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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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Senior Sergeant R Callaghan, Detective Inspector E Novosel,
Acting Inspector A Dyer, and Senior Sergeant C Troeger
MR A BERGER, with MS K MUSGROVE, representing
the Commonwealth**

1000, TUESDAY, 18 JUNE 2024

DAY EIGHT

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	24/06/24	(Transcription)

EXHIBIT LIST

Date: 18/06/2024

Number	Description	Page No
	EXHIBIT 1 - BUNDLE OF SUBMISSION DOCUMENTS	1001
	EXHIBIT 23 - STATEMENT FROM MAJ MICHAEL ALAN GALLATLY	1041
	EXHIBIT 24 - STATEMENT FROM DETECTIVE INSPECTOR EMMA JUDY NOVOSEL DATED 11/06/24	1125

WITNESS LIST

Date: 18/06/2024

Name Of Witness	Page No.
HEARING ADJOURNED	1027
HEARING RESUMED	1027
HEARING ADJOURNED	1039
HEARING RESUMED	1040
MAJ MICHAEL ALAN GALLATLY, Affirmed	1040
EXAMINATION-IN-CHIEF BY FLT LT ROSE	1040
CROSS-EXAMINATION BY LCDR GRACIE	1095
CROSS-EXAMINATION BY LCDR TYSON	1102
CROSS-EXAMINATION BY COL GABBEDY	1105
CROSS-EXAMINATION BY SQNLDR NICOLSON	1113
CROSS-EXAMINATION BY MR BERGER	1118
WITNESS WITHDREW	1119
HEARING ADJOURNED	1120
HEARING RESUMED	1120
DETECTIVE INSPECTOR EMMA JUDY NOVOSEL, Affirmed	1122
EXAMINATION-IN-CHIEF BY MR PRATT	1122
CROSS-EXAMINATION BY COL STREIT	1125
WITNESS WITHDREW	1137

MS McMURDO: I understand there's an application this morning.

5 COL STREIT: Yes. Good morning, Ms McMurdo. The application is being brought by the Commonwealth. Mr Berger KC is here to make that application on behalf of the Commonwealth, and I'm prepared to appear after him, if that's convenient.

MS McMURDO: Yes, thank you, COL Streit.

10 MR BERGER: May it please the Inquiry. Berger, B-e-r-g-e-r, appearing with Ms Musgrove for the Commonwealth.

MS McMURDO: Yes, Mr Berger.

15 MR BERGER: Unless I can better assist the Inquiry in another way, I propose to make the Commonwealth's application by firstly saying something briefly about what our application does not seek to do, because there appears to be some misconception about that, then outline specifically what our application seeks and the ruling we seek from the
20 Inquiry, and the reasons for that. I hope not to take more than about 15 minutes to outline those matters for the Inquiry.

At the outset I note, in making the application, we rely on the letter of the
25 Chief of Army, to the Inquiry, of 17 April 2024, and the statement of GPCAPT Smith of 6 June 2024, as well as our written submissions of 7 June 2024.

Our application has refined slightly from that set out in our written
30 submissions, and I'll explain to the Inquiry, in a moment, exactly how that has changed.

But at the outset we wish to make very clear that the importance and
independence of this Inquiry is absolutely recognised and respected by the
Commonwealth, and it does not seek to undermine either of those things
35 in any way whatsoever. It also recognises that this Inquiry will make its own findings in relation to the matters the subject of its Terms of Reference. And whilst it might be assisted by the work of the DFSB investigation, and indeed other parallel investigations, it will decide for itself what use to make of the information gathered by those parallel
40 investigations and what conclusions it reached.

We also wish to make very clear that the Commonwealth understands the
need for the families and friends of those who died whilst serving their
country to understand why they died as soon as possible, and it also shares
45 this desire.

5 This is not, I wish to make perfectly clear, an application to shut down the Inquiry, or prevent it from conducting hearings or otherwise inquiring into matters relating to the tragedy that occurred on 28 July last year. This is also not an application to prevent the Inquiry investigating matters that have been investigated by the DFSB. And it is not an application that seeks to necessarily try and delay the ultimate conclusion of this Inquiry.

10 The Commonwealth's application is that prior to the DFSB's final Air Safety Investigation report being concluded and provided to this Inquiry, the Inquiry will not seek to obtain or adduce evidence relating to the issues set out in subparagraphs 28(a) to (h) of the statement of GPCAPT Smith insofar as they relate specifically and proximately to the actions of either the four deceased or another person involved in the events of 28 July.

We do not seek to prevent this Inquiry continuing to investigate - - -

20 MS McMURDO: The four deceased or any other person? Would you just give me that again, please?

MR BERGER: Yes. The four deceased or another person directly involved in the events of 28 July last year.

25 MS McMURDO: What does that mean?

30 MR BERGER: So what that means, firstly, we do not seek to delay the investigation of issues relating to aircraft design, certification, engineering and maintenance, crash survivability, aircrew training and standardisation. Nor do we seek to delay the investigation of the issues referred to in 28(a) to (h) of the statement of GPCAPT Smith in general terms. But we do seek to delay the investigation of those matters if they are capable of suggesting one of the deceased, or someone else, may have directly contributed to the tragedy that occurred.

35 We are not seeking to prevent the Inquiry investigating those matters. That will obviously need to occur, and will be an important part of the Inquiry. Our application seeks to ensure that the investigation of those important topics occurs after the report has been provided so it can occur in an efficient, effective and trauma-informed way. And I'll explain to the Inquiry why we say that will occur if it's done in this way.

40 MS McMURDO: I still don't understand exactly the distinction you're making. So it's everything that you're asking for originally in your application, but now you're limiting all that to the extent that concerns or

relates specifically, or proximately, to the four deceased, or any other person directly involved in the events of 28 July. Do you mean that's all the people flying that evening in the sortie on the four aircraft, or is it wider than that?

5

MR BERGER: Well, it may be wider than that, Ms McMurdo. Firstly, I note that (i), (j) and (k) of 28 of GPCAPT Smith's statement are no longer part of our application. In practical terms - - -

10 MS McMURDO: Just look at your submission. So that's what I've been working on. Your submission is what you asked from paragraph 14.

MR BERGER: Yes.

15 MS McMURDO: "Until further Direction of the" – well, have you written out exactly what you're asking for because you've now changed it? So is it still:

20 *Until further Direction of the Inquiry, the hearings held by the Inquiry prior to the receipt of the final Defence Flight Safety Bureau report into the MRH-90 Taipan crash will not seek to obtain or adduce evidence relating to any of the following issues:*

25 *(a) Crew and/or individual actions.*

25

That's still there?

MR BERGER: That is still there, subject to the limitation - - -

30 MS McMURDO: So (b) to (k) is all in there still; is that right?

MR BERGER: Everything up to (h) is, Ms McMurdo.

35 MS McMURDO: Up to (h), Aviation. So you're taking out "aircrew training and standardisation".

MR BERGER: (i), (j) and (k) are no longer part of our application.

40 MS McMURDO: They're out, and so now it reads – tell us exactly how it reads. You haven't actually - - -

MR BERGER: We can provide a revised draft Direction to the Inquiry in a moment, but (a) to (h) are still part of our application.

45 MS McMURDO: Yes, okay.

MR BERGER: But in a more limited way.

5 MS McMURDO: So after “risk management”, then your request is what?

MR BERGER: Insofar as those topics relate specifically and proximately to the actions of either the four deceased - - -

10 MS McMURDO: Just a minute. Yes.

MR BERGER: - - - or another identified person involved in the events – identified or identifiable person involved in the events of 28 July 2023. So that’s the ruling we seek. In practical terms, we would need to engage with those assisting the Inquiry in relation to specific witnesses. So what 15 it means for this tranche of the hearing block is of the 13 witnesses that are proposed to be called, we would have concerns about two of them, namely D15 and D20, being called. For reasons I will outline in a moment, we would prefer they not be called at this stage. It may be they need to be called down the track. It may transpire they don’t, but if they 20 do, so be it.

If the Inquiry is against us in relation to that and does decide to call them notwithstanding the matters we raised, then we would seek to limit the questions that are asked of them to prevent anything trespassing into the 25 ruling we seek. The advantage of not calling them at this stage is it would reduce the need to bring people back again, and for reasons I’ll outline, that is one of the Commonwealth’s concerns.

MS McMURDO: The advantage of calling them at this stage is that it 30 might lead to other evidence coming forward.

MR BERGER: It may. And I noted the Inquiry’s specific comments about that yesterday, and I will address those in just a moment if that would be of assistance. The Inquiry will have seen the functions and 35 resources available to the DFSB. They are set out in the statement of GPCAPT Smith. I won’t labour those. The Inquiry will have noted that the DFSB is set up to provide an independent investigative capability that is aligned to the International Civil Aviation Organisation, or ICAO, standards and recommended practices. 40

The Inquiry can see that in paragraph 6. The Inquiry can see it does not seek to apportion blame or determine liability. As set out in paragraph 8, it follows a structured process to gather information, determine what active failures occurred, and analyse why they occurred. 45

5 As set out in subparagraph 8(e), it seeks to identify the systemic factors that contributed to an event. Paragraph 8(e), it is set up to be fully independent and impartial. And, significantly, it is set up to ensure various bodies make available subject-matter experts to assist the Aviation Safety Investigation Team.

10 The importance of the DFSB's investigation to this Inquiry was adverted to yesterday by Counsel for CAPT Lyon, who submitted that the fact this Inquiry does not have available to it its own independent airworthiness expert, means the Inquiry, and those appearing in it - - -

15 MS McMURDO: Well, we haven't called one yet because obviously we're hoping to see the DFSB report before we need to look at that. But why couldn't we have one available, if needs be?

MR BERGER: Well, you could.

20 MS McMURDO: I mean, it's not – it's less desirable, obviously, because we don't want to spend government resources that don't need to be spent. But there's no reason why we couldn't.

25 MR BERGER: There's not. But there is an expert investigation that is occurring and its report is expected by the end of this year. It would, in our - - -

MS McMURDO: Six months later than it was supposed to be due. And why is it taking so long? I mean, we've read the material. The staff shortages, and concurrent investigations.

30 MR BERGER: And the incredible complexity of the investigation as explained in the statement. It's said to be one of the most complex – or the most complex investigation that has occurred of this kind.

35 MS McMURDO: Well, are enough resources being provided to them? If they've lost staff, trained staff, can they get them from somewhere else? Are they being properly resourced?

40 MR BERGER: Well, the Inquiry would appreciate it's a highly specialised field and one can't just go to Seek and seek some more people to undertake such complex investigations. But the importance of this report being provided as soon as possible is well understood. It is an extremely eagerly awaited report, and everybody understands that. And those who can do something about this will be doing their utmost to ensure it is provided as soon as possible. And the Inquiry should have no

doubt about that. This is one of the most eagerly awaited reports in recent military history in this country, and everybody is acutely aware of that.

5 AVM HARLAND: A question regarding concurrence, and running sequential reports: is this Inquiry report – sorry, the DFSB report for the Lindeman Island accident being prioritised above the ditching report from March 2023?

10 MR BERGER: I don't have specific instructions about that. I can seek to obtain those.

15 AVM HARLAND: Yes. Because we're told that, due to resourcing, DFSB can no longer run concurrent investigations, and that they would now be sequential. So my question really relates to what is the priority?

20 MR BERGER: I don't know the answer to that question, but I will seek those instructions. Counsel for CAPT Lyon noted that those appearing in this Inquiry are likely to be informed and assisted by the DFSB's final report. An informed, targeted, and ultimately helpful cross-examination would, in relation to certain topics, we submit, be difficult without it.

25 An Inquiry really seems to have two choices available to it. The first option would be to crack on regardless, and conclude this Inquiry as quickly as possible, without the benefit or assistance of the DFSB report and the expertise that the conclusion of that report would provide by way of assistance to those in this room. If that was to occur, however, we respectfully suggest a significant question mark would hang over the conclusions reached by this Inquiry, the utility to the ADF, and the extent to which closure would properly be provided to those who lost loved ones.

30 The second option is to await the final DFSB report before concluding this Inquiry, so that its investigations can be factored into the analysis this Inquiry makes and the recommendations it provides. Now, if that second option is taken, we respectfully suggest the best approach is to delay investigating matters directly and proximately related to the actions of the deceased or another person involved in the events of 28 July until the report is received, for following reasons.

40 Firstly, awaiting the report will enable the Inquiry to be better informed in deciding which witnesses need to be called, and reduce the risk of witnesses being called unnecessarily. It will also reduce the risk of the need to recall witnesses. And otherwise, witnesses may need to be recalled to either clarify their previous evidence in light of the DFSB report – “What, if anything, does this change for you? What about this? What about that?” The DFSB report may also indicate further or different

lines of questioning that this Inquiry wants to pursue that, again, could see the need to recall witnesses.

5 And when dealing with a high-profile tragedy like this, we respectfully suggest a trauma-informed approach should seek to reduce the risk of calling any witness or needing to recall a witness unnecessarily, because the toll involved in coming before this Inquiry and giving evidence about the matters it is inquiring into should not be underestimated.

10 It will also enable Counsel Assisting, and those appearing for interested parties, to question the witnesses who are called in a more informed and targeted manner, which will assist the Inquiry to reach the right outcomes as efficiently as possible.

15 It would also reduce the potential trauma for witnesses and others involved in matters the subject of this Inquiry. For example – and this is only a hypothetical – if the DFSB final report was to uncover strong evidence suggesting the crash was caused by the helmet-mounted sighting display, people involved in mission planning, training standards, sleeping
20 arrangements, or fatigue, may either not be required, or may be questioned in a different way to what would occur if it was reasonably apprehended these things may all have potentially contributed to the crash. Or if the DFSB final report was to uncover strong evidence suggesting the crash was caused by a mechanical failure – and we note the Inquiry has the
25 preliminary report that doesn't suggest that at this stage, but the final report may discover such evidence, potentially – then the possibility of witnesses being questioned in a way that is capable of suggesting pilot error might be avoided or reduced.

30 We note, for example, there has been a lot of questioning and cross-examination – as we read the transcript – about the heavy-left formation and the role of various aircraft in that formation. Now, that could suggest to some of those involved in the incident, as well as their colleagues and loved ones, that those responsible for aviating the four
35 helicopters might, in some way, have been responsible for what went wrong. And if it transpired that this had nothing whatsoever to do with the crash, that would be a terrible shame, and a terrible burden, to have inflicted unnecessarily on those involved.

40 And we submit it's certainly easy to pay lip service to a trauma-informed approach, but we respectfully suggest the active and effective implementation of it requires proper and genuine consideration of ways to reduce the risk of this occurring.

We note, as I indicated a moment ago, the Inquiry's concerns about preventing further material and evidence coming forward. We say three things in response to that. Firstly, this Inquiry, and what it is examining, is highly publicised. And if someone has pertinent information they wish to bring forward, that could reasonably be expected to occur, we say.

Secondly, to the extent specific evidence could flush out further material or evidence, our application won't prevent this at all, only delay it, by some months. And, thirdly, for the reasons we've outlined, we contend our suggested approach should assist the Inquiry to focus more sharply on areas that are truly likely to be informative in terms of the causes of the incident and what can be done to prevent its reoccurrence. And if further material or evidence is to be flushed out, it is, we say, far better that it be in relation to pertinent areas of inquiry, rather than speculative or potentially irrelevant ones.

MS McMURDO: But that submission proceeds on the basis that the DFSB report will look at all the possibilities and cover everything and be absolutely correct. In which case, why have our Inquiry at all. The whole point of our Inquiry is that it is an independent Inquiry. It gives people who might not have an opportunity to speak to DFSB to come forward with their concerns.

MR BERGER: It absolutely will not dictate the outcome of this Inquiry; we accept that.

MS McMURDO: But everything you're saying is that it will.

MR BERGER: It will be of assistance and informative to this Inquiry and those who are questioning witnesses and assisting the Inquiry to decide who is going to be called. The analogy we would draw which is not a perfect one, but hopefully assists in understanding the Commonwealth's position, it would be akin, we say, to conducting an inquest in relation to a fatal fire without the benefit of the Forensic Expert Fire Examination report. One can see how, without the benefit of such expert evidence to a decision-maker, it might be harder to target and focus the areas of the Inquiry, and that's the assistance we suggest the DFSB report will provide to this Inquiry.

The Inquiry might consider it's entirely helpful or there might be further areas that need to be inquired into. There's a whole ranges of approaches the Inquiry would take. But without it, there's a degree of firing in the dark or speculative, perhaps irrelevant, lines of inquiry in question.

MS McMURDO: Well, that's what Inquiries do. Inevitably, there are some dead ends that you go down. That's the purpose of our Inquiry.

MR BERGER: Yes, and a balance needs to be struck.

5

MS McMURDO: The trouble with your argument, of course, is that – and look, ideally it would have been great if we could have received the DFSB report by Easter. That would have been great, and we could have had that early for the work of our Inquiry and we could have benefited from that. But we're not going to, and we now know we're not going to receive it until the end of December.

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If we wait to do all the things that you suggest we do until the end of December, well, obviously then it's not going to gear up again until February, and then we would have to do a huge amount of work. Our report would not be delivered until well into next year – well into next year. If we continue with our line of inquiry as we have been, it means that we will have a lot less work to do if and when we do get your report. It also means that if, for example, your report doesn't come in December, it comes much later than that – who knows – it means that in the meantime we can look at whether there are other avenues to get this expert material from.

25
If you're talking about a trauma-informed approach, delay is well known and well documented as the most distressing thing for people affected by trauma, and that comes through very strongly in the submissions that you would have heard from the families of the deceased that are represented in this Inquiry.

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MR BERGER: Yes.

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MS McMURDO: So you say there are two options, that we crash on or we stop, pretty much stop our work because our work – really every witness we're calling is focused on looking at the cause of the crash and it's related to that, so most of our work would stop. That would mean that we did nothing until we get the report, which might come the end of December or might not. Then we start to wrap up the Inquiry next year, and so it would probably be most of next year before our report would be finalised.

40
If we do crack on – as you've used the expression – there are advantages. It means there may be some witnesses who have to be recalled, but I wouldn't necessarily expect that there would be a lot and not necessarily any. It would mean that we'd be in a much better position to finish the

report quickly, either after you've delivered your report or, if that wasn't possible, to get an alternative source of information.

5 In the meantime, your bureau would have the benefit of things that we are discovering as we call our evidence. Certainly, I mean I think that that's already – well, I hope that's already been the case because there are lines of inquiry that have emerged as this Inquiry has progressed.

10 MR BERGER: Two things in response to those comments. The first is we would respectfully resist the notion that our application would effectively give this Inquiry little to do. Of this tranche of hearings, there's only two witnesses that we would respectfully suggest shouldn't be called out of the 13 that are proposed to be called. So there's 11 witnesses who can be examined this week. And alternatively, if the
15 Inquiry was against us in relation to the primary aspect of our application, all 13 could be called but there would be some limitation upon the questions asked of two of those 13 witnesses.

20 We are acutely aware of the position of the families and the concerns about delay, but the Inquiry heard from Counsel for CAPT Lyon, the assistance they think would be provided by being able to question witnesses with the benefit of this report. We also see Ms Lyon's statement to the Inquiry suggesting without the report being delivered, she cannot see how the Inquiry could finish its hearings and make any
25 findings about the cause of her husband's death. Without any other evidence identifying the cause and no independent expert or report, she doesn't see what the alternatives are and she, therefore, supports LCDR Gracie's position which is ultimately based, as we respectfully suggest many people's ultimate concern is, in wanting to know what
30 happened.

We suggest that the most efficient trauma-informed way of getting an accurate conclusion in relation to what happened is to conduct the important work of this Inquiry with the benefit of the findings and
35 material gathered, rather than without it.

40 MS McMURDO: Mr Berger, I do point out that Ms Lyon also says, "As a result of the distrust that has been created, I would really appreciate the Inquiry to consider their own experts to create an independent report separate from the DFSB".

MR BERGER: Yes.

45 MS McMURDO: So that there's the complete picture there of her submission.

MR BERGER: Of course. And if that was to occur, different considerations would arise, but there's not currently such an expert. We would suggest that having the benefit of the DFSB report will enable this Inquiry to more specifically and efficiently target what is to be examined and how it will be examined. So rather than leaving a large amount of work to be postponed, we suggest it should significantly curtail the work that this Inquiry may need to do. Awaiting the report will enable the Inquiry to be better informed in deciding all the witnesses that need to be called. That would reduce the risk of witnesses being called unnecessarily, as we've submitted.

So balancing all these considerations, we respectfully suggest these matters should, of course, be comprehensively considered, but once the DFSB report is received. And the benefits of waiting some months for this to occur will significantly outweigh the detriments of not doing so, especially as there is much the Inquiry can examine in the meantime. And that the 11 witnesses that can be examined this week are a very pertinent example of that. We would suggest that would maximise the prospect of the most appropriate findings and recommendations being made by this Inquiry in the most efficient way, with the most minimal impact on witnesses and others.

And in concluding the Commonwealth's application, I would again like to recognise that the Commonwealth understands that the families want answers as quickly as possible, but we imagine they want to have confidence in the answers that this Inquiry is able to provide them, and that they wouldn't want other ADF Officers to be unnecessarily traumatised in the process.

Unless there's any questions or further assistance I can provide, those are the Commonwealth's submissions in support of its application.

MS McMURDO: Thank you, Mr Berger. Yes, COL Streit.

COL STREIT: Thank you, Ms McMurdo. The Commonwealth's application appears to have changed substantially, can I say, from the written outline that they've provided. I sought to make notes of learned Senior Counsel's submissions to the Inquiry in relation to the key points concerning those changes, and I'll seek to address those in due course.

I think the appropriate course to begin with, however, is to ensure the Inquiry has the appropriate material before it in relation to the application that's actually been brought, and so I have clean copies of those materials

which I propose to identify individually, and then they could perhaps be tendered as a bundle for the purposes of the application.

5 The first is the letter from the Chief of Army of 17 April 2024 to the Inspector-General of the Australian Defence Force, Mr Gaynor. The second is an outline of written submissions by Counsel Assisting, which was prepared and dated 12 June 2024. I also have copies of the submissions received by the Inquiry concerning members of the family. The first is - - -

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MS McMURDO: Sorry, you said the submissions of Counsel Assisting. Did you mean submissions of the Commonwealth?

15

COL STREIT: I have submissions of Counsel Assisting.

MS McMURDO: All right.

20

COL STREIT: I'll arrange for the clean copies of the Commonwealth's submissions and statement of GPCAPT Smith to be included in the bundle. That will occur immediately. Can I also just identify, while that's being done, the email of Mr Wayne Laycock to the Inquiry of 12 June 2024 at 3.56 pm, the email of Mrs Marianna Nugent of 14 June 2024 at 8.58 am, and a submission provided by Mr Naggs on 12 June 2024 as received by email from the Inquiry. I also have the written submissions of the Commonwealth, a copy of 7 June 2024, and the statement which was enclosed with those submissions, the statement of GPCAPT David Smith, which is 6 June 2024. I provide those submissions to the Inquiry as a bundle.

25

30

MS McMURDO: And also Mrs Lyon's submission this morning.

COL STREIT: I apologise. Mrs Lyon's submission - - -

35

MS McMURDO: Or email, I should say.

COL STREIT: Yes, which was received – which was sent to the Inquiry last night at – or, sorry, this morning, 18 June 2024, at 8 am. I include those materials I've identified as a bundle.

40

MS McMURDO: They'll all be Exhibit 1 in this application.

#EXHIBIT 1 - BUNDLE OF SUBMISSION DOCUMENTS

45

COL STREIT: Can I begin, as all matters begin, at the beginning? The beginning of this matter is what has now morphed into the present application by the Commonwealth, articulated today for the first time. It begins with a letter from the Chief of Army to Mr Gaynor of 17 April
5 2024. In relation to that particular letter, the Chief of Army refers to the importance of the Aviation Safety Investigation report, and that it would provide certainty and clarity on what happened in the incident of 28 July 2023.

10 I mention that because I pause to observe that the statement of GPCAPT Smith, which underpins the Commonwealth's application, on their submissions, actually reflects that the Aviation Safety Investigation
15 his organisation is conducting into the incident on 28 July 2023 is the most complex investigation conducted by Defence that he's aware of in recent history. That appears at paragraph 20 of his statement. This would seem to indicate that the provision of certainty and clarity to which the Chief of Army refers to that the Aviation Safety Investigation report will provide is by no means guaranteed, given that that organisation considers
20 that the incident, and the investigation it's conducting, is the most complex to be conducted by Defence in recent history. Who knows where they'll end up? Who knows where this Inquiry will end up? The evidence is uncertain.

Chief of Army also indicated that the Aviation Safety Investigation report
25 will make findings, not recommendations. However, when the Inquiry examines the statement of GPCAPT Smith, it reflects that the Aviation Safety Investigation report intends to make recommendations for safety improvement at paragraphs 23 and 24, so there seems to be misunderstanding by the Chief of Army as to what the Aviation Safety
30 Investigation report intends to do. This again gives rise to a level of uncertainty as to what ultimately will occur with the Aviation Safety Investigation.

Further, in the letter of 17 April to the Inspector-General, the Chief of
35 Army on the face of it appears critical of the Inquiry in the sense of wanting those involved in the Inquiry to elevate their consideration of the impacts of the Inquiry on the health and wellbeing of Army's people. That appears on page 2. The statement infers that the Inquiry is not being conducted in a trauma-informed manner. No evidence has been provided
40 to support this assertion by the Chief of Army in the Commonwealth's present application before this Inquiry.

I do note my learned friend's submission to you that, in effect, about the
45 concerns of a lip service being paid to a trauma-informed approach. I didn't quite understand that submission, but if that submission meant that

this Inquiry is playing lip service to the trauma-informed approach, then that submission, respectfully, is utterly rejected.

5 Further, ultimately the Chief of Army wanted the Inspector-General to reschedule the remaining hearing blocks for 2024 until Aviation Command received a final Aviation Safety Investigation report. That's what the Chief of Army says in his letter. In other words, on the face of it, Army wanted the Inspector-General to suspend the Inquiry for up to six months, pending delivery of the Aviation Safety Investigation report, anticipated – or, rather, estimated to be received in December of this year.

15 The Inspector-General referred the Chief of Army's letter to this Inquiry, and invited Army to bring whatever applications it wanted to before this Inquiry. So that's the 17 April 2024. Here we are, on 18 June 2024, and the application that was initially mounted by the Commonwealth, pursuant to its submissions, has now changed again. No evidence has been called in relation to issues concerning trauma as articulated in the Chief of Army's letter to the Inspector-General.

20 What happened next was this: the Australian Government Solicitor is instructed by Defence in a letter dated 24 May, received by the Inquiry on 30 May 2024, and advised of its intention to file an application for the Inquiry to, in effect, not examine a number of matters, or continue its examination of a number of matters, until delivery of the Aviation and Safety Investigation report. The Commonwealth, in that letter, indicated, and effectively granted itself 14 days to file its application. This meant that its application, on its own material, was to be presented to this Inquiry on 7 June. That's a Friday.

30 What happened next was on Friday, 7 June, at 3.29 pm, the Commonwealth filed its application before the Inquiry causing a copy of its application, the statement of GPCAPT Smith, to be sent to the Inquiry's email address. The 8th, 9th and 10th June were a long weekend. I made the decision not to provide copies of the Commonwealth's application to - - -

35 MS McMURDO: I think it was – to be clear, it was a long weekend in certain parts of Australia. A long weekend in New South Wales and Canberra, I think.

40 COL STREIT: It was a long weekend everywhere else except Queensland, so I understand it.

45 MS McMURDO: Was it in Victoria as well? I'm not sure.

COL STREIT: In any event, I made the decision, as a result of the long weekend in other states, to not provide the Commonwealth's material to Counsel representing, a number of which are in New South Wales, and took about the task of preparing submissions in response to the Commonwealth's application.

Then, on Tuesday, I provided, or caused to be provided, the Commonwealth's application, statement of GPCAPT Smith, Counsel Assisting's response submissions to Counsel representing, which are appearing here today, including other Counsel representing who are not here today. The Inquiry also then caused copies of all of those materials to be provided to the family, noting their interests were potentially affected before the Inquiry given the Commonwealth's application.

On Thursday of last week, the Inquiry was notified that Senior Counsel was not available to appear before the Inquiry to make the Commonwealth's application, which had been listed to be heard at 10 am yesterday, and learned junior counsel appeared yesterday and sought an adjournment in relation to the matter.

In my submission, on the face of it there is certainly what might be characterised as to shifting sands of the Commonwealth's position concerning, essentially, the initial position that Chief of Army urged the Inspector-General to take, which was then altered or not advanced significantly in the Commonwealth's application seeking only to produce evidence from GPCAPT Smith and setting out around 11 grounds as to the areas that the Inquiry should not investigate further, pending the outcome of the Aviation Safety Investigation report.

And today, the application has shifted again to a point where the application is only pressed in relation to certain paragraphs, 14(a) to (h), as I understand it, of the areas identified by GPCAPT Smith, but with a limitation. And that is that the Inquiry can call evidence in relation to all kinds of things, just not evidence that concerns, proximately, matters concerning the four aircrew in Bushman 84 or any other person who might be called to give evidence in relation to matters concerning those four aircrew.

My learned friend has identified two witnesses in this sitting which he says is captured by the Commonwealth's application. And that is D20 and D15. I don't really understand that submission because there are other witnesses being called in these sittings; for example, CAPT Rogan, who, on the face of his statement, I anticipate he'll give evidence about being present in 2022 on a Regimental Officers' Aviation course with CAPT Lyon, where CAPT Lyon is attributed to saying the following

during a session conducted during the course where Senior Officers were present from 16 Aviation Brigade.

5 And I anticipate this witness – that is, CAPT Rogan – will give evidence to the effect that CAPT Lyon said to those Senior Officers:

10 *I no longer have time to remain proficient or confident within the cockpit because of the impost of my secondary appointment, and don't feel empowered to prioritise my primary role, a role that ultimately can kill me.*

15 What I've just indicated to the Inquiry, in anticipation of the evidence that that officer may give, would seem to be captured by the provisions of my learned friend's amended application. And that's why I don't understand, ultimately, what the Commonwealth's position actually is in relation to its now altered application.

20 This Inquiry was established to independently investigate the incident on 28 July 2023, and detailed Inquiry Directions were established by the Inspector-General for that purpose. I have always said in my submissions to this Inquiry, and more recently in our last hearing, that the Aviation Safety Investigation is its own impartial and independent investigation.

25 Ms McMurdo, you recognised in your opening remarks back on 27 February 2024 – which I've addressed at paragraph 12 of my submission – that the Inquiry is independent – that is, this Inquiry is independent of other ADF, Commonwealth/State agencies – and that agencies like the Defence Flight Safety Bureau's Air Safety Investigation Team and the Queensland Coroner are also investigating the events of
30 28 July 2023 as they're required, by law, to do.

35 Further, the Inquiry understands that Comcare is also conducting an investigation into this matter. And further, the Inquiry has been informed by Aviation Command that back in February of this year Comcare undertook interviews in relation to the aircrew – that is, interviewed the aircrew of the other aircraft involved in the sortie – and that Comcare continue to undertake interviews.

