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INQUIRY OFFICER'S REPORT INTO THE DEATH OF LANCE CORPORAL JASON PAUL MARKS AND THE WOUNDING OF AUSTRALIAN SOLDIERS IN AFGHANISTAN ON 27 APRIL 2008 (MARKS INQUIRY)

References:

- A. CDF Inquiry Officer Instrument of Appointment dated 1 May 2008
- B. CDF Terms of Reference dated 1 May 2008
- C.
- D. ADFP 06.1.4 Administrative Inquiries Manual (AL1, 2007)
- E. Extant ISAF ROE – RC South (Extract)
- F. CDF ROEAUTH – OPERATION SLIPPER SPECIAL OPERATIONS TASK GROUP RULES OF ENGAGEMENT SERIAL dated 23 November 2007
- G. DI(G) Pers 20–6, Deaths within and outside Australia of Australian Defence personnel dated 16 September 2006
- H. DI(G) Pers 11–2, Notification of Service and Non-Australian Defence Force Casualties dated 18 December 2001
- I. CDF Directive 29/2006, Notification Responsibilities When a Member Becomes a Casualty dated 11 November 2006
- J. HQ JTF633 Standing Instructions Pers 04–06 – MEAO Mortuary Affairs Management dated 30 March 2008

Appointment and Terms of Reference

1. I, Colonel David Keith Connery, having been duly appointed by Air Chief Marshal Allan Grant Houston, AO, DFC, Chief of the Defence Force, to inquire into the circumstances surrounding the death of Lance Corporal Jason Paul Marks and injuries to four other Australian soldiers in accordance with the Terms of Reference attached to the Instrument of Appointment (References A and B, attached as Annex A) herein submit my report.

Inquiry Officer Team

2. The Inquiry Team consisted of me as the Inquiry Officer and the following Assistant Inquiry Officers:

- a. Colonel Gary Bruce Hevey, RFD;
- b. Lieutenant Colonel David Harold Gower Freeman;
- c. Chief Petty Officer Ian Kenneth McIntyre; and
- d. Sergeant Sean Markus Veit Heinze.

Introduction

3. On 26 April 2008, Force Element (FE) of Special Operations Task Group (SOTG) began a new operation approximately south-east of their base at Tarin Kowt. This operation, named , aimed at increasing the force's situational awareness and disrupting the enemy in this area

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(Annex B). The intended benefits of this operation included increased freedom of action for the Reconstruction Task Force, and increased situational awareness of the area for future Regional Command (South) operations in the north-west part of

4. In the late afternoon of 27 April 2008, FE conducted a deliberate operation to an enemy group. The track through this valley was somewhere along it. FE —having moved through the valley earlier in the day— was tasked to move north

5. At approximately 1750 hrs DE (local Afghanistan time), an incident occurred when came under heavy fire from concealed enemy positions approximately in the vicinity of. This enemy fire killed Lance Corporal Marks and wounded four other members

Methodology and Approach

6. The Inquiry Team commenced gathering statements from relevant Australia-based personnel from 8 May, including the four wounded members. One Inquiry Assistant, Colonel Hevey, moved forward to Afghanistan to collect facts about the incident on 7 May. The Inquiry Team, less Sergeant Heinze, commenced interviewing members of SOTG in Tarin Kowt on 13 May 2008. The team completed its interviews in Tarin Kowt on 16 May and returned to to ensure the deployed forces were not distracted by our activities.

7. I consulted the Quick Assessment conducted by S6 SOTG which is attached at Annex C.

8. The Inquiry Team was unable to visit the incident site due to security concerns, but this is not considered a significant shortcoming

9. In instances where it was impractical to provide interviewees with Annex D to Chapter 6 of Reference D before the interview, I provided a verbal brief to each and provided them with a copy to read in their own time. While all interviewees were offered the opportunity to have a support person during their interview, I asked that each of the wounded have a support person and one was provided by their unit.

Synopsis of the Incident

10. At approximately 1730hrs on 27 April 2008, was ordered to advance north from their position near along the track. The movement formation was suited to clearing the route of IED. Once the lead elements of neared their limit of exploitation, an enemy group of unknown size engaged the column with small arms and rocket propelled grenade fire. The enemy used concealed positions in a nearby green belt and compounds to their north, and rocky high ground to their south-

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east during the incident (see Annex D).

