

Chapter 3

The nature and veracity of complaints and reasons for landing the three senior sailors

3.1 The committee was asked to determine the nature and veracity of the complaints and allegations concerning equity and diversity issues made by personnel onboard *Success*. It was also asked to consider 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).

3.2 The committee has noted that the E&D process was flawed. In this chapter, the committee looks closely at the veracity of the report that came out of this process. It confines its consideration to the presentation and soundness of the conclusions reached in the E&D report based largely on the way the team went about gathering and assessing the evidence before it. In this regard, the committee is concerned with the substance of the facts as presented to CMDR Brown and Fleet Headquarters by the E&D team. The committee then considers the immediate aftermath following the presentation of the report to the commanding officer and the manner in which decisions were made and actions taken.

Nature of complaints

3.3 The E&D team was of the view that part of their task was to 'ascertain if continual rumours relating to unacceptable behaviour in *Success* could be substantiated'. According to the E&D team some of the rumours circulating at that time in *Success* were that:

- a bounty was placed on the head of any new female posted to *Success*, to see who could have sex with that member first, including female officers, senior sailors and junior sailors;
- a predatory culture existed within the MT department on *Success*, whereby some of the male senior sailors and junior sailors actively sought out young female junior sailors and coerced or bullied them into having sex while ashore;
- a sexual act took place between a female junior sailor and a male junior sailor in public areas, and that MT senior sailors watched on and encouraged junior MT sailors to watch on; and
- threats were made against certain members of the crew if they spoke out about the nature of the unacceptable acts being carried out.¹

1 Results of equity and diversity health check workshops held in HMAS *Success* during the period 4 May–9 May 2009 (The equity and diversity team's report), para 1, Appendix C to Gyles Report, Part One.

3.4 In order to ascertain whether the rumours of unacceptable behaviour had substance, the E&D team over a period of three days held various meetings with crew members onboard the ship.

Conduct of the E&D health workshops

3.5 The E&D team joined the ship in Hong Kong on 4 May 2009 prior to the vessel sailing for Singapore and conducted their workshop onboard during that period.² They had three days to conduct presentations for the ship's personnel which had to accommodate the ship's existing schedule. The approach taken by the E&D team involved standard group presentations, group discussions and invitations to crew members to confer with them privately.³ Lieutenant McArthur explained to the Commission:

...the plan was to run the standard equity and diversity presentation and follow up with discussion, being the targeted discussion...about the irresponsible use of alcohol and unacceptable behaviour ashore and then we would open up the floor for discussion...we would offer all personnel the opportunity to speak with us in private if they wanted to discuss something and were uncomfortable doing so in an open environment.⁴

3.6 Lieutenant McArthur and WO Harker agreed to present separately to different groups simultaneously.⁵ In total, about 15 presentations were conducted during the period from the morning of 6 May through to 8 May 2009. The main features of the presentation included defining unacceptable conduct, rights and responsibilities of persons and the complaint management process.⁶ According to Lieutenant McArthur:

At the beginning of each group discussion I explained why I was there. I explained that fleet command had heard rumours, but not the subject matter of those rumours. That the CO of the ship had requested assistance and I was asked to supply targeted equity and diversity training.⁷

2 Gyles Report, Part One, para. 1.119 and Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 214.

3 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 216.

4 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 215.

5 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 215.

6 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 215.

7 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 217.

3.7 WO Harker told the Commission, however, that they provided annual equity and diversity training not targeted training.⁸

3.8 Mr Gyles questioned whether the meetings followed this format strictly. He noted, for example, that it was reasonably clear that the meeting with the female junior sailors:

...involved little E&D training of the kind delivered in the annual compulsory training. There is evidence—which I accept—of general discussions about a number of matters, such as sexual harassment, swearing, treatment of females, behaviour of females, fraternisation and bullying.⁹

3.9 Indeed, the group E&D sessions encouraged 'open discussion about instances of unacceptable behaviour'. In some instances, alleged perpetrators were named.¹⁰ The E&D report noted:

As the workshops were conducted within peer groups, some of the ship's crew felt comfortable enough to openly talk in the group format. Most groups raised similar issues, including the use of steroids and drugs onboard, the closed off cultur[e] within the MT branch, inequality in punishments when it came to the MT branch, and the level of inappropriate relationships that occur on board.¹¹

