REPORT OF THE BOARD OF INQUIRY

INTO THE DEATH OF

8229393 PRIVATE JACOB KOVCO

AT THE SECDET ACCOMODATION

IN THE

AUSTRALIAN EMBASSY COMPOUND BAGHDAD

ON 21 APRIL 2006
COVERING LETTER

Air Chief Marshal A.G. Houston, AO, AFC
Chief of the Defence Force
R1-5-B CDF Suite
Department of Defence
Canberra ACT 2600

HQIOC/C910086

Sir,

REPORT OF THE BOARD OF INQUIRY INTO THE DEATH OF 8229393
PRIVATE JACOB KOVCO ON 21 APRIL 2006

References:
A. Instrument of Appointment of 17 June 2006
B. Terms of Reference of 7 June 2006

1. We have the honour to report to you on our Inquiry into the death of 8229393
PTE Jacob Kovco on 21 April 2006 in accordance with the Appointment at reference A
and the Terms of Reference at reference B.

should have regard to these sensitivities and to the relevant privacy and security
policies.

3. The President and the Members of the Board confirm that we unanimously
support the findings, conclusions and recommendations presented in this report.

M.P. Charles
Colonel
Member

J.P. O'Sullivan, AC APM
Mr
Member

W.F. Cook, OAM RFD
Group Captain
President

STAFF-IN-CONFIDENCE
27 Oct 2006

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INSTRUMENT OF APPOINTMENT

DEFENCE (INQUIRY) REGULATIONS
APPOINTMENT OF BOARD OF INQUIRY

Pursuant to Regulation 23 of the Defence (Inquiry) Regulations, I, Allan Grant Houston, AO, AFC Chief of the Defence Force hereby appoint a Board of Inquiry constituted by:

a. GPCAPT Warren Cook,
b. COL Michael Charles, and
c. Mr James O’Sullivan

for the purpose of inquiring into the circumstances surrounding the death of PTE Jacob Kovco 8229393 at the Security Detachment accommodation in Baghdad on 21 April 2006.

And pursuant to Regulation 25 of those Regulations, I empower the Board of Inquiry to make recommendations arising out of its findings;

And pursuant to Regulation 27 of those Regulations, I appoint GPCAPT Warren Cook to be the President of the Board of Inquiry which will convene at Victoria Barracks, Sydney on Monday 19 June 2006;

And pursuant to Regulation 28 of those Regulations, I direct the Board of Inquiry to follow as closely as practicable the procedure set out in Annex B to Chapter 7 of Australian Defence Force Publication 06.1.4 – Administrative Inquiries Manual;

And pursuant to Regulation 31 of those Regulations, I direct that all evidence to be given before the Board of Inquiry shall be on oath or affirmation;

And pursuant to Regulation 29 of those Regulations I direct that the Board conduct its inquiry in respect of the taking of oral evidence and the making of oral submissions in public, subject to the direction below;

And pursuant to Regulation 29 of those regulations I direct that the Board conduct in private that part of its inquiry that involves classified material. Only persons with a need to know and holding the appropriate security clearance are to be permitted to attend that part of its inquiry. The President may, at his discretion, direct that the Board conduct its inquiry in closed session with respect to the medical history and emotional well being of PTE Kovco prior to his death;

And pursuant to Regulation 29 of the those Regulations I direct that the following persons may be present during the open and closed sessions of the inquiry by the Board of Inquiry, namely:

a. the next-of-kin, Mrs Michelle Kovco, her children Tyrie and Alana and her parents Mr and Mrs Small;
b. the parents of the deceased, Mr and Mrs Kovco;

c. staff from Headquarters Joint Operations Command, Army Headquarters and Land Component Command as required; and

d. Defence Community Organisation representative.

And pursuant to Regulation 51 of those Regulations, I appoint the legal practitioner, Colonel Michael Griffin, Major Edward Jolly, Major Jonathon Hyde and Major Asha Belkin to assist the Board of Inquiry.

And pursuant to paragraph 7.9 of the Administrative Inquiries Manual, I appoint Mrs Kim Harrison as the Secretary to the Board of Inquiry.

Original Signed

A.G. HOUSTON, AO, AFC
Air Chief Marshal
Chief of the Defence Force
APPOINTING AUTHORITY

17 June 2006
TERMS OF REFERENCE

Pursuant to the instrument of appointment of May 2006, the Board is appointed to inquire into and report upon the circumstances surrounding the injury to and death of 8229393 PTE Jacob Kovce ("the deceased") in Baghdad, on 21 April 2006 ("the incident") and such related matters as are specified below.

In conducting its inquiry, the Board is to seek evidence and report upon the following matters:

**General:**

1. a. When, where and in what manner the injury to and death of the member occurred.

   b. A chronological account of the circumstances of the incident.

   c. The identity and particulars of all persons directly or indirectly involved in the occurrence of the incident.

   d. The cause or causes of the death of the member.

   e. Whether the deceased was on duty, and if so, the specific type of duty being performed at the time of the incident.

   f. Whether the deceased was, at the time of the incident, employed on continuous full-time duty as a member of the ADF and was a contributor under the Defence Force Retirement and Death Benefits Act or the Military Superannuation and Benefits Act.

   g. The medical history and emotional wellbeing of the member prior to his death.

   h. Any reasons why the Board is unable to, or it is not reasonably practicable to, obtain any relevant evidence.

**Pre-Incident Issues:**

2. a. The qualifications and experience of the deceased and of any other person directly involved in the incident, to the extent that such matters are relevant to the occurrence of the incident.

   b. The adequacy of all orders, instructions, procedures, documents and manuals governing the handling of weapons to the extent that they are relevant to the circumstances of the incident.
c. The form, content and adequacy of weapons handling briefings and briefing materials relevant to weapons in accommodation areas.

d. The extent to which there was compliance with the orders, instructions, procedures, documents, manuals and briefings described in subparagraphs b and c.

Post Injury

3. The medical treatment provided to the deceased post injury.

The Incident:

4. a. The primary and contributory causal factors in the incident.

b. The likely medical cause or causes of death of the deceased, noting that the final determination for the cause of death is a matter for State Coroner.

c. The extent to which any recommendations made in previous ADF Boards of Inquiry and investigations regarding weapon handling incidents were not implemented at the time of the incident.

Post-Incident Issues:

5. a. The performance of and adequacy of all post-incident procedures, including security of the scene of the incident, casualty notification, reporting procedures, and the repatriation of the deceased.

Other Issues

6. Whether the death of the deceased was caused or partly caused by:

a. The act, omission, neglect, carelessness or misconduct of any person.

b. The use of drugs or alcohol.

c. Non-compliance with orders, instructions or safety procedures.

d. Any inadequacy in the individual training of an ADF member or the collective training of ADF personnel as it relates directly to this incident or its post incident actions.

e. Any equipment limitation, malfunction or failure.
f. Any weakness in relevant systems or methods of control.

7. a. Whether the next of kin of the deceased have been advised of their eligibility to submit claims for compensation in accordance with current guidelines.

b. Whether there is any outstanding action required of members or units to enable finalisation of any compensation issue or any other issue arising out of the incident.

8. Any inadequacy revealed in the course of the Inquiry of any training, orders, instructions, procedures, or publications which, while not a causal factor of the incident, the Board considers should be brought to the attention of the Appointing Authority.

9. Any relevant issues raised by the next of kin of the deceased and other relevant authorities, relating to the incident and post incident procedures and inquiries.

Recommendations:

10. The Board is to make recommendations arising from its findings, including:

a. Whether the conduct of any person or the occurrence of any event in relation to the incident warrants further investigation by Service or civilian police or any other authority.

b. Whether any immediate action is required to prevent the occurrence of a similar incident.

c. Actions which should be taken to prevent the occurrence of a similar incident, or to reduce to an acceptable level of risk the probability of another incident occurring, from the same causal factors.

d. Actions which should be taken to eliminate the inadequacies of any training, orders, instructions, procedures, or publications, revealed in the course of the inquiry which are not causal factors of the incident, but which the Board considers should be subject to action by the Appointing Authority.

Documentation

11. The following documents are to be attached to your report:

b. These Terms of Reference.

c. Any written legal advice which has been obtained.

d. A copy of the Quick Assessment Report.

e. Copies of all statements taken from witnesses.

f. Copies of all relevant orders.

g. Extracts from all relevant publications.

h. Drawings, diagrams and photographs of the scene of the incident.

i. Lists of persons who were directly or indirectly involved in the incident.

j. Copies of all investigation reports associated with this incident.

No Finding of Criminal/Disciplinary Offences

12. The Board is not to make a finding that any person has committed a criminal offence or disciplinary offence. Should you at any time come to the conclusion that a criminal or disciplinary offence may have been committed, you are to suspend the inquiry into that aspect of the matter and report the circumstances to me. To this end, the Board should have regard to DI(G) ADMIN 45-2 Reporting and Investigation of Alleged Offences within the Australian Defence Organisation.

Reports

13. You are to complete your report by 14 August 2006 or, if completion is delayed, you are to advise me in writing seven days before that date, at which time you are to submit to me a progress report on that date and be in a position to justify any request for an extension of time. If completion is further delayed you are to submit weekly reports until the report is completed.

Original signed

A.G. HOUSTON, AO, AFC
ACM
CDF
APPOINTING AUTHORITY

7 June 2006
PART 1 - INTRODUCTION

The Board of Inquiry

1. 8229393 Private Jacob Kovco suffered a fatal gunshot wound at the SECDET Accommodation block in the Australian Embassy Compound Baghdad on Friday 21 April 2006.

2. Pursuant to Regulation 23 of the Defence (Inquiry) Regulations the Chief of the Defence Force, Air Chief Marshal Allan Grant Houston AO AFC, appointed a Board of Inquiry (BOI) for the purposes of inquiring into the death of Private Jacob Kovco. The Board consisted of a President Group Captain Warren Cook OAM RFD, a military member Colonel Michael Charles and a civilian member Mr James Patrick O'Sullivan AC APM. Mrs Kim Harrison acted as Secretary to the Board.

3. COL Michael Griffin, MAJ Edward Jolly, MAJ Jonathan Hyde and MAJ Asha Belkin were appointed as Counsel Assisting the Board.

4. COL Les Young represented the interests of PTE Kovco.

5. COL Griffin recommended that PTE Kovco's wife and mother be separately represented before the Inquiry. Accordingly, LTCOL Tom Berkley represented the interests of PTE Kovco's Wife, Mrs Shelley Kovco and LTCOL Frank Holles represented the interests of PTE Kovco's mother, Mrs Judy Kovco.

6. Mrs Shelley Kovco and Mrs Judy Kovco attended on a regular basis throughout the Board's proceedings. Mrs Shelley Kovco's father, Mr David Small, and PTE Kovco's step-father, Mr Martin Kovco, also regularly attended the hearings.

1 Exhibit C52
7. Two ADF members were identified as potentially affected persons (PAP) and pursuant to the policy in Australian Defence Force Publication (ADFP) 06.1.4, service legal representation was provided for each of them. The PAP were SECDET IX personnel.

8. In the interests of protecting the security of ADF members assigned to the Middle East Area of Operations (MEAO) and their families in Australia; members serving in the MEAO whilst the Board was receiving evidence were not to be named during proceedings and a call sign matrix was developed to protect their identities. This included the identities of the two PAP. Once Security Detachment (SECDET) IX personnel returned from the MEAO the need for the protection abated and personnel were then identified by their names.

9. Initially LTCOL Craig McConaghy represented SGT Colin Hoekstra (Soldier 2) and PTE Steven Carr (Soldier 14). However, on day three of the hearing LTCOL McConaghy applied to the Board to be released, and the President granted that application. Ultimately, LTCOL Bruce Green represented PTE Carr and LTCOL Paul Wilkinson represented SGT Hoekstra.

10. To assist in answering the Terms of Reference expert evidence was obtained from a number of sources including:
   a. Dr Jochan Duflou - Chief Forensic Pathologist at Glebe, NSW;
   b. Detective Inspector Hayes - Investigations Coordinator of the NSW Police Homicide Squad;
   c. Lucas Van der Walt - Scientific Officer in the Forensic Ballistics Investigation Section of the New South Wales Police;
   d. Detective Inspector Hoffman - Manager of the Forensic Ballistics Investigation Section;
   e. Detective Sergeant Elliott - Crime Scene Examiner of the NSW Police Service;
   f. Detective Sergeant Snow – NSWPOL ballistics expert;
   g. WO2 Lankshear - Technical Adviser for Small Arms, incorporating special forces weapons from the Defence Materiel Organisation, Melbourne;
h. WO2 Nayda - Sergeant Major, Small Arms at Headquarters CATC;
i. LTCOL Saddlington - Program manager, Small Arms in the Defence Materiel Organisation;
j. Mr Salvatore Spitaleri - Chief Engineer, Armaments at SPO;
k. Professor McFarlane - Professor of Psychiatry at the University of Adelaide and Director of the Adelaide Node of the Centre of Military and Veterans Health;
l. Professor Mitchell - Professor at the University of New South Wales and Head of the School of Psychiatry at the University of New South Wales;
m. COL Peter Murphy – DPSYCH;
n. GPCAPT Lambert – Director of ADF Mental Health;
o. GPCAPT Dines – J07 at HQ JOC;
p. Ms Michelle Franco - Forensic Biologist for the Division of Analytical Laboratories;
q. Ms Stephanie Hales - Scientific Officer with the NSW Police Forensic Services Group;
r. Ms Sonia Richards - Electronic Evidence Specialist of the State Electronic Evidence Branch NSW Police Force.

Conduct of the Board of Inquiry

11. The BOI was initially appointed on 2 May 2006. On 3 May 2006 Counsel Assisting, COL Griffin and MAJ Belkin, flew to Victoria to consult with Mrs Shelley Kovco and Mrs Judy Kovco about the TOR.

12. The TOR were settled with the NOK and confirmed by the Appointing Authority and Counsel Assisting began preparations for the Inquiry. Members of the Counsel Assisting Team were provided with access to the President of the Board to consult with him about suggestions and recommendations as to the manner in which this BOI ought to commence and the conduct of initial investigations.

13. Counsel Assisting, COL Griffin, MAJ Hyde, and MAJ Belkin flew to the
MEAO on 19 May 2006 to undertake compilation of witness statements and to gather details and physical evidence. MAJ Jolly remained behind to prepare documents, the venue, and coordinate the first phase of evidence via video link.

14. Following the preparatory scoping phase, the BOI was formally appointed on 17 June 2006 and required to present its final report to the Chief of the Defence Force (CDF) by 14 August 2006. CDF subsequently extended the date of submission of the Board’s final report to 27 October 2006.

15. On the morning of Monday 19 June 2006 the BOI commenced its sittings at Victoria Barracks, Paddington, New South Wales. The Board initially convened in LHQ’s VTC room to receive the evidence via video link from witnesses in Baghdad.

16. On 21 June 2006 (day 3 of proceedings) LTCOL McConaghy, then acting for SGT Hoekstra and PTE Carr, made an application to be released which was granted by the President. Consequently, the Board was forced to adjourn until 17 July 2006 to allow SGT Hoekstra and PTE Carr to obtain and consult alternative counsel. In the interim, Counsel Assisting returned from the MEAO on 25 June 2006 and continued scoping the inquiry.

17. The entirety of the Board’s proceedings was completed in thirty-seven (37) hearing days.

Methodology of the BOI and the Approach Taken to the Evidence

18. ADFP 06.1.4, Chapter 7 provided the Board with the relevant guidance on the conduct of Boards of Inquiry. Counsel Assisting also provided the Board with oral legal advice regarding the process of receiving and evaluating the evidence put before the Board. The Board President is a former judicial officer with coronial experience which was of direct relevance to the conduct of our inquiry.
19. Operational issues were very significant factors for the methodology employed by the Board. Those issues included security of information and the impact of the Board’s proceedings on the operational efficiency of JTF 633. The death occurred in Baghdad and the majority of witnesses were located there. The Board had been directed to conduct a public inquiry where possible and the NOK had expressed a firm intention to attend the hearings and be present for the evidence of each witness.

20. Following consultation with the President, HQ JOC and COMD JTF 633, Counsel Assisting arranged for video link hearings to be conducted for key witnesses located in Baghdad and Kuwait. Sworn affidavits from other relevant witnesses located in the MEAO were put into evidence, obviating the requirement for many of them to give oral evidence.

21. This methodology, despite some initial difficulties, proved to be an acceptable means of obtaining evidence and minimised the disruption to JTF 633 operations.

22. The Board has applied the civil standard of proof in reaching its assessment of the evidence and in reaching its findings. The Board has directed itself in accordance with the principles given in Briginshaw v Briginshaw (1938) 60 CLR 336.

Structure of the Report and Exhibits

23. This Report has been written by the Board. All the members of the Board have agreed to the contents of the Report. The Report addresses the Terms of Reference, as detailed in the Instrument issued by CDF. It is acknowledged that this Report draws on the final address made by the Counsel Assisting.

24. Exhibits tendered during the Board proceedings were separated into Classified and Unclassified lists. The Classified exhibits are located at Annexure A. Annexure A is for limited distribution and is released under a different classification to the rest of this report. The distribution list for Annexure A only is shown below:
a. Office of the Chief of the Defence Force,
b. Headquarters Joint Operations Command,

25. The Unclassified exhibits are located at Annexure B.

26. The Terms of Reference (TOR) are addressed serially hereunder. Where appropriate, we have referred to relevant evidence and stated the conclusions that we have reached on that evidence, in respect of each TOR. We have consolidated those conclusions as our findings of fact in a discrete section. We have done the same for our recommendations.

PART 2 - GENERAL

Date, Time and Place of Accident (TOR 1.a)

27. The Board received evidence that on 21 Apr 06 at the Australian Embassy Baghdad, PTE Kovco completed a shift at 1500h. He was on duty as part of SECDET IX and at this time he returned to his room (Room 8) in the accommodation area which was located within the Australian Embassy premises. PTE Kovco shared this room with PTE Johnson and PTE Shore. The accommodation within the Australian Embassy grounds comprised of a number of linked ATCO huts forming two parallel lines with a central corridor. There is a second roof over the top of the huts and the central corridor is at ground level. The huts are elevated approximately 30cm off the ground.