11. returned fire on identified enemy positions with their organic weapons, and began taking casualties within 60-90 seconds. Soon after, commanders within began to manoeuvre their forces

The attacked part of the column was soon joined by the company's and later by

vehicles led the extraction and delivered the wounded to their eventual casualty evacuation (CASEVAC) point. Throughout this time and other elements of FE were continually engaged by enemy small arms fire. then moved

and the CASEVAC helicopter departed around 1918hrs. After consultation with Commanding Officer SOTG FE moved back to Tarin Kowt at around 2130hrs to reconstitute,

12. The SOTG story-board supporting this incident is attached at Annex E, the full contact report by OC FE is attached at Annex F, and the final Operation Summary (OPSUM) is at Annex G.

Forces Involved

13. **Australian.** The unit involved in the incident was 4th Battalion (Commando), Royal Australian Regiment

14. **Afghan.**

15. **Coalition.** FE was supported by deployed to the area, but were not used in the incident. US Black Hawk helicopters supported the CASEVAC phase. Immediate medical support was provided by the Dutch Role 2 Facility at Tarin Kowt, and additional support for was provided at Mortuary affairs assistance was provide by US forces in

Involvement by Civil and Service Authorities

16. There have been no other Australian, local or coalition investigations into the incident. The ADF Investigative Service provided two assistants to the Inquiry team.

Authority to Conduct the Operation

17. The incident occurred during This operation was approved by Commander JTF 633 on 20 March 2008 (Annex H).

Death During the Incident

18. Lance Corporal Jason Paul Marks, posted to 4 RAR (CDO) and appointed as a vehicle commander in FE was killed in action as a result of

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this combat-related incident. His next-of-kin, Mrs Cassandra Marks of [redacted] was informed of her husband's death on 28 April 2008 at 0412 hrs (AEST) by the unit notification team.

19. After being fired upon by the enemy, Lance Corporal Marks returned fire with his team. He then ordered his driver to manoeuvre the vehicle so they could engage the enemy more effectively. Lance Corporal Marks was fatally wounded early in the contact (within 60-90 seconds) as he was moving towards the rear of his vehicle to treat a cut cheek.

20. The time of Lance Corporal Marks' death was provided in the first situation report as 1814 hrs DE, and later adjusted to 1813hrs. The medical examination pronounced him dead at 2130 hrs. Facts gathered during this Inquiry place Lance Corporal Marks' death earlier than these times, as contact occurred around 1750hrs and the fatal wound was sustained 60-90 seconds into the contact. Consequently, a more accurate time of Lance Corporal Marks' death is about 1752hrs DE (2322hrs AEST).

21. An autopsy was conducted by the NSW Forensic Pathologist at the Department of Forensic Medicine, Glebe, on 4 May 2008. A witness at this autopsy, [redacted], Director Health at Headquarters Joint Operations Command, stated that the autopsy found that Lance Corporal Marks died instantly from a single gunshot wound that entered the back of the head

(Annex I). Given the circumstances of the contact, I am satisfied that the fatal shot was fired by an enemy soldier from within the green zone to the north or north-west of the incident site (see Annex D).

22. At all times following his death, Lance Corporal Marks' remains were treated with dignity and respect by his comrades and those who assisted in his repatriation. His comrades have farewelled him at ceremonies in theatre and in Australia, and his name and photo have been added to honour boards in the SOTG compound and at 4 RAR (CDO). All interviewees who knew Lance Corporal Marks spoke of his dedication, professionalism and great value to his unit.

Injuries During the Incident

23. **Injury 1.**
[redacted] performing the duties [redacted], received a gunshot wound to the right arm. This wound was received 60-120 seconds after contact was initiated, and he continued to request and direct offensive support for some time after receiving his wound. Given the circumstances of the contact, I am satisfied that the wounding shot was fired by enemy forces from an unidentified location. After treatment at the Dutch Role 2 facility in Tarin Kowt, [redacted] was evacuated to Australia on 2-3 May. He underwent a number of surgical procedures at the [redacted] Hospital after his return. [redacted] is expected to return to a deployable medical classification.

24. **Injury 2.**
[redacted] performing the duties [redacted] received three gunshot wounds to his lower back and left leg. These wounds were received after [redacted] moved to an exposed position to assist the fatally-wounded Lance Corporal [redacted]

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Marks. Given the circumstances of the contact, I am satisfied that the wounding shots were fired by enemy forces from an unknown location. After treatment at the Dutch Role 2 facility in Tarin Kowt and the

was evacuated to Australia on 7-8 May. He underwent a number of surgical procedures at the Hospital after his return. is expected to return to a deployable medical classification.

