

# Chapter 4

## The removal of three senior sailors from HMAS *Success*

4.1 The committee's terms of reference include the circumstances of the landing of the senior sailors from HMAS *Success* in Singapore on 9 May 2009. In this chapter, the committee seeks to determine the manner in which the three senior sailors were removed from the ship and whether they were accorded procedural fairness. It looks at whether the senior sailors were informed in a timely fashion of the full nature of the allegations and factual evidentiary basis for their landing; the arrangements under which they were removed; and the commanding officer's address to the ship's company about his decision to land the sailors.

### Procedural fairness

4.2 The situation that confronted the commanding officer, *Success*, was complex. Numerous allegations of unacceptable behaviour including alcohol and drug abuse, sexual misconduct, intimidation and bullying were brought to his attention. Some allegations could be classified as E&D matters, as unacceptable behaviour or as notifiable incidents. There are Defence instructions governing the management of all such behaviour.<sup>1</sup>

4.3 The Defence Instructions on managing and reporting unacceptable behaviour existing at that time stated that all complaints of such behaviour were to be dealt with sensitively, thoroughly, impartially and expeditiously. It stated further that all Defence personnel could expect, 'natural justice/procedural fairness (the right to be given a fair hearing and the opportunity to present their case, the right to have a decision made by an unbiased decision maker and the right to have that decision based on relevant facts). The Instructions also directed that commanders and managers are to 'ensure that all parties to the unacceptable behaviour complaint are informed of the options for resolutions'.<sup>2</sup>

### *Information provided to the senior sailors and evidentiary basis for their landing*

4.4 Before landing the sailors, CMDR Brown spoke to Captain Bowers, Fleet Legal Officer, about the proposal to remove them from the ship. According to Captain Bowers:

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- 1 Defence Instructions in force at the time listed the types of categories of behaviour that could be defined as unacceptable behaviour and included harassment (gender harassment, sexual harassment and work place bullying); discrimination; abuse of power; inappropriate relationships and associated behaviour; and other unacceptable behaviour likely to bring discredit upon Defence or to adversely affect discipline in the workplace. DI(G) PERS 35–3, Issue No PERS B/5/2004, para. 19.
  - 2 DI(G) PERS 35–3, B/5/2004, paragraphs 29(b) and 44(c), 11 February 2004.

I advised him that the standard practice before a member could be landed was to issue a notice and to consider the response to that notice before deciding whether or not to land the member.<sup>3</sup>

4.5 CMDR Brown, however, informed him that his preference was to land the personnel without providing notice because he was 'very concerned for safety and, given the urgency, had really made up his mind that this was the path he wished to take'.<sup>4</sup> Captain Bowers then advised him that this action could be taken under provisions in the *Guide to Administrative Decision Making*, if he felt there was an immediate threat to safety.<sup>5</sup> On 9 May, CDRE Bates informed Captain Bowers that the commanding officer of *Success* would appreciate his assistance with recording the reasons for landing the sailors.<sup>6</sup> Captain Bowers sent the following advice to CMDR Brown:

After reading your intended COA [course of action], in my opinion, you have a legal basis to RTA [return to Australia] the members without notice at a time that you see fit. I rely on ADFP 06.1.3. *Guide to Administrative decision making* paragraph 2.39(d) which outlines occasions when an absence of procedural fairness is justified in making adverse decisions on the basis of real operational imperative including safety and welfare of personnel.<sup>7</sup>

4.6 At a later date, while giving evidence before the Commission, Captain Bowers explained further the grounds for agreeing to the landing of the sailors without notice:

It is inherent in the power of command for a CO to land personnel if he has reasonable grounds to do so.

The CO held concerns for the safety of his ship's company. In my view safety of personnel was more important than the principle that personnel affected ought receive procedural fairness. I referred to ADFP 06.1.3 (edition I), paragraph 2.39 which provides for this. The landing of personnel from a ship during a deployment without affording procedural fairness on the basis of a threat to personal safety was a justifiable response, in my view having regard to the obligations of the Commanding Officer in terms of ensuring safety of personnel.

