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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

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 AVM G HARLAND AM CSC DSM**

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1000, THURSDAY, 27 FEBRUARY 2025

DAY 35

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	14/03/25	(Transcription)

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MS McMURDO: Yes, COL Streit.

5 COL STREIT: Good morning, Ms McMurdo. Can I begin briefly with some housekeeping matters concerning a change to the witness list for week 2 for the benefit of Counsel representing and those persons watching on.

10 In week 2, at the moment, Mr Michael Grant from Defence Science and Technology Group is listed to give evidence on Thursday, 6 March 2025. He will now give evidence during hearing phase 8 on 27 March 2025.

LTCOL Daniel Perren, who's listed to give evidence on Friday, 7 March, will now be moved to give evidence on Thursday, 6 March.

15 The effect of that is that Friday, at present, no witnesses are planned to be called by Counsel Assisting. Our experience in the hearings to date is that sometimes witnesses go over time, and so it may be – although we don't anticipate next week – it may be that a witness spills over into the Friday. But I simply alert Counsel representing and those present here, for their
20 own planning and travel purposes, that matter for next week. Thank you.

MS McMURDO: Thank you, COL Streit.

25 COL STREIT: The next witness is COL Joel Domigan, D-o-m-i-g-a-n, who is giving evidence by audio-visual link. He's presently online, and I call COL Domigan.

Colonel, can you see and hear me?

30 COL DOMIGAN: Yes, good morning, I can. I can see and hear you, yes, you've got me.

COL STREIT: Thank you. Can you - - -

35 CLERK OF THE COURT: Would you prefer the oath or the affirmation?

40 COL DOMIGAN: Unfortunately, I'm at the Australian Defence College in a media room, I don't have access to a Bible, so I will take the affirmation, please.

<COL JOEL DOMIGAN, Affirmed

<EXAMINATION-IN-CHIEF BY COL STREIT

5

COL STREIT: Can I just have the correct pronunciation of your surname, please.

10 COL DOMIGAN: Yes, you sure can. It's Domigan.

COL STREIT: Thank you, COL Domigan. Now, in front of you, do you have a copy of your witness statement you provided to the Inquiry?

15 COL DOMIGAN: I do, yes. I've got a witness statement and just the pseudonym list should it be required.

COL STREIT: Thank you. Can I confirm that the copy of the witness statement you have before you has been redacted in parts?

20

COL DOMIGAN: That's correct, yes.

COL STREIT: Thank you. Now, what I propose to do, I'll just ask you some preliminary questions, and then we'll turn to matters concerning your statement.

25

COL DOMIGAN: Sure.

30 COL STREIT: So first can I just ask, did you receive a section 23 Notice requiring you to answer questions and complete a statement for the Inquiry?

COL DOMIGAN: I did, yes.

35 COL STREIT: And you did that and provided a witness statement to the Inquiry; is that correct?

COL DOMIGAN: That's correct.

40 COL STREIT: Did the section 23 Notice also require your appearance here today?

COL DOMIGAN: It did, yes.

45 COL STREIT: Now, when you received the section 23 Notice, did you

receive other documents, including my Instrument of Appointment?

COL DOMIGAN: Yes, I did.

5 COL STREIT: A Privacy Notice?

COL DOMIGAN: Yes.

10 COL STREIT: A Frequently Asked Questions Guide for Witnesses?

COL DOMIGAN: Yes.

COL STREIT: A copy of the Inquiry's Directions?

15 COL DOMIGAN: That's correct.

COL STREIT: Thank you. Now turning to your statement, can I just ask you to examine the statement you have before you and just confirm the following matters. First, is that a statement made by you and signed
20 digitally on 13 February 2025?

COL DOMIGAN: That is correct.

25 COL STREIT: Does your statement comprise 39 paragraphs?

COL DOMIGAN: Yes, it does.

COL STREIT: And does it comprise 15 pages with one annexure, which would be the 16th page?

30

COL DOMIGAN: That's correct.

COL STREIT: And the annexure to your statement is a single page in colour of the ADF Military Salary Aviation, 7 November 2024; is that
35 correct?

COL DOMIGAN: That's correct.

40 COL STREIT: And in terms of that document, I take it you obtained that document or that page rather from the ADF Military Salary Aviation sheets, is that correct?

COL DOMIGAN: Yes, from my understanding, it was the Pay and Conditions website for the ADF salaries.

45

COL STREIT: Now, a matter you addressed in your statement reflects that you altered the – to draw or to highlight a matter, you altered the ADF Military Salary Aviation annexure you've attached in some part. Is that right?

5

COL DOMIGAN: Yes, that's correct, I just put two red boxes on it to amplify a point.

COL STREIT: Can you just identify, by reference to the document you have in front of you, where those two red boxes are?

COL DOMIGAN: I can. My document here is just in black and white, but I can see the boxes. It's just around the asterisk in the Army component of the pay scale between Captain 03 Rotary Wing Pilot *OA19 and then the subtext down the bottom accompanying that asterisk which refers to Captains who have completed seven years at rank and have been appointed to Troop Command.

COL STREIT: I see. So is the information:

20

Captains who've completed seven years at rank and have been appointed Troop Commander –

is that information you have inserted?

25

COL DOMIGAN: No, that's not. The only insertion was the red box to highlight the point that I referred to in the statement.

COL STREIT: I see, all right, thank you.

30

MS McMURDO: So where was the first red box? I've got the second one. Where was the first red box, please? Could you just tell us that again.

COL DOMIGAN: Yes, ma'am. It was just around the – in the Army Generalist Stream, around the Captain 03, just highlighting the Captain rank and the commensurate pay scale of OA19.

MS McMURDO: Okay, thank you, got that.

40

COL STREIT: Colonel, you've had an opportunity to go through your redacted statement before appearing here today, did you?

COL DOMIGAN: Yes, I did.

45

COL STREIT: Are there any amendments or additions? I'm not suggesting there are; I'm just asking. But are there any amendments or additions you wish to make to your statement?

5 COL DOMIGAN: No, there's not.

COL STREIT: Thank you. I tender the statement of CAPT (sic) Joel Domigan of 13 February 2025.

10 MS McMURDO: Exhibit 123.

COL STREIT: I might indicate that the copy that'll be tendered – and we'll look to substitute it as soon as we're able to – the annexure doesn't reflect the red box highlighting.

15 MS McMURDO: No.

COL STREIT: So with that caveat, I tender the statement.

20 MS McMURDO: Thank you.

#EXHIBIT 123 - STATEMENT FROM COL DOMIGAN

25 COL STREIT: Colonel, what I propose to do now is – you're welcome to have your statement in front of you and open – we'll move through various parts of your statement, I'll identify the relevant paragraph and the information and then ask you some additional questions. So first can I
30 just also confirm do you have access to a pseudonym list that was provided to you by the Inquiry?

COL DOMIGAN: I do. I have that pseudonym list with me.

35 COL STREIT: I don't anticipate there'll be a need for you to access the pseudonym list. However, if you consider that a person you may be identifying – given that you're giving evidence concerning Aviation matters, a person that you may identify may indeed have a pseudonym, then please look at the list first and satisfy yourself. If the person has a
40 pseudonym, then use that pseudonym. If the person does not have a pseudonym, then feel free to use their name.

COL DOMIGAN: Will do.

COL STREIT: Or their position. So, first, can I begin by just identifying some qualification features of your statement, which you've outlined in paragraph 3 and 4 in these terms: your evidence today is on the basis you're being called as a witness arising from your experience working with Army Career Management, coupled with your time as an Army Aviator and Commander within Army Aviation Capability. Is that correct?

COL DOMIGAN: That's correct, yes.

COL STREIT: And you've indicated and informed the Inquiry that your answers to the questions that were asked in the section 23 Notice are provided on the basis of your experience, recollection, and the understanding of policy. Correct?

COL DOMIGAN: That's correct.

COL STREIT: You've worked within Army Officer Career Management from January 2020 to December 2021, during which time you were not directly in charge of Aviation Career Management. Rather, you were the supervisor of the aviation officer career manager, amongst others. Is that correct?

COL DOMIGAN: That is correct.

COL STREIT: You provide your responses to the questions asked in the section 23 Notice in that context. Correct?

COL DOMIGAN: That's correct.

COL STREIT: Further, where you are absent knowledge about something, is it correct that you have sought assistance via Career Management Army to provide responses, policy-based responses, that are accurate and up to date to the questions asked of you in the section 23 Notice?

COL DOMIGAN: Yes, that's correct.

COL STREIT: In the body of your statement, you have identified where you've drawn on that information from Army Career Management. Is that right?

COL DOMIGAN: That's correct. I've italicised that component of this statement, yes.

45

COL STREIT: Thank you. Can I turn now to your background, qualifications and experience, which commences on page 2 of your statement? You're presently a Colonel within the Australian Army Aviation Corps, and you're presently posted to the Australian War College as a student on the Defence Strategic Studies Course. Is that right?

COL DOMIGAN: That's correct. My background is Aviation Corps, although as a Colonel I'm now sort of non-Corps. But, yes, that's correct.

COL STREIT: In terms of your flying experience as a pilot, you have been a previous CAT A pilot with over 2200 flight hours; qualified on various aircraft, including the CT-4B. Is that right?

COL DOMIGAN: That's correct.

COL STREIT: What's the CT-4B?

COL DOMIGAN: That was the fixed-wing trainer that was used prior to the current airframe, the PC-9, that is used in basic flight training.

COL STREIT: You're qualified on the Kiowa and the Armed Reconnaissance Helicopter, or Tiger. Is that right?

COL DOMIGAN: That's correct.

COL STREIT: In terms of your background and qualifications, you graduated from RMC in June of 2002, and commissioned to the rank of Lieutenant. Is that right?

COL DOMIGAN: That's correct.

COL STREIT: When you were at RMC, were you commissioned on the basis that you were scheduled to undergo pilot training, or is that something you applied for and were accepted to whilst at Duntroon?

COL DOMIGAN: So I attended Duntroon under the understanding that I was on an Aviation cadetship, which is something that I reference in the statement a bit later. But, yes, so I knew that I was allocated to Aviation Corps if I successfully graduated from the Royal Military College.

COL STREIT: You then, upon graduating from RMC, completed fixed-wing and rotary training in 2002-2004. And you received your Army flying badge in December 2003, specialising in reconnaissance operations, flying the Kiowa helicopter. Is that right?

COL DOMIGAN: That's correct, yes.

5 COL STREIT: You then describe, at paragraphs (c), (d), (e) and (f), and onwards of your statement, various postings that you have had, including fulfilling the roles at 1 Aviation Regiment in Darwin, of Troop Pilot, Troop Second in Charge, Troop Commander, Squadron Operations Officer, and Squadron Second in Charge. Is that right?

10 COL DOMIGAN: That's correct, yes, at the rank of Captain, yes.

COL STREIT: You attained the qualification of CAT A pilot, and you were also a Unit Check Captain. Correct?

15 COL DOMIGAN: That's correct.

COL STREIT: Can you just explain, what's a Unit Check Captain?

20 COL DOMIGAN: So a Unit Check Captain is used purely to assess flight and mission skills for maintenance of pilots' currencies within the unit. Normally, this is conducted largely by a Qualified Flying Instructor. However, a QFI would also do instruction as well, whereas a Check Captain can't do instruction, it can only do assessment.

25 COL STREIT: You also, in that period, deployed to Timor Leste as part of an Aviation Task Group; is that right?

COL DOMIGAN: That's correct, yes.

30 COL STREIT: You, from 2008 to 2010, were at the School of Army Aviation, as the Kiowa Training Troop Commander in Aviation Tactics Wing. That's right?

COL DOMIGAN: That's correct, yes.

35

COL STREIT: You were an Instructor, I take it, during that posting?

40 COL DOMIGAN: No, I was still a Unit Check Captain, with some expanded roles and responsibilities. But I did not complete a Flying Instructor Course as I was more interested in the Command and Leadership Stream of Aviation.

45 COL STREIT: In terms of your Command roles – and we're looking at paragraph (h) now on page 3 – from 2016 to 2018 you commanded the 162 Reconnaissance Squadron, flying ARH Tiger. That's right?

COL DOMIGAN: That's correct, yes.

5 COL STREIT: You then moved through the Command Stream, being selected and then attending Australian Command and Staff College at Weston Creek.

COL DOMIGAN: That's correct.

10 COL STREIT: That's as a Major, and ultimately that's necessary to attend the college, successfully complete it, in order to be eligible for promotion as a Lieutenant Colonel within the Command Stream?

15 COL DOMIGAN: Yes, within the Command Stream, that's the method.

COL STREIT: So that is a gate that an Aviation Officer must move through in order to be eligible for selection to Command an Aviation unit?

20 COL DOMIGAN: Yes, you need to go through the Command and Leadership Pathway, which is inclusive of Command and Staff College, to then compete for Regimental units within Aviation Command.

25 COL STREIT: You then, upon completion of the Australian Command and Staff College, performed a function as a Staff Officer within the Directorate of Officer Career Management. You were the Army Senior Career Adviser; is that right?

COL DOMIGAN: That's correct, yes. That was on promotion, yes.

30 COL STREIT: And you were then ultimately selected for command of the 1st Aviation Regiment in Darwin, where you served from 2022 to 2024?

35 COL DOMIGAN: That's correct.

COL STREIT: So is the normal pathway, from your experience, once you complete Staff College and are eligible for promotion, you're then promoted? You'll do generally a staff job for two to three years, and then potentially be selected for command; is that right?

40 COL DOMIGAN: That's correct, that's the normal pathway you complete at Staff College. Most individuals will complete a role post-Staff College, prior to going to the Board for promotion. Upon promotion, generally, you'll fill a staff role and then, again, opt in to compete for unit command.

45

COL STREIT: Can I just track back a little bit – now that we’ve gone through to the point where you took command as the CO, can I just take you back to when you were at Troop Commander?

5

COL DOMIGAN: Yes.

COL STREIT: What were your experiences of maintaining proficiency and currency on type whilst also fulfilling those command roles in Darwin?

10

COL DOMIGAN: I mean, from my experience, quite positively. I have always been someone that has sought to keep my tactical proficiency fairly high, and lead from the cockpit, for want of a better term. So I was always very invested in trying to continue my aircrew or pilot progression whilst also maintaining my Army Officer responsibilities.

15

COL STREIT: Is it, by necessity, a trade-off, because you have, can I suggest, two important roles: one is the Troop Commander, and the other is actually a pilot operating an airframe?

20

COL DOMIGAN: (No audible reply).

COL STREIT: So just on that basis, is it ultimately a bit of a trade-off, in there’s only so many hours in the day, as to where your focus can be at any one time?

25

COL DOMIGAN: I think there’s an element of prioritisation about what you need to do to focus. But I’m a firm believer that “Army aviator” doesn’t just mean “pilot”; it incorporates being a pilot, but also being an Army Officer. So therefore, it is a responsibility that comes with a whole range of additional things. But, you know, I guess that’s par for the course, from my understanding, yes. If that answers your question?

30

COL STREIT: It may be casting things back a little bit too far, but do you recall whether there were any service availability issues for aircraft that impacted on your ability, when a Troop Commander, to maintain proficiency in the airframe?

35

COL DOMIGAN: Not during my time as a Troop Commander. It was a fairly known entity about what the availability was. There was always standard ups and downs within the unit; however, it was quite achievable to maintain proficiency and also cover down on your command responsibilities.

40

45

COL STREIT: When you finished your role as the CO of the
1st Aviation Regiment in Darwin – I’ll pause there for a moment. The
1st Aviation Regiment, the airframe that the Regiment operated was the
ARH Tiger attack helicopter. Is that correct?
5

COL DOMIGAN: That’s correct. My time as a Troop Commander was
on the Kiowa. That was replaced by the ARH Tiger, which is where I did
my sub-unit command and unit command time as the CO on the
ARH Tiger.
10

COL STREIT: So during your command of 1st Aviation Regiment, it
wasn’t the case, was it, that you had MRH-90 airframes in your unit?

COL DOMIGAN: That’s correct. We solely flew the ARH Tiger within
the 1st Aviation Regiment.
15

COL STREIT: Can you recall approximately – and only if you can – the
period of time ARH Tiger had been operating in the 1st Armoured
Regiment before you took command?
20

COL DOMIGAN: Sorry, in the 1st Aviation Regiment, yes. I’m
thinking back. I know we received the first aircraft at the end of 2004;
however, we did not operate them within the unit until approximately
2008-2009, somewhere around that timeframe, though I can’t put a
specific date on it. We certainly didn’t have them in 2008, so I’d say
2009. So it was sometime after I’d left the unit as a Captain and was
operating at the School of Army Aviation. So I’d put it around the
2009-2010 window.
25

COL STREIT: So if we make the maths easy and we just say 2010, the
airframe had been operating in the unit for about 12 years at the point you
took command of the 1st Aviation Regiment. Correct?
30

COL DOMIGAN: Yes, that’s correct.
35

COL STREIT: Can I just turn now to, very briefly, what you did after
command of the 1st Aviation Regiment, which was your last posting
before your current one at the War College as the G3 Operations at
Headquarters Aviation Command. Is that right?
40

COL DOMIGAN: Yes, that’s correct.

COL STREIT: Can you just assist the Inquiry to understand what your
role was as the G3 Operations?
45

COL DOMIGAN: So, as the G3, it's effectively the Operations Officer for the functional command, being Headquarters Aviation Command. So you're responsible for broadly planning, and then up to the point of execution, operations and exercises within the broader Aviation Command. So I would do the high-level liaison with other functional Commands with Army Headquarters, and then provide tasking to the Brigade that would be conducting the actual execution of the task.

COL STREIT: One matter I'm just going to ask you about – it's not something you were asked about in your section 23 Notice, so if you're not able to answer it, please indicate that – at the time of the crash of Bushman 83, which was 28 July 2023, at that time, you were partway through your role as the CO of the 1st Aviation Regiment. Is that right?

COL DOMIGAN: That's correct.

COL STREIT: As a consequence of things that occurred after the accident, in terms of the investigation conducted by the DFSB and other organisations, and actions potentially taken by Aviation Command, was there any direct impact to you in the conduct of how ARH Tiger was engaged?

COL DOMIGAN: What do you mean by "engaged" if I can clarify that? Like, how it was operated?

COL STREIT: All right, let me put it this way. Was there any requirement for you to undertake any review about the workload of your aircrew in your unit, post the crash of Bushman 83?

COL DOMIGAN: So there was no direct requirement to undertake a look at the workload for that component. The unit was already undergoing a broader review on capability at the time. So, no, there was no specific direction to look at workload.

COL STREIT: I'm not suggesting you did, I'm simply asking did you, of your own motion, initiate any review actions following the crash of Bushman 83 within your unit that directly related to the crash?

COL DOMIGAN: Yes. So a number of sort of safety – noting that the ongoing safety investigation was occurring, we were sort of poised and waiting to see what iterative findings were going to come out of that, that we could analyse and look at to see if there was, you know, value in implementation, or how it related to flight operations within the 1st Aviation Regiment.

45

I was already undergoing a broader look at the overarching capability and some of the pressures within the ARH capability, so it sort of linked to some elements of that anyway. So I'd say that, yes, we were conducting activities in the period following the crash, to see ways and means to ensure we were optimising and making sure we were doing business as safely as possible.

COL STREIT: And the final matter I just want to ask you about in relation to that command role you had: to your recollection when you were the CO in that period 2022 to 2024, and in terms of the Troop Commanders that were in your unit, do you recall if any of them were junior by way of rank; that is, not Captain 7, fulfilling a Troop Commander role?

COL DOMIGAN: There were some that were probably maybe one or two years prior to that, but I don't have the information in front of me that I would be able to reference that accurately.

COL STREIT: Sure.

MS McMURDO: Was that common, or was that unusual for that to happen, for a Captain to be a Troop Commander prior to the seven years' experience?

COL DOMIGAN: No, that's common, ma'am, as well. Well, I would say it's not uncommon is probably a better way of phrasing that. So identification and selection for a Troop Commander normally occurred around the third or fourth year, or between two and four-year Captain. Once that had been identified, depending on their proficiency and what their qualifications and experience were within the unit, it was not uncommon to put them in the role prior to reaching Captain 7.

Part of that is a function of time in rank requirements. The expectation is that you complete your time as a Troop Commander generally in your last couple of years as a Captain, not after that, so that you are still on track to then promote to Major broadly on time with your peers within the Army Officer cohort.

AVM HARLAND: What is that, "broadly on time for Major"? What's the average time as a Captain before you're promoted to Major?

COL DOMIGAN: Well, it's broadly around the fifth year Captain, to any time after that. So within the Career Management Agency, we normally start looking at Captains to promote as they were going into their sixth year, or seventh year. But, effectively, you have to have completed

five years' time in rank, before you were sort of looking at an early look to promote, or on time around the six-year Captain mark.

5 AVM HARLAND: So how does that work, then? Because you don't get the Troop Commander benefit until you're a seven-year Captain, but on average you get promoted to Major before that.

10 COL DOMIGAN: So I guess I'll clarify that a little bit. The fifth to sixth-year Captain mark is for Army Officers. Aviation Officers are normally expected to spend a little bit more time so that we can get their full value that (1) they get their tactical proficiency qualifications and experience built up to enable success in later ranks, and return on investment as well within the unit. So normally aviators will expect to spend seven years as a Captain before promoting.

15 AVM HARLAND: So does that mean they're relatively disadvantaged compared to a standard Army Officer's advancement?

20 COL DOMIGAN: They are slightly delayed but remunerated, I guess, accordingly, if that makes sense. So, yes, as an Army Officer you generally won't expect to meet the exact same milestones as Lieutenant and Captain that a broader Army Officer or Generalist Army Officer might meet.

25 AVM HARLAND: So you're generally promoted later?

COL DOMIGAN: Generally promoted later, at those ranks, to Captain and to Major, yes.

30 AVM HARLAND: Okay, thank you.

COL DOMIGAN: Not always, but general – as a general rule.

35 AVM HARLAND: Great, thank you.

MS McMURDO: And a Captain prior to year 7. A flying pilot Captain flying to year 7 doing the Troop Commander role doesn't get paid for that?

40 COL DOMIGAN: They do not. With the current pay scale, that's correct, ma'am. They do not get that remuneration until they have completed their time, which is the other component of that remuneration.

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

COL STREIT: Thank you.

5 Colonel, when you were a Troop Commander in the 1st Aviation Regiment, can you recall how many years you had been a Captain at the time you were a Troop Commander?

COL DOMIGAN: I had been a Captain for three years when I was a Troop Commander.

10 COL STREIT: On the pay scale that existed at that time, do you recall whether you were paid for that role as being a Troop Commander?

15 COL DOMIGAN: No, the previous pay scale did not recognise Troop Command Unit, Sub-unit Command or Unit Command as a differing factor for aviators. So particularly Troop Command. I can't really talk to Sub-unit Command or Unit Command because I never really looked at the pay scales relevant to that back then. But, no, it was just – you just got paid according to time in rank.

20 COL STREIT: Thanks. And I appreciate you deal with the rank structure – Lieutenant, Captain, and so on – later in your statement so we'll just return to those matters at that time. Can I just deal briefly with the overview of recruitment and selection of Army trainee pilots and
25 aircrewman – first dealing with pilots – which is at paragraph 10 of your statement.

COL DOMIGAN: Yes.

30 COL STREIT: So ADF Careers, which was formerly called Defence Force Recruiting, is responsible for the external recruitment of Army Officers including Army pilot trainees to ab initio training. Correct?

COL DOMIGAN: That's correct, yes.

35 COL STREIT: And so whether you're coming in on a cadetship or Aviation, or not, you need to move through officer training at the Royal Military College Duntroon. Is that right?

40 COL DOMIGAN: Yes, that's correct. I think I talk about it a little bit further in my statement, the methods for "in". So there's in-service. But if we're talking purely recruiting for, say, an individual off the street, yes, their option is to do a degree at the Defence Force Academy and then do their subsequent period of time at the Royal Military College prior to
45 commission, or direct entry to the Royal Military College prior to commission into the Aviation Corps.

COL STREIT: So the selection of personnel for Army Aviation is either persons being selected and going through Duntroon straightaway, or persons being selected going to ADFA first and then Duntroon, or lateral recruitment of qualified pilots from overseas Defence Forces.

5

COL DOMIGAN: Yes. Yes, I guess I don't categorise the lateral transfer in the ab initio component, but - - -

10 COL STREIT: Sure.

COL DOMIGAN: But, yes, that's correct. That was a further mechanism to recruit pilots to the ADF, yes.

15 COL STREIT: Paragraph 11. I won't go through the detail, but you list some of the selection criteria for trainee pilots, including medically fit, cognitive ability, and so on. That's correct?

COL DOMIGAN: That's correct, yes.

20

COL STREIT: Now, you set out in paragraph 12 – and you've italicised it for the assistance of the Inquiry – information that you've been provided by the Directorate of Officer Career Management Army in relation to the additional selection requirements for general entry and enlistment for Aviation. That's right?

25

COL DOMIGAN: That's correct, yes.

COL STREIT: You similarly do the same on page 5 for aircrewman, commencing at paragraph 13. And at paragraph 14 you draw on information that the Directorate of Soldier Career Management has provided in relation to becoming an aircrewman selected through either trade transfer or Defence Force Recruitment. That's correct?

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35 COL DOMIGAN: That's correct.

COL STREIT: Can I turn now to Army pilot training, including officer training, which you detail commencing at paragraph 15 on page 6. You there, at paragraph 15(a), (b) and (c) set out in greater detail the process of entry via ADFA, direct entry to Duntroon and lateral transfer. Correct?

40

COL DOMIGAN: That's correct, yes.

COL STREIT: Now, at paragraph 16 you say:

45

program, get into the workforce and alleviate some of the workforce issues that were existing.

5 Once in the unit, there was a broader expectation that they would fulfil predominantly flying-related roles. As I said previous, it didn't preclude them from doing any of those other roles, and really the only roles it broadly stopped them from were the pure command role. So Troop Command, some of those – well, Troop 2IC, Squadron OPSO, those type of other roles could and were filled by Specialist Service Officers as well.
10 So within the unit, yes.

COL STREIT: Is it fair to say then that scheme, in the circumstances in which it existed, provided Army Aviation with a workforce to fulfil a flying capability? Correct?
15

COL DOMIGAN: Yes, that's correct.

COL STREIT: And persons who were then posted to undertake command roles would be stepping through a longer career pathway, longer course at Duntroon, and various promotion courses. That's correct?
20

COL DOMIGAN: Yes, that's correct. It didn't – certainly the initial commissioning stuff through RMC – once you're in the unit, you know, broadly, from a career perspective, SSOs still completed career courses and other things. However, unless they were completing sort of command roles and other milestones within a general sense, they weren't competitive to promote to higher and higher ranks, which kept them broadly in the sphere of just providing aircrew or pilot capability within
25 the unit.
30

COL STREIT: So, in effect, that scheme gave the Army, at that point in time, a ready, willing and able workforce to fly helicopters, which was their principal focus.
35

COL DOMIGAN: Yes. I think there was a – the element was to really fill the liability that was existing within the units. And, you know, as recruiting increased and more positions were available, throughput through pilot training and a few other issues, it's my understanding that it was determined that the requirement for a Specialist Stream, Specialist Entry Stream, wasn't required because we could get that just through a Generalist Stream. And then, once within the unit, they could identify whether they wanted to seek the Command and Leadership path or seek more of a specialisation.
40
45

AVM HARLAND: How's recruiting going nowadays?

5 COL DOMIGAN: I can't really comment, sir, on recruiting but, from my understanding, we are – through Military College, I'm pretty confident, anecdotally, that we are getting applicants through that are going on to pilots course.

AVM HARLAND: Yes.

10 COL DOMIGAN: So, yes, meeting those targets from an Aviation perspective, as far as graduating at Royal Military College.

15 AVM HARLAND: Yes, it's interesting because a number of the witnesses we've heard from so far fulfilling staff roles throughout Army Aviation Command, and the Brigade and the Regiments, there's a remarkable number of Reservists which would indicate to me a lack of health in the Army Aviation system to be able to fill those positions, because normally they don't design an organisation around Reservists, but they plug the gaps.

20 So, yes, that's interesting that you say that everything's healthy, but some other indicators indicate not.

25 COL DOMIGAN: Yes, so I guess just to clarify, I mean I'm not an expert in the recruiting space but, from an input perspective, I would argue – or I could posit that that was healthy. I can't talk about retention, how that throughput looks like through the rest of the workforce in filling some of those roles, though.

30 AVM HARLAND: And I guess - - -

COL DOMIGAN: Yes.

35 AVM HARLAND: Sorry, I was going to say that from other witnesses we've heard of a workforce under pressure, a lot of tasking, and I know as things evolve even since your command, you know, governance requirements, certainly in my experience, don't go down. But we've heard that the workforce is under pressure. Are you aware of that the time that the decision to scrap SSO – for want of a better word – was the option
40 open to restart that in the future should the conditions dictate that you needed some more flexibility, or has it been effectively sentenced for good?

45 COL DOMIGAN: Sir, I actually don't know. I'm not sure. I can't answer that one for you accurately.

AVM HARLAND: No, that's okay. Thank you.

COL DOMIGAN: Yes.

5

MS McMURDO: And could those Specialist Service Officers go on to things like Qualified Flying Instructors and so forth?

COL DOMIGAN: Yes, ma'am.

10

MS McMURDO: Could they go into that Specialist Stream? Yes.

COL DOMIGAN: That was generally – you know, it was seen as, you know, the pathway for them if they wanted to continue in flying roles, to build their experience and qualifications through flight instruction.

15

MS McMURDO: Thank you.

COL STREIT: Later in your statement, from paragraph 17 onwards to 20, you set out the training for a trainee pilot stepping through first Flying Training School training at Oakey, et cetera. So I might just move over that and ask you to turn to paragraph 22. Here, you set out the overview of aircrewman training, including as a soldier. You inform the Inquiry at para 23 that you were drawing on information provided to you by the Directorate of Soldier Career Management; is that right?

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25

COL DOMIGAN: That's correct, yes.

COL STREIT: So is it correct that soldier training, i.e. all aircrewman, undertake training as a soldier in parallel with all other corps for general course promotions like sub 1 for Corporal, sub 1 for Sergeant and so on?

30

COL DOMIGAN: Yes. It's my understanding that they still need to be required – sorry, are required to complete their standard All Corps Soldier Training Continuum.

35

COL STREIT: And that the Technical Instructor Course that aircrewman can undertake to become an instructor within that stream is generally at the Sergeant rank level; is that right?

