

Chapter 1

Introduction

Referral of inquiry and terms of reference

1.1 On 26 November 2009, the Senate referred matters relating to incidents that occurred on board HMAS *Success* and subsequent events to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 18 March 2010. The terms of reference for the inquiry are extensive:

- (a) the nature, scope and purpose of an ‘Equity and Diversity Health Check’ in the Royal Australian Navy, and under what authority such an investigation is conducted;
- (b) the equity and diversity issues at large on board HMAS *Success* (Success) giving rise to the ‘Equity and Diversity Health Check’ which was carried out on board Success between 21 April and 9 May 2009 including *inter alia* all disciplinary issues, the transfer of a Royal Navy exchange sailor, the management of equity and diversity issues by the ship’s Commanding Officer and his Executive Officer both before and after the ‘Equity and Diversity Health Check’;
- (c) the nature and veracity of complaints and allegations made by a Petty Officer or any other person concerning equity and diversity issues on Success;
- (d) the reasons and factual evidentiary basis for the ship’s Commanding Officer resolving to land a Chief Petty Officer and two Petty Officers (the senior sailors) at Singapore on 9 May 2009 from Success and the circumstances of that landing and removal from the ship including whether the Commanding Officer acted under the direction of any superior officer;
- (e) whether the senior sailors were informed of the full nature of the allegations and factual evidentiary basis for the subsequent landing in a timely fashion or at all, and whether procedural fairness was provided to those senior sailors;
- (f) the circumstances and events that led to the Commanding Officer of Success addressing members of the crew in relation to the landing of the senior sailors, whether the Commanding Officer referred to the senior sailors by stating words to the effect of ‘there was a rotten core on this ship and the core has now been removed’ and if so, the extent that those comments may have prejudiced any subsequent inquiry;
- (g) whether the Inquiry Officer as appointed pursuant to terms of reference, dated 15 May, and as set out in Minute S1804843, dated 10 July 2009, declined to interview any relevant witnesses in circumstances where the

senior sailors were prohibited from attending Success and or contacting any of the ship's company;

- (h) the way in which the inquiry into the events on Success was conducted, whether the method of questioning witnesses and gathering evidence was conducted according to the principles of justice, whether the inquiry process 2830 No. 102—24 November 2009 was free from any perception of bias, and whether any witnesses were threatened with disciplinary or other action during the course of giving evidence;
 - (i) whether the senior sailors requested access to evidence gathered during the inquiry into the events on Success, whether any such request was denied, and whether any subsequent finding is reasonable in the circumstances;
 - (j) the facts and circumstances of the treatment of the Legal Officer (the lawyer) assigned to the management and defence of the case of the senior sailors including any threats, bullying, adverse conduct and prejudice generally, including any threat of posting to Western Australia, and whether any such conduct constituted an attempt to compromise the lawyer's capacity to represent the best interests of the senior sailors without fear or favour;
 - (k) the knowledge and awareness of the ship's Commanding Officer, the Australian Defence Force Investigative Service investigators and the broader naval chain of command of the facts and circumstances relating to the Channel 7 News reports on 4 July and 7 July 2009 (the media reports) and the dates and times of such personnel being availed of such knowledge and awareness;
 - (l) the knowledge and awareness of the media reports by the responsible Minister and the dates and times of the Minister being availed of such knowledge and awareness;
 - (m) all and any other matters relating to the justice and equity of the management of the senior sailors in their removal from the ship and the subsequent administrative process or processes, including their complaints as to the flawed process as set out herein; and
- (2) That the committee not conduct any hearings until after 1 February 2010.

Conduct of inquiry

1.2 The committee advertised its inquiry on its website, and in the *Australian*, calling for submissions to be lodged by 21 December 2009. During the first week in December, the committee also wrote directly to a range of people likely to have been involved in matters covered by the terms of reference, drawing their attention to the inquiry and inviting them to make written submissions. Naturally, because of the nature of the inquiry, they included serving Australian Defence Force (ADF) personnel.

1.3 To help the committee obtain necessary background information before starting the inquiry process in earnest, the committee wrote to the Minister for Defence (the Minister) requesting his assistance in obtaining documentation relevant to its inquiry. The committee also sought a timeline of events starting with the incidents that triggered the equity and diversity health check on HMAS *Success* and covering all relevant subsequent actions. Anticipating that some of this information may have to be treated in strict confidence, that committee suggested that any request for material to be received *in camera* should be clearly indicated.

1.4 Finally, the committee requested that, through the department, all persons known to be concerned with, or directly affected by, the findings of the equity and diversity health check on board HMAS *Success* and related events be notified of the committee's inquiry and of its call for submissions.

1.5 In mid-December, the committee was disappointed to learn that the Department of Defence had taken action that, in the committee's view, effectively deterred ADF personnel from contacting the committee about matters relating to its inquiry. This matter of parliamentary privilege and possible contempt of the Senate is considered in full in a separate report to the Senate.

Submissions

1.6 The committee received six submissions which it resolved for the time being to keep confidential. The Chief of the Defence Force (CDF), the Chief of Navy and the Head of Defence Legal also provided private briefings to the committee on 3 and 23 February 2009. No transcripts of these meetings were recorded but the secretariat took notes that have been used to produce some sections of the report.

Progress of the inquiry

1.7 This is an interim report. Before making a final report, the committee is awaiting the release of the report of a CDF's Commission of Inquiry to be conducted by a former judge of the Federal Court, the Hon Mr Roger Gyles AO QC. His report is not expected to be completed until 30 June 2010. The committee understands that the Minister may wish to consider the report before responding to it.

1.8 Thus, before taking any further action, the committee will allow time for the Commission to produce its report and for government to make its response. After examining the commission's findings and the government's response, the committee expects to be in a position to report to the Senate on or before 2 September 2010.

Scope of report

1.9 The committee uses this interim report to inform the Senate about the progress made with its inquiry. It records information and advice provided by Defence to the committee on actions it has taken following the equity and diversity health check on HMAS *Success*. The committee also takes this opportunity to recall the findings of previous inquiries into the ADF's administrative system in order to place the current

inquiry in a broader and important context. The need to achieve positive and lasting improvements in the ADF's administrative inquiry system was one of the most enduring messages coming out of these inquiries and one that should not be forgotten. The committee believes that an appreciation of the history of reforms to this system is central to understanding the matters now under consideration by the Commission of Inquiry and by the committee.

1.10 Thus, the committee provides this necessary background as well as detailing and explaining recent developments.

Acknowledgments

1.11 The committee thanks all those who contributed to the inquiry by making submissions and providing additional information.