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3 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 23 June 2010, pp. 57–8.

4 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 23 June 2010, p. 58.

5 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 23 June 2010, p. 58.

6 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 23 June 2010, p. 63.

7 Captain Bowers to CMDR Brown, 9 May 2009 in Gyles Report, Part One, para. 4.266.

I had regard to the urgency of the situation. The CO was concerned for an immediate response to address an immediate threat to the safety of the ship's company.

I was also concerned that, given the very nature of some of the allegations, to give notice to the sailors and allow them the opportunity to respond to the allegations while they remained in the ship could have the effect of detrimentally interfering with the integrity of the DFDA or administrative Inquiry investigations that were about to commence. It seemed to me those investigations would be the more appropriate forum to afford procedural fairness while at the same time protecting others involved.

I had regard to the temporary nature of the landing.<sup>8</sup>

4.7 During his appearance before the Commission, Captain Bowers was questioned about paragraph 2.41 of the guide. With regard to this paragraph, he agreed that, where procedural fairness was not followed because of exceptional circumstances, a member should be afforded procedural fairness as soon as the circumstances changed.<sup>9</sup>

4.8 On 9 May 2009, the commanding officer ordered the three senior sailors to appear individually before him in his cabin. At each meeting, termed an administrative table, CMDR Brown provided the sailor with a letter. The coxswain and the engineering officer were present at the meetings. The commanding officer addressed the sailors by reading from a letter and providing them with the flight details of their return to Australia. The letter was brief and to the point. It stated that certain allegations had come to the commanding officer's attention that were of great concern to him 'in terms of the operation of HMAS *Success*, including matters possibly affecting the safety and welfare of personnel'. The letters went on to state:

These matters concerning you have been reported up the chain of command for further investigation and lead me to land you temporarily from HMAS SUCCESS immediately.

You will be returned to Australia as soon as possible and be employed at HMAS KUTTABUL. You are to report to OIC FSU SYDNEY ... [The CPO's letter had different wording that allowed for him staying in Singapore to holiday with his family].

As soon as you leave my office I direct you not to contact by any means or to return contact by any means with any member of the ship's company of

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8 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 23 June 2010, pp. 64–5.

9 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 23 June 2010, p. 85.

HMAS SUCCESS, except the MEO [the marine engineering officer], as required.<sup>10</sup>

4.9 The coxswain, who was present when the commanding officer informed the members that they were to be removed, recalled that the three members wanted to know the allegations made against them. Although, at least two of the sailors sought further information from the commanding officer, none was forthcoming and all three remained in the dark about the nature of the allegations against them. According to the coxswain, the commanding officer did not elaborate on the nature of the allegations responding with words to the effect of 'certain allegations'. The commanding officer then directed them to return to their mess.<sup>11</sup>

4.10 According to CMDR Muller, at some stage after becoming aware of the decision to land the four sailors, she asked the commanding officer whether it was intended that the sailors be given notice to show cause why they should not be landed. She recalled:

...he held up the decision-makers handbook and highlighted a part of the document relating to occasions where decision-makers may take immediate action for the health, safety and welfare of their personnel. In this instance I recall the CO considered the safety and welfare of his ship's company.<sup>12</sup>

4.11 Clearly, CMDR Brown relied on relevant provisions in the *Guide to Administrative Decision Making*, and the advice from the Fleet Legal Officer, to justify his decision to remove the three sailors from the ship without observing the usual procedural fairness requirements.

4.12 Once they left CMDR Brown's office, the sailors were escorted to their mess decks 'to ensure that they didn't interact with the ship's company on the way...and to ensure that mess members did not come and disturb them while they were packing their bags.' They were then escorted off the gangway to a taxi—'their administration in terms of pay, files and that sort of thing remained with the ship'.<sup>13</sup> The MEO, the only crew member permitted to speak to the sailors, could offer them no further information on the reasons for their removal.