28. The Board heard evidence that all three men (PTEs Shore, Johnson and Kovco) were close friends and chose to occupy Room 8 notwithstanding the fact that it was a small room and that they would have been more comfortable with just two people in the room. The Board has as evidence various photographs of Room 8 in addition to the

\[\text{Exhibits C70, C71, C72, C80, C84, C86 & 86A, 10, and 102.}\]
scene reconstruction evidence\textsuperscript{3} provided by the New South Wales Police Force (NSWPOL). The Board notes that Room 8 is a small room and that movement within the room when occupied by the three soldiers and their equipment would have been significantly restricted. As the Board will detail further on in the Report, the dimensions of Room 8 play an important role in analysing the cause of the shooting.

29. In their statements, affidavits, and oral evidence, PTE Shore and PTE Johnson gave evidence that there were only three people in Room 8 at the time of the shooting. Significantly, PTEs Shore and Johnson have been consistent on this fact since they were first interviewed by the Quick Assessment\textsuperscript{4} (QA) Officer; MAJ Willets, the morning after the fatal shooting.

30. PTE Shore and PTE Johnson gave evidence to the Board that, on 21 Apr 06, they had planned to go to the gym at 1600h and this was delayed by agreement to 1615h. They also gave evidence that PTE Kovco did not intend accompanying them to the gym.

31. From the time the members returned to the room until the shot rang out, all three had removed their Combat Body Armour (CBA) and were in various states of dress. PTE Johnson's evidence is that he was sitting on his single bed; PTE Kovco was standing alongside his bunk; and PTE Shore was initially on the lower bunk and later moved to his locker at the other end of the room before moving to the small fridge located near the entrance to the room.

32. The uncontested evidence before the Board is that PTE Kovco and PTE Johnson were using their laptop computers on return to the accommodation. PTE Shore did not have a computer. Moreover, music was playing via PTE Shore's Ipod located on top of the fridge. There is further uncontested evidence that all three soldiers were, from time to time, singing and that PTE Kovco was 'skylarking' in the room.

33. All three soldiers had F88s and PTEs Kovco and Johnson had secondary

\textsuperscript{3} Exhibits 74, 75, & 76
34. The evidence is that PTE Kovco routinely placed his SLP\(^5\), which was carried in an issued thigh holster, at the end of his bunk bed by hanging it on the bed post. In a Record of Interview\(^6\) (ROI) with NSWPOL, PTE Shore assumed that on the afternoon of 21 Apr 06, PTE Kovco had placed his SLP and holster in the same place, that is, at the end of his bunk. PTE Johnson, in his ROI\(^7\) with NSWPOL, was certain that PTE Kovco, on 21 Apr 06, placed his SLP and holster at the end of his bunk.

35. Also before the Board is Exhibit C86, which is a photograph taken by PTE Shore in the days before the incident on 21 Apr 06. This photograph shows PTE Johnson reclining on his bed with his laptop on his lap and PTE Kovco leaning against his bunk. Importantly the photograph clearly depicts PTE Kovco’s SLP and holster in the location and manner as described by PTE Shore and PTE Johnson. Both PTE Shore and PTE Johnson gave evidence that on 21 Apr 06, PTE Kovco was in a position similar to that depicted of him in Exhibit C86.

36. PTEs Johnson and Shore gave evidence that they did not see PTE Kovco’s SLP at any time on the afternoon of 21 Apr 06 before the incident.

37. The uncontested evidence before the Board is that PTE Kovco had been communicating via email with his wife, Mrs Shelley Kovco and that this correspondence was unremarkable. In oral evidence, and over a number of appearances in the witness stand, PTEs Shore and Johnson gave evidence of conversations they had with PTE Kovco on the content of the email correspondence with his wife. They both confirmed the benign nature of this correspondence. Furthermore, the Board has before it the physical evidence of the emails\(^8\) recovered from PTE Kovco’s laptop by Ms Richards (NSWPOL) which again confirms the benign nature of the email content and corroborates the evidence of PTEs Shore and Johnson on this point.

\(^4\) Exhibit 145  
\(^5\) Exhibit 82  
\(^6\) Exhibit CR23 at pages 7 and 10.  
\(^7\) Exhibit CR17 at page 29.  
\(^8\) Exhibit C184
38. There is also uncontested evidence that PTE Kovco appeared happy throughout this period. Some of that evidence is traversed in the body of the report below. Significantly there is no evidence at all of a "Dear John" letter as was rumoured and reported in the media at an early stage.

39. The evidence\(^9\) is that the three members were singing along to a 'Cranberries' song and at the time the song concluded, PTE Shore moved from the locker to the fridge to get a drink. PTE Johnson remained seated on his bed and was still using his laptop. At this point, PTE Shore bent over and opened the fridge:

I can recall that PTE Kovco was pulling his shorts up really far to the extent that his testicles were protruding each side of the trouser leg during the high part of the song as if he was trying to enhance the high pitch. We all thought this was funny and had a good laugh over it. PTE Kovco repeated this action every time the high part of the song came around. We were all in good spirits and having a laugh.

At the end of that particular song, I believe that PTE Kovco said something and although I couldn't hear the exact words, the tone of the words suggested in was a comment made in jest. At this stage I was kneeling in front of the fridge with the fridge door open. I can recall that as soon as PTE Kovco saying that half joking comment, I heard a sound similar to a cap gun going off and I knew that the sound had come from behind me.

40. The evidence before the Board is that at this time both PTE Shore and PTE Johnson were not looking at PTE Kovco. The Board again notes that PTE Shore and PTE Johnson have remained consistent on this issue from the time of their first interview with MAJ Willetts\(^10\) and subsequently in a number of statements and affidavits made by them and importantly in the NSWPOL Records of Interview (ROI) and finally in their evidence to the Board.

41. The evidence is that at, or very shortly before, 1608hrs PTE Kovco's SLP discharged and he sustained a gunshot wound to the right side of his head.

\(^9\) PTE Shore's evidence at transcript page 207 lines 1 to 15
\(^10\) QA Officer. QA is Exhibit 145
42. PTE Shore's evidence<sup>11</sup> is that he turned to see PTE Kovco falling to the ground:

> When you say you saw him falling down, was he facing in a particular direction when you saw him falling? By that I mean, was he facing his bunk or was he facing toward the back of the room or toward the front of the room? — Just when he was falling directly down, I believed he was facing towards his bunk.

> You say that he fell; did he crumple or did he fall forward or backward? Can you describe the fall that you saw and how much of the fall you saw? — When I turned I just simply remember him not moving — falling in any direction besides straight down in a very — like awkward position, the way he went down was straight down. Just arms falling down by — in front of him, just collapsing, basically.

43. PTE Johnson's consistent evidence throughout the Inquiry has been that he was sitting on his bed looking at his laptop at the time the shot occurred and did not see PTE Kovco fall.

44. Various NSWPOL forensic experts examined Room 8 and the SLP and have reconstructed<sup>12</sup> the trajectory of the projectile. The reconstructed trajectory is not inconsistent with the evidence of PTE Shore who in his NSWPOL ROH<sup>13</sup> stated that PTE Kovco was about 2 paces back from the bunk when he saw him collapsing.

45. The NSWPOL reconstruction has PTE Kovco facing the rear wall of Room 8 at the time the shot is fired. PTE Shore's evidence<sup>14</sup> is that PTE Kovco was facing towards his bunk when he first saw him after the shot and at the point that he had already commenced collapsing and was halfway through the fall.

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<sup>11</sup> PTE Shore's evidence at transcript page 722, lines 23 to 38.
<sup>12</sup> Exhibit C75 and C76
<sup>13</sup> Exhibit CR23 at question 369
<sup>14</sup> PTE Shore's evidence at transcript page 728, line 10.
Chronological Account of Accident (TOR 1.b)

46. A detailed sequence of events and timings on the day of the incident is at Annexure C.

Identity and Particulars of all persons directly or indirectly involved in the Occurrence of the Incident (TOR 1.c)

47. The following personnel were either directly or indirectly involved in the shooting in Room 8 on 21 Apr 06:

In Room 8
a. PTE Johnson
b. PTE Shore
c. PTE Kovco

Outside Room 8 in Accommodation area
d. CPL Saunders
e. PTE Carr
f. PTE Volkovksy

SECRET Pers on scene
g. SGT Hoeksra
h. LCPL Cook

10 CSH
i. MAJ Tyrell
j. LT Croft

Post Incident Investigation
k. MAJ Willetts
l. CAPT Smith
m. SGT Hession
The Cause or Causes of the Death of the Member (TOR 1.d)

48. A detailed analysis of the evidence and the Board’s findings on these matters are set out in responding to TOR 4.a herein.

49. The Board finds that PTE Kovco’s death was not caused by a mechanical failure of his SLP.

50. The Board accepts Dr Duflou’s evidence that the gunshot wound was ‘non survivable’. The Board finds that the uncontroverted medical evidence is that PTE Kovco died as a result of a single gunshot wound to the head.

Duty Status of the Deceased (TOR 1.c & f)

51. PTE Kovco enlisted in the Australian Regular Army on 26 Mar 02 and was employed on Active Service as a Permanent Member and was a contributing member of the Military Superannuation Benefits Scheme (MSBS)\textsuperscript{15}.

52. The Board has the evidence of OC SECDET IX, MAJ Tyrell and LT Croft, his platoon commander that PTE Kovco was specifically chosen from a list of reserves because of his competence as a soldier. LT Croft’s evidence was that PTE Kovco was placed in a new section for the purposes of the rotation to the Australian Embassy and finally there is the evidence of the section commanders, CPLs Scott and McKenzie that PTE Kovco was on duty at the time.

The Medical History and Emotional Wellbeing of the Member prior to his Death (TOR 1.g)

\textsuperscript{15} Exhibit 11 – PMKeys Printout
53. PTE Kovco's medical files are in evidence and show that he was fit for deployment.

54. The Board is required by the Terms of Reference to consider the medical history and emotional well being of PTE Kovco prior to his death and in this regard has heard evidence from various experts. Of particular interest are the expert opinions of two eminent psychiatrists, Professor McFarlane and Professor Mitchell. Both gave oral evidence and produced written reports to the Inquiry.

55. The Board is very mindful of the fact that the task of reconstructing a psychiatric history is fraught with difficulty in the absence of direct psychiatric assessment of the individual. Notwithstanding these difficulties the Board is satisfied that there were sufficient primary materials available to the experts for them to assess PTE Kovco.

56. The Board notes that neither psychiatrist reviewed the other's report prior to either writing their report or giving their evidence to the Inquiry and in that regard their conclusions are independent of the other.

57. In addition to the two expert psychiatric opinions the Board also had the benefit of hearing from GPCAPT Lambeth, Director of Mental Health for the ADF on Suicide Awareness, Prevention and Training and COL Murphy, Director of the Defence Force Psychology Organisation.

58. The primary purpose of the psychiatric evidence is to assist the Board in its consideration of whether the gunshot wound sustained by PTE Kovco was a deliberate act of self harm.

59. A significant component of this part of the Inquiry concerned whether PTE Kovco may have been suffering from depression or some other related illness or condition at the time of his death. In this regard the Board observes the collective expert opinion that depression is the most common pre existing psychiatric disorder in

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16 Med Records are Exhibit C202 & the UMR are Exhibit C205.
those who suicide and that of those psychiatric illnesses depression is the most common disorder associated with suicide\(^{17}\).

**Evidence of Professor Mitchell**

60. Concerning the correlation between suicide and depression Professor Mitchell noted that:

> "The studies indicate ... that where suicides have occurred that 91 per cent of individuals have a ... clear identifiable psychiatric illness."\(^{18}\)

61. For the purposes of the proceedings the following materials were tendered and made available to the psychiatrists:

a. Exhibit 202 - Psychology records of PTE Kovco.

b. Post Mortem photographs.

c. Exhibits C14 and C21 - Statements to the Service Police dated 30 April 2006 of PTE's Shore and Johnson, the two persons in the room at the time of the incident.


e. Exhibit 117 - Sworn statement of PTE Green dated 14 June 2006

f. Unsworn statement of Mrs Shelley Kovco dated 19 June 2006


h. Exhibits 14 and 21 Sworn statements to MAJ Hyde of PTE Shore and PTE Johnson dated 14 June 2006

i. Exhibit 73 - Plan of Room 8 showing layout of room

j. Exhibit C72 - Photographs of Room 8

k. Exhibit C33 - SDH – Hand written stories

l. Exhibit C34 SDH – Letter from Shelley Kovco

m. Exhibit 35 – Letter from parents

n. Exhibit C52 - PTE Kovco's journal in full

o. Exhibit C202 - PTE Kovco's medical records

\(^{17}\) Report Professor Mitchell dated 24 July 2006 page 2
p. Exhibit C205 – PTE Kovco’s Unit Medical Record

62. Professor Mitchell was satisfied that for the purposes of his review the materials outlined above were sufficient to enable proper assessment of the psychological condition of PTE Kovco prior to his death.¹⁹

63. The assessment and conclusions reached were substantially based on the following:

a. The candidate Medical History Questionnaire Proforma of 15 October 2001 which indicated no psychiatric admissions; no suicide attempts; no depression, anxiety or suspected psychiatric/psychological illness; and no psychiatric/psychological treatment.

b. The initial psychology test record of October 31 2001 which notes: No signs of any psychological impediments to satisfactory military service”.

c. The Comprehensive Preventive Health Examination of April 28 2005 specifically details no “Stress or Mental Health” issues and records a normal mental state.

d. PTE Kovco’s wife Shelley said that “he was excited about going to (Iraq)... He wanted to be deployed and get service medals”. “At no time has Jake ever spoken to me about hurting himself and to my knowledge has never tried to do so”. “I cannot think of any reason why Jake would hurt himself”. “There was no way Jake was not happy with his family, he told us that he loved us all the time”.

e. PTE Green denied any suggestion that PTE Kovco was unhappy prior to, or subsequent to the deployment to Iraq. He spoke of PTE Kovco being “ecstatic about being deployed (to Iraq)”. Furthermore, he said “I never really saw him depressed or down in the dumps although he might have the shits from time to

¹⁹ Transcript at page 681
time but would get over it”. “Nothing made me think that Jake was upset or pissed off before I left for leave” (PTE Green went on leave on April 16 – 5 days prior to the event). “There is absolutely no way that he self harmed”.

f. PTE Johnson (one of the room mates) said (in sworn evidence on June 20, 21) that PTE Kovco had not been depressed nor had he had any difficulties (page 15 of the June 21 transcript). He stated that he (PTE Johnson) “had no reason to believe he (PTE Kovco) intentionally shot himself”. PTE Johnson had attended the Army suicide awareness training, and said that he had no concern that PTE Kovco had suicidal intent. PTE Johnson told MAJ Hyde on June 14, that when he passed PTE Kovco during the duty changes on the day of the incident “he seemed fine”. PTE Johnson told the service police on April 30 “I can recall that PTE Kovco was his normal self throughout the process (? [sic] Referring to changes in the guard duty positions)”.

g. In the Service Police Statements of PTE Johnson and PTE Shore of April 30 both stated that PTE Kovco had not mentioned any form of “self harm”.

h. PTE Shore stated in the Service Police statement of April 30, “PTE Kovco was his normal self throughout the process” during the security shifts earlier in the day of the event. In the NSW Police interview of May 31, when asked if PTE Kovco had said anything about being unhappy, PTE Shore replied “no, not a thing” and then went on to say that PTE Kovco spoke about receiving some medals on Anzac Day. [This looking forward to the medal ceremony is not consistent with a person who is depressed and suicidal; the suicidal depressed individual is mainly focused on suicide and has little interest in future events].

i. PTE Kovco’s diary did not indicate any evidence of depression:

- March 6, 2006 – The diary indicates clearly that he was looking forward to the deployment: “IRAQ! (FINALLY)”
- Day 14 – after recording the dream of the previous night: “I have no intention in shooting myself. I’m very happy with my life”.
- Day 15 – “Feeling good, having a ball....Miss Shell and the kids”.
- On day 40 he wrote of

and on day 42 (April 18; the date of his last journal entry) he wrote

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19 Transcript of evidence 680.
of being distressed by the sight of wounded Iraqi troops needing to wait for security clearance prior to being able to enter the hospital. However, both accounts read like normal responses to difficult life experiences, and do not reveal an overwhelming or persistent sense of despondency or depression.

- His last entry on day 42 indicated that he was able to be cheered by contact with his family: “Also hearing their (Shelley and the children) voices is a good lift for my spirits”.
- There was no suicide note in the journal or elsewhere; nor any suggestion of suicidal intent in the journal.

64. In addition to the matters referred to above Professor Mitchell concluded that the behaviour of PTE Kovco in his room on the afternoon prior to the event was not consistent with depression or any other psychiatric condition. The Board believes that it is worth setting out these materials and observations in full:

a. “According to Soldier 17 (in sworn evidence of June 20, 21), PTE Kovco was using his laptop to check email, singing and talking with the others about experiences and officers in C Company. With regard to the email from his wife about the web cam, and her initially not finding part of this in the box, “he just thought it was funny”. Soldier 17 said that while they were singing together to the ‘Cranberries’ song “Dreams”, PTE Kovco was “taking the piss” out of the female singer. While singing in a high pitched voice, he described PTE Kovco as having “pulled his shorts high above his waist……he pulled them up to one side so his testicles would hang out and pretend to sing really loud……It was pretty funny…..he was laughing too……” Soldier 17 described PTE Kovco as “…in good spirits and happy prior to his death……”

b. Soldier 19 told Major Hyde on June 14 “Nothing made me think he was upset”, “We were laughing pretty loud” and “To any suggestion of suicide I say no way, absolutely not”. Soldier 19 stated in the Service Police Statement of April 30 that when PTE Kovco pulled up his trousers so his testicles were showing “we all thought this was funny and had a good laugh about it”. In the NSW Police interview of May 31, soldier 19 says before the event occurred, “we were
actually laughing" and that the three in the room were "acting like clowns".

c. Those who suicide usually do so on their own. The fact that the shooting occurred in the presence of his two roommates (particularly with his knowledge that they were planning to leave the room to go to the gym about 4 pm, leaving him alone in the room) is not consistent with usual suicidal behaviour.

d. The above behaviours are not consistent with someone who is depressed and contemplating imminent suicide. Such individuals would be expected to be more likely to be withdrawn and preoccupied.

e. While some people with depression are able to hide this from others for much of the time, and may even appear at times to be in good humour (so called "masked depression"), it is difficult to accept that in a tightly-knit and close community such as the security forces at the Baghdad Embassy that no one would have noticed some depression at some stage. Similarly, it is well recognized that sometimes when individuals with depression finally make the decision to kill themselves they may be calm and not distressed prior to the actual act of suicide. However, in that second scenario, as with the first, any prior depression would be expected to have been observed by someone beforehand.