40

COL DOMIGAN: That's my understanding, yes.

COL STREIT: That's the information that Directorate of Soldier Career Management has provided you.

45

COL DOMIGAN: That's correct. Their knowledge was that the eligibility window opens from Corporal, but it is the general or the norm is it is done at Sergeant.

5 COL STREIT: Can I just turn now to the overview of Army pilot career pathways. You've touched on some of this evidence earlier, but two broad career pathways, the Command Stream and the Specialist Stream. That's right?

10 COL DOMIGAN: That's correct, yes.

COL STREIT: Now, at para 26 you say:

15 *Army pilots generally have a personal choice regarding which Army pathway they wish to choose; however, it's largely dependent upon performance, sustainability and liability for selection to attend Australian Command and Staff College.*

Correct?

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COL DOMIGAN: Yes, that's correct.

25 COL STREIT: So to put it in context, if a pilot performs well at the rank of Lieutenant, Captain and Major, generally, provided their performance meets standards and they're competitive within their cohorts, they'll be promoted to Captain and Major. Correct?

COL DOMIGAN: That's correct.

30 COL STREIT: The difficulty is, when they hit the rank – or it becomes more challenging if they want to advance to Lieutenant Colonel on the command side. They first have to be selected for Australian Command and Staff College?

35 COL DOMIGAN: If you want to be a Generalist, so the Command Stream, yes, that's the pathway that they would be seeking.

40 COL STREIT: So if you want to be the CO of 1 Aviation Regiment, as you were, you need to step through and be selected for Australian Command and Staff College.

COL DOMIGAN: That's correct, yes.

45 COL STREIT: That's when the pyramid starts to become narrow on the command promotion options. Correct?

COL DOMIGAN: That's correct, yes.

5 COL STREIT: And that's consistent across Army more broadly for all its other corps; is that right?

COL DOMIGAN: That's correct. It's competitive across all corps.

10 COL STREIT: Just focusing on Aviation. So for those Majors who are performing well, just not as well as the person or persons selected for Staff College, what options do they have if they don't get through that gate to go to Staff College?

15 COL DOMIGAN: So this is where I was trying to articulate who can specialise in capability management or command from an Army perspective, if you take away the Aviation component. Just from an Army perspective, that's where you go. Now, if an aviator's not interested in pursuing or competing for sort of technology or project management space, and they do want to be a Generalist and fulfil those type of roles but
20 they're not competitive to attend Command and Staff College, the likelihood is that they will fill other Generalist or Aviation roles within Army, or the joint space, to either – it can be a lifestyle, posting location, further career development in a different area, or they can be seeking to sort of do another job where they can show their competitiveness, and
25 they have another look or a subsequent look at competing for that opportunity again.

At a certain point in time the Career Management Agency will – if someone is continually not competitive against their peers to attend
30 Command and Staff College, they will be told that. And that generally means that they are capped at that rank. They've hit their ceiling rank. And they are offered a range of other roles at rank that they continue serving in and providing significant value to the organisation for, you know, as long as they like, really.

35 COL STREIT: It's just simply a function in a hierarchical organisation that not everyone can become the Commander?

40 COL DOMIGAN: Exactly, yes. It's competitive and it's relative merit against your peers. So yes.

COL STREIT: In terms of other options available, you set out some of those matters within your evidence, including at paragraph 28:

45 *If a pilot seeks to focus their career and capability in a project*

management environment, they can compete to attend the Australian Command and Staff College.

Can you just explain that pathway, please?

5

COL DOMIGAN: Yes. So Command and Technology Management is a pathway within – well, it's within the ADF, but particularly within the Army. The way it is structured nowadays is that, generally, at the sort of mid-Major timeframe an individual will opt to either stay as a Generalist in Command and Leadership or they can opt to go, if they have a bit of an affinity for project management or capability management, to compete for that.

10

They're both named. The nomenclature is both Australian Command and Staff College. One is Military Arts, which is the Generalist side; and one is Capability, which is the capability side. So they both consist of a one-year Masters degree of post-graduate study prior to filling roles post-college to increase your competitiveness for promotion to Lieutenant Colonel and further.

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20

COL STREIT: You're currently at the War College. Can you just remind the Inquiry which course?

COL DOMIGAN: I'm doing the Defence and Strategic Studies Course, which it's another course offered at the War College; generally, just a higher-level national security and strategy course.

25

COL STREIT: Successful completion of that course, is that necessary for consideration to promotion to one-star level on the Command Stream?

30

COL DOMIGAN: It's not required. It can be viewed favourably. But it is not a prerequisite for selection to one-star.

COL STREIT: Can I just turn now to - - -

35

AVM HARLAND: Just before you do, COL Streit. If I could just take you back to the kind of Lieutenant, Captain, Major ranks. What would you say would be the primary driver for a person in terms of managing their career? Would it be managing their career as an Army General Service Officer or managing their Aviation mastery?

40

COL DOMIGAN: Sir, I think in many cases the two can go hand-in-hand. I can only sort of talk largely about my own experiences or others of my colleagues. But I don't think you need to forgo your Aviation technical skills to follow a path in the Generalist sense. There is

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5 some level, “But I don’t have the same amount of hours or flying experience as some of my colleagues that are Specialists. But, yes, I have still fulfilled all the prerequisite and flying roles throughout my time. So I don’t necessarily. I think it’s more a case of, ‘Hey, but I like commanding, I like leading soldiers, or leading other aviators. I’m interested in broader Generalist jobs within the ADF’, which is where the Generalist Stream can provide some of those opportunities”.

10 Well, those are really more focused on their flying side of the house and the Aviation-related side of the house, which would probably look to see them pursue a career down the Aviation Specialist pathway. Does that answer your question?

15 AVM HARLAND: Yes, it kind of does. So it’s a bit of a balancing act. But just reflecting on the conversation that we had earlier, just to make sure I had that correct. The result is that an Aviation Officer will typically spend more time in rank at those junior ranks than their equivalent General Service Officer in other Corps.

20 COL DOMIGAN: In a general sense, sir, yes, you will. And it’s become that way to allow them to fulfill more time within a flying role within the unit. So the difference being that when people of my sort of ilk and time, when I was a junior officer, would try and complete Generalist roles and promote on time in accordance with the broader Army model. But it was
25 also determined that we were disadvantaging in some ways aviators because we weren’t investing enough in their technical skills to allow them to be more successful and further rank in positions like Sub-unit Command and Unit Command, which is why you see sort of the seven-year timeline rather than the final six-year timeline for other All
30 Corps General Service Officers.

AVM HARLAND: Thank you. Yes, COL Streit.

35 COL STREIT: Just in relation to the rank structure – and this may seem a curious question to ask you – or you may think it is curious – but why is it necessary for the Troop Commander to be at the Captain rank as opposed to having a Troop Commander who’s a Major?

40 COL DOMIGAN: It would really be my own opinion there on why that is.

COL STREIT: Sure.

COL DOMIGAN: But it’s broadly, again, aligned to the overarching

5 Army model rather than any other service model that you might put in
over the top. Troop Commanders are done as a junior officer across,
broadly, all the corps. And Sub-unit Command is done at the rank of O4
and Major. So it's that constant trying to align to an Army Officer model
whilst also providing all the opportunities that are needed within an
Aviation Stream, which is not necessarily a Specialist, but more
specialised than some of the other corps in the Army.

10 COL STREIT: If I can put it this way. What's driving the shape of the
command structure of Army Aviation at the unit level is principally
aligning with how Army structures its other units and formations in its
Officer Corps?

15 COL DOMIGAN: I think that was the basis of it. I can't really comment
on what the future would look like or why we haven't changed, or should
we change, or any of those sort of questions. But, yes, I think that was the
– from my understanding, that was the basis for how the structure came to
be as it currently is.

20 COL STREIT: Because if, as a result of different pressures, Army
regularly finds itself appointing Troop Commanders to fulfil that role
when they're less time in rank than Captain 7, if that is the case, then do
you see any advantage in Army considering a different type of structure
for Aviation at the unit level to reflect primacy of skills in flying first,
before taking on substantive command functions?

30 COL DOMIGAN: So I wouldn't let the pay scale dictate the structure of
the unit. I don't link the two, necessarily, together. What I'll explain is, I
actually think that a mid to senior Captain is an appropriate time to be in
charge of a Troop of pilots or Troop of aircrew. I think it's well within
their leadership capability. And for those that have an affinity towards
command and leadership, I've certainly seen it done very successfully
over my time. I can only talk to the 1st Aviation Regiment, but that
comes commensurate with those tactical skills, flying skills and
experience.

40 So we, as best as possible, try and ensure that someone is properly
categorised and experienced and qualified before they undertake that role.
So they're identified for that skillset and their command and leadership
skills. It's a component of command and leadership and technical and
tactical proficiency that comes together to see them put into that role as
Troop Commander. Again, I'm only talking from the 1st Aviation
Regiment, that's where I spent my time and where I was a CO.

5 The component about the seven-year piece is, broadly, a pay scale issue, if I'm frank. And I can only talk anecdotally but, broadly, I think there is a disparity there. I think a Captain should be paid commensurate with their responsibility at the time, not post. So waiting till Captain 7, I would argue is too late. They should be remunerated at the time they are undertaking that responsibility. And I know that that is a – it's an ongoing issue. It's been an issue since the Defence Force Remuneration Tribunal settled on the matter and on that pay scale. To my understanding, it is actively being addressed in an active submission to rectify that as well.

10 COL STREIT: Thank you, Colonel. Can I turn now to the overview that you provide for aircrewman career pathways, which commences at paragraph 29 of your statement. Again, you indicate to the Inquiry that you have sought and relied upon information provided by the Director of Soldier Career Management. That's correct?

15 COL DOMIGAN: That's correct, yes.

20 COL STREIT: You there set out in detail in paragraph 10, in essence, the process of advancing from aircrewman through the rank of Corporal to Sergeant to Warrant Officer. The upshot of all of that is that the aircrewman has to maintain two things: first of all, technical mastery in their role as aircrewman, which might also include being an instructor; and, second, completing the various All Corps subject courses for promotion. Is that right?

25 COL DOMIGAN: That's my understanding, yes.

30 COL STREIT: At paragraph 31 onwards, you set out an overview of Army pilot career streams and milestones, and you there – and we've touched on this in your evidence already in relation to Captains; that is, at the O3 – you set out information in relation to technical mastery of tactical flying is progression through the UTAP. That's right?

35 COL DOMIGAN: Yes, that's correct.

COL STREIT: We are doing our best to limit the number of acronyms to the extent we can in the Inquiry. So UTAP stands for?

40 COL DOMIGAN: Yes, I referenced it a little bit earlier, but it's the Unit Training and Progression Plan.

COL STREIT: Thank you. So mid-Captains – that is, two to five years' experience – are expected to complete the Regimental Officers'

Intermediate Course and Combat Officer Advanced Course to prepare them for operational and more demanding roles. That's right?

5 COL DOMIGAN: That's correct, yes.

COL STREIT: So the Combat Officer Advanced Course, or COAC, that is a course that's conducted with the arms corps of Infantry, Armour and Artillery?

10 COL DOMIGAN: So at present, it's conducted with the fellow arms corps of the Army. And then there is a component at the end called LWIC, which I think stands for Land Warfare Integration Course, which incorporates some of the other elements of the Army, so Logistics and Intelligence as well.

15 COL STREIT: So, essentially, Army Aviation Officers attend the Combat Officer Advanced Course with Infantry, Armour and Artillery Officers, and they step through - - -

20 COL DOMIGAN: And Engineers, yes.

COL STREIT: And Engineers. And they step through that particular course and that's a necessary component for being eligible for postings and promotions, would you agree?

25 COL DOMIGAN: Some postings will normally have a prerequisite or a desirable qualification, i.e. completed COAC. Sometimes that's related to deployment opportunities as well. If you're going to work in a Headquarters in an Operations Cell on operations, there is many times a preference that you have completed that course, so you understand what you're doing. It doesn't preclude you from being promoted. However, there is a timeframe where you still need to complete that course to be made substantive at the next rank. So it is still a prerequisite to become a substantive Major.

35 COL STREIT: COAC, the Combat Officer Advanced Course, that is not an All Corps course, is it?

40 COL DOMIGAN: No, it's not. Just Aviation is included in the Combat Officer cohort for career management.

AVM HARLAND: How long are the courses, the intermediate course and also the COAC?

COL DOMIGAN: So, sir, ROIC is constantly adjusting as they refine, I guess, the product that they're seeking to achieve. But normally about three weeks is the ROIC. COAC, to my understanding, is about eight weeks, as a norm.

5

AVM HARLAND: And the Regimental Officer Basic Course that they're also required to do prior to this?

COL DOMIGAN: So Basic Course is done whilst you are undergoing training, while still doing your type transition. That's normally around eight to 12 months. That's the larger component of your – the final component of your rotary wing training, the larger portion.

10

AVM HARLAND: So that's part of your operational conversion to aircraft type?

15

COL DOMIGAN: That's correct, sir, yes.

AVM HARLAND: Thank you.

20

COL STREIT: You go on to set out in (b) other roles that experienced Captains in Aviation fulfil within a unit. That's correct?

COL DOMIGAN: Yes, that is correct.

25

COL STREIT: Then, at paragraph (c), you set out matters concerning what Majors – that is, the O4 rank level – predominantly the roles that they perform. Correct?

30

COL DOMIGAN: That's correct, yes.

COL STREIT: Approximately at what year level would you ordinarily expect as a Major to fulfil the role of Squadron Command?

35

COL DOMIGAN: Squadron Command is generally your third and fourth year as a Major. So similar to Lieutenant Colonel, there's an expectation that you fulfil some type of staff or other functional role prior to assuming command. It's similar at the rank of Major. So you fulfil minimum one but generally two years in some type of staff or higher Headquarters' role prior to selection and completion of Sub-unit Command.

40

COL STREIT: Again, at paragraph 33 you provide similar information concerning aircrewman, which you sourced from the Directorate of Soldier Career Management. You identify at paragraph 34 that:

45

The critical milestone for aircrewman is becoming an aircrewman instructor.

5 That's correct?

COL DOMIGAN: That's correct. That's what I got from Soldier Career Management, yes.

10 COL STREIT: The reason it's a critical milestone is that once an aircrewman promotes to Warrant Officer, without completing the Aircrewman Instructor Course, they're no longer eligible to compete for the course. Therefore, the only way they can be promoted is through the Regimental pathway.

15 COL DOMIGAN: To the best of my knowledge, that's my understanding, yes.

20 COL STREIT: I just want to turn briefly now to the concluding parts of your evidence. Commencing at paragraph 34, you were asked the question:

25 *To what extent does Army Aviation provide personal support to assist pilots and aircrewman with administrative workload, particularly when they have a command/instructor/supervisor role?*

You say at paragraph 35:

30 *No specific personal support is provided to unit members to assist with administrative workload outside of unit structure and establishment. For example, a Unit Orderly Room can assist with administrative queries or issues.*

35 I pause there. Can I ask you to cast your mind back to when you were a Troop Commander, a little while ago now, and compare the governance requirements you had a Troop Commander at that stage to the governance requirements that a Troop Commander has now as you're giving evidence. Are there any differences, from your perspective, in terms of workload?

40 COL DOMIGAN: Yes, I think there is a larger governance requirement and governance overhead for current Troop Commanders than there was when I was a Troop Commander.

45 COL STREIT: When you were a Troop Commander, the Unit Orderly

Room – I withdraw that. When you were a Troop Commander, I take it the unit had a Unit Orderly Room staffed by Military people?

5 COL DOMIGAN: Yes. To the best of my knowledge, it did, generally. How well-staffed? But yes, it had one.

10 COL STREIT: To your observation, did that Unit Orderly Room, at the time you were a Troop Commander, have a more significant role to play in assisting you as a Troop Commander, compared to what a Unit Orderly Room now has within a unit in Army Aviation?

15 COL DOMIGAN: Look, I'm not sure that's entirely accurate. Are you asking were they more engaged in – was the Orderly Room more engaged in management of personnel management or workload?

20 COL STREIT: Sure. Let me put it this way. Is it the case that the services that were available and provided by Unit Orderly Room when you were a Troop Commander – those services, a number of them have largely been centralised and imposed on a member to complete through submissions of electronic documentation. Would you agree with that, as we speak today?

25 COL DOMIGAN: Yes. Look, I would say that there has been some centralisation of administrative functions in the Orderly Room, yes.

30 COL STREIT: So, in other words, the workload or the burden of that workload has been taken from the Unit Orderly Room – at the time that you were a Troop Commander, that workload, some aspects of it have been taken from the Unit Orderly Room and put onto the shoulders of Unit COs, OCs and Troop Commanders?

35 COL DOMIGAN: There is some elements that have been removed from the Orderly Room that require a bit more of a process by, yes, executive staff within a unit.

40 COL STREIT: As a consequence of that additional workload – and we're not going into the rights and wrongs of that – but just as a consequence of the additional workload, it would mean, wouldn't it, that there would be an increased administrative workload for persons in command roles which may have the impact of taking away their ability to maintain proficiency in an airframe they're required to fly?

45 COL DOMIGAN: I can't really speak to the effect, i.e., does it stop them from maintaining proficiency? I think that depends on the individual in some regards and the tempo of a unit. There's a number of different

factors. But I do think that there is more of an onus on those that are in command roles within Aviation units to take the burden of some of that administrative requirement, yes.

5 COL STREIT: So perhaps my question is a bit clumsy. If we consider proficiency as the minimum qualification you need to fly an aircraft – perhaps what I’m really asking you about is recency; that is, the ability for a pilot to maintain recency and experience. They have the minimum
10 in an airframe, when the workload on a governance side is becoming increasingly high.

COL DOMIGAN: I wouldn’t say that there’s a direct correlation. I think that the challenges – there are some challenges there that I’d acknowledge.
15 But again, I think it is really based on the individual or the situation that they are in. From my observation, in certain roles there is a higher workload, an administrative workload. But from my observation within the 1st Aviation Regiment, in particular, I have seen the Troop Commanders handle that pretty well.

20 In many cases, particularly in the 1st Aviation Regiment, the Troop Commanders are the ones that are supervisory pilots and are, broadly, some of the more proficient pilots within the unit as well, if that makes sense.

25 COL STREIT: Sure.

COL DOMIGAN: Because they are out there conducting the tasking. But that then comes back to the fact that they then have to still cover down
30 on their governance and administration requirements, yes.

COL STREIT: I’m not being critical of you at all in this way. Your direct observation is the CO of the 1st Aviation Regiment, which has ARH Tiger helicopters with good service availability. Correct?
35

COL DOMIGAN: I’d say historically the serviceability of the ARH Tiger has been a challenge for the capability. So it does require some very close monitoring. Yes, that’s all I’d say. I don’t think the challenges are wholly within one single area of Army Aviation. Certainly the ARH
40 Tiger had its challenges with serviceability as well.

COL STREIT: Is it the case that in terms of things that might impact maintaining recency on an airframe is a complex matter and driven by context and which unit you’re operating in?
45

COL DOMIGAN: Yes, I would say that's probably accurate, but it's a challenge for all units. Certainly, proficiency and recency was a concern of mine as a CO, and something that was in the forefront of my mind to ensure we were doing everything we could to make sure our pilots were as proficient as they could be, considering the challenges that were surrounding us from a capability sense.

COL STREIT: Thank you, Colonel. I have nothing further.

MS McMURDO: Could you explain to me what a Unit Orderly Room is, please?

COL DOMIGAN: Yes, ma'am. Effectively it's a room or a function where there are staff. They're called Orderly Room Staff. They are normally administrative soldiers and senior NCOs that sort of manage the inflow and outflow of unit administration, in large part, from sort of basic - - -

MS McMURDO: I understand. So it's not just a room, it's got people in it. Okay.

COL DOMIGAN: Yes. Ideally it does, ma'am, yes.

MS McMURDO: Thank you.

AVM HARLAND: A question following on from that. We've heard from other witnesses about an Aviation operations support category or something like that. As the career management witness, could you perhaps talk about whether that's historical, current or future?

COL DOMIGAN: Sir, it's underway at the moment, is my understanding. So I can only talk from my understanding. When I left the Career Management Agency, it was not in place, but there was discussions being had about re-instigating an Aviation Operations Officer. So, in theory, an Aviation Corps-badged Officer that was not aircrew in order to fulfil a number of different executive and staff roles within the capability.

AVM HARLAND: So you were saying "re-instate". So that was a thing in the past, but it was removed?

COL DOMIGAN: Yes. And I can't give you any accurate detail on exactly when it was removed. But, yes, generally there was a period of time where those that chose to go to Aviation – and in large part it was members that had an affinity for Aviation but may have failed pilots course but still wanted to be part of the capability, still wanted to

value-add within the Aviation capability – could stay on within the Aviation Corps and fulfil a number of roles, predominantly within the operations space.

5 I know of a number of officers still serving who went down that pathway and have had really rewarding careers.

AVM HARLAND: So if I'm to understand the effect of having that category around, it would depressurise the Aviation Regiment pilots by
10 assisting them in all of the kind of auxiliary functions that would consume their day otherwise?

COL DOMIGAN: Yes, sir. I would argue that the Aviation capability as a whole will be better off with Aviation Operations Officers that can fulfil
15 a number of different staff roles from each echelon of Headquarters to allow concentration of the effort to the operational unit.

AVM HARLAND: Thank you. One follow-on question, and it's my last one. It's just regarding pilots course. Going through your statement and
20 you talk about the pilots course and by my understanding, Air Force and Navy, they do a Basic Pilots Course phase at East Sale and then they do an advanced pilots course at Pearce in Western Australia. Then from there, Navy will go on to do their rotary conversion, so conversion to helicopters, and then their operational conversion to type.

25 For Army, the Army pilots go through the basic training at East Sale in Victoria. And then from there, they go straight to rotary training at the HATS at Nowra.

30 COL DOMIGAN: Yes.

AVM HARLAND: Then off to their operational conversion. So that means that the Army pilots don't do the advanced pilot training phase over in Pearce that Air Force and Navy do. Given the increasing
35 complexity of Army helicopters that we've heard from other witnesses – they've talked about MRH-90 being a Gen 5 helicopter, I think it was quoted as yesterday, with all the modern technology on board and the demands of the role that you carry out in terms of formation and instrument flying. And given my understanding of the Advanced Pilots Course over in Pearce, which enhances formation skills and instrument
40 flying skills, I'm just interested to understand the Army's rationale for doing basic and then straight to the rotary, and then operational conversion, rather than going through that advanced pilot training, which appears to have some elements which would be attractive in the modern
45 Army Aviation environment.

COL DOMIGAN: Yes, sir. I mean, I can't talk on behalf of Aviation capability writ large about some of the decisions that have been made in the past. My understanding is that the product that we are receiving out
5 the back end of the Aviation Training Centre is world class and are highly trained to a level where they can integrate into a unit and then follow that Unit Training and Progression Plan, not with ease, but clearly follow it and progress at the required rate.

10 I think arguably that's more of a question for why Navy chose to follow that path versus the other. Anecdotally, my understanding initially was because they were doing a lot more single pilot operations, they wanted a bit more of a focus on some of those and some of the environments they were flying over sea. Whereas Army is a crewed environment, whether
15 it's two pilots in ARH or whether it's pilots and aircrewman in other types of airframes.

Therefore, whether or not – I guess it's a decision on weighing that up versus the additional time spent in training, versus the skillsets that were
20 required to fulfil the role from an operational perspective. But that's just my opinion there, sir. I can't really talk on behalf of the Aviation capability as to why those decisions were made.

AVM HARLAND: Thank you.
25

COL STREIT: Last question. In your period in command, was your unit required to support any disaster relief occurring in your area, or anywhere else, for either the Territory or Australian Government?

30 COL DOMIGAN: No, we didn't commit helicopters to any disaster relief. The unit has provided over the years liaison officers into different headquarters to assist to bolster the broader aviation effort. But, no, we did not commit to disaster relief operations.

35 COL STREIT: Thank you.

MS McMURDO: Was there a reason for that? Were you not asked to, or did you decide not to?

40 COL DOMIGAN: Ma'am, it's mainly the role of the frame. So ARH Tiger is an attack helicopter. It's a two-person attack helicopter. So the utility is a big component. We can't carry people or stores.

MS McMURDO: I see.
45

COL DOMIGAN: Arguably, the perception – the profile is one of an attack helicopter versus a Troop-carrying or aid-carrying helicopter.

MS McMURDO: Thank you.

5

COL STREIT: Thank you.

MS McMURDO: Any applications to cross-examine? COL Gabbedy?

10

<CROSS-EXAMINATION BY COL GABBEDY

COL GABBEDY: Thank you, ma'am.

15

Good morning, Colonel. I'm COL Nigel Gabbedy. I appear for MAJGEN Jobson. I've just got a few brief questions for you.

COL DOMIGAN: Yes.

20

COL GABBEDY: You were asked an extensive group of questions in relation to, I suppose, the balancing act between your flying duties and your Regimental duties. Do I understand your answers to those questions to effectively be that it's a matter for the individual pilot to manage?

25

COL DOMIGAN: Look, largely it's a matter for the individual pilot. I think if there are challenges involved and the individual is experiencing challenges, then they should certainly be raised through the unit to, say, their Sub-unit Commander or the Commanding Officer, who should then, by my understanding, look to do what they can to assist as far as tempo, allocation of resources. But in many ways, yes, it's left to the individual to manage. I've seen some that are fantastic at doing that and others that are not as great over my time. So, yes, I think a lot of it comes down to the individual.

35

COL GABBEDY: Again, from your answer I take it that there's peer and Command support available there for those individuals that are struggling with that sort of task?

40

COL DOMIGAN: Yes. I mean, it's not a formalised function, other than you should use the Chain of Command to seek assistance if you are struggling in your role.

45

COL GABBEDY: In relation to the non-flying officer pathway that the Air Vice-Marshal was asking you about, were you aware that there were,

in fact, a couple of non-flying officers posted to 6 Avn Regiment in the last 12 months?

5 COL DOMIGAN: Look, I'm trying to think off the top of my head. I'm aware someone has been posted in for this year, if that's what you mean? Certainly that's the case. So I know that the scheme is – or the Aviation Operations Officer Scheme is being implemented at the time. I don't know at what stage, whether we're at trial or whether it's fully in. But, yes, I'm tracking there at least has been one individual I know that's been
10 posted to that unit for this year, if that answers your question?

COL GABBEDY: It does. Thank you very much. Just one last thing that I want to put to you. You're a very experienced aviator?

15 COL DOMIGAN: I'm arguably an experienced aviator, yes.

COL GABBEDY: We've heard a lot of evidence about something that's described in various ways, but one of the ways is this OC's hour. And it's a description of the time or uncluttered time immediately prior to flying a
20 mission. Are you able to comment on the importance of that in terms of eliminating distraction from a pilot during a mission?

COL DOMIGAN: Yes. Look, I could only talk from my experience within the 1st Aviation Regiment. We would normally talk about it as a
25 mission bubble rather than, say, an OC's hour, or how we framed most things in the 1st Aviation Regiment as far as mission-related. So mission bubble is where you would try as best you can to minimise any distraction so that you could focus on the task at hand, certainly once you'd completed briefings and mission orders and those types of things, whilst
30 preparing to go on a mission.

COL GABBEDY: What do you see as the importance of that mission bubble in terms of execution of the task?

35 COL DOMIGAN: I think the largest component of that was just to try and minimise distractions to keep your mind on the task at hand.

COL GABBEDY: Thank you very much. I have nothing further.

40 MS McMURDO: Any other applications to cross-examine? Any re-examination?

COL STREIT: No, ma'am.

45 MS McMURDO: Thank you very much, COL Domigan. The Inquiry

greatly appreciates your assistance. We'll terminate the video link now and you're free to go. Thank you very much.

5 COL STREIT: Thanks, ma'am. Thanks, sir.

MS McMURDO: We'll have a short break before the next witness.

10 <WITNESS WITHDREW

HEARING ADJOURNED

15

HEARING RESUMED

MS McMURDO: Yes, MAJ Chapman.

20

MAJ CHAPMAN: Thank you, Chair. The next witness, Chair, is MAJ Glenn McCall. But before I formally call MAJ McCall, there's one preliminary matter to raise concerning the witness, and in the absence of the witness.

25

As the Inquiry is aware, MAJ McCall has prepared two statements. The first is his substantive statement which is 23 October 2024, and then there's a supplementary statement dated 8 November 2024. The Inquiry – or Counsel Assisting rather, has been given notice, Chair – and this is by LCDR Hay, who's acting for D19 – that he has an objection to, first of all, in the first matter – and this will be confirmed when CMDR Hay comes to the lectern – but I gather it's 12 to 14 of MAJ McCall's first statement and the entirety of the second statement, which is 8 November, which it will be obvious to the Inquiry what those matters relate to when you see that.

35

In short, Counsel Assisting's position is that the evidence – we're seeking to, first, read and lead the first statement – we're proposing to tender the first statement and lead evidence about it. We're proposing to tender the second statement, but not lead evidence from the witness as to the matters in the second statement.

40

MS McMURDO: So you're not intending to lead evidence about the material in 12 to 14; tender it but not intend to lead evidence about it?

45 MAJ CHAPMAN: Indeed. And tender but not lead the evidence in the

second statement. In short, the basis for the tender of the second statement, and those parts of the first which are objected to, is seeking not to establish the truth of the representations which are made in those portions but just to establish the fact that they were made. Noting that
5 LTCOL Perren will later give evidence as the primary witness. With that being the position, I might ask LCDR Hay to come up.

MS McMURDO: Yes.

10 LCDR HAY: Thank you. Chair, I do formally take the objection to those portions of the first statement – that is, paragraphs 12 through 14 – and also the entirety of the second statement, the November 2024 statement.

MS McMURDO: Could I just clarify that it's not intended that any of
15 this will be referred to in the public hearing today? Is that correct? There's no applications to cross-examine about any of this material today? Can I just confirm that?

LCDR GRACIE: That's correct, ma'am, from my point of view.
20

MS McMURDO: Thank you. Yes, thank you.

LCDR HAY: Thank you, ma'am. In my submission - - -

25 MS McMURDO: So no reference will be made to it in the public hearing?

LCDR HAY: I understand that. But the difficulty is that it will still be received as evidence by the Inquiry. The difficulty is, in my respectful
30 submission, that - - -

MS McMURDO: As information, I would say – as information for the Inquiry.

