

SENATE STANDING COMMITTEE ON FOREIGN AFFAIRS,
DEFENCE AND TRADE

SEXUAL HARASSMENT

IN THE

AUSTRALIAN DEFENCE FORCE

August 1994

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ISBN 0 642 21281 3

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TERMS OF REFERENCE

On 29 September 1993, the Senate referred the following matter to the Senate Standing Committee on Foreign Affairs, Defence and Trade for inquiry and report by the last sitting day in February 1994:¹

1. The incidence of sexual harassment or sexual assault in the Royal Australian Navy, and the appropriateness of the handling by the Royal Australian Navy of allegations of such harassment or assault, with particular reference to:
 - a. allegations of sexual harassment towards female personnel aboard HMAS SWAN in 1992;
 - b. the adequacy of living conditions provided for female personnel on HMAS SWAN, including the sleeping and ablution areas;
 - c. the behaviour of officers from HMAS SWAN while ashore during deployments in South-East Asia in 1992;
 - d. other appropriate matters contained in the Board of Inquiry Report;
 - e. whether the Terms of Reference of the Board of Inquiry were sufficient to enable the Board to consider any aspects of the unacceptable behaviour occurring on board HMAS SWAN, and the appropriateness of the recommendations of the Board;
 - f. whether the subsequent disciplinary and administrative action taken against persons named in the Board of Inquiry Report was sufficient and appropriate;
 - g. the appropriateness of the decisions made as part of determining whether sexual assault charges should be laid, and a Court Martial convened, in reference to an officer aboard HMAS SWAN in 1992;
 - h. the content and timing of directives from the Government in relation to the integration of female personnel into the Navy, with particular reference to sea-going appointments, and the actions taken by the Government relating to the Board of Inquiry;
 - i. the appropriateness of actions taken by the Navy subsequent to the Board of Inquiry Report to address the issues of sexual harassment on Navy ships; and
 - j. an evaluation of the 'Good Working Relationships' project being undertaken by the Navy.
2. While dealing with and reporting first on the case of sexual harassment on HMAS SWAN, the Committee is also to inquire into the nature and extent, if any, of sexual harassment in the other armed forces.

¹ Reporting date was subsequently extended to 25 August 1994.

AUSTRALIAN DEFENCE FORCE

SEXUAL HARASSMENT HOTLINES

Royal Australian Navy (Operation Lifeguard)

<i>Australia</i>	<i>008 - 644 247</i>
Canada	1800 - 655 4796
Hawaii	1800 - 865 3776
Hong Kong	800 - 2974
Indonesia	00800 - 61626
Japan	0066 - 338 00917
Korea	0078 - 611 3348
Malaysia	800 - 2536
New Zealand	0800 - 442 290
Philippines	1027 - 1800 610 3344
Singapore	800 - 616 1205
Thailand	001 - 800 613 346

Royal Australian Army *008 - 803 831*

Royal Australian Air Force *1800 - 626 25*

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Senator B.R. Burns, Queensland
Senator C. Ellison, Western Australia
Senator S. West, New South Wales
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Ms Virginia Buring provided advice on legal aspects during the course of the inquiry.

Contributions were made at various times by Ms Lynette Aungiers, Ms Linda Bates, Ms Jane Battersby, Ms Kim Donaldson, Ms Jenny Hill, Mrs Kay Chee Lance, Ms Angie Mistic and Ms Elizabeth Mullighan.

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PROFILES OF MEMBERS OF THE COMMITTEE



Senator Gerry Jones (ALP - Queensland), Chairman of the Committee since 1993, Senator Jones is the Government Whip in the Senate, a position he has held since 1987. He was elected to the Senate in 1980 and has been a Senator for Queensland since that time. Senator Jones has been a member of several Senate Standing and Select Committees, including Science, Technology and the Environment; Procedure, Publications, House, the Senate Select Committee on Video Material and Legislation Procedures Committee. He is currently the Chairman of the Selection of Bills Committee. He

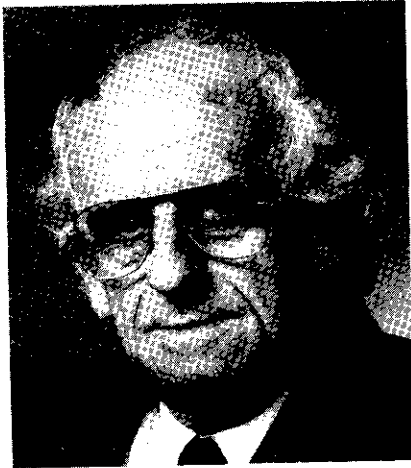
has also served on the Joint Statutory Committee on Public Works and is currently a member of the Joint Statutory Committee on the National Crime Authority and of the Joint Standing Committee on Foreign Affairs, Defence and Trade. Before entering Parliament, Senator Jones was a Research Assistant and ALP official. He was the State Secretary of the Queensland ALP from 1977 to 1980. He was the official Australian Government representative at the inauguration of the President of Chile in March 1994.

Senator Baden Teague (Liberal Party - South Australia) Deputy Chairman:

A Senator since 1978 and Chairman of the Opposition Task Force on Foreign Affairs, Defence and Trade 1990-93, Senator Teague is now Parliamentary Secretary to the Deputy Leader of the Liberal Party. He has served on many parliamentary inquiries, especially in the areas of Foreign Affairs, Defence and Trade; Employment, Education and Training; and Parliamentary Privilege. Graduating BA (Hons) BSc at Adelaide and PHD at Cambridge, he worked at Adelaide University from 1972 to 1978 where he was responsible for student services and lectured in the history of ideas. Senator Teague has visited most



countries in the Asia-Pacific region and many, such as China and Indonesia, on numerous occasions. As Deputy Leader of Parliamentary Delegations he has visited Europe, North America, Latin America, South Asia and the Middle East. He has participated in all the inquiries of this Senate Committee since joining the Committee in September 1987.



Senator Bryant Burns (ALP - Queensland) was elected to the Senate in 1987. He is a member of several Senate Standing and Joint House Committees, including Industry, Science and Technology and Foreign Affairs, Defence and Trade. He has been a member of the Joint Statutory Committee on Public Works since 1987. Senator Burns is currently Chairperson of the Senate Standing Committee on Rural and Regional Affairs as well as Senate Estimates Committee B.

Before entering Parliament he has worked as a Stockman, Boilermaker and Trade Union official as the State President of the Amalgamated Metal Workers Union, Queensland. He has

held positions on various ALP and Trade Union Committees and was an Executive Officer of the Trades and Labor Council of Queensland. He is presently Deputy Whip.

Senator Sue West (ALP - New South Wales) The first woman from New South Wales to represent that state in the Senate, she filled the casual vacancy created by the retirement of Senator Doug McClelland in 1987. Defeated in the double dissolution in July that year, she was re-elected to the Senate in 1990. Senator West is a qualified midwife, and has also worked as a community health nurse, a research officer and a ministerial consultant.

She is a member of numerous committees including the Senate Standing Committees on Community Affairs; Environment, Recreation and the Arts; Rural and Regional Affairs and the

Senate Select Committee on Superannuation. Senator West is presently the Chair of the Community Affairs Committee and Secretary of the Federal Parliamentary Labor Party Caucus.





Senator Chris Ellison (Liberal, Western Australia). Elected as a Senator for Western Australia in July 1993, Senator Ellison serves on the Senate Legal and Constitutional Committee, the Senate Privileges Committee, the Senate Standing Committee Foreign Affairs, Defence and Trade, and he is a member of the Senate Inquiry into the Print Media. He was recently elected to serve on the Joint House Committee which will take responsibility for reviewing the implementation of the Native Title Act. Senator Ellison graduated from the University of Western Australia in 1977 with a Bachelor of Jurisprudence (B.JURIS) and Bachelor of Laws (LLB).

He completed his Articles with the Legal Aid Commission of Western Australia and in 1980 commenced practice as a partner in his own firm in Perth, WA until election to the Senate in 1993. Apart from some civil and family law, his main practice was in criminal law jurisdiction where he practised as a barrister and solicitor (which is permissible in WA).

Senator John Woodley (Australian Democrats - Queensland) was elected to the Senate in March 1993 and is the Australian Democrats' spokesperson on Social Security, Rural Australia, Primary Industry, Australia's Security (including Defence) and Tourism. He is a member of the Senate Standing Committees on Foreign Affairs, Defence and Trade; Rural and Regional Affairs and the Senate Select Committee on Superannuation. Senator Woodley holds a Licentiate of Theology from the Melbourne College of Divinity and a Bachelor of Theology from the Brisbane College of Theology. Before entering



Parliament, the Reverend John Woodley was Chaplain of the Queensland University of Technology and a Guest Lecturer and Tutor in Ethics at that institution. He has held several positions in the Methodist and Uniting Churches and has written a number of books. He was a Reservist in the Royal Australian Navy for two years from 1957. He was Queensland State President of the Australian Democrats from 1991 to 1993.

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INTRODUCTION

On 29 September 1993, the Senate referred a detailed set of Terms of Reference to the Senate Standing Committee on Foreign Affairs, Defence and Trade concerning the nature and incidence of sexual harassment or sexual assault and the handling of such complaints in the Royal Australian Navy and the other armed forces.

The Terms of Reference require the Committee to examine the overall situation, as well as the incidents on board the Destroyer Escort, HMAS SWAN, during 1992 involving the medical officer, Dr Wheat, and the female sailors assigned to that ship.

Dr Wheat wrote to the then Minister for Defence Science and Personnel, the Hon. Gordon Bilney, MP, on 25 November 1992 expressing dissatisfaction with various aspects of her service on the SWAN and subsequently.

In December 1992, a Navy court-martial tried and acquitted an officer from HMAS SWAN of a charge that he sexually assaulted Dr Wheat during the deployment. Navy convened a Board of Inquiry on 21 December 1992 to investigate the matters raised by Dr Wheat, in particular Dr Wheat's allegation that she had been sexually harassed on the SWAN. The Board delivered its findings in a confidential Report to the Maritime Commander on 8 March 1993. The Recommendations were largely adopted, with some variations. In September of that year some of the matters dealt with by the Board were prominently featured in the media and allegations made that the incidents and investigations were inappropriately handled. On 9 September 1993, the then Minister for Defence Science and Personnel, Senator the Hon. John Faulkner, raised the matter with the Committee Chairman and issued a press release on the same day noting that he had done so. On 29 September, the Senate referred the matter to this Committee for inquiry.

The Committee approached selected organisations integral to the inquiry, such as the Navy and Headquarters, ADF, as well as other organisations which it considered could provide a benchmark for comparison with the ADF. The Human Rights and Equal Opportunity Commission, the Public Service Commission and the Australian Federal Police were prominent among these. The Inquiry was advertised in the print media and interested members of the public and the Services were invited to lodge submissions.

The Committee received a total of 122 submissions from individuals, including many submissions from current and former Service personnel and 16 submissions from various organisations. Among the submissions were some which advanced specific claims and made specific charges against individuals.

The Committee considered very carefully how it should deal with such allegations. The approach the Committee adopted reflected a wish to strike a fair balance between receiving legitimate information that would enable it to fulfil its terms of reference and receiving information that would prejudice the natural justice rights of individuals.

The Committee is bound by the procedures laid down in the parliamentary resolutions of the Senate to provide any individual opportunity for a response to allegations about that individual of an adverse nature. Another important consideration that was taken into account by the Committee is the limitation on the capacity of a parliamentary committee to investigate in detail all the claims and counterclaims that can arise in specific cases. In many instances, therefore, the Committee accepted submissions on the basis that the identities of the individuals named adversely were not revealed. In those cases the Committee made an offer to the complainant to refer the complaint to either the Sex Discrimination Commissioner, the Ombudsman or other appropriate authority to monitor the handling of the case. This approach enabled the Committee to form a view as to the kind of complaints that were being made without making determinations on specific allegations. This procedure was not, however, considered appropriate in relation to the incidents on the SWAN. In relation to possibly adverse comments about individuals involved in the incidents on the SWAN, the Committee sought written responses to any comment that could be construed as adverse. Allegations about the way in which the Services had handled specific sexual harassment complaints were not referred individually to the Services for response. The Committee's approach was to explore the types of issues raised by individuals in their submissions to the Committee with representatives of the Services at public hearings and in follow-up correspondence with the Services.

The Committee held six public hearings and in-camera hearings of four witnesses during the course of its inquiry. Fifty-seven witnesses appeared before the Committee at the public hearings, in some cases more than once. Witnesses who wished to have legal counsel present when they gave evidence to the Committee were advised that, in accordance with the relevant Parliamentary Privilege Resolution of 25 February 1988, the role of counsel would be restricted to advising the witness only. While a witness was free to consult counsel in the course of a meeting at which the witness

was required to appear, counsel assisting the witness were not permitted to speak on behalf of the witness or to direct questions to the Committee, to the witness or to other witnesses.

At one public hearing held at Maritime Headquarters in Sydney, fifteen serving members of the Navy, ranging in rank from Able Seaman to Lieutenant Commander, recounted their experiences and expressed their views to the Committee. Representatives of Navy appeared before the Committee on three occasions to respond to issues and questions that the Committee identified during its deliberations. Representatives of Army and Airforce, and the Commandant of the Australian Defence Force Academy appeared, jointly with the Assistant Chief of Defence Force - Personnel before the Committee.

Vice-Admiral Ian MacDougall, who was Chief of Naval Staff during the time when the SWAN incidents took place, and steered the Navy onto its present course, gave a full and frank account to the Committee of shortcomings in the Navy's initial understanding of the full extent and nature of the problems it would have to address with the integration of women in the Service.

Vice-Admiral MacDougall's term of office happened to come to an end during the course of the inquiry. The Committee was pleased to be in a position to observe that Vice-Admiral Taylor, who took over as Chief of Naval Staff from Vice-Admiral MacDougall, and led the Navy's team to the Committee's final public hearings, affirmed his personal commitment and that of the Navy to a positive program of change in all workplace relationships in the Navy.¹

The Committee wishes to thank the Navy for the way it responded to the many requests the Committee made for information and documentation. This inquiry has proved exceptionally demanding in the quantity and detail of the evidence required. The Navy provided all material requested promptly and facilitated the Committee's investigations in every way. The Committee particularly appreciated the opportunity to spend a day at sea on HMAS SWAN. It was also appreciated that the one member of the Committee who was unable to be present on the SWAN subsequently spent a full twenty four hours on the SWAN sister ship, HMAS TORRENS. These experiences made an invaluable contribution to the Committee's understanding of the issues and circumstances surrounding the incidents on the SWAN.

1 VADM R. Taylor, Committee Hansard, p. 1246

The Committee wishes to express its very deep appreciation to all the individual members of the Defence Force who have come forward with personal submissions to the inquiry. Particular thanks go to all the individuals who came before the Committee at public hearings.

The Committee is very much aware of the courage that it takes for individual women and men to make public their views and experiences on matters that are usually regarded as personal and private.

The Committee recognises the anxiety and stress that may be involved for the individuals who came forward. The Committee also recognises the pressures that individual members of the Defence Force may feel they are under to demonstrate unquestioning loyalty to tight-knit organisations such as the Navy, the Army or the Airforce.

This is by no means to say that either the top leadership, or any other management level in the forces deliberately exerted such pressure. On the contrary, the Committee was impressed by the efforts made to encourage individual personnel to put submissions to the Committee. This appeared to be particularly true in the case of the Navy. The Committee took note of the very clear messages from the then Chief of Naval Staff, Vice-Admiral Ian MacDougall to all personnel giving a firm assurance that unacceptable behaviour of any kind in the Navy would not be countenanced.² Signals were also sent out from the Chief of Naval Staff to all stations encouraging personnel to make submissions. The Committee is also aware, that articles and information about the inquiry appeared in the in-house "Navy News" paper. Several commanding officers made a point of drawing the attention of their crews to the opportunity to make individual views known. All witnesses were advised of the protection extended under parliamentary privilege. Vice-Admiral MacDougall gave the following undertaking at the first of the Committee's public hearings:

"High in our thinking in relation to this Senate inquiry was: would there be fears of retribution if submissions were made? We all worked very hard with reassurance ... the rest of management and I have most forcibly made it clear that if anybody has something to say, good, bad or indifferent, in this context, no retribution." ³

2 The message from CNS and all-post signal is in Annex 7 to this Report.

3 VADM I. MacDougall, Committee Hansard, p. 575.

Notwithstanding this encouragement, the Committee does not underestimate the courage that it takes for an individual to expose herself or himself to scrutiny in a public forum. Not only does the individual lay herself or himself open to criticism by peers and others within the organisation, but also risks a further intrusion by the press into her or his private thoughts and feelings. Several witnesses came to the Committee in the firm belief that the press had distorted reality in the way the SWAN incidents were reported; they would have undoubtedly had concerns that what they said to the Committee could well be presented to the wider community in ways that may not accurately reflect their comments.

Indeed, the Committee observed that much of the media coverage failed to reflect accurately the balance of evidence presented during the course of a day of hearings. Television news at the end of the day and headlines the following morning invariably highlighted accounts of problems; little if any space was given to the extensive time witnesses spent in illustrating the complexity of the issues being examined. Nor was much news time given over to the accounts of the very real efforts that have been made to address acknowledged shortcomings in recent times.

There is no question that the unfavourable publicity associated with the SWAN revelations provided a very real spur to the Navy to speed up and extend efforts to address the issue of sexual harassment seriously. At the same time it was made clear to the Committee that the way in which the media reported the SWAN revelations left many Navy personnel angry. They said they felt that a slur had been cast, unfairly, over the whole Navy. Spouses and children of Navy personnel were confused and hurt by the reactions of the people around them to the sensationalised reporting.

A sense of unfair treatment was clearly conveyed to the Committee during an informal discussion with some of the personnel who had been on board the SWAN at the time of the incidents. Many felt their reputations had been tarnished by the way events that many crew members knew nothing of at the time were reported by the media. The Committee sensed that this informal meeting on the SWAN was the first opportunity these crew members had to have their account of the impact that the sensationalised reporting had had on their lives heard by anyone outside the Navy. The sense of unfair treatment extended well beyond the crew members of the SWAN and emerged in a number of submissions put to the Committee by other Navy personnel. Some expressed concern that the distorted publicity would harm the pace of integration of women into the Services.

The individuals who may have been bruised by the SWAN events or their aftermath can have the satisfaction of knowing that these events, including the Senate inquiry, have acted as a catalyst for a very positive and worthwhile enhancement of a program of change.

The Services repeatedly point out that they have certain advantages in that they are disciplined organisations. They have a tradition of imposing rules. They have the right and authority to discipline. They can go so far as to discharge anyone who fails to behave in the prescribed manner.⁴

Disciplinary measures have a place in changing behaviour. But disciplinary measures should be seen as only one of the tools available. Moreover, if the objective is to change future behaviour and not merely punish for past behaviour, careful and sensitive judgements need to be made about the role and use of disciplinary measures. Attitudinal change must be achieved if lasting change is to be achieved. Even more importantly, attitudinal change must be achieved if the destructive consequences of forced behaviour change are to be avoided.

If the behavioural changes demanded are seen to be unreasonable, unfair, or unclear, there is, a high risk of resentment. Resentment can be the cauldron for subsequent dysfunctional and damaging behaviours. Distress, confusion and uncertainty of the individual will affect organisational efficiency – and hinder the primary objective of the armed forces, the operational effectiveness of the armed forces in the event of conflict. It has been demonstrated that the distress caused by sexual harassment to the victim can have serious adverse consequences. At the same time, the level of confusion and uncertainty surrounding the question of sexual harassment and the effect that this uncertainty has on individuals and on the organisation has not been adequately examined or understood.

It is essential to deal with both sides of the question. It is essential to deal with the unhappiness of the women and men being subjected to behaviours they find unwelcome. It is equally important to deal with the emotions and needs of those in the process of accepting new standards of behaviour. It is necessary to examine the basics of what is expected of men and women in our society today.

4 Professor Bryson, HQADF Supplementary Submission, Committee Hansard, p. 1498

It is not only men who find difficulty in clearly identifying what society expects of them today. Some men and some women, and society as a whole sometimes send out confusing messages. On the one hand, there is still an expectation that the man will be strong. For some the most common way of demonstrating strength is by demonstrating power. The perception of success itself is intrinsically linked to visible power. And very often that power is exercised by various dominating behaviours. The reality is that men have frequently been encouraged by the society we live in to dominate, both by the use of strong language and other aggressive behaviours. Some women use different techniques – caustic comment rather than vulgar language, passive aggression rather than open violence. Yet these behaviours can in their own way be equally difficult to handle. The entry of women into previously all-male workplaces may be perceived as a challenge to deeply ingrained assumptions about the proper role, rights and obligations of men and women. Those issues must be openly discussed and not swept under the carpet if genuine attitudinal change to matters such as sexual harassment is to be achieved.

It is widely accepted that sexual harassment is not about sex but about power.⁵ In the armed forces the power imbalance between individuals is compounded by the existence of a rigid Chain of Command.⁶ The power of one individual over another is more deeply institutionalised in the armed forces than in society at large.

It would not be surprising then if the fundamental changes that society is undergoing in defining the relationship between the sexes were more difficult to come to grips with in the armed forces than elsewhere in society. Perhaps the surprising thing to emerge in this inquiry is that there is little evidence to suggest that sexual harassment is any worse in the Defence Force than elsewhere.

The statistics are notoriously unreliable and incomplete, but professionals who have observed the situation have tentatively concluded that sexual harassment in the ADF is no more prevalent than in society at large.

It is very clear that the Navy is now tackling the issue of sexual harassment with great energy and commitment. The Committee is satisfied that, at an organisational level,

5 Professor Bryson, HQADF Submission, p. 1503.

6 The Chain of Command is the structure through which authority is exercised in the military. It is a hierarchical structure in which personnel are required to carry out the lawful commands of their superiors. Personnel are promoted up through the Chain of Command on the basis of their abilities, experience and performance.

the Navy is actively pursuing a program of educating its personnel and raising awareness across the organisation about sexual harassment. The program, begun in January 1993, has undergone intensive development since then. Sensible mechanisms have been put in place to deal with those instances where education and awareness may not be enough to eliminate unacceptable incidents. The program has been very ably led throughout by Commodore Barrie. The assignment of an officer of this seniority to the task sends a clear signal to all personnel of the importance that Navy attaches to the issue. The Committee attended one such seminar and observed the professional presentation of the subject matter and the encouragement given to participants to discuss their concerns openly.

Most importantly, the Committee has noted the unequivocal commitment made by the Chief of Naval Staff, Vice-Admiral Taylor, appointed during the course of the inquiry, to continue the very serious effort begun by his predecessor, Vice-Admiral MacDougall to eliminate sexual harassment from the Navy. An outline of the measures they are taking is given later in this Report, together with the Committee's recommendations on the further development of the program.

The other two Services, the Airforce and the Army, have programs on the drawing board but have not proceeded with the same sense of urgency and commitment evident in the Navy. It is important that the Navy maintains its momentum. It is imperative that the other Services give a higher priority to developing the appropriate mechanisms and putting educational programs in place.

Expectations for this Report are high. Some individuals involved in the SWAN incidents appear to regard the inquiry as a court of appeal. Many members of the SWAN crew expect the report to exonerate them from the perception they believe the media has conveyed that everyone on the SWAN is in some way guilty of sexual harassment.

Several submissions have expressed the hope that the Report will set a benchmark for the way in which sexual harassment will be dealt with in the whole community.

Some hope it will put the brakes on what is often referred to as '*social experimentation*', that is the employment of women in areas previously exclusive to men. The Committee has taken the view that the problems of integration that have come to light since combat-related positions have been opened to women are in part due to the inevitable pressures created by such a major change in a very traditional organisation. The difficulties encountered do not warrant going back to the old ways.

The challenge is to make the new opportunities work for both men and women.

Feminists of different views may be variously critical and laudatory of the Report's findings. There is little possibility that the Report will either meet all the expectations or escape criticism from some quarters. The issue of sexual harassment and the related issue of equality of opportunity for women in the Defence Force are still too contentious for the Committee to hope to reach conclusions welcomed by all.

It is the hope of the Committee that the individuals directly touched by these events will accept the report as a fair-minded evaluation of the evidence that was put to the Committee. It is also the hope of the Committee that the Report will assist all those directly affected to understand better their own role in the events that occurred. Most importantly the Committee hopes that both individuals and the organisations they work in will have a better understanding of what is required of them to help prevent the repetition of the unhappy events on the SWAN and other similar instances that have occurred periodically.

RECOMMENDATIONS

Recommendation One: The Committee recommends that the definition of sexual harassment under the Sex Discrimination Act be refined to reflect more clearly

- the hierarchy of complaints;
- the advantage, where possible, of the complainant informing the alleged harasser that his or her behaviour is offensive;
- the appropriate mechanisms and legal sanctions for the different degrees of seriousness of the unlawful behaviour.

[para. 1.118]

Recommendation Two: The Committee recommends that the Human Rights and Equal Opportunity Commission should investigate the proposal that the requirement under the Sex Discrimination Act for employers to take all "*reasonable steps*" to prevent an employee or agent from engaging in unlawful acts of sexual harassment should specify that, as one such "*reasonable step*", the employer should provide support, through an appropriate off-line, internal unit in the organisation (such as Sexual Harassment Contact officers) or, facilitate access to an external agency (such as the Sex Discrimination Commissioner), for the person who feels harassed to bring to the attention of an alleged harasser (directly or indirectly) that the person's behaviour is offensive, intimidating or humiliating.

Such action should be seen as different from a formal complaint alleging sexual harassment and provide an opportunity for both parties to clarify the situation and be made aware of the possible consequences if offensive behaviour continues. The purpose of the measure is to assist in resolving genuine misunderstandings before they become a major difficulty in the work relationship, particularly in situations where the person who feels harassed feels unable to prevent the offending behaviour by his or her own action alone. The measure would also simplify the resolution of a subsequent complaint, should such a complaint be formally lodged.

[para. 1.121]

Recommendation Three: The Committee recommends that Navy pay greater attention to the in-port activities of its personnel to gain the maximum benefit from these visits while minimising the potential for unacceptable behaviour. The Committee recommends that ships' officers, in conjunction with the Australian Defence or diplomatic representatives in the countries to be visited, identify possible suitable cultural, sporting and social in-port activities and make the arrangements for interested crew members to participate. This function could best be undertaken by officers, such as doctors and chaplains, who are responsible for the health and well-being of the crew.

[para.4.14]

Recommendation Four: The Committee recommends that care be taken to ensure that the choice of legal counsel appointed by Navy, Army and Air Force to assist with multiple inquiries or legal proceedings into the same or related matters does not give rise to perceptions of possible conflict of interest.

[para. 5.20]

Recommendation Five: The Committee recommends that the Defence Instructions covering Inquiries into Matters Affecting the Defence Force be amended to include a requirement, in the case of an inquiry into personnel matters such as sexual harassment, to inform all witnesses, including those who are not directly the subject of recommendations, of their status at the conclusion of the inquiry. Consideration should also be given to advising all those directly involved in an inquiry of the outcome of any action taken pursuant to the inquiry as soon as possible after decisions on the implementation of the inquiry's recommendations have been made.

[para. 5.27]

Recommendation Six: The Committee recommends that supervisors be clearly instructed and required to record in writing whether a performance assessment of an individual is based on a short period providing limited opportunities for observation of the performance of that individual.

[para. 5.70]

Recommendation Seven: The Committee recommends that a special effort be made to ensure that all qualified entry personnel be given sufficient information to understand the regulations governing public employment in the Defence Force and Navy's way of applying those regulations to its organisation.

[para. 5.92]

Recommendation Eight: The Committee recommends that Navy continue, through the Good Working Relationships program, to examine and improve all aspects of work relationships within and between the various functional groups in the Navy. In particular the Committee recommends that further detailed studies be carried out, with the assistance of expert consultants, into the impact of group dynamics on the individuals in the Navy, and on the organisation more generally, with a view to harnessing more effectively the human resources available to achieve higher standards of performance and behaviour.

[para. 6.20]

Recommendation Nine: The Committee recommends that in all its training and education courses on gender awareness, Navy stresses the responsibility of all individuals involved in incidents of unacceptable behaviour and sexual harassment. While it may not always be possible for the person who feels offended to tell the offender directly, the person who objects to the behaviour has a responsibility, especially if the offensive behaviour could also be interpreted as jocular or light-hearted, to tell at least one other person about it, preferably someone well placed to support the person who feels offended to resolve the situation before it deteriorates further. To facilitate such communication the identity of all Sexual Harassment Contact officers as the personnel best equipped to offer support should be readily accessible

to all personnel; moreover all personnel should be clearly advised that they may approach the Sexual Harassment Contact officer in their own unit or in any other unit or division.

[para. 6.46]

Recommendation Ten: The Committee recommends that the Navy:

- re-examine the adequacy of the nine week qualified entry officers' course and the reserve officers orientation course and consider extending the courses to a full six months;
- consider setting a minimum recruiting period to allow for longer training;
- give new medical recruits the opportunity to take day and weekly running trips before taking up a longer sea posting;
- wherever possible give new medical recruits a sufficient period on shore before posting to sea;
- make a determined effort to post medical officers to ships in time for them to take part in the work-up of the ship before deployment;
- identify specific naval tasks that can be effectively undertaken by medical and dental officers at sea in addition to their professional medical duties to assist them in being accepted as fully integrated members of the team; and
- ensure that the qualified entry officers in both the Reserve and the Permanent Naval Force are clearly informed about these additional tasks and are adequately equipped, during their initial training, to carry them out.

[para. 6.95]

Recommendation Eleven: The Committee recommends that the provision of medical services on board naval vessels be reviewed, with particular focus on the benefits to be gained from making sea postings available to registered Navy nurses. The review should include an evaluation of the benefits of replacing Petty Officer Medic positions with fully qualified nursing staff, as well as the feasibility of nursing staff, in certain circumstances, being appointed to replace medical officers.

[para. 6.97]

Recommendation Twelve: The Committee recommends that an in-depth review be conducted of all positions at sea with the objective of more clearly identifying the personal characteristics, skills and aptitudes that are considered essential for service at sea. The review should include identifying minimum physical requirements including strength and flexibility, and characteristics such as resilience to stress, adaptability,

and teamwork, that are appropriate for the conditions and for the technologies actually in use today.

[para. 6.104]

Recommendation Thirteen: The Committee recommends that all potential new entrants to the Navy, including direct entry specialists, be given an opportunity to fully discuss and evaluate the difficult and demanding aspects of service, especially at sea, before making a firm commitment to the Navy.

[para. 6.107]

Recommendation Fourteen: The Committee recommends that a review of the management of the RAN's Tactical Electronic Warfare Support Section (RANTEWSS) be undertaken by an independent investigator, reporting directly to the Minister for Defence. In particular, the review should include:

- the organisational structure of RANTEWSS;
- the selection and training of personnel, including the gender balance required to provide equal opportunity for sea postings;
- the establishment, pre-deployment preparation and tasking of tactical teams, including the provision of appropriate equipment and work aids;
- the scope for integrating teams more effectively into ships' crews; and
- the work practices and conditions of deployed teams.

[para 6.116]

Recommendation Fifteen: The Committee recommends that all personnel in the Navy are assessed in the routine appraisal process for their capacity to develop a good working relationship with other personnel, no matter what their gender or sexual preference.

[para. 6.122]

Recommendation Sixteen: The Committee recommends that all personnel with supervisory and management responsibilities are assessed for:

- their skills in facilitating the integration of women into the Service;
- their compliance with the requirement that all sexual harassment complaints are properly investigated;
- their ability to assist in the effective resolution of sexual harassment allegations.

Where appropriate, the views of subordinates of the person being assessed should be taken into account in order to arrive at a reliable assessment of these matters.
[para 6.123]

Recommendation Seventeen: The Committee recommends that the guidelines for performance appraisal be reviewed:

- to clarify the approach that supervisors should adopt to matters such as inadequacies in the assessee's training for tasks, short assessment periods and lack of opportunity for the assessee to demonstrate the particular skills for which he or she is being assessed; and
- to ensure that all supervisors are consistent in their approach to performance appraisal.

[para. 6.124]

Recommendation Eighteen: The Committee recommends that a full-scale review of the Divisional System be carried out. The review should include in particular:

- the effectiveness of the Divisional System in meeting the needs of individuals and in meeting the needs of the organisation;
- the impact of the 008 number on the operation of the Divisional System;
- the impact of the introduction of Navy Quality Management on the operation of the Divisional System; and
- the adequacy of the training of Divisional Officers and Divisional Chiefs for their Divisional duties.

[para. 6.165]

Recommendation Nineteen: The Committee recommends that the potential for tensions between the principles underlying the Chain of Command and the more participatory problem solving principles of Navy Quality Management be openly and more fully addressed at every level of management training in the Navy.

[para. 6.173]

Recommendation Twenty: The Committee recommends that:

- the behaviour designated as gender harassment in para 4d of Annex A to DI(G) PERS 35-3 be clearly identified as unacceptable behaviour between all personnel, including behaviour between members of the same gender; and

- the example in 4b of Annex A to DI(G) PERS 35-3 be reformulated to include derogatory references to both female and male physiological functions.

[para. 6.179]

Recommendation Twenty-One: The Committee recommends that more emphasis be given in the draft DI (G) PERS 35-3 to:

- the value of seeking to resolve concerns about sexual harassment by the individuals involved and at an informal level; and
- the support mechanisms available to the complainant. The guidance should make explicit reference to all the 008 numbers in the section headed "*Avenues of Complaint*". The guidance should also be regularly supplemented by the service-wide circulation of up-to-date lists of Sexual Harassment Contact officers.

[para. 6.180]

Recommendation Twenty-Two: The Committee recommends that the DI (G) PERS 35-3 be more detailed and specific in the guidance it gives on false allegations of sexual offences and sexual harassment. In particular the instruction should outline the procedures that are to be followed and the possible outcomes in the event that a false, malicious, vexatious or patently unfounded allegation is made.

[para. 6.192]

Recommendation Twenty-Three: The Committee recommends that, where a PERS 1 or PR5 is disputed, the superior should see the supervisor responsible for drafting the report and the subordinate separately, before any attempt is made to resolve differences between the parties in a joint meeting.

[para. 7.131]

Recommendation Twenty-Four: The Committee recommends that the Chief of Naval Staff review the censure of Captain Mole, taking into account the Committee's view that:

- Captain Mole should have been given an opportunity to respond to the specific details of the censure as finally issued by the Chief of Naval Staff;
- the censure carried additional weight because it was made public; and
- the severity of a censure at the Chief of Naval Staff level is out of proportion to any shortcomings in Captain Mole's performance as Commanding Officer of the SWAN.

[para. 7.229]

Recommendation Twenty-Five: The Committee recommends that review of Captain Mole's censure should include a parallel review of his performance assessments since August 1992. Furthermore, the Committee recommends that any selection panel considering promotions where Captain Mole is a candidate should have this Committee's Report brought to its attention.

[para. 7.230]

Recommendation Twenty-Six: The Committee recommends that the censure for all other personnel involved in the SWAN incidents be reviewed in the light of the findings of this inquiry.

[para. 7.232]

Recommendation Twenty-Seven: The Committee recommends that amendments to the Defence Force Disciplinary Act be considered to allow for alleged sexual offences involving only Australian military personnel that occur outside Australian territorial waters, including on board Australian vessels, to be tried in a civilian criminal court under the relevant law applying in the Jervis Bay Territory in Australia, having been investigated by the appropriate civilian police and prosecuting authorities.

[para. 8.24]

Recommendation Twenty-Eight: The Committee recommends that:

- the 008 service should remain an integral component of Navy's strategy to eliminate sexual harassment; and
- protocols governing the operation of the 008 number be reviewed in the light of experience a year after the tabling of this report.

[para. 10.19]

Recommendation Twenty-Nine: The Committee recommends that in future, organisers at the Good Working Relationships seminars apportion appropriate time to the issue of homosexuality and the way in which the guidelines on unacceptable sexual behaviour apply.

[para. 11.22]

Recommendation Thirty: The Committee Recommends that Navy devise a conflict resolution program drawing as appropriate on "*Resolving Conflict: Following the Light of Personal Behaviour*" as one useful model. Such a program should be used as an additional segment of the Good Working Relationships program to give practical advice to all personnel in the Navy for resolving the conflict associated with sexual harassment.

[para. 11.26]

Recommendation Thirty-One: The Committee recommends that, in developing the guidelines and training for a conflict resolution program as suggested in Recommendation Thirty, particular attention is given to the development of those skills

and techniques which enable individuals subjected to sexual harassment to be more confident and effective in dealing with such harassment at the personal level.

[para. 11.32]

Recommendation Thirty-Two: The Committee recommends that Navy and the other Services ensure that Defence Instructions regarding policy changes affecting personnel are followed up and explained at divisional and unit meetings.

[para. 11.38]

Recommendation Thirty-Three: The Committee recommends that as new instructions are promulgated, care is taken to ensure that all terminology is gender neutral. The Committee further recommends that as far as possible existing instructions are revised to reflect the new situation.

[para. 11.40]

Recommendation Thirty-Four: The Committee recommends that all officers who are likely to be appointed as Divisional Officers should undertake through - career courses which cover issues of gender awareness and the referral and handling of complaints of sexual harassment.

[para. 11.41]

Recommendation Thirty-Five: The Committee recommends that specific training be provided for staff in the recruitment and postings section of Navy's organisation to enhance their skills in the area of matching the person and the job.

[para. 11.45]

Recommendation Thirty-Six: The Committee recommends that Army, Air Force and particularly ADFA adopt an approach similar to that of Navy towards raising gender awareness and preventing unacceptable sexual behaviour from occurring.

[para. 11.46]

Recommendation Thirty-Seven: The Committee recommends that an evaluation study of the impact of the Good Working Relationships program be undertaken 3 years after implementation.

[para. 11.50]

Recommendation Thirty-Eight: The Committee recommends that the Service Chiefs of Army and Airforce create an opportunity to deliver, in such a way that it reaches all personnel forcefully, their unequivocal and strong commitment to the elimination of sexual harassment from their respective Services.

[para. 12.52]

Recommendation Thirty-Nine: The Committee recommends that the ADF implement without delay the action plan submitted to the Committee on 4 February 1994. The emphasis at this stage of developing the program to eliminate sexual harassment from the ADF should be on service-wide education and on preventative rather than punitive

measures. The Committee considers that particular attention should be paid to the following aspects in the action plan:

I Amendments to Defence instructions

- (a) Mixed-gender focus groups of ADF personnel should be used to gain a better insight into the views of ADF personnel on a hierarchy of unacceptable sexual behaviours, including sexual harassment, and the views of ADF personnel on the optimum way of resolving incidents of varying severity. The results of such focus groups should then be one element to consider when refining further the Defence Instructions on Unacceptable Sexual Behaviour. It remains a matter for the ADF leadership to determine with as much clarity as possible, where the boundaries of sexual behaviour in the ADF lie.
- (b) In addition, changes should be made to the current draft DI(G) PERS-35 on sexual harassment, as outlined in the Committee's Recommendations Twenty, Twenty-One and Twenty-Two.
- (c) DI(G) PERS-35 should be supplemented by a practical guide to all personnel (complainant, harasser, supervisor, observer) for dealing with instances of unacceptable sexual behaviour. The Committee's recommendation Thirty gives more details about the guide.

II Action to educate and raise awareness

- (a) Compulsory awareness raising seminars for all ADF personnel, including all senior ranks, should be developed and introduced as a matter of urgency. While written instructions are essential, they are not sufficient to ensure proper understanding and handling of sexual harassment by all personnel. The seminars are essential to enable all personnel to gain a clearer understanding of the problem and how to deal with it.
- (b) The ADF-wide awareness raising seminars should be supplemented by more specific training for any personnel who wish to develop skills and techniques for dealing with such harassment at the inter personal level.
- (c) Procedures should be put in place to ensure that course symbols, such as pilot course badges, in-house publications (both formal and informal) and training materials do not contain unacceptable sexual connotations.

III Provision of alternative avenues of support

An essential component of an effective sexual harassment policy is the ready availability of avenues of complaint other than through the chain of command.

- (a) A 008 confidential advisory service should be maintained. Consideration should be given to amalgamating the initial points of contact, so that a

single 008 telephone number for all Service personnel replaces the existing 008/1800 numbers for Army, Navy and Air Force. It should be possible for callers to either talk directly to a counsellor or to leave a message at any time of the day or night. Every effort should be made to respond to any message left on the 008 number within 12 hours of the call being received. The service should continue to be widely publicised and reviewed in three years time. Any new staff appointed to the service should be appropriately trained.

- (b) Measures should be put in place to ensure that all other personnel, such as doctors, chaplains, social workers and psychologists who may also be used as an alternative avenue to receive and address complaints are fully aware of their responsibilities in relation to sexual harassment and undergo appropriate training to enable them to identify and assist personnel who may be at risk and to deal appropriately with incidents of sexual harassment that come to their attention.
- (c) The role of specialists such as doctors, chaplains, social workers and psychologists in assisting personnel to deal with harassment should be made clearly known to all personnel.
- (d) An external conflict resolution process should be introduced and made widely known and readily available to any personnel who consider they are being subjected to harassment and encounter difficulties in resolving their complaint directly at the unit level.

IV The promotion of informal resolution of allegations of sexual harassment

- (a) The emphasis in dealing with allegations of sexual harassment should be on informal resolution of the complaint at the local level. Personnel who believe they are being subjected to sexual harassment should be encouraged and given support in resolving the conflict at a personal level.
- (b) If, however, a formal, internal complaint is proceeded with, the procedures followed and the mechanisms that are in place should give assurance to the complainant that the complaint is being fully and properly investigated.
- (c) If the internal investigation is not satisfactory to the complainant, or if the person harassed encounters difficulties in pursuing this course, information on all alternative options (eg. an approach to HREOC, or to the Defence Force Ombudsman) should be made readily available.
- (d) Recourse to courts martial for resolving complaints of sexual harassment should be regarded as a last resort, after other avenues for resolving the problem have been fully explored.

- (e) Assurances must be given at the highest level and monitored to ensure compliance, that there will be no retribution for making a legitimate complaint.

V Improved procedures for the investigations of complaints

Immediate attention must be given to overhauling the procedures and guidelines for the investigation of complaints to incorporate the following:

(a) Investigation of sexual assault

Allegations of sexual assault must be immediately referred to civilian police authorities for investigation.

Provision should also be made for continuing liaison between the civilian investigating authorities, and the military particularly in relation to incidents outside Australian territorial waters pending the adoption of measures in the Committee's Recommendation Twenty-Seven.

(b) Investigation of other sexual harassment allegations

All personnel appointed to investigate incidents must have had appropriate training in the investigation of such complaints.

In all but exceptional cases, investigating officers should be appointed from outside the unit where the alleged incident occurred.

Investigating officers should not be personally acquainted with any of the parties involved in the incident.

All the Services should establish closer liaison with specialists in the investigation of allegations of sexual harassment, both in terms of training military personnel to conduct such investigations internally and to seek the assistance of civilian investigators in cases where suitable military investigators are not available. Where difficulties arise in appointing suitable military investigators from within the Service where the complaint has been made, the use of trained investigators from a Service other than the one where the complaint was made should also be considered.

VI Ensuring that supervising officers are accountable

- (a) The performance appraisal forms of each Service should be revised so that the extent to which all personnel adhere to the guidelines on unacceptable sexual behaviour is assessed, including the extent to which senior officers carry out their responsibility to take appropriate action to investigate quickly and fairly any allegations of sexual harassment. Care should be taken to ensure that these assessments are given equal weight by, and are comparable across all the Services.

VII Clarifying organisational responsibility

- (a) Steps should be taken urgently to establish clearly whether the ADF or the Department of Defence has the responsibility to ensure that proper sexual harassment policies and mechanisms are in place for handling sexual harassment allegations in establishments where both military and civilian personnel, including contract personnel, are employed.

VIII Monitoring sexual harassment

- (a) Mechanisms should be established for an accurate and comprehensive on-going record of the number and kind of sexual harassment incidents occurring in the ADF. These mechanisms should be such as to enable valid comparisons to be made between the Services and between different units, including training units, within each Service. The records collected should clearly identify the nature of the incident, the action taken and the outcome.
- (b) The Committee notes that, from the records currently available from the 008 numbers, there appears to be a significant difference in the kind of calls being received by the Navy and the kind of calls being registered in the other two Services. In particular, the level of incidents of general harassment in the Navy appears to be as high as that recorded for sexual harassment. All Services should ensure that general harassment as well as sexual harassment is identified and recorded. The categorisation of the calls should be standardised across all the Services.
- (c) All exit interviews should specifically seek to establish whether the person has experienced sexual harassment, the extent and nature of any such harassment, and whether such harassment has played any part in the person's decision to leave the service. Comparative data on the difference at separation in the ranks and length of service between male and female personnel should be monitored.
- (d) The Services should conduct a survey similar to that conducted by Major Quinn in 1987 to provide data on women's perceptions of sexual harassment since the major policy changes on integration were introduced. A survey at this time would be a further useful benchmark for future evaluation of the programs now being put in place.

IX Establishment of Advisory Committee

- (a) The chain of command should continue to take full responsibility for the development, implementation and monitoring of ADF policy on sexual harassment. It is also essential that the Services develop their own internal expertise in every aspect of the management of sexual harassment, including expertise in group dynamics and conflict resolution. However, there would be value in setting up an Advisory Panel

to meet periodically with the Defence Force Policy Committee to assist the ADF carry out this responsibility. The Federal Sex Discrimination Commissioner, the Defence Force Ombudsman, and the present consultants to Navy and the ADF on sexual harassment should be included on the Advisory Panel. In view of the many integrated civilian/military establishments, consideration should also be given to including a representative of the Merit Protection and Review Agency. The HQADF and single Service EEO Units and personnel providing the 008 services should, as a matter of course, participate in meetings with the Advisory Panel.

[para. 12.85]

Recommendation Forty: The Committee recommends that the ADF report back to the Senate, one year after the Government's response to this Report, on the action taken by each of the Services and the Australian Defence Force Academy to eliminate sexual harassment from the Australian Defence Force.

[para. 12.87]

Recommendation Forty-One: The Committee recommends that the ADF develop further the ADF's guidelines on appropriate professional behaviour and inter-personal relations. Particular attention should be given to both the process of arriving at those standards and the process of promulgating them. The Navy's approach of conducting focus groups to identify issues, followed by service-wide seminars which encourage communication and open discussion of the issue of unacceptable sexual behaviour in the context of appropriate overall behavioural standards provides an effective model for dealing with sensitive and complex matters of this kind. Similar processes should be put in place by all the Services to address the wider issue of professional inter-personal conduct, including general and sexual harassment, and mechanisms put in place for eliminating harassment of any kind from the ADF.

[para. 12.92]

Recommendation Forty-Two: The Committee endorses the principle of equal opportunity for women in the Australian Defence Force and recommends that high priority be accorded to removing, to the maximum extent possible, any remaining barriers to recruitment and promotion prospects for women in the Services. To achieve this, high priority and resources should be given to reviewing criteria for advancement in the Services to reflect accurately the full range of complementary skills and attributes required for an effective and efficient Defence Force. Particular care should be taken to ensure that policies on access to facilities, physical strength requirements, pregnancy leave, fraternisation and the pre-requisites for promotion, do not unfairly or unnecessarily disadvantage women. Equally importantly they must not be perceived as giving an unfair advantage to women.

[para. 12.102]

CHAPTER 1

SEXUAL HARASSMENT

1.1 Sexual harassment captures headlines. It is written about in the daily press. It appears in court reports and mass distribution women's magazines as well as feminist publications.

1.2 It mesmerised television viewers in the United States when Anita Hill brought charges against judge Clarence Thomas. It brought about the discharge and the early resignation of several of the most senior officers in the United States Navy in the wake of the *Tailhook* affair.

1.3 It has been explicitly addressed in Australian law since 1984. In the ten years that have passed since the passage of the Sex Discrimination Act in that year, sexual harassment has come to be recognised as a matter that can adversely affect work performance, and is therefore of legitimate and necessary concern to managers in the workplace. The Public Service Board first developed guidelines for public service managers and employers in 1986.

1.4 The issue again hit the headlines in September of 1993 with sensational allegations about sexual harassment aboard one of the Royal Australian Navy warships, HMAS SWAN, during the preceding year.

1.5 The term itself has now become part of our daily vocabulary. At first glance, sexual harassment appears to be a straightforward issue. It would be easy to assume that everyone knows what is meant when something is described or referred to as sexual harassment. The Committee's investigation of the issues raised by the terms of reference set for it by the Senate on 29 September 1993 makes it clear that it would be wrong to make such an assumption.

1.6 Everyone agrees that there is no room for sexual harassment in the workplace. But not everyone agrees on what constitutes sexual harassment. On the basis of the extensive evidence before it, the Committee concluded that the issue is far more complex than the headlines suggest. The following section looks at some of these complexities.

What is sexual harassment?

1.7 There is no doubt that there is a wide consensus in the Australian community today that certain kinds of sexual behaviour are unacceptable and are not to be tolerated. The difficulty arises when agreement is sought on a precise definition or description of the type of behaviour that is unacceptable.

1.8 Most commonly, it is said that any sexual behaviour that is unwelcome constitutes sexual harassment.

1.9 There is a beguiling simplicity about this view of sexual harassment. On closer examination, however, it quickly becomes evident that such a view of sexual harassment ignores many very important considerations.

Sexual assault

1.10 It is outside the terms of reference of this inquiry to enter into a detailed consideration of the way in which the criminal law defines and deals with the most serious sexual offences such as sexual assault. It is instructive, however, to note that even at this extreme end of the scale of sexually abusive behaviour there are difficulties and complexities with which our society is still grappling. For example, the definition of what constitutes a sexual offence in criminal law has undergone change over the last decade.

1.11 Many aspects of the law relating to sexual assault generate heated debate in the community. In recent times there has been considerable community questioning of the comments by judges in some cases of sexual assault. There is also much public discussion about the concept of consent. The nature of consent and the responsibilities of both partners in relation to consent have become central issues in what has come to be called "*date-rape*".

1.12 With regard to this inquiry, the important point to make is that sexual assault is a criminal matter. Any allegations of sexual assault within Australia are, therefore, a matter for the police authorities. This applies in the case of members of the Australian

Defence Force in the same way as it applies to any other persons in Australia.¹

1.13 A jurisdictional complication arises in the case of allegations of sexual assault on board an Australian naval vessel outside Australia's territorial waters. The handling of such instances is dealt with in Chapter 8 of this report.

Sexual harassment

1.14 If there are some grey areas around the question of sexual assault, it is not surprising that the grey areas around the notion of sexual harassment are substantially greater.

1.15 The concept of sexual harassment itself is relatively recent. That is not to say that the reality of sexual harassment has not been around for a long time. There is no doubt that what we now broadly refer to as sexual harassment has existed in many societies in some shape or form over the centuries.

1.16 However, in its modern manifestation it first came into focus in the United States in the early 1970s. The identification of the phenomenon of sexual harassment coincided with the blossoming of the feminist movement and the increasing assertion by women of equal rights in the workplace, in the home and in society in general. Sexual harassment was recognised as one form of discrimination.

1.17 In Australia, sexual harassment was first codified in the *Sex Discrimination Act 1984*. Amendments with important implications for the meaning of sexual harassment in law were adopted by the Australian Parliament in December 1992.

1.18 As noted previously, while most mature men and women agree there are some sexual behaviours that are undesirable in the workplace, problems arise as soon as

1 The Committee notes, however, the observation by the Federal Sex Discrimination Commissioner, Ms S. Walpole, in her submission to the inquiry that the *'system of redress introduced by the SD Act [Sex Discrimination Act] is now used increasingly to obtain a remedy for a range of behaviours and actions which would constitute criminal conduct. Although complainants are aware that they can take criminal action, some choose the less intimidating conciliated approach which avoids the negative experience associated with an adversarial system and can provide access to a range of benefits such as monetary compensation'*. Committee Hansard, p. 49.

one attempts to define what constitutes undesirable sexual behaviour in a way that will be unambiguously identified and agreed by the individuals involved and by society at large.

1.19 In her evidence to the Committee, Ms Cane, representing the Public Service Commission confirmed, for example, that people working in the field of sexual harassment in the Australian Public Service believe that:

*"there are some difficulties with definition of sexual harassment, that people's views differ, especially at the lesser end of the scale of incidents, as to what it should or might cover."*²

Impact of change - women in the Services

1.20 Triulzi Collins Solutions, consultants to the Navy on sexual harassment, point to a common strain that has increasingly emerged in public discussions:

*" Women are upset. Men don't understand why."*³

1.21 It should come as no surprise that the push for equality of opportunity for women in the armed forces has met with resistance in some quarters. Indeed, it would be most surprising if there were no such resistance.⁴

1.22 In the first place, the integration of women on a large scale is a major change. As in any major change there is a sense of loss for existing members of the organisation. It has been said by organisational change experts that:

*"making employees feel good about change is a challenge for today's managers."*⁵

2 Ms M. Cane, Committee Hansard, p. 1040.

3 Triulzi Collins Solutions, submission, Committee Hansard, p. 616.

4 Ms S. Triulzi, Committee Hansard, p. 733.

5 Rosabeth Moss Kanter, quoted in Triulzi Collins Solutions, submission, Committee Hansard, p. 623.

But as Ms Triulzi says:

*"the simplicity of the above statement ... hides the 'real' fears and grieving which employees experience when faced with workplace changes."*⁶

1.23 There are both real and imagined differences between men and women that create both real and perceived problems of fairness and equity.

1.24 It is probably equally fair to say that:

Men feel resentment. Women don't understand why.

One way in which this resentment manifests itself is in sexual harassment.⁷

1.25 Putting it this way by no means implies that sexual harassment is justifiable or excusable or should be tolerated. It does however provide some pointers to issues that must be dealt with if a lasting and mutually satisfactory solution to the problem of sexual harassment is to be found. First amongst these is the definition of sexual harassment.

Sexual harassment - different perceptions

1.26 From 1984 to the end of 1992, sexual harassment under the Sex Discrimination Act was defined as:

"A person shall, for the purposes of this section, be taken to harass sexually another person if the first-mentioned person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or engages in other unwelcome conduct of a sexual nature in relation to the other person, and -

(a) the other person has reasonable grounds for believing that a rejection of the advance, a refusal of the request or the taking of objection to the conduct would disadvantage the other person in any way in connection with the other

6 Triulzi Collins Solutions, submission, Committee Hansard, p.623.

7 See also para. 2.53 of this Report.

person's employment or work or possible employment or possible work; or

- (b) *as a result of the other person's rejection of the advance, refusal of the request or taking of objection to the conduct, the other person is disadvantaged in any way in connection with the other person's employment or work or possible employment or possible work."*⁸

1.27 In December 1992, the definition was amended to the following:

"a person sexually harasses another person ("the person harassed") if:

- (a) *the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed;*
or
- (b) *engages in other unwelcome conduct of a sexual nature in relation to the person harassed;*

*in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated."*⁹

1.28 In contrast to the earlier definition, it is now no longer necessary for the complainant to demonstrate disadvantage as a result of sexual harassment. The crux of the difficulty with this definition lies in the very subjective nature of the criterion itself. What is felt as unwelcome by a woman, for example, may be perceived by a man in an entirely different light. In the literature on sexual harassment there are frequent references to the differences between men and women in how a particular situation is perceived. A comment genuinely regarded by the man as a friendly compliment may be perceived by a woman as sexual harassment.

⁸ Section 28 (3), *Sex Discrimination Act 1984*. This was the definition in force at the time of the incidents on the SWAN.

⁹ Section 28, *Sex Discrimination Act 1984*. The amendment was introduced following a recommendation in the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into Equal Opportunity and Equal Status, tabled in April 1992.

1.29 Moreover, not only is there very often a difference in the way in which men and women perceive and react to different sexual behaviours, there can be equally wide variations in the way different women react to exactly the same objective set of circumstances. Where one woman may feel offended another may rejoice. A wolf whistle may be perceived by one woman as a sign that she is being crudely treated as a sex object. Another may just as easily receive it as a compliment and a welcome boost to her self-esteem.

1.30 To complicate matters further, the same woman might well subjectively react differently to the same objective set of circumstances at different times. The young woman who, at the age of seventeen or eighteen, might feel discomfited by the wolf-whistle might react very differently if she manages to attract the same kind of attention some twenty or thirty years down the track.

1.31 Conversely, a fifty year old conservative matron might find herself blushing with embarrassment at comments that today's seventeen year old regards as perfectly natural and normal having been, in all probability, exposed to a diet of sexually explicit articles and photographs in some of the magazines that fill the stands of the local newsagent every month.

1.32 It can even be said that what is acceptable to someone one day, may prove unwelcome on another day when other pressures and stresses in that person's life have combined to lower the tolerance level or increased sensitivity to the world around them.

1.33 In reviewing the evidence before it, the Committee has noted a tendency for some observers, witnesses and interest groups to place a heavy emphasis on the complainant's perception of behaviour as unwelcome as the defining characteristic of sexual harassment. In other words, there appears to be an increasing tendency to rely on the subjective reaction of an individual as the sole criterion for determining whether or not a complaint of sexual harassment should be upheld.¹⁰

10 In this context it is relevant to note that there has not been any judicial consideration of the effect of the '*reasonable person*' element of section 28A of the Sex Discrimination Act on the operation of the section. See also paras 1.65 - 1.70 of this Chapter.

1.34 For example, the International Labour Office (ILO) publication "*Conditions of Work Digest: Combating sexual harassment at work*"¹¹ states unequivocally that:

"However sexual harassment is described and whatever the scope of the prohibition, there is one defining characteristic: sexual harassment refers to conduct which is unwanted by the recipient. It is behaviour which is unwelcome, unreciprocated, imposed."

*"Because sexual harassment refers to behaviour which is unwanted by the recipient, it follows that it is for each person to determine what behaviour they welcome or tolerate, and from whom."*¹²

1.35 According to the ILO publication:

*"That one woman tolerates or even enjoys sexual teasing or risqué jokes does not somehow deter every other woman from regarding such conduct as unacceptable behaviour."*¹³

1.36 The ILO publication concedes that:

*"On the other hand, a person's reaction to behaviour cannot be entirely unreasonable. But within those broad objective parameters, sexual harassment is essentially a subjective concept: It is for each individual to decide what does and what does not offend them. Any other standard would amount to an intolerable infringement of individual autonomy."*¹⁴

1.37 Professor Bryson points out that:

*"The law is intended to deal with the results of the behaviour and these must be seen through the eyes of the woman who experienced it."*¹⁵

11 "*Conditions of Work Digest: Combating sexual harassment at work*", International Labour Office, Geneva, Number 1 1992, p. 10.

12 *ibid.*

13 *ibid.*

14 *ibid.*, pp.10-11 (emphasis added).

15 HQADF Supplementary submission, Committee Hansard, p. 1503.

1.38 The Committee has some difficulty with the emphasis that is sometimes being given to the subjective reaction of the complainant.

1.39 Ms Susan Walpole, the Federal Sex Discrimination Commissioner appeared not to find any problem of definition. Ms Walpole stated:

*"The Sex Discrimination Act is clear. Unlawful sexual harassment covered by the Act is unwelcome, unwanted and unreciprocated. There is no doubt about community standards. There is no general misunderstanding about the parameters of acceptable behaviour whether supposedly in public or in private."*¹⁶

1.40 The evidence before the Committee indicates that the Sex Discrimination Commissioner's view that the matter is clear-cut is not shared by everyone. Ms Triulzi, who has worked extensively in private enterprise and now with the Navy, after listening to what the members of focus groups have to say, said to the Committee that:

*"...what we need to understand is that there are lots of elements of grey in understanding what sexual harassment is and is not, and how we distinguish and differentiate those levels of grey."*¹⁷

1.41 The reality is that there is some confusion and uncertainty in society about what constitutes sexual harassment.

1.42 One benchmark sometimes suggested is whether or not the individual would treat his daughter that way. Another approach suggested is to consider whether the behaviour would be acceptable in that person's own lounge-room. Courtesy and commonsense are also advocated.¹⁸

1.43 The Committee accepts the good intentions of such rules of thumb but has serious reservations about their adequacy. For example, there is much evidence emerging of serious sexual aberrations and misconduct in some apparently respectable families. While useful for many, there is little guarantee that the yardstick

16 Ms S. Walpole, Committee Hansard, p. 140.

17 Ms Triulzi, Committee Hansard, p. 740.

18 Parliamentary Departments Guidelines, Policy for the Elimination of Sexual Harassment in the Workplace.

of how one treats family members will be an adequate guide for behaviour for all in the workplace.

1.44 The question can be looked at in another way. If, as the ILO says, what one woman tolerates or even enjoys should not deter other women from regarding as unacceptable behaviour, and presumably also from taking a complaint to the Sex Discrimination Commissioner if she wishes to do so, then a legitimate and necessary question to pose is whether all possible forms of behaviour in the workplace that might be regarded as unacceptable sexual behaviour by anyone in the community must therefore be avoided or even proscribed.

1.45 As in the case of the community debate about sexual assault and "date rape" in the United States, there are strong pressures from some quarters to broaden as much as possible the meaning of terms such as sexual assault and sexual harassment. Those who wish to broaden the concepts argue, for instance, that unless a woman explicitly states that she is a willing participant in an act of sexual intercourse, she has the ability to claim rape.¹⁹ In this view of the world, in the absence of an explicit yes, the man who contrives to seduce a woman to the point of sexual intercourse does so at his peril. He runs the risk that, should she regret her wordless compliance the following morning, she would have the right to claim "date-rape".²⁰

1.46 As part of this same trend, there are pressures evident in some quarters to make the concept of sexual harassment as broad as possible. Those favouring this approach hold that, no matter if the great majority of people might regard a particular comment as harmless banter, the objection by anyone that it is offensive to him or her should be enough to make it unlawful in the workplace.²¹ This approach has a number of consequences that have not been adequately recognised. Their full impact has not been evaluated.²²

19 See for example s. 38 of the Victorian Crimes Act.

20 For a recent commentary on the developments in law in regard to rape and the issue of consent see Chapter 2 of the report by the Senate Standing Committee on Legal and Constitutional Affairs on "Gender Bias and the Judiciary" published on 13 May 1994.

21 See sub-section 28B of the Sex Discrimination Act for definition of 'workplace' and situations where the Act applies. See also footnote 31 in Chapter 2 of this Report.

22 In this context it is relevant to note the Sex Discrimination Commissioner's comments with regard to damages: *"There has been no leading decision or consideration of the issue in relation to the assessment of damages in harassment cases, but general principles would mean that the "egg-shell skull rule" would apply... The victim must be taken as they were*

1.47 There is broad consensus that certain sexual behaviours are unacceptable in the workplace. The elimination of such behaviours is a cultural change to be warmly welcomed. However, the emphasis now given to the complainant's subjective reaction as the defining characteristic of sexual harassment suggests that the only safe course for every member of the workforce to follow is to desist from all possible forms of behaviour that might be regarded as unacceptable sexual behaviour by anyone at all in the community. If this is indeed the case, then a more revolutionary cultural change still is being proposed. The Committee notes that the practical effect of seeking to anticipate possibly adverse reactions to such a wide variety of behaviours could lead to a substantial change in the inter-personal relationships in the workplace that may not be welcomed by many people.

1.48 Take, for example, a situation where someone suffers a personal loss. As Professor Kirsner says in his submission to the Committee:

"many people come from cultures or families where touching is a routine and supportive activity." ²³

1.49 For many members of the Australian community it is very natural and normal to extend and receive sympathy by a hug or an arm around the shoulder. This is a very individual matter. []Not to be consoled in this way could well be perceived by some as a sign that their colleagues do not care about their grief and misfortune. Yet a behavioural consequence of the approach outlined above to sexual harassment could well be a hesitation and reluctance, by men in particular, to offer sympathy by any physical gesture for fear of being accused of sexual harassment. In effect, the rights of individuals who wish to continue to have friendly, asexual physical contact are bound to be affected by the current approach to defining sexual harassment. The rights of one group in society are, in effect, pitted against the rights of another group.

1.50 Most surveys in this field tend to concentrate solely on attitudes to unwelcome physical contact. Very little if any research appears to have been conducted on

found, and hence if they were especially susceptible to psychological damage from the harassment, then that must be compensated. There is no commonly accepted "reaction" which can be used as a litmus test by a respondent to argue that this individual complainant has over reacted to the situation and that no "normal" woman would have had such a "reaction". Ms S. Walpole, submission, Committee Hansard, p. 61.

23 Professor Kim Kirsner, submission, para 5. Professor Kirsner nevertheless concludes that these behaviours should be eliminated in the workplace.

attitudes in the community to regulations that have the effect of eliminating all physical contact in the workplace.

1.51 There is also the contentious matter of regulating standards of dress. Although most complaints about sexually offensive behaviour come from women, there are instances where men may see themselves as victims. Can any person who feels unsettled and offended by the revealing outfits of those around them legitimately claim sexual harassment? Many people would object to being constrained in how they dress just because someone in their working environment complained in this way. However, the present definition of sexual harassment seems to allow for the possibility that such a complaint could be made out. Moreover if a complaint of this kind were to be upheld, the vicarious liability of the employer raises the question of the extent to which employers need to take responsibility for regulating standards of dress.

1.52 Australian society, perhaps more than most, is made up of a mosaic of cultural backgrounds and experiences. What is acceptable to one person may be unacceptable to another.

1.53 The infinite variety that is possible in the moods, the perceptions and the vulnerabilities, the diverse cultural backgrounds and personal experiences of our people creates a very real challenge when dealing with an issue as sensitive and personal as sexual harassment.

1.54 The lack of understanding of the definition of sexual harassment, particularly for the perpetrator, is a major issue confronting the armed forces in integrating women fully into their structures.

1.55 The entry of women in substantial numbers in workforces previously dominated or even exclusively occupied by men is a relatively recent phenomenon. There are few if any identifiably successful role models to provide signposts.

1.56 It is the Committee's view that a serious effort must be made to increase understanding of sexual harassment amongst personnel in all the Services.

1.57 In the absence of a clear understanding on the part of some of the term "*sexual harassment*", there is scope for confusion and misunderstanding. It is not a trivial matter. Circumstances could arise where uncertainty that a person might be liable to accusations of sexual harassment could in fact endanger the life of another person.

1.58 Given the nature of the activities and exercises in which the Armed Services regularly engage in, the possibility of such a situation arising in the Services environment is probably higher than in society at large.

1.59 Take for example a situation where a person may have been hurt and appear to be in need of emergency medical attention, such as mouth to mouth resuscitation, and loosening of constrictive clothing. Under the present definition of sexual harassment, it may arise that a soldier or sailor hesitates to extend the necessary assistance, particularly if there are no witnesses around.

1.60 This is by no means a fanciful scenario. The Committee was given a concrete illustration of similar circumstances. A woman being "jack stayed" from one naval vessel to another encountered hesitation on the part of an all male crew on an Australian naval vessel to grab hold of her as she landed on board the receiving ship, when she needed assistance to regain her balance.²⁴ The Navy's "no touch" rule, which has for some time been the Navy's way of seeking to apply the Sex Discrimination Act's provisions on sexual harassment, could have put the woman at risk of going overboard. While in this instance the necessary assistance was, after the initial hesitation, extended, the potential for a tragic outcome remains. The irony is that while a man cannot be sure, under the law as it now stands, whether his actions in such circumstances might attract a complaint of sexual harassment, he knows that he cannot be charged with a criminal offence (nor is he likely to find himself subject of a complaint of sexual harassment) for not extending assistance when a person's life may be at risk. Military personnel should be clearly instructed that safety of life and limb and duty of care must be the priority consideration in circumstances such as these.

1.61 It is of interest to note that the Navy Board of Inquiry into Sexual Harassment on the HMAS SWAN adopted a broad interpretation of its terms of reference. The Board did not seek to determine whether sexual harassment as defined in the Sex Discrimination Act had occurred. The Board set out its approach as follows:

"[268].In LEUT WHEAT's letter to the Minister she alleges that she and the other females onboard SWAN during the deployment were subjected to

24 Ms Sonia Humphrey, *Committee Hansard*, pp. 780-781. It is to be expected that the Sex Discrimination Commissioner would take into account and carefully examine all the circumstances in deciding whether a complaint has been made out in a case such as this. However, the crux of the difficulty remains that the average person who finds himself or herself in that situation at the time the events are occurring cannot know whether his or her actions might constitute unlawful behaviour.

sexual harassment. In considering this allegation, the Board has not used a strict definition of the words 'sexual harassment', rather it has interpreted the Terms of Reference to mean that the Board was to enquire into all matters relating to problems experienced by females onboard SWAN during the time in question, and which were the result of their gender.

[269]. Most of the issues that came out in evidence are better described as unacceptable sexual behaviour as defined in DI (N) PERS 16 - 5. Whilst this Defence Instruction had not been promulgated at the time of SWAN's deployment, the Board considers that the attitude to behaviour towards women onboard warranted close examination. It has not felt tightly constrained by strict definition of sexual harassment or unacceptable sexual behaviour, rather it has attempted to have due regard to the spirit of the instructions and guidance on gender related issues which have been promulgated. Throughout this section, unless stated otherwise, the term 'harassment' is used to cover any form of unsavoury behaviour or action towards, or in the presence of, females." ²⁵

1.62 That some people are uncertain as to the precise meaning of sexual harassment should not be read to mean that those people are not concerned about improving the work environment. There are many members of society, both men and women, who would wish to contribute to raising the standards of behaviour in the workplace. The uncertainty that flows from the subjective definition of sexual harassment creates problems of its own that can act as a hindrance rather than a help to improving those standards.

The "reasonable person" test

1.63 As noted previously, the following amendment to the Sex Discrimination Act was adopted in December 1992, thereby extending the areas where sexual behaviour is unlawful within the terms of the Act. Under this amendment:

"If the complainant feels offended, humiliated or intimidated by the conduct, and a reasonable person, having regard to all the circumstances, would have

25 BOI Report, p. 77. It should also be noted that there was a change in the definition of sexual harassment under the Sex Discrimination Act in the interval between the events under investigation on HMAS SWAN and the Board's Inquiry into those events. See paras 1.26-1.28.

*anticipated that the complainant would be offended, humiliated or intimidated by the conduct, then the complaint will be made out."*²⁶

1.64 The Sex Discrimination Commissioner states that this new definition has both "a subjective and objective element."²⁷

1.65 The application of the "reasonable person" concept in the new definition is interesting. However, it also raises a number of difficult issues. The extent to which it provides an objective balance to the subjective nature of the definition of sexual harassment is a matter of debate.²⁸

1.66 First, what attributes can this "reasonable person" be expected to have? Is that

26 Ms S. Walpole, Committee Hansard, p. 28.

27 Letter dated 14 April 1994 from Ms S. Walpole to Committee Secretary.

28 The Committee notes that the concept of a reasonable person has existed in tort law for a long time. The man on the Clapham omnibus was invented to represent the reasonable man, who, according to standard tort law texts, embodies all the qualities expected of a good citizen and probably better than anyone actually happens to be. (Fleming John G. The Law of Torts, Seventh edition, 1987, p.97.). It is intended to provide a vehicle for an objective test to be applied based upon standards of conduct expected of the community. It "eliminates the personal equation and is independent of the idiosyncracies of the particular person whose conduct is in question."Glasgow Corp v Muir [1943] AC 448 per Lord MacMillan.). Negligence is considered to be failure to do what the reasonable person would have done under the same or similar circumstances. Fleming explains the latitude of the expression makes allowances for external facts as well as personal characteristics of the actor. Of assistance in the present context is the following extract from Fleming:

"The objective community ideal alone determines whether the defendant's conduct attained the point of proper balance between self-interest and altruism. The individual's moral notions and qualities, like courage, self-control and will power, are irrelevant, be they higher or lower. 'Some persons are by nature unduly timorous and imagine every path is beset with lions; others, of more robust temperament, fail to foresee or nonchalantly disregard even the most obvious dangers. The reasonable man is presumed to be free from over apprehension and from over confidence.'Glasgow Corp v Muir [1943] AC 448 at 457 per Lord Macmillan.).

"Closely allied is the quality of being able to perceive and appreciate what risks are involved in a particular activity. Perception of risk is the correlation of past experience with the specific facts in a situation, which depends to a large extent on knowledge as the basis for judging the harmful potentialities of contemplated conduct. The defendant is credited with such perception of the surrounding circumstances and such knowledge of other pertinent matters as a reasonable man with the actor's own superior perception and knowledge, if any, would possess."

Translating these concepts into the context of sexual harassment is not easy.

reasonable person male or female? It is acknowledged by many experts that there can be significant and genuine differences in the way men and women may react to the same set of sexual behaviours. Is the "*reasonable person*" assumed to be a colleague? Or is it a person who has no knowledge of any of the people involved?

