

OFFICIAL



ABN 85 120 213 381

Level 4, 190 Queen Street, Melbourne 3000 Telephone: 03 8628.5561 Fax: 03 9642.5185
Offices in: Melbourne, Brisbane, Darwin, Canberra, Perth, Sydney, Adelaide

TRANSCRIPT OF PROCEEDINGS
TRANSCRIPT-IN-CONFIDENCE

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

PUBLIC INQUIRY

**THE HONOURABLE M McMURDO AC
AVM G HARLAND AM CSC DSM**

**COL J STREIT, with MAJ L CHAPMAN and FLTLT A ROSE,
Counsel Assisting**

**LCDR M GRACIE, representing CAPT D Lyon
SQNLDR I CASHA, representing LT M Nugent
LCDR M TYSON, representing CPL A Naggs
SQNLDR C THOMPSON, representing WO2 J P Laycock
COL N GABBEDY, representing MAJGEN Jobson
COL S THOMPSON, representing BRIG D Thompson
LTCOL D HEALEY, representing BRIG J Fenwick
SQNLDR T SCHMITT, representing COL D Lynch
SQNLDR M NICOLSON, representing D10
CMDR B JONES SC, with LCDR M HAY, representing D19
MAJ M BARNES, representing D146 and LTCOL A Norton
LEUT R CLUTTERBUCK, representing D147
MR G O'MAHONEY, with MR N HUMPHREY, representing Airbus
MS K MUSGROVE, representing the Commonwealth**

0930, TUESDAY, 25 MARCH 2025

DAY 40

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	31/03/25	(Transcription)

.MRH-90 Inquiry 25/03/25

© C'wlth of Australia

OFFICIAL

OFFICIAL

EXHIBIT LIST

Date: 25/03/2025

Number	Description	Page No
	EXHIBIT 155 – SELF-ADMINISTERED INTERVIEW FORM TEMPLATE.....	6152
	EXHIBIT 156 – MEMORANDUM OF UNDERSTANDING BETWEEN ATSB AND DFSB	6165
	EXHIBIT 157 – WRITTEN NOTE INCLUDING NAME OF SO1 ..	6196
	EXHIBIT 158A – MINUTE DATED 28/05/24.....	6208
	EXHIBIT 158B – REPORT BY MRS BERRY AND ENCLOSURES 1-5	6210

OFFICIAL

OFFICIAL

WITNESS LIST

Date: 25/03/2025

Name Of Witness

Page No.

CMDR DOMINIC CHARLES COOPER, on former affirmation.....	6121
EXAMINATION-IN-CHIEF BY FLTLT ROSE, continuing	6121
HEARING ADJOURNED	6173
HEARING RESUMED	6173
CROSS-EXAMINATION BY LCDR GRACIE	6183
CROSS-EXAMINATION BY MS MUSGROVE.....	6194
WITNESS WITHDREW	6196
 MRS TESSA MARGARET BERRY, Affirmed.....	 6198
EXAMINATION-IN-CHIEF BY FLTLT ROSE	6198
WITNESS WITHDREW	6210
HEARING ADJOURNED	6210
 (Continued in Private Hearing Session)	 6211-6330
 HEARING RESUMED	 6331

OFFICIAL

MS McMURDO: FLTTLT Rose.

<CMDR DOMINIC CHARLES COOPER, on former affirmation

5

<EXAMINATION-IN-CHIEF BY FLTTLT ROSE, continuing

10 FLTTLT ROSE: Good morning, Ms McMurdo, AVM Harland.

CMDR Cooper, can I ask you to be mindful of your security obligations throughout your evidence this morning. So if I ask you a question, or if anyone else asks you a question, you think the answer to which may be at the “Official: Sensitive” level or above, just to let us know, and we won’t explore that in a public forum.

15

CMDR COOPER: Certainly.

20 FLTTLT ROSE: Could the witness be returned his statement? Just to confirm, that is the statement that you made?

CMDR COOPER: Yes, it is.

25 FLTTLT ROSE: Could you turn to paragraph 4? I’m going to ask you some questions now about your background. So you commenced your military career as a helicopter pilot in the Royal Navy in the UK in 1988.

CMDR COOPER: Yes, I did. Yes.

30

FLTTLT ROSE: Then you transferred to the Royal Australian Navy in 1995.

CMDR COOPER: Yes.

35

FLTTLT ROSE: You’ve flown a variety of helicopters in your career in Australia, including the Kiowa.

CMDR COOPER: Yes.

40

FLTTLT ROSE: The Squirrel.

CMDR COOPER: Yes.

45 FLTTLT ROSE: And then a fixed-wing CT4-B.

OFFICIAL

CMDR COOPER: Yes.

5 FLTLT ROSE: And the MRH-90.

CMDR COOPER: Yes, I did.

10 FLTLT ROSE: Paragraph 13, your total flying hours across all of these platforms, both Military and civil, and in simulators, is 5572 hours.

CMDR COOPER: Yes, that's true.

FLTLT ROSE: Paragraph 13(g), you had 749 hours on the MRH-90.

15 CMDR COOPER: Yes, that's true.

FLTLT ROSE: And 98 hours were on night-vision devices.

CMDR COOPER: Yes, they were.

20 FLTLT ROSE: You were an A CAT pilot.

CMDR COOPER: Yes.

25 FLTLT ROSE: And that's an A CAT pilot on the MRH-90.

CMDR COOPER: Yes, I was.

FLTLT ROSE: And a Flight Commander.

30 CMDR COOPER: Yes.

FLTLT ROSE: Is that an equivalent to an Aircraft Captain?

35 CMDR COOPER: No, Flight Commander is the Commander of a flight at sea. So when an aircraft deploys on an Australian warship, the Flight Commander is in charge of the Aviation element, and responsible to the ship's Commanding Officer, providing that Aviation capability.

40 FLTLT ROSE: Did you ever use TopOwl on the MRH-90?

CMDR COOPER: Yes, I did.

45 FLTLT ROSE: Did you use the HMSD as well? The TopOwl basic Helmet?

OFFICIAL

CMDR COOPER: Yes, I did.

5 FLTLT ROSE: And then the HMSD is a separate item that attaches to it?

CMDR COOPER: Yes, I did.

FLTLT ROSE: Did you use version 4? Can you recall which version?

10 CMDR COOPER: I can't recall the version. I think it would have been version 4 when I finished flying. I think it had not had an upgrade by the time I finished flying.

FLTLT ROSE: So you don't think that you flew on version 5.10?

15 CMDR COOPER: I definitely did not fly on 5.1.

FLTLT ROSE: Now, you converted to the MRH-90 quite early on, and that was in 2013 or 2014.

20 CMDR COOPER: Yes.

FLTLT ROSE: So how many years did you fly it in total?

25 CMDR COOPER: 2013, while I was Executive Officer of 808 Squadron. Between '13 and '14, I was flying the MRH-90. And then I went to staff course for 2015, and returned back to the MRH-90 in mid-2016 to fly, unexpectedly, because they were running out of pilots. So back into the MRH-90, and flew then until mid-2018 or so.

30 FLTLT ROSE: So approximately about four years of flying the MRH-90.

CMDR COOPER: Yes.

35 FLTLT ROSE: At paragraph 11, so in addition to what you just stated before, that you went to the Australian Command and Staff Course in 2015, you also have a Masters in Military and Defence Studies.

CMDR COOPER: That was from the Staff Course, yes.

40 FLTLT ROSE: Then, in paragraph 11, in 2018 you went to Cranfield University to complete an Aviation Accident Investigation Course.

CMDR COOPER: Yes, I did.

45

OFFICIAL

FLTLT ROSE: The Inquiry has heard some evidence – or some references to this Cranfield University course. What is the connection between ADF and Cranfield University?

5 CMDR COOPER: The Cranfield course is used as the main training for accident investigators in the ADF, particularly in Navy and Army. Army are bringing it in, but Navy have been running them for ages. DFSB has a requirement for those courses. Navy have been sending their investigators to Cranfield, and because I was going into the job as Fleet Aviation Safety
10 Officer, the next job, that's why I went to Cranfield in 2018.

FLTLT ROSE: Is that a one-year course?

15 CMDR COOPER: No, it's a two-month course. It gives you a basic grounding in accident investigation, then specialises the second part of the course for aviation accident investigation.

FLTLT ROSE: Is there some post course work that you have to complete?

20 CMDR COOPER: Yes, there was a voluntary one to get the grad cert, which I did an extra couple of – three or four modules, from memory. There is a possibility of a Masters later on, but that's obviously outside the scope of what ADF require.

25 FLTLT ROSE: Does Cranfield University have a particular reputation amongst universities for aviation accident investigation learnings?

30 CMDR COOPER: It certainly does. The course itself is internationally used by all organisations. For example, on my course, we had representatives from many civil and Military organisations sending their investigators to Cranfield for their training on accident investigation.

35 FLTLT ROSE: Paragraph 12, in January 2022 you were posted to the Defence Flight Safety Bureau as the Deputy Director Safety Investigation.

CMDR COOPER: Yes.

FLTLT ROSE: And you reported to the Director of the DFSB.

40 CMDR COOPER: Yes.

FLTLT ROSE: You describe the DFSB as ADF's independent accident investigation capability.

45 CMDR COOPER: Yes.

FLTLT ROSE: Now, the ability for the ADF to conduct its own investigations into aircraft accidents you state is set out in the Defence Aviation Safety Program.

5

CMDR COOPER: Yes, it is.

FLTLT ROSE: Is this a program that DASA oversees?

10 CMDR COOPER: DASA is part of that program. The Aviation Safety Program incorporates DASA, but as part of that program we provide that investigation capability, but not run by DASA. We provide it as part of the whole program, if that makes sense.

15 FLTLT ROSE: The Defence Aviation Safety Program, does it sit above the highest levels of Defence and permeate through the services, and other agencies such as DASA?

CMDR COOPER: Yes.

20

FLTLT ROSE: You stated before that the DFSB is one of the Directorates inside DASA. Is that correct?

25 CMDR COOPER: It's slightly more complicated. DFSB is administratively part of DASA, but obviously we're independent, function independently. There are elements of it which are supplied and helped out by DASA – some of the administrative functions – but for the role of investigation, we're independent of DASA.

30 FLTLT ROSE: When you say there's the "shared administrative functions", what do you mean by that?

35 CMDR COOPER: Things like registry functions, budgetary, finance. For instance, the manning of departments, it's all shared. It's all done through the shared services – for want of a better word – down in Melbourne for Headquarters DASA.

40 FLTLT ROSE: In essence, there's financial people that work across both DASA and the DFSB.

CMDR COOPER: Yes.

45 FLTLT ROSE: Is that the same for, for example, legal advisers? Are they shared between the services?

OFFICIAL

CMDR COOPER: There is a legal DASA adviser, a DASA Legal O, we have used. Yes.

5 FLTLT ROSE: Do you have your own legal adviser, or is it if you needed legal advice, you would go to the DASA Legal Officer?

10 CMDR COOPER: We would use the DASA one, or anyone available in Defence. We don't have to use the DASA one. Just for normal, routine advice, we have used the DASA one, yes. I'd probably describe the DASA one as the conduit to other legal advice, if needed. So if the DASA one can't answer the question, or we need other ones, we would use the other ones as well.

15 FLTLT ROSE: In terms of your reporting line – the DFSB's reporting line, this is – do you report directly to DG DASA for any functions?

20 CMDR COOPER: Outside of investigation, it's my understanding – and it's probably worth clarifying with Director DFSB the exact mechanism because I was not in that role – outside of that, it would be budgetary, admin, that sort of thing, up through to DG DASA. But certainly not anything in the investigation role, no.

25 FLTLT ROSE: Who is DFSB's reporting chain then in terms of the accident investigations?

CMDR COOPER: Chief of Air Force is the Airworthiness Authority.

30 FLTLT ROSE: Is the reason why it's functionally independent of DASA, who is the Regulator, because that's what the ICAO Conventions state as best practice?

CMDR COOPER: Yes, that's my understanding.

35 FLTLT ROSE: The best practice in the ICAO Convention is that accident and investigation capability should be functionally independent of the Defence Aviation Regulator.

CMDR COOPER: Yes.

40 FLTLT ROSE: Is the DFSB independent of the Chain of Command, other than having to report to Chief of Air Force as the Aviation Authority?

45 CMDR COOPER: Yes. And, again, this is carried out by the Director DFSB, but my understanding is – it's not word perfect – there is a Director DFSB, we're outside of the Chain of Command. In other words, DFSB

OFFICIAL

Director can go to service, to the Chief of Air Force and the Force Commanders, or the Service Commanders, to start an investigation without having to ask their permission, so paraphrasing basically what's in the Act – in the Regulations.

5

FLTLT ROSE: At paragraph 14 you state that you were in your role as the Deputy Director Safety Investigation at the DFSB at the time of Bushman 83's crash.

10 CMDR COOPER: Yes.

FLTLT ROSE: At paragraph 15 you state you had never met or worked with CAPT Lyon, LT Nugent, WO2 Laycock or CPL Naggs.

15 CMDR COOPER: No, I did not.

FLTLT ROSE: I am going to ask you some questions about the DFSB's investigation into the crash of Bushman 83 now. If you could turn to paragraph 16 of your statement? You were appointed as the Investigator in Charge of the DFSB's Aviation Safety Investigation Team into the crash of Bushman 83 on 29 July 2023.

20

CMDR COOPER: Yes.

25 FLTLT ROSE: So that's when you were appointed, not the date of the crash, just to be clear.

CMDR COOPER: Yes, and that was the formal appointment. But obviously the understanding – because of the nature of the accident, there was no doubt that was going to happen. That was the actual formal date of the appointment.

30

FLTLT ROSE: We are trying to not use too many acronyms in evidence today, so I'll try as best I can, and invite you to as well, use the full name of things like Aviation Safety Investigation Team, although I'm sure you're tempted to say ASIT. So the role of the Investigator in Charge of the Aviation Safety Investigation Team is to be the senior investigator on site, and to have overall command responsibility for the on-site phase of the accident investigation.

35

40

CMDR COOPER: Yes, that's correct.

FLTLT ROSE: This is laid out in the DFSB Safety Investigation On-site Guidebook.

45

CMDR COOPER: Yes, it is. Also backed up in our Standing Instructions that DFSB use. It basically lays out the procedures and who is responsible at what stage of the investigation

5 FLTLT ROSE: This guidebook, and those Standing Instructions as well, are they based on a manual published by the International Civil Aviation Organisation, or ICAO?

10 CMDR COOPER: Yes, it is adapted. Because we don't actually come under ICAO, it's adapted using their procedures and best practice to provide that ICAO-like standards for us to use in Defence.

FLTLT ROSE: The Investigator in Charge manages the activities of the team, ensuring that the activities during the site phase are completed safely.

15 CMDR COOPER: Yes.

FLTLT ROSE: And that the evidence is appropriately collected and managed.

20 CMDR COOPER: Yes.

FLTLT ROSE: You are the person from the DFSB that communicates with all of the relevant agencies on site.

25 CMDR COOPER: I ensure the communications occur. Obviously, maybe not in person, but I've got team leads that would be delegated to talk to the right people at the right time. I was certainly responsible for providing SITREPs to Command, i.e. the OIC of the investigation – the Officer in Charge of the investigation – direct to DFSB.

30 FLTLT ROSE: Just to clarify, there's an OIC, Officer in Charge, and then there's the IIC – you – as the Investigator in Charge. Can you just describe the difference between your roles?

35 CMDR COOPER: So it's more the practical element of the investigation. The Investigator in Charge is on the ground, actually working on the site, or once the site is complete, working on the investigation. It's conceivable in larger organisations you would have one or two investigations running, so the Officer in Charge would be overseeing all the investigations, with the individual IICs, the Investigator in Charge, reporting to him on the status of those investigations. In this case, I was reporting to the Officer in Charge what was happening, and I was responsible – so the Officer in Charge is therefore not running the investigation at a tactical level. He is overseeing the investigation and making sure it's – to an understanding of what's going

on, so therefore the Officer in Charge can communicate upwards as required as well.

5 FLTLT ROSE: Are you allowed to say in this forum the name of the Officer in Charge? If not, you can write it on a piece of paper.

CMDR COOPER: It's basically the Director of the DFSB at the time.

10 FLTLT ROSE: In terms of liaising with subject matter experts that the DFSB required to assist with the investigation, did you engage them as the Investigator in Charge, or was that the Officer in Charge's role?

15 CMDR COOPER: It's mainly the Investigator in Charge. We would organise the subject matter experts, and an example would be if there's any correspondence from the Officer in Charge to the parent organisation of that subject matter expert, we would request their assistance through the Officer in Charge, but the actual liaison would be done through myself as IIC.

20 FLTLT ROSE: Did you, as the Investigator in Charge, have any role in drafting the DFSB's 30-day report – or preliminary report?

CMDR COOPER: Yes, I did.

25 FLTLT ROSE: Did you have any role in drafting any interim reports?

CMDR COOPER: Yes, I did.

30 FLTLT ROSE: Did you have any role in drafting the final report, which is not yet finalised?

35 CMDR COOPER: I was involved in the start of the – like, whether you'll get to it on the statement – when I handed over the role of IIC, I stayed at DFSB for a period of time before leaving, and during that time I was employed to help write some of the factual elements. I was also assisting with some of the analysis. So some of the early writing of the factual elements of the report, yes, I was doing.

40 FLTLT ROSE: Just to close that off, you are no longer posted to the DFSB?

CMDR COOPER: No.

45 FLTLT ROSE: I take it you have not been involved in these finalisation aspects of that report?

CMDR COOPER: No, I have not.

5 FLTLT ROSE: In terms of dates, at paragraph 19 you set out when you handed over the role of the site Investigator in Charge, and that was 9 August 2024, or 2023?

CMDR COOPER: '23.

10 FLTLT ROSE: But you retained your role as the overall Investigator in Charge back in Canberra; is that correct?

15 CMDR COOPER: Yes. So basically what happened, at around about the 9th I went back to Canberra to help out – continue work back in Canberra. Another member of DFSB came up to work as site IIC, so running the physical site with the operations and technical leads, and I was retaining IIC over all of the investigation back in Canberra, which I did until I handed it over.

