

Chapter 2

Allegations of unacceptable behaviour

2.1 During deployment between March and May 2009, the commanding officer of *Success* became aware of a number of incidents of unacceptable behaviour that eventually caused him to contact Fleet Headquarters for support and guidance. The response from fleet command set in motion a series of events that eventually culminated in the landing of three senior sailors in Singapore on 9 May 2009. Rather than resolve problems, this action attracted widespread and sensational publicity, damaged the good standing and character of certain crew members; cast doubt on the reputation of the ship's company and more broadly damaged Navy's image. It also triggered a series of administrative and disciplinary inquiries, which themselves have called into question the integrity of both administrative and disciplinary processes. Indeed, the Gyles Report indicates that events may not have run their course with the possibility of even further inquiries.

2.2 In this chapter, the committee looks at the conduct of crew members onboard *Success* that led their commanding officer to seek assistance from Fleet command, and the nature and appropriateness of the equity and diversity team sent as a response to his concerns. It starts its consideration by providing relevant background to HMAS *Success* and its deployment in the first half of 2009.

Background

2.3 HMAS *Success* is an Auxiliary Oiler Replenishment vessel of 18,000 tonne fully loaded and 157.2 metres in length. The ship supplies naval combat units with fuel, ammunition, food and stores while they are underway at sea. She is capable of day and night replenishment to ships alongside and, by her embarked helicopter, to other ships in company. *Success* has a crew of 220 who are required to operate and maintain the ship's propulsion, replenishment, auxiliary machinery and support systems. According to Navy:

Providing underway replenishment support to the fleet is a challenging and continuing task requiring technical proficiency and high seamanship standards.¹

2.4 In March 2009, *Success* left Sydney for a deployment to Southeast Asia and China. Of the total crew complement of about 220, 30 were females and 190 males. The majority of female sailors were young women ranging in age from 18 years to early 20s.² Under the command of CMDR Simon Brown, the ship left Sydney on 27 March and anchored overnight in Darwin on 3 April as part of a working port visit to

1 ADF website, http://www.navy.gov.au/HMAS_Success

2 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 119.

replenish stores. The following day, *Success* sailed for Manila arriving in Manila Harbour on 9 April where she remained until 14 April. On that day, she left for Qingdao arriving there on 19 April to participate in the People's Liberation Army (Navy) Fleet Review in celebration of the 60th anniversary of the fleet's formation. During this port visit, members of the crew had several opportunities to join in cultural and professional activities. *Success* left Qingdao on the evening of 26 April 2009, reaching Hong Kong on 30 April for crew rest and ship replenishment. *Success* departed Hong Kong on 4 May arriving in Singapore on the 9th.³

2.5 The following section looks at the problems that became apparent to the commanding officer during the early part of the ship's deployment.

The equity and diversity issues at large on board HMAS *Success* giving rise to the E&D health check

2.6 CMDR Brown first became aware of a problem onboard HMAS *Success*, following its overnight stay in Darwin on 3 April. He told the Commission that soon after leaving Darwin an unusually high number of crew members had failed a random alcohol breath test (RBT), including about half a dozen junior female sailors. He stated:

At the time I didn't think anything of it, more than, 'This is unusual...We put it down to the fact that it was the first port away, it was one night in, some people had probably got a bit carried away and drank too much'.⁴

2.7 CMDR Donna Muller, who at the time was a Lieutenant Commander and executive officer (XO) of *Success*, remembered discussing with the commanding officer the unusually high whole ship result. She shared his view that the large number of failed breath tests could be attributed to 'the fact that it was the ship's first port out of Sydney as part of the deployment'. She also noted that a number of sailors were experiencing sea life for the first time. Both the commanding officer and the XO did not think that the incident 'necessarily represented a wider problem or cultural issue for the ship'.⁵

2.8 After sailing from Manila, which was the next port of call, there was a similar occurrence again involving 'an elevated number of junior female sailors' who failed a random breath test.⁶ Once more, the commanding officer raised his concerns with the XO and before arriving at the next port, Qingdao, addressed the ship's company over

3 Gyles Report, Part One, Executive summary, p. vii.

4 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 54.

5 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 378.

6 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 53. The commanding officer explained that they did not actually draw any conclusions from it, 'except, again, the first overseas port, people probably got a bit carried away'.

the broadcast system. He spoke about the appropriate use of alcohol and making sure that crew members looked after each other. He noted that Qingdao was a port where they were on show, where they were representing Australia and he 'expected everybody on board to be good ambassadors for Australia during that visit'.⁷

2.9 While in Qingdao, however, a number of incidents occurred including damage to a washbasin in a bar onshore. CMDR Brown explained:

...the bar owner claimed that it was Australian sailors that had done that. We were unable to ascertain whether that was exactly so, but we did provide assistance to the bar owner to repair that basin. Then there was ...another claim of damage to another bar allegedly caused by sailors.⁸

2.10 The XO also became aware of a number of alleged incidents. One involved a female junior sailor having consensual sexual intercourse with a male senior sailor onboard the ship. CMDR Muller spoke to the commanding officer about this matter, who asked the ship's coxswain to investigate the allegation.⁹ The coxswain conducted a disciplinary investigation into the incident. The commanding officer indicated that the statements taken by the coxswain were inconclusive and it 'was difficult to say whether the event actually happened'.¹⁰ He told the Commission that the junior sailor was saying that it had occurred but the senior sailor was denying that it had taken place.¹¹ Charges were preferred against the female sailor for a disciplinary offence to which she pleaded guilty. CMDR Brown consulted with fleet legal office at Garden Island about the male sailor, who was on exchange from another Navy, and based on that conversation decided to land the male sailor in Hong Kong.¹² According to the coxswain, the commanding officer did not have jurisdiction to take disciplinary action against this sailor.¹³

7 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 54.

