

# MEDIA GUIDE

## Black Hawk 221 Board of Inquiry

**Produced by Defence Public Affairs, Department of Defence, 2007**

## **INTRODUCTION**

This Media Guide has been produced to assist the media reporting on the Black Hawk 221 Board of Inquiry.

Defence is intent on conducting an open and transparent BOI. At times, however, some information may be restricted by the essential aspects of operational and national security and fairness to the interests of those who may be affected by the inquiry

Wherever possible, media coverage will be supported by Defence to ensure that the public is kept well informed of the proceedings and outcomes.

This Media Guide does not contain legal advice. You should obtain independent legal advice if you are unsure about how to report any issue or information relevant to the Australian Defence Force or a Board of Inquiry.

## **CONTACTS**

- BOI Public Affairs Officer, Squadron Leader John McCourt  
Mobile: 0439 523 009 or email: john.mccourt@defence.gov.au
- Defence Public Affairs Phone: 02 6265 3343
- Black Hawk 221 BOI website: [www.defence.gov.au/boi/blackhawk221/](http://www.defence.gov.au/boi/blackhawk221/)

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## **WHAT IS A BOARD OF INQUIRY?**

### **Purpose**

The purpose of a Board of Inquiry is to determine the facts and circumstances surrounding an incident or situation. Inquiries are undertaken so that an informed decision can be made by the Chief of the Defence Force or other Appointing Authority about any action required including, where appropriate, action to avoid a recurrence.

Importantly, a Board of Inquiry does not focus on the attribution of blame, nor does it conduct a criminal or disciplinary investigation or conclude that offences have been committed.

Terms of Reference and the Instrument of Appointment issued by the appointing authority guide the Board of Inquiry. The Chief of Defence Force is the appointing authority for a Board of Inquiry into the death of an Australian Defence Force member.

Material that is relevant to the Terms of Reference and which can practicably be obtained will be considered by the inquiry.

Australian Defence Force Board of Inquiry processes are thorough, fair and impartial. A Board of Inquiry is empowered to make recommendations arising from its findings. The appointment and conduct of a Board of Inquiry is in accordance with the *Defence (Inquiry) Regulations 1985*.

### **Independence from the chain of command**

While the purpose of a Board of Inquiry is to inform the Chief of Defence Force on an incident or issue, the inquiry process is impartial and separate from the normal ADF chain of command. It is authorised to make findings and recommendations in respect of the Terms of Reference.

To ensure separation from the command chain, civilians with judicial experience are now appointed as Presidents for Boards of Inquiry into deaths of ADF members.

### **Outcomes of Boards of Inquiry**

A Board of Inquiry provides a report to the Appointing Authority of its findings, and may make recommendations arising from its findings. While it will not make findings that individuals have committed criminal or disciplinary offences or focus on the attribution of individual blame, a Board of Inquiry may make comments or findings which are critical of the conduct of individuals.

Once a Board of Inquiry submits its report to the Appointing Authority, the appointing authority makes a decision on the findings and recommendations contained in the report. The Minister for Defence may authorise the release of all or part of a Board of Inquiry report.

### **Difference between a Board of Inquiry and a Coronial Inquest or disciplinary investigation**

The purpose of an Australian Defence Force Board of Inquiry is quite different from other types of inquiries or investigations, notwithstanding some similarities in terms of inquiry process.

Australian Defence Force Boards of Inquiry are separate from, and do not replace, other investigations that may take place in respect of the death of an Australian Defence Force member. Those investigations have a different purpose and procedure and may be conducted by State or Territory Coroners, Comcare or military or civilian police. Naturally Defence cooperates with external agencies with respect to those investigations.

## **THE BLACK HAWK 221 BOARD OF INQUIRY – BACKGROUND**

The Black Hawk 221 Board of Inquiry was appointed by the Chief of Defence Force, Air Chief Marshal Angus Houston AO, AFC, to determine the facts and circumstances surrounding the loss of an Army Black Hawk helicopter (Number 221) while operating with *HMAS Kanimbla* off Fiji on 29 November last year. Two ADF personnel, Captain Mark Bingley and Trooper Joshua Porter, died in the incident.