1.67 Add to these complexities the different cultural backgrounds, educational levels and work experiences present in our community, and the problem of identifying the "*reasonable person*" for these purposes quickly multiplies. How familiar is the "*reasonable person*" expected to be with the group norms of the workplace in question? Can the "*reasonable person*" be a member of the group in question? To what extent can a "*reasonable person*" be expected to understand the norms of the many different cultures from which today's Australians have been drawn, let alone hazard a guess about the personal experiences that have shaped the complainant's view of himself or herself and the world?

1.68 It is important to note that the legislation requires an assessment of whether the "*reasonable person*" could have anticipated that something would be offensive, humiliating or intimidating to the complainant, not whether the reasonable person would have felt offended, humiliated or intimidated. In effect it requires the "*reasonable person*" to climb inside the skin of the complainant and see the situation from the complainant's point of view.

1.69 Commentators frequently interpret this to mean that it is:

*"sufficient that the complainant felt offended, humiliated or intimidated by the behaviour in question and that it was reasonable to have felt that way."*²⁹

The Sex Discrimination Commissioner also seems to interpret the amendment in that way.³⁰ It seems to the Committee that this is not what the amendment actually states.

1.70 The point at issue as the Committee understands it, is not how the "*reasonable person*" would define offensive behaviour but whether a "*reasonable person*" would anticipate that the complainant would consider the behaviour offensive. The Committee

29 OSWOMAN, December 1992, No 15, p. 4, quoted in HQADF supplementary submission, Committee Hansard, p. 1503.

30 Ms S. Walpole, submission, Committee Hansard, p. 43., states that "*what a 'reasonable person' would define as being offensive, humiliating or intimidatory behaviour is yet to be tested under federal jurisdiction*" (emphasis added).

would find a definition of sexual harassment which specifies that conduct amounts to sexual harassment where a "reasonable person" would have found the conduct offensive, humiliating or intimidating, more satisfactory.³¹ The Committee notes with interest that the "reasonable person" element of the Sex Discrimination Act as it now stands "is yet to be tested under federal jurisdiction".³²

Community standards

1.71 An important aspect of the sexual harassment debate that attracts less attention and less discussion than it deserves is the tension in society today between attempts to regulate or change behaviour by means of laws such as the Sex Discrimination Act and the increasingly explicit and graphic depictions of sexual relationships of all kinds in film, on television, and in literature of every kind, from the daily press to novels and academic treatises.

1.72 The limits of what is acceptable and what is not to the community at large are becoming more and more difficult to define.

1.73 Contemporary examples are the commercial television screening of films such as "Basic Instinct" or the screening by the ABC of a program such as "Sex, Guys and Videotape" with its explicit references to male and female sexuality. Unquestionably some members of the Australian community find such programs offensive. In the setting of a private home, it is clearly a decision for each family whether or not the material screened is unwelcome and whether or not a particular family chooses to watch the program.

1.74 In the case of a ship's wardroom the situation is not at all clear-cut.³³ If one member of the wardroom were to find the program offensive, does it follow that every member of the wardroom should be denied the right to view the program? Could those who insist on viewing the program be accused of sexual harassment of the wardroom member who objects? Should a single individual in those circumstances

31 The Committee accepts that this approach does not overcome all the difficulties inherent in the present definition. It does, however, reduce the degree of uncertainty in the present approach.

32 Ms S. Walpole, submission, Committee Hansard, p. 43.

33 For a discussion of the concept of workplace in the Navy context see paras 2.37 - 2.45 of this Report.

be able, in effect, to exercise censorship over programs that, by all accounts, attract record ratings? Is that not an unwanted interference with the civil liberties of those who would normally view such programs for relaxation? ³⁴

1.75 The above example highlights just one of the complexities inherent in applying the Sex Discrimination Act as it now stands in the sea-going environment.

Types of behaviours

1.76 In an attempt to clarify the meaning of sexual harassment, the guidelines of many organisations list the kinds of behaviours that might constitute sexual harassment. So for example, the 1987 guidelines promulgated by the Public Service Commission identified the following as some of the forms sexual harassment can take at work:

- . personally offensive verbal comments;*
- . sexual or smutty jokes;*
- . repeated comments or teasing about a person's alleged sexual activities or private life;*
- . persistent unwelcome social invitations or telephone calls from workmates at work or at home;*
- . being followed home from work;*
- . unsolicited letters;*
- . obscene telephone calls;*
- . stares and leers;*
- . offensive hand or body gestures;*
- . physical contact such as patting, pinching, touching or putting an arm around another person's body at work;*
- . provocative posters with sexual connotation. Even works of art may be inappropriate on occasions..."*

34 It is of interest to note that the sensitivities of those who may be offended by Penthouse magazines were accommodated on the SWAN by keeping the magazine either locked away, or at least out of sight. It is interesting to speculate whether the same rule would be applied to what are regarded as women's magazines, such as Cleo, particularly when they contain graphic photographs and explicit articles on the male as well as female anatomy.

The Guidelines add that:

"Sexual harassment can range from subtle requests to explicit demands for sexual activity or even criminal assault."

1.77 A subtle shift to a greater emphasis on sexist material or activities in addition to sexual behaviours can be seen in the guidelines put out by the Parliamentary Departments in 1991. In those guidelines, forms that sexual harassment can take at work include:

- ". display of offensive sexist or sexually oriented material (such as provocative posters);*
- . sexually oriented and sexist jokes;*
- . offensive hand or body gestures;*
- . gender based derogatory remarks;*
- . repeated comments or teasing about a person's alleged sexual activities or private life;*
- . sexually oriented kidding or verbal abuse;*
- . exertion of pressure - subtle or otherwise - for sexual activities;*
- . obscene telephone calls;*
- . requests for sexual favours accompanied by overt promises or preferential treatment or threats concerning an individual's employment status;*
- . physical contact such as patting, pinching, touching or putting an arm around another person;*
- . being followed around the workplace or home from work; and*
- . sexual assault or rape."*

1.78 There are further variations to the list of behaviours provided by the Navy:

- ". fondling, pinching, patting, touching, embracing, hugging, grabbing, kissing,*
- . repeated requests for dates, especially after prior refusal*
- . gestures or body movements of a sexual or intimidating nature*
- . requests for sexual favours, smutty jokes and comments, sexually provocative remarks, displays of sexually graphic or offensive materials including posters, pictures graffiti messages in areas publicly visible*
- . sex-based insults or taunting*
- . leering and staring*
- . tales of sexual performance*

- . *sexually oriented verbal or written remarks, jokes*
- . *physical contact, such as purposely brushing up against or touching another person*
- . *suggestive comments or innuendos about a person's physical appearance or sexual preferences*
- . *inferences of sexual morality, eg prude, tart.*
- . *persistent questions about a person's private life*
- . *sexist jokes."*

1.79 The Federal Sex Discrimination Commissioner advises that:

"Behaviours held by the Human Rights and Equal Opportunity Commission (HR&EO Commission") and other tribunals and courts to constitute sexual harassment have included:

- . *intrusive questions asked at interviews and at work,*
- . *unwanted touching,*
- . *sexually explicit conversations,*
- . *unfastening clothing,*
- . *comments on appearance, demands that certain sexually suggestive clothing be worn, for example, short skirts,*
- . *kissing,*
- . *grabbing,*
- . *sexual intercourse under threat of loss of employment,*
- . *persistent requests for dates."*

1.80 The important points about these lists are that:

- they are not regarded as exhaustive, merely illustrative;
- no two are exactly the same; and
- they all stress that whether the behaviours constitute sexual harassment depends on the circumstances in which it occurs.

1.81 The onus is still on each person to judge whether, "*having regard to all the circumstances*", a reasonable person would have anticipated "*that the person harassed would be offended, humiliated or intimidated.*"³⁵

³⁵ Section 28A, Sex Discrimination Act. The ILO also concedes that "*it is impossible to compile an accurate list of harassing conduct that should be prohibited. We can give examples of the forms of behaviour that are likely to be regarded as sexual harassment, but whether they*

Intent

1.82 It is also important to note that the intent of the perpetrator is regarded as irrelevant. The Sex Discrimination Commissioner stated in her evidence that *"innocent intention is no defence in sexual harassment cases"*.³⁶ This sets sexual harassment apart from most other legislation.³⁷

1.83 The question of intent is related to the question of whether the misunderstanding as to what is meant by sexual harassment that is apparently often claimed by those accused of sexual harassment is genuine or a shabby attempt to evade responsibility.³⁸

1.84 It is a distressing fact of life that there are some individuals who believe that violence is a legitimate means of imposing their will on another person.³⁹ From its examination of the evidence before it, the Committee is of the view that there are also individuals in all walks of life, who believe that sexual harassment is a legitimate tactic

have been so regarded depends on the facts of the case i.e. whether they are welcome or unwelcome to the particular recipient. ILO Convention of Work Digest: Combating sexual harassment at Work Vol 11 1/1992 p.11.

36 Ms S. Walpole, submission, Committee Hansard, p. 15.

37 It should be noted, however, that if behaviour which crosses the line into criminal offences is also sexual harassment, then the matter of intent (mens rea) would be relevant in criminal proceedings. Should the same behaviour be complained of to the Sex Discrimination Commissioner, intent would not be relevant.

38 Ms S. Walpole, submission, Committee Hansard, p.60.

39 A national survey conducted by the Public Policy Research Centre under the auspices of the Office of the Status on community attitudes towards domestic violence in Australia in February 1988, concluded that: *"One in five people (19%) consider that the use of physical force by a man against his wife is acceptable under some circumstances. This view is held by 17% of women and 22% of men. Up to 15% regarded acts such as pushing, shoving or smashing objects near the wife as acceptable. Actions such as kicking, biting, punching, beating up choking and threatening or using a weapon on the wife were regarded as acceptable by 6% of the 1504 men and women surveyed."*

for achieving their ends and who deliberately and intentionally sexually harass other employees.

1.85 There is little doubt that there are people who, when accused of harassing, feign innocence and claim they were just being friendly or funny, when in truth they were fully aware that they were offending the complainant. While the difficulty of precisely defining sexual harassment allows such people to claim misunderstanding and confusion, the Act's distinctive approach to intent makes it difficult for the accused in such a case to avoid being held accountable.

1.86 At the same time, there are individuals who can find that language and behaviour to which no one openly objected to in the past can now, in some circumstances, constitute unlawful behaviour. The efforts at educating all members of the community fall far short of what is required to feel confident that there is adequate understanding of the law on sexual harassment.⁴⁰ Added to this ignorance are the difficulties created by the current definition of sexual harassment, already discussed in this Chapter. It is therefore to be expected that in some instances, the person engaging in sexual harassment does so unwittingly. Prima facie it is also to be expected that those who find themselves liable for something that is perceived differently from the way it was intended are likely to feel resentment.

1.87 The means chosen to deal with the different kinds and levels of harassment will have important consequences. Clearly it is important that unambiguously serious incidents should attract, and be seen to attract, a heavy penalty. But the severity of disciplinary action must be carefully considered on a case by case basis. A strong conviction that harsh disciplinary action could in some circumstances be counter-productive was expressed to the Committee by a female naval officer, Lieutenant Sly:

"I believe that in some areas when they have been required to deal with sexual harassment the immediate solution has been to take disciplinary action against the perpetrators, and I firmly believe that this only makes the problem

40 The Sex Discrimination Commissioner's submission states that *"Often there is a real misunderstanding or unwillingness to accept the legal definition of sexual harassment"*. Committee Hansard, p. 60. The Committee notes the Human Rights and Equal Opportunity Commission published a training package for managers and supervisors on Eliminating Sexual Harassment from the Workplace only in 1993. There appears to be a great deal of variation in the steps employers in the community at large have taken to educate both managers and all staff about sexual harassment. Ms Walpole's view that the private sector was well ahead of the Defence Force in this regard was not shared by Professor Bryson and Ms Triulzi.

worse, both in the short term for the victim and in the long term for the navy and for females in the navy." ⁴¹

Lieutenant Sly elaborated her view thus:

"When, without any guidance, they made a mistake and when they were harshly disciplined for having made that mistake, it would cause resentment. I think that initially, within themselves they would naturally, in many cases, feel hard done by. But secondary to that, it caused backlash indirectly against the females, because there was very much this attitude of, 'You've arrived. We don't know how to deal with you. When we get it wrong, we are the ones who are suffering. I believe that is a fairly understandable reaction. What I would have preferred to have seen when things went wrong, as at times they are bound to, was a better education process introduced to help both the men and the females in how to deal with this new environment.'" ⁴²

1.88 Women's feelings of resentment are in effect acknowledged by measures such as those embodied in the Sex Discrimination Act. In righting the wrongs against one group in society care must be taken not to inadvertently create new causes for legitimate resentment by another.

1.89 It must also be acknowledged that the broad and largely subjective definition of sexual harassment provides scope for a complainant to abuse the process. Behaviours that appeared to cause no offense at the time may be portrayed by a complainant in a very different light when other factors come into play later and lead to dissatisfaction of one kind or another on the part of the complainant. It is difficult to dismiss the possibility that, in some instances, the prospect of monetary gain through compensation may play a part in coming forward with a dubious complaint. ⁴³

1.90 There is, at the present time, a widespread perception that there is much scope for abuse of the complaints process. That perception is acting as an impediment to the full acceptance and integration of women into the armed services. The Committee

41 LEUT Sly, Committee Hansard, p. 932.

42 *ibid.*, p. 933.

43 The protection afforded to complainants under the Act reinforces such suspicions. See paras 6.182 - 6.191.

accepts that the intent of the present approach is to seek to protect every member of the community, and particularly those who are least able to defend themselves.⁴⁴ It is important that this protection be available. It is also important that a person who is not powerless to remedy a situation that is not to his or her liking should have at least some responsibility to seek a resolution at the informal level. This is particularly the case where the behaviour in question falls in the grey areas of behaviour that many people would perhaps regard as tasteless, but not necessarily as offensive.

1.91 If we are looking for a solution to the problem of sexual harassment, and for ways to repair the damage that the widespread apprehension that the complaint process can be abused is causing, then a better balance between protecting the weak and promoting confidence in the complaint process must be found.

1.92 Several avenues for achieving a better balance should be explored, including fine tuning the definition of sexual harassment and better community access to and understanding of the actual operation of the Sex Discrimination Act in relation to sexual harassment. A central difficulty arises from the very limited knowledge in the community at large - and in the armed forces - about the kinds of sexual harassment complaints that are taken to the Sex Discrimination Commissioner and the way in which those complaints are being resolved. The Committee accepts that the privacy of individuals needs to be protected. Nevertheless a much greater transparency and visibility of the nature and resolution of cases would go a long way to educating all members of the community. If access to such information were more open, and the resolution of the cases was widely seen to be fair and reasonable, then unnecessary apprehension could be allayed.⁴⁵

1.93 A third avenue for achieving a better balance relates to specifying, in greater detail, the employer's responsibility to take "*reasonable steps*" to prevent the act constituting unlawful behaviour.⁴⁶ A more specific reference to a requirement that

44 The Sex Discrimination Commissioner's submission points out that *"The profile of women who complain of sexual harassment highlights their powerlessness. Most are young (15-24 years of age). Most work in low pay, low status jobs which are dead end. Many come from small business"*. Committee Hansard, p. 59.

45 At present, information about cases that go to public hearings at HREOC is available. Not surprisingly the media tend to give publicity to the more salacious instances. However, very little is known about the more than 300 cases that were conciliated and mediated by the Sex Discrimination Commissioner. A useful innovation in keeping the public informed is the newsletter "*Agender*". The first edition was published in April 1994.

46 Section 106, *Sex Discrimination Act 1984*.

employers provide suitable support (whether internal or external) for all employees to be able to inform the harasser, (directly or indirectly) that his or her behaviour is offensive, would assist in resolving those instances where there is genuine misunderstanding on the part of the respondent. Such an approach might also achieve the objective that the Sex Discrimination Commissioner says underlies most complaints, that is, the unacceptable behaviour ceases.

1.94 As presently defined, sexual harassment clearly spans a very wide spectrum of possible behaviours. The consequences for the victim of behaviour at one end of the spectrum can be very much more severe than the consequences of behaviour at the other end of the spectrum.

1.95 The Committee considers that a clearer distinction can and should be drawn between sexual assault, sexual harassment and unacceptable sexual behaviour.

1.96 Sexual harassment as defined under the Sex Discrimination Act is an unlawful activity. Unacceptable sexual behaviour is not necessarily unlawful. It may be boorish and vulgar, or simply infantile and silly. It is common in our society at every level. It is not unlawful, but it is behaviour which organisations such as the Navy have the right to declare as unacceptable in certain circumstances, to seek by various means to curb it and, in certain circumstances, to take disciplinary action to curtail it.

1.97 While disciplinary measures can be taken, it should also be recognised that fully effective and lasting impact can probably only be achieved through raising awareness of the consequences of such unacceptable sexual behaviour for the productivity and morale of the individuals and the organisations they work in. There has to be genuine understanding and acceptance, if genuine change in attitude is to be achieved. Without a genuine change in attitude, an environment of constant policing and punishment of offenders is unlikely to produce a healthy and productive workplace.

1.98 In recognition of the difficulties surrounding the precise definition of sexual harassment, the Navy has not attempted to define a precise code of acceptable and unacceptable behaviour. In its Good Working Relationships seminars, the issues are discussed and attention is drawn to the consequences for the individual and for the organisation if a judgement were to be made that sexual harassment as defined in the Sex Discrimination Act has occurred.

1.99 It is the Committee's view that further work needs to be done to increase the understanding of what constitutes sexual harassment under the Sex Discrimination Act.⁴⁷ Without this, the present subjective definition creates too many uncertainties and hence scope for confusion. Under the present definition, there is no real distinction between behaviours that would be regarded as offensive by most mature individuals in the broad Australian community today and behaviours that most would regard as being of no consequence but which could nevertheless be claimed as unwelcome by anyone with a mind to do so.

1.100 It is the legislative definition of the behaviours that fall into this grey area, at what might be regarded as the least serious end of the spectrum, that needs most attention.

1.101 In this context, it is of interest to note the results of a survey conducted by Major Quinn of women's experience of various levels of sexual harassment in the ADF in 1987.⁴⁸

1.102 The variation in response rates to the different questions used by Major Quinn are important. As Professor Bryson points out *"the stronger you make the definition, the fewer women have experienced it"*.

1.103 Professor Bryson adds that:

*"Nonetheless, one has to say that the lower levels on the scale are serious and should be taken seriously."*⁴⁹

1.104 The Committee agrees that is important to take action with regard to sexual harassment across a broad spectrum of behaviour from the less serious to the extremely serious. The Committee is concerned however, that the present approach tends to encourage the sensationalization of anything to do with sexual harassment,

47 The Committee notes with interest that several recent writers who approach gender issues from very different standpoints nevertheless agree on the need for clearer definition of sexual harassment. For example, Naomi Wolf, argues that *"We are not well served by generalising all inappropriate behaviour as harassment...People in power, as women can begin to be now, should claim the luxury of drawing careful distinctions."* Naomi Wolf: *Fire with Fire*, Random House Australia Pty Ltd, 1993, p. 211.

48 Further details are in Chapter 11 of this Report.

49 Prof. L. Bryson, Committee Hansard, p. 1558.

from the trivial to the most gross manifestations. This tends to trivialise all sexual harassment in the eyes of many;⁵⁰ it also camouflages the importance of responding to and dealing with sexual harassment in different ways, depending in large part on the level of seriousness of the offending behaviour.

1.105 Having identified a concern about the wording of the present legislation the Committee emphasises and states unequivocally that there are certain sexual behaviours which quite clearly are unacceptable in any workplace. It is quite clear that not all inappropriate sexual behaviour in the workforce is an innocent misunderstanding and all sexual harassment is purely in the eye of the beholder. It is self-evident that some sexual behaviour is intended to embarrass, insult, intimidate, humiliate, offend and sometimes drive the person harassed from the workplace. In some cases it is intended as a means of gaining sexual favours that are not being willingly offered.

1.106 All managers have a responsibility to take reasonable steps, as stated in the Sex Discrimination Act, to ensure that such behaviours are eliminated from the work environment. This applies to the Navy, Army and Airforce just as much as it applies to every other workplace in Australia.

1.107 In drawing attention to difficulties with the present definition, the Committee is in no way suggesting that rulings by the Sex Discrimination Commissioner have been inappropriate or that complaints have been accepted that most mature adults would regard as trivial. The Committee is in no position and has no desire or standing to assess independently the handling of cases by the Commissioner. The summaries of cases heard in public hearing suggest that the cases resolved in favour of the complainant have been of sufficient severity to justify the outcome.

1.108 The Committee's concern is that the public perception of what may end up being judged to be sexual harassment is not clear. It is the lack of clarity, the uncertainty, that creates problems. The uncertainty is directly linked to:

- the extremely wide range of behaviours that could fall under the present definition;

50 Grave concern about trivialisation of violence against women by not distinguishing between serious and minor incidents (for example by the level of compensation) are expressed by the founder of the Women's Electoral Lobby, Beatrice Faust in *"Backlash Balderdash"* ... University of New South Wales Press, Sydney 1994.

- the absence of any indication that some forms of sexual harassment are more serious than others;
- the wide variation in the cultural customs, standards and norms of behaviour, in a multicultural society;
- the resulting difficulties associated with the concept of a "*reasonable person*"; and
- the absence of any obligation by the person claiming harassment to indicate where possible that certain behaviours are unwelcome before a formal complaint can be lodged.

1.109 That confusion and uncertainty is clearly also present amongst personnel in the Navy, and in the other Services. The effort that the Navy has made, particularly since the events on the SWAN in mid - 1992, has gone a long way to assisting its personnel to be aware that there are sexual behaviours that are unacceptable. But a clear line between acceptable and unacceptable sexual behaviours has yet to be drawn.

1.110 The draft DI(G) PERS 35-3 makes reference to these difficulties, both in relation to sexual harassment and unacceptable sexual behaviour. It states, for example, that:

*"It is, however, recognised that individual perceptions will alter and there may be a fine line requiring the exercise of common sense, maturity and clear judgement."*⁵¹

Unacceptable sexual behaviour, the instruction states is "*not subject to rigid definition*".

1.111 The Committee does not dispute that it is very difficult to arrive at a definition and approach that ensures that serious cases are dealt with seriously while more minor misdemeanours are dealt with as such. But the consequences of not making greater efforts to do so are too serious to ignore.

⁵¹ Draft DI(G) PERS 35-3, para 36, p. 8.

1.112 In her evidence Ms Triulzi said to the Committee:

*" It does concern me that the current legislation under which we are operating and the definition of sexual harassment as it is currently contained in that legislation, with the long lists of hierarchy of incidences it has ranging from touching in an offensive way to rape, creates confusion. It creates conflicts. It leaves itself open to perhaps negative, destructive debate..."*⁵²

1.113 Ms Triulzi made the further observation that:

*"... as we currently have it structured in legislation it causes great confusion and lots of reasons for people to walk away and not really address it seriously."*⁵³

1.114 The Committee shares this concern about the damaging consequences of the present approach to the definition of sexual harassment. The Committee is conscious of the difficulty faced by some particularly vulnerable people and the Committee accepts that the intent of the present approach is to seek to ensure maximum protection for all potential victims. However, one consequence of the present approach is an impediment to the wholehearted acceptance of women as full equals. One of the by-products of uncertainty about what constitutes sexual harassment is uncertainty whether legitimate orders or disciplinary action by male supervisors might attract allegations of sexual harassment from female personnel.

1.115 The Impact Study conducted by Triulzi Collins on HMAS SYDNEY clearly illustrates some of the consequences. A significant number of male personnel felt that women on board the SYDNEY were getting away with more than they should because their male supervisors were concerned that if they disciplined the women in the way they discipline the men, they would find themselves accused of sexual harassment. This concern was evident in many of the comments by crew members in response to a questionnaire on the impact of women serving on the ships:

"Morale low when troops see females getting away with things that the guys get stamped on for";

52 Ms S. Triulzi, Committee Hansard, p. 740.

53 *ibid.*, p. 741.

"Many people feel threatened ... unsure of where they stand in relation to harassment issue";

"they think they get treated poorly because of their gender not because of their rank! It happens to all of us, our bosses have an off day and we get "boned" in;

"You yell, they cry harassment."

"Prevent good management of high workloads in stressful situations without fear of reprisal".⁵⁴

1.116 There are also other undesirable consequences. The junior female officers on the SWAN told the Committee, for example, that the reaction of many of the crew after the unfavourable publicity it received in September 1993, was to withdraw from the normal interaction that had been developing, as the men came to accept the women's professionalism during the course of the deployment. A mixture of resentment and uncertainty among the male personnel over where the line on unacceptable behaviour was to be drawn had the effect of isolating the women. A service like the Navy that depends so heavily on teamwork cannot afford to allow these kinds of resentments to fester and divisions between the sexes to develop.

1.117 Up to a point, the Services have it within their power to draw a clearer line between acceptable and unacceptable behaviour than in the Sex Discrimination Act. The draft Defence Instruction on sexual harassment attempts to do so and the Good Working Relationships seminars are of great assistance to Navy personnel in recognising where to draw that line. Ultimately, however, no matter what efforts the Services make to clarify their own standards, all personnel are still subject to the vagaries of the definition under the Sex Discrimination Act. The present situation,

54 Triulzi Collins Solutions - Impact Study. For further discussion of appropriate management style and general harassment see Chapters 6 and 12. It may be argued that in some instances it is not only the treatment of women subordinates but also male subordinates that needs attention; and that there should, for example, be less *"yelling"* all around. However the Committee accepts that in some situations the same *"yelling"* at both males and females may be the key to survival and unquestionably appropriate. The difficulty seems to be in agreeing where and when to draw the line.

whereby an individual may be engaging in unlawful conduct without knowing that he or she is doing so until a complaint is lodged is unsatisfactory.⁵⁵

1.118 Recommendation One: The Committee recommends that the definition of sexual harassment under the Sex Discrimination Act be refined to reflect more clearly

- the hierarchy of complaints;
- the advantage, where possible, of the complainant informing the alleged harasser that his or her behaviour is offensive;
- the appropriate mechanisms and legal sanctions for the different degrees of seriousness of the unlawful behaviour.

1.119 There is much evidence to support the conclusion that many workers tolerate low levels of harassment for long periods before they do anything about it. When they do finally take action it is something serious - either a formal complaint or resigning from the job. It may be the cumulative effect of unremitting low-level sexual harassment or escalation in its severity that leads to such action being taken. By the time this happens, the stress for all those involved is severe.

1.120 The Committee believes more effort needs to be put into nipping harassment in the bud, well before it has blown out and traumatised those involved. It is essential to devote more thought and more effort to the means whereby the sexual harassment can be arrested before serious damage is done. Education is one necessary element. The other area requiring attention is the support provided to the person being harassed who does not wish to make a formal complaint but does want the offending behaviour to cease.

1.121 Recommendation Two: The Committee recommends that the Human Rights and Equal Opportunity Commission should investigate the proposal that the requirement under the Sex Discrimination Act for employers to take all "*reasonable steps*" to prevent an employee or agent from engaging in unlawful acts of sexual harassment should specify that, as one such "*reasonable step*", the employer should provide support, through an appropriate off-line, internal unit in the organisation (such as

55 The Committee's Recommendation Two is aimed at identifying offensive behaviour at an early stage, thereby alerting the alleged offender that he or she may be in breach of the law.

Sexual Harassment Contact officers) or, facilitate access to an external agency (such as the Sex Discrimination Commissioner, for the person who feels harassed to bring to the attention of an alleged harasser (directly or indirectly) that the person's behaviour is offensive, intimidating or humiliating.⁵⁶

Such action should be seen as different from a formal complaint alleging sexual harassment and provide an opportunity for both parties to clarify the situation and be made aware of the possible consequences if offensive behaviour continues. The purpose of the measure is to assist in resolving genuine misunderstandings before they become a major difficulty in the work relationship, particularly in situations where the person who feels harassed feels unable to prevent the offending behaviour by his or her own action alone. The measure would also simplify the resolution of a subsequent complaint, should such a complaint be formally lodged.

Possible consequences of Sexual Harassment

1.122 Notwithstanding the difficulties associated with the precise definition of sexual harassment, there is no question that sexual harassment is now recognised as a real problem.

1.123 Sexual harassment can lead to adverse consequences for the individual, for fellow workers and for the organisation as a whole. The Public Service Commission lists the following possible consequences:

- actual or potential disadvantages to individual's opportunities in appointment, promotion or transfer
- lack of self-esteem or confidence in carrying out tasks
- adverse effects on productivity
- the creation of an intimidating, hostile environment where people other than the victim may suffer.⁵⁷

56 The Committee's Recommendation Thirty Nine proposes that avenues of complaint outside the Chain of Command be made available to all ADF personnel and that inappropriate behaviour be identified and dealt with before it escalates.

57 *Public Service Commission Guidelines*, p. 3.

Impact of sexual harassment on the individual

1.124 The Human Rights Commissioner's guidelines also identify the impact that sexual harassment can have on the individual:

"People who experience sexual harassment often suffer fear, anxiety, tension, irritability and frustration. This may manifest itself in physical symptoms such as migraines, skin disorders and stomach upsets or psychological problems such as insomnia, nervousness, depression and lack of concentration. It can also lead to increased absenteeism, especially if a person is trying to avoid contact with the harasser.

*A person accused of harassment may also feel angry or distressed. This can result in problems which are similar to those outlined above."*⁵⁸

Impact of sexual harassment on the organisation

1.125 It is increasingly recognised that sexual harassment is a matter that all employers and managers need to address.

1.126 In relation to the public sector, the Public Service Commission states that:

*"Sexual harassment is inconsistent with the policy of equal employment opportunity in government employment, it is extremely difficult for the parties to discuss and resolve because of its sensitive and highly personal nature and, not least, it is unlawful under the Sex Discrimination Act."*⁵⁹

1.127 There are good reasons from an organisational point of view why all organisations, including the Services, should eliminate sexual harassment. As the HREOC points out:

"An organisation may lose talented and valued employees as a result of sexual

58 HREOC Guidelines, pp. 16-17.

59 Public Service Commission, *Personnel Management Guidelines, Eliminating Sexual Harassment - Guidelines for Sexual Harassment Contact Offers and Personnel Management Guidelines*, AGPS, Canberra, 1st ed 1986, reprinted 1991, p. 3.

*harassment. Resignations also mean that time and money spent on training and development have been unnecessarily wasted."*⁶⁰

1.128 Sexual harassment can prove costly in other ways. Section 106 of the *Sex Discrimination Act 1984* contains vicarious liability provisions which make an employer:

"liable for an unlawful act of sexual harassment by an employee or agent, unless the employer took all reasonable steps to prevent the unlawful act.

*To avoid liability, the onus is on employers to show that they have taken such steps, for example, they need to demonstrate that they have issued a policy statement on sexual harassment, formulated guidelines for its prevention and conducted staff awareness programs on the subject."*⁶¹

1.129 The employer can therefore become involved in expensive, protracted legal proceedings which can damage public image and credibility. A successful sexual harassment complaint can result in the payment of financial compensation.⁶² Then there are the less direct costs such as:

*"lost working time for everyone involved in a complaint - the complainant, the alleged harasser, witnesses and the manager or supervisor who is responsible for investigation and resolution. The cost of recruiting and training the replacement of anyone who resigns as a result of harassment must also be considered."*⁶³

60 HREOC Guidelines, p. 19.

61 Ms S. Walpole, submission, Committee Hansard, p. 29.

62 Note: As at 20 May 1994, the ADF had paid the following amounts in compensation to individuals who had suffered sexual harassment in the Services:

ARMY: \$243,115.73 (4 Claims)

NAVY: \$117,536.61 (4 Claims)

RAAF: Nil

Letter dated 20 May 1994 from MAJGEN S. Gower to the Committee Chairman.

63 HREOC Guidelines, p. 19.

Who harasses whom?

1.130 It is widely reported, and confirmed by evidence before the Committee, that complaints of sexual harassment are mostly made by women against men. The Sex Discrimination Commissioner states that:

*"the vast majority of incidents of sexual harassment are of women by men, and those men are usually in a senior or similar position to the woman. There are an extremely small number of complaints of sexual harassment of men by women, and usually when the woman is the boss. There are some incidents of harassment of men by men, even when the harasser knows that the victim is not homosexual. There are virtually no reported incidents of women harassing women."*⁶⁴

1.131 According to HQADF:

*"instances have been reported of both male and female perpetrators, although by far the overwhelming majority have been male."*⁶⁵

Sexual harassment and management style

1.132 In some circumstances it is very difficult to disentangle harsh, rigid, authoritarian management practices from sexual harassment. Concerns have also been expressed in some submissions that senior personnel in the Services feel that their authority as managers will be undermined by women objecting to legitimate orders to do something they don't want to do by alleging that such an order constitutes sexual harassment.

1.133 It would be unacceptable if a style of management of women were to be declared unlawful while essentially the same treatment of men continued to be considered acceptable. It is vital to ensure equitable treatment of men and women in the workplace. Any preferential treatment, or even appearance of preferential treatment of women can only set back the cause of integration.

64 Ms S. Walpole, submission, Committee Hansard, p. 52.

65 HQADF submission, Committee Hansard, p. 1331.

1.134 The difficulty goes to the heart of the management style that has been practised in many organisations, not least in the armed services, for centuries. This aspect is examined further in Chapters 6 and 12 of this Report.

Sexual harassment and poor performance

1.135 Dissatisfaction with work performance appears to be frequently associated with complaints of sexual harassment. Difficult judgements may have to be made. Is one the cause of the other? Does sexual harassment lead to poor performance? Or are women who are poor performers more vulnerable to sexual harassment?

1.136 In all probability both of the above are possible. Each case must be assessed individually. It may be very difficult to disentangle cause and effect when performance is being appraised. In some cases it will be clear and straightforward. For example, if an individual has a consistent record of good performance and then is rated as poor in circumstances where the only significant change is a complaint by that individual of sexual harassment, then the probability that harassment has occurred is obviously high.

1.137 The situation becomes far more complex if other variables come into play. For example, a bad rating for someone for his or her performance at sea after a series of good ratings on shore may or may not be attributable to sexual harassment. There are so many other new factors - cramped living conditions, difficult working hours very little privacy, possibly sea-sickness and so on - that it may be very difficult to isolate sexual harassment as the sole or major cause for a drop in performance.

1.138 Another circumstance where it may well be difficult to reach an unequivocal conclusion would arise if the person claiming disadvantage because of sexual harassment is a new recruit with no record of performance that would enable a comparison to be made.

1.139 The Committee noted that during the Good Working Relationships seminar,⁶⁶ it was pointed out that complaints about poor performance often tend to be made after a subordinate makes a complaint about sexual harassment. As a general rule, it was suggested that investigators into allegations of sexual harassment, particularly if they are against the supervisor, would give greater credence to the supervisor's

66 For details about the Good Working Relationships seminars see Chapter 11 of this Report.

statements that the complainants are poor performers if the evidence of poor performance is submitted before any complaints of sexual harassment have been lodged.

1.140 The Human Rights and Equal Opportunity Commissioner's guidelines on sexual harassment state that:

*" The stress associated with sexual harassment is likely to have a negative effect on job performance. The work of the person experiencing the harassment can suffer to such an extent that an employer may begin to question their ability. The harasser is also wasting time by behaving in a way which has nothing to do with the work they should be doing. Any member of a team working below capacity affects the productivity of the entire team."*⁶⁷

1.141 The arguments from the point of view of the welfare of the individual and from the point of view of the efficiency and productivity of the organisation for eliminating sexual harassment in the workplace are powerful.

1.142 The following chapters of the Report examine the extent to which sexual harassment is a problem in the Navy and the ADF generally, and what these organisations are doing about it.

⁶⁷ HREOC Guidelines, p. 15.

CHAPTER 2

SEXUAL HARASSMENT IN THE NAVY

This Chapter examines in broad terms the incidence and nature of sexual harassment or sexual assault in the Royal Australian Navy.

Data available on sexual harassment in the Navy

2.1 Hard facts about the incidence of sexual harassment in the Navy are hard to come by. As in most other organisations several factors can work against a simple and accurate compilation of such statistics:

- there is the difficulty of the definition of sexual harassment. In addition, there have been changes over time to internal Navy instructions which deal with issues relating to sexual harassment;
- the phenomenon of under-reporting of sexual harassment.¹ It is argued in some submissions that the characteristics of the Navy as an organisation are such that a relatively high level of under-reporting is to be expected. However, the Committee received no hard evidence to establish the extent of under-reporting;
- there has been, until the recent introduction of the 008 Operation Lifeline service, no central collection of data on sexual harassment in the Navy;² and

1 Under-reporting is considered to be common in most organisations and is discussed further in paras 2.16 - 2.32 of this Chapter and in Chapter 12 of this Report.

2 The Operation Lifeguard number 008 - 644 247 was opened on 29 September 1993, the Army number 008 - 803 831 was opened on 15 October 1993 and the Air Force number 1800 - 626 254 was opened on 4 November 1993. For further details of Operation Lifeguard, see Chapter 10 of this Report.

- awareness that sexual harassment is an issue for management has, as in society more generally, developed only slowly in the Navy.

2.2 The evidence provided by the Sex Discrimination Commissioner to the Committee itemised thirteen cases of "sexual harassment complaints brought against the ADF under the SD Act".³ Details provided in the summaries of the cases did not reveal whether any of these cases involved Navy personnel.

2.3 The Headquarters Australian Defence Force (HQADF) submission gives the following information on the number of sexual offences and the number of reported incidents of sexual harassment in the Navy for the five years 1989-1993.⁴

Year	Sexual Offences		Sexual Harassment		
	language		non-contact	action other	sub-total
1989	1	7	2	3	12
1990	1	0	0	0	0
1991	0	3	4	0	7
1992	2	2	1	3	6
1993	<u>13</u>	6	4	4	<u>14</u>
	17				39

2.4 More details on the interpretation of these statistics, and a comparison with the other armed services, is given in Chapter 12 of this Report. At this point, it is sufficient to note that of the 39 sexual harassment cases listed for the Navy, all except 9 were either found guilty under the Defence Force Disciplinary Act (DFDA) or had administrative action taken against them. Formal disciplinary action has been taken in 15 of the 17 sexual offence cases reported.

2.5 Unfortunately, the survey contained in the 1987 study "Women in the Armed Services Career and Family Intentions and Expectations" by Major Katherine Quinn

3 Ms S. Walpole, submission, Appendix 4, p. 77.

4 HQADF, submission, Committee Hansard, Annex B. pp. 1361-1364. "In simple terms ... sexual harassment is any sexually offensive action without physical contact; sexual offence is one where physical contact is made without the consent of the other person." *ibid.*, p. 1329.

on sexual harassment in the Navy, Army and Air Force does not separate out the responses of women in the Navy from the aggregate figures. The overall results of the survey are considered in greater detail in Chapter 12 of this Report.

2.6 The Committee received one submission from a former Warrant Officer of long experience in both the Royal Navy and the Royal Australian Navy which reported on an interesting, in depth study of sexual harassment at one particular naval shore establishment, the RAN Air Station at Nowra in the late 1980s and early 1990s.⁵ The study gives a detailed account of the nature of the sexual harassment experienced and the difficulties encountered in unearthing the full extent of its occurrence.

2.7 With regard to the specific instances of sexual harassment on the SWAN, Associate Professor Kim Kirsner considers that:

*"While some of the episodes reported to the HBOI⁶ were reprehensible, they were not - in my opinion - outside the range of episodes which would be expected among any other group of 17,000 mostly young Australians."*⁷

2.8 An analysis of the 21 submissions presented to the Committee by women who have been or are employed by the Navy reveals that six consider that sexual harassment is a problem in the Navy. Of these, five report that they have themselves experienced sexual harassment and fifteen report that it is not a problem.

2.9 The most recent data available on sexual harassment in the Navy is to be found in the records being compiled by the 008 Operation Lifeguard.⁸

5 Mr T.H. McDonald, submission. At the time, only 20 of the 300 personnel on the base were female, and all were in age group 16-18 years.

6 The HBOI refers to the Board of Inquiry, established to investigate matters raised by Dr Wheat in her letter to the Minister for Defence Science and Personnel. It is sometimes referred to as the Harrington Board of Inquiry after the presiding officer, CAPT C. Harrington RAN. This Report refers to the Board of Inquiry as the BOI or the Board.

7 Associate Professor K. Kirsner, submission, p. 3.

8 Further details on Operation Lifeguard are in Chapter 10 of this Report.

2.10 Navy told the Committee that 67 calls have been received since the Service was established, 64 % from males and 36 % from females (It must be borne in mind that males make up 87.5 % of Navy's workforce). Details are as follows:

- . 55.2 % of the calls related to problems of gender based discrimination or sexual harassment
- . 28.4 % of the calls related to general harassment
- . 16.4 % were classified as general queries.

How widespread is sexual harassment in the workforce generally?

2.11 There appeared to be an implication in the media coverage of the SWAN incidents that sexual harassment is either worse or more prevalent in the Navy than in workplaces generally in Australia. The Committee therefore sought to establish what is known about the incidence of sexual harassment in the community.

2.12 Perhaps not surprisingly, this proved to be difficult. Very little reliable statistical data exists about the incidence of sexual harassment, both in Australia and in comparable countries overseas. Much of the data that has been collected is regarded by some workers in the field as suspect. As the Public Service Commission representative told the Committee in relation to the collection of data on the APS:

*"there are mixed views around the service about the validity of some of this reporting."*⁹

2.13 Several factors work against a simple and accurate compilation of statistical data on sexual harassment.

2.14 First and foremost, as previously noted, there is the difficulty of the definition of sexual harassment. Until the question of definition is clarified, statistical data will have little meaning. If one organisation records only what might be regarded as the more serious end of the spectrum, and another includes even the most minor incident, then clearly there is no scope for drawing any comparative conclusions.¹⁰

9 Ms M. Cane, submission, Committee Hansard, p. 1040.

10 The question of definition is examined in greater detail in Chapter 1 of this Report.

2.15 An equally important difficulty is the known phenomenon of under-reporting of sexual harassment.¹¹

Reluctance to complain

2.16 Adequate statistics are a problem not only because victims of sexual harassment are reluctant to have their complaints recorded but many victims do not complain at all because they find it too difficult. The Sex Discrimination Commissioner told the Committee:

*"for every woman who has complained, hundreds of others have not done so for fear of losing their job or not gaining some other benefit such as a pay rise. They are also concerned about destroying their personal life or suffering public humiliation."*¹²

2.17 The Nowra study found that *"fear, lost pride, and the threat of reprisals"* meant that the victim *"becomes confused and doesn't know what to do, so she usually does nothing."*¹³

2.18 Fear of retribution was a theme of the female witnesses to Navy's Board of Inquiry. The Board said in its report:

*"Fear of retribution has been a commonly expressed problem for the victims of unacceptable sexual behaviour throughout this inquiry."*¹⁴

2.19 At the hearings of the Committee, Commodore Barrie confirmed that, in his experience, the issue of retribution *"is a problem, or has been a problem. That is an*

11 This aspect is discussed also in Chapter 12 of this Report.

12 Ms M Waipole, Committee Hansard, p. 106.

13 Mr T.H. McDonald, submission, attachment A, p. 10. It is also widely recognised that some incidents are not reported because reporting a complaint forces the complainant to relive what may have been a very harrowing experience.

14 BOI Report, p. 11.

*abuse of authority in my view ...*¹⁵ Navy's response to the problems that were uncovered by the SWAN incident has been to adopt, in the words of Sandra Triulzi:

*"preventive mechanisms rather than relying on the curative approach through the complaints based process, which is the process that HREOC provides."*¹⁶

The Committee welcomes this approach and accepts the argument that, if it is successful, the need to make formal complaints will only arise in exceptionally difficult cases.

2.20 A lack of awareness on the part of both managers and employers about the avenues for complaints about sexual harassment contributes to the overall unreliability of data on sexual harassment.

2.21 A further, related difficulty is the reluctance of some people to have their complaints recorded at all. Ms Cane stressed that:

*"there are some people who appear to be very reticent if it goes anywhere other than to the harassment contact officer".*¹⁷

The Ombudsman also states that a number of the complaints about sexual harassment received in her office have been anonymous.¹⁸

2.22 A moving personal account of reticence to complain was given to the Committee by Lieutenant Susan Sly. Lieutenant Sly explained why, in the late 1980s, after finding a "guy" at ADFA trying to get into her bed on three consecutive nights, she had asked for help from her fellow students at the Academy but had chosen not to report the incident:

"There were two guys now involved who were helping me basically supporting

15 CDRE C. Barrie, Committee Hansard, p. 576.

16 Ms S. Triulzi, Committee Hansard, p. 729.

17 Ms M. Cane, Committee Hansard, p. 1042.

18 Ombudsman, Submission, p. 2. In the ADF this reticence may be compounded by an individual's concern that their making of a complaint may be included on their Service Record.

*me. Finally, they said, 'You have got to tell us who it is'. So I gave them the name; they were the only people I ever told at that stage who it was. They knew straightaway why I had not done anything about it. It was because no-one would have believed me - like no-one. The only reason they did was because they had seen the state I was in after the incident ... even they themselves admitted that no-one would have believed me. Had I tried to have done anything about that incident I would have come off second best, not him."*¹⁹

2.23 Ms Cane argued that in considering the approach that should be taken to the collection of data, the risk that this might constitute a further barrier to the reporting of incidents had to be carefully evaluated. In her view:

*"the last thing we want to do, I would suggest, is in any way impede or put any barrier in the way of people's seeking assistance."*²⁰

Ms Cane noted however, that this reluctance to be recorded varied from agency to agency.

2.24 The Sex Discrimination Commissioner reported in her submission to the Committee that in 1992-93 the Human Rights and Equal Opportunity Commission received 783 complaints under the Sex Discrimination Act:

"of these, 292 (over a third) complaints were made in relation to sexual harassment. Complaints alleging both sex discrimination and sexual harassment increase the number of cases to 366."

2.25 Thus, 47 per cent of the complaints received by the Sex Discrimination Commissioner in 1992-93 related to sexual harassment. The Sex Discrimination Commissioner further reports that of all the complaints under the Act, 338 were conciliated and 38 were referred elsewhere, or declined. No information is given to indicate how many of the conciliated cases related to sexual harassment. A brief

19 LEUT S. Sly, submission, Committee Hansard, p. 938.

20 Ms M. Cane, Committee Hansard, p. 1042.

description is, however, given of each of the 19 cases of sexual harassment that were referred for public hearing.²¹

2.26 Ms Cane advised that centrally compiled statistical data on the incidence of sexual harassment and sexual assault in the Australian Public Service is not available.²²

2.27 Although the eight major agencies that currently employ over 79 per cent of APS staff all have comprehensive policies and procedures on sexual harassment in place, only one of these, the Australian Bureau of Statistics, publicly reports on the incidence of sexual harassment. In its annual report of 1992-93, the Bureau reports that it received 17 informal complaints. Since the Bureau has over 4,000 staff, this could be presented as a rate of approximately four informal complaints per 1,000 staff. The PSC reports that:

*"other agencies have publicly reported a few EEO related grievances without specifying whether they involved sexual harassment."*²³

2.28 On the basis of the Sex Discrimination Commissioner's assessment that just under 10 per cent of all the 783 complaints to her are from the Commonwealth, Ms Cane said it was reasonable to conclude that at least some of these 70 odd cases arose in the APS. However, Ms Cane was *"not in a position to say with any accuracy how many."*²⁴

2.29 Ms Cane also noted that in 1992-93:

*"the Merit Protection and Review Agency registered no grievances on the grounds of sexual harassment, although nine were made on general harassment - victimisation grounds."*²⁵

21 Ms S. Walpole, submission and Appendix 7, Committee Hansard, pp. 24-25, and pp. 99-104.

22 Ms M. Cane, Committee Hansard, pp. 1045 - 1046.

23 *ibid.*, p. 1037.

24 *ibid.*, p. 1037.

25 *ibid.* The Australian Public Service employs 150,000 paid staff. If the extreme assumption that all 10% of Commonwealth complaints were by APS employees, on a very rough calculation this would represent a per capita incidence of one complaint per 2,000

2.30 Ms Cane indicated that while there are no centrally maintained APS records, most agencies would in all probability have some records for their internal purposes and that serious cases of sexual assault or sexual harassment would certainly be a matter of record *"because they would have gone to discipline procedures and become formal."*²⁶

2.31 According to Triulzi Collins Solutions, sexual harassment:

*"is subversive to the broad business goals and creates a 'no-win' situation for everyone involved."*²⁷

Moreover, in Ms Triulzi's view:

*"Inappropriate behaviour in the workplace has not been treated seriously by the majority of senior management in all Australian businesses - public and private."*²⁸

2.32 In a paper submitted with HQADF's supplementary submission, Professor Bryson makes mention of several international studies of sexual harassment in the workplace. These studies have produced a wide variety of outcomes, ranging from very high to quite low rates in different countries. The ILO publication *ILO Convention of Work Digest: Combating sexual harassment at Work, Vol II 1/1992*, also attempts to give some comparative data. All these efforts at comparison are bedevilled by great variation in definition of what constitutes sexual harassment and great variation in the manner of data collection. All results must therefore be treated with a great deal of caution.

Drawing conclusions from statistical data on sexual harassment

2.33 As indicated in the foregoing paragraphs, collecting data on sexual harassment can be a very difficult exercise. These same difficulties create a minefield when it comes to drawing conclusions from that data.

employees.

26 *ibid.*, p. 1046.

27 Triulzi Collins Solutions, submission, Committee Hansard, p. 622.

28 *ibid.*, p. 617.

2.34 The Committee feels it necessary to draw attention to one particular pitfall. Experience has shown that an increase in the reported number of sexual harassment cases in any particular agency in the workplace does not necessarily mean that there has been an increase in the actual incidence of sexual harassment there.

2.35 Increased awareness and improved reporting and handling mechanisms can lead to increased reporting. As the Public Service Commission pointed out:

"One agency did a particularly good job of distributing information throughout its agency, throughout the whole of Australia, on sexual harassment and, for a brief period of time, the number of incidents apparently rose enormously; that was again because of education. That number gradually sank back to what one might consider an acceptable level." 29

2.36 Just as a high level of reporting may be misleading, it is also hazardous to assume all is well in agencies with a low reporting rate. It is important to flag again the problem of the barriers that exist to the making of complaints about sexual harassment. It may well be that those experiencing sexual harassment in an agency with a low pro-rata reporting rate are inhibited, for a variety of reasons, from coming forward with their complaints. The Committee is not aware of any substantive research in this area.

The workplace

2.37 The law as spelt out in the Sex Discrimination Act prohibits sexual harassment where there is a business, working or education relationship. Although under the Act there is no geographic limitation to where you may not sexually harass an employee, it is nevertheless important to note that, on board a ship, the Navy workplace encompasses both professional and recreational time and functions.

2.38 Personnel serving on a ship at sea are regarded as being in the workplace at all times. In effect there is no distinction, while at sea, between being on duty or off duty. Time spent in one's cabin or in the wardroom while not on watch is still regarded as

29 Ms M.Cane, Committee Hansard, p. 1043. It will be interesting to see what effect the intensive sexual harassment education program that the Navy has put in place will have on the numbers of complaints. For the number of calls to the 008 number see para. 2.10 of this Chapter.

time spent in the workplace.³⁰ Furthermore all activities on board a Navy ship when it is alongside in port are also deemed to be taking place in the workplace. The more usual pattern of employees returning to their homes, away from their colleagues at work, does not apply.

2.39 Activities ashore are normally not regarded as workplace activities. Nevertheless this does not mean a green light for sexual harassment once personnel are physically no longer on board the ship. As previously noted and as in the case of civilian employees, there is no geographic limitation to the application of the Sex Discrimination Act. However, in addition, any behaviour ashore that discredits the Navy can attract disciplinary measures. This includes sexual harassment.³¹

2.40 The Committee notes that while in law all time on board a Navy ship is considered as time spent at the workplace, it is unrealistic not to expect some variation in the style and content of communication amongst personnel while on watch on the bridge and when relaxing after dinner in the wardroom.

2.41 It is in the context of the wardroom that individuals, and managers, are likely to experience the greatest difficulty in drawing the line between acceptable and unacceptable topics of conversation, language and behaviour. Rapid changes in community standards contribute to the difficulty.

2.42 The Committee raised with several witnesses the question of common standards in all circumstances, in particular whether it is appropriate to set the same parameters of behaviour for people on a small, isolated, cramped and uncomfortable ship at sea as are set for the more common situations where people work in an office or on a building site and then go to the pub, or for a stroll, or just go home at the end of the day. The responses varied. Ms Triulzi's view was that:

"you have to apply different standards to different environments. You can have a general core of accepted standards and accepted ways of

30 The time spent *'on watch'* rather than *'on duty'* can roughly be equated to the working hours in civilian employment.

31 Sub-section 28 B (2) of the Sex Discrimination Act makes sexual harassment between fellow employees anywhere unlawful. Sub-sections 28 (6) and 28 (7) make sexual harassment between workplace participants (for example behaviour between an ADF member and a contract worker) unlawful only at *'a workplace of both of those persons'*.

*operating. You then add to that additional strategies or actions that apply to a particular environment. There is no one answer to all of this."*³²

2.43 The Sex Discrimination Commissioner's views were less flexible. She drew parallels between working on a navy ship at sea and on a base in the Antarctic. She maintained that there is no variation in what constitutes unacceptable behaviour. In response to the question whether it is different in different places, Ms Walpole said:

*"No. There are standards of acceptable behaviour within the community ... The vast majority of the community understands and accepts these standards."*³³

2.44 While Ms Walpole accepted that *"there are particular aspects of the culture in the defence forces which are peculiar to the defence forces"*³⁴ the Committee found it difficult to explore with Ms Walpole as fully as it would have wished the difficult question of the effect that variations in the norms of different groups and the effect that different environments might have on the management of sexual harassment.³⁵

2.45 An interesting question to consider, for example is whether in attempting to control wardroom behaviour to the extent that it now appears to be doing, the Navy is seeking to achieve standards that are in effect above community standards under conditions that are more difficult than most.

The nature of women's experiences in the RAN

2.46 This Committee's inquiry has come about as a result of Dr Wheat's allegations that she was sexually harassed on HMAS SWAN and from her dissatisfaction with Navy's handling of her allegations. The Committee's findings about Dr Wheat's allegations and the manner in which Navy's Board of Inquiry addressed them are

32 Triulzi Collins Solution, submission Committee Hansard, p. 734.

33 Ms S. Walpole, Committee Hansard, p. 140. Navy acknowledges "there are similarities, as there is (sic) a lack of similarities, driven in large part by this environment", RADM D. Chalmers, Committee Hansard, P. 576. The HQADF submission summarises the differences in Service life from civilian life and how those differences may affect Service personnel, Committee Hansard, pp. 1319-1321.

34 Ms S. Walpole, Committee Hansard, pp. 155-159.

35 For Navy's comment on its distinctive environment see Committee Hansard, p.576.

discussed in later chapters of this Report. What about other women in the Navy? What do they have to say about sexual harassment in the Navy?

2.47 The Committee has received a small number of submissions from women who have been sexually harassed in the course of their employment in Navy in the past 10 years and who chose not to make a complaint about the treatment they were subjected to.³⁶ One of them, Lieutenant Susan Sly, explained:

"For a long time I had the feeling that I deserved the treatment I got because I had come into a male domain. `They did not invite me; I invited myself was certainly the way a lot of the time you finished up feeling." 37

2.48 The women learnt early that there was a price to pay for having previously "male only jobs" opened to them. Lieutenant Sly says about her time at the Australian Defence Force Academy (ADFA), beginning in 1986:

"I was ostracised, abused and had several attempts made to sexually assault me. ... The attitude which pervaded was one in which even the females believed that by venturing into the male domain we deserved the treatment which we received." 38

2.49 These women, like all the other Navy women who made submissions to the Committee, expressed sympathy for the male sailors and officers who saw "their ship" invaded overnight by one or several women:

"They were rung up on the phone and told: Your navigator is a girl. She gets here tomorrow." 39

2.50 There was no preparation or training to help them change from a lifestyle in which they were steeped and accept the individual whom they perceived had caused the change.

36 LEUT W. Russell, Committee Hansard, p. 904; LEUT S. Sly, Committee Hansard p. 932.

37 LEUT S. Sly, Committee Hansard, p. 941.

38 LEUT S. Sly, submission, Committee Hansard, p. 926.

39 *ibid.*, p. 934.

2.51 The majority of submissions from women in the Navy did not refer to their experiences as sexual harassment. Rather, they spoke of an environment charged with hostility towards working women, especially women working in the same jobs as men. It is with great reluctance that some of the women admitted that they had encountered a difficult working environment when they were first posted to a ship or were promoted on shore:

*"I was not ignorant to the fact that some people would not want us there, but given time and effort they would come around ... and they did";*⁴⁰

and

*"I have to admit that I was given a hard time by male sailors, some of them were senior to me, who thought that I could not handle the job, that I was not 'pulling my weight' or branded me as being lazy and incompetent at my job."*⁴¹

2.52 This female sailor was one of those who recognised that the situation was made worse for them by the novelty aspect of women on warships and the fact that the small numbers of women meant that any shortcomings they might have and their inexperience was highlighted:

*"To be branded lazy and incompetent can be very demoralising to one's self esteem especially if you are in the 'limelight' and endeavouring to make a difficult situation such as the integration succeed."*⁴²

2.53 Even the Navy women who did not mention in their submissions that they had faced hostility, expressed a hope, and a belief that, as a result of the Good Working Relationships program and of the training now available to all, things will change for the better:

"I truly (sic) believe that when some form of education is introduced for

40 LSWTR D. Cleary, submission, Committee Hansard, p. 800.

41 PO S. Brown, submission, Committee Hansard, p. 806.

42 PO S. Brown, submission, Committee Hansard, p. 806.

*both men and women ... attitudes will change and there is a future for women at sea."*⁴³

The women were particularly keen to see the education program in gender awareness issues continued because they feared that some of the positive attitudes they encountered from their male contemporaries on entry could change as the latter became integrated into an environment that had been predominantly hostile to women. They found also that positive attitudes did not flourish under the pressure of competition:

*"As soon as it became evident that some of the females were formidable 'opponents' some of the old attitudes resurfaced."*⁴⁴

The strong competition that the women graduating from ADFA provide was confirmed at the Committee's hearing by Rear-Admiral Carwardine, Commandant of the Australian Defence Force Academy: *"I can say without any doubt that the women are disproportionately higher achievers than the men."*⁴⁵

2.54 The Chief of Naval Staff accepts that hostility to women has been a problem in Navy. Vice-Admiral MacDougall told the Committee:

*"There has been a great deal of soul-searching. We acknowledge that historically we are a misogynistic society. The warrior ethos is strong. There are many complexities to this".*⁴⁶

2.55 The price of acceptance for the women was that they had to perform better than the men in order to prove their worth. This attitude took its toll on Lieutenant Sly for example:

"I was getting very weary of the first few months of every posting being

43 LS K. McMullen, submission, Committee Hansard, p. 844.

44 LEUT W. Russell, Committee Hansard, p. 902. As noted in Chapter 1, sexual harassment is one form of discrimination.

45 RADM A. Carwardine, Committee Hansard, p.1567.

46 VADM MacDougall, Committee Hansard, p. 592.

*lousy, while people checked out whether I could do my job. I was always having to justify why I got the same jobs as some of the guys got."*⁴⁷

2.56 Others also mentioned this in their submissions:

*"I did feel uncomfortable at the beginning and always felt as though I had to prove myself";*⁴⁸ and

*"once they saw that most of the females were willing to work and give 100% and in some cases they often worked harder than their male counterparts, attitudes started to change."*⁴⁹

Who engages in sexual harassment?

2.57 The Committee heard evidence that the older generation of sailors are finding it more difficult to adapt to the presence of women at sea. Most of that evidence was sympathetic to the difficulties faced by those older sailors. Associate Professor Kim Kirsner expressed it thus:

*"These older sailors grew up in a different navy, and it is changing before their eyes".*⁵⁰

Ms Sandra Triulzi had this to say:

"Their view is that things are changing very rapidly for them, with a lot of their conditions. Most of them have never worked with women before; their life has been at sea. If you do not give these people some support and help through the integration process, particularly when they are asked to take in difference, then they are floundering. When they are floundering they become threatened and when they are threatened they react because they do not want to be seen to be stupid, they do not want to be seen as though they cannot do their job, but they are being asked to integrate

47 LEUT S. Sty, Committee Hansard, p. 940.

48 PO J. Clark, submission, Committee Hansard, p. 812.

49 PO S. Brown, submission, Committee Hansard, p. 806.

50 Associate Professor Kim Kirsner, submission, p. 3.

these women. At the end of the sessions their cry was 'Please help us. We want to be part of this change but we need support.'"⁵¹

However, Ms Triulzi was keen to point out that:

*"I would just like to say at the outset that it is very important that we do not put the senior sailors all in the same box. They are not all the same."*⁵²

2.58 Dr Westphalen, a medical officer who has served on HMAS SWAN and HMAS SYDNEY, perceived onboard Navy ships a "type" of person prone to harass anyone who appeared to be different. In some instances, they would engage in harassment but their target did not have to be female:

*"The perpetrators have similar characteristics. They are in their mid-late 20's, with a fair amount of naval experience behind them, but perhaps little idea of civilian concerns. They are extroverts, very competitive, ... The main distinguishing feature of the perpetrators is their emotional insensitivity - they seem unaware of the emotional /psychological effects of their acts on others."*⁵³

2.59 Part of the reason that sexual harassment appears to be more prevalent among the older sailors is that they have an established position from which to engage in such harassment. And as has been pointed out, they joined a very different Navy at a time when Navy was a man's world. Warrant Officer Pontarolo's submission to the Committee stated:

"Whilst not having any statistical data, nearly all sexual harassment or assaults, or inappropriate sexual conduct that I have knowledge of, has involved Officers, followed by senior sailors. This would indicate that the

51 Ms S. Triulzi, Committee Hansard, p. 739.

52 *ibid.*, p. 738.

53 LCDR N. Westphalen, submission, Committee Hansard, p. 1107. See also Chapter 7 of this Report.

*main offenders are the very ones who are the supervisors, managers and divisional officers."*⁵⁴

She perceived that it was not a world where it was easy for a woman to make a complaint:

*"To some extent they are also a 'protected species'. If a female member is able to lodge a complaint, a closed shop mentality is formed to protect the offender. This loyalty proffered to Officers and senior sailors is at the expense of the victim. In my opinion, it is done to protect the image of the officer and/or officer corps, or to protect the senior sailors' pension."*⁵⁵

2.60 At the Committee's hearings in Sydney, Warrant Officer Pontarolo said that, as a result of the "Good Working Relationships" project, she was:

*"seeing an improvement in what they are saying and in their attitude. They are all taking into account this good working relationship and they are more aware of the guidelines that are in the instructions and regulations."*⁵⁶

The evidence quoted above highlights the need for the pro-active approach adopted in the Good Working Relationships program and the importance of an obvious commitment from senior Navy management to education of all personnel to eradicate discriminatory behaviour. The report prepared for Maritime Command by Commander Brand after the SWAN incident pointed to the negative influence the older sailors could have on new recruits' attitudes:

*"Young male sailors on joining a ship do not appear to be prejudiced against their fellow female sailors but become so when assimilated into the crew and influenced by their seniors."*⁵⁷

54 WO F. Pontarolo, submission, Committee Hansard, p. 833.

55 *ibid.*

56 *ibid.*, p. 861.

57 CMDR CM Brand, *The Assimilation of Women at Sea, Report to the Maritime Commander*, p. 3. Enclosure to letter from CAPT B. Robertson to Committee Secretary, 11 May 1994.

How women cope

2.61 There has been considerable variation in the way women have chosen to cope with the challenge of entering an all-male domain. Sub-Lieutenant Schelling gives a good account in her submission of this variation in relation to language:

"Female behaviour currently ranges from overbearing prime-donnas (ie. won't accept any swearing at all, and take everything personally) to those that swear to excess, quite often embarrassing their male shipmates." 58

In her view:

"Fixed behaviour needs to be for males and females, and both sides will have to make adjustments." 59

2.62 Sub-Lieutenant Miller, one of the junior female officers under training on the HMAS SWAN in 1992 brings out very clearly in her testimony to the Board of Inquiry (BOI) the conflicting pressures and challenges that inevitably face the women pioneers in the Navy.⁶⁰ On the one hand, to be accepted as equal professionals, they have to prove their ability to do the job. Many women in the Navy believe that the sooner and the better they do this, the sooner and more fully they will be accepted, and even welcomed as equals. Some women have concluded that achieving this objective may require tolerating some behaviour or attitudes that, in an ideal world, they would rather not have to put up with.

2.63 There is no doubt that exactly that same calculation has also been made by many men who have chosen to make their career in the Navy in the past. It is also undoubtedly this, probably quite large group of men, who warmly welcome the steps now being taken by the Navy to clarify what is and what is not regarded as unacceptable sexual behaviour and what constitutes good working relations between all members of the Service.

58 SBLT M. Schelling, submission, p.3.

59 *ibid.*

60 For further details about the Board of Inquiry, see Chapter 5.

2.64 For many and varied reasons, many men, and now women, have felt it was not appropriate to complain about some behaviour that they would have preferred not to have around them. It also seems to the Committee that the more mature, and self-confident members of the Navy have been able, through their own personal approach to instances of unbecoming behaviour, been able to deal quite effectively at a personal level with such behaviour. Again, where their personal efforts have not been sufficient, the majority have in most instances found sources of support, whether it be through the Divisional System, peer support, or other means, such as the chaplains, to deal with behaviours that have gone beyond the tolerable.

2.65 Facilitating the integration of women has required a certain measure of tolerance and maturity. The calculation was made by many individual women to avoid the backlash that could confidently be expected if a more comprehensive and rapid effort to impose demands that behaviour that had previously been tolerated (even perhaps implicitly condoned) should immediately change.

2.66 The Committee notes the fine judgements that are required if the ultimate objective of true equality for women in the defence forces is to be achieved. This tolerant approach requires that parallel and serious steps be taken to clarify standards, define the parameters of unacceptable behaviour and educate every member of the Service. It is now clear, and fully demonstrated by Navy, that initially this need to educate all personnel, both men and women, was not sufficiently recognised by Navy's management.

2.67 It is also sensible, in the Committee's view, for the managers in the Navy to take special care in selecting appropriate people at this early stage of the integration process. This applies both to the women billeted to the foreseeable difficult postings, and to the selection of commanding officers and those charged with divisional responsibilities.

2.68 The Committee notes that this was a matter that was consciously addressed when Sub-Lieutenants Miller and Ganter were posted to the SWAN. The selection officer in this case is quoted by Sub-Lieutenant Miller in her testimony to the BOI as having given attention to the likelihood that a small number of junior female officers would face more than the usual challenges and made his selection of personnel to appoint with that consideration clearly in mind.

2.69 There have been some very successful appointments of female doctors to sea postings, with the doctor being the only woman on board. For example, the Committee received, late in the Inquiry, submissions from Dr C. Moore and Lieutenant Commander Alison McLaren, both of whom served as medical officers on HMAS SWAN. Neither encountered difficulties. LCDR McLaren described her approach as follows:

*"I tried to make it clear that I was not offended by casual (conversational) swearing as long as it was not directed at me and that I find dirty jokes perfectly acceptable as long as they are funny and not overly derogatory. It took about three weeks before I was fully accepted into the wardroom and from then on the officers were quite relaxed in my presence. I must admit I was surprised at some aspects of male behaviour when females are not around, eg the play fights, the frequent homosexual allusions and the conviction that violence is the ultimate answer to any problem, but I found this interesting rather than offensive."*⁶¹

2.70 Inevitably it has been, at times, a difficult learning experience for both the men and the women who have found themselves at the vortex of change. It was a learning experience for the managers and it was a learning experience for those at the coal face. It was a learning experience for the men and it was a learning experience for the women. With the best will in the world, no-one could have anticipated all the problems that were to crop up or prescribe what solutions would work best.

2.71 When the policy of integrating women into the Navy was first promulgated, no-one had a clear idea of the full extent of the pressures and demands that the change would bring with it, let alone have a clear idea of how to resolve those conflicting demands and pressures. Some in positions of leadership leaned one way, hanging onto traditional ways, others leaned the other way, actively searching out more creative approaches. With hindsight, it is possible to see that those who adopted the more flexible, consultative mode were the more successful in achieving acceptable solutions for the new circumstances.

2.72 The present leadership in the Navy was itself brought up in a tradition of exclusivism. It would be most surprising, then, if at least some of those who are in a position of leadership were not dismayed by the change in policy that allowed women into their ranks as equals. All the more credit must be given to those in the Navy who

61 LCDR A. McLaren, submission, para. 4.

have now wholeheartedly committed themselves to bringing about the changes that the change in policy on women entail.

Reverse discrimination

2.73 In his submission and evidence to the Committee, Dr Hugh Smith raised the issue of discrimination in favour of women. His was not the only submission to raise that sensitive issue. Lieutenant Christensen told the Committee:

"I believe that a lot of frustration of male personnel is derived from the 'reverse discrimination' that males suffer under the present naval system" and

"It seems to be a bit easier to get on a frigate if you are a female than if you are a male, as a junior officer. Because they have got the facilities available for more mixed gender, there are more places on the frigates for the girls than for the guys."⁶²

2.74 Captain Flynn makes the observation that:

"Double standards can also lead to the perception or reality of reverse discrimination. I am aware of a number of instances where female personnel, for various reasons, have been dealt with administratively quite differently because of their gender in relation to incidents that have occurred in the course of their duties. These matters are mentioned only as I believe they are relevant to the question of the acceptance of women in the services."⁶³

2.75 Dr Smith points out that it may be impossible to open up more positions to women in the Defence Force without practising discrimination in their favour. Maternity Leave, for example, can only be available to women and a pregnant sailor has to be given a shore posting:

"Personnel practices, however, may still prove a necessary source of discrimination in favour of women. It is possible that female sailors,

62 LEUT B. Christensen, Committee Hansard, pp. 913-915.

63 CAPT M. Flynn is Director Medical Services in the Office of the Surgeon General Australian Defence Force, HQADF, submission, p. 21.

especially those who are married and have children, will be given shore postings more frequently than males in the same situation. This might be necessary from Navy's point of view in order to prevent the resignation of good sailors".

But Dr Smith argues that if such practices need to be followed: *"the reason should be clearly spelt out."*⁶⁴

2.76 The Navy's current Good Working Relationships Project is aimed at changing the attitudes that have, until recently made working life for Navy women more difficult than it had to be. The submissions received by the Committee reveal that those women do not want to receive more favourable treatment than their male counterparts. Matters that might appear trivial at first, can upset the delicate balance of perceived equality. Lieutenant Commander Lloyd told the Committee:

*"The AF [Australian Fleet] memorandum on the subject of women at sea was generally well received, except for the section which stated that women could have more shower water because they had longer hair! My cabin mate and I made sure we never used more water than our male counterparts as a matter of principle."*⁶⁵

2.77 The evidence put to the Committee on the question of "reverse discrimination" reveals some of the complexities involved in changing workforce attitudes that have developed over a thousand years or more. Once women simply did not go to sea. Nowadays, the example of a pregnant sailor or officer highlights the impossibility of insisting that men and women are treated exactly the same in the Navy. A sailor about to give birth needs access to maternity leave arrangements that are not required by her male colleagues. "Good Working Relationships" require that this situation be accepted by her peers in a spirit of cooperation.

Physical Strength

2.78 The impossibility of ensuring that exactly the same tasks are given to both male and female sailors on an equal basis is highlighted when physically demanding tasks must be performed. The majority of respondents to the HMAS SYDNEY Impact Study

64 Dr H. Smith, submission, Committee Hansard, pp. 1220 - 1224.

65 LCDR Jenny Lloyd, submission, Committee Hansard, p. 887.

conducted at the end of its Red Sea deployment in December 1993 by consultant Sandra Triulzi complained about the inability of female sailors to do the "heavy work".⁶⁶ The male respondents objected to two females being assigned to the same task as one man. This led to complaints of 'favouritism' from 67 per cent of respondents in the study with 59 per cent stating that "women were not carrying their share of the work load".⁶⁷ Resentment was also expressed that if the females were told harshly to "pull their weight", they could complain of sexual harassment - an option not available to the male sailors.

