concern about any divergence between the bunch of facts and the interests of the Commonwealth?

5 LTCOL MARSH: I think a large number of them are simply factual questions.

10 LCDR GRACIE: Which is the one that would trigger any possible divergence. If you're a lawyer looking at this before giving advice to a witness, or preparing a witness statement, which of those, with your legal experience, would trigger any possibility that the interests of the Commonwealth might diverge from the bunch of facts that are requested?

15 COL STREIT: Can I just be heard on this? I understand my friend's question. The concern I have is first of all it's speculative. This witness didn't give advice in relation to these particular matters and, essentially, to illicit an opinion from her now in relation to what may or may not have caused a divergence would be unfair absent evidence of divergence. So I think if my friend wishes to explore it perhaps another way, but they're my submissions on his current question.

20 MS McMURDO: Well, I think AVM Harland really touched on that already. Perhaps it really kind of speaks for itself, doesn't it?

25 LCDR GRACIE: I will deal with it in this way if I may, ma'am.

MS McMURDO: All right then.

30 LCDR GRACIE: Could I suggest to you that in terms of the – sorry, I withdraw that. I take it that the decision by DRL to obtain AGS and external Counsel advice was informed by those 13 items that were requested?

35 LTCOL MARSH: I don't necessarily think it was determined by the questions. They would have sought external legal advice and Counsel advice on this matter. Like, that was just a standard process for a Coronial like this, is that we would get external lawyers and Counsel.

40 LCDR GRACIE: As it turned out, I think you said the Commonwealth's interests didn't diverge with the items to be addressed in those 13 matters?

45 LTCOL MARSH: We were bearing in mind again the statements that were provided were in response to a request from the Coroner. I was not informed by DRL of any divergence in interests of the witness of the aircrew.

LCDR GRACIE: Okay, thank you.

MS McMURDO: Any other applications? Yes.

5

<CROSS-EXAMINATION BY LCDR TYSON

10 LCDR TYSON: Ma'am, my name is LCDR Matthew Tyson. I represent the interests of CPL Alex Naggs. Just very briefly, so in relation to the statements that the 12 aircrew from the sortie in July '23 provided to the Coroner, is this correct: that none of those aircrew had the benefit of legal advice from one of the barristers or solicitors with military experience from the Defence Counsel Services Panel? Is that your understanding?

15

LTCOL MARSH: I do not know, because there is always the option for an individual to call DDCS outside of this process. So I do not know if those individuals did that. Sometimes if individuals are worried about a divergence or they may be worried about another ramification for their career, they can call DDCS and ask for legal advice on that. The short answer: I am not aware if any of those individual witnesses sought that advice.

20

LCDR TYSON: Did anyone make a decision that the members of the aircrew were not able to have access to an independent lawyer through the Defence Counsel Services Panel?

25

LTCOL MARSH: No.

30 LCDR TYSON: Thank you. Nothing further.

MS McMURDO: Thank you, LCDR Tyson. Yes, COL Gabbedy.

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

40 COL GABBEDY: Good morning, LTCOL Marsh. I'm COL Gabbedy. I appear for MAJGEN Jobson. Just a couple of quick questions. Taking you back to something you were asked by Ms McMurdo in relation to the Commonwealth's role in facilitating these statements, the individual members have rights, don't they, in relation to whether they give a statement or not?

45 LTCOL MARSH: Yes.

COL GABBEDY: My understanding is the initial approach was for voluntary statements.

5 LTCOL MARSH: Yes.

COL GABBEDY: Is it a matter of the members' personal choice as to whether those voluntary statements are provided?

10 LTCOL MARSH: Yes.

COL GABBEDY: As part of the briefing process, did the Commonwealth reinforce to the members that it was their choice?

15 LTCOL MARSH: Yes.

COL GABBEDY: Then just taking you on from that, there was a reference at the very end of COL Streit's questioning about a security review. Is that a usual part of the process?

20 LTCOL MARSH: Yes.

COL GABBEDY: These members were members of a Special Operations Organisation, weren't they?

25 LTCOL MARSH: They were.

COL GABBEDY: With every one of those organisations, a security review is quite a standard part of any provision of information, is it not?

30 LTCOL MARSH: Yes.

COL GABBEDY: Thank you very much.

35 MS McMURDO: Any other applications to cross-examine? Yes.

<CROSS-EXAMINATION BY LCDR HAY

40 LCDR HAY: Good morning, ma'am. My name is LCDR Mark Hay. I represent the interests of D19. If you could just have a look at the list in front of you, just to familiarise yourself with the identity of D19.

45 LTCOL MARSH: Yes.

LCDR HAY: At paragraph 70 of your statement you make reference to a teleconference that you had on 3 August 2024. The individual that's indicated there was attending with a DRN.

5 MS McMURDO: Sorry, what paragraph was that?

LCDR HAY: Sorry, 70.

10 MS McMURDO: 70, thank you.

LCDR HAY: Was D19 party to that teleconference?

LTCOL MARSH: Yes.

15 LCDR HAY: Can you just indicate, if you would – I'm not asking you about what legal advice might be provided, but was D19 provided legal advice during the course of that teleconference?

20 LTCOL MARSH: From my recollection, no, in terms legal processes were discussed, but not legal advice.

LCDR HAY: Not legal advice in the sense to him?

25 LTCOL MARSH: To him, yes.

LCDR HAY: About what his legal responsibilities or rights might be, just about the process generally; is that right?

30 LTCOL MARSH: Yes.

LCDR HAY: Can you indicate, did you yourself take any notes of that teleconference?

35 LTCOL MARSH: We may have. I can't recollect. I know that the DRL lawyer did.

LCDR HAY: Do you know whether or not – and just for the time being I'm just asking about you, ma'am – do you know whether or not you, following that teleconference, communicated with D19 in writing about the teleconference?

40 LTCOL MARSH: I cannot recall.

LCDR HAY: Is it possible that you wrote to him confirming things that might have been said during the course of that teleconference?

5 LTCOL MARSH: It is possible either myself or the DRL lawyer did, but I can't recollect.

LCDR HAY: Do you know whether or not there are any communications between yourself and D19 within the LPP document that has been provided as part of your report by that stage?

10 LTCOL MARSH: I don't believe so.

LCDR HAY: Yes, thank you. Thank you, they're my questions.

15 MS McMURDO: Yes. Any other applications to cross-examine? Yes, COL Streit.

20 **<RE-EXAMINATION BY COL STREIT**

COL STREIT: Thank you, Ms McMurdo.

25 Just in relation to a matter concerning what COL Gabbedy asked you in the security review, are you aware of security review of statements presented to this Inquiry through the Commonwealth are being undertaken by Special Operations Command?

30 LTCOL MARSH: Yes.

COL STREIT: Now, can I turn to the last page of your statement. I understand you wish to say something.

35 LTCOL MARSH: I would just like to express my sincere condolences to the families of the four deceased. I don't have the right words for you. I suspect there are no right words. I also want to express my condolences to the families and men and women of Aviation Command. I know the grief and the pain that you, too, are going through and which I suspect you will have to live with for the rest of your lives. Thank you.

40 COL STREIT: Thank you, Lieutenant Colonel.

45 **<WITNESS WITHDREW**

MS McMURDO: We might have a short break now, I think.

5 **HEARING ADJOURNED**

HEARING RESUMED

10

MS McMURDO: Yes, MAJ Chapman.

MAJ CHAPMAN: Thank you, Ms McMurdo. The Inquiry calls
BRIG Andrew Thomas.

15

<BRIG ANDREW LEE GIRFFITH THOMAS, Affirmed

20

<EXAMINATION-IN-CHIEF BY MAJ CHAPMAN

MS McMURDO: And, Brigadier, please let me know if you need a break
at any time.

25

BRIG THOMAS: Thank you, ma'am.

MS McMURDO: Yes, MAJ Chapman.

30

MAJ CHAPMAN: Thank you, Ms McMurdo. Sir, can you please state
your full name?

BRIG THOMAS: Andrew Lee Griffith Thomas.

35

MAJ CHAPMAN: And could you please just confirm that you've
received each of the following documents with your section 23 Notice? So
it's a notice itself?

BRIG THOMAS: Yes, I have.

40

MAJ CHAPMAN: Extract of the Inquiry Directions?

BRIG THOMAS: Yes, I have.

45

MAJ CHAPMAN: Copy of my appointment as an Assistant IGADF?

BRIG THOMAS: Yes, I have.

5 MAJ CHAPMAN: A Frequently Asked Questions Guide for Witnesses at
Inquiries?

BRIG THOMAS: Yes.

10 MAJ CHAPMAN: A Privacy Notice?

BRIG THOMAS: Yes, I have.

15 MAJ CHAPMAN: Thank you, sir. Although I don't anticipate it to be an
issue, can you please be mindful of your security obligations when giving
evidence? If you're asked anything by me or you propose to respond with
something that may raise a security concern, could you please raise that
with me and we may need to take it to private hearing?

20 BRIG THOMAS: Certainly.

MAJ CHAPMAN: Thank you. And, sir, have you prepared a statement
for the purposes of the Inquiry?

25 BRIG THOMAS: Yes, I have.

MAJ CHAPMAN: Can I hand up – a copy is on its way, sir.

BRIG THOMAS: Thank you.

30 MAJ CHAPMAN: I'll just give you a moment to look at that. I'll just ask
you, do you recognise that to be a statement dated 5 February 2025?

BRIG THOMAS: Yes, I do.

35 MAJ CHAPMAN: And it's your statement?

BRIG THOMAS: Yes, it is.

40 MAJ CHAPMAN: And it is seven pages in length?

BRIG THOMAS: Yes.

MAJ CHAPMAN: And there are no annexures to the document?

45 BRIG THOMAS: No.

MAJ CHAPMAN: Thank you, sir. And do you wish to make any amendments?

5 BRIG THOMAS: No, I don't.

MAJ CHAPMAN: Chair, I tender the statement of BRIG Andrew Leigh Griffith Thomas dated 5 February 2025.

10 MS McMURDO: Exhibit 113.

#EXHIBIT 113 - STATEMENT OF BRIG THOMAS

15 MAJ CHAPMAN: Sir, if I may, I'd like to begin with some of what you've had to say about your background and your professional experience, which commences at paragraph 4. And I'll just remind you there's some water there if you'd like to take that.

20 BRIG THOMAS: Thank you.

MAJ CHAPMAN: And I'm just going to summarise the events and the entries and ask you to agree to them.

25 BRIG THOMAS: Okay.

MAJ CHAPMAN: So, sir, you commenced in the Australian Regular Army in January 1989.

30 BRIG THOMAS: Yes, that's correct.

MAJ CHAPMAN: And you entered through ADFA, the Australian Defence Force Academy.

35 BRIG THOMAS: Yes, I did.

MAJ CHAPMAN: And in January 1993, you graduated from the Royal Military College of Duntroon.

40 BRIG THOMAS: Yes, that's correct.

MAJ CHAPMAN: And you were allocated to the Australian Aviation Corps.

45

BRIG THOMAS: Yes, that's correct.

MAJ CHAPMAN: Sorry, Army Aviation Corps.

5 BRIG THOMAS: Army Aviation Corps, yes.

MAJ CHAPMAN: Sorry, my mistake. And soon thereafter, you commenced your flying training.

10 BRIG THOMAS: Yes.

MAJ CHAPMAN: And in 1994 you qualified on the Kiowa.

BRIG THOMAS: Yes, that's correct.

15

MAJ CHAPMAN: And that, just for everyone's knowledge, is a small utility helicopter.

20 BRIG THOMAS: Small light reconnaissance helicopter.

MAJ CHAPMAN: Light reconnaissance helicopter. Thank you. You then posted to 161 Reconnaissance Squadron in Townsville, and served in various roles there.

25

BRIG THOMAS: Yes, that's correct.

MAJ CHAPMAN: In 1999 you deployed to East Timor on Operation WARDEN.

