

## Chapter 3

### Inquiries and investigations following landing of senior sailors

3.1 On 7 May 2009, LCDR David Swanson, Deputy Fleet Legal Officer, referred to events on HMAS *Success* as 'a bit of a storm in a teacup'. He explained later that 'the nature of these sorts of incidents occur quite regularly, and they're issues that fleet legal would be aware of, different inquiries, different chain'.<sup>1</sup> According to LCDR Swanson:

...people had started to spin a little out of control and that what needs to be done is rather than letting it get out of control, follow your processes, follow the procedures. We have an inquiry mechanism that makes sure that we'll get to the bottom of what these problems are.<sup>2</sup>

3.2 In this chapter, the committee looks closely at the disciplinary and administrative procedures that followed the landing of the senior sailors in Singapore. But as already noted by the committee, even at this early stage, the flawed E&D health check and its subsequent report had strayed from the path of established process. Nonetheless, with the return of the sailors to Sydney, Navy was in a position to get the process on track: to put in train proper procedures to ensure that the allegations raised in the E&D report would be examined thoroughly and objectively. There was also the opportunity for Navy to ensure that all associated with grievances or complaints would be treated fairly, reasonably and in accordance with the principles of natural justice.

3.3 The first step was to conduct a quick assessment.

#### Quick assessment into alleged improper conduct

3.4 On 13 May 2009, the Deputy Fleet Legal Officer directed LCDR Anthony Whiting to conduct a 'desktop' quick assessment based on the E&D health check only. In his report, LCDR Whiting made no direct reference to the three senior sailors although he did refer to allegations of violence by some sailors against crew members, in particular from the MT department. He also referred to the allegation about a sex act in a public place which in his view was 'disturbing and warrants further inquiry'.

3.5 Overall, he largely agreed with the summary provided in the E&D health check report namely that a sexual predatory culture existed within a group of the crew. He went on to state, however, that:

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1 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 28 July 2010, p. 7.

2 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 28 July 2010, pp. 7 and 37.

...there have been numerous examples of coercion of junior female sailors to have sex with older male crew members. From the evidence the culture on board HMAS *Success* is dysfunctional and requires immediate action.<sup>3</sup>

3.6 It should be noted that the E&D report did not provide any examples of older male crew members coercing junior female sailors to have sex. The only specific example of sexual misconduct cited in the E&D report was the public sex act involving two junior sailors and without any suggestion of coercion or the existence a predatory culture. The quick assessment went beyond the broad conclusions reached in the E&D report to suggest that specific cases existed.

3.7 The uncritical acceptance of the conclusions reached by the E&D team follows the same approach taken by the CO, *Success*, and Fleet Headquarters and underscored the importance of having a formal, properly instituted inquiry capable of distinguishing fact from supposition.

3.8 There was also at this time a tendency to use emotive language when referring to the allegations, such as the CO's reference to 'mafia style actions'. Similarly, the inclination apparent in the quick assessment of reading too much into an already flawed document, such as assuming that there were indeed numerous examples of coercion was unhelpful. Clearly, there was a need for a balanced, well-reasoned and objective approach to establishing the factual basis for the various allegations. Some of the recommendations in the quick assessment would assist in this way.

3.9 LCDR Whiting suggested that the decision maker could decide as follows:

- refer the matter to naval police for investigation;
- Defence Force Discipline Act (DFDA) charges;
- increased drug and alcohol testing, perhaps even 'whole of ship' testing;
- further administrative inquiry such as a Routine Inquiry or Inquiry Officer Inquiry; and/or
- consider the removal from the ship of the apparent ringleaders.<sup>4</sup>

3.10 By 13 May 2009, however, events had already overtaken the quick assessment. CMDR Bowers, the Fleet Legal Officer, was in no doubt that the matters raised in the E&D report were 'sufficiently serious to warrant an Inquiry Officer's Inquiry'. Indeed, the decision to initiate such an inquiry was probably taken around 9 May. On 12 May CDRE Bates requested CMDR Bowers to 'take the necessary steps to instigate an Inquiry Officer Inquiry'.<sup>5</sup> Also, by this date, four sailors, including the

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3 Quick assessment Brief for Chief Combat Support Group, Quick Assessment into alleged improper conduct by certain members of crew of HMAS *Success*, 13 May 2009.