25. Injury 3.

performing the duties of , received a gunshot wound to the right upper thigh. This wound was received after moved up to support those elements of under attack. Given the circumstances of the contact, I am satisfied that the wounding shot was fired by enemy forces hiding on a feature to the south-east of the incident site. After treatment at the Dutch Role 2 facility in Tarin Kowt, was evacuated to Australia on 2-3 May. He underwent a number of surgical procedures at the Hospital after his return. is expected to return to a deployable medical classification.

26. Injury 4.

performing the duties of , received a gunshot wound to the right arm. This wound was received while was engaging the enemy with his - an action he continued to perform for some time after being wounded. Given the circumstances of the contact, I am satisfied that the wounding shot was fired by enemy forces hiding on a feature to the south-east of the incident site within 2-3 minutes of initial contact. After treatment at the Dutch Role 2 facility in Tarin Kowt, was evacuated to Australia on 2-3 May. He underwent a number of surgical procedures at the Hospital after his return. is expected to return to a deployable medical classification.

Loss and Damage to Service Property

27. Losses.

on account to were lost in the incident. also lost in the incident. Both losses were sustained at the incident site. CO SOTG intends to write these losses off at Commonwealth expense.

28. Damage.

FE sustained superficial damage caused by enemy fire during the incident. All vehicles were returned to a battleworthy condition by SOTG logistic elements.

Enemy casualties

29. Information gathered by FE after the contact suggests the enemy sustained dead and wounded.

Damage to Non-Combatant Property During the Incident

30. The SOTG OPSUM (Annex G) assesses that no non-combatants were killed in this incident. A number of civilian compounds near the incident site were

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damaged by Australian and enemy fire. This damage was caused as a direct result of fire being returned by Australian forces to areas from where they were being fired upon. This return fire was consistent with the requirement of Reference F. SOTG have not compensated the owners of the damaged compounds.

Witnesses

31. Statements were obtained from the following witnesses or others with knowledge of the incident:

- a.
- b.
- c.
- d.
- e.
- f.
- g.
- h.
- i.
- j.
- k.
- l.
- m.
- n.
- o.
- p.
- q.
- r.
- s.
- t.
- u.
- v.

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w.

x.

y.

z.

aa.

bb.

cc.

dd.

ee.

32. These statements are included at Annexes I to MM. Statements from local national witnesses were not sought due to security considerations.

33. I found each witness credible, forthright and cooperative. I am satisfied that, taken together, these statements and other supporting documents from SOTG provide the general facts of this incident. While the unit conducted a thorough debriefing process of the members who remained in Tarin Kowt after the incident, I do not think there has been any attempt to obscure the facts or develop an agreed version of the incident within FE or SOTG. Indeed, my ability to interview the soldiers who were not part of the after-action review process (namely the wounded soldiers who returned to Australia) gives me confidence in the reliability of all the statements received.

34. Despite this information, some small differences about minor details of the incident remain. This should be expected given the pace of events, individual perspectives of the incident and the very nature of combat. I do not think that a further inquiry would add to the understanding of why Lance Corporal Marks died or why his colleagues were wounded.

Environmental Conditions

35. **Terrain.** The terrain consists of a series of steep, rocky and almost treeless features in the east and north; a densely wooded green-belt and compounds in the centre and south; and further steep, rocky features in the west. A single, narrow dirt track runs through the valley. This track is marked by numerous wash-outs and culverts that slow vehicle movement. The compounds in the area are surrounded by high mud walls.

36. **Incident site.** The incident site is bordered by a steep rocky feature in the south-east to north, a green belt from the north through west, and compounds to the south-west. A track runs through the centre of the incident site. There is no significant vegetation outside the green belt.

37. **Weather.** The weather at the time of the incident was hot and clear.

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38. **Visibility.** Visibility in the valley at the time of the incident was excellent and not an impediment to either ground observation or air operations. Intervisibility within the valley from the [redacted] by numerous features (see Annex Y). Intervisibility around the incident was only interrupted by compounds and some minor variations in the landform. There was still around eighty to ninety minutes until dusk at the commencement of the incident.

39. **Cultural environment** [redacted] of the cultural environment of the [redacted]. However, [redacted] were suspected of being sympathetic to the Taliban as the general region was assessed as an [redacted]

40. **Human activity.** [redacted]

Operational and Logistic Factors

41. **Intelligence.** [redacted]

b. **In support of the** [redacted] **operation on 27 April.** Information from [redacted] OC FE identified a small group of enemy in the valley.

