



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

GUIDE FOR FAMILY AND FRIENDS

The scope of the Inquiry

One of the tasks of the IGADF is to inquire into the deaths of members of the Defence Force where the tragedy appears to have arisen out of, or in the course of, the member's Defence service.

The IGADF has set out the scope of the Inquiry in a document referred to as "the Directions", which sets out the matters which the Assistants IGADF are to examine. A copy of the Directions can be found [here](#).

The key reason for the Inquiry is to investigate what caused the MRH-90 helicopter, with Captain Danniell Lyon, Lieutenant Maxwell Nugent, Warrant Officer Class Two Joseph (Phil) Laycock CSM and Corporal Alexander Naggs on-board, to crash into the sea near Lindeman Island on 28 July 2023.

To do this, the Assistants IGADF will gather information about the circumstances of the deaths and evaluate whether Defence policies and procedures were followed and, if not, why not. The Assistants IGADF can then make recommendations on how policy and procedures within the Defence Force can be improved, to ensure that a similar tragedy does not occur again.

The IGADF will provide a copy of the Inquiry's final report to the Chief of the Defence Force.

The role of the Assistants IGADF

The IGADF has appointed the Honourable Margaret McMurdo AC, a former President of the Court of Appeal, Supreme Court of Queensland, to lead the Inquiry with help from Air Vice-Marshal Joe Iervasi AM CSC, a senior Air Force officer with considerable aviation and air safety experience who has recently retired from full-time service. Together, they will be making the findings and recommendations in the Inquiry.

Please note that the Inquiry is not conducting a criminal or disciplinary investigation nor can it determine civil liability.

The IGADF has also appointed Colonel Jens Streit and Flight Lieutenant Alexandra Rose to the role of "Counsel Assisting". They are both barristers and Reserve Legal Officers and are responsible for presenting the evidence in the Inquiry.

Other Assistants IGADF appointed to the Inquiry include Captain Jo Bastian RAN, who is the Inquiry's family and witness support officer, and Group Captain Simon Braun MBE, who is in charge of the administrative arrangements required to run the Inquiry.

Concurrent inquiries

There are other inquiries being conducted into the same incident that occurred on 28 July 2023. Those inquiries are separate to, and distinct from, the IGADF Inquiry.

While this Inquiry may refer to evidence and findings in those Inquiries, it will make its own findings on the evidence it receives.

Conduct of the Inquiry

Parts of the Inquiry might be conducted in private, which means members of the public will probably not be able to observe certain evidence being given to the Inquiry. One reason for this is because that part of the evidence refers to Australian Government classified documents. Other parts of the Inquiry will be conducted in public, which means there will be public hearings where witnesses are called to give evidence. These proceedings can be watched by members of the public in person or on the live stream.

The Inquiry's hearings are not like going to court and will not be adversarial. The hearings will follow an investigative process which means that Ms McMurdo and Air Vice-Marshal Iervasi may be actively involved in asking questions of witnesses during hearings.

The rules of evidence do not apply in the Inquiry which means the usual restrictions on the admission of evidence that apply in court cases in Australia do not apply to the Inquiry.

A rule that does apply is "procedural fairness". This rule means that the Assistants IGADF will act fairly to all parties throughout the Inquiry and if the Inquiry thinks a person may have done something wrong, that person will have a chance to put their side to the Inquiry.

The role of witnesses

The Assistants IGADF will require certain persons to give evidence to the Inquiry if they think they have relevant information about the matters being examined by the Inquiry.

If you are asked to give evidence to the Inquiry, please refer to the *Witnesses – Frequently Asked Questions* [factsheet](#).

You can also email Counsel Assisting at igadf.mrh-90inquiry@defence.gov.au if you think you have information relevant to the Inquiry.

Potentially affected persons or entities

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

A potentially affected person or entity may be granted leave to appear at the public hearings relevant to their interests, and if they have permission from the Inquiry, they will be able to ask questions of other witnesses and to make statements to the Inquiry.

The role of legal representatives

Any witness in the Inquiry can be represented by a lawyer.

A potentially affected person or entity does not have to be represented by a lawyer.

If a person engages a lawyer to represent them, then all communications about the Inquiry will go through their lawyer.

Australian Defence Force (ADF) Reserve Legal Officers have been appointed to represent the interests of Captain Lyon, Lieutenant Nugent, Warrant Officer Class Two Laycock CSM and Corporal Naggs in the Inquiry. Those legal representatives will be able to provide more information about their role to family members.

Leave to appear

“Appearing” at a hearing (other than as a witness) means actively participating in some or all parts of the hearing, or having a legal representative participate on a person’s behalf. For example, someone with leave to appear may ask, or may tell their legal representative to ask, some witnesses questions. This can only be done with the permission of the Inquiry.

If someone wishes to participate in the hearing, they have to seek “leave to appear” at the start of the hearing. They usually only have to do this once. Ms McMurdo will decide whether to give a person leave to appear, i.e. give them permission to participate in the proceedings.