4 Quick assessment Brief for Chief Combat Support Group, Quick Assessment into alleged improper conduct by certain members of crew of HMAS *Success*, 13 May 2009.

5 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 23 June 2010, pp. 66 and 125 and 5 July 2010, p. 12.

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senior sailors, had been removed from the ship; identifiable incident reports sent to ADFIS; an E&D complaint raised; and a subsequent quick assessment in respect of that matter was underway. The following section considers these processes.

### **Investigations and inquiries in Singapore**

3.11 When outlining his proposed course of action, dated 9 May 2009, CMDR Brown stated that he intended to have the senior sailors landed and returned to Australia at the first available opportunity pending further investigation. He was of the view that with the ringleaders removed there would be 'a flood of information' put forward to substantiate the concerns held by command'. Although he believed that the problems identified in the E&D report had been a cultural issue within *Success* for a number of years, he was of the view that there was strong evidence of 'unacceptable behaviour, indecent acts and potentially criminal acts'.<sup>6</sup>

#### ***Formal E&D complaints***

3.12 In his statement, CMDR Brown also noted that after the E&D report had been finalised, two members of the ship's company had come forward and made E&D complaints.<sup>7</sup> One of the complaints included a threat of physical violence while the other involved two alleged assaults. CMDR Brown acted on both allegations promptly. The E&D matter was raised on 8 May, when a sailor lodged a complaint against the CPO (one of the senior sailors) in relation to a threat that the CPO would put him through the wall if he took a complaint to the Ship's Warrant Officer (SWO). CMDR Trevor Evans, Head of the Supply Department, conducted a quick assessment which was completed on 15 May 2009.<sup>8</sup> He interviewed both the sailors involved in the alleged incident.

3.13 In his evidence, CMDR Evans stated that he made an assessment based on what he was told, noting that there were two sides to the issue. He suggested that the complainant saw the behaviour as intimidating while the CPO maintained that it was a question of perception. Further, CMDR Evans was concerned that, in speaking to the complainant, 'the true nature of the complaint as it was presented 'didn't appear to be the issue.'<sup>9</sup> He explained further that to his mind, the real purpose of the complaint was—'potentially substantially different to what had actually been said and that he

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6 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*, 9 May 2009, paragraph 16. Copy provided to the committee in confidence.

7 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*, 9 May 2009, paragraph 8. Copy provided to the committee in confidence.

8 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 11 August 2010, pp. 8 and 143; 14 July 2010, p. 136; and 16 July 2010, pp. 1 and 5.

9 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 16 August 2010, pp. 59–60.

hadn't really felt threatened at all, he hadn't taken that literally'.<sup>10</sup> The committee has not seen the report of the quick assessment but it would appear that no administrative inquiry or disciplinary investigation followed as a result of the assessment.

3.14 The alleged assaults were raised as a notifiable incident through the coxswain for further investigation. CMDR Brown also indicated that he was raising a notifiable incident report for the ADF Investigative Service (ADFIS) requesting immediate investigation of the more general issues covered in the E&D report.<sup>11</sup> Fleet Command supported CMDR Brown's intended course of action.

3.15 That same day, 9<sup>th</sup> May, the Deputy Legal Officer, LCDR Swanson, informed the CO *Success* that the Fleet Legal Officer was working to assist with the notifiable incident and would liaise with ADFIS in order to initiate an investigation onboard in Singapore, commencing as soon as possible. He also suggested that CMDR Brown should conduct a 100% Prohibited Substance Testing Program (PSTP) test of the entire ship's company while alongside in Singapore.<sup>12</sup>

3.16 Within three days of the landing of the senior sailors, a number of Notifiable Incidents reports had been sent to ADFIS in respect of:

- an incident in Darwin on 4 April 2009—sent 12 May;<sup>13</sup>
- the discovery of drug paraphernalia onboard *Success*—sent 27 April;
- two alleged assaults involving a throat grab and a headlock—sent 9 May;<sup>14</sup> and
- potential criminal activity, inappropriate behaviour, unacceptable culture, indecent acts, standover tactics and predatory behaviour—sent 9 May.<sup>15</sup>

3.17 The military justice system has two distinct but interrelated elements: the discipline system and the administrative system. Both are designed to support the command and organisational structure of the ADF. The discipline system provides a framework within which disciplinary and criminal offences are investigated and prosecuted. The administrative system deals with the decisions and processes

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10 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 16 August 2010, p. 60.

