

## CHAPTER 7

### DISCIPLINARY AND ADMINISTRATIVE ACTION TAKEN

#### TERMS OF REFERENCE 1(e) and 1(f)

This Chapter examines whether the disciplinary and administrative action taken against persons named in the Board of Inquiry Report was sufficient and appropriate and relates this action to the recommendations of the Board.

#### ADF mechanisms for maintaining good order and discipline

7.1 The Defence Force has two mechanisms for maintaining good order and discipline:

- "*disciplinary action*" under the Defence Force Disciplinary Act 1982 (DFDA); and
- "*administrative action*."

7.2 The DFDA provides a comprehensive body of law which applies to offences for which service personnel may be tried by a service tribunal. Such offences include specific service offences defined in the DFDA and "*Territory offences*", as defined by section 3. "*Territory offences*" include offences against other Commonwealth laws and criminal offences which exist in the law of the Jervis Bay Territory<sup>1</sup>. Under section 63 of the DFDA, certain offences committed in Australia may only be dealt with by a service tribunal with the consent of the Director of Public Prosecutions.

7.3 Administrative action, which includes censures, may flow from other statutory provisions or result from a breach of policy directives.<sup>2</sup> It does not bar the subsequent trial by a service tribunal under the DFDA.

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1 Paragraph (b) of the definition of '*Territory offence*' in section 3 refers to offences punishable under the Crimes Act 1900 of the State of New South Wales in its application to the Jervis Bay Territory. This is in fact the Crimes Act 1900 of the Australian Capital Territory, presently applying in the Jervis Bay Territory but subject to the Commonwealth's power to make Ordinances for that Territory which can repeal or amend any part of the ACT law as it applies to the Jervis Bay Territory.

2 Brief provided by Attorney-General's Department.

## ***Courts Martial***

7.4 Courts martial are established under the DFDA as part of a hierarchy of ad hoc tribunals to try offences under that Act. They are conducted according to the standards and safeguards of Australian criminal law.<sup>3</sup> These apply the "*beyond reasonable doubt*" standard of proof to prosecutions for service offences and, although not criminal courts, can sentence a person to a period of detention amongst other penalties.

## ***Censures***

7.5 Defence Instruction DI(N) ADMIN 35-1 describes a censure in the following terms:<sup>4</sup>

*"An administrative censure is a written record of the fact that an officer's conduct or behaviour has fallen short of that to be expected of an officer of his/her seniority and experience in the Service. It is not a punishment..."*

*The effect of censure on an officer's future employment and promotion will depend entirely on the circumstances. Conduct or behaviour of a less serious nature may well not have an effect after a short period of time and the censure will act as a record of what has happened in the past...the effect of two censures of a similar nature could have a more serious effect.*

*In more serious cases, a censure may have a permanent effect on future employment if the conduct or behaviour indicates unsuitability for certain postings.*

*...a censure...will be taken into account by the Selection Board with all the other attributes of the officer...a censure does not in itself have the effect of precluding an officer from being considered for promotion."<sup>5</sup>*

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3 VADM Taylor, Committee Hansard. p. 1249. See also Chapter 8 of this Report for further comment on courts martial.

4 Defence Instruction (Navy) Administrative 35-1.

5 Defence Instruction (Navy) Administrative 35-1.

7.6 The severity of a censure is determined by the rank of the person giving the censure. In the Navy this ranges from a Commanding Officer's logging (the mildest censure) through to censure by the "Administrative Authority" or the Chief of Naval Staff (the most severe).

7.7 In evidence to the Committee Vice-Admiral MacDougall confirmed that a censure does not necessarily spell the end of a person's career in the Navy. However he also confirmed that:

*" It does bring them very much under the microscope each time due process of review for promotion arrives. There can be financial penalty if there are delays." <sup>6</sup>*

7.8 The Navy confirmed to the Committee that while all copies of the milder form of censure, a Commanding Officer's logging, are usually destroyed when the officer leaves the ship, a censure at the Chief of Naval Staff level stays *"on their service record for the rest of their career"*.<sup>7</sup>

### ***Performance Appraisals***

7.9 All RAN personnel routinely undergo an annual performance appraisal which covers technical knowledge, work performance, leadership ability, suitability for service life, potential and conduct. For officers this is called the PR5 and for enlisted personnel it is a PERS 1. Personnel eligible for promotion are assessed on a six-monthly basis.

7.10 In rating an individual's performance, these appraisals reflect if the individual was censured during the period it covers and whether he or she has taken any remedial action to address the reason for the censure.

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6 VADM MacDougall, Committee Hansard p. 1293.

7 Enclosure 6 to letter from CAPT B. Robertson, to Committee Secretary, dated 11 May 1994.

## ***Quarterly Report***

7.11 Personnel who have been diagnosed as having a medical condition or have been warned about their behaviour can be placed on a quarterly report. Although not a punishment in itself, being placed on a quarterly report has the effect of highlighting to both the individual and his/her supervisors that that person is under scrutiny. A PR5 or PERS 1 is prepared when an individual is placed on quarterly report and sets out the reasons why this action has been taken and what aspect of the individual's performance needs to be addressed.

## **Administrative and Disciplinary action taken**

7.12 Details of the recommendations by the BOI with regard to individual personnel involved in the SWAN incident are in Chapters 5 and 6 of this Report. Ultimately, the following action against them was taken.

7.13 The Maritime Commander issued Notices to Show Cause for Censure to Captain Mole, Lieutenant Commander Spruce and Lieutenant Bartlett. He issued Chief Petty Officer Broad with a Notice to Show Cause for Discharge.

7.14 The Chief of Naval Staff reviewed the Maritime Commander's recommendations and the following action was taken:

- Captain D. Mole was censured by the Chief of Naval Staff *"for failing to take adequate steps to keep [him]self sufficiently informed of events occurring within [his] command."*<sup>8</sup>

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8 CAPT D. Mole was granted the acting higher rank of Captain on his posting as Commander Australian Submarine Squadron and will revert to his substantive rank of Commander at the completion of this posting unless he is promoted in the meantime. CAPT Mole will be considered against all other eligible Commanders for promotion to Captain. He was a Commander when he was the Commanding Officer of HMAS SWAN.

- Lieutenant Commander M.J. Spruce was censured by the Chief of Naval Staff for *"failing to set and enforce appropriate behavioural standards among HMAS SWAN officers both in the Wardroom and ashore."*<sup>9</sup>
- Lieutenant P.D.J. Bartlett was censured by the Chief of Naval Staff for *"allowing [his] behaviour in the wardroom HMAS SWAN to fall below an acceptable standard with respect to [his] conduct towards fellow officers. In particular, [his] persistent use of coarse and inappropriate language of an explicit sexual nature in the presence of female officers was totally unacceptable."*<sup>10</sup>
- Chief Petty Officer K.C. Broad was censured by the Chief of Naval Staff for *"[his] unacceptable behaviour towards female subordinates whilst serving in HMAS SWAN in 1992. Specifically [he] used derogatory and sex-based terms in relation to them such as 'SWODS' (sailors without dicks), 'sluts' 'bitches, 'half wit sisters', 'dimwits', 'numbskulls' and 'idiots'. [He] also created a hostile working environment for the female junior sailors in [his] division contrary to the provisions of DI(N) PERS 16-5 by not discouraging other personnel from using derogatory terms in relation to them."*<sup>11</sup> The Chief of Naval Staff directed that Chief Petty Officer Broad undergo counselling to improve his interpersonal relationship skills with subordinates.<sup>12</sup>

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9 LCDR Spruce was subsequently placed on quarterly report and relieved as Executive Officer (XO) on 7 May 1993.

10 Censure by VADM I. MacDougall, dated 30 July 1993.

11 Censure by VADM I. MacDougall, dated 30 July 1993.

12 CPO Broad has advised the Committee that he is *"not even eligible to be considered for promotion for 6 years and may only be deployed to sea with the express permission of ACPERS-N"*; letter dated 24 January 1994.

## The censure of Captain Mole

7.15 In his submission of 17 November 1993 Captain Mole raises several issues with the Committee. His concerns were further elaborated during in camera hearings held by the Committee on 10 March 1994. The evidence in relation to Captain Mole considered by the Committee includes his legal submission of 31 January 1994, his supplementary submission of 16 March and his response of 31 January 1994 to possibly adverse comment that the Committee made available to him for comment on 11 and 21 January 1994.

7.16 In his evidence, Captain Mole raises two matters of particular concern to him arising from the BOI:

- the conduct of the investigation by the Board of Inquiry as it pertains to Captain Mole; and
- actions affecting Captain Mole taken by Navy after the Board of Inquiry.

A further matter of concern Captain Mole has brought to the attention of the Committee is the ambiguity in the statement made to the media on 9 September 1993 from which an inference that Captain Mole was himself guilty of sexual harassment could be drawn, an inference which, it is clear, was never intended by the BOI or by the Chief of Naval Staff.<sup>13</sup>

7.17 It is also to be noted that in answer to Captain Mole's request that his censure be reviewed, the Chief of Naval Staff responded that the matter would be delayed.<sup>14</sup>

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13 The media was told that: *"the Board found that sexually explicit and offensive language had been used or condoned by those officers and one senior sailor."* This drew the following response from CAPT Mole in his request that CNS review his censure: *"On receiving the censure from you, my first reaction was that I would resign from the service. However, as the censure was an in-house and in-confidence affair, I contemplated living with it. Now I find that my Staff-In-Confidence censure has been advertised nationwide throughout the media. Not only have I been publicly humiliated but in some cases I have been slandered as the media reporting implies I have been censured for sexual harassment. My family is finding this to be an extremely traumatic experience and they do not deserve this."*

14 See Enclosures to Captain Mole's supplementary submission dated 16 March 1994 and para 7.221 of this Report.

7.18 The following discussion of these matters addresses aspects of two of the Terms of Reference of this Committee in particular, namely:

- 1(e) which requires the Committee to inquire *inter alia* into the appropriateness of the recommendations of the Board; and
- 1(f) which requires the Committee to examine whether the subsequent disciplinary and administrative action taken against persons named in the Board of Inquiry Report was sufficient and appropriate.

7.19 The Committee's comments on the procedures adopted by the BOI and their impact on Captain Mole are in Chapter 5 of this Report.

#### ***How the decision to censure was reached***

7.20 The BOI recommended that:

*"Captain Mole be advised by the Maritime Commander that he did not keep himself sufficiently informed of certain events occurring within his command, particularly with respect to gender related issues and the state of morale within the embarked RANTEWSS team." <sup>15</sup>*

7.21 It should be noted that the Board did not recommend that Captain Mole be censured.

7.22 After the Board reported, the Maritime Commander, on 13 May 1993, issued Captain Mole with a Notice of Cause for Censure. Captain Mole provided a reply to the Notice of Cause for Censure on 6 July 1993. On 30 July 1993, Captain Mole was censured by the Chief of Naval Staff. In a press conference on 9 September 1993, the Chief of Naval Staff referred to Captain Mole by name as one of the officers censured as a result of events on the SWAN.

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15 BOI Report, p. 99.

7.23 It is evident from the documentation provided by the Navy to the Committee that there was extensive debate within the senior echelons of the Navy as to the most appropriate measures to take in relation to Captain Mole. Of particular interest for the light they throw on the deliberations and on the nature of the decision-making process are:

- a minute AF 6/2/396 of 25 June from the Maritime Commander to the Deputy Chief of Naval Staff (DCNS(NO)) commenting on the BOI Report;
- the Notice of Cause for Censure sent by the Maritime Commander to Captain Mole on 13 May 1993;
- a minute AF 6/2/396 of 12 July 1993 from the Maritime Commander to the Chief of Naval Staff commenting on Captain Mole's response to the Notice of Cause for Censure;
- a minute DNLS 543/93 of 16 July 1993 from the Director of Naval Legal Services (DNLS) to Assistant Chief of Personnel-Navy (ACPERS-N) and the Chief of Naval Staff, commenting on the Maritime Commander's minute of 12 July; and
- a minute ACPERS-N705/93 of 20 July from Assistant Chief of Personnel-Navy to the Chief of Naval Staff, commenting on all the above;
- a submission from the Chief of Naval Staff to the Minister dated 10 August 1993.

7.24 Several important points emerge from this documentation, and the subsequent evidence put to the Committee by Navy at public hearings and by Rear-Admiral Walls in a separate submission.



### *Content of the Censure*

7.25 The Maritime Commander's reasons for his proposed censure of Captain Mole were:

- "(a) failing to take adequate steps to keep yourself sufficiently informed of events within your command;*
- (b) failing to take adequate steps to prepare your ship's company and officers for arrival of the first females to serve in SWAN; and*
- (c) failing to take active and preventative steps in relation to unacceptable behaviour even when it was brought to your notice." <sup>16</sup>*

The Maritime Commander's contemplated censure was not proceeded with.

7.26 Following Captain Mole's response, the Chief of Naval Staff called for all the papers and advised that he wished *"to review any proposed administrative actions"*. <sup>17</sup>

7.27 Having considered Captain Mole's response, the Maritime Commander recommended to the Chief of Naval Staff that:

- the censure be given by the Chief of Naval Staff; and
- the terms of the censure remain as originally proposed by the Maritime Commander, with the additional comment that: *"while appropriate action was taken in relation to the LEUT WHEAT/LEUT BARTLETT matter, it was a grave error of judgement not to make enquiries of the RANTEWSS Team following the incident."* <sup>18</sup>

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16 Notice of Cause for Censure dated 13 May 1994.

17 RADM Wall's minute AF 6/2/396 of 12 July to CNS.

18 *ibid.*

7.28 In making this recommendation, the Maritime Commander also states that:

*"the option of undertaking proceedings with a view to the court martial of CAPT MOLE should not be overlooked."*<sup>19</sup>

7.29 It was the Maritime Commander's view that:

*"trial by court martial would establish for once and all the seriousness of all the issues involved for all members of the RAN having command responsibility."*<sup>20</sup>

The Maritime Commander further expresses the view that a court martial *"is probably the most satisfactory way of dealing with matters concerning Captain Mole"*.<sup>21</sup> He cautions, however, that:

*"there may well be significant difficulties in framing charges of sufficient substance to warrant a court martial."*<sup>22</sup>

7.30 The Committee finds the consideration given to court martialling Captain Mole illuminating in the light it throws on the perception that the severe punishment of being subjected to a court martial would be the most effective way to send a signal to the rest of the Navy.

