

Chapter 4

The senior sailors in Sydney

4.1 On their return to Australia, the senior sailors were entitled to feel aggrieved. Without warning and any satisfactory explanation, they had been ordered to pack their bags and then marched off the ship in a public and humiliating way into a waiting taxi. Their landing carried a stigma and had far reaching implications for their careers as well as their personal lives. There was an opportunity, however, for Navy to repair some of the damage that had already occurred. Indeed, with regard to landed sailors, LCDR Swanson stated 'we follow the appropriate steps and make sure that everyone's interests are well looked after.'¹

4.2 In this chapter, the committee considers the treatment of the senior sailors following their landing. Given that the decision to withhold information from the senior sailors on the reasons for their removal was an exception to procedural fairness rules, the committee is especially interested in when this exemption was lifted.

Return to Garden Island, Sydney

4.3 At the time of their removal from *Success*, the CO issued an order that the senior sailors were not to contact by any means any member of the ship's company with the exception of the Marine Engineer.² As directed, on arrival in Australia they reported to the OIC of FSU Sydney where they were employed. Soon after the CPO, who had remained in Singapore to holiday with his family, returned to Sydney, the three senior sailors meet LCDR Dean Bainbridge who began acting as their legal representative. LCDR Bainbridge had no official documentation or direction from a superior that assigned the senior sailors to him for assistance.³

4.4 One of the most pressing issues for the sailors was to gain some understanding of the basis for their removal. They knew that an inquiry was being conducted as a result of the E&D report but had no knowledge of the terms of reference. According to LCDR Bainbridge, at that time the senior sailors:

1 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 28 July 2010, p. 52.

2 Letter dated 9 May 2009 and signed by S. T. Brown provided to the committee in confidence and Gyles Report, Part One, paragraph 4.270. The draft letter in the Gyles Report has a slightly different wording – the last paragraph begins: 'As soon as you are landed'. Routine Inquiry into the Formal Complaint by [names redacted] from HMAS *Success* (the Houston report), 23 October 2009, p. 6. Committee-in-confidence document.

3 Gyles Report, Part Two, paragraph 3.10.

...were trying to figure out why they were landed...they were searching for answers at that stage, so they'd certainly discussed that at length, trying to figure out what the basis was.⁴

4.5 While the sailors received sufficient divisional access from the OIC Fleet Support Unit (FSU) Sydney and from personnel at the Amphibious Afloat Support Sustainment Project Office in Sydney, they were highly critical of the support they received regarding the allegations made against them and their removal from *Success*. They complained that their divisional personnel and legal representative were unable to obtain any information regarding their removal.⁵

Sailors status unchanged, new CO *Success*

4.6 According to the senior sailors, 6 weeks had passed after their removal from the ship before they had any communication with anyone involved in the Wark inquiry, which was when their interviews were concluded on 18 June.⁶

4.7 It should be noted that the Local Area Move (LAM) signals from HMAS *Success* to HMAS *Kuttabul* noted that the period of LAM for the senior sailors was from 11 May to 22 June 2009.⁷ The signals also indicated that the reasons for landing the sailors would be forwarded to CO *Kuttabul* by separate correspondence.⁸ But by the end of June, despite being interviewed by the CMDR Wark, they still had not been provided with a statement of reason for their landing and were still prevented from contacting crew members from *Success*. These restrictions were to 'ensure that the ADFIS investigation and the Inquiry Officer Inquiry would not be prejudiced'. The Fleet Legal Officer instructed that the three senior sailors were not to speak to anyone about any matters under investigation or inquiry and that they were not to proceed onboard HMAS *Success* unless for work purposes, and then only with the express approval of OIC FSU-S. CMDR Kemp, the new MEO *Success*, relayed this information to the senior sailors.⁹

4.8 On 25 June 2009, CMDR Anthony Rayner assumed command of *Success*. During the handover, he was told that the senior sailors had been landed for administrative purposes which were then the subject of the Wark inquiry. He was led

4 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 16 July 2010, p. 119.

5 Three senior sailors to Commodore C.A. Clarke, Commanding Officer HMAS *Kuttabul*. Committee-in-confidence document.

6 Three senior sailors to Commodore C.A. Clarke, Commanding Officer HMAS *Kuttabul* and Houston Report, p. 3. Committee-in-confidence document.

7 HMAS *Success* to HMAS *Kuttabul*, 11 May 2009.

8 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 75.