65. In summary the Board accepts and notes that Professor Mitchell was satisfied that:

"In view of all the above accounts and observations, it is my opinion that, if PTE Kovco did shoot himself, this was most unlikely to have been a deliberate attempt to kill him as a result of a psychiatric disorder."\(^{20}\)

66. As an aside the Board notes that the absence of a suicide note was not a conclusive component of the reasoning process of Professor Mitchell that this was unlikely to have been a suicide\(^{21}\):

"... it would clearly be indicative of suicidal intent but its absence, I don't think excludes the possibility of suicide but certainly the absence is consistent with my thesis that it's unlikely that he had suicidal intent beforehand."\(^{22}\)

\(^{20}\) Professor Mitchell at page 6
\(^{21}\) Transcript at page 685
\(^{22}\) Transcript at page 685 lines 12 - 16
Evidence of Professor McFarlane

67. As with Professor Mitchell, Professor McFarlane was asked to consider whether PTE Kovco may have suffered from a psychiatric condition that contributed either directly or indirectly to his death.

68. Professor McFarlane was provided with various medical records together with more contemporaneous material from individuals who were close to PTE Kovco prior to his death. These included primarily his wife Mrs Shelley Kovco and a close friend PTE Green who deployed to Iraq with PTE Kovco. In addition Professor McFarlane was provided with the oral evidence and written statements of PTE Shore and PTE Johnson. Both these individuals as stated above were in the room at the time of the incident. The Board considers these materials important as they provide the best available indication of the state of mind of PTE Kovco just prior to his death.

69. In assessing the psychiatric condition of PTE Kovco prior to his death Professor McFarlane placed considerable weight on the contents of the journal regularly maintained during the course of his deployment. He considered that seventeen of the entries were particularly pertinent and these are referred to in his report.\(^{23}\)

70. The first relevant entry appears on 5 March 2006 two days prior to PTE Kovco deploying. In this entry Professor McFarlane could see nothing to suggest that PTE Kovco was in an unsound state of mind.\(^{24}\)

71. Further the Board notes that Professor McFarlane did not observe anything unusual or remarkable in the journal entries in the intervening period between 5 March and 20 March 2006. On 21 March 2006 Professor McFarlane considers the entry in which PTE Kovco describes an 'unnerving dream'. As Professor McFarlane states:

> 'the question arises as to whether this component of the journal could be indicative of some suicidal thinking.'\(^{26}\)

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\(^{22}\) Exhibit 111

\(^{24}\) PTE Kovco was reflecting on where he was to go and the nature of the job he had to do.

\(^{25}\) Professor McFarlane report at page 5

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72. The Board notes Professor McFarlane's conclusions as to whether this was a suicide and they are worth setting out in full:

"Given his mood as reflected in his diary, there is nothing to suggest this. His entries are orientated to the future. In one sense, the possibility of PTE Kovco being shot in the head during combat is of his own making, given that he had volunteered for the ADF. Thus he had placed himself at risk by his own decisions of being killed in combat and his dream may represent his engagement with these contemplations during his sleep."26

73. As regards PTE Kovco's psychiatric condition prior to his death Professor McFarlane observed that:

"Whilst no specific psychological examination was done of PTE Kovco prior to or during his service in Iraq, there is little or no evidence that he suffered from a psychiatric disorder as assessed from the contents of his diary and the accounts of his colleagues".27

74. The Board further notes that while Professor McFarlane is unable to say conclusively that PTE Kovco did not suffer from a psychiatric disorder because of a general lack of information he was nonetheless satisfied that28:

"The probability that PTE Kovco intentionally committed suicide is very low...."29

75. In particular he notes the diary entry in which PTE Kovco 'actively disavows a thought of suicide' and considers this significant as 'an important negative statement that he has made'.30

76. Also of interest to the Board are the observations of Professor McFarlane in his report as to issues of threat perception and the fact that there are different levels of threat with some potentially dangerous environments being inappropriately considered

26 Professor McFarlane at page 5 of report
27 Report of Professor McFarlane 27 July 2006 at page 27
28 At page 29 of his report Professor McFarlane also states" "It cannot be definitively concluded that he has ever suffered from a psychiatric disorder, although there is a possibility".
29 Report of Professor McFarlane 27 July 2006 at page 28
30 Transcript at page 654
low threat environment areas. According to Professor McFarlane this can cause individuals to be somewhat less cautious/vigilant than they otherwise might in terms of appreciating risk.

77. **Findings** – The Board accepts the observations made by Mrs Shelley Kovco and a significant number of SECDET IX members that PTE Kovco, throughout his deployment and in particular on the afternoon of 21 Apr 06, was consistently in good spirits. The expert medical evidence is consistent with these observations. The Board finds that PTE Kovco was of good health and in a positive frame of mind prior to his death.

78. **Findings** – The Board finds that on the available evidence PTE Kovco did not suffer from a diagnosable psychiatric illness. The Board accepts the psychiatric evidence that his death was not suicide and finds that PTE Kovco did not intentionally inflict the gunshot wound to his head.

79. **Recommendations** – The Board recommends that ADF deployments, wherever practicable, deploy with psychologists. The Board also recommends that deploying ADF members should be strongly encouraged to keep journals.

**Issues with obtaining evidence (TOR 1.h)**

80. The Board has evidence from various witnesses that:
   a. PTE Kovco’s body was washed prior to forensic analysis;
   b. PTE Kovco’s clothes were destroyed prior to forensic analysis;
   c. Room 8 was cleaned prior to examination by NSWPOL but after examination by the MPs;
   d. PTEs Shore & Johnson’s clothes were washed prior to forensic analysis;
   e. PTE Johnson’s F88 was cleaned prior to forensic analysis;
   f. Various items were removed from Room 8 prior to examination by NSWPOL;
   g. The hard drive on PTE Kovco’s laptop computer failed during analysis by
NSWPOL;
h. The Kenyon sub-contractor declined to give a statement or evidence to the
   Board and,
i. US General declined to allow video footage to be taken of the TMP.

81. Sub paragraphs (a) to (f) are issues of scene preservation and the adequacy of the
    investigation subsequent to the shooting. Sub paragraphs g to i are additional matters
    subsequent to the investigation into Room 8. The Board intends to deal with these in
    two discrete categories.

Washing of Body
82. The Board accepts the evidence of Dr Duflou who indicated that these steps
    would have been necessary emergency medical procedures and that the presence of
    bags on the hands would not normally form part of that treatment. Inspector Hayes
    gave evidence that the washing of PTE Kovco's body did not adversely impact upon his
    ability to carry out his investigation.

Destruction of clothes
83. This was done by the US Military Hospital and clothing would not have been
    preserved in circumstances where PTE Kovco was alive at the time of his admission to
    the hospital. In other words the Board accepts that the primary concern of the Hospital
    is life preservation and not evidence preservation.

84. The Board heard evidence that PTEs Shore and Johnson's clothes were cleaned
    immediately after the incident, given the body matter and fluids present on the clothing.
    PTEs Shore and Johnson were also directed to wash. LT Croft told the Board that he
    made this decision for health and morale reasons. The Board accepts the evidence of
    doctor GPCAPT Dines that it would be unacceptable for servicemen not to wash
    themselves in circumstances where they were covered in the body fluids of their
    deceased comrade.

85. The loss of the clothing attracted some criticism, however, the forensic evidence
was that this was not a material factor in the investigation and the loss/destruction of clothing did not impact upon the Gun Shot Residue, the ballistic, and DNA investigative processes. Inspector Hayes told the Board that it would have been preferable to have had the clothing for the purposes of finalising his investigation but their loss was immaterial in the circumstances of this particular matter.

86. **Findings** – The Board finds that the investigative process was not adversely compromised by either the loss of the clothing or the direction to PTEs Shore and Johnson to wash following the incident.

**Cleaning of Room 8:**

87. **GSR** – Ms Hales said that the washing (clothes and room) had no adverse impact on her analysis because she would have expected the room and clothing to have returned positive results for Gun Shot Residue given the environment and weapons duties of the soldiers, together with the close confines of the room.

88. **DNA** Ms Franco gave evidence of successful DNA testing and matching.

89. **NSWPOL Ballistics** – the projectile was recovered from the roof area and thus the reconstruction of the trajectory of the round was not compromised.

90. **Findings** – The Board finds that the washing of PTE Kovco was a necessary function of the life saving efforts of the United States 10 CSH (Combat Surgical Hospital) medical personnel and as such, the Board does not view these actions as indicative of an intention to conceal or destroy evidence.

91. **Findings** – The Board finds that the cleaning of PTE Kovco’s room was not due to any attempt to conceal or destroy evidence. The Board finds that given the restricted confines of the SECDET accommodation block coupled with the central location of Room 8, that it was entirely reasonable for SECDET IX personnel to request the return of Room 8 for cleaning. The Board accepts that this was done solely based on the issues of morale and operational efficiency. The Board further accepts the evidence of
LT Croft that he made the request for the return of Room 8 based on the advice of the MPs that the investigation of Room 8 was complete. On this point, the Board also accepts the evidence of SGT Hession that he was neither aware of the late involvement of NSWPOL nor would he have been expected to be aware of the NSWPOL’s investigation. The Board accepts SGT Hession’s evidence that he genuinely believed that the forensic examination of Room 8 had been completed at the time it was handed back to SECDET personnel.

92. **Findings** – Notwithstanding the Board’s findings on the washing and destruction of items of evidence, the Board, however, finds that Room 8 was not properly secured for the preservation of all evidence in the room. Put simply, there were too many ADF personnel entering Room 8 after the shooting.

93. The Board received evidence of a 96 hour delay in the arrival of the MP SIB at the scene of the incident. There was also evidence that the SIB were required to spend a period of time staging into the Theatre. However, the evidence is that the staging undertaken in this instance was reduced in time from the standard period to a much reduced program. In practical terms, because of flight timings and the fortunate coincidence of PTE Kovco’s body being in the staging location at the same time, the actual delay of the investigation was minimal as most of the 96 hours was spent in travel. The Board notes that travel to Baghdad is not a straightforward process and necessarily involves significant travel complications.

94. **Findings** – The Board finds that the delay in commencing the MP SIB investigation arose because the MPs had to fly from Australia.

95. The Board notes that the MP SIB investigators were unable to interview key witnesses until 8 days after the event as they were part of the Bearer Party. The Board makes no criticism of their selection as part of the Bearer Party. If members of the SIB had been located in theatre, it would have been possible to conduct the interviews much earlier. The Board notes that CDF has taken steps to ensure the presence of MP SIB personnel are now in theatre.
96. **Recommendations** – The Board recommends that ADF personnel, at all levels, receive basic training on the critical need for scene preservation where there has been a "notifiable incident" as defined by the current Dl(G). At the very least, this training should be part of every officer's ROBC and part of the subject courses for NCOs. Furthermore, the Board recommends that the ADF review how critical Dl(G)s are promulgated with a view to improving the awareness within the ADF.

97. **Recommendations** – The Board recommends that PM ADF investigate the viability of MP SIB undertaking CIVPOL training on DNA collection and preservation. The Board notes with concern the evidence that the MP fly away team equipment trunk was deficient in stores. The Board recommends that the ADF deploy with MP SIB investigators who are properly equipped and trained.

**Failure of the hard drive on PTE Kovco’s laptop computer**

98. The Board received uncontested expert evidence from Ms Richards (NSWPOL) that during forensic analysis, PTE Kovco’s laptop suffered a failure of the hard disk. However, Ms Richards had already recovered all relevant email data and all other data from the laptop prior to this event. This data was preserved and copied, and then tendered to the Board.

99. **Findings** – The Board is satisfied that this failure has not impacted on either the forensic investigation or recovery of relevant evidence.

**Kenyon sub-contractor declined to give a statement or evidence to the Board.**

100. The Board notes that GAC (a sub-contractor of Kenyon International) declined to appear to give evidence to the Board.

101. The Board notes that GAC provided a statement as part of the ‘Cosson Report’ and that this evidence is before the Board.

102. It would have been preferable for GAC to have either appeared or at least
provide an affidavit given the importance of this issue to the Inquiry.

103. It is apparent from the evidence\textsuperscript{31} before the Board that a crucial mistake occurred in the Al Sabah Mortuary in that:
   a. the wrong body was presented for identification in the presence of a GAC representative; and,
   b. there was a complete lack of effective communication between the GAC representative and the Australian personnel in the identification process. The language and cultural differences contributed to this failure.

104. Recommendations – The Board recommends that where practicable the repatriation process be handled by ADF personnel only. In addition, transport of deceased ADF personnel should, wherever practicable, be carried out by military transport. The Board recommends that the Appointing Authority investigate the practicality of using US TMEP facilities for repatriation of Australian personnel.

US General declined to allow video footage to be taken of the TMEP.

105. Whilst imagery of the TMEP would have been useful to the Board, the Board has received uncontested evidence of the high levels of co-operation and professionalism displayed by the US Military. Given the sensitivity of this facility, the Board is not critical of this decision.

106. Findings – The Board is of the view that a Protocol for the preservation and handling of serious incident sites should be considered for future training or battle preparation activities with coalition forces overseas. The Board is also of the view that a similar Protocol should also be developed within general Service training regarding:
   a. the need to preserve and quarantine scenes of serious injuries or incidents; and,
   b. control and responsibility for scene preservation to reside with the senior ADF member at the scene.

\textsuperscript{31} List all evidence WOFF Hunter; CAPT Donovan check back in Australia;
PART 3 - PRE-INCIDENT ISSUES

Qualifications and experience of deceased and other relevant persons (TOR 2.a)

107. The Board received into evidence\textsuperscript{32} a copy of PTE Kovco's PMKeys printout which details his qualifications and experience. The Board also received evidence from MAJ Tyrell (Soldier 30) as to PTE Kovco's qualifications and experience. The Board heard similar evidence from SGT Hoekstra, PTE Carr, and PTEs Johnson and Shore about their own qualifications and experience, which is further supplemented by the evidence of MAJ Tyrell.

108. LCPL Cook and PTE Shore were both Combat First Aid (CFA) qualified. The Board notes the evidence of LTCOL Mazur (US) that the CFAs did all that they possibly could in a highly professional manner.

109. The evidence before the Board is that PTE Kovco was a fully trained infantry soldier with several years experience, and that the persons directly involved in the incident had similar levels of training and experience.

110. The Board has evidence that PTE Kovco had exposure to a one day course in order to qualify on the SLP. The Board heard further evidence that on one occasion, PTE Kovco participated in a SLP Range Shoot whilst in Kuwait and prior to entry into Iraq as part of his Reception Staging, Onforwarding and Integration (RSO&I) Training.

111. The Board heard evidence from several SECDET IX members about their attitude towards and their practices in handling the SLP. The Board notes with concern that some members appeared markedly less confident and assured in their handling of the SLP, as opposed to the F88 which they have carried since basic training at Kapooka.

112. The Board received expert evidence on the SLP and ADF policy and training on

\textsuperscript{32} PMKeys printout Exhibit 11 and Pers File Exhibit 67
the weapon from LTCOL Saddington and his team. The Board also participated in the formal SLP training comprising of a two day course which included, as part of that, a one day Range Shoot.

113. Findings – The Board having received this evidence and based on observations made during the SLP training finds that this level of training is inadequate for ADF personnel required to carry and handle the SLP on deployment.

114. Recommendations – The Board recommends that the Appointing Authority consult with Chief of Army on increasing the training and exposure to the SLP.

Adequacy of Orders, Instructions et al (TOR 2.b)

SECDET IX SOPs

115. The Board heard evidence\textsuperscript{33} from MAJ Tyrell that the ‘buddy system’ was not a formal requirement of any extant ADF DI(G), DI(A), rules and/or regulations.

116. Paragraph 161.8.1 from the SECDET IX SOPs states:

The buddy system is to be applied by all SECDET IX personnel when changing degrees of weapon readiness. The buddy system requires personnel to be observed by their buddy as they carry out a change of degree of weapon readiness to ensure that the correct drill is conducted in order to avoid unauthorised discharge or negligent discharge.

117. Findings – The Board finds this provision inadequate because there is no clear identification of where this check is to be carried out within the relevant locations and in what circumstances a departure from the provision is permissible. By way of illustration, it is unclear what procedure is to be adopted where there is a staggered piquet. For the system to work effectively, individual responsibilities for each of the buddies need to be specified in this paragraph. In addition, the paragraph should specify clear exceptions of when it is permissible to depart from the procedure
118. The Board received uncontested evidence that, in the absence of any formal procedure, ADF members are ultimately responsible for their own issued weapon.

119. **Findings** – Notwithstanding these criticisms, the Board finds that the philosophy and intent behind the 'buddy system' was sound, and should be the subject of a DI(G) requiring formal adoption across the ADF.

120. **Recommendations** – The Board recommends that the Appointing Authority investigate either the drafting of a DI(G) on the use of the ‘buddy system’, or the formal incorporation of such a procedure into current weapons training procedure.

121. **Recommendations** – The Board recommends that the Appointing Authority investigate and review the process by which critical ADF procedures, such as SOPs, are promulgated before and during ADF deployments.