7.31 In formulating his recommendation to the Chief of Naval Staff, the Maritime Commander raises the question of corporate responsibility. He notes that:

*"Whether CAPT MOLE is deserving of censure is dependent on a number of factors, not the least of which is the extent of the RAN's corporate responsibility for not providing more guidance on the integration of women at the sea. It is easy with hindsight to say what*

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19    *ibid.*

20    *ibid.*

21    *ibid.*

22    *ibid.*

*should have been done, but much harder to judge actions on their merits at the time they were taken."*<sup>23</sup>

No further mention of corporate responsibility is made.

7.32 The Chief of Naval Staff informed Captain Mole that he had incurred the Chief of Naval Staff's displeasure for:

*"failing to take adequate steps to keep yourself sufficiently informed of events within your command of HMAS SWAN. Specifically, you failed to:*

- (a) sufficiently recognise that the proposal to return Leading Seaman CONNOLLY (sic) to Australia from Hong Kong, because of her dissatisfaction, indicated a morale problem with the female Electronic Warfare sailors on board which required further investigation and careful monitoring;*
- (b) you failed to sufficiently recognise the shortcomings of the RANTEWSS divisional system when dealing with the complaint by Leading Seaman FLANNERY concerning her PERS1 report; and*
- (c) you failed to keep yourself adequately informed of the unacceptable behaviour of some of your officers."*<sup>24</sup>

7.33 The Chief of Naval Staff told the Committee that he *"decided to lift it to a higher level of censure."*<sup>25</sup> The Director of Navy Legal Service sets out the relationship between the Maritime Commander's Notice to Show Cause and the final censure by the Chief of Naval Staff as follows:

*"the Maritime Commander has invited A/CAPT Mole to show cause on three separate grounds why he should not be censured. CNS, in having regard to A/CAPT Mole's response, determined that two of the proposed*

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23 *ibid.*

24 CNS Censure of CAPT D. Mole, dated 30 July 1993, Enclosure 9 to Letter from CAPT B. Robertson to Committee Secretary, dated 14 March 1994.

25 VADM I. MacDougall, *Committee Hearing*, p. 1282.

*grounds for censure should be removed and the remaining ground was particularised to reflect those matters set out in the notice to show cause."*<sup>26</sup>

7.34 The Committee does not question the right of the convening authority (in this case the Maritime Commander) to use the outcome and recommendations of a Board of Inquiry as part only of any consideration of the action he or she decides to take. Nor does the Committee question the right of the Chief of the Naval Staff to assume responsibility at his level for any ensuing action. The Committee does, however, question several aspects of the process and content of the censure of Captain Mole.

7.35 The Committee has concluded that there are differences between the substance of the recommendation by the Board, the reasons for censure in the Maritime Commander's Notice of Cause for Censure and the final terms of censure as issued by the Chief of Naval Staff.

7.36 Technically, the Maritime Commander and the Chief of Naval Staff fulfilled minimum requirements, although it is noted that Assistant Chief of Personnel-Navy expected that a change in the terms of the censure would mean that another Notice of Cause for Censure would be issued.<sup>27</sup>

7.37 Having carefully compared the Notice of Cause for Censure and the terms of the censure, the Committee considers that the differences are of sufficient magnitude to raise questions about the failure to give Captain Mole an opportunity to provide reasons why he should not be censured on the grounds that ultimately constituted the censure.

7.38 It is not clear from the terms of the final censure exactly what is being referred to in paragraph (c) of the censure, ie that Captain Mole:

*"failed to keep [himself] adequately informed of the unacceptable behaviour of some of [his] officers."*

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26 Minute N93/25604 from CAPT T.B. Stodulka to ACPERS-N, dated 24 March 1994. (*emphasis in final phrase added*).

27 ACPERS-N minute, 705/93 of 20 July 1993, p. 2.

This charge is open to several interpretations.

7.39 In referring to "*unacceptable behaviour*", it is not clear for instance, whether the Chief of Naval Staff is referring only to the behaviour of Chief Petty Officer Broad towards the female sailors, or whether he is also referring to:

- the alleged failure by the wardroom to integrate Dr Wheat;
- Dr Wheat's allegations of sexual harassment; and
- the allegation that Dr Wheat was sent to "*coventry*" or victimised following the "Bartlett incident".

7.40 The uncertainty arises in part because of the range of issues, including those noted above, raised in the Maritime Commander's Notice of Cause for Censure and his minute of 12 July commenting on Captain Mole's response to the Maritime Commander's Notice of Cause for Censure.

7.41 The very wide interpretation of the terms "*sexual harassment*" and "*unacceptable sexual behaviour*" used by the BOI further compounds the difficulty of understanding clearly which behaviours are referred to in the censure.<sup>28</sup>

7.42 The Committee's comments on each of these aspects follows:

*Integration of Dr Wheat into the wardroom*

7.43 The Maritime Commander put to Captain Mole in his Notice of Cause for Censure that Captain Mole:

*"did not take adequate measures to integrate LEUT WHEAT RANR into the organisation of SWAN"*<sup>29</sup>

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28 The BOI interpretation of the term sexual harassment is given in Chapter 5 of this Report.

29 Maritime Commander, Notice of Cause for Censure to CAPT D. Mole, dated 13 May 1993.

7.44 From the evidence at the BOI, it seems that Dr Wheat felt comfortable in the company of the Coxswain and the Petty Officer Medic, who appear to have been regarded by everyone as very approachable.<sup>30</sup> They, in turn, saw her as "happy-go-lucky", "bubbly" and "easy to talk to"<sup>31</sup> and "fairly happy, bright".<sup>32</sup>

7.45 However the BOI Report speaks of "alienation" between Dr Wheat and the other officers and concludes that:

*"far greater efforts could have been made by the wardroom of HMAS SWAN to integrate LEUT WHEAT into the wardroom. The whole of the wardroom must share some responsibility for their failure to do so."*<sup>33</sup>

7.46 The Committee notes that the BOI Report also concluded that "LEUT WHEAT did not express open hostility to the rest of the wardroom," and that "she was often wrongly assumed to be an intolerant complainer."<sup>34</sup>

7.47 The Committee accepts these conclusions. However the Committee considers that while the BOI Report is rightly critical of the behaviour of the wardroom as a whole, and of the inadequate preparation of Dr Wheat for life at sea, the Report does not sufficiently canvass the contribution that Dr Wheat's approach made to the overall situation.

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30 The Coxswain and the Petty Officer Medic are not members of the wardroom.

31 CPOCXN D.A. McKay, Court Martial Transcript, p. 369.

32 POMED R. J. Wells, Court Martial Transcript, p. 449.

33 BOI Report, p. 48. It should be noted that it is standard practice for the Captain of a naval vessel to visit the wardroom only at the specific invitation of the wardroom. Normally the Captain dines and relaxes in his own cabin. Captain Mole only visited the SWAN wardroom occasionally. However, he also said that it was his practice to invite groups of officers to dine in his cabin and in that way he felt he kept abreast of ship life. Committee Hansard, pp. 21-23; Captain Mole's reply to Notice of Cause for Censure, dated 6 January 1993.

34 BOI Report, p. 47; BOI Transcript, p. 723.

7.48 Dr Wheat appears to have shown remarkably little initiative in finding out for herself about matters that had a direct impact on her life on board. For example, the BOI Report notes that:

*"She was asked by a SBLT whether or not she had any duties other than her medical ones. She replied "I've got no idea". He suggested she look at the notice board at the top of the ladder leading to the wardroom flat, but there was no indication there that she had been assigned any auxiliary duties (T644)." <sup>35</sup>*

7.49 It seems to the Committee that a question of the kind asked by the Sub-Lieutenant should have been enough to alert Dr Wheat to the possibility that doctors are sometimes assigned other duties. At the very least a person in her position could reasonably have been expected to make at least informal inquiries of more senior personnel about the possibility that there could be such duties. There is no evidence to suggest that Dr Wheat may have made any such inquiries while on the SWAN.

7.50 Dr Wheat made many assumptions about members of the wardroom that made a significant contribution to the nature of the interpersonal interactions that eventuated. For example, she assumed that there was no point in her raising the matter of the lock on the wardroom washroom when nothing was done after the initial request.

7.51 The Committee concurs with the Board's conclusion that:

*"The evidence shows LEUT Wheat demonstrated little initiative ... She made little effort to help herself." <sup>36</sup>*

7.52 In her evidence to the Board Dr Wheat encapsulated her approach to getting things done, when asked why she had not chased up her initial request:

*"Because once a request for something to be done has been made, that is generally as far as I expect to take it. Otherwise I would spend my whole life chasing everything up." <sup>37</sup>*

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35 BOI Report, p. 45.

36 *ibid.*, p. 65.

37 BOI Transcript, p. 785.

7.53 Serious consequences resulted from Dr Wheat's passive approach to life on board the SWAN. The BOI Report considers that:

*"There is little doubt that many members of the wardroom came to the conclusion that she was not pulling her weight...The fact that she played a less participatory role in shipboard life is one of the reasons she was ostracised by some of the individuals in the wardroom."* <sup>38</sup>

7.54 The Committee notes that there are other ways in which Dr Wheat's position can be seen. Evidence given by Sub-Lieutenant Ganter to the BOI gives an account of the situation which appears to capture the way several of the wardroom members felt:

*"There was very little way to make her feel comfortable in the wardroom. When you tried to have conversations with her, you didn't get much conversation back, so whether she's shy, or whatever, I didn't get to know very much about her because she didn't interact very much with any of us and we didn't interact very much with her."* <sup>39</sup>

7.55 Sub-lieutenant Miller described her as:

*"fairly friendly, fairly relaxed, relatively quiet ... in the evening she'd come to the wardroom and eat a meal and watch a video, and just partake of normal life like that. She was fairly bubbly and always friendly in that respect."* <sup>40</sup>

7.56 Lieutenant Ganter's experience appears consistent with that of Chaplain Thiem, who said in evidence to the Committee that:

*"She showed little or no interest or enthusiasm in anything outside her medical duties. I tried at various times to interest her in other activities as it was evident to me that she was not enjoying shipboard life. I*

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38 BOI Report, p.47. See also para. 6.27 of this Report.

39 BOI Transcript, p.390.

40 SBLT M. Miller, Court Martial Transcript, p. 403.



*pointed out to her that it could be enjoyable if she put in the effort, but she did not appear to want to try.*

*As a result of this she was something of an odd person out in the wardroom. She was inoffensive and pleasant enough but she was very hard work to talk to. She was not at all gregarious or outgoing. She had very little idea of shipboard life, what was expected of her or how to cope with it. Unfortunately, although I tried, I was not able to encourage her to learn.*

*On several occasions, and without trying to make a big thing out of it, I mentioned to other officers that she was new to the Navy and was obviously having problems fitting in, and asked them to be tolerant and "to give her a go." I also spoke to her Petty Officer and we discussed ways in which he could help her fit in more easily with shipboard life from a professional point of view.*

*I felt sorry for her and that is why it was my practice to go ashore with her in overseas ports on various occasions. Lieutenant Commander James frequently came with us - I think he also felt sorry for her. It was also the fact that the three of us were somewhat older than most of the officers and we had all known each other at HMAS CERBERUS. I did my best to help her. However, she would make no effort herself and indeed, would not allow anyone to help her."<sup>41</sup>*

7.57 Dr Wheat herself confirmed that she had very little in common with many members of the wardroom, although she contests the factual basis for concluding that she had no enthusiasm for shipboard life.<sup>42</sup> However, she has not brought to the Committee's notice any significant examples to counter the description given by Chaplain Thiem and other witnesses. Moreover, she implicitly accepts that there is some basis for Chaplain Thiem's perception when she draws attention to her

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41 CHAP Thiem, submission, pp. 6-7.

42 BOI Transcript, pp. 791-795.

seasickness, her inadequate training and preparation for service at sea and what she describes as the hostility she felt in the wardroom.<sup>43</sup>

7.58 It is also clear from the BOI Transcript that Dr Wheat's approach to matters such as her seniority was having a deleterious effect on the morale of some of the personnel on the SWAN. For example, her manner of raising the question of whether she was entitled to the privileges of a Head of Department apparently rankled with some members of the wardroom.<sup>44</sup> It was within her power to deal with these matters differently.

7.59 The BOI Report speaks of *"a most unfortunate element of rank closing within the wardroom against LEUT WHEAT."* The Report describes this *"defensive closing of ranks to exclude the outsider"* as an *"expression of hostility towards someone who was different."*<sup>45</sup>

7.60 In this context of *"rank closing"* and *"ostracising"*, the Committee found the submission, and subsequent public testimony from Dr Westphalen particularly illuminating. Also of considerable interest in this regard were the submissions of two other female doctors, both of whom served on the HMAS SWAN, one before and one after Dr Wheat's deployment.<sup>46</sup>

7.61 Surgeon-Lieutenant Commander (Dr) Neil Westphalen's submission gives a very thoughtful account and analysis of his own experience as a young male medical officer on the HMAS SWAN in June - September, 1988.

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43 Letter from Minton Ellison Morris Fletcher of 3 February 1993, pp. 7-8. The Committee agrees that lack of enthusiasm or failure to make an effort by an individual does not justify unacceptable behaviour towards the individual; however, it does assist in understanding better some of the reasons for such behaviour. Understanding all the contributory factors is essential if a repetition of such circumstances is to be avoided in the future.

44 BOI Transcript, pp. 1020-1021.

45 BOI Report, p.48.

46 LCDR A. McLaren, submission; Dr C. Moore, submission. It should be noted that the Committee only learnt of these appointments of female medical officers to the SWAN very late in the inquiry.

7.62 Having read media reports of Dr Wheat's experiences, Dr Westphalen felt there were strong parallels between his experiences and those of Dr Wheat. He concluded that:

*"...the apparent plethora of similarities between myself and the 1992 SWAN incident seems too close to be coincidental..."*<sup>47</sup>

7.63 Dr Westphalen identified several factors that set doctors at sea apart from their fellow officers and can contribute to resentment towards them. This resentment can manifest itself in various ways, including harassment.

7.64 The factors identified by Dr Westphalen include *"...the perceived lack of a defined role on board"*, Dr Westphalen told the Committee that during his time on the SWAN he was *"seen as a passenger and not as a member of the crew"*.

