

The Senate

Foreign Affairs, Defence and Trade
References Committee

Part I

Incidents onboard HMAS *Success* between
March and May 2009 and subsequent events

May 2011

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Acronyms and abbreviations

ABMT	Able Seaman Marine Technician
ADF	Australian Defence Force
ADFIS	Australian Defence Force Investigative Service
CAPT	Captain
CCSG	Chief Combat Support Group (Fleet Headquarters)
CDF	Chief of the Defence Force
CDRE	Commodore
CMDR	Commander
CO	Commanding Officer
CPO	Chief Petty Officer
DFC	Deputy Fleet Commander
DFDA	Defence Force Discipline Act 1982
E&D	equity and diversity
HMAS	Her Majesty's Australian Ship
HOD	Head of Department
IGADF	Inspector General Australian Defence Force
LEUT	Lieutenant
MEO	Marine Engineering Officer
MT	marine technical
PO	Petty Officer
POMT	Petty Officer Marine Technician
QA	quick assessment
RADM	Rear Admiral
RAN	Royal Australian Navy
RBT	random breath test
SEA-FC	Senior Equity Adviser—Fleet Command
WO	Warrant Officer
XO	Executive Officer

- E&D Report Results of Equity and Diversity Health Check Workshops held in HMAS Success during the period 4 May–9 May 2009, prepared by D. J. McArthur, LEUT RAN, Senior Equity Adviser Fleet Command, 9 May 2009.
- Gyles Report *HMAS Success Commission of Inquiry, Allegations of Unacceptable Behaviour and the Management Thereof, Part One: The Asian Deployment and Immediate Aftermath*, redacted report made available to the public following authorisation by the Minister for Defence under Regulation 63(3) of the Defence (Inquiry) Regulations 1985 on 18 February 2011, President, the Hon Roger Gyles, AO QC, January 2011.

Chapter 1

Inquiry into incidents that occurred on board HMAS *Success*

Referral of inquiry and terms of reference

1.1 On 26 November 2009, the Senate referred matters relating to incidents that occurred on board HMAS *Success* and subsequent events to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 18 March 2010. The terms of reference for the inquiry are extensive and available on the committee's website. They are also at Appendix 1.

1.2 By and large, the terms of reference deal with: allegations of unacceptable behaviour by a number of sailors onboard HMAS *Success*; an equity and diversity health check of the ship; the subsequent removal of three senior sailors from the ship; and the many administrative and disciplinary investigations that followed.

Conduct of inquiry

1.3 The committee advertised its inquiry on its website, and in the *Australian*, calling for submissions to be lodged by 21 December 2009. During the first week in December, the committee also wrote directly to a range of people likely to have been involved in matters covered by the terms of reference, drawing their attention to the inquiry and inviting them to make written submissions.

1.4 The committee received 8 submissions which it has resolved to keep confidential for the time being. The Chief of the Defence Force (CDF) and the Chief of Navy also provided private briefings to the committee on 3 and 23 February 2010 and 22 February 2011. No transcripts of these meetings were recorded.

Appointment of a Commission of Inquiry

1.5 During the second briefing, the CDF announced his intention to establish a CDF Commission of Inquiry (the Commission) headed by a former judge of the Federal Court, the Honourable Roger Gyles AO QC. The CDF explained that the process would involve a formal inquiry with legal representation, witnesses and formal hearings and testimonies. Under the Instrument of Appointment, the Commission was:

to inquire into the alleged incidents of unacceptable behaviour, as defined in applicable Defence Instructions or other behaviour which could compromise the safety and effectiveness of the crew onboard HMAS *Success* that were brought to the attention of command between March and

May 2009, and issues associated with the subsequent management of such allegations and of personnel allegedly involved.¹

1.6 Annex A to the Instrument of Appointment stipulated that the essential purpose of the Commission was 'to determine the facts and circumstances that fall within the scope of the terms of reference and make recommendations based on its findings'.²

1.7 It should be noted that these terms of reference refer specifically to behaviour that was 'brought to the attention of command'. According to Mr Gyles:

The terms of reference limit the relevant behaviour to that which was brought to the attention of command 'between March and May 2009'. It is not necessary for the behaviour itself to have occurred during that period. The behaviour could have occurred before March 2009 and yet have been brought to the attention of command between March and May 2009. Furthermore, things occurring before or after the period might throw light on what occurred during the period and need to be considered as context.³

1.8 Mr Gyles indicated to the CDF that he would like to complete gathering evidence by 15 April in order to finalise the report by 30 June 2010.

Committee's interim reports

1.9 The committee tabled an interim report on 18 March 2010. At that time, it noted that before proceeding with its inquiry, it would await the release of Mr Gyles' report. The committee advised the Senate that it would need time to consider this report and intended to report on or before 2 September 2010.

1.10 On 23 April 2010, the CDF wrote to the committee to provide an update on the Commission's activities. He informed the committee that Mr Gyles had adjourned receiving oral evidence from witnesses on 12 April and would reconvene public hearings to receive more evidence on 21 June 2010. He noted:

Thus far, evidence has been received from 20 witnesses over 11 sitting days. However, during the course of the inquiry's activities Mr Gyles advises that a significant number of potential additional witnesses have been identified and there are now approximately 35 witnesses more that he has indicated will be called to give evidence.⁴

1 Appendix A, Roger Gyles AO QC, *HMAS Success Commission of Inquiry, Allegations of Unacceptable Behaviour and the Management Thereof, Part One: The Asian Deployment and Immediate Aftermath*, redacted copy.

2 Annex A, Roger Gyles AO QC, *HMAS Success Commission of Inquiry, Allegations of Unacceptable Behaviour and the Management Thereof, Part One: The Asian Deployment and Immediate Aftermath*, redacted copy.

3 Gyles Report, Part One, para. 1.111.

4 Correspondence, Chief of the Defence Force to Chair of the Committee, 23 April 2010.

1.11 According to the CDF, Mr Gyles anticipated that he would complete his report and findings by 30 September 2010. On 10 August, however, the Acting Chief of the Defence Force, Lieutenant General David Hurley, conveyed to the committee advice he had received from Mr Gyles indicating that:

...due to the significantly larger number of witnesses and documentary evidence that have been called and tendered as part of the COI proceedings, the second session of hearings has taken considerably longer than he originally anticipated.⁵

1.12 Mr Gyles expected that he would be ready to report no later than 31 December 2010.

1.13 In light of the delay in the Commission's inquiry and with the prorogation of the House of Representatives, the committee tabled a second interim report on 20 August notifying the Senate of its intention to present a final report as soon as possible in the 43rd Parliament. An election was held on 24 August 2010 and the 43rd Parliament sat for the first time on 28 September. Two days later the Senate resolved that the committee continue its inquiry with a reporting date of 12 May 2011.

Part One—HMAS *Success* Commission of Inquiry (the Gyles Report)

1.14 The Commission of Inquiry did not finalise its report until the end of December 2010. The Minister tabled a redacted copy of part one of Mr Gyles report on 22 February 2011 entitled *HMAS Success Commission of Inquiry, Allegations of Unacceptable Behaviour and the Management Thereof, Part One: The Asian Deployment and Immediate Aftermath*.⁶ Mr Gyles explained the reason for having two parts to his report:

On 26 September 2010 the Chief of the Defence Force proposed that I should take into account the report (not then available) of a working group into Defence Administrative Inquiries, to be presented to the Chiefs of Services Committee for the purposes of this Commission of Inquiry. He did not, however, want that to delay completion of the report on substantive matters arising from events onboard *Success* on the deployment of March–May 2009. It was therefore agreed that I should deliver my report in two parts. The first part was to deal with events on and connected with the deployment and their immediate aftermath; this is that report.⁷

5 Correspondence, Acting Chief of the Defence Force, Lieutenant General D. J. Hurley, to Chair of the committee, 10 August 2010.

6 *HMAS Success Commission of Inquiry, Allegations of Unacceptable Behaviour and the Management Thereof, Part One: The Asian Deployment and Immediate Aftermath*, Redacted report made available to the public following authorisation by the Minister for Defence under Regulation 63(3) of the De (Inquiry) Regulations 1985 on 18 February 2011. President, the Honourable Roger Gyles AO QC, January 2011 (Gyles Report, Part One).

7 Gyles Report, Part One, para. 1.128.

1.15 The CDF stated that he expected to receive the balance of Mr Gyles' report in the middle of the year. The second part of the report will deal with the general Defence processes that followed the decision to land the three senior sailors in Singapore in May 2009.

1.16 The release of part one of the Commission's report in February 2011 provided the committee with the first opportunity to read and consider Mr Gyles' findings. His report addresses in large part a number of the committee's terms of reference. The committee has decided that rather than wait for the second part of the report to be released, it would table a report that would look closely at the findings of part one of the Gyles Report as they relate to the committee's terms of reference.

1.17 Thus, in preparing this report, the committee has drawn heavily on the Gyles Report and is in essence a summary of its findings. The committee also used material from the transcript of the Commission's hearings; documents appended to the report, especially the equity and diversity (E&D) report; and official Defence Instructions associated with ADF inquiries and equity and diversity matters.

1.18 The committee notes that 102 individuals appeared before the Commission to give evidence with 12 people providing affidavits. The transcript of the hearings runs to 4866 pages with 376 exhibits received—many containing multiple documents. Because of the comprehensiveness of the Commission's inquiry and its direct relevance to the committee's terms of reference, Mr Gyles has done much of the work covered by the first six of the committee's terms of reference. The committee sees no real gain in duplicating his work though it reserves the right to explore any issue under its terms of reference that it believes requires further investigation.

1.19 The committee uses the evidence presented to the Commission as a resource to obtain insight into the events that occurred during *Success's* deployment and to reach its own conclusions though, as mentioned above, the committee's consideration was informed by Mr Gyles' findings. It should be noted, however, that only a redacted version of the Gyles Report with certain names and other material removed was made public. Unfortunately, in some places this edited material creates confusion for the reader. When quoting from the report the committee indicates where text has been removed.

1.20 The committee has also been careful when quoting from the transcripts of the Commission's hearings to protect the privacy of crew members. The names of the sailors who were landed and the more junior sailors caught up in the events onboard *Success* are not disclosed. The key decision makers such as the commanding officer and the executive officer of *Success* and those at Fleet Headquarters are identified.

1.21 Part one of the Gyles Report did not cover the inquiry processes and related matters that followed the E&D health check and the sailors' landing. Mr Gyles has indicated that such matters will be the subject of part two of his report. At least seven of the committee's terms of reference go to matters related directly to events that

occurred once the sailors were removed. Thus, the committee will wait until the second part of the Commission's report is released before completing its inquiry.

1.22 Having dealt with the facts and circumstances of the landing of the three sailors in this report, the committee will then be better placed to devote the bulk of its final report to the inquiry processes on which Mr Gyles is yet to report. The committee is particularly interested in identifying potential systemic weaknesses in the ADF's inquiry processes.

The Gyles Report and the committee's terms of reference

1.23 In his report, Mr Gyles made clear that he assembled and presented evidence 'in order to establish a factual narrative of events in which many individuals played a part.'⁸ In doing so, Mr Gyles effectively addressed a number of the committee's terms of reference either in full or in part, including:

- (a) the nature, scope and purpose of an 'Equity and Diversity Health Check' in the Royal Australian Navy, and under what authority such an investigation is conducted;
- (b) the equity and diversity issues at large on board HMAS *Success* (*Success*) giving rise to the 'Equity and Diversity Health Check' which was carried out on board *Success* between 21 April and 9 May 2009 including inter alia all disciplinary issues, the transfer of a Royal Navy exchange sailor, the management of equity and diversity issues by the ship's Commanding Officer and his Executive Officer both before and after the 'Equity and Diversity Health Check';
- (c) the nature and veracity of complaints and allegations made by a Petty Officer or any other person concerning equity and diversity issues on *Success*;
- (d) the reasons and factual evidentiary basis for the ship's Commanding Officer resolving to land a Chief Petty Officer and two Petty Officers (the senior sailors) at Singapore on 9 May 2009 from *Success* and the circumstances of that landing and removal from the ship including whether the Commanding Officer acted under the direction of any superior officer;
- (e) whether the senior sailors were informed of the full nature of the allegations and factual evidentiary basis for the subsequent landing in a timely fashion or at all, and whether procedural fairness was provided to those senior sailors;
- (f) the circumstances and events that led to the Commanding Officer of *Success* addressing members of the crew in relation to the landing of the senior sailors, whether the Commanding Officer referred to the senior

8 Gyles Report, Part One, para. 5.2.

sailors by stating words to the effect of ‘there was a rotten core on this ship and the core has now been removed’ and if so, the extent that those comments may have prejudiced any subsequent inquiry.

1.24 The committee has rearranged its consideration of the terms of reference so that it looks first at the equity and diversity issues that prompted the commanding officer to seek outside assistance. It then considers the nature and scope of the E&D health check. After that, and relying on Mr Gyles' findings, the committee then considers the nature and veracity of allegations, the basis for the commanding officer resolving to land the three senior sailors, the extent to which these sailors were informed of the reasons for their removal and the circumstances of their landing.

Unanticipated revelations

1.25 It should be noted that the Gyles Report revealed matters that were not anticipated in the committee's terms of reference but which have been of longstanding concern to the committee. The most disturbing revelation was that a culture of silence existed on board *Success* which meant that members of the ship's crew were reluctant to report wrongdoing or unacceptable behaviour. In particular, that the most vulnerable members of the crew, young female sailors, were subjected to verbal abuse but were reluctant to report such conduct.

1.26 The committee was alarmed further by the disclosure during the Commission's work that an inquiry in 2004 on the same ship had raised similar concerns about sexual harassment of female sailors. Indeed, the issues raised regarding HMAS *Success* in 2004 and more recently have all the hallmarks of those considered by the committee as far back as 1994 on board HMAS *Swan*. Because of the committee's work with the ADF in trying to promote a culture of responsible reporting of wrong doing, especially of unacceptable behaviour, and of stamping out bullying and harassment in the ADF, it is of the view that it must again draw attention to this broader cultural issue in the ADF.

Scope of report

1.27 The committee's terms of reference extend beyond the events surrounding the landing of the three senior sailors from HMAS *Success* in Singapore on 9 May 2009. In the following chapters, however, the committee confines its consideration to the events leading to the decision to land the three sailors in Singapore and the manner in which they were removed from the ship. Although a fourth sailor was also removed from *Success* at the same time, the committee's focus does not extend to this sailor. During the ship's deployment, a Royal Navy Exchange sailor was landed in Hong Kong and although mentioned in the committee's terms of reference, the committee deals only briefly with this matter. As mentioned earlier, the committee will consider events following the removal of the sailors in Singapore, including the raft of inquiries following the landing of these men, in its final report. In the following chapters, the committee's attention is focused on two main objectives:

- to establish and summarise the facts and circumstances leading to the landing of three senior sailors from HMAS *Success* in Singapore in May 2009; and
- to explore the nature of the culture described by Mr Gyles in light of the committee's continuing concern about the reluctance to report wrongdoing in the ADF and to place these specific concerns in a broader context.