3.10 The private sessions provided an opportunity for individuals or small groups to speak to the E&D team in confidence.¹² Lieutenant McArthur referred to a number of these private sessions, including two main instances of individuals approaching her, and one where a sub group of four sailors met her. During these particular sessions, the people stated that they were 'aware that inappropriate relationships may be going on between female junior sailors and male junior officers'.¹³ The sub group also raised other matters including: the public sex act and those who were present; the avoidance of random breath tests; some CPOs and POs not providing good role models; and some sailors gloating publicly about their sexual encounters with female sailors and officers.¹⁴ Another two individuals provided information regarding the senior sailors who bragged 'about the events that occurred in the bar where the sex act was alleged to have occurred', while another reported being threatened with physical violence if he

8 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 26 March 2010, p. 342.

9 Gyles Report, Part One, para. 4.83.

10 Gyles Report, Part One, paras 4.103–4.104.

11 The equity and diversity teams' report, para. 4.

12 Gyles Report, Part One, para. 4.184.

13 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 218.

14 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, pp. 219–20.

told the team anything.¹⁵ In some of these cases the names of individuals said to be involved in unacceptable behaviour were disclosed. Four female sailors provided the names of individuals allegedly using steroids.¹⁶

Contents of the E&D report

3.11 On 8 May 2009, after conducting its health check, the E&D team presented its report to the commanding officer. Lieutenant McArthur drafted most of the report, which recorded matters that had been brought to the attention of the E&D team. The report noted that the groups had voiced a number of common concerns that were 'shared across the majority of the crew, and through most ranks'.¹⁷ It also indicated that many people took the opportunity to speak to the E&D team privately and provided information 'that substantiated some of the concerns that had been raised during the group discussions'.¹⁸

3.12 The concerns mentioned in the E&D report included the use of drugs, inappropriate relationships, sexual act in public, the use of alcohol ashore, random breath testing, equality of punishment, leadership and mentoring, and predatory culture, particularly within the marine technical department.¹⁹ In more detail, the E&D team recorded that:

- most groups raised the issue of the use of steroids and recreational drugs by some junior sailors and it appeared common knowledge throughout the ship that steroids were found in the trash onboard *Success*;
- a common perception existed that random drug testing was not conducted as it was too hard and therefore culprits continued to use drugs—a number of individuals had come forward and provided the names of those allegedly using steroids, some of the users were experiencing steroid rages;
- female junior sailors 'almost unanimously agreed that it was easier to give in and agree to have sex with a sailor, than continually fight off their persistent attention'—when asked why they gave in, the common response was that 'some of the sailors were big and scary, and they intimidate to the point where you just give in to get it over and done with, particularly some of the MT sailors';
- it appeared to be no secret that some of the female sailors were having inappropriate relationships with male sailors and a number of individuals

15 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, pp. 221, 224–26.

16 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 217.

17 The equity and diversity team's report, para 6.

18 The equity and diversity team's report, para 7.

19 The equity and diversity team's report and Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 6.

stated they were aware of inappropriate relationships between female junior sailors and male junior officers;

- it appeared to be common knowledge across the ship that some sort of public sex act occurred recently in a bar in Qingdao;
- a number of individuals came forward and provided the names of two POs who were present when the public sex act was alleged to have occurred and the name of the ABMT [able seaman, marine technician] who allegedly had sex with an unknown female;
- most of the groups acknowledged that the consumption of alcohol while ashore was excessive and unhealthy and that it was a major contributing factor towards the unacceptable behaviour that goes on ashore;
- female junior sailors admitted that they drank too much when ashore, and get caught up in drinking games;
- some of the male junior sailors admitted that 'depth charging' female sailors' drinks without their knowledge was common practice and was used to get them drunk more quickly;
- a number of individuals stated that when RBTs were being conducted, one POMT 'told his boys to stay down the hole' if they thought they were going to blow over, and he would cover for them;
- individuals stated that on two occasions two personnel have blown over and the paperwork has been mysteriously misplaced;
- some of the groups referred to an incident that was alleged to have occurred in Cairns, where two *Success* sailors assaulted police officers and the perception amongst the ship's crew was that the two sailors did not receive a punishment as they belonged to the 'protected pack' of MT sailors;
- there was a common perception among junior ranks that not all senior sailors and officers set a good example or act as good role models, particularly in the areas of alcohol consumption, inappropriate relationships and dress and bearing while ashore;
- a number of individuals came forward and explained how they had on occasions escorted officers to bed because they were too intoxicated to get to their messes; and
- there was a general consensus among POs that some CPOs were missing in action in that they were neither available as mentors, nor set an example as mentors. This view was also shared by officers but not apparently so by the POMTs.²⁰

