

CHAPTER 6

RECOMMENDATIONS OF THE BOARD of INQUIRY TERMS of REFERENCE 1(a) and 1(e)

This Chapter looks at the recommendations of the Board of Inquiry.

6.1 The Board made a number of recommendations relating to individuals who had served on the SWAN during the Asia deployment in 1992. Other recommendations addressed broader issues such as gender issues (including sexual harassment and accommodation) training and the Divisional System. Each will be addressed in turn in this Chapter.

Gender Issues

6.2 The Board recommended that:

"Every effort should be made not to post females to sea in very small numbers.

A team of possibly two, namely a Lieutenant Commander and a senior sailor, one male and one female, be appointed by the Maritime Commander to deal with gender related issues as they arise in the Maritime Command."

A continuing education program be developed which would make all personnel within the Maritime Command aware of gender related issues and their rights in, and obligations to such issues.

"Gender related issues should be highlighted at all initial entry training establishments as well as in all staff and management training courses. Within the Maritime Command, it should be given a high profile for people such as CO and XO designates.

*Sea riders*¹ should be briefed to look for any evidence of harassment or objectionable behaviour. It also needs to be included as a specific item in final inspections.

The measures taken by SYDNEY to prepare the ship for the arrival of females be used as a framework for developing guidance to other ships on how to integrate females on board.

A policy should be instituted whereby when female sailors are posted to a ship, there is at least one billet at senior sailor or officer level filled by a female."²

6.3 Dr Wheat told the Board in her evidence that, prior to her posting to HMAS SWAN, a female Petty Officer at HMAS CERBERUS had mentioned to her a matter concerning sexual harassment that had occurred one or two years before. The Board made a recommendation that the Petty Officer in question should be given every opportunity to pursue a complaint of sexual harassment without fear or retribution. Navy gave evidence to the Committee that the matter was referred to the Petty Officer's Commanding Officer at HMAS CERBERUS and it was investigated.³ Navy's report to the Minister on this matter states that during an interview with the base legal officer, the Petty Officer concerned had made:

*"reference to an incident which occurred approximately eight years ago at HMAS HARMAN which involved ... her supervisor making obscene remarks or suggestions to her. A poor PP1A followed, which led her to wonder whether her refusal to comply had affected the report... she stated that she had no intention of pursuing the matter."*⁴

1 Note: "*Sea riders*" are non-crew members of the ship.

2 BOI Report, p. 101-102 (emphasis added).

3 RAN, submission, Committee Hansard, p. 228.

4 CNS Memo to Minister for Defence Science and Personnel, 10 August 1993.

The base legal officer was:

"satisfied at the conclusion that no such harassment has occurred in recent years, that no staff at HMAS CERBERUS had ever treated her in a sexually harassing manner and that no PERS1 reports could, to her knowledge, be ascribed to reasons of that nature."

6.4 The Board made five recommendations relating to the living conditions (including ablution facilities) for women on HMAS SWAN and on the suitability of certain ships to embark women. This matter is addressed in Chapter 3 of this Report.

Appropriateness of the gender related recommendations

6.5 The Board's recommendations in relation to gender appear to have a two-fold aim: the provision of personal support for females at sea and a thorough Navy-wide education and training campaign to make all members of the RAN aware of the issues of sexual harassment and unacceptable behaviour, as well as their rights and responsibilities in relation to those issues. Moreover, in recognition of their management responsibilities, the Board recommended that gender related issues *"be given a high profile for people such as CO and XO designates"*.⁵

6.6 In its report, the Board pointed out that:

"The pursuit of gender related issues without fear of retribution has been a persistent theme of many of the female witnesses throughout this inquiry."

6.7 It quoted an answer given by Dr Wheat to a question of the Board about fear of retribution in which she said:

"that until attitudes change she does not think that there is anything that could be done about the fear of retribution."

5 BOI Report, p. 102.

6.8 The Board went on:

*"this Board's recommendations are designed to change behaviour towards females, and commence that attitude change."*⁶

6.9 The Board's emphasis on the implementation of education programs in its recommendations certainly point to achieving attitude change. Navy contracted Triulzi Collins consultants to devise those education packages. Triulzi's wide ranging study of Navy resulted in findings and recommendations quite similar to those of the Board of Inquiry. Navy's implementations of those recommendations are underway and are dealt with in later chapters of this Report.

6.10 The Committee notes that the Board's recommendations in this section of its Report are aimed at dealing primarily with the issue of unacceptable sexual behaviour. The Board's Report states:

*"There is a wealth of evidence before the Board that the language and behaviour of the officers in SWAN's wardroom went well beyond any ordinary standard of common decency. The Board was particularly helped in the assessment of this behaviour by the wardroom stewards who gave an account of the goings on in the wardroom that differed markedly from that of many of the officers. Indeed the stewards personal standards of propriety and decency were offended by the conduct that they witnessed."*⁷

6.11 The Committee recognises that such behaviour would not have been exclusive to HMAS SWAN wardroom or indeed to Navy. Although many men (and indeed several did in this instance) would object to such behaviour, it is unlikely that many complaints would have been made about this in the past, whether in Navy or any other exclusively male workplace. However, it is imperative that measures be taken to address the consequences of this type of behaviour on the ability of all employees to perform optimally in a mixed gender environment. The Committee is of the view that the Board's recommendations for extensive education programs and training to address gender related issues were very positive and constructive.

6. *ibid.*, p. 74.

7 *ibid.*, p. 79.

6.12 The Board, to its credit, sought to examine the question of sexual harassment in the context of the overall culture of the Navy. The Committee is aware, for example, of the extensive discussions that the Board had with Dr Kirsner in their search for both an explanation for the unacceptable behaviours they had identified on the SWAN and for constructive ways to bring about a change for the better.⁸

6.13 In the course of this inquiry the Committee has reached the conclusion that it is important to address more extensively still the total context in which Navy personnel live and work. It is too simplistic to isolate sexual harassment and discrimination from harassment or from the total context in which people are functioning in the Navy today.

6.14 The way people behave in any community reflects an infinitely complex interplay of that community's norms, values and traditions, rules and regulations, personalities and personal experiences. A number of witnesses have put to the Committee the view that, as a first step, it is behaviour that should be tackled because change of attitude is more difficult and can be expected to take considerably longer.⁹

6.15 To bring about changes in behaviour it is not enough, as the Board recognised, to issue edicts, particularly when those edicts try to deal with an area as sensitive, complex and personal as sexual harassment, or harassment of any kind. A clear formulation of policy and regulations is a necessary, but not a sufficient condition for change. Similarly, punishment alone for transgressions will not eliminate undesirable behaviours. A far more sophisticated approach, involving awareness raising and support mechanisms and a variety of conflict resolution mechanism must be put in place if genuine attitudinal and behavioural change is to be achieved.

6.16 The Committee believes it is both necessary and possible to move on both fronts together. Neither the Board nor the Committee were in a position to explore and investigate in detail, and in sufficient depth, the culture and dynamics of the naval community, the inter-play of the various sub-cultures and the way in which this affects the interpersonal relationships and the behaviour of the individual members of that community. The role of peer group pressure in encouraging desirable behaviour and inhibiting undesirable behaviour formed part of the Board's deliberations when considering what recommendations it should put forward. The question of the most

8 BOI Transcript, pp. 2609-2652.

9 Ms A. Smith, Committee Hansard, p. 1088.

appropriate management style and management practices for the circumstances and demands facing the Navy today was touched on, but not fully explored.

6.17 The Navy places great emphasis on teamwork and discipline. At the same time it expects its personnel to display initiative and self-reliance. Inculcating team spirit in a work force drawn from an increasingly diverse community is no simple task. The growing presence of women in every branch of the Navy further complicates the process. The Navy faces the enormous challenge of achieving group cohesion without discriminating, isolating, pushing out or rejecting those who are different simply because they are different.

6.18 There will always be individuals who are not prepared to make the adaptations necessary to fit in with the prevailing norms of any particular group. The Navy must ensure that the norms themselves are appropriate. Assumptions that may have been made unquestioningly in the past must be carefully re-examined and rigorously tested against today's changed needs and circumstances. Once this has been done, selection and appraisal processes must be re-evaluated to ensure that there is a good fit between the individual and the organisation.

6.19 The Committee is pleased to note that the Navy has recognised that sexual harassment must be dealt with in the broad context of working relationships between all members of the Navy and not just the relationship between men and women in the Navy. This broad context is reflected in the name itself of the current project: "Good Working Relationships in the Navy". Consultant Helen Taylor told the Committee:

"The basic premise of the program, as with the whole good working relationships project, is that the problems that the Navy has been experiencing are due largely to the pain associated with a major organisational change. Therefore, the programs deal with that organisational change and not just the issue of sexual harassment."¹⁰

6.20 **Recommendation Eight:** The Committee recommends that Navy continue, through the Good Working Relationships program, to examine and improve all aspects of work relationships within and between the various functional groups in the Navy. In particular the Committee recommends that further detailed studies be carried out, with the assistance of expert consultants, into the impact of group dynamics on the

10 Ms H. Taylor, Committee Hansard, p. 735.

individuals in the Navy, and on the organisation more generally, with a view to harnessing more effectively the human resources available to achieve higher standards of performance and behaviour.¹¹

Sexual Harassment of Dr Wheat

Background

6.21 The Committee's first Term of Reference requires it to inquire into allegations of sexual harassment towards female personnel aboard HMAS SWAN in 1992. The SWAN embarked one female medical officer and four female junior sailors for its Asian deployment in 1992. Dr Wheat spent the period 22 June to 27 July on HMAS WESTRALIA. Two female sub-lieutenants joined the ship in Sasebo on 27 June 1992. Two months into the deployment, on about August 10 or 11, the Coxswain and the Executive Officer reported to the Commanding Officer, Captain Mole that the Medical Officer, Dr Wheat had appeared to be upset over the language and behaviour of one officer, Lieutenant Bartlett, in the wardroom. Captain Mole investigated the matter. The Defence Instruction on sexual harassment was consulted and Captain Mole concluded that, although the behaviour was unacceptable, it did not constitute sexual harassment as then defined in the DI(N) and the Sex Discrimination Act. Dr Wheat did not disagree with that conclusion. Captain Mole reprimanded Lieutenant Bartlett and removed him from the prestigious and relatively senior position of Operations Officer.

6.22 About a week or so later, again via the Coxswain, Dr Wheat informed the Captain that she believed she could have been sexually assaulted two days previously. The Captain contacted Maritime Command Headquarters in Australia and an investigation team and a medical officer were flown to Lumut in Malaysia to investigate the incident. On 25 November, about two weeks before the Court Martial into the alleged sexual assault was due to take place Dr Wheat, wrote a letter of complaint to the Minister for Defence Science and Personnel. As a result of the letter, a Board of Inquiry into the allegations made by Dr Wheat was convened as soon as the Court Martial proceedings were complete. The Board of Inquiry uncovered that, in a separate part of the ship from where Dr Wheat worked and lived, the four female junior sailors were subjected to sexual harassment by their chief, a non commissioned officer.

11 The Brand Report makes some very telling observations about the effect of pressure both on men and women in the Navy.

6.23 In her submission to the Committee, Dr Wheat claimed that she was:

"subjected to sexual harassment in the form of ... deliberate verbal affronts of a sexual nature made against her... unwelcome conduct of a sexual nature in relation to her ... The behaviour of the group of officers in question was largely, condoned by other members of the wardroom."¹²

The Board's investigations of sexual harassment of Dr Wheat

6.24 The Board investigated in depth Dr Wheat's complaints of unwelcome sexual conduct against Lieutenant Commander James and verbal sexual harassment against certain other members of the wardroom of HMAS SWAN. These were Lieutenant Bartlett (who was counselled and demoted by Captain Mole on HMAS SWAN following the incident) and three other officers, whom Dr Wheat believed to be harassing her. However, she was not able to *"be specific in what they said"* and in response to questions from her legal counsel had this to say:

"Counsel: Did you form the view that they were again said to annoy you, or were they more general conversation items?"

Dr Wheat: I'm really not sure.

Counsel: You could not tell?"

Dr Wheat: No."¹³

6.25 When asked what sort of discussions upset her, Dr Wheat said it was:

"usual male comments about females, how to become involved with females, all the various positions, locations, as I say, day after day. It was not so much the particular content of any one conversation, it was just the quantity of it".¹⁴

12 Dr C. Wheat, Committee Hansard (in camera - released), pp. 118-119.

13 BOI Transcript, p. 667.

14 *ibid.*, p. 664.

