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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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 MS K MUSGROVE, representing the Commonwealth**

0930, TUESDAY, 4 MARCH 2025

DAY 38

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	21/03/25	(Transcription)

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MS McMURDO: I'll just confirm our cyclone rearrangements so that everyone knows. I think a lot of you may already know. We had made enquiries about working remotely with video-link witnesses on Wednesday, but the practicalities are that it's too uncertain and so we have decided that
5 the only realistic thing to do is to, when we finish our hearings today, that will be the end of this hearing and that will allow everybody from out of Brisbane to return to their homes before the worst of the cyclone is expected to take effect.

10 The next hearing, hearing 8, is due to commence for two weeks from Monday, 24 March. So there will be some rearrangements to witnesses in that sittings. And the ones we haven't reached in this hearing will certainly be reached in that hearing; that is, provided the after-effects of the cyclone don't prevent it.

15 Tentatively, we're looking at having an extra week of hearings beginning 28 April. So obviously we have to be flexible and deal with what Mother Nature throws at us, but that's as much as I can tell you at this stage. Thank you.

20 Yes, COL Gabbedy.

COL GABBEDY: If I might, sorry, just in relation to that, I appreciate your last words were, "That's as much as I can tell you". There are four, perhaps, identified for the next hearing block – I mean no criticism by this
25 because I understand Counsel Representing – Assisting are very busy – we don't have our section 23 Notices yet. Is it foreshadowed that those perhaps would be moved to the 28 April block?

30 MS McMURDO: I might let COL Streit respond to that request.

COL GABBEDY: Thank you.

35 MS McMURDO: Yes, COL Streit.

COL STREIT: Thank you. I can indicate one potentially affected person will only receive a Notice to appear because he's partway through his evidence, and I've already communicated that to his legal representative. One potentially affected person has received their section 23 Notice. The
40 remaining two Notices are with me and will be issued this week. I've already communicated that to another Counsel representing.

I understand, having spoken separately with all Counsel representing affected persons, that they already have undertaken steps – or some of them
45 have undertaken steps to already prepare a statement in advance, noting that

their client's assistance is sought to this Inquiry in relation to matters they were given notice of back in April last year in a potentially affected person's letter. So the 23 Notices will be issued this week. They will have them.

5 Given circumstances that have arisen largely beyond anyone's control, the Inquiry is looking to a short hearing phase, which will be hearing phase 9, at the end of April. It is highly likely – and I'll communicate with Counsel representing before the end of this week – but it's highly likely that three
10 potentially affected persons will be moved to that hearing phase. If Counsel representing have a concern about time, then they're very welcome, as all Counsel representing other witnesses have done is to engage with Counsel Assisting and indicate what the issue is, and we can have an accommodation.

15 So there is a fair bit of flexibility in the process and my role is to ensure fairness to all. If somebody considers they don't have enough time, just raise it with me early and we can go from there.

MS McMURDO: Does that satisfy you, COL Gabbedy?

20 COL GABBEDY: Potentially. It depends on which PAP is moved, I assume, and I accept what COL Streit says in relation to time. But it's difficult to know if you've got enough time if you don't yet have the Notice. I appreciate that people got the original Notices but they are quite
25 broad and my intent is not to deliver a brick of information as part of my client's statement; it's to narrow down to the issues that really are of concern to this Inquiry. Obviously, if we get those Notices this week, that will resolve the problem, I suspect.

30 COL STREIT: Well, let me be clear. I've already told Counsel representing in an email the order of potentially affected persons. MAJGEN Jobson is last. So if I say that three potentially affected persons will be moved to hearing phase 9, it means that MAJGEN Jobson will be hearing phase 9.

35 I'm just being a little bit circumspect as to what I say because these are fairly sensitive matters between Counsel Assisting and Counsel representing, and a section 23 Notice is a private coercive document, and until such time as a witness gives evidence, the legal character of a
40 section 23 Notice doesn't change.

So, to be clear, MAJGEN Jobson will be in hearing phase 9. The only potentially affected person to give evidence in hearing phase 8 at this stage may be BRIG Fenwick, who's already partway through his evidence.

45

MS McMURDO: Yes, thank you.

COL STREIT: Madam Chair, can I call AIRCDRE Joseph John Medved, please?

5

MS McMURDO: It's recalling him.

COL STREIT: Recalling, thank you.

10 MS McMURDO: Recalling him, yes.

AIRCDRE Medved, I can't remember if it was an oath or affirmation that you took last time.

15 AIRCDRE MEDVED: Ms McMurdo, I believe it was an affirmation.

<AIRCDRE JOSEPH JOHN MEDVED, on former affirmation

20

MS McMURDO: You are still on your affirmation that you took last time. Thank you. Again, please let me know if you need a break at any time.

AIRCDRE MEDVED: Will do.

25

MS McMURDO: Thank you very much. Yes, COL Streit.

<EXAMINATION-IN-CHIEF BY COL STREIT, continuing

30

COL STREIT: Thank you, Ms McMurdo.

35 Sir, just to orientate you, in front of you is a pseudonym list fixed to the table. I suspect questions asked of you might not require you to go to that pseudonym list, but if it does or if you have a concern about a name you're about to mention may have a pseudonym, can you please consult the list. The two lists are essentially the same. It's just that one is in order of pseudonym number and one is in alphabetical order of the relevant person
40 with a pseudonym to the immediate right.

Sir, can I ask some preliminary matters if I may. First, did you receive a section 23 Notice to be here today to give evidence?

45 AIRCDRE MEDVED: Yes, I did.

COL STREIT: Did that Section 23 Notice also contain a series of questions to which you responded in the form of a witness statement?

5 AIRCDRE MEDVED: Yes, they did, and I did reply.

COL STREIT: Thank you. Sir, when you received the section 23 Notice, did you also receive the following additional documents: a Frequently Asked Questions Guide for Witnesses?

10 AIRCDRE MEDVED: Yes, I did.

COL STREIT: A Privacy Notice?

15 AIRCDRE MEDVED: Yes, I did.

COL STREIT: My Instrument of Appointment?

AIRCDRE MEDVED: Yes.

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

AIRCDRE MEDVED: Yes.

25 COL STREIT: Sir, I'm just going to show you a document. Just take a moment, sir, please, and peruse that document and then I'll ask you some questions. Sir, can I confirm that the document you have before you is a copy of your statement digitally signed on 12 February 2025? Is that correct?

30 AIRCDRE MEDVED: It is.

COL STREIT: It comprises 17 pages and 30 paragraphs?

35 AIRCDRE MEDVED: That's correct.

COL STREIT: Sir, are there any amendments or additions you wish to make to the statement?

40 AIRCDRE MEDVED: No.

COL STREIT: Madam Chair, I tender the statement of AIRCDRE Joseph Medved of 12 February 2025.

45 MS McMURDO: I think that's Exhibit 143; is that right?

CLERK OF THE COURT: 148.

MS McMURDO: 148. Thank you.

5

#EXHIBIT 148 - STATEMENT OF AIRCDRE MEDVED

10 COL STREIT: Sir, you have already given evidence to the Inquiry, which was in August of last year. And as a consequence of your evidence, you were asked some questions in relation to particular matters which then resulted in you providing further information to the Inquiry. Is that right?

15 AIRCDRE MEDVED: That's correct.

COL STREIT: As a consequence of those additional matters, you're appearing here today to give evidence in relation to the matters contained in your statement?

20

AIRCDRE MEDVED: That's correct.

25 COL STREIT: Sir, I won't trouble you with the preliminary matters concerning your background and service history, other than to confirm with you that you are, and have been since December of 2020, the Director-General of the Defence Aviation Safety Authority. Is that right?

AIRCDRE MEDVED: I finished my appoint as DG DASA on 2 February.

30 COL STREIT: Thank you. Now, sir, turning to particular aspects of your witness statement, you list your tertiary qualifications at paragraph 5; is that correct?

AIRCDRE MEDVED: That's correct.

35

COL STREIT: Just to assist the Inquiry, and perhaps recall some of your earlier evidence, as the Director-General of the Defence Aviation Safety Authority, you have a number of Directorates that report to you within the authority itself?

40

AIRCDRE MEDVED: I did.

COL STREIT: Those particular Directorates, the information that you obtain from those particular Directorates, I take it you rely upon that

information and have relied upon that information in the preparation of your statement that's here before the Inquiry?

5 AIRCDRE MEDVED: There was some input I gained for the preparation of this statement or confirmation from the Directorates.

10 COL STREIT: An example of that would be responding to the section 23 Notice question in relation to when an audit had been conducted of Aviation Command following the promulgation of the DASA Regulation concerning Aviation fatigue?

15 AIRCDRE MEDVED: That's correct. So I was given the reference sources so I could independently validate and construct my witness statement.

20 COL STREIT: Thank you. Sir, can I begin, first, at paragraph 6 of your statement where you were asked questions concerning the approval process of version 5.1 symbology software upgrade to the TopOwl helmet system. In particular, can I just focus your attention on DASA's involvement in that process? You've set that out in paragraph 6, but in broad compass, DASA was involved – well, DASA assessed, did it, a change to aircraft type design in relation to bringing – or an application rather, to upgrade the TopOwl helmet software symbology?

25 AIRCDRE MEDVED: That is correct.

COL STREIT: Can you just explain in your words why it's necessary for DASA to be engaged in that approval process?

30 AIRCDRE MEDVED: Sure. I think it's important to revisit or go back to the earlier evidence I provided, just to set the scene for the framework that exists for Defence Aviation Safety. So the regulatory system is a system that's aligned with contemporary best practice and civil aviation. In that framework, there is a Regulator or Authority and there are certain
35 preconditions where an Authority or Regulator needs to get involved with regards to the certification or of an aircraft design.

40 I won't go into the details referenced in my submission, but there are Regulations that cover the level of involvement that's required and when an applicant or a member of the community needs to engage the Regulator. In accordance with the Regulations and the associated accepted means of compliance, it provides conditions for when a change in the type design or type certificate requires Regulator approval. That is determined by whether
45 a change is determined to be a major or a minor change to type design or the type certificate.

In this circumstance, the applicant, who was Airbus, made a determination that the software change was classified as a major change to type design, or a major change to the type certificate.

5

COL STREIT: Now, your evidence is that Airbus was the applicant, but I take it that Airbus – is it correct that Airbus is not operating in isolation, in other words, to unilaterally simply seek an upgrade to software for the MRH-90 helmet? Do you agree with that, what I just said?

10

AIRCDRE MEDVED: Airbus were the applicant as a design organisation.

COL STREIT: Yes.

15

AIRCDRE MEDVED: They are not the Capability Manager decision-maker. So it was not their decision to pursue this modification. They were the design organisation who applied to the Regulator.

20

COL STREIT: So when DASA reviewed the application for the upgrade to the symbology on the MRH-90 helmet, it's on the basis that the Capability Manager was seeking the upgrade and that Airbus was the applicant, because they're the organisation that is going to bring the upgrade into existence; in other words, uploading the software onto the airframe?

25

AIRCDRE MEDVED: That is correct. So they were the organisation that did provide the application and additional checks and balances required by the Regulations to support certification of the modification, and then subsequent modification.

30

COL STREIT: Because the bottom line is, Airbus is not going to seek an upgrade to an airframe that's functioning if it's not something the Capability Manager wants to occur?

35

AIRCDRE MEDVED: That is correct.

COL STREIT: In relation to the distinction between what is a major change and a minor change, in broad terms how should the Inquiry understand that distinction?

40

AIRCDRE MEDVED: The definition of a "minor change" – and I'm quoting footnote 3 – is defined as:

45

A change that has no appreciable effect on the mass, balance, structural strength, reliability, operational characteristics, or other characteristics affecting the airworthiness of the product.

When I say “airworthiness of the product”, that means that it inhibits the aircraft’s ability to fly safely. All other changes are defined as major.

5 So it is quite an ambiguous definition, intentionally, and within the Regulations there is considerable acceptable means of compliance that gives examples across different technical disciplines as to what – that gives examples of what constitutes major changes in different aircraft systems.

10 COL STREIT: So in a nutshell, a major change is something that is proposed and can affect the safe operation of an aircraft?

AIRCDRE MEDVED: Correct.

15 COL STREIT: So in those circumstances, is there a greater level of scrutiny applied from a DASA perspective to a major change than a minor change?

AIRCDRE MEDVED: Yes.

20

AVM HARLAND: Just a question, who makes the assessment of major or minor? Is that always an engineering organisation or is it done in consolidation with the operator and the Regulator?

25 AIRCDRE MEDVED: Sir, it’s a determination by the design organisation which shouldn’t be purely viewed as an engineering organisation because a design organisation will be multidisciplinary and requires inputs from – also may predominantly have engineers. It may well have additional professionals within it, such as aircrew, Flight Test Specialists, for
30 example. The determination is done in accordance with a procedure, and that’s associated with an organisational approval.

DASA, as part of a broader oversight in enforcement activities, looks at examples of how they’ve classified design changes. That is important to
35 ensure that these design organisations do not subvert the system and underclassify in order to avoid additional assurance by DASA.

AVM HARLAND: That was my next question, so thank you. Yes, great.

40 COL STREIT: You’ve given some evidence about the distinction between major and minor changes. Can you assist the Inquiry understand why the symbology upgrade to the MRH-90 helmet used by pilots was a major change? Why did it fall into the “major” change bucket?

45 MS McMURDO: Paragraph (d).

AIRCDRE MEDVED: (d)?

MS McMURDO: 6(d).

5

AIRCDRE MEDVED: Yes. So paragraph 6(d):

The applicant –

10 that was Airbus –

in air classification, determined that the change to the type design should be classified as “major” due to the effect of the hazardous failure for the aircraft.

15

Now, I was not involved in that; DASA was involved.

COL STREIT: Sure. No, I understand.

20 AIRCDRE MEDVED: That was from the applicant.

COL STREIT: That leads to my next question, and that is, irrespective of what the applicant designates a change – i.e. minor or major – does DASA, in your tenure, make an independent assessment about that, as to whether
25 in fact it is minor or major?

AIRCDRE MEDVED: If a design change is assessed to be minor, DASA, by definition, does not get involved or directly overseen, apart from retrospective assurance of design organisations and their procedures and how they follow them. With respect to a major change in type design, unless it appears to be a gross error in classification, DASA will typically take the classification of a “major” on face value.
30

COL STREIT: And I suppose, is it the case that DASA would be less concerned about the incorrect classification being applied to what is essentially a minor change, making it major, because the focus of a major change is just a higher safety focus? Correct?
35

AIRCDRE MEDVED: That’s correct. So if it is ambiguous or if there’s a level of ambiguity or uncertainty, if the classification goes to a high level of classification, to a major, DASA will not challenge it.
40

COL STREIT: So the upshot of it is this: Airbus classified in their

application the symbology upgrade to version 5.1 as a major change and DASA, having regard to the applications, did not look behind the reasoning process as to why that was designated a major change by Airbus.

5 AIRCDRE MEDVED: (No audible reply).

COL STREIT: If it's not within your knowledge, sir, please say so.

10 AIRCDRE MEDVED: DASA assessed it and did not disagree with it.

MS McMURDO: There's no obvious ambiguity there as to it being a major change, is there?

15 AIRCDRE MEDVED: Ms McMurdo, I was simply giving – my previous response was in cases where there may be ambiguity.

MS McMURDO: Yes.

20 AIRCDRE MEDVED: I can't comment on the specifics of this example.

MS McMURDO: No. But isn't it sort of self-evident that, as you say in paragraph (d), "It was classified as a major change to the type design due to the effect of the hazardous failure for the aircraft" – i.e. if it was a dud – if this version 5.10 was a dud, it had potentially very serious ramifications for the aircraft? So it would be a major change. That's how I understand it. Is it not as simple as that?

25 AIRCDRE MEDVED: The words in my submission is a direct quotation from Airbus, and it depends on how that design is used. So if it's not – as to whether it's a primary flight aid or not.

30 AVM HARLAND: So just to follow-up on that, when these major assessments come through, do you assess each one of those or do you do it as part of your assurance process like you indicated last time? So would you assess 100 per cent of the "major" classifications, or would you just sample them as part of an assurance process?

35 AIRCDRE MEDVED: The classification that's made is not explicitly approved per se. Because DASA gets its assurance when it approves the design organisation. Because it approves its process as part of the design organisation approval; that if that process if followed, it will lead to the correct classification. So it is looked at, but it's not explicitly approved. And that step is done as part of a Certification Program Plan activity in advance of a final application for a design certification.

45

AVM HARLAND: So if I was to say that a “major” classification is made by the design organisation, which is an approved organisation under the Regulations, DASA doesn’t then apply a second level of approval to it, but is aware of that classification as part of the Certification Plan?

5

AIRCDRE MEDVED: Program Plan. Correct.

AVM HARLAND: Program Plan, yes. And then in addition to that, DASA’s assurance program would look at some of the approvals to assure themselves that the design organisation is categorising these changes correctly over time – that’s your assurance program over time.

10

AIRCDRE MEDVED: That’s correct. So the separate assurance of design organisations, which is predominantly focused on privileges that are awarded to that organisation where it can self-approve certain activities, that will look at the classification procedure and how it’s being executed with examples. But when something’s been classified as major, whether it’s borderline minor/major or clearly major, as Counsel indicated, it becomes in effect a moot point because it’s a high level of assurance provided by DASA in identifying what airworthiness standards need to be complied with for that change in type design.

15

20

And then the final assurance process is by DASA, when that application is formally provided.

25

AVM HARLAND: Okay, thank you.

COL STREIT: And it’s simply the case that Airbus, in their application, classified the upgrade to 5.10 as a major change to the type design due to the effect of the hazardous failure for the aircraft. Correct?

30

AIRCDRE MEDVED: They did, that’s correct.

COL STREIT: Now, can I turn to page 4 of your statement, please, and the basis upon which DASA granted approval for the MRH-90 TopOwl version 5.10 software upgrade. So, sir, in relation to paragraph 7, the nub of paragraph 7, would you agree with me, is to this effect: that DASA noted that the TopOwl version 5.1 software had been approved and certified by the German Military Aviation Authority? Correct?

40

AIRCDRE MEDVED: That’s correct.

COL STREIT: And as a consequence of a process of mutual recognition between other nation’s Military Aviation Authorities and DASA – in this case the Germans – was DASA satisfied that the upgrade of 5.10 had been

45

subject to a process by the German Military Aviation Authority leading to its approval into service in that Armed Forces?

5 AIRCDRE MEDVED: I'll unpack that question.

COL STREIT: Sure.

10 AIRCDRE MEDVED: Firstly, DASA has formally recognised LufABw. So the German Military Aviation Authority is a competent Military Aviation Authority for the scope of design and type certification, amongst other things. Within the construct of the NH90, the German MAA was the lead Military Aviation Authority for the TopOwl system, and the version 5.1 software update, which DASA relied upon in order to provide DASA additional assurance of that modification.

15 COL STREIT: So the nub of it is, that once DASA became aware that their equivalent German Military Aviation Authority had approved into service version 5.1 symbology on their NH90s, DASA relied upon that decision taken by that German Military Aviation Authority as the basis for
20 DASA's approval for version 5.1 symbology to be upgraded on the MRH-90 fleet. Is that correct?

AIRCDRE MEDVED: Partially correct.

25 COL STREIT: Sure.

AIRCDRE MEDVED: It definitely did leverage off that previous certification work. One requirement that always needs to be performed is a validation check to confirm that there aren't differences in the configuration role or operating environment. As a result of that, there was some additional qualification testing for that modification for the Australian configuration that had been completed. So it was part of the validation of what had been done.

35 And this is in my evidence: DASA's subsequent involvement was limited to reviewing a suite of evidence to confirm that the design met the certification requirements.

40 COL STREIT: So these additional steps you mention, so DASA has the application from Airbus, it has the German Military Aviation Authority's approval of version 5.1 on their fleet of NH90s. What are the additional steps DASA took as part of its approval process, before approving the software upgrade?

5 AIRCDRE MEDVED: Broadly speaking – and I did provide the evidence of what DASA had stepped through in the additional responses I provided, I think it was September last year – the applicant needs to step through how far they can leverage off that prior certification by demonstrating how any differences in configuration, role and operating environment, how they’ve been addressed, against how they meet the airworthiness requirements.

10 In this exact circumstance, as already provided in separate evidence, there was additional qualification testing of that modification to the Australian configuration that was performed.

15 COL STREIT: Is that a reference to your evidence a little later in your statement where you identify at paragraph 12(c) that there was a test and evaluation process undertaken by the Directorate of the Air Warfare Centre, Air Command?

AIRCDRE MEDVED: No, that’s not. This is qualification testing done by the design organisation.

20 COL STREIT: By the?

AIRCDRE MEDVED: Design organisation.

25 COL STREIT: So that additional information, together with the German Military Aviation Authority’s tick of approval for 5.10, did DASA then approve version 5.1 software upgrade?

30 AIRCDRE MEDVED: What happened after that? Well, at that stage, Airbus Australia had provided a set program plan, providing evidence of those activities that had been done by the design organisation, and also the German MAA’s involvement. And as part of that approval of that Certification Program Plan, it explained or indicated the level of involvement of DASA. And that’s where DASA’s level of involvement was limited to reviewing a suite of some documents. DASA also independently engaged the German MAA as part of the validation activities.

40 And again, evidence of that is included in the internal documentation that DASA documented associated with approving the design change, which was provided in September to the Inquiry. It was through a review of the associated documents provided by Airbus, with additional validation by the German – with an engagement with the German MAA, that led to DASA’s approval of the modification.

COL STREIT: Was any flight test undertaken by a Test and Evaluation Organisation within the ADF of the symbology upgrade which DASA considered before it made its decision to approve version 5.1 into service?

5 AIRCDRE MEDVED: Counsel, can you repeat that question, please?

COL STREIT: Let me put it this way. Before DASA approved version 5.1 symbology upgrade into service – putting aside what Airbus said; putting aside what the German Military Aviation Authority said – was there any independent flight testing done by any ADF Test and Evaluation Organisation about the operation of version 5.10 on an MRH-90 that DASA considered?

15 AIRCDRE MEDVED: No, not that I'm aware of. However, it was acknowledged that Operational Test and Evaluation was required, as well as crew training.

COL STREIT: For a lawyer – me – what does that really mean on the ground, in practical terms?

20

AIRCDRE MEDVED: I'll give an analogy to a motor vehicle.

COL STREIT: Sure.

25 AIRCDRE MEDVED: If we're all familiar with driving motor vehicles, for those that have driven a Tesla, it has a different symbology inside. You can't just jump into a Tesla and drive it. You do need a level of training and instruction to understand how some of the functions operate. So, similarly, if you have an aircraft where they change some of the features, particularly with symbology, it was acknowledged there'd need to be training on that, as well as how to apply the additional functionality to operations and tactics and procedures.

30

COL STREIT: As we understand the evidence, or as some of the evidence reflects before the Inquiry, that process seems to have occurred after DASA gave approval for the symbology upgrade. Is that your understanding?

35

AIRCDRE MEDVED: That is my understanding. And that the approval said that the modification was – or the aircraft with that modification was safe to fly.

40

COL STREIT: Absent a test and evaluation assessment by a Flight Test Organisation in the ADF?

45 AIRCDRE MEDVED: That's correct. But the modification was in

service in other Militaries in, you know, NH90 other variants. And as part of the design, there was testing done as part of the design change.

5 AVM HARLAND: In your mind, when DASA indicated that as part of that CRE configuration role environment validation, additional testing was required, what was DASA's intention regarding that test? As in what was its purpose?

10 AIRCDRE MEDVED: The purpose was to support use of the additional features of that modification from an operational sense, and for the conduct of safe operations. So there's additional training, clearly, for the operators, in how to exploit the maximum benefits of the additional functionality from a tactics' perspective.

15 AVM HARLAND: So it was to confirm its operation in the Australian configuration, role and environment?

AIRCDRE MEDVED: Context.

20 AVM HARLAND: And determine what training might be required to be able to go ahead and use it as a line modification?

AIRCDRE MEDVED: And how you will use that functionality tactically in operating procedures.

25 AVM HARLAND: So was there any thought in DASA's mind that there was a requirement to do, like, a safety check or audit as part of that, as part of the flight test?

30 AIRCDRE MEDVED: There wasn't a requirement for flight test to support a demonstration of airworthiness requirements. It was not identified for this modification. Some modifications do require a flight test to be conducted to gather certification demonstration evidence. For this modification, flight test was not identified as being required to generate certification demonstration evidence to support approval.

35 AVM HARLAND: Did you have any insight into the German testing? So did you get copies of their reports as part of the agreement you have with the German MAA? Were you able to get access to that?

40 AIRCDRE MEDVED: I'm not aware of getting copies of test reports and so forth. But the premise behind recognition, and with trusted regulatory authorities, is that you don't need to re-verify the certification activity. You trust what they've done. You understand the requirements that the modification was assessed against. It's not a verification activity, it's a

validation check. So a validation that what they certified for their configuration is not invalidated by any differences in Australia's configuration, role or operating environment for the MRH-90.

5 AVM HARLAND: In this part of the process, does DASA have a look at the detailed design specification for the change, or is that left to the design organisation?

10 AIRCDRE MEDVED: I wasn't directly involved. I did provide a copy of the DASA assessment, but I'd have to look again at what suite of evidence was provided. But again, I do state it's not a full review process; it's a validation check. We are relying on prior certification conducted by the German Military Aviation Authority, so there isn't a full verification process done.

15 AVM HARLAND: You're aware of attitude instrumentation on aircraft?

AIRCDRE MEDVED: I am.

20 AVM HARLAND: And the fact that that actually displays inside the aircraft the representation of what's happening out in the real world. If you were given a design that included a feature that displayed attitude information incorrectly in certain areas, or in certain parts of flight, depending on what you were doing, would that concern you?

25 AIRCDRE MEDVED: With that context, certainly.

AVM HARLAND: Were you aware of any concerns that were raised regarding the TopOwl version 5.10 and the display of symbology off-axis?

30 AIRCDRE MEDVED: I don't recall those issues being identified as part of the submission of the documentation suite supporting approval.

35 AVM HARLAND: I guess what I'm trying to get to is whether there's a tripwire in your process. I understand the notion of a like Military Airworthiness Authority, and that you would go through a process to effectively exchange trust and say, "Well, we think that, you know, your certification is similar to our certification. We'll do a check on configuration role and environment. We anticipate your risk tolerance is somewhat similar to ours – your design philosophy is somewhat similar to ours".