A person will only be granted leave to appear if they have a “sufficient interest” in the subject matter of the Inquiry. “Sufficient interest” is not defined but an example could be that someone thinks they could be adversely affected by the matters being examined by the Inquiry. Ms McMurdo will consider each application on a case by case basis.

If someone wishes to seek leave to appear, they will have to set out why they say leave should be granted, in writing and in advance, to Counsel Assisting via igadf.mrh-90inquiry@resources.defence.gov.au. The specific requirements when applying for leave to appear are set out in the Inquiry’s Practice Note No 1/2024, which can be found [here](#).

There is no obligation for family members to participate in the hearings directly or to have their own legal representation. Family members can talk to the ADF Legal Officer representing their deceased family member’s interests or to Counsel Assisting if they want certain evidence to be presented or tested.

Live stream

The public hearings will be live streamed. This means that you do not need to attend the hearings in person, unless you are a witness. You may prefer this option so you can watch the proceedings from your own home or from another location with other people.

A “live stream” means that the hearings will be video recorded and then uploaded, in real time, onto the IGADF’s website where you can access them on your device.

You cannot record, transmit or distribute the audio or video of the live stream without the permission of the Inquiry, in line with the direction in the Inquiry’s Practice Note No 1/2024, which can be found [here](#). It is an offence to do so.

You can access the live stream [here](#).

Evidence

Evidence can include the oral testimony given by witnesses, information in written statements or documents, or even objects. Counsel Assisting will “tender” evidence at the public hearings. That means the evidence will be kept and considered by the Inquiry.

If someone “objects” to the tendering of the evidence, the Inquiry will listen to their reasons and then decide whether to admit the evidence.

Ordinarily, evidence to be presented at a hearing will not be published or provided in advance.

A person or entity who is legally represented before the Inquiry may make a written application to Ms McMurdo for access to documents or objects that Counsel Assisting may tender during a hearing.

During hearings, Counsel Assisting will ask witnesses questions about the information in their statements. Ms McMurdo and Air Vice-Marshal Iervasi may also ask a witness questions at any time. The lawyers representing other parties or other witnesses involved in the hearings may also ask the witnesses questions about their evidence, if the Inquiry has given them permission.

Family statements

A family member of a deceased person may wish to tell the Inquiry something about their loved one without being questioned by anyone. At the end of the public hearings, family members are sometimes able to read out a statement about their loved one. Statements like this are not evidence and cannot affect the Inquiry’s findings.

If a family member is thinking about giving a statement like this, they can speak to their own lawyer or the lawyer appearing for the interests of their deceased relative. The lawyer will then discuss the request with Counsel Assisting.

Findings and recommendations

After all the evidence has been produced to the Inquiry and everyone has made their submissions about how the Assistants IGADF responsible for the final report should interpret the evidence, the Assistants IGADF will draft a report setting out the Inquiry’s preliminary findings and recommendations.

If the Assistants IGADF think they may make adverse findings against someone they will give that person or their lawyer, if they have one, the opportunity to make submissions about their draft findings. The Assistants IGADF responsible for the final report will consider any material and submissions received and, if they agree with the submission or parts of it, will make changes to the Inquiry’s report. The Assistants IGADF will then present the Inquiry’s final report to the IGADF.

Disclosure of the final report

A person who is adversely affected by the findings, family members of the deceased members, the legal representatives for the deceased members and certain persons and entities in Defence who are responsible for implementing the recommendations may receive a copy of the final report or relevant parts of it.

The IGADF will decide if anyone else can read all or part of the report.

The IGADF will also consider whether to publicly release all or part of the report.

Welfare support for families

The IGADF recognises the nature and impact of inquiries into the deaths of Defence members on all persons involved, especially families of the deceased persons. Captain Jo Bastian RAN is available to speak to family members about the welfare supports available.

Family members and friends can also access the following supports at any stage during the Inquiry:

- **Lifeline Australia** – call 13 11 14 (available 24/7). Lifeline is a national charity providing all Australians with access to 24-hour crisis support and suicide prevention services. www.lifeline.org.au.
- **Employee Assistance Program** – call 1300 OUR EAP (1300 687 327). Free, confidential and professional counselling for Defence APS employees, Australian Signals Directorate employees, ADF Reservists, ADF Cadets, Officers and Instructors, including immediate families, and workplace supervisors/managers.
- **Defence Family Helpline** – call 1800 624 608 (available 24/7) to speak to human services professionals, including social workers and psychologists. For Defence APS employees, ADF members and their families. www.defence.gov.au/adf-members-families. Links also to the **ADF Health and Wellbeing Portal**.
- **Open Arms** – call 1800 011 046 to access for counselling for current ADF members, veterans and families including a free-call all-hours crisis telephone service as well as face to face support. Open Arms is not part of Defence. www.openarms.gov.au. You can also call **Safe Zone Support** on 1800 142 072 (available 24/7) for free, anonymous counselling.
- **Department of Veterans' Affairs** – call 1800 555 254. For current or former serving ADF members and families.
- **All-hours Support Line** – call 1800 628 036 (available 24/7) for mental health advice and referral. For ADF member and their families.