20 The equity and diversity team's report, paras 9–24.

3.13 The report also provided detailed information on what the E&D team termed predatory behaviour in the MT department, including the use of stand over techniques, intimidation and bullying, even threats of physical violence.²¹

3.14 Based on the contents of the discussions in the group and private meetings, Lieutenant McArthur concluded that:

- it was difficult to confirm if the bounty theory...was true and that although people talked about it, there was no real evidence to suggest that it existed;
- a predatory culture existed within the marine technical department whereby some of the male senior sailors and junior sailors actively sought out young female junior sailors and coerced or bullied them into having sex while ashore;
- a sexual act between a female junior sailor and a male junior sailor did take place in a public area and that marine technical senior sailors watched on and encouraged marine technical junior sailors to also watch on;
- threats had been made against certain members of the crew if they spoke out about the nature of the unacceptable acts being carried out.²²

3.15 The report did not make any recommendations.²³

Veracity of complaints

3.16 Lieutenant McArthur prepared the E&D report with WO Harker's input and assistance on the basis of the discussions during the presentations, as well as private conversations. She explained that she drafted the report with WO Harker progressively over the duration of the time spent on the ship.

3.17 As noted earlier, the stated task of the E&D team was to 'ascertain if continual rumours relating to unacceptable behaviour in *Success* could be substantiated'.²⁴ Even so, Lieutenant McArthur made clear that she did nothing to verify the veracity of the information coming from group discussion—'there is information in the report that was spoken of in the group discussions'. She explained that to test the validity of the information to raise it above the standard of rumour she used the 'put up, shut up' line:

Which is we were here to talk about behaviour ashore and we then moved into rumour mongering and I made it pretty clear to anyone that I spoke to that if what they were talking about was rumour then that needed to stop.²⁵

21 The equity and diversity team's report, paras 25–31.

22 The equity and diversity team's report, Summary.

23 Evidence of WO Harker, Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 26 March 2010, p. 340.

24 The equity and diversity team's report, para. 1.

25 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 243.

3.18 Indeed according to the report, the team advised groups that it wanted:

...to know about incidents of unacceptable behaviour or cultures onboard, only if they [crew members] had personally witnessed it, or been personally involved. This was so we could determine whether the details were fact or fiction.²⁶

3.19 Lieutenant McArthur disagreed with the proposition that she had gone beyond a mere recording of rumours. As noted in the previous chapter, she did not believe that the E&D team had taken on an investigative role and stated that it was her expectation that an investigation would follow.²⁷ WO Harker also did not regard the E&D team's role as investigating allegations.²⁸

3.20 Thus, in keeping with this view, the E&D team recorded in their report the complaints or allegations that were raised during both the open and private meetings. In a few places, the E&D team makes clear that they did not have enough information to substantiate allegations. It did so with regard to inappropriate relationships between female junior sailors and male junior sailors and the mysterious disappearance of paperwork connected with RBTs. In most cases, the report simply stated in general terms either that most groups, or some groups, or some individuals raised a particular matter.

3.21 The section dealing with predatory behaviour, however, was different. The statements made in this section of the report convey the impression that the type of conduct detailed under this heading was indeed fact. Before examining in detail the way in which the E&D team reported on the predatory culture, the committee notes Mr Gyles' overall assessment on the sources that it used to identify matters.