40 Nothing has been said by the Commonwealth in its earlier iterations of its application, or its current iteration of its application, about the fact that the aircrew and witness they would say this Inquiry should not take evidence from pending the outcome of the Aviation and Safety report, that those persons have, in fact, already been interviewed by Comcare as well.

45 Turning to what I characterise as the deferral application, and in relation

to the submissions that I make, I just want to touch on the following matters; that is, my written submissions. At its highest, the statement of GPCAPT Smith makes several thematic assertions to the general effect of prejudice. Though again, there's been no analysis or substantive engagement as to precisely how it is said that this Inquiry will prejudice the DFSB investigation or how such prejudice could materialise.

Respectfully, it's submitted to the Inquiry that it ought reject the assertions set out in GPCAPT Smith's statement as inherently speculative for the following reasons. First, there's nothing at all extraordinary, less uncommon, about the maintenance of concurrent Inquiries/investigations which have, as here, entirely different mandates and purposes.

I pause there to make this observation. We do not know the extent to which evidence obtained by this Inquiry is actually also assisting the Defence Flight Safety Bureau investigation because it may be this Inquiry turns up matters upon which that investigation was either unaware or unaware to the extent of.

I pause there to observe the evidence, for example, of Mrs Lyon, who gave evidence about her engagement with her husband, CAPT Lyon, over a period of time, her observations of her about the effects of overwork and fatigue on him, her exchanges with him whilst he was on Exercise TALISMAN SABRE about things that were occurring to him there in relation to an inability to sleep properly and to be re-freshened whilst he's also working in difficult circumstances. So that may well be new evidence the Flight Safety Bureau and others were unaware of.

I also note, and again respectfully, the DFSB has had a number of months from the appointment of their investigation to the date of service of the deferral application to interview important witnesses. It would be surprising, if true, to now learn that the DFSB has not already completed their interviews of these important witnesses.

Nothing in the Commonwealth's application shed any light on this particular issue at all. There's no list provided by the Commonwealth as to those witnesses the DFSB have spoken to, or have not spoken to. But it would be surprising, given the length of time, they haven't already spoken to key witnesses.

Third, there's been nothing in the Commonwealth's submissions that deal with the DFSB's concerns – that is, GPCAPT Smith's concerns – that somehow witnesses appearing before this Inquiry would then be at risk of giving anything other than a full and frank interview with DFSB investigators, if indeed they haven't been interviewed.

5 Next, in November of last year the ADF provided the Central Queensland
Coroner with signed statements made by 12 aircrew of Bushman 81, 82
and 84 involved in the sortie with Bushman 83 on 28 July 2023. The
Inquiry had no involvement in the taking of those witness statements. The
DFSB has the opportunity to access those witness statements, and has had
so for many months.

10 Those witness statements which have now been provided to the Inquiry
are important because they're from the individuals who were involved in
the sortie. The DFSB, on the face of it, has had access to those
statements, or should have had access to those statements.

15 Finally, it bears reminding that before this Inquiry, and indeed the DFSB
investigation, Comcare or indeed the Coroner's investigation, that
witnesses who give evidence are under both a moral and legal obligation
to give truthful evidence. Again, there's no basis for the Commonwealth
to suppose the continuation of witness examinations before the present
Inquiry would impact at all adversely on the quality of the evidence of
20 those witnesses if they were later to be examined by the DFSB.

Indeed, for reasons not least of efficiency, the DFSB may well be assisted
by the fact that witnesses have given evidence to this Inquiry. A witness's
evidence, as this Inquiry knows, is comprised in two parts. It's their
25 written statement and it's their oral evidence given in this Inquiry. The
DFSB has access to the evidence given by – should it wish to, the
evidence given by our witnesses. They can easily access the transcript
publicly available, or they can make a request privately.

30 There is a second limb to the Commonwealth's application about
prejudicing the ongoing DFSB investigation, and a second sense of
reducing – of introducing a risk of unnecessarily or unfairly creating bias,
preconception, misconception, or confusion as to the possible causes of
the crash.

35 Counsel Assisting submits this reasoning is inherently speculative.
GPCAPT Smith does not, in his statement, particularise who, if anyone,
would be susceptible to bias, nor how and why any bias would impact on
the investigation.

40 Respectfully, the Commonwealth's application does not appreciate, in my
submission, the role of Inquiries to independently investigate the deaths of
four members who died in tragic circumstances. The purpose of the
Inquiry is not singularly to place blame on any individuals or
45 organisations. Rather, the purpose of the Inquiry is to attempt to

determine the cause of the accident with a view to avoiding or mitigating the risk to ADF personnel in the future.

5 As a matter of public policy, this is an important object and ought not to have to wait the outcome of the DFSB investigation before it continues, which on GPCAPT Smith's own estimation, as I note from his statement, is not likely to be finished until December 2024.

10 I pause to observe there that, as with any estimation, no one can rule out with any confidence that there's a real risk that the timing identified by GPCAPT Smith may not be achieved and that there's a real possibility of delay beyond the December 2024 estimate, and a disregard – and no criticism of the Office of the DFSB, on the face of GPCAPT Smith's statement it would appear to be suffering a resource deficiency in relation
15 to qualified investigators.

The third basis of the Commonwealth's application essentially sits on the issue of purported trauma. The Commonwealth submits that there's a risk of further trauma in the sense of exposing individuals in units to multiple
20 investigations and repeating questioning. No particulars or evidence is provided to support this contention, in my submission.

As a preliminary matter, and as I said from the start, Counsel Assisting rejects any suggestion that the work of this Inquiry is being conducted in a
25 manner that is not trauma-informed. Witnesses appear before this Inquiry with a statement. No witness appears before this Inquiry without a statement. The method by which questioning of a witness is engaged in is they're permitted to have their statement before them. Counsel Assisting takes the witness to particular parts of their statement and asks them
30 questions in relation to that matter. Witnesses can have a support person present. Witnesses can apply to give evidence in a private hearing or give evidence in a public hearing.

The Inquiry's Practice Note guides that are set out on the
35 Inspector-General's website speaks to the practice of this Inquiry engaging in a trauma-informed approach. Giving evidence is not easy. Giving evidence about difficult matters is equally not easy. But as I've said previously, difficult questions may need to be asked of witnesses but those questions will be asked in a trauma-informed approach. The witness
40 will be given an opportunity to give evidence as to the best of their recollection.

That method, time-honoured in our history of the conduct of Inquiries, allows an Inquiry to be in the best position to understand what is the best
45 evidence that's available and not placed through any filter.

I pause there to observe this: it would be incorrect to infer that the Defence Force Flight Safety Bureau investigation is going to contain witness statements, exhibits and evidence that will be provided to this Inquiry, because to do so would be inconsistent with Annexure 13 of the Chicago Convention which requires the DFSB, unless it steps away from that application of that convention, to protect that material.

The DFSB report, if it follows historically what other DFSB reports have done, will simply anonymise individuals. Individuals won't be named, they'll be anonymised. It's a no-fault Inquiry. There's nothing that would indicate, necessarily, in the report, as to a list of witnesses that were interviewed, for example, what those witnesses said, who they were.

So it would be incorrect to characterise the DFSB report as essentially a report that attaches all of the evidence it has obtained to be provided to this Inquiry, and to be led publicly and openly in a hearing. That would be inconsistent with what Annexure 13 in the Chicago Convention identifies, and inconsistent with the purpose of a no-fault safety investigation.

What this Inquiry could reasonably expect to receive from the investigative report is a report which is anonymised and nothing else. It may identify lines of inquiry, it may not. We don't know how wide their Inquiry is being conducted. We don't know how narrow their Inquiry is being conducted. We don't know how many witnesses will be interviewed. We won't know what those witnesses have said.

My learned friend has made submissions, in effect, about this Inquiry leading evidence from witnesses, receiving the DFSB report, and then potentially a risk that a witness might need to be recalled. There's always a risk that any witness who gives evidence in any Inquiry might need to be recalled.

It should, in my respectful submission, not be inferred that, simply because the DFSB made a finding about something, that that finding would be accepted like some sort of rubber stamp by this Inquiry, without interrogating how that finding was ultimately arrived at. That necessarily means the calling of witnesses.

The Commonwealth seeks to emphasise the risk, in my submission, of welfare to members by continuing this Inquiry and examining the matters that the Inquiry has been tasked to examine. This submission overlooks the importance to families and colleagues of the four deceased aircrew of the Inquiry concluding as promptly as it can.

5 The Inquiry has the submissions of the families. I don't propose to set those submissions out. But I do note that three of the families are, in effect, asking the Inquiry to continue, and another representative of another family is prepared to join with the submissions of Counsel for CAPT Lyon, but does make some observations about her views about delay.

10 In relation to other investigations, if the Commonwealth's position was to be accepted, then it gives rise to whether this Inquiry should wait for Comcare to finish its investigations, or the Coroner to finish his investigations, and that cannot be right. This Inquiry's being tasked independently to examine the matter. It is, as you have identified, Ms McMurdo, at the start, that the Inquiry may take note of the evidence and reports produced to or by such other agencies, but the Inquiry will make its own independent findings based on the evidence that's placed before it. That's its very important and solemn task. And you made those comments in your opening remarks on the 27th.

20 If I may just have a moment to check my notes. Counsel Assisting referred to some hypotheticals – sorry, the Commonwealth, my learned friend, Senior Counsel, referred to some hypotheticals in his submissions. One of them was the helmet-mounted sight display. One of the issues that this Inquiry has to determine is in relation to that very piece of equipment. Because, on the face of some of the material before this Inquiry, it would seem to indicate that Comcare and the Defence Flight Safety Bureau had some involvement in the suitability of the version of the helmet-mounted sight display that was being utilised on 28 July 2023. So as far as that hypothetical is concerned, the helmet-mounted sight display, or TopOwl, is a feature of a line of inquiry in the examination of this independent Inquiry.

35 He also referred to another hypothetical. What I simply say about hypotheticals is, they're simply that, they're hypotheticals. It's all well and good to refer to hypotheticals. And the effect of referring to a hypothetical might be to generate some sort of level of fear that, "Well, look, if that happened, then – and if we don't stop, then it may be that that'll lead this Inquiry into trouble".

40 Inquiries are inherently dynamic, as I've said in closing remarks in the last hearings. The Inquiry embarks upon a particular pathway. Evidence arises which will require this Inquiry to examine that evidence. That evidence might lead to another line of inquiry. That is the dynamic nature of Inquiries.

45

This Inquiry is receiving submissions from individuals, either confidentially or openly. Those submissions are being chased up and, where appropriate, witnesses are being called in relation to submissions that have been made.

5

And so hypotheticals, in my submission – to raise hypotheticals as a reason why this Inquiry should not continue holistically is, in my respectful submission, of no meaningful assistance to this Inquiry.

10 In terms of the final submission that was made, about the extent of potentially this Inquiry, to some extent, firing in the dark in terms of evidence: evidence is obtained by witnesses who come forward. An assessment is made as to the relevance of their evidence against the Inquiry's Directions. And if the evidence is relevant, the witness is called.
15 It's ultimately a matter for this Inquiry – that is, you and the Deputy Chair, Ms McMurdo – as to the assessment in relation to that particular evidence. The role of Counsel Assisting is to provide it for your consideration.

20 In my respectful submission, if the Defence Flight Safety Bureau report is delivered to this Inquiry, it will be considered. It is a piece of evidence that'll be considered by this Inquiry. But it should not be regarded and should not be treated as potentially some sort of panacea for all the matters that this Inquiry has to examine.

25

Ultimately, the submissions made by my learned, in relation to the characterisation now of the application would be inherently difficult for the Inquiry to divorce in relation to evidence being called by witnesses. CAPT Rogan is an example of that. It would lead to uncertainty as to
30 what evidence we could actually call. And potentially, because of the submissions made by Counsel Assisting, if accepted, in my submission, it would largely lead to this Inquiry downing tools until submission of the Flight Safety Bureau.

35 MS McMURDO: We'd have to check with the Commonwealth as to whether we could call witnesses or not.

COL STREIT: That's right. Which gives rise to its own uncertainty, and puts at risk my primary function, which is to assist this Inquiry, in
40 producing the evidence to the Inquiry in a form that the Inquiry can properly consider, and in a form where that evidence, where it needs to be, has been tested.

Unless I can assist the Inquiry any further?

45

MS McMURDO: No, thank you. Yes, LCDR Gracie.

5 LCDR GRACIE: Ma'am, sir, the nature of my application has also changed. Prior to the submissions of Senior Counsel this morning, I had been more inclined to support the Commonwealth's application. But now I have some misgivings about the ability to hive off those items. I have some misgivings about the ability to hive off those items in paragraph 14(a) to, I think it's (h), and then additionally quarantine that evidence insofar as it relates specifically or proximately to the four
10 deceased ADF members. I can't see a practical way of dealing with that and I would respectfully adopt your comments, ma'am, that effectively the Inquiry would have to ask the Commonwealth if it could call a witness. I can't see that working.

15 Ordinarily, ma'am, I would oppose the Commonwealth's application, but unfortunately I feel compelled to accept the difficulties created by not having the DFSB report, and it's that which means my application has changed a little. I see no present alternative to the way the Inquiry is presently running to a heavy dependence on the findings of the DFSB
20 report in relation to the Directions concerning the matters the Inquiry has to cover. There's the general circumstances surrounding the incident, there's the cause of the incident, and there's other matters which may be relevant to the cause. That's three of the four categories – or three of the five categories – I withdraw that – in the Directions in a summary way.

25 In my respectful submission, the focus of the DFSB report is on those matters and until we have either a DFSB report or the Inquiry's own independent expert to look at those matters, then the Inquiry is hamstrung. On one occasion, ma'am, when I said it's difficult to ask questions about
30 certain things because we don't know where the evidence is, we're still in that territory, in the sense that it's very hard to target the questions without knowing the cause. And you said to me, ma'am, "It is what it is".

35 That's the unfortunate position we're in now, is it is what it is. We can either proceed, which is my preferred course now, contrary to what I thought yesterday. But my application is that the Inquiry needs to have its own independent expert. The problem with that, ma'am, is that by the time that independent expert does a report, given the complexities of what we now have, it's just as likely to be December anyway. The other
40 problem with it is that it's all very good to have an independent expert, but unless that expert has access to the DFSB material, then it's only going to be an incomplete report.

It's disappointing that Counsel Assisting doesn't know what evidence DFSB has. I think a report or some communication with DFSB would have been helpful to know where it's going.

5 MS McMURDO: It would.

LCDR GRACIE: And at the moment, Counsel Assisting simply says, "Well, we don't even know if they've got the witness statements that were taken for the Coroner in November last year". Without that connection or
10 communication, Counsel Assisting would not be able to access the material it needs to brief an independent expert. The other difficulty of course is that it might have been preferable if GPCAPT Smith was called to be asked some questions about matters, because as the learned Counsel of - - -

15 MS McMURDO: It's a matter for the Commonwealth, isn't it?

LCDR GRACIE: Yes. But as learned Counsel Assisting said, he said, "We're speculating over so many things to do with the report". But it's an
20 invidious position. I feel it's very difficult to make a submission because on the one hand my client's interest – which is not Mrs Lyon's and the families' interests, it's CAPT Danniell Lyon – his interests and my representation of his interests really just goes to the cause of the accident. The post-incident matters don't affect his interests: the recovery - - -

25 MS McMURDO: I think they might. Now, I think they might.

LCDR GRACIE: All right.

30 MS McMURDO: So there's evidence still to come out, of course, but I think they might.

LCDR GRACIE: And that again is part of the problem. Counsel Assisting hasn't responded to the Commonwealth's application to say,
35 "Well, this is the evidence we are going to be calling". And so we're all – we've got the speculation on the part of the Commonwealth, we've got the speculation on the part of Counsel Assisting as to what evidence we are going to hear about cause and when.

40 MS McMURDO: I think the statements have been distributed for this hearings, haven't they? Yes, so you've got those statements for this hearing.

45 LCDR GRACIE: Only for this.

MS McMURDO: Yes.

LCDR GRACIE: None of that goes to the cause of the accident. And that's where we're going.

5

MS McMURDO: Well, I'm not sure about that. But anyway, that's your assessment. But I just have to say that I'm not so sure about that.

LCDR GRACIE: Sorry, perhaps I'll put it better, ma'am. It may go to the cause of the accident, but we don't know what the cause is until the DFSB at least comes out with something or we have an independent expert. So at the moment we have two witnesses, and I would support the Commonwealth's application in respect of D15 and D20 this week. Counsel Assisting referred not to their evidence, but to CAPT Rogan's evidence as to the relevance of calling certain witnesses. No one suggests that CAPT Rogan should not be called.

10
15

But the issues that the Commonwealth raised, and which I support, in relation to D15 and D20, is that it would be much more appropriate if they were called with the other 12 witnesses who provided statements, eyewitness statements, to the Coroner in November last year because they were also part of that sortie. And it seems that to hive them off, outside of the context of the other eyewitness evidence, is unnecessary and unduly complicating the issues that they deal with when we haven't yet heard from the eyewitnesses.

20

25

It seems that the evidence of the eyewitnesses which has been provided, there's no indication of when that's to be called. Although DFSB may have that material, we don't know what they're doing with it, we don't know how long DFSB is going to be, and the problem for an independent expert is access to DFSB technical data.

30

It's a difficult position for the Inquiry and for Counsel representing. But in my respectful submission, the appropriate course would be for Counsel Assisting to have an independent expert because he's going to need an independent expert, I would have thought, once the DFSB report comes out, if it's going to independently interrogate its findings.

35

The problem in the delay is going to happen in any event. This Inquiry will have to sit in February or March or April next year because if the DFSB report comes out in December, at its best, there's going to be a situation where Counsel Assisting will have to take statements from witnesses, or rely upon the DFSB report but then obtain its own instructions as to the veracity of that report.

40

45

And as my learned friend Counsel Assisting has said, there is already the prospect of a conflict with DFSB and Comcare in certifying the TopOwl helmet-mounted display system. And so it's almost inevitable that DFSB has to come under some scrutiny, or its report has to come under some
5 scrutiny from Counsel Assisting. And in my respectful submission, it can't do that without an independent expert. It's a difficult scenario but I do want to make it very clear to the families of the deceased that no matter how much the Inquiry proceeds expeditiously in other areas, it will not be able to finish until after the DFSB report comes out.

10 So no matter how trauma-informed the approach is, it will inevitably run into next year, and that's the unfortunate reality. But I think for the families to form a view that the Inquiry will run expeditiously and finish this year is mistaken. As much as everyone wants it to finish
15 expeditiously, it cannot until that report comes out.

The problem is, as learned Counsel Assisting said, for whatever reasons – we don't know – this report is being delayed. And for it to take 18 months is nothing short of appalling. And Mrs Lyon said it too, there's an
20 element of distrust already in the way Defence has gone about things. That is only heightened by a delay that this has taken and it's only heightened by the fact that GPCAPT Smith isn't here to ask questions of in terms of what is going on. Because it is appalling.

25 Those are my submissions, ma'am.

MS McMURDO: So just to clarify, because we've kind of gone in full circles - - -

30 LCDR GRACIE: We have.

MS McMURDO: - - - and down the middle and back up again. Can I just clarify then, you're no longer supporting the Commonwealth's
35 submission, but you are supporting the Commonwealth's submission in relation to D15 and D20 because you think they should be called in the same witness block as the others involved in the sortie and the crash?

LCDR GRACIE: Yes, ma'am.

40 MS McMURDO: And you also have suggested that the Inquiry should get its own independent expert witness - - -

LCDR GRACIE: Yes, ma'am.

45 MS McMURDO: - - - involved in the causes of the crash.

LCDR GRACIE: Yes, ma'am. I can't support the Commonwealth's revised position because I can't see how it would practically work.

5 MS McMURDO: Yes. All right then. Thank you.

LCDR GRACIE: Thank you, ma'am.

10 MS McMURDO: Thank you, LCDR Gracie. COL Gabbedy?

COL GABBEDY: Ma'am, sir, I have no submissions to make either in favour of or against the application before you.

15 MS McMURDO: Okay. Thank you. Is there any other – anyone else wish to make submissions? Yes, there are some further submissions?

20 LCDR TYSON: Ma'am, LCDR Matthew Tyson in the interests of CPL Alexander Naggs. In my respectful submission, the Inquiry should reject the application. It should be dismissed on the ground of principle and also, given the quality of the evidence or lack of quality of evidence that is put forward ostensibly in support of the application.

25 Ma'am, sir, I didn't know CPL Alexander Naggs, but I do know that he loved those close to him. He's concerned about their welfare. The uncertainty and powerlessness and distress that they are going through at the moment with not having answers would be a matter of concern to him. I also know about CPL Alexander Naggs that he was passionate and enthusiastic about the people that he went to work with, about other aircrew, about the pilots, the maintainers he worked with, the members of
30 6 Aviation Regiment.

I am confident, based upon what I know about him, that he would want his colleagues, his comrades who are involved in Army Aviation to get some answers or to progress towards getting some answers about what
35 happened to Bushman 83 on 28 July 2023.

40 In this Inquiry, an important interest has not been touched on so far in the submissions, that this is not merely a historical investigation, a parlour game. There are people who are involved in ADF Aviation today, there are people flying Chinook helicopters, there are people flying Seahawk helicopters, issues of fatigue, issues about how we managed airframes needs to be looked at. And in my respectful submission, many people looking at this Inquiry may well have more confidence in it being investigated by yourself, ma'am, and, sir, AVM Harland.
45

5 The reason why the Commonwealth application fails as a matter of principle is that it doesn't engage with the purpose and nature of this Inquiry and the important interests that this services. Now, to some extent, learned Senior Counsel for the Commonwealth, for the first time in the oral submissions today, did make some acknowledgement of that and the Inquiry's role.

10 But the application, itself should be seen for what it is. It is an attempt to, effectively, shut down this Inquiry. That is the effect, even on the narrowing of the application that has come – that was perhaps foreshadowed yesterday and has now been cleared today, because this Inquiry has potential to answer questions of the next of kin, family members, husbands – sorry, wives, mothers, fathers, siblings who have got a huge hole in their life because of what happened on 28 July 2023.

15 This Inquiry can also assist members of the ADF Aviation community who are involved in flying operations this week, as we speak. It's also got an important role to play for the broader public interest because there is a public interest by the Australian community that these matters be investigated by a credible Inquiry, an independent Inquiry.

20 And, ma'am, yourself and sir have been appointed to this Inquiry for good reasons. You will bring intellectual rigor, intellectual curiosity, your experience and skills to investigating this issue. The flawed nature of the application can be readily seen by just looking at some of the material that has been produced to us this week. We have, in the material, MAJ Gallatly's statement of 31 May 2024. We've got D20's statement of 11 June 2024, D15's statement of 7 June 2024 and CAPT Rogan's statement of 10 June 2024.

25 Each of these pieces of evidence are of benefit to the various interests that I have referred to. Each of these pieces of evidence they don't definitively and categorically provide evidence of the cause of the crash. But they fill in parts of the picture. They fill in parts of the puzzle. Just to take D20, her role in it in this – and why she didn't fly, obviously caused a lot of questions. It caused a lot of speculation.

30 We now actually have her explaining what happened. It provides important context. It provides important answers. The material D20, D15's statement, MAJ Gallatly's statement show and emphasise the value of this Inquiry and the interests that it can advance. It's normally the case, certainly in Court proceedings or even Inquiry proceedings, where effectively adjournments are sought these days, that one has reference to the High Court's decision in *Aon Risk Services Australia v The Australian*

National University [2009] 239 CLR 175, a decision, no doubt, that you're well aware of.

5 But the High Court makes it very clear in that case that it's not really – for whatever reason why a party is not timely, why it delays. Whether it's through inadvertence. Whether it's through lack of resources, lack of confidence to commit to a position, tactical reasons, there are broader interests at stake. The convenience of DFSB is not the only interest at stake here.

10 There are other interests that are prejudiced by delay. There are the interests of the loved ones of the deceased. There are the interests of the ADF members who are involved in Army and naval helicopter operations. There's also a public interest. So it's not good enough to simply say,
15 "Well, it's convenient to my organisation for this to be delayed". You have to take into account the prejudice of other interests that are affected, including stress and anxiety on people. And also, the broader public interest that this investigation be advanced.

20 Let me now then turn to looking at the explanation for the delay that has been offered. And let's step back for a moment and look at the evidence in this case. The first set of evidence that's needed are, really, witness statements closely connected to the events of 28 July 2023. The three other helicopters who were in the formation, what did the members of
25 those helicopters see in terms of the tragedy? What was the Mission Planning Team? What did they do? What were the pre-flight briefings? What were the final maintenance checks? What was the servicing record of Bushman 83?

30 All of that material can be readily obtained, and of course it would be remarkably surprising that these witness statements were not obtained very soon after 28 July 2023. It would be axiomatic. It would be fundamental for an investigation that you would get witness statements from those people closely contemporaneous with the results because the
35 effluxion of time is not going to improve anything.

So we're told DFSB lacked the resources. Is this right, that they lack the resources to get statements? Why, for example, couldn't they – there are
40 Military Police Investigators, there are Reserve Legal Officers, there are a whole host of people who one would have thought DFSB would readily be able to get the relevant witness statements.

The next key piece of evidence is this: the flight data recorder. That was obtained not last week, not a fortnight ago, not a month ago, but on
45 2 August 2023. That piece of evidence has got the potential to answer

many questions. We know that the Australian Transport Safety Bureau has looked at it. We know that DFSB has looked at it.

5 But what was gleaned from it? What has been done with it? When was it looked at? Is it really the case that DFSB's resources didn't allow them to understand the recording and what flows from it? So one has a general assertion about, "It's complex. We don't have resources", but what does it actually mean when one looks at the relevant primary evidence?

10 As for the wreckage from Bushman 83, we know from the evidence that most of that was obtained – major pieces of wreckage – by 10 August 2023. Again, a considerable period ago, ma'am. We know that human remains – I think the last date they were obtained was on 10 August 2023. We've got video footage that was taken on 5 August 2023 regarding the
15 boot that was on the ocean floor in the wreckage. And no doubt there would be evidence about meteorological conditions and so forth at the time. So most of the primary facts, most of the evidence, was all known in August 2023.

20 What normally happens with other investigations of this type is that once you get your primary fact material, you then identify what expert opinion material is needed. So, for example, did you need some metallurgical tests upon parts that were obtained, some destructive testing? Did we
25 need expert engineering opinion? Did you need an electronics engineer expert opinion about, for example, the fly-by-wire controls by way this type of aircraft were flown? Also – or you do some simulations on a computer.

30 Now, normally what happens, that's not done by DFSB. It's resourced out to an expert, whether that person is in DSTO or the CSIRO in Australia, or whether they're overseas in Britain or France or America. These expert opinions are normally obtained outside DFSB. So is it really the case that the resources were such that they couldn't issue expert
35 instructions to someone who could obtain this sort of material? Normally these things take six to eight weeks to obtain.

40 You are not given, in my respectful submission, satisfactory persuasive evidence explaining the delay. You're told that they didn't have resources. If the resources didn't exist, what was done to rectify? Was a request made to CDF for extra resources? Was a request made to the Defence Minister for resources? There's no evidence about what steps and what vigour was taken to rectify those defects if they were known.

45 Very serious questions are raised by this Commonwealth application about what DFSB has been doing for so long. Serious questions are raised

about what Defence was doing about what they were doing to check in on DFSB and see whether this investigation was being done properly.

5 One other fact that should be drawn attention to, which is of great concern, is this: in March 2023, we know that an MRH-90 had a ditching accident. Now, the helicopter didn't ditch in some gorge in the Highlands of Papua New Guinea or in some plateau in the Hindu Kush Mountains in Afghanistan. This helicopter ditched in Jervis Bay, in the placid shallow waters of Jervis Bay. And DFSB come here today and they still don't
10 know when they're going to complete that report. They don't have resources to complete that report.

This is extraordinary, ma'am and sir. You are not given a satisfactory explanation for the apparent languid nature and leisurely approach that's
15 been taken. And as I said earlier, it's not a parlour game. It's not a historical artefact. There are men and women of this country who are flying helicopters for our Navy and our Army today.

MS McMURDO: Yes, the findings of the DFSB in respect of this
20 Inquiry, and perhaps the earlier one, could potentially have implications for current aircrew, even though the MRH-90s are no longer flying.

LCDR TYSON: And no doubt you, ma'am, are well familiar with the way civilian litigation works, complex arbitrations work, expert evidence
25 is dealt with in the civilian world. It would not be acceptable to come before a Judge of the Federal Court or a Superior Court in this land, or in a commercial arbitration involving, for example, a very valuable piece of processing equipment in Western Australia or something that's suffering from an expert defect and say, "Oh, we need 16 months to put on a report
30 – or our reports in relation to the matter".

If you wouldn't accept this delay in the civilian context, how more so you should not accept the delay in the military context where people are
35 dealing with inherently dangerous equipment, where they are dealing with inherently dangerous things.

Just in relation to LCDR Gracie's comment about the difficulty to ask questions and cross-examination. I do accept there is value, and I support what he says about that. It is true that because we don't have the full
40 expert opinion type material on causation that one might expect, that there is some difficulty with that at the moment. However, that doesn't mean the Inquiry can't progress with its other valuable work, and I've sought to support that submission by drawing attention to some of the material that's been served this week.

45

It also doesn't mean that the Inquiry shouldn't get its own independent expert material. And, for example, one rhetorically asks, why can't the Inquiry appoint someone to go and listen to the flight data recording that other Government associations seem to have had since 2 August 2023?

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But the bottom line is that even if this report is produced, I note there's no guarantee this is going to come in December. There's no guarantee at all. People who are following this Inquiry may well be very concerned about the nature of this application and what we know about DFSB and the confidence in it. Many people might think that they would much rather Ms McMurdo and AVM Harland be the ones who actually come up with a report and obtain their own expert opinion evidence to get to the bottom of this.

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The principal submission, as far as I can gather it, of learned Senior Counsel for the Commonwealth, was – and in terms of a practical matter affecting the economy – was that witnesses might have to be recalled. But, ma'am, this is an Inquiry. That is simply par for the course. I've been involved in other – including a very high profile IGADF Inquiry – where that just happens, people are recalled. “Well, you spoke to us X months ago, but now we've got this material. Here's a chance for you to comment on it.” It happens with, for example, corruption Inquiries that are conducted by, say, ICAC in New South Wales and the other states.

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It's an Inquiry. It's not a Court case where there are strict rules about when you lead evidence-in-chief, when the respondents goes to evidence and reply. That's par for the course. And, with respect, it's a practical problem that is overstated because one has to understand there's a difference between primary evidence – there is a difference between what people might have seen, for example, on 28 July, and it's a difference between expert opinions who might be given primary facts and then come up with opinions from that.

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So that was, I think, the most substantial practical matter that was put forward on behalf of the Commonwealth, but it is a concern that is overstated and the other thing that was interesting about the Commonwealth's position is that it actually relied upon LCDR Gracie's submissions from yesterday and sought to piggyback off those, which strategically and tactically was an interesting approach to take.