7.65 This sense of not belonging is exacerbated by the way in which doctors usually join a ship. Dr Westphalen told the Committee that it is frequently the case that the doctor misses the:

*"work-up which is a fairly intensive preparation before they go away on deployment. So the team is there, the ship is ready to go, it is all worked-up and then all of a sudden the doctor turns up at the end."*<sup>48</sup>

7.66 Other important factors contributing to a sense of being different, privileged and therefore resented identified by Dr Westphalen in his own case were his:

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- a. *rank of Surgeon Lieutenant;*
  - b. *position as a Head of Department (as assumed by the senior officer of each department);*

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47 Dr Westphalen, submission, Committee Hansard, p. 1105.

48 *ibid.*

- c. *greater pay level than other Lieutenants* <sup>49</sup>; and
- d. *greater employability outside the Navy.*" <sup>50</sup>

Dr Moore also draws attention to:

*"... the commonly held perception that Defence Force Medical Officers were 'civilians in uniform' who were overpaid, underworked and unable to obtain employment in the civilian workplace."* <sup>51</sup>

Dr Moore conveys the impression that despite the tendency to stereotype her in this way, she succeeded, after an initial settling in period, in being well accepted:

*"My response to such comments was that, although I had limited naval experience, I had worked for 6 years prior to joining the RAN and had taken a 75% reduction in income in joining."* <sup>52</sup>

7.67 Dr Westphalen stresses in his submission the importance, in the Navy, of being genuinely accepted as part of the team. It is critically important for civilian doctors to realise, when they go to sea, that a navy doctor is not simply a civilian doctor wearing a navy uniform. The navy doctor is a doctor, but he or she is also a naval officer. Regrettably, despite her three years' civilian contract experience at CERBERUS, Dr Wheat appears to have either not realised, or not accepted, this requirement sufficiently to ease her acceptance into the wardroom. Evidence put to the BOI illustrates ways in which she set herself apart.<sup>53</sup>

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49 The Committee established that Dr Wheat's salary and service allowance during her service on the SWAN was about \$57,000. CAPT Mole, at that stage, received a salary of \$56,00 so "Lieutenant Wheat was receiving about \$1,000 a year more" (RADM Oxenbould, Committee Hansard, p. 1304).

50 Dr Westphalen, submission, Committee Hansard, p. 1102.

51 Dr C. Moore, submission, para. 5.

52 *ibid.*

53 BOI Transcript, p. 2140.

7.68 Dr Westphalen considers that another important factor contributing ultimately to the vulnerability of doctors to harassment is:

*"the manner in which medical officers are posted to sea, and the preparation. While this has improved dramatically for General List (ie permanent medical officers) new reservists often still do not get much, if any preparation. This is due to time, financial, and posting constraints, in turn due to a lack of medical officers." 54*

7.69 Dr Moore, who joined the RAN in August 1989 as a direct entry officer, also confirms that:

*"At that time, despite direct requests for information and assistance from superiors, Medical officers were not briefed at all regarding their role at sea and were not given the opportunity to complete appropriate courses and refresher training prior to posting at sea." 55*

Dr Moore's response to this situation was to arrange as much training for herself as possible in her own time and at her own expense and to request information from others, particularly females, who had previous sea experience prior to deploying.<sup>56</sup>

7.70 Dr Westphalen told the Committee that his own harassment *"took the form of attacks on my professional capacity."* In his case:

*"The nature of the harassment was of the form of derogatory comments, unceasing and unremitting,, commencing almost on arrival, on my profession. This was justified as 'black humour' or 'chiacking', even as the 'Australian sense of humour'. This was initially accepted by me as part of the 'playing-irt' process and was expected to gradually improve; however the jibes degenerated into what was felt to be personal attacks on my professional standing. I felt I was not taken seriously as a*

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54 Dr Westphalen, submission, Committee Hansard, pp. 1102.

55 Dr C. Moore, submission, para. 4.

56 *ibid.*

*professional by several wardroom members - I was just the `scabliker', or `chancre mechanic'." 57*

7.71 The harassment Dr Westphalen experienced:

*"started as good natured banter, ... the idea was to try and push it and see how far they could get until something bit or something bit them back." 58*

7.72 In Dr Westphalen's view what differentiated "ordinary chiacking" from harassment was the imbalance in the level of power in the latter, the ability of one person to dominate another:

*"chiacking, to me means give and take ... harassment is ... all one way and there is no way of retaliating or there is no give and take." 59*

7.73 The harassment, according to Dr Westphalen, could occur between male and male just as readily as between male and female. Dr Westphalen speculates that the fact that Dr Wheat was a reservist and female may have further exacerbated the situation in her case.

7.74 Dr Westphalen shed further light on the nature of the harassment he suffered in his comments on deeply ingrained aspects of navy culture:

*"It ties into the tribal nature of the navy as well. You have your subcultures; you have submariners - they are a different mob from us on skimmers. There are aviators, who are a tribe of their own down at Albatross. The supply world - the passers - have their little bit. You have the seamen as well. Then you have medical, dental and all the rest of it. There is a lot of tribal interplay with that. I guess what happens sometimes is that the tribal interplay gets out of hand for some*

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57 Dr N. Westphalen, submission, Committee Hansard, p. 1102.

58 *ibid.*, p. 1121.

59 *ibid.*

*individuals. Some people get carried away dishing it out and other people are not in a position to dish it back."*<sup>60</sup>

7.75 Lieutenant Commander McLaren appears to have had similar experiences, but not to the point of being distressed or offended. She told the Committee that she was made the subject of one or two practical jokes during the deployment, but they could not in any way be classed as sexual harassment as they were directed at "the doc" rather than at "the female".<sup>61</sup>

7.76 The Committee was impressed by Dr Westphalen's determination to overcome the difficulties that he initially ran into on the SWAN.<sup>62</sup>

7.77 He told the Committee that he found his service subsequently on the SYDNEY quite different because he had learnt to handle the harassment effectively. It was Dr Westphalen's experience that:

*"The key is to confront the perpetrator early, in private, and tell him to back off."*<sup>63</sup>

It was Dr Westphalen's advice that:

*"If anyone is saying stuff that you do not like because it is beyond the pale or whatever, you take them very quietly aside and tell them to pull their heads in. It is only a little thing but it is a bit of assertion. My experience has been that when you assert yourself they always back off."*<sup>64</sup>

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60 *ibid.*, p. 1125.

61 LCDR A. McLaren, submission, para. 4.

62 Dr Westphalen draws attention to the likelihood that, although the ship was the same, all personnel on board were probably quite different when he served on the SWAN from those on board in mid 1992. Committee Hansard, p. 1120.

63 Dr Westphalen, submission, Committee Hansard, p. 1107.

64 *ibid.*, p. 1125.

7.78 Dr Westphalen's experience that early intervention at the personal level is usually effective is consistent with that of many experts working in the field of sexual harassment.<sup>65</sup>

7.79 The Committee considers that Dr Westphalen's account throws up a number of important issues. It demonstrates that a young male doctor in the Navy can experience serious problems of being accepted and integrated into the ship's company and be subjected to unacceptable behaviour comparable in many ways to that experienced by Dr Wheat. The Committee notes that there appear to have been no repercussions for the Commanding Officer for being unaware of the difficulties one of his officers was having at the time.<sup>66</sup> Nor have other Commanding Officers been castigated for the hostility that many women in the Navy have experienced during these early years of integration.

7.80 Several other witnesses before the Committee drew attention to the difficulties they had faced in being accepted and integrated into new postings. Lieutenant Susan Sly said in her submission:

*"with every new posting one can feel a certain resistance initially."*<sup>67</sup>

7.81 Lieutenant Sly found that this initial resistance was in most cases resolved with time. Moreover, she found that over time, and once she had demonstrated her competence, the same personnel who had reservations *"became sources of great support"* and several told her at the end of the posting that *"they would be happy to have me work for them"*. It was the demonstrated competence that won them over.

7.82 Dr Moore found that while she:

*"encountered attitudes and comments that constituted a mild form of sexual discrimination onboard HMAS SWAN, [she] "was never subjected*

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65 This question is addressed also in Chapter 11 of this Report.

66 The Committee does not wish to suggest that action be taken against that Commanding Officer retrospectively. The Committee would be most surprised if other instances with strong parallels with Dr Westphalen's experience have not occurred in the past, with no action taken against the Commanding Officer.

67 LEUT S.Sly, Committee Hansard, p. 927.



*to verbal abuse, name calling, threatening behaviour or any form of sexual harassment in HMAS SWAN or in any other posting."*<sup>68</sup>

Dr Moore refers to some initial reluctance by the Command to accept her medical judgements over that of a male Reservist Medical Officer, and comments that it was:

*"difficult to judge whether [her] lack of naval experience, [her] gender or [her] medical judgment were under scrutiny."*

To her, this attitude was *"irritating but not personally offensive"* and did not impede her in performing her duties.<sup>69</sup> Interestingly, she also notes instances where there was some discrimination in her favour:

*"Any differences in treatment that I received because of my gender were far more positive than negative."*<sup>70</sup>

7.83 An important factor in the way the situation developed in the SWAN wardroom was Dr Wheat's poor handling of the behaviour she did not like.

#### *Mixed and Misleading Messages*

7.84 It should be noted that, on first coming on board, Dr Wheat is reported in evidence to the BOI as saying, to members of the crew, *"don't change for [the] females coming on board."*<sup>71</sup> When asked by the BOI whether she had *"some discomfort about the swearing"* at the time the Executive Officer addressed the wardroom about swearing, Dr Wheat said no, *"the swearing was nothing".*<sup>72</sup>

7.85 If Dr Wheat was suffering deep distress for the two months she was on board the SWAN, then she was simultaneously sending out a different message to those around her. So for example, her Medical Record report to 30 June which Captain

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68 Dr C. Moore, submission, para. 27.

69 *ibid.*, para. 21.

70 *ibid.*, para. 24.

71 BOI Transcript, p. 188.

72 *ibid.*, pp. 723, 826.

Mole received and duly forwarded to the Fleet Medical Officer, clearly and unambiguously states:

*"To date my deployment on HMAS SWAN has been thoroughly enjoyable, in part due to the manner in which the Sickbay is managed. HMAS SWAN's Sickbay was found to be well equipped, maintained and stocked. The Sickbay staff have an excellent rapport with all the sailors and officers onboard."*<sup>73</sup>

7.86 She struck Captain Mole as *"invariably cheerful"*.<sup>74</sup> Captain Mole said in evidence to the Committee:

*"When she rejoined SWAN after her month on board WESTRALIA she told me she was delighted to be back on board SWAN"*<sup>75</sup>

7.87 In the Committee's view comments such as these could legitimately be taken by Captain Mole as reflecting Dr Wheat's overall satisfaction with life on board HMAS SWAN.<sup>76</sup>

7.88 From Dr Wheat's subsequent complaints, it would appear that these comments were not an accurate account of her feelings at the time. If that is so, then it is difficult to reach any conclusion other than that Dr Wheat was sending out messages that were misleading, or at the least, unclear. It would not have been unreasonable for anyone to think that, at that point at least, the behaviour in the SWAN wardroom was acceptable to her. Dr Wheat was given the choice to stay on the WESTRALIA or move back to the SWAN. She chose to move back to the SWAN.<sup>77</sup>

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73 Medical Officer's Report prepared by Dr Wheat.

74 CAPT D. Mole, Court Martial Transcript, p. 391.

75 CAPT D. Mole, Committee Hansard, (in camera - released), p. 47.

76 The Committee does not see the assessment as being confined to the well-run sick bay, although the good management of the sick bay made an important contribution to the overall positive picture.

77 Dr Wheat rejoined the SWAN on 27 July 1992.

*Dr Wheat's allegations of sexual harassment - personal responsibility*

7.89 The Committee's comments on the Board's findings with regard to Dr Wheat's allegations of sexual harassment are in Chapter 6 of this Report. In that Chapter, the Committee refers to the importance of letting a person engaging in behaviour that is offensive know that this is the effect of the behaviour or seeking the assistance of an appropriate third party to do so. The following section examines this aspect in greater detail.

7.90 Although it is not a requirement under the Sex Discrimination Act for the complainant to make known to the respondent that the respondent's behaviour is offensive, most guidelines emphasise the value of dealing with sexual harassment informally and at the personal level in the first instance.<sup>78</sup>

7.91 According to the Sex Discrimination Commissioner, the requirement to tell the respondent that behaviour is unacceptable was not included in the Sex Discrimination Act to protect particularly vulnerable categories of women. Senator Susan Ryan said at the time:

*"Many of the women we are hoping to protect by this legislation are women who may be migrants and have a poor command of English or be very young, or be in an inferior position in the workforce and would not be in a position to articulate...her objection...This is often a very difficult thing to do." 79*

7.92 Dr Wheat appears to have made little if any effort to deal directly with any behaviour she found offensive. Sub-lieutenant Ganter, for example, recalled only one instance where Dr Wheat told Lieutenant Bartlett that he was "*boring*". Dr Wheat confirmed in evidence to the Committee that she had responded to Lieutenant Bartlett's conversation in that way. It is not surprising then, if those around her were unclear as to what her attitude was.

7.93 Dr Wheat explained to the BOI that she did not want to be regarded as a complainer and feared that complaint by her would lead to her being ostracised.

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78 See Chapter 1.

79 Ms S. Walpole, submission, Committee Hansard, p. 27.

7.94 Lieutenant Ganter told the BOI that, although she did not regard any of the behaviour in the wardroom as sexual harassment she, Ganter, had, on occasion spoken to some of the officers privately about behaviour that she was not happy about. Her approaches appear to have had mixed success. However, she reported no negative repercussions from having raised the matters with her fellow officers in this way.

7.95 The Committee notes that Lieutenant Ganter had the "*advantage*" of having experienced the rigours of the Defence Force Academy, where, by all accounts the situations confronting women in the early years were more challenging and difficult than anything that happened in the SWAN wardroom. At the same time Lieutenant Ganter was considerably junior to most of the other officers there. If sexual harassment is in part a manifestation of a power imbalance, then Lieutenant Ganter could have been more at risk of being subjected to harassment than Dr Wheat.