35 LCDR HAY: Yes. The difficulty is, of course – well, firstly, can I say I accept – I understand that the Rules of Evidence do not apply to this Inquiry. But the authorities are clear that for materials to be considered by the Inquiry, it has to have some logically probative value. In my respectful submission, the difficulty with those items, both paragraphs 12
40 to 14, they can be relevantly summarised as third-hand hearsay. In my respectful submission, given what Counsel Assisting has said this morning about LTCOL Perren being called next week, the contents of those two statements really do not assist this Inquiry in any way.

45 Can I just indicate that the prejudice to D19 is actually found in

paragraph 14 of the first statement? It is the way that the third-hand hearsay has been used by this witness. There is a process of reasoning there. There's an opinion that is expressed there which is likely to have infected his opinions. It is something that I will cross-examine him about.

5

But it is important, in my respectful submission, that there is no chance that this Inquiry would be affected by it directly or otherwise. The only way to guarantee that is to ensure that it's not received as evidence.

10 MS McMURDO: So you're going to cross-examine McCall about this?

LCDR HAY: My intention is to cross-examine him about his involvement, his dealings with D19 through the relevant period. It is my understanding that he will give evidence that he was conducting audits of 6 Avn through the relevant period. He was there a number of times and observed the unit pilots within the unit and had dealings with the Commanding Officer, which are entirely inconsistent with the views that he expresses at paragraph 14.

20 MS McMURDO: Thank you, I understand your submission. Certainly, it is hearsay; there is no doubt about that. It is not, at this stage, of great weight at all. But I think these matters need to be explored in this Inquiry. I think they are highly relevant to the work of the Inquiry.

25 As to the weight that would be given to a hearsay comment like this, it may not be very great, but it actually could become relevant, particularly if there is recent invention suggested when Perren gives his evidence. So I think it is appropriate that we receive it.

30 The way it is being treated with, I think gives adequate protection to reputational issues. And, of course, D19 has a pseudonym, so there is no public embarrassment in that respect.

35 So I reject your application. And the matters you refer to, when we have all the evidence received and all the information received, are matters I will consider when I'm giving weight, if any, to this material. Thank you.

LCDR HAY: May it please.

40 MS McMURDO: Thank you.

MAJ CHAPMAN: If it please the Inquiry, I call formally MAJ Glenn McCall.

<MAJ GLENN McCALL, Affirmed

5

<EXAMINATION-IN-CHIEF BY MAJ CHAPMAN

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

MAJ McCALL: Thank you, ma'am.

MS McMURDO: Thank you, Major.

15 MAJ CHAPMAN: Thank you, MAJ McCall. There's some water there if you'd like to pour yourself a glass. Sir, can you please state your full name and your current position?

20 MAJ McCALL: Glenn McCall and I'm the SO2 Op Airworthiness for the Aviation Training Centre.

MAJ CHAPMAN: As a preliminary matter, can you please confirm that you've received each of the following documents prior to today? The first is a section 23 Notice requiring your appearance today to give evidence?

25

MAJ McCALL: Correct.

MAJ CHAPMAN: Extract of the Inquiry Directions?

30 MAJ McCALL: Yes.

MAJ CHAPMAN: A copy of my appointment as an Assistant IGADF?

35 MAJ McCALL: Yes.

MAJ CHAPMAN: A Frequently Asked Question Guide for Witnesses Appearing before the Inquiry?

40 MAJ McCALL: I think so, yes.

MAJ CHAPMAN: A Privacy Notice for witness giving evidence?

MAJ McCALL: Yes.

45 MAJ CHAPMAN: Sir, have you prepared and signed for the purposes of

this Inquiry, two statements – and I'll deal with them in turn – so the first is a statement dated 23 October 2024? I'll just hand over a copy. Do you recognise that to be your statement dated 23 October 2024?

5 MAJ McCALL: Yes.

MAJ CHAPMAN: And it's 17 pages in length?

MAJ McCALL: Correct.

10

MAJ CHAPMAN: It's seven annexures, A to G?

MAJ McCALL: Yes.

15 MAJ CHAPMAN: And just checking, that's your signature on page 17 of the statement?

MAJ McCALL: My digital signature, yes.

20 MAJ CHAPMAN: Yes. Do you wish to make any amendments to that document?

MAJ McCALL: No.

25 MAJ CHAPMAN: Chair, I tender the first statement of MAJ Glenn McCall dated 23 October 2024.

MS McMURDO: Exhibit 124A, and the second statement 124B.

30

**#EXHIBIT 124A - STATEMENT OF MAJ McCALL
AND ANNEXURES**

35 **#EXHIBIT 124B - SECOND STATEMENT OF MAJ McCALL**

MAJ CHAPMAN: Thank you.

40 Sir, could I just begin with some of what you've had to say about your experience and your background, which commences on page 1 of your statement? And it's a few pages in – rather, page 2 of your statement. Do you have that?

45 MAJ McCALL: Yes.

MAJ CHAPMAN: I'll just summarise that experience and ask you to agree to it. So you commenced with the ADF as a Cadet in 1981. Correct?

5 MAJ McCALL: Correct.

MAJ CHAPMAN: In 1983 you qualified as an Army pilot on the Kiowa?

10 MAJ McCALL: Correct.

MAJ CHAPMAN: You next qualified on the Iroquois in '87.

15 MAJ McCALL: Yes.

MAJ CHAPMAN: In 1988, became a Qualified Flying Instructor?

MAJ McCALL: Yes.

20 MAJ CHAPMAN: In 1994 you spent some time with the US Army Directorate of Evaluation and Standards as an instructor pilot on the UH-1H helicopter?

25 MAJ McCALL: Yes.

MAJ CHAPMAN: You have held various command positions in the late 1990s, and in 2000 were the Standards Officer on the Black Hawk.

30 MAJ McCALL: Yes.

MAJ CHAPMAN: In 2006, on promotion to Lieutenant Colonel, you were SO1 Army Aviation Standards for the S-70 Black Hawk.

35 MAJ McCALL: Yes.

MAJ CHAPMAN: You've had some time away from the ADF at various times, and in 2008 you re-joined as the MRH-90 Standards Officer Specialist Pilot. Correct?

40 MAJ McCALL: 2018.

MAJ CHAPMAN: In 2018?

45 MAJ McCALL: Yes.

5 MAJ CHAPMAN: Your more recent experience has been between 2021 and '22 as Staff Officer Grade 1 Army Aviation Standards, MRH Standards Officer?

MAJ McCALL: Staff Officer Grade 2.

MAJ CHAPMAN: Grade 2.

10 MAJ McCALL: Yes.

MAJ CHAPMAN: In 2023, as Staff Officer Grade 2 Army Aviation - - -

MAJ McCALL: Yes, sorry. I was the SO1 as a Major.

15 MAJ CHAPMAN: Thank you. In 2023 you were Staff Officer Grade 2 Army Aviation Standards as a Reservist full-time?

MAJ McCALL: Correct.

20 MAJ CHAPMAN: In 2024, Staff Officer Grade 2 Operational Airworthiness at the Army Aviation Training Centre?

MAJ McCALL: That's correct.

25 MAJ CHAPMAN: So, sir, if I have that narrative correct, you were the MRH-90 Standards Officer, SO2, between 2016 to 2022; is that right?

MAJ McCALL: I was actually a contractor Standards Officer before that also.

30 MAJ CHAPMAN: Now, relevantly at the time that the OPEVAL report was produced – and you agree that was – you know where I refer to the OPEVAL report, I'm referring to the Operational Evaluation produced by Standards Branch?

35 MAJ McCALL: Yes.

MAJ CHAPMAN: And that was dated 29 February 2020?

40 MAJ McCALL: Yes.

MAJ CHAPMAN: At that time, you were the SO2 MRH Standards Officer?

45

MAJ McCALL: Yes.

MAJ CHAPMAN: In that role, SO2 Standards Officer for the MRH, you say at paragraph 5 of your statement that between late 2019 and 17 September '21 you reported to SO1 Standards, LTCOL Anthony Norton. Is that correct?

MAJ McCALL: Yes.

MAJ CHAPMAN: You set out there in your statement your responsibilities, which included providing additional support to MRH-90 Standards Officers. Correct?

MAJ McCALL: Correct.

MAJ CHAPMAN: Reviewing publications and improvement reporting?

MAJ McCALL: Yes.

MAJ CHAPMAN: And reviewing changes that were issued by Airbus and other information gathering systems; is that right?

MAJ McCALL: Yes.

MS McMURDO: So you've had a very interesting career, retiring as a Lieutenant Colonel and then rejoining in various roles. The more recent rejoining as a flight pilot. Is that because there's a shortage in the Army of experienced pilots, pilots with your extent of experience?

MAJ McCALL: Yes, I think that's a reasonable assumption. I was working offshore flying over in Western Australia and some events happened in the offshore world, which was the Deepwater Horizon oil rig blowing up, which meant that the contracting work slowed down for a while. And before I left, I was interested in operating in the MRH-90 and that wasn't offered to me, so that's why I went offshore. Army asked me to come back into the MRH-90 project, which I did.

MS McMURDO: Yes, thank you. Yes, MAJ Chapman.

MAJ CHAPMAN: Thank you, Chair.

If we go to paragraph 7 of your statement, you deal – well, you commence dealing with the topic of version 5.10 upgrade and service release. You understand, don't you, sir, that where I refer to version 5.10 HMSD upgrade, that's the upgrade to the TopOwl system?

MAJ McCALL: Yes.

5 MAJ CHAPMAN: You indicate there in your statement, with a tick box, your agreement with the following propositions: that on 29 February 2020 an OPEVAL was conducted?

MAJ McCALL: Yes.

10 MAJ CHAPMAN: I should just clarify that. You mean to say, do you not, that the report which resulted from the Operational Evaluation was dated 29 February. Correct?

MAJ McCALL: Yes, I think it was.

15 MAJ CHAPMAN: And the exercise happened before that. In fairness, I'll just ask you to go to – and ask the witness to be shown – a copy of the Operational Evaluation Report.

20 MS McMURDO: Yes.

MAJ CHAPMAN: 121. I'm grateful, thank you. Sir, just as that has arrived with you, you recognise that to be the Operational Evaluation Report?

25 MAJ McCALL: Yes, I think so.

MAJ CHAPMAN: The reference to the date is on page 12.

30 MAJ McCALL: Yes.

MAJ CHAPMAN: So 29 February 2020.

MAJ McCALL: Yes.

35 MAJ CHAPMAN: At paragraph 8 of your statement, I just want to confirm your understanding that the Operational Evaluation Report was conducted in response to the “unsatisfactory” – or “unacceptable”, rather, safety recommendation made by AATES?

40 MAJ McCALL: Yes.

MAJ CHAPMAN: Do you agree that the actual term used in the AATES report – and I'm happy to take you to it – was “unacceptable”?

45

MAJ McCALL: Look, I didn't really – I wasn't really involved in that level. But I do remember discussions about the HMSD being unsatisfactory – or the update.

5 MAJ CHAPMAN: You understand, do you, that “unacceptable” has a particular meaning in the flight test context?

MAJ McCALL: Yes. But not being a tester, that was outside of my subject-matter expert – that was the test pilot world.

10 MAJ CHAPMAN: Yes. Can I just ask you, sir, as the next matter, that are you aware that the Operational Evaluation Report, which you have a copy of there, included the suggestion of the inclusion in the Standards Manual a warning to the effect that you produce in your statement on
15 page 6?

MAJ McCALL: Yes.

20 MAJ CHAPMAN: We're going to return to that in due course. Just so you're aware, the reference in the Operational Evaluation Report to the warning is at page 11. Do you see that?

MAJ McCALL: That's page 11 of the report?

25 MAJ CHAPMAN: Yes.

MAJ McCALL: Yes.

30 MAJ CHAPMAN: Just to make it clear what we're talking about in terms of the manuals, because there has been some evidence given about the difference between a Flight Manual and a Standards Manual, can I just ask you to confirm these two matters: that the Standards Manual, broadly speaking, is essentially Army Aviation's set of rules by which the pilots and aircrew are to operate the aircraft?
35

MAJ McCALL: It's a little bit more nuanced than the rules. If I could say - - -

40 MAJ CHAPMAN: Please describe it.

MAJ McCALL: The Flight Manual is the technical manual for the hardware. That's how to turn it on and turn it off, and the technical limitations of the machine. The Standards Manual you could say is the Flight Manual for the squishy ware.
45

MAJ CHAPMAN: Sorry, for the?

5 MAJ McCALL: Squishyware. The people. And they're not hardware or technical systems. And you've got people and, really, it's talking about the non-technical skills and also setting the envelope for the individuals to operate in, and it sets the standards. But, importantly, in Chapter 2 of the Standards Manual it sets the base standard of the conditions that the Standards Manual is written to. Then it talks about – in Chapter 1 it pretty much gives the rules as to how to use the Standards Manual. Because I
10 was one of two authors that started the Standards Manual process and we wrote the first manual. And that was LTCOL Greg Rutter and myself, we wrote the first Standards Manual.

15 MAJ CHAPMAN: For the MRH?

MAJ McCALL: No. For the Huey. For the Bell 206, actually; we started with that. And then we developed all the Standards Manuals for that, which then gave a set of conditions for the standards for individuals. It's not so much the rules – I suppose you could say there are
20 rules in it because if it says “must”, then that's what you have to do. If it says “should”, “This is what we prefer you do in these standard sets of conditions. But when it's different, you can adjust”. And then there's another set of rules in there which are “may”, which is, “Hey, you've got flexibility to do what you need to do in the conditions”. So it's a sliding
25 scale of rules to, “This is how to operate the machine”.

MAJ CHAPMAN: The Standardisation Manual includes warnings, cautions and notes, as an example?

30 MAJ McCALL: Yes.

MAJ CHAPMAN: Could you just distinguish those if you can?

35 MAJ McCALL: Again, a Flight Manual has warnings, cautions and notes. And the Standards Manuals have warnings, cautions and notes. The Flight Manual consideration of warnings, cautions and notes is technical in nature. And a warning in the Flight Manual is, “If you exceed these temperatures, if you exceed this RPM, you will break the physical machine. Something will happen or you will cause additional problems to
40 the machine, or you'll crash the machine.”

In the Standards Manual, the warnings, cautions and notes is, again, slightly nuanced, in that it's a warning that you will cause damage to individuals or damage to the airframe. So it focuses on, again, the
45 non-technical elements and the individuals, or the people operating the

machines. And cautions and notes are the same thing, but that focus really on the people. So the Standards Manual is a people-focused manual. The Flight Manual is a technically-focused manual.

5 MS McMURDO: We've heard the expression "Human-Machine Interface". Would that be appropriate for what the STANMAN does?

MAJ McCALL: Yes. Yes, very much so, ma'am.

10 MAJ CHAPMAN: Just to round out that explanation of these two types of manuals, the Flight Manual is produced by the aircraft manufacturer?

MAJ McCALL: Yes.

15 MAJ CHAPMAN: Whereas the Standards Manual is one produced by, in this case, Army Aviation?

MAJ McCALL: Correct.

20 MAJ CHAPMAN: Just in relation to the warning that you extract at page 6 of your statement, down the bottom, are you aware or what's your recollection of what this was intended to address?

25 MAJ McCALL: Pretty much that with the helmet-mounted sight and display, the information for the attitude is correct when you're looking at the 12 o'clock position; that is, looking forward out of the aircraft. That doesn't say that the other information associated with it – which is technical in nature, is the ground speed RADALT, you know, other information that is coming up on the HMSD – you can still use that
30 information looking off-axis.

And when I talk about off-axis, that is if I'm sitting in the seat of the aircraft, the axis of the aircraft is pretty much my sternum looking forward.

35 MAJ CHAPMAN: So you're at off-axis – essentially, anything off the centre line - - -

MAJ McCALL: Centre line, yes.

40 MAJ CHAPMAN: And I take it you were provided – given that you were – first of all, you were responsible, were you not, for updating the warnings and other changes to the Standardisation Manual in respect of the MRH-90?

45

MAJ McCALL: I was responsible for drafting, investigating, looking at all of the issues associated with something that needed to be put into the Standards Manual. The person who signed the manual, being the SO1 Standards, is responsible.

5

MAJ CHAPMAN: And I take it, given that you drafted the warning or caused the warning to be reproduced into the Standards Manual, that you were provided with a copy of the Operational Evaluation Report around the time it was signed on 29 February 2020?

10

MAJ McCALL: Yes.

MAJ CHAPMAN: And were you involved in the Operational Evaluation serials at all?

15

MAJ McCALL: Yes.

MAJ CHAPMAN: Did you fly the serials?

20

MAJ McCALL: Yes.

MAJ CHAPMAN: Were you involved in any of the planning for the serials?

25

MAJ McCALL: I was, yes, in a manner of speaking, from what I recall. But it was mainly administrative to get – gather or assist in gathering SMEs and getting us all to appear in one spot.

30

MAJ CHAPMAN: And just going to paragraph 10(b) – 10(a), rather, of your statement, the question was asked whether the Standardisation Manual was in fact updated to incorporate the warning. Do you see that?

MAJ McCALL: Yes.

35

MAJ CHAPMAN: And your answer was:

Yes, the manual was updated and the update included amended elements similar to the proposed elements in the OPEVAL report.

40

Is that right?

MAJ McCALL: Correct.

45

MAJ CHAPMAN: And did that form part of amendment 15 to the Standardisation Manual which you annexed to your statement?

MAJ McCALL: I'm certain it was – I reviewed all this AL standards and I'm pretty certain it was part of 15.

5 MAJ CHAPMAN: And if we just go – you've included, helpfully, the Standardisation Manuals with some electronic comments. And that's at Annexure D. And if we could just go to that? Let me know when you've got that, sir?

10 MAJ McCALL: Yes.

MAJ CHAPMAN: Now, as we see from the front page, that is referred to as the "Australian Air Publication Aircraft Standardisation Manual – MRH-90". Correct?

15 MAJ McCALL: Correct.

MAJ CHAPMAN: And that's a document which was approved by LTCOL Anthony Norton; is that right?

20 MAJ McCALL: Yes.

MAJ CHAPMAN: And he was, at that time, Standard Officer Grade 1 MRH Standards?

25 MAJ McCALL: Yes.

MAJ CHAPMAN: And your direct report?

30 MAJ McCALL: Yes.

MAJ CHAPMAN: And just confirm, sir, that this is dated both at the signature block and also on the date, AL date, as 22 March '21?

35 MAJ McCALL: Yes.

MAJ CHAPMAN: And you've given evidence that you agree that your role, at that time, was to draft, though not approve, the updates to this Standardisation Manual?

40 MAJ McCALL: Yes.

MAJ CHAPMAN: And I'd just ask you to stay on Annexure D because I have some questions regarding that. And just to be clear, I should also ask you to agree that this is Australian Air Publication 7210.023-16?

45

MAJ McCALL: Correct.

5 MAJ CHAPMAN: And this is the document which you say incorporated the warning that was proposed in the OPEVAL report?

MAJ McCALL: Yes.

10 MAJ CHAPMAN: And you've given evidence that what prompted this update in the amendments that you have tracked to it were the OPEVAL report; is that right?

MAJ McCALL: Yes.

15 MAJ CHAPMAN: So just based on these dates, sir – and you've got the OPEVAL report at 29 February 2020 – do you agree that we have a time gap of 13 months, approximately, from the time the OPEVAL was produced on 29 February 2020 to the time that this update was approved on 21 March '21?

20

MAJ McCALL: Yes, that's correct.

MAJ CHAPMAN: And you can take it from me that Director-General Army Aviation signed his recommendation to the MRH Project Office for service release of version 5.10 on 20 March 2020. Are you aware of that?

25

MAJ McCALL: No. I wasn't sure when it was signed. I was not involved in that, at that level.

30 MAJ CHAPMAN: I understand. Well, just take it from me that's when the recommendation for service release was given. And you'd agree, then, that's almost a year prior to this warning coming into force?

MAJ McCALL: Yes.

35

MAJ CHAPMAN: Well, I'd ask you to agree, you understood that, didn't you, the update for 5.10, one purpose for it was to have it installed in the MRH fleet prior to the Special Operations Qualification Course in May 2020?

40

MAJ McCALL: I knew that was one of the drivers behind it, yes.

MAJ CHAPMAN: So would it follow then, sir, that you agree that it appears that the update to the Standardisation Manual to include a warning with respect to this came into effect something like – my maths –

45

nine months following service release?

MAJ McCALL: Yes.

5 MAJ CHAPMAN: And some eight months following the Special Operations Qualification Course?

MAJ McCALL: Yes.

10 MAJ CHAPMAN: Based on that being in May 2020?

MAJ McCALL: Yes.

15 MAJ CHAPMAN: Now, are you aware, sir, as to whether the Special Operations Course involved sorties at night?

MAJ McCALL: I assume it does.

MAJ CHAPMAN: In formation?

20

MAJ McCALL: Yes.

MAJ CHAPMAN: Anything overwater?

25 MAJ McCALL: Yes. Well, I don't know - - -

MAJ CHAPMAN: Making – sorry, to interrupt you.

30 MAJ McCALL: Yes, I don't know if it's overwater, but I'm assuming they do missions in day and night.

MAJ CHAPMAN: Making use of the helmet-mounted sight display?

35 MAJ McCALL: Yes, because that was a standard configuration.

MAJ CHAPMAN: So am I correct in this: we have an Operational Evaluation acknowledging a risk though the software being put into the aircraft is many months prior to the warning being promulgated in the Standardisation Manual? Would you agree with that?

40

MAJ McCALL: I think what you're getting to is that there's a time period.

MAJ CHAPMAN: I am.

45

MAJ McCALL: And the software, as I understand it, wasn't loaded to the airframes until all of the documentation was updated. So, I would probably suggest, from my recall is that any SO courses that were done at that stage, weren't with 5.10. 5.10 was only loaded to the airframes for the OPEVAL. The OPEVAL was conducted. We then had a look at it to find out what we needed to do to mitigate the risks. And that software that was loaded to the aircraft was then removed until all of the document was established and in place.

10 And any of the additional guidance that we needed to put out needed to be put out. Once that was done, then all of the aircraft were rolled up to 5.1.

MAJ CHAPMAN: Sir, we've had evidence suggest consistently in this Inquiry to the effect that not only was a driver of 5.10 upgrade so that it could be included in the aircraft for the Special Operations Qualification Course, but also that it was installed in the aircraft for the purposes of a Special Operations Qualification Course in May 2021. And if I'm understanding your – sorry, '20. And if I'm understanding your evidence, you're saying that it was not installed in the aircraft as at the time of the Special Operations Qualification Course?

MAJ McCALL: That's my recall and I - - -

MAJ CHAPMAN: And that – sorry.

MAJ McCALL: I think you probably need to look at that again because we didn't load software to an aircraft until we had all of the other bits and pieces published in the Flight Manual, and in the Standards Manuals, and in the checklists.

MS McMURDO: So that would all be done simultaneously, would it?

MAJ McCALL: Well, it's not simultaneous. It takes a long time to write all this stuff. And you don't just sort of build – you have a report and then you have to go and have a look at it to make sure that it's correct. Because I think one of the things that COL Langley and I found, because we were doing other testing at the time, was that the warning in the OPEVAL was slightly wrong.

40 Because we said, alternatively, use the AFCS – which is the Automatic Flight Control System – GA, which is the go-around mode for automated unusual attitude. We found that didn't really work at low speeds. So because of the flight controls laws, it's the fly-by-wire – is the first fly-by-wire helicopter in the world that was released for service. We found that there was some additional work that needed – or, additional

things that needed to be looked at, and that's why you see that the warning from the OPEVAL doesn't actually make it into the Standards Manual as it's written because it needed to be modified.

5 And other warnings needed to be attached to it. And I would suggest, and I could be wrong, that we were pretty hard and fast. You don't load stuff to an aircraft before we've got the guidance published. And I would stake my reputation on that we didn't do that. And if that's the case – well, no, I'm pretty certain we didn't do that.

10 MS McMURDO: And certainly, if it was done, it shouldn't have been done?

15 MAJ CHAPMAN: If it was done, it shouldn't have been done. But I'm pretty certain – and COL Norton wouldn't have let that happen. And I can still remember that we had to get special permission to load the aircraft down in Sydney for the software because that took a maintenance period to load and then we had to make sure that we pulled all that software out so that people didn't fly that aircraft until they had the training that we were still determining what they needed to do.

20 MS McMURDO: So if you are right and the Special Operations Course was done on version 4.0, then obviously they weren't trained in version 5.1?

25 MAJ McCALL: We determined what needed to be done. I'm pretty certain in that time period that you're talking about, they used the old version of the software. Once we got everything together – again, it was a fleet issue of updating the aircraft, and that takes time. And you don't want to have a mixture of fleet software which is different. So it was something that COL Norton and the engineers needed to orchestrate to get right.

35 And we needed to get the documentation right to make sure that it was – “Okay, we're ready to load the software to the aircraft”, and that was outside of my world. My job was to get the Standards Manuals and the Flight Manual and checklists sorted.

40 MS McMURDO: But you would've expected the software to be loaded at about the same time as the STANMAN was changed?

45 MAJ McCALL: Well, we needed to have the documentation ready to issue when the engineers were ready to upload the fleet. And we didn't want one or two aircraft done there, and aircrew to jump into one aircraft and go, “What version is this?” We didn't want that. You know,

Standardisation is make the machines all the same. And I can't remember how it was done. I think it was done Sydney first, then we did – then Townsville was done, and I think Oakey was done last.

5 But it was done in a managed process. But if that hasn't come out, it should have. And I would suggest that that's something that probably needs to be looked at, but I'm pretty certain that's the way it worked.

10 AVM HARLAND: And I think our understanding was that the driver for service release was the May '20 SOQC that 6 Avn, I think, were going to be conducting. And as we went through the CCB process, the delegation for service release was pushed down to where it was allowed to be pushed down to, but wouldn't ordinarily be pushed down to on the basis of the publications being updated and training being in place.

15 MAJ McCALL: Yes. So it took some time to – you can have service release, but you've still got to get all the other things in line to then say, "Okay, it's service released, but have we got all of the other things in place?"

20 AVM HARLAND: Okay.

MAJ McCALL: And if we didn't, we wouldn't have let them fly. That's my - - -

25 AVM HARLAND: Shouldn't have.

MAJ McCALL: Yes, that's my memory.

30 AVM HARLAND: I think we need to clarify - - -

MS McMURDO: Certainly do.

35 AVM HARLAND: - - - when version 5.10 was loaded and what configuration the aircraft were in for that SOQC in May '20.

MAJ McCALL: Yes, because my recollection is that they couldn't reload the whole fleet and we still needed time to write all the documentation.

40 AVM HARLAND: Yes, makes sense.

45 MAJ CHAPMAN: Thank you for that, sir. And, as the Air Vice-Marshal has just alluded to, the Inquiry's understanding to date is that when the delegated exercise of service release authority was exercised

by, in this case, COL Marshall, that triggered the ability for technicians to update the aircraft immediately.

5 MAJ McCALL: Look, I can't remember that. My job was to type away and get the changes done. But that was – you know, HMSD 5.1 was probably just an element of AL 15.

10 MAJ CHAPMAN: And that by the stage of the CCB delegated authority being exercised to, as I say, trigger the physical installation that these matters, as the Air Vice-Marshal has just raised, of the Standardisation Manual had already been attended to. But you're saying that's not the case?

15 MAJ McCALL: Well, I can't recall because I was probably head down, typing and doing other things. But it'd be unusual for us to not issue the guidance and then load the aircraft up with the wrong stuff.

20 MAJ CHAPMAN: Once the guidance has been finalised and Standards is satisfied that everything is in place, from an airworthiness or a Standards point of view to commence flying operations under the new modification is there some instrument or some document that the Inquiry might be able to obtain which notifies that from - - -

25 MAJ McCALL: No, I can't help you with that.

MAJ CHAPMAN: No. So a day would come where the Standardisation Manual, in this case, had been approved and that would effectively be the final piece in the puzzle to permit flying operations to start under this new - - -

30 MAJ McCALL: Look, I can't answer that. Because, again, I was Flight Manual, checklist and Standards Manual, managing the updates to those. That was my level.

35 MAJ CHAPMAN: Yes, but it seems consistent with your evidence, sir, that once the Standardisation Manual had been completed, then that would then allow the pilots to start operations by reference to the new Standard?

40 MAJ McCALL: That, again, I had some other guidance material that was put out in one of the training systems but, look, I can't remember at what stage. But that's my recollection, was we didn't let the – well, you can't have things loaded to an aircraft without a Flight Manual and checklist and the Standards Manual being consistent.

45 MAJ CHAPMAN: I understand. We'll follow that up. Now, if you just

go – and do you still have Annexure D there, the Standardisation Manual?

MAJ McCALL: Yes.

5 MAJ CHAPMAN: So, if you just go to page – it’s difficult to identify the page, but it’s – well, down the bottom right-hand corner, do you see Annex D, page – and I’m on 3/5?

MAJ McCALL: Correct, yes.

10

MAJ CHAPMAN: And do you see there on the left-hand side, third bullet point down, it says this:

15 *When the flying pilot’s line of sight is not aligned straight ahead, aligned with HC –*

meaning helicopter?

MAJ McCALL: Correct.

20

MAJ CHAPMAN:

– forward axis, setting an aircraft attitude using HMSD 5.10, symbology will lead to spatial disorientation.

25

Do you see that?

MAJ McCALL: Yes.

30 MAJ CHAPMAN: And if we just go up to the other side of the page, which starts at page 31, like, there’s a reference to 31. But that’s, I take it, a comment, and it says, “Glen McCall”. So you authored this comment?

MAJ McCALL: Correct.

35

MAJ CHAPMAN: And you say there in your comment that:

A basic warning detailing or meeting the intent of the operational evaluation warning.

40

MAJ McCALL: Correct.

MAJ CHAPMAN: Now, if you next go to the next page, there’s a similar notation in a warning. So we’re now at page 4/5. And do you see - - -

45

MAJ McCALL: Yes.

5 MAJ CHAPMAN: - - - halfway down the page it says, third dot point, in highlighting:

Setting aircraft attitude using that symbol set, with line of sight not aligned to X axis, straight ahead from the pilot's perspective, may lead to spatial disorientation.

10

MAJ McCALL: Yes.

MAJ CHAPMAN: And then if you go over the page – sorry, then there's a reference up again to a comment where you say essentially that this reflects the basic warning dealt with in the OPEVAL.

15

MAJ McCALL: Correct.

MAJ CHAPMAN: And if you go over the page again, there is a further version of the warning in similar terms, second dot point:

20

HMSD 5.10, horizon line is only correct when the line of sight is consistent when looking to the front of the aircraft.

25 MAJ McCALL: Correct.

MAJ CHAPMAN: And if you go to your comments which were on 24 October 2024 – sir, I just pause there to say these comments were made in preparation for your statement, given the dates?