Chapter 2

Allegations of unacceptable behaviour

2.1 During deployment between March and May 2009, the commanding officer of *Success* became aware of a number of incidents of unacceptable behaviour that eventually caused him to contact Fleet Headquarters for support and guidance. The response from fleet command set in motion a series of events that eventually culminated in the landing of three senior sailors in Singapore on 9 May 2009. Rather than resolve problems, this action attracted widespread and sensational publicity, damaged the good standing and character of certain crew members; cast doubt on the reputation of the ship's company and more broadly damaged Navy's image. It also triggered a series of administrative and disciplinary inquiries, which themselves have called into question the integrity of both administrative and disciplinary processes. Indeed, the Gyles Report indicates that events may not have run their course with the possibility of even further inquiries.

2.2 In this chapter, the committee looks at the conduct of crew members onboard *Success* that led their commanding officer to seek assistance from Fleet command, and the nature and appropriateness of the equity and diversity team sent as a response to his concerns. It starts its consideration by providing relevant background to HMAS *Success* and its deployment in the first half of 2009.

Background

2.3 HMAS *Success* is an Auxiliary Oiler Replenishment vessel of 18,000 tonne fully loaded and 157.2 metres in length. The ship supplies naval combat units with fuel, ammunition, food and stores while they are underway at sea. She is capable of day and night replenishment to ships alongside and, by her embarked helicopter, to other ships in company. *Success* has a crew of 220 who are required to operate and maintain the ship's propulsion, replenishment, auxiliary machinery and support systems. According to Navy:

Providing underway replenishment support to the fleet is a challenging and continuing task requiring technical proficiency and high seamanship standards.¹

2.4 In March 2009, *Success* left Sydney for a deployment to Southeast Asia and China. Of the total crew complement of about 220, 30 were females and 190 males. The majority of female sailors were young women ranging in age from 18 years to early 20s.² Under the command of CMDR Simon Brown, the ship left Sydney on 27 March and anchored overnight in Darwin on 3 April as part of a working port visit to

1 ADF website, http://www.navy.gov.au/HMAS_Success

2 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 119.

replenish stores. The following day, *Success* sailed for Manila arriving in Manila Harbour on 9 April where she remained until 14 April. On that day, she left for Qingdao arriving there on 19 April to participate in the People's Liberation Army (Navy) Fleet Review in celebration of the 60th anniversary of the fleet's formation. During this port visit, members of the crew had several opportunities to join in cultural and professional activities. *Success* left Qingdao on the evening of 26 April 2009, reaching Hong Kong on 30 April for crew rest and ship replenishment. *Success* departed Hong Kong on 4 May arriving in Singapore on the 9th.³

2.5 The following section looks at the problems that became apparent to the commanding officer during the early part of the ship's deployment.

The equity and diversity issues at large on board HMAS *Success* giving rise to the E&D health check

2.6 CMDR Brown first became aware of a problem onboard HMAS *Success*, following its overnight stay in Darwin on 3 April. He told the Commission that soon after leaving Darwin an unusually high number of crew members had failed a random alcohol breath test (RBT), including about half a dozen junior female sailors. He stated:

At the time I didn't think anything of it, more than, 'This is unusual...We put it down to the fact that it was the first port away, it was one night in, some people had probably got a bit carried away and drank too much'.⁴

2.7 CMDR Donna Muller, who at the time was a Lieutenant Commander and executive officer (XO) of *Success*, remembered discussing with the commanding officer the unusually high whole ship result. She shared his view that the large number of failed breath tests could be attributed to 'the fact that it was the ship's first port out of Sydney as part of the deployment'. She also noted that a number of sailors were experiencing sea life for the first time. Both the commanding officer and the XO did not think that the incident 'necessarily represented a wider problem or cultural issue for the ship'.⁵

2.8 After sailing from Manila, which was the next port of call, there was a similar occurrence again involving 'an elevated number of junior female sailors' who failed a random breath test.⁶ Once more, the commanding officer raised his concerns with the XO and before arriving at the next port, Qingdao, addressed the ship's company over

3 Gyles Report, Part One, Executive summary, p. vii.

4 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 54.

5 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 378.

6 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 53. The commanding officer explained that they did not actually draw any conclusions from it, 'except, again, the first overseas port, people probably got a bit carried away'.

the broadcast system. He spoke about the appropriate use of alcohol and making sure that crew members looked after each other. He noted that Qingdao was a port where they were on show, where they were representing Australia and he 'expected everybody on board to be good ambassadors for Australia during that visit'.⁷

2.9 While in Qingdao, however, a number of incidents occurred including damage to a washbasin in a bar onshore. CMDR Brown explained:

...the bar owner claimed that it was Australian sailors that had done that. We were unable to ascertain whether that was exactly so, but we did provide assistance to the bar owner to repair that basin. Then there was ...another claim of damage to another bar allegedly caused by sailors.⁸

2.10 The XO also became aware of a number of alleged incidents. One involved a female junior sailor having consensual sexual intercourse with a male senior sailor onboard the ship. CMDR Muller spoke to the commanding officer about this matter, who asked the ship's coxswain to investigate the allegation.⁹ The coxswain conducted a disciplinary investigation into the incident. The commanding officer indicated that the statements taken by the coxswain were inconclusive and it 'was difficult to say whether the event actually happened'.¹⁰ He told the Commission that the junior sailor was saying that it had occurred but the senior sailor was denying that it had taken place.¹¹ Charges were preferred against the female sailor for a disciplinary offence to which she pleaded guilty. CMDR Brown consulted with fleet legal office at Garden Island about the male sailor, who was on exchange from another Navy, and based on that conversation decided to land the male sailor in Hong Kong.¹² According to the coxswain, the commanding officer did not have jurisdiction to take disciplinary action against this sailor.¹³

7 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 54.

8 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 55.

9 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 56.

10 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 57.

11 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 57. See also Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 4 April 2010, p. 92.

12 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 57 and Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 7 April 2010, p. 52.

13 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 4 April 2010, p. 52. Captain Bowers, Fleet Legal Officer, noted that because the sailor was on short-term attachment to the Royal Australian Navy, he was not subject to the Defence Force Discipline Act. Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 23 June 2010, p. 54.

2.11 CMDR Muller stated that during her conversation with the commanding officer about this incident, she also referred to a rumour that a bounty had been placed on the junior female sailor.¹⁴

2.12 Another incident involved the discovery of what appeared to be used syringes, alcohol swaps, a container with a label suggesting 'the contents had been steroid tablets, and empty plastic sleeves with a powder residue'. This matter was also brought to the commanding officer's attention who directed the coxswain 'to conduct further investigations'.¹⁵ The XO also learned of a report that two sailors had engaged in sexual acts in a public bar in Qingdao and that two Petty Officers Marine Technical (POMTs) had allegedly witnessed the incident and were encouraging other sailors to watch.¹⁶ In this case, a sailor who became aware of this story approached the Senior Warrant Officer first before reporting the matter to the XO.¹⁷ He was representing his concerns as well as those of another three POs. CMDR Muller was also informed that a POMT 'had been shielding sailors from the MT department who may return a positive result for a RBT by hiding them down a hole'.¹⁸

2.13 On hearing of these allegations, the XO conferred with a female senior sailor about whether she had also heard the rumour of sailors engaging in a sex act in a nightclub. The senior sailor had just recently become aware of this story from a different source. Concerned about such developments, they met with another senior female sailor, who was aware of the report, to discuss the behaviour of some male sailors.¹⁹ During this meeting, one of the senior sailors spoke of 'bullying and intimidation of some females by a couple of MT sailors'²⁰. CMDR Muller informed the Commission that:

I recall thinking that we needed to be proactive as I was concerned for the safety of personnel onboard. Specifically, I was concerned at the number of known incidences going on at the time, the unknown degree to which personnel were involved, the possibility of steroid use, and...suggestion

14 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 389.

15 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 389.

16 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 390.

17 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 390 and Gyles Report, Part One, p. x. In evidence, LCDR Muller stated that she understood that he did not raise these concerns with the SWO.

18 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 390.

19 This senior sailor was one of the four POs who had previously got together to discuss their concerns about unacceptable behaviour mentioned in paragraph 2.12 above.

20 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, pp. 391-2.

that there was bullying and intimidation taking place, the degree to which was unknown to me.²¹

2.14 Indeed, matters had reached such a state that together these three members of the ship's company—the XO, who was the most senior female officer and the two senior female sailors—approached the commanding officer to discuss 'a serious issue concerning the general management of the ship'.

Meeting, 26 April 2009

2.15 The group met with the commanding officer on 26 April. In particular, according to CMDR Brown, they raised the matter of the treatment of junior female sailors and the culture onboard with regard to the treatment of females generally. The allegations included 'bullying, the existence of bounties for having sex with junior sailors, encouragement of female sailors to get drunk and, therefore, be more susceptible to sexual approaches and predatory behaviour towards female sailors—specifically being undertaken by some members of the engineering department.'²² According to the commanding officer, this information 'was not firsthand, but had been reported or told to these members by junior female sailors'.²³ The alleged perpetrators were not named as the information had been provided in confidence, but the commanding officer was told that this behaviour had been going on for some time and that it was getting worse.

2.16 The commanding officer stated that the information took him by surprise but he believed that those voicing their concerns were genuine in their convictions.²⁴

Fleet Headquarters

2.17 Confronted with a sequence of reports of unacceptable or even criminal behaviour, the commanding officer was of the view that he needed outside assistance. He told the Commission that he was determined that an investigation needed to happen into this culture or alleged culture that was onboard.²⁵ He explained further that to his mind, it was a cultural issue:

21 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 392. It should be noted that Mr Gyles was satisfied that the senior sailor who took the initiative to approach the XO to convey her concerns 'was genuinely worried by the various complaints she had received from female junior sailors and, in his view had 'good reason to be worried'. Gyles Report, Part One, para. 2.453.

22 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, pp. 4 and 62–63.

23 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 4.

24 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, pp. 5, 63, 72–73.

25 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, pp. 72–73.

...not just an unacceptable behaviour issue, it was broader than that. There was potential sexual-related activities, potential criminal activities.²⁶

2.18 For that reason, he raised his concerns in a telephone conversation with fleet headquarters, asking the deputy fleet commander (DFC), CDRE Simon Cullen, for guidance and assistance. CMDR Brown indicated that the matters needed to be investigated further to get down to whether there was a culture onboard the ship and whether there was any veracity behind the allegations.²⁷ In his words:

...if this culture existed onboard, then it was very serious and it needed to be investigated. I indicated that I did not feel that the ship was in a position to investigate it further.²⁸

2.19 CMDR Muller was similarly of the view that the matter should be taken off the ship. She told the Commission that in her considered opinion taking such action would enable 'a fresh and independent assessment, thus giving opportunity to either validate or dispute the concerns, but either way potentially getting a baseline in which to work'.²⁹ In a further conversation with CMDR Brown, she elaborated on the reasons for seeking outside assistance. Among her main concerns were that, if matters were to be handled onboard:

- people would not come forward and formally raise complaints to anyone internal to the ship;
- if people did come forward the ship's equity adviser network could not cope with the potential number of complaints; and
- the coxswain could not deal with the potential number of Defence Force Discipline Act (DFDA) incidents though she considered that the majority of the potential incidents would likely be raised as notifiable incidents and taken by Australian Defence Force Investigative Service (ADFIS) for action.³⁰

2.20 In response to CMDR Brown's conversation, the DFC passed the matter on to the Chief Combat Support Group at Fleet Headquarters (CCSG), CDRE Daryl Bates, to 'come up with a solution on how to deal with this concern'. CDRE Bates told the Commission that at the time commanding officers of ships were to report in a

26 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 70.

27 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 70.

28 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 70.

29 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 393.

30 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 393. LCDR Muller understood that the commanding officer would contact fleet command to outline the concerns; to explain that the issue was beyond the capacity of the ship to manage; and to seek external assistance

command and control sense directly to the Fleet Commander, who was RADM Nigel Coates. He explained that in practice, however, commanding officers generally dealt with one of the three commodores at Fleet Headquarters. He explained that:

Any equity and diversity issues that concerned a CO or one of his/her heads of department were generally referred to and dealt with by DFC. All other equity and diversity issues affecting fleet were generally referred to and dealt with by CCSG.³¹

2.21 At CDRE Cullen's request, CMDR Brown detailed his concerns in an email, dated 30 April.³² In this document, CMDR Brown referred to the recent telephone conversations in which he spoke of a significant cultural issue onboard *Success*. He then outlined the equity and diversity issues of concern. In part, the email stated that the commanding officer believed that there was currently a number of 'bounties' placed on the very junior female members of his ship's company, including the one involved in a consensual sex act that took place on board *Success* while in Qingdao. In his email, CMDR Brown then went on to say:

There have been instances of junior female sailors being abused, intimidated and threatened ashore. The sailors in question are currently not willing to come forward due to the potential for incrimination and potential recrimination. This has been brought to my attention through a number of the more senior females onboard. I believe much of the action/issues that are occurring are condoned by some [redacted] onboard. A recent incident which came to light after sailing from Qingdao involved a junior female sailor and [redacted] in a night club ashore where a sexual act was committed on the pool table in the bar in the full view of POs and other members of the ships company. My executive officer has been approached by junior sailors who have stated that there is a predatory element [redacted] onboard that has been onboard for a number of years, it has only been brought to commands attention because there is an understanding that something will now be done about it.

Sir, it is my firm belief that there is a predatory element onboard that focuses on junior inexperienced females which is led by the [redacted] department onboard. I am convinced that this has been going on for some time and is condoned by members of [redacted]. I am also convinced that there are a [redacted] number of junior sailors onboard who are confident that their actions are condoned thinking that they have the 'consent' of the senior sailors onboard, the junior females that are implicated feel that they have very little recourse and feel that if they speak up there will be consequences. The members who have brought this to my attention feel they are very much at risk, but feel that enough is enough.³³

31 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 4.

32 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 7 July 2010, p. 5.

33 The Gyles Report, Part 1, paras 1.117 and 2.237.

2.22 This email, dated 30 April 2009, was the first written document recording the allegations.³⁴ CDRE Cullen forwarded the email to CDRE Bates and RADM Coates. According to CDRE Bates apart from an early incident when a Petty Officer had been landed from HMAS *Success*, his first memory of any E&D issues relating to this ship was when he received an email from DFC to which was attached CMDR Brown's email.

2.23 The committee notes that Defence Instructions in force at that time stated that a matter may be a Notifiable Incident if it is regarded as sensitive, serious or urgent. As a guide to what may constitute an identifiable incident, the Instructions cited the following factors to consider—the likelihood that the incident will bring the Australian Defence Organisation into disrepute, attract media or Parliamentary attention; or may adversely affect the efficiency of Defence. In cases, where the commanding officer determined that a Notifiable Incident had occurred he or she was to report, or make arrangements for reporting the incident to the relevant Service Police organisation. In addition, the Instructions stated that the commanding officer may also report incidents 'in parallel to their chain of command'.³⁵ Confronted with allegations of a number of sensitive and serious incidents, and given the unusual circumstances, CMDR Brown took the matters to his chain of command.