The Gyles Report

3.22 In his report, Mr Gyles examined and commented on the specific observations made by the E&D team. In his assessment:

- the alleged use of steroids was certainly a matter brought to Lieutenant McArthur's attention, and there can be no criticism of her in relation to that aspect of her report;²⁹
- the evidence from the E&D sessions showed that inappropriate alcohol use was raised consistently.³⁰

26 The equity and diversity team's report, para. 5.

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

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

29 Gyles Report, Part One, para. 4.207.

30 Gyles Report, Part One, para. 4.224.

3.23 He accepted Lieutenant McArthur's evidence or was satisfied that:

- it appeared to be common knowledge across the ship that some sort of public sex act occurred in a bar in Qingdao and that a number of individuals had provided the names of two POs who were present when the act allegedly occurred and the name of the ABMT who was allegedly having sex with an unknown female;³¹
- the matter of the excessive and unhealthy consumption of alcohol while ashore and female junior sailors drinking too much and getting caught up in drinking games was brought to Lieutenant McArthur's attention;³²
- individuals had stated that on two known occasions, two personnel had blown over the alcohol limit and the paperwork had been mysteriously misplaced—also there was no reason to disbelieve suggestions brought to Lieutenant McArthur's attention by individuals who had come forward to report one of the POMTs telling his boys to stay down during the RBT, that they 'were properly sourced from her activity on the ship';³³
- some groups had brought to her attention an incident alleged to have occurred in Cairns whereby two *Success* MT sailors assaulted police officers—that regardless of whether this is true or untrue, the perception amongst the ship's crew was that, the two sailors did not receive a punishment, as they belonged to the 'protected pack' of MT sailors;³⁴
- Lieutenant McArthur's source for the common perception among junior ranks that not all senior sailors and officers set a good example, or act as good role models came out of group discussions.³⁵

3.24 Mr Gyles also accepted that the following matters were brought to the attention of Lieutenant McArthur or WO Harker, or both of them, in some form during their group and individual E&D sessions:

...a CPOMT and at least two POMTs rule this ship and run the engineering department—known as the untouchables—use standover techniques—manipulate watch bills to ensure packs stays together when in port and ensure the pack will be covered during RBTs—they will lie for each other to ensure no dirt sticks—some MT sailors both junior and senior regularly gloat about the female sailors and Officers they've had sex with.³⁶

31 Gyles Report, Part One, para. 4.222.

32 Gyles Report, Part One, para. 4.227.

33 Gyles Report, Part One, para. 4.231.

34 Gyles Report, Part One, para. 4.233.

35 Gyles Report, Part One, para. 4.235.

36 Gyles Report, Part One, para. 4.244.

3.25 While Mr Gyles acknowledged or confirmed that certain matters were raised or that statements were made by groups or individuals during the public and private meetings, he does not necessarily accept the conclusions that the E&D drew from them. For example, he was of the view that the evidence before the Commission did not show the 'almost unanimous agreement' that it was easier to give in and have sex with a male sailor than to fight off their persistent attention' as claimed in the E&D report.³⁷

3.26 Overall, Mr Gyles found that the report was framed as though it were the result of an investigation or the substantiation of allegations: that it 'was not appropriate for an informal sounding exercise'.³⁸ He stated:

Although the E&D team had a basis for discussing the topics raised in the E&D report, the form and tone of the report is another matter. The purpose of the report was said to be 'to ascertain if continual rumours relating to unacceptable behaviour in SUCCESS could be substantiated'. According to the *Macquarie Dictionary*, the primary meaning of 'substantiated' is to establish by proof or competent evidence'. The E&D report is so framed: conclusions are expressed, particular incidents are reported, and particular individuals are identified by name or description as guilty. The form of the report was not appropriate for the task carried out.³⁹

3.27 Furthermore, he was critical of the section on predatory behaviour—which was crucial to the commanding officer's actions. In his view this section was 'couched in emotive and inflammatory language'.⁴⁰

Committee view

3.28 Based on the evidence, including assertions by Lieutenant McArthur and WO Harker, it is without doubt that the E&D team made no attempt to verify allegations. Yet as noted by Mr Gyles their report presents some of the rumours and allegations as though proven, as though fact.

3.29 The committee now considers in detail Mr Gyles' observation about the section of the E&D report dealing with predatory behaviour.