11 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*, 9 May 2009, paragraph 10. Copy provided to the committee in confidence.

12 LCDR David Swanson to Simon Brown, email, 9 May 2009.

13 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 11 August 2010, pp. 97–98.

14 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 5 August 2010, pp. 113 and 117.

15 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 11 August 2010, pp. 97–98.

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associated with the control and administration of the ADF. Similar to structures in many organisations, it is designed to encourage Service personnel to maintain high standards of professional judgement, command and leadership.<sup>16</sup>

3.18 The committee considers the disciplinary matters first before looking at the administrative measures taken in the wake of the E&D report.

### *ADFIS investigations*

3.19 The E&D report provided the starting point for both the disciplinary investigations and the administrative inquiries that followed. On the last page of the E&D report, LEUT McArthur identified the names of certain crew members who were the subject of allegations. She explained the reason for doing so:

I (and/or WO Harker) had received information from and about persons which, to my understanding, may have constituted 'notifiable incidents' as covered by the definitions in DI(G) 45-2 (specifically, par 2, point h—'illegal drugs' and point j—'Sensitive Matters that may attract undesirable attention by the public, media or other agencies'). I believed I had an obligation, as a member of the ADF, to report the matter to command.<sup>17</sup>

3.20 At the time, an incident was defined as a 'Notifiable Incident' if it raised a reasonable suspicion that an offence may have been committed against the DFDA, the criminal law of the Commonwealth, states or territories, or the criminal law of another country and involved a Defence member. The definition covered not only criminal offences such as theft, fraud, assaults, sexual offences, the use and possession of illegal drugs but also matters that may be regarded as sensitive, serious or urgent including the likelihood that an incident:

- would bring the Australia Defence organisation (ADO) into disrepute;
- would attract media or Parliamentary attention; and
- may adversely affect the efficiency of the ADO.<sup>18</sup>

3.21 On 12 May, WO2 David Clarke, ADFIS, was tasked to investigate a number of matters related to incidents in HMAS *Success*.<sup>19</sup> The initial information he obtained from his headquarters was that an E&D team had gone onboard the ship at a previous port and raised a number of notifiable incidents. He was to proceed to Singapore from his base at Butterworth and make an assessment from what the E&D team could tell

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16 For a more detailed description of both systems see, Standing Committee on Foreign Affairs, Defence and Trade, *The effectiveness of Australia's military justice system*, June 2005, pp. 7–22.

17 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 29 July 2010, p. 62.

18 Defence Instructions (General) ADMIN 45-2, 30 October 2001, paragraphs 7–10.

19 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 6 August 2010, p. 46.

him.<sup>20</sup> The investigating officer was shown a number of notifiable incident reports but was not provided with them. LTCOL Stephen Vokes, Director of Operations, ADFIS, stated, however, that he would be surprised if the investigation officer did not have copies of the notifiable incidents to assist him in his investigation.<sup>21</sup>

3.22 When the ADFIS investigator arrived in Singapore he spoke first to the chief coxswain and the CO before the E&D team.<sup>22</sup> WO2 Clarke informed the CO that he was going to analyse the initial information he had received, identify the witnesses that he needed to interview and determine any other avenues of investigation he should take.<sup>23</sup> CMDR Brown took the investigator through all the issues that had come up in the discussion on the 26<sup>th</sup> April and the E&D report including the matter of alleged bounties.<sup>24</sup> In addition, the coxswain provided the investigating officer with a brief overview of the likely offences that had occurred. WO2 Clarke did not take notes of either conversation.