2.79 Navy has not done much to date to address the issue of the average physical strength of females relative to average male strength, although Captain Flynn draws attention in his submission to an initiative by Navy to develop fitness standards and training programs that directly relate to operational tasks and shipboard activities.⁶⁸ This problem of differences in physical strength can in part be overcome by devising better mechanical or automated ways of completing heavy tasks. But it would be simplistic to expect that this will solve the problem entirely. The issue is as much one of perceived status conferred by great physical strength as a desire to see equality of treatment. The Committee notes Ms Triulzi's comments that:

"A general view based on workplace discussions and studies, finds that the issue of physical strength is founded in the value placed on the work being done. The resistance and resentment expressed by men is more often

66 The Committee notes that only 9 per cent of the female sailors responded to the HMAS SYDNEY survey (compared to 90 per cent of males). The survey therefore presents a very masculine view of the Navy's workplace and its positive findings in relation to the absence of sexist jokes and the support provided by workmates and by Divisional officers must be assessed with this in mind. The Committee is aware that Triulzi Collins attempted to balance the poor response to the survey from female crew members by conducting "focus group" discussions in which almost all female crew participated. It is also worth noting that the survey reflects perceptions of inequalities in the extent to which women carried out heavy work. There may be value in conducting further objective study to determine what proportion of the tasks performed by the various ranks in the Navy are physically demanding.

67 Triulzi Collins Solutions, *HMAS SYDNEY - Impact Study*, Nov - Dec 1993.

68 CAPT Flynn, submission, p. 6.

about the presumption that their work is 'devalued' by the presence of women and therefore this impinges on their masculinity and sense of self-worth'.⁶⁹

2.80 It is the view of the Committee that the problem will only be eased over time if the men are encouraged to deal with it as an occupational health and safety issue. It is as much to the advantage of the men as to that of the women if better methods are devised to do the heavy lifting work. This should become more acceptable to the men as new ships are built and fitted with equipment that facilitates the physical aspects of the sailor's work. Tasks demanding above average physical strength will not disappear but if they need to be performed less frequently, it should be possible and more acceptable to make special roster arrangements for the completion of such tasks.⁷⁰

Fraternisation

2.81 The other major area of concern to the male sailors on HMAS SYDNEY was the issue of fraternisation. A lot of resentment stemmed from a perception that a small number of men could enjoy female companionship while on deployment (10 to 15 per cent in the case of SYDNEY). This was seen to be detrimental to team cohesion and to adversely affect morale. Navy has had rules against fraternisation in place for some time, but the survey reveals that it was nevertheless a problem on HMAS SYDNEY.

2.82 In this context the Committee, was perturbed by one view expressed to the Committee, that the postings of women to sea posed a threat to the spouses and families of male personnel. That threat was perceived to be different from the difficulties that arise from other kinds of sexual encounters, that may occur, particularly in foreign ports. The Committee accepts that sexual encounters of all kinds can lead to a multitude of problems. It is appropriate for the Navy to seek to provide guidance, counselling and assistance to its personnel about sexual behaviour to meet the needs of the organisation and to promote the welfare of families. However, the additional

69 Triulzi Collins Solutions, *HMAS SYDNEY - Impact Study*, Nov-Dec 1993, p. 14; Mr T. H. McDonald, submission, Attachment C, p. 11.

70 CAPT Flynn states in para 17 of his submission that *"Notwithstanding developments in engineering and maritime technology, a significant part of shipboard activities such as provisioning, ammunitioning and de-ammunitioning remain dependant to some degree upon manual handling. This requires physical strength, particularly upper body strength. In his article, Slater quotes a 1985 UN study that determined that 90% of women failed specific functions of the eight critical tasks related to emergency shipboard performance task standards. the comparable failure rate for men was 3%."*

complexity of regulating sexual behaviour on integrated ships is not, in the Committee's view, a reason to limit equality of opportunity for women in the Navy.⁷¹

71 Chaplain W. Reddin, submission, Committee Hansard, pp.986-995.

CHAPTER 3

ACCOMMODATION ON HMAS SWAN

TERM of REFERENCE 1 (b)

This Chapter examines the adequacy of living conditions provided for female personnel on HMAS SWAN, including the sleeping and ablution areas.

3.1 In her letter of 25 November 1992 to the then Minister for Defence Science and Personnel, the Hon. Gordon Bilney MP, Dr Wheat stated that:

"When I joined HMAS Swan on 24/5/1992 I was horrified at the living conditions. I had a single cabin which was amongst those of the male officers, but there were holes in the walls through which came light and cigarette smoke, and through which I could be watched. I was not aware of this until the neighbouring officer brought it to my attention.

I was quite upset about having to share the toilets with the male officers and so were some of them, as the urinal was placed in the communal part of the toilet block. The females downstairs used a single toilet next to the wardroom, which was also used by the men, and they told me that they were embarrassed about sharing with the men, particularly as the sanitary bin was in the communal area."

HMAS SWAN

3.2 HMAS SWAN, a River Class Destroyer Escort (DE), is 112.8 metres in length, 12.5 metres across the beam, 2 750 tonnes displacement and carries a crew of 250. The hull was designed in 1947, the internal configuration in 1953 and construction of the Class began in 1954. The River Class Destroyer Escorts, the Guided Missile Destroyers (DDGs) and the Oberon Class Submarines are the oldest warships in the RAN.

3.3 HMAS SWAN was launched in December 1967 and commissioned into the RAN in January 1970. At that time ships' companies were all male and crew comfort was not a high priority. *"The design of a modern warship is a series of compromises between conflicting requirements for space, weight and power"* ¹ often to the detriment of aspects of daily life, such as privacy, which many of us take for granted. Personnel who serve on these vessels must accept and be prepared to adapt to these conditions.

3.4 The Committee inspected SWAN and its sister ship TORRENS, and experienced at first hand the cramped and basic living and working conditions onboard these vessels for all members of the crew.

The 1992 Deployments

3.5 HMAS SWAN made two deployments in 1992 when female personnel were embarked:

- . the first was a six week deployment, in March-April, in Australian waters for Exercise Kangaroo 92;
- . the second was a four month deployment to Asia from late May to early October 1992.

3.6 In addition to its normal crew, SWAN also carried a specialist group on both deployments. Originally, this group was to have included one female but the number was increased to four at the request of Captain Mole who considered that a single female may have felt isolated. ²

3.7 Dr Wheat joined SWAN for the Asia deployment. Captain Mole had requested a female doctor to boost the number of females on SWAN and to look after the female sailors. Two female officers under training also joined SWAN on 27 June 1992 in the Philippines. ³

1 Mr T. Brinkley, submission, p. 1.

2 CAPT D. Mole, submission, Committee Hansard, p. 3.

3 ibid., pp. 4-5.

Dr Wheat's Accommodation

3.8 No special arrangements were made for Dr Wheat as her accommodation was of normal officer standard. She was assigned a single berth cabin "*commensurate with her rank and status*"⁴ that "*had previously been occupied the year before by a female doctor and there had not been a problem with it.*"⁵ This cabin is 7 foot by 7 foot and fitted out with a single bunk, wash basin and desk. It is among the other single berth cabins for officers and in close proximity to the officers' ablutions facilities. Two other female doctors have occupied this same cabin and found it "*very comfortable, ... relatively spacious ... with ample storage space*"⁶ and "*perfectly acceptable*".⁷

3.9 The officers who occupied these cabins, including Dr Wheat, enjoyed a level of privacy that some other officers in shared cabins did not have. In several cases, two officers shared a cabin; up to six junior officers under training may share the same sleeping area.

3.10 In her evidence to the Committee, Dr Wheat acknowledged that she had not been prepared for that aspect of sea-going life:

*"When I first saw it I was shocked, I suppose. I soon got used to it, but it was just a shock to the system because I had never seen anything like that before."*⁸

3.11 The holes in her cabin walls are design requirements and similar holes are found in most of the other cabins. The holes under the wash basin allow the pipes to move with the motion of the ship while those next to the ceiling are for cabling. Dr

4 BOI Report, p. 14.

5 RADM R. Walls, Committee Hansard, p. 1298.

6 Dr C. Moore, submission, p. 3.

7 LCDR A. MacLaren, submission, p. 3. The Committee notes that the cabin could not be locked in 1991 when Dr Moore occupied it, but that it had been repaired by the time LCDR MacLaren replaced Dr Wheat for the remainder of the 1992 deployment. The Committee also notes that Dr Moore felt it would have been "*inappropriate*" to have locked her cabin in case it was necessary for her "*to be woken ... to attend to patients.*"

8 Dr C. Wheat, Committee Hansard in-camera, p. 198.

Wheat said she felt obliged to dress on top of her bunk because of her concern that she may have been watched through these holes.

3.12 The Committee inspected Dr Wheat's cabin and concurs with the BOI comment *"that it would have needed a very determined effort by anyone to get into a position to peer through any of the holes"*. A number of Navy personnel have indicated that it is common practice to cover holes with pictures, posters or tape. The Committee agrees with the BOI conclusion that Dr Wheat *"could have overcome her perceived problem in a more practical manner than she chose."*⁹

The Other Females' Accommodation

3.13 The two female officers under training shared the same sleeping area as the four female sailors which was an unusual arrangement as officers do not normally share facilities with enlisted personnel. The accommodation was located in the guidance control room for the Ikara Missiles that the Destroyer Escorts formerly carried and was installed by SWAN's crew as a self-help project. The room was fully air-conditioned, contained six bunks and was more spacious than the accommodation for the many of the male sailors. The female sailors acknowledged that the air-conditioning was a significant benefit, particularly in the tropics, not available to their male counterparts.

3.14 The male Junior Sailors' Mess, for example, accommodates fifty sailors in rows of bunks that are three along and three high. Each bunk has only a curtain around it for privacy. This Mess is directly above the water storage tanks and is adjacent to the vessel's engine room. Similarly, the Petty Officers' Mess is directly above the boiler room which is the hottest part of the vessel.

3.15 The toilet directly across from the female sailors' sleeping area was for the use of all the women onboard as well as officers of the Wardroom. The female sailors also shared the officers' toilets and showers, again an unusual arrangement in the Navy.¹⁰ Although the officers' facilities are on the deck above the female sleeping area, these are private compared to the male sailors' facilities.

9 BOI Report, p.14.

10 It was pointed out in one submission to the Committee that the toilet facilities at HMAS CEREBUS, where Dr Wheat worked before SWAN, were used by both sexes. LEUT J. Thomas, submission, p. 2.

3.16 The Committee has concluded that while some of the ablution and toilet facilities were inconvenient, there was an element of inconvenience for both the female sailors and the male officers. Most were able to accept the inconvenience as an unavoidable fact of life under the circumstances. The Committee accepts that the cost of converting all the older ships to provide top of the range facilities is not justified. Testimony from the junior female officers as well as some of the female sailors confirms that not all the women onboard were bothered by the existing arrangements. The Committee is confident that, without the other pressures that the female sailors were under at the time, and with the proper functioning of the Divisional System, any minor irritants would have assumed a lesser importance. For example while it would be preferable to have single sex toilets, under the circumstances this was not, in the Committee's view, practicable. The Committee concluded that the absence of the lock on the external door was not the problem that has been suggested. Had it been a serious problem the Committee finds it difficult to believe that an effective remedy could not have been found with a little initiative and perserverence.

3.17 The Committee agrees with the Board of Inquiry assessment that the four female sailors had accommodation and showering facilities superior to those of their male counterparts.

3.18 The female sailors, however, were disadvantaged by not having a dedicated recreation space. Two of the senior sailors made their work areas available for socialising which helped to alleviate the situation. ¹¹

Modifications to HMAS SWAN

3.19 There were two sets of modifications made to HMAS SWAN during 1992:

- . the first was in preparation for the arrival of the four female sailors for the Exercise Kangaroo '92 deployment; and
- . the second was to enable HMAS SWAN to embark junior officers under training, including up to nine females.

11 BOI Report, pp. 14-16.

3.20 In preparing for the four female sailors to join HMAS SWAN for the Exercise Kangaroo '92 deployment, Captain Mole considered that:

"the most pressing problem was one of accommodation. The ship was of 1960's design and had no provision whatsoever for females onboard. I considered that there was a clear need to provide an adequate segregated messdeck for the females. I presented the problem to my heads of department along with my thoughts on a possible solution.

*Modifications were made and a great deal of effort was taken by the ship's staff to complete alterations in time for the females to join the ship, bearing in mind the considerable financial constraints which I was working under. For example, I requested Maritime Headquarters approve the removal of six bunks and lockers from the former HMAS STUART for installation in The Guidance Equipment Room which I was having modified for female sleeping quarters. STUART was then a hulk in Western Australia. My request was denied with no alternative advice or guidance forthcoming."*¹²

3.21 These modifications and the efforts of his crew were a source of pride for Captain Mole who showed them to a variety of senior people, including the Maritime Commander and one of his senior deputies, the Commodore Flotillas as well as the Naval Officer Commanding Western Australia, Commodore Briggs.¹³

3.22 Navy representatives testified to the Committee that they found *"no notes, no signals and no letters ... [nor any] record in the ship"* of Captain Mole's request for lockers and bunks from STUART but *"the ship's engineer recalled the issue ... [and] said that they were readily made available and they were installed using ship's staff and FIMA - Fleet Intermediate Maintenance Authority - assistance."*¹⁴

3.23 The difference between these two accounts remains unresolved. What is cannot be disputed is that Captain Mole and SWAN's crew made a serious effort, in the absence of corporate guidelines, to prepare suitable accommodation for female sailors. Maritime Headquarters played no part in making this possible. Despite

12 CAPT D. Mole, submission, Committee Hansard, pp. 7-8.

13 *ibid.*, p. 98.

14 CDRE C. Barrie, Committee Hansard, p.1297.

women having been posted to non-combatant ships since at least 1985 and the decision to allow women to serve at sea on all vessels being taken in April 1991, Navy was slow to meet its corporate responsibilities in this regard. It did not conduct a study to determine the appropriate standards of accommodation on its vessels until March 1992 and did not promulgate new guidelines until 30 October 1992. Navy acknowledges Captain Mole's efforts and maintains that the *"accommodation arrangements organised by SWAN were not the focus"* of its criticism of Captain Mole.¹⁵

3.24 The second set of modifications were proposed in response to Navy's decision that the Destroyer Escorts would also perform a seamanship training function. These were identified after SWAN had returned from the deployment to Asia and was towards the end of Captain Mole's posting as Commanding Officer, by which time Dr Wheat and the other female personnel had left the ship. SWAN requested \$3,500 to provide separate showers and proposed outfitting the former IKARA missile magazine as a dining, working and recreation area for junior officers under training. Ironically, this request was sent to Maritime Headquarters on 25 November 1992, the same day that Dr Wheat wrote to the Minister for Defence Science and Personnel.

3.25 In view of the criticism by some of the female sailors that they lacked a separate recreational area, it should be noted that Maritime Headquarters at first queried this request:

"WRT [with regard to] showering arrangements requirement for females/ males is that privacy is preserved for both. Request confirmation that this work is essential to meet that requirement. Funding is particularly tight even for this relatively small amount.

*Regret that funding of the magnitude necessary to complete the work envisaged at para 6 [fitting out the former Ikara missile magazine as a mess and recreation space] is not available."*¹⁶

15 Maritime Commander minute AF 6/2/396 of 12 July 1993 to the Chief of Naval Staff, pp.7-8.

16 Signal from Maritime Headquarters to HMAS SWAN dated 27 November 1993, Enclosure 4 to Maritime Commander's minute AF 6/2/396 of 12 July 1993.

3.26 Captain Mole interpreted this response as a refusal. Maritime Headquarters accepted SWAN's justification for the separate showers on 18 December 1992, by which time Captain Mole had left the ship.

Standards of Accommodation for Women at Sea

3.27 The Committee agreed with the following recommendations of the Board of Inquiry concerning postings and accommodation for women at sea:

- a) *Every effort should be made not to post females to sea in very small numbers.*
- b) *Facilities for female sailors should wherever possible be equivalent to the facilities for male sailors onboard the same vessel.*
- c) *If inferior facilities do exist for female sailors then it is imperative that arrangements be made which minimise the impact of those inferior facilities.*
- d) *There will be occasions where factors such as privacy do mean that females (or perhaps males if they are in the minority) will have better facilities than their opposite members. There must be valid and persuasive reasons to allow such differentials. They should be minimised, but not to the extent that they inhibit the opening of sea billets to females.*
- e) *Where facilities are shared by male and female sailors or officers specific arrangements must be made to ensure that the privacy of each sex is maintained."*¹⁷

3.28 These recommendations formed the basis of a directive issued on 3 June 1993 by the Maritime Commander that set out the standard of facilities to be provided for both men and women on Australian Naval vessels.¹⁸

17 BOI Report, p. 101.

18 RAN, submission, Committee Hansard, p. 203.

3.29 Modifications to the accommodation in existing vessels can be expensive and must be balanced against other factors such as the remaining time in-service of the particular vessel. For instance, it is not possible to modify the Guided Missile Destroyers and the Oberon Class submarines because of their internal configurations so these will not carry female crew members.¹⁹ Although the Destroyer Escorts have been modified to accommodate junior officers under training, including up to nine females each, these vessels will not remain in service past the turn of the century so it was not economic for these to be extensively modified.

3.30 The following ships have been modified to provide mixed gender accommodation, messing and recreation facilities:

COOK, JERVIS BAY, WESTRALIA, FLINDERS and DERWENT (DE) at a cost of \$6,000 each;

SWAN (DE)²⁰ at a cost of \$16,000;

SUCCESS and TORRENS (DE) at a cost of \$35,000 each; and

MORESBY at a cost of \$84,000.

These are modifications to HMAS SWAN that have been made since the 1992 deployments.

3.31 Conversely, the Guided Missile Frigates (FFGs), as the only warships currently in the RAN inventory programmed to continue in-service into the next century, have been or are being extensively modified.

HMAS SYDNEY, the first FFG to carry females as an integral part of its crew, was modified at a cost of \$350,000;

19 VADM I. MacDougall, Committee Hansard, p. 554.

20 These modifications to SWAN were identified by processes initiated by CAPT Mole towards the end of his posting as Commanding Officer in response to a policy directive from Navy Office. CAPT Mole's successor sent the proposal to Navy Office on 8 February 1993 and it was approved by MHQ on 8 March 1993. The modifications were completed by 21 April 1993.

HMAS Darwin was modified at a cost of \$610,000. These modifications have incorporated improvements based on the experience with HMAS SYDNEY;

the remaining FFGs, ADELAIDE, MELBOURNE, CANBERRA and NEWCASTLE are programmed to complete the modifications by the end of 1994.²¹

3.32 The new generation vessels, the ANZAC frigates and Collins Class submarines, will have mixed gender accommodation incorporated during construction.

21 CAPT B. Robertson letter N93/28736 NTGSI 41/94 of 2 March 1994.

CHAPTER 4

BEHAVIOUR OF OFFICERS ASHORE TERM of REFERENCE 1 (c)

This Chapter examines the behaviour of officers from HMAS Swan while ashore during deployments in South East Asia in 1992.

4.1 According to popular perception sailors head directly for the nearest bar and brothel as soon as their ships have docked. They have a reputation for hard-drinking, womanising and generally raucous behaviour. Such pursuits have been justified on the basis that they relieve stress after the rigours of being at sea. The Board of Inquiry concluded that *"the Navy climate has appeared in the past to condone, if not encourage uncouth behaviour, liberal use of alcohol and a degree of misogyny"*. Although the Board drew parallels to all-male university colleges, it found that, unlike the Navy, the males in these colleges "outgrew" this environment when they graduated.¹

4.2 While such in-port pursuits in the past were not uncommon, according to Rear-Admiral Walls, *"the patterns of life for and interests of [RAN] sailors have changed ... quite remarkably over the last twenty years or so."*² Navy recruits now are generally older with higher levels of education than previously and this is reflected in the younger generation of sailors having a broad range of interests including cultural and sporting activities. These changing attitudes also reflect community attitudes towards healthy living and physical fitness. Comments by several witnesses suggest that male sailors are being influenced in their choice of activities by their female counterparts.

4.2 Attitudes to alcohol are also changing. Alcohol can be a contributing factor to unacceptable behaviour or criminal offences both in the Navy and the general community. Navy has acknowledged the detrimental effect alcohol can have in the workplace and has in the last decade instituted programs to educate its personnel about the dangers of alcohol abuse.

1 BOI Report, p. 29.

2 RADM R. Walls, Committee Hansard, p. 582.

4.4 The use of alcohol at sea is controlled through the "beer issue" which limits consumption to two cans of beer per person per day. The allocation is non-transferable and the cans are opened when they are collected. It is a privilege, not a right, and is issued at the Commanding Officer's discretion.

4.3 Once a ship is alongside and personnel are ashore, Navy cannot exercise the same control on the use of alcohol. Captain Mole indicated that "almost all the problems [he] had in [his] time on SWAN could be related to alcohol"³ and took measures to control its use. He banned alcohol on SWAN for a "few months" after there "was an incident of excessive and illegal drinking going on at sea"⁴ during the Exercise Kangaroo 92 deployment. "Later in the deployment there was another incident of illegal drinking at sea, so [Captain Mole] banned alcohol for the rest of the time [he] was in command."⁵ Captain Mole "applied a policy in all three of [his] commands that the officers' bar on board did not open before the cocktail party began"⁶ in order to minimise the potential for unacceptable behaviour.

4.6 Alcohol was not, however, judged to be a factor in the behaviour which led to the general complaints by Dr Wheat and former Leading Seamen Connelly and Flannery. It was a factor in the incident that led to the court-martial.

4.7 There were some incidents during the 1992 deployment where individual officers from HMAS SWAN behaved inappropriately, usually after consumption of alcohol, but only one where officers from HMAS SWAN, as a group, were poorly behaved. This was during a function at a restaurant on Lamma Island in Hong Kong. The function was arranged by the Royal Navy and attended by officers from HMAS WESTRALIA and the Royal Navy as well as HMAS SWAN. Dr Wheat was on HMAS WESTRALIA at this point in the deployment and rejoined HMAS SWAN after the events on Lamma Island.

4.8 During the course of the evening food and napkins were thrown into the overhead fans with the result that these were sprayed over some of the patrons. A similar function the year before had also ended in a food fight and this was well-

3 CAPT D. Mole, Committee Hansard in-camera, p. 105.

4 *ibid.*, p. 115.

5 *ibid.*, p. 115.

6 *ibid.*, p. 115.

known, at least among the members of HMAS SWAN's Wardroom. There were no other patrons in the restaurant and some of the staff aided and abetted the participants.

4.9 Neither the Commanding Officer of SWAN nor the Commanding Officer of WESTRALIA was present at the function. The Commanding Officer of WESTRALIA, when informed of the proceedings, felt obliged as the senior RAN officer, to apologise to the senior Royal Navy officer in Hong Kong on behalf of both ships.

4.10 When the senior Royal Navy officer was later asked about the behaviour of SWAN personnel during that visit, he felt that *"they were a credit to their country ... [and was] confident that behaviour was totally acceptable, lively and fun but certainly not uncivilised"*.⁷

4.11 The Committee accepts the finding of the Board of Inquiry that this was *"a marginal case ... [that] was close to the borderline of social acceptability"*⁸ and that the crew of HMAS SWAN were generally well-behaved while ashore. This assessment is supported by activities such as fund raising for the MITHRA Charity in India. Reports from the Australian Defence representatives in most of the countries which HMAS SWAN visited commented favourably on the behaviour of its crew. These reports are contained in Annex 13.8 to the RAN's submission.

4.12 The Committee recognises that many RAN personnel who visit other countries are still young; the majority of the crew of HMAS SWAN during the 1992 deployment were aged between 18 and 25 years; and may become over-exuberant when in port. All the personnel on Australian naval vessels must be made aware that they are representing Australia when they are abroad and must maintain an appropriate standard of behaviour. The Committee recognises that being able to strike this balance is a matter of judgement and experience as well as education. It is incumbent on the senior members of RAN vessels, both officers and sailors, to set the example for their junior colleagues to follow.

4.13 These visits also provide the opportunity to expose a group of mostly young Australians to other peoples and cultures with the consequent broadening of mind and experience. The Committee congratulates the Navy for being selective about the ports

7 RAN, submission, Committee Hansard, Annex 13.8, p. 308.

8 BOI Report, p. 30.

its ships visit and for "pay[ing] more attention ... to ... the facilities available onshore for people to enjoy their recreation or pursue their particular interests".⁹

4.14 Recommendation Three: The Committee recommends that Navy pay greater attention to the in-port activities of its personnel to gain the maximum benefit from these visits while minimising the potential for unacceptable behaviour. The Committee recommends that ships' officers, in conjunction with the Australian Defence or diplomatic representatives in the countries to be visited, identify possible suitable cultural, sporting and social in-port activities and make the arrangements for interested crew members to participate. This function could best be undertaken by officers, such as doctors and chaplains, who are responsible for the health and well-being of the crew.

9 RADM R. Walls, Committee Hansard, pp. 580-581.

CHAPTER 5

THE TERMS OF REFERENCE of THE BOARD of INQUIRY TERMS of REFERENCE 1(e) and 1(d)

This Chapter looks at whether the Terms of Reference of the Board of Inquiry were sufficient to enable it to consider any aspects of unacceptable behaviour that occurred on board the SWAN.

5.1 The Board of Inquiry¹ was appointed by the Maritime Commander Australia on 21 December 1992 to inquire into certain matters concerning Navy, namely those matters relating to Maritime Command which were raised by Lieutenant Carol WHEAT, RANR in her letter to the Minister for Defence, Science and Personnel dated 25 November 1992. The Minister received the letter on 2 December. The Chief of Naval Staff wrote to the Maritime Commander on 11 December 1992 requiring him to investigate thoroughly all the issues raised in the letter. He requested a plan of action from the Maritime Commander by 15 December stating: "*I am determined to act quickly and decisively*"². The Board was convened on 21 December and it heard witnesses for the first time on the same day.

5.2 The speed with which the Board moved reflected the direction from the CNS, the proximity of the Christmas holidays, with the consequent effect on the availability of witnesses, as well as the need to conclude proceedings within a time frame that took into account the existing commitments of Board members. Although the haste with which the Board began its work created some difficulties, on balance the Committee accepts that it was desirable and reasonable to proceed quickly.

1 The Board of Inquiry, convened by the Maritime Commander on 21 December 1992, is also referred to as the Board or the BOI.

2 Letter from Chief of Naval Staff, VADM I. MacDougall to Maritime Commander, 11 December 1992.

Terms of Reference of the Board

5.3 The Terms of Reference of the Board were:

"(a) in particular but not limited to:

- (1) the living conditions for females in HMAS SWAN including suitability of accommodation and ablution facilities,*
- (2) allegations of sexual harassment of females in HMAS SWAN, including the behaviour of LEUT P.D.J. BARTLETT, RAN towards females in HMAS SWAN,*
- (3) the behaviour of officers from HMAS SWAN while ashore during the deployment referred to by LEUT WHEAT and*
- (4) LEUT WHEAT's allegation that she was forced to pay for her accommodation in Kuala Lumpur and flight to Singapore; but*

(b) excluding those events which are directly associated with charges of sexual assault on 15 August 1992 laid against LCDR R.D. JAMES, RAN."³

Powers of the Board of Inquiry

5.4 The Board was convened under Regulation 23 of the Defence (Inquiry) Regulations, 1985, made under the *Defence Act 1903*. As such it had significant powers to summon witnesses and require the production of documents before it. Evidence is required to be taken under oath. The convening authority appointing the Board can empower it to make recommendations under sub-regulation 25 of Regulation 23. In this case the Board was empowered to make recommendations arising out of its findings.

3 Board of Inquiry Report, p. 1.

5.5 In evidence to the Committee, the then Maritime Commander, Rear-Admiral Walls said:

*"The terms of reference were developed in such a way that they should not be seen to be, or considered by members of the board to be, limiting in any of the matters they might investigate in the course of their inquiry and that they should be sufficiently broad as to enable them to pursue any unexpected items which might come up in the course of people giving evidence or in the course of the investigation."*⁴

5.6 Before proceeding to analyse the Board's approach to its Terms of Reference, the Committee looked at the procedures followed by the Board of Inquiry. Procedures for Boards of Inquiry are standard throughout the Defence Force and the inquiry into the incidents on HMAS SWAN was set up according to the DI(N): Defence Instruction (Navy) 35-15.⁵ The Board followed all the instructions of the DI(N) and adopted procedures in accordance with those instructions.

Complaints about the Board's Procedures

Captain Mole

5.7 Captain Mole submitted to the Committee that he:

*"was denied natural justice and procedural fairness by the Board and that [he] clearly ought to have been told that the Board was proposing to make an adverse finding or recommendation against [him] and given the opportunity to put evidence before the Board and make submissions to the Board about that matter."*⁶

5.8 The Board first sat on 21 December 1992 and Captain Mole was the first witness called before it. Captain Mole told the Committee that he was telephoned at 9 o'clock in the morning of 21 December 1992 and required to appear as a witness four hours

4 RADM R. Walls, Committee Hansard, p. 1275.

5 Note that the DI(N) used in this case, Defence Instruction NAVY ADMIN 35-15 stems from DI (GENERAL ADMIN) 34-1, and is the same as DI (ARMY ADMIN) 23-1 and DI (AIR FORCE PERS) 11-18.

6 CAPT D. Mole, Committee Hansard (in camera - released), p. 35.

later.⁷ On 8 January 1993, the President of the Board wrote to Captain Mole in the following terms:

"As a result of evidence that has been given by yourself and a number of other witnesses before the Board concerned under the Reference, I now consider that you may be a person affected by the Inquiry being conducted by the Board. That being so, Regulations 33 and 34 of Defence (Inquiry) Regulations provide that where a person may be affected by an Inquiry he may seek to appear before the Board to deal with relevant evidence against him (which he may possibly do by means of a legal practitioner) and/or submit a written statement to the Board."⁸

The letter went on to offer any necessary transcript of the proceedings on request, provided they were not disclosed to anyone except a legal adviser. The letter concluded:

"It is suggested that you contact your local legal officer or a private legal practitioner of your choice concerning this letter."⁹

The Board sent letters similar to the one received by Captain Mole to five other witnesses and they all obtained legal representation at Navy's expense. The Committee observed that there was considerable variation in the tenacity of the various legal counsel in pursuing the interests of their clients at the BOI.

5.9 The Board used the wording of the DI(N) in advising witnesses that they may be affected. Captain Mole told the Committee that:

"I was not given any indication that the Board was proposing to make any adverse findings against me and I did not expect that they would do so."¹⁰

7 *ibid.*, p. 52.

8 Letter from the President of the Board, CAPT C. Harrington to CAPT D. Mole, 8 January 1993 (emphasis added).

9 *ibid.*

10 CAPT D. Mole, Committee Hansard (in camera - released), p. 35.

Captain Mole had virtually no personal experience of the way in which naval Boards of Inquiry operate. The Committee accepts Captain Mole's assertion that he:

*"went into it with blind faith of the Navy's ability to get to the bottom of what really went on."*¹¹

5.10 At the end of the Inquiry, the Board recommended that:

*"CAPT Mole be advised by the Maritime Commander that he did not manage to keep himself sufficiently informed of certain events occurring within his command, particularly with respect to gender related issues and the state of morale within the embarked RANTEWSS team".*¹²

5.11 After considering all the evidence before it, the Committee is of the view that the Board fulfilled its obligations towards Captain Mole by advising him that he *"may be a person affected by the Inquiry"*. However, the following needs to be noted:

- following the Board's letter of 8 January, Captain Mole was given access to some transcripts, but not all of the transcripts of evidence were then available. Moreover, further hearings were held after Captain Mole's second appearance before the Board. In effect, Captain Mole was not aware, by the time of his second appearance before the Board, of all the evidence that the Board would consider in reaching its conclusions;¹³
- there was no explicit information in the evidence that a finding against Captain Mole would be made; and
- the adverse finding itself was not put to Captain Mole during the inquiry.

The Committee concludes that it was open to Captain Mole and his legal counsel at the time to pursue more vigorously with the Board the specific nature of the *"relevant evidence against him"*.

11 CAPT Mole told the Committee he had only once before given evidence to a naval Board of Inquiry as a junior sub-lieutenant in 1972, Committee Hansard (in camera - released), p. 57.

12 Report of Board of Inquiry (BOI) to the Maritime Commander, p. 97.

13 This is confirmed by the Maritime Commander in his Minute of 12 July to CNS.

5.12 It is also relevant to note that the consequences of the Board's failure to be more specific in the advice that Captain Mole may be "*a person affected*" and Captain Mole's failure to press the Board for more details at the time have been magnified by the way the Board's recommendation was dealt with by the Chief of Naval Staff.

5.13 The Board's recommendation regarding Captain Mole was not followed. The Chief of Naval Staff instead imposed a more severe penalty on him by issuing a censure against him. The censure contained at least one element that had not been specifically canvassed either during the Board's inquiry or in the subsequent Notice to Show Cause for Censure. This is dealt with in Chapter 7 of this Report.

5.14 The Committee received submissions from two other witnesses to the Board of Inquiry who, like Captain Mole, complained about the procedures followed by the Board. They were Lieutenant Commander Paul Flynn, one of the investigating officers of the 15 August incident on the SWAN and Lieutenant Kelvin Turner, the SWAN's Deputy Supply Officer.

Lieutenant Commander Flynn

5.15 Lieutenant Commander Flynn, the Naval Police investigator, wrote to the Assistant Chief of Naval Staff - Personnel on 22 November 1993 pointing out that the Board did not appraise him of Lieutenant Wheat's allegations against him (that he was a "*friend of the accused*") prior to his giving evidence before the Board.¹⁴ Lieutenant Commander Flynn also complained about the failure of the Board of Inquiry to warn him that it might make adverse comments about him. The Board did not make a recommendation about Lieutenant Commander Flynn. However, it commented in its report that:

*"Whilst LCDR FLYNN was honest and forthright in his investigation, the problem which arose was that once his friendship with LCDR JAMES was known to LEUT WHEAT, perfectly understandably she viewed everything said with a degree of suspicion. That suspicion was compounded by the unconsciously insensitive way that LCDR FLYNN dealt with his friendship with LCDR JAMES."*¹⁵

14 Annexures to letter from LCDR P. Flynn to the Committee, 19 January 1994.

15 BOI Report, p. 71. This matter is discussed in greater detail in paras 5.34 - 5.47 of this Chapter.

Lieutenant Turner

5.16 Lieutenant Turner, the Deputy Supply Officer complained about the lack of information given by the Board about why he was being called before it:

"I sat outside the Inquiry room from 8 a.m to 6 p.m. without knowing why I was there...It seemed to be that we were all asked to 'defend ourselves' but not given access to the charges...I was never formally advised by the Board that I was not in any sort of trouble, and only from press releases in September of this year did I know." ¹⁶

5.17 In their submissions to the Committee, both Lieutenant Turner and Lieutenant Commander Plummer, who had served on WESTRALIA, complain about the fact that Lieutenant Slattery QC, who had been the prosecutor at the Court Martial, was heavily involved in the Board of Inquiry (as Counsel Assisting the Board).

5.18 This issue was also raised by Counsel representing Lieutenant Commander James and Lieutenant Commander Spruce before the Board of Inquiry. The Board considered the issue of a possible conflict of interest for Lieutenant Slattery in his role as Counsel Assisting the Board and concluded that it had been able to:

"make sound judgements based on the evidence presented, and that no person has been disadvantaged by the fact that LEUT SLATTERY had been the prosecutor in LCDR JAMES' court martial." ¹⁷

5.19 The Committee does not question the professional integrity of Lieutenant Slattery and the Committee recognises the benefits of using counsel already very familiar with many aspects relevant to the inquiry because of his involvement with the Court Martial. This no doubt assisted the Board in identifying avenues to pursue and witnesses to call more quickly than might otherwise have been possible. The Committee notes, however, that by employing the same experts, unnecessary anxiety might be caused to persons involved in these types of investigations. It is important that the procedures should not only be impartial but also be clearly seen to be impartial.

16 LEUT K. Turner, submission, pp. 11-12.

17 BOI Report, p. 4.

5.20 Recommendation Four: The Committee recommends that care be taken to ensure that the choice of legal counsel appointed by Navy, Army and Air Force to assist with multiple inquiries or legal proceedings into the same or related matters does not give rise to perceptions of possible conflict of interest.

5.21 The Defence Instruction ¹⁸ governing the setting up of Boards of Inquiry was written to enable investigations of various matters:

"on which the appointing authority requires to be thoroughly informed, including a major accident or incident." ¹⁹

"*Incident*" here clearly includes administrative bungling. The Committee notes that the Defence Instruction was last updated in 1986, at a time when a Board of Inquiry into sexual harassment was inconceivable.

5.22 Boards of Inquiry are not courts of law. Members of the Defence Force are not called before Boards of Inquiry because they are charged with any wrong-doing. The inquiries are essentially information gathering exercises. Nevertheless an officer who has been involved in an accident has some notion of what his or her degree of responsibility for it might have been. This is not the case in sexual harassment. As has already been discussed in chapter 1, the lack of understanding of what constitutes "*sexual harassment*" could result in a person unwittingly engaging in sexual harassment and finding out about it only when a complaint is formally lodged. Likewise the complainant can be left wondering and worrying about the outcome of an investigation. Such a situation can cause a great degree of anxiety and unnecessary stress. This happened to some of the persons involved in the case of the Board of Inquiry into the events on HMAS SWAN.

5.23 Ms Connelly, one of the Leading Seamen in the RANTEWSS team, contacted a number of people in her unsuccessful attempts to find out about the Board's Report. She told the Committee:

"At that stage, I was worried about the Board of Inquiry. We had not heard anything. We were more or less told that we were not on the "need to know"

18 Defence Instruction NAVY ADMIN 35-15.

19 *ibid.*, p. 5.

*list and that what happened at the Board of Inquiry was none of our business. I felt it was, because it was chewing me up."*²⁰

5.24 The Committee recognises that there are excellent reasons for not warning witnesses at Boards of Inquiry, in advance, of the matters about which they will be questioned. Further it is the hope of the Committee that another Board of Inquiry into sexual harassment will not prove to be necessary in future in any of the Services. However, there are no compelling reasons for failing to reassure witnesses who are directly involved in an inquiry shortly after the inquiry is concluded. The failure in this case to inform some of the persons directly affected such as Dr Wheat and Leading Seamen Connelly and Flannery, as well as several other witnesses resulted not only in those people experiencing a high level of unnecessary stress but in creating a perception on their part that Navy was trying to cover up the matters raised by the Board of Inquiry. The Board had made a genuine attempt to gather all the relevant evidence and less secrecy would have ensured some recognition for its work.

5.25 The Board reported on its findings in March 1993. It took Navy until 10 August to advise the Minister of the outcome and what Navy was doing in response to the Board's recommendations. The time taken reflects, at least in part, the difficulty of some of the issues raised and the debate within the leadership of the Navy on how to deal with the Board's recommendations.²¹

5.26 However, the problem was not only the delay, but the impression they gained that it was none of the business of the people directly involved to know the outcome. There is no indication in the advice to the Minister that Navy had it in mind at that stage to communicate the outcome of the investigations in other than in the most general terms to those involved.

5.27 Recommendation Five: The Committee recommends that the Defence Instructions covering Inquiries into Matters Affecting the Defence Force be amended to include a requirement, in the case of an inquiry into personnel matters such as sexual harassment, to inform all witnesses, including those who are not directly the subject of recommendations, of their status at the conclusion of the inquiry. Consideration should also be given to advising all those directly involved in an inquiry

20 Ms S. Connelly, Committee Hansard (in camera - released), pp. 300-302.

21 For further details of the internal debate see Chapter 7 of this Report.

of the outcome of any action taken pursuant to the inquiry as soon as possible after decisions on the implementation of the inquiry's recommendations have been made.

The Board's interpretation of its Terms of Reference

5.28 In its report, the Board stated that, in interpreting its Terms of Reference, it had not felt tightly constrained by strict definitions of sexual harassment or unacceptable sexual behaviour:

"It [the Board] has interpreted the Terms of Reference to mean that the Board was to enquire into all matters relating to problems experienced by females on board SWAN during the time in question, and which were the result of their gender." ²²

Further, the Board stated that it had used the term "harassment":

"to cover any form of unsavoury behaviour or action towards, or in the presence of, females." ²³

5.29 The evidence accepted by the Board of Inquiry suggests that the Board in fact applied a broad interpretation to its Terms of Reference and to the term "sexual harassment". It heard evidence from 42 witnesses, including all the female sailors and female officers on HMAS SWAN, as well as from those members of the ship's crew against whom allegations of sexual harassment had been made after the HMAS SWAN 1992 Asia deployment. The Board also called many members of the ship's crew who could reasonably have been expected to have been present and observed the behaviour of the complainant and those against whom allegations of sexual harassment had been made.

5.30 The Board found it difficult to deal with some of the complaints of Dr Wheat without considering the question of training and prior preparation of medical officers for Fleet billets.²⁴ Lack of training also revealed itself to be a problem for the female sailors in the RANTEWSS team and for all members of the SWAN's crew who had no

22 BOI Report, p. 77.

23 *ibid.* (emphasis added).

24 *ibid.*, p. 11.

preparation towards accepting and integrating women at sea. The Board canvassed those issues at length in its report.²⁵ Evidence heard by the Board also led it to look carefully in its report at the failure of the Divisional System on SWAN.²⁶ Both those matters are dealt with elsewhere in this report.

5.31 The Board heard evidence and made recommendations on the following issues:

- the treatment of the female junior sailors by their superiors, their peers and other crew members as well as the social environment in which the female sailors had to perform their duties;
- the language used towards the female junior sailors and whether it could be said to constitute "*verbal harassment*";
- the language used and type of conversation in the wardroom of HMAS SWAN, its effect on Dr Wheat, including the question of awareness of that effect among the officers present;
- whether any measures were taken to put a stop to the behaviour and language in the wardroom; and
- Lieutenant Commander James' behaviour towards Dr Wheat throughout her time on HMAS SWAN and the perceptions members of the crew (not only officers) had of the relationship between Dr Wheat and Lieutenant Commander James.

5.32 During the Inquiry, members of the Board, counsel assisting the Board of Inquiry and Dr Wheat's legal representative, Commander Willee asked questions and cross-examined Lieutenant Commander James about the allegations of sexual harassment (not sexual assault) made against him by Dr Wheat. The questioning about this matter alone fills 24 pages of the transcript. Evidence was also taken from a number of officers from HMAS WESTRALIA which accompanied SWAN on the 1992 Asia deployment.

25 *ibid.*, pp 42-54.

26 *ibid.*, pp 54, 58, 61-62.

5.33 In addition the Board interpreted literally its directive of "*in particular, but not limited to*"²⁷ and it addressed a number of issues in depth, although they were not strictly in its Terms of Reference. They were:

- the gathering of evidence and conduct of the initial investigation into Dr Wheat's allegations of sexual assault by the team sent to Lumut in Malaysia in August 1992;
- the performance appraisals of Dr Wheat (PR 5) and of Leading Seaman Connelly and Leading Seaman Flannery (PERS-1) and whether they had received poorer ratings because of their gender or gender related issues or, in the case of Dr Wheat, because she had made complaints of sexual harassment and sexual assault.

Initial investigations at Lumut

Friendship between the parties

5.34 The Board used a broad definition of "*those events associated with charges of sexual assault on 15 August 1993*" (the charges themselves were specifically excluded from its Terms of Reference) and it inquired at some length into the initial investigation at Lumut and the subsequent follow-up investigation in Australia. It also looked into the way in which Lieutenant Commander Flynn made Dr Wheat aware of his acquaintance with Lieutenant Commander James.²⁸ The Board came to the conclusion that the preliminary and subsequent interviews had been fairly conducted.

5.35 In her letter to the Minister, Dr Wheat stated that:

*"A factor which added to my distress was that the investigating officer was a friend of the offender, an admission made by both parties."*²⁹

27 *ibid.*, p. 1 (emphasis added).

28 *ibid.*, p. 68.

29 Letter from Dr. C. Wheat to Minister for Defence Science and Personnel, 25 November 1992.

5.36 Subsequently, Dr Wheat's submission to the Committee states that:

*"Dr Wheat's knowledge of LCDR Flynn's friendship with LCDR James doomed the investigation to failure ..."*³⁰

Like the Board of Inquiry, the Committee spent some time addressing the question of whether Lieutenant Commander Flynn and Lieutenant Commander James were friends and the effect that such a friendship might have had on the subsequent investigations.

5.37 Lieutenant Commander Flynn told the Board that as soon as he was told who the accused was in the matter that had to be investigated at Lumut, he told the Fleet Legal Officer that he knew the accused. He explained to the Board:

*"I've been in the Navy a long time, I've got a lot of acquaintances and mates, and in fact, the last three or four officers that I've actually investigated have all been people I've known. It doesn't really affect the way I do my work and they're all well aware of that. These are people I've met on courses or on postings and they know how I do my work. Everyone accepted that and we then left for Lumut."*³¹

5.38 In its submission, Navy told the Committee that the choice of Lieutenant Commander Flynn was influenced by the fact that:

*"there was a very limited pool of Naval Police Coxswains available to conduct this investigation. The rank of the accused and the seriousness of the offence were factors taken into account in appointing officers to conduct the investigation. In a Service the size of the Royal Australian Navy the possibility of an investigating officer and an accused person being acquainted cannot always be eliminated."*³²

30 Dr C. Wheat, submission, Committee Hansard (in camera - released), p. 128.

31 BOI Transcript, p. 2501.

32 RAN submission, Committee Hansard, p. 211. See also chapter 12 of this Report.

5.39 Lieutenant Commander Flynn told the Board that at the first interview with Dr Wheat (at Lumut) he:

*"just talked to her in general conversation which included the information that although I knew LCDR James, it wouldn't affect the way I did the job in any way whatsoever."*³³

In answer to a question from Lieutenant Slattery, he added that his purpose in saying that was *"to make sure that she was fully informed of exactly what was going on"*.³⁴

5.40 The Committee has had access to both the transcript and the tape of the interviews Lieutenant Commander Flynn conducted with Dr Wheat. The introductory conversation, including the revelation of the acquaintance was not recorded (the tape was still turned off). The details Dr Wheat gave the investigators did not differ from what she had earlier told Captain Mole and Chief Petty Officer McKay about the alleged sexual assault. Both the account of what happened and the gaps in recall were substantially the same in each of those three accounts. It is the view of the Committee that the tape and transcript do not reveal any reluctance or inhibition to give evidence to the investigator.

5.41 The Committee considers that Lieutenant Commander Flynn acted properly in informing Dr Wheat of his acquaintance with Lieutenant Commander James. The Committee would have been gravely concerned, as surely would Dr Wheat have been, had Lieutenant Commander Flynn attempted to hide the fact of that acquaintance. The transcript of the interview he subsequently conducted with Lieutenant Commander James (and which the Committee has studied) reveals that Lieutenant Commander Flynn indeed showed no favour towards Lieutenant Commander James. This is also borne out in the evidence of Commander Judith Horobin.

5.42 Commander Judith Horobin, a legal officer, was the head of the investigation team sent by Navy to Lumut. She was present at all the interviews Lieutenant Commander Flynn conducted with Dr Wheat and with all other witnesses. In relation

33 BOI Transcripts, p. 2502.

34 *ibid.*, p. 2502.

to the manner in which Lieutenant Commander Flynn told Dr Wheat that he knew Lieutenant Commander James, Commander Horobin told the Board:

*"I recall him saying the he knew him and had met him at the staff college and my recollection is that was the limit of their acquaintance. That they, you know, they had beers together on the staff course."*³⁵

5.43 The Board of Inquiry recognised in its report that Lieutenant Commander Flynn "was honest and forthright in his investigation". However, the Board recommended that:

*"Every effort should be made to ensure that investigation of alleged offenders are carried out by persons who are not friends or acquaintances of either the accused or the person making the allegation. This is particularly so where sexual offences are concerned."*³⁶

5.44 The Committee notes that Navy has taken steps to implement this recommendation. Its submission to the Committee states that it has taken action to ensure that:

*"where practicable that even where location, rank or other circumstances severely limit available naval police investigative resources, in sexual assault cases in particular, a situation will not be allowed to recur where Navy's investigating officer is acquainted with an accused person. This has been achieved by making arrangements with the Australian Federal Police Special Sexual Assault Unit, so that the duty officer of that unit will be on call twenty four hours a day to Naval Police Coxswains. A proposal to induct civilian police into a specialist sexual investigation team through the Royal Australian Naval Reserve is also being examined."*³⁷

5.45 The Committee welcomes these initiatives taken by Navy and notes that it is also taking steps to educate Naval Police Coxswains personnel about the requirements for sensitivity in investigating cases of sexual assault. The Committee is of the view that

35 BOI Transcript, p. 2246.

36 BOI Report, p. 71.

37 RAN, Committee Hansard, p. 212.

special skills are absolutely necessary in dealing with cases of alleged sexual assault. This need was highlighted by the different perceptions of the protagonists in the SWAN allegations.

5.46 Dr Wheat told the Board of Inquiry that she felt that Lieutenant Commander Flynn, the investigative officer, had made comments about Lieutenant Commander Jame's reputation with women because:

*"he was trying to make me feel at ease and to try to make me feel that he was on my side, rather than being an antagonist...At first I was just confused... And it certainly didn't make me feel at ease, which I think the intention had been, but right at the beginning I really didn't form an opinion as to whether it was good or bad. I was just surprised. It was later on that I began to see it in a negative aspect."*³⁸

Lieutenant Commander Flynn explained that he had made those comments as:

*"Part of the general conversation to make her feel that things were not quite as bad as she might think they are. To interview someone you want them to be relaxed and to trust you... You've got to be there to understand it. It did work, I might add."*³⁹

5.47 The Committee accepts that the views expressed by both Dr Wheat and Lieutenant Commander Flynn are valid. The comments mentioned could have opposite effects on different people, effects determined largely by their personalities and possibly sometimes by their gender. Since a growing number of women are now employed by the Australian Defence Force, the Committee believes that it is essential that mechanisms be put in place to ensure that personnel with specialist skills are available to investigate and deal with allegations of sexual assault.

38 BOI Transcript, p. 2283.

39 BOI Transcript, p. 2503.

Pressure to withdraw the allegations

5.48 Dr Wheat told the Committee that:

*"On 9 September, I had another interview with an investigating team, who made it clear to me that they did not believe me."*⁴⁰

In the course of the Board's inquiries into the manner in which the investigation team had conducted its task, Dr Wheat claimed that:

*"there was a lot of pressure, as I said, for me to withdraw the allegations and the impression I had was that they were saying that - that they did not have enough evidence on which they could lay charges and that it might be better if the whole thing were dropped, and if I wished to change my - if I wished to withdraw my statement I was quite free to do so."*⁴¹

5.49 On the same day, Dr Wheat told the Board that at the second interview (in Melbourne on 9 September 1992) the investigation team *"spent the whole time trying to destroy my credibility and tried to get me to retract my statement"*.⁴² As already mentioned, the Committee has closely studied the transcript and tape of those interviews. The questions and answers are all aimed at remembering details of the alleged sexual assault.

5.50 The Committee does not believe that the apparently *"normal"* exchanges between interviewers and interviewee recorded on tape were interspersed, whenever the tape was turned off, with episodes where Dr Wheat was placed under pressure to withdraw her allegations. Had such pressure been applied, even if Dr Wheat had chosen to say nothing about it on the tape itself, the Committee believes that Dr Wheat's answers would sound at least constrained and there is no evidence on the tape that they were.

40 Dr C. Wheat, Committee Hansard (in camera - released), p. 178.

41 Dr C. Wheat, BOI Transcript, p. 973.

42 *ibid.*, p. 974.

5.51 Lieutenant Commander Flynn told the Board that he had said to Dr Wheat at the 9 September 1992 interview that:

"if she wanted to change any of her evidence in the light of subsequent recovery of memory or a clearer idea in her own mind as to what took place, then she was quite able to do so."⁴³

Commander Horobin also explained to the Board that Lieutenant Commander Flynn's intention was:

"to be sure...that if she had recalled things and that there were differences in the earlier statement and as a result of her recollection she wanted to change it, that she could make a later statement."⁴⁴

5.52 There is evidence from the tape that the investigating team did everything possible to assist Dr Wheat in remembering the events of 15 August 1992. At the beginning of the second interview Dr Wheat unequivocally asserted that she could not remember anything other than the facts she had given to the investigating team at the time of the first interview. The team informed her of the evidence given by other witnesses and pointed out to her inconsistencies between her own and the other evidence. While it is possible to interpret these statements (as Dr Wheat did) as being evidence that the investigating team did not believe her, they can equally be seen as attempts to assist Dr Wheat in getting her story together to enable prosecution to proceed.

5.53 If anything, the Committee has reservations about the extent to which the investigating team revealed to Dr Wheat the detail of what other witnesses had said to them in their efforts to assist her recall. The team was in an awkward position. Had Lieutenant Commander Flynn and Commander Horobin not put to Dr Wheat the conflicting evidence that they had gathered from all the witnesses, they could have been subsequently accused of concealing information from her or not being sufficiently thorough. Their actions could have been construed as ensuring that no Court Martial would eventuate.

43 BOI Transcript , p. 2509.

44 *ibid.*, p. 2253.

5.54 The Committee finds that the members of the investigating team were doing a difficult job as best they could under the circumstances. The Committee accepts the evidence that their intention in telling Dr Wheat that she could change her initial statement (where she could not remember what had actually happened to her) was to allow Dr Wheat to make a statement with the benefit of any memory she might have regained. The Committee concludes that Lieutenant Commander Flynn and Commander Horobin did not pressure Dr Wheat to withdraw her statement or change her evidence.

Other Matters Investigated by the Board.

Payment for Dr Wheat's expenses

5.55 The Board of Inquiry had to inquire into the following matter as part of its Terms of Reference:

Lieutenant WHEAT's allegation that she was forced to pay for her accommodation in Kuala Lumpur and flight to Singapore.

The Board made a thorough inquiry into this matter and found that although Dr Wheat had received an advance from HMAS SWAN to cover most of her travel expenses, she was out of pocket for the sum of \$109.60, which represented payment for her flight from Malaysia to Singapore and for part of her accommodation after she left the SWAN in August 1992. This resulted from a change of travel plans on her part. The Board found that:

"by a series of poor communications she was not encouraged to pursue reimbursement and was given little or no assistance. Accordingly, she concluded that the money was to all intents and purposes irrecoverable."⁴⁵

5.56 The Board recommended that the money be reimbursed to Dr Wheat. The Committee notes that the "*poor communications*" mentioned by the Board came about partly as a result of an understandable attempt to keep confidential Dr Wheat's reasons for travel. The Committee also notes that Dr Wheat did not avail herself of an

45 BOI Report, p. 40. See also para. 7.48 of Chapter 7.

opportunity suggested to her in Singapore to collect the outstanding amount immediately. Dr Wheat has now been reimbursed and the Committee considers that the matter has been resolved to the satisfaction of all concerned and it has no further comment to make on this issue.

The Board's analysis of the PR5

5.57 The Board of Inquiry analysed in depth Captain Mole's assessment of Dr Wheat's performance and compared it to a draft PR5 by Commander Wellham covering the 3 week period Dr Wheat had served on HMAS WESTRALIA. A PR5 is a report on an officer's performance, usually raised annually by that officer's supervisor. In the case of officers who are being considered for promotion, the performance reports are raised half yearly and in the case of officers being considered for new postings, performance report may be raised after only a few months. Officers are rated on a scale ranging from 1 to 10 with scores carrying the following definitions:

"3 - Satisfactory with general shortcomings

4 - Satisfactory with slight shortcomings

5 - Satisfactory or normal

6 - Good

7 - Very good indeed" ⁴⁶

5.58 It is the Committee's understanding that there is no officially specified minimum score for promotion or appointment to a new posting. It is up to the officer taking the decision to exercise her or his judgement in the matter. The weight given to the PR5 in making the decision takes account of the circumstances under which the PR5 was drawn up, including the length of time for which it was possible to observe the performance of the officer involved.

5.59 The reports on Dr Wheat from the two Commanding Officers were quite similar, the scores differing only in the following areas:

Leadership: 3 (SWAN) 5 (WESTRALIA)

The Board gave a 4.

46 DI(N) PERS 52-2, Appendix 1 to Annex D.

Personal Qualities: 4 (SWAN)

According to the draft report, it was likely to have been higher on WESTRALIA.

The Board changed it to a 6.

Motivation and Drive: 3 (SWAN)

No score from WESTRALIA.

The Board changed the 3 to a 5 because it: *"respected her determination to right what she sees as a number of wrongs that she has experienced at Navy's hands and her determination to remain on full time service."*⁴⁷

5.60 Dr Wheat had scored above 5 on HMAS SWAN on all other counts except for **Initiative** (4 for both ships) and the Board did not change that assessment nor the 7 (higher than the WESTRALIA score) given by Captain Mole for **Intellectual Qualities**. The amended report (by the Board) gave Dr Wheat a total of 5.4 compared with a previous score of less than 5. The Committee notes that a number of witnesses who appeared before the Board made comments that supported Captain Mole's views about Dr Wheat's attitudes and suitability for working in a ship's environment.⁴⁸ The Committee notes that Dr Wheat herself told the BOI that:

*"I don't believe he [Captain Mole] was wrong in his assessment of my [naivety] about Service matters..."*⁴⁹

She also agreed with Commander Wellham's judgement that she:

*"certainly was a fish out of water on a warship."*⁵⁰

5.61 The Board's discussion and analysis of Dr Wheat's PR5 was done in the context of the future employment of Dr Wheat. The Committee believes that the Board of Inquiry's analysis of Dr Wheat's PR5 is positive and generous towards Dr Wheat. The

47 BOI Report, p. 66.

48 BOI Transcript, pp. 584,871,1016.

49 *ibid.*, p. 954.

50 *ibid.*, p. 957.

Board recommended that Dr Wheat should be offered a permanent position in Navy subject to her meeting the conditions of service.

5.62 In her letter to the Minister, Dr Wheat said that she believed that she had been given a "terrible" performance report (PR5) because she had "made complaints about sexual harassment and assault in the RAN that the Navy wish to ignore."⁵¹ The Committee found no evidence to substantiate this claim. The Committee notes that Captain Mole did not ignore Dr Wheat's initial complaint about the behaviour of Lieutenant Bartlett. He took the initiative to investigate the matter immediately it was brought to his attention. He was alerted to the matter by officers other than Dr Wheat. Captain Mole took appropriate action against the offender.⁵² The allegation of sexual assault was thoroughly investigated and a decision to convene a Court Martial was made on 13 November 1992, more than a week before Dr Wheat sent her letter to the Minister.

5.63 At the Board of Inquiry, Dr Wheat provided further insight into her complaint about her PR5. She agreed that her real complaint was that she was being assessed for life on board SWAN, which she felt had no resemblance to the job she would be doing at COONAWARRA. It appears that Dr Wheat did not fully appreciate that the assessment of suitability for appointment to the Permanent Naval Force (PNF), which includes sea service, is not the same as assessing suitability for contract employment at a particular shore position.⁵³ The COONAWARRA position is discussed in greater detail in paragraphs 5.82 - 5.95 of this Chapter.

5.64 The Committee agrees with the Board of Inquiry's view that Captain Mole had a very difficult task in raising a PR5 for an officer who had been on his ship for only 2 months. The Board of Inquiry concluded that Captain Mole had made:

"a genuine attempt to raise a PR5 in difficult circumstances. He had really observed her for only two months. Also, because of her alienation within the

51 Letter from Dr C. Wheat to Minister, 25 November 1992.

52 The handling of this incident is discussed in greater detail in Chapter 7 of this Report.

53 BOI Transcript, p. 958.

*wardroom, there was a bias (of which he was unaware) in the drafts he received."*⁵⁴

5.65 Moreover, since Dr Wheat had been granted six years' rank seniority, it was appropriate that Captain Mole assess her performance during the posting on that basis.⁵⁵ The Board recommended that the PR5 written by Captain Mole be retained on Dr Wheat's file, together with the Board's analysis of her performance because the Board was conscious that:

*"its analysis may be faulty as no member of the Board was on board SWAN during the deployment in question. Similarly, CMDR Wellham's draft PR5 is based on a very limited observation period."*⁵⁶

5.66 The evidence before the Committee suggests that the Board is right in adopting a cautious approach to its own partial re-writing of the PR5. The report was meant to be an evaluation of Dr Wheat's performance at sea. In particular the Committee notes that the Board's granting of a 5 for **Motivation** and **Drive** rather than the 3 granted by Captain Mole is based on the Board's observation of Dr Wheat after she left SWAN (namely her determination in pursuing her claim for redress). What happened after the deployment was obviously not relevant to Captain Mole's evaluation of her performance during the deployment.

5.67 It is most important to be absolutely clear whether a PR5 is a judgement about the individual's performance during the designated time and at the level at which the individual has been appointed to the position. It should not be a judgement about how that individual might perform in different circumstances, or if allowances were made for lack of training, or illness or any other extraneous factor. It is up to the appointing authority to take these aspects into account when considering posting, promotion or permanent appointment.

5.68 It is possible and at times useful to speculate about what performance might be under different circumstances, comment on potential and indicate what external factors

54 BOI Report, p.66. The question of alienation is discussed more fully in Chapter 7 of this Report.

55 The mistake in the seniority granted to Dr Wheat came to light well after Dr Wheat left the SWAN. See paras 5.79-5.86 of this Chapter.

56 BOI Report, p. 66.

might have influenced performance at the time. It should also be made clear in an assessment if no opportunities presented themselves for an individual to demonstrate capacity in a particular area. However, the distinction between rating the actual performance and the other factors should be clear and unambiguous. The Committee recognises that in the Navy environment, an individual's performance at a shore establishment may be an incomplete indication of how that individual will perform at sea. The on-the-spot appraisal is invaluable to determine suitability for duties at sea.

5.69 The Committee is concerned that a PR5 and PERS-1⁵⁷ is sometimes written after only a short period of service at sea and that it may not be a fair indication of the potential of a crew member. This places both the assessor and the person being assessed in an invidious situation.

5.70 Recommendation Six: The Committee recommends that supervisors be clearly instructed and required to record in writing whether a performance assessment of an individual is based on a short period providing limited opportunities for observation of the performance of that individual.

Court Martial

5.71 Dr. Wheat submitted to the Committee that a Board of Inquiry ought to have been convened "*for the purposes of investigating [her] allegations of rape*"⁵⁸ before any decision to convene a Court Martial was made. The process leading to a Court Martial had been in train since August 1992. A decision to convene a Court Martial was made on 13 November 1992 after Dr Wheat had indicated, in writing, her interest in proceeding with the charges. The Court Martial was set to commence on 9 December 1992.

5.72 At no stage did Dr Wheat indicate to Navy that she felt that an Inquiry should be conducted into her allegations. Dr Wheat's first "*protest*" against the Court Martial was in the form of asking for its delay (not for an inquiry) in her letter to the Minister, which was received in the Minister's office on 2 December 1992 and which was forwarded to Navy on 14 December 1992 while the Court Martial was in progress. In the

57 Note: A PERS-1 is a performance report for non commissioned officers.

58 Dr C. Wheat, submission, Committee Hansard (in camera-released) pp. 128-9.

circumstances, Dr Wheat submitted to the Committee that the Board's Terms of Reference should have included:

- (1) the effect of the circumstances of the initial investigation (at Lumut) on the Court Martial, the convening and conduct of the Court Martial, and
- (2) the way she was treated by Navy "*following the rape*".⁵⁹

5.73 The Board of Inquiry was convened ten days after Navy received Dr Wheat's letter of complaint to the Minister. The Court Martial had concluded 3 days earlier, on 18 December 1992. The Committee is of the view that it would have been improper for the Board to investigate matters that had been dealt with following due process in a court of law. It would have also been inappropriate for the Board to inquire into the effect of the investigations on the Court Martial.⁶⁰

5.74 In her evidence to the Committee, Dr Wheat also claims that the finding of "*not guilty*" was made because the officers from the SWAN were lying to the Board. Dr Wheat told the Committee:

*"The prosecutor told me that he had overheard some of the other witnesses talking about having been round to the hotel of the accused the night before and working out a story to get him off."*⁶¹

The prosecutor, Lieutenant Michael Slattery wrote to Navy in response to these allegations:

*"I never heard of any such thing at the time that the court martial was taking place or afterwards until I read it in the transcript before the Senate. I did not say this to Dr Wheat and no conduct by prosecution or defence witnesses of this kind ever came to my attention".*⁶²

59 Dr C. Wheat, submission, Committee Hansard (in camera - released), p. 129.

60 In both court martial proceedings and in trial by jury, there can be no appeal against acquittal of the accused.

61 Dr C. Wheat, Committee Hansard (in camera - released) p.233.

62 LEUT M. Slattery, Memorandum of 7 April 1994, forwarded to the Committee as enclosure to letter from CAPT B. Robertson to Committee Secretary, dated 8 April 1994.

Committee Conclusion

5.75 In all, the Board of Inquiry took some 2000 pages of evidence from its 42 witnesses (including 4 civilian witnesses who had experience in managing the integration of men and women in work environments which had previously been exclusively male). After analysing the evidence gathered by the Board and its report, the Committee concludes that the Board's Terms of Reference were sufficient to enable the Board to consider any aspects of the unacceptable behaviour occurring on board HMAS SWAN. It was appropriate that the allegations of possible sexual assault on 15 August were dealt with as a separate matter and not as part of the inquiries conducted by the Board. It was also appropriate that the Board inquired into how the initial investigations that ultimately led to a Court Martial were conducted. The fact that it did so confirms the Committee's assessment that the Terms of Reference did not restrict the Board from pursuing any relevant matters. Related aspects of the Court Martial are examined in Chapter 8 of this Report.

5.76 The Committee notes here, that there were some facts relating to allegations of sexual harassment that did not emerge during the Board's inquiry. These are examined in Chapter 7 of this Report. The Board's failure to investigate these matters cannot be attributed to any shortcomings in the Terms of Reference. The appropriateness of the recommendations of the Board is examined in Chapters 6 and 7 of this Report.

Parallel Inquiry by Assistant Chief of Naval Staff - Personnel

5.77 The issue of the employment of Dr Wheat by Navy subsequent to the allegations of sexual assault and of sexual harassment that she had made against individual members of Navy is not a separately identified Term of Reference of this Committee. However, it is clearly a matter of grave concern to Dr Wheat and she alleges a direct link between her complaints of sexual harassment and her failure to secure a particular permanent position in the Navy. This matter affects some of the issues central to this inquiry and the Committee views it as part of its general Terms of Reference. The Committee has therefore inquired into it.

5.78 Some of the evidence for these aspects is drawn from ACPERS-N⁶³ internal Navy investigation of some of Dr Wheat's complaints. It is important to understand that

63 Assistant Chief of Naval Staff - Personnel.

the Board of Inquiry was set up within Maritime Command. Its Terms of Reference required it to investigate particularly matters within that command. Nevertheless the Board raised a number of issues and commented on matters which lay outside the jurisdiction of Maritime Command. In addition, on 11 December 1992, the Chief of Naval Staff directed ACPERS-N to:

*"investigate all allegations and claims made in the Reference [Dr Wheat's letter to the Minister] which relate to LEUT Wheat's postings, conditions of employment and personal support aspects."*⁶⁴

5.79 ACPERS-N conducted a wide-ranging investigation covering the following issues:

- Dr Wheat's rank and pay seniority;
- the circumstances surrounding her posting to HMAS SWAN;
- her further service following the incident on the SWAN, including her posting preferences;
- the conduct of the investigation at Lumut, following the allegations made by Dr Wheat;
- the medical examination of Dr Wheat following the incident;
- follow up counselling and return to work;
- the completion of her period of full-time service (Dr Wheat was a Reserve officer on Continuous Full-Time Service not a member of the Permanent Naval Force); and
- the payment of her medical expenses by Navy.

5.80 The report produced by ACPERS-N for the Chief of Naval Staff (CNS) covered all of the above issues and was made available to the Committee. The report points to administrative errors made in granting seniority to Dr Wheat. It also reveals that Navy has taken many steps to assist Dr Wheat in the aftermath of her experiences

64 CNS 1650/92 Minute to ACPERS-N, 11 December 1992, (emphasis added).

aboard HMAS SWAN. This has included the provision of counselling and psychiatric services and support for her rehabilitation.

5.81 The Committee is not aware whether ACPERS-N considered the option of convening a Board of Inquiry to investigate the matter referred to him by the Chief of Naval Staff. There are certain benefits in conducting an investigation in that way. However, it is also a costly method both in terms of human and financial resources. Following its own examination of the issues referred to ACPERS-N by CNS, the Committee is of the view that the matters were thoroughly investigated and a formal Board of Inquiry would not have been justified.

Dr Wheat's Employment

5.82 In her submission to the Committee, Dr Wheat claimed that she was "*deprived of the position offered to her at HMAS Coonawarra*"⁶⁵ because of the "*unfair*" PR5⁶⁶ given her by Captain Mole and the delays associated with it. When she left the SWAN at the end of August 1992, Dr Wheat believed that Captain Mole would write her performance report immediately. He did not in fact do so until 11 November 1992. Navy told the Committee that the delay:

*"is not an unusual circumstance in reports on officers who are at sea or who have just finished service at sea."*⁶⁷

5.83 The Committee notes that, although the matter of Dr Wheat's employment by Navy was not one of the specific Terms of Reference of the Board of Inquiry convened by Maritime Command, the Board investigated the matter of the PR5 in depth and recommended that Captain Mole's PR5 on Dr Wheat be retained on her file but that

65 Dr C. Wheat, submission, Committee Hansard (in camera - released), p. 126.

66 *ibid.*, p. 125. Note: A PR5 is an annual performance report raised on officers of the Navy. For various reasons a PR5 is sometimes raised more frequently. In this case, a PR5 was requested because the posting had been Dr Wheat's first sea posting and she was applying for a Permanent Naval Force commission.

67 CAPT G. Kennedy, Committee Hansard, p. 1301.

the Board's analysis of her performance should also be filed. Further the Board recommended that Dr Wheat be advised that subject to:

"successful completion of an orientation course, medical fitness and her acknowledging that she may receive short notice postings including sea postings to meet the requirements of the service, she can apply for full-time service." ⁶⁸

Dr Wheat was employed as a member of the Naval Reserves for 135 days Continuous Full-Time Service for the 1992 Asia deployment. In order to become a member of the Permanent Naval Force, she had to apply for and obtain a permanent commission.

The offer of a position at HMAS COONAWARRA to Dr Wheat

5.84 As already stated, Dr Wheat blamed the "poor" ⁶⁹ assessment in her PR5 for her failure to be offered a permanent position at *HMAS COONAWARRA* near Darwin.⁷⁰ From the time she was still on *HMAS SWAN* in August, she had been encouraged to indicate her interest in the job and on 18 September 1992, she applied for the *COONAWARRA* position. Dr Wheat had numerous telephone conversations with staff in Navy's Personnel department in relation to that position.⁷¹

5.85 On 2 October 1992, Dr Wheat was contacted by telephone and told that due to an error made in May 1992 when she joined *HMAS SWAN*, she had been granted six years rank and pay seniority instead of only pay seniority based on her years of experience as a medical officer. Dr Wheat was told that the error would have to be rectified if she joined the Permanent Naval Force.⁷² Dr Wheat refused to accept what she perceived to be a demotion and she withdrew her application for a permanent position. The Committee does not accept Dr Wheat's characterisation of the need to correct an administrative error as "a demotion". It is, of course, regrettable that the administrative error was made.

68 BOI Report, p. 100 (emphasis added).

69 Dr C. Wheat, Committee Hansard (in camera - released), p. 232.

70 *ibid.*

71 Letter from Dr C. Wheat to Minister, 25 November 1992.

72 Comments on the effects of errors made by Navy's Personnel section are made in Chapter 7 of this Report.

5.86 Ten days later, on 12 October 1992, Dr Wheat submitted another request to join the Permanent Naval Force. On 22 October 1992, Dr Wheat rang Navy Personnel and was told that *"the Admiral would not sign my commission until he had received a report on me from HMAS Swan"*.⁷³ On 17 November 1992, Dr Wheat was advised that the position at HMAS COONAWARRA was no longer open to her. The position had been offered to a member of the Permanent Naval Force, Lieutenant Lee. Lieutenant Lee's posting was formally promulgated in the *'List of Officers Postings'* dated 26 November 1992.⁷⁴ If Dr Wheat joined the Permanent Naval Force, she would have to be posted somewhere other than Darwin. She withdrew her application to join the Permanent Naval Force.

5.87 In its submission to the Committee, Navy did not mention the delay in receiving the PR5 as being the reason for not posting Dr Wheat to COONAWARRA, Darwin:

*"Although she wanted to take up a posting at HMAS COONAWARRA in Darwin as a member of the Permanent Naval Force, the uncertainty surrounding the further investigations, the Court Martial and the Board of Inquiry made this impractical and another officer was posted there."*⁷⁵

5.88 Dr Wheat is correct when she points out that at the time when she was advised that the COONAWARRA position was no longer open, the letter which prompted the setting up of the Board had not yet been dispatched. It is nevertheless true, as the Navy says, that there was much uncertainty surrounding her availability. Her letter of 10 November indicating that she wished the Court Martial to proceed had just been received and consultations with Navy's lawyers on whether there was sufficient evidence to proceed to Court Martial were being actively pursued. It is self-evident that positions cannot be held open indefinitely.