6.26 The Board found that:

*"The behaviour exhibited went well beyond the bounds of common decency, particularly in respect to the topics of conversation, their frequency and explicitness. The evidence of the Wardroom staff indicates that at least some of these conversations were aimed at upsetting LEUT WHEAT."*¹⁵

However, the Board said in its report that it had not been able to *"isolate individuals other than LEUT Bartlett to the extent that they should be made to apologise"*.¹⁶ As a result, it did not make any findings or recommendations about the behaviour of other officers. In the absence of specific allegations against particular individuals, the Committee considers that it would have been improper for the Board to be any more specific in its findings with regard to individuals other than the ones that the Board did name in its recommendations.

6.27 The Board of Inquiry adopted a very broad definition of sexual harassment, namely "any form of unsavoury behaviour or action towards, or in the presence of, females". Even so, the Board found in its investigations that:

"Most of the issues that came out in evidence are better described as unacceptable sexual behaviour".¹⁷

The Committee's reading of the evidence leads it to concur with the Board in this instance. An individual may object to particular behaviour and language but, if that individual cannot tell whether that behaviour or language is aimed in their direction, it is more difficult to determine that it constitutes sexual harassment. In the SWAN wardroom, only one officer appeared to have aggressively directed such behaviour

15 BOI Report, p. 92.

16 *ibid.*, p. 73.

17 *ibid.*, p. 77 (emphasis added).

at Dr Wheat.¹⁸ The evidence suggests strongly that few members of the wardroom felt positive towards Dr Wheat. Lieutenant Commander Blazeby had this to say about it:

*"I think she was badly prepared for the deployment. I think she had been badly briefed. I felt that the wardroom was receptive to start with, I think. We were certainly aware of the fact of her limited Naval experience and the fact that she hadn't received a proper briefing, but I think that patience rapidly ran out."*¹⁹

6.28 Moreover, the two other female officers, Lieutenants Miller and Ganter told Captain Mole in response to his request for their views, immediately after the Bartlett incident, that they did not consider that they were being sexually harassed in the wardroom. They confirmed this to the BOI. They described the behaviour of some officers as "*boring*" and "*annoying*". Nevertheless, the BOI concluded that each of the women had been subjected to sexual harassment.

6.29 This conclusion poses a dilemma. It is the Committee's view that it is difficult to agree with the Board's conclusion if neither of the two junior female officers themselves felt harassed. As explained in Chapter 1 of this Report, the definition of sexual harassment highlights the importance of the subjective reaction of an individual. If the emphasis is on the subjective reaction to determine that someone is being sexually harassed, then the corollary must be that it is also a subjective matter for a person to consider that he or she is not offended and therefore not sexually harassed. The different reactions of the three women in essentially the same environment highlight the difficulties in the understanding of and dealing with sexual harassment.²⁰

6.30 A relevant observation in this context is the Maritime Commander's assessment in relation to the most extreme wardroom incident involving Dr Wheat. It is noteworthy that, in challenging Captain Mole's view that what occurred at the time of the Bartlett

18 Lieutenant Bartlett disputes that he meant to upset Dr Wheat; see BOI Transcript, p. 139 and his letter to Committee Secretary dated 27 January 1994.

19 BOI Transcript, p. 993. See also paras 7.52-7.55.

20 See Chapter 1.

incident did not constitute sexual harassment, the Maritime Commander says only that *"this characterisation is in question."*²¹ He does not refute it outright.

6.31 The treatment and reaction of the two female sub-lieutenants by the wardroom suggests that the hostility towards Dr Wheat had less to do with gender and more with perceived competence and willingness to adapt to a ship's environment.

6.32 Evidence to the Board revealed that at least two officers and the Executive Officer, Lieutenant Commander Spruce, had attempted to curb the language of one group in the wardroom before Dr Wheat complained. Dr Wheat herself told the Board that Lieutenant Commander James had tried to do so.²² Lieutenant Commander Blazeby had also tried.

6.33 The Committee observes that these officers took the initiative to curb language they did not like. It seems to the Committee that, until the Bartlett incident, Dr Wheat appears to have given no outward sign that she felt she was being sexually harassed. An outside observer might have drawn the conclusion, from Dr Wheat's silence about the behaviour, that Dr Wheat herself condoned the behaviour.

6.34 It should also be remembered that a finding of sexual harassment as defined under the Sex Discrimination Act before December 1992 required not only that the complainant felt offended but also had reasonable grounds for believing that objection to the conduct would disadvantage the complainant in connection with the complainant's work.

6.35 The Committee considers that a belief on Dr Wheat's part that she would be disadvantaged in her employment as a doctor on the SWAN if she complained about the behaviour she found offensive was not well founded. The Committee is reinforced in this view by the actions other officers took to curb some of the language and by the prompt and strong action the Captain took when he became aware of the Bartlett incident. The Committee's consideration of later allegations by Dr Wheat that her complaint disadvantaged her in her subsequent employment by the Navy is in Chapter 5 of this Report.

21 Maritime Commander: Notice of Cause Censure, 13 May 1993.

22 Dr C. Wheat, BOI Transcript, p. 667.

Lieutenant Commander James

6.36 The Board of Inquiry took evidence on the complaint by Dr Wheat that Lieutenant Commander James sexually harassed her throughout her time on board the SWAN and came to the conclusion that it could not:

*"accept that LEUT WHEAT was quite as unfriendly towards LCDR JAMES as she asserts. This is not to say, however, that she encouraged any of the conduct by the WEEO of which she complains."*²³

6.37 The Board also concluded that the evidence showed that:

*"LCDR James was not an active contributor to the unacceptable sexual behaviour occurring. In the Board's view there is considerable doubt as to the veracity of LEUT WHEAT's perception that LCDR JAMES was following her around the ship. There is also evidence that LCDR James made attempts to curb the language of other officers in the wardroom."*²⁴

6.38 The transcript of evidence which has been available to the Committee supports the Board's view. The Committee notes that the Board took evidence from a number of persons (outside the officers' wardroom) who had been supportive of Dr Wheat during the deployment. This included Chief Petty Officer McKay to whom she had complained about Lieutenant Bartlett's behaviour and about the alleged sexual assault and who took both matters to the ship's Commanding Officer. The Board commented, when speaking about the witnesses it called before it that in addition to Lieutenant Commander Blazeby and Petty Officer Steward Laidlaw:

*"CPONPC McKay was a direct and uncompromisingly truthful witness as were POMED Weis."*²⁵

6.39 Together with the deployment's Chaplain, with whom Dr Wheat went ashore on numerous occasions in company with Lieutenant Commander James, they all gave

23 *ibid.*, p. 92.

24 *ibid.*, p. 93.

25 *ibid.*, p. 5.

evidence that Dr Wheat and Lieutenant Commander James seemed to be good friends.²⁶ Chief Petty Officer McKay's evidence at the Court Martial was:

*"I never saw LCDR James or LEUT Wheat say anything nasty to each other, they always seemed to be pretty friendly."*²⁷

Chaplain Thiem described the relationship thus:

*"friends in that platonic way, yes. They were just going to a few places together, they used to talk to one another, have a brew, often there would be the three of us in the wardroom, and just sit down with a cup of tea together and chat."*²⁸

6.40 In answer to a question, Chaplain Thiem said that he had not observed any animosity between Dr Wheat and Lieutenant Commander James. The Committee has received no evidence to suggest that those witnesses would not have told the truth if they believed that Lieutenant Commander James was sexually harassing Dr Wheat.

6.41 The Committee notes that the Board found among the officers of the SWAN, a "*disturbing*" degree of defensiveness and protectiveness of one another but the Board in its report stated that it had resolved this problem by calling a large number of witnesses and comparing their evidence. Indeed the Board did not limit its inquiry and the taking of evidence to the officers.

6.42 It could be that Dr Wheat felt harassed by Lieutenant Commander James and never showed any sign of her displeasure to him or about him to anyone else on either the SWAN or the WESTRALIA. Further, Dr Wheat never mentioned her feelings about this matter to anyone on board,²⁹ not even to Chief Petty Officer McKay and Petty Officer Medical Wells with whom she raised the other matters, such as her

26 Further comment on the role of chaplains is in Chapter 7 of this Report.

27 Court Martial Transcript, p. 373.

28 BOI Transcript, p. 2175.

29 Subsequently, in a letter dated 11 November 1992 to Peter Reith MP, Dr Wheat's husband, John Beaumont said that in her letters to him, she had mentioned an officer "*who seemed to be following her around the ship*".

having had a difference of opinion with the XO on WESTRALIA with whom she *"just did not see eye to eye on a few things."*³⁰

6.43 This Committee has made many recommendations in this report aimed at educating the perpetrators of sexual harassment and unacceptable sexual behaviour to change their behaviour in the workplace. It is the view of the Committee that this aim cannot be achieved if the person taking exception to the behaviour sends a message of acceptance of the relationship not only to the perpetrator of the alleged sexual harassment and unacceptable sexual behaviour but also to all other witnesses to the behaviour.³¹ The Committee believes that victims have a responsibility not to pretend, in the presence of witnesses, to seek the company of the perpetrator of behaviour that is unacceptable to them.

6.44 As stated earlier, Dr Wheat went ashore with Lieutenant Commander James on several occasions.³² On at least one occasion, (the day after the alleged sexual assault) she chose to spend the whole day with him in a strange place (at Ipoh in Malaysia) about 2 hours drive away from the ship and all her other colleagues. There is no suggestion in any of Dr Wheat's evidence to the Committee that she was put under any pressure to accompany Lieutenant Commander James to Ipoh. It is behaviour that is difficult to reconcile with a person who regards the behaviour of another towards her as unwelcome, intimidating, humiliating or offensive.

6.45 The Committee notes that the evidence to the Court Martial and the BOI revealed a marked contrast between the perceived relationship between Lieutenant Bartlett (whom Dr Wheat accused of harassing her on the SWAN) and Dr Wheat and the relationship between Lieutenant Commander James and Dr Wheat (whom she accused of sexually harassing her on the SWAN three months after she had left the ship). Captain Mole told the Committee about Dr Wheat and Lieutenant Bartlett:

*"It is also very true that the two of them just did not like each other."*³³

30 PO R. Wells, BOI Transcript, p. 581.

31 See para.11.26 for the Committee's recommendation for conflict resolution.

32 Dr C. Wheat, BOI Transcript, p. 805, CHAP D. Thiem, submission, p. 7 Court Martial Transcript, p. 373.

33 CAPT D. Mole, Committee Hansard, (in camera-released), p. 88.

This statement succinctly captures similar accounts of the relationship between Lieutenant Bartlett and Dr Wheat by other witnesses to the BOI and to the Committee.

6.46 Recommendation Nine: The Committee recommends that in all its training and education courses on gender awareness, Navy stresses the responsibility of all individuals involved in incidents of unacceptable behaviour and sexual harassment. While it may not always be possible for the person who feels offended to tell the offender directly, the person who objects to the behaviour has a responsibility, especially if the offensive behaviour could also be interpreted as jocular or light-hearted, to tell at least one other person about it, preferably someone well placed to support the person who feels offended to resolve the situation before it deteriorates further. To facilitate such communication the identity of all Sexual Harassment Contact officers as the personnel best equipped to offer support should be readily accessible to all personnel; moreover all personnel should be clearly advised that they may approach the Sexual Harassment Contact officer in their own unit or in any other unit or division.

6.47 The Committee recognises the enormous difficulties faced by victims who are subordinate to the harasser, especially in cases where the higher ranked person blocks the avenues of recourse for the victim. This was the situation for example with the female sailors on board SWAN.

Recommendations of the Board regarding individuals and behaviour in the wardroom

6.48 The Committee recognises that, in making recommendations regarding the punishment of individual officers and sailors on the SWAN, the Board adopted a rehabilitative approach. The position adopted by the Board may have flowed from the fact that the Board's members were only too aware (since they had been in a similar situation themselves) that the integration of female personnel on board warships was simply expected to happen. The lack of directives, training and support available to male and female crew to assist with integration is canvassed in Chapter 7 of this Report.

6.49 The Board did not excuse the behaviour of any crew member of HMAS SWAN. In some cases, the Board could find no evidence to support the allegations that were being made. Where it found that the allegations were substantiated it made recommendations so that the women involved could obtain some redress in their future employment with the Navy (for example, the Board recommended amendments

to the female sailors performance report and to Dr Wheat's PR5) and it made recommendations with a view to ensuring that the same problems should not occur again.

6.50 The behaviour of the individuals involved was unacceptable but the responsibility was not theirs alone. A few were made to shoulder responsibility for the failure to act of many in Navy. The issue of corporate responsibility is addressed in Chapter 7 in this Report.