[redacted], although indicators of significant enemy ground action were dismissed. [redacted] also provided some support to the reconnaissance effort.

c. **Inquiry assessment.** There was a [redacted] about the valley, although the area was assessed as a transit route for the Taliban. This assessment made the [redacted] aim of the tactical action on 27 April, especially important to securing freedom of action for the RTF [redacted]

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42. **Planning.** The planning for _____ in general, and the detailed planning for the _____ operation on the afternoon of 27 April, appeared thorough. OC FE _____ paid due attention to security for the moving force, and attempted

The latter source led him to assume that the _____
That the enemy evaded the reconnaissance effort is a testimony to enemy skill, rather than a weakness in the planning of this operation.

43. **Command and control.** OC FE _____ and his subordinate commanders, especially those within the immediate incident site, maintained effective command of their troops under the difficult conditions presented by this incident.

44. **Offensive support.** FE _____ organic and assigned offensive support was suitable for the mission at hand, even though the actual size of the enemy group encountered (likely 20-30 personnel in dispersed positions) was larger than anticipated.

45. **Rules of Engagement.** The International Security Assistance Force (ISAF)

_____ . The latest serial _____ of OPERATION SLIPPER SOTG ROE was rewritten and updated on 23 November 2007 (Reference F). This serial reflects the increasingly high threat situation and provides robust ROE for the SOTG. FE _____ personnel applied their fire within the ROE, given they were acting in self-defence and attempting to kill enemy that were using compounds and natural features for cover.

46. **Tactics, techniques and procedures.** The tactics, techniques and procedures used by FE _____ were suitable to the task and performed to a high standard, and so were not factors to the death or wounding of Australian soldiers in this incident.

47. **Training.** Most _____ members interviewed for this inquiry have experience through _____ operational tours. The few less-experienced members generally expressed confidence in their training. One member noted the value of the current

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training. Training is not considered to be a factor contributing to the death or injuries suffered in this incident.

48. **Equipment.** Lance Corporal Marks was wearing the standard special forces-issue chest webbing including front and rear ballistic plates, but no helmet. However, the entry point of the fatal shot to Lance Corporal Marks was between the area covered by a helmet and the ballistic plates. Regardless, nor any other ADF-issued helmet is capable of providing protection against a round of the type that killed Lance Corporal Marks (see Annex NN). As a result, wearing a helmet would not have saved Lance Corporal Marks' life. No other equipment issues have been identified as factors contributing to this incident.

49. **CASEVAC.** The CASEVAC procedures worked well and resulted in the effective and fast movement of casualties from the battle area to the Dutch Role 2 facility at Tarin Kowt.

50. **Repatriation of Lance Corporal Marks.** Lance Corporal Marks' repatriation from Tarin Kowt to Australia was well conducted and in accordance with the principles described in Reference G.

51. **Repatriation and treatment of wounded.** The wounded soldiers were all satisfied with their repatriation and treatment, and no major issues were identified.

52. **Casualty notification.** The notification of Lance Corporal Marks' next-of-kin (NOK) and Primary Emergency Contact (PEC) was well managed. However, two of the wounded members—expressed dissatisfaction with the decision to have a Major from 4 RAR (CDO) inform their NOK by telephone. Both stated to the Inquiry that they wished to inform their wives themselves before undergoing surgery at Tarin Kowt, but these calls were not made until after surgery (from about 0730hrs AEST). also told me that he was dissatisfied with this aspect because his wife was informed of his condition and impending surgery, and not provided any more information for four hours.

CO 4 RAR (CDO) told me that the unit had learned from other experiences that a personal visit at odd hours of the night usually caused additional distress to the NOK. As a result, the unit briefs families that when soldiers receive wounds that are not life threatening, notification will occur by phone in the first instance. Notification of the casualties through the AC563 form was not received by Occupational Health Safety and Compensation (OHSC) Branch within the timeframes stipulated by Reference H.

Drugs and Alcohol

53. There is no evidence to suggest that drugs or alcohol were factors in this incident.

Other Factors

54. No other factors contributed to the death or injuries in this incident.

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Duty Status and Authorisation

55. Every member of FE involved in this incident was on duty at the time as part of SOTG FE was conducting an operation appropriately authorised by COMD JTF633.