73 Letter from Dr C. Wheat to Minister, 25 November 1992. Note: the problem caused by the delay in receiving the PR5 was confirmed by RADM Chalmers in a letter to Dr Wheat on 17 December 1992.

74 Letter from CAPT B. Robertson to Committee Secretary, 8 April 1994. LEUT Lee took up the position on 18 January 1993, i.e. before the BOI hearings had been completed.

75 RAN submission, Committee Hansard, p. 216.

5.89 In evidence to the Committee, Dr Wheat said that she believed the Board of Inquiry should have investigated the:

"question of my posting to COONAWARRA which was cancelled after I had been promised it." 76

Responding to the claims of cancellation of a promised posting, Rear-Admiral Oxenbould told the Committee that:

"It is quite normal in the posting process that we discuss with people over the telephone whether they would be keen, especially, to go to areas such as COONAWARRA ... It is not unusual for us to carry out these discussions. We might have discussions with several people and only one would be selected to go forward." 77

Rear-Admiral Oxenbould further explained that:

"throughout this whole process (selection), there is considerable consultation, wherever possible, between the desk officer in the Naval Personnel Division, or the career manager...No promises are made because they are not the final decider of who is going to the posting." 78

Captain Kennedy also told the Committee:

"At no stage did her desk officer ever indicate to her that she was approved to be posted to HMAS COONAWARRA. There is an approval process and he is not the approving officer of that posting." 79

5.90 The Committee accepts Navy's evidence that Dr Wheat was never "promised" the COONAWARRA position. However, the Committee believes that Dr Wheat took her discussions with Lieutenant Commander Harrod to mean that she would obtain the COONAWARRA position. The evidence before the Committee suggests that Dr Wheat

76 Dr C. Wheat, Committee Hansard (in camera - released) p. 205.

77 RADM C. Oxenbould, Committee Hansard, pp. 1301-1302.

78 *ibid.*, p. 1619.

79 CAPT G. Kennedy, Committee Hansard, p. 1621.

had an inadequate understanding of the rules governing public employment and did not perceive that the position was not Lieutenant Commander Harrod's or even Captain Flynn's to give. She lacked an appreciation of the procedures Navy routinely follows when posting officers.⁸⁰

5.91 The Committee notes that as part of the Good Working Relationships Project:

*"service personnel who are appointed to positions which include responsibility for or to defence civilians will be required to undertake Public Service awareness training."*⁸¹

5.92 Recommendation Seven: The Committee recommends that a special effort be made to ensure that all qualified entry personnel be given sufficient information to understand the regulations governing public employment in the Defence Force and Navy's way of applying those regulations to its organisation.

Dr Wheat's further employment by Navy

5.93 On 17 December 1992, (before the Board of Inquiry commenced its hearings) the then Assistant Chief of Naval Staff - Personnel, Rear Admiral Chalmers wrote to Dr Wheat offering her:

"a one year extension to your contract in HMAS CERBERUS as a civilian medical practitioner or two years continuous full-time service on the RANR in HMAS ALBATROSS.

Any extensions of service beyond these periods would need to be reassessed against the prevailing manning situation at that time. Moreover, if you remain interested in a transfer to the PNF, your extensive medical experience will continue to influence any decision in this regard. However, you should recognise that a transfer to the PNF requires an unfettered ability

80 In his submission, CAPT P.G. Habersberger, the Director of Reserve Health Support - Navy had this to say about Dr Wheat's expectation that she was going to sea on HMAS WESTRALIA: *"Although I did indicate to LEUT Wheat that they were particularly looking for a Medical Officer for HMAS WESTRALIA, I did not give her any guarantee that she would be actually posted to that ship."*

81 RAN submission, Committee Hansard, p. 265.

*to move freely between postings in any locality, and that you would be liable for further sea service."*⁸²

5.94 It should be noted that at the time of Rear Admiral Chalmers' letter there was no active application by Dr Wheat to join the PNF. She had withdrawn her application on 17 November 1992. Rear Admiral Chalmers' letter proposed alternative opportunities open to her and classified the standard conditions that she would have to accept were she to apply for appointment to the PNF. Dr Wheat chose to have her contract at HMAS CERBERUS extended for one year. She resigned that position on medical advice on 6 August 1993.

5.95 The evidence before the Committee suggests that Navy has not at any time refused to employ Dr Wheat as a result of the allegations she has made. Dr Wheat has exercised her right to choose and has refused a number of offers of positions (both short term and long term) made by Navy.⁸³ Dr Wheat was only interested, at that time in temporary positions at CERBERUS or in a PNF posting in Darwin.⁸⁴ A Permanent Naval position requires posting to any establishment and to sea if required.⁸⁵ Dr Wheat has at no time indicated that she is prepared to accept those conditions of service. She cannot be considered for a permanent position until she applies for a permanent position and indicates that she is prepared to accept those conditions.

82 Letter from RADM D. Chalmers to Dr Wheat, 17 December 1992.

83 i.e: 2 years continuous full-time service at ALBATROSS, extension of her contract at CERBERUS or a new application for a PNF position.

84 Letter from CAPT B. Robertson to Committee Secretary, 14 March 1994, (enclosure 7) Officers Posting and Course Preferences. RADM C. Oxenbould, Committee Hansard, p. 1622.

85 The Committee notes for example that over the period 1989 - 1993, Dr Carmel Moore was posted first to HMAS PENGUIN for 6 months, then to HMAS COONAWARRA for 7 months and then to sea, during which time she had 11 posting changes. Dr C. Moore, submission, para. 11.

Treatment of Dr Wheat after her return to Australia

5.96 In certain respects, Dr Wheat has received more favourable treatment from Navy than is the norm for victims of alleged sexual assault in the community, for example in:

- the provision of legal counsel for Dr Wheat during the Court Martial;
- the provision of accommodation in Sydney at above the standard rate;
- agreement to pay for Dr Wheat's husband and two-year old child to join her in Sydney during the Court Martial; and
- agreement (from the Minister) to pay for Dr Wheat's legal representation at the Senate Inquiry and for pursuing any claim she may have against the Commonwealth "*with the usual reasonable costs conditions to apply.*"⁸⁶

5.97 To date, Navy has paid some \$105,215.83 in legal fees for Dr Wheat. The total legal bill to June 1994 amounted to \$172,565.83. There is a legal bill for \$67,350 to Minter Ellison Morris Fletcher Solicitors and counsel which has not yet been paid⁸⁷ and which is the subject of discussions between the Attorney-General's Department and Dr Wheat's solicitors. The matter has now been referred to the Minister.⁸⁸

5.98 Dr Wheat complains that she had to ask Navy to provide her with a legal counsel for the Court Martial. The fact is that it is not standard practice for witnesses in cases of alleged sexual assault to have the assistance of legal counsel. Navy provided such assistance when requested and also provided Dr Wheat with legal assistance for the Board of Inquiry's hearings and at this Committee's hearings. In relation to the accommodation in Sydney, Navy paid an extra \$30 per day to respond to Dr Wheat's request for change as soon as she indicated that she did not consider the

86 Letter dated 16 September 1993 from the Minister for Defence Science and Personnel to Dr C. Wheat.

87 Letter from CAPT T. Stodulka to Committee Secretary, 10 June 1994.

88 Letter dated 14 June 1994 from Minter Ellison Morris Fletcher to Committee Secretary. (Attachment).

accommodation suggested by Navy (and used by other witnesses at the Court Martial) as suitable.⁸⁹

5.99 The Committee considers that the Navy has been sensitive and responsive to concerns expressed by Dr Wheat after she made the allegations of sexual assault and sexual harassment. Prior to Dr Wheat joining HMAS SWAN, two administrative errors were made. The more serious, in terms of its consequences, was the error made in granting her six years' seniority. It appears to have adversely affected the feelings of some of the SWAN's crew towards Dr Wheat and the subsequent correction of the error adversely affected Dr Wheat's feelings towards the Navy.

5.100 The Committee considers the other matters raised by Dr Wheat (such as Navy's expectation that she would make her own way to the airport to go to Sydney for the Court Martial) do not reflect any ill intent towards her and are likely to occur in any large organisation, especially if tasks are delegated down a long chain of command, are not routine and are carried out at some distance from the point of decision. Where mistakes have been brought to the attention of those in command, directions that they be rectified have been promptly given. For example, Navy paid for a taxi to take her from her home to the airport to attend the Court Martial at a cost of \$74.⁹⁰

Compensation

5.101 The Board of Inquiry did not look at the issue of compensating Dr Wheat for loss of income in the wake of the SWAN incident as this matter was outside its Terms of Reference. The Committee considers that this was the proper approach to adopt since the Board did not inquire into all matters affecting Dr Wheat (personnel and

89 Letter from CAPT B. Robertson to Committee Secretary 8 April 1994, (enclosures - Dr Wheat aspects).

90 Dr Wheat told the Committee that the taxi fare was only provided following a request from her legal adviser. However, documents provided by Navy show that original instructions given by Maritime Command regarding payment of Dr Wheat's taxi fare had not been followed and the Fleet Legal Officer had to re-issue those instructions.

personal support matters were inquired into by ACPERS-N). At Navy's last appearance before the Committee, Navy advised that the previous day, 24 March 1994:

*"Dr Wheat agreed on 24 March to commence rehabilitation processes, initially through contact established with Defence Compensation and her doctors."*⁹¹

The Committee understands that negotiation on the compensation claim by Dr Wheat has broken down since an offer for compensation made by Navy on 18 March 1994 was rejected by Dr Wheat's counsel. Navy advised the Minister for Defence Science and Personnel that:

*"The mediation process was concluded on the basis that the parties could not reach a mutually acceptable compromise."*⁹²

Medical Investigation

5.102 In a letter written to the Committee to respond to certain comments made about her, Dr Wheat alleged that she had been further discriminated against because the medical officer who examined her after the alleged sexual assault told her that sexual intercourse had not taken place although he knew that it had. Dr Wheat alleged that:

*"She was part of a process in a system, which ... continued the discrimination against her, previously commenced in the ship. Its proceedings were tainted by the conduct of the investigation upon which they were founded. Principally being conduct of an officer who was a close friend of LCDR James ...and by a medical officer who purported to advise her that sexual intercourse had not taken place. This was extraordinary, in light of what must have then beknown (sic) by the investigators, that LCDR James was claiming that intercourse had taken place and that it was consensual."*⁹³

91 Ms H. Taylor, Committee Hansard, p. 1635.

92 RADM C. Oxenbould, Minute dated 23 March 1994.

93 Letter from Minter, Ellison, Morris, Fletcher (Dr Wheat's Solicitors) to Committee Secretary, 3 February 1994, p. 5.

5.103 In his submission to the Committee, Captain Flynn challenges Dr Wheat's claim. He states that he examined Dr Wheat during the morning of 20 August 1992 and that he gave an opinion which:

*"I believe ... to have been a valid one at the time that I counselled her on the basis of the information and evidence available to me... The assertion by LCDR James was made apparently in the afternoon of the 20 of August. I believe I was told of this by the investigators either that evening, or possibly the following day, but in any case, after I completed my investigation and written reports... Although I had the opportunity to see Surgeon Lieutenant Wheat on two or three occasions after I became aware of his assertion, I did not feel that it was my place to acquaint her with this as the investigation was still in progress."*⁹⁴

5.104 The Committee accepts that Captain Flynn's comments to Dr Wheat were made strictly on the basis of his medical examination of Dr Wheat and that⁹⁵ he did not know at that stage that Lieutenant Commander James would tell the investigating team that sexual intercourse (without ejaculation) had taken place. After careful consideration of the evidence placed before it, the Committee concluded that Captain Flynn acted with professional integrity and the Committee firmly rejects any suggestion to the contrary.

5.105 The Committee notes that the Navy had shown foresight in developing and distributing to naval vessels a medical sexual assault kit in the event that the most serious of sexual offences were to occur. Called the Sexual Assault Investigation Kit (SAIK) the kit contains:

*"necessary instructions, documentation and equipment required to obtain and preserve in a forensically acceptable state, all relevant medical evidence. Its protocol requires referral for specialist counselling and this is re-inforced by the Navy policy (Naval Health Circular 7/91)."*⁹⁶

94 CAPT M. Flynn, supplementary submission, para. 14.

95 Note: CAPT Flynn examined Dr Wheat on 20 August 1992, five days after the alleged assault had taken place. In all the interviews at Lumut Dr Wheat stated that she could not recall whether or not intercourse had taken place.

96 CAPT M. Flynn, submission, para. 35

HMAS SWAN had the SAIK on board and it was used by Captain Flynn to examine Dr Wheat after she had made the allegations of sexual assault. The Committee notes that Dr Wheat was initially reluctant to undertake the counselling offered as part of the package and she was encouraged to do so by the investigation team.⁹⁷

⁹⁷ BOI Transcript, p. 2243.

CHAPTER 6

RECOMMENDATIONS OF THE BOARD of INQUIRY TERMS of REFERENCE 1(a) and 1(e)

This Chapter looks at the recommendations of the Board of Inquiry.

6.1 The Board made a number of recommendations relating to individuals who had served on the SWAN during the Asia deployment in 1992. Other recommendations addressed broader issues such as gender issues (including sexual harassment and accommodation) training and the Divisional System. Each will be addressed in turn in this Chapter.

Gender Issues

6.2 The Board recommended that:

"Every effort should be made not to post females to sea in very small numbers.

A team of possibly two, namely a Lieutenant Commander and a senior sailor, one male and one female, be appointed by the Maritime Commander to deal with gender related issues as they arise in the Maritime Command."

A continuing education program be developed which would make all personnel within the Maritime Command aware of gender related issues and their rights in, and obligations to such issues.

"Gender related issues should be highlighted at all initial entry training establishments as well as in all staff and management training courses. Within the Maritime Command, it should be given a high profile for people such as CO and XO designates.

*Sea riders*¹ should be briefed to look for any evidence of harassment or objectionable behaviour. It also needs to be included as a specific item in final inspections.

The measures taken by SYDNEY to prepare the ship for the arrival of females be used as a framework for developing guidance to other ships on how to integrate females on board.

*A policy should be instituted whereby when female sailors are posted to a ship, there is at least one billet at senior sailor or officer level filled by a female."*²

6.3 Dr Wheat told the Board in her evidence that, prior to her posting to HMAS SWAN, a female Petty Officer at HMAS CERBERUS had mentioned to her a matter concerning sexual harassment that had occurred one or two years before. The Board made a recommendation that the Petty Officer in question should be given every opportunity to pursue a complaint of sexual harassment without fear or retribution. Navy gave evidence to the Committee that the matter was referred to the Petty Officer's Commanding Officer at HMAS CERBERUS and it was investigated.³ Navy's report to the Minister on this matter states that during an interview with the base legal officer, the Petty Officer concerned had made:

*"reference to an incident which occurred approximately eight years ago at HMAS HARMAN which involved ... her supervisor making obscene remarks or suggestions to her. A poor PP1A followed, which led her to wonder whether her refusal to comply had affected the report... she stated that she had no intention of pursuing the matter."*⁴

1 Note: *"Sea riders"* are non-crew members of the ship.

2 BOI Report, p. 101-102 (emphasis added).

3 RAN, submission, Committee Hansard, p. 228.

4 CNS Memo to Minister for Defence Science and Personnel, 10 August 1993.

The base legal officer was:

"satisfied at the conclusion that no such harassment has occurred in recent years, that no staff at HMAS CERBERUS had ever treated her in a sexually harassing manner and that no PERS1 reports could, to her knowledge, be ascribed to reasons of that nature."

6.4 The Board made five recommendations relating to the living conditions (including ablution facilities) for women on HMAS SWAN and on the suitability of certain ships to embark women. This matter is addressed in Chapter 3 of this Report.

Appropriateness of the gender related recommendations

6.5 The Board's recommendations in relation to gender appear to have a two-fold aim: the provision of personal support for females at sea and a thorough Navy-wide education and training campaign to make all members of the RAN aware of the issues of sexual harassment and unacceptable behaviour, as well as their rights and responsibilities in relation to those issues. Moreover, in recognition of their management responsibilities, the Board recommended that gender related issues *"be given a high profile for people such as CO and XO designates"*.⁵

6.6 In its report, the Board pointed out that:

"The pursuit of gender related issues without fear of retribution has been a persistent theme of many of the female witnesses throughout this inquiry."

6.7 It quoted an answer given by Dr Wheat to a question of the Board about fear of retribution in which she said:

"that until attitudes change she does not think that there is anything that could be done about the fear of retribution."

5 BOI Report, p. 102.

6.8 The Board went on:

*"this Board's recommendations are designed to change behaviour towards females, and commence that attitude change."*⁶

6.9 The Board's emphasis on the implementation of education programs in its recommendations certainly point to achieving attitude change. Navy contracted Triulzi Collins consultants to devise those education packages. Triulzi's wide ranging study of Navy resulted in findings and recommendations quite similar to those of the Board of Inquiry. Navy's implementations of those recommendations are underway and are dealt with in later chapters of this Report.

6.10 The Committee notes that the Board's recommendations in this section of its Report are aimed at dealing primarily with the issue of unacceptable sexual behaviour. The Board's Report states:

*"There is a wealth of evidence before the Board that the language and behaviour of the officers in SWAN's wardroom went well beyond any ordinary standard of common decency. The Board was particularly helped in the assessment of this behaviour by the wardroom stewards who gave an account of the goings on in the wardroom that differed markedly from that of many of the officers. Indeed the stewards personal standards of propriety and decency were offended by the conduct that they witnessed."*⁷

6.11 The Committee recognises that such behaviour would not have been exclusive to HMAS SWAN wardroom or indeed to Navy. Although many men (and indeed several did in this instance) would object to such behaviour, it is unlikely that many complaints would have been made about this in the past, whether in Navy or any other exclusively male workplace. However, it is imperative that measures be taken to address the consequences of this type of behaviour on the ability of all employees to perform optimally in a mixed gender environment. The Committee is of the view that the Board's recommendations for extensive education programs and training to address gender related issues were very positive and constructive.

6. *ibid.*, p. 74.

7 *ibid.*, p. 79.

6.12 The Board, to its credit, sought to examine the question of sexual harassment in the context of the overall culture of the Navy. The Committee is aware, for example, of the extensive discussions that the Board had with Dr Kirsner in their search for both an explanation for the unacceptable behaviours they had identified on the SWAN and for constructive ways to bring about a change for the better.⁸

6.13 In the course of this inquiry the Committee has reached the conclusion that it is important to address more extensively still the total context in which Navy personnel live and work. It is too simplistic to isolate sexual harassment and discrimination from harassment or from the total context in which people are functioning in the Navy today.

6.14 The way people behave in any community reflects an infinitely complex interplay of that community's norms, values and traditions, rules and regulations, personalities and personal experiences. A number of witnesses have put to the Committee the view that, as a first step, it is behaviour that should be tackled because change of attitude is more difficult and can be expected to take considerably longer.⁹

6.15 To bring about changes in behaviour it is not enough, as the Board recognised, to issue edicts, particularly when those edicts try to deal with an area as sensitive, complex and personal as sexual harassment, or harassment of any kind. A clear formulation of policy and regulations is a necessary, but not a sufficient condition for change. Similarly, punishment alone for transgressions will not eliminate undesirable behaviours. A far more sophisticated approach, involving awareness raising and support mechanisms and a variety of conflict resolution mechanism must be put in place if genuine attitudinal and behavioural change is to be achieved.

6.16 The Committee believes it is both necessary and possible to move on both fronts together. Neither the Board nor the Committee were in a position to explore and investigate in detail, and in sufficient depth, the culture and dynamics of the naval community, the inter-play of the various sub-cultures and the way in which this affects the interpersonal relationships and the behaviour of the individual members of that community. The role of peer group pressure in encouraging desirable behaviour and inhibiting undesirable behaviour formed part of the Board's deliberations when considering what recommendations it should put forward. The question of the most

8 BOI Transcript, pp. 2609-2652.

9 Ms A. Smith, Committee Hansard, p. 1088.

appropriate management style and management practices for the circumstances and demands facing the Navy today was touched on, but not fully explored.

6.17 The Navy places great emphasis on teamwork and discipline. At the same time it expects its personnel to display initiative and self-reliance. Inculcating team spirit in a work force drawn from an increasingly diverse community is no simple task. The growing presence of women in every branch of the Navy further complicates the process. The Navy faces the enormous challenge of achieving group cohesion without discriminating, isolating, pushing out or rejecting those who are different simply because they are different.

6.18 There will always be individuals who are not prepared to make the adaptations necessary to fit in with the prevailing norms of any particular group. The Navy must ensure that the norms themselves are appropriate. Assumptions that may have been made unquestioningly in the past must be carefully re-examined and rigorously tested against today's changed needs and circumstances. Once this has been done, selection and appraisal processes must be re-evaluated to ensure that there is a good fit between the individual and the organisation.

6.19 The Committee is pleased to note that the Navy has recognised that sexual harassment must be dealt with in the broad context of working relationships between all members of the Navy and not just the relationship between men and women in the Navy. This broad context is reflected in the name itself of the current project: "Good Working Relationships in the Navy". Consultant Helen Taylor told the Committee:

"The basic premise of the program, as with the whole good working relationships project, is that the problems that the Navy has been experiencing are due largely to the pain associated with a major organisational change. Therefore, the programs deal with that organisational change and not just the issue of sexual harassment."¹⁰

6.20 **Recommendation Eight:** The Committee recommends that Navy continue, through the Good Working Relationships program, to examine and improve all aspects of work relationships within and between the various functional groups in the Navy. In particular the Committee recommends that further detailed studies be carried out, with the assistance of expert consultants, into the impact of group dynamics on the

10 Ms H. Taylor, Committee Hansard, p. 735.

individuals in the Navy, and on the organisation more generally, with a view to harnessing more effectively the human resources available to achieve higher standards of performance and behaviour.¹¹

Sexual Harassment of Dr Wheat

Background

6.21 The Committee's first Term of Reference requires it to inquire into allegations of sexual harassment towards female personnel aboard HMAS SWAN in 1992. The SWAN embarked one female medical officer and four female junior sailors for its Asian deployment in 1992. Dr Wheat spent the period 22 June to 27 July on HMAS WESTRALIA. Two female sub-lieutenants joined the ship in Sasebo on 27 June 1992. Two months into the deployment, on about August 10 or 11, the Coxswain and the Executive Officer reported to the Commanding Officer, Captain Mole that the Medical Officer, Dr Wheat had appeared to be upset over the language and behaviour of one officer, Lieutenant Bartlett, in the wardroom. Captain Mole investigated the matter. The Defence Instruction on sexual harassment was consulted and Captain Mole concluded that, although the behaviour was unacceptable, it did not constitute sexual harassment as then defined in the DI(N) and the Sex Discrimination Act. Dr Wheat did not disagree with that conclusion. Captain Mole reprimanded Lieutenant Bartlett and removed him from the prestigious and relatively senior position of Operations Officer.

6.22 About a week or so later, again via the Coxswain, Dr Wheat informed the Captain that she believed she could have been sexually assaulted two days previously. The Captain contacted Maritime Command Headquarters in Australia and an investigation team and a medical officer were flown to Lumut in Malaysia to investigate the incident. On 25 November, about two weeks before the Court Martial into the alleged sexual assault was due to take place Dr Wheat, wrote a letter of complaint to the Minister for Defence Science and Personnel. As a result of the letter, a Board of Inquiry into the allegations made by Dr Wheat was convened as soon as the Court Martial proceedings were complete. The Board of Inquiry uncovered that, in a separate part of the ship from where Dr Wheat worked and lived, the four female junior sailors were subjected to sexual harassment by their chief, a non commissioned officer.

11 The Brand Report makes some very telling observations about the effect of pressure both on men and women in the Navy.

6.23 In her submission to the Committee, Dr Wheat claimed that she was:

"subjected to sexual harassment in the form of ... deliberate verbal affronts of a sexual nature made against her... unwelcome conduct of a sexual nature in relation to her ... The behaviour of the group of officers in question was largely, condoned by other members of the wardroom."¹²

The Board's investigations of sexual harassment of Dr Wheat

6.24 The Board investigated in depth Dr Wheat's complaints of unwelcome sexual conduct against Lieutenant Commander James and verbal sexual harassment against certain other members of the wardroom of HMAS SWAN. These were Lieutenant Bartlett (who was counselled and demoted by Captain Mole on HMAS SWAN following the incident) and three other officers, whom Dr Wheat believed to be harassing her. However, she was not able to *"be specific in what they said"* and in response to questions from her legal counsel had this to say:

"Counsel: Did you form the view that they were again said to annoy you, or were they more general conversation items?"

Dr Wheat: I'm really not sure.

Counsel: You could not tell?"

Dr Wheat: No."¹³

6.25 When asked what sort of discussions upset her, Dr Wheat said it was:

"usual male comments about females, how to become involved with females, all the various positions, locations, as I say, day after day. It was not so much the particular content of any one conversation, it was just the quantity of it".¹⁴

12 Dr C. Wheat, Committee Hansard (in camera - released), pp. 118-119.

13 BOI Transcript, p. 667.

14 *ibid.*, p. 664.

6.26 The Board found that:

*"The behaviour exhibited went well beyond the bounds of common decency, particularly in respect to the topics of conversation, their frequency and explicitness. The evidence of the Wardroom staff indicates that at least some of these conversations were aimed at upsetting LEUT WHEAT."*¹⁵

However, the Board said in its report that it had not been able to *"isolate individuals other than LEUT Bartlett to the extent that they should be made to apologise"*.¹⁶ As a result, it did not make any findings or recommendations about the behaviour of other officers. In the absence of specific allegations against particular individuals, the Committee considers that it would have been improper for the Board to be any more specific in its findings with regard to individuals other than the ones that the Board did name in its recommendations.

6.27 The Board of Inquiry adopted a very broad definition of sexual harassment, namely "any form of unsavoury behaviour or action towards, or in the presence of, females". Even so, the Board found in its investigations that:

*"Most of the issues that came out in evidence are better described as unacceptable sexual behaviour."*¹⁷

The Committee's reading of the evidence leads it to concur with the Board in this instance. An individual may object to particular behaviour and language but, if that individual cannot tell whether that behaviour or language is aimed in their direction, it is more difficult to determine that it constitutes sexual harassment. In the SWAN wardroom, only one officer appeared to have aggressively directed such behaviour

15 BOI Report, p. 92.

16 *ibid.*, p. 73.

17 *ibid.*, p. 77 (emphasis added).

at Dr Wheat.¹⁸ The evidence suggests strongly that few members of the wardroom felt positive towards Dr Wheat. Lieutenant Commander Blazeby had this to say about it:

*"I think she was badly prepared for the deployment. I think she had been badly briefed. I felt that the wardroom was receptive to start with, I think. We were certainly aware of the fact of her limited Naval experience and the fact that she hadn't received a proper briefing, but I think that patience rapidly ran out."*¹⁹

6.28 Moreover, the two other female officers, Lieutenants Miller and Ganter told Captain Mole in response to his request for their views, immediately after the Bartlett incident, that they did not consider that they were being sexually harassed in the wardroom. They confirmed this to the BOI. They described the behaviour of some officers as "*boring*" and "*annoying*". Nevertheless, the BOI concluded that each of the women had been subjected to sexual harassment.

6.29 This conclusion poses a dilemma. It is the Committee's view that it is difficult to agree with the Board's conclusion if neither of the two junior female officers themselves felt harassed. As explained in Chapter 1 of this Report, the definition of sexual harassment highlights the importance of the subjective reaction of an individual. If the emphasis is on the subjective reaction to determine that someone is being sexually harassed, then the corollary must be that it is also a subjective matter for a person to consider that he or she is not offended and therefore not sexually harassed. The different reactions of the three women in essentially the same environment highlight the difficulties in the understanding of and dealing with sexual harassment.²⁰

6.30 A relevant observation in this context is the Maritime Commander's assessment in relation to the most extreme wardroom incident involving Dr Wheat. It is noteworthy that, in challenging Captain Mole's view that what occurred at the time of the Bartlett

18 Lieutenant Bartlett disputes that he meant to upset Dr Wheat; see BOI Transcript, p. 139 and his letter to Committee Secretary dated 27 January 1994.

19 BOI Transcript, p. 993. See also paras 7.52-7.55.

20 See Chapter 1.

incident did not constitute sexual harassment, the Maritime Commander says only that *"this characterisation is in question."*²¹ He does not refute it outright.

6.31 The treatment and reaction of the two female sub-lieutenants by the wardroom suggests that the hostility towards Dr Wheat had less to do with gender and more with perceived competence and willingness to adapt to a ship's environment.

6.32 Evidence to the Board revealed that at least two officers and the Executive Officer, Lieutenant Commander Spruce, had attempted to curb the language of one group in the wardroom before Dr Wheat complained. Dr Wheat herself told the Board that Lieutenant Commander James had tried to do so.²² Lieutenant Commander Blazeby had also tried.

6.33 The Committee observes that these officers took the initiative to curb language they did not like. It seems to the Committee that, until the Bartlett incident, Dr Wheat appears to have given no outward sign that she felt she was being sexually harassed. An outside observer might have drawn the conclusion, from Dr Wheat's silence about the behaviour, that Dr Wheat herself condoned the behaviour.

6.34 It should also be remembered that a finding of sexual harassment as defined under the Sex Discrimination Act before December 1992 required not only that the complainant felt offended but also had reasonable grounds for believing that objection to the conduct would disadvantage the complainant in connection with the complainant's work.

6.35 The Committee considers that a belief on Dr Wheat's part that she would be disadvantaged in her employment as a doctor on the SWAN if she complained about the behaviour she found offensive was not well founded. The Committee is reinforced in this view by the actions other officers took to curb some of the language and by the prompt and strong action the Captain took when he became aware of the Bartlett incident. The Committee's consideration of later allegations by Dr Wheat that her complaint disadvantaged her in her subsequent employment by the Navy is in Chapter 5 of this Report.

21 Maritime Commander: Notice of Cause Censure, 13 May 1993.

22 Dr C. Wheat, BOI Transcript, p. 667.

Lieutenant Commander James

6.36 The Board of Inquiry took evidence on the complaint by Dr Wheat that Lieutenant Commander James sexually harassed her throughout her time on board the SWAN and came to the conclusion that it could not:

*"accept that LEUT WHEAT was quite as unfriendly towards LCDR JAMES as she asserts. This is not to say, however, that she encouraged any of the conduct by the WEEO of which she complains."*²³

6.37 The Board also concluded that the evidence showed that:

*"LCDR James was not an active contributor to the unacceptable sexual behaviour occurring. In the Board's view there is considerable doubt as to the veracity of LEUT WHEAT's perception that LCDR JAMES was following her around the ship. There is also evidence that LCDR James made attempts to curb the language of other officers in the wardroom."*²⁴

6.38 The transcript of evidence which has been available to the Committee supports the Board's view. The Committee notes that the Board took evidence from a number of persons (outside the officers' wardroom) who had been supportive of Dr Wheat during the deployment. This included Chief Petty Officer McKay to whom she had complained about Lieutenant Bartlett's behaviour and about the alleged sexual assault and who took both matters to the ship's Commanding Officer. The Board commented, when speaking about the witnesses it called before it that in addition to Lieutenant Commander Blazeby and Petty Officer Steward Laidlaw:

*"CPONPC McKay was a direct and uncompromisingly truthful witness as were POMED Weis."*²⁵

6.39 Together with the deployment's Chaplain, with whom Dr Wheat went ashore on numerous occasions in company with Lieutenant Commander James, they all gave

23 *ibid.*, p. 92.

24 *ibid.*, p. 93.

25 *ibid.*, p. 5.

evidence that Dr Wheat and Lieutenant Commander James seemed to be good friends.²⁶ Chief Petty Officer McKay's evidence at the Court Martial was:

*"I never saw LCDR James or LEUT Wheat say anything nasty to each other, they always seemed to be pretty friendly."*²⁷

Chaplain Thiem described the relationship thus:

*"friends in that platonic way, yes. They were just going to a few places together, they used to talk to one another, have a brew, often there would be the three of us in the wardroom, and just sit down with a cup of tea together and chat."*²⁸

6.40 In answer to a question, Chaplain Thiem said that he had not observed any animosity between Dr Wheat and Lieutenant Commander James. The Committee has received no evidence to suggest that those witnesses would not have told the truth if they believed that Lieutenant Commander James was sexually harassing Dr Wheat.

6.41 The Committee notes that the Board found among the officers of the SWAN, a "*disturbing*" degree of defensiveness and protectiveness of one another but the Board in its report stated that it had resolved this problem by calling a large number of witnesses and comparing their evidence. Indeed the Board did not limit its inquiry and the taking of evidence to the officers.

6.42 It could be that Dr Wheat felt harassed by Lieutenant Commander James and never showed any sign of her displeasure to him or about him to anyone else on either the SWAN or the WESTRALIA. Further, Dr Wheat never mentioned her feelings about this matter to anyone on board,²⁹ not even to Chief Petty Officer McKay and Petty Officer Medical Wells with whom she raised the other matters, such as her

26 Further comment on the role of chaplains is in Chapter 7 of this Report.

27 Court Martial Transcript, p. 373.

28 BOI Transcript, p. 2175.

29 Subsequently, in a letter dated 11 November 1992 to Peter Reith MP, Dr Wheat's husband, John Beaumont said that in her letters to him, she had mentioned an officer "*who seemed to be following her around the ship*".

having had a difference of opinion with the XO on WESTRALIA with whom she *"just did not see eye to eye on a few things."*³⁰

6.43 This Committee has made many recommendations in this report aimed at educating the perpetrators of sexual harassment and unacceptable sexual behaviour to change their behaviour in the workplace. It is the view of the Committee that this aim cannot be achieved if the person taking exception to the behaviour sends a message of acceptance of the relationship not only to the perpetrator of the alleged sexual harassment and unacceptable sexual behaviour but also to all other witnesses to the behaviour.³¹ The Committee believes that victims have a responsibility not to pretend, in the presence of witnesses, to seek the company of the perpetrator of behaviour that is unacceptable to them.

6.44 As stated earlier, Dr Wheat went ashore with Lieutenant Commander James on several occasions.³² On at least one occasion, (the day after the alleged sexual assault) she chose to spend the whole day with him in a strange place (at Ipoh in Malaysia) about 2 hours drive away from the ship and all her other colleagues. There is no suggestion in any of Dr Wheat's evidence to the Committee that she was put under any pressure to accompany Lieutenant Commander James to Ipoh. It is behaviour that is difficult to reconcile with a person who regards the behaviour of another towards her as unwelcome, intimidating, humiliating or offensive.

6.45 The Committee notes that the evidence to the Court Martial and the BOI revealed a marked contrast between the perceived relationship between Lieutenant Bartlett (whom Dr Wheat accused of harassing her on the SWAN) and Dr Wheat and the relationship between Lieutenant Commander James and Dr Wheat (whom she accused of sexually harassing her on the SWAN three months after she had left the ship). Captain Mole told the Committee about Dr Wheat and Lieutenant Bartlett:

*"It is also very true that the two of them just did not like each other."*³³

30 PO R. Wells, BOI Transcript, p. 581.

31 See para.11.26 for the Committee's recommendation for conflict resolution.

32 Dr C. Wheat, BOI Transcript, p. 805, CHAP D. Thiem, submission, p. 7 Court Martial Transcript, p. 373.

33 CAPT D. Mole, Committee Hansard, (in camera-released), p. 88.

This statement succinctly captures similar accounts of the relationship between Lieutenant Bartlett and Dr Wheat by other witnesses to the BOI and to the Committee.

6.46 Recommendation Nine: The Committee recommends that in all its training and education courses on gender awareness, Navy stresses the responsibility of all individuals involved in incidents of unacceptable behaviour and sexual harassment. While it may not always be possible for the person who feels offended to tell the offender directly, the person who objects to the behaviour has a responsibility, especially if the offensive behaviour could also be interpreted as jocular or light-hearted, to tell at least one other person about it, preferably someone well placed to support the person who feels offended to resolve the situation before it deteriorates further. To facilitate such communication the identity of all Sexual Harassment Contact officers as the personnel best equipped to offer support should be readily accessible to all personnel; moreover all personnel should be clearly advised that they may approach the Sexual Harassment Contact officer in their own unit or in any other unit or division.

6.47 The Committee recognises the enormous difficulties faced by victims who are subordinate to the harasser, especially in cases where the higher ranked person blocks the avenues of recourse for the victim. This was the situation for example with the female sailors on board SWAN.

Recommendations of the Board regarding individuals and behaviour in the wardroom

6.48 The Committee recognises that, in making recommendations regarding the punishment of individual officers and sailors on the SWAN, the Board adopted a rehabilitative approach. The position adopted by the Board may have flowed from the fact that the Board's members were only too aware (since they had been in a similar situation themselves) that the integration of female personnel on board warships was simply expected to happen. The lack of directives, training and support available to male and female crew to assist with integration is canvassed in Chapter 7 of this Report.

6.49 The Board did not excuse the behaviour of any crew member of HMAS SWAN. In some cases, the Board could find no evidence to support the allegations that were being made. Where it found that the allegations were substantiated it made recommendations so that the women involved could obtain some redress in their future employment with the Navy (for example, the Board recommended amendments

to the female sailors performance report and to Dr Wheat's PR5) and it made recommendations with a view to ensuring that the same problems should not occur again.

6.50 The behaviour of the individuals involved was unacceptable but the responsibility was not theirs alone. A few were made to shoulder responsibility for the failure to act of many in Navy. The issue of corporate responsibility is addressed in Chapter 7 in this Report.

Lieutenant Bartlett

6.51 Lieutenant Bartlett was found by the Board of Inquiry to have been the main perpetrator of verbal sexual harassment of Dr Wheat in the wardroom. The Committee has received no evidence which would lead it to disagree with the Board's conclusions. Lieutenant Bartlett was the only offender about whom Dr Wheat had specific complaints. At Captain Mole's insistence, Dr Wheat told the Captain what she found offensive in Lieutenant Bartlett's behaviour and language. Lieutenant Bartlett was publicly punished because of his actions by the Commanding Officer of the SWAN, while the ship was still on deployment. The Board took into consideration Captain Mole's sanctions against Lieutenant Bartlett and Dr Wheat's evidence that she was satisfied with the apology she had received from him and with the subsequent modification in his behaviour.³⁴

6.52 Nevertheless, the Board recommended that Lieutenant Bartlett be placed on quarterly report (an administrative punishment in Navy which delays and precludes the promotion of the officer involved. This is further explained in Chapter 7 of this report). The Chief of Naval Staff considered the Board's recommendation to be too lenient and Lieutenant Bartlett received a censure from CNS instead.

6.53 The Committee notes that the decision to censure some members of HMAS SWAN was taken by the Chief of Naval Staff before the events on the SWAN were made public through a leak of the BOI report to the Press. The censures had already been given by the time the story made the headlines.

34 When asked at the BOI whether Dr Wheat took LEUT Bartlett's apology to be genuine, she said *"It seemed fairly genuine at the time."* When asked whether LEUT Bartlett subsequently resumed his conduct at any time, Dr Wheat responded that *"He was very, very quiet for a long time after that"*. BOI Transcript, p. 672.

Lieutenant Commander Spruce

6.54 Lieutenant Commander Spruce did not personally engage in sexual harassment of Dr Wheat or of the female junior sailors. However, as Executive Officer (XO), Lieutenant Spruce was responsible for the wardroom. The Board found that:

*"the XO failed to set and maintain an appropriate standard of behaviour in the wardroom."*³⁵

The BOI recommended that he be removed from his posting as XO because he demonstrated *"unacceptably poor judgment"* in failing to control the situation in the Wardroom and *"inflam[ing] the acrimonious atmosphere by taunting the Gunnery Officer [Bartlett] about his and LEUT Wheat's relative seniorities"*.³⁶

6.55 The Board heard evidence that the XO made a special effort to make requested changes in the wardroom because the wardroom atmosphere had not been a good one when he joined the ship.³⁷ The Committee, like the Board, accepts that Lieutenant Commander Spruce brought many qualities to his job.

6.56 In her submission to the Committee, Dr Wheat complained that:

*"intervention (by) the XO, LCDR Spruce, on her behalf, further inflamed the situation and ostracised Dr Wheat because it was done in a way which identified her to the remainder of the ship's officers as the source of complaints that were regarded as unjustified."*³⁸

In fact, the Executive Officer spoke to the wardroom about the level of swearing before Dr Wheat made any complaints. He gave evidence to the Board of Inquiry that:

somewhere between STIRLING and Singapore, and I think it was about three days out, I actually had a clear lower deck or a clear - cleared the officers into the ward room and reminded them, amongst a whole bunch

35 BOI Report, p. 94.

36 *ibid.*, p. 94.

37 BOI Transcript, p. 861.

38 Dr C. Wheat, submission, Committee Hansard, (in camera-released), p. 121.

*of other things, we talked about social programs and all sorts of things, but I reminded them that there was now a female in the mess, that we had to be aware of that. I actually, in saying so, looked at Carol and I said, 'I don't mean to embarrass you or anything but', and then went on with the thing."*³⁹

It is difficult to see how he could have asked for the language to be toned down without the presence of a woman in the wardroom being seen as either the implicit or the explicit reason for the request.

6.57 Lieutenant Commander Spruce could have informed the Commanding Officer at an earlier stage, of the difficulties both Dr Wheat and the wardroom were facing in developing a good working relationship. He allowed the situation to deteriorate but he did take immediate action and informed the Captain on the same evening when he overheard Lieutenant Bartlett discussing his masturbating habits at the dinner table. CPO McKay approached the Captain the next day.

6.58 In his submission to the Committee, Lieutenant Commander Spruce accepts full responsibility for *"allowing the situation in the Wardroom to develop in the manner that it did"*⁴⁰ but points out that:

"When it became apparent that LEUT Wheat was suffering harassment by the Gunnery Officer, LEUT P.D.J. Bartlett RAN, I in conjunction with the Commanding Officer, Captain Mole RAN, took steps to prevent any further occurrence. This action was taken in strict accordance with the regulations in force at the time."

6.59 Lieutenant Commander Spruce also points out:

"Following the events in HMAS SWAN and the BOI, I took positive steps to modify the Ship's Standing Orders. I sought to reflect in great detail, not only the Navy's policy and attitudes towards the employment of women at sea and unacceptable sexual behaviour, but to go further and

39 BOI Transcript, pp. 1145-6.

40 LCDR M.J. Spruce, submission, para 5.

*set up a proper and effective regime for the integration of female personnel onboard."*⁴¹

6.60 The Committee notes that Lieutenant Commander Spruce took those steps before he became aware that he would be censured by CNS for failing in his responsibilities. The Committee recognises Lieutenant Commander Spruce's commitment to the RAN and notes his willingness to learn to adapt to a changed environment:

*"I have carefully considered everything that happened in HMAS SWAN and subsequently and sought to learn from it. I fully support the integration of female personnel into the seagoing element of the RAN and am more aware of gender related problems than I believe I was previously."*⁴²

6.61 The Board recommended the removal of Lieutenant Commander Spruce from his position as Executive Officer of HMAS SWAN and also recommended a censure. The censure was delivered by the CNS.

Captain Mole

6.62 Captain Mole was not involved in any instances of sexual harassment and unacceptable sexual behaviour. The Board's recommendations in regard to Captain Mole are dealt with in Chapter 7 of this report.

The Board's Investigation of the Sexual Harassment of the Junior Sailors

6.63 When the Board commenced its inquiry, it focused on sexual harassment of Dr Wheat following the complaints she had made in her letter to the Minister for Defence Science and Personnel. The various difficulties that members of the RANTEWSS team experienced during the Asia deployment of the SWAN, including the unacceptable sexual behaviour by the officer in charge of the RANTEWSS team, were uncovered gradually as witnesses were called to give evidence to the Inquiry. That fact in itself indicates that the Terms of Reference of the Board of Inquiry were sufficiently wide to address any aspects of unacceptable behaviour on HMAS SWAN.

41 *ibid.*, para. 6.

42 *ibid.*, para. 28.

6.64 The allegations which emerged about sexual harassment of the female sailors referred to entirely different personnel from personnel named by Dr Wheat and occurred in an entirely separate part of the ship.

6.65 The BOI reports that:

*"As the inquiry unfolded, it soon became apparent that the RANTEWSS team embarked in the SWAN during the deployment was also a cause of concern, basically because of the breakdown in the Divisional System. This affected the four female sailors of that team more than the males although the males in the team certainly suffered as well."*⁴³

Chief Petty Officer Broad

6.66 The Board found that Chief Petty Officer Broad, the Chief in charge of the female sailors in the RANTEWSS team had engaged in unacceptable sexual behaviour. It recommended a censure by the Maritime Commander. Chief Petty Officer Broad was censured by the Chief of Naval Staff.⁴⁴

RANTEWSS Team

6.67 The BOI Report gives a detailed account of the circumstances of the four female sailors in the RANTEWSS Team. It also gives a description of the way in which the four female sailors *"tried to use the divisional systems and how it failed them."*⁴⁵

6.68 The Committee considers that the BOI Report gives a good analysis of the situation that developed. The Report rightly points out that it is:

"... not true to say that all the issues the two female Leading Seamen wished to raise through the divisional system were caused either by sexual harassment or the watch keeping system. In the judgement of their peers, the two Leading Seaman had shortfalls in the skills required through inadequate training and preparation. (T532). Although they were

43 BOI Report, p. 45.

44 For details of censure, see para 7.14 of this Report.

45 BOI Report, p. 54.

*helped by some of their peers, there was a general impression that they were not trying. (T532). The Board, however, is left with the impression that they lost the will to try partly because of their frustration with the inaction concerning their complaints. Regrettably, this set up a vicious circle; the professional limitations of the female sailors caused disapproval by superiors which was expressed in sufficiently harsh terms as to warrant the female junior sailors seeking recourse to the divisional system. The divisional system failed to provide any resolution which lead to depression and loss of initiative on the part of the female sailors concerned. This cycle was perpetuated by the breakdown of the divisional system."*⁴⁶

Sexual Harassment - Language

6.69 The Committee explored in considerable depth the nature of the harassment that the female sailors were subjected to. With regard to the nature of her interaction with the crew in general in the early stages of the deployment, Leading Seaman Connelly said in her evidence to the BOI that:

*"There was a lot of quite heavy language, but I expected that and was quite willing to accept it ... none of it was that bad that it was upsetting me greatly, and it did tone down."*⁴⁷

She confirmed to the Board that she never became:

*"subjected to any unwanted physical attention by any of the other male officers or sailors."*⁴⁸

Nor to her knowledge, were any of the other female sailors. When asked:

" did they ever complain to you about any unwelcome attention, any of the men touching them or anything like that?"

46 BOI Report, pp. 56-57.

47 BOI Transcript, p. 349.

48 *ibid.*, p. 356.

Leading Seaman Connelly answered:

*"No, There was nothing that stands out, no."*⁴⁹

Ms Connelly confirmed, in her evidence to the Committee, that *"she did not have any problems with anybody actually touching me"*.⁵⁰

6.70 Both Ms Connelly and Ms Flannery were at pains to make it clear to the Committee that their complaint of sexual harassment refers only to Chief Petty Officer Broad.

6.71 The Committee notes that early on in the deployment, Leading Seaman Flannery's objections to unwelcome advances by one crew member were resolved to her satisfaction when the sailor was sent from the ship to Australia for assaulting some male sailors and subsequently discharged from the Navy.⁵¹

6.72 It is the Committee's understanding that it was the perceived intent to degrade and humiliate together with the sheer physical exhaustion and psychological frustration with their work situation that made the language Chief Petty Officer Broad used intolerable.

6.73 It is interesting to note that the women themselves admit to using strong language at times.⁵² It seems it is possible in certain circumstances to make a light-hearted in-joke of strong language. It was not the nature of the language itself so much as the total lack of support and encouragement, the inflexibility and lack of

49 *ibid.*

50 LS Connelly, Committee Hansard, p. 307. (in-camera - released).

51 The sailor had a long history of charges, including violence against other male members of the crew. There is no suggestion in evidence before the Committee of any physical violence against the female sailors, by this crew member or any other crew member.

52 ABSMAN, Voullaire, BOI Transcript, p. 2207. CPO Broad wrote the following in his letter dated 24 January to the Committee - *"Early in the deployment I did instruct the males about watching their language in front of the female sailors. However I then had cause to warn AB Voullaire about her continual use of bad language while we were trying to restrict our use of language"*.

sympathy for the problems the women were experiencing on the job that ultimately made the language itself humiliating.⁵³

6.74 In situations where strong language is not meant in a personally offensive way, it need not necessarily be perceived as offensive. In times of stress in particular, vehement expressions of frustration can be an acceptable release of tension for both men and women. In the case of the SWAN, the language used to refer to the female sailors did not assume this kind of benign function. When used by Chief Petty Officer Broad it seems incontrovertible that it was intended to denigrate the abilities of the female sailors, it was clearly directed at them and it was perceived by the women as denigratory. When a term such as "*SWOD*" is used in combination with words to the effect that someone is "*no good and useless*" it is clearly derogatory.⁵⁴

6.75 As the Committee observed above, it is the perceived intent that does the damage, not necessarily the actual words used. It is necessary to draw attention to this distinction as another example of the difficulties inherent in defining unambiguously what constitutes sexual harassment. Drawing up a list of prohibited words, for example, is not enough. It is known that, in groups, certain apparently innocuous words can acquire derogatory connotations in that group, while appearing quite harmless to the uninitiated.⁵⁵ The converse can also occur. In Australia in some instances the term "*bastard*" can be used in an affectionate way, when its "*real*" meaning has been, at least until recent social change, quite damning.

6.76 The other point that must be made in this regard is the fact that, when the female sailors raised their concerns with people outside their Divisional System, they never complained specifically about sexual harassment or about the language being used. In his evidence to the Committee, Chaplain Thiem gives the following detailed account of the concerns that the female sailors put to him:

"During my interviews with LS Connelly and LS Flannery they voiced their problems as follows:

53 See Chapter 2 for further comment on use of language.

54 BOI Transcript, p. 2183. It was explained at the BOI that "*SWOD*" was a term meaning "*sailors without dicks*". The BOI Report comments that, whilst the term "*can be used inoffensively, there were certainly occasions when it was used with intent to offend*", BOI Report, p.78.

55 The Committee is aware, for example of such instances from Bruce Moore's *A Lexicon of Cadet Language, RMC, Duntroon in the period 1983 -1985*, published in 1993.

(a) Work Conditions

Both of them complained that the compartment in which they worked was very cramped, in fact so cramped that when anyone had to pass them or they had to pass anyone else in the compartment, it was necessary for body contact to be made. They described it as "brushing past". However, they did not give me the feeling that there was anything sexual about the "brushing past." They complained about Chief Petty Officer Broad in other regards, but they did not complain that "brushing past" was specifically him or that it constituted any form of unwelcome sexual conduct. They merely gave it as an example of how cramped the compartment was and how unpleasant it was to work in as a result.

(b) Hours Worked

They complained about the six-on and six-off watchkeeping system that they were obliged to follow, particularly when, as they said, the job was very boring and they felt that they were not doing anything worthwhile. They complained that Chief Petty Officer Broad would not allow them to read or talk when they were on duty and consequently they had to sit there for six hours "listening to nothing". They also complained that the six hours off was not long enough for them adequately to attend to their personal and hygiene needs as well as to get sufficient sleep. They were obviously having great difficulty coping with the watchkeeping routine and I did speak to Chief Petty Officer Broad about this. He told me that it was not possible to change and I regarded that as a command decision with which I could not interfere. Indeed, as there were two Abs, two leading seamen, two petty officers and two chief petty officers, it was quite apparent that there were only two complete watches in the RANTEWSS team.

(c) Private Problems

One of the female Leading Seamen had a child at home and she was very concerned about the welfare of the child. This was causing her considerable emotional stress and I counselled her and advised her in this regard. An aunt was, I think, looking after the child and proper arrangements had been made, and there really did not seem to be much more that one could do for the welfare of the child in Australia. The problem was that Leading Seaman Connelly missed her child very much and the separation was causing additional emotional strain for her.

She said to me more than once that she did not want to be on board the ship and that she wanted to be back in Australia. I did what I could for her in that regard by way of counselling and lending a sympathetic ear. The other girl, Leading Seaman Flannery, also said to me that she did not want to be on board but the reasons she gave were related to work conditions, lack of privacy on board and general unpleasantness with Chief Petty Officer Broad.

As to the lack of privacy on board, they both complained that there were no designated female toilets, there were no bathroom facilities or washing machine facilities exclusively for females (they shared these with the officers on board), their bathroom and laundry facilities were not located conveniently close to the messdeck (they had to go up a ladder to reach them) and there was no recreational space set aside exclusively for them where they could sit and relax (their messdeck was not suitable for that purpose).

(d) Chief Petty Officer Broad

In relation to Chief Petty Officer Broad they complained that he was intolerant, hard, insensitive and continually disapproving of them. They never seemed to be able to please him no matter what they did or how hard they tried. They made no complaint to me about the use by Chief Petty Officer Broad of any abusive or offensive language. Of course, I have learned since by reading the Report of the Board of Inquiry that Chief Petty Officer Broad did use completely unacceptable language to these girls. However, I did not know that at the time."⁵⁶

6.77 At in camera hearings, Ms Connelly told the Committee that, even at a post deployment debriefing at RANTEWSS she did not wish to talk about her experience on the SWAN and commented merely that she did not think the management was very good. She said that, on reflection, she said she did return to RANTEWSS and made mention of the discrepancy she perceived in Chief Petty Officer Broad's threats to discipline the female sailors if they "mucked up" without similar admonishment to their male counterparts "who were mucking up".⁵⁷

56 CHAP D. Thiem, submission pp. 2-4.

57 Ms. S Connelly, Committee Hansard, p. 299. (in camera - released). In effect, Ms Connelly was, in this instance, identifying a form of discrimination.

6.78 The Committee notes that, even at this stage, when Leading Seaman Connelly was no longer reporting to people in the SWAN hierarchy, and when invited to comment on her experiences, she demonstrated a reluctance to make a full complaint about all the matters that had distressed her on the SWAN. This is particularly relevant when examining the reasons why Captain Mole was unaware of all the circumstances of the female sailors on the SWAN.⁵⁸

6.79 The Committee believes it is important to note the way in which the female sailors' concerns were couched. The strong impression that their testimony to the BOI, their evidence to the Committee and evidence presented by other witnesses to the BOI and to the Committee conveys is that the sexual harassment aspect was a secondary, and not the primary concern.

6.80 Pointing this out in no way diminishes the Board's conclusion that the female sailors were subjected to sexual harassment. The Committee concurs with this judgement. However, the Committee sees it as very important to put the sexual harassment into the overall context. Had there been no sexual harassment, there would nevertheless have been a serious problem of poor staff management by Chief Petty Officer Broad. It is clear from the BOI Transcript and the BOI Report that:

*"The watch-keeping system was very hard on the male sailors also"*⁵⁹

and that

*"There did appear to be at least some unnecessary inflexibility in the system" (T517).*⁶⁰

6.81 It is less certain, however, that the problem of bad management practices at that level would have come to light, had it not been for the subsequent sexual harassment allegations. The SWAN incident alerted the Navy's senior managers to the fact that the integration of women needed a more committed approach. It is to be hoped that it will have alerted those same managers to the need to review also other

58 See also Chapter 7 of this Report.

59 BOI Report, p. 56, BOI Transcript, pp. 517, 530.

60 BOI Report, p. 55. According to LSEW Flannery all the male sailors were more experienced and had undergone more training for the tasks they were required to carry out. Committee Hansard, (in camera - released), p. 261.

practices that clearly can have serious health and safety implications, and in all probability productivity implications as well.

Factors other than sexual harassment

6.82 The BOI Report drew attention to the factors other than sexual harassment that played a critical role in the outcome. Chief amongst these was the sheer physical exhaustion caused by long, unbroken stretches of six-on, six-off watches; the serious deficiencies in the pre-deployment training of the two female leading seamen; the frustration generated by the absence of suitable training opportunities on board and the failure by the immediate supervisor to assist adequately in making further training possible; and the nature of the task itself. These matters were clearly acknowledged by the BOI Report. However, the nature of the terms of reference, and the time available to complete the inquiry meant that these matters were not pursued by the Board as far as they deserve to be.

6.83 The Committee also notes that these other critical factors in the total situation attracted very little attention in the media coverage. There was, on the other hand, media sensationalization of aspects such as the absence of windows in the Electronic Warfare System work-station. From evidence put to the Committee by the female sailors, it is clear that this was not directly a matter of complaint. Windowless work spaces, and windowless sleeping spaces for all sailors on board a warship are the norm and from the evidence available to the Committee it was what the women expected. What they were not fully prepared for was the effect that working in such an environment under the conditions that eventuated would have on them over time. Nor were they equipped to deal with the management style practised by Chief Petty Officer Broad.

6.84 The following section looks at the factors other than sexual harassment that made a major contribution to the difficulties on the SWAN.

(1) Level of Skills - training

6.85 One of the factors identified as making a substantial contribution to the overall unsatisfactory state of affairs in relation to the RANTEWSS team on the SWAN was the level of skill that the two female leading seamen brought with them to the job. The BOI Report concluded that the two female Leading Seamen were markedly under-trained in certain key aspects of the job they were expected to do. This is not disputed by the

two women. There is, however, some conflict in the evidence put to the BOI, and subsequently to the Committee, on the extent to which this was addressed both before and during the deployment. The BOI addressed the issue of training appropriately in its recommendations on that aspect.⁶¹

The BOI Report made a useful recommendation with regard to the selection of personnel for certain tasks:

"it is recommended that when selecting personnel for billets where specific job skills and specialist knowledge are required:

a) prospective candidates be adequately screened to ensure that the functional integrity of the team will not be compromised by inadequate skills, and

*(b) where such inadequacies are identified in personnel in such billets, every effort be made to provide the necessary skills training."*⁶²

There is also the question of who takes responsibility within Navy for indentifying training needs and ensuring that they are met.

6.86 In his advice to the Minister, the Chief of Naval Staff states that:

*"These considerations are normal outgoing requirements which are already adequately addressed within current instructions."*⁶³

6.87 The Committee came to the conclusion that existing arrangements in this regard proved inadequate in the case of the RANTEWSS team on the SWAN and further action with regard to the selection and training for such specialist teams is required. The Committee's Recommendation Fourteen inter alia addresses this aspect.

61 See paras 6.2 and 6.5 above.

62 BOI Report, pp. 62-63.

63 CNS minute CNS 1127/93 of 10 August 1993 to Minister for Defence.

(2) Training for direct entry specialist officers

6.88 Inadequate pre-deployment general naval preparation was identified as a major contributing factor in Dr Wheat's difficulties in settling in on the SWAN. The only course Dr Wheat undertook was the three-week NBCD (Nuclear Biological Chemical Defence) course.

6.89 The normal procedure is for specialists such as medical officers and dentists to undergo a nine-week Qualified Entry Officers Course at CRESWELL.⁶⁴ Engineers who are direct recruits undergo a more extensive, six months introduction to the Navy.

(3) Shortage of medical officers

6.90 It seems that the shortage of doctors available to go on sea postings was a key element which led to the cutting of corners in the recruitment of Dr Wheat in several respects. It contributed to the inadequate participation by Dr Wheat in the pre-deployment work-up period and it accounted for the failure to ensure that Dr Wheat had undergone all the basic training requirements.⁶⁵ Vice-Admiral MacDougall accepted that Navy:

" had not put enough effort into preparing these people [ie direct entry recruits]...for sea service, and we have adjusted that since." ⁶⁶

6.91 Dr Westphalen urged that the Navy put more effort in familiarising new recruits in matters such as the chain of command:

" The chain of command is there to be used. If they do not know the problems there they cannot fix it, so you have to use the chain of command. I guess the problem I had was that I was so plumb ignorant when I went to sea. I did not know the chain of command. I imagine that other doctors may have the same problem." ⁶⁷

64 Details about the content of this course are in a letter dated 2 March 1994 from CAPT B. Robertson to the Committee Secretary.

65 The only training course Dr Wheat undertook was the advanced NBCD course.

66 VADM MacDougall, Committee Hansard, p. 83.

67 Dr N. Westphalen, Committee Hansard, pp. 1124 -1125.

6.92 It seems that the old hands in the Navy may have forgotten what the early days can be like. Or they have little confidence in the content of present courses. Whichever may be the case, according to Dr Wheat, Surgeon Captain Habersberger was dismissive of the value to Dr Wheat of going through the course at CRESWELL. Dr Wheat told the BOI that:

*"SGN CAPT Habersberger of the Reserves said... 'There is no need for you to do the course at Cresswell... It's a waste of time... You know how to salute' "*⁶⁸

It is also the case that Dr Wheat did not query this judgement and did not point out to Dr Habersberger that his assumption that she knew how to salute was incorrect.⁶⁹

6.93 Dr Westphalen also suggested that care in choice of ship and port from which a first posting proceeds could assist new medical officers. In Dr Westphalen's view:

*" the main problem with recruiting doctors for the ADF is that it is not as lucrative, although the hours - certainly compared with those of most GPs - are much better. The second thing is the lack of opportunity for full-scale post-graduate training in clinical stuff".*⁷⁰

"I think what steers most people away from the ADF is that they cannot join the Defence Force and come out with a ticket in radiology, orthopaedics, general surgery and physicianing (sic). We are not big enough. We cannot do it."

6.94 It is beyond the terms of reference of this Committee's inquiry to examine in detail the reasons for the apparently chronic shortage of doctors in the Navy.⁷¹ Rear-

68 Dr C. Wheat, BOI Transcript, p. 643.

69 p. 643.

70 Dr N. Westphalen, Committee Hansard, p. 1118.

71 RADM C. Oxenbould, Committee Hansard, p. 1296; CAPT G. Kennedy, Committee Hansard, p. 1620; Dr Westphalen testified that *"up until... the beginning of 1991, there were 50 billets and we had 28-29 or 30 odd that were filled at any particular time"*. Committee Hansard, p. 1123. Note: The National Health Strategy Issues Paper Number 3, *"The Future of General Practice"*, March 1992, touches on the issue of oversupply of doctors in Australian cities while rural and special needs areas cannot attract doctors (p.9).

Admiral Chalmers told the Committee that competition for direct entry into the Navy is in fact greater than the competition for entry into the Defence Force Academy.⁷² However, the evidence suggests that there is high turnover in some direct entry specialist areas, such as medical officers. Figures provided by Navy also show that only 11 qualified entry applicants succeeded in a field of 245 between February 1993 and January 1994. Three of the successful applicants were female (out of 103 female candidates who applied). In contrast 105 out of 512 applicants to ADFA were successful. Forty-six of these were women, out of a total field of 225 female applicants.⁷³

6.95 Recommendation Ten: The Committee recommends that the Navy:

- re-examine the adequacy of the nine week qualified entry officers' course and the reserve officers orientation course and consider extending the courses to a full six months;
- consider setting a minimum recruiting period to allow for longer training;
- give new medical recruits the opportunity to take day and weekly running trips before taking up a longer sea posting;
- wherever possible give new medical recruits a sufficient period on shore before posting to sea;
- make a determined effort to post medical officers to ships in time for them to take part in the work-up of the ship before deployment;
- identify specific naval tasks that can be effectively undertaken by medical and dental officers at sea in addition to their professional medical duties to assist them

72 RADM Chalmers, Committee Hansard, p. 584.

73 Letter dated 2 March 1994 from CAPT B. Robertson to Committee Secretary.

in being accepted as fully integrated members of the team;⁷⁴
and

- ensure that the qualified entry officers in both the Reserve and the Permanent Naval Force are clearly informed about these additional tasks and are adequately equipped, during their initial training, to carry them out.

6.96 The Committee also notes that the full integration of women into the Navy requires a thorough re-examination of the role of registered Navy nurses at sea.⁷⁵ It is the Committee's understanding that, at present, nurses are employed only in a limited number of shore postings. It is also clear that not all ships have a doctor on board at all times,⁷⁶ and that day to day care is left to the Petty Officer Medical. Nurses are considerably more qualified than personnel appointed as Petty Officers Medical. It is the Committee's view that a restructuring of the medical services on board ships to include nursing positions would provide a higher level of service, greater flexibility in the face of continuing shortages of qualified doctors interested in sea service and better career opportunities for nursing staff. Many of the nurses now in the Navy have substantial Navy experience behind them that would stand them in good stead at sea.

6.97 Recommendation Eleven: The Committee recommends that the provision of medical services on board naval vessels be reviewed, with particular focus on the benefits to be gained from making sea postings available to registered Navy nurses. The review should include an evaluation of the benefits of replacing Petty Officer Medic positions with fully qualified nursing staff, as well as the feasibility of nursing staff, in certain circumstances, being appointed to replace medical officers.⁷⁷

74 For a specific suggestion see Recommendation Three. The Committee accepts that under the Geneva Convention there are some naval tasks that could not be allocated to medical officers.

75 References to nurses in this context are to registered nurses.

76 In the case of the 1992 Asia deployment, for example, one doctor and one dentist serviced both the WESTRALIA and the SWAN.

77 This recommendation should in no way be seen as a reflection on the performance of the Petty Officers and Able Seaman Medic on the 1992 Asia deployment. By all accounts they provided an excellent medical support service, a welcoming haven for the women under stress.

(4) *Selection of Personnel*

6.98 The Committee accepts that pre-embarkation training cannot be provided for every aspect of every individual's life and job when that individual first goes to sea. The experience itself is part of training for life in the Navy. Leading Seaman Connelly put it this way: it is like having a baby. No matter how many childbirth classes you go to, you cannot fully know what it is like until you go through the experience yourself.⁷⁸

6.99 Dr Westphalen made a similar observation to the Committee. He said that:

*" the seagoing environment is an odd one. The preparation that happens ashore before you go to sea certainly helps, but when push comes to shove and you actually go on the ship, you are still, to some extent, going in off the deep end."*⁷⁹

6.100 With the very high rate of turnover on ships it is inescapable that, to an extent each individual is expected to take some initiative in finding out where things are, how things are done and what is expected of them. It cannot be a one-way process of being told what to do by supervisors. The process must be interactive.

6.101 Under these circumstances, an important element of the recruitment process must be to select people who are suited to this approach and who will flourish in the face of such demands. Part of the pre-deployment training process must be to assist the Navy in identifying people who do not appear likely to withstand the rigours of life at sea.⁸⁰ The pre-deployment training process should also enable individuals to select themselves out if they find that they develop serious reservations about their own ability to handle life at sea. At the end of the day, despite best efforts at selection and training, it is nevertheless inevitable that some selections will prove to have been inappropriate. Discharge will be the only option in some cases.

6.102 The difficult issue for Navy to address is whether an individual's poor performance at sea is in fact related to factors such as poor management practices

78 LS S. Connelly, BOI Transcript, p. 380.

79 Dr N. Westphalen, Committee Hansard, p. 1113.

80 VADM MacDougall, Committee Hansard p. 579.

or harassment of any kind. The impact of factors such as these is important in any work environment. Their impact is bound to be magnified in the closed, cramped and demanding environment of a ship at sea.

6.103 The Committee notes that Navy is attempting, within the legal requirements to ensure equal opportunity, to discourage applicants who are *"out and out chauvinists"*.⁸¹

6.104 Recommendation Twelve: The Committee recommends that an in-depth review be conducted of all positions at sea with the objective of more clearly identifying the personal characteristics, skills and aptitudes that are considered essential for service at sea. The review should include identifying minimum physical requirements including strength and flexibility, and characteristics such as resilience to stress, adaptability, and teamwork, that are appropriate for the conditions and for the technologies actually in use today.

6.105 Some of the difficulties encountered on HMAS SWAN highlight the need for new recruits to be better informed about the less glamorous side of employment in the RAN. This applies to all new recruits, be they general entry or direct entry. The Committee agrees with the Board that:

"It is only fair and proper to give an honest 'warts and all' assessment of what a person may expect at sea before that person is posted to sea".

Television advertisements and advertising brochures stress the positive aspects of a career in the Navy. This is an understandable approach. Nevertheless, the Committee takes the view that both Navy and prospective new recruits would benefit if possible problem areas were openly discussed and if this were done in the initial stages of the recruitment process. It is important to clarify what the Navy expects of its personnel and allow potential recruits to realistically assess whether a career in the Navy is right for them. Navy must address its responsibilities in this area, particularly now that the minimum entry age has been lowered to 16. It also applies to specialists such as medical personnel. The difficulty, it seems, is that if there is a shortage of doctors available for posting, there is an understandable reluctance to canvass all the possible discomforts of life at sea. The pool of possible recruits might well dwindle even further.

81 ibid.

6.106 Nevertheless, in the interests of fairness and to properly discharge its responsibilities as an employer, the Navy has an obligation to ensure that a reasonably accurate picture of what they are about to encounter, is presented. Such openness might lead a few to change their minds about joining up, but those who do enlist would be more likely to come prepared and determined to face the more difficult challenges ahead.

6.107 Recommendation Thirteen: The Committee recommends that all potential new entrants to the Navy, including direct entry specialists, be given an opportunity to fully discuss and evaluate the difficult and demanding aspects of service, especially at sea, before making a firm commitment to the Navy.

(5) *Work Practices*

6.108 As indicated previously, the work conditions were a primary cause of distress for the female sailors. The work conditions came about partly because of the nature of the work, partly because of the attitude of the supervisor. It seems likely that the belief that, because the work had always been done that way, that was the only way it should be done, also played a part.

6.109 The hold that tradition has had in perpetuating attitudes to work in an organisation like Navy emerges clearly in the evidence to the Committee and in the surveys conducted on the HMAS SYDNEY. The question of work practices is gradually being brought out into the open through programs such as the Naval Quality Management and the Good Working Relationships programs in most parts of the organisation.

6.110 The Committee accepts that it is more difficult to use the same open and participatory approach when reviewing the organisation of work in high security areas. On the SWAN the manager of the team rejected totally any efforts by anyone outside the team to influence the way in which the team was managed. It is important that the same phenomenon of rejecting legitimate external involvement is not permitted to occur, on a larger scale, in relation to the operation of the Navy's Tactical Electronic Warfare Support Section as a whole.

6.111 A key factor to be taken into account also is the culture of non-complaint in the Navy. The inhibitions to complain, at every level in the Armed Forces, have been repeatedly brought to the attention of the Committee during the course of this inquiry.

It is clear to the Committee that reluctance to complain has been a widespread phenomenon in relation to sexual harassment. It is equally clear that there are strong factors, not least the rank structure and the disciplinary measures available to those in authority, that work against complaining about many other aspects of work and life in the Armed Forces.

6.112 Clearly there are benefits in this approach, for both the individuals and the organisation. The ability to endure, to tolerate discomfort and apply oneself despite adversity must be part of the training for war. Nevertheless, questions must be asked about the need, and efficacy, of putting up with extreme conditions at all times. A willingness and ability to change gears, according to circumstances, is part of Navy's evolving approach to the way it functions overall. Nevertheless, the Committee questions whether sufficient attention has been paid to this need to change gears, and to the scope for operational flexibility, in the overall RANTEWSS operation.

6.113 The Committee does not wish to encourage a culture of complaint in the Navy. It does wish to encourage forward looking review of entrenched attitudes that do not readily permit the legitimate questioning of traditional work practices which may have outlived their usefulness or can be shown to be harmful or inefficient. The Committee took note, for example, of Professor Kim Kirsner's view that:

*"the structure of their watch-keeping duties - while it was presented as unavoidable on technical grounds - defied the results of fifty years of research into vigilance and fatigue, research involving conditions not unlike those which prevailed for the junior female sailors on HMAS Swan, their jobs and tasks should have been re-designed to recognise and reduce the predictable consequences of their working conditions."*⁸²

6.114 The Committee has gained the impression from the evidence before it that enough flexibility could have been introduced into the RANTEWSS working arrangements to reduce, if not eliminate, the stresses of working there. However, it appears to the Committee that the changes required in all probability go beyond changes that could have been achieved on board by minor tinkering with the way the RANTEWSS team worked. Further consideration should, for example, be given to the provision of larger, but more multi-skilled RANTEWSS teams for long deployments to permit some variety in the tasking and some relief from the six-on, six-off routine.

82 Assistant Prof Kim Kirsner Submission, para. 1.1.

Tasks that would better integrate the RANTEWSS team with the rest of the ship should also be considered.