Lieutenant Bartlett

6.51 Lieutenant Bartlett was found by the Board of Inquiry to have been the main perpetrator of verbal sexual harassment of Dr Wheat in the wardroom. The Committee has received no evidence which would lead it to disagree with the Board's conclusions. Lieutenant Bartlett was the only offender about whom Dr Wheat had specific complaints. At Captain Mole's insistence, Dr Wheat told the Captain what she found offensive in Lieutenant Bartlett's behaviour and language. Lieutenant Bartlett was publicly punished because of his actions by the Commanding Officer of the SWAN, while the ship was still on deployment. The Board took into consideration Captain Mole's sanctions against Lieutenant Bartlett and Dr Wheat's evidence that she was satisfied with the apology she had received from him and with the subsequent modification in his behaviour.³⁴

6.52 Nevertheless, the Board recommended that Lieutenant Bartlett be placed on quarterly report (an administrative punishment in Navy which delays and precludes the promotion of the officer involved. This is further explained in Chapter 7 of this report). The Chief of Naval Staff considered the Board's recommendation to be too lenient and Lieutenant Bartlett received a censure from CNS instead.

6.53 The Committee notes that the decision to censure some members of HMAS SWAN was taken by the Chief of Naval Staff before the events on the SWAN were made public through a leak of the BOI report to the Press. The censures had already been given by the time the story made the headlines.

34 When asked at the BOI whether Dr Wheat took LEUT Bartlett's apology to be genuine, she said *"It seemed fairly genuine at the time."* When asked whether LEUT Bartlett subsequently resumed his conduct at any time, Dr Wheat responded that *"He was very, very quiet for a long time after that"*. BOI Transcript, p. 672.

Lieutenant Commander Spruce

6.54 Lieutenant Commander Spruce did not personally engage in sexual harassment of Dr Wheat or of the female junior sailors. However, as Executive Officer (XO), Lieutenant Spruce was responsible for the wardroom. The Board found that:

*"the XO failed to set and maintain an appropriate standard of behaviour in the wardroom."*³⁵

The BOI recommended that he be removed from his posting as XO because he demonstrated *"unacceptably poor judgment"* in failing to control the situation in the Wardroom and *"inflam[ing] the acrimonious atmosphere by taunting the Gunnery Officer [Bartlett] about his and LEUT Wheat's relative seniorities"*.³⁶

6.55 The Board heard evidence that the XO made a special effort to make requested changes in the wardroom because the wardroom atmosphere had not been a good one when he joined the ship.³⁷ The Committee, like the Board, accepts that Lieutenant Commander Spruce brought many qualities to his job.

6.56 In her submission to the Committee, Dr Wheat complained that:

*"intervention (by) the XO, LCDR Spruce, on her behalf, further inflamed the situation and ostracised Dr Wheat because it was done in a way which identified her to the remainder of the ship's officers as the source of complaints that were regarded as unjustified."*³⁸

In fact, the Executive Officer spoke to the wardroom about the level of swearing before Dr Wheat made any complaints. He gave evidence to the Board of Inquiry that:

somewhere between STIRLING and Singapore, and I think it was about three days out, I actually had a clear lower deck or a clear - cleared the officers into the ward room and reminded them, amongst a whole bunch

35 BOI Report, p. 94.

36 *ibid.*, p. 94.

37 BOI Transcript, p. 861.

38 Dr C. Wheat, submission, Committee Hansard, (in camera-released), p. 121.

*of other things, we talked about social programs and all sorts of things, but I reminded them that there was now a female in the mess, that we had to be aware of that. I actually, in saying so, looked at Carol and I said, 'I don't mean to embarrass you or anything but', and then went on with the thing."*³⁹

It is difficult to see how he could have asked for the language to be toned down without the presence of a woman in the wardroom being seen as either the implicit or the explicit reason for the request.

6.57 Lieutenant Commander Spruce could have informed the Commanding Officer at an earlier stage, of the difficulties both Dr Wheat and the wardroom were facing in developing a good working relationship. He allowed the situation to deteriorate but he did take immediate action and informed the Captain on the same evening when he overheard Lieutenant Bartlett discussing his masturbating habits at the dinner table. CPO McKay approached the Captain the next day.

6.58 In his submission to the Committee, Lieutenant Commander Spruce accepts full responsibility for *"allowing the situation in the Wardroom to develop in the manner that it did"*⁴⁰ but points out that:

"When it became apparent that LEUT Wheat was suffering harassment by the Gunnery Officer, LEUT P.D.J. Bartlett RAN, I in conjunction with the Commanding Officer, Captain Mole RAN, took steps to prevent any further occurrence. This action was taken in strict accordance with the regulations in force at the time."

6.59 Lieutenant Commander Spruce also points out:

"Following the events in HMAS SWAN and the BOI, I took positive steps to modify the Ship's Standing Orders. I sought to reflect in great detail, not only the Navy's policy and attitudes towards the employment of women at sea and unacceptable sexual behaviour, but to go further and

39 BOI Transcript, pp. 1145-6.

40 LCDR M.J. Spruce, submission, para 5.

*set up a proper and effective regime for the integration of female personnel onboard."*⁴¹

6.60 The Committee notes that Lieutenant Commander Spruce took those steps before he became aware that he would be censured by CNS for failing in his responsibilities. The Committee recognises Lieutenant Commander Spruce's commitment to the RAN and notes his willingness to learn to adapt to a changed environment:

*"I have carefully considered everything that happened in HMAS SWAN and subsequently and sought to learn from it. I fully support the integration of female personnel into the seagoing element of the RAN and am more aware of gender related problems than I believe I was previously."*⁴²

6.61 The Board recommended the removal of Lieutenant Commander Spruce from his position as Executive Officer of HMAS SWAN and also recommended a censure. The censure was delivered by the CNS.

Captain Mole

6.62 Captain Mole was not involved in any instances of sexual harassment and unacceptable sexual behaviour. The Board's recommendations in regard to Captain Mole are dealt with in Chapter 7 of this report.

The Board's Investigation of the Sexual Harassment of the Junior Sailors

6.63 When the Board commenced its inquiry, it focused on sexual harassment of Dr Wheat following the complaints she had made in her letter to the Minister for Defence Science and Personnel. The various difficulties that members of the RANTEWSS team experienced during the Asia deployment of the SWAN, including the unacceptable sexual behaviour by the officer in charge of the RANTEWSS team, were uncovered gradually as witnesses were called to give evidence to the Inquiry. That fact in itself indicates that the Terms of Reference of the Board of Inquiry were sufficiently wide to address any aspects of unacceptable behaviour on HMAS SWAN.

41 *ibid.*, para. 6.

42 *ibid.*, para. 28.

6.64 The allegations which emerged about sexual harassment of the female sailors referred to entirely different personnel from personnel named by Dr Wheat and occurred in an entirely separate part of the ship.

6.65 The BOI reports that:

*"As the inquiry unfolded, it soon became apparent that the RANTEWSS team embarked in the SWAN during the deployment was also a cause of concern, basically because of the breakdown in the Divisional System. This affected the four female sailors of that team more than the males although the males in the team certainly suffered as well."*⁴³

Chief Petty Officer Broad

6.66 The Board found that Chief Petty Officer Broad, the Chief in charge of the female sailors in the RANTEWSS team had engaged in unacceptable sexual behaviour. It recommended a censure by the Maritime Commander. Chief Petty Officer Broad was censured by the Chief of Naval Staff.⁴⁴

RANTEWSS Team

6.67 The BOI Report gives a detailed account of the circumstances of the four female sailors in the RANTEWSS Team. It also gives a description of the way in which the four female sailors *"tried to use the divisional systems and how it failed them."*⁴⁵

6.68 The Committee considers that the BOI Report gives a good analysis of the situation that developed. The Report rightly points out that it is:

"... not true to say that all the issues the two female Leading Seamen wished to raise through the divisional system were caused either by sexual harassment or the watch keeping system. In the judgement of their peers, the two Leading Seaman had shortfalls in the skills required through inadequate training and preparation. (T532). Although they were

43 BOI Report, p. 45.

44 For details of censure, see para 7.14 of this Report.

45 BOI Report, p. 54.

*helped by some of their peers, there was a general impression that they were not trying. (T532). The Board, however, is left with the impression that they lost the will to try partly because of their frustration with the inaction concerning their complaints. Regrettably, this set up a vicious circle; the professional limitations of the female sailors caused disapproval by superiors which was expressed in sufficiently harsh terms as to warrant the female junior sailors seeking recourse to the divisional system. The divisional system failed to provide any resolution which lead to depression and loss of initiative on the part of the female sailors concerned. This cycle was perpetuated by the breakdown of the divisional system."*⁴⁶

Sexual Harassment - Language

6.69 The Committee explored in considerable depth the nature of the harassment that the female sailors were subjected to. With regard to the nature of her interaction with the crew in general in the early stages of the deployment, Leading Seaman Connelly said in her evidence to the BOI that:

*"There was a lot of quite heavy language, but I expected that and was quite willing to accept it ... none of it was that bad that it was upsetting me greatly, and it did tone down."*⁴⁷

She confirmed to the Board that she never became:

*"subjected to any unwanted physical attention by any of the other male officers or sailors."*⁴⁸

Nor to her knowledge, were any of the other female sailors. When asked:

" did they ever complain to you about any unwelcome attention, any of the men touching them or anything like that?"

46 BOI Report, pp. 56-57.

47 BOI Transcript, p. 349.

48 *ibid.*, p. 356.

Leading Seaman Connelly answered:

*"No, There was nothing that stands out, no."*⁴⁹

Ms Connelly confirmed, in her evidence to the Committee, that *"she did not have any problems with anybody actually touching me"*.⁵⁰

6.70 Both Ms Connelly and Ms Flannery were at pains to make it clear to the Committee that their complaint of sexual harassment refers only to Chief Petty Officer Broad.

6.71 The Committee notes that early on in the deployment, Leading Seaman Flannery's objections to unwelcome advances by one crew member were resolved to her satisfaction when the sailor was sent from the ship to Australia for assaulting some male sailors and subsequently discharged from the Navy.⁵¹

6.72 It is the Committee's understanding that it was the perceived intent to degrade and humiliate together with the sheer physical exhaustion and psychological frustration with their work situation that made the language Chief Petty Officer Broad used intolerable.

6.73 It is interesting to note that the women themselves admit to using strong language at times.⁵² It seems it is possible in certain circumstances to make a light-hearted in-joke of strong language. It was not the nature of the language itself so much as the total lack of support and encouragement, the inflexibility and lack of

49 *ibid.*

50 LS Connelly, Committee Hansard, p. 307. (in-camera - released).

51 The sailor had a long history of charges, including violence against other male members of the crew. There is no suggestion in evidence before the Committee of any physical violence against the female sailors, by this crew member or any other crew member.

52 ABSMAN, Voullaire, BOI Transcript, p. 2207. CPO Broad wrote the following in his letter dated 24 January to the Committee - *"Early in the deployment I did instruct the males about watching their language in front of the female sailors. However I then had cause to warn AB Voullaire about her continual use of bad language while we were trying to restrict our use of language"*.

sympathy for the problems the women were experiencing on the job that ultimately made the language itself humiliating.⁵³

6.74 In situations where strong language is not meant in a personally offensive way, it need not necessarily be perceived as offensive. In times of stress in particular, vehement expressions of frustration can be an acceptable release of tension for both men and women. In the case of the SWAN, the language used to refer to the female sailors did not assume this kind of benign function. When used by Chief Petty Officer Broad it seems incontrovertible that it was intended to denigrate the abilities of the female sailors, it was clearly directed at them and it was perceived by the women as denigratory. When a term such as "*SWOD*" is used in combination with words to the effect that someone is "*no good and useless*" it is clearly derogatory.⁵⁴

6.75 As the Committee observed above, it is the perceived intent that does the damage, not necessarily the actual words used. It is necessary to draw attention to this distinction as another example of the difficulties inherent in defining unambiguously what constitutes sexual harassment. Drawing up a list of prohibited words, for example, is not enough. It is known that, in groups, certain apparently innocuous words can acquire derogatory connotations in that group, while appearing quite harmless to the uninitiated.⁵⁵ The converse can also occur. In Australia in some instances the term "*bastard*" can be used in an affectionate way, when its "*real*" meaning has been, at least until recent social change, quite damning.