The Gyles Report

2.24 In his report, Mr Gyles took the view that CMDR Brown's decision to refer matters to Fleet Headquarters could not 'be properly criticised'. The commanding officer had before him a series of accounts involving—the high incidence of failure to pass breath tests in Darwin, a public sex act in Qingdao and allegations of bullying and intimidation. Mr Gyles observed that this was the first time that CMDR Brown had had to seek advice of this kind and was reluctant to take this step because 'the ethos was that a Commander should be able to take care of matters onboard'. According to Mr Gyles, CMDR Brown was 'prudent' to take such action. Mr Gyles also noted that the executive officer supported the commanding officer's view. He observed that CMDR Brown's decision 'was not questioned or criticised at Fleet Headquarters, and the way in which it was dealt with there illustrates the complexity of the problem'.³⁶

Committee view

2.25 CMDR Brown's email of 30 April 2009 to Fleet Headquarters clearly identified the matters that caused him to seek assistance. In turn, Fleet Headquarters relied on information contained in this key document, and also conveyed in telephone conversations by CMDR Brown, as the basis for deciding a course of action. Without

34 Commission of inquiry into alleged incidents onboard HMAS *SUCCESS*, transcript, 12 March 2010, p. 73.

35 Defence Instructions (General), ADMIN 45-2, (Issue No ADMIN B/10/2001) paras 10 and 17.

36 Gyles Report, Part One, para. 4.2.

doubt, the commanding officer of *Success* placed a great deal of weight on reports that a number of 'bounties' had been placed on very junior female members of his ship's company and there had been instances of junior female sailors being abused, intimidated and threatened ashore. He believed that there was a predatory element onboard that focused on junior inexperienced females which was led by a particular department onboard. In correspondence to Fleet Command, he cited one specific incident of unacceptable behaviour which involved a junior female sailor and a male sailor engaging in a public sexual act in a bar in the full view of POs and other members of the ship's company.

2.26 According to CMDR Brown, the members who had brought these matters to his attention felt that they were very much at risk. Further that, at the time, the sailors in question were not willing to come forward due to the potential for incrimination and recrimination. Indeed, he wrote that the junior females that are involved feel that they have very little recourse and if they speak up there will be consequences.

2.27 He was also concerned that a number of junior sailors onboard were confident that a particular department condoned their inappropriate actions and believed that they had the 'consent' of the senior sailors.

2.28 The committee has drawn attention to Defence Instructions that advise that a matter deemed sensitive, serious or urgent may be a Notifiable Incident which requires the commanding officer to report the matter to the relevant Service Police Organisation. He or she may also report such incidents 'in parallel to their chain of command'. In this regard, the committee is of the view that some of the reports of unacceptable behaviour before the commanding officer of *Success* could definitely be categorised as identifiable incidents and thereby warranted prompt and urgent attention. CMDR Brown was correct in notifying, and requesting assistance from, Fleet Command.

2.29 The committee's findings, however, do not answer the question as to why the situation in *Success* was allowed to develop to such a state before outside intervention was needed. Clearly, the allegations of abuse of junior females and of bullying and intimidation had not been afforded proper attention. The committee notes, however, the responsible actions of the XO and the few senior sailors who did report what they believed to be unacceptable behaviour.

Decision to send an E&D team

2.30 As noted above, the commanding officer made absolutely clear to Fleet Headquarters that he was seeking outside assistance and asked CDRE Cullen if he would investigate the matter further.³⁷ Subsequent correspondence indicates that Fleet

37 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, pp. 72–73.

Command took the matters raised by the commanding officer of *Success* seriously. CDRE Bates informed the Commission:

Shortly after receiving that email I spoke with CDRE Cullen...I cannot remember the details of the conversation other than a concern and the issues raised by the CO [commanding officer] in his email to CDRE Cullen and possible options Fleet could take. I believe it was in this meeting that DFC passed the matter to me for further action.³⁸

Within the hour I telephoned SUCCESS and spoke to CMDR Brown. We talked for about 20 to 30 minutes.³⁹

2.31 Based on the widespread nature of the allegations and the informal reports at Fleet Headquarters which indicated that *Success* was 'a cohesive ship that was performing well', CDRE Bates maintained that he was 'somewhat sceptical of the concerns expressed by the CO'.⁴⁰ He explained:

At some later stage I can recall discussing this concern with CDRE Cullen and RADM Coates. It was agreed that while the matter clearly needed urgent and serious attention we should be cautious not to over react.⁴¹

2.32 At various times, CDRE Bates discussed these matters with a range of people at Fleet Headquarters including RADM Coates; Captain Partridge, the Chief Staff Officer–Engineering; Captain Grunsell, Chief Staff Officer–Support; CMDR Bowers, the Fleet Legal Officer; and Lieutenant McArthur, the senior equity adviser.⁴²

2.33 CDRE Bates indicated that he wanted to establish whether there was substance to the allegations and suggested to CMDR Brown that 'maybe the commanding officer of HMAS *Pirie* could come onboard and look into it'. This ship was in the area at the time. In response to this suggestion, CMDR Brown noted that the commanding officer of *Pirie* had worked for him and that 'he may feel a bit uncomfortable' conducting this type of activity on 'someone in his direct chain of command'. CMDR Brown also indicated that he did not think the commanding officer of *Pirie* was properly resourced, noting that 'he had a very small patrol boat 3000

38 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 5.

39 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 5.

40 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 5.

41 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 6.

42 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 6.

miles from home'.⁴³ CMDR Muller shared the view that it was not appropriate for an officer under the tactical command of CMDR Brown to investigate the ship.⁴⁴

2.34 Even so, on 28 April, CMDR Brown put the proposal to the commanding officer of *Pirie* but, as expected, he was reluctant to undertake the task.⁴⁵ CDRE Bates had also contemplated sending Captain Partridge from Fleet Headquarters to *Success*. Indeed, Captain Peter Bowers, Fleet Legal Officer, briefed Captain Partridge in relation to the conduct of a quick assessment (QA) into allegations of unacceptable behaviour in *Success*.⁴⁶ According to CDRE Bates:

My memory is that I considered sending CAPT Partridge to the ship. My thinking behind this option was that since the CO's concerns appeared to centre on the culture in the Engineering Department, CAPT Partridge being the Senior Fleet Engineering Officer would be well qualified to discern whether there was a problem.

To that end I advised LEUT McArthur that CAPT Partridge would be joining *SUCCESS* in Hong Kong and directed her to bring him up to speed on E&D in the ADF. This option was subsequently discussed with RADM Coates and then dismissed because firstly the Fleet Commander was of the view, and I agreed, that sending an officer of captain in rank was unnecessarily heavy handed.

Secondly, it was expected that an officer of the rank of captain would have trouble determining the required information, particularly given advice of the CO that he thought that his people would be very reticent to come forward.⁴⁷

2.35 CDRE Bates then indicated that he would arrange for an equity and diversity team, made up of two personnel, to come onboard to conduct an equity and diversity workshop.

No quick assessment

2.36 Mr Gyles was uncertain as to why the commanding officer could not have conducted a Quick Assessment (QA) of the allegations brought to his attention by the XO. In his view, the commanding officer's email to Fleet Headquarters came very

43 Commission of inquiry into alleged incidents onboard HMAS *SUCCESS*, transcript, 12 March 2010, p. 70.

44 Commission of inquiry into alleged incidents onboard HMAS *SUCCESS*, transcript, 29 March 2010, p. 395.

45 Commission of inquiry into alleged incidents onboard HMAS *SUCCESS*, transcript, 12 March 2010, p. 70.

46 Commission of inquiry into alleged incidents onboard HMAS *SUCCESS*, transcript, 23 June 2010, p. 54.

47 Commission of inquiry into alleged incidents onboard HMAS *SUCCESS*, transcript, 5 July 2010, p. 7.

close to one.⁴⁸ A QA is used to identify and assess promptly (generally within 24 hours) the known facts of an incident so that a decision can be taken about the most appropriate course of action to adopt. Defence Instructions make clear that:

Following an occurrence, which can be any significant incident, allegation or problem, which comes to the attention of the commander/supervisor, the commander/supervisor, using common sense and sound judgement, must decide whether a QA is required. Should the commander/supervisor be of the opinion that subsequent investigation or inquiry of the occurrence may be required, a QA must be conducted.⁴⁹

2.37 In giving evidence, CMDR Brown agreed that Defence Instructions state that upon receipt of a complaint or detection of an incident and after establishing the intentions of the complaint, the commander or manager is to instigate a process for the management of the complaint—a QA. As noted earlier, the commanding officer had asked his coxswain to investigate a number of incidents including the discovery of material associated with drug taking, the alleged consensual sex act onboard *Success*, and the reported public sex act. With the latter incident, the coxswain had confirmed that the stories were 'out there': that two sailors had been involved in sex in a public bar in Qingdao.⁵⁰

2.38 CDRE Cullen was of view that based on the information that the commanding officer had provided to him, it was not possible to determine whether the issues raised were disciplinary or E&D matters or both. He was of the view that the normal course would be to conduct a quick assessment, which would clarify the position and determine more fully the nature of the complaint and whether an investigation should be undertaken.⁵¹

2.39 In his second conversation with the commanding officer, CDRE Cullen recalled a general discussion regarding the appointment of an officer to conduct a quick assessment. According to CDRE Cullen, CMDR Brown told him that he did not have 'a good rapport with his ship's marine engineering officer and that, as a result, he was not prepared to use him as a person to conduct a quick assessment'.⁵² CDRE Cullen noted that CMDR Brown was keen to have someone external to the ship undertake that assessment: that he felt that other senior people on the ship 'were either unsuitable or compromised and he couldn't use them'.⁵³ Besides, CMDR Brown

48 Gyles Report, Part One, para. 4.1.

49 DI(G) ADMIN 67-2, para. 8.

50 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 58.

51 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 7 July 2010, p. 8.

52 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 7 July 2010, p. 5.

53 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 7 July 2010, p. 17.

argued that in his mind 'this was not an E&D or unacceptable complaint, it was an issue to do with culture in my ship which I asked to be investigated'.⁵⁴

2.40 CDRE Bates, who had carriage of the matter, noted that a QA was considered but dismissed as an option. He explained that he had decided against a QA because:

- (a) The CO had indicated in his email of 30 April 2009 and further in our phone conversation on 1 May 2009 that he thought many of the ship's company, and in particular, the female junior sailors, would be very reticent to come forward and provide any evidence of inappropriate behaviour or an inappropriate culture.
- (b) While the matters of concern to CO SUCCESS were significant, they were at that stage rumour-based with no evidence to support them. Not wishing to over-react to what amounted to rumour, I did consider there existed at that point in time a sufficient basis upon which to instigate a QA or other administrative inquiry. It has been my experience that a QA is more appropriately utilised in situations where a discrete incident has occurred and a quick answer is required to determine whether any further investigation into that incident is warranted. In this instance we had no specific or identifiable incident in which a QA could be instigated.
- (c) While unconfirmed, most of the concerns held by CO SUCCESS related to matters which, if accurate, would likely need to be dealt with under the Defence Force Discipline Act (DFDA). It is my understanding that a QA was not an appropriate means for investigation of a DFDA.
- (d) An ADFIS [Australian Defence Force Investigative Service] inquiry was considered inappropriate at the stage since ADFIS will not investigate matters absent a notifiable incident report, and in this case the concerns were essentially rumour-based and insufficient to base such a report.⁵⁵

2.41 CDRE Bates concluded:

...that a less formal means of assisting CO SUCCESS to determine the actual situation onboard was preferable, particularly if such a mechanism

54 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 168.

55 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, pp. 7–8. CDRE Bates also informed the Commission that it became clear to him 'that the commanding officer had very little in the way of facts to base his assumptions and that his conclusions were primarily based upon the opinion proffered to him in one meeting with a small number of his ship's company'. Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 5.

could additionally provide some level of E and D training to reinforce Navy standards and expectations.⁵⁶

2.42 Thus, according to CDRE Bates, he considered that the 'most reasonable, balanced and appropriate response' was to send the senior equity adviser of Fleet Command, Lieutenant McArthur, and the Assistant Equity and Diversity Coordinator of Fleet Command, WO Melville Harker, to the ship. He expected that they would be 'less obtrusive to the ship's company than the other options and thus more likely to flesh out whether there was a cultural issue of unacceptable behaviour.'⁵⁷ They were not to conduct a QA.

2.43 CMDR Brown stated that he raised concerns with the CCGS about sending the E&D team but, while he wanted a full investigation, conceded that the E&D team would provide further information for the way ahead.⁵⁸ CMDR Muller also maintained that she recalled thinking and stating that sending an E&D team to join the ship was not adequate.⁵⁹ CDRE Bates did not recall the commanding officer requesting him to instigate a formal investigation.⁶⁰

The Gyles Report

2.44 Overall, Mr Gyles acknowledged that the Fleet Commander and CDRE Bates were confronted with a very unusual situation. He found:

In spite of CDRE Bates's evidence, the allegations could not be dismissed as simply rumour, and they pointed to a longstanding serious cultural problem between MT male sailors and female sailors. I can understand the point of view that a senior engineering officer might not be best placed to deal with the problem, particularly when engineering sailors were said to be at the core of it. Once that was appreciated, the choice of the senior equity and diversity adviser, particularly a mature and experienced woman sailor, makes sense.⁶¹

2.45 Although puzzled by the decision not to ask the E&D team to conduct a quick assessment, Mr Gyles noted CDRE Bates's view that the quick assessment procedure was 'appropriate for identified incidents but not for the generalised allegations

56 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 8.

57 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, pp. 7–8.

58 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 168.

59 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 395.

60 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 5.

61 Gyles Report, Part One, para. 4.33.

suggestive of a culture extending over some years'.⁶² Mr Gyles noted further that whilst "occurrence" for the purpose of the Instructions, is probably not so limited, the procedure is best adapted for identified incidents'.⁶³

Committee view

2.46 Without doubt, the allegations now before the commanding officer needed to be investigated in order to establish their veracity so that further action could be taken if required. As noted previously, the committee is of the view that the commanding officer of *Success* was correct in seeking assistance from Fleet Command. Nonetheless, questions remain as to why Defence Instructions relating to Notifiable Incidents, reporting unacceptable behaviour and quick assessments were not observed.

2.47 The committee accepts Mr Gyles observation that the commanding officer's email to Fleet Headquarters came very close to a QA.⁶⁴ It, however, was not categorised as such and thus from the very beginning the process began to deviate from Defence's established legal framework. The committee is of the view that a QA at the beginning of this process would have provided the necessary legal foundation to then proceed with further inquiries where clear and well understood precedents and written guidelines and instructions would have governed their conduct. It would have provided a valuable record of the factors considered by the commanding officer in support of his wish to have an investigation. The committee has found in previous inquiries that it is critical to get this early stage of an investigation right—that any failing or shortcoming at the beginning may thereafter contaminate the whole process.