4.13 One of the sailors was given the opportunity to remain in Singapore because he had planned a holiday there with his family over that period. He was directed to

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10 Letter signed by S. T. Brown provided in confidence to committee, dated 9 May 2009 and Gyles Report, Part One, para. 4.270. The draft letter in the Gyles Report, has a slightly different wording – the last paragraph begins : 'As soon as you are landed'.

11 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, pp. 105–106.

12 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 399.

13 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 107

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arrange accommodation for himself. The commanding officer approved his request to make a phone call to do so.<sup>14</sup>

4.14 It should be noted that the three sailors did not receive an account of the allegations relied on to remove them from the ship until September 2009, four months after they were landed in Singapore.<sup>15</sup>

### ***The Gyles Report***

4.15 Mr Gyles wrote extensively on the manner in which the three senior sailors were informed of the decision to remove them from the ship and their landing. He found that the landings constituted administrative action adverse to each sailor.<sup>16</sup> He noted that:

The procedure for landing, adopted in accordance with advice from the Fleet Legal Officer, meant that none of the landed sailors was to be given the opportunity of knowing and rebutting what was put against him and was not to receive any meaningful statement of reasons for the decision. The ability to manage personnel by administrative means such as posting should not be, and is not, hamstrung by formality provided that procedural fairness is afforded. Procedural fairness can be afforded in a manner appropriate to the circumstances. There should have been no difficulty in doing so in this case.<sup>17</sup>

4.16 According to Mr Gyles, the commanding officer's decision to land the sailors without providing them with the opportunity to defend their conduct could be justified as a matter of process only in certain circumstances such as urgent or operational decisions.<sup>18</sup> The guidelines make it clear that:

It is acceptable to temporarily waive the requirements for procedural fairness only where there is a genuine and real urgency or operational imperative, such as command or operational situations requiring priority to be given [to] speed, security, safety, efficiency or welfare of personnel or protection of Defence property. Administrative inconvenience or delays are not an excuse for denying a member their entitlement to procedural fairness. Commanders and other appointment holders are required to ensure that members are given procedural fairness in all cases except when there are genuine circumstances that warrant the making of exceptions.

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14 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 108.

15 Confidential submission.

16 Gyles Report, Part One, para. 4.283.

17 Gyles Report, Part One, para. 4.298.

18 Gyles Report, Part One, para. 4.284.

If exceptions are warranted, then the member should be afforded procedural fairness as soon as the circumstances change.<sup>19</sup>

4.17 Mr Gyles noted:

There is a real question about whether the decisions were urgent within the meaning of Clause 2.39 of the *Guide to Administrative Decision Making*. No inquiry or investigation had been ordered, and it is by no means clear that there was any great urgency to order one, bearing in mind the long-term nature of the alleged cultural problem. Particular incidents could be investigated in the ordinary way. There was also a real question about whether or not the decisions were based, to some extent at least, on a genuine operational imperative by reason of the safety or welfare of personnel. It is by no means clear that the holding of an inquiry of the kind envisaged is an operational imperative. It was not as if the alleged predatory behaviour caused a breakdown of discipline on the vessel during operations or an incipient mutiny or, indeed, any alleged operational impact giving rise to a recognised operational weakness or emergency.

Even if procedural fairness in the full sense was not to be afforded before the decision was made, it is difficult to see why reasons could not have been given at the time of notification of the decision or soon after. Consideration of this question throws into relief the arguably premature nature of the decision itself. If the true reason for landing was disclosed to be the risk of potential interference with the conduct of an inquiry, the short answer would have been 'There is no inquiry'.