30

MAJ McCALL: Yes.

MAJ CHAPMAN: You say this, that:

35 *The repetition is ready to reinforce version 5.10 limitation.*

MAJ McCALL: Yes.

MAJ CHAPMAN: And next, later on, on that page, there's a caution, and also a note, and it says that:

40

Setting aircraft attitude using the 5.10 should be done only when line of sight is aligned with the X axis, straight ahead, to prevent disorientation.

45

MAJ McCALL: Correct.

MAJ CHAPMAN: And the first of those appears under the heading, Recovery Drill; is that right?

5

MAJ McCALL: Yes.

MAJ CHAPMAN: And that's consistent with the recommendation made in the Operational Evaluation Report that a warning with respect to UA – unusual attitude – recovery drill be included.

10

MAJ McCALL: Yes.

MAJ CHAPMAN: And there are warnings replicated in substantially the same terms under the section, "Collective Safety Function"?

15

MAJ McCALL: Yes.

MAJ CHAPMAN: And do you recall giving evidence earlier that the update included amended elements of what was proposed in the Operational Evaluation?

20

MAJ McCALL: Yes. You're talking about the warning?

MAJ CHAPMAN: Yes.

25

MAJ McCALL: Yes.

MAJ CHAPMAN: And what was included in the update to the Standardisation Manual, it actually went further than the Operational Evaluation, in that the warning also reflected paragraph 12(b) of the OPEVAL. Can you just go over to paragraph 12(b) of the OPEVAL. In that, with respect to maintaining line of sight when making attitude changes.

30

35

MAJ McCALL: Yes.

A requirement to align line of sight forward when making attitude changes using the HMSD as an attitude setting reference.

40

MAJ CHAPMAN: Yes, that's right. Thank you. So, sir, I've taken you to a series of these warnings and cautions and notes that were ultimately included in the Standardisation Manual. Is that right?

MAJ McCALL: Yes.

45

5 MAJ CHAPMAN: Though they're expressed, each of them slightly differently, but they're all directed essentially to the same point, and that's that to require pilots only to make attitude adjustments to the aircraft when looking forward and not off-axis. Is that right?

MAJ McCALL: Yes.

10 MAJ CHAPMAN: And that the making use – consistently in your changes here and in the comments – and that making use of symbology off-axis either will or may lead to spatial disorientation. Is that right?

MAJ McCALL: Yes.

15 MAJ CHAPMAN: So if I can just summarise what the changes to the manual establish and ask you to agree or disagree. The first is that the inclusion of these matters in the Standardisation Manual are an acknowledgement by Standards that the HMSD symbology was a serious issue, other than when the pilots were looking straight ahead?

20 MAJ McCALL: It was an issue, and the way the warnings that I've tried to write them was that, "If you're using HMSD to set an attitude, you're going to have problems because it's not designed from the technical manual"; that Airbus said, "Don't use this as a piloting aid", which means, 25 "Hey, still fly the aircraft". But the centre of truth is the flight instruments, which is the instrument panel.

The HMSD is in the name, which is helmet-mounted sight display, is to 30 keep the eyes outside of the cockpit. Because if you're looking inside the cockpit, you're not going to see the hazards because helicopters operate, mainly, down low level. So the warnings are, "Hey, don't set attitudes. Or, if you do set attitudes using just the HMSD, you may have – or you will have – depending on what conditions you're in, you will have 35 problems".

MAJ CHAPMAN: And they required the pilots, when making attitude adjustments though, that they be looking straight ahead?

40 MAJ McCALL: If they're going to do that, yes.

MAJ CHAPMAN: Yes. And drawing on your significant experience, do you agree with this proposition: that, I mean, the very idea of a pilot only making attitude adjustments when looking straight ahead can be 45 problematic?

MAJ McCALL: It depends what conditions they're in.

5 MAJ CHAPMAN: Well, I'd ask you to picture this scenario: flying in formation, low light levels, at night, DVE and executing turns in formation. Do you have a picture of that?

MAJ McCALL: Yes, I do.

10 MAJ CHAPMAN: Now, in that setting, would you agree that executing turns will almost certainly require the flying pilot, depending on their seat and the direction of turn to be looking off axis from time to time?

15 MAJ McCALL: They may be looking off-axis, yes. But I would go back to a statement that I said earlier. The conditions that you've just said are outside the Standards Manual of conditions that I pointed out in Chapter 2, so they're outside of the Standards Manual, which means that the organisation – that is, the formation – and the formation lead, and the Air Mission Commander, and the Commanders of each aircraft, they now must take into consideration the differences from the Standards Manual
20 that they're outside of.

25 MAJ McCALL: They shouldn't be looking off-axis very much, but they'll be – they may be looking off-axis, yes. But I would go back to a statement that I said earlier. The conditions that you've just said are outside the Standards Manual of conditions that I pointed out in Chapter 2, so they're outside of the Standards Manual, which means that the organisation – that is, the formation – and the formation lead, and the Air Mission Commander, and the Commanders of each aircraft, they now must take into consideration the differences from the Standards Manual
30 that they're outside of.

Because the conditions that you just indicated to me are outside of the Standards Manual conditions and now risk assessment has to come into it.

35 AVM HARLAND: What do you mean by "outside the Standards Manual conditions"?

40 MAJ McCALL: If you have a look at Chapter 2, the Standards Manual's conditions were set for a very clear set of standards, which is the envelope. Because one of the things that we found very early on was if we're going to write a Standards Manual for the pilots and aircrewman, we can't give you standards for all the conditions. It's impossible. Because what we can do is, give you a set of standards for day, night and in certain visual conditions.
45

Once you start getting outside of those conditions, that's where the command and risk analysis, and mission planning and understanding of the risk context that they're in, has to come into it.

5 AVM HARLAND: So in the conditions that MAJ Chapman described, night, low-level formation, degraded visual environment - - -

MAJ McCALL: That's outside of the Standards Manual limits.

10 AVM HARLAND: So in that sense, the formation was operating outside the STANMAN?

MAJ McCALL: The formation was allowed to operate outside of those things, but other controls now need to be worked on.

15 MS McMURDO: So at that point, did they fly to conditions having done a risk assessment and making a decision as to what is appropriate in those circumstances? Is that correct?

20 MAJ McCALL: Yes. But you're really talking about – here is a multi-aircraft mission in degraded visual environments outside of the Standards Manual's limits and they're doing – you know, I'm a Standards Officer and I was trained by the Directorate of Evaluation and Standards in the US Army, who do risk assessment and training very well, and the
25 standard sets of conditions that we wrote into the Standards Manual I borrowed from the US Army. Because you can only write sets of standards for particular task conditions and standards.

30 Once you get outside of those standards, you have to start having additional awareness of the risks that you're taking. And degraded visual environment means that you're starting to blend into the grey area of the Airbus, or original equipment manufacturer, saying, "The helmet-mounted sight display that we've given you to enhance your understanding of what the machine is doing so that you can look outside is not a primary piloting
35 aid. The primary piloting aid is the flight instruments".

40 Once you're starting to get outside of that, you now need to have other parts of this system assist you to operate this machine. And one of the things that I've said in my statement here is HMSD can't be just taken as a system in its individual setting. HMSD is a part of the system and that system is the airframe. And that airframe includes the autopilot system. So you need a stabilisation system.

45 So as soon as you start talking about degraded visual environment, you can't rely on the individual who is monitoring or flying the aircraft

5 physically; that is, hands and feet on the flight controls. Once you start talking degraded visual environment using HMSD, then they need support. Because if they don't have that support, they are going to get closer and closer to all of the elements – and I've written down "visual illusions" – you're getting closer to suffering from those things.

So HMSD and its symbology is part of the system. And that system is you need stabilisation and you need autopilot assistance.

10 MAJ CHAPMAN: So just absorbing that evidence, if you say that the conditions that I just outlined were effectively operating outside of the rule book, or the Standardisation - - -

15 MAJ McCALL: This is – again, I said, it's nuanced.

MAJ CHAPMAN: Yes.

20 MAJ McCALL: The Standards Manual is – here's the flight envelope, these are the standards that we, as the regulators, have said for you to develop your training programs and for the unit CO – because we take people off the streets and within a couple of years we've got them flying very, very complex machines. Those individuals who we take off the streets and fly very, very complex machines, they can't get a civil job because they don't have the experience.

25 They won't get a job for another 15 to 20 years – well, 15 years is about where it goes. They've got to be developed by the unit to be able to operate in those conditions. That's why, in my evidence again, the Aircraft Captains are certified. They're certified Aircraft Captains. Certified means that the CO of the unit has used the resources and trained that individual for those conditions. And those conditions need to be risk assessed. And they're risk assessed for the task. And all of these tasks, they're all training. They're all training.

35 And in training, the CO and the flight leads and the Aircraft Captains all have to comply with the *WHS Act* which says you've got to eliminate the risk. So if you're starting to take – "Here are the crappy conditions that we're flying in in formation, okay. What additional risk management processes did you, Commanders – that is, Aircraft Commanders, Troop Commanders, flight lead, Air Mission Commander, Squadron Commander – what additional protections have you put in place for the conditions that you're now operating in?" And if you haven't found any, then they've not been doing their job.

45 AVM HARLAND: So if you - - -

MAJ CHAPMAN: And is – I'm sorry, Air Vice-Marshal.

5 AVM HARLAND: I was going to say, so in those conditions which are outside the intent of the STANMAN – the night, low level, degraded environment, in formation – what you're saying is that the helmet-mounted sighting display is not designed to provide attitude if you're looking off-axis?

10 MAJ McCALL: Correct.

15 AVM HARLAND: So the flying pilot would not be using that attitude as a reference, and that other measures that you may have in place would be risk management controls such as the non-flying pilot monitoring the attitude of the aircraft, the use of automatic modes and warnings.

MAJ McCALL: Correct.

20 AVM HARLAND: For example, the DH warning on the aircraft.

MAJ McCALL: Yes.

25 AVM HARLAND: And they end up being controls to effectively stop an event such as an unusual attitude developing?

30 MAJ McCALL: Yes. Additional controls. Now, the other thing I would say is, again, you know, I thought I'd end up here because I'm the writer of the Standards Manual. I haven't followed this Inquiry. I've seen occasional news flashes. But additional controls would be, did the formation have their formation lights on? Did the formation use the skippy lights? Why are they in formation? Because it's a training exercise.

35 The Standing Instructions which, again, is another order written by the two star and signed by the two star, that order says, "If you're below 500 foot, have a collective mode engaged"; that is, the automation for the stay away from the earth mode is engaged.

40 Now, when you're in formation, you're constantly interfering with that mode. Okay, was that risk assessed? Because, I think sir, if you can imagine, if you're flying along in formation, are you just setting a throttle setting and leaving it there? You can't. If you're number 2 or 3 or 4 in a formation, number 1, yes, they can set a throttle setting and leave it there. Number 2, 3 and 4, they're using that throttle like a pump machine.

45

AVM HARLAND: And we discussed this yesterday, about the fact that there was an intensifier, an instruction out there which mandated the use of a particular AFCS mode below 500 feet overwater. But when you're flying in formation, it wasn't practically possible to operate in accordance with that display strictly.

MAJ McCALL: Okay. If you're a Commander, where's the risk assessment and who approved it? Because that's an order from the two-star General that says, "If you're below 500 foot, this mode must be engaged". "Okay, we're going to fly in formation and we're going to interfere with that mode". Okay, where's the risk assessment for that?

AVM HARLAND: Are you aware of one?

MAJ McCALL: No. But that is the formation lead that you just advised me – okay, that formation lead and that element and those Commanders in there who develop that process, where is it?

AVM HARLAND: But if this is a routine exercise, a formation lead, every time they go flying, shouldn't have to consider that. That's really a natural outcome of formation flying.

MAJ McCALL: Yes, but it's an order. And if that order is interfering, then either change the order or modify your procedures because the *WHS Act* says you've got to eliminate the risk. Aviation Command said, "Okay, we've eliminated this risk by telling you to use a mode that stops you hitting the earth, or stops you hitting the surface of the earth".

AVM HARLAND: That will be routinely interrupted if you're flying in the back of a formation?

MAJ McCALL: And if it's – yes. Well, if it's routinely interrupted, then you've got to modify the way you're doing things, or you've got to tell the Command that you're doing that.

AVM HARLAND: Right.

MAJ McCALL: Because, as far as I was concerned as the Standards Officer, that order is an order, and you should be doing that. Not should, you must be doing that. And if you're not complying with that order, then what are you doing? You didn't tell us that you're not complying with it. You didn't tell Avn Command that you're not complying with it. You're flying below 500 foot.

Well, 500 foot is – and I understand, I think, they were at 200 foot. Well, at 500 foot per minute, that’s two and a half seconds to the water at a standard rate. Okay, so why have you reduced my reaction time by 60 per cent? Why are you doing the mission in formation? Is there
5 another way to do the mission? Because, Command, you’ve got to eliminate the risk in training because we’re only training.

AVM HARLAND: So related to that – and this is another risk control that has been discussed by previous witnesses – was the setting of the
10 decision height, the RADALT decision height, at 10 per cent below your minimum altitude for the mission which is, I understand, in the STANMAN as well.

MAJ McCALL: Yes.
15

AVM HARLAND: But that’s actually in the STANMAN recorded as “The Aircraft Captain may”.

MAJ McCALL: Correct.
20

AVM HARLAND: So that gives them latitude and opportunity to set it to whatever they want, which means, potentially, they’ll lose the chance of an early indication that they’re actually arriving at a dangerous condition.
25

MAJ McCALL: The decision issue, again, the Standards Manual tries to cover it, tries to give general rules, again, for the non-technical skills. But if you mandate that you’re setting the decision height all the time, then when they’re operating around confined areas or they’re flying terrain flight, then the decision height is going off every two to three minutes because it’s - - -
30

AVM HARLAND: But if you’re overwater, which is not confined and it’s an environment which is conducive to losing your awareness of the horizon, why would that not be a must?
35

MAJ McCALL: Then that’s up to the Aircraft Captain to determine what they need to set for their risk assessment for the conditions that they’re in. And 10 per cent was seen to be, “Well, that’s about reasonable for the majority of mission profiles”.
40

AVM HARLAND: Yes.

MAJ McCALL: But again, it comes down to the Standing Instructions of the certified Aircraft Captain who is responsible for that machine. They
45

can set it two foot below where they are, because that's their prerogative as the Aircraft Captain. They're responsible. Their Aircraft Captain is legally responsible for their airframe, for their crew, their passengers and anyone in their flight path.

5

And again, the organisation – one of the things I remember – one of the COs who got very excited about how many “musts” were in the Standards Manual, and he would pound the table and say, “There are 600 ‘musts’. You must reduce them”. Sure, I can do that. How many do you want? Because we've got to write a manual that allows you to operate day, night, degraded visual.

10

AVM HARLAND: But the number of “musts” is really irrelevant. It's how many “musts” do you need.

15

MAJ McCALL: Correct.

AVM HARLAND: It's not a number.

20

MAJ McCALL: And that's why we said, you know, “That's what we think is reasonable to give you, the certified Aircraft Captain, who's been trained, given the resources, to be responsible in accordance with the *WHS Act* requirements for your airframe and your crew and your passengers. You're responsible. You have all of the tools available to you to make a decision to look after your airframe”.

25

AVM HARLAND: Just one final one and I'll allow you to get back to MAJ Chapman. In your note in the STANMAN, the one that appears on your AL 15, 15(b)(3), the one we were referring to before:

30

Setting an aircraft attitude using HMSD version 5.10 should be done only when line of sight is aligned with the X axis straight ahead to prevent disorientation.

35

But when we go to the warning, which was recommended for the STANMAN on the back of the OPEVAL, it actually said it was a must. So how come there's a difference? Because, like, if I'm reading that – and it's probably semantic – but I go, “Which one do I take? Do I take the should or the must, and why are they different?”

40

MAJ McCALL: Well, again, it comes down to how do you define a warning, and is a warning a rule? What I tried to do with warnings, cautions and notes is not hide rules inside the warning. I'm trying to tell

you what the warning is. And this is discussions that we've had with various SOIs.

5 A warning is not the rule. A warning is, "Hey, if you do this" – and the "warning" definition in front of the Standards Manual says, "Look at the warnings", because the warnings will tell you what will probably kill you if you don't take that into account. And the trouble is, the Standards Manual, I think when I did look at it, there's about 350 warnings in the Standards Manual.

10

AVM HARLAND: With rules embedded in them?

15 MAJ McCALL: No. Well, we tried to take the rules out of the – rules should exist in the Standing Instructions. The Standards Manual is, "Here's a standard set of conditions and here's how we're trying to tell you what the standard is for you to be a competent pilot in those standard set of conditions. By the way, here's a whole bunch of warnings that you really need to be aware of".

20 There's close to 400 warnings in the Standards Manual. There's about 300 to 400 – 500 in the Flight Manual. And the Flight Manual is 2400 pages – 2500 pages. And the flying training process and the development process from CAT D co-pilot up through the categories, that takes time and resources to be able to expose individuals to all these areas.

25

So, no, I wouldn't say it's semantics. But it's, "Hey, we're trying to bring out those elements inside the manuals for you to be super aware of".

30 AVM HARLAND: But I'm an operator and now I'm confused because I don't know if it's a "should" or a "must". Because in the same manual, it gives me both.

35 MAJ McCALL: Yes, but the warnings, cautions and notes are put ahead of the particular area that we want to talk about. The area that you're just talking about there, which is 15(b)(3), "Warnings and cautions and notes by convention from the AAP Writing Manual", said, "Okay, we're going to talk about steep turns. Here are a set of warnings for what we're going to talk about, which is steep turns". And steep turns, it says that's high angle of bank.

40

So it starts off with the first warning that, "High angle of bank, there may be insufficient power to maintain level flying". That warning is specific to steep turns. The next warning, HMSD software, "Horizon line is only correct when the line of sight is consistent when looking forward to the

aircraft”. That warning is put in front of the boldface action, which is steep turns.

5 So when you’re talking about steep turns, it says, “Hey, here’s what the steep turn is in the Standards Manual”. What are the warnings, cautions and notes associated with steep turns?

AVM HARLAND: Yes.

10 MAJ McCALL: Okay, let’s have a look at that. Okay, when I’m doing steep turns, that is – and a steep turn was pretty much anything – well, a steep turn for the MRH-90 was 45 degrees. But 45 degrees at 100 foot meant that you needed to move forward and start looking up. Don’t be
15 looking at the HMSD horizon line because that’s not going to help you, because the warning is for the steep turn.

20 So to drive individuals’ attention, the AAP, which the AAP – we rolled Standards Manual into the AAP and we used the AAP context and rules which says when you’re talking about a subject and you’ve got warnings, cautions and notes, it precedes that subject. And that’s what you’ve got here. So it’s, “Here’s the guidance. These things will kill you” –
25 correction, “These will kill you/may kill you, depending on the condition or the mission profile that you’re in, but you need to read them before you think about steep turns”.

AVM HARLAND: I guess, I’ll remain confused as to why it’s “must” in one area and “should” in the other.

30 MAJ McCALL: That was probably me in the process of writing. But, again, they’re not rules, they’re warnings to tell you, “Be aware of this condition when you’re doing this”. So warnings, cautions and notes – the warning, again, it says, “Dangers of terrain flight”, and there’s a couple of warnings in front of that.

35 AVM HARLAND: Yes.

MAJ McCALL: The UA recovery drill, page 3/5, they’re warnings, cautions and notes which are talking about degraded visual environment.

40 AVM HARLAND: Yes.

MAJ McCALL: So, again, it comes down to if you want to drill something into someone’s head, just use repetition. They’re not rules, they’re warnings to say, “Hey, when you’re doing UA recovery drills, be

aware of these things. Some things are going to help you, some things aren't".

5 AVM HARLAND: Okay, thanks.

MAJ CHAPMAN: Is that a convenient time?

10 MS McMURDO: It is. Yes, we'll adjourn for lunch for an hour and resume at 2 o'clock. Thank you.

<WITNESS WITHDREW

15 **HEARING ADJOURNED**

HEARING RESUMED

5 MS McMURDO: Yes, COL Streit.

COL STREIT: Yes, thank you. Ms McMurdo, the next witness is Mr Michael Lysewycz, who is the General Counsel of Dispute Resolution and Litigation within the Department of Defence. He should be appearing on screen to give his evidence via video link.

10 MS McMURDO: Yes.

COL STREIT: Mr Lysewycz, can you hear and see me?

15 MR LYSEWYCZ: I can hear but not see you.

MS McMURDO: Can hear but can't see us.

MR LYSEWYCZ: Now I can see you.

20 MS McMURDO: Yes, now it's working. Excellent.

COL STREIT: Thank you. Sorry, I'll just confirm. You can hear and see me?

25 MR LYSEWYCZ: Yes.

COL STREIT: Thank you. Mr Lysewycz, do you have a copy of your statement, and the confidential annexure to your statement before you?

30 MR LYSEWYCZ: I do.

COL STREIT: Thank you. Can I just ask you to identify yourself to the Inquiry, please? So, first just beginning with your full name?

35 MR LYSEWYCZ: Michael Lysewycz.

COL STREIT: Your current role.

40 MR LYSEWYCZ: General Counsel, Dispute Resolution and Litigation in Defence Legal, Defence.

COL STREIT: You're presently located in Canberra; is that correct?

45 MR LYSEWYCZ: Correct.

COL STREIT: Mr Lysewycz, in relation to your appearance here today, could you please indicate did you receive a section 23 Notice – sorry, yes?

5 CLERK OF THE COURT: Just before we start, do you want to take the oath or affirmation?

MR LYSEWYCZ: I'm happy to take the oath, thank you.

10

<MR MICHAEL LYSEWYCZ, Sworn

<EXAMINATION-IN-CHIEF BY COL STREIT

15

COL STREIT: Thank you. Apologies, Mr Lysewycz, and Chair. I got ahead of myself there. Mr Lysewycz, we were just dealing with some preliminary matters. I asked you whether you received a section 23 Notice which required you to answer some questions in the form of a statement. Is that correct?

20

MR LYSEWYCZ: Correct.

25 COL STREIT: And the section 23 Notice also required your appearance to give evidence before the Inquiry today; is that right?

MR LYSEWYCZ: Yes.

30 COL STREIT: You also received a copy of a Frequently Asked Questions Guide for Witnesses from the Inquiry?

MR LYSEWYCZ: Yes.

35 COL STREIT: A copy of the Inquiry's Directions?

MR LYSEWYCZ: Yes.

COL STREIT: A copy of a Privacy Notice?

40

MR LYSEWYCZ: Yes.

COL STREIT: And a copy of my Instrument of Appointment?

45 MR LYSEWYCZ: Yes.

COL STREIT: In relation to your statement, which you have a copy of in front of you, can I just turn to that now, Mr Lysewycz, and ask you some questions. First, in relation to your statement, is that a statement
5 that you made and signed on 21 February 2025?

MR LYSEWYCZ: Yes.

COL STREIT: Your statement comprises – just in relation to the
10 evidence, not including the annexures – your statement comprises 15 pages?

MR LYSEWYCZ: Yes, 15 pages, and 54 paragraphs.

COL STREIT: And 54 paragraphs. Thank you. Your statement
15 Comprises – attaches, rather, three annexures. Is that correct?

MR LYSEWYCZ: That's correct.

COL STREIT: The annexures are A, B and C, which you have described
20 in the body of your statement. Is that right?

MR LYSEWYCZ: Yes.

COL STREIT: In relation to your statement – I'll come to the
25 confidential annex shortly – but in relation to your statement, are there any amendments or additions - - -

MR LYSEWYCZ: Counsel, can I just query you? I've got Annexure D
30 as well. Do you have an Annexure D.

MS McMURDO: They go right up to G, I think, don't they?

MR LYSEWYCZ: E, F, G. Yes.
35

MS McMURDO: G, H.

COL STREIT: My apologies.

MS McMURDO: Or some of them. It might be the – that's the
40 confidential one.

COL STREIT: Yes.

So let me deal with it this way. Given that you're appearing remotely, let me be more complete. Annexure A to your statement is entitled, "Chief Counsel Directive for Roles and Responsibilities of General Counsel, Dispute Resolution and Litigation", dated 24 July 2020. Is that right?

5

MR LYSEWYCZ: Yes.

COL STREIT: Next is Annexure B, which is a copy of a Form 25 from the Queensland – sorry, issued by the Central Queensland Coroner, dated 5 September 2023, requiring the provision of statements from 12 ADF members.

10

MR LYSEWYCZ: Yes, that's right.

COL STREIT: Next, Annexure C is a copy of a PowerPoint slide. The PowerPoint slide is entitled, "Legal Landscape of the MRH-90 Incident", and then the person is identified there, the Deputy General Counsel, Dispute Resolution and Litigation, with the date of 8 September 2023?

15

MR LYSEWYCZ: Yes.

20

COL STREIT: Annexure D is an Official: Sensitive document which is an email from – at the top, from GPCAPT Lewis of 26 October 2023. Do you see that?

25

MR LYSEWYCZ: Yes, I see that.

COL STREIT: If you turn a couple of pages, you'll come to Annexure E, which is also an Official: Sensitive document, which is an email from Ms Baker of 30 November 2023. Do you see that?

30

MR LYSEWYCZ: Yes, I have that as well.

COL STREIT: Those annexures I've just taken you to, including the two Official: Sensitive annexures, they comprise the annexures to your statement. That's correct?

35

MR LYSEWYCZ: Yes.

COL STREIT: Now, in relation to your statement, are there any amendments or additions you wish to make?

40

MR LYSEWYCZ: No.

COL STREIT: Ms McMurdo, I tender the statement of Mr Lysewycz of 21 February 2024 with Annexures A to E.

MS McMURDO: A to E. Well, that will be Exhibit 125A.

5

#EXHIBIT 125A - STATEMENT OF MR LYSEWYCZ

10 COL STREIT: Mr Lysewycz, can I ask you to pick up – or refer to, rather, the Confidential Legal Professional Privilege annexure that you provided to the Inquiry when you provided your statement to the Inquiry?

MR LYSEWYCZ: I have that.

15

COL STREIT: Just for the sake of identification, if you turn to page 2 of that annexure, can you confirm that at the top of that page 2 is the reference to Annexure F?

20 MR LYSEWYCZ: Yes.

COL STREIT: And then if you move a couple of pages in, there's a reference to what becomes Annexure G.

25 MR LYSEWYCZ: Correct.

COL STREIT: I'm not going to ask you any questions in relation to the confidential annexure - - -

30 MS McMURDO: There's also a H.

MR LYSEWYCZ: Mm.

MS McMURDO: So a H.

35

COL STREIT: I apologise. At the back of the document, three pages in, is Confidential LPP, Annexure H. Do you see that?

MR LYSEWYCZ: I see that as well.

40

COL STREIT: The entire document that we've just referred to is, in essence, a Confidential Legal Professional Privilege annexure provided by you to the Inquiry, and privilege is not waived. Is that right?

45 MR LYSEWYCZ: That's right.

MS McMURDO: Exhibit 125B.

COL STREIT: Thank you.

5

**#EXHIBIT 125B - CONFIDENTIAL LEGAL PROFESSIONAL
PRIVILEGE**

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COL STREIT: Mr Lysewycz, could you put the confidential annexure to one side. I won't be asking you questions in relation to that matter. If I can turn to your statement, please?

15 MR LYSEWYCZ: Mm-hm.

COL STREIT: Now, just first, before I ask you some preliminary questions about your background, can I just identify the limitations to your statement? First is, in relation to the preparation of your statement you have had regard to various Defence files in order to assist you in responding to questions that the section 23 Notice asked. Is that correct?

20

MR LYSEWYCZ: That's correct.

COL STREIT: And the files you had regard to contained information of which you did not necessarily generate, but members of your staff or other persons within Defence did. Is that right?

25

MR LYSEWYCZ: And received correspondence from other sources, yes. It was an Objective file which contained all of our material.

30

COL STREIT: And to assist the Inquiry to the extent you're able to, by reference to paragraph 4, in some limited circumstances and in order to provide the Inquiry with fulsome response to some of the questions set out below, it's been necessary for some of your answers to contain information subject to legal professional privilege. Is that right?

35

MR LYSEWYCZ: That's correct.

COL STREIT: And that is the reason why there is a legal professional privilege annexure which you have provided to the Inquiry.

40

MR LYSEWYCZ: That's right.

COL STREIT: In terms of your background, Mr Lysewycz, you're

45

presently, and have been for some time, an Australian legal practitioner entitled to practise as a barrister and solicitor. Is that correct?

MR LYSEWYCZ: Yes.

5

COL STREIT: You set out at paragraph 6 your previous experience in your legal career, including periods as a member of the Australian Public Service, practice as a solicitor, practice in a corporate, legal and technical advisor role and including a part-time lecturer in undergraduate/postgraduate Law. Is that right?

10

MR LYSEWYCZ: That's right.

COL STREIT: You hold a Bachelor of Arts and a Bachelor of Laws as your tertiary qualifications?

15

MR LYSEWYCZ: Yes.

COL STREIT: Now, your present role is that of General Counsel within Dispute Resolution and Litigation of the Defence Legal, Department of Defence. And you've set out in your statement at Annexure A – which is the Directive I referred to earlier – essentially what your roles and responsibilities are. That's correct?

20

MR LYSEWYCZ: That's right.

25

COL STREIT: Can I turn now to ask you this. In very broad terms, noting the directive is three pages long, just in very broad terms, can you explain, principally, your role as General Counsel within Defence Legal?

30

MR LYSEWYCZ: Well, first of all, I'm a senior Executive Legal Officer with the Commonwealth. And in my role as General Counsel, I have both a management/supervisory role, but also called upon to give legal advice. I manage a team of people. The size of the branch will fluctuate. And I also have technical control, if I call it that – or technical authority over work undertaken by other units within Defence.

35

COL STREIT: Now, it might seem an obvious question to you, but can I just ask you this? As a lawyer, who is your client in your current role?

40

MR LYSEWYCZ: Always the Commonwealth.

COL STREIT: Can I turn now to your evidence in relation to the

investigation of the crash of Bushman 83 and the involvement of your Directorate within matters arising after the crash of Bushman 83, which commences at paragraph 12 of your statement.

5 MR LYSEWYCZ: Mm-hm.

COL STREIT: At the time of the crash of Bushman 83 on 28 July 2023 you were, at that time, on leave. That's correct?

10 MR LYSEWYCZ: That's correct, yes.

COL STREIT: You returned to resume duties at the Dispute Resolution Litigation on 5 August 2023. Correct?