20 FLTLT ROSE: You state that you actually oversaw initial reporting and data recovery, are the words you used in your statement.

CMDR COOPER: Yes.

25 FLTLT ROSE: Does “data recovery” mean you were recovering the data from the flight data recorder?

CMDR COOPER: Yes.

30 FLTLT ROSE: Does it mean anything else?

35 CMDR COOPER: Flight data recorder, and also data from the other aircraft data recorders, the other aircraft in the formation as well. So we were recovering data from those aircraft, getting that processed, as well as the data from the flight – once the flight data recorder from 040, the incident aircraft, was recovered, working with the team at DFSB to get that recovered as well.

FLTLT ROSE: Does that also include the cockpit voice recorders?

40 CMDR COOPER: Yes, that is the same. Sorry, that is the same piece of equipment. I will clarify that the flight data recorder in the MRH-90 is a combined flight data recorder, so it combines cockpit and data – sorry, cockpit and voice and data, so it's one unit that records everything. So when we say “the cockpit device” – VFDR is the voice and flight data

OFFICIAL

recorder, is the acronym, and that recovers – that is one unit that records the cockpit and all the data as well.

5 FLTLT ROSE: You mentioned before subject matter experts. Can you please confirm for me – if you want to turn to Annex A on page 13 of your statement to refresh your memory? In that annex you list various people that you liaised with in the course of your role.

10 CMDR COOPER: Yes.

FLTLT ROSE: Halfway down the page in that table you've got COL Jeff Brock.

15 CMDR COOPER: Yes.

FLTLT ROSE: The SO1 Aviation Medicine Officer.

CMDR COOPER: Yes.

20 FLTLT ROSE: He was also the single-service Aviation Medicine Adviser for Army.

CMDR COOPER: Yes.

25 FLTLT ROSE: Those are what that acronym stands for?

CMDR COOPER: It does, yes.

30 FLTLT ROSE: You state that you engaged him as the team's point of contact for the Aviation Medicine aspects of the investigation.

CMDR COOPER: Yes, he was.

35 FLTLT ROSE: He was also the Mortuary Affairs Liaison.

CMDR COOPER: Yes, he was.

40 FLTLT ROSE: On page 14 – if you turn over – you refer to two people's names in that table, including Ms Tessa Berry.

CMDR COOPER: Yes.

45 FLTLT ROSE: She was the Aeronautical Life Support Equipment subject matter expert.

OFFICIAL

CMDR COOPER: Yes, she was.

FLTLT ROSE: And there's another name as well, a colleague of hers that fulfilled the same role.

5

CMDR COOPER: Yes.

FLTLT ROSE: Were they responsible for collecting and then, later, analysing evidence relating to Aeronautical Life Support Equipment?

10

CMDR COOPER: They were, yes.

FLTLT ROSE: Were each of those persons – COL Brock, Ms Berry and the additional person that's listed on that page – were they all on site at Proserpine?

15

CMDR COOPER: No, Ms Berry and her colleague arrived on 2 August, I believe.

20

FLTLT ROSE: Arrived at Proserpine?

CMDR COOPER: Yes, they did.

FLTLT ROSE: So they were at some stage on site at the same time that you were on site.

25

CMDR COOPER: Yes, they were.

FLTLT ROSE: Because you were on site until about 9 August.

30

CMDR COOPER: Yes, that's correct.

FLTLT ROSE: And COL Brock was on site?

35

CMDR COOPER: COL Brock, he was on site, but I don't believe I saw him on site. I was mostly liaising by phone with COL Brock.

FLTLT ROSE: Paragraph 18 of your statement, you set out that there was a team of personnel appointed to the Aviation Safety Investigation Team, but you cannot name them, or their roles, in this forum.

40

CMDR COOPER: That is correct. They're a part of the "Official: Sensitive" document, so it's a footnote.

45

FLTLT ROSE: But there was a team of you, we take it?

CMDR COOPER: Yes, there were.

5 FLTLT ROSE: At paragraph 20 you state that you handed over your responsibilities as the Deputy Director of Safety Investigations to another person in January 2024.

CMDR COOPER: Yes, I did.

10 FLTLT ROSE: That's when you posted to another position within the DFSB.

CMDR COOPER: Yes, I did.

15 FLTLT ROSE: Was that to complete that short period of time of report writing?

20 CMDR COOPER: It was. In fact, the reason for posting out of the position is a structural workforce requirement. My position, when I was working as Deputy Director, is actually an Air Force position, and in January 2024 – I was in it, sorry, as a Naval member, and in 24 it went back to being an Air Force position, and I was temporary in there in the Naval position, so it had to go back to Air Force. So that's the member I handed over to in January.

25 FLTLT ROSE: When you handed over, it seems as if you wore a few hats.

CMDR COOPER: Yes.

30 FLTLT ROSE: So you had the Deputy Director Safety Investigation. Then you had originally the on-site Investigator in Charge, and then the off-site Investigator in Charge.

35 CMDR COOPER: Yes.

FLTLT ROSE: Did you simultaneously hand over those two roles that you retained as at January 2024 to this single Air Force person?

40 CMDR COOPER: No, the Deputy Director Investigation was handed over in January, and the IIC was with effect from 1 August '24. So that enabled a handover of the Deputy Director Investigation position, with a reasonable handover of the complex nature of the IIC position.

45 FLTLT ROSE: Can I take it, in your Deputy Director position, that you were overseeing a number of safety investigations?

CMDR COOPER: At that time, I think we finished one other Class B, which is a lesser grade investigation, but at that time there were no other major investigations.

5

FLTLT ROSE: Was that the Jervis Bay ditching?

CMDR COOPER: That was finalising that one, and another one, which was an Air Force one at the time, which was actually in late 2023.

10

FLTLT ROSE: So you essentially handed over your responsibilities in respect of those other investigations to the Deputy.

CMDR COOPER: They were completed by January '24.

15

MS McMURDO: So the way it works is the services share these roles, and it's mandated that you change from Navy to Air Force to Army. Is that how it works?

20

CMDR COOPER: No, ma'am. This particular one is always – when I say “always”, is typically an Air Force position, but due to posting circumstances about three years before, Air Force could not provide a member of the correct rank for that position, and I expressed interest. I was posting to that area anyway, so I expressed an interest on moving into it, and it was temporarily assigned to Navy until January '24.

25

MS McMURDO: And at that time Air Force did have someone available.

CMDR COOPER: In January '24, yes, ma'am.

30

MS McMURDO: It just sounds a little bit inefficient, that you wouldn't just finish the investigations that you were partway through.

CMDR COOPER: Well, ma'am, I was actually – and that was the plan around the August '24 handover of the IIC, the Investigator in Charge. I was going to get to a culminating point, or a logical changeover point, in August to hand over that IIC once the IIC was fully up to speed. And bearing in mind the whole team – I was overseeing the investigation, so the whole team, who were actually writing it, was still pretty much extant from previous, albeit a few changeovers with postings.

35

40

MS McMURDO: So you didn't see it as particularly inefficient to do that at that time?

OFFICIAL

CMDR COOPER: It was a logical time to do it, ma'am. It wouldn't have changed a lot if I'd stayed there a few months further on.

MS McMURDO: Thank you. Yes, FLTLT Rose.

5

FLTLT ROSE: You stated yesterday that you are now posted into a position in Fleet Air Arm.

CMDR COOPER: That is correct.

10

FLTLT ROSE: I take it you are no longer flying helicopters.

CMDR COOPER: No.

15

FLTLT ROSE: At paragraph 16 of your statement you set out that it was the Commander of Aviation Command, in his role as the Army Military Air Operator Accountable Manager, that appointed you as the Investigator in Charge of the Aviation Safety Investigation Team.

20

CMDR COOPER: Correct.

FLTLT ROSE: Was that MAJGEN Stephen Jobson?

CMDR COOPER: Yes, it was.

25

FLTLT ROSE: And MAJGEN Jobson was the Appointing Authority for the entire Aviation Safety Investigation Team, or just your role?

CMDR COOPER: For the team itself, yes.

30

FLTLT ROSE: Was it your understanding at the time that you could only commence your duties as the DFSB investigators once you had been appointed into those roles by the Appointing Authority?

35

CMDR COOPER: Practically speaking, no, because as soon as the – the way that the Defence Aviation Safety Manual is written, DFSB will investigate all Class A events, which this one was. So we were already started, and the actual awaiting the Appointing Authority Minute, or the actual Appointing Authority, is more of a formality in this case because we certainly would not be waiting for a piece of paper to arrive to do it. And that was done on the verbal authority or understanding between the OIC, I believe – and you'll have to confirm with the Director DFSB when this happened with the Major General.

40

45

FLTLT ROSE: What did you think then that the role of the Appointing

Authority was?

5 CMDR COOPER: The Appointing Authority – this was based on the Defence Aviation Safety Manual – the original role is to lay out the Terms of Reference, and these are written in agreement with the actual investigation team and to spell out the circumstances of the investigation, the scope of the investigation, and particularly the initial timeline of the investigation as well.

10 FLTLT ROSE: Did you have to report back to MAJGEN Jobson?

15 CMDR COOPER: Not personally, no. The understanding in the Appointing Authority Minute is that there will be regular updates provided, and a requirement – without going into the document itself, whether there was a requirement spelt out for a 30-day report, for instance, or an interim report – and it does vary between Appointing Authority Minutes – it depends what they need – and regular updates, and the understanding that if there's anything comes up outside of that cycle of reporting, an immediate safety concern, it will be raised straightaway with the Appointing Authority.

20 FLTLT ROSE: I am just trying to understand, you gave evidence earlier about the DFSB being functionally independent of DASA, being independent completely from the Chain of Command, other than your direct report up to Chief of Air Force, and yet there's an Appointing Authority for your team that includes drafting Terms of Reference and making requirements of stages you have to meet.

25 CMDR COOPER: The Terms of Reference in the Minute – which again, I can't go into the nature of the "Official: Sensitive" – are very, very broad. DFSB are empowered to investigate as they see fit – and that's a major paraphrase – any parts of the incident for their safety investigation. So the Appointing Authority Minute does not limit our investigation. It does not imply any control over the investigation by the Appointing Authority. And based on the higher Regulations, Director DFSB does not have to abide by – incorrect word – Director DFSB basically is empowered to act independently of the Appointing Authority and Service or Force Chiefs as well. So does not control our investigation, no.

35 FLTLT ROSE: Did you see it more as an opportunity for collaboration with the Chain of Command in Army Aviation to try and find out more information, settle on a scope, gather information from them? Is that how you saw it?

40 CMDR COOPER: It is. It also gives us the resources we need. So if we asked for – and in the engagement before the Appointing Authority Minute

Directive is drawn up, we will ask for, and we got, extra personnel from Army Aviation Command. It was the understanding that we will have resources given to us by them, and support for the investigation. Bearing in mind the size of the investigation, we needed more people as well.

5

FLTLT ROSE: Is that typical for all Class A investigations, that the DFSB conducts that you need to draw on resources from the services?

10 CMDR COOPER: "Typical" is a hard word to use for Class A. This is the largest one since possibly NEAS, 20 years ago. This is the first time I've seen one this large. The last two Class As we've done that I was involved in was Jervis Bay and the ditching of a Romeo. We did not need extra for the Romeo – or DFSB did not, and there was minimal requirement for the Jervis Bay one.

15

FLTLT ROSE: As a standard standing agency, the DFSB, it was overwhelmed by the expectations of this particular Class A investigation. You didn't have sufficient resources, in your mind, to be able to successfully complete it, and you needed outside assistance?

20

25 CMDR COOPER: I think "overwhelmed" is incorrect. I think what we're saying was basically we needed the actual numbers of people to safely conduct the investigation without burning out our personnel. There was a lot of unknowns at the start of how long we'd be working there for, the size and scope, so we went for as many people as we could get, to start with. And obviously having to split the sites down at Holsworthy as well, we needed extra people to cover the extra requirements for interviews as well.

30 FLTLT ROSE: Did you only go to Army Aviation for those personnel, or did you cast the net wider than that?

CMDR COOPER: No, we also used two members from the Fleet Aviation Safety Cell as well, two Navy members.

35

FLTLT ROSE: So essentially you were looking for people with Safety Officer roles.

40 CMDR COOPER: No, we were looking for people with the Cranfield qualifications, and that's basically what we've got. Because Navy qualify their people at Cranfield, we use that as a, like, qualification because we can only take people onto an accident site that are qualified and able to go on there safely. It's all to do with safe operations on an accident site.

45 FLTLT ROSE: Does the Air Force also send officers to Cranfield?

CMDR COOPER: They do, but they're not as formalised. They don't link it formally to as many positions.

5 AVM HARLAND: Could I just go back - - -

CMDR COOPER: Sorry, sir. Yes.

10 AVM HARLAND: Go ahead.

CMDR COOPER: I was about to say the Air Force do, if you count all DFSB as Air Force, but Air Force wider don't do it as formally as Navy, and sometimes Army.

15 AVM HARLAND: Thanks. I just wanted to go back to the Appointing Authority. Did you find it at all unusual that the Military Air Operator Accountable Manager and the Commander of the Aviation enterprise that contained the unit that had the accident was the Appointing Authority?

20 CMDR COOPER: No, sir. That's typical for all the Class A's and major accidents I've been involved in.

AVM HARLAND: If I was to reframe it in maybe a civil way, would you find it at all unusual that the CEO of Qantas would appoint the ATSB to do an accident investigation on a Qantas aircraft?

25

CMDR COOPER: It would be unusual, sir, because it's not possible with the Act I know the ATSB run under, and it is – in Defence, because we're not actually part of ICAO, it is all to do with the way the Director DFSB's powers can be used, if necessary. So he is empowered by the Aviation Safety Program to, if he perceives there's any conflict, tell the Appointing Authority, "No, we're not going to do this". And, in practice, this didn't happen anyway. And it's never happened, to my knowledge, when I've been involved in investigations. We've not been influenced by the Appointing Authorities.

30

35

AVM HARLAND: I just find it interesting that the Appointing Authority sets out the Terms of Reference, which includes guidance and scope, as you previously said. They're in the Chain of Command, so they either influence the investigation or they don't. And if they don't influence it, then why have it?

40

CMDR COOPER: That's a good point, sir. I believe that has been changed, the actual – post my statement. I'd say it has been changed post my departure from DFSB, and the DASM, who, as the Appointing

45

Authority, has been changed, I believe. Because this was more of a historic way we've been doing it, and it hasn't really presented a problem up until now. I don't believe this was a problem, but that conflict was raised.

5 When I say "the Appointing Authority sets the Terms of Reference", they're done mostly – they are drafted by DFSB and agreed with the Appointing Authority, so there's no – I've not seen, in my experience, where the Appointing Authority has disagreed with our Terms of Reference. If anything, they've added to them and asked for extra things to be
10 investigated rather than limited what we'd like to investigate, sir.

AVM HARLAND: And I'm not suggesting any particular issues with this Terms of Reference. I find it curious that we have this procedure, or a process that we go through where an Appointing Authority would set a
15 Terms of Reference. But, really, they're not very influential at all because it's all done within DFSB. So it almost seems like theatre rather than anything functional.

CMDR COOPER: So it does function. There are a lot of other – I've
20 probably glossed over some of the aspects of the Appointing Authority Minute, but I would probably refer to, or defer to, Director DFSB to go through the mechanisms, the internal mechanisms, whys and wherefores of the Appointing Authority Minutes, and certainly the developments post this investigation, sir.

25 AVM HARLAND: Thank you.

MS McMURDO: Just following up on that, the potential conflict that the Air Vice-Marshal spoke to you about, there are really two issues there, and
30 you have been very clear to say that an actual conflict has never arisen as far as you were ever aware.

CMDR COOPER: Not in my experience.

35 MS McMURDO: But there's a different issue as well, and that is whether the system appears to be independent, and so whether there's any actual conflict that has arisen, or whether there's the potential for it to have arisen, because if there's the potential for it to arise, then that undermines confidence in the independence of the system. Do you understand the
40 distinction I'm drawing?

CMDR COOPER: Yes, I do, ma'am.

45 MS McMURDO: So bearing that in mind, can you see that there is that difficulty there with the Appointing Authority that can arise?

5 CMDR COOPER: I think, ma'am, the main thing that's covered by the higher Regulation is the fact that the Director DFSB has got the power to override. He has got that function to be independent, and that's above the Appointing Authority Minute, and above the Appointing Authority appointment. And he's got power under the Airworthiness Authority with CAF to do that. So, procedurally – and actually what it looks like is, if we take that into account, I don't see – there is not normally a problem with it, inside Defence anyway.

10 MS McMURDO: So you don't even see it as a perceived problem?

15 CMDR COOPER: I could see it could be perceived by people like that, ma'am, but if we look at it in context with the way the Director - - -

MS McMURDO: You say in practice it works okay because people do the right thing.

20 CMDR COOPER: It certainly does, ma'am, yes.

MS McMURDO: Does the Appointing Authority have anything to do with the resources that you ask for?

25 CMDR COOPER: That used to be the case, ma'am, but in this investigation, and post Jervis Bay, at DFSB, we changed it. We actually got money allocated to us. Because originally, in years gone by, you would have to ask – the travel expenses, for instance, were gone through – they were never refused, but they had to be run through the financial system of the Appointing Authority. That has now changed, and I can't remember the exact date that was changed.

30 So DFSB has got money through Air Force for as much funds as we need to do whatever we need to do. So we're financially independent. We do not need to ask for resources, no, ma'am. And, in practice, it worked very well indeed this time.

35 MS McMURDO: Thank you. Yes, FLTLT Rose.

40 FLTLT ROSE: At paragraph 22 of your statement – now you alluded to this in your evidence just then - - -

CMDR COOPER: Yes.

FLTLT ROSE: - - - you state that the Appointing Authority for the

OFFICIAL

Aviation Safety Investigation Team, which was MAJGEN Jobson, was changed following your departure from the DFSB.

