

TERMS OF REFERENCE

Pursuant to the Instrument of Appointment of 28 September 2009, you are to inquire into complaints made by [REDACTED] in a letter to CO HMAS KUTTABUL on 15 July 2009 regarding complaints surrounding their removal from HMAS SUCCESS on 09 May 09 and the subsequent lack of support provided to them once landed in Sydney. You are to collect evidence and submit a written report containing your findings and recommendations.

1. In investigating the complaints you are to pay particular attention to the following areas:
 - a. The procedural conduct of the HMAS SUCCESS 'Equity and Diversity Health Check;'
 - b. The conduct of the Commanding Officer and other senior HMAS SUCCESS personnel in the process leading to and including the removal of the sailors from the ship in Singapore with particular attention to:
 - i. Whether the members were afforded procedural fairness in the process or informed of the allegations made against them;
 - ii. The process by which the decision was made and implemented to remove the sailors from the ship;
 - iii. whether there was any inappropriate action undertaken by any member of the ship's company regarding the removal of the sailors or any action post-removal relating to the matter.
 - c. Whether the action taken regarding the removal of the sailors from HMAS SUCCESS was conducted appropriately and in accordance with Royal Australian Navy policies and procedures;
 - d. Whether the parties to the complaint were provided with adequate support generally during and after the incident, removal from the ship and complaints.

Quick Assessment

2. You are to have regard to the Quick Assessment of [REDACTED] dated 15 July 2009 in conducting the inquiry.

Other Documents

3. A request for statement of reasons for decision was made pursuant to the *Administrative Decisions (Judicial Review) Act 1977* by the three members. The request and the submitted documents are at enclosures 4-6 of the Instrument of Appointment. You are to consider these documents in the course of your Inquiry.

Other Inquiries

4. You are to be aware that an Inquiry Officer's Inquiry was conducted by [REDACTED] [REDACTED] RAN into the original allegations arising from the findings of the Equity and Diversity Health Check. You should not impede nor inquire into any matters covered by the scope of this inquiry.

Procedure

5. I direct that you follow the procedure, practice and guidance contained in Chapter 4 of ADFP 06.1.4 - *Administrative Inquires Manual*.

Witnesses

6. You are to advise me in writing if you are unable to obtain evidence from any person who could give evidence relevant to the Inquiry, including the reasons for their non availability.

7. All witnesses are to be given a copy of the Rights and Obligations of Witnesses document at Annex B to Chapter 4 of ADFP 06.1.4 which should be acknowledged in the transcript or witness statement as having been read and understood.

Variation

8. If during your Inquiry it becomes apparent that a line of inquiry should be commenced that falls outside the terms of reference you are to advise me in writing requesting variation of the terms of reference with reasons for the request.

Communications

9. All communications between you and the Appointing Officer or any other person in the course of the inquiry are to be in writing and are to be attached as documents to your report.

Potential adverse findings

10. You are to ensure that a notice of potential adverse finding is issued in accordance with subparagraph 6.44 of ADFP 06.1.4 in the event that such findings are contemplated against any person. You may wish to consider the example contained at Annex G to Chapter 6 of ADFP 06.1.4.

No Finding of Criminal/Disciplinary Offences

11. You are not to make a finding that any person has committed a criminal offence or disciplinary offence. Should you at any time come to the conclusion that a criminal or disciplinary offence may have been committed, you are to suspend the inquiry into that aspect of the matter and report the circumstances to me. To this end, you should have regard to DI(G)

ADMIN 45-2 Reporting and Investigation of Alleged Offences within the Australian Defence Organisation.

Recommendations

12. Recommendations are to be made upon, but are not limited to, the following:
- a. how the Royal Australian Navy should respond to the issues raised by the complaint;
 - b. whether the conduct of any person warrants further investigation by Service or civilian police;
 - c. whether administrative action is warranted against any person;
 - d. the remedial action required to prevent a recurrence of the incident; and
 - e. action which should be taken to correct or improve any training, orders, instructions or publications which while they may not be causal factors themselves, is action which you consider should be subject to attention by the Appointing Authority or higher authority.

Report

13. Your Inquiry Report is to be submitted to me no later than the close of business **23 October 2009**. If the report cannot be submitted by this date, an interim progress report is to be submitted, including justification for **any request for an extension by 16 October 2009**.

Documentation

14. The following documents are to be attached to your report:
- a. this Instrument of Appointment and Terms of Reference; and
 - b. the signed statement of impartiality.
 - c. the Quick Assessment report of [REDACTED] dated 15 Jul 09;
 - d. the letter to CO HMAS KUTTABUL dated 15 July 2009.
 - e. CO SUCCESS Reasons for decision dated 09 May 09
 - f. [REDACTED] Results of E&D Health check Report dated 09 May 09
 - g. copies of all statements taken from witnesses;
 - h. copies of any Notification of Proposed Inquiry Findings;

- i. any legal advice which has been received in writing;
- j. copies / extracts of all relevant orders, Defence Instructions or Service publications used throughout your Inquiry;