6.76 The other point that must be made in this regard is the fact that, when the female sailors raised their concerns with people outside their Divisional System, they never complained specifically about sexual harassment or about the language being used. In his evidence to the Committee, Chaplain Thiem gives the following detailed account of the concerns that the female sailors put to him:

"During my interviews with LS Connelly and LS Flannery they voiced their problems as follows:

53 See Chapter 2 for further comment on use of language.

54 BOI Transcript, p. 2183. It was explained at the BOI that "*SWOD*" was a term meaning "*sailors without dicks*". The BOI Report comments that, whilst the term "*can be used inoffensively, there were certainly occasions when it was used with intent to offend*", BOI Report, p.78.

55 The Committee is aware, for example of such instances from Bruce Moore's *A Lexicon of Cadet Language, RMC, Duntroon in the period 1983 -1985*, published in 1993.

(a) Work Conditions

Both of them complained that the compartment in which they worked was very cramped, in fact so cramped that when anyone had to pass them or they had to pass anyone else in the compartment, it was necessary for body contact to be made. They described it as "brushing past". However, they did not give me the feeling that there was anything sexual about the "brushing past." They complained about Chief Petty Officer Broad in other regards, but they did not complain that "brushing past" was specifically him or that it constituted any form of unwelcome sexual conduct. They merely gave it as an example of how cramped the compartment was and how unpleasant it was to work in as a result.

(b) Hours Worked

They complained about the six-on and six-off watchkeeping system that they were obliged to follow, particularly when, as they said, the job was very boring and they felt that they were not doing anything worthwhile. They complained that Chief Petty Officer Broad would not allow them to read or talk when they were on duty and consequently they had to sit there for six hours "listening to nothing". They also complained that the six hours off was not long enough for them adequately to attend to their personal and hygiene needs as well as to get sufficient sleep. They were obviously having great difficulty coping with the watchkeeping routine and I did speak to Chief Petty Officer Broad about this. He told me that it was not possible to change and I regarded that as a command decision with which I could not interfere. Indeed, as there were two Abs, two leading seamen, two petty officers and two chief petty officers, it was quite apparent that there were only two complete watches in the RANTEWSS team.

(c) Private Problems

One of the female Leading Seamen had a child at home and she was very concerned about the welfare of the child. This was causing her considerable emotional stress and I counselled her and advised her in this regard. An aunt was, I think, looking after the child and proper arrangements had been made, and there really did not seem to be much more that one could do for the welfare of the child in Australia. The problem was that Leading Seaman Connelly missed her child very much and the separation was causing additional emotional strain for her.

She said to me more than once that she did not want to be on board the ship and that she wanted to be back in Australia. I did what I could for her in that regard by way of counselling and lending a sympathetic ear. The other girl, Leading Seaman Flannery, also said to me that she did not want to be on board but the reasons she gave were related to work conditions, lack of privacy on board and general unpleasantness with Chief Petty Officer Broad.

As to the lack of privacy on board, they both complained that there were no designated female toilets, there were no bathroom facilities or washing machine facilities exclusively for females (they shared these with the officers on board), their bathroom and laundry facilities were not located conveniently close to the messdeck (they had to go up a ladder to reach them) and there was no recreational space set aside exclusively for them where they could sit and relax (their messdeck was not suitable for that purpose).

(d) Chief Petty Officer Broad

In relation to Chief Petty Officer Broad they complained that he was intolerant, hard, insensitive and continually disapproving of them. They never seemed to be able to please him no matter what they did or how hard they tried. They made no complaint to me about the use by Chief Petty Officer Broad of any abusive or offensive language. Of course, I have learned since by reading the Report of the Board of Inquiry that Chief Petty Officer Broad did use completely unacceptable language to these girls. However, I did not know that at the time."⁵⁶

6.77 At in camera hearings, Ms Connelly told the Committee that, even at a post deployment debriefing at RANTEWSS she did not wish to talk about her experience on the SWAN and commented merely that she did not think the management was very good. She said that, on reflection, she said she did return to RANTEWSS and made mention of the discrepancy she perceived in Chief Petty Officer Broad's threats to discipline the female sailors if they "mucked up" without similar admonishment to their male counterparts "who were mucking up".⁵⁷

56 CHAP D. Thiem, submission pp. 2-4.

57 Ms. S Connelly, Committee Hansard, p. 299. (in camera - released). In effect, Ms Connelly was, in this instance, identifying a form of discrimination.

6.78 The Committee notes that, even at this stage, when Leading Seaman Connelly was no longer reporting to people in the SWAN hierarchy, and when invited to comment on her experiences, she demonstrated a reluctance to make a full complaint about all the matters that had distressed her on the SWAN. This is particularly relevant when examining the reasons why Captain Mole was unaware of all the circumstances of the female sailors on the SWAN.⁵⁸

6.79 The Committee believes it is important to note the way in which the female sailors' concerns were couched. The strong impression that their testimony to the BOI, their evidence to the Committee and evidence presented by other witnesses to the BOI and to the Committee conveys is that the sexual harassment aspect was a secondary, and not the primary concern.

6.80 Pointing this out in no way diminishes the Board's conclusion that the female sailors were subjected to sexual harassment. The Committee concurs with this judgement. However, the Committee sees it as very important to put the sexual harassment into the overall context. Had there been no sexual harassment, there would nevertheless have been a serious problem of poor staff management by Chief Petty Officer Broad. It is clear from the BOI Transcript and the BOI Report that:

*"The watch-keeping system was very hard on the male sailors also"*⁵⁹

and that

*"There did appear to be at least some unnecessary inflexibility in the system" (T517).*⁶⁰

6.81 It is less certain, however, that the problem of bad management practices at that level would have come to light, had it not been for the subsequent sexual harassment allegations. The SWAN incident alerted the Navy's senior managers to the fact that the integration of women needed a more committed approach. It is to be hoped that it will have alerted those same managers to the need to review also other

58 See also Chapter 7 of this Report.

59 BOI Report, p. 56, BOI Transcript, pp. 517, 530.

60 BOI Report, p. 55. According to LSEW Flannery all the male sailors were more experienced and had undergone more training for the tasks they were required to carry out. Committee Hansard, (in camera - released), p. 261.

practices that clearly can have serious health and safety implications, and in all probability productivity implications as well.

Factors other than sexual harassment

6.82 The BOI Report drew attention to the factors other than sexual harassment that played a critical role in the outcome. Chief amongst these was the sheer physical exhaustion caused by long, unbroken stretches of six-on, six-off watches; the serious deficiencies in the pre-deployment training of the two female leading seamen; the frustration generated by the absence of suitable training opportunities on board and the failure by the immediate supervisor to assist adequately in making further training possible; and the nature of the task itself. These matters were clearly acknowledged by the BOI Report. However, the nature of the terms of reference, and the time available to complete the inquiry meant that these matters were not pursued by the Board as far as they deserve to be.

6.83 The Committee also notes that these other critical factors in the total situation attracted very little attention in the media coverage. There was, on the other hand, media sensationalization of aspects such as the absence of windows in the Electronic Warfare System work-station. From evidence put to the Committee by the female sailors, it is clear that this was not directly a matter of complaint. Windowless work spaces, and windowless sleeping spaces for all sailors on board a warship are the norm and from the evidence available to the Committee it was what the women expected. What they were not fully prepared for was the effect that working in such an environment under the conditions that eventuated would have on them over time. Nor were they equipped to deal with the management style practised by Chief Petty Officer Broad.

6.84 The following section looks at the factors other than sexual harassment that made a major contribution to the difficulties on the SWAN.

(1) Level of Skills - training

6.85 One of the factors identified as making a substantial contribution to the overall unsatisfactory state of affairs in relation to the RANTEWSS team on the SWAN was the level of skill that the two female leading seamen brought with them to the job. The BOI Report concluded that the two female Leading Seamen were markedly under-trained in certain key aspects of the job they were expected to do. This is not disputed by the

two women. There is, however, some conflict in the evidence put to the BOI, and subsequently to the Committee, on the extent to which this was addressed both before and during the deployment. The BOI addressed the issue of training appropriately in its recommendations on that aspect.⁶¹

The BOI Report made a useful recommendation with regard to the selection of personnel for certain tasks:

"it is recommended that when selecting personnel for billets where specific job skills and specialist knowledge are required:

a) prospective candidates be adequately screened to ensure that the functional integrity of the team will not be compromised by inadequate skills, and

*(b) where such inadequacies are identified in personnel in such billets, every effort be made to provide the necessary skills training."*⁶²

There is also the question of who takes responsibility within Navy for indentifying training needs and ensuring that they are met.

6.86 In his advice to the Minister, the Chief of Naval Staff states that:

*"These considerations are normal outgoing requirements which are already adequately addressed within current instructions."*⁶³

6.87 The Committee came to the conclusion that existing arrangements in this regard proved inadequate in the case of the RANTEWSS team on the SWAN and further action with regard to the selection and training for such specialist teams is required. The Committee's Recommendation Fourteen inter alia addresses this aspect.

61 See paras 6.2 and 6.5 above.

62 BOI Report, pp. 62-63.

63 CNS minute CNS 1127/93 of 10 August 1993 to Minister for Defence.

(2) Training for direct entry specialist officers

6.88 Inadequate pre-deployment general naval preparation was identified as a major contributing factor in Dr Wheat's difficulties in settling in on the SWAN. The only course Dr Wheat undertook was the three-week NBCD (Nuclear Biological Chemical Defence) course.

6.89 The normal procedure is for specialists such as medical officers and dentists to undergo a nine-week Qualified Entry Officers Course at CRESWELL.⁶⁴ Engineers who are direct recruits undergo a more extensive, six months introduction to the Navy.

(3) Shortage of medical officers

6.90 It seems that the shortage of doctors available to go on sea postings was a key element which led to the cutting of corners in the recruitment of Dr Wheat in several respects. It contributed to the inadequate participation by Dr Wheat in the pre-deployment work-up period and it accounted for the failure to ensure that Dr Wheat had undergone all the basic training requirements.⁶⁵ Vice-Admiral MacDougall accepted that Navy:

" had not put enough effort into preparing these people [ie direct entry recruits]...for sea service, and we have adjusted that since." ⁶⁶

6.91 Dr Westphalen urged that the Navy put more effort in familiarising new recruits in matters such as the chain of command:

" The chain of command is there to be used. If they do not know the problems there they cannot fix it, so you have to use the chain of command. I guess the problem I had was that I was so plumb ignorant when I went to sea. I did not know the chain of command. I imagine that other doctors may have the same problem." ⁶⁷

64 Details about the content of this course are in a letter dated 2 March 1994 from CAPT B. Robertson to the Committee Secretary.

65 The only training course Dr Wheat undertook was the advanced NBCD course.

66 VADM MacDougall, Committee Hansard, p. 83.

67 Dr N. Westphalen, Committee Hansard, pp. 1124 -1125.

6.92 It seems that the old hands in the Navy may have forgotten what the early days can be like. Or they have little confidence in the content of present courses. Whichever may be the case, according to Dr Wheat, Surgeon Captain Habersberger was dismissive of the value to Dr Wheat of going through the course at CRESWELL. Dr Wheat told the BOI that:

*"SGN CAPT Habersberger of the Reserves said... 'There is no need for you to do the course at Cresswell... It's a waste of time... You know how to salute' "*⁶⁸

It is also the case that Dr Wheat did not query this judgement and did not point out to Dr Habersberger that his assumption that she knew how to salute was incorrect.⁶⁹

6.93 Dr Westphalen also suggested that care in choice of ship and port from which a first posting proceeds could assist new medical officers. In Dr Westphalen's view:

*" the main problem with recruiting doctors for the ADF is that it is not as lucrative, although the hours - certainly compared with those of most GPs - are much better. The second thing is the lack of opportunity for full-scale post-graduate training in clinical stuff".*⁷⁰

"I think what steers most people away from the ADF is that they cannot join the Defence Force and come out with a ticket in radiology, orthopaedics, general surgery and physicianing (sic). We are not big enough. We cannot do it."

6.94 It is beyond the terms of reference of this Committee's inquiry to examine in detail the reasons for the apparently chronic shortage of doctors in the Navy.⁷¹ Rear-

68 Dr C. Wheat, BOI Transcript, p. 643.

69 p. 643.

70 Dr N. Westphalen, Committee Hansard, p. 1118.

71 RADM C. Oxenbould, Committee Hansard, p. 1296; CAPT G. Kennedy, Committee Hansard, p. 1620; Dr Westphalen testified that *"up until... the beginning of 1991, there were 50 billets and we had 28-29 or 30 odd that were filled at any particular time"*. Committee Hansard, p. 1123. Note: The National Health Strategy Issues Paper Number 3, *"The Future of General Practice"*, March 1992, touches on the issue of oversupply of doctors in Australian cities while rural and special needs areas cannot attract doctors (p.9).