5 CMDR COOPER: Yes.

FLTLT ROSE: Then you posted out of the DFSB on 1 August 2024.

CMDR COOPER: Yes.

10 FLTLT ROSE: So it was some stage after that.

CMDR COOPER: I believe it was possibly October, and I know if the correspondence – which I have not got; I believe that would be at “Official: Sensitive” level – but I believe it was.

15 FLTLT ROSE: But you weren’t involved in any of that decision-making process, I take it.

CMDR COOPER: No, I wasn’t.

20 FLTLT ROSE: I want to turn to notification of the incident. If you go to paragraph 23, you state that the DFSB Duty Officer received a call on their mobile at 2317, so at 11.17 pm, on 28 July 2023 about the incident involving Bushman 83.

25 CMDR COOPER: Correct.

FLTLT ROSE: And at paragraph 24 you said the DFSB Duty Officer called you to notify you of the crash at 2325, or 11.25 pm.

30 CMDR COOPER: Yes.

FLTLT ROSE: So that’s about eight minutes later.

35 CMDR COOPER: Yes.

FLTLT ROSE: Now, that was July in Queensland, so New South Wales and Queensland were on the same time zone at that point.

40 CMDR COOPER: Yes.

FLTLT ROSE: What did you do after you received this call?

CMDR COOPER: I was in Nowra. This was on the Thursday night. I

was actually driven back to Nowra that evening because typically my work routine involves - - -

5 FLTLT ROSE: Sorry, did you say Thursday night?

CMDR COOPER: Sorry, the 23rd. Disregard. I'm not sure if it was a Thursday or not, but that evening.

10 FLTLT ROSE: Take it from me that it was a Friday night.

CMDR COOPER: That evening, sorry. Friday, yes. That evening, I was in Nowra because my home – so I was working in Canberra, living in Nowra. So I was at home in Nowra. At that point, I believe it was a number of phone calls. I obviously talked to the Director DFSB, and then it was a number of phone calls going through until about 2 or 3 o'clock in the morning, when I was talking to representatives – I think it was in the annex – COL Satrapa, and various other people, all to do with trying to get SITREPs to find out what was happening, organising for the team to get ready to go for an immediate response meeting the next morning.

20 FLTLT ROSE: You've said "SITREPs" a few times in your evidence.

CMDR COOPER: Sorry, Situational Reports.

25 FLTLT ROSE: Situational Reports.

CMDR COOPER: Yes.

30 FLTLT ROSE: Did you speak to anyone on the ground that night, or in those early hours of the morning, at Proserpine about quarantining evidence for the investigation?

CMDR COOPER: I did not. But I recall I was talking to the Duty Officer to ensure that that was occurring. The role of the Duty Officer in this matter would be to get the initial notification from the person, whoever it is – and this is for any incident or accident. The person would ring the Duty Officer mobile. It is a mobile – it is actually a phone number – it's on the DFSB website – which automatically redirects to the Duty Officers as they cycle through their duty. So it goes through their mobiles, their work mobiles. So the role of the Duty Officer is then – and there's a notification form which goes through all the requirements for what they need to do, including quarantining of evidence.

45 FLTLT ROSE: Sometimes you fulfil the role of Duty Officer?

OFFICIAL

CMDR COOPER: No, I didn't.

FLTLT ROSE: Paragraph 27, you state that you attended an immediate response meeting at 8 in the morning on 29 July 2023.

5

CMDR COOPER: Affirm. Yes.

FLTLT ROSE: And that's with your DFSB colleagues.

10 CMDR COOPER: Yes, it was.

FLTLT ROSE: The meeting was in Canberra, but because you were in Nowra, you attended virtually.

15 CMDR COOPER: Yes, I did.

FLTLT ROSE: After this meeting, did you travel from Nowra to Canberra?

20 CMDR COOPER: Yes, the meeting, I believe, was about an hour and a half or so, maybe two hours. I think it wrapped up about approximately 10 o'clock. At this point, we had organised to meet up with the two Navy investigators at Headquarters Fleet Air Arm in Nowra, and we met up in the Headquarters mid to late morning. And by the time we got on the road, it was about just before 12, and I drove straight across to Canberra –
25 correction – they drove straight across to Canberra; I was too tired.

FLTLT ROSE: Two-sided, as in a passenger?

30 CMDR COOPER: Too tired, yes.

FLTLT ROSE: Too tired.

35 CMDR COOPER: Tired, sorry. I was the passenger in the car. Someone else drove for me.

FLTLT ROSE: I understand. And then you caught an aeroplane from Canberra to Proserpine.

40 CMDR COOPER: Certainly, yes. That was a C-17 aircraft that was provided by Air Force, and it took the team up there.

45 FLTLT ROSE: Because you were travelling for part of that day, did you not have any further direct communications with the members on the ground at Proserpine?

CMDR COOPER: Not that I can recall.

5 FLTLT ROSE: Paragraph 26, you state that before you arrived at Proserpine the Aviation Safety Investigation Team advised persons on the ground at Proserpine, and also in supporting and operating units, to preserve all data, physical evidence, and witness recollections relating to the incident crew, the incident aircraft, and other operating aircraft and crews.

10 CMDR COOPER: Yes, and that's typically as per our normal procedures, running through the notification form. We make sure that the – and that's the standard. And also Aviation Safety Officers are taught what they need to preserve in the event of any incident or accident. Yes, that pretty much covers most of the things we would preserve.

15 FLTLT ROSE: Did this include the use of the DFSB's self-administered interview form?

20 CMDR COOPER: Yes, it did. And that's a form we use. It's basically spelt out and it's available through the DFSB website, and it is used as a cue for witnesses – I say “witnesses” in an Aviation safety point of view – to cue them to what they remembered. It provides questions for, “What did you see? What did you hear? Where were you?”, all that sort of thing. It's a free text, so people can fill it out and send it back. And failing that, we
25 just encourage people just to provide anything on a piece of paper. It doesn't even need to be on the form itself.

FLTLT ROSE: So you're saying it was either the Duty Officer or
30 someone else in the team who actually gave this advice to those on the ground.

CMDR COOPER: Yes, I believe so.

35 FLTLT ROSE: When you say it was to people on the ground at Proserpine, but also in supporting and operating units, what do you mean by “in supporting and operating units”?

40 CMDR COOPER: That would be 6 Avn Regiment. So we would also send the same advice down to 6 Avn Regiment to make sure any maintenance data, any evidence around computer-based maintenance data, was quarantined. The system is called PEX, which is short for Patriot Excalibur, which is the currency tracking system for aircrew and authorisation system. There's making sure that data is captured for those flights, or on the main database so we don't lose it or nothing gets

OFFICIAL

overwritten. And, again, this is pretty typical of all our incidents and accidents. This is exactly what we do for all of them.

5 FLTLT ROSE: The Inquiry has heard evidence that some members of 6 Aviation Regiment, including the Commanding Officer, were based at RAAF Base Richmond because it was TALISMAN SABRE at the time.

CMDR COOPER: Yes.

10 FLTLT ROSE: When you're saying, "Supporting and operating units", did that also include quarantining anything at RAAF Base Richmond?

15 CMDR COOPER: I don't know if it was specifically to RAAF Base Richmond, but I know that there was contact made through the members at 6 Avn Regiment, and I've got a name which I've identified on the – I know it was one of the contacts. I didn't speak to the member personally, but I believe it was – I think it was D23 on your list was engaged as well to make sure it was aware of the requirements, as far as I'm aware. I don't know if there was any specific evidence that was needed to be quarantined, but in
20 general terms it was put out across to all the contacts at 6 Avn Regiment.

FLTLT ROSE: You have mentioned D23 as one of the persons that this advice was provided to. You might just want to move your statement across. There is a pseudonym list there. Could you look down the
25 pseudonym list, and identify whether you recall yourself, or the Duty Officer, or anyone else in the Aviation Safety Investigation Team, giving specific advice to D19?

30 CMDR COOPER: I personally did not give specific - any advice to D19. I believe I talked to him. I don't recall giving specific advice with regards to evidence collection or preservation.

FLTLT ROSE: Did you talk to D10 about evidence preservation, quarantining?
35

CMDR COOPER: No, I did not.

FLTLT ROSE: Did you speak to BRIG Dean Thompson?

40 CMDR COOPER: I met with BRIG Dean Thompson at Proserpine Airfield, when we arrived by C-17.

FLTLT ROSE: If you just continue looking at that. D13, who was the Camp Commandant, do you remember anyone, yourself or someone else,
45 providing her with information about quarantining processes?

OFFICIAL

5 CMDR COOPER: D13 was engaged by my tech. By “tech”, I mean Engineering Officer investigator lead. I don’t know what conversations went between those. I know they were engaged with talking about the aircraft and the maintenance evidence that would have been at Proserpine. I don’t know the extent of their conversation, but I know they were engaging.

10 FLTLT ROSE: Now, the Inquiry’s heard evidence that there were a number of people in the Command Post at the time of the incident. Can you just look at that list again and confirm whether you or anyone from your team spoke to the following persons about quarantining, D14?

CMDR COOPER: I don’t know. I’m not sure on that one.

15 FLTLT ROSE: D29?

CMDR COOPER: Unknown.

20 FLTLT ROSE: D16?

CMDR COOPER: No, names don’t ring a bell.

FLTLT ROSE: D15?

25 CMDR COOPER: Not directly.

FLTLT ROSE: So your best recollection now, noting it’s been some time since this event has occurred, is that you or someone else spoke to D23 about the quarantining of evidence.

30 CMDR COOPER: I’m not sure of the exact – whether it was about quarantining. I know D23 was engaged. Whether there was specific reference to quarantining of evidence, I cannot say.

35 FLTLT ROSE: The best person to ask would be the Duty Officer, whoever’s task it was to provide that advice?

CMDR COOPER: Yes, probably.

40 FLTLT ROSE: The Inquiry has heard evidence that officers who were in the Command Post when Bushman 83 crashed coordinated the initial search and rescue, but they also quarantined certain items in the Tactical Operations Cell, such as whiteboards they used.

45 CMDR COOPER: Sorry, just please clarify. You’re talking about the

OFFICIAL

Command Post at?

FLTLT ROSE: Proserpine.

5 CMDR COOPER: At Proserpine. Yes, that was my understanding, they did.

FLTLT ROSE: We've also heard evidence that the Camp Commandant, D13, and others, moved the Bushman 83 aircrew's personal effects from
10 their sleeping tents into the Command Post. Were you aware of that?

CMDR COOPER: I was aware that when we arrived there was a collection of personal effects gathered together. I was not aware of how they got there.
15

FLTLT ROSE: So you're not sure whether it was anyone from your Aviation Safety Investigation Team that advised them to do that?

CMDR COOPER: I'm not sure.
20

FLTLT ROSE: Would you, as an investigator trained at Cranfield University, have preferred for those items to be left where they lay originally in situ?

CMDR COOPER: Yes, the best, in general terms, evidence is best left undisturbed until we get there. The difficulty with control of site, there's always difficulties with controlling the site until we actually get there. So, yes, that would be the general preference. But, typically, with most of our investigations we have to basically do the best with what we're presented with when we arrive on site. So if it has been disturbed, we know it has
30 been disturbed and try and work out what that means with relation to the quality and the evidence itself.

FLTLT ROSE: Were you concerned when you saw the personal effects in the Command Post?
35

CMDR COOPER: Concerned? I wasn't concerned. It was noted, yes, that's where they were. I've got to admit at the time I hadn't given much thought to how they got there. We were more interested in establishing where things were and what was going on when we arrived.
40

AVM HARLAND: How do you vouch for the idea that those items have been in, like, clean custody for over the whole time? Or do you just have to take that on face value?
45

OFFICIAL

5 CMDR COOPER: So when we got there, I liaised with – there was a member in annex – the JMPU member in the annex assured us that they'd taken custody as soon as they'd arrived on site of those and were keeping custody of those, all the personnel items. And they basically held onto those until we took over the next morning. So that's as best as we could do at the time.

10 AVM HARLAND: So they were trained professionally in handling evidence?

CMDR COOPER: Yes, sir.

15 AVM HARLAND: And was it feasible for the accommodation areas, so where the personal effects were and the Ops area, just to be effectively taped off – if you like, “Do not enter” – up until the time that you were coming up? Noting that you turned up the next day.

20 CMDR COOPER: In general terms, that would be feasible, yes, sir. I'm not sure of the practicalities of the actual – again, while I was travelling, I wasn't sure of any – I'm not aware of any, you know, considerations that were passed between the duty of the team and the actual people on the ground in Proserpine on that one.

25 AVM HARLAND: So when you got there, were you able to view the accommodation that the aircrew were staying in and also the Ops tent in a relatively undisturbed fashion?

30 CMDR COOPER: Accommodation not so much. I know some of the tents had been taken down. Although the Ops tent was available, yes, sir.

AVM HARLAND: And was it in the state that it was at the time of the accident or - - -

35 CMDR COOPER: We weren't sure on that one, sir. We arrived, we saw what the tent was on arrival, sir.

AVM HARLAND: So whiteboards were up, desks were all set out, or was it all packed up?

40 CMDR COOPER: There were some whiteboards set up, some of the desks were around, some of the things – the whiteboards were actually stacked up. So it looked some had been consolidated into one area. Again, not seeing what it was before we arrived, it was hard to make a judgment, sir.

45

OFFICIAL

AVM HARLAND: Sure. But, yes, the sense was that it was under a state of partial pack-up and the accommodation area, some of them had been pulled down.

5 CMDR COOPER: Yes, sir, from my understanding.

AVM HARLAND: Okay. Thank you.

10 FLTLT ROSE: Two points that arose in your evidence then. Was the JMPU, the Joint Military Police Unit, investigator you were referring to PO Casey Theissen?

CMDR COOPER: Yes.

15 FLTLT ROSE: And when you said some of the tents had been dismantled or taken down, did that include the accommodation tent where the aircrew had slept – or tents?

20 CMDR COOPER: I'm not sure. I don't know. When we arrived, it was dark and all we had was – when we arrived, we were shown the Ops tent, the tent with all the personal effects. And the next morning, we saw the Ops tent and where the ALSE – and that was pretty much from my recollection of what we had.

25 FLTLT ROSE: So the next day, when it was daylight, your team or you yourself, or other members of your team, did you actually ask to see the accommodation tent where the aircrew slept?

30 CMDR COOPER: I cannot recall. At this point, we were concentrating on collecting the evidence that we had available, which is extensive, and trying to understand more the actual aircraft itself, looking at sort of the aircraft wreckage, looking for aircraft. Understanding what was going on with the site when it comes to priority of evidence that was the accommodation side of things was a little bit further down the list.

35 We were looking at collecting the perishable evidence first, which is really what we do as soon as we get to a site. We want to collect stuff which is going to perish, which is going to be degraded, which we can't then collect again. So that's why we wanted to get and look at the other stuff first, and
40 that's probably why we didn't prioritise finding and looking at the accommodation of the aircrew.

FLTLT ROSE: So can I take it then, at no stage did you yourself look at the accommodation tent?

45

OFFICIAL

CMDR COOPER: Not personally, no.

FLTLT ROSE: Did anyone in your team?

5 CMDR COOPER: I can't recall.

FLTLT ROSE: Because it was a Forward Operating Base, and then it was dismantled at some point.

10 CMDR COOPER: Yes.

FLTLT ROSE: Was it dismantled during the time that you were on site, until 9 August?

15 CMDR COOPER: I've got to admit I can't recall which tents were there – exactly which tents were there when we arrived. There was a minimal number of tents. The Ops tent, the ones with the Aviation Life Support Equipment were pretty much the only tents I can recall seeing there.

20 FLTLT ROSE: When you arrived - - -

CMDR COOPER: Sorry, there were other tents across the other side of the – a little bit further away, and I'm unknown if they were the aircrew accommodation or the accommodation for the other Troops at Proserpine.

25 MS McMURDO: Would you expect the aircrew accommodation to be separated from the accommodation for the other Troops?

30 CMDR COOPER: At that stage, ma'am, we were not making any assumptions on that one. But, in general terms, that would be an assumption of mine, that there is accommodation available.

MS McMURDO: Separate accommodation available for the aircrew?

35 CMDR COOPER: I believe so, ma'am.

MS McMURDO: And that's because everyone has to operate in field conditions, you want the aircrew to have as quiet accommodation as possible.

40 CMDR COOPER: Certainly in my experience when operating – in the few times I've operated in the field, and more barebones operations, it's exactly what we try to aim for.

45 MS McMURDO: Thank you.

5 FLTLT ROSE: Just on that point, I've noted before, earlier in your evidence, that you are a very experienced helicopter pilot, with over 5000 hours' flying time. And you've only deployed into a field environment on a few occasions in your career?

CMDR COOPER: Yes, that's correct.

10 FLTLT ROSE: Is that because you embarked on ships being in the Navy?

CMDR COOPER: Yes.

15 FLTLT ROSE: Now, when you stated that the Aviation Safety Investigation Team advised persons on the ground at Proserpine to preserve witness recollections, did you mean that someone was tasked to interview them, or did you mean that they were asked to complete this DFSB self-administered interview form?

20 CMDR COOPER: At this stage, it was either use the administrative form – interview form, or a recollection written on a piece of paper, whatever we could get, just to get that first recollection for our investigation, because it's always the most valuable.

25 FLTLT ROSE: But it definitely wasn't someone interviewing them. It was asking them to put their thoughts on paper?

30 CMDR COOPER: No. Not at that stage. Not at that stage. Because it's too early to get an interview because you don't know really – you need to find out the background stuff. If you can interview, that's great. But most of the time it's the interview form to start with.

FLTLT ROSE: Can I show the witness a document?

35 CMDR COOPER: Thank you.

FLTLT ROSE: Is this the self-administered interview form template that you have been referring to?

40 CMDR COOPER: Yes, it is.

FLTLT ROSE: And it's from Annex F to the Defence Aviation Safety Manual, Part 2, Chapter 3?

45 CMDR COOPER: I believe so, yes.

FLTLT ROSE: I tender the form.

MS McMURDO: Exhibit 135.

