

**Senate Foreign Affairs, Defence and Trade
References Committee**

SUBMISSION COVER SHEET

Inquiry Title: Effectiveness of Australia's Military Justice System

Submission No: P33

Date Received: 20.02.04

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Submission
For
Foreign Affairs, Defence and Trade References Committee
Into
The Effectiveness of Australia's Military Justice System

Monday February 16th 2004

RE: HMAS WESTRALIA

Dear Sir

My name is Kevin David Herridge, formerly a Chief Petty Officer Marine Technician with the Royal Australian Navy (RAN). I served from 07 October 1980 until 09 February 2001. As a former member of the RAN and crewmember of the WESTRALIA I would like to make a submission to this inquiry.

At the time of the fire onboard HMAS WESTRALIA I was a serving Petty Officer Marine Technician (POMT) in the position of the Engineering Officer Of the Watch (EOOW), and as such in control of the Engine room and its personnel. My association with the WESTRALIA spans over seven-year period in which I have been involved in three major refits including the repairs to the ship before and after the fire, I have also participated in a number of Assisted Maintenance Periods (AMP), both as ships staff and as a member of the Fleet Intermediate Maintenance Activity (FIMA)

The WESTRALIA fire was found to be caused by a systemic failure, an accident, the Chief of the Navy (CN) Vice Admiral Chalmers stated at a press conference. He also said that there would be no junior scapegoats. This was indeed true; there was to be no scapegoats and no blame placed at all.

The Board of Inquiry (BOI) was convened at HMAS STIRLING within a matter of days. HMAS STIRLING was the homeport for the WESTRALIA and as such was seen to be the logical venue although somewhat remote for the general public. I believe the reason for the quick formation of the BOI was to show that the Navy or Defence did not want to be seen as "dragging its feet" on this one, a perception that was held by many after the inquiry into the Black Hawk accident. This also begs to ask the question as to will defence (ARMY) have be investigating the more recent Black Hawk down accident of February 2004. At least this time thank god, we had no fatalities.

Was the BOI called to soon?

I think this is one of those situations where you could be damned if you do and damned if you don't. However it may have possibly been a little premature given the fact that the funerals hadn't taken place and that the families and potential witness were still suffering from grief and shock. We can all appreciate the need to get the evidence whilst it is still fresh in people's minds but some people just wouldn't have been up to it.

Three days later, the day of the memorial service I was required to give my statement, this happened shortly after the service had finished and every one was paying their respects to families and alike while I was detailed off to the administration building to formally give my statement to the lawyers. The timing of this was as you can imagine not the best. I was still suffering from shock and disbelief that this accident had actually happened and I was understandably still confused, in a state of distress trying to come to grips with the death of personnel in my charge. The interview lasted about six hours or so and was very disturbing.

Looking back now at the time of giving my statement I was probably not fit to do so. It wasn't until several days later when things started to sink in and become clearer that I started to remember more things that should have been included in my statement, this meant that I had to amend my original statement to correct the sequence of events. Later on during the proceedings I also tendered 2 supplementary statements; these were tendered prior to being called to give any verbal evidence to the BOI.

Why BOI and not a General Inquiry:

The BOI was held as an open inquiry for all to attend including the general public however, I know that through talking to friends and family members of the deceased that most people believed that you still needed clearance to enter the island to attend, this of course was true, you have to maintain some level of security on a military establishment but here lies one of the problems. No one was ever properly informed how to gain that access to the island.

As we know the BOI consisted of 5 members, 3 Naval and for 2 civilians for impartiality sake. Before we entered into the BOI scenario we may have had a more though outcome if the Police or Coroners Office had gone through the ship, interviewed all witness and put together a picture about what had happened prior to leaping straight into an inquiry, the discovery of evidence may have expedited and may have been more through.

This may have also assisted the two civilian board members and attending civilian counsels to have a better understanding as to how the Department Of Defence (Navy) and it legal system the Defence Force Discipline Act (DFDA) actually functioned. This may have then lead to more pertinent questions being asked of the right witness and possible adverting the need for the Coronial inquest at all.

Defence could have brought in its own independent non-naval General inquiry team to investigate, that way the BOI may not have been seen as an internal Naval

Inquiry (Navy investigating Navy) and looking out for its self, I can remember someone stating that this was classed as one of the worst peacetime maritime accidents in Australia's history, but yet here we are some five years after the event and all those involved are still unable to put their emotions and feelings away behind them.

I know that some witness and families members of the deceased felt intimidated by the fact that the BOI was a high profile Naval inquiry being held in a isolated Military establishment with little or no means for the general public to attended, therefore one could argue that the Navy or indeed Defence force for that matter was trying to keep it "In House".

Although as previously mentioned, the board did contain its civilian members I think that if the president of the board hadn't been a high ranking naval officer then the BOI would have been seen to be more of an impartial affair than it actually did. The location although common and close to the crime scene, If it had been held in a less than intimidating surroundings, such as a local or Fremantle Court, then I think it would have seemed to be more approachable by every one concerned and less of a one sided affair.

Immediately after the return of the Westralia to HMAS Stirling, the Western Australian Forensic Police boarded the ship and started their investigation into the fire and deaths of personnel. The Police requested that all entrances and exits leading to and including the Main Machinery Space be sealed off using Police crime scene tape; this of course was done, however if it was a crime scene why was every Tom Dick and Harry aloud to have access to the space.

At the inquest one witness, a Mr Baird-Orr made allegations in his written statement that the ships crew had close or changed the position of critical Main Engine fuel isolation vales after the fire to cover up any negligence or wrong doing on the part of the ships crew. These valves were indeed operated by the ships crew but I stress only in the presence of the police.

Mr Baird-Orr; himself, a witness for the families at the inquest stated in his sworn statement to the coroner, dated: 11:09:2001, Para 7, that about three days after the fire he accompanied a Mr Morland the ADI Mechanical Technical Specialist into the engine room and under the guise of damage assessment, and actually opened and closed Main Engine fuel isolation valves to ascertain what position they were in. These two individuals I am sure did not have any sort of authority from the Police to enter the Main Machinery Space which after all it was still a crime scene,

My point here is that what sort of crime scene is it if anybody can just enter unopposed and tamper with any possible evidence. Let me assure the committee that after only three days the gathering of evidence the police nor the BOI anywhere near complete in its investigations, it was an fact closer to two months before ships staff were aloud to re-enter and start the clean up.

This case clearly highlights that defence does not possess the expertise or the experience for engaging in this type of inquiry.

In summary I would like to submit the following be taken into consideration by the committee prior making any findings or recommendations.

- Defence should have brought in its own independent non-naval general inquiry team to investigate.
- All incidents of this magnitude and importance should be conducted by each state relevant authority's such as the Police and or the Coroners office.
- Defence force personnel should be trained in the correct procedures for handling and preserving crime scenes such as this case instead of making it up as they go.
- All Parties, Personnel Military and civilian, Companies, Organizations and Authorities involved should be able to be held responsible for their actions under the Occupational Health & Safety Act and the DFDA and as such be liable for prosecution in some form or another.
- The practise that the military has adopted of removing and or promoting its personnel from the lime light after incidents such as WESTRALIA needs to be stopped and instead accountability be placed on these personnel.
- Defence should not be allowed to investigate defence; it is too easy to question the impartiality of all investigating officers.
- Military be restricted to the type and scale of investigations and inquires that it is allowed to conduct. In

Submitted by Mr K.D. Herridge