15 MR LYSEWYCZ: That's right, yes.

COL STREIT: Now, the reason why is it that ultimately your branch assisted in providing advice and managing legal matters associated with investigations into the crash of Bushman 83 is because matters concerning
20 Coronial investigations, Comcare investigations and IGADF investigations is part of the work of your Directorate for the Commonwealth. Is that right?

MR LYSEWYCZ: No. The IGADF is not a regular part of my work.
25 Coronials, Comcare would be, yes. IGADF might chime in from time to time, but no, it's not a regular part of my work.

COL STREIT: I see, so in circumstances where the Commonwealth's interests might be affected by – or potentially affected by the conduct of
30 an IGADF inquiry, it's not usual, therefore, that your branch would be involved in the provision of legal advice to the Commonwealth in that matter?

MR LYSEWYCZ: Yes, we would. I apologise. If, for example, there
35 were a public interest immunity or sensitivity issue that were to arise, if the IGADF himself were involved in proceeding and wished to raise issues with a court or some administrative or quasi-administrative body, there would be consultation, and a decision would be made as to whether I would take that on or whether we'd brief it somewhere else.

40 COL STREIT: Sure. But in relation perhaps more closer to home, this IGADF Inquiry into the crash of Bushman 83, are you involved in the provision of instructions to the Australian Government Solicitor and Counsel in representing the Commonwealth before this Inquiry?
45

MR LYSEWYCZ: Yes.

5 COL STREIT: Now, ultimately, it's the case – and you've set out in some detail commencing at paragraph 17 – ultimately, it's the case that your Directorate, can I suggest, had significant involvement in the provision of assistance to aircrew in the creations of their statements ultimately provided to the Coroner. Is that right?

10 MR LYSEWYCZ: Yes.

COL STREIT: And you - - -

MR LYSEWYCZ: 12 witnesses.

15 COL STREIT: 12. And you've listed, from paragraph 17 onwards, the various stakeholders or personnel within your Directorate in terms of their engagement with those various aspects and organisations in Defence. Is that correct?

20 MR LYSEWYCZ: Yes.

COL STREIT: That included some external engagement, did it, with the Queensland Coroner?

25 MR LYSEWYCZ: Yes.

COL STREIT: And Queensland Police.

30 MR LYSEWYCZ: Yes.

COL STREIT: And that's set out at paragraph (e) and (f) of your statement on page 4.

35 MR LYSEWYCZ: Yes.

40 COL STREIT: Can I turn now, Mr Lysewycz, to paragraph 19 onwards on page 6 of your statement where you respond to questions in the 23 Notice in relation to the involvement of Dispute Resolution and Litigation Branch in obtaining statements from 12 aircrew? If we just turn to that, please?

MR LYSEWYCZ: I have that, yes.

COL STREIT: Thank you. Are you able to say when your Directorate

was given the task of engaging in a process to obtain statements from the 12 aircrew? When was that responsibility given to you?

5 MR LYSEWYCZ: It was following the meeting that occurred in early August, I believe. It was about 2 August, attended by a number of people, including the Acting Director-General of Military Services.

10 COL STREIT: And you say at paragraph 22 of your statement that on 4 August 2023 your Directorate received the names and contact details of the relevant witnesses, being the crews of Bushman, 81, 82 and 84. Is that right?

MR LYSEWYCZ: That's right.

15 COL STREIT: At paragraph 23 you identify that you allocated three Legal Officers, three civilian Legal Officers within your Directorate to work with four – each of the aircrew that you've identified at para 23?

20 MR LYSEWYCZ: Yes. I'll just qualify that. You mentioned civilian Legal Officers. I have no uniform Legal Officers working for me.

COL STREIT: Yes.

25 MR LYSEWYCZ: All my staff, including my deputies are civilians, and they're not Reservists. Sorry, there is one exception who's just joined me but, as a general rule, we are civilians.

30 COL STREIT: Yes. So within your Directorate, your lawyers are admitted practitioners and performing the role of lawyers to the Commonwealth. Is that correct?

MR LYSEWYCZ: Yes.

35 COL STREIT: Now, on 4 August 2023 – and I'm looking at paragraph 24 of your statement – you indicate that an email, which was identical save for the name of the recipient, was sent separately to each of D1 to D12, inclusive, by the respective Directorate of Resolution Litigation Branch lawyer that you had allocated. That's correct?

40 MR LYSEWYCZ: Yes.

45 COL STREIT: The email stated, amongst other things, that statements were being requested voluntarily by the Coroner and that witnesses should not discuss the incident with each other, and that your organisation can provide assistance to the witnesses and what would happen if the

witnesses interests were not aligned with Defence's interests. Further evidence regarding this email is set out in the confidential annexure. That's correct, what I've just said?

5 MR LYSEWYCZ: Yes.

COL STREIT: Now, just in broad terms, can you explain the distinction without regard to the specifics of assistance provided to D1 to 12? But can you just assist the Inquiry to understand the distinction between when
10 a witness's interest does not align with the Commonwealth, and what is the consequence of that?

MR LYSEWYCZ: Okay. The starting assumption we have with most incidents is that the Commonwealth's interests, Defence interests and the
15 interests of members involved in an incident are all aligned. Occasionally, the incident itself may indicate that an actor in the incident will have some personal exposure. For example, the driver of a truck which might roll in unusual circumstances, to the extent that we consider the interests are all aligned, we will treat everyone as part of a group and give advice – fairly
20 high-level advice to start with because one has to be cautious.

Facts will inform the way in which we approach a particular matter as it evolves. So in this particular case, well, initial statements are taken from
25 12 people. We and others start to obtain a better understanding as to what their respective responsibilities and role were in an incident, and we get a sense as to whether they are personally at risk for some reason.

It might be an administrative action from within their service or it might be something more serious. We are always conscious as to whether or not
30 they can stay part of the group or whether their interests are better served, and the Commonwealth's interests are better served, for them to be accorded separate legal representation.

COL STREIT: Now, in relation to that distinction where a witness's interest might not align with the Commonwealth's interests, that can arise,
35 I think you said, in relation to – well, that can arise, can it, in relation to an external investigation being undertaken by another agency; for example, such as Comcare?

40 MR LYSEWYCZ: Mm-hm.

COL STREIT: Sorry, you have to indicate "Yes" or "No".

MR LYSEWYCZ: Sorry, yes. Yes.
45

COL STREIT: It can also arise, can it, in relation to the internal Military justice system where, if a member's interest is not aligned to the Commonwealth's interest because what the member is indicating might give rise to some form of administrative sanction process, or give rise to a possible commission of a suspicion of a service offence having been committed, then that also would mean their interests are not aligned with the Commonwealth, would it not?

MR LYSEWYCZ: That's right.

COL STREIT: And just in terms of the process that then occurs. Is the case if it's internal to the Commonwealth and the interests of a witness are not aligned, the internal resolution to the provision of legal support to that member then is a referral to Defence Counsel Services, who can engage a Reserve Legal Officer to assist that member in relation to an internal Military justice matter. Correct?

MR LYSEWYCZ: That's right.

COL STREIT: And if it's an external matter, such as in relation to the Coroner, Comcare or a civilian court case, in those circumstances, is it the case that the member would need to make an application for legal assistance at Commonwealth expense under a particular determination?

MR LYSEWYCZ: Yes. What we draw their attention to is the existence of Appendix E to the Attorney-General's Legal Services Directions. And that provides for a way in which ADF members and APS members who are involved in proceedings, can ask for, or seek financial assistance to assist them with getting legal support. Those directions set out the criteria to be satisfied, together with terms and conditions for seeking indemnities and what a delegate would need to take into account.

COL STREIT: The process might be a little bit fluid – and if it is, please indicate – but at what juncture on a timeline is an assessment made as to whether or not a witness's interest is aligned with the Commonwealth's? So, for example, is it after an initial conference with Commonwealth lawyers? Is it after a draft statement is prepared to a fulsome level, but not yet signed? Or is it in relation to once a signed statement has been prepared?

MR LYSEWYCZ: It'll happen all along that spectrum because it's not actually key to particular interview points. There will be a variety of interviews being conducted and we will be receiving – or my team will be receiving documents from various sources. As one reads into the whole exercise, one starts to form a view. It may be, for example, that on the

5 receipt of information, say, dealing with tactics, doctrine, policy and administrative instructions, one gets an understanding as to what mandatory steps needed to be taken. It may be clear from evidence that's already been given that those steps have not been taken. It's reasonable to come to a conclusion that that person is at risk.

10 So at that point in time, the matter would be – well, our part would stop for the moment and we would say to the person, “You know, it might be in your interests to go off and get separate legal representation; there are some exposures”, and draw the person's attention to the alternatives that are available.

15 If the exposure comes from the Military justice and Military administration side, the natural course is to avail of Defence Counsel Services. If it's an external review, a court case or a Coronial, they can apply for Appendix E. If they don't work, there's Legal Aid under a variety of systems that are administrated by the Attorney-General's Department.

20 COL STREIT: Just in relation to this particular matter, just coming back to the engagement of your Directorate concerning obtaining statements from the 12 aircrew which we've identified earlier, at the time that your Directorate was engaged to essentially contact those witnesses through your staff Legal Officers to get statements, did you have an awareness at
25 that time that the initial position by Defence had been Defence representatives had been conveyed to Queensland Police; that the ADF Military Police would obtain statements of the witnesses?

30 MR LYSEWYCZ: No, I was not aware of it at that stage. (1) I was not there, so I wasn't aware of any communication at the initial meeting. It would've been – it depends on the ground rules that are set at those meetings. If there is a – I call it a gateway for communication. If that's established in the early administration meetings that have occurred, we adhere to it.

35 COL STREIT: All right.

40 MR LYSEWYCZ: Absent some clarity, I wouldn't be surprised for one of my lawyers to say, “Well, look, guys, we'll get the statements together and give them to you”.

45 COL STREIT: There's some evidence before the Inquiry that the Military Police were engaging in a process on behalf of Queensland Police to obtain statements from witnesses. Administrative arrangements had been made for travel for Military Police to travel to Sydney to 6 Avn to

take statements. That ultimately didn't happen because the process was stopped within Defence. Do you have any awareness of what I've just indicated to you?

5 MR LYSEWYCZ: I'm aware of it now, because I saw some of the earlier stages of this Inquiry. At the time, I was not aware, and no one drew that to my attention.

10 COL STREIT: I see. Well, let's just focus now on the engagement of your legal staff ultimately obtaining statements from the 12 aircrew. You set out in some detail in the paragraphs following paragraph 26 what happened. And aspects of that is you having regard and interrogating the various Defence files. Is that correct?

15 MR LYSEWYCZ: Yes.

20 COL STREIT: Now, before we move to that, can I just indicate or ask you about one matter? At paragraph 26 of your statement you say that between 8 to 14 August 2023 D1 to D12 each confirmed in writing to your Directorate that they elected not to provide a voluntary statement to QPS or the Coroner. Is that correct?

MR LYSEWYCZ: That's correct.

25 COL STREIT: And do you know when that was then communicated back to the Coroner, which then generated the Coroner's compulsive form for production of the statements?

30 MR LYSEWYCZ: No, I can't give you that answer with precision.

COL STREIT: I take you to paragraph 28. This essentially seems to be the start point where the requests from the Coroner was – sorry, I'll start again. Is the start point where the Coroner has issued a form 25 Notice, in essence, compelling the production of statements from the 12 aircrew? That's correct?

35

MR LYSEWYCZ: Yes.

40 COL STREIT: The form 25 is Annexure B to your statement. Correct?

MR LYSEWYCZ: Yes.

COL STREIT: And the effect of that form 25 is the Coroner exercising their powers of compulsion to compel the 12 aircrew to provide a witness

statement to the Coroner in relation to the event of 23 July 2023; that is, the crash of Bushman 83.

5 MR LYSEWYCZ: That's the way I read Annexure B, yes.

COL STREIT: Now, ultimately, the Coroner's Direction was conveyed, was it, to the 12 aircrew which then, through a series of – or periods of time ultimately led to the obtaining and signing of a statement by the 12 aircrew. Is that right?

10 MR LYSEWYCZ: That's right. That's detailed in paragraph 30 of my statement.

COL STREIT: You set out in detail – which can I say is of assistance – from paragraph 31 onwards, the various – and over into page 13 of your statement at paragraph 48, the various occasions when conferences and communications occurred between the lawyers in your Directorate and D1 to 12 in terms of the preparation of their witness statements. Correct?

20 MR LYSEWYCZ: Correct.

COL STREIT: Now, in terms of the key points, at paragraph 35 you say between 29 September and 16 October 2023 your Directorate prepared an initial draft of the statements based upon written notes and/or what was said in the initial conferences, and I interpolate with D1 to 12. Is that correct?

MR LYSEWYCZ: Correct.

30 COL STREIT: Just in relation to that, if we can put it in broad terms, the three Legal Officers you allocated providing legal support to four members with pseudonyms, D1 to 12, there was a process of the development of their statement over time from an initial shell draft to the final detailed draft before it was signed. Is that right?

35 MR LYSEWYCZ: That's right.

COL STREIT: And in the context of legal professional privilege as it applies to the individual witness, can you just explain to your knowledge whether the 12 aircrew were ever informed about their engagement with your Legal Officers; they would have the protection of legal professional privilege in terms of what they might say to those Legal Officers?

40 MR LYSEWYCZ: No, I can't answer that. There was no reference that I found in the material that I reviewed to that specifically.

COL STREIT: In circumstances where your lawyers working in your Directorate are admitted practitioners where the Commonwealth is their client – so if you just accept that as a proposition – is it the case that those
5 lawyers can't, by extension, provide legal professional privileged advice to each of the individual aircrew?

MR LYSEWYCZ: Not on a personal level.

10 COL STREIT: What that means is, by extension, is that information given by each individual aircrew to one of the three lawyers you allocated, whatever was said on its face, would not be subject to legal professional privilege because the lawyer they're giving that information to is a
15 Commonwealth lawyer who owes their duty to the Commonwealth?

MR LYSEWYCZ: Yes and no. So far as establishing a relationship of solicitor/client as between the Legal Officer and the witness, I would say there was not one. But at that point in time on the continuum, those
20 officers – the witnesses are part of the Commonwealth. And statements have been prepared to respond to notices that were issued upon them as part of their Commonwealth response. So the obligation still is behoven to the Commonwealth. There is a privilege that attaches so far as those documents are Commonwealth documents.

25 COL STREIT: Let's say, hypothetically in that construct, one of the aircrew said, "No, I'm not going to respond to the Coroner's Direction and I'm not going to provide a notice". That would put them in difficulty with the Coroner, wouldn't it, as opposed to putting the Commonwealth in
30 difficulty with the Coroner for non-compliance with the Notice?

MR LYSEWYCZ: There would be a personal exposure given the way in which the Notice was directed.

35 COL STREIT: Sure. So the - - -

MR LYSEWYCZ: But if I can draw your attention back to the Notice? It's not a Notice directed to each of the 12 independently, it's a Notice to the ADF to produce statements by 12 ADF members. And so the obligation was put upon the organisation to actually get these statements
40 together and deliver them to the Coroner. An alternative way, which would fit more neatly with your hypothesis or your example, would be for 12 Notices to be issued putting the obligation fair and square on the individual.

45 COL STREIT: If a member refuses to provide a statement, the

Commonwealth would then simply, hypothetically, just indicate to the Coroner that, “Here’s 11 statements. The twelfth witness refused to provide a statement”. So the Commonwealth wouldn’t get in trouble, would they?

5

MR LYSEWYCZ: That would be – well, a question whether within the Chain of Command that sort of declining to comply with a lawfully issued Notice should be the subject of an order or a direction from the Chain of Command. So I think that would have to be addressed before you could actually finalise the matter in the way you’ve suggested.

10

COL STREIT: Can I ask you this? In circumstances where the conduit for the provision of assistance in the preparation of a statement is the Commonwealth’s lawyers, and then each individual aircrew pilot did not have their own lawyer to seek assistance from and advice confidentially. Aren’t they at a disadvantage in terms of the information about their legal rights and the protection of their instructions?

15

MR LYSEWYCZ: No, not overall. Again, it depends on the – at the outset, I would draw your attention to the presentation that was made, which is outlined in the overhead slides – sorry, the PowerPoint presentation at Annexure C.

20

COL STREIT: Yes.

25

MR LYSEWYCZ: Now, that’s high level. But it does draw a picture of the landscape that the witnesses are coming into and what options are available for them. It’s not a treatise. It’s paraphrasing. It’s summarising the readability level, if you like, is aimed at a general audience. But it’s sufficient for a person who is about to engage in this process to be aware of potential pitfalls and hopefully be mature enough to say, “Well, I don’t understand it”, or “I don’t like what you are doing; I want somebody to represent me”. Based on my experience, we’ve had occasions in other matters where that’s actually occurred.

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COL STREIT: I was going to ask you some questions a little later about this document, which is Annexure B, but we might do that now in that sense, because you’ve given some evidence about it. So, first of all, the document you referred to is Annexure B. It’s a PowerPoint presentation that was delivered, was it, to the 12 aircrew in relation to informing them about things concerning DFSB, the Coroner, Comcare, IGADF and Freedom of Information matters?

40

MR LYSEWYCZ: Yes, it’s Annexure C. And it’s an overview of what is likely to happen given that the incident occurred.

45

COL STREIT: Yes. And just for clarity, your statement deals with it in paragraph 31. Now, when you go through the slides that are contained in the annexure, I did not detect in the body of the document anywhere that
5 informs the aircrew that the assistance provided by Dispute Resolution and Litigation lawyers, that that assistance is not subject to protection for legal professional privilege to them as an individual?

MR LYSEWYCZ: Yes, that's not in there.
10

COL STREIT: What is in there, though, is by reference to – and if you go to the back – and it follows two slides concerning the conduct of an IGADF Inquiry and some general information. There is there a slide at the end for Defence Counsel Services. It's the second last slide of the
15 PowerPoint presentation. Do you see that?

MR LYSEWYCZ: Yes, I see that.

COL STREIT: And if you can't assist the Inquiry because it's not within
20 your knowledge, please say so. It would help the Inquiry understand why Defence Counsel Services and then engaging its Reserve Legal Officers, most of whom are solicitors and barristers in private practice, engaging those lawyers, 12 of them, to provide independent and impartial legal advice to the 12 aircrew in the preparation of their statement in response
25 to a direction under compulsion from the Coroner. Why that didn't occur, but what occurred was Defence's lawyers engaged in that process?

MR LYSEWYCZ: That's an option. That's a way of doing business. It's not the way we normally do business. What happened in this case is
30 the way we normally operate. And they are subject to exceptions, as I mentioned earlier in my evidence, where it becomes apparent that it's not in the Commonwealth's interests or the individual's interests to continue with the same representation.

COL STREIT: The reason I ask the question is because the PowerPoint slide, on your evidence, given this PowerPoint given to the members, the
35 12 aircrew, says, "Defence Counsel Services" – DCS – "provides trusted legal assistance to all ADF members and former ADF members, independent of the ordinary Chain of Command".

MR LYSEWYCZ: Mm-hm.
40

COL STREIT: And so that conveys to them you'll get a lawyer from DCS who's independent from the ordinary Chain of Command. You'd
45 accept that?

MR LYSEWYCZ: Yes.

COL STREIT: But that's not what occurred, is it?

5

MR LYSEWYCZ: No. And it couldn't occur in this particular case because DCS is established under the *Defence Act*. It has a particular remit focusing on Military law and Military administration. DCS could not provide independent legal representation consistent with its legal mandate for that representation at a Coronial.

10

COL STREIT: And that brings me to the next question, and that is, as a consequence of – or are you aware of this: that as a consequence of section 23 Notices issued by this IGADF Inquiry to witnesses, those witnesses in the ADF were able to access the resources of Defence Counsel Services lawyers in the preparation of their statement? Are you aware of that?

15

MR LYSEWYCZ: I'm not aware of it, but I'm not surprised to hear it.

20

COL STREIT: So is an exception made for IGADF Inquiries to access Defence Counsel Services Reserve lawyers, which is not made for external inquiries undertaken by other statutory agencies, such as Comcare and the Coroner?

25

MR LYSEWYCZ: Well, it's not an exception. It's a matter of what's been mandated under the *Defence Act*. The IGADF Inquiry is, from my point of view, a Military Inquiry and that falls fair square within the Defence Counsel Services' remit. Coronials, Comcare, prosecutions, civil actions elsewhere are outside the scope of the DCS's remit.

30

COL STREIT: Well, can I suggest to you the IGADF Inquiry is not a Military Inquiry? Do you agree or disagree?

35

MR LYSEWYCZ: Because it's within the portfolio, it's within the *Defence Act*, the distinction at the moment is drawn between that's in-house, all the rest are external.

COL STREIT: Sure. So the distinction in legislation is the Inspector-General, would you accept from me, is a statutory appointee? Correct?

40

MR LYSEWYCZ: Yes.

45

COL STREIT: And the *Defence Act* provides the Inspector-General

powers to conduct inquiries in relation to Military justice matters.
Correct?

MR LYSEWYCZ: Yes.

5

COL STREIT: And that includes examination of whether or not a death of a member has arisen out of or in the course of their service. Would you agree?

10 MR LYSEWYCZ: That's quite clear, yes.

COL STREIT: It's the *Defence Act* that sets out the Inspector-General's powers. What I'm trying to assist the Inquiry understand is the distinction between the engagement of provision of legal services from Defence Counsel Services for an IGADF Inquiry which is being conducted in public as against the provision of the same services from Reserve lawyers to Defence members who are responding to a Coronial requirement to produce a statement. When there's cross-over of what the Coroner will look at and what IGADF will look at? If you're not able to assist or answer, please say so?

15
20

MR LYSEWYCZ: Look, I'll concede that's something that needs to be looked at. To my recollection, this is the first time the IGADF has engaged in a Public Inquiry. So far as the distinction is concerned, that has been there for some time. The DDCS's role evolved over a period of time and, comparatively recently, was made the subject of Legislative Authority, if I can call it that.

25

The creation of an independent statutory person called the DCS, it sets out responsibility within the organisation as there's a different line of responsibility and funding for that. There's probably a bit of catching up and tidying up to be – or clarity to be drawn as regards the scope of its work and whether, in fact, IGADF Inquiries, broadly speaking, should be covered exclusively by DCS. But at the moment, the rule of thumb – and I'll just say that because it's not entrenched – but in our discussions with DCS, the rule of thumb is that if it's an external inquiry – and clearly Coronials and Comcare investigations are – the members are directed towards Appendix E, Applications Under the Legal Services Directions. If it's anything contained within Defence, including IGADF Inquiries, they are steered to DDCS.

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COL STREIT: We're nearly finished, Mr Lysewycz, so thank you for your assistance, but can I just bring you to paragraph 41 of your statement. You say there that:

45

Between 30 October and 27 November, Dispute Resolution and Litigation Legal Officers provided each witness with their statements as reviewed by the AGS and Counsel for the witnesses' consideration.

5

MR LYSEWYCZ: Mm-hm.

COL STREIT: What, in broad terms – and I'm not asking you to disclose legal professional privilege information – but in broad terms, what was the role of AGS and Counsel reviewing each witness statement?

10

MR LYSEWYCZ: All I could say is that's second and third tier review.

COL STREIT: So second and third tier. Is the Inquiry to understand that to mean just simply another set of legal eyes over the document before it's signed by the member?

15

MR LYSEWYCZ: I wouldn't put it any higher than that, yes.

COL STREIT: Can I bring you to paragraph 51 of your statement. This is in response to a question, in broad summary, about your understanding as to whether or not Defence provided the ADF witness statements to QPS, and the reason for Defence's decision. Now, the upshot of your evidence at paragraphs 51 to 53 – and let me know if you disagree with this – but the upshot of your evidence is that Defence were at no time required or requested to provide the statements compelled under the Notice from the Coroner to QPS. Is that right?

25

MR LYSEWYCZ: That's right.

30

COL STREIT: Just coming back to some questions I asked you a little while ago about your knowledge of whether or not you knew before your office was engaged to obtain statements from the 12 aircrew about the fact that the service police were initially engaged to obtain statements. Just coming back to that point, do you recall when you became – you weren't aware at the time your office was engaged, but at what time did you become aware that there was – my words – an initial indication that Defence would provide statements through the service police to QPS from the 12 aircrew?

35

40

MR LYSEWYCZ: Sometime last year I was watching some of the public hearing.

COL STREIT: Yes.

45

MR LYSEWYCZ: And evidence was given to that effect. I think there was an understanding on the part of a policeman.

COL STREIT: Yes.

5

MR LYSEWYCZ: It might have been quite early in this Inquiry. That's the first time it was flagged to me. Subsequently, reference was made to it in internal discussions in relation to another matter that we were working on.

10

COL STREIT: Thank you, Mr Lysewycz. They're my questions.

MS McMURDO: Yes, thanks, Mr Lysewycz. Very helpful and clarified quite a things for us. Can I just ask you to look at all this through a slightly different lens, which I'll put to you. So you know here, of course, we have this terrible crash in which four young men were killed, and it happened in Queensland, off Lindeman Island, so the Coroner was involved in the investigation from very early on.

20

That happened on 28 July. The Coroner obviously wants to get statements from witnesses who could assist in the Coroner's investigation and that's the role of Queensland Police. So Queensland Police very early on are trying to get statements from the witnesses that your team eventually got statements from. Because those witnesses returned to New South Wales, the Military Police were cooperating with Queensland Police to take the statements.

25

That was what was happening in early August. So there's a well-known legal adage that justice must not only be done but be seen to be done. The Coronial Inquiry is an independent inquiry where it's possible that findings could be made against the Commonwealth in circumstances of a crash like this. That's a possibility. So bearing that in mind, the public would perhaps not have confidence in a process whereby the statements from the witnesses – and I should also mention here that there is a protocol that the ADF will assist in the Coronial Inquiries.

35

There's a protocol. It is out of date, but that, at its base level, remains in force. So bearing in mind that the Coronial Inquiry could make findings adverse to the Commonwealth, would you agree that it's not the best look for public confidence in the system if the Commonwealth organises the taking of those statements from the witnesses and, in effect, settles them before they're sent off and returned to the Coroner?

40

MR LYSEWYCZ: I'm not sure how to answer that. One could look at

5 that and draw a negative conclusion. On the other hand, depending upon where the incident occurs – and this is actually, unfortunately, one such incident where in view of the nature of the exercise and the people undertaking it, there will need to be a review of whatever is being offered, whether it's to a policeman or to a Coroner or to Comcare, for national security purposes.

MS McMURDO: Yes. That can be done, though.

10 MR LYSEWYCZ: I'm not suggesting the narrative or the construction of the narrative would be controlled, but there would at least have to be a review as to - - -

MS McMURDO: Yes, that's accepted. That's accepted.

15 MR LYSEWYCZ: - - - how you stray. So that's a technical function we would perform, and my area performs that quite regularly. As to the narrative - - -

20 MS McMURDO: On that point, do you do the review yourself or is it sent off to experts in the ADF to do that?

MR LYSEWYCZ: We always have subject-matter experts, and depending upon whether it comes out of HQJOC, or whether it's an international relations issue, the subject-matter experts will be drawn in through the services in a way that's relevant.

MS McMURDO: Yes.

30 MR LYSEWYCZ: We can't claim immunities on things that are not sensitive.

MS McMURDO: Yes, but that can be done external to your office?

35 MR LYSEWYCZ: That is being done almost in tandem with the gathering of the information. Flags go up.

MS McMURDO: Yes, but that's not something that the Commonwealth lawyer has to do, is it? That's something that the ADF can do?

40 MR LYSEWYCZ: No, but that is a role that is assigned to my people at the moment.

MS McMURDO: But you outsource it, don't you - - -

45

MR LYSEWYCZ: So we do that as well.

MS McMURDO: - - - to the relevant subject-matter expert?

5 MR LYSEWYCZ: No, no. Ms McMurdo, it's a team that's put together. It'll be a team of lawyers and subject-matter experts.

AVM HARLAND: But security review is not a legal issue, is it?

10 MR LYSEWYCZ: No. But the translation of the security concern into an outcome which might lead to an application for suppression orders or something like that to protect the information will be.

15 MS McMURDO: And that's exactly where you are then representing the Commonwealth in the statement-taking process.

MR LYSEWYCZ: That's right.

MS McMURDO: Not the witness?

20 MR LYSEWYCZ: That's right.

MS McMURDO: Yes. So that really highlights the issue that I'm concerned about.

25 MR LYSEWYCZ: No, I'll put that aside. So I've raised that. I hope I haven't confused you, but that is a function that you should be aware of.

30 MS McMURDO: No, you haven't confused me. Yes, I'm well aware of it.

MR LYSEWYCZ: Coming back to the original one, yes, a perception could be that an attempt to control the creation of the narratives is an attempt to steer the conversation in a particular way, or a statement, or the Inquiry in a particular way. Personally, I haven't seen that. If anything, we benefit from a wholesome review of the causes of an incident so that we can see whether there were systemic or technical faults and improve the system.

40 And that's one thing in my pretty long experience within Defence I've found that most seniors are more concerned about. Was there a failing? Is it a one off? Is it systemic? Did we fail in training? Is there a technical deficiency? How do we fix it?

45 MS McMURDO: All right then. So now let me look at what happened

5 here through a difference lens. Again, there's a well-known adage that justice delayed is justice denied, and in your experience as a lawyer of course you would understand the importance of taking statements from witnesses as soon as conveniently close in time to the incident happening. So here we have the incident happening on 28 July and the statements eventually are provided to the Coroner on 30 November.

10 The public would not think that was a terrifically efficient system. Certainly, a suboptimal system in terms of obtaining timely statements for an investigation into the cause of the fatal crash.

MR LYSEWYCZ: I agree.

15 MS McMURDO: Okay, thank you.

MR LYSEWYCZ: I'd qualify that. Having had experience in the evolution of matters, it's not unusual, by the time a matter normally comes to us, to find three or four versions of a statement from an individual. One taken contemporaneously or shortly after an event, which often is quite confusing because the person is in a bit of a state; and then as subsequent interviews occur. There's an improvement in the coherence of the statement.

25 I wouldn't say changing – sorry, it's not been manufactured, but as a person has some distance from the actual incident and recovers themselves, they're able to actually express themselves more clearly. Inconsistencies arise. People's recollections, whether at the time or later on, can be influenced by various things. That's the nature of evidence-gathering. And then ultimately a hearing to try to work out what is the truth.

35 I'm very familiar with that. And I'm more familiar with that than having a process which delays for two or three months so that we can get one coherent – or one statement which is unlikely to be adequate into the future.