Admiral Chalmers told the Committee that competition for direct entry into the Navy is in fact greater than the competition for entry into the Defence Force Academy.⁷² However, the evidence suggests that there is high turnover in some direct entry specialist areas, such as medical officers. Figures provided by Navy also show that only 11 qualified entry applicants succeeded in a field of 245 between February 1993 and January 1994. Three of the successful applicants were female (out of 103 female candidates who applied). In contrast 105 out of 512 applicants to ADFA were successful. Forty-six of these were women, out of a total field of 225 female applicants.⁷³

6.95 Recommendation Ten: The Committee recommends that the Navy:

- re-examine the adequacy of the nine week qualified entry officers' course and the reserve officers orientation course and consider extending the courses to a full six months;
- consider setting a minimum recruiting period to allow for longer training;
- give new medical recruits the opportunity to take day and weekly running trips before taking up a longer sea posting;
- wherever possible give new medical recruits a sufficient period on shore before posting to sea;
- make a determined effort to post medical officers to ships in time for them to take part in the work-up of the ship before deployment;
- identify specific naval tasks that can be effectively undertaken by medical and dental officers at sea in addition to their professional medical duties to assist them

72 RADM Chalmers, Committee Hansard, p. 584.

73 Letter dated 2 March 1994 from CAPT B. Robertson to Committee Secretary.

in being accepted as fully integrated members of the team;⁷⁴
and

- ensure that the qualified entry officers in both the Reserve and the Permanent Naval Force are clearly informed about these additional tasks and are adequately equipped, during their initial training, to carry them out.

6.96 The Committee also notes that the full integration of women into the Navy requires a thorough re-examination of the role of registered Navy nurses at sea.⁷⁵ It is the Committee's understanding that, at present, nurses are employed only in a limited number of shore postings. It is also clear that not all ships have a doctor on board at all times,⁷⁶ and that day to day care is left to the Petty Officer Medical. Nurses are considerably more qualified than personnel appointed as Petty Officers Medical. It is the Committee's view that a restructuring of the medical services on board ships to include nursing positions would provide a higher level of service, greater flexibility in the face of continuing shortages of qualified doctors interested in sea service and better career opportunities for nursing staff. Many of the nurses now in the Navy have substantial Navy experience behind them that would stand them in good stead at sea.

6.97 Recommendation Eleven: The Committee recommends that the provision of medical services on board naval vessels be reviewed, with particular focus on the benefits to be gained from making sea postings available to registered Navy nurses. The review should include an evaluation of the benefits of replacing Petty Officer Medic positions with fully qualified nursing staff, as well as the feasibility of nursing staff, in certain circumstances, being appointed to replace medical officers.⁷⁷

74 For a specific suggestion see Recommendation Three. The Committee accepts that under the Geneva Convention there are some naval tasks that could not be allocated to medical officers.

75 References to nurses in this context are to registered nurses.

76 In the case of the 1992 Asia deployment, for example, one doctor and one dentist serviced both the WESTRALIA and the SWAN.

77 This recommendation should in no way be seen as a reflection on the performance of the Petty Officers and Able Seaman Medic on the 1992 Asia deployment. By all accounts they provided an excellent medical support service, a welcoming haven for the women under stress.

(4) *Selection of Personnel*

6.98 The Committee accepts that pre-embarkation training cannot be provided for every aspect of every individual's life and job when that individual first goes to sea. The experience itself is part of training for life in the Navy. Leading Seaman Connelly put it this way: it is like having a baby. No matter how many childbirth classes you go to, you cannot fully know what it is like until you go through the experience yourself.⁷⁸

6.99 Dr Westphalen made a similar observation to the Committee. He said that:

*" the seagoing environment is an odd one. The preparation that happens ashore before you go to sea certainly helps, but when push comes to shove and you actually go on the ship, you are still, to some extent, going in off the deep end."*⁷⁹

6.100 With the very high rate of turnover on ships it is inescapable that, to an extent each individual is expected to take some initiative in finding out where things are, how things are done and what is expected of them. It cannot be a one-way process of being told what to do by supervisors. The process must be interactive.

6.101 Under these circumstances, an important element of the recruitment process must be to select people who are suited to this approach and who will flourish in the face of such demands. Part of the pre-deployment training process must be to assist the Navy in identifying people who do not appear likely to withstand the rigours of life at sea.⁸⁰ The pre-deployment training process should also enable individuals to select themselves out if they find that they develop serious reservations about their own ability to handle life at sea. At the end of the day, despite best efforts at selection and training, it is nevertheless inevitable that some selections will prove to have been inappropriate. Discharge will be the only option in some cases.

6.102 The difficult issue for Navy to address is whether an individual's poor performance at sea is in fact related to factors such as poor management practices

78 LS S. Connelly, BOI Transcript, p. 380.

79 Dr N. Westphalen, Committee Hansard, p. 1113.

80 VADM MacDougall, Committee Hansard p. 579.

or harassment of any kind. The impact of factors such as these is important in any work environment. Their impact is bound to be magnified in the closed, cramped and demanding environment of a ship at sea.

6.103 The Committee notes that Navy is attempting, within the legal requirements to ensure equal opportunity, to discourage applicants who are *"out and out chauvinists"*.⁸¹

6.104 Recommendation Twelve: The Committee recommends that an in-depth review be conducted of all positions at sea with the objective of more clearly identifying the personal characteristics, skills and aptitudes that are considered essential for service at sea. The review should include identifying minimum physical requirements including strength and flexibility, and characteristics such as resilience to stress, adaptability, and teamwork, that are appropriate for the conditions and for the technologies actually in use today.

6.105 Some of the difficulties encountered on HMAS SWAN highlight the need for new recruits to be better informed about the less glamorous side of employment in the RAN. This applies to all new recruits, be they general entry or direct entry. The Committee agrees with the Board that:

"It is only fair and proper to give an honest 'warts and all' assessment of what a person may expect at sea before that person is posted to sea".

Television advertisements and advertising brochures stress the positive aspects of a career in the Navy. This is an understandable approach. Nevertheless, the Committee takes the view that both Navy and prospective new recruits would benefit if possible problem areas were openly discussed and if this were done in the initial stages of the recruitment process. It is important to clarify what the Navy expects of its personnel and allow potential recruits to realistically assess whether a career in the Navy is right for them. Navy must address its responsibilities in this area, particularly now that the minimum entry age has been lowered to 16. It also applies to specialists such as medical personnel. The difficulty, it seems, is that if there is a shortage of doctors available for posting, there is an understandable reluctance to canvass all the possible discomforts of life at sea. The pool of possible recruits might well dwindle even further.

81 ibid.

6.106 Nevertheless, in the interests of fairness and to properly discharge its responsibilities as an employer, the Navy has an obligation to ensure that a reasonably accurate picture of what they are about to encounter, is presented. Such openness might lead a few to change their minds about joining up, but those who do enlist would be more likely to come prepared and determined to face the more difficult challenges ahead.

6.107 Recommendation Thirteen: The Committee recommends that all potential new entrants to the Navy, including direct entry specialists, be given an opportunity to fully discuss and evaluate the difficult and demanding aspects of service, especially at sea, before making a firm commitment to the Navy.

(5) *Work Practices*

6.108 As indicated previously, the work conditions were a primary cause of distress for the female sailors. The work conditions came about partly because of the nature of the work, partly because of the attitude of the supervisor. It seems likely that the belief that, because the work had always been done that way, that was the only way it should be done, also played a part.

6.109 The hold that tradition has had in perpetuating attitudes to work in an organisation like Navy emerges clearly in the evidence to the Committee and in the surveys conducted on the HMAS SYDNEY. The question of work practices is gradually being brought out into the open through programs such as the Naval Quality Management and the Good Working Relationships programs in most parts of the organisation.

6.110 The Committee accepts that it is more difficult to use the same open and participatory approach when reviewing the organisation of work in high security areas. On the SWAN the manager of the team rejected totally any efforts by anyone outside the team to influence the way in which the team was managed. It is important that the same phenomenon of rejecting legitimate external involvement is not permitted to occur, on a larger scale, in relation to the operation of the Navy's Tactical Electronic Warfare Support Section as a whole.

6.111 A key factor to be taken into account also is the culture of non-complaint in the Navy. The inhibitions to complain, at every level in the Armed Forces, have been repeatedly brought to the attention of the Committee during the course of this inquiry.

It is clear to the Committee that reluctance to complain has been a widespread phenomenon in relation to sexual harassment. It is equally clear that there are strong factors, not least the rank structure and the disciplinary measures available to those in authority, that work against complaining about many other aspects of work and life in the Armed Forces.

6.112 Clearly there are benefits in this approach, for both the individuals and the organisation. The ability to endure, to tolerate discomfort and apply oneself despite adversity must be part of the training for war. Nevertheless, questions must be asked about the need, and efficacy, of putting up with extreme conditions at all times. A willingness and ability to change gears, according to circumstances, is part of Navy's evolving approach to the way it functions overall. Nevertheless, the Committee questions whether sufficient attention has been paid to this need to change gears, and to the scope for operational flexibility, in the overall RANTEWSS operation.

6.113 The Committee does not wish to encourage a culture of complaint in the Navy. It does wish to encourage forward looking review of entrenched attitudes that do not readily permit the legitimate questioning of traditional work practices which may have outlived their usefulness or can be shown to be harmful or inefficient. The Committee took note, for example, of Professor Kim Kirsner's view that:

*"the structure of their watch-keeping duties - while it was presented as unavoidable on technical grounds - defied the results of fifty years of research into vigilance and fatigue, research involving conditions not unlike those which prevailed for the junior female sailors on HMAS Swan, their jobs and tasks should have been re-designed to recognise and reduce the predictable consequences of their working conditions."*⁸²

6.114 The Committee has gained the impression from the evidence before it that enough flexibility could have been introduced into the RANTEWSS working arrangements to reduce, if not eliminate, the stresses of working there. However, it appears to the Committee that the changes required in all probability go beyond changes that could have been achieved on board by minor tinkering with the way the RANTEWSS team worked. Further consideration should, for example, be given to the provision of larger, but more multi-skilled RANTEWSS teams for long deployments to permit some variety in the tasking and some relief from the six-on, six-off routine.

82 Assistant Prof Kim Kirsner Submission, para. 1.1.

Tasks that would better integrate the RANTEWSS team with the rest of the ship should also be considered.

6.115 The combination of the culture of non-complaint and the limited routine external scrutiny of high security work units requires that closer than usual attention be paid to the management practices in such areas. In the case of the SWAN it is evident that a complex combination of factors led to the difficulties experienced by the female sailors, and to a lesser extent the male members of the RANTEWSS team. The indications are that fundamental aspects, including the practice of six-on six-off watches, the selection, training, tasking and equipping of the RANTEWSS teams needs to be reviewed. It is not appropriate for this Committee to inquire in detail into the actual management and the work practices that are followed. Nor is it satisfactory to have a purely internal, in-house review of RANTEWSS. The Committee acknowledges that initial steps in improving the situation have been taken. A new division responsible for Command and Control, Communications and Intelligence (C.3I), has been established in Maritime Headquarters.⁸³ The Committee considers, however, that further scrutiny by an independent authority is required.

6.116 Recommendation Fourteen: The Committee recommends that a review of the management of the RAN's Tactical Electronic Warfare Support Section (RANTEWSS) be undertaken by an independent investigator, reporting directly to the Minister for Defence. In particular, the review should include:

- the organisational structure of RANTEWSS;
- the selection and training of personnel, including the gender balance required to provide equal opportunity for sea postings;
- the establishment, pre-deployment preparation and tasking of tactical teams, including the provision of appropriate equipment and work aids;

83 Letter dated 2 February 1994 from CNS to LS Connelly.

- the scope for integrating teams more effectively into ships' crews; and
- the work practices and conditions of deployed teams.

6.117 The intent of the review is not to investigate again the individuals and their performance in the RANTEWSS team during the SWAN's 1992 deployment. As far as possible, the Committee would hope that these individuals should be allowed to get on with their lives without further having to revisit yet again the events of the past. They have already provided much evidence to the BOI and to the Committee. The Committee would propose to make all the detailed evidence held by the Committee available to the authority appointed to conduct the review. The main thrust of the review should be to evaluate the structure, systems, management and work practices in RANTEWSS as a whole, going well beyond the particular individuals involved in the SWAN.