30

BRIG THOMAS: Yes, that's correct.

MAJ CHAPMAN: Between 2000 to 2005 you were in non-flying roles, amongst others, in the Army Training Centre and also in ADFA.

35

BRIG THOMAS: Yes. So the Army Training Centre was a ground-based role, but I maintained a flying category and did do some flying in that role.

40 MAJ CHAPMAN: Thank you, sir. In 2005 you returned to a flying positing, I suppose I could say, as the OC, Officer Commanding, 161 Reconnaissance Squadron in Darwin?

BRIG THOMAS: Yes, that's correct.

45 MAJ CHAPMAN: You deployed again to East Timor on Operation

ASTUTE where you commanded deployed Aviation Squadrons of Kiowas and Black Hawks. Is that right?

5 BRIG THOMAS: Yes, that's correct.

MAJ CHAPMAN: At paragraph 9 you say that in 2008 you attended the Australian Command and Staff College, and thereafter promoted to Lieutenant Colonel. Is that right, sir?

10 BRIG THOMAS: Yes, that's correct.

MAJ CHAPMAN: Yes. And at paragraph 10, in 2010 you had your first connection with the MRH-90 when you posted to the Defence Materiel Organisation and took up a role as Team Leader of the Tiger and Taipan Resident Team. Is that right?

BRIG THOMAS: So that posting is correct. But my first connection with the MRH-90 was as a Major, when I was posted to the Capability Development Group, where I was the project sponsor for Air 9000 phase 2 and 4, which was the project that achieved government approval to procure the MRH-90.

MAJ CHAPMAN: Yes, thank you, sir. And your team leader role in the Resident Team, that was located in France?

25 BRIG THOMAS: Yes, that's correct.

MAJ CHAPMAN: And the posting in France, I take it was a bit closer to the suppliers and the Design Team and so forth?

30 BRIG THOMAS: Yes.

MAJ CHAPMAN: Is that a general summary?

35 BRIG THOMAS: That's correct. We were co-located with the industry part of - - -

MAJ CHAPMAN: Yes. Co-located, thank you. And it was for about three years, until 2014?

40 BRIG THOMAS: Yes, that's correct.

MAJ CHAPMAN: And on your return to Australian in 2015, you left the ADF for a time working as a consultant?

45

BRIG THOMAS: Yes. So just backtracking a little bit, so 2010 to '13 I was the Resident Team leader. I returned in 2014 – sorry, 2013, where I did another role within DMR. And then 2014 I took long service leave.

5 MAJ CHAPMAN: Thank you, sir. And at paragraph 12 you say that in August 2019 you returned to service?

BRIG THOMAS: Yes, that's correct.

10 MAJ CHAPMAN: And on promotion to Colonel, you became the Director of the MRH project within the Capability and Sustainment Group, or known in short as CASG. Is that right?

BRIG THOMAS: Yes, that's correct.

15 MAJ CHAPMAN: And if I could just pause there. Was your earlier role in France also part of CASG organisation?

20 BRIG THOMAS: Yes. Yes, correct. So I reported through the Project Director in that role in France.

MAJ CHAPMAN: And just returning to your role as Director of the MRH project, could you just assist the Inquiry to understand a little more of the role of CASG in the context of the ADF as a general - - -

25 BRIG THOMAS: So, yes, the CASG is the procurement agency. So we were responsible for the procurement and also the sustainment of the capability.

30 MAJ CHAPMAN: So it's an organisation. Is it fair to say it's Defence allied and it's staffed by APS and uniformed ADF? Is that right?

35 BRIG THOMAS: Yes, that's correct. So it's part of the Defence organisation. When it was Defence Material Organisation, it had been a separate agency within Defence. But as CASG, it is within the Defence organisation.

40 MAJ CHAPMAN: And as you've just mentioned in your evidence, sir, CASG, it's responsible for ADF's acquisition and sustainment function, generally described.

BRIG THOMAS: Yes, that's correct.

45 MAJ CHAPMAN: Now, in terms of your Director role, you say also at 12, over the page, that your office was working to close out the acquisition

of MRH-90 and complete the transition of the system to sustainment. Is that correct?

5 BRIG THOMAS: Yes, that's correct.

MAJ CHAPMAN: And you entered the Project Office in about August 2019; is that right?

10 BRIG THOMAS: Yes, that's correct. So I took over the role as the Director in uniform in 2019. Prior to that, for about – a bit less than 12 months. I had been doing a contract role within the organisation before I returned back to Army.

15 MAJ CHAPMAN: Understood. And by that stage, sir, in about August 2019, when you took over, the acquisition phase of the MRH-90 had been underway for a number of years?

BRIG THOMAS: Yes.

20 MAJ CHAPMAN: And had Army, at that stage, received all or most of the MRH platforms?

25 BRIG THOMAS: Yes. So all the aircraft had been delivered. Most of the training and support systems had also been delivered. The project was really in the final stages of delivery. And, you know, most of the systems had already been transitioned to sustainment.

30 MAJ CHAPMAN: And you say a little ahead in your statement, at paragraph 17, the last sentence, that the MRH was, at the time you came in as Director, a project of concern.

BRIG THOMAS: Yes, that's correct.

35 MAJ CHAPMAN: And you say it had been a project of concern since 2011; is that right?

BRIG THOMAS: That's correct.

40 MAJ CHAPMAN: And we might return to that. But, at a general level, is your evidence that the Project Office that sat within CASG was established around the time that government committed to acquiring the MRH. Could you just give a sense of that, please?

45 BRIG THOMAS: Yes. It would've been 2005 that government made the decision to procure the MRH-90. The Project Office had been established

prior to that. So it was a small Project Office before government approval that supported the development of the business case and all the documentation that was required for government approval. Post government approval, it grew in size to deliver the capability.

5

MAJ CHAPMAN: And again, broadly described, project groups or Project Offices are raised generally for the procurement and acquisition of all sorts of, you know, aircraft, ships, in the Navy context.

10

BRIG THOMAS: Yes. All sorts of military materiel.

MAJ CHAPMAN: Yes. And so at the time that you came in as Director, you were, in effect, dealing with, as you say, the final pieces of the acquisition phase before moving to sustainment?

15

BRIG THOMAS: Yes, that's correct.

MAJ CHAPMAN: And by "sustainment", do we understand you're referring to that phase that is concerned with – well, maintaining the capability for its planned service life?

20

BRIG THOMAS: Yes. So the phase between acquisition and disposal, generally known as sustainment. In this case, and in many cases, the acquisition and sustainment phases overlap.

25

MAJ CHAPMAN: Yes.

BRIG THOMAS: Because, you know, the acquisition runs for quite some time, and you need to sustain the system as it's being delivered.

30

MAJ CHAPMAN: And just picking up on that point, so in respect of HMSD version 5.10, did the procurement of that system fall within an acquisition or sustainment phase from the point of view of CASG, or they overlapped?

35

BRIG THOMAS: So they overlapped. But the procurement of the system, the initial procurement of the system, was an acquisition procurement. It was being supported and sustained within service. But the decision to upgrade to HMSD 5.10 was within the scope of the project and, therefore, was run out of the acquisition side of CASG, but working closely with the sustainment organisation, the Army Aviation Systems Program Office.

40

MAJ CHAPMAN: And am I right in saying that the Project Office, does that continue for the service life of a platform?

45

BRIG THOMAS: No.

MAJ CHAPMAN: Or it closes the - - -

5

BRIG THOMAS: So once all the acquisition is delivered, the Project Office will close and the ongoing sustainment is conducted out of the relevant Systems Program Office.

10 MAJ CHAPMAN: So if you have, for instance, a modification late in the service life of an aircraft would that go to the sustainment function as opposed to – even though it's an acquisition, it will go to the sustainment function?

15 BRIG THOMAS: Yes. Yes, it would. So in this case, whilst the acquisition was being run by the Project Office, the in service processes were in place. So it was through those in service processes, that were sponsored by AASPO as the sustainment organisation, that we introduced that into service.

20

MAJ CHAPMAN: Thank you. Next, sir – and I'm still at 12 – but you say that you became a Project Director for LAND 2097 phase 4 and Special Operations Rotor Wing project. Correct?

25 BRIG THOMAS: Yes, that's correct. I overlapped for about six months where I did both roles concurrently.

MAJ CHAPMAN: And just noting the no doubt security of that particular – details of that topic, is it accurate to say just at a general level that LAND
30 2097 phase 4 included the MRH?

BRIG THOMAS: No. No, it didn't. So that was a new project. It was specifically looking to procure a light utility helicopter for special operations. It was pre-government approval. We were working to develop
35 the business case and achieve government approval.

MAJ CHAPMAN: And then you say later that LAND 2097 phase 4 was cancelled in about 2022; is that right?

40 BRIG THOMAS: Yes, that's correct.

MAJ CHAPMAN: And it was cancelled because it was announced by government that the MRH was being replaced by the 60M Black Hawk?

45 BRIG THOMAS: Yes, that's correct.

MAJ CHAPMAN: Do we understand from your statement that your Project Director role then moved from the MRH to deal with the 60M Black Hawk?

5

BRIG THOMAS: So, intermediate, in between, I was – so I finished my role as the Director of the MRH project. There was about a six-month overlap, but I then handed that over to a Project Manager. I was the Project Director for the Special Operations Rotary Wing capability. That was cancelled and I became the Project Director for the Black Hawk.

10

MAJ CHAPMAN: Understood. And moving on, you were promoted in 2023 to your current rank, Brigadier, and you were appointed Director-General Army Aviation Systems.

15

BRIG THOMAS: Yes, that's correct.

MAJ CHAPMAN: And that was a role, again, within CASG at the time?

20

BRIG THOMAS: Yes, correct.

MAJ CHAPMAN: And in that role you were responsible, you say, for the acquisition and sustainment of all Army Aviation systems, be they helicopters through to unmanned aerial systems.

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BRIG THOMAS: Yes, that's correct.

MAJ CHAPMAN: And in 2024 – and I'm at paragraph 14 of your statement – you next posted in to your current role as Deputy Commander, Australian Aviation Command, Army Aviation Command and Director of General Aviation?

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BRIG THOMAS: Yes, that's correct.

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MAJ CHAPMAN: And so this is clearly now a Commander point and back in Army and away from CASG?

BRIG THOMAS: Yes, back into Army.

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MAJ CHAPMAN: And I think that we can all follow your Deputy Commander designation. Though, could you just assist us and explain the function of the Director-General, Aviation?

BRIG THOMAS: Yes. So that role is effectively as the sponsor for the Battle Aviation Program – Battlefield Aviation Program. This function, the

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5 sponsorship role, is normally done by Army from within Army Headquarters under a two-star General, the Head of Land Capability. So I have the responsibility of that sponsorship role where I report to the Head of Land Capability within Army Headquarters of the execution of the function and report to the Commander, Aviation Command for the Deputy role.

10 MAJ CHAPMAN: And it's also noted in your statement you're now Head of Corps for the Army Aviation Corps.

BRIG THOMAS: Yes, that's correct.

15 MAJ CHAPMAN: And in terms of your own flying experience, you have 1550 hours, of which 750 is Aircraft Captain on – is that Kiowa and Black Hawk?

BRIG THOMAS: No, Kiowa and Squirrel.

20 MAJ CHAPMAN: Kiowa and Squirrel. So you don't have any time on the MRH?

BRIG THOMAS: No, I don't.

25 MAJ CHAPMAN: Nor the ARH?

BRIG THOMAS: No. Other than familiarisation - - -

30 MAJ CHAPMAN: Sure. And did the Kiowa for the Squirrel utilise HMSD devices at all?

BRIG THOMAS: No.

35 MAJ CHAPMAN: And I gather, did they use ANVIS or NG goggles of some description?

BRIG THOMAS: Yes, we used ANVIS system in the Kiowa.