9 Gyles Report, Part Two, paragraph 3.107; Houston report, p. 6.

to believe that the inquiry was expected to be completed in 'short order' which would then 'resolve the status of the sailors'. CMDR Rayner understood that the sailors:

...were landed because of safety issues, for safety concerns about members of the ship's company based on...an E&D report or parts of that E&D report which indicated that people were at risk.¹⁰

He was given a copy of the E&D report, which to him did not seem 'very factual' in a 'critical way'.¹¹

4.9 CMDR Rayner told the commission that he struggled to get information because the Wark inquiry was underway'.¹² He also indicated that he 'did not get a lot of detail on the circumstances of those sailors' because of the number of ADFIS investigations going on.¹³ CMDR Rayner explained that while 'the catalyst for the landings remained under investigation', he had 'no basis or information on which to change their posting arrangement'.¹⁴ He noted further that although he was the CO of *Success*:

...in this circumstance the IOI [Inquiry Officer Inquiry] and subsequent actions were being directed by the higher Headquarters COMSURFOR (CDRE Middleton) and I was also responsive to this process. It was only when I commenced action on the Redresses of Grievance [30 November 2010] that I had full access to the information contained in the Wark IOI and other subsequent investigations'.¹⁵

4.10 Also, according to CMDR Rayner, he was 'reliant on the services of the Fleet Legal Officer' as some correspondence he received sought information which he could not access. He noted that the nature of some requests was such that 'legal guidance and advice' was required before he could respond.¹⁶

4.11 With regards to the landed sailors' welfare, CMDR Rayner understood that they were being administered by CO *Kuttabul* and he confirmed through the Fleet

10 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 5 August 2010, p. 20.

11 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 5 August 2010, pp. 23 and 38.

12 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 5 August 2010, p. 21.

13 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 5 August 2010, p. 20.

14 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 5 August 2010, p. 5.

15 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 5 August 2010, p. 5.

16 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 5 August 2010, pp. 6–7.

Legal Officer that they had independent legal advice.¹⁷ He also tasked the Engineer, CMDR Kemp, to talk with the sailors, to maintain regular contact with them and respond to their divisional needs.¹⁸

CDRE Middleton assumes responsibility for HMAS Success

4.12 On 1 July 2009, Navy underwent a restructure that abolished the position of CCGS and created Commodore Support. While Commodore Support subsumed some of the duties and responsibilities of the CCGS position, it did not include the duties and obligations that CDRE Bates had with regard to *Success*. CDRE Ian Middleton, the Commander of the Surface Force was now responsible for all the major fleet units and larger ships, which included *Success*.¹⁹

Reports of a 'sex scandal'

4.13 In late June 2009, Mr Andrew Greene, a reporter with Channel 7, had a chance meeting with a female in a bar in Canberra. The woman identified herself as a member of the Royal Australian Navy and someone who was familiar with events on HMAS *Success* but would not say whether she had been on the ship. Mr Greene questioned her extensively and at that time she conveyed information that would form the basis of questions he would put to the Department of Defence (Defence). Following the meeting, he sent a 'media request' to Defence seeking answers to five questions.²⁰

4.14 On 3 July 2009, COL Mark Elliott, Acting Director-General Public Affairs Operations for Defence, received an email from Mr Greene relating to 'an incident onboard *Success* in May'.²¹ In the preamble to this request for information, Mr Greene referred to crew members of *Success* being accused of 'drawing up a ledger challenge to try to sleep with as many onboard, female colleagues as possible'. He wrote:

During its visit to Singapore a number of sailors, five or six, were disciplined and returned to Australia for misconduct. The men were accused of drawing up a ledger challenge to try to sleep with as many onboard, female colleagues, as possible. The men involved were then

17 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 5 August 2010, p. 5.

18 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 5 August 2010, p. 8.

19 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 6 August 2010, p. 2.

20 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 30 July 2010, p. 2.

21 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2009, p. 31.

ordered back to Australia. I seek answers to the following questions within the next few days.²²

4.15 COL Elliott informed the Commission that he could not recall whether he was aware of any such incident in *Success* at that time. He noted that the only area that would have known about the allegations against the landed sailors would have been 'the subject matter expert and most likely the commander of the vessel at the time'.²³

4.16 Normally, the Public Affairs Operations Centre takes an enquiry from any source around Australia, including the media, and refers it to a line area such as Navy, Army or Air Force or inter-headquarters JOC for specific information. Subject matter experts in that area would formulate a response which is returned to the Centre where it is 'synchronised' to make sure it is current with other previous advice. The response is then conveyed back to the person making the request.²⁴ Thus, according to COL Elliott, he would have sent the request 'down to Navy straightaway'.²⁵ He explained that:

On behalf of Navy, they'd go to, in this case, fleet headquarters and fleet headquarters would coordinate the material, knowing the matter in detail, and then it would come back up the chain.²⁶

4.17 At that time, CAPT Anthony Aldren, the Director of Navy Communications and Coordination based in Navy Headquarters, would normally have managed Navy's response to such a request from a journalist. He would have identified the area best placed in Navy to provide the subject matter expertise to answer queries.²⁷

4.18 In this case, CMDR Paul Doble, Commander of the Fleet Personnel Service, provided information in response to the journalist's questions.²⁸ CMDR Doble made clear that he did not have any contact with COL Elliott or any direct contact with

22 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 32.

23 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 22.

24 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 14.

25 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 21.

26 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 21.

27 He was specifically tasked to deal with matters relating to Navy, Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, pp. 16 and 21; 6 August 2010, p. 19.

28 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 46.