40

No doubt it's testimony to the skill of LCDR Gracie and his persuasive powers, but it was an odd thing to do, to abort an application on or about 6 June and then be piggybacking off LCDR Gracie's submissions on the adjournment of the adjournment application yesterday.

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MS McMURDO: I think he was looking for friends.

5 LCDR TYSON: But just in relation to that, I do respectfully ask you to
take note of the fact – and there’s a nuance in LCDR Gracie’s position that
has been carefully explained just a moment ago – but three of the
representatives of the deceased are actually opposed to this adjournment
application. Now, that’s not in any way an implied criticism of anyone
because obviously we all act in the fiduciary interests of our client as we
see fit, and at times we’re obliged to present positions boldly. But I would
10 also respectfully ask you to give some weight to the fact that three of the
four Counsel representing the deceased’s interests are actually opposed to
this application. So, ma’am - - -

15 MS McMURDO: And perhaps three and three-quarters now.

LCDR TYSON: So, ma’am, in summary, I respectfully submit that you
and sir ought to refuse the application. The application does not engage
properly with the nature and purposes of this Inquiry, the very important
range of interests that have been served by this Inquiry, not just limited to
20 family members of the deceased but also the ADF Aviation community,
the pilots, the maintainers, the aircrew who were involved, the broader
public interest.

25 Secondly, DFSB’s convenience or lack of resources is not a valid or
sufficient reason for an open-ended halt to this Inquiry, which is
effectively what it does. So even the way it was narrowed appropriately
today, it still goes to the very heart of this Inquiry. So, in my respectful
submission, when you carefully evaluate the evidence and the submissions
I put to you, you should reject the application.

30 MS McMURDO: Thank you very much, LCDR Tyson. Yes.

35 SQNLDR THOMPSON: Ma’am, sir, SQNLDR Christopher Thompson
representing the interests of WO2 Phillip Laycock in this Inquiry. My
submissions are brief. Between the submissions of Counsel Assisting and
LCDR Tyson, in particular, I think the concerns have been well ventilated
in opposing the application of the Commonwealth.

40 I wish to place it on record that I oppose the application of the
Commonwealth as set out in the written submissions and also expanded or
retracted upon in their oral submissions here today. I have had the benefit
of reading Counsel Assisting’s written submissions and hearing Counsel
Assisting’s oral submissions. I agree with and support those submissions,
45 as I do the submissions of LCDR Tyson.

I only further add that this position is also consistent with the position outlined by Wayne Laycock, the father of WO2 Phillip Laycock, and we ask you, ma'am, to take into account those wishes also.

5 Those are my submissions with the Commonwealth application.

MS McMURDO: Thank you very much SQNLDR Thompson. Yes, Mr – there's something more, please? Thank you.

10 SQNLDR GILES: Ma'am, SQNLDR Jonathan Giles representing the reputational interests for LT Max Nugent. My submissions will also, too, be brief. I oppose the application made by the Commonwealth. I support the submissions made by Counsel Assisting, LCDR Tyson and SQNLDR Thompson, and formally put on the record I oppose the
15 application.

MS McMURDO: Thank you. And the Nugent family have also put in a submission, which I expect you would have placed some emphasis on too.

20 SQNLDR GILES: Yes, Ms McMurdo. I also support, and Marianna Nugent, mother of Max Nugent, has also provided submissions of which you would have had the benefit of reading. And I, too, place emphasis on those submissions.

25 MS McMURDO: Thank you very much, SQNLDR Giles. Yes, submissions from the Commonwealth in reply, Mr Berger?

MR BERGER: Thank you. I do note at the time I anticipate I'd be about five or 10 minutes in reply.

30 MS McMURDO: Yes, sure. Sure, that's fine.

MR BERGER: That, of course, depends on what, if any, questions flow, but assuming not too many, that should be all I need. For submissions in
35 reply in relation to Counsel Assisting, firstly, it was submitted that our application had some inconsistency or difficulty in implementation because what CAPT Rogan had said about CAPT Lyon in 2022 would be caught within our ruling, yet we weren't seeking to exclude that evidence. That was to the effect that in 2022 CAPT Lyon had said he no longer had
40 time to remain proficient. We wouldn't seek to prevent that evidence from being adduced in this hearing block.

45 What was allegedly said by CAPT Lyon in 2022 would not, in our submission, relate specifically and proximately to the actions of him or anybody else in the events of 28 July 2023. If questions were to be asked

suggesting that his actions on the day were not proficient and that led to the crash, we would have a different position. But a general inquiry in relation to that would not be something we oppose and would not fall within the application we make.

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It may be that the practical implementation of our application has to be taken as it comes. So for present purposes we seek to defer two witnesses, and two witnesses only, and beyond that, we might have to see what comes next. But we have, as clearly as we can, identified our concerns, and how that plays out might be a matter for the Inquiry in due course, as it is in the case of any evidentiary or other ruling that occurs in - - -

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MS McMURDO: So it really is the position then, if I were to accede to your application, we'd just have to really run by our witnesses that we propose to call by the Commonwealth to see whether it passed your test.

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MR BERGER: Well, to see whether we had any concerns. If we didn't, then they could be called. If they did, then we could explain those concerns and the Inquiry might accept them or they may not, or it may need to be something that's dealt with either on the papers or in another way. But certainly the Commonwealth approaches this with the utmost good faith, consistently with the matters we've put and without any desire whatsoever to unnecessarily delay or hamstring this Inquiry.

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The second point made by Counsel Assisting was there's always a risk a witness will need to be recalled. We, of course, accept that but our point that we seek to contend for is that calling certain witnesses before the DFSB report will significantly increase the risk and that's not in anyone's interests.

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The third submission made was that the families are asking for the Inquiry to continue. And we heard a number of submissions to that effect. We recognise that. We don't seek to gainsay that. So do we. We just propose what we respectfully submit is an efficient way of that occurring that minimises the risk of questioning occurring that suggests a specific person's actions may have specifically contributed to the tragedy without a foundational basis for that occurring.

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And fourthly, and finally, Counsel Assisting submitted that if our application was acceded to, then it might equally follow that Comcare or the Coroner's investigations needed to be completed before certain aspects of this Inquiry could continue. We don't seek to make such a submission. It's not an application we bring.

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5 Comcare and the Coroner are in a different position to the DFSB who have the framework, the resources, the expertise available to them to undertake an expert examination of the cause of the crash that, in the absence of an independent expert, neither Comcare nor the Coroner would have. In relation to the submissions - - -

10 MS McMURDO: Sorry, could I just make sure I understand that submission. So you're not submitting that Comcare or the Coroner's Inquiry delay their investigations? Because - - -

MR BERGER: As I understood Counsel Assisting's submission, it was to the effect of, "Well, if we have to wait for the DFSB report, why shouldn't we also have to wait for the Coroner or Comcare" - - -

15 MS McMURDO: I think the submission rather was, if this Inquiry has to wait for the DFSB report, doesn't the Coroner's Inquiry and the Comcare Inquiry also have to wait?

20 MR BERGER: I didn't understand it that way. If that was the submission put, we would respond - - -

MS McMURDO: That is, that you're submitting that. And that's his point, that you're not submitting to Comcare and the Coroner that they must stop their Inquiry until the DFSB report - - -

25 MR BERGER: No.

MS McMURDO: Why do it to us? That's the submission, isn't it? Yes.

30 MR BERGER: Well, the Coroner and Comcare have taken the statements, as we understand. People aren't being called before them in a high profile way.

35 MS McMURDO: No. No, it's the public aspect of this that's concerning, really, in the end, isn't it?

40 MR BERGER: The impact that has for those involved in the process is at the forefront of the Commonwealth's mind and its application, certainly. And the impact in that setting of anything being done that might suggest wrongly or unnecessarily an involvement of a specific person in the tragedy is also, we accept, at the forefront of the Commonwealth's application.

45 We embrace and agree, and not just because he's the one-quarter friend we seem to have but, LTCOL Gracie did, in his submissions, we say,

accurately encapsulate the difficulty that arises here and the difficult position the Inquiry is in, and accepted the assistance that the DFSB report could provide to him and others involved in this Inquiry.

5 And we echo those submissions as we do, that there's an unfortunate reality that appears to be here that the Inquiry either proceeds expeditiously but without full information or answers or it waits for that information and assistance and then concludes after that. The criticism appeared to be made that GPCAPT Smith was not here to answer questions.
10

That is because, by email of 12 June, Counsel Assisting told the Commonwealth he was not required for cross-examination, was not required to be here.

15 MS McMURDO: It's your application, so you have to produce the evidence to support it.

MR BERGER: Yes. Well, we've provided the statement, but to the extent there was a criticism that he's not here today to answer questions, that's the explanation for that. In relation to the submissions made on behalf of CPL Naggs, that fatigue needs to be looked at. We don't seek to prevent that unless any questioning in that regard was to specifically suggest that the actions of either the four deceased or another identified or identifiable person involved in the events of 28 July had led to the incident.
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So, for example, questioning could occur, information could be gathered about fatigue levels or fatigue management in the Army generally, but we would resist anybody suggesting, explicitly or implicitly, in the way they questioned a witness or otherwise conducted themselves that, for example, a pilot fell asleep or made a fatigue-induced error, unless there's a foundational basis for doing so. And they either will be or won't be, once we have the DFSB report.
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And it's not the case that fatigue can't be looked at in the meantime. So we also equally reject the submission that this is an attempt to shut down the Inquiry. And the fact that we agree with 11 out of the 13 witnesses who are going to be called this week, we say, is a stark illustration that that is simply not the case.
40

It was also submitted in somewhat emotive terms, "What on earth has the DFSB been doing?" The flight data recorder was obtained in August 2023 and we simply note that the preliminary report was provided by the

DFSB in September 2023, and matters arising from that flight data recording have been provided insofar as that can be done.

Unless there's anything further, those are the submissions in reply.

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MS McMURDO: Thank you. Thank you. Look, I suppose there are a couple of options. We could have a short adjournment and then come back and give our decision, or I will give the decision after lunch. Would that be the best? That would work the best. Okay. So we'll have a short adjournment now and we'll consider – AVM Harland and I will consider our decision on this.

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HEARING ADJOURNED

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HEARING RESUMED

MS McMURDO: The Commonwealth originally sought the following declaration or ruling from this Inquiry:

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Until further Direction of the Inquiry, the hearings held by the Inquiry prior to the receipt by it of the DFSB report into the MRH-90 Taipan crash will not seek to obtain or adduce evidence relating to any or all of the following: crew or individual actions; helmet-mounting sighting display; night-vision illumination systems; human factors; aviation fatigue management; flying supervision; flight authorisation; aviation risk management; aircrew training and standardisation; aircraft design certification, engineering and maintenance; and crash survivability.

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This morning, the application was amended to omit –

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aircrew training and standardisation; aircraft design, certification; engineering and maintenance; and crash survivability –

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and add –

to the extent it concerns specifically or proximately, the four deceased –

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sorry, can I add that – to amend it to add these words –

insofar as those topics relate, specifically and proximately, either to the actions of the four deceased or another identified or identifiable person involved in the events of 28 July 2023.

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Specifically, the Commonwealth said that, in this hearing block, they were objecting only to the evidence of witness D15 and witness D20, at least at this stage.

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The Commonwealth emphasises in its written submissions that the Defence Flight Safety Bureau – DFSB – Inquiry involves technical and subject-matter experts and investigative methodologies consistent with international standards and recommended practices. It contends that the DFSB differs from this Inquiry in that, by contrast with the

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Inspector-General Australian Defence Force Inquiry – the IGADF Inquiry – the DFSB investigation does not apportion blame or liability and is principally concerned with safety recommendations that reduce the probability of occurrence.

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The Commonwealth relies on GPCAPT David Smith’s statement as raising evidence of three risks of prejudice to the DFSB Inquiry, if the IGADF Inquiry fails to exceed to the Commonwealth’s application. GPCAPT David Smith has been the Director of the DFSB since January 2023, and Officer in Charge of the Aviation Safety Investigation

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Team investigating the crash since 29 July 2023. He states that the DFSB investigation was to be completed within 12 months of the crash; that is, 29 July 2024.

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He emphasises that the function of the DFSB investigation is to identify and reduce safety-related risk and not to apportion blame or responsibility. The DFSB Inquiry recommendations must not recommend disciplinary or administrative action against individuals. The DFSB prepared a preliminary report on 12 September 2023 and provided this to the IGADF Inquiry. The current DFSB investigation, he states, is extremely complex and becoming increasingly so. It was to be conducted concurrently with the investigation into the ditching of another MHR-90 Taipan helicopter in Jervis Bay on 22 March 2023 as a result of engine failure. But given staff investigator shortages, the two Inquiries will now be conducted sequentially.

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The Commonwealth also relies on a letter from the Chief of Army to the IGADF dated 17 April 2024 and received by the IGADF on 23 April 2024. In that letter, the Chief of Army, LTGEN Simon Stuart AO DSC, emphasises his obligation to protect the health and wellbeing of his staff, veterans and families affected by the MRH-90 accident, and that he is

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concerned about the impact of the IGADF Inquiry continuing before the DFSB report is completed.

5 He further emphasises the no-fault approach taken by the DFSB Inquiry and its high-level technical expert analysis which, when delivered in December 2024, will provide certainty and clarity on what happened in the accident. Historically, he states, a DFSB report is completed before an IGADF Inquiry commences.

10 Questions have been asked in IGADF hearings, he states, which could have been better characterised after receipt of the DFSB final report, and witnesses called to the IGADF Inquiry about training issues were unexpectedly asked questions about the cause of the accident.

15 LTGEN Stuart requests that this Inquiry elevate consideration of the impacts of the multiple injuries and the accident on the health and wellbeing of Army's people, current and serving, including those conducting the DFSB investigation. He states he has commissioned an assessment of the psychosocial risks presented by the IGADF Inquiry in
20 its public hearings.

I interpolate to observe that no such assessment has been provided to the IGADF Inquiry.

25 LTGEN Stuart asks the IGADF Inquiry to reschedule the remaining IGADF Inquiry hearings until after receipt of the final DFSB report. But as I have mentioned, that request now seems to have been refined in the manner that I have set out in the Commonwealth's present application.

30 The IGADF responded on 26 April 2024 in terms, including:

35 *Independently inquiring into the ADF members' deaths is one of my legislative functions. The Assistant IGADF who is leading the Inquiry, former Justice, the Honourable Margaret McMurdo AC, emphasised on the first day of the hearings that the IGADF MRH-90 Inquiry would be conducted in a trauma-informed manner wherever possible.*

40 *The families of the deceased aircrew are attending and understandably taking a great interest in the Inquiry hearings. The concerns your letter raises require careful consideration, including with an opportunity for input from all interested parties.*

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5 *As Inquiry hearings have already commenced, I have referred your letter to Ms McMurdo. She invites Army to formally place before the Inquiry any applications it may wish to make. Army should provide its written application and supporting evidence and submissions to Counsel Assisting as soon as feasible so that a suitable date for all concerned can be arranged.*

10 Returning to the Commonwealth's written submissions, it relies on GPCAPT Smith's statement, the Chief of Army's letter, and their concerns about the IGADF Inquiry proceeding simultaneously with the DFSB Inquiry to make three contentions.

15 First, that the IGADF Inquiry should rely on the outcome of the DFSB Inquiry to ensure that the IGADF Inquiry does not prejudice witnesses with alternate hypotheses, opinions or recollections as to the causes of the crash so that they do not provide full, open and frank accounts to the DFSB.

20 Second, that the IGADF Inquiry may interview witnesses yet to be interviewed or who may be interviewed further by the DFSB, or call them at public hearings, and that this may make those witnesses less open, honest and transparent in the DFSB Inquiry, increasing the complexity of that Inquiry.

25 Third, that the cumulative hazard and trauma of exposing individuals and Army units to multiple concurrent investigations involving tragic and sensitive circumstances is causing trauma as set out in the Chief of Army's letter to the IGADF.

30 The Commonwealth, in its oral submissions, emphasises again the expertise and professionalism of the DFSB and their investigation into the crash. Counsel for the Commonwealth submitted that to delay the investigation by the IGADF Inquiry in the way the Commonwealth suggests would mean that: the IGADF Inquiry was better informed and it would reduce the risk of recalling witnesses unnecessarily, it would reduce the risk of having to call some witnesses at all, it would raise different lines of inquiry and emphasis on the way the witnesses were giving evidence, it would enable the IGADF Inquiry to become more targeted in the manner of questioning, and that this would be consistent with a trauma-informed response.

45 Counsel for the Commonwealth stated that he had no issue about the IGADF Inquiry continuing with certain parts of its Inquiry and certain witnesses, and it would not prevent any witnesses from being called, it would only ask that they be delayed until after the DFSB report was

received. He also placed some emphasis on the submissions of Counsel representing the interests of the deceased CAPT Lyon, who yesterday indicated he would be supporting the Commonwealth's submissions.

5 Counsel Assisting's written submissions were as follows: that the IGADF submit that the Commonwealth's application to defer the work of the IGADF Inquiry should be refused as the Commonwealth has offered only generalisations and speculation and has established no justification to support its application.

10 In any case, they submit, to accede to the Commonwealth's application would undermine public confidence in this important IGADF Inquiry and could exacerbate the trauma of families and colleagues of the deceased aircrew. Counsel emphasises that under section 5(a) of the Inspector-General of the Australian Defence Force Regulation 2016, a function of the IGADF is:

20 *to inquire into the death of a member of the Defence Force, where the relevant death appears to have arisen out of, or in the course of, the member's service in the Defence Force.*

Counsel Assisting emphasised that: the IGADF's Directions to the Inquiry are wide-ranging; the IGADF is independent of other ADF or Commonwealth agencies and is not bound by any findings of the DFSB or other agencies; and as far as possible, the IGADF Inquiry will be conducted in a trauma-informed way.

25 As to the Commonwealth's asserted prejudice to the DFSB investigation, Counsel Assisting contend that this is not supported by cogent evidence. To accede to the Commonwealth's request would undermine public confidence in the IGADF Inquiry. It is not unusual, counsel contend, for Inquiries with different mandates and purposes to operate concurrently.

35 Counsel Assisting submit that the DFSB has now had many months to interview their key witnesses and can be expected to have done so by now. The Commonwealth, counsel contend, has no particulars of which witnesses may be likely to give less than full and frank accounts to the DFSB if the IGADF Inquiry continues. They point out that the Central Queensland Coroner, not the IGADF Inquiry, took statements from many ADF witnesses involved in the fatal sortie months ago.

40 In any case, Counsel Assisting points out, whether giving evidence to this Inquiry or the DFSB, witnesses are under a moral and legal obligation to give truthful accounts, and there is no evidence to show that they would

do otherwise. Indeed, the DFSB is likely to be assisted by the evidence of witnesses before the IGADF Inquiry.

5 As to the Commonwealth's contention that this Inquiry risks unnecessary and unfairly creating bias, preconception, misconception, or confusion as to the possible cause or causes of the crash, Counsel Assisting submit that this too is entirely speculative, not supported by evidence, and fails to appreciate the independent role of the IGADF Inquiry, which is not to place blame on any person or organisation but to attempt to determine the
10 cause of the accident and to mitigate future risks to ADF personnel.

Counsel submit that, given the slow progress of the DFSB Inquiry so far, there can be no guarantee their final report will indeed be provided to the IGADF Inquiry by December 2024, so that, from a public policy
15 perspective, it's important that the IGADF Inquiry not now halt the key aspects of its investigations.

As to the Commonwealth's contentions this Inquiry is causing trauma to ADF personnel, Counsel Assisting responds by rejecting the claim that the IGADF Inquiry has not or will not respond in a trauma-informed way in its interviewing and examination of the aircrew flying in the fatal sortie, and point out that these witnesses will be able to give their evidence using pseudonyms so that their identity is protected.

25 Counsel Assisting also emphasise the importance, for families and colleagues of the deceased, for this Inquiry and also the DFSB Inquiry to continue and conclude their investigations and reports as promptly as possible. They argue that this delay to the conclusion of the DFSB Inquiry is likely to cause considerable further trauma to families and
30 colleagues of the deceased, and to compound that delay with yet more delays to the IGADF Inquiry would further exacerbate their trauma.

Counsel Assisting also emphasise the importance of investigating all relevant matters as soon as possible while recollections are fresher and
35 prone to be more reliable.

In their oral submissions, Counsel Assisting relied on his written submission emphasising aspects of it. He accepted that the DFSB investigation was a complex one, but pointed out that that meant that there was still a degree of uncertainty as to when it would be completed and so
40 it could not be relied on to be completed even by the end of December. He again emphasised that there was no evidence of the assertion of trauma to witnesses or potential witnesses.

He spoke to the shifting sands of the Commonwealth's position, and that the Commonwealth now only wants to prevent D15 and D20 from giving evidence in these sittings, rather curiously, when other witnesses, it would seem, would fall within the ambit of their application.

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He pointed out that other investigations being conducted into the crash, including those by Comcare or the Coroner, have undertaken interviews of personnel involved in the sortie of 24 July. The Commonwealth does not seek to try to stop them from furthering their investigation and queries why that might be so.

10

He emphasises that the DFSB investigation, and this investigation, are very different, with different purposes, and the IGADF Inquiry investigation has revealed evidence that should assist the DFSB in their investigation, and that may continue to happen as long as the IGADF Inquiry is able to continue.

15

He submitted there was no evidence to support the many evidentiary assertions of the Commonwealth and emphasised that witnesses appearing before this Inquiry were being treated in a trauma-informed way; they gave evidence with access to their statements; they had their support persons present; and, if requested, they were able to give evidence in private.

20

He pointed out that, in any case, the DFSB report, whilst it should be helpful to the Inquiry, is of some limited assistance given that it is written in terms of no-fault and anonymously, in compliance with Annexure 13 of the Chicago Convention. This Inquiry, he emphasised, has to make its own findings and conclusions, and is not bound, and will not be bound, by any DFSB report in any way.

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30

Counsel for the interests of the deceased CAPT Dannel Lyon, while stating yesterday that he supported the Commonwealth application, stated today that he no longer supports it as it would effectively mean that the Inquiry would need to ask the Commonwealth as to whether it could call a witness and what questions they would be asked, and he recognises that that is impractical.

35

And he recognises the importance of the DFSB report, or another expert report, which he concedes could be commissioned by this Inquiry. And, indeed, he submitted that this Inquiry will probably need to obtain its own independent expert advice, with access to the DFSB report, to consider the accuracy and reliability of the DFSB report.

40

He supported the Commonwealth's application insofar as it related to witnesses D15 and D20, in that he considered that they should be called with others involved in the sortie and not in this current group of witness.

5 COL Gabbedy, for MAJGEN Jobson, made no submissions.

LCDR Tyson, on behalf of the interests of the deceased Aircrew Naggs, submitted that the Commonwealth application should be rejected on principle, and also because of the lack of quality of supporting evidence.
10 He emphasised the delay that the DFSB had had so far towards getting answers to what happened on the night of the crash, and the unsatisfactory nature of this.

He emphasised that the Inquiry of the DFSB, and this Inquiry, was not of historical interest, it was a real interest, an immediate interest, to those still flying within the ADF, and the reports from both these Inquiries could have a real impact on their safety, and there was also a great public interest in this independent Inquiry continuing, and the evidence of witnesses, like D20, D15, and others, to be given in this hearing, and in future hearings, was important to be given as soon as possible and not delayed. That this was important, for loved ones of the deceased, for their Army colleagues, and also for the public interest.
15
20

He seriously questioned the delay within the DFSB in progressing their report, given the availability of the relevant evidence over such a long period. And he stated that any concern that the Commonwealth raised about recalling witnesses was overstated, that this is what regularly happened in Inquiries.
25

30 SQNLDR Thompson, for the interests of the deceased Aircrew Laycock, adopted the submissions of Lcdr Tyson and Counsel Assisting, and also the submissions of Mr Laycock which I will refer to shortly.

And SQNLDR Giles, on behalf of the deceased's interests, LT Nugent, also adopted the submissions of Counsel Assisting, opposed the Commonwealth application, adopted the submissions of Counsel representing Aircrew Naggs and Aircrew Laycock, and emphasised the submissions of Mrs Nugent to which I shall also refer to shortly.
35

This Inquiry has received the following submissions from families of the deceased. Mr David Naggs urges the rejection of the Commonwealth's application as delaying both Inquiries will cause him and his family significant stress and emotional impact. They need to know what happened. Details will not cause them stress but rather lack of information will cause them stress.
40
45

5 He needs to know how and why his son died. He questions, given the ADF's stated lack of resources and manpower, will they ever complete the DFSB Inquiry by December 2024. He also questions whether the DFSB should be investigating this matter, and its independence given, as suggested, DFSB's past involvement with safety decisions which may have contributed to the crash.

10 He emphasises that the DFSB must not be left unaccountable for delaying the IGADF Inquiry. He pleads for an independent Aviation Authority to take on the DFSB Inquiry given it may be compromised and admits – that is, the DFSB admits – it is incapable of completing this investigation in a timely way.

15 Ms Marian Nugent, on behalf of her family, also opposed the Commonwealth's application, emphasising the added stress and trauma caused by delay, and the absence of conclusion. She pointed out the financial stress to her and her family of taking unpaid personal leave to attend hearings and the burden should this week's hearings be rescheduled later. This would also cause difficulties for their employers.

20 She cannot see how the IGADF Inquiry could bias the DFSB Inquiry, which should be fact-centred, and questions how delaying the evidence of ADF witnesses would help their trauma as they would have to give evidence at some stage, and delay does not help trauma.

25 The Commonwealth application, she argues, has no regard for the feelings of the deceased's families and friends who want the investigation concluded as soon as possible.

30 Mr Wayne Laycock, a retired police officer, on behalf of he and his wife, Dr Di Laycock, also opposes the Commonwealth application. Mr Laycock points out that it is now almost one year since the crash and they still do not know its cause. They are still grieving, and the length of these investigations make it difficult to move beyond the grieving stage.
35 As a former investigator, he finds it difficult to believe that after nearly 12 months of investigation, the vital witnesses are yet to be interviewed.

Ms Caitland Lyon, in her statement to the Inquiry provided yesterday, says:

40 *My family want this Inquiry to proceed as expeditiously as possible. But without the DFSB report being delivered until December this year, I cannot see how the Inquiry could finish its hearings this year and make any findings about the cause of my husband's death. For me and my family, that is the most*
45

important part of the Inquiry about which the other affected families agree. But we have not yet heard any evidence about that matter, despite being six months into the Inquiry.

5 *The secrecy that still surrounds the cause of the accident is of considerable impact to me and only creates distrust about the ADF and a serious concern that the Inquiry is not focused on that primary fact.*

10 *As a result of this distrust, I would really appreciate the Inquiry to consider their own expert to create an independent report separate from the DFSB .*

15 *The trauma is not knowing what killed Danniell and why the accident happened, not the fact that the Inquiry cannot conclude until the DFSB report is obtained.*

20 *I cannot imagine how or why the DFSB report could take so long. It is quite appalling and insulting to the Inquiry to only now be raising this issue. However, without any other evidence identifying the cause, and no independent expert or report, I do not know what the alternatives are.*

25 *I support LCDR Gracie's position if he thinks it's in Danniell's best interests, even if it was not my initial view. All I want to know now is what happened to Danniell. I do not have the answer or the solution to this very complex issue.*

30 In conclusion, the IGADF is established under part 8B of the Defence Act 1903 (Cth). The object of this part of the Act emphasises that the IGADF is to be independent of the ordinary chain of command of the ADF [see Defence Act section 110A and B]. The IGADF's functions include those prescribed by Regulations [see Defence Act section 110C(1)(g)].

35 Regulations made for the purpose of Defence Act section 110C(1)(g) may relate to deaths of members of the Defence Force where the relevant death appears to have arisen out of or in the course of the member's Service in the Defence Force [see Defence Act section 110C(4)(c)].

40 Under 5(a) of the Inspector-General of the Australian Defence Force Regulation 2016 (Cth), the functions of the IGADF include:

45 *Inquiring into the death of a member of the Defence Force where the relevant death appears to have arisen out of, or in the course of, the member's service in the Defence Force.*

5 The IGADF's Directions to AVM Harland and me, as Assistant IGADFs
conducting this Inquiry into the deaths of the four aircrew in the crash of
the MRH-90 Taipan helicopter in waters near Lindeman Island on 28 July
2023, are extensive, wide-ranging and are published in full on the IGADF
website, so that I need not repeat them here. Importantly, they do not
require the apportioning of blame or responsibility.

10 I have carefully considered the letter from the Chief of Army,
LTGEN Stuart AO, the statement from GPCAPT David Smith, and the
issues they raise and on which the Commonwealth relies in this
application. The assertion that historically IGADF inquiries do not
commence until the related DFSB Inquiry has reported is not helpful
15 given the few instances of such Inquiries. It is especially unhelpful in a
case like this where the DFSB report is significantly delayed.

I accept that it is highly desirable for an IGADF Inquiry to obtain the final
relevant DFSB report as early as possible in the IGADF Inquiry, but
where that report is delayed, as here, I consider it would be remiss of this
20 Inquiry not to continue the investigations it is lawfully charged to conduct
in a timely way.

I am unable to accept the Commonwealth's contention that for this Inquiry
to continue the bulk of its work before the DFSB has provided a copy of
25 the final DFSB report is apt to prejudice the DFSB investigation. It is true
that there are differences between the DFSB Inquiry and this one, and
equally true that there is some inevitable overlap in our investigations.
But, with mutually cooperative communication, that overlap should be
minimised. It could be minimised.

30 The IGADF Inquiry has made every effort, and will continue its efforts, to
mutually communicate and cooperate with the DFSB Inquiry while
maintaining the IGADF's critical independent role.

35 Witnesses, whether at this Inquiry or at the DFSB Inquiry, are expected to
be forthcoming, frank and truthful. I do not accept that they will be less
forthcoming to the DFSB Inquiry if they have given evidence to this
Inquiry. Indeed, it seems to me that the prior questioning of witnesses of
this Inquiry as to the possible cause of the crash is more likely to assist
40 than hinder the effectiveness of the DFSB Inquiry.

It is common experience in administrative Inquiries such as the IGADF
Inquiry that the public reporting of evidence results in the provision of
further valuable information. Indeed, that has been the experience of this
45 Inquiry.

5 The exploration of evidence as to possible causes of the crash at this Inquiry, whether ultimately accepted or not, is more apt to assist than hinder the DFSB Inquiry and is important to maintaining public confidence both in the transparency of the IGADF Inquiry and ultimately in the ADF itself.

10 Nor can I accept the Commonwealth's contention that a failure to grant their application will cause unnecessary trauma to ADF personnel. Earlier in the work of this Inquiry, the DFSB told us their final report could be expected by the end of July 2024. Accepting that the expert DFSB report would likely to be of significant importance to the work of this Inquiry, and taking a trauma-informed approach, seeking to minimise the times the aircrew involved in the sorties surrounding the crash had to retell and relive their accounts of a dreadful night, this Inquiry delayed calling those
15 aircrew to give evidence until August, by which time we understood we would have the final DFSB report. It is now clear we will not have that report until at least December 2024, with no guarantee it will be available then.