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It appears that there is no tripwire for something like, you know, an attitude display which is displayed in an ambiguous or incorrect way. There doesn't

seem to be a tripwire in that system to be able to catch that, because you have this circle of trust around the Military Airworthiness Authority.

5 AIRCDRE MEDVED: I don't see any differences with the German MAA, and I was directly involved with the recognition of the German MAA. I don't see difference in their level of transparency and competency, as a Civil Aviation Authority. This is where there is a little bit of ambiguity, of whether something is certified as a primary flight aid, rather than a support. For the intended purpose of the modification, and in accordance
10 with the airworthiness requirements, it was approved.

AVM HARLAND: So, essentially, you're assuming that the specification is correct and reasonable, and you don't necessarily get into the finer detail of the modification?
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AIRCDRE MEDVED: Sir, can you clarify that question, or provide more context?

AVM HARLAND: Well, the context can be version 5.10.
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AIRCDRE MEDVED: Okay.

AVM HARLAND: That you didn't delve into the detail of a specification which articulated that when looking off-axis you would end up with ambiguity in the attitude display?
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AIRCDRE MEDVED: I'm not aware of, and I don't recall, looking at the internal ASIT documentation, that that had been identified.

AVM HARLAND: Okay, I'll leave it there. And then when we get to the flight test aspects, I'll come back to that.
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AIRCDRE MEDVED: But the airworthiness requirements were reviewed, as they were proposed with the Type Certification Plan.
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AVM HARLAND: Understood. Yes, thank you.

COL STREIT: As part of the DASA approval process for version 5.10 – and we'll just focus on that context – is it the case that DASA had regard to the German Military Aviation approval, but not how the German Military might utilise, operationally, that symbology upgrade in its airframe?
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AIRCDRE MEDVED: Again, I would have to – based on my recollection of the DASA assessment, it did not include an assessment of how the German Military employed use of that TopOwl modification.
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5 COL STREIT: Does that not then lead to some significance in the conduct of an assessment test and evaluation by an ADF Flight Test Organisation to provide DASA information, or a level of assurance how, operationally, the piece of equipment – in this case an upgrade to symbology for a pilot’s helmet – would work, or any limitations to it?

AIRCDRE MEDVED: Counsel, can you repeat the question, please?

10 COL STREIT: So let me put it this way – and if I have this wrong, please say so – DASA’s approval process is based upon an application and documentation submitted in writing by Airbus. Correct?

15 AIRCDRE MEDVED: Correct.

COL STREIT: And based its decision to approve the symbology upgrade, essentially that it had been approved by the equivalent regulatory authority in Germany.

20 AIRCDRE MEDVED: Correct. And there had also been some – yes.

25 COL STREIT: But what is absent from DASA’s approval process, before it says, “Yes, 5.1 can be brought into service”, is a report from a Flight Test Organisation that tested and evaluated the piece of equipment in real time, under Australian conditions, and in relation to ADF operations, as to whether there was any issue that arose that might affect DASA’s decision to ultimately approve version 5.1 into service.

30 AIRCDRE MEDVED: As part of the approval, the German MAA had certified TopOwl 5.1. There was additional qualification testing done of that with the Australian configuration. And for its intended purpose against the airworthiness requirements against which it was assessed against, it satisfied those and the modification was assessed as safe to fly – or the aircraft with that modification was assessed as safe to fly.

35 COL STREIT: Now, jumping a little bit ahead. You deal with, later in your - - -

40 MS McMURDO: Just before you do that, can I just ask something?

COL STREIT: Yes.

MS McMURDO: You said earlier – just clarify this – you said there was a difference between DASA and the German MAA only in their approach

to primary flight aid – whether something was a primary flight aid or a support. Have I got that right?

5 AIRCDRE MEDVED: That is correct, Ms McMurdo.

MS McMURDO: So did that have any relevance to version 5.10?

10 AIRCDRE MEDVED: Again, I would have to look at the evidence I had provided in September, but my recollection is that the HMSD had not been certified as a primary flight aid.

MS McMURDO: Right. Thank you.

15 COL STREIT: But nonetheless irrespective of that, the application was a major change to design type due to the effects of hazardous failure for the aircraft. Correct?

AIRCDRE MEDVED: That's correct.

20 COL STREIT: So, in other words, if the version 5.10 symbology being utilised by a pilot in flight failed, then the consequence of that was a hazardous failure for the aircraft, i.e. a safety issue for the aircraft. Correct?

25 AIRCDRE MEDVED: It depends on how you define "failure", clearly. And I had not looked at – for example, I've not looked at what would constitute failure.

30 COL STREIT: When you say at paragraph 6(b) – what do you understand to be the meaning of "hazardous failure for the aircraft"? What was the hazard which caused the upgrade to be regarded or classified rather as a major change?

35 AIRCDRE MEDVED: Those words, as I've just said, were provided by Airbus as part of their classification process.

COL STREIT: And, as a consequence of that, it was therefore treated by DASA as a major change which required a greater lens of scrutiny for safety issues before any approval was given.

40 AIRCDRE MEDVED: That's correct.

COL STREIT: Can I just turn now, please, to paragraph 11 of your statement? You were asked this question:

Does an ADF Flight Test Organisation have a particular function under the DASR –

i.e. the Defence Aviation Safety Regulation

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and if yes, please explain that function, including whether ADF Flight Test Organisations have any delegations under the DASR?

You say that:

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The DASR does not explicitly identify Flight Test Organisations as a regulated organisation with associated delegations.

Is there any reason for that?

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AIRCDRE MEDVED: The reason is that it's based on contemporary approaches by international civil aviation and many Military – many Militaries where a Flight Test Organisation in and of itself is not a regulated – or independent regulated organisation. It may be part of a regulated organisation. But a Flight Test – it doesn't – we don't have explicit Regulations supporting an approval of a Flight Test Organisation.

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COL STREIT: Indeed, your evidence subsequently in para 11(b) reflects that Flight Test activities under the DASR may be conducted by Military Air Operators that are capable of safely conducting those activities, including that the tests are conducted using civil personnel processes and data. Is that correct?

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AIRCDRE MEDVED: That is correct.

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COL STREIT: So what you're saying there, if I understand it correctly, is that under the Defence Aviation Safety Regulation, the Military Air Operator – that's the end user of the product that DASA has approved in this case version 5.1?

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AIRCDRE MEDVED: Yes.

COL STREIT: So Military Air Operator, in this context, is Aviation Command; is that right?

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AIRCDRE MEDVED: Well, currently Aviation Command. But it doesn't – but the way the Regulations are written, it's not limited to the end-user organisation for flight test. For example, if it was – some flight test activities may be done by a different Military Air Operator that's exclusively focused on flight test activities.

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5 COL STREIT: And we'll come to that a little later in your evidence. But just in terms of the framework – well, as it currently sits and sat in 2020 when TopOwl came into service – version 5.1 – that the Defence Aviation Safety Regulation does not explicitly identify Flight Test Organisations as regulated organisations with delegations under the DASR. Correct?

AIRCDRE MEDVED: That's correct.

10 COL STREIT: What the DASR does, can I suggest, is permit flight test activities to be conducted by a Military Air Operator capable of safely conducting those activities, including that the tests are conducted using suitable personnel, processes and data? Correct?

15 AIRCDRE MEDVED: That's correct.

20 COL STREIT: So in Army's case, that's the – is it your understanding that that is the, sorry, Army Aviation Test and Evaluation Section? That is a Flight Test Organisation used by Army's Military Air Operator?

AIRCDRE MEDVED: That is my understanding, yes, and they operate under the Army Military Air Operator.

25 COL STREIT: And the DASR – i.e. the regulatory framework – the DASR Flight Test Regulation provides the regulatory controls for flight testing; is that correct?

AIRCDRE MEDVED: That's correct.

30 COL STREIT: So DASA doesn't regulate Flight Test Organisations with delegations in the ADF. DASA permits the Military Air Operator – whether it's Army, Navy, Air Force – to do those flight tests. But DASA does provide the Regulation for the conduct of those flight tests. Is that correct?

35 AIRCDRE MEDVED: Can you repeat that again, please, Counsel?

40 COL STREIT: Sure. So DASA does not regulate or provide delegations for an ADF Flight Test Organisation. Do you accept that?

AIRCDRE MEDVED: DASA does not explicitly provide a Flight Test Organisation approval.

45 COL STREIT: Sure.

AIRCDRE MEDVED: But there is an approval as part of the Military Air Operator certificate and operational specification for the conduct of flight test.

5 COL STREIT: Yes. So the end user of the product, in this case – let’s use the context of this matter – version 5.1 symbology was ultimately approved by DASA – the upgrade. Correct?

AIRCDRE MEDVED: Correct.

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COL STREIT: What happened next is that the Military Air Operator – which was Army Aviation in its previous form, now Aviation Command – conducted, through AATES, a flight test activity. Is that your understanding?

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AIRCDRE MEDVED: That is correct.

COL STREIT: Now, the flight tester – that is, AATES – is not a regulated organisation under the DASR. Correct?

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AIRCDRE MEDVED: It’s not an explicitly regulated organisation.

COL STREIT: Sure.

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AIRCDRE MEDVED: But as part of the broader Army Aviation Command, and the predecessor organisation, they were part of that regulated community.

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COL STREIT: But AATES is tasked by the Military Air Operator, Army, to do testing.

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AIRCDRE MEDVED: I guess to provide clarification, what I mean by my previous statement, there are certain provisions particularly for higher end flight test, or more challenging flight test, that requires a much higher degree of skilling of personnel, and training and experience – and that is typically only resonate within, like, a concentrated group of people in a dedicated organisation to do those types of activities which may be colloquially referred to, or commonly referred to, as a Flight Test Organisation.

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COL STREIT: But in terms of regulating the actual flight test done by a Flight Test Organisation, part of Army, Navy, Air Force, DASA provides a Regulation for that purpose. Is that right?

AIRCDRE MEDVED: They're a model – there's a dedicated Flight Test Regulation. For that Military Operator to conduct a flight test, they need to meet those requirements.

5 COL STREIT: I'm just looking at paragraph 11(c) of your statement. So you say:

DASA flight test provides regulatory controls for flight test.

10 So the DASA Regulation provides the regulatory controls for flight testing. Is that correct?

AIRCDRE MEDVED: That's correct, through that Regulation, yes.

15 COL STREIT: Yes. It's just that DASA doesn't own the organisation, the ADF Flight Test Organisation that does the testing. Is that correct?

AIRCDRE MEDVED: Can you repeat that? I thought I heard you say they fly their own - - -

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COL STREIT: So AATES?

AIRCDRE MEDVED: Yes.

25 COL STREIT: Is not part of DASA?

AIRCDRE MEDVED: That's correct. And that's consistent with foreign civil aviation authorities as well as in foreign militaries where Flight Test Organisations often reside within a design organisation when you're developing your aircraft designs.

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AVM HARLAND: Is it fair to say that while you don't regulate the Flight Test Organisation, you have limits and authorities required for the conduct of flight tests, so you kind of, like, regulate the activity? And you have certain levels, based on the significance of the flight test, which would demand certain qualifications, and in doing so, you satisfy that it's going to be carried out by qualified people?

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AIRCDRE MEDVED: Yes. So the Flight Test Organisation is oversighted as a part of the Military Air Operator. But they don't get an explicit approval from DASA.

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LCDR HAY: But you regulate their processes and the flight test activity to a certain degree.

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AIRCDRE MEDVED: That's correct.

COL STREIT: "DASA provides" – and I'm looking at paragraph 11(c) and the dot points underneath:

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DASA provides a Military Air Operator –

Sorry –

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a Military Air Operator requires a specific privilege to be able to conduct flight test activities that are Category 1 to 4.

Is that correct?

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AIRCDRE MEDVED: That's correct.

COL STREIT: You say that flight test activities classified as Category 1 to 4 must be conducted under the authority of a Military Permit to Fly. Correct?

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AIRCDRE MEDVED: Correct.

COL STREIT: And that only DASA, or an appropriate Delegate of the Safety Authority, can issue a Military Permit to Fly supporting all of these flight test categories. Is that right?

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AIRCDRE MEDVED: Correct.

COL STREIT: And DASA relies on the DoSA, Delegate of the Safety Authority, with appropriate flight test qualifications, training and experience to perform this authority function.

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AIRCDRE MEDVED: Correct. So that's an individual who does not reside within the DASA organisation.

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COL STREIT: In the context of test and evaluation that was conducted by AATES concerning version 5.10, to your knowledge, did AATES have a Delegate of the Safety Authority to conduct testing?

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AIRCDRE MEDVED: They did. From what I could gather in providing this statement, I did not see evidence of an individual within AATES being a Delegate of the Safety Authority to approve an MPTF, which was supported by the flight test DoSA, who approved the flight test activities – those two flight test activities, which was the DoSA that resides within the Air Force Air Warfare Centre, Test and Evaluation Directorate.

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COL STREIT: So DoSA is the Delegate of - - -

AIRCDRE MEDVED: Delegate for the Safety Authority.

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COL STREIT: Safety Authority.

AIRCDRE MEDVED: Yes.

10 COL STREIT: And is the Inquiry to understand your evidence is, upon interrogating the records at DASA that in relation to AATES testing of TopOwl version 5.10, AATES did not have, to your understanding, a delegation of the Safety Authority to conduct that testing?

15 AIRCDRE MEDVED: No, that they did not have a delegation to approve the Military Permit to Fly.

COL STREIT: Can't do the testing without the Military Permit to Fly.

20 AIRCDRE MEDVED: But that Military Permit to Fly was granted and signed off by a flight test DoSA from the Air Force Air Warfare Centre, Test and Evaluation Directorate.

25 COL STREIT: Is the Inquiry to understand your evidence that when AATES did its testing of version 5.10, the authority to conduct that testing under the Delegate of the Safety Authority was provided by the Director, Test and Evaluation Directorate, the Air Warfare Centre?

AIRCDRE MEDVED: Correct.

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AVM HARLAND: Was that an allocation made by DASA? So did that mean that Army was required to go to that DoSA to get a Military Permit to Fly for their flight test activity, or could they go to other DoSAs within ASDF?

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AIRCDRE MEDVED: Sir, I'm not 100 per cent sure. However, they could have gone to other – I understand they could have gone to other flight test DoSAs. At the time, I think, the only flight test DoSAs was in AMAFTU, so it was the Navy test area within the Navy Fleet Military Air Operator as well as the Air Force Air Warfare Centre Military Air Operator or ARDU, the flight test area.

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During my tenure as DG DASA, I increased the number of delegates of the Safety Authority and it is that practice – and this is also to ensure we don't have unnecessary bottlenecks or delays in approving flight test

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authorisations or instruments. So I expanded the number of individuals that were approved as a Delegate of the Safety Authority to approve flight test activities.

5 AVM HARLAND: Thank you.

COL STREIT: Under the DASA framework that existed in 2020 and 2019, when TopOwl version 5.10 upgrade was being considered and tested, there was, at that time, no requirement for a Flight Test Organisation's report concerning version 5.10 to be provided to DASA at all. Is that correct?

AIRCDRE MEDVED: That is correct.

15 COL STREIT: And so even though the Flight Test Organisation that is engaged by Army's Military Air Operator at the time to do flight testing of version 5.10 which AATES, the evidence before the Inquiry, did – and your evidence that AATES had to go and get a Delegate of the Safety Authority Military Permit to Fly to do the testing – which, on your evidence, occurred – the report that AATES prepares after doing its testing, it was not required to be sent to DASA for consideration.

AIRCDRE MEDVED: That's correct. And that's because the purpose of the flight test was not to generate certification demonstration evidence against the airworthiness requirements that the modification was designed to.

COL STREIT: Would not DASA be interested to know if the Flight Test Organisation had identified an unacceptable risk or made an "unacceptable" finding concerning the operation of TopOwl version 5.10?

AVM HARLAND: Because you already approved the design at this stage. You approved it in February 2019. So you've now signed off on the design.

35 AIRCDRE MEDVED: Correct.

AVM HARLAND: Subsequent flight testing done under a Military Permit to Fly by a DoSA, one of your delegates, comes up with an "unacceptable" finding. So you've now got an approved design with an "unacceptable" finding related to safety.

AIRCDRE MEDVED: An "unacceptable" finding identified through a very controlled flight test activity, not through routine operations.

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5 AVM HARLAND: It's still an "unacceptable" finding. And they're basically saying that the risk is controlled flight into terrain. It's about as serious as it gets. And that there's no requirement for that to come back because you've now approved the design and it's all out there, it's all running. Are you comfortable with that?

10 AIRCDRE MEDVED: I acknowledge that. What I would state is that this was part of a number of flight test activities and the one you are referring to, sir, is one of that I am aware of. There was three separate flight test groups of activities. And through the process of those flight test activities and associated outcomes risk controls were put in place that adequately addressed the hazard and managed the risks.

15 Had there been the scenario where there were safety occurrences, post-implementation of those controls, DASA, the Regulator, would be notified and that is quite commonplace. And if there are issues with the design, again, this is quite common in even civil aviation. There's a close feedback mechanism to revisit the certification of the design.

20 AVM HARLAND: So this is where you talk about, in para 14(d), you rely effectively on op hazards, submitting an op hazard report, operational hazard report, or - - -

25 AIRCDRE MEDVED: An operational hazard report or an Aviation Safety Report once the system has been fielded in service.

30 AVM HARLAND: So that's a result, really. That's what I'd consider to be reactive flight safety as opposed to proactive. So you've gone through testing, there's been an "unacceptable" finding relating to flight safety and DASA is satisfied to wait further down the track until an op hazard might be submitted, or we have a safety occurrence. That would seem to me to be a very long wish reactive approach to flight safety.

35 AIRCDRE MEDVED: Sir, I can appreciate where you're coming from. At the time, DASA was not aware – just to make it clear, DASA was not aware of this – from one of these flight test activities where there was an "unacceptable" finding.

40 MS McMURDO: Could I just ask you about that? So you know now that there was the AATES testing that found the "unacceptable" finding, then there was further testing done in an Operational Evaluation, OPEVAL, and ultimately it was decided that, as you mentioned, the risks could be managed by various things. But the AATES still said, after receiving that OPEVAL, the AATES still considered that it was an "unacceptable" finding. Now, none of that came to DASA?

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AIRCDRE MEDVED: Not at the time, Ms McMurdo.

5 MS McMURDO: At the time. None of that came to DASA at the time.
Was there any way it could have come to DASA?

10 AIRCDRE MEDVED: Ms McMurdo, I would frame it from the
perspective that there were – and this is retrospectively me looking at and
being provided evidence in support of this Inquiry, three sets of test
activities done with this modification. There was some work done by
AMAFTU, the Navy flight test area. There was AATES and then there was
subsequent, more comprehensive testing, with many more flights upon
review of that AATES report, which had a limited number of flights.

15 In terms of the findings, they are – by their nature, they have a level of
subjectivity and there were also differing views amongst Flight Test
Specialists with regards to, you know, suitability or unsuitability of the
system. So differing views amongst Flight Test Specialists within different
organisations.

20 MS McMURDO: But my question to you was, was there any way then
that you could have been informed of the AATES' concern, despite the
OPEVAL, that it was still unacceptable that the OPEVAL had not
eliminated or diminished or diluted the “unacceptable” finding, in their
25 view? It just seems, to a lay person, to be the sort of thing that DASA
should have been made aware of at the time when there was this dispute
between experienced test flight - - -

30 AIRCDRE MEDVED: Within the flight test community?

MS McMURDO: Yes, test flight pilots.

35 AVM HARLAND: And AATES, in terms of context, had accepted a
number of changes that resulted from the OPEVAL, but they still
maintained their “unacceptable” relating to the ambiguous attitude. So, to
me, that rings more alarm bells because they accepted everything else, but
they still stuck with their original assessment.

40 AIRCDRE MEDVED: Yes, sir. I am aware of that. In terms of coming
back to DASA, the Regulator, there are avenues to contact DASA with
regards to – if there are concerns with non-compliance against airworthiness
requirements. There's also a confidential reporting system as well.

45 AVM HARLAND: Were any of those representations or reports made
regarding this issue to DASA?

5 AIRCDRE MEDVED: There was a confidential report provided to DFSB, not to DASA. But then subsequent investigations did involve DASA regulatory staff with the FLIR system.

AVM HARLAND: That was the FLIR system. Okay, so that wasn't related to this TopOwl?

10 AIRCDRE MEDVED: Not that I'm aware.

AVM HARLAND: Sorry, COL Streit, just a follow-on question. I'm probably ruining your flow here.

15 At 12(c), para 12(c), it talks about 2018 MRH-12, and that was conducted under a Military Permit to Fly approved by GPCAPT Young, who was in the Directorate, Test and Evaluation Directorate, Air Warfare Centre. So the habitual DoSA for AATES.

20 AIRCDRE MEDVED: Yes.

AVM HARLAND: If you can just help me out and understand, if you set a flight test task like that, does that cover the testing until it's complete? Or if you get to a certain point in testing, as we did with the AATES report, where they went and they found an "unacceptable", there was a lot more work that was done to do some research – I understand the characteristics of TopOwl – and then go and do some further testing, which is what you would expect, that you'd be doing some further testing, would that be done under that same task and that same Military Permit to Fly ordinarily, or would you be able to go to another DoSA, for example, and get another Military Permit to Fly under a different flight test category given that you're still testing the same stuff?

35 AIRCDRE MEDVED: Sir, I'd have to look explicitly at what's written in that approval because often the approvals for the flight test activity are constrained in scope. They're not open-ended. But the Regulations would not compel you to stick with the same DoSA.

40 AVM HARLAND: Okay, that's good. If you're doing a flight test activity and it's effectively the same flight test activity, but you now have got more information and you're now doing further testing, would it be ordinary to change the category of flight test?

45 AIRCDRE MEDVED: Sir, I'm not a Flight Test Specialist. And without understanding the nuance or context or even in this circumstance, I'm not able to answer that question.

AVM HARLAND: Okay, thank you.

5 COL STREIT: Perhaps if I put it this way – and just to set out the chronology so your evidence might assist the Inquiry – DASA was approached by Airbus with an application for the upgrade of symbology 5.10 on MRH-90 TopOwl. DASA approved that upgrade. Correct?

10 AIRCDRE MEDVED: That is correct. But prior to the application, DASA was engaged with the Certification Program Plan, so that’s the plan on how you intend to certify it. That was approved first.

COL STREIT: Sure.

15 AIRCDRE MEDVED: As a risk mitigation step. And then subsequently DASA did approve that modification.

20 COL STREIT: Sure. So what I want to suggest to you is, post the approval by DASA, there was no requirement under a DASA Regulation for a Flight Test Organisation’s report on the operation of that symbology upgrade to come back to DASA in relation to whether that report impacted DASA’s decision for approval of the upgrade. That’s correct, isn’t it?

25 AIRCDRE MEDVED: That is correct. However, I do want to state that there are Regulations in place that if there’s identification of a potential unsafe condition with an aircraft, that that is reported by the Type Certificate Holder. And in both instances DASA wasn’t notified.

30 COL STREIT: And the version 5.10 upgrade was a major change because it was identified by Airbus in its application that it was a hazard to the aircraft. Correct?

35 AIRCDRE MEDVED: It wasn’t due to the hazard to the aircraft. It’s due to the – and I quote Airbus’ words – “due to the effect of a hazardous failure for the aircraft”.

COL STREIT: Well, if it’s working, it’s not a hazard. But if it fails, it’s a hazard. Correct?

40 AIRCDRE MEDVED: Well, it depends on how it fails.

COL STREIT: Well, I’m just looking at your evidence.

45 AIRCDRE MEDVED: I understand. I understand.

COL STREIT: Would you accept that? So what that meant was DASA applied a heightened level of focus on the approval process because it's a safety issue concerning the safe operation of the aircraft.

5 AIRCDRE MEDVED: Correct.

COL STREIT: Now, as part of your section 23 Notice, the Inquiry provided you with copies of the AATES report and the Operational Evaluation in relation to version 5.10. Correct?

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AIRCDRE MEDVED: That's correct.

COL STREIT: Now, having seen those documents in preparation of your evidence here today, through the section 23 Notice, had you seen the documents earlier – those reports earlier?

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AIRCDRE MEDVED: I had not seen them.

COL STREIT: Sure.

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AIRCDRE MEDVED: Some DASA staff were made aware of them. And I'll just get the date.

COL STREIT: It was following the accident, wasn't it?

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AIRCDRE MEDVED: It was after the accident. And reference was made to the document. So it was requested by the Director of Aviation Operations. They requested a copy of it.

COL STREIT: Sure. So what I want to suggest to you is – and this is a suggestion in hindsight. That, in circumstances where DASA is approving a major change to an aircraft type which is a safety issue, and the approval necessarily means DASA is satisfied that the item can be used for safe operation of the airframe, in circumstances where a Flight Test Organisation prepares a report that says that same item, there's an "unacceptable" finding in relation to the operation of that item, and where that report doesn't come back to DASA to review its decision through the approval of version 5.10, that is a gap in DASA's, as it existed at the time, regulatory process. Would you accept that?

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AIRCDRE MEDVED: No, I don't.

COL STREIT: Why?

45 AIRCDRE MEDVED: The reason I don't accept that is that you are

5 talking about whether the modification for its intended purpose, whether it's safe – fitted to the aircraft is safe to fly. It then depends on how you intend to operate it. So there's, in effect, an operator approval, like, to – and how it's to be used and employed operationally. And I wasn't aware of it at the time.

COL STREIT: No, that's what I said, it's - - -

10 AIRCDRE MEDVED: And DASA was not aware of it at the time.

COL STREIT: That's why I said it's in hindsight.

15 AIRCDRE MEDVED: And I appreciate that. But, also in hindsight, there were multiple reputable Flight Test Organisations involved with some differing views. And I acknowledge there were differing views even at the end from AATES, compared to, for example, AMAFTU.

20 AVM HARLAND: Yes, I think regardless of agreement or otherwise with the views we have, AMAFTU, AATES and then the OPEVAL was conducted. Two said it was not unacceptable, so unsatisfactory, undesirable – I can't recall which – and one said unacceptable. That Flight Test Organisation, with qualified test pilots, had conducted a set of testing and even on the review of the OPEVAL report, they maintained that their "unacceptable" still stood. And there's no arbitration on that.