CAPT Aldren.²⁹ Based on information that he had obtained from the Fleet Legal Officer (FLO) and from Defence policy documents, CMDR Doble drafted answers to Mr Greene's questions. He explained that he would have drawn up the answers, consulted and prepared them for clearance by CDRE Michael van Balen, Commodore Support Group, before they were dispatched to Canberra.³⁰

4.19 The Fleet Legal Officer, CMDR Bowers, was the main source of information for CMDR Doble on the action taken against the sailors.³¹ Indeed, CMDR Bowers, as the key legal adviser to the CO *Success* at the time of the E&D health check and the removal of the sailors, was well placed to provide sound and accurate advice. He agreed with the observation that at that time the sailors had not been disciplined and there was no mention of them being involved in a sex ledger.³² Although listed as being the subject matter expert, he could not, however, recall being consulted in the preparation of the response.

4.20 Having gone through the normal channels, COL Elliott provided Mr Greene with answers to the five questions. This response, however, did nothing to discount the false assumption contained in Mr Greene's preamble to his request that the sailors were landed because of their involvement in a sex ledger. Indeed, the silence on this matter in Navy's response seemed to give credence to this assertion.

4.21 CMDR Doble acknowledged that the response to the media request did not in any way deny that the sailors were landed as a disciplinary measure because they had drawn up a ledger challenge: it made no reference to it.³³ He concurred with the proposition that if he had known it was wrong it would have been appropriate to correct it.³⁴ He added, however, that he was not in a position to say whether or not the premise underpinning Mr Greene's request for information was correct because 'it was still under investigation.'³⁵

29 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 50.

30 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 50.

31 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 48.

32 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 9 August 2010, pp. 58 and 59.

33 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 50.

34 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 51.

35 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 50.

4.22 Mr Greene anticipated that his report on *Success* would be a main story with 'headline status'.³⁶ COL Elliott was also alert to the potential for this story to be a major news item. Noting that Mr Greene was 'a populist journalist', he recommended to CAPT Aldren, that 'they should look towards a release of information if this situation got some ground'. But at this preliminary stage and despite the likelihood for adverse publicity, it appears that relevant Defence personnel paid little attention to establishing the facts. As a result, they were ill-equipped to correct the record or temper exaggerated reporting.

4.23 It is no surprise then, that on 4 July Mr Greene presented a segment on Channel 7 news which focused on a 'sex scandal' onboard HMAS *Success* whereby four sailors were removed. This news item sparked widespread media interest. One such report from the *Age* captured the tone and content of the news reports which read:

Several male sailors have been counselled and sent home after a ledger surfaced recording bets on how many of their fellow crew members they could sleep with.

...

Concerns about the betting book, known as 'The Ledger', were raised by female crew members. Dollar values were placed on the female crew, with higher amounts to be won if sailors had sex with a female officer or a lesbian.

Channel Seven news reported last night that the men also challenged each other to have sex in different locations, including on top of a pool table.

The sailors allegedly detailed their bets and the various dollar values on the female targets in The Ledger, which was discovered while HMAS *Success* was visiting Singapore in May.

Sailors were formally interviewed by their captain, Commander Simon Brown, and a number were immediately returned to Australia.

4.24 The report indicated that a Defence spokesperson had confirmed that an unnamed number of sailors in HMAS *Success* were returned to Australia from Singapore in May. It noted that a formal investigation was under way and Defence said it would be inappropriate to discuss details of the complaints or investigation while the inquiry was continuing.

4.25 It also stated that the Navy had a strict 'equity and diversity' policy which was regularly monitored and so-called 'health checks' were conducted in workplaces at sea and on land to ensure it was being enforced. According to the newspaper account, the

36 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 30 July 2010, p. 18.

sailors at the centre of the new allegations were removed from the ship after such a 'health check'.³⁷

4.26 Most major news outlets in Australia broadcast similar misinformed and highly embellished stories on 5 July.

Media release

4.27 In response to the publicity about sexual misconduct, Navy produced a written reply. Having neglected initially to correct the underlying premise of Mr Greene's request for information, Navy now had a chance to put right the misleading media reports. CDRE Michael van Balen, Commodore Support Group, explained that the subject matter experts within the headquarters in consultation with the public affairs people developed a media release. It was then presented to him as a 'reflection of the status of where the issue was at the time' and accordingly he released it.³⁸

4.28 According to CDRE van Balen, he made clear that at the time he had not been provided with any information with regard to events in *Success* or a copy of the E&D report.³⁹ He explained Navy's approach:

...the concern is that you make a statement which suggests a certain course of action or a certain undertaking without having any facts. Then you're presupposing an outcome. Certainly there was strong intent to ensure that that did not occur.⁴⁰

4.29 CDRE van Balen also discussed the release with CMDR Doble, as the head of the Human Resources organisation, about the E&D health check. In CDRE van Balen's view, Navy's response reflected the answers given by CMDR Doble.

4.30 On 5 July, Defence issued the following statement regarding the allegations of bad behaviour onboard *Success*:

In May 2009, the Navy was made aware of allegations of misconduct by members of HMAS *Success*. These allegations were identified during the conduct of a proactive Navy equity and diversity health check program which had been initiated by the Commanding Officer of HMAS *Success*.