The reasons and factual evidentiary basis for landing the sailors

3.30 According to CMDR Brown, he was initially shocked by the contents of the E&D report. In his view, it was 'far more in-depth...covered a broader range of concerns' than he was aware of. Although the report raised allegations that covered a range of unacceptable behaviour, CMDR Brown was most disturbed by the references

37 Gyles Report, Part One, para. 4.219.

38 Gyles Report, Part One, p. xvii.

39 Gyles Report, Part One, para. 4.248.

40 Gyles Report, Part One, para. 4.248.

to threats of violence. He informed the Commission that he landed the three sailors because of concerns he had for the safety and welfare of the ship's company.

3.31 In this regard, CMDR Brown made clear that the contents of the E&D report were critical to his decision to land the three sailors: that the report confirmed his suspicions and the information contained in it formed the basis of his decision to talk to Fleet Command about removing the sailors.⁴¹ He stated:

Up until the point that I read that report I hadn't intended landing anybody, I hadn't discussed landing anybody prior to that. The report raised those concerns of safety and welfare quite vividly in my mind and that's when I made the decision that's what I wanted to do...there were thoughts going through my head that if this is bad enough maybe I'm going to have to land people, but I mean none of that had been confirmed in my mind.⁴²

3.32 A number of paragraphs in the report are germane to the committee's inquiry because of the role they had in the commanding officer's decision to remove the three sailors. Under the heading *Predatory Culture*, the paragraphs read in part:

There is a ship wide acknowledgement that a CPOMT and at least two POMTs rule this ship and run the engineering department. They are known throughout the ship as the untouchables. They believe they can do whatever they want and get away with it, because they believe they will never be posted off as they have unique specialist skills. This is a sentiment reflected through all departments and through most ranks... (paragraph 25)

They use standover techniques to get what they want, they intimidate and bully their way through the ship and ashore. They manipulate watchbills to ensure that the pack stays together when in port...(paragraph 26).

...

Since WO Harker and I arrived onboard two members of ship's company have been threatened by a CPOMT that they are not to tell us anything. They have been threatened with physical violence and with being posted off this ship (paragraph 30).

The allegations that have been made against the CPOMT and numerous POMTs are difficult to prove, however, I have no reason to doubt any of the information that has been provided to me, in confidence. The individuals have nothing to gain from telling me, they just want the pack culture to stop (paragraph 31).

3.33 The last page of the report identified by name a number of individuals alleged to have been involved in some of the incidents among them the CPO who was said to have threatened two crew members with physical violence.

41 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, pp. 134–5.

42 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 25 March 2010, p. 200.

3.34 It should be noted that Mr Gyles did not accept that Lieutenant McArthur was told [the CPO] had threatened two members of the crew.⁴³ She later acknowledged that the reference to two people complaining may have been 'a mistaken reference to the same person'.⁴⁴ In his view:

To that extent, I find that the E&D report was not properly sourced from information reported to LEUT McArthur. If LEUT McArthur was genuinely mistaken, it was a serious error in circumstances in which she knew that such a statement could or would lead to the landing of [the CPO].⁴⁵

3.35 Indeed, Mr Gyles casts considerable doubt over the reliability of the E&D report particularly with regard to allegations that led to the removal of the three sailors. He noted that the 'group-based approach might have been defensible if the purpose had been merely to gain a sense of the culture onboard...' With this objective in mind, individual contributions would have been used to acquire a better understanding of the culture that existed but without any action being taken on the basis of them. He explained:

Even if that had been the original intention, it did not last long. It is clear from the evidence...emails...and his conversation with [redacted] and the evidence of what WO Harker and LEUT McArthur said in sessions with MT sailors, that from an early stage the E&D team was focused on finding a justification for landing the perceived ringleaders of the unacceptable behaviour. That objective was at odds with the methodology employed and the stated basis for the exercise.⁴⁶

3.36 This finding is central to the committee's terms of reference because the commanding officer of *Success* maintained that it was his concerns about the safety of his crew that were critical to his decision to land the three senior sailors. Fleet Command approved the removal of the sailors based on the commanding officer's apprehensions and the contents of the report.