(6) Performance appraisal

6.118 The Board addressed the question of the review of the PERS-1 reports for Leading Seaman Connelly and Leading Seaman Flannery. As indicated in the foregoing section the Committee was not in a position to fully access the claims and counter-claims about the performance of the two female leading seamen. It is quite clear to the Committee, however, that the management style adopted by Chief Petty Officer Broad was highly inappropriate and contributed to any poor performance by them.

6.119 The Board did not look at the general question of ratings given to personnel who have not received adequate training for the jobs they are required to do. Appeal through the redress of grievance should not be the only avenue for personnel who feel that they have been put into positions without adequate training. The female sailors were not the only ones placed in a difficult situation through no fault of their own because they lacked certain training. Some of Dr Wheat's difficulties on board the SWAN could also be traced to inadequate training and preparation.⁸⁴

6.120 Those preparing assessments of performance should be given clearer guidance as to how they are to approach the rating of subordinates in such

84 See paras 6.82-6.85.

circumstances. It should be possible to clearly distinguish and identify under-performance that is due to lack of training outside the control of the individual from under-performance due to other causes. Likewise, assessments for periods of less than three months full service should be regarded in a different category from assessments of performance over longer periods. It is clearly very difficult for the assessee to demonstrate his or her full capacity and equally difficult for a supervisor to make assessments with any confidence about an individual's capacity on anything less than three full months' experience of that person's performance.

6.121 A number of different approaches is possible. A descriptive account, with no requirement to allocate numbered ratings is one possibility. As assessment of potential, rather than actively demonstrated capacity is another. The relationship of such interim assessments to promotion prospects should also be clearly enunciated.

6.122 Recommendation Fifteen: The Committee recommends that all personnel in the Navy are assessed in the routine appraisal process for their capacity to develop a good working relationship with other personnel, no matter what their gender or sexual preference.

6.123 Recommendation Sixteen: The Committee recommends that all personnel with supervisory and management responsibilities are assessed for:

- their skills in facilitating the integration of women into the Service;
- their compliance with the requirement that all sexual harassment complaints are properly investigated;
- their ability to assist in the effective resolution of sexual harassment allegations; and
- where appropriate the views of subordinates of the person being assessed be taken into account in order to arrive at a reliable assessment of these matters.

6.124 Recommendation Seventeen: The Committee recommends that the guidelines for performance appraisal be reviewed:

- to clarify the approach that supervisors should adopt to matters such as inadequacies in the assessee's training for tasks, short assessment periods and lack of opportunity for the assessee to demonstrate the particular skills for which he or she is being assessed; and
- to ensure that all supervisors are consistent in their approach to performance appraisal.

(7) *Breakdown of the Divisional System*

6.125 The Divisional System is a management tool in the RAN whereby commissioned officers and senior sailors are responsible for the well-being and efficiency of their junior personnel.

6.126 Sailors are divided into groups, or "*Divisions*", on the basis of their specialisation, work location and the shift they keep. Under this system, sailors can seek help or advice from their Divisional officers and senior sailors who are "*required to provide guidance, assistance and advice on a wide variety of problems*".⁸⁵

6.127 These problems can be related to their duties, work conditions, difficulties they may have in dealing with colleagues, such as harassment or personal concerns. The Divisional officers and senior sailors are not expected to be able to deal with all the problems brought to their attention but are encouraged "*to seek the advice of Chaplains, Social Workers, psychologists, Medical Officers and other `specialists`*".⁸⁶

85 RAN submission, Annex 13.4, Enclosure 1, Divisional Handbook.

86 *ibid.*

6.128 The BOI Report very correctly identified the breakdown of the Divisional System as central to the Board's inquiry. As the Board states in relation to female sailors:

*"even if their complaints had been without foundation, they were not dealt with in a manner which reflects the satisfactory operation of the divisional system."*⁸⁷

6.129 The BOI Report summarises the situation as follows:

*"The female sailors then had a number of courses of action open to them, but for differing reasons each of these courses of action failed."*⁸⁸

6.130 It would be more accurate to say that Leading Seaman Connelly and Leading Seaman Flannery tried several options, including approaching:

- Chief Petty Officer Broad directly about the watches and assistance with training;
- Chief Petty Officer Goedecke about some of the conditions and in connection with Leading Seamen Connelly's wish to see the Captain;
- Chief Petty Officer McKay for assistance in approaching Chief Petty Officer Broad; and
- the Chaplain, for assistance in getting some changes in their conditions of work.

6.131 Each of these people were rebuffed by Chief Petty Officer Broad and in effect told not to interfere in internal Electronic Warfare Section work matters.

6.132 The two female sailors also approached Dr Wheat in connection with accommodation and their health, and Chief Petty Officer Wells about their deteriorating

87 BOI Report, p. 54.

88 BOI Report, p. 57.

health. Chief Petty Officer Medic Wells took it upon himself to talk to Chief Petty Officer Broad, again without success. Dr Wheat's role in relation to the female sailors is discussed more fully in Chapter 7 of this Report.

6.133 The most obvious person for the female sailors to approach in the Divisional System should have been their Divisional Officer, Lieutenant Walker. They appear to have made very limited use of this channel. Evidence to the BOI indicates that the female sailors had no confidence in Lieutenant Walker's ability or willingness to intercede on their behalf. The evidence available to the Committee does not provide an adequate explanation for the perception that the female sailors had of Lieutenant Walker. Captain Mole states that he felt Lieutenant Walker would be a suitable appointee not only because he had the necessary security clearances, but because:

*"he had an understanding of that type of work which the other officers did not have. Therefore, I knew that he had ready access to the compartment where they worked. When he was my navigation officer in a submarine, I found him to be a very reliable man. I knew him as a good dependable, married man with children who would be sympathetic and who had access to them in their workplace all the time."*⁸⁹

6.134 Leading Seaman Connelly told the Committee that:

*"Our Divisional Officer was also aware that we weren't happy. He told me later in the deployment (almost at the end of the trip) that he had mentioned to the Captain that "The girls are not happy in the EWO" (our workplace). He told me that the Captain's reply was, "Well. You're their Divisional Officer. Fix it!" I don't recall the Divisional Officer doing anything at all to "Fix-it".*⁹⁰

89 CAPT D. Mole, Committee Hansard, (in camera - released). p. 107.

90 Letter to Committee Secretary dated 2 February 1994 from Mr Ken Cush, MacPhillamy, Cummins & Gibson.

6.135 It seems that the Coxswain did seek to take up the matters of concern to the female sailors with Chief Broad. Ms Connelly wrote the following to the Committee:

*"WO McKay spoke to Chief Broad regarding these problems on several occasions. He eventually gave up."*⁹¹

6.136 A particular difficulty that pertained to both Dr Wheat and the four female sailors was that they each belonged to a very specialised, minority category. Their jobs were different and seen to be significantly different from most of the other crew members. The security aspects of the EWS work set the EWS team apart and in effect, appear to have constituted a barrier to closer interaction with people outside the team, even in the operation of the Divisional System. This does not justify the behaviour of the Team's chief; it does, however, explain in part how it came to be that Chief Petty Officer Broad was able to exercise his authority to the extent that he did.

6.137 It should be noted that there were a number of options open to Leading Seaman Connelly and Leading Seaman Flannery that they did not pursue. They appear not to have raised their concerns to any great extent with their divisional officer, Lieutenant Walker or with the two junior female officers, Lieutenant Ganter and Sub Lieutenant Miller. Nor did they raise work concerns with Dr Wheat. The Board accepted that the female sailors had no confidence that approaches to any of these would have had any positive result. Nor did Leading Seaman Connelly have the confidence to approach the Captain directly, after Chief Petty Officer Broad actively discouraged her from doing so.

6.138 Leading Seaman Flannery's request to see the Captain over her PERS-1 report was successful, but the occasion did not result in any of the matters of concern to her being resolved to her satisfaction.⁹²

6.139 It is difficult for the Committee to determine with any degree of confidence the reasons why the full extent of Leading Seaman Flannery's concerns did not emerge at her meeting with the Captain. The BOI concluded that the Captain was too heavily influenced and side-tracked by her security breach. There is not enough detail available about the nature of the exchanges that took place to determine how it came about that Leading Seaman Flannery appears not to have alerted Captain Mole to all

91 *ibid.*

92 BOI Report, p. 60.

her concerns. The Committee considers that in all likelihood an important contributory factor was the presence of Chief Petty Officer Broad at the meeting.⁹³

6.140 The Committee notes that most of the factors that worked against Leading Seaman Connelly and Leading Seaman Flannery were, in one way or another, related to the security classification of their work. It was both a reason and an excuse used by Chief Petty Officer Broad to insist that no one had a right to interfere. It was, in that sense, a most unfortunate set of circumstances and one which, hopefully, is unlikely to apply in the case of most junior female sailors on Royal Australian Navy ships.

Alternative avenues of complaint

6.141 An issue of some importance not addressed adequately by the BOI Report is the role of the Medical Officer and the Chaplain in monitoring the morale and overseeing the welfare of the female personnel on the SWAN. As noted previously, there is provision in the Divisional System for matters to be taken up with chaplains, social workers, medical officers and other "*specialists*".

Medical Officer

6.142 The Committee observes that Captain Mole made a request that the ship's doctor be female, if possible, because there were to be female sailors on board. He specifically asked Dr Wheat to talk to the female sailors, as did Lieutenant Walker, their Divisional Officer.⁹⁴ Dr Wheat did so at the beginning of the deployment. She states that subsequently she was approached by the female sailors for certain medical conditions and in relation to the toilets.

93 See also paras 6.74 and 7.130-7.131 of this Report.

94 While the way in which the requests were made may have been informal, there is no question that CAPT Mole's expectation that Dr Wheat had a welfare role to play in relation to the four female sailors was made quite clear to her. The BOI reported that "*Captain MOLE did, however, say to LEUT WHEAT that there were four female sailors on board and that he (Captain Mole) had wanted Lieutenant WHEAT to be on board the ship to look after them (T651). This general concept had apparently also been conveyed to LEUT WHEAT during a previous conversation with CMDR DONOVAN...*"; "*Finally, LEUT WALKER, the divisional officer for the RANTEWSS team also asked LEUT WHEAT some two or three days after the ship departed STIRLING to have a talk with the four female sailors to tell them that fraternisation and similar behaviour were not acceptable on board (T652).*" BOI Report, p. 45.

6.143 It is, in the Committee's view, important to note that, despite her subsequent allegations about the unacceptable behaviour she herself was subjected to, Dr Wheat at no stage sought to inquire whether the female sailors may have been experiencing similar difficulties. It seems to the Committee reasonable for Captain Mole to have expected that, following his request that Dr Wheat should make herself available to the female sailors, she would actively seek to establish if they, too, were experiencing any difficulties and let him know if there were any difficulties that were not being resolved adequately at the Divisional level.

6.144 The evidence before the Committee shows that:

- Dr Wheat did not initiate any inquiries to establish whether the female sailors were being subjected to sexual harassment; and
- Dr Wheat did not consider the possibility that the medical symptoms being brought to the sick bay by the female sailors may have been related to stress from their work situation and/or sexual harassment.

6.145 It is, however, to be noted that Petty Officer Medic Wells did consider that some of the medical problems some of the female sailors were experiencing may have been stress related.⁹⁵

6.146 Leading Seaman Connelly told the Committee that:

*"After I had been treated for a stress related problem in the sickbay one night, the Petty Officer Medic approached Warrant Officer Coxswain McKay and told him that he thought that there would be more stress problems occurring amongst the RANTEWSS team members if Chief Broad did not let up."*⁹⁶

95 BOI Transcript, pp. 565, 573.

96 Letter to Committee Secretary dated 2 February 1994, from Mr Ken Cush, MacPhillamy, Cummins & Gibson.

6.147 In a letter to the Committee, Leading Seaman Connelly has described the state of her health on board the SWAN as follows:

*"Being made to keep a 6 hour on 6 hour off routine for 7 months, for stints of up to 32 days with out breaking that routine by as much as 5 minutes, with no real reason for doing so, is not a condition of service, it is an act of extreme inhumanity. If there was a genuine reason for me being there, I would have done that time and more without complaint. To be made to keep this routine up while coughing uncontrollably due to the flu that you haven't been able to shake for months, whilst vomiting with seasickness, while weeping sores have developed at the sides of your mouth, while the insides of your nostrils are split and bleeding, while your eye hasn't stopped twitching in weeks (when you only used to get it in times of extreme stress), you have chronic ear-ache from 12 hours a day of useless static pouring from your headphones that you were not permitted to remove and, you can't hold even the most basic of conversations any more because no thought stays long enough in your brain for you to capture it and get it to your mouth, all the while with nothing to do but sit and stare ... is not only not a condition of service but is very damaging to one's physical and mental health."*⁹⁷

6.148 At the BOI Dr Wheat agreed that she was aware that the Divisional System had broken down for the female sailors in the sense that Petty Officer Broad was "an obstruction for their complaint" and Lieutenant Walker was apparently "unreceptive to their complaint"⁹⁸. Dr Wheat also stated that she "had a feeling [Lieutenant Walker] was trying to push some of his so-called welfare problems on to me."⁹⁹ When asked whether the divisional problems affected the health of the female sailors, Dr Wheat stated:

*"Looking back, yes, I think it did. At the time it wasn't obvious."*¹⁰⁰

97 ibid.