If the real reason for landing the senior sailors was to in effect set a dramatic example to be noted by other MT sailors and other crew members to bring the unacceptable behaviour to an end and to encourage victims to come forward (whether there was an inquiry or not) then a different set of considerations would apply. That would be to assume the truth of the allegations and of the role being played by the senior sailors, and the landing would arguably amount to a form of punishment—having practical consequences more serious for the individual than some other formal punishments. Disclosure of that reason would have made the decision vulnerable to challenge. That challenge would not, however, prevent the transfer to Sydney, at least for the time being.<sup>20</sup>

4.18 Mr Gyles was not satisfied that he 'received a frank and truthful account of the process that led to the landing of the sailors in Singapore, from the decision to despatch the equity and diversity team onwards'.<sup>21</sup> He concluded, however, that:

There was no valid basis for failing to give reasons once an inquiry had been constituted. It is clear enough that the exceptions to procedural

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19 Paragraph 2.41, *Guide to Administrative Decision Making*, reproduced in Gyles Report, Part One, para. 4.281.

20 Gyles Report, Part One, paras 4.299–4.301.

21 Gyles Report, Part One, para. 4.302.

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fairness are to be kept to a minimum and that reasons should have been given as soon as circumstances permitted.<sup>22</sup>

### *Committee view*

4.19 It should be noted that despite repeated requests, the three sailors were not informed of the allegations against them until September 2009. The only information provided to them was that certain allegations had come to the commanding officer's attention that were of great concern to him 'in terms of the operation of HMAS *Success*, including matters possibly affecting the safety and welfare of personnel'. These were serious accusations.

4.20 While the commanding officer may have had grounds for removing the sailors, the committee is not convinced of the need to deny them the right to know the nature of the allegations and to defend themselves. The sailors had been directed not to talk to anyone, they had a limited amount of time to collect their belongings, they were under escort from the commanding officer's cabin and from the ship, and the gangways had been cleared. There was little opportunity for them to present any threat to the ship's company. Indeed, Mr Gyles noted in his report that there 'was no operational criticism of the performance of the MT Department' on HMAS *Success*.<sup>23</sup> Furthermore, the CPO had received recognition and commendation for his performance both as a technician and for his work on *Success*.<sup>24</sup> To deny the sailors the right to know the allegations against them until well after their return to Sydney was clearly a breach of procedural fairness.

### **Removal of the sailors and commanding officer's address to ship's company**

4.21 The removal of the three sailors was an extremely serious decision with far reaching implications for each sailor. They had no forewarning of the commanding officer's intentions, no knowledge of the allegations made against them except that that they were serious and possibly affected the safety and welfare of the ship. All three were shocked, confused and distressed by the commanding officer's decision to remove them from the ship.<sup>25</sup> According to Mr Gyles:

Each was taken from a settled posting, mid-deployment and without notice, and returned to Sydney, interrupting their normal career path. As it emerges, each landing was effectively a public act known to the rest of the crew and the family and friends of the landed sailors that would inevitably

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22 Gyles Report, Part One, para. 4.304.

23 Gyles Report, Part One, para. 2.736. Based on informal reports, CDRM Bates was of the view that *Success* was 'a cohesive ship that was performing well'. See earlier, para. 2.31

24 See earlier reference in this report, para. 3.38.

25 See for example, Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 9 July 2010, p. 60.

affect the good standing and reputation of the sailor in the absence of an innocent explanation, which was not given or available.<sup>26</sup>

4.22 Defence Instructions in force at that time stated that all Defence personnel have a responsibility to provide, where reasonable and appropriate, moral support to all personnel involved in unacceptable behaviour complaints. The instructions indicate that all Defence personnel can expect 'access to counsellors, legal assistance and medical services through Service channels for ADF members'. They also instruct commanders and managers to:

- take all reasonable action to ensure that all personnel involved in the complaint are aware of, and are provided access to, the range of support services;
- provide **advice and support** to the complainant, respondent and witnesses as required, including the appointment of a case manager; and
- ensure that the personnel affected by a complaint receive appropriate support and ensure that it is provided immediately they become aware of the complaint and throughout the inquiry and resolution processes.<sup>27</sup>

4.23 In light of these instructions, the committee now considers whether the three sailors were afforded the support required at this difficult time.