Verifying the allegations

3.37 By his own admission, the commanding officer did not make the most rudimentary of inquiries about the hearsay allegations recorded in the E&D report. According to CMDR Brown, he did not speak to the CPO, said to have made threats of physical violence, about the allegations in the report and did not think to ask about who made the allegations.⁴⁷ He explained that he was concerned that given everything

43 Gyles Report, Part One, para. 4.245.

44 Gyles Report, Part One, para. 4.246.

45 Gyles Report, Part One, para. 4.247.

46 Gyles Report, Part One, para. 4.194.

47 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, pp. 135 and 137.

else that was in that report and the complexities of the situation and if the information were correct and he raised it with the CPO, he 'might exacerbate the problem'.⁴⁸

3.38 It should be noted that the CPO had received a commanding officer's commendation from CMDR Brown and 'had been awarded the Herbert Lott Medal for outstanding performance as the top room technician in a course completed in 2009'.⁴⁹

3.39 While the CPO, who had allegedly threatened two crew members with physical violence, was named in the report, the two POs reportedly associated with the predatory behaviour were not. They were, however, named as the sailors who were alleged to have been watching the public sex act and encouraging the MT sailors present 'to watch on and clap and cheer'.⁵⁰ Although the commanding officer did not question Lieutenant McArthur about the report, he did ask her about the unnamed POs in the report referred to as part of the predatory culture. He sought clarification from Lieutenant McArthur as to whether a particular CPO and two POs were the ones associated with the threats and intimidation.⁵¹

3.40 When Lieutenant McArthur disclosed the identity of those believed to be the culprits, and after a discussion with her, CMDR Brown understood that the two named POs alleged to have encouraged others to watch the public sex act were also involved in the 'threats of physical violence'. He told the Commission that in his mind he linked the threats made by the CPO with the two POs.⁵² When pressed on this matter during the Commission's hearing, CMDR Brown stated clearly that 'My understanding is that they were involved in the threats, and that's why I acted the way I did'.⁵³

3.41 The commanding officer was unable to recall the reasons for not asking Lieutenant McArthur why the report was silent on the POs involvement in those threats. He also stated that he did not ask whether the threats made by the three sailors were against one individual or several.⁵⁴ CMDR Brown explained further:

The substance to the allegations in my mind at the time had come from my concerns that were raised at the meeting on the 26th with the three female

48 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 135.

49 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 136.

50 Gyles Report, Appendix C, the Equity and Diversity team's report, last page.

51 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, pp. 171–2, 175, 179 and 180 and 25 March 2010, pp. 203, 229 and 258–9.

52 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 179.

53 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 182.

54 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, pp. 180 and 183.

senior sailors which was then again in the report which, in my mind, provided some substantiation, some support to that—the initial claims.⁵⁵

3.42 CMDR Muller confirmed that neither she nor anyone present during the course of that meeting with the E&D team made inquiries as to the identity, rank, gender of the personnel against whom the threats were made. She stated that Lieutenant McArthur was quite clear that she would not provide these names: that the information was confidential.⁵⁶ Although surprised by the proposition that the CPO was involved in making threats, CMDR Muller did not suggest to the commanding officer that they should speak to the sailor about the allegations.⁵⁷

3.43 Having determined that the three sailors were involved in threats of physical violence, CMDR Brown decided that he needed to speak to Fleet Headquarters about having them removed.⁵⁸

Response by fleet command

3.44 CMDR Brown telephoned CDRE Bates on 8 May to inform him that Lieutenant McArthur had provided a report which confirmed his concerns and that he wanted to land one CPO and two POs. According to CDRE Bates, CMDR Brown:

Appeared genuinely concerned for the safety and welfare of his ship's company if these sailors were allowed to remain onboard. I directed the CO to email me a copy of the report as soon as possible. I also directed that he provide me his intentions in writing as soon as possible.⁵⁹

3.45 On 9 May, CMDR Brown forwarded via email:

- his intended course of action;
- SEA-FC's report (the E&D Report);
- a draft notifiable incident report; and
- a hot issues brief.

3.46 CDRE Bates forwarded this material to CDRE Cullen requesting a discussion with him as soon as possible.

55 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 138.

56 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 441.

57 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 29 March 2010, p. 442.

58 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 183.

59 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 10.