6.115 The combination of the culture of non-complaint and the limited routine external scrutiny of high security work units requires that closer than usual attention be paid to the management practices in such areas. In the case of the SWAN it is evident that a complex combination of factors led to the difficulties experienced by the female sailors, and to a lesser extent the male members of the RANTEWSS team. The indications are that fundamental aspects, including the practice of six-on six-off watches, the selection, training, tasking and equipping of the RANTEWSS teams needs to be reviewed. It is not appropriate for this Committee to inquire in detail into the actual management and the work practices that are followed. Nor is it satisfactory to have a purely internal, in-house review of RANTEWSS. The Committee acknowledges that initial steps in improving the situation have been taken. A new division responsible for Command and Control, Communications and Intelligence (C.3I), has been established in Maritime Headquarters.⁸³ The Committee considers, however, that further scrutiny by an independent authority is required.

6.116 Recommendation Fourteen: The Committee recommends that a review of the management of the RAN's Tactical Electronic Warfare Support Section (RANTEWSS) be undertaken by an independent investigator, reporting directly to the Minister for Defence. In particular, the review should include:

- the organisational structure of RANTEWSS;
- the selection and training of personnel, including the gender balance required to provide equal opportunity for sea postings;
- the establishment, pre-deployment preparation and tasking of tactical teams, including the provision of appropriate equipment and work aids;

83 Letter dated 2 February 1994 from CNS to LS Connelly.

- the scope for integrating teams more effectively into ships' crews; and
- the work practices and conditions of deployed teams.

6.117 The intent of the review is not to investigate again the individuals and their performance in the RANTEWSS team during the SWAN's 1992 deployment. As far as possible, the Committee would hope that these individuals should be allowed to get on with their lives without further having to revisit yet again the events of the past. They have already provided much evidence to the BOI and to the Committee. The Committee would propose to make all the detailed evidence held by the Committee available to the authority appointed to conduct the review. The main thrust of the review should be to evaluate the structure, systems, management and work practices in RANTEWSS as a whole, going well beyond the particular individuals involved in the SWAN.

(6) Performance appraisal

6.118 The Board addressed the question of the review of the PERS-1 reports for Leading Seaman Connelly and Leading Seaman Flannery. As indicated in the foregoing section the Committee was not in a position to fully access the claims and counter-claims about the performance of the two female leading seamen. It is quite clear to the Committee, however, that the management style adopted by Chief Petty Officer Broad was highly inappropriate and contributed to any poor performance by them.

6.119 The Board did not look at the general question of ratings given to personnel who have not received adequate training for the jobs they are required to do. Appeal through the redress of grievance should not be the only avenue for personnel who feel that they have been put into positions without adequate training. The female sailors were not the only ones placed in a difficult situation through no fault of their own because they lacked certain training. Some of Dr Wheat's difficulties on board the SWAN could also be traced to inadequate training and preparation.⁸⁴

6.120 Those preparing assessments of performance should be given clearer guidance as to how they are to approach the rating of subordinates in such

84 See paras 6.82-6.85.

circumstances. It should be possible to clearly distinguish and identify under-performance that is due to lack of training outside the control of the individual from under-performance due to other causes. Likewise, assessments for periods of less than three months full service should be regarded in a different category from assessments of performance over longer periods. It is clearly very difficult for the assessee to demonstrate his or her full capacity and equally difficult for a supervisor to make assessments with any confidence about an individual's capacity on anything less than three full months' experience of that person's performance.

6.121 A number of different approaches is possible. A descriptive account, with no requirement to allocate numbered ratings is one possibility. As assessment of potential, rather than actively demonstrated capacity is another. The relationship of such interim assessments to promotion prospects should also be clearly enunciated.

6.122 Recommendation Fifteen: The Committee recommends that all personnel in the Navy are assessed in the routine appraisal process for their capacity to develop a good working relationship with other personnel, no matter what their gender or sexual preference.

6.123 Recommendation Sixteen: The Committee recommends that all personnel with supervisory and management responsibilities are assessed for:

- their skills in facilitating the integration of women into the Service;
- their compliance with the requirement that all sexual harassment complaints are properly investigated;
- their ability to assist in the effective resolution of sexual harassment allegations; and
- where appropriate the views of subordinates of the person being assessed be taken into account in order to arrive at a reliable assessment of these matters.

6.124 Recommendation Seventeen: The Committee recommends that the guidelines for performance appraisal be reviewed:

- to clarify the approach that supervisors should adopt to matters such as inadequacies in the assessee's training for tasks, short assessment periods and lack of opportunity for the assessee to demonstrate the particular skills for which he or she is being assessed; and
- to ensure that all supervisors are consistent in their approach to performance appraisal.

(7) *Breakdown of the Divisional System*

6.125 The Divisional System is a management tool in the RAN whereby commissioned officers and senior sailors are responsible for the well-being and efficiency of their junior personnel.

6.126 Sailors are divided into groups, or "*Divisions*", on the basis of their specialisation, work location and the shift they keep. Under this system, sailors can seek help or advice from their Divisional officers and senior sailors who are "*required to provide guidance, assistance and advice on a wide variety of problems*".⁸⁵

6.127 These problems can be related to their duties, work conditions, difficulties they may have in dealing with colleagues, such as harassment or personal concerns. The Divisional officers and senior sailors are not expected to be able to deal with all the problems brought to their attention but are encouraged "*to seek the advice of Chaplains, Social Workers, psychologists, Medical Officers and other `specialists`*".⁸⁶

85 RAN submission, Annex 13.4, Enclosure 1, Divisional Handbook.

86 *ibid.*

6.128 The BOI Report very correctly identified the breakdown of the Divisional System as central to the Board's inquiry. As the Board states in relation to female sailors:

*"even if their complaints had been without foundation, they were not dealt with in a manner which reflects the satisfactory operation of the divisional system."*⁸⁷

6.129 The BOI Report summarises the situation as follows:

*"The female sailors then had a number of courses of action open to them, but for differing reasons each of these courses of action failed."*⁸⁸

6.130 It would be more accurate to say that Leading Seaman Connelly and Leading Seaman Flannery tried several options, including approaching:

- Chief Petty Officer Broad directly about the watches and assistance with training;
- Chief Petty Officer Goedecke about some of the conditions and in connection with Leading Seamen Connelly's wish to see the Captain;
- Chief Petty Officer McKay for assistance in approaching Chief Petty Officer Broad; and
- the Chaplain, for assistance in getting some changes in their conditions of work.

6.131 Each of these people were rebuffed by Chief Petty Officer Broad and in effect told not to interfere in internal Electronic Warfare Section work matters.

6.132 The two female sailors also approached Dr Wheat in connection with accommodation and their health, and Chief Petty Officer Wells about their deteriorating

87 BOI Report, p. 54.

88 BOI Report, p. 57.

health. Chief Petty Officer Medic Wells took it upon himself to talk to Chief Petty Officer Broad, again without success. Dr Wheat's role in relation to the female sailors is discussed more fully in Chapter 7 of this Report.

6.133 The most obvious person for the female sailors to approach in the Divisional System should have been their Divisional Officer, Lieutenant Walker. They appear to have made very limited use of this channel. Evidence to the BOI indicates that the female sailors had no confidence in Lieutenant Walker's ability or willingness to intercede on their behalf. The evidence available to the Committee does not provide an adequate explanation for the perception that the female sailors had of Lieutenant Walker. Captain Mole states that he felt Lieutenant Walker would be a suitable appointee not only because he had the necessary security clearances, but because:

*"he had an understanding of that type of work which the other officers did not have. Therefore, I knew that he had ready access to the compartment where they worked. When he was my navigation officer in a submarine, I found him to be a very reliable man. I knew him as a good dependable, married man with children who would be sympathetic and who had access to them in their workplace all the time."*⁸⁹

6.134 Leading Seaman Connelly told the Committee that:

*"Our Divisional Officer was also aware that we weren't happy. He told me later in the deployment (almost at the end of the trip) that he had mentioned to the Captain that "The girls are not happy in the EWO" (our workplace). He told me that the Captain's reply was, "Well. You're their Divisional Officer. Fix it!" I don't recall the Divisional Officer doing anything at all to "Fix-it".*⁹⁰

89 CAPT D. Mole, Committee Hansard, (in camera - released). p. 107.

90 Letter to Committee Secretary dated 2 February 1994 from Mr Ken Cush, MacPhillamy, Cummins & Gibson.

6.135 It seems that the Coxswain did seek to take up the matters of concern to the female sailors with Chief Broad. Ms Connelly wrote the following to the Committee:

*"WO McKay spoke to Chief Broad regarding these problems on several occasions. He eventually gave up."*⁹¹

6.136 A particular difficulty that pertained to both Dr Wheat and the four female sailors was that they each belonged to a very specialised, minority category. Their jobs were different and seen to be significantly different from most of the other crew members. The security aspects of the EWS work set the EWS team apart and in effect, appear to have constituted a barrier to closer interaction with people outside the team, even in the operation of the Divisional System. This does not justify the behaviour of the Team's chief; it does, however, explain in part how it came to be that Chief Petty Officer Broad was able to exercise his authority to the extent that he did.

6.137 It should be noted that there were a number of options open to Leading Seaman Connelly and Leading Seaman Flannery that they did not pursue. They appear not to have raised their concerns to any great extent with their divisional officer, Lieutenant Walker or with the two junior female officers, Lieutenant Ganter and Sub Lieutenant Miller. Nor did they raise work concerns with Dr Wheat. The Board accepted that the female sailors had no confidence that approaches to any of these would have had any positive result. Nor did Leading Seaman Connelly have the confidence to approach the Captain directly, after Chief Petty Officer Broad actively discouraged her from doing so.

6.138 Leading Seaman Flannery's request to see the Captain over her PERS-1 report was successful, but the occasion did not result in any of the matters of concern to her being resolved to her satisfaction.⁹²

6.139 It is difficult for the Committee to determine with any degree of confidence the reasons why the full extent of Leading Seaman Flannery's concerns did not emerge at her meeting with the Captain. The BOI concluded that the Captain was too heavily influenced and side-tracked by her security breach. There is not enough detail available about the nature of the exchanges that took place to determine how it came about that Leading Seaman Flannery appears not to have alerted Captain Mole to all

91 *ibid.*

92 BOI Report, p. 60.

her concerns. The Committee considers that in all likelihood an important contributory factor was the presence of Chief Petty Officer Broad at the meeting.⁹³

6.140 The Committee notes that most of the factors that worked against Leading Seaman Connelly and Leading Seaman Flannery were, in one way or another, related to the security classification of their work. It was both a reason and an excuse used by Chief Petty Officer Broad to insist that no one had a right to interfere. It was, in that sense, a most unfortunate set of circumstances and one which, hopefully, is unlikely to apply in the case of most junior female sailors on Royal Australian Navy ships.

Alternative avenues of complaint

6.141 An issue of some importance not addressed adequately by the BOI Report is the role of the Medical Officer and the Chaplain in monitoring the morale and overseeing the welfare of the female personnel on the SWAN. As noted previously, there is provision in the Divisional System for matters to be taken up with chaplains, social workers, medical officers and other "*specialists*".

Medical Officer

6.142 The Committee observes that Captain Mole made a request that the ship's doctor be female, if possible, because there were to be female sailors on board. He specifically asked Dr Wheat to talk to the female sailors, as did Lieutenant Walker, their Divisional Officer.⁹⁴ Dr Wheat did so at the beginning of the deployment. She states that subsequently she was approached by the female sailors for certain medical conditions and in relation to the toilets.

93 See also paras 6.74 and 7.130-7.131 of this Report.

94 While the way in which the requests were made may have been informal, there is no question that CAPT Mole's expectation that Dr Wheat had a welfare role to play in relation to the four female sailors was made quite clear to her. The BOI reported that *"Captain MOLE did, however, say to LEUT WHEAT that there were four female sailors on board and that he (Captain Mole) had wanted Lieutenant WHEAT to be on board the ship to look after them (T651). This general concept had apparently also been conveyed to LEUT WHEAT during a previous conversation with CMDR DONOVAN..."; "Finally, LEUT WALKER, the divisional officer for the RANTEWSS team also asked LEUT WHEAT some two or three days after the ship departed STIRLING to have a talk with the four female sailors to tell them that fraternisation and similar behaviour were not acceptable on board (T652)."* BOI Report, p. 45.

6.143 It is, in the Committee's view, important to note that, despite her subsequent allegations about the unacceptable behaviour she herself was subjected to, Dr Wheat at no stage sought to inquire whether the female sailors may have been experiencing similar difficulties. It seems to the Committee reasonable for Captain Mole to have expected that, following his request that Dr Wheat should make herself available to the female sailors, she would actively seek to establish if they, too, were experiencing any difficulties and let him know if there were any difficulties that were not being resolved adequately at the Divisional level.

6.144 The evidence before the Committee shows that:

- Dr Wheat did not initiate any inquiries to establish whether the female sailors were being subjected to sexual harassment; and
- Dr Wheat did not consider the possibility that the medical symptoms being brought to the sick bay by the female sailors may have been related to stress from their work situation and/or sexual harassment.

6.145 It is, however, to be noted that Petty Officer Medic Wells did consider that some of the medical problems some of the female sailors were experiencing may have been stress related.⁹⁵

6.146 Leading Seaman Connelly told the Committee that:

*"After I had been treated for a stress related problem in the sickbay one night, the Petty Officer Medic approached Warrant Officer Coxswain McKay and told him that he thought that there would be more stress problems occurring amongst the RANTEWSS team members if Chief Broad did not let up."*⁹⁶

95 BOI Transcript, pp. 565, 573.

96 Letter to Committee Secretary dated 2 February 1994, from Mr Ken Cush, MacPhillamy, Cummins & Gibson.

6.147 In a letter to the Committee, Leading Seaman Connelly has described the state of her health on board the SWAN as follows:

*"Being made to keep a 6 hour on 6 hour off routine for 7 months, for stints of up to 32 days with out breaking that routine by as much as 5 minutes, with no real reason for doing so, is not a condition of service, it is an act of extreme inhumanity. If there was a genuine reason for me being there, I would have done that time and more without complaint. To be made to keep this routine up while coughing uncontrollably due to the flu that you haven't been able to shake for months, whilst vomiting with seasickness, while weeping sores have developed at the sides of your mouth, while the insides of your nostrils are split and bleeding, while your eye hasn't stopped twitching in weeks (when you only used to get it in times of extreme stress), you have chronic ear-ache from 12 hours a day of useless static pouring from your headphones that you were not permitted to remove and, you can't hold even the most basic of conversations any more because no thought stays long enough in your brain for you to capture it and get it to your mouth, all the while with nothing to do but sit and stare ... is not only not a condition of service but is very damaging to one's physical and mental health."*⁹⁷

6.148 At the BOI Dr Wheat agreed that she was aware that the Divisional System had broken down for the female sailors in the sense that Petty Officer Broad was "an obstruction for their complaint" and Lieutenant Walker was apparently "unreceptive to their complaint"⁹⁸. Dr Wheat also stated that she "had a feeling [Lieutenant Walker] was trying to push some of his so-called welfare problems on to me."⁹⁹ When asked whether the divisional problems affected the health of the female sailors, Dr Wheat stated:

*"Looking back, yes, I think it did. At the time it wasn't obvious."*¹⁰⁰

97 ibid.

98 BOI Transcript, p. 714. Dr Wheat also confirmed that she understood the Divisional System from her time at CERBERUS and was aware that the Divisional System does not work well if the divisional chief is the cause of the problem, BOI Transcript, P. 713.

99 Ibid., p. 744.

100 ibid., p. 744.

6.149 Dr Wheat confirmed to the BOI that when the ships reached Sasebo¹⁰¹ and the Chaplain returned to WESTRALIA, he had told her about difficulties that the female sailors had told him about:

"So he left it up to them to speak to me. I assume he told them to speak to me if they wanted any further help and nothing was said for quite some time afterwards." 102

6.150 When asked whether she saw no obligation to inform the Commanding Officer of the problems she knew the female sailors were experiencing, Dr Wheat said:

"there was a lot of things on the ship that people were unhappy about, and I knew that these girls were unhappy, but so were a lot of people unhappy about a lot of things, and I felt that it was not my place to be telling the commanding officer about everything that was not right." 103

6.151 While it is somewhat surprising to the Committee that Dr Wheat did not actively seek to investigate how the four female sailors were faring, and whether anything might be done about their situation, the following comment by Leading Seaman Connelly to the BOI gives some insight into the reasons why the female sailors did not seek her out to assist with their difficulties. Leading Seaman Connelly told the BOI that Dr Wheat:

"did actually come in and have a talk with us in May when she joined the ship. She called the four girls together in our mess, so there was just five of us, and more or less said how life at sea can be tough, sailors can be pretty rude, crude, they can say things, this can happen, that can happen, that sort of thing, and just generally warning us what to expect. We'd been on board for K92 by that stage and at the end of the talk I found I was a bit worried for her. I thought how the hell is she going to survive." 104

101 The SWAN visited Sasebo, 25-30 June 1992.

102 Dr C. Wheat, BOI Transcript, p. 715.

103 BOI Transcript, p. 745.

104 BOI Transcript, p. 355.

Chaplain

6.152 From the evidence available to the Committee, it appears that the two female sailors placed most hope in the Chaplain as an alternative means to have their concerns addressed.

6.153 It is also clear that the Chaplain sought to intervene with the Divisional officers on behalf of the female sailors. However, the Chaplain said he felt that he did not have the authority to insist on changes in work practices which were then the primary concern of the female sailors. He brought the morale problems that he believed flowed from the inflexibility of CPO Broad to the attention of Captain Mole. He did not refer his concerns to the Chaplain General.

6.154 In his submission to the Committee the Chaplain tells the Committee that he had prepared a report on low morale on the HMAS SWAN and had pressure put upon him not to forward the Report independently to the Principal Fleet Chaplain.¹⁰⁵

6.155 There are some differences in the evidence on how the Chaplain's decision not to advise his Chaplaincy superior came about. According to the Chaplain, he was pressured by Captain Mole into tearing up a report he had prepared for his Chaplain superior. According to Captain Mole, it was a decision the Chaplain freely arrived at after discussing the matter with the Captain.

6.156 The Committee notes the following in relation to Chaplain Thiem's account:

- the Chaplain's discussion with the Captain about the proposed report on morale took place on 29 July 1992 about ten days after the SWAN had left Hong Kong;
- the Chaplain's recollection of the substance of his report is that it dealt with "*morale, discipline, alcohol abuse, accommodation for female sailors and church services/spiritual welfare*";
- it is known, from a number of witnesses, including Chaplain Thiem that the SWAN had a history of disciplinary

105 CHAP D. Thiem, submission, p. 5.

problems, many associated with alcohol.¹⁰⁶ Captain Mole took firm steps to curb alcohol use, including not opening the bar in the wardroom before a cocktail party, declaring the ship "dry" for parts of the deployment and stopping a day's leave for the entire ship's company for misbehaviour. The Chaplain's own account confirms that:

*"the morale of the ship's company hit 'rock bottom' as a result of the leave stoppage";*¹⁰⁷

- the extent of the alcohol problems described in evidence to the Committee leads the Committee to conclude that Captain Mole was fully justified in taking a firm stand with regard to alcohol; and
- according to Chaplain Thiem's account, on the day that Chaplain Thiem showed Captain Mole his report on morale in the ship, *"Commander Mole and I then went on to speak about how morale might be improved in the ship."*¹⁰⁸

6.157 In this context, the Committee notes the views of the Director General of Chaplaincy-Navy, Principal Chaplain Davis, on the role of chaplains. He states in his submission that:

"The religious, spiritual well-being, and morale of members of a ship's company are the direct responsibility of the Commanding Officer".

106 CPO D. McKay, BOI Transcript, pp. 842, 845-850; Dr C. Wheat, BOI Transcript, pp. 642-643, 685, 749-750. See also Chapter 4 of this Report for CAPT Mole's account of this issue.

107 CHAP D. Thiem, submission, p. 5.

108 CHAP D. Thiem, submission, p. 6. One of the solutions was to engage the ship's crew on a morale boosting fund-raising activity for a Children's Home in Madras. By CHAP Thiem's account this proved very successful.

He further explains that:

"The Chaplain's role as the Commanding Officer's adviser, is both supplementary and complementary."

In carrying out his role, Chaplain Davis considers that:

"A Chaplain would try to resolve an issue of concern at the most appropriate level. The exercise of good leadership and management indicates that this should be at the lowest level in the command chain. If it is a simple matter of inter-personal conflict between the occupant of a mess deck the appropriate level would be to start with the Leading Hand of the Mess, then the Divisional Petty Officer, then the Divisional Officer until the matter was satisfactorily resolved. In more serious matters, particularly those involving unacceptable or immoral activity, he would appraise the Commanding Officer of the problem and offer advice on a solution. If it was a serious matter and the Commanding Officer refused to intervene, the Chaplain would have a responsibility to behave the same way as any other Head of Department. I would expect that his first point of contact, in this regard, would be his Command Chaplain." ¹⁰⁹

6.158 In view of the difficulties that Chaplain Thiem had in influencing Chief Petty Officer Broad, it is also of interest to note Principal Chaplain Davis' comments on the Navy's tradition, inherited from the Royal Navy, of chaplains having no rank. Principal Chaplain Davis says that:

"While the Chaplain is not encumbered with any sign of rank-power he is not a threat to anyone. It may also be said, however, that his ranklessness projects a perception of powerlessness - lacking the status to intervene successfully." ¹¹⁰

109 Principal Chaplain M. Davis, submission, p. 3.

110 *ibid.*, p. 4.

Enhancement of the Divisional System

6.159 In the evidence put to the Committee, there is a clear-cut division of opinion over the need for a complaint mechanism outside the existing Divisional System:

- several submissions argue strongly that a parallel or additional channel of complaint would undermine the Divisional System. These witnesses consider that the Divisional System is appropriate and adequate and should not be tampered with. Some concede that the Divisional System could perhaps be improved, but are convinced that it is fundamentally a sound approach. Several consider that *"to bypass it in anyway, is to put the effectiveness of the Defence force at risk"*; ¹¹¹ and
- a majority of submissions that comment on the question of complaint mechanisms for dealing with sexual harassment favour a separate and independent channel to be established in addition to the Divisional System. Senior management in Navy acknowledge that the Divisional System *"was not doing the job it ought to have done."* ¹¹²

6.160 The Chief of Naval Staff, Vice-Admiral MacDougall told the Committee that, although the Divisional System had served the Navy well in the past *"it has to be said that it failed in SWAN"*. The Navy has concluded that:

"society has become more complex and therefore the divisional officer as a stand-alone resource is not enough." ¹¹³

6.161 The Committee formed the view that, in many instances, the Divisional System appears to have functioned effectively. In those cases it seems that the personalities of both the officers designated as Heads of Divisions and the personnel for whom they

111 LCDR P. Kraus, submission, para. 12; Holley, submission, pp. 2-3; RSL, submission, pp. 4-5, Committee Hansard, pp. 1211-1214; Anti Submarine Officers Association submission, Committee Hansard, pp. 1024-1025.

112 CDRE C. Barrie, Committee Hansard, p. 593.

113 VADM I. MacDougall, Committee Hansard, p. 577.

were responsible worked well together. A fundamental requirement for the system to operate effectively seems to require that all parties trust and respect each other.

6.162 Unfortunately, this is not always the case. The worst cases of sexual harassment appear to occur in instances where the perpetrator of the harassment is in fact the supervisor and/or a key link in the Divisional System.¹¹⁴

6.163 Vice-Admiral MacDougall pointed out to the Committee that the Divisional System is not static. It has evolved over time and has incorporated specialist assistance, for example, such as that provided by psychologists, social workers, doctors and chaplains.¹¹⁵

6.164 The Committee fully endorses Navy's conclusion that an additional safety net must be built into the system to respond adequately to the complex conditions that prevail today. The Navy has in fact moved quickly to establish the 008 Operation Lifeguard to provide a service-wide alternative channel for any person in the Navy to seek assistance for any aspect of sexual harassment. Further details are in Chapter 10 of this Report. The Committee notes that a review of the Divisional System is one of the recommendations in the report of the consultant on the Good Working Relations project. The Committee believes that what is required is more than just a "rejigging".¹¹⁶

6.165 **Recommendation Eighteen:** The Committee recommends that a full-scale review of the Divisional System be carried out. The review should include in particular:

- the effectiveness of the Divisional System in meeting the needs of individuals and in meeting the needs of the organisation;
- the impact of the 008 number on the operation of the Divisional System;

114 The Navy is by no means unique in this regard. The difficulty of dealing with sexual harassment through the normal management hierarchy, particularly if the harasser is the immediate supervisor, is common to many organisations. See, for example, submission 2.

115 VADM I. MacDougall, Committee Hansard, p. 1294.

116 *ibid.*, p. 737.

- the impact of the introduction of Navy Quality Management on the operation of the Divisional System; and
- the adequacy of the training of Divisional Officers and Divisional Chiefs for their Divisional duties

(8) Management style

6.166 The Committee considers that it is necessary for the Navy to examine carefully the management style used by all its personnel, from initial training, through to the most senior management. The highly authoritarian, inflexible and rigidly hierarchical approach adopted by Chief Petty Officer Broad was clearly in conflict with the needs and circumstances at the time on board the SWAN.

6.167 The BOI Report acknowledges that:

*"CPO Broad is in many ways a product of his environment."*¹¹⁷

The Committee takes this to mean in relation to his approach to authority and management, as well as in his attitude to women in the Navy.

6.168 In evidence to the Committee, Chief Petty Officer Broad, outlined his own background:

*"My approach was based upon my strict upbringing and background from boarding school, through 13 years in the Royal Navy and without any management training prior to promotion to Chief Petty Officer in the RAN. I am a product of the old school of a tough senior sailor who was equally hard on male and female subordinates."*¹¹⁸

The Navy confirmed that Chief Petty Officer Broad had undergone no training for his Divisional duties.

6.169 The Committee is aware that the Navy has begun to address fundamental issues of management through its Naval Quality Management (NQM) program. The

117 BOI Report, p. 67.

118 Letter dated 24 January 1994 from CPO Broad to Committee Secretary.

Committee was also pleased to note the emphasis Commodore Barrie placed on an open dialogue and open channels of communication as basic requirements if Navy is to meet the demands of rapid and massive change.¹¹⁹

6.170 The Committee is not convinced, however, that the Navy has adequately addressed all the issues of leadership and people management skills to meet the multiple challenges and increasingly complex environment facing the Navy today. Part of that challenge is the integration of women into the Service.

6.171 More work needs to be done to resolve the tensions between the authoritarian approach that typified the Services in ages past¹²⁰ and the more participatory and flexible approach seen by management experts as the only way to achieve the level of motivation, the creativity and the sense of teamwork that is demanded today. A more open, more participatory and consultative management approach would assist all parties, men and women, to deal with the particular problems that the integration of women has thrown up. How to integrate this more open style of management with an effective chain of command is a challenge the Navy and the other Services, cannot sidestep or ignore.

6.172 The Committee considers that better communication between all levels of management in the Navy about issues such as these is an effective means of allaying fears and uncertainties about the changes, including the integration of women taking place in the organisation. The pace of change is unlikely to subside in the foreseeable future.

6.173 Recommendation Nineteen: The Committee recommends that the potential for tensions between the principles underlying the chain of command and the more participatory problem solving principles of Navy Quality Management be openly and more fully addressed at every level of management training in the Navy.

119 CDRE C Barrie, Committee Hansard, p. 578.

120 It was, of course, a common approach in many, if not most other large organisations.

Defence Instructions on Sexual Harassment

6.174 The Committee notes the very substantial improvement in the guidance now being revised for all ADF personnel, Defence Instruction on Unacceptable Sexual Behaviour by Members of the Australian Defence Forces (DI(G)PERS 35-3).

6.175 The Committee endorses the broad policy framework that the ADF is developing concerning standards of sexual behaviour in the ADF. The statement of policy, rightly in the Committee's view, sets sexual behaviour within a broad context. The current draft statement of policy reads as follows:

"Service in the ADF is concerned ultimately with maximising operational effectiveness. This goal requires the development of group cohesion, respect for command relationships, the willing acceptance of individual and collective discipline and the maintenance of morale. Accordingly, Service members must refrain from behaviour which:

- a. undermines a member's ability to contribute to the mutual dependence and collective discipline of the group; or*
- b. is contrary to, or inconsistent with, the standards of professional and personal conduct required to achieve such operational effectiveness.*

The ADF is concerned with the sexual behaviour of members in terms of this obligation. Sexual behaviour which is inconsistent with this obligation is termed unacceptable sexual behaviour, that is any sexual behaviour, activity or attitude that places operational efficiency or effectiveness at risk.

The leadership of the ADF neither condones nor accepts unacceptable sexual behaviour. Incidents will normally warrant disciplinary and/or administrative action where such behaviour:

- a. is prejudicial, or likely to be prejudicial, to group cohesion or command relationships*

by affecting the health or safety of the individual or the group;

- b. takes advantage or threatens the person or personal integrity of subordinate or underage persons;*
- c. brings or is likely to bring discredit on the ADF; or*
- d. is unlawful under either civil, criminal or military law."*

6.176 The policy seeks to encompass fraternisation as well as sexual offences and sexual harassment, and applies to behaviour between and towards homosexual personnel, as well as to heterosexual personnel.

6.177 In addition to identifying behaviours such as those listed in Chapter 2 of this report, the guidelines give specific instances of gender harassment that could constitute sexual harassment, for example:

- " . blaming women for pregnancy;*
- . derogatory references to female physiological functions;*
- . unjustified inequitable treatment of males and females; and*
- . acts of aggression, intimidation, hostility, rudeness, name calling or other types of abusive conduct directed towards one gender."*

6.178 The Committee acknowledges the need, in the context of obligations under the Sex Discrimination Act and in the light of the prevalence of sexual harassment, to identify behaviours listed in paragraph 6.177 above as unacceptable. However, the Committee considers that abusive behaviour of the kind outlined is just as unacceptable between members of the same sex as between members of the opposite sex.

6.179 Recommendation Twenty: The Committee recommends that:

- the behaviour designated as gender harassment in para 4d of Annex A to DI(G) PERS 35-3 be clearly identified as unacceptable behaviour between all personnel, including behaviour between members of the same gender; and
- the example in 4b of Annex A to DI(G) PERS 35-3 be reformulated to include derogatory references to both female and male physiological functions.

6.180 The Committee endorses the emphasis that the ADF draft DI (G) PERS 35-3 gives to seeking resolution of incidents directly between individuals whenever possible, in recognition of the reality *"that individual perceptions will differ and there may be a fine line requiring the exercise of common sense, maturity and clear judgement."*¹²¹

6.181 Recommendation Twenty-One: The Committee recommends that more emphasis be given in the draft DI (G) PERS 35-3 to:

- the value of seeking to resolve concerns about sexual harassment by the individuals involved and at an informal level; and
- the support mechanisms available to the complainant. The guidance should make explicit reference to all the 008 numbers in the section headed *"Avenues of Complaint"*. The guidance should also be regularly supplemented by the service-wide circulation of up-to-date lists of Sexual Harassment Contact officers.

121 Draft DI (G) PERS 35-3.

Unsubstantiated Allegations and False Allegations

6.182 The Sex Discrimination Commissioner states that:

*"There is no corporate knowledge within the HR & EO Commission of any sexual harassment matter having been declined on the basis that it was considered vexatious. The fear of vexatious complaints far outweighs the likelihood of occurrence."*¹²²

6.183 It is the Sex Discrimination Commissioner's view that *"complainants have little to gain from making false accusations"*.¹²³ Of the nineteen sexual harassment cases that have gone to public hearing, three were dismissed as unsubstantiated.¹²⁴ Of the total of 690 complaints closed under the Sex Discrimination Act during 1992-93, 126 were withdrawn. It is not known how many of these related to sexual harassment or what the reasons were for the withdrawal.

6.184 However, as noted previously, there is concern amongst many supervisors that they may be vulnerable to false allegations of sexual harassment. The uncertainties generated by the present definition of sexual harassment make it particularly important to ensure that the guidelines are quite clear and explicit about the procedures for dealing with false and vexatious allegations of sexual harassment. This is important not because many false allegations are expected, but because there is a perception held by many that it is easy to make false allegations and there is no protection against such allegations.¹²⁵ It is important to address this anxiety as effectively as possible, not least to ensure that the integration of women is not hampered by misperceptions that women are unfairly getting away with unjustified complaints and/or the less pleasant tasks because of supervisor fears of being charged with sexual harassment.

122 Ms S. Walpole, submission and appendix 7, Committee Hansard, pp. 60-61, 99-104. See also Chapter one of this Report.

123 *ibid.*

124 Ms S. Walpole, submission, Committee Hansard, p. 46: *"Where a complaint is unsubstantiated, the Commissioner may cease the inquiry (S52(2)). The Commissioner is required to inform the complainant of this decision. (S.52(3)). The complainant then has the right to ask that the complaint be referred for a review of the decision by the President of the Commission (S52(4)), S52A"*.

125 Ms S. Walpole, submission, Committee Hansard, p. 60; see also Chapter 1 of this Report.

6.185 One of the most effective ways to deal with both the reality that there are some false allegations and the damaging perception that they are a big problem is to spell out the steps that can be taken in such cases. In this regard the Sex Discrimination Commissioners guidelines are disappointingly inadequate.¹²⁶ It is clear that formal avenues of redress are very limited.

6.186 Section 111 of the Sex Discrimination Act protects anyone who has lodged a complaint of sexual harassment with the Human Rights and Equal Opportunity Commission from civil action. It also protects anyone who has made a submission, given evidence and information or provided documents to the Commission.¹²⁷

6.187 The Committee received one submission advising it of a claim for compensation from the Navy, following a not guilty verdict by a court martial. The Committee was also informed of a complaint received by the Defence Force Ombudsman from an Air Force Corporal, who was found not guilty of three counts of rape. He complained that the Service Police had misled the State Police about the evidence leading to the rape charges. A Board of Inquiry into the matter criticised the conduct of both the RAAF Police and the complainant. The Ombudsman states that:

*"Although rape was not proven there was some evidence of his having taken advantage of his position of authority to obtain sexual favours."*¹²⁸

6.188 In the case of criminal proceedings, such as sexual assault, where the defendant is acquitted, the Attorney-General's Department submission says the following:

"Courts are reluctant to allow people to sue in such circumstances. It is considered to be in the public interest that members of the public feel free to report possible crimes to the relevant authorities, and that those

126 HREOC, 1993, *Eliminating Sexual Harassment from the Workplace: A Training Package for Managers and Supervisors*, p. 27.

127 Section 111(2) of the Sex Discrimination Act states that: "(2) Where: (a) a complaint has been made to the Commission; or (b) a submission has been made, a document or information has been furnished, or evidence has been given, to the Commission or the Commissioner; a person is not liable to an action, suit or other proceeding in respect of loss, damage or injury of any kind suffered by another person by reason only that the complaint or submission was made, the document or information was furnished or the evidence was given.

128 Ms P.S. Smith, submission, p. 4.

authorities are free to prosecute suspected criminals, without having to fear possible civil liability for doing so. Further, the courts consider that completed criminal litigation should be final and not subject to reopening in the civil courts.

Another difficulty that an acquitted defendant has in seeking to sue is that statements by witnesses and by counsel in court (and in courts martial) are covered by absolute privilege and cannot be used against them in later civil proceedings.

Nevertheless, there are three possible actions that acquitted defendants can take to seek compensation for the damage they have suffered. They can use the prosecuting authorities in the tort of malicious prosecution. This action is difficult to establish as the defendant must show that the prosecutor both had no reasonable and probable cause to prosecute the plaintiff and was either motivated by malice or had, at least, a primary purpose other than that of carrying the law into effect. The plaintiff must also demonstrate that the proceedings caused loss or injury, being either a pecuniary loss, damage to reputation, or imprisonment or the threat of imprisonment. It is theoretically possible that this action could be used against a complainant but the plaintiff would have to show that the complainant not only made the allegation but was instrumental in instituting the proceedings. It is an open question whether this action could be used following an acquittal in a court martial.

The second possible action is for the tort of abuse of process. This action might lie against the prosecuting authority but not against the complainant. Here the plaintiff must show that the defendant attempted to use the legal process of a court to achieve some improper purpose or in pursuit of some ulterior motive. In addition, there must have been some overt act or threat, distinct from the proceedings themselves, in furtherance of the improper purpose. Again, such an action is very difficult to establish and is rarely used. It is doubtful whether this action could be used following a court martial as the tort is based on abuse of the process of a court.

The final possible action, against the complainant, is in defamation. A major difficulty for a plaintiff suing for defamation following either criminal or court martial proceedings is that, as mentioned above, statements made to the court or court martial are covered by absolute privilege. Further, absolute privilege is not confined to statements made in the proceedings themselves but extends to all preparatory steps taken with a view to judicial proceedings. There is authority to suggest this privilege extends to complaints addressed to the proper authority for initiating disciplinary proceedings. Certainly, if the complainant merely complained to the proper authorities then the matter is covered by qualified privilege. However this privilege does not apply if the person was motivated by malice or knew the complaint to be false. Nor does it apply if the complaint was made to the wrong authorities or was repeated to others. Such an action could lie, given the right circumstances, following a court martial.

Thus of the three relevant possible actions, probably two can be used following a court martial. In any case, because all three of these actions are difficult to establish, whether a civilian or military proceedings was involved is likely to make little difference."¹²⁹

6.189 In the Committee's view there is a need to give consideration to procedures in the Defence Force short of civil court action to deal with allegations of sexual harassment, other than sexual assault, which, after a fair and thorough investigation are determined to be patently unfounded or malicious. The procedures for false allegations should provide for conciliation which leads to an appropriate outcome for the person against whom such an allegation has been made. This could include compensation or disciplinary action against the person determined to have made a patently unfounded or malicious allegation.

6.190 The Committee acknowledges that complaints may be made about sexual harassment and/or unacceptable sexual behaviour which are not found to be substantiated when legal action is taken upon them. This can happen for a number of reasons which may have nothing to do with whether the allegation was in fact true or false. The result is usually that the complaint is not upheld. The compensation or disciplinary action referred to in paragraph 6.189 and the following recommendations

129 Attorney-Generals Department letter, dated 15 June 1994.

would not be appropriate in the majority of unsuccessful complaints which fail for reasons connected only with the legal processes involved.

6.191 However, in a small minority of cases, complaints may be pursued for motives of malice or mischievousness. When these motives are apparent and the fact finder concerned with the resolution of the dispute finds no basis for the original allegations of sexual harassment, there can be a resultant undermining of discipline and/or morale. Paragraph 19 of DI(G) PERS 35-3 currently requires administrative action to be taken. It fails to provide any guidance as to what steps should be taken to ascertain that an allegation is "false and malicious, vexatious or mischievous" nor as to what the possible outcomes should be. In particular, some attention needs to be given to a means to repair the damage such allegations can do to the subject of the complaint.

6.192 Recommendation Twenty Two: The Committee recommends that the DI (G) PERS 35-3 be more detailed and specific in the guidance it gives on false allegations of sexual offences and sexual harassment. In particular the instruction should outline the procedures that are to be followed and the possible outcomes in the event that a false, malicious, vexatious or patently unfounded allegation is made.

CHAPTER 7

DISCIPLINARY AND ADMINISTRATIVE ACTION TAKEN

TERMS OF REFERENCE 1(e) and 1(f)

This Chapter examines whether the disciplinary and administrative action taken against persons named in the Board of Inquiry Report was sufficient and appropriate and relates this action to the recommendations of the Board.

ADF mechanisms for maintaining good order and discipline

7.1 The Defence Force has two mechanisms for maintaining good order and discipline:

- "*disciplinary action*" under the Defence Force Disciplinary Act 1982 (DFDA); and
- "*administrative action*."

7.2 The DFDA provides a comprehensive body of law which applies to offences for which service personnel may be tried by a service tribunal. Such offences include specific service offences defined in the DFDA and "*Territory offences*", as defined by section 3. "*Territory offences*" include offences against other Commonwealth laws and criminal offences which exist in the law of the Jervis Bay Territory¹. Under section 63 of the DFDA, certain offences committed in Australia may only be dealt with by a service tribunal with the consent of the Director of Public Prosecutions.

7.3 Administrative action, which includes censures, may flow from other statutory provisions or result from a breach of policy directives.² It does not bar the subsequent trial by a service tribunal under the DFDA.

1 Paragraph (b) of the definition of '*Territory offence*' in section 3 refers to offences punishable under the Crimes Act 1900 of the State of New South Wales in its application to the Jervis Bay Territory. This is in fact the Crimes Act 1900 of the Australian Capital Territory, presently applying in the Jervis Bay Territory but subject to the Commonwealth's power to make Ordinances for that Territory which can repeal or amend any part of the ACT law as it applies to the Jervis Bay Territory.

2 Brief provided by Attorney-General's Department.

Courts Martial

7.4 Courts martial are established under the DFDA as part of a hierarchy of ad hoc tribunals to try offences under that Act. They are conducted according to the standards and safeguards of Australian criminal law.³ These apply the "*beyond reasonable doubt*" standard of proof to prosecutions for service offences and, although not criminal courts, can sentence a person to a period of detention amongst other penalties.

Censures

7.5 Defence Instruction DI(N) ADMIN 35-1 describes a censure in the following terms:⁴

"An administrative censure is a written record of the fact that an officer's conduct or behaviour has fallen short of that to be expected of an officer of his/her seniority and experience in the Service. It is not a punishment..."

The effect of censure on an officer's future employment and promotion will depend entirely on the circumstances. Conduct or behaviour of a less serious nature may well not have an effect after a short period of time and the censure will act as a record of what has happened in the past...the effect of two censures of a similar nature could have a more serious effect.

In more serious cases, a censure may have a permanent effect on future employment if the conduct or behaviour indicates unsuitability for certain postings.

...a censure...will be taken into account by the Selection Board with all the other attributes of the officer...a censure does not in itself have the effect of precluding an officer from being considered for promotion."⁵

3 VADM Taylor, Committee Hansard. p. 1249. See also Chapter 8 of this Report for further comment on courts martial.

4 Defence Instruction (Navy) Administrative 35-1.

5 Defence Instruction (Navy) Administrative 35-1.

7.6 The severity of a censure is determined by the rank of the person giving the censure. In the Navy this ranges from a Commanding Officer's logging (the mildest censure) through to censure by the "Administrative Authority" or the Chief of Naval Staff (the most severe).

7.7 In evidence to the Committee Vice-Admiral MacDougall confirmed that a censure does not necessarily spell the end of a person's career in the Navy. However he also confirmed that:

" It does bring them very much under the microscope each time due process of review for promotion arrives. There can be financial penalty if there are delays." ⁶

7.8 The Navy confirmed to the Committee that while all copies of the milder form of censure, a Commanding Officer's logging, are usually destroyed when the officer leaves the ship, a censure at the Chief of Naval Staff level stays *"on their service record for the rest of their career"*.⁷

Performance Appraisals

7.9 All RAN personnel routinely undergo an annual performance appraisal which covers technical knowledge, work performance, leadership ability, suitability for service life, potential and conduct. For officers this is called the PR5 and for enlisted personnel it is a PERS 1. Personnel eligible for promotion are assessed on a six-monthly basis.

7.10 In rating an individual's performance, these appraisals reflect if the individual was censured during the period it covers and whether he or she has taken any remedial action to address the reason for the censure.

6 VADM MacDougall, Committee Hansard p. 1293.

7 Enclosure 6 to letter from CAPT B. Robertson, to Committee Secretary, dated 11 May 1994.

Quarterly Report

7.11 Personnel who have been diagnosed as having a medical condition or have been warned about their behaviour can be placed on a quarterly report. Although not a punishment in itself, being placed on a quarterly report has the effect of highlighting to both the individual and his/her supervisors that that person is under scrutiny. A PR5 or PERS 1 is prepared when an individual is placed on quarterly report and sets out the reasons why this action has been taken and what aspect of the individual's performance needs to be addressed.

Administrative and Disciplinary action taken

7.12 Details of the recommendations by the BOI with regard to individual personnel involved in the SWAN incident are in Chapters 5 and 6 of this Report. Ultimately, the following action against them was taken.

7.13 The Maritime Commander issued Notices to Show Cause for Censure to Captain Mole, Lieutenant Commander Spruce and Lieutenant Bartlett. He issued Chief Petty Officer Broad with a Notice to Show Cause for Discharge.

7.14 The Chief of Naval Staff reviewed the Maritime Commander's recommendations and the following action was taken:

- Captain D. Mole was censured by the Chief of Naval Staff *"for failing to take adequate steps to keep [him]self sufficiently informed of events occurring within [his] command."*⁸

8 CAPT D. Mole was granted the acting higher rank of Captain on his posting as Commander Australian Submarine Squadron and will revert to his substantive rank of Commander at the completion of this posting unless he is promoted in the meantime. CAPT Mole will be considered against all other eligible Commanders for promotion to Captain. He was a Commander when he was the Commanding Officer of HMAS SWAN.

- Lieutenant Commander M.J. Spruce was censured by the Chief of Naval Staff for *"failing to set and enforce appropriate behavioural standards among HMAS SWAN officers both in the Wardroom and ashore."*⁹
- Lieutenant P.D.J. Bartlett was censured by the Chief of Naval Staff for *"allowing [his] behaviour in the wardroom HMAS SWAN to fall below an acceptable standard with respect to [his] conduct towards fellow officers. In particular, [his] persistent use of coarse and inappropriate language of an explicit sexual nature in the presence of female officers was totally unacceptable."*¹⁰
- Chief Petty Officer K.C. Broad was censured by the Chief of Naval Staff for *"[his] unacceptable behaviour towards female subordinates whilst serving in HMAS SWAN in 1992. Specifically [he] used derogatory and sex-based terms in relation to them such as 'SWODS' (sailors without dicks), 'sluts' 'bitches, 'half wit sisters', 'dimwits', 'numbskulls' and 'idiots'. [He] also created a hostile working environment for the female junior sailors in [his] division contrary to the provisions of DI(N) PERS 16-5 by not discouraging other personnel from using derogatory terms in relation to them."*¹¹ The Chief of Naval Staff directed that Chief Petty Officer Broad undergo counselling to improve his interpersonal relationship skills with subordinates.¹²

9 LCDR Spruce was subsequently placed on quarterly report and relieved as Executive Officer (XO) on 7 May 1993.

10 Censure by VADM I. MacDougall, dated 30 July 1993.

11 Censure by VADM I. MacDougall, dated 30 July 1993.

12 CPO Broad has advised the Committee that he is *"not even eligible to be considered for promotion for 6 years and may only be deployed to sea with the express permission of ACPERS-N"*; letter dated 24 January 1994.

The censure of Captain Mole

7.15 In his submission of 17 November 1993 Captain Mole raises several issues with the Committee. His concerns were further elaborated during in camera hearings held by the Committee on 10 March 1994. The evidence in relation to Captain Mole considered by the Committee includes his legal submission of 31 January 1994, his supplementary submission of 16 March and his response of 31 January 1994 to possibly adverse comment that the Committee made available to him for comment on 11 and 21 January 1994.

7.16 In his evidence, Captain Mole raises two matters of particular concern to him arising from the BOI:

- the conduct of the investigation by the Board of Inquiry as it pertains to Captain Mole; and
- actions affecting Captain Mole taken by Navy after the Board of Inquiry.

A further matter of concern Captain Mole has brought to the attention of the Committee is the ambiguity in the statement made to the media on 9 September 1993 from which an inference that Captain Mole was himself guilty of sexual harassment could be drawn, an inference which, it is clear, was never intended by the BOI or by the Chief of Naval Staff.¹³

7.17 It is also to be noted that in answer to Captain Mole's request that his censure be reviewed, the Chief of Naval Staff responded that the matter would be delayed.¹⁴

13 The media was told that: *"the Board found that sexually explicit and offensive language had been used or condoned by those officers and one senior sailor."* This drew the following response from CAPT Mole in his request that CNS review his censure: *"On receiving the censure from you, my first reaction was that I would resign from the service. However, as the censure was an in-house and in-confidence affair, I contemplated living with it. Now I find that my Staff-In-Confidence censure has been advertised nationwide throughout the media. Not only have I been publicly humiliated but in some cases I have been slandered as the media reporting implies I have been censured for sexual harassment. My family is finding this to be an extremely traumatic experience and they do not deserve this."*

14 See Enclosures to Captain Mole's supplementary submission dated 16 March 1994 and para 7.221 of this Report.

7.18 The following discussion of these matters addresses aspects of two of the Terms of Reference of this Committee in particular, namely:

- 1(e) which requires the Committee to inquire *inter alia* into the appropriateness of the recommendations of the Board; and
- 1(f) which requires the Committee to examine whether the subsequent disciplinary and administrative action taken against persons named in the Board of Inquiry Report was sufficient and appropriate.

7.19 The Committee's comments on the procedures adopted by the BOI and their impact on Captain Mole are in Chapter 5 of this Report.

How the decision to censure was reached

7.20 The BOI recommended that:

*"Captain Mole be advised by the Maritime Commander that he did not keep himself sufficiently informed of certain events occurring within his command, particularly with respect to gender related issues and the state of morale within the embarked RANTEWSS team."*¹⁵

7.21 It should be noted that the Board did not recommend that Captain Mole be censured.

7.22 After the Board reported, the Maritime Commander, on 13 May 1993, issued Captain Mole with a Notice of Cause for Censure. Captain Mole provided a reply to the Notice of Cause for Censure on 6 July 1993. On 30 July 1993, Captain Mole was censured by the Chief of Naval Staff. In a press conference on 9 September 1993, the Chief of Naval Staff referred to Captain Mole by name as one of the officers censured as a result of events on the SWAN.

15 BOI Report, p. 99.

7.23 It is evident from the documentation provided by the Navy to the Committee that there was extensive debate within the senior echelons of the Navy as to the most appropriate measures to take in relation to Captain Mole. Of particular interest for the light they throw on the deliberations and on the nature of the decision-making process are:

- a minute AF 6/2/396 of 25 June from the Maritime Commander to the Deputy Chief of Naval Staff (DCNS(NO)) commenting on the BOI Report;
- the Notice of Cause for Censure sent by the Maritime Commander to Captain Mole on 13 May 1993;
- a minute AF 6/2/396 of 12 July 1993 from the Maritime Commander to the Chief of Naval Staff commenting on Captain Mole's response to the Notice of Cause for Censure;
- a minute DNLS 543/93 of 16 July 1993 from the Director of Naval Legal Services (DNLS) to Assistant Chief of Personnel-Navy (ACPERS-N) and the Chief of Naval Staff, commenting on the Maritime Commander's minute of 12 July; and
- a minute ACPERS-N705/93 of 20 July from Assistant Chief of Personnel-Navy to the Chief of Naval Staff, commenting on all the above;
- a submission from the Chief of Naval Staff to the Minister dated 10 August 1993.

7.24 Several important points emerge from this documentation, and the subsequent evidence put to the Committee by Navy at public hearings and by Rear-Admiral Walls in a separate submission.

Content of the Censure

7.25 The Maritime Commander's reasons for his proposed censure of Captain Mole were:

- "(a) failing to take adequate steps to keep yourself sufficiently informed of events within your command;*
- (b) failing to take adequate steps to prepare your ship's company and officers for arrival of the first females to serve in SWAN; and*
- (c) failing to take active and preventative steps in relation to unacceptable behaviour even when it was brought to your notice." ¹⁶*

The Maritime Commander's contemplated censure was not proceeded with.

7.26 Following Captain Mole's response, the Chief of Naval Staff called for all the papers and advised that he wished *"to review any proposed administrative actions"*. ¹⁷

7.27 Having considered Captain Mole's response, the Maritime Commander recommended to the Chief of Naval Staff that:

- the censure be given by the Chief of Naval Staff; and
- the terms of the censure remain as originally proposed by the Maritime Commander, with the additional comment that: *"while appropriate action was taken in relation to the LEUT WHEAT/LEUT BARTLETT matter, it was a grave error of judgement not to make enquiries of the RANTEWSS Team following the incident."* ¹⁸

16 Notice of Cause for Censure dated 13 May 1994.

17 RADM Wall's minute AF 6/2/396 of 12 July to CNS.

18 *ibid.*

7.28 In making this recommendation, the Maritime Commander also states that:

*"the option of undertaking proceedings with a view to the court martial of CAPT MOLE should not be overlooked."*¹⁹

7.29 It was the Maritime Commander's view that:

*"trial by court martial would establish for once and all the seriousness of all the issues involved for all members of the RAN having command responsibility."*²⁰

The Maritime Commander further expresses the view that a court martial *"is probably the most satisfactory way of dealing with matters concerning Captain Mole"*.²¹ He cautions, however, that:

*"there may well be significant difficulties in framing charges of sufficient substance to warrant a court martial."*²²

7.30 The Committee finds the consideration given to court martialling Captain Mole illuminating in the light it throws on the perception that the severe punishment of being subjected to a court martial would be the most effective way to send a signal to the rest of the Navy.

7.31 In formulating his recommendation to the Chief of Naval Staff, the Maritime Commander raises the question of corporate responsibility. He notes that:

"Whether CAPT MOLE is deserving of censure is dependent on a number of factors, not the least of which is the extent of the RAN's corporate responsibility for not providing more guidance on the integration of women at the sea. It is easy with hindsight to say what

19 *ibid.*

20 *ibid.*

21 *ibid.*

22 *ibid.*

*should have been done, but much harder to judge actions on their merits at the time they were taken."*²³

No further mention of corporate responsibility is made.

7.32 The Chief of Naval Staff informed Captain Mole that he had incurred the Chief of Naval Staff's displeasure for:

"failing to take adequate steps to keep yourself sufficiently informed of events within your command of HMAS SWAN. Specifically, you failed to:

- (a) sufficiently recognise that the proposal to return Leading Seaman CONNOLLY (sic) to Australia from Hong Kong, because of her dissatisfaction, indicated a morale problem with the female Electronic Warfare sailors on board which required further investigation and careful monitoring;*
- (b) you failed to sufficiently recognise the shortcomings of the RANTEWSS divisional system when dealing with the complaint by Leading Seaman FLANNERY concerning her PERS1 report; and*
- (c) you failed to keep yourself adequately informed of the unacceptable behaviour of some of your officers."*²⁴

7.33 The Chief of Naval Staff told the Committee that he *"decided to lift it to a higher level of censure."*²⁵ The Director of Navy Legal Service sets out the relationship between the Maritime Commander's Notice to Show Cause and the final censure by the Chief of Naval Staff as follows:

"the Maritime Commander has invited A/CAPT Mole to show cause on three separate grounds why he should not be censured. CNS, in having regard to A/CAPT Mole's response, determined that two of the proposed

23 *ibid.*

24 CNS Censure of CAPT D. Mole, dated 30 July 1993, Enclosure 9 to Letter from CAPT B. Robertson to Committee Secretary, dated 14 March 1994.

25 VADM I. MacDougall, *Committee Hearing*, p. 1282.

*grounds for censure should be removed and the remaining ground was particularised to reflect those matters set out in the notice to show cause."*²⁶

7.34 The Committee does not question the right of the convening authority (in this case the Maritime Commander) to use the outcome and recommendations of a Board of Inquiry as part only of any consideration of the action he or she decides to take. Nor does the Committee question the right of the Chief of the Naval Staff to assume responsibility at his level for any ensuing action. The Committee does, however, question several aspects of the process and content of the censure of Captain Mole.

7.35 The Committee has concluded that there are differences between the substance of the recommendation by the Board, the reasons for censure in the Maritime Commander's Notice of Cause for Censure and the final terms of censure as issued by the Chief of Naval Staff.

7.36 Technically, the Maritime Commander and the Chief of Naval Staff fulfilled minimum requirements, although it is noted that Assistant Chief of Personnel-Navy expected that a change in the terms of the censure would mean that another Notice of Cause for Censure would be issued.²⁷

7.37 Having carefully compared the Notice of Cause for Censure and the terms of the censure, the Committee considers that the differences are of sufficient magnitude to raise questions about the failure to give Captain Mole an opportunity to provide reasons why he should not be censured on the grounds that ultimately constituted the censure.

7.38 It is not clear from the terms of the final censure exactly what is being referred to in paragraph (c) of the censure, ie that Captain Mole:

"failed to keep [himself] adequately informed of the unacceptable behaviour of some of [his] officers."

26 Minute N93/25604 from CAPT T.B. Stodulka to ACPERS-N, dated 24 March 1994. (*emphasis in final phrase added*).

27 ACPERS-N minute, 705/93 of 20 July 1993, p. 2.

This charge is open to several interpretations.

7.39 In referring to "*unacceptable behaviour*", it is not clear for instance, whether the Chief of Naval Staff is referring only to the behaviour of Chief Petty Officer Broad towards the female sailors, or whether he is also referring to:

- the alleged failure by the wardroom to integrate Dr Wheat;
- Dr Wheat's allegations of sexual harassment; and
- the allegation that Dr Wheat was sent to "*coventry*" or victimised following the "Bartlett incident".

7.40 The uncertainty arises in part because of the range of issues, including those noted above, raised in the Maritime Commander's Notice of Cause for Censure and his minute of 12 July commenting on Captain Mole's response to the Maritime Commander's Notice of Cause for Censure.

7.41 The very wide interpretation of the terms "*sexual harassment*" and "*unacceptable sexual behaviour*" used by the BOI further compounds the difficulty of understanding clearly which behaviours are referred to in the censure.²⁸

7.42 The Committee's comments on each of these aspects follows:

Integration of Dr Wheat into the wardroom

7.43 The Maritime Commander put to Captain Mole in his Notice of Cause for Censure that Captain Mole:

*"did not take adequate measures to integrate LEUT WHEAT RANR into the organisation of SWAN"*²⁹

28 The BOI interpretation of the term sexual harassment is given in Chapter 5 of this Report.

29 Maritime Commander, Notice of Cause for Censure to CAPT D. Mole, dated 13 May 1993.

7.44 From the evidence at the BOI, it seems that Dr Wheat felt comfortable in the company of the Coxswain and the Petty Officer Medic, who appear to have been regarded by everyone as very approachable.³⁰ They, in turn, saw her as "happy-go-lucky", "bubbly" and "easy to talk to"³¹ and "fairly happy, bright".³²

7.45 However the BOI Report speaks of "alienation" between Dr Wheat and the other officers and concludes that:

*"far greater efforts could have been made by the wardroom of HMAS SWAN to integrate LEUT WHEAT into the wardroom. The whole of the wardroom must share some responsibility for their failure to do so."*³³

7.46 The Committee notes that the BOI Report also concluded that "LEUT WHEAT did not express open hostility to the rest of the wardroom," and that "she was often wrongly assumed to be an intolerant complainer."³⁴

7.47 The Committee accepts these conclusions. However the Committee considers that while the BOI Report is rightly critical of the behaviour of the wardroom as a whole, and of the inadequate preparation of Dr Wheat for life at sea, the Report does not sufficiently canvass the contribution that Dr Wheat's approach made to the overall situation.

30 The Coxswain and the Petty Officer Medic are not members of the wardroom.

31 CPOCXN D.A. McKay, Court Martial Transcript, p. 369.

32 POMED R. J. Wells, Court Martial Transcript, p. 449.

33 BOI Report, p. 48. It should be noted that it is standard practice for the Captain of a naval vessel to visit the wardroom only at the specific invitation of the wardroom. Normally the Captain dines and relaxes in his own cabin. Captain Mole only visited the SWAN wardroom occasionally. However, he also said that it was his practice to invite groups of officers to dine in his cabin and in that way he felt he kept abreast of ship life. Committee Hansard, pp. 21-23; Captain Mole's reply to Notice of Cause for Censure, dated 6 January 1993.

34 BOI Report, p. 47; BOI Transcript, p. 723.

7.48 Dr Wheat appears to have shown remarkably little initiative in finding out for herself about matters that had a direct impact on her life on board. For example, the BOI Report notes that:

"She was asked by a SBLT whether or not she had any duties other than her medical ones. She replied "I've got no idea". He suggested she look at the notice board at the top of the ladder leading to the wardroom flat, but there was no indication there that she had been assigned any auxiliary duties (T644)." ³⁵

7.49 It seems to the Committee that a question of the kind asked by the Sub-Lieutenant should have been enough to alert Dr Wheat to the possibility that doctors are sometimes assigned other duties. At the very least a person in her position could reasonably have been expected to make at least informal inquiries of more senior personnel about the possibility that there could be such duties. There is no evidence to suggest that Dr Wheat may have made any such inquiries while on the SWAN.

7.50 Dr Wheat made many assumptions about members of the wardroom that made a significant contribution to the nature of the interpersonal interactions that eventuated. For example, she assumed that there was no point in her raising the matter of the lock on the wardroom washroom when nothing was done after the initial request.

7.51 The Committee concurs with the Board's conclusion that:

"The evidence shows LEUT Wheat demonstrated little initiative ... She made little effort to help herself." ³⁶

7.52 In her evidence to the Board Dr Wheat encapsulated her approach to getting things done, when asked why she had not chased up her initial request:

"Because once a request for something to be done has been made, that is generally as far as I expect to take it. Otherwise I would spend my whole life chasing everything up." ³⁷

35 BOI Report, p. 45.

36 *ibid.*, p. 65.

37 BOI Transcript, p. 785.

7.53 Serious consequences resulted from Dr Wheat's passive approach to life on board the SWAN. The BOI Report considers that:

"There is little doubt that many members of the wardroom came to the conclusion that she was not pulling her weight...The fact that she played a less participatory role in shipboard life is one of the reasons she was ostracised by some of the individuals in the wardroom." ³⁸

7.54 The Committee notes that there are other ways in which Dr Wheat's position can be seen. Evidence given by Sub-Lieutenant Ganter to the BOI gives an account of the situation which appears to capture the way several of the wardroom members felt:

"There was very little way to make her feel comfortable in the wardroom. When you tried to have conversations with her, you didn't get much conversation back, so whether she's shy, or whatever, I didn't get to know very much about her because she didn't interact very much with any of us and we didn't interact very much with her." ³⁹

7.55 Sub-lieutenant Miller described her as:

"fairly friendly, fairly relaxed, relatively quiet ... in the evening she'd come to the wardroom and eat a meal and watch a video, and just partake of normal life like that. She was fairly bubbly and always friendly in that respect." ⁴⁰

7.56 Lieutenant Ganter's experience appears consistent with that of Chaplain Thiem, who said in evidence to the Committee that:

"She showed little or no interest or enthusiasm in anything outside her medical duties. I tried at various times to interest her in other activities as it was evident to me that she was not enjoying shipboard life. I

38 BOI Report, p.47. See also para. 6.27 of this Report.

39 BOI Transcript, p.390.

40 SBLT M. Miller, Court Martial Transcript, p. 403.

pointed out to her that it could be enjoyable if she put in the effort, but she did not appear to want to try.

As a result of this she was something of an odd person out in the wardroom. She was inoffensive and pleasant enough but she was very hard work to talk to. She was not at all gregarious or outgoing. She had very little idea of shipboard life, what was expected of her or how to cope with it. Unfortunately, although I tried, I was not able to encourage her to learn.

On several occasions, and without trying to make a big thing out of it, I mentioned to other officers that she was new to the Navy and was obviously having problems fitting in, and asked them to be tolerant and "to give her a go." I also spoke to her Petty Officer and we discussed ways in which he could help her fit in more easily with shipboard life from a professional point of view.

I felt sorry for her and that is why it was my practice to go ashore with her in overseas ports on various occasions. Lieutenant Commander James frequently came with us - I think he also felt sorry for her. It was also the fact that the three of us were somewhat older than most of the officers and we had all known each other at HMAS CERBERUS. I did my best to help her. However, she would make no effort herself and indeed, would not allow anyone to help her."⁴¹

7.57 Dr Wheat herself confirmed that she had very little in common with many members of the wardroom, although she contests the factual basis for concluding that she had no enthusiasm for shipboard life.⁴² However, she has not brought to the Committee's notice any significant examples to counter the description given by Chaplain Thiem and other witnesses. Moreover, she implicitly accepts that there is some basis for Chaplain Thiem's perception when she draws attention to her

41 CHAP Thiem, submission, pp. 6-7.

42 BOI Transcript, pp. 791-795.

seasickness, her inadequate training and preparation for service at sea and what she describes as the hostility she felt in the wardroom.⁴³

7.58 It is also clear from the BOI Transcript that Dr Wheat's approach to matters such as her seniority was having a deleterious effect on the morale of some of the personnel on the SWAN. For example, her manner of raising the question of whether she was entitled to the privileges of a Head of Department apparently rankled with some members of the wardroom.⁴⁴ It was within her power to deal with these matters differently.

7.59 The BOI Report speaks of *"a most unfortunate element of rank closing within the wardroom against LEUT WHEAT."* The Report describes this *"defensive closing of ranks to exclude the outsider"* as an *"expression of hostility towards someone who was different."*⁴⁵

7.60 In this context of *"rank closing"* and *"ostracising"*, the Committee found the submission, and subsequent public testimony from Dr Westphalen particularly illuminating. Also of considerable interest in this regard were the submissions of two other female doctors, both of whom served on the HMAS SWAN, one before and one after Dr Wheat's deployment.⁴⁶

7.61 Surgeon-Lieutenant Commander (Dr) Neil Westphalen's submission gives a very thoughtful account and analysis of his own experience as a young male medical officer on the HMAS SWAN in June - September, 1988.

43 Letter from Minton Ellison Morris Fletcher of 3 February 1993, pp. 7-8. The Committee agrees that lack of enthusiasm or failure to make an effort by an individual does not justify unacceptable behaviour towards the individual; however, it does assist in understanding better some of the reasons for such behaviour. Understanding all the contributory factors is essential if a repetition of such circumstances is to be avoided in the future.

44 BOI Transcript, pp. 1020-1021.

45 BOI Report, p.48.

46 LCDR A. McLaren, submission; Dr C. Moore, submission. It should be noted that the Committee only learnt of these appointments of female medical officers to the SWAN very late in the inquiry.

7.62 Having read media reports of Dr Wheat's experiences, Dr Westphalen felt there were strong parallels between his experiences and those of Dr Wheat. He concluded that:

"...the apparent plethora of similarities between myself and the 1992 SWAN incident seems too close to be coincidental..." ⁴⁷

7.63 Dr Westphalen identified several factors that set doctors at sea apart from their fellow officers and can contribute to resentment towards them. This resentment can manifest itself in various ways, including harassment.

7.64 The factors identified by Dr Westphalen include *"...the perceived lack of a defined role on board"*, Dr Westphalen told the Committee that during his time on the SWAN he was *"seen as a passenger and not as a member of the crew"*.

7.65 This sense of not belonging is exacerbated by the way in which doctors usually join a ship. Dr Westphalen told the Committee that it is frequently the case that the doctor misses the:

"work-up which is a fairly intensive preparation before they go away on deployment. So the team is there, the ship is ready to go, it is all worked-up and then all of a sudden the doctor turns up at the end." ⁴⁸

7.66 Other important factors contributing to a sense of being different, privileged and therefore resented identified by Dr Westphalen in his own case were his:

- "
- a. *rank of Surgeon Lieutenant;*
 - b. *position as a Head of Department (as assumed by the senior officer of each department);*

47 Dr Westphalen, submission, Committee Hansard, p. 1105.

48 *ibid.*

- c. *greater pay level than other Lieutenants* ⁴⁹; and
- d. *greater employability outside the Navy.*" ⁵⁰

Dr Moore also draws attention to:

"... the commonly held perception that Defence Force Medical Officers were 'civilians in uniform' who were overpaid, underworked and unable to obtain employment in the civilian workplace." ⁵¹

Dr Moore conveys the impression that despite the tendency to stereotype her in this way, she succeeded, after an initial settling in period, in being well accepted:

"My response to such comments was that, although I had limited naval experience, I had worked for 6 years prior to joining the RAN and had taken a 75% reduction in income in joining." ⁵²

7.67 Dr Westphalen stresses in his submission the importance, in the Navy, of being genuinely accepted as part of the team. It is critically important for civilian doctors to realise, when they go to sea, that a navy doctor is not simply a civilian doctor wearing a navy uniform. The navy doctor is a doctor, but he or she is also a naval officer. Regrettably, despite her three years' civilian contract experience at CERBERUS, Dr Wheat appears to have either not realised, or not accepted, this requirement sufficiently to ease her acceptance into the wardroom. Evidence put to the BOI illustrates ways in which she set herself apart.⁵³

49 The Committee established that Dr Wheat's salary and service allowance during her service on the SWAN was about \$57,000. CAPT Mole, at that stage, received a salary of \$56,00 so "Lieutenant Wheat was receiving about \$1,000 a year more" (RADM Oxenbould, Committee Hansard, p. 1304).

50 Dr Westphalen, submission, Committee Hansard, p. 1102.

51 Dr C. Moore, submission, para. 5.

52 *ibid.*

53 BOI Transcript, p. 2140.

7.68 Dr Westphalen considers that another important factor contributing ultimately to the vulnerability of doctors to harassment is:

"the manner in which medical officers are posted to sea, and the preparation. While this has improved dramatically for General List (ie permanent medical officers) new reservists often still do not get much, if any preparation. This is due to time, financial, and posting constraints, in turn due to a lack of medical officers." 54

7.69 Dr Moore, who joined the RAN in August 1989 as a direct entry officer, also confirms that:

"At that time, despite direct requests for information and assistance from superiors, Medical officers were not briefed at all regarding their role at sea and were not given the opportunity to complete appropriate courses and refresher training prior to posting at sea." 55

Dr Moore's response to this situation was to arrange as much training for herself as possible in her own time and at her own expense and to request information from others, particularly females, who had previous sea experience prior to deploying.⁵⁶

7.70 Dr Westphalen told the Committee that his own harassment *"took the form of attacks on my professional capacity."* In his case:

"The nature of the harassment was of the form of derogatory comments, unceasing and unremitting,, commencing almost on arrival, on my profession. This was justified as `black humour' or `chiacking', even as the `Australian sense of humour'. This was initially accepted by me as part of the `playing-irt' process and was expected to gradually improve; however the jibes degenerated into what was felt to be personal attacks on my professional standing. I felt I was not taken seriously as a

54 Dr Westphalen, submission, Committee Hansard, pp. 1102.

55 Dr C. Moore, submission, para. 4.

56 *ibid.*

professional by several wardroom members - I was just the `scabliker', or `chancre mechanic'." 57

7.71 The harassment Dr Westphalen experienced:

"started as good natured banter, ... the idea was to try and push it and see how far they could get until something bit or something bit them back." 58

7.72 In Dr Westphalen's view what differentiated "ordinary chiacking" from harassment was the imbalance in the level of power in the latter, the ability of one person to dominate another:

"chiacking, to me means give and take ... harassment is ... all one way and there is no way of retaliating or there is no give and take." 59

7.73 The harassment, according to Dr Westphalen, could occur between male and male just as readily as between male and female. Dr Westphalen speculates that the fact that Dr Wheat was a reservist and female may have further exacerbated the situation in her case.

7.74 Dr Westphalen shed further light on the nature of the harassment he suffered in his comments on deeply ingrained aspects of navy culture:

"It ties into the tribal nature of the navy as well. You have your subcultures; you have submariners - they are a different mob from us on skimmers. There are aviators, who are a tribe of their own down at Albatross. The supply world - the passers - have their little bit. You have the seamen as well. Then you have medical, dental and all the rest of it. There is a lot of tribal interplay with that. I guess what happens sometimes is that the tribal interplay gets out of hand for some

57 Dr N. Westphalen, submission, Committee Hansard, p. 1102.

58 *ibid.*, p. 1121.

59 *ibid.*

*individuals. Some people get carried away dishing it out and other people are not in a position to dish it back."*⁶⁰

7.75 Lieutenant Commander McLaren appears to have had similar experiences, but not to the point of being distressed or offended. She told the Committee that she was made the subject of one or two practical jokes during the deployment, but they could not in any way be classed as sexual harassment as they were directed at "the doc" rather than at "the female".⁶¹

7.76 The Committee was impressed by Dr Westphalen's determination to overcome the difficulties that he initially ran into on the SWAN.⁶²

7.77 He told the Committee that he found his service subsequently on the SYDNEY quite different because he had learnt to handle the harassment effectively. It was Dr Westphalen's experience that:

*"The key is to confront the perpetrator early, in private, and tell him to back off."*⁶³

It was Dr Westphalen's advice that:

*"If anyone is saying stuff that you do not like because it is beyond the pale or whatever, you take them very quietly aside and tell them to pull their heads in. It is only a little thing but it is a bit of assertion. My experience has been that when you assert yourself they always back off."*⁶⁴

60 *ibid.*, p. 1125.

61 LCDR A. McLaren, submission, para. 4.

62 Dr Westphalen draws attention to the likelihood that, although the ship was the same, all personnel on board were probably quite different when he served on the SWAN from those on board in mid 1992. Committee Hansard, p. 1120.

63 Dr Westphalen, submission, Committee Hansard, p. 1107.

64 *ibid.*, p. 1125.