Four members of the ship's company were returned to Australia from Singapore as a result of the allegations.

37 Kerry-Anne Walsh, 'Navy mired in betting-on-sex scandal, *The Age*, 5 July 2009, <http://www.theage.com.au/national/navy-mired-in-bettingonsex-scandal-20090704-d8ha.html>

38 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 6 August 2010, p. 2.

39 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 6 August 2010, pp. 2 and 9.

40 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 6 August 2010, p. 6.

Chief of Navy, Vice Admiral Russ Crane, said the alleged behaviours under investigation do not align to Navy values or the recently articulated signature behaviours developed by our Navy people and implemented through our New Generation Navy program. Our Navy people will not tolerate this type of behaviour.

'Once these allegations were made known, Navy acted immediately by removing those sailors allegedly involved in the matter from the ship and referring the matter to the independent Australian Defence Force Investigative Service (ADFIS) for action,' VADM Crane said.

'Navy stands by its values and signature behaviours and will act swiftly and decisively to address allegations of unacceptable behaviour.'

'Navy has stringent policies and education programs in place to support Navy people who rightly demand and deserve a working environment free from unacceptable behaviour'.

'Navy is awaiting the results of the ADFIS investigation and will act as quickly as possible to address appropriate findings and recommendations particularly should disciplinary or administrative action be warranted.'

Navy people are briefed regularly on their responsibility to treat others fairly and know that unacceptable behaviour will be dealt with. A regular, Navy wide, equity and diversity education program proactively reinforces these principles and immediate action is taken to address any concerns raised by individuals.⁴¹

4.31 Media reports began quoting from the Chief of Navy's statement that the alleged behaviours were being investigated and do not align with Navy values. They noted that 'Navy is awaiting the results of the ADFIS investigation and will act as quickly as possible to address appropriate findings and recommendations particularly should disciplinary or administrative action be warranted.'⁴²

4.32 Clearly Defence's media release was designed to portray Navy as a decisive and responsible organisation that acted promptly to stop unacceptable behaviour while promoting a safe and healthy workplace. It did nothing, however, to counter the misinformation already disseminated widely about the existence of a sex ledger and 'dollar values being placed on the female crew'. Similar fanciful assertions such as the challenge 'to have sex in different locations, including on top of a pool table', were left uncorrected. The E&D report and CMDR Brown's correspondence with Fleet Command before landing the sailors mentioned no such activity. The reference to a 'proactive Navy equity and diversity health check program' was also misleading because, as noted in the previous chapter, the E&D health check onboard *Success* was the first of its kind.

41 Defence website, Media Release, MECC 202/09, 5 July 2009, <http://www.defence.gov.au/media/DepartmentalTpl.cfm?CurrentId=9236>

42 ABC News, <http://www.abc.net.au/news/2009-07-05/navy-wont-tolerate-sailor-sex-contests/1342272>

4.33 Importantly, the media release did not clarify what the Chief of Navy was referring to when he stated that 'Navy acted immediately by removing those sailors allegedly involved in the matter from the ship'. In using such language, the release conveyed a definite message that the allegations related to the sex ledger that had figured so prominently in media reports. But the sailors were not returned to Australia for sexual misbehaviour and definitely were not connected in any way with a sex ledger. At the time, the closest association that could be drawn with any sexual misconduct was that two of the sailors were alleged to have watched and encouraged others to watch a public sex act. Mr Gyles stated that although the media release did not expressly mention the sex ledger allegations, it 'implicitly accepted the truth of them'. The committee agrees.

4.34 Further, Defence's response stated categorically that the matter had been referred to ADFIS for action and was waiting for results. While in Singapore, ADFIS investigators had struggled to gather evidence to support any case for bounties let alone a sex ledger or the other type of activities detailed in the media reports. Clearly the sex ledger and the matter of bounties were not being investigated. The FLO or other subject matter experts must, or should, have been aware of the findings of the ADFIS investigation that took place in Singapore immediately after the sailors had been returned to Australia. His office should also have known that the E&D report had stated that there was no real evidence to suggest that a sex ledger existed. Furthermore, that the senior sailors were landed because of complaints of threats of physical violence with no connection whatsoever to a sex ledger.

7 July 2009

4.35 Reports about the alleged incidents continued to run as a live issue for the rest of the week. On 7 July 2009, RADM Stephen Gilmore and CDRE Tim Barrett launched a submariner recruiting package at the National Press Club in Canberra.⁴³ The launch was followed by a question-and-answer session. According to Mr Greene, there was intense interest at that press conference and people were there basically to ask questions about this [*Success*] story rather than submariners.⁴⁴

4.36 COL Elliott stated that because of the publicity around *Success*, there were concerns that members of the press might ask questions at this event.⁴⁵ He told the Commission that a document of contingency talking points was compiled to help the presenters should they be asked about the *Success* matter. The briefs had come from the subject matter experts at the time.⁴⁶

43 The event was a Head of Navy People and Reputation launch of a high end digital product.

44 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 30 July 2010, p. 25.