3.47 The commanding officer stated clearly in correspondence to Fleet Command his intended course of action:

The report has highlighted a number of issues that have reinforced my belief that a number of my ship's company *are in potential danger*, particularly if they speak about the incidents that have occurred. This is indicated *by the threats of physical violence* from [redacted] should they talk to the E&D team or 'spill the beans'. There is a real fear onboard that if anything is raised while the main protagonists are onboard then nothing will be done and they would be in danger of physical violence.⁶⁰

3.48 He later told the Commission:

...the reason I landed the sailors was not about the sex, it was not about the drugs...it was about my concern for the safety of the ship's company based on threats of physical violence and in accordance with my direction to maintain a safe working environment.⁶¹

3.49 It should be noted, however, that while the commanding officer cited in his intended course of action 'threats of physical violence and potential criminal activities' as the reason for removing the sailors, he went on to say:

Also for the Petty Officer [redacted] their complicity in the 'table sex' act referenced in the report and not acting in an appropriate manner for Senior Sailors in my view also warrants their removal based on a lack of trust.⁶²

3.50 CMDR Brown informed CDRE Bates of the identity of the three senior sailors that he wanted to land in Singapore, indicating that there may be other personnel whom he believed presented a threat to the safety of his ship's company.

3.51 CDRE Bates had a conversation with Fleet Commander during which it was agreed that the commanding officer's intended course of action to land the sailors be supported by fleet.⁶³ The evidence of those at Fleet Headquarters dealing with the matters relating to HMAS *Success* indicates that they also did not question the findings of the E&D team or the commanding officer's acceptance of them. CDRE Cullen took the view that in circumstances such those confronting CDRE Brown:

60 Gyles Report, Part One, para. 4.263 and S.T. Brown, Commanding Officer, HMAS SUCCESS, Intended Course of Action in relation to issues onboard HMAS SUCCESS relating to recent concerns by commanding officer HMAS SUCCESS. Copy provided to the committee in confidence. and Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 12 March 2010, p. 83.

61 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 24 March 2010, p. 151.

62 Gyles Report, Part One, para. 4.263.

63 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 10.

...the judgement of the CO should be given great weight and on the information that was then available I supported the CO's decision to land the sailors.⁶⁴

3.52 CDRE Bates told the commission that:

...the CO's concerns for the safety and welfare of his ship's company that was paramount in supporting his decision to land the sailors. Absent that concern, fleet would not have sanctioned the landing of these sailors.⁶⁵

3.53 He sent an email to CMDR Brown informing him that the Fleet Commander supported and agreed with his intention to land the sailors. He was also given permission to land 'other personnel that CO SUCCESS considered presented a risk to the safety and welfare of his ship's company'.⁶⁶

The Gyles Report

3.54 Mr Gyles noted that Fleet Headquarters appeared to accept the findings of the E&D report at face value and did not question the CO's response to them. According to Mr Gyles:

Given that Fleet Headquarters had sent the equity and diversity team, and accepting the team's report at face value, there was little basis for questioning the Commanding Officer's decision as a matter of substance. Having sent the E&D team to assist the Commanding Officer, and that team having confirmed—indeed, strengthened—the Commanding Officer's concerns, Fleet Headquarters was scarcely in a position to second-guess the conclusions of those on the spot.⁶⁷

It is arguable, however, that cooler heads away from the hothouse atmosphere of the vessel at the time should have picked up the fact that the E&D report on which the intended course of action was based had, first, gone well beyond what had been envisaged in the initial tasking of the team and, second, was framed in very colourful, even dramatic language—particularly if the Fleet Commander and CDRE Bates had been sceptical about the Commanding Officer's reaction in the first place.⁶⁸

3.55 He found:

There was sufficient substance to the complaints made to the Commanding Officer to warrant serious investigation. There might have been a proper

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

65 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 11.