2.48 The committee now considers the appropriateness of the decision to dispatch an E&D team to HMAS *Success*.

The role and function of the E&D team

2.49 Much confusion surrounded the role and function of the E&D team. CDRE Bates telephoned the commanding officer of *Success* to inform him of the intention to send an E&D team. According to CDRE Bates, he made clear to CMDR Brown that the team was being provided to:

- assist him informally in exploring whether he did in fact have any inappropriate behaviour or culture occurring in the ship; and
- provide E&D presentations in order to assist him in rectifying a poor E&D culture should that exist.⁶⁵

62 Gyles Report, Part One, para. 4.35.

63 Gyles Report, Part One, para. 4.35.

64 Gyles Report, Part One, para. 4.1.

65 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 8.

2.50 In his statement before the Commission, CDRE Bates indicated that it was made clear to the commanding officer that he should provide 'clear direction' on how he wanted the team to conduct its business on board.⁶⁶ Indeed, CDRE Bates sent an email confirming this intended course of action. This email of 1 May 2009 outlined the purpose of having the E&D team join the ship as follows:

- In order to assist you in determining whether there is in fact 'a significant cultural issue' in SUCCESS. The two [members of the E&D team] will be led further by your instructions on arrival but I have advised them that they are not onboard to conduct a formal QA [quick assessment] or inquiry, but to provide you with a sense of the culture onboard and, if necessary, recommend remedial action. I anticipate that SEA-FC [Senior Equity Adviser—Fleet Command, being LEUT McArthur] will leave you with a written report and I have asked that I receive an information copy of such. If, on receipt of SEA-FC's advice, you believe that further action is required you will need to initiate such. I am happy to discuss at any time.
- In order to provide a comprehensive E&D education program for your entire ship's company.⁶⁷

2.51 Consistent with this correspondence, CMDR Brown understood that the E&D team were 'to provide some comprehensive E&D education, and to assist me by providing a report on anything they were able to ascertain during that time onboard'.⁶⁸ He was under the impression that the team would see where the ship was in terms of compliance with equity and diversity, conduct workshops with different groups onboard and at the same time ascertain whether the claims or his concerns had any veracity.⁶⁹

2.52 While there was a general appreciation of the purpose in sending an E&D team, there were no precedents or written guidelines to assist the team to undertake their given tasks. Captain Bowers, Fleet Legal Officer, told the Commission that he was not familiar with the term equity and diversity health check but understood that the E&D team were 'to conduct a general assessment of the culture on board'. He was of the view that this undertaking was different from a QA:

A quick assessment is something with far more definition. It has a Defence Instruction, it has structure and a place within the legal framework...a

66 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 9.

67 Gyles Report, Part One, para. 4.46.

68 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 76.

69 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, pp. 72–73.

health check is something a little less defined...it's not defined at all so far as I know in writing.⁷⁰

2.53 Lieutenant McArthur also noted that there were no instructions or guidance for an E&D health check.⁷¹

Instructions to the E&D team

2.54 On 1 May, CDRE Bates held a meeting with the E&D team and handed Lieutenant McArthur a hardcopy of the email that he had sent to CMDR Brown that day. CDRE Bates maintained that he informed Lieutenant McArthur that the commanding officer of *Success* had some concerns of a possible culture of unacceptable behaviour in his ship. Consistent with his advice to CMDR Brown, he told Lieutenant McArthur:

...she was to join SUCCESS for two reasons (1) to make herself available to CO SUCCESS and to assist him to determine whether there was any basis to the claims of unacceptable behaviour or unacceptable culture in the ship; and (2) to conduct a fresh round of E and D briefings for the ship's company in order to ensure the ship's company was fully cognisant of E and D issues.⁷²

2.55 Lieutenant McArthur told the Commission that she had a copy of CMDR Brown's email and read carefully the following paragraph (quoted earlier):

Sir, it is my firm belief that there is a predatory element onboard that focuses on junior inexperienced females which is led by the [redacted] department onboard. I am convinced that there are a [redacted] number of junior sailors onboard who are confident that their actions are condoned thinking that they have the 'consent' of the senior sailors onboard, the junior females that are implicated feel that they have very little recourse and feel that if they speak up there will be consequences. The members who have brought this to my attention feel they are very much at risk, but feel that enough is enough.⁷³

2.56 According to Lieutenant McArthur, before joining *Success*, she and WO Harker planned to conduct the standard E&D presentation as well as the targeted equity training.⁷⁴ She explained to the Commission that the team's role was 'to go and

70 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 23 June 2010, pp. 75–6.

71 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 276.

72 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 9.

73 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 282.

74 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, pp. 213–14.

conduct targeted equity training, particularly in the area of irresponsible use of alcohol ashore. The second part ...was to gauge the culture, which we were going to do by running workshops and basically see what people said.⁷⁵

2.57 WO Harker, the second member of the E&D team, agreed with the view that their first task was to assist in determining whether there was, 'in fact, a significant cultural issue'. He understood this to mean, 'to see if there was this predatory culture onboard ship'.⁷⁶ He was, however, unsure how the E&D team were going to do that.⁷⁷ The second part was to provide a comprehensive equity and diversity education program for the entire ship's company. In his opinion, they were being asked 'to provide a rehash of the annual awareness presentation'.⁷⁸ He noted that while the latter was very clear, he was not clear how they were going to determine the cultural issue. He informed the Commission that he had many conversations with Lieutenant McArthur before leaving Sydney for Hong Kong about how they were going to carry out their tasks.⁷⁹

2.58 He also told the Commission that he had not previously been involved in an equity and diversity assignment like this and, to his knowledge, there was nothing in the Defence Instructions to assist in such a task.⁸⁰ According to the WO, the team were on a fact finding exercise 'to just try and substantiate anything that was going on. Not to investigate'. He informed the committee that he had not done an investigator's course so he would not 'even know how to start investigating'.⁸¹ Lieutenant McArthur similarly indicated that she had never conducted a routine inquiry, or inquiry under the Defence Inquiry Regulations, been an inquiry officer or an assistant to an inquiry officer or had any training in investigative inquiries, but that she had done a couple of QAs.⁸²

75 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 240.

76 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 26 March 2010, p. 328.

77 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 26 March 2010, p. 328.

78 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 26 March 2010, p. 329.

79 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 26 March 2010, p. 328.

80 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 26 March 2010, p. 313.

81 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 26 March 2010, p. 362.

82 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 305.

2.59 Crew members were also unclear about the reasons for the E&D team and its purpose. Evidence indicates that the ship's company was not informed that the E&D team were there to look into the culture of the ship. The Daily Orders, issued on Wednesday, 6 May 2009 for *Success* included Item 4—'Whole Ship Training'. It stated:

Fleet staff have arrived onboard to conduct cultural awareness and Equity and Diversity presentations. These presentations will be conducted in Station 9 from the period AM Wednesday thru to PM Friday. The presentations will be given to specific groups, i.e. male officers, WOs/CPO, etc, so listen to pipes throughout this period.⁸³

2.60 CMDR Donna Muller, who authorised the release of the daily orders, noted that the team did not have any terms of reference. She stated that she:

...was left with the understanding that the team were onboard to do targeted cultural equity and diversity training while at the same time identify whether there were any signs of there being cultural problems aboard, the later being the primary reason for their presence onboard. I was left with the impression that they were joining the ship with little guidance from fleet command and I remain unsure as to whether there was an expectation that the CO was expected to be more directive and prescriptive of what needed to take place.⁸⁴

2.61 While giving evidence before the Commission, Lieutenant McArthur conceded that the heading and the substance of the daily orders that related to the E&D team's presence on *Success* was not a fair statement of what they were to do—that it was quite misleading.⁸⁵

2.62 Although CDRE Bates's email of 1 May stated that the two E&D officers would be led further by the commanding officer's instructions on arrival, no such directions were given to them.⁸⁶

83 Gyles Report, Part One, para. 4.70 and also evidence from WO Harker, Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 26 March 2010, p. 331.

84 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 397 and Gyles Report, Part One, para. 4.71.

85 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 306 and Gyles Report, Part One, para. 4.71.

86 Lieutenant McArthur made clear that the commanding officer did not provide any instructions or directions as to what the E&D team were to do: that she was not provided with any information that would have assisted the E&D team in its activities. She explained that she had a discussion with the CO in which they determined the way ahead which was going to be workshops'. Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 241.

The Gyles Report

2.63 Mr Gyles noted that if the evidence of CDRE Bates, Lieutenant McArthur and WO Harker were accepted:

...the instructions were very brief and contained little in the way of guidance as to what was to be done or what potential remedial action might be taken in conjunction with the Commanding Officer.⁸⁷

2.64 In particular, he observed 'it was not made clear how an informal sounding or testing of a culture could be converted into remedial action'.⁸⁸

E&D training, inquiry or investigation

2.65 Evidence presented to the Commission showed a blurred understanding of the extent to which the team's role was to inquire or even investigate the allegations of unacceptable behaviour. Lieutenant McArthur was of the view that one could gauge culture by conducting surveys, by 'asking questions that do not have to be investigative questions'.⁸⁹ She stated, 'with regards to trying to ascertain whether rumours are rumours or fact, then we did need to try and find out was there any substance to the rumours.'⁹⁰ In her opinion, however, the E&D team did not attempt to substantiate the rumours and did nothing to verify them.⁹¹ She informed the Commission that the E&D team had conducted an informal process that she termed a health check as distinct from an audit.⁹² According to Lieutenant McArthur, the term 'equity and diversity health check' suited the situation. She said:

I believe an audit has pretty fair guidelines as to what you've got to check off. A check is an informal process—it was an informal report.⁹³

2.66 Lieutenant McArthur told the Commission that it was her expectation that following the E&D process, 'an investigation would occur'.⁹⁴ WO Harker also

87 Gyles Report, Part One, para. 4.38.

88 Gyles Report, Part One, para. 4.38.

89 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 240.

90 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, pp. 301–2.

91 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 302.

92 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 277.

93 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 277.

94 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 303.

regarded their role as obtaining facts and not 'investigating allegations'.⁹⁵ On the other hand, when asked about whether the E&D team would conduct an investigation, the commanding officer stated that the team was to test the veracity of the allegations. He accepted that an investigation is 'testing the veracity of allegations'.⁹⁶ To his mind, the E&D health check was 'a workshop and a fact-finding exercise'.⁹⁷

The Gyles Report

2.67 Mr Gyles found that the Fleet Commander and CDRE Bates were not necessarily in error in choosing to send an equity and diversity team to conduct an informal exercise, rather than have an engineering officer (or some other officer) conduct a quick assessment. Nonetheless, he questioned the wisdom in taking this course of action.⁹⁸ Mr Gyles noted the 'lack of guidance, if any, from Fleet Command about the actual carrying out of the team's task'. Formal Defence Instructions also provided no assistance. He stated:

The consequence of that choice, however, was that there was no Instructions, Regulations, guidelines or precedents for the task. It was not covered by the *Administrative Inquiry Manual*. Those directing the task, those performing it and those onboard the vessel affected by it had no previous relevant experience. Neither LEUT McArthur nor WO Harker had any training or experience in investigations. There were no relevant equity and diversity Instructions, Regulations or guidelines, and there was no such previous equity and diversity experience. The defined system of administering equity and diversity training and of monitoring the delivery of that training was quite distinct. Even targeted E&D training is a concept different from that with which LEUT McArthur and WO Harker were tasked insofar as the first objective was concerned.⁹⁹

2.68 Thus, according to Mr Gyles:

Questions such as privacy, self-incrimination, defamation, exposure of informants to repercussions and the obligation to report unacceptable behaviour were simply not taken into account. It is difficult to understand why the Fleet Legal Officer was not consulted about the proposed change in the course of action: he had been involved in the matter in other respects. The difficulties inherent in departing from the normal rules for the conduct of administrative inquiries should have been explored. Although the situation called for a prompt response and although there were numerous

95 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 26 March 2010, p. 349.

96 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 168.

97 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 192.

98 Gyles Report, Part One, para. 4.36.

99 Gyles Report, Part One, para. 4.37.

other matters requiring the attention of the Fleet Commander and CDRE Bates, greater consideration of the legal and practical aspects of the task to be performed was called for and might have obviated the difficulties that later presented themselves.¹⁰⁰

2.69 He drew attention to the ambiguity in the task given to the E&D team, suggesting that combining an E&D program with an 'unspoken quasi-investigatory function was likely to cause difficulties'.¹⁰¹ In his view, the E&D health check:

...was essentially an investigation, albeit informal, but it was not described as such. Indeed, it was fairly described by the Commanding Officer in a statement he gave to an ADF Investigative Service investigator—that it was an investigation in the guise of an equity and diversity health check.¹⁰²

2.70 Mr Gyles cited a further complicating factor in deciding to send the equity and diversity team to join the ship. He noted that 'on any view the concerns raised in CMDR Brown's email of 30 April 2009 were, if true, serious disciplinary and command matters that cannot readily be classified, at least completely, as "equity and diversity" matters as defined in relevant Defence policy'.¹⁰³ In his view, the team 'was entering uncharted territory on this mission, and there was no policy or Instruction that could provide guidance'.¹⁰⁴ He stated:

There should have been no pretence of a 'comprehensive E&D education program' to muddy the waters.¹⁰⁵

2.71 Overall, he found that sending an equity and diversity team was:

...an unconventional approach to an unusual problem and it departed from established procedures. It was fraught with danger and danger eventuated. As a result, the so-called E&D health check was a flawed process.¹⁰⁶

Committee view

2.72 The committee supports the findings of Mr Gyles on the decision to send an E&D team to join *Success*. The team was provided with no clear terms of reference and had no Defence regulations or instructions to guide its conduct. Much confusion also surrounded the actual role and function of the E&D team which meant that there was a breakdown in communication and those on board *Success* had no reasonable understanding of the purpose of the so-called 'cultural awareness and Equity and Diversity presentations'. Furthermore, Mr Gyles described their activity as a 'quasi-

100 Gyles Report, Part One, para. 4.39.

101 Gyles Report, Part One, para. 4.41.

102 Gyles Report, Part One, para. 4.38.

103 Gyles Report, Part One, para. 4.40.

104 Gyles Report, Part One, para. 4.192.

105 Gyles Report, Part One, para. 4.193.

106 Gyles Report, Part One, para. 5.28.

investigation' which was undertaken by people with no training or experience in conducting such inquiries. Clearly, the appointment of the E&D team and the tasks assigned to it meant that it was destined to fail.

Chapter 3

The nature and veracity of complaints and reasons for landing the three senior sailors

3.1 The committee was asked to determine the nature and veracity of the complaints and allegations concerning equity and diversity issues made by personnel onboard *Success*. It was also asked to consider the reasons and factual evidentiary basis for the ship's Commanding Officer resolving to land a Chief Petty Officer and two Petty Officers (the senior sailors).

3.2 The committee has noted that the E&D process was flawed. In this chapter, the committee looks closely at the veracity of the report that came out of this process. It confines its consideration to the presentation and soundness of the conclusions reached in the E&D report based largely on the way the team went about gathering and assessing the evidence before it. In this regard, the committee is concerned with the substance of the facts as presented to CMDR Brown and Fleet Headquarters by the E&D team. The committee then considers the immediate aftermath following the presentation of the report to the commanding officer and the manner in which decisions were made and actions taken.