40 MAJ CHAPMAN: Yes. So we take it from that, you don't yourself have any direct flying experience with HMSD systems?

BRIG THOMAS: No.

45 MAJ CHAPMAN: Thank you. Moving on briefly, at paragraph 16 you list your academic qualifications as Bachelor of Arts, Master of Defence Studies, and Masters of Management. And you're a graduate of the

Australian Technical Staff Course, and the Australian Command and Staff Course.

BRIG THOMAS: Yes. Yes, that's correct.

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MAJ CHAPMAN: So, sir, I'm just going to ask you now some questions in relation to a Minute that was sent to you while you were Director of the Project Office. And you deal with this at paragraph 17 of your statement. So I just want to first show you a document. Sir, do you recognise that as a Minute addressed to the MRH Project Office naming you at your then rank of Colonel, signed 20 March 2020?

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BRIG THOMAS: Yes, I do.

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MAJ CHAPMAN: And that's a Minute, is it, from the then Director-General Army Aviation, BRIG Fenwick? Correct?

BRIG THOMAS: Yes, that is.

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MAJ CHAPMAN: And that was a document that was sent to you as part of your section 23 Notice in this Inquiry?

BRIG THOMAS: Yes.

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MAJ CHAPMAN: And you've had the benefit of reviewing that document for the purpose of preparing your statement?

BRIG THOMAS: Yes, I have.

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MAJ CHAPMAN: Ma'am, I tender that document.

MS McMURDO: Yes, that'll be Exhibit 114.

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#EXHIBIT 114 - MINUTE ADDRESSED TO MRH PROJECT OFFICE FROM BRIG FENWICK

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MAJ CHAPMAN: May it please the Inquiry.

So, sir, this was sent to you in 2020 for your role as Director of MRH Project Office. Correct?

BRIG THOMAS: Yes.

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MAJ CHAPMAN: And you note in paragraph 17 of your statement that the project was, as you say, “extremely complex and had a troubled history”, having, as you’ve given evidence, been a project of concern since 2011?

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BRIG THOMAS: Yes, correct.

MAJ CHAPMAN: And we’ve touched on this briefly earlier, but is the project of concern an ADF or a CASG classification, if I can even distinguish those?

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BRIG THOMAS: It’s actually agreed by the Minister for a project to be a project of concern, so it’s a classification within our procurement system.

MAJ CHAPMAN: And we’ve touched on this briefly earlier but the move – just to be clear about the move to the sustainment phase – that’s the point when the responsibility for the platform fell under the Army Aviation Systems Program Office. Is that right?

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BRIG THOMAS: So, yes, the responsibility for the ongoing management of the system.

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MAJ CHAPMAN: The sum of all of that is that the issues of procurement of the platform system sustainment are CASG?

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BRIG THOMAS: Mm-hm.

MAJ CHAPMAN: And that presumably one purpose of having the function outside of the ADF is so that the units themselves can focus on the training and deployment of the capability as one function?

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BRIG THOMAS: Yes. Yes, I think that’s reasonable.

MAJ CHAPMAN: It’s fair?

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BRIG THOMAS: Yes.

MAJ CHAPMAN: And with that in mind, and just to return to this Minute, can you insist – sorry, can you assist the Inquiry to understand why the 5.10 software upgrade was being managed by the Project Office and not AASPO?

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BRIG THOMAS: So it was considered part of the acquisition project. So it was a capability that was required for the introduction of the aircraft into the Special Operations role within 6 AVN Regiment. Therefore, the budge,

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if you like, was an acquisition budget that was used to fund the procurement of that capability, and that's why it fell within the acquisition project.

5 MAJ CHAPMAN: And am I pronouncing that correctly? Would you say AASPO?

BRIG THOMAS: AASPO, yes.

10 MAJ CHAPMAN: AASPO. Thank you.

BRIG THOMAS: Yes, correct.

15 MAJ CHAPMAN: And at the time you were Director of the Project Office, who was in charge of AASPO at that time?

BRIG THOMAS: It might've been some overlap there; I'm just trying to remember. Certainly, for a period in my time there was COL Phillips was the Director of AASPO. I can't recall for certain if he was the Director of AASPO at the time.

20 MAJ CHAPMAN: That's fine. You say in the middle of paragraph 18 that you, being in the Project Office, were managing a number of the outstanding subsystem deliveries and modifications.

25 BRIG THOMAS: Yes, that's correct.

MAJ CHAPMAN: And one of those is 5.10.

30 BRIG THOMAS: Yes.

MAJ CHAPMAN: And you describe at paragraph 19 that the Minute that we've been discussing, the one that's just gone into evidence as Exhibit 114, came at the very end of the process to introduce version 5.10. Correct?

35 BRIG THOMAS: Yes, towards the end.

40 MAJ CHAPMAN: And from paragraph 20 of your statement you helpfully set out the process that 5.10 went through for service release. And I might just, again, summarise that for ease. You begin by saying that the introduction of the modification is carefully managed through a configuration or control process. Correct?

45 BRIG THOMAS: Yes.

MAJ CHAPMAN: And that's a reference to a process which is overseen by the AASPO Configuration Control Board, or CCB?

BRIG THOMAS: Yes, that's correct.

5

MAJ CHAPMAN: And in overseeing the process, is it right that the CCB – that's the Board – follows a Configuration Control Plan?

BRIG THOMAS: Yes. Yes, so there's a configuration change process which is outlined in a plan, and that's followed by the Board.

10

MAJ CHAPMAN: And do you recall reviewing at this time a copy of the Configuration Control Plan?

BRIG THOMAS: Okay, so in fact I think you might be referring to – there's two configuration – two CCPs here. So there was a Certification Program Plan, which might be what you are referring to here, which is the specific plan for the certification of that modification. There's a Configuration Control Plan, which is a broader plan which describes the configuration process.

20

MAJ CHAPMAN: And which one is given the approval by DASA?

BRIG THOMAS: That's the Configuration – sorry, Certification Program Plan is approved by DASA.

25

MAJ CHAPMAN: And do you recall at that time – and you may not – but recall seeing that Certification Program Plan?

BRIG THOMAS: No, I don't recall seeing it. But I think it was actually approved before my tenure as the Project Director.

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MAJ CHAPMAN: And you next say at paragraph 21 that HMSD version 4 – the version which we know preceded 5.1 – had been the subject of a desire to improve its functionality for some time.

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BRIG THOMAS: Yes, that's correct.

MAJ CHAPMAN: And is that a desire expressed from CASG, from Army Aviation, from where?

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BRIG THOMAS: No. No, from the user, from the operator.

MAJ CHAPMAN: From the user. And what is your knowledge of the reference to the desire to improve functionality? Is this coming from your time as Director?

5 BRIG THOMAS: No. It's coming from my reviewing of, you know, the history of the change. I know that there had been some DSTG studies that were looking at what an optimal symbol set might look like. And that was because, you know, there was a feeling that the symbol set that we had under 4.0 was not optimal and could be improved.

10 MAJ CHAPMAN: So, sir, if I could just – on that point, when you say “from reviewing”, is that from reviewing for the purpose of preparing for this evidence, or at the time you understood there to be a desire to improve - - -

15 BRIG THOMAS: At the time I understood there was a desire.

MAJ CHAPMAN: Yes.

20 BRIG THOMAS: I think I was aware that there'd been some DSTG study, but I wasn't sort of fully across that because it had happened before my time.

AVM HARLAND: Just a question if I may, MAJ Chapman.

25 That optimal display that DSTG did some work on in 2015, was that just related to the line MRH-90, or was that related to in a future Special Operations role?

30 BRIG THOMAS: I don't know for certain, I'm afraid, sir. I think it was, in general – the decision to introduce the MRH into the Special Operations role I think happened in 2016, so I don't think it was specifically related to Special Operations.

35 AVM HARLAND: Okay, thank you.

MAJ CHAPMAN: And when you're referring to the optimised symbology that DSTG you understand were working on, do you know if that's a reference to the MOD 4?

40 BRIG THOMAS: Yes, that's what I understand it was referred to.

MAJ CHAPMAN: And do you understand that to have been a bespoke – my words – symbology set that included distance to run as well as other features?

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BRIG THOMAS: I understand it to be bespoke. I don't know whether it included distance to run.

5 MAJ CHAPMAN: Though ultimately that was a version which did not proceed to finalisation?

BRIG THOMAS: Yes, that's correct.

10 MAJ CHAPMAN: And you didn't have any involvement in MOD 4 from CASG?

BRIG THOMAS: No, I didn't. Predecessors may have, but I personally didn't.

15 MAJ CHAPMAN: Do you know why it didn't proceed? Do you have any knowledge about that?

BRIG THOMAS: My understanding is that it didn't proceed because of commercial and developmental risk. So we had a software facility as part of the procurement of the MRH-90 system, but that did not have the capability to modify the HMSD symbology. Therefore, any modification would have needed to have been done back in Europe and would have been subject to, you know, relative priorities of other customers, and it's complicated and expensive and could take a long time.

20 MAJ CHAPMAN: So you've just touched on, sir, the software capability. Do we take it this means the ability to draw on IT support for the symbology package or for the HMSD - - -

30 BRIG THOMAS: We had a software facility in Australia that did not have that capability. It had other software capabilities, but it didn't have the capability to modify the HMSD or to, you know, change the HMSD in any way.

35 MAJ CHAPMAN: And your evidence is that to change any symbology would have required going back to the OEM, the Original Equipment Manufacturer?

40 BRIG THOMAS: Yes. Yes, that's correct.

MAJ CHAPMAN: And that was NHI, or Nato Helicopters Industries?

45 BRIG THOMAS: Yes, that's correct.

MAJ CHAPMAN: So just to be clear, the software support was for the aircraft generally, and it had limits. For example, you could call on software support people to fix certain aspects, just not the symbology?

5 BRIG THOMAS: Yes. You know, it was a very software-driven aircraft, so the software support facility had certain scope. You know, things like radio integration, for example, is something that could be done within the software support facility. But then there was levels of software development that weren't, you know, able to be done by our software support facility.
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MAJ CHAPMAN: Moving on to paragraph 22, you say that:

15 *On 29 May 2017 the then Director of Aviation Capability Management, DACM, wrote to the Director of Project Office and AASPO confirming the requirement to update HMSD to 5.10.*

BRIG THOMAS: Yes, that's correct.

20 MAJ CHAPMAN: And do you know who DACM was at the time?

BRIG THOMAS: No, I can't recall. It was before my time.

MAJ CHAPMAN: Indeed. This was prior to your time in August, yes. And to your understanding, sir, was this a request from your review that was being made by the DACM to confirm requirements to procure 5.10 from the OEM?
25

BRIG THOMAS: Yes, that's correct.

30 MAJ CHAPMAN: And that's because the role of DACM, and not the Project Office or AASPO, is to procure the software update?

BRIG THOMAS: No, it's not the role of DACM to procure. The role of DACM is on the requirement side. So he was under the authority of DG AVN, indicating that there was a requirement for this capability. And then that direction was being given to CASG to undertake, then, the procurement of the system.
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40 MAJ CHAPMAN: So DACM identified the need to it and then goes to CASG to effectively order it?

BRIG THOMAS: Correct.

MAJ CHAPMAN: And then you say at 22 that 5.10 was identified as a software version that had been developed against a specification that had itself been approved in 2015.

5 BRIG THOMAS: Yes, that's correct.

MAJ CHAPMAN: And it was, in May 2017, undergoing certification testing by the German National Airworthiness Authority.

10 BRIG THOMAS: Yes, that's correct.

MAJ CHAPMAN: And you say it achieved the certification in August 2017.

15 BRIG THOMAS: Yes.

MAJ CHAPMAN: And would you agree, sir, that when the certification was being conducted and achieved, that that was a process by reference to German configuration role and environment for their – correct?

20 BRIG THOMAS: Yes, that would be correct.

MAJ CHAPMAN: And that was testing which, in reality, was different potentially from the Australian CRE?