8 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 55.

9 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 56.

10 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 57.

11 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 57. See also Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 4 April 2010, p. 92.

12 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 57 and Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 7 April 2010, p. 52.

13 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 4 April 2010, p. 52. Captain Bowers, Fleet Legal Officer, noted that because the sailor was on short-term attachment to the Royal Australian Navy, he was not subject to the Defence Force Discipline Act. Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 23 June 2010, p. 54.

2.11 CMDR Muller stated that during her conversation with the commanding officer about this incident, she also referred to a rumour that a bounty had been placed on the junior female sailor.¹⁴

2.12 Another incident involved the discovery of what appeared to be used syringes, alcohol swaps, a container with a label suggesting 'the contents had been steroid tablets, and empty plastic sleeves with a powder residue'. This matter was also brought to the commanding officer's attention who directed the coxswain 'to conduct further investigations'.¹⁵ The XO also learned of a report that two sailors had engaged in sexual acts in a public bar in Qingdao and that two Petty Officers Marine Technical (POMTs) had allegedly witnessed the incident and were encouraging other sailors to watch.¹⁶ In this case, a sailor who became aware of this story approached the Senior Warrant Officer first before reporting the matter to the XO.¹⁷ He was representing his concerns as well as those of another three POs. CMDR Muller was also informed that a POMT 'had been shielding sailors from the MT department who may return a positive result for a RBT by hiding them down a hole'.¹⁸

2.13 On hearing of these allegations, the XO conferred with a female senior sailor about whether she had also heard the rumour of sailors engaging in a sex act in a nightclub. The senior sailor had just recently become aware of this story from a different source. Concerned about such developments, they met with another senior female sailor, who was aware of the report, to discuss the behaviour of some male sailors.¹⁹ During this meeting, one of the senior sailors spoke of 'bullying and intimidation of some females by a couple of MT sailors'²⁰. CMDR Muller informed the Commission that:

I recall thinking that we needed to be proactive as I was concerned for the safety of personnel onboard. Specifically, I was concerned at the number of known incidences going on at the time, the unknown degree to which personnel were involved, the possibility of steroid use, and...suggestion

14 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 389.

15 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 389.

16 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 390.

17 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 390 and Gyles Report, Part One, p. x. In evidence, LCDR Muller stated that she understood that he did not raise these concerns with the SWO.

18 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 390.

19 This senior sailor was one of the four POs who had previously got together to discuss their concerns about unacceptable behaviour mentioned in paragraph 2.12 above.

20 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, pp. 391–2.

that there was bullying and intimidation taking place, the degree to which was unknown to me.²¹

2.14 Indeed, matters had reached such a state that together these three members of the ship's company—the XO, who was the most senior female officer and the two senior female sailors—approached the commanding officer to discuss 'a serious issue concerning the general management of the ship'.

Meeting, 26 April 2009

2.15 The group met with the commanding officer on 26 April. In particular, according to CMDR Brown, they raised the matter of the treatment of junior female sailors and the culture onboard with regard to the treatment of females generally. The allegations included 'bullying, the existence of bounties for having sex with junior sailors, encouragement of female sailors to get drunk and, therefore, be more susceptible to sexual approaches and predatory behaviour towards female sailors—specifically being undertaken by some members of the engineering department.'²² According to the commanding officer, this information 'was not firsthand, but had been reported or told to these members by junior female sailors'.²³ The alleged perpetrators were not named as the information had been provided in confidence, but the commanding officer was told that this behaviour had been going on for some time and that it was getting worse.

2.16 The commanding officer stated that the information took him by surprise but he believed that those voicing their concerns were genuine in their convictions.²⁴

Fleet Headquarters

2.17 Confronted with a sequence of reports of unacceptable or even criminal behaviour, the commanding officer was of the view that he needed outside assistance. He told the Commission that he was determined that an investigation needed to happen into this culture or alleged culture that was onboard.²⁵ He explained further that to his mind, it was a cultural issue:

21 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 392. It should be noted that Mr Gyles was satisfied that the senior sailor who took the initiative to approach the XO to convey her concerns 'was genuinely worried by the various complaints she had received from female junior sailors and, in his view had 'good reason to be worried'. Gyles Report, Part One, para. 2.453.

22 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, pp. 4 and 62–63.

23 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 4.

24 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, pp. 5, 63, 72–73.

25 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, pp. 72–73.

...not just an unacceptable behaviour issue, it was broader than that. There was potential sexual-related activities, potential criminal activities.²⁶

2.18 For that reason, he raised his concerns in a telephone conversation with fleet headquarters, asking the deputy fleet commander (DFC), CDRE Simon Cullen, for guidance and assistance. CMDR Brown indicated that the matters needed to be investigated further to get down to whether there was a culture onboard the ship and whether there was any veracity behind the allegations.²⁷ In his words:

...if this culture existed onboard, then it was very serious and it needed to be investigated. I indicated that I did not feel that the ship was in a position to investigate it further.²⁸

2.19 CMDR Muller was similarly of the view that the matter should be taken off the ship. She told the Commission that in her considered opinion taking such action would enable 'a fresh and independent assessment, thus giving opportunity to either validate or dispute the concerns, but either way potentially getting a baseline in which to work'.²⁹ In a further conversation with CMDR Brown, she elaborated on the reasons for seeking outside assistance. Among her main concerns were that, if matters were to be handled onboard:

- people would not come forward and formally raise complaints to anyone internal to the ship;
- if people did come forward the ship's equity adviser network could not cope with the potential number of complaints; and
- the coxswain could not deal with the potential number of Defence Force Discipline Act (DFDA) incidents though she considered that the majority of the potential incidents would likely be raised as notifiable incidents and taken by Australian Defence Force Investigative Service (ADFIS) for action.³⁰

2.20 In response to CMDR Brown's conversation, the DFC passed the matter on to the Chief Combat Support Group at Fleet Headquarters (CCSG), CDRE Daryl Bates, to 'come up with a solution on how to deal with this concern'. CDRE Bates told the Commission that at the time commanding officers of ships were to report in a

26 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 70.