98 BOI Transcript, p. 714. Dr Wheat also confirmed that she understood the Divisional System from her time at CERBERUS and was aware that the Divisional System does not work well if the divisional chief is the cause of the problem, BOI Transcript, P. 713.

99 Ibid., p. 744.

100 ibid., p. 744.

6.149 Dr Wheat confirmed to the BOI that when the ships reached Sasebo¹⁰¹ and the Chaplain returned to WESTRALIA, he had told her about difficulties that the female sailors had told him about:

"So he left it up to them to speak to me. I assume he told them to speak to me if they wanted any further help and nothing was said for quite some time afterwards." 102

6.150 When asked whether she saw no obligation to inform the Commanding Officer of the problems she knew the female sailors were experiencing, Dr Wheat said:

"there was a lot of things on the ship that people were unhappy about, and I knew that these girls were unhappy, but so were a lot of people unhappy about a lot of things, and I felt that it was not my place to be telling the commanding officer about everything that was not right." 103

6.151 While it is somewhat surprising to the Committee that Dr Wheat did not actively seek to investigate how the four female sailors were faring, and whether anything might be done about their situation, the following comment by Leading Seaman Connelly to the BOI gives some insight into the reasons why the female sailors did not seek her out to assist with their difficulties. Leading Seaman Connelly told the BOI that Dr Wheat:

"did actually come in and have a talk with us in May when she joined the ship. She called the four girls together in our mess, so there was just five of us, and more or less said how life at sea can be tough, sailors can be pretty rude, crude, they can say things, this can happen, that can happen, that sort of thing, and just generally warning us what to expect. We'd been on board for K92 by that stage and at the end of the talk I found I was a bit worried for her. I thought how the hell is she going to survive." 104

101 The SWAN visited Sasebo, 25-30 June 1992.

102 Dr C. Wheat, BOI Transcript, p. 715.

103 BOI Transcript, p. 745.

104 BOI Transcript, p. 355.

Chaplain

6.152 From the evidence available to the Committee, it appears that the two female sailors placed most hope in the Chaplain as an alternative means to have their concerns addressed.

6.153 It is also clear that the Chaplain sought to intervene with the Divisional officers on behalf of the female sailors. However, the Chaplain said he felt that he did not have the authority to insist on changes in work practices which were then the primary concern of the female sailors. He brought the morale problems that he believed flowed from the inflexibility of CPO Broad to the attention of Captain Mole. He did not refer his concerns to the Chaplain General.

6.154 In his submission to the Committee the Chaplain tells the Committee that he had prepared a report on low morale on the HMAS SWAN and had pressure put upon him not to forward the Report independently to the Principal Fleet Chaplain.¹⁰⁵

6.155 There are some differences in the evidence on how the Chaplain's decision not to advise his Chaplaincy superior came about. According to the Chaplain, he was pressured by Captain Mole into tearing up a report he had prepared for his Chaplain superior. According to Captain Mole, it was a decision the Chaplain freely arrived at after discussing the matter with the Captain.

6.156 The Committee notes the following in relation to Chaplain Thiem's account:

- the Chaplain's discussion with the Captain about the proposed report on morale took place on 29 July 1992 about ten days after the SWAN had left Hong Kong;
- the Chaplain's recollection of the substance of his report is that it dealt with "*morale, discipline, alcohol abuse, accommodation for female sailors and church services/spiritual welfare*";
- it is known, from a number of witnesses, including Chaplain Thiem that the SWAN had a history of disciplinary

105 CHAP D. Thiem, submission, p. 5.

problems, many associated with alcohol.¹⁰⁶ Captain Mole took firm steps to curb alcohol use, including not opening the bar in the wardroom before a cocktail party, declaring the ship "dry" for parts of the deployment and stopping a day's leave for the entire ship's company for misbehaviour. The Chaplain's own account confirms that:

*"the morale of the ship's company hit 'rock bottom' as a result of the leave stoppage";*¹⁰⁷

- the extent of the alcohol problems described in evidence to the Committee leads the Committee to conclude that Captain Mole was fully justified in taking a firm stand with regard to alcohol; and
- according to Chaplain Thiem's account, on the day that Chaplain Thiem showed Captain Mole his report on morale in the ship, *"Commander Mole and I then went on to speak about how morale might be improved in the ship."*¹⁰⁸

6.157 In this context, the Committee notes the views of the Director General of Chaplaincy-Navy, Principal Chaplain Davis, on the role of chaplains. He states in his submission that:

"The religious, spiritual well-being, and morale of members of a ship's company are the direct responsibility of the Commanding Officer".

106 CPO D. McKay, BOI Transcript, pp. 842, 845-850; Dr C. Wheat, BOI Transcript, pp. 642-643, 685, 749-750. See also Chapter 4 of this Report for CAPT Mole's account of this issue.

107 CHAP D. Thiem, submission, p. 5.

108 CHAP D. Thiem, submission, p. 6. One of the solutions was to engage the ship's crew on a morale boosting fund-raising activity for a Children's Home in Madras. By CHAP Thiem's account this proved very successful.

He further explains that:

"The Chaplain's role as the Commanding Officer's adviser, is both supplementary and complementary."

In carrying out his role, Chaplain Davis considers that:

"A Chaplain would try to resolve an issue of concern at the most appropriate level. The exercise of good leadership and management indicates that this should be at the lowest level in the command chain. If it is a simple matter of inter-personal conflict between the occupant of a mess deck the appropriate level would be to start with the Leading Hand of the Mess, then the Divisional Petty Officer, then the Divisional Officer until the matter was satisfactorily resolved. In more serious matters, particularly those involving unacceptable or immoral activity, he would appraise the Commanding Officer of the problem and offer advice on a solution. If it was a serious matter and the Commanding Officer refused to intervene, the Chaplain would have a responsibility to behave the same way as any other Head of Department. I would expect that his first point of contact, in this regard, would be his Command Chaplain." ¹⁰⁹

6.158 In view of the difficulties that Chaplain Thiem had in influencing Chief Petty Officer Broad, it is also of interest to note Principal Chaplain Davis' comments on the Navy's tradition, inherited from the Royal Navy, of chaplains having no rank. Principal Chaplain Davis says that:

"While the Chaplain is not encumbered with any sign of rank-power he is not a threat to anyone. It may also be said, however, that his ranklessness projects a perception of powerlessness - lacking the status to intervene successfully." ¹¹⁰

109 Principal Chaplain M. Davis, submission, p. 3.

110 *ibid.*, p. 4.

Enhancement of the Divisional System

6.159 In the evidence put to the Committee, there is a clear-cut division of opinion over the need for a complaint mechanism outside the existing Divisional System:

- several submissions argue strongly that a parallel or additional channel of complaint would undermine the Divisional System. These witnesses consider that the Divisional System is appropriate and adequate and should not be tampered with. Some concede that the Divisional System could perhaps be improved, but are convinced that it is fundamentally a sound approach. Several consider that *"to bypass it in anyway, is to put the effectiveness of the Defence force at risk"*; ¹¹¹ and
- a majority of submissions that comment on the question of complaint mechanisms for dealing with sexual harassment favour a separate and independent channel to be established in addition to the Divisional System. Senior management in Navy acknowledge that the Divisional System *"was not doing the job it ought to have done."* ¹¹²

6.160 The Chief of Naval Staff, Vice-Admiral MacDougall told the Committee that, although the Divisional System had served the Navy well in the past *"it has to be said that it failed in SWAN"*. The Navy has concluded that:

"society has become more complex and therefore the divisional officer as a stand-alone resource is not enough." ¹¹³

6.161 The Committee formed the view that, in many instances, the Divisional System appears to have functioned effectively. In those cases it seems that the personalities of both the officers designated as Heads of Divisions and the personnel for whom they

111 LCDR P. Kraus, submission, para. 12; Holley, submission, pp. 2-3; RSL, submission, pp. 4-5, Committee Hansard, pp. 1211-1214; Anti Submarine Officers Association submission, Committee Hansard, pp. 1024-1025.

112 CDRE C. Barrie, Committee Hansard, p. 593.

113 VADM I. MacDougall, Committee Hansard, p. 577.

were responsible worked well together. A fundamental requirement for the system to operate effectively seems to require that all parties trust and respect each other.

6.162 Unfortunately, this is not always the case. The worst cases of sexual harassment appear to occur in instances where the perpetrator of the harassment is in fact the supervisor and/or a key link in the Divisional System.¹¹⁴

6.163 Vice-Admiral MacDougall pointed out to the Committee that the Divisional System is not static. It has evolved over time and has incorporated specialist assistance, for example, such as that provided by psychologists, social workers, doctors and chaplains.¹¹⁵

6.164 The Committee fully endorses Navy's conclusion that an additional safety net must be built into the system to respond adequately to the complex conditions that prevail today. The Navy has in fact moved quickly to establish the 008 Operation Lifeguard to provide a service-wide alternative channel for any person in the Navy to seek assistance for any aspect of sexual harassment. Further details are in Chapter 10 of this Report. The Committee notes that a review of the Divisional System is one of the recommendations in the report of the consultant on the Good Working Relations project. The Committee believes that what is required is more than just a "rejigging".¹¹⁶

6.165 **Recommendation Eighteen:** The Committee recommends that a full-scale review of the Divisional System be carried out. The review should include in particular:

- the effectiveness of the Divisional System in meeting the needs of individuals and in meeting the needs of the organisation;
- the impact of the 008 number on the operation of the Divisional System;

114 The Navy is by no means unique in this regard. The difficulty of dealing with sexual harassment through the normal management hierarchy, particularly if the harasser is the immediate supervisor, is common to many organisations. See, for example, submission 2.

115 VADM I. MacDougall, Committee Hansard, p. 1294.

116 *ibid.*, p. 737.

- the impact of the introduction of Navy Quality Management on the operation of the Divisional System; and
- the adequacy of the training of Divisional Officers and Divisional Chiefs for their Divisional duties

(8) Management style

6.166 The Committee considers that it is necessary for the Navy to examine carefully the management style used by all its personnel, from initial training, through to the most senior management. The highly authoritarian, inflexible and rigidly hierarchical approach adopted by Chief Petty Officer Broad was clearly in conflict with the needs and circumstances at the time on board the SWAN.

6.167 The BOI Report acknowledges that:

*"CPO Broad is in many ways a product of his environment."*¹¹⁷

The Committee takes this to mean in relation to his approach to authority and management, as well as in his attitude to women in the Navy.

6.168 In evidence to the Committee, Chief Petty Officer Broad, outlined his own background:

*"My approach was based upon my strict upbringing and background from boarding school, through 13 years in the Royal Navy and without any management training prior to promotion to Chief Petty Officer in the RAN. I am a product of the old school of a tough senior sailor who was equally hard on male and female subordinates."*¹¹⁸

The Navy confirmed that Chief Petty Officer Broad had undergone no training for his Divisional duties.

6.169 The Committee is aware that the Navy has begun to address fundamental issues of management through its Naval Quality Management (NQM) program. The

117 BOI Report, p. 67.

118 Letter dated 24 January 1994 from CPO Broad to Committee Secretary.

Committee was also pleased to note the emphasis Commodore Barrie placed on an open dialogue and open channels of communication as basic requirements if Navy is to meet the demands of rapid and massive change.¹¹⁹

6.170 The Committee is not convinced, however, that the Navy has adequately addressed all the issues of leadership and people management skills to meet the multiple challenges and increasingly complex environment facing the Navy today. Part of that challenge is the integration of women into the Service.

6.171 More work needs to be done to resolve the tensions between the authoritarian approach that typified the Services in ages past¹²⁰ and the more participatory and flexible approach seen by management experts as the only way to achieve the level of motivation, the creativity and the sense of teamwork that is demanded today. A more open, more participatory and consultative management approach would assist all parties, men and women, to deal with the particular problems that the integration of women has thrown up. How to integrate this more open style of management with an effective chain of command is a challenge the Navy and the other Services, cannot sidestep or ignore.

