

Chapter 1

Inquiry into incidents that occurred on board HMAS *Success*

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 and available on the committee's website. They are also at Appendix 1.

1.2 By and large, the terms of reference deal with: allegations of unacceptable behaviour by a number of sailors onboard HMAS *Success*; an equity and diversity health check of the ship; the subsequent removal of three senior sailors from the ship; and the many administrative and disciplinary investigations that followed.

Conduct of inquiry

1.3 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.

1.4 The committee received 8 submissions which it has resolved to keep confidential for the time being. The Chief of the Defence Force (CDF) and the Chief of Navy also provided private briefings to the committee on 3 and 23 February 2010 and 22 February 2011. No transcripts of these meetings were recorded.

Appointment of a Commission of Inquiry

1.5 During the second briefing, the CDF announced his intention to establish a CDF Commission of Inquiry (the Commission) headed by a former judge of the Federal Court, the Honourable Roger Gyles AO QC. The CDF explained that the process would involve a formal inquiry with legal representation, witnesses and formal hearings and testimonies. Under the Instrument of Appointment, the Commission was:

to inquire into the alleged incidents of unacceptable behaviour, as defined in applicable Defence Instructions or other behaviour which could compromise the safety and effectiveness of the crew onboard HMAS *Success* that were brought to the attention of command between March and

May 2009, and issues associated with the subsequent management of such allegations and of personnel allegedly involved.¹

1.6 Annex A to the Instrument of Appointment stipulated that the essential purpose of the Commission was 'to determine the facts and circumstances that fall within the scope of the terms of reference and make recommendations based on its findings'.²

1.7 It should be noted that these terms of reference refer specifically to behaviour that was 'brought to the attention of command'. According to Mr Gyles:

The terms of reference limit the relevant behaviour to that which was brought to the attention of command 'between March and May 2009'. It is not necessary for the behaviour itself to have occurred during that period. The behaviour could have occurred before March 2009 and yet have been brought to the attention of command between March and May 2009. Furthermore, things occurring before or after the period might throw light on what occurred during the period and need to be considered as context.³

1.8 Mr Gyles indicated to the CDF that he would like to complete gathering evidence by 15 April in order to finalise the report by 30 June 2010.

Committee's interim reports

1.9 The committee tabled an interim report on 18 March 2010. At that time, it noted that before proceeding with its inquiry, it would await the release of Mr Gyles' report. The committee advised the Senate that it would need time to consider this report and intended to report on or before 2 September 2010.

1.10 On 23 April 2010, the CDF wrote to the committee to provide an update on the Commission's activities. He informed the committee that Mr Gyles had adjourned receiving oral evidence from witnesses on 12 April and would reconvene public hearings to receive more evidence on 21 June 2010. He noted:

Thus far, evidence has been received from 20 witnesses over 11 sitting days. However, during the course of the inquiry's activities Mr Gyles advises that a significant number of potential additional witnesses have been identified and there are now approximately 35 witnesses more that he has indicated will be called to give evidence.⁴

1 Appendix A, Roger Gyles AO QC, *HMAS Success Commission of Inquiry, Allegations of Unacceptable Behaviour and the Management Thereof, Part One: The Asian Deployment and Immediate Aftermath*, redacted copy.

2 Annex A, Roger Gyles AO QC, *HMAS Success Commission of Inquiry, Allegations of Unacceptable Behaviour and the Management Thereof, Part One: The Asian Deployment and Immediate Aftermath*, redacted copy.

