

Chapter 1

Inquiry into incidents that occurred onboard HMAS *Success*

Referral of inquiry and terms of reference

1.1 On 26 November 2009, the Senate referred matters relating to incidents that occurred onboard HMAS *Success* and subsequent events to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 18 March 2010. The terms of reference for the inquiry are extensive and available on the committee's website. They are also at Appendix 1.

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

Conduct of inquiry

1.3 The committee advertised its inquiry on its website, and in the *Australian*, calling for submissions to be lodged by 21 December 2009. During the first week in December, the committee also wrote directly to a range of people likely to have been involved in matters covered by the terms of reference, drawing their attention to the inquiry and inviting them to make written submissions.

1.4 The committee received 10 submissions which it has resolved to keep confidential for the time being. The Chief of the Defence Force (CDF) and the Chief of Navy also provided private briefings to the committee on 3 and 23 February 2010 and 22 February 2011. No transcripts of these meetings were recorded.

1.5 In March 2010, the then Chief of the Defence Force, Air Chief Marshal Angus Houston, commissioned a former judge of the Federal Court, the Honourable Roger Gyles AO QC, to conduct an independent commission of inquiry to inquire into the alleged incidents of unacceptable behaviour onboard HMAS *Success* (the Commission). The committee resolved to monitor the Commission's progress and to wait until it had completed its work before deciding on how it would proceed. The committee tabled an interim report on 18 March 2010.

1.6 The Commission took longer than expected to deliver its findings. In light of this delay and with the prorogation of the House of Representatives, the committee tabled a second interim report on 20 August 2010 notifying the Senate of its intention to present a final report as soon as possible in the 43rd Parliament. On 30 September, two days after the new Parliament sat for the first time, the Senate resolved that the committee continue its inquiry with a reporting date of 12 May 2011.

Part One—HMAS *Success* Commission of Inquiry

1.7 In September 2010, the CDF proposed that the Commission take account of a report, not then available, of a working group into Defence Administrative Inquiries. He did not want to prolong completion of the Commission's work on the events that happened during *Success*' deployment of March to May 2009. Consequently, they agreed that Mr Gyles would produce a report in two parts. The first would deal with substantive matters arising from events onboard *Success* and the second with the general Defence processes that followed the decision to land the three senior sailors in Singapore on 9 May 2009.

1.8 Mr Gyles did not finalise the first part of his report until the end of December 2010. The Minister tabled a redacted version of this report on 22 February 2011 entitled *HMAS Success Commission of Inquiry, Allegations of Unacceptable Behaviour and the Management Thereof, Part One: The Asian Deployment and Immediate Aftermath*.¹ The CDF stated that he expected to receive the balance of Mr Gyles' report in the middle of the year.

1.9 In Part One of his report, Mr Gyles made clear that he assembled and presented evidence with regard to HMAS *Success* 'in order to establish a factual narrative of events in which many individuals played a part.'² In doing so, Mr Gyles effectively addressed six of the committee's terms of reference either in full or in part, including:

- (a) the nature, scope and purpose of an 'Equity and Diversity Health Check' in the Royal Australian Navy, and under what authority such an investigation is conducted;
- (b) the equity and diversity issues at large onboard HMAS *Success* (*Success*) giving rise to the 'Equity and Diversity Health Check' which was carried out onboard *Success* between 21 April and 9 May 2009 including inter alia all disciplinary issues, the transfer of a Royal Navy exchange sailor, the management of equity and diversity issues by the ship's Commanding Officer and his Executive Officer both before and after the 'Equity and Diversity Health Check';
- (c) the nature and veracity of complaints and allegations made by a Petty Officer or any other person concerning equity and diversity issues on *Success*;

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

2 Gyles Report, Part One, paragraph 5.2.

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- (d) the reasons and factual evidentiary basis for the ship's Commanding Officer resolving to land a Chief Petty Officer and two Petty Officers (the senior sailors) at Singapore on 9 May 2009 from *Success* and the circumstances of that landing and removal from the ship including whether the Commanding Officer acted under the direction of any superior officer;
 - (e) whether the senior sailors were informed of the full nature of the allegations and factual evidentiary basis for the subsequent landing in a timely fashion or at all and whether procedural fairness was provided to those senior sailors;
 - (f) the circumstances and events that led to the Commanding Officer of *Success* addressing members of the crew in relation to the landing of the senior sailors, whether the Commanding Officer referred to the senior sailors by stating words to the effect of 'there was a rotten core on this ship and the core has now been removed' and if so, the extent that those comments may have prejudiced any subsequent inquiry.

1.10 The committee notes the comprehensiveness of Mr Gyles' inquiry. In all, 102 individuals appeared before the Commission to give evidence with 12 people providing affidavits. The transcript of the hearings runs to 4866 pages with 376 exhibits received—many containing multiple documents.

1.11 The release of Part One of the Commission's report provided the committee with the first opportunity to read and examine Mr Gyles' findings. The committee considered carefully the report and formed the view that, given that it dealt thoroughly with six of the committee's terms of reference, the committee should pay close regard to its findings. Thus, conscious of the scope of the Commission's inquiry and the passage of time, the committee resolved to adopt Mr Gyles' approach and also produce a report in two parts.

1.12 In May 2011, the committee tabled Part One of its report on incidents onboard HMAS *Success* between March and May 2009.

