

Chapter 9

Conclusion

9.1 In Part One of its report, the committee found that the management of unacceptable behaviour onboard HMAS *Success* demonstrated:

- an absence of leadership;
- serious errors of judgements starting with the lack of proper attention given to early warning signs of alcohol abuse in Darwin;
- a failure to exercise duty of care especially toward young female sailors who did not receive the protection or mentoring that was required; and
- scant regard for, or at best ignorance of, defence's legal procedures.

9.2 The committee was of the view that although personnel at all levels through the chain of command should take responsibility for unacceptable behaviour, those in the position of highest authority must accept that their inattention, poor judgement and lack of courage meant that the safety and wellbeing of those under their charge was put at risk. It found this situation intolerable.

9.3 To that stage, the committee had only considered events leading to the landing of the senior sailors in Singapore in May 2009 and their return to Sydney. It had identified a number of major concerns—the flawed E&D report that the CO had relied on to justify landing the senior sailors in Singapore; the failure to provide the sailors with reasons for their removal from *Success*, and the CO's reference to the sailors as 'a rotten core' to some groups of the ship's company shortly after the sailors were landed.

9.4 With the senior sailors return to Sydney, there were opportunities to rectify these initial failings. The committee has found, however, that rather than correct the mistakes they were compounded.

Disciplinary system—ADFIS

9.5 Following the removal of the senior sailors from *Success*, numerous inquiries and investigations were conducted in an endeavour to establish the facts of what happened during *Success*' deployment between March and May 2009.

9.6 The arrival of an ADFIS investigator in Singapore heralded the first step toward putting in train proper procedures to ensure that the allegations raised in the E&D report would be examined thoroughly and objectively. But overwhelming evidence from the investigator on the ground through to the Director of Operations, LTCOL Vokes, show that the ADFIS investigations were well below standard. Before the Commission, LTCOL Vokes acknowledged that the investigations were inadequate: that, in his words, they were 'an aberration in terms of how ADFIS should be doing business'. He explained:

The headquarters of the ADFIS was by and large very unsatisfied with the methodology and approach that the lead investigator took with regards to all of that series of *Success* investigations. It ranged from everything from diligence and application to duty to application of knowledge and procedure.¹

9.7 To add to the myriad inquiries taking place, the Deputy Provost Marshal 'saw fit to strike a routine inquiry investigating the ADFIS issues in relation to *Success*.² The committee has not seen this inquiry's report which apparently identified clear failures. Mr Gyles has, however, and noted that the report found the following significant deficiencies:

...serious allegations were not investigated or not properly investigated; in some instances investigation files were not opened or adequately maintained; important witnesses were not interviewed or signed statements were not taken; adequate searches were not conducted and evidence seized; important documents (such as Notifiable Incident reports) were not considered; and there was a general failure in communication between the ADFIS investigation team, the Chief Coxswain, the command of *Success* and Fleet Headquarters as to precisely what was to be investigated and by whom.³

9.8 For a number of years, the committee has expressed its concerns about the standard of ADFIS' investigations. This most recent revelation about significant deficiencies in this investigative service is most disturbing. The committee suggests to ADFIS that the investigations that took place relating to incidents onboard HMAS *Success* in 2009 should not be treated as an 'aberration'. In the committee's view, they should be considered in light of the committee's 2005 findings and ADFIS continuing attempts to improve its investigations. It should be noted that the committee found in 2005 that the ADF had 'proven itself manifestly incapable of adequately performing its investigatory function'.

9.9 The Provost Marshal, through the Minister for Defence, has been providing the Senate Foreign Affairs, Defence and Trade Legislation Committee with periodic updates on the progress of reforms to the Australian Defence Investigative service.⁴ With this in mind, the committee makes the following recommendation.

Recommendation 2

9.10 The committee recommends that the Provost Marshal in his next update to the Senate Foreign Affairs, Defence and Trade Legislation Committee on

1 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 10 August 2010, p. 14.

2 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 10 August 2010, p. 14.