20 I have great sympathy for the ADF personnel, as discussed by LTGEN Stuart, who were involved in the sortie, and for others who are undoubtedly deeply affected by the tragic, violent and sudden loss of four of their loved and respected colleagues and mates. It is usually accepted, however, that delay is a significant exacerbator of trauma. That is
25 certainly the view of the families of the deceased who unanimously urge me – almost unanimously urge me, perhaps I should say – to reject the Commonwealth's application and to proceed with the IGADF Inquiry in as timely a way as possible.

30 Together with the families of the deceased airmen, I urge the ADF and the Department of Defence to provide all necessary resources to the DFSB so that it can urgently complete its final report on this crash. That report is likely to be of great assistance to this Inquiry. When ADF personnel give evidence to this Inquiry, LTGEN Stuart and GPCAPT David Smith can be
35 assured that those witnesses are and will be treated in as trauma-informed a way as possible.

40 This Inquiry will need to hear their accounts and it would seem to be in their best psychosocial interest for that to occur sooner rather than later, when their memories are still strong. Further, where appropriate, their identities can be protected so that they will not be exposed to any unwanted media coverage.

45 Another aspect that cannot be ignored is the costs that will be wasted were I to accede to the Commonwealth's request. The IGADF has incurred

considerable expense in the preparation for this and future hearings. And, as Ms Nugent states:

5 *So too have the families of the deceased and their employers in
arranging precious time off work, often without pay.*

10 Were the Commonwealth's application to be granted, this Inquiry would be beholden to the Commonwealth as to what witnesses it called and what questions they were asked. It would gravely compromise the independence of this Inquiry.

15 Counsel for the Commonwealth effectively accepted that the reason why it was making its application to this Inquiry and not to Comcare or the Coroner in respect of their Inquiries was because of the public nature of this Inquiry and the resulting trauma to witnesses involved in this sortie on the night of the crash. Yet no evidence was given to support that claim.

20 The Commonwealth's application also presumes that this Inquiry will fully accept and act on the DFSB report, when it may not. As LTCOL Tyson submitted, the IGADF Inquiry should continue and the DFSB report be provided as urgently as possible, as our reports could affect the safety and wellbeing of current ADF aircrew. These investigations have current and future urgent relevancy.

25 As I say, I sincerely hope this Inquiry has the benefit of the DFSB report as soon as possible, so that we can consider it before completing our own report, whether or not we call our own expert evidence.

30 But in the meantime, this IGADF Inquiry must continue our important work which we consider is in the interests of families, the safety of ADF personnel and the public interest. We will do so in as trauma-informed way as possible and hopefully with a mutually appropriate spirit of cooperation with the ADF, the DFSB and ASIR, so that duplication is avoided where possible, taxpayer costs are minimised, and we can all
35 complete our own responsibilities as early as reasonably feasible for the benefit of families and colleagues of the deceased.

40 For the reasons I have given, I therefore reject – or the Inquiry therefore rejects – the Commonwealth's submissions and refuses its application.

We'll adjourn now for an hour for lunch and resume at 2 o'clock. Thank you.

45 **HEARING ADJOURNED**

HEARING RESUMED

5 MS McMURDO: Yes, FLTLT Rose.

FLTLT ROSE: I call MAJ Michael Gallatly.

10 <MAJ MICHAEL ALAN GALLATLY, Affirmed

<EXAMINATION-IN-CHIEF BY FLTLT ROSE

15 FLTLT ROSE: Please feel free to pour yourself some water. Can you please state your rank, full name and your current unit?

MAJ GALLATLY: MAJ Michael Alan Gallatly. I'm currently posted in the Joint Aviation Systems Division in AASB in CASG.
20

FLTLT ROSE: Is that in Canberra?

MAJ GALLATLY: Yes, that's in Canberra.

25 FLTLT ROSE: Could you please confirm that you were sent the following documents by the Inquiry prior to appearing today? A section 23 Notice requiring your appearance?

MAJ GALLATLY: Yes.
30

FLTLT ROSE: An extract of the Inquiry's Directions?

MAJ GALLATLY: Yes.

35 FLTLT ROSE: A copy of my appointment as an Assistant IGADF?

MAJ GALLATLY: Yes.

FLTLT ROSE: A Frequently Asked Questions Guide for Witnesses?
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MAJ GALLATLY: Yes.

FLTLT ROSE: And a Privacy Notice?

45 MAJ GALLATLY: Yes.

FLTLT ROSE: I'll hand you a document.

MAJ GALLATLY: Thank you.

5 FLTLT ROSE: Did you prepare a statement for this Inquiry?

MAJ GALLATLY: Yes, I did.

10 FLTLT ROSE: Could you please look through that document before you and just confirm that is your statement?

MAJ GALLATLY: Yes, it is. Sorry, I just – there's some duplicated pages at the front, I think, but yes, that is the statement.

15 FLTLT ROSE: If you hand it back to me, I can take those off.

MAJ GALLATLY: Sure. Yes, so it goes to 31, then starts at - - -

20 FLTLT ROSE: Okay. If I just – I've opened the statement up to page 16. Sorry, this does appear to be not quite an accurate version of your statement. I'll hand you my version.

MAJ GALLATLY: Thank you.

25 FLTLT ROSE: If you turn to page 16, is that your signature?

MAJ GALLATLY: Yes, that is my signature.

30 FLTLT ROSE: And is that dated 31 May 2024?

MAJ GALLATLY: That is correct.

FLTLT ROSE: You have one annexure attached to your statement?

35 MAJ GALLATLY: That's correct.

FLTLT ROSE: I tender the statement.

40 MS McMURDO: Exhibit 23.

#EXHIBIT 23 - STATEMENT FROM MAJ MICHAEL ALAN GALLATLY

45

FLTLT ROSE: Is there any amendments you wish to make to that statement?

5 MAJ GALLATLY: No.

FLTLT ROSE: You first made contact with the Inquiry through a submission that you made on the Inquiry's webpage on 22 April 2024. Is that correct?

10

MAJ GALLATLY: Yes, that is correct.

FLTLT ROSE: You enlisted in the Army in 2008, when you were 17 years old?

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MAJ GALLATLY: That's correct.

FLTLT ROSE: And then you went to ADFA and completed a Bachelor of Science?

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MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: And following that, you went to the Royal Military College in Duntroon?

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MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: You subsequently have obtained a Masters of Space Engineering and a Masters in Capability Management?

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MAJ GALLATLY: That's correct.

FLTLT ROSE: I'd like to ask you some questions about your pilot training and your posting history. So this starts at paragraph 7 of your statement. You completed your basic flying training in Tamworth in 2012?

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MAJ GALLATLY: Yes, that's correct.

40 FLTLT ROSE: Which airframe was that on?

MAJ GALLATLY: That's on the CT/4 fixed-wing aircraft.

FLTLT ROSE: And then you completed your basic helicopter training at Oakey in 2013?

45

MAJ GALLATLY: That's correct.

FLTLT ROSE: And what airframe was that on?

5 MAJ GALLATLY: That was on the Kiowa.

FLTLT ROSE: Helicopter?

10 MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: You then posted into 6 Aviation Regiment, and you flew the Kiowa there until the end of 2013?

15 MAJ GALLATLY: That's correct.

FLTLT ROSE: From paragraph 11, you state that in 2014 you converted to the Black Hawk and that you continued to fly Black Hawk at 6 Aviation Regiment until you posted out of there in 2016. Is that correct?

20 MAJ GALLATLY: That is correct.

FLTLT ROSE: So you flew Black Hawk for about two and a half years at that time?

25 MAJ GALLATLY: Three and a half years, including the training. But, yes, two and a half years, probably, post-course. Yes.

FLTLT ROSE: And what category pilot were you on the Black Hawk?

30 MAJ GALLATLY: C Category on the Black Hawk.

FLTLT ROSE: And were you an Aircraft Captain?

35 MAJ GALLATLY: I had been an Aircraft Captain on the Black Hawk by day only, not by night.

FLTLT ROSE: And by night you were you a co-pilot?

40 MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: Did you complete your Special Operations Qualification Co-pilots' Course on the Black Hawk?

45 MAJ GALLATLY: Yes, I did.

FLTLT ROSE: I take it you didn't complete the Captain's SOQC?

5 MAJ GALLATLY: No, definitely not. No.

FLTLT ROSE: You performed a series of non-flying roles from 2017 to 2019, including a six-month deployment to Afghanistan in 2019?

10 MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: Did you maintain your helicopter currencies during this time?

15 MAJ GALLATLY: Yes, I did. On the Defence Currency Flying Scheme, I rented a helicopter about once a month – obviously not while I was in Afghanistan – but, yes, just with money from Defence, to keep my skills – or keep an awareness of how to fly aircraft.

20 FLTLT ROSE: Was that a civilian helicopter that you - - -

MAJ GALLATLY: Civilian helicopters, yes.

25 FLTLT ROSE: And then, at paragraph 18, you state that you posted back into 6 Aviation Regiment in 2020?

MAJ GALLATLY: That is correct.

FLTLT ROSE: Were they flying the MRH by then?

30 MAJ GALLATLY: Yes, they were, at 6 Aviation Regiment in 2020.

FLTLT ROSE: And you completed your MRH conversion course in Oakey from February until July 2020?

35 MAJ GALLATLY: That is correct.

FLTLT ROSE: And what category pilot were you after that conversion course?

40 MAJ GALLATLY: Yes. At the end of the course, I was a C CAT on MRH-90.

FLTLT ROSE: As a co-pilot?

MAJ GALLATLY: The category system is irrelevant of whether you're the Captain or the co-pilot. So it was a C Category. That would've enabled me to fly as Captain or co-pilot by day, and only as co-pilot by night. So - - -

5

FLTLT ROSE: And paragraph 19, when you came back into 6 Aviation Regiment – this is now when they were flying the MRH – what was your primary role?

10 MAJ GALLATLY: When I first came back, it was just as a line pilot, to consolidate my skills on the MRH-90, and to start moving through the progression scheme – system that we had at 6 Aviation Regiment at the time.

15 FLTLT ROSE: What do you mean by “line pilot”?

MAJ GALLATLY: So as a line pilot, essentially your role is primarily to fly the aircraft. So you would probably have the least amount of additional duties. And your job is to start flying and just to get better. And then, once you get better, you can move through the qualifications, and then up in the ranks throughout the organisation.

20

FLTLT ROSE: So when you say you had the least amount of secondary duties, you still did have some secondary duties?

25

MAJ GALLATLY: Very light. Like, by assisting someone who was responsible with planning an exercise, I might help them out with a document, I might help them out with an after-action review. I would do secondary duties like the Ground Safety Officer on a target that we were using to practice on. So light duties like that. But I didn't have a designated role, like a Squadron OPSO or an XO or anything like that.

30

FLTLT ROSE: How long were you the line pilot for?

35 MAJ GALLATLY: Until December that year. So from August to December.

FLTLT ROSE: About five months?

40 MAJ GALLATLY: Yes.

FLTLT ROSE: And how many days a week were you flying then, when you were in that line pilot role?

MAJ GALLATLY: Some days I'd – I'd fly once a week. Other times, you'd probably – you'd fly maybe only a few times a month. Sometimes I hardly got a flight in a month, just with the MRH-90s at the time, just with the work we were doing. So, yes, sometimes barely flying.

5

FLTLT ROSE: So even though your primary and, really, sole job was to fly - - -

MAJ GALLATLY: Yes.

10

FLTLT ROSE: - - - during that five-month period, you actually weren't flying very often?

MAJ GALLATLY: No, not really.

15

FLTLT ROSE: Is that because there weren't enough MRH serviceable as it was being introduced into 6 Avn in 2020?

MAJ GALLATLY: Probably serviceable MRH-90. But also available

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aircrew to go out and fly with, but yes. And then, just with the workload that was on, it was pretty busy just trying to move through all the exercises and training. There's just no additional time to give flying to someone who's not kind of on that path to meet the milestones for the training and the exercises and those sort of activities that are already

25

planned. So you're almost kind of just trying to get flights at the – around the margins.

FLTLT ROSE: Is that – so, if I understand this correctly, there were flights going on?

30

MAJ GALLATLY: Yes.

FLTLT ROSE: It is not necessarily that you, in your junior role - - -

35

MAJ GALLATLY: Yes.

FLTLT ROSE: - - - weren't able to get on those flights because they were too complex for - - -

40

MAJ GALLATLY: Too complex - - -

FLTLT ROSE: - - - where you were at in your training process.

MAJ GALLATLY: Yes. Or I didn't have sufficient qualifications.

45

Because I'd obviously come off course, I didn't have the qualifications to

partake in those training exercises, or insufficient aircraft participating on those exercises. But, yes, it's very common that, as a new pilot, you'd be waiting around until your opportunity to get those qualifications on a formal course. And then you'll be able to join in, and you'll be able to do more and more, as your time progresses in the unit.

5
FLTLT ROSE: And in terms of those formal qualifications, are you referring to the Special Operations Qualification Course for Co-pilots?

10 MAJ GALLATLY: Yes, that's correct. That's probably one of the biggest ones. But there are other courses, like helicopter insertion/extraction techniques. So for the fast roping. There's parachuting, where people are jumping out of the aircraft. There are water insertion, where people are hopping out. There's deck landing qualifications off ships. There's numerous qualifications to kind of move through. But the SOQC is that big course that allows you then to partake in most of the things that 6 Aviation does from there.

FLTLT ROSE: And then, in paragraph 22, you state that in December 2020 you posted out of the Squadron, into the Regiment Headquarters, to become the Regiment Operations Officer?

MAJ GALLATLY: Yes, that's correct.

25 FLTLT ROSE: Is that when you were promoted to Major?

MAJ GALLATLY: Yes.

FLTLT ROSE: At the same time?

30 MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: Is it a requirement that to be a Major, to be the Regiment Operations Officer?

35 MAJ GALLATLY: Yes. The position is – for a Major, you – yes. Yes.

FLTLT ROSE: I'll ask you some questions about what the Operations Officer does in a moment.

40 MAJ GALLATLY: Yes.

FLTLT ROSE: But just in terms of your posting history, did you have many opportunities to fly when you were the Operations Officer?

45

MAJ GALLATLY: Opportunities to fly when I was the Operations Officer? No, it was hard to get flights. The Regiment – it was tough with the Regiment as we were transitioning off the Black Hawk and on to the MRH-90 and the collective training requirements, as well as the exercises, and those certification events essentially consumed the regiment. So there was essentially no spare capacity for additional flying while I was the Regiment OPSO. I was essentially just – my role is to be an OPSO, not to be essentially a pilot, and if I did get to fly that was good but it wasn't essential. It consumed all the resources to move through what we had to do that year.

FLTLT ROSE: So your primary role became the Operations Officer and your secondary role was flying?

MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: Do you remember how many days a week you got to fly when you were the Operations Officer?

MAJ GALLATLY: I'd be lucky if I flew once a week. Probably once a fortnight would be that, and I think in the submission I think she might not have the hours here, but I think it was about 60 to 70 hours in that year. So if you divide that by 50 weeks, it's kind of like 1.5 hours a week, if you do the math.

FLTLT ROSE: At paragraph 25, you state that in January 2022 you posted out of 6 Aviation Regiment and went to Aviation Command in Canberra as the Project Sponsor, helping to write a submission to government about why Army should replace the MRH with Black Hawk.

MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: You said Army was aware that MRH-90 was underperforming and it was not able to provide the capability that 6 Aviation Regiment and 5 Aviation Regiment needed.

MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: Did you come in to the submission process at the beginning or partway through its drafting?

MAJ GALLATLY: Probably at the start of the submission to seek the Black Hawks, but really probably partway through the submission where Army was communicating to government that MRH-90 was under – didn't meet the capability requirements of Defence. So that argument had

already been put forward, and I think it was Peter Dutton, as the Minister of Defence, made that decision to explore the UH-60M Black Hawk. And that's where I came into the process.

5 FLTLT ROSE: As far as you know, from what point on had Army been aware that the MRH-90 was underperforming in those two Regiments?

MAJ GALLATLY: I'm not sure. I don't think I could kind of put my – I could find a time or place where Defence had said that it was
10 underperforming for 5 or 6 Aviation Regiment. I know when I was at 6 Aviation Regiment we failed to declare FOC on the MRH-90. It failed to meet a number of things that it was required to do to replace the Black Hawk in that Special Operations capability.

15 So I know that was a real big red flag, but there were other issues going through. But I'm not intimately – I don't understand in great detail how 5 Aviation Regiment was going, but I know they were having issues using the MRH-90.

20 FLTLT ROSE: What does FOC stand for?

MAJ GALLATLY: Sorry, Final Operational Capability. So it's essentially that would be the end of us introducing the MRH-90 and the
25 start of us saying that the MRH-90 is a capability to government. So we essentially were unable to kind of get over that final milestone.

FLTLT ROSE: As I understand the timeline, 2020 was when the MRH-90 was introduced into 6 Aviation Regiment?

30 MAJ GALLATLY: It might have been introduced a little bit earlier than that, maybe 2018 or '19, but I'm not aware of it. 2020, we were going quite fast with it and we were really ramping up and we were drawing down on the Black Hawk as well over that two years.

35 FLTLT ROSE: When did the Black Hawk stop being used in 6 Aviation Regiment?

MAJ GALLATLY: The Black Hawk stopped being used in December
40 2021, or late in 2021. I'm sorry if it's off by three months but definitely before the end of that year. And I believe we stopped using the Black Hawk being held for operational requirements. I think it was about July/August in 2021. So the MRH-90 had fully taken over those roles.

45 FLTLT ROSE: You were only exclusively flying the MRH-90 by 2020.

MAJ GALLATLY: Yes, 2020/2021, I was only flying the MRH-90.

5 FLTLT ROSE: When you say it was underperforming, what did you understand that to mean? You said it was not providing the capability required.

10 MAJ GALLATLY: Yes. It was unable to achieve availability, so for us to have a number of the aircraft online for us to use to meet our mission requirements. I wasn't really intimately involved in the process, but I don't believe it was meeting our training requirements. It just wasn't moving through enough people. We didn't have the availability from the aircraft to replace what the Black Hawk had done with the workforce before, if that makes sense.

15 FLTLT ROSE: At paragraph 26, you state that the Army were considering buying Bell 429s, which is a small Special Forces helicopter, to complement the MRH-90.

20 MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: Was that just for 6 Aviation Regiment?

MAJ GALLATLY: Yes, that was just for 6 Aviation Regiment.

25 FLTLT ROSE: But then the government, you say, decided to return the MRH-90 completely and replace them with the Black Hawks.

30 MAJ GALLATLY: Yes, that's correct. So that money for those light helicopters was used, with some other money, to pursue whether the UH-60M would replace the MRH-90. So instead of bringing in the light helicopters with the MRH-90, not buying the light helicopters, replace the MRH-90 with Black Hawks.

35 FLTLT ROSE: Completely replace them?

MAJ GALLATLY: Yes, that's correct.

40 FLTLT ROSE: I take it then, was it your role in the project team you then refocused your efforts to the acquisition of Black Hawks?

MAJ GALLATLY: Yes, that's correct.

45 FLTLT ROSE: Now, it's in 2023, that's when you completed your Master's in Capability Management?

MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: Then, in 2024, you posted into the Apache Project Office, where you said before – and in CASG – as an Integration Officer?

5

MAJ GALLATLY: Yes, Integration Manager, yes, for that project, yes.

FLTLT ROSE: Which Regiment are the Apaches being purchased for?

10

MAJ GALLATLY: The 1st Aviation Regiment.

FLTLT ROSE: Is that in Townsville?

MAJ GALLATLY: It is as the ARH Tigers are withdrawn from Service, the Apaches will be introduced in Townsville, yes. So the Regiment is currently in Darwin, but as Apaches come in, the Regiment will move to Townsville.

15

FLTLT ROSE: Is it correct to say that your flying career is completed now?

20

MAJ GALLATLY: No, I can choose to look to go back to a flying role. But I believe, yes, my flying career as a Major, it's – the opportunities are much more limited, short of a couple of command positions or staff appointments in the Regiment, but yes, that's correct.

25

FLTLT ROSE: You're actually currently on parental leave; is that correct?

30

MAJ GALLATLY: Yes, I am.

FLTLT ROSE: So just to recap your MRH-90 experience, you flew as an MRH pilot, this is including your conversion course, in 2020 for about two years?

35

MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: Your total flying hours in the MRH-90 is 175.3 hours. This is at paragraph 23.

40

MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: With 110.3 flying hours by day?

45

MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: Sixty-five hours by night?

MAJ GALLATLY: Yes, that's correct.

5

FLTLT ROSE: Is it fair to say that most of that flying was in 2020, when you were a line pilot, as opposed to 2021?

MAJ GALLATLY: Yes, that's correct.

10

FLTLT ROSE: Did you ever fly as an Aircraft Captain on the MRH?

MAJ GALLATLY: No, I never flew and I would never have wanted to have flown as an Aircraft Captain.

15

FLTLT ROSE: You said before that you could have, being a Major.

MAJ GALLATLY: Yes.

20

FLTLT ROSE: Can you explain why you would never have wanted to fly – or chose never to fly as an Aircraft Captain?

MAJ GALLATLY: Yes, even as a – holding the rank of Captain, I could have flown as an Aircraft Captain if you normally fly with someone who's more junior than you. But normally when you want to fly as an Aircraft Captain, you want to feel confident that you can keep everybody safe, and you can fly competently. And with the experience I had, newly off course, and with the outwards that I did on the MRH-90, at no stage did I feel confident that I could keep everybody safe in that aircraft.

25

30

FLTLT ROSE: Were you ever asked to fly as the aircraft captain?

MAJ GALLATLY: No.

35

FLTLT ROSE: Was it understood by the people in your Troop that you didn't have the experience or capability to fly as Aircraft Captain?

MAJ GALLATLY: Yes, as being one of the newest members, even though I'd been at the Regiment before, I was kind of new to starting MRH-90. It would be those other people who had been around longer at the Regiment who would take me flying and who would mentor me and teach me more things about the aircraft.

40

FLTLT ROSE: You state at paragraph 24, despite flying in Army Aviation for 10 years, you have less than 1000 flying hours and have only ever achieved basic flying qualifications.

5 MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: You said you believe this is due to the severe lack of available flying hours on Army Aviation aircraft.

10 MAJ GALLATLY: Yes.

FLTLT ROSE: What do you mean by that?

15 MAJ GALLATLY: I believe at all stages during my career, Army Aviation has really struggled to have available platforms online where they're able to transition and grow the workforce or provide sufficient hours where the workforce can fly the aircraft to the standard where it could grow. It's really struggled and, as such, I believe that we've been moving through those critical people with those critical qualifications to
20 ensure that we meet government's requirements, but the aircraft – especially the MRH-90 – has not provided sufficient hours where we could really give more flying to the aircrew.

25 So we have to prioritise where it goes and if you're at the bottom of the pile, it's kind of hard to get those flying hours because you really need to give those to the important people who are meeting government's requirements.

30 FLTLT ROSE: When you talk about being on the bottom of the pile, was there anything particular about you that meant you were deprioritised for flying or was it just because you had this?

35 MAJ GALLATLY: It's just unlucky. It was a – and I'm kind of shooting from the hip here, but I believe the MRH-90 was due to replace the Black Hawk in 2012. I started my flying training in 2012. The MRH-90 was meant to be the workhorse of Army Aviation and it really has never kind of filled that void, and it's definitely reduced.

40 So it's just the Black Hawk had to be extended as the MRH-90 was struggling to meet Defence's requirements, and it was really slow to be introduced. So that was really clunky, trying to extend the Black Hawks. Bringing in the MRH-90 was clunky. And the MRH-90 has never really replaced what the Black Hawk used to provide for flying hours.

So it's just unlucky that I started my career in 2012. I think it would be very different if I started today.

5 FLTLT ROSE: I'd like to ask you some questions now about being the Regiment's Operations Officer in 6 Aviation in 2021.

MAJ GALLATLY: Yes.

10 FLTLT ROSE: You outlined what the role is from paragraph 29 in your statement, but can you tell us what is the role of the Regiment Operations Officer?

15 FLTLT ROSE: Yes. So it's, essentially, you'd be in charge of operational planning, as well as collective training for the Regiment. So you'd be in charge of doing operational responses for government if a mission came up, and for training, you'd be in charge of doing those Regiment-level training exercises, so the SOQCs, as well as exercises with 2 Commando and SASR and the other Special Forces Regiments to ensure that everyone is trained as a Joint Force.

20 FLTLT ROSE: Who did you report to?

MAJ GALLATLY: To COL Helen Mammino. She was a Lieutenant Colonel at the time.

25 FLTLT ROSE: Is that the Commanding Officer?

MAJ GALLATLY: Yes, that was the CO.

30 FLTLT ROSE: She was the CO in 2021, I take it?

MAJ GALLATLY: 2020 and 2021, yes.

35 FLTLT ROSE: You said before that you helped in operation planning. Was that also in relation to FLOOD ASSIST, BUSHFIRE ASSIST?

40 MAJ GALLATLY: Yes, I came in just after the bushfires. But in 2021 there was floods and there was a couple of domestic issues and a couple of overseas planning events which we got ready for, but obviously we were never called to assist – as well as COVID as well.

FLTLT ROSE: I imagine COVID, did that interrupt some of your planning for exercises?

MAJ GALLATLY: Yes. Yes, it heavily disrupted us. We were unable to really go beyond the Sydney Basin because we were in Liverpool LGA, which was one of the hotspots around that time. It also impacted us getting our workforce and we also responded to the state guidelines at the
5 time. We were minimising what we could do but, yes, it affected us over a period of time.

FLTLT ROSE: Was it the case that – in 2021, how many days of the
10 week were you actually flying?

MAJ GALLATLY: For the Regiment?

FLTLT ROSE: For the Regiment.

MAJ GALLATLY: I think we stopped flying for, I believe it was close to
15 two months when there was an STI released. Sorry, I'm not sure what STI stands for, but it's like a technical, "Stop flying until we resolve an issue". So I think we were flying for – we probably fly for maybe nine months, almost 10 months in the year. We lost two months of flying
20 due to that STI. So kind of eight months in that year we would have flown Monday to Thursday for most of those periods of time, except for school holidays.

FLTLT ROSE: So when you said you only flew nine months of the year
25 in any case - - -

MAJ GALLATLY: Yes.

FLTLT ROSE: - - - why is that? What three months were you not flying,
30 and why?

MAJ GALLATLY: So we won't really fly much into December. We probably won't fly beyond the first week of December. We won't commence flying until probably after Australia Day, so call that February.
35 We won't fly over the school holiday periods, so that's six weeks throughout that. Then we also don't fly on Fridays. So that was – so you take what's left in the year there, that's how many days we flew.

Then obviously there was a chunk of time where there was COVID and
40 then there was a chunk of time where the MRH-90s weren't flying while we were trying to resolve that STI.

FLTLT ROSE: Why were you not flying on Fridays and why were you
45 not flying in school holidays?

5 MAJ GALLATLY: So the MRH-90s took a lot of work. There's also a measure to reduce fatigue from across the Force. So by not flying on Fridays, except for maintenance test flights when you were trying to confirm a helicopter was serviceable – but the maintenance staff could conduct maintenance on that Friday. Then we didn't fly in the school holidays to give people that time off to manage fatigue and also catch up on maintenance through our contractors.

10 FLTLT ROSE: So it was Monday through Thursday that were the flying days in 6 Avn.

MAJ GALLATLY: Yes, that's correct.

15 FLTLT ROSE: At paragraph 33 you said the unit was running two Special Operations Qualifications courses in 2020 and 2021 and that they each ran for six weeks.

MAJ GALLATLY: Yes, that's correct.

20 FLTLT ROSE: At paragraph 34 you said you tried to increase the number of – I'll call them SOQCs – up to three.

MAJ GALLATLY: Yes, that's correct.

25 FLTLT ROSE: That was part of your role as the Operations Officer, to start planning for those SOQCs?

MAJ GALLATLY: Yes, in the next year, that's correct.

30 FLTLT ROSE: Then at paragraph 34 you said:

35 *BRIG David Hafner, the Commander of 16 Aviation Brigade, decided not to increase it to three because it would mean that 6 Aviation Regiment would have to cancel one of the exercises that*
[REDACTED].

40 MAJ GALLATLY: Yes, that's correct. In a decision brief it was decided that there weren't enough weeks in the year to achieve that, so therefore one thing had to be cancelled and therefore we decided – it was decided to run two SOQCs and complete all of our certification exercises with those Special Forces Regiments.

45 FLTLT ROSE: At paragraph 33 you said there was an overall reduction in flying hours compared to previous years when you were in 6 Aviation Regiment before, where there was flying five days a week and there was

flying during school holidays, and that they were running up to four SOQCs per year.

5 MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: Is that when you were on Black Hawk?

MAJ GALLATLY: Yes, that's correct.

10 FLTLT ROSE: So that was back in 2013 to 2016.

MAJ GALLATLY: Yes, that's correct.

15 FLTLT ROSE: When you're saying there was an overall reduction in flying hours, you're comparing it from that time period to 2021.

MAJ GALLATLY: Yes, that's correct.

20 FLTLT ROSE: What do you think the reason is for those reduced flying hours over that seven-year period?

25 MAJ GALLATLY: It's probably to address fatigue, but it's also to allow our maintenance staff sufficient time to actually prepare the aircraft just to meet that – so there's reduced flying, but the maintainers needed more time just to maintain the aircraft just to support that flying schedule.

FLTLT ROSE: So the maintainers were still working on the Fridays?

30 MAJ GALLATLY: Yes, very hard. Yes. Even some – at one stage, I was the Duty Officer in 2020 and people were working on a Saturday for our contractors, which really shocked me, that maintainers had to work on a weekend to keep the aircraft serviceable to fly Monday to Thursday.

35 FLTLT ROSE: Did you have the same issue when you were flying Black Hawk as you did at MRH in terms of maintainers struggling to have enough serviceable aircraft?

40 MAJ GALLATLY: There were always bad times – sorry, hard times where you're flying the aircraft hard and you had to do more maintenance. But, no, in comparing it, it was like chalk and cheese. They were completely different. So at some stages you'd have less Black Hawks because you flew them really hard, but the MRH-90, we struggled to provide the same serviceability for the maintenance man hours.

45 FLTLT ROSE: That's whether or not you were flying them hard?

MAJ GALLATLY: Yes, if we flew them hard, it got even worse with the MRH-90s. So even just a basic simple flying program really took a lot of effort from the maintainers.

5

FLTLT ROSE: At paragraph 44 you state that:

In 2021, 6 Aviation Regiment would struggle to fly six out of the 12 available MRH-90s.

10

MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: You described that as "just because the MRH was a fragile system"?

15

MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: What do you mean by that?