6.172 The Committee considers that better communication between all levels of management in the Navy about issues such as these is an effective means of allaying fears and uncertainties about the changes, including the integration of women taking place in the organisation. The pace of change is unlikely to subside in the foreseeable future.

6.173 Recommendation Nineteen: The Committee recommends that the potential for tensions between the principles underlying the chain of command and the more participatory problem solving principles of Navy Quality Management be openly and more fully addressed at every level of management training in the Navy.

119 CDRE C Barrie, Committee Hansard, p. 578.

120 It was, of course, a common approach in many, if not most other large organisations.

Defence Instructions on Sexual Harassment

6.174 The Committee notes the very substantial improvement in the guidance now being revised for all ADF personnel, Defence Instruction on Unacceptable Sexual Behaviour by Members of the Australian Defence Forces (DI(G)PERS 35-3).

6.175 The Committee endorses the broad policy framework that the ADF is developing concerning standards of sexual behaviour in the ADF. The statement of policy, rightly in the Committee's view, sets sexual behaviour within a broad context. The current draft statement of policy reads as follows:

"Service in the ADF is concerned ultimately with maximising operational effectiveness. This goal requires the development of group cohesion, respect for command relationships, the willing acceptance of individual and collective discipline and the maintenance of morale. Accordingly, Service members must refrain from behaviour which:

- a. undermines a member's ability to contribute to the mutual dependence and collective discipline of the group; or*
- b. is contrary to, or inconsistent with, the standards of professional and personal conduct required to achieve such operational effectiveness.*

The ADF is concerned with the sexual behaviour of members in terms of this obligation. Sexual behaviour which is inconsistent with this obligation is termed unacceptable sexual behaviour, that is any sexual behaviour, activity or attitude that places operational efficiency or effectiveness at risk.

The leadership of the ADF neither condones nor accepts unacceptable sexual behaviour. Incidents will normally warrant disciplinary and/or administrative action where such behaviour:

- a. is prejudicial, or likely to be prejudicial, to group cohesion or command relationships*

by affecting the health or safety of the individual or the group;

- b. takes advantage or threatens the person or personal integrity of subordinate or underage persons;*
- c. brings or is likely to bring discredit on the ADF; or*
- d. is unlawful under either civil, criminal or military law."*

6.176 The policy seeks to encompass fraternisation as well as sexual offences and sexual harassment, and applies to behaviour between and towards homosexual personnel, as well as to heterosexual personnel.

6.177 In addition to identifying behaviours such as those listed in Chapter 2 of this report, the guidelines give specific instances of gender harassment that could constitute sexual harassment, for example:

- " . blaming women for pregnancy;*
- . derogatory references to female physiological functions;*
- . unjustified inequitable treatment of males and females; and*
- . acts of aggression, intimidation, hostility, rudeness, name calling or other types of abusive conduct directed towards one gender."*

6.178 The Committee acknowledges the need, in the context of obligations under the Sex Discrimination Act and in the light of the prevalence of sexual harassment, to identify behaviours listed in paragraph 6.177 above as unacceptable. However, the Committee considers that abusive behaviour of the kind outlined is just as unacceptable between members of the same sex as between members of the opposite sex.

6.179 Recommendation Twenty: The Committee recommends that:

- the behaviour designated as gender harassment in para 4d of Annex A to DI(G) PERS 35-3 be clearly identified as unacceptable behaviour between all personnel, including behaviour between members of the same gender; and
- the example in 4b of Annex A to DI(G) PERS 35-3 be reformulated to include derogatory references to both female and male physiological functions.

6.180 The Committee endorses the emphasis that the ADF draft DI (G) PERS 35-3 gives to seeking resolution of incidents directly between individuals whenever possible, in recognition of the reality *"that individual perceptions will differ and there may be a fine line requiring the exercise of common sense, maturity and clear judgement."*¹²¹

6.181 Recommendation Twenty-One: The Committee recommends that more emphasis be given in the draft DI (G) PERS 35-3 to:

- the value of seeking to resolve concerns about sexual harassment by the individuals involved and at an informal level; and
- the support mechanisms available to the complainant. The guidance should make explicit reference to all the 008 numbers in the section headed *"Avenues of Complaint"*. The guidance should also be regularly supplemented by the service-wide circulation of up-to-date lists of Sexual Harassment Contact officers.

121 Draft DI (G) PERS 35-3.

Unsubstantiated Allegations and False Allegations

6.182 The Sex Discrimination Commissioner states that:

*"There is no corporate knowledge within the HR & EO Commission of any sexual harassment matter having been declined on the basis that it was considered vexatious. The fear of vexatious complaints far outweighs the likelihood of occurrence."*¹²²

6.183 It is the Sex Discrimination Commissioner's view that *"complainants have little to gain from making false accusations"*.¹²³ Of the nineteen sexual harassment cases that have gone to public hearing, three were dismissed as unsubstantiated.¹²⁴ Of the total of 690 complaints closed under the Sex Discrimination Act during 1992-93, 126 were withdrawn. It is not known how many of these related to sexual harassment or what the reasons were for the withdrawal.

6.184 However, as noted previously, there is concern amongst many supervisors that they may be vulnerable to false allegations of sexual harassment. The uncertainties generated by the present definition of sexual harassment make it particularly important to ensure that the guidelines are quite clear and explicit about the procedures for dealing with false and vexatious allegations of sexual harassment. This is important not because many false allegations are expected, but because there is a perception held by many that it is easy to make false allegations and there is no protection against such allegations.¹²⁵ It is important to address this anxiety as effectively as possible, not least to ensure that the integration of women is not hampered by misperceptions that women are unfairly getting away with unjustified complaints and/or the less pleasant tasks because of supervisor fears of being charged with sexual harassment.

122 Ms S. Walpole, submission and appendix 7, Committee Hansard, pp. 60-61, 99-104. See also Chapter one of this Report.

123 *ibid.*

124 Ms S. Walpole, submission, Committee Hansard, p. 46: *"Where a complaint is unsubstantiated, the Commissioner may cease the inquiry (S52(2)). The Commissioner is required to inform the complainant of this decision. (S.52(3)). The complainant then has the right to ask that the complaint be referred for a review of the decision by the President of the Commission (S52(4)), S52A"*.

125 Ms S. Walpole, submission, Committee Hansard, p. 60; see also Chapter 1 of this Report.

6.185 One of the most effective ways to deal with both the reality that there are some false allegations and the damaging perception that they are a big problem is to spell out the steps that can be taken in such cases. In this regard the Sex Discrimination Commissioners guidelines are disappointingly inadequate.¹²⁶ It is clear that formal avenues of redress are very limited.

6.186 Section 111 of the Sex Discrimination Act protects anyone who has lodged a complaint of sexual harassment with the Human Rights and Equal Opportunity Commission from civil action. It also protects anyone who has made a submission, given evidence and information or provided documents to the Commission.¹²⁷

6.187 The Committee received one submission advising it of a claim for compensation from the Navy, following a not guilty verdict by a court martial. The Committee was also informed of a complaint received by the Defence Force Ombudsman from an Air Force Corporal, who was found not guilty of three counts of rape. He complained that the Service Police had misled the State Police about the evidence leading to the rape charges. A Board of Inquiry into the matter criticised the conduct of both the RAAF Police and the complainant. The Ombudsman states that:

*"Although rape was not proven there was some evidence of his having taken advantage of his position of authority to obtain sexual favours."*¹²⁸

6.188 In the case of criminal proceedings, such as sexual assault, where the defendant is acquitted, the Attorney-General's Department submission says the following:

"Courts are reluctant to allow people to sue in such circumstances. It is considered to be in the public interest that members of the public feel free to report possible crimes to the relevant authorities, and that those

126 HREOC, 1993, *Eliminating Sexual Harassment from the Workplace: A Training Package for Managers and Supervisors*, p. 27.

127 Section 111(2) of the Sex Discrimination Act states that: "(2) Where: (a) a complaint has been made to the Commission; or (b) a submission has been made, a document or information has been furnished, or evidence has been given, to the Commission or the Commissioner; a person is not liable to an action, suit or other proceeding in respect of loss, damage or injury of any kind suffered by another person by reason only that the complaint or submission was made, the document or information was furnished or the evidence was given.

128 Ms P.S. Smith, submission, p. 4.

authorities are free to prosecute suspected criminals, without having to fear possible civil liability for doing so. Further, the courts consider that completed criminal litigation should be final and not subject to reopening in the civil courts.

Another difficulty that an acquitted defendant has in seeking to sue is that statements by witnesses and by counsel in court (and in courts martial) are covered by absolute privilege and cannot be used against them in later civil proceedings.

Nevertheless, there are three possible actions that acquitted defendants can take to seek compensation for the damage they have suffered. They can use the prosecuting authorities in the tort of malicious prosecution. This action is difficult to establish as the defendant must show that the prosecutor both had no reasonable and probable cause to prosecute the plaintiff and was either motivated by malice or had, at least, a primary purpose other than that of carrying the law into effect. The plaintiff must also demonstrate that the proceedings caused loss or injury, being either a pecuniary loss, damage to reputation, or imprisonment or the threat of imprisonment. It is theoretically possible that this action could be used against a complainant but the plaintiff would have to show that the complainant not only made the allegation but was instrumental in instituting the proceedings. It is an open question whether this action could be used following an acquittal in a court martial.

The second possible action is for the tort of abuse of process. This action might lie against the prosecuting authority but not against the complainant. Here the plaintiff must show that the defendant attempted to use the legal process of a court to achieve some improper purpose or in pursuit of some ulterior motive. In addition, there must have been some overt act or threat, distinct from the proceedings themselves, in furtherance of the improper purpose. Again, such an action is very difficult to establish and is rarely used. It is doubtful whether this action could be used following a court martial as the tort is based on abuse of the process of a court.

The final possible action, against the complainant, is in defamation. A major difficulty for a plaintiff suing for defamation following either criminal or court martial proceedings is that, as mentioned above, statements made to the court or court martial are covered by absolute privilege. Further, absolute privilege is not confined to statements made in the proceedings themselves but extends to all preparatory steps taken with a view to judicial proceedings. There is authority to suggest this privilege extends to complaints addressed to the proper authority for initiating disciplinary proceedings. Certainly, if the complainant merely complained to the proper authorities then the matter is covered by qualified privilege. However this privilege does not apply if the person was motivated by malice or knew the complaint to be false. Nor does it apply if the complaint was made to the wrong authorities or was repeated to others. Such an action could lie, given the right circumstances, following a court martial.

Thus of the three relevant possible actions, probably two can be used following a court martial. In any case, because all three of these actions are difficult to establish, whether a civilian or military proceedings was involved is likely to make little difference."¹²⁹

6.189 In the Committee's view there is a need to give consideration to procedures in the Defence Force short of civil court action to deal with allegations of sexual harassment, other than sexual assault, which, after a fair and thorough investigation are determined to be patently unfounded or malicious. The procedures for false allegations should provide for conciliation which leads to an appropriate outcome for the person against whom such an allegation has been made. This could include compensation or disciplinary action against the person determined to have made a patently unfounded or malicious allegation.

6.190 The Committee acknowledges that complaints may be made about sexual harassment and/or unacceptable sexual behaviour which are not found to be substantiated when legal action is taken upon them. This can happen for a number of reasons which may have nothing to do with whether the allegation was in fact true or false. The result is usually that the complaint is not upheld. The compensation or disciplinary action referred to in paragraph 6.189 and the following recommendations

129 Attorney-Generals Department letter, dated 15 June 1994.

would not be appropriate in the majority of unsuccessful complaints which fail for reasons connected only with the legal processes involved.

6.191 However, in a small minority of cases, complaints may be pursued for motives of malice or mischievousness. When these motives are apparent and the fact finder concerned with the resolution of the dispute finds no basis for the original allegations of sexual harassment, there can be a resultant undermining of discipline and/or morale. Paragraph 19 of DI(G) PERS 35-3 currently requires administrative action to be taken. It fails to provide any guidance as to what steps should be taken to ascertain that an allegation is "false and malicious, vexatious or mischievous" nor as to what the possible outcomes should be. In particular, some attention needs to be given to a means to repair the damage such allegations can do to the subject of the complaint.

6.192 Recommendation Twenty Two: The Committee recommends that the DI (G) PERS 35-3 be more detailed and specific in the guidance it gives on false allegations of sexual offences and sexual harassment. In particular the instruction should outline the procedures that are to be followed and the possible outcomes in the event that a false, malicious, vexatious or patently unfounded allegation is made.