4.24 The sailors were given 30 minutes to pack their belongings and were then escorted from the ship to a taxi waiting alongside. CMDR Muller recalled that when the sailors were to leave, 'the transit route was cleared of the ship's company and the gangway was also cleared'. She remembered advising the coxswain, who was facilitating the departure of sailors from the ship, that she wanted their departure 'to be as discreet as possible out of respect for their rank'.<sup>28</sup>

4.25 While being escorted from the ship, the coxswain 'walked aft in K passageway and said words to the effect of 'Clear the area,' in a raised but clear voice'. He stated that he had made arrangements for the gangway to be cleared to provide a degree of privacy to the members.<sup>29</sup> Two of the sailors, however, were of the view that they were shown neither dignity nor respect. According to one, the coxswain shouted, 'clear the passageways and do not look at this person'.<sup>30</sup> The other told the Commission that the coxswain:

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26 Gyles Report, Part One, para. 4.283.

27 DI(G) PERS 35-3, para 57. (Issue No PERS B/5/2004), paras 29, 31(b), 44(d), 53(c), 57.

28 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 401.

29 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 7 April 2010, p. 56.

30 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 8 July 2009, p. 24.



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...was shouting at members of the ship's company words to the effect of, 'Clear the passageway,' and 'Don't look at these people.' I found this to be extremely humiliating as I felt that I was being treated as guilty before I even knew what the allegations were against me.<sup>31</sup>

4.26 The third sailor, however, told the Commission that knowing the coxswain:

...I do not believe that he was saying this in any derogatory way but in an attempt, albeit rather clumsily, to protect our dignity and privacy. I say this because he did not take us the most direct route to the gangway, but rather, down the stairs from the swamp, along the 2 deck passageway and out to the starboard waist and then back up to the gangway on 1 deck. This was not the most direct route and obvious route to take, but it avoided being marched past the manoeuvring deck where most crew members would be working and congregating.<sup>32</sup>

4.27 According to one of the POs, no one from the ship stayed with them or contacted them after the taxi dropped them at the airport. He stated further that on arrival in Sydney no representative from the Navy was there to meet them and he arranged and paid for a taxi to take him home. Furthermore, he indicated that when they reported for duty at FSU, no one there was aware of their landing. He said:

To compound our embarrassment and the indignity of being landed, no-one at FSU was able to answer our inquiries...<sup>33</sup>

4.28 CMDR Brown stated that he did not contact the landed CPO after 9 May or have the marine engineer contact him on his behalf or arrange for the divisional staff to get in touch with him. He also did not contact the POs.<sup>34</sup> While agreeing with the view that the landing of personnel, even on a temporary basis, is regarded as 'a last resort', CMDR Muller informed the Commission that she did not discuss the potential impact' that the landing might have on the CPO. In her view, it was the engineer's role (MEO) to be involved in such discussions. She stated:

I think in hindsight I would have continued to encourage the engineer to be engaged on this discussion as the sailor belonged to the engineer.<sup>35</sup>

4.29 The ship's chaplain told the Commission that she would have expected to have been part of the conversation about the handling of the landing of the sailors.

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31 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 9 July 2009, p. 61.

32 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 1 July 200, p. 47.

33 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 1 July 2010, p. 48.

34 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, pp. 158, 173.

35 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 448.