27 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 70.

28 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 70.

29 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 393.

30 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 393. LCDR Muller understood that the commanding officer would contact fleet command to outline the concerns; to explain that the issue was beyond the capacity of the ship to manage; and to seek external assistance

command and control sense directly to the Fleet Commander, who was RADM Nigel Coates. He explained that in practice, however, commanding officers generally dealt with one of the three commodores at Fleet Headquarters. He explained that:

Any equity and diversity issues that concerned a CO or one of his/her heads of department were generally referred to and dealt with by DFC. All other equity and diversity issues affecting fleet were generally referred to and dealt with by CCSG.³¹

2.21 At CDRE Cullen's request, CMDR Brown detailed his concerns in an email, dated 30 April.³² In this document, CMDR Brown referred to the recent telephone conversations in which he spoke of a significant cultural issue onboard *Success*. He then outlined the equity and diversity issues of concern. In part, the email stated that the commanding officer believed that there was currently a number of 'bounties' placed on the very junior female members of his ship's company, including the one involved in a consensual sex act that took place on board *Success* while in Qingdao. In his email, CMDR Brown then went on to say:

There have been instances of junior female sailors being abused, intimidated and threatened ashore. The sailors in question are currently not willing to come forward due to the potential for incrimination and potential recrimination. This has been brought to my attention through a number of the more senior females onboard. I believe much of the action/issues that are occurring are condoned by some [redacted] onboard. A recent incident which came to light after sailing from Qingdao involved a junior female sailor and [redacted] in a night club ashore where a sexual act was committed on the pool table in the bar in the full view of POs and other members of the ships company. My executive officer has been approached by junior sailors who have stated that there is a predatory element [redacted] onboard that has been onboard for a number of years, it has only been brought to commands attention because there is an understanding that something will now be done about it.

Sir, it is my firm belief that there is a predatory element onboard that focuses on junior inexperienced females which is led by the [redacted] department onboard. I am convinced that this has been going on for some time and is condoned by members of [redacted]. I am also convinced that there are a [redacted] number of junior sailors onboard who are confident that their actions are condoned thinking that they have the 'consent' of the senior sailors onboard, the junior females that are implicated feel that they have very little recourse and feel that if they speak up there will be consequences. The members who have brought this to my attention feel they are very much at risk, but feel that enough is enough.³³

31 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 4.

32 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 7 July 2010, p. 5.

33 The Gyles Report, Part 1, paras 1.117 and 2.237.

2.22 This email, dated 30 April 2009, was the first written document recording the allegations.³⁴ CDRE Cullen forwarded the email to CDRE Bates and RADM Coates. According to CDRE Bates apart from an early incident when a Petty Officer had been landed from HMAS *Success*, his first memory of any E&D issues relating to this ship was when he received an email from DFC to which was attached CMDR Brown's email.

2.23 The committee notes that Defence Instructions in force at that time stated that a matter may be a Notifiable Incident if it is regarded as sensitive, serious or urgent. As a guide to what may constitute an identifiable incident, the Instructions cited the following factors to consider—the likelihood that the incident will bring the Australian Defence Organisation into disrepute, attract media or Parliamentary attention; or may adversely affect the efficiency of Defence. In cases, where the commanding officer determined that a Notifiable Incident had occurred he or she was to report, or make arrangements for reporting the incident to the relevant Service Police organisation. In addition, the Instructions stated that the commanding officer may also report incidents 'in parallel to their chain of command'.³⁵ Confronted with allegations of a number of sensitive and serious incidents, and given the unusual circumstances, CMDR Brown took the matters to his chain of command.

The Gyles Report

2.24 In his report, Mr Gyles took the view that CMDR Brown's decision to refer matters to Fleet Headquarters could not 'be properly criticised'. The commanding officer had before him a series of accounts involving—the high incidence of failure to pass breath tests in Darwin, a public sex act in Qingdao and allegations of bullying and intimidation. Mr Gyles observed that this was the first time that CMDR Brown had had to seek advice of this kind and was reluctant to take this step because 'the ethos was that a Commander should be able to take care of matters onboard'. According to Mr Gyles, CMDR Brown was 'prudent' to take such action. Mr Gyles also noted that the executive officer supported the commanding officer's view. He observed that CMDR Brown's decision 'was not questioned or criticised at Fleet Headquarters, and the way in which it was dealt with there illustrates the complexity of the problem'.³⁶

Committee view

2.25 CMDR Brown's email of 30 April 2009 to Fleet Headquarters clearly identified the matters that caused him to seek assistance. In turn, Fleet Headquarters relied on information contained in this key document, and also conveyed in telephone conversations by CMDR Brown, as the basis for deciding a course of action. Without

34 Commission of inquiry into alleged incidents onboard HMAS *SUCCESS*, transcript, 12 March 2010, p. 73.

35 Defence Instructions (General), ADMIN 45-2, (Issue No ADMIN B/10/2001) paras 10 and 17.

36 Gyles Report, Part One, para. 4.2.

doubt, the commanding officer of *Success* placed a great deal of weight on reports that a number of 'bounties' had been placed on very junior female members of his ship's company and there had been instances of junior female sailors being abused, intimidated and threatened ashore. He believed that there was a predatory element onboard that focused on junior inexperienced females which was led by a particular department onboard. In correspondence to Fleet Command, he cited one specific incident of unacceptable behaviour which involved a junior female sailor and a male sailor engaging in a public sexual act in a bar in the full view of POs and other members of the ship's company.