122. The Board notes the evidence of the SLP experts that the extant training on clearing the SLP requires the operator to place a loaded magazine back on the weapon in order to check/test fire the action in confirming that the SLP has been cleared. The current upgrade of the SLP to the Mark III version removes the need to place the magazine back on the weapon as part of the clearance drill; thereby rendering the clearance drill safer.

123. **Recommendations** – The Board notes the evidence of LTCOL Saddlington that the new training procedure for handling the Mark III SLP has been drafted and is currently being held pending the findings of this BOI. The Board recommends the immediate release of this Instruction.

124. The Board received evidence that provision for Degrees of Weapons Readiness (DOWR) contained in the SECDET IX SOPs was regularly ignored by PTE soldiers.

53 MAJ Tyrell's evidence at Transcript page 994 lines 4 to 8.
The Board also heard\textsuperscript{34} that the SOPs on DOWR were flexible enough to allow for running amendments by prescribed personnel. However, once amendments were made, the Board notes that there was no process by which these amendments were formally re-incorporated back into the SOPs and no process by which the amendments were readily available to personnel.

125. **Recommendations** – The Board recommends that the Appointing Authority review the training, policy, and procedures concerning DOWR on deployments.

**Form, Content, and Adequacy of Weapons Handling Briefings and Briefing Materials Relevant to Weapons in Accommodation Areas** (TOR 2.c)

126. The Board has heard evidence from MAJ Tyrell, LT Croft, CPL McKenzie and LCPL Scott about the form, content, and effect of the briefings along with briefing material relevant to the incident. The effect of the evidence was that all briefings were consistent with the standard Infantry oral orders group and were adequate for the activities.

127. The Board heard further evidence of MAJ Tyrell and LT Croft about the pre-deployment training which was conducted for the unit, including training relevant to the SLP and briefings on the Buddy System and DOWR at the Embassy.

128. The Board heard evidence that personnel were cleaning weapons within their accommodation which the Board considers to be unsafe and inappropriate.

129. **Recommendations** – The Board recommends that for current and future deployments, SOPs are amended to specifically exclude the cleaning of weapons in accommodation areas and that there be a requirement for NCOs to carry out random checks on weapons located within an accommodation area.

\textsuperscript{34} See CPL Scott’s evidence at Transcript page 1087 lines 13 to 19 and LT Croft’s evidence at
Compliance with orders, Instructions et al (TOR 2.d)

130. The evidence for these matters comes largely from the statements and testimony of Soldiers 14, 17 and 19. As the Board has previously noted, we were concerned at evidence received about a deliberate disregard of SOPs regarding DOWR at Position DELTA and of inappropriate handling of the 9mm Pistol by PTE Kovco and others.

131. The Board also heard evidence of CPL Scott and LCPL Cook of their observation of inappropriate handling of the SLP by PTE Kovco and this is also relevant to TOR 4. a. The relevant passages of CPL Scott’s evidence are set out below:

Yes, sir. I saw him playing with the pistol as if it was a toy, not losing the sight of the lethality of the weapon, and just pointing the barrel in directions and doing things with it that you shouldn’t really do with a pistol inside a confined quarters area\(^{35}\).

I cannot quote exactly what I said, sir, but it was along the lines of, "You know you shouldn’t be doing that, it is a dangerous weapon and accidents do happen, people can get hurt when you play with weapons in such a manner." It was something along those lines, sir.\(^{36}\)

I observed it once or twice, sir, and I know my second-in-command, Soldier 4, he noticed it once as well, sir.\(^{37}\).

132. LCPL Cook’s uncontested evidence contained in his statement\(^{38}\) was:

I had to pull up PTE Kovco because he was handling his pistol inappropriately in that he flashed his muzzle past body parts. It indicated a lack of situational awareness so I pulled him up. It occurred on deployment here at ANZAC Cove, but I cannot recall exactly when. Soldier 3 [CPL Scott] also had to pull him up. This was brought to my attention which is how I know about it\(^{39}\).

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Transcript page 1012 lines 19 to 26.
35 Transcript page 1088 lines 10 to 14
36 Transcript page 1088 lines 20 to 24
37 Transcript page 1088 lines 26 to 29
38 Exhibit 116
133. The Board was concerned to note that a number of soldiers were unfamiliar with extant SOPs; in particular the provisions addressing DOWR. Further the Board heard evidence that some soldiers either changed DOWR of their own volition or actively ignored the DOWR state for particular areas within the Australian Embassy.

134. Officers of SECDET IX, who gave evidence, described the dynamic process by which the SOPs evolved during pre-deployment training and exercises. NCOs confirmed this approach. Both officers and NCOs were aware of the location of electronic and hard copies of the SOPs. However, there were no hard copies distributed or made available below the rank of CPL. Promulgation below this rank was by way of oral briefings by the Section Comds. None of the soldiers, who gave evidence, indicated that they had seen a hard or electronic copy of the SOPs. Officers and NCOs who gave evidence, presumed that soldiers would have been aware of SOPs given that the Unit engaged in pre-deployment training using the embryonic SOPs as a training platform.

135. There was evidence that soldiers, when in the presence of officers, displayed proper attention to both DOWR and the ‘buddy system’. The Board notes the difficulties in policing a soldier’s extant knowledge of SOPs and their compliance with them on a continual basis.

PART 4 – POST INJURY (TOR 3)

136. The Board received considerable evidence concerning the medical treatment provided to PTE Kovoo following the injury. CPL Saunders and LCPL Cook gave evidence of the immediate treatment provided to PTE Kovoo, and the Board received documentary evidence in the form of clinical notes from 10 CSH and the expert opinion of the treating US Doctor LTCOL Mazur.

59 Exhibit 116 at page 6.
137. **Findings** – The Board finds that the post injury treatment was timely and appropriate.

**PART 5 – THE INCIDENT**

**Primary and Contributory Causes of Death (TOR 4.a)**

138. By the time the evidence had concluded and the Board had received the closing submissions of Counsel Assisting and Counsel Representing, four competing causes of death had either been advanced, or were inferences potentially available and they were:

a. Suicide.

b. Murder/Manslaughter;

c. Accident ("The Bump Hypothesis"); and,

d. Inappropriate handling of the SLP ("Skylarking").

**Suicide**

139. **Findings** – For the reasons detailed in the Board's analysis at TOR 1(g) herein, the Board finds that PTE Kovco did not commit suicide.

**Murder/Manslaughter**

140. During the course of evidence, Counsel Representing Mrs Judy Kovco, raised\(^{40}\) the hypothesis that an unknown person could have swapped the slide component of PTE Kovco's SLP for another which actually fired the fatal shot. The implication being that someone else shot PTE Kovco and deliberately exchanged the working parts of the weapon in order to conceal the offence and make it appear as though PTE Kovco had shot himself.

141. The Board notes that although the ballistics expert, Mr van der Walt, gave evidence that he allowed for this possibility, there was no evidence before the Board to support this hypothesis. Indeed the Board notes Mr van der Walt's evidence that the objective would be more easily achieved by swapping the entire weapon as opposed to just the slide component. Moreover, the imprinted identification number of the SLP

\(^{40}\) See Transcript page 438 and 439.
appears on three different components of the SLP, namely the frame, the slide and the barrel of the SLP. Given these facts and the evidence of PTEs Shore and Johnson that they were the only other people in Room 8 and that neither of them handled PTE Kovco’s SLP, the Board is satisfied that this hypothesis can be discounted.

142. During the examination of PTE Carr an accusation\(^{41}\) was made to him that he was in Room 8 on the afternoon of 21 Apr 06 and that he had discharged PTE Kovco’s SLP. The clear assertion was that PTE Carr had shot PTE Kovco.

143. **Findings** — The Board finds that these were positive assertions of fact notwithstanding that there was no evidence to support the accusation that PTE Carr was in Room 8 at the relevant time and shot PTE Kovco.

144. The Board notes that PTE Shore was asked if he shot PTE Kovco and he denied doing so. PTE Johnson was asked if he shot PTE Kovco and he too denied doing so. PTE Carr, whose DNA profile appears on the weapon, was asked if he shot PTE Kovco and he denied this.

145. PTE Volkovskiy gave uncontested evidence that PTE Carr was present in the room they shared at the time the shot rang out. This evidence is also consistent with the testimony of PTEs Johnson and Shore, who said that they were the only people present in the room with PTE Kovco at the time the SLP discharged. The Board also notes the evidence that CPL Saunders opened the door to Room 8 a matter of seconds after the shot and saw only Shore, Johnson, and Kovco in the room.

146. The Board notes that the expert forensic opinion is that the injury was self-inflicted. This opinion was given by Detective Inspector Hoffman and Detective Sergeant Snow. Their opinions were based on evidence\(^{42}\) that included, the location of the wound; the distance of the muzzle from the wound; the tissue damage; Gun Shot Residue patterning; and the ‘stove-pipe’ of the spent cartridge. This evidence also included the three dimensional scene reconstruction that provided heights, distances,

\(^{41}\) Transcript page 1533 at lines 6 to 8.
and most helpfully, the trajectory of the projectile.

147. The Board has heard evidence that PTE Kovco was confident and experienced in the handling of weapons and had been trained and qualified on the SLP. However, the Board also has the evidence of his Section Commander and 2IC that they had reprimanded him, whilst on deployment, for inappropriate handling of the SLP.

148. On PTE Carr's evidence, Private Kovco did not apply the 'buddy system' clearance of his weapons on the day of the incident. PTE Carr's evidence is that he believed that PTE Kovco did not have sufficient time to clear both weapons before he went through the door and held it closed from the other side. There is no other evidence as to whether or not PTE Kovco in fact cleared his SLP at that time or indeed at any other time on the day. However, there is evidence that earlier in the day, PTE Kovco was on duty at a place where his SLP was required to be in the 'action' condition.

149. Given the discharge of PTE Kovco's SLP, it is apparent that he had a loaded SLP in the 'action' condition inside the accommodation area. This is contrary to the SOPs.

150. Findings - The Board is satisfied that the only plausible inference that arises from this evidence is that PTE Kovco was handling his loaded pistol when it discharged. The Board therefore finds that at the time of his death, PTE Kovco was handling his SLP. In making this finding, the Board feels it is important to again highlight the evidence of Detective Inspector Hoffman and Detective Sergeant Snow which explicitly stated that they were not proffering an opinion that the shot was intentional or otherwise, only that it was self-inflicted.

151. Findings - The Board finds that PTE Kovco pulled the trigger on his SLP and discharged one round. The Board notes SGT Hession's evidence that 12 rounds of a 13 round magazine were recovered from Room 8, thereby confirming that only one shot was fired from PTE Kovco's SLP.

See for example Exhibit 94 and Snow's opinion at transcript page 915 at line 19
152. **Findings** – The Board notes the evidence of a mixture of DNA profiles on the magazine of the SLP, consistent with those of PTE Kovco and PTE Carr. PTE Carr denies handling the SLP and magazine on the day of the incident or at any other time. However, the Board heard evidence that the SLP magazines were shared and bulk-loaded at range practice shoots and accepts it is possible PTE Carr may have handled the magazine in that process.

153. **PTE Carr has consistently denied handling or loading PTE Kovco’s SLP on any occasion. The DNA evidence that secondary transfer is unlikely does not however, lead to a finding or indeed, speculation that PTE Carr loaded PTE Kovco’s SLP on 21 Apr 06. The Board analyses this DNA issue in greater depth under TOR 6.**

154. **Findings** – The Board finds that PTE Kovco was not murdered. Moreover, the Board finds that no other person shot PTE Kovco.

**The Bump Hypothesis**

155. **In his closing submissions**, Counsel Representing Mrs Shelley Kovco, LTCOL Berkley, advanced the ‘bumping accident’ hypothesis as follows:

Jake could well have noticed that the magazine was in the pistol whilst entertaining himself at his computer in the moments before he died. It would be very easy for Jake to reach over and with one hand, his left, steady the holster, withdraw the pistol with his right hand, the hand was likely to be his right or firing hand, and of course Jake would have been turned with his right side towards the upper bunk to perform the action. No fanfare needed accompany that act. In fact it might have been the cause of some embarrassment to Jake should his pistol be found with the magazine still in it.

It is quite possible that the safety lever was pushed into the instant or fire position upon withdrawal. There is evidence before the Board that this is possible, depending on how tightly the holster, with or without the help of the steadying hand, was gripping the slide of the pistol. All it would have taken is for Jake to knock his arm or to attempt to steady himself with his right arm.

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43 See CPL Scott’s Statement at Exhibit 140 and LCPL Cook Statement at Exhibit 116. 
44 LTCCL Berkley’s Closing Submissions at Transcript page 1811 lines 3 to 21
against the bed after becoming unbalanced in any way and his finger could easily have found its way inside the trigger guard with tragic results.

156. The Board has carefully considered and analysed the 'bumping accident' theory and is not satisfied that there are sufficient facts proved to support this hypothesis.

157. This hypothesis requires PTE Kovco’s right arm to bump the bed at the same time the muzzle of the weapon is less than 5cm from his head at a point along the trajectory reproduced by NSWPOL. This would require PTE Kovco to be standing within a half arm’s distance from the bunk.

158. The Board has the following evidence:
   a. PTE Shore saw PTE Kovco 2 paces back from PTE Kovco’s bunk and falling straight down;
   b. PTEs Shore and Johnson evidence coupled with the photographs taken by SGT Hoekstra and the MP SIB photographs of where PTE Kovco’s head first came to rest;
   c. Exhibit C72 showing PTE Kovco leaning on his bunk and working on his laptop which shows his height relative to his bunk;
   d. Exhibit 73, a diagram of Room 8;
   e. Exhibit 74, a computer 3D reconstruction of Room 8 which includes the trajectory of the projectile;
   f. Mr van der Walt’s evidence on the location and testing of the projectile; and,
   g. Exhibit 76, a sketch plan of Room 8 showing the dimensions of the room.

159. The Board is satisfied that PTE Kovco must have been at a distance greater than half an arm’s length at the time his SLP discharged and that this could not have been, on the available evidence, the result of a bump as suggested by LTCOL Berkley.

Skylarking

45 Transcript page 1811 lines 3 to 21.
46 See Board’s analysis at paragraphs 38 to 41 herein
47 Exhibit 45
160. As the Board has previously determined, just prior to the discharge of the SLP, PTE Kovco was in Room 8 with PTEs Shore and Johnson. PTE Kovco was concurrently standing at his bunk and working on his laptop sending emails to his wife; and singing in a falsetto whilst exposing his testicles, in humour, to PTEs Shore and Johnson. PTE Shore is able to narrow the timings of these events by reference to the Cranberries' song and his movement to the fridge beside the door to Room 8.

161. The Board again reminds itself of the evidence on the events in Room 8:
   a. PTE Shore saw PTE Kovco 2 paces back from PTE Kovco's bunk and falling straight down;
   b. PTEs Shore and Johnson’s evidence of what they saw and heard PTE Kovco doing, coupled with the photographs taken by SGT Hoekstra and the MP SIB photographs of where PTE Kovco’s head first came to rest;
   c. PTE Carr’s evidence of what occurred when he and PTE Kovco dismounted duty on 21 Apr 06;
   d. The evidence of Dr Duflou coupled with his Autopsy, notes and pathology Report;
   e. Exhibit C72 showing PTE Kovco leaning on his bunk and working on his laptop which shows his height relative to his bunk;
   f. Exhibit 73, a diagram of Room 8 and a ‘Walkthrough of Room 8’ at Exhibit 102;
   g. Exhibit 74, a computer 3D reconstruction of Room 8 which includes the trajectory of the projectile;
   h. Exhibit 76, a sketch plan of Room 8 showing the dimensions of the room;
   i. Mr van der Walt’s evidence on the location and testing of the projectile (and his Report along with the evidence of Detective Inspector Hoffman and

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48 Exhibit 30
49 See Board’s analysis at paragraphs 38 to 41 herein
50 Exhibit 45
51 Exhibit 30
52 Exhibit 24
53 Exhibit 187
54 Exhibit 85
55 Exhibit R87
56 Exhibit R91 and Exhibit 94
Detective Sergeant Snow; and,

j. The substantial body of expert DNA evidence by Ms Franco and the Gun Shot Residue evidence of Ms Hales.

162. Findings – The Board finds the following facts:

a. After dismounting duty, PTE Kovco had his SLP in a loaded condition when he was in Room 8 on 21 Apr 06;

b. PTE Kovco failed to clear his SLP as required by extant SOPs;

c. PTE Kovco’s DNA was on the trigger of his SLP;

d. That at the time of the discharge of the SLP, PTE Johnson was located on his bed;

e. That at the time of the discharge of the SLP, PTE Shore was bending down at the fridge near the door of Room 8

f. That at the time of the discharge of the SLP, PTE Kovco was standing two paces away from his bunk bed;

g. That at the time of the discharge of the SLP, PTE Kovco’s SLP was held by him 5cm or less from his head;

h. That the trajectory of the round is as identified by the NSWPOL experts in Exhibit 74;

i. PTE Kovco’s SLP had a cartridge jammed in its breach (described in the evidence by NSWPOL as a ‘stovepipe’) after discharge;

j. That PTE Kovco had previously been warned about misuse of his SLP.

163. Findings – Therefore, based on these findings of fact, the Board draws the following inferences and finds that:

a. PTE Kovco did not believe or did not know that the SLP was in a dangerous condition when he picked it up;

b. The discharge of the SLP occurred in the context of PTE Kovco engaging in skylarking behaviour;

c. PTE Kovco deliberately released the safety catch of his SLP, or in the alternative

57 Exhibit R92 and Exhibit 93
58 Exhibits 150 to 157 inclusive
59 Exhibit 173
the safety catch was never on;
d. PTE Kovco placed the SLP within 5cm of the right side of his head and discharged the weapon;
e. The act of pulling the trigger was deliberate but not intended to cause self harm; and,
f. The stovepipe of the cartridge is indicative of a self inflicted injury.

Medical causes of death (TOR 4.b)

164. The Board received a substantial volume of evidence\(^60\) as to the medical cause of death. Several medical practitioners and paramedics attended PTE Kovco. In particular there is the expert opinion\(^61\) of the Chief Forensic Pathologist for NSW Dr J Duflou. His evidence is that PTE Kovco died as a result of a self inflicted gunshot wound to the head.