5 FLTLT ROSE: 155?

MS McMURDO: 155, yes. Sorry, did I say 145?

10 FLTLT ROSE: 135, I'm told from behind.

MS McMURDO: No, it's definitely 155. Thank you.

15 **#EXHIBIT 155 - SELF-ADMINISTERED INTERVIEW FORM
TEMPLATE**

FLTLT ROSE: Did the Aviation Safety Investigation Team send a copy
20 of this particular form to personnel on the ground and have it printed off
somehow for them to fill in?

CMDR COOPER: No, I believe – again, this is my recollection – it is
possible that we either – some units take them with them. They are
25 available on the network, and it is not a showstopper because we can use –
it is a prompt, and I believe in quite a few other investigations we've just
had a piece of A4 with someone's recollections written on them. But if it's
available, it's the easiest way to do it.

FLTLT ROSE: And who did the team advise should fill out this form?
30 Was it the aircrew involved in the incident sortie?

CMDR COOPER: Unknown. I don't know if we – I'm assuming it
would have been the aircrew involved. In fact, anyone involved had
35 anything to add to it, basically.

FLTLT ROSE: In your mind, it would be wider than just the aircrew?

CMDR COOPER: Yes.

40 FLTLT ROSE: It would involve maintainers?

CMDR COOPER: If that's relevant. Some investigations where
maintainers, if they were witnesses or seen something, yes. We encourage
45 any input from anybody.

OFFICIAL

FLTLT ROSE: Including people in the Command Post, Operations Officers?

5 CMDR COOPER: If that was required. But I don't recall if we received any of these or not. I don't remember.

10 FLTLT ROSE: So for your role, as the on-site Investigator in Charge, you didn't read or receive these filled out forms or handwritten notes that anyone completed on that day?

15 CMDR COOPER: I believe I put it in the statement. We received them over the next day or so via scan. Bearing in mind we were actually very limited in what we could receive. We were using Defence laptops. So the whole idea of the investigation at this point is collecting evidence. So we're collecting the evidence, not actually analysing it at this stage.

20 So, yes, we had them, that's great. And then we move on to collecting more evidence. We're in the evidence collection phase of the investigation. So we weren't using those statements. We were just ensuring we had those statements from the crews.

FLTLT ROSE: You didn't necessarily read them as you were going about your initial processes?

25 CMDR COOPER: I might have glanced over them. We didn't actually bring them in. They may have been used to inform some of our initial – how we were going to do things. I know they were used by the team who went to interview the aircrew a few days later at Holsworthy, to form the basis of those interviews.

30 FLTLT ROSE: Did yourself or anyone else that you were aware of in your investigation team advise the aircrew or anyone else on the ground at Proserpine not to talk to each other about what they saw?

35 CMDR COOPER: I personally did not. And it would be my understanding that's the normal practice, but it's not a – I don't know if it was formally advised to them or not.

40 MS McMURDO: What, it's normal practice not to discuss or to discuss?

45 CMDR COOPER: There's no legal requirement, ma'am. It is basically to get the best evidence. And we're always after the highest quality evidence. The best evidence is the memory of that person, not a shared memory of the crew. So if we can get the evidence of that person – and we don't go as far as saying, "Don't talk to each other until you've written it

OFFICIAL

down”, but it’s an advice we give them. “It’d be a better idea if, on the first available opportunity, go away somewhere quiet, write down everything you’ve heard and if you’ve got the form, use the form as a prompt then.”

5 MS McMURDO: The Military Police Officer, was he aware that you gave these forms to the flight crew of the other aircraft involved?

CMDR COOPER: I do not know, ma’am. No.

10 MS McMURDO: You didn’t tell him?

CMDR COOPER: I’m not aware if he knew of that one. I don’t - - -

MS McMURDO: No.

15

CMDR COOPER: Personally, I did not tell him, no.

MS McMURDO: No, thank you.

20 AVM HARLAND: Do those forms, when they’re filled out and submitted to DFSB, do they have any particular protections in terms of - - -

CMDR COOPER: Yes, sir. They basically form part of our evidence as with any evidence gathered in any investigation. So they’re subject under
25 release through the OIC and CAF, if necessary, through the normal evidence requirements out of a DFSB investigation.

AVM HARLAND: And that’s written in which document?

30 CMDR COOPER: That’s as per the DASR-M, sir. So it will only be released with the say-so of the OIC of the investigation. But it’s very rarely done.

AVM HARLAND: So if this was to go to somebody else – just say the
35 Coroner or the QPS – it would need to be formally released by the Defence Aviation Authority?

CMDR COOPER: Yes. The main idea of these ones, using the Standards Best Practice, the ICAO is having that ability of people to honestly put
40 down their thoughts without fear of incrimination for this investigation – for an Aviation safety investigation provides very valuable investigation evidence. But obviously if it needs to be released under a legal thing, it will be. But obviously we make sure there’s the correct barriers in place for it to be casually – it won’t be casually released, anyway.

45

OFFICIAL

AVM HARLAND: So your priority is to get all the information to be able to do a good safety investigation, to get the best benefit in the future and the best lessons learnt, rather than it be evidence for some other Inquiry or for any other purpose.

5

CMDR COOPER: Yes, sir. And in this case, for another Inquiry, we basically – and certainly with our understanding when we're talking with other agencies is, if you need the information, it's best to reinterview the actual member to actually get the information for that other investigation.

10

AVM HARLAND: And that was the basis of your approach for managing yourself through the Bushman 83 accident?

CMDR COOPER: Yes, sir. And all our investigations are exactly the same. We use the same technique for the lower grade investigations all the way up through to Class A's.

15

AVM HARLAND: Yes, okay. Thank you.

20 MS McMURDO: So it's a - - -

FLTLT ROSE: Thank you.

MS McMURDO: Sorry, it's a common complaint of witnesses to a traumatic event, and it is something that we've heard from witnesses in this Inquiry, that they did find it triggering to have to recall to many different people and investigations the same record of events, and that it would be better if they could give one record of events that could be used as the basis by all the investigatory bodies so that they didn't have to go over the same material all the time; accepting that they would sometimes have to be asked additional questions from that particular Inquiry's viewpoint.

25

30

Now, that isn't something that the DFSB has to date taken into account in its approach here because of the reasons that you've given, which are legitimate reasons. But there is actually a tension there that we've found in this Inquiry.

35

Is there some feasible way that an initial statement could be taken that could be used by all the various enquiring bodies as their key document so that witnesses didn't have to give the same evidence over and over again to various investigatory bodies that only have to be asked particular questions that needed further clarification?

40

CMDR COOPER: I think, ma'am, that would be a major – "major" is

probably too strong a word – a larger policy shift for how we handle investigations.

5 MS McMURDO: It's a policy shift. It would be a policy shift, yes.

CMDR COOPER: And I think that would certainly be a question direct to DFSB in that side of things, because that would be – the implications in the Safety Management System would have to be understood before we did that.

10 MS McMURDO: I understand. Thank you.

AVM HARLAND: Could there be a possibility of, like, a Part A and a Part B, where the Part A is just the fundamentals of the witness statement as per, we heard, about 13 questions, I think it was, from the QPS that they were seeking to be answered as a witness statement; and then a Part B, which is really more about exploring some of the other issues and contributing factors, organisation factors, that you would be interested in as DFSB?

20 And in that way, you've sort of split the statements, and rather than having to take two statements and go through the process twice, one part of the statement can be used in that purely evidence to other agencies, and the other part is the learnings and the things that you're interested in in addition to that as the DFSB?

CMDR COOPER: So I think the practicalities of how we do it – and I believe what this investigation has taught us is that we haven't dealt with parallel Coronial investigations in Australian Defence for a very long time. And the practicalities certainly will be along those lines. Certainly, probably worth addressing again through DFSB, direct to DFSB, how we can actually make the system better is what we've learnt from this one.

35 AVM HARLAND: Okay, thanks.

MS McMURDO: Thanks.

FLTLT ROSE: Are you aware if the QPS ever asked the DFSB for copies of the aircrew's accounts of the incident?

40 CMDR COOPER: Yes, I believe that was – and I can't remember who and what date when I was in Proserpine – that was the question, and pretty much I provided the same – paraphrased the answer which I've – the discussion we've just had as to why we've had it, and we've had to – so, yes, basically they did ask and I've given, "No, I'm afraid we can't release

what we've got". And I suggested to them alternative methods for getting the same information, i.e. interviewing the members.

5 FLTLT ROSE: Can I take you to the first page of this form? I'll read the introductory words out. Now, this part of the form is Official. I note that the last two pages are "Official: Sensitive", so I'm just reading from the Official part. It says:

10 *The intent of this form is to capture your recollections of the event and any impressions of what may have contributed to the event. Research has shown that recording your memory of the event as soon as possible protects against forgetting, and external influences. The information you provide will be used to assist in an investigation of the event.*

15 *The sole intent of the safety investigation is to work out what happened and why it happened, so that appropriate safety action can be implemented to stop this event from happening again. The investigation will be conducted in a just and fair manner, meaning*
20 *that it is not about determining fault or liability.*

The investigator may contact you at a later date to go through the information you have provided.

25 Do you see that there?

CMDR COOPER: Yes.

30 FLTLT ROSE: Where it says:

Research has shown that recording your memory of the event as soon as possible protects against forgetting, and external influences –

35 I take it you agree with that proposition?

CMDR COOPER: Yes, I do. I believe that came from the human factors.

40 FLTLT ROSE: Human factors?

CMDR COOPER: The DFSB human factors area.

45 FLTLT ROSE: So that is subject matter experts on human factors within the DFSB?

OFFICIAL

CMDR COOPER: My understanding is the development of the form and the questions were by human factors part of DFSB. I'm not sure at what stage it was developed, but that's my understanding of where the content came from.

5

FLTLT ROSE: Paragraph 40 of your statement, you state that:

The aircrew in the formation did complete these forms or similar handwritten notes overnight on 29 and 30 July.

10

CMDR COOPER: Yes.

FLTLT ROSE: And that they were scanned and sent to the DFSB on 31 July?

15

CMDR COOPER: That is my understanding, yes. That is correct, yes, from what I've seen on the forms themselves.

FLTLT ROSE: As far as you're aware, did the aircrew complete these when they were back in Sydney?

20

CMDR COOPER: It is possible given the times and dates. Although, it is possible they did them on the way – some of them were handwritten, so I don't know where they were actually completed.

25

FLTLT ROSE: And did they hand them directly to a DFSB investigator, or did they go through their own Chain of Commands?

CMDR COOPER: I'm just aware they were scanned and sent through.

30

FLTLT ROSE: So if you go back to paragraph 25, you state that you arrived Proserpine Airport at 8 pm on 28 July 2023 – sorry, 29 July 2023?

CMDR COOPER: Yes.

35

FLTLT ROSE: And you were accompanied by nine other members of your team.

CMDR COOPER: Yes.

40

FLTLT ROSE: Sorry, five of the members of your team were on-site at Proserpine, but there were nine other members who then deployed to Holsworthy. Is that how it was differentiated?

OFFICIAL

5 CMDR COOPER: No. I'll clarify. So I flew up. There was 10 of us on board the aircraft; myself plus nine others. We also deployed five members of the ASIT, the Aviation Safety Investigation Team, to Holsworthy for arrival on the 30th.

10 FLTLT ROSE: So they were part of the same group that went to Proserpine - - -

CMDR COOPER: Negative. No, extra.

10 FLTLT ROSE: Extra. From Canberra?

CMDR COOPER: So nine – yes. So nine up to Proserpine and then an additional team to Holsworthy of five.

15 FLTLT ROSE: And those particular persons were to conduct interviews with members of the 6 Aviation Regiment at Holsworthy Barracks?

CMDR COOPER: Yes.

20 FLTLT ROSE: Do you know if they had access to these completed interview forms or handwritten notes that the aircrew had made?

CMDR COOPER: Yes, they had, by that stage, by the time they started their interviews.

25 FLTLT ROSE: We'll come back to what happened at Holsworthy in a moment. But let's just go back to what was happening at Proserpine at the time. At paragraph 41 you state that you met with BRIG Dean Thompson, the Commander of 16 Aviation Brigade, at Proserpine?

30 CMDR COOPER: Yes.

FLTLT ROSE: Now, he was already there, I take it?

35 CMDR COOPER: Yes, he was.

FLTLT ROSE: So you met with him at around the time you landed, 8 pm on the 29th?

40 CMDR COOPER: Unsure of the exact time, but it wasn't that far afterwards, by the time we unloaded the aircraft.

FLTLT ROSE: And did he give you an update brief?

45

OFFICIAL

CMDR COOPER: Very brief, of where things – what was happening and the deployment of – yes, where everyone was and what the – I can't recall the exact content, I've got to admit, but yes, he gave us a basic update brief of what was happening.

5

FLTLT ROSE: By the time you arrived at 8 pm on the 29th, the aircrew had left?

CMDR COOPER: Yes.

10

FLTLT ROSE: Were you aware of that before you arrived?

CMDR COOPER: Yes. It came up, I believe, during the latter stages of the initial response meeting, which is why we deployed – we split the team with another team of five going to Holsworthy in preparation, to conduct interviews with aircrew.

15

FLTLT ROSE: Was that a surprise to you, that the witnesses to the incident had left the site before you and other members of your team had a chance to arrive on site?

20

CMDR COOPER: Surprise. It was unexpected. It was, yes. That's the facts we were presented by the time we got through the initial response meeting. So we are basically trained to make do with what we've got and how we can actually apply – get our best results out of where the people were actually deployed. So, yes.

25

FLTLT ROSE: You said before in your evidence that the DFSB had the ability to tell, say, the Appointment Authority, "No, we're going to run our investigation a different way. We're going to run it our way". Did you not feel as if you were empowered enough to say, "No, we want the witnesses to the incident to stay on site until we arrive"?

30

CMDR COOPER: It is a discussion I've had. We've had that kind of discussion before in other investigations but it's not a – we have no command authority over the units to tell them what to do. I believe there was good reasons for bringing the members back down to Holsworthy and we basically had to fit in around that to try and get the best evidence we could out of that situation.

35

40

FLTLT ROSE: So can I take it then that although you can run your own investigation how you see fit, you still have to rely on cooperation with the services rather than giving them directions?

OFFICIAL

CMDR COOPER: To some degree, yes. We had to rely on Command direction from inside the units and it works pretty well most of the – it has worked all the time in my experience.

5 FLTLT ROSE: Were you told who had directed the aircrew to go back to Holsworthy?

CMDR COOPER: Not directly, no.

10 FLTLT ROSE: “Not directly”, what do you mean by that?

CMDR COOPER: So I don’t know who – I was not told who directed them to go back to Holsworthy.

15 FLTLT ROSE: Now, when you were at Proserpine, you also met with the Proserpine Airport Commander.

CMDR COOPER: Yes.

20 FLTLT ROSE: Can you look at the pseudonym list and see if that person is on that list, and tell me what their pseudonym is?

CMDR COOPER: D13. When I say “met with”, I believe they were present at the meeting, the update brief with BRIG Thompson. I don’t
25 recall any extended conversation, or any conversation, with that member.

FLTLT ROSE: Did you - - -

CMDR COOPER: That’s – sorry.

30 FLTLT ROSE: No, you were going to say?

CMDR COOPER: Yes, I was. As I said, that before and subsequently they engaged more with my technical lead to organise some maintenance –
35 the evidence collection, the technical evidence collection.

FLTLT ROSE: Did you have any discussions with MAJGEN Jobson, as the Appointing Authority, prior to arriving on site, yourself?

40 CMDR COOPER: Not directly myself.

FLTLT ROSE: Did you speak with D19 prior to arrival?

45 CMDR COOPER: I believe I spoke to him briefly and it would have been overnight on the – I think sometime overnight on the 28th/29th. I can’t

OFFICIAL

recall the conversation. As general terms, our Standing Instructions, I would, as the OIC and Deputy Director of Investigation, engage with the Commanding Officer or the hierarchy of the units and I would basically engage with those persons, and I think they form part of that engagement.

5

FLTLT ROSE: You state that before you arrived, the QPS had already inspected and cleared the personal effects that PO Theissen had handed over to you.

10 CMDR COOPER: That was what I was told. I didn't - - -

FLTLT ROSE: You weren't there when it occurred?

CMDR COOPER: I did not witness him doing it, no.

15

FLTLT ROSE: Did your team catalogue and store these items, these personal effects?

CMDR COOPER: Yes, we did, the next day.

20

FLTLT ROSE: And you state that your team, subsequently, passed any personal effects not deemed necessary to the investigation back to Aviation Command?

25 CMDR COOPER: Yes, we did.

FLTLT ROSE: Was that for the intention of them to return to families?

CMDR COOPER: Yes.

30

FLTLT ROSE: Are you aware if that occurred?

CMDR COOPER: I believe so. Our Evidence Log reflects that there was equipment transferred back. I'm not sure of the exact date.

35

FLTLT ROSE: But I take it that wasn't your responsibility once you handed it over to Aviation Command?

CMDR COOPER: No.

40

FLTLT ROSE: Now, at paragraph 29 you state that the ways in which the Defence Flight Safety Bureau and the Joint Military Police Unit are meant to engage with each other after an incident like this is set out in the Investigator Support Framework?

45

CMDR COOPER: Yes.

FLTLT ROSE: Is that a specific document?

5 CMDR COOPER: No, it basically forms part of our Standing Instructions
on how we actually carry out investigations. We've worked out all the
supporting elements for an investigation and one of those is the Joint
Military Policing. In a typical investigation that doesn't involve fatalities,
10 they would be providing site security, things along those lines. And
sometimes assistance with evidence analysis.

But obviously, in this case, it's slightly different. So, yes, we do engage
with JMPU. And, in fact, as in para 29 there, earlier on that year we'd
15 actually sat down with them in their Headquarters in Canberra to go through
how we – as a regular engagement session, to talk about sort of how we
would work together on investigations and what sort of time.

FLTLT ROSE: And because there were fatalities, are you stating that site
20 security was handled by the QPS?