2.26 According to CMDR Brown, the members who had brought these matters to his attention felt that they were very much at risk. Further that, at the time, the sailors in question were not willing to come forward due to the potential for incrimination and recrimination. Indeed, he wrote that the junior females that are involved feel that they have very little recourse and if they speak up there will be consequences.

2.27 He was also concerned that a number of junior sailors onboard were confident that a particular department condoned their inappropriate actions and believed that they had the 'consent' of the senior sailors.

2.28 The committee has drawn attention to Defence Instructions that advise that a matter deemed sensitive, serious or urgent may be a Notifiable Incident which requires the commanding officer to report the matter to the relevant Service Police Organisation. He or she may also report such incidents 'in parallel to their chain of command'. In this regard, the committee is of the view that some of the reports of unacceptable behaviour before the commanding officer of *Success* could definitely be categorised as identifiable incidents and thereby warranted prompt and urgent attention. CMDR Brown was correct in notifying, and requesting assistance from, Fleet Command.

2.29 The committee's findings, however, do not answer the question as to why the situation in *Success* was allowed to develop to such a state before outside intervention was needed. Clearly, the allegations of abuse of junior females and of bullying and intimidation had not been afforded proper attention. The committee notes, however, the responsible actions of the XO and the few senior sailors who did report what they believed to be unacceptable behaviour.

Decision to send an E&D team

2.30 As noted above, the commanding officer made absolutely clear to Fleet Headquarters that he was seeking outside assistance and asked CDRE Cullen if he would investigate the matter further.³⁷ Subsequent correspondence indicates that Fleet

37 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, pp. 72–73.

Command took the matters raised by the commanding officer of *Success* seriously. CDRE Bates informed the Commission:

Shortly after receiving that email I spoke with CDRE Cullen...I cannot remember the details of the conversation other than a concern and the issues raised by the CO [commanding officer] in his email to CDRE Cullen and possible options Fleet could take. I believe it was in this meeting that DFC passed the matter to me for further action.³⁸

Within the hour I telephoned SUCCESS and spoke to CMDR Brown. We talked for about 20 to 30 minutes.³⁹

2.31 Based on the widespread nature of the allegations and the informal reports at Fleet Headquarters which indicated that *Success* was 'a cohesive ship that was performing well', CDRE Bates maintained that he was 'somewhat sceptical of the concerns expressed by the CO'.⁴⁰ He explained:

At some later stage I can recall discussing this concern with CDRE Cullen and RADM Coates. It was agreed that while the matter clearly needed urgent and serious attention we should be cautious not to over react.⁴¹

2.32 At various times, CDRE Bates discussed these matters with a range of people at Fleet Headquarters including RADM Coates; Captain Partridge, the Chief Staff Officer–Engineering; Captain Grunsell, Chief Staff Officer–Support; CMDR Bowers, the Fleet Legal Officer; and Lieutenant McArthur, the senior equity adviser.⁴²

2.33 CDRE Bates indicated that he wanted to establish whether there was substance to the allegations and suggested to CMDR Brown that 'maybe the commanding officer of HMAS *Pirie* could come onboard and look into it'. This ship was in the area at the time. In response to this suggestion, CMDR Brown noted that the commanding officer of *Pirie* had worked for him and that 'he may feel a bit uncomfortable' conducting this type of activity on 'someone in his direct chain of command'. CMDR Brown also indicated that he did not think the commanding officer of *Pirie* was properly resourced, noting that 'he had a very small patrol boat 3000

38 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 5.

39 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 5.

40 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 5.

41 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 6.

42 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 6.

miles from home'.⁴³ CMDR Muller shared the view that it was not appropriate for an officer under the tactical command of CMDR Brown to investigate the ship.⁴⁴

2.34 Even so, on 28 April, CMDR Brown put the proposal to the commanding officer of *Pirie* but, as expected, he was reluctant to undertake the task.⁴⁵ CDRE Bates had also contemplated sending Captain Partridge from Fleet Headquarters to *Success*. Indeed, Captain Peter Bowers, Fleet Legal Officer, briefed Captain Partridge in relation to the conduct of a quick assessment (QA) into allegations of unacceptable behaviour in *Success*.⁴⁶ According to CDRE Bates:

My memory is that I considered sending CAPT Partridge to the ship. My thinking behind this option was that since the CO's concerns appeared to centre on the culture in the Engineering Department, CAPT Partridge being the Senior Fleet Engineering Officer would be well qualified to discern whether there was a problem.

To that end I advised LEUT McArthur that CAPT Partridge would be joining SUCCESS in Hong Kong and directed her to bring him up to speed on E&D in the ADF. This option was subsequently discussed with RADM Coates and then dismissed because firstly the Fleet Commander was of the view, and I agreed, that sending an officer of captain in rank was unnecessarily heavy handed.

Secondly, it was expected that an officer of the rank of captain would have trouble determining the required information, particularly given advice of the CO that he thought that his people would be very reticent to come forward.⁴⁷

2.35 CDRE Bates then indicated that he would arrange for an equity and diversity team, made up of two personnel, to come onboard to conduct an equity and diversity workshop.