Nature of complaints

3.3 The E&D team was of the view that part of their task was to 'ascertain if continual rumours relating to unacceptable behaviour in *Success* could be substantiated'. According to the E&D team some of the rumours circulating at that time in *Success* were that:

- a bounty was placed on the head of any new female posted to *Success*, to see who could have sex with that member first, including female officers, senior sailors and junior sailors;
- a predatory culture existed within the MT department on *Success*, whereby some of the male senior sailors and junior sailors actively sought out young female junior sailors and coerced or bullied them into having sex while ashore;
- a sexual act took place between a female junior sailor and a male junior sailor in public areas, and that MT senior sailors watched on and encouraged junior MT sailors to watch on; and
- threats were made against certain members of the crew if they spoke out about the nature of the unacceptable acts being carried out.¹

1 Results of equity and diversity health check workshops held in HMAS *Success* during the period 4 May–9 May 2009 (The equity and diversity team's report), para 1, Appendix C to Gyles Report, Part One.

3.4 In order to ascertain whether the rumours of unacceptable behaviour had substance, the E&D team over a period of three days held various meetings with crew members onboard the ship.

Conduct of the E&D health workshops

3.5 The E&D team joined the ship in Hong Kong on 4 May 2009 prior to the vessel sailing for Singapore and conducted their workshop onboard during that period.² They had three days to conduct presentations for the ship's personnel which had to accommodate the ship's existing schedule. The approach taken by the E&D team involved standard group presentations, group discussions and invitations to crew members to confer with them privately.³ Lieutenant McArthur explained to the Commission:

...the plan was to run the standard equity and diversity presentation and follow up with discussion, being the targeted discussion...about the irresponsible use of alcohol and unacceptable behaviour ashore and then we would open up the floor for discussion...we would offer all personnel the opportunity to speak with us in private if they wanted to discuss something and were uncomfortable doing so in an open environment.⁴

3.6 Lieutenant McArthur and WO Harker agreed to present separately to different groups simultaneously.⁵ In total, about 15 presentations were conducted during the period from the morning of 6 May through to 8 May 2009. The main features of the presentation included defining unacceptable conduct, rights and responsibilities of persons and the complaint management process.⁶ According to Lieutenant McArthur:

At the beginning of each group discussion I explained why I was there. I explained that fleet command had heard rumours, but not the subject matter of those rumours. That the CO of the ship had requested assistance and I was asked to supply targeted equity and diversity training.⁷

2 Gyles Report, Part One, para. 1.119 and Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 214.

3 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 216.

4 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 215.

5 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 215.

6 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 215.

7 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 217.

3.7 WO Harker told the Commission, however, that they provided annual equity and diversity training not targeted training.⁸

3.8 Mr Gyles questioned whether the meetings followed this format strictly. He noted, for example, that it was reasonably clear that the meeting with the female junior sailors:

...involved little E&D training of the kind delivered in the annual compulsory training. There is evidence—which I accept—of general discussions about a number of matters, such as sexual harassment, swearing, treatment of females, behaviour of females, fraternisation and bullying.⁹

3.9 Indeed, the group E&D sessions encouraged 'open discussion about instances of unacceptable behaviour'. In some instances, alleged perpetrators were named.¹⁰ The E&D report noted:

As the workshops were conducted within peer groups, some of the ship's crew felt comfortable enough to openly talk in the group format. Most groups raised similar issues, including the use of steroids and drugs onboard, the closed off cultur[e] within the MT branch, inequality in punishments when it came to the MT branch, and the level of inappropriate relationships that occur on board.¹¹

3.10 The private sessions provided an opportunity for individuals or small groups to speak to the E&D team in confidence.¹² Lieutenant McArthur referred to a number of these private sessions, including two main instances of individuals approaching her, and one where a sub group of four sailors met her. During these particular sessions, the people stated that they were 'aware that inappropriate relationships may be going on between female junior sailors and male junior officers'.¹³ The sub group also raised other matters including: the public sex act and those who were present; the avoidance of random breath tests; some CPOs and POs not providing good role models; and some sailors gloating publicly about their sexual encounters with female sailors and officers.¹⁴ Another two individuals provided information regarding the senior sailors who bragged 'about the events that occurred in the bar where the sex act was alleged to have occurred', while another reported being threatened with physical violence if he

8 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 26 March 2010, p. 342.

9 Gyles Report, Part One, para. 4.83.

10 Gyles Report, Part One, paras 4.103–4.104.

11 The equity and diversity teams' report, para. 4.

12 Gyles Report, Part One, para. 4.184.

13 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 218.

14 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, pp. 219–20.

told the team anything.¹⁵ In some of these cases the names of individuals said to be involved in unacceptable behaviour were disclosed. Four female sailors provided the names of individuals allegedly using steroids.¹⁶

Contents of the E&D report

3.11 On 8 May 2009, after conducting its health check, the E&D team presented its report to the commanding officer. Lieutenant McArthur drafted most of the report, which recorded matters that had been brought to the attention of the E&D team. The report noted that the groups had voiced a number of common concerns that were 'shared across the majority of the crew, and through most ranks'.¹⁷ It also indicated that many people took the opportunity to speak to the E&D team privately and provided information 'that substantiated some of the concerns that had been raised during the group discussions'.¹⁸

3.12 The concerns mentioned in the E&D report included the use of drugs, inappropriate relationships, sexual act in public, the use of alcohol ashore, random breath testing, equality of punishment, leadership and mentoring, and predatory culture, particularly within the marine technical department.¹⁹ In more detail, the E&D team recorded that:

- most groups raised the issue of the use of steroids and recreational drugs by some junior sailors and it appeared common knowledge throughout the ship that steroids were found in the trash onboard *Success*;
- a common perception existed that random drug testing was not conducted as it was too hard and therefore culprits continued to use drugs—a number of individuals had come forward and provided the names of those allegedly using steroids, some of the users were experiencing steroid rages;
- female junior sailors 'almost unanimously agreed that it was easier to give in and agree to have sex with a sailor, than continually fight off their persistent attention'—when asked why they gave in, the common response was that 'some of the sailors were big and scary, and they intimidate to the point where you just give in to get it over and done with, particularly some of the MT sailors';
- it appeared to be no secret that some of the female sailors were having inappropriate relationships with male sailors and a number of individuals

15 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, pp. 221, 224–26.

16 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 217.

17 The equity and diversity team's report, para 6.

18 The equity and diversity team's report, para 7.

19 The equity and diversity team's report and Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 6.

stated they were aware of inappropriate relationships between female junior sailors and male junior officers;

- it appeared to be common knowledge across the ship that some sort of public sex act occurred recently in a bar in Qingdao;
- a number of individuals came forward and provided the names of two POs who were present when the public sex act was alleged to have occurred and the name of the ABMT [able seaman, marine technician] who allegedly had sex with an unknown female;
- most of the groups acknowledged that the consumption of alcohol while ashore was excessive and unhealthy and that it was a major contributing factor towards the unacceptable behaviour that goes on ashore;
- female junior sailors admitted that they drank too much when ashore, and get caught up in drinking games;
- some of the male junior sailors admitted that 'depth charging' female sailors' drinks without their knowledge was common practice and was used to get them drunk more quickly;
- a number of individuals stated that when RBTs were being conducted, one POMT 'told his boys to stay down the hole' if they thought they were going to blow over, and he would cover for them;
- individuals stated that on two occasions two personnel have blown over and the paperwork has been mysteriously misplaced;
- some of the groups referred to an incident that was alleged to have occurred in Cairns, where two *Success* sailors assaulted police officers and the perception amongst the ship's crew was that the two sailors did not receive a punishment as they belonged to the 'protected pack' of MT sailors;
- there was a common perception among junior ranks that not all senior sailors and officers set a good example or act as good role models, particularly in the areas of alcohol consumption, inappropriate relationships and dress and bearing while ashore;
- a number of individuals came forward and explained how they had on occasions escorted officers to bed because they were too intoxicated to get to their messes; and
- there was a general consensus among POs that some CPOs were missing in action in that they were neither available as mentors, nor set an example as mentors. This view was also shared by officers but not apparently so by the POMTs.²⁰

20 The equity and diversity team's report, paras 9–24.

3.13 The report also provided detailed information on what the E&D team termed predatory behaviour in the MT department, including the use of stand over techniques, intimidation and bullying, even threats of physical violence.²¹

3.14 Based on the contents of the discussions in the group and private meetings, Lieutenant McArthur concluded that:

- it was difficult to confirm if the bounty theory...was true and that although people talked about it, there was no real evidence to suggest that it existed;
- a predatory culture existed within the marine technical department whereby some of the male senior sailors and junior sailors actively sought out young female junior sailors and coerced or bullied them into having sex while ashore;
- a sexual act between a female junior sailor and a male junior sailor did take place in a public area and that marine technical senior sailors watched on and encouraged marine technical junior sailors to also watch on;
- threats had been made against certain members of the crew if they spoke out about the nature of the unacceptable acts being carried out.²²

3.15 The report did not make any recommendations.²³

Veracity of complaints

3.16 Lieutenant McArthur prepared the E&D report with WO Harker's input and assistance on the basis of the discussions during the presentations, as well as private conversations. She explained that she drafted the report with WO Harker progressively over the duration of the time spent on the ship.

3.17 As noted earlier, the stated task of the E&D team was to 'ascertain if continual rumours relating to unacceptable behaviour in *Success* could be substantiated'.²⁴ Even so, Lieutenant McArthur made clear that she did nothing to verify the veracity of the information coming from group discussion—'there is information in the report that was spoken of in the group discussions'. She explained that to test the validity of the information to raise it above the standard of rumour she used the 'put up, shut up' line:

Which is we were here to talk about behaviour ashore and we then moved into rumour mongering and I made it pretty clear to anyone that I spoke to that if what they were talking about was rumour then that needed to stop.²⁵

21 The equity and diversity team's report, paras 25–31.

22 The equity and diversity team's report, Summary.

23 Evidence of WO Harker, Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 26 March 2010, p. 340.

24 The equity and diversity team's report, para. 1.

25 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 243.

3.18 Indeed according to the report, the team advised groups that it wanted:

...to know about incidents of unacceptable behaviour or cultures onboard, only if they [crew members] had personally witnessed it, or been personally involved. This was so we could determine whether the details were fact or fiction.²⁶

3.19 Lieutenant McArthur disagreed with the proposition that she had gone beyond a mere recording of rumours. As noted in the previous chapter, she did not believe that the E&D team had taken on an investigative role and stated that it was her expectation that an investigation would follow.²⁷ WO Harker also did not regard the E&D team's role as investigating allegations.²⁸

3.20 Thus, in keeping with this view, the E&D team recorded in their report the complaints or allegations that were raised during both the open and private meetings. In a few places, the E&D team makes clear that they did not have enough information to substantiate allegations. It did so with regard to inappropriate relationships between female junior sailors and male junior sailors and the mysterious disappearance of paperwork connected with RBTs. In most cases, the report simply stated in general terms either that most groups, or some groups, or some individuals raised a particular matter.

3.21 The section dealing with predatory behaviour, however, was different. The statements made in this section of the report convey the impression that the type of conduct detailed under this heading was indeed fact. Before examining in detail the way in which the E&D team reported on the predatory culture, the committee notes Mr Gyles' overall assessment on the sources that it used to identify matters.

The Gyles Report

3.22 In his report, Mr Gyles examined and commented on the specific observations made by the E&D team. In his assessment:

- the alleged use of steroids was certainly a matter brought to Lieutenant McArthur's attention, and there can be no criticism of her in relation to that aspect of her report;²⁹
- the evidence from the E&D sessions showed that inappropriate alcohol use was raised consistently.³⁰

26 The equity and diversity team's report, para. 5.

27 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 303.

28 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 26 March 2010, pp. 349.

29 Gyles Report, Part One, para. 4.207.

30 Gyles Report, Part One, para. 4.224.

3.23 He accepted Lieutenant McArthur's evidence or was satisfied that:

- it appeared to be common knowledge across the ship that some sort of public sex act occurred in a bar in Qingdao and that a number of individuals had provided the names of two POs who were present when the act allegedly occurred and the name of the ABMT who was allegedly having sex with an unknown female;³¹
- the matter of the excessive and unhealthy consumption of alcohol while ashore and female junior sailors drinking too much and getting caught up in drinking games was brought to Lieutenant McArthur's attention;³²
- individuals had stated that on two known occasions, two personnel had blown over the alcohol limit and the paperwork had been mysteriously misplaced—also there was no reason to disbelieve suggestions brought to Lieutenant McArthur's attention by individuals who had come forward to report one of the POMTs telling his boys to stay down during the RBT, that they 'were properly sourced from her activity on the ship';³³
- some groups had brought to her attention an incident alleged to have occurred in Cairns whereby two *Success* MT sailors assaulted police officers—that regardless of whether this is true or untrue, the perception amongst the ship's crew was that, the two sailors did not receive a punishment, as they belonged to the 'protected pack' of MT sailors;³⁴
- Lieutenant McArthur's source for the common perception among junior ranks that not all senior sailors and officers set a good example, or act as good role models came out of group discussions.³⁵

3.24 Mr Gyles also accepted that the following matters were brought to the attention of Lieutenant McArthur or WO Harker, or both of them, in some form during their group and individual E&D sessions:

...a CPOMT and at least two POMTs rule this ship and run the engineering department—known as the untouchables—use standover techniques—manipulate watch bills to ensure packs stays together when in port and ensure the pack will be covered during RBTs—they will lie for each other to ensure no dirt sticks—some MT sailors both junior and senior regularly gloat about the female sailors and Officers they've had sex with.³⁶

31 Gyles Report, Part One, para. 4.222.

32 Gyles Report, Part One, para. 4.227.

33 Gyles Report, Part One, para. 4.231.

34 Gyles Report, Part One, para. 4.233.

35 Gyles Report, Part One, para. 4.235.

36 Gyles Report, Part One, para. 4.244.

3.25 While Mr Gyles acknowledged or confirmed that certain matters were raised or that statements were made by groups or individuals during the public and private meetings, he does not necessarily accept the conclusions that the E&D drew from them. For example, he was of the view that the evidence before the Commission did not show the 'almost unanimous agreement' that it was easier to give in and have sex with a male sailor than to fight off their persistent attention' as claimed in the E&D report.³⁷

3.26 Overall, Mr Gyles found that the report was framed as though it were the result of an investigation or the substantiation of allegations: that it 'was not appropriate for an informal sounding exercise'.³⁸ He stated:

Although the E&D team had a basis for discussing the topics raised in the E&D report, the form and tone of the report is another matter. The purpose of the report was said to be 'to ascertain if continual rumours relating to unacceptable behaviour in SUCCESS could be substantiated'. According to the *Macquarie Dictionary*, the primary meaning of 'substantiated' is to establish by proof or competent evidence'. The E&D report is so framed: conclusions are expressed, particular incidents are reported, and particular individuals are identified by name or description as guilty. The form of the report was not appropriate for the task carried out.³⁹

3.27 Furthermore, he was critical of the section on predatory behaviour—which was crucial to the commanding officer's actions. In his view this section was 'couched in emotive and inflammatory language'.⁴⁰

Committee view

3.28 Based on the evidence, including assertions by Lieutenant McArthur and WO Harker, it is without doubt that the E&D team made no attempt to verify allegations. Yet as noted by Mr Gyles their report presents some of the rumours and allegations as though proven, as though fact.