25 BRIG THOMAS: Correct. But I'd just highlight that the Certification Program Plan identified that there would be further analysis to confirm the Australian configuration conducted as part of that certification process.

30 MAJ CHAPMAN: Understood. And are you aware – and you may not be, sir – even generally, of the conditions in which the German Airworthiness Authority conducted their testing?

35 BRIG THOMAS: No, I'm not.

MAJ CHAPMAN: Yes. Or, even generally, the CRE of the testing, which is - - -

40 BRIG THOMAS: No.

MAJ CHAPMAN: Though I think you've agreed that it would be reasonable to say that there may have been differences between what the German forces were testing for and what the Australian forces would be deploying 5.10 in?

45

BRIG THOMAS: That's possible, yes.

5 MAJ CHAPMAN: And the Inquiry has heard some evidence that version 5.10 was developed for the German forces' deployment to Afghanistan. Are you aware of that?

BRIG THOMAS: I'm aware that the Germans used it in Afghanistan. I'm not certain whether it was developed specifically for that purpose or not.

10 MAJ CHAPMAN: So it may have been that the testing was unlikely to have involved maritime environment or flying overwater. That you just cannot say?

15 BRIG THOMAS: I can't say.

MAJ CHAPMAN: Sir, I didn't take you to the first Control Configuration Board reference. So this is in June 2018. We're at paragraph 23 of your statement.

20 BRIG THOMAS: Yes.

MAJ CHAPMAN: You refer to HMSD 5.10 being presented to the CCB on 21 June 2018 for the first time.

25 BRIG THOMAS: Yes.

MAJ CHAPMAN: And it was on that occasion that it achieved the first gate – if I can put it that way – of development approval. Is that - - -

30 BRIG THOMAS: Yes, that's correct.

MAJ CHAPMAN: And you described – your words – the first stage of the configuration change process. And it's at that stage that it's designed to ensure resourcing to enable the change is agreed between all stakeholders.

35 BRIG THOMAS: Yes, that's correct.

MAJ CHAPMAN: So this is, of course, well prior in time to any AATES or Standards testing which was ultimately conducted?

40 BRIG THOMAS: Correct.

MAJ CHAPMAN: So any physical testing, really?

BRIG THOMAS: Yes. But we would have been, for example, identifying if there was a need for testing, ensuring that it was – you know, that the organisations were available to do that testing.

5 MAJ CHAPMAN: And in the timeline, this is about 12 months or so following DACM, which is the Capability Manager, writing to the Project Office and AASPO confirming the requirement for the upgrade?

BRIG THOMAS: Yes.

10

MAJ CHAPMAN: So we're still, to be clear, at the very early stages of the procurement process?

15 BRIG THOMAS: Yes, we are. I think by that stage, you know, we had contracted it, so it was, you know, the contract through the – the sustainment contract to procure it was being executed because that's part of the development approval process to ensure we've got budget and a contract mechanism to deliver it.

20 MAJ CHAPMAN: Well, just on that point, so at this CCB, which is the development approval, would you, based – drawing on your experience at CASG, would this have been – the funding would have been approved prior to development approval or it's contingent on development approval?

25 BRIG THOMAS: So the funding would have been identified before development approval. And in this case we were using contingency funding, and that had been approved before the configuration – before development approval was granted.

30 MAJ CHAPMAN: So maybe just to develop that a bit more, had, as it were, money exchanged hands by that stage?

BRIG THOMAS: No, money would not have exchanged hands by that time, but we may have been in contract by then.

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MAJ CHAPMAN: I think at this stage, if my timeline is correct, you were outside of Defence in your consultancy role at that time, the first CCB?

BRIG THOMAS: The first CCB, yes, I was still outside.

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MAJ CHAPMAN: Yes. So you were obviously not involved in the CCB.

BRIG THOMAS: No.

45 MAJ CHAPMAN: Noting what you've said about 5.1 having been

approved by the German forces, would you expect that same CCB process to be engaged in, had it not relied on the foreign-approved modification? I can break that down if you like.

5 BRIG THOMAS: Sorry, no, I don't quite understand that one.

MAJ CHAPMAN: So the CCB process that was followed relied, at least in part, on the approval by the German forces. Is that right?

10 BRIG THOMAS: Yes, so that was – I would say you would go a development approval, regardless of whether it was already certified. How you would then get to the next step would be dependent upon whether it was a certified product or not as to the work that you needed to do. And that work is, in terms of certification, identified in the Certification Program Plan.
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MAJ CHAPMAN: So, broadly speaking, you still have your gates if you have your first CCB, second, and possibly a third one, regardless of whether or not it's been approved by the foreign operator?
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BRIG THOMAS: Yes, any configuration change goes through those steps, and if it's a really simple one it can go through those steps quite quickly. If it's a complicated configuration change, it might take longer, and it might go through one or more of them multiple times.
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MAJ CHAPMAN: How would you characterise the progress of this particular one? Was this fast? Was it slow?

BRIG THOMAS: It was hard to say. It's how long's a piece of string?
30

MAJ CHAPMAN: Sure.

BRIG THOMAS: But it was proceeding at the pace that you would expect up until the point of the testing.
35

MAJ CHAPMAN: Is there anything at that development approval stage which considers the CRE for the proposed upgrade, or is that simply a procurement approval stage?

40 BRIG THOMAS: It's a planning to plan stage. So I would say where that CRE aspect is captured is in the Certification Program Plan, which came after the development approval.

45 MAJ CHAPMAN: That's a Certification Program Plan that's approved by DASA?

BRIG THOMAS: Yes.

5 MAJ CHAPMAN: At this stage, which is development approval, that can all be progressed through the necessary gates without input from any test pilots, or anything of that nature?

10 BRIG THOMAS: The test organisation is represented at the Board, but I would expect that there wouldn't be a lot of input at the developmental approval, other than potentially engagement in the development of the Certification Program Plan.

15 MAJ CHAPMAN: Yes. But they're one of the stakeholders that are included in the Board?

BRIG THOMAS: Yes, correct.

20 MAJ CHAPMAN: Is that process still a process which is in place today, as you understand it?

BRIG THOMAS: Yes, it's in place for all our aircraft fleet.

25 MAJ CHAPMAN: At paragraph 24 of your statement you say that approximately five or six months following the CCB development approval, on 2 November 2018, DASA, the Defence Aviation Safety Authority, approved the Certification Program Plan?

BRIG THOMAS: Yes, correct.

30 MAJ CHAPMAN: Based on your experience, is the plan one that's ordinarily put before the Control Board or the Configuration Control Board?

35 BRIG THOMAS: No, it's not my experience that it is put before them.

MAJ CHAPMAN: Who prepares the plan, the Certification Control Plan?

40 BRIG THOMAS: So that would have been approved by the organisation that is the approved design organisation, what's known as a 21J. And in this case that was AAP, so Airbus Asia Pacific, who was our prime contractor, did the work and put in the application for the certification program.

MAJ CHAPMAN: So we've got Airbus Pacific Australia preparing the Certification Control Plan, which is then put to the CCB and, ultimately, put to DASA for approval?

5 BRIG THOMAS: So it's not put to the CCB, but the Chief Engineer of AASPO would be involved in reviewing it.

MAJ CHAPMAN: But it is the plan, the Airbus plan – if I can forfeit by Airbus – goes ultimately to DASA to approval?

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BRIG THOMAS: For approval, that's correct.

MAJ CHAPMAN: To the extent you've got knowledge of it, sir, could you just – I withdraw that. Am I right in saying that Airbus were required to prepare a CCP in respect of 5.1 because it was considered a major change?

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BRIG THOMAS: Yes, so a CPP was required because of the classification of the change, which was "major".

20

MAJ CHAPMAN: Who gave it the classification "major change"? Was that Airbus?

BRIG THOMAS: You're probably getting to my limit of knowledge with exactly how it works, but there's a criteria that's applied to determine the level of change. I would assume it's a self-assessment in the development of the plan that's then validated by the regulator.

25

MAJ CHAPMAN: This may be related to the last, you may not have knowledge of it, but can you just describe why it may have been considered a major change, or is that outside of - - -

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BRIG THOMAS: Yes. Look, getting to the limit of my knowledge of this, I would assume because it involved the human machine interface, that that's probably why it would be considered a major change.

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MAJ CHAPMAN: Now, the approval that we've been talking about which is given by DASA, that's an approval to the CPP and not the upgrade itself. That's right?

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BRIG THOMAS: So the CPP outlines how the certification is intended to be conducted and so they say, yes, if you follow those steps, that is an acceptable approach to the certification. DASA also then approved the change to design at the end of that process.

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MAJ CHAPMAN: So they approved the plan and then they approve the change in the design at the very end, around service release stage. Is that right? Or whereabouts in that stage?

5 BRIG THOMAS: No, in fact, incorporation approval is when that Form 31A, which is the DASA approval of the design change, actually occurred.

MAJ CHAPMAN: Is it your understanding that DASA, the safety
10 regulator – were they involved in the decision for service release or you couldn't put it like that?

BRIG THOMAS: I think it's probably better to go back to incorporation approval before service release. The service release process is right at the
15 end. The design approval, so the assessment of the design change, happens at incorporation approval.

MAJ CHAPMAN: Moving to paragraph 24 of your statement, at the
20 bottom of the page, you say:

NHI would conduct an analysis of the configuration difference between the German and the Australian aircraft configuration to confirm compliance verification.

25 Do you see that?

BRIG THOMAS: Yes, that's correct. So that was what the Certification Program Plan identified as the pathway for certification.

30 MAJ CHAPMAN: Just in relation to that, as far as you're aware, the CPP contemplated some configuration testing?

BRIG THOMAS: No, it contemplated a configuration assessment which was effectively a desktop assessment done by NHI.

35 MAJ CHAPMAN: There's a reference to testing in Europe had already been completed. Is that correct?

BRIG THOMAS: Yes, that testing for 5.10 had been completed.

40 MAJ CHAPMAN: Yes. Is that the desktop?

BRIG THOMAS: No. So there was testing of the 5.10 on a

German-configured aircraft and then there was a desktop analysis on the configuration differences between our aircraft and their aircraft to confirm that there would be no issues.

5 MAJ CHAPMAN: But, again, that's testing by the German forces in respect of their CRE and then there's a desktop assessment done for any differences that may be identified. Is that right?

BRIG THOMAS: Yes, correct.

10

MAJ CHAPMAN: You also say at the top of page 5 that the CPP stated the Commonwealth had indicated intent to conduct an operational evaluation, though that was not required for certification.

15 BRIG THOMAS: Correct.

MAJ CHAPMAN: Just to be clear about that, on that point, your evidence is that for the purposes of the DASA approval of the CPP, Australia could rely on the German certification without being required to conduct testing here. Is that right?

20

BRIG THOMAS: Yes, that's correct. So they're a mutually recognised airworthiness authority, so their assessment was considered acceptable.

25 MAJ CHAPMAN: Then, next, at paragraph 25, you refer to DASA approving, on 14 February 2019, the major change to type design. Correct?

BRIG THOMAS: Correct.

30 MAJ CHAPMAN: So this was DASA giving the approval to the modification itself, having earlier given its approval to the plan for the modification?

BRIG THOMAS: Yes.

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MAJ CHAPMAN: This was, again, well prior to the flight testing; is that right?

BRIG THOMAS: Prior to the flight testing, yes.

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MAJ CHAPMAN: Prior to, yes. That was an approval, and this is the DASA approval, from what you understand, based principally on the mutual recognition with the German authorities?

45 BRIG THOMAS: Yes, correct.

MAJ CHAPMAN: And that testing configuration was conducted by NHI?

5 BRIG THOMAS: Yes, so the configuration assessment conducted by NHI.

MAJ CHAPMAN: Assessment, yes. Just moving to paragraph 26 of your statement – and this is related to the second CCB – you say:

10 *On 7 March 2019, HMSD 5.10 was presented to the CCB for a second time where it achieved incorporation approval.*

BRIG THOMAS: Correct.