25 It was just the last report was taken. So I guess it's just, yes, again, a layman's view. Yes, it would seem that there's something left unattended there in terms of addressing the maintained "unacceptable" assessment by a Flight Test Organisation with qualified test pilots in it.

30 AIRCDRE MEDVED: And, sir, I haven't seen how all the reports – and I've made an assumption in my evidence, it would appear, that all the evidence was compiled, reviewed, analysed and then controls put in place. I've not seen the outcome of that. So the decision and associated controls that were put in place to mitigate the concerns, they've been talked about a lot, but I was not provided nor privy to, you know, that operative decision brief.

40 AVM HARLAND: So those issues were reconciled within the Military Air Operator, and the Regulator didn't have a view or engagement on that. Is that a correct statement?

AIRCDRE MEDVED: That's correct. It was done under the risk management processes.

45

AVM HARLAND: Okay, thank you.

5 COL STREIT: From a lay perspective – and correct me if I’m wrong –
DASA’s framework, as it existed at that time, based on an application made
by Airbus, approved the symbology upgrade to version 5.10. Correct?

AIRCDRE MEDVED: Correct.

10 COL STREIT: And then it was really up to the Military Air Operator from
there to conduct whatever flight testing of that item it wanted before
releasing the item into the MRH-90 community to be used by line pilots.

AIRCDRE MEDVED: Flight testing as well as training.

15 COL STREIT: Sure. But it’s up to the Military Air Operator to do it?

20 AIRCDRE MEDVED: That’s correct. And there is retrospective
assurance – or there is an organisational approval that there needs to be
processes for modifications because modifications occur on a continuous
basis across all ADF fleets.

25 COL STREIT: There’s no requirement by DASA for the Military Air
Operator to have conducted that flight testing once DASA approved
version 5.10 into service.

AIRCDRE MEDVED: Not for the purposes of generating compliance,
demonstration evidence that the equipment was certified against it.

30 COL STREIT: DASA’s decision in relation to the operation of
version 5.10 is made, is it, absent input from the operators as to how that
item will be used in the aircraft and the nature of operations that will be
used to conduct? Is that correct?

35 AIRCDRE MEDVED: There are some implicit considerations in how we
use as part of the airworthiness requirements that it’s certified against. But
I do acknowledge it does not capture all elements with how you may intend
to employ that capability operationally.

40 COL STREIT: And can I suggest to you that that is actually a critical
matter that would be of interest to DASA for this reason. It may be that
how Army Aviation was to employ MRH-90 symbology, version 5.10, in
the conduct of its operations may be different to how the German Military
employ the same item on its aircraft. Would you accept that?

45 AIRCDRE MEDVED: (No audible reply).

MS McMURDO: Operationally different.

AIRCDRE MEDVED: Potentially. I don't - - -

5

COL STREIT: I'll give you an example. It may be that Army was going to use it to fly at night overwater, in close formation, a very short distance off the earth's surface, which the Germans may or may not do in relation to the operation of their use of version 5.1. So for that scenario alone, isn't it not important for DASA to have an ADF Flight Test Organisation tell DASA, "This is how this item is going to be used", and DASA feeds that into its decision-making as to whether or not to approve the use of that item?

10

AIRCDRE MEDVED: The approval of the item is defined by what its intended purpose is and the airworthiness requirements.

15

COL STREIT: Does that mean DASA relies upon Airbus having an understanding as to how the symbology upgrade was to be utilised in ADF's Army operations?

20

AIRCDRE MEDVED: I don't think it'd be reasonable for Airbus to foresee every perturbation in the future of how Army's use of a capability may evolve.

COL STREIT: So that, does it not enhance the importance of an ADF Flight Test Organisation's assessment and report about the operation of version 5.1 on MRH-90 doing the kinds of things 6 Avn/5 Avn did at the relevant time, and then that's fed back to DASA as to whether or not it alters the approval process?

25

30

AIRCDRE MEDVED: It depends on the scope of the approval and what the approval covers.

COL STREIT: Sure.

35

AIRCDRE MEDVED: So if the approval still requires that you're using – it depends on the scope of the approval.

COL STREIT: Sure. Now, I'm not being flippant at all when I say this. This is as I understand your evidence. And I appreciate your responses are in hindsight as you sit here today. But as I understood your evidence earlier – if I have this incorrect, say – version 5.1 was approved by DASA. Correct?

40

AIRCDRE MEDVED: Correct.

45

COL STREIT: DASA's then assurance as to the operation of version 5.1 in the TopOwl is based upon oversight over any occurrence or safety reports that might come through the system. Correct?

5 AIRCDRE MEDVED: There is more to it than that.

COL STREIT: Sure.

10 AIRCDRE MEDVED: And when I say "more to it", the approval of the Military Air Operator will look at all aspects to operate safely.

COL STREIT: Let's put the Military Air Operator to one side for the moment. Let's just say there's an internal disagreement within the Military Air Operator as to an item, when it should be used, how it should be used, what its limits are, and so on. So let's – just focusing on the Regulator. In

15 circumstances where you approve in this case version 5.1 into service, the next step in the process DASA has is just oversight over – essentially watching any occurrence or safety reports that come through the system, however they arise, as to whether there's an issue about the operation of 5.1

20 in the MRH-90 fleet. Correct?

AIRCDRE MEDVED: Can you repeat that, please?

25 COL STREIT: Basically, once you've approved it, you don't do anything else until there's an accident.

AIRCDRE MEDVED: I disagree.

30 COL STREIT: All right?

AIRCDRE MEDVED: We approve it within certain bounds and constraints. In my recollection, it was not approved as a primary flight aid, so you still need to use your instruments within the cockpit as well. But I'll

35 have to confirm – I can confirm that separately. There's a closed loop feedback system with aircraft design in the Regulations in Part 21, with obligations on the community and the Military Type Certificate Holder to notify occurrences of potentially unsafe conditions. And that's on the design side as well as other obligations for safety reporting from operators.

40 COL STREIT: Was there an obligation on Army Aviation Command in its previous iteration to provide DASA with a copy of the AATES report identifying an "unacceptable" finding for version 5.1 symbology?

45 AIRCDRE MEDVED: Not that I'm aware of, on the basis that it did not

invalidate the scope of the design approval, and that that finding was conducted through a tightly controlled flight test program, and it was subsequently fielded with a number of controls and risk mitigation measures employed when it was rolled across the fleet.

5

AVM HARLAND: Could I just read out what the “unacceptable” is. It talks about:

10 *A description of the deficiency as it prevents a weapon system performing an operational task, or liable to cause accidents. Restrictions needed to prevent occurrence are considered intolerable. Recommendation terminology: “something must be done”. Recommendation level: essential.*

15 This applies to your approved type design. It’s saying your design could end up being liable to cause accidents, and restrictions are needed. And that’s just out there, that “unacceptable” against your type design which you’ve approved. And I think that’s where COL Streit’s going, and there’s no requirement for you to hear about that.

20

AIRCDRE MEDVED: From the Military Air Operator – at the end of the flight test program there was nothing in our system that prevented AATES from providing a report to us, but they did not.

25

AVM HARLAND: But there’s nothing that required them to.

AIRCDRE MEDVED: I guess that becomes an interpretation against the safety reporting requirements.

30

AVM HARLAND: So is there a - - -

AIRCDRE MEDVED: The operational safety reporting requirements.

35

AVM HARLAND: Is there a regulatory requirement to report an “unacceptable” finding in a flight test against an approved design?

AIRCDRE MEDVED: Not explicitly in that fashion, no.

40

AVM HARLAND: Okay, thank you.

45

COL STREIT: Would you accept therefore – and again it’s a question of hindsight – would you accept therefore there is a gap, in the sense of it would benefit, would it not, DASA to be informed if there was an adverse report done by a Flight Test Organisation on an item that DASA had approved?

AIRCDRE MEDVED: If the finding was within the intended purpose and use of that equipment for which it was certified, yes.

5 COL STREIT: And just picking up and being specific, the Air
Vice-Marshal read out to you the finding. I appreciate again in hindsight,
but having regard to what that finding is, if you had just – that is, DASA
had just approved version 5.1 symbology and then that finding landed on
your desk in an AATES report, you're not going to put it to one side and
10 not have regard to it and say, "Oh well, we've approved it, so I'm not
worried about what is in the AATES report". That wouldn't happen, would
it?

15 AIRCDRE MEDVED: No, we would clearly review our – we would,
look, try and understand the context because of the significance of that
finding and review about whether it required a – or reassess against how
that original modification was approved and whether it invalidated it.

20 COL STREIT: Because it's not rocket science, I suggest. It's Flight Test
Organisation says something in a report that affects the decision to bring
version 5.1 into service. So the regulatory authority in discharging its
responsibility if that had happened, would have just done a review of what
AATES said which may or may not alter the regulatory authority's decision.
But nonetheless, the review would occur because it would be important to
25 do that?

AIRCDRE MEDVED: Yes. DASA did reassess the validity of the
approval and I think I provided a copy of that. That was after the accident.

30 COL STREIT: After the accident.

AIRCDRE MEDVED: Did a reassessment of the validity of that approval
for the scope of that approval and the purpose after the accident.

35 COL STREIT: Sure. Again, I'm not being critical. That's a review in
hindsight, after an accident has occurred, in the context of where there are
two investigations ongoing, DFSB and this Inquiry, in relation to the
circumstances of the crash and the death of four men.

40 AIRCDRE MEDVED: Just to clarify, it wasn't. It was a review of the
AATES finding. It was driven by the provision of there's a concern, not a
review of that finding as a direct result of the accident.

COL STREIT: Would you consider it helpful for there to be – and I

5 appreciate you're moving from the position or have moved from the position of the DG – but for the regulatory authority to have a formal requirement for a Military Air Operator to provide its Flight Test Organisation reports on an item that DASA has approved after, in the shortest time, the Flight Test Organisation report is completed?

10 AIRCDRE MEDVED: To answer that question, I think the fundamental – the driver when DASA makes any mandatory requirement for reporting to DASA is what does DASA do with it as a Regulator.

COL STREIT: What about change its decision?

15 AIRCDRE MEDVED: So carte blanche, there doesn't seem to be clear logic as to why, particularly when the flight test activity wasn't conducted to generate evidence to support certification. Carte blanche, it doesn't make sense to me to have that requirement. But I can see an argument that it should be evaluated if there is an "unacceptable" finding, even if it wasn't associated with certification – sorry, even if the flight test wasn't supporting certification, if there was an "unacceptable" finding, it may be I can see it's worthy or reviewed as to whether those sorts of reports should be provided to DASA for awareness.

20 COL STREIT: I mean, the Air Mobility Organisation's flight Test and Evaluation Organisation, so AATES here, did an assessment, did a report, had an "unacceptable" finding. Whether or not there's agreement about that "unacceptable" finding is not the premise of my suggestion to you. It's the fact that it wasn't brought to DASA's attention is what I'm asking you about, and whether in the circumstances you would regard a formal requirement – now knowing these matters in this Inquiry, whether you would regard a formal requirement in the Regulations stipulating the Air Mobility Operator to provide these types of reports would actually enhance DASA's decision-making concerning the safe operation of aircraft it approves?

35 AIRCDRE MEDVED: What I would say to your question – and this has a number of elements – firstly, any flight test where you're generating evidence for certification, DASA gets that and that comes through. Other flight test activity, particularly Operational Test and Evaluation, that does not support direct certification, if there is an "unacceptable" finding, it is definitely worth reviewing whether a report of that nature ought to be provided immediately to DASA.

40 The reason I say it's worth looking into that and exploring that further, like a potential requirement further is what that would drive isn't necessarily a change to the approval and modification, but it would apply additional

45

oversight on additional flight test activities or risk management approaches by DASA in mitigating risks identified, or it may drive other alternate solutions.

5 COL STREIT: In this case, again in hindsight, if DASA did not have the German Military Air Operator approval – that is, there was no other Military Air Operator approval – would DASA have conducted, in those circumstances, or caused to be conducted, its own operational flight test of the version 5.1?

10 AIRCDRE MEDVED: If DASA could not rely on the German Military Aviation Authority for prior certification, and with additional qualification testing being done on the MRH configuration – so if DASA was not in a position to leverage off prior certification, there would have been – I think it's fair to assume there being a much higher level of involvement from DASA that may well have leveraged off Flight Test Organisations to support that activity.

20 COL STREIT: Because it couldn't be done any other way, could it? I mean, how could DASA, in those circumstances, make an assessment about a symbology upgrade without doing any flight testing?

AIRCDRE MEDVED: Or simulated testing, correct.

25 COL STREIT: Sure. Or flight testing, simulator or otherwise?

AIRCDRE MEDVED: Correct.

30 MS McMURDO: Well, we've heard the simulator testing wasn't available because no simulator had been fitted with version 5.10.

35 AIRCDRE MEDVED: Ms McMurdo, when I say "or simulated testing", so it might be done in a synthetic environment, maybe not in a simulator, but like a laboratory simulated environment.

MS McMURDO: Well, simulator, of course, would be a very safe and efficient way of doing it if it could be done in a simulator, wouldn't it, when there are safety concerns?

40 AIRCDRE MEDVED: Downstream but during modification development, there will be other synthetic methods as part of testing of it.

45 COL STREIT: Ms McMurdo, I note the time. The witness has been in there for a little while. Perhaps - - -

MS McMURDO: Yes, I might just ask one question before we go.

5 So we know there was this dispute within the test flight community, as you've described it, and that was very unusual, for there to be such a divergence of opinion, in the test flight community after something like this?

10 AIRCDRE MEDVED: Ms McMurdo, I'm not part of the community. I know they had strong views, and from my experience dealing with tests and test specialists, it's not uncommon at times for different individuals to have differing judgments, like professional judgments.

15 MS McMURDO: So when they affect flight safety, it's a very important issue, obviously – flight safety – because the repercussions can be dreadful. Do you see that there would be some benefit in having an independent arbiter deciding these disputes when they arise – an independent expert arbiter, I should say?

20 AIRCDRE MEDVED: A great question. It could be explored, but it may end up creating more complexity and disbenefit, and additional resources than intended benefit for the number of cases where you get a marked discrepancy in professional judgments. I was quite surprised by the marked differences in professional opinions in this example.

25 MS McMURDO: Yes, all right then. We'll have a 10-minute break now, thank you.

30 **HEARING ADJOURNED**

HEARING RESUMED

35 MS McMURDO: Yes, COL Streit.

COL STREIT: Thank you, Ms McMurdo.

40 Sir, just finishing your evidence in relation to matters concerning TopOwl version 5.1 upgrade, I'll just take you to paragraph 16 of your statement, please. You were asked in terms of the requirements of DASA and/or procedure extant in December 2019 was the Operation Evaluation report an authorised and/or accepted Aviation process to determine if TopOwl version 5.1 system was suitable for safe interim use by Navy and Army
45 aircrew. You respond at (a) in these terms:

5 *The DASA major change approval indicated the system was compliant with a type certification basis and safe to use; however, further work and operational approval were required to ensure that operations could be conducted safely, including changes to operational procedures and pilot gap training. The use of Operational Test and Evaluation is consistent with the broader test and evaluation concepts defined in the Defence Test and Evaluation Manual.*

10 That's correct, what I've just read out?

AIRCDRE MEDVED: That's correct.

15 COL STREIT: So DASA approved version 5.1 as safe to use. Correct?

AIRCDRE MEDVED: Correct.

20 COL STREIT: But there was a limitation, it seems, having regard to your evidence, that further work and operational approval were required. Is that required?

AIRCDRE MEDVED: That's correct from the Military operator.

25 COL STREIT: When you say "operational approval", how does that sit within the Defence Aviation Safety Regulation? So if DASA says version 5.1 is safe to use, why can't the Military Air Operator simply then just load it up on to the aircraft and use it?

30 AIRCDRE MEDVED: The reason they can't automatically just – they can upload it, but the reason they can't use it is that the whole operational Regulations are built on foundations of skilled, trained personnel, processes, orders, instructions, and publications for appropriate use and training. Then also for new capabilities, there may be a tactics development
35 on the employment of certain capabilities.

So even if something is approved for use, it's safe to use, there is still additional work required from the operational community to make use of it. And that's no different, for example, if they acquire a new aircraft type;
40 crews need to be trained up on how to operate the aircraft, as well as tactics and so forth.

COL STREIT: So when you say, "However, further work and operational approval were required", just focusing on "operational approval", within
45 the Military Air Operator, that's Army Aviation at the time, what does that

operational approval look like? So, in other words, is there a DASA Regulation that said the operational approval is defined as this and it relates to this person or this position?

5 AIRCDRE MEDVED: Not that I'm aware. The organisation has a level of latitude in how they set up their processes for training, conduct of operations, other safety controls, such as flood authorisation, for example. The system may develop. They have a certain amount of latitude with the system and processes they employ. And although they develop and then subsequently employ, DASA does assess that so then when they're incorporating in modifications, there's still changes that need to be made throughout their systems and processes and training in order to make use of that capability.

10
15 COL STREIT: So should the Inquiry understand the approval process for version 5.1 symbology upgrade in this way: that is, DASA, through a certification process and an application by Airbus, approves version 5.1 as safe to use under DASA's requirements? Correct?

20 AIRCDRE MEDVED: Under agreed airworthiness certification requirements, yes.

COL STREIT: Yes. The next decision that needs to be made is one by the Military Air Operator as to whether the version 5.1 symbology should be given operational approval. Is that correct?

25 AIRCDRE MEDVED: That's a fair way to consider it.

COL STREIT: Does that mean that operational approval might be informed by a Flight Test Organisation conducting an assessment of version 5.1 and producing a report?

30 AIRCDRE MEDVED: Yes, and that's a key part and purpose of Operational Test and Evaluation.

35 COL STREIT: But if the Air Military Operator or a representative of the Air Military Operator within their organisation does not accept a Flight Test Organisation's report outcome, they can then conduct some other form of testing, can they, to present that to the decision-maker for operational approval?

40 AIRCDRE MEDVED: Well, ultimately the risk management authority will lie within that organisation at a certain level, depending on what risk is categorised at or residual risk.

45

COL STREIT: Sure.

5 AIRCDRE MEDVED: I'm not privy to what occurred beyond what was provided to me to provide this evidence. I'm not aware of the total sequence of events.

COL STREIT: But what you are aware of is that AATES sought approval through a DoSA for a Military permit to conduct a Category - - -

10 AIRCDRE MEDVED: Before they conducted the flight test activities, they had a Military Permit to Fly that was approved to conduct it.

15 COL STREIT: That's right. So at least to that extent, DASA's still involved in a process as being engaged by the Military Air Operator to determine whether to grant operational approval.

AIRCDRE MEDVED: Using a delegate external to DASA.

20 COL STREIT: Yes. Can I turn now to matters concerning the Defence Aviation Safety Regulation Aviation Fatigue Management, which commences at paragraph 10 of your statement. You've already given some evidence before the Inquiry in relation to this matter in the August hearing, and so I'll simply deal with matters that are new in your statement.

25 So at paragraph 18(b) you identify that the Defence Aviation Safety Regulation Aviation Fatigue Management came into effect on 28 October 2021. Is that correct? Looking at the top of page 11.

30 AIRCDRE MEDVED: That's correct.

COL STREIT: That it came into effect on 28 October 2021. And that complementing the Aviation Fatigue Management Regulation was the DFSB Defence Aviation Fatigue Management Guidebook, issued in April 2021. Correct?

35 AIRCDRE MEDVED: Correct.

40 COL STREIT: The guidebook, you say, on page 11 at the top of the page, was produced to support the community application of, and compliance with, the Defence Aviation Safety Regulation for fatigue management. Correct?

AIRCDRE MEDVED: Correct.

45 COL STREIT: Now, you go on to say in your evidence at paragraph 19

onwards, that a DASR had a two-year implementation period, whereby Military Air Operators were, in effect, given two years to change their processes or amend their processes, to bring into force the DASR Fatigue Management Regulation. Is that correct?

5

AIRCDRE MEDVED: To be compliant with the Fatigue Management, and strengthen their controls.

COL STREIT: And do you explain in your statement that a reason for the two-year transition period to permit compliance was because that the Fatigue Management Regulation was a significant change, was it, to the current or previous existing structure?

10

AIRCDRE MEDVED: It was indeed.

15

COL STREIT: And that Military Air Operators, who were Army, Navy, Air Force, were to have two years to bring into effect this major change for the management of fatigue Regulation.

AIRCDRE MEDVED: And to have regulatory compliance systems in place.

20

COL STREIT: And that assessments conducted by DASA – or audits, rather, of Air Mobility Operators – Army, Navy, Air Force – of compliance with the Fatigue Management Regulation would commence following 28 October 2023. Correct?

25

AIRCDRE MEDVED: Correct.

COL STREIT: Because 28 October 2023 was the last date for the Air Mobility operators to comply, through their own orders, instructions and policies, with the Fatigue Management Regulation.

30

AIRCDRE MEDVED: The day of 28 October 23 was two years, which was the two-year window or grace period to have compliance systems in place. At which point, DASA would start incorporating Aviation Fatigue Management within its scope during its oversight activities.

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COL STREIT: So the Regulation – that is, the Fatigue Management Regulation – came into force on 28 October 2021. There was a two-year implementation period to 28 October 2023. Post immediately 28 October 2023, all Military Air Operators were required to comply with the requirements of the Fatigue Management Regulation. Correct?

40

AIRCDRE MEDVED: That's correct.

45

COL STREIT: In other words, if they weren't compliant post-28 October 2023, they were in breach of the Regulation for Fatigue Management?

5 AIRCDRE MEDVED: Yes. And, practically speaking, if there was an audit conducted or oversight activity, they would be subject to findings of non-compliance, if they were non-compliant.

10 COL STREIT: When DASA conducts audits of an Air Mobility Operator, and if those audits lead to adverse findings, the worst outcome that can occur to an Air Military Operator is the removal of their licence to fly aircraft within that command. Is that right?

15 AIRCDRE MEDVED: In extreme cases, yes, removal of an organisational approval is, in effect, removal of – your words – a licence.

20 COL STREIT: So that's why I said worst case the consequence of a breach of a Regulation – subject to what it is – but the worst case is a removal of DASA's approval for that Air Mobility Operator to operate aircraft. Correct?

AIRCDRE MEDVED: Correct, and that logic applies to any organisation approval issued by DASA, whether it's industry or a Defence organisation.

25 COL STREIT: Now, you say at paragraph 19(b):

30 *The two-year transition plan was selected due to the scale of the change, the need to gain widespread community understanding of the need for change and how to comply, and to schedule necessary regulatory support activities to effect behavioural change.*

Correct?

35 AIRCDRE MEDVED: Correct.

COL STREIT: And at 19(c) you say:

40 *DASA subsequently made changes to the internal DASA amendment management procedure in May 2024. The changes, inter alia, mandate community consultation on expected compliance timeframe, or transition period, and for this to be explicit on the DASA notification of change, when promulgating major regulatory changes.*

45 Correct?

AIRCDRE MEDVED: Correct.

5 COL STREIT: Does that mean that in May of last year, DASA decided,
for future amendments to its regulations, that there would be mandated
community consultation on the expected compliance timeframe? So, in
other words, telling the operators of the regulation and engaging with them
early as to what the timeframe will be for compliance, so they can get ahead
10 of the wave and sort their backyard out, to ensure they will be compliant on
the day the regulation is effective.

AIRCDRE MEDVED: The regulation is effective from when it's
promulgated. So the transition window or implementation period is the
point at which DASA will then start overseeing and assuring compliance
15 with those regulations. The reason for the change, DASA employs a
business management system or an independent certified quality
management system as part of continuous improvement. So there are
continuous improvements to how we manage regulatory changes.

20 What was evident was that with the primary approaches, DASA only
advised the community when there was a notice of proposed
amendment. There could be a long period between a notice of proposed
amendment and the regulation being finally released, so there could be
ambiguity on what the actual transition window is. For example, if there
25 was an 18-month window from when the community was engaged to when
a regulation was finally promulgated, there could be ambiguity as to when
compliance was expected.

30 So this was part of a number of other changes to that procedure, so that
DASA makes it explicit and crystal clear to the community on when they
expect it to be compliant with a significant change to regulation.

COL STREIT: At paragraph 18(b) you say:

35 *The notice of proposed amendment was issued on 18 December
2020.*

That's correct?

40 AIRCDRE MEDVED: Correct.

COL STREIT: So would the Inquiry be on safe ground to understand that
to be that the community – that is, the Military Air Operators – were
informed at least as at 18 December 2020 that there was going to be a

change to the Aviation Fatigue Management Regulation, with effect in the future?

5 AIRCDRE MEDVED: That's correct.

COL STREIT: So then from 18 December 2020 to 28 October 2021, is around a 10-month period. Do you accept that?

10 AIRCDRE MEDVED: Correct.

COL STREIT: So they had 10 months' notice that there was to be a change, a new DASR Fatigue Management Regulation was coming into effect. Correct?

15 AIRCDRE MEDVED: Yes. And the purpose of the notice of proposed amendment, it's also critical to get feedback on the regulation. And often there are subsequent changes to the regulation as a result of that feedback. And all feedback is dispositioned, and evidence of the disposition is provided, in a transparent manner, back to the community.

20 COL STREIT: So when the regulation came into effect on 28 October 2021, it should, one would think, be no surprise to the Air Mobility Operators, because they'd had notice of it some 10 months earlier. Correct?

25 AIRCDRE MEDVED: Correct.

COL STREIT: And they had, as I understand your evidence, been involved in a consultation process and providing feedback about the regulation?

30 AIRCDRE MEDVED: Correct.

COL STREIT: They'd been given two years to implement the regulation which is in force, but held in abeyance for a period of two years to permit them to implement the regulation within their span of command?

35 AIRCDRE MEDVED: That is correct.

40 COL STREIT: Then they would be subject to audits, part of the regulatory process DASA engages in, to assure itself that there is compliance with its regulations?

45 AIRCDRE MEDVED: That's correct. One clarifying point, with respect to the implementation period or grace period, that will be dependent on different regulatory changes. So a much more significant change will have

a longer grace period; less significant changes might not have a grace period at all.

