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**TRANSCRIPT OF PROCEEDINGS
TRANSCRIPT-IN-CONFIDENCE**

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

PUBLIC INQUIRY

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

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Counsel Assisting**

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SQNLDR J GILES, representing LT M Nugent
LCDR M TYSON, representing CPL A Naggs
SQNLDR C THOMPSON, representing WO2 J P Laycock
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COL S THOMPSON, representing BRIG D Thompson
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SQNLDR T SCHMITT, representing COL D Lynch
SQNLDR M NICOLSON, with FLTLT S SEEFELD, representing D10
CMDR B JONES SC, representing D19
MR G O'MAHONEY, representing Airbus
MS K MUSGROVE, representing the Commonwealth**

MONDAY, 28 APRIL 2025

DAY 49

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	16/05/25	(Transcription)

.MRH-90 Inquiry 28/04/25

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MS McMURDO: I welcome everyone back to what I anticipate will be the final Inquiry hearing block into the crash of the MRH-980 helicopter off Lindeman Island on 28 July 2023 in which CAPT Danniell Lyon, LT Maxwell Nugent, WO2 Joseph Laycock and CPL Alexander Naggs were tragically killed during service to their nation.

Once again, I warmly and respectfully acknowledge the traditional custodians of this land once known as Meanjin, the Turrbal and Jagera peoples. For tens of thousands of years before European contact, they prospered on the bountiful banks of the River Maiwar. And they held meetings here to work out ways to do things better in their community; in essence, as we will continue to do over the next two weeks as we further explore the circumstances preceding and surrounding the crash, its causes, and how it has been dealt with. We're uniquely privileged as Australians to be able to reflect on the nation's ancient indigenous heritage.

As in previous hearings, some witnesses giving evidence to the Inquiry, because of the nature of their work, will do so using pseudonyms and with an order that no images of them be broadcast. For that reason, I have issued non-publication order No 10 of 2025, which will now be published on our website. That brings the number of people benefitting from these orders to 150.

During the testimony of these pseudonymised witnesses, the video will be stopped and only audio will be streamed. It is an offence to breach those orders. If the media has any concerns, doubts or queries, they should contact the Inquiry's highly capable Media Officer, WGCDR Deanna Nott.

The Inquiry has endeavoured, wherever possible, to conduct hearings in public. Once again, during this hearing block, there may be some Private Sessions because of the nature of the information being received and provided, and the security classification of that information. Where this occurs, the streaming will, of course, stop, and I will issue non-publication Directions to those permitted to attend the viewing and hearing. Again, it is an offence for anyone to breach those orders.

As I have regularly mentioned, this Inquiry is being conducted in as trauma-informed a manner as possible, but it is an Inquiry and must, therefore, be inquisitorial. Common sense and procedural fairness must allow Counsel representing to ask questions, either to assist the Inquiry or where the interests of their clients require it.

Nevertheless, I again remind Counsel representing that this Inquiry is being conducted in as trauma-informed a way as possible, and that paragraph 35 of the Inquiry Practice Note requires a question to be courteous. It should

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also be as concise as possible. Counsel representing should therefore frame their questions and adjust the tone of their questioning with that in mind, as far as that is possible in carrying out their duty to their clients.

5 I understand that medical information in respect of at least one witness to be called in this hearing has been shared with Counsel Assisting and Counsel representing. I ask all Counsel to consider that material when questioning that witness.

10 You will hear later today from GPCAPT Smith, the Director of the Defence Flight Safety Bureau, through whom I expect the Bureau's final Aviation Safety Investigation Report and enclosures into the crash the subject of this Inquiry will be tendered. Counsel Assisting has provided that material to Counsel Representing, but subject to a non-publication order from me.

15 As set out in paragraphs 63 to 65 of the Inquiry's Practice Note, the Inquiry endeavours to observe the International Civil Aviation Organisation (ICAO) Guidelines. For that reason, on 14 April, the Inquiry's legal team informed Counsel representing that no examination of GPCAPT Smith
20 about the specific contents of the report would be permitted unless a written application, with supporting reasons, was made to the Inquiry by 23 April. No such applications have been made.

I understand that the legal team for the Commonwealth has helpfully
25 informed Counsel Assisting that the Commonwealth is still considering the final Aviation Safety Investigation Report, its findings and recommendations. Ms Musgrove, could I ask you to inform the Inquiry, as soon as, and if, the Army and/or the Director-General of the Defence Aviation Safety Authority, and the Defence Aviation Safety Authority,
30 have accepted the report's findings and recommendations in due course?

MS MUSGROVE: Good morning, Ms McMurdo. I note the request. I would just indicate for the Inquiry that DFAA has received the final report from DFSB, and is acting on it. DFAA, DG DASA and the Army, and
35 respective Accountable Managers, are currently, and have throughout the investigative process, been considering the recommendations and implementing various recommendations along the way.

40 The use of the language of "accepting" or "rejecting" the report is not part of the process of the language for the final report. It is a generative safety culture, and so the considerations are ongoing and the implementation of the recommendations are being considered and ongoing as well. If that assists.

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MS McMURDO: So will there not be a point where the Inquiry can be informed what findings and recommendations have been accepted and implemented, or are to be implemented?

5 MS MUSGROVE: That is an ongoing process, and I will take instructions on it; whether or not each recommendation as set out in the final report is going to be accepted in that form, or a varying form, and the timeframe for each. So I'll take instructions on that.

10 But please know that the DFAA, Army, DG DASA, are actually considering the recommendations and the findings, and implementing those in due consideration, and in accordance with the recommendations.

15 MS McMURDO: That's fine. But you can understand how it would be very helpful to the Inquiry to have something more concrete and tangible than that, at some point when you're able to give it to us.

MS MUSGROVE: I'll take instructions, Ms McMurdo.

20 MS McMURDO: Thank you. Finally, I remind anyone who is distressed by matters arising in these hearings that help is always available through the organisations whose contact details appear regularly on the live stream, and on the Inquiry website. Members of the ADF have the additional option of contacting their Chain of Command for assistance, or reference
25 on to support services.

Yes, COL Streit?

30 COL STREIT: Thank you, Ms McMurdo, and good morning to you and AVM Harland. With the Inquiry's permission, I'll make some brief opening remarks as to the purpose of this hearing phase, including identifying witnesses to be called.

35 It's important to recall my submissions, this preliminary step that I have made in previous hearings. Bushman 83 is the call-sign of MRH-90 Taipan aircraft in which CAPT Lyon, LT Nugent, WO2 Laycock and CPL Alexander Naggs were flying in, at night, on 28 July 2023.

40 The Inquiry is required to examine issues before the crash of Bushman 83, find out what happened at the time of the crash, and what happened after the crash. The Inquiry's Directions describe these broad areas: there's pre-incident issues, the incident, post-incident issues, and other issues. The term "the incident" refers to the crash of Bushman 83 on 28 July 2023.

45 In my opening address in an earlier hearing in May of last year, I said this:

5 *Can I begin by first making some observations about what an Inquiry process is, which might assist people in the audience and watching online to put in context some differences between an Inquiry and what might be their experiences in a Court or a Tribunal.*

10 *An Inquiry such as this is a fact-finding process. It is necessarily dynamic, in a sense that unlike a case before a Court or a Tribunal, an Inquiry follows an investigative process to find evidence to answer questions in its Directions.*

15 *Where the evidence may lead is not always clear, nor anticipated. By analogy, it's a bit like travelling down a river in a boat, and every now and again venturing up a branch of the river to explore an issue. You then return to the main journey down the river, to your destination.*

20 *Sometimes, what is discovered when exploring the branch of the river is significant, and will occupy the Inquiry's attention for a period of time. This can change the Inquiry's expected timeline, and its plans. If the matter is not significant, the Inquiry can draw a line through that matter and return to its main journey.*

25 *You can't properly understand what may have happened in the crash without understanding the state of relevant matters before the crash. There is little point rushing to the finish line and risk overlooking a critical matter.*

30 *I repeat, there is little point rushing to the finish line and risking overlooking a critical matter.*

35 We are now, in this hearing phase, close to the finish line in terms of gathering evidence from witnesses. Putting to one side the legislative basis, this IGADF Inquiry is, to a large extent, a legacy about CAPT Lyon, LT Nugent, WO2 Laycock and CPL Naggs, what happened to them on 28 July 2023, and why. It's about working those things out as best we can through an independent and transparent Inquiry process, so findings and recommendations can be made to help the ADF learn from this tragic event, and avoid or limit the risk of it happening again, which is something the Inquiry Chair referred to in the foreword of the Inquiry's Practice Note.

45 It is apposite also to recall AVM Harland's opening remarks upon taking up his duty as Deputy Chair of the Inquiry. He said this:

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I am aware that Military Aviation is not without risk. I have personally lost friends who have tragically died in Military Aviation incidents.

5 *We have a duty and an obligation to enquire into the deaths of CAPT Lyon, LT Nugent, WO2 Laycock and CPL Naggs. This will be a challenging process for all, and our aim is to sensitively explore what happened, and to determine, to the best extent possible, why it happened.*

10 *To be successful, we will need the support and engagement of all involved. It will be necessary to ask difficult questions, and we ask that you assist us to determine the circumstances leading to the accident, to enable the ADF to reduce the risk of future accidents. We owe that duty to the crew of Bushman 83, family and friends, and ADF aviators present and future.*

15 *The Inquiry has, in its preceding eight hearings, obtained much evidence to answer its Directions. Much courage has been shown by many witnesses in coming forward to the Inquiry and providing important evidence.*

20 *In this regard I note the comments of the Chief of the Defence Force and the Secretary for Defence in a message to all Defence staff in August of 2024 about the importance of Defence supporting this Inquiry and other investigations while Defence also provides support to personnel involved in the Inquiry and other investigations.*

I will tender this message at the end of my opening remarks.

25 *In this hearing phase, D10, D19 and MAJGEN Jobson will give evidence. They are first and foremost important witnesses in the Inquiry. They are being called in the last planned hearing because, as persons potentially affected by the Inquiry, what the Inquiry is required to examine under its Directions, D10, D19 and MAJGEN Jobson are entitled, as a matter of fairness, to hear all the evidence called before the Inquiry before they too give their evidence.*

30 *This is simply a requirement arising from the legal principle of procedural fairness, no more and no less. They are legally represented before the Inquiry and have had the opportunity to put questions to witnesses appearing before the Inquiry through their respective lawyers.*

5 D10, D19 and MAJGEN Jobson have, like many witnesses that have given evidence before them, been impacted by the loss of CAPT Lyon, LT Nugent, WO2 Laycock and CPL Naggs. Their evidence may at times be challenging for them to give and we, as lawyers asking them questions, need to be mindful of that matter.

10 As I have remarked in earlier hearings in terms of the role of Counsel Assisting, Counsel Assisting is not the mouthpiece of any organisation, person or witness. Counsel Assisting's role is to assist the Inquiry. This includes ensuring fairness is provided to all persons that appear before the Inquiry so their evidence can be heard and considered by the Inquiry.

15 That does not mean a witness won't face difficult questions at times. What it does mean is that when difficult questions are asked of a witness they will be asked fairly and in a trauma-informed manner. If Counsel Assisting considers questioning of a witness unfair, Counsel Assisting may object, or will object.

20 It is important to remember the families. They seek the answers to what happened, and why, to their loved ones. Their circumstances are never far from my thoughts. Through all of this, they have suffered most. They have actively participated in the Inquiry's hearings, showing immeasurable strength in doing so, either watching the hearing in person or watching the live stream. I have nothing but the deepest respect for them all.

25 In terms of witnesses to be called in this hearing phase, COL Gabbedy has requested MAJ Lewis give evidence. MAJ Lewis was scheduled to give evidence. No application being received to cross-examine him, he was removed from the list. A subsequent application was made and MAJ Lewis, his availability, has kindly altered some things so he is available to give evidence before the Inquiry. It will need to be via audio-visual link, because he's in the middle of flying duties, and arrangements have been made for that to take place at 9.30 am on Wednesday this week, so as to cause the minimum disruption to D10's evidence, who may be commencing his evidence later tomorrow afternoon.

35 In terms of the balance of the witness list, today we'll hear from MAJGEN Jeremy King, who is the Head Joint Aviation Systems Division at Capability Acquisition and Sustainment Group. MAJGEN King was one of a handful of witnesses identified and offered by the Commonwealth to the Inquiry to give evidence in relation to certain matters. I thank the Inquiry for that communication concerning MAJGEN King, and he's been called.

45

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5 GPCAPT David Smith will follow MAJGEN King. He is the Director of the Defence Flight Safety Bureau. He'll give evidence in relation to some aspects concerning the investigation leading ultimately to the final Aviation Safety Investigation Report. He'll also give some evidence in relation to a matter concerning his previous role when he worked within the Defence Aviation Safety Authority.

10 Tomorrow we'll see Dr Braden McGrath give evidence. He is the Professor of Practice Digital Engineering Capability Systems Centre, the University of New South Wales. He is a subject matter expert. He provided subject matter expert advice to the Aviation Safety Investigation in the conduct of its examination of the circumstances of the impact with water of Bushman 83.

15 Following Dr McGrath, D10 will be called. I anticipate that will be later in the afternoon of tomorrow. D10 was the Officer Commanding of 173 Special Operations Squadron in the period 2022 to 2023.

20 On Wednesday we'll hear from MAJ Lewis via an audio-visual link, and D10 will continue his evidence.

25 On Thursday, subject to concluding D10's evidence, we'll commence the evidence of D19, who was the Commanding Officer of the 6th Aviation Regiment during 2022/23. His evidence will continue into Friday.

30 On Tuesday, 6 May – noting that Monday, 5 May is a public holiday in Queensland – on Tuesday the Inquiry will call Dr Adrian Smith. He was to be called earlier in the hearings, in this hearing phase, but a request made by some members of Counsel Assisting that he be called later in the hearing phase was agreed to and he kindly had availability to be moved to Tuesday next week.

35 I note Dr Smith will be present, as he has been in other hearings, to listen to the evidence of aircrew. This will include D10 and D19, MAJGEN Jobson, and he'll also listen to the evidence of Dr McGrath.

40 On Wednesday of next week, I anticipate MAJGEN Jobson, the Commander of Aviation Command in the period 2022/2023, will commence his evidence, and anticipate his evidence concluding on Thursday, 8 May. That leaves Friday, 9 May, a hearing day available in case of overflow evidence, and there may be, I understand, some statements made on behalf of some family members at that time.

45 Can I turn briefly to say something about disclosure of documents? The Inquiry's legal team has worked very hard to review and disclose to

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5 applicable Counsel representing large volumes of documents received, including witness statements and annexes and enclosures to those statements. Timelines are provided to all Counsel representing as the Inquiry has many competing tasks, moving parts, many Counsel representing to respond to issues raised, many witnesses to address, including their personal circumstances to consider.

10 It's requested that Counsel representing pay close attention to email communications from the Counsel Assisting Team to minimise the risk of missing responses to timelines. As always, should issues arise, Counsel Assisting invites individual Counsel representing to communicate with Counsel Assisting about such matters.

15 Nobody's perfect and things can sometimes be missed, but we need to work together to ensure the hearings can proceed and everyone has the documents that are relevant to their position, not perhaps what they wish to have.

20 I wish to record my thanks to the Commonwealth's legal team, and a particular Colonel and his small team, for their ongoing assistance in conducting the security review of the large volume of material received by the Inquiry, particularly since the hearing in February and up to the commencement of the Easter break, which has assisted Counsel Assisting's endeavours to keep this hearing phase on track.

25 Due to the nature of security classification of certain evidence to be led in this hearing phase, it will be necessary this week to conduct a Private Hearing concerning some aspects of the evidence of Dr McGrath. It may become necessary to conduct a Private Hearing for aspects of the evidence of Dr Smith, D10, D19 and MAJGEN Jobson.

30 I will foreshadow to the Inquiry and Counsel representing as soon as possible if a Private Hearing is necessary. Equally, can I encourage Counsel representing to approach me or another member of Counsel Assisting should Counsel representing foreshadow the need to go into Private Hearing concerning a particular witness?

40 I note the Commonwealth's response in relation to the Defence Aviation Authority, the Chief of Army and the Director-General of the Defence Aviation Authority considering the findings and recommendations of the final Aviation Safety Investigation Report, and I look forward to receiving future information, potentially confirmation, as to when those office holders are in a position to confirm, or otherwise, whether such findings and recommendations have been accepted.

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5 I note the Inquiry Chair's guidance in previous hearings concerning security matters and the delineation between Public and Private Hearings. Evidence above the classification "Official" cannot be led and/or heard in a Public Hearing. Counsel Assisting is available as always to assist Counsel representing with security matters and will at appropriate times foreshadow to the Inquiry if it's necessary to go into a Private Hearing.

That concludes my opening remarks.

10 MS McMURDO: Thank you, COL Streit.

COL GABBEDY: Ma'am, there's a couple of short matters, if I may?

15 MS McMURDO: Yes.

COL GABBEDY: I'll start with the easy one. I haven't mentioned this to my friend, but in relation to MAJGEN King, who is our first witness, there are a number of questions I have that can only be asked in a Closed Session. So perhaps if I go last, and if there are other members that have questions for a Closed Session we can do them at the end.

20 MS McMURDO: That would be the best, yes. And you could ask any questions that you have that can be done in a Public Session before we go into Private Session.

25 COL GABBEDY: Thank you, ma'am. The other matter relates to GPCAPT Smith. I did write to Counsel Assisting requesting leave to cross-examine him. I have sharpened my cross-examination and I believe I can ask him questions that don't go to his report. But I was concerned when you just said that no such applications were received, because one was certainly sent from me. I didn't receive an acknowledgement. But my recollection is that SQNLDR Gracie also followed up saying that he had some questions for GPCAPT Smith. So I do have some questions.

30 MS McMURDO: It's only if the questions relate to the accuracy of the DFSB report.

35 COL GABBEDY: I would say the vast majority of my questions do not. Any questions that do are simply questions of clarification. I'm sure that can be dealt with on a question-by-question basis if needed. And I will leave the questions that related to clarification to the end.

40 MS McMURDO: Yes, all right then.

45 COL GABBEDY: Thank you, ma'am.

MS McMURDO: And you might have further discussions perhaps with Counsel Assisting.

5 COL GABBEDY: In the lunch break, perhaps that might assist.

MS McMURDO: Yes, thank you. Thank you, COL Gabbedy. Yes, Ms Musgrove.

10 MS MUSGROVE: I'm sorry, just on something that my friend has just raised in relation to questions in cross-examination, I'd actually request that the Practice Direction be followed that sets out what is required in terms of seeking leave to cross-examine a witness for GPCAPT Smith, particularly if it possibly traverses the issue of the Aviation Safety Investigation Report. And I obviously draw my friend's attention to points 37 and 38 of the Practice Direction for this Inquiry that requires leave and an application for cross-examination:

20 *And an applicant must identify a sufficient interest to warrant cross-examining the witness, and must:*

(a) identify the purpose of the cross-examination; and
(b) set out the issues to be canvassed; and/or
25 *(c) provide the Inquiry with copies of any documents to which they propose to take the witness to ensure that appropriate questions can be asked.*

30 But that they don't actually traverse the findings of the final report. I would request that the Commonwealth also be given the outline that my friends may put to the Inquiry in their applications.

I would request that in writing so that we could perhaps find a way to work together so that the cross-examination could take place, but so that it doesn't actually go into areas that we say would be inappropriate and not in accordance with the ICAO Standards.

40 MS McMURDO: Thank you, Ms Musgrove. I note that application and I invite Counsel Assisting and Counsel representing to see if that can be sorted out amicably between you outside the Inquiry hearing. Otherwise it can be brought to me to determine.

MS MUSGROVE: May it please.

45 MS McMURDO: Thank you. COL Streit?

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COL STREIT: Thank you, Ms McMurdo. First, just in relation to MAJGEN King and a Closed Session, I'll speak with COL Gabbedy about that matter during a break. I wasn't aware of that matter.

5 In relation to the application to ask GPCAPT Smith questions, I've just been shown an email which was sent to the Inquiry's group email inbox. It's an email I haven't seen before. So I'll have regard to that particular matter, and the contents of it. So I haven't formed a view in relation to that matter.

10 Concerning seeking leave to cross-examine, I understand the Commonwealth's position concerning that matter. It's a bit unfortunate that it's raised now only in relation to this single witness. It's been applicable to every entire witness that's appeared before this Inquiry.

15 MS McMURDO: Of course.

COL STREIT: And the Inquiry has adopted a particular approach. The Practice Note is subject to your direction and guidance and can be changed at any point in time. I understand the sensitivities around GPCAPT Smith's evidence. We've been clear in our communications to Counsel representing concerning no questioning of GPCAPT Smith about the specific contents of the final Aviation Safety Investigation Report, its findings and recommendations as contained in the report unless an application is brought to the Inquiry, and the Inquiry has accepted that application.

20 I will – and have communicated to the Commonwealth – be asking GPCAPT Smith questions concerning the contents of a fact sheet which the Commonwealth has provided and we have disclosed to Counsel representing. That fact sheet was also provided to the families. It is at the “Official”, level and I will be leading evidence from GPCAPT Smith in relation to the contents of that fact sheet, which includes reference to findings contained in that fact sheet. I understand that's not an issue for the Commonwealth.

35 So I will have some clarifying discussions with the Commonwealth before GPCAPT Smith is called and update the Inquiry at an appropriate time.

40 MS McMURDO: Yes. So anybody wishing to pursue that line of questioning with GPCAPT Smith should be prepared to make a written application with supporting material then, which I should make clear.

45 COL STREIT: Yes.

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MS McMURDO: But hopefully that can be sorted out in one of the breaks. And if you need a little bit more time to do so, that's fine too.

5 COL STREIT: Yes. I omitted to do one thing at the end of my opening remarks, and that was to tender the message from the Secretary of the Department of Defence and Chief of the Defence Force of 27 August 2024 sent to an addressee, "All Defence Staff". It is dated 27 August 2024 and comprises two pages.

10 MS McMURDO: The message from the head of the ADF on 27 August '24 will be Exhibit 196.

15 **#EXHIBIT 196 - MESSAGE FROM HEAD OF THE ADF**

COL STREIT: Thank you. FLTLT Rose will be taking MAJGEN King. I'll just wait for her to come to the lectern.

20 MS McMURDO: Thank you. Yes, FLTLT Rose?

FLTLT ROSE: Good morning, Ms McMurdo, AVM Harland. I call MAJGEN Jeremy King.

25 **<MAJGEN JEREMY BRIAN KING, Sworn**

30 **<EXAMINATION-IN-CHIEF BY FLTLT ROSE**

MS McMURDO: Major General, please help yourself to water. And if at any time you need a break, just let me know and I'll adjourn. Thank you.

35 MAJGEN KING: Thank you.

MS McMURDO: Yes, FLTLT Rose?

40 FLTLT ROSE: Can you please state your full name?

MAJGEN KING: Jeremy Brian King.

FLTLT ROSE: You're a Major General in the Australian Army?

45 MAJGEN KING: That's correct.

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- 5 FLTLT ROSE: Can you confirm you received the following documents from the Inquiry: a section 23 Notice requiring your appearance today to give evidence?
- MAJGEN KING: I did.
- FLTLT ROSE: An extract of the Inquiry's Directions?
- 10 MAJGEN KING: That's correct.
- FLTLT ROSE: Could I just ask you to keep your voice up so we can hear you? A copy of my appointment as an Assistant IGADF?
- 15 MAJGEN KING: Yes, I did.
- FLTLT ROSE: A Frequently Asked Questions Guide for Witnesses in IGADF Inquiries?
- 20 MAJGEN KING: Yes, I received that.
- FLTLT ROSE: And a Privacy Notice?
- MAJGEN KING: Yes.
- 25 FLTLT ROSE: Did you prepare a statement for the Inquiry?
- MAJGEN KING: I did.
- 30 FLTLT ROSE: I'll hand you a bundle of documents. If you could look at the top document, is this your statement dated 28 February 2025?
- MAJGEN KING: Yes, it appears so.
- 35 FLTLT ROSE: It's 17 pages?
- MAJGEN KING: That's correct.
- FLTLT ROSE: There are five annexures, A through to E?
- 40 MAJGEN KING: Yes, that's correct.
- FLTLT ROSE: Do you wish to make any amendments to your statement?
- 45 MAJGEN KING: No, I don't.

FLTLT ROSE: I tender the statement.

5 MS McMURDO: The statement and the Annexures A to E will be Exhibit 197.

#EXHIBIT 197 - STATEMENT OF MAJGEN KING AND ANNEXURES

10

FLTLT ROSE: Can I please ask you to be mindful of your security obligations so that if I, or anyone else in the room, asks you a question you think the answer to which is at the “Official: Sensitive” level or above, to just let us know and we won’t explore that in a Public Hearing?

15

MAJGEN KING: Understand.

FLTLT ROSE: I’ll ask you some questions about your background and your qualifications. So you’re currently the Head of Joint Aviation Systems Division in Defence Capability Acquisition and Sustainment Group.

20

MAJGEN KING: That’s correct.

FLTLT ROSE: That’s also known as CASG.

25

MAJGEN KING: Yes.

FLTLT ROSE: You have an engineering background.

30

MAJGEN KING: I do.

FLTLT ROSE: You’ve got degrees in Electrical Engineering.

MAJGEN KING: Yes.

35

FLTLT ROSE: And Engineering Science.

MAJGEN KING: Yes.

40

FLTLT ROSE: And a Master’s in Business Administration.

MAJGEN KING: I do, yes.

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FLTLT ROSE: Sorry, I'm finding it a little bit difficult to hear. Perhaps if you bring that closer to you. You can move it forward. Thank you.

MAJGEN KING: Is that better?

5

FLTLT ROSE: That's much better, thank you.

MAJGEN KING: No problem.

10 FLTLT ROSE: If you look at paragraphs 4 to 8 of your statement, it outlines your progression through the Army. You started your officer career in the Army in 1991.

MAJGEN KING: 1989.

15

FLTLT ROSE: 1989. That was in the Royal Australian Electrical and Mechanical Engineering Corps.

MAJGEN KING: No, I started in the Royal Australian Electrical Mechanical Corps in 1991.

20

FLTLT ROSE: Understand. And then there was a period of time for two years when you were in a different corps.

MAJGEN KING: That's correct, yes.

25

FLTLT ROSE: You've fulfilled many roles since that time, including being appointed as the Director-General Army Aviation Systems Branch in CASG in 2017.

30

MAJGEN KING: Yes.

FLTLT ROSE: In 2020, you returned to Army Headquarters.

MAJGEN KING: That's correct, yes.

35

FLTLT ROSE: Then you returned to CASG again in February 2023, when you were appointed to your current role.

MAJGEN KING: That's correct, yes.

40

FLTLT ROSE: Paragraph 10 of your statement, you have also served in 171 Squadron in 6 Aviation Regiment at some point?

MAJGEN KING: I have, yes.

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FLTLT ROSE: When was that?

MAJGEN KING: That was 2005 and 2006.

5

FLTLT ROSE: Which aircraft were you working on at that time?

MAJGEN KING: That was the S-70A-9 Black Hawk.

10 FLTLT ROSE: Paragraph 11, you also held a project management role on the MRH-90 in 2011.

MAJGEN KING: That's correct.

15 FLTLT ROSE: You also worked on the Chinook at some stage.

MAJGEN KING: Yes.

FLTLT ROSE: What year was that?

20

MAJGEN KING: That was 2014 and '15 and '16, and I've been responsible for Chinook in some degree in my future roles since 2017.

25 FLTLT ROSE: At paragraph 20, in your current role as the Head of Joint Aviation Systems Division at CASG, one of your main responsibilities is the acquisition and sustainment of crewed and uncrewed rotary-wing systems, and then some fixed-wing systems as well across all three services.

MAJGEN KING: That's correct, yes.

30

FLTLT ROSE: At paragraph 22, one of the areas that reports to you in the Army Aviation Systems Branch is AATES.

35 MAJGEN KING: No, that's not correct. So Army Aviation Systems Branch is one of the branches that works for me. AATES is not part of that organisation.

40 FLTLT ROSE: I want to ask you some questions now about the introduction into service of the Helmet-Mounted Sight Display version 5.10, otherwise known as TopOwl. Paragraph 25 of your statement?

MAJGEN KING: Yes.

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FLTLT ROSE: So between 2018 and 2020 you were posted to the role of Director-General Army Aviation Systems Branch in CASG, as we discussed previously?

5 MAJGEN KING: Yes.

FLTLT ROSE: So at this time you became aware of a need to replace the HMSD version 4.0 on the MRH-90?

10 MAJGEN KING: That's correct, yes.

FLTLT ROSE: You state that the poor performance of version 4.0 was discussed at the MRH Project Management Steering Group?

15 MAJGEN KING: That's correct. There were a number of systems that failed on it on start-up and shutdown. There were elements in relation to the distance to go function, but one of the key problems was that HMSD 4.0 was unreliable.

20 FLTLT ROSE: You were one of the co-chairs of the Steering Group in respect to that, together with the Director-General of Army Aviation?

MAJGEN KING: That's correct, yes.

25 FLTLT ROSE: Who was that at the time?

MAJGEN KING: That was BRIG Scott Benbow and BRIG John Fenwick.

30 FLTLT ROSE: So there were two that followed each other?

MAJGEN KING: That's correct, yes.

35 FLTLT ROSE: At paragraph 26 you state that there were discussions in this Steering Group since 2013 about the dissatisfaction with version 4.0 configuration.

40 MAJGEN KING: That's correct. Version 4.0 was the system that was approved to be acquired on the aircraft when the project was first stood up. As I stated earlier, that system was unreliable, there were numerous reliability issues in relation to it powering down on start-up, some of the elements not appearing in the symbology correctly. And so whilst there were some elements that were needed for future capability such as the distance to go function, it was identified that that system, whilst approved

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as part of the acquisition project, wasn't performing as satisfactorily as it should have.

5 FLTLT ROSE: In essence, you're referring to the distance to go aspect of the symbology. It was deemed essential for the Special Operations to have that functional feature operating correctly?

10 MAJGEN KING: For that Project Management Steering Group, it was communicated that it was essential. So that was, I'd argue, the key driver for moving across from HMSD 4.0 to HMSD 5.10. But there were a number of other advantages, and that was about getting this unreliable system that didn't perform to a satisfactory standard off the aircraft and moving to one that was more stable and reliable as well.

15 FLTLT ROSE: Was there an issue about the acuity on 4.0?

MAJGEN KING: Not to my knowledge, no. Certainly that wasn't something that was presented at the PMSG.

20 FLTLT ROSE: Just to recap, there were discussions since 2013 about the need to come up with a better solution for that product?

MAJGEN KING: That's correct, yes.

25 FLTLT ROSE: At paragraph 27 you state that you were made aware in 2017 that the Director of Aviation Capability Management, or DACM, had assessed version 4.0 as unacceptable for use in the crash rescue function.

30 MAJGEN KING: Yes, that's correct. At the time MRH was being used in the crash rescue function in Oakey. And as I say, through the PMSG, that was one of the points and one of the other reasons why it was sought to be replaced.

35 FLTLT ROSE: At paragraph 28 you state that your role in the process to replace the HMSD, the version 4.0, was to endorse the approach to progress to next steps and to try and find a suitable replacement for it.

MAJGEN KING: That's correct.