3 Gyles Report, Part Two, paragraph 6.8.

4 The most recent was received in February 2011.

progress in reforming ADFIS include the lessons learnt from the investigations into matters relating to HMAS *Success*. The committee is not interested in individual performances but the systemic shortcomings that allowed the mistakes to occur and importantly to go undetected for some time.

Administrative system

9.11 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. Also, 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.⁵

9.12 For six weeks after their removal, they remained in the dark as to the reasons for their removal. Then without warning, headline news items reported that sailors from *Success* had been counselled and sent home after a ledger surfaced recording bets on how many of their fellow crew members they could sleep with.

9.13 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.⁶ 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.'⁷ 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.⁸

9.14 There is no doubt that these media reports contained a number of errors, but most importantly the sailors were not removed because of their involvement with a sex ledger. Defence's response to the adverse media reports concentrated on

5 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.

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

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

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

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. As a result, the reputation and personal wellbeing of the senior sailors was placed in jeopardy.

9.15 To make matters worse within days of the first report of the sex scandal, a journalist rang the three sailors on their mobile phones.

9.16 In the committee's view, 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 could. The responsibility for rectifying the errors also resided with those who knew that the reports were wrong. Apparently no one bothered. The reports went uncorrected.

9.17 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.

9.18 By mid August 2009, the senior sailors' right to procedural fairness had been suspended for over three months. Despite their persistent efforts to obtain information, their position and entitlement to know the reasons for their return to Australia had changed little from the day they were removed from the ship on 9 May. Even after the distress caused by media reports of their involvement in a so-called sex scandal, they still could not obtain information on why they were landed and returned to Sydney.

9.19 This exception to the procedural fairness rule was based on the understanding that the senior sailors posed a threat to the safety and welfare of the ship's crew and that informing them of the reasons for their removal may prejudice the integrity of the Inquiry Officer Inquiry. The Fleet Legal Officer advising the CO *Success* relied heavily on this incomplete inquiry, which was established in May, to justify continuing the order disallowing the sailors to contact the ship's crew.

9.20 The Inquiry Officer's report, finally completed on 20 August, was intended to bring an end to the speculation about the events onboard *Success* during the first half of May 2009. Rather than go some way to putting an end to this troubled process, the findings of the inquiry prompted the senior sailors to lodge ROGs which argued that the inquiry was biased, conducted improperly, and its findings unreasonable. The subsequent legal advice on the ROGs called into question the integrity of the inquiry which eventuated in the CDF and Chief of Navy declaring the Inquiry Officer Inquiry void.

9.21 A key consideration for the committee was how a situation could arise whereby the Inquiry Officer Inquiry, intended to establish the facts and circumstances of allegations raised in the flawed E&D report, was itself found to be flawed.

What went wrong

9.22 Based on years of experience, Defence have promulgated regulations, issued instructions and published manuals and handbooks to assist decision-makers, commanding officers and those responsible for inquiries. They provide advice and guidance on statements of reasons, on managing complainants and respondents, on procedural fairness, avoiding perceptions of bias and protecting privacy.

9.23 In this report the committee has quoted from Defence instructions and manuals. But during the administrative processes relating to events on *Success*, they seem to have been ignored. The sailors were not provided with a statement of reasons for their landing until September; the terms of reference for the Inquiry Officer Inquiry were broad and 'invited a fishing expedition'; not all the terms of reference were addressed adequately; and its final report was delayed. Also, an assistant to the Inquiry Officer Inquiry should not have been appointed due to the potential for bias; the CO *Success* had publicly maligned the senior sailors conveying a message to potential witnesses of assumed guilt; and the senior sailors' right to privacy had been abused. Moreover, the senior sailors were publicly vilified for something they had not done but there was no attempt to correct the errors. The list goes on.