No quick assessment

2.36 Mr Gyles was uncertain as to why the commanding officer could not have conducted a Quick Assessment (QA) of the allegations brought to his attention by the XO. In his view, the commanding officer's email to Fleet Headquarters came very

43 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 70.

44 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 395.

45 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 70.

46 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 23 June 2010, p. 54.

47 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 7.

close to one.⁴⁸ A QA is used to identify and assess promptly (generally within 24 hours) the known facts of an incident so that a decision can be taken about the most appropriate course of action to adopt. Defence Instructions make clear that:

Following an occurrence, which can be any significant incident, allegation or problem, which comes to the attention of the commander/supervisor, the commander/supervisor, using common sense and sound judgement, must decide whether a QA is required. Should the commander/supervisor be of the opinion that subsequent investigation or inquiry of the occurrence may be required, a QA must be conducted.⁴⁹

2.37 In giving evidence, CMDR Brown agreed that Defence Instructions state that upon receipt of a complaint or detection of an incident and after establishing the intentions of the complaint, the commander or manager is to instigate a process for the management of the complaint—a QA. As noted earlier, the commanding officer had asked his coxswain to investigate a number of incidents including the discovery of material associated with drug taking, the alleged consensual sex act onboard *Success*, and the reported public sex act. With the latter incident, the coxswain had confirmed that the stories were 'out there': that two sailors had been involved in sex in a public bar in Qingdao.⁵⁰

2.38 CDRE Cullen was of view that based on the information that the commanding officer had provided to him, it was not possible to determine whether the issues raised were disciplinary or E&D matters or both. He was of the view that the normal course would be to conduct a quick assessment, which would clarify the position and determine more fully the nature of the complaint and whether an investigation should be undertaken.⁵¹

2.39 In his second conversation with the commanding officer, CDRE Cullen recalled a general discussion regarding the appointment of an officer to conduct a quick assessment. According to CDRE Cullen, CMDR Brown told him that he did not have 'a good rapport with his ship's marine engineering officer and that, as a result, he was not prepared to use him as a person to conduct a quick assessment'.⁵² CDRE Cullen noted that CMDR Brown was keen to have someone external to the ship undertake that assessment: that he felt that other senior people on the ship 'were either unsuitable or compromised and he couldn't use them'.⁵³ Besides, CMDR Brown

48 Gyles Report, Part One, para. 4.1.

49 DI(G) ADMIN 67-2, para. 8.

50 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 58.

51 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 7 July 2010, p. 8.

52 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 7 July 2010, p. 5.

53 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 7 July 2010, p. 17.

argued that in his mind 'this was not an E&D or unacceptable complaint, it was an issue to do with culture in my ship which I asked to be investigated'.⁵⁴

2.40 CDRE Bates, who had carriage of the matter, noted that a QA was considered but dismissed as an option. He explained that he had decided against a QA because:

- (a) The CO had indicated in his email of 30 April 2009 and further in our phone conversation on 1 May 2009 that he thought many of the ship's company, and in particular, the female junior sailors, would be very reticent to come forward and provide any evidence of inappropriate behaviour or an inappropriate culture.
- (b) While the matters of concern to CO SUCCESS were significant, they were at that stage rumour-based with no evidence to support them. Not wishing to over-react to what amounted to rumour, I did consider there existed at that point in time a sufficient basis upon which to instigate a QA or other administrative inquiry. It has been my experience that a QA is more appropriately utilised in situations where a discrete incident has occurred and a quick answer is required to determine whether any further investigation into that incident is warranted. In this instance we had no specific or identifiable incident in which a QA could be instigated.
- (c) While unconfirmed, most of the concerns held by CO SUCCESS related to matters which, if accurate, would likely need to be dealt with under the Defence Force Discipline Act (DFDA). It is my understanding that a QA was not an appropriate means for investigation of a DFDA.
- (d) An ADFIS [Australian Defence Force Investigative Service] inquiry was considered inappropriate at the stage since ADFIS will not investigate matters absent a notifiable incident report, and in this case the concerns were essentially rumour-based and insufficient to base such a report.⁵⁵

2.41 CDRE Bates concluded:

...that a less formal means of assisting CO SUCCESS to determine the actual situation onboard was preferable, particularly if such a mechanism

54 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 168.

55 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, pp. 7–8. CDRE Bates also informed the Commission that it became clear to him 'that the commanding officer had very little in the way of facts to base his assumptions and that his conclusions were primarily based upon the opinion proffered to him in one meeting with a small number of his ship's company'. Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 5.

could additionally provide some level of E and D training to reinforce Navy standards and expectations.⁵⁶

2.42 Thus, according to CDRE Bates, he considered that the 'most reasonable, balanced and appropriate response' was to send the senior equity adviser of Fleet Command, Lieutenant McArthur, and the Assistant Equity and Diversity Coordinator of Fleet Command, WO Melville Harker, to the ship. He expected that they would be 'less obtrusive to the ship's company than the other options and thus more likely to flesh out whether there was a cultural issue of unacceptable behaviour.'⁵⁷ They were not to conduct a QA.