CMDR COOPER: Yes. And again, because of the difficulties with this,
the actual site being in the ocean itself, we had no strict site. The only site
we had was Proserpine and it was secured by the nature of the fact it was
25 secured by a Defence team, access at the gate. So the site – when I'm
talking of "site", a normal accident site, if you imagine an aircraft crash in
a paddock, in a field, there would be site security with fencing around it or
cordons around it. Initially, that would be done with air fatalities with all
civil agencies until it's handed over to Defence. And, if necessary, we
30 would use JMPU to maintain site security after the site has been handed to
Defence.

FLTLT ROSE: You state that there was a designated DFSB investigator
appointed as a point of contact for the JMPU to liaise with.

35 CMDR COOPER: Yes, that is not specifically for this investigation. But
in our team, we have Liaison Officers for organisations. I just can't give
you the name, but I also can't recall the name of who it was. So in the
normal day to day they would have, for example, arranged that meeting
earlier on in 2023 to engage with them. We have one for ATSB, we have
40 one for CASA. All the organisations we could work with, we have a
Liaison Officer.

We've only got a small team, so many people do multiple jobs on that one.
It's really just to be a Liaison Officer with those organisations and support
45 us.

FLTLT ROSE: Were you a Liaison Officer for any agency?

5 CMDR COOPER: No, because the DDI role there was enough to do in that role.

FLTLT ROSE: There is a Memorandum of Understanding – sorry, is there a Memorandum of Understanding or some other kind of agreement between the DFSB and the QPS?

10 CMDR COOPER: Not that I'm aware of.

FLTLT ROSE: Is there one between the DFSB and Comcare?

15 CMDR COOPER: Not apart from beyond – not a specific one with us, apart from the standard engagement with Comcare with Defence.

FLTLT ROSE: But there is a Memorandum of Understanding between the DFSB and the Australian Transport Safety Bureau?

20 CMDR COOPER: Yes, there is.

FLTLT ROSE: I hand you another document.

25 CMDR COOPER: Thank you.

FLTLT ROSE: Is this the Memorandum of Understanding between the ATSB and the DFSB?

30 CMDR COOPER: Yes, it is.

FLTLT ROSE: If you go to page 15, the second-last page? It's signed by the Director of the DFSB and the Chief Commissioner of the ATSB on 14 September 2022.

35 CMDR COOPER: Yes.

FLTLT ROSE: And it relates to a cooperation between agencies in transport safety investigations.

40 CMDR COOPER: Yes.

FLTLT ROSE: I tender that document.

45 MS McMURDO: 156. I've got it right this time.

**#EXHIBIT 156 - MEMORANDUM OF UNDERSTANDING
BETWEEN ATSB AND DFSB**

5

FLTLT ROSE: On page 5 of this document, paragraph 4.1, the MOU recognises that there may be joint investigations between the ATSB and the DFSB.

10

CMDR COOPER: Yes.

FLTLT ROSE: Were the ATSB involved in an investigation to the crash of Bushman 83 at all?

15

CMDR COOPER: They provided subject matter experts and, to enable that, they formed an investigation. They staffed an investigation for their own process to enable that assistance to our investigation.

20

FLTLT ROSE: So they had a parallel investigation occurring, or were they embedded within your investigation?

25

CMDR COOPER: They weren't embedded into the asset because there's no mechanism for it, but they would provide us the external subject matter experts into our investigation predominately around underwater wreckage recovery, not so much salvage – so the underwater wreckage recovery, evidence collection and the voice flight data recorder recovery, certainly in these situations when it was underwater.

30

FLTLT ROSE: Were there any members of the ATSB on site to assist you at Proserpine?

35

CMDR COOPER: Yes, they were. They arrived, I believe, on 2 August as well.

40

FLTLT ROSE: I'm just looking at your Annex A to your statement. They're not included – nobody's names from the ATSB is included in this.

45

CMDR COOPER: No. And that's my understanding of the ATSB under the Transport Safety, they protect the names of their investigators under the *Transport Safety Act*. I might be incorrect, but that was my understanding of not including them in the list.

50

FLTLT ROSE: Sir, if you go to page 6 of this MOU, paragraph 4.9, it states:

5 *When the ATSB notifies the DFSB of its decision to conduct an investigation or as soon as practicable after that notification, the ATSB will inform the DFSB whether or not the ATSB will need to interview Defence members.*

10 *At that time, the parties agree to discuss whether it is preferential that Defence members are interviewed by the ATSB before they are interviewed by the DFSB for DFSB investigation purposes.*

Is this the same approach that the DFSB takes with any other agencies; that is, that it negotiates with those agencies as to who can access those Defence members first for interviews?

15 CMDR COOPER: Sorry, could you clarify the question, which agencies you're referring to?

FLTLT ROSE: QPS. Or any police service.

20 CMDR COOPER: My understanding is we would get our interviews done whenever we can. Obviously, the primacy if there's any Coronial stuff, to my understanding, would be we get handed over the site – and that may include witnesses, it may not – the site by the police or the Coroner to us, and then we've got the site.

25 If we can collect our evidence with an administrative interview form, et cetera, we'll do that first. But I'm not sure – there was certainly not a procedure I'm aware of that we handed over – there was any sort of primacy in it.

30 FLTLT ROSE: Was it your understanding that the QPS had interviewed any of the witness aircrew?

35 CMDR COOPER: I was unsure, at the time I was up on site, who/what had been interviewed.

FLTLT ROSE: Would it have been a surprise to you if they had been interviewed prior to the DFSB investigators interviewing them?

40 CMDR COOPER: No. It'd be my expectation that if they would – because there was fatalities were involved and the site wasn't ours at this point, we had to wait for official handover of evidence from the Coroner, then it would be my expectation they would interview those – the QPS would be trying or – if not actually interview any witnesses.

45

OFFICIAL

MS McMURDO: Does the DFSB have any compulsion powers to make people give a statement to them or is it purely voluntary?

CMDR COOPER: No, ma'am.

5

MS McMURDO: So are they told that it's voluntary when they're given this form or are they just asked to - - -

CMDR COOPER: Strongly encouraged, ma'am, and we've never had anyone refuse, to my – sorry, I'll rephrase that. I've never experienced anyone refusing to - - -

10

MS McMURDO: Yes, but do you tell them it's voluntary?

CMDR COOPER: I believe so, yes, ma'am. Yes.

15

FLTLT ROSE: The Inquiry has received evidence that QPS Officers conducted some brief interviews with three of the aircrew of Bushman 84 on 29 July '23. That's prior to them returning to Holsworthy. And you weren't aware of that at the time?

20

CMDR COOPER: When I was at Holsworthy, I subsequently heard about it. But at the time I was at – sorry, at Proserpine I was not aware they were actually doing it.

25

FLTLT ROSE: But is it your understanding that there would be no issues from you or anyone else in your investigation team that that had occurred?

CMDR COOPER: Not at all. It's perfectly fine.

30

FLTLT ROSE: Now, in terms of just going back to the MOU, at page 6, paragraph 4.10, it reads that:

35

The parties agree that Defence members to be interviewed by the ATSB will not be given access to any onboarding recording, audio or radar data associated with the investigation prior to being interviewed by the ATSB.

Is that a practice that the DFSB also employs?

40

CMDR COOPER: Not formally. It would be in the logical flow of evidence providing people with the – we want their recollections, what they actually felt. We then use those recollections in interview. And the way that evidence will be analysed is we've got the initial thoughts, which will be on the – however, we've gathered it – the initial interview, sometimes

45

the follow-up interviews and then compared with the actual – the on board recordings.

5 And any differences there is useful in our investigation to validate the weight of the evidence, how we'd process it, what we'd do with it and how we'd analyse it. So it's not done for legal purposes, it's done in practical purposes. The evidence is better collected in a raw form, without the access to the ones beforehand. And in practical terms, in this case, there wouldn't have been any access to that material anyway because it took a while before
10 we actually got access to that on board recording.

But any other accident where we've had on board recording, personally, I would not provide it to the people before interview because it actually may influence what we get out of the interview. We compare it altogether and
15 we do the analysis to see what that actually looks like. Again, there's no liability or anything. We're not accusing people of making stuff up, it's just useful for how we analyse it.

FLTLT ROSE: So in terms of the timeline. Members of your team went to Holsworthy to interview the aircrew on 31 July 2023. It may have taken a few days. Are you aware if it took a few days to conduct those interviews?

CMDR COOPER: Yes, it did. Yes, they initially got there, I believe, on the 30th, or maybe the 31st, and then there was a delay while the – a request
25 from the unit to delay the start of the interviews from a welfare point of view. I'm not sure of the details. Then they got into the interviews, and they took a couple of days.

FLTLT ROSE: It took months afterwards to be able to obtain the data from the flight data recorder, I understand.
30

CMDR COOPER: The flight data recorder was – we had two levels in the flight data recorder. The actual flight data took a long time to analyse, to – the actual download, I believe, we had done in, I think it was about the 14th,
35 but we actually got a successful download mid-August. But by the time we actually got the data analysed – and that's taken a very long time to work out what it means, the raw data. The voice was available a lot earlier.

FLTLT ROSE: Earlier than the middle of August?
40

CMDR COOPER: No, it was basically after that.

FLTLT ROSE: Did members of your team then go back and re-interview any of the aircrew using aspects of the voice recorder or flight data
45 information?

CMDR COOPER: Unsure. I know there was at least two rounds of interviews, some aircrew had three. But I can't remember the details of why and when which aircrew were interviewed more than once.

5

FLTLT ROSE: You weren't involved in those processes?

CMDR COOPER: I was involved in overseeing it. I wasn't conducting those interviews, no. Correction, I sat in on one or two of the interviews, but I can't remember which aircrew it was.

10

FLTLT ROSE: With the best of your recollection, do you know if those first, second or third interviews were all conducted in 2023 or were some in 2024?

15

CMDR COOPER: It's possible there might have been some in early '24, but I can't recall exactly.

FLTLT ROSE: From your memory, were any of the aircrew played aspects of the voice recordings or shown any of the data from the flight data recorder?

20

CMDR COOPER: I believe there was a request to listen to their own voice from their own aircraft. And that, I believe, was the extent of what was given. They certainly were not given – I do not believe they were given any data at all.

25

FLTLT ROSE: Let's go back to when you arrived at Proserpine back on 29 July 2023. That's paragraph 43 of your statement. You state that:

30

The Aviation Safety Investigation Team inspected and quarantined the remaining Aviation Life Support Equipment, and the other aircraft flown in the formation, and the fuel used to refuel the aircraft.

35

CMDR COOPER: Yes.

FLTLT ROSE: Were you aware that the MRH-90s that were involved in the search and rescue for Bushman 83 refuelled using the same fuel that they had used for the incident sortie?

40

CMDR COOPER: That would be a logical assumption, yes.

FLTLT ROSE: Does the DFSB provide any advice to aircrew involved in

search and rescue activities about the safety issues involved with using the same source of fuel?

5 CMDR COOPER: I cannot recall. If it was provided, I can't recall when it was provided. It would be a consideration, if there's any unknowns or not. But that would be a risk-based decision, depending on the – bearing in mind that all three other aircraft that were flying had no problems with the same fuel. It could have been a risk-based decision whether to carry on flying using that fuel supply.

10 FLTLT ROSE: Paragraph 44, the operation and planning information in the Operations tent was also quarantined. We've talked about this previously.

15 CMDR COOPER: Yes.

FLTLT ROSE: Then at paragraph 32 you state that you attended the Situation Room at the Whitsundays Police Station on 30 July 2023.

20 CMDR COOPER: Yes.

FLTLT ROSE: Was that in the morning?

25 CMDR COOPER: I believe so, yes.

FLTLT ROSE: Did you attend daily briefings at the police station whilst you were at Proserpine?

30 CMDR COOPER: Yes. I was based out of the QPS most of the time, and then moving out to the site when required. So it was one in the morning, one on the afternoon – or one in the evening – correction.

35 FLTLT ROSE: In Annex A to your statement, you list the names of QPS Officers you liaised with while you were on site at Proserpine?

CMDR COOPER: Yes.

FLTLT ROSE: You refer to Acting Inspector Adam Dyer?

40 CMDR COOPER: Yes.

FLTLT ROSE: Or Dwyer, I think you wrote. He was the Officer in Charge of Operation Victor Cloak?

45 CMDR COOPER: Yes.

FLTLT ROSE: That was the name of the search and rescue operation that QPS used?

5 CMDR COOPER: QPS used, yes.

FLTLT ROSE: You also liaised with Detective Inspector Emma Novosel.

10 CMDR COOPER: Yes.

FLTLT ROSE: What did you understand her role to be, as distinct from Acting Inspector Dyer's?

15 CMDR COOPER: I believe she was in charge of the actual investigation, the investigation side of it, rather than the actual operation to run it. But I'm unsure of the exact details.

FLTLT ROSE: The Inquiry has heard evidence that she was in charge of the investigation for the Coroner.

20 CMDR COOPER: Yes.

FLTLT ROSE: But you didn't necessarily appreciate the distinction between those two parallel investigations at the time?

25 CMDR COOPER: No. I was aware of – yes, aware there was a – and I was probably struggling more to articulate my sort of understanding of it. But yes, that's my understanding, she was from the actual Coronial side of it, or the QPS side of it. And then there's the actual running of the operation.

30 FLTLT ROSE: For the search and rescue.

CMDR COOPER: She was more for the actual investigation part of it rather than the search and rescue operational side of it.

35 FLTLT ROSE: You also referred to Senior Constable Joseph Cook from the Forensic Crash Unit in Brisbane.

40 CMDR COOPER: Yes.

FLTLT ROSE: And a Senior Sergeant Ritchie Callaghan from the QPS Disaster Victim Identification Team?

45 CMDR COOPER: Yes.

5 FLTLT ROSE: Then you list the various different issues you engaged with each of them about in that annex. For example, you engaged with Acting Inspector Dyer about evidence storage and quarantine and the salvaging of the flight data recorder?

CMDR COOPER: Yes.

10 FLTLT ROSE: You state that you engaged with Detective Inspector Novosel about various issues, including the agreed methods for provision of information to the Coroner via the Provost Marshal of ADF?

CMDR COOPER: Yes.

15 FLTLT ROSE: What role does the DFSB have in what information the Provost Marshal can give to the Coroner, or the QPS on behalf of the Coroner?

20 CMDR COOPER: We were asked by QPS to provide information for the Coroner, which we started providing and getting details together. We were advised to pass it – we had to pass it through the Provost Marshal for then passing on to the Coroner. So we were not telling the – we were responding to requests for information and providing it to the people we were told to provide it to.

25 FLTLT ROSE: Is that standard for investigations involving fatalities?

30 CMDR COOPER: This, again, earlier comments, is the first fatality investigation we've had on Australian soil with DFSB for a very long time. So the procedures were pretty new to all the people involved. And I would suggest that's what we're – as we were working through the investigation – and this certainly characterised the first few days of the investigation – we were feeling our way through the procedures required to get the information to the people that needed it as fast as we can – as we could, sorry.

35 FLTLT ROSE: Ms McMurdo, I do note the time and I'm wondering when - - -

40 MS McMURDO: Sure. Just on that point, before we break, you say the DFSB was told to provide the requested information to the Coroner through the Military Police. Who told you that?

45 CMDR COOPER: That was provided me, ma'am, from the OIC. And that came through – I'm unsure exactly where it came through. It was on an "Official: Sensitive" email, but it was basically the decision was made

OFFICIAL

to provide – to give the Coroner the information via the Provost Marshal. The Provost Marshal would collate it from us and pass it through.

5 MS McMURDO: Sorry. The OIC of?

CMDR COOPER: Sorry, the Officer in Charge of the investigation directed DFSB.

10 MS McMURDO: DFSB OIC, thank you.

CMDR COOPER: Thank you.

MS McMURDO: We'll have a 10-minute break now. Thank you.

15

HEARING ADJOURNED

HEARING RESUMED

20

MS McMURDO: Yes, FLTLT Rose.

FLTLT ROSE: Do you still have your statement in front of you?

25

CMDR COOPER: Yes, I do.

FLTLT ROSE: Paragraph 34. You refer to arriving at the police station on 30 August. Do you mean 30 July?

30

CMDR COOPER: Yes. Apologies.

FLTLT ROSE: Do you have your pen with you?

35

CMDR COOPER: Yes, I do.

FLTLT ROSE: Could you please change that to 30 July, and then just initial next to it? You also state that the site and the wreckage needed to be released to the Aviation Safety Investigation Team by the Coroner. When you say "by the Coroner", do you mean an official Directive from the Coroner or was it an informal handing over of the site by QPS?

40

CMDR COOPER: Official Directive from the Coroner, and I assume to QPS. So via QPS, yes.

45

OFFICIAL

FLTLT ROSE: By “the site”, do you mean the wreckage as opposed to the physical site in the ocean?

5 CMDR COOPER: “The site” is a generic term I’ve used here to describe evidence collected. So in this case any wreckage recovered from the site, Proserpine. So any evidence we’re collecting out of Proserpine, and any evidence already collected at the police station at Airlie Beach as well.

10 So going back to the earlier comments, a site we’re looking at is most of the time a contained area with aircraft wreckage in it, as opposed to what we had in this case.

FLTLT ROSE: That wreckage and the entire site then was released to your team on 4 August 2023?

15 CMDR COOPER: Yes, that’s my understanding.

FLTLT ROSE: This was easily facilitated by the Coroner?

20 CMDR COOPER: I have no experience to base it on, to compare it to any other investigation, but it seemed a reasonably easy process.

FLTLT ROSE: Did you and your team have access to the wreckage, though, in the days preceding 4 August?

25 CMDR COOPER: Yes, we did. Under supervision of QPS. So we were – they accompanied us to make sure they were – because it was still under their custody.

30 FLTLT ROSE: At paragraph 36 you state that Senior Constable Cook provided you with a list of requirements for the supplementary report to the Coroner. And you referred to this earlier in your evidence today.

35 CMDR COOPER: Yes.

FLTLT ROSE: That represented the minimum reporting requirements for the Coroner.