This involvement would have allowed her to offer advice regarding pastoral care for the individuals being removed and any members of the ship's company seeking assistance. According to the chaplain, she approached the commanding officer and asked if there was anything she could do or if she could make contact with people.<sup>36</sup> The commanding officer told her that she was not to talk to anyone off the ship but was 'eventually given permission to talk to the Fleet Command chaplain' about the sailors who were landed. She then passed on some information that the sailors had been landed and may require pastoral care back in Australia.<sup>37</sup>

4.30 The MEO, who was the only member of the ship's crew allowed to speak to the sailors, told them that he was unable to give them any information relating to the reasons for their landing: that he had not been informed by the CO.<sup>38</sup> He advised the POs to seek legal advice on their return to Australia.<sup>39</sup> While the CPO was staying in Singapore, the MEO also contacted him about a QA that was being conducted by CMDR Evans, who later questioned the CPO over the phone about the assessment.<sup>40</sup>

4.31 The CPO informed the Commission that on his return to Sydney he met a Lieutenant who informed him that he had been assigned his case manager for the E&D complaint but had 'no details of a complaint and could not gain any access to the complaint or the outcome of the QA'.<sup>41</sup>

### ***The Gyles Report***

4.32 Mr Gyles found that the sailors were 'peremptorily ordered to pack their belongings and were marched off the vessel in a humiliating fashion'. He stated:

Liaison about the manner in which they should be treated in Sydney was less than ideal, and they were effectively in limbo for some time. Even if a proper case for temporarily removing the sailors from the ship had been made, there was no urgency that justified the manner in which the removal was effected.<sup>42</sup>

He stated further:

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36 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 15 July 2010, p. 30.

37 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 15 July 2010, p. 30.

38 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 9 July 2010, p. 60 and 8 July 2010, p. 24.

39 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 9 July 2010, p. 60.

40 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 8 July 2010, p. 26.

41 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 8 July 2010, p. 27.

42 Gyles Report, Part One, p. xvii.

Even if the landings were justified, their precipitate timing and public nature and the failure to provide any sensible explanation are difficult to justify. The procedure was bound to cause bewilderment, humiliation and resentment in circumstances where none of the sailors had been found guilty of anything. Being despatched in a taxi and told to report to a particular place on Monday morning in Sydney, without any support, added to a natural feeling of isolation. The lack of proper and timely coordination with the authorities in Sydney exacerbated the problem: plainly, nobody knew what to do with the sailors when they reported in and for some time thereafter.<sup>43</sup>

4.33 The Commission found that the timing and manner of the landings were not appropriate and the landed sailors were not treated fairly.<sup>44</sup>

#### *Committee view*

4.34 The three sailors were not provided with the opportunity to know or to reply to the complaints against them; they were not given regular progress updates on the process dealing with it; nor advised of the outcome of the subsequent inquiry. No-one in authority discussed with the sailors their transfer to Sydney, how it was to be managed or any objections they might have had to the move. The committee concurs with Mr Gyles findings that the sailors were 'not treated fairly'.

#### *Commanding Officer's address to members of the crew*

4.35 Under the terms of reference, the committee was also to consider 'whether the commanding officer referred to the senior sailors by stating words to the effect of 'there was a rotten core on this ship and the core has now been removed'. If so, the committee was then to look at the extent that those comments may have prejudiced any subsequent inquiry.

4.36 It should be noted that Defence Instructions, current at that time, recognised that the complainant, respondent and witnesses could be harmed by gossip about a complaint. They highlighted the importance of keeping a complaint 'as confidential as possible to protect the right to privacy of the complainant, the respondent and any other person involved in the complaint'. They also instructed the commander or manager:

...to take all reasonable steps to prevent and discourage improper discussion of the complaint to prevent information about the complaint being relayed to other members of the workplace.<sup>45</sup>

4.37 During the E&D workshops, rumours and speculation about allegations being raised with the E&D team were rife on board *Success*. Mr Gyles stated:

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43 Gyles Report, Part One, para. 4.343.