7.78 Dr Westphalen's experience that early intervention at the personal level is usually effective is consistent with that of many experts working in the field of sexual harassment.⁶⁵

7.79 The Committee considers that Dr Westphalen's account throws up a number of important issues. It demonstrates that a young male doctor in the Navy can experience serious problems of being accepted and integrated into the ship's company and be subjected to unacceptable behaviour comparable in many ways to that experienced by Dr Wheat. The Committee notes that there appear to have been no repercussions for the Commanding Officer for being unaware of the difficulties one of his officers was having at the time.⁶⁶ Nor have other Commanding Officers been castigated for the hostility that many women in the Navy have experienced during these early years of integration.

7.80 Several other witnesses before the Committee drew attention to the difficulties they had faced in being accepted and integrated into new postings. Lieutenant Susan Sly said in her submission:

*"with every new posting one can feel a certain resistance initially."*⁶⁷

7.81 Lieutenant Sly found that this initial resistance was in most cases resolved with time. Moreover, she found that over time, and once she had demonstrated her competence, the same personnel who had reservations "*became sources of great support*" and several told her at the end of the posting that "*they would be happy to have me work for them*". It was the demonstrated competence that won them over.

7.82 Dr Moore found that while she:

"encountered attitudes and comments that constituted a mild form of sexual discrimination onboard HMAS SWAN, [she] "was never subjected

65 This question is addressed also in Chapter 11 of this Report.

66 The Committee does not wish to suggest that action be taken against that Commanding Officer retrospectively. The Committee would be most surprised if other instances with strong parallels with Dr Westphalen's experience have not occurred in the past, with no action taken against the Commanding Officer.

67 LEUT S.Sly, Committee Hansard, p. 927.

*to verbal abuse, name calling, threatening behaviour or any form of sexual harassment in HMAS SWAN or in any other posting."*⁶⁸

Dr Moore refers to some initial reluctance by the Command to accept her medical judgements over that of a male Reservist Medical Officer, and comments that it was:

"difficult to judge whether [her] lack of naval experience, [her] gender or [her] medical judgment were under scrutiny."

To her, this attitude was *"irritating but not personally offensive"* and did not impede her in performing her duties.⁶⁹ Interestingly, she also notes instances where there was some discrimination in her favour:

*"Any differences in treatment that I received because of my gender were far more positive than negative."*⁷⁰

7.83 An important factor in the way the situation developed in the SWAN wardroom was Dr Wheat's poor handling of the behaviour she did not like.

Mixed and Misleading Messages

7.84 It should be noted that, on first coming on board, Dr Wheat is reported in evidence to the BOI as saying, to members of the crew, *"don't change for [the] females coming on board."*⁷¹ When asked by the BOI whether she had *"some discomfort about the swearing"* at the time the Executive Officer addressed the wardroom about swearing, Dr Wheat said no, *"the swearing was nothing".*⁷²

7.85 If Dr Wheat was suffering deep distress for the two months she was on board the SWAN, then she was simultaneously sending out a different message to those around her. So for example, her Medical Record report to 30 June which Captain

68 Dr C. Moore, submission, para. 27.

69 *ibid.*, para. 21.

70 *ibid.*, para. 24.

71 BOI Transcript, p. 188.

72 *ibid.*, pp. 723, 826.

Mole received and duly forwarded to the Fleet Medical Officer, clearly and unambiguously states:

*"To date my deployment on HMAS SWAN has been thoroughly enjoyable, in part due to the manner in which the Sickbay is managed. HMAS SWAN's Sickbay was found to be well equipped, maintained and stocked. The Sickbay staff have an excellent rapport with all the sailors and officers onboard."*⁷³

7.86 She struck Captain Mole as *"invariably cheerful"*.⁷⁴ Captain Mole said in evidence to the Committee:

*"When she rejoined SWAN after her month on board WESTRALIA she told me she was delighted to be back on board SWAN"*⁷⁵

7.87 In the Committee's view comments such as these could legitimately be taken by Captain Mole as reflecting Dr Wheat's overall satisfaction with life on board HMAS SWAN.⁷⁶

7.88 From Dr Wheat's subsequent complaints, it would appear that these comments were not an accurate account of her feelings at the time. If that is so, then it is difficult to reach any conclusion other than that Dr Wheat was sending out messages that were misleading, or at the least, unclear. It would not have been unreasonable for anyone to think that, at that point at least, the behaviour in the SWAN wardroom was acceptable to her. Dr Wheat was given the choice to stay on the WESTRALIA or move back to the SWAN. She chose to move back to the SWAN.⁷⁷

73 Medical Officer's Report prepared by Dr Wheat.

74 CAPT D. Mole, Court Martial Transcript, p. 391.

75 CAPT D. Mole, Committee Hansard, (in camera - released), p. 47.

76 The Committee does not see the assessment as being confined to the well-run sick bay, although the good management of the sick bay made an important contribution to the overall positive picture.

77 Dr Wheat rejoined the SWAN on 27 July 1992.

Dr Wheat's allegations of sexual harassment - personal responsibility

7.89 The Committee's comments on the Board's findings with regard to Dr Wheat's allegations of sexual harassment are in Chapter 6 of this Report. In that Chapter, the Committee refers to the importance of letting a person engaging in behaviour that is offensive know that this is the effect of the behaviour or seeking the assistance of an appropriate third party to do so. The following section examines this aspect in greater detail.

7.90 Although it is not a requirement under the Sex Discrimination Act for the complainant to make known to the respondent that the respondent's behaviour is offensive, most guidelines emphasise the value of dealing with sexual harassment informally and at the personal level in the first instance.⁷⁸

7.91 According to the Sex Discrimination Commissioner, the requirement to tell the respondent that behaviour is unacceptable was not included in the Sex Discrimination Act to protect particularly vulnerable categories of women. Senator Susan Ryan said at the time:

"Many of the women we are hoping to protect by this legislation are women who may be migrants and have a poor command of English or be very young, or be in an inferior position in the workforce and would not be in a position to articulate...her objection...This is often a very difficult thing to do." 79

7.92 Dr Wheat appears to have made little if any effort to deal directly with any behaviour she found offensive. Sub-lieutenant Ganter, for example, recalled only one instance where Dr Wheat told Lieutenant Bartlett that he was "*boring*". Dr Wheat confirmed in evidence to the Committee that she had responded to Lieutenant Bartlett's conversation in that way. It is not surprising then, if those around her were unclear as to what her attitude was.

7.93 Dr Wheat explained to the BOI that she did not want to be regarded as a complainer and feared that complaint by her would lead to her being ostracised.

78 See Chapter 1.

79 Ms S. Walpole, submission, Committee Hansard, p. 27.

7.94 Lieutenant Ganter told the BOI that, although she did not regard any of the behaviour in the wardroom as sexual harassment she, Ganter, had, on occasion spoken to some of the officers privately about behaviour that she was not happy about. Her approaches appear to have had mixed success. However, she reported no negative repercussions from having raised the matters with her fellow officers in this way.

7.95 The Committee notes that Lieutenant Ganter had the *"advantage"* of having experienced the rigours of the Defence Force Academy, where, by all accounts the situations confronting women in the early years were more challenging and difficult than anything that happened in the SWAN wardroom. At the same time Lieutenant Ganter was considerably junior to most of the other officers there. If sexual harassment is in part a manifestation of a power imbalance, then Lieutenant Ganter could have been more at risk of being subjected to harassment than Dr Wheat.

7.96 An observation by Dr McLaren is interesting in this regard. She says in her submission that while the two junior female officers *"were 'picked out' at times it was as midshipmen rather than as females and they did not appear to be upset by it and seemed to have fitted in well with the ship."*⁸⁰

7.97 Lieutenant Ganter's and Lieutenant Miller's approach reflects an attitude to life in the services that is both fostered and expected by the services. Major-General Gower told the Committee that the Australian Defence Force is:

*"looking for intelligent people; people who are self-confident, self-reliant and assertive."*⁸¹

7.98 Submissions to the Committee indicate that there are many instances where women in the Navy have been very successful in establishing the parameters of what they find acceptable and unacceptable.⁸² The evidence before the Committee indicates that the biggest challenge for women in the Navy has been harassment in the form of hostility and resentment, rather than sexual harassment in the sense of

80 LCDR A. McLaren, submission, para. 10.

81 MAJGEN S. Gower, Committee Hansard, p. 1581.

82 For example, CMDR E. Coles, Committee Hansard, p. 1167.

unwelcome requests for sexual favours.⁸⁴ The important point to make is that nipping sexual harassment in the bud by confronting it as early in the piece as possible and directly at the personal level if at all possible, is the most successful strategy in most cases.

7.99 There were several members in the SWAN wardroom who shared Dr Wheat's discomfort at some of the conversations. Some of the wardroom members who disapproved of Lieutenant Bartlett's behaviour, for example Lieutenant Commander James, Chaplain Thiem and Lieutenant Commander Blazeby even admonished him before Captain Mole's reprimand.

7.100 It is also clear that Dr Wheat found Captain Mole approachable in informal settings. She told the Committee, and the BOI, that they had several lengthy, informal discussions about family matters.⁸⁵ He was equally approachable in relation to work matters, as the following extract from the BOI indicates:

"In relation to CMDR Mole, were you ever discouraged by him from going to him with any particular problems?..."

I was, and it wasn't that I thought he was unapproachable, but I felt that he thought I was an idiot. That was my feeling, I am not saying it is a fact.

On occasions those occasions that you went to see him, I think you saw him fairly regularly on an informal basis, about medical matters on board ship did you not?....

Yes.

On those occasions, did he ever say or do anything which indicated to you that he was not receptive to the views that you were putting?....

84 Both Dr C. Moore and LCDR A. McLaren referred in their submissions to the presence of officers in their sea postings who objected to the presence of women on ideological grounds. However, it was their experiences that *"it was usually possible to maintain good working relationships which is a tribute to the professionalism of the officers concerned"*: LCDR A. McLaren, submission, para. 11.

85 Dr C. Wheat, Committee Hansard, pp. 228-229.

No, he always listened to my views. He didn't always agree with them, but...

Would it be fair to say that he gave whatever views you presented, reasonable consideration? Or, due consideration?...

Well, he always made decisions very quickly and very firmly and it was sometimes difficult to get him to change that, but -

In summary, perhaps, correct me - would it be fair to say that there was - he never said or did anything which indicated to you that he was not prepared to listen to views you had?...

No, that's the case. He - as I say, he was not unapproachable."⁸⁶

7.101 The Committee is not convinced that, under those circumstances, it was justified to assume that she had no one at all to turn to, to at least discuss what was bothering her. It seems to the Committee that it was open to Dr Wheat to sound out those with whom she had established some sort of rapport on how they felt about the wardroom environment without being seen to be a complainer or a whinger. There was no basis for assuming that Captain Mole could not be approached in this way.

Alleged "victimisation" of Dr Wheat after the "Bartlett incident"

7.102 As noted earlier in this Chapter (para. 7.37) it is not clear whether the Chief of Naval Staff's censure was intended to include the allegations made by Dr Wheat after she returned to Australia, that she was victimised by the members of the wardroom of the SWAN because she had complained about Lieutenant Bartlett's behaviour to Captain Mole.

7.103 The allegation of "victimisation" was included in the Notice of Cause for Censure and it was certainly an aspect of unacceptable behaviour that was canvassed by the Maritime Commander in his minute of 12 July to CNS.⁸⁷ In the minute, the Maritime Commander accepts that Dr Wheat's perception that she was victimised by

86 BOI Transcript, p.961. See also BOI Transcript, pp. 977-978.

87 Maritime Commander Minute, AF 6/2/396, dated 12 July 1993 to the Chief of Naval Staff.

"being sent to Coventry" by the majority of the wardroom members was "not unfounded". He also criticises Captain Mole for not informing her of the steps he took in relation to her complaint, nor actively seeking to determine whether the behaviour had ceased. In the Committee's view the evidence is very flimsy that Dr Wheat was victimised and "sent to Coventry" after her distress about Lieutenant Bartlett's behaviour was brought to Captain Mole's attention.

7.104 The Maritime Commander concedes that *"the term 'Coventry' was in response to a leading question"*.⁸⁸

7.105 However, the Maritime Commander goes on to quote evidence by Lieutenant WALKER as tending *"to support her interpretation that her action, in complaining about Lieutenant BARTLETT's behaviour, may have resulted in some repercussions for her"*:

LEUT SLATTERY: *When did the question of LEUT BARTLETT'S conduct in relation to LEUT WHEAT first come to your attention? Was it in the course of the deployment?*

LEUT WALKER: *LEUT BARTLETT informed, or it became general knowledge that LEUT BARTLETT had been called up by the Commanding Officer and had been told by the captain that Carol had complained about his conduct in the mess.*

LEUT SLATTERY: *And did, so far as you could see, his conduct warrant any complaint by her?*

LEUT WALKER: *Not as far as I could see...No. I'm saying the conduct of the wardroom was as I would have expected it to be in a wardroom at sea. We weren't given any specific guidance on how people were supposed to conduct themselves because there were females embarked. I think people just used their own discretion."*⁸⁹

88 *ibid.*, para. 20.

89 BOI Transcript, p. 68.

7.106 There are several comments to be made:

- the exchange quoted above does not specifically address the question of wardroom behaviour after the "*Bartlett incident*";
- there is no suggestion in Lieutenant Walker's remarks that because he saw no reason for complaint against Lieutenant Bartlett either he or any other officer therefore sent Dr Wheat to "*Coventry*";
- the reference to Lieutenant Walker's perceptions is very selective. There is every reason to suppose that several officers approved of Captain Mole's action as they themselves had cautioned Lieutenant Bartlett. They had no reason to victimise Dr Wheat for having brought the matter indirectly to a head. It must be remembered that it was not Dr Wheat who initiated the complaint. It was the Coxswain and the Executive Officer who first brought it to the Captain's attention;⁹⁰
- Dr Wheat agreed, when questioned at the BOI, that it was only the junior officers, and not the heads of department or the Executive Officer, whom she perceived as sending her to "*Conventry*";
- Dr Wheat appears to have participated in social activities after the "*Bartlett incident*". It is a matter of record that she took part in general wardroom socialising for several hours on the afternoon of 15 August. She testified that she had been invited to go out to dinner that evening.⁹¹

90 See also para. 7.91 of this Report.

91 LEUT K.W. Turner, submission. It is significant, in the Committee's view to note that the invitation had been extended by LEUT Turner, LCDR McCartney and SBLT Nash, three officers who were not generally regarded as amongst those with whom Dr Wheat had most in common. *"We were the three supply officers onboard, and as a wardroom custom we would have dinner together in each port. Lieutenant Wheat was asked as a friendly gesture as she was still having trouble settling in, and we decided that the invitation would assist."*

Lieutenant Fraser knocked on her cabin door and offered her one of his birthday chocolates later that same evening.

- Dr Wheat's own observation that "*everyone was extremely quiet and quite, it seemed, angry towards me, obviously because I'd complained about one of them*"⁹² is the only evidence in the BOI Transcript to this effect. The fact that everyone was quiet could equally be taken to reflect the realisation by everyone from the Captain's actions, that the kind of behaviour Lieutenant Bartlett had engaged in was indeed a very serious matter and one taken very seriously by their Commanding Officer. It also suggests that Captain Mole's direction to the Executive Officer to counsel two or three other officers was taking effect. Some of those who may have suspected that perhaps they had been injudicious in their choice of language or topics of conversation may, wisely, have curbed their own behaviour to ensure they did not meet with the same fate as Lieutenant Bartlett; and
- Dr Wheat does not point to any concrete evidence of anger towards her. Her perception that everyone was angry and her conclusion that the anger was the result of her complaint is a subjective observation on her part, not substantiated by other evidence.

7.107 The Maritime Commander also criticises Captain Mole for not expecting or eliciting any feedback to determine whether general behaviour had improved. In the Committee's view, Lieutenant Bartlett's report back to Captain Mole that he had apologised to Dr Wheat, and Dr Wheat's acknowledgment to Captain Mole that Lieutenant Bartlett had indeed done so, were reasonable grounds for Captain Mole to draw the conclusion that his action in relation to Lieutenant Bartlett had been effective. If, as Captain Mole asserts, Dr Wheat told him about the apology, there was no reason for Captain Mole to assume that she would not alert him to any undesirable side-effects that she may have observed.

92 BOI Transcript, p. 673.

7.108 The Committee finds credible Captain Mole's assertion that he advised Dr Wheat in general terms of the action he was proposing to take against Lieutenant Bartlett.⁹³ There is no evidence in the Transcript of the BOI to suggest otherwise. The Transcript makes it clear that Dr Wheat incorrectly drew the conclusion that Captain Mole had not reprimanded Bartlett after she left the SWAN.⁹⁴

7.109 The period of time during which the alleged "*victimisation*" occurred and the ship activities at the time are also relevant. Captain Mole notes that:

- he dealt with Bartlett on 10 or 11 August and addressed the wardroom on 11 or 12 August. Dr Wheat spent the afternoon of 15 August socialising in the wardroom;
- during the 3 or 4 days in between these two events, by her own account, Dr Wheat was seasick because of the high swell in the Bay of Bengal and retired to her cabin more than usual.⁹⁵ Captain Mole notes that it would not be surprising if other members of the crew were similarly afflicted.

7.110 Having reviewed all the evidence before it on this question, the Committee has concluded that there is no cause for complaint about the way the "*Bartlett incident*" or the after effects were handled. While there may have been no explicit direction for feedback, the subsequent discussion that the Captain had with Dr Wheat and Lieutenant Bartlett and the directions he gave to his Executive Officer were appropriate and adequate. By his prompt handling of Lieutenant Bartlett as soon as he learnt of his behaviour and the sensitive way in which he coaxed out of Dr Wheat the information about the incidents that she was unhappy about, Captain Mole clearly signalled his willingness to deal with inappropriate behaviour on the part of his officers. In the Committee's judgement there was no reason for Dr Wheat to believe that Captain Mole would not be prepared to listen to or deal with any other matters that may have been of concern to Dr Wheat.

93 CAPT Mole's response of 6 July 1993 to the Maritime Commander's Notice to Show Cause, para. 7.

94 BOI Transcript, pp. 716, 742, 755.

95 BOI Transcript, pp. 675.

Exaggeration

7.111 On a significant number of occasions Dr Wheat has shown a tendency to exaggerate her account of a situation, and under questioning, has retracted some initial claims.

7.112 In her appearance before the Board of Inquiry, when Dr Wheat was asked to explain what she meant by her statement "*three months of verbal sexual harassment*", she admitted:

*"in fact that's an exaggeration, Ma'am. I was off the ship for a month so it should really, it was from - it was over a three month period but actually for only two months."*⁹⁶

7.113 Having drawn attention to holes in the walls of her cabin and implied that it was therefore necessary to get up on to her bunk to get changed, Dr Wheat stated, on questioning, that she had not said that anybody was looking through the holes.⁹⁷ She agreed, under questioning at the BOI, that her physical accommodation in SWAN "*was not a bed of roses, but was no worse or no better than most of the other officers on board*" and that "*the male officers also had inconveniences thrust upon them.*"⁹⁸

7.114 Dr Wheat also agreed in evidence to the BOI that her description of the events at the restaurant on Lamma Island had been an exaggeration.⁹⁹

96 BOI Transcript, pp. 752-753.

97 *ibid.*, p. 785. Dr Wheat was on the SWAN from 24 May to 22 June and from 27 July to 20 August.

98 *ibid.*, p. 790.

99 *ibid.*, p. 912. Dr Wheat's letter of 25 November referred to the behaviour of the SWAN officers as "*extremely drunk, riotous, throwing food and towels and destroying the restaurant*". At the BOI she agreed that the description of the restaurant being destroyed was an exaggeration, and that it was destroyed "*only in as much as it was being made a mess of*" - nothing was broken.

7.115 Perhaps most importantly for this inquiry, attention must be drawn to the comments Dr Wheat made to the BOI about her letter of 25 November 1992 to the Minister:

"I suppose, the thing which prompted me to write the letter was the fact that I'd lost my job not - if I hadn't lost my job, you know, I was not - it wasn't - the things that had happened weren't so bad that I would normally have made a complaint about it, but it was because of the end result that I did so.¹⁰⁰

7.116 Dr Wheat apparently made some comments about the wardroom to her sick bay staff. However, Dr Wheat's evidence raises the question whether she herself at that time regarded the behaviour towards her as sexual harassment. It should be remembered that the complaint about Lieutenant Bartlett's behaviour was brought by another officer, and not initiated by Dr Wheat. She also accepted at that time Captain Mole's interpretation of the Defence Instruction (Navy) PERS 23-2¹⁰¹ on sexual harassment then in force that the behaviour towards her did not constitute sexual harassment.¹⁰² Dr Wheat's statement strongly suggests that she came to regard the behaviour as sexual harassment only after she herself had left the SWAN, after the alleged sexual assault.¹⁰³

7.117 The question of Dr Wheat's continuing employment with the Navy after her SWAN posting is examined in detail in Chapter 5 of this Report.

Summary - responsibility for Dr Wheat's situation.

7.118 It appears to the Committee that, in relation to the events surrounding Dr Wheat's tour of duty on the SWAN, a very great number of different factors came together in a most unfortunate way. Each in its own way made a contribution to the

100 Ibid., p. 762 (emphasis added).

101 DI(N) PERS 23-2. Note that this is the same document as DI (G) PERS 35-1 issued in November 1986.

102 It should also be remembered that CAPT Mole spoke to the other two female officers immediately he had been alerted to the Bartlett incident. They both said that they had not been subjected to any gender based harassment. Committee Hansard (in camera - released), p. 47.

103 As noted previously, the officer against whom the allegation of sexual assault was made was found not guilty by the Court Martial.

outcome. The absence of or difference in any one of these factors might have produced a very different result. Chief amongst these factors as regards Dr Wheat were the need for:

- more extensive general naval training;
- greater clarification of expectations and attitudes as part of the personnel selection process;
- correct allocation of seniority;
- fuller briefing on the background and experience of key personnel provided to the commanding officer beforehand;
- participation in the work-up before deployment; and
- better selection and training of divisional officers for their divisional duties.

7.119 Greater attention to all these matters, quite apart from more detailed guidance on the integration of women, including sexual harassment on board navy ships, would undoubtedly have made a considerable difference to the outcome. A different approach by Dr Wheat would also have made an important difference.

7.120 The unacceptable behaviour in the wardroom of the SWAN was clearly linked to a complex interplay of factors and personalities. Part of the responsibility clearly belongs to the individuals who were participants in the actual behaviour and to those who had management responsibilities for the running of the ship. But a significant part of the responsibility for shortcomings in all the factors in para. 7.118 above is widely dispersed throughout Navy's management structure. A lot of people got a lot of things wrong or failed to anticipate problems that should have been anticipated. Individually each may be of limited significance. When compounded, they created a volatile and explosive situation.

7.121 Captain Mole has borne the full brunt of the impact of that explosion.

RANTEWSS Team

7.122 The censure of Captain Mole refers specifically to two matters relating to personnel in the RANTEWSS Team. The Committee assumes that the overall thrust of the censure of Captain Mole includes other inadequacies that the Chief of Naval Staff has identified in Captain Mole's management of the RANTEWSS Team. The

Committee therefore examined the evidence on all the matters concerning the RANTEWSS Team very carefully.

7.123 The evidence available to the BOI and the Committee's comments on the conclusions reached by the BOI in relation to the RANTEWSS team are in Chapter 6 of this Report.

7.124 This section looks at additional aspects that arose after the BOI reported on its findings.

Matters that have arisen since the BOI - revelations in the media

7.125 Several reports about the female sailors on the SWAN appeared in the media in September 1993 that differ from and are in conflict with the facts as put to the BOI and to the Committee. The Committee pursued several of the matters which appeared in the media reports with the Navy and with the two female sailors.

Female sailors' access to the Captain

7.126 New Idea of 2 October 1993 reported that Leading Seaman Connelly had said that:

" I didn't get to see the Captain ever."

7.127 The Committee is aware that, when asked to explain this statement, Leading Seaman Connelly gave the following response to the magazine through her legal representative:

"If you are asked by the Commanding Officer to make a correction to the article we would support the following: -

- *Where the article implies Sheena Connelly did never see the Captain in an interview while serving on HMAS SWAN, this is incorrect. She did not see the Captain in relation to the alleged sexual harassment which occurred on board HMAS SWAN. She did however have the opportunity to see the Captain some time in August in relation to a problem which had occurred regarding her daughter's*

care at Nowra. Sheena Connelly indicates in relation to this problem, the Captain was compassionate and helpful." ¹⁰⁴

7.128 Although she did not make a request to New Idea that the statement be corrected, she notified New Idea that she would support a clarification along the above lines were Captain Mole to request it. The Committee is not aware that any such statement has appeared subsequently in New Idea.

7.129 There are two instances clearly recorded of discussion between the two female sailors and Captain Mole.

7.130 At Leading Seaman Flannery's request, she, Flannery, saw Captain Mole about her dissatisfaction with the PERS-1 that Chief Petty Officers Broad and Goedecke had prepared on the basis of her performance of her duties in the RANTEWSS team. In retrospect, and as noted previously, it would have been better if Captain Mole had seen her separately, at least in the first instance, and not together with Chief Petty Officer Broad and Chief Petty Officer Goedecke.

7.131 Recommendation Twenty Three: The Committee recommends that, where a PERS 1 or PR5 is disputed, the superior should see the supervisor responsible for drafting the report and the subordinate separately, before any attempt is made to resolve differences between the parties in a joint meeting.

7.132 Captain Mole told the Navy on 24 September 1993 and the Committee on 10 March that :

"two thirds of the way through SWAN's five month deployment, one of the sailors who made that allegation had difficulty with foster care for her daughter back in Australia. When this was reported to me, I called her to my cabin and I offered to send her home at Commonwealth expense. She declined this offer. She told me that she really wanted to remain on the ship for the rest of the deployment if at all possible. This is the woman who now says that conditions were so bad that together she and her colleague attempted to have a leg broken to get off the ship. My offer to send this sailor home to Australia was not revealed by me in

104 Letter from Mr K. Cush to New Idea, 30 September, 1993.

the navy inquiry because I was never apprised of any allegations that this sailor was a victim of harassment and, therefore, to me, it was not relevant information. Her divisional officer was also not asked any questions regarding her alleged harassment or her dissatisfaction."¹⁰⁵

7.133 The Committee notes that Ms Connelly has confirmed that Captain Mole was very helpful in relation to the domestic problem that had arisen some time between the ship's departure from Hong Kong (18 July 1992) and arrival in Singapore (26 August 1992),¹⁰⁶ and that she did not use that opportunity to convey to the Captain her disillusionment with her work situation. In relation to her meeting with the Captain, Ms Connelly explains that:

"She did not raise the issue of sexual harassment with the Commanding Officer during her meeting with him because the principal overwhelming issue was with her child." ¹⁰⁷

Ms Connelly confirmed to the Committee in oral evidence that her priority at the time was her child, that she expected to meet up with her in Singapore in a couple of weeks and she:

"did not want to give up on the ship." ¹⁰⁸

7.134 Captain Mole draws attention to another earlier instance, where the female sailors had an opportunity to tell him of their experiences on board the SWAN. In response to his question to Leading Seaman Connelly on an informal occasion at the end of Exercise K92 about the attitude of the female sailors to their first experience of life at sea, Leading Seaman Connelly said that - "*one loved it, one hated it and the third was fairly neutral about it*". ¹⁰⁹

105 CAPT D. Mole, Committee Hansard, (in camera - released), pp. 49-50.

106 Ms S. Connelly, Committee Hansard, (in camera - released), p. 297.

107 Letter to Committee Secretary, dated 2 February 1994, from Mr K. Cush.

108 Ms S. Connelly, Committee Hansard, (in camera - released), p. 297. See also para 5.152 of this Report.

109 CAPT D. Mole, submission, Committee Hansard, (in camera - released), p. 24.

7.135 Captain Mole regarded this as what would be expected from any such group of people going to sea for the first time. Although neither Captain Mole nor Leading Seaman Connelly appears to have pursued at the time the reasons for one of them hating it, Captain Mole notes that *"during the break between deployments none of the females requested to be removed before the subsequent deployment."* ¹¹⁰

7.136 The legal counsel for Ms Connelly has since written to the Committee saying that:

"She agrees that after K92, the Executive Officer spoke to her. At that time, the Executive Officer spoke to her about the ship in a general sense and not about her work environment. Although I suppose with hindsight it would have been open for her to have raised the problems in the EWO, her perception at that time was that things were generally going quite well on board the ship." ¹¹¹

7.137 The following extract from the same letter from her legal counsel summarises her perception of the Commanding Officer's responsiveness.

"Sheena Connelly has said she believes that the Captain would have done something about the problem if he knew about it. She, however, rightly or wrongly, did not feel that she had the right to go to the Commanding Officer because she had been 'squashed down' by the Chief Petty Officer and her recourse through the Chaplain had failed. Sheena is conscious that going public about the Chief Petty Officer, has unintentionally had repercussions upon the Commanding Officer. For this, she has regret." ¹¹²

7.138 Under the circumstances, the Committee considers that it was reasonable for Captain Mole to accept Leading Seaman Connelly's absence of complaint at face value.

110 *ibid.*, p. 11.

111 Letter to Committee Secretary, dated 2 February 1994 from Mr K. Cush, MACPHILLAMY CUMMINS & GIBSON, legal counsel for Ms Connelly.

112 *ibid.*

7.139 The Committee does not question that Leading Seaman Connelly felt defeated by Chief Petty Officer Broad's reaction to her request to see the Captain. At the same time the Committee notes that Leading Seaman Flannery's request to Lieutenant Walker to see the Captain resulted in her seeing the Captain. It was demonstrated that the Captain could be approached.

7.140 Moreover, Ms Flannery testified to the Committee that Chief Petty Officer Broad's predictions that the Captain would "*tear strips off*" her proved quite inaccurate. She was, in her view, given a reasonable hearing.¹¹²

7.141 The evidence of Ms Connelly and Ms Flannery confirms the Committee's view that the extent to which respect for Commanding Officers is instilled into military personnel is a factor which must be taken into account when examining the mechanisms that must be put in place when dealing with the issue of sexual harassment. No matter who the individual holding the position, the rank of Captain, the top position in the chain of command on a ship, creates a barrier for junior personnel, such as the female sailors. That distance undoubtedly diminishes as one progresses in seniority. On the SWAN it is evident that the sailor holding the rank of Coxswain felt well able to speak openly and frankly to the Captain on many matters.¹¹³

Hong Kong "leg-breaking" incident

7.142 The Committee investigated, in detail, the facts with regard to the account Ms Connelly and Ms Flannery gave on television in September, 1993, about the alleged attempt to break Leading Seaman Flannery's leg in Hong Kong.

7.143 The impression conveyed in the television interview by the two female sailors was that they invited friends in the British services to assist in breaking Leading Seaman Flannery's leg because she could not bear to remain on the SWAN.

7.144 No evidence about the leg breaking incident was given by either leading Seaman Flannery or Leading Seaman Connelly to the BOI.

112 Ms Flannery, Committee Hansard, (in camera - released), p. 266.

113 The Committee notes that the Coxswain first alerted the Captain to Dr Wheat's upset in relation to Lieutenant Bartlett; he did not, however, raise the problems of the female sailors of which he had some knowledge.

7.145 According to Captain Mole, Chief Petty Officer Broad told him that Leading Seaman Connelly:

*"had been making remarks when on watch in the [Electronic Warfare Office] to the effect that she was contemplating becoming an absentee in Hong Kong where she had friends, because she did not like the work she was required to do."*¹¹⁵

7.146 The Committee asked the Navy what investigations had been made following the revelation to the media about the alleged leg breaking incident in Hong Kong. The material provided by Navy included the following:

- *"... medical records were obtained from the British Military Hospital in Hong Kong which indicated that Leading Seaman Flannery had sought treatment for a leg injury";*
- the hospital advised the Navy that Leading Seaman Flannery reported to the casualty department *"following a twisting injury to r[ight] ankle whilst shopping"*. According to the hospital records she was seen by the casualty nurse, and was given appropriate treatment for this *"minor injury"*;
- *" As it transpired, the two Leading Seamen were unable to provide the names of the British soldiers allegedly involved in the incident and the veracity of their claims remains inconclusive."*¹¹⁶

7.147 At the beginning of the inquiry the Committee was advised by legal counsel for the two women that they were not medically fit to give evidence. The Committee noted also their evidence that the proceedings of the BOI had had a severe adverse impact on their health.¹¹⁷ Following the Committee's public hearing of 25 March

115 CAPT Mole, submission, Committee Hansard, p. 26.

116 Director of Naval Legal Service (DNLS) Minute 273/94, dated 24 March 1994 to the Assistant Chief of the Naval Staff - Personnel.

117 Letter to Committee Secretary dated 2 February, 1994, from Mr K. Cush, legal counsel for Ms Connelly and Ms Flannery.

1994, and after the Committee received indications that Ms Flannery and Ms Connelly wished to appear before the Committee, arrangements were made to hold an in camera hearing. The Committee was able to clarify several aspects at the hearing.

7.148 In reviewing the evidence before it, the Committee noted confusion in some of the references to Leading Seaman Connelly and Leading Seaman Flannery in the media and to some extent also during the BOI proceedings and in subsequent internal navy documents. Ms Connelly confirmed to the Committee that there had been several such mix-ups.¹¹⁸

7.149 The Committee therefore spent some time in clarifying the facts of relevance to the Committee's inquiry. The most serious of these were references to thoughts of suicide and who may have been aware of such thoughts.

7.150 From the evidence presented to the Committee at in camera hearings, the Committee believes that, in moments of despair, Leading Seaman Flannery seriously thought about what might be required for suicide, but actively sought an alternative and less drastic means of getting off the ship, namely the breaking of a leg. The Committee accepts Ms Flannery's and Ms Connelly's accounts of their plan and what happened when they put their plan into action.¹¹⁹

7.151 Ms Flannery stated categorically to the Committee that she told no-one, not even Ms Connelly, about her thoughts of suicide. Nevertheless, Ms Connelly stated that she "*just sensed she [i.e. Flannery] was suicidal*".¹²⁰

7.152 Ms Connelly told the Committee that her concern was not to get off the ship, but to get away from her work situation in RANTEWSS. In fact, she spoke to the Committee about a personal commitment to the ship and a strong wish to see her deployment through to the end. In part this arose from the fact that her father had

118 Ms S. Connelly, Committee Hansard, (in camera - released) p. 303.

119 Ms W. Flannery, Committee Hansard, (in camera - released) pp. 239-243, Ms Connelly, Committee Hansard, (in camera - released) pp. 290-291; Letter dated 9 June 1994 from Ms A. Roberts, Statutory Declaration dated 6 June 1994 from Grant Dooley; Medical Records from the British Military Hospital, Hong Kong.

120 Ms S. Connelly, Committee Hansard, (in camera - released), p. 294.

been involved in building the ship. She had been present when the ship had been commissioned. She clearly felt a particular affinity with it:

"I was the first female ever to be posted to a combatant ship. To me it felt as though I was making history and I was so proud, so I was not going to give up on the ship" ¹²¹

7.153 It was the work situation in the RANTEWSS team that she found demoralising. The reality of life at sea in general, the living conditions, and the reception she received from the male crew as a whole were very much what she had expected.¹²² In Ms Connelly's words:

" the ship was fine." ¹²³

7.154 Sheena Connelly told the Committee at hearings that she had given no serious thought to suicide. As she put it , it was an option, *"...not that I could do it but that it was an option in this situation"*.¹²⁴ Ms Connelly stated at hearings before the Committee that she had not indicated her thought on this to anyone on the ship.¹²⁵ She wrote the following to the Committee:

"I have never been nor was I at the time and have never claimed to be, suicidal." ¹²⁶

7.155 The BOI Report states that:

"the situation, in fact, became so bad at one stage that one member of the team began to speak of suicide. Whether such talk was genuine or not is not for the Board to judge. However, never was the need for a

121 *ibid.*, p. 290.

122 *ibid.*, p. 282.

123 *ibid.*, p. 290.

124 *ibid.*, p. 294.

125 *ibid.*

126 *ibid.*

*properly functioning divisional system more apparent than when such talk was occurring."*¹²⁷

7.156 This appears to be based on comments Chief Petty Officer Broad made to the BOI that one of the Petty Officers on his team had told him that:

*"he was really worried, because she kept threatening, you know, she was going to do herself in, or something, and saying, you know, really silly sort of things ... like 'I'm just going to end it all one day'".*¹²⁸

7.157 Chief Petty Officer Broad's testimony both with regard to the state of morale of the female Leading Seamen and the possibility of returning them to Australia from Hong Kong is very confused. However, it appears that the comments by the team member, the Chaplain's approach to him and Leading Seaman Connelly's own request to see the Captain (which Chief Petty Officer Broad effectively quashed) led Chief Petty Officer Broad to contemplate taking Leading Seaman Connelly off the ship in Hong Kong. In speaking to Captain Mole, however, he appears only to have conveyed his suspicions that Leading Seaman Connelly might absent herself in Hong Kong.¹²⁹ In his evidence to the BOI, Chief Petty Officer Broad states that he *"never got that far to sort of explaining it to the captain"*.¹³⁰ Captain Mole's reported response that Leading Seaman Connelly should be treated in the same way as any other sailor going Absent Without Leave (AWOL) should be seen in the context of 43 recorded cases of sailors going AWOL during the course of the SWAN's Asia deployment.¹³¹

7.158 Chief Petty Officer Broad told the BOI that, as the SWAN approached Hong Kong, he *"was starting to think that, well, we cannot go on like this, maybe I should try and get them back to Australia, and my original intention was to get another person from RANTEWSS flown up to take their place"*.¹³² However, he also states

127 BOI Report, p. 56.

128 BOI Transcript, p. 2560.

129 *ibid.*, p. 2561. See para. 7.145 of this Report.

130 BOI Transcript, pp. 2256-2557.

131 *ibid.*, pp. 2561-2562.

132 *ibid.*, p. 2556.

that *"I'm not sure that I actually got through telling him"*.¹³³ His failure to do so is consistent with the evidence given by the female sailors to the BOI that Chief Petty Officer Broad was preoccupied, from the very beginning of the deployment, with the reputation of his team and how it was perceived. In his determination to be seen to be a successful manager of a successful work team, Chief Petty Officer Broad was not prepared to admit to problems that he himself was coming to perceive. The Committee was unable to determine whether, at that stage, he was also aware of the extent to which he had precipitated some of those problems.¹³⁴

7.159 Captain Mole stated unequivocally to the Committee that neither the possibility of suicide nor any proposal to return Leading Seaman Connelly to Australia from Hong Kong had ever been brought to his notice. In the light of Captain Mole's prompt and positive action in response to personal difficulties such as Leading Seaman Connelly's childcare problems and Dr Wheat's difficulties with inappropriate language in the wardroom, the Committee fully accepts that the seriousness of the collapse of the morale of the two female sailors was kept from him, even when he enquired about Leading Seaman Connelly.¹³⁵

7.160 To censure Captain Mole for not considering a proposal that was never actually put to him is unfair to him and sidesteps the complexity of the situation overall.

7.161 On the basis of the evidence before it, the Committee considers that there were serious shortcomings in the way the RANTEWSS team was recruited, and trained before deployment, as well as in the way the team was supervised on board SWAN. Sexual harassment was one component of the overall situation. A systemic problem with the Divisional System was another.¹³⁶

133 *ibid.*, p. 2561.

134 It is however clear that, as a result of the counselling and management training Chief Petty Officer Broad has undergone since then, Chief Petty Officer Broad has a better understanding of the counterproductive effect of his former management approach.

135 BOI Transcript, p. 2558.

136 See also Chapter 6 and paras 7.170-7.180 of this Report.

Committee Comment

7.162 Captain Mole made the following statement to the Committee:

"I am not, for one minute, trying to pretend there was no unacceptable behaviour on SWAN - there clearly was. There has been some unacceptable behaviour of some type on every ship I have ever served on in my time in the navy."¹³⁷

7.163 The crux of the issue is whether the unacceptable behaviour on the SWAN was of a kind, or of a severity that puts it into an exceptional category which should attract a censure of the ship's Captain from the Chief of Naval Staff.

7.164 In the Committee's view the Commanding Officer's responsibility with regard to the behaviour of his ship's company can be summarised as:

- (a) setting the guidelines for behaviour;
- (b) monitoring the effectiveness of those guidelines; and
- (c) taking action if the guidelines are not observed.

7.165 It is the Committee's view that, in the light of the minimalist approach adopted by senior Navy management in the early 1990's towards gender awareness raising and training, the very limited instructions on integration of women and the total absence of policy guidance on matters as basic as minimum numbers of women at sea and minimum accommodation guidelines, Captain Mole performed very creditably in relation to (a) above in the context of Navy's attitude to these matters at that time.

7.166 On the evidence put to the BOI, the Committee is also of the view that, whenever there was a clear breach of the guidelines for behaviour that he had set, (through addresses to the ship's company, through day-to-day contact with his senior managers and by the example he set by his own behaviour), then Captain Mole took quick, decisive, appropriate and effective action. Instances of particular relevance to this inquiry are his reprimand to Lieutenant Bartlett and the action he took as soon as he learnt of the 15 August incident between Dr Wheat and Lieutenant Commander James. Several other instances have been mentioned during the various inquiries, in

137 Captain Mole, Committee Hansard, (in camera - released), p. 99.

particular Captain Mole's firmness in imposing certain restrictions on alcohol use over and above the standard Navy regulations. He also dealt appropriately with a situation where a male sailor assaulted several of his shipmates.

7.167 The Committee considers that Captain Mole fulfilled his responsibilities with regard to (c) above very well. This judgement accords with the conclusions reached by the BOI.¹³⁸

7.168 The contentious area remaining is (b), i.e. the extent to which he monitored compliance with the guidelines he had set.¹³⁹

7.169 Captain Mole contends that he relied, as he is instructed to do by Navy instructions, on the Divisional System to maintain morale and oversight the welfare of all the ship's company. Captain Mole puts forward a well reasoned case for not only using the Divisional System, but for seeking to strengthen it.

7.170 Captain Mole gives several illustrations of a Divisional System in decay on the SWAN when he took command. He argues that an essential requirement for rebuilding the Divisional System was to be seen to be actively using it and relying on it for the purposes for which it was designed.

7.171 It is the Committee's view that it was Captain Mole's commitment to and reliance on the Divisional System that made a fundamental contribution to the situation that developed on the SWAN.

7.172 The Divisional System failed.¹⁴⁰ It failed for several reasons.

138 In contrast, the Maritime Commander proposed censure on grounds related to inadequacies he perceived with regard to CAPT Mole's performance in relation to (a) and (c).

139 Section (c) of the CNS's censure appears to relate to this element of CAPT Mole's performance.

140 The Committee observes that CNS acknowledged also to the Committee that the Divisional System failed and he subsequently took systemic measures to try and prevent similar failure in future.

7.173 It failed because individuals within the system failed to carry through their responsibilities. The Divisional Handbook spells out in considerable detail the very extensive responsibilities that each divisional officer and each divisional senior sailor carries. Several links within the RANTEWSSS team and in the wardroom did not carry out those responsibilities. Identifying the reasons for these failings is more difficult. It seems to the Committee that in all probability it was a mix of personal biases, personalities and inadequate training for those with duties and responsibilities under the Divisional System. There is little doubt that the classified nature of the work in RANTEWSS interfered with and limited open communication in the Divisional System. It also seems that Captain Mole did not judge correctly the character and personality of some of his subordinates.

7.174 There is some irony in the fact that Captain Mole's own personal interest in the RANTEWSS operation may have inadvertently contributed to the communication difficulties. Captain Mole required Chief Petty Officer Broad to report directly to him. By his own account, Captain Mole visited the RANTEWSS team more often than almost any other area of the ship.¹⁴¹

7.175 It is not surprising to the Committee that Captain Mole observed nothing amiss during his visits to the RANTEWSS work area. The respect for rank that is so deeply instilled in every member of the armed forces ensured that any discord in the team was kept well out of sight during such visits.

7.176 Ms Flannery confirmed to the Committee that it was the "*rank thing*" that inhibited her voicing her concerns with the Captain.¹⁴² From her account, and that of Ms Connelly, the Committee believes that the same inhibitors to open communication would in all likelihood have come into play no matter who the particular person in command may have been. Ms Flannery told the Committee that: "*It was very intimidating to be called before the captain*". When asked whether the Captain intimidated her she said "*Not personally. It is just the 'captain' thing*".¹⁴³

141 CPO Broad briefed the Captain at least on a daily basis; BOI Transcript, p.2557; CAPT D. Mole, submission, Committee Hansard, (in camera - released), p. 23.

142 Ms Flannery, Committee Hansard, (in camera - released), p. 269.

143 Ibid., p. 269.

7.177 Captain Mole's personal interest in the RANTEWSS team may have also had the unintended effect of reducing the influence that the Divisional Officer, Lieutenant Walker, might have been expected to have on the management of the RANTEWSS team. While the female sailors had no inhibitions about approaching an officer at that rank, they, probably rightly, felt instinctively that, in Chief Petty Officer Broad's eyes Lieutenant Walker lacked real authority in that situation.

7.178 The problems that arose cannot be readily attributed to any lack of knowledge on the part of the female sailors about the Divisional System. They had both served in the Navy for several years and functioned within the Divisional System during that time. Although the Divisional System allows for approaches to off-line people such as chaplains and social workers, it appears that the strong tradition of working within a strict hierarchy and not circumventing it played an important part in this regard also. It is also an inescapable fact that there are fewer off-line people to whom crew members have ready access while at sea than there are at shore based establishments.¹⁴⁴ There was a disinclination on the part of all the women to go outside the Divisional System for assistance with their problems.¹⁴⁵ It was particularly unfortunate that when they did get up the courage to do so (as for example when Leading Seaman Connelly spoke to the Chaplain), nothing came of it.

7.179 It is also important to note that Captain Mole was given feedback from outside the Divisional System by the Chaplain. It is therefore important to assess whether or not Captain Mole discharged his responsibilities adequately when he was alerted to morale problems by the Chaplain, who was outside the Divisional System.

7.180 In this regard, both the timing and the content of the advice to Captain Mole about low morale is important. The Chaplain states that his discussion with the Captain when he became seriously concerned about morale took place on 29 July, 1992, i.e. about ten days after the SWAN left Hong Kong and two days after Jakarta, where all leave had been stopped for a day for disciplinary reasons. Restrictions on alcohol were also imposed. Thereafter immediate discussion and activities were begun, with the involvement and support of the Captain, to involve the whole crew on

144 It is relevant to note that, according to CAPT Mole, up to 12 members of the SWAN crew took themselves off to see Service social workers and psychologists following the deployment before CAPT Mole assumed command. CAPT Mole, Committee Hansard, (in camera - released), p. 102.

145 LS Connelly first joined the Navy in 1979. There was a break of a couple of years in her service after she had a child. LS Flannery had been in the Navy since 1985.

a positive enterprise. Second, the Chaplain's concerns were expressed in general terms. He states unequivocally that the later allegation of sexual harassment on the part of CPO Broad was not brought to his attention by anyone during the deployment.¹⁴⁶

7.181 During the course of the deployment, it was demonstrated that Captain Mole was responsive to a request by a female sailor to be heard in relation to her PERS 1. He also demonstrated a compassionate interest in, and initiated dialogue with the other female sailor when he learnt of personal problems she was having with her child. The Captain assumed that the two female sailors were performing under the same conditions as the men in the RANTEWSS team. His instructions to the RANTEWSS team manager when notified of talk that suggested that one of the female sailors might go AWOL in Hong Kong reflected a determination to be seen to be treating male and female crew members equally as much as possible, a principle endorsed subsequently by the BOI and one that the Committee considers important in facilitating the integration of women into the forces.

7.182 There were grave shortcomings in the performance of several links in the Divisional System, and serious limitations in the effectiveness of the back-up that chaplains and medical officers should be able to provide in such circumstances. With hindsight, it is clear that the situation called for a different approach. With hindsight, Vice Admiral MacDougall concluded that likewise the whole question of integrating women into the Navy called for a different approach from the one adopted initially.¹⁴⁷

7.183 Captain Mole accepts that the situation could have been better managed:

*"Did I make any mistakes? Of course I did. With hindsight I should have done a few things differently. For example, I should have insisted on having at least one senior female sailor in addition to the junior sailors."*¹⁴⁸

The question, as noted previously, is whether the shortcomings identified above are of such magnitude that they should attract a censure from the Chief of Naval Staff.

146 Chaplain, D. Thiem, submission, pp. 2-4.

147 VADM I. MacDougall, Committee Hansard, p. 559; RAN submission, Committee Hansard, p. 269.

148 CAPT D. Mole, Committee Hansard, (in camera - released), p. 51.

7.184 The report from the Chief of Naval Staff to the Minister following the BOI makes it clear that the Chief of Naval Staff's key concern was to send a strong message to all personnel in the Navy that sexual harassment is not acceptable. The Committee agrees wholeheartedly with the content of such a message - it must be made known unambiguously, loudly and clearly across all ranks at all posts.

7.185 However, the Committee does not believe that a censure by the Chief of Naval Staff of one commanding officer in the circumstances that eventuated on the SWAN is either equitable or necessarily effective in the long term in achieving the objective stated above.

7.186 That strong message should have been sent out by senior management at least at the time of the major policy change i.e. at the time of announcing the integration of women in 1990, if not before. An unambiguous commitment at the highest level should have been clearly demonstrated and accompanied by the kind of concerted, across-the-ranks education program that is now taking place.

7.187 The earlier failure by Navy's leadership to recognise all the implications of fully integrating women into the Navy was acknowledged by Vice-Admiral MacDougall at the very first day of this Committee's public hearings.¹⁴⁹

7.188 In particular, the severity of the censure appears to take no account of the sensitivity and foresight that Captain Mole demonstrated when the possibility of a single female sailor serving on the SWAN was first raised. It is, in the Committee's view important to note that the initial proposal by Navy's management was for one woman only to join the crew of the SWAN. There was no policy on the numbers of women to be posted at the time, yet Captain Mole had the foresight to insist that the number be increased and that it would be inappropriate to post a single, isolated woman to an all-male ship. Policy guidelines on minimum numbers have since been formulated. These guidelines confirm the position Captain Mole adopted before they were issued.

7.189 It was a most unfortunate by-product of Captain Mole's request that the number of female personnel on the RANTEWSS team be boosted that also led to the appointment of personnel who were less than fully trained for the task they were

149 VADM I MacDougall, Committee Hansard, p. 551.

expected to carry out. Their supervisor's dissatisfaction with their work skills contributed at least in part to the overall unsatisfactory state of affairs.

7.190 It should also be recalled that it was specifically at Captain Mole's request that a female doctor was posted to the SWAN. Captain Mole clearly indicated that he thought it would be desirable to have a female officer on board for the junior female sailors. Again his approach demonstrated a sensitivity to the potential for problems to arise and the need to buttress existing means of support for women. In the event, the presence of a more senior female officer did nothing to assist the junior female sailors. The reasons for this are examined elsewhere in this Report. The fact that the approach failed in this instance does not invalidate the correctness of Captain Mole's decision to request a senior female officer.

7.191 The Navy will undoubtedly be confronted by similarly difficult choices in the future. Fine judgements about the balance to be struck in selecting personnel will need to be made:

- until there is a higher percentage of women who have gone through the ranks in the Navy, there will continue to be difficulties in ensuring that suitable senior female officers are posted to billets with junior female personnel; and
- holding women back from postings, either because they lack some requisite skill or because of accommodation considerations will need to be balanced against the pressures to open up opportunities for women.

7.192 The Committee fully acknowledges that the task of management in the Navy is increasingly more complex and more difficult. In this it is by no means unique. Adapting to technological change, multi-skilling, introducing greater flexibility into the workplace, including the introduction of family-friendly policies is a challenge facing most organisations today.

7.193 A major consideration was the perceived need to send a strong message to all Navy personnel that sexual harassment is an important issue and that it will not be

tolerated in the Navy.¹⁵⁰ How best to send that message emerged as a point of difference within the Navy leadership. The Chief of Naval Staff concluded that:

"A general weakness in the Board's approach to dealing with individuals named in the report is that the recommendations do not send an 'appropriate signal to the rest of the Navy concerning the seriousness with which sexual harassment is viewed'. ¹⁵¹

Corporate Responsibility

7.194 The only substantive document relating to the integration of women in existence when Captain Mole took command of the SWAN was AF Memorandum 18/91 on *"Guidelines on the Employment and Treatment of Women at Sea"*. The Director of Naval Legal Services has assessed the guidance in this memorandum as *"limited"*.¹⁵² The Committee agrees with this assessment.

7.195 In the light of the extensive development of policy, instructions and training provided since the end of 1992, it is clear that what was available during the 1992 SWAN deployment was far from adequate.

7.196 The Navy has progressed a long way in a very short time in addressing the issue of sexual harassment. Annex F to Navy's submission update of 3 February 1994 gives a summary of action taken. The list is a very good indication of the corporate responsibility that had not been adequately discharged at the time of the SWAN incidents. Had those actions been taken and mechanisms been put in place by mid 1992 it is highly unlikely that any of the incidents about which complaints were made would have occurred. Had they occurred there is no reason to doubt that they would have been quickly and effectively investigated and resolved, with a minimum of pain and hardship for all those involved.

7.197 It is implicit in some of the comments of the BOI Report that the disciplinary measures recommended in regard to some of the personnel on SWAN may have an element of unfairness, in that others who may have been involved in similar instances

150 This is apparent from the documentation listed in para. 7.32 of this Report.

151 CNS minute, CNS 1127/93 of 10 August 1993.

152 Director of Naval Legal Services (DNLS) Minute 543/93, dated 16 July 1993 to the Assistant Chief of the Naval Staff - Personnel, para. 23.

have suffered no consequences. The Board can be seen as advocating punishment as a means of sending a signal of the appropriate strength to all other personnel. The Report states that:

"If the Navy is to convince its people that it is serious about eliminating unacceptable behaviour, strong and visible measures need to be taken against those who do not comply with the required standards, even if there is an element of them being "in the wrong place at the wrong time.""¹⁵³

7.198 The Committee notes that the punishment in some cases was in fact more severe than recommended by the Board. Moreover, the severity of the punishment was subsequently magnified many times by the public exposure and inaccurate reporting that followed.

7.199 Whether or not it was intended that these individuals should be scapegoats for a number of poor decisions with regard to personnel selection, for various inadequacies in the training and preparation of personnel, and for the absence of detailed policy guidance on a range of issues associated with the full integration of women into the Navy, the Committee has detected that this is indeed how many members of the Navy see the outcome. There is a sense of *"there but for the grace of God go I"*.

7.200 The Committee concurs with the Maritime Commander's more recent assertion that *"nobody should be made a scapegoat"* and that everyone should be *"treated with fairness."*¹⁵⁴

7.201 Clearly, questions remain whether the severity of the penalty incurred by Captain Mole was out of proportion to any shortcomings that may have been identified in his performance.¹⁵⁵ In this regard, it is important to note that an important element of the Maritime Commander's recommendation to the Chief of Naval Staff that Captain

153 BO1 Report, p. 11.

154 Submission by RADM R.A.K. Walls, 24 March 1994, p. 3.

155 It should be noted that CNS advised CAPT Mole that his request that his censure be reviewed was being deferred. See para. 7.17.

Mole be censured is the Maritime Commander's opinion that Captain Mole handled the question of integration of women on the SWAN as a "secondary" issue.¹⁵⁶

7.202 Captain Mole agrees with the Maritime Commander's observation that other matters took a higher priority in the Captain's estimation at the time. However, Captain Mole argues persuasively that his priorities coincided closely with the priorities of senior Navy management at that time.

7.203 Captain Mole puts his case with regard to the integration of women into the SWAN in the following terms in his Reply to Notice of Cause for Censure of 6 July 1993:

"Having taken steps to address what I considered to be the most significant management problem in introducing females into SWAN, the accommodation, I also devoted some effort into preparing the ship's company. I object strongly to the assertion in paragraph 3 of the reference that my address to the ship's company was secondary, which is presumably inferring inadequate. My addresses to the ship's company were not too frequent, they were never secondary, I never dealt with minor issues and anything I included in my addresses was done so because I considered the subject sufficiently important to warrant face to face contact with the ship's company so that they could appreciate the seriousness of the subject. It is true that when I addressed the ship's company with regard to females joining the ship I did so in the context of the RANTEWSS team joining the ship and I did not specifically use the words "sexual harassment". I did however point out that the females were joining the ship with my full support because they were the best qualified available personnel to do an important job.

Clearing lower deck to address the ship's company is an expensive use of human resources. For this reason my clear lower decks were infrequent and usually were for more than one issue. On the occasion I addressed the ship's company with regard to females joining the ship it was a rehearsal for divisions and I addressed other issues including

156 It also needs to be noted that this specific formulation of the censure was dropped in the final version of the censure. However, as the Committee points out previously in this chapter, it is not clear whether it is nevertheless incorporated as one of the elements of the final censure.

Naval Quality Management (NQM) and Program Management Budgeting (PMB). Throughout my CO designate training NQM and PMB were recurring subjects. Gender awareness was not mentioned once, not by CNS, not by ACPERS-N and not by MCAUST. I believe I gave the subject higher priority than Navy did as a corporate entity. Furthermore I considered no change to Ships Standing Orders was warranted as the females were to be a temporary arrangement for five months only and furthermore the subject of females at sea did not receive separate attention in your orders to the fleet or even in Personal Memorandums. I was convinced that the ships company would receive an adequate message from my address. At the time anything more than this did not seem warranted when compared to preparations for formal inspection (SWAN had only been inspected twice in almost ten years), preparations for Workup, Exercise K92 and the South East Asian deployment. A great deal of physical and administrative preparation was also required for the subsequent RANTEWSS operations. I believe my address to the ship's company was successful however neither the RANTEWSS team nor LEUT Bartlett had joined the ship by that time.

Having prepared the ship and the ships company for females I also briefed the female sailors when they joined. I object to the suggestion in paragraph 3 of the reference that in my special briefing to the female sailors that I advised them they needed to constrain their behaviour to avoid gossip. What I did attempt to do was to prepare them mentally for some inevitable gossip. I pointed out that although I had briefed the ship's company in advance, they should be aware that anything they said or did at one end of the ship would be magnified tenfold by the time the story got to the other end of the ship. This brief was conducted in the presence of their Divisional CPO, and I think the XO, as it was my desire that the brief should reflect the RAN Divisional System, not alternatives to it. My reliance upon the Divisional System will be explained later, but suffice to say I placed great importance on it. The assertion in paragraph 3 that "No procedures were implemented to monitor the assimilation of women into the ship's company" is incorrect. The "procedure" was the Divisional System. Similarly no alternative "procedures" were adopted for the many young male junior sailors going to sea for the first time, or the soldiers in the RBS70 missile detachment, or the temporary RAAF intelligence officer, or the soldiers in the

*RANTEWSS team, or the Chaplain, the Dentist or Doctor, or the many junior officers under training. In this regard the allegation at paragraph 5 of the reference that measures to integrate LEUT Wheat into the ship were inadequate are also unreasonable. At age 36 LEUT Wheat is a mature person, a doctor, a highly trained career professional and yet she had far more difficulty integrating than the many other, much less mature personnel going to sea for their first time. The BOI correctly observed at paragraph 38 of their report that LEUT Wheat's expectations were totally unrealistic."*¹⁵⁷

7.204 The Maritime Commander accepts that:

*"CAPT Mole is correct when he states that gender awareness did not receive a high profile during his commanding officer designate course."*¹⁵⁸

7.205 The Maritime Commander also confirms that:

*"there were no Personal AF Memorandums extant on this topic."*¹⁵⁹

7.206 Nevertheless in his advice to the Chief of Naval Staff, the Maritime Commander questions the adequacy of Captain Mole's efforts. The Maritime Commander cites a selection of comments from three crew members that they do not recollect the briefings or that they only recall vague references to females joining the ship. The Maritime Commander cites this as proof that the briefing could not be classed as 'successful'.¹⁶⁰

157 CAPT D. Mole, Reply to Notice of Cause for Censure, dated 6 July 1993, Enclosure 2 to Maritime Commander's Minute AF 612/396, dated 12 July 1993 to the Chief of Naval Staff, paras 15-16.

158 Minute AF 6/2/396 of 12 July from Maritime Commander to CNS, para. 36.

159 *ibid.*

160 *ibid.*, para. 34.

7.207 The Committee concurs with the Director of Naval Legal Services' comments about the Captain's briefing:

"The evidence of these sailors indicates that individual recollection of the briefing was not good thereby supporting the proposition that the brief was inadequate. Although it is open to conclude this, regard must also be had to the prevailing attitudes held by male sailors towards females serving at sea. Hence, it must be equally possible that some or all of the sailors only heard what they wanted to hear." 161

7.208 The Committee concurs that what is said is often not the same as what is heard or what is remembered. If the Captain's address failed to make the right impression, it highlights to the Committee the difficulty of conveying adequately the complexities of issues such as integration and sexual harassment by means of formal addresses or written instructions. The trial focus groups on the HMAS SYDNEY, where mixed personnel were able to toss around ideas and questions they may have about the issues are probably the only effective way to achieve a proper understanding by all of the importance of the matter and an appreciation of how to deal with problems should they arise.

7.209 However, the circumstances on the SWAN and on the SYDNEY were very different. There were critical differences in the number of women joining the crew and in the nature of the tasks they were undertaking. On the SYDNEY there were women allocated to almost all the functional areas of the ship.¹⁶² The situation on the SYDNEY lent itself to open work groups getting together to anticipate and resolve problems in a way that could not readily apply in the case of the very isolated RANTEWSS unit on the SWAN. That is not to detract from the achievements of the SYDNEY.¹⁶³ It is merely to point to exceptional difficulties confronting the SWAN.

161 Director of Naval Legal Services Minute 543/93, dated 16 July 1993 to the Assistant Chief of Naval Staff - Personnel, para. 19.

162 Triulzi Collins Solutions, *Impact Study, HMAS SYDNEY*, p. 3.

163 It is also clear from the Impact Study conducted on the SYDNEY that much work remains to be done in achieving adequate additional change and in clarifying the boundaries of acceptable and unacceptable sexual harassment.

7.210 The question of Captain Mole's success in conveying his expectations about the standard of conduct towards the women coming on board could also be looked at in another way. Only two members of the SWAN's company were clearly identified by the BOI as guilty of unacceptable behaviour which might widely be regarded as sexual harassment.¹⁶⁴ The behaviour of a few others was deemed to be unsatisfactory. That means that, either through good luck, good leadership or good sense on their part, close to 280 members of the ship's company did not engage in sexual harassment or even in unacceptable sexual behaviour.

7.211 With regard to the impact or effectiveness of the Commanding Officers' address, it is also relevant that neither Lieutenant Bartlett, nor the RANTEWSS team were actually present at the time of the general address, although the female members of the RANTEWSS team were separately spoken to by Captain Mole. In hindsight, given that the problem was within the RANTEWSS team and not with the rest of the crew, it was particularly unfortunate that they arrived after the Captain's general address. The progressive arrival of personnel on board a ship creates obvious difficulties when it comes to keeping everyone up to date on all important matters. Moreover, in this instance, it is easy to see how an assumption could be made that, since the RANTEWSS people arrived from an environment where women had operated previously, there was less of an imperative to alert the team's own members to problems associated with integration.

7.212 A ream of instructions does not necessarily equate with management commitment. In an area as full of complexities and fine nuances as sexual harassment, in an area of fundamental and major change, personnel read signs other than just the existence of a written instruction to gauge what priority is to be accorded to it. The Committee was pleased to note, that in the course of the Good Working Relationships seminar that the Committee attended, Commodore Barrie readily acknowledged the inadequacy of dealing with the issue of sexual harassment by written instruction alone.

7.213 From the evidence of Navy itself to the Committee, sexual harassment was not high on the list of priorities that the Navy was to address in 1992.

164 Note: the Board did not use *"a strict definition of the words 'sexual harassment'"*. For the BOI use of the term *'sexual harassment'* see para. 6.27 of this Report; BOI Report, pp. 77, 91-93.

7.214 An examination of the Defence Annual Report for 1991-92 confirms this. The Report gives details of the numbers of women who had by then been recruited following the Government's 30 May 1990 announcement that women in the ADF would be able to serve in combat-related positions. The Report has nothing to say on any preparation that either the men or the women in the Services had received to prepare them for this intensified integration. The Report says:

*"To help things along, both the women and their male colleagues will receive specialist 'mixed - gender awareness training', a concept being developed by Army (and taken on board by Navy and Air Force as well) to address any 'cultural' impediments to the new policy."*¹⁶⁵

7.215 The list of major activities and key results of the Executive Sub-Program includes Navy Quality Management; it makes no mention of the measures taken by management to facilitate the integration of women into the Services.

7.216 There is no sense of urgency in the Annual Report that might suggest that the issue of preparing personnel for the adjustments required to integrate women was regarded as a high priority by the Navy leadership in June 1992.

7.217 The actions noted in that Annual Report are for the future, not measures actually put in place. The concept of mixed gender awareness training was still only under development.

7.218 In hearings before the Committee, Vice-Admiral Taylor gave a succinct summary of the issues that preoccupied Navy's leadership in the years immediately preceding and at the time of the SWAN incidents. After noting that the Navy "*probably concentrated a little too much on the physical facilities side of the preparation for women at sea, at the expense of preparing the males at sea for the reception of the females,*"¹⁶⁶ Vice-Admiral Taylor said:

"Just to put this whole subject of women at sea and sexual harassment into some sort of context for the whole period of the late 1980s, early 1990s, I just remind the committee that in Navy we were going through a great period of change which involved a whole lot of major personnel

165 Defence Report 1991-1992 AGPS 1992, p. 27, (emphasis added).

166 VADM R. Taylor, Committee Hansard, p. 1624.

issues, and this was one of them. There was no evidence there to suggest that this was the one we should be concentrating on at the expense of others but I will just remind you of some of the others that were happening: we were going through personnel wastage the like of which we had not experienced for some time; there were problems with members without families and what entitlements they should have; there were family support issues; there was the question of homosexuals in the Australian Defence Force; Defence Housing Authority issues; a change from the Defence Force Retirements and Death Benefits Scheme to the new scheme, and so on.

*So those were the range of personnel issues with which we were trying to grapple at the time. While we may not have, in hindsight, put as much emphasis on this particular one as we could have, I think that probably puts it a bit more into perspective."*¹⁶⁷

7.219 The Committee notes the strong similarities in Vice-Admiral Taylor's account of Navy's priorities and approach with the account just cited of Captain Mole's priorities and approach on the SWAN in 1992.¹⁶⁸

7.220 It is now accepted by all that, Dr Wheat received inadequate training and preparation for her sea-posting. It is also true that Captain Mole received inadequate training and policy guidance for operating in a mixed gender environment.¹⁶⁹ No members of the ship's complement had sufficient exposure to the issues they would have to deal with on a mixed gender ship or been given sufficient support to handle any problems that might arise, and sufficient guidance on the need for special measures and mechanisms to be in place to ensure that a Commanding Officer is kept fully informed of any sexual harassment that may be occurring. The complacency of the Navy as a whole about the adequacy of the Divisional System was well captured by Commodore Barrie: "*... we went back centuries on the Divisional System and we thought the Divisional System was serving us well. I do not think we had too*

167 VADM R. Taylor, Committee Hansard, pp. 1627-1628.

168 See para. 7.203 of this Report.

169 The relative priority Navy management accorded to preparing senior officers for dealing with the integration of women is illustrated by the approval by Maritime Command for CAPT Mole to forego that part of his Commanding Officer's Designate Course (module 5) that included such issues in favour of updating his knowledge of surface ships operations. Maritime Commander minute AF71/22/28(3) of 4 July 1991.

much reason to question its effectiveness but the truth is, of course, that it was not doing the job it ought to have done and perhaps we should have been smarter in examining all the other alternatives and how it might improve the divisional system, before we had to have a watershed event." ¹⁷⁰

Impact of censure on promotion prospects

7.221 It is not appropriate for the Committee to seek to evaluate Captain Mole's promotion prospects, either before or after the events on the SWAN. Apart from the impropriety of doing so, promotion is clearly a matter in part of the relative capabilities of the people applying and the Committee has no basis on which to compare Captain Mole's performance with that of his competitors. However, the Committee considers that it must draw attention to the following:

- Captain Mole's substantive rank is commander;
- before the Board of Inquiry into the events on the SWAN, in October 1992 Captain Mole was ranked by the Maritime Commander as being in the top 20 per cent of his peers and ready for promotion;
- on 27 August, 1992, while SWAN was on its deployment to Asia, CMDR Mole's posting to the position of Commander, Australian Submarine Squadron was promulgated in the Officers' Posting List. That is, as a commander he was judged suitable to take up a position normally filled by a captain;
- he has now held that position since 18 January 1993;
- as a result of the SWAN events, he was downgraded to "not now" for promotion in March 1993;
- while the numerical rating of his performance has, in the last assessment returned to 7.1, and he is again assessed as ready for promotion, the descriptive comments are

170 Commodore C. Barrie, Committee Hansard, p. 593.

more conditional and reserved than they were when he first took Command of the SWAN.¹⁷¹

Review of censure

7.222 The Committee notes that the Chief of Naval Staff told Captain Mole on 24 September 1993 that:

*"it would not be appropriate for me to reconsider the basis upon which censure action was taken against you [i.e. Captain Mole] in advance of the findings of the Senate Inquiry."*¹⁷²

7.223 The Committee notes that the three grounds for censure proposed by the Maritime Commander went well beyond the recommendation of the BOI, both in terms of content and in terms of severity. In particular, grounds (b) and (c) of the proposed censure by the Maritime Commander introduced elements not specifically identified in the BOI recommendation.

7.224 In the course of evaluating the proposed grounds for censure, and Captain Mole's reply to the Maritime Commander's Notice to Show Cause, Director of Naval Legal Services concluded that *"the failings of CAPT MOLE, particularly in respect of the second and third limb of the notice of cause"* are *"painted in a more serious light than perhaps is warranted"*.¹⁷³

7.225 These two grounds were dropped. The way in which the final censure particularised the one remaining ground raised a specific matter that had not been aired previously, and contained another element whose meaning was far from clear.

171 The descriptive comments in CAPT Mole's last two assessments focus on the challenges he faces and the qualities he must now display whereas his previous assessments commented favourably on the initiative and leadership he displayed in addressing the technical and personnel problems he faced when he took over command of SWAN.

172 CNS letter of 6 October 1993 to CAPT Mole, enclosure to Captain Mole's supplementary submission, dated 16 March 1994.

173 DNLS Minute 543/93, dated 6 July 1993 to ACPERS-N, para. 39.

7.226 Evidence to this Committee indicates that (a), the first of the particular grounds for censure is based on an erroneous premise.¹⁷⁴ As far as the Committee has been able to ascertain, no proposal to return Leading Seaman Connelly to Australia from Hong Kong was adequately put to Captain Mole. The evidence of both Leading Seaman Connelly and Captain Mole indicates that Captain Mole offered Leading Seaman Connelly the opportunity to return to Australia because of child care problems some time after Hong Kong. Leading Seaman Connelly chose not to avail herself of that opportunity. The preference she expressed to Captain Mole at that time to stay to the end of the deployment would have given Captain Mole no cause whatever to probe further about her or the other Electronic Warfare sailors' state of morale.

7.227 The Committee's detailed consideration of component (b) of the censure is in paragraphs 7.122-7.83 of this Report. The Committee's review of component (c) of the censure is in paragraphs 7.38-7.117 of this Report.

7.228 The Committee notes that one of the consequences of the censure being issued at the Chief of Naval Staff level is that there are few avenues of appeal open to Captain Mole.¹⁷⁵ The Committee has therefore felt a particular responsibility to examine closely all the matters pertaining to that censure.

174 Part (a) of the censure stated *"you failed to sufficiently recognise that the proposal to return LS Connelly to Australia from Hong Kong, because of her dissatisfaction, indicating a morale problem with the female Electronic Warfare sailors on board which required further investigation and careful monitoring"*.

175 In Attachment 5, letter from CAPT Brian Robertson of 11 May 1994, the Navy advised the Committee that: *"DI(N) ADMIN 35-1 is the relevant instruction directing how a censure may be awarded against an officer, however, the DI(N) does not specify how an officer may appeal against the awarding of a censure by the Chief of Naval Staff (CNS)."*

Procedures in awarding censures differ slightly depending upon whether a flag officer or a commanding officer initiated the censure action, however, in all cases an officer must be given the opportunity to show cause why he or she should not be logged or censured.

