

MEDIA GUIDE

CDF Commission of Inquiry into the death of Private Ashley Baker

Produced by Defence Public Affairs, Department of Defence, 2008

INTRODUCTION

This Media Guide has been produced to assist the media reporting on the Commission of Inquiry established to inquire into the facts and circumstances surrounding the death of Private Ashley Baker from non-combat related gun shot wounds in Timor-Leste on 5 November 2007.

Defence is intent on conducting a thorough, fair and impartial Commission of Inquiry. 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 Commission of Inquiry.

CONTACTS

- Defence Public Affairs phone: 02 6265 3343 or 0408 498 664 or email mediaops@defence.gov.au
- Commission of Inquiry website: www.defence.gov.au/coi

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Commissions of Inquiry investigate what happened and why

The ADF conducts inquiries to determine the facts and circumstances surrounding an incident or event. The ability of Australian Defence Force (ADF) commanders to appoint internal administrative inquiries and obtain timely information on incidents that affect personnel, assets, training and policy is vital for the maintenance of Defence's capability—including operational capability.

A CDF Commission of Inquiry is established primarily to inquire into deaths in service where there is a service link or connection, and is appointed by the Chief of the Defence Force.

Defence conducts inquiries to examine what occurred in the hope of preventing the likelihood of similar incidents in the future. The outcomes of these inquiries, in turn, assist in obtaining timely information on incidents that affect our personnel, training and policy.

Terms of Reference and the Instrument of Appointment issued by the appointing authority guide the Commission of Inquiry. Material that is relevant to the Terms of Reference and which can practicably be obtained will be considered by the inquiry.

Commissions of Inquiry are thorough, fair and impartial

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

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

Commission of Inquiry are separate to Coronial Inquests

The holding of an inquiry by the ADF does not stop or inhibit Federal, State or Territory agencies from holding their own investigations or inquiries. Australian Defence Force Commissions 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.

Importantly, a Commission 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. The Commission may however make comments or findings that are critical of the conduct of individuals, and its report may be used to inform others who have authority to make administrative decisions.

The appointment and conduct of a Commission of Inquiry is in accordance with the *Defence (Inquiry) Regulations 1985*.

Inquiry Reports help to inform Defence decision-making

A CDF Commission of Inquiry provides a report containing its findings, and any recommendations arising from those findings, to the Chief of the Defence Force.

After considering the report, the Chief of the Defence Force will make decisions about any recommendations, and how they might apply to Defence practices, training and policy.

The decision to authorise disclosure of part or all of a Report is made by the Minister for Defence in accordance with the requirements of the Defence (*Inquiry*) Regulations 1985.

PTE BAKER COMMISSION OF INQUIRY – BACKGROUND

The PTE Baker Commission 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 death of PTE Ashley Baker in Timor-Leste in November 2007.

The primary purpose of the Commission 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.

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 in the interests of those who may be affected by the inquiry.

PTE Baker Commission President

The Chief of the Defence Force has appointed Mr Andrew Kirkham, AM RFD QC as COI President.

Counsel Assisting

Counsel Assisting are Australian Defence Force legal officers selected to assist the Commission. The Senior Counsel Assisting is COL Michael Griffin. Junior Counsel Assisting is LEUT Joshua Nottle.

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

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 Commission of Inquiry, they are entitled to legal representation by an Australian Defence Force Legal officer at Commonwealth expense.

Next of Kin

Attending a Commission 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 PTE Baker Commission of Inquiry.

Media liaison – public affairs officer

A media liaison service is available to journalists covering the inquiry. The first point of contact for any media requests or assistance is Defence Public Affairs, 02 626 53343, or email mediaops@defence.gov.au.

Website

Media/journalists are encouraged to refer to the Commission of Inquiry website www.defence.gov.au/coi for information on the Commission of Inquiry process.

Hearings Location

Hearings will be held in the Rowell Centre, Robertson Barracks, Darwin, NT.

Access to Rowell Centre, Robertson Barracks

Media and members of the public will need to have photographic identification to access Robertson Barracks Thorngate Road, Palmerston, NT. Appropriate identification is a valid driver's licence or a current passport.

The Commission of Inquiry building

The map of the Rowell Centre at Robertson Barracks at the back of this Media Guide shows the location of the Commission of Inquiry hearing room, inquiry offices, 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 Robertson Barracks.

Next of Kin

The family of PTE Baker have asked that any media requests be made through Defence Public Affairs.

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 the Commission of Inquiry hearings.

Media statements

The Commission of Inquiry President will not make comment direct to the media.

Defence will not make comment on specific issues or matters that might be brought before the Commission of Inquiry. However, media inquiries concerning media access, timings, order of proceedings etc for the Commission of Inquiry should be directed to 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 Commission President.

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 Commission President via the public affairs officer.

Open and closed sessions

Hearings will be open to the public unless the President of the Commission directs otherwise – in which case, a notice to that effect will be posted on the hearing room doors.

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.

Sketching

Sketching in the hearing room will only be permitted at the discretion of the Commission President. Media are to make their request through Defence Public Affairs.

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

The use of laptops by media is not permitted in the hearing room

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.

Cameras

The use of television and still cameras is permitted at designated areas outside the inquiry building as determined by Defence Public Affairs. The recording of vision and photos of buildings and facilities of Robertson Barracks (other than the Rowell Centre) is strictly forbidden.