5 AVM HARLAND: What do you mean by “significant”? Is that in terms of the scale of the regulation change, or - - -

AIRCDRE MEDVED: This was a brand-new regulation that hadn’t been regulated previously.

10 AVM HARLAND: Yes, and you’d agree that Fatigue Management is an important regulation to avoid negative safety outcomes?

15 AIRCDRE MEDVED: Absolutely. What we want to achieve is genuine behavioural change, rather than a compliance mindset, rather than it filtering into, you know, normal day-to-day business.

AVM HARLAND: So in terms of the compliance period, apart from the scale of the regulation, is the safety risk associated with that regulation not being present. And you said I think in para 18(a) that:

20

Defence Instruction Air Force Ops 6-6: crew duty limits was cancelled on 13 August 2016.

25 Did that only apply to Air Force? I’ll get to my point in a minute, but did that only apply to Air Force?

AIRCDRE MEDVED: That was my understanding, that was an Air Force Defence Instruction.

30 AVM HARLAND: Did Army have a Defence Instruction that related to fatigue management?

35 AIRCDRE MEDVED: So, sir, I guess to clarify in obligations and expectations to the community, even though the Fatigue Management Regulation wasn’t going to be in force for a two-year window, there is still an obligation on the Military Air Operator to conduct operations safely. Broadly, the regulation for Safety Management Systems means that you should still manage hazards and risks appropriately, even if they’re not explicitly regulated.

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The three services did have procedures and processes with respect to fatigue management for different types of flight operations, both rotary-wing, fast jet, and fixed-wing transport. But the processes and procedures used varied considerably, and no service was deemed to adequately address all best practice approaches for fatigue management.

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5 AVM HARLAND: I guess I'm curious why you called out the Air Force Instruction and didn't put the Army Instruction in there? Because what I'm really trying to get to is whether Army had instructions that were in force in this intervening period, before the regulation came out, that addressed fatigue management.

10 AIRCDRE MEDVED: That Air Force Instruction, that's provided as a high-level policy instruction that existed. I was not aware, and DASA staff were not aware, of any similar level of policy instruction within the other two services at the time.

15 AVM HARLAND: So what I'm getting to with this is that when you put the regulation out, you were regulating what was a gap in what we know as orders, instructions and publications.

AIRCDRE MEDVED: Correct.

20 AVM HARLAND: So with that, people know about it on 18 December 2020, and then it comes out in October 2021, and then they've still got two years to effect it. It seems like an awfully long time, given the attendant risks with fatigue.

25 AIRCDRE MEDVED: That's accepted on the surface. What I would say is that all services did have some procedures with respect to fatigue management, and they did employ processes, and there was guidance that had been previously provided by DFSB in their education and support role. So it wasn't a case of it being non-existent in terms of having some processes and approaches that were being employed.

30 And there were also obligations under the broad umbrella of Safety Management System Regulations for Military Air Operators to put in place effective controls and manage risks, even if not explicitly regulated.

35 AVM HARLAND: Okay, great. And a final question before I go back to COL Streit. Is there any requirement for a Military Air Operator to notify DASA when they've achieved compliance with the new Aviation Fatigue Management Regulations, or any other regulations when they're implemented?

40 AIRCDRE MEDVED: No, there is not, unless there is a limitation on the scope of their operations permitted within their Military Air Operator. So, for example, with their Military Air Operator in their operations specification, if they're introducing a new capability, there might be some limitation on how they can use that. Depending on how that limitation is

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put in place, the Military Air Operator may need to advise DASA of completion of residual activities prior to the lifting of that restriction.

5 AVM HARLAND: But for a general publishing of a regulation under the normal process, you don't have a requirement for a Military Air Operator to say, "Hey, this new regulation, it's fatigue management. It's a big regulation, it's filling a gap that we had before". There's no requirement for them to say to you, "We've now complied with this regulation"; you rely on your routine oversight process? The next time you basically knock on their door and go through an assurance process, that's the next time you really look at it?

15 AIRCDRE MEDVED: That's right. So we put the onus or obligation on DASA as the Regulator and its oversight activities. And also noting that the way oversight activities are done, is that they're informed through Safety Intelligence Systems, safety reporting, et cetera. So the scope of what's conducted during audits can change considerably from one oversight activity to the next, depending on what's considered to present the greatest hazard or risk with that Military Air Operator.

20 AVM HARLAND: Do you always audit new regulations, once you go past the regulatory requirement for it to be implemented, you know, after that grace period of two years? Is that always something that's on your audit list, so that you'll actually check that next time? After that date, you go and visit?

AIRCDRE MEDVED: If it's significant, I would expect it to be, and that's what is confirmed later in the evidence that I provided.

30 AVM HARLAND: Yes.

AIRCDRE MEDVED: There was one case where it was not included as part of the oversight activity, because fatigue management wasn't expected to feature as a key threat to safety for the nature of those operations with one of those Military Air Operators.

35 AVM HARLAND: That was the Air Warfare Centre you detailed in paragraph 20(a), I think it was.

40 AIRCDRE MEDVED: Correct.

AVM HARLAND: Okay, thank you. COL Streit?

45 COL STREIT: Thank you, sir.

You were asked in the 23 Notice this question:

5 *In terms of ADF Military Air Operators and insofar as DASA is aware, what dates did each ADF Military Air Operator implement the DADR Aviation fatigue management and/or demonstrate compliance with DADR Aviation fatigue management?*

10 And you respond to that question on page 12 of your statement. You say that:

DASA does not track, nor progressively monitor Military Air Operator compliance with new DADR requirements.

15 You then give some evidence about the first formal oversight activity undertaken by DASA in relation to the implementation of the DADR Fatigue Management Regulation. That's correct?

20 AIRCDRE MEDVED: That's correct. Noting that those oversight activities included other regulations as part of its scope as well.

COL STREIT: Sure. Just focusing on Fatigue Management. Now, for Army Aviation Command you say an oversight visit was done in April 2024, one level 3 finding issued and two opportunities for improvement were recommended. Correct?

25 AIRCDRE MEDVED: Correct.

COL STREIT: Navy fleet, the oversight visit was November '24. No findings issued. Correct?

30 AIRCDRE MEDVED: Correct.

COL STREIT: Air Command Air Combat Group, an oversight visit October 2023. No findings issued. Correct?

35 AIRCDRE MEDVED: Correct.

40 COL STREIT: Air Command Air Force Training Group, oversight visit October 2024. No findings issued. One opportunity for improvement recommended. That's correct, sir?

AIRCDRE MEDVED: Correct.

45 COL STREIT: Air Command Air Mobility Group, oversight visit July – sorry, withdraw that. Air Command Air Warfare Centre:

While formal targeted oversight was conducted in 2023, DASR fatigue management was not within scope.

5 What do you mean by that?

AIRCDRE MEDVED: So within the scope of target – of oversight, the organisations were advised which regulations the oversight will look into with regards to compliance and effective – in terms of being – compliance
10 as well as effectiveness of their response. During that oversight activity of Air Warfare Centre, Aviation fatigue management was not within scope because it was not – in light of other threats to Aviation safety, it did not warrant explicit oversight.

15 COL STREIT: So from your examination of DASA’s records, the earliest there’s an oversight visit from DASA in relation to the operation of DASR fatigue management – the Fatigue Management Regulation – was in Air Command Air Combat Group in October 2023.

20 AIRCDRE MEDVED: Correct.

COL STREIT: And that was conducted, I take it, at a time when the transition window was still in effect, because they had until the end of October, or the 28th to be precise, to have implemented the regulation.

25 AIRCDRE MEDVED: That’s correct.

COL STREIT: Now, you describe at paragraph 22 – for completeness – I don’t propose to lead evidence from you – but the nature of the process undertaken for an audit. You identify on page 14, in answer to
30 question 22(b) the conduct of the audit at Aviation Command and the process adopted there. That’s correct?

35 AIRCDRE MEDVED: That’s correct.

COL STREIT: You identify what the level 3 finding was. That’s correct?

AIRCDRE MEDVED: That’s correct.

40 COL STREIT: The reference there to the Accountability Manager, who’s that a reference to?

AIRCDRE MEDVED: There is a position identified as an Accountable
45 Manager within an approved organisation for Aviation Command at the time. That was MAJGEN Jobson.

COL STREIT: So Accountable Manager is the Military Air Operator.

AIRCDRE MEDVED: Operator. That was – correct.

5

COL STREIT: Now, you identify at the top of page 15 that during DASA’s review conducted of Aviation Command in April of 2024, DASA, in preparation, reviewed Headquarters Aviation Command SFI 12 of 2023 Aviation fatigue management dated 15 December 2023. Is that correct?

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AIRCDRE MEDVED: Correct.

COL STREIT: And also the Special Flying Instruction, SFI, 5 Avn 03/2024, Aviation fatigue management. Is that correct?

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AIRCDRE MEDVED: Correct.

COL STREIT: Did DASA then come to the view that Aviation Command did not therefore comply with the DASR Aviation Fatigue Management Regulation by implementing the regulation within the two-year window? Because the SFI issued for Aviation Fatigue Management was in December 2023.

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AIRCDRE MEDVED: So to paraphrase your question, you’re asking whether Avn Command was compliant with the procedure with effect October ‘23.

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COL STREIT: Correct.

AIRCDRE MEDVED: I can understand the inference on the basis that instructions were published towards the end of 2023. So, from a documented procedure perspective, there may have been gaps, clearly.

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COL STREIT: It’s not gaps. It’s non-compliance, isn’t it?

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AIRCDRE MEDVED: If that change had introduced changes to address regulatory requirements that were not present in October, then it would not have – then from a procedural perspective, it would not have been compliant with the regulations in October 2023.

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COL STREIT: So unless Aviation Command had done something else which you haven’t identified in your statement – so, in other words, there was some other policy that sat within that two-year window bringing into effect the DASR Regulation – i.e. enforcing it within the Command – unless that’s there, what DASA have identified is a Fatigue Management

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Regulation issued by Commander Aviation Command but dated 15 December 2023, outside the two-year implementation window. Correct?

5 AIRCDRE MEDVED: From my recollection, there were some processes employed for fatigue management prior to these improvements in December of '23. The level of compliance I can't attest to, but based on earlier activities when the regs was developed, I think it's unlikely they would've been fully compliant.

10 COL STREIT: And, indeed, the level 3 finding you address in the fourth dot point on page 14 of your statement was that:

15 *Aviation Command is not compliant with DASR Aviation Fatigue Management 30A.1. The Accountability Manager must use fatigue-related principles, operational knowledge and experience to define normal and extended duty time limitations.*

That's correct?

20 AIRCDRE MEDVED: That's correct.

COL STREIT: Now, in circumstances where there was an Aviation accident in 28 July 2023, why was it that the audit of Aviation Command in relation to bringing into effect the Aviation Fatigue Management Regulation occurred in April 2024 and not at an earlier time?

25 AIRCDRE MEDVED: When you're suggesting an "earlier time", any earlier time or - - -

30 COL STREIT: Well, let me put it this way. So there's an accident July 2023. That's why we're all here. There is a period of all of the rest of 2023 where there's no audit on the implementation of a Fatigue Management Regulation. Then there's a period from January, even accounting for leave, February to April, before there's an audit of the Command.

35 In circumstances where the audit identifies a level 3 finding I've just referred to, I'm just trying to understand what was the thought process as to why the other units went first, Air Force in particular, and Army seems to be coming last in the audit structure engaged in by DASA.

40 AIRCDRE MEDVED: Yes, I want to clarify a few things upfront with respect to findings, and this stems from the evidence I provided in August last year. So the findings structure that's employed in DASR, it's an escalation process. The lowest level is an opportunity for improvement.

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5 Then there's a level 3 finding. If it's more significant, it's a level 2. More significant than that, it's a level 1. If there are wilful non-compliances and they're of a serious enough nature, then that warrants further an escalation to removal, or potential removal, or suspension, of an organisational approval.

10 The most serious findings are level 1 and level 2, and both of those require a root cause analysis to be conducted by the organisation that was given the finding, and they need to demonstrate how they'll put – or their actions to address the non-compliance. Level 3 findings are much less significant and don't require a formal response back to DASA with respect to a root cause analysis or how they're addressing the finding. A level 3 finding is subsequently revisited at the next DASA oversight activity.

15 So my point of stepping through that slowly is firstly to flag that a level 3 finding is a low-level finding within the oversight and enforcement activities conducted by DASA.

20 With respect to Army and Army Aviation - - -

COL STREIT: Sorry, before you answer that, I need to correct something. What I need to correct is that it was two Air Force organisations within Air Command that were conducted in 2023 audits. Army seems to be third in April 2024, followed by another Air Force unit, followed by Navy. I just wanted to correct that for you.

25 AIRCDRE MEDVED: Yes, that's correct. During 2023, as you know and everyone in the room understands, there were two Class A accidents with Army MRH; one in Jervis Bay in March, and the fatal accident in Far North Queensland in July. There was a lot of engagement throughout the course of the year, even with Army Aviation, with resumption of flying post Jervis Bay, and a lot of activity and close engagement between DASA and Army Aviation throughout the course of 2023. They were also introducing another aircraft type into service, of which DASA was heavily involved, that employed processes that span all of Army Aviation Military Air Operator.

30 So whilst we, in effect, gave them, if you like, breathing space, there was a high level of oversight and engagement with Army Aviation throughout 2023 on other aircraft types, and also supporting the resumption of flying early in 2023.

40 Just with other priorities that were taken – the oversight activity on Army, or the formal oversight visit, which is much broader than Aviation fatigue

management and places a much larger impost on Army, was decided to be delayed to April.

5 COL STREIT: Sir, I asked you those questions to get some clarity for this reason. At paragraph 22(c), in page 14 of your statement, you say:

DASA did not conduct a formal oversight activity in 2023 due to DASA and MAO capacity.

10 So is the Inquiry to understand that the reason there was no audit conducted of Aviation Command is because DASA didn't have the capacity to do it and the Military Air Operator Army Aviation Command didn't have the capacity to host the audit?

15 AIRCDRE MEDVED: DASA has a constraint capacity to do audits, clearly, and oversight activities. There was a lot of independent assurance already conducted by DASA across Army Aviation. Independent assurance can take many forms. Some of the team that were involved or that would be involved in the audit activity were supporting some other
20 assurance activities with other aircraft being introduced into service.

COL STREIT: The second half of 2023, the MRH-90 fleet was grounded. Do you agree?

25 AIRCDRE MEDVED: It ceased operations at the end of July and then in September the government agreed to bring forward the planned withdrawal data.

COL STREIT: So it didn't fly again after the accident. Correct?

30 AIRCDRE MEDVED: Correct.

COL STREIT: But Army Aviation Command operated Chinook aircraft in Townsville. Do you agree?

35 AIRCDRE MEDVED: Correct.

COL STREIT: And they operated Tiger aircraft in 1 Aviation Regiment in Darwin. Correct?

40 AIRCDRE MEDVED: Correct.

COL STREIT: So they're still conducting Aviation operations, just with different aircraft?

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AIRCDRE MEDVED: Correct.

COL STREIT: The Fatigue Management Regulation is not aircraft-specific, is it?

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AIRCDRE MEDVED: No, it's not.

COL STREIT: So I'm just trying to assist the Inquiry understand, even in circumstances where DASA might have limited resources to conduct an audit, why wouldn't Army Aviation Command take precedence in an audit for the implementation of a Fatigue Management Regulation ahead of two Air Force Air Command organisations which were subject to audits in October 2023, and the other one at some stage during 2023?

15 AIRCDRE MEDVED: The way I'll answer this question is if we look at independent assurance, or independent assurance that's applied to Army Aviation at the time, there was a considerable level of DASA engagement with introduction of new aircraft in the service, the 60M Black Hawk. There were two Airworthiness Boards – that was Tiger and AW139 – in the second half of 2023. And as part of the contribution to the activity, DASA does a complete assessment of assurance views, from operations, aircraft type, maintenance, and industry as well.

25 So they were scheduled for that second half of 2023. So when we aggregated it all, there was still a lot of independent assurance through other activities rather than singularly looking through an audit-type lens, that we were satisfied with the level of oversight and assurance provided.

COL STREIT: I need to ask you this question. Once the implementation period had expired – so we're looking 29 October 2023 – was there a concern within DASA that if DASA did an audit of Army Aviation Command immediately post the implementation period, Army Aviation Command would not be compliant or fail in relation to the implementation of the Fatigue Management Regulation? If that view was held, is that the explanation as to why it only occurred in April 2024?

40 AIRCDRE MEDVED: I'm not aware of any case in my tenure as DG DASA for over four years where DASA would ever be influenced with the timing of an oversight activity based on level of anticipated compliance from the community. Similarly, when DASA had approved other artefacts and provided other authorisations, DASA's decision-making or timing was not influenced by the level of compliance, unless of course it was very early or within a transition window where a community had advised us of shortcomings.

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COL STREIT: The reason I ask you these questions, sir, is because of what you say at the bottom of page 14, that putting aside DASA's capacity to conduct the audit, you're expressing, I suggest, a concern that Army Military Air Operator didn't have the capacity to participate in the audit?

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AIRCDRE MEDVED: I guess where I'm coming to there, if we look at the pressure and tasking that's on Army Aviation Command, and the demands from government, from Freedom of Information requests, et cetera, et cetera, there are a lot of demands to the point where adding an extra burden is actually taking away from their resources to actually manage safe – or to conduct operations safely. So there is always a balance of it, the majority of the time – or the Headquarters' time is supporting – or is exclusively supporting – or to a large extent supporting a number of varied independent oversight activities, not just from the Safety Regulator but from all the facets, then that constrains their ability to make any appreciable improvements to some of their processes.

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COL STREIT: But even at a fundamental level, just a desktop review, a simple request to Army Headquarters for regulations in a Force fatigue management, "Send us a copy of your orders, instructions and policies" – it's an email. They send it to you, and you make the assessment from there as to whether an audit is immediately necessary or necessary at a later stage. Would you agree that is one option without impacting significantly the Command's ability to do its day job?

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AIRCDRE MEDVED: That does sound readily feasible, and I don't know exactly what was performed. However, in introducing new aircraft into service, like 60M, for example, the orders, instructions, and publications, including processes, are reviewed, which may span the whole of Army Aviation as well.

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COL STREIT: Because if you did that – and again an issue in hindsight – but if you did, DASA did, that, it would have discovered that at the point of implementation expiry, on the face of your evidence, Aviation Command had not implemented that regulation, at least in any flying instruction that you have identified in your evidence. Do you accept that, what I just suggested to you?

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AIRCDRE MEDVED: I accept that my evidence doesn't explicitly state what they had in place, but they did have procedures in place that covered fatigue management prior to October '23.

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COL STREIT: Well, even if that inference is available, let's just accept that the reality is that you've allowed a two-year window to bring this.

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AIRCDRE MEDVED: Correct.

5 COL STREIT: Prior to that regulation on fatigue management, there was no regulation in DASR's Regulations dealing with fatigue management. Correct?

AIRCDRE MEDVED: Under DASRs, correct.

10 COL STREIT: Right. So it's a major change. There's a two-year implementation period – in fact, three years of notice almost from back when the first Notice was given to the Commands. But then there's no check at the end of that implementation period, even a short email to the Commands or the Air Mobility Operator to say, "Hey, show us the paperwork that you've complied". Correct?

15 AIRCDRE MEDVED: That is my understanding, that we didn't do that. And like I said before, that's not the approach that we take, given the scale of changes that are happening on a continuous basis with all the regulations.

20 COL STREIT: One final question on this, sir – and I appreciate you're just going off the material that you've been able to access – but if it is the case that Headquarters Aviation Command Special Flying Instruction Aviation Fatigue Management 15 December 2023 is Aviation Command's implementation of the DASR Fatigue Management Regulation, you would expect then to see, would you not, a finding in an audit report that insofar as that period between 28 October and 15 December was concerned, Aviation Command were not compliant with the Fatigue Management Regulation?

30 AIRCDRE MEDVED: I think it would be worthwhile exploring that further with Aviation Command, the scope of the SFI. My understanding is the SFI is no longer in force. It's an interim instruction until the contents is fully rolled into enduring orders, instructions and publications.

35 COL STREIT: It is, is it not, an SFI is a method by which to temporarily address a matter where, in the fullness of time, that matter will be more fully addressed in enduring policies, instructions and orders? Correct?

40 AIRCDRE MEDVED: Enduring. That's my understanding. That's my understanding.

45 COL STREIT: So in a nutshell, it's a quick fix to deal with something you have to regulate, knowing that in the fullness of time that you will have more fulsome orders, instructions and policies to deal with the matter?

AIRCDRE MEDVED: Correct, or gaps in your extant policy suite.

5 COL STREIT: Sir, very briefly, the final matter, just from my perspective in any event, to ask you about concerns the independence of DASA and the Defence Flight Safety Bureau. At paragraph 24 you give some evidence to the effect that questions about independence are a natural and common governance question, and for organisations like DASA and the DFSB, the dangers of regulatory capture. Sir, can you just explain the concept of regulatory capture. What does that mean?

10 AIRCDRE MEDVED: So the concept of regulatory capture for any Regulator, whether they be legislated or a policy-based Regulator, is that the organisation they operate within can, through either management change or command chains, influence decisions made by the Regulator to satisfy the desires of the community that may not be in the best interests of the community for the hazard that's being regulated.

15 COL STREIT: Now, I appreciate again it's a question in hindsight, but the current regulatory framework establishing DASA is under a CDF and Secretary Joint Directive. Correct?

AIRCDRE MEDVED: Correct.

25 COL STREIT: Do you see any advantage in relation to DASA's regulatory framework and its existence, including the DFSB, being the subject of some sort of legislation, whether by regulation or otherwise?

30 AIRCDRE MEDVED: There are clear benefits of having a statutory body or Regulators being statutory bodies. That does introduce, however, considerable additional overheads to establish a statutory body. Having additional statutory bodies within the Department of Defence, to the point where there needs to be some decisions made on whether the effort expended to set it up and to maintain it is necessary or required and what the opportunity costs of expending all those resources to other requirements within Defence.

35 Even from the perspective of legislative work that would be required, there is a long list of desired legislative changes, even to the *Defence Act*, that are required that had to be reprioritised. There becomes that question and what the opportunity costs is prioritising one over another from the perspective of outcomes of Defence.

40 COL STREIT: In the civilian world, CASA, the Civil Aviation Safety Authority, is your mirror organisation, would you agree?

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AIRCDRE MEDVED: Correct.

COL STREIT: The ATSB, essentially, in the civilian world, is the DFSB mirror?

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AIRCDRE MEDVED: Correct, albeit with a slightly broader scope because they cover maritime and rail.

COL STREIT: Sure. You're aware, are you, that both of those organisations are established by legislation?

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AIRCDRE MEDVED: Yes, I am.

COL STREIT: Now, in the Military context, the single independence that's afforded to DASA and the DFSB to do its important functions like you suggest, is a CDF Secretary Directive?

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AIRCDRE MEDVED: Correct, and the organisations, DASA and even DFSB, they don't report to the Operating Commands.

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COL STREIT: But the head of the Defence Aviation Authority, the person you report to, is the Defence Aviation Authority, who is the Chief of Air Force. Correct?

AIRCDRE MEDVED: That is correct.

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COL STREIT: So the Chief of Air Force wears two hats; that is, the Chief of Air Force, and the Defence Aviation Authority. Correct?

AIRCDRE MEDVED: Correct.

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COL STREIT: So if the Chief of Air Force, as the Defence Aviation Authority, is essentially CASA's mirror – the CEO of CASA, for example – CASA's mirror image, is there not an issue in having the Chief of Air Force who owns and operates the major aircraft fleet in the ADF also being the head of the Defence Aviation Authority?

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AIRCDRE MEDVED: I can appreciate that there will always be a perception of a lack of independence, yes.

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COL STREIT: Because I mean CASA doesn't have the CEO of Qantas sitting in their organisation, do they?

AIRCDRE MEDVED: Clearly not.

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COL STREIT: Nothing further. Thank you.

AVM HARLAND: I just had a follow-on question just regarding paragraph 27.

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DASA does not report to the Operational Commands or management chains that ensure safety of Defence Aviation activities.

10 What does that actually mean?

AIRCDRE MEDVED: So the Commands that are responsible for conduct of Aviation operations and even – so if we look at all the organisations that are issued organisational approvals, for Air Force for operations it comes under Air Command, for Army it's Aviation Command, for Navy it's Fleet Air Arm. Then other organisations – there are organisations, for example, in Capability Acquisition Sustainment Group, CASG, and the System Program Officers, and there are all the industry organisations that we provide organisational approvals for. DASA does not report from a reporting perspective to heads of any of those organisations.

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AVM HARLAND: So Air Command, you're saying the Military Air Operators all work for Air Command in the Air Force sense?

25 AIRCDRE MEDVED: Correct.

AVM HARLAND: Who does the Air Commander work for?

AIRCDRE MEDVED: Air Commander works for Chief of Air Force.

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AVM HARLAND: Who writes your annual report, your annual report when you were DG DASA?

AIRCDRE MEDVED: My annual report when I was DG DASA?

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AVM HARLAND: Yes.

AIRCDRE MEDVED: Deputy Chief of Air Force.

40 AVM HARLAND: Who writes your next level annual report?

AIRCDRE MEDVED: Chief of Air Force.

45 AVM HARLAND: Does he write that as the Chief of Air Force or as the DAA, Defence Aviation Authority?

AIRCDRE MEDVED: Chief of Air Force.

5 AVM HARLAND: Just another question. Just regarding DFSB and the services that they provide, it talks about the independent investigative capability, safety data collection and processing, analysis and research, conduct of things such as the DFSB snapshot survey, which is really all about gathering information to inform them as an investigator. One of the other things they also provide is a provision of human factors advice,
10 guidance and support tools and implementation of the Defence Aviation non-technical skills training framework.

We've also heard before that they also – as part of the Fatigue Management Regulations, the DFSB produced the Defence Aviation Fatigue Management Guidebook issued on April 2021. The question I've got is that they're effectively providing guidance on how to do certain things, whether it be fatigue management, guidance on human factors, non-technical skills. They put the framework together.

20 If they're the investigator of an accident, aren't they to some degree marking their own work, given that they provided that guidance? If they're doing that, how do they maintain their independence and objectivity with relation to those specific things I've just mentioned?