44 Gyles Report, Part One, para. 5.29.

45 DI(G) PERS 35-3 (Issue No PERS B/5/2004), paras 32-33.

The E&D team allowed and encouraged crew members to speak out in an open forum about the problems onboard *Success*. The female E&D session was a robust discussion during which serious allegations and other matters were aired. That approach made it impossible for complaints to be confidential in order to protect the right to privacy of the complainant, the respondent to the complaint and any other person involved in the complaint.<sup>46</sup>

The group E&D format was bound to fuel discussion, speculation and rumours throughout the ship about what was being discussed and who had made what allegation. It opened the lines of communication and enabled the MT sailors to know what was being said and by whom.<sup>47</sup>

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The risk of intimidation of, and repercussions against, those who spoke out was obvious and should have alerted CMDR Brown and the E&D team to the fact that the proposal to conduct open E&D sessions and to allow people the opportunity to speak openly about their concerns was inappropriate in all the circumstances of the case and likely to be counter-productive.<sup>48</sup>

4.38 The following section looks at how information about events onboard HMAS *Success* was disseminated after the sailors were landed.

4.39 Shortly after the three men had been marched off the ship, the commanding officer addressed the Heads of Department (HOD), along with the Ship's Warrant Officer. He also briefed the officers in the wardroom including the ship's chaplain, then the warrant officers and chief petty officers followed by an address to the petty officers in their mess. According to CMDR Muller, the commanding officer spoke to all about his decision to remove the sailors and asked all of them to respect that decision. He provided the names of those who had been landed.<sup>49</sup> She recalled that the individual HODs addressed their respective departments immediately after the commanding officer spoke to the Petty Officers mess.<sup>50</sup>

4.40 The commanding officer recalled that he may have used the term 'rotten core'. He did not believe, however, that he had said rotten to the core with regards to a specific department or use words to the effect that 'the rotten core had been removed.'<sup>51</sup> He explained that when addressing the WOs/CPOs, he said: 'There's a

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46 Gyles Report, Part One, para. 4.188.

47 Gyles Report, Part One, para. 4.189.

48 Gyles Report, Part One, para. 4.191.

49 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 400.

50 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 400.

51 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 148.

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rotten core—there is a rotten core on this ship' in the same vein as, 'This ship is broken and it has to be fixed'.<sup>52</sup>

### ***The Gyles Report***

4.41 In Mr Gyles' view, the commanding officer did say something about the removal of a rotten core at the briefing of the officers in the wardroom and the briefing in the warrant officers and chief petty officers' mess. He noted that there were a number of versions of what the commanding officer actually said in his addresses, including:

- There was a rotten core in the ship and it has been removed;
- The landed members were rotten to the core and needed to be removed;
- The engineering department is rotten to the core and the core is being removed; and
- A rotten core had been removed.<sup>53</sup>

4.42 Mr Gyles concluded that whatever the precise words used, he was satisfied that the message conveyed to the rest of the crew was that 'the landed sailors were guilty of serious wrongdoing'.<sup>54</sup>

### ***Committee view***

4.43 It is difficult to determine whether the various addresses by the commanding officer to the ship's company prejudiced any of the subsequent inquiries. Even so, the committee believes that the commanding officer's reference to the removal of a rotten core certainly had the potential to bias future inquiries. This matter may be discussed in the final report when the committee looks at the disciplinary and administrative processes that followed the E&D report. The committee, however, is of the view that those in authority paid scant regard to the Defence Instructions existing at the time which clearly advised that great care should be taken to protect the privacy of those involved in a complaint.

## **Conclusion**

4.44 The committee found that the senior sailors were denied natural justice by not being informed about the allegations against them in a timely way; that their landing from the ship and transfer arrangements to HMAS *Kuttabul* in Sydney showed a disregard for their mental well-being, legal situation and professional standing in the Navy. They were not provided with the protections that should have been afforded to persons yet to undergo due process that would determine guilt or innocence. Clearly,

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52 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 149.

53 Gyles Report, Part One, para. 4.318.

54 Gyles Report, Part One, para. 4.318.

they did not receive appropriate support in the period immediately after their removal from the ship and their welfare had not been taken into account properly.