7.96 An observation by Dr McLaren is interesting in this regard. She says in her submission that while the two junior female officers "*were 'picked out' at times it was as midshipmen rather than as females and they did not appear to be upset by it and seemed to have fitted in well with the ship.*"<sup>80</sup>

7.97 Lieutenant Ganter's and Lieutenant Miller's approach reflects an attitude to life in the services that is both fostered and expected by the services. Major-General Gower told the Committee that the Australian Defence Force is:

*"looking for intelligent people; people who are self-confident, self-reliant and assertive."*<sup>81</sup>

7.98 Submissions to the Committee indicate that there are many instances where women in the Navy have been very successful in establishing the parameters of what they find acceptable and unacceptable.<sup>82</sup> The evidence before the Committee indicates that the biggest challenge for women in the Navy has been harassment in the form of hostility and resentment, rather than sexual harassment in the sense of

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80 LCDR A. McLaren, submission, para. 10.

81 MAJGEN S. Gower, Committee Hansard, p. 1581.

82 For example, CMDR E. Coles, Committee Hansard, p. 1167.

unwelcome requests for sexual favours.<sup>84</sup> The important point to make is that nipping sexual harassment in the bud by confronting it as early in the piece as possible and directly at the personal level if at all possible, is the most successful strategy in most cases.

7.99 There were several members in the SWAN wardroom who shared Dr Wheat's discomfort at some of the conversations. Some of the wardroom members who disapproved of Lieutenant Bartlett's behaviour, for example Lieutenant Commander James, Chaplain Thiem and Lieutenant Commander Blazeby even admonished him before Captain Mole's reprimand.

7.100 It is also clear that Dr Wheat found Captain Mole approachable in informal settings. She told the Committee, and the BOI, that they had several lengthy, informal discussions about family matters.<sup>85</sup> He was equally approachable in relation to work matters, as the following extract from the BOI indicates:

*"In relation to CMDR Mole, were you ever discouraged by him from going to him with any particular problems?..."*

***I was, and it wasn't that I thought he was unapproachable, but I felt that he thought I was an idiot. That was my feeling, I am not saying it is a fact.***

*On occasions those occasions that you went to see him, I think you saw him fairly regularly on an informal basis, about medical matters on board ship did you not?....*

**Yes.**

*On those occasions, did he ever say or do anything which indicated to you that he was not receptive to the views that you were putting?....*

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84 Both Dr C. Moore and LCDR A. McLaren referred in their submissions to the presence of officers in their sea postings who objected to the presence of women on ideological grounds. However, it was their experiences that *"it was usually possible to maintain good working relationships which is a tribute to the professionalism of the officers concerned"*: LCDR A. McLaren, submission, para. 11.

85 Dr C. Wheat, Committee Hansard, pp. 228-229.

***No, he always listened to my views. He didn't always agree with them, but...***

*Would it be fair to say that he gave whatever views you presented, reasonable consideration? Or, due consideration?...*

***Well, he always made decisions very quickly and very firmly and it was sometimes difficult to get him to change that, but - ....***

*In summary, perhaps, correct me - would it be fair to say that there was - he never said or did anything which indicated to you that he was not prepared to listen to views you had?...*

***No, that's the case. He - as I say, he was not unapproachable."***<sup>86</sup>

7.101 The Committee is not convinced that, under those circumstances, it was justified to assume that she had no one at all to turn to, to at least discuss what was bothering her. It seems to the Committee that it was open to Dr Wheat to sound out those with whom she had established some sort of rapport on how they felt about the wardroom environment without being seen to be a complainer or a whinger. There was no basis for assuming that Captain Mole could not be approached in this way.

*Alleged "victimisation" of Dr Wheat after the "Bartlett incident"*

7.102 As noted earlier in this Chapter (para. 7.37) it is not clear whether the Chief of Naval Staff's censure was intended to include the allegations made by Dr Wheat after she returned to Australia, that she was victimised by the members of the wardroom of the SWAN because she had complained about Lieutenant Bartlett's behaviour to Captain Mole.

7.103 The allegation of "victimisation" was included in the Notice of Cause for Censure and it was certainly an aspect of unacceptable behaviour that was canvassed by the Maritime Commander in his minute of 12 July to CNS.<sup>87</sup> In the minute, the Maritime Commander accepts that Dr Wheat's perception that she was victimised by

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86 BOI Transcript, p.961. See also BOI Transcript, pp. 977-978.

87 Maritime Commander Minute, AF 6/2/396, dated 12 July 1993 to the Chief of Naval Staff.

"being sent to Coventry" by the majority of the wardroom members was "not unfounded". He also criticises Captain Mole for not informing her of the steps he took in relation to her complaint, nor actively seeking to determine whether the behaviour had ceased. In the Committee's view the evidence is very flimsy that Dr Wheat was victimised and "sent to Coventry" after her distress about Lieutenant Bartlett's behaviour was brought to Captain Mole's attention.

7.104 The Maritime Commander concedes that *"the term 'Coventry' was in response to a leading question"*.<sup>88</sup>

7.105 However, the Maritime Commander goes on to quote evidence by Lieutenant WALKER as tending *"to support her interpretation that her action, in complaining about Lieutenant BARTLETT's behaviour, may have resulted in some repercussions for her"*:

***LEUT SLATTERY:*** *When did the question of LEUT BARTLETT'S conduct in relation to LEUT WHEAT first come to your attention? Was it in the course of the deployment?*

***LEUT WALKER:*** *LEUT BARTLETT informed, or it became general knowledge that LEUT BARTLETT had been called up by the Commanding Officer and had been told by the captain that Carol had complained about his conduct in the mess.*

***LEUT SLATTERY:*** *And did, so far as you could see, his conduct warrant any complaint by her?*

***LEUT WALKER:*** *Not as far as I could see...No. I'm saying the conduct of the wardroom was as I would have expected it to be in a wardroom at sea. We weren't given any specific guidance on how people were supposed to conduct themselves because there were females embarked. I think people just used their own discretion."*<sup>89</sup>

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88 *ibid.*, para. 20.

89 BOI Transcript, p. 68.

7.106 There are several comments to be made:

- the exchange quoted above does not specifically address the question of wardroom behaviour after the "*Bartlett incident*";
- there is no suggestion in Lieutenant Walker's remarks that because he saw no reason for complaint against Lieutenant Bartlett either he or any other officer therefore sent Dr Wheat to "*Coventry*";
- the reference to Lieutenant Walker's perceptions is very selective. There is every reason to suppose that several officers approved of Captain Mole's action as they themselves had cautioned Lieutenant Bartlett. They had no reason to victimise Dr Wheat for having brought the matter indirectly to a head. It must be remembered that it was not Dr Wheat who initiated the complaint. It was the Coxswain and the Executive Officer who first brought it to the Captain's attention;<sup>90</sup>
- Dr Wheat agreed, when questioned at the BOI, that it was only the junior officers, and not the heads of department or the Executive Officer, whom she perceived as sending her to "*Conventry*";
- Dr Wheat appears to have participated in social activities after the "*Bartlett incident*". It is a matter of record that she took part in general wardroom socialising for several hours on the afternoon of 15 August. She testified that she had been invited to go out to dinner that evening.<sup>91</sup>

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90 See also para. 7.91 of this Report.

91 LEUT K.W. Turner, submission. It is significant, in the Committee's view to note that the invitation had been extended by LEUT Turner, LCDR McCartney and SBLT Nash, three officers who were not generally regarded as amongst those with whom Dr Wheat had most in common. *"We were the three supply officers onboard, and as a wardroom custom we would have dinner together in each port. Lieutenant Wheat was asked as a friendly gesture as she was still having trouble settling in, and we decided that the invitation would assist."*



Lieutenant Fraser knocked on her cabin door and offered her one of his birthday chocolates later that same evening.

- Dr Wheat's own observation that "*everyone was extremely quiet and quite, it seemed, angry towards me, obviously because I'd complained about one of them*"<sup>92</sup> is the only evidence in the BOI Transcript to this effect. The fact that everyone was quiet could equally be taken to reflect the realisation by everyone from the Captain's actions, that the kind of behaviour Lieutenant Bartlett had engaged in was indeed a very serious matter and one taken very seriously by their Commanding Officer. It also suggests that Captain Mole's direction to the Executive Officer to counsel two or three other officers was taking effect. Some of those who may have suspected that perhaps they had been injudicious in their choice of language or topics of conversation may, wisely, have curbed their own behaviour to ensure they did not meet with the same fate as Lieutenant Bartlett; and
- Dr Wheat does not point to any concrete evidence of anger towards her. Her perception that everyone was angry and her conclusion that the anger was the result of her complaint is a subjective observation on her part, not substantiated by other evidence.

7.107 The Maritime Commander also criticises Captain Mole for not expecting or eliciting any feedback to determine whether general behaviour had improved. In the Committee's view, Lieutenant Bartlett's report back to Captain Mole that he had apologised to Dr Wheat, and Dr Wheat's acknowledgment to Captain Mole that Lieutenant Bartlett had indeed done so, were reasonable grounds for Captain Mole to draw the conclusion that his action in relation to Lieutenant Bartlett had been effective. If, as Captain Mole asserts, Dr Wheat told him about the apology, there was no reason for Captain Mole to assume that she would not alert him to any undesirable side-effects that she may have observed.

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92 BOI Transcript, p. 673.

7.108 The Committee finds credible Captain Mole's assertion that he advised Dr Wheat in general terms of the action he was proposing to take against Lieutenant Bartlett.<sup>93</sup> There is no evidence in the Transcript of the BOI to suggest otherwise. The Transcript makes it clear that Dr Wheat incorrectly drew the conclusion that Captain Mole had not reprimanded Bartlett after she left the SWAN.<sup>94</sup>

7.109 The period of time during which the alleged "*victimisation*" occurred and the ship activities at the time are also relevant. Captain Mole notes that:

- he dealt with Bartlett on 10 or 11 August and addressed the wardroom on 11 or 12 August. Dr Wheat spent the afternoon of 15 August socialising in the wardroom;
- during the 3 or 4 days in between these two events, by her own account, Dr Wheat was seasick because of the high swell in the Bay of Bengal and retired to her cabin more than usual.<sup>95</sup> Captain Mole notes that it would not be surprising if other members of the crew were similarly afflicted.

7.110 Having reviewed all the evidence before it on this question, the Committee has concluded that there is no cause for complaint about the way the "*Bartlett incident*" or the after effects were handled. While there may have been no explicit direction for feedback, the subsequent discussion that the Captain had with Dr Wheat and Lieutenant Bartlett and the directions he gave to his Executive Officer were appropriate and adequate. By his prompt handling of Lieutenant Bartlett as soon as he learnt of his behaviour and the sensitive way in which he coaxed out of Dr Wheat the information about the incidents that she was unhappy about, Captain Mole clearly signalled his willingness to deal with inappropriate behaviour on the part of his officers. In the Committee's judgement there was no reason for Dr Wheat to believe that Captain Mole would not be prepared to listen to or deal with any other matters that may have been of concern to Dr Wheat.

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93 CAPT Mole's response of 6 July 1993 to the Maritime Commander's Notice to Show Cause, para. 7.

94 BOI Transcript, pp. 716, 742, 755.

95 BOI Transcript, pp. 675.

## *Exaggeration*

7.111 On a significant number of occasions Dr Wheat has shown a tendency to exaggerate her account of a situation, and under questioning, has retracted some initial claims.

7.112 In her appearance before the Board of Inquiry, when Dr Wheat was asked to explain what she meant by her statement "*three months of verbal sexual harassment*", she admitted:

*"in fact that's an exaggeration, Ma'am. I was off the ship for a month so it should really, it was from - it was over a three month period but actually for only two months."*<sup>96</sup>

7.113 Having drawn attention to holes in the walls of her cabin and implied that it was therefore necessary to get up on to her bunk to get changed, Dr Wheat stated, on questioning, that she had not said that anybody was looking through the holes.<sup>97</sup> She agreed, under questioning at the BOI, that her physical accommodation in SWAN "*was not a bed of roses, but was no worse or no better than most of the other officers on board*" and that "*the male officers also had inconveniences thrust upon them.*"<sup>98</sup>

7.114 Dr Wheat also agreed in evidence to the BOI that her description of the events at the restaurant on Lamma Island had been an exaggeration.<sup>99</sup>

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96 BOI Transcript, pp. 752-753.

97 *ibid.*, p. 785. Dr Wheat was on the SWAN from 24 May to 22 June and from 27 July to 20 August.

98 *ibid.*, p. 790.

99 *ibid.*, p. 912. Dr Wheat's letter of 25 November referred to the behaviour of the SWAN officers as "*extremely drunk, riotous, throwing food and towels and destroying the restaurant*". At the BOI she agreed that the description of the restaurant being destroyed was an exaggeration, and that it was destroyed "*only in as much as it was being made a mess of*" - nothing was broken.

7.115 Perhaps most importantly for this inquiry, attention must be drawn to the comments Dr Wheat made to the BOI about her letter of 25 November 1992 to the Minister:

"I suppose, the thing which prompted me to write the letter was the fact that I'd lost my job not - if I hadn't lost my job, you know, I was not - it wasn't - the things that had happened weren't so bad that I would normally have made a complaint about it, but it was because of the end result that I did so.<sup>100</sup>

7.116 Dr Wheat apparently made some comments about the wardroom to her sick bay staff. However, Dr Wheat's evidence raises the question whether she herself at that time regarded the behaviour towards her as sexual harassment. It should be remembered that the complaint about Lieutenant Bartlett's behaviour was brought by another officer, and not initiated by Dr Wheat. She also accepted at that time Captain Mole's interpretation of the Defence Instruction (Navy) PERS 23-2<sup>101</sup> on sexual harassment then in force that the behaviour towards her did not constitute sexual harassment.<sup>102</sup> Dr Wheat's statement strongly suggests that she came to regard the behaviour as sexual harassment only after she herself had left the SWAN, after the alleged sexual assault.<sup>103</sup>

7.117 The question of Dr Wheat's continuing employment with the Navy after her SWAN posting is examined in detail in Chapter 5 of this Report.

***Summary - responsibility for Dr Wheat's situation.***

7.118 It appears to the Committee that, in relation to the events surrounding Dr Wheat's tour of duty on the SWAN, a very great number of different factors came together in a most unfortunate way. Each in its own way made a contribution to the

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100 Ibid., p. 762 (emphasis added).

101 DI(N) PERS 23-2. Note that this is the same document as DI (G) PERS 35-1 issued in November 1986.

102 It should also be remembered that CAPT Mole spoke to the other two female officers immediately he had been alerted to the Bartlett incident. They both said that they had not been subjected to any gender based harassment. Committee Hansard (in camera - released), p. 47.