2.43 CMDR Brown stated that he raised concerns with the CCGS about sending the E&D team but, while he wanted a full investigation, conceded that the E&D team would provide further information for the way ahead.⁵⁸ CMDR Muller also maintained that she recalled thinking and stating that sending an E&D team to join the ship was not adequate.⁵⁹ CDRE Bates did not recall the commanding officer requesting him to instigate a formal investigation.⁶⁰

The Gyles Report

2.44 Overall, Mr Gyles acknowledged that the Fleet Commander and CDRE Bates were confronted with a very unusual situation. He found:

In spite of CDRE Bates's evidence, the allegations could not be dismissed as simply rumour, and they pointed to a longstanding serious cultural problem between MT male sailors and female sailors. I can understand the point of view that a senior engineering officer might not be best placed to deal with the problem, particularly when engineering sailors were said to be at the core of it. Once that was appreciated, the choice of the senior equity and diversity adviser, particularly a mature and experienced woman sailor, makes sense.⁶¹

2.45 Although puzzled by the decision not to ask the E&D team to conduct a quick assessment, Mr Gyles noted CDRE Bates's view that the quick assessment procedure was 'appropriate for identified incidents but not for the generalised allegations

56 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 8.

57 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, pp. 7–8.

58 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 168.

59 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 395.

60 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 5.

61 Gyles Report, Part One, para. 4.33.

suggestive of a culture extending over some years'.⁶² Mr Gyles noted further that whilst "occurrence" for the purpose of the Instructions, is probably not so limited, the procedure is best adapted for identified incidents'.⁶³

Committee view

2.46 Without doubt, the allegations now before the commanding officer needed to be investigated in order to establish their veracity so that further action could be taken if required. As noted previously, the committee is of the view that the commanding officer of *Success* was correct in seeking assistance from Fleet Command. Nonetheless, questions remain as to why Defence Instructions relating to Notifiable Incidents, reporting unacceptable behaviour and quick assessments were not observed.

2.47 The committee accepts Mr Gyles observation that the commanding officer's email to Fleet Headquarters came very close to a QA.⁶⁴ It, however, was not categorised as such and thus from the very beginning the process began to deviate from Defence's established legal framework. The committee is of the view that a QA at the beginning of this process would have provided the necessary legal foundation to then proceed with further inquiries where clear and well understood precedents and written guidelines and instructions would have governed their conduct. It would have provided a valuable record of the factors considered by the commanding officer in support of his wish to have an investigation. The committee has found in previous inquiries that it is critical to get this early stage of an investigation right—that any failing or shortcoming at the beginning may thereafter contaminate the whole process.

2.48 The committee now considers the appropriateness of the decision to dispatch an E&D team to HMAS *Success*.

The role and function of the E&D team

2.49 Much confusion surrounded the role and function of the E&D team. CDRE Bates telephoned the commanding officer of *Success* to inform him of the intention to send an E&D team. According to CDRE Bates, he made clear to CMDR Brown that the team was being provided to:

- assist him informally in exploring whether he did in fact have any inappropriate behaviour or culture occurring in the ship; and
- provide E&D presentations in order to assist him in rectifying a poor E&D culture should that exist.⁶⁵

62 Gyles Report, Part One, para. 4.35.

63 Gyles Report, Part One, para. 4.35.

64 Gyles Report, Part One, para. 4.1.

65 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 8.

2.50 In his statement before the Commission, CDRE Bates indicated that it was made clear to the commanding officer that he should provide 'clear direction' on how he wanted the team to conduct its business on board.⁶⁶ Indeed, CDRE Bates sent an email confirming this intended course of action. This email of 1 May 2009 outlined the purpose of having the E&D team join the ship as follows:

- In order to assist you in determining whether there is in fact 'a significant cultural issue' in SUCCESS. The two [members of the E&D team] will be led further by your instructions on arrival but I have advised them that they are not onboard to conduct a formal QA [quick assessment] or inquiry, but to provide you with a sense of the culture onboard and, if necessary, recommend remedial action. I anticipate that SEA-FC [Senior Equity Adviser—Fleet Command, being LEUT McArthur] will leave you with a written report and I have asked that I receive an information copy of such. If, on receipt of SEA-FC's advice, you believe that further action is required you will need to initiate such. I am happy to discuss at any time.
- In order to provide a comprehensive E&D education program for your entire ship's company.⁶⁷

2.51 Consistent with this correspondence, CMDR Brown understood that the E&D team were 'to provide some comprehensive E&D education, and to assist me by providing a report on anything they were able to ascertain during that time onboard'.⁶⁸ He was under the impression that the team would see where the ship was in terms of compliance with equity and diversity, conduct workshops with different groups onboard and at the same time ascertain whether the claims or his concerns had any veracity.⁶⁹

2.52 While there was a general appreciation of the purpose in sending an E&D team, there were no precedents or written guidelines to assist the team to undertake their given tasks. Captain Bowers, Fleet Legal Officer, told the Commission that he was not familiar with the term equity and diversity health check but understood that the E&D team were 'to conduct a general assessment of the culture on board'. He was of the view that this undertaking was different from a QA:

A quick assessment is something with far more definition. It has a Defence Instruction, it has structure and a place within the legal framework...a

66 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 9.

67 Gyles Report, Part One, para. 4.46.

68 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 76.