45 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 16.

46 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 18.

4.37 CAPT Aldren, whose primary duties covered reputation management, media advice and ministerial support, was also involved in preparing RADM Gilmore for the launch on 7 July. The contingency talking points prepared for the Admiral were very similar to the ones that were cleared on or about 5 July.⁴⁷ Predictably, during this session, a journalist asked about the allegations concerning *Success* and their probable effect on Navy recruitment. In answering, Rear Admiral Gilmore appeared to lend some credence to the allegations by stating that the potentially 'abhorrent' behaviour of four sailors aboard *Success* could harm future recruitment efforts.⁴⁸ An article in at least two major newspapers also reported that:

Rear Admiral Gilmore wouldn't pre-empt the *Success* inquiries under way but said the future of the four sailors was in doubt.⁴⁹

4.38 This response provided yet another opportunity to enliven media interest in the allegations that sailors on *Success* had been sent home for allegedly staging a contest to see how many female sailors they could bed and detailing their contest in a ledger. The Gyles Report was of the view that RADM Gilmore's response 'implicitly accepted the truth of the allegations—namely that the sailors had been landed for their involvement in a scandal related to a sex ledger'.⁵⁰ The reference to the sailors' future being in doubt was particularly unfortunate in that it conveyed a message of their assumed guilt and punishment.

4.39 When asked about RADM Gilmore's statement about the sailors careers being in doubt, COL Elliott suggested that 'if we'd picked up on that contextually where it's mentioned we would have fired it back down the chain...'⁵¹ He could not recall, however, the statement being made.⁵² Clearly, no one in Navy, or Defence more broadly, noticed or thought to mention to the relevant Public Affairs area that the media was reporting on RADM Gilmore's reference to the sailors' careers being in doubt.

47 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 6 August 2010, p. 45.

48 'HMAS *Success* scandal could harm recruitment: Navy', 7 July 2009, *The Age*, <http://www.theage.com.au/national/hmas-success-scandal-could-harm-recruitment-navy-20090707-db9n.html>

49 *The Age*, <http://www.theage.com.au/national/hmas-success-scandal-could-harm-recruitment-navy-20090707-db9n.html>; *Sydney Morning Herald*, 7 July 2010, <http://news.smh.com.au/breaking-news-national/sex-scandal-could-harm-navy-recruitment-20090707-db9h.html>

50 Gyles Report, Part Two, p. xiii.

51 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, pp. 40–41.

52 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 40.

Committee view

4.40 There is no doubt that the media reports on the landed sailors in the early part of July contained a number of errors—the sailors were not removed because of their involvement with a sex ledger and at the time there was no ADFIS investigation in connection with the sex ledger and the senior sailors. Indeed, at this stage, it would appear that ADFIS was not investigating any matter at all dealing with the senior sailors. Finally, Navy's E&D policy did not involve E&D health checks—the E&D health check on *Success* was the first of its kind.

Journalist contacts the senior sailors

4.41 It is difficult to imagine the effect that this publicity had on the landed sailors and those close to them. Their families and many in the Navy including the ship's company would have known of their identities.⁵³ Also, the sailors were yet to be informed about the reasons for their landing and must have been totally bewildered by the reports associating their removal from the ship with a sex ledger. They explained, 'Our families now believe that we are all involved in some sex scandal, even though that does not appear to form part of the [Wark] inquiry.'⁵⁴ They wrote of their concerns:

I believe that we were entitled to support from the Navy regarding our welfare after the media reports but we received nothing.⁵⁵

4.42 To add to their concerns, without warning Mr Greene contacted them seeking information.

Media access to mobile phone numbers of senior sailors

4.43 Within days of the first media report, a different person phoned Mr Greene in his office in Canberra endeavouring to clarify some of the allegations that had been broadcast and published. The unidentified caller indicated that a number of his crewmates thought that there were some inaccuracies in what had been reported.⁵⁶ During the conversation, the man provided the private telephone numbers of the senior sailors. Mr Greene used this information to contact them.

4.44 According to the senior sailors, on the night of Monday 6 July they received phone calls on their private mobile numbers from the media. All three refused to

53 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 36.