3 Gyles Report, Part One, para. 1.111.

4 Correspondence, Chief of the Defence Force to Chair of the Committee, 23 April 2010.

1.11 According to the CDF, Mr Gyles anticipated that he would complete his report and findings by 30 September 2010. On 10 August, however, the Acting Chief of the Defence Force, Lieutenant General David Hurley, conveyed to the committee advice he had received from Mr Gyles indicating that:

...due to the significantly larger number of witnesses and documentary evidence that have been called and tendered as part of the COI proceedings, the second session of hearings has taken considerably longer than he originally anticipated.⁵

1.12 Mr Gyles expected that he would be ready to report no later than 31 December 2010.

1.13 In light of the delay in the Commission's inquiry and with the prorogation of the House of Representatives, the committee tabled a second interim report on 20 August notifying the Senate of its intention to present a final report as soon as possible in the 43rd Parliament. An election was held on 24 August 2010 and the 43rd Parliament sat for the first time on 28 September. Two days later the Senate resolved that the committee continue its inquiry with a reporting date of 12 May 2011.

Part One—HMAS *Success* Commission of Inquiry (the Gyles Report)

1.14 The Commission of Inquiry did not finalise its report until the end of December 2010. The Minister tabled a redacted copy of part one of Mr Gyles report on 22 February 2011 entitled *HMAS Success Commission of Inquiry, Allegations of Unacceptable Behaviour and the Management Thereof, Part One: The Asian Deployment and Immediate Aftermath*.⁶ Mr Gyles explained the reason for having two parts to his report:

On 26 September 2010 the Chief of the Defence Force proposed that I should take into account the report (not then available) of a working group into Defence Administrative Inquiries, to be presented to the Chiefs of Services Committee for the purposes of this Commission of Inquiry. He did not, however, want that to delay completion of the report on substantive matters arising from events onboard *Success* on the deployment of March–May 2009. It was therefore agreed that I should deliver my report in two parts. The first part was to deal with events on and connected with the deployment and their immediate aftermath; this is that report.⁷

5 Correspondence, Acting Chief of the Defence Force, Lieutenant General D. J. Hurley, to Chair of the committee, 10 August 2010.

6 *HMAS Success Commission of Inquiry, Allegations of Unacceptable Behaviour and the Management Thereof, Part One: The Asian Deployment and Immediate Aftermath*, Redacted report made available to the public following authorisation by the Minister for Defence under Regulation 63(3) of the De (Inquiry) Regulations 1985 on 18 February 2011. President, the Honourable Roger Gyles AO QC, January 2011 (Gyles Report, Part One).

7 Gyles Report, Part One, para. 1.128.

1.15 The CDF stated that he expected to receive the balance of Mr Gyles' report in the middle of the year. The second part of the report will deal with the general Defence processes that followed the decision to land the three senior sailors in Singapore in May 2009.

1.16 The release of part one of the Commission's report in February 2011 provided the committee with the first opportunity to read and consider Mr Gyles' findings. His report addresses in large part a number of the committee's terms of reference. The committee has decided that rather than wait for the second part of the report to be released, it would table a report that would look closely at the findings of part one of the Gyles Report as they relate to the committee's terms of reference.

1.17 Thus, in preparing this report, the committee has drawn heavily on the Gyles Report and is in essence a summary of its findings. The committee also used material from the transcript of the Commission's hearings; documents appended to the report, especially the equity and diversity (E&D) report; and official Defence Instructions associated with ADF inquiries and equity and diversity matters.

1.18 The committee notes that 102 individuals appeared before the Commission to give evidence with 12 people providing affidavits. The transcript of the hearings runs to 4866 pages with 376 exhibits received—many containing multiple documents. Because of the comprehensiveness of the Commission's inquiry and its direct relevance to the committee's terms of reference, Mr Gyles has done much of the work covered by the first six of the committee's terms of reference. The committee sees no real gain in duplicating his work though it reserves the right to explore any issue under its terms of reference that it believes requires further investigation.

1.19 The committee uses the evidence presented to the Commission as a resource to obtain insight into the events that occurred during *Success's* deployment and to reach its own conclusions though, as mentioned above, the committee's consideration was informed by Mr Gyles' findings. It should be noted, however, that only a redacted version of the Gyles Report with certain names and other material removed was made public. Unfortunately, in some places this edited material creates confusion for the reader. When quoting from the report the committee indicates where text has been removed.