3.23 LCDR Swanson had encouraged WO Clarke to speak to the E&D team headed by LEUT McArthur as 'a key starting point for consideration of any potential wider offences.'<sup>25</sup> He explained:

Certainly from the point of view of speed and simplicity and assisting him, and not attempting to influence what investigations they did or did not do, but it makes logical sense that an inquiry team has already identified particular individuals. If you go to the equity and diversity inquiry team you could start your chain of questioning from there and then feel free to go where you need to go.<sup>26</sup>

3.24 WO2 Clarke recalled that during his meeting with the E&D team, he was shown a copy of the E&D report and provided with a list of names with an asterisk against particular key people. He recorded a statement from the team which he used as a basis for his investigation.

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20 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 6 August 2010, pp. 47–48.

21 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 10 August 2010, p. 4.

22 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 6 August 2010, p. 52.

23 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 6 August 2010, p. 53.

24 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 11 August 2010, pp. 100 and 102.

25 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 28 July 2010, p. 19.

26 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 28 July 2010, p. 19.

3.25 Two other non-commissioned officers joined the investigating officer towards the end of the week for their initial visit.<sup>27</sup> The investigators conducted all the inquiries off the ship at a naval base in Singapore and spoke to 50 people during the first stay in Singapore.<sup>28</sup>

3.26 LTCOL Vokes, the Director of Operations ADFIS, indicated that he gave broad advice to one of the investigating team to:

...firstly identify all the DFDA offences we can, sift them out and crystallise them and then attack them as DFDA matters. Those matters which are...inquiry style matters that involve hearsay or innuendo is to do the best we can with those but attack the matters that we know that we're going to have a substantial chance of proving something beyond a reasonable doubt.<sup>29</sup>

3.27 He explained further that ADFIS' initial approach carried right through the investigation: that ADFIS concentrated 'on the investigation of DFDA offences...with a view to being able to prove to a requisite standard. In response to the question whether this vague guidance could result in matters falling between two stools, LTCOL Vokes indicated that the investigator and the chain of command on the ship could have managed this uncertainty. He then acknowledged, however, that matters were neglected and that 'things did indeed slip between the cracks or were incorrectly referred'.<sup>30</sup>

3.28 Two particular allegations—the public sex act and the drug incidents—highlight the disarray that prevailed at the time.

#### *Public sex act*

3.29 As noted earlier, the E&D report concluded that a sexual act did take place between a female junior sailor and a male junior sailor in a public area. The quick assessment based on the E&D report stated clearly that the alleged public sex act was disturbing and warranted further inquiry. CMDR Brown was under the impression that the ship had sent a Notifiable Incident report that related to the public sex act.<sup>31</sup>

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27 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 11 August 2010, p. 88 and 9 August 2010, p. 38.

28 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 9 August 2010, p. 6.

29 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 10 August 2010, p. 5.

30 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 10 August 2010, p. 6. See also comments by the ADFIS investigating officer, Commission of Inquiry into alleged incidents onboard HMAS *SUCCESS*, transcript, 6 August 2010, p. 54.

31 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 11 August 2010, p. 90.

3.30 Thus, by 20 May CMDR Brown had done nothing with this matter because he believed that it was being investigated by ADFIS and he was waiting for information on the next step.<sup>32</sup> CMDR Donna Muller, the executive officer (XO), was under the same impression. She noted:

I thought it had been handled as a notifiable incident, but I don't believe it actually ended up that way, and so by Hong Kong there were questions being asked [by the captain and XO] on where we were at with this particular incident.<sup>33</sup>

3.31 Asked whether he was receiving updates from his coxswain about the public sex act, CMDR Brown could not recall. With regard to steps taken in respect of the public sex act and indeed other matters, he explained:

These things happened extremely quickly and started to be overtaken by passing them up to ADFIS and reporting them up through Fleet Headquarters.<sup>34</sup>

3.32 Although the coxswain agreed that there was an instruction for an investigation to take place, he could not remember the XO or CO asking him to conduct an investigation. He did not interview any person about the incident on the voyage between Qingdao and Hong Kong and could not recall when he first heard about it. He stated that investigations were conducted when ADFIS arrived in Singapore.<sup>35</sup>

3.33 The ADFIS investigating officer accepted that he should have taken carriage of this matter but had handed it back to the ship's coxswain and somewhere along the line 'dropped the ball' on it again until it was finally picked up by the investigation office in Sydney.<sup>36</sup> LTCOL Vokes stated that he could not offer a satisfactory explanation for the delay in investigating this matter. He noted that for an unknown reason the ADFIS investigator handed this matter back to the ship's coxswain. He stated that this matter slipped by them altogether and ADFIS did not become aware that it had not been addressed at all until later in the year. He stated that the situation 'was completely unsatisfactory'.