The primary purpose of the Black Hawk 221 Board of Inquiry is to determine the facts surrounding the incident so that informed decisions can be made by the Chief of the Defence Force about any required actions flowing from the findings and recommendations.

### **Board Members**

The Chief of the Defence Force appointed retired NSW Supreme Court Justice, The Hon David Levine RFD QC as the President of the Board of Inquiry. Mr Levine has extensive judicial experience which will help to ensure that the inquiry is thorough and impartial.

In addition to the President, the Board of Inquiry comprises two Australian Defence Force members, Group Captain Stephen Fielder AM and Commander Andrew Rourke RAN.

### **Counsel Assisting**

Counsel Assisting are Australian Defence Force legal officers selected to assist the Board. The Senior Counsel is Commander John (Jack) Rush RFD QC RANR. Junior Counsel Assisting are Colonel Gary Hevey RFD and Lieutenant Patience Neal RAN.

The Counsel Assisting team of a Board of Inquiry collects information before the commencement of hearings. This information is then formally entered into evidence during Board hearings, where it is examined and considered by the Board.

The Counsel Assisting team interviews witnesses and assists with the preparation of witnesses' statements. During the hearing, Counsel Assisting will make an opening submission, call and examine witnesses, tender documents and other exhibits and make closing submissions.

### **Counsel Representing Affecting Persons**

Where the President decides that certain persons may be affected by the Board of Inquiry, they are entitled to legal representation by an Australian Defence Force Legal officer at Commonwealth expense.

### **Public Affairs Officer**

The Black Hawk 221 BOI public affairs officer, Squadron Leader John McCourt, is the principle contact for all media covering the inquiry: contact 0439 523 009 or email [john.mccourt@defence.gov.au](mailto:john.mccourt@defence.gov.au)

**Open Inquiry**

This is a public inquiry. It will be conducted in an open and thorough manner. However, some aspects of the hearing may be restricted for operational security reasons and the interests of those who may be affected by the inquiry.

**Next of Kin**

Attending a Board of Inquiry associated with the death of a loved one is something that many bereaved families want to do. However, it can be a highly stressful experience.

Defence is assisting next of kin to attend this inquiry and respects their privacy. It is important for members of the media and general public to also be mindful of the families' need for privacy.

**MEDIA ARRANGEMENTS – GENERAL**

Arrangements have been put in place to enable the media to cover the proceedings of the Black Hawk 221 Board of Inquiry.

**Media liaison**

A media liaison service is available to journalists covering the inquiry. The public affairs officer is the first point of contact for any media requests or assistance. The public affairs officer is Squadron Leader John McCourt contact, 0439 523 009 or email: john.mccourt@defence.gov.au

**Website ([www.defence.gov.au/boi/blackhawk221](http://www.defence.gov.au/boi/blackhawk221))**

Media/journalists are encouraged to refer to the Black Hawk 221 BOI website for the latest information on the inquiry.

**Hearings Location**

Hearings will be held in the Randwick Barracks Conference Centre, Avoca Street, Randwick, New South Wales.

**Access to Randwick Barracks**

Media and members of the public will need to have photographic identification to access Randwick Barracks. Appropriate identification is a valid driver's licence or a current passport.

**The Board of Inquiry building**

The map of the Conference Centre at Randwick Barracks at the back of this Media Guide shows the location of the Board of Inquiry hearing room, inquiry offices, the designated media room and sundry facilities.

**Out of bounds areas**

The attached plan of the inquiry venue shows areas that are strictly out of bounds to the public and media. Entry into these areas will result in removal of offending members of the media or public from Randwick Barracks.

**Parking**

Parking for media representatives will be available adjacent to the Conference Centre building.

**Media surveys**

Should television media require access to Randwick Barracks to determine feed locations, please call the public affairs officer, Squadron Leader John McCourt on 0439 523 009.