103 As noted previously, the officer against whom the allegation of sexual assault was made was found not guilty by the Court Martial.

outcome. The absence of or difference in any one of these factors might have produced a very different result. Chief amongst these factors as regards Dr Wheat were the need for:

- more extensive general naval training;
- greater clarification of expectations and attitudes as part of the personnel selection process;
- correct allocation of seniority;
- fuller briefing on the background and experience of key personnel provided to the commanding officer beforehand;
- participation in the work-up before deployment; and
- better selection and training of divisional officers for their divisional duties.

7.119 Greater attention to all these matters, quite apart from more detailed guidance on the integration of women, including sexual harassment on board navy ships, would undoubtedly have made a considerable difference to the outcome. A different approach by Dr Wheat would also have made an important difference.

7.120 The unacceptable behaviour in the wardroom of the SWAN was clearly linked to a complex interplay of factors and personalities. Part of the responsibility clearly belongs to the individuals who were participants in the actual behaviour and to those who had management responsibilities for the running of the ship. But a significant part of the responsibility for shortcomings in all the factors in para. 7.118 above is widely dispersed throughout Navy's management structure. A lot of people got a lot of things wrong or failed to anticipate problems that should have been anticipated. Individually each may be of limited significance. When compounded, they created a volatile and explosive situation.

7.121 Captain Mole has borne the full brunt of the impact of that explosion.

### ***RANTEWSS Team***

7.122 The censure of Captain Mole refers specifically to two matters relating to personnel in the RANTEWSS Team. The Committee assumes that the overall thrust of the censure of Captain Mole includes other inadequacies that the Chief of Naval Staff has identified in Captain Mole's management of the RANTEWSS Team. The

Committee therefore examined the evidence on all the matters concerning the RANTEWSS Team very carefully.

7.123 The evidence available to the BOI and the Committee's comments on the conclusions reached by the BOI in relation to the RANTEWSS team are in Chapter 6 of this Report.

7.124 This section looks at additional aspects that arose after the BOI reported on its findings.

***Matters that have arisen since the BOI - revelations in the media***

7.125 Several reports about the female sailors on the SWAN appeared in the media in September 1993 that differ from and are in conflict with the facts as put to the BOI and to the Committee. The Committee pursued several of the matters which appeared in the media reports with the Navy and with the two female sailors.

***Female sailors' access to the Captain***

7.126 New Idea of 2 October 1993 reported that Leading Seaman Connelly had said that:

*" I didn't get to see the Captain ever."*

7.127 The Committee is aware that, when asked to explain this statement, Leading Seaman Connelly gave the following response to the magazine through her legal representative:

*"If you are asked by the Commanding Officer to make a correction to the article we would support the following: -*

- *Where the article implies Sheena Connelly did never see the Captain in an interview while serving on HMAS SWAN, this is incorrect. She did not see the Captain in relation to the alleged sexual harassment which occurred on board HMAS SWAN. She did however have the opportunity to see the Captain some time in August in relation to a problem which had occurred regarding her daughter's*

*care at Nowra. Sheena Connelly indicates in relation to this problem, the Captain was compassionate and helpful."* <sup>104</sup>

7.128 Although she did not make a request to New Idea that the statement be corrected, she notified New Idea that she would support a clarification along the above lines were Captain Mole to request it. The Committee is not aware that any such statement has appeared subsequently in New Idea.

7.129 There are two instances clearly recorded of discussion between the two female sailors and Captain Mole.

7.130 At Leading Seaman Flannery's request, she, Flannery, saw Captain Mole about her dissatisfaction with the PERS-1 that Chief Petty Officers Broad and Goedecke had prepared on the basis of her performance of her duties in the RANTEWSS team. In retrospect, and as noted previously, it would have been better if Captain Mole had seen her separately, at least in the first instance, and not together with Chief Petty Officer Broad and Chief Petty Officer Goedecke.

**7.131 Recommendation Twenty Three: The Committee recommends that, where a PERS 1 or PR5 is disputed, the superior should see the supervisor responsible for drafting the report and the subordinate separately, before any attempt is made to resolve differences between the parties in a joint meeting.**

7.132 Captain Mole told the Navy on 24 September 1993 and the Committee on 10 March that :

*"two thirds of the way through SWAN's five month deployment, one of the sailors who made that allegation had difficulty with foster care for her daughter back in Australia. When this was reported to me, I called her to my cabin and I offered to send her home at Commonwealth expense. She declined this offer. She told me that she really wanted to remain on the ship for the rest of the deployment if at all possible. This is the woman who now says that conditions were so bad that together she and her colleague attempted to have a leg broken to get off the ship. My offer to send this sailor home to Australia was not revealed by me in*

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104 Letter from Mr K. Cush to New Idea, 30 September, 1993.

*the navy inquiry because I was never apprised of any allegations that this sailor was a victim of harassment and, therefore, to me, it was not relevant information. Her divisional officer was also not asked any questions regarding her alleged harassment or her dissatisfaction.*"<sup>105</sup>

7.133 The Committee notes that Ms Connelly has confirmed that Captain Mole was very helpful in relation to the domestic problem that had arisen some time between the ship's departure from Hong Kong (18 July 1992) and arrival in Singapore (26 August 1992),<sup>106</sup> and that she did not use that opportunity to convey to the Captain her disillusionment with her work situation. In relation to her meeting with the Captain, Ms Connelly explains that:

*"She did not raise the issue of sexual harassment with the Commanding Officer during her meeting with him because the principal overwhelming issue was with her child."* <sup>107</sup>

Ms Connelly confirmed to the Committee in oral evidence that her priority at the time was her child, that she expected to meet up with her in Singapore in a couple of weeks and she:

*"did not want to give up on the ship."* <sup>108</sup>

7.134 Captain Mole draws attention to another earlier instance, where the female sailors had an opportunity to tell him of their experiences on board the SWAN. In response to his question to Leading Seaman Connelly on an informal occasion at the end of Exercise K92 about the attitude of the female sailors to their first experience of life at sea, Leading Seaman Connelly said that - "*one loved it, one hated it and the third was fairly neutral about it*". <sup>109</sup>

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105 CAPT D. Mole, Committee Hansard, (in camera - released), pp. 49-50.

106 Ms S. Connelly, Committee Hansard, (in camera - released), p. 297.

107 Letter to Committee Secretary, dated 2 February 1994, from Mr K. Cush.

108 Ms S. Connelly, Committee Hansard, (in camera - released), p. 297. See also para 5.152 of this Report.

109 CAPT D. Mole, submission, Committee Hansard, (in camera - released), p. 24.



7.135 Captain Mole regarded this as what would be expected from any such group of people going to sea for the first time. Although neither Captain Mole nor Leading Seaman Connelly appears to have pursued at the time the reasons for one of them hating it, Captain Mole notes that *"during the break between deployments none of the females requested to be removed before the subsequent deployment."* <sup>110</sup>

7.136 The legal counsel for Ms Connelly has since written to the Committee saying that:

*"She agrees that after K92, the Executive Officer spoke to her. At that time, the Executive Officer spoke to her about the ship in a general sense and not about her work environment. Although I suppose with hindsight it would have been open for her to have raised the problems in the EWO, her perception at that time was that things were generally going quite well on board the ship."* <sup>111</sup>

7.137 The following extract from the same letter from her legal counsel summarises her perception of the Commanding Officer's responsiveness.

*"Sheena Connelly has said she believes that the Captain would have done something about the problem if he knew about it. She, however, rightly or wrongly, did not feel that she had the right to go to the Commanding Officer because she had been 'squashed down' by the Chief Petty Officer and her recourse through the Chaplain had failed. Sheena is conscious that going public about the Chief Petty Officer, has unintentionally had repercussions upon the Commanding Officer. For this, she has regret."* <sup>112</sup>

7.138 Under the circumstances, the Committee considers that it was reasonable for Captain Mole to accept Leading Seaman Connelly's absence of complaint at face value.

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110 *ibid.*, p. 11.

111 Letter to Committee Secretary, dated 2 February 1994 from Mr K. Cush, MACPHILLAMY CUMMINS & GIBSON, legal counsel for Ms Connelly.

112 *ibid.*

7.139 The Committee does not question that Leading Seaman Connelly felt defeated by Chief Petty Officer Broad's reaction to her request to see the Captain. At the same time the Committee notes that Leading Seaman Flannery's request to Lieutenant Walker to see the Captain resulted in her seeing the Captain. It was demonstrated that the Captain could be approached.

7.140 Moreover, Ms Flannery testified to the Committee that Chief Petty Officer Broad's predictions that the Captain would "*tear strips off*" her proved quite inaccurate. She was, in her view, given a reasonable hearing.<sup>112</sup>

7.141 The evidence of Ms Connelly and Ms Flannery confirms the Committee's view that the extent to which respect for Commanding Officers is instilled into military personnel is a factor which must be taken into account when examining the mechanisms that must be put in place when dealing with the issue of sexual harassment. No matter who the individual holding the position, the rank of Captain, the top position in the chain of command on a ship, creates a barrier for junior personnel, such as the female sailors. That distance undoubtedly diminishes as one progresses in seniority. On the SWAN it is evident that the sailor holding the rank of Coxswain felt well able to speak openly and frankly to the Captain on many matters.<sup>113</sup>

#### *Hong Kong "leg-breaking" incident*

7.142 The Committee investigated, in detail, the facts with regard to the account Ms Connelly and Ms Flannery gave on television in September, 1993, about the alleged attempt to break Leading Seaman Flannery's leg in Hong Kong.

7.143 The impression conveyed in the television interview by the two female sailors was that they invited friends in the British services to assist in breaking Leading Seaman Flannery's leg because she could not bear to remain on the SWAN.

7.144 No evidence about the leg breaking incident was given by either leading Seaman Flannery or Leading Seaman Connelly to the BOI.

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112 Ms Flannery, Committee Hansard, (in camera - released), p. 266.

113 The Committee notes that the Coxswain first alerted the Captain to Dr Wheat's upset in relation to Lieutenant Bartlett; he did not, however, raise the problems of the female sailors of which he had some knowledge.

7.145 According to Captain Mole, Chief Petty Officer Broad told him that Leading Seaman Connelly:

*"had been making remarks when on watch in the [Electronic Warfare Office] to the effect that she was contemplating becoming an absentee in Hong Kong where she had friends, because she did not like the work she was required to do."*<sup>115</sup>

7.146 The Committee asked the Navy what investigations had been made following the revelation to the media about the alleged leg breaking incident in Hong Kong. The material provided by Navy included the following:

- *"... medical records were obtained from the British Military Hospital in Hong Kong which indicated that Leading Seaman Flannery had sought treatment for a leg injury";*
- the hospital advised the Navy that Leading Seaman Flannery reported to the casualty department *"following a twisting injury to r[ight] ankle whilst shopping"*. According to the hospital records she was seen by the casualty nurse, and was given appropriate treatment for this *"minor injury"*;
- *" As it transpired, the two Leading Seamen were unable to provide the names of the British soldiers allegedly involved in the incident and the veracity of their claims remains inconclusive."*<sup>116</sup>

7.147 At the beginning of the inquiry the Committee was advised by legal counsel for the two women that they were not medically fit to give evidence. The Committee noted also their evidence that the proceedings of the BOI had had a severe adverse impact on their health.<sup>117</sup> Following the Committee's public hearing of 25 March

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115 CAPT Mole, submission, Committee Hansard, p. 26.

116 Director of Naval Legal Service (DNLS) Minute 273/94, dated 24 March 1994 to the Assistant Chief of the Naval Staff - Personnel.

117 Letter to Committee Secretary dated 2 February, 1994, from Mr K. Cush, legal counsel for Ms Connelly and Ms Flannery.

1994, and after the Committee received indications that Ms Flannery and Ms Connelly wished to appear before the Committee, arrangements were made to hold an in camera hearing. The Committee was able to clarify several aspects at the hearing.

7.148 In reviewing the evidence before it, the Committee noted confusion in some of the references to Leading Seaman Connelly and Leading Seaman Flannery in the media and to some extent also during the BOI proceedings and in subsequent internal navy documents. Ms Connelly confirmed to the Committee that there had been several such mix-ups.<sup>118</sup>

7.149 The Committee therefore spent some time in clarifying the facts of relevance to the Committee's inquiry. The most serious of these were references to thoughts of suicide and who may have been aware of such thoughts.

7.150 From the evidence presented to the Committee at in camera hearings, the Committee believes that, in moments of despair, Leading Seaman Flannery seriously thought about what might be required for suicide, but actively sought an alternative and less drastic means of getting off the ship, namely the breaking of a leg. The Committee accepts Ms Flannery's and Ms Connelly's accounts of their plan and what happened when they put their plan into action.<sup>119</sup>

7.151 Ms Flannery stated categorically to the Committee that she told no-one, not even Ms Connelly, about her thoughts of suicide. Nevertheless, Ms Connelly stated that she "*just sensed she [i.e. Flannery] was suicidal*".<sup>120</sup>

7.152 Ms Connelly told the Committee that her concern was not to get off the ship, but to get away from her work situation in RANTEWSS. In fact, she spoke to the Committee about a personal commitment to the ship and a strong wish to see her deployment through to the end. In part this arose from the fact that her father had

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118 Ms S. Connelly, Committee Hansard, (in camera - released) p. 303.

119 Ms W. Flannery, Committee Hansard, (in camera - released) pp. 239-243, Ms Connelly, Committee Hansard, (in camera - released) pp. 290-291; Letter dated 9 June 1994 from Ms A. Roberts, Statutory Declaration dated 6 June 1994 from Grant Dooley; Medical Records from the British Military Hospital, Hong Kong.

120 Ms S. Connelly, Committee Hansard, (in camera - released), p. 294.

been involved in building the ship. She had been present when the ship had been commissioned. She clearly felt a particular affinity with it:

*"I was the first female ever to be posted to a combatant ship. To me it felt as though I was making history and I was so proud, so I was not going to give up on the ship"* <sup>121</sup>

7.153 It was the work situation in the RANTEWSS team that she found demoralising. The reality of life at sea in general, the living conditions, and the reception she received from the male crew as a whole were very much what she had expected.<sup>122</sup> In Ms Connelly's words:

*" the ship was fine."* <sup>123</sup>

7.154 Sheena Connelly told the Committee at hearings that she had given no serious thought to suicide. As she put it , it was an option, *"...not that I could do it but that it was an option in this situation"*.<sup>124</sup> Ms Connelly stated at hearings before the Committee that she had not indicated her thought on this to anyone on the ship.<sup>125</sup> She wrote the following to the Committee:

*"I have never been nor was I at the time and have never claimed to be, suicidal."* <sup>126</sup>

7.155 The BOI Report states that:

*"the situation, in fact, became so bad at one stage that one member of the team began to speak of suicide. Whether such talk was genuine or not is not for the Board to judge. However, never was the need for a*

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121 *ibid.*, p. 290.