15 MAJ CHAPMAN: And that:

The purpose of this step was to ensure that all necessary approvals are in place to commence the testing phase.

20 BRIG THOMAS: Correct.

MAJ CHAPMAN: They were deemed to be in place?

BRIG THOMAS: Yes.

25 MAJ CHAPMAN: And that there were two testing activities conducted. So we had the AMAFTU testing first of class flight trials 23 April to 17 May, and the AATES testing between 7 and 11 June. Correct?

30 BRIG THOMAS: Correct.

MAJ CHAPMAN: Then was the CCB – I withdraw that. So presumably Navy were conducting these trials, that they'd been through a similar CPP process, or they use the same?

35 BRIG THOMAS: No. So it was the same process, so that was managed as a single fleet.

40 MAJ CHAPMAN: As a single fleet. You note at paragraph 27 that Navy had concluded, with respect to their own trials, that the symbology was satisfactory?

BRIG THOMAS: Correct.

MAJ CHAPMAN: Whereas AATES identified that the display of pitch ladder was unacceptable. Correct?

BRIG THOMAS: Correct.

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MAJ CHAPMAN: While it's true that both were testing version 5.10, would you agree that the focus from what you understand of the Navy and the Army testings were different?

10 BRIG THOMAS: Yes, I'd expect there were differences in their testing.

MAJ CHAPMAN: And that the first of class flight trials were directed to embarked operations, whereas the Army's were directed to testing for SO approaches?

15

BRIG THOMAS: Certainly the AMAFTU was about embarked operations, yes. And the AATES testing, I'm not sure whether it was specifically for SO approaches or just in general.

20 MAJ CHAPMAN: To the extent that Navy came to a view that 5.1, in their assessment, was satisfactory, it's not directly comparable to the Army experience. Do you agree with that?

25 BRIG THOMAS: It's a different test, so, yes, I would agree there are elements of it that are relevant to Army because we also operate embarked on ships and overwater as well. So there certainly are elements that I would consider relevant.

30 MAJ CHAPMAN: There would also be, followed from that, limitations relying on the result from the Navy testing, from an Army point of view?

35 BRIG THOMAS: We recognise AMAFTU as well, so they often conduct testing on our behalf as well. So we recognise it and rely upon it, but there might be consideration about the scope of the testing and whether it covered the specific issue that we're looking for.

MS McMURDO: Is that a convenient time?

40 MAJ CHAPMAN: Yes, it is, thank you, ma'am.

MS McMURDO: All right. Then we'll break for lunch. We'll have an hour for lunch. We'll resume at 2 o'clock. Thank you.

45 **HEARING ADJOURNED**

HEARING RESUMED

5

MS McMURDO: MAJ Chapman, I think there is a request to have pure acronyms, please.

MAJ CHAPMAN: I'll take that on board. Thank you, Chair.

10

MS McMURDO: Yes. MAJ Chapman.

MAJ CHAPMAN: Thank you, Chair.

15

Sir, do you still have a copy of your statement there?

BRIG THOMAS: Yes, I do.

20

MAJ CHAPMAN: Thank you. I believe we're up to paragraph 28, but if I could briefly take you back to paragraph 25 to just clarify something.

BRIG THOMAS: Yes.

25

MAJ CHAPMAN: So at paragraph 25 you say that:

On 14 February 2019, DASA approved the major change to the type design enabling modification of the MRH HMSD to version 5.10.

30

And so this was based on your earlier evidence before lunch. This is the second stage of approval from a DASA point of view; is that right?

BRIG THOMAS: So, yes, they approved the Certification Program Plan.

35

MAJ CHAPMAN: Yes?

BRIG THOMAS: And then they approved the type design change.

40

MAJ CHAPMAN: And at 26 it refers to HMSD 5.10 went through the CCB where it received incorporation approval, which then allowed in effect for testing of the modification.

BRIG THOMAS: Yes, correct.

MAJ CHAPMAN: Now, is it your understanding that, in terms of the
DASA approval of the modification, that their approval on 14 February
2019 with the major change to type design was the last stage of approval
that DASA was required to complete?

5

BRIG THOMAS: That is my understanding, but I am far from being an
expert in design approval.

MAJ CHAPMAN: And that – and again base this on your understanding
– that was an approval, a DASA approval, which took place prior to
physical testing that was undertaken by the Australian Flight Test
Organisations or - - -

10

BRIG THOMAS: Yes, that's correct.

15

MAJ CHAPMAN: And so notwithstanding – sorry, and then in the
timeline, next we have AATES. The first stage concluding, “An
unacceptable risk to flight safety,” in about June of 2019?

20

BRIG THOMAS: Yes, that's correct.

MAJ CHAPMAN: So notwithstanding that there was this “unacceptable”
finding made by AATES, and that's the Army Aviation Test and Evaluation
Section, being the Army Flight Test Organisation, the Safety – based on
your understanding, the Safety Authority was not required to act as they'd
already given an approval for the major change in type design. Is that right?

25

BRIG THOMAS: Yes, the design was approved based upon the
Certification Program Plan.

30

MAJ CHAPMAN: Yes.

BRIG THOMAS: And the mutual recognition of the German national
airworthiness authority.

35

MAJ CHAPMAN: So the safety organisation, DASA, Defence Aviation
Safety Authority, it was not within its remit at that time to intervene at all
with respect to the unacceptable risk to flight safety that had been
discovered by AATES?

40

BRIG THOMAS: Yes, not from my understanding.

MAJ CHAPMAN: Thank you. Can I just now go to paragraph 28.

MS McMURDO: Just before you go on. Do you know whether DASA needed to even be informed of the AATES concerns?

BRIG THOMAS: I don't – I can't answer that question, ma'am.

5

MS McMURDO: You don't know.

BRIG THOMAS: I don't know.

10 MS McMURDO: No, that's all right.

MAJ CHAPMAN: Just going to paragraph 28 now. So this is where we discussed – or you discussed the “unacceptable” findings in the AATES testing. You deal with it by saying that the project was placed on hold. That was by your office and the AASPO; is that correct?

15

BRIG THOMAS: Yes. Yes, we - - -

MAJ CHAPMAN: Were you in the seat at the time to make that decision, or was that another - - -

20

BRIG THOMAS: I was the Project Director.

MAJ CHAPMAN: Yes.

25

BRIG THOMAS: Yes.

MAJ CHAPMAN: So you took that decision. Did you take that by – a decision with the Director of the AASPO at the time, or - - -

30

BRIG THOMAS: I wouldn't say necessarily that we consulted on that decision, but it was, you know, “We've got to pause here and determine what the way ahead is,” because of the “unacceptable” finding.

MAJ CHAPMAN: Yes. And then there was a process following, a post-testing de-modification of the aircraft. So reverted back to version 4?

35

BRIG THOMAS: Yes.

MAJ CHAPMAN: So that's effectively just uninstalling the version 5.10 and just - - -

40

BRIG THOMAS: Yes.

MAJ CHAPMAN: Yes. And then you say next that:

45

Advice was sought from DG AVN as the delegate of the Military Air Operator as to how he would like to proceed.

5 BRIG THOMAS: Yes.

MAJ CHAPMAN: Was that BRIG Fenwick at the time?

BRIG THOMAS: Yes, it was.

10

MAJ CHAPMAN: Can I just clarify another matter. The Inquiry's received some evidence that post the AATES "unacceptable" finding there was a Test and Evaluation Review Committee convened or a TERC. Are you aware of that process?

15

BRIG THOMAS: Yes, there would be a TERC.

MAJ CHAPMAN: And at that TERC the evidence is that the then Director of Capability Management, COL Connolly, took a decision to require further testing. Are you aware of that decision?

20

BRIG THOMAS: I'm aware of that decision. I'm not – I'm not sure whether I was actually at that TERC or not, but I am aware that there was a decision to proceed to further testing.

25

MAJ CHAPMAN: Would the DG AVN, Director-General of Aviation attend the TERC, typically?

BRIG THOMAS: No. No, that would have normally been chaired either by the DACM or by his SO1.

30

MAJ CHAPMAN: I'm just trying to reconcile how you say at the end of paragraph 28 that there was consultation with DG AVN how he would like to proceed, which ultimately ended up in the OPEVAL, against evidence that it was the Director of Capability Management at the TERC that made a determination. Do you have - - -

35

BRIG THOMAS: The DACM works for the DG AVN. He would have been, you know, I assume, speaking with his authority.

40

MAJ CHAPMAN: I see. Now, just in terms of the further response to the AATES report, you say then – sorry, just a moment. In terms of the OPEVAL, were you involved in any of the discussions that took place in support of a decision to proceed with the OPEVAL?

45

BRIG THOMAS: No, not that I recall.

5 MAJ CHAPMAN: Now, you say at paragraph 29 that you didn't have any involvement in the operational OPEVAL activity. You were aware, were you, though, it was occurring?

BRIG THOMAS: Yes, I was.

10 MAJ CHAPMAN: And you considered that an appropriate way forward?

BRIG THOMAS: Yes, I considered it an appropriate way.

15 MAJ CHAPMAN: And you considered it an appropriate way forward. Was it because it would evaluate the risks and the benefits of 5.10? Correct?

BRIG THOMAS: Yes.

20 MAJ CHAPMAN: And, sir, just on that point, did you, in your experience, ever consider whether that particular activity might be conducted by the Flight Test Organisation instead of Standards?

25 BRIG THOMAS: It wasn't something that I was involved in making a decision on. So, you know, I knew it was happening, and an appropriate person had decided the way in which to conduct it.

MAJ CHAPMAN: Is there any guidance or a mandated course of action where a Flight Test Organisation has arrived at an "unacceptable" finding in terms of any further testing that's required, that you're aware of?

30 BRIG THOMAS: Not to my knowledge.

35 MAJ CHAPMAN: Short of "unacceptable" finding, you're not aware of any requirement for further testing in circumstances where there's been an adverse finding?

BRIG THOMAS: Not to my knowledge. There could be some policy there, but I'm not aware of it.

40 MAJ CHAPMAN: It may just be a Command decision based on risk assessment considerations?

BRIG THOMAS: Well, there would be a risk assessment aspect to it, yes.

MAJ CHAPMAN: And just in terms of the AATES report – so this is June 2019, you had access to and did you read the report around then in June 2019?

5 BRIG THOMAS: Yes, I believe I did.

MAJ CHAPMAN: And you were aware, do you agree, that the report did not suggest that AATES could not or were not prepared to conduct any further testing?

10

BRIG THOMAS: No, I'm aware their report said that it ceased the testing when they identified the particular behaviour, but I'm not aware of them not being willing to conduct further testing.

15 MAJ CHAPMAN: My point was that in the report it didn't say anything about AATES could not or were not prepared to conduct further testing (indistinct).

BRIG THOMAS: Not to my recollection, no.

20

MAJ CHAPMAN: Just some questions – last topic – about service release. So next in the timeline – and I'm about paragraph 30 – you say that in March 2020 – this is DG AVN, the Director-General Army Aviation, sent you a Minute – and that's the Minute that's gone into evidence – that the operational evaluation was complete, and that version 5.10 was suitable for use.

25

BRIG THOMAS: Yes, correct.

30 MAJ CHAPMAN: And you see there's part of the Minute, though, there was a request from the Director-General that you work to achieve service release by a particular date, and the date was 24 April 2020.

BRIG THOMAS: Yes.

35

MAJ CHAPMAN: And so, sir, did you take that as a direction in this Minute to seek to achieve service release by that particular date?

BRIG THOMAS: Yes, I did.

40

MAJ CHAPMAN: And do you know what was the motivation or the driver for that decision? Are you aware?

BRIG THOMAS: I understand there was a training activity or something along those lines occurring at 6 Aviation Regiment from that point in time, and they wanted to have it incorporated by then.