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32 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 11 August 2010, p. 90.

33 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 28 July 2010, p. 83.

34 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 11 August 2010, p. 95.

35 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 5 August 2010, p. 95.

36 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 9 August 2010, p. 21.



3.34 LTCOL Vokes informed the commission that when finally discovered the matter was quickly taken back to investigate and finalise.<sup>37</sup> Both sailors alleged to have engaged in the act were interviewed in late August 2009.

#### *Steroid use*

3.35 In respect of the discovery of material related to drug use, LTCOL Vokes directed the investigating officer to:

Travel to Singapore, conduct investigations into the assault of [name redacted] and assess the situation with the location of syringe and drug paraphernalia onboard *Success* on or about 28 April.<sup>38</sup>

3.36 The ADFIS investigating officer was shown the notifiable incident that dealt with the drug offence which he did not investigate in Singapore. He decided to leave the evidence onboard, which, in his words, had been bagged, tagged and stored correctly, until the ship returned to Australia so that the ADFIS office at Garden Island could take charge of that evidence.<sup>39</sup> When asked about ADFIS' approach to the notifiable incident in respect of the drug paraphernalia found in *Success*, CMDR Muller stated that:

...at that point in time, there was a lot of confusion over who was taking what, and ADFIS were quite slow in responding on some matters<sup>40</sup>

3.37 It was not until 2 July 2009 that the scenes of crime action took place. LTCOL Vokes could not explain the two-month delay in examining the exhibits.<sup>41</sup>

#### *Sex act onboard Success*

3.38 CMDR Rayner, who assumed command of *Success* on 25 June 2009, informed the committee that he dealt with the incident involving the two sailors who were alleged to have engaged in sexual intercourse onboard *Success*.<sup>42</sup> He stated that the charge against the female sailor was initially referred to CMDR Brown but he was

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37 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 10 August 2010, p. 21.

38 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 10 August 2010, p. 7.

39 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 6 August 2010, p. 48.

40 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 28 July 2010, p. 79.

41 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 10 August 2010, pp. 8 and 10.

42 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 5 August 2010, p. 5.

unsure exactly of the time that CMDR Brown had heard the matter.<sup>43</sup> The charge was handed on to him when he took command of the ship and eventually heard a month later on 25 July.<sup>44</sup>

*Threats, intimidation and bullying, bounties and sex ledger*

3.39 The E&D report raised a number of allegations of unacceptable behaviour including the suggestion of bounties and a sex ledger, though it recognised that there was 'no real evidence'. Even so, the ADFIS investigator was to investigate the alleged existence of a sex ledger, mentioned by the E&D team during their discussions in Singapore, and which he included in his initial 'scope of investigation'.<sup>45</sup>

3.40 According to ADFIS, preliminary investigations found insufficient evidence of the existence of a sex ledger. The ADFIS investigator stated that his only information on the ledger came 'from the equity and diversity team and one person who allegedly heard about its existence but had never seen it'.<sup>46</sup> He indicated that he had no information to support the proposition that 'the ledger or bounties ever existed, or it was happening'—that 'no-one knew anything about that'.<sup>47</sup> The investigator stated that he informed the CO that the allegations regarding the sex ledger appeared to be unfounded.<sup>48</sup> Similarly, he received no evidence to suggest the existence of a bounty placed on the heads of females. LTCOL Vokes also understood that the matter of bounties did not get past the level of rumour.<sup>49</sup>

3.41 With regard to the allegations of sexual coercion, the investigator told the Commission that, as a result of the conversation he had with the E&D team, a number of females onboard had been identified in connection with the allegations. He explained, however, that:

When I arranged to speak with them individually none of them provided me with anything that related to those allegations...I took no statements in relation to this topic because I had no information. The witnesses they

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43 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 5 August 2010, p. 16.