40 FLTLT ROSE: So that was the role of the Steering Group, or you personally?

45 MAJGEN KING: My staff largely contributed to that. So CASG had a resident team in Europe that were engaged with the other operators in Europe. And obviously HMSD 5.10 was in service with both the Germans

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and the French, so through myself engaging with them, but also my staff was examining options to look at the viability of that version.

5 AVM HARLAND: Excuse me. Could I just reverse back to para 27, the bottom of page 3. There's a sentence there that says:

10 *Because the upgrade was funded through contingency funding, much of this discussion was finance-led in my engagements, although I was also tracking the need to address AATES' concerns through commentary in the PMSG specifically.*

15 Could you please elaborate on what the significance of that being funded through contingency funding would mean and also the significance of there being finance-led conversations?

20 MAJGEN KING: So as part of the Government approval for AIR-9000 Phase 2, 4 & 6, which is the project to acquire MRH-90, the configuration that was approved to be acquired was HMSD 4.0 because that was the system that industry then offered as part of that and was approved for use on the aircraft. The fact that it was not performing to a standard and it was identified after we had commenced the acquisition that in order to get the distance to go function, that we would need to move off that to a different system that was going to require additional funding, that's a different scope to what was approved by government.

25 So every project has what is called a contingency funding that's designed to allow you to then go and address those deltas that perhaps you don't identify when you sign the contract for that aircraft. So, as such, there's a process to access that contingency funding. It's not one that you can just go and use because you think it's the right thing to do.

30 So the PMSG was largely the clearing house to identify where there was a need to apply contingency funding to upgrade into an (indistinct) project system, and then use that money rather than perhaps sustainment for funding; or perhaps just have to deal with an underperforming system, as was the case with 4.0 for the duration of the life of the aircraft.

35 AVM HARLAND: So effectively you bought a system. In the process of bringing that system on board, it was found to be lacking. So the only method of achieving an upgrade to that, it can't be done as part of the project, you've just got to accept that you've kind of bought the wrong thing.

40 MAJGEN KING: Sorry. You can do it as part of the project, but you don't have a funding profile. So you need to access the contingency

funding that's allocated to the project to then go and move from the system that was acquired with the aircraft to a better system that's reliable and has the features that you now realise you need.

5 AVM HARLAND: So you do that – contingency funding is done within the project. You need to provide a justification, which is why the conversations were finance-led. Does that then add a sense of pressure or otherwise on the system as you're looking at implementing it down-track? That given you go, "Okay, we need to move away from version 4.0. We've
10 got to go to version 5.10. We're now on contingency funding", does that add a sense of pressure or urgency to the system following on to be able to get that system across the line?

15 MAJGEN KING: Look, I don't think so. Every project comes with a contingency funding. And whilst that's a formal process and we use the PMSG as the mechanism in order to formally progress that through so there's a record of what you are doing, there are also informal conversations occurring to validate whether that's acceptable. I think the fact that distance to go function was assessed as essential, it really made the process
20 almost a formality. So whilst we took it through the PMSG at the time, it was largely a formality because that was required and the current system didn't have it.

25 So there was contingency funding available still in the project to cover the cost. There was a known path that can fix the problem through to HMSD 5.10. What we needed to do was effectively capture that through the PMSG.

30 AVM HARLAND: So why wasn't distance to go specified as essential before we got version 4.0?

MAJGEN KING: Say the question again?

35 AVM HARLAND: So you're saying that version 5.10 having the distance to go function or the display was classified as essential. That indicates to me that this is a new thing that we've found – that Defence has found – that is essential. Why wasn't it essential beforehand?

40 MAJGEN KING: Look, I know the project's had a bunch of requirements that were essential, desirable, undesirable, et cetera. That's generally how the system specifications are spelt out. I actually don't know, but I would be very surprised if something like distance to go function was called out in the original system specifications as being required.

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5 Regardless of that, at some point along the path from when we acquired the aircraft in 2005 to when it was identified in 2013, it was identified as a need and it was classified as essential. So I'm not exactly sure where that was injected into the process. I'd be very surprised if it was identified in the original system specifications though.

10 AVM HARLAND: One final question. In 2005, when we acquired the MRH-90 system, did we envisage using it in the SO role or was it just going to be used for air mobility?

15 MAJGEN KING: So I described the project earlier as AIR-9000 Phase 2, 4 & 6. The original project was to acquire a Squadron of aircraft simply to provide utility, support and lift. As we rolled in Phases 4 and 6, that was to replace the Sea King helicopter for Navy and the Black Hawk in the Special Operations capability.

20 So whilst we initially had a project that didn't require that Special Operations capability, when the additional phases were blistered into the project, it absolutely incorporated the Special Operations capability and there would have been an expectation, given the HUD that we had on Black Hawk – the Head-Up Display – that those functions would carry across onto MRH-90.

25 AVM HARLAND: I'm just trying to understand, because I kind of see a bit of a gap here where there's a transition in terms of what the requirement for MRH-90 is into a new role. And then we kind of find that the system has come up short on what is now classified as "essential", "must have", "can't do without it" function, and all of a sudden it's a bit of a scramble. It would seem to me that that would ordinarily be covered in the different phasings of the program as it builds.

30 MAJGEN KING: Yes. Look, as I say, with the addition of Phases 4 and 6 being added to the original Phase 2, very much came with a Special Operations capability being added to an aircraft that was not identified initially for that. That's not the end of the world. It's entirely manageable. As I say, it was fortunate that it was a system for the TopOwl that we were able to tap into relatively easily that could provide us that function and address the other issues that I alluded to that HMSD 4.0 was displaying.

40 AVM HARLAND: Understood. Thank you, that's helpful.

45 MS McMURDO: So while you're interrupted, I might ask a few questions myself, if you don't mind. So it was unacceptable for Special Operations, and then in paragraph 27 you say:

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And it was unacceptable for use in the crash rescue function it was performing.

5 Are they separate things or the same thing?

MAJGEN KING: They are separate things.

10 MS McMURDO: They are separate things. So it was unacceptable for two areas of use?

15 MAJGEN KING: I simply flagged that, as I went through prior to the hearing, all of the PMSG Minutes, and it was noted it was in the Minutes and it was in one of the slides, that HMSD was required to support the crash rescue function in Oakey, and it had been assessed as unacceptable.

MS McMURDO: Thank you. Also in paragraph 27, where you say, at the bottom of page 3:

20 *Because the upgrade was to be funded through contingency funding, much of this discussion was finance-led in my engagements, although I was also tracking the need to address AATES' concerns through commentary in the PMSG, the Project Management Steering Group, specifically.*

25 Did this relate to the AATES concerns about version 5.10?

30 MAJGEN KING: So through the PMSG, the AATES concerns were raised and highlighted that there were ongoing challenges in relation to how that would be addressed.

MS McMURDO: But that is 5.10; is that right?

35 MAJGEN KING: That's correct, yes.

MS McMURDO: So that relates to that. Now, you did mention that the Army Aviation Systems Branch reports up to you, but that that didn't include AATES?

40 MAJGEN KING: That's correct, yes.

MS McMURDO: So could you just explain what the Army Aviation Systems Branch did include that reported up to you?

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MAJGEN KING: So the Army Aviation Systems Branch is responsible for acquisition and sustainment of helicopters for Army specifically at the time, as well as the MRH-90 for Navy. It also has responsibility for tactical and small uncrewed aerial systems in support of Army as well. So that
5 involved at the time – or through my tenure, the sustainment for Chinook, for MRH-90 and for ARH Tiger, as well as the acquisition most recently of Black Hawk and Apache.

We also had the project which was AIR-9000 Phase 2, 4 & 6, which was
10 the introduction into service and acquisition of MRH-90 for Army and Navy. On top of that, as I said, all of what are colloquially known as drones as well for Army.

MS McMURDO: Thank you. This contingency funding that is built into
15 all projects, I guess, getting money for new things is always a challenge, and I'm sure it was a challenge in Army to do that. So was there a wish – quite understandable; I'm not being critical here – but a wish to use contingency funding where that was possible?

MAJGEN KING: Look, that's correct. It has changed since then.
20 Contingency funding is no longer allocated to projects. But at the time it was an amount of money that was there that you could call upon to address these sorts of things.

MS McMURDO: Yes.

MAJGEN KING: The concern would obviously be that if we didn't do it
via that means, at some point while the aircraft was in service, you would
start to use things like sustainment funding. That is a finite amount of
30 money that is designed to keep the running system operating, replacing parts, those sorts of things, as opposed to dealing with a system that fundamentally is unreliable in terms of its issues around – as well as addressing things such as the distance to go function that was identified midway through the project or at some point in the project, as essential.

MS McMURDO: And so, certainly, it would be much easier to fall within
35 the contingency funding heading if something was identified as unacceptable and - - -

MAJGEN KING: Essential?

MS McMURDO: Essential. Yes, thank you.

MAJGEN KING: That's correct.
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MS McMURDO: Yes, thank you.

5 AVM HARLAND: So if contingency funding is no longer a thing, how does a project deal with the almost inevitable fact that you will find something to be short when you go through a complex project?

10 MAJGEN KING: So I should clarify, my apologies. Contingency funding is still available; it is no longer allocated directly to a project. It is a pool that's held inside the department for all of its projects, and you can bid for access to that in a whole pool, as opposed to it's allocated out, project-by-project. If that makes sense?

15 AVM HARLAND: Who is the decision-maker on whether that gets allocated to a particular project or not?

20 MAJGEN KING: So again the CFO. And there's a Finance Committee that sits within the department, in terms of how you then apply for that access to that contingency. The process is largely the same, it's just not sitting inside – it's not allocated inside the project. There's still the requirement to have the transparency and the rigour to justify why you're going to use it. You are just bidding for it, as part of an external pull to the project.

25 AVM HARLAND: But a Finance Committee has got other things on its mind, like managing a spreadsheet, not managing capability, so why would that not be resident within a capability organisation, or at least cooperative between the two?

30 MAJGEN KING: I suppose it goes back down to the point of you need to have your justification lined up and be correct. If you are applying for contingency and the justification is there, then you should expect to get access to that money.

35 AVM HARLAND: So that's made by, effectively, the finance people, not by capability people, that decision?

40 MAJGEN KING: It's at the Finance Committee, but again, the justification is coming through the project and the operators. In my experience, where we've needed to access contingency for things such as this since then, it's not been an issue in terms of getting access to that money.

AVM HARLAND: Okay, thank you.

45 MS McMURDO: FLTLT Rose, thank you.

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FLTLT ROSE: So you eventually did endorse, through the MRH Project Management Steering Group, their procurement of 5.10, TopOwl?

5 MAJGEN KING: That's correct, yes.

FLTLT ROSE: And you provided a history of how that came to be, in your statement from paragraph 29 to 31. I won't take you to that now. What I'll do is, if you can move forward to paragraph 50 and 51 of your statement?

10 MAJGEN KING: Yes.

FLTLT ROSE: You make clear that you did not have any role in the decision-making process for the MRH-90 to maintain its certification.

15 MAJGEN KING: That's correct, yes.

FLTLT ROSE: And that the extent of your involvement in the release of the HMSD version 5.10 was to endorse a path to progress it as an option through the Project Management Steering Group.

20 MAJGEN KING: That's correct, yes.

FLTLT ROSE: And then to sign the funds assurance for the endorsement to proceed to procure the upgrade.

25 MAJGEN KING: That's correct, yes.

FLTLT ROSE: At paragraph 53 you state that CASG does not have the financial delegation for the procurement.

MAJGEN KING: No, that's not correct; we do have the financial delegation for the procurement, but we can't just go and spend money on the things that we want to spend money on, or we think we should. That's largely driven by the Capability Manager, in terms of those things that are required for the aircraft.

FLTLT ROSE: So what then is the next line of the decision-maker then, if it's not the Capability Manger alone?

MAJGEN KING: So what I'm saying is, at the end of the day we will sign-off to ensure that the procurement has been done correctly. But in terms of driving the requirements for what we spend the money on, that is largely driven by the Capability Manager in terms of what is required.

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5 FLTLT ROSE: So if you go back to paragraph 34, you state that you became aware in July 2019 that AATES had made an “unacceptable” finding after testing, which had resulted in a temporary halt to the planned implementation of version 5.10.

MAJGEN KING: That’s correct. It was flagged at the PMSG, that it was being paused while that was being worked through.

10 FLTLT ROSE: And there was a report then, was it, that came to the Steering Group, or had someone orally addressed the group?

MAJGEN KING: It was literally – I think it was the DACM at the time flagged that, and it was mentioned in a slide, yes.

15 FLTLT ROSE: So the halt then was until it could be determined if the “unacceptable” finding could be mitigated?

MAJGEN KING: That’s exactly what was presented on the day, yes.

20 FLTLT ROSE: Did you see the report from AATES itself which contained the “unacceptable” finding?

MAJGEN KING: Not at the time. I’ve since read it, but not at the time, no.

FLTLT ROSE: So when you say “since read it”, you’ve read it for the purposes of this Inquiry?

30 MAJGEN KING: Correct, yes.

FLTLT ROSE: So years afterwards?

MAJGEN KING: Correct, yes.

35 FLTLT ROSE: Was it usual for information like that to just be presented on a slide, perhaps with some oral explanation, or did the Steering Group actively ask for and receive AATES reports as part of its course of business?

40 MAJGEN KING: Not necessarily AATES reports. Look, I think the context is of everything that was going on in MRH at the time. It was a developmental platform, and so really it was a top-level Committee in order to understand all of the issues that were going on at the time. That was but one of the issues that was occurring at the time, and really it was just an
45 update.

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5 I think the update was in relation to, as I said earlier on, the financial piece, which was we were looking to progress the contingency funding, and effectively we needed to hold off on that until we had some clarity that this was going to be okay.

FLTLT ROSE: Were you given information about what the steps towards mitigation would be?

10 MAJGEN KING: Look, it might've been discussed on the day. It's not captured in the minutes or on the slide; it was just simply as stated in my evidence there, that it was on pause while it was being mitigated – or while the “unacceptable” finding could be mitigated. That was literally how it was presented. There might've been some discussion on the day, but I can't
15 recall.

FLTLT ROSE: You said before that the MRH-90 was a developmental platform. Is that as opposed to a mature platform? Is that the distinction?

20 MAJGEN KING: That's correct, yes.

FLTLT ROSE: That's what you use in terms of project management terminology?

25 MAJGEN KING: I would describe it as a developmental platform, yes.

FLTLT ROSE: And by that, you mean that it was constantly under review and changes?

30 MAJGEN KING: Yes, the systems, in terms of their reliability and their maturity, were not at a level that we had anticipated, that's correct.

FLTLT ROSE: Did it ever stop being a developmental platform, prior to its cessation of service?

35 MAJGEN KING: It required a lot of resources to maintain the system, but that's consistent with a developmental system.

40 FLTLT ROSE: So the answer essentially is no, it remained in developmental stage up until cessation of service?

MAJGEN KING: That would be my assessment, yes.

45 AVM HARLAND: Did other nations consider it to be developmental, are you aware, given that we participate in international groups?

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5 MAJGEN KING: I had a lot of engagements with the other nations. They had similar challenges to us, perhaps less public than us. You know, we've been fairly transparent over the last two decades, on our challenges in keeping MRH operating in terms of reliability and maturity. Perhaps we're one of the more open and transparent nations, but certainly my engagements with other nations has indicated that's consistent with what they've experienced as well.

10 AVM HARLAND: Okay, thank you.

FLTLT ROSE: You gave some evidence earlier that you're the co-Chair of the MRH Project Management Steering Group.

15 MAJGEN KING: That's correct.

FLTLT ROSE: Were you also part of the MRH-90 Configuration Control Boards, CCBs?

20 MAJGEN KING: No, I wasn't. I had staff who were on the Configuration Control Board, but I was not a member of the Configuration Control Board for this aircraft, or any of the others.

25 FLTLT ROSE: And then you actually provide a description of what a CCB did in 2018 and 2020, and who sat on them. You set that out at paragraphs 37 to 41 of your statement.

MAJGEN KING: Yes.

30 FLTLT ROSE: Is it your evidence that you were not aware of any concerns raised at any of these CCBs regarding the introduction of HMSD version 5.10, or did you receive feedback from your staff who were on CCBs about issues concerning 5.10?

35 MAJGEN KING: So I'd characterise the CCBs for MRH-90 as being busy, they had a lot of things that they were doing. In the context of the CCBs that were occurring regularly, Helmet-Mounted Sight Display and the upgrade to version 5.10 was not flagged, no, not with me.

40 FLTLT ROSE: Not with you?

MAJGEN KING: No.

45 FLTLT ROSE: Would you have expected it to be, considering the state of – your role at the time, and also you say the busyness in the team?

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5 MAJGEN KING: In the context of the system that we took across from – and the maturity and its approvals with the other operators, no, I would not. It was perhaps slightly more than a read across from the French and German Airworthiness Authorities, yes.

FLTLT ROSE: A read across. What does that mean, a “read across”?

10 MAJGEN KING: It effectively means that the system was in service and being operated safely and effectively by organisations that we had mutual recognition for, and, as such, we could move it across with a fair degree of confidence onto our aircraft.

15 FLTLT ROSE: So you’re talking about because other nations were using 5.10, you felt more confident, in the Australian Army and Navy setting, to move across the 5.10 software?

MAJGEN KING: Absolutely, yes. That’s correct, yes.

20 FLTLT ROSE: Is that how you approached other matters and other products, for example, if other allied nations were using the same product? In effect, it could move quicker through the CASG process?

25 MAJGEN KING: It depended on which nation was operating it and whether we had done the work to understand their regulatory system and validate those to allow us to bring it across. It also depended on things like their configuration and whether it was compatible with ours. But in the case of 5.10, given the relatively similar configuration and compatibility with the German aircraft, and the fact that we had recognition of their system, it
30 allowed for that to be moved across within the construct of the CCB relatively easily, yes.

35 FLTLT ROSE: Did you have recognition of the system, the entire German testing and evaluation system, or do you mean the recognition of the system in relation purely to 5.10?

MAJGEN KING: No, the whole system. So, yes.

40 AVM HARLAND: Did you consider, in your role, not only the configuration of the aircraft, but also the role and environment that they were operating within?

MAJGEN KING: In my role, or the CCB?

45 AVM HARLAND: In your role, from a CASG point of view.

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MAJGEN KING: No, I didn't.

5 AVM HARLAND: So that would be more a subordinate activity carried out by the CCB. Is that a correct understanding?

10 MAJGEN KING: Because the CCB has all of the various stakeholders required to make a decision to do service release of a system onto our aircraft – and that's not a fixed group of people. You bring people in as required in order to address where there might be aspects or elements that need consideration. In terms of pulling that across, there are subject matter experts who would look at that from a configuration and its role, and its use, in order to provide attestations in relation to its suitability to be brought across and provide its Service Release.

15 AVM HARLAND: And didn't you have access to the Flight Test Reports from the other national authorities?

20 MAJGEN KING: Look, I'm not sure. I know that there was a substantial suite of documents that were provided as part of that, as I describe it, a "read across" of information in order to step through the developmental approval and through to service release of 5.10 onto the aircraft. In terms of exactly what those documents are, I couldn't tell you today, I'm sorry.

25 AVM HARLAND: Okay, thank you.

MS McMURDO: Were you aware of whether any countries, other than Germany, had version 5.1?

30 MAJGEN KING: So it's my understanding both France and Germany were operating those systems. But for us, the German solution, given the similarities in terms of configuration, made that one the simplest and most compelling to pull across from their system.

35 MS McMURDO: So I understand we've had evidence, though, that the French system was version 5.0, not 5.1, and that the French system didn't have the element that was of concern to AATES.

40 MAJGEN KING: Look, I'm not sure exactly in that regard.

MS McMURDO: Not sure about that?

45 MAJGEN KING: There were elements of both software for the symbology and hardware, that came across and were read across from both the French and German system. At the end of the day, the German software

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facility and their work was what we relied upon mostly, in terms of bringing that across to incorporate into our aircraft.

5 MS McMURDO: Thank you.

FLTLT ROSE: Paragraph 35 - I'll let you pour your drink, sorry.

MAJGEN KING: Thanks.

10 FLTLT ROSE: At paragraph 35 you state that DACM advised the MRH Project Management Steering Group in October 2019 that:

15 *An operational test and evaluation activity would take place after the Special Operations Qualification Course had been completed in 6 Aviation Regiment that year.*

MAJGEN KING: Yes, that's what the minutes from that meeting indicated, yes.

20 FLTLT ROSE: And the Special Operations Qualification Course was being conducted at the end of 2019, or nearer the end.

MAJGEN KING: I believe so. As I say, that was a direct lift from the minutes. I went back through and reviewed it, in order to prepare for today.
25

FLTLT ROSE: Then:

30 *Aviation Branch of MRH-90 Standards would lead and report on the operation test and evaluation to determine if the software upgrade was suitable with the listed deficiency for the activities that 6 Aviation Regiment conducted.*

MAJGEN KING: That's correct, yes.

35 FLTLT ROSE: Were you concerned about the Standards Branch conducting this activity, and not AATES?

MAJGEN KING: I'll be honest, I didn't have an opinion. As I say, from my perspective, we were working towards moving the aircraft to
40 version 5.10. That was advice that was presented to the PMSG. It wasn't provided in order to elicit an opinion from us in relation to that; it was simply an update, from my perspective. That was how it was received in the PMSG anyway.

45 FLTLT ROSE: In terms of your background, have you got any

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qualifications as a Test Engineer?

MAJGEN KING: No, I don't.

5 FLTLT ROSE: And you haven't worked in AATES at any stage?

MAJGEN KING: No, I haven't, no, or any other Test and Evaluation Organisation.

10 FLTLT ROSE: People in your team, have they?

MAJGEN KING: Yes, they have.

15 FLTLT ROSE: So then it wasn't unusual in your experience for an organisation other than an authorised Flight Test Organisation to be conducting an Operational Test and Evaluation Exercise?

MAJGEN KING: Nothing stood out at the time. I wouldn't say it didn't come to – it's not something I have a sufficient level of expertise in, to have an opinion on, really. But it didn't raise any concerns at the time, no.

FLTLT ROSE: And no one in your office that has experience in those test and evaluation spaces raised it as a concern for you?

25 MAJGEN KING: No, they did not.

FLTLT ROSE: No one else at the Steering Group raised it as a concern?

30 MAJGEN KING: Again, I don't recall it generating any conversation at the time, but it was some time ago. Literally what I've written there is what was presented through the Minutes and what was captured.

FLTLT ROSE: So you have no independent memory I take it, from the discussions in the Steering Group about these issues?

35 MAJGEN KING: No, not really.

40 MS McMURDO: At paragraph 35 you say as at the October 2019 PSMG it was flagged that version 5.10 was in contract. Do you know when the Army entered into contract with Airbus?

MAJGEN KING: I can provide that later. No, I haven't got that date with me now.

45 MS McMURDO: You could give it to us later?

MAJGEN KING: Yes, I can.

MS McMURDO: That would be very helpful, thank you.

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FLTLT ROSE: You've given some evidence already about the Mutual Recognition Process by which you can read across certain information from a country, or an allied nation, a friendly nation that uses similar software equipment to ADF. That Mutual Recognition Process also goes across to the Regulator, DASA, in terms of they can approve major changes to type certification based on a foreign party's acceptance of a change?

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MAJGEN KING: So, largely, mutual recognition is one that's managed by the Regulator, by DASA. Obviously, the SFOs in my organisation have a desire to set those up because it means that we can take work that's already mature and bring that across to our aircraft. Some good examples would be if we use that same Mutual Recognition Process for US Army on Chinook, and now with Black Hawk. And indeed for MRH-90, we used the same process for both the French and the German Airworthiness Authorities, largely.

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The onus is largely on my organisation to get the evidence together to satisfy DASA, as the Regulator, that we can rely upon that evidence. Once that has occurred, and DASA has given us that ability to have what is colloquially described as "mutual recognition", it doesn't mean that we just simply just, as I described, read across.

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We still have to apply things such as the governance framework of CCB in order to make sure that the appropriate documents have been received, and that we've done our due diligence in order to satisfy ourselves that those documents and that analysis is sufficiently robust and the rigour is correct, to then incorporate that onto our aircraft.

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FLTLT ROSE: So do the same people, personnel in your team, who present the information to DASA, recommend to DASA to accept the Mutual Recognition Process, are they the same people who then sit on the CCBs?

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MAJGEN KING: Not necessarily. So, for instance, the mutual recognition that we've achieved through US Army is not just now for Chinook, we use it for other platforms. And it's not just our organisation that collates that. Again, it's in concert with DASA, in order to make sure they're satisfied and answering their questions they may reach and then going and do their own audits in order to satisfy them. So it's not something

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that we do in isolation, and then present a body of work to DASA, it's one that's done with DASA involved as well.

5 As I said, once received, it's not one of those things that everything just sits on the shelf and gathers dust. DASA will continue to then go in and audit those organisations, to make sure that they're satisfied that the mutual recognition that they've provided remains contemporary and equivalent to what we need.

10 FLTLT ROSE: So there's a collaboration process between your team and DASA in the initial stages, and then there's a further oversight role that DASA plays as the Regulator, looking back into your team, and then there's the CCB?

15 MAJGEN KING: Looking into our team, as well as into the other organisation. The CCB, from my perspective, is the process by which we take any information. It doesn't have to be through mutual recognition, or mutual – yes, mutual recognition, and bringing something onto an aircraft in a safe manner, that doesn't have to come through something that has
20 mutual recognition. It is certainly simplified where that's the case.

In terms of what DG DASA's responsibilities are, perhaps the Director-General for DASA is probably better placed to answer that question than me.

25 FLTLT ROSE: I'm just trying to figure out where the go/no go stop points are. So you've got DG DASA, or DASA – other people within DASA, they could say, "No, we're not accepting this mutual recognition. Go back to the drawing board. Start again with the process". CCBs, can they – sorry,
30 you're nodding. You have to say an answer for the transcript.

MAJGEN KING: Right. Sorry. Yes, so I agree with you in relation to DG DASA and us in relation to mutual recognition. For me, the CCB is an
35 internal process by which we do any modifications or any upgrades to our aircraft. So that's the independent process to mutual recognition. Mutual recognition allows you to source documents, and source options to apply to an aircraft. Regardless of whether it's coming from that source or another source, you then use the CCB to then pull that through. Now, the rigour that sits inside the CCB may wax or wane, depending on the complexity of
40 the work that's being done, or the source of the information, or indeed whether it has the appropriate rigour to satisfy us.

FLTLT ROSE: But the CCB does have that power to say – again, it's
45 another stop-gap moment to say that we cannot proceed.

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MAJGEN KING: That's correct, yes.

FLTLT ROSE: For various reasons, if they chose to.

5 MAJGEN KING: And it is an extensive group of people. I think one of
the CCBs for HMSD had about 50 people there, representatives from
industry, representatives from what is now Aviation Command, and
representatives from my team. So test and evaluation representatives, we're
not talking one or two people. You pull in as many people as you can in
10 order to make sure you give every piece of evidence that's presented at a
CCB as much chance to be contested as you possibly can, so that when it is
released onto the aircraft, it's done in a safe manner.

15 FLTLT ROSE: You would have expected there would have been
someone from AATES, the Army Test and Evaluation, sitting on the CCB
in relation to this particular project, 5.10.

20 MAJGEN KING: My understanding is there was certainly representatives
from Aviation Command who were communicating the test and evaluation
perspective when we took it through for developmental approval and for
Service Release.

FLTLT ROSE: But you weren't on those CCBs?

25 MAJGEN KING: No, I wasn't.

30 FLTLT ROSE: Paragraph 43, in terms of the mutual recognition, the way
you describe it there is that it's a concept that there are trustworthy,
world-wide regulatory bodies with processes which are assessed as being
able to produce credible and defensible approved designs, based on
substantial bodies of works that other applicable regulators can use.

MAJGEN KING: That's correct, yes.

35 FLTLT ROSE: Now, in terms of paragraphs 44 and 45, you outline the
process you usually engage in when presented with considerations under
the Mutual Recognition Process.

40 MAJGEN KING: That's correct, yes.

FLTLT ROSE: But you do state that you do not blindly rely on mutual
recognitions, and you, meaning CASG, do your own due diligence.

45 MAJGEN KING: That's correct, yes.

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FLTLT ROSE: You state that the AATES testing of the HMSD version 5.10 and the later OPEVAL that Standards conducted is an example of the ADF doing its own due diligence.

5 MAJGEN KING: Yes. So in this case, I would argue that we could have taken HMSD 5.10, and I use the term “read across”, but simply pulled it through the Configuration Control Board without having done any OPEVAL or testing, and put it on the aircraft. The fact that the Command chose to then pass it to their test and evaluation people to look at it and check, from my perspective, reflects the fact that we took a conservative approach. We wanted to make doubly sure that the system was okay for us. But I would argue, given we had mutual recognition, we had a Configuration Control Board with appropriate representation, that we simply could have taken HMSD 5.10 from the Germans and applied Service Release onto the aircraft.

FLTLT ROSE: But once you had the AATES testing of the “unacceptable” result, in your mind, you had to hold, had to pause, to understand what that meant?

20 MAJGEN KING: When you say “you”, I think the organisation then chose to take a conservative approach and do more work through the OPEVAL to understand and characterise the concerns that had been raised.

25 FLTLT ROSE: I’m just trying to understand. The way that you’re describing it, it seems like there’s choice involved, so that even though AATES, as a Test and Evaluation Organisation, found this “unacceptable” finding, you said it was still a choice whether or not to accept their finding. You could have ignored it. You could have still progressed without the OPEVAL. Is that what your evidence is?

30 MAJGEN KING: Look, if you wanted to be bullish, you could probably pull it through and just ignore it. I think it’s reflective of the organisation that we were willing to accept the fact that we take a conservative approach, that we want to examine these things, and if we’re unsure, that we’ll go back and look at these things as opposed to simply just pull it through because we’ve got the mutual recognition, we’ve got the documents we need, we know it’s in service with another country, so let’s just put it on our aircraft. An important organisation has flagged some concerns, so it’s important that we now go back and try to characterise that and understand it. Was it required? Not really. For me, it reflects the fact that the organisation was trying to do its due diligence and making sure that we didn’t miss anything.

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FLTLT ROSE: I think you were taking a question on notice from the Chair in respect of dates before.

MAJGEN KING: That's correct.

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FLTLT ROSE: This might be testing your memory. Had you understood that Defence had already acquired 5.10 prior to these discussions about the AATES finding and the CC Boards?

10 MAJGEN KING: It's my recollection it had, by a month or two, I think, but I couldn't be sure. I need to check the dates. It's some time ago.

FLTLT ROSE: Thank you. At paragraph 47, in essence you state that you do not consider there are any limitations to this approach, which is the Mutual Recognition Process, so long as the process is performed correctly.

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MAJGEN KING: Again, I think when you look at the amount of people that are doing their audits and the Regulator, and what their role is in making sure that we only apply mutual recognition to a level that's commensurate with that which has been checked and evaluated, that there's only an upside, from my perspective, in terms of being able to access these sorts of documents, and save us the effort and the challenges of starting from scratch.

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FLTLT ROSE: So is it your evidence that you didn't have any concerns then about the process regarding the acquisition of 5.10, and that that process had been performed correctly in terms of the mutual recognition?

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MAJGEN KING: That's correct. Absolutely, yes.

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FLTLT ROSE: I want to ask you some questions about a different topic, the Jervis Bay incident. So you were aware that an MRH-90, flown by aircrew in 6 Aviation Regiment, ditched into water in Jervis Bay during an exercise in March 2023?

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MAJGEN KING: Yes, I'm aware of that.