69 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, pp. 72–73.

health check is something a little less defined...it's not defined at all so far as I know in writing.⁷⁰

2.53 Lieutenant McArthur also noted that there were no instructions or guidance for an E&D health check.⁷¹

Instructions to the E&D team

2.54 On 1 May, CDRE Bates held a meeting with the E&D team and handed Lieutenant McArthur a hardcopy of the email that he had sent to CMDR Brown that day. CDRE Bates maintained that he informed Lieutenant McArthur that the commanding officer of *Success* had some concerns of a possible culture of unacceptable behaviour in his ship. Consistent with his advice to CMDR Brown, he told Lieutenant McArthur:

...she was to join SUCCESS for two reasons (1) to make herself available to CO SUCCESS and to assist him to determine whether there was any basis to the claims of unacceptable behaviour or unacceptable culture in the ship; and (2) to conduct a fresh round of E and D briefings for the ship's company in order to ensure the ship's company was fully cognisant of E and D issues.⁷²

2.55 Lieutenant McArthur told the Commission that she had a copy of CMDR Brown's email and read carefully the following paragraph (quoted earlier):

Sir, it is my firm belief that there is a predatory element onboard that focuses on junior inexperienced females which is led by the [redacted] department onboard. I am convinced that there are a [redacted] number of junior sailors onboard who are confident that their actions are condoned thinking that they have the 'consent' of the senior sailors onboard, the junior females that are implicated feel that they have very little recourse and feel that if they speak up there will be consequences. The members who have brought this to my attention feel they are very much at risk, but feel that enough is enough.⁷³

2.56 According to Lieutenant McArthur, before joining *Success*, she and WO Harker planned to conduct the standard E&D presentation as well as the targeted equity training.⁷⁴ She explained to the Commission that the team's role was 'to go and

70 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 23 June 2010, pp. 75–6.

71 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 276.

72 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 9.

73 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 282.

74 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, pp. 213–14.

conduct targeted equity training, particularly in the area of irresponsible use of alcohol ashore. The second part ...was to gauge the culture, which we were going to do by running workshops and basically see what people said.⁷⁵

2.57 WO Harker, the second member of the E&D team, agreed with the view that their first task was to assist in determining whether there was, 'in fact, a significant cultural issue'. He understood this to mean, 'to see if there was this predatory culture onboard ship'.⁷⁶ He was, however, unsure how the E&D team were going to do that.⁷⁷ The second part was to provide a comprehensive equity and diversity education program for the entire ship's company. In his opinion, they were being asked 'to provide a rehash of the annual awareness presentation'.⁷⁸ He noted that while the latter was very clear, he was not clear how they were going to determine the cultural issue. He informed the Commission that he had many conversations with Lieutenant McArthur before leaving Sydney for Hong Kong about how they were going to carry out their tasks.⁷⁹

2.58 He also told the Commission that he had not previously been involved in an equity and diversity assignment like this and, to his knowledge, there was nothing in the Defence Instructions to assist in such a task.⁸⁰ According to the WO, the team were on a fact finding exercise 'to just try and substantiate anything that was going on. Not to investigate'. He informed the committee that he had not done an investigator's course so he would not 'even know how to start investigating'.⁸¹ Lieutenant McArthur similarly indicated that she had never conducted a routine inquiry, or inquiry under the Defence Inquiry Regulations, been an inquiry officer or an assistant to an inquiry officer or had any training in investigative inquiries, but that she had done a couple of QAs.⁸²

75 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 240.

76 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 26 March 2010, p. 328.

77 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 26 March 2010, p. 328.

78 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 26 March 2010, p. 329.

79 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 26 March 2010, p. 328.

80 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 26 March 2010, p. 313.

81 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 26 March 2010, p. 362.

82 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 305.

2.59 Crew members were also unclear about the reasons for the E&D team and its purpose. Evidence indicates that the ship's company was not informed that the E&D team were there to look into the culture of the ship. The Daily Orders, issued on Wednesday, 6 May 2009 for *Success* included Item 4—'Whole Ship Training'. It stated:

Fleet staff have arrived onboard to conduct cultural awareness and Equity and Diversity presentations. These presentations will be conducted in Station 9 from the period AM Wednesday thru to PM Friday. The presentations will be given to specific groups, i.e. male officers, WOs/CPO, etc, so listen to pipes throughout this period.⁸³

2.60 CMDR Donna Muller, who authorised the release of the daily orders, noted that the team did not have any terms of reference. She stated that she:

...was left with the understanding that the team were onboard to do targeted cultural equity and diversity training while at the same time identify whether there were any signs of there being cultural problems aboard, the later being the primary reason for their presence onboard. I was left with the impression that they were joining the ship with little guidance from fleet command and I remain unsure as to whether there was an expectation that the CO was expected to be more directive and prescriptive of what needed to take place.⁸⁴

2.61 While giving evidence before the Commission, Lieutenant McArthur conceded that the heading and the substance of the daily orders that related to the E&D team's presence on *Success* was not a fair statement of what they were to do—that it was quite misleading.⁸⁵

2.62 Although CDRE Bates's email of 1 May stated that the two E&D officers would be led further by the commanding officer's instructions on arrival, no such directions were given to them.⁸⁶

83 Gyles Report, Part One, para. 4.70 and also evidence from WO Harker, Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 26 March 2010, p. 331.

84 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 397 and Gyles Report, Part One, para. 4.71.

85 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 306 and Gyles Report, Part One, para. 4.71.

86 Lieutenant McArthur made clear that the commanding officer did not provide any instructions or directions as to what the E&D team were to do: that she was not provided with any information that would have assisted the E&D team in its activities. She explained that she had a discussion with the CO in which they determined the way ahead which was going to be workshops'. Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 241.