44 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 5 August 2010, pp. 9 and 15.

45 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 9 August 2010, p. 12.

46 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 9 August 2010, p. 12.

47 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 9 August 2010, p. 26.

48 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 9 August 2010, p. 13.

49 See LTCOL Vokes comments about dealing with allegations of prejudicial conduct. Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 10 August 2010, p. 23.

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[E&D team] identified were unwilling or unable to provide any information.<sup>50</sup>

3.42 The senior sailors were not associated in any way to the allegations discussed so far—the two physical assaults, the public sex act (except two were alleged to have watched and encouraged others to watch), steroid use, bounties or the sex ledger. The ADFIS investigator did, however, interview the complainant who raised the allegation concerning threats made by the CPO against certain members of the crew if they spoke out about unacceptable behaviour.<sup>51</sup> According to the investigator, the complainant declined to make a statement in regards to that matter. As he had no further information, the investigator did not interview the CPO, explaining that he needed information if he were to proceed.<sup>52</sup> He also stated that he did not receive any information on any alleged threats made by either of the other senior sailors.<sup>53</sup> As noted earlier, the Supply Officer had conducted a quick assessment into the E&D complaint which he completed on 15 May.<sup>54</sup>

#### *Confusion and investigation shortcomings*

3.43 Three of the four notifiable incidents involved particular allegations. Despite dealing with a specific incident, there was confusion over what was being investigated and, if so, how far the investigation had progressed. The fourth notifiable incident, the referral to ADFIS of 'potential criminal activity', was very broad and general in nature and only further complicated an already hazy situation. Furthermore, there can be a degree of overlap or blurring in what constitutes a disciplinary and an administrative matter. While some of the allegations raised in the E&D report were clearly ADFIS matters such as those relating to physical assaults and drug use, others under the broad rubric of inappropriate behaviour and unacceptable culture were less clear.<sup>55</sup>

3.44 Accordingly, one of the immediate tasks for the administrative inquiry officer was to have a clear understanding of the allegations, and to separate them into those

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50 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 9 August 2010, pp. 3–4.

51 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 9 August 2010, p. 24.

52 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 9 August 2010, pp. 25 and 34.

53 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 9 August 2010, p. 25.

54 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 11 August 2010, pp. 8 and 143 and 14 July 2010, p. 136 and 16 July 2010, p. 1.

55 See LTCOL Vokes comments about dealing with allegations of prejudicial conduct. Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 10 August 2010, p. 24.

coming under ADFIS's jurisdiction and those under the administrative system.<sup>56</sup> LCDR Swanson explained that 'the criminal side of it was for ADFIS to decide and for our side if there's this nebulous general culture that was going on then that lends itself to an inquiry to find out what was going on...'<sup>57</sup>

3.45 The ADFIS investigator stated that on leaving the ship in Singapore, he briefed the commanding officer on the matters that he was investigating and those that seemed unfounded at that time or for which he had no evidence, including the sex ledger.<sup>58</sup> As noted earlier, the CO and XO were by no means certain about what was and was not being investigated.

3.46 CMDR Brown indicated that he was expecting ADFIS to investigate the allegations raised in the E&D report about the use of threats, intimidation and bullying. He thought that ADFIS would provide feedback to the ship 'as to what they were going to carry and what they were going to pass back.'<sup>59</sup> He explained that sometimes ADFIS refer matters back to the ship to investigate. If it comes back to the ship then he would, through the ship's coxswain, take further action to investigate.<sup>60</sup> In his email of 20 May to LEUT McArthur, CMDR Brown stated:

I intend to investigate further the threats of physical harm under the DFDA. Once I've been given a clear understanding of what ADFIS will carry after the interviews back in Sydney. These relate directly to the E&D issues recently raised onboard.<sup>61</sup>

3.47 CMDR Brown waited to receive a report back from ADFIS informing him of what they were doing and where they were at but had not received any such advice by the time he left the ship in June 2010.<sup>62</sup> As of 11 August 2010, CMDR Brown had not been informed by 'either ADFIS or the coxswain or anyone else as to what matters ADFIS didn't intend to investigate'.<sup>63</sup>

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56 See for example, Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 28 July 2010, p. 35.