3.29 The committee now considers in detail Mr Gyles' observation about the section of the E&D report dealing with predatory behaviour.

The reasons and factual evidentiary basis for landing the sailors

3.30 According to CMDR Brown, he was initially shocked by the contents of the E&D report. In his view, it was 'far more in-depth...covered a broader range of concerns' than he was aware of. Although the report raised allegations that covered a range of unacceptable behaviour, CMDR Brown was most disturbed by the references

37 Gyles Report, Part One, para. 4.219.

38 Gyles Report, Part One, p. xvii.

39 Gyles Report, Part One, para. 4.248.

40 Gyles Report, Part One, para. 4.248.

to threats of violence. He informed the Commission that he landed the three sailors because of concerns he had for the safety and welfare of the ship's company.

3.31 In this regard, CMDR Brown made clear that the contents of the E&D report were critical to his decision to land the three sailors: that the report confirmed his suspicions and the information contained in it formed the basis of his decision to talk to Fleet Command about removing the sailors.⁴¹ He stated:

Up until the point that I read that report I hadn't intended landing anybody, I hadn't discussed landing anybody prior to that. The report raised those concerns of safety and welfare quite vividly in my mind and that's when I made the decision that's what I wanted to do...there were thoughts going through my head that if this is bad enough maybe I'm going to have to land people, but I mean none of that had been confirmed in my mind.⁴²

3.32 A number of paragraphs in the report are germane to the committee's inquiry because of the role they had in the commanding officer's decision to remove the three sailors. Under the heading *Predatory Culture*, the paragraphs read in part:

There is a ship wide acknowledgement that a CPOMT and at least two POMTs rule this ship and run the engineering department. They are known throughout the ship as the untouchables. They believe they can do whatever they want and get away with it, because they believe they will never be posted off as they have unique specialist skills. This is a sentiment reflected through all departments and through most ranks... (paragraph 25)

They use standover techniques to get what they want, they intimidate and bully their way through the ship and ashore. They manipulate watchbills to ensure that the pack stays together when in port...(paragraph 26).

...

Since WO Harker and I arrived onboard two members of ship's company have been threatened by a CPOMT that they are not to tell us anything. They have been threatened with physical violence and with being posted off this ship (paragraph 30).

The allegations that have been made against the CPOMT and numerous POMTs are difficult to prove, however, I have no reason to doubt any of the information that has been provided to me, in confidence. The individuals have nothing to gain from telling me, they just want the pack culture to stop (paragraph 31).

3.33 The last page of the report identified by name a number of individuals alleged to have been involved in some of the incidents among them the CPO who was said to have threatened two crew members with physical violence.

41 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, pp. 134–5.

42 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 200.

3.34 It should be noted that Mr Gyles did not accept that Lieutenant McArthur was told [the CPO] had threatened two members of the crew.⁴³ She later acknowledged that the reference to two people complaining may have been 'a mistaken reference to the same person'.⁴⁴ In his view:

To that extent, I find that the E&D report was not properly sourced from information reported to LEUT McArthur. If LEUT McArthur was genuinely mistaken, it was a serious error in circumstances in which she knew that such a statement could or would lead to the landing of [the CPO].⁴⁵

3.35 Indeed, Mr Gyles casts considerable doubt over the reliability of the E&D report particularly with regard to allegations that led to the removal of the three sailors. He noted that the 'group-based approach might have been defensible if the purpose had been merely to gain a sense of the culture onboard...' With this objective in mind, individual contributions would have been used to acquire a better understanding of the culture that existed but without any action being taken on the basis of them. He explained:

Even if that had been the original intention, it did not last long. It is clear from the evidence...emails...and his conversation with [redacted] and the evidence of what WO Harker and LEUT McArthur said in sessions with MT sailors, that from an early stage the E&D team was focused on finding a justification for landing the perceived ringleaders of the unacceptable behaviour. That objective was at odds with the methodology employed and the stated basis for the exercise.⁴⁶

3.36 This finding is central to the committee's terms of reference because the commanding officer of *Success* maintained that it was his concerns about the safety of his crew that were critical to his decision to land the three senior sailors. Fleet Command approved the removal of the sailors based on the commanding officer's apprehensions and the contents of the report.

Verifying the allegations

3.37 By his own admission, the commanding officer did not make the most rudimentary of inquiries about the hearsay allegations recorded in the E&D report. According to CMDR Brown, he did not speak to the CPO, said to have made threats of physical violence, about the allegations in the report and did not think to ask about who made the allegations.⁴⁷ He explained that he was concerned that given everything

43 Gyles Report, Part One, para. 4.245.

44 Gyles Report, Part One, para. 4.246.

45 Gyles Report, Part One, para. 4.247.

46 Gyles Report, Part One, para. 4.194.

47 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, pp. 135 and 137.

else that was in that report and the complexities of the situation and if the information were correct and he raised it with the CPO, he 'might exacerbate the problem'.⁴⁸

3.38 It should be noted that the CPO had received a commanding officer's commendation from CMDR Brown and 'had been awarded the Herbert Lott Medal for outstanding performance as the top room technician in a course completed in 2009'.⁴⁹

3.39 While the CPO, who had allegedly threatened two crew members with physical violence, was named in the report, the two POs reportedly associated with the predatory behaviour were not. They were, however, named as the sailors who were alleged to have been watching the public sex act and encouraging the MT sailors present 'to watch on and clap and cheer'.⁵⁰ Although the commanding officer did not question Lieutenant McArthur about the report, he did ask her about the unnamed POs in the report referred to as part of the predatory culture. He sought clarification from Lieutenant McArthur as to whether a particular CPO and two POs were the ones associated with the threats and intimidation.⁵¹

3.40 When Lieutenant McArthur disclosed the identity of those believed to be the culprits, and after a discussion with her, CMDR Brown understood that the two named POs alleged to have encouraged others to watch the public sex act were also involved in the 'threats of physical violence'. He told the Commission that in his mind he linked the threats made by the CPO with the two POs.⁵² When pressed on this matter during the Commission's hearing, CMDR Brown stated clearly that 'My understanding is that they were involved in the threats, and that's why I acted the way I did'.⁵³

3.41 The commanding officer was unable to recall the reasons for not asking Lieutenant McArthur why the report was silent on the POs involvement in those threats. He also stated that he did not ask whether the threats made by the three sailors were against one individual or several.⁵⁴ CMDR Brown explained further:

The substance to the allegations in my mind at the time had come from my concerns that were raised at the meeting on the 26th with the three female

48 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 135.

49 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 136.

50 Gyles Report, Appendix C, the Equity and Diversity team's report, last page.

51 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, pp. 171–2, 175, 179 and 180 and 25 March 2010, pp. 203, 229 and 258–9.

52 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 179.

53 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 182.

54 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, pp. 180 and 183.

senior sailors which was then again in the report which, in my mind, provided some substantiation, some support to that—the initial claims.⁵⁵

3.42 CMDR Muller confirmed that neither she nor anyone present during the course of that meeting with the E&D team made inquiries as to the identity, rank, gender of the personnel against whom the threats were made. She stated that Lieutenant McArthur was quite clear that she would not provide these names: that the information was confidential.⁵⁶ Although surprised by the proposition that the CPO was involved in making threats, CMDR Muller did not suggest to the commanding officer that they should speak to the sailor about the allegations.⁵⁷

3.43 Having determined that the three sailors were involved in threats of physical violence, CMDR Brown decided that he needed to speak to Fleet Headquarters about having them removed.⁵⁸

Response by fleet command

3.44 CMDR Brown telephoned CDRE Bates on 8 May to inform him that Lieutenant McArthur had provided a report which confirmed his concerns and that he wanted to land one CPO and two POs. According to CDRE Bates, CMDR Brown:

Appeared genuinely concerned for the safety and welfare of his ship's company if these sailors were allowed to remain onboard. I directed the CO to email me a copy of the report as soon as possible. I also directed that he provide me his intentions in writing as soon as possible.⁵⁹

3.45 On 9 May, CMDR Brown forwarded via email:

- his intended course of action;
- SEA-FC's report (the E&D Report);
- a draft notifiable incident report; and
- a hot issues brief.

3.46 CDRE Bates forwarded this material to CDRE Cullen requesting a discussion with him as soon as possible.

55 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 138.

56 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 441.

57 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 442.

58 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 183.

59 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 10.

3.47 The commanding officer stated clearly in correspondence to Fleet Command his intended course of action:

The report has highlighted a number of issues that have reinforced my belief that a number of my ship's company *are in potential danger*, particularly if they speak about the incidents that have occurred. This is indicated *by the threats of physical violence* from [redacted] should they talk to the E&D team or 'spill the beans'. There is a real fear onboard that if anything is raised while the main protagonists are onboard then nothing will be done and they would be in danger of physical violence.⁶⁰

3.48 He later told the Commission:

...the reason I landed the sailors was not about the sex, it was not about the drugs...it was about my concern for the safety of the ship's company based on threats of physical violence and in accordance with my direction to maintain a safe working environment.⁶¹

3.49 It should be noted, however, that while the commanding officer cited in his intended course of action 'threats of physical violence and potential criminal activities' as the reason for removing the sailors, he went on to say:

Also for the Petty Officer [redacted] their complicity in the 'table sex' act referenced in the report and not acting in an appropriate manner for Senior Sailors in my view also warrants their removal based on a lack of trust.⁶²

3.50 CMDR Brown informed CDRE Bates of the identity of the three senior sailors that he wanted to land in Singapore, indicating that there may be other personnel whom he believed presented a threat to the safety of his ship's company.

3.51 CDRE Bates had a conversation with Fleet Commander during which it was agreed that the commanding officer's intended course of action to land the sailors be supported by fleet.⁶³ The evidence of those at Fleet Headquarters dealing with the matters relating to HMAS *Success* indicates that they also did not question the findings of the E&D team or the commanding officer's acceptance of them. CDRE Cullen took the view that in circumstances such those confronting CDRE Brown:

60 Gyles Report, Part One, para. 4.263 and S.T. Brown, Commanding Officer, HMAS SUCCESS, Intended Course of Action in relation to issues onboard HMAS SUCCESS relating to recent concerns by commanding officer HMAS SUCCESS. Copy provided to the committee in confidence. and Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 83.

61 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 151.

62 Gyles Report, Part One, para. 4.263.

63 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 10.

...the judgement of the CO should be given great weight and on the information that was then available I supported the CO's decision to land the sailors.⁶⁴

3.52 CDRE Bates told the commission that:

...the CO's concerns for the safety and welfare of his ship's company that was paramount in supporting his decision to land the sailors. Absent that concern, fleet would not have sanctioned the landing of these sailors.⁶⁵

3.53 He sent an email to CMDR Brown informing him that the Fleet Commander supported and agreed with his intention to land the sailors. He was also given permission to land 'other personnel that CO SUCCESS considered presented a risk to the safety and welfare of his ship's company'.⁶⁶

The Gyles Report

3.54 Mr Gyles noted that Fleet Headquarters appeared to accept the findings of the E&D report at face value and did not question the CO's response to them. According to Mr Gyles:

Given that Fleet Headquarters had sent the equity and diversity team, and accepting the team's report at face value, there was little basis for questioning the Commanding Officer's decision as a matter of substance. Having sent the E&D team to assist the Commanding Officer, and that team having confirmed—indeed, strengthened—the Commanding Officer's concerns, Fleet Headquarters was scarcely in a position to second-guess the conclusions of those on the spot.⁶⁷

It is arguable, however, that cooler heads away from the hothouse atmosphere of the vessel at the time should have picked up the fact that the E&D report on which the intended course of action was based had, first, gone well beyond what had been envisaged in the initial tasking of the team and, second, was framed in very colourful, even dramatic language—particularly if the Fleet Commander and CDRE Bates had been sceptical about the Commanding Officer's reaction in the first place.⁶⁸

3.55 He found:

There was sufficient substance to the complaints made to the Commanding Officer to warrant serious investigation. There might have been a proper

64 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 7 July 2010, p. 8.

65 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 11.

66 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 11.

67 Gyles Report, Part One, para. 4.295.

68 Gyles Report, Part One, para. 4.296.

basis for temporarily landing certain sailors off the ship pending such investigation. But the decision by the Commanding Officer, with the approval of Fleet Command, to land those sailors who were landed was not the result of a proper process.⁶⁹

3.56 According to Mr Gyles, the decision to land the senior sailors 'was not justified'. He was of the view that 'the real reason for landing them was that they were identified as the ringleaders of the undesirable culture and behaviour of the MT sailors'. In his opinion, the flawed process 'affected the E&D report that was presented to the Commanding Officer and his actions in response to that report'.⁷⁰

Committee view

3.57 The committee was asked to consider the nature and veracity of complaints. At this stage in the report, the committee is only concerned with the extent to which the allegations had been substantiated at the time the commanding officer decided to land the sailors. The only evidence the commanding officer had access to derived mainly from conversations he had had prior to the arrival of the E&D team, for example, the conversation he had with the three senior female officers on 26 April; the E&D report; and his brief exchange with Lieutenant McArthur on 8 May. The information obtained from these sources especially the E&D report, however, was crucial to the commanding officer's decision to remove the three sailors.

3.58 Mr Gyles looked carefully at the E&D report and the evidence before him. In his assessment, people or groups of people did make allegations of unacceptable behaviour as recorded in the E&D report. He noted, however, two instances of inaccuracies in recording accounts or observations made to the E&D team—the 'almost unanimous agreement' that it was easier to give in and have sex with a male sailor than to fight off their persistent attention' and that two people had informed Lieutenant McArthur that a named senior sailor had threatened them. The latter error was particularly serious given that it was central to the removal of at least one senior sailor and supported or provided the context for the landing of another two.

3.59 In compiling the E&D report, the authors recorded the comments or observations made to them about the type and level of unacceptable behaviour. For example, the report stated that 'Most of the groups acknowledged that the consumption of alcohol (while ashore) is excessive and unhealthy'. In some cases the language was very general and clearly indicated that the report was recording statements or accounts given to the E&D team.

3.60 In some in places, however, the allegations were stated as though proven. Despite the E&D team not undertaking an investigation, in their report they draw conclusions that clearly elevate some allegations to the level of fact: individuals are

69 Gyles Report, Part One, para. 5.29.

70 Gyles Report, Part One, para. 5.28.

named as though guilty of unacceptable behaviour. For example, the report stated that 'the two members had been threatened with physical violence and with being posted off this ship'. This statement is not couched in terms of an allegation yet to be tested but as a matter of fact. Furthermore, as noted by Mr Gyles, the evidence did not support the conclusion that two crew members had indeed made such an allegation. Somehow, the commanding officer gained the impression from Lieutenant McArthur that two POs were involved with these threats of physical violence. The information provided to the E&D team made no such connection.