5 MAJ CHAPMAN: And I think you've given evidence earlier that service release is the final step in this Configuration Control Process.

BRIG THOMAS: Yes, correct.

10 MAJ CHAPMAN: So there are three steps: the development approval, incorporation approval, and service release?

BRIG THOMAS: Correct.

15 MAJ CHAPMAN: And it's at this stage – that is, the service release stage – you're working to ensure that the modification is able to be sustained with logistics, training, publications, et cetera?

BRIG THOMAS: Correct.

20 MAJ CHAPMAN: And then you say, however, at 31 that the technical suitability of the modification had already occurred at the initial acceptance stage.

25 BRIG THOMAS: The incorporation approval stage, yes. Well, in fact, it had occurred with the design approval by DASA.

MAJ CHAPMAN: And that was a design approval which, as you've given evidence earlier about, was established through mutual recognition with the German forces, and a desktop assessment.

30

BRIG THOMAS: Correct.

MAJ CHAPMAN: I just take you now briefly to the third Configuration Control Board meeting, and that was on 2 April 2020, which you address at paragraph 32.

35

BRIG THOMAS: Correct.

40 MAJ CHAPMAN: Were you in attendance at that?

BRIG THOMAS: No, I wasn't.

MAJ CHAPMAN: And this was a meeting, as you understand it, that – well, you're aware of the meeting and the content of what that was.

45

BRIG THOMAS: Yes. Yes, I'm aware of the meeting, but it was not a meeting that I would regularly attend as the Project Director.

5 MAJ CHAPMAN: And you understand, just drawing on your experience, that the Board delegated, at this particular meeting, approval for service release to the Chief Engineer?

10 BRIG THOMAS: Yes, that's correct, from my review of the Minutes of the CCB.

MAJ CHAPMAN: Yes. And, sir, did you receive as part of your section 23, the Minutes for the CCB?

15 BRIG THOMAS: No, I didn't.

MAJ CHAPMAN: Or it was just the Minute for the - - -

20 BRIG THOMAS: Yes.

MAJ CHAPMAN: Yes. And that by that stage of service release, was it the case that operational approval had been given to the modification?

25 BRIG THOMAS: What do you mean by "operational approval"?

MAJ CHAPMAN: So at the service release stage, that's really dealing with engineering considerations as the final step?

30 BRIG THOMAS: It's really dealing with logistics considerations as a final step. Most of the engineering has occurred in the design approval stage. So, yes, logistics approval.

35 MAJ CHAPMAN: Just to be clear about – when you have service release as being recommended by then DG AVN, that was operationally a recommendation only because service release is actually given by the CC Board.

BRIG THOMAS: Yes. Yes, correct.

40 MAJ CHAPMAN: But just - - -

45 BRIG THOMAS: It was a direction to proceed to service release, not approval of service release. There would have been other instruments in the orders, instructions, and publications that would have been confirmed as having been approved at the CCB.

5 MAJ CHAPMAN: So none of the Minutes that we've seen – and there's been some evidence from – about the Director-General Army Aviation giving approval – they're only to the extent of recommending, because the approval is given by that Board, that is their function.

10 BRIG THOMAS: Yes. I would describe the Board as a governance process, all right? The Board is confirming that all the various approvals are in place, not necessarily approving each of those things in the Board. At the end of that, they say, "Everything is done that needs to be done. We can approve service release."

15 AVM HARLAND: Just a question on that. Do the Board also consider risk assessments and then effectively accept or otherwise a particular level of risk with the modification?

20 BRIG THOMAS: No, I wouldn't say the Board is accepting the risk, but the Board would confirm that the risk assessment had been complete and had been accepted by the appropriate decision-maker.

AVM HARLAND: So who accepts the risk?

25 BRIG THOMAS: In that case, it would be – within the Aviation risk management system, it would be whoever was the appropriate authority to accept that level of risk. I would expect it was probably DG AVN in this case. But his representative – there would be normally the SO1 Op Airworthiness, for example, at the Board, and they would confirm that the risk assessment had been done, and that any enabling orders or instructions – for example, a Special Flying Instruction – if that was required, was approved.

30 So the Board would hear that that had occurred and confirm that all those steps had been taken, but they would not be necessarily making those individual approvals or risk acceptance.

35 AVM HARLAND: But they'd have access to the risk management worksheets, for want of a better term?

40 BRIG THOMAS: Yes. Or it might simply be an attestation that it has been complete and published, and the Board would confirm that from their checklist of things that were required for service release.

45 AVM HARLAND: Great. So what I'm reading from that is that that Minute that was dated on 20 March '20 from DG AVN to you is really – it doesn't go into the details and ask you to sign off on anything in particular;

it effectively asks you to go through a process which will result in service release.

5 BRIG THOMAS: Correct.

AVM HARLAND: And during that process, you will consider whether the modifications are appropriate, the training is in place, the publications are in place, and the risk management has been done and accepted by an appropriate authority.

10 BRIG THOMAS: Correct.

AVM HARLAND: All right. Okay, thank you.

15 MS McMURDO: So that is you're really checking that all the processes that should have been done to get to this point have been done, rather than the correctness of those processes.

20 BRIG THOMAS: Yes. I would say it's a governance process, and the individuals that are approving each one of those activities are assessing whether it is correct. The Board, Configuration Control Board, is assessing that it's been done, that all the steps have been done.

25 AVM HARLAND: Thank you.

MS McMURDO: And in paragraph 32, when you say that, "The Board delegated service release to be approved by the Chief Engineer of AASPO on completion of the outstanding actions", do you recall what the outstanding actions were?

30 BRIG THOMAS: No, I don't, ma'am.

MS McMURDO: Thank you. Yes.

35 AVM HARLAND: Is that service release timeline from 20 March '20 to 24 April '20? So do we need a month – is that routine or is that challenging and short, or - - -

40 BRIG THOMAS: It's a "How long is a piece of string?" question. Again, it depends upon the nature. A simple modification: you might even do incorporation approval and service release concurrently. So it really depends upon what is outstanding in terms of what needs to happen.

45 AVM HARLAND: So was this time pressurised for version 5.10 or was it something which you've gone, "That's achievable"?

5 BRIG THOMAS: Look, I think it was an achievable timeframe but the fact that it had to be delegated meant that not everything had been complete by that date. It was only a matter of days before it was complete. So it was a challenging schedule, but it certainly was an achievable month.

AVM HARLAND: Okay. Thank you.

10 MAJ CHAPMAN: And it had to be delegated – just following on – because it was considered that the decision for service release couldn't await the next CCB meeting?

BRIG THOMAS: Yes, the CCB is normally run every two months or so.

15 MAJ CHAPMAN: Two months.

BRIG THOMAS: So, you know, it was a matter of days for a couple of outstanding actions to be complete.

20 MAJ CHAPMAN: And just finally, sir, at paragraphs 33 to 35 you clarify the reference to MTCH, which is a Military Type Certificate Holder, as not being an individual, it's an organisation.

25 BRIG THOMAS: Yes, that's correct.

MAJ CHAPMAN: And you say this:

30 *It is common but technically incorrect that the Senior Defence Engineer within the MTCH organisation is referred to as the MTCH, in this case, of the MRH-90. This organisation was AASPO and the Senior Defence Engineer was the AASPO Chief Engineer.*

35 BRIG THOMAS: Correct.

MAJ CHAPMAN: Those are my questions, thanks.

MS McMURDO: Thank you. Applications to cross-examine?

40 AVM HARLAND: I just had another couple of questions.

MS McMURDO: Yes. Thank you.

45 AVM HARLAND: My apologies. Another couple of questions. Were you aware of the German forces' configuration role and environment?

BRIG THOMAS: Not specifically. Yes, that's a complicated assessment.

5 AVM HARLAND: So were you aware, did they fly night, low level formation overwater?

BRIG THOMAS: I couldn't say but that was certainly assessed as part of the configuration assessment.

10 AVM HARLAND: Okay, good. And another question. I guess I'm just asking your professional opinion given that you've got a background which is neatly split between Aviation as a pilot and also some technical and acquisition experience. With respect to aircraft attitude information, what's
15 your opinion on the wisdom of displaying inaccurate or erroneous information to a pilot?

BRIG THOMAS: I would say that's not wise.

20 AVM HARLAND: Yes, so in the case of TopOwl version 5.10, we've accepted that that's going to be the case?

BRIG THOMAS: In certain circumstances, yes.

25 AVM HARLAND: Yes. Okay, thank you.

MS McMURDO: Yes, now I think there are a number of applications to cross-examination. Yes.

30 <CROSS-EXAMINATION BY LCDR GRACIE

35 LCDR GRACIE: Sir, my name is LCDR Malcolm Gracie. I represent the interests of CAPT Danniell Lyon of Bushman 83. Can I just tease out some terminology.

BRIG THOMAS: Yes.

40 LCDR GRACIE: By reference to your statement, sir, in paragraph 24 – I appreciate that we're dealing with the notion of certification and major change to the type design, and without going back over what you've said there, basically you're saying that an operational evaluation is not a requirement of the certification - - -

45 BRIG THOMAS: Correct.

5 LCDR GRACIE: - - - that you're dealing with in paragraph 28. What I'm trying to get a handle on is where the line is drawn between the certification – and I don't know if that's from an engineering point of view – and operational airworthiness. Could you perhaps explain, if I provided the dichotomy correctly?

BRIG THOMAS: Yes.

10 LCDR GRACIE: One is a certification, one's airworthiness. Where's the line drawn, please?

15 BRIG THOMAS: So this was an existing certified product that was assessed through the airworthiness system, and the design system that goes all around that, as being a safe design for implementation.

MS McMURDO: That is by Germany?

20 BRIG THOMAS: That is by Germany and also by Australia, in that we had approved that design.

MS McMURDO: DASA did - - -

25 BRIG THOMAS: DASA had approved that design.

MS McMURDO: DASA approval, yes.

30 BRIG THOMAS: Because it's mutually recognised. I would say there is then operationally an assessment as to, "Does this existing product meet our need? And if it does meet our need, then how are we going to use that operationally?"

35 LCDR GRACIE: And that's perhaps what I'm trying to tease out. Where you've discussed certification, and you talked about through an airworthiness system, that's from an engineering point of view, isn't it?

BRIG THOMAS: Yes, it is.

40 LCDR GRACIE: And then if you move across that line, that demarcation, you're getting into technical or operational airworthiness, aren't you?

BRIG THOMAS: Yes. There's the, "How are we going to use this in our environment, in our mission?"

5 LCDR GRACIE: And I think, sir, that's what you're addressing in 26. You say there – and I won't read it out to you – but you've got the governance step, and I think that was described as the second stage of approval.

BRIG THOMAS: Correct.

10 LCDR GRACIE: And you say, "Approvals and the systems are in place to commence initial modification," and then, "often to allow testing in the modification."

BRIG THOMAS: Correct.

15 LCDR GRACIE: And that's where AATES then steps in. Okay, yes.

BRIG THOMAS: Yes.

20 LCDR GRACIE: And I appreciate that you're already within the decision-making by DACM following the Test and Evaluation Review Committee to perform an OPEVAL. So just to give the timeline, we've got the AATES report in relation to the ambiguous and unacceptable symbology of 14 June, the TERC, the Test and Evaluation Review Committee meet on 27 June, and that is when the decision is taken for the OPEVAL, is it?

25 BRIG THOMAS: That's my understanding, yes.

30 LCDR GRACIE: And again, I know you say you were broadly aware of the OPEVAL, but I've seen a document, which I can cross-reference to – it's not in evidence yet, but it's a witness coming this week. But on 22 August you write to Airbus and provide the AATES report. Do you recall doing that? 22 August 2019?

35 BRIG THOMAS: No, I don't recall that.

LCDR GRACIE: Well, just in fairness, I'll take you to it. Ma'am, just to cross-reference, it's Ms House from Airbus is providing some evidence.