57 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 28 July 2010, p. 35.

58 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 9 August 2010, p. 12.

59 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 11 August 2010, p. 91.

60 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 11 August 2010, p. 92.

61 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 11 August 2010, p. 91.

62 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 11 August 2010, p. 103.

63 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 11 August 2010, p. 92.

3.48 Overall, by the time the administrative inquiry was to begin, confusion still surrounded the work being done by ADFIS. Moreover, evidence suggests that there were serious shortcomings in the ADFIS' investigations and that communication between the commanding officer and the ADFIS investigator was poor. Indeed, ADFIS' Director of Operation, LTCOL Vokes, accepted that the investigations were inadequate. He summarised :

I would like to suggest that the *Success* matters were an aberration in terms of how ADFIS should be doing business and we fully accept that that was a poor investigation and we've taken steps and have been taking steps since the inception of ADFIS to improve the general quality of our investigations.<sup>64</sup>

3.49 On 15 January 2010, the Deputy Provost Marshal of the ADF arranged for a quick assessment to be made of allegations of poor investigation standards. Following that assessment on 27 January 2010, a Routine Inquiry Officer was appointed to inquire into the matter. The report of that inquiry, issued in March 2010, found significant deficiencies with the ADFIS investigations. Those failings were not separately investigated by the Commission. Nevertheless, Mr Gyles noted the extent of the deficiencies, the narrow scope of the matters investigated by ADFIS, and the very conservative approach to instituting disciplinary proceedings.<sup>65</sup>

3.50 Since 2005, the committee has raised concerns about the poor standard of the ADF investigative service. It comments further on ADFIS in the final chapter.

#### ***Inquiry Officer Inquiry—the Wark inquiry***

3.51 On 12 May 2009, CDRE Bates told the Fleet Legal Officer that they needed to know what ADFIS was investigating so they would then know what was left to do. In response, the Legal Officer informed CDRE Bates that Fleet Legal would exert all the pressure that it could on ADFIS to obtain information on how far its investigation would extend.<sup>66</sup> He indicated that the Deputy Fleet Legal Officer, LCDR Swanson, would liaise closely with the ADFIS investigator to extract an answer quickly.

3.52 LCDR Swanson held discussions with LTCOL Vokes, to ascertain, 'from a logistics and administrative point of view', what ADFIS were doing.<sup>67</sup> According to LCDR Swanson he:

...simply wanted to know what ADFIS were doing in terms of we'll be doing these investigations. I don't get involved in what they might look at,

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64 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 10 August 2010, p. 22.

65 Gyles Report, Part Two, p. xvi.

66 Gyles Report, Part Two, paragraphs 2.5– 2.6.

67 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 28 July 2010, pp. 16–17.

what they might do, that's their prerogative for what they want to investigate.<sup>68</sup>

3.53 At that stage, he understood that an ADFIS investigator would 'join the ship immediately 'with a view to interviewing persons concerning the assault on a female sailor (incident not related to senior sailors).

3.54 By email, LTCOL Vokes informed LCDR Swanson that ADFIS was 'not intending to investigate the other matters raised' in the E&D report. LTCOL Vokes noted further that 'with reference to the historical incidents of unlawful activity aboard *Success*, ADFIS are not prepared to dispatch an investigative team'.<sup>69</sup> Consequently LCDR Swanson, as the officer responsible, drafted the terms of reference for an inquiry into the remaining issues raised in the E&D report.<sup>70</sup> Yet as noted above, it was still not clear what investigations ADFIS were following and people held different assumptions about what was or was not being considered.

3.55 On 15 May 2009, the Chief of the Combat Support Group, Commodore Bates appointed CMDR Niel Wark as an Inquiry Officer for the purpose of inquiring:

...into the facts and circumstances of allegations of equity and diversity issues in HMAS *Success* raised as a result of the equity and diversity health check that was undertaken in *Success* during the period 04–09 May 2009.