MS McMURDO: Yes, all right then. Are there applications to cross-examine?

40 AVM HARLAND: I just have one question before we do.

MS McMURDO: Yes, of course.

AVM HARLAND: Just a question about the relationship between the

5 Coroner and the witnesses in Defence. Like, in a normal situation where there's an industrial accident and the Coroner is involved, would they normally deal through the corporation to be able to get witness statements, or would the relationship be between the witness and the Coroner directly?

10 MR LYSEWYCZ: I can't answer that, Air Vice-Marshal. I have virtually no experience in work health and safety matters and the corporate sector.

AVM HARLAND: Okay.

15 MS McMURDO: Yes, any applications to cross-examine? Yes.

15 <CROSS-EXAMINATION BY MS MUSGROVE

20 MS MUSGROVE: Sir, my name is Musgrove, and I appear for the Commonwealth. What ethical obligations do the lawyers under your supervision have as admitted lawyers?

25 MR LYSEWYCZ: Counsel, that's a very broad – well, potentially broad question. They have professional responsibilities. They're all admitted. They all have a practising certificate as a - - -

30 MS McMURDO: Do you mean as relevant to the taking of the statements in this case? Is that what you mean, just to limit it a little bit? Otherwise, it's a very, very broad question, as Mr Lysewycz has identified.

35 MS MUSGROVE: And he started to answer it. So I think at this point I'd like to leave it as broadly as that. And then if I need to ask a refining question, if I may, I'll do so. But are you able to - - -

40 MS McMURDO: But it could take a while. It might take a while to answer what his staff's ethical obligations are. Anyway, all right. Sorry, please answer the question if you're able – as best you're able Mr Lysewycz.

45 MR LYSEWYCZ: Okay. I'll see if I can sort of bullet point it. We have professional obligations which arise by virtue of the profession in which we are members. There's the duty to the Court and administration of justice. There's the duties of the Commonwealth as employer but also as client. There's compliance with directions issued by the Attorney-General

and now the emerging Commonwealth Lawyers Network which is starting to issue directions to us.

5 Those of us who are public servants, we are subject to the *Public Service Act*. They are not so much ethical requirements as regulatory or statutory requirements, and some of it is inherent in the profession, so we've got to discharge those obligations.

10 So far as ethics are concerned, my understanding of ethics is that this is not a matter that is at the level of law. It is something that is right to be done. It's the right thing, and that's often debateable.

15 We have ethics considerations arising all the time. A rule might not cover the situation clearly. A lawyer, particularly a young lawyer, might need some guidance as to what is the right thing to do. Within Defence Legal, we do have a committee which provides ethics advice on a confidential basis, and that's available to various people.

20 So far as getting guidance as to what the – I'll say "right thing to do", it's a matter of discussion with your supervisor and getting some counsel. And it's almost a truism that you're not going to get consistency, because we all have different value sets and experience. And if you ask the wrong person the right question, you might not get a good answer; or if you match it up, you might get a very good answer.

25 MS MUSGROVE: In terms of - - -

30 MR LYSEWYCZ: I'm sorry, that's going to go off into a vague debate about other things, and I don't know that that's going to be very helpful.

MS MUSGROVE: Thank you. In terms of taking a witness statement, what obligations do your staff have in terms of the truth and fullness contained in that witness statement?

35 MR LYSEWYCZ: Well, one is – and you can see in my statement and the annexures that this was done – an encouragement to be fulsome, tell the truth, check to ensure it's your own statement and it's accurate. And that's a warning and an encouragement that was given to the witnesses on a regular basis. The second obligation is one to draw to their attention inconsistencies in their statement or perhaps with supporting wording –
40 sorry, supporting documentation where their statement doesn't align with what the record states, and seek an explanation and have that dealt with in the statement upfront.

45 To give you a simple example, the witness might say that he was in a

particular place at a point in time. The record indicates that he was not there. I would say that behoves the instructing solicitor – sorry, the lawyer who has taken the statement, or assisting with it, to draw that to his attention and not perpetuate the error.

5

MS MUSGROVE: And is it made clear in the process of drafting and then finalising witness statements whose evidence it must be that's contained within that statement?

10

MR LYSEWYCZ: I thought it had been made clear and that that's dealt within my statement and the annexures. The obligation is always put back to the witness. There was an encouragement and basically a behaving almost, "Read your statement. Read it again. Please make sure it is accurate because it is your statement".

15

MS MUSGROVE: Thank you. I have nothing further.

MS McMURDO: Any re-examination?

20

<RE-EXAMINATION BY COL STREIT

COL STREIT: Just very briefly. It's paragraph 42 of your statement you deal with that matter. Can I ask you this? What you've just indicated in relation to the obtaining statements from aircrew in terms of the things that may or may not have been said to them individually, even if those things occurred, it's occurred in circumstances where the lawyer conveying those matters is not giving legal advice to the individual aircrew person, are they?

30

MR LYSEWYCZ: That's correct.

COL STREIT: So whatever the aircrew individual says to that lawyer confidentially in circumstances where it might indicate a divergence from the Commonwealth's interests, the obligation is on that lawyer to convey that information to the Commonwealth because it's evidence of a divergence from the Commonwealth's interests. Do you accept that?

35

MR LYSEWYCZ: It could be, yes.

COL STREIT: Nothing further.

MS McMURDO: Thank you very much, Mr Lysewycz, for your

40

5 assistance to the Inquiry, it's greatly appreciated. I think you should be aware, even as a very experienced lawyer, that giving evidence to an Inquiry into something of this nature can be difficult and confronting and there is assistance available. And so if you need it, please don't hesitate to avail yourself of it. Thank you very much.

MR LYSEWYCZ: Thank you, Ms McMurdo.

10 MS McMURDO: Thank you.

<WITNESS WITHDREW

15 MS McMURDO: We'll now - - -

MAJ CHAPMAN: Chair, if we can just return to MAJ McCall.

20 MS McMURDO: Yes. We now resume with MAJ McCall, thank you.

<MAJ GLENN McCALL, on former affirmation

25 **<EXAMINATION-IN-CHIEF BY MAJ CHAPMAN, continuing**

30 MAJ CHAPMAN: Thank you, MAJ McCall. Sir, just before the luncheon adjournment – well, first of all, I've got two matters to raise with you to conclude your evidence-in-chief. So just before the luncheon adjournment, do you recall giving some evidence – and I'll just summarise it so to refresh your memory about it. But it was to the effect that the STANMAN, or known as the Standardisation Manual, essentially had its limits in the sense that it did not purport to deal with all flying scenarios or possible flying scenarios?

35 MAJ McCALL: Correct. It deals with standard sets of conditions or nominal conditions.

40 MAJ CHAPMAN: Yes.

MAJ McCALL: And you'll find that in Chapter 2.

45 MAJ CHAPMAN: Thank you. There was a reference to Chapter 2 then. And within the flying conditions that I think I outlined to you by way of

example, and it was formation at night and in DVE conditions, you gave the opinion, if I understood your evidence correctly, that an aircraft or pilots operating or flying in those conditions were possibly flying outside or beyond the scope of the STANMAN by reference to Chapter 2?

5

MAJ McCALL: Yes, because Chapter 2, Standards Nominal Conditions, set the nominal conditions and those nominal conditions are less than what you were describing. And if a formation finds themselves in that set of conditions, then they're responsible and their command elements are responsible to assess the risk or assess the hazards, and deal with the hazards and the risks. And if you're flying below 500 foot, you're in violation of the SI for that set of conditions. So that's one part.

10
15 The other part is, you're outside of the limits of Standards Manuals and you've got to do, as I said, hazard and risk assessment. And if you're continually interfering with the collective upper modes to keep you away from the centre of the earth, then you've either got to identify that as a risk or get above 500 feet.

20 MAJ CHAPMAN: Understood. So just to recap on that, if you're operating, as I say, outside of the scope of the STANMAN as we've now had an exchange about, you're saying it's a matter for the aircrew and the Chain of Command to – well, it was a matter for the Chain of Command to impose activity controls to manage that risk.

25

MAJ McCALL: Absolutely.

30 MAJ CHAPMAN: And an example, I think that in an exchange you had with the Air Vice-Marshal, was activation or the use of automation to deal with it by way of a control?

MAJ McCALL: Yes.

35 MAJ CHAPMAN: And would you agree that other types of controls that could have been applied were, for example, control of not flying below two millilux, or not flying in that activity without a visual horizon? Are they examples, in the same way of the automation, that it would be controls to manage risk?

40 MAJ McCALL: Yes. And I think I added formation lights, skippy lights, which were another set of formation lights, because we found the original formation lights were less than optimal, but we had those fixed. But if they were flying around lights out, that's another control that would have assisted in identifying what lead and what the other aircraft were doing.

45

MAJ CHAPMAN: So accepting that those two examples are controls that could have been included, were you aware that the conduct of the OPEVAL was subject to those two particular controls, among others? So
5 there was a requirement not to fly below two millilux or in the absence of a visual horizon?

MAJ McCALL: Again, when you're flying night unaided - - -

10 MAJ CHAPMAN: No, my question was, were you aware that those two conditions were part of the OPEVAL?

MAJ McCALL: I can't remember.

15 MAJ CHAPMAN: Would it surprise you or be of any concern to you, sir, from a Standards point of view, that with those controls in the OPEVAL, that they did not make their way as conditions on service release of HMSD 5.10?

20 MAJ McCALL: No, it doesn't really worry me because I thunder around with no image intensifiers and I can't see outside the aircraft, and I just put additional controls in. So if it's dark, then adjust your controls.

25 AVM HARLAND: So what you're saying there is if you can't see a horizon through the TopOwl system with its image intensifiers, you should transition to instruments?

MAJ McCALL: No, you could probably transition FLIR for a while because FLIR brings up into your HMSD.

30 AVM HARLAND: Yes.

MAJ McCALL: And if you can see a horizon for that, you might be able to continue your mission. But again, all these missions in Australia
35 they're just training missions. And I might just add, of my 40 years of flying Military rotary wing aircraft, the MRH is the best, the most fully equipped and the safest Military rotary wing aircraft I ever flew. So, no, you know, two millilux, five millilux, how do I measure that? I don't. I take off, I have a look at the weather reports. The weather reports say,
40 "You're going to have a full moon tonight". It should be good. I go out, there's cloud, there's shadow. Adjust, modify, adjust my height, adjust my profile, consider what I'm doing. And if I can't get done what I need done, go home.

45 MS McMURDO: Because as you say, it's training. It's a training

session.

5 MAJ McCALL: Yes. Well, in Australia, what else is there? You know, and this is things that I heard quite often was, “Oh, yeah, but in operations”. What operations are there in Australia that are not training? Now, you’re training all the time. And in accordance with the *WHS Act*, as a Commander of that training event, you’ve got to eliminate the risks. You’re legally bound to comply with that. And when you can’t eliminate the risks, you minimise the risks and the standard - - -

10 MS McMURDO: Well, I guess you can’t really eliminate the risks of life, can you? There are always some risks.

15 MAJ McCALL: Yes. But, you know, that’s what the WHS says, and to do that the Australian taxpayer went out and bought a magnificent helicopter for us. Yes, I understand that there was maintenance issues, but the maintainers did a really fabulous job to give me an aircraft that I felt the safest I’ve ever felt in an ADF rotary wing aircraft. It was fantastic.

20 MAJ CHAPMAN: The last point on this topic. Isn’t minimising the risks conditioning either the release of service or putting other controls on the use of a particular system in conditions that have not been tested?

25 MAJ McCALL: Look, I think the two millilux – look, I don’t know how the test pilots decided to pick that number. You know, suck your thumb and stick your thumb in the air and, “All right, let’s pick two”. It really comes down to a useable cue environment. And when you don’t have a useable cue environment, generally we would either slow up and descend to try and get that useable cue environment, or, if you can’t slow up and descend, get away from the surface of the earth, enact your recovery plan. And that’s also written in the SIs.

35 But, as the certified Aircraft Captain, I’ve got to make that decision. And one thing I won’t do is slow down and descend if I’m over a body of water because I know I’ll never get the useable cue environment over the water.

40 And in my statement I’ve written down there it doesn’t matter whether you’re wearing HMSD or ANVIS-9 or ANVIS-5 – which I started off on, which were pretty crap – those visual illusions, they’re going to get anyone at any time. And it really doesn’t matter how much experience you’ve got, you can be assaulted by one of those visual illusions just because you moved your head wrong.

5 But you've got to be able to say, "Ah, the HMSD is not going to help me here. I need to go to my primary pilotage aids, and I need to have automation help me out here". As I'd like to say, the MRH was a fantastic machine, but you didn't just rely on one system – that is, the HMSD – you relied on the whole system.

10 MAJ CHAPMAN: And just finally, sir, the acronym INAM, are you familiar with that, what that means? Is it interim amendment, would that be - - -

MAJ McCALL: Yes, interim amendment.

15 MAJ CHAPMAN: Interim amendment. And the service release from the point of view of the CCB was made subject to an interim amendment being confirmed. And my question – which it eventually was, which is why delegated service release occurred. But you referred earlier to the changes to the Standardisation Manual. That's not a reference to an interim amendment, is it?

20 MAJ McCALL: No. No, I'm not really sure what you're talking about there. But you're talking about the time period between the Standards Manual being amended?

25 MAJ CHAPMAN: Correct.

MAJ McCALL: And operations on 5.10 starting?

30 MAJ CHAPMAN: My question is whether the changes to the Standardisation Manual could have been described as an interim amendment anyway?

35 MAJ McCALL: Well, as I said, one of the elements of that original warning out of the OPEVAL – because we were looking at other elements to make more information available to the aircrew to fly this aircraft safer – was the performance class. And in that we found that the go-around mode – well, it wasn't so much that we found; we sort of knew elements of it, that we needed to modify that one concept of the warning. And that's why there's so many different sort of versions of it, because it needed to be adjusted.

40 MAJ CHAPMAN: I'll just put it perhaps slightly differently. I have a document which indicates – and I'm happy to show you it. If the witness could be shown this document referred to as an EAF. Do you know what an EAF is?

45

MAJ McCALL: No, I'll have a look.

MAJ CHAPMAN: Can you go to page 26. This has been served. It's an engineering – best I can describe it is as an engineering document, but
5 COL Marshall will be addressing - - -

MAJ McCALL: Yes.

MAJ CHAPMAN: Can you go to page 26 of that document? Bottom
10 left-hand corner is the page numbers.

MS McMURDO: Sorry, what page was that?

MAJ CHAPMAN: 26, Chair.
15

MS McMURDO: 26. Thank you.

MAJ CHAPMAN: Are you there, sir? Do you see at the top there,
20 "STANMAN"?

MAJ McCALL: Yes.

MAJ CHAPMAN: Reference to the Standardisation Manual.

MAJ McCALL: Yes.
25

MAJ CHAPMAN: You can take it from me that from the earlier
two pages, essentially this is a – if you go to page 24? Perhaps I should
30 have started there, 24. Back a couple, sir. And do you see there it says,
"Service Release Evaluation Report", and it's 21 April 2020? So in the
timeline we've got the Configuration Control Board, then we have Service
Release Evaluation Report. And it goes through the history, you will see,
of CCBs, of the FORCOMD Standards Operational Evaluation, all of the
steps that you'd expect to see in the narrative.

MAJ McCALL: Yes.
35

MAJ CHAPMAN: And then we get to page 26. And do you see up the
top of it, "FORCOMD MRH STDO", which I gather is your office or
40 Standards Office. Is that correct?

MAJ McCALL: That was Standards Officer.

MAJ CHAPMAN: Standards Officer.
45

MAJ McCALL: Yes.

MAJ CHAPMAN: “Advised that AAP” – and that’s a reference to the Australian Air Publication Standardisation Manual. Correct?

5

MAJ McCALL: Yes.

MAJ CHAPMAN:

10 *Was being updated via INAM to reflect changes required in relation to HMSD 5.10.*

And then it says:

15 *The DPN –*

Defence library version of that same document –

shows INAM 56 now incorporated.

20

And I just wanted to take you to that reference because that would be suggesting that as at 21 April 2020 the change – or, on one view of it, the change to the Standardisation Manual has been incorporated. I was just hoping you could explain that?

25

MAJ McCALL: Well, yes, I can’t remember putting INAM 56 out. But it would probably be – better go and find INAM 56. But I can’t remember putting that out.

30

MAJ CHAPMAN: Yes.

MAJ McCALL: But if I did, then it may show that the warning was put out. But, as I said, the warning, as we subsequently found, was stripped and developed into other elements of the Standards Manual. So I can’t remember INAM 56.

35

MAJ CHAPMAN: Thank you, sir. Those are my questions, Chair.

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

40

LCDR GRACIE: Yes, ma’am.

MS McMURDO: Yes, how many applications to cross-examine? Quite a few. Yes.

45

LCDR GRACIE: I'll bear that in mind.

COL STREIT: Just for the purposes of the next witness, could I invite, through you, Chair, to ask for indications of timing?

5 MS McMURDO: Yes, that's a good idea. Yes, some indications of timing, please?

LCDR GRACIE: I don't have any questions, ma'am.

10 MS McMURDO: You don't have any questions?

LCDR GRACIE: Well, of this witness.

15 MS McMURDO: Of this witness.

LCDR GRACIE: I thought you meant – he said the next witness. Sorry.

MS McMURDO: No, no.

20 LCDR GRACIE: Well, 10 to 15 minutes.

MS McMURDO: 10 to 15.

25 LCDR HAY: 10 to 15 minutes, ma'am.

MS McMURDO: 10 to 15 minutes.

LCDR TYSON: 15 to 20 - - -

30 MS McMURDO: And the Air Vice-Marshal has some questions too for a few minutes. So will we get to the next witness today? Unless he was going to be very short.

35 MAJ CHAPMAN: Yes, this would take us to approximately 4.30. I understand that the tech people are here until 5, 5.15.

MS McMURDO: 5.15? Probably not.

40 MAJ CHAPMAN: No. I'll ask the Inquiry solicitor to speak to senior Counsel Assisting and we can make some arrangements.

MS McMURDO: Okay, thank you.

45 MAJ CHAPMAN: Thank you.

MS McMURDO: Yes, LCDR Gracie.

5 <CROSS-EXAMINATION BY LCDR GRACIE

10 LCDR GRACIE: Sir, my name is LCDR Gracie. I represent the interests of CAPT Danniell Lyon, who was in Bushman 83. Can I just ask something that's fairly basic that I might have missed? But do the extracts, at least that you've provided from the Standardisation Manual, deal specifically with formation flying?

15 MAJ McCALL: No. There is a chapter that deals with formation flying and there's also a Standing Instruction in the Forces Command orders that deals with formation flying. And you'll also find that each Regiment has their own SOPs or Standard Operating Procedures for formation flying.

20 LCDR GRACIE: And I'll paraphrase this, so if I put it incorrectly please do correct it. But where you're saying, in effect, that if you're below 500 as a minimum – sorry, if you were below 500 feet and you're required to have that automated collective function, then you shouldn't be in formation?

25 MAJ McCALL: I would suggest that is correct because you're interfering with the automated system. But it doesn't stop the Command deciding to do that. It's just that they need to identify what the additional hazards are and then create controls for those additional hazards and make sure that they're not increasing the risk of non-complying with an order. Because that's what it is, it's an order.

30 LCDR GRACIE: For example, by requiring - - -

35 MAJ McCALL: A collective mode to be engaged, yes.

40 LCDR GRACIE: What I'm trying to ascertain, though, is those additional conditions that you say are perhaps outside the ambit of the Standardisation Manual, are they then reflected in the Standard Operating Procedures for each particular Aviation Regiment, or particular flight profile or particular SO ops?

45 MAJ McCALL: Well, it comes down to what the training mission task is. Because that's what it was, and it was a training mission task and you've got – you don't always have a fully trained crew. You've got junior pilots, you've got junior crewmen in that mission package. And

that mission package was on an exercise, so I would consider that there would be an exercise risk assessment.

5 Also, out of the Tactics Manuals, there is a requirement to have a formation lead and that's usually number 1. But you've also got a Formation Mission Commander and they're required, by doctrine, to have their own risk assessments associated with that mission task. And if you're going to be thundering four helicopters out overwater at night in degraded vision environments, then you need to be able to say, "Well, 10 how are we going to do this? How are we protecting" – yes, as I said, ma'am, you can't eliminate all risks. And that's the case in Aviation. But where you can, you identify where you can. If you can't, then you identify how to minimise the risk.

15 But if they went out there with lights out – and I did see the factual representation of the planned route – that mission failed as soon as they took off. They had to change their route. That's a problem straightaway.

20 Why did they change their route? I would probably suggest that it was weather, that they couldn't see, or they couldn't cross terrain at the heights that they needed to. I don't know. But that's what the formation lead and Command needed to do. They needed to establish the risk and the hazard for that mission, and for the whole training exercise.

25 LCDR GRACIE: I think you're there talking about the fact that they were to be flying over the saddle out of Proserpine, but instead they went around the - - -

30 MAJ McCALL: Yes, I just thought there was a plan for a straight line.

LCDR GRACIE: Yes.

35 MAJ McCALL: And then the route that they flew, when they went back over, changed their mission. There's something they've changed the mission for.

LCDR GRACIE: And are you aware that there was a further change? Instead of turning on a hard right, there was a hard left due to some rain?

40 MAJ McCALL: No. Yes, look, as soon as you've got rain, you've now got false horizons. And that doesn't matter whether you're on ANVIS or TopOwl or night VFR, you start getting false horizons that starts changing your perception of what you're looking at.

45 LCDR GRACIE: And with those change dynamics, do you say that

adopting a more conservative approach in a training profile – because you’ve got co-pilots who are the ones being trained and, as the flying pilots, that you would operate a more conservative risk assessment in terms of whether you continue with the formation flying or not?

5

MAJ McCALL: I was the MRH Standards Officer for the MRH fleet and I was also the Flight Instructor Standardisation Officer. And every time I talked to the QFIs, or the Qualified Flying Instructors, that I dealt with most of the time, is you’re there to teach and you’re there to make sure that they come home. And you’re there to show how to operate this machine, but it’s not going to be a quick process. It takes years to master a complex machine. So, yes, it’s a training exercise and you’ve got to be, you know, slow and steady, in effect. And you’ve got to have your outs. And you’ve got to have more than one out.

15

LCDR GRACIE: Let me ask this as just an assumption. If one of the co-pilots in that formation had expressed the view that he was exceedingly uncomfortable in the environment in which he was flying, would that be an occasion on which you would expect the Captain to take over, if he was aware of that level of discomfort due to the low cue environment?

20

MAJ McCALL: Yes. Well, yes, he or she may. But it gets down to it’s how do you extend an individual’s comfort zone? Well, you’ve got to let them practice in their comfort zone, but you don’t take them to a point where they break. You don’t take them to the point where they go, “Hey, this is really bad”. You’ve got to listen to – you know, inside a cockpit you’ve got to talk and you’ve got to communicate. And you’ve got to be aware of how they’re flying, what they’re doing.

25

If I could – and I’m not sure if I’m going to blow out the time here, but – and this is how I wrote the Standards Manual. In the cockpit with two pilots, you’ve got five entities. And I’m not sure if that’s going to blow your minds a little bit, but this is how I ended up dealing with, “How do I write a Standards Manual?” You’ve got an Aircraft Captain, you’ve got a co-pilot, you’ve got a flying pilot, and you’ve got a non-flying pilot, and you’ve got an autopilot.

30

35

The flying pilot and the non-flying pilot bounces between who is flying or not flying at the time. So the Aircraft Captain can be the flying pilot and that changes the dynamics of communication inside the cockpit, because the Aircraft Captain doesn’t need to ask the co-pilot, “Hey, I think I’m going to do this. What do you think, co-pilot?” Well, the co-pilot is usually the junior pilot. The Aircraft Captain just says, “I’m going to do something”, or does something, and the co-pilot’s duty is to support the Aircraft Captain in doing that.

40

45

5 So things can happen fairly quick when an Aircraft Captain is the flying pilot because they're generally thinking further ahead, they're more aware of their mission profiles, they're more aware of their capabilities, and they're more aware of what they're doing in the 3D space. So they may do something quicker than the co-pilot.

10 If you've got the co-pilot who is the aircraft flying pilot, then the co-pilot, before they do something, will generally say, "Sir, I think I need to do this". There's a time period, then that will happen. And the Aircraft Captain will say, "Ah, are you uncomfortable?" Then, "Yes, I will try and talk you through or direct you through to see how far we can take you. If you don't want to do it, yes, I'll take the aircraft off you and then we'll continue".

15 Or, "Yes, I think you should enact inadvertent entry into our escape route", which is "Let's get away from the earth". So there is a bit more talk. So Aircraft Captain, flying pilot, things happen dynamically and can happen dynamically, and it's allowed to. A co-pilot flying pilot will generally defer to the Aircraft Captain, "Hey, this is causing me problems". There's a time period, so that takes time, especially when you're at 100 knots, you're doing three kilometres a minute.

20 And then you've got the autopilot. So the autopilot is another pilot, and that can be managed by the Aircraft Captain or the co-pilot. And that actually adds more time because the autopilot is a slower acting pilot. It's slower acting so that it doesn't startle the crew. You don't want the autopilot doing something wild when you didn't expect it to do something. You've got to dial information into the co-pilot and then the co-pilot or the autopilot will then gently adjust the flight profile for what you wanted. But you have to sort of think even further ahead of the aircraft so that the autopilot can do those things for you. In formation, autopilot becomes a bit difficult to deal with.

35 LCDR GRACIE: Because if you've got your RADALT on, you're fighting that input from the aircraft, are you?

40 MAJ McCALL: It's not so much you're fighting it; you're disengaging it. That is, you're interfering with the automatic functions of that autopilot function. So you're pulling a trigger and you're resetting datum and you're having to adjust things. And then as soon as you let it go, it captures that datum. But that datum may be above or below the formation aircraft in front of you, and then you've got to reset the datum again. And, invariably, more than likely what happens is you go, "Bugger it, turn it off".

AVM HARLAND: And can you confirm that when you've pulled that trigger in, as you called it, that you've effectively disengaged the AFCS mode?

5

MAJ McCALL: Yes. Well, you've put it in a standby mode.

AVM HARLAND: Paused it.

10

MAJ McCALL: It'll follow – it's got a bug and, as one of the French pilots said to me, you're no longer a pilot in the MRH-90, you're a bug driver. So you drive the bugs where you want it and then you let it go and then it will capture that. But, you know, in formation, you're constantly changing power when you're not number 1.

15

AVM HARLAND: So listening to you discuss that – my apologies. And listening to you discuss that, it sounds like the STANMAN Direction to engage the AFCS altitude mode when you are below 500 feet overwater - - -

20

MAJ McCALL: No, that's not the Standards Manual that tells you to do that, that was the Standing Instructions signed by the two star.

25

AVM HARLAND: Standing Instruction, my apologies. So that's the Standing Instruction which is - - -

MAJ McCALL: And that's an order.

30

AVM HARLAND: An order.

MAJ McCALL: Yes.

35

AVM HARLAND: That's designed for that particular scenario. So then when you overlay formation on it - - -

MAJ McCALL: Yes.

40

AVM HARLAND: So it sounds to me like you shouldn't be doing formation at night overwater below 500 feet.

MAJ McCALL: Unless you've done a risk assessment to adjust and modify the procedures to comply with that order below 500 foot. And if you haven't, then do your formation at 500 foot and above.

AVM HARLAND: I think I asked you before, have you seen such a risk assessment?

MAJ McCALL: No.

5

AVM HARLAND: Was it raised by anybody – crews, units – that operated the MRH-90, to your knowledge?

MAJ McCALL: Sir, I wasn't there. I don't know. But, to me, if you've got something below 500 foot and that's the order and there is no risk assessment, to me, as a Standards Officer – and if I was in the US Army and I did it – I did do audits in units – we'd close that unit down; a violation.

AVM HARLAND: Just a follow-on question; it's related to this. During the OPEVAL, we're led to believe, although somewhat inconclusively, that night formation was conducted during that OPEVAL?

MAJ McCALL: No. Well, no, I can't remember it. Look, the HMSD, as I said to you before, this machine is the safest machine that I've ever flown, and the modifications that were done to the HMSD, they weren't that startling. I don't know what started the concept of why we needed another version of the symbology.

MS McMURDO: Well, the evidence we've heard is that it was distance to go functions required. It was considered as essential.

MAJ McCALL: Yes, well, you know, sometimes it's one of those things of, "We had it on that machine, we want it on this machine". And we go, "Well, it gives you that information, but it gives you that information somewhere else". And, yes, your co-pilot can give you that, but people like to see distance information in the HUD. And I think - - -

MS McMURDO: Well, that's what we've been told was the reason for it.

MAJ McCALL: Yes.

MS McMURDO: The driving reason behind the modification.

40

MAJ McCALL: Look, I didn't need to use it that much in the profiles, but I was just training and standardisation, so I didn't operate the machine in the operating units. It was useful but, you know, it wasn't earth-shattering.

45

MS McMURDO: Well, we've heard two different views on that. We've heard different views on the success of the MRH-90 helicopter, too.

MAJ McCALL: Yes.

5

MS McMURDO: So views differ on these things.

MAJ McCALL: Certainly. But, you know, as I said, I've flown Military helicopters for 40 years and this machine was fantastic. As the Chief Pilot of the Flying Doctors at some time described a particular aircraft type as "not being good at anything, but it could do everything", and that was the MRH. It was capable of doing everything, but it had limitations on just about everything that it had to do. And that made it a good multi-role general service Military helicopter. All machines need to be modified somehow to do whatever they need to do.

10
15

LCDR GRACIE: Are you going to serial 6 of the OPEVAL, sir?

AVM HARLAND: No, I'm complete, thank you.

20

LCDR GRACIE: Are you sure?

AVM HARLAND: Yes.

25

LCDR GRACIE: Thank you.

Just in terms of the distance to run feature, your comment in relation to the OPEVAL and the survey that you did, it said, "If the distance to run info was not present, would that affect your ability to conduct the SO as per STANMAN?" And your answer to that question is that, "It makes the approach more reliant on the co-pilot readout". You mean without the distance to go?

30

MAJ McCALL: Yes. Well, the flying pilot needs someone else to tell them. But by that stage if you're doing an approach, it's pretty much a visual approach, and you're just looking at energy management. It's a bit like being in your car, being able to stop at the red light, you know how hard you need to push before you start smoking the wheels to pull up. So, you know, that's just a quick stop in the helicopter.