20

MAJ GALLATLY: So if we had 12 aircraft there, if there was 10 available on a Monday and we put crews out to fly all 10 aircraft for four, five, six hours a day, by the end of the week it's a gamble because you don't know what will break. But by the end of the week, I wouldn't be surprised if you had three or four aircraft left, and if you did it for two weeks, you know, it's more likely that it's going to be like that. So, yes, it was about six aircraft was what we could kind of sustain in a way that met all our training requirements.

25

So out of those, you know, we're getting about 50 per cent of the fleet, which is why it didn't meet our capability requirements, as I brought up before, because we got more from the Black Hawk, and the MRH-90 just didn't provide us the number of aircraft that we thought we'd get.

30

FLTLT ROSE: At paragraph 44 you refer to a two-month grounding in 2021. Is this related to the STI you referred to before?

35

MAJ GALLATLY: Yes, that's correct. That's exactly it.

FLTLT ROSE: So you state that:

40

There was a two-month grounding due to Airbus not appropriately tracking the movements of parts between the different aircraft, and certain parts being over-flown.

45

MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: And it took two months to rectify, or to trace those over-flown parts. Is that correct?

5 MAJ GALLATLY: Yes, we essentially had to pause across the whole of the ADF and track down each part, and find out how many hours were left remaining on each individual part, and kind of tick off each part so we could return all aircraft.

10 FLTLT ROSE: You say “we”.

MAJ GALLATLY: Sorry.

15 FLTLT ROSE: Does that mean involving aircrew, or is that maintainers?

MAJ GALLATLY: Sorry, only maintainers, and the contracted Airbus staff as well, but both working together.

20 FLTLT ROSE: Was 2021 a particularly bad year for groundings – if you’ve got COVID, there’s STI for two months – or was it consistent in your experience in 6 Aviation Regiment that there would be regular groundings?

25 MAJ GALLATLY: Well, I was only at 6 Aviation Regiment for two years with the MRH-90. I know there was some previous issues with the MRH-90, but I’m not an expert. I know they had the tail rotor issue. So there had been other issues where there were groundings. I think it’s – you could probably say the MRH-90 had more groundings, but it seems like we had kind of one a year, kind of a period of time, something that
30 was disruptive.

FLTLT ROSE: You said before that one of the reasons for not flying Fridays and school holidays was to reduce fatigue.

35 MAJ GALLATLY: Yes, that’s correct.

FLTLT ROSE: So was there an attempt by Command to reduce the workload on its members?

40 MAJ GALLATLY: Yes. Yes, fatigue was probably one of the bigger issues going around, and it was noted that to complete the exercise and the training it took a lot from people, and therefore we needed to give people time to recover, and also to do other military things that you need to do in line with your job that aren’t specifically aircrew-related. So, yes, that’s
45 why Friday was all about reducing fatigue.

FLTLT ROSE: In your observation of this, did that assist with reducing fatigue across the Regiment?

5 MAJ GALLATLY: Yes, that's a good question. So it was still – people were still fatigued. So I guess people were probably fatigued when I was there on Black Hawk. People were still fatigued when we were there on MRH-90. Yes, it helped, but the flying was very peaky. Like, there would be busy flying periods, and then periods where you weren't flying,
10 so it's still kind of fatiguing, even if it – over the course of the year it might be a little bit less, it's still fatiguing.

FLTLT ROSE: Is it because actually flying a helicopter in itself is fatiguing on the body, or is there something about the secondary duties
15 that made the role more fatiguing? What was it that was fatiguing?

MAJ GALLATLY: That's a good question. So flying is fatiguing because to get to be the safest pilot or, you know, a really good pilot, you need to fly at night, and on NVGs, because if you can do that, you can fly
20 quite easily by day. So you're kind of working night shift, yes, and if you're working Monday to Thursday, you're on night shift for four days of the week. And then you've got Friday, Saturday, Sunday you're on day shift, and then you start a new work week. You're on night shift. So even – it's not even a long enough period of time to get your body in a routine.

25 So you can say that's fatiguing, flying is fatiguing, doing exercises is fatiguing. You'll go away for periods of time and you'll be planning, you'll be waiting to fly, you'll be away from your family. So that's kind of fatiguing in itself as well. So, yes, there's – the role itself is kind of
30 fatiguing, yes.

FLTLT ROSE: So one of the things you mentioned there was shifting cycles. So if you were, say, a line pilot, you would be flying night shifts Monday to Thursday.

35 MAJ GALLATLY: Yes.

FLTLT ROSE: Then you would have Friday half day, or day off.

40 MAJ GALLATLY: Yes, kind of half day.

FLTLT ROSE: Half day.

MAJ GALLATLY: Come in late, after your Thursday, you know, in line with your crew endurance. So maybe come in kind of 10, 11, 12 o'clock, do a couple of hours, and then you'd head home in the afternoon.

5 FLTLT ROSE: So then you have the weekend sleeping whatever hours you chose to sleep, but then you'd be back to night shift again on Monday.

MAJ GALLATLY: Yes, that's correct. If you were flying on Monday. You might come in to fly Monday night, then not fly. Plan to fly a day shift on the Wednesday, change it to a night shift. So it's unpredictable because the aircraft are unpredictable as well. So your shift would change during the week as well.

10 FLTLT ROSE: What other management techniques did Command introduce to help reduce fatigue?

MAJ GALLATLY: It was probably as well as giving the school holiday periods off, like giving people kind of a certain two-week blocks of time where you could go away with your family and take leave, maybe trying to make a predictable flying schedule. So therefore the maintainers could have a manageable workload for them fixing the aircraft.

20 We came up with a flying program that we'd publish a week in advance where we'd try to hold people to a flying program, so you couldn't, you know, be ready for a day shift and then text someone at the last minute and change to a night shift, or you couldn't just, you know, take someone away for an exercise, a mid-week exercise.

25 So we – there were a couple of things to address fatigue, but it was kind of – it helps, but it's not – like, it hasn't solved the issue.

30 FLTLT ROSE: Was there any doctrine or guidance provided to you as an operations officer who was doing the planning to assist you to help manage the crew's fatigue?

35 MAJ GALLATLY: To be honest, your hands are kind of tied. There's not too much you can really do. As I kind of outlined before, the year's essentially booked before you get started. So for doctrine that I could look to implement to reduce fatigue at the unit, there's – you could probably say there's probably, like, four to six weeks of the year that aren't allocated somewhere. And then we have to do our own unit internal training, which would be like helo casting, parachuting, maybe gunnery or something like that. So I couldn't – there's not too much you could've done. So, no, there's no real doctrine.

45

We had monitoring through the Snapshot Survey where we collect data from people, but it's really collecting data and just telling us what we already know.

5 FLTLT ROSE: Were there any changes based on the Snapshot Survey results?

MAJ GALLATLY: I didn't see any massive changes over the period of time I was there in response to it.

10

FLTLT ROSE: So you said before that it was fatiguing when you were flying Black Hawk, and also fatiguing when you were flying MRH. Did you notice an increase in fatigue for MRH pilots?

15 MAJ GALLATLY: No. No, I would say it's about the same. It's the workload of flying nights, going away, doing exercises, and then just changing your work program throughout the week that involves day and night shift.

20 FLTLT ROSE: Did you have to attend courses annually about, you know, aviation medicine that included issues of fatigue?

MAJ GALLATLY: Yes, I think not annually, but we – you've got an aviation medicine currency that you need to do for aircrew. I think it's
25 two or three – every two or three years. We'd have two safety days every year where we'd discuss fatigue. At mandatory training we'd discuss fatigue. We'd discuss it quite a lot. We'd make it known to people, and Commanders were trying to make it work where they could, but there was just work that needed to be done, and people needed to do that work.

30

FLTLT ROSE: Was there an emphasis on managing your own fatigue as a pilot or an aircrew?

MAJ GALLATLY: Yes. Yes, you know, it was quite important that the
35 aircrew needed to manage their fatigue, but like, once again, you can say these things but if the schedule is the schedule, it's really just a nice statement.

40 FLTLT ROSE: Is there any difference in terms of fatigue levels if you're in the simulator as opposed to live aircraft?

MAJ GALLATLY: Maybe – it's probably the same. Maybe in the
45 simulator you're working harder because the person you're flying with can kind of pull more emergencies on you, so you're kind of – you're working harder because the aircraft is going wrong, because you're trying

to train. But yet again, the simulators for us were either in Townsville or Oakey, so to go to the simulator you have to fly up, so you're away from your family.

5 You probably don't really want to fly in the simulator, you want to fly in the aircraft. So you're potentially frustrated that that's not the flying you want to do. So, no, I don't think that would really address it.

FLTLT ROSE: At paragraph 40 you state that:

10

There was an over-reliance on senior aircrew that had the particular qualifications needed to fly the Special Operations missions for 6 Aviation Regiment, and that they needed to be consistently available for flying because there wasn't the depth on the bench to relieve them.

15

MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: So would it be your observation then that it's the senior aircrew that were more fatigued than the junior aircrew?

20

MAJ GALLATLY: Yes, absolutely. Sorry, so when I was talking about the kind of very low flying, that would probably be myself or the more junior cohort. The senior guys were probably flying almost every sortie, and having to fly those because, yes, they were the only people who had those qualifications. And you needed those qualifications in the formation to achieve the mission.

25

FLTLT ROSE: The senior aircrew also had the more demanding secondary duties?

30

MAJ GALLATLY: Yes, there were normally – because they'd been around the Regiment longer, they would be people like OCs, they would be OPSOs, they'd be Troop Commanders, maybe Standards Officers, Adjutants. There are a bunch of positions that are more senior for the secondary duties that those people who had been around the Regiment long enough to – yes, so they're busy in two jobs.

35

FLTLT ROSE: So they were essentially flying four days a week, Monday to Thursday?

40

MAJ GALLATLY: Yes.

FLTLT ROSE: Plus doing those more demanding secondary roles?

45

MAJ GALLATLY: Yes, that's correct.

5 FLTLT ROSE: Then you continue at paragraph 40, you state that you were concerned about the impact of the reduced flying schedule on the junior aircrew because it meant that they had less flying hours, which impacted their currency, proficiency and recency.

10 MAJ GALLATLY: Yes. And, sorry, can you just say, was that in paragraph 40?

FLTLT ROSE: Paragraph 40.

MAJ GALLATLY: Yes, that's correct.

15 FLTLT ROSE: So did you have concerns about the junior aircrew and the pipeline coming through in terms of them being qualified enough to replace the senior aircrew as they were posted out?

20 MAJ GALLATLY: Yes. I had serious concerns that junior aircrew weren't getting sufficient hours in order to become senior aircrew. And therefore that also provided an over-reliance on the senior aircrew to remain and continue filling those senior positions. And they would be filling those positions without anyone – with less and less people to be able to help them out or swap out and the like.

25 FLTLT ROSE: As part of the issue, there were only two SOQCs being run per year, so there were less – the junior aircrew, less of them were able to get on those courses?

30 MAJ GALLATLY: Yes. Yes, so there were less SOQCs, but there was also less flying on the MRH-90. So not even just purely looking at the SOQC and that pipeline. Even just normal flying, there's less flying to do so the junior guys really struggled to kind of get those hours in the aircraft to be able to get better, to be those senior people.

35 FLTLT ROSE: At paragraph 45 you describe a sortie in 2020 when you started four aircraft in a row and none of them were serviceable. And then you describe some other reasons why aircraft were not serviceable on other occasions.

40 MAJ GALLATLY: Yes.

FLTLT ROSE: You then state that even though you felt confident to fly when an aircraft was serviceable, you probably didn't factor in the human

factors involved in the stress of starting each of those aircraft in a row and then having to run to the next one with all your gear.

MAJ GALLATLY: Yes, that's correct.

5

FLTLT ROSE: What do you mean, the human factors involving the stress of moving between aircraft?

MAJ GALLATLY: So when you prepare for a mission, you'll put – you'll have the aircraft configured in a certain way. So you'll have mission equipment, you'll have passengers, you'll have markings on the aircraft. You'll have all these things that then need to be – that you haven't thought of – even fuel loads on the aircraft – that need to be reconsidered to ensure that you're ready to go for that mission.

15

So that human factors that I'm talking about is just that stress that you weren't planning to – you weren't planning to run to four aircraft that day. It really shocked me when – starting four aircraft, it's just – I just can't believe that it would just break and break and break and break. So yes. And you would finally get off the ground and you're like, "Oh my God, that's great". But did you forget something? Did you not bring a kneeboard? The data card, did you leave it in the previous aircraft?

20

Once I was getting my finger light off and the batteries spilled out, and then you need to find the batteries. Did you just break the aircraft? Because now we need to find all the FOD in the aircraft.

25

So it's these human factors of that you just weren't prepared that day to be running around with heavy equipment. And the aircrewman, who have the mission equipment, which might be stretchers or sniper bars or things like that, they're lugging heavy pieces of equipment around the flight line, walking two, three hundred metres, shuffling between aircraft.

30

FLTLT ROSE: So is it the case that in this instance, when you had to move between four aircraft, you were sort of sweaty and stressed out by the time you actually started flying?

35

MAJ GALLATLY: Yes, stressed out. And, to be honest, you'd almost be at the point where you're like, "You know what, if this one doesn't become serviceable, I might just call it for the day because I'm probably going to be unsafe if I move to another aircraft".

40

FLTLT ROSE: Did you have to go through – we've heard evidence of FACE checks.

45

MAJ GALLATLY: Yes.

FLTLT ROSE: Can you just say what FACE stands for?

5 MAJ GALLATLY: Yes, so fatigue, attitude, I think it's complacency, external factors. Essentially a FACE check is, "Do you feel okay to fly today?" Just, "Are you feeling okay?" So, yes, you know, after four of those aircraft and I said I probably would have called it quits on the next one, that would have been me FACE-ing out, essentially.

10 FLTLT ROSE: At paragraph 49 you refer to a Risk Management Plan that BRIG David Hafner and LTCOL Helen Mammino introduced in February 2021. That's at Annexure A of your statement. Could you turn to that?

15 MAJ GALLATLY: Yes.

FLTLT ROSE: It's titled here the "MRP 6 Avn – 21 MRH Over Water Operations".

20 MAJ GALLATLY: Yes.

FLTLT ROSE: What does MRP stand for?

25 MAJ GALLATLY: It's Risk Mitigation Plan. Sorry, off the top of my head it's – not too sure exactly, MRP, but yes, Risk Mitigation Plan.

FLTLT ROSE: On page 1, the activity description says:

30 *MRH over water operations where pilots are using HMSD for the purposes of training, currency and qualification.*

HMSD, can you tell us what that stands for?

35 MAJ GALLATLY: Head-Mounted Sight Display.

FLTLT ROSE: Is that essentially the night-vision devices?

40 MAJ GALLATLY: Yes, that's the night-vision system. But you can wear it by day as well. It's your heads-up display by day.

FLTLT ROSE: The Activity Objectives says:

45 *Utilise MRH over water IO2 –*

in order to?

MAJ GALLATLY: Yes, in order to.

5 FLTLT ROSE:

Achieve training currency and qualification. This includes all over water profiles where MRH pilots are using HMSD.

10 MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: Did MRH pilots always have to use HMSD by the time you were flying in 2020 and 2021?

15 MAJ GALLATLY: Yes, by the time I was, everyone would wear the HMSD and, yes, it'd be more dangerous not flying with the HMSD.

MS McMURDO: Sorry, was that "would be more dangerous if not flying with HMSD"?

20 MAJ GALLATLY: Yes, ma'am.

MS McMURDO: Thank you.

25 MAJ GALLATLY: Just because of the information it provided to you, it was very useful.

MS McMURDO: Thank you.

30 FLTLT ROSE: What is the status of this type of document in terms of where does it fit in the hierarchy of orders, instructions, procedures?

35 MAJ GALLATLY: Yes, it'd probably sit between – it's something at the Regiment-level, so below Brigade. It would be something that sits outside of our Standing Instructions. So it'd be, like, a document that's released faster than our Standing Instructions, so the Brigade-level safety documents, and then it would be incorporated into a future version of that document in the future.

40 FLTLT ROSE: On page 2 it says, under the heading "Main Hazards":

MRH pilot underwater egress impeded by HMSD and the potential consequence is multiple fatalities.

45 You saw that?

MAJ GALLATLY: Yes.

5 FLTLT ROSE: If you go back just to page 1, it refers to an AATES report, an AATES test report from 4 December 2020.

MAJ GALLATLY: Yes.

10 FLTLT ROSE:

Underwater egress for TopOwl [REDACTED] –

15 MAJ GALLATLY: [REDACTED] [REDACTED]
[REDACTED]

FLTLT ROSE: The report states:

20 *Unacceptable assessment in a successful underwater egress of MRH pilots using HMSD.*

MAJ GALLATLY: Yes.

25 FLTLT ROSE: And then at paragraph 49 of your statement you say that a Dutch aircrewman drowned while trying to egress the aircraft because there were too many cables in the way.

MAJ GALLATLY: Yes, that's what I believe has prompted AATES to conduct this test. Yes.

30 FLTLT ROSE: And that Dutch pilot was flying an MRH or an NH version?

35 MAJ GALLATLY: Yes, an NH, and then crashed. But at slow speed, so the aircraft was upside down and they were trapped in the aircraft, just upside down, so like a metre and a half underwater. And they drowned because they were unable to get out of the aircraft. And sorry, that's what I believe, I think, from just reading the news.

40 FLTLT ROSE: So page 4 of this MRP, if you could turn to the "Risk and treatment controls". Sorry, I have to use – I don't have glasses, but under the risk section it says:

45 *Pilot underwater egress impeded by TopOwl HMSD. MRH pilot underwater egress impeded by basic helmet cord and HMSD QRP failure to disconnect or - - -*

MAJ GALLATLY: Would you like me to read that for you?

FLTLT ROSE: Sorry, I'm struggling, yes.

5

MAJ GALLATLY: Yes, so that's the:

HMSD QRP –

10 so that's the quick-release pack –

failure to disconnect or snagging on the airframe leading to multiple serious injuries, impeded exit and/or fatalities.

15 FLTLT ROSE: So that's the risk.

MAJ GALLATLY: Yes.

FLTLT ROSE: The cabling issue?

20

MAJ GALLATLY: Yes.

FLTLT ROSE: Not being able to get out of the helicopter when it's underwater.

25

MAJ GALLATLY: Yes.

FLTLT ROSE: Then if you look at the treatment controls, which is one of the columns beyond halfway through that table.

30

MAJ GALLATLY: Yes. Do you want me to read the relevant part?

FLTLT ROSE: Well, I think the essence of it is that from February 2021, when it was introduced, the 6 Aviation aircrew were prohibited from flying over water unless it was essential for training preparedness and operational requirements.

35

MAJ GALLATLY: Yes, that's correct. Yes, flight over water is to be limited to that unless essential, from what you said. Yes, true.

40

FLTLT ROSE: So what did this mean on the ground for the flying Troops in terms of how often were they flying over water in 2021, once this was introduced?

MAJ GALLATLY: I'm not too sure post because – how it changed it after this, but I do remember being told by the other aircrew that it's, like, "You can't fly over water unless we are doing a mission, so you're flying to a ship or you're doing something related to having to fly over water".

5

FLTLT ROSE: In 2020, before this was introduced, when you were flying a little bit more, had you been flying over water?

MAJ GALLATLY: Yes. Yes, of course.

10

FLTLT ROSE: And it was quite often that you were flying over water?

MAJ GALLATLY: Yes. Yes, you'd fly over water all the time, and yes, like, you know, if you're flying over water there are things you have to do to get yourself safe. You have your oxygen bottle. You have to get your helmet, your quick – your HMSD quick-release pack. [REDACTED]

15

[REDACTED] If you've got any other things around you, like, you prepare yourself. If you're over water, you need to be prepared to get yourself out of the aircraft quickly.

20

FLTLT ROSE: When you left 6 Aviation Regiment at the end of 2021, was this restriction or reduction in flying over water still in place?

MAJ GALLATLY: Yes, I believe so.

25

FLTLT ROSE: Was it incorporated into Standing Instructions?

MAJ GALLATLY: I can't recall if it was, but I gather it might've been. But, sorry, I don't know how this changed because it's a short period of time, like 10, 11 months since this was dropped. Like, I wouldn't be surprised if it maybe took 18 months for it to be incorporated into a document.

30

FLTLT ROSE: Do you have any knowledge now as to whether there is still this reduction of flying over water?

35

MAJ GALLATLY: No idea, sorry.

FLTLT ROSE: So if this was introduced in February 2021, the pilots that were flying regularly in 6 Aviation Regiment were not flying over water for that whole period of 2021, essentially, unless it was operationally required.

40

MAJ GALLATLY: Yes, otherwise they'd be violating this rule.

45

FLTLT ROSE: At paragraph 50 of your statement you refer to:

part of the Standing Instructions for Aviation Operations that restricted aircraft from flying below 500 feet AGL –

5

is that above ground level?

MAJ GALLATLY: Yes, that's correct.

10

FLTLT ROSE:

Outside of approved terrain flight areas.

15

MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: What are "approved terrain flight areas"?

MAJ GALLATLY: Not on a Defence flying – not on a Defence range. So everywhere in Australia that's not a Defence range.

20

FLTLT ROSE: So it's:

Where there was no operational or training imperative for low flying due to an increased risk of aircraft hitting civilian drones.

25

MAJ GALLATLY: Yes.

FLTLT ROSE: Has this happened in your experience? Have you had anyone hit a drone?

30

MAJ GALLATLY: No, but we've hit birds, pelicans, like, hawks. I've hit a bat. Like, but no, I've personally never hit a drone, and I don't know of anyone who's hit a drone. I know people have come close.

35

FLTLT ROSE: When an aircraft hits a bat or a bird, is it the case that the procedures are that you need to conduct an emergency landing?

40

MAJ GALLATLY: It depends what happens, but yes, more often than not you should because the aircraft has been contacted with something abnormal, and you should check that the aircraft is working.

FLTLT ROSE: Is it fairly regular that you hit flying objects like bats and birds?

5 MAJ GALLATLY: Maybe like, yes, probably once a fortnight you'd probably hit a bat or a bird. Yes, it depends on what area you're in. Like, if you're in Sydney there's maybe a little bit less wildlife. When I was flying in Cultana, there was just heaps of bats because it's a rural area, so yes.

10 FLTLT ROSE: Do you know if it would be more dangerous for a drone or a bird to be hitting an aircraft, or do you think it would be essentially the same potential damage?

15 MAJ GALLATLY: I think I've seen when we were on Black Hawk someone hit a pelican and that went straight through the windscreen. It's all about the mass of the thing that hits. It doesn't matter whether it's a drone or a bird. Like, a four-kilo thing that hits your windscreen at 200 kilometres an hour is a four-kilo thing, yes.

20 FLTLT ROSE: At paragraph 51 you describe both these risks, and those are the flying over water and the potential risk of hitting a drone as low-level risks.

25 MAJ GALLATLY: Yes, as I kind of said – as you alluded to with hitting birds and the like, or hitting other things, like hitting a bird or a drone is – like, it may happen, but the risks of not flying at low-level and doing something wrong and hitting the ground at speed is dangerous. And the same with the flight over water, you could crash over water at a slow speed, but if you crash over water at a high speed it doesn't matter whether you've got a glove off or HMSD on, you've crashed. If that makes sense.

30 Yes, so I believe they were kind of low-level risks, and I don't think it was worthy of restricting training in those environments.

FLTLT ROSE: Then you state that:

35 *Cancelling and limiting flying because of these low-level risks actually increased the risks for aircrew when they did actually fly.*

40 MAJ GALLATLY: Yes, because they weren't exposed, or they didn't do those things. So the flying at low-level – I don't want to say – it wasn't frowned upon, but you shouldn't be flying at low-level. And if you are at 200 feet and if you were to hit a drone, you could be in quite big trouble because you shouldn't have been. But then, people are not training in that low-level flight – and, sorry, to be clear, our rules and instructions, below 200 feet is low-level. 200 feet and above is just normal flying. So I guess
45 our normal flying envelope was brought from 200 feet up to 500 feet.

FLTLT ROSE: Whereas previously you had been doing quite a lot of low-level flying when you were a line pilot.

5 MAJ GALLATLY: Yes, like, if you were flying – if you were just flying normally, I'd fly around at 200 feet if you weren't flying over houses. That would be your common flight altitude, especially – if you were going over houses, you'd go a little bit higher, but you'd certainly want to –
10 especially in Sydney where there's so much general aviation traffic – you would want to stay below that altitude where everyone else is playing it, because you don't want to collide with those GA aircraft around Sydney, or anywhere else.

15 So, yes, very common to fly at 200 feet. Not below, but like, two to two hundred feet – sorry, two to two hundred and fifty feet would be a common flight altitude.

FLTLT ROSE: Does that mean that the junior pilots that posted into 6 Aviation Regiment in 2021, and were there essentially in 2022 I suppose
20 as well, would have had less experience flying over water and at those low altitudes than, say, yourself or other pilots that came into 6 Avn around your time?

25 MAJ GALLATLY: Yes, that's correct, and that restriction for the HMSD over water, that was a 6 Avn restriction, but that low-level flying for the drone, that was Defence-wide. So all Army – sorry, not Defence-wide – Army-wide. So all Army pilots graduating around that time would not have been flying at those altitudes or training in those environments.

30 FLTLT ROSE: At paragraph 53 you refer to another reason why junior aircrew in 6 Aviation Regiment were not able to sufficiently develop their flying skills, and that's the flat structure of the workforce.

35 MAJ GALLATLY: Yes. So there was a lot of junior pilots sitting around waiting for their opportunities to progress and move through the competency system. So there was a lot of junior aircrew, very few senior aircrew, and the few senior aircrew – there wasn't enough of them to train the junior aircrew and kind of drag them through the system.

40 FLTLT ROSE: You said before the senior aircrew were doing most of the flying.

MAJ GALLATLY: Yes, that's correct.

45 FLTLT ROSE: They had demanding secondary roles.

MAJ GALLATLY: Yes.

5 FLTLT ROSE: They were also responsible for mentoring or training up the juniors.

MAJ GALLATLY: Yes, correct.

10 FLTLT ROSE: And they just weren't able to achieve all of those tasks.

MAJ GALLATLY: They can mentor and train the junior people. Like, however many of them there are, they can train that many junior aircrew. But there are always more junior aircrew than those seniors and, as such, you're just waiting for your spot to join with one of those people to
15 conduct the flight that would give you that experience.

FLTLT ROSE: Is there a lot of sitting around for junior pilots?

20 MAJ GALLATLY: Yes.

FLTLT ROSE: You also state that:

25 *Junior pilots were often promoted into secondary duties prematurely, so they did not get the opportunity to gain the necessary skills and experience in their primary role as aircrew.*

MAJ GALLATLY: Yes, that's correct.

30 FLTLT ROSE: Do you include yourself in that?

MAJ GALLATLY: Yes, I'd put myself in that. I would just say that if - so those senior aircrew in those senior positions, demanding roles, most of them can kind of deal with it for a few years, but then people would like to move on to sometimes civilian employment, or they'd just move on to
35 other roles that are better, and are less demanding, and then there's a vacancy where those - like, someone needs to fill that position, so junior aircrew are promoted to fill those positions. They have to be filled by someone.

40 FLTLT ROSE: At paragraph 54 you say that:

The workload on the senior aircrew was unsustainable, and that many experienced significant fatigue.

45 And you said:

They worked long hours from about 1600 to 3 in the morning.

5 MAJ GALLATLY: Yes.

FLTLT ROSE: Was that the standard night shift?

10 MAJ GALLATLY: Yes, that wouldn't be uncommon. So you'd come to work, especially in summertime, you'd come to work and you can't do – you can't really do night flying until the sun goes down. So summer it's, like, 8, 8.30 and you might do two waves. So a senior aircrew could train, kind of, two people that night.

15 They would take one junior pilot, come back, shut down, refuel, take another junior pilot. So that's two two-hour sorties with a one-hour shutdown. So it's, like, five hours of flying at least from – kind of at least from 9, 9 o'clock, at night.

20 FLTLT ROSE: And you're including the QFIs and the QAIs in this senior aircrew?

MAJ GALLATLY: Yes. Yes, definitely.

25 FLTLT ROSE: At paragraph 55 to 58 you talk about the type of serials that 6 Aviation Regiment conducted in 2020 and 2021.

MAJ GALLATLY: Yes.

30 FLTLT ROSE: And you compare high-quality training serials to low-quality training serials.

MAJ GALLATLY: Yes.

35 FLTLT ROSE: Can you describe the difference between the two?

40 MAJ GALLATLY: Yes. So we did a lot of great – like, we did a lot of great training. Like the SOQCs were set – deliberate. We went through a bunch of different training serials or flights over that. What's that, six weeks with about four flights a week over that period of time. But it would be a minimum six-week training block. And so, really, you'd only do 16 flights over that – sorry, 24 flights, roughly – a few less – but over that six-week training block. And you'd really only do those missions.

45 You weren't doing lots of flying. You were doing a little bit of flying, but you were doing a little bit of flying exactly – you were flying to a stadium,

you were flying to a building, you were flying to an aircraft – sorry, you were flying to a ship, the aircraft were flying to ships. So you were doing complex training but there was a long period of time where you'd only do a few flights.

5

FLTLT ROSE: Was that the high quality? The SOQCs with the high quality from serials?

10 MAJ GALLATLY: Yes. As well as probably our collective training exercises with [REDACTED] So we'd have maybe two, two to four-week exercises with those guys. We'd do height training and then we'd do a full mission. They're probably the things that you see on the TV with Commandos roping onto ferries or buildings in the CBD.

15 But sometimes you'd only do one of those flights in a whole week. So you'd do a lot of planning, but only about four aircraft would fly to a building once in the week. So that's eight aircrew or eight pilots and eight loadmasters who were exposed to that one serial.

20 FLTLT ROSE: And what's a low-quality serial?

25 MAJ GALLATLY: A low-quality training serial would just be something that has very limited objectives where you would just take an aircraft and you would go for a flight to the training area and it would not be complex. You wouldn't be taking passengers. You'd just be landing in pads in your Holsworthy flying training area and you'd just be consolidating your skills.

30 And the senior pilot – they didn't have to be too senior – would be mentoring the junior people, showing them different things, asking them to do it again. You'd be refining, you'd be trying to get better or more accurate.

35 So that's what a low-quality training serial is.

FLTLT ROSE: And at paragraph 58 you state that you would have preferred to fly, say, five two-hour sorties and these low-training serials per week - - -

40 MAJ GALLATLY: Yes.

FLTLT ROSE: - - - rather than doing these high-quality serials - - -

45 MAJ GALLATLY: Yes.

FLTLT ROSE: - - - where you've got limited flying.

MAJ GALLATLY: Yes, I'd rather fly 10 hours in a week where I was in the aircraft a lot than fly, like, one hour in a week.

5

AVM HARLAND: Excuse me, just a question.

MAJ GALLATLY: Yes, sir.

10 AVM HARLAND: Is low quality and high quality, is that your terminology?

MAJ GALLATLY: Yes. Yes, sorry, that's my terminology, sir.

15 AVM HARLAND: Yes. Maybe I'm getting that mischaracterised because it sounds like you're saying low quality is actually good quality and your preference.