122 *ibid.*, p. 282.

123 *ibid.*, p. 290.

124 *ibid.*, p. 294.

125 *ibid.*

126 *ibid.*

*properly functioning divisional system more apparent than when such talk was occurring."*<sup>127</sup>

7.156 This appears to be based on comments Chief Petty Officer Broad made to the BOI that one of the Petty Officers on his team had told him that:

*"he was really worried, because she kept threatening, you know, she was going to do herself in, or something, and saying, you know, really silly sort of things ... like 'I'm just going to end it all one day'".*<sup>128</sup>

7.157 Chief Petty Officer Broad's testimony both with regard to the state of morale of the female Leading Seamen and the possibility of returning them to Australia from Hong Kong is very confused. However, it appears that the comments by the team member, the Chaplain's approach to him and Leading Seaman Connelly's own request to see the Captain (which Chief Petty Officer Broad effectively quashed) led Chief Petty Officer Broad to contemplate taking Leading Seaman Connelly off the ship in Hong Kong. In speaking to Captain Mole, however, he appears only to have conveyed his suspicions that Leading Seaman Connelly might absent herself in Hong Kong.<sup>129</sup> In his evidence to the BOI, Chief Petty Officer Broad states that he *"never got that far to sort of explaining it to the captain"*.<sup>130</sup> Captain Mole's reported response that Leading Seaman Connelly should be treated in the same way as any other sailor going Absent Without Leave (AWOL) should be seen in the context of 43 recorded cases of sailors going AWOL during the course of the SWAN's Asia deployment.<sup>131</sup>

7.158 Chief Petty Officer Broad told the BOI that, as the SWAN approached Hong Kong, he *"was starting to think that, well, we cannot go on like this, maybe I should try and get them back to Australia, and my original intention was to get another person from RANTEWSS flown up to take their place"*.<sup>132</sup> However, he also states

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127 BOI Report, p. 56.

128 BOI Transcript, p. 2560.

129 *ibid.*, p. 2561. See para. 7.145 of this Report.

130 BOI Transcript, pp. 2256-2557.

131 *ibid.*, pp. 2561-2562.

132 *ibid.*, p. 2556.

that *"I'm not sure that I actually got through telling him"*.<sup>133</sup> His failure to do so is consistent with the evidence given by the female sailors to the BOI that Chief Petty Officer Broad was preoccupied, from the very beginning of the deployment, with the reputation of his team and how it was perceived. In his determination to be seen to be a successful manager of a successful work team, Chief Petty Officer Broad was not prepared to admit to problems that he himself was coming to perceive. The Committee was unable to determine whether, at that stage, he was also aware of the extent to which he had precipitated some of those problems.<sup>134</sup>

7.159 Captain Mole stated unequivocally to the Committee that neither the possibility of suicide nor any proposal to return Leading Seaman Connelly to Australia from Hong Kong had ever been brought to his notice. In the light of Captain Mole's prompt and positive action in response to personal difficulties such as Leading Seaman Connelly's childcare problems and Dr Wheat's difficulties with inappropriate language in the wardroom, the Committee fully accepts that the seriousness of the collapse of the morale of the two female sailors was kept from him, even when he enquired about Leading Seaman Connelly.<sup>135</sup>

7.160 To censure Captain Mole for not considering a proposal that was never actually put to him is unfair to him and sidesteps the complexity of the situation overall.

7.161 On the basis of the evidence before it, the Committee considers that there were serious shortcomings in the way the RANTEWSS team was recruited, and trained before deployment, as well as in the way the team was supervised on board SWAN. Sexual harassment was one component of the overall situation. A systemic problem with the Divisional System was another.<sup>136</sup>

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133 *ibid.*, p. 2561.

134 It is however clear that, as a result of the counselling and management training Chief Petty Officer Broad has undergone since then, Chief Petty Officer Broad has a better understanding of the counterproductive effect of his former management approach.

135 BOI Transcript, p. 2558.

136 See also Chapter 6 and paras 7.170-7.180 of this Report.

## Committee Comment

7.162 Captain Mole made the following statement to the Committee:

*"I am not, for one minute, trying to pretend there was no unacceptable behaviour on SWAN - there clearly was. There has been some unacceptable behaviour of some type on every ship I have ever served on in my time in the navy."<sup>137</sup>*

7.163 The crux of the issue is whether the unacceptable behaviour on the SWAN was of a kind, or of a severity that puts it into an exceptional category which should attract a censure of the ship's Captain from the Chief of Naval Staff.

7.164 In the Committee's view the Commanding Officer's responsibility with regard to the behaviour of his ship's company can be summarised as:

- (a) setting the guidelines for behaviour;
- (b) monitoring the effectiveness of those guidelines; and
- (c) taking action if the guidelines are not observed.

7.165 It is the Committee's view that, in the light of the minimalist approach adopted by senior Navy management in the early 1990's towards gender awareness raising and training, the very limited instructions on integration of women and the total absence of policy guidance on matters as basic as minimum numbers of women at sea and minimum accommodation guidelines, Captain Mole performed very creditably in relation to (a) above in the context of Navy's attitude to these matters at that time.

7.166 On the evidence put to the BOI, the Committee is also of the view that, whenever there was a clear breach of the guidelines for behaviour that he had set, (through addresses to the ship's company, through day-to-day contact with his senior managers and by the example he set by his own behaviour), then Captain Mole took quick, decisive, appropriate and effective action. Instances of particular relevance to this inquiry are his reprimand to Lieutenant Bartlett and the action he took as soon as he learnt of the 15 August incident between Dr Wheat and Lieutenant Commander James. Several other instances have been mentioned during the various inquiries, in

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137 Captain Mole, Committee Hansard, (in camera - released), p. 99.



particular Captain Mole's firmness in imposing certain restrictions on alcohol use over and above the standard Navy regulations. He also dealt appropriately with a situation where a male sailor assaulted several of his shipmates.

7.167 The Committee considers that Captain Mole fulfilled his responsibilities with regard to (c) above very well. This judgement accords with the conclusions reached by the BOI.<sup>138</sup>

7.168 The contentious area remaining is (b), i.e. the extent to which he monitored compliance with the guidelines he had set.<sup>139</sup>

7.169 Captain Mole contends that he relied, as he is instructed to do by Navy instructions, on the Divisional System to maintain morale and oversight the welfare of all the ship's company. Captain Mole puts forward a well reasoned case for not only using the Divisional System, but for seeking to strengthen it.

7.170 Captain Mole gives several illustrations of a Divisional System in decay on the SWAN when he took command. He argues that an essential requirement for rebuilding the Divisional System was to be seen to be actively using it and relying on it for the purposes for which it was designed.

7.171 It is the Committee's view that it was Captain Mole's commitment to and reliance on the Divisional System that made a fundamental contribution to the situation that developed on the SWAN.

7.172 The Divisional System failed.<sup>140</sup> It failed for several reasons.

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138 In contrast, the Maritime Commander proposed censure on grounds related to inadequacies he perceived with regard to CAPT Mole's performance in relation to (a) and (c).

139 Section (c) of the CNS's censure appears to relate to this element of CAPT Mole's performance.

140 The Committee observes that CNS acknowledged also to the Committee that the Divisional System failed and he subsequently took systemic measures to try and prevent similar failure in future.

7.173 It failed because individuals within the system failed to carry through their responsibilities. The Divisional Handbook spells out in considerable detail the very extensive responsibilities that each divisional officer and each divisional senior sailor carries. Several links within the RANTEWSSS team and in the wardroom did not carry out those responsibilities. Identifying the reasons for these failings is more difficult. It seems to the Committee that in all probability it was a mix of personal biases, personalities and inadequate training for those with duties and responsibilities under the Divisional System. There is little doubt that the classified nature of the work in RANTEWSS interfered with and limited open communication in the Divisional System. It also seems that Captain Mole did not judge correctly the character and personality of some of his subordinates.

7.174 There is some irony in the fact that Captain Mole's own personal interest in the RANTEWSS operation may have inadvertently contributed to the communication difficulties. Captain Mole required Chief Petty Officer Broad to report directly to him. By his own account, Captain Mole visited the RANTEWSS team more often than almost any other area of the ship.<sup>141</sup>

7.175 It is not surprising to the Committee that Captain Mole observed nothing amiss during his visits to the RANTEWSS work area. The respect for rank that is so deeply instilled in every member of the armed forces ensured that any discord in the team was kept well out of sight during such visits.

7.176 Ms Flannery confirmed to the Committee that it was the "*rank thing*" that inhibited her voicing her concerns with the Captain.<sup>142</sup> From her account, and that of Ms Connelly, the Committee believes that the same inhibitors to open communication would in all likelihood have come into play no matter who the particular person in command may have been. Ms Flannery told the Committee that: "*It was very intimidating to be called before the captain*". When asked whether the Captain intimidated her she said "*Not personally. It is just the 'captain' thing*".<sup>143</sup>

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141 CPO Broad briefed the Captain at least on a daily basis; BOI Transcript, p.2557; CAPT D. Mole, submission, Committee Hansard, (in camera - released), p. 23.

142 Ms Flannery, Committee Hansard, (in camera - released), p. 269.

143 Ibid., p. 269.

7.177 Captain Mole's personal interest in the RANTEWSS team may have also had the unintended effect of reducing the influence that the Divisional Officer, Lieutenant Walker, might have been expected to have on the management of the RANTEWSS team. While the female sailors had no inhibitions about approaching an officer at that rank, they, probably rightly, felt instinctively that, in Chief Petty Officer Broad's eyes Lieutenant Walker lacked real authority in that situation.

7.178 The problems that arose cannot be readily attributed to any lack of knowledge on the part of the female sailors about the Divisional System. They had both served in the Navy for several years and functioned within the Divisional System during that time. Although the Divisional System allows for approaches to off-line people such as chaplains and social workers, it appears that the strong tradition of working within a strict hierarchy and not circumventing it played an important part in this regard also. It is also an inescapable fact that there are fewer off-line people to whom crew members have ready access while at sea than there are at shore based establishments.<sup>144</sup> There was a disinclination on the part of all the women to go outside the Divisional System for assistance with their problems.<sup>145</sup> It was particularly unfortunate that when they did get up the courage to do so (as for example when Leading Seaman Connelly spoke to the Chaplain), nothing came of it.

7.179 It is also important to note that Captain Mole was given feedback from outside the Divisional System by the Chaplain. It is therefore important to assess whether or not Captain Mole discharged his responsibilities adequately when he was alerted to morale problems by the Chaplain, who was outside the Divisional System.

7.180 In this regard, both the timing and the content of the advice to Captain Mole about low morale is important. The Chaplain states that his discussion with the Captain when he became seriously concerned about morale took place on 29 July, 1992, i.e. about ten days after the SWAN left Hong Kong and two days after Jakarta, where all leave had been stopped for a day for disciplinary reasons. Restrictions on alcohol were also imposed. Thereafter immediate discussion and activities were begun, with the involvement and support of the Captain, to involve the whole crew on

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144 It is relevant to note that, according to CAPT Mole, up to 12 members of the SWAN crew took themselves off to see Service social workers and psychologists following the deployment before CAPT Mole assumed command. CAPT Mole, Committee Hansard, (in camera - released), p. 102.

145 LS Connelly first joined the Navy in 1979. There was a break of a couple of years in her service after she had a child. LS Flannery had been in the Navy since 1985.

a positive enterprise. Second, the Chaplain's concerns were expressed in general terms. He states unequivocally that the later allegation of sexual harassment on the part of CPO Broad was not brought to his attention by anyone during the deployment.<sup>146</sup>

7.181 During the course of the deployment, it was demonstrated that Captain Mole was responsive to a request by a female sailor to be heard in relation to her PERS 1. He also demonstrated a compassionate interest in, and initiated dialogue with the other female sailor when he learnt of personal problems she was having with her child. The Captain assumed that the two female sailors were performing under the same conditions as the men in the RANTEWSS team. His instructions to the RANTEWSS team manager when notified of talk that suggested that one of the female sailors might go AWOL in Hong Kong reflected a determination to be seen to be treating male and female crew members equally as much as possible, a principle endorsed subsequently by the BOI and one that the Committee considers important in facilitating the integration of women into the forces.

7.182 There were grave shortcomings in the performance of several links in the Divisional System, and serious limitations in the effectiveness of the back-up that chaplains and medical officers should be able to provide in such circumstances. With hindsight, it is clear that the situation called for a different approach. With hindsight, Vice Admiral MacDougall concluded that likewise the whole question of integrating women into the Navy called for a different approach from the one adopted initially.<sup>147</sup>

7.183 Captain Mole accepts that the situation could have been better managed:

*"Did I make any mistakes? Of course I did. With hindsight I should have done a few things differently. For example, I should have insisted on having at least one senior female sailor in addition to the junior sailors."*<sup>148</sup>

The question, as noted previously, is whether the shortcomings identified above are of such magnitude that they should attract a censure from the Chief of Naval Staff.

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146 Chaplain, D. Thiem, submission, pp. 2-4.

147 VADM I. MacDougall, Committee Hansard, p. 559; RAN submission, Committee Hansard, p. 269.

148 CAPT D. Mole, Committee Hansard, (in camera - released), p. 51.

7.184 The report from the Chief of Naval Staff to the Minister following the BOI makes it clear that the Chief of Naval Staff's key concern was to send a strong message to all personnel in the Navy that sexual harassment is not acceptable. The Committee agrees wholeheartedly with the content of such a message - it must be made known unambiguously, loudly and clearly across all ranks at all posts.

7.185 However, the Committee does not believe that a censure by the Chief of Naval Staff of one commanding officer in the circumstances that eventuated on the SWAN is either equitable or necessarily effective in the long term in achieving the objective stated above.