40 MS McMURDO: Yes.

LCDR GRACIE: Exhibit AH26 to her statement. And, sir, I'll just go over it. But on 22 August you wrote to Mr Laurent of Airbus Brisbane.

45 BRIG THOMAS: Yes.

LCDR GRACIE: And copy LTCOL Wheatley and Mr Ken Miller of the Sustainment Program.

BRIG THOMAS: Yes.

5

LCDR GRACIE: You provide Airbus with the AATES report and you say:

The DACM –

10

Director of Army Capability Management –

has outlined the requirement for the Commonwealth to conduct further assessment of HMSD V5.10 under operational test and evaluation conditions.

15

So that decision has been made.

BRIG THOMAS: Mm-hm.

20

LCDR GRACIE: And you're seeking further input. I'll just – because you were nodding there - - -

BRIG THOMAS: Yes. Yes, okay. Yes, I'm - - -

25

LCDR GRACIE: - - - I'll just take that as a yes. Just for the transcript, that's all.

BRIG THOMAS: Yes.

30

LCDR GRACIE: Why are you the person in this scenario tasked with obtaining that information from Airbus?

BRIG THOMAS: I'm not sure what information I'm asking for in that request.

35

LCDR GRACIE: Okay, all right. You ask them for the assistance of the conduct of the OPEVAL for certain documentations. And you ask them, in particular, if they can assist with the characteristics identified in the AATES report.

40

MS McMURDO: Excuse me, LCDR Gracie, can we give a copy of the document to the witness? Is that possible, please? You don't have it?

LCDR GRACIE: I ran around all lunchtime trying to get a copy and it hasn't yet been printed. I don't mind if – I know it's not convenient to your - - -

5 MS McMURDO: No, I think it's – the main thing is that the witness can see it.

LCDR GRACIE: Yes, but I don't mind - - -

10 MS McMURDO: Because he's obviously struggling.

LCDR GRACIE: I don't mind if the witness has a look at it here.

MS McMURDO: Yes.

15

LCDR GRACIE: Sir, as you're well aware with the – if you don't keep moving, it's going to - - -

MS McMURDO: Exhibit 26 - - -

20

LCDR GRACIE: The Commonwealth has come to the rescue.

MS McMURDO: Good. Thank you very much. Greatly appreciated, Ms Musgrove. Thank you.

25

LCDR GRACIE: Thank you.

Just familiarise yourself with that, sir, because it's – I appreciate you've provided your statement and may have overlooked this.

30

MS McMURDO: It's very hard for the witness to answer your questions without seeing a copy of it.

LCDR GRACIE: Absolutely. And I did try, ma'am, but - - -

35

BRIG THOMAS: Yes, done that. Thank you.

LCDR GRACIE: So if I just take you to para 4(d). So forget the typo with "angle of back".

40

For the purpose of further assessment of the HMSD angle of bank –
it should read –

characteristic identified in the AATES report and outlined in Ref E –

which I think is reference to the TERC –

5

request Airbus provide the Commonwealth by 6 September the most recent revisions and the following documents –

and you see there some seven documents listed.

10

BRIG THOMAS: Yes.

LCDR GRACIE: And you've identified in para 4 that the OPEVAL is planned to commence from 23 September '19 through to 30 June '20. I think the OPEVAL was completed around February 2020. Did you receive the documents that are there listed in para 5(d)(i)-(vii)?

15

BRIG THOMAS: I don't know if we received them.

LCDR GRACIE: And then you'll see in (e) there, subpara (e):

20

For the purpose of further assessment of the HMSD angle of bank characteristics, request from the French and German test authorities copies of HMSD V4.07 and 5.10 test flight reports.

25

Did you get those?

BRIG THOMAS: I'm not sure whether we received those, no.

LCDR GRACIE: But the purpose of your communication to Airbus was based upon the provision of information arising out of the AATES report, or the concerns there to provide for the OPEVAL testing or evaluation?

30

BRIG THOMAS: Further information, yes.

35

LCDR GRACIE: But that decision had already been made in terms of undertaking the OPEVAL prior to you sending that document?

BRIG THOMAS: Yes. So it was to support the OPEVAL, is my understanding.

40

LCDR GRACIE: Thank you. Thank you, ma'am.

MS McMURDO: So can you return that document now to the Commonwealth so it doesn't get lost. Thank you.

45

LCDR GRACIE: I've identified it as AH - - -

5 MS McMURDO: You have. You've identified it. You did.

LCDR GRACIE: We don't need to mark it for identification.

MS McMURDO: No.

10 LCDR GRACIE: Okay, thank you, ma'am. Thank you, sir.

MS McMURDO: Are there some further applications to cross-examine?
Yes.

15

<CROSS-EXAMINATION BY LTCOL HEALEY

20 LTCOL HEALEY: Hey, sir, it's LTCOL David Healey and I represent
the interests of BRIG John Fenwick.

BRIG THOMAS: Yes, sir, of course.

LTCOL HEALEY: I'm just going to take you back to your evidence. And
25 it's more so in terms of pressures you may have felt in terms of 5.10 and
moving it along. Do you recall that?

BRIG THOMAS: (No audible reply).

30 LTCOL HEALEY: Now, I understand in para 23 – and noting your role
back in 2014 was more the technical and acquisition side. Is that fair to
say?

BRIG THOMAS: Yes, that's correct.

35 LTCOL HEALEY: And I think you said in questioning that you believed
that the 5.10 TopOwl was in contract, even if not paid for before entering
the CCB. Is that correct?

40 BRIG THOMAS: I can't 100 per cent say that it was in contract. I think
it was in contract. Certainly, you know, it hadn't been paid for at that point
in time.

LTCOL HEALEY: Thank you, sir. And you said that the MRH project
45 had been complex and a project of concern?

BRIG THOMAS: Correct.

5 LTCOL HEALEY: Were there any other modifications made to the aircraft for Special Operations at that time?

BRIG THOMAS: There were other modifications that had been made.

10 LTCOL HEALEY: And I'm assuming – but can you tell me if they cost more money as well?

BRIG THOMAS: Yes. Yes, there was quite a number that were in contract, and most were of a higher value than this.

15 LTCOL HEALEY: And were some of those things cancelled, sir, because they no longer made - - -

BRIG THOMAS: Yes. The Taipan gun mount, for example, was one that we invested a significant amount of money in. That was cancelled.

20 LTCOL HEALEY: And this is my last question. Did you ever feel that there was pressure to agree to the version 5.10 TopOwl on the basis of funding?

25 BRIG THOMAS: No.

LTCOL HEALEY: Thank you. Those are my questions.

BRIG THOMAS: Sorry, I might just need to correct an answer. Your first question about if it was in contract and paid for.

30 LTCOL HEALEY: Yes.

BRIG THOMAS: What timeframe are you referring to there?

35 LTCOL HEALEY: This at the commencement?

BRIG THOMAS: At the commencement, no, it certainly wasn't paid for. But by the time we got to, say, incorporation approval or service release, there had been some elements that were paid for.

40 LTCOL HEALEY: Thank you. Those are my questions. Thank you, ma'am.

MS McMURDO: So just to clarify, I think that when you were originally asked about this, was about the period 21 June 2018, when version 5.10 was first presented to the Board. I think that's - - -

5 BRIG THOMAS: Yes. They were at development approval. No, we wouldn't have paid for anything at that point in time. We might've paid for the software licence, for example, very soon after that, no.

10 MS McMURDO: And I think you said originally that you may have signed a contract to procure it.

BRIG THOMAS: Yes.

15 MS McMURDO: So that there'd then be an obligation to pay for it. Is that right?

BRIG THOMAS: Some of those obligations would certainly be in place at that time when the contract was signed.

20 MS McMURDO: So you've said to LTCOL Healey that there were modifications which had been contracted for which you later then didn't proceed with and weren't paid for. So was the contract arrangement with Airbus flexible like that?

25 BRIG THOMAS: It would depend, for example - - -

MS McMURDO: Depend on the terms of the contract, I suppose.

30 BRIG THOMAS: Depends upon the terms of the contract. It would also depend upon the amount of work that had been done at a certain point in time.

MS McMURDO: So you would be expected to pay for work that had been completed?

35 BRIG THOMAS: Yes.

MS McMURDO: But then if it hadn't been completed, then it might be negotiable?

40 BRIG THOMAS: Yes.

MS McMURDO: Yes, okay.

45 BRIG THOMAS: And there were cases that we did that.

MS McMURDO: Sure. Anything arising?

LTCOL HEALEY: No, nothing arising.

5

MS McMURDO: Thanks, LTCOL Healey.

LTCOL HEALEY: Thank you, Chair.

10 MS McMURDO: Yes. COL Gabbedy.

<CROSS-EXAMINATION BY COL GABBEDY

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COL GABBEDY: Thank you, ma'am, sir.

Sir, I'm COL Nigel Gabbedy and I appear for GEN Jobson, Commander Army Aviation. I've just got a couple of quick matters. If I could take you back to paragraph 17 of your statement?

20

BRIG THOMAS: Yes.

COL GABBEDY: You refer to the MRH-90 project as being extremely complex and having a troubled history. Are you able to elaborate on that?

25

BRIG THOMAS: Yes. Broadly, the aircraft, when we procured it, was a very immature developmental platform. It meant that we hit a lot of problems introducing it into service. There were significant delivery delays. And there were numerous unexpected configurations that we needed to step through because of the complexity of the developmental process. So there were at least three, you could argue maybe four to five, different configurations that we delivered, and then there was a case of having to retrofit and bring all the aircraft up to the same configuration.

30

35

We ended up being one of the leaders worldwide in terms of rate of effort, or number of hours flown. So where we were expecting that there were going to be other nations that would have led the development, we often found that we were the first to identify a particular problem with a system and, therefore, we had to work through the solutions with industry to find those solutions.

40

Overall, the project should have been completed around 2014 to '15 but we were still delivering modifications to make it suitable for the Special Operations role in 2020.

45

COL GABBEDY: Did that cause capability problems?

5 BRIG THOMAS: Yes, it did. So there was effectively a capability gap that we had to manage. The S-70-A9 Black Hawk fleet, we had to extend that much beyond what we had originally intended, and the realisation of the MRH capability was much slower than was expected. Therefore, there was some capability gaps that were being carried as a consequence.

10 COL GABBEDY: Did you also encounter maintenance and operational issues?

15 BRIG THOMAS: An exceptionally maintenance-intensive aircraft, probably the most maintenance-intensive aircraft in the ADF Fleet. So we were around 45 maintenance hours per hour of flight which meant that our maintenance organisations were under significant pressure to maintain the fleet, and consequently we had much lower availability of aircraft to what was expected.

20 COL GABBEDY: Thank you. You referred to this briefly in your earlier evidence, you use a phrase at paragraph 17 which is “project of concern”. That phrase has a particular meaning, does it?

25 BRIG THOMAS: Yes, it does. It’s a specific list of projects that mean that project is underperforming, and it gets specific attention from the Minister. There’s sort of normally a handful – a maximum of projects that are on that list and it is normal for a project to go on that list to be remediated and to come off the list. The MRH went on the list in 2011 and was not removed from the list until it was withdrawn from service.

30 COL GABBEDY: When you say “it’s usual that there might be a handful of projects on that list”, is that a handful of projects out of thousands or tens of thousands?

35 BRIG THOMAS: Out of hundreds.

40 COL GABBEDY: Thank you, sir. Just looking at paragraph 24 and following, and I’m looking at the testing and approvals that were occurring with MRH-90 version 5.10. Am I correct in understanding that at the time of the AATES test, you had German testing which had approved the system, you had French testing which had approved the system, and you’d had an AMAFTU test which has approved the system, and then AATES said, “No, it’s ambiguous and unacceptable”?

45 LCDR GRACIE: Can I object?

COL GABBEDY: Sorry?