20 MAJ GALLATLY: Well, I would say it's subjective, sir. So someone could say, you know, a low-quality training serial could be a waste of time. You know, "Did you really have to, you know, burn that aircraft for that period of time to achieve not much?" I guess, yes, sorry, so it's subjective. But that's why when I say "high quality", it's when we've rented a Sydney ferry or a, you know, building or a vessel, like a cargo ship, like, you know, it's expensive training and it's awesome, but it's very limited.

25

AVM HARLAND: Yes. So I just check that I understand that correctly.

30 MAJ GALLATLY: Yes, sir. Yes, sir.

AVM HARLAND: You're saying that basically there is a quality in a quantity of flying hours - - -

35 MAJ GALLATLY: Yes, sir.

AVM HARLAND: - - - and effectively going and getting the actual experience.

40 MAJ GALLATLY: Yes, sir. Yes, sir, that's my opinion. Yes, I think - - -

AVM HARLAND: Okay. Thank you.

45 MAJ GALLATLY: Thanks, sir.

FLTLT ROSE: I'll ask you some questions now about you actually flying the MRH.

5 MAJ GALLATLY: Yes.

FLTLT ROSE: At paragraph 62 you state that by 2021 your currency and recency was poor.

10 MAJ GALLATLY: Yes.

FLTLT ROSE: And you felt very incompetent flying.

15 MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: And then at paragraph 63 you state that the OC and the CO of 6 Aviation Regiment would have been aware of your limitations and that's why they didn't task you with complex sorties?

20 MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: If you turn over the laminated A3 piece of paper in front of you.

25 MAJ GALLATLY: Yes.

FLTLT ROSE: I'm going to ask you now who the OC was of 6 Aviation Regiment in 2020 and 2021.

30 MAJ GALLATLY: Okay.

FLTLT ROSE: But if they appear on that list, could you please use their pseudonyms instead of their real name.

35 MAJ GALLATLY: Yes. It's D23.

FLTLT ROSE: D23?

40 MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: At paragraph 91 of your statement you state that you flew with CAPT Danniell Lyon six times.

45 MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: Did you call him Diesel?

MAJ GALLATLY: Yes, I called him Diesel.

5 FLTLT ROSE: And you said that some of those flights were at night and that you felt very comfortable flying with him?

MAJ GALLATLY: Yes, that's correct.

10 FLTLT ROSE: And at paragraph 92 you give a specific example of one flight with Diesel - - -

MAJ GALLATLY: Yes.

15 FLTLT ROSE: - - - where you were flying over the coast of Wollongong, and it's over water by day.

MAJ GALLATLY: Yes, that's correct.

20 FLTLT ROSE: And you were conducting a turn in the MRH when it lost a bit of speed and then dived its nose to catch up airspeed.

MAJ GALLATLY: Yes, that's correct.

25 FLTLT ROSE: And you state that you threw your bugs because you did not understand what was happening.

MAJ GALLATLY: Yes, that's correct.

30 FLTLT ROSE: What does "throwing your bugs" mean?

MAJ GALLATLY: It's like the autopilot disconnect. So you stop the autopilot from functioning and you fly the aircraft.

35 FLTLT ROSE: So something happened to the aircraft that made you nervous, that you wanted - - -

MAJ GALLATLY: Yes.

40 FLTLT ROSE: - - - to take it off autopilot so that you could hands fly it?

MAJ GALLATLY: Yes, that's correct. Yes, that's correct.

45 FLTLT ROSE: Roughly, how low were you flying at that stage?

MAJ GALLATLY: As I was saying before, we were flying above 200 feet but around that altitude. So 200 to 250 feet, something like that.

5 FLTLT ROSE: And were you the flying pilot?

MAJ GALLATLY: Yes, I was the flying pilot.

10 FLTLT ROSE: And when it dived its nose, did you mean that it lost altitude?

MAJ GALLATLY: Yes, that's correct.

15 FLTLT ROSE: What were you trained to do when the aircraft did something unexpected like that?

MAJ GALLATLY: Yes, just trained to take control of the aircraft. So that's why I disconnected the controls, reset it to the baseline and then reprogrammed the flight controls after it stabilised.

20 FLTLT ROSE: Were you trying to lift the altitude?

MAJ GALLATLY: Yes. Yes, definitely. Lift the altitude back to a safe altitude.

25 FLTLT ROSE: And then you reset the auto controls?

MAJ GALLATLY: Yes, that's correct.

30 FLTLT ROSE: To the new height and speed.

35 MAJ GALLATLY: Yes. I think I reset it and I didn't select the speed from then on, I only selected altitude. So I realised that – and Diesel spoke to me that he was, like, "Yeah, it'll prioritise this airspeed over this altitude", which is obviously not great. So therefore I reset it with only altitude so that it wouldn't descend and then I would manage the airspeed manually.

40 FLTLT ROSE: Is this an example of the more senior pilot mentoring a junior pilot?

MAJ GALLATLY: Yes, this is. Exactly, yes. And in the quantity of doing lots of flying where a senior pilot can provide you those little nuggets of information that are really quite important.

45 AVM HARLAND: Is this covered on your conversion course on the

MRH-90?

5 MAJ GALLATLY: It's covered on the course for the different ways the autopilots can respond – no, I do not believe the intricacies of – I think there was, like, five different modes you can set depending on the ways that you set it, with the different combinations. I don't think that was covered in great detail.

10 AVM HARLAND: Okay, thank you.

MAJ GALLATLY: Thanks, sir.

15 FLTLT ROSE: At paragraph 93 you said that Diesel explained to you why the aircraft did what it did.

MAJ GALLATLY: Yes.

FLTLT ROSE: He said:

20 *It was because the MRH has an Airbus flight control system which is better designed for a high-altitude aircraft system rather than a low-altitude system like a helicopter.*

25 MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: And he warned you that the aircraft dips its nose in a turn and then loses altitude to regain airspeed back.

30 MAJ GALLATLY: Yes. So he was essentially explaining there that the aircraft prioritises airspeed over altitude because a passenger aircraft flying at 30,000 to 40,000 feet, it's important for them to maintain their airspeed so they don't stall or – I don't know. I don't fly up there, but airspeed is more important for them. But for helicopters, altitude is by far way more important than your airspeed, so that you don't crash.

35 FLTLT ROSE: And this only happens in a turn?

40 MAJ GALLATLY: It could be if you're holding the controls. So even though you've got the autopilots held – engaged, I should say – you can still the controls, and if you hold the controls the aircraft will try to reach that baseline again and it will kind of try to fight back. So you can hold the controls if you do a turn. If you do things, you'll deviate and the aircraft's logic decided that airspeed was more important than altitude in that instance.

45

FLTLT ROSE: Was this the first time this had occurred when you were flying the MRH?

5 MAJ GALLATLY: Yes. And to be honest, it's never happened to me on the Black Hawk. So, you know, I took it as a really good lesson, to watch out that – to be really careful when I'm flying at low level that maybe from now on I'll just do the airspeed myself and I'll set the altitude off the autopilot.

10 FLTLT ROSE: Do you then, as a junior pilot, go back and discuss that with your colleagues or feed it back up the chain as, "Perhaps we should have a lesson on this"?

15 MAJ GALLATLY: So if it was a catastrophic – sorry, if it was a bad issue, you would raise it through a safety report. But this is a real minor event, so it didn't really breach anything. It's not really – doesn't really warrant a safety report. But it's good that I learnt and then if I was in the position of taking a junior pilot on, it would be something that I would monitor my junior pilots for, because of what Diesel taught me in that moment. And that's kind of how knowledge is passed on.

20 AVM HARLAND: Did you submit an ASR on that particular incident?

25 MAJ GALLATLY: No, sir. We didn't submit an ASR because it didn't really deviate badly. It was more one of those situations of, "What is the aircraft doing?", where I was flying and I was like, "I don't know why it's doing this".

30 AVM HARLAND: Thanks.

MAJ GALLATLY: Thanks, sir.

FLTLT ROSE: At paragraph 93, though, you said:

35 *This was a very daunting experience because at low level every metre counts.*

40 MAJ GALLATLY: Yes, that's correct. I was just lucky – you know, it's good that it was by day, it's good that I was with experienced people. So the conditions were very good for that to occur. Wasn't a major issue, it was just – it's just learning more about the aircraft.

45 FLTLT ROSE: At paragraph 66 you raise another issue with the MRH, and that's the formation lights.

MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: Where were the formation lights on the MRH?

5 MAJ GALLATLY: To be honest, the integrated formation lights on the MRH-90, I can't recall where they are. And to be honest, I don't think there were integrated set lights that you could turn on. There was the IR PALs. Sorry, I don't know what they stand for. But there were – it's like a sticker, like a glow - - -

10 FLTLT ROSE: Infrared?

MAJ GALLATLY: Yes, infrared. Yes. I'm sorry, not sure what PAL stands for. But, essentially, you stuck it on the tail, it was about this long.
15 And I think the maintainers cracked the glow sticks and then that's what we used as formation lights.

FLTLT ROSE: So that was an addition that 6 Aviation Regiment came up with to make it better - - -

20 MAJ GALLATLY: I think Army Aviation - - -

FLTLT ROSE: Army Aviation?

25 MAJ GALLATLY: Army Aviation, yes, that's correct.

FLTLT ROSE: That's to improve the formation lighting?

MAJ GALLATLY: Yes.

30 FLTLT ROSE: But you said that even with those on, you could hardly see the aircraft in front of you when you were flying in formation at night?

MAJ GALLATLY: Yes, that's correct.

35 FLTLT ROSE: And you described that as terrifying?

MAJ GALLATLY: Yes, the situation for that terrifying incident was probably a night of poor illumination, there was rain. Obviously you get
40 fog and water on your windscreen. And then the NVGs aren't great and the formation lights aren't super helpful. So that's why I kind of captured that situation as terrifying. But, yes, I was quite surprised at the quality of the MRH-90 formation lights compared to the Black Hawk ones that I'd previously flown on.

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FLTLT ROSE: Is that why 6 Aviation Regiment tended to fly quite close together, so that they could actually see the formation lights on the aircraft in front?

5 MAJ GALLATLY: Yes, so when I was flying on course, it was – so that's at the flying school, it was noted that the closer you fly – not closer – you obviously wouldn't breach that two rotor di hard rule. But if you flew close, it was easier because you could see the aircraft in front of you. but if you had high illumination or flying through Sydney at night, the
10 lighting from below illuminates the aircraft and it makes it quite easy to fly in formation. So just different environments.

But in the school at Oakey where you have – what do you call them – farms, cattle farms and the like, and there's just no lights and there's cloud
15 and there's no moon and there's no stars, yes, it's really dark and it's really hard to see the aircraft.

FLTLT ROSE: Did you ever fly the MRH at night over water, in low illumination?

20 MAJ GALLATLY: Yes, I believe I did my deck landing qualification, yes, with low illumination with the MRH-90.

FLTLT ROSE: Was it difficult to see the formation lights if you were in formation?

25 MAJ GALLATLY: Apologies, sorry. I flew the aircraft over water, but sorry, not in formation. Sorry.

30 FLTLT ROSE: At paragraph 71 you talk about some formation flying. Had you ever flown in formation on the MRH, whether it's by day or by night?

35 MAJ GALLATLY: Yes, I've flown the MRH-90 in formation by day and by night.

FLTLT ROSE: You state that it's harder for the pilots in ships 3 and 4 in a four-ship formation, if they're flying in a heavy-left formation, to see the formation lights because they're forming off ship 1, which is not
40 actually in front of them.

MAJ GALLATLY: Yes, that's correct.

45 FLTLT ROSE: It's to the side.

MAJ GALLATLY: Yes. So you're actually – yes, you're forming off the aircraft that's kind of 2 in front of you, but you're spacing off the one that's meant to be in front of you in line. So, yes, it is – yes, would be more difficult to see those lights.

5

FLTLT ROSE: And ship 1 that you're forming off is actually more than two rotor di's in front of you.

MAJ GALLATLY: Yes, it'd be at a minimum four rotor di's – sorry, no, it'd be five rotor di's.

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FLTLT ROSE: From paragraph 74 and onwards you talk about how complex the MRH was to fly, and then you give some examples of that.

MAJ GALLATLY: Yes.

15

FLTLT ROSE: At paragraph 75 you say that you've:

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been confused by the autopilot, the collective switches, the cyclic switches, the display keyboard unit, the navigation sequencing system, the external lights, the formation lights, the internal lights, the checklist, the radios, the intercom system, the engine limitations, the caution panel, the flight profiles, and the weight and balance unit.

25

MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: That's a number of things. I imagine as a pilot you're concerned about all of those, but not necessarily all at once?

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MAJ GALLATLY: Yes. Just when you're going to use certain systems, sometimes – and the purpose of this paragraph is just saying it is a very complex aircraft, the MRH-90. And if you could fly it regularly and – you would be able to learn to use those systems and it'd become much easier.

35

But when you do it infrequently, the complex system is a little bit overwhelming because you actually don't know what button you need to press or where the switch is, or – the checklist is huge – “Which page am I turning to? Is this the right book?”

40

Or an engine – sorry, our VMD – I'm sorry, I don't know what that stands for, but it's our display of our aircraft for if there's something that's a failure on the aircraft or if something's wrong. There could be, like, a hundred things that could go wrong on that VMD, and everything could

45

go from an amber box to an amber fill to a red box. So what's the difference between an amber outline or an amber fill? It's confusing.

5 So some things are confusing and the more you fly or the more you're around people who have great experience, they can talk you through that, "That doesn't matter", or "This actually means that", or "This is the fast way to program that DKU", and certain things like that. So that's the purpose of, "There are lots of things that have confused me in that aircraft".

10

FLTLT ROSE: DKU?

MAJ GALLATLY: Sorry, the display keyboard unit.

15

FLTLT ROSE: Is that the computer screen that's in front of you?

MAJ GALLATLY: No, call it the keyboard that sits next to the pilots, down kind of next to your knee on the inward side of the pilots – both pilots. And that's how you put information in to display on your screens up above.

20

FLTLT ROSE: At paragraph 75 you refer to a fellow pilot in 6 Aviation Regiment. Now, this person has a pseudonym called D15.

25

MAJ GALLATLY: Yes.

FLTLT ROSE: They told you that another pilot had accidentally switched an engine to idle in flight while trying to change a light.

30

MAJ GALLATLY: Yes, that's correct. Our landing light was – so you had to toggle between a landing light on NVGs when you're close or far away. So as you were flying into a pad, you would have a beam light. And then as you got closer to the pad, that beam light was too bright and you change it to a flood light. And it's just a switch that was up above. I've never had an aircraft like that before. And someone was trying to – I was told by D15 that someone was trying to toggle that and toggled the engine switch from flight to idle. So yes.

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40

FLTLT ROSE: Was an ASR - - -

MAJ GALLATLY: Yes, I believe – an ASR must have been submitted for that. But it just shows that it's a light switch or a helmet-mount display switch is just sitting next to an engine switch that you don't commonly go to, which can be confusing.

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FLTLT ROSE: Is one of the issues with having the complexity of this system is that both pilots might have eyes in at the same time trying to figure out which button to push, when?

5 MAJ GALLATLY: Yes, that's correct. You would have issues where a pilot's trying to do something and another pilot's trying to help them out. You know, to update the information in the DKU you have to go to a different subpage or you're putting the lat and longs in with the south and east. You put the letter at the start, not the numbers. Or two pilots will be
10 – one pilot will be doing it, the other pilot will be trying to help, and they kind of get sucked in and you end up having both pilots looking at the DKU.

15 AVM HARLAND: Would that include when you're visually flying below MSA?

MAJ GALLATLY: Yes, sir.

20 AVM HARLAND: So both eyes in?

MAJ GALLATLY: Yes, it would not be uncommon. One pilot, the pilot who's flying, should be glancing inside and looking back out again. But it wouldn't be uncommon to have two pilots – yes, when you mean MSA, yes, below 1000 feet, yes, of course, sir. Yes.

25 AVM HARLAND: Yes.

30 MAJ GALLATLY: Yes, maybe not terrain flying, like below 200 feet. You'd probably slap the other pilot. But, yes, very common to have two pilots looking inside, one definitely more than the other below that altitude.

35 AVM HARLAND: Would you typically be on autopilot at that stage or would you be – would somebody be - - -

40 MAJ GALLATLY: More often than not, you'd try to fly on autopilots because that's the best way to safely fly the aircraft. So, yes, there'd be some level of autopilots on most of the time, sir. But, yes, you probably would have autopilots on.

AVM HARLAND: Thank you.

MAJ GALLATLY: Thanks, sir.

FLTLT ROSE: At paragraph 81 you state that you agree that the MRH is a safe aircraft, but you were concerned that the system in Army was not conducive to breeding and maintaining a workforce that was competent to safely fly it.

5

MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: What do you mean by that?

10 MAJ GALLATLY: I guess the incident in Jervis Bay, that is where the aircraft obviously did something that was pretty bad to the aircrew. But more often than not, I feel like the aircraft, the MRH-90, was a safe aircraft. But I feel like overall the workforce, or especially the junior workforce, didn't fly the aircraft enough to be able to safely operate all the systems. So as such, being incompetent or being not very competent in
15 the aircraft can be very dangerous.

FLTLT ROSE: Now that you work in CASG, that's the group responsible for disposing of the MRH airframes?

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MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: It's your understanding that the airframes have to be buried, or perhaps they are already buried?

25

MAJ GALLATLY: Yes. From seeing the media reports, yes. And from kind of a real brief summary we were given for the group at the mandatory training at the start of the year, yes, we were told that the airframes will be buried.

30

FLTLT ROSE: Do you know why they have to be buried?

MAJ GALLATLY: Because, essentially, the – the parts have been taken off the aircraft. And the parts for the MRH-90 are hard to maintain, as
35 I've previously stated. So the parts have been taken off and returned to the global pool to help other user nations hopefully get better serviceability from their aircraft. But once the parts are all off the aircraft, you just have a carbon fibre shell that's essentially useless. So there's nothing else you could really do with the airframes except for bury them.
40 So I guess I'm not surprised they're doing that.

FLTLT ROSE: Is it unsafe to cut into carbon fibre?

45 MAJ GALLATLY: Unsafe to cut into carbon fibre, but I just don't know what you would do. I don't think carbon fibre can be recycled.

FLTLT ROSE: At paragraph 89 you state that you were aware of a minor
flaw on version 5.10 of TopOwl software that affected the attitude
readings when a pilot turned their head.

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MAJ GALLATLY: Yes.

FLTLT ROSE: But you said that as a junior pilot you would not have
been aware of that flaw?

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MAJ GALLATLY: I think it is a miniscule issue and I don't think that
would have been an issue for any junior pilot. And I'm not intimately
aware of the issue. It never gave me any issues. I've never flown on a
flight where it's ever given me any issues. It's just what I've seen in the
media. But at no stage would I look sideways and only rely on attitude
information from my HMSD; I don't think I'd know anyone who would.
And if I flew with a pilot who said they would, that would concern me.

15

FLTLT ROSE: Where would you get your attitude information from?

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MAJ GALLATLY: You'd use your NVGs to have a look to the horizon
or if it's by day, you'd see the horizon. Or, if you're on NVGs, you use
your eyes, your NVGs, to see the horizon. And then if not that, I would
use my attitude indicator, your main display that sits in front of every
pilot. And then if that failed, I'd probably look at the standby indicator –
attitude indicator in the middle of the aircraft because the HMSD, it's just
a green line. Your attitude indicator has a grey – sorry, a brown for the
dirt and blue sky, so you don't get disorientated. Rather than the HMSD,
it's just a line. How do you know you're not – that's up and down, you're
not completely upside down, if that makes sense. So I just don't know
pilots who would do that, while looking sideways, either.

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FLTLT ROSE: I want to change topic now on to your experience, your
knowledge of the deceased members of Bushman 83. At paragraph 95 –
now, you've already mentioned that you had flown with Diesel on a
number of occasions.

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MAJ GALLATLY: Yes.

40

FLTLT ROSE: You said that:

*He probably loved flying more than any other pilot in 6 Aviation
Regiment, and would take every opportunity to fly.*

MAJ GALLATLY: Yes, that's correct. Yes, he absolutely loved it, yes, more than anybody else.

5 FLTLT ROSE: And he was the Squadron XO in 2021, when you were the Regiment Operations Officer?

MAJ GALLATLY: Yes, that's correct.

10 FLTLT ROSE: You said you had many discussions about trying to maintain the Army structure, with Diesel.

MAJ GALLATLY: Yes. So talking about that, that's probably talking about all the positions that we needed to fill. Many conversations about the requirements I had for the operational requirements, so for manning documents, COVID, sending people away to do COVID roles, Liaison Officers for FLOOD ASSIST and the like. So we had many discussions on who we allocate to what, how do we double-hat people, who can go away on a career course and who has to stay; essentially managing the workforce to ensure that we meet our requirements.

20

FLTLT ROSE: So I take it that you were friends with Diesel?

MAJ GALLATLY: Yes, I was friends with Diesel. He was a fantastic guy. I really enjoyed hanging out with him. We used to surf together. I thoroughly enjoyed flying with him, and I really enjoyed him as a person. And I really thoroughly enjoyed flying with him. So, yes, he was a fantastic person.

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FLTLT ROSE: You got the opportunity to go to his funeral?

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MAJ GALLATLY: Yes, I did.

FLTLT ROSE: Did you know LT Max Nugent?

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MAJ GALLATLY: No, sorry, I didn't.

FLTLT ROSE: You state at paragraph 99 that you knew Phil Laycock - - -

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MAJ GALLATLY: Yes, I did.

FLTLT ROSE: - - - when you were in 6 Aviation Regiment, flying the Black Hawk?

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MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: Then you worked together again, in 2021?

MAJ GALLATLY: Yes, that's correct.

5

FLTLT ROSE: But did you ever fly together?

MAJ GALLATLY: No, we never flew together.

10 FLTLT ROSE: At paragraph 101 you said that you thought he was probably the most qualified and competent aircrewman in 6 Aviation Regiment.

15 MAJ GALLATLY: Yes, that's correct. I would have had absolutely no issues flying with him and he was far more experienced than what I would have been. Yes, he was very good at his job and, as such, that's why he held the positions he did.

20 FLTLT ROSE: At paragraph 103 you said you also knew CPL Alex Naggs, which I think you called him Naggsy?

MAJ GALLATLY: Yes, that's correct.

25 FLTLT ROSE: That you flew with him 17 times on the MRH?

MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: At paragraph 104 you said:

30 *He was a good soldier, not lazy, and that he did his job without complaining or getting distracted.*

MAJ GALLATLY: Yes, he was very good at what he did.

35 FLTLT ROSE: At paragraph 105 you said he also assisted you and reassured you on one sortie when he noticed you were not doing your aircraft start checks – sorry, you were doing your aircraft start checks too slow and in a disjointed manner.

40 MAJ GALLATLY: Yes, that's correct. We were starting the spare aircraft and I'd moved from – I think we were on aircraft number 2, because the first one broke, and I was – had poor recency and I didn't want to break the aircraft. And Naggsy came up to my window and asked what was going on to kind of help me through my checks because he was
45 a really emotionally intelligent kind of guy, but he was a real team player.

So he just wanted to come to work together to achieve great outcomes. So, yes, he was a great person and, yes, like a good loadmaster.

5 FLTLT ROSE: You went to Naggsy's funeral as well?

MAJ GALLATLY: Yes, that's correct.

FLTLT ROSE: Those are my questions.

10 MS McMURDO: Thank you. MAJ Gallatly, thank you very much. You've given us a very good insight and an overview of some of the problems in 6 Aviation Regiment at the time of the crash on 28 July.

15 MAJ GALLATLY: Thanks, ma'am.

MS McMURDO: You have a Masters in Capability Management.

MAJ GALLATLY: Yes, ma'am.

20 MS McMURDO: So now, looking back with your experience and expertise in that, looking back, what would you see as a better system? Would it be more experienced pilots for training and more helicopters available?

25 MAJ GALLATLY: Yes, ma'am. I believe if there were more aircraft available to fly, and then there were sufficient people to fly, and sufficient – so the workforce structure was appropriately sized with the amount of hours that can be flown, and sustainably as well, not trying to break the maintainers or flog those guys too hard, I believe that would set up a system that could be enduring. That would be a healthy system.

30 MS McMURDO: So the problem here was not enough aircraft, too heavy at the bottom with junior pilots, not enough senior pilots to do the training and bring the younger pilots on.

35 MAJ GALLATLY: Yes, ma'am.

40 MS McMURDO: And of course then proper maintenance, enough people doing – maintainers to keep the aircraft flying.

MAJ GALLATLY: Yes. There was just insufficient - - -

MS McMURDO: So generally under-resourced.

5 MAJ GALLATLY: Yes, under-resourced. But the system – maybe instead of is resourcing, ma’am, maybe more – the system just couldn’t perform at the level that it was required to. So it didn’t matter how many maintainers you threw at these aircraft to fix them, you would still kind of get the same effect. Or it was disproportionate: you could throw a hundred soldiers and you might get an additional one or two aircraft on line.

10 MS McMURDO: So that was a problem with the MRH-90?

MAJ GALLATLY: And that’s probably the reason – one of the reasons why we were looking at this case, is the MRH-90 was very expensive. And one of the reasons it was expensive is because the number of people required to maintain it. So, you know, people and money kind of go hand-in-hand. So it’s a good way to measure - - -

20 MS McMURDO: Yes. We always look at more resources, but another way of looking at them might be – first of all, there was a problem with that particular aircraft as far as you were concerned and it was high maintenance.

MAJ GALLATLY: Yes.

25 MS McMURDO: And it wasn’t serviceable enough at the time to meet the needs of 6 Aviation. But also, you needed more – or pilot teams, they’d be more top heavy. And more people at the top of the pyramid being able to train the fewer junior pilots, so everybody got their flying time and got their skills up so that you have this steady stream of people coming in to fill as the top people went off to other areas.

30 MAJ GALLATLY: That’s correct, ma’am. And then there’s just general attrition over time as well, where people might leave or choose different careers.

35 MS McMURDO: Yes.

MAJ GALLATLY: So it’s just – yes, it’s digesting and training all those people and moving them through the system.

40 MS McMURDO: Thank you very much.

MAJ GALLATLY: Thanks, ma’am.

45 AVM HARLAND: Just had a couple more quick questions.

MS McMURDO: Yes, of course.

AVM HARLAND: Just relating to the – let me get that technology right – the SOCQ courses.

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MAJ GALLATLY: Yes, sir.

AVM HARLAND: And back in 2021, going down to two per year, producing [REDACTED] pilots and [REDACTED] aircrewman - - -

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MAJ GALLATLY: Yes, sir.

AVM HARLAND: - - - per annum. Was that sufficient to effectively fuel the posting cycle?

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MAJ GALLATLY: Yes, sir. Thanks for the question, sir. It's a good question. Those [REDACTED] pilots and those [REDACTED] aircrewman, the SOQC wasn't just about providing a basic qualification, it was also about providing changes. So from a co-pilot to a Captain or an Aircraft Captain to an Aircraft Flight Lead or someone to be a Mission Commander. So they were all spots on the course.

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So when you probably rationalise the courses, it's actually not [REDACTED] pilots per year or [REDACTED] junior pilots going through, it could be [REDACTED], it could be [REDACTED]. And then as a rough rule of thumb you could probably think that you're probably going to lose about [REDACTED] aircrew per year leaving. So if you think about it, you're probably maybe just maintaining the same number of people in as are leaving. So, yes, I don't think it was enough to sustain the workforce.

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AVM HARLAND: Okay. No, thanks for that.

MAJ GALLATLY: Thanks, sir.

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AVM HARLAND: And one final question, regarding simulator - - -

MAJ GALLATLY: Yes, sir.

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AVM HARLAND: - - - which you talked about. Given the amount of night flying that 6 Avn in particular did, did you do any unusual attitude training? So recovery from unusual attitudes?

MAJ GALLATLY: Yes. Yes, we would've done unusual attitude training in the simulator mainly for instrument flight – unusual attitude

training. We would've done some in the aircraft on NVGs during our training serials. It's not unusual to do a UA training serial.

5 AVM HARLAND: Yes. Would you do a routine reassessment of unusual attitude recoveries?

10 MAJ GALLATLY: No, I don't think so. I think it would probably be seen as maybe a, like, basic sequence that you would take a new pilot through. But once a pilot was qualified, you would probably look at more advanced sequences. That's by visual flying. For instrument flying, your unusual attitude recovery is done yearly in your instrument flying assessment.

15 AVM HARLAND: Okay, great. Thanks. Just for those who may not understand it, unusual attitude is where the aircraft is in a position or an attitude that is not expected by the flying pilot, which will require remedial action to get it back to a known state.

20 MS McMURDO: Okay, thank you. Questions? Yes, Lieutenant Commander.

<CROSS-EXAMINATION BY LCDR GRACIE

25 LCDR GRACIE: My name is LCDR Malcolm Gracie. I represent Danniell - - -

30 MAJ GALLATLY: G'day, sir.

LCDR GRACIE: - - - Danniell Lyons, sorry. Major, you mentioned that this is, I think your words were "a fragile system".

35 MAJ GALLATLY: Yes, sir.

LCDR GRACIE: And is that the same as what ma'am said about it being a high maintenance – is that the complexity in it or is it something else?

40 MAJ GALLATLY: Yes. If you tried to – a fragile system, if you tried to take more from it once it was in a steady state, it would degrade and you would have less aircraft serviceable.

LCDR GRACIE: So when you said that you could really only sustain about six aircraft, that's about 50 per cent of the fleet - - -

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MAJ GALLATLY: Yes.

5 LCDR GRACIE: - - - at 6 Avn. When you went to be the Project Sponsor to look at the replacement of the MRH-90 with the UH-60 and Black Hawk, did part of that assessment look at the relative serviceability of the MRH-90 in Australia and the NH-90 fleet internationally?

10 MAJ GALLATLY: Sir, I can't go through too much information as it was – there was a lot of it that was marked “Cabinet”, with the information I worked on.

LCDR GRACIE: Right.

15 MAJ GALLATLY: But information was included about serviceability on the Australian fleet, and that was included within what – the information that we packaged.

20 LCDR GRACIE: But in terms of assessing whether it would be replaced with another type of aircraft, was there a comparison done about the serviceability rates with the Australian fleet to the NH-90 fleet overseas? Or put it this way, was there some comparison made to see why the MRH-90 serviceability was so low?

25 MAJ GALLATLY: The only comparison we did was between the Australian MRH-90 and the prospective UH-60M Black Hawk. We were purely focused on what we had and what we thought would replace it with a better performing system.

30 LCDR GRACIE: So the assessment had really already been made that it was not meeting Final Operational Capability and it's just, “We've got to find another platform”?

35 MAJ GALLATLY: Yes. Yes, it's not fulfilling what we envisaged it would be useful.

LCDR GRACIE: Just in terms of that failure to meet Final Operational Capability, was there something more than just the maintenance of this system that was causing that shortfall?

40 MAJ GALLATLY: It's a – I probably can't answer that fully. [REDACTED]
[REDACTED]
[REDACTED]

45 LCDR GRACIE: In paragraph 85 of your statement - - -

MAJ GALLATLY: Yes.