Apart from any reasons in writing the officer may give there is no specified or "normal" avenue of appeal against a censure. The officer may file a Redress of Grievance to have the matter reviewed pursuant to the provisions of DI(N) ADMIN 35-3. The officer may, if still dissatisfied with the decision reached after filing a Redress of Grievance apply to the Defence Force Ombudsman for a further review of the adequacy of the decision. In addition, there is nothing to prevent the affected officer from reapplying to CNS to review the decision if further relevant information becomes available to the officer."

7.229 Recommendation Twenty Four: The Committee recommends that the Chief of Naval Staff review the censure of Captain Mole, taking into account the Committee's view that:

- Captain Mole should have been given an opportunity to respond to the specific details of the censure as finally issued by the Chief of Naval Staff;
- the censure carried additional weight because it was made public;¹⁷⁶ and
- the severity of a censure at the Chief of Naval Staff level is out of proportion to any shortcomings in Captain Mole's performance as Commanding Officer of the SWAN.

7.230 Recommendation Twenty Five: The Committee recommends that review of Captain Mole's censure should include a parallel review of his performance assessments since August 1992. Furthermore, the Committee recommends that any selection panel considering promotions where Captain Mole is a candidate should have this Committee's Report brought to its attention.

7.231 The Committee noted that, in advising the Minister of his intentions to censure several officers in relation to the SWAN incidents, the Chief of Naval Staff expressed his view that the severity of the punishment should be seen to be equitably spread for all ranks. The Committee accepts that there is validity in this approach. It will be self-evident, however, from this Report that equity demands that responsibility for the SWAN events be accepted across the management in the Navy. This means that the senior management also must acknowledge its failings and shoulder its fair share of corporate responsibility. A beginning to this was made when the Chief of Naval Staff, Vice-Admiral MacDougall, openly acknowledged Navy's corporate responsibility during the Committee's public hearings.¹⁷⁷ As is evident from comments elsewhere in this Report, the Committee believes firmly that the emphasis at this stage of evolution in the Navy's integration of women, the primary emphasis must be on educating all

176 In enclosure 6 to the letter dated 11 May 1994 from CAPT B. Robertson to the Committee Secretary, the Navy advised the Committee that *"It is not usual practice for the awarding of a censure to be made known to the general public, however, there is no prohibition on this being done if CNS believes it is in the Navy's interest to do so"*.

177 VADM I. MacDougall, Committee Hansard, p. 551.

personnel, raising awareness about gender related problems, providing effective tools for managing those problems and laying the basis for genuine and fundamental changes in attitude. There is a role for punishment for severe transgressions and that option will at times need to be exercised. But it must be exercised with great discretion.

7.232 Recommendation Twenty Six: The Committee recommends that the censure for all other personnel involved in the SWAN incidents be reviewed in the light of the findings of this inquiry.

7.233 The events on the HMAS SWAN and subsequent developments have had a severe impact on the lives of many people. This is obviously true for the parties principal, but it is also true for many others, particularly the 280 crew members.

7.234 The events themselves were important. But now, more than two years later, it is very difficult to disentangle the effect of the events that followed the initial complaints, from the actions which led to the complaints in the first place.

7.235 The Committee has concluded that the emotional price paid by all those directly affected by the events on HMAS SWAN goes beyond any distress at the time of the particular events themselves. Continuing scrutiny, first by a court martial, then the Board of Inquiry, the media and finally the Senate Committee proceedings have exposed the people affected to much greater stress than would normally be expected for the resolution of incidents of the kind that triggered the present inquiry.¹⁷⁸ Moreover, the responsibility for allowing a situation to develop that permitted the incidents to take place must be widely shared. All the parties present when the events took place carry some responsibility, as do a wide range of officers at various levels and in several different management levels of the Royal Australian Navy.

178 Dr C. Wheat; *"the things that happened wererrt so bad that I would normally have made a complaint about it"*, BOI Transcript, p.762; Ms S. Connelly told the Committee *"More damage has been done since then actually happened on the ship"*, Committee Hansard, (in camera - released), p.302; *"It would appear from the instructions that I have taken from both women [Ms Flannery and Ms Connelly] that it was their attendance at the Board of Inquiry which led to a rapid deterioration in their psychiatric, emotional and physical well-being. After leaving SWAN, both women had residual problems but these became prominent when they were required to give evidence before the Inquiry."* letter from Mr Ken Cush dated 16 November 1993 to Committee Secretary; CAPT Mole, Committee Hansard, (in camera - released), pp. 63-64.

7.236 The Committee accepts that the objectives of the Board of Inquiry, the Maritime Commander and the Chief of Naval Staff were admirable and to be supported. But there were shortcomings in the way matters were tackled. In their determination to do and be seen to be doing whatever was necessary to ensure that sexual harassment is eliminated from the Navy, they failed to consider adequately the total context in which the particular events under investigation occurred. They also tended to brush aside the very deep and real difficulties in clearly identifying the nature of the beast, sexual harassment, itself.

CHAPTER 8

COURT MARTIAL

TERM of REFERENCE 1 (g)

This Chapter deals with the appropriateness of the decisions made as part of determining whether sexual assault charges should be laid, and a court martial convened, in reference to an officer aboard HMAS SWAN in 1992.

8.1 Although the court martial of Lieutenant Commander James is not part of the terms of reference of this inquiry, the Committee is required to consider some matters relating to the court martial in the context of the Term of Reference (g).

8.2 The transcript of the proceedings before the court martial was examined as part of the process of seeking information about the decision to convene a court martial.

8.3 The Committee is not empowered to review the outcome of the court martial proceedings¹ nor does it wish to do so. The Committee has no reason to question in any way the outcome of the court martial.

8.4 The fact that a charge has been dealt with by a court martial does not prevent a person making a complaint about the same circumstances to the Human Rights and Equal Opportunity Commission (HREOC), whether the accused has been found guilty or not, and vice versa. Because the criminal standard of proof (beyond reasonable doubt) does not apply in HREOC proceedings, it is possible for a person acquitted by criminal proceedings to be found liable to pay compensation to a complainant in HREOC proceedings.

1 In a letter to Dr Wheat, dated 16 september 1993, the Minister responded to her request that the Senate Committee inquiry review the decision of the Court Martial by explaining to her that: *There are strict constitutional limitations upon the legislature acting as a de facto review body over the conduct of a Court, whether civil or military*. This is also the Committee's view.

8.5 The Committee notes that a court martial conducts itself in almost all respects in the same way as civilian criminal proceedings are conducted. For example, there is:

*"the presumption of innocence, the onus of proof on the prosecution and the standard of proof beyond reasonable doubt. The rules of evidence applying to criminal trials in the ACT apply to court martials. The directions on the law given by the judge advocate are binding on court martials' boards, the same as a judge's direction to a jury."*²

8.6 The accused has the right to challenge the people appointed to the tribunal. The trial before a court martial is a public trial open to any member of the public. The major difference is that a tribunal of military officers, not junior in rank to the accused, replaces a jury drawn from the wider community. There are some differences in appeal rights of the accused.³

8.7 As is the case in comparable civilian proceedings, the complainant, whose status in both is that of a witness for the prosecution, has no right to challenge the membership of the tribunal, nor in the case of civilian proceedings, the membership of the jury. Normally the witnesses in both court martial proceedings and comparable civilian proceedings are not provided with legal counsel. The Attorney-General's Department puts the view that:

*"It would be possible for a witness to be afforded separate legal representation in a criminal trial, in the discretion of the trial judge, but it would be quite extraordinary for this to occur."*⁴

The prosecution may take account of the views of the complainant in their conduct of the case but they do not represent the complainant in a legal capacity.

8.8 Another difference between a court martial trial and a criminal trial is in the proceedings and decision-making process preceding the trial. In civilian proceedings

2 RADM Oxenbould, Committee Hansard, p. 1249-1250. See also submission by Attorney-General's Department.

3 For details see Attorney-General's Department submission, p. 5.

4 *ibid.*

for indictable offences,⁵ a committal hearing is held in public by a magistrate to assess the evidence and to determine whether it justifies a decision to proceed to trial.⁶ The Defence Force Discipline Act (DFDA) provides for a summary hearing to be held, but this is a private process involving the gathering together of all the evidence on which to base an administrative decision whether or not to proceed to court martial:

*"The person running that hearing is not legally qualified... What invariably happens in accordance with the Defence Force Discipline Act is that it is referred on to a higher authority. A higher authority in this case is the Maritime Commander, the convening authority. The convening authority then makes a decision based on all of the material that is available to him to convene a court martial."*⁷

8.9 A summary hearing of the evidence in the case of the alleged sexual assault of Dr Wheat on HMAS SWAN was held at HMAS STIRLING on 18 November 1992⁸ and the documents convening the court martial were signed on 20 November 1992.

8.10 Rear-Admiral Walls gave evidence to the Committee that he received legal advice three times about the convening of the court martial. The first opinion was from Lieutenant Commander Hoyle, a Deputy Senior Crown Prosecutor with the New South Wales Department of Public Prosecution and a member of the RAN Reserves. His advice, given on 25 September 1992, was that there was insufficient evidence to proceed to prosecution of the case. One month later, in October 1992, Dr Wheat forwarded to Navy a statement containing new evidence and she had a lengthy interview with Lieutenant Commander Hoyle on 26 October 1992. On the basis of the

5 Indictable offences are defined in the Commonwealth Crimes Act 1914 as offences for which the penalty is more than twelve months' imprisonment.

6 The Attorney-General's Department submission notes that this *"procedure is a protection for the accused"*. Attorney-General's Department submission, p. 3.

7 CAPT T. Stodulka, *Committee Hansard*, p.1258. The Attorney-General's Department confirms that *"there is no provision for a public hearing by a judicial officer to assess the sufficiency of the evidence"*. See Attorney-General's Department submission, p. 3.

8 This is referred to as a *"de facto committal proceeding"* and is provided for under Section 130 of the DFDA. Attorney-General's Department submission, p. 3.

interview and of the new evidence, Lieutenant Commander Hoyle advised on 26 October 1992, that:

*"Whilst LEUT Wheat's second statement contains sufficient information to technically support a charge, I adhere to my original opinion that a conviction would be most unlikely to result."*⁹

8.11 The Maritime Commander also sought the opinion of Lieutenant Slattery, QC, a barrister and member of the RAN Reserves. On 11 November 1992, Lieutenant Slattery advised that:

"There is a clear prima facie case of all the ingredients for the charging of an offence under s.92D of the Act."

However, he also stated that:

*"This is a matter in which, because of the circumstances that have been outlined above, there is a substantial possibility that a conviction will not be obtained... That, however, is ultimately a matter for the tribunal."*¹⁰

8.12 Both lawyers also advised that Dr Wheat be informed that a conviction was unlikely to ensue. On the same day as Navy received Lieutenant Slattery's advice that a prima facie case existed, it also received a letter dated 10 November 1992, from Dr Wheat to the Fleet Legal Officer :

*"I am writing to let you know that I am still keen to proceed with charges of sexual assault against LCDR James... I fully understand that there is only a small chance that LCDR James will be punished for his actions, but, I feel that a small chance is better than no chance, which would be the case if a trial was not held."*¹¹

9 LCDR T. Hoyle, Investigation HMAS SWAN - LCDR R.D. James, RAN (Letter dated 14 March 1994 from CAPT B. Robertson to Committee Secretary).

10 LEUT M. Slattery, Consideration of possible charges against LCDR R. D. James RAN (Letter dated 14 March 1994 from CAPT B. Robertson to Committee Secretary).

11 Letter, 10 November 1992, from Dr C. Wheat to LCDR V. McConachie.

8.13 Rear-Admiral Walls said in evidence to the Committee that, on the basis of all the information before him:

*"I thought it inappropriate that I should make the judgement that in effect I should close out the matter myself. I thought it more appropriate that the matter should go to trial and should be judged in accordance with due process rather than for me to make an arbitrary decision."*¹²

8.14 In an interview on 26 October 1992, Lieutenant Commander Hoyle had told Dr Wheat:

*"that her claims of sexual assault were largely uncorroborated other than for the admissions by LCDR James that intercourse had occurred ... I explained to her that there was a very high standard of proof required in matters of this kind and that she might wish to discuss with her psychiatrist whether it was in her interests to submit to the rigours of giving evidence in a criminal trial. I reiterated that she should not infer from this that I was expressing an opinion or in any way attempting to influence any decision she might make in the matter...LEUT Wheat expressed the view that if criminal proceedings were not taken against LCDR James for sexual assault it would thus be inferred that the intercourse was therefore consensual. I assured her that this was not necessarily the case."*¹³

8.15 There is no doubt that the complainant was aware that a conviction was by no means guaranteed or even likely. In view of Dr Wheat's express wish that the charges be proceeded with, the Committee is of the opinion that, had Navy decided not to proceed to court martial, it would have been open to charges of ignoring the seriousness of alleged sexual assault within its ranks.

8.16 It is not clear whether Dr Wheat understood that, since the tribunal of the court martial acted as a jury, in the case of an acquittal of the accused, the prosecution would not be able to appeal.¹⁴ Likewise, in the Australian civil legal system, there is

12 RADM Walls, Committee Hansard. p. 1612.

13 LCDR T. Hoyle, op. cit. 26 October 1992. (Letter dated 14 March 1994 from CAPT B. Robertson to Committee Secretary).

14 Division 3 of DFDA makes provision for appeals in relation to convictions only.

no provision for appeal by the prosecution or anyone else against an acquittal in a jury trial.

8.17 The party (i.e. Dr Wheat) making the allegations that led to the charges had an alternative or additional options available. They were:

- to indicate that she did not wish to be a witness before a court martial. A court martial would be unlikely to proceed without the co-operation of the principal witness.
- to pursue her case in a civil action in an Australian civil court. This option has so far not been exercised.
- to take her case to the Human Rights and Equal Opportunity Commission.¹⁵

8.18 Dr Wheat's dissatisfaction with the outcome of the court martial seems to stem from two factors:

- lack of confidence in the investigation on which the decision to proceed to court martial was based; and
- lack of confidence, through suspicion of bias, in a decision arrived at by a jury drawn from within Navy.

8.19 The Committee's review of the preliminary investigation process and of the work of the investigation team is in paragraphs 5.34 - 5.54 of this Report. The Committee's conclusions were that the investigation team had acted with propriety.

8.20 While the Committee is satisfied that due process was followed in the case under consideration, the Committee recognises that the team spirit that is encouraged in the Australian Navy may lead a person who alleges sexual assault to feel that members of the Navy should not form the jury trying a fellow officer on an allegation of sexual assault. It may be more reassuring if the jury were drawn from the general community. Similarly, a person accused may lack confidence in a Navy jury and prefer one drawn from the wider community. This would, of course, be the result if all

15 In February 1994, this step was taken by Dr Wheat.

allegations of sexual assault were dealt with by civilian authorities as recommended below.

8.21 The Committee heard evidence from Navy that in the circumstances of this alleged offence not having taken place in Australia, the only course it could follow to prosecute the alleged offender was to proceed to a court martial.¹⁶ Had the alleged offence occurred within Australia, it could only have been tried by a court martial with the permission of the Director of Public Prosecutions.¹⁷ Navy considered that since the alleged offence occurred on board an Australian vessel outside Australian territorial waters, none of the States or Territory Courts had any jurisdiction. Under the DFDA a court martial was the only option.¹⁸

8.22 The Attorney-General's Department is of the view that this was:

*"probably the only practical course. A foreign court would not have jurisdiction. It is arguable that a State or Territory court could have jurisdiction under the Crimes at Sea Act 1979 (Cth), but the application of this Act to RAN ships is far from clear."*¹⁹

8.23 Because the alleged sexual assault took place on board a Navy vessel, outside Australian Territorial waters, the Navy found itself in a unique position - one that would not apply to any Australian employer outside the Defence Force. In addition to meeting its corporate responsibility of assistance to the victim of the alleged assault, the current requirements of the DFDA meant that Navy also had the responsibility for conducting the preliminary investigations in the case, for making a decision whether to proceed to court martial and for conducting the court martial proceedings in which its own employees acted as jurors. No matter how professional and even-handed an organisation is in such a situation, it can become the target of criticism from any party that is not satisfied with the outcome.

16 VADM R. Taylor, Committee Hansard, p. 1251.

17 See section 63 of DFDA.

18 The Attorney-General's Department points out that this provides protection for the accused in civilian proceedings since the Director of Public Prosecutions has a discretion to discontinue proceedings. Attorney-General's Department's submission, p. 4.

19 Attorney-General's Department's submission, p. 1. A more detailed examination of the applicability of the Crimes at Sea Act is on p. 3. of the submission.

8.24 Recommendation Twenty Seven: The Committee recommends that amendments to the Defence Force Disciplinary Act be considered to allow for alleged sexual offences involving only Australian military personnel that occur outside Australian territorial waters, including on board Australian vessels, to be tried in a civilian criminal court under the relevant law applying in the Jervis Bay Territory in Australia, having been investigated by the appropriate civilian police and prosecuting authorities.²⁰

20 See section v (a) of Recommendation Thirty Nine.

CHAPTER 9

INTEGRATION OF WOMEN IN THE NAVY

TERM of REFERENCE 1 (h)

This Chapter examines the content and timing of directives from the Government in relation to integration of female personnel into the Navy with particular reference to sea-going appointments, and the actions taken by the Government relating to the Board of Inquiry.

Background

9.1 The Women's Royal Australian Naval Service (WRANS) was formed in April 1941 in order to fill vacancies created when the Navy's male wireless telegraphists were sent on war duties overseas. After the war, the possibility of making the WRANS a part of the Permanent Naval Force was discussed but the matter was not resolved and in July 1948, the last WRAN was discharged. In July 1950, Federal Cabinet adopted a decision to re-introduce the Womens' Services at the beginning of 1951. The reconstituted WRANS became part of the PNF in 1959. Nevertheless the WRANS was a separate Service: its members were only employed in jobs that were regarded as suitable for women according to the prevailing norms at the time.

9.2 The next government directive came in 1974 when, during preparations for International Women's Year in 1975, the Prime Minister requested the Minister for Defence to consider the possible liberalisation of Defence's employment policies for women. A Working Party established by the Chiefs of Staff Committee in response to the Government's request recommended that:

*"women should be permitted to serve on active service at home or abroad, but not in a combatant role. Women should also hold the same command and disciplinary powers and responsibilities as men."*¹

1 HQADF submission, Committee Hansard, p. 1325.

Employment of Women at Sea

9.3 The Government endorsed the recommendations of the Working Party and during 1977, the Air Force, Army and Navy each released a new policy relating to the employment of women, the Air Force proceeding immediately with the integration of women into the Royal Australian Air Force. The Royal Australian Army abolished its separate Women's Corps in 1979 and in 1980, training for sea service was offered to the WRANS for the first time in the Royal Australian Navy. There were few women in the Permanent Naval Force at that time. In 1982, women represented 6.6 per cent (1033 members) of the PNF.²

9.4 The *Sex Discrimination Act 1984* came into effect on 1 August 1984. Section 43 of the Act provided that discrimination against a woman on the grounds of sex was not unlawful in connection with employment, engagement or appointment in the Defence Force in a position involving the performance of combat duty or combat-related duties. A Joint Press Release was issued on the effect the Sex Discrimination Act would have on the employment of women in the Defence Force by the Minister for Defence, the Minister Assisting the Prime Minister on the Status of Women and the Attorney General on 2 August 1984. It announced that:

*"The Government has decided to open more positions in the Defence Force to women, consistent with maintaining combat preparedness."*³

The Ministers' statement went on to say that some 17000 positions within the Defence Force would be made available to women on merit *"over a period of time and priority will be given to suitable applicants who are already on the waiting lists"*. According to Navy's submission to the Committee, prior to 1984, *"very few females were sent to sea in RAN ships. In that year the first female officers began full training cruises"*.⁴ The separate Women's Service of the Navy was not abolished until 1985.

9.5 A direct effect of the *Sex Discrimination Act 1984* was that women who joined the Navy after June 1985 could be requested at any time to go to sea. The Department of Defence Annual Report for 1986-87 reveals that a major review of all ADF positions

2 RAN submission, Committee Hansard, p. 192.

3 Commonwealth of Australia, Press Release No 146/84, 2 August 1984.

4 RAN submission, Committee Hansard, p. 192.

was conducted in late 1986 and resulted in an increase in the number of positions open to women⁵. The Minister for Defence, the Hon. Kim Beazley, MP, stated in a Press Release dated 11 June 1987 that:

"Individual Services continue to examine restricted categories with a view to expanding the employment opportunities for women. This recently resulted in the opening of three sea-going officers' positions in non-combat ships, which will eventually result in female officers being able to compete for command and second-in-command of non-combatant ships."

9.6 It was not until 1987, however, that female officers were posted to sea for the first time. This initiative occurred at a time when, according to the Government White Paper on Defence released during that year, another review was *"underway to expand employment opportunities available to women in the ADP"*.⁶ The proposals put forward by the review were initially rejected and in 1989, drafts of revamped proposals were put to the then Minister for Defence Personnel, the Hon. Ros Kelly, MP.

9.7 On 30 May 1990, the Minister for Defence Science and Personnel announced that women would be allowed to serve in some combat-related positions:

*"I have taken this decision on the advice of the Chiefs of Staff Committee. It follows reviews by the three Services which recognised the need to attract and retain talented women by providing them with quality career opportunities."*⁷

The statement added that the Services would no longer use the section 43 exemption from combat-related duties that they had been granted under the Sex Discrimination Act. The Chiefs of Staff Committee would review the decision annually until it carried out a policy review in June 1993.

5 Department of Defence, *Defence Report 1986-87*, Canberra, AGPS, 1987.

6 Department of Defence, *The Defence of Australia 1987*, Canberra, AGPS, 1987.

7 Minister for Defence Science and Personnel, *Press Release*, 30 May 1990.

Women in the Navy - some statistics

9.8 When the decision to allow women to serve in combat related positions in April-May 1990, was announced, there were 33 women officers and sailors serving at sea. The numbers have increased rapidly since then so that, during 1991, 95 women served on Navy ships, 140 during 1992. The number reached 175 at the end of 1993. In 1982, women represented 6.6 percent of the Permanent Naval Force. This percentage had doubled in just over 10 years to 12.5 per cent of the PNF at the time of Navy's submission to the Committee in November 1993. Women can now apply for 99 per cent of available positions in Navy.⁸

Personnel Serving at Sea in May ⁹

YEAR	MALES	FEMALES	TOTAL
1990	4734	33	4767
1991	4494	95	4589
1992	4298	140	4438
1993	4386	175	4561

9.9 The decision to allow women to go to sea caused considerable concern among some serving members of the Navy. Consultations with senior sailors as part of "*Project Mainstay*", a review of the role and aspirations of senior sailors in the RAN conducted in June 1990, revealed that the issue of women at sea was a major concern to senior sailors. The report of the review team included a chapter on "*Equal Opportunity and Women at Sea*" in order to address those concerns and it recommended a "*slow and steady as she goes approach to further implementation*" of the policy of employing women at sea¹⁰. However, the report found that there was

8 HQADF submission, Committee Hansard, p. 1327.

9 Minute dated 17 August 1994 from RADM C.J. Oxenbould to Committee Secretary.

10 Letter from CAPT B. Robertson to Committee Secretary 2 March 1994, (*Project Mainstay*) p. 176.

a perception that sea postings for females were not to be taken seriously and added that:

*"until such time as female billets at sea are increased, the credibility of employing women at sea will come under scrutiny."*¹¹

9.10 Navy told the Committee that *"Project Mainstay's recommendations relating to this chapter (chapter 2, 'Women at sea') were all implemented"*.¹² The Chief of Naval Staff released *"CNS Protocols on the Employment of Women in the RAN"* (15 February 1991) and an instruction that Mixed Gender Awareness training was to be incorporated in all leadership and management courses. In July 1991, a Defence Instruction entitled *"Sexual Assault"* (DI(N) PERS 40-15) was promulgated.

9.11 In December 1992, the Minister announced that, on the advice of the Chief of the Defence Force, a large number of combat positions would be opened to women. For the Navy, the decision meant that women became eligible to serve on every type of warship in peacetime, including submarines with suitable accommodation when they enter service after 1995. The time-table for the implementation of the policy was left to the individual Chiefs of Staff. In March 1994, the Minister for Defence acknowledged this when he said in answer to a question from Senator MacGibbon about the seagoing appointment of women members of the RAN, that:

*"No orders or instructions were given by me or Senator Faulkner."*¹³

9.12 In evidence to the Committee, Rear-Admiral Holthouse representing the RSL said that in relation to the integration of women in the Defence Force:

*"Mounting criticism from the media and other interest groups in society translated into political pressure to accelerate."*¹⁴

11 *ibid.*, p. 177.

12 Letter from CAPT B. Robertson to Committee Secretary, 2 March 1994.

13 Senator the Hon. R. Ray, Senate Hansard, 23 March 1994, p. 2130.

14 RADM D. Holthouse, Committee Hansard, p. 1193. RADM Holthouse was the Assistant Chief of Naval Staff - Personnel at the time the Project Mainstay study was undertaken.

9.13 This point of view seems to have had fairly wide currency. The Good Working Relationships (GWR) Project Team who found in their research and discussions with Service and civilian personnel within Navy that there was:

*"a perception of government interference and the imposition of community standards, particularly in relation to the increased participation of women into the broader spheres of NAVY life. There is a strong traditional belief that they, NAVY, are unique and therefore should be exempted from community norms."*¹⁵

9.14 The evidence from Department of Defence documents shows, however, that in opening up more Defence Force positions to women, the Chiefs of Staff Committee was not influenced only by government and community impatience. The recommendation to open combat-related positions to women was partly motivated by the difficult recruiting situation experienced by the Services at the end of the 1980's and into the 1990's. The then Chief of Naval Staff, Vice-Admiral Hudson acknowledged this in the protocols released to senior Navy staff in February 1991, stating that in addition to fulfilling a need to be fair and to benefit from the full potential of women employed by the Navy, the new policy would:

*"improve the current personnel situation at a time when recruitment is difficult and likely to get worse; and to help re-balance sea/shore ratios, particularly in categories in which the current situation is exacerbating already high wastage rates."*¹⁶

9.15 At the first of the Committee's public hearings, the Chief of Naval Staff at the time, Vice-Admiral MacDougall explained to the Committee that the RAN had *"no successful military models"* of women serving at sea to follow and it was not *"prepared to wait for one to be developed elsewhere"*.¹⁷ Navy therefore decided to adopt a process of learning by doing:

15 Triulzi Collins Solutions, submission, Committee Hansard, p. 626.

16 VADM M. Hudson, *Employment of Women*, CNS 82/91, 15 February 1991, p. 5.

17 VADM I. MacDougall, Committee Hansard, p. 551.

*"I am still convinced that we did the right thing in getting it started. If we had not started it, it would have meant a 10-to-15 year delay before women had the opportunity to go to sea."*¹⁸

In evidence to the Committee, Ms Triulzi commended the approach taken by Navy:

*"They have taken a risk management approach. Perhaps they could have planned that risk management approach a little more effectively but, without taking that risk management approach, they would not have learnt."*¹⁹

9.16 The Chief of Naval Staff's point of view that the best way to promote the integration of women at sea was to send them to sea was reinforced by the former Maritime Commander, Rear-Admiral Walls who told the Committee that:

*"the demonstration of professional competence by women at sea arkedly speeds up and enhances their recognition and acceptance. That has been particularly evident, I think, in the past year."*²⁰

9.17 The evidence placed before the Committee suggested that each of the Services was able to choose how and at what speed to proceed with the integration of females within its ranks. The pace of the integration of women into Navy ships was a matter for Navy to decide. The first female sea billets were taken up 13 years after the Government first requested the Chiefs of Staff to look at the possibility of opening more positions to women in the Defence Force. While this may appear to be an extremely slow pace to those who were anxious to see all Navy positions opened to women, it could equally be seen as rapid policy implementation in the context of thousands of years of naval history exclusive to men and starting from a base of less than 1000 female members of the Royal Australian Navy.

9.18 While the Committee accepts that Navy's decision to *"make it up as we went along"* was a valid approach in the circumstances, it finds it regrettable that Navy did not canvass the views of its female members, some of whom had been going to sea for short periods for about six years, before the first sailors were posted to sea billets.

18 RADM R. Walls, Committee Hansard, p. 559.

19 Ms S. Triulzi, Committee Hansard, p. 730.

20 RADM R. Walls, Committee Hansard, p. 573.

The Committee believes that a more consultative approach, inclusive of the views of the junior members of Navy (both male and female) may have assisted Navy in averting the situation that arose on HMAS SWAN in 1992.

Actions taken in relation to the Board of Inquiry

9.19 Dr Wheat's 25 November 1992 letter to the Minister for Defence Science and Personnel was received in the Minister's office on 2 December 1992. On 14 December 1992, the letter was forwarded to the Chief of Naval Staff. CNS reported back to the Minister on 17 December 1992 that all allegations and claims relating to Dr Wheat's postings, conditions of employment and personal support aspects would be investigated by the Assistant Chief of Naval Staff (Personnel) and that at the same time, Maritime Command would undertake an investigation of events on HMAS SWAN in 1992.

9.20 The Board of Inquiry into those matters was convened on 21 December 1992. The Minister was briefed by CNS on the progress of the inquiry's report on 1 March 1993 and the Board's report was issued (but not released publicly) on 8 March 1993. The Minister authorised release of the Board of Inquiry's report to Dr Wheat and her counsel on 19 April 1993, to Captain Mole on 24 May 1993 and to Lieutenant Bartlett and Chief Petty Officer Broad on 16 June 1993.²¹ On 29 July 1993, the Minister was advised of the proposed actions of the Chief of Naval Staff in relation to issuing censures to some crew members of HMAS SWAN. He endorsed those actions.²²

9.21 The Minister wrote to Dr Wheat on 19 August 1993, detailing Navy's actions following the Board of Inquiry. (Navy's actions following the Board of Inquiry's report to address the issue of sexual harassment within its ranks are dealt with in detail in Chapters 10 and 11 of this report.) The Minister again wrote to Dr Wheat on 26 August 1993, in response to a letter from her dated 29 July 1993. The letter acknowledged that Dr Wheat's lawyer, Mr P. Willee, QC had had discussions with Navy in relation to a

21 Ms Connelly, who had served on the SWAN as a Leading Seaman told the Committee that after numerous unsuccessful attempts at obtaining information about the findings of the Board of Inquiry, she first read its Report in the office of Mr P. Reith, MP. Ms Flannery told the Committee she first read the Report of the Board in the office of the naval legal officer in Canberra. Committee Hansard, (in camera-released). pp. 271, 305.

22 Senator the Hon. J. Faulkner, Minister for Defence Science and Personnel, Letter to CNS, 29 July 1993.

compensation claim for income lost and expressed the hope that the matter would be quickly resolved.

9.22 In September 1993, the report of the Board of Inquiry was leaked to the media and the Minister and Chief of Naval Staff held a press conference on 9 September 1993 at which the Minister said:

*"I obviously find the actions that took place on board HMAS SWAN during the deployment of concern, those actions are absolutely unacceptable to me as Minister, they are absolutely unacceptable to the Government, and every effort will be made and has been taken to ensure that there is no repeat of that behaviour and no recurrence will be tolerated."*²³

The Minister announced that the matter would be referred to the Senate Standing Committee on Foreign Affairs, Defence and Trade for investigation.

9.23 The Chief of Naval Staff said at the Press Conference that he was prepared to apologise publicly to Dr Wheat for the circumstances that occurred on board SWAN. On 29 October 1993, CNS wrote to Dr Wheat on 5 November 1993 and to the female sailors involved giving each an apology on behalf of the Royal Australian Navy. In its submission to the Committee, Navy said that in hindsight it saw the decision not to *"give this form of institutional apology earlier"* as a mistake.²⁴

9.24 On 16 September 1993, the Minister for Defence Science and Personnel wrote to Dr Wheat regarding the Terms of Reference of this Senate Committee inquiry and the legal assistance the Commonwealth was prepared to offer her in relation to her ongoing compensation claim and in relation to this Committee's inquiry.

23 Senator the Hon. J. Faulkner, Press Conference Transcript, 9 September 1993.

24 RAN submission, Committee Hansard p. 215.

CHAPTER 10

THE NAVY'S RESPONSE TO SEXUAL HARASSMENT

TERM of REFERENCE 1(i)

This Chapter examines the appropriateness of actions taken by Navy subsequent to the Board of Inquiry Report to address the issue of sexual harassment on Navy ships.

Before the SWAN Incident

10.1 In April 1990 the Chief of Naval Staff, Vice-Admiral Hudson announced that, as a result of a change in policy, women would be able to serve in peace time on all ships except submarines. This announcement was followed in June of the same year by a message to all Navy ships and establishments in which CNS stated:

*"I wish to make it quite clear that sexual harassment will not be tolerated in the Navy... Prevention of sexual harassment is the duty of all personnel. Divisional officers and supervisors however are in an especially important position to prevent sexual harassment and I expect them to take an active role in educating their subordinates."*¹

10.2 Another document entitled "Employment of Women", issued by CNS in February 1991 reinforced the position on sexual harassment stated in the earlier document:

*"Commanding officers will need to pay careful attention to ... ensuring that sexual harassment does not occur, especially as a manifestation of resentment at the employment of women at sea. DI(N) PERS 23-2 and DI(G) PERS 35-1 contain guidance on sexual harassment."*²

The Maritime Commander's *Guidelines on the Employment and Treatment of Women at Sea* in March 1991 also referred personnel to DI(N) 23-2. It is worth noting that

1 VADM M. Hudson, Mixed Gender Awareness - Sexual Harassment, 4 June 1990.

2 VADM M. Hudson, *Employment of Women*, para. 15.

DI(N) 23-2 had been issued in 1986 and was not updated when the 1990 change of policy came into effect and opened all sea going positions to women in peace time.

10.3 The Commanding Officer of HMAS SWAN gave evidence to the Committee that, during the Asia deployment in 1992, he only had that particular Defence Instruction (23-2) to rely on for guidelines on cases of sexual harassment.³ The new Defence Instruction (DI(N) PERS 16-5) on sexual harassment, issued in June 1992, has more detailed "Guidelines for Commanding Officers" and a list of examples of unacceptable behaviour and of sexual harassment. However, those instructions were issued while the SWAN was on deployment and only became available to the Commanding Officer of the ship after his return.

Navy's actions before the Board of Inquiry

10.4 Although it had issued a number of guidelines on the subject of sexual harassment in the two years preceding the incident, Navy acknowledged in its submission to the Committee that:

*"HMAS Swan was a trigger. It showed that the previous perception of integration at sea progressing satisfactorily could ... be quite wrong. It showed a need for cultural change within Navy, which in hindsight, should have been anticipated at the time that mixed gender work in Navy was introduced and then expanded."*⁴

Navy took a number of steps to enhance awareness of sexual harassment immediately following the SWAN incident and before the decision to conduct an inquiry into events that had occurred on the ship was taken.

10.5 On 30 September 1992 the Maritime Commander issued a Personal Memorandum to all Commanding Officers reminding them that sexual harassment, along with other forms of unacceptable sexual behaviour, would not be tolerated in the RAN. The Maritime Commander issued another Personal Memorandum on the same subject on 11 December 1992. Navy also told the Committee that the Maritime Commander conducted an open forum on 28 October 1992 to examine some issues of concern to women. As a result of the forum, a paper on the assimilation of women

3 CAPT D. Mole, Committee Hansard (in camera - released) p. 51.

4 RAN submission, Committee Hansard, p. 269.

at sea was produced, which made a number of recommendations on the issue to the Maritime Commander.

10.6 The paper prepared by Commander Carolyn Brand, RAN, identified some key issues for Navy to address in relation to the assimilation of women at sea. In particular, it identified that Navy management had:

*"failed to provide the guidance and training required by its personnel to deal with the significant change in the culture brought about by introducing women into combat units."*⁵

The paper also identified strong discrimination against outsiders to the group, both male and female. For example, female junior sailors were just as likely to discriminate against new recruits as were male junior sailors. The paper concluded with recommendations aimed at educating and equipping Navy personnel to integrate women at sea. It recommended a pro-active approach and suggested ways of providing support for women who were posted to sea. The Committee notes that many of the programs developed by Triulzi Collins Solutions consultants for Navy, follow an approach similar to that suggested in the Brand paper.

10.7 The Director of Naval Legal Services and the Director General of Chaplaincy (Navy) commenced a tour of Navy's establishments in November 1992 to give a series of presentations aimed at explaining the new defence instruction on Unacceptable Sexual Behaviour, DI(G) PERS 35-3. This initiative was followed up by the introduction of lectures on Unacceptable Sexual Behaviour policy by the Personnel Liaison Team as part of their regular presentations to ships and establishments about conditions of service.

Navy's actions after the Board of Inquiry

10.8 The Board of Inquiry was convened on 21 December 1992. In January 1993, the Chief of Naval Staff held discussions with a firm of consultants with expertise in the field of integrating women into previously all-male work environments. Triulzi Collins

5 Letter from CAPT B. Robertson to Committee Secretary, 11 May 1994. Enclosure: *The Assimilation of Women at Sea* by CMDR C. Brand, Dec. 1992.

Solutions was commissioned to develop a gender awareness training package for all personnel in the Navy.⁶ Also in January 1993, the Chief of Naval Staff sent:

*"amplified directives and guidelines to all Commanding Officers on unacceptable sexual behaviour and interpersonal relationships by members of the Navy."*⁷

In response to Navy's needs, Triulzi Collins Solutions developed and proposed the Good Working Relationships Project. The project was approved and implementation of Stage One commenced in April 1993.

10.9 The Board of Inquiry report was issued on 8 March 1993. Although a decision to proceed with seminars had been taken before the Board of Inquiry issued its report, the seminars run by Commodore Barrie, Lieutenant Commander McConachie and Petty Officer Plichá from Maritime Command began in March 1993. They covered the issues of unacceptable behaviour and sexual harassment by using a training package developed in-house by Lieutenant Commander McConachie, the Fleet Legal Officer. The Committee attended one of the seminars on 21 February 1994 and its comments can be found in Chapter 11 of this report.

10.10 Concurrently in March 1993, Naval Support Command issued a minute on *"Mixed Gender Awareness"* to all Commanding Officers within its Command for circulation to all personnel. The booklet handed out at Maritime Command seminars was supplemented in October 1993 with a leaflet on the topic of sexual harassment and on the avenues of complaint available to those who are subjected to it. Navy made copies of the leaflet available in *"Navy News"* and it was also distributed by other means throughout Maritime Command.

Development of the confidential database

10.11 In June 1993, the Navy decided to establish a centrally managed and confidential database of information on reports of sexual harassment and unacceptable sexual behaviour, similar to the database maintained by the New South Wales Police Force. Because a large number of sexual harassment incidents are resolved informally and many members of the Police Force move from one posting to

6 RAN submission, Committee Hansard, p. 251.

7 *ibid.*, p. 245.

another, the NSW Police database was developed in order to keep track of repeat offenders.⁸ Likewise, Navy's database will be used to ensure that any repeat offence is dealt with formally and carries the possibility of discharge.

10.12 By ensuring that repeat offenders are dealt with severely, this approach both protects other potential victims of sexual harassment and gives the offender the opportunity to be counselled and rehabilitated. Navy provided the Committee with the protocols that it has developed for the database. Although statistical information from the database is available to the Committee and on a weekly basis to the Minister for Defence Science and Personnel, Navy's policy states:

*"The primary requirement is that confidentiality of calls is not breached and thus it is not envisaged that names or other identifiers will ever be included in any data summaries authorised by CIS or ACPERS-N."*⁹

10.13 The Committee is satisfied that every step has been taken to protect the privacy of the individuals involved. The Committee is concerned, however, that Navy does not have in place a policy for destroying the files after a number of years. The Committee's view is that Navy should consider the imposition of a limit on the length of time for which information on the confidential data base of reports, of sexual harassment and unacceptable sexual behaviour is kept. Navy might consider adapting for its own needs the Guidelines suggested in Public Service Regulations 158/159.¹⁰

Operation Lifeguard

10.14 On the recommendation of the consultants it had employed, Triulzi Collins Solutions, Navy established a confidential toll-free '008' telephone referral service in September 1993. Known as Operation Lifeguard, the service was trialled for two months after which it became part of the EEO unit under the management of the

8 RAN submission, Committee Hansard, p. 248.

9 Letter from CAPT B. Robertson to Committee Secretary, 18 February 1994. Enclosure: *Protocols for Management of Confidential Databases*, para. 1.

10 Public Service Regulations 158 and 159 provide that records of disciplinary action remain as part of a staff member's official conduct record kept on the staff member's personal file. Records should be kept for 2 years in the case of admonition and in any other case for five years. The high mobility of Navy staff may require some increase in these time limits.

Director of Naval Personnel Services. It aims to give information about their rights to Navy personnel who may have been "subjected to, accused of, or witnessed any form of discrimination or harassment".¹¹ Callers, who can choose to remain completely anonymous are advised of the avenues opened to them if they wish to take further action. Details about the calls received since the service began are in Chapter 2 of this Report.

10.15 The Committee noted that the RSL was critical of the opportunity that the 008 number gave individuals to bypass the divisional system and the chain of command. Rear-Admiral Holthouse (Rtd.) appearing for the RSL told the Committee:

"we are concerned that the 008 number concept has the potential to reduce the effectiveness of the chain of command".¹²

10.16 Responding to the criticism, CNS told the Committee that, while he understood that concern, he was confident that the 008 number would not "kill the divisional system".¹³ The Committee shares the point of view expressed by the Chief of Naval Staff on this matter. It considers that the 008 number is an appropriate component of Navy's response to the existence of sexual harassment in its workplaces. It endorses Commodore Barrie's comments to the Committee that the education program against sexual harassment now run by Maritime Command:

"...has got to give young people the tools they need to eliminate sexual harassment from the workplace. The 008 number is simply one of those tools. It is a backstop."¹⁴

10.17 The Committee notes that Navy's 008 number to deal with sexual harassment was not a first for the Defence Force. A similar telephone information network called FIND (Family Information Network for Defence) was inaugurated in 1989 to provide support and advice to Service families on conditions of Service matters. Fears were

11 RAN submission, Committee Hansard, p. 261.

12 RADM (Rtd.) D. Holthouse, Committee Hansard, p. 1214. See also comments on the Divisional System in Chapter 6 of this Report.

13 VADM (Rtd) I. MacDougall, Committee Hansard, p. 1295.

14 CDRE C. Barrie, Committee Hansard, p. 1295.

also expressed at the time that the network would undermine the chain of command; experience has shown the fears were unfounded.

10.18 The 008 number is useful in many ways: it provides a "safe" point of contact as well as a source of support and a referral service. Its remoteness from the place where the harassment or unacceptable behaviour may be occurring makes it a more attractive option in the eyes of some than on-the-spot sexual harassment contact officers. Many members of Navy are committed to the Divisional System and may feel reluctant to go to contact officers for advice on resolving a minor incident. The anonymity of the 008 number allows individuals to weigh up their options with less pressure. The Committee has taken note of the protocols governing the operation of the 008 number that Navy has developed.

10.19 Recommendation Twenty Eight. The Committee recommends that:

- the 008 service should remain an integral component of Navy's strategy to eliminate sexual harassment; and
- protocols governing the operation of the 008 number be reviewed in the light of experience a year after the tabling of this report.¹⁵

10.20 After the findings of the Board of Inquiry's report were leaked to the media in September 1993, the Chief of Naval Staff again wrote to all Commanding Officers stating strongly that sexual harassment and unacceptable sexual behaviour would be dealt with seriously and that management was taking all possible steps to ensure that such behaviour was eradicated from Navy workplaces. The stand taken by Navy's management was reinforced by the Maritime Commander in a message also sent in September 1993.

Navy's pro-active strategy

10.21 At that stage, however, Navy was doing a lot more than issuing instructions and directives. At the press conference convened by the Minister for Defence Science and Personnel on 9 September 1993, the Chief of Naval Staff told journalists that prior to the SWAN incident:

15 See Chapter 12 for other Committee recommendations relating to the 008 number.

*"We did not appreciate the sort of education programme that we should have undertaken ... The one regret I have is that in introducing women going to sea in warships that we didn't do more on the education side."*¹⁶

Recognising that it was not enough for Navy to promote government and organisational policy against sexual harassment through directives such as the Defence Instructions, Triulzi Collins had suggested a more pro-active approach to introducing organisational change.

10.22 Triulzi Collins' submission to the Committee stressed:

*"Formalised policy statements and procedural guidelines are best understood as an important first step in managing sexual harassment incidences."*¹⁷

In September 1993, Navy moved past those "first steps". Navy adopted and launched the Good Working Relationships education and training modules. The program was designed to ensure that no member of Navy failed to receive (either as part of their initial or through-career training) the message that the organisation views sexual harassment and unacceptable sexual behaviour as impediments to achieving its goals.

10.23 In evidence to the Committee, the Chief of Naval Staff stated that the message that Navy rejects sexual harassment and unacceptable sexual behaviour in its workplaces was accompanied by "an absolute leadership commitment to creating a harmonious working environment", and Navy's strategy involves:

*"compulsory through-career training and education to create an understanding of the issues in the work-place."*¹⁸

The training program is reinforced through an education video on unacceptable workplace behaviour, "Fair Game" which Film Australia produced for Navy in 1993.¹⁹

16 VADM I. MacDougall, Press Conference Transcript, 9 September 1993, p. 14.

17 Triulzi Collins Solutions, submission, Committee Hansard, p. 637.

18 VADM I. MacDougall, Committee Hansard, p. 552.

19 This video won a Gold Mobie Award for internal communications in 1993.

10.24 In December 1993, the Maritime Commander issued a directive that:

*"Commanding officers are to appoint an appropriate officer or senior sailor to act as a Harassment Counsellor within their command... The names of the appointed Harassment Counsellors are to be forwarded to Maritime Command by 13 December 1993."*²⁰

Harassment Counsellors fill a different role from the 008 telephone number. They provide an immediate point of contact for someone who may face a problem with sexual harassment at sea or in another isolated situation. Navy's plan is to eventually replace the Harassment Counsellors with trained Good Working Relations Facilitators.²¹

10.25 Also in December 1993, Maritime Command issued a memorandum titled, *"Policy for posting women to sea"* which aims at placing women in a supportive environment when posting them. The policy states that no female junior sailor should be *"posted to a ship where there are no billeted female senior sailors or officers"*.²² Every effort would be made to post women in groups of no less than three and also to replace women who are serving in small groups of two or three with another woman if one is posted off.²³

10.26 The Committee acknowledges that there is sometimes a difficult balance to be struck between the need to ensure that a woman does not find herself intolerably isolated if she is the only woman on board and ensuring that avenues for experience essential for promotion are not unnecessarily restricted by a rigid application of a policy that women should not be posted on their own. Experience has shown that solo postings can be successful. The Committee notes, for example, that a female doctor

20 RAN's supplementary submission, Committee Hansard, p. 543.

21 It is of interest to note that an early experiment in appointing off-line contact officers at Nowra did not produce the hoped for results. It appears that such measures alone are not enough. They must be part of an integrated approach which includes leadership, commitment and an extensive education program; Mr T.H. McDonald, submission.

22 *ibid.*, p. 541.

23 While this is a commendable attempt to minimise the difficulties, it does not solve them. As one officer told the Committee: *"The trainee whom I was expected to direct and discipline as Navigator was also my closest friend and a source of mutual support"* LEUT S. Sty, submission. Committee Hansard, p. 930.

served successfully on the SWAN before the 1992 Asia deployment. She was the only woman on board at the time.²⁴

10.27 The Committee also takes note of the experience of Lieutenant Sly as the first and only woman posted to a particular patrol boat. Lieutenant Sly gave a graphic account to the Committee of the adjustments that were necessary by everyone, from the Captain down, when a ship that had always been regarded as "a real man's ship"²⁵ found that, at a day's notice, the third in charge was to be a female navigator who had never before set foot on a patrol boat. Even though this was not Lieutenant Sly's first sea posting, and she already knew a lot about life at sea, Lieutenant Sly said that:

"It must have been a real shock to their systems, as they were to mine."²⁶

Lieutenant Sly described her introduction to the boat as:

"the worst two months I had in my eight years in the Navy."²⁷

However, Lieutenant Sly told the Committee that, when her posting came to an end:

"the hardest thing I have had to do was to leave that ship."

The Committee agrees with Lieutenant Sly's conclusion that it is not the number of women who are posted to a ship that is the only or even primary factor to be considered. A great many other factors - how well the ship's crew are prepared for it, the level of skills the female personnel bring with them, and the personal characteristics of all those involved come into play. A critical factor is the need to ensure that the woman herself is well prepared, is realistic in her expectations and feels confident that appropriate support is available to her should she need it.

10.28 The Committee commends the steps that have now been taken by Navy to ensure that no female sailor or officer should experience an undue sense of isolation

24 Dr C. Moore, submission.

25 LEUT S. Sly, Committee Hansard, p. 934.

26 *ibid.*, p. 935.

27 *ibid.*, p. 983.

on board its ships. However, it is the view of the Committee that the policy developed by Navy for the posting of women at sea should not be applied so rigidly that it could disadvantage those women who find themselves in a situation where they are the only remaining female billet at a post or the only female who could be posted to a billet. Those women should be given a choice.

10.29 Comparing the situation regarding gender awareness on board the Navy's ships during 1992 and during the Senate Inquiry in 1994, Captain Mole told the Committee:

*"I suspect everybody on SWAN has now been through the gender awareness training that Maritime Command is running. I would think there would be a much higher level of awareness now. My level of awareness is much higher now that I have been through those briefing sessions than before."*²⁸

10.30 Navy also gave evidence to the Committee that the issue of behaviour in the workplace is now addressed early - even before the prospective recruit joins the Navy:

*"The issue of Good Working Relations has now become a focus for recruiting interviews and also for selection boards when personnel for Navy are selected. Indeed, it is established at those selection boards whether individuals have any particular bias for or against working in a mixed gender environment."*²⁹

10.31 The Committee believes that Navy is now on the right track and that, subsequent to the Board of Inquiry Report, its actions to address the issues of sexual harassment on its ships have been very positive. Navy's current strategy has some important components which are recognised as being effective ways³⁰ of creating a workplace free of sexual harassment. They are:

- An obvious commitment to the policy from the most senior ranks of Navy, including the Chief of Naval Staff;

28 CAPT D. Mole, Committee Hansard (in camera - released) p. 100.

29 RAN submission, Committee Hansard, p. 567.

30 Public Service Commission, *Eliminating Sexual Harassment*, Canberra, AGPS, 1990.

- An intensive and continuing education program for both supervisors and staff to raise levels of awareness and responsibility; and
- Extensive advertising of the support system put in place by Navy to deal with incidents of sexual harassment.

10.32 The Committee commends Navy's senior management for the commitment and leadership that it has provided during 1993 and 1994 towards achieving the goal of creating a working environment free of sexual harassment. Maritime Command has allocated some of its most senior officers, including the Chief of Staff and the Fleet Legal Officer to deliver the briefing sessions on Navy's policy regarding sexual harassment and unacceptable sexual behaviour. The issue of sexual harassment is now integrated in through-career courses for every rank in the Navy, beginning with new recruits. Finally, the 008 number is widely advertised and anyone with a concern about unacceptable sexual behaviour or sexual harassment can be referred to the appropriate professionals for advice and follow-up action.

10.33 The evidence before the Committee suggests that Navy's approach is heavily focussed on sexual harassment of females by males. As a result, two potential problem areas require further attention:

- the area of homosexual harassment (male and female); and
- the concern felt by men who fear being falsely accused of sexual harassment.

Whether justified or not, anxiety and anger aroused by the belief that men are now very vulnerable to false accusations must be addressed. An effective approach is to make it clear that malicious accusations, if proved, will entail career consequences as serious as punishment for proven cases of sexual harassment. Such an approach is believed to act as an effective deterrent to false or vexatious allegations.³¹

31 See Chapter 6 of this Report for further comment on this aspect.

CHAPTER 11

THE GOOD WORKING RELATIONSHIPS PROJECT

TERM of REFERENCE 1 (i)

Term of Reference (i) requires the Committee to evaluate the *Good Working Relationships (GWR) Project* which is being undertaken by the Navy.

11.1 The long-term aim of the program is to bring about a cultural change in the RAN, one aspect of which is a change from the norm of an all male workplace to a mixed gender workplace. Because of its focus on interpersonal relations in the workplace, the effects of the GWR project, if it is successful will be more evident in 5 to 10 years. The project was begun in April 1993 and it is only possible at this stage to evaluate its aims and its design, the initial implementation process and its preliminary results.

11.2 Triulzi Collins Solutions (TCS) was first contacted by Navy in January 1993 and after preliminary discussions the Chief of Naval Staff commissioned the consultants in April 1993 to undertake a study to identify issues and trends emerging as a result of a number of policy changes relating particularly to the wider employment of women at sea and the occurrence of unacceptable sexual behaviour. Navy made a number of its personnel available to both co-ordinate the project and assist the consultants. TCS undertook a Navy-wide consultation process. At the same time, it embarked on a review of Navy's personnel policies, its Divisional System, the communication processes used by Navy and its education and training programs.

The Good Working Relationships Project

11.3 Triulzi Collins Solutions proposed the Good Working Relationships Project to Navy. It is based on a four-stage approach:

Stage One - Preliminary fact finding and research

Stage Two - Development of education and training modules designed to create a harmonious working environment.

Stage Three - Implementation of the recommendations and of the training packages, and

Stage Four - Evaluation of the Project

11.4 In evidence to the Committee, the Sex Discrimination Commissioner commented in relation to the GWR project that:

*"It certainly is an excellent start. We also suggest that the initiative taken in the appointment of a naval EEO officer is a very good initiative and that this needs to be further developed in terms of role, function and resources associated with that position."*¹

The GWR fact-finding study

11.5 In Stage One, Triulzi employed a methodology that is widely used and accepted as a means of achieving improvement of personnel environments in the workplace. The methodology included "focus groups" with Navy personnel of all ranks employed in a variety of jobs and locations; interviews with Service and Civilian personnel from different interest groups and a "climate survey" designed to assess the attitudes of Senior and Commanding Officers responsible for implementing and managing change in the Navy.

11.6 The focus groups were attended by more than 300 participants and the interviews were conducted with about 100 personnel from 10 different interest groups ranging from administration, training areas, Chaplains, Naval Police Coxswains and Psychologists to female officers and ADFA personnel and students. The Committee notes that "the focus group participation rates were 66% male and 34% female".

11.7 Since women now make up about 12.5 per cent of the Permanent Naval Force, a participation rate of 34 per cent in the focus groups means that a large proportion

1 Ms. S. Walpole, Committee Hansard, p. 139.

2 RAN, submission, Committee Hansard, p. 259.

of Navy women were afforded the opportunity to make their views known. However, Triulzi Collins found that:

*"A key finding which emerged ... was the similarity between the concerns, observations and solutions expressed by NAVY women and men regarding the establishment of a better working environment for all personnel."*³

Attitudes to Change in Navy

11.8 Another important finding of the study came from the "climate survey". The survey had been designed to "ascertain the knowledge and experience of senior officers of equal employment opportunity legislation and policy",⁴ including the role of the Human Rights and Equal Opportunity Commission, and policy in regard to disability, racial and sex discrimination. It found that of the 52 officers who responded to the survey (78 per cent of the sample), 70 per cent were found to have progressive attitudes, 5 per cent had negative attitudes and 25 per cent gave neutral responses. The consultants advised that the levels of negative and neutral responses indicated that Navy would have to undertake an intensive education program to achieve further change.

11.9 The climate survey covered only 12.5 per cent of officers with the rank of Commander and above. The Committee notes with concern that as high a proportion as 69 per cent perceived their fellow workers as "resistant to change". Forty-six per cent answered that "new policies (were) greeted with resistance". Senior Officer support for workplace change was described as "limited" by 56 per cent of respondents.⁵ Of even greater concern, the consultants found that:

*"there appears to be a hard core of between 5-10 per cent of officers who seldom challenge their own biases, nor do they go out of their way to support gender integration."*⁶

3 Triulzi Collins Solutions, submission, Committee Hansard, p. 646.

4 RAN, submission, Committee Hansard, p. 259.

5 Triulzi Collins Solutions, submission, Committee Hansard, p. 671.

6 *ibid.*, p. 674.

This is particularly worrying since workplace harassment (sexual and sexist) was an issue identified by 63 per cent of the participants in focus groups in Triulzi's study of Navy.

11.10 The survey revealed a strong resistance to change because Navy is "different". The section 43 exemption for the armed forces to the Sex Discrimination Act (SDA) would only have reinforced the attitude that somehow the Forces do not have to meet community expectations in the way required of other public service organisations. The Committee heard evidence that there was a perception in some quarters that change was being imposed from the outside and that it was both unnecessary and unfair.⁷

11.11 The difficulties facing the Defence Forces and Navy in particular in adapting to rapid changes are recognised by the Committee, as they were in the exemption granted under the SDA. However, they are not the only organisations that have had to adapt to rapid changes in recent years. Public service organisations throughout Australia and overseas as well as the defence forces of many other countries have faced unprecedented administrative, technological and sociological changes in the past twenty years. The Committee recognises that the changes have added to the complexity of managing personnel, particularly at sea but it is of the view that with appropriate training and support systems, the Australian Defence Force will meet this challenge.

11.12 A larger sample of senior ranking officers in the climate survey would have included an even higher proportion of officers who joined a very different Navy - one where women were restricted to limited areas of work. (Because of the need to fulfil a number of postings requirements before promotion, it takes some years before one can become a Senior ranking officer). Such a sample might well have revealed even greater resistance to change and to posting women to sea. All participants in the focus groups identified the manner in which policy is communicated as an issue of concern. If implementation of a particular policy is delegated to junior officers, it is, not unexpectedly, perceived to be relatively unimportant.

11.13 This finding leads the Committee to believe that the decision to post women to warships may have suffered from a perception, in the period up to and including 1992, that it did not have the full commitment of Navy's higher echelons. Not all the junior ranks would therefore have felt the need to make it work. The Committee

7 RSL submission, Committee Hansard, p. 1180.

recognises that the commitment shown by Navy's hierarchy changed quite dramatically in early 1993, even before the SWAN Board of Inquiry reported to CNS. The Committee believes that the climate that prevailed in Navy until early 1993 underlines the need for pro-active programs such as the Good Working Relationships program currently run by Navy to assist personnel in accepting change and in supporting gender integration.

11.14 The study revealed that although Senior Officers recognised that it was their responsibility to initiate change, those affected by the changes believed that Senior Officers did not provide enough support to the change processes. The report concluded that, in order to achieve its objective, the GWR project will:

*"require the establishment ... of a clear and consistent message that senior officers are committed to workplace and work-force changes, both in leadership and in the management of change processes."*⁸

Implementation of GWR strategy

11.15 The consultants presented the results of their research together with an analysis of their findings to the Chief of Naval Staff Advisory Committee for its endorsement on 17 September 1993.⁹ Navy accepted Triulzi's proposal to develop a number of GWR education and training modules to achieve the objective of a better integrated work-force. An education program on sexual harassment and unacceptable sexual behaviour had already been put in place by Maritime Command in January 1993.

Management of Unacceptable Behaviour Seminar

11.16 On 21 February 1994, the Committee attended Maritime Command's seminar on the "Management of Unacceptable Behaviour" at HMAS Harman in Canberra. The seminar is run as part of the Good Working Relationships Project. Navy told the Committee that as at February 1994, some 2595 personnel (officers and senior sailors) had attended the seminar.¹⁰ The seminars run for 4 - 4.5 hours and cover a wide

8 RAN, Committee Hansard, p. 258.

9 Note: This was a fortnight before the Senate referred the matter of sexual harassment in the Defence Forces to this Committee for inquiry.

10 RAN submission, Committee Hansard, p. 520.

range of issues ranging from the legal definitions of sexual harassment, examples of unacceptable sexual behaviour and the responsibilities of senior personnel in dealing with this issue, to guidelines on how to handle a complaint together with sample questions for the complainant.

11.17 A video on sexual harassment in the workplace is shown to highlight the effects of the problem and the complex situation that the manager may face in handling it. The Committee found that the talks were delivered in an informal manner in a way that made it possible for the participants to relate to the situations under discussion. The format used gave many opportunities for questions and discussions of the issues raised. The written material distributed at the seminar is informative and is clearly presented.

11.18 The total commitment of senior echelons of Navy to achieving a workplace free of sexual harassment and unacceptable sexual behaviour is clear in the choice of the Chief of Staff in Maritime Command to give the opening talk at the seminar. The participation of the Fleet Legal Officer means that questions about the impact of sex discrimination legislation can be dealt with competently.

11.19 The Committee noted, however, that it was impossible for the speakers to satisfy personnel who wanted a clear statement of the position to adopt in particular cases. As already discussed in Chapter 1 of this Report, the definitions of sexual harassment and unacceptable sexual behaviour are such that the only answer that could be provided to some questions was *"it depends on the circumstances..."*. It is ultimately up to supervisors to exercise their judgement and discretion and to deal with each situation that confronts them on its own merits.

11.20 In every other respect, the Committee found the seminar to be informative in raising awareness of the issues and in equipping participants to deal at a general level with sexual harassment and complaints of sexual harassment.

11.21 The Committee anticipates that there will be a continuing need for such seminars. In addition to the need to deal with mixed gender issues, the seminars provide an ideal opportunity to stress that the directives on sexual harassment cover both homosexual and heterosexual behaviour.

11.22 Recommendation Twenty-Nine: The Committee recommends that in future, organisers of the Good Working Relationships seminars apportion appropriate time to the issue of homosexuality and the way in which the guidelines on unacceptable sexual behaviour apply.

Other Good Working Relationships initiatives

11.23 Navy has implemented other initiatives recommended by the consultants as part of the Good Working Relationships Project. These include a number of initiatives directly aimed at dealing with sexual harassment and unacceptable sexual behaviour:

- the setting up of a confidential toll-free telephone number as a referral service;
- the creation of a confidential database to monitor trends and identify repeat perpetrators of unacceptable sexual behaviour;¹¹
- the commissioning and use of the *Fair Game* video on unacceptable sexual behaviour as part of its training packages;
- the appointment of a Human Rights, Employee Assistance Programs and Equal Employment Opportunity Coordinator; and
- the use, in seminars designed to assist integration, of the experience with mixed gender crewing on HMAS Sydney on active deployment in the Red Sea.

11.24 However, the Committee considers that future seminars need to address in greater detail some of the practicalities of successful resolution of sexual harassment allegations. The Committee is aware of the approach developed by the men and women of the US Navy, titled "*Resolving Conflict: Following the Light of Personal Behaviour*".

11 Note: *Operation Lifeguard* (including both the toll-free number and the database) is reviewed in Chapter 10 of this Report.

11.25 It seems to the Committee a particularly concise and practical guide, which approaches sexual harassment as a conflict situation and sets out well known conflict resolution techniques for all the parties involved to apply.

11.26 **Recommendation Thirty:** The Committee Recommends that Navy devise a conflict resolution program drawing as appropriate on *"Resolving Conflict: Following the Light of Personal Behaviour"* as one useful model. Such a program should be used as an additional segment of the Good Working Relationships program to give practical advice to all personnel in the Navy for resolving the conflict associated with sexual harassment.

11.27 The Committee is aware of and commends the conflict resolution service now being provided by Triulzi Collins Solutions for difficult cases, where the assistance of a skilled third party is considered necessary. The above program is not intended to replace the consultant's resolution service, but is intended to assist local, on the spot resolution of incidents by the parties to an incident themselves.

11.28 Training modules designed to achieve the integration of women by enhancing gender awareness were piloted by Triulzi Collins Solutions in late 1993 and modified in January 1994 as a result of the pilot findings. Initial reactions from the participants were positive. Navy now has 8 initial and career training courses which incorporate the Good Working Relationships training package. They are:

- Initial Recruit Training Course;
- Leading Seaman Leadership Course;
- Petty Officers Management & Staff Skills Course;
- New Entry Officers Course;
- Qualified Officers Entry Course;
- ADFA Single Service Training;
- RAN Staff Course; and
- CO and XO Designate Course.

11.29 There is one other aspect of the GWR project which the Committee considers should be further developed. The Sex Discrimination Commissioner states that many women do not complain of sexual harassment at work. In explaining this, she quotes the following:

"Women are conditioned to feel that if they confront the issue directly, it will most likely escalate, for sexual harassment in the workplace is an issue of power, and experience shows that pressing the issue will bring on an intensified response. It seems easier to do nothing than complain, because complaining is stepping out of line, and stepping out of line brings on a display of power and control in our society."¹²

11.30 The Sex Discrimination Act as it now stands gives little encouragement to women to take personal responsibility for confronting harassers. The Committee accepts that, without institutional support, women may hold back from making complaints. The Committee believes that it is now very important to pursue several objectives in parallel and the program proposed by Triulzi does so very effectively:

- First, it is important to set in place policies, endorsed at the highest level, that make it clear that sexual harassment will not be tolerated.
- Second, it is important to ensure that the mechanisms for dealing with complaints, including avenues of complaint (such as Sexual Harassment Contact officers and other personnel outside the Divisional System and the 008 numbers) are in place.
- Third, it is important to have service-wide awareness raising and training to ensure that everyone (the potential victim, harasser, third party observer and supervisor) are fully aware of the first two points above.

11.31 Once the support mechanisms for complaints are in place, it is critically important that the conditioning of anyone who feels powerless to deal with the situation at the personal level, or to make a formal complaint if a personal approach is not successful, is addressed. It is the Committee's view that more emphasis must

12 Sex Discrimination Commissioner, submission, Committee Hansard p. 43, (*Emphasis added*)

be given to equipping anyone who feels vulnerable to harassment with the necessary skills to be assertive and to deal directly with the harassment. Where this is tried and fails, then recourse to other remedies must be readily available. But encouragement and support should be provided to the victim to develop confidence in the victim's own ability to manage the situation personally. This type of action would have been helpful in the situation that arose on HMAS SWAN in 1992.

11.32 Recommendation Thirty-One: The Committee recommends that, in developing the guidelines and training for a conflict resolution program as suggested in Recommendation Thirty, particular attention is given to the development of those skills and techniques which enable individuals subjected to sexual harassment to be more confident and effective in dealing with such harassment at the personal level.

11.33 The Committee is reinforced in this view by the personal experience of Dr Westphalen. He pin-pointed the key difference between his three month service on the SWAN in 1988 - *"the worst period of my life"* - and his successful subsequent service on the SYDNEY in 1993:

"I had learned how to handle it - by confronting the perpetrator early, in private, and telling him to back off".¹³

11.34 The Committee took particular note of two observations by Dr Westphalen:

- confrontation at the personal level usually works; and
- most potential victims need encouragement to confront the perpetrator of harassment.

Dr Westphalen explained that:

"Confrontation sounds easy to do; in practice it was still difficult, especially if it was to be done constructively. I do not believe junior medical officers (or anyone else in the same position), especially those most vulnerable to harassment, will take this action without strong advice to do so. However, the relative ease with which these issues

13 Dr N. Westphalen, submission, Committee Hansard, p. 1106.

*were resolved implies that the perpetrators were unaware of the effects of their actions. Once confronted, they changed their approach."*¹⁴

Good Working Relations Advisory Committee

11.35 In February 1994 CNS appointed the Director General Naval Manpower Chairman of the Good Working Relations Advisory Committee. The Advisory Committee is made up of personnel of all ranks from a range of employment positions. Its role is to monitor the implementation of the GWR initiatives and evaluate their effectiveness. A network of trained GWR Coordinators and Facilitators is to be established to assist the committee in its task. The document appointing the GWR Advisory Committee stated that:

*"It is envisaged that the GWR Facilitators will replace existing Anti Harassment Contact Officers currently appointed in ships and establishments."*¹⁵

11.36 Navy also adopted Triulzi's other recommendations aimed at creating a more harmonious and effective workforce. They are:

- the development of a conflict resolution program;
- the formation of a Problem Response Team of appropriately qualified personnel (and consultants if necessary) to help Commanding Officers who may request assistance when faced with difficult personnel problems;
- improvement of Navy's method of communicating organisational directives;
- a review of the Divisional System; and
- a review of Navy's recruitment process.

14 *ibid.*, p. 1106.

15 RAN supplementary submission, Committee Hansard, p. 526.

11.37 The Committee notes that Triulzi's study revealed 77 per cent of respondents found informal communication methods (oral communication at divisional meetings) to be more effective in communicating directives and only 17 per cent relied on the DI(N)s as a major mechanism for guidance.

11.38 **Recommendation Thirty-Two:** The Committee recommends that Navy and the other Services ensure that Defence Instructions regarding policy changes affecting personnel are followed up and explained at divisional and unit meetings.

11.39 The Committee has observed that some old instructions (eg DI(N) ADMIN 30-3) which are still current today use terminology which reflects the all-male make-up of the Navy.¹⁶

11.40 **Recommendation Thirty-Three:** The Committee recommends that as new instructions are promulgated, care is taken to ensure that all terminology is gender neutral. The Committee further recommends that as far as possible existing instructions are revised to reflect the new situation.

11.41 Both the Board of Inquiry and Triulzi Consultants recommended improvements to the Divisional System.¹⁷ The Committee was told that Navy would undertake a review of this system.¹⁸

11.42 **Recommendation Thirty-Four:** The Committee recommends that all officers who are likely to be appointed as Divisional Officers should undertake through - career courses which cover issues of gender awareness and the referral and handling of complaints of sexual harassment.

11.43 Likewise both the Board and Triulzi commented that shortcomings in the recruitment process contributed directly to many of the problems that arose on the SWAN. Navy told the Committee that the recruitment process now addresses the issue of mixed gender crews early in the process. The Committee endorses this

16 For example, DI(N)ADMIN 30-3, issued 15 December 1989, stated *"Divisions should therefore be organised on functional lines, ie. the officer who supervises a man's work should be his Divisional Officer."* (emphasis added)

17 BOI Report, p. 54, Committee Hansard, p. 647.

18 RAN submission, Committee Hansard, p. 265. See also Recommendation Eighteen.

approach but it believes that Navy needs to do much more to improve its selection and postings strategy.

11.44 Many of the problems that arose on HMAS SWAN had their roots in a mismatch between the person and the job. Any deficiencies are highlighted in a ship environment because the contribution of each member of the crew is so vital. In the case of the SWAN, the obvious lack of appropriate training and preparation of some members of the female crew for their work at sea contributed to the total context in which the sexual harassment and unacceptable sexual behaviour took place.

11.45 **Recommendation Thirty-Five:** The Committee recommends that specific training be provided for staff in the recruitment and postings section of Navy's organisation to enhance their skills in the area of matching the person and the job.

11.46 The GWR project also recommended that Navy:

*"draft a submission to Headquarters Australian Defence Force to investigate options to assist Service personnel in balancing their work and family commitments through such measures as child care and flexible work."*¹⁹

The Committee supports such an initiative. However, it is still only at the discussion stage and too early for substantive comment to be made on it. As elsewhere in the community, the greatly increased percentage of women in the Navy will mean a greater focus on the interplay of work and family.

11.47 The Committee commends Navy for the commitment it has shown to addressing the workforce problems revealed by events on the SWAN during its 1992 deployment. It endorses the approach adopted in the Good Working Relationships Project of establishing preventive mechanisms designed to ensure that incidents of sexual harassment and unacceptable sexual behaviour are addressed in the early stages. This makes resolution through informal processes more likely and reduces stress. The Committee also endorses the highly participative nature of the education

19 RAN submission, Committee Hansard, p. 264.

and training programs with their emphasis on assistance from peers. The Committee welcomes an approach which :

*"...provides an opportunity for participants to examine their own attitudes and behaviour and to express their concerns and fears in a safe, non-judgmental environment."*²⁰

11.48 Recommendation Thirty-Six: The Committee recommends that Army, Air Force and particularly ADFA adopt an approach similar to that of Navy towards raising gender awareness and preventing unacceptable sexual behaviour from occurring.²¹

11.49 Ms Triulzi told the Committee that after refining and integrating the programs her consultancy has developed for Navy:

*"we will have a monitoring role. We will monitor the ongoing implementation and continue to evaluate the success of the integration of the programs into mainstream Navy training."*²²

Evaluation and monitoring are necessary to ensure that the programs are effective. The Committee is of the view that Navy must take steps to ensure that the initial enthusiasm and commitment to the Good Working Relationships program is not lost.

11.50 Recommendation Thirty-Seven: The Committee recommends that an evaluation study of the impact of the Good Working Relationships program be undertaken 3 years after implementation.

20 Ms S. Triulzi, Committee Hansard, p. 736.

21 See also Recommendations in Chapter 12.

22 Ms. S. Triulzi, Committee Hansard, p. 737.

CHAPTER 12

SEXUAL HARASSMENT IN THE AUSTRALIAN DEFENCE FORCE TERM of REFERENCE 2

This Chapter examines the nature and extent of sexual harassment in the other armed forces.