FLTLT ROSE: If you go to paragraph 102?

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MAJGEN KING: Yes.

FLTLT ROSE: You state that the DFSB, Defence Flight Safety Bureau, concluded within 48 hours of this incident that the HP1 engine had failed in that particular MRH-90.

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MAJGEN KING: Yes. HP1 being the first stage of the high-pressure section of the engine, yes.

5 FLTLT ROSE: And the high-pressure engine contains blades inside it. Is that your understanding?

MAJGEN KING: That's correct, yes.

10 FLTLT ROSE: And it was one of the blades that failed.

MAJGEN KING: That's correct, yes.

15 FLTLT ROSE: Paragraph 103, CASG had a role in confirming the cause of the accident.

MAJGEN KING: That's correct. We have a number of engineers who are responsible for managing the engine as well, and so we were assisting as one of the stakeholders.

20 FLTLT ROSE: So does that mean that members of CASG provided advice to the DFSB Accident Investigation Team, or did they conduct their own investigation into the engine?

25 MAJGEN KING: No, we just simply would have contributed as part of the DFSB investigation.

30 FLTLT ROSE: And the report from the DFSB concluded that the engine failed due to issues with the turbine blades in that particular engine, on that particular aircraft.

MAJGEN KING: That's correct, yes.

35 FLTLT ROSE: I just want to work through the sequence of events concerning the turbine blades. It starts at paragraph 65 of your statement.

MAJGEN KING: Yes.

40 FLTLT ROSE: Then I'm going to move through the paragraphs that follow 65. You set out some further information that you obtained about this blade issue from your interrogation of records held by Defence.

MAJGEN KING: That's correct, yes.

45 FLTLT ROSE: And that's your recent interrogation of the reports in preparation for preparing your statement. Is that what you mean?

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MAJGEN KING: Can you state that again, please?

5 FLTLT ROSE: When you say that you interrogated records held by
Defence, do you mean this year or - - -

MAJGEN KING: Yes, that's correct. So having gone back and looked at
this, having received these questions prior to giving evidence.

10 FLTLT ROSE: But you didn't read those particular records at the time?

MAJGEN KING: I was aware broadly of the Service Bulletins, but
they're not something I pick up and read line by line, no.

15 FLTLT ROSE: Now, the documents indicate that the Original Equipment
Manufacturer of the HP1 engines, which is Safran – is that your
understanding? It's Safran, the engine manufacturer?

20 MAJGEN KING: That's correct. It is the engine manufacturer, yes.

FLTLT ROSE: Advised Defence through four different Service Bulletins,
or Product Notifications, in 2017, 2019 and 2022 about a number of engine
failures that had occurred in other aircraft elsewhere in the world that were
caused by issues with the HP1 turbine blades.

25 MAJGEN KING: Just to clarify, that's not necessarily correct. So there
were two in 2019. Not all of those Service Bulletins referred to an accident.
So the very first one referred to an in-flight shutdown of an engine on a
Westland Merlin aircraft. I don't recall – and I think the third Service
30 Bulletin referred to an in-flight shutdown. The other two were simply
updates to the known issue in relation to the HP1 section of the engine.

FLTLT ROSE: We have those Service Bulletins, they're annexed to your
statement.

35 MAJGEN KING: Yes.

FLTLT ROSE: We can check through that. So Safran initially
recommended that the blades be modified in certain specific ways to
40 improve performance.

MAJGEN KING: So not that the blades be modified, that the engine be
modified with replacement blades.

45 FLTLT ROSE: So the engine gets modified with new blades?

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MAJGEN KING: That's correct, yes.

5 FLTLT ROSE: But by 2022 – this is when the later Service Bulletin came out from Safran – they were recommending that the blades be replaced completely. So it may not have been that they – the earlier Service Bulletins may not have been saying that the blades had to be replaced?

10 MAJGEN KING: So from the second Service Bulletin, they were recommending replacement of blades. Generally, if – and the requirement was, if my memory serves, that if an engine was returned for an issue to Safran, or that we had to effectively repair an engine that required access to the area where the high-pressure section was, that we would take advantage of that and replace those. So it wasn't a case of just pushing all of the
15 engines through, it was on occurrence.

The fourth of the Service Bulletins, because of the shortfall of the replacement, or the design of what was called the C3111 blades, in the second Service Bulletin it's my understanding that Safran effectively ran
20 out of materials to do those, or to offer those to the other countries and, as such, the fourth of those bulletins was an update that effectively provided an alternative blade to put into the engines. That it provided improved performance in terms of rates of failure.

25 FLTLT ROSE: Did Safran have to conduct the modification, or was it something that the maintainers could do within the ADF?

30 MAJGEN KING: No, it's a substantial modification. It required breaking the engine open and replacing the high-pressure engine blades inside the engine. So removal of the engine from the aircraft, breaking down the engine, and so it needed to be returned to Safran so it could be done.

35 FLTLT ROSE: At paragraph 73 you explain that the term "recommendations from the OEM", or the Original Equipment Manufacturer, refers to actions they suggest users should undertake not because they're required to, but because it is considered good practice to do so.

40 MAJGEN KING: That's correct, yes.

FLTLT ROSE: And they're not mandatory actions that must take place.

MAJGEN KING: Correct.

45 FLTLT ROSE: At paragraph 74 you state that it is the manufacturer,

which in this case was Safran, that decides whether an action is mandatory or recommended.

5 MAJGEN KING: That's correct, yes.

FLTLT ROSE: However, this does not prevent CASG from reviewing the advice and forming its own view as to whether Defence should undertake the recommended actions.

10 MAJGEN KING: Yes, and in this case, we did a substantial amount of analysis, based on our understanding as to whether recommended was appropriate, and what path to take in terms of modification.

FLTLT ROSE: At paragraph 69, if we go back to there, you state that:

15 *Once the ADF received the first Service Bulletin in 2017, CASG took steps to engage with Safran and other operators and regulators of the MRH-90 to explore options to source the required parts and maintenance capacity to execute the Service Bulletin.*

20 MAJGEN KING: So it's my recollection that Australia actually didn't receive the first Service Bulletin. The first Service Bulletin we received was the second one. The first one was actually for the French Army, based on an in-flight shutdown. However, again, as I said earlier, we had a
25 resident team in France, and we were tracking this, and so well before we were directed or recommended to commence replacing of blades, we started doing analysis in 2017 to understand what approach we should be taking to the recommended Service Bulletin.

30 Largely, the second Service Bulletin followed the first. However, it was issued world-wide and was effectively validated that it didn't change the data and the analysis that we'd done following the release of the first Service Bulletin.

35 FLTLT ROSE: Then paragraph 70, in terms of seeking that advice or analysis, you sought it from the Defence Science Technology Group about the risks associated with the blade issue, which went to both then DASA and CASG.

40 MAJGEN KING: No, so DASA requested that, not us.

FLTLT ROSE: But you did receive the analysis from the DSTG?

45 MAJGEN KING: No.

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FLTLT ROSE: So it went straight to DASA.

MAJGEN KING: Correct.

5 FLTLT ROSE: CASG didn't receive it.

MAJGEN KING: That's correct.

10 FLTLT ROSE: So then, when CASG prepared a decision brief for the Military Air Operators setting out the modification strategy to resolve the issue, does that mean you didn't have the analysis from the DSTG informing your decision brief?

15 MAJGEN KING: That's correct, yes.

FLTLT ROSE: Did you know about the existence of the advice or analysis from the DSTG?

20 MAJGEN KING: No.

FLTLT ROSE: When did you find out that there was an analysis by that organisation?

25 MAJGEN KING: In preparing evidence for this Inquiry.

FLTLT ROSE: Was that a surprise to you, that there was an analysis done by a Defence organisation that wasn't given to you or your team to create or inform the decision brief?

30 MAJGEN KING: So what the Regulator does, and what DSTG does, is of their own choice, I suppose. I was surprised, yes, that they hadn't engaged with us. It didn't change the quality of the evidence that we had provided in terms of the advice that we had received from the OEM. Effectively, DSTG's was effectively re-examining the OEM's analysis, as opposed to
35 looking down other alternatives. And I know this now, having read their evidence.

40 FLTLT ROSE: In a perfect world, actually in hindsight, would you agree that you would have liked to have seen that?

MAJGEN KING: Look, if there's things that you can rely upon, it would be beneficial. Having read it since then, there is nothing in the DSTG work that undermined or changed the analysis and the evidence that my team put together to provide to the MAO. So, yes, it would be preferable to have had

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access to that. It wouldn't have changed the evidence, as I look back at it now, from what we provided to the MAO.

5 FLTLT ROSE: When you're talking about the MAO, you're talking about both the Navy and the Army MAOs?

MAJGEN KING: That's correct, yes.

10 FLTLT ROSE: Because both services were operating the MRH-90 at that stage.

MAJGEN KING: They were, yes.

15 FLTLT ROSE: Who was the Army MAO in 2018?

MAJGEN KING: BRIG Steve Jobson.

FLTLT ROSE: Who was the Navy MAO?

20 MAJGEN KING: CDRE Chris Smallhorn was the Commander Fleet Air Arm.

FLTLT ROSE: Do you recall how many MRH-90s Army had in 2018, and how many Navy had?
25

MAJGEN KING: So my recollection was Navy had between six and eight. Army would have somewhere between sort of 30 or more. It would really depend on how many were in deeper maintenance or being rotated through for other servicings or transiting. When I say "Army", that also
30 included the training aircraft that were being operated by Army as well.

FLTLT ROSE: At Oakey?

35 MAJGEN KING: That's correct, yes.

FLTLT ROSE: You've included the MAO-AM, which is the Military Air Operator Accountable Manager, decision brief at Annex E of your statement. Now, it's classified as "Official: Sensitive", so I won't ask you any specifics about this document in this forum. Paragraphs 81 to 83 of
40 your statement, you explain that the Systems Program Office – which I think you called the SPO before?

MAJGEN KING: That's correct, yes.

45 FLTLT ROSE: The acronym.

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MAJGEN KING: It's a pretty boring acronym; I apologise.

5 FLTLT ROSE: It's a division in CASG though; is that correct?

MAJGEN KING: Yes. So I have a number of SPOs who work for me. I have SPO that do sustainment for Chinook. I had one for MRH-90, for Tiger and Black Hawk, yes.

10 FLTLT ROSE: And it developed a position with Airbus – and concluded that particular SPO for MRH-90, developed a position with Airbus and concluded that Safran was correct to classify the rectification as a “recommendation” and not “a mandatory action”.

15 MAJGEN KING: That's correct, yes.

FLTLT ROSE: So then CASG developed three options for the Military Air Operators for Navy and Army. They were: Option 1, modify all of the ADF's 108 engines at the fastest rate possible, while not unduly impacting operations, which would take approximately three years.

20 MAJGEN KING: That's correct, yes.

FLTLT ROSE: Option 2, incorporate the new HP1 blades on all engines at their next overhaul, which would take up to 15 years at the current rate.

25 MAJGEN KING: Yes.

FLTLT ROSE: Or Option 3, incorporate new HP1 blades at the engine's next overhaul, only when the existing blades had been deemed unserviceable, which would also take 15 years.

30 MAJGEN KING: Yes, that's correct.

FLTLT ROSE: And each of those options had a cost estimate attached to them.

35 MAJGEN KING: It did, yes.

40 FLTLT ROSE: Without going into the specifics, Option 1 was the most expensive and Option 3 was the cheapest, or the least expensive?

MAJGEN KING: No, I think all of them was an equivalent price because we're doing the same amount of work. It was just in terms of what the impacts were operationally, and whether you're paying for it in a shorter

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amount of years. So whether you spread it out across multiple financial years across the sustainment budget, or whether you pay for it all in a much shortened period, at the expense of something else. I would say that dollars was never a factor in terms of this conversation though.

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FLTLT ROSE: More about capability?

MAJGEN KING: More about availability of aircraft. I think also about you need to factor in there are a bunch of other things going on with this aircraft. At the time it wasn't just the engines that we were dealing with in terms of reliability. The other piece, I would suggest, is to reflect on that removing of an engine from an aircraft is a substantial body of work. Sending it back, waiting hundreds of days for it to be repaired, then having to fit it to an aircraft and all of the work to then have the aircraft returned for operational service is not a trivial body of work, and so I can fully appreciate from the operator's perspective that it's more than just a simple, "Let's modify an engine". It would have substantial impacts across the whole fleet.

FLTLT ROSE: The decision brief also set out the risk analysis of how likely it was that an aircraft would crash due to engine failure caused by a defective turbine blade.

MAJGEN KING: Just to be clear, the brief was how often an engine would fail into the future, as opposed to a crash.

FLTLT ROSE: Although as night follows day, if an engine fails on a helicopter it may – it never - - -

MAJGEN KING: It may, but it may not also. So the aircraft was designed largely to operate with one engine operating, so that is a possibility, and obviously we were aware of what happened at Jervis Bay, but that isn't a necessary conclusion of an engine failure, no.

FLTLT ROSE: Paragraph 84, in November 2018, CDRE Smallhorn, the Navy MAO, elected Option 1, to modify the engines at the fastest rate possible.

MAJGEN KING: That's correct, yes.

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FLTLT ROSE: And as far as you're aware, that is what happened?

MAJGEN KING: Yes, I suppose that is what happened.

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FLTLT ROSE: Essentially, what I'm saying is they managed to complete those modifications prior to the cessation of flying operations.

5 MAJGEN KING: No, look, what we did, we prioritised engine removals and replacement of engines inside Navy as fast as we possibly could.

FLTLT ROSE: Then paragraph 85, Army Aviation elected Option 3, to modify the blades when any part of the engine failed or when the aircraft was sent for overhaul.

10 MAJGEN KING: That's correct, yes.

FLTLT ROSE: And you recall that it was BRIG Jobson, you said, who made this decision as the DG of - - -

15 MAJGEN KING: As the MAO, yes, as the AM.

FLTLT ROSE: The MAO. Sorry, yes. In the role as the MAO at that point.

20 MAJGEN KING: So his role was Director-General Aviation - - -

FLTLT ROSE: Was he not DG AVN at - - -

25 MAJGEN KING: - - - but in his function as the MAO-AM, that was his election. Yes.

FLTLT ROSE: You state that Army Aviation actually ended up completing this task quicker than originally planned for because they found some extra money in the budget.

30 MAJGEN KING: That's correct. So financially we had additional money. We were under-flying the fleet because of reliability issues. That released additional money inside the sustainment budget within the contract, and so that actually allowed us to prioritise engines back through and have repairs done. Have the modification done sooner.

FLTLT ROSE: So in essence then, you managed to modify 108 engines.

40 MAJGEN KING: Yes, that's correct.

FLTLT ROSE: In a matter of months.

45 MAJGEN KING: In a year or two, yes. So it was relatively quick, and it was largely limited by the availability of the modification kits. I talked

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earlier on about the fourth Service Bulletin driving an alternative HP1 blade design. Effectively they ran out of – world-wide they ran out of kits to modify the engines.

5 FLTLT ROSE: So there was a second solution, in terms of the ADF engines – the back-up solution was a different type of blade modification.

MAJGEN KING: An approved alternative design, yes.

10 FLTLT ROSE: Okay.

AVM HARLAND: Was MAJGEN Jobson actually the MAO-AM in 2018, or was he acting as that?

15 MAJGEN KING: I believe he was the MAO-AM.

AVM HARLAND: I had thought it was Commander Forces Command.

MAJGEN KING: I'll have to - - -

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MS McMURDO: MAJ Gabbedy might clarify.

COL GABBEDY: Sir, if I may, in 2018 – sir, I'm sorry. I'm
25 COL Gabbedy. I appear for MAJGEN Jobson. I think in 2018 you might find that BRIG Scott Benbow was DG AVN. Do you recall that?

MAJGEN KING: Yes.

30 COL GABBEDY: And the MAO in 2018 was MAJGEN Fergus McLachlan, who was the Commander of Forces Command.

MAJGEN KING: Right.

35 COL GABBEDY: Sorry, I just needed to clarify that.

AVM HARLAND: Thank you.

40 MAJGEN KING: So I withdraw on the MAO, but it was generally – it was BRIG Jobson who signed off on the brief.

AVM HARLAND: So not the MAO per se, but BRIG Jobson in his role as DG AVN.

45 MAJGEN KING: Correct. My apologies.

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AVM HARLAND: Okay. Thank you.

5 FLTLT ROSE: At paragraph 76 you state that although the HP1 turbine blade issue was a known issue, it was not something that took the MRH-90 out of its type certification.

MAJGEN KING: That's correct, yes.

10 FLTLT ROSE: And since the Original Equipment Manufacturer did not deem it mandatory to rectify the turbine blades, it was not deemed as a risk to continued operations.

15 MAJGEN KING: Everything is a risk to continued operations. I think in terms of the whole scheme of what we were dealing with in the aircraft, an issue or a consideration, or Service Bulletin that's released, that you can follow, and follow as per the OEM, is something that sits somewhere in the middle, not at the top of the issues we were dealing with at the time. So as we talked about before about mandatory versus recommended, I am very comfortable that we followed the advice of the engine manufacturer, and if
20 they had elevated that to a mandatory, then I suspect we would have done something like ceased flying in order to replace engines as a matter of priority.

25 FLTLT ROSE: At paragraph 92 you explain what remaining within certification means, and that it was that the MRH-90 was safe and fit.

MAJGEN KING: Sorry, what paragraph was that?

30 FLTLT ROSE: 92.

MAJGEN KING: Yes, that's correct.

35 AVM HARLAND: Could I just clarify that? Just in a kind of very simplistic fashion, there was an issue that had been identified with the HP1 blade, or blade set, by the OEM, that indicated that it was more prone to failure than they had previously estimated. Is it a correct understanding, based on what you know from the OEM, and subsequently found out from DSTG, that that increased possibility of failure still did not take the aircraft statistically out of its certification basis, which has a statistical reference for
40 failures?

45 MAJGEN KING: That's correct. So the type certification basis, which allows us to continue operating the aircraft safely and effectively, even with what was identified as a system that was known to fail more often than possibly it should with the unmodified engines, it still remained within its

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type certification as considered safe and fit to fly by the OEM, the OEM being NATO Helicopter Industries, of which Safran was supporting by delivering the engines.

5 AVM HARLAND: So statistically it didn't nudge it out of that boundary?

MAJGEN KING: No. That's correct.

AVM HARLAND: And the OEM makes that judgment?

10

MAJGEN KING: That's correct, yes.

AVM HARLAND: And the OEM would – they're not totally unbiased in making that judgment, are they, because it's their helicopter?

15

MAJGEN KING: No, but at the end of the day, they are beholden to safety standards and the things by which they certified the engine, so it's not a case of where they can simply just fudge the numbers. So we need to rely on the advice of the OEM for all aspects of an aircraft in terms of how we operate it, how we maintain and service it. So when they provide a recommended Service Bulletin, in our case, as I alluded to earlier, given the fact that it did suggest a degraded reliability of the engine performance, that's why we did our due diligence, to understand what that meant. But at the end of the day, you rely on the OEM for their advice, and it was a recommendation rather than a mandatory replacement and overhaul.

20

25

AVM HARLAND: Okay. Thank you.

MS McMURDO: Is that a convenient time? We might have the mid-morning break now.

30

FLTLT ROSE: Yes.

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

35

HEARING ADJOURNED

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HEARING RESUMED

MS McMURDO: Yes, FLTLT Rose.

45

FLTLT ROSE: MAJGEN King, just to clarify an issue from your

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evidence earlier. Paragraph 85 of your statement - - -

MAJGEN KING: Yes.

5 FLTLT ROSE: Halfway through you say, “I recall”, we’re talking about the decision in Army Aviation in 2018 to select Option 3 in terms of modifying the engines and turbine blades.

MAJGEN KING: Yes.

10

FLTLT ROSE: You state that, “I recall that this decision was made by DG AVN, BRIG Jobson”.

MAJGEN KING: That’s correct, yes.

15

FLTLT ROSE: Now, you say you recall that it was BRIG Jobson. Is that just a recollection from your memory or is there a document to support that?

MAJGEN KING: So, Annex I, which is FOUO - - -

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FLTLT ROSE: Annex E?

MAJGEN KING: Sorry, Annex E. My apologies. It’s my recollection that he was one of the two people who signed off on that document.

25

FLTLT ROSE: I’ll just take you to – and obviously we’re not going to the contents of it, but you’ll see that it’s signed by, I think it was CDRE Chris Smallhorn at that stage. There’s a signature block for him.

30

MAJGEN KING: Yes.

FLTLT ROSE: On page 1. Now, there is no other signature of any person from Army on that front page, is there?

35

MAJGEN KING: That’s correct, yes. But he was DG AVN and the addressee was DG AVN. I incorrectly stated MAO-AM previously. But it’s my recollection he was DG AVN at the time.

FLTLT ROSE: The Inquiry has received some evidence that BRIG Jobson was the Commander of 16 Aviation Command in 2018.

40

MAJGEN KING: Okay.

FLTLT ROSE: And that he was not DG AVN until 2021.

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MAJGEN KING: Right. Okay.

FLTLT ROSE: So when you - - -

5 MAJGEN KING: So my recollection is probably wrong then. So you're right, that document doesn't have a second signature. I'm happy to be corrected.

10 FLTLT ROSE: What you're essentially saying is that whoever was DG AVN in 2018 would've made that decision about Option 3 is the process that Army was going to follow.

15 MAJGEN KING: Correct. So that brief was sent to the DG AVN at the time, who elected Option 3. I apologise if I got the name wrong.

20 FLTLT ROSE: What I'll do now is take you back to paragraph 77. You gave evidence similar to this before that the issue with the turbine blades was not even on the top of the list of critical items that Defence was having to deal with at the time with the MRH-90.

25 MAJGEN KING: That's correct, yes.

30 FLTLT ROSE: Which is why you state that it was unnecessary for Army Aviation to incorporate the known issue about the turbine blades into its Risk Management Plans.

35 MAJGEN KING: Perhaps "unnecessary" is the wrong term. Perhaps to prioritise higher is probably a better way to describe it, I think.

40 FLTLT ROSE: So you're saying there were much higher risks that needed to be accounted for than this issue with the turbine blades?

45 MAJGEN KING: Look, not necessarily risks but modifications, upgrades, introductions to service challenges that we were dealing with that sat well above an issue that was simply recommended by the OEM.

FLTLT ROSE: So, in terms of the OEM, the Service Bulletins were clear that the HP1 blade issue was safe within the context of the type certification basis.

MAJGEN KING: That's correct, yes.

FLTLT ROSE: And I take it from your evidence that there were other issues which needed to be addressed more readily because it could have taken the MRH-90 out of its certification basis?

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5 MAJGEN KING: Not necessarily. Just issues that required – that we knew need to be upgraded on the platform in order to perform certain operational capability milestones on the aircraft. As that project was moving through, there were a number of land, maritime and Special Operations capability milestones that we needed to hit. They required modifications. They required role equipment to be fitted to the aircraft.

10 There were known reliability issues around the aircraft as well, through that as well. All of those things were driving work that I would argue, in some cases, was of a much higher priority than perhaps fast-tracking or addressing the engine issue that had been simply placed as a recommendation by the OEM that we could follow by repairing engines as they were being sent through in its normal course of action.

15 FLTLT ROSE: I just want to understand the risk process here, CASG doesn't own the Risk Management process for the MRH-90, does it?

20 MAJGEN KING: No, it doesn't.

FLTLT ROSE: It's the MAO?

MAJGEN KING: That's correct, yes.

25 FLTLT ROSE: So it's a decision for him or her as to whether the turbine blade issue should be incorporated into any risk assessments, not CASG?

30 MAJGEN KING: So certainly we are front and centre in providing that technical advice as to validating that OEM's advice, and what the options are if they wanted to go to prioritise it at a faster rate. But again, I think it's through the things like the Configuration Control Boards and the like you start to get a sense of all of the other things that were going on at the time and the challenges that they were dealing with in terms of what were the most critical. And some of those were technical and some of those were operational.

35 FLTLT ROSE: Now, in terms of risk, you just stated that it wasn't CASG who actually sign or own the risk in terms of this issue. But it was a risk that actually eventuated in the sense that the engine failed on the MRH-90 in Jervis Bay?

40 MAJGEN KING: Yes, it did.

45 FLTLT ROSE: So even though it may have been classified as a low risk of occurring, it obviously did eventuate.

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5 MAJGEN KING: These are complex systems and things fail on aircraft regardless of whatever due diligence. They're mechanical systems that are prone to failure in some cases, that don't line up with the statistical analysis that the Chair was referring to earlier in the evidence.

10 FLTLT ROSE: Were there any additional controls put in place, that you were aware of, to manage the risk even though it was considered low, other than replacing the blades over time?

MAJGEN KING: Such as? What do you mean?

15 FLTLT ROSE: Limiting low flying, for example. Considering there may have been an engine failure and having to operate on one engine or increasing training in respect of engine recovery.

MAJGEN KING: This is prior to the incident in Jervis Bay?

20 FLTLT ROSE: Yes.

MAJGEN KING: Not to my knowledge.

25 FLTLT ROSE: Now, in terms of who knew about the turbine blade issue, if you go to paragraph 96, you state that you don't know if any of the aircrew in Aviation Command knew about it.

MAJGEN KING: I said I can't say with any precision as to who knew about it. That's correct.

30 FLTLT ROSE: And in paragraph 88 you state that you, in your role in CASG, had no role in the decision whether to inform aircrews who were flying MRH-90s about the turbine blade issue?

35 MAJGEN KING: That's correct, yes.

FLTLT ROSE: And is it your understanding that that decision process was within AVN Command itself?

40 MAJGEN KING: That's correct, yes.

FLTLT ROSE: Did you understand that to be a decision that MAO himself would make, or someone else within AVN Command?

45 MAJGEN KING: Look, I'm not sure, to be honest. Again, you're looking at this through the context of one issue of many that were being managed

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across this platform. I would be surprised, again, given the context of where this sat in terms of the OEM recommendation, that this was something that would've been at the MAO-AM. But I'm probably not the right person to ask of that in terms of their understanding.

5

FLTLT ROSE: I want to turn to a different topic now. It's post-incident actions, and it starts at paragraph 104 of your statement. So after the Jervis Bay ditching, both the Army and Navy MAOs directed an operational pause to support a root cause analysis of the incident and consideration of ongoing risk and mitigations.

10

MAJGEN KING: That's correct, yes.

FLTLT ROSE: So CASG supported the DFSB, as we established before, with its investigation by inspecting the engines and providing data to the DSTG and OEM.

15

MAJGEN KING: That's my understanding, yes.

FLTLT ROSE: So CASG, in conjunction with the OEM and then DASA, confirmed that the engines remained within the type certification basis?

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MAJGEN KING: Sorry, can you repeat that?

FLTLT ROSE: So I understand from your evidence and your statement that it was a combination of agencies that confirmed the MRH-90 remained within its type certification basis after the modifications were achieved. So that's CASG, OEM and DASA?

25

MAJGEN KING: So the aircraft remained within its type certification basis regardless of the accident, yes.

30

FLTLT ROSE: And I'm just trying to establish which agencies stated that. So who gets to have an input into whether an MRH-90 stayed within certification?

35

MAJGEN KING: So I don't think anyone stated it. It's the reality of the configuration of the platform and the state of the fleet at the time. Regardless of the accident, the aircraft remained within its type certification basis. The failure of that component did not change that aspect of it. It didn't fall out of type certification basis based on the accident.

40

FLTLT ROSE: Well, then I'll ask it that way. If an aircraft did fall out of type certification basis, who makes that decision?

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5 MAJGEN KING: So I would imagine that would be a conversation that would occur between all of those parties and the Regulator in terms of a platform that we could no longer assure as being airworthy because there was a key component of the aircraft that couldn't be relied upon to meet the type certification basis. Sorry, I'm being a bit round. I'm not trying to avoid the question, I'm just trying to best answer the question.

10 But I think, as I say, if an engine was found to no longer be within the type certification basis, then effectively you would not be flying a fleet from that point forward.

FLTLT ROSE: And the first point of call would be the original equipment manufacturer to make that assessment?

15 MAJGEN KING: Well, I think they would be, yes. Because they would be front and centre in that. Because it wouldn't just be involving our aircraft, it would be a worldwide decision across three different platform types, across maybe 17 different nations.

20 FLTLT ROSE: If you go to paragraph 105, you state that it was AVM Command's decision to return to flying?

MAJGEN KING: That's correct, yes.

25 FLTLT ROSE: So that's not a decision that CASG has any input into?

MAJGEN KING: We can provide advice, but at the end of the day the decision to return to flying was one of AVN Command's, yes.

30 FLTLT ROSE: And at paragraph 107 you also had discussions with AVN Command and the Chief of Army about whether to permanently ground the MRH-90 fleet after the accident on 28 July 2023.

MAJGEN KING: That's correct, yes.

35 FLTLT ROSE: And you state that you were not the decision-maker in respect of that decision.

MAJGEN KING: No.

40 FLTLT ROSE: Once again, it was CASG providing technical advice to the actual decision-makers?

MAJGEN KING: Correct.

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FLTLT ROSE: And whose decision was it then to permanently ground the fleet?

5 MAJGEN KING: So there was a pause, effectively, to the best of my recollection, probably through until September, until the Minister for Defence, who is the Deputy Prime Minister, decided that we were no longer to fly the aircraft.

10 AVM HARLAND: Was the aircraft still operating within its type certification basis at the time it was permanently grounded?

15 MAJGEN KING: Yes, it was. It was still being maintained and serviced and kept airworthy, but obviously wasn't flying through that period from July 2023 until about some time in September, when the Minister made that announcement.

20 AVM HARLAND: Yes. I guess I'm just trying to establish whether or not there was something else that might have triggered that decision. But, effectively, it was an airworthy aircraft at the time that it was retired - - -

MAJGEN KING: It was.

AVM HARLAND: - - - running within its type certification basis.

25 MAJGEN KING: I think the Chief of Army is on record as saying the aircraft was safe. It was never an unsafe aircraft through that period and in the lead-up to the accident.

AVM HARLAND: Thank you.

30 FLTLT ROSE: Were you involved in discussions about what to do with the fleet after that in terms of what to do with the parts, the frames?

MAJGEN KING: Yes, I was.

35 FLTLT ROSE: And who did you provide advice to at that stage? Was it AVM Command or was it within CASG once the decision had been made to cease flying?

40 MAJGEN KING: Are you saying from – as in relation to disposal or are you - - -

FLTLT ROSE: Yes, disposal or selling of the parts?

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MAJGEN KING: All of the above and others, yes. At the political and all the way through the department.

5 FLTLT ROSE: And were you involved in the decision – or you provided advice to the decision-makers about dismantling the aircraft and effectively burying the frames in the desert?

10 MAJGEN KING: So no airframes have been buried. No airframes were ever buried. I was involved in the mechanisms about how we could best dispose of the aircraft, yes.

FLTLT ROSE: And in terms of disposal, what was the decision?

15 MAJGEN KING: The decision was to reclaim as many parts as possible to feed back into the user nations and assist them with their chronic problems in relation to availability of parts. No operating nation showed interest in our airframes and so those airframes were destroyed and disposed of in an environmentally-friendly way is probably the best way to describe it.

20 But the vast majority of the parts and the systems were fed back into current users in order to assist them to deal with the same problem that we had been dealing with for 15 years, which was chronic parts availability and reliability.

25 FLTLT ROSE: The Inquiry has received some evidence that the frames are made of carbon fibre, so that they're actually quite difficult to – or, as you say, there are environmental concerns or health concerns about disposing of them in particular ways.