40 CMDR COOPER: That’s what he advised it was for, yes.

FLTLT ROSE: The understanding is that more information would be required at a later date.

45 CMDR COOPER: Yes.

OFFICIAL

FLTLT ROSE: The request included details about the aircraft, the crew, the weather, other aircraft in the formation and witness statements.

CMDR COOPER: Yes.

5

FLTLT ROSE: Could I have the witness be shown Exhibit 13, Annex A?

MS McMURDO: Yes.

10

FLTLT ROSE: Is this an email from Senior Constable Cook to you sent on 2 August 2023 at 1858?

CMDR COOPER: Yes, it is.

15

FLTLT ROSE: Attached to this email is an excerpt of the QPS OPM?

CMDR COOPER: Yes.

20

FLTLT ROSE: And OPM, do you understand it relates to a manual that QPS use?

CMDR COOPER: I wasn't aware. But yes, thank you.

25

FLTLT ROSE: No, that was a question for you. You're not aware what OPM stands for?

CMDR COOPER: No, I wasn't.

30

FLTLT ROSE: It sets out the procedure QPS Officers are to follow following an aircraft incident resulting in a death?

CMDR COOPER: Yes.

35

FLTLT ROSE: And it includes information that QPS Officers have to include in their report to the Coroner.

CMDR COOPER: Yes.

40

FLTLT ROSE: The Inquiry has heard evidence that you'd asked the QPS to release the flight data recorder to your team once it had been recovered?

CMDR COOPER: Yes.

OFFICIAL

FLTLT ROSE: That the QPS explained to you the Coroner needed certain information about the incident from you before it could release the site to you?

5 CMDR COOPER: Yes, aware of that.

FLTLT ROSE: And that you had provided some information, but the QPS said it was not sufficient?

10 CMDR COOPER: That sounds familiar, yes.

FLTLT ROSE: Which is why Senior Constable Cook sent you this email?

15 CMDR COOPER: Yes.

FLTLT ROSE: Do you recall conversations with him about this?

20 CMDR COOPER: Yes. And to some degree – and paraphrasing the replies I made earlier – saying that we had to run it through the – we were exploring how we would do it through Defence. And that’s where it led up to the point where we were told we had to put the requirements through the Provost Marshal. So yes, I did discuss it with him.

25 FLTLT ROSE: So initially QPS went to you, from DFSB, for this information?

CMDR COOPER: Yes.

30 FLTLT ROSE: And you thought you should run it through Defence before you provided it to QPS?

35 CMDR COOPER: No, I pushed it through to the OIC and requested advice on how I should reply to this. In practical terms, as I said before, we were trying to get the information to them as fast as we possibly could. I got my team to start work on the basics, i.e. the description of the aircraft, all the stuff which is not relating – was general information that wasn’t available to QPS. So we started work gathering that information. Obviously, things like the statements, as we’ve already discussed, was slightly more problematic. But I was gathering that information.

40 While I was doing that, I got advice from – I asked the OIC, the Officer in Charge of the investigation at DFSB, how this should be – “Am I authorised to push it straight through to QPS?” And the discussions happened over the next couple of days. I believe I mentioned the statement on the – I was

actually advised of how to do it, which was to push it through to Provost Marshal.

5 FLTLT ROSE: Help me understand this for a moment. We've talked earlier in your evidence about the independence of the DFSB from Defence, from the Chain of Command, from DASA.

CMDR COOPER: Yes.

10 FLTLT ROSE: Yet you're still seeking permission from Defence to release basic information about an incident to the policing authority of that State?

15 CMDR COOPER: Yes. Some of it was to do with clarification on security. Some of it's to do with the fact that it was information outside our investigation. I had to ask Avn Command, certainly with the details of the crew, their history. That would have had to have come from Avn Command. So we were providing, in good faith, some of the information that we could do, which was not quite open source but which may have
20 been classified at Official level. So it had to be released through someone.

As mentioned, when I was attending the QPS Ops Room, I was literally sitting opposite from the QPS members. So the logical step was for them to ask me, as the only Defence member in the room, for this
25 information. We were trying to facilitate that, and that's how we did it, running through the Chain of Command inside my investigation, i.e. the OIC, and then getting advice external to the investigation of how it should be processed through Defence. If that answers the question.

30 FLTLT ROSE: That took a number of days, I take it?

CMDR COOPER: I believe so, yes. I could refer back to my statement, but I believe it was the – yes, 4 August was when I received notification of how to do it.
35

FLTLT ROSE: The Inquiry has also heard evidence that you had to receive legal advice from the ADF Legal before you could respond to the QPS; is that correct?

40 CMDR COOPER: Not me personally. That was more the OIC and the DFSB in general. So I pushed it up. I wasn't personally asking for legal advice. I would suggest it was pushed through the legal adviser to find out how we actually release this stuff. Because again, unfamiliar territory; we'd not operated in this manner with a Coroner before, in recent history.
45

OFFICIAL

FLTLT ROSE: So does this relate to before when I asked you questions about there was a legal adviser to DASA which you relied on as your first point of contact for legal issues? Is that correct?

5 CMDR COOPER: There is a Legal Officer in DASA, yes.

FLTLT ROSE: Is that who you sought the legal advice from, or did you go to Defence Legal?

10 CMDR COOPER: I personally did not seek legal advice. It was pushed through the Officer in Charge, through DFSB. I believe the Legal Officer in DASA was used. I'm not sure any contact with Defence Legal. I think there was, but I can't provide any details.

15 FLTLT ROSE: Has it ever caused you any concern that the DFSB doesn't have its own independent legal adviser separate from Defence?

CMDR COOPER: No, it hasn't. We have legal advice available through Defence Legal any time we need it.

20 FLTLT ROSE: At paragraph 37 you state that you sent this request to Director DFSB on 2 August?

CMDR COOPER: Yes, I did.

25 FLTLT ROSE: That was while collecting the information, clearing it through the ADF for operational security and other reasons, which you mentioned before.

30 CMDR COOPER: Yes.

FLTLT ROSE: At 38, you state that on 4 August 2023 you were made aware that all requests for information were to be sent through the Provost Marshal. So you arrived on site on the 29th and it took until 4 August for that system to be arranged, processes?

35

CMDR COOPER: Yes, that's my understanding.

40 FLTLT ROSE: Then you provided all the information to the Provost Marshal?

CMDR COOPER: I provided all the information we could. We provided up all the information we gathered and all the information we were able to provide. And we did not provide absolutely all the information in the annex to the exhibit you gave me.

45

FLTLT ROSE: Do you know how long it took from the time you gave it to the Provost Marshal to when it was then passed on to QPS?

5 CMDR COOPER: No, I do not.

FLTLT ROSE: Is it the case that you hadn't worked – had you worked with police officers in any State or Territory in an investigation prior to this one?

10

CMDR COOPER: No, I was not required in any investigation I worked with.

15 FLTLT ROSE: Paragraph 39, on 5 August, the Coroner released the wreckage and the voice flight data recorder to the ADF.

CMDR COOPER: Yes.

20 FLTLT ROSE: At paragraph 46 you state that your team, the Aviation Safety Investigation Team, had positive and productive relationships with both the Joint Military Police Unit and QPS?

CMDR COOPER: Yes, that's true.

25 FLTLT ROSE: There was an excellent collaboration between all three agencies, although you acknowledge that the QPS were frustrated about the delays in the release of information to the Coroner.

30 CMDR COOPER: That is my impression of what their – yes.

FLTLT ROSE: You said before that there wasn't – because this was the first time there'd been a fatality in about 20 years for the DFSB to investigate - - -

35 CMDR COOPER: I will clarify that. It was the first time we've had it on Australian soil. There was the Black Hawk accident off the coast. But this is one of the first big ones we've had on Australian soil involving a DFSB team interacting with Australian Coronial and QPS – or sorry, Police Forces.

40

FLTLT ROSE: Have these processes, that took some days to work out now with using the Provost Marshal as the conduit between Defence and police, have they been set up as permanent structures now and replicated in Standing Instructions?

45

OFFICIAL

CMDR COOPER: They hadn't been by the time I left. But I believe that was a work in progress. Again, that will be a question for the Director of DFSB.

5 FLTLT ROSE: At paragraph 47 you note that the Joint Task Force 1116, stood up by Headquarters Joint Operations Command, and led by GPCAPT Pont, took over the responsibility for the recovery operations from the Navy on 4 August 2023?

10 CMDR COOPER: Yes.

FLTLT ROSE: Then, paragraph 48, the Joint Task Force provided support to the DFSB with respect to the recovery of wreckage?

15 CMDR COOPER: Yes, that's true.

FLTLT ROSE: The Inquiry has heard evidence about a list of items that DFSB provided to the Navy divers, with a list of priorities about what you hoped could be recovered from the site?

20 CMDR COOPER: Yes, I'm aware there's a list.

FLTLT ROSE: Most, if not all, of those items were able to be recovered?

25 CMDR COOPER: To my recollection, yes, I think we got them.

FLTLT ROSE: Paragraph 50, members of your team were on site at Proserpine until 16 October 2023?

30 CMDR COOPER: Yes. We slowly drew down the numbers required based on the amount of evidence recovered.

FLTLT ROSE: Then it was handed over – the site was handed over to a commercial dive recovery vessel after that stage?

35 CMDR COOPER: No, that's actually – the commercial dive was actually ongoing before that, because I had a DFSB Safety Investigation Team member established on the dive vessel up until that point. So up until when it was handed over to Aviation Command – once we established we'd
40 recovered all the wreckage we required for our investigation, it was handed over to Aviation Command. And that stage, I believe, is when we recovered the member we had on board the commercial dive vessel.

45 FLTLT ROSE: Did you yourself go back to Proserpine after 9 August?

OFFICIAL

CMDR COOPER: I went back briefly the 24th/25th, around about there, I think it was.

FLTLT ROSE: Of August?

CMDR COOPER: Yes.

FLTLT ROSE: More and more wreckage was recovered and then your team catalogued and stored it in storage containers at Proserpine Airport?

CMDR COOPER: Yes.

FLTLT ROSE: I take it this time you were still prioritising the recovery of human remains?

CMDR COOPER: Definitely.

FLTLT ROSE: Paragraph 53, by 25 October 2023 your team deemed that they had recovered all the highly desirable wreckage necessary to inform the investigation?

CMDR COOPER: Yes, we did.

FLTLT ROSE: Was it then shipped down to Canberra to be examined?

CMDR COOPER: It had actually been shipped down already by that stage. We had a rolling number of shipments. I think it was three, maybe four all-up, including the larger pieces of wreckage, then the smaller pieces of wreckage of significance and highly desirable stuff, as required.

FLTLT ROSE: You state that the command and control arrangement for coordination of wreckage recovery was then passed to Headquarters Avn Command, which is what you stated before, and they took over and engaged the commercial diving vessel?

CMDR COOPER: No. As I said, the commercial diving team was engaged a lot earlier than that. I haven't got the exact date, but that was when Joint Task Force 1116 was involved. Because when the Australian Defence Vessel *Reliant* left, they handed over to the commercial dive vessel. So they were in charge of the main part of recovery, and they were recovering the smaller elements of wreckage, but over a wider area. So that was well before the Army Aviation Command took over.

FLTLT ROSE: I want to go now back to the role of your colleagues at Holsworthy who were conducting the interviews with aircrew. It's your

OFFICIAL

understanding that they interviewed them on, you said before, around potentially 30, 31 July 2023 and maybe a couple of days into early August?

CMDR COOPER: Yes.

5

FLTLT ROSE: Were there any impediments to your team interviewing the aircrew, other than a few days delay for welfare concerns?

CMDR COOPER: Not to my understanding or I can recall now.

10

FLTLT ROSE: The same as for you went for the second or the third round interviews?

CMDR COOPER: No, I can't recall any problems with that, apart from there may have been availability issues, either personnel were travelling or somewhere else. But we were given pretty free access to the personnel.

15

FLTLT ROSE: Did you or your colleagues have any discussions with Defence Legal or Headquarters Aviation Command about the drafting of statements for the Coroner?

20

CMDR COOPER: I did not. I cannot comment whether anyone else did. I'm not sure.

FLTLT ROSE: Did you have an expectation yourself that statements would be provided to the Coroner soon after your team had conducted your interviews?

25

CMDR COOPER: Not so much the timeline. I obviously knew there would be requirement to provide statements to the Coroner. And by this stage we had – once the information flow system had been established through Provost Marshal, I pretty much left that up to Avn Command and Army Aviation Command, and other elements, to do that. So I'd kind of dropped track on that because we were concentrating on evidence recovery.

30

35

FLTLT ROSE: Those are my questions.

MS McMURDO: Yes, thanks. Could I just clarify one minor matter? At paragraph 34 you said:

40

The site and wreckage needed to be released to the ASIT by the Coroner. This was easily facilitated, and this occurred on 4 August '23.

45 Do you see that?

OFFICIAL

CMDR COOPER: Yes, ma'am.

MS McMURDO: Over on para 39 you said:

5

*On 5 August, I was made aware via email of the Direction from the
Coroner that recovered helicopter wreckage and –*

et cetera –

10

could be released to the ADF.

Is there a distinction between what happened on the 4th and the 5th? I just
wasn't sure about that.

15

CMDR COOPER: Sorry, ma'am. Just to clarify, para 38, so this is for the
request for information. Sorry, you may have to repeat the question, I'm
afraid.

20

MS McMURDO: Just have a look at what you say in the second part of
34, and you give the date there 4 August. It sounds as though it's the same
event that you're talking about an email Direction from the Coroner on
5 August, in para 39.

25

CMDR COOPER: Yes, ma'am. That is the same event. There may have
been a confusion over the exact date.

MS McMURDO: I see. So is it probably 5 August then, after that?

30

CMDR COOPER: I believe so, yes, ma'am.

MS McMURDO: Thank you. Any other applications to cross-examine?

35

LCDR GRACIE: Yes, ma'am, there are. I'll be 15 to 20 minutes.

40

MS McMURDO: Yes.

<CROSS-EXAMINATION BY LCDR GRACIE

45

LCDR GRACIE: Sir, my name's LCDR Malcolm Gracie. I represent the
interests of CAPT Danniell Lyon in Bushman 83. Can I take you to
paragraph 26 of your statement? But before I do that, I just want to clarify
my understanding of para 25. I know that you made an addition to 25

OFFICIAL

yesterday about a further DFSB member arriving on 3 August – 1 August, was it? Did you correct the date in that first line of 25?

5 CMDR COOPER: Yes, I did.

LCDR GRACIE: You did? Thank you. So that is 29?

CMDR COOPER: Yes, it is.

10 LCDR GRACIE: Thank you. In 26, you make reference to “advice provided to preserve data”, and in particular I want to draw your attention to “and the other operating aircraft and crews”. Is my understanding correct that DFSB did not recover the cockpit voice recording of Bushman 81 or Bushman 82 relevant to the period prior to the incident?

15 CMDR COOPER: I’ll have to check. Yes, there was problems – the recovery, because the aircraft – and I will not commit to the numbers of the aircraft, but in general terms the aircraft that performed the search and rescue flights, the cockpit voice data recorder overwrote the period of the
20 actual accident on the voice. So it is a loop, so it’s not continuously recording. So it only records a certain amount of time. And because they’ve gotten airborne again to carry out search and rescue, it actually overwrote the period of the actual accident itself.

25 LCDR GRACIE: Let me put this scenario and see if you can explain it. My understanding – and I’d be grateful if Counsel Assisting would correct it if it’s wrong – there is voice recording of Bushman 84?

30 CMDR COOPER: Yes.

LCDR GRACIE: Bushman 84 was the aircraft that conducted the immediate search and rescue. Bushman 81 and Bushman 82 landed on Lindeman Island, returned to Proserpine, refuelled and then conducted SAR?

35 CMDR COOPER: Yes.

LCDR GRACIE: When they landed at Proserpine, why was the cockpit voice recording not then secured?

40 CMDR COOPER: I imagine because they’re actually conducting the search and rescue, which would be a higher priority. I’m unsure if there was any consideration of shutting down and stopping the SAR to recover the voice recorder. If asked at the time – and obviously we weren’t – if

OFFICIAL

asked at the time, I would suggest that the search and rescue would be a higher priority at that point.

5 LCDR GRACIE: While they're refuelling though, would there be some mechanism to download it?

CMDR COOPER: There is not, no.

10 LCDR GRACIE: What about utilising other aircraft for the search and rescue?

15 CMDR COOPER: I was aware, with the four aircraft – again, I was not aware of any of the operational decisions or any – I had no input to the operational decisions at that point. Bearing in mind, DFSB's role is to arrive at the site and then preserve the evidence we're given, not in any of the search and rescue, any of the recovery or any operational decisions leading up to it.

20 LCDR GRACIE: At what point was the cockpit voice recording, if you can say, obtained in relation to 81, 82 and 84?

25 CMDR COOPER: They were downloaded during the period after the team were deployed to Proserpine. So would have been the 30th, 31st over the – I'm not sure of the exact time, but they were recovered while the aircraft was on the ground at Proserpine, the left over aircraft.

LCDR GRACIE: When you say it was "downloaded", that was by DFSB?

30 CMDR COOPER: Yes.

LCDR GRACIE: So there is a mechanism within DFSB to be able to download it quite immediately?

35 CMDR COOPER: The download is one thing. The actual usability is another matter entirely. The actual – I can outline the process, but it is a – the download file is not immediately readable.

40 LCDR GRACIE: Was any thought given by you or others under your command to try and secure the cockpit voice recording before the SAR was undertaken?

CMDR COOPER: No, there was not. Because, as mentioned, our role is to arrive to – we get there and start collecting the evidence. And during the

OFFICIAL

search and rescue, I would be surprised if a search and rescue was paused just for that purpose.

5 LCDR GRACIE: Well, unless other aircraft were available.

CMDR COOPER: I have no knowledge of the operational decisions that were made at the time.

10 AVM HARLAND: Could I just ask another question? Just related to that, is there a data module or anything where they'll load up mission data on the MRH-90 and potentially record data that could have been used for that purpose?