Exhibits

Exhibits will not be released.

Transcripts

The President has decided that copies of transcripts will not be provided. The President will consider requests for access to transcripts for the purpose of promoting accurate reporting of the Inquiry. Requests for access to transcripts are to be made in writing to Defence Public Affairs who will then pass on relevant requests to the Commission Secretary and President.

Advice on proceedings

Defence Public Affairs will seek to assist media in relation to status of proceedings and the order of witnesses.

Hearing room courtesies

The Commission of Inquiry is not a judicial process. The hearing room is not a court room 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 enters the room.

Upon the Commission 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 Commission when entering or leaving to hearing room. However uniformed members of the Australian Defence Force will formally acknowledge the Commission 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 Commission rises for recess or at the close of sessions, all persons in the room will be asked to stand and remain so until the Commission 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:

- ***Commission Members***

The President of the Commission of Inquiry will be addressed as “President” and/or “Sir/Ma’am”. When the President addresses Counsel he/she will do so by reference to their rank and name.

Australian Defence Force members of inquiries will be addressed by their relevant military rank and/or “Sir/Ma’am”.

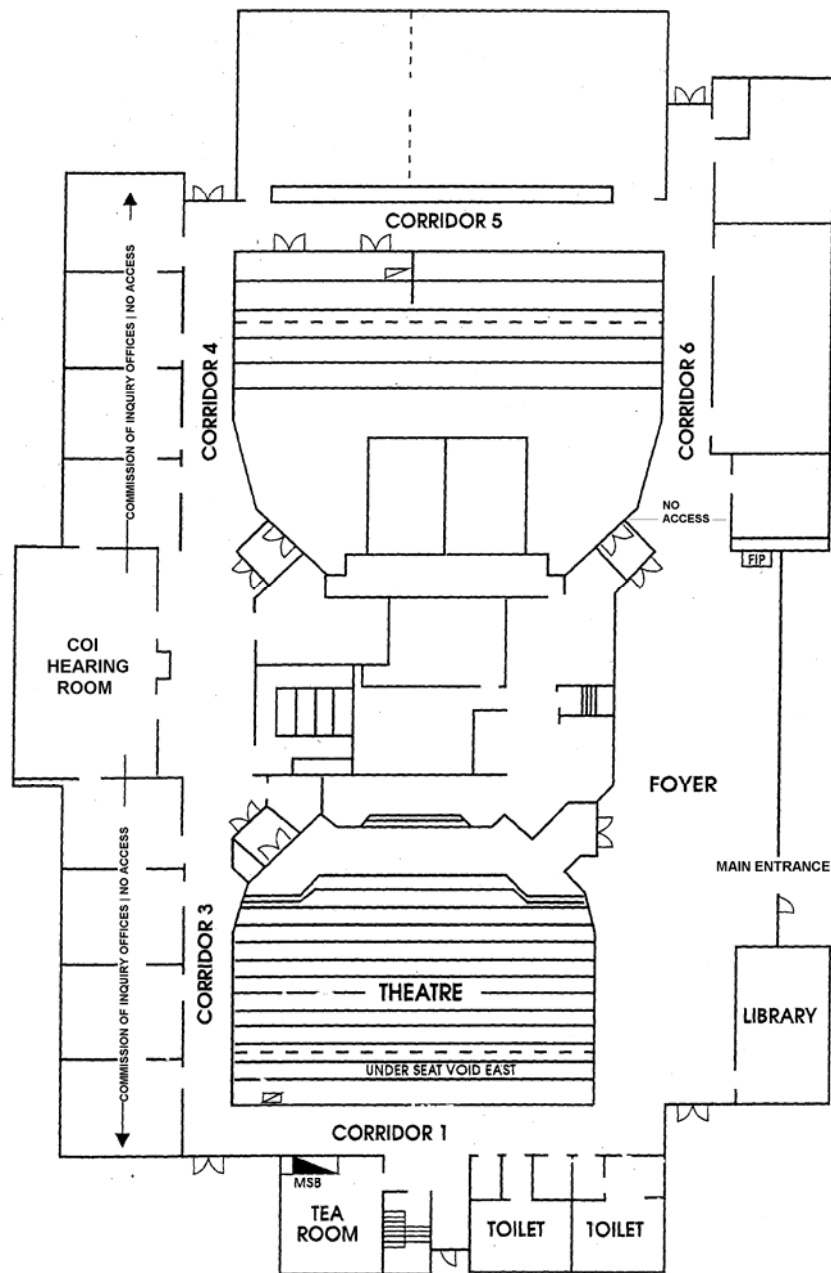
- ***Counsel Assisting***

Australian Defence Force officers who are selected to assist the Commission are referred to as “Counsel Assisting” and will be addressed by their relevant military rank.

APPENDIX 1: PLAN OF ROWELL CENTRE (not to scale)

The Rowell Centre is the venue for the PTE Baker Commission of Inquiry.

- The hearing room is a large area with seating for media.
- Media are to access the Rowell Centre through the main entry as shown.
- The Commission of Inquiry offices on either side of the COI Hearing room are strictly out of bounds to all members of the public including media.
- Other areas of the Rowell Centre are for the use of defence personnel not associated with the inquiry. Media are not to enter this area.
- Toilet facilities are located in Corridor 1.



GROUND FLOOR