**Next of Kin**

The families of Captain Mark Bingley or Trooper Joshua Porter have asked that any media requests be made through the inquiry's public affairs officer, Squadron Leader John McCourt.

During the inquiry hearings, Defence will provide a private area for next-of-kin. Their privacy is to be respected.

The media's assistance is also being sought to respect the privacy of next of kin at their places of accommodation and journeys to and from Randwick Barracks.

**BOI statements**

It is not anticipated the Board of Inquiry President will be making any comment direct to the media.

Media inquiries concerning Defence issues relating to the Board of Inquiry should be made through the public affairs officer, Squadron Leader John McCourt on 0439 523 009 or Defence Public Affairs on 02 6265 3343.

**MEDIA GUIDELINES FOR ACCESS AND CONDUCT IN THE HEARING ROOM**

This is an open inquiry and, as such, media representatives are welcome to sit in the hearing room to report on proceedings. There may be some proceedings that may be closed to the public and media at the direction of the Board President.

The hearing room will be equipped with screens and monitors to display relevant visual aspects of the inquiry. The room will also be equipped with audio facilities for clear understanding of proceedings.

When the inquiry hearings are not in session, the hearing room is not to be used for any media purpose unless permission is sought and gained from the Board President via the public affairs officer.

**Open and closed sessions**

Hearings will be open to the public unless the President of the Board directs otherwise.

When there is a direction by the President that parts of the hearings will be closed a notice to that effect will be posted on the hearing room doors.

Every endeavour will be made to alert the media in advance of proceedings that may be closed.

### **Witness identification**

There may be times during the inquiry when it will be necessary to protect the identity of some witnesses. Such restriction will be at the direction of the President.

### **Vision/Stills opportunity**

To facilitate vision and photographs of the conduct of the Board of Inquiry, the President will allow vision, audio and photographs to be taken at the first session of the **first day** of sitting – during introductory remarks.

Media will be permitted to film and photograph the interior of the hearing room and the entry of the Board members and legal counsel for a designated period time (as determined by the President).

The media will be given sufficient time to secure vision and photographs at this time so as to facilitate the need for file vision for use throughout the duration of the Board of Inquiry.

***After this vision/photo opportunity on the first day of sittings, all media recording devices are to be removed from the hearing room.***

### **Sketching**

Sketching in the hearing room will be permitted at the discretion of the Board President. Media are to make their request through the public affairs officer.

### **Note taking**

Media representatives may take notes during proceedings in the hearing room but no media recording devices will be permitted.

### **Recording devices**

Recording devices are not permitted in the hearing room. A recording device is defined as a device that is capable of being used to record/replicate images or sound (or both) and includes a:

- (a) camera including a video camera;
- (b) mobile phone that is capable of recording images or sound or both; and
- (c) tape recorder or digital audio recorder.

### **Laptops**

Media are advised the use of laptops is permitted in the hearing room provided all internal and/or attached media enabling devices (including any capability of recording) are turned off and that laptops operate on battery power with no power cables attached. Laptops are to be used for word processing only.

### **Mobile Phones / Pagers**

All persons are to turn off their mobile phones/pagers before entry to the hearing room. This is to be strictly adhered to. Use of mobile phones is not permitted in the corridors of the complex or the Hearing Room.

### **Access to exhibits**

Requests for access to exhibits and information are to be made to the public affairs officer in writing who will then pass on relevant requests to the Secretary to the Board.

### **Transcripts**

Transcripts will be made available on the official Black Hawk 221 Board of Inquiry website. Transcripts will be made available as soon as practicable following hearing sessions. Certain information may not be disclosed in transcripts due to operational or national security reasons or out of fairness to those who may be affected by the Inquiry.

### **Advice on proceedings**

The public affairs officer will seek to assist media in relation to status of proceedings and the order of witnesses.

### **Hearing room courtesies**

The Board of Inquiry is not a judicial process. The hearing room is not a courtroom so there are different protocols. To enable those attending the hearings to be aware of proceedings the following information is provided.

At the commencement of each session, all those present in the hearing room will be asked to stand while the President and Board Members enter the room.