7.186 That strong message should have been sent out by senior management at least at the time of the major policy change i.e. at the time of announcing the integration of women in 1990, if not before. An unambiguous commitment at the highest level should have been clearly demonstrated and accompanied by the kind of concerted, across-the-ranks education program that is now taking place.

7.187 The earlier failure by Navy's leadership to recognise all the implications of fully integrating women into the Navy was acknowledged by Vice-Admiral MacDougall at the very first day of this Committee's public hearings.<sup>149</sup>

7.188 In particular, the severity of the censure appears to take no account of the sensitivity and foresight that Captain Mole demonstrated when the possibility of a single female sailor serving on the SWAN was first raised. It is, in the Committee's view important to note that the initial proposal by Navy's management was for one woman only to join the crew of the SWAN. There was no policy on the numbers of women to be posted at the time, yet Captain Mole had the foresight to insist that the number be increased and that it would be inappropriate to post a single, isolated woman to an all-male ship. Policy guidelines on minimum numbers have since been formulated. These guidelines confirm the position Captain Mole adopted before they were issued.

7.189 It was a most unfortunate by-product of Captain Mole's request that the number of female personnel on the RANTEWSS team be boosted that also led to the appointment of personnel who were less than fully trained for the task they were

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149 VADM I MacDougall, Committee Hansard, p. 551.

expected to carry out. Their supervisor's dissatisfaction with their work skills contributed at least in part to the overall unsatisfactory state of affairs.

7.190 It should also be recalled that it was specifically at Captain Mole's request that a female doctor was posted to the SWAN. Captain Mole clearly indicated that he thought it would be desirable to have a female officer on board for the junior female sailors. Again his approach demonstrated a sensitivity to the potential for problems to arise and the need to buttress existing means of support for women. In the event, the presence of a more senior female officer did nothing to assist the junior female sailors. The reasons for this are examined elsewhere in this Report. The fact that the approach failed in this instance does not invalidate the correctness of Captain Mole's decision to request a senior female officer.

7.191 The Navy will undoubtedly be confronted by similarly difficult choices in the future. Fine judgements about the balance to be struck in selecting personnel will need to be made:

- until there is a higher percentage of women who have gone through the ranks in the Navy, there will continue to be difficulties in ensuring that suitable senior female officers are posted to billets with junior female personnel; and
- holding women back from postings, either because they lack some requisite skill or because of accommodation considerations will need to be balanced against the pressures to open up opportunities for women.

7.192 The Committee fully acknowledges that the task of management in the Navy is increasingly more complex and more difficult. In this it is by no means unique. Adapting to technological change, multi-skilling, introducing greater flexibility into the workplace, including the introduction of family-friendly policies is a challenge facing most organisations today.

7.193 A major consideration was the perceived need to send a strong message to all Navy personnel that sexual harassment is an important issue and that it will not be

tolerated in the Navy.<sup>150</sup> How best to send that message emerged as a point of difference within the Navy leadership. The Chief of Naval Staff concluded that:

*"A general weakness in the Board's approach to dealing with individuals named in the report is that the recommendations do not send an 'appropriate signal to the rest of the Navy concerning the seriousness with which sexual harassment is viewed'.* <sup>151</sup>

## Corporate Responsibility

7.194 The only substantive document relating to the integration of women in existence when Captain Mole took command of the SWAN was AF Memorandum 18/91 on *"Guidelines on the Employment and Treatment of Women at Sea"*. The Director of Naval Legal Services has assessed the guidance in this memorandum as *"limited"*.<sup>152</sup> The Committee agrees with this assessment.

7.195 In the light of the extensive development of policy, instructions and training provided since the end of 1992, it is clear that what was available during the 1992 SWAN deployment was far from adequate.

7.196 The Navy has progressed a long way in a very short time in addressing the issue of sexual harassment. Annex F to Navy's submission update of 3 February 1994 gives a summary of action taken. The list is a very good indication of the corporate responsibility that had not been adequately discharged at the time of the SWAN incidents. Had those actions been taken and mechanisms been put in place by mid 1992 it is highly unlikely that any of the incidents about which complaints were made would have occurred. Had they occurred there is no reason to doubt that they would have been quickly and effectively investigated and resolved, with a minimum of pain and hardship for all those involved.

7.197 It is implicit in some of the comments of the BOI Report that the disciplinary measures recommended in regard to some of the personnel on SWAN may have an element of unfairness, in that others who may have been involved in similar instances

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150 This is apparent from the documentation listed in para. 7.32 of this Report.

151 CNS minute, CNS 1127/93 of 10 August 1993.

152 Director of Naval Legal Services (DNLS) Minute 543/93, dated 16 July 1993 to the Assistant Chief of the Naval Staff - Personnel, para. 23.

have suffered no consequences. The Board can be seen as advocating punishment as a means of sending a signal of the appropriate strength to all other personnel. The Report states that:

*"If the Navy is to convince its people that it is serious about eliminating unacceptable behaviour, strong and visible measures need to be taken against those who do not comply with the required standards, even if there is an element of them being "in the wrong place at the wrong time.""*<sup>153</sup>

7.198 The Committee notes that the punishment in some cases was in fact more severe than recommended by the Board. Moreover, the severity of the punishment was subsequently magnified many times by the public exposure and inaccurate reporting that followed.

7.199 Whether or not it was intended that these individuals should be scapegoats for a number of poor decisions with regard to personnel selection, for various inadequacies in the training and preparation of personnel, and for the absence of detailed policy guidance on a range of issues associated with the full integration of women into the Navy, the Committee has detected that this is indeed how many members of the Navy see the outcome. There is a sense of *"there but for the grace of God go I"*.

7.200 The Committee concurs with the Maritime Commander's more recent assertion that *"nobody should be made a scapegoat"* and that everyone should be *"treated with fairness."*<sup>154</sup>

7.201 Clearly, questions remain whether the severity of the penalty incurred by Captain Mole was out of proportion to any shortcomings that may have been identified in his performance.<sup>155</sup> In this regard, it is important to note that an important element of the Maritime Commander's recommendation to the Chief of Naval Staff that Captain

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153 BO1 Report, p. 11.

154 Submission by RADM R.A.K. Walls, 24 March 1994, p. 3.

155 It should be noted that CNS advised CAPT Mole that his request that his censure be reviewed was being deferred. See para. 7.17.



Mole be censured is the Maritime Commander's opinion that Captain Mole handled the question of integration of women on the SWAN as a "secondary" issue.<sup>156</sup>

7.202 Captain Mole agrees with the Maritime Commander's observation that other matters took a higher priority in the Captain's estimation at the time. However, Captain Mole argues persuasively that his priorities coincided closely with the priorities of senior Navy management at that time.

7.203 Captain Mole puts his case with regard to the integration of women into the SWAN in the following terms in his Reply to Notice of Cause for Censure of 6 July 1993:

*"Having taken steps to address what I considered to be the most significant management problem in introducing females into SWAN, the accommodation, I also devoted some effort into preparing the ship's company. I object strongly to the assertion in paragraph 3 of the reference that my address to the ship's company was secondary, which is presumably inferring inadequate. My addresses to the ship's company were not too frequent, they were never secondary, I never dealt with minor issues and anything I included in my addresses was done so because I considered the subject sufficiently important to warrant face to face contact with the ship's company so that they could appreciate the seriousness of the subject. It is true that when I addressed the ship's company with regard to females joining the ship I did so in the context of the RANTEWSS team joining the ship and I did not specifically use the words "sexual harassment". I did however point out that the females were joining the ship with my full support because they were the best qualified available personnel to do an important job.*

*Clearing lower deck to address the ship's company is an expensive use of human resources. For this reason my clear lower decks were infrequent and usually were for more than one issue. On the occasion I addressed the ship's company with regard to females joining the ship it was a rehearsal for divisions and I addressed other issues including*

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156 It also needs to be noted that this specific formulation of the censure was dropped in the final version of the censure. However, as the Committee points out previously in this chapter, it is not clear whether it is nevertheless incorporated as one of the elements of the final censure.

*Naval Quality Management (NQM) and Program Management Budgeting (PMB). Throughout my CO designate training NQM and PMB were recurring subjects. Gender awareness was not mentioned once, not by CNS, not by ACPERS-N and not by MCAUST. I believe I gave the subject higher priority than Navy did as a corporate entity. Furthermore I considered no change to Ships Standing Orders was warranted as the females were to be a temporary arrangement for five months only and furthermore the subject of females at sea did not receive separate attention in your orders to the fleet or even in Personal Memorandums. I was convinced that the ships company would receive an adequate message from my address. At the time anything more than this did not seem warranted when compared to preparations for formal inspection (SWAN had only been inspected twice in almost ten years), preparations for Workup, Exercise K92 and the South East Asian deployment. A great deal of physical and administrative preparation was also required for the subsequent RANTEWSS operations. I believe my address to the ship's company was successful however neither the RANTEWSS team nor LEUT Bartlett had joined the ship by that time.*

*Having prepared the ship and the ships company for females I also briefed the female sailors when they joined. I object to the suggestion in paragraph 3 of the reference that in my special briefing to the female sailors that I advised them they needed to constrain their behaviour to avoid gossip. What I did attempt to do was to prepare them mentally for some inevitable gossip. I pointed out that although I had briefed the ship's company in advance, they should be aware that anything they said or did at one end of the ship would be magnified tenfold by the time the story got to the other end of the ship. This brief was conducted in the presence of their Divisional CPO, and I think the XO, as it was my desire that the brief should reflect the RAN Divisional System, not alternatives to it. My reliance upon the Divisional System will be explained later, but suffice to say I placed great importance on it. The assertion in paragraph 3 that "No procedures were implemented to monitor the assimilation of women into the ship's company" is incorrect. The "procedure" was the Divisional System. Similarly no alternative "procedures" were adopted for the many young male junior sailors going to sea for the first time, or the soldiers in the RBS70 missile detachment, or the temporary RAAF intelligence officer, or the soldiers in the*

*RANTEWSS team, or the Chaplain, the Dentist or Doctor, or the many junior officers under training. In this regard the allegation at paragraph 5 of the reference that measures to integrate LEUT Wheat into the ship were inadequate are also unreasonable. At age 36 LEUT Wheat is a mature person, a doctor, a highly trained career professional and yet she had far more difficulty integrating than the many other, much less mature personnel going to sea for their first time. The BOI correctly observed at paragraph 38 of their report that LEUT Wheat's expectations were totally unrealistic."*<sup>157</sup>

7.204 The Maritime Commander accepts that:

*"CAPT Mole is correct when he states that gender awareness did not receive a high profile during his commanding officer designate course."*<sup>158</sup>

7.205 The Maritime Commander also confirms that:

*"there were no Personal AF Memorandums extant on this topic."*<sup>159</sup>

7.206 Nevertheless in his advice to the Chief of Naval Staff, the Maritime Commander questions the adequacy of Captain Mole's efforts. The Maritime Commander cites a selection of comments from three crew members that they do not recollect the briefings or that they only recall vague references to females joining the ship. The Maritime Commander cites this as proof that the briefing could not be classed as 'successful'.<sup>160</sup>

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157 CAPT D. Mole, Reply to Notice of Cause for Censure, dated 6 July 1993, Enclosure 2 to Maritime Commander's Minute AF 612/396, dated 12 July 1993 to the Chief of Naval Staff, paras 15-16.

158 Minute AF 6/2/396 of 12 July from Maritime Commander to CNS, para. 36.

159 *ibid.*

160 *ibid.*, para. 34.

7.207 The Committee concurs with the Director of Naval Legal Services' comments about the Captain's briefing:

*"The evidence of these sailors indicates that individual recollection of the briefing was not good thereby supporting the proposition that the brief was inadequate. Although it is open to conclude this, regard must also be had to the prevailing attitudes held by male sailors towards females serving at sea. Hence, it must be equally possible that some or all of the sailors only heard what they wanted to hear." 161*

7.208 The Committee concurs that what is said is often not the same as what is heard or what is remembered. If the Captain's address failed to make the right impression, it highlights to the Committee the difficulty of conveying adequately the complexities of issues such as integration and sexual harassment by means of formal addresses or written instructions. The trial focus groups on the HMAS SYDNEY, where mixed personnel were able to toss around ideas and questions they may have about the issues are probably the only effective way to achieve a proper understanding by all of the importance of the matter and an appreciation of how to deal with problems should they arise.

7.209 However, the circumstances on the SWAN and on the SYDNEY were very different. There were critical differences in the number of women joining the crew and in the nature of the tasks they were undertaking. On the SYDNEY there were women allocated to almost all the functional areas of the ship.<sup>162</sup> The situation on the SYDNEY lent itself to open work groups getting together to anticipate and resolve problems in a way that could not readily apply in the case of the very isolated RANTEWSS unit on the SWAN. That is not to detract from the achievements of the SYDNEY.<sup>163</sup> It is merely to point to exceptional difficulties confronting the SWAN.

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161 Director of Naval Legal Services Minute 543/93, dated 16 July 1993 to the Assistant Chief of Naval Staff - Personnel, para. 19.

162 Triulzi Collins Solutions, *Impact Study, HMAS SYDNEY*, p. 3.

163 It is also clear from the Impact Study conducted on the SYDNEY that much work remains to be done in achieving adequate additional change and in clarifying the boundaries of acceptable and unacceptable sexual harassment.

7.210 The question of Captain Mole's success in conveying his expectations about the standard of conduct towards the women coming on board could also be looked at in another way. Only two members of the SWAN's company were clearly identified by the BOI as guilty of unacceptable behaviour which might widely be regarded as sexual harassment.<sup>164</sup> The behaviour of a few others was deemed to be unsatisfactory. That means that, either through good luck, good leadership or good sense on their part, close to 280 members of the ship's company did not engage in sexual harassment or even in unacceptable sexual behaviour.

7.211 With regard to the impact or effectiveness of the Commanding Officers' address, it is also relevant that neither Lieutenant Bartlett, nor the RANTEWSS team were actually present at the time of the general address, although the female members of the RANTEWSS team were separately spoken to by Captain Mole. In hindsight, given that the problem was within the RANTEWSS team and not with the rest of the crew, it was particularly unfortunate that they arrived after the Captain's general address. The progressive arrival of personnel on board a ship creates obvious difficulties when it comes to keeping everyone up to date on all important matters. Moreover, in this instance, it is easy to see how an assumption could be made that, since the RANTEWSS people arrived from an environment where women had operated previously, there was less of an imperative to alert the team's own members to problems associated with integration.

