

Committee recommendations

During HMAS *Success*' deployment between March and May 2009, the commanding officer (CO) of the ship became aware of reports 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.

In part one of its report, the committee looked at the circumstances that caused the CO to seek outside help to deal with problems that had been brought to his attention. It considered the Equity and Diversity (E&D) team that was sent to assist the CO; the veracity of its damning report on the conduct of some crew members; and the subsequent landing of three senior sailors in Singapore. In this second part of its report, the committee focuses on the administrative and disciplinary processes that followed the removal of the sailors from *Success*. The committee finds that both processes were deficient.

Although the committee suggests that Navy should endeavour to do its utmost to assist the senior sailors and the company of *Success* to put the events of 2009 behind them, there can be no doubt that Defence must learn important lessons from *Success*' experience. The lessons go to the importance of due process, duty of care, procedural fairness and of complying both in word and spirit with the various Defence Manuals on managing unacceptable behaviour and subsequent inquiry processes.

From its monitoring of reforms to Australia's military justice system, the committee is aware that the Inspector General of the ADF (IGADF) and the Fairness and Resolution Branch have critical roles in assisting others to manage reports of unacceptable behaviour in the ADF. Their apparent absence, particularly in an advisory capacity, from the administrative processes dealing with unacceptable behaviour in respect of *Success*, is noteworthy.

Overall, the committee is strongly of the view that Defence must take responsibility for what the committee believes was an organisational failure. It makes only one recommendation in this regard. In light of the multiple breakdowns in procedure and breaches of standard practice in the management of reports of unacceptable behaviour in *Success*, including the mishandling of media reports, the committee recommends that Defence look carefully at its internal control mechanisms including those for handling media requests and reports.

The committee recommends that:

- IGADF examine the inquiry processes from the initiation of the E&D health check through to the legal advice (and its consequences) provided by Colonel Griffin and Defence Legal in order to identify real or potential systemic failures in the inquiry processes and consider the practical measures needed to minimise the risk of future mistakes;
- concurrently, the Fairness and Resolution Branch examine independently the same processes in order to identify real or potential systemic failures in the inquiry processes and consider the practical measures needed that would minimise the risk of future mistakes;
- at the same time, Defence Legal examine the legal advice, in respect of HMAS *Success*, provided by legal officers to the senior Navy officers at that time, especially on initiating inquiries and procedural fairness, with a view to identifying any weaknesses, inconsistencies or errors in, and the overall quality of, this advice;
- having carried out their respective examinations, the IGADF, the Fairness and Resolution Branch and Defence Legal jointly consider their findings and together identify what needs to be done to rectify problems; and
- by 1 December 2011, provide the committee with a report on their findings, the lessons to be learnt and their joint recommendations.

The committee requests that the IGADF, the Fairness and Resolution Branch and Defence Legal keep a written record of the notes taken during their separate examinations and also a record of the discussions held between them when producing their joint findings. The purpose in having these notes retained, is to ensure that they would be available to the committee should it resolve to consider matters further.

The committee notes that for a number of years it has expressed concerns about the standard of investigations undertaken by the Australian Defence Force Investigative Service (ADFIS). The most recent revelation about significant deficiencies in this investigative service is most disturbing. The committee suggests to ADFIS that the shortcomings identified in the investigations that took place relating to incidents onboard HMAS *Success* in 2009 should not be treated as an 'aberration'. In the committee's view, they should be considered in light of the committee's 2005 findings and ADFIS' continuing attempts to improve its investigations. It should be noted that the committee found in 2005 that the ADF had 'proven itself manifestly incapable of adequately performing its investigatory function'.

The Provost Marshal, through the Minister for Defence, has been providing the Senate Foreign Affairs, Defence and Trade Legislation Committee with periodic updates on the progress of reforms to the investigative service.¹

Recommendation 2

paragraph 9.10

The committee recommends that the Provost Marshal in his next update to the Senate Foreign Affairs, Defence and Trade Legislation Committee on progress in reforming ADFIS include the lessons learnt from the investigations into matters relating to HMAS *Success*. The committee is not interested in individual performances but the systemic shortcomings that allowed the mistakes to occur and importantly to go undetected for some time.

1 The most recent was received in February 2011.