25 AIRCDRE MEDVED: To clarify, so that Research and Human Factors Team, that's where we aggregate – or that's where, for example, the psychologist's skillset is aggregated.

30 AVM HARLAND: Maybe we'll confine it to the products that they produce. We can use the Fatigue Management Guide as a really good example there. So they provide a guidance to the Regulator community on fatigue management. An accident happens, they're required to investigate all particular causal and contributory factors. If one of those is fatigue, they've actually given the guidance out to the regulated community. So
35 how do they maintain their objectivity in that sense?

AIRCDRE MEDVED: When they're brought in to an investigation, they're brought in as a subject matter expert, and that is no different to any investigation team when subject matter experts, even in Australian Transport Safety Bureau, are investigating. When an investigation is being conducted, depending on the nature of what's being investigated and systemic contributions, the DFSB Investigation Team – which is a separate part of DFSB to the Research and Human Factors Team – they may rely on other experts beyond the DFSB experts as well.

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5 AVM HARLAND: Well, why would you just not separate that out, so there's no possible perception of a bias or a lack of objectivity and just have DFSB as an investigatory organisation? When you look at the MOU between the ATSB and the DFSB, it appears the ATSB stick to their knitting and basically just do investigations and safety intelligence work.

10 AIRCDRE MEDVED: I guess it comes down to maintaining critical mass and for the size of the organisation. You need to centralise some of these subject matter expertise skills, and if you want to have pure independence, you would end up fragmenting the limited resources and have a less successful outcome in working with the community.

15 AVM HARLAND: Education is a role of a Regulator, isn't it, as in educating people about the regulations?

AIRCDRE MEDVED: It is.

20 AVM HARLAND: In fact, it's a central component of regulation, by my understanding. Why wouldn't you just have that function carried out underneath the Regulator in DASA large, rather than DFSB?

AIRCDRE MEDVED: And some of that activity is being transitioned across with updates to Safety Management System Regulations.

25 AVM HARLAND: Okay, that's great. Thank you.

30 MS McMURDO: Air Commodore, I just want to ask you one thing, taking you back to the AATES report. Now, in a section of the AATES report – I've got the redacted version here, which is Exhibit 122 – where they gave their results and they talked about their concerns about attitude information, and then they found that it was an unacceptable risk to flight safety. They said this:

35 *Attitude information displayed in the HMSD must consistently and unambiguously correctly present aircraft attitude information during all possible HMSD orientations.*

Then this is the bit I'm particularly interested in:

40 *The HMSD version 5.10 may be non-compliant to pertinent specifications and standards IAW Annex C.*

Now, would that affect the design certification?

5 AIRCDRE MEDVED: Ms McMurdo, I think that's alleging or suggesting that there are some requirements that the HMSD is not compliant with from a design perspective for attitude display, and an inference that that is part of the type cert basis or the collection of airworthiness requirements. The subsequent DASA review did not identify the discrepancies that were alluded to at the end of that report.

10 MS McMURDO: That was subsequent, but what I'm saying to you is – and I think you've probably answered it, but could I just clarify it – so those concerns raised there would be relevant to design certification?

AIRCDRE MEDVED: Yes.

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

LCDR GRACIE: Yes, ma'am.

MS McMURDO: Yes. Who wants to cross-examine? Quite a few. Okay, time estimates?

20 LCDR GRACIE: 20 minutes.

LCDR HAY: 20 minutes.

25 MS MUSGROVE: Approximately 15.

MR O'MAHONEY: Probably five minutes.

30 MS McMURDO: Is that it? Thank you. Yes, LCDR Gracie.

<CROSS-EXAMINATION BY LCDR GRACIE

35 LCDR GRACIE: Sir, as you've just heard, my name is LCDR Malcolm Gracie. I am representing the interests of CAPT Danniell Lyon of Bushman 83. Sir, can I just revisit some of the last territory that Counsel Assisting dealt with, and AVM Harland, in relation to your evidence in relation to regulatory capture, as you described it? Can I just put this
40 scenario to you and tell me first, in a professional sense, what your opinion is, and I also want to ask what you think in terms of perception about it?

45 The Test Director of the OPEVAL, the former AATES test pilot, wrote the decision brief to DG AVN in support of the service release of the upgrade to 5.10. That same person, who was the Test Director and recommended

5 the service release has assisted the DFSB as an expert in its investigation of this accident. Do you agree with me that there is a theoretical possibility that whatever expert assistance that person is providing the DFSB has a theoretical incentive to support the outcome of the OPEVAL and the service release of the upgrade?

AIRCDRE MEDVED: Counsel, can you clarify the question, please?

10 LCDR GRACIE: Yes. The person providing expert assistance to the DFSB was the Test Director of the OPEVAL, the author of the decision brief recommending service release to DG AVN.

AIRCDRE MEDVED: Okay.

15 LCDR GRACIE: And, I want to suggest that there is at least a theoretical possibility that there is a predetermined – or a prejudgment by that person in terms of the advice they would be providing an independent Board.

20 AIRCDRE MEDVED: There could be a perception of bias clearly, of the individual having been heavily involved. It's also on the assumption that that is the only witness that DFSB were engaging with, with respect to TopOwl.

25 LCDR GRACIE: And that was one other thing you put. You talked about fragmenting of resources to explain that pure independence is impossible, but you would certainly expect there to be other test pilot experts providing assistance to DFSB. Do you know if there are?

30 AIRCDRE MEDVED: I don't. I'm separated from that investigation. It wasn't done under my delegation at all. It depends on the nature of the contribution and the importance of the flight test.

LCDR GRACIE: Of the OPEVAL flight test or - - -

35 AIRCDRE MEDVED: Or what subject matter expertise from a flight test perspective that DFSB needed in support of their investigation.

40 LCDR GRACIE: And ma'am took you to something which I wanted to raise with you as well and that is, ma'am took you to the paragraph of the AATES report – this is Exhibit 122, and if it is available I'd ask the witness to have a look at it, please.

MS McMURDO: Yes.

45 LCDR GRACIE: The bit I want to focus on is the oft overlooked

Annex C – ma’am referred to it – but it is an important provision of airworthiness benchmarks that AATES refer to. And, just for the record, none of that, as far as I’m aware, has been redacted.

5 MS McMURDO: No, it hasn’t been redacted.

LCDR GRACIE: Thank you, ma’am.

MS McMURDO: The AATES, it’s - - -

10

LCDR GRACIE: AATES, sorry. I think we’ll need that too. That’s 121.

AIRCDRE MEDVED: Yes.

15

MS McMURDO: 122. Sorry, I’ve got them around the wrong way, have I?

LCDR GRACIE: No, I think 121 is the OPEVAL. Maybe I’ve got them around the wrong way too. 120, thank you.

20

And just take a moment, sir, to refresh your memory of Annex C, because I think you’ve said you’ve seen this. So, just correcting that, it’s Exhibit 120 I’m taking you to.

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MS McMURDO: Just to be clear, I think I’ve misled you. It’s Exhibit 120 is the AATES report and 121 the OPEVAL. Is that correct?

LCDR GRACIE: Yes, it is, ma’am.

30

And you’ll see that by reference to the paragraph that ma’am took you to and this Annex C, would you agree with me that the findings by AATES are referencing airworthiness codes in terms of their assessment of this unacceptable risk that they identified with the off-axis symbology?

35

AIRCDRE MEDVED: It does reference airworthiness codes. It has not done an analysis on whether they’re applicable.

LCDR GRACIE: No, and there’s - - -

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AIRCDRE MEDVED: And whether they’re appropriate in the context of the Australian MRH configuration.

LCDR GRACIE: Well, it makes that clear in the footnote, but it is still a specification reference, isn’t it, that they’re referring to here in Annex C?

45

AIRCDRE MEDVED: They are referring, but there are many airworthiness codes and many airworthiness requirements that exist for all different scenarios and aircraft types.

5 LCDR GRACIE: But just have a look at – sir, if I may take you to it, the last sentence of para 3 of Annex C, “Consequently” – and this is the Heads-Up Display attitude symbology:

10 *It is non-compliant for the Commonwealth of Australia to treat this defect with respect to FAA certification via a warning within aircrew publications, or implementation of other procedural controls.*

15 Are you saying because it’s not an FAA mandatory requirement for TAUUA aircraft that you can just put that to one side?

AIRCDRE MEDVED: Well, I guess for clarification, when we say “FAA”, it’s a Federal Aviation Administration I assume that we’re talking about, the US civil regulatory organisation.

20 LCDR GRACIE: Yes.

AIRCDRE MEDVED: Also, this is for primary flight instruments. HMSD is not certified as a – my understanding, like I said earlier, is not certified as a primary flight instrument.

25 LCDR GRACIE: And if you look at para 5, the AATES report explains while they acknowledge the FAA regulatory and compliance system is not a mandatory requirement, if there’s a compelling equivalent safety and operational case, then it may have some bearing on these things.

30 AIRCDRE MEDVED: I acknowledge the comments. The question is whether this is appropriate context and whether it’s appropriately put forward in this report with respect to the scope of approval of the HMSD version 5.10, as well whether it’s an appropriate airworthiness requirement for its application on the Australian MRH?

35 LCDR GRACIE: And if you look at para 1, it references the MRH-90 system specification, and you’ll see in the conclusion at (4) it’s saying:

40 *Considering the possible non-compliance to the MRH-90 system specification as a mandatory requirement –*

45 and as well as possible non-compliance to those specifications there, the FAA Advisory Circulars –

the HMSD V5.10 software is not recommended for use until such compliances are substantiated.

5 And I want to focus on that in terms of compliance because the AATES test is looking at compliance relative to airworthiness codes. Do you agree with that?

10 AIRCDRE MEDVED: It wasn't the scope and the definition of the testing from the front, but they have addressed that, yes. And it wasn't established for the purposes of compliance demonstration evidence.

15 LCDR GRACIE: Let me just ask it again. Whether or not that was its purpose, a reader of that report would understand that AATES has come to its finding of "unacceptable" by reference to airworthiness specifications?

AIRCDRE MEDVED: Some standards, yes.

20 LCDR GRACIE: Some standards.

AIRCDRE MEDVED: Yes.

25 LCDR GRACIE: Can you point in the OPEVAL, if you go to 121 of any airworthiness standard at all – whether American, Australian or something else – by which the OPEVAL is referencing its assessment that the off-axis symbology is merely undesirable?

30 AIRCDRE MEDVED: Look, I'd have to take this offline and go through it.

LCDR GRACIE: In fairness to you, I'll put it differently then. Would you agree with me, based on your recollection of the OPEVAL – have a look at it – that the OPEVAL was not undertaking a test of airworthiness relevant to specifications?

35 AIRCDRE MEDVED: Correct, because it was not a test to generate compliance demonstration of evidence supporting certification of the HMSD as a primary flight instrument.

40 LCDR GRACIE: Correct. And what it was doing, if you - - -

45 AIRCDRE MEDVED: Which is not – my understanding is that the HMSD and the approval wasn't certified as a primary flight instrument, which is the FAA Advisory Circular, which is referenced in this Annex C is in relation to primary flight instruments.

5 LCDR GRACIE: And if that's the case, you would expect the service release to make that very clear in the Standardisation Manual, that it is only a supplementary pilotage aid. Correct?

AIRCDRE MEDVED: I will probably get the terminology wrong, but whether it's a supplementary aid or – I'm not sure on the exact terminology, but - - -

10 LCDR GRACIE: Well, you're saying that the DASA approval of the change of type certification was predicated upon the upgrade from version 4.0 to 5.10 as being a supplementary pilot aid and not a primary pilot aid. Is that right?

15 AIRCDRE MEDVED: From recollection, it's not – my understanding is it's not certified as a primary flight instrument, yes.

LCDR GRACIE: And on that scenario, you would expect and require, I would imagine, that any service release reflect that limitation?

20 AIRCDRE MEDVED: You would expect that to be understood within – and evident within orders, instructions and publications.

25 LCDR GRACIE: Well, you would actually go a bit further, wouldn't you, sir, and make sure that that limitation is clearly reflected in the service release? Can I say, sir, it should not, with respect, be a difficult question to answer.

30 AIRCDRE MEDVED: No, I'm struggling with the term of "service release", because I don't understand what that means. It's not - - -

LCDR GRACIE: Well, let me put it this way. DG AVN, on 21 April 2020 directed the symbology upgrade to be released for operational use – and I mean service release, in that sense.

35 AIRCDRE MEDVED: Okay.

40 LCDR GRACIE: You would surely expect, wouldn't you, sir – and I don't mean this in any pejorative way – but you would surely expect that if DASA had only certified the change of type to a supplemental pilot aid for this upgrade to be used under those restricted conditions, that that would be reflected in any service release?

AIRCDRE MEDVED: You would expect that the intent of that would be – whether it's in just that service release or whether it's in other orders, instructions or publications, for that to be clear, yes.

5 LCDR GRACIE: How does DASA convey that intent to those who come after and do the test and evaluation, the modifications, the other things that you've talked about that happen after certification of the type design?

AIRCDRE MEDVED: Can you repeat that question, please?

10

LCDR GRACIE: Yes, I'll do it differently. If you have a look at paragraph 9(a) of your statement, you say:

Post approval of the modification –

15

that's the DASA type approval. Is that correct? You're there talking post that?

AIRCDRE MEDVED: Correct.

20

LCDR GRACIE:

– the community is responsible for a range of activities, including incorporation of the modification across the aircraft fleet, updates to orders, instructions and publications, Operational Test and Evaluation.

25

How is that DASA intent that this is a supplemental, not primary flight upgrade to the symbology conveyed to those communities post approval?

30

AIRCDRE MEDVED: In this instance, I'm not aware of how that was done or if it was done.

LCDR GRACIE: Should it be done?

35

AIRCDRE MEDVED: The community should be aware, yes.

LCDR GRACIE: And you may not recall it, but we have met before. It was back on 9 August - - -

40

AIRCDRE MEDVED: I remember.

LCDR GRACIE: - - - and I asked you a question back then, and now understanding, with the benefit of your further evidence, I understand that the DASA authorisation is at a much earlier time to the line of questions I

45

was asking you about then. But you did say that with the approval of the modification – that is, the aircraft type design – we have a document that articulates our formal approval of that modification.

5 *Underpinning that internally –*

this is at transcript 2288 to 2289, just for the record –

10 *Underpinning that internally, we have our own authorisation processes for staff within DASA to document our rationale.*

And I asked:

15 *So there is an internal DASA report approving the symbology upgrade?*

AIRCDRE MEDVED: There is.

20 Is that still a correct understanding of your evidence, that there is an internal DASA report approving the symbology upgrade?

AIRCDRE MEDVED: There’s an internal documented assessment that underpins the formal approval on the Form 31, if I recall correctly, and that was provided to the IGADF in September.

25 LCDR GRACIE: Thank you. Just coming back to the territory of the specification, the airworthiness codes. You answered a question from ma’am who raised a matter about the AATES report, and you said, “But the OPEVAL was more comprehensive”. What did you mean by “more comprehensive than the AATES report”? Was it the number of pilots that undertook the assessment, or what?

30 AIRCDRE MEDVED: I understand. More comprehensive in the number of – and again, from looking at this and the evidence that was provided – because I was not privy to it until requested to provide evidence – there were significantly more flights conducted as part of the OPEVAL.

35 LCDR GRACIE: Do you know the test environment that was mandated by the Military Permit to Fly? Do you know what flight conditions were imposed?

AIRCDRE MEDVED: I can’t recall off the top of my head.

40 LCDR GRACIE: Do you know, for example - - -

45

AIRCDRE MEDVED: Because they were approved by the Delegate of the Safety Authority.

5 LCDR GRACIE: Do you know, for example, that there was a prohibition on flying at night below two millilux?

AIRCDRE MEDVED: I can't recall. I did look at the MPTF, Military Permit to Fly, and flight conditions, but I can't recall.

10 LCDR GRACIE: Do you know that there was, both for day and night, a requirement to maintain a visual horizon?

15 AIRCDRE MEDVED: I don't recall. And noting that when I say I reviewed these documents, it was only in support of providing this evidence for this Inquiry.

20 LCDR GRACIE: And there has been some evidence – you won't see it in the OPEVAL – but there has been some evidence given by someone involved with it that it would rate as a Category 4 testing. I know you said you're not an expert in the test categories, but do you know what a Category 4 test is?

AIRCDRE MEDVED: It's the lowest risk flight test category.

25 LCDR GRACIE: Yes.

AIRCDRE MEDVED: I can't just quote a definition or, in effect, experience in classifying flight tests because it's not my background.

30 LCDR GRACIE: And do you know what a Category 2 test is?

AIRCDRE MEDVED: It carries additional risk – much higher risk, and the requirements of test crews tend to be higher.

35 LCDR GRACIE: It's, in summary, something that's not a Category 1, but - - -

AIRCDRE MEDVED: Clearly.

40 LCDR GRACIE: - - - coming under that, it is in relation to an already certified type. That's this case. Correct?

AIRCDRE MEDVED: Correct.

45 LCDR GRACIE: So already certified after embodiment of a not yet

approved modification or substantial change to role or environment, which requires an assessment of the general behaviour of the aircraft, among other things.

5 AIRCDRE MEDVED: Yes. Noting that it was categorised as a CAT 2 – and we get into the details here – but Category 2(b)(ii).

LCDR GRACIE: Yes.

10 AIRCDRE MEDVED: And I had this as footnote 7 in my submission on page 7, so it was approved, the modification. So it wasn't conducted to support approval of the modification.

LCDR GRACIE: No, sure.

15 AIRCDRE MEDVED: So it must have been assessed as a substantial change to role or equipment and – which you know – requiring assessment of basic crew procedures when a new or modified system is operated or is needed.

20 LCDR GRACIE: And you would agree with me, wouldn't you, that pilot response to attitude information is a basic procedure?

AIRCDRE MEDVED: I'm not a pilot, but it seems reasonable.

25 LCDR GRACIE: I'm not either, but I think I know the answer.

AIRCDRE MEDVED: It seems reasonable.

30 LCDR GRACIE: It does. And what I was going to ask also is – or, sorry, put to you, is this: that the evidence before the Inquiry is the AATES test was done as a Category 2 test.

AIRCDRE MEDVED: It was.

35 LCDR GRACIE: So, as you said, 2(a)(b) - - -

AIRCDRE MEDVED: 2(b)(ii).

40 LCDR GRACIE: (b)(ii), all right. So can I just put this to you as a proposition and assist in explaining this? We have an AATES report referencing certain specifications with a finding of unacceptable due to the risk of controlled flight into terrain utilising the upgraded symbology under a Category 2 test condition. Would you agree with that as a broad
45 proposition as being accurate?

AIRCDRE MEDVED: Yes.

5 LCDR GRACIE: The OPEVAL could not have, even if it did certify or make an assessment of airworthiness relevant to specifications, could not have been assessing anything by way of any airworthiness code other than something referable to a Category 4 test environment. Is that correct?

10 AIRCDRE MEDVED: Can you repeat the question, please?

15 LCDR GRACIE: No matter how you cut it, the OPEVAL, even if it was making an assessment or conducting a test by reference to airworthiness codes – which I put to you earlier it doesn't – even if it did, it could only be referencing those codes relevant to a Category 4 type of test, the lowest.

20 AIRCDRE MEDVED: I'm understanding – and, look, again, I qualify my following statement by stating that I'm not an expert in flight test. But my understanding of the categorisation of flight test is not linked to airworthiness codes, it's linked to the hazard of conducting it.

25 LCDR GRACIE: Well, let's forget the codes because we've already said the OPEVAL didn't reference any codes. So take the codes away, the situation is perhaps even more stark. The OPEVAL could only have made an assessment of – or an evaluation in respect of not even airworthiness, just suitability of the upgrade in an operational environment by reference to something coming within a Category 4 test qualification, i.e. the lowest level of hazard.

30 AIRCDRE MEDVED: Acknowledging that there was also a Fleet Air Arm test, my understanding - - -

LCDR GRACIE: Let's not worry about that right now.

35 AIRCDRE MEDVED: - - - conducted by that - - -

40 LCDR GRACIE: Let's just talk about the OPEVAL. I didn't mention AMAFTU. I just, sir, ask if you could just answer that question? Do you agree with the proposition that the OPEVAL, which made no reference to any airworthiness standards or codes, as you've now said, could only have made an evaluation referable to a Category 4 type of testing environment, being the lowest possible category?

45 AIRCDRE MEDVED: I agree that it was conducted as a – from the inference – and I can't recall that the OPEVAL was done as a level 4 – but on that assumption, the risks that may be experienced or that had been

mitigated against, you can't suggest or infer that you would not experience the same risk on a – or the effectiveness of risk controls can't be conducted by a level 4 (indistinct) a level 2.

5 LCDR GRACIE: So how would you explain - - -

AIRCDRE MEDVED: If they are known. But again, I'm encroaching into experience of Flight Test Specialists.

10 LCDR GRACIE: You're saying it could be deemed a Category 2 test?

AIRCDRE MEDVED: I'm not making any suggestions about a categorisation of a test, but when a test activity is first categorised you'll err on the side of caution. Once risks are better understood, you may not need to have the same level of categorisation once, you know, the risks are understood. Because the extra rigor that's applied is due to uncertainty.

20 LCDR GRACIE: But can I suggest that there wasn't that rigor in the OPEVAL. You might describe it as more comprehensive, but the rigor is not in the OPEVAL because it's not referencing airworthiness by reference to specifications. It's asking for a subjective opinion from the pilots, "How do you rate this? Is it desirable? Do you prefer the symbology to be lowered down so it's not too bright?" They're the sort of subjective assessments that are made in the OPEVAL, aren't they?

25 AIRCDRE MEDVED: From recollection, yes.

30 LCDR GRACIE: It's not as objective assessment of a Category 2 flight test, is it?

AIRCDRE MEDVED: It doesn't appear to be to the same rigor of a higher level flight test activity that's supporting the certification of a primary flight instrument.

35 LCDR GRACIE: Such as the AATES test?

AIRCDRE MEDVED: Such as how the AATES test was conducted.

40 LCDR GRACIE: Yes, thank you. Thank you, ma'am. Thank you, sir.

45 MS McMURDO: There's probably not much point starting the next – unless the next person is going to be very short? No? No one's volunteering. All right, I have been told that there are long queues at Brisbane Airport to get through security and that you should allow at least 30 minutes. And that also the traffic on the way to the airport is bad.

5 So I think that probably means you've probably got to allow about
two hours from leaving the city to get to the airport and onto your plane in
time. For those of you who'd be affected by that, and as to the time that we
finish today, could you speak to Counsel Assisting in the lunchtime break,
please?

We'll adjourn now until 2 o'clock. Thank you.

10

HEARING ADJOURNED

HEARING RESUMED

MS McMURDO: Yes, COL Streit.

5

COL STREIT: Thank you, Ms McMurdo. What Counsel Assisting proposes is, noting information received about flights for Counsel representing and Counsel Assisting, members travelling home and the issues in relation to the administration of that, it's proposed that one member of Counsel representing just applies for and asks this witness some brief questions. Then another witness is interposed, which would be LTCOL Perren. I anticipate his evidence will be about 30 minutes. And then we would ask the Air Commodore to return, conclude his evidence, and then conclude the Inquiry's hearing without calling the third witness identified for today.

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MS McMURDO: MAJ Levey has been excused and he's off on his - - -

COL STREIT: COL Levey, yes.

20

MS McMURDO: COL Levey, yes. He's off now.

COL STREIT: Yes.

25

MS McMURDO: Thank you. Yes, that's suitable. Yes?

<CROSS-EXAMINATION BY LCDR HAY

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LCDR HAY: Good afternoon, sir. My name is LCDR Mark Hay. I represent the interests of D19. D19, relevantly, was the CO of 6 Avn. Sir, I just have a number of questions for you about some of the material that's currently on the DFSB intranet site. There is a number of tabs on the intranet site, including Human Factors and NTS Resources, Fatigue Management, and SAFTE-FAST. Are you aware of those resources on the DFSB intranet site?

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AIRCDRE MEDVED: Yes, I am.

40

LCDR HAY: Do you know whether or not those resources were there – that is, on the intranet – as at 2022/2023?

AIRCDRE MEDVED: I believe both NTS Guidebook as well as the Fatigue Management Guidebook were present at that timeframe.

45

LCDR HAY: What about the other resources that are currently available, do you know if they were all available at that time?

5 AIRCDRE MEDVED: Whilst the resources do evolve over time, there's been – during my tenure as DG DASA, from end of 2020 to February this year, my recollection is that there was always resources on that intranet website.

10 LCDR HAY: So the materials available might be evolving. As more materials become available, they then get added.

AIRCDRE MEDVED: Yes, new editions issued, et cetera.

15 LCDR HAY: What about the SAFTE-FAST tab, do you know if that was available in 2022/2023?

AIRCDRE MEDVED: I can't recall that tab.

20 LCDR HAY: One of the items listed under the Fatigue Management tab is the Fatigue Monitoring Studies/Interventions. Are you aware of that generally being present on the intranet site?

AIRCDRE MEDVED: No, I'm not.

25 LCDR HAY: Is it the case, to your understanding, that there are fatigue studies conducted by DFSB?

AIRCDRE MEDVED: Yes, amongst others.

30 LCDR HAY: When you say “amongst others”, those sleep studies – can we call them sleep studies?

AIRCDRE MEDVED: That's fine.

35 LCDR HAY: Those sleep studies, are they conducted generally by or at the unit level?

AIRCDRE MEDVED: I can't go into that, I don't know.

40 LCDR HAY: Were you aware that in that period, 2022/2023, that 6 Avn had actually commissioned a sleep study for members of the unit?

AIRCDRE MEDVED: I wasn't aware.

45

LCDR HAY: If you accept from me that that was the case, would that seem unusual to you, that the unit itself had commissioned sleep studies at that time?

5 AIRCDRE MEDVED: Not necessarily. And what I mean by that, if a unit is being proactive in managing hazards and risks through an effective Safety Management System, they might identify that there might be a greater threat, for example, with fatigue. And they may be proactive in managing that risk by conducting a sleep study with support.

10 LCDR HAY: A Command element that commissions a sleep study, particularly to their unit at that level, is that, in your professional opinion, indicative of a Command that is aware of, conscious of, safe-guarding against, fatigue issues?