1.20 The committee has also been careful when quoting from the transcripts of the Commission's hearings to protect the privacy of crew members. The names of the sailors who were landed and the more junior sailors caught up in the events onboard *Success* are not disclosed. The key decision makers such as the commanding officer and the executive officer of *Success* and those at Fleet Headquarters are identified.

1.21 Part one of the Gyles Report did not cover the inquiry processes and related matters that followed the E&D health check and the sailors' landing. Mr Gyles has indicated that such matters will be the subject of part two of his report. At least seven of the committee's terms of reference go to matters related directly to events that

occurred once the sailors were removed. Thus, the committee will wait until the second part of the Commission's report is released before completing its inquiry.

1.22 Having dealt with the facts and circumstances of the landing of the three sailors in this report, the committee will then be better placed to devote the bulk of its final report to the inquiry processes on which Mr Gyles is yet to report. The committee is particularly interested in identifying potential systemic weaknesses in the ADF's inquiry processes.

The Gyles Report and the committee's terms of reference

1.23 In his report, Mr Gyles made clear that he assembled and presented evidence 'in order to establish a factual narrative of events in which many individuals played a part.'⁸ In doing so, Mr Gyles effectively addressed a number of the committee's terms of reference either in full or in part, including:

- (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

8 Gyles Report, Part One, para. 5.2.

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.

1.24 The committee has rearranged its consideration of the terms of reference so that it looks first at the equity and diversity issues that prompted the commanding officer to seek outside assistance. It then considers the nature and scope of the E&D health check. After that, and relying on Mr Gyles' findings, the committee then considers the nature and veracity of allegations, the basis for the commanding officer resolving to land the three senior sailors, the extent to which these sailors were informed of the reasons for their removal and the circumstances of their landing.

Unanticipated revelations

1.25 It should be noted that the Gyles Report revealed matters that were not anticipated in the committee's terms of reference but which have been of longstanding concern to the committee. The most disturbing revelation was that a culture of silence existed on board *Success* which meant that members of the ship's crew were reluctant to report wrongdoing or unacceptable behaviour. In particular, that the most vulnerable members of the crew, young female sailors, were subjected to verbal abuse but were reluctant to report such conduct.

1.26 The committee was alarmed further by the disclosure during the Commission's work that an inquiry in 2004 on the same ship had raised similar concerns about sexual harassment of female sailors. Indeed, the issues raised regarding HMAS *Success* in 2004 and more recently have all the hallmarks of those considered by the committee as far back as 1994 on board HMAS *Swan*. Because of the committee's work with the ADF in trying to promote a culture of responsible reporting of wrong doing, especially of unacceptable behaviour, and of stamping out bullying and harassment in the ADF, it is of the view that it must again draw attention to this broader cultural issue in the ADF.

Scope of report

1.27 The committee's terms of reference extend beyond the events surrounding the landing of the three senior sailors from HMAS *Success* in Singapore on 9 May 2009. In the following chapters, however, the committee confines its consideration to the events leading to the decision to land the three sailors in Singapore and the manner in which they were removed from the ship. Although a fourth sailor was also removed from *Success* at the same time, the committee's focus does not extend to this sailor. During the ship's deployment, a Royal Navy Exchange sailor was landed in Hong Kong and although mentioned in the committee's terms of reference, the committee deals only briefly with this matter. As mentioned earlier, the committee will consider events following the removal of the sailors in Singapore, including the raft of inquiries following the landing of these men, in its final report. In the following chapters, the committee's attention is focused on two main objectives:

- to establish and summarise the facts and circumstances leading to the landing of three senior sailors from HMAS *Success* in Singapore in May 2009; and
- to explore the nature of the culture described by Mr Gyles in light of the committee's continuing concern about the reluctance to report wrongdoing in the ADF and to place these specific concerns in a broader context.