54 Three senior sailors to Commodore C.A. Clarke Commanding Officer HMAS *Kuttabul*. Committee-in-confidence document.

55 Three senior sailors to Commodore C.A. Clarke Commanding Officer HMAS *Kuttabul*. Committee-in-confidence document

56 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 30 July 2010, p. 4.

comment.⁵⁷ Mr Greene explained that he spoke to the CPO, who gave him one word answers, followed by 'I'm not talking to you'. The CPO then hung up. The two Petty Officers showed the same unwillingness to engage with the journalist and responded with a 'no comment' in one way or another.⁵⁸

4.45 The senior sailors were concerned about the media obtaining their personal details and how such a situation could have eventuated.⁵⁹ The day following the phone calls, they 'arrived at the office of CMDR Christine Clarke, CO *Kuttabul*, seeking support and advice on how to deal with the media contact. They complained about the contents of the media reports, indicating that this was the first time that they had information on the reasons for their landing and further that they did not believe the accounts to be accurate.⁶⁰

4.46 At that time, CMDR Clarke had not yet met the sailors and had no knowledge of the reasons they were removed from the ship.⁶¹ She explained:

I took command in June and they were already located in *Kuttabul* prior to me taking command and I was advised at the time that further information would be made available to me, that they had been landed and, as the signals indicated, that further reasons for their landing would be provided.⁶²

4.47 CMDR Clarke noted that the sailors were 'quite concerned about how their mobile phone numbers had been provided to the media'.⁶³ Arrangements were made for them to meet with personnel from Fleet Public Affairs who advised the senior sailors that they were not to make comment or otherwise discuss the situation.⁶⁴ CAPT Aldren also spoke to CMDR Clarke and WO Donlan to ensure that the sailors

57 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, pp. 76, 83.

58 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 30 July 2010, p. 11.

59 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 76 and three senior sailors to Commodore C.A. Clarke Commanding Officer HMAS *Kuttabul*.

60 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, pp. 76, 83.

61 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, pp. 81–82.

62 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 83.

63 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 82.

64 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 76.

not only understood their responsibilities dealing with the media and were de-briefed on them but that they were being properly supported at the time.⁶⁵

4.48 On the sailors' return to her office, CMDR Clarke talked to them about the help that was available including legal assistance through the Legal Officer Advocacy and Counselling at Garden Island and support for them and their families through the Defence Community Support Organisation. She also informed them of the resources offered through a psychologist if they needed stress management assistance or related help.⁶⁶ In addition, she appointed WO Donlan as their Divisional Officer. CMDR Clarke explained:

The initial incident was to assist them with their ability to deal with media enquiries in the first instance and then the progression of documents that we went through was to try and find the reasons that they were landed.⁶⁷

4.49 According to the senior sailors, they were very disappointed to find out that for almost seven weeks the XO of *Kuttabul* and the Navy Public Affairs Officers were unaware of who they were and that they had been landed ashore.⁶⁸

4.50 Before the Commission, COL Elliott was asked whether Public Affairs provided the senior sailors with guidance on how to manage the publicity. He stated that normally as part of a brief they would have provided advice to relevant Navy personnel that they 'must be aware of their duty of care of information, so we'd ask that Navy brief them accordingly'.⁶⁹ He also indicated that Public Affairs would expect 'the divisional chain to support and look after those families'.⁷⁰ Furthermore, he explained that he was not informed that the senior sailors had been contacted by the journalist and only found out months later.⁷¹

4.51 On 7 July, LCDR Bainbridge informed the FLO, CMDR Bowers, that the media had contacted the senior sailors. According to CMDR Bowers, he then directed his staff to speak to ADFIS and LCDR Bainbridge to ascertain if there were sufficient information to undertake a DFDA investigation into the possible leaking of personal

65 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 6 August 2010, p. 35.

66 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, pp. 76–77 and 84.

67 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 83.

68 Three senior sailors to Commodore C.A. Clarke Commanding Officer HMAS *Kuttabul*.

69 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2009, p. 33.

70 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 36.

71 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 39.

information. ADFIS formed the view that there was insufficient evidence to proceed without further inquiry. On that basis, CMDR Bowers decided that he would not pursue the matter.⁷²

4.52 About three weeks later, after 'further information was received in a Ministerial Representation' from a relative of one of the senior sailors, CMDR Bowers reviewed the situation. A discussion followed between ADFIS and the Defence Security Agency about which agency should take carriage. CMDR Bowers understood that ADFIS took charge but was not aware of the result.⁷³

Correcting the record

4.53 Personnel were drawn from various areas within Defence and Navy to deal with the media reporting on *Success*. Yet despite the number of people involved, there was no genuine attempt to establish the veracity of the reports, and little consideration was given to the sailors publicly maligned.

4.54 CMDR Clarke was of the view that it was not her role to correct the errors in the media reporting.⁷⁴ She explained that she took the concerns to the Commander Australian Surface Forces, CDRE Middleton, as this was the immediate, next level up.⁷⁵

4.55 Similarly, COL Elliott explained that the Public Affairs area was not the subject matter expert. He noted that Public Affairs did not know that the ADFIS investigation had nothing to do with a sex ledger and that the landed sailors had not been accused of being involved personally in any sex ledger accusations. In response to a question on correcting errors such as this, COL Elliott stated:

...the subject matter expert should come back up and say this is inaccurate and if we need to refute something like that, that would be, you know, the case.⁷⁶

4.56 The subject matter expert for the media release was CAPT Aldren. COL Elliott explained that the captain was not a legal officer: that he would have acquired material from his line area. He stated that CAPT Aldren would:

72 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 23 June 2010, p. 67.

73 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 23 June 2010, p. 67.

74 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 84.

75 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 84.

76 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, pp. 35–36.