165. The Board notes that the question of the ultimate cause of death is a matter for the NSW Coroner.

Previous ADF BOI Recommendations (TOR 4.c)

166. COL Petersen gave evidence\(^62\) to the Board that there were no relevant outstanding recommendations from previous BOI or other investigations that have not been implemented.

PART 6 - POST-INCIDENT ISSUES

\(^{60}\) Exhibit 25 – Toxicology Report  
Exhibit 26 – Statement by LTCOL Mazur (US)  
Exhibit 85 – Report produced by the Institute of Clinical Pathology  

\(^{61}\) Exhibit 187 – Post Mortem Notes of Dr Duflou  
Exhibit 24 – Autopsy conducted by Dr Duflou.

\(^{62}\) COL Petersen’s evidence at Transcript page 1724 lines 23 to 39.
Performance and adequacy of post incident procedures (TOR 5.a)

167. The following issues arose in considering the performance and adequacy of post incident procedures:
   a. Security of the Incident Scene;
   b. Casualty Notification;
   c. MP SIB Police Investigation; and,
   d. Performance and adequacy of repatriation of PTE Kovco.

Security of the Incident Scene
168. The Board repeats its Findings and Recommendations herein on dealing with preservation of incident scenes at paragraphs herein.

Casualty Notification
169. The Board heard evidence from a number of sources as to the manner in which the death of PTE Kovco was reported up the Chain of Command and ultimately disseminated to the public. The Board considers that it is appropriate to set out the evidence of each of these witnesses, as this was an important element of the Inquiry given the apparent confusion as to the circumstances surrounding the death of PTE Kovco.

170. The Board heard oral evidence from BRIG Symon, who was COMD JTF 633 at the time of PTE Kovco’s death.

171. BRIG Symon gave evidence of the manner and type of information that he released at the time of PTE Kovco’s death at around midnight on 21 Apr 06:

   The first at my hand, but of course we had sent notification of casualty, a normal advice that we formally send from the headquarters had already been sent known as the NOTICAS. So that had already been sent and authorised by me or the Chief of Staff. We were the only ones - and I made this very clear at the outset - we were the only ones to release those sorts of signals.
So the NOTICAS83 had gone already. The fatalcas had gone, the notification of the fatality from the time at which Jake was deceased. So those documents had already gone and been released. Our next piece of formal work that we were working on was known as the hot issues brief, which included the talking points.64

I know that it covered the fact that Jake had lost his life. I know for fact that it did not speculate on the cause of death and in fact I made sure that it didn’t indicate or speculate in any way. So I know that the hot issues brief, which I haven’t read since April, but I would stand by what went in that hot issues brief as being a factual statement of what we knew at the time that we’d released the hot issue brief.65

172. In addition to these measures, BRIG Symon then told the Board of an email he released to senior personnel in the Iraq Theatre and in Australia. Counsel Assisting the Inquiry asked BRIG Symon to read from the email:66

“This evening at 1852, life was terminated on PTE Jacob (Jake) Kovco 3 RAR at the 10 Combat Support Hospital in the international zone Baghdad. PTE Kovco sustained a 9 mm round to the head while in his room adjacent to the Australian Embassy. He was 25 years of age, is married and is survived by two young children. OC SECDT described Jacob to me as a happy, very positive soldier, a country lad, well respected and popular. An investigation is underway.”

By that I mean I had appointed an officer, MAJ Mark Willetts, to be the officer to conduct the quick assessment, that’s what I meant by that statement “an investigation is underway”.67

173. After further evidence, BRIG Symon then continued on with reading from the email:

“My determination is that every dignity be afforded PTE Kovco in death. In the short term this means that every staff process and every staff action must be scrupulously correct. This is how HQ JTF 633 can most tangibly help the deceased, his
family, SECDET and all his many friends. For Commanders, please ensure your people are informed of the facts as I have relayed them to you. Tomorrow, the Australian public will be informed. Just prior to the announcement, I will unlock the welfare phones." 68

174. The email further stated:

"Tomorrow, the Australian public will be informed. Just prior to the announcement, I will unlock the welfare phones. It would be wise for a member serving in Iraq just to ring home, tell their loved ones they're okay, but please, no speculation, that would be most unhelpful. Although I have advised you the name of the deceased member, this is not public information and is not to be released to your command. If any of your members know soldiers of SECDET it might assist them with their inquiries. If any specifically ask after or mention that they know PTE Kovco, you are to advise HQ JTF 633." 69

175. During examination of BRIG Symon, LTCOL Berkley asked 70:

Can you assist us at all how would the Minister have got that information? Do you know? If you don't, just say so?—I don't know. I can assure you that the people I spoke to in Australia were, first of all, the Chief of Defence Force, the Vice Chief of Defence Force, the Deputy Chief of Joint Operations and in Army I spoke to the Chief of Army and to the Land Commander, GEN Kelly. I can assure you that I speculated - I did not speculate in any of the conversations with those individuals as to how Jake might have died.

176. The Board notes from this evidence that BRIG Symon spoke only with these senior military personnel and made no mention of any conversation with MINDEF. Annexed to MINDEF's statement 71 is a copy of a transcript of an interview conducted by MINDEF on 22 Apr 06 (described as "Doorstop Interview regarding death of Soldier in Iraq"). In the course of that interview, in response to a question "how have you been able to rule out suicide", MINDEF stated the following:

68 1396 lines 24 to 44
69 1397 lines 10 to 19
70 1424 lines 37 to 44
Well at this stage I'm working on the advice that's been given to me directly by Brigadier Paul Symon, who commands our troops right across the Iraq Theatre.72

177. BRIG Symon went on to say in his evidence that:

I asked senior officers, a senior officer, to try and ensure that there were no -
that there was no speculation in the reporting. So after the initial report that
included speculation went to air, I learned from OC SECDET of that
speculation. I looked it up and I saw it for myself. I was very disappointed
and I reported to my senior that speculation is unhelpful. I indicated that
we've been working very hard in Iraq not to speculate and I just implored
senior officers to ensure that there was no speculation back in
Australia.73 (Board emphasis added)

178. The Board received in evidence a statement given by MINDEF74 to NSWPOL.
In this statement, MINDEF deals with the conversations he had with CDF:

[CDF] said "that it appears that he was handling his own weapon in some way
and that it had discharged".75

179. The evidence of MINDEF is that he took this to mean "That he was maintaining
it as soldiers were meant to do". He then stated that:

The Chief of Army, LTGEN Peter Leahy was to make a press statement that
day and I believed that as Minister for Defence, I also should make a
statement. I told the media what I knew and I said "maintaining his weapon -
placing it somewhere".76

I recall that it was either the Monday before ANZAC Day (Tuesday 25 Apr 06
or the Wednesday following it that [CDF] telephoned me and told me that they
had completed the [QA]...I recall asking [CDF] was PTE Kovco standing up
and he said "yes and the gun was either next to or under the laptop"77.

71 Exhibit 196
72 page 2 of "Doorstop Interview regarding death of soldier in Iraq" annexed
73 1425 lines 19 to 26
74 Exhibit 196
75 ibid paragraph 5
76 ibid paragraph 7
77 ibid paragraph 8
180. MINDEF, in a ‘Doorstop Interview’ also stated that:

I'm advised that the soldier was simply handling his weapon, and maintaining
it as soldiers are required to do, and for some unexplained reason, the firearm
discharged, and a bullet unfortunately entered the soldier's head,... 78

181. The evidence 79 of the Chief of Army (CA) is that he had no direct
communications with MINDEF save for three conversations; the first dealt with
repatriation issues and the formation of a BOI; the second and third occasions were on
the evening of 26 Apr 06. In his statement, CA says that he has:

no memory of reporting anything specifically relating to the circumstances
involving the discharge of PTE Kovco's pistol during this time. 60

182. CDF was requested to provide the Board with a Statutory Declaration 81
containing:

...a sworn statement setting out the information, including written, verbal, and
by gesture, that (I) imparted to MINDEF (the Minister of Defence) about the
circumstances surrounding the discharge of PTE Kovco's pistol. 82

183. In his Statutory Declaration, CDF states that he was informed by BRIG Symon
that:

He [BRIG Symon] was unable to draw any conclusions about the
circumstances about the incident. 83

184. Subsequent to this conversation CDF telephoned MINDEF to inform him of
PTE Kovco’s death and stated that:

...It was not known how the shooting occurred. Nobody had seen the
gun, a 9mm pistol, go off. 84 [Board emphasis added]

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78 page 2 of “Doorstop Interview regarding death of soldier in Iraq” annexed to Exhibit 195
79 Exhibit 197
80 Exhibit 197 paragraph 5.2.1
81 Exhibit 209
82 Exhibit 209 at paragraph 1
83 Exhibit 209 at paragraph 4
84 Exhibit 209 at paragraph 5
185. It is apparent from the evidence outlined above that BRIG Symon, Chief of Army, and CDF are consistent in that they did not speculate and cautioned others not to speculate on the circumstances of the discharge of PTE Kovco’s SLP.

186. **Findings** – The Board finds that BRIG Symon, the Chief of Army, and CDF were not the source of any speculation surrounding the circumstances of the shooting of PTE Kovco.

**MP SIB Police Investigation**

187. The Board refers to its analysis herein regarding the SIB investigation and scene preservation issues.

188. There is a further issue relating to the movement of the body. The Board heard evidence from the MP investigators of concern about the initial movement of PTE Kovco’s body. The senior SIB officer advised that the body should not be moved until his investigators had arrived in Baghdad. The evidence is that by the time this advice had been received the body had already been moved from the US Hospital to Baghdad International Airport Mortuary Facility where it remained until 1410D on 23 Apr 06.

189. There appeared on the evidence to be a conflict between COFS 633 and OC SIB on what was said in a telephone conversation concerning the movement of the body. That conversation took place late on the evening of the 22 Apr 06 (2300D) some 28 hours after PTE Kovco died. The essence of the dispute is that according to COFS JTF 633, the OC SIB gave approval for the further movement of the body from Baghdad to Kuwait where it would be met by the SIB investigators. The OC SIB denies giving that approval. Suffice to say the Board notes that when the telephone conversation occurred between COFS 633 and OC SIB the body was still in Baghdad.

190. In any event the body was met by SIB investigators in Kuwait and the Board is satisfied on the evidence of Dr Duflou concerning washing of the body and Ms Hales on GSR that this movement did not significantly compromise the forensic evidence.
191. The Board notes that the SIB investigators did not take custody of the body in Kuwait and were not directed to do so. The Board is unable to make a positive finding that had the SIB Investigators been permitted to take custody of PTE Kovco's remains in either Baghdad or Kuwait the body might not have been lost.

192. The Board notes that as part of the investigation process the SIB took statements from all relevant SECDET IX members. During the evidence of the investigating MPs it was revealed that these statements were in part 'templated' in order to save time. The Board regards this practice, irrespective of the reason, as less than ideal.

193. **Recommendations** – The Board recommends that all MP SIB investigators be issued with digital tape recorders.

**Repatriation of PTE Kovco**

194. "Repatriation" is defined as the "strategic movement of remains and [personal effects] from a [theatre mortuary evacuation point] rearward to Australia."\(^5\)

195. The Board makes the following findings of fact in relation to the repatriation of PTE Kovco's body:

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<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td>21 Apr 08</td>
<td>1852D</td>
<td>PTE Kovco passed away at 10th Combat Support Hospital (10 CSH), a US military facility</td>
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<td></td>
<td>2350D</td>
<td>PTE Kovco's body left 10 CSH in a US military helicopter</td>
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<tr>
<td>22 Apr 08</td>
<td>0030D</td>
<td>PTE Kovco's body arrived at the theatre mortuary evacuation point (TMEP) at Baghdad International Airport (BIAP), a US military facility</td>
</tr>
<tr>
<td>23 Apr 08</td>
<td>1410D</td>
<td>PTE Kovco's body left TMEP BIAP on an Australian military C130</td>
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<tr>
<td></td>
<td>1600D</td>
<td>Australian military C130 arrived at Kuwait City International Airport (KCIA)</td>
</tr>
<tr>
<td></td>
<td>1700D</td>
<td>PTE Kovco's body left the C130 on ground transport</td>
</tr>
<tr>
<td>24 Apr 08</td>
<td>1234D</td>
<td>PTE Kovco's body arrived TMEP KCIA, a US military facility</td>
</tr>
<tr>
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<td>GAC, specifically Mr Nasser, assumed responsibility for repatriation and PTE Kovco's body left TMEP KCIA in a civilian ambulance</td>
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</tbody>
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\(^5\) LWP-G 1-1-8, paragraph 4.25
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<th>Time</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>25 Apr 06</td>
<td>1000 - 1100D</td>
<td>A body was produced for sealing in a casket under Australian consular seal</td>
</tr>
<tr>
<td></td>
<td>PM D</td>
<td>A civilian ambulance collected the sealed casket from the Al Sabah morgue and took it to the civilian side of KCIA where it was loaded on to an Emirates aircraft</td>
</tr>
<tr>
<td>28 Apr 06</td>
<td>AM D</td>
<td>Soldier 34 was advised by GAC that KBR believed PTE Kovco's body was still at the Al Sabah morgue</td>
</tr>
<tr>
<td>27 Apr 06</td>
<td>0830D</td>
<td>PTE Kovco's identity was confirmed at the Al Sabah morgue</td>
</tr>
<tr>
<td></td>
<td>1700D</td>
<td>PTE Kovco's body arrived back at TEMEP KCIA</td>
</tr>
<tr>
<td>28 Apr 06</td>
<td>0100D</td>
<td>PTE Kovco's body left TEMEP KCIA</td>
</tr>
<tr>
<td></td>
<td>0600D</td>
<td>Aircraft took off from KCIA</td>
</tr>
</tbody>
</table>

196. The Board finds that the body of a Bosnian national, Mr Juso Sinanovic, was repatriated to Australia on 25/26 Apr 06 instead of that of PTE Kovco\(^{86}\). The Board considers that the process of identification is an integral element of repatriation.

197. The Board received evidence that the following documents were relevant to repatriation at the time PTE Kovco was to be returned from Kuwait to Australia:

a. Land Warfare Procedures - General 1-1-8 - Mortuary Affairs dated 15 Jun 04 (LWP-G 1-1-8)\(^{87}\);

b. Defence Instruction (General) Personnel 20-6 - Deaths within and outside Australia of Australian Defence Force personnel dated 6 Jun 03 (DI(G) PERS 20-6)\(^{88}\);

c. Defence Instruction (Army) Personnel 31-3 - Army Funerals dated 26 Nov 96\(^{89}\);

d. Appendix 5 to annex B to CJOPS ADMININST 002/05 dated May 05 (the ADMININST);

e. Escort of Deceased Persons Duty Statement (the Duty Statement)\(^{90}\);

\(^{86}\) Evidence of GPCAPT dines at Transcript page 1661 line 31 onwards.

\(^{87}\) Part of exhibit 100

\(^{88}\) Exhibit 163

\(^{89}\) Exhibit 162

\(^{90}\) Exhibit 134
f. Status of Forces Arrangement between Australia and Kuwait coming into effect on 24 Sep 02 (SOFA)\textsuperscript{91}; and

g. Deed of Agreement for a Standing Offer (Number – SO78/2003) for the provision mortuary and emergency services between the Commonwealth of Australia represented by the Department of Defence and Kenyon International Emergency Services, Inc dated 22 Apr 03 (the Kenyon contract)\textsuperscript{92}.

198. LWP-G 1-1-8 states that "Formal identification of remains is only to be conducted by qualified forensic specialists"\textsuperscript{93}. It then goes on to provide that "unit personnel may assist in tentative identification due to close association at the time of the incident; however, mortuary specialists are to consider this temporary only"\textsuperscript{94}.

199. DI(G) PERS 20-6 states that "In some circumstances, formal identification of remains may occur...These circumstances include...if the deceased is recognised by comrades..."\textsuperscript{95}. The DI(G) does not state who may perform "formal identification" but the inference is that those "comrades" who recognise the deceased may do so. On this interpretation, SGT Hoekstra might reasonably have been expected to formally identify PTE Kovco.

200. Findings - The Board finds that the provisions of LWP-G 1-1-8 and DI(G) PERS 20-6 in relation to formal identification are inconsistent and cannot be reconciled with each other. The Board further finds that the provision of DI(G) PERS 20-6 set out above is contrary to the psychiatric evidence\textsuperscript{96} received by the Board regarding the difficulties of visual identification of deceased members by their colleagues.

201. The ADMININST is silent on the issue of identification. The ADMININST purports to be a mortuary affairs plan yet does not address the issue of identification.

\textsuperscript{91} Part of exhibit 100
\textsuperscript{92} Exhibit 190
\textsuperscript{93} LWP-G 1-1-8, paragraph 4.19
\textsuperscript{94} Ibid
\textsuperscript{95} DI(G) PERS 20-6, paragraph 18
\textsuperscript{96} Professor McParlame and COL Murphy
202. The Kenyon contract enables the contractor to perform identification of remains, but only upon request by the Commonwealth. It states that "Kenyon, if requested by the Commonwealth, in an authorised Work Authorisation Agreement raised by an authorised delegate of the Commonwealth, will meet "on request" one or more of the...additional requirements;...(a) identification...of remains". The relevant Work Authorisation Agreement did not specifically request that Kenyon identify PTE Kovco. It simply stated "Reatriation (sic) of remains of Private Kovco back to Australia.".

203. **Findings** – The Board finds that it cannot be inferred, from an instruction to repatriate remains, that there was an obligation upon Kenyon to identify the body. The Board further finds that the Work Authorisation Agreement was inadequately completed, and failed to detail the relevant country where the services were required. The Board accepts evidence that information was passed between HQ JOC and Kenyon via telephone and email in addition to the Work Authorisation Agreement, however at no stage was Kenyon required to identify PTE Kovco.

204. **Recommendation** – The Board recommends that a list of services offered by service providers be maintained with the Work Authorisation Agreement, so that any authorised person completing the Work Authorisation Agreement is specifically aware of which services are available and which of those needs to be requested in the circumstances particular to any incident.