30 MAJGEN KING: So the airframes are made of a bunch of very nasty chemicals, both metals as well as carbon fibre of various kinds, and so there is no simple way to deal with that other than – and so the solution was to crush and seal that and use a provider who could give us that assurance that it had been managed, as I say, in an environmentally-friendly way, to ensure it didn't leech into the environment.

35 FLTLT ROSE: And that was a contractor, was it, external to Defence?

40 MAJGEN KING: That's correct, yes.

FLTLT ROSE: I understand that you wish to make a comment to the Inquiry or to the families of the deceased?

45 MAJGEN KING: Yes. I simply just wanted to, before I finished my

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5 evidence, just to offer my condolences to the families. I know a lot of people who have presented evidence have had friends and colleagues who have passed away while we have served with them. And I can recall in my experience that happening some 19 years ago and the grief that we felt, and I felt that in no way comes even close, I'm sure, to the grief that you've felt and the sorrow that you are all dealing with in relation to the loss of your husbands and your sons and your children's fathers.

10 So on behalf of myself and the staff who work with me, I just wanted to pass on my sincere condolence and apologies for what's happened. Thank you.

FLTLT ROSE: Those are my questions.

15 MS McMURDO: Thank you. Applications to cross-examine?

COL GABBEDY: Just me.

20 MS McMURDO: Just you, COL Gabbedy. How long will you be?

COL GABBEDY: I think about five to 10 minutes in Open Session and probably the same amount in Closed.

25 MS McMURDO: Yes, all right. So are we organised for the Closed Session? We'll have to adjourn. Yes, all right, COL Gabbedy, yes.

COL GABBEDY: Thank you, ma'am.

30 **<CROSS-EXAMINATION BY COL GABBEDY**

COL GABBEDY: Sir, I'm COL Nigel Gabbedy. I appear for MAJGEN Jobson. I just want to quickly go over a few matters covered in your statement. If I could take you back to paragraph 85? And this is going to be the last crack at that paragraph, which we've had a few goes at. Counsel Assisting very kindly took you back there after the break. Is it the case that you don't remember who DG AVN was in 2018?

40 MAJGEN KING: Yes. Look, my understanding is, I'm pretty sure it's John Fenwick.

COL GABBEDY: I think it was actually - - -

45 MAJGEN KING: Steve, sorry - - -

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COL GABBEDY: Scott Benbow?

MAJGEN KING: Scott Benbow, my apologies. Yes.

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COL GABBEDY: Thank you.

MAJGEN KING: It was an error on my part. So I'm happy to have my evidence adjusted if that's what's required. So - - -

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COL GABBEDY: No worries, sir. It's a small point. And look, it's the case, isn't it, that Army Aviation Command wasn't stood up until December of 2021. And prior to that time, it was Forces Command that ran that - - -

15

MAJGEN KING: That's correct. So I've used the latest nomenclature there. But you're quite correct, at the time when that discussion was occurring, it was Forces Command, yes.

20

COL GABBEDY: Thank you, sir. Then back to the end of your statement. I'm looking at paragraphs 104 and 105 and I think you talk about, in paragraph 104 that the decision remained within type certification. So, effectively, that means it was safe to fly the aircraft; is that right?

25

MAJGEN KING: That's correct, yes.

30

COL GABBEDY: So it would be the case, would it not, that any remedial action or any action taken to regulate the way in which the aircraft was flown by Aviation Command, as it then was, after Jervis Bay, would be above and beyond what was required?

MAJGEN KING: Sorry, can you repeat the question?

35

COL GABBEDY: Yes. My question is basically this: the aircraft didn't go outside of type certification, so it was safe to fly.

MAJGEN KING: Correct.

40

COL GABBEDY: But it is the case that Army Aviation Command in 2023 did take remedial action in terms of organising an immediate replacement of the turbines for the engines for 6 Avn and imposing flying restrictions for 5 Avn. Were you aware of those restrictions?

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MAJGEN KING: I was aware of those, yes.

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COL GABBEDY: So my question was that would be above and beyond what was required, wouldn't it?

5 MAJGEN KING: Correct. Understand. Yes, that was absolutely above and beyond. The aircraft remained in its type certification basis and, yes, it was above and beyond the requirements of what the OEM and the manufacturer had directed us to do.

10 COL GABBEDY: Thank you, sir. And then you say at paragraph 105:

It was a decision for Aviation Command, to determine the process for returning to flying.

15 It was the case, was it not, that that was a perfectly reasonable decision for them to make because the aircraft was safe to fly?

MAJGEN KING: It's my assessment it was and that was my supporting advice at the time.

20 COL GABBEDY: Thank you, sir. Now, I've got a number of questions for you that traverse other areas. So please feel free to take your time. And if there's something I'm asking you that you're not familiar with, by all means, just let me know.

25 Are you able to summarise, as best you can, the 2014 National Audit Office Report on the MRH-90?

30 MAJGEN KING: So the 2014 National Audit Office Report really focused on the acquisition of the aircraft, of the MRH-90 and the support systems, the training systems that came with that aircraft. I would articulate, probably the simplest terms, that the aircraft was identified as unreliable, immature and expensive are probably the three adjectives I'd probably best use to describe how the ANAO characterised it. And when I say - - -

35 MS McMURDO: Is that unreliable, immature and expensive? Was that - - -

40 MAJGEN KING: Correct.

MS McMURDO: Yes, thank you.

45 MAJGEN KING: So they are words that are scattered through the document. But if you were to ask me how to succinctly characterise the ANAO Report, it would be those three terms.

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COL GABBEDY: Did the phrase “underperforming” also come into that report?

5 MAJGEN KING: I think that’s implied by “unreliable”.

COL GABBEDY: I think you’re probably right, sir. Was the system viewed to be immature at the time of acquisition?

10 MAJGEN KING: Look, that’s a good question. I think in terms of the aircraft that were identified, I think that they all had different pros and cons in relation to the aircraft. I wasn’t involved in the development of the consideration to government at the time. But given where it was in its life cycle, I think it would be hard to argue it was anything but developmental
15 when it was being looked at in sort of the early 2000s.

COL GABBEDY: And to place it in context, sir, are you able to explain the difference between an immature and a mature and stable aircraft system?

20 MAJGEN KING: So, for me, an immature system is one that consumes a lot of resources, components, perhaps require far more intensive management than one that is mature. Over the life of an airframe, perhaps 20, 30, 40, 50 years, the more you fly a platform the more you start to
25 identify the systems that fail more often. You start to be able to have confidence in components that you don’t have to maintain them as often or service them as often. And so all of those things lead to a platform that becomes more reliable. They can fly for longer without servicing. The components have been modified so that they fail less often, or are less likely
30 to fail. And as such it becomes what I would describe as a mature system.

That takes millions of hours of flying in order to lean that out of the system. You know, where MRH sat at the time when we took the aircraft on, you know, it had hundreds of thousands of hours. That’s an immature
35 system. It’s not an unsafe system, it’s just immature. It just means that you’re spending a lot more time trying to keep that platform flying. And for Army, where you’re trying to put six aircraft in the air at the one time out of a fleet of 10 or so in a unit, that’s considerably difficult when you’re dealing with all of those things.

40 COL GABBEDY: And, sir, I assume it goes without saying that when it takes a lot more time to put that platform in the air, that takes a toll on all of the people responsible for that?

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MAJGEN KING: So it takes a toll on the aircrew, specifically in terms of, you know, their wanting to achieve mission success. But for the whole team who are in there supporting the aircraft as well who want to see that mission success, having an aircraft be handed across to conduct a mission only to then be handed back half an hour later because it hasn't flown or it's come up with an issue, is not where anyone wants to be.

And for me, that's the challenge of the fleet, was it wasn't unsafe. The unreliability means that the aircraft was inevitably handed back, without having flown a mission, in order to fix a problem. That leads to dissatisfaction and frustration amongst everyone involved in the capability when it occurs. And it is reflective of a system that is not mature and it's not reliable, as I said, at the start.

COL GABBEDY: Thank you, sir. Are you able to describe what Project LAND 4507 is?

MAJGEN KING: Project LAND 4507 is what is called the MRH Rapid Replacement Project. And that is the project that commenced some 18 months ago to acquire the Black Hawk UH-60M helicopters to replace the MRH-90 in a Special Operations role.

COL GABBEDY: And it's my understand – and correct me if I'm wrong – that that represented a capability manager's intent to rapidly replace the MRH-90 with the UH-60M. Is that right?

MAJGEN KING: That's correct. But also that project was announced before both accidents that we've talked about this morning.

COL GABBEDY: So it was already in train well before both accidents?

MAJGEN KING: That's correct, yes.

COL GABBEDY: In your opinion, is the UH-60M a mature and stable aircraft system?

MAJGEN KING: Yes, it is.

AVM HARLAND: If I could, COL Gabbedy?

COL GABBEDY: Certainly, sir.

AVM HARLAND: Just something you talked about with the ANAO audit in 2014, and if you could confirm to me, that 2014 preceded the decision to use MRH-90 in 6 Aviation Regiment in the SO role?

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MAJGEN KING: So the decision or the commencement?

AVM HARLAND: Well, the decision to use it in that way.

5

MAJGEN KING: Right. No, so the project to acquire 47 aircraft that expanded off the original Phase 2 for just the 14 – or 12 or 14 aircraft, that always had a plan to roll the aircraft into the Special Operations capability. It had Special Operations milestones associated with it as well as maritime and land. So when the 2014 ANAO Report occurred, at that time, it was always envisaged that – well, it had been envisaged to roll the aircraft into Special Operations capabilities.

10

AVM HARLAND: And then that Special Operations capability, it happened sometime later - - -

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MAJGEN KING: That's correct.

AVM HARLAND: - - - the incorporation of MRH-90. And I understand there was a Houston Review that was done in the interim?

20

MAJGEN KING: Yes.

AVM HARLAND: Yes. So can you help me understand how we have an aircraft that you've described – or you've kind of, like, summarised the ANAO Report as unreliable, immature and expensive and then we've also heard from other witnesses about 6 Aviation's role as an SO, Support Organisation, as being a no-fail kind of role. How do you reconcile those two things together and then go ahead and put MRH-90 into 6 Aviation Regiment? I'm trying to understand how that would occur, because the two things seem to be completely at odds with each other.

25

30

MAJGEN KING: So I think the amount of reviews that have occurred have reflected the fact that we've always been challenged by this platform, as are the other operators in relation to those characteristics I've described earlier on. But at the end of the day, if that is the only platform you have, it's beholden upon you to make sure that everyone does their best to make that platform as capable and as reliable as possible. And that's what, hand on heart, I think everyone was doing inside the capability. In fact, everyone in the industry was doing as well here in Australia.

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That doesn't change the fact that you can only put so much effort into it and so much money into it and if not achieving that reliability, but you will keep doing what you've got to do to do that. At the end of the day, a decision to

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take a platform out of service or to replace a platform is a government decision.

5 All we can do is continue to do that and provide advice. And that's what occurred for a decade, I suppose. And inevitably, it led to a decision to replace the MRH-90 in 6 Aviation Regiment with Black Hawk again. But until that decision is made, you do everything you possibly can to make that platform as safe and reliable as you can, at the working level, I suppose.

10 AVM HARLAND: Understood. And that's consistent with things that we've heard from other witnesses. I guess a question in my mind is, at what stage do you say, "Enough"?

15 MAJGEN KING: Look, that's a good question. It had been a project of concern since 2011. So every year, as part of that process, it was re-examined as to where it was at. And we would fulfill our responsibilities in terms of reporting the challenges we were experiencing on the platform. And so, in terms of reports and returns, I am comfortable that all of that was being presented.

20 But it's a multi-billion conversation to replace a platform. It is not a trivial decision. It also places enormous challenges on the whole system in terms of removing a system and replacing it. So it would be wrong to trivialise the gravity of such a decision, I suppose. But at the end of the day, all we
25 can do is do the best we can with the platform we've got and communicate upwards the challenges we are having in relation to the platform. As was done through the Houston Review. As was done through the ANAO Report, and a number of others, and the Project of Concern Reports. I am pleased to say that at no stage was it ever flagged that we were unsafe. And
30 I am really proud of the team for the work they did to keep it as a safe operating platform. It doesn't mean that we weren't frustrated by the immaturity and the reliability of the platform.

35 AVM HARLAND: Yes, thank you for that. COL Gabbedy.

COL GABBEDY: Thank you, sir.

40 Just to build on some of the questions asked of you by the Air Vice-Marshal, my understanding of your answer was you used the MRH-90 because it was the platform you had for those roles. It wasn't an option, was it, not to be able to fill the SO or the CT roles undertaken by 6 Aviation?

45 MAJGEN KING: That's probably a question better coming from those in the Command. But, to the best of my knowledge, we had requirements in terms of providing a helicopter for various Special Operations role and the

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only platform that was in service, and the platform that was directed, was the MRH-90.

5 COL GABBEDY: Thank you, sir. And in terms of the two different systems, are you able to provide or colour in the differences between the UH-60M and the MRH-90 in terms of their applicability or the capability as immature and mature systems? What does the Black Hawk offer that the MRH-90 does not?

10 MAJGEN KING: So as I said earlier in my evidence, hours count in terms of the ability to make a platform reliable. And when I say “hours”, I’m talking millions of hours. And so a fleet of 400 to 500 aircraft worldwide for MRH-90, flying hundreds of thousands of hours, gives you a degree of reliability.

15 But a fleet of thousands of aircraft having flown millions of hours over a number of decades, over many iterations, means that, as I say, things around component reliability, things that relate to how often you do servicings – and I’m talking about the Black Hawk – immediately you have inherent
20 reliability because the components are less likely to fail, and where perhaps you are required to remove a component or service a component every 30 days, in some cases, you never remove the component or it’s on condition.

25 And so that means the component stays there and it’s one less thing you need to worry about. So it doesn’t fail as often and it’s not being needed to be removed from the aircraft. So less maintenance on the aircraft means that it’s out there and available to use. Less failures means that when you go on a mission, that aircraft performs that mission and can be depended on
30 to perform that mission as opposed to having to be handed back unserviceable.

COL GABBEDY: And sort of following on from that – you may well have partially answered this – but are you able to elaborate on the difference
35 for the technical workforce in supporting the Black Hawk as opposed to the MRH-90? Is it greater or lesser impost on the technical workforce?

MAJGEN KING: Significantly less. Same workforce, same skills, but significantly less work per hour of flying.

40 COL GABBEDY: I assume this is a bit of a – it goes without question. Will the rapid replacement of the MRH-90 by the Black Hawk produce better conditions for the workforce, do you believe, in terms of moderating the demands placed on them in terms of their time and their efforts?

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MAJGEN KING: Yes. Less demands on their time, that's correct, yes.

COL GABBEDY: Do you have confidence that the UH-60M will achieve its scheduled final operating capability on time?

5

MAJGEN KING: Yes, I do.

COL GABBEDY: And what are you basing that on?

10 MAJGEN KING: My experience and where the project is at. My knowledge of where things are occurring and the work that needs to occur. The fact that we've declared our initial operating capability now and on time and the work that remains, and the people involved and my trust in those people.

15

COL GABBEDY: Thank you, sir. Do you have confidence that UH-60M will provide its forecast rate of effort in terms of flying hours for the aircrew to operate?

20 MAJGEN KING: I do. The system will not be a limiting factor. The aircraft will not be the limiting factor. There may be years or times when we don't fly the rate of effort, or the capability does not fly the rate of effort that's been allocated to the airframe. I don't believe that will be driven by the – that will not be restricted by the aircraft. It's not the limiting factor.

25

COL GABBEDY: And can you contrast that to the - - -

FLTLT ROSE: I'm sorry to interrupt my friend, I'm just wondering what the relevance is of this to the Inquiry's - - -

30

COL GABBEDY: I'm happy to make it relevant for you. So the relevance, ma'am, is this: for some time prior to this tragic accident, Army Aviation Command was looking at a solution to deal with the issues created by the MRH-90, and that solution was replacement of the aircraft. So that's what I'm exploring with this witness, how successful that solution is expected to be.

35

MS McMURDO: Well, I think you've done that now.

40 COL GABBEDY: Okay, thank you, ma'am, I shall move on.

I'll summarise my last several questions in one. Do you believe that the replacement of the MRH-90 with the Black Hawk is going to provide a better capability for Army Aviation Command in terms of its overall workplace and in terms of the platform from which they operate?

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MAJGEN KING: Yes.

5 COL GABBEDY: Thank you, sir. I've got some questions in relation to MAJGEN Jobson, in particular. He took over as Commander of Army Aviation Command in December 2021. Can you recall whether or not he took an enterprise approach to Command when he raised the Army Aviation Command?

10 MAJGEN KING: How would you define "enterprise approach", sorry?

COL GABBEDY: I'm not entirely sure. I was hoping you would be able to help me with that, sir. But if you can't, I'm happy to move on.

15 MAJGEN KING: Look, I'm very familiar with – I was side-by-side with GEN Jobson through that time, so I'm very familiar with what he did and have nothing but high praise for what he did during that period. But I'm not sure what you mean by "enterprise approach", sorry.

20 COL GABBEDY: Are you aware that he formed an enterprise leadership group with members of Capability Acquisition and Sustainment Group?

MAJGEN KING: Yes. Yes, we did.

25 COL GABBEDY: And perhaps that's what I'm getting to in terms of enterprise approach. Did he involve all members of the sort of acquisition and use chain in terms of the decision-making process?

MAJGEN KING: Yes, he did.

30 COL GABBEDY: Are you aware of any concern in industry workforce when there was a government announcement in December 2021 to replace the MRH-90 with the UH-60M?

35 MAJGEN KING: Yes, I am.

COL GABBEDY: What was that concern?

40 MAJGEN KING: Obviously, the concern was that there were about 300 people employed directly in support of MRH in Brisbane through Airbus Australia Pacific and a number of people in the outlying operating locations who worked in the contract who were obviously concerned in relation to their future employment.

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COL GABBEDY: Are you aware of how the Army Aviation leadership group approached that issue, that concern raised by industry?

5 MAJGEN KING: Yes, I am.

COL GABBEDY: And how did they do that?

10 MAJGEN KING: That was a direct engagement from GEN Jobson and myself in relation to engaging with that workforce in order to offer assurances around the value that they placed within the capability regardless of the platform. But also explaining the reasoning as to what was going on.

15 COL GABBEDY: And do you believe that approach produced good outcomes?

MAJGEN KING: I'm not sure if it produced good outcomes, but I certainly think it was the appropriate thing to do in terms of engaging with those people in an honest and transparent manner.

20 COL GABBEDY: Thank you, sir. Are you aware as to whether or not MAJGEN Jobson formed a two-star oversight group to review the risks at 6 Aviation Regiment?

25 MAJGEN KING: Yes, he did.

COL GABBEDY: And were you involved in that group?

MAJGEN KING: Yes, I was.

30 COL GABBEDY: Did that group allow you, and the other members of that group, to hear any concerns raised by the Commanding Officer in his leadership team about issues within that unit?

35 MAJGEN KING: Yes, it did.

COL GABBEDY: And was it communicated to you that it was important to have a scheduled introduction to service of the UH-60M?

40 MAJGEN KING: Sorry, can you repeat the question?

COL GABBEDY: Yes. As part of that engagement between the leadership group, the two-star leadership group and the Command of 6 Aviation Regiment, was one of the outcomes the need for a scheduled introduction of the Black Hawk into service?

45

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MAJGEN KING: What do you mean by “scheduled”? Deliberate?

COL GABBEDY: Considered, deliberate.

5 MAJGEN KING: Yes, it was.

COL GABBEDY: And are you aware of the development of an Integrated Program Plan aimed at undertaking the introduction of the 60M and the removal of the MRH-90?

10

MAJGEN KING: Yes, I am.

COL GABBEDY: Now, unfortunately, ma’am, I think I need to go into Closed Session. They’re all the questions I have for open.

15

MS McMURDO: Yes.

COL GABBEDY: Thank you, sir.

20 FLTLT ROSE: Ms McMurdo, I did have some re-examination questions based on questions posed by my learned friend.

MS McMURDO: Well, we’ll do those now then. Thank you.

25

<RE-EXAMINATION BY FLTLT ROSE

30 FLTLT ROSE: You were asked some questions about the MRH-90 system. Do you recall that?

MAJGEN KING: Yes, I do.

35 FLTLT ROSE: Who is responsible or accountable for the MRH-90 system? And it may be a number of agencies or Defence organisations. But, who has that responsibility for the system?

40 MAJGEN KING: It depends which system you’re talking about. There are any number. You’ve got the Regulator, you’ve got now what is called Aviation Command, you’ve got my organisation. You’ve got the industry perspective as the OEM. So, there are a number of organisations. Then you’ve got other organisations responsible for training and other systems as well. And I’ve probably missed a few of the agencies responsible.

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FLTLT ROSE: Is there an agency that has the overarching responsibility, or is it the Minister, or the department?

5 MAJGEN KING: That's a good question. I'm not entirely sure, to be honest.

FLTLT ROSE: And now in terms of the ANAO Report, which you summarised, that describes the MRH-90 system as – it was immature, expensive and?

10 MAJGEN KING: Unreliable.

FLTLT ROSE: Unreliable.

15 MAJGEN KING: They're my words.

FLTLT ROSE: Yes. That was in 2011, was it, or 2013?

20 MAJGEN KING: 2014, I think.

FLTLT ROSE: 2014 ANAO Report. Is it your understanding that Defence accepted that report and the findings within it?

25 MAJGEN KING: I believe so, yes.

FLTLT ROSE: So Defence accepted in 2014, or perhaps even slightly after that, that the MRH-90 system was unreliable, immature and expensive?

30 MAJGEN KING: They were my words, not ANAO's. I'm probably not the right person to answer the questions. I have read the ANAO Report. In terms of – I can't recall what the Department's response was in relation to that ANAO Report, but it's a published document. It's openly and publicly available. So I would assume that that was accepted as part of that process.

35 FLTLT ROSE: And then who then decided to replace the MRH-90 with the UH-60M?

40 MAJGEN KING: So decisions around replacement of platforms are a government decision. So that was the government of the day.

FLTLT ROSE: Those are my questions in re-examination.

45 MS McMURDO: All right.

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AVM HARLAND: I did have one follow-up. And it's regarding the comment you made about the fact that you were comfortable that during the life of the MRH-90, during your experience, you had kept it in a technically safe fashion. And I'm assuming you meant that you constrained that to technically safe, so it was theoretically an available and airworthy platform?
5

MAJGEN KING: Correct. Yes.

AVM HARLAND: That's a correct interpretation. Would you agree or have any other comment about the fact that notwithstanding that a platform could be technically safe and airworthy, all of the other things that are surrounding it to do with the churn relating to maintenance overheads, changing of Orders, Instructions and Publications, responding to shortfalls in rate of effort, the ability to be able to generate flying hours, unreliability, immaturity – what was your other one – yes, unreliability and immaturity can, in fact, have an overall impact on the ability to be able to operate safely.
10
15

MAJGEN KING: What I would say is, it saturated the workforce in terms of the workload. People were – and I think you've probably heard this evidence, I would imagine, from others – is that, everyone was extremely busy in order to keep that as a safe system. I think for all the people I know who were working in and around the MRH-90 system, if I had had a sense – and I know the others well enough – that if any of us had a sense that we were seeing it tend towards unsafe, we would've stopped.
20

And I can give numerous examples of where the smallest aspect around things such as maintenance policy, where we weren't sure on the maintenance policy, we stopped flying the aircraft. So, again, I think they are good indicators that we took a very conservative approach to the management of the fleet. And if in doubt, we stopped flying the aircraft.
25
30

And I think those eight or so maintenance policy events which, in some way, for instance, suggested that we may not be across the configuration and the life-ing of the system, even the smallest doubt appeared, we stopped flying the entire fleet until we understood that. I think they're indicators that – it's only one, but it should give an assurance that we weren't ignoring the safety aspects around the pressures that were on the workforce and the system.
35

AVM HARLAND: Yes, understood. And that's certainly consistent with evidence we've heard from other witnesses. I guess what I'm really trying to get your opinion on is that when you do stop the aircraft from flying, other things happen. So maintainers don't continue to get experience maintaining the aircraft, they get out of their flow, aircrew can't continue
40

on with their qualification and categorisation programs. So that's an impact as well. That all has to be remediated.

5 And that's in a system which continually demands for exercises for Defence aid to the civil community. I guess my question really is, just to get your thoughts on the fact that, yes, it can be technically airworthy and it was managed, very clearly, to ensure that those risks didn't translate into flight risk, but there were other impacts.

10 And I'm suggesting that those impacts do have a follow-on impact on the ability of an organisation to operate and, indeed, operate safely over time, when it's chronic.

15 MAJGEN KING: So I would certainly agree with the first part of the premise in relation to it absolutely had an impact. Whether it impacted on its safety, I'm probably not the best judge. I wouldn't go that far. But at some point, if it just keeps putting that pressure, then at some point it probably does. Whether that was the case for this platform, I don't really have an opinion.

20 But certainly I think it did consume us in terms of trying to keep the system safe. And where flying the hours, you're not doing those things and you're doing that much maintenance it has to be at the expense of something else, yes.

25 AVM HARLAND: Yes, I'm asking this question not to speculate, but just to explore the idea of how do you apply judgment – or how would an organisation apply timely judgment to a system which is clearly struggling?

30 MAJGEN KING: Look, I think you also look at the amount of reviews that occurred along the path specific to MRH internal; many of them initiated by the Command itself and by Army. There were many opportunities to sort of get others to look at it and decide whether it was bordering on unsafe, I suppose. And so we continued to operate the
35 platform, but I think all of them characterised the system as under stress.

AVM HARLAND: Yes, okay. Thank you.

40 FLTLT ROSE: Ms McMurdo, I understand that my learned friend, COL Gabbedy, has about 20 minutes' worth of questions in a Private Session for this witness. We will need to adjourn to amend the cameras and also to take a list of people who would like to be present during that Private Session, and present it to you for consideration.

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I suggest that we take a 10-minute adjournment so that we can then come back and finish this witness's evidence. I understand lunch isn't even ready yet, so there would be no need to adjourn early.

5 MS McMURDO: Yes. That's what I was planning to do, but I thought you were going to ask for the lunch break. That's fine, we'll do that. Hopefully, we'll finish MAJGEN King before lunch, so he can get away.

10 FLTLT ROSE: If I could just ask those in the Hearing Room that would like to be present in the Private Session to please stay in the room and talk to the Counsel Assisting Team before you exit, and we can consider that?

15 MS McMURDO: Yes, all right. Well, COL Gabbedy, did you want to say something?

COL GABBEDY: Sorry, ma'am. It's not on topic, but I've just been made aware that the Commonwealth – this is in relation to GPCAPT Smith – had offered all Counsel the opportunity to be briefed by GPCAPT Smith's larger DFSB Team. I'm not sure whether or not that offer was made to Counsel Assisting, but I found out about it about 15 minutes ago.

25 I'm not sure if that is still able to be done. But given the concerns relating to the question of GPCAPT Smith - - -

MS McMURDO: For that to be done in this hearing block, it would have to be done later.

30 COL GABBEDY: That might be a problem in terms of GPCAPT Smith then.

MS McMURDO: Yes, I think because we're pretty tight. But, look, we can look at that, but I don't know that there's time to do that or how long it would take.

35 COL GABBEDY: It may ultimately make the questioning of GPCAPT Smith easier, is the point I was attempting to make. Because once we've got that full briefing - - -

40 MS McMURDO: Well, look, perhaps if you can discuss that with Counsel Assisting - - -

COL GABBEDY: Perhaps in the lunch break.

45 MS McMURDO: - - - during the lunch break.

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COL GABBEDY: Thank you, ma'am.

5 MS McMURDO: All right, thank you. Well, I'll adjourn until we're
ready to proceed in a Private Session. At that point, the video streaming
will be stopped. Thank you.

10 <WITNESS WITHDREW

HEARING ADJOURNED

15 **(Continued in Private Hearing Session)**

HEARING RESUMED

5 MS McMURDO: Yes, COL Streit.

COL STREIT: Thank you, Ms McMurdo. I have spoken with
COL Gabbedy and another member of Counsel representing. I understand
no application will be made to ask GPCAPT Smith questions concerning
the specific contents of the final Aviation Safety Investigation Report, its
10 findings and recommendations, that the matters that COL Gabbedy may
wish to raise will be dealt with another way, potentially by submission.
Second, in relation to calling GPCAPT Smith, which I'll do in a moment,
the Commonwealth will take him through his preliminary
evidence-in-chief, noting the Commonwealth are representing
15 GPCAPT Smith in his capacity as the Director of the DFSB.

I call GPCAPT David Smith.

20 MS McMURDO: Thank you.

COL STREIT: Sorry, can I indicate one other matter? We are a little bit
pressed for space for Counsel representing in the Hearing Room today, so
two Counsel representing for Airbus are located now immediately behind
the solicitors for the Inquiry, and we will re-posture the Hearing Room after
25 close of today's proceedings to provide that additional space.

MS McMURDO: Thank you.

30 <GPCAPT DAVID RUSSELL SMITH, Affirmed

<EXAMINATION-IN-CHIEF BY MS MUSGROVE

35 MS McMURDO: GPCAPT Smith, help yourself to water, and please let
me know if at any time you want a break, and I will adjourn for you.

GPCAPT SMITH: Thank you, ma'am.

40 MS McMURDO: Yes, Ms Musgrove.

MS MUSGROVE: Thank you. Can you please tell the Inquiry your full
45 name?

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GPCAPT SMITH: My full name is David Russell Smith.

MS MUSGROVE: And your rank?

5 GPCAPT SMITH: Group Captain.

MS MUSGROVE: And your current posting?

10 GPCAPT SMITH: My current posting is the Director of the Defence Flight Safety Bureau.

MS MUSGROVE: I'll show you this document. Do you recognise that document?

15 GPCAPT SMITH: Yes, I do.

MS MUSGROVE: What do you recognise that to be?

20 GPCAPT SMITH: That is the statement that I've prepared for this hearing.

MS MUSGROVE: Is that 35 pages?

25 GPCAPT SMITH: Yes, that's correct.

MS MUSGROVE: Does it have 17 Annexures, A through Q?

GPCAPT SMITH: Yes, that's correct.

30 MS MUSGROVE: Now, I understand that there are two changes that you'd like to make in relation to that; is that correct?

GPCAPT SMITH: Yes, there is.

35 MS MUSGROVE: I'll have a pen brought for you. I understand the first change is at paragraph 5; is that correct?

GPCAPT SMITH: That's correct.

40 MS MUSGROVE: What's the change you'd like to make?

GPCAPT SMITH: The date of "June 1991" should be "June 1990" in the first sentence.

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MS MUSGROVE: Would you like to amend that on that copy, please? And the next is at paragraph 126. What's the change you'd like to make?

5 GPCAPT SMITH: The Senior Assessor is actually the Deputy Chief of Air Force, so there was missing "Deputy".

MS MUSGROVE: Would you like to write that in there, please? I tender the statement and the 17 annexures.

10

MS McMURDO: Exhibit 198.

15 **#EXHIBIT 198 - STATEMENT OF GPCAPT SMITH
AND ANNEXURES**

MS MUSGROVE: Is everything else true and correct, to the best of your knowledge and belief, in that statement?

20

GPCAPT SMITH: Yes, it is.

MS MUSGROVE: I'll show you this folder of documents. Can you please look at those documents? Do you recognise those documents?