Women in the Armed Services

12.1 Women have served in the Australian military since the turn of the century. Nurses accompanied the Australian contingents to the Boer War. The Womens' Services were formed during the Second World War, disbanded and then re-established in 1950. These were separate from the mainstream (male) Services with distinct career paths and different conditions of employment for its members. The Women's Services were disbanded and integrated with the mainstream Services in 1977 (Air Force), 1979 (Army) and 1985 (Navy).

12.2 Integration into the Services, together with the granting of equal rank and pay in 1979 broadened the career opportunities for Servicewomen. The range of positions open to females rose from 23.5% in 1984 to 87% in 1992.¹ The only categories still closed to females are those which are particularly physically demanding and, possibly, involve direct contact with members of an opposing force.

12.3 In the past, junior personnel in the Women's Services were, to a degree, protected by their senior personnel, who were also women, through the advice and support they could provide in relation to aspects of Service life. These support and protection mechanisms were lost when the Services were integrated.²

1 HQADF submission, Annex A, Committee Hansard, pp. 1357-1360.

2 MAJGEN S. Gower, Committee Hansard, p.1585.

Monitoring of Sexual Harassment

12.4 Some of the difficulties in collecting data on sexual harassment were canvassed in earlier sections of this Report. In summary, it will be recalled that there are three mechanisms to monitor the incidence of sexual harassment:

- formal complaints about alleged incidents;
- informal complaints and queries about alleged incidents; and
- staff surveys on attitudes to sexual harassment and opinions on the number/type of incidents.³

None of these, on its own, can be relied upon to give an accurate picture of the incidence of sexual harassment in an organisation. For people to lodge complaints of sexual harassment, they must know their rights and have access to mechanisms to investigate and resolve their complaints. Furthermore, they must have confidence that their complaints will be treated seriously. Silence becomes an attractive option if the repercussions from lodging a complaint are worse than or are even just perceived to be worse than, the harassment.

12.5 The rates of formal and informal complaints may reflect the confidence that people have in the mechanisms to address sexual harassment, rather than reflect the actual extent of the problem. A low rate of complaint may show that people are averse to complaining because they are unaware of the avenues for complaint or they are not confident that they will be treated seriously. Similarly a high rate of complaint may reflect the confidence people have that their complaint will be treated seriously.

12.6 Surveys are useful for gauging people's attitudes towards working in a mixed gender environment and sexual harassment as well as indicating problem areas that should be addressed. However, they can vary greatly in the contribution they make to a proper understanding of an issue, depending on the skill of those conducting the survey in framing questions and selecting sample populations. One submission to the Committee noted that *"experience shows that people are often very guarded in what*

3 Public Service Commission, submission, p. 1.

*they are prepared to disclose and, of course, there is no way of knowing if they are being truthful."*⁴

ADF Mechanisms for Monitoring Sexual Harassment

12.7 Although women have been integrated in the ADF for at least nine years, and the Sex Discrimination Act has been in force for a decade, the Committee was disturbed to find that sexual harassment did not become a priority management issue in the Services until the incidents on HMAS SWAN and this inquiry. ADF representatives, in evidence to the Committee, conceded that *"most of the initiatives [to address the issue of sexual harassment] are only post HMAS Swar"*.⁵

12.8 The Services have not had a *"standardised reporting policy ... standard definitions of what sexual harassment was or what the various categories of sexual offences and other unacceptable behaviours were"*.⁶ Nor have they provided internal organisational avenues of complaint outside the chain of command until the implementation of the telephone hot-lines in late 1993.

12.9 The Services have had no mechanism in place to establish to any reliable extent the attitudes of their personnel towards integration and sexual harassment. While the Air Force conducts, each year, a "General Attitude Survey" of a random selection of ten percent of its personnel which covers their perceptions of how Service life and employment compares to non-Service life and employment, there are no questions relating specifically to integration or sexual harassment.

12.10 The Committee notes also that the Services do not, as part of determining their suitability for military life, assess the attitudes of prospective recruits to working in an integrated environment.⁷ Nor do the Services, in their voluntary exit interviews for personnel who resign, seek to establish in any consistent way whether sexual harassment was a factor in their decision to leave.

4 *ibid.*, p. 3.

5 MAJGEN J. Stevens, Committee Hansard, p. 1575. Most of the comment in this section refers to the Army and the Airforce. The situation with regard to Navy is considered in greater detail in other sections of this Report.

6 MAJGEN S Gower, Committee Hansard, p. 1533.

7 HQADF, Supplementary Submission, Serial 4 (c) and (d), Committee Hansard, , p. 1483.

Incidence of Sexual Harassment in the Australian Defence Force

12.11 There is no accurate assessment of the extent of sexual harassment in the ADF.

The Sex Discrimination Commissioner

12.12 The Sex Discrimination Commissioner lists 13 cases of complaints of sexual harassment brought against the ADF under the Sex Discrimination Act; the Committee's analysis of these cases shows that:

- 9 of these complaints were made by civilian employees and 5 by Servicewomen;
- all the civilian cases were complaints against single individuals. Five of these respondents were also civilians; and
- three of the Servicewomen's complaints were against multiple respondents (6, 3 and 4). None of these have been resolved. Only one complaint by a Servicewoman against a Service respondent has been resolved.

12.13 HQADF disputes that the Sex Discrimination Commissioner's figures accurately reflect the situation with regard to the ADF. HQADF points out that:

*"only seven are actually complaints against the ADF. Of the other six cases, three involved only civilians and were referred to the Department [of Defence]. The remaining three complaints were never referred to anyone by the Commission because the complainants did not pursue them."*⁸

8 Letter from MAJGEN S. Gower, PERS 93-27478 of 11 May 1994, p.17.

12.14 HQADF advised the Committee that, following the Sex Discrimination Commissioner's evidence to the Committee, discussions between them have led to agreement that of the complaints against the ADF:

- two cases listed by the SDC are actually only one case as a "named ... co-worker ... declined to lodge a complaint".⁹ This complaint has been resolved through public hearing with damages awarded to the complainant;
- three have been conciliated; and
- one is with the HREOC which is yet to decide if it will accept the complaint for investigation.¹⁰

The Committee notes that two of these complaints have been resolved since the Committee began its Inquiry.

Central Point of Contact

12.15 There appears to have been some breakdown in the past in the communication between the Sex Discrimination Commissioner and the ADF.

12.16 The Sex Discrimination Commissioner stated that the absence of a central point of contact for her office to deal with in the ADF had been a hindrance. The ADF was clearly surprised by this, since they considered that this had been established some time ago. Major General Gower confirmed at the Committee's hearings that he, as the Assistant Chief of the Defence Force (Personnel) is the central point of contact for the entire ADF.

Internal ADF records

12.17 Before this Committee's inquiry, the ADF had compiled no records on the incidence of sexual harassment in the Services. Prompted by the need to appear before the Committee, the ADF set about assembling whatever information it had. The

9 *ibid*, p.18.

10 *ibid*.

differences in the reporting requirements complicated the process considerably. Major General Gower told the Committee that:

*"the statistics you have in our submission had to be produced by a manual search - a very tedious and time-consuming process."*¹¹

12.18 As a result of the different reporting requirements, the Services had to "go right through anything [they] had ... police reports; ... incident reports; ... personnel reports; ... unit reports" to collect this data.¹² As a result of this effort, HQADF found that there were 258 reported cases of sexual harassment or sexual offences across the Defence Force in the period 1989 to 1993 but "accept[s] that the figures ... are understated."¹³

<u>Year</u>	<u>Navy</u> <i>harassment offences</i>		<u>Army</u> <i>harassment offences</i>		<u>Air Force</u> <i>harassment offences</i>	
1989	12	1	9	8	31	19
1990	0	1	4	14	2	10
1991	7	0	5	10	10	10
1992	6	2	12	11	7	8
1993	14	13	10	8	8	6
Totals	39	17	40	51	58	53 ¹⁴

12.19 No readily discernible patterns emerge from the data that has been collected in this way. The number of reported sexual harassment incidents in any one year across the ADF range from six in 1990 to fifty-two in 1989. In 1993 there were thirty-two incidents reported. There is less variation in the number of sexual offences, with the average in any one year being in the low to mid-twenties.

11 MAJGEN S Gower, Committee Hansard, p. 1533.

12 AVM F Cox, Committee Hansard, p. 1579.

13 MAJGEN S. Gower, Committee Hansard, p. 1551. No estimate of the extent of under-reporting was given.

14 HQADF submission, Annex B, Committee Hansard, pp. 1361 - 1364, 1478. See also Committee Hansard, pp. 1442 - 1443 for the definitions of sexual harassment and sexual offences used by HQADF in these tables. In simple terms "sexual harassment is any sexually offensive act without physical contact; sexual offence is one where physical contact is made without the consent of the other person." Committee Hansard, p. 1329.

12.20 The ADF comments that

*"Analysis of these figures show no readily identifiable trend regarding geographic location, type of unit or type of harassment. Reported incidents of harassment have occurred nearly equally at training and non-training establishments/ships and the geographic spread of the incidents is broad."*¹⁵

Defence Force Ombudsman

12.21 The Defence Force Ombudsman's submission lists seven complaints of sexual harassment from female ADF personnel that have been brought to her attention, all lodged between 1989 and 1994. One of those refers to events that occurred in the Air Force some ten years previously, and had been competently investigated by the Air Force. The Ombudsman considered it inappropriate to re-open the case and no compensation resulted. One case involving an Officer Cadet at ADFA, referred to the Ombudsman by the Minister for Defence, revealed serious deficiencies in the Defence Force handling of the matter and resulted in the Chief of Defence Force apologising to the young woman. A claim for compensation is still under consideration. All the remedies sought by a Navy doctor who complained to the Ombudsman in September 1993 of sexual harassment and discrimination at a shore base were provided by Navy. One other Navy approach to the Ombudsman was one of the 1992 SWAN cases. An October 1993 complaint of rape of a female Air Force officer is still under investigation by the Air Force. Two of the complaints relate to harassment on grounds of alleged homosexuality, one in the Air Force and one in the Army.¹⁶

12.22 The Ombudsman notes that:

"the Ombudsman's office, has dealt with a relatively small number of complaints. In recent years, however, the numbers have increased and have been of a serious nature. I suspect, however that the culture is

15 HQADF submission, Annex B, Committee Hansard, p. 1361.

16 Ms Philippa Smith, submission, p. 3.

*such that it is still difficult to complain on such matters and the numbers cannot be regarded as representative in any way".*¹⁷

Surveys

12.23 There is only one comprehensive survey of sexual harassment in the ADF. In 1987, Major Kathryn Quinn undertook a study into the career aspirations of Servicewomen. Although it included a section on sexual harassment this was not the major focus of the study. Of the 162 questions in the survey, only 12 related to sexual harassment. Major Quinn approached a random selection of 2000 Servicewomen, 1400 of whom responded. This *"represented at that time 20 percent of women who were serving in the armed forces."*¹⁸

12.24 Major Quinn conducted her study while on a Defence Fellowship, which is a program to encourage members of the ADF to undertake higher education. Her report was not an official ADF study. Nevertheless, according to Major General Gower, it *"had very wide distribution right up to ministerial level ... [and] ... was a very useful document in the broader subject matter of women in the ADF."*¹⁹

12.25 Major Quinn defined three separate categories of sexual harassment:

Category 1

Category 1 type behaviours relate to your work environment generally.

They include poster displays depicting women as objects of sexual fantasy, the telling of sexually suggestive jokes and the expression of derogatory comments about women. This category also includes leering or wolf whistling.

Category 1 type behaviours will not necessarily be directed at you personally, but such behaviours can create a hostile work place where you feel uncomfortable, embarrassed or intimidated.

17 Ms P. Smith, submission, p. 5.

18 MAJ K. Quinn, Committee Hansard, p. 875. See also Chapter 1 of this Report.

19 MAJGEN S. Gower, Committee Hansard, p. 1556.

Category 2

Category 2 type behaviours are directed at you personally and include uninvited physical contact such as touching, patting, pinching, brushing against you, standing over you or standing too close to you, and cornering you.

Other behaviours which belong in this category include sexually suggestive comments about your body, your appearance or your personal life. This category can also include uninvited requests for sexual contact from co-workers.

Category 3

Category 3 type behaviours include uninvited requests or demands from a superior for sexual contact, especially if you feel that refusal will adversely affect your career, job or course evaluation.

12.26 Major Quinn found that:

***Category one harassment** Fifty-three percent of the women indicated that type of harassment had happened in their workplace in the past (11% to a great extent), and 40 per cent indicated that it was happening to them now. Twenty-five percent said it had been, or was now, a problem for them (4% to a great extent), and 58 percent thought it was a problem generally for Servicewomen.*

***Category two harassment** Forty-two percent of the women indicated that this type of harassment had happened to them in their workplace in the past (6% to great extent), and 24 percent indicated that it was happening to them now. Twenty eight percent said it had been or was now, a problem for them (5% to a great extent), and 53 percent said they thought it was a problem generally for servicewomen.*

***Category three harassment** Eleven percent of the women indicated that this type of harassment had happened to them in their workplace in the past (2% to a great extent), and 2 percent said it was happening to them now. Nine*

percent said it had been, or was now, a problem for them (2% to a great extent), and 29 percent thought it was a problem generally for servicewomen." ²⁰

12.27 Major Quinn also *"found, just generally as an attitude amongst those who were in a position to receive those complaints, that there was generally a denial of the existence of sexual harassment and often - in fact, in many cases - it simply was not taken as a problem."* ²¹

12.28 The consultant to the ADF on sexual harassment, Professor Bryson considers that Major Quinn's survey was *"probably one of the first careful surveys on the issue of sexual harassment in Australia. ... In fact, one of the biggest surveys which was a survey covering 63,000 public sector workers in New South Wales which was done by the Director of Equal Opportunity in Public Employment, used far inferior questions and definitions of sexual harassment"*. ²²

12.29 The Public Service Commission (PSC) representative pointed out to the Committee that a survey of the kind carried out by Major Quinn is not without its difficulties. As discussed earlier, a major difficulty is the verification of the accuracy of the data. The PSC also identified some anomalies in the findings, particularly in relation to the issue of perception. *"It could reasonably be expected that the perceptions of harassment involving others would equate with the level of self reported harassment. However, ... the number of women reporting harassment is well below their perception of the level of harassment generally."* ²³ It may be that this is because the questions were of a *"general nature"*. The survey did not, for example take into account other factors, such as work location or the nature of the work of the respondents.

12.30 In spite of these possible shortcomings, the Committee considers that Major Quinn's survey is a useful benchmark for any future evaluation of the effectiveness of the sexual harassment policies and procedures that are now being put in place.

20 MAJ K. Quinn, submission, Committee Hansard, p. 874.

21 *ibid.*

22 Prof L. Bryson, Committee Hansard, pp. 1557-1558.

23 Public Service Commission, submission, pp. 4-5.

12.31 The Committee finds it difficult to accept that Major Quinn's survey was overlooked by ADF senior management simply because it "*was a small part which was then not subsequently highlighted in the conclusions of the report*".²⁴ It was a clear warning light. The failure to act on it suggests that the ADF, like many managers in the wider community, have had difficulty in recognising and accepting that sexual harassment is a real difficulty that needs to be addressed.

Individual Submissions to the Committee

12.32 The Committee received 138 submissions in all. Of these 85 are from individual service personnel, including:

- 7 from serving or recently retired Army personnel; three of these are from women;
- 10 from serving or recently retired Air Force personnel, eight from women and one from a homosexual male; and
- 68 from serving or recently retired Navy personnel. Eleven of these are related to the incidents on HMAS SWAN, and of the remainder, 24 are from women and 33 from men.

12.33 It is probable that this imbalance in representation between the Services is in large part the result of the Inquiry's focus on the incidents on HMAS SWAN and the situation in the Navy. Several Navy personnel were concerned to set the record straight about the situation in the Navy because they felt it was being misinterpreted by the media reporting of the incidents on HMAS SWAN. The Committee notes also that senior Navy personnel, including the Chief of Naval Staff, made a particular effort to encourage personnel to make their views known to the Committee. Some Commanding Officers also actively encouraged their personnel to lodge submissions. The Committee received, for example, 7 submissions from HMAS IPSWICH and 9 from HMAS SYDNEY, both of which have female crew members.

12.34 The Committee makes no claim that the submissions it has received constitute a representative sample of opinion and experiences of women in the ADF. There is, for example, no reliable way for the Committee to verify most of the allegations made.

24 MAJGEN S Gower, Committee Hansard, p. 1556.

The detailed examination that the Committee made of the SWAN incidents indicates how complex the circumstances of sexual harassment can be. As previously noted, the Committee made it known to individuals who brought specific allegations to their attention that the Committee is prepared to refer individual cases to the Sex Discrimination Commissioner or to the Ombudsman for detailed resolution. The outcome of any such cases will not be available in time for inclusion in this Report.

12.35 Time and resource constraints also made it impractical for the Committee to conduct its own survey of ADF personnel to arrive at an independent assessment of the incidence of sexual harassment in the ADF.

12.36 Nevertheless, while the Committee cannot give an exact figure for the incidence of sexual harassment in the ADF, there is enough evidence before it to conclude that sexual harassment is a problem of sufficient dimensions to require comprehensive and immediate action by the ADF management. There is also sufficient evidence for the Committee to gain insights into the nature of the problem and to identify the key problem areas that need to be addressed.

Culture of the ADF

12.37 The prevailing culture in the ADF is characterised in several submissions to the Committee as male-dominated, paternalistic and ingrained with gender bias against women.²⁵ Ongoing sexual harassment by their male colleagues is also reported in several submissions. Most of these submissions say that there is little or no support from senior officers. Some submissions call into question the ability of their senior personnel to recognise and address sexual harassment. These servicewomen also perceive a closing of the ranks by male servicemen against them if they complain.²⁶ Many *"say nothing for fear of being ostracised in a team environment"*;²⁷ others feel they are blamed for inviting the harassment.²⁸

25 Ms S. Sellick, submission.

26 Submissions from Ms A. Chambers, FLTLT L. Kardas and CAPT W. Knobel, as well as submissions 4 and 5 and in camera evidence.

27 Ms A. Chambers, submission, p. 2.

28 Submission 4.

12.38 The Committee is concerned that it detected a sense of frustration and isolation in the submissions it received from Army and Air Force servicewomen.

Badges

12.39 Several submissions stated that gender harassment in the form of disparagement of women, rather than one to one harassment of individuals is a problem. As an example, the Committee was presented with evidence that the course badges for some RAAF pilot's courses in the past have had unacceptable sexual connotations in their design. These badges have a semi-official status, and are publicly displayed. The Committee examined a number of such badges and concluded that some were inappropriate. It was also alleged to the Committee that training aids in the RAAF have at times had deliberate sexual connotations.

Alcohol

12.40 The Committee noted that the evidence before it confirmed general findings in the wider community that there is often a link between the consumption of alcohol and sexual offences. However, no such link has emerged between alcohol consumption and sexual harassment in the workplace.²⁹

Community attitudes

12.41 Many submissions to the Committee point out that members of the defence force are drawn from the Australian community and reflect broad community attitudes, including attitudes on relations between the sexes and issues such as sexual harassment. For example, Dr Hugh Smith from ADFA argues that a number of factors such as social conditioning into prescribed roles, stereotypes of male and female behaviour, unequal power relationships between the sexes all contribute to the unacceptable form of behaviour that is termed sexual harassment in present day society:

*"All of these factors influence those in the armed forces as well as the rest of society. But in the armed forces, these factors tend to work even more strongly than in society at large."*³⁰

29 MAJGEN S. Gower, Committee Hansard, p. 1547.

30 Dr H. Smith, Committee Hansard, p. 1219.

12.42 Chaplain Reddin, RAN, told the Committee:

*"There can be no doubt that many male personnel in the RAN are sexist to some degree. However, in my view sexist language and comment has been at about the same level as you would expect to find in the civilian community, where men congregate."*³¹

12.43 Another submission affirmed:

*"I firmly believe that the standards of behaviour in the Defence Force are only a mirror of society in general."*³²

12.44 One submission, from the RSL, stood out in this regard in that it maintained:

"There have been studies which show that in western democracies like ours only about 5 percent of the eligible (male) population are attracted to voluntary military service."

12.45 The RSL went on to state that:

*"war is a brutalising experience, and it follows that training and practising for war is also brutalising, to a degree. This is not to condone brutality, nor even aggressiveness, but it is our submission and our firm conviction that to recruit and train a military force on the one hand, and then to recoil in horror when its members occasionally exhibit unseemly aggressiveness or even brutality towards one another, is either deceitful or stupid, and certainly unfair to the general membership of our armed forces."*³³

12.46 The Committee disagreed strongly with this view. The Committee took the opportunity also to seek the views of the representatives of the Australian Defence

31 CHAP W. Reddin, submission, Committee Hansard, p. 985 (emphasis added).

32 Mr T.H. McDonald, submission.

33 RSL, submission, Committee Hansard, p. 1182.

Force at public hearings on the proposition put by the RSL. Major General Gower responded:

*"I certainly do not believe we are seeking the aggressive Rambo type - we actively discourage that type of person... So I reject any suggestion that we concentrate on a small group of Rambos and we do not worry about the remainder of the population...There are a lot of influences on how we get recruits...it ends up with a relatively small group. It is certainly not a five per cent Rambo group."*³⁴

12.47 The Committee notes the observation by Professor Bryson that the levels of sexual harassment in the ADF that have been identified *"are certainly not as high as one might have envisaged they might be, given some studies of all-male environments"*.³⁵ She concludes that *"the defence forces come off reasonably well"*.

12.48 The Committee has seen no evidence that would lead it to contest Professor Bryson's conclusion. Nevertheless, to meet the objectives of the ADF's *"zero tolerance"* policy on sexual harassment, the ADF must embark on a clearly focussed but multi-pronged program to bring about fundamental change in both attitudes and behaviour of ADF personnel at every level. The key components of the program are discussed in the following paragraphs.

Leadership Commitment

12.49 The change in culture required to eliminate sexual harassment must have the endorsement of the very top leadership.

12.50 The Committee values the information provided by Major General Gower, Assistant Chief of the Defence Force, (Personnel), Air Vice Marshall Cox, Assistant Chief of the Air Staff, (Personnel and Resource Management), RAAF, Major General Stevens, Assistant Chief of the General Staff, (Personnel) and Rear Admiral Carwadiene, the Commandant, Australian Defence Force Academy on the approach being taken and work being done by the organisations each represents to eliminate sexual harassment.

34 MAJGEN S Gower, Committee Hansard, p. 1581.

35 Prof L. Bryson, Committee Hansard, p. 1560.

12.51 However, the Committee believes it is essential that the policy itself should be seen to have the endorsement of the most senior representative of each Service. The Committee noted the very clear and personal commitments given by the Chiefs of Naval Staff who appeared before it. It was noted that the Chiefs of Staff of Army and Airforce chose not to appear before the Committee.

12.52 Recommendation Thirty-Eight: The Committee recommends that the Service Chiefs of Army and Airforce create an opportunity to deliver, in such a way that it reaches all personnel forcefully, their unequivocal and strong commitment to the elimination of sexual harassment from their respective Services.

Role of Senior Officers

12.53 The role of all senior officers in encouraging the necessary change in culture is critical. They are the role models for the next generation. Unless they demonstrate an unequivocal commitment to the principles of equality of opportunity that are essential if sexual harassment is to be eradicated, both the process of integration and the eradication of sexual harassment will be a long drawn out process.

12.54 The senior levels of the ADF are still predominantly male; most senior officers joined when the Services were all male. Active measures must be taken to ensure that, whether unwittingly through a lack of awareness of gender based issues, or intentionally, through active participation in or condoning of acts of harassment, they do not perpetuate the ugly side of this culture.³⁶

Commanding Officers' responsibilities

12.55 As each Service chief is *"responsible for implementation of policies [by] tak[ing] into account the nature of its operating environments"*³⁷ the policy on unacceptable sexual behaviour and the employment of women is being implemented in three different ways.

12.56 The ADF places responsibility for integration and addressing the issue of sexual harassment on the individuals in the chain of command. Major General Gower stated in evidence to the Committee that *"any superior is duty bound to do something*

36 FLTLT L. Kardas, submission.

37 HQADF submission, Committee Hansard, p. 1317.

*about an incident of unacceptable behaviour."*³⁸ It is incumbent on these personnel to *"discuss, take responsibility for and focus their attention on the issue."*³⁹

12.57 As the Committee's detailed review of the SWAN incidents shows, it is not enough, at this point in time to place all the onus for eliminating sexual harassment on the Commanding Officer of a unit. The awareness raising and education of all personnel, including Commanding Officers, is a corporate responsibility.

12.58 The draft DI(G) PERS 35-3 gives clear guidance on the Commanding Officer's responsibilities and action required in the event that a sexual offence is brought to his or her attention. The guidance on the options available to the Commanding Officers when allegations of sexual harassment come to his or her notice is less comprehensive and of more limited assistance. The guidance merely states that:

"where sexual harassment warrants disciplinary action, the appropriate charge will depend on the facts of each case."

12.59 There is a need for a consistent policy across all postings and Services. More detailed guidance is required to assist personnel at all levels to have a common understanding of what constitutes sexual behaviour warranting disciplinary action. The instruction DI(G) PERS 35-3 states:

"ADF members are expected to act in accordance with the general standards of community decency. The ADF will be concerned with the sexual behaviour of its members only where it is inconsistent with the requirements of the ADF or where it is unlawful. It is, however, recognised that individual perceptions will differ and there may be a fine line requiring the exercise of common sense, maturity and clear judgement. Such matters should be resolved between the individuals involved, or through a process of conflict resolution wherever possible. Other unacceptable behaviour of a more serious nature will result in military administrative or disciplinary action or charges under criminal law."

38 MAJGEN S Gower, Committee Hansard, p. 1571.

39 Prof L Bryson, Committee Hansard, p. 1539.

12.60 The instruction goes on to warn that, in the case of unacceptable sexual behaviour other than sexual harassment:

"The decision on whether to act on information will not be easy".

The instruction recommends that:

"A Commanding Officer, who decides that the formal prohibition of sexual activities and related behaviour is warranted, should be sensitive to the extent of such behavioural restrictions in adjacent units to ensure members in the same environment are not subject to inconsistent rules. Before such a prohibition is promulgated, the relevant superior commander is to be informed."

12.61 It is the Committee's view that the present approach leaves too many uncertainties of interpretation and places too much responsibility on Commanding Officers to ensure consistency of treatment.

12.62 The Committee is of the view that different kinds of sexual harassment require different remedies. The process for reaching agreement and a common understanding within a work group on what are regarded as acceptable posters or language in the workplace is different from the process required to deal with an unwelcome overt request to a subordinate for sexual favours in an isolated location with no witness present. There are many variations in behaviour between these two examples. Much work remains to be done on reaching a common understanding of the boundaries of acceptable behaviour as well as the appropriate measures for ensuring that those boundaries are respected.

Accountability

12.63 Inaction by senior officers following complaints or witnessing of sexual harassment incidents themselves has been commented on in several submissions.⁴⁰ For example, one female officer gave the following account to the Committee:

"Whilst on an overseas detachment I was accommodated with my fellow officers. I was the only female in the unit. One evening in the

40 CAPT W. Knobel, submission; and submissions 4 and 8.

Officers' Mess one of the male officers grabbed my breast. In a reflexive action I threw my drink into his chest, the officer braced himself and pulled his fist back to hit me. Luckily he did not strike me. However, the dreadful part is that this incident was witnessed by a Commanding Officer of an RAAF flying unit (LTCOL equivalent), who walked away without commenting, intervening or speaking to the officer who had assaulted me." ⁴¹

This same female officer also commends one of her Commanding Officers for his "unqualified support";

"At my current posting the Commanding Officer has attempted to ensure that any kind of sexual harassment is dealt with swiftly and is not tolerated. He has ensured that he has briefed the unit personnel en masse to tell them of his expectations. The first brief of this nature was [held prior to my arrival]. Since I arrived at the unit ..., the Commanding Officer has given two other mass briefs." ⁴²

12.64 She describes her Commanding Officer in the second example as "rare in the RAAF". ⁴³ In her experience the Commanding Officer who implicitly condoned a sexual assault reflected the more prevalent view "that there is no problem of sexual harassment" and represents leaders who do "nothing to 'lead by example'." ⁴⁴ By taking no action to address the incident and protect the interests of the female officer, he failed in his duty as a superior officer.

12.65 The Services have the power under their Regulations and the Defence Force Discipline Act to take action against officers who do not intervene in, report or investigate appropriately allegations of sexual harassment. Depending upon the severity of the incident, an officer may be subject to administrative action, such as counselling or censure, or disciplinary action. The power to take action against officers who do not intervene in, or report or investigate allegations of sexual harassment appropriately has, however, very rarely been exercised.

41 LK Kardas, submission, pp. 1-2.

42 *ibid.*, p. 2.

43 *ibid.*

44 *ibid.*

12.66 HQADF informed the Committee that only one Army officer has been counselled for failing to intervene in or report a case of sexual harassment. Air Force has "*nil instances [of inaction by officers] reported*".⁴⁵ A detailed discussion of the only Navy officer who has been censured in relation to his responsibilities as Commanding Officer of a ship where allegations of sexual harassment became an issue is to be found in Chapter 7 of this Report.

12.67 On the basis of the evidence before the Committee there appears to be a discrepancy between the experience of some women in the armed services and the stated policy of holding supervisors accountable for taking action.

Investigative procedures

12.68 A related aspect brought to the attention of the Committee is a perceived inadequacy of the investigative procedures. The ADF told the Committee that it has policies in place for the proper conduct of investigations.

12.69 The armed services have a strong preference for internal resolution of personal problems.⁴⁶ However, there is sufficient evidence to suggest that there have been a range of problems in the past associated with complete local autonomy for investigations of allegations of sexual harassment and resolution of such complaints.

12.70 Allegations put to the Committee indicate that several complainants have felt that the investigation of their cases had serious shortcomings. In some instances, it is alleged that insufficient attention has been given to the seriousness of the complaints. Submissions also reveal that there are several instances where either the alleged harasser or the persons who have been harassed have serious criticisms about the way they were interviewed. In some instances there are claims that one or other of the two parties involved have not even been interviewed and given an opportunity to put their case properly before any decision either to pursue or drop the

45 HQADF letter PERS 93-27478 of 11 May 1994, pp. 12-13.

46 It is relevant to note that the High Court recently ruled in the Foley case that it was appropriate for the ADF to use the DFDA and courts martial "*if the proceedings could reasonably be regarded as substantially serving the purpose of maintaining or enforcing service discipline.*" Letter to the Secretary dated 9 June 1994 from CAPT T.B. Stodulka, Director of Naval Legal Services.

case was made.⁴⁷ The Army, for example appears to have a policy that the complainant is routinely given an opportunity to make a written complaint.⁴⁸ It is not clear under what circumstances the investigation proceeds to interview of the complainant. What does seem clear is that the present practice of relying in some instances on a written statement only is inadequate.

12.71 Access to avenues other than the chain of command for complaints appears to have been very limited, not encouraged and rarely, if ever, used. Once a supervising officer dismissed a complaint, those who believed they were victims of sexual harassment have, in effect, had no avenue to pursue other than to go outside the ADF, primarily to HREOC. Clearly this is a very serious step that no individual would take lightly without carefully assessing how such a complaint would be regarded by their peers and by their supervisor in the ADF. The ADF is an organisation that lays great stress on teamwork, loyalty and cohesion; the fear of being regarded as disloyal could be expected to act as a strong disincentive to taking complaints outside the organisation.

12.72 A victim of gross abuse would, in all probability have fewer inhibitions about taking such action. In the case of lower level but nevertheless real and unacceptable harassment, the victim may feel less inclined to run the risks that could be perceived to be associated with an external complaint. It is therefore of critical importance that:

- senior officers ensure that the investigation is thorough and professional; and
- there are alternative internal avenues that are independent of the chain of command for pursuing a complaint.

Performance Appraisal

12.73 In order to evaluate the adequacy of current practices with regard to assessing how well managers in the defence forces are carrying out their responsibilities to deal with sexual harassment, the Committee examined in detail a range of performance appraisal forms currently in use in the Services. In the Committee's view none identified this aspect of an individual's performance in sufficient detail.

47 CAPT W. Knobel, submission; submission 4 and in camera evidence.

48 Letter dated 11 May 1994 from MAJGEN S Gower to Committee Chairman, p. 5

Homosexuality

12.74 The Committee received only one submission dealing specifically with the issue of homosexuality in the Defence Force. The submission states:

"I am making this submission to bring to the Committee's attention that the incidents of sexual harassment and discriminatory behaviour within the Australian Defence Force are not confined to heterosexual incidents only." ⁴⁹

However, no specific examples of harassment of homosexuals in the Defence Force are given in the submission. The Defence Force Ombudsman brought two cases to the notice of the Committee where allegations of homosexual behaviour, were, in her view, badly handled by the military authorities. Both cases involved women. One, an Airforce member was subjected to unsubstantiated accusations and kept under unnecessarily intensive surveillance by the Service Police. The other, a female soldier who admitted to homosexual experience was subjected to unnecessarily detailed and intimate questioning.

12.75 The Committee notes that the Defence Force Instructions on Unacceptable Sexual Behaviour apply to unacceptable behaviour between and within genders. The Good Working Relationships seminars also make it clear that the principles apply equally.

Courts Martial

12.76 The Committee observed that several courts martial of ADF personnel for unacceptable sexual behaviour were conducted in the aftermath of the SWAN incidents. In response to a Committee request for details, the ADF advised that the following courts martial had been convened since December 1992: Navy 3, Army 4, Air Force nil courts martial, two Defence Force magistrates trials.

12.77 The Committee also requested information about the number of courts martial convened for sexual harassment and other unacceptable sexual behaviour between 1984 and 1992. The data provided reveals that Navy held 8 such courts martial, the RAAF held 14 courts martial and 5 Defence Force magistrate trials. The Army stated

49 SGT M. Livingstone, submission, p. 2.

that it only had records from 1989 and these indicate that no courts martial for unacceptable sexual behaviour were held during that time.

12.78 While only very tentative conclusions can be drawn from the data, it appears that there has been a slight increase in the rate of courts martial in the Navy and a spate of courts martial convened by the Army since the SWAN incidents. The rate in the RAAF on the other hand has declined substantially.

12.79 Very little evidence to the Committee provided information about the other kinds of disciplinary action that has been taken where allegations of sexual harassment were substantiated. It is known that in some cases the harasser has been discharged from the Service.

12.80 On the basis of the evidence before it, there appears to be some basis for concern that severe punitive measures are being used as a substitute for the comprehensive and timely education of all personnel on the issue of sexual harassment and in preference to mediation and conciliation as the most constructive means of resolving allegations of sexual harassment. The Committee fully accepts that there is a place for punitive measures as part of the total approach to combating sexual harassment. However, punitive measures should only be one component of an anti-harassment strategy. To be effective, considerable emphasis must be given to education and to conciliation and mediation as key elements in the strategy.

Integrated military/civilian workplaces

12.81 There is, at the present time, a lack of clarity in determining whether the employer vicariously liable for sexual harassment in a workplace where both military and civilian personnel are employed is the ADF or the Department of Defence. Responsibility for matters such as the policy in place for appointment of sexual harassment officers and so on must be clearly enunciated. The situation can be complex. For example, a situation can occur where an enlisted officer is in charge of civilian employees, and vice versa and some personnel may be contract employees. Several of the cases identified by the Sex Discrimination Commissioner involved a mix of civilian and enlisted personnel.

ADF future action plan

12.82 HQADF, in consultation with the Navy, Army and Air Force, has recently developed a nine point action plan to address the issue of sexual harassment. It has engaged Lois Bryson, Professor of Sociology at Newcastle University, as its consultant.

12.83 The initiatives in this plan, many of which are still only under consideration and not yet fully implemented, include:

- a. the review of existing policies on sexual harassment and the integration of women;
- b. the review of procedures for reporting, investigating and resolving complaints of sexual harassment;
- c. the analysis and review of the monthly Service statistical reports on unacceptable sexual behaviour;
- d. the implementation of programs to eliminate offensive behaviour and mechanisms to monitor awareness of gender issues;
- e. the establishment of a consultative forum with external agencies such as the Human Rights and Equal Opportunity Commission;
- f. the establishment of mechanisms to evaluate the effectiveness of measures to combat unacceptable sexual behaviour;
- g. the establishment of mechanisms for the lodgement and conciliation of complaints and programs to ensure that personnel are aware of these mechanisms;
- h. the implementation of training programs and provision of literature to make personnel aware of gender issues; and

- i. demonstrating management commitment to the elimination of unacceptable sexual behaviour.⁵⁰

Telephone Advisory Service

12.84 In the latter part of 1993, each Service opened telephone hotlines (008 for Army and Navy and 1800 for Air Force) to provide support and advice to personnel facing problems of sexual harassment.⁵¹ While the Committee is aware that each Service may wish to deal with the particular needs of its personnel, the duplication of telephone advisory services has some disadvantages. The most obvious is the number of trained personnel needed to provide an adequate 24 hour service.

12.85 Recommendation Thirty-Nine: The Committee recommends that the ADF implement without delay the action plan submitted to the Committee on 4 February 1994. The emphasis at this stage of developing the program to eliminate sexual harassment from the ADF should be on service-wide education and on preventative rather than punitive measures. The Committee considers that particular attention should be paid to the following aspects in the action plan:

1 Amendments to Defence instructions

- (a) Mixed-gender focus groups of ADF personnel should be used to gain a better insight into the views of ADF personnel on a hierarchy of unacceptable sexual behaviours, including sexual harassment, and the views of ADF personnel on the optimum way of resolving incidents of varying severity. The results of such focus groups should then be one element to consider when refining further the Defence Instructions on Unacceptable Sexual Behaviour. It remains a matter for the ADF leadership to determine with as much clarity as possible, where the boundaries of sexual behaviour in the ADF lie.
- (b) In addition, changes should be made to the current draft DI(G) PERS-35 on sexual harassment, as outlined in the Committee's Recommendations Twenty, Twenty-One and Twenty-Two.

50 HQADF, supplementary submission, Annex A, Committee Hansard, pp. 1480-1489.

51 Committee Hansard, pp. 1543, 1573.

- (c) DI(G) PERS-35 should be supplemented by a practical guide to all personnel (complainant, harasser, supervisor, observer) for dealing with instances of unacceptable sexual behaviour. The Committee's recommendation Thirty gives more details about the guide.

II Action to educate and raise awareness

- (a) Compulsory awareness raising seminars for all ADF personnel, including all senior ranks, should be developed and introduced as a matter of urgency. While written instructions are essential, they are not sufficient to ensure proper understanding and handling of sexual harassment by all personnel. The seminars are essential to enable all personnel to gain a clearer understanding of the problem and how to deal with it.
- (b) The ADF-wide awareness raising seminars should be supplemented by more specific training for any personnel who wish to develop skills and techniques for dealing with such harassment at the inter personal level.
- (c) Procedures should be put in place to ensure that course symbols, such as pilot course badges, in-house publications (both formal and informal) and training materials do not contain unacceptable sexual connotations.

III Provision of alternative avenues of support

An essential component of an effective sexual harassment policy is the ready availability of avenues of complaint other than through the chain of command.

- (a) A 008 confidential advisory service should be maintained. Consideration should be given to amalgamating the initial points of contact, so that a single 008 telephone number for all Service personnel replaces the existing 008/1800 numbers for Army, Navy and Air Force. It should be possible for callers to either talk directly to a counsellor or to leave a message at any time of the day or night. Every effort should be made to respond to any message left on the 008 number within 12 hours of the call being received. The service should continue to be widely

publicised and reviewed in three years time. Any new staff appointed to the service should be appropriately trained.

- (b) Measures should be put in place to ensure that all other personnel, such as doctors, chaplains, social workers and psychologists who may also be used as an alternative avenue to receive and address complaints are fully aware of their responsibilities in relation to sexual harassment and undergo appropriate training to enable them to identify and assist personnel who may be at risk and to deal appropriately with incidents of sexual harassment that come to their attention.
- (c) The role of specialists such as doctors, chaplains, social workers and psychologists in assisting personnel to deal with harassment should be made clearly known to all personnel.
- (d) An external conflict resolution process should be introduced and made widely known and readily available to any personnel who consider they are being subjected to harassment and encounter difficulties in resolving their complaint directly at the unit level.

IV The promotion of informal resolution of allegations of sexual harassment

- (a) The emphasis in dealing with allegations of sexual harassment should be on informal resolution of the complaint at the local level. Personnel who believe they are being subjected to sexual harassment should be encouraged and given support in resolving the conflict at a personal level.
- (b) If, however, a formal, internal complaint is proceeded with, the procedures followed and the mechanisms that are in place should give assurance to the complainant that the complaint is being fully and properly investigated.
- (c) If the internal investigation is not satisfactory to the complainant, or if the person harassed encounters difficulties in pursuing this course, information on all alternative options (eg. an approach to HREOC, or to the Defence Force Ombudsman) should be made readily available.

- (d) Recourse to courts martial for resolving complaints of sexual harassment should be regarded as a last resort, after other avenues for resolving the problem have been fully explored.
- (e) Assurances must be given at the highest level and monitored to ensure compliance, that there will be no retribution for making a legitimate complaint.

V Improved procedures for the investigations of complaints

Immediate attention must be given to overhauling the procedures and guidelines for the investigation of complaints to incorporate the following:

(a) Investigation of sexual assault

Allegations of sexual assault must be immediately referred to civilian police authorities for investigation.

Provision should also be made for continuing liaison between the civilian investigating authorities, and the military particularly in relation to incidents outside Australian territorial waters pending the adoption of measures in the Committee's Recommendation Twenty-Seven.

(b) Investigation of other sexual harassment allegations

All personnel appointed to investigate incidents must have had appropriate training in the investigation of such complaints.

In all but exceptional cases, investigating officers should be appointed from outside the unit where the alleged incident occurred.

Investigating officers should not be personally acquainted with any of the parties involved in the incident.

All the Services should establish closer liaison with specialists in the investigation of allegations of sexual harassment, both in terms of training military personnel to conduct such investigations internally and to seek the assistance of civilian investigators in cases where suitable military

investigators are not available. Where difficulties arise in appointing suitable military investigators from within the Service where the complaint has been made, the use of trained investigators from a Service other than the one where the complaint was made should also be considered.

VI Ensuring that supervising officers are accountable

- (a) The performance appraisal forms of each Service should be revised so that the extent to which all personnel adhere to the guidelines on unacceptable sexual behaviour is assessed, including the extent to which senior officers carry out their responsibility to take appropriate action to investigate quickly and fairly any allegations of sexual harassment. Care should be taken to ensure that these assessments are given equal weight by, and are comparable across all the Services.

VII Clarifying organisational responsibility

- (a) Steps should be taken urgently to establish clearly whether the ADF or the Department of Defence has the responsibility to ensure that proper sexual harassment policies and mechanisms are in place for handling sexual harassment allegations in establishments where both military and civilian personnel, including contract personnel, are employed.

VIII Monitoring sexual harassment

- (a) Mechanisms should be established for an accurate and comprehensive on-going record of the number and kind of sexual harassment incidents occurring in the ADF. These mechanisms should be such as to enable valid comparisons to be made between the Services and between different units, including training units, within each Service. The records collected should clearly identify the nature of the incident, the action taken and the outcome.
- (b) The Committee notes that, from the records currently available from the 008 numbers, there appears to be a significant difference in the kind of calls being received by the Navy and the kind of calls being registered in the other two Services. In particular, the level of incidents of general harassment in the Navy appears to be as high as that recorded for

sexual harassment. All Services should ensure that general harassment as well as sexual harassment is identified and recorded. The categorisation of the calls should be standardised across all the Services.

- (c) All exit interviews should specifically seek to establish whether the person has experienced sexual harassment, the extent and nature of any such harassment, and whether such harassment has played any part in the person's decision to leave the service. Comparative data on the difference at separation in the ranks and length of service between male and female personnel should be monitored.
- (d) The Services should conduct a survey similar to that conducted by Major Quinn in 1987 to provide data on women's perceptions of sexual harassment since the major policy changes on integration were introduced. A survey at this time would be a further useful benchmark for future evaluation of the programs now being put in place.

IX Establishment of Advisory Committee

- (a) The chain of command should continue to take full responsibility for the development, implementation and monitoring of ADF policy on sexual harassment. It is also essential that the Services develop their own internal expertise in every aspect of the management of sexual harassment, including expertise in group dynamics and conflict resolution. However, there would be value in setting up an Advisory Panel to meet periodically with the Defence Force Policy Committee to assist the ADF carry out this responsibility. The Federal Sex Discrimination Commissioner, the Defence Force Ombudsman, and the present consultants to Navy and the ADF on sexual harassment should be included on the Advisory Panel. In view of the many integrated civilian/military establishments, consideration should also be given to including a representative of the Merit Protection and Review Agency. The HQADF and single Service EEO Units and personnel providing the 008 services should, as a matter of course, participate in meetings with the Advisory Panel.

12.86 In accordance with Government undertakings with regard to Senate Committee Reports, the Committee expects that a Government response to this Report's recommendations will be made within three month's of the tabling of the Report.

12.87 Recommendation Forty: The Committee recommends that the ADF report back to the Senate, one year after the Government's response to this Report, on the action taken by each of the Services and the Australian Defence Force Academy to eliminate sexual harassment from the Australian Defence Force.

General Harassment

12.88 It is important for the successful integration of women into the Defence Force that the attention being given to sexual harassment should not come to be regarded by male personnel as preferential treatment for women.

12.89 As pointed out in earlier chapters of this Report, successful integration of women demands that there be equity of treatment of all personnel. It is clear from evidence before the Committee that harassment of a general kind occurs in the armed services (as it does in many other workplaces). The fact that general harassment has not, in the past attracted the attention it deserves, does not mean that sexual harassment can equally be relegated to the too hard basket. It does mean that the whole question of what is regarded as acceptable behaviour and appropriate interaction between all personnel needs to be more clearly defined and effectively promulgated.⁵²

12.90 In taking action to combat sexual harassment, the ADF should deal with the problem of sexual harassment as part of the wider phenomenon of general harassment.

12.91 There is a growing recognition that employers have a responsibility to improve management practices and ensure that all employees are treated with respect and dignity. The Committee notes, for example, that the Public Service Commission issued guidelines in May 1994 for the Australian Public Service on general harassment.⁵³

52 P.J. Day MAJGEN (RTD), submission, paras 3-9.

53 Public Service Commission, *Eliminating Workplace Harassment Guidelines*, 1994.

12.92 Recommendation Forty-One: The Committee recommends that the ADF develop further the ADF's guidelines on appropriate professional behaviour and inter-personal relations. Particular attention should be given to both the process of arriving at those standards and the process of promulgating them. The Navy's approach of conducting focus groups to identify issues, followed by service-wide seminars which encourage communication and open discussion of the issue of unacceptable sexual behaviour in the context of appropriate overall behavioural standards provides an effective model for dealing with sensitive and complex matters of this kind. Similar processes should be put in place by all the Services to address the wider issue of professional inter-personal conduct, including general and sexual harassment, and mechanisms put in place for eliminating harassment of any kind from the ADF.

Sexual harassment and integration

12.93 In dealing with sexual harassment in the armed forces it is also necessary to keep fully in mind the link between such harassment and the full acceptance of women as equal members of the team effort that the Defence Force strive to foster.

12.94 Women still represent a small minority in the Defence Force. A submission from the first female Commanding Officer of an RAN establishment, which reflects views expressed in several other submissions, argues that the rate of progress in women achieving senior rank is still too slow.⁵⁴ The submission points out that so long as a:

*"state of inequality remains then the propensity for sexual harassment will continue."*⁵⁵

12.95 The Committee observes that there is, in effect, a vicious cycle in operation. Women encounter sexual harassment. This can affect their performance on the job. It may also lead to decisions to leave the service.⁵⁶

54 CDR E.J. Coles, submission, Committee Hansard, p. 1153.

55 CDR E.J. Coles, submission, Committee Hansard, p. 1154.

56 As the Services have not in the past specifically inquired whether sexual harassment has been a factor in women's decisions to leave, the Committee has no statistical data on the importance of this factor. Several submissions indicate that in a number of individual cases it has been a factor.

12.96 Both of these outcomes act as a barrier to the advancement of women in the Services, both in the level of rank achieved and in the numbers of women progressing through the ranks.

12.97 This tends to reinforce any biases held by individuals that women are unwelcome intruders, are not up to the job, and do not belong in the Services. This in turn increases the likelihood that sexual harassment will continue to be seen by some as a means of expressing disapproval of their presence.

12.98 Women will more readily be regarded as equals when there are more of them, they are seen to be pulling their weight and when their presence across the ranks becomes the norm rather than the exception.

12.99 That in itself will not guarantee the disappearance of sexual harassment. Some submissions have pointed out that increasing the numbers of women in the Services, particularly in the more senior ranks, may be seen as increasing competition and therefore as an increasing threat to advancement for men. As Commander Coles found, at the time of her appointment as *"the first female Commanding Officer on RAN establishment"*... this can also manifest itself as sexual harassment.⁵⁷

12.100 Nevertheless, the Committee believes that increased numbers of women in the Services will, over time, and together with appropriate policies on sexual harassment, reduce the likelihood of sexual harassment.

12.101 At the same time, the evolution and development of policies in a wide range of other matters that will have an effect on the numbers of women applying, on the perceptions of the male members of the Services of the contribution the women are making, and on the effect the women are having on the careers of existing personnel. The successful integration of women in the Services depends in part on the development of policies that do not discourage or impede servicewomen from applying to promotions to all levels.

12.102 Recommendation Forty-Two: The Committee endorses the principle of equal opportunity for women in the Australian Defence Force and recommends that high priority be accorded to removing, to the maximum extent possible, any remaining barriers to recruitment and promotion prospects for women in the Services. To

57 CMDR E. Coles, submission, Committee Hansard, p.1154.

achieve this, high priority and resources should be given to reviewing criteria for advancement in the Services to reflect accurately the full range of complementary skills and attributes required for an effective and efficient Defence Force. Particular care should be taken to ensure that policies on access to facilities, physical strength requirements, pregnancy leave, fraternisation and the pre-requisites for promotion, do not unfairly or unnecessarily disadvantage women. Equally importantly they must not be perceived as giving an unfair advantage to women.

12.103 Finding the right solutions for some of these issues will not be simple. Careful judgements on the balances to be struck will need to be made. This will require strong and committed leadership. It will also require a very extensive and sustained effort to open up communication across the Services. Open debate is a key ingredient not only for the development of the policies, but for the acceptance of those policies when they are implemented. The recommendations of this Report are aimed at facilitating the resolution of some of these difficult and complex issues.

GERRY JONES
CHAIRMAN

EVIDENCE

The Committee received a large quantity of evidence in relation to its inquiry into sexual harassment in the Australian Defence Force. The written evidence included submissions, correspondence and a variety of background documents provided by 122 individuals and 16 organisations. The evidence gathered relates to both the specific circumstances of HMAS SWAN in 1992 and to the general question of sexual harassment in the armed forces.

The Committee gave careful consideration to the most appropriate approach to adopt in receiving, evaluating, assessing and publishing the material before it. As a basic principle, the Committee considered that its approach should take account of the rights of individuals to privacy and natural justice as well as the public interest. The Committee also considered it important that as much as possible of the evidence submitted should be publicly available. At the same time, the Committee was very conscious of the sensitivity of some of the material before it. In some instances, the evidence before the Committee contained information that could be regarded as protected under the Privacy Act. In other instances, the evidence included allegations and statements that could be construed as reflecting adversely on named individuals, and included specific claims that the Committee was not in a position to either substantiate or dismiss.

The Committee's approach to the evidence put before it was underpinned by the Standing Orders of the Senate and the Parliamentary Privilege resolutions agreed to by the Senate on 25 February 1988. In broad terms the Committee proceeded as follows:

- In the first instance, the Committee regarded all material submitted to it during the course of the inquiry as confidential to the Committee;
- The Committee made it clear when it advertised the inquiry, at the commencement of all its hearings, and in acknowledging the receipt of submissions that any evidence, including in camera evidence, may be made public at a later stage by the Senate, by the Committee or by an individual Committee member in a minority or dissenting report. The documentation being released publicly with the tabling of this Report is in List A at the end of this Annex.
- Following the receipt of written submissions, the Committee decided that several matters should be explored more fully at both public and in

camera hearings. Fifty seven witnesses appeared before the Committee at public hearings, in some cases, more than once. The witnesses are listed alphabetically, followed by the dates of appearance before the Committee in List B at the end of this Annex. The Hansard transcripts of these hearings are publicly available. The submissions incorporated in Hansard at the time of the public hearings are in List C at the end of this Annex.

- The Committee heard the following four witnesses at in camera hearings:

Ms S Connelly	7 June 1994	Canberra
Ms W Flannery	7 June 1994	Canberra
Captain D Mole	10 March 1994	Canberra
Dr C Wheat	22 March 1994	Canberra

The decision to hold these four hearings in camera reflected the Committee's view that media treatment of the initial allegations about HMAS SWAN distorted the situation and subjected many individuals to unnecessary stress. At the same time, the Committee considered it was important to hear at first hand the testimony of these witnesses. The Committee decided, at the conclusion of its inquiry, to release the evidence given at the in camera hearings, as well as correspondence and supplementary submissions from these witnesses. The Navy was given an opportunity to comment on the evidence given by Dr Wheat and Captain Mole and Navy's comments are included in the documentation released by the Committee.

- Several of the submissions relating to HMAS SWAN received by the Committee and evidence taken at one in camera hearing contained comment about individuals which could be construed as adverse. In accordance with the Senate Parliamentary Privilege Resolutions of 25 February 1988, all individuals referred to in this way were given an opportunity to respond to such comment. In releasing evidence containing comment which could be construed as adverse, the Committee is simultaneously releasing any responses that it received to such comment. These exchanges are included in List A at the end of this Annex.
- The Committee took the view that it was not appropriate for the Committee to become involved in commenting on or seeking to resolve

individual complaints, other than those relating to HMAS SWAN within its Terms of Reference. The Committee considered that it was appropriate that individual complaints not related to HMAS SWAN should be resolved through the Sex Discrimination Commissioner, the Ombudsman, or other appropriate administrative channels. In the case of submissions referring to such individual complaints, the Committee offered to refer the complaint to an appropriate authority and to monitor progress on the complaint. The Committee noted that individual complaints may also be dealt with through other normal legal channels.

- In the majority of cases where allegations were made about individuals other than those involved in HMAS SWAN, the Committee therefore received the submissions with those sections that would identify individuals in a possibly adverse manner deleted. This approach reflected the Committee's wish to strike a fair balance between receiving information to enable it to fulfil its terms of reference and receiving information that could prejudice the right of individuals to natural justice. It acknowledged the limitations on the capacity of a Parliamentary Committee to assess, within the time-frame for the inquiry and the resources available to the Committee, all the claims and counterclaims that are likely to be made in relation to individual complaints (other than those specified in the Terms of Reference) and removed any possibility of unsubstantiated allegations being protected by parliamentary privilege. They are regarded by the Committee not as proven cases, but as indicative of the kinds of concerns that exist amongst members of the armed forces. The majority of submissions treated in this way are included in the submissions being released publicly. In most of the instances where this approach was adopted it was necessary to delete the name of the originator of the submission, as well as the name of the individual against whom allegations were made. A number of submissions are therefore identified numerically rather than by the originator's name.
- Much of the material received by the Committee was originally prepared as Staff-in-Confidence or Confidential documentation. Several witnesses requested that their submissions and correspondence be treated as confidential to the Committee or that references to certain individuals be deleted. The Committee considered each of these documents and requests very carefully. In the majority of these cases the Committee concluded that, on balance, it is in the public interest to release the

documentation, notwithstanding the preferences of individuals and the considerations that led to the restrictions applying initially to the documentation.

- In some instances, information has been deleted from the material being released and a small number of submissions and some background documentation is not being released. In most of these instances, the information pertains to cases that are known to be under active investigation by other bodies or agencies, or is judged to be information that would be protected under privacy legislation. In a few cases, the Committee has reason to be concerned about possibly damaging consequences for the individuals involved if the information were to be released. Any such consequences would be viewed very seriously by the Committee as involving a possible contempt, but the Committee has weighed the inherent difficulty of proving this type of contempt against possible harm to individuals and determined that the public interest is best served by keeping the information confidential. Some minor deletions were made for reasons of national security. The deletions do not affect any of the matters in the Committee's terms of reference.

LIST A - SUBMISSIONS AND DOCUMENTATION TABLED WITH THE REPORT

FLTLT M F Anderson	17 Nov 1993
Anonymous Female Lieutenant	8 Dec 1993
The Anti-Submarine Officers' Assoc. (In Hansard)	15 Nov 1993
Attorney-General's Department	15 June 1994
1 Background Briefing by Attorney General's Department to Senate Standing Committee on Foreign Affairs Defence and Trade inquiring into issues of sexual harassment in the Defence Force, 7 October 1993.	
Australian Federal Police (In Hansard)	22 Nov 1993
Mr C R Barling	17 Nov 1993
LEUT P Bartlett	
1 Letter dated 11 January 1994 from Committee Secretary to LEUT Bartlett	
2 Letter dated 27 January 1994 from LEUT Bartlett to Committee Secretary	
3 Letter dated 30 July 1993 from CNS to LEUT Bartlett (Censure)	
Mr John Beaumont	15 Nov 1993
1 Letter dated 13 July 1994 from Mr Beaumont to Committee Secretary	
2 Letter dated 3 August 1994 from Committee Secretary to Mr Beaumont	
CPOUC G R B Benham	31 Jan 1994
BHP Information Technology	8 Nov 1993
Mr Rollo Brett (see Returned Services League)	
CMDR (Rtd.) T E Brinkley	8 Nov 1993
CPO K Broad	
1 Letter dated 11 January 1994 from Committee Secretary to CPO Broad	
2 Letter dated 24 January 1994 from CPO Broad to Committee	
3 Letter dated 22 February 1994 from Committee Secretary to CPO Broad	
4 Fax dated 5 March 1994 from CPO Broad to Committee Secretary	

- 5 Letter dated 9 March 1994 from CPO Broad to Committee Secretary

Enclosures:

Telex dated 24 August 1992 from RANTEWSS to HMAS SWAN

Telex dated 25 August 1992 from HMAS SWAN to
RANTWESS

- 6 Letter dated 30 July 1993 from CNS to CPO Broad (Censure)

PO S Brown (In Hansard)	17 Nov 1993
Ms Maureen Cane (see Public Service Commission)	6 May 1994
Ms Anita Chambers	15 Nov 1993
Mrs Sandra Chandler (In Hansard)	12 Nov 1993
LEUT B Christensen (HMAS IPSWICH - In Hansard)	Sept 1993
PO J Clark (In Hansard)	17 Nov 1993
LS D Cleary (In Hansard)	16 Nov 1993
CMDR E Coles (In Hansard)	15 Nov 1993
Commonwealth Ombudsman	9 June 1994

Ms Sheena Connelly (Evidence in Hansard)

- 1 Letter dated 16 November 1993 from MacPhillamy, Cummins & Gibson to Committee Secretary
- 2 Letter dated 7 December 1993 from MacPhillamy, Cummins & Gibson to Committee Secretary
- 3 Letter dated 7 January 1994 from Committee Secretary to Ms Connelly
- 4 Letter dated 21 January 1994 from Committee Secretary to Ms Connelly
- 5 Letter dated 1 February 1994 from Committee Secretary to Ms Connelly
- 6 Letter dated 9 December 1993 from Ms Connelly to CNS
- 7 Letter dated 2 February 1994 from CNS to Ms Connelly
- 8 Letter dated 2 February 1994 from MacPhillamy, Cummins & Gibson to Committee Secretary
- 9 Letter dated 22 February 1994 from Committee Secretary to Ms Connelly
- 10 Letter dated 23 May 1994 from Ms Connelly to Committee Secretary

- 11 Letter dated 31 May 1994 from Committee Secretary to Ms Connelly
- 12 Letter dated 2 June 1994 from Committee Secretary to Ms Connelly
- 13 Statutory Declaration dated 6 June 1994 from Grant Dooley relating to the leg breaking incident in Hong Kong
- 14 Letter dated 9 June 1994 from Alison J. Roberts relating to the leg breaking incident in Hong Kong
- 15 Letter dated 4 June 1993 from Mr John Langmore, MP to the Minister for Defence Science and Personnel relating to the SWAN Board of Inquiry Report
- 16 Letter dated 4 June 1993 from Mr John Langmore, MP to Ms Connelly
- 17 Letter dated 5 June 1993 from Mrs Myra Connelly to the Commonwealth Ombudsman
- 18 Letter dated 29 January 1993 from Ms Connelly to Commanding Officer, HMAS HARMAN re her PERS1 Assessment Appeal
- 19 Letter dated 23 June 1994 from MacPhillamy, Cummins & Gibson to Committee Secretary

PO M D Connors	22 Nov 1993
Mr Ben Constable	16 Nov 1993
Ms Brenda Cooke	15 Nov 1993
Mr S Cornish	15 Nov 1993
CAPT (RANEM) D B Cotsell	15 Nov 1993
Ms Alison Crofts (incl. Ms Amanda Wolff & Mr Dominic Alecci)	25 Feb 1994
Ms Simone T Dalton	4 Nov 1993
Mr Max L Davis	18 Feb 1994
MAJGEN (Rtd) P J Day	3 Nov 1993
Department of Industrial Relations (In Hansard)	8 Dec 1993
LCDR V E B Di Pietro	15 Nov 1993
Mr Ian Downs	19 Oct 1993
LSRO L J Dunn	26 Nov 1993
CPO Keith Edwards	17 Nov 1993

FLTLT J Elkington 25 Nov 1993

Mr Tom Fahy 15 Nov 1993

Mr Trevor K Ferdinands 11 Oct 1993

Ms Wendy Flannery (Evidence in Hansard)

- 1 Letter dated 7 January 1994 from Committee Secretary to Ms Flannery
- 2 Letter dated 21 January 1994 from Committee Secretary to Ms Flannery
- 3 Letter dated 17 January 1994 from Ms Flannery to Committee Secretary
- 4 Letter dated 31 January 1994 from Ms Flannery to Committee Secretary
- 5 Letter dated 1 February 1994 from Committee Secretary to Ms Flannery
- 6 Letter dated 2 February 1994 from Ken Cush (MacPhillamy, Cummins and Gibson, Solicitors to Ms Flannery) to Committee Secretary
- 7 Letter dated 22 February 1994 from Committee Secretary to Ms Flannery
- 8 Letter dated 3 March 1994 from Ms Flannery to Committee Secretary
- 9 Letter dated 12 May 1994 from Ms Flannery to Committee Secretary
- 10 Letter dated 16 May 1994 from Ms Flannery to Committee Secretary
- 11 Letter dated 18 May 1994 from Committee Secretary to Ms Flannery
- 12 Letter dated 9 June 1994 from Alison J Roberts relating to the leg breaking incident in Hong Kong
- 13 Statutory declaration dated 6 June 1994 from Grant Dooley relating to the leg breaking incident in Hong Kong

SGNCAPT M Flynn RAN 18 Mar 1994

- 1 Letter dated 17 March 1994 from Mr Brian Loftus of Gallens, Crowley & Chamberlain Solicitors acting for Surgeon Captain M. Flynn to Committee Secretary
- 2 Letter dated 12 May 1994 from Committee secretary to CAPT Flynn
- 3 Letter dated 25 May 1994 from Mr Brian Loftus to Committee Secretary
- 4 Letter dated 27 May 1994 from Mr Brian Loftus to Committee Secretary

LCDR P Flynn (Naval Police)

- 1 Letter dated 7 January 1994 from Committee Secretary to LCDR P. Flynn
- 2 Minute dated 16 September 1992 from LCDR P. Flynn and CMDR J. Horobin to Maritime Commander Australia, "Allegation of Indecent or Sexual Assault"
- 3 Letter dated 22 November 1993 from LCDR P. Flynn to ACPERS-N
- 4 Letter dated 19 January 1994 from LCDR P. Flynn to Committee Secretary

CPO (Now SBLT) J Goedecke

- 1 Letter dated 11 January 1994 to CPO J. Goedecke
- 2 Letter dated 22 February 1994 to CPO Goedecke
- 3 Letter dated 17 March 1994 from Commander R. Crane to Committee Secretary
- 4 Submission from SBLT Goedecke

CAPT (RANR) P G Habersberger 15 Nov 1993

CMDR (Rtd.) G Halley 17 Nov 1993

Mr Trevor Hay 3 Nov 1993

Headquarters ADF (In Hansard) 15 Nov 1993

- 1 Letter dated 12 November 1993 from Chief of the Defence Force to Committee Chair
- 1a Letter dated 7 February 1994 from Major General Gower to Committee Secretary forwarding a submission from Chief Petty Officer Benham (Note: submission not released)
- 2 Letter dated 5 May 1994 from Committee Chair to Major General Gower requesting answers to a number of questions
- 3 Letter dated 11 May 1994 from Major General Gower to Committee Chair providing answers to questions from the Committee
- 4 Photocopies of RAAF Course badges requested by the Committee at 18 March public hearing
- 5 Letter dated 20 May 1994 from Major General Gower to Committee Chair
- 6 Letter dated 31 May 1994 from Major General Stevens to Committee Secretary
- 7 Letter dated 14 June 1994 from Commander Coles to the Committee Secretariat

- 8 Letter dated 28 June 1994 from CMDR H. Marks to Committee Chair
- 9 Copies of appraisal and performance report forms with relevant instructions for appraisers for Army, Navy and Air Force
- 10 Minute dated 22 July 1994 from Major General Gower to Committee Chair
- 11 Minute dated 16 August 1994 from Major General Gower to Committee Chair

Mr C B Hewitt	17 Feb 1994
CAPT (Rtd.) L M Hinchliffe	16 Nov 1993
Dr Joan-Mary Hinds	16 Nov 1993
LEUT A G Horder (In Hansard)	17 Nov 1993
HMAS Benalla Association	17 Nov 1993
HMAS IPSWICH (listed individually)	22 Nov 1993
HMAS IPSWICH Junior Sailors Mess	22 Nov 1993
HMAS Lismore Association	3 Nov 1993
Ms Sonia Humphrey (In Hansard)	12 Nov 1993
WO Lindsay Irwin	12 Nov 1993

LCDR R James

- 1 Letter dated 29 October 1993 from Mr John Rush, QC acting on behalf of Lcdr James to Committee Secretary
- 2 Letter dated 2 December 1994 from Committee Secretary to Mr John Rush, QC
- 3 Letter dated 17 December 1993 from Committee Secretary to Mr John Rush, QC
- 4 Letter dated 17 December 1993 from Mr John Rush, QC to Committee Secretary
- 5 Letter dated 17 December 1993 from Committee Secretary to Mr John Rush, QC
- 6 Letter dated 6 January 1994 from Committee Secretary to Lcdr James
- 7 Letter dated 23 February 1994 from Mr John Rush, QC to Committee Secretary including submission

POWTR M Jeppesen	11 Oct 1993
SBLT S M Johnson	16 Nov 1993
LCDR P D Jones (In Hansard)	3 Nov 1993
PO N D Jones	22 Oct 1993
FLTLT L K Kardas	17 Nov 1993
Dr A T Kenos	20 Sept 1993
Prof. Kim Kirsner	8 Dec 1993
CAPT Wendy Knobel	9 Mar 1994
LCDR P Kraus (HMAS IPSWICH - In Hansard)	Sept 1993
POEWLSM G R Le Cerf	3 Nov 1993
Mr Mark Lewis	10 Dec 1993
Mr J Linton-Mann (see Humphrey, S.)	
SGT M L Livingstone	23 Jan 1994
LCDR J E Lloyd (In Hansard)	22 Oct 1993
Major P D McKay	17 Dec 1993
Mr T H McDonald	13 Nov 1993
Mr Clinton McKenzie	17 Nov 1993
CAPT A B Mackinnon (In Hansard)	9 Nov 1993
LCDR (Dr) Alison McLaren	18 May 1994
LS K A McMullen (In Hansard)	17 Nov 1993
LEUT W A Malcolm	16 Nov 1993
PO A J Malouf (In Hansard)	17 Nov 1993
AB M A Mathers	12 Nov 1993
Mr J Minson (see Smith, Alison)	

- 1 Letter dated 1 November 1993 from Henry Davis York, Solicitors, to Committee Secretary
- 2 Letter dated 11 January 1994 from Committee Secretary to A/CAPT Mole
- 3 Letter dated 21 January 1994 from Committee Secretary to A/CAPT Mole
- 4 Letter dated 31 January 1994 from Henry Davis York to Committee Secretary
- 5 Letter dated 2 February 1994 from Henry Davis York to Committee Secretary
- 6 Letter dated 8 February 1994 from Henry Davis York to Committee Secretary
- 7 Facsimile message dated 9 March 1994 from Henry Davis York
- 8 Letter dated 11 March 1994 from CAPT B. Robertson to Committee Secretary
- 9 Letter dated 16 March 1994 from Henry Davis York to Committee Secretary including supplementary submission from CAPT Mole

Dr Carmel Moore	24 May 1994
Mr Harold Murphy	29 Oct 1993
Ms Jennifer Neville	12 Nov 1993
NSW Police Service	4 May 1994
Mr Peter O'Hare	15 Nov 1993
PLTOFF Brian Patton	8 Nov 1993
Mr Bob Pease	17 Nov 1993
Mr Otto Pelczar	15 Nov 1993
LCDR D S Plummer	27 Oct 1993
WO F Pontarolo (In Hansard)	15 Nov 1993
LCDR R Prendergast	

- 1 Letter dated 30 May 1994 from LCDR R. C. Prendergast
- 2 Letter dated 21 June from Brigadier D'Hagé to Committee Secretary

Mr D L Price (see Anti-Submarine Officers Association)

Public Service Commission (In Hansard)

Major Kathryn Quinn (In Hansard)	12 Nov 1993
1 "Women in the Armed Services, Career and Family. Intentions and Expectations" by Major K. Quinn, Department of Defence, 1989.	
Royal Australian Navy (In Hansard) (See also separate entry at the end of this list)	16 Nov 1993
Revd. W D Reddin (In Hansard)	8 Dec 1993
Returned Services League (In Hansard)	16 Nov 1993
Ms Julie Roberts	15 Nov 1993
LEUT W K Russell (In Hansard)	Sept 1993
ABRO Cheryl Rutland (In Hansard)	15 Nov 1993
SBLT Margot Schelling	15 Nov 1993
LS Linda Schiel	22 Nov 1993
Ms S M Sellick	15 Nov 1993
Sex Discrimination Commissioner (In Hansard)	16 Nov 1993
CPO E H Sheather	15 Nov 1993
LEUT S J Sly (In Hansard)	Sept 1993
Ms Alison Smith (In Hansard)	15 Nov 1993
Dr Hugh Smith (In Hansard)	29 Nov 1993
Ms Philippa Smith (see Commonwealth Ombudsman)	
Mrs E V M Spruce	25 Oct 1993
Mr J Spruce	27 Oct 1993
LCDR M J Spruce	12 Nov 1993
1 Letter dated 7 January 1994 from Committee Secretary to LCDR M. Spruce	
2 Letter dated 24 January 1994 from LCDR M. Spruce to Committee Secretary	
Mr I M Swan	15 Nov 1993
1 Letter dated 22 February 1994 from Committee Secretary to Mr I. Swan	
2 Letter dated 3 March 1994 from Mr Swan to Committee Secretary	
3 Letter dated 14 July 1994 from Committee Secretary to Mr Swan	

CHAP D M Thiem RAN

12 Nov 1993

- 1 Letter dated 22 February 1994 from Committee Secretary to Chaplain Thiem, relating to adverse comments
- 2 Letter dated 24 February 1994 from Mr Brian Loftus of Gallens, Crowley & Chamberlain, Barristers and Solicitors acting for Chaplain Thiem
- 3 Letter dated 24 February 1994 from Committee Secretary to Mr Brian Loftus
- 4 Letter dated 25 February 1994 from Mr Brian Loftus to Committee Secretary
- 5 Letter dated 25 February 1994 from Committee Secretary to Mr Brian Loftus
- 6 Letter dated 11 November 1993 from Mr Brian Loftus to Committee Secretary including submission
- 7 Letter dated 3 March 1994 from Mr Brian Loftus to Committee Secretary

LEUT J L Thomas

15 Nov 1993

Triulzi Collins Solutions Pty Ltd

23 Nov 1993

- 1 Letter dated 26 May 1994 from Ms Sandra Triulzi of Triulzi Collins Solutions to Committee Secretary

Enclosures:

HMAS SYDNEY - Impact Study

GWR Pilot Programs - Cumulative Evaluation Report

Leading