...turn to Fleet to ensure that the information provided by Fleet was accurate, and if there was any change because of a quick assessment or some condition inside the information area he would have to reflect that in the talking points coming up.⁷⁷

4.57 CAPT Aldren agreed with the proposition that it was obvious by 7 July that the sailors had been identified in the public arena as having been involved in a sex scandal. When asked whether he realised he could have corrected that impression with a proper answer to the journalist concerned, he replied:

I did not have at the time clear advice from any source that a ledger existed or didn't exist. I had no completed administrative or disciplinary investigations. I had no formal advice that the sailors at that point in time had not been given any statement of reasons. The first occasion was this, on 7 July where it's suggested—that allegation was they didn't know why they'd been landed. All of the other information I've had through the fleet chain indicated that the right processes, divisionally, legally, psychologically, chaplaincy support were in place.⁷⁸

4.58 He did not speak specifically to CMDR Bowers, Fleet Legal Officer, about the existence of a sex ledger.

4.59 According to LEUT McArthur, the author of the E&D report, as soon as she saw that article in the paper she and WO Harker went up to see CMDR Bowers and made it known that they did not agree that such an article should be published and asked what was going to be done. The matter of the sex ledger associated with the landed sailors was part of a whole conversation. Her suggestion was that 'somebody should advise the people who have put that out that that is incorrect'. In evidence, LEUT McArthur stated that CMDR Bowers' response to that was 'Well, Navy doesn't do that. We don't do that'.⁷⁹ CMDR Bowers could not recall this discussion or his response.⁸⁰ He stated that he would be surprised at making such a statement and might have 'referred her on to the Public Affairs people who manage Public Affairs'.⁸¹

4.60 LEUT McArthur did not know whether CMDR Bowers looked into the matter or not. She again told the Commission that he just said 'that that's the media or something that would have to be dealt with through—we have public relations/media

77 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 23.

78 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 6 August 2010, p. 36.

79 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 29 July 2009, p. 80.

80 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 9 August 2010, p. 67.

81 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 9 August 2010, p. 68.

people that deal with that'.⁸² LEUT McArthur stated that she also had a conversation with CMDR Wittwer, the group equity coordinator, about how the media could inaccurately report things.⁸³

4.61 CMDR Doble stated that LEUT McArthur expressed concerns about the media reports and told him that there was no ledger. He did not pass this information on but understood that the concerns had been reported to the highest levels. He did not know by whom. In his words:

...there was a lot of organisations of ADFIS, a lot of organisations involved in this...I know that LEUT McArthur had made that clear...I wasn't in a position to say that, I was not there. But I doubt that it was not aware at the highest level.⁸⁴

4.62 He was under the impression that LEUT McArthur had spoken to CMDR Bowers about it. As noted earlier, CMDR Bowers did not recall being consulted on the matters raised by Mr Greene in his request for information.⁸⁵ He was, however, involved in preparing contingency talking points. Again, however, he could not recall the points being put to him, but accepted that he was consulted because the document recorded this fact, noting that there is no indication of the nature of that consultation.⁸⁶

4.63 CMDR Bowers knew about the lack of evidence on the existence of a sex ledger and the reasons for landing the sailors. He had read the E&D report, CMDR Brown's statement of intention dated 9 May and provided legal advice on the grounds for landing the senior sailors in Singapore. Indeed, he helped to frame the document setting out the reasons for removing the sailors.⁸⁷ CMDR Bowers told the Commission that although he had read the E&D report on 9 May he did not refer back to it when the media began referring to a sex ledger and the landing of the sailors in Singapore. He noted that a lot of allegations of a general nature were made and the reason he did not do anything was that he did not know what happened.⁸⁸

82 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 29 July 2009, p. 81.

83 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 29 July 2009, p. 81.

84 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 55.

85 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 9 August 2010, p. 57.

86 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 9 August 2010, pp. 59–60.

87 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 9 August 2010, p. 68.

88 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 9 August 2010, p. 76.

4.64 When asked whether any action was taken at a command legal level to try to set the record straight, CMDR Bowers replied that he did not see that as his role.⁸⁹

...Navy's response to the press is a matter for the public affairs people, and I wasn't keeping tabs on it. What I was focused on as the legal officer, [responsible] for legal issues, was the matters raised to me by the commanding officer and our response to them.⁹⁰

4.65 Later, he told the Commission that he saw the matter of correcting media reports damaging to both individual sailors and to Navy as a command question. In his view:

...the commanders are cognisant of what is written here and presumably also cognisant of what's said in the media. I didn't see it so much as a legal issue to deal with media assertions.⁹¹

4.66 During the Commission's hearing, CMDR Bowers was asked directly if CDRE Bates and CDRE Middleton were not aware of the minutiae or intricacies of the matters and whether he, knowing the reports to be incorrect, should have alerted command or public affairs. He responded by stating that they had access to the same documents—the E&D report and the CO's document.⁹²

4.67 Around 6 July 2009, CMDR Bowers drafted a document providing background information on allegations of inappropriate behaviour onboard HMAS *Success*. In this document, he suggested that he was careful to make sure that 'we didn't say that ADFIS investigations were underway in relation to the four sailors'. He stated:

I suggested a framing that would say that there is a DFDA investigation into one of the sailors [not one of the senior sailors] by ADFIS and another one by *Success* itself. So I was keen not to sleight all of the sailors with all of the ADFIS investigations and try to distinguish it along those lines...it was also pretty important to state that the allegations were not proved in any forum, that the administrative action of removal from the ship was taken on the basis of preliminary findings.⁹³

4.68 It should be noted that CMDR Bowers agreed that 'finding' was not the right word to use in this case.

89 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 23 June 2009, p. 111.