25

GPCAPT SMITH: Yes, I do.

MS MUSGROVE: What do you recognise them to be?

30 GPCAPT SMITH: That is the Aviation Safety Investigation Report. So I could read out the full title, if you like?

MS MUSGROVE: Yes, please.

35 GPCAPT SMITH: So the "Aviation Safety Investigation Report, 6th Aviation Regiment, NH Industries, MRH-90 Taipan A40-040, Spatial Disorientation Leading to Controlled Flight Into Terrain" – in abbreviation, CFIT – "Whitsunday Islands, Queensland, 28 July 2023".

40 MS MUSGROVE: Are there Annexures 1 through 11 at the back of that report?

GPCAPT SMITH: Are you referring to Annexes or Enclosures?

45 MS MUSGROVE: Annexes, yes.

MS McMURDO: Enclosures?

GPCAPT SMITH: I have enclosures tabbed at 1 through 11.

5

MS MUSGROVE: Thank you. I tender that report and the enclosures.

MS McMURDO: Exhibit 199.

10

**#EXHIBIT 199 - AVIATION SAFETY INVESTIGATION REPORT
AND ENCLOSURES**

15 MS MUSGROVE: I'll show you this final document. Do you recognise that document?

GPCAPT SMITH: Yes, I do.

20 MS MUSGROVE: What do you recognise it to be?

GPCAPT SMITH: There was a fact sheet that was prepared by Defence. The fact sheet is titled, "Defence Aviation Safety Investigation".

25 MS MUSGROVE: I tender that document.

MS McMURDO: Exhibit 200.

30 **#EXHIBIT 200 - FACT SHEET TITLED, "DEFENCE AVIATION
SAFETY INVESTIGATION"**

MS MUSGROVE: That's the evidence-in-chief for this witness.

35

MS McMURDO: Thank you. Yes, COL Streit.

<CROSS-EXAMINATION BY COL STREIT

40

COL STREIT: Thank you, Ms McMurdo.

Good afternoon, Group Captain. Can I just briefly begin with some

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preliminary matters, please? In relation to your statement, which is now Exhibit 198, is it the case you received, through your legal representatives, a section 23 Notice from the Inquiry to answer some questions, which then generated your statement?

5

GPCAPT SMITH: Yes, that's correct.

COL STREIT: Did the section 23 Notice also require your appearance here today to give evidence?

10

GPCAPT SMITH: Yes, it did.

COL STREIT: As part of that material, did you also receive a Frequently Asked Questions Guide for Witnesses?

15

GPCAPT SMITH: Yes, I did.

COL STREIT: A Privacy Notice?

20

GPCAPT SMITH: Yes, I did.

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

25

GPCAPT SMITH: Yes, I did.

COL STREIT: And did you also receive a copy of my Instrument of Appointment as an Assistant IGADF?

30

GPCAPT SMITH: Yes, I did. Thank you.

COL STREIT: Now, in relation to just assisting you and orientating you to the room, in front of you are two A3 sheets fixed to the witness table. They contain a list of names and pseudonyms. One document is in alphabetical order of a person's surname with the corresponding pseudonym. Another is in order of pseudonym number 1, 2, 3, 4. I suspect it won't arise but if it does, and you are aware that a person has a pseudonym, if you could just use that pseudonym in the giving of your evidence? If you are uncertain as to whether a person may have a pseudonym, then can I just ask you to quickly check either one of those documents that you have before you, and if the person has a pseudonym, to then use that person's pseudonym, whether I'm asking the question, whether it's the Inquiry, or Counsel representing asking the question.

45

GPCAPT SMITH: I understand. Thank you.

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COL STREIT: Thank you. Now, can I just first begin with matters contained in your statement, and what I'll do, Group Captain, is simply take you through parts of your statement in a narrative form, taking you to particular aspects, drawing your attention to a paragraph which I might read out, and then I'll ask you some questions in relation to that matter. I'm not going to ask you any questions at all in relation to the specific contents of the Aviation Safety Investigation Report, it's findings and recommendations as contained in that document. I will at an appropriate time ask you questions in relation to the contents of the fact sheet which is now an exhibit before the Inquiry. Do you understand that process that we're going through?

GPCAPT SMITH: Yes, I do. Thank you.

COL STREIT: Thank you. Can I just begin with some preliminary matters concerning your statement? You say at paragraph 3 that the source of knowledge and belief in making your statement, that is derived from your Defence service and background, your knowledge and experience of the Defence Aviation Safety Program, spanning independent safety assurance by the Regulator of Defence Aviation, independent reviews of Aviation safety conducted on behalf of the Defence Aviation Authority, and independent Aviation Safety Investigations conducted by the Defence Flight Safety Bureau. Is that correct, what I've read out?

GPCAPT SMITH: That is correct.

COL STREIT: If I ask a question, or another person asks you a question, that is outside your lane of experience, then please indicate that particular matter. Just in relation to your background and qualifications, turning quickly, and briefly, to paragraphs 4 and 5, you joined the Air Force in January 1984, and at No 37 Royal Australian Air Force Academy Course. You transitioned to, and graduated from, the Australian Defence Force Academy in 1986, and graduated to No 145 Pilot's Course at No 2 Flying Training School in 1988, and then Introductory Fighter Course at No 76 Squadron in 1989. Is that correct?

GPCAPT SMITH: That is correct.

COL STREIT: You ultimately ended up as an F/A-18A pilot; is that right?

GPCAPT SMITH: That's correct.

COL STREIT: You graduated from the F/A-18A Operational Conversion Course at No 2 Operational Conversion Unit in June 1990. You completed several tours as an F/A-18A Operational Pilot, Flight Commander,

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Executive Officer, spanning the Squadrons you've identified there, before you left the Air Force in late 1998. Correct?

5 GPCAPT SMITH: That's correct.

COL STREIT: You took up a period of civilian employment with the organisation you mention at paragraph 6 of your statement, which was between September 1998 and August 2007, where you were the Aircraft Captain on both Lear jet and Westwind aircraft. Is that right?

10 GPCAPT SMITH: That's correct.

COL STREIT: You subsequently, at paragraph 7, re-joined the Air Force in September 2000, obtained an F/A-18 Operational Flying Instructor qualification in 2001, and an F/A-18 Category A OFI – that is, Operational Flying Instructor – and Senior Instrument Rating Examiner qualification. And whilst at 2 OCU – OCU, what does that stand for?

20 GPCAPT SMITH: Operational Conversion Unit.

COL STREIT: Thanks. At 2 Operational Conversion Unit, performed both QFI – sorry, OFI and Training Flight Command roles. Is that right?

25 GPCAPT SMITH: That's correct.

COL STREIT: At paragraphs 8 through to 17, you listed a number of postings that you've had over the years, including a Commanding Officer posting as the CO of No 2 Operational Conversion Unit 2009 to 2011, a posting as the DASA Director of Airworthiness and Policy Coordination Agency from 2020 to 2021, which transitioned to the new position of Director Aviation Ops in 2022, and you, in terms of your current role, were appointed the Director of the Defence Flight Safety Bureau from 17 January 2023 until present.

35 GPCAPT SMITH: That's correct.

COL STREIT: You list your tertiary qualifications at paragraphs 18 through to 21; is that right?

40 GPCAPT SMITH: That's correct.

COL STREIT: Now, you list on page 3, at paragraph 27, your main responsibilities as Director of the Defence Flight Safety Bureau, which are to prevent Military Aviation accidents and enhance flight safety through a

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systematic approach to investigation, research, education, and promotion. Is that right?

5 GPCAPT SMITH: That is correct.

COL STREIT: You list the key DFSB functions, drawn from the Defence Aviation Safety Program Manual Volume 3 and Chapter 4. You list those on page 4 at the top; is that right?

10 GPCAPT SMITH: That is correct.

COL STREIT: One of those functions is to conduct independent investigation and reporting of all accidents, selected incidents, and selected systemic safety issues. That's correct?

15 GPCAPT SMITH: That's correct.

COL STREIT: The role of the DFSB is – we're not just talking about Army here. It's across the whole of the ADF in terms of investigating Aviation safety incidents. Correct?

20 GPCAPT SMITH: That is correct.

COL STREIT: So Army, Navy and Air Force aircraft.

25 GPCAPT SMITH: Yes, that's correct.

COL STREIT: At paragraph 28 you identified that the DFSB functions do not include the regulation or oversight of Defence Aviation safety as independent safety assurance is conducted by DASA's Regulatory Directorates.

30 GPCAPT SMITH: That's correct.

35 COL STREIT: So the DFSB sits outside of DASA's Regulatory Directorates.

GPCAPT SMITH: DFSB is not a Regulatory Directorate of the Safety Authority.

40 COL STREIT: So DFSB for all intents and purposes, in terms of its functions, sits outside DASA; is that correct?

45 GPCAPT SMITH: The Defence Aviation Safety Program includes the regulatory functions of the Safety Authority. So there are four regulatory

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functions. DFSB has the independent investigative capability as a function, and the independent reviews of Aviation safety, otherwise known as Airworthiness Boards, is the other major function of the Defence Aviation Safety Program.

5

COL STREIT: But in terms of an Aviation accident that the DFSB investigates, that's not something that's directed by the Defence Aviation Safety Authority, is it?

10 GPCAPT SMITH: No, it's not.

COL STREIT: And the preparation of a DFSB report into that matter, you're not – the DFSB investigation is not appointed by DASA, is it?

15 GPCAPT SMITH: No, it is not appointed by DASA.

COL STREIT: And although DASA might be an organisation that you provide your report to as a stakeholder, DASA is not directing the conduct or the outcomes for a DFSB investigation.

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GPCAPT SMITH: No, it does not.

COL STREIT: You set out at paragraph 29 through to 32 the main responsibilities, issuing directions and instructions, policies and guidance, for the DFSB, and at paragraph 30 you say:

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DFSB functions do not include issuing directions, instructions, policies and guidance in respect of the planning, execution, command or control of Defence Aviation operations.

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Is that correct?

GPCAPT SMITH: That's correct.

35 AVM HARLAND: Could I just ask a question about that, COL Streit? Just on that, how would you characterise the DFSB Fatigue Management and Non-Technical Skills Management Guidebooks, reference your comment in para 30 there where you say that you do not issue directions, instructions, policy and guidance in respect to the planning, execution and command and control of Defence Aviation operations? I guess I'm just trying to understand where that Fatigue Management Guidebook and the Non-Tech Skills Management Guidebook fits in, because it appears to me to be implementing advice.

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5 GPCAPT SMITH: Sir, I'd characterise it in terms of for planning execution, command or control that's actually being conducted by those organisations. We don't issue any directions, or instructions, or policies, or others for the control of those activities. I agree with you that we do provide guidance to assist with their planning, execution, or conduct, but we're not certainly involved in any of the planning, execution, command or control of their operations. It's only provision of guidance material.

10 AVM HARLAND: So they can choose to not implement it. They can choose to do it a completely different way.

GPCAPT SMITH: That would be correct.

15 AVM HARLAND: So as an example, the DFSB Fatigue Management Guidebook is in no way binding, or an obligation to Commanders to follow.

GPCAPT SMITH: By its very nature it is a guidebook.

20 AVM HARLAND: Okay. Thank you.

COL STREIT: To assist, if we could just quickly jump to page 8 of your statement, paragraph – what is 38(h). That's correct, 38(h) deals with the Aviation Fatigue Management Guidebook. So the contents of that paragraph, is that what you mean when you say the DFSB doesn't issue Orders, Instructions or Policies, but sometimes provides guidance?

GPCAPT SMITH: That guidance material is available to the Defence Aviation Commands, yes.

30 COL STREIT: Sure, but it's issued by the DFSB; is that right?

GPCAPT SMITH: DFSB is the sponsor of the Aviation Fatigue Management Guidebook for use by Defence Aviation Commands.

35 COL STREIT: Just in relation to that particular matter, can you assist the Inquiry understand why it's the DFSB that is the sponsor for that guidebook, as opposed to, for example, DASA being the sponsor for that guidebook?

40 GPCAPT SMITH: The Defence Flight Safety Bureau has had a long history of providing what I would say are human factors, Aviation fatigue, support for the whole Defence Aviation community. I think Defence has empowered the Defence Flight Safety Bureau to be the centre of excellence for the provision of such guidance material, or education training material, across human factors, fatigue, et cetera, which in many respects we support

all of the Defence Commands so that each of those Commands doesn't have to try to replicate. So, in effect, we are centralising that centre of expertise, and centralising our knowledge and experience for the provision across all of the Defence Aviation community.

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COL STREIT: So when we return to page 4 at the top, and we look at (a), (b), (c), (d) and (e), being the key DFSB functions, if you look at (e):

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Foster safety awareness, knowledge and action through promotion and education programs, utilising the outcomes from safety analysis research and investigation functions to influence organisational learning.

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Is that where the Aviation Fatigue Management Guidebook, sponsored by DFSB, is that where it would sit in terms of a key DFSB function?

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GPCAPT SMITH: I think you could say that, but it's not a direct relationship, I don't think, to say that the provision of those materials is strictly just subparagraph (e).

COL STREIT: Now, following on from subparagraph (e), you say at 28:

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The DFSB functions do not include the regulation or oversight of Defence Aviation safety as independent safety assurance is conducted by DASA's Regulatory Directorates.

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Can you assist the Inquiry understand how it might reconcile or synthesise, if you like, guidance that the DFSB might sponsor and provide to the Aviation community, and guidance that one of DASA's Regulatory Directorates might provide on the same topic?

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GPCAPT SMITH: If I started with the DASA's regulatory functions to prescribe policy to do organisational approvals, to educate the regulated community on interpretation, or others of the regulations, as well as conduct oversight activities, those are the DASA's regulatory functions. DASA's regulatory functions include provision of what I would say is outcome-based or hazard-based regulations, and those regulations often do not have the prescriptive solutions to how to comply with those regulations.

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Many of the regulations, depending on their legacy, or their maturity, will probably have different elements of acceptable means of compliance or guidance material, and may in fact refer to other best practices or guidance material for Commands, who are now responsible for developing Orders, Instructions and Publications, that would then meet the requirements for the Regulator that they have demonstrated that they have developed a suite of

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Orders, Instructions and Policy that, in effect, address those very hazards that the regulations have implemented. So ultimately DFSB is sponsoring a range of products, a range of guidance books, a range of reference materials, that does more broadly support the Defence aviation community to know and understand the particular hazards, and to be able to implement their own system of OIP. So those guidebooks may actually provide them with a formula, they may provide them with material to then apply to their own context of their organisation, how they would develop their own unique and context-dependent set of OIP.

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COL STREIT: If we take the Aviation Fatigue Management Guidebook as an example of a DFSB-sponsored publication. So in relation to that particular publication, and when DFSB sponsored it, is that an independent decision made by DFSB, namely that the contents is presented in draft, DFSB sponsors it, and releases it, or does DFSB have to go to another authority to say that we propose to sponsor and release this publication, and then that authority gives approval for that to occur, or not?

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GPCAPT SMITH: I must say I can't give you the exact answer in terms of the development sponsorship, and whether there's an actual approval process from Commands. Sorry, I don't have that answer. I would have to take that on notice.

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COL STREIT: Let's just situate ourselves now, as you sit here today as the Director of DFSB, and put to one side the Aviation Fatigue Management Guidebook for now. So in relation to a DFSB-sponsored policy that's presented to you by one of your staff, do you have the independent authority just to release that policy as a DFSB-sponsored policy for fostering safety awareness, knowledge and action through promotional education programs, or do you have to go to somebody else higher in your Chain of Command to get their approval to release?

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GPCAPT SMITH: What I would say is DFSB has independent authority to generate those guidebooks, and to release those guidebooks.

COL STREIT: So might it be that you would consult with other stakeholders in the community in relation to a draft, but ultimately once you've settled the draft, you will issue it as the Director of the DFSB?

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GPCAPT SMITH: I couldn't actually give you the process by which the guidebook that was available before I arrived in the role was developed, but I know it obviously went through a long process of development and consultation, and external engagement with internationally-recognised experts, to eventually develop the guidebook.

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Sorry, I don't have the background right now as to the formal release process.

5 COL STREIT: Let me put it this way then. Since you assumed your role as the Director in January 2023, have you, in that role as the Director, sponsored a guidebook of whatever form and nature for the purposes of providing guidance and training material to the Aviation community?

10 GPCAPT SMITH: I would have to go back to the DFSB website to understand the current versions and release dates of any of the guidebooks that we have. But the Aviation Fatigue Management Guidebook, Non-Technical Skills Guidebook, have gone through several revisions and upgrades over the years.

15 COL STREIT: Now can I turn to - - -

AVM HARLAND: Before we move on, COL Streit, if I could just ask a question about the guidebooks, and it's really a bit of a hypothetical?

20 If in the conduct of an investigation for an accident you found that the contents of a guidebook that had been issued by the DFSB were in some way contributory or causal to the accident, how do you manage that? Because it would seem to me there'd be somewhat of a conflict with DFSB having issued a guidebook, that guidebook having been followed, and then
25 that having become a contributory or a causal factor? How do you reconcile that, or how would you deal with that?

GPCAPT SMITH: I understand your hypothetical question.

30 AVM HARLAND: And it is hypothetical because what I'm trying to really understand here is it appears to me that you've actually crossed the line, and you're now in the business of the doing, and you're providing advice on how to do things, and then on the other side of an accident you're required to objectively investigate what happened. But you've kind of
35 given advice on how things can be done, and if that was followed, and that was contributory or causal, then I kind of see a bit of an issue, and that's what I'm trying to reconcile and understand.

40 GPCAPT SMITH: I understand. So, sir, I think that's a great question. The way I would answer that is the DFSB Aviation Safety Investigation Section, under the leadership of Deputy Director Investigation, is its own independent investigation section. They are not actually responsible for the development or issuing of guidance material, publications, fact sheets, or others. They are completely separate to any of the other DASA's
45 regulatory functions. They're also completely separate to DFSB's other

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5 functions. So investigations is just one element. And the Investigation Section is – that’s their only mission, is to investigate. So I would give you confidence if there was issues arising from, or what they found as there could be improvements made as a result of the investigation related to fatigue or non-technical skills, it actually does give us that very ability to truly understand that and to seek opportunities to improve it.

10 AVM HARLAND: So effectively what I understand from that is the Directorate of Investigations within DFSB, or whatever it is, that part of - - -

GPCAPT SMITH: Investigation Section.

15 AVM HARLAND: That is effectively an outrigger by itself. That’s the independent bit, but it’s actually covered by you as the Director of DFSB. You sit on top of that, and you have the authority to convene an investigation team.

GPCAPT SMITH: Correct.

20 AVM HARLAND: Under the new DAA’s direction; is that correct?

GPCAPT SMITH: That’s correct, yes.

25 AVM HARLAND: But you also have responsibility for managing other parts of the DFSB, which includes the people who do promotion, education, and provide these guidebooks.

30 GPCAPT SMITH: That is a true statement, and the Investigation Section is more than likely to identify areas for both DASA and DFSB to do better.

AVM HARLAND: Could that promotion area just be under DASA and maintain complete separation, in your mind?

35 GPCAPT SMITH: If you’re asking could the Regulator prescribe the regulations as well as provide the guidance material, or the guidebook, to comply with the regulations, that is possible.

40 AVM HARLAND: They already provide guidance material, acceptable means of compliance, by my understanding.

GPCAPT SMITH: Guidance material is included within the implementing regulations.

45 AVM HARLAND: But it’s not binding?

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GPCAPT SMITH: By its very nature, it is guidance material. The acceptable means of compliance – and again, often the acceptable means of compliance are not prescriptive. They often describe the effect they're to achieve, and then depending on the regulation itself, and the effect that they're trying to achieve, some regulations might be relatively prescriptive and be quite directive, and others will obviously be very dependent on the context of that organisation's operations. Air Mobility Group for fatigue is completely different than Air Combat Group, which would be completely different to Army Aviation. Each has a different operating context and will need to develop their own OIP, and their system to manage those hazards, using the best tools available to them.

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

MS McMURDO: If I could just ask a couple of questions about paragraph 38, too? The Defence Aviation Safety Manual, so does DFSB have input into that, or does DFSB just collect all that information?

GPCAPT SMITH: So I would probably have to take you back to a small history lesson, ma'am. Obviously, the Defence Aviation Safety Manual was really a product that was developed before the Defence Aviation Safety Authority fully integrated the regulatory arms of the Safety Authority, so DGTA, so the Directorate of Technical Airworthiness. The Airworthiness Coordination on Policy Agency, and the Defence Flight Safety Bureau, which at the time was the Defence Aviation – sorry, DDAAFS was the name – so well before the Safety Authority was formed, the Defence Aviation Safety Manual was a DDAAFS-sponsored product. So that Defence Aviation Safety Manual does have a long legacy of being sponsored by the Defence Flight Safety Bureau.

MS McMURDO: It's sponsored. So does that mean there's input into it by the DFSB?

GPCAPT SMITH: That is a true statement.

MS McMURDO: Now, are parts of the material in the manual mandatory, rather than just guidance? It says it's Defence-approved corporate policy, procedures and guidance.

GPCAPT SMITH: That's true, ma'am. You will find a range of what I would say are guidance or standards and recommended practices, and it's probably perhaps easier to talk standards and recommended practices. I will be the first to admit that, as I've mentioned in my submission, there is a large amount of policy work that is ongoing with the revision of the Defence Aviation Safety Regulation Safety Management Systems, and the

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revision of corporate – or revision of the policy suite that supports that regulation.

5 And one of those will be the withdrawal of the Defence Aviation Safety Manual, in specific recognition that it has created some policy inconsistencies whereby the DASM can be seen to be acceptable means of compliance and wasn't really the intent, to be seen as the prescriptive acceptable means of compliance. The policy issue that was created was for that very reason, that it was seen that DFSB was providing acceptable
10 means of compliance, but we are not a Regulator.

DFSB can provide guidance material, and we may discuss that, but you will see that there is a large project, in recognition of that very fact, to redefine the policy suite spanning regulations in the Defence Aviation Safety
15 Program Manual. And that will actually lead to the withdrawal of the DASM and DFSB from sponsoring any material that actually looks like regulatory acceptable means of compliance.

20 MS McMURDO: So there is some room for confusion there as to what is mandatory and what is guidance?

GPCAPT SMITH: Ma'am, I wouldn't say it's confusion. What I would say is the suite of policy that we have spanning Defence Aviation Safety Program Manual volume 1, the Defence Aviation Safety Regulations,
25 which is volume 2, and the Defence Aviation Safety Manual now has created some policy disconnects in terms of the language or the level of, as you said, prescription or guidance material. That has been the subject of review and it's a project that DASA is actively progressing right now.

30 AVM HARLAND: So the DASM will be withdrawn?

GPCAPT SMITH: Correct.

35 AVM HARLAND: And with that will go your sponsorship of that manual?

GPCAPT SMITH: And DFSB will no longer sponsor a Defence Aviation Safety Manual.

40 AVM HARLAND: Okay.

GPCAPT SMITH: You will find that the majority of the material that is guidance material will end up where it should be in Defence Aviation Safety Program Manual volume 3, which is guidance for the regulated community.
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AVM HARLAND: Who will that be sponsored by?

GPCAPT SMITH: That will be sponsored by DASA.

5 AVM HARLAND: So do you think that the reason DFSB sponsored it was it is a legacy of the previous organisation?

10 GPCAPT SMITH: Absolutely. It was sponsored by DDAAFS and it was probably sponsored by the – I don't know the organisation, the Defence Flight Safety Bureau, whatever the naming convention was even prior to DDAAFS, sponsored that manual.

15 AVM HARLAND: Just for clarity, just for everyone who may not be aware, DDAAFS is the organisation that preceded the DFSB, but it also included other safety functions. Is that a correct statement?

20 GPCAPT SMITH: That's correct. It also included some Work Health and Safety and it was very much almost a legacy of an Air Force safety agency.

AVM HARLAND: That's where the DASM being sponsored by DFSB, you think, came from that legacy?

25 GPCAPT SMITH: That's correct.

AVM HARLAND: Thank you.

30 MS McMURDO: And then for (c), the Aviation Accidents Work Health and Safety Manual, that's in a different category because that involves more directly the work of the DFSB; is that right?

35 GPCAPT SMITH: The Aviation Accidents Work Health and Safety Manual, again, is a DFSB-sponsored product to provide advice for first responders to Aviation accident sites, in particular to provide them advice of Military airframes.

MS McMURDO: So is that, even though it's called a manual, perhaps more a guidebook?

40 GPCAPT SMITH: It is a manual signed by the Defence Aviation Authority.

45 MS McMURDO: So that means it has some mandatory force. It's required to be followed, it's not just a guide.

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5 GPCAPT SMITH: I wouldn't say, ma'am, it's a guidebook. It is really a manual to provide any of the first responders the ability to go, "It's a Defence accident, it's a C-130". If I go to this manual, then I'm expecting for the first responders to be able to identify what the hazardous materials are on an Australian Military C-130J, for instance.

10 MS McMURDO: I'm just trying to get my mind across the language that's used. So guidebooks are self-explanatory in that they're a guide. Manuals sound as though they're more, "This is what has to be done. This is the procedure".

15 GPCAPT SMITH: The manual will help first responders, for them to be able to do a risk assessment prior to going onto an accident site, based on the information that's in the material, will assist those first responders to be able to do their risk assessment for potential exposure to hazards.

20 MS McMURDO: So how does that differ from if it was called a guidance, Aviation Accidents Work Health and Safety Guidance? How is it different?

GPCAPT SMITH: I'm not actually certain, ma'am.

MS McMURDO: No, okay.

25 GPCAPT SMITH: Again, it is a legacy document that has been within the remit of DFSB for quite some time.

MS McMURDO: Thank you. Yes.

30 COL STREIT: You were taken to some of those manuals and guidebooks that are sponsored by the DFSB by the Inquiry Chair and Deputy Chair. Can I just return to page 8 for the Aviation Fatigue Management Guidebook. The 2021 version of that guidebook is an exhibit already before this Inquiry. Can I just show you this document? Would you accept from me that what you have there is the Aviation Fatigue Management Guidebook version 2, and if you turn the first page at the front cover, you'll see down the bottom of that page there's version 2 of August 2024. That's correct?

40 GPCAPT SMITH: That's correct.

COL STREIT: This is an Aviation Fatigue Management Guidebook that's still sponsored by the Defence Flight Safety Bureau, that's right?

45 GPCAPT SMITH: That's correct.

COL STREIT: The earlier guidebook, you'll see by reference to the version and amendment date, the first version was April 2021 was its first release, then the second version, which is in front of you, is August 2024, version 2. Minor amendments, Enclosure 1 update. This guidebook has been released during your tenure as the Director DFSB. Do you recall this document coming across your desk in draft before it was released as version 2 in August 2024?

GPCAPT SMITH: Yes, it would come across my desk and is a responsibility of the Director of Reporting, Intelligence and Research to do so.

COL STREIT: So when it came across your desk – and please answer only if you recall – is it coming across your desk as a draft for you to authorise its release, or is the decision on its release and update is being made by somebody else in your organisation?

GPCAPT SMITH: I am accountable for its release.

COL STREIT: Is that the same as the question I asked? So is that you accepting that you are the Authorising Officer for the release of this guidebook or are you – I'm just trying to understand, are you saying something else?

GPCAPT SMITH: No. What I'm saying is this guidebook would have been generated by the Director of Reporting, Intelligence and Research and he would have sought my authority or accountability to release it.

COL STREIT: So you get the draft, provided you're satisfied with it, whatever information has been provided to you by your staff, you have the authority to authorise its release. And you did so, noting that it has now been released as of August 2024. Is that correct?

GPCAPT SMITH: That would be true, yes.

COL STREIT: I tender the Aviation Management Guidebook version 2 of August 2024.

MS McMURDO: Exhibit 201.

**#EXHIBIT 201 - AVIATION MANAGEMENT GUIDEBOOK
VERSION 2, AUGUST 2024**

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COL STREIT: Thank you. I won't be returning to that exhibit, so it can be collected by the Inquiry Assistant, if that's convenient. You also identify at (i), (j), (k), (l) and (m) on page 8, a number of other tools and templates that are issued by the DFSB. Is that correct?

GPCAPT SMITH: That's correct.

COL STREIT: Over the page, 9(n), which is "Snapshot Guide for Commanders and Managers":

The Snapshot guide familiarises Commanders and Managers with key features of the DFSB Snapshot survey and provides guidance and tips for maximising the program.

Is what I've read correct?

GPCAPT SMITH: That's correct.

COL STREIT: Just can I ask you some questions concerning the DFSB Snapshot survey, paragraph 39(b), you address it in your statement:

The DFSB Snapshot survey is administered annually to Defence Aviation personnel as part of fostering a generative safety culture.

Just in your own words, if you could just explain what you understand is the purpose of the DFSB Snapshot survey, what its purpose is.

GPCAPT SMITH: Ultimately, what I would say is the Snapshot survey, as read, was ultimately there to capture a broad range of issues that impact safety, performance and overall health. The survey is wide-ranging and provided to all Defence Aviation personnel.

COL STREIT: Is one of the key procedures concerning the DFSB Snapshot survey is that it's anonymous?

GPCAPT SMITH: It is anonymous, yes, from names. But obviously it collects information related to categories, occupations, specialisations.

COL STREIT: Its purpose, therefore, is it, is to seek to assist understanding particular issues that may be existent within a part of the Defence Aviation community by asking specific questions and having individuals who work in that part of that community complete the survey anonymously, therefore encouraging them to be perhaps more open and

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honest than what they otherwise would be if their name was attached to their responses?

5 GPCAPT SMITH: I think by the very nature of a survey, they are anonymous.

COL STREIT: Not all surveys are anonymous though, are they?

10 GPCAPT SMITH: For the nature of the Aviation safety, they are anonymous, yes.

COL STREIT: Sure. So my next question is, why is the DFSB survey anonymous, to your understanding?

15 GPCAPT SMITH: I think my advice would obviously be there are ethical standards for Aviation safety surveys or this particular safety survey, which by its very nature means that we would not collect individuals' names.

20 COL STREIT: Would one of the reasons be to afford individuals completing the survey a level of comfort that they can be upfront and frank in their responses without worrying about being interrogated or questioned by their Chain of Command about their responses at a later stage?

25 GPCAPT SMITH: Yes, I could broadly agree with that.

COL STREIT: Is not a DFSB Snapshot survey an important safety feature to provide information to the DFSB without it being shaped, influenced or sanitised at any point in time before it arrives to the DFSB?

30 GPCAPT SMITH: Just to clarify, the survey is not specifically issued for the purposes of DFSB. The survey is there first and foremost for unit-level Commanders, not for DFSB's purposes.

35 COL STREIT: Sure. No, I'll come to unit and the Commands in a moment, but is it not the case the DFSB has regard to the outcomes of Snapshot surveys?

GPCAPT SMITH: Yes, at a broader organisational level.

40 COL STREIT: Yes.

45 GPCAPT SMITH: Yes, the survey, which has been running for many years, gives the ability for safety intelligence, of which analysis can be conducted, and benchmarks from year-to-year.

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COL STREIT: The outcomes of surveys are sometimes referred to in DFSB guidance documents published on the DFSB website?

5 GPCAPT SMITH: Each year the Defence Flight Safety Bureau produces an annual review of Defence Aviation Safety statistics, of which Snapshot survey is one of the contributors to those.