205. In the absence of written direction to identify the body, the Board has considered whether SGT Hoekstra was briefed as to his role in the identification process. In this regard the Board notes that SGT Hoekstra was asked in examination whether:

   At any stage has anybody specifically instructed you that it was your role, that it was your job, to ensure that the body was Jake's? —No, sir.

206. **BRIG Symon** gave evidence that he spoke with SGT Hoekstra about the general
nature of the responsibilities involved in escorting PTE Kovco’s remains back to Australia. In particular, his evidence was:

We then got on to his duties. He explained to me that he understood that it was his responsibility to - to bring the body back to the family and by the family again, I mean the direct family, but also the broader Army family with the 3rd Battalion. He indicated to me that he would take those responsibilities very seriously. If the nature of your question is, did I at that point of time articulate or specify from him exactly what I wanted him to do, no, I didn’t.\textsuperscript{101}

207. SGT Hoekstra remembers that when this body was presented on this occasion, he “was not in the mood to have a good look for a number of reasons”\textsuperscript{102}. He further stated that he had:

observed his body several times over the past 36 hours...[and had been] involved in the aftermath of the incident and dealing with the bearer party who were very emotional. [He] had had interrupted sleep...\textsuperscript{103}

208. SGT Hoekstra also gave evidence that:

I assumed that an embalming process would change the appearance of the remains by having bandages removed, wounds cleaned, colour and general appearance changed, et cetera. Furthermore, I assumed that there was only one body in a military body bag and I expected that the staff would have ensured that the correct body was presented for identification...\textsuperscript{104}

209. He further concedes that:

As a consequence of these assumptions and the fact that I had viewed the body three or four times previously, the attention that I paid was cursory\textsuperscript{105}

210. SGT Hoekstra then stated that he:

believed that Mr Adams had far more experience than me at this sort of thing and was clearly observing the body at the same time as I was. He had a picture of PTE Kovco...He appeared to be satisfied that the body was PTE

\textsuperscript{101} BRIG Symon’s evidence at Transcript page 1400 lines 18 to 22.
\textsuperscript{102} Transcript page 580
\textsuperscript{103} Transcript page 580-581
\textsuperscript{104} Transcript page 581
\textsuperscript{105}
Kovco’s. He neither asked me whether or not it was his body, nor did he tell me that it was my responsibility to identify it. Furthermore, Mr Nasser had specifically told me that the staff knew what they were doing and I trusted him that he was doing his job.

211. The Board accepts Mr Adams’ evidence that it was not his role to identify the body and this is supported by the Department of Foreign Affairs and Trade (DFAT) Consular Guidelines which are in evidence before the Board.

212. The Board notes that it is unfortunate that Mr Adams did not engage in any dialogue with SGT Hoekstra about identification when the body was presented for viewing. A comment by Mr Adams concerning the moustache, which he noted was present on the body before him but not present on PTE Kovco’s passport photograph which he had with him at the time, possibly might have alerted SGT Hoekstra to the fact that the body was not that of PTE Kovco.

213. In summary, SGT Hoekstra states that he was:

required to look at the body three or four times. As it turned out, I do not believe that I was psychologically suited to the task. I was tired, emotional and under stress.

214. Professor McFarlane provided the Board with evidence in relation to SGT Hoekstra’s efforts to identify PTE Kovco’s body. He states in his report that:

two factors are likely to have conspired in the recognition of PTE Kovco by his face, namely that the accuracy of recognition for faces in a highly traumatic situation is problematic and secondly, that there are likely to have been significant differences between PTE Kovco’s face before and after death because of the nature of his injury which would have reinforced to the identifying personnel the nature of his traumatic experience.

215. Professor McFarlane agrees that SGT Hoekstra had been exposed to a traumatic
event, being the immediate aftermath of the incident. He also states that PTE Kovco's face was disfigured as a result of his injuries "when he was in the post mortem state".

216. Professor McFarlane concludes that:

Any individual who knew PTE Kovco and then had to look at his face after he died is likely to have been confronted with a sense of horror, fear, and apprehension. These affective states have a substantial capacity to disrupt memory functioning.

217. Professor McFarlane describes the brain circuitry involved in facial identification:

There is significant inter-relationship between the circuitry that is thought to be involved in the process of traumatic memories and facial recognition. In particular, the medial prefrontal/amygdala connection is thought to play an important role in both the emotional valence of traumatic memories and identifying the emotional valence of faces.

218. In summary, Professor McFarlane observed that:

a) The systems involved in facial recognition are the same neural systems that are involved in the processing of traumatic memories.

b) Traumatic stimuli have the capacity to disrupt the processing of contextual information.

c) The process of witnessing PTE Kovco's face by individuals who were known to him as part of the body identification process will activate these circuits in the brain.

d) The horror and distress of the individuals combined with the obvious signs of injury manifest in PTE Kovco's face is likely to have disrupted the underlying integrity of these neural systems and their accuracy in the facial recognition task.

110 Exhibit 111 at page 18
111 Transcript page 657
112 Exhibit 111 at page 18
113 Exhibit 111 at page 18
114 Exhibit 111 at page 18
As a consequence there is a significant probability of inaccurate facial recognition of a dead person particularly if there is facial distortion as a consequence of horrific death. The impact of the emotional response to viewing the face by an individual who had a personal relationship with the dead individual will disrupt the functioning of the neural circuitry that is essential to correct identification.

Furthermore, faces are the central aspect of an individual's identity and critical to a sense of familiarity. The traumatic injury of a face as was the case with PTE Kovco, is likely to provoke an avoidance response to the immediacy of the horror of witnessing the dead person. This further process is likely to create a significant error rate in facial recognition...

...To put it simply, traumatised individuals find it difficult to carry out recognition tasks with any degree of accuracy...the impact of traumatic stress precisely disrupts those parts of the brain whose function is critical for carrying out the process of accurate facial identification...The reflex desire to look away from horror combined with the effects of stress on brain circuitry makes the accuracy of this process vulnerable to substantial error115.

219. **Findings** – The Board accepts the evidence of the members of the Bearer Party that they asked SGT Hoekstra on more than one occasion to ensure the correct remains were transported because of their concerns the body may be lost. The Board accepts the evidence of SGT Hoekstra that in the Kuwait morgue he gave a cursory look at the body he believed to be PTE Kovco. The Board accepts the expert evidence as to SGT Hoekstra’s reduced capacity to effectively identify his colleague.

220. **Findings** – The Board finds that SGT Hoekstra was directed to escort PTE Kovco’s body back to Australia. This process necessarily required the correct body to be returned. This did not happen. The Board finds that a body was presented to SGT Hoekstra at the civilian mortuary in Kuwait for viewing prior to being sealed in a casket for return to Australia. The Board finds that SGT Hoekstra only paid cursory attention to the body and failed to correctly identify the remains as PTE Kovco’s.

221. **Findings** – The Board finds that due to circumstances beyond his control, SGT

115 Exhibit 111 at pages 19-20
Hoekstra was not in a fit and proper condition to carry out a proper identification of PTE Kovco.

222. **Recommendations** - The Board recommends that no disciplinary or adverse administrative action should be taken against SGT Hoekstra, despite his failure to discharge his obligation to identify the body of PTE Kovco correctly.

223. **Recommendations** – The Board recommends that Professor McFarlane’s findings be taken into account when policy for escort of deceased persons is re-written. The Board further recommends that Professor McFarlane be consulted in the development of protocol on how proper identification of deceased persons might be carried out.

224. The Board notes the evidence of CAPT Donovan that:

The decision to use the Kenyon contract was based on the fastest means available to us. PTE Kovco died on a Friday so if we were to use the A330 charter aircraft, it wasn’t returning to Australia until the following Thursday. It would come to Kuwait the following Wednesday. If we used the Kenyon contractor, we could move him out on the next available Emirates flight. If we used a sustainment aircraft, being the sustainment C130, which was in theatre at the time, PTE Kovco would need to overnight at Diego Garcia. To avoid overnighting in Diego Garcia, another C130 would need to be pushed forward from Australia to Diego Garcia and Solomon Islands was ramping up at the time, therefore there were no C130s available to meet either the intra-theatre sustainment C130 or the inter-theatre sustainment C130, which was in the MEAO at the time. Therefore, the Kenyon contractor was selected as the fastest means available for repatriation.116

225. **Findings** – The Board finds that the lack of Australian military transport meant that PTE Kovco’s body would have remained in the TMEP for approximately one week until ADF transport was available. The Board further finds that the decision to activate the Kenyon contract meant that the civilian mortuary in Al Sabah had to be used in order to comply with Kuwait law on the transport of human remains.

116 Transcript page 861 lines 28 to 41
226. **Findings** – As noted previously herein, the Board finds that significant inconsistencies exist in the following extant documents that deal with the repatriation of deceased ADF personnel:
   a. LWP-G 1-1-8;
   b. DI(G) PERS 20-6;
   c. DI(A) PERS 31-3;
   d. ADMININST; and,
   e. SOFA.

227. **Recommendations** - The Board recommends that on the issue of repatriation of deceased ADF personnel there be one comprehensive document.

228. **Recommendations** – The Board recommends a review of the Kenyon contract.

229. **Recommendations** – The Board recommends that the Appointing Authority investigates whether mortuary affairs should be included in future SOFAs.

230. **Recommendations** – The Board recommends that the Appointing Authority investigates the feasibility of incorporating the issue of mortuary affairs into officer training at the MAJ (E) level and above.

**PART 7 - OTHER ISSUES**

**Cause of Death – Act, Omission, neglect, carelessness or misconduct of any person (TOR 6.a)**

231. The Board refers, in part, to its Findings at TOR 4(a).

232. The Board heard evidence from PTE Carr on the following topics:
a. prior to 21 Apr 06, PTE Carr observed PTE Kovco re-assemble his SLP so that it was at the ‘action’ state. PTE Carr described this process as “silent cocking” (“Silent Cocking Evidence”)

b. that on dismounting duty at the relevant checkpoint on 21 Apr 06, PTE Kovco ran ahead of PTE Carr and prevented him from exiting a door (“Dismounting Duty on 21 Apr 06”); and,

c. that PTE Carr had not handled PTE Kovco’s SLP either prior to or on 21 Apr 06 notwithstanding the fact that PTE Carr’s DNA was found on the slide, handgrip, trigger, magazine, and magazine base of PTE Kovco’s SLP (PTE Carr’s DNA).

‘Silent Cocking’

233. The Board received evidence that PTE Kovco’s SLP was purchased by the ADF in 2002 and that it had no history of malfunction and was found to be in satisfactory working order with an efficient safety mechanism. The Board also notes the NSWPOL evidence of these safety matters and the rigorous Customs Regulations by which the relevant tests were conducted.

234. The Board also has the expert evidence of WO2 Nayda and LTCOL Saddlington that the practice described as ‘silent cocking’ is not ADF doctrine or training and is a dangerous practice.

235. The Board also observed the demonstration by WO2 Lankshear that the process of ‘silent cocking’ as described by PTE Carr is impossible in that a 9mm round is ejected when the SLP is re-assembled in the manner that PTE Carr says he saw PTE Kovco perform.

236. On 29 Aug 06, COL Griffin methodically put\textsuperscript{117} to PTE Carr all of the expert evidence on ‘silent cocking’ which included playing the video demonstration\textsuperscript{118} of WO2 Lankshear. The Board notes that the attempt at ‘silent cocking’ depicted in the video demonstration is exactly the same process as originally described by PTE Carr when he

\textsuperscript{117} COL Griffin’s examination of PTE Carr starting at Transcript page 1533 line 32 through to Transcript page 1540 line 43

\textsuperscript{118} Exhibit 175
first gave evidence of the phenomena.

237. At the end of this process, PTE Carr still maintained that he saw PTE Kovco completely reassemble his SLP via 'silent cocking'.

238. Finding – The Board finds that the process of 'silent cocking', as described by PTE Carr, is physically impossible. The Board further finds that it prefers and accepts the expert evidence on 'silent cocking'.

Dismounting Duty on 21 Apr 06

239. The Board received evidence\(^ {119} \) from PTE Carr where he stated that:

I can recall that PTE Kovco walked ahead of me and at that time we were having a verbal joke...

240. It was at this point that PTE Carr said that PTE Kovco had exited through the door, turned around and then held the door closed thus preventing PTE Carr from exiting. This process was a continuation of the humorous exchange between PTE Carr and PTE Kovco. It was as a result of this process that PTE Carr stated he did not observe PTE Kovco carry out his clearance drill on either the F88 or his SLP. As a result of this humorous exchange, PTE Carr believed that PTE Kovco would not have had sufficient time to have cleared both his F88 and SLP.

241. The Board accepts the evidence of PTE Carr on this topic as it is consistent with the fact that PTE Kovco's SLP was, at the very least, in the 'action' condition. The Board again notes the evidence that at one checkpoint during PTE Kovco's duty rotation on 21 Apr 06, he was required to have his SLP in the 'action' condition.

PTE Carr's DNA

242. As a result of extensive DNA testing by Ms Franco, two main DNA contributors were found on PTE Kovco's SLP; namely, PTE Kovco and PTE Carr.

\(^{119} \) Exhibit C20
243. PTE Carr voluntarily participated in a NSWPOL interview in order to provide a buccal swab for DNA comparison. During this interview, PTE Carr stated to NSWPOL that he had not touched PTE Kovco’s SLP either before or on 21 Apr 06. The Board notes that in earlier statements, PTE Carr had stated that he could not recall whether he had handled PTE Kovco’s SLP before the shooting.

244. When asked to account for the presence of his DNA on PTE Kovco’s SLP, PTE Carr offered the possible explanation that his DNA was present as a result of ‘secondary transfer’ as result of both he and PTE Kovco having touched a megaphone.

245. The evidence of the DNA expert, Ms Franco, is that it is possible for secondary transfer to occur. However, based on the research literature and her own laboratory’s testing, she would expect PTE Kovco’s DNA contribution to be equal or greater than that of PTE Carr’s and this was not the case in her test results on PTE Kovco’s SLP.

246. The Board notes that Ms Franco was careful to point out that the presence of DNA is not capable of being tested for proximity or time. That is, Ms Franco’s evidence is that DNA can remain on an object for several days. In addition, Ms Franco’s evidence is that the presence of two contributors’ DNA on an object is not indicative that both contributors touched the object at the same time.

247. The Board again notes that PTE Volkovsky gave uncontested evidence that PTE Carr was present in the room they shared at the time the shot rang out. This evidence is also consistent with the testimony of PTEs Johnson and Shore, who said that they were the only people present in the room with PTE Kovco at the time the SLP discharged. The Board also notes the evidence that CPL Saunders opened the door to Room 8 a matter of seconds after the shot and saw only Shore, Johnson, and Kovco in the room.

248. On 18 Aug 06, Counsel Assisting the Inquiry, COL Griffin asked PTE Carr a series of questions:

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120 Exhibit 158  
121 Transcript page 1228 line 31 to Transcript page 1229 line 13
The Board has just seen a video of you meeting with some members of the New South Wales Police for sampling of your DNA in which you are recorded as saying that, to your knowledge, you didn’t handle - your words were:

To the best of my knowledge

you did not handle the weapon on the day and to the best of your knowledge you hadn’t handled it at any other time, that is, Jake’s pistol?
---Yes, that’s correct, sir.

That is what you said to the police?—Yes, sir.

You’ve sat and heard the evidence of the specialist who deals in DNA. Did you handle Jake’s pistol at any time?—No, sir.

Did you handle the magazine in Jake’s pistol at any time?—No, sir. Can I say something on that?

Of course?—Obviously if range practices were being conducted, if guys were shooting and magazines were obviously empty, there’s been occasions where they’ve just been sitting there. So guys just grab magazines. So I mean, there is a chance, but I’ve never touched his weapon or magazine, sir.

Did you silent cock Jacob Kovco’s pistol?—No, sir.

Did you strip or assemble Jacob Kovco’s pistol?—No, sir.

249. On 21 Aug 06, Counsel Representing Mrs Shelley Kovco, LTCOL Berkely also asked PTE Carr a series of questions122:

What about this proposition; could you have asked him to have a look at his pistol and just gone through a load and unload procedure and given it back to him, would that have happened?—No, sir.

You couldn’t have loaded on him as a joke?—No, sir.

It was always on his person?—That’s right, sir. He didn’t get it out at all, sir, that day.

It wasn’t out and you didn’t touch it at all, you didn’t physically put your hands on it, is that your evidence?—That’s - yes, sir, that’s right.

If it was your DNA, if it was your DNA on that pistol, say on the magazine, you can’t explain how it got there?—That’s right, sir.

122 Transcript page 1245 lines 6 to 25
If it was your DNA on the pistol grip, you can't explain how it got there?
--- That's right, sir.

If it was your DNA on the slide, you can't explain how it got there?
--- That's right, sir.

250. On 29 Aug 06, Counsel Assisting the Inquiry, COL Griffin, again methodically put\textsuperscript{123} to PTE Carr all of Ms Franco's expert DNA evidence, including secondary transfer.

251. During the course of this evidence, PTE Carr, for the first time, gave evidence of touching other items, in addition to the megaphone that he had originally stated was the source of secondary transfer. COL Griffin put to PTE Carr that this evidence was that of 'recent invention'\textsuperscript{124}. PTE Carr denied this.

252. The Board accepted the uncontested evidence that ADF personnel when issued with a weapon are solely responsible for the safety of that weapon.

253. As previously discussed at TOR 4(a), PTE Carr has consistently denied handling or loading PTE Kovco's SLP on any occasion. The DNA evidence that secondary transfer is unlikely does not however, lead to a finding or indeed, speculation that PTE Carr loaded PTE Kovco's SLP on 21 Apr 06.

Cause of Death – drugs or alcohol (TOR 6.b)

254. The Board accepts the expert evidence that there were no drugs or alcohol present in the body of PTE Kovco, save for those drugs necessary for life saving measures.