15 AIRCDRE MEDVED: In my opinion, it demonstrates a proactive approach to safety and safety management.

LCDR HAY: Thank you. Those are my questions.

20 MS McMURDO: Air Commodore, I think we're now going to stand you down for a little while and hear from another witness. I understand this isn't going to affect your ability to catch your flight home, but it will help other people, who have an earlier flight, get there.

25 AIRCDRE MEDVED: Yes, understood, Ms McMurdo.

MS McMURDO: Thank you very much. So we'll just stand you down. You can go outside and have a relax and we'll let you know when you're needed next. Thank you.

30

<WITNESS WITHDREW

35

MS McMURDO: Yes.

COL STREIT: Thank you, Ms McMurdo. I call LTCOL Daniel Stephen Perren. For the assistance of Counsel representing, can you please note in relation to LTCOL Perren's statement, paragraph 5, the name identified in the last line now has a pseudonym of D145.

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MS McMURDO: Thank you.

45

<LTCOL DANIEL STEPHEN PERREN, Affirmed

<EXAMINATION-IN-CHIEF BY COL STREIT

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

LTCOL PERREN: Yes, ma'am. Thank you.

10

MS McMURDO: Thank you.

COL STREIT: LTCOL Perren, I'm just going to ask you some questions if I may? First, can I just ask you some preliminary matters? Did you receive a section 23 Notice from Counsel Assisting to appear here today?

15

LTCOL PERREN: Yes, I did.

COL STREIT: Did that Notice also contain some questions for you to answer in the production of a statement to the Inquiry?

20

LTCOL PERREN: Yes, it did.

COL STREIT: Did you also receive the following documents: a Privacy Notice?

25

LTCOL PERREN: Yes.

COL STREIT: A Frequently Asked Questions Guide for Witnesses?

30

LTCOL PERREN: Yes.

COL STREIT: An Instrument of Appointment from FLTLT Rose?

35

LTCOL PERREN: Yes.

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

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LTCOL PERREN: Yes.

COL STREIT: As a result of the section 23 Notice, did you complete a statement for the purposes of your evidence here today?

45

LTCOL PERREN: Yes.

COL STREIT: I'll show you a document. Before I ask you to look at that document, Lieutenant Colonel, can I just orientate you? On the table that you're seated at are two documents affixed to the table. They are a list of pseudonyms with relevant names next to them. So in circumstances where
5 you consider that if you're going to give evidence that might identify a person that has a pseudonym, could I ask you to please consult those two documents? One is in alphabetical order of a person's name with their surname, the other one is in order of the pseudonym number, D1, D2, D3, and so on.

10

MS McMURDO: 145 isn't on that list yet.

COL STREIT: Yes, that's right. So can I ask you to - - -

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MS McMURDO: It has been written on, has it? Thank you.

COL STREIT: Well, for completeness, can I just draw your attention to the document I've given to you? You'll see that it contains, particularly on page 2, where the Inquiry has redacted persons' names and accorded those
20 names with a pseudonym that I'll ask you to check shortly marries up with the name on the pseudonym list.

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So, first, can I just begin by confirming that the document you have before you is a statement signed by you on 18 February 2025? Is that correct?

LTCOL PERREN: That's correct.

COL STREIT: It comprises three pages and 13 paragraphs?

30

LTCOL PERREN: Correct.

COL STREIT: In relation to the pseudonyms, the first pseudonym should appear in paragraph 5, the last line, with the number D145. Do you see that?
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LTCOL PERREN: Correct. Yes, I do.

COL STREIT: Can you just confirm, by reference to D145 on the pseudonym list, that that is the name that was contained in your original
40 signed statement?

LTCOL PERREN: Yes, it is.

COL STREIT: You'll see, also at paragraph 7, 9 and 10, and the second paragraph of 13, they contain the pseudonym of the same person. Do you see that?

5 LTCOL PERREN: Yes, I do.

COL STREIT: Can you confirm, by reference to the pseudonym list, that the pseudonym number accords with the person that you had in your original statement?

10 LTCOL PERREN: Yes, it does.

COL STREIT: Thank you. LTCOL Perren - - -

15 MS McMURDO: That will be Exhibit 149.

#EXHIBIT 149 - STATEMENT OF LTCOL PERREN

20 COL STREIT: Yes, thank you, Ms McMurdo.

LTCOL Perren, can I just begin with some brief matters concerning your background at paragraph 1 of your statement, appearing under the subpara heading, "My Background, Qualifications and Posting History"? You joined the Army in 1993, and you graduated from Officer Cadet School at Portsea in 1984. Is that correct?

25 LTCOL PERREN: No. You said "1993", I think, Counsel. It was 1983, when I joined.

COL STREIT: Thank you. You underwent pilot training and flew CT/4; is that correct?

35 LTCOL PERREN: Yes.

COL STREIT: Kiowa and Lynx AH helicopters?

LTCOL PERREN: Yes.

40 COL STREIT: Lynx AH. What does the "AH" stand for?

LTCOL PERREN: Attack helicopter.

45 COL STREIT: You say at paragraph 1 you have fulfilled a number of

flying and non-flying positions, which included sub-unit Command and four operational deployments. Is that correct?

5 LTCOL PERREN: That's correct, yes.

COL STREIT: In terms of those operational deployments, are you just able to indicate to what operations they were, or which location?

10 LTCOL PERREN: I deployed three times to East Timor, with various operations. I can't remember the names of them all.

COL STREIT: Sure.

15 LTCOL PERREN: And to Afghanistan.

COL STREIT: You say post-2006 you worked mainly in CASG. "CASG" stands for?

20 LTCOL PERREN: The Capability Acquisition and Sustainment Group.

COL STREIT: Where you oversaw the Production Test and Airworthiness Team. What's that team, Production Test and Airworthiness?

25 LTCOL PERREN: That team worked on behalf of the Commonwealth to accept the ARH Tiger and MRH-90 into service as they were being manufactured at the production facility in Pinkenba in Brisbane.

30 COL STREIT: Finally, you worked as an O6 – that is, Officer 6 – in the Operational Airworthiness Authority Reposition for Acquisition; is that correct?

LTCOL PERREN: Representative for Acquisition, yes.

35 COL STREIT: You transferred to the Army Reserve in March 2017; is that right?

LTCOL PERREN: Correct.

40 COL STREIT: Since March 2017 you have performed Army Reserve service.

45 LTCOL PERREN: Some Army Reserve service, but principally I've worked as a civilian contractor.

COL STREIT: I was about to ask you about that. So your work since transferring to the Army Reserve has been as a civilian contractor to Defence?

5 LTCOL PERREN: Mostly, but not always to Defence. I also worked for the South Australian State Government on some work as well.

COL STREIT: You have tertiary qualifications: a Bachelor of Professional Studies and a Master of Defence Studies. Is that right?

10 LTCOL PERREN: That's correct.

COL STREIT: Can I just take you, as at 28 July 2023, you were working under a previous contract with Nova Systems providing operational airworthiness support to Headquarters Aviation Command for the MRH-90 Taipan. Is that right?

LTCOL PERREN: Yes.

20 COL STREIT: Nova Systems, can you just briefly indicate to or assist the Inquiry by explaining what Nova Systems is?

LTCOL PERREN: Nova Systems is a company that not exclusively works for Defence. It's an international company that started working or worked – was created in Adelaide, probably I think 25 years ago, and works on a number of different engineering contracts for Defence and other clients, and also some consulting – which largely is what my role at Nova Systems has been on and off since 2017.

30 COL STREIT: You say at paragraph 5:

35 *employed by Nova Systems as a contractor to Defence, working for Headquarters Aviation Command, specifically to the Director of Operational Airworthiness, providing support to the acquisition of the AH-64E Apache helicopter.*

You've been working in this role since September 2024, and that you report directly to D145, and that you have no one reporting to you presently.

40 LTCOL PERREN: Correct, yes.

COL STREIT: Just turning to matters you've identified in your statement as at 2018/2019. You say, at paragraph 6, in 2018 and '19 you were working on a casual contract with Nova Systems. In late 2018 you worked on LAND 2097, Phase 4, Special Operations Light Helicopter, where you

developed the Operational Concept Document, and the Test and Evaluation Master Plan. Is that correct?

LTCOL PERREN: Correct. Yes, that's right.

5

COL STREIT: At paragraph 7 you say you first met D19 at one of two project meetings in 2018 that you attended at Holsworthy Barracks, and that from your recollection and travel records one was conducted 10 to 11 May 2018 and the other on 6 to 7 November 2018. Correct?

10

LTCOL PERREN: That's correct, yes.

COL STREIT: You can't recall which of the two meetings D19 attended - - -

15

MS McMURDO: D145 – sorry, you're correct; I'm wrong. Thank you. Sorry to interrupt.

20

COL STREIT: You say further, at para 7, that at the time D19's rank was Major, and you recall he had not long returned from the United States on exchange and that he was either a sub-unit Commander in 6 Aviation Regiment or was about to be. Is that correct?

LTCOL PERREN: Yes.

25

COL STREIT: At paragraph 8 you give description of things you say you said you heard D19 speak. Can I just ask you to, in relation to paragraph 8, just explain what you say happened and what you say D19 said?

30

LTCOL PERREN: As I have in my statement, during one of those meetings, as I was developing the Operational Concept Document, we had a lot of discussion about different helicopter platforms that might fulfil the role and what their capabilities needed to be, and that was really my role in advising that. So there was a comparison between some larger aircraft, like Agusta 139 twin-engine Category A aircraft, and also a smaller single-engine aircraft, like a Little Bird that was flown in the United States.

35

40 And from some of my work, working with CASA Regulations, and doing some other analysis, we were discussing the merits of twin-engine helicopters versus single-engine helicopters, particularly in relation to the role of that unit in flying in populous areas and built-up areas, and the added safety margin that would be available – likely available with a twin-engine helicopter.

5 At that time, during that discussion, D19 stated words to the effect that, “We just need to be prepared to crash a few aircraft”. And at that point, I perceived that to be him trying to close that line of conversation down. So, at that point, I ceased that line of conversation and moved to another subject following that, and moved on with the process of the workshop that we were involved with.

10 COL STREIT: When you say D19 said those words, was anyone else present at the time?

LTCOL PERREN: Yes. We were in the precinct of the Special Forces who are located at Holsworthy Barracks. Present there were representatives - - -

15 COL STREIT: Before you mention that, I might just ask for a piece of paper to be provided to you. If you could just write down the name or names of the persons you say were present at the time when you say D19 said these things? If you can’t remember their name, just their position.

20 LTCOL PERREN: That’s about all the people that I can recall. There were a number of others of various ranks, but they were the main players.

COL STREIT: I’ll have that handed back, thank you.

25 MS McMURDO: I’ll have a look, please.

COL STREIT: I was going to tender it.

30 MS McMURDO: Yes, that will be Exhibit 150.

**#EXHIBIT 150 – LIST OF NAMES PROVIDED BY
LTCOL PERREN**

35 MS McMURDO: So we should show it to Counsel representing?

COL STREIT: I will in a moment. Can I just have it returned to the member?

40 MS McMURDO: Thank you.

45 COL STREIT: So just for clarity, the persons that you have identified in that list you recall were present at the time you say D19 said those words you’ve just given some evidence about?

LTCOL PERREN: Yes, to the best of my recollection.

5 COL STREIT: Just in relation to that matter, did you recall D19 saying anything else following those words?

LTCOL PERREN: No.

10 COL STREIT: Do you recall anyone else saying anything at that time in relation to what you say D19 had just said?

LTCOL PERREN: No.

15 COL STREIT: What happened next, after you say these words were said by D19? What was the next thing you recall happening?

20 LTCOL PERREN: The next thing I recall happening is that we just moved further on with the development of the concept document, and we stopped that line of conversation and moved to other information that we were gathering until we left that precinct and then went to accommodation with my company colleagues.

25 At dinner that evening, I discussed that comment that had been made with my company colleagues, to the words of the effect that I thought it was possibly an aberrant comment. It shouldn't be taken as being representative of what we should be designing into the operational concept and that we should – we set that aside, and we discussed that with colleagues over dinner.

30 And that is really all I can recall of that evening. I was a bit – because I was the only ex-Military member in that Nova group, I wanted to ensure that my counterparts didn't take that as being a representative comment.

35 COL STREIT: The persons you say you spoke to that evening, your Nova colleagues, are they also listed on that list of names?

LTCOL PERREN: Yes, they are.

40 COL STREIT: Thank you. Following that engagement, did you, at any other time, have any discussion with D19 about what you say he said?

LTCOL PERREN: No.

45 COL STREIT: Did you have any discussion with – apart from your Nova colleagues, with any member of the Military about what you say D19 said,

that you can recall?

5 LTCOL PERREN: No, not that I can recall, because at the end of the day, the Military normally – they weren't staying with us in our accommodation.

COL STREIT: For completeness, it's the case, isn't it, that you were contacted by the Inquiry in relation to this matter? Is that correct?

10 LTCOL PERREN: Yes, that's correct.

COL STREIT: It's not the case that you contacted the Inquiry to raise this matter at first instance?

15 LTCOL PERREN: That's correct.

COL STREIT: Nothing further.

20 MS McMURDO: Are any of the names on that list in front of you in – were any of those people in D19's Chain of Command at the time?

LTCOL PERREN: No, ma'am.

MS McMURDO: Thank you. Yes, LTCOL Hay.

25 LCDR HAY: Ma'am, just before I begin, could I please have access to Exhibit 150?

MS McMURDO: Of course, yes.

30

<CROSS-EXAMINATION BY LCDR HAY

35 LCDR HAY: Good afternoon, sir. My name is LCDR Mark Hay. I represent the interests of D19. Can I just begin by asking you, when did you first become aware of this Inquiry?

LTCOL PERREN: When I received an email through my Defence Network that I work on regularly.

40

LCDR HAY: Was that an email from MAJ Glenn McCall?

LTCOL PERREN: No, it wasn't. It was a general email from someone in the Headquarters of Aviation Command.

45

LCDR HAY: And you did have some email correspondence with MAJ McCall in October 2024; is that right?

5 LTCOL PERREN: I don't recall the date, but I did have some email communication with MAJ McCall.

LCDR HAY: Ma'am, I don't actually have the exhibit number, but the statement of MAJ McCall, if I could have access to that, please?

10 MS McMURDO: Yes, sure. It's 124, I think. Yes, 124.

LCDR HAY: Thank you.

15 MS McMURDO: There's an A and a B.

LCDR HAY: Sir, just while that's being located, can I also ask you, when did you first become aware of D19 being the Commanding Officer of 6 Avn?

20 LTCOL PERREN: I think that was in 2024.

LCDR HAY: 2024?

25 LTCOL PERREN: To the best of my recollection, yes.

LCDR HAY: Just to be clear, was it before or after you had this contact from people within Defence advising you of the Inquiry?

30 LTCOL PERREN: Before.

LCDR HAY: Just so I understand the timeline, you became aware that D19 was the CO of 6 Avn?

35 LTCOL PERREN: Yes.

LCDR HAY: Some later time you become aware that the Inquiry was being undertaken?

40 LTCOL PERREN: Yes.

LCDR HAY: Some time after that, you had some correspondence with MAJ McCall?

45 LTCOL PERREN: Yes.

5 LCDR HAY: Can I just show you this? This is Annexure G for Golf, of the exhibit. Sir, could you just take a moment, if you would, just to satisfy yourself as to that document? Do you agree with this: that that document appears to be an email from you to MAJ McCall dated Tuesday, 15 October 2024 at 1.59 pm?

LTCOL PERREN: Yes.

10 LCDR HAY: Now, can I just ask you, do you see down the bottom of that document there appears to be some writing that is highlighted?

LTCOL PERREN: Yes.

15 LCDR HAY: And just take a moment, if you would, to read the highlighted words.

LTCOL PERREN: It's a little difficult to read. Yes.

20 LCDR HAY: Do you agree with this: those words are not your words; they appear to be added at some later time by MAJ McCall?

LTCOL PERREN: I assume so, yes.

25 LCDR HAY: Thank you. Could you then turn the page? Could you just confirm that what follows is a two-page document which was attached to your email to Glenn McCall?

30 LTCOL PERREN: It is, with an exception. Obviously, the annexure – the annex is not correct, and I didn't highlight the fourth-last paragraph.

LCDR HAY: So two parts: there's the addition of the label, Annexure G?

LTCOL PERREN: Yes.

35 LCDR HAY: That's not yours. There's also some highlighting on the second page of that document. You did not highlight those words?

LTCOL PERREN: No.

40 LCDR HAY: But the words are your words. Is that right?

LTCOL PERREN: Yes.

LCDR HAY: And, sir, you wrote to Glenn McCall on 15th October

attaching this document. At the time that you attached this document, did you know that MAJ McCall was being called as a witness in the Inquiry?

5 LTCOL PERREN: I believe that I did.

LCDR HAY: How long have you known MAJ McCall for?

LTCOL PERREN: For the best part of 40 years.

10 LCDR HAY: For 40?

LTCOL PERREN: Four zero.

15 LCDR HAY: Four zero.

LTCOL PERREN: Almost 40 years.

LCDR HAY: Can you tell the Inquiry, if you would, when was the first time that you mentioned to MAJ McCall this meeting at which D19 is alleged to have said the words that you allege he said?

20 LTCOL PERREN: From the best of my recollection, I think it was after the Jervis Bay incident.

25 LCDR HAY: So sometime in 2024? Sorry, 2023?

LTCOL PERREN: 2023.

LCDR HAY: So between March '23 and October 2023, when you sent the email, you believed you raised this issue for the first time?

LTCOL PERREN: To Glenn McCall, yes.

35 LCDR HAY: Did you know that in 2018/2019 that Glenn McCall was Standards Officer with Army Aviation?

LTCOL PERREN: Not that I recall.

40 LCDR HAY: You've known him for 40 years.

LTCOL PERREN: Yes.

LCDR HAY: How do you know him? Do you know him in a personal capacity, private capacity, or both?

45

LTCOL PERREN: What's the difference between personal and private?

LCDR HAY: Sorry, personal and professional.

5 LTCOL PERREN: Professionally first, and then personally throughout our careers.

LCDR HAY: Do you mean by that that you became friends over time?

10 LTCOL PERREN: We were colleagues and we didn't have a close friendship. We never served in the same unit together, but I'd flown in the same aircraft with Glenn on occasion.

LCDR HAY: Do you consider him to be your friend now?

15 LTCOL PERREN: Yes.

LCDR HAY: And at what point do you say that you became friends with MAJ McCall – just to the best that you can?

20 LTCOL PERREN: 1986, I'd have a guess at.

LCDR HAY: About '86. So by the time of 2018 you would say that you and he were friends?

25 LTCOL PERREN: Yes.

LCDR HAY: Now, you say in your statement that although you separated from the ADF in 2017, you continued to have what you describe as personal and professional dealings with people within Army Aviation community. Is that right?

LTCOL PERREN: Yes.

35 LCDR HAY: As at 2018/2019, would you have known people within the Aviation community – Army Aviation in particular?

LTCOL PERREN: Would I have known people?

40 LCDR HAY: Yes.

LTCOL PERREN: Yes.

LCDR HAY: Do you know people in the Headquarters?
45

LTCOL PERREN: Yes.

LCDR HAY: Would you have known people at 6 Avn at that time?

5 LTCOL PERREN: Only one or two, I would think, yes.

LCDR HAY: One or two?

LTCOL PERREN: Yes.

10

LCDR HAY: And just the best that you can, where would they fit within the hierarchy of the organisation? Were they at the Officer level? Were they enlisted personnel?

15 LTCOL PERREN: Officer.

LCDR HAY: Officer level. And within the officer cohort where would they sit in terms of rank?

20 LTCOL PERREN: Lieutenant Colonel.

LCDR HAY: About the Lieutenant Colonel rank. Now, you say that at this meeting that occurred in 2018 – and I'm going to come back and ask you some further questions about the timing – you say D19 was a Major. Is that right?

25

LTCOL PERREN: Correct.

LCDR HAY: You knew people in Army Aviation at the half Colonel rank; is that right?

30

LTCOL PERREN: Yes, I did.

LCDR HAY: Did you, at any stage, after this meeting, make contact with any of your associates at the half Colonel rank to tell them what D19 had said?

35

LTCOL PERREN: I can't recall, but for good reason.

40 LCDR HAY: You can't recall for good reason?

LTCOL PERREN: I can't recall that I contacted anyone at that period of time because I was living in Victoria and had separated from Defence and was only working on a casual contract, and I wasn't doing active Army

Reserve work. Like I said, I knew one person in 6 Avn, but I didn't speak to him about this.

5 LCDR HAY: When you transferred to the Reserves in 2017, what rank did you transfer at?

LTCOL PERREN: I was a Lieutenant Colonel. I'd reverted to that rank.

10 LCDR HAY: So, just to be clear, as at the time that you sat down at this meeting, were you still a member of the Army Reserves, but inactive?

LTCOL PERREN: Yes.

15 LCDR HAY: When you were in uniform, you wore the Lieutenant Colonel rank; is that right?

LTCOL PERREN: When I wore uniform, yes.

20 LCDR HAY: And your evidence is that a Major said words that you obviously recognised the import of at the time in the meeting. Is that your evidence?

LTCOL PERREN: Yes.

25 LCDR HAY: Did you, at any stage, consider it appropriate or necessary for you to speak to the Major either inside that meeting or outside the meeting?

30 LTCOL PERREN: I thought it was inappropriate in the context of that meeting, as I was an invited guest, as a civilian inside a Special Forces precinct, and doing a particular job, having left my other role from Defence. I thought it was inappropriate to dress that person down in front of his subordinates and other peers. And as there were other Military people there, I didn't think it was appropriate for me to take action.

35 Also, too, from my point of view, it was a very small snapshot. It was a tiny snapshot. And from my experience in Defence, in taking legal action or formal DFDA action against people, you would normally need a body of evidence to do that, now, just a snapshot, a throwaway line, and so that's
40 why I didn't speak to him at that point.

LCDR HAY: Just to be clear, sir. I'm not talking about formal DFDA action. I'm not, at the moment, asking about complaint mechanisms. What I'm asking about is whether or not you saw it as being appropriate or

necessary to have, as it were, a quiet word with a Major following the meeting? Did you think that was appropriate or necessary?

5 LTCOL PERREN: No, I didn't think it was appropriate at the time.

LCDR HAY: Did you send D19 an email at any stage raising the concerns that you'd had with the comment you say he said?

10 LTCOL PERREN: No. I just shut the conversation down at the time and deflected to another issue.

LCDR HAY: Ever consider it necessary or appropriate to pick up the phone and speak to D19 about the comments you say that he made in that meeting?
15

LTCOL PERREN: No.

LCDR HAY: You agree, though, that that was an open avenue for you to take if you were seriously concerned about the comment that you say that he made in that meeting? You could have picked up the telephone and spoken to him?
20

LTCOL PERREN: Did I say I was seriously concerned in my statement?

25 LCDR HAY: Well, you were concerned enough, weren't you, to speak to your colleagues afterwards and tell them that those comments did not reflect the attitude of Army Aviation generally? Wasn't that a concern?

LTCOL PERREN: I guess you're right, yes.
30

LCDR HAY: And can I just – and I'll come back to this momentarily. But in your statement – have you got your statement there?

LTCOL PERREN: Yes, I do.
35

LCDR HAY: Just go to the third page, if you would, paragraph 13? The final sentence of your statement – I'm just going to ask you to read to yourself the final sentence of your statement. Do you agree that here you retrospectively apply the concerns that you say that you had in 2018 to what was happening in the Aviation Regiment in 2023? Do you see that that's what you're doing? You're drawing that link?
40

LTCOL PERREN: No. The reference to the "can do" attitude – let me read it again – which was from a Sydney Morning Herald report about the – I think it was the 2006 Black Hawk accident – was that a reference to
45

that? That was the “can do” attitude. And what I was doing there was, yes, I was making a link that maybe organisationally we hadn’t learnt lessons from those previous incidents. And so that comment that D19 had made resonated then with me post those incidents.

5

LCDR HAY: Now, just to be clear, I asked you to read the last sentence. Do you see the sentence that begins, “My opinion”?

LTCOL PERREN: Okay.

10

LCDR HAY: Do you see that what you say there – putting aside the previous sentence – the last sentence draws the connection between what you said in the previous sentence and the comments made by D19? Do you see that you’ve said that?

15

LTCOL PERREN: Yes, I can see that there’s a correlation there between what D19 had said in 2018 and the unfortunate incidents that occurred.

20

LCDR HAY: Now, just going back. Following the meeting, did you ever make a note to yourself or to others about what you say D19 said in that meeting?

25

LTCOL PERREN: I made a mental note to myself, but I couldn’t – and look, it’s very difficult to, for instance, even understand who’s there because all of the documentation for those meetings is recorded on a classified network that I no longer have access to and can’t legally access. I certainly made a mental note of that, but not a physical note.

30

LCDR HAY: So you made a mental note?

LTCOL PERREN: Yes.

LCDR HAY: But no written note; is that right?

35

LTCOL PERREN: No.

LCDR HAY: Did you make a complaint to anyone at any stage about the “bravado” that was evident in the comments of D19 in that meeting?

40

LTCOL PERREN: I didn’t make a formal complaint.

45

LCDR HAY: What about an informal complaint? Did you at any stage raise with his Chain of Command what you described as the bravado evident in the remarks that you say that he made in that meeting? Ever any form of complaint at all – formal, informal or otherwise?

5 LTCOL PERREN: I had contemplated talking to his Chain of Command. And I had known his CO since the CO was a boy – and this might embarrass him, what I’m about to say – and he was a pilot in my unit, and I had cause to take action against him and ground him from flying for a period of time while he was investigated.

10 LCDR HAY: Who’s that, sorry? Not the name. Did you say that was D19’s CO?

15 LTCOL PERREN: His CO, yes, from the best of my knowledge. So I didn’t think going to him was necessarily going to be an effective strategy. And I did contemplate speaking to other people in Army Aviation but, as it was such a small snippet and I understand that, on the balance of probabilities, no action would’ve been taken on that person – and that’s unlikely that anything would’ve occurred out of that.

