



DEFENCE (INQUIRY) REGULATIONS

CHIEF OF THE DEFENCE FORCE COMMISSION OF INQUIRY

TERMS OF REFERENCE

Introduction

1. Pursuant to the Instrument of Appointment of 9 November 2007, the Commission of Inquiry (the Commission) is appointed to inquire into the circumstances surrounding the death of 8514280 Private Ashley Arthur Baker.

Background

2. I am advised that on 5 Nov 07 PTE Baker was found dead in Dili, Timor Leste. PTE Baker was a member of the Australian Army when he died. I am advised that preliminary information indicates that his death appears to have arisen out of, or in the course of, his service in the Army. Accordingly, I have decided to appoint a Commission of Inquiry pursuant to Part VIII the *Defence (Inquiry) Regulations 1985* (the Regulations).

Inquiry Task

3. The Commission is to obtain evidence and to provide me with a report detailing, with reasons, the findings of the Commission as to:
 - a. the circumstances surrounding the death of PTE Baker including, without restricting the generality thereof:
 - (i) the date and place of the death;
 - (ii) the manner and cause of the death; and
 - (iii) any facts and circumstances establishing that the death arose out of, or in the course of, his service in the Army.
 - b. the sufficiency of any actions and decisions taken by Defence personnel which are materially relevant to PTE Baker's death, both prior and subsequent thereto.
 - c. any weaknesses or deficiencies (isolated or systemic) in Defence systems, policies, equipment, practices, procedures and training proximately associated with PTE Baker's death.
4. The findings and recommendations of the Commission may be used by me:
 - a. primarily as the basis for appropriate remedial action in respect of any weaknesses or deficiencies (isolated or systemic) in Defence systems, policies, practices, equipment, procedures or training as may be identified in the Commission's report; and
 - b. also to inform, subject to Regulation 63, PTE Baker's next-of-kin and other family about the circumstances surrounding his death.

Recommendations

5. Without limiting the scope provided for by Regulation 110, I am particularly interested in considering recommendations regarding actions that the Commission believes should be taken with respect to any weaknesses or deficiencies (isolated or systemic) in Defence systems, practices, policies, procedures and training associated with the death of PTE Baker.
6. Recommendations should be clear, reasoned, succinct, measurable and achievable. The Commission is authorized and encouraged to consult widely regarding recommendations that it proposes to make in its report.
7. Pursuant to Regulation 110, recommendations should be explicitly linked to findings made in the Commission's report. For clarity and convenience, recommendations should be published in a table format containing the following detail for each recommendation:
 - a. the finding(s) to which it relates; and
 - b. the relevant paragraph(s)/page(s) reference within the report where the related finding(s) is contained.

Interim reports and monitoring

8. **Inquiry Plan.** Following completion of Inquiry Planning (and further to CDF Directive 12/2006), the Commission is to provide me with an Inquiry Plan. The Inquiry Plan should build upon the initial Scoping Plan and is intended to provide me with indications of the likely complexity and duration of the Inquiry, as well as resource implications, for which I retain ultimate responsibility. The Inquiry Plan should address the matters listed in paragraph 7.14 of ADFP 06.1.4—*Administrative Inquiries Manual*.
9. **Monthly Progress reports.** During the course of the Inquiry, the President is to provide me with a written update on the last working day of each month informing me of progress made against the Inquiry Plan, these Terms of Reference, and other matters of significance to the President.
10. **Other reports.** The President is to provide me with reports on matters he believes require my urgent attention or action. Such issues might include significant matters affecting the conduct of the Commission's inquiries, Defence safety, security, operational effectiveness or the welfare and wellbeing of ADF members, Defence employees, or persons otherwise potentially affected by the Commission of Inquiry.

Documentation

11. In addition to the requirements of Regulation 123(5), the following are to accompany the Commission's report:
 - a. imagery of articles (other than documents) tendered as exhibits before the Commission and a record of the location of those articles;
 - b. notices sent to, and any responses from, individuals against whom it is contemplated adverse findings may be made (unless the Commission believe that doing so would be unfairly prejudicial to the interests of a person sent such a notice);
 - c. any external legal advice obtained by the Commission (such advice is to be handled in such a way as to maintain any client legal privilege which attaches to that advice);

- d. these Terms of Reference;
- e. the Instrument of Appointment;
- f. any written communications between the Commission and the Appointing Authority;
and
- g. a succinct executive summary of the report.

Representation of affected persons

12. Where the President of the Commission determines that a person may be affected by the Inquiry pursuant to Regulation 121, arrangements for the representation of that person by a particular ADF Legal Officer will be made by the Director of Defence Counsel Services (DDCS). Accordingly, the President will notify DDCS of any person that may be affected.

13. Where the President of the Commission determines that the record or reputation of a person who has died may be affected by the Inquiry pursuant to Regulation 121, arrangements for the legal representation of a single representative of the deceased will be made by the DDCS. Accordingly, the President will notify DDCS whether the record or reputation of the deceased may be affected and who the single representative of the deceased is.

No findings of criminal/disciplinary offences

14. The Commission is not to conclude or find that a disciplinary or criminal offence has been committed by any person. Nor is it to use the language of the criminal law when describing particular conduct or behaviour. If during the course of the inquiry the view is formed by the President that a person is likely to have committed a serious criminal or serious disciplinary offence, such offences should be reported to the Provost Marshal of the Australian Defence Force, and also notified to me, as soon as it is practicable to do so. Care needs to be taken to ensure that continuing with the Inquiry does not unduly prejudice any criminal or disciplinary investigation.

Public inquiry

15. In accordance with Regulation 117, I direct that the Commission shall conduct its inquiry in public in respect of the taking of evidence and the making of submissions, subject to the following qualifications;

- a. the Commission shall not conduct in public such parts of its inquiry that involves the disclosure of security classified information; and
- b. only:
 - i. persons holding an appropriate security clearance and who have a need to know the information; or
 - ii. with respect to information classified up to and including SECRET, persons who, in the opinion of the President, are immediate family members or close friends of PTE Baker, but only where such persons are made subject to a direction issued by the President under Regulation 62 prohibiting absolutely disclosure of security classified information from that part of the Inquiry;

may be permitted by the President to attend that part of the Commission or have access to the information disclosed therein.

Security

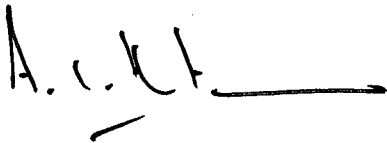
16. **Security briefings and undertakings.** Any direction referred to in paragraph 15(b)(ii) is to be reinforced by protective security briefings to family members and close friends of the deceased. Where appropriate, the President may require such persons to sign an undertaking that they will protect information that they receive during Commission hearings.

17. **Security Liaison Officer (SLO).** As the death of PTE Baker occurred while he was on operations, there is a potential for operational security issues to arise in the conduct of the Commission of Inquiry. A SLO may be provided to advise on issues of security to the Commission, counsels assisting and representing, and the Administrative Support Team. The Commission and counsel assisting should liaise closely with any SLO when conducting scoping and planning for this inquiry.

18. **Security classified information.** If the Commission has cause to question the security classification attributed by Defence to information gathered or presented to it, then it is, in the first instance, to seek advice from an SLO, if appointed. If the Commission is not satisfied with such advice, then the matter is to be referred to me for determination regarding the appropriate security classification.

Final Report

19. The Commission's report is sought by 30 Apr 08 or, if completion is delayed, the Commission is to submit to me a progress report seven days before that date and justify any request for an extension of time. If completion is further delayed the Commission is to submit monthly reports until the report is completed.



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

Appointing Authority

24 November 2007