66 Commission of inquiry into alleged incidents onboard HMAS SUCCESS, transcript, 5 July 2010, p. 11.

67 Gyles Report, Part One, para. 4.295.

68 Gyles Report, Part One, para. 4.296.

basis for temporarily landing certain sailors off the ship pending such investigation. But the decision by the Commanding Officer, with the approval of Fleet Command, to land those sailors who were landed was not the result of a proper process.⁶⁹

3.56 According to Mr Gyles, the decision to land the senior sailors 'was not justified'. He was of the view that 'the real reason for landing them was that they were identified as the ringleaders of the undesirable culture and behaviour of the MT sailors'. In his opinion, the flawed process 'affected the E&D report that was presented to the Commanding Officer and his actions in response to that report'.⁷⁰

Committee view

3.57 The committee was asked to consider the nature and veracity of complaints. At this stage in the report, the committee is only concerned with the extent to which the allegations had been substantiated at the time the commanding officer decided to land the sailors. The only evidence the commanding officer had access to derived mainly from conversations he had had prior to the arrival of the E&D team, for example, the conversation he had with the three senior female officers on 26 April; the E&D report; and his brief exchange with Lieutenant McArthur on 8 May. The information obtained from these sources especially the E&D report, however, was crucial to the commanding officer's decision to remove the three sailors.

3.58 Mr Gyles looked carefully at the E&D report and the evidence before him. In his assessment, people or groups of people did make allegations of unacceptable behaviour as recorded in the E&D report. He noted, however, two instances of inaccuracies in recording accounts or observations made to the E&D team—the 'almost unanimous agreement' that it was easier to give in and have sex with a male sailor than to fight off their persistent attention' and that two people had informed Lieutenant McArthur that a named senior sailor had threatened them. The latter error was particularly serious given that it was central to the removal of at least one senior sailor and supported or provided the context for the landing of another two.

3.59 In compiling the E&D report, the authors recorded the comments or observations made to them about the type and level of unacceptable behaviour. For example, the report stated that 'Most of the groups acknowledged that the consumption of alcohol (while ashore) is excessive and unhealthy'. In some cases the language was very general and clearly indicated that the report was recording statements or accounts given to the E&D team.

3.60 In some in places, however, the allegations were stated as though proven. Despite the E&D team not undertaking an investigation, in their report they draw conclusions that clearly elevate some allegations to the level of fact: individuals are

69 Gyles Report, Part One, para. 5.29.

70 Gyles Report, Part One, para. 5.28.

named as though guilty of unacceptable behaviour. For example, the report stated that 'the two members had been threatened with physical violence and with being posted off this ship'. This statement is not couched in terms of an allegation yet to be tested but as a matter of fact. Furthermore, as noted by Mr Gyles, the evidence did not support the conclusion that two crew members had indeed made such an allegation. Somehow, the commanding officer gained the impression from Lieutenant McArthur that two POs were involved with these threats of physical violence. The information provided to the E&D team made no such connection.

3.61 Based on their accounts, the members of the E&D team made no attempt nor intended to substantiate the truth or otherwise of the allegations. Those said to be involved in the alleged incidents were not approached to give their version of events. Indeed Lieutenant McArthur assumed that an investigation would follow.

3.62 The committee believes that the report was correct to record the views, observations and concerns of crew members to enable the E&D team to inform the commanding officer and Fleet Command about possible or even likely inappropriate conduct. In the committee's view, however, the report went beyond its remit by naming individuals as though guilty of unacceptable behaviour. It is irrelevant that the members of the E&D team insist that they did not conduct an investigation, because whatever way the report is read, it presented some of its most critical findings as though proven.

3.63 Despite the deficiencies in the report, no one in authority appeared to question the basis for its findings with both the commanding officer and Fleet Command accepting the report's findings at face value. They did not question or seek to corroborate the information contained in the report.

3.64 Thus, at the time of landing the three senior sailors many of the allegations remained largely untested. In the case of the three senior sailors, the evidence that they were involved in threatening two members of the crew with physical violence if they spoke to the E&D team was erroneous. Yet it was on these grounds that they were removed from the ship. The committee also notes Mr Gyles' view that 'from an early stage the E&D team was focused on finding a justification for landing the perceived ringleaders of the unacceptable behaviour'.

3.65 The E&D process was flawed. The report was couched in language that was misleading and drew conclusions without establishing the facts. Thus, a proper and thorough investigation was needed to establish the truth or otherwise of the allegations and rumours recorded in the E&D report. In this regard, it should be noted that after a rigorous examination of the allegations, the Commission of Inquiry identified a raft of problems involving unacceptable behaviour in *Success* between March and May 2009. These are discussed in chapter 5 of report.