10 COL STREIT: In terms of at the unit or at the Command, the Military Air Operator level, the Snapshot surveys can be utilised as a valuable tool to assist Command understand what's occurring in a unit or a sub-unit amongst their personnel without the personnel being identified by name. Is that correct?

15 GPCAPT SMITH: That's correct.

COL STREIT: Therefore, in one sense the Snapshot survey is a process by which potentially an unfiltered response or uninfluenced response is made by an individual to their Chain of Command in relation to particular questions where they're not identified as to what their answers might be.

20 GPCAPT SMITH: That's true.

25 COL STREIT: That would mean, would it not, that on occasion a Snapshot survey will identify potentially negative trends which otherwise might not be evident on the ground if you were to speak to identified individuals? Let me put it another way. So the Snapshot survey, because it's anonymous, might actually give the Chain of Command a different perspective of what's occurring on the ground amongst their Troops than if they went and spoke to them directly, because the individuals completing the Snapshot survey would be more comfortable, because it's anonymous, in being upfront and honest.

30 GPCAPT SMITH: My experience is that the Snapshot survey has been a valuable tool for unit Commanders to get a gauge of what the workforce is reporting as hazards in their workplace, et cetera, but it's not the only tool that Commanders have to do so.

40 COL STREIT: So would you agree that the Snapshot survey really acts as a counterweight at the unit, sub-unit, or Command level as a means by which the Command can obtain anonymous feedback from the workforce where if they were to do it another way and approach the workforce directly and individually, it might be that they will not get the same level of upfront and frankness in response to the same questions?

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5 GPCAPT SMITH: I would say that's a true statement, that the culture that we have within Defence Aviation is that the Snapshot survey has been highly regarded and respected for many years by unit Commanders, and also the broader organisational Commanders who receive higher level reports. It has been a very successful program to inform unit Commanders as to hazards that their workforce are reporting across a broad range of questions. I don't have the full range of questions there.

10 COL STREIT: Sure.

GPCAPT SMITH: But as I said, it's not the only gauge, but certainly a mechanism where it does feed into the annual review of safety statistics.

15 COL STREIT: In terms of a term, the "can-do attitude", in the Military context, what do you understand that to mean?

GPCAPT SMITH: Are you saying in an Aviation context or can-do across any Military Organisation?

20 COL STREIT: In an Australian Defence Force context. So not specific to Army Aviation or Air Force Aviation or Navy, but in an ADF-specific context, what do you understand "can-do attitude" to mean?

25 GPCAPT SMITH: My view?

COL STREIT: Yes.

30 GPCAPT SMITH: My view is that "can-do" really means we have dedicated, professional people who will strive to do the best job they can do.

COL STREIT: With the resources that they have?

35 GPCAPT SMITH: Whether they have the resources or not, as can-do people, they will strive to do the very best job they can, given the task that they've been given.

40 COL STREIT: Would you consider that the Snapshot survey and it being anonymous on key questions relevant to, for example, Army Aviation at a unit level, acts as a counterbalance to a unit engaging in trying to make things work with the limited resources they have, i.e. the can-do attitude, where they might be not inclined to identify things that are impacting the ability to achieve the mission because they don't want to let the team down?

45 GPCAPT SMITH: It would be very context-dependent.

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AVM HARLAND: If I could just follow-up there. What you describe there and the can-do attitude from what I heard was very much positive, task-focused, get the job done and deliver. Do you see any downsides or risks that are associated with that attitude, particularly in an environment which may be not ideal, resource-constrained, for example?

GPCAPT SMITH: I understand the question, but again I think it would be very context-dependent, where can-do organisations will perhaps have a different outcome depending on how they approach the task and how they risk manage the task.

AVM HARLAND: So if I understand what you're saying there – let me say this. So what you're saying there is that the can-do attitude will keep people pushing towards delivering. If they've got good Risk Management processes in place that should allow them to continue to operate safely and effectively. But if they don't have good Risk Management practices in place, there's a chance that they could effectively overstretch and put themselves into safety risk.

GPCAPT SMITH: That is a potential, or perhaps they figure a smarter way of achieving the same outcome with less risk.

AVM HARLAND: Okay.

GPCAPT SMITH: I understand what you're saying. There is, from a – can-do cultures in different organisations can lead to a different outcome. As in, it will depend on perhaps how much risk was taken, how much risk was controlled, or whether they had truly characterised the course of action that they had decided on.

AVM HARLAND: So I'll take away from that that the culture is a factor in whether that can-do attitude is successful or not?

GPCAPT SMITH: Correct. And perhaps a can-do attitude actually leads to, "No, we won't do it that way", or "We will change the way we're going to do it", or "We accept that we will provide less capability but only achieve 50 per cent of the tasking, but we're still going to get 50 per cent as perhaps a hundred per cent".

AVM HARLAND: But some people would say that's not a can-do attitude, because can-do is get the hundred per cent, no matter what.

GPCAPT SMITH: I couldn't give you an answer to that, sir. That would be very much dependent on the organisation. I honestly believe the

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different organisations might have a different approach to how far or how hard they would push to achieve an outcome, still, with two organisations saying they're both can-do.

5 AVM HARLAND: And do you see that factor playing out in your annual safety reports in terms of the different approaches to this can-do attitude?

GPCAPT SMITH: No, I do not. I don't have anything specific that I can identify.

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AVM HARLAND: Thank you.

COL STREIT: Just quickly, at paragraph 40 you identify Aviation safety courses provided by the DFSB; is that right?

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GPCAPT SMITH: That's true.

COL STREIT: Just broadly, why is it that the DFSB conducts Aviation safety courses, to start with? Why is that not a function of DASA?

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GPCAPT SMITH: Perhaps, similar to the centralisation of many of the DFSB functions, they are there to support the regulated community for them to manage Aviation safety, for them to ensure Aviation safety. Defence has centralised many of those training functions, guidebooks, human factors, so there's a centre of excellence for the provision of that education and training.

25

Perhaps I could equate it to there's several different organisations out there, however, we have a common reporting framework, we have a common investigation safety analysis model, we have a common taxonomy. So, therefore, it's appropriate that Defence centralise and standardise the way we are going to train our Aviation Safety Officers to run their Safety Management Systems: how to investigate, how to report, how to use Sentinel.

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COL STREIT: Can I turn now just to dealing with another matter discretely before I return to the DFSB and the Aviation Safety Investigation process into the crash of Bushman 83? So on page 10, at the bottom and through to page 11, culminating at page 15, paragraph 59, you deal with questions in and around your previous role – your former role, rather, as the Director Airworthiness Coordination and Policy Agency and matters concerning the flight test permission provided to AATES to conduct flight tests involving TopOwl version 5.10.

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Now, all the information there comprises your evidence in the relevant paragraphs. But ultimately you say at paragraph 59 that your professional view is that there were nil consequences to flight safety if a flight test is conducted in accordance with the requirement specified in the publication you identified there. Is that correct?

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GPCAPT SMITH: So para 59, in the context of summarising all those sections which you've just gone through, which is really more in response to questions related to what was in the content of the OPSPEC.

COL STREIT: Yes. So let's do it this way. At paragraph 58 you say:

15
My professional assessment is it was more than likely that neither ACPA, AATES or the DoSA-FT were specifically aware of the administrative oversight or apparent breach of OPSPEC version 6 at the time of the flight test for HMSD version 5.10.

Is what I've read out correct?

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GPCAPT SMITH: That's correct.

COL STREIT: So, just in short compass, in relation to what is a matter that's fairly complex, first, can you just explain what the administrative oversight of the OPSPEC version 6 was that you refer to?

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GPCAPT SMITH: To my recollection, is that OPSPEC version 6 did not specifically refer to AATES, pertaining to flight test, throughout 2019 that had been identified through the Flight Test Organisation Airworthiness Board report advice from that then Director of the Airworthiness Coordination Policy Agency that there was obviously some administrative areas of OPSPECs that needed to be clarified. OPSPEC version 6 did not correctly refer to AATES. And by OPSPEC version 7, which was corrected by myself, under advice from the Acting Deputy Director of Projects, that AATES needed to be specifically referred to in the OPSPEC, which is what OPSPEC version 7 did.

40
So my understanding and recollection is that it was an administrative oversight. However, several OPSPECs were in a similar position that were being amended and updated throughout 2019. Some had, some hadn't. I'm unsure as to why OPSPEC version 6 wasn't correctly amended at the time.

COL STREIT: And "OPSPEC" means what?

45
GPCAPT SMITH: Operation Specification.

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COL STREIT: Why is that important, or why was it important for AATES to be mentioned in the Operational Specification version 6? Why was it - - -

5 GPCAPT SMITH: If you strictly read OPSPEC version 6, it did not provide an authority approval for AATES to conduct flight test.

COL STREIT: So was it the case, from your understanding, that AATES was given approval by DoSA-FT to conduct its flight test, but the reality was that DoSA-FT couldn't provide that approval because AATES was not a Flight Test Organisation referred to in OPSPEC version 6?

GPCAPT SMITH: If you're going back to where you start with para 59?

15 COL STREIT: Yes.

GPCAPT SMITH: My view is that if the activities were conducted in accordance with the regulatory requirements of DASR 21J subpart (b) and DASR Flight Test so they met all the regulatory requirements for the conduct of the flight test, the administrative oversight was in the Operation Specification. The administrative oversight from the authorities does not have that specific reference to AATES, which is what it was addressing in OPSPEC version 7.

25 COL STREIT: Sure. That's why you regard it as an administrative oversight.

GPCAPT SMITH: It was also an authority-initiated change.

30 COL STREIT: Sure. But is that why you regard it as an administrative oversight, namely that AATES is not mentioned in OPSPEC version 6, because in your professional view – at 59 – there were nil consequences to flight safety if the AATES flight test is conducted in accordance with the requirements specified in the DASR you referred to at 59?

35 GPCAPT SMITH: Correct.

COL STREIT: Although, looking at these things retrospectively, is it your view that the fact that AATES was not mentioned as a Flight Test Organisation in OPSPEC version 6 was, for all intents and purposes, of no practical significance on the basis that AATES testing – provided the AATES testing flight test was conducted in accordance with the publication you identify at 59?

45 GPCAPT SMITH: That's a true statement.

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COL STREIT: Moving on now to the Defence Flight Safety Aviation Investigation Team, the investigation into the crash of Bushman 83 which begins at paragraph 60 of your statement. So the initiation of the independent Aviation Safety Investigation commenced when the DFSB Duty Officer was first notified of the Aviation accident, which occurred before midnight on 28 June 2023. Is that right?

GPCAPT SMITH: That's true.

COL STREIT: Turning to paragraph 62, you identify that the Officer in Charge of the Aviation Safety Investigation Team is accountable for the procedural direction and conduct of all phases of the investigation and provision of an Aviation Safety Investigation Report. That's right?

GPCAPT SMITH: That is a true statement.

COL STREIT: At paragraph 63(a) through to (r) you identify all members performing primary Aviation Safety Investigation Team duties. That's correct?

GPCAPT SMITH: That's correct.

COL STREIT: The Investigator in Charge was initially CMDR Cooper; is that right?

GPCAPT SMITH: That's correct.

COL STREIT: Subsequently, did that transition to WGCDR Kennedy in July 2024?

GPCAPT SMITH: That's true.

COL STREIT: You identify at paragraph 64 that in addition to the ASIT – ASIT is Aviation Safety Investigation Team, so ASIT members – several subject matter experts were engaged. The subject matter experts were not formally part of the ASIT, but do provide external specialist advice to the ASIT; is that right?

GPCAPT SMITH: That's true.

COL STREIT: Now, the Officer in Charge of the ASIT, that's you, isn't it?

GPCAPT SMITH: Sorry?

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COL STREIT: The Officer in Charge of the ASIT is you?

5 GPCAPT SMITH: Correct.

COL STREIT: So you have the Investigator in Charge is the person immediately under you, but you are the Officer in Charge of the Aviation Safety Investigation Team?

10 GPCAPT SMITH: Correct.

COL STREIT: You set out your role at paragraph 65(a), (b) and (c). That's right?

15 GPCAPT SMITH: At para 65?

COL STREIT: Sorry, apologise. You set out that your role as the Officer in Charge of ASIT is not complete until the things you identify at (a), (b) and (c) have occurred; is that right?

20 GPCAPT SMITH: Generically speaking.

COL STREIT: At the time of making your statement, you say at 66 that:

25 *Some of the items in the paragraphs above have not been Completed.*

You remain the Officer in Charge.

30 GPCAPT SMITH: That's true.

COL STREIT: Noting your statement was made recently, last week on the 23rd, have any of those matters been completed?

35 GPCAPT SMITH: We have completed briefings for families, crews, ADF rotary-wing units, consulted with DG DASA. There is still a separate engagement with the DASA regulatory-facing Directors. Later this week, again, debriefings with Institute of Aviation Medicine is happening on Thursday. We also have several other requests for briefs to other Defence
40 organisations; however, that's not part of the essential criteria.

We certainly haven't transferred accountability of the report, and we are going through the process of developing the appropriate mechanisms for oversight of the recommendations.
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COL STREIT: At 65(b) you say:

DFSB has transferred accountability for the Sentinel Aviation Safety Report to Army Aviation Command.

5

First of all, in relation to Sentinel Aviation Safety Report, is that a reference to the Aviation Safety Investigation Report or is the Sentinel Report something else?

10 GPCAPT SMITH: So all Aviation safety events are reported through Sentinel. This particular event will have its own Sentinel identification number. I can't give you what that is.

COL STREIT: Sure.

15

GPCAPT SMITH: DFSB, from an administrative perspective, is the owner of that investigation Sentinel entry right now, but by default we will transfer accountability for the closure requirements to Army Aviation Command.

20

COL STREIT: MAJGEN Hafner. Yes?

GPCAPT SMITH: Well, Army Aviation's Safety Management System, yes, under the accountability of MAJGEN Hafner.

25

COL STREIT: Because he's the Military Air Operator now, isn't he?

30 GPCAPT SMITH: Correct. So you'll find that the Aviation Safety Investigation Report in total is included within the Sentinel entry. But in the functionality of Sentinel, you'll also find there are the numerous mechanisms to provide detailed recommendations to then have the mechanisms in there to develop the action plans and closure requirements. Ultimately, there will need to be an owner. It's similar to all Defence Aviation Safety events, they're not owned by DFSB. This particular one right now is under the authority of DFSB.

35

AVM HARLAND: So will you then transfer all the recommendations from the DFSB ASIR relating to the accident into Sentinel for tracking?

40 GPCAPT SMITH: The Aviation Safety Investigation Report in toto will. At present, we are still working with the Director-General of the Safety Authority to develop the appropriate mechanism as I wrote to the Defence Aviation Authority and DG DASA about what would be the appropriate mechanism for the independent oversight of the development of actions plans against those recommendations. But not all those recommendations

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are placed within the Army Aviation's Safety Management System, so we will have to go through what would be the appropriate Steering Group process and working groups and the management of those individual recommendations and ownership and how they will be steered and then reported up through the Defence Aviation Safety Board.

AVM HARLAND: So they may not live in Sentinel, but there will be a method of tracking it?

GPCAPT SMITH: Correct.

AVM HARLAND: Yes, okay. Thank you.

GPCAPT SMITH: We haven't formalised what recommendations will sit within the Army Aviation Safety Management Systems within Sentinel as recommendations to be actioned by Army Aviation as separate to recommendations that are perhaps placed against the Defence Aviation Authority, or DG DASA, or DFSB, which may not reside within the actual Sentinel framework right now. It's to be advised.

COL STREIT: Just turning to paragraph 67, you were asked to outline who appointed the Aviation Safety Investigation Team and when the Appointing Authority was changed and why. You indicate at para 67 that on 29 July it was Commander Aviation Command that signed a particular document requesting Director DFSB to form an ASIT to investigate the accident. That's correct?

GPCAPT SMITH: That's correct.

COL STREIT: On 4 July 2024, at para 68, you identify that the Inspector-General of the Australian Defence Force, Mr Gaynor, wrote to the Defence Aviation Authority, AM Chappell, to provide a recommendation for review of appointment arrangements for Aviation Safety Investigation in MRH-90 incident of 28 July 2023. That's right?

GPCAPT SMITH: That's true.

COL STREIT: At paragraph 69 you say:

On 23 August 2024 the Defence Aviation Authority –

that's AM Chappell. That's correct?

GPCAPT SMITH: Chappell.

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COL STREIT: Chappell, apologies.

5 *The Defence Aviation Authority clarified policy for Appointing Authorities, directed DG DASA to ensure that appropriate policy is updated to reflect that the Director DFSB has independent authority to form an ASIT without a requirement to be appointed by an applicable Environmental Commander. The Defence Aviation Authority also stated that the Director DFSB is to issue notification Minutes to replace all extant letters of appointment.*

10

That's correct?

GPCAPT SMITH: That's true.

15 COL STREIT: So that was a decision that impacted Appointing Authorities from Air Force, Navy and Army, across the spectrum; is that right?

GPCAPT SMITH: That applied to all three services, yes.

20

COL STREIT: Yes. So it wasn't something that just applied to Aviation Command.

GPCAPT SMITH: No.

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COL STREIT: It was the Defence Aviation Authority sought clarity of the policy for Appointing Officers across all three services. Correct?

GPCAPT SMITH: That's true.

30

COL STREIT: The effect of that decision taken by the Defence Aviation Authority was that Military Air Operators from all three services were no longer the Appointing Officers, or Appointing Officers in waiting, for any future Aviation accident investigation by DFSB?

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GPCAPT SMITH: I'll just clarify. It's not the Military Air Operator. At the time, the DASM referred to the Environmental Commanders.

COL STREIT: Is that the same thing by definition?

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GPCAPT SMITH: No. It just so happens, in the Army Aviation context, the two-star Commander was also the Military Air Operator, as distinct to, say, the Air Commander, being the two-star Environmental Commander, is not a Military Air Operator.

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COL STREIT: I see. What about in Navy, do you know if the Navy has a Military Air Operator or an Environmental Commander?

5 GPCAPT SMITH: The Environmental Commander is the Commander Australian Fleet, and the Commander of the Fleet Air Arm is the Military Air Operator.

COL STREIT: I see. So in the Navy context, at least prior to the change, the Environmental Commander, who was the Fleet Commander at the time, was the person who would be the Appointing Officer for an Aviation Safety Investigation Team?

GPCAPT SMITH: True.

15 COL STREIT: At para 70 you say:

On 16 October 2024, the Director DFSB –

that is you –

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as the OIC of the ASIT, provided a Minute to Defence Aviation Authority and Commander Aviation Command to advise Director DFSB has independent authority to investigate the accident and that the Minute supersedes, in effect, the Directive that had been issued by MAJGEN Jobson.

25

Is that correct?

GPCAPT SMITH: That's true.

30

COL STREIT: Turning now to the actual conduct of the Aviation Safety Investigation conducted by the ASIT and its engagement on the ground in Proserpine, you set out those matters from paragraph 71 onwards.

35 GPCAPT SMITH: Sorry, COL Streit, you were referring to Proserpine?

COL STREIT: Yes. Can I just begin first, before we get to Proserpine, with paragraph 72. So the Director DFSB immediately assumes the role of OIC of an investigation upon notification of an accident. Similarly, Deputy Director Investigations assumes the role of Investigator in Charge. So I take it CMDR Dominic Cooper at the time, in 28 July 2023, was Deputy Director Investigations in DFSB?

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GPCAPT SMITH: That's correct.

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COL STREIT: Now, turning to paragraph 78, you say:

5 *Under direction of the OIC, the ASIT provides updates and briefings to, but does not report to, Commander Aviation Command, who is the initial Appointing Authority, and key Aviation Command Executives, on the progress, outcomes, and/or conclusions of each phase of the investigation, which includes: deployment and site phase activities; preliminary, operational and technical report with emphasis on the most likely sequence of events; immediate safety concerns; key lines of enquiry for analysis; findings related to key lines of enquiry analysis; and focus areas for recommendations.*

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15 Is that correct, what I've read out?

GPCAPT SMITH: That is correct. It's not absolutely prescriptive, but that is the generic reasoning why we would do those briefings.

20 COL STREIT: Now, at paragraph 81, turning to the actual engagement of the Deputy Director, you say:

My recollection is the Deputy Director Investigations contacted me via mobile phone around midnight on 28 July 2023.

25 I take it he informed you of the event concerning Bushman 83 at that time?

GPCAPT SMITH: That's correct.

30 COL STREIT: What happened next was a series of engagements resulting in the coming together of the Aviation Safety Investigation Team for a coordination meeting at 0800 hours on 29 July 2023 in Canberra. Is that right?

35 GPCAPT SMITH: That's true and to probably clarify, it's the DFSB Investigation Section which is not really formally stood up as an ASIT, but for all intents and purposes they are just taking on the duties of an Aviation Safety Investigation Team without any formal appointment.

40 COL STREIT: You visited Airlie Beach and Proserpine Airport on the period 8 to 11 August 2023, at paragraph 83 of your statement?

GPCAPT SMITH: That's true.

45 COL STREIT: You did not visit the site of the accident; is that correct?

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GPCAPT SMITH: No, I did not have enough time.

5 COL STREIT: You've set out, at paragraph 84, the purpose of your visit, including liaising with the Queensland Police Service led Inter-Agency Task Force under the direction of Acting Inspector Adam Dyer.

GPCAPT SMITH: Correct. That's true.

10 COL STREIT: Liaison with the Commander of the Joint Task Force 1116, GPCAPT Pont; is that right?

GPCAPT SMITH: True.

15 COL STREIT: The purpose was to assess issues, concerns and/or challenges related to the activities of the ASIT, and health and well-being of personnel in the deployed location.

GPCAPT SMITH: That's true.

20 COL STREIT: Now, how long had the ASIT been in location?

GPCAPT SMITH: Since the 29th.

25 COL STREIT: Now, you also wanted to gain a direct understanding of the activities related to wreckage recovery, evidence collection and preservation, and preparation activities to transport wreckage to a secure facility in the ACT.

GPCAPT SMITH: That's true.

30 COL STREIT: At paragraph 85 you say:

35 *I don't have any recollection that the Director DFSB, Deputy Director Investigations, or DFSB Duty Officer provided advice to persons on the ground at Proserpine Airport prior to any members of DFSB arriving on the scene about the preservation of evidence and/or statements to be collected from witnesses.*

40 GPCAPT SMITH: That's true.

AVM HARLAND: Were you surprised that the ops area and the Proserpine Forward Operating Base was packed up on the 29th, before your team arrived?

45 GPCAPT SMITH: The investigators were surprised.

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AVM HARLAND: Would you have normally expected that that would have been preserved and left as is?

5 GPCAPT SMITH: My expectation is that the Operating Unit would have been in location when the DFSB arrived.

AVM HARLAND: Yes, okay. Thank you.

10 COL STREIT: There was – and you’ve set this out in the paragraphs immediately under 86 and onwards over to page 22 – the engagement between Defence, the DFSB, and the Queensland Coroner. Is that correct?

GPCAPT SMITH: Sorry, up to what paragraph? Sorry.

15 COL STREIT: Over the page, 22. So if you go to paragraph 91.

GPCAPT SMITH: That’s true, yes.

20 COL STREIT: At paragraph 91 you set out an email between the Coroner and the Acting Provost Marshal ADF. Do you see that?

GPCAPT SMITH: Yes.

25 COL STREIT: In the second-last paragraph, in the middle, it says this:

If this is ordered by me, then first I require confirmation that recovered information in any investigation report into the circumstances of the accident be provided to me in a timely way.

30 So what I just read to you, do you accept that that’s what the Coroner was communicating to the Acting Provost Marshal ADF in the context of the Coroner issuing an order or a direction to release Aviation Safety accident evidence to the DFSB? He was essentially doing that and wanting any investigation report to subsequently be provided to him in a timely way?

GPCAPT SMITH: That’s correct.

40 COL STREIT: Do you know if – well, has the Coroner been provided a copy of the final Aviation Safety Investigation Report to your knowledge?

GPCAPT SMITH: I have not been requested to provide a copy of the report to the Coroner.

45 MS McMURDO: Is that not a request?

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GPCAPT SMITH: I do not have a request, ma'am.

5 MS McMURDO: But what you've been taken to there, is that not a request:

10 *I require confirmation that recovered information in any investigation report into the circumstances of the accident be provided to me in a timely way.*

Isn't that the request there?

GPCAPT SMITH: Yes, I agree, ma'am, that could be taken that way.

15 MS McMURDO: Anyway, it hasn't happened?

GPCAPT SMITH: It has not happened.

20 MS McMURDO: Thank you.

GPCAPT SMITH: Perhaps Defence is waiting for the request, as opposed to being implied that it does it.

25 COL STREIT: Who would be authorised to release the final Aviation Safety Investigation Report to the Coroner in response to his request from back in August of '23?

30 GPCAPT SMITH: My understanding, it would be appropriate for the Defence Aviation Authority to provide the authority for the Defence Flight Safety Bureau to provide it to the Coroner.

35 COL STREIT: That's consistent with extant Defence Aviation Safety Policy, that it's the Defence Aviation Authority who is the decision-maker on release of Aviation Safety Accident Investigation Reports and evidence.

40 GPCAPT SMITH: That is a true statement. I'd highlight that there are elements of the Aviation Safety Investigation Report that only DFSB will have access to or control on our Objective structure, so therefore we are the only organisation that can actually then facilitate the provision of those documents. Similarly, it may be the CO, Commanding Officer, of the Institute of Aviation Medicine who owns the specific medical-in-confidence enclosures.

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COL STREIT: But DFSB has provided, so the Inquiry understands, a copy of the final Aviation Safety Investigation Report and its enclosures to the Defence Aviation Authority. Correct?

5 GPCAPT SMITH: Correct.

COL STREIT: So the Defence Aviation Authority - - -

10 GPCAPT SMITH: Sorry, COL Streit, there are enclosures within that that not all parties will be default “need to see” or will have access to.

15 COL STREIT: I understand that, but in relation to the release of – let’s just limit it to the Aviation Safety Investigation Report, then the Defence Aviation Authority already has the report. So I understand, on the current state of policy, it would be for the Defence Aviation Authority to release a copy of that report to the Coroner in response to the Coroner’s request from August 2023?

20 GPCAPT SMITH: Yes, that’s correct.

MS McMURDO: That might be a convenient time for a 10-minute break.

COL STREIT: Thank you.

25

HEARING ADJOURNED

30 **HEARING RESUMED**

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MS McMURDO: Yes, COL Streit.

COL STREIT: Thank you, Ms McMurdo.

35

Can I just take you to paragraph 100, please, of your statement? You were asked there whether the DFSB provided any advice to Aviation Command on 29 July. You say at paragraph 100:

40 *My recollection is the DFSB personnel did not provide advice to Aviation Command on 29 July pertaining to witnesses from 6 Aviation Regiment who were involved in the sortie on 28 July 2023.*

45 That’s correct?

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GPCAPT SMITH: That's true.

COL STREIT: Your recollection is set out at paragraph 101, that:

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The Deputy Director Investigations was made aware on the morning of 29 July 2023 that the crews of the incident formation were redeploying to Holsworthy on the afternoon of 29 July 2023.

10 And your recollection is:

15

The Deputy Director Investigations did not express any specific concerns related to the decision to re-deploy the crews to Holsworthy, as members of the ASIT could travel to Holsworthy to conduct interviews with crews of the incident formation.

Is that right?

20

GPCAPT SMITH: That's true.

COL STREIT: To your knowledge, did that occur; that is, members of the ASIT travelled to Holsworthy to conduct interviews?

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GPCAPT SMITH: Yes, they did.

COL STREIT: At paragraph 103 you were asked a question, to:

30

Describe the ASIT's relationship with the Joint Military Police Unit and the Queensland Police Service?

You say that your recollection is that:

35

Acting Inspector Adam Dyer was in command of the QPS-led Inter-Agency Task Force which was responsible for securing the accident site, coordinating the search for human remains, liaising with the FCU and Coroner's representative.

So "FCU", Forensic Crash Unit?

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GPCAPT SMITH: Correct.

COL STREIT:

45

DFSB, JMPU, 16 Aviation Brigade Liaison Officer and the JTF1116 provided daily advice and assistance to the Inter-Agency

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Task Force, whilst also providing Situation Reports to respective Defence Headquarters and Command appointments.

Is that right?

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GPCAPT SMITH: That's true.

COL STREIT: At paragraph 108 you were asked to:

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Describe the ASIT's involvement, if any, in the preparation of aircrew statements for the Queensland Central Coroner.

Is that correct? That's the question you were asked?

15

GPCAPT SMITH: Yes, that is the question. Yes.

COL STREIT: And your answer is:

20

The ASIT was not involved in the preparation of aircrew statements for the Queensland Central Coroner.

GPCAPT SMITH: That's true.

25

COL STREIT: To your recollection, did the ASIT have regard to, or obtain copies of, the aircrew statements to the Queensland Central Coroner?

30

GPCAPT SMITH: Sorry, DFSB was not provided statements prepared for the Coroner. DFSB collected their recollection, their written statements, yes. That's what we collected.

COL STREIT: I see. Are you saying, to your knowledge, the DFSB did not, in the conduct of its investigation, obtain copies of the aircrew statements made to the Queensland Central Coroner?

35

GPCAPT SMITH: We did not.

COL STREIT: Is there any reason for that, why you would not do that?

40

GPCAPT SMITH: My understanding was that those statements would be prepared for a separate purpose and for a separate organisation.

45

COL STREIT: Sure. They were, as the Inquiry understands, an individual witness's response to a Direction issued by the Coroner to the Commonwealth to provide statements from the aircrew, that's the context. But even so, given the contents of those documents are to an extent the

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recollection of an individual aircrew witness from the sortie on 28 July 2023, would it not be of assistance to the DFSB to understand what that witness had said in that statement?

5 GPCAPT SMITH: I'm not sure when those statements were prepared. The DFSB investigators conducted a range of interviews with the crews at Holsworthy, which would have included notes, tape recordings conducted over several days. There is just no requirement for DFSB to then subsequently source a separate range of what you would call witness
10 statements that were prepared for a separate purpose.

COL STREIT: I see. What I can indicate to you is the Inquiry understands that the statements made by the aircrew in the sortie on 28 July – Bushman 81, 82 and 84 statements – were obtained and provided to the
15 Coroner at the end of November '23. That's as the Inquiry understands the state of the evidence.

GPCAPT SMITH: Okay.

20 COL STREIT: So in those circumstances, is it your recollection that the DFSB have never had in their possession the statements made to the Coroner by the aircrew I just mentioned?

GPCAPT SMITH: That's a true statement.

25 COL STREIT: My next question is in circumstances where it's a statement made by an aircrew member in the sortie on 28 July 2023, why would the DFSB not wish to obtain access to those statements to understand their contents?

30 GPCAPT SMITH: I would offer that there is no requirement, outside the purposes of an Aviation Safety Investigation, to seek those statements given we have already conducted interviews with those members for the specific purpose of an Aviation Safety Investigation.

35 COL STREIT: Well, did interviews with aircrew and other Aviation members continue into 2024?

40 GPCAPT SMITH: I don't have any specifics, but I do know that the investigators, whether it's the lead Ops Investigator, if required, would contact members who they had previously interviewed if they needed to seek clarification of any information.

45 COL STREIT: Can you just bear with me for a moment, please?

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MS McMURDO: Just while you're doing that, COL Streit.