9.24 In chapter 7, the committee noted that ADF personnel should be confident that when adverse action is proposed against them, they would be provided with reasons for the action. They should also expect that they would receive a fair hearing. Any failure to do so may sour their perceptions of the administrative processes. The inquiries and investigations into the allegations levelled against the senior sailors is a sorry example of what can go wrong when not properly managed. The huge expenditure of resources and the damage inflicted on the reputation of Navy and some of its personnel may have been avoided or contained if close attention had been paid to proper process and to the advice and guidance provided in the relevant Defence Manuals.

9.25 The committee also found that currently opinion is divided on the validity of the Inquiry Officer Inquiry. The arguments and counter arguments about the merits and findings of this inquiry in large measure reflect the nature and veracity of the evidence before it. The committee has seen only fragments of the Wark Inquiry transcripts which, in some cases, and consistent with that before the Commission, was contradictory, unreliable, self-serving, petty and occasionally vexatious. Some of the evidence is drawn from the recollections of people who were heavily intoxicated at the time of an alleged incident. Mr Gyles found:

Even with the powers and resources available to this Commission of Inquiry, it was very difficult to obtain full and frank evidence from crew members.⁹

9 Gyles Report, Part Two, paragraph 2.83.

9.26 The committee cannot see any value in reassessing or reviewing the evidence before the various inquiries or prolonging this matter in any way. Clearly the senior sailors and their families have undergone a truly unwarranted and dreadful ordeal. Some members of *Success*' company have also been exposed to unnecessary and in some cases distressing public scrutiny and comment. For a number of individuals, the damage caused to their reputation, personal relationships and career prospects, far outweighs any likely adverse action that could be taken against them. In this regard, the committee believes that the time for healing and making amends is well overdue.

9.27 Thus, the committee agrees with Mr Gyles' recommendation that the senior sailors should be compensated for the hardships they have experienced. This compensation should also take account of Navy's failure of duty of care toward the senior sailors during the difficult months after they were removed from the ship especially as they were being pilloried in the media for something they did not do. The committee believes that it is particularly important for Navy to put every effort into helping the sailors to resume their careers and to rise above the experiences of the last two years.

9.28 The committee is also particularly cognisant of the importance of providing the ship's company with the support needed to restore *Success*' reputation. In this regard, the committee notes the view of the CO *Success*, CMDR Rayner, who was left to deal with the aftermath of this unfortunate process. He stated:

We've made changes and I think when I joined the ship I felt it didn't feel right. There was a lot of mistrust and because of the move of the senior sailors that had caused great rifts within the ship and it continues to this day with things going on, but that had caused a lot of heartache, a lot of mistrust within the ship and a lot of friction and we've moved on from that and we've resolved a lot of those cultural/personal issues.¹⁰

9.29 Although, the committee recommends that Navy should endeavour to do its utmost to assist the senior sailors and the company of *Success* to put the events of 2009 behind them, it must learn important lessons from this experience. The lessons go to the importance of due process and of complying both in word and spirit with the various Defence Manuals on managing unacceptable behaviour and subsequent inquiry processes.

9.30 From its monitoring of reforms to Australia's military justice system, the committee is aware that the Inspector General of the ADF and the Fairness and Resolution Branch have critical roles in managing reports of unacceptable behaviour in the ADF. Their apparent absence, particularly in an advisory capacity, from the administrative processes dealing with unacceptable behaviour in respect of HMAS *Success*, is noteworthy.

10 Commission of Inquiry into alleged incidents onboard HMAS *Success*, transcript, 5 August 2010, p. 39.

9.31 In this regard, the committee recommended that the IGADF, the Fairness and Resolution Branch and Defence Legal look closely at the processes that were followed after reports of unacceptable behaviour were made to the CO *Success* (see Recommendation 1, paragraph 7.85).

9.32 The committee is strongly of the view that Defence must take responsibility for what the committee believes was an organisational failure. There were multiple breakdowns in procedure and breaches of standard practice in the management of reports of unacceptable behaviour, including the mishandling of media reports. Defence must look closely at its internal control and monitoring mechanisms to ensure compliance with its instructions and Manuals.

SENATOR ALAN EGGLESTON
CHAIR