15 CMDR COOPER: Not in the MRH-90, sir. It's not a voice – the MRH-90 data recorders only provide maintenance data and that's pretty much it. They'll do what's known as the Helicopter Usage and Monitoring System, the HUMS. That will provide engine data and bits and – a very, very basic version of the flight data. And that's used for maintenance recording, and this is of no use for us at all.

20 AVM HARLAND: So there was no other alternate means to be able to get any recordings from that crash time?

25 CMDR COOPER: No.

AVM HARLAND: Thanks.

30 CMDR COOPER: We did get recovered data, but not voice, because the data works for longer, but the voice overwrites. And it's all to do with the size of the recording device and the memory storage that allows it. It has to overwrite, otherwise you'll run out of space.

AVM HARLAND: Understood. Thanks.

35 LCDR GRACIE: Can I move to another topic? It relates to the symbology upgrade of the HMSD software from version 5 to version 5.10. Are you roughly aware of what I'm discussing?

40 CMDR COOPER: Yes.

45 LCDR GRACIE: There is some evidence – and I'd like your assistance on it – it's from the 60 Minutes transcript, Exhibit 12A, I think it is, where it's reported that DFSB had a role, as did Comcare, in the approval or the review of that upgrade to the version 5.10. Is that correct?

OFFICIAL

CMDR COOPER: Not to my understanding.

LCDR GRACIE: I want to take you to the near miss in relation to the two MRH-90s back in November 2020.

5

CMDR COOPER: Yes.

LCDR GRACIE: Were you involved in the report?

10 CMDR COOPER: I was involved in the very latter stages of briefing the report. It was just after I arrived at DFSB, so I was involved in the very latter stages of the report. I was not involved in the writing or the analysis of that report.

15 LCDR GRACIE: So we've got the incident in November 20, the report's released on 9 June 2022, just as a bookmark.

CMDR COOPER: Yes.

20 LCDR GRACIE: The two MRH-90 were in a four-ship formation with two Chinook. This is on the DFSB website, so whatever I'm saying here shouldn't have any classification problems. The report found that there were vague and differing distances reported by the aircrew.

25 CMDR COOPER: I would actually confirm, I believe the report may still be classified "Official: Sensitive", even if it's on the DFSB website. I'd have to confirm that. We don't normally declassify.

LCDR GRACIE: This is a summary of the report on the website.

30

CMDR COOPER: If it's a summary, that's fine. Sorry, if you're talking about the report – okay. Apologies, sorry.

35 LCDR GRACIE: No, that's all right. The website records that the pilots reported vague and differing distances in relation to the aircraft, and reported that it was not a near collision.

CMDR COOPER: I don't recall the exact part of it, but yes, I follow your logic.

40

LCDR GRACIE: That's just from the website.

CMDR COOPER: Yes.

45 LCDR GRACIE: DFSB found that it was a near collision.

CMDR COOPER: Yes.

5 LCDR GRACIE: DFSB identified increasing complexity in modern aircraft leads to increased risk. I just want to step these through.

Have I got the Commonwealth approaching from behind?

10 MS McMURDO: It was threatening.

LCDR GRACIE: I can feel it coming though.

MS McMURDO: There was movement.

15 LCDR GRACIE: It's just a DFSB summary. I'll turn it up. There seems to be some problem. It's the DASA website. The link is dasa.defence.gov.au. It has no classification on it and it's under an article February '22 called "Spotlight Investigation Summarising DFSB's Recent Investigations, Special Edition". One of the matters reported in that
20 website article called Spotlight was that there's never one factor that, if removed, would make the whole issue go away.

CMDR COOPER: Yes.

25 LCDR GRACIE: It's part of the complexity and part of the overriding of multiple dynamic circumstances in an aircraft accident. Do you agree?

CMDR COOPER: Yes.

30 LCDR GRACIE: It actually said just heading to the target in a formation is a complex feat in itself. Would you agree with that?

CMDR COOPER: Yes, if that's what the article suggests.

35 LCDR GRACIE: Do you know whether or not the MRH-90 aircraft flying on November 2020 were utilising the version 4 symbology software or version 5.10?

40 CMDR COOPER: I don't know.

LCDR GRACIE: Were you aware, when you looked into this report, of the AATES report in relation to its concerns about the upgrade to version 5.10, which was dated 14 June 2019, so before this incident?

45 CMDR COOPER: So when you say "aware of this report", are you

referring to the near miss report?

5 LCDR GRACIE: In the DFSB report that you were involved with, released on 9 June 2022, were you aware of the preceding report issued by AATES on 14 June 2019 expressing its concerns in relation to the upgrade to version 5.10?

10 CMDR COOPER: I do not recall if that was covered in the DFSB report. As I said, I was not involved in the writing and analysis of it, I only arrived at the back end of the final close out and communication of the outcomes of that report.

15 LCDR GRACIE: There is some evidence that the service release for version 5.10 was time-critical so that it could be installed for SO training in May 2020. But you don't know if that occurred, the installation?

CMDR COOPER: I'm not aware of that.

20 LCDR GRACIE: Can I read the comment by the Director of DFSB in relation to that incident? He said:

25 *I find it truly chilling how much this close call reminded me of the tragic events of 12 June 1996 when two Black Hawk helicopters collided and the lives of 18 soldiers and aircrew were lost.*

If you overlay that with the incident on 28 July 2023, it's even more chilling, isn't it?

30 CMDR COOPER: Yes.

LCDR GRACIE: That's putting aside the Jervis Bay incident on March 2023. We've got a scenario on 28 July 2023 that's very similar to the November 2020 near miss, haven't we?

35 CMDR COOPER: The aircraft were in formation, I agree.

LCDR GRACIE: At night.

40 CMDR COOPER: Yes.

45 LCDR GRACIE: And one of the things that came out of the report, and on the website, is that risks associated with TopOwl performance, especially in low illumination, were not adequately understood or detailed as part of aircrew training. That's the November '20 one.

OFFICIAL

CMDR COOPER: Okay.

LCDR GRACIE: Do you know what was done by Army Aviation to deal with that risk that was identified in the DFSB report?

5

CMDR COOPER: I do not. We do not, as DFSB has no function for assuring that actions for our reports are actually carried out. We present the report to the Appointing Authority, or the Airworthiness Authority, and it is left up to the Appointing Authorities, et cetera, to action those reports as required.

10

LCDR GRACIE: So there's no mechanism for DFSB to oversee, audit or have any role in implementing its recommendations?

15

CMDR COOPER: No, that's left up to the actual Appointing Authority, and that's how the Aviation Safety System is designed.

LCDR GRACIE: So DFSB doesn't make any assessment of whether or not the risks associated with the TopOwl performance that it identified are addressed by Army Aviation?

20

CMDR COOPER: That is not our function, no.

LCDR GRACIE: Yesterday ma'am raised an issue in relation to something that was again followed up this morning by both ma'am and Counsel Assisting and it's to do with the issue of functional and operational interests in the matters that DFSB are investigating, whether or not that raises a potential conflict of interest, and I want to touch on that just a little bit.

25

30

Given what you've said about the need for secrecy – and I don't put that in a pejorative way – secrecy about membership or who does what in the aircraft investigations, I just want to do a hit list. Again, it's from Spotlight. In relation to an aircraft investigation, you have the Officer in Charge, that's the Director?

35

CMDR COOPER: Or a Class A, yes.

LCDR GRACIE: Class A, thank you. For this particular one, I'm talking about you have an Investigator in Charge. That's you, I think, as Deputy Director?

40

CMDR COOPER: Sorry, just clarifying, we're now talking about the incident investigation or we're still talking about the near miss?

45

OFFICIAL

LCDR GRACIE: This current one.

CMDR COOPER: Okay. Thank you, yes.

5 LCDR GRACIE: You have a lead investigator?

CMDR COOPER: Yes.

10 LCDR GRACIE: You have an operations lead?

CMDR COOPER: In this context, we'd have the lead investigators will be the lead ops and a lead technical.

15 LCDR GRACIE: Well, that was the next one, a technical lead?

CMDR COOPER: Yes.

LCDR GRACIE: So you have ops lead and technical lead? Two separate people?

20 CMDR COOPER: Yes.

LCDR GRACIE: You have a data lead? So that's a data specialist?

25 CMDR COOPER: Yes.

LCDR GRACIE: An investigation support network, so that could be DSTG?

30 CMDR COOPER: Yes.

LCDR GRACIE: Defence Science Technology Group, sorry. And you have a local subject matter expert with specialist knowledge – could be one or several?

35 CMDR COOPER: Many of, yes.

40 LCDR GRACIE: I want to hand you a piece of paper. I'll show it to ma'am and sir, if I may, because I did ask this of AIRCDRE Medved, ma'am, but I didn't give a name, and I'll keep the name out of it. But what I asked the Air Commodore was something relevant to this.

Just keep that name to yourself. The person who I asked

OFFICIAL

AIRCDRE Medved about was the test lead in the OPEVAL that was conducted in relation to this symbology upgrade and other matters associated with it.

5 CMDR COOPER: Yes.

10 LCDR GRACIE: I think I can probably say SO1 Standards. That same person wrote a decision brief recommending service release of the symbology upgrade to DG AVN on 20 April 2024. I understand that person – sorry, 20 April 2020. Might be 23 April, but April 2020. My understanding is that that person also provided specialist advice to DFSB. Is that correct?

15 CMDR COOPER: Yes, he did.

LCDR GRACIE: Could you tell me which of those categories? Was it ops lead, local SME, or in what role?

20 CMDR COOPER: Local SME. So not formally attached to the ASIT. Used by the Aviation Safety Investigation Team as a source of information.

25 LCDR GRACIE: Bearing in mind that potential conflict of operational interest and functional interest in relation to matters under investigation, would you see that that person's involvement in an independent DFSB report into the cause of this accident as potentially a conflict of interest?

30 CMDR COOPER: We assessed it. We assess all our evidence based on the knowledge of where we get it from and the quality and the standard of the evidence. We knew that person's involvement in the documentation you talked about, and we applied any weighting to the evidence as required. And the information he gave us was useful and we used it in that light.

35 LCDR GRACIE: I just want to put it this way: the present DFSB report is looking into an incident that is chillingly similar to the near miss in November 2020, and identified risks associated with the performance of TopOwl, right? AATES warned about the risks of the symbology upgrade, defining it as "unacceptable" as it was likely to cause a controlled flight into
40 terrain and multiple deaths. That was not accepted by the person that DFSB is utilising for its subject matter expertise.

45 I just want to put to you that there could not be a clearer conflict of interest if part of the DFSB investigation is looking into the performance of TopOwl. Would you agree?

- 5 CMDR COOPER: I wouldn't have characterised it like that, because we used his evidence knowing the – as you put it – the possible conflict of interest. We used his technical knowledge of the system, the performance of the system, and I believe a simulator visit so he could show us what it looked like. And that's pretty much the extent. We did not take his advice on its own. It was used in conjunction with other evidence, as is all our evidence for the investigations.
- 10 LCDR GRACIE: If he's the expert, how do you test the integrity of his expert evidence?
- 15 CMDR COOPER: We've also used other sources of information as well as him, not just him on his own.
- LCDR GRACIE: Other sources of information, I understand. Did you have other test pilots?
- 20 CMDR COOPER: We had other inputs from other test pilots as well to the investigation.
- LCDR GRACIE: Was that after he left the investigation?
- 25 CMDR COOPER: I'm unsure.
- LCDR GRACIE: Were you present at a meeting when LTCOL Reinhardt, SO1 T&E, objected to that person being part of the DFSB team?
- 30 CMDR COOPER: No, I was not.
- LCDR GRACIE: Were you made aware of that?
- 35 CMDR COOPER: No, I was not.
- LCDR GRACIE: Thank you, ma'am. Thank you, sir. No further questions.
- 40 MS McMURDO: Thank you. Any other applications to cross-examine? Yes, Ms Musgrove.

<CROSS-EXAMINATION BY MS MUSGROVE

5 MS MUSGROVE: Sir, my name is Musgrove, and I appear for the Commonwealth. Is it your understanding that the DFSB investigation team is separate from the policy team?

CMDR COOPER: Can you clarify which policy team you're referring to?

10 MS MUSGROVE: Are there a number of policy teams at DFSB, in terms of publications that are put out?

CMDR COOPER: Yes.

15 MS MUSGROVE: Yes. Could you just explain the structure perhaps?

CMDR COOPER: Certainly. The DFSB sub-directorates inside the – or sub-teams inside DFSB: DFSB investigation teams are formed by the members who are qualified and actually do the investigations. We have a policy team who write the policy; for instance, the Defence Aviation Safety Manual and other policy. An education team, who go around teaching the Aviation Safety Officers. Human factors team, who look after the – and survey, who look after the – assist us in the investigations and also do all the cultural surveys as well. That's pretty much how we've got it. We've also got an admin team, who do a lot of the publications. So the admin team, then there's the publications for media team who generate publications such as the Spotlight and other Defence Safety publications, et cetera.

30 MS MUSGROVE: So they're separate and distinct teams?

CMDR COOPER: Yes.

35 MS MUSGROVE: There's not crossover between the separate teams into the investigative team?

CMDR COOPER: During this investigation, just for manpower, we used other people in that team, but only as – noting, and it's very carefully done, that we're not using them as trained investigators, we're using them to assist in the investigation. For instance, pure physical work on the site, et cetera, as required.

MS MUSGROVE: Not part of the analysis itself?

45 CMDR COOPER: No, not at all.

- 5 MS MUSGROVE: Were you aware that Queensland Police Service members were on site at Proserpine from approximately 12.20 am on the 29th?
- CMDR COOPER: I wasn't aware of the exact time. But it would be my assumption they would be there that early.
- 10 MS MUSGROVE: If they were there and taking notes on an iPad, did they provide that information, the notes that they were taking at that time, to you?
- CMDR COOPER: I do not recall seeing any information.
- 15 MS MUSGROVE: Were you aware that QPS members took photographs of the personal items of the aircrew involved?
- CMDR COOPER: I was not aware of the photographs. I was aware, and I think I mentioned in the statement, that they had actually cleared them. I was not aware of any photographs taken.
- 20 MS MUSGROVE: So they didn't provide those photographs to you?
- CMDR COOPER: I cannot recall if they have been recorded, if we have got them. I just don't recall.
- 25 MS MUSGROVE: But they didn't offer to provide that evidence to you?
- CMDR COOPER: Not personally to me.
- 30 MS MUSGROVE: To the investigation team, more generally?
- CMDR COOPER: If it was provided, I don't recall that actually happening.
- 35 MS MUSGROVE: That's all I have in terms of cross-examination. I just note, Ms McMurdo, that the Minute in relation to the change of the Appointing Authority for Class A Aviation safety incidents was provided to the Inquiry on 20 September 2024. I don't understand that it's been
- 40 tendered at this point in time. And I did address the Inquiry in relation to that change on Monday, 14 October of last year. So obviously it's a matter for Counsel Assisting as to whether or not that's tendered.
- 45 MS McMURDO: What change?

OFFICIAL

MS MUSGROVE: That's for the Appointing Authority for Class A Aviation safety incidents, the Minute in relation to that from the Defence Aviation Authority.

5 MS McMURDO: Are you asking that it be tendered?

MS MUSGROVE: I'm just raising it, that the Inquiry has it and if it's relevant for your considerations, that yes, it be tendered.

10 MS McMURDO: Thank you. Well, we'll consider that.

COL STREIT: It'll be through the Director DFSB, when he's called.

15 MS McMURDO: Thank you. There we are, it's planned to be tendered later, when the Director of the DFSB is called. Yes, any re-examination?

COL STREIT: No.

20 MS McMURDO: Thank you very much, Commander. We really appreciate your assistance to the Inquiry. You're free to go. People sometimes find giving evidence to an Inquiry like this quite challenging. So remember that there is assistance available and you should not hesitate to use that if you think it prudent.

25 CMDR COOPER: Thank you, ma'am. Thank you, sir.

MS McMURDO: Thank you. Yes.

30 FLTLT ROSE: I call Mrs Tessa Berry. Sorry, I think we should – for completeness, I'll tender, on LCDR Gracie's behalf, the written note that included the name of the SO1 Standards Officer that was referred to in evidence.

35 MS McMURDO: You're free to go, Commander.

<WITNESS WITHDREW

40 MS McMURDO: Thank you. That will be Exhibit 157.

#EXHIBIT 157 - WRITTEN NOTE INCLUDING NAME OF SO1

45

OFFICIAL

FLTLT ROSE: I understand there's an application for leave before this witness is called.

MS McMURDO: Yes.

5

MAJ BARNES: Yes, Ms McMurdo. MAJ Michelle Barnes, I seek leave to appear for D146.

10 MS McMURDO: Yes, thanks. I did receive your application, and I did intend to grant it, but it slipped my mind. I'm happy to grant that application now. You're given leave to appear for D146.

MAJ BARNES: Thank you, ma'am.

15 MS McMURDO: Thank you, MAJ Barnes.

FLTLT ROSE: I can also indicate, before the witness arrives, that I will commence her evidence in a public hearing for a short period of time, before I intend to transition to a private hearing.

20

25 LCDR GRACIE: Ma'am, we don't want any moments of silence, so I just thought I'd correct something I said, I think it was yesterday. I mentioned that the rotor di was in evidence from either LTCOL Cameron or CAPT Balaam. It's in both. But I made reference to Exhibit 2. It's Exhibit 5. And the relevant parts of the transcript are pages 123 to 124. That's CAPT Balaam. And page 40 in relation to LTCOL Cameron.

MS McMURDO: And the transcript of the Channel 9 60 Minutes program was Exhibit 6A.

30

LCDR GRACIE: I said 12A once before and I was wrong then. I'm still wrong. If I could also then correct something I said. I've said the Service Bulletin was released in relation to the high-pressure turbine in 2018. It was 2017. I think the report is 2018. That's my mea culpa for the day.

35

MS McMURDO: Thank you, LCDR Gracie. Yes, please be seated.

<MRS TESSA MARGARET BERRY, Affirmed

<EXAMINATION-IN-CHIEF BY FLTLT ROSE

5

MS McMURDO: So help yourself to water, please, Mrs Berry, and let me know if at any time you need a break.