The President of the Board will take his place at the centre of the board table with the senior of the two Defence members to the President's right and the junior ranked member to his left.

Upon the three Board members taking their seats, all other persons in the room will then be requested to sit.

Members of the public (and, as such, the media) are not required to defer (bow) to the Board when entering or leaving to hearing room. However uniformed members of the Australian Defence Force will formally acknowledge the Board upon their arrival and departure from the hearing room.

Movement in and out of the hearing room should be done as quietly as possible to minimise disruption to the proceedings. It is also important that silence is maintained by all observers throughout the hearings.

When the Board rises for recess or at the close of sessions, all persons in the room will be asked to stand and remain so until the Board members leave the hearing room.

### **Titles and protocols**

To assist media in reporting on the Inquiry, formal titles of personnel involved and relevant procedures are as follows:

- ***Board Members***

The President of the Board of Inquiry is The Hon David Levine RFD QC. Legal Counsel will address him as "President" and/or "Sir". When the President addresses Counsel he will do so by reference to their rank and name.

The two Australian Defence Force members of the inquiry are Group Captain Stephen Fielder AM and Commander Andrew Rourke RAN. Legal Counsel will address them by their relevant military rank (*Group Captain Fielder/ Commander Rourke*) and/or “Sir”.

▪ **Counsel Assisting**

Australian Defence Force officers who are selected to assist the Board are referred to as Counsel Assisting.

Senior Counsel Assisting is Commander John (Jack) Rush RFD QC RANR. Junior Counsel Assisting are Colonel Gary Hevey RFD and Lieutenant Patience Neal RAN.

▪ **Secretary to the Board**

Secretary to the Board of Inquiry is Lieutenant Commander Jane Probert RANR.

## **MEDIA ROOM AND ACTIVITY**

A designated media room will be available for exclusive use of working members of the media. The attached plan of the inquiry building shows the location of the media room. The location has been determined so as to allow media activity without disruption to proceedings (eg: noise and use of phones).

### **Facilities**

The media room is equipped with:

- space for approximately 15 journalists;
- broadband facilities for Internet connection;
- power points for laptops, mobile phone chargers and other needs.
- access to tea and coffee facilities.

The media room can be used at any time while the Inquiry is in session or at other times in consultation with, and approval of, the public affairs officer.

### **Recording devices**

Recording devices are permitted in the media room and are to be limited to this room while media are inside the Conference Centre (inquiry building).

### **Cameras**

The use of television and still cameras is permitted inside the media room and at designated areas outside the inquiry building as determined by the public affairs officer. The recording of vision and photos of buildings and facilities of Randwick Barracks (other than the Conference Centre) is strictly forbidden.

### **Mobile phones**

The use of mobile phones is permitted in the media room and designated areas outside the inquiry building as determined by the public affairs officer. The use of mobile phones in any area inside the inquiry building (except the media room) is strictly forbidden.