3.61 Based on their accounts, the members of the E&D team made no attempt nor intended to substantiate the truth or otherwise of the allegations. Those said to be involved in the alleged incidents were not approached to give their version of events. Indeed Lieutenant McArthur assumed that an investigation would follow.

3.62 The committee believes that the report was correct to record the views, observations and concerns of crew members to enable the E&D team to inform the commanding officer and Fleet Command about possible or even likely inappropriate conduct. In the committee's view, however, the report went beyond its remit by naming individuals as though guilty of unacceptable behaviour. It is irrelevant that the members of the E&D team insist that they did not conduct an investigation, because whatever way the report is read, it presented some of its most critical findings as though proven.

3.63 Despite the deficiencies in the report, no one in authority appeared to question the basis for its findings with both the commanding officer and Fleet Command accepting the report's findings at face value. They did not question or seek to corroborate the information contained in the report.

3.64 Thus, at the time of landing the three senior sailors many of the allegations remained largely untested. In the case of the three senior sailors, the evidence that they were involved in threatening two members of the crew with physical violence if they spoke to the E&D team was erroneous. Yet it was on these grounds that they were removed from the ship. The committee also notes Mr Gyles' view that 'from an early stage the E&D team was focused on finding a justification for landing the perceived ringleaders of the unacceptable behaviour'.

3.65 The E&D process was flawed. The report was couched in language that was misleading and drew conclusions without establishing the facts. Thus, a proper and thorough investigation was needed to establish the truth or otherwise of the allegations and rumours recorded in the E&D report. In this regard, it should be noted that after a rigorous examination of the allegations, the Commission of Inquiry identified a raft of problems involving unacceptable behaviour in *Success* between March and May 2009. These are discussed in chapter 5 of report.

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.¹

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'.²

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:

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.³

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'.⁴ 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.⁵ 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.⁶ 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.⁷

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.

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.⁸

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.⁹

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

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.¹⁰

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.¹¹

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.¹²

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'.¹³ 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

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

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

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.¹⁵

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.¹⁶ 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.¹⁷

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.¹⁸ 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.

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.¹⁹

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.²⁰

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'.²¹ 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

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.

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

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*.²³ Furthermore, the CPO had received recognition and commendation for his performance both as a technician and for his work on *Success*.²⁴ 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.²⁵ 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

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.²⁶

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.²⁷

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'.²⁸

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.²⁹ 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'.³⁰ The other told the Commission that the coxswain:

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.

...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.³¹

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.³²

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...³³

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.³⁴ 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.³⁵

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.

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.³⁶ 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.³⁷

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.³⁸ He advised the POs to seek legal advice on their return to Australia.³⁹ 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.⁴⁰

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'.⁴¹

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.⁴²

He stated further:

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.⁴³

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

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.⁴⁵

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:

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.⁴⁶

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.⁴⁷

...

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.⁴⁸

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.⁴⁹ She recalled that the individual HODs addressed their respective departments immediately after the commanding officer spoke to the Petty Officers mess.⁵⁰

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.'⁵¹ He explained that when addressing the WOs/CPOs, he said: 'There's a

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.

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'.⁵²

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.⁵³

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'.⁵⁴

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,

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.

Chapter 5

Reporting wrongdoing in the ADF

5.1 To this stage, the committee has considered the veracity of allegations made onboard HMAS *Success* as determined at the time of the decision to remove the three senior sailors. Since then, Mr Gyles has conducted a thorough inquiry into the behaviour of crew members of HMAS *Success* during its deployment from March to May 2009. In this chapter, the committee looks closely at the Gyles Report and uses its findings to provide a clearer insight into, and better understanding of, what actually happened during this deployment.

The Gyles Report—findings

5.2 Although the E&D report may have been based on a flawed process and itself had deficiencies, it did draw attention to serious allegations of unacceptable conduct by some crew members. Having presided over a comprehensive inquiry into the events and circumstances onboard HMAS *Success*, Mr Gyles found evidence to support the following conclusions:

- a powerful culture of silence and mutual protection existed among MT sailors (para. 2.8);
- a warning or lookout system was in operation as necessary to shield the Marine Technical engine room sailors from alcohol testing—it was 'destructive of ship-wide command and discipline' and 'could not help but diminish morale and respect for command (paras 2.41–2.44 and 2.53);
- the behaviour of MT sailors in HMAS SUCCESS was one of 'a fiercely tribal culture' (para. 2.735);
- a public sex act took place in a bar in Qingdao on 25 April 2009 that later involved a cover-up of an MT sailor's misbehaviour by other MT sailors and the failure of the discipline system to deal with the situation, even when the Engineering Department hierarchy was deliberately bypassed (paras 2.129 and 2.160);
- three so-called fancy dress occasions took place in Hong Kong—involving a bathrobe run; construction worker outfits; and Snow White and schoolgirl dress—one included 'more than inappropriate dress' and where an attempt to correct and direct the behaviour was 'ignored and not supported' and was one of a breakdown of authority' (paras 2.167–2.172 and 2,189);
- there was substance to the allegations of intimidation, recriminations and fear of repercussions with respect to any member of the ship's company who spoke out against the MT sailors at any time during the deployment of March–May 2009 whether before or after CMDR Brown's email of 30 April (para. 2.243);

- there existed a pattern of verbal abuse of certain of the female junior sailors by certain of the junior MT sailors—little, if anything, was done by senior sailors to curb that behaviour (para. 2.710);
- some female junior sailors were reluctant to use their chain of command or divisional system to make complaints for fear of repercussions;
- numerous accounts of inappropriate alcohol use, for example in Hong Kong there were a number of serious incidents involving alcohol including 5 heavily intoxicated crew members—two were hospitalised at the Matilda International Hospital, one went to hospital to receive stitches, another was kept under watch, and the fifth was described as being non responsive and in 'a very bad state' (paras 3.15–3.23);
- a bathroom in Manila was damaged—a serious failure of command in that those responsible should have been identified and punished, indeed 'firm and decisive action at that stage might have put a brake on later excesses' (para 3.51);
- a rest room in a different bar was also damaged which, as with the incident above, was 'swept under the carpet' (paras 3.51, 3.55, 5.15); and
- there was no doubt that the 'considerable volume of alcohol 'consumed by many members of the crew, both male and female, was 'a factor contributing to virtually every untoward incident' (p. xvii).

5.3 Mr Gyles noted that MT sailors had placed a bounty on the head of a young female sailor but could not say 'whether there were bounties on other females, or whether there existed anything that could be described as a sex ledger maintained by the MT sailors'.¹ According to Mr Gyles 'save for the possibility of one incident, there was no evidence of physical threats or coercion by MT sailors seeking sexual relations with junior female sailors'.² Overall, Mr Gyles stated:

It can safely be concluded that the behaviour of the crew of *Success* whilst ashore in ports on the deployment was out of control and discipline had broken down. There was damage to two bars in Manila; a public sex act and property damage in Qingdao; the 'robe run', so-called fancy-dress incidents and severe alcohol-related collapses in Hong Kong; along with numerous instances of verbal and physical confrontation between males and females in public in all three ports. This, occurring as it did without any disciplinary action being taken, either on the spot by senior sailors or later by the responsible officers, is sufficient to illustrate the point.³

5.4 While concerned with these findings, the committee was particularly troubled by Mr Gyles' findings relating to the reporting of wrongdoing. In his report, he made a

1 Gyles Report, Part One, p. xii.

2 Gyles Report, Part One, p. xiii.

3 Gyles Report, Part One, para. 5.7.

number of observations on the reluctance of crew members to report unacceptable behaviour on board *Success* and spoke of a bond of silence that existed in a certain department in the ship.⁴ He stated:

A combination of the culture of silence and mutual protection among MT sailors and intimidation and fear of repercussions on the part of those contemplating complaints against MT sailors provided a powerful cover against exposure of poor behaviour. Complainants were reluctant to use the normal channels for making complaints.⁵

5.5 It is especially important to note his suggestion that a culture of silence may not have been particular to this ship:

There is a distinct possibility that the underlying culture could exist in the Marine Engineering departments of other vessels, particularly those with little rotation among the engineering crew. I received confidential evidence that supports the existence of that possibility.⁶

5.6 Mr Gyles suggested that all naval disciplinary and personnel systems:

...should recognise the reluctance of crew members to come forward and complain about grievances for fear of repercussions, and procedures should be devised to alleviate that concern.⁷

5.7 Furthermore, he recommended that:

The progress of the campaign to break the MT culture of silence and mutual protection should be monitored from time to time. This will require the adoption of methods that will be effective and that recognise the barriers to obtaining genuine information. This should prove useful elsewhere in the Fleet.⁸

5.8 Although not covered by the committee's terms of reference, the committee is of the view that in light of its longstanding concern about the reporting of wrongdoing in the ADF, it should take the opportunity to highlight the Commission's findings on this matter. In this section, the committee provides a broader context in which to place the culture of silence that was evident on HMAS *Success*. It should serve as a salutary reminder of the enduring nature of this problem in the ADF and the need for continued vigilance in recognising and eliminating it wherever and whenever it surfaces.

4 Gyles Report, Part One, paras 2.44, 2.48 and 2.580.

5 Gyles Report, Part One, p. xii.

6 Gyles Report, Part One, para. 2.744.

7 Gyles Report, Part One, p. xviii.

8 Gyles Report, Part One, para. 2.749.

Longstanding concern—reporting of wrongdoing

5.9 In its 2005 report on Australia's military justice system, the committee wrote extensively on the reluctance to report wrongdoing in the ADF. Indeed, it referred to 'an embedded anti-reporting ethic in some areas of the ADF' and stated:

The reticence to report improper conduct or to make a legitimate complaint means that responsible commanders are not well placed to detect and correct wrongdoing and hence unsafe practices or inappropriate conduct continue unchecked.⁹

5.10 In response to the committee's findings and recommendations, the ADF initiated a comprehensive reform program with a projected two-year implementation period. From 2006 to 2008, the committee monitored the progress of reforms to Australia's military justice system giving particular attention to the reporting of wrongdoing.

5.11 Two of the important reforms introduced during this period included the establishment on 30 January 2006 of the Fairness and Resolution Branch to address organisational failures in the administrative system and the Inspector General's (IGADF) audits to determine the health of the military justice system. A number of reviews or investigations were also undertaken:

- *Report of an Audit of the Australian Defence Force investigative capability*, July 2006;
- *Final Report of the Learning Culture Inquiry: Inquiry into the learning culture in ADF schools and training establishments*, July 2006; and
- Commonwealth Ombudsman, *Australian Defence Force: Management of Complaints about Unacceptable Behaviour*, Report 04/2007, June 2007.

5.12 In 2008, the committee was led to believe that Defence also conducted attitude surveys that benchmarked the attitudes of Defence personnel through which the ADF could 'pick up how people are travelling and how their morale is'.¹⁰

5.13 At the end of this two-year period of implementing reforms, the CDF emphasised the importance of allowing the new arrangements sufficient time to 'bed down' before 'optimal effectiveness can be achieved'.¹¹ Overall, he was confident that the reforms in train would result in substantial improvements to the military justice system. In his view, they would better enable the ADF to achieve the correct balance

9 Foreign Affairs, Defence and Trade References committee, *The effectiveness of Australia's military justice system*, June 2005, para. 7.91.

10 Standing Committee on Foreign Affairs, Defence and Trade, Inquiry into reforms to Australia's military justice system, *Committee Hansard*, 20 June 2008, p. 36.

11 Standing Committee on Foreign Affairs, Defence and Trade, Inquiry into reforms to Australia's military justice system, *Committee Hansard*, 20 June 2008, pp. 23–4.

between maintaining discipline and safeguarding individual rights.¹² The IGADF agreed with this assessment.¹³ In July 2008, after a visit to a number of overseas defence forces, he concluded that, allowing for the reform program to mature, the new ADF military justice system 'could quite likely represent best practice among comparable defence forces'.¹⁴

5.14 In its fourth progress report, tabled in May 2008, the committee recognised that 'substantial and commendable progress' had been achieved in improving Australia's military justice system.¹⁵ It was concerned, however, that as the implementation period drew to a close and a phase of consolidated began, the reform program might lose momentum. In this regard, the committee noted ADF's long history of repeated failures to secure lasting effects from reforms to its justice system. It stated that:

...many of the problems identified in the military justice system were 'manifestations of a deeply entrenched culture'. Thus, one of the committee's main concerns is to prevent the re-emergence of old attitudes and lax practices that run counter to securing an effective and fair military justice system. Improvements in process will not of themselves eliminate the underlying culture or deep-seated attitudes that allowed some of the abuses identified in 2005 to once again take root.¹⁶

5.15 It drew attention to a statement made by the CDF:

The wrong sorts of behaviour can be very destructive to an organisation, but the right sorts of behaviour can be very productive and constructive. Whilst statements on values are fine in their own right, the real challenge that any organisation faces is to embed its values and its culture and to ensure that its values shape the behaviour of its people.¹⁷

5.16 Against this background, the committee takes careful note of Mr Gyles' comments on the reluctance of crew members in HMAS *Success* to make a complaint

12 Standing Committee on Foreign Affairs, Defence and Trade, Inquiry into reforms to Australia's military justice system, *Committee Hansard*, 20 June 2008, p. 23.

13 Standing Committee on Foreign Affairs, Defence and Trade, Inquiry into reforms to Australia's military justice system, *Committee Hansard*, 20 June 2008, p. 23.

14 Joint Standing Committee on Foreign Affairs, Defence and Trade, *Hansard*, 10 July 2008, p. 71.

15 Department of Defence, *Report on the progress to reforms to the military justice system*, 20 May 2008.

16 Standing Committee on Foreign Affairs, Defence and Trade, *Reforms to Australia's military justice system*, Fourth progress report, September 2008, para. 5.9.

17 Standing Committee on Foreign Affairs, Defence and Trade, *Reforms to Australia's military justice system*, Fourth progress report, September 2008, para. 5.9.

or report wrongdoing. Indeed, his observations have once again raised serious concerns about the reporting of wrongdoing in the ADF.¹⁸

5.17 The committee now turns to look at Navy's response to the recommendations contain in the Gyles Report.

Navy's response to Mr Gyles' recommendations

5.18 In his report Mr Gyles made 19 recommendations. For the purposes of this inquiry, the committee draws attention to only those dealing with the reluctance of personnel to report incidences of unacceptable behaviour. It has confined its comments to these recommendations because from its previous experiences, the committee understands that if the system for reporting wrongdoing fails then the integrity of the military justice system as a whole is at risk. The committee notes in particular Navy's response to the specific recommendations listed on the opposite page.¹⁹

5.19 In light of the ADF's reform program following the committee's 2005 military justice report, the subsequent reviews and investigations and the assurances given that the reform program had addressed the problem of reporting of wrongdoing, the committee is not convinced that Navy's current response is adequate. The committee is concerned that the 'planned predictive survey measurement and reporting (pulse survey)' may be cosmetic. It believes that a far more robust, concrete and determined response is required to ensure that the Navy's system for managing complaints does not stumble at its most elementary stage—the reporting of wrongdoing.