Unanticipated revelations

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

1.14 The committee was alarmed further by the disclosure during the Commission's work that an inquiry in 2004 on the same ship had raised similar concerns about sexual harassment of female sailors. Indeed, the issues raised regarding HMAS *Success* in 2004 and more recently have all the hallmarks of those

considered by the committee as far back as 1994 onboard HMAS *Swan*. Because of the committee's work with the ADF in trying to promote a culture of responsible reporting of wrong doing, especially of unacceptable behaviour, and of stamping out bullying and harassment in the ADF, it was of the view that it must again draw attention to this broader cultural issue in the ADF. This matter was discussed fully in Part One of the committee's report.

Part Two—HMAS *Success* Commission of Inquiry

1.15 On 7 July 2011, the Minister for Defence tabled in parliament a redacted version of Part Two of the Gyles' report—*The Management of Allegations and Personnel Involved*.³ The Minister explained that the redactions were made on legal advice 'to prevent the identification of individuals who may be subject to disciplinary procedures.'⁴

1.16 This second part deals with Navy's administrative inquiries; management of the three landed senior sailors on their return to Australia; and Navy's response to media queries and reporting. The report also looks at the treatment of the legal officer representing the landed senior sailors and the relevant investigations undertaken by the Australian Defence Force Investigative Service (ADFIS). Effectively, Part Two of the Gyles Report addresses the committee's terms of reference that are still outstanding including:

- (g) whether the Inquiry Officer as appointed pursuant to terms of reference, dated 15 May, and as set out in Minute S1804843, dated 10 July 2009, declined to interview any relevant witnesses in circumstances where the senior sailors were prohibited from attending *Success* and or contacting any of the ship's company;
- (h) the way in which the inquiry into the events on *Success* was conducted, whether the method of questioning witnesses and gathering evidence was conducted according to the principles of justice, whether the inquiry process was free from any perception of bias, and whether any witnesses were threatened with disciplinary or other action during the course of giving evidence;
- (i) whether the senior sailors requested access to evidence gathered during the inquiry into the events on *Success*, whether any such request was denied, and whether any subsequent finding is reasonable in the circumstances;

3 The full citation is *HMAS Success Commission of Inquiry, Allegations of Unacceptable Behaviour and the Management Thereof, Part Two: The Management of the Allegations and Personnel Involved*, May 2011. Redacted report made available to the public following authorisation by the Minister for Defence under regulation 63(3) of the Defence (Inquiry) Regulations 1985 on 5 July 2011.

4 The Hon Stephen Smith, House of Representatives *Hansard*, 7 July 2011, p. 7976.

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- (j) the facts and circumstances of the treatment of the Legal Officer (the lawyer) assigned to the management and defence of the case of the senior sailors including any threats, bullying, adverse conduct and prejudice generally, including any threat of posting to Western Australia, and whether any such conduct constituted an attempt to compromise the lawyer's capacity to represent the best interests of the senior sailors without fear or favour;
 - (k) the knowledge and awareness of the ship's Commanding Officer, the Australian Defence Force Investigative Service investigators and the broader naval chain of command of the facts and circumstances relating to the Channel 7 News reports on 4 July and 7 July 2009 (the media reports) and the dates and times of such personnel being availed of such knowledge and awareness;
 - (l) the knowledge and awareness of the media reports by the responsible Minister and the dates and times of the Minister being availed of such knowledge and awareness;
 - (m) all and any other matters relating to the justice and equity of the management of the senior sailors in their removal from the ship and the subsequent administrative process or processes, including their complaints as to the flawed process as set out herein.

1.17 Because of the thoroughness of the Commission's inquiry and its direct relevance to the committee's terms of reference, the committee is of the view that Mr Gyles has done much of the work covered by the above terms of reference. Taking the same approach as it took with its first report, the committee sees no real gain in duplicating Mr Gyles' work. The committee, however, has read the transcript of the Commission's hearings and has considered confidential submissions and additional information. Furthermore, for many years the committee has been monitoring the implementation of reforms to Australia's military justice system with a particular interest in the ADF's investigatory capability as well as the effectiveness of the ADF's administrative system. As such, while drawing heavily on Mr Gyles findings, the committee presents its own views and identifies areas that it may wish to pursue further with Defence.

Limitations to the committee's inquiry

1.18 At this stage, the committee draws attention to a number of difficulties it had in preparing and presenting this report. The first significant limitation was producing a factual and balanced report from incomplete and potentially misleading evidence. The committee did not have access to material central to its inquiry including the Inquiry Officer's report cited in terms of reference (g) and (h) and the supplementary material accepted by the Commission as evidence in the form of exhibits.

1.19 The committee was also conscious of the importance of protecting the privacy of the many individuals caught up in events during *Success'* deployment in the first half of 2009 and used the redacted copy of Mr Gyles' report as a guide. While the

committee also had access to other material not on the public record, it resolved to use this evidence in accordance with the principle adopted by Defence and not disclose the identity of a number of sailors.

1.20 In this report, the committee, by and large, traced events from May 2009 as they unfolded. This chronological approach was not always possible where developments overlapped. The report provides a summary of events that culminated in three senior sailors being removed from HMAS *Success*. It then considers:

- the disciplinary and administrative processes that followed the removal of the senior sailors from *Success* and whether they were afforded procedural fairness;
- the circumstances surrounding the senior sailors' employment in HMAS *Kuttabul*; their persistent endeavours to obtain information about the allegations made against them, the inaccurate and sensational media reports of their removal from *Success* and Defence's response; and
- concerns about the relationship between the legal officer representing the senior sailors and the chain of command and whether there were attempts to unduly influence him.

1.21 This second part of the committee's report builds logically on the first, but for ease of reading, the committee starts by briefly outlining the events that led to the landing of the senior sailors in Singapore and the committee's findings on those matters. It then focuses on their return to Australia and the inquiries and investigations that took place.