\textsuperscript{123} COL Griffin's examination of PTE Carr starting at Transcript page 1540 line 45 through to Transcript page 1545 line 7.
\textsuperscript{124} Transcript page 1542 at line 18
255. **Findings** - The Board finds\(^{125}\) that PTE Kovco’s death was not caused by drugs or alcohol.

**Cause of Death – Non-Compliance with Orders, Instructions et al (TOR 6.c)**

256. There is evidence before the Board from SGT Hession, Mr Van Der Walt and DET SGT Snow that there was non-compliance with orders, instructions and safety procedures because PTE Kovco’s SLP was in the accommodation area and that it was loaded and fired.

257. The Board also concludes that given the evidence of PTE Carr there appears to have been a failure to apply the “buddy system” check following dismounting of duty.

**Cause of Death – Inadequacy of individual training (TOR 6.d)**

258. There is no evidence to suggest that there is any inadequacy in the training of PTE Kovco or any other relevant SECDET member. However there is evidence that the SLP had not been used extensively by some SECDET members such as PTE Carr and PTE Johnson before the deployment.

259. **Recommendation** – By comparison with their primary weapon use of the F88 rifle, the soldiers appear to have had little experience or confidence in the use of the pistol. This is an area in which the Board recommends that there be further consideration given to improving training methods.

260. **Recommendation** – There is also evidence to support the need for ADF wide training/instruction on scene and evidence preservation. The Board recommends that consideration be given to this issue.

\(^{125}\) Exhibit 25 – Toxicology Report
261. **Recommendation** – The Board sees a need for further training of ADF personnel in proper identification, repatriation and escort duties.

262. **Recommendation** – The Board recommends that the Appointing Authority investigates the feasibility of establishing a DNA register of all ADF personnel in order to facilitate the accurate identification of ADF personnel.

**Cause of Death – Equipment limitation, malfunction or failure (TOR 6.e)**

263. There is evidence that the particular weapon involved in this incident was purchased by the ADF in 2002. Further it did not have a history of malfunction and was found to be in a satisfactory working order with an efficient safety mechanism. The NSWPOL subjected the SLP to rigorous testing and inspection in terms of its operative functioning capacity.

264. The Board found no other evidence of equipment malfunction.

**Cause of Death – Any weakness in relevant systems or methods of control (TOR 6.f)**

265. The Board found evidence that the SECDET IX SOP were not well known or understood by some soldiers and that amendments to the SOP were not well documented or formally promulgated other than by oral briefings. This is an area of weakness in the system and method of control particularly in relation to DOWR at the Embassy.

266. **Findings** – There was evidence from Soldier 30 that there is no extant doctrine or general instruction instituting the ‘buddy system’ for weapons clearances. In this regard the Board finds that the buddy system in use at SECDET IX was not considered compulsory by the soldiers.
Next of Kin compensation eligibility (TOR 7.a)

267. The Board received evidence from Mrs Shelley Kovco that she has been advised of her COMCARE and COMSUPER rights and entitlements arising out of her husband’s death on duty. Mrs Kovco informed the Board that these matters were being taken care of, and this was confirmed by the evidence of Ms Janet Stodulka DGDCO.

268. Findings – The Board finds that the next of kin have been advised of their eligibility to submit claims for compensation in accordance with the current guidelines.

Outstanding actions for any compensation issue (TOR 7.b)

269. The Board reiterates that it received evidence from Mrs Shelley Kovco that she has been advised of her COMCARE and COMSUPER rights and entitlements arising out of her husband’s death on duty. Mrs Kovco informed the Board that these matters were being taken care of and this was confirmed by the evidence of Ms Janet Stodulka DGDCO.

270. Findings – The Board finds that there are no outstanding actions for compensation.

Outstanding actions for any issue

271. There is no evidence of outstanding action for any other issue arising out of the accident.

Non Causal factor – Any Inadequacy of Training, Orders, Instructions, et al (TOR
8)

272. The evidence reveals that there were a number of non causal factors which demonstrated inadequacies. These factors included:
   a. SOPs;
   b. SLP Training;
   c. Repatriation documentation; and,
   d. MP SIB Issues.

273. These areas have been discussed in the body of the Report herein:
   a. SOPs;
   b. SLP Training;
   c. Repatriation documentation; and,
   d. MP SIB Issues.

Relevant Issues raised by Next of Kin with respect to Accident and Post-Accident procedures (TOR 9)

274. The Board notes the value and importance of having separate counsel to represent the interests of the NOK.

275. Findings – The Board recommends that the practice of appointing separate counsel to represent the NOK be continued as required for BOI where appropriate.

276. Recommendations – The Board recommends that LTCOL Berkley and LTCOL Holles be authorised to attend upon Mrs Shelley Kovco and Mrs Judy Kovco respectively, if they so desire, when the BOI report is released.

Relevant Issues raised by other relevant authorities with respect to Accident and Post-Accident procedures (TOR 9)
277. The Board notes that the NSW Coroner\textsuperscript{126}, at the request of the ADF, initiated a NSWPOL investigation of PTE Kovco’s death.

278. The Board received evidence that NSWPOL possesses investigative expertise, training, and resources that are not available within ADF. The Board was assisted, particularly in the areas of ballistics and DNA, by the provision of these resources whilst the Inquiry was sitting. The Board is grateful for this assistance.

279. **Recommendations** – As a result of the assistance provided by NSWPOL, the Board recommends that the Appointing Authority investigate the following:
   a. the establishment of formal protocols with Australian State Police to allow MP secondments and to provide expertise, resources, and training where the ADF lacks this capacity; and,
   b. the establishment of a pool of State Police investigators who are ADF ‘force prepared’ to accompany a Counsel Assisting team during the scoping of offshore Inquiries.

280. The Office of the New South Wales Coroner has expressed a desire to be apprised of the findings of this Board of Inquiry.

281. **Recommendation** – The Board recommends that the NSW Coroner receive a copy of this Report and its annexures.

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**PART 8 - FINDINGS**

282. The Board finds that:
   a. PTE Kovco’s death was not caused by a mechanical failure of his SLP.
   b. The Board accepts Dr Duflo’s evidence that the gunshot wound was ‘non

\textsuperscript{126} Exhibit 195
survivable’. The Board finds that the uncontested medical evidence is that PTE Kovco died as a result of a single gunshot wound to the head.

c. The Board accepts the observations made by Mrs Shelley Kovco and a significant number of SECDET IX members that PTE Kovco, throughout his deployment and in particular on the afternoon of 21 Apr 06, was consistently in good spirits. The expert medical evidence is consistent with these observations. The Board finds that PTE Kovco was of good health and in a positive frame of mind prior to his death.

d. The Board finds that on the available evidence PTE Kovco did not suffer from a diagnosable psychiatric illness. The Board accepts the psychiatric evidence that his death was not suicide and finds that PTE Kovco did not intentionally inflict the gunshot wound to his head.

e. The Board finds that the investigative process was not adversely compromised by either the loss of the clothing or the direction to PTEs Shore and Johnson to wash following the incident.

f. The Board finds that the washing of PTE Kovco was a necessary function of the life saving efforts of the United States 10 CSH (Combat Surgical Hospital) medical personnel and as such, the Board does not view these actions as indicative of an intention to conceal or destroy evidence.

g. The Board finds that the cleaning of PTE Kovco’s room was not due to any attempt to conceal or destroy evidence. The Board finds that given the restricted confines of the SECDET accommodation block coupled with the central location of Room 8, that it was entirely reasonable for SECDET IX personnel to request the return of Room 8 for cleaning. The Board also accepts the evidence of SGT Hession that he was neither aware of the late involvement of NSWPOL nor would he have been expected to be aware of the NSWPOL’s investigation. The Board accepts SGT Hession’s evidence that he genuinely believed that the forensic examination of Room 8 had been completed at the time it was handed back to SECDET personnel.

h. Notwithstanding the Board’s findings on the washing and destruction of items of evidence, the Board, however, finds that Room 8 was not properly secured for the preservation of all evidence in the room. Put simply, there were too many
ADF personnel entering Room 8 after the shooting.

i. The Board finds that the delay in commencing the MP SIB investigation arose because the MPs had to fly from Australia.

j. The Board is satisfied that the failure of the hard drive on PTE Kovco's laptop did not impact on either the forensic investigation or recovery of relevant evidence.

k. The Board having received this evidence and based on observations made during the SLP training finds that this level of training is inadequate for ADF personnel required to carry and handle the SLP on deployment.

l. The Board finds that the philosophy and intent behind the 'buddy system' was sound, and should be the subject of a DI(G) requiring formal adoption across the ADF.

m. The Board finds that the post injury treatment was timely and appropriate.

n. The Board finds that PTE Kovco did not commit suicide.

o. The Board finds that at the time of his death, PTE Kovco was handling his SLP.

p. The Board finds that PTE Kovco pulled the trigger on his SLP and discharged one round.

q. The Board finds that PTE Kovco was not murdered.

r. The Board finds that no other person shot PTE Kovco.

s. The evidence, including DNA evidence, does not allow a finding that any person other than PTE Kovco loaded his SLP on 21 Apr 06.

t. The Board finds the following facts:

   i. After dismounting duty, PTE Kovco had his SLP in a loaded condition when he was in Room 8 on 21 Apr 06;

   ii. PTE Kovco failed to clear his SLP as required by extant SOPs;

   iii. PTE Kovco's DNA was on the trigger of his SLP;

   iv. That at the time of the discharge of the SLP, PTE Johnson was located on his bed;

   v. That at the time of the discharge of the SLP, PTE Shore was bending down at the fridge near the door of Room 8;

   vi. That at the time of the discharge of the SLP, PTE Kovco was standing two paces away from his bunk bed;
vii. That at the time of the discharge of the SLP, PTE Kovco's SLP was held by him 5cm or less from his head;

viii. That the trajectory of the round is as identified by the NSWPOL experts in Exhibit 74;

ix. PTE Kovco's SLP had a cartridge jammed in its breach (described in the evidence by NSWPOL as a 'stovepipe') after discharge; and,

x. That PTE Kovco had previously been warned about misuse of his SLP.

Therefore, based on these findings of fact, the Board draws the following inferences and finds that:

i. PTE Kovco did not believe or did not know that the SLP was in a dangerous condition when he picked it up;

ii. The discharge of the SLP occurred in the context of PTE Kovco engaging in skylarking behaviour;

iii. PTE Kovco deliberately released the safety catch of his SLP, or in the alternative the safety catch was never on;

iv. PTE Kovco placed the SLP within 5cm of the right side of his head and discharged the weapon;

v. The act of pulling the trigger was deliberate but not intended to cause self-harm; and,

vi. The stovepipe of the cartridge is indicative of a self-inflicted injury.

v. The Board finds that BRIG Symon, the Chief of Army, and CDF were not the source of any speculation surrounding the circumstances of the shooting of PTE Kovco.

w. The Board finds that the provisions of LWP-G 1-1-8 and DI(G) PERS 20-6 in relation to formal identification are inconsistent and cannot be reconciled with each other.

x. The Board finds that DI(G) PERS 20-6 is contrary to the psychiatric evidence received by the Board regarding the difficulties of visual identification of deceased members by their colleagues.

y. The Board finds that it cannot be inferred, from an instruction to repatriate remains, that there was an obligation upon Kenyon to identify the body.

z. The Board finds that SGT Hoekstra was directed to escort PTE Kovco's body
back to Australia. This process necessarily required the correct body to be
returned. This did not happen.

aa. The Board finds that a body was presented to SGT Hoekstra at the civilian
mortuary in Kuwait for viewing prior to being sealed in a casket for return to
Australia.

bb. The Board finds that SGT Hoekstra only paid cursory attention to the body and
failed to correctly identify the remains as PTE Kovco's.

c. The Board finds that due to circumstances beyond his control, SGT Hoekstra
was not in a fit and proper condition to carry out a proper identification of PTE
Kovco.

dd. The Board finds that the lack of Australian military transport meant that PTE
Kovco's body would have remained in the TMEP for approximately one week
until ADF transport was available.

e. The Board finds that the decision to activate the Kenyon contract meant that the
civilian mortuary in Al Sabah had to be used in order to comply with Kuwait
law on the transport of human remains.

ff. The Board finds that significant inconsistencies exist in the following extant
documents that deal with the repatriation of deceased ADF personnel:
i. LWP-G 1-1-8;
ii. DJ(G) PERS 20-6;
iii. DJ(A) PERS 31-3;
iv. ADMININST; and,
v. SOFA.

gg. The Board finds that the buddy system in use at SECDET IX was not considered
compulsory by the soldiers.

hh. The Board finds that PTE Kovco's death was not caused by drugs or alcohol.

ii. The Board finds that the next of kin have been advised of their eligibility to
submit claims for compensation in accordance with the current guidelines.

jj. The Board finds that there are no outstanding actions for compensation.
PART 9 – CONCLUSIONS

283. PTE Kovco died as a result of the inappropriate handling of his personal weapon. Every effort must be taken to ensure that training and procedures are strengthened to avoid a recurrence of such a tragedy.

284. The repatriation has highlighted failures in ADF training and doctrine that lead to the distressing and unfortunate circumstances of the wrong body being returned to Australia.

285. A significant outcome of this Board has been the evident shortcomings in ADF processes concerning the handling and preservation of serious incident sites and physical evidence and of the passage of information about the details of serious incidents.

286. The Board emphasises the critical importance of being provided with suitable resources, proper staffing and facilities which has allowed this Board to function. The Board therefore acknowledges the co-operation and assistance from Counsel Assisting and his team; as well as the co-operation and assistance received from all members who dealt with this Board.

PART 10 – RECOMMENDATIONS

287. The Board makes the following recommendations:

a. The Board recommends that ADF deployments, wherever practicable, deploy with psychologists.

b. The Board recommends that deploying ADF members should be strongly encouraged to keep journals.

c. The Board recommends that ADF personnel, at all levels, receive basic training on the critical need for scene preservation where there has been a “notifiable
incident" as defined by the current DI(G).

d. The Board recommends that the ADF review how critical DI(G)s are promulgated with a view to improving the awareness within the ADF.

e. The Board recommends that a Protocol for the preservation and handling of serious incident sites should be considered for future training or battle preparation activities with coalition forces overseas.

f. The Board recommends that a similar Protocol should also be developed within general Service training regarding:

   i. the need to preserve and quarantine scenes of serious injuries or incidents; and,

   ii. control and responsibility for scene preservation to reside with the senior ADF member at the scene.

g. The Board recommends that PM ADF investigate the viability of MP SIB undertaking CIVPOL training on DNA collection and preservation.

h. The Board recommends that the ADF deploy with MP SIB investigators who are properly equipped and trained.

i. The Board recommends that where practicable the repatriation process be handled by ADF personnel only. In addition, transport of deceased ADF personnel should, wherever practicable, be carried out by military transport.

j. The Board recommends that the Appointing Authority investigate the practicality of using US TMEP facilities for repatriation of Australian personnel.

k. The Board recommends that the Appointing Authority consult with Chief of Army on increasing the training and exposure to the SLP.

l. The Board recommends that the Appointing Authority investigate either the drafting of a DI(G) on the use of the ‘buddy system’, or the formal incorporation of such a procedure into current weapons training procedure.

m. The Board recommends that the Appointing Authority investigate and review the process by which critical ADF procedures, such as SOPs, are promulgated before and during ADF deployments.

n. The Board recommends the immediate release of new training procedure for handling the Mark III SLP.

o. The Board recommends that the Appointing Authority review the training,
policy, and procedures concerning DOWR on deployments.

p. The Board recommends that all MP SIB investigators be issued with digital tape recorders.

q. The Board recommends that a list of mortuary affairs services be maintained with the Work Authorisation Agreement.

r. The Board recommends that no disciplinary or adverse administrative action should be taken against SGT Hoekstra, despite his failure to discharge his obligation to identify the body of PTE Kovco correctly.

s. The Board recommends that Professor McFarlane's findings be taken into account when policy for escort of deceased persons is re-written. The Board further recommends that Professor McFarlane be consulted in the development of protocol on how proper identification of deceased persons might be carried out.

t. The Board recommends that on the issue of repatriation of deceased ADF personnel there be one comprehensive document.

u. The Board recommends a review of the Kenyon contract.

v. The Board recommends that the Appointing Authority investigates whether mortuary affairs should be included in future SOFAs.

w. The Board recommends that the Appointing Authority investigates the feasibility of incorporating the issue of mortuary affairs into officer training at the MAJ (E) level and above.

x. The Board sees a need for further training of ADF personnel in proper identification, repatriation and escort duties.

y. The Board recommends that the Appointing Authority investigates the feasibility of establishing a DNA register of all ADF personnel in order to facilitate the accurate identification of ADF personnel.

z. The Board recommends that LTCOL Berkley and LTCOL Holles be authorised to attend upon Mrs Shelley Kovco and Mrs Judy Kovco respectively, if they so desire, when the BOI report is released.

aa. As a result of the assistance provided by NSWPOL, the Board recommends that the Appointing Authority investigate the following:

i. the establishment of formal protocols with Australian State Police to
allow MP secondments and to provide expertise, resources, and training where the ADF lacks this capacity; and,

ii. the establishment of a pool of State Police investigators who are ADF 'force prepared' to accompany a Counsel Assisting team during the scoping of offshore Inquiries.