5 LCDR GRACIE: Reference to approving a system is not what the witness said.

MS McMURDO: It's very loose language. It's very loose language.

10 COL GABBEDY: Let me tighten the language. Okay, I apologise. Well, if I rephrase that, there'd been German and French testing of compliance?

BRIG THOMAS: Correct.

15 COL GABBEDY: And had version 5.10 passed that compliance testing?

BRIG THOMAS: Yes, it had.

20 COL GABBEDY: There's a reference to the French testing in paragraph 24.

MS McMURDO: But it was of a slightly different - - -

BRIG THOMAS: I can explain that a little bit more in detail.

25 COL GABBEDY: It might be easier if it were coming out of your mouth than mine, sir.

30 BRIG THOMAS: So two elements to the HMSD certification, there was the certification of the firmware, so from 4 to 5, and that is effectively the firmware within the electronic unit that interfaces with the aircraft and generates then the symbology. That part of the upgrade was certified by the French national authority. Then there is the software element of it. So the bits after the 4 and 5, so the version 10, is the actual software version. The software version was certified by the German national airworthiness
35 authority.

COL GABBEDY: Thank you. I misunderstood.

40 BRIG THOMAS: It's complicated.

AVM HARLAND: Was that software version the thing that changed the symbology. So did the French version 5 firmware upgrade change the symbology to what we're familiar with in version 5.1?

BRIG THOMAS: No, but it did enable some of the symbology. So there was another version of the symbology that I understand was considered, 4.07, so that would have been a symbology set that did not have the distance to run. But it would have happened on the earlier version of the electronic unit. Therefore, the electronic units wouldn't have needed an upgrade. That was decided not to proceed with that version because of the distance to run requirement. That required the upgrade to the firmware on the electronic unit to 5 but the symbology, so the generation of the symbology happens, as my understanding, in the electronic unit. The actual way it's represented is the software.

AVM HARLAND: So correct me if I'm wrong, but the impression that I get from that is that the French approval was the firmware approval which didn't include a symbology change.

BRIG THOMAS: Correct.

AVM HARLAND: Whereas the German approval approved the firmware and the symbology change to what we're familiar with with version 5.1 ADF?

BRIG THOMAS: Yes. So if you're talking symbology software, that was the German approval that approved it.

AVM HARLAND: Okay, thank you.

MS McMURDO: So the off-axis concern that we have with the symbology only arose in the 5.10?

BRIG THOMAS: Yes.

MS McMURDO: Yes, thank you.

COL GABBEDY: Sir, I think an aspect of version 5.10 was this distance to run information it provided; is that right?

BRIG THOMAS: Yes, that's correct.

COL GABBEDY: Are you aware of any particular need for that information, or any reason why that was seen as a desirable characteristic to have?

BRIG THOMAS: It was a feature that was considered desirable for the Special Operations approach.

45

COL GABBEDY: So at the time of the AATES findings, was it an option to simply say, “We’ve got this other information. We’re going to do nothing. We’re simply going to accept this product into service”?

5 BRIG THOMAS: Yes, that was always an option, so accept 5.10 into service.

COL GABBEDY: Yes, so could you have done that without the OPEVAL I suppose is the crux of my question?

10

BRIG THOMAS: Process-wise, yes, I think you could, but I don’t think without a further step you could complete a risk assessment to say that you’ve fully considered and characterised the system.

15 COL GABBEDY: So the OPEVAL was a sensible risk assessment step to take?

BRIG THOMAS: Yes, I think so.

20 COL GABBEDY: In your opinion, that was a perfectly appropriate step to take?

BRIG THOMAS: Yes.

25 COL GABBEDY: All right, thank you.

MS McMURDO: Is that because of the human machine interface that arises out of the changes?

30 BRIG THOMAS: Yes, ma’am. So it’s a system that the pilots are using. The benefits and the risks hadn’t been fully assessed at that point because the AATES testing had been cut short. So there was a requirement to fully assess that.

35 MS McMURDO: From an operational perspective?

BRIG THOMAS: Yes.

MS McMURDO: Thank you.

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COL GABBEDY: Thank you very much, sir.

MS McMURDO: Yes.

45

<CROSS-EXAMINATION BY LCDR HAY

5 LCDR HAY: Good afternoon, sir. My name's LCDR Mark Hay.
I appear representing the interests of D19. Do you have the pseudonym numbers?

BRIG THOMAS: No, I don't.

10 LCDR HAY: Can I just ask you, sir, do you know D19?

BRIG THOMAS: Yes, I do.

15 LCDR HAY: Do you know him well?

BRIG THOMAS: Moderately well.

LCDR HAY: Can I just ask you, how long have you known D19 for?

20 BRIG THOMAS: More or less for probably 10 years.

LCDR HAY: Your contact with him, is that primarily or mostly in the Aviation Branch, Army Aviation?

25 BRIG THOMAS: Yes, it is.

LCDR HAY: Do you have any views about D19 in terms of his command philosophy? Do you know how he interacts with his Troop's morale, welfare, that sort of thing?

30 BRIG THOMAS: Look, I was not in his direct Chain of Command whilst he was in command, so I've only observed it remotely and I would say not closely. I know him as an individual and I know him to be very forthright, honest, approachable. But I haven't seen any interacting with his unit.

35 LCDR HAY: Have you yourself observed him ever to be reckless in terms of the welfare or morale of his people?

40 BRIG THOMAS: No, I haven't, and I wouldn't expect him to be.

LCDR HAY: Yes, thank you. Thank you.

45 MS McMURDO: Any other applications to cross-examine? Yes, Ms Musgrove.

<CROSS-EXAMINATION BY MS MUSGROVE

5 MS MUSGROVE: Sir, my name is Musgrove, and I appear for the Commonwealth. If I can take you to paragraph 24, please.

BRIG THOMAS: Yes.

10 MS MUSGROVE: And it's the sentence that starts "NHI would conduct an analysis". Do you see that right down the bottom of the page? It's on - - -

BRIG THOMAS: Sorry.

15 MS MUSGROVE: - - - page 4 of your statement.

BRIG THOMAS: Yes. Wrong page. Yes, "would conduct analysis".

20 MS MUSGROVE: The last sentence.

BRIG THOMAS: Yes.

MS MUSGROVE: Just clarify for me, please, who are NHI?

25 BRIG THOMAS: NHI is the Nato Helicopter Industries. So they're the original equipment manufacturer of the helicopter.

MS MUSGROVE: And you say there that:

30 *NHI would conduct an analysis of the configuration difference between German and Australian aircraft configuration to confirm compliance verification.*

35 Is that correct?

BRIG THOMAS: Yes, that's correct.

MS MUSGROVE: What does that actually mean?

40 BRIG THOMAS: So there are multiple aircraft configurations for each of the different customers of the NH90. The baseline configuration for the Australian MRH-90 was the German TTH, Troop Transport Helicopter, and our configuration was defined through any differences to that German configuration. So the certification had occurred against the German TTH.

45

5 The engineers would have gone and looked at all the configuration differences between the Australian TUAU as it was called – T-U-A-U – which was our configuration, how it was referred to. They would've gone and looked at all those configuration differences and done an analysis about whether that configuration difference could have an impact upon that configuration change.

10 MS MUSGROVE: And was that done then to determine whether or not the differences in configuration would invalidate the previous certification by the Germans?

BRIG THOMAS: Yes, that's correct.

15 MS MUSGROVE: And to your understanding, was there no invalidation of that previous certification?

BRIG THOMAS: That is my understanding.

20 MS MUSGROVE: Are you familiar with the term "sunk costs"?

BRIG THOMAS: I am indeed.

25 MS MUSGROVE: What do you understand that to mean?

BRIG THOMAS: Sunk costs are costs that are irrecoverable, and there's a common fallacy known as a sunk cost fallacy where, you know, people base decisions upon past costs rather than what the future costs and benefits are.

30 MS MUSGROVE: Were you responsible for managing the contract for payment in relation to the upgrade to version 5.1?

BRIG THOMAS: Yes, I was.

35 MS MUSGROVE: Were sunk costs a consideration for you in your decision-making in relation to version 5.1?

BRIG THOMAS: No, they weren't.

40 MS MUSGROVE: I have no further questions. Thank you.

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

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COL STREIT: No re-examination.

MS McMURDO: Thank you very much. We greatly appreciate your assistance to the Inquiry. You're free to go.

5

BRIG THOMAS: Thank you, ma'am.

MS McMURDO: Thank you.

10

<WITNESS WITHDREW

MS McMURDO: COL Streit, the next thing is to run a video. Did you want a short – I was going to offer you a short break, but I'm told we do need one.

15

COL STREIT: I was going to request one, thank you, just to make sure everything's working.

20

MS McMURDO: Yes. So we'll have a 10-minute break?

COL STREIT: Thank you.

25

MS McMURDO: Is sufficient? Yes.

HEARING ADJOURNED

30

HEARING RESUMED

MS McMURDO: Yes, COL Streit.

35

COL STREIT: Thank you, Ms McMurdo. Shortly I'll seek your permission to play the video recording of the view conducted by the Inquiry on 21 October 2024 in an area adjacent to Proserpine Airport. For completeness, I also remind Counsel representing of the direction that you made, Ms McMurdo, on 10 October 2024 in relation to the conduct of the view, and that in essence the view is not – well, it is not evidence; it is information that assists the Inquiry understand evidence given by witnesses or documents that are tendered before the Inquiry.

40

45

I understand the recording is approximately 40 minutes. With your

permission, I'll ask that be played.

MS McMURDO: Yes, thank you.

5

RECORDING PLAYBACK

MS McMURDO: Yes, COL Streit. So are you tendering that?

10

COL STREIT: Yes, thank you. I tender the electronic recording of the view.

MS McMURDO: That will be Exhibit 115.

15

COL STREIT: Which can now be stopped.

#EXHIBIT 115 - ELECTRONIC RECORDING OF THE VIEW

20

MS MUSGROVE: Sorry, there's just one thing. I'm sorry to just raise this. I'm sorry, my friend indicated that it's – sorry, it's not evidence, and so I just raise the question as to whether or not it requires an exhibit number, or whether it should actually just have an MFI reference?

25

MS McMURDO: No, we're not a court. I can receive material in any form.

30

MS MUSGROVE: Thank you, your Honour.

MS McMURDO: It's not evidence. It's true it's not evidence, but we are still able to act on it.

35

MS MUSGROVE: Certainly.

MS McMURDO: It's information that the Inquiry can act on. Yes, thank you.

40

MS MUSGROVE: Thank you. I might seek some clarification, if it's not evidence – the Inquiry acting on it. I'll seek that, with convenience.

MS McMURDO: Well, under the Act, this Inquiry can receive information and act on information, and the formal Rules of Evidence don't apply.

45

MS MUSGROVE: Thank you.

MS McMURDO: Yes, thank you. Yes, COL Streit.

5

COL STREIT: Thank you. And just for clarification of Counsel representing, the recording of an exhibit number for an item that is a view – and I've been very clear that is an item that is a view and there's indeed a direction made by the Chair in relation to that – it's really for the balance of convenience and to ensure that the Inquiry has an accurate recording of the information, if it's a view, and the evidence that's being presented to it in the one consolidated record. Thank you.

10

MS McMURDO: Yes, COL Streit. So is that all you have for us today?

15

COL STREIT: Yes, it is. We have three witnesses tomorrow, and I anticipate tomorrow might be a slightly longer day. The time is just approaching 4 pm. I don't think in my assessment – and I'm looking at MAJ Chapman – that we would need to start early. We could start at 10 o'clock and have a level of confidence we'll complete that evidence tomorrow.

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MS McMURDO: Excellent. All right then, we'll adjourn now until 10 o'clock tomorrow morning. Thank you.

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**PUBLIC INQUIRY ADJOURNED UNTIL
TUESDAY, 25 FEBRUARY 2025 AT 1000**