7.212 A ream of instructions does not necessarily equate with management commitment. In an area as full of complexities and fine nuances as sexual harassment, in an area of fundamental and major change, personnel read signs other than just the existence of a written instruction to gauge what priority is to be accorded to it. The Committee was pleased to note, that in the course of the Good Working Relationships seminar that the Committee attended, Commodore Barrie readily acknowledged the inadequacy of dealing with the issue of sexual harassment by written instruction alone.

7.213 From the evidence of Navy itself to the Committee, sexual harassment was not high on the list of priorities that the Navy was to address in 1992.

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164 Note: the Board did not use *"a strict definition of the words 'sexual harassment'"*. For the BOI use of the term *'sexual harassment'* see para. 6.27 of this Report; BOI Report, pp. 77, 91-93.

7.214 An examination of the Defence Annual Report for 1991-92 confirms this. The Report gives details of the numbers of women who had by then been recruited following the Government's 30 May 1990 announcement that women in the ADF would be able to serve in combat-related positions. The Report has nothing to say on any preparation that either the men or the women in the Services had received to prepare them for this intensified integration. The Report says:

*"To help things along, both the women and their male colleagues will receive specialist 'mixed - gender awareness training', a concept being developed by Army (and taken on board by Navy and Air Force as well) to address any 'cultural' impediments to the new policy."*<sup>165</sup>

7.215 The list of major activities and key results of the Executive Sub-Program includes Navy Quality Management; it makes no mention of the measures taken by management to facilitate the integration of women into the Services.

7.216 There is no sense of urgency in the Annual Report that might suggest that the issue of preparing personnel for the adjustments required to integrate women was regarded as a high priority by the Navy leadership in June 1992.

7.217 The actions noted in that Annual Report are for the future, not measures actually put in place. The concept of mixed gender awareness training was still only under development.

7.218 In hearings before the Committee, Vice-Admiral Taylor gave a succinct summary of the issues that preoccupied Navy's leadership in the years immediately preceding and at the time of the SWAN incidents. After noting that the Navy "*probably concentrated a little too much on the physical facilities side of the preparation for women at sea, at the expense of preparing the males at sea for the reception of the females,*"<sup>166</sup> Vice-Admiral Taylor said:

*"Just to put this whole subject of women at sea and sexual harassment into some sort of context for the whole period of the late 1980s, early 1990s, I just remind the committee that in Navy we were going through a great period of change which involved a whole lot of major personnel*

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165 Defence Report 1991-1992 AGPS 1992, p. 27, (emphasis added).

166 VADM R. Taylor, Committee Hansard, p. 1624.

*issues, and this was one of them. There was no evidence there to suggest that this was the one we should be concentrating on at the expense of others but I will just remind you of some of the others that were happening: we were going through personnel wastage the like of which we had not experienced for some time; there were problems with members without families and what entitlements they should have; there were family support issues; there was the question of homosexuals in the Australian Defence Force; Defence Housing Authority issues; a change from the Defence Force Retirements and Death Benefits Scheme to the new scheme, and so on.*

*So those were the range of personnel issues with which we were trying to grapple at the time. While we may not have, in hindsight, put as much emphasis on this particular one as we could have, I think that probably puts it a bit more into perspective."*<sup>167</sup>

7.219 The Committee notes the strong similarities in Vice-Admiral Taylor's account of Navy's priorities and approach with the account just cited of Captain Mole's priorities and approach on the SWAN in 1992.<sup>168</sup>

7.220 It is now accepted by all that, Dr Wheat received inadequate training and preparation for her sea-posting. It is also true that Captain Mole received inadequate training and policy guidance for operating in a mixed gender environment.<sup>169</sup> No members of the ship's complement had sufficient exposure to the issues they would have to deal with on a mixed gender ship or been given sufficient support to handle any problems that might arise, and sufficient guidance on the need for special measures and mechanisms to be in place to ensure that a Commanding Officer is kept fully informed of any sexual harassment that may be occurring. The complacency of the Navy as a whole about the adequacy of the Divisional System was well captured by Commodore Barrie: "*... we went back centuries on the Divisional System and we thought the Divisional System was serving us well. I do not think we had too*

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167 VADM R. Taylor, Committee Hansard, pp. 1627-1628.

168 See para. 7.203 of this Report.

169 The relative priority Navy management accorded to preparing senior officers for dealing with the integration of women is illustrated by the approval by Maritime Command for CAPT Mole to forego that part of his Commanding Officer's Designate Course (module 5) that included such issues in favour of updating his knowledge of surface ships operations. Maritime Commander minute AF71/22/28(3) of 4 July 1991.

*much reason to question its effectiveness but the truth is, of course, that it was not doing the job it ought to have done and perhaps we should have been smarter in examining all the other alternatives and how it might improve the divisional system, before we had to have a watershed event."*<sup>170</sup>

***Impact of censure on promotion prospects***

7.221 It is not appropriate for the Committee to seek to evaluate Captain Mole's promotion prospects, either before or after the events on the SWAN. Apart from the impropriety of doing so, promotion is clearly a matter in part of the relative capabilities of the people applying and the Committee has no basis on which to compare Captain Mole's performance with that of his competitors. However, the Committee considers that it must draw attention to the following:

- Captain Mole's substantive rank is commander;
- before the Board of Inquiry into the events on the SWAN, in October 1992 Captain Mole was ranked by the Maritime Commander as being in the top 20 per cent of his peers and ready for promotion;
- on 27 August, 1992, while SWAN was on its deployment to Asia, CMDR Mole's posting to the position of Commander, Australian Submarine Squadron was promulgated in the Officers' Posting List. That is, as a commander he was judged suitable to take up a position normally filled by a captain;
- he has now held that position since 18 January 1993;
- as a result of the SWAN events, he was downgraded to "not now" for promotion in March 1993;
- while the numerical rating of his performance has, in the last assessment returned to 7.1, and he is again assessed as ready for promotion, the descriptive comments are

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170 Commodore C. Barrie, Committee Hansard, p. 593.



more conditional and reserved than they were when he first took Command of the SWAN.<sup>171</sup>

### *Review of censure*

7.222 The Committee notes that the Chief of Naval Staff told Captain Mole on 24 September 1993 that:

*"it would not be appropriate for me to reconsider the basis upon which censure action was taken against you [i.e. Captain Mole] in advance of the findings of the Senate Inquiry."*<sup>172</sup>

7.223 The Committee notes that the three grounds for censure proposed by the Maritime Commander went well beyond the recommendation of the BOI, both in terms of content and in terms of severity. In particular, grounds (b) and (c) of the proposed censure by the Maritime Commander introduced elements not specifically identified in the BOI recommendation.

7.224 In the course of evaluating the proposed grounds for censure, and Captain Mole's reply to the Maritime Commander's Notice to Show Cause, Director of Naval Legal Services concluded that *"the failings of CAPT MOLE, particularly in respect of the second and third limb of the notice of cause"* are *"painted in a more serious light than perhaps is warranted"*.<sup>173</sup>

7.225 These two grounds were dropped. The way in which the final censure particularised the one remaining ground raised a specific matter that had not been aired previously, and contained another element whose meaning was far from clear.

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171 The descriptive comments in CAPT Mole's last two assessments focus on the challenges he faces and the qualities he must now display whereas his previous assessments commented favourably on the initiative and leadership he displayed in addressing the technical and personnel problems he faced when he took over command of SWAN.

172 CNS letter of 6 October 1993 to CAPT Mole, enclosure to Captain Mole's supplementary submission, dated 16 March 1994.

173 DNLS Minute 543/93, dated 6 July 1993 to ACPERS-N, para. 39.

7.226 Evidence to this Committee indicates that (a), the first of the particular grounds for censure is based on an erroneous premise.<sup>174</sup> As far as the Committee has been able to ascertain, no proposal to return Leading Seaman Connelly to Australia from Hong Kong was adequately put to Captain Mole. The evidence of both Leading Seaman Connelly and Captain Mole indicates that Captain Mole offered Leading Seaman Connelly the opportunity to return to Australia because of child care problems some time after Hong Kong. Leading Seaman Connelly chose not to avail herself of that opportunity. The preference she expressed to Captain Mole at that time to stay to the end of the deployment would have given Captain Mole no cause whatever to probe further about her or the other Electronic Warfare sailors' state of morale.

7.227 The Committee's detailed consideration of component (b) of the censure is in paragraphs 7.122-7.83 of this Report. The Committee's review of component (c) of the censure is in paragraphs 7.38-7.117 of this Report.

7.228 The Committee notes that one of the consequences of the censure being issued at the Chief of Naval Staff level is that there are few avenues of appeal open to Captain Mole.<sup>175</sup> The Committee has therefore felt a particular responsibility to examine closely all the matters pertaining to that censure.

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174 Part (a) of the censure stated *"you failed to sufficiently recognise that the proposal to return LS Connelly to Australia from Hong Kong, because of her dissatisfaction, indicating a morale problem with the female Electronic Warfare sailors on board which required further investigation and careful monitoring"*.

175 In Attachment 5, letter from CAPT Brian Robertson of 11 May 1994, the Navy advised the Committee that: *"DI(N) ADMIN 35-1 is the relevant instruction directing how a censure may be awarded against an officer, however, the DI(N) does not specify how an officer may appeal against the awarding of a censure by the Chief of Naval Staff (CNS)."*

Procedures in awarding censures differ slightly depending upon whether a flag officer or a commanding officer initiated the censure action, however, in all cases an officer must be given the opportunity to show cause why he or she should not be logged or censured.

Apart from any reasons in writing the officer may give there is no specified or "normal" avenue of appeal against a censure. The officer may file a Redress of Grievance to have the matter reviewed pursuant to the provisions of DI(N) ADMIN 35-3. The officer may, if still dissatisfied with the decision reached after filing a Redress of Grievance apply to the Defence Force Ombudsman for a further review of the adequacy of the decision. In addition, there is nothing to prevent the affected officer from reapplying to CNS to review the decision if further relevant information becomes available to the officer."

**7.229 Recommendation Twenty Four:** The Committee recommends that the Chief of Naval Staff review the censure of Captain Mole, taking into account the Committee's view that:

- Captain Mole should have been given an opportunity to respond to the specific details of the censure as finally issued by the Chief of Naval Staff;
- the censure carried additional weight because it was made public;<sup>176</sup> and
- the severity of a censure at the Chief of Naval Staff level is out of proportion to any shortcomings in Captain Mole's performance as Commanding Officer of the SWAN.

**7.230 Recommendation Twenty Five:** The Committee recommends that review of Captain Mole's censure should include a parallel review of his performance assessments since August 1992. Furthermore, the Committee recommends that any selection panel considering promotions where Captain Mole is a candidate should have this Committee's Report brought to its attention.

7.231 The Committee noted that, in advising the Minister of his intentions to censure several officers in relation to the SWAN incidents, the Chief of Naval Staff expressed his view that the severity of the punishment should be seen to be equitably spread for all ranks. The Committee accepts that there is validity in this approach. It will be self-evident, however, from this Report that equity demands that responsibility for the SWAN events be accepted across the management in the Navy. This means that the senior management also must acknowledge its failings and shoulder its fair share of corporate responsibility. A beginning to this was made when the Chief of Naval Staff, Vice-Admiral MacDougall, openly acknowledged Navy's corporate responsibility during the Committee's public hearings.<sup>177</sup> As is evident from comments elsewhere in this Report, the Committee believes firmly that the emphasis at this stage of evolution in the Navy's integration of women, the primary emphasis must be on educating all

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176 In enclosure 6 to the letter dated 11 May 1994 from CAPT B. Robertson to the Committee Secretary, the Navy advised the Committee that *"It is not usual practice for the awarding of a censure to be made known to the general public, however, there is no prohibition on this being done if CNS believes it is in the Navy's interest to do so"*.

177 VADM I. MacDougall, Committee Hansard, p. 551.

personnel, raising awareness about gender related problems, providing effective tools for managing those problems and laying the basis for genuine and fundamental changes in attitude. There is a role for punishment for severe transgressions and that option will at times need to be exercised. But it must be exercised with great discretion.

**7.232 Recommendation Twenty Six: The Committee recommends that the censure for all other personnel involved in the SWAN incidents be reviewed in the light of the findings of this inquiry.**

7.233 The events on the HMAS SWAN and subsequent developments have had a severe impact on the lives of many people. This is obviously true for the parties principal, but it is also true for many others, particularly the 280 crew members.

7.234 The events themselves were important. But now, more than two years later, it is very difficult to disentangle the effect of the events that followed the initial complaints, from the actions which led to the complaints in the first place.

7.235 The Committee has concluded that the emotional price paid by all those directly affected by the events on HMAS SWAN goes beyond any distress at the time of the particular events themselves. Continuing scrutiny, first by a court martial, then the Board of Inquiry, the media and finally the Senate Committee proceedings have exposed the people affected to much greater stress than would normally be expected for the resolution of incidents of the kind that triggered the present inquiry.<sup>178</sup> Moreover, the responsibility for allowing a situation to develop that permitted the incidents to take place must be widely shared. All the parties present when the events took place carry some responsibility, as do a wide range of officers at various levels and in several different management levels of the Royal Australian Navy.

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178 Dr C. Wheat; *"the things that happened wererrt so bad that I would normally have made a complaint about it"*, BOI Transcript, p.762; Ms S. Connelly told the Committee *"More damage has been done since then actually happened on the ship"*, Committee Hansard, (in camera - released), p.302; *"It would appear from the instructions that I have taken from both women [Ms Flannery and Ms Connelly] that it was their attendance at the Board of Inquiry which led to a rapid deterioration in their psychiatric, emotional and physical well-being. After leaving SWAN, both women had residual problems but these became prominent when they were required to give evidence before the Inquiry."* letter from Mr Ken Cush dated 16 November 1993 to Committee Secretary; CAPT Mole, Committee Hansard, (in camera - released), pp. 63-64.

7.236 The Committee accepts that the objectives of the Board of Inquiry, the Maritime Commander and the Chief of Naval Staff were admirable and to be supported. But there were shortcomings in the way matters were tackled. In their determination to do and be seen to be doing whatever was necessary to ensure that sexual harassment is eliminated from the Navy, they failed to consider adequately the total context in which the particular events under investigation occurred. They also tended to brush aside the very deep and real difficulties in clearly identifying the nature of the beast, sexual harassment, itself.