LCDR GRACIE: If you'd like to go to it.

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MAJ GALLATLY: Yes.

LCDR GRACIE: You mentioned that you were surprised to find that when you converted from the Black Hawk, which used the ANVIS-9 - - -

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MAJ GALLATLY: Yes.

LCDR GRACIE: - - - NVGs, when you converted to the MRH-90 utilising the TopOwl system, that the visual acuity was worse on the TopOwl.

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MAJ GALLATLY: Yes, that's correct, sir.

LCDR GRACIE: Can you just explain the differences in what you mean by that?

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MAJ GALLATLY: Yes. So probably the first situation was landing – and once again, it was in rural Queensland, Oakey. So it's quite a dark environment, on a dark night, with landing in a well-known pad in Oakey, and I was about to commence the descent at the set distance, which is one nautical mile and, as we're commencing the descent, I'm struggling – like, I couldn't see the landing area. And on the Black Hawk – I just found it really odd because on the Black Hawk, when I would commence a descent around that distance, I could easily see the pad. So even though it was a dark night, I was just – I was a little bit shocked that I was commencing descent to a pad that I couldn't fully see, and I couldn't see my landing area.

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LCDR GRACIE: Was that a repeated experience, though? That was the standard: lesser visual acuity than the ANVIS NVDs?

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MAJ GALLATLY: Yes. Our loadmasters who had the ANVIS NVDs would have a better visual acuity and they'd be able to – sometimes, if you couldn't see the pad, you would roll out and – because we had our pilot system, so we had, you know, a map, we had a tracking needle and the like and you would be, like, "I can't see the pad, but I think I'm about to commence descent". And the loadmaster would be, like, "Oh, I've got it. You're good. Commence your descent", or "Slow your approach", or the like. So the loadmasters had a different performance with their goggles compared to us on the TopOwl.

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LCDR GRACIE: And are you then, as a pilot, relying upon your aircrew to be giving you visual cues?

5 MAJ GALLATLY: So as the flying pilot, you will always be in charge of what you see and making sure the aircraft is safe. So, you know, you're at a safe altitude, you can see things that are closer to you so you can – you know, if you're flying down a ridge, you can see the ridge as you're coming down, but you just can't see that landing point at the end. So it's
10 not like you're flying blind, but you just – you can't fully see with great detail exactly where you're going to land at the end, which I found it odd.

LCDR GRACIE: Isn't it at that point, though, that you're trying to get a visual cue by looking left or right as well?

15 MAJ GALLATLY: Yes. Yes, so like night-vision flying, it's – you're flying off your instruments. You're flying with your loadmasters. You're flying with your systems. You use a bunch of things layered together to help you get the right outcome.

20 LCDR GRACIE: But if you are needing that visual cue to look left or right, that's when the symbology washes out or disappears or - - -

MAJ GALLATLY: You still have the symbology when you look left and
25 right, the full symbology. It's just, I think – and, like, I'm not an expert. I don't know about this AATES test report, but I think when you look sideways, that pitch bar is what they're talking about.

LCDR GRACIE: The pitch and roll and reverse; is that right?

30 MAJ GALLATLY: Honestly, I'm not too sure on the issue when looking sideways. It never concerned me when I was flying with it.

LCDR GRACIE: Then, just coming down to the image intensifier tubes,
35 can you just go back over what your specific concern was there? I know you talk about the symbology over the front of the helmet visor. Is that basically putting a flat image on a curved screen?

MAJ GALLATLY: Sorry, can you just direct me to which paragraph it
40 was?

LCDR GRACIE: Sorry, 87.

MAJ GALLATLY: 87.
45

LCDR GRACIE: Is it projecting a flat image onto a curved screen? Is that what it is?

5 MAJ GALLATLY: Yes, potentially. When I talk about the image intensifier tubes, they are the NVGs. So TopOwl – I guess TopOwl is a system. HMSD is a system. But it's all – I guess when I'm referring to night-vision systems, it's all that, the goggles that are projecting onto the glass that are in front of your eyes. I'm not too sure how it's different from a flat image onto a curved screen. The biggest issue you have is 10 actually it's wider than your eyes. So, like, imagine – because it's taking images from beside your ears, so you get the feeling of being much closer to something, just based off telescopic vision. So you feel like you're about to hit a tree, but the loadmaster will actually tell you you're further away, just because of the location.

15 Lcdr GRACIE: Is the FLIR part of the TopOwl system?

MAJ GALLATLY: Yes. Yes, that is a part of the – it's a system that you can bring up.

20 Lcdr GRACIE: And it will come up on the visor?

MAJ GALLATLY: Yes, it will replace your NVGs. So you'll have NVGs with your HUD symbology, and then with a switch – if you can remember which one it is on your collective, you can toggle between that. You can turn it off, you can turn your NVGs on, or you can turn your FLIR on.

LCDR GRACIE: So you've got the IITs, which is your NVGs.

30 MAJ GALLATLY: Yes.

LCDR GRACIE: And you can alternate that to the FLIR for the infrared.

35 MAJ GALLATLY: Yes, which is on the front of your nose of the aircraft, so it's a different spot as well.

LCDR GRACIE: And you're using that for your distance from an aircraft in front to maintain the two di's, or - - -

40 MAJ GALLATLY: You wouldn't solely fly on the FLIR. You would mainly fly on your NVGs. You would use your FLIR to confirm what you're looking at. So if on your NVGs you think there's a dark paddock down there, you can change to your FLIR and it might – it's a completely different system. So you could see there's a tree, or a car, or something 45

hot, or different terrain. So you use it to kind of overlay with what you're seeing on your NVGs.

5 LCDR GRACIE: In terms of the new Black Hawks, the UH-60Ms, was there consideration to them having the TopOwl system or was there a departure away from utilising that system in Army Aviation?

10 MAJ GALLATLY: Yes, so there was – with the new UH-60M Black Hawks they're looking for a strong configuration alignment with the US Army, so whatever the US Army use, we're looking to use, so that we don't have to modify the aircraft greatly or introduce risk.

15 LCDR GRACIE: Because the TopOwl was unique to the MRH-90, wasn't it?

MAJ GALLATLY: Yes, that's correct.

20 LCDR GRACIE: Not used in the Black Hawks or any other Army Aviation.

MAJ GALLATLY: No, not in the Black Hawk. I'm not sure about the RH Tiger. They might have a similar system.

25 LCDR GRACIE: Look, I only just want to ask you one more thing. When you talked about the failure to meet the final operational capability, did that also touch upon the TopOwl in terms of it having lesser visual acuity than the ANVIS NVGs?

30 MAJ GALLATLY: No, that had nothing to do with the FOC, I don't believe, from my point of view.

LCDR GRACIE: Was there no concern that Army were utilising a system that was not as good as the ANVIS used in the other Army helicopters?

35 MAJ GALLATLY: Yes, I think this is – it's a good point. It's a subjective thing, sir, where I feel like it's worse than the ANVIS NVGs, but like, what is bad? So I would say it shocked me that it was different, and it was a little bit worse, but I could still fly on it. It just – you just needed to do it a little bit more often to get used to this new system that
40 was a little bit worse.

LCDR GRACIE: How much worse was it? Was it up to 50 per cent, or up to 30 per cent? Would you be able to put a figure on it?

MAJ GALLATLY: Yes, I'd probably say maybe like – maybe between 10 to 20 per cent worse. Maybe 20 per cent worse.

5 LCDR GRACIE: That could make a big difference, though, in a high tempo, low altitude, bad illumination, wet night, can't it?

MAJ GALLATLY: Yes, you're 100 per cent correct.

10 LCDR GRACIE: All right, thank you. Thank you, ma'am.

AVM HARLAND: Just a point of clarification. All the comments that you've made about the image intensifier tubes on TopOwl, are they related to version 1.0, or were you exposed to the previous version when you first started?

15 MAJ GALLATLY: So I was exposed – so I did my flight training on the – so I'm not over the details, but the version for – the TopOwl version 5.10, or whatever the version changes was, I believe that was for the symbology. The image intensifier tubes are about the NVGs, or the quality of the NVGs, sir. We did change from a less – from a lower-performing intensifier tube to a better one. So I did my training on 20 the lower quality one, but then at 6 Avn I flew on the higher quality one, but it still wasn't as good as what I'd previously flown on.

25 AVM HARLAND: Yes, that's exactly what I was asking. So, sorry, I confused you there. So you started on the initial image intensifier tubes.

MAJ GALLATLY: Yes, sir.

30 AVM HARLAND: Then when you were operating at 6 Aviation, you were on the improved IITs.

MAJ GALLATLY: Yes, sir.

35 AVM HARLAND: Great, thank you.

MAJ GALLATLY: Cheers, sir.

40 MS McMURDO: Yes, any further questions? Yes.

<CROSS-EXAMINATION BY LCDR TYSON

5 LCDR TYSON: My name is LCDR Tyson. I represent CPL Alex Naggs' interests. Just very briefly, Major, sir was asking you some questions about unusual attitude recoveries. Have you ever actually practised that manoeuvre, not in a simulator but flying the helicopter?

10 MAJ GALLATLY: Yes, I have.

LCDR TYSON: How often would you have done that?

MAJ GALLATLY: Maybe less than maybe once a year.

15 LCDR TYSON: Have you done that manoeuvre, say, at night, flying over water?

MAJ GALLATLY: No, it wouldn't have been over water, but it would've been, like, at night over land, but not at a low altitude.

20 LCDR TYSON: I want you to think in your mind about that scenario of the unusual attitude recovery, and then I also just want to remind you about another aspect of your evidence. In paragraphs 68 and 69 you describe this:

25 *If MRH-90 pilots lose sight of the aircraft in front of them, they are trained to call blind, and climb to altitude. The other aircraft would probably continue with their current altitude to separate themselves. If pilots are conducting a rejoin, they would put their*
30 *searchlights on underneath the aircraft, pointing down –*

and so forth. So I want you to compare those two scenarios in your mind. Now, just assume this scenario: you've got four ships in transit, in a heavy lift formation. They're flying at night, over water, low level, poor
35 visibility. If, say, the third aircraft in that formation suddenly left the formation and climbed, would that action be, to the best of your knowledge, consistent with either an unusual attitude recovery or the scenario that you talk about in paragraph 68 of your statement? Could it be consistent with either of them, or both of them, or with neither of them,
40 doing the best you can?

MAJ GALLATLY: So at paragraph 68, so a formation going into poor visibility, you would assume the formation would normally do that together. So everyone would agree that we have poor visual conditions,
45 and we are all going to climb to altitude and separate ourselves. So that's

kind of the first one. The second part is a rejoin, where you're trying to get back together.

5 So the situation you're talking about, maybe – I don't know if they would've gone – like, so if you lose sight, you'd want to climb pretty quickly, and you'd want to set a stable attitude, which is like an emergency procedure. So I'm not sure if it meets that situation, and I'd be pretty quick to tell the other formation members that, like, "I'm climbing and I've lost visual with you guys".

10 So I feel like the fact – what's occurred here is they're trying to get back into position. So whether it would be – you're still visual with the aircraft, so therefore you want to get back into formation, and because you're still visual with them, you don't need to call blind because you can still see the aircraft in front. So does that kind of appropriately answer your question?

15 LCDR TYSON: That's right. So in that scenario you actually wouldn't actually do the – call blind.

20 MAJ GALLATLY: No.

LCDR TYSON: You would actually – you'd just move the helicopter.

25 MAJ GALLATLY: Yes, you'd move the – you're out of station, and you're going to get back into position.

30 LCDR TYSON: And perhaps it's unfair, because part of the background to what you say in paragraph 68, you precede that by talking about the difficulty with the formation lights, and that issue.

MAJ GALLATLY: Yes.

35 LCDR TYSON: So the scenario would be, again, you're flying at night, on a turn in the formation, the heavy-lift formation, because you lose track of perhaps where you are in the formation, the pilot could actually climb the aircraft and not call blind.

40 MAJ GALLATLY: Yes, that's correct.

LCDR TYSON: And if you're, say, the fourth ship in the packet and you see the third aircraft climbing, it could be consistent with a deliberate pilot input – well, could it be consistent with both the scenario that you're talking about in paragraph 68 and also an unusual attitude recovery.

45

MAJ GALLATLY: Yes. Yes, it could also be – rather than – normally we think of unusual attitudes as a bad attitude with a descent. So it could be an unusual attitude where you don't know what's happening so you increase the power and you pull back on the stick, so you climb. So
5 maybe – sorry, I don't know how to really say this. But we normally have unusual attitudes as descending towards the ground. So the climb could have been disorientated and trying to gather visual cues to understand the situation better. But in climbing, it's moving yourself away from the dangerous thing, which is the water or the ground.

10 LCDR TYSON: And just in this scenario, if you're the pilot and you've climbed the aircraft out of formation and you wanted to regain your position in the formation, how would you go about doing that? Would you use the autopilot or would you actually fly the aircraft yourself?

15 MAJ GALLATLY: So I'd fly the aircraft myself. And depending on how far out of formation I am is – depends on whether I'd communicate with people or not. So if you're only a little bit out of formation, you don't need to say anything, you just need to get back into position again.

20 LCDR TYSON: But if the aircraft – no, I withdraw that. That's all, thank you, ma'am.

25 AVM HARLAND: One follow-up on that.

MAJ GALLATLY: Yes, sir.

30 AVM HARLAND: When you're operating low level at night and in formation, just say that heavy-left formation, when you're in a holding pattern, do you have standard parameters for that in terms of angle of bank and length of the downwind and upwind legs?

35 MAJ GALLATLY: Yes, sir. So you probably wouldn't have downwind or upwind lengths. But you would have normal terms that you would frequently use, which would be, like, a polite term to the other pilots. So it's probably less than 30 degrees angle of bank. And if you're in a holding pattern, yes, you would pre-brief the location where you're going to have that hold, and you would probably talk through your speeds in and out. But it's mission-dependent, sorry, sir. I guess it depends on the
40 situation and what part of the flight profile it was.

AVM HARLAND: Would it be briefed as part of a mission profile, what your holding parameters would be?

MAJ GALLATLY: So if you're – so after an SO approach, the aircraft – you're flying as a formation, you split apart for the SO approach. And then you depart, essentially, as individual aircraft and then you rejoin back as a formation again. That is briefed in great detail because it's obviously
5 very dangerous, that you've got four aircraft flying together that aren't in formation. So that's briefed with great detail, with great control measures. And that's rehearsed as well. So that situation is – but a simple - - -

AVM HARLAND: Just to clarify, you're in a transit in the heavy-left
10 formation and you're about to approach a holding pattern, do you have a set of parameters which are familiar for a holding pattern which would be routine or normal?

MAJ GALLATLY: From my point of view, sir, no.
15

AVM HARLAND: Would it be briefed as part of the mission?

MAJ GALLATLY: If you expected to do the holding pattern as part of
20 the mission, it probably would have been briefed. But if you don't expect to conduct that holding pattern, it wouldn't have been briefed and there wouldn't be a set holding pattern procedure.

AVM HARLAND: Thank you.

MAJ GALLATLY: Thanks, sir.
25

MS McMURDO: Any other questions? Yes, COL Gabbedy.

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

COL GABBEDY: Afternoon, Major. I'm COL Gabbedy, I appear for
35 MAJGEN Jobson, the Commander of Army Aviation.

MAJ GALLATLY: G'day, sir.

COL GABBEDY: I've just got a few questions to clarify some of your
40 evidence. If you've got your statement in front of you, at paragraph 19 you refer to your experience as a line pilot, and I believe your evidence was that flying is prioritised for new pilots.

MAJ GALLATLY: Sorry, which?

COL GABBEDY: If you look at the end of paragraph 19, what you say in your statement is:

5 *Their responsibility is to consolidate their flying skills and improve their proficiency.*

MAJ GALLATLY: Yes, that's correct, sir.

10 COL GABBEDY: So your evidence was that their job is to fly, and that part of training is prioritised. Then if we turn to paragraph - - -

15 MAJ GALLATLY: Sorry, sir, just to jump in there. I guess if I can just say their duty in the Army is to consolidate their flying and become better. But them being prioritised, that's maybe a different kettle of - I think maybe that might be something different, sir.

COL GABBEDY: Okay.

20 MAJ GALLATLY: So just the complete difference is your job as a line pilot is to get better as a pilot and progress, but the situation of the Squadron or the Regiment depends on who's prioritised for flying.

25 COL GABBEDY: So maybe that answers my question. Because if we go from paragraph 19 to paragraph 53, you express your view there that:

The junior aircrew at 6 Avn weren't able to develop their flying skills.

30 MAJ GALLATLY: Yes, that's correct, sir.

COL GABBEDY: So how is that you say, when flying was to be prioritised, that that didn't occur at 6 Avn?

35 MAJ GALLATLY: Well, that's exactly kind of what I'm saying, is that flying for the junior aircrew wasn't prioritised because there was no ability to prioritise it because it was consumed with maintaining the aircraft, but also completing the training and the operational exercises.

40 COL GABBEDY: So for me to understand that, are you saying that 6 Avn wasn't able to fly as much as it wanted to?

MAJ GALLATLY: It wasn't able to fly as much as it wanted to for the people that it had there at the time.

COL GABBEDY: When it did fly, was it always junior pilot, senior pilot in the cockpit?

5 MAJ GALLATLY: No. If you're doing a complex mission, you'll probably put your best team forward to ensure that you can give – so that you don't have an incident. You'll try to take some junior aircrew on board. So if you're flying an SO mission regaining a ship with the Commandos, you might give three or four spots in that formation to junior people, but you'd try to put through people that are qualified, and
10 competent, and recent, so that it's safe.

COL GABBEDY: So within the parameters of safety, the training of junior pilots was prioritised.

15 MAJ GALLATLY: The training of junior pilots was done, but it's – I guess, sir, the priority was training, sustaining the system and completing all your exercises. There's only – you have to prioritise and there's operational requirements and then there's your SOQCs to maintain the qualified workforce. But then you can't have three priority number 1s.
20 So priority number 1 is operational, priority number 2 is sustaining the workforce, priority number 3 is probably developing and bringing through those junior aircrew.

COL GABBEDY: I think I understand that. Playing into that is this next
25 issue that you raised in relation to the MRH underperforming, and that appears in paragraphs 25 and, I think, 81 of your statement.

MAJ GALLATLY: Sorry, 25 and 81?

30 COL GABBEDY: So 25 is where we start.

MAJ GALLATLY: Yes, sir.

COL GABBEDY: My understanding of what you're saying there – and
35 tell me if I've got this wrong – is that you're talking about aircraft availability.

MAJ GALLATLY: Essentially, yes, sir.

40 COL GABBEDY: And building into that were issues in relation to parts availability and maintenance issues with the aircraft.

MAJ GALLATLY: Yes, sir.

COL GABBEDY: I think in response to one of my friend's questions you said that at any given time 6 Avn was able to have about six serviceable and functional aircraft out of 12.

5 MAJ GALLATLY: Yes, sir. That's a real rough kind of - - -

COL GABBEDY: That's a rough estimate.

MAJ GALLATLY: But that's a good indicator.

10

COL GABBEDY: And I believe that then plays into paragraph 81, where you say, "The aircraft itself was safe". So assume we've got a functional, airworthy helicopter, that's a safe aircraft to fly.

15 MAJ GALLATLY: Yes, sir.

COL GABBEDY: So the issue wasn't perhaps with any individual airworthy aircraft. The issue was getting enough of these aircraft available for training and operational purposes at any given time.

20

MAJ GALLATLY: Yes, sir. And there were little difficulties that I brought up, like the NVGs weren't as great, and formation lights weren't as great. And you could have overcome them if you were exposed and you trained that more often.

25

COL GABBEDY: No, thank you for that, that clarifies it, at least in my mind. And, look, this is meant as no criticism to you, but in paragraph 24 of your statement you refer to that - - -

30 MS McMURDO: Was that 24?

COL GABBEDY: 24, yes. Thank you, ma'am. Despite flying in Army Aviation for 10 years, you had less than 1000 flying hours.

35 MAJ GALLATLY: Yes, sir.

COL GABBEDY: Unfortunately, your career took a trajectory where for about four or five of those 10 years you were in non-flying roles.

40 MAJ GALLATLY: Three.

COL GABBEDY: Well, there was 2017 you were the Staff Officer to SOCOMD?

45 MAJ GALLATLY: Yes, that's correct, sir.

COL GABBEDY: And 2018/19 you were at ADFA.

MAJ GALLATLY: Yes.

5

COL GABBEDY: So that's the three years.

MAJ GALLATLY: Yes, that's correct.

10 COL GABBEDY: In 2013/14 you had a staff role, which would be a less flying role, would it not?

MAJ GALLATLY: Yes, 2013 I completed my Helicopter Qualification course, and in 2014 I commenced the Black Hawk course. But I filled a
15 staff role in the middle. But, yes, you are right, sir, that there were, yes, breaks – six-month breaks, three-month breaks, four months. But I guess I don't want to make it – I'm not trying to make this about me, because this Inquiry shouldn't be about me. I guess it's just trying to say that you can't – like, the statement of, "It's a bad year", like, there's only so many
20 bad years you can have before you can be, like, it's actually probably, like, a long-term underperformance.

So I guess that's the purpose of that statement is, yes, there's - - -

25 COL GABBEDY: Certainly, I understand that. Look, and through no fault of your own - - -

MAJ GALLATLY: Yes.

30 COL GABBEDY: - - - that's the way your flying career turned out.

MAJ GALLATLY: Yes. Completely agree.

COL GABBEDY: At paragraph 32, you talk about the flying
35 schedule - - -

MAJ GALLATLY: Yes, sir.

COL GABBEDY: - - - at 6 Avn. That's evidence, is it not, of direct
40 action taken by Command to try and manage fatigue?

MAJ GALLATLY: That's correct, sir.

COL GABBEDY: So we're looking at the sorts of things they did
45 included only flying Mondays to Thursdays?

MAJ GALLATLY: Yes, that's correct, sir.

5 COL GABBEDY: And as I understood your evidence, it wasn't every day you would fly, was it?

MAJ GALLATLY: No, that's correct.

10 COL GABBEDY: There was no flying in school holidays?

MAJ GALLATLY: No. Yes, that's correct, we did not fly in the school holidays.

15 COL GABBEDY: I assume Squadron members were encouraged to spend time with their families during those periods?

MAJ GALLATLY: Yes, that's correct, sir.

20 COL GABBEDY: And again, there was no flying generally, broadly speaking, in December or January.

MAJ GALLATLY: That's correct, sir.

25 COL GABBEDY: And again, I assume Squadron members were encouraged to spend time with their families.

MAJ GALLATLY: That's correct, sir.

30 COL GABBEDY: There was an attempt there to look at the work-life balance?

MAJ GALLATLY: Yes, sir, there was.

35 COL GABBEDY: At paragraph 51 of your statement, you were referring to some measures that were brought in by 6 Avn following the unfortunate death of a Dutch pilot.

MAJ GALLATLY: Yes, sir.

40 COL GABBEDY: And you say:

The impact of cancelling or limiting flying resulted in a less competent workforce.

45 MAJ GALLATLY: Yes, sir.

COL GABBEDY: And you talk about the restrictions that were put in place.

5 MAJ GALLATLY: Yes. Sir, if I can explain, sir?

COL GABBEDY: Yes, by all means.

10 MAJ GALLATLY: Yes. So there's potentially a dangerous environment. So someone's written a report that there's a dangerous thing and there's a dangerous environment. And I can completely see why Command had to do something to respond to that. Therefore, they say, "Let's not go into that dangerous environment".

15 I guess, what it doesn't look at is you can't just not fly in an environment but still expect people to fly in that environment and it to be safe. So you can't just not do it. You either need to completely avoid it or you need to safely train people in those environments. So, I guess, what I'm trying to say there is, if there's a risk of drowning under water, the response is to say, "Don't fly over water. But then we still need you to fly over water".
20 It's at odds, and there's a risk there of not being exposed to something and not being appropriately trained by being exposed to that environment.

25 COL GABBEDY: I certainly understand the point you're making. But it's also the case, isn't it, that you can still conduct valuable flying and valuable training within those parameters. For example, you could do formation flying at a higher altitude, but still achieve quite a number of aims. Although you're not flying at 200 metres, you might be flying five or one thousand.

30 MAJ GALLATLY: Yes, I completely agree, sir. Yes, I wasn't bringing up formation, yes, in that paragraph there in paragraph 51. I was purely talking about low-level flying and then flight over water.

35 COL GABBEDY: Okay, thank you very much. And, look, the final issue I want to raise with you is this issue you've talked about - - -

MAJ GALLATLY: Yes, sir.

40 COL GABBEDY: - - - in paragraphs 91 and onwards.

MAJ GALLATLY: Yes, sir.

45 COL GABBEDY: There was an issue that you referred to in paragraph 92.

MAJ GALLATLY: Yes, sir.

5 COL GABBEDY: And that issue, did you get the feeling from speaking to CAPT Lyon that he was completely familiar with what had happened?

MAJ GALLATLY: Yes, sir.

10 COL GABBEDY: And he was able to explain it to you and talk it through with you?

MAJ GALLATLY: Yes.

15 COL GABBEDY: And he was, I think on your own evidence, and on the evidence of others, a very experienced pilot?

MAJ GALLATLY: Yes, he was a competent pilot. He was very good.

20 COL GABBEDY: He didn't feel that there was a need to raise an ASR over this?

MAJ GALLATLY: No. And to be honest, I didn't think there was a need to raise the ASR. The purpose of that is just showing, like, the senior pilots mentoring junior pilots and teaching them things that you can't, you know, thrash out in a course, in a formal course. So - - -

25 COL GABBEDY: And that's one of the things that comes with training and experience, is it not?

30 MAJ GALLATLY: Yes, that's correct, sir.

COL GABBEDY: And, indeed, in your time flying the MRH – which I took was 175.3 hours - - -

35 MAJ GALLATLY: Yes, sir.

COL GABBEDY: - - - this is the only time something like that came up?

MAJ GALLATLY: Yes. Yes, I believe so, sir, off the top of my head.

40 COL GABBEDY: All right, thank you very much.

MAJ GALLATLY: Cheers, sir.

45 MS McMURDO: Are there any other questions? Yes.

<CROSS-EXAMINATION BY SQNLDR NICOLSON

5

SQNLDR NICOLSON: Good afternoon Major, my name is Michael Nicolson. I appear for D10 in these proceedings. If you just have a look at the pseudonym list.

10

MAJ GALLATLY: Sorry.

SQNLDR NICOLSON: To your right.

MAJ GALLATLY: Yes.

15

SQNLDR NICOLSON: D10.

MAJ GALLATLY: Yes.

20

SQNLDR NICOLSON: Have you flown with D10 before?

MAJ GALLATLY: Yes, on Black Hawk.

SQNLDR NICOLSON: In respect to your role as the Regimental OPSO?

25

MAJ GALLATLY: Yes.

SQNLDR NICOLSON: You left there in December '21?

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MAJ GALLATLY: Yes, that's correct.

SQNLDR NICOLSON: Just if you have a look at that list there, are you able to identify who was the Regimental OPSO that replaced you in December '21?

35

MAJ GALLATLY: Yes, it was D23.

SQNLDR NICOLSON: And when you changed over with D23, was there a handover between yourself and D23?

40

MAJ GALLATLY: Yes, that's correct.

SQNLDR NICOLSON: And did you, as the Regimental OPSO, identify with D23 the issues that you've had over that year of '21?

45

MAJ GALLATLY: The term “issues” you mean, like, I guess, are we talking about all 100 paragraphs or - - -

5 SQNLDR NICOLSON: Just issues with 6 Aviation that you had as the Regimental OPSO?

MAJ GALLATLY: Yes. I guess I didn’t have too many issues. When I wrote this statement here, I guess, at the time I wasn’t looking at them as issues that would lead to a death. I was probably more concerned that
10 there were issues where there just wouldn’t be anyone around. So that was my main concern, is that people would be tired, people would be fatigued and there wouldn’t be anyone left. And he was well aware of that and I believe that D23 looked to bring in things, like increasing the number of training courses the year after.

15 And he reached out to me to seek evidence so that he could write an appropriate response to do that course.

20 SQNLDR NICOLSON: So dealing with things like tempo and fatigue, they were matters that you raised with D23 on the changeover?

MAJ GALLATLY: D23 is the OC in 2020 and 2021 who was acutely aware and continuing to manage it. Probably one of the key people who was experiencing the fatigue and managing it. So, I guess we didn’t
25 specifically talk about fatigue because he knew it better than I did.

SQNLDR NICOLSON: Thank you. Can I talk about the transition between the Black Hawk and the MRH-90? Did that occur in 2021?

30 MAJ GALLATLY: It occurred mostly in the late half of 2020 and the first half of 2021.

SQNLDR NICOLSON: And what role did you play at that period? Were you the Regimental OPSO or were you flying at that time?

35 MAJ GALLATLY: So I was a line pilot for the back half of 2020, but I really didn’t do much because I was busy trying to transition. And I was the Regimental OPSO in 2021, when we were kind of finalising the certification exercises and transitioning the workforce from Black Hawk
40 to MRH-90.

SQNLDR NICOLSON: So when there was that transition, did that mean that both the Black Hawk and the MRH-90 flew missions?

MAJ GALLATLY: Yes. Sorry, missions? We never did any actual, real missions, but the Black Hawks and the MRH-90 did do training together and did do a combined formations as well as, yes, they were holding the government's requirements together.

5

SQNLDR NICOLSON: Earlier, when you gave evidence this afternoon, you've mentioned in relation to your operation planning about "government mission".

10

MAJ GALLATLY: Yes.

SQNLDR NICOLSON: What does that mean, "government mission"?

15

MAJ GALLATLY: The government asked us to do certain missions and then we plan up response options and we provide them to government and government either uses us or they do not use us.

20

SQNLDR NICOLSON: And the other matter you talked about operation planning was training and exercises with Special Forces.

MAJ GALLATLY: Yes, that's correct.

25

SQNLDR NICOLSON: During the time of the transition, was both the Black Hawk and the MRH-90 used for those three types of operational planning?

MAJ GALLATLY: Sorry, for operational planning or are you talking about all three?

30

SQNLDR NICOLSON: All three. The operational government mission, the training and exercises.

35

MAJ GALLATLY: Yes, they were used for all three but in 2021 they were reducing. So in 2021 I'm not aware of any training they did because their workforce would transition off it soon. And then we didn't hold them for any government requirements once they were off the hook from mid-2021.

40

SQNLDR NICOLSON: So would it be the case more that the MRH came online and was more a priority as the airframe, with the Black Hawk using its capability to deal with missions, like, government missions or government assistance?

MAJ GALLATLY: Yes. So the MRH-90 was the priority coming online and the Black Hawk was holding certain gaps until the MRH-90 could fully cover those gaps.

5 SQNLDR NICOLSON: And in respect to that time, does that effectively mean that there were two operational Squadrons flying helicopters?

MAJ GALLATLY: Yes, there was.