3.56 Under the terms of reference, the Inquiry Officer was to seek evidence and report on the existence of inappropriate culture onboard HMAS *Success* including:

- (a) Whether there exists, or existed, onboard *Success* generally, or more specifically in the Engineering Department, an inappropriate culture as evidenced by attitudes towards:
  - (i) inappropriate relationships including specific incidents with details of who was involved or otherwise aware of any such relationships;
  - (ii) sexual behaviour including, but not limited to, any predatory culture towards members of Ship's Company by any person, including specific incidents;
  - (iii) the consumption and use of alcohol, including specific incidents;
  - (iv) the use of random breath tests and attempts to avoid its proper use; and

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68 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 28 July 2010, p. 16.

69 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 28 July 2010, p. 17.

70 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 28 July 2010, p. 33. Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 16 July 2010, p. 129. LCDR Swanson was acting Fleet Legal Officer late October, November and December 2009.

- (v) the use of drugs/steroids.
- (b) The extent of any culture of assault, intimidation, bullying or coercion that has occurred towards any individual who has not agreed with any of the above identified culture with details of who was involved and otherwise aware of such action.

3.57 The Inquiry Officer was also to seek evidence and report on how any identified inappropriate culture came into existence and:

- (c) Whether the adverse culture was developed as a result of either fully or partially:
  - (i) a break down in the divisional system;
  - (ii) the rotational system/manning process on HMAS *Success* and the time individuals serve on the one ship; or
  - (iii) staff messing arrangements and whether they are generally different to other RAN ships;
- (d) Whether the chain of command up to and including the Commanding Officer were aware of such an inappropriate culture and what steps were taken to address it or the degree to which such practices were permitted;
- (e) The level and kind of support provided to complainants and respondents involved in inappropriate behaviour incidents;
- (f) Whether there was any non-conformance with any Defence or RAN policy, directive or instruction and if so by whom; and
- (g) Any perceived bias in treatment towards any particular group, including specific examples.<sup>71</sup>

3.58 It should be noted that under these very broad terms of reference, CMDR Wark was to have regard to two key documents—the E&D health check report and the associated quick assessment.

3.59 LCDR Matthew Vesper (a reserve legal officer who acted in effect as counsel assisting CMDR Wark) and WO Melville Harker were appointed Inquiry assistants.

3.60 CMDR Wark had 33 years of service and was experienced in conducting and reviewing quick assessments and producing inquiry reports. LCDR Vesper was a member of the Naval Reserve who had been a legal practitioner since 1991 and was a barrister in private practice at the NSW bar, and was also experienced in Defence inquiries. WO Harker had been part of the two member E&D team that had produced the E&D report which subsequently formed the basis for the work of the proposed Inquiry. The appropriateness of this appointment is discussed later.

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71 The Wark report: summary, findings and recommendations, Gyles Report, Part Two, Appendix B.

3.61 As the ADFIS personnel were leaving Singapore, the administrative inquiry team arrived to conduct an Inquiry Officer's Inquiry.<sup>72</sup> LCDR Vesper and WO Harker joined HMAS *Success* on 20 May 2009 in Singapore as it was about to embark on a joint naval exercise. The ship returned to Singapore on 29 May. During that voyage the inquiry team held 62 interviews. Some witnesses were interviewed more than once. Subsequent interviews were held in late June and early July making a total of 70 crew members who were interviewed. Each signed a statement of impartiality and independence, and there was a record of interview for each. The interviews were taped and accounted for over 100 hours of recordings.<sup>73</sup>

## **Conclusion**

3.62 Although flawed, the E&D report raised allegations that could now be investigated properly, thoroughly and objectively by appropriate authorities using formal and recognised processes. But confusion about what was being investigated; break downs in communication; and in some cases poor investigation practices served only to complicate an already complex process. The very broad terms of reference under which the Inquiry Officer Inquiry was instituted did not help to clarify the matters that it was considering. It is against this backdrop of uncertainty that the committee now looks at the circumstances of the landed sailors.

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72 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 11 August 2010, p. 88.

73 Gyles Report, Part Two, paragraphs 2.11–2.12.