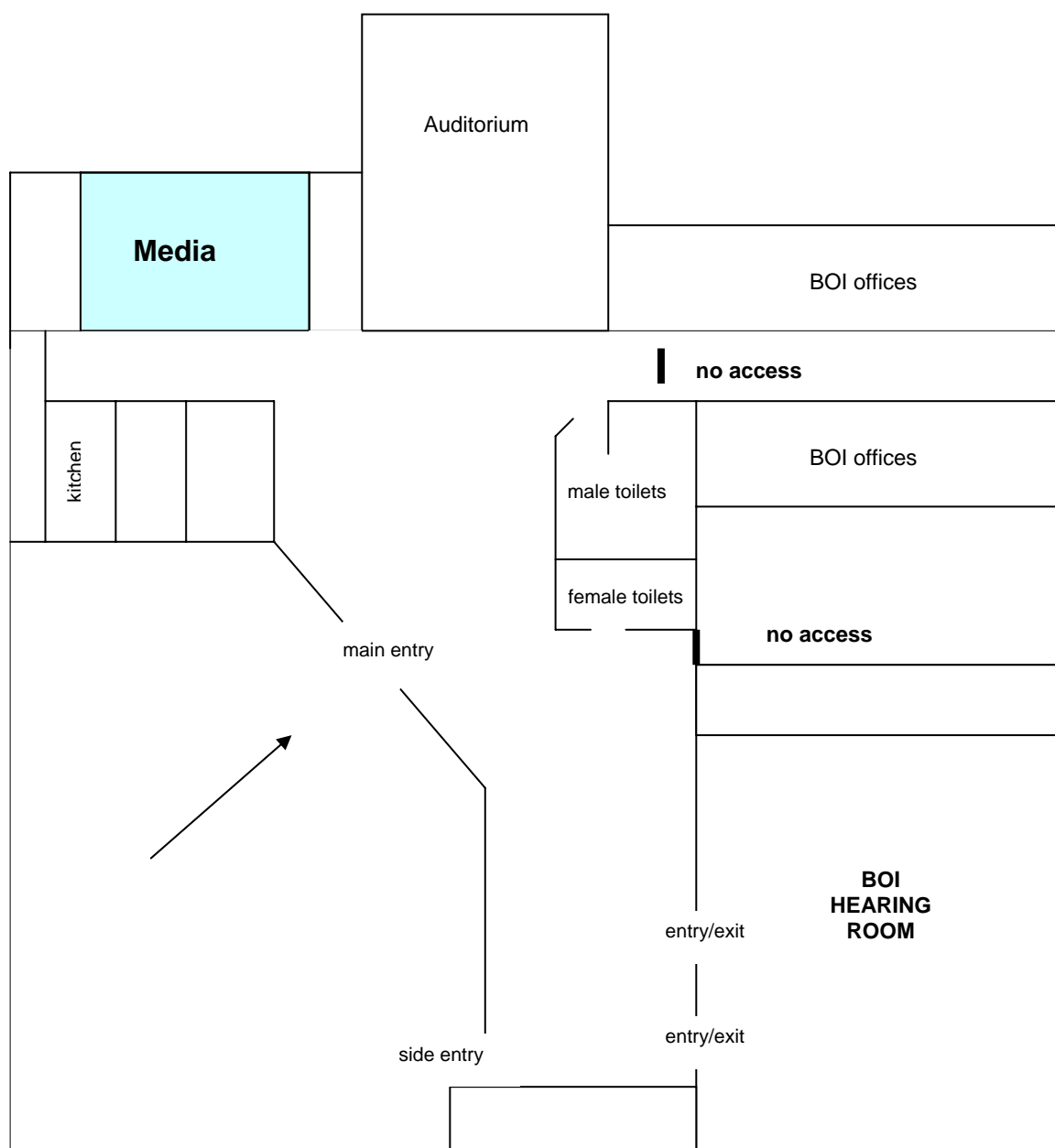
### **Laptops**

The use of laptops is permitted in the media room.

## **APPENDIX 1: PLAN OF CONFERENCE CENTRE (not to scale)**

The Randwick Barracks Conference Centre is the venue for the Black Hawk 221 Board of Inquiry.

- The hearing room is a large area with ample seating.
- Media are to access the Conference Centre through the main entry as shown.
- The rear entrance to the complex is not to be used by members of the public or media.
- The media room is situated adjacent to the auditorium. This location allows for media activity without disruption to proceedings.
- The Board of Inquiry offices at the right wing of the building area strictly out of bounds to all members of the public including media.
- The main auditorium is for the use of defence personnel not associated with the inquiry. Media are not to enter this area.
- Toilet facilities are located at the centre of the complex.
- The kitchen is located near the media room, however a tea and coffee service will be provided to members of the media.



**APPENDIX 2: PLAN OF MEDIA ROOM**

The media room is situated in the same complex as the Hearing Room. It is approximately 50 paces from the hearing room.

- The plan shows work stations, monitors and a wireless broadband facility. Media using the room will be provided with access details and passwords to use the hub.
- The room will have power connectors for laptops, battery chargers and other basic electrical needs.