90 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 9 August 2010, p. 61.

91 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 9 August 2010, p. 66.

92 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 9 August 2010, p. 76.

93 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 9 August 2010, p. 64.

4.69 This document, however, must be read in the context of the media reporting which implied that the sailors were being disciplined for their involvement with activities related to a sex ledger. In response as to why he did not correct such impressions, CMDR Bowers stated that his role was to address the allegation that he knew of and not to rely on media as a reliable source of allegations.⁹⁴

4.70 At the time of the media accounts, CDRE Middleton had only recently taken responsibility for matters relating to HMAS *Success*. His predecessor, CDRE Bates, who had been actively involved in discussions about the removal of the sailors, could not recall having a specific conversation with CDRE Middleton when the allegations of a sex ledger became news.⁹⁵ He told the Commission that he 'would not have talked detail of what he knew' with his successor for fear of influencing him, indicating that CDRE Middleton was to receive the Inquiry Officer's inquiry'.⁹⁶

Upholding Navy's reputation

4.71 Clearly, no one in Defence generally or Navy in particular was prepared firstly to establish the veracity of the assertions made in the press and secondly attempt to correct them where required. Indeed, the prevailing attitude toward bad publicity meant that the focus was on protecting Navy's reputation. COL Elliott stated:

Any allegation, that's put into the public space such as this...if you can't deny it straightaway because the media runs on a principle of if it bleeds, it leads. So if you can't stop that straightaway, then put in place something that actually shows we're actually doing something about it, such as an investigation.⁹⁷

4.72 This statement clearly shows the approach taken by Defence which was primarily to limit the reputational damage to Navy by showing that it was taking decisive steps through the ADFIS investigation. By doing so, no consideration was given to the harm caused to the senior sailors and indeed it strengthened the perception that they were landed because of their alleged involvement in the sex ledger. But it also perpetuated a falsehood about an investigation when, in fact, there was no ADFIS investigation underway at that time into the sex ledger.

4.73 Those in Defence managing the publicity at that time should have made it their business, at the very least, to acquaint themselves with the facts as best they

94 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 9 August 2010, p. 66.

95 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 5 July 2010, p. 79.

96 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 5 July 2010, p. 80.

97 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 3 August 2010, p. 22.

could. The responsibility for correcting the errors also resided with those who knew that the reports were incorrect. Apparently no one bothered.

4.74 This detachment from, and lack of concern for, the sailors wellbeing in the glare of adverse publicity, was a continuation of the attitude shown toward them during their removal from *Success* and return to Sydney. The management of the sex scandal reports simply fuelled their sense of grievance.

Conclusion

4.75 Mr Gyles found that from Mr Greene's first inquiry, the Public Affairs Office personnel 'should have sought from command a clear, unequivocal statement as to the truth or otherwise of the allegations made'. He argued that:

Command should have provided that statement. A denial should then have been issued to the journalist, and any subsequent media report should have been firmly and clearly corrected rather than pursuing the course of obfuscation that proceeded from 3 July onwards.

Naturally, the effect of the media reports on the senior sailors and those close to them was devastating. One thing is clear: there is no hint that anyone gave any consideration to the interests of the landed sailors and their families. The divisional system failed them.⁹⁸

4.76 The committee agrees that no other conclusion can be drawn from the evidence presented to the Commission. The committee is not convinced, however, that even if the Public Affairs Operation Centre had sought assurances on the facts of the case, it would have received a clear and accurate account. The confusion surrounding the various inquiries and investigations underway coupled with poor communication between HMAS *Success* and Fleet Command meant that unsound assumptions went unquestioned. Also, those who were aware of the circumstances of the sailors' landing and in a position to correct false information appeared to detach themselves from any responsibility to do so, assuming that job rested elsewhere.

4.77 Furthermore, Defence's response to the adverse media reports concentrated on containing damage to Navy's reputation. This approach meant that efforts were directed toward promoting a favourable image of Navy and away from establishing the truth or otherwise of the media reports. Thus, Navy focused on its decisiveness in immediately removing the sailors allegedly involved in the sex scandal from the ship and referring the matter to ADFIS for action. Attention was also given to the New Generation Navy program and its proactive equity and diversity education program. As a result, the reputation and personal wellbeing of the senior sailors was placed in jeopardy.

98 Gyles Report, Part Two, p. xv.