M.P. Charles
Colonel
Member

J.P. O'Sullivan, AC, APM
Mr
Member

W.F. Cook, OAM RFD
Group Captain
President

30 Oct 2006

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EXHIBIT R191 - PHOTOGRAPHS OF AL SABAH HOSPITAL MORTUARY
EXHIBIT R192 - REDACTED VERSION OF BINDER OF DOCUMENTS PRODUCED BY KENYON INTERNATIONAL
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EXHIBIT R194 - TIMELINE
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EXHIBIT R208 - BUNDLE OF DOCUMENTS REGARDING ATTEMPTS TO RESUSCITATION OF PTE KOVCO
EXHIBIT R209 - REDACTED VERSION OF CDF STATEMENT
EXHIBIT R210 - DENTAL X-RAY
### SEQUENCE OF EVENTS ON 21 APRIL 2006

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Event</th>
<th>Who</th>
</tr>
</thead>
<tbody>
<tr>
<td>21 Apr 06</td>
<td>1504D</td>
<td>Kovco, Soldier 14 and Soldier 17 exit ASEMB building</td>
<td>Soldier 14 identifies each mbr</td>
</tr>
<tr>
<td></td>
<td>1600D</td>
<td>Soldiers 17 and 19 had planned to go to gym. Were running late so planned to go at 1615D</td>
<td>Soldier 19</td>
</tr>
<tr>
<td></td>
<td>1638D</td>
<td>Shooting indicated by soldiers sprinting from accom lines to guard box</td>
<td>CCTV footage</td>
</tr>
<tr>
<td></td>
<td>1639D</td>
<td>Soldier sprints from guard box towards the lines with a stretcher</td>
<td>CCTV footage</td>
</tr>
<tr>
<td></td>
<td>1610D</td>
<td>Gator halts outside accom lines</td>
<td>CCTV footage</td>
</tr>
<tr>
<td></td>
<td>1611D</td>
<td>Stretcher emerges from accom lines with PTE Kovco and is placed on gator. CPR commenced by Soldier 4 and Soldier 19 as the gator leaves ASEMB</td>
<td>CCTV footage</td>
</tr>
</tbody>
</table>
|            | 1630D  | - Learned of shooting  
- Directed staff to raise noticas  
- Put psych team on standby | Soldier 45                                |
|            | 1700D  | Told COL McManus of shooting                                        | Soldier 45                                |
|            | 1652D  | PTE Kovco dies                                                      | Soldier 45, told by SMO                   |
|            | 2000D  | Spoke to VCDF about movement arrangements for the body              | Soldier 45                                |
|            | 2300D  | MAJ Pemberton is told of death. Directs WO2 Anderson to ensure that body not be moved from current location | WO2 Anderson (OPSWO 1. MP Bn)         |
| 22 Apr 06  | 0030D  | Body arrives at BIAP mortuary from 10 CSH by helo                   | Soldier 45                                |
|            | 0130D  | BRIG Symon told that MPs insist the body not be moved                | Soldier 45                                |
|            | 0200D  | Spoke to Chief of Army                                              | Soldier 45                                |
|            | 0215D  | Spoke to Chief of Army                                              | BRIG Symon                                |
|            | 0246D  | Email sent to LHQ watchkeeper, Soldier 46, Soldier 34 requesting that body not be moved | WO2 Anderson (1 MP Bn OPSWO)          |
|            | (220846K) |                                                                 |                                           |
|            | 0248D  | Rang COL McManus to provide update                                  | Soldier 45                                |
|            | 0322D  | COL McManus rang and said J10 HQ JOC will ring with Kenyon details  | Soldier 45                                |
|            | 0616D  | COL McManus rang and said:  
- J10 HQ JOC had been in contact with Kenyon.  
- A Kenyon rep from UK will contact Soldier 45.  
- Defence Investigative Agency needs to be involved. | Soldier 45                                |
<p>|            | 0625D  | Meeting with CJTF 633, COFS, CSM JTF 633, J1/4 JTF 633. CJTF 633 wants to move body on 23 Apr 06 to KU then link up with Kenyon. Discussion about room and letter. | Soldier 45                                |
|            | 0647D  | Email sent to Mark Edwards, Kenyon – body to be moved to MEL        | J10 HQ JOC                                |</p>
<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>0756D</td>
<td>J10 HQ JOC advised family wants body returned to MEL</td>
<td>Soldier 45</td>
</tr>
<tr>
<td>1041D</td>
<td>Email sent to Mark Edwards, Kenyon. Advised:</td>
<td>J10 HQ JOC</td>
</tr>
<tr>
<td></td>
<td>- location of body</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- POC is Soldier 45</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- where body is to be sent</td>
<td></td>
</tr>
<tr>
<td>1113D</td>
<td>Email sent to Soldier 45 confirming conversation and tasking Kenyon</td>
<td>Rob Rowntree, Kenyon UK</td>
</tr>
<tr>
<td></td>
<td>subcontractor in KU</td>
<td></td>
</tr>
<tr>
<td>1126D</td>
<td>It was confirmed to Soldier 45 that subcontractor in KU would handle</td>
<td>Rob Rowntree, Kenyon UK</td>
</tr>
<tr>
<td></td>
<td>the task</td>
<td></td>
</tr>
<tr>
<td>1143D</td>
<td>Soldier 45 was told that AS C130 had to deliver body to KCIA</td>
<td>Rob Rowntree, Kenyon UK</td>
</tr>
<tr>
<td>1217D</td>
<td>Email sent to Soldier 45. Contained copy of work instruction to</td>
<td>Rob Rowntree, Kenyon UK</td>
</tr>
<tr>
<td></td>
<td>Kenyon subcontractor in KU. Req details of ADF escort</td>
<td></td>
</tr>
<tr>
<td>1244D</td>
<td>Kenyan email of 1113D forwarded to Soldier 34</td>
<td>Soldier 45</td>
</tr>
<tr>
<td>1251D</td>
<td>Soldier 45 advises Kenyan that POC in KU is</td>
<td>Soldier 45</td>
</tr>
<tr>
<td></td>
<td>Soldier 34 and escort is SGT Hooistra</td>
<td></td>
</tr>
<tr>
<td>1330D</td>
<td>Soldier 45 rings Rob Rowntree to advise POC in KU</td>
<td>Soldier 45</td>
</tr>
<tr>
<td></td>
<td>Soldier 34, Rowntree advises no embalming done in KU</td>
<td></td>
</tr>
<tr>
<td>1600D</td>
<td>MAJ Pemberton confirms that body should not be moved and explains</td>
<td>Soldier 34</td>
</tr>
<tr>
<td></td>
<td>why</td>
<td></td>
</tr>
<tr>
<td>2245D</td>
<td>COFS HQ JTF 633 is told that the body may be moved to KU by MAJ</td>
<td>MAJ Pemberton (according to</td>
</tr>
<tr>
<td></td>
<td>Pemberton</td>
<td>COFS HQ JTF 633 (accaording</td>
</tr>
<tr>
<td></td>
<td></td>
<td>to MAJ Pemberton statement)</td>
</tr>
<tr>
<td>2300D</td>
<td>MAJ Pemberton is asked to concur that body may be moved. He</td>
<td>COFS HQ JTF 633</td>
</tr>
<tr>
<td></td>
<td>refuses and is told that body has been moved already, or is on its</td>
<td>(according to MAJ</td>
</tr>
<tr>
<td></td>
<td>way to KU</td>
<td>Pemberton statement)</td>
</tr>
<tr>
<td>23 Apr 06</td>
<td>Soldier 45 is advised body will leave KU on 25 Apr, arriving AS on 25 Apr</td>
<td>Soldier 34</td>
</tr>
<tr>
<td>1232D</td>
<td>Soldier 45 is copied in on email advising flight times</td>
<td>Alan Almeida (GAC)</td>
</tr>
<tr>
<td>1410D</td>
<td>Body leaves TMEP BIAP on AS C130</td>
<td>Note: TMEP BIAP docs state</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&quot;1410L&quot; but other evidence</td>
</tr>
<tr>
<td></td>
<td></td>
<td>suggests 1410D – e.g.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>corroborated by Soldier 39</td>
</tr>
<tr>
<td></td>
<td></td>
<td>statement and WOFF Hunter</td>
</tr>
<tr>
<td></td>
<td></td>
<td>statement</td>
</tr>
<tr>
<td>1600D</td>
<td>AS C130 arrives KCIA from TMEP BIAP. PTE Kovco is taken by truck</td>
<td>Note: TMEM KCIA docs state</td>
</tr>
<tr>
<td></td>
<td>Ktiep KCIA</td>
<td>1700L but other evidence</td>
</tr>
<tr>
<td></td>
<td></td>
<td>suggests 1700D – e.g.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>WOFF Hunter statement</td>
</tr>
<tr>
<td>1700D</td>
<td>Body arrives TMEP KCIA</td>
<td></td>
</tr>
<tr>
<td>1800D</td>
<td>Transfer case containing PTE Kovco placed in fridge at TMEP KCIA</td>
<td></td>
</tr>
<tr>
<td>2140D</td>
<td>Soldier 45 is advised the body is in the US</td>
<td>Soldier 34</td>
</tr>
<tr>
<td></td>
<td>TMEP KCIA</td>
<td></td>
</tr>
<tr>
<td>24 Apr 06</td>
<td>Soldiers 2, 34 and WOFF Hunter return to TMEP KCIA</td>
<td></td>
</tr>
<tr>
<td>1100D</td>
<td>Nasser and civilian ambulance arrive TMEP KCIA</td>
<td></td>
</tr>
<tr>
<td>1116D</td>
<td>Amended flight timings advised to Soldier 45</td>
<td>Alan Almeida (GAC)</td>
</tr>
<tr>
<td>1227D</td>
<td>Amended flight timings forwarded to WGCDR</td>
<td>Soldier 45</td>
</tr>
<tr>
<td>Date</td>
<td>Code</td>
<td>Description</td>
</tr>
<tr>
<td>----------</td>
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<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>25 Apr 06</td>
<td>1000D</td>
<td>WOFF Hunter (and another ADF mbr) and Alaster Adams meet GAC at Al Sabah, Black body bag is removed from the fridge – second from left on bottom row – Soldier 2 and Adams look inside. Adams has a passport photo and is comparing it with the body. This must be when Bosnian is produced.</td>
</tr>
<tr>
<td>1100D</td>
<td></td>
<td>They leave Al Sabah mortuary as ASEMБ stamp is placed on wax seals. The coffin is placed back in the fridge.</td>
</tr>
<tr>
<td>PM D</td>
<td></td>
<td>Civilian ambulance collects sealed coffin from the Al Sabah mortuary. It is taken to KCIA and loaded on to an Emirates aircraft.</td>
</tr>
<tr>
<td>26 Apr 06</td>
<td>AM D</td>
<td>Soldier 34 is advised by GAC that KBR thinks PTE K is still at Al Sabah mortuary.</td>
</tr>
<tr>
<td>1209D</td>
<td></td>
<td>Soldier 45 is advised that wrong body may have been repatriated.</td>
</tr>
<tr>
<td>1300D</td>
<td></td>
<td>Soldier 45 receives phone call advising wrong body.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Alaster Adams, WOFF Hunter &amp; anor return to Al Sabah mortuary and look at the real PTE K. Adams confirms it is not the body he viewed yesterday.</td>
</tr>
<tr>
<td>About</td>
<td>1300D</td>
<td>COFS HQ JTF 633 is advised wrong body may have been repatriated.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Email advises Soldier 45 that ADF pers have viewed body and are waiting for ASEMБ staff at morgue. Another flight being organised to repatriate second body.</td>
</tr>
<tr>
<td>1355D</td>
<td></td>
<td>OIC SIB contacted and photos of PTE Kovco requested.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>WOFF Hunter views SIB photos.</td>
</tr>
<tr>
<td>1509D</td>
<td></td>
<td>Alan Almeida is advised that proposed plan is suitable and ADF wants body returned within 24 hrs.</td>
</tr>
<tr>
<td>1530D</td>
<td></td>
<td>DCJOPS is advised that PTE Kovco’s body is still in KU.</td>
</tr>
<tr>
<td>1558D</td>
<td></td>
<td>Soldier 34 is advised that cost is not an issue and body is to be returned asap.</td>
</tr>
<tr>
<td>1810D</td>
<td></td>
<td>GAC is advised that alternative plan is agreed.</td>
</tr>
<tr>
<td>1830D</td>
<td></td>
<td>Soldier 45 is told that body is to return to AS regardless of cost.</td>
</tr>
<tr>
<td>1833D</td>
<td></td>
<td>Soldier 45 is advised that Alan Almeida has spoken to LTCOL Cole about problems with moving the body any earlier.</td>
</tr>
<tr>
<td>1842D</td>
<td></td>
<td>Soldier 34 is told to get the body back to AS asap, no expense spared.</td>
</tr>
<tr>
<td>1756D</td>
<td></td>
<td>Soldier 34 is told to look at options to get the body back asap.</td>
</tr>
<tr>
<td>Time</td>
<td>Event Description</td>
<td>Source</td>
</tr>
<tr>
<td>-------</td>
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</tr>
<tr>
<td>1800D</td>
<td>WOFF Hunter and QC FLAA-K return to Al Sabah mortuary IOT conduct a QA on repatriation mix-up. This is when WOFF Hunter is asked by Soldier 39 to check the tattoo and scar on the neck.</td>
<td>Soldier 45</td>
</tr>
<tr>
<td>1820D</td>
<td>SO1 &quot;JMS/SOPS&quot; (sic) HQ 1 JMOVGP is called to see what options are being worked on</td>
<td>Soldier 45</td>
</tr>
<tr>
<td>1830D</td>
<td>HQ JTF 633 is advised that PTE Kovco has been identified at KU morgue</td>
<td>(no individuals named)</td>
</tr>
<tr>
<td>1913D</td>
<td>Alan Almeida is told to proceed with current plan</td>
<td>Soldier 45</td>
</tr>
<tr>
<td>2157D</td>
<td>&quot;Secretary of Defence&quot; (Ric Smith?) rang COFS HQ JTF 633</td>
<td>Secretary of Dept of Defence</td>
</tr>
<tr>
<td>2205D</td>
<td>Soldier 45 is told that CDF needs a brief immediately as wrong info is being given to MINDEF</td>
<td>DCJOPS</td>
</tr>
<tr>
<td>2213D</td>
<td>Soldier 45 is told to send to brief to DCJOPS</td>
<td>DCJOPS</td>
</tr>
<tr>
<td>27 Apr 06</td>
<td>Arrangements for second body’s return discussed via VTC</td>
<td>COFS HQ JTF 633, Soldier 45, DCJOPS, CDF, SCG members</td>
</tr>
<tr>
<td>0100D</td>
<td>Soldier 45 told to look at getting an embalmer</td>
<td>DCJOPS</td>
</tr>
<tr>
<td>0153D</td>
<td>Update given to WGCDR Guerin, including looking at embalming. WGCDR Guerin said J07 had advised against embalming</td>
<td>Soldier 45</td>
</tr>
<tr>
<td>0337D</td>
<td>Soldier 45 is told that embalming may interfere with autopsy therefore hold off</td>
<td>DCJOPS</td>
</tr>
<tr>
<td>0343D</td>
<td>Soldier 45 is told that HQ 1 JMOVGP will send movements info and that sustainment fit will be used to return second body to VIC</td>
<td>COL McManus</td>
</tr>
<tr>
<td>0421D</td>
<td>Soldier 45 given an update on tpt options</td>
<td>SO1 JM 3/5 (sic) HQ 1 JMOVGP</td>
</tr>
<tr>
<td>0643D</td>
<td>Soldier 45 is advised that the body is now to go to SYD and that HQ JOC is looking at using the sustainment flight</td>
<td>COL McManus</td>
</tr>
<tr>
<td>0804D</td>
<td>SO1 JM 3/5 HQ 1 JMOVGP asks Soldier 45 to keep him informed of all planning effort</td>
<td>SO1 JM 3/5 (sic) HQ 1 JMOVGP</td>
</tr>
<tr>
<td>0930D</td>
<td>Soldier 45 is given an update on aircraft movements</td>
<td>Soldier 34</td>
</tr>
<tr>
<td>1010D</td>
<td>WOFF Hunter and Soldier 33 go to Al Sabah mortuary. Alastar Adams is also there. All ID the real PTE Kovco</td>
<td>Soldier 45</td>
</tr>
<tr>
<td>1234D</td>
<td>Update provided to &quot;all concerned&quot; via VTC (incl. DCJOPS and SOD)</td>
<td>Soldier 45</td>
</tr>
<tr>
<td>1243D</td>
<td>Soldier 45 is advised against using military aircraft &quot;as we will encounter problems&quot;</td>
<td>Rob Rowntree, Kenyon UK</td>
</tr>
<tr>
<td>1300D (2722000L)</td>
<td>Body arrives back at TMEP KCIA from KU morgue</td>
<td>Rob Rowntree, Kenyon Kuwait</td>
</tr>
<tr>
<td>1313D</td>
<td>SO1 JM 3/5 (sic) HQ 1 JMOVGP is told about advice not to use military aircraft. He asked to be advised &quot;if it can or can't be done&quot;</td>
<td>Soldier 45</td>
</tr>
<tr>
<td>1338D</td>
<td>Soldier 45 is told that CDF is calling CDF KU to get clearances. COL McManus also looking at other options through Emirates</td>
<td>COL McManus</td>
</tr>
<tr>
<td>1449D</td>
<td>Soldier 45 is told that CDF KU has cleared the body for release</td>
<td>COL McManus</td>
</tr>
<tr>
<td>Time</td>
<td>Event Description</td>
<td>Soldier</td>
</tr>
<tr>
<td>-------</td>
<td>----------------------------------------------------------------------------------</td>
<td>---------</td>
</tr>
<tr>
<td>1454D</td>
<td>Rob Rowntree, Kenyon UK is told to use military aircraft to return the body</td>
<td>45</td>
</tr>
<tr>
<td>1500D</td>
<td>Soldier 45 is told that ASEMB has confirmed relevant clearances obtained for use of military aircraft</td>
<td>34</td>
</tr>
<tr>
<td>1501D</td>
<td>COL McManus is told tpt arrangements are in place</td>
<td>45</td>
</tr>
<tr>
<td>1700D</td>
<td>PTE Kovco is taken from Al Sabah to TMEP KCIA</td>
<td></td>
</tr>
<tr>
<td>1930D</td>
<td>PTE Kovco is placed in the fridge at TMEP KCIA, having again been identified by Soldier 33</td>
<td></td>
</tr>
<tr>
<td>28 Apr 06</td>
<td>Soldier 33, 34, WOFF Hunter, Asst Defence Attaché, Ambassador King, Alastar Adams and Robert Rowntree meet at TMEP KCIA. Casket leaves TMEP KCIA and is loaded on to aircraft</td>
<td></td>
</tr>
<tr>
<td>0600D</td>
<td>Aircraft takes off</td>
<td></td>
</tr>
</tbody>
</table>