20 LCDR HAY: So, just to be clear, my question was whether you ever made a complaint. So putting aside what you contemplated, whether you contemplated raising it with the CO or someone else, my question was whether or not you raised a complaint – formal or otherwise. Your answer is no. Is that right?

25 LTCOL PERREN: No. Correct.

LCDR HAY: And you don’t speak to anyone within Army Aviation for many, many years about what you say D19 said in that meeting. Is that a fair characterisation of what you did or didn’t do?

30 LTCOL PERREN: To the best of my knowledge, I didn’t, no.

35 LCDR HAY: Now, I just want to go back again to MAJ McCall. Can I suggest to you that by the time that you sent this email – that is, the email that you have of 15 October – you were aware at that time that MAJ McCall was being called as a witness in this Inquiry? Would you agree with that?

40 LTCOL PERREN: I can’t actually recall whether he’d told me he’d been called as a witness. I think I spoke to him about this content after the Jervis Bay accident.

LCDR HAY: Can I just ask you, just if you would, you, I think, have been given a copy of MAJ McCall’s witness statement?

45 LTCOL PERREN: Yes.

LCDR HAY: And all I'm asking you to do at this stage, sir, just go to the date of that document.

5 LTCOL PERREN: Of this statement?

LCDR HAY: Of the statement.

LTCOL PERREN: Yes.

10 Lcdr HAY: So first statement. Do you see that it's dated 23 October 2024?

LTCOL PERREN: The statement I've got is 29 October 2024.

15 MS McMURDO: There are two, there's an A and a B.

LCDR HAY: I think the supplementary one, ma'am, I thought that was dated November. The second statement is dated 8 November 2024. The first one is dated 23 October. Could I just grab that off you just for a moment, sir. Just to make sure that we're literally on the same page. Now, what I've put in front of you, hopefully, is the coversheet to MAJ McCall's statement. Do you see the date there as 23 October?

20 LTCOL PERREN: Yes, I do.

LCDR HAY: Now, your email, 15 October, would you agree, was sent just a little bit over a week before this statement appears to have been prepared?

30 LTCOL PERREN: Yes.

LCDR HAY: What I want to suggest to you, sir, is that that is not a coincidence. That your email and the document that was attached to your email was designed to make its way, before this Inquiry through MAJ McCall as a proxy, effectively. Do you agree with that?

LTCOL PERREN: Yes.

40 Lcdr HAY: Now, just go back again, if you would, to that Annex G, which is your email, and just the highlighted words we agreed were not added by you but added by somebody else. Are you able to read those highlighted words?

45 LTCOL PERREN: Yes.

LCDR HAY: Do you agree with this: that whoever wrote it – you don't know who wrote it – but whoever wrote it, what they say there is that:

5 *Discussion with Mr D Perren 21 October 2024, 0830, approved by Mr Perren for me to include in my statement his email and statements as detailed in the attachment below.*

Do you see that?

10 LTCOL PERREN: Yes.

LCDR HAY: Now, that was precisely your design, wasn't it? In getting that document, the attachment to MAJ McCall, you had intended for that information, that material, to make its way into this Inquiry.

15 LTCOL PERREN: Yes. MAJ McCall had asked me for that.

LCDR HAY: Now, in your statement you reference research that you conducted. Do you remember making reference to research that you had conducted?

20 LTCOL PERREN: Yes.

LCDR HAY: Is that document attached to that email, the research that you say you conducted?

25 LTCOL PERREN: Yes.

LCDR HAY: Now, what I want to suggest to you, sir, is that that research, effectively, is for Sydney Morning Herald articles from 1996, 2008, 2004 and 2021. That's it. That's the full extent of your research. Do you agree with that?

30 LTCOL PERREN: Yes.

LCDR HAY: So not really research at all. What you were doing is collating Sydney Morning Herald articles relating to Army Aviation, do you agree?

35 LTCOL PERREN: No.

LCDR HAY: Do you agree that not only does that document contain what you have described as research, but it also includes the reference to somebody you describe in here as, "A senior member of 6 Avn Regiment circa 2019". Do you see that?

40 LTCOL PERREN: No.

LTCOL PERREN: I don't see that.

5 LCDR HAY: See the highlighted words?

LTCOL PERREN: Yes.

10 LCDR HAY: You say, "senior member of 6 Avn", so you don't actually – in this document, you don't identify the member you say said the words, do you?

LTCOL PERREN: No.

15 LCDR HAY: See how you say, "circa 2019"?

LTCOL PERREN: Yes.

20 LCDR HAY: So you were off by about a year in that statement. Do you agree with that?

LTCOL PERREN: Yes.

25 LCDR HAY: Because now you say that the words – the meeting took place in May or November 2018, the year before; is that right?

LTCOL PERREN: Yes.

30 LCDR HAY: You say that, "Present were senior Army Aviation Officers".

LTCOL PERREN: Yes.

LCDR HAY: And are they on that list, Exhibit 150?

35 LTCOL PERREN: Two of them are.

LCDR HAY: Two of they are.

40 LTCOL PERREN: And I can't recall the name of the other person who was leading the project at Lieutenant Colonel level.

LCDR HAY: I think you've got some dashes next to the Lieutenant Colonel.

45 LTCOL PERREN: Yes.

5 LCDR HAY: So you can't remember who the Lieutenant Colonel was, but you remember the – I'll just grab that list for a moment, if I could. I just don't want to step into territory I shouldn't. So the second name on the list, Major – Major level?

LTCOL PERREN: Yes.

10 LCDR HAY: That person is one of the other senior Army Aviation Officers that you were referring to in your email; is that right?

LTCOL PERREN: Yes.

15 LCDR HAY: Do you consider a Major to be a senior Army Aviation Officer?

LTCOL PERREN: Yes. They can be a Squadron Commander, so they're fairly senior.

20 LCDR HAY: So more about their position within the Regiment, or the position within Army Aviation, than their rank necessarily?

LTCOL PERREN: I'm not sure I understand your question, Counsel?

25 LCDR HAY: I'm just trying to understand what you mean by "senior Army Aviation Officers". Do you mean the position he held, not the rank that he wore?

30 LTCOL PERREN: He was a senior officer. You're a Major in the Army, you're a senior officer. Lieutenant Colonel was a senior officer. That's what I meant.

LCDR HAY: You've got two other positions or units identified in your email as well, which I won't read onto the record.

35 LTCOL PERREN: Yes.

40 LCDR HAY: I'll just return that. Thank you. And then do you agree that from the highlighted section, two paragraphs down, that also is not part of the research, but that is your commentary on two recent incidents involving MRH?

LTCOL PERREN: That's incorrect. The second-last paragraph was from ABC reporting.

45

LCDR HAY: The one that begins, “Army’s MRH-90”?

LTCOL PERREN: Correct.

5 LCDR HAY: The first line is “ABC”?

LTCOL PERREN: It’s a direct quote from ABC reporting, yes.

10 LCDR HAY: Is the balance of that from the ABC, or is that from you?

LTCOL PERREN: The ABC.

LCDR HAY: What about the last line of that attachment, is that yours or does that come from - - -

15 LTCOL PERREN: That comes from me.

LCDR HAY: Now, sir, I just want to go back, I just want to explore this, what I’m going to describe as a discrepancy between the initial
20 identification of the meeting taking place in 2019 and your subsequent statement that says it’s either May 2018 or November 2018. And is the reason for that apparent discrepancy, that you went back and checked your travel records?

25 LTCOL PERREN: Correct.

LCDR HAY: And you saw that in 2018 there were two meetings that you attended at Holsworthy.

30 LTCOL PERREN: Correct.

LCDR HAY: Were there any meetings that you attended in Holsworthy in 2019?

35 LTCOL PERREN: No.

LCDR HAY: Were those records available to you when you prepared your research document?

40 LTCOL PERREN: The travel records?

LCDR HAY: Yes.

45 LTCOL PERREN: Yes.

LCDR HAY: You didn't think it was necessary to check the accuracy of the timing when you prepared your research document?

LTCOL PERREN: No.

5

LCDR HAY: In your statement you say this – just in relation to or about D19, you say that – and this is in paragraph 7, the last sentence – you say:

10 *I recall that he had not long returned from the United States on exchange.*

Now, when you say “not long returned”, what do you mean by that? How long before this meeting had D19, to your knowledge, returned from that exchange?

15

LTCOL PERREN: I can't exactly recall, but my assumption is probably less than six months.

LCDR HAY: Would it surprise you to learn that D19 returned from that exchange in December 2013?

20

LTCOL PERREN: Yes, it would surprise me.

LCDR HAY: But that's a full five years before this meeting. Do you agree?

25

LTCOL PERREN: Yes.

LCDR HAY: Now, do you agree that if you're mistaken, if your memory's failed you in relation to that, that you might be mistaken about other things as well?

30

LTCOL PERREN: No.

LCDR HAY: You don't, okay. By the time that the incident occurred with Bushman 83, do you agree that something, like, five years had passed between this meeting that you say occurred and the incident in July 2023?

35

LTCOL PERREN: Yes.

40

LCDR HAY: The words that you now attribute to D19, how certain are you, firstly, that he was the person who said them?

LTCOL PERREN: Absolutely.

45

LCDR HAY: How certain are you that they are precisely the words that he used?

5 LTCOL PERREN: I'm not certain they're precisely the words, or words to that effect.

LCDR HAY: What context were those words spoken in?

10 LTCOL PERREN: As I expressed previously, they were spoken in regard to discussing twin-engine helicopters and performance, I would guess - - -

LCDR HAY: Are you - - -

15 LTCOL PERREN: I haven't finished yet, Counsel.

LCDR HAY: I'm sorry, sir.

20 LTCOL PERREN: Twin-engine and performance class operations and their ability to hopefully fly with OEI – sorry, that means one engine and operative.

LCDR HAY: And are you seriously suggesting that, as it were, out of the blue, in relation to that topic area, D19 said words to the effect, “We need to crash some aircraft”?

25 LTCOL PERREN: Yes.

LCDR HAY: And your evidence is that nobody said anything in response to that; they just changed the subject.

30 LTCOL PERREN: Not that I can recall, no.

LCDR HAY: Nobody said anything to him at that time?

35 LTCOL PERREN: Not that I can recall, no.

LCDR HAY: You just simply moved on?

40 LTCOL PERREN: Yes.

LCDR HAY: And you say not another word was said about it until your return to your accommodation in the Liverpool area?

45 LTCOL PERREN: No, that's not what I said.

LCDR HAY: What do you say - - -

5 LTCOL PERREN: When I returned to my accommodation in the Liverpool area, I spoke to my colleagues over dinner, but we may have spoken in the car on the way back.

LCDR HAY: The colleagues that were in the car and that were around your accommodation, are they on that list?

10 LTCOL PERREN: Yes, they are.

LCDR HAY: Could I just ask you, could you perhaps – and I'll just check with Counsel Assisting for a moment – Madam Chair - - -

15 MS McMURDO: Yes.

20 LTCOL PERREN: Could I just ask you, if you would, sir, would you put an asterisk next to the names of those two people? Could I then have access to the exhibit? While that's coming back to me, sir, can I just ask you, did they indicate to you that they shared your concerns about those words and the context in which they were spoken?

LTCOL PERREN: They were shocked.

25 LTCOL PERREN: How did they communicate to you that they were shocked?

30 LTCOL PERREN: I don't know the exact words, but we spoke about it and they wondered if that was representative of the culture of that organisation, and what that comment was meant to imply.

LCDR HAY: Did the senior officer Aviation that you are able to name, did you happen to hear any response or reaction from him at the time you say these words were spoken?

35 LTCOL PERREN: No.

MS McMURDO: Could I have a look at that, please? Thank you.

40 LTCOL PERREN: Now, Counsel Assisting asked you whether you had made any approach to the Inquiry or whether you simply responded to the Notice that was sent to you. Was your answer that you didn't make any approach to the Inquiry except in response to the section 23 Notice that you were sent?

45 LTCOL PERREN: Yes.

5 LCDR HAY: Now, without labouring the point, I'm just going to go back through the chronology again for a moment, if I can? You transferred to the Reserves in about 2017 at the Lieutenant Colonel rank?

LTCOL PERREN: Yes.

10 LCDR HAY: You maintained contact with people within Army Aviation throughout and, do I take it, to this point in time? Do you have associations with people in Army Aviation even to this day?

LTCOL PERREN: Yes.

15 LCDR HAY: You say that in 2018 there was this meeting where D19 has said the words that you alleged?

LTCOL PERREN: Yes.

20 LCDR HAY: You have known Glenn McCall for 40-something years?

LTCOL PERREN: Less than 40 years.

25 LCDR HAY: You've been friends with him since, I think you said about 1986?

LTCOL PERREN: Yes.

30 LCDR HAY: You understood that he was part of Standards Command at that time, to 2018/2019?

LTCOL PERREN: No. My answer was "No", Counsel.

35 LCDR HAY: But you certainly didn't ever raise with him before the Jervis Bay incident these words that you say D19 said to you – or said in your presence?

LTCOL PERREN: Not that I believe, because I didn't have a lot of contact with him at that point.

40 LCDR HAY: And you say that you became aware that D19 was CO 6 Aviation Regiment before you sent the email to Glenn McCall?

LTCOL PERREN: Yes.

LCDR HAY: And did you not, at any stage, think it might be important for you to make contact with the Inquiry directly to tell them this piece of information that you must have realised was important to the Inquiry being undertaken?

5

LTCOL PERREN: I'd considered it, but no.

LCDR HAY: Is there a reason for it?

10 LTCOL PERREN: Because, prior to this email with MAJ McCall, I'd spoken to MAJ McCall as – and other colleagues, because we were all upset post the Jervis Bay incident – or concerned. So whilst I'd had only infrequent contact with MAJ McCall prior to that point, that reinvigorated contact and we started speaking. And that's when MAJ McCall asked me
15 if he – if I – if he could include the conversation I had with him in his statement. And then he asked me to provide an email to him, I think, at that time.

LCDR HAY: See, what I need to suggest to you, sir, is that you are
20 mistaken and wrong about the words that you attribute to D19 in that meeting of 2018. What do you say about that?

LTCOL PERREN: I'm not wrong.

25 LCDR HAY: Thank you. Those are my questions.

MS McMURDO: Just a couple of questions from me, if you wouldn't mind?

30 LTCOL PERREN: Yes, ma'am.

MS McMURDO: Context is everything in respect of words like this, of course.

35 LTCOL PERREN: Yes, ma'am.

MS McMURDO: So you, of course, as a pilot yourself, appreciate the critical importance of a safety culture in Aviation. Correct?

40 LTCOL PERREN: Yes.

MS McMURDO: So you're having a discussion with this group of people about the safety benefits of two-engine helicopters over one-engine helicopters. Is that basically the context?
45

LTCOL PERREN: Yes, ma'am.

MS McMURDO: And Army Aviation is hoping to get more two-engine helicopters. Is that the context?

5

LTCOL PERREN: At this point we were discussing, you know, what type of helicopter they were going to require for this project to support SO.

MS McMURDO: Sure. But am I right in saying that the discussion about two-engine versus one, pros and cons; the safety aspect of having the two-engine is, you know, if you lose one engine, you can keep going with the other?

10

LTCOL PERREN: Correct.

15

MS McMURDO: So that's a safety advantage of the two-engine helicopter?

LTCOL PERREN: Correct.

20

MS McMURDO: And so was the conversation that Army would like to have more two-engine helicopters, or that that was where they should be going in the future?

LTCOL PERREN: I think, ma'am, that it was a natural process going towards twin-engine helicopters because very few manufacturers were manufacturing single-engine helicopters, so – particularly in this project. All of the modern aircraft that we were considering, the Airbus products, were twin-engine. Our training aircraft in Nowra are now twin-engine.

25

30

We don't have any single-engine aircraft in our fleet any longer. So I think it was a natural progression. And we were discussing possibly the Little Bird, which is a Hughes 500, which is used by US Special Forces, and there were a lot of people who were a proponent of that particular platform.

35

MS McMURDO: And was it also in the context of it might be difficult to get the funding to get more two-engine helicopters?

LTCOL PERREN: No, ma'am.

40

MS McMURDO: No.

LTCOL PERREN: So this project, at the time, was in the early phases of the project – the project since was cancelled – and it was in the Integrated Investment Program as a Special Operations light helicopter.

5 MS McMURDO: Okay.

LTCOL PERREN: And so we were just trying to figure out, from the user representatives, from the Special Forces user group and from the 6 Aviation user group, what would be their – how would they be employing this
10 helicopter, both in the domestic role that you're aware that they do and in their green role that they would do offshore.

MS McMURDO: Okay.

15 LTCOL PERREN: So on balance we were trying to figure out, you know, what their concept for operating was.

MS McMURDO: It wasn't a throwaway line in the context of, "I don't know how we're going to get the money for this. Maybe we've got to crash
20 a few helicopters before they'll give us the money"? It wasn't in that sort of context?

LTCOL PERREN: No, ma'am.

25 MS McMURDO: No. So it just seems to have sort of come out of the blue in the context. How did it arise, "We need to be prepared to crash a few aircraft"? What led up to that comment? It just seems to be such a strange thing to say.

30 LTCOL PERREN: It does. And it was very much out of the blue. I think – I can only really suppose now it is – you know, the meeting was quite a few years ago. And I believe that I had been doing a lot of work and I subsequently did work with the South Australian Government advising them on the implications of the Part 133, the new CASR Regulations, and
35 the new CASR, Part 138 on their fleet of A1 teams, and whether their police and EMS Operators needed to replace their fleet.

So this discussion about the civil regulations haven't been spoken about for a while in terms of – you may have heard of the term "performance class
40 operations".

MS McMURDO: Yes.

45 LTCOL PERREN: And so we were discussing that. Probably particularly in the context of doing the domestic role where a lot of the activities and

5 exercise activities were done over built-up areas where sort of – to quote a former officer in DASA – that, “We can’t accept risks on behalf of other people” – so civilians, particularly people under the aircraft. And just the advantages that having – to be able to fly on a single engine would provide, particularly in that circumstance when you’re operating over your own populous.

10 And I think he was just a little bit frustrated with that line. I think – and this is only supposing – that the capability thought they were either going to get Black Hawk or an aircraft called the Little Bird. I don’t think, you know, they liked where we were going with the operational concept at that time.

15 MS McMURDO: He didn’t seem to like where you were going with the operational - - -

LTCOL PERREN: No, ma’am.

20 MS McMURDO: I see. So it was a comment that was more or less dismissive then of where you were going – where you were suggesting that they should go operationally.

LTCOL PERREN: That’s how I took that comment, ma’am, yes.

25 MS McMURDO: And was the reaction of all those present shock at this? Embarrassment? No one laughed?

LTCOL PERREN: Nobody laughed, ma’am, and the room went quiet for – you know, it was a pregnant pause.

30 MS McMURDO: Yes.

LTCOL PERREN: While we sort of gathered our thoughts and moved away from that topic.

35 MS McMURDO: All right, thank you. Anything arising?

LCDR HAY: No, thank you, ma’am.

40 MS McMURDO: No. Thank you. You’ve finished then? Yes. Any other applications to cross-examine this witness? Any re-examination, COL Streit?

COL STREIT: Just one matter arising.

45

<RE-EXAMINATION BY COL STREIT

5 COL STREIT: You were asked a question which led to a response from you that you were upset about the Jervis Bay incident.

LTCOL PERREN: Yes.

10 COL STREIT: Why was that? Why were you upset about the Jervis Bay incident? Before you answer that, is that a reference to the Jervis Bay incident with the ditching of an MRH-90 in March of 2023?

LTCOL PERREN: Yes, it is.

15 COL STREIT: Why were you upset about that incident?

20 LTCOL PERREN: Because in 2021 I recall that I commenced another contract with my same company, working for Headquarters Aviation Command, looking after – consulting on Operational Airworthiness for MRH-90. And so, you know, we put a lot of work into trying to make that platform as safe as possibly as we could, particularly for its introduction into 6 Aviation Regiment.

25 And we were dismayed that we'd had an incident like that at the time, and that we understood that soldiers were in the water, that there was some – nearly some fatalities during that operation. And so naturally we had a focus on what had occurred there.

30 It's always sad/concerning when platforms that you work and dedicate time to and try and manage, when something goes wrong, because you want to make sure that your work prevents that from occurring and from injuring people, and providing, you know, a safe workplace, which is our legal requirement under the *WHS Act*.

35 COL STREIT: Did you know at the time, the Jervis Bay incident – were you aware at the time of the Jervis Bay incident that D19 was the CO of 6 Aviation Regiment, or did you learn that at a later stage?

40 LTCOL PERREN: My best recollection is that I learned that at a later stage, but I can't say that with 100 per cent certainty. And particularly, as you would know, people who come and go to that unit, because of their protected identity I don't – and because of my seniority – I'd left Defence – been out of Defence for a little while. I wasn't tracking the posting cycles of every Major and Lieutenant Colonel into Command and units.
45 And it was only through interaction with those people or their staff who,

you know, sadly passed away in Bushman 83, that I would understand who the senior officers were and who the Commanders were.

5 COL STREIT: I see. So is your best recollection that you learnt that D19 was the CO of 6 Aviation Regiment following the crash on 28 July 2023?

LTCOL PERREN: In Jervis Bay? Is that what you're talking about?

10 COL STREIT: No. So Jervis Bay is March '23. But following the crash - - -

LTCOL PERREN: I think I was aware around that time that he'd become the CO then, yes.

15 COL STREIT: I see.

LTCOL PERREN: And I can't, with 100 per cent certainty, say whether it was before then or after. But I can say with certainty I knew after Jervis Bay that he was the CO.

20 COL STREIT: I see. And as a consequence of that, learning that matter, the ditching in the Jervis Bay in March 2023 and that D19 was the CO of 6 Aviation Regiment, did that cause you to reflect and recall what you say he said to you in the presence of others a few years earlier?

25 LTCOL PERREN: Yes, absolutely.

COL STREIT: All right. Nothing further. Thank you.

30 MS McMURDO: One other thing. You mentioned your concerns about D19's then Commanding Officer, and your previous dealings with that person.

35 LTCOL PERREN: Yes.

MS McMURDO: Is that person's name on the pseudonym list in front of you?

40 LTCOL PERREN: I think it was checked by Counsel earlier, and I don't think that it is, ma'am.

45 MS McMURDO: It's not there. Okay, that's all right then. If it's not on the list, that's all right. Thank you. Yes, thank you very much. We appreciate you giving your assistance to the Inquiry. It's very much appreciated. Giving evidence to an Inquiry like this is never easy and

you've been examined at length fairly robustly about your evidence, which is seldom pleasant for most people and, I suspect, not for you. So please be aware that there is assistance available if you need after this, and if you do, don't hesitate to take it up.

5

LTCOL PERREN: Thank you, ma'am.

MS McMURDO: Thank you very much.

10 LTCOL PERREN: Thank you.

MS McMURDO: Yes, you're free to go. Thank you.

15 <WITNESS WITHDREW

MS McMURDO: All right. Well - - -

20 LCDR GRACIE: Ma'am, could I be indulged for 30 seconds. I don't want to take up time at the end of the day, but I do want to say that certainly on behalf of my client's family, and I think I can speak on behalf of the other families and Counsel representing, we are very touched by the consideration the Inquiry's given to the interests of the families and Counsel representing in making the hard decision to call this hearing block short.

25

We all know that the Inquiry and Counsel Assisting are often dealing with competing interests, and we also know that those decisions are not always popular. And so for that reason, we do want to recognise the interests that you've provided for those affected people, and we also want to convey our thoughts for those that we're leaving in Brisbane and wish everyone the very best and a safe outcome.

30

But thank you, ma'am.

35

MS McMURDO: Thank you, that's very gracious of you, LCDR Gracie, and I'm pleased that you now appreciate that sometimes a trauma-informed approach can even help Counsel representing.

40 LCDR GRACIE: Yes, you did remind me last August that we're at the bottom of the list, but we appreciate being included in this decision.

MS McMURDO: Well, I'm sure you understand you are not at the bottom of the list at all, but - - -

45

LCDR GRACIE: No. We are very grateful, ma'am.

MS McMURDO: - - - perhaps not quite as high up as the families are.
Yes.

5

LCDR GRACIE: Or those who – I think we called it “special persons”
the other day. But, no, we really are grateful because we know the impact
it has, but thank you.

10 MS McMURDO: Yes. Well, safe travels to everybody who's returning
to their homes too. Thank you. Yes, COL Streit.

COL STREIT: Thank you, Ms McMurdo. For the assistance of the
15 Inquiry and Counsel representing, when the dust is settled over the next
couple of days, I will communicate to them in writing as to the plans for
hearing phase 8 and subsequent hearing phase 9, so they can make their
own plans in relation to their diaries. There will be extensions of time given
to witnesses who are also needing extensions to complete statements, and
I'll engage with Counsel representing for affected persons in that regard.
20 Thank you.

MS McMURDO: Thank you. Yes, is the witness being
returned? AIRCDRE Medved, please. Yes, COL Gabbedy.

25 COL GABBEDY: Thank you, ma'am.

<AIRCDRE JOSEPH JOHN MEDVED, on former affirmation

30

<CROSS-EXAMINATION BY COL GABBEDY

COL GABBEDY: Sir, I'm COL Nigel Gabbedy. I appear on behalf of
35 GEN Jobson. I've just got a few questions for you in relation to the matters
you were giving evidence in respect of earlier today. You were DG DASA
for the period 17 December 2020 to 2 February 2025. That's right, isn't it?

AIRCDRE MEDVED: Correct.

40

COL GABBEDY: Now, during a large part of that period GEN Jobson
was the Military Air Operator for Army Aviation; is that right?

AIRCDRE MEDVED: Correct.

45

COL GABBEDY: Did you have a good working relationship with him?

AIRCDRE MEDVED: Yes, I did.

5 COL GABBEDY: And I think in your evidence you said there was considerable engagement with Aviation Command, including in the period 2023, both before and after the TALISMAN SABRE incident.

AIRCDRE MEDVED: Correct.

10

COL GABBEDY: Were you generally satisfied with the levels of assurance and oversight exercised by Aviation Command?

15 AIRCDRE MEDVED: Can you provide clarity on what you mean by that question?

20 COL GABBEDY: Yes, maybe that's a better way of doing it. I'll go into what I've been told are some of the things that were happening during that time. My understanding is Aviation Command were dealing with a myriad of matters during the period when GEN Jobson was the Commander that had direct impact on Aviation safety, and that you provided direction. Now, in relation to that direction, I understand that you recommended that the Hazard Tracking Authority be moved to Townsville; is that right?