18 Gyles Report, Part One, para. 2.580.

19 The recommendations and Navy's response are contained in a document Chief of Navy Implementation Plan—HMAS *Success* Commission of Inquiry Report, Part One, Enclosure 2 to Chief of the Defence Force Response, CDF/OUT/011/194. It was made available in a media package on the day that the Gyles Report was released.

	Recommendation	Comments and action
12	<p>The progress of the campaign to break the culture of silence and mutual protection among MT sailors on SUCCESS should be monitored from time to time. This will necessitate the adoption of methods that are effective and that recognise the barriers to obtaining genuine information.</p>	<p>The effectiveness of the <i>New Generation Navy</i> cultural reform program in <i>Success</i> will be measured as part of the planned predictive survey measurement and reporting (pulse survey) in 2011.</p> <p>Department Management audits will report on indicators of cultural issues.</p> <p>Defence will examine other ways to measure compliance.</p>
13	<p>All Navy disciplinary and personnel systems should recognise and endeavour to allay crew member's reluctance to come forward and complain about grievances for fear of repercussions. That tendency was exaggerated in <i>Success</i> because of the MT culture.</p>	<p><i>The Chief of Navy Leadership Day</i> will emphasise the need to allay crew members' reluctance to come forward.</p> <p>The <i>Navigating the Change</i> program included discussion specifically designed to encourage people to come forward and to recognise the impediments to doing so.</p> <p>The effectiveness of the <i>Navigating the Change</i> program will be measured during the predictive survey measurement and reporting (pulse survey) in 2011.</p>
14	<p>The reluctance of crew members to come forward and complain about grievances for fear of repercussions makes it difficult to monitor equity and diversity program and military justice arrangements. Monitoring procedures should be reviewed to ensure that compliance with equity and diversity program and military justice is not judged by absence of complaint.</p>	<p>The effectiveness of cultural reform program will be measured by the planned predictive survey measurement and reporting (pulse survey) in 2011.</p> <p>IGADF will be requested to review the processes he adopts when conducting ships' audits.</p> <p>The methods available to measure compliance with Equity and Diversity programs and Military Justice will be examined.</p>

Silence and sexual harassment

5.20 The committee's concern about the failure to report wrongdoing was heightened by the instances cited in the Gyles Report of female sailors remaining silent in the face of abuse. Mr Gyles found evidence of inappropriate conduct toward females—including sexual advances (physical and verbal), insulting comments and workplace bullying.²⁰ He referred to patterns of behaviour and a 'longstanding serious cultural problem between MT male sailors and female sailors.'²¹ As an example he cited:

... insulting remarks to female sailors by male sailors generally, not only by MT sailors, were not uncommon. The term 'WRAN', in particular, was frequently used in a derogatory and offensive manner—for example, using it to jeer at female sailors or yelling 'WRAN' up the stairs into the female messes. Although the term 'WRANS' has a long and creditable history in the Australian Navy as an acronym for Women's Royal Australian Naval Service, in more recent times it has developed a derogatory meaning and refers to a 'whore of the Royal Australian Navy'. It was a derogatory term used by male members of the crew generally.²²

5.21 It was apparent to Mr Gyles that some female junior sailors were reluctant to use their chain of command or divisional system to make complaints for fear of repercussions. Rather than relying on the traditional means to report complaints, they turned to a more informal mentoring system 'as a way of airing grievances'.²³ His statement about unacceptable behaviour toward females takes on greater force when considered in the context of a previous inquiry onboard HMAS *Success* undertaken in 2004 by a Routine Inquiry team led by CMDR Kenyon. Mr Gyles recorded that:

On 21 January 2004 a Routine Inquiry began into allegations that a poll had been conducted on 19 January that year onboard *Success* in order to create a ranked list of female personnel with whom surveyed crew members would most like to have sex or, in a more benign form, who were most attractive.²⁴

5.22 According to Mr Gyles:

Witnesses interviewed in the course of the inquiry gave varied evidence about the poll question and ultimately the inquiry team was unable to come to a conclusion on this point. The sailors who admitted to organising the poll said the poll question was to the effect of 'Who is the best looking girl onboard?' Two other versions of the poll question were put forward by other witnesses: 'Which girl would you like to sleep with/pump/f...and then

20 Gyles Report, Part One, p. xiii and para 2.710.

21 Gyles Report, Part One, p. xii and para. 2.710.

22 Gyles Report, Part One, para. 3.12.

23 Gyles Report, Part One, para. 2.357.

24 Gyles Report, Part One, para. 2.461.

not talk to in the morning? and "Which girl would you like to sleep with/pump/f..., what nasty things would you do to her...and not talk to her in the morning?"

Then [redacted] was the first sailor to admit to participating in the vote; he later said a number of sailors knew exactly what the poll question was but they were worried about ramifications of admitting to it.²⁵

5.23 In summarising the Keynon inquiry, Mr Gyles also noted that there were allegations of abuse and sexual innuendo by males (including MT personnel) towards female sailors, and that many of those interviewed were concerned and fearful about giving information.²⁶ Moreover, when referring to the recent evidence of predatory sexual behaviour by crew members in *Success*, he noted:

The existence of competitions to have sex with nominated females, as organised in the engine room, had been part of the folklore on *Success* since at least 2004, when an inquiry had been conducted into an allegation of the kind.²⁷

5.24 He noted further that the reluctance to report wrongdoing:

...also makes it difficult to monitor the equity and diversity program and military justice arrangements. For example, *Success* had received a favourable report from the Inspector General of the Australian Defence Force Military Justice Audit in July 2006. It cannot be assumed that the situation in 2006 was as bad as that in 2009, but the conduct that led to the Kenyon inquiry in 2004 bears sufficient similarity to the conduct in 2009 to lead to a reasonable inference that a problem existed in 2006. The Kenyon inquiry was not referred to in the IGADF audit report. Monitoring procedures should be reviewed to ensure that compliance is not judged by absence of complaint.²⁸

5.25 It should be noted that in August 2006, the committee found that even where there are formal and known avenues for a person to disclose information or make a complaint about inappropriate conduct, the workplace may effectively render them useless. It stressed that a fundamental change in the ADF mindset must occur to overcome the stigma attached to reporting wrongdoing or making a complaint.²⁹ This observation has equal force today and underlines the committee's suggestion that

25 Gyles Report, Part One, paras. 2.469 and 2.470.

26 Gyles Report, Part One, para. 4.13.

27 Gyles Report, Part One, p. xii.

28 Gyles Report, Part One, para. 5.23. The IGADF informed the committee that an IGADF military justice audit had been conducted onboard HMAS *Success* in May 2006 and was assessed as satisfactory and 'no issues of significance relevant to the later incidents were noted by or brought to the attention' of the audit teams at the time of the audit. IGADF to the Senate Foreign Affairs, Defence and Trade Committee, 27 November 2009.

29 Foreign Affairs, Defence and Trade Legislation Committee, *Reforms to Australia's military justice system, First progress report*, August 2006, para. 4.65.

Navy's response to Mr Gyles' recommendations on reporting wrongdoing may be inadequate.

Committee view

5.26 Mr Gyles' findings on the sexual abuse endured by junior females sailors on board HMAS *Success* and their reluctance to report such conduct reveal a serious breakdown in leadership which failed to protect, supervise and mentor junior sailors.

5.27 It is the committee's view that Navy must ensure that it has a reporting structure that encourages the disclosure of inappropriate conduct and poor work practices. If not, the potential remains for a culture tolerant of unacceptable behaviour to take root and flourish as happened in *Success*.

Conclusion

5.28 The committee believes that the Navy, and indeed the ADF as a whole, must once again tackle this problem of reporting wrongdoing. In particular, the committee is of the view that the ADF must ask serious questions about the effectiveness of the Fairness and Resolution Branch, the Office of the Inspector General ADF, including the audits it undertakes, and even the Defence Force Ombudsman to determine if they in any way could do more to promote the responsible reporting of wrongdoing. It may even be time to revisit recommendation 29 of the committee's 2005 report which advocated the establishment of an independent Australian Defence Force Administrative Review Board. This organisation would be able to receive reports and complaints directly from ADF members under certain circumstances including: where the person making the complaint believes that they, or any other person, may be victimised, discriminated against or disadvantaged in some way if they make a report through the normal means.

5.29 The ADF, but Navy in particular, has been subjected to numerous inquiries, reviews and investigations. In 2005, the committee outlined earlier inquiries starting with the 1998 Commonwealth Ombudsman's 'Own Motion Investigation into How the ADF Responds to Allegations of Serious Incidents and Offences'. This inquiry was followed by a number of other significant parliamentary, coronial and quasi-judicial inquiries into matters related to military justice. All produced recommendations that were accepted by the ADF and were followed by an implementation period.³⁰ The committee's 2005 inquiry similarly found the military justice system wanting. It also produced a number of recommendations, many of which were accepted by the ADF

30 In its 2005 report, the committee discussed a number of these inquiries. See Foreign Affairs, Defence and Trade References Committee, *The effectiveness of Australia's military justice system*, June 2005, pp. 27–30.

and implemented.³¹ Since then there have been other reviews including the Defence Force Ombudsman's report on management of complaints about unacceptable behaviour and the 2009 *Report of the Independent Review on the Health of the Reformed Military Justice System*.³² Despite this pattern of inquiry followed by reform, and the efforts of successive Service chiefs, nothing seems to change. It is important that Mr Gyles' inquiry is instrumental in breaking this cycle to ensure that reforms make a lasting change.

5.30 The problems identified in the Gyles Report related not only to the reporting of wrongdoing and unacceptable behaviour but to the handling of such incidents once they became known or allegations were made. In HMAS *Success* things started to go wrong from the moment an incident occurred. Rather than minimise any initial damage, each measure taken or not taken appeared to compound the problem. The failure to nip unacceptable behaviour in the bud; the unconventional E&D health check that was outside the ADF's formal legal processes; the landing of three senior sailors without proper regard for their rights or wellbeing; and the subsequent myriad disciplinary and administrative inquiries send an unambiguous message to Navy. Clearly, it still has much work to do to improve the way it manages unacceptable behaviour and complaints.

5.31 In summary, the committee is of the view that the management of unacceptable behaviour onboard HMAS *Success* demonstrated:

- an absence of leadership;
- serious errors of judgements starting with the lack of proper attention given to early warning signs of alcohol abuse in Darwin;
- a failure to exercise duty of care especially toward young female sailors who did not receive the protection or mentoring that was required (the XO and the few senior sailors who had the courage to report incidents of wrongdoing are the rare exceptions and are the type of members that Navy needs); and
- scant regard for, or at best ignorance of, defence's legal procedures.

5.32 Although evident at all levels through the chain of command, those in the position of highest authority must accept that their lack of attention, sound judgement and courage meant that the safety and wellbeing of those under their charge was put at risk. This situation is intolerable.

31 Foreign Affairs, Defence and Trade References Committee, *The effectiveness of Australia's military justice system*, June 2005. For Department of Defence's response to the committee's recommendations see Appendix 1 to Standing Committee on Foreign Affairs, Defence and Trade, *Reforms to Australia's military justice system, Third progress report*, September 2007, pp. 3–8.

32 See Standing Committee on Foreign Affairs, Defence and Trade, *Reforms to Australia's military justice system, Third progress report*, September 2007, pp. 3–8.

5.33 Navy's response to Mr Gyles' recommendations and to his findings such as the existence of verbal abuse toward junior female sailors and of bullying and intimidation was woefully inadequate. Indeed, it was simply a re-packaging of so-called initiatives which have failed miserably in the past. This type of window-dressing will simply not work.

5.34 The committee awaits the release of the second part of the Commission's report before commenting any further.

SENATOR HELEN KROGER
CHAIR

Appendix 1

Terms of reference

That the following matters be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 18 March 2010:

- (a) the nature, scope and purpose of an 'Equity and Diversity Health Check' in the Royal Australian Navy, and under what authority such an investigation is conducted;
- (b) the equity and diversity issues at large on board HMAS Success (Success) giving rise to the 'Equity and Diversity Health Check' which was carried out on board Success between 21 April and 9 May 2009 including inter alia all disciplinary issues, the transfer of a Royal Navy exchange sailor, the management of equity and diversity issues by the ship's Commanding Officer and his Executive Officer both before and after the 'Equity and Diversity Health Check';
- (c) the nature and veracity of complaints and allegations made by a Petty Officer or any other person concerning equity and diversity issues on Success;
- (d) the reasons and factual evidentiary basis for the ship's Commanding Officer resolving to land a Chief Petty Officer and two Petty Officers (the senior sailors) at Singapore on 9 May 2009 from Success and the circumstances of that landing and removal from the ship including whether the Commanding Officer acted under the direction of any superior officer;
- (e) whether the senior sailors were informed of the full nature of the allegations and factual evidentiary basis for the subsequent landing in a timely fashion or at all, and whether procedural fairness was provided to those senior sailors;
- (f) the circumstances and events that led to the Commanding Officer of Success addressing members of the crew in relation to the landing of the senior sailors, 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' and if so, the extent that those comments may have prejudiced any subsequent inquiry;
- (g) whether the Inquiry Officer as appointed pursuant to terms of reference, dated 15 May, and as set out in Minute S1804843, dated 10 July 2009, declined to interview any relevant witnesses in circumstances where the senior sailors were prohibited from attending Success and or contacting any of the ship's company;

- (h) the way in which the inquiry into the events on Success was conducted, whether the method of questioning witnesses and gathering evidence was conducted according to the principles of justice, whether the inquiry process 2830 No. 102—24 November 2009 was free from any perception of bias, and whether any witnesses were threatened with disciplinary or other action during the course of giving evidence;
 - (i) whether the senior sailors requested access to evidence gathered during the inquiry into the events on Success, whether any such request was denied, and whether any subsequent finding is reasonable in the circumstances;
 - (j) the facts and circumstances of the treatment of the Legal Officer (the lawyer) assigned to the management and defence of the case of the senior sailors including any threats, bullying, adverse conduct and prejudice generally, including any threat of posting to Western Australia, and whether any such conduct constituted an attempt to compromise the lawyer's capacity to represent the best interests of the senior sailors without fear or favour;
 - (k) the knowledge and awareness of the ship's Commanding Officer, the Australian Defence Force Investigative Service investigators and the broader naval chain of command of the facts and circumstances relating to the Channel 7 News reports on 4 July and 7 July 2009 (the media reports) and the dates and times of such personnel being availed of such knowledge and awareness;
 - (l) the knowledge and awareness of the media reports by the responsible Minister and the dates and times of the Minister being availed of such knowledge and awareness;
 - (m) all and any other matters relating to the justice and equity of the management of the senior sailors in their removal from the ship and the subsequent administrative process or processes, including their complaints as to the flawed process as set out herein; and
- (2) That the committee not conduct any hearings until after 1 February 2010.