Performance of Duty

56. This task was conducted in accordance with the commander's intent, orders as issued by the commander, and established tactics, techniques and procedures. While I have not gathered facts on individual actions, it is clear members distinguished themselves through their conduct during this incident.

Weaknesses in the System and Method of Control

57. I did not identify any significant deficiencies in the system and method of control relating to the operational aspects of this incident. While the post-incident procedures including reporting, repatriation and notification were conducted in broad accordance with References G, H and I (less the reporting by AC 563), matters concerning mortuary affairs and notification are worth mentioning.

58. **Mortuary affairs.** While the current processes and equipment are generally satisfactory, some improvements have been suggested in the post activity report on the repatriation of Lance Corporal Marks (Annex OO) and the statement by the Task Force 633 Mortuary Affairs Officer (Annex N). While many of the issues raised in this report pertain to internal JTF 633 matters (Reference J), three are relevant to the broader ADF:

- a. The existing ADF casket is reportedly inferior to the US improved casket. This US casket was used to repatriate Lance Corporal Marks because it preserves the remains better than the existing ADF type.
- b. Caskets are currently strapped directly to the floor when travelling in RAAF aircraft. In some witnesses' opinion, this method lacks dignity and could be improved by using a small, purpose built platform for this task.
- c. According to some users, Form PH393 – Personal Effects Certificate does not meet modern form standards.

59. **Notification process.** The notification process was generally well managed and effective in this instance. It is clear that Lance Corporal Mark's family was provided with extensive support from 4 RAR (CDO) and the broader Defence community after this incident. The wounded soldiers may be dissatisfied because they were unable to speak to their NOK before surgery and thought this was their right. However, allowing them to do so could have compromised the notification process for Lance Corporal Mark's fatality, and the Commanding Officer made a sound decision to allow this consideration to over-ride the wounded members' preferences. The in-theatre decision to mark all FATALCAS and NOTICAS signals as provided a minor impediment to efficient communication in areas that lacked secure communications. The practice of informing NOK by telephone was a

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minor weakness in this process, but understandable in the context of unit briefings to families and the time of day.

Conclusions

60. Lance Corporal Jason Marks was killed in action by enemy fire on 27 April 2008 near the village of _____ in Afghanistan. He died instantly from the fatal wound, and no medical intervention could have saved Lance Corporal Marks' life. His repatriation was conducted with dignity and respect.

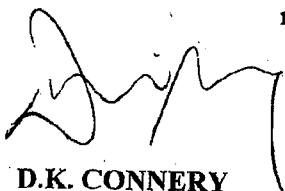
61. Four other members of _____
—were also wounded by enemy fire in the same incident. They were protected by their colleagues during the incident, and managed well during their subsequent repatriation and treatment.

62. While there were some minor concerns with the NOK notification process, this aspect of the incident was generally well managed. Although DI(G) PERS 11-2 has only recently been revised, it could be improved with some minor revisions to clarify notification priorities and reporting requirements.

Recommendations

63. I recommend that:

- a. A commission of inquiry into this incident is not warranted as such a commission is unlikely to identify any new facts that would meaningfully inform command decision-making about the death of Lance Corporal Marks or the injuries to the wounded soldiers.
- b. DI(G) PERS 11-2 be reviewed to:
 - i. State the primacy of informing the NOK of a deceased member over the individual wishes of wounded members.
 - ii. Include the AC 563 reporting requirement in the casualty reporting flow-chart at Annex A.



D.K. CONNERY
Colonel
Inquiry Officer

3rd June 2008

Annexes:

- A. CDF Instrument of Appointment and Terms of Reference dated 1 May 2008
- B.

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C. Quick Assessment for CO SOTG – Death of 8240607 LCPL
J.P. Marks on 27 Apr 08

D. 13 April 2008

E. SOTG Storyboard of Troops In Contact, 27 April 2008

F. FE Contact Report – 003-08, 13 May 2008

G.

H. Decision Brief – Endorsement of SOTG OPPLAN, 20 March
2008

I. Statement by

J. Statement by

K. Statement by

L. Statement by

M. Statement by

N. Statement by

O. Statement by

P. Statement by

Q. Statement by

R. Statement by

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- HH. Statement by
- II. Statement by
- JJ. Statement by
- KK. Statement by
- LL. Statement by
- MM. Statement by
- NN. Statement by
- OO. - Repatriation of LCPL Jason Paul Marks

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