10 SQNLDR NICOLSON: And how did that go in terms of that period, 2020/2021, about tempo and fatigue?

MAJ GALLATLY: It was difficult. And to completely – you know, to address your point with probably the best example is there were times where we would land a Black Hawk formation and a loadmaster would get off a Black Hawk aircraft, change their helmet for an MRH-90 one and hop on an MRH-90 aircraft and then take off again.

15 SQNLDR NICOLSON: Can I talk to you about your statement at about paragraph 49 and 50? Can I just take you to those two paragraphs? This is reference to February of 2021 about a Risk Management Plan that was put in place.

MAJ GALLATLY: Yes.

25 SQNLDR NICOLSON: At paragraph 50 you refer to paragraph 4 of the SI Aviation Ops 3-208.

MAJ GALLATLY: Yes, that's correct.

30 SQNLDR NICOLSON: You say at paragraph 50 that:

The SI restricted Army aircraft from flying below 500 feet AGL.

35 MAJ GALLATLY: Yes, that's correct.

SQNLDR NICOLSON: The term "restricted", was that your word or was that contained in the SI?

40 MAJ GALLATLY: To be honest, I'm not too sure. I'd have to open up that specific document and read that specific paragraph.

SQNLDR NICOLSON: So in terms of the SIs, you deferred to what was in fact in the SIs in terms of what was directed in the Standing Instructions about the 500 feet AGL – whether it was a restriction or minimisation?

MAJ GALLATLY: I believe it was a minimisation. But I can't recall the words. I printed out the document when compiling the statement, but I haven't confirmed specific words, sorry.

5

SQNLDR NICOLSON: Thank you.

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

10

<CROSS-EXAMINATION BY MR BERGER

5 MR BERGER: Good afternoon, Major. My name is Andrew Berger. I appear for the Commonwealth of Australia. I just have a couple of questions. Major, you gave some evidence about flying below 200 feet. Do you recall that?

10 MAJ GALLATLY: Not really specifically. If you can tell me - - -

MR BERGER: Well, let me ask you this question. Doing that requires a specific authorisation process, doesn't it?

15 MAJ GALLATLY: Yes, that's correct.

MR BERGER: And what is that process?

20 MAJ GALLATLY: That process is you would have that recorded on our electronic flight management system, called PEX. So you would discuss with your Authorisation Officer what you were going to do and they would authorise you in accordance with their authorities within our instructions. They would authorise you to do that manoeuvre if they deemed it suitable. You also need to achieve other things. Like, you need to make sure there's a hazard – like, you need to fly over the area to confirm the hazards and it needs to be in designated areas. So you can't
25 just do it anywhere. It needs to be in a designated low-flying area that's been surveyed, and you need to be authorised through ePEX by a supervisor.

30 MR BERGER: And who would the Authorising Officer be, potentially?

35 MAJ GALLATLY: The Authorising Officer could be – essentially, someone in a position of command, probably from a Troop Commander and above. There's a page within our Standing Instructions that dictates who has what privileges. You can authorise things that you can do yourself. So for me, if I wasn't qualified by night, I couldn't authorise someone to go by night. But, yes, there's a set document and there's a set procedure in what you can authorise in each unit.

40 MR BERGER: And if you were authorised to fly below 200 feet, additional steps on top of those you've referred to, such as flying over the area, would also need to be taken before that occurred. Is that right?

45 MS McMURDO: Is it 200 or 500 feet you're asking about?

MR BERGER: 200 feet.

MAJ GALLATLY: Yes, I believe so.

5 MR BERGER: For example, removing or securing certain items; is that right?

MAJ GALLATLY: I'm not sure what items need to be removed. Yes, you normally conduct a low flight – we call it a hustle check, but yes, ensuring loose items are tied down. Yes, correct.

MR BERGER: And all crew on the helicopter would be required to look out at all times as well; correct?

15 MAJ GALLATLY: Yes.

MR BERGER: Thank you, sir, those are all my questions.

MS McMURDO: Any other applications for leave to cross-examine? Any re-examination? No. Thank you very much, you're free to go, MAJ Gallatly.

MAJ GALLATLY: Thanks, ma'am.

25 MS McMURDO: And enjoy your parental leave.

MAJ GALLATLY: Thank you, ma'am.

MS McMURDO: You might need to do some fatigue management.

30 MAJ GALLATLY: Thanks, ma'am.

<WITNESS WITHDREW

35

MS McMURDO: Yes. The next witness is?

COL STREIT: Thank you, Ms McMurdo. The next witness is Detective Inspector Novosel. I note the time, it's highly unlikely I'll finish the
5 Detective Inspector's evidence today. We could certainly make a start.

MS McMURDO: I think we should make a start, given that we lost half the day with that application.

10 COL STREIT: Yes. I just wonder, noting I'm not going to finish the Detective Inspector's evidence today, whether just a short five-minute comfort break for everyone would be convenient and then commence the evidence in short compass. I then anticipate, either this afternoon or later
15 in the week, making an application that the Detective Inspector finish her evidence via audio-visual link. She's actually based out of Brisbane, in North Queensland, and will be returning to North Queensland tomorrow. Tomorrow is a full day with other witnesses, so I'm not able to continue her evidence.

20 MS McMURDO: I see. Well, I can't see any difficulty, from my perspective, with her giving her evidence by video link. It'll be quite satisfactory from my perspective.

COL STREIT: Thank you.
25

MS McMURDO: I don't imagine there'd be any objection to that from anyone? No. All right then, so we'll just have a five-minute break for everybody.

30

HEARING ADJOURNED

HEARING RESUMED
35

COL STREIT: Ms McMurdo, before the next witness is called, I have one matter to raise with the Inquiry, and it's this: on 15 May 2024, I wrote to the Defence Aviation Safety Authority, Air Vice-Marshal – Air
40 Marshal, I apologise, Robert Chipman, who's also the Chief of the Air Force. I wrote to him as a consequence of the operation of paragraph 63 of the Inquiry's Practice Note, which provides that where the Inquiry was contemplating obtaining information, including evidence obtained by the Flight Safety Bureau in its investigation, that we would afford the Director
45 of the Flight Safety Bureau procedural fairness and the opportunity to

make submissions as to whether the Inquiry's request would be acceded to.

5 In my letter to the Defence Aviation Safety Authority, I conveyed the Inquiry's intention to seek items of evidence, which included the voice data recordings from Bushman 81, 82, 83 and 84, which had been obtained by the Defence Flight Safety Bureau, concerning the mission on 28 July 2023, in which Bushman 83 impacted the water.

10 I also indicated that we sought the voice and flight data reports provided to the Defence Flight Safety Bureau by Airbus Australia Pacific, NATO Helicopter Industries, and Defence Science and Technology Group.

15 I also indicated that the Inquiry would seek any recreation of Bushman 83 and the formation flight paths of Bushman 81, 82, and 83 and 84 by the Defence Science and Technology Group.

20 The Defence Aviation Authority was invited to make submissions, should he wish to do so, in relation to any concerns about the provision of that information to the Inquiry, and a period of time was given for those written submissions to be received. And it was an invitation to provide written submissions, in essence, as to why the Inquiry shouldn't issue a section 23 Notice requiring production of those matters from the Flight Safety Bureau.

25 In a letter to the Inquiry of 24 May 2024, which was received by the Inquiry on 30 May 2024, the Australian Government Solicitor essentially asked the Inquiry to, in a way, not advance the matter that it had requested from the Defence Aviation Safety Authority, pending the outcome of what was to be the Commonwealth's application which was heard today.

30 That application, having been heard and dismissed, I would ask that this Inquiry issue a Direction to the Commonwealth to provide its submission, should it wish to do so, by Friday of next week, or at such later time if they need more time, in response to my letter to the Defence Aviation Safety Authority of 15 May 2024, as a preliminary matter.

35 MS McMURDO: Thank you. Mr Berger, do you have anything to say about this, or do you need to get instructions and give me some more information tomorrow?

40 MR BERGER: That was the first I'd heard of this application. I'd need to seek some instructions, please.

MS McMURDO: That's a shame, that it's the first you've heard of it.
But yes, well - - -

MR BERGER: Well, that it was going to be raised today, that's the first.

5

MS McMURDO: All right. Well, if you get instructions overnight and we'll hear tomorrow whether there's any problem with me issuing a Direction for you to provide those written submissions by Friday of next week.

10

MR BERGER: Thank you.

MS McMURDO: Thank you. Yes, COL Streit.

15

COL STREIT: Thank you, Ms McMurdo. I call Detective Inspector Emma Novosel. Novosel is N-o-v-o-s-e-l. The detective's evidence-in-chief will be taken by her legal representative.

20

MS McMURDO: Yes, thank you. Thank you, Mr Pratt, is it?

MR PRATT: Indeed. Thank you.

MS McMURDO: Thank you.

25

<DETECTIVE INSPECTOR EMMA JUDY NOVOSEL, Affirmed

30

<EXAMINATION-IN-CHIEF BY MR PRATT

MR PRATT: For the record, my surname is Pratt, P-r-a-t-t, initial C. I'm a solicitor with Gilshenan & Luton. I appear today on behalf of Detective Inspector Emma Novosel.

35

MS McMURDO: Yes. Thanks, Mr Pratt.

MR PRATT: Thank you. Detective Inspector, could you state your full name, please?

40

DETECTIVE INSPECTOR NOVOSEL: My full name is Emma Judy Novosel.

45

MR PRATT: And your current rank?

DETECTIVE INSPECTOR NOVOSEL: I'm a Detective Inspector of Police.

5 MR PRATT: With the Queensland Police Service?

DETECTIVE INSPECTOR NOVOSEL: Yes.

10 MR PRATT: And your current role within the Queensland Police Service is?

DETECTIVE INSPECTOR NOVOSEL: I'm the Patrol Group Inspector for Mackay Whitsunday Crime and Support Services.

15 MR PRATT: And were you in that role as at 28 July 2023?

DETECTIVE INSPECTOR NOVOSEL: Yes, I was.

20 MR PRATT: At that time, and in that role, were you tasked to assist in the investigation involving the incident involving the crash of a MRH-90 Taipan helicopter off the coast of Queensland?

DETECTIVE INSPECTOR NOVOSEL: Yes, I was.

25 MR PRATT: And who was it that directed you to undertake that investigation?

DETECTIVE INSPECTOR NOVOSEL: The District Officer, Superintendent Graeme Paine, Mackay Whitsunday District.

30 MR PRATT: And in that role, what did it ultimately require you to do?

DETECTIVE INSPECTOR NOVOSEL: So my role was to coordinate the investigative response on behalf of the Central Coroner in relation to the crash.

MR PRATT: And prior to coming today to the Inquiry, did you receive a section 23 Notice requiring your appearance and for you to give evidence today?

40 DETECTIVE INSPECTOR NOVOSEL: I did, yes.

MR PRATT: And again, prior to attending today, did you prepare a statement for the Inquiry?

45

DETECTIVE INSPECTOR NOVOSEL: I did, yes.

MR PRATT: Do you have a copy of the statement in front of you?

5 DETECTIVE INSPECTOR NOVOSEL: No, not that one.

MR PRATT: Have you had a chance to review that statement today?

10 DETECTIVE INSPECTOR NOVOSEL: Yes, I've reviewed it today.

MR PRATT: That statement there, I believe, is a redacted copy. Have you had an opportunity - - -

15 DETECTIVE INSPECTOR NOVOSEL: Yes, it is.

MR PRATT: - - - to cross-reference that with the original copy?

DETECTIVE INSPECTOR NOVOSEL: I did, yes.

20 MR PRATT: And are the contents of that statement true and correct?

DETECTIVE INSPECTOR NOVOSEL: Yes.

25 MR PRATT: Are there any alterations or amendments or additions you'd like to make to that statement?

DETECTIVE INSPECTOR NOVOSEL: No.

30 MR PRATT: And you're satisfied there's been no change either, in the redactions you've identified?

DETECTIVE INSPECTOR NOVOSEL: Yes, there's been no change, other than the redactions.

35 MR PRATT: And that statement has been redacted using the pseudonyms which you've been shown?

DETECTIVE INSPECTOR NOVOSEL: Yes.

40 MR PRATT: Ma'am, could I seek to tender that statement?

MS McMURDO: Yes. That will be Exhibit 24, statement of 11 June '24.

**#EXHIBIT 24 - STATEMENT FROM DETECTIVE INSPECTOR
EMMA JUDY NOVOSEL DATED 11/06/24**

5 MR PRATT: Thank you. That's the evidence-in-chief.

MS McMURDO: Thank you, Mr Pratt. Yes, COL Streit.

10 <**CROSS-EXAMINATION BY COL STREIT**

COL STREIT: Thank you, Ms McMurdo. Detective Inspector, how long
have you been a serving officer in the Queensland Police Service?

15 DETECTIVE INSPECTOR NOVOSEL: I was sworn in on
11 August 1995, so just short of 29 years.

COL STREIT: And your current role?

20 DETECTIVE INSPECTOR NOVOSEL: I'm the Detective Inspector,
Mackay Whitsunday Crime and Support Services.

COL STREIT: Now, your appearance here today was as a result of the
25 receipt of a section 23 Notice from the Inquiry; is that correct?

DETECTIVE INSPECTOR NOVOSEL: Yes, that's correct.

COL STREIT: And in relation to that Notice, that Notice also required
30 you to address certain questions and issues and provide a statement to the
Inquiry. Is that right?

DETECTIVE INSPECTOR NOVOSEL: Yes, it did.

35 COL STREIT: And that's how your statement has been prepared; is that
correct?

DETECTIVE INSPECTOR NOVOSEL: Yes.

40 COL STREIT: Did you also receive an extract of the Inquiry's
Directions?

DETECTIVE INSPECTOR NOVOSEL: Yes.

COL STREIT: A copy of a Frequently Asked Questions Guide for Witnesses in IGADF Inquiries?

5 DETECTIVE INSPECTOR NOVOSEL: Yes.

COL STREIT: A copy of a Privacy Notice for witnesses giving evidence?

DETECTIVE INSPECTOR NOVOSEL: Yes.

10 COL STREIT: And did you also receive a copy of an Instrument of Appointment for Assistant IGADF, either for me or FLTLT Alexandra Rose?

15 DETECTIVE INSPECTOR NOVOSEL: Yes, I did.

COL STREIT: Thank you. Now, I'm just going to draw your attention to certain parts of your statement. I'll take you to the particular paragraphs, and then I'll just ask you some questions.

20 DETECTIVE INSPECTOR NOVOSEL: Sure.

25 COL STREIT: And I may, in the interests of time, simply lead some evidence from you, in that way. Now, can I take you to paragraph 9 and paragraph 10. So at 0700 hours on Saturday, 29 July 2003 you received a telephone call from the Mackay Whitsunday District Officer, Superintendent Graeme Paine. Is that correct?

DETECTIVE INSPECTOR NOVOSEL: Yes, that's correct. It was 2023.

30 COL STREIT: 2023. Thank you. On that day, Saturday 29 July 2023, what role were you performing, at that time, as a Queensland Police Service Officer?

35 DETECTIVE INSPECTOR NOVOSEL: So I was in my current role, as the Detective Inspector. I was actually on days off, and in Townsville on a personal engagement.

40 COL STREIT: Now, he advised you, did he, that there'd been an incident in the Whitsundays involving an Australian Defence Force helicopter during TALISMAN SABRE?

DETECTIVE INSPECTOR NOVOSEL: Yes, he did.

45 COL STREIT: And what did he ask you to do in that phone call?

DETECTIVE INSPECTOR NOVOSEL: He told me that it was his expectation that I would lead the investigative response, or coordinate the investigative response in relation to an investigation for the Central Coroner.

5

COL STREIT: Did he indicate what any other QPS Officer's role was to be in line with yours?

DETECTIVE INSPECTOR NOVOSEL: So he told me that Acting Inspector Adam Dyer would lead the response as far as search and rescue and recovery, in cooperation with the ADF.

10

COL STREIT: Can you just explain, to the extent you're able to, the difference between your role and Acting Inspector Dyer's role?

15

DETECTIVE INSPECTOR NOVOSEL: So Acting Inspector Dyer had overall, I guess, command of the QPS resources as far as working with the ADF in the search and rescue capacity and the later recovery of the aircraft, and in the search for the personnel that had gone down with the aircraft. Difference: my role was different in the respect that I was to coordinate the investigative units that were tasked to attend for the purposes of gathering information for a report to the Coroner on the crash.

20

COL STREIT: Just in relation to that role and engaging with the Coroner – and that's the role that you had – can you just explain that a little bit further? In practical terms, how did that work?

25

DETECTIVE INSPECTOR NOVOSEL: So the Central Coroner is Magistrate O'Connell. He has a Detective Senior Sergeant who holds the position of the Coronial Support Officer, and that's Detective Senior Sergeant Tony Lee. So when we engage with the Coroner, we do so through Detective Senior Sergeant Lee by way of either phone calls, emails or submissions through our Queensland Police system, which we refer to as QPRIME. And we send tasks through QPRIME for the attention of the Coroner.

30

35

COL STREIT: It might seem an obvious question to you, but it may assist the Inquiry to understand, why is it that you're essentially engaging with the Coroner's Office in relation to the investigation of a crash and not simply just conducting the investigation of the crash in the normal function of policing?

40

DETECTIVE INSPECTOR NOVOSEL: So the *Coroners Act* 2003 says that wherever there's a death that occurs in a violent nature, where there's a crash – there's a whole parameter, but essentially the ADF crash fell into

45

those parameters, which the *Coroners Act* says that the Coroner – our Coroner, our Central Coroner, because it happened in the waters off Mackay, where it's his jurisdiction, he would be responsible for that investigation.

5

COL STREIT: Just excuse me for a moment. So when Superintendent Graeme Paine indicated to you that, in effect, you would be leading the QPS investigation, in your mind at that time did you give any thought as to how that might be reconciled with any role the ADF might have?

10

DETECTIVE INSPECTOR NOVOSEL: At that time, because I understood that it was a – we were investigating what I understood could possibly be four deaths as a result of a crash that had happened in waters just off Queensland in our area, I immediately went into – well, conducting an – or overseeing the investigation that we would ordinarily conduct for the Coroner, mindful that obviously the crash was involving ADF assets and ADF personnel. I understood there would probably be an amount of ADF involvement, but my focus was on that investigation on behalf of the Queensland Central Coroner.

15

20

COL STREIT: So after the receipt of the phone call – you're located in Townsville; is that correct?

DETECTIVE INSPECTOR NOVOSEL: I was in Townsville, yes.

25

COL STREIT: What happened next?

MS McMURDO: Could I just ask something? When you got the phone call, were you told something about whether it was – something about whether it was likely to be survivability?

30

DETECTIVE INSPECTOR NOVOSEL: Mr Paine told me that the crash had been of a catastrophic nature and that there was not much chance – or the survivability was low.

35

MS McMURDO: And that was on 29 July, at 7 am?

DETECTIVE INSPECTOR NOVOSEL: Yes, during that phone call, ma'am.

40

MS McMURDO: Thank you.

COL STREIT: What happened next, after your phone call with Superintendent Paine?

45

5 DETECTIVE INSPECTOR NOVOSEL: So I then contacted Detective Sergeant Luke Scells of the Whitsunday CIB. He's the Officer in Charge of that unit and he reports to me. I contacted him – Luke was on a day off – and I let him know about the information I had in relation to the crash and that an investigative response would be required. He had two officers performing or rostered to work day shift and he immediately said, yes, he would task them to commence the investigation.

10 COL STREIT: What action did you then undertake from there?

15 DETECTIVE INSPECTOR NOVOSEL: I later had a phone call during the day from the Regional Crime Coordinator of the Central Region, Detective Superintendent Darin Shadlow, who told me that it was the expectation of the Central Coroner that the QPS would maintain the investigation for the Coroner's component of the investigation. And I'd also received a phone call from Mr Shadlow indicating that the Assistant Commissioner, Kev Gutteridge, had wanted a Detective Sergeant, or a person of at least the rank of Detective Sergeant, to be involved in the investigation on that day. So I recalled Detective Sergeant Scells to duty.
20 He was on a day off.

COL STREIT: At paragraph 17 of your statement you refer to an email you received from Detective Superintendent Shadlow. You say:

25 *The email provided information in respect of Central Coroner, Magistrate O'Connell's expectation that the QPS would take the investigative lead with respect to the incident, supported by the ADF.*

30 Is that correct?

DETECTIVE INSPECTOR NOVOSEL: Yes.

35 COL STREIT: So was your expectation, upon the information that had been provided by Superintendent Paine in your phone call with him and, further, an email on 29 July 2023 from Detective Superintendent Shadlow, your expectation was that QPS would take the lead with respect to the investigation of the incident?

40 DETECTIVE INSPECTOR NOVOSEL: Yes.

45 COL STREIT: Was it also your understanding that Acting Inspector Dyer would perform a role of assisting the ADF in the search and recovery effort?

DETECTIVE INSPECTOR NOVOSEL: Yes. Acting Inspector Dyer had been the on-call Commissioned Officer for the weekend, and so he took command of the initial search and response.

5 COL STREIT: Did you then travel to the Whitsundays at any point?

DETECTIVE INSPECTOR NOVOSEL: Yes, I returned home from Townsville on the Sunday, the 30th, and then I travelled to Whitsunday on the Monday, which was 31 July.

10

COL STREIT: At paragraph 18 you say on Monday, 31 July you deployed to the Whitsunday Police Station; is that right?

DETECTIVE INSPECTOR NOVOSEL: Yes.

15

COL STREIT: And that's located in Airlie Beach?

DETECTIVE INSPECTOR NOVOSEL: Yes. It's in Cannonvale, but yes, the suburb next to Airlie Beach.

20

COL STREIT: You say at paragraph 19 you were present for the investigation centre briefing at 7.30. What do you mean – well, can you elaborate on what “investigation centre briefing” was?

25

DETECTIVE INSPECTOR NOVOSEL: So essentially the investigation centre, or an IC, is when there's a major incident and the QPS stands up a response. The IC is essentially referred to the working area where the major contributors gather to, I guess, work collaboratively together. And that IC was located at the Whitsundays Police Station. And there's often briefings around an IC and so there were briefings that were tasked – or briefings that were at 7.30 and 5 pm each day.

30

COL STREIT: In relation to paragraph 21, you say:

35

There were a number of agencies present during the brief, including QPS, Defence Force (sic) Safety Bureau, the Australian Transport Safety Bureau, various ADF representatives.

40

Can I just ask, if you're able to recall any particular names for representatives of the Australian Transport Safety Bureau?

DETECTIVE INSPECTOR NOVOSEL: I don't recall the names of the ATSB representative who was there.

5 COL STREIT: I appreciate you're casting your mind back some time in relation to this matter, and obviously your statement was only recently prepared. But I suppose the obvious question is, how did you know that they were Australian Transport Safety Bureau representatives? Is there something in your memory that assists you?

10 DETECTIVE INSPECTOR NOVOSEL: I was introduced to CMDR Dominic Cooper, who I understand from the – or was from the DFSB, Defence Force Safety Bureau. And I remember being introduced to a number of people in his team and I – from my memory, I believe there was someone from the ATSB that was present sometime, I think it was in that first briefing. It may have been later in the day. But I certainly met someone who was working with Cooper's team during the response.

15 COL STREIT: May I just be provided the statement that's been tendered in evidence, please? Just a moment. Thank you, that can be returned.

20 Detective Inspector, I was remiss in raising a matter with you when I first commenced my questions, and that is your statement is dated 11 June 2024. That's correct? If you go to page 16.

DETECTIVE INSPECTOR NOVOSEL: Yes.

25 COL STREIT: It comprises 125 paragraphs?

DETECTIVE INSPECTOR NOVOSEL: Yes, it does.

30 COL STREIT: Attached to your statement is an annexure; is that right?

DETECTIVE INSPECTOR NOVOSEL: Yes.

COL STREIT: The annexure comprises a glossary of terms.

35 DETECTIVE INSPECTOR NOVOSEL: That's correct.

COL STREIT: A document which is headed "Would Your Decision Pass the Test?"

40 DETECTIVE INSPECTOR NOVOSEL: There's a page in between.

COL STREIT: I apologise. Attached following the glossary of terms, is that a photocopy of parts of your police notebook?

DETECTIVE INSPECTOR NOVOSEL: That's my official police diary, yes.

5 COL STREIT: Official police diary. And - - -

MS McMURDO: That's Annexure B to this?

10 COL STREIT: That's Annexure B. And then when you move through those notes, you'll come to Annexure C. What's Annexure C?

DETECTIVE INSPECTOR NOVOSEL: So Annexure C is a notebook that I had in my possession during the time I was deployed to Whitsunday Police Station for the purpose of this investigation, that I also made various notes in.

15 COL STREIT: And I take it in the preparation of your statement you had regard to your official police notebook and in Annexure B; is that right?

20 DETECTIVE INSPECTOR NOVOSEL: I did, yes.

COL STREIT: And your notes taken in Annexure C.

DETECTIVE INSPECTOR NOVOSEL: Yes.

25 COL STREIT: Thank you.

MS McMURDO: It's a diary, not official police notebook.

30 COL STREIT: Sorry, the – crossing jurisdictions. Your official police diary is Annexure B.

DETECTIVE INSPECTOR NOVOSEL: Yes.

35 COL STREIT: Thank you. Just returning to where we were on the chronology, you were at a meeting on 31 July 2023 at about 7.30 am at the Whitsundays Police Station.

DETECTIVE INSPECTOR NOVOSEL: Yes.

40 COL STREIT: So immediately after that meeting, can you remember what you then did?

45 DETECTIVE INSPECTOR NOVOSEL: Immediately after that meeting I would have met with Detective Sergeant Scells to, I guess, be briefed on what had happened in the days previous, over Saturday and Sunday.

COL STREIT: At paragraph 22 you say:

5 *The QPS response, including the search and rescue and recovery and crash investigation, was given the operation name Operation Victor Cloak.*

DETECTIVE INSPECTOR NOVOSEL: Cloak, yes.

10 COL STREIT: That had already been established before your arrival at the Whitsundays, had it?

DETECTIVE INSPECTOR NOVOSEL: I think it had, yes.

15 COL STREIT: At paragraph 24 you say that initially, both prior to and after your:

20 *deployment to the Whitsunday, there were morning and afternoon IC briefings held at 0730 hours and 1700 hours, unless otherwise advised. All agency representatives were in attendance at these briefings. These briefings were chaired by Acting Inspector Adam Dyer.*

Is that right?

25

DETECTIVE INSPECTOR NOVOSEL: That's correct.

COL STREIT: Was there any reason why Acting Inspector Adam Dyer chaired the meetings and not you?

30

DETECTIVE INSPECTOR NOVOSEL: That was the decision of Mr Paine. Adam had the overall command and control of the response, and so that would be, I guess, procedural, that he would chair those meetings.

35

COL STREIT: It was simply consistent with what his role was?

DETECTIVE INSPECTOR NOVOSEL: Yes. I did chair some of those meetings when Adam took – or Acting Inspector Dyer took some, I guess, fatigue management time away from the investigation.

40

COL STREIT: Certainly. Can I take you to paragraph 28, please? At paragraph 28 you say, in your role as Detective Inspector, you're:

COL STREIT: How would you receive information from the Coroner?
Was that through the QPS Coronial Support Officer?

5 DETECTIVE INSPECTOR NOVOSEL: Through Detective Senior
Sergeant Lee, yes.

COL STREIT: Would it always come through that officer or would it
come through another person?

10 DETECTIVE INSPECTOR NOVOSEL: Our usual process is for the
contact between us and the Coroner to go through Senior Sergeant Lee.
So that wasn't unusual, that I didn't have any dealings with
Magistrate O'Connell.

15 COL STREIT: In your previous experience in – I withdraw that. Have
you previously been tasked to investigate accidents where there was a
requirement to report to the Coroner?

20 DETECTIVE INSPECTOR NOVOSEL: Yes, I've been – I've led
investigations where we've had to report to the Coroner, not just crash
investigations but other investigations that are a result of an unnatural or
violent death.

25 COL STREIT: I understand. And is it your earlier experience that you, at
least in those matters, had direct contact with the Coroner?

DETECTIVE INSPECTOR NOVOSEL: No, it's - - -

30 COL STREIT: No direct contact?

DETECTIVE INSPECTOR NOVOSEL: We never have any direct –
unless of course Mr O'Connell phones us or contacts us directly. But
that's highly unusual and I've never – I can't recall ever experiencing that.

35 COL STREIT: Thank you. Just one final matter, because I note the time
and risk of the curtain coming down whilst you're still giving evidence.
Can I just take you to paragraph 30? You say there:

40 *The QPS Operational Procedures Manual 17.3.3 provides that
aircraft incidents resulting in death or serious injury should be
investigated by a trained Forensic Crash Investigator.*

Is that correct?

45

DETECTIVE INSPECTOR NOVOSEL: Yes.

5 COL STREIT: Is that a reference to a trained Forensic QPS Crash Investigator, or just any crash investigator?

DETECTIVE INSPECTOR NOVOSEL: No, a trained QPS Crash Investigator.

10 COL STREIT: The QPS Operational Procedures Manual, that's a publicly available manual on the internet; is that right?

DETECTIVE INSPECTOR NOVOSEL: The OPM, yes.

15 COL STREIT: At paragraph 31 you say:

Additionally, 8.5.12 of the OPM provides that due to the complexities surrounding aircraft incidents, the QPS investigator should be an ATSB-trained or seek advice from the ATSB as required.

20 Can you just explain the effect of that part of the QPS Operational Procedures Manual?

25 DETECTIVE INSPECTOR NOVOSEL: So my understanding of 8.5.12 is that when there's a report that's been prepared for the Coroner and it's the result of an air crash, that the Forensic Crash Investigators should be involved and they should have some sort of ATSB training or they should have engagement with ATSB.

30 COL STREIT: Was there anyone suitably trained, ATSB trained, on your investigative team that you can recall?

35 DETECTIVE INSPECTOR NOVOSEL: Not specifically. So Senior Sergeant Narelle (sic) Fox of the Forensic Crash Unit in Brisbane, she deployed Senior Constables Cook and Troeger to the Whitsundays for the response. And so I had assumed that they were appropriately trained as per the OPMs.

40 MS McMURDO: I think we are going to have to - - -

COL STREIT: I was about to say, Ms McMurdo, I note the time and – unless my watch is slightly slower than the time here in the Inquiry hearing room. Perhaps if this witness could be put over to another day.

MS McMURDO: Detective Inspector, I'm sorry we haven't been able to hear more from you today, because of the unexpected time that the application this morning took. But I understand that you'll be able to give the remainder of your evidence by video link later in the week - - -

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DETECTIVE INSPECTOR NOVOSEL: Yes, ma'am.

MS McMURDO: - - - which will be convenient to you because you return to Mackay.

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DETECTIVE INSPECTOR NOVOSEL: Yes.

MS McMURDO: Thank you. All right then, we'll adjourn now until 9.30 tomorrow. We'll try and make up for a little bit of the lost time today.

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<WITNESS WITHDREW

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**PUBLIC INQUIRY ADJOURNED UNTIL
WEDNESDAY, 19 JUNE 2024 AT 0930**