The Gyles Report

2.63 Mr Gyles noted that if the evidence of CDRE Bates, Lieutenant McArthur and WO Harker were accepted:

...the instructions were very brief and contained little in the way of guidance as to what was to be done or what potential remedial action might be taken in conjunction with the Commanding Officer.⁸⁷

2.64 In particular, he observed 'it was not made clear how an informal sounding or testing of a culture could be converted into remedial action'.⁸⁸

E&D training, inquiry or investigation

2.65 Evidence presented to the Commission showed a blurred understanding of the extent to which the team's role was to inquire or even investigate the allegations of unacceptable behaviour. Lieutenant McArthur was of the view that one could gauge culture by conducting surveys, by 'asking questions that do not have to be investigative questions'.⁸⁹ She stated, 'with regards to trying to ascertain whether rumours are rumours or fact, then we did need to try and find out was there any substance to the rumours.'⁹⁰ In her opinion, however, the E&D team did not attempt to substantiate the rumours and did nothing to verify them.⁹¹ She informed the Commission that the E&D team had conducted an informal process that she termed a health check as distinct from an audit.⁹² According to Lieutenant McArthur, the term 'equity and diversity health check' suited the situation. She said:

I believe an audit has pretty fair guidelines as to what you've got to check off. A check is an informal process—it was an informal report.⁹³

2.66 Lieutenant McArthur told the Commission that it was her expectation that following the E&D process, 'an investigation would occur'.⁹⁴ WO Harker also

87 Gyles Report, Part One, para. 4.38.

88 Gyles Report, Part One, para. 4.38.

89 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 240.

90 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, pp. 301–2.

91 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 302.

92 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 277.

93 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 277.

94 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 303.

regarded their role as obtaining facts and not 'investigating allegations'.⁹⁵ On the other hand, when asked about whether the E&D team would conduct an investigation, the commanding officer stated that the team was to test the veracity of the allegations. He accepted that an investigation is 'testing the veracity of allegations'.⁹⁶ To his mind, the E&D health check was 'a workshop and a fact-finding exercise'.⁹⁷

The Gyles Report

2.67 Mr Gyles found that the Fleet Commander and CDRE Bates were not necessarily in error in choosing to send an equity and diversity team to conduct an informal exercise, rather than have an engineering officer (or some other officer) conduct a quick assessment. Nonetheless, he questioned the wisdom in taking this course of action.⁹⁸ Mr Gyles noted the 'lack of guidance, if any, from Fleet Command about the actual carrying out of the team's task'. Formal Defence Instructions also provided no assistance. He stated:

The consequence of that choice, however, was that there was no Instructions, Regulations, guidelines or precedents for the task. It was not covered by the *Administrative Inquiry Manual*. Those directing the task, those performing it and those onboard the vessel affected by it had no previous relevant experience. Neither LEUT McArthur nor WO Harker had any training or experience in investigations. There were no relevant equity and diversity Instructions, Regulations or guidelines, and there was no such previous equity and diversity experience. The defined system of administering equity and diversity training and of monitoring the delivery of that training was quite distinct. Even targeted E&D training is a concept different from that with which LEUT McArthur and WO Harker were tasked insofar as the first objective was concerned.⁹⁹

2.68 Thus, according to Mr Gyles:

Questions such as privacy, self-incrimination, defamation, exposure of informants to repercussions and the obligation to report unacceptable behaviour were simply not taken into account. It is difficult to understand why the Fleet Legal Officer was not consulted about the proposed change in the course of action: he had been involved in the matter in other respects. The difficulties inherent in departing from the normal rules for the conduct of administrative inquiries should have been explored. Although the situation called for a prompt response and although there were numerous

95 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 26 March 2010, p. 349.

96 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 168.

97 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 192.

98 Gyles Report, Part One, para. 4.36.

99 Gyles Report, Part One, para. 4.37.

other matters requiring the attention of the Fleet Commander and CDRE Bates, greater consideration of the legal and practical aspects of the task to be performed was called for and might have obviated the difficulties that later presented themselves.¹⁰⁰

2.69 He drew attention to the ambiguity in the task given to the E&D team, suggesting that combining an E&D program with an 'unspoken quasi-investigatory function was likely to cause difficulties'.¹⁰¹ In his view, the E&D health check:

...was essentially an investigation, albeit informal, but it was not described as such. Indeed, it was fairly described by the Commanding Officer in a statement he gave to an ADF Investigative Service investigator—that it was an investigation in the guise of an equity and diversity health check.¹⁰²

2.70 Mr Gyles cited a further complicating factor in deciding to send the equity and diversity team to join the ship. He noted that 'on any view the concerns raised in CMDR Brown's email of 30 April 2009 were, if true, serious disciplinary and command matters that cannot readily be classified, at least completely, as "equity and diversity" matters as defined in relevant Defence policy'.¹⁰³ In his view, the team 'was entering uncharted territory on this mission, and there was no policy or Instruction that could provide guidance'.¹⁰⁴ He stated:

There should have been no pretence of a 'comprehensive E&D education program' to muddy the waters.¹⁰⁵

2.71 Overall, he found that sending an equity and diversity team was:

...an unconventional approach to an unusual problem and it departed from established procedures. It was fraught with danger and danger eventuated. As a result, the so-called E&D health check was a flawed process.¹⁰⁶

Committee view

2.72 The committee supports the findings of Mr Gyles on the decision to send an E&D team to join *Success*. The team was provided with no clear terms of reference and had no Defence regulations or instructions to guide its conduct. Much confusion also surrounded the actual role and function of the E&D team which meant that there was a breakdown in communication and those on board *Success* had no reasonable understanding of the purpose of the so-called 'cultural awareness and Equity and Diversity presentations'. Furthermore, Mr Gyles described their activity as a 'quasi-

100 Gyles Report, Part One, para. 4.39.

101 Gyles Report, Part One, para. 4.41.

102 Gyles Report, Part One, para. 4.38.

103 Gyles Report, Part One, para. 4.40.

104 Gyles Report, Part One, para. 4.192.

105 Gyles Report, Part One, para. 4.193.

106 Gyles Report, Part One, para. 5.28.

investigation' which was undertaken by people with no training or experience in conducting such inquiries. Clearly, the appointment of the E&D team and the tasks assigned to it meant that it was destined to fail.