35
40

You're looking at, "How big am I? How heavy am I? Where do I need to start this? Where do I need to start the deceleration?" And if you're light, you sort of can wait a little bit longer. If you're heavy, you sort of need to start a little bit earlier.

45

5 LCDR GRACIE: It's probably not a good analogy given the number of demerits I have involving red lights. But that aside, if I then go to serial 8, which was, "If any, what do you think are the good and bad features of the new 5.10 symbology?" You said, interestingly, I think – and I'll ask you to explain it:

The symbology set needs to be reviewed over an extended period before Australia makes reasoned SPCR for changes.

10 What's the SPCR?

MAJ McCALL: What is SPCR?

15 LCDR GRACIE: Yes.

MAJ McCALL: Can you just say that again?

LCDR GRACIE: Yes.

20 *The symbology set needs to be reviewed over an extended period before Australia makes reasoned SPCR for changes.*

Special – it doesn't matter, but - - -

25 MAJ McCALL: Yes. No, I'm not really sure but, you know, it - - -

LCDR GRACIE: Let's talk about the early part of what you say there. Don't worry about SPCR.

30 MAJ McCALL: Yes.

LCDR GRACIE:

35 *The symbology set needs to be reviewed over an extended period before we make reason for changes.*

What's your tentativeness in the way you've expressed that in terms of the symbology - - -

40 MAJ McCALL: As I understand the original symbology and one of the things that I found when I was transitioning Black Hawk pilots onto MRH, one of the complaints they had about the symbology – because it was focused at infinity, and I put my hands out in front of me to say, "You've had all the numbers and things out in front of you". They moved
45 everything out of the way of the central vision, so it looked like it was

widely spread apart. But it really just came down to – it gave you a clear central vision area to see the world.

5 And when you were doing different manoeuvres, you just needed to be able to focus your attention on that particular performance thing that you wanted to look at which, if it was the air speed, all you had to do was just slightly, you know, adjust your eyes slightly left, quickly flick – “Yes, that’s the number” – and then look back to the centre.

10 One of the things that the Black Hawk pilots – because they were all ANVIS-6 monacle HUD – that is, they had a monacle stuck on the front of one of their goggles – that was a very tight set of numbers and their perception was – and I exaggerate – “I have to look around for all this information”. “No, it’s right in front of you. All you have to do is just
15 adjust your eyes a little bit”.

And so one of the things that 5.10 did was bring the information in a little bit closer to the central field of view.

20 LCDR GRACIE: Do you think someone, though, with your 40 years or so experience is going to be dealing differently with the off-axis attitude ambiguity or problems that AATES identified in relation to the 5.10 upgrade?

25 MAJ McCALL: I would have to give the Queensland “yeah/no”.

LCDR GRACIE: Yes. Do the yes and then the no.

30 MAJ McCALL: Okay. Yes. What is an MRH? Or what is a Military utility helicopter? We’re just Uber. Someone calls us up, we go and pick them up. And I was an Infantry soldier also. And I was attached to 9 Squadron as the Infantry Platoon that we got flown around. The last thing you want to do is have me sitting in the back of your aircraft
35 throwing up because I’m going to leave pizza everywhere, and so is all my soldiers. And we did. And that was 9 Squadron racing us around on the top of the trees.

40 And in the end, they said, “You guys keep throwing up”. And we said, “Yeah, because you guys are flaming hack racking and zooming at the bottom of the trees. How about you just take us to where we need to go, let us get off and go and do our job?” So when I was a Squadron Commander and I had my pilots flying Chinook and UH-1 gunships, if I heard them fly passengers around and they came back saying, “That was
45 so exciting”, they were doing something wrong.

So what I'm saying is, the only time that HMSD was probably going to cause me a problem using the horizon line was whether I was looking at 90 degrees to the left or 90 degrees to the right.

5 LCDR GRACIE: And I was just going to come to that.

MAJ McCALL: And I don't do that. And you don't drive your car looking 90 degrees out left or right. You drive your car looking to where you're going. So the MRH was a great big fat helicopter. Once you put
10 Troops on board, you are sitting at 10.4 tonne or so. Don't be throwing this thing around. Look out the front, stay away from the hazards, and know where the hazards are before you leave.

LCDR GRACIE: But this is where I want to explore it. I'm getting the
15 impression – and correct me if it's a false one – that there's one set of rules that might apply for formation flying and one that's very much STANMAN-related because in a formation you may have to look off-axis.

MAJ McCALL: Not very far.

20 LCDR GRACIE: Enough, though, to throw your symbology out.

MAJ McCALL: No.

25 LCDR GRACIE: Only 20 degrees was going to throw it out.

MAJ McCALL: It doesn't throw it out that much. And you're still out
30 having a visual horizon. But, as formation, you're still looking at the other aircraft in front of you. But if they don't have their formation lights on – and this is one of the things that I found in the early part with the TopOwl, the early version of TopOwl was when it got dark, without the formation lights you couldn't really determine – your brain would do funny things or – you know, you're looking at things, sometimes you couldn't really get a good understanding of what the aircraft was doing in
35 front of you. So you just had to concentrate or move back until you got a better understanding of the attitude of the other machine.

And, in formation, they're not responsible for my terrain clearance. I'm
40 responsible for my terrain clearance. And if I'm uncomfortable at any stage, attitude, roll my wings level, get away from the earth.

LCDR GRACIE: But this is again where – forgive me if I'm wrong –
but you're dealing in a scenario there where you can see the other aircraft
in formation. If you have - - -

45

MAJ McCALL: If I can't see the other aircraft in formation, immediately leave the formation. Immediately now.

5 LCDR GRACIE: But that's one thing. If you have spatial disorientation and you don't know it - - -

MAJ McCALL: You'll know it. Look straight to your instruments.

10 LCDR GRACIE: That's what I'm about to ask. If I am looking off-axis for a possible conflict, let's say I've lost sight - - -

15 MAJ McCALL: No. You know, if you're looking off-axis and you go – okay, I don't know I've got spatial disorientation, but something feels wrong – and I've been in that condition – then the first place you look at is your attitude indicator. They have to look there.

LCDR GRACIE: Yes. So you're saying that you have to look back at the 12 o'clock - - -

20 MAJ McCALL: You've got to look straight back – no, no, you've got to look straight back inside because that's what the Standards Manual tells you to do.

25 LCDR GRACIE: There's the problem. If you aren't able to utilise your symbology and keep eyes out, and you have to look down and you're in a formation of two rotor dies - - -

30 MAJ McCALL: No, that's an unusual attitude and it's an inadvertent IMC, you leave the formation.

LCDR GRACIE: Before determining your attitude?

MAJ McCALL: You leave the formation.

35 LCDR GRACIE: Up or down?

MAJ McCALL: Away from the earth.

40 LCDR GRACIE: Yes. And in terms of the scenario that you've postulated there, you've made some comments in your witness statement about the responsibilities of Commanders in training their Force elements. Coming back to training, you've mentioned the Jervis Bay incident, you've mentioned this one on July '23. Are you saying that there should be some different documentation for training that is over and
45 above the Standardisation Manual if, let's say, you're going to be in

formation in a low cue environment? I'm trying to work out where you say the responsibility is for the Commander?

5 MAJ McCALL: It's called the Unit Training and Assessment Program.

LCDR GRACIE: Right. So there is something there?

MAJ McCALL: Yes.

10 LCDR GRACIE: And you're saying that that conflicts, in effect - - -

MAJ McCALL: No, it doesn't conflict. The Aviation Training Centre recruits people – well, the ADF recruits people and individuals who are selected to go into flying training are selected and then trained, and they're trained to a standard that graduates from the Aviation Training Centre, and they will be called a CAT D. That's usually called CAT Dangerous in outside of this. But CAT D is a junior pilot.

20 That CAT D is then sent to the units. And it's the unit's Commanding Officer who is then given the resources to then develop that individual from a CAT D for the mission profiles that that unit is doing. And that unit Commander gets the resources – that is, people, time and money – to do that. And there are time periods that they are developed for. And there's training programs.

25 So it is the unit Commander's responsibility to do that. And it's written down as, "These are your people. You need to train them for your mission". And the DASR's state that the CO has to certify the Aircraft Captains. So it's the Aircraft Captains that the DASR says, "certify them". Those rules are rolled through to the SIs from the two star, and the SIs stated, "Unit Commanders, here are your responsibilities in accordance with the Unit Training and Assessment Program".

35 Yes, so there are other elements, and it's at the units that they're trained.

LCDR GRACIE: So, again, let me just try and understand this. We have got two stars setting 500 foot or 500 feet, and below that you're saying that there's a lawful general order that says you will be utilising - - -

40 MAJ McCALL: I'm pretty sure I've got a page in there that points it out.

LCDR GRACIE: You do. And I think if you're looking for it, it's at page 6/7 of Annex F.

45

MAJ McCALL: Yes, it's - - -

LCDR GRACIE: And you'll see it's para 17, the top of page 6:

5 *Aircraft should not be flown by night overwater at a height of less than 500 feet AHO, unless an automated altitude hold mode is selected.*

MAJ McCALL: Yes. Well, there's the order.

10

LCDR GRACIE: Yes.

MAJ McCALL: That is the order.

15 LCDR GRACIE: And this is where I'm now trying to get to the next step. If we have a mission profile at 200 feet, what specific things are you saying need to be considered (a) in deciding the desirability or otherwise of flying at 200 feet; or, if that decision is made to fly at 200 feet, what mitigating factors do you say then have to overlay this?

20

MAJ McCALL: I would just have to say a lot.

LCDR GRACIE: Yes. Give me a hit list of five. Is one - - -

25 MAJ McCALL: Well, I would probably – you know, what are the weather conditions? Maybe don't go. Maybe send a single aircraft.

LCDR GRACIE: Right. Yes.

30 MAJ McCALL: If the Uber call got to me and they said, "We've got 40 people to pick up", okay, well – "And we want to be all picked up at the same time", "Well, sorry, I can't do that". That's a control. I've eliminated the control, "No, I'll pick you up tomorrow morning, when the sun's up". That's another control. "No, we want to be picked up at
35 11 o'clock tonight", or whatever it was – I don't know, midnight.

LCDR GRACIE: Or you could pick them up in one aircraft and three return or whatever.

40 MAJ McCALL: Yes.

LCDR GRACIE: But you're saying that - - -

MAJ McCALL: “And who’s my senior crew?” “You’re the senior crew. You get to fly all night tonight. Off you go, go and pick 40 people up”. It’s training.

5 LCDR GRACIE: But where’s the flexibility come in? Is it the Mission Commander who calls that during the sortie, or who does that?

MAJ McCALL: Yes. It’s the, you know, rock, paper, scissors rank – who’s got the rank, who’s the boss.

10 LCDR GRACIE: So it wouldn’t be the lead four – the lead pilot in one of four?

MAJ McCALL: Well, if they’re an Aircraft Captain, they could say,
15 “Hey, Mission Commander, this is not going to work. How about I continue” – you know, another control. Things we used to do in 5 Squadron: “Looks a bit crappy tonight. You’re the best pilot we’ve got tonight. You’re the weather boot. Go out and find out what it’s like”.

20 LCDR GRACIE: Right.

MAJ McCALL: “And see if you can get there and see what you think, because I’ve got a whole bunch of junior crew and I don’t want to take them out in something that is going to get us in trouble.” You’re the
25 Resource Manager. There’s anything and everything; all you have to do is make a decision. But make an informed decision on what are the hazards, what are the risks. “What have I got? What are the resources I’ve got? What’s the task?”

30 LCDR GRACIE: That had nothing to do with the things I was going to ask, but it was very interesting and helpful, so I hope you don’t mind that I kept going. But it means that I probably won’t cover the other topics I was going to cover except for one, if I may, ma’am? Could you just have
35 a look at – it’s page 11 of your statement, and you say that – and I know you gave some oral evidence about this, but you’ve talked about there are about 290 warnings that have already dealt with many other relevant serious issues. And at least 35 of those identifying controlled flight into terrain.

40 MAJ McCALL: Yes.

LCDR GRACIE: We heard some evidence which was described as perhaps being counter-intuitive, but I’d ask you to comment about it. There was a suggestion that the more controls you have by adding more
45 and more controls or warnings, counter-intuitively provides only a

theoretical increase in the level of safety. That, in fact, it can provide the opposite effect. Can you say something about that?

5 MAJ McCALL: I'm not really sure what you're getting to, but one of the - - -

LCDR GRACIE: I think it's basically that the more warnings you have – the more theoretical controls you have in, for example, a Standardisation Manual might make you think that you are theoretically increasing the safety factors, but you may not be because you're overcomplicating the process.

15 MAJ McCALL: One of the things I've found in writing all of the Regulations – and this seems to be something wrong with the Australian mindset – I'm not really sure – because the US mindset was, “Yes, sir, I'll comply. The Australian mindset is, “You write too many Rules and Regulations for us”. So back in 1999-2000, actually, I was stuck in Timor then, but in 2000 when I came back, we rewrote all of what then was called the Army Flying Orders which we changed into the Standing Instructions because of the 707 accident.

25 And we rewrote the orders and we stripped them and we made them as thin as possible, because all of the Commanders and pilots were complaining about being over-regulated and having too many things telling them. So we said, “Right, we'll clean them all up and we will give you, Commander, the left and right of arc that you want”. They then complained that we'd given them too much freedom. And then we said, “Well, that's what you asked for”.

30 And then over the time periods with more and more incidents of getting things wrong, breaking things, the natural human behaviour of, “You didn't tell us that that was a problem. You didn't tell us that – the orders didn't say that”. So we had to start putting things back in because individuals, as soon as they did something wrong, would straightaway go, 35 “Ah, it's not in the book”. “Oh well. Okay. Well, maybe we need to put it back in the book.” And we get told to put it back in the book.

40 The Canberra fire was one of those which was, you know, landing lights get hot and it was the Authorising Officer who burnt down a cane farm, who was involved in – so then we had to go and put, “Hey, landing lights get hot”, throughout all of the manuals. And every event or incident of junior crew or senior crew who go out into conditions where they're not nominal will find something else and break something, the investigation will come back, “That was written” – so, okay, well, another control or

another warning or another caution has to go in to tell them, “These are the things that you’ve got to be aware of”.

5 So the document just keeps breathing and adding as we go through more events, more incidents, more accidents. You have a look at the reports and then we just have to continually add other information into the manuals.

10 LCDR GRACIE: I think I understand it. Maybe a broad agreement that the mere increase in the number of controls in the manual might only theoretically improve the level of control.

15 MAJ McCALL: Well, let me put it another way. See, it’s the lack of accountability. Because the SIs and the orders state safety is a Command responsibility. You have a look at all of our incidents and accidents, which Command elements are held accountable?

20 LCDR GRACIE: I see that that was in your statement in paragraph 11, but I won’t go there. There’s just one email that I want to put to you before we leave. It’s, again, the much-referenced Andrea House documentation. It’s AH 28. And I just want to take you to it, please, if I can, sir? I’ll make this available courtesy of COL Gabbedy. I just want to ask you in your role as SO2 Standards, you’ll see that your name is there on that email from MAJ Wilson to Airbus. I think you were then standing
25 in as SO1 Standards for LTCOL Norton, were you - - -

MAJ McCALL: No, probably not in 2019.

30 LCDR GRACIE: - - - at this time?

MAJ McCALL: I can’t remember.

35 LCDR GRACIE: But would it have gone to you because of your role in perhaps dealing with the question of whether there will be a note, a caution or a warning in relation to the symbology upgrade?

MAJ McCALL: Well, I’m cc, which is carbon copy. Yes. And it’s from Maxence. Yes, so your question?

40 LCDR GRACIE: Do you see there that MAJ Wilson is rather stridently saying that the response that he has from Airbus – and feel free to just look back through the sequence of the emails – is that he said that:

45 *The response from Airbus indicates to me that Airbus does not understand HMSD 5.10 system performance.*

5 And then he confirms that what is said there in black by Airbus is what he is talking about in terms of pitch diverters. It's described as a roll, and the rate at which roll is resolved against pitch for display in the HMSD is still unknown. So this is August '19. It's about, I think, June '19 was when AATES did its testing. And so this is an exchange between AATES-Airbus and involving yourself in terms of how there's going to be some sort of warning, note or caution in the STANMAN.

10 And you'll see that, if you just go over the page, he was saying the statement which he said should be a warning must be included as setting attitude with reference to the display to HMSD symbology, saying that:

15 *It will result in an unintended attitude change which may result in pilot disorientation, unintended deviation from desired flight path, impact with terrain/water. The above reasonable expected outcomes justify the inclusion of a warning in the AFM.*

And he says:

20 *The AFM must properly describe the system performance and ensure that aircrew are appropriately alerted to system limitations arising from this defect.*

25 Did you discuss with MAJ Wilson these matters that are set out there in his exchange with Airbus and copied to you?

MAJ McCALL: No.

30 LCDR GRACIE: Did you take any action in relation to this when it came to updating the STANMAN?

MAJ McCALL: Well, it was already in train. And the whole point of HMSD was we didn't set attitudes using HMSD.

35 LCDR GRACIE: Well, if you look down at – there's a (4) roll attitude, there's some black in italics, and then I think it's highlighted on the copy.

MAJ McCALL: Yes.

40 LCDR GRACIE:

45 *Setting aircraft attitude using HMSD should be done only when line of sight is aligned with X axis.*

MAJ McCALL: Yes.

LCDR GRACIE: And that's, effectively, what went in the STANMAN.

5 MAJ McCALL: Yes, if you're going to set an attitude. But, again, there
was no pitch ladder associated. There was a very rudimentary pitch
ladder, but the horizon line was just pretty much to tell you, "Here's your
horizon line", because we had a flight vector and you could tell when you
were descending or climbing. The flight vector would be either at or
10 above the horizon line. But, essentially, the HMSD horizon line was not
ever required or needed to set an attitude. But the warnings stated, pretty
much, was "If you're going to set an attitude using this, then just look to
the front", and that's what we put in.

15 LCDR GRACIE: But do you remember saying earlier in your evidence
that the test pilot world is outside of your SME? Do you remember saying
something like that?

MAJ McCALL: Yes.

20

LCDR GRACIE: This is one of the AATES test pilots saying - - -

MAJ McCALL: Yes, but I was working for a test pilot, who was
COL Norton.

25

LCDR GRACIE: LTCOL Norton?

MAJ McCALL: Yes. And he was the one who was dealing with the test
pilot world.

30

LCDR GRACIE: So did you defer to him rather than take on what
AATES - - -

MAJ McCALL: Of course I did, he was my boss.

35

LCDR GRACIE: So when MAJ Wilson says:

I do not agree that the proposed wording –

40 which included that highlighted part I've read out that is in the
STANMAN – he says:

I don't agree that the proposed wording –

45 which is now in the STANMAN –

describes the system performance with respect to depiction of pitch as roll.

5 Do you take issue with that?

MAJ McCALL: No, because - - -

10 LCDR GRACIE: Right. That's okay.

MAJ McCALL: But - - -

LCDR GRACIE: If you don't take issue with it, that's fine.

15 MAJ McCALL: No.

LCDR GRACIE:

20 *I do not agree that the proposed wording gives an indication of the magnitude of the roll error.*

Do you agree with what he said there?

25 MAJ McCALL: No. Well, no. I really don't have an element of this because if MAJ Wilson wanted something into the Standards Manual, he would have written a publication improvement report in reply and passed it into COL Norton's area of operations. We would have registered that and then had to deal with that. As it was, we were dealing with it anyway with the OPEVAL that came out of Sydney.

30 LCDR GRACIE: But what MAJ Wilson is saying is that he doesn't agree with the wording. That wording is what is incorporated later into the STANMAN, among others. But are you simply saying that you deferred to LTCOL Norton as your boss in considering what MAJ Wilson is there saying?

35 MAJ McCALL: Yes, because COL Norton was dealing with COL Reinhardt and they were talking test pilot to test pilot.

40 LCDR GRACIE: All right, thank you. Thank you, ma'am. Thank you, sir.

MS McMURDO: Yes. LCDR Tyson.

MAJ McCALL: Would you like this book back or – no? It's going to be needed?

5 LCDR GRACIE: COL Gabbedy won't read it.

MS McMURDO: It might give you a little bit more room, we'll take that back.

10 <CROSS-EXAMINATION BY LCDR TYSON

15 LCDR TYSON: Major, my name is LCDR Matthew Tyson. I represent the interests of CPL Alex Naggs. Major, I want to present to you two scenarios and ask you what you would do or how you would react in the different scenarios, and if there are differences into how you'd react. So the parameters for the scenarios are you're flying at night, overwater. It's a degraded visual environment. There are some light passing showers. You're flying in a heavy left formation, four ships, and you're
20 third. You're flying at 200 feet, and you've gone through two turns – racetrack pattern turns.

Now, you're the pilot, you have not set the RADALT hold to 200 feet. As opposed to, I think you were given a scenario where you've set the hold
25 but then you're disengaging it manually, I'm saying from the outset you haven't set the RADALT hold at all. Do you understand that?

MAJ McCALL: Yes. Right, so I haven't set the autopilot to maintain my separation from the earth's surface.
30

LCDR TYSON: Yes. And then you also haven't set decision height at 10 per cent below that minimum altitude of 200. So that's the scenario – sorry, that's their parameters. Now, there are two different scenarios I want to put to you. The first is, you're having difficulty keeping station
35 for whatever reason – whether it's the cowl over the instruments, whether it's weather, whether it's what number 1 is doing, or number 2. So you're having difficulty keeping station. And the second scenario is, you actually become disoriented. So in the first scenario where you're having difficulty keeping station in those parameters that I've set for you, what do
40 you do?

MAJ McCALL: Well, I can still see the formation. You know, there's any number of things that you can ask. You can ask for lights on 1 and 2, but that may cause some problems. Generally, when I was training, I
45 would set the hover light, which is on the belly of the aircraft, and that

gave a nice cone of light down and people could easily see what that aircraft was doing. But that's why I asked about the formation lights. Did they have their formation lights on?

5 LCDR TYSON: Well, assume that they did.

MAJ McCALL: Okay. Well - - -

10 AVM HARLAND: We understand they had the stick-on ones, A-mounts.

MAJ McCALL: Yes. Were they on?

15 AVM HARLAND: We understand they were.

MAJ McCALL: So they were. Well, it depends how far away am I? You know, what distance am I from the aircraft. Because if I'm having difficulties identifying what attitudes, you know, what is the problem? Am I climbing/descending? Am I just not holding position? Number 3, I'm lead of the second element.

20 You know, you would have to enunciate, you know, what problems I'm having. I don't know. If I can't hold station position, then break the formation up into two. I just become lead of number 2 section.

25 LCDR TYSON: What about things like, for example, you use the radio frequency to tell the Mission Commander, "Look, I'm really struggling keeping station", or do you – for example, if you're the flying pilot, do you swap with the non-flying pilot or - - -

30 MAJ McCALL: Well, it depends if I'm the Aircraft Captain and I'm having troubles. If I'm Aircraft Captain and I'm having troubles, in most cases I'm going to say, "Look, I'm knocking it off. I'm going home". Because it gets down to what's the quickest and easiest way of me making my aircraft safe. That's my first possible choice. If I'm not the Aircraft Captain, then I'm probably going to say to the Aircraft Captain, "Now, look, I'm having troubles, and I'm just the co-pilot and I'm the junior pilot, how about you fly? And if you're having troubles, how about we go home?"

35 40 LCDR TYSON: So that's an option available to you, to say to the Mission Commander, "Look, we're really struggling to keep station."

45 MAJ McCALL: Sure. Yes, it - - -

LCDR TYSON: "It's not safe. Can we pull a plug on the mission?"

MAJ McCALL: No. No, not "can we". "Hey, we're going. We'll see you back". Yes, they've got that option.

5

LCDR TYSON: And that's acceptable, and an Aircraft Captain would understand that?

MAJ McCALL: Well, a Squadron Commander who understands that they're dealing with the training of their people should go, "Yeah, okay, off you go. We'll talk about it when we get back, see what we need to do for additional training", or, "Yeah, you're right, it's a bit crappy, we probably should go home".

LCDR TYSON: And then, again, setting the same parameters, but this time it's not just a question of difficulty keeping station, you've actually become disoriented. What do you do in that situation?

MAJ McCALL: Well, you've already planned your get out of jail card. And if you haven't, you're in trouble. But the Standards Manual says, [REDACTED]

20

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

25

MS MUSGROVE: I'm sorry, can the feed be cut, please?

MS McMURDO: Yes, all right then, we'll cut the feed. Apparently, we can continue but cut the feed. What needs to be taken out, Ms Musgrove, please?

30

MS MUSGROVE: It's the reference to the various [REDACTED] and it's in [REDACTED].

35

MS McMURDO: For the foreign workforce. Okay, so we can continue, but that will be cut out because of the delay. Okay.

LCDR TYSON: So is your expectation – or perhaps is Chief of Army or the Chief of Defence Force entitled to expect that any pilot, regardless of his experience in flying MRH-90s, would immediately go into the unusual attitude drill or the intermediate IMC if he or she became disoriented?

40

MAJ McCALL: Well, that's my interpretation as a senior pilot on the

45

aircraft type. You know fairly quickly that you're disoriented, but you've got to have time to recover the aircraft. And if you're at 200 foot, you don't have much time and you probably should have thought of that in your risk assessment, when you developed the training sequence. But
5 there is another SI about the Aircraft Captain that says, "This aircraft is yours. The crew is yours. You're responsible for the safety of it. So you better have some prime considerations and you better have some sequels because operating in degraded visual environment at night on systems and not using your autopilot or not using your autopilot correctly, yes, that's a
10 challenging environment. And you better be ready to recover or have an escape plan ready to act on".

LCDR TYSON: And when you say "escape plan", do you mean I immediately leave the formation and do my unusual attitude drills?
15

MAJ McCALL: Yes.

LCDR TYSON: And your expectation would be that every pilot flying MRH-90 would know that?
20

MAJ McCALL: That's what, you know, the Standards Manual says, "Here's the UA drill" – unusual attitude. And an unusual attitude is you find yourself not doing what you're meant to do. Now, there's going to be a time period. Like I said, I've been disoriented. I was looking for a
25 crashed aircraft in New South Wales and I felt – I was hovering around the top of a mountain top looking for the crashed aircraft and I felt unusual because as I was climbing through some degraded visual environments I was using the ground as my reference point, but I didn't realise that the trees that I was using as a reference, once they got up in sight, changed
30 their attitude.

And then I realised that I was some 40 degrees nose up and I was sliding backwards. I then had to look at that and control what the aircraft was doing, and fly away from the earth. So it's immediate. How long is
35 immediate? It takes seconds. But it's seconds. You're talking, I don't know, three, four, five seconds.

LCDR TYSON: But you're not talking about, say, 60 seconds.

MAJ McCALL: No.
40

LCDR TYSON: It's not, "Well, I'll try to solve the problem myself first"?

5 MAJ McCALL: No, no, no. 60 seconds is way too long. You're talking less than five to 10 seconds – maybe five seconds. You know, I've done a Crash and Investigators' Course. All of these things come down to probable cause because you're not going to be able to identify exactly what it was. It's a probable cause. And the OCMs raises a thing, you cut things away and go, "Well, this is the most likely probable cause.

10 But if you're talking about disorientation, is it possible that both pilots were disoriented? Well, that's unlikely, but it's not impossible. But then it comes down to a co-pilot/Captain relationship because if it's the Aircraft Captain that's disoriented, well, the co-pilot may or may not intervene in a time period. If it's the co-pilot who's disoriented, then that time period may be different.

15 LCDR TYSON: Well, that's part of my next question. So in the scenario if you are the co-pilot, how likely it is that you're able to perceive that the flying pilot is disoriented? And if you do form that view, what are you able to do, if anything?

20 MAJ McCALL: Well, again, Army Aviation has had an Aircraft Captain be disoriented and it was a Huey at night and the trainee who was not a qualified pilot. The trainee recovered the aircraft. But that took some time, and how long was that? It was seconds. But, again, it comes to the cockpit gradient. If you're the co-pilot, you're generally the junior pilot.

25 If you're the junior lawyer and they say to you, ma'am, "You're doing this wrong", how long is it going to take them to build up that courage to say, "I think you should consider what you just said or how you're running things"? There's a time delay in there.

30 So a junior pilot, who is in a high-performing organisation that's looking after high-performing customers, they may not intervene.

35 MS McMURDO: Particularly in a hierarchical organisation.

40 MAJ McCALL: Certainly, yes. It's not that there's a couple of incidents; there's hundreds of incidents around the world where the co-pilot has gone to their death because they didn't say things. That's in the airlines, that's in the Military.

45 AVM HARLAND: With the UA, unusual attitude recovery – so recognising and recovering that you've described as something which needs to happen fairly quickly. So how much training are Army pilots required to do and what currency are they required to hold on unusual attitude recognition and recovery?

MAJ McCALL: Well, unusual attitude should be done in their instrument ratings.

5 AVM HARLAND: How often are they done?

MAJ McCALL: They're done once a year, but usually a UA drill will be run just as the trainees are taken out into the flying training area under goggles. So you'll do a training flight. Generally, what I would do is I
10 would just reach over with a map or something and I'd put that in front of their face, and they would go, "I can't see outside". "So what are you doing?" "I have to do a UA". That would be done every NVG flight I did with a trainee or a trainee QFI.

15 AVM HARLAND: So that's a trainee. When you become a line pilot at one of the Regiments?

MAJ McCALL: That's under the unit training and assessment program, in accordance with the CO of the unit. That's their bag. That's their
20 resource.

AVM HARLAND: Does that UA training always get done on the aircraft or can you use simulators?

25 MAJ McCALL: Simulators are fantastic for it.

AVM HARLAND: So much better?

MAJ McCALL: Well, you know yourself, simulators don't actually give
30 you the feeling of flying the aircraft and the feeling of that is different because they're trying to trick the way you're looking at things. But the simulator you can drop someone straight into a degraded visual environment very quickly. You just take away their horizon.

35 AVM HARLAND: We've heard that 6 Aviation Regiment didn't have a simulator available at their home base location?

MAJ McCALL: Yes, but they had travel and they had aircraft and they
40 could fly out.

AVM HARLAND: Are you aware of how often they used the simulators?

MAJ McCALL: No. Again, that came down in the unit training and

assessment program and their Commanders. So they had two simulators to pick from. All they had to do was either fly themselves up there or jump on a plane.

5 AVM HARLAND: Okay, thanks.

LCDR TYSON: You've given some evidence this afternoon about the MRH-90 being, I think, the safest of the helicopters that you've flown, and you actually praise the platform in some ways for its features. In this
10 scenario about flying at night overwater in a formation of four in a degraded visual environment, what are the features that the MRH-90 has to actually promote safety of your flight in that scenario?