25 AIRCDRE MEDVED: Out of the Headquarters, yes.

COL GABBEDY: And that, in response to that, Aviation Command actually moved Headquarters of 16 Brigade to Townsville.

30 AIRCDRE MEDVED: Correction. I didn't make recommendations on moving the Brigade structure but with regards to moving the Hazard Tracking Authority from the Deputy Commander Avn Command to the 16 Brigade Commander.

35 COL GABBEDY: So effectively that's what they did, they implemented your recommendations.

40 AIRCDRE MEDVED: With respect to where the Hazard Tracking Authority should be located, from a position perspective.

COL GABBEDY: And the purpose of that was to put the Hazard Tracking Authority closer to the operators, was it not?

45 AIRCDRE MEDVED: Correct. It's more appropriate to be - - -

COL GABBEDY: Yes. Another thing that Aviation Command did, that you had discussed with them, was bringing Army Aviation Training Command under 16 Brigade?

5 AIRCDRE MEDVED: That wasn't a direction or guidance or recommendation from DASA, but it was supported.

COL GABBEDY: It wasn't one of the things that you raised as being a sensible outcome for them to achieve?

10

AIRCDRE MEDVED: I don't recall it being initiated by myself or DASA.

COL GABBEDY: Can you recall talking to them about their QMS system?

15

AIRCDRE MEDVED: It had been discussed a number of times in relation to QMS as well as their Safety Management System.

20 COL GABBEDY: And are you aware that a considerable amount of work was done, including in the back half of 2023, to bring that system up to full capability or to a situation where it was better fit for purpose?

25 AIRCDRE MEDVED: Yes, I am aware that they've spent considerable resources and effort with developing an integrated Quality and Safety Management System.

30 COL GABBEDY: I can go through the particular instructions that then issued, but before I do – or rather than whether I do, do you have any knowledge of what was actually done in terms of instructions that issued from Aviation Command to achieve that end?

AIRCDRE MEDVED: Not explicit details on individual instructions. It was a MAO Directive that I was provided a copy of.

35 COL GABBEDY: But you're aware that that work was ongoing?

AIRCDRE MEDVED: I am aware a lot of work was ongoing, and I was provided information – copies of a number of MAO Accountable Manager Directives.

40

COL GABBEDY: Thank you. Now, you were asked a lot of questions about the Fatigue Guidebook and the change to implement that guidebook and other fatigue recommendations that were to be implemented by 28 October 2023.

45

AIRCDRE MEDVED: That's correct.

5 COL GABBEDY: You talked about an audit at Aviation Command in April of 2024 and that prior to that audit you had regard to two particular instructions that you refer to in paragraph 22(c) of your second statement.

AIRCDRE MEDVED: That's correct. And that was DASA staff in the Director of Aviation Operations had reviewed those other instructions.

10 COL GABBEDY: As at April of 2024, the staff that conducted the audit issued one level 3 finding?

AIRCDRE MEDVED: Against Aviation Fatigue Management.

15 COL GABBEDY: My understanding, if I go back to your earlier statement, at page 25, paragraph 60 - - -

MS McMURDO: I don't think he has that.

20 COL GABBEDY: Don't you? Perhaps the Air Commodore could be given a copy of his earlier statement? It will make this bit a bit easier. Sorry.

25 MS McMURDO: Yes. You don't have the exhibit number there, do you? No? We'll have a look. We'll find it.

COL GABBEDY: Sorry, ma'am, otherwise I can read out the part. We're going back a fair way, unfortunately.

30 MS McMURDO: Yes, it's 48.

COL GABBEDY: Thank you very much.

35 Sir, the part of your statement I was referring you to is at page 25, paragraph 60(c), and it talks to this level 3 finding and says that that sort of finding is non-compliance with DASA requirements, or potential problem, that could lower the safety standard and possible hazards of flight safety. That's a level 3 finding, I assume?

40 AIRCDRE MEDVED: That is correct, and that's also why I reiterated in my evidence earlier this morning that those level 3 findings do not require a corrective action – sorry, root cause analysis by the community, nor a dedicated response back to DASA.

45 COL GABBEDY: It's the lowest level finding?

AIRCDRE MEDVED: Correct.

5 COL GABBEDY: In line with that, and again from that statement you have in front of you, at page 23, paragraph 56(c), you're talking about DASA enforcement action, and can you see there at the second dot point it talks about, "the responses on compliance will be proportionate to the identified breach and increased risk to Aviation safety"?

10 AIRCDRE MEDVED: Yes, I do.

COL GABBEDY: Do I take it from the combination of those factors, that this level 3 finding didn't indicate any significant serious breach to Aviation safety?

15 AIRCDRE MEDVED: That's a fair statement.

COL GABBEDY: Now, in your evidence earlier, we were talking about this fatigue management process that was occurring over a couple of years to update all platforms – Navy, Army, Air Force – in relation to fatigue management. You said that all services had fatigue management processes in place prior to these changes. Is that right?

25 AIRCDRE MEDVED: They did, but they were not – there were weaknesses identified across all three services.

COL GABBEDY: That was the purpose of the project, wasn't it, to remediate the weaknesses that were identified across all three services?

30 AIRCDRE MEDVED: It was identified that without explicit regulation, those weaknesses would continue to exist.

COL GABBEDY: Now, Counsel assisting took you to the date of the SFI, 12 of 2023, and then obviously with reference to the date by which implementation needed to be managed. You haven't been provided with the log of policy relating to fatigue management that was extant prior to December of 2023, have you, in Army Aviation?

40 AIRCDRE MEDVED: No, I did not. I did not have copies of a full log of instructions that they had in place.

COL GABBEDY: So it's impossible for you to say now whether or not that log of policy was fit for purpose as at that time?

45 AIRCDRE MEDVED: Well, the way I'll respond to that, it wasn't

formally assessed when I generated the evidence. The SFI provided appreciable additional guidance material from a process perspective – the legacy orders, instructions, and publications – at the time.

5 COL GABBEDY: Would another way of putting it be you don't know – and I mean this as no criticism to you – whether a level 1, 2, or 3 finding would have issued had that policy been reviewed as at, say, November of 2023?

10 AIRCDRE MEDVED: That is correct, and a compliance assessment was not conducted against the previous instructions, against the regulated requirements.

15 COL GABBEDY: So all we really can say, I'll put to you, is that as at 15 December of 2023 there were no significant issues in relation to compliance with the Fatigue Management Directive?

AIRCDRE MEDVED: Well, it wasn't identified.

20 COL GABBEDY: Thank you, sir. I have nothing further.

MS McMURDO: Any other applications to cross-examine?
Yes, Ms Musgrove.

25 MS MUSGROVE: Before I start questioning the witness, I'd like to put on the record that the Commonwealth, and I assume other Counsel representing, weren't aware that this witness had provided documents to the Inquiry in September of 2024, and I formally request all of those documents be provided to the Commonwealth and Counsel representing as they desire.
30 I anticipate that on review of those documents, there may be a request for Counsel Assisting to tender some of those documents.

MS McMURDO: COL Streit, can we meet that request?

35 COL STREIT: I'm making a note, yes.

MS McMURDO: Yes, thank you.

MS MUSGROVE: Thank you.

40 COL STREIT: If there's anything else Counsel representing wish, can they ask via email or otherwise?

45 MS MUSGROVE: Certainly, thank you. I would note we only became aware of it with this witness's evidence today, otherwise we would have

requested it beforehand so we could have perhaps elicited some further evidence, not that I'm wanting to recall the Air Commodore.

5 <**CROSS-EXAMINATION BY MS MUSGROVE**

MS MUSGROVE: Sir, my name is Musgrove.

10 COL STREIT: Sorry, can I just clarify that. Can I just clarify whether the Commonwealth actually acts for the Defence Aviation Safety Authority or is it just for the DFSB component of the Defence Aviation Safety Authority?

15 MS MUSGROVE: I act for the Commonwealth. I take instructions from various entities within the organisation of the Australian Defence Force. At this point in time, I am not in a position to indicate. I need to take some instructions as to whether it's for DASA or for DFSB. We take instructions from the Chief of Army, the Chief of Air Force, and other entities. So I can
20 address that with my friend as required. I don't know the relevance of that question at this point in time.

COL STREIT: Well, I'll be clear. The Defence Aviation Authority is the head of the DASA. The Defence Aviation Authority, I understand the
25 Commonwealth acts for within DASA is the Defence Flight Safety Bureau. I understand the Commonwealth, as it made submissions on behalf of the DFSB, act for the DFSB.

30 So in circumstances where the Commonwealth has access to far more documentation than this Inquiry will ever have access to, unless we issue a 23 Notice, I just need clarity about who the Commonwealth actually say they act for, so then the Inquiry can understand does the Commonwealth have this document, do they have access to this document, should the Commonwealth in fact be giving us these documents because we don't have
35 them? So that's why I seek that clarity. Thank you.

MS MUSGROVE: I certainly don't have the documents, and I understand my friend's question. I'm not in a position to answer that question now in
40 a public forum.

MS McMURDO: So you're not sure who you're acting for?

MS MUSGROVE: No, I act for the Commonwealth.

45 MS McMURDO: The Commonwealth, but you're not sure which

agencies of the Commonwealth you're acting for?

5 MS MUSGROVE: I am taking instructions at this point in time variously from the Chief of Army, the Chief of Air Force, and from DFSB. They are where I've received my instructions thus far. I can't make it any clearer than that.

10 MS McMURDO: If there's any change to that, you let us know. Is that right? If there's any expansion?

MS MUSGROVE: If it's so required, yes. I was merely putting on the - - -

15 MS McMURDO: Well, I think the Inquiry is entitled to know for which agencies you are acting?

MS MUSGROVE: Well, it's the Commonwealth, with specific instructions from various parts of the Commonwealth within the ADF. At this point in time, I've indicated who I'm taking the instructions from.

20 MS McMURDO: You have. So what I'm saying to you is, if that changes, would you let the Inquiry know? If that expands, would you let the Inquiry know?

25 MS MUSGROVE: I'll take instructions on that, certainly.

Sir, my name is Musgrove, and I appear for the Commonwealth in these proceedings. In terms of the certification process, just so that everyone's very clear, Counsel Assisting suggested that version 5.10 was out there after certification. Do you have your statement in front of you?

30 AIRCDRE MEDVED: I do.

MS MUSGROVE: If I can take you to paragraph 9(a)? That provides the approval process after the certification; is that correct?

AIRCDRE MEDVED: It does.

40 MS MUSGROVE: It's not the case that after certification occurred, that version 5.10 was out there and being used in the Aviation community?

AIRCDRE MEDVED: That is correct. It required an operational approval to ensure that a number of in-service elements were sufficiently mature before you could field that capability with training experienced

operators, as well as an understanding of how it would be used from a tactical perspective.

5 MS MUSGROVE: You were asked some questions in relation to whether or not the “unacceptable” finding was brought to DASA or DFSB’s attention. Do you recall those questions?

AIRCDRE MEDVED: I do.

10 MS MUSGROVE: Would it have been open to AATES, or anyone within AATES, to bring the “unacceptable” finding to DASA or DFSB’s attention?

15 AIRCDRE MEDVED: I see no reason why they could not have provided it directly.

MS MUSGROVE: You were asked some questions about the AATES report. Do you still have that there? It’s Exhibit 120?

20 AIRCDRE MEDVED: I don’t.

MS MUSGROVE: Exhibit 120?

25 AIRCDRE MEDVED: Thank you.

MS MUSGROVE: If you can turn to paragraph 26, please. Under the heading, “Conclusions and Recommendations”, it says:

30 *The ambiguous display of attitude information could be explained in possibly three ways. There has been an integration issue with the Australian version of the aircraft. It was a purposeful characteristic of the symbology that AATES does not fully understand, or the current operators already know about the issue and have assessed and put in place mitigations or guidance to deal with it.*

35

MS McMURDO: I think they must have liked that question.

40 MS MUSGROVE: They’re probably not alone.

That’s what it says in the report there; is that correct?

AIRCDRE MEDVED: It does.

MS MUSGROVE: Does that indicate to you that AATES were not aware as to what of those three possible explanations there were for the attitude information being displayed as it was?

5 AIRCDRE MEDVED: My interpretation is it displays a lack of certainty.

MS MUSGROVE: If you turn over the page, under point 25 in the table there on page 10, do you see that?

10 AIRCDRE MEDVED: I do.

MS MUSGROVE: Actually, I apologise, I'll take you back. So the general conclusion, it reads at paragraph 27, is:

15 *The overall format of the HMSD version 5.10 symbology was satisfactory.*

That's what it says?

20 AIRCDRE MEDVED: It does.

MS MUSGROVE:

25 *However, ambiguous function of the gull wings represented an unacceptable risk to flight safety.*

Correct?

30 AIRCDRE MEDVED: That's what it says.

MS MUSGROVE: Then it sets out the specific conclusions and recommendations; is that correct?

35 AIRCDRE MEDVED: That's correct.

MS MUSGROVE: Over the page, at 10, at point 25 it says:

40 *HMSD version 5.10 was assessed as representing an unacceptable risk to flight safety.*

That's what it says?

AIRCDRE MEDVED: It does say that.

45 MS MUSGROVE:

As a means to develop capability balanced against risk, it is recommend that HMSD version 4.0 be retained in order to permit development of the MRH-90 SO capability.

5

It says that, doesn't it?

AIRCDRE MEDVED: It does.

10 MS MUSGROVE:

HMSD version 5.10 be returned to the OEM for rectification of identified deficiencies.

15 It says that?

AIRCDRE MEDVED: It does.

MS MUSGROVE: Then it says "or". Correct?

20

AIRCDRE MEDVED: It does.

MS MUSGROVE:

25 *The OEM provide documentation clarifying system function and substantiating basis of its certification.*

AIRCDRE MEDVED: That's correct.

30 MS MUSGROVE: Are you aware if that is what occurred, if the OEM provided documentation clarifying the system?

AIRCDRE MEDVED: I am not aware whether that was sought or whether it was provided.

35

MS MUSGROVE: Thank you. But it was those two options that were recommended?

AIRCDRE MEDVED: That's correct.

40

MS MUSGROVE: You were asked questions about legislation. Do you recall those questions that you were asked about legislation?

AIRCDRE MEDVED: For a Regulator.

45

MS MUSGROVE: For a Regulator?

AIRCDRE MEDVED: And also potentially a statutory body, yes.

5 MS MUSGROVE: In terms of DFSB investigations - - -

AIRCDRE MEDVED: Yes.

10 MS MUSGROVE: - - - do you have an opinion as to whether or not legislation similar to that, to the ATSB legislation, would be of assistance to DFSB investigations?

15 AIRCDRE MEDVED: My personal opinion is that equivalent powers and protections of safety investigation information that's afforded under the *Transport Safety Investigations Act* is a weakness in the Defence system and it adversely affects the generative safety culture in Defence Aviation to the point where a number in the community will be less willing to openly report safety events or non-compliances for fear of how it may be used administratively against them.

20 MS MUSGROVE: Administratively and in alternative forums?

AIRCDRE MEDVED: And alternative forums.

25 MS MUSGROVE: Is that part of the concerns about the "no blame" jurisdiction that's set up through compliance with the ICAO, Annexure 13?

30 AIRCDRE MEDVED: Absolutely, and this weakness has been identified and was formally advised to government in 2015. It was agreed to investigate it. It was part of a *Defence Act* project as one of the separate components to bolster the *Defence Act* with similar provisions of the *Transport Safety Investigation Act*. But due to relative priorities and other legislative work that needs to be done across the Commonwealth – or across Defence and the Commonwealth, it is not currently progressing.

35 MS MUSGROVE: So is it the case that, in the absence of such legislation, DFSB are reliant up the ICAO principles set out in Annexure 13?

40 AIRCDRE MEDVED: That's correct, and other entities following the spirit of those recommended practices.

MS MUSGROVE: And following the spirit of those recommended practices is important for the generative safety culture.

45 AIRCDRE MEDVED: Absolutely.

MS MUSGROVE: I have nothing further. Thank you.

5 MS McMURDO: Thank you. Any other applications to cross-examine?
Yes.

<CROSS-EXAMINATION BY MR O'MAHONEY

10

MR O'MAHONEY: Just very briefly.

15 Air Commodore, my name is O'Mahoney. I appear for Airbus in this
Inquiry. I want to ask you just a handful of questions about the version 5.10
upgrade. Do you understand?

AIRCDRE MEDVED: I understand.

20 MR O'MAHONEY: I think I capture your evidence correctly when I say
your evidence is to the effect that that upgrade was a major change?

AIRCDRE MEDVED: Correct.

25 MR O'MAHONEY: I think we need an audible answer?

AIRCDRE MEDVED: Yes, correct.

MR O'MAHONEY: And it was classified as such, wasn't it?

30 AIRCDRE MEDVED: Yes, it was.

35 MR O'MAHONEY: Now, that meant – tell me if you agree with this –
that the Military Design Organisation, the MDO here, Airbus, was not able
to approve it?

AIRCDRE MEDVED: That is correct. They did not have an organisation
privilege to approve that.

40 MR O'MAHONEY: Thank you for clarifying that. And it's in that
context you say to the Inquiry that DASA's role kicked in, that DASA had
that responsibility.

AIRCDRE MEDVED: That is correct.

MR O'MAHONEY: In approving the 5.10 version upgrade as safe to use, I think I'm right in saying your evidence is to the effect that DASA did that having regard to the upgrade being approved by the relevant German authority.

5

AIRCDRE MEDVED: Being certified by the counterpart German Regulator or Aviation Authority, yes.

MR O'MAHONEY: And that was a development or a learning that was relied upon by DASA; that is, the fact of such certification in Germany?

10

AIRCDRE MEDVED: Absolutely. And DASA and all civil aviation Regulators, to some extent, rely on prior certification of other agencies.

MR O'MAHONEY: And I'm not in any way being critical of you, but tell me if you agree with this: there was no stress testing of that certification by Germany on you or DASA's part? That's right, isn't it?

15

AIRCDRE MEDVED: Can you clarify the question? What do you mean by "stress testing"?

20

MR O'MAHONEY: Well, I'll come at it another way. There was no analysis on DASA's part as to whether or not the 5.10 upgrade was designed to assist with specific needs on the part of Germany?

25

AIRCDRE MEDVED: Can you clarify the question again? Because I'm a little bit uncertain because within the NH90 certification construct, you do have a number of different countries and their Military Aviation Authorities, but I don't understand where you're coming from, whether it's a capability question from Germany's desired capability and whether that influenced the – or a suggestion that may have influenced the German Regulator, or something else.

30

MR O'MAHONEY: I'll come at it another way. You've made it clear that one of the things DASA relied upon for its process and purpose was the fact of certification within Germany by the relevant authority.

35

AIRCDRE MEDVED: Against the same airworthiness criteria, correct.

MR O'MAHONEY: And as part of that process at the DASA end, I think I'm right in saying, there was no analysis – and I'm not being critical – of whether or not Germany had specific needs?

40

AIRCDRE MEDVED: Specific needs with respect to what?

45

MR O'MAHONEY: Well, referrable, sir, to the very upgrade we're talking about, 5.10.

5 AIRCDRE MEDVED: That is correct. DASA took that certification activity on face value, and that it was not influenced by a time or capability requirement of the German Military.

10 MR O'MAHONEY: And I think it follows that there was no – and again, I'm not being critical – but there was no analysis of whether there was specific German needs that in any way were different to specific Australian needs. Is that right?

15 AIRCDRE MEDVED: That is correct from a needs perspective. However, like I said earlier, there was qualification testing done of the Australian configuration.

20 MR O'MAHONEY: And as far as you're aware – tell me if you agree with this – Army ordered the 5.10 upgrade, really, as configured by the Germans?

25 AIRCDRE MEDVED: I'm not aware that it was as configured by the Germans. I know there was certain functionality with 5.1 that the Germans had adopted, and my understanding is the French had also adopted it because of some unique function or improvement in functionality that supported their capability needs.

30 MR O'MAHONEY: As far as you're aware, that the 5.10 upgrade that Army ordered was aligned with the functionality that had been experienced in Germany?

AIRCDRE MEDVED: Yes.

35 MR O'MAHONEY: And that was precisely, as you understand it, what the Army got?

AIRCDRE MEDVED: That is my understanding, yes.

MR O'MAHONEY: No further questions, thank you.

40 MS McMURDO: Thank you. Any re-examination, COL Streit?

COL STREIT: Very briefly, Ms McMurdo.

<RE-EXAMINATION BY COL STREIT

5 COL STREIT: One question: you were asked some questions from Counsel from the Commonwealth in relation to the application of ICAO – International Civil Aviation Organisation – Guidelines to the DFSB. So, first, as a matter of law, the ICAO conventions don't apply to a DFSB investigation, do they?

10 AIRCDRE MEDVED: That is correct. Because they apply to civil aircraft and not state aircraft.

COL STREIT: Not state aircraft. But DFSB policy is to apply the ICAO Guidelines in the conduct of its investigations. Is that correct?

15 AIRCDRE MEDVED: That's correct, and the whole premise of DASA as well, from a Regulator, is to be aligned with ICAO standards and recommended practices as well.

20 COL STREIT: DFSB's policy is also, isn't it, that they may vary from the ICAO Guidelines as DFSB considers necessary and appropriate in the conduct of an investigation? That's correct?

25 AIRCDRE MEDVED: That's true. And that's often driven by a lot of practicalities because you have different concepts in an international global Military construct where concepts such as state of design, state of operation, state of registration, may significantly differ in how it's set up in a civil aviation construct.

30 COL STREIT: So, in a nutshell, DFSB, as a matter of policy, applies the ICAO Guidelines, save in circumstances where DFSB considers it necessary and appropriate to do something different from what the guidelines require.

35 AIRCDRE MEDVED: Or where the guidelines may not be applicable in a Military context.

COL STREIT: Yes.

40 AIRCDRE MEDVED: That's probably a more appropriate response rather than it being simply a choice based on the potential whim of individuals.

COL STREIT: ICAO Guidelines are applicable to the conduct of an

aircraft investigation – this simply a pathway, is it not, as to how an aircraft investigation ought be conducted?

5 AIRCDRE MEDVED: Correct. It's part of standards and recommended practices. And then it does require for that individual – ICAO states to enshrine it in local laws.

10 COL STREIT: That's right. And as a result of enshrining it in state laws, then that gives legal effect in that country to the ICAO Guideline principle of the protection of aviation accident investigation evidence.

AIRCDRE MEDVED: For civil aviation, yes.

15 COL STREIT: Yes. Thank you, nothing further.

AVM HARLAND: Can I just ask a question? Philosophically, my understanding of modern regulations is that they intend to encourage outcomes, in this case in Military Aviation, and they're only prescriptive where it's necessary and they intend to allow an operator to implement the regulations in a way that suits their operating context. Is that a fair statement?

20 AIRCDRE MEDVED: That is true. Yes, it does provide – particularly on the operational regulations, it provides a reasonable amount of latitude in how to comply with regulations. But for someone who may not be familiar with the Aviation regulatory construct, even looking at the Military Regulations, they may interpret it as being very prescriptive.

25 AVM HARLAND: But at the end of the conversation, the intent of the regulations is to give a safe operating space for Military Aviation to do its job, but not do it unsafely.

30 AIRCDRE MEDVED: Correct. And it also provides additional flexibilities for Militaries that exceed – to operate at elevated levels of risk because of the nature of their duties, supporting national security requirements.

35 AVM HARLAND: So if an operator is under the oversight of the Regulator who not only regulates, they have a risk management responsibility, they have an assurance responsibility – this is the Regulator – and a responsibility to educate and communicate. So if they're under the oversight of the Regulator, and they're neither stopped as an operator or they're not given significant restrictions, would it be fair for the operator to consider that what they're doing is okay?

45

AIRCDRE MEDVED: The function - - -

AVM HARLAND: Notwithstanding their ongoing responsibility to manage safety so far as is reasonably practical.

5

AIRCDRE MEDVED: So the Regulator is not responsible for ensuring safety. And it was very clear in the second Board of Inquiry, the Regulator, as we've defined in our functions, has a responsibility to set regulations and/or lower-level policy to promote through education, training, dissemination of information, to provide certification or approvals and authorisations. And that also includes licensing organisational approvals, et cetera. And the last function is an oversight and enforcement function.

10

They're quite common to a lot of Regulators. Words may be different but, broadly speaking, you know, quite common functions. There still is an obligation and requirement on the community to be managing their risks and not be solely reliant on the Regulator to ensure that they are operating safely.

15

AVM HARLAND: Yes, and I think that's a good way of describing it. I understand what you're trying to say, that the Regulator can't ensure everything that's happening out there. But I guess my question really related to if I'm an operator out there and the Regulator hasn't shut me down or given me a whole bunch of restrictions, would it be reasonable to anticipate that I'm acting tracking okay?

20

25

AIRCDRE MEDVED: They should have a level of confidence that what they are doing is effective at managing safety. Not a guarantee

30

AVM HARLAND: Yes. Thank you.

AIRCDRE MEDVED: Not a guarantee, but a level of confidence.

MS McMURDO: Thanks very much, AIRCDRE Medved. You've had a very long time in the box today and been asked a lot of questions. You're free to go now. Could I just say thank you for your assistance to the Inquiry the second time. Much appreciated. You've got the flight home to Canberra now in fairly stressful conditions, I guess – fleeing from the cyclone. Please understand that there is assistance available if you need it and don't hesitate to use it if it's necessary. Thank you very much.

35

40

<WITNESS WITHDREW

45

MS McMURDO: All right then, we'll adjourn. Hopefully – did you want to say something, COL Streit, before we adjourn?

5 COL STREIT: Just adjourning to 24 March?

MS McMURDO: We hope so.

COL STREIT: Ms McMurdo, we hope so.

10 MS McMURDO: Yes, that's the plan. We're adjourning till 24 March. That's our plan. Those of you who are not Brisbane locals might understand that this facility has been flooded in the past, in major flood events. So that's why I say we hope we'll resume on 24 March, here. Thank you.

15

**PUBLIC INQUIRY ADJOURNED UNTIL
MONDAY, 24 MARCH 2025**