10 MRS BERRY: Thanks.

FLTLT ROSE: Can you please state your full name?

15 MRS BERRY: Tessa Margaret Berry.

FLTLT ROSE: What is your current occupation?

MRS BERRY: I'm a subject matter expert at ALSMU.

20 FLTLT ROSE: In terms of using acronyms, we're trying to use less of them in this evidence for those watching. When you say the "ALSMU", do you mean the Aircrew Life Support Management Unit?

25 MRS BERRY: That's correct.

FLTLT ROSE: Can you confirm that you received a section 23 Notice requiring your appearance today?

30 MRS BERRY: That's correct, I did.

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

MRS BERRY: Correct, yes.

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

MRS BERRY: Yes, I did.

40 FLTLT ROSE: A Frequently Asked Questions Guide for Witnesses?

MRS BERRY: I did.

FLTLT ROSE: A Privacy Notice?

45 MRS BERRY: Yes.

FLTLT ROSE: You were asked to prepare a statement for the purposes of this Inquiry. That's correct?

5 MRS BERRY: Correct, yes.

FLTLT ROSE: Can I please ask you to be mindful of your security obligations during this public forum? If I, or anyone else, asks you a question you think the answer to which would be at the "Official: Sensitive" level or above, just to let me know.

MRS BERRY: Okay, thank you.

FLTLT ROSE: I'll start with your background and qualifications. As you noted before, you're an Aeronautical Life Support Equipment subject matter expert?

MRS BERRY: Correct.

FLTLT ROSE: You noted that your current unit, the Aircrew Life Support Management Unit, is that within the Surveillance and Response Systems Program Office?

MRS BERRY: That's correct, yes.

FLTLT ROSE: Is that office part of Defence's Capability Acquisition and Sustainment Group?

MRS BERRY: Yes.

FLTLT ROSE: You're based out of RAAF Base Edinburgh in Adelaide?

MRS BERRY: That's correct.

FLTLT ROSE: Is the Aircrew Life Support Management Unit the centre of expertise for Aeronautical Life Support Equipment in Defence?

MRS BERRY: Yes, it is considered that.

FLTLT ROSE: Does it also advise civilian agencies?

MRS BERRY: We don't, no.

FLTLT ROSE: What is the purpose and function of the unit?

OFFICIAL

MRS BERRY: We have a couple of different roles. Sorry, can you just rephrase the question?

5 FLTLT ROSE: If you could just outline the purpose and function of your unit, as in what is the main purpose of advising Defence about these particular issues?

10 MRS BERRY: We are an organisation that is headed by a delegate of a Safety Authority. We promulgate standards via the DASR and the Defence Aviation Safety Manual. We set standards for life support equipment used in Defence, basically. A couple of other roles as well, so a unique role in helping out in investigations such as this.

15 FLTLT ROSE: So it's in the name Aircrew Life Support Management Unit. So you only advise units within Defence that operate aircraft?

MRS BERRY: Yes. We support the 19 platforms in service.

20 FLTLT ROSE: Sorry, what was that last?

MRS BERRY: We support the 19 platforms in service.

25 FLTLT ROSE: Understood. And that's across all three services: Army, Navy and Air Force?

MRS BERRY: Yes, correct.

FLTLT ROSE: This is a civilian role for you?

30 MRS BERRY: Correct, yes.

FLTLT ROSE: But you're also in the Reserves, aren't you, as a Corporal, in the Royal Australian Air Force?

35 MRS BERRY: That's correct.

FLTLT ROSE: You are an Aeronautical Life Support Fitter in 11 Squadron.

40 MRS BERRY: Correct.

FLTLT ROSE: You hold various trade authorisations as a Reservist.

45 MRS BERRY: Yes, that's correct.

FLTLT ROSE: You're a Design Engineer by occupation?

5 MRS BERRY: That definition has changed slightly. Considered an SME now. Considered a Design Engineer Class 2, under the old probably TER, so yes.

FLTLT ROSE: Have you actually gained more qualifications or was it just an organisational restructure?

10 MRS BERRY: Yes, a little bit. Yes, organisational restructure. I don't have a tertiary qualified engineering background, no.

FLTLT ROSE: But you do have qualifications in your role. What tertiary qualifications do you have?

15 MRS BERRY: None in engineering that apply to this.

FLTLT ROSE: That apply to this. But you have some other qualifications, trade qualifications?

20 MRS BERRY: Yes, I have trade qualifications. Not through university, yes.

FLTLT ROSE: You also have expertise in inflation equipment; is that correct?

25 MRS BERRY: That's correct, yes.

FLTLT ROSE: So that's separate to the Aeronautical Life Support Equipment?

30 MRS BERRY: Part of my primary role would be in inflatable equipment at ALSMU. So we also look at all the other ALSE as well, all the other life support equipment.

35 FLTLT ROSE: By "inflatable equipment", is that life jackets and life rafts?

40 MRS BERRY: Correct, yes.

FLTLT ROSE: You've completed the Cranfield University's Principles of Aircraft Accident Course?

45 MRS BERRY: We completed a shortened version – it was about a week long – which was conducted online in 2022.

OFFICIAL

FLTLT ROSE: How long have you worked in the Aircrew Life Support Management Unit?

5 MRS BERRY: Thirteen years.

FLTLT ROSE: Were you in this role in this unit at 28 July 2023?

10 MRS BERRY: Yes, correct.

FLTLT ROSE: You mentioned before, there's been a restructure, but were you a Design Engineer in 2023?

15 MRS BERRY: My role – it's difficult to explain. I have Design Engineer authority in our engineering management system, if that makes sense, but not a tertiary qualification, so it can be confusing.

FLTLT ROSE: But that was the role that you were fulfilling as at the time of 83's crash?

20 MRS BERRY: Yes.

FLTLT ROSE: Now, your unit went by a slightly different name then, in 2023. I understand it used to be called the Aircrew Life Support Logistics Management Unit.

MRS BERRY: Correct, yes.

FLTLT ROSE: So it's now lost the L.

30 MRS BERRY: Yes, correct.

FLTLT ROSE: But did the function and purpose of the unit stay the same throughout, despite this name change?

35 MRS BERRY: Yes, correct.

FLTLT ROSE: Now, the acronym for your unit is a little bit confusing and difficult to say.

40 MRS BERRY: It is, yes.

FLTLT ROSE: So for the purposes of your evidence, I'm going to refer to the ALSLMU as "your unit".

45

OFFICIAL

MRS BERRY: No worries. Yes.

FLTLT ROSE: And you can do the same.

5 MRS BERRY: Thank you.

FLTLT ROSE: Now, the MRH-90 was fitted with Aeronautical Life Support Equipment?

10 MRS BERRY: Yes, correct.

FLTLT ROSE: But did the Army manage the platform fitted Aeronautical Life Support Equipment on its MRH-90s as opposed to your unit?

15 MRS BERRY: Yes, they did.

FLTLT ROSE: Are the TopOwl helmet and the helmet-mounted sight display considered Aeronautical Life Support Equipment?

20 MRS BERRY: It is considered Aeronautical Life Support Equipment but not managed by us.

FLTLT ROSE: And we'll discuss what else constitutes that type of equipment in another forum. But as part of your role in your unit, have you provided advice to the Defence Flight Safety Bureau on many crash investigations?

25

MRS BERRY: I assisted in the ditching at Jervis Bay in 2023 as well.

30 FLTLT ROSE: And was that the only other one you were involved in?

MRS BERRY: Yes.

FLTLT ROSE: Your unit was, though, asked by the DFSB in his investigation to assist into the crash of Bushman 83?

35

MRS BERRY: Yes, correct.

FLTLT ROSE: And when was your unit first contacted by the DFSB to assist with the investigation?

40

MRS BERRY: I believe on the Monday morning after the accident my boss reached out to DFSB to offer assistance.

45 FLTLT ROSE: So the incident occurred on a Friday evening.

OFFICIAL

MRS BERRY: Yes.

5 FLTLT ROSE: 28 July 2023.

MRS BERRY: Yes.

FLTLT ROSE: So it's your understanding it was the following Monday?

10 MRS BERRY: It was on the Monday. Correct, yes.

FLTLT ROSE: I take it the DFSB took up that offer from your supervisor to assist?

15 MRS BERRY: Correct, yes, they did.

FLTLT ROSE: Immediately took it up?

MRS BERRY: On the Monday they did, yes.

20 FLTLT ROSE: And were you tasked on that same Monday, by your supervisor, to assist the DFSB with its investigation?

MRS BERRY: Yes, I was.

25 FLTLT ROSE: Now, did you work on this task alone or in collaboration with colleagues?

MRS BERRY: In collaboration with colleagues.

30 FLTLT ROSE: But you were the Accident Team lead within your unit?

MRS BERRY: That's correct.

35 FLTLT ROSE: Did you liaise with CMDR Dominic Cooper, the Investigator in Charge of the DFSB's investigation, on site at Proserpine?

MRS BERRY: Yes, I did.

40 FLTLT ROSE: Did you know CAPT Danniel Lyon?

MRS BERRY: I did not.

45 FLTLT ROSE: Did you know LT Max Nugent?

OFFICIAL

- MRS BERRY: I did not.
- FLTLT ROSE: Did you know WO2 Joseph Laycock?
- 5 MRS BERRY: I did not, no.
- FLTLT ROSE: Did you know CPL Alex Naggs?
- MRS BERRY: I did not.
- 10 FLTLT ROSE: Did you and your team go to Proserpine?
- MRS BERRY: We did. Correct.
- 15 FLTLT ROSE: And when did you arrive?
- MRS BERRY: On the Tuesday following the accident, so the day after being tasked.
- 20 FLTLT ROSE: So I'm just getting the dates right here. The Monday would've been 31 July 2023.
- MRS BERRY: Okay.
- 25 FLTLT ROSE: So you arrived on site at Proserpine on 1 August, on the Tuesday.
- MRS BERRY: Correct, yes.
- 30 FLTLT ROSE: Did you immediately inspect the recovered Aeronautical Life Support Equipment?
- MRS BERRY: Not immediately. When we arrived on the Tuesday, we just had a quick site induction and had a look, and the following day, on the
- 35 Wednesday, is when we audited the equipment that was there.
- FLTLT ROSE: Take some time to pour your water.
- MRS BERRY: Thank you.
- 40 FLTLT ROSE: Where was the Aeronautical Life Support Equipment? Was it at the Whitsundays Police Station?
- MRS BERRY: Sorry, the "recovered", did you say, or – yes, the
- 45 recovered items were at the police station.

OFFICIAL

FLTLT ROSE: Were there any items in a different storage unit at Proserpine?

5 MRS BERRY: Nothing that was recovered from the accident, no. It was taken to the police station, yes.

FLTLT ROSE: But there was still some Aeronautical Life Support Equipment at the forward operating base at Proserpine Airport that was not
10 the recovered equipment?

MRS BERRY: Correct, yes. There was the equipment of all the other deployed members.

15 FLTLT ROSE: And you inspected that Aeronautical Life Support Equipment as well?

MRS BERRY: Correct. We did a brief audit on that, yes.

20 FLTLT ROSE: Did you inspect the Aeronautical Life Support Equipment that was in Bushman 81, 82 and 84?

MRS BERRY: Not on all of the platforms, no. We looked on one of the platforms, which I think I referred to in the report.
25

FLTLT ROSE: Did you inspect at any other location that you looked at for Aeronautical Life Support Equipment at Proserpine?

MRS BERRY: Sorry, can you say that again?
30

FLTLT ROSE: Was there any other place within Proserpine or Airrie Beach where you went to inspect any Aeronautical Life Support Equipment?

35 MRS BERRY: There was not, no.

FLTLT ROSE: But you did inspect some equipment that the DFSB had stored in Canberra, after it was shipped down from Proserpine?

40 MRS BERRY: Correct. That was equipment that was recovered after my colleague and I departed Proserpine.

FLTLT ROSE: And you also inspected Aeronautical Life Support Equipment at 6 Aviation Regiment in Holsworthy?
45

OFFICIAL

MRS BERRY: Correct.

FLTLT ROSE: Were you assisted in your investigation by a COL Jeff Brock?

5

MRS BERRY: I was, yes.

FLTLT ROSE: Was he the Medical Officer that was part of the DFSB's Aviation Safety Investigation Team?

10

MRS BERRY: Yes, he was.

FLTLT ROSE: Was he known as survivability lead?

15

MRS BERRY: Correct, yes.

FLTLT ROSE: And you also received some assistance in your role, in your part of your investigation, from the Defence Science and Technology Group in Melbourne.

20

MRS BERRY: We did, yes.

FLTLT ROSE: Now, you wrote a series of reports following your Investigation.

25

MRS BERRY: Yes.

FLTLT ROSE: And these reports were released to the DFSB by your supervisor?

30

MRS BERRY: I believe so? I can't recall exactly who released them.

FLTLT ROSE: I'll hand you a series of documents. Now, they're not stapled but they are tabbed, so I advise you to try and keep this order together.

35

MRS BERRY: Okay.

FLTLT ROSE: Thank you. Now, if you look at the top item, it's a covering Minute?

40

MRS BERRY: Yes.

FLTLT ROSE: I take it you didn't write that Minute?

45

OFFICIAL

MRS BERRY: No.

FLTLT ROSE: It's written - - -

5 MRS BERRY: I believe the person written on it wrote the Minute, who's signed it.

FLTLT ROSE: That was your supervisor?

10 MRS BERRY: Correct, yes.

FLTLT ROSE: Have you seen this Minute before?

15 MRS BERRY: I have, yes.

FLTLT ROSE: And the date of the Minute is – it was signed by your supervisor on 28 May 2024?

20 MRS BERRY: Yes.

FLTLT ROSE: Ms McMurdo, I do intend to go through all of the documents in this bundle. Would you prefer them to be tendered individually or all together as an A, B, C, D, with the same exhibit number?

25 MS McMURDO: Perhaps as an A, B, C, D; I think it might be best, so that it's tendered as one bundle of exhibits. So the bundle of exhibits will be Exhibit 158, and then you can tell us which is A, et cetera.

FLTLT ROSE: I tender the Minute dated 28 May 2024 as A.

30 MS McMURDO: Yes.

35 **#EXHIBIT 158A - MINUTE DATED 28/05/24**

FLTLT ROSE: If you turn that over to the next tab. Now, is that the investigation into the recovered Aeronautical Life Support Equipment MRH-90 Taipan A040 accident 28 July 2023?

40 MRS BERRY: (No audible reply).

FLTLT ROSE: And do you see your – sorry, just audibly, you have to answer it with an audible answer.

45

OFFICIAL

- MRS BERRY: Yes.
- FLTLT ROSE: Now, it's a report prepared by Mrs Tessa Berry.
- 5 MRS BERRY: Correct.
- FLTLT ROSE: And that's where it says you're a Design Engineer.
- MRS BERRY: Yes.
- 10 FLTLT ROSE: And you're also the Accident Team lead for your unit.
- MRS BERRY: Yes.
- 15 FLTLT ROSE: And the date that you signed it, 28 May 2024?
- MRS BERRY: Yes.
- FLTLT ROSE: And this is a report that you supervised, signed and prepared.
- 20 MRS BERRY: Yes. In collaboration with the other person listed.
- FLTLT ROSE: I tender that as B.
- 25 MS McMURDO: 158B, yes. Does that include the enclosures?
- FLTLT ROSE: In terms of does it – sorry, I'll take this through.
- 30 There are a number of enclosures to your report?
- MRS BERRY: Correct, yes.
- FLTLT ROSE: Some enclosures – 1 through to 5?
- 35 MRS BERRY: Yes.
- FLTLT ROSE: Were they part of your report?
- 40 MRS BERRY: Yes, they are part of the report.
- FLTLT ROSE: It might be better to tender it all as one.
- MS McMURDO: Yes, absolutely. So the report and enclosures 1 through 5 will be 158B.
- 45

**#EXHIBIT 158B - REPORT BY MRS BERRY AND
ENCLOSURES 1-5**

5

FLTLT ROSE: Now, each of these reports is classified as
“Official: Sensitive”; is that correct?

10 MRS BERRY: Correct, yes.

FLTLT ROSE: I do propose to ask Mrs Berry about the contents of those
reports, but I cannot do it in this forum.

15 MS McMURDO: So we now have to go into a private hearing?

FLTLT ROSE: Yes.

20 MS McMURDO: A closed hearing. All right, so now, at this point, the
recording must be stopped completely. Do you need an adjournment to do
this?

CLERK OF THE COURT: Yes.

25 MS McMURDO: All right. So just so that everybody knows, we will
break in a moment and have an early lunch and resume at 1.15. The
recording will stop at this point. Only those who I have directed to be
present can be present.

30

<WITNESS WITHDREW

HEARING ADJOURNED

35

(Continued in Private Hearing Session)

HEARING RESUMED

5 FLTLT ROSE: I note the time. It's almost 5 o'clock, and I think we did promise we wouldn't go too late today, but we have another witness.

MS McMURDO: It's been a big day.

10 FLTLT ROSE: We have another witness ready, so I'm in your hands as to whether – we would need to adjourn in any case because we need to reset.

MS McMURDO: No, we won't be sitting any further tonight. Now, the witnesses tomorrow, do they have any time constraints on them in terms of flights, et cetera?

15 FLTLT ROSE: No, and I am confident we'll get through. If we have three witnesses tomorrow, we will get through them. I am confident.

MS McMURDO: Starting at 10.

20 FLTLT ROSE: Yes. I am always happy for extra time, just in case, but I'm in your hands with that as well.

MS McMURDO: Well, I think we've had two very, very long days for everybody. I think everyone would be grateful for a 10 o'clock start tomorrow. Hopefully we won't have to sit late, but that's always an option.

FLTLT ROSE: Thank you.

30 MS McMURDO: All right then. Thank you. We'll adjourn until 10 o'clock tomorrow.

35 **PUBLIC INQUIRY ADJOURNED UNTIL
WEDNESDAY, 26 MARCH 2025 AT 1000**