MAJ McCALL: The autopilot function is fantastic. The collective safety
15 function, if you engage it correctly, and if you're using it, will stop you hitting the earth. The forward-looking infrared – you could bring up the forward-looking infrared on any of the three inboard screens and that gave you a fantastic idea that was a different way of looking at the world. But depending on your temperatures for the FLIR to see, that gave you really
20 good situational awareness.

The machine had four. You could fill it up with a lot of fuel and if you did need to go into cloud, you had all the options to go back and get yourself down using an instrument pattern. You had magnificent nav
25 systems, so you knew where you were all the time. The aircraft itself couldn't get lost because the nav system was international nav systems.

One of the problems that we had in aircraft that didn't have the fuel range that the MRH had was you were reticent to go into cloud because then you
30 had fuel problems. In MRH you could carry a lot of fuel and still put a lot of people on board.

LCDR TYSON: So if you did have to break formation, you don't have a
35 problem of running out of fuel?

MAJ McCALL: No.

LCDR TYSON: And navigation lights to get you back.

40 MAJ McCALL: Yes, that's all part of your plan. That's all part of your plan before you go.

LCDR TYSON: Are you familiar with TAC mode in the MRH-90?

45 MAJ McCALL: Yes.

LCDR TYSON: Putting the helicopter in TAC mode, would that be a feature that would assist you?

5 MAJ McCALL: No.

LCDR TYSON: Why is that?

10 MAJ McCALL: TAC mode is a follow-up trim mode. Tiger pilots like the TAC mode but follow-up trim is problematic in degraded visual environments because you don't have the protections of ATT or attitude mode or the upper modes. In TAC mode, you can't go to your upper modes and in TAC mode – again, and I'm talking about being at 200 foot.

15 If you inadvertently sort of look down at your nav board or you're trying to change a frequency and you're the flying pilot on the flight controls, and you inadvertently set an attitude that is a descent attitude, the aircraft will just let you do that. The Standards Manual talked about the safest mode being ATT mode at least. I don't know if I put it in there, but for a
20 terrain flight or flying overwater, set your trims to up and down and the attitude so you're sitting about five degrees nose up with your bugs in the vertical roll position. So if you push against your flight control and then let go, the aircraft will just roll itself, wings level and continue driving on as it was. So TAC mode, no. If you move the flight controls, it said,
25 "Okay, if you want to do that, I'll just trim to that". So, no, it's not a degraded visual environment mode that I would use.

LCDR TYSON: In this sort of mission, you're doing a mission at night
30 overwater. You've got a transit of about 20 minutes. You're going to pick up some soldiers at a landing zone and then fly back. These decisions about whether or not to put the aircraft into RADALT hold, setting it at a 200, setting a decision height, whether to go into TAC mode, is it the case that in the Army context these are just matters for the individual Aircraft Captain to subjectively decide?
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MAJ McCALL: Yes, but again I come back to they've decided to be at
40 200 foot below 500 foot, which is there's a White Page two-star General order that says, "No, this is what you need to be in. You need to be in this mode". Now, if you're not in that mode, then you've trained not to be in that mode and you've got a particular risk assessment stating how and why and what training has certified you to be there.

LCDR TYSON: So if you made those decisions to deselect some of
45 those features, there would be other compensating things that you would do to balance that?

MAJ McCALL: There has to be because we as the regulators have already said they're the things that you need to do to keep yourself safe. If you're not going to do that, okay, that's up to you as the Commander or the CO or the UTAC Commander, then you've got to enunciate how you're keeping yourself safe. You've got to enunciate how you're training people to do that because that's what the Unit Commanders want. They want the flexibility to operate the machines the way they want them.

LCDR TYSON: You've given some evidence this afternoon about putting additional protections in place, about setting other conditions. Can you be specific about who is the person that does that? Is it, for example, the Mission Commander? Is it the OC? Is it the CO? Who's the person who actually makes these decisions about the additional protections or conditions?

MAJ McCALL: Well, it really comes down to what was the training mission or what was the training exercise. You're going up to a particular area, then a risk assessment has to be done. It's written in the Regulations. Who does that? Well, that's up to the Detachment Commander or the Unit Commander or the controlling Headquarters.

There was a training episode, obviously, that they planned. In that planning, "Well, where's the risk assessments and what are the training outcomes that you're gaining out of this exercise? How are you keeping everyone safe?" because right at the start of the SIs it says, "Commanders" – and it uses all of that term – "Commanders, safety is your responsibility. You're accountable for safety". It says that throughout the SIs, "Commanders, you're accountable". "Okay then, be accountable and start doing what the SIs tell you to do." Now, who does that? I don't know. Who was the senior person there? Who was running the exercise?

LCDR TYSON: But how do you enforce that, for example, if you're the Mission Commander? And you might expect that the people who are flying are going to obey the order that they set the RADALT hold at 200 feet because you're going overwater. Are you not entitled to expect that the pilots obey that order, or do you have to somehow individually check or enforce that with each flying pilot?

MAJ McCALL: That's the mission order. Again, it comes down to someone saying – no, not someone; it's the Aircraft Captains, they're responsible to know the Rules and Regulations that they're operating to. You've got an Authorising Officer who's going through and having a look at the mission profiles. You've got an Exercise Commander who said,

5 “Well, during this exercise, we’re training these serials in our Unit Training and Assessment Program to develop these crewman and these pilots in these roles. The role really is it’s an internal load picking up. It just happens to get on by itself. But it’s a mission at night in a degraded visual environment and at some stage there has to be a go, no go.

LCDR TYSON: There has to be what, sorry?

10 MAJ McCALL: A go, no go. At some stage you go, “Well, we actually can’t do the job”, or “We can do the job but we have to do it differently”. But that’s like the doctrine says, in a formation you’ve got two Commanders. Actually, in a formation you’ve got more than two Commanders. You’ve got flight lead, they have responsibilities. You’ve got Mission Command, they have responsibilities. Both of those have risk requirements. Then you’ve got Aircraft Captains in each of those aircraft, and they have individual responsibilities. If they don’t like what they’re doing, they can call it quits. It’s just a training exercise.

20 Lcdr TYSON: Thank you, ma’am. Thank you, sir.

MS McMURDO: Yes, next?

25 <CROSS-EXAMINATION BY LCDR HAY

LCDR HAY: Major, my name’s LCDR Mark Hay. I represent the interests of D19. I think you’ve got a pseudonym list there. Could you just have a look at that and satisfy yourself as to who D19 is, please?

30 MS McMURDO: One side’s alphabetical and one side’s numerical.

MAJ McCALL: A number? No, it’s not working for me. Yes.

35 MS McMURDO: You’ve found it?

MAJ McCALL: Yes.

40 Lcdr HAY: Now, firstly you were asked by the Commission staff about whether or not you’d flown with any of the aircrew of Bushman 83.

MAJ McCALL: Yes.

45 Lcdr HAY: You answered that at page 6 of your statement. Have you ever flown with D19?

MAJ McCALL: No, not that I can recall.

5 LCDR HAY: During the period 2022 through 2023, you were with Standards at that time?

MAJ McCALL: Yes.

10 LCDR HAY: Is it the case that as part of your role you were required to conduct audits of the various Aviation units around the country?

MAJ McCALL: Yes.

15 LCDR HAY: Were you required to conduct those audits once or twice a year?

MAJ McCALL: Once a year for each unit.

20 LCDR HAY: Once a year; is that right?

MAJ McCALL: Yes, generally.

25 LCDR HAY: Just thinking about 6 Avn for a moment, in that period 2022 to 2023, did you go to the unit other than for those annual audits?

MAJ McCALL: No.

LCDR HAY: You didn't go there?

30 MAJ McCALL: Well, except for – 2022, I think I did one audit there.

LCDR HAY: What about outside of the audit responsibilities that you have?

35 MAJ McCALL: No.

LCDR HAY: You didn't go to the unit at all?

40 MAJ McCALL: No. Hang on. I think I went down to do some instructors' categorisations with the Standards Officer, so yes.

LCDR HAY: What was the Standards Officer at that time?

45 MAJ McCALL: Do I have to – I probably need to use this then?

MS McMURDO: One side's alphabetical, that might help you. And one side's got the numbers on the reverse of the sheet.

MAJ McCALL: D14.

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LCDR HAY: D14. Are you able to say just approximately how many times in that period you went to 6 Avn for that?

MAJ McCALL: I think that was once.

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LCDR HAY: Just the once?

MAJ McCALL: Yes.

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LCDR HAY: Did you have an offsider at the time?

MAJ McCALL: No, I was the offsider.

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LCDR HAY: You were the offsider. Who were you working with?

MAJ McCALL: No, I think COL Norton was gone by then. No, he was still around as a Reservist, so – no, I ended up just doing one of the categorisations and he was the QFI.

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LCDR HAY: What about in the period 2018 to 2019, you were obviously the MRH-90 Standards Officer in 2018 through to '19. Is that right?

MAJ McCALL: Yes.

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LCDR HAY: Did you go to the unit – that is, 6 Avn – during that period?

MAJ McCALL: Again, it probably would have only been for categorisation of instructors.

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LCDR HAY: Were you doing safety audits or audits during that period?

MAJ McCALL: Yes, possibly would have been. I think I can recall one, maybe.

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LCDR HAY: Will you just explain to the Inquiry, if you would, what do those safety audits involve? Did they involve flying with the aircrew down at the unit?

MAJ McCALL: Generally, you try to but usually they're either busy or they're doing other tasking, or they're doing other – or they're on leave. So you're turning up to look at the safety management system, their Unit Training and Assessment Program, and compliance with elements of the White Page SIs and having a look at what their instructions state. And you're looking to see what they're doing against what they say they're trying to do.

LCDR HAY: Just thinking about that earlier period, the 2018 to 2019 period, did you have any interactions with D19 during that period?

MAJ McCALL: No, I can't remember.

LCDR HAY: Now, just to be clear, when you say you "can't remember", do you mean by that that you didn't have any interactions with him, or is it that you might have and you just don't recall it?

MAJ McCALL: No, I can't remember whether he was there early on in the MRH phase or – no, I just can't remember.

LCDR HAY: Do you recall him being there during that period as one of the OCs?

MAJ McCALL: Yes, but for a short period of time. But, again, you know, we'd only turn up for two or three days.

LCDR HAY: But during that period, you don't have any recollection of any direct interactions or contact with him as an OC of the unit?

MAJ McCALL: It would've been just in passing discussions on some points of things that we found in the SIs or questions.

LCDR HAY: Now, did I understand your evidence before that if, as part of one of those audits, you discovered any non-compliance with SIs, that you could've basically shut down the unit?

MAJ McCALL: That's unusual. But generally that would be a – it's not so much that you shut down the unit, you just say, "Hey, this is an immediate or a problem and you probably need to have a talk to the Commander before I do".

LCDR HAY: And who would you be communicating that with?

MAJ McCALL: That was the way Standards had modified – that would've been with the Director of Operational Airworthiness.

LCDR HAY: For instance, if you discovered any of those sorts of non-compliance, would you have engaged directly with the command element of the unit?

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MAJ McCALL: Yes.

LCDR HAY: Do you have any recollection in the period 2022-2023 of engaging with the CO of the unit about any significant non-compliance?

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MAJ McCALL: With D19?

LCDR HAY: Yes.

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MAJ McCALL: Yes, I did an audit there and that was during the COVID thing, so he was dialled in remotely and the discussion point I remember for that audit was fatigue management because there was only Command information requirement of individuals who worked more than 55 hours. And what I found was there, and I reported it in the Standards audit, and that was about, "Hey, here's a discussion point".

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They couldn't measure, and I couldn't measure, their working rates, and so I reported back to the Command, "If you can't measure this particular critical information requirement, it's not really critical and – or maybe you should think about being able to measure it".

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LCDR HAY: Can you just unpack that a little bit? When you said it was "during the COVID period" what was the relevance of the COVID period in relation to your audit?

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MAJ McCALL: Well, there was hardly anyone there. And I got to talk to that officer over Skype.

LCDR HAY: When you say "that officer", do you mean D19?

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MAJ McCALL: Yes.

LCDR HAY: The person or persons that you identified as working 55 or so hours, was that flying hours, was it admin hours?

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MAJ McCALL: No. Again, this wasn't just 6 Regiment, this was across a number of units. Individuals saying, "We're working long hours and we want you to tell Command that we're working long hours". And I said, "Yeah, I'm happy to write that down in my report, but I need to use your name and will you let me use your name?" And they said, "No". So I'm

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not going to report on individuals who won't let me use their name to say, "We're working long hours". Because, essentially, they were saying, "Hey, we're working long hours. We want you to tell everyone that we're working long hours, but we won't use our names".

5

And I said, "Well, you're required to report to your Command that you're working long hours and if you're not going to report to your Command that you're working long hours and you won't let me use your name in the audit reports, I'm not reporting that". It just becomes a general observation.

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LCDR HAY: So just to be clear, my question, if you remember, was whether or not you'd had any engagement with D19 during that period, 2022-2023?

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MAJ McCALL: Yes, I think it was – that's the point I was saying, was that was the engagement that I said to him at the time.

LCDR HAY: But is it your evidence that you spoke with other Unit Commanders at the same time about the same issue?

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MAJ McCALL: The other Unit Commanders were – I think it was with the QFI and the Standards Officer at the time.

LCDR HAY: Just so that I understand, when you gave your evidence a moment ago, you said that this person would not allow you to use their name. So you said, I think - - -

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MAJ McCALL: Yes, some pilots.

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LCDR HAY: Sorry, Major, just let me finish the question. You said they wouldn't let you use their name, so you couldn't incorporate it into your formal report. Is that right?

MAJ McCALL: Correct.

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LCDR HAY: You said, I thought, that you had this engagement across several units about - - -

MAJ McCALL: Yes, two. Two units: 5 Regiment, and 6.

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LCDR HAY: And when you engaged with D19 about fatigue management, did you identify whether or not the person, the unnamed source, was a member of 5 or 6 Regiment?

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MAJ McCALL: No, I just said, “How are you dealing with this critical Command information requirement?” And he said, “Well, we’re trying to, but it’s difficult”.

5 LCDR HAY: Did that engagement with him at any stage make its way into the audit report?

MAJ McCALL: Yes. I wrote, I think, in a summary which said, “This critical information requirement is difficult to comply with because it can’t be measured”. We tried looking at gate codes. We tried looking at DRN log-ons as an outside sort of evidence looking in, but that was not really relevant for my report or anything after that.

10 LCDR HAY: Again, so that we fully understand, the individual that was saying that they were working these long hours, are you able to say whether they were flight crew or some other part of the unit?

MAJ McCALL: No, they were just general – it wasn’t an individual, there were just individuals who were saying, “Yeah, we’re working long hours”. “Okay. Well, are you complying with this?” “No, not really.”

15 LCDR HAY: Were you, at any stage – and again, I’m just asking you to confine yourself, if you would, to that period 2022-2023?

20 MAJ McCALL: Yes.

LCDR HAY: As part of your audit, were you in any way looking at the mission profiles that were undertaken by 6 Avn at the time?

25 MAJ McCALL: Earlier on, I flew with some of the profiles for the quick stops, assaults to the range areas, and they were, you know, I’d use the word “nominal” because they were done during the day and they were pretty much a non-event.

30 LCDR HAY: Just on that topic, just looking at your paragraph 1 of your statement – have you got your statement there with you? You were asked, I think, to give a brief outline of your career in the Army, including your flying experience. Do you see that?

35 MAJ McCALL: Yes.

LCDR HAY: Can I just ask you, it may be that you didn’t think it relevant, but I can’t see anywhere in that brief history – did you ever complete the SOQC?

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MAJ McCALL: No, never did it.

LCDR HAY: Do you have any experience in that area?

5 MAJ McCALL: Yes. But it wasn't in – it was in Bell 206.

LCDR HAY: And just looking at your CV, where in that long history of flying would you have done that course?

10 MAJ McCALL: We didn't do courses when I was doing that. I was flying night unaided, formation, and I only did it one night because I scared the crap out of myself, that I was number 7 in the formation and we didn't have goggles. I was looking at an aircraft in front of me and we had these new things tied to the aircraft called Cyalume sticks. And I was
15 at 200 foot in an unstabilised, single pilot Kiowa as a Command element for the formation. And that was over Bass Strait.

So when you're talking about SO, yes, I did it in something that was even worse than this machine.

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LCDR HAY: Just to remind you of my question, can you just go to that CV and would you identify, if you would, where, in that CV did you have that experience?

25 MAJ McCALL: That was in 1984/85.

LCDR HAY: So 1984/85 you had some SO experience.

MAJ McCALL: Yes.

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LCDR HAY: As per your description just now. Any subsequent experience in the SO area?

MAJ McCALL: No.

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LCDR HAY: So you haven't really done any Special Operations flying since about 1984/85?

MAJ McCALL: Correct.

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LCDR HAY: Is it also fair to say that since about 2000 your experience in the Aviation environment – and I'm not in any way being dismissive about it – but has it mostly been in the Standards field?

45 MAJ McCALL: Yes.

LCDR HAY: With the exception of your civilian flying experience; is that right?

5 MAJ McCALL: Yes.

LCDR HAY: And it's fair to say that when you were flying the S-92 Sikorsky, working off oil rigs, it's very limited exposure to what might be described as hot landing zones? Would you agree with that?

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MAJ McCALL: Are you talking hot humid?

LCDR HAY: No, I'm talking about coming under fire from enemy combatants?

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MAJ McCALL: You're just talking about another hazard.

LCDR HAY: But it's fair to say that that's not the environment that you were operating in, would you agree with that?

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MAJ McCALL: You're right, yes.

LCDR HAY: And when you mentioned before about the missions being undertaken in the Australian mainland, in particular, are all training missions – you would agree with this, wouldn't you, that as closely as possible as you can replicate the tactical environment, the better it is for the training of the individuals involved?

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MAJ McCALL: It depends.

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LCDR HAY: So before you said that – and it's not disputed, I don't think – but under the WHS legislation you said you've got to eliminate all risk. Do you remember giving that evidence?

35 MAJ McCALL: Yes.

LCDR HAY: That's the primary responsibility under the Act?

MAJ McCALL: Yes. Yes. You've got to eliminate first.

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LCDR HAY: And do you agree with this: that flying is an unnatural state for us as humans?

MAJ McCALL: Yes.

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LCDR HAY: Do you agree that all aviation activities are, to some extent, risky?

MAJ McCALL: You can make it less risky.

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LCDR HAY: That's not my question. Do you agree that there is some risk involved in any aviation activity?

MAJ McCALL: There's some risk involved, yes.

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LCDR HAY: And the only way to eliminate the risk is to keep your wheels or your skids on the ground. Do you agree with that?

MAJ McCALL: No, because that's risky too. Because it's really, really easy in a helicopter, when your wheels are on the ground, to roll over. I mean, all it takes is a sneeze.

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LCDR HAY: So just to keep it packed away is the only way to eliminate all risk?

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MAJ McCALL: Yes, I can see where you're going with that. But, yes, there's risk. But this aircraft was designed as a CAT A passenger-carrying aircraft. And a Category A passenger-carrying aircraft has reduced the risk as far as engineering possible. So the MRH-90 was designed similar to an Ansett or – not Ansett; that's showing my age – a Qantas or a Virgin jet. So if you think about what was the big story in November last year: as a 737 that took off, the big story there was the fire that it started on the airfield.

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LCDR HAY: Yes.

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MAJ McCALL: That should've been how magnificent it was that that organisation trained those pilots, and the other surviving engine, and the Category A engineering of that airframe that allowed that aircraft to continue and then land safely; as opposed to the 6 Regiment aircraft that fell into the water. And this is why I wrote it in there, "Was the organisation's acceptance of risk is a little bit skewed?"

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So before the incident that we're looking at here, 80 days before that, that Category A aircraft was capable, if it was configured correctly, of flying away. But this unit decided to – and this is why I wrote it in there – this unit decided to configure and accept a Performance Class 3 when they could have operated for the training serial of human external cargo. They decided to operate Performance Class 3 as opposed to Performance Class 1. And the plan for Performance Class 3 is, "I have you hanging out

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of my helicopter, the engine fails, we're crashing and I'm crashing on top of you. Are you okay with that? This is the training exercise that we're going out to do; not just one aircraft but several aircraft. So are you happy to hang onto the aircraft?"

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I could configure my aircraft and I can operate to the Category A intent and the elimination of the risk, but I choose not to. This is the same unit. So its engagement with risk, in my view, as the Standards Officer, needs to be sort of questioned.

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LCDR HAY: Were you the Standards Officer after the Jervis Bay incident?

MAJ McCALL: Yes.

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LCDR HAY: Did you consider yourself to have powers or authority to conduct audits outside of the scheduled annual audits of the unit?

MAJ McCALL: No.

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LCDR HAY: Could you have raised concerns as the Standards Officer about what you consider to be cavalier or reckless attitudes towards safety?

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MAJ McCALL: Yes. And I was ordered by my Commander to never mention performance class to him again.

LCDR HAY: Who was your Commander at the time?

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MAJ McCALL: My SO1.

LCDR HAY: Who's that? COL Norton?

MAJ McCALL: No.

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LCDR HAY: Who was it?

MAJ McCALL: Well, he's not on the list.

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MS McMURDO: Is there any reason why it should be anonymised? Is it Special Operations or anything of that kind?

MAJ McCALL: No.

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MS McMURDO: No.

MAJ McCALL: No, so - - -

MS McMURDO: No, you can give the answer.

5 MAJ McCALL: Yes. It's D145 .

LCDR HAY: D145

10 MAJ McCALL: Yes.

LCDR HAY: And you say that he – I assume it's a he?

MAJ McCALL: Yes.

15 LCDR HAY: You say he told you to never mention that to - - -

MAJ McCALL: Performance class again to him.

20 LCDR HAY: What's the context in which that was said to you? Firstly, can I just ask you, was that as a result of something you - - -

MS MUSGROVE: Yes, if I could - - -

25 MS McMURDO: Just a moment, please?

MS MUSGROVE: - - - just make a request? Given it's a trauma-informed approach that you're taking and the person that's just been named, he's about to be publicly named if it goes out in the live feed – we, in here, now have his name.

30 MS McMURDO: Yes.

MS MUSGROVE: If perhaps that could be cut out of the feed out of respect to him, because it might take him by surprise?

35 MS McMURDO: Yes, out of fairness, I think that's appropriate. We'll do that.

40 MS MUSGROVE: Thank you.

LCDR HAY: So just so we understand, was it a conversation? Was it email? Was it - - -

45 MAJ McCALL: It was a conversation because - - -

5 LCDR HAY: Sorry, just before you go on with the “because”, just if you would just listen to my question, answer my question. So it was a conversation. Was it in person? Was it over the telephone? Was it - - -

MAJ McCALL: It was in person.

10 LCDR HAY: - - - in person? And was it before or after the Jervis Bay incident?

MAJ McCALL: It was probably – well, there were two cases. It was probably before and after.

15 MS McMURDO: So much before – can you give us some approximately timeframe?

MAJ McCALL: No, I can’t.

20 MS McMURDO: But within the year before, or - - -

MAJ McCALL: No, within a very short period of time. The whole point - - -

25 MS McMURDO: Shortly before?

MAJ McCALL: Yes, the whole point of performance class is to minimise the risk, and you can actually eliminate some of the risk because this aircraft was designed to do it.

30 LCDR HAY: So you say it was an ongoing conversation with D145 ?

MAJ McCALL: No, once I was ordered to not mention performance class again, there’s not much more I can say.

35 LCDR HAY: No, I understand that. But I thought the effect of your evidence a moment ago was it started possibly before the JB incident and also after it. Wasn’t that your evidence?

40 MAJ McCALL: Yes. Because - - -

LCDR HAY: Not the “because” just yet. Just, if you don’t mind, you say that the conversation started before the incident at Jervis Bay?

45 MAJ McCALL: Look, I can’t really remember, but it was around about

the same time.

LCDR HAY: Well, is it fair to characterise it as an evolving conversation that culminated in him saying to you, “Don’t mention it again”?

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MAJ McCALL: No, not really. It was fairly – because we were discussing it’s essentially associated with twin-engine operations and the safe conduct of flight single-engine, which doesn’t really have anything to do with the Whitsundays other than the relationship of risk of this organisation and how they decided to operate at the edges of the capability of the machine.

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Because that machine was capable of conducting training exercises safely and being able to recover and not fall into the ocean if it was correctly configured for the mission, it was correctly authorised for the mission, it was correctly risk managed, and then once the engine failure happened, they would’ve – as the crew, should’ve just gone, “Oh, engine failure. It’s finally happened. Why don’t we just sit here, get the human external cargo off the aircraft? Once that’s all done, we’ll recover the aircraft to the airfield”.

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But they planned and they’d authorised because Performance Class 3 in the Standards Manual says, “If you have an engine failure Performance Class 3, the only option you’ve got left is crash”. Who does that in a training exercise? Well, apparently this organisation does.

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LCDR HAY: In that context, your SO1 told you to effectively never mentioned performance class to him again?

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MAJ McCALL: Yes, because as far as he’s concerned, possibly – well, I don’t know why.

LCDR HAY: But the important part of it is that you’d had this what you took to be a directive about bringing up or mentioning performance class by your superior officer?

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MAJ McCALL: Yes.

LCDR HAY: And that was, in part, subsequent to the JB incident but before the Lindeman Island incident?

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MAJ McCALL: Correct. So, in my view point, it speaks to how the organisation is looking at risk and hazards. That’s the point.

LCDR HAY: And that's the correlation, you say, between the Jervis Bay incident and the Lindeman Island incident?

MAJ McCALL: Yes.

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LCDR HAY: And it's the reason why you've included the Jervis Bay incident in your statement?

MAJ McCALL: Yes.

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LCDR HAY: Can I just ask you – I'm conscious of the time – but I just want to just go back to the SI found at page 6/7 of Annex F of your statement.

15 MS McMURDO: So we're just having some enquiries made, I think we do have to finish at 5.15. Is that correct? We can't go beyond 5.15?

MAJ McCALL: Yes.

20 MS McMURDO: So, unfortunately, we're not going to finish with you today, I'm afraid. I did try very hard, but - - -

MAJ McCALL: I talk too much.

25 MS McMURDO: Well, you have a lot of important information to provide, so - - -

MAJ McCALL: Well, I thought it was important information and, you know, my problem is it's risk and hazard identification and management, and training responsibilities and Command responsibilities associated with safety.

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MS McMURDO: No, these are very important issues for the Inquiry, so thank you.

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LCDR HAY: Now, firstly, Major, you have to appreciate that I'm a Naval Officer, not an Army Officer. And I'm a Legal Officer, not a helicopter pilot. But just help me out with this, if you would. The SI reads:

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Aircraft shall not be flown by night overwater at a height of less than 500 feet AHO –

what's "AHO"?

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MAJ McCALL: Above the highest obstacle.

LCDR HAY:

5 – *unless an automatic altitude hold mode is selected.*

MAJ McCALL: Correct.

10 LCDR HAY: Now, it might just be me thinking like a lawyer, but will you just walk us through what does the word “selected” there mean to you?

15 MAJ McCALL: Well, “selected” means turned on and functioning, in my view. And you’re right, other pilots will start looking at it and this is where you have to start going, “Ah, we didn’t think that they would think that way. Okay, we need to find some other words to put in there”. But this one here is an altitude hold mode. And it says, “automated altitude hold mode”. If you select it, that means it’s turned on.

20 LCDR HAY: It’s on.

MAJ McCALL: Which means it’s keeping you away from the centre of the earth – or the surface of the earth.

25 LCDR HAY: Well, operating within the limits of the machine, what this function actually does is it maintains altitude unless and until the pilot overrides that function. Do you agree with that?

30 MAJ McCALL: Correct, yes.

LCDR HAY: And the way that the pilot overrides that function is with the trigger on the collective. Is that true?

35 MAJ McCALL: Yes.

LCDR HAY: And I don’t know if I understood your evidence previously, earlier today, to be – did you say that it’s not possible to maintain formation flight with the RADALT engaged?

40 MAJ McCALL: It is possible, but you’re interfering – you’re starting to override that automated function because it’s now not selected. You’re interfering with it, you’re changing it, and invariably that might lead to disabling other functions because you want to get rid of it.

45 LCDR HAY: Do you have cruise control on your car?

MAJ McCALL: Yes.

5 LCDR HAY: With cruise control selected, you're able to press the accelerator, override the cruise control momentarily and then take your foot off the accelerator.

MAJ McCALL: Yes.

10 LCDR HAY: Will the cruise control then kick back in?

MAJ McCALL: Yes.

15 LCDR HAY: You've never actually ever disengaged cruise control, have you?

MAJ McCALL: It depends. It might kick off by itself. It just depends how violent you're being with the machine.

20 LCDR HAY: Well, can I ask you to think about this? Just think of this as an alternative. In most standard cars with the cruise control activated, if I depress the brake, is it, in your experience, a usual feature of the cruise control that the cruise control will now disengage?

25 MAJ McCALL: It will go into a standby mode.

30 LCDR HAY: Thinking then, using that analogy back into the cockpit with the RADALT, do you agree that the activation of the trigger is now more and no less than the same as when the driver of the vehicle depresses the accelerator on cruise control?

MAJ McCALL: They're still interfering and there still needs to be a risk assessment identifying how you're dealing with that order.

35 LCDR HAY: Sure. But it's still selected, do you agree with that?

MAJ McCALL: Yes. You could argue that, yes.

40 LCDR HAY: All right. I should indicate, Chair, I've only got – well, I've probably got about 10 or 15 minutes more.

MS McMURDO: Apparently, we can't. The AV staff just cannot work beyond 5.15 - - -

45 LCDR HAY: Yes, I understand.

MS McMURDO: - - - for workplace health and safety reasons.

LCDR HAY: Thank you.

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MS McMURDO: The Inquiry staff will talk to you about making sure your arrangements are in place and make sure that you get any support that's needed. Thank you very much for your assistance. Is 10 o'clock tomorrow morning all right or did you want to start earlier?

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MAJ CHAPMAN: A suggestion has been made of 9.30, if that's convenient.

MS McMURDO: Is that all right with you, Major? 9.30 start tomorrow?

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MAJ McCALL: Yes.

MS McMURDO: Yes, all right then, 9.30 start tomorrow, thank you.

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<WITNESS WITHDREW

**PUBLIC INQUIRY ADJOURNED UNTIL
FRIDAY, 28 FEBRUARY 2025 AT 0930**

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