5 So you appreciate that when there's been a tragic incident like this, there are a number of Inquiries. There's your Inquiry, there's this Inquiry, there's the Coroner's Inquiry, and very often there's Comcare as well. And we understand that for those who have been involved in witnessing a traumatic incident like this, particularly for aircrew who have witnessed it and it's involved their colleagues and friends, it's very traumatic to have to repeat it all time after time after time to one Inquiry, and then to another Inquiry, 10 and to another Inquiry.

15 Do you see it being practical, workable, for initially a statement to be taken by one entity that covers the general topics that would be of interest to everyone, the basic facts, what happened, what they saw, et cetera, and then, so that when there's a specific Inquiry, with a specific purpose that goes beyond that basic statement, then more questions can be asked to detail that, but they don't have to go over the old ground again – the same ground again, with the witness who has been through a traumatic experience? Can you see that there could be some benefit in that, and it could be workable? 20

GPCAPT SMITH: Ma'am, I understand where you're going. My professional view is that those interviews that we conduct for the purpose of a safety investigation at the very early phases are very important, from an Aviation Safety - - - 25

MS McMURDO: They're probably important from every angle actually, but I understand what you're saying, particularly from – it's the lack of fault that's being attributed that you would say is important.

30 GPCAPT SMITH: What I don't understand, ma'am, is the purpose or the techniques or the type of information that other Inquiries, whether it's the police or others, are specifically asking those members to recollect and how they conduct those interviews or ask for statements. I'm not privy to how they do that, so all I could offer is that we have our information requirements and the way we conduct interviews. I don't know how you would balance that off against how other organisations would like to seek their information. 35

40 MS McMURDO: Well, for all those organisations, I think it's generally accepted that getting a record of events at the earliest possible opportunity is beneficial to memory and getting the most reliable and accurate account, bearing in mind that some people might be injured or traumatised and need some time to recover from that. But once you've allowed for that period, then it's important to get it as soon as possible. So that benefits everybody. 45

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So do you think that there – can you see that your organisation would be prepared to enter into some sort of agreement across the board where these statements could be shared across all the investigating bodies to try and minimise the trauma to the witnesses involved?

5

GPCAPT SMITH: I do find that quite a difficult question, ma'am, in particular, if we are investigating organisations that are also – have protected identities, are talking about tactics, techniques and procedures that are speaking to Defence personnel. But I would say it's definitely our approach to trying to understand, in the Aviation context.

10

I think the questions and what we would be asking would be way more Aviation-specific and very focused and targeted at the types of information that we need. Which I think perhaps would be subtly different than other organisations perhaps, such as police who are after – they have different information requirements. I do appreciate the utility of the less number of times, but our interviews are quite detailed and can be quite long.

15

MS McMURDO: Yes.

20

GPCAPT SMITH: And there's obviously requirements to go back and discuss with the crew, based on what we have gathered from the cockpit voice recordings or the Flight Data Recordings as well, to go back and seek clarification.

25

MS McMURDO: Well, that would suggest to me that then perhaps if you were going to move to this model, that the initial statement might be better off being taken by, say, the police on behalf of the Coroner, because they could take the initial statement. Then at least you would have that as an early record and then you could flesh that out with the technical material and make sure that it was matters that could be of a security clearance level.

30

GPCAPT SMITH: Perhaps, ma'am. I'd also offer that as part of our interviewing process, those very early recollections, it may take us 24 hours to be at the scene. So if we were to repeat this incident again, then perhaps we would have arrived well and truly after statements had been prepared for the Queensland Police and that we might have well been in the position to say, "Well, we are going to set the scene, we're going to engage, explain the process". And the actual interviews themselves may not have happened for, traditionally, another day or even two days, to really make sure those affected members were comfortable with our process and the conduct of it. Noting that we would have to interview separately 12 crew members of that formation, which will actually take some time.

40

MS McMURDO: Thank you.

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COL STREIT: The Inquiry understands and received some evidence that in fact one of the aircrew was interviewed by Queensland Police at Proserpine Airport before departing Proserpine on 29 July 2023, and that
5 would appear, on the evidence at least before the Inquiry, is the earliest in time interview conducted by an investigative agency of a witness in the sortie.

GPCAPT SMITH: Yes.
10

COL STREIT: Are you aware whether the DFSB ever obtained a copy of that interview from QPS?

GPCAPT SMITH: No, I'm not aware.
15

COL STREIT: As a question in hindsight, would it not have been of assistance to DFSB to have access and watch that interview between that particular member and QPS as to what the member said, which might then assist DFSB in how it approaches that member and the questions it might
20 ask?

GPCAPT SMITH: COL Streit, I would offer – I would probably have to take that under consideration, because it's very much a – it depends, and obviously that is not part of our normal process.
25

COL STREIT: Where I'm coming from is probably this. In, for example, the Defence statements that were obtained and provided to the Coroner at the end of November 2023 there are key matters that all witnesses addressed, one of which was the weather conditions, for example, on the
30 night of 28 July. In circumstances where the weather conditions is a matter no doubt the DFSB Aviation Safety Investigation Team had regard to in its investigative process, would it not be of assistance for the DFSB to understand what the witness had said in their statement to the Coroner about the weather conditions relevant to the night and compare that to what
35 they've said to the DFSB, or in fact if the DFSB had at that time even asked the question of that person? Don't you see value in that?

GPCAPT SMITH: I don't discount that that's a source of information.

COL STREIT: Sure.
40

GPCAPT SMITH: All I would offer is that from a normal process, we're not reliant on having to seek another independent source of information.

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COL STREIT: I'm certainly not suggesting you are. No investigation is
reliant on another investigation. That would impact its independence, I
suggest. What I'm really simply asking you is this: in circumstances where
5 information from a witness exists at a point in time relevant to the matter
the DFSB is examining, irrespective of how it came into existence and who
got it, would it not be of assistance for the DFSB to have regard to that
information as it goes through its investigative process?

GPCAPT SMITH: In order to answer your question, I would offer that
10 throughout the course of any lengthy investigation there will be numerous
sources of information or views, opinions or other information that's
provided along the way. Ultimately, the aim of the investigation is to
collect the best evidence possible, obtain that directly from the witnesses
that we want to talk to, for the specific purposes of an Aviation Safety
15 Investigation.

I personally would not like to mix and match information obtained for other
Inquiry purposes, or police investigation purposes, within the construct of
an independent Aviation Safety Investigation. And, ultimately, I'm
20 accountable for making sure it's objective and unbiased. Personally, my
view would be I would not like to set the precedent whereby members are
in a position where they are responding to several Inquiries without true
clarification of the purpose of the information that they are providing.

It is very clear when we speak to individuals what the purpose of our
discussions with them are and what we are hoping to achieve through our
interviews with them, to get their recollection of events. I personally would
not like to see a member in a position where they were considering what
they were saying could be used for many and varied different purposes,
30 spanning investigations, something to support Forensic Crash Unit,
Coroner, Comcare, or others. I would not like to see a member be in a
position where it was not clear as to what purpose their statement was being
provided for.

COL STREIT: So is it the DFSB approach in the conduct of this particular
Aviation Safety Investigation, is that the DFSB only had regard to what the
witnesses said to them in DFSB interviews as to the facts and circumstances
of the witness's recollection of events and did not have regard to what the
witness may have said in any other statement about the same matters?

GPCAPT SMITH: As Director DFSB I have just never seen the need to
independently source another statement prepared for a separate Inquiry, or
others, to use that as evidence upon which – will be used for the purpose of
our investigation.

45

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COL STREIT: What about fairness to the witness in this context? That if the witness has been interviewed and made a statement to another investigative body before they speak to the DFSB, what about, in fairness to the witness, that the witness turns up to the DFSB interview with that statement and says, “This is what I’ve said to the Coroner. This is what I’ve said to the IGADF Inquiry”, you would not say to that witness, would you, “Well, we don’t want to look at that or have regard to it”?

GPCAPT SMITH: First off, I’d say that proposition that you provided there would be quite unique and we have not experienced that.

COL STREIT: Sure.

GPCAPT SMITH: So it really would be “it depends”.

COL STREIT: Well, it’s happened here, hasn’t it? Because one of the aircrew, who was a pilot, was interviewed by QPS on the 29th, before he departed Proserpine Airport, in relation to the incident. So a statement contemporaneous in time, much closer than any other investigative body, has already been obtained by QPS relevant to what DFSB is looking at, relevant to this Inquiry, relevant to Comcare, relevant to the Coroner. So, in that context, would not DFSB be well-served to have access to that interview to see what that witness said, even if it’s just to assist the witness remember what they’ve already told the police?

GPCAPT SMITH: COL Streit, I would really come back to the fact that DFSB, from an investigation perspective, just doesn’t need to seek those statements for the purposes of our investigation.

COL STREIT: Can I put it to you this way, that establishing boundaries that don’t permit other relevant information to fall into the bucket of information that the DFSB is considering provided by a witness has the potential to put the DFSB’s analysis of evidence in relation to what a witness said about an event in some jeopardy because you don’t know what the witness has said about the same thing in another statement, for another organisation, when you easily could have obtained it?

GPCAPT SMITH: COL Streit, I’d offer our experience with interviewing witnesses immediately after an Aviation event. I have found no issue with that information that’s been provided by that individual at the time actually requires us to go down any separate path. I think that is somewhat of a hypothetical.

COL STREIT: I’m not pointing out a requirement. I’m really just trying to understand and assist the Inquiry to understand why the DFSB might be

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5 so prescriptive in its approach in only considering the evidence it's obtained from interviews with a witness and not consider the evidence obtained by another organisation interviewing the same witness about the same matter close in time to the DFSB interview. That's what I'm trying to ask you about and reconcile for the Inquiry.

10 GPCAPT SMITH: Again, I think you're after quite a prescriptive answer. In my experience, we just haven't required to go down that path. If a member was wishing to provide us subsequently a statement or some evidence that was different than they had said before, I would expect that member to do so. If there was something that they thought perhaps was passionate, that they said, "I provided this statement and I would like to give it to DFSB", I would certainly not say that I won't look at it. I would also be very surprised if they were raising, "I told this organisation something completely different than what I just told you".

20 COL STREIT: Given your responses, I just ask you this: does that mean that the DFSB investigation has not had regard to any evidence that's been produced in this Inquiry to date, and prior to the finalisation of the safety report, from any witness, including aircrew of Bushman 81, 82 and 84, as part of its investigative process?

25 GPCAPT SMITH: We have not considered information or evidence that's been provided to this Inquiry.

COL STREIT: Is there any reason for that?

30 GPCAPT SMITH: By the very nature, it's an independent Aviation Safety Investigation.

COL STREIT: But how does that reason relate to whether or not evidence is relevant for the DFSB to consider?

35 GPCAPT SMITH: Again, what I'd offer is the information and evidence that's collected for the purposes of a safety investigation upon which we have subsequently then analysed or used other subject matter expert reports simply aren't reliant upon information or evidence that's been separately provided to other Inquiries, or for other forums. Ultimately, I need to preserve the integrity, the objectivity, and have an unbiased report. Not so much bias, but the Aviation Safety Investigation Report needs to stand on its own with the information and evidence that has been collected and engagement with the individuals that we need to for the purposes of our investigation.

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COL STREIT: So the short answer is – if I understand what you’ve said correctly, and if I have that wrong, please let me know. But the short answer is the DFSB has regard to the evidence it has obtained in the course of its investigation and does not have regard to any other evidence obtained by any other investigative body in relation to the same matter that’s being investigated.

GPCAPT SMITH: Generally speaking, that’s a true statement.

COL STREIT: Can I turn to the topic about independence and resourcing of DFSB, please? This is at paragraph 123; page 28 is where it starts. The DFSB is a Directorate within DASA. That’s correct?

GPCAPT SMITH: That’s correct.

COL STREIT: Your first-level assessor, that is the person who reports on your performance on an annual basis, is the Director-General of DASA. Is that right?

GPCAPT SMITH: That’s correct.

COL STREIT: Your second-level assessor is the Deputy Chief of Air Force. That’s right?

GPCAPT SMITH: Correct.

COL STREIT: When we talk about assessors, first level and senior, what we’re talking about are the people that prepare and issue your annual Performance Appraisal Report. Correct?

GPCAPT SMITH: That’s correct.

COL STREIT: Which is provided to the Career Manager for Air Force; is that right?

GPCAPT SMITH: At my level?

COL STREIT: Yes.

GPCAPT SMITH: It is progressed through the Director of Senior Officer Management.

COL STREIT: Sorry, Senior Officer Management. But the purpose of, would you agree with me, a Performance Appraisal Report is a report

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essentially to you as to how you have performed in your particular role during a 12-month period?

5 GPCAPT SMITH: True statement.

COL STREIT: That report is then provided to the relevant Career Management, in this case Senior Officer Career Management in Air Force, where that Career Manager, together with others, will consider your suitability for postings subsequent to your current role?

10 GPCAPT SMITH: My advice would be it would be assessing your suitability for continued employment within current rank, suitability for promotion, and then, subsequently, there would be decisions in terms of what positions that you may follow onto, or whether that's SITA, et cetera.

15 COL STREIT: So I was going to ask you about those, so thank you for that response. So the nuts and bolts of the Performance Appraisal Report is feedback to you and feedback to the Senior Officer Career Management in Air Force, which can then assist them in their decision-making in relation to continued engagement in your current role, potential for promotion to high levels of rank, and potential for posting to another particular role.

20 GPCAPT SMITH: True statement.

25 COL STREIT: In circumstances where the Director-General of DASA is your first-level supervisor and the role you have as the Director DFSB in the conduct of independent and impartial investigations, do you see any particular perception difficulty with the DG of DASA being your first-level supervisor given your role for the conduct of independent and impartial investigations?

30 GPCAPT SMITH: You said "perception"?

35 COL STREIT: Yes. So let's put it this way. In circumstances where – and we're not talking about this investigation – but any other investigation that might require you to examine processes, policies and decisions made by a regulatory component of DASA, or indeed the DG of DASA themselves, in circumstances where they're your Reporting Officer on an annual basis for your performance, would you agree with me there's a perception conflict of issue there?

40 GPCAPT SMITH: I agree that perhaps externally you could see that as a perception – perhaps.

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COL STREIT: In terms of the independence of DASA and its authority, appreciating you sit under the Defence Aviation framework, do you see any benefit to the conduct of your role and your organisation in having a level of independence, independent statutory authority under legislation to perform your function of Aviation investigations?

GPCAPT SMITH: Without actually seeing what this statutory authority would look like and its powers and protections - - -

COL STREIT: Think big, what would you like?

GPCAPT SMITH: Within the current context of the safety authority, we get huge synergies of effort with the small workforce that we have for the management of the Defence Aviation Safety Program. From a perspective of legal powers and protections, ultimately, if you use this investigation as an example, we had no practical issues in terms of access to accident sites, the conduct of our investigation, being able to interview individuals, et cetera.

Ultimately, our challenges are more in the perspective of making sure Defence folks are comfortable that if they are supporting an independent investigation, that the information that they are providing to DFSB for the conduct of an investigation and the information that they provide is actually protected under a suitable framework.

COL STREIT: So legislative independence and statutory power may have the effect of assisting the DFSB conduct its functions independently and to protect Aviation accident investigation information, because you'd have a legislative protection.

GPCAPT SMITH: I would offer the construct that you're talking about, it is the powers and protections; however you achieve that is a separate issue. So, under the current Defence Aviation Safety Program, I'm provided with the independent powers and authority to conduct independent investigations. The broader challenge is actually the protections of the information and evidence that we have gathered, where individuals have provided that specifically for the purposes of an Aviation Safety Investigation.

COL STREIT: Would you accept from me that there is actually no legislative protection to Aviation accident investigation evidence that you have obtained – that the DFSB's obtained, in any Aviation accident, as we sit here today?

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GPCAPT SMITH: There are no legal protections for other Inquiries to request that information.

5 COL STREIT: And therefore, having a statutorily appointed independent DFSB with the ability to protect by legislation accident investigation evidence it's obtained consistent with ICAO guidelines, would that not be an enhancement to the current structure that exists in which you operate?

10 GPCAPT SMITH: I agree that having appropriate protections in place for the evidence gathered would be advantageous. Whatever structure that enables, whether it's under a Defence structure or some other legislative authority, I would have to take that on notice what that looks like.

15 COL STREIT: A final question in relation to this, before I turn to the fact sheet. In relation to legal support that DFSB can access, at paragraph 129(c) you say:

20 *DFSB has access to the DASA Legal Officer, should the need arise for general advice pertaining to the conduct and management of activities related to DFSB investigations, or interactions with other Inquiries, such as those by the IGADF, Comcare, and the Coroner. In my experience, DFSB's need for legal advice from the DASA Legal Officer does not arise frequently. The DASA Legal Officer was not involved in, nor provided, any legal advice, nor was any*
25 *requested in respect of the Aviation Safety Investigation Report.*

So that's your evidence I've just read out. Correct?

30 GPCAPT SMITH: That's true.

COL STREIT: So in relation to Legal Officer support, you have access to the DASA Legal Officer, if you need it.

35 GPCAPT SMITH: That's true.

COL STREIT: And the DASA Legal Officer, that person's primary function is to support the Director-General DASA. Would you agree?

40 GPCAPT SMITH: I would offer that more than likely his primary effort is to support DG DASA, as opposed to DFSB.

COL STREIT: Yes, because he's the DASA Legal Officer. That's correct?

45 GPCAPT SMITH: Correct.

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COL STREIT: You have dealt with – sorry, there was briefly one final topic. You’ve dealt with, at paragraph 139, the DFSB was established for two Aviation Safety Investigation Teams to be able to conduct two concurrent serious incident Class B investigations, and you set out the positions within your organisation. That’s correct?

GPCAPT SMITH: Yes, that’s correct.

COL STREIT: So the effect is that DFSB, on its current staffing, can conduct two concurrent serious incident investigations. That’s right?

GPCAPT SMITH: That’s how it’s structured, yes.

COL STREIT: But in reality, was it the case in relation to this Aviation Safety Investigation that you had to first complete the investigation into the Jervis Bay incident in March 2023 before turning to deal with this particular investigation, the MRH-90 on 28 July – 23 July, I’m sorry?

GPCAPT SMITH: Not specifically. At the time of the TALISMAN SABRE incident, DFSB had two serious incident investigations already underway – Class B investigations. We also had the Class A investigation of the Jervis Bay engine failure resulting in ditching. So at the time, we had what I would say was two Class B investigations, and two Class A investigations, and I would honestly say that will outstrip the resources of any organisation at the time. Through sequencing of different phases of investigations, we were able to complete the two Class B investigations, and we were able to focus our efforts – at different phases, or different focus areas of the investigations, we were able to complete the investigation of the Jervis Bay engine failure resulting in ditching.

And at the time, because they were at different phases of the investigation, and I was also able to keep CMDR Cooper on staff for an additional eight months, we were able to complete that investigation because it was heavily focussed – more technical for a long period of time. But it did obviously create resource challenges for us.

I would offer that the Jervis Bay ditching was extremely important given the introduction of Black Hawk, because of their preparedness requirements, and the types of activities that were required to meet their capability milestones. It was essential that we completed that investigation. It did not mean that we had stopped investigating.

At the period of time, for the TALISMAN SABRE incident, it was heavily focussed at the – we had a separate team to complete the technical

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investigation, but we were very much in the early phases of truly understanding the sequence of events and the human factors.

5 COL STREIT: I am not by any stretch being critical of the circumstances that the DFSB faced in the early stages of 2023, but the context to my question is this: in June of last year, an application was brought by the Commonwealth seeking for – although the application ultimately changed over time, but essentially seeking for this Inquiry to cease its investigation into certain matters. Part of that application was a statement made by you
10 in support of the application. That statement, to my recollection, identified resource implications that you were facing at that relevant point in time which were impacting the DFSB’s ability to meet and conclude its investigations it had on the books at that time.

15 So since June of last year to today, as you sit there today and give evidence, has the resourcing circumstances that you faced in June of last year, have they improved?

20 GPCAPT SMITH: Yes, they have improved. They’re still not 100 per cent, but they are improving.

COL STREIT: Do you see value in having further investigators on your permanent staff?

25 GPCAPT SMITH: The capacity for the DFSB Investigation Team is really about the effective strength at the time, and the spread of knowledge, skills and experience across that team. Small teams are not resilient to taking out several members at a time. If you take two investigators out at exactly the same time, that does create challenges, and it’s not an easy
30 mechanism to reintegrate new people into the middle of a current investigation.

35 So I would offer it’s really about having the right folk in the positions, who have had the right training, who come to us, that meet the essential and desirable criteria with the right knowledge, skills and background, and we also have the right succession plan, such that we have a small turnover of a small group of people, but spanning a three-year period.

40 COL STREIT: Have you heard the terminology in Military terms, “One part of your Force resting on leave, one part of your Force training, one part of your Force doing the job”? Have you heard that before?

GPCAPT SMITH: Yes.

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COL STREIT: So in the circumstances of the DFSB, when you've got two teams, would it not benefit you to have a third team?

5

GPCAPT SMITH: On balance, more resources would be good.

COL STREIT: Sure. Can I turn now to - - -

10

AVM HARLAND: Could I just ask just a supplementary question? Do you have access to or routinely structure to take advantage of Reservists who are qualified and may be able to assist?

15

GPCAPT SMITH: Yes, we do. So under the Total Workforce Model, I do have a range of very experienced Reservists, especially at the 05 level, and in particular we had a very experienced 05 – several 05s support this investigation.

AVM HARLAND: So by “05s”, you mean Lieutenant Colonel equivalent?

20

GPCAPT SMITH: Lieutenant Colonel, Wing Commander, Commander equivalent, yes.

25

AVM HARLAND: So you do have access to Reservists. And a follow-on question, is there a requirement for 100 per cent manning of DFSB positions given the criticality of the work that you are required to do?

30

GPCAPT SMITH: From an overall filling all of the safety positions within the Authority, that has been a struggle against all Defence agencies, especially for the Officer Aviation workforce. So on balance, it has been – the strength has been on par or better than the majority of external organisations that are having to give Officer Aviation resources to them.

35

AVM HARLAND: So just for clarity there, when you say “strength”, that means a person allocated to a position?

GPCAPT SMITH: Correct.

40

AVM HARLAND: So you're saying that, in general, you feel that DFSB has more people in positions than perhaps the wider Defence community, as a general rule, but you don't have a requirement for 100 per cent people 100 per cent of the time.

45

GPCAPT SMITH: The Career Management agencies, I would offer have had guidance related to filling safety positions. It's whether the Career Management agencies are physically able to have the resources and the

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folks available to actually staff the positions. The majority of that has resulted as of short notice resignations where it's not an easy fill immediately, even though the services know they have to fill that. There is an overhead to then go, "I need someone to get onto the next Cranfield course". So it's when they become effective is really the issue. So I may have four people on staff, but still waiting for someone to finish their Cranfield training, and by rights I would – from an investigation perspective, I truly couldn't use them in that role.

5
10 AVM HARLAND: So that answered my question. I'll hand back to COL Streit. Thank you.

COL STREIT: Thank you, sir.

15 Very quickly, one matter, if I could deal with this discretely before I turn to the fact sheet. You set out at paragraphs 116 through to 119 assistance that was provided by LTCOL Norton, and that he was assigned to the Aviation Safety Investigation Team, and you have set out what he did in assisting the ASIT conduct activities in the MRH-90 simulator. That's correct, what I've said?

20
GPCAPT SMITH: That's correct.

COL STREIT: At 117 you say:

25
I was aware that LTCOL Norton had performed the role within Army Aviation Standards Branch and AATES. Through discussions with LTCOL Norton personally, I was aware that he had a deep understanding of AATES Flight Test Reports and Standards Branch Operational Evaluation Reports related to the Service Release of HMSD software version 5.1.

30
That's correct?

35 GPCAPT SMITH: That's correct.

COL STREIT: At 118 you say:

40
My assessment was at the time, and remains now, that LTCOL Norton did not have a conflict of interest in respect to his SME assistance to the Aviation Safety Investigation Team. This was primarily because he was not required to conduct analysis, raise findings, or draft content for the ASAR, rather LTCOL Norton's role as an SME was to provide expert advice on the functionality and operation of HMSD version 5.1, and

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compared to version 4.0. For clarity, LTCOL Norton did not provide SME advice to the ASIT as to whether version 5.1 was causal to the accident.

5 That's correct?

GPCAPT SMITH: That's true.

10 COL STREIT: Can I turn to the fact sheet, please? I'm just going to identify some aspects of the fact sheet and read them out to you, just to confirm the contents. First of all, is the fact sheet essentially a summary of matters concerning the procedure adopted in the Aviation Safety Investigation?

15 GPCAPT SMITH: The fact sheet was primarily developed to support the briefings for the families. So the families had a higher level summary of the information that we provided during the presentation. Again, quite a high-level summary.

20 COL STREIT: And that high-level summary, was that a different classification than the fact sheet? Is that correct?

GPCAPT SMITH: Sorry, the fact sheet?

25 COL STREIT: The fact sheet is - - -

GPCAPT SMITH: Was provided as a summary for the families, which was provided to the families at the end of the briefings.

30 COL STREIT: I see. So the fact sheet is classified "Official". That's right?

GPCAPT SMITH: Yes, it is.

35 COL STREIT: Now, the fact sheet records on the first page, about the middle – it says this:

40 *This Aviation Safety Investigation was one of the most complex conducted by Defence in recent history. The duration of the investigation was commensurate with the nature and circumstances of the event, and the scope and depth of evidence and analysis. Independent subject matter expert reports and peer reviews were sought to verify and validate analysis and findings, and to protect against bias.*

45

Is that correct?

GPCAPT SMITH: That's correct.

5 COL STREIT: Second-last paragraph:

10 *The report provides safety actions and recommendations. The report does not seek to apportion blame, or determine liability, and does not recommend disciplinary or administrative action against organisations or individuals. This approach is consistent with the Australian Transport Safety Bureau's approach to aviation safety investigations, and the International Civil Aviation Organisation.*

Is that correct?

15

GPCAPT SMITH: Sorry, which paragraph was that?

COL STREIT: Second-last paragraph, page 1. The first page.

20 GPCAPT SMITH: Sorry. That's true.

COL STREIT: If you turn the page, the heading is "Findings". It says this:

25 *Consistent with the Australian Transport Safety Bureau Investigation Report terminology, the DFSB Aviation Safety Investigation Report uses verbal probability expressions as a basis to make findings which represent the investigators' understanding of the level of likelihood, such as "virtually", "almost certain",*
30 *"extremely likely", "very likely", and "likely". Investigators are required to use professional interpretation, assessment and judgment of the level of likelihood in the absence of direct evidence of causal or contributory factors.*

35 Is that correct?

GPCAPT SMITH: That's true.

40 COL STREIT: The Aviation Safety Investigation identified the primary cause of the crash of Bushman 83 as follows:

45 *The investigation concluded that the primary cause of the accident was unrecognised loss of spatial orientation, commonly referred to as spatial disorientation. Unrecognised spatial disorientation occurs when a pilot misperceives the orientation or position of the*

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aircraft with reference to the surrounding environment. This leads the pilot to take actions that are relative to their misperceived orientation, without awareness that the aircraft is in an abnormal state.

5

Is that correct?

GPCAPT SMITH: That's a true statement.

10 COL STREIT: Next:

Due to the low operating altitude of the formation, and the aircraft's high rate of descent, the investigation concluded that the pilots did not have sufficient time after experiencing the unrecognised spatial disorientation event to rebuild an accurate mental model of the aircraft's orientation and apply unusual attitude recovery techniques prior to the impact.

15

Is what I've read correct?

20

GPCAPT SMITH: True.

COL STREIT: So they're the primary causes identified by the Aviation Safety Investigation Team concerning the impact with water of Bushman 83.

25

GPCAPT SMITH: That's true.

COL STREIT: "Contributory factors" – can you just explain the difference between "primary cause" and "contributory findings"? You'll see "Contributory Findings" about halfway down on the second page, as a paragraph heading. What does "contributory findings" mean?

30

GPCAPT SMITH: As in those findings that were raised were considered to be contributory to how the accident sequence of events unfolded. They're not primary causes. Primary causes are really talking about the defining top event that is really the basis upon which the accident sequence of events then truly pans out. Contributory findings, such as visibility, contrast, flying with the cabin doors closed, or others, were aspects that, if you removed those, perhaps weren't going to be contributory to the event. Good weather day, with the doors open, not flying at night, all those aspects would not be contributing to what is the top event.

35

40

COL STREIT: So the first contributory finding is this:

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5 *Varying visibility and contrast in overcast and showery environmental conditions, and intermittent periods where the horizon was more than likely not discernible, are considered to have contributed to the degradation of the pilots' spatial orientation, in particular whilst the pilots were task-focused to maintain formation position using night-vision devices as the primary visual reference.*

10 Is that right?

GPCAPT SMITH: That's true.

COL STREIT: Next:

15 *Cabin doors were authorised to be in the closed configuration for the mission in order to alleviate the aircrewman's exposure to rain and low temperatures, until a pre-determined approach point to the landing zone. However, this restricted the aircrewman's visibility and ability to contribute effectively to the pilots' situational awareness within the formation, and proximity to terrain.*

Is what I've read correct?

25 GPCAPT SMITH: True.

COL STREIT: Next:

30 *The investigation found systemic organisational influences that likely reduced the effectiveness of risk controls across the Defence Aviation Safety Program's multi-layered framework of independent safety assurance. This includes policy and regulation, organisational approvals, education and training, and oversight for aeromedical factors, Aviation fatigue management,*

35 *human performance limitations, and spatial disorientation.*

Is what I've read correct?

40 GPCAPT SMITH: That's true.

COL STREIT: Next:

45 *The investigation noted that Army Aviation faced significant challenges to mitigate operational safety and airworthiness risks arising from the complexity of maintaining and operating the*

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MRH-90, especially during a period of Force modernisation and platform transition.

Is what I've read correct?

5

GPCAPT SMITH: That's true.

COL STREIT: Next:

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The investigation found that demands on key personnel responsible for Aviation safety often exceeded workforce capacity, which likely degraded the effectiveness of Army's Aviation Safety Quality and Risk Management Systems.

15

Is what I've read correct?

GPCAPT SMITH: That's correct.

20

COL STREIT: The next heading is "Non-Contributory Findings". What does "non-contributory findings" mean?

GPCAPT SMITH: I would stress those are aspects that we analysed, of which were then ruled out as contributory to the event.

25

COL STREIT: The first of those non-contributory findings is this:

30

The technical investigation of voice and flight data recorder and aircraft wreckage concluded that the aircraft's propulsion systems, transmission and gear boxes, flight control systems, and associated major systems, were operating normally, and that there were no structural failures of the aircraft prior to impact.

GPCAPT SMITH: That's true.

35

COL STREIT: Next:

40

The operational investigation concluded that it was almost certain that the Helmet-Mounted Sight and Display, and associated night-vision imagery and flight symbology displayed to the pilots was functioning correctly.

Is that correct?

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GPCAPT SMITH: That's true.

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COL STREIT: Next:

5 *The investigation also concluded that it was almost certain that the
Helmet-Mounted Sight and Display pitch scale attitude was not
contributory to the crew's loss of spatial orientation, and is not
part of pilots' instrument scan when flying formation.*

Is what I've read correct?

10 GPCAPT SMITH: That's correct.

COL STREIT: Is that a reference to TopOwl version 5.1 where the
non-contributory finding refers to Helmet-Mounted Sight and Display?

15 GPCAPT SMITH: That third bullet point is to be very specific to the pitch
scale attitude, which is one component of the symbology within the broader
– all of the symbology, and the night imagery that's been provided through
the helmet.

20 COL STREIT: The version they were using was TopOwl version 5.1, is
the evidence before this Inquiry.

GPCAPT SMITH: That's correct.

25 COL STREIT: Next:

*All formation crews were current and qualified to conduct the
low-level formation flight overwater using night-vision devices.*

30 GPCAPT SMITH: That's true.

COL STREIT: Next:

35 *The mission was appropriately authorised by a current and
Qualified Flight Authorisation Officer.*

GPCAPT SMITH: That's true.

40 COL STREIT: And last:

*Forecast weather and environmental conditions were within
authorised and appropriate limits set by the Commanding Officer
of 6 Aviation Regiment.*

45 GPCAPT SMITH: That's true.

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COL STREIT: The fact sheet then goes on to identify and set out the process and priority adopted in the investigation; is that right?

5 GPCAPT SMITH: That's true.

COL STREIT: Including identifying those organisations that provided information to the Aviation Safety Investigation as part of its investigative process, as set out on the second-last page of the fact sheet.

10 GPCAPT SMITH: That's correct.

COL STREIT: Thank you, Group Captain. I have no further questions. I note this witness is not able to be here tomorrow, he needs to depart. He has another engagement tomorrow in a different state, and so if Counsel representing don't conclude their questioning, we'll need to make other arrangements at a later stage. Hopefully that will be of some assistance to them. Thank you.

20 AVM HARLAND: I just had one question before we go to cross. In the process of version 5.1 coming into Army, had DFSB been asked for or given an opinion on version 5.1 to the Army Capability Management area, or otherwise?

25 GPCAPT SMITH: I have no recollection that anyone within DFSB was requested to provide a comment on a Service Release matter.

AVM HARLAND: Okay. Thank you.

30 MS McMURDO: Applications to cross-examine?

COL GABBEDY: Ma'am, before we start, LCDR Gracie and I have spoken. Between us, we have more than an hour's worth of questions for this witness. That's without any other Counsel representing. I appreciate that this witness has had a long day. Everyone in this room has probably had a long day. And I appreciate it's inconvenient to bring him back, but I would urge upon you that that is the best course, given the circumstances.

40 MS McMURDO: Well, we don't really want to bring him back. I think if we don't finish today, then it will have to be done by video link.

COL GABBEDY: I'm happy to do it by video link, ma'am. None of the questions relate to credit, so they could easily be done by video link.

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MS McMURDO: I don't know if he's available later this fortnight. Do you, COL Streit?

COL STREIT: I (indistinct).

5

GPCAPT SMITH: Ma'am, would you mind if I make a comment?

MS McMURDO: Of course.

10

GPCAPT SMITH: Perhaps if I was to arrange with someone about options for my program for tomorrow and subsequent interstate flights, et cetera, if you wanted to entertain first thing tomorrow morning?

15

MS McMURDO: Do you think there's a possibility you could finish tomorrow morning?

GPCAPT SMITH: Correct.

20

MS McMURDO: Well, we'll just have a short adjournment. We won't leave. Do you want to go and talk to someone about that? Is that right?

GPCAPT SMITH: If there's the option for the IGADF to re-arrange my - - -

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MS McMURDO: Yes, I'm sure they could do that, but we understood you weren't available tomorrow.

GPCAPT SMITH: I am flying to Adelaide tomorrow afternoon.

30

MS McMURDO: Tomorrow afternoon. Okay. So if you had accommodation arranged overnight, you could stay?

GPCAPT SMITH: Correct.

35

MS McMURDO: Can we look into that while we start cross-examination?

COL STREIT: I'm sure the Secretary might be able to wave his magic wand in relation to those matters.

40

LCDR GRACIE: He can have my room. There's no soap. I'm in the kitchen, and it's got a wonderful view of everyone quite opposite me when the curtains are open. You can have that.

45

GPCAPT SMITH: If you would like the room that I had last night without any air-conditioning, I'll swap you.

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COL STREIT: Perhaps if we continue?

MS McMURDO: Yes, we'll continue.

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COL STREIT: And use the time that's available to us while the Secretary makes some enquiries.

MS McMURDO: We'll sit until 5.30 tonight. I think that's long enough. Are you right to go on until 5.30 tonight?

10

GPCAPT SMITH: Yes, ma'am.

MS McMURDO: And then should we start at 9 o'clock tomorrow?

15

COL STREIT: I think that would be of assistance, subject to other Counsel.

MS McMURDO: Because we've got a busy day with other witnesses. Yes, all right. All right then. Who is going first?

20

COL THOMPSON: COL Gabbedy.

MS McMURDO: COL Gabbedy. It's your day, COL Gabbedy.

25

COL GABBEDY: Thank you, ma'am. I will try and be as quick as I can.

MS McMURDO: Were there any other applications to cross-examine? Yes. If you want to go first?

30

COL THOMPSON: Was that serious?

MS McMURDO: Yes, that was serious. I'm just checking there are no other applications to cross-examine? No. Thank you.

35

MS MUSGROVE: I'll be seeking to re-examine.

MS McMURDO: How long – I suppose you don't know at the moment?

MS MUSGROVE: No, ma'am.

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MS McMURDO: No, all right.

LCDR TYSON: Ma'am, could I just ask a question? What's the scope of permissible cross-examination of this witness? I wonder perhaps if

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COL Streit could indicate, because I thought that there were large areas which were not permitted for cross-examination.

5 MS McMURDO: Well, that's true because of the report, but the fact sheet is in public domain. So I think if it's the fact sheet, it's all right. Is that right?

10 COL STREIT: That's correct. The position of Counsel Assisting was as communicated to Counsel representing in an email from Counsel Assisting as to the parameters. The short point is there can't be any questioning of this witness concerning the specific contents – I'll put it another way – the actual contents of the Aviation Safety Investigation Report, it's findings and recommendations as set out in the final report, for the reasons articulated in that email to Counsel representing, and unless, of course, they bring an application and persuade the Inquiry that it is necessary and appropriate to depart from the ICAO Guidelines.

20 Second, cross-examination of the witness is open and permissible in relation to the contents of his statement; the contents of the fact sheet, to the extent that it does not descend into effectively cross-examination of the contents of the final report by another way. Thank you.

MS McMURDO: COL Thompson.

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<CROSS-EXAMINATION BY COL THOMPSON

30 COL THOMPSON: Thank you, ma'am.

30

Good evening, GPCAPT Smith. COL Thompson for BRIG Dean Thompson. You remember how he fitted in last year as the - - -

35 GPCAPT SMITH: Yes, I do.

35

COL THOMPSON: And now are you aware that transcripts of the IGADF proceedings in this Inquiry are published on the internet, a public forward-facing - - -

40 GPCAPT SMITH: Yes, I am.

COL THOMPSON: Have you ever looked at them, the transcripts?

45 GPCAPT SMITH: No, I haven't.

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COL THOMPSON: Has IGADF ever offered to supply any of its evidence to DFSB for the purpose of your Inquiry?

5 GPCAPT SMITH: No, it hasn't.

COL THOMPSON: Have any of the other agencies, Queensland Police Service, both in their own right or for the Queensland Coroner, IGADF – sorry, Comcare, JMPU, have they offered to supply any of their evidence for the purpose of your investigation?

10 GPCAPT SMITH: I don't recall. I would have to take that on notice.

COL THOMPSON: And nor have you sought that evidence, as I understand it?

15 GPCAPT SMITH: I haven't sought that evidence, no.

COL THOMPSON: Now, I understand that DFSB works hand-in-hand with the ATSB, the Australian Transport Safety Bureau.

20 GPCAPT SMITH: DFSB has a Memorandum of Understanding with the Australian Transport Safety Bureau. It does not work hand-in-hand.

COL THOMPSON: Did you get assistance from the ATSB for the purposes of your investigation into these fatalities?

25 GPCAPT SMITH: DFSB did seek the assistance of the Australian Transport Safety Bureau. Specifically, they have expertise in underwater recovery, underwater retrieval of voice and flight data recorders, and they also have some specialist capabilities in terms of the preparation of voice and flight data recorders that have been immersed in water.

COL THOMPSON: So you sought that assistance. Did you get that assistance?

35 GPCAPT SMITH: Yes, we did.

COL THOMPSON: Did that assistance include using ATSB equipment and human subject matter expertise for examining flight data recorders on the Taipan that went down?

40 GPCAPT SMITH: ATSB assisted with the preparation of the Crash Survivable Memory Unit. ATSB has a specialist kiln that's required to ensure that – which is a circuit board – is in a state prepared for then DFSB, for us to then be able to, in effect, source and download the data from the

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Crash Survivable Memory Unit. We don't have a kiln, a specialist kiln, which is where we sought the assistance of ATSB.

5 COL THOMPSON: Have you ever looked at the IGADF Terms of Reference from Mr Gaynor for this Inquiry?

GPCAPT SMITH: I do recall I have read it, but not recently.

10 COL THOMPSON: Did you ever compare it with your Terms of Reference for your investigation?

GPCAPT SMITH: I do recall reading it. I don't recall what I gleaned from it though.

15 COL THOMPSON: Do you have any recollection of anything in the Terms of Reference for the IGADF Inquiry resonating with the Terms of Reference for your Inquiry?

20 GPCAPT SMITH: I honestly don't have any specific recollections. I do recall reading the Terms of Reference. I'm sorry, I don't know. It was a long time ago.

25 COL THOMPSON: Just one more question. I've only got three minutes. Is there anything that IGADF could do, to your knowledge, that DFSB, working, as you say, with ATSB, couldn't do for the purpose of finding out the cause of these fatalities and how to avoid this sort of accident in the future?

30 COL STREIT: Can I – sorry, it's a matter – I don't really understand how all of these things are relevant to my friend's client's - - -

35 MS McMURDO: Well, I think the questioning is relevant to something that was raised in your questioning; that is, the sort of powers that the DFSB could have to assist it in its Inquiry. Is that right?

COL THOMPSON: Yes, ma'am.

MS McMURDO: Thank you.

40 COL STREIT: But how is that relevant to his client's interests, is my submission? Because I'm sure all Counsel representing would like one day to be Counsel Assisting, but they're not.

45 MS McMURDO: Yes.

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COL STREIT: Perhaps they wouldn't want to be Counsel Assisting.

MS McMURDO: Perhaps not.

5 COL STREIT: But it's important that they remain within the lane permitted by the Inquiry in accordance with their appearance.

MS McMURDO: Yes. All right, I understand the submission.

10 COL THOMPSON: I press the question, ma'am. You will remember the final paragraph of my client's statement caused a good deal of kerfuffle in this Inquiry. That's how my question is relevant to my client's evidence. Do you remember the final paragraph?

15 MS McMURDO: I do. I'm just wondering how that's relevant to this question?

COL THOMPSON: Well, I won't press it if you think it's not relevant.

20 MS McMURDO: Okay. Thank you. I can't see the relevance.

COL THOMPSON: Very good. Thank you.

MS McMURDO: Yes, COL Gabbedy.
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<CROSS-EXAMINATION BY COL GABBEDY

30 COL GABBEDY: Thank you, ma'am.

GPCAPT Smith, I am COL Nigel Gabbedy. I appear for MAJGEN Jobson. In your statement you noted that you became the Director of DFSB in January 2023. That's right, isn't it?

35 GPCAPT SMITH: That's true.

COL GABBEDY: And before that, you were the Director of Airworthiness and Policy, and then Aviation Operations in the period 2020
40 to 2022.

GPCAPT SMITH: I was the Director of the Airworthiness Coordination and Policy Agency for two years, which then transitioned to a new title, which was the Director of Aviation Operations.
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COL GABBEDY: My questions will relate to your time in both of those jobs to an extent. When you took over as Director DFSB, did you relieve GPCAPT Dennis Tan?

5 GPCAPT SMITH: Yes, I did.

COL GABBEDY: This Inquiry has heard evidence from MAJ Wilson that he contacted GPCAPT Tan when GPCAPT Tan was head of DFSB to raise concerns that he had about the Head-Up Display on TopOwl 5.0. Did
10 GPCAPT Tan relate to you those concerns? Did he pass them on to you? Did he say he dealt with them, or did he not mention them at all?

GPCAPT SMITH: I do recall the previous Director DFSB did have a confidential report related to that matter, and was engaging with the Safety
15 Authority in order to investigate those concerns.

COL GABBEDY: Now, the previous Director, if he had that confidential report, when you took over, was that matter concluded before you took over, or was it ongoing?
20

GPCAPT SMITH: My understanding was that matter had concluded.

COL GABBEDY: And was your understanding that matter had concluded with no ongoing concerns in relation to that Head-Up Display?
25

GPCAPT SMITH: I don't recall what the conclusion was at that time.

COL GABBEDY: And that would be a question for GPCAPT Tan, I take it, if he were to be called?
30

GPCAPT SMITH: Perhaps.

COL GABBEDY: Thank you. My next set of questions relates to the Command commitment from Army Aviation Command to safety. Are you
35 able to say from your interaction with him, was there a clear commitment made by MAJGEN Jobson to safety on the behalf of Army Aviation Command?

GPCAPT SMITH: Are you saying as a general commitment?
40

COL GABBEDY: Yes.

GPCAPT SMITH: Or as a safety attitude and behaviour, as a Commander?
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COL GABBEDY: Both.

GPCAPT SMITH: My impression is that Commander Aviation Command has displayed a great safety attitude and behaviour.

5

COL GABBEDY: Are you able to expand on that in terms of why that's your opinion?

GPCAPT SMITH: I would offer that's a general observation, having seen Commander Aviation Command, and accountabilities and responsibilities in the stand up of Army Aviation Command from Forces Command, and their responses generally to DASA's oversight findings, and recommendations from Aviation Safety Investigations. My general view is he's displayed a great commitment to Aviation safety.

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COL GABBEDY: Thank you for that. As part of that commitment, are you familiar with his efforts in establishing a Quality Management System?

GPCAPT SMITH: I'm not privy to the specifics. I'm absolutely privy to the fact that DASA had provided findings on Army Aviation as part of a broad regulatory oversight, improvements in both Quality Management Systems and Safety Management Systems. And, yes, I was aware that Quality Management Systems was one of those aspects of Army Aviation that his Command Team was intent on remediating.

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COL GABBEDY: Are you aware of whether or not they were successful in remediating that?

GPCAPT SMITH: Perhaps, ma'am, I would offer that we are starting to reach into the realm of contents within the report.

30

MS McMURDO: Fair enough.

COL GABBEDY: If you feel I'm straying into your report, then by all means pull me up. Thank you, Group Captain. In the same sort of vein though, are you familiar with the fact that in response to DG DASA, and apparently, DFSB's requests, the Hazard Tracking Authority for Army Aviation was moved, or was established with the Commander of 16 Brigade?

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GPCAPT SMITH: I am aware that when Army Aviation Command was established, the Hazard Tracking Authority had moved from Director-General Aviation under the Forces Command construct to the Deputy Commander. I'm not aware of the timing or the Key Organisational Change Plan that was enacted. But I was aware that there was future plans

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not immediately under the establishment of Army Aviation Command or the Headquarters, but there were future plans to transition the Hazard Tracking Authority responsibilities to Commander 16 Brigade, yes. I'm not quite sure what the trigger point was.

5

COL GABBEDY: Are you aware of the intent or utility of that transfer. What was the sort of "So what?" in transferring the Hazard Tracking Authority to 16 Brigade?

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COL STREIT: I object to this line of questioning. This witness has been called to give evidence in relation to matters contained in his statement. These matters about what Aviation Command did or didn't do at different points in time are questions for other witnesses. I mean, he's been asked to reach back in time and give general impressions about things that he recalls of which he's not involved in about what Army Aviation might do. He's the head of an Investigative Authority. Unless it concerns matters he's raised in his statement when he was at DASA specifically, or the matters are permissible to be led in relation to the Aviation Safety Investigation and its report and fact sheet, then everything else is simply not relevant and is not of assistance to this Inquiry.

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It may be the subject of submissions my friend can make in due course, but this witness has been asked to travel down memory lane and express opinions about what Commander Aviation Command may have done at points in time and whether it was any good. It's not permissible, in my view.

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COL GABBEDY: Might I respond to that, please? This morning MAJGEN King was travelling down memory lane back to 2017 and beyond. GPCAPT Smith is the Director of DFSB. That's an organisation that had interplay with Army Aviation Command during the tenure of MAJGEN Jobson.

30

MS McMURDO: I think it would be quicker to just ask the question, but if you could try and keep things relevant.

35

COL GABBEDY: I'll trim it as best I can, ma'am.

MS McMURDO: And things that don't really need to be asked of this witness and can be asked of another witness. Could you please bear that in mind.

40

COL GABBEDY: I will, ma'am. I'm just not quite sure who that other witness might be. Yes, it could be MAJGEN Jobson.

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During your tenure, did MAJGEN Jobson invite DFSB to participate in the Army Aviation Safety Program Conferences?

5 GPCAPT SMITH: I do recall DFSB or, more broadly, the Safety Authority may have been invited. It's whether DFSB had capacity, amongst all the other events, to participate in it. I can't recall.

COL GABBEDY: You can't recall whether that occurred?

10 GPCAPT SMITH: I can't recall whether we participated.

COL GABBEDY: Can you remember whether or not DFSB were invited to provide briefings from your investigators in relation to previous safety events?

15 GPCAPT SMITH: Previous safety events.

COL GABBEDY: Including the RAN MH-60 ditching, the S-78 Black Hawk rotor strike, and the 2020 MRH-90 formation near miss?

20 GPCAPT SMITH: Yes, I do recall having a presentation for the Commander's Command Council, whether it was the rotor strike and the Jervis Bay ditching – sorry, the MH-60R – yes, I know we have provided presentations to the Command Council.

25 COL GABBEDY: Who comprises the Command Council?

GPCAPT SMITH: It's Commander Aviation Command and his Senior Leadership Team across the Aviation Organisations.

30 COL GABBEDY: Thank you. Were you present at Defence Aviation Safety Boards?

35 GPCAPT SMITH: Yes, I was.

COL GABBEDY: Are you able to recall whether or not Commander Army Aviation briefed those Boards on the risk in the Army Military Air Operator?

40 GPCAPT SMITH: If you briefed it at the Boards, then yes, I was there.

COL GABBEDY: Sorry, I'll try and speed ahead and save us some time. Can you recall the level of risk represented to you, DG DASA, in relation to the risk in the MRH-90 system?

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GPCAPT SMITH: Yes, I can.

COL GABBEDY: What was that level of risk?

5 GPCAPT SMITH: The level of risk that was communicated by
Commander Aviation Command was a medium level of risk to personnel's
safety.

10 COL GABBEDY: Was that consistent across the Boards that you were
at?

GPCAPT SMITH: It was consistently articulated, yes.

15 COL GABBEDY: Thank you. I understand that the MRH-90 had four
Airworthiness Board corrective action requests made against it. Are you
aware of any other aircraft system that had a similar level of corrective
actions levelled against it?

20 GPCAPT SMITH: I'd have to ask over what timeframe, I'm sorry?

COL GABBEDY: I'm sorry, I can't help you with that, so I'll move on
from it.

25 GPCAPT SMITH: I only say that Airworthiness Boards have been
running since 1990. I'm sorry, I do not know.

30 COL GABBEDY: Look, my final question on this topic, you'll be
relieved to know, is was there any recommendation from yourself that you
can recall, or from DG DASA that you're aware of, that systems with the
same level of risk as the MRH-90 platform – medium risk – receive a
greater level of priority in terms of support and oversight?

35 GPCAPT SMITH: Sorry, it's been a long day. You might have to go back
over that question.

COL GABBEDY: Yes. I'm happy to ask that question again.

GPCAPT SMITH: Yes.

40 COL GABBEDY: I'll do it this way. Are you aware of any other
airframe that was carrying a medium level of risk?

45 GPCAPT SMITH: During my time in the Safety Authority, I was not
aware that any other Commander had articulated that a particular platform
presented a medium level of risk to safety.

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5 COL GABBEDY: In those circumstances, are you aware of any recommendation flowing, either from your organisation or from DG DASA, that you're aware of, that an increased level of support or oversight or priority in terms of support and oversight should be provided to Army Aviation to assist them with this platform, with the MRH-90 platform?

10 GPCAPT SMITH: I'm not aware that that characterisation of risk invoked anything special from the authority, if that's what you're referring to.

15 COL GABBEDY: Yes. So any sort of prioritisation or identification of a need to provide particular support for this platform because it's carrying a greater level of risk than any other platform?

GPCAPT SMITH: Are you talking in terms of safety, or capability, or people, or resources?

20 COL GABBEDY: To the organisation?

GPCAPT SMITH: I would offer perhaps that it's not a role or a function of the Safety Authority to recommend other capability or prioritisation of resources.

25 COL GABBEDY: Okay, thank you. I understand that. I'll move on to something else. I want to move on to training and education, if that's okay.

30 AVM HARLAND: Whose responsibility would that be, to seek support and additional resource?

GPCAPT SMITH: That is Commander Aviation Command.

AVM HARLAND: Thank you.

35 GPCAPT SMITH: And the Commanders who have accepted and have authorised that level of risk.

AVM HARLAND: Yes, okay. Thank you.

40 COL GABBEDY: Now, it's the case, isn't it, that the Defence Flight Safety Bureau delivers training and education to Army Aviation aircrew?

45 GPCAPT SMITH: The Defence Flight Safety Bureau provides education and training to numerous Defence organisations, it's not just aircrew.

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COL GABBEDY: Is that training in Non-Tech Skills?

GPCAPT SMITH: Non-Technical Skills is one element of guidance material that we provide, and education and training, yes.

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COL GABBEDY: Does that training include knowledge necessary to understand how human factors might affect performance in the operation of an aircraft?

10 GPCAPT SMITH: That is a true statement, through the provision of guidebooks and other NTS courses. That's a true statement.

COL GABBEDY: I think you just said "guidebooks and courses". So DFSB runs those courses or delivers packages to be run by units?

15

GPCAPT SMITH: Specifically to the NTS, is that what you're talking about, or other courses?

COL GABBEDY: Yes, Non-Tech Skills. In relation to Non-Tech Skills.

20

GPCAPT SMITH: The Non-Technical Skills course and the guidebook, again, is a suite of education and training that DFSB provides. So there's an NTS Facilitator course which provides NTS Facilitators from across all the Aviation Commands to deliver Non-Technical Skills training packages that are appropriate to the context of their particular organisation.

25

COL GABBEDY: Thank you, that's very helpful. So that training, is that then delivered to – is it a train the trainer approach? You deliver it to people who then train their units, or is it delivered direct to pilots and aircrew?

30

GPCAPT SMITH: The course, as it was designed, is to train facilitators, which you could say are the trainers.

COL GABBEDY: How often is that delivered, that course?

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GPCAPT SMITH: Prior to the revision of DASA Non-Technical Skills in February 24, from memory that course was in the order of at least two per year.

40 COL GABBEDY: Now, does that course include the following elements: decision-making, leadership, assertiveness, distraction, violation, and error.

MS McMURDO: Well, just a tick.

45 COL GABBEDY: Maybe I'll go one by one.

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MS McMURDO: Yes.

COL GABBEDY: Sorry, ma'am.

5

MS McMURDO: Thank you.

COL GABBEDY: Does that course include these elements, and I'll go through them one by one by one, rather than overloading you: decision-making?

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GPCAPT SMITH: If I had the source document in front of me, I could probably tick those off but, generically speaking, if you're reading those off what the guidebook is, I would agree with you.

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COL GABBEDY: I'm not reading them off the guidebook, Group Captain. I'm reading them off some instructions I've received.

GPCAPT SMITH: Okay.

20

COL GABBEDY: So I'm assuming that perhaps they've come from the guidebook. You don't know what's in that training?

GPCAPT SMITH: I generically do. I'm just offering you may be giving me a full list which I could probably say, "Yes, generically". If they're all Non-Technical Skills related, then I could agree with you.

25

COL GABBEDY: If I group these generically, ma'am, are you happy with that?

30

MS McMURDO: Yes.

COL GABBEDY: So, generically, Group Captain, the aspects I would suggest include decision-making, leadership, assertiveness, distraction, violation, and error, cockpit communication, and stress, and fatigue. Does that sound right?

35

GPCAPT SMITH: Generically speaking, yes.

COL GABBEDY: You would agree, wouldn't you, that those are all important areas of knowledge for Army Aviators to operate in hazardous environments?

40

GPCAPT SMITH: Non-Technical Skills is an important aspect for all Defence Aviation aviators.

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OFFICIAL

COL GABBEDY: So not just the Army, for every aviator, Navy and Air Force as well.

5 GPCAPT SMITH: Correct.

COL GABBEDY: Is the training course that DFSB conducts accredited?

10 GPCAPT SMITH: What do you mean by “accredited”?

COL GABBEDY: Has it been approved – is it a Defence registered training organisation, approved?

15 GPCAPT SMITH: DASA is a registered training organisation for the delivery of courses, yes.

COL GABBEDY: Is it subject to quality assurance from the Australian Skills Quality Authority?

20 GPCAPT SMITH: I would have to take that on notice.

COL GABBEDY: Thank you. Are you able to identify who it is that is accountable for the delivery of the DFSB Non-Tech Skills for ADF pilots? Is that DFSB itself?

25 GPCAPT SMITH: What specifically do you mean by “accountable for the course”?

COL GABBEDY: Who ensures that that training is delivered?

30 GPCAPT SMITH: Who ensures that it’s delivered?

MS McMURDO: If you don’t know, that’s all right.

35 GPCAPT SMITH: It’s just a suite of courses that DFSB deliver, Aviation Safety Officer courses and Non-Technical Skill courses. They are just a range of functions that DFSB provide for the regulated community.

40 COL GABBEDY: Again, you’ve said they train the trainer, and the trainer will then provide that training to the units. I’m sort of paraphrasing there.

45 GPCAPT SMITH: Correct. Each organisation has a completely different operating context. So from a Non-Technical Skills, that would be applicable to whether you’re a fast jet organisation, air mobility,

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rotary-wing. It's applying those fundamentals, and the key requirement is really not only the provision of education and training but is also to implement Non-Technical Skills and embed Non-Technical Skills training within that organisation.

5

COL GABBEDY: So building on that, and with a specific focus on fatigue, did the DFSB, or the Defence Aviation Fatigue Management Guidebook – is that the publication that introduced the FRAT, the Fatigue Risk Awareness Tool?

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GPCAPT SMITH: Sorry, I don't have the guidebook in front of me. Whether it's an element within the guidebook or a separate product on the DFSB website, I'm not sure.

15

COL GABBEDY: I will phrase it this way in case you don't know. Do you know whether the FRAT is taught as part of Non-Tech Skills training in DFSB courses?

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GPCAPT SMITH: I would offer that the FRAT, which is available on the DFSB website, more than likely arises across numerous education and training forums, not just a DFSB Non-Technical Skills course. I remind you there's numerous Initial Employment Training courses that include fatigue and non-technical skills.

25

COL GABBEDY: To understand your answer, are you saying that the FRAT is a tool that is published by DFSB and it could be taken up and used by any organisation, without being part of a DFSB approved training course?

30

GPCAPT SMITH: That's true.

35

COL GABBEDY: The final area I'd like to cover with you, thank you, Group Captain, is this. Would you agree with me that Non-Technical Skills are often at least examined as a contributor to an air crash?

40

GPCAPT SMITH: Within the broader context of human factors, yes; non-technical skills absolutely, whether it's fatigue, decision-making, yes. Those are all aspects of an investigation under the broad category of human factors, yes.

45

COL GABBEDY: They're factors you really have to look at and examine and either discount or, I suppose, underline as potential contributors in any aircraft crash, do you not?

GPCAPT SMITH: The investigation absolutely will analyse a broad

range of human factors, yes.

5 COL GABBEDY: Sir, arising from that, do you think it's a problem then that DFSB are conducting an investigation where one of the aspects they're investigating is non-tech skills when they are responsible for promulgating that training?

10 GPCAPT SMITH: As I said to AVM Harland before, the DFSB Investigation Section has no responsibility for providing guidebooks or pamphlets, or anything. They are investigators. The other areas of DFSB do provide education and training, research, intelligence, reporting, publications and multimedia. So the Aviation safety, the Investigation Section itself, is absolutely independent of all of those regulatory functions, as well as completely independent of my Education and Training Team, and
15 the team that's responsible for the provision of those guidebooks, et cetera.

COL GABBEDY: As I understand your answer, you're talking about two different sections of an organisation that you sit on top of?

20 GPCAPT SMITH: That's a true statement.

COL GABBEDY: Can you see the potential for concern that DFSB might be seen to be, for want of a better description, marking its own work in conducting an Inquiry that contains an investigation into an area part of the
25 organisation is responsible for training?

GPCAPT SMITH: In order to answer that question, I would - - -

30 COL STREIT: Before you answer, can I raise a matter? I think, in fairness to this witness, there's a bit of history here that needs to be laid out as a foundation. MAJGEN Jobson was the Appointing Officer for the DFSB investigation initially, and was for some months. So one might wonder if MAJGEN Jobson had a problem about the independence of the organisation, questioning my friend has put to this witness, whether - - -
35

MS McMURDO: That's probably a matter for submissions, COL Streit.

40 COL STREIT: Well, should not the witness be asked whether MAJGEN Jobson had given any direction, as the Appointing Officer at the time the DFSB was appointed, in relation to these matters? That would be my submission, as a proper foundation to then put the proposition question to the witness.

45 MS McMURDO: Well, I think you can, if necessary, ask that question in re-examination.

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So the educators and the investigators, are they in the same building?

5 GPCAPT SMITH: Yes, they are, ma'am.

MS McMURDO: They are in the same building. Yes, thank you. Yes.

10 COL GABBEDY: Just one final question for you, Group Captain; I know you've had a long day. Did DFSB give any consideration to commissioning an independent expert to consider the impact of non-tech skills on this particular accident?

GPCAPT SMITH: No.

15 COL GABBEDY: Thank you. Ma'am, I've nothing further.

MS McMURDO: Now, do we know, COL Streit, Ms Musgrove – we may know something now – whether we've been able to get accommodation for the witness? Thumbs up. I don't know what it's going to be like. I hope it's adequate, that's all I can say.

COL STREIT: I think the wand has been waved.

25 MS McMURDO: And for Counsel representing, and also members of our team, about accommodation for this fortnight, but there we are.

COL STREIT: May I have a moment, Ms McMurdo?

30 MS McMURDO: Yes.

COL STREIT: LCDR Gracie indicates 30 minutes. My learned friend, Counsel for the Commonwealth, would probably keep her powder dry, subject to what might need to be re-examined about. So if we were to start at 9?

35 MS McMURDO: 9 o'clock? I think that would be wise. Thank you. It's been a very long day.

40 Thank you for your assistance to the Inquiry so far and for being so accommodating about staying overnight and starting early tomorrow morning. We greatly appreciate it, Group Captain.

45 Ms Musgrove, could I add to your burdens arising from paragraph 91 of this witness's statement. Can you at some point get instructions as to if and when the ASI Report has been or will be provided to Coroner O'Connell?

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MS MUSGROVE: Yes.

5 MS McMURDO: Thank you.

MS MUSGROVE: Thank you.

10 MS McMURDO: All right then. Could I also thank the transcribers who have stayed late to help us today with getting through the evidence – the recorders. Thank you. All right. We'll adjourn until 9 o'clock tomorrow morning. Thank you.

15 <WITNESS WITHDREW

**PUBLIC INQUIRY ADJOURNED UNTIL
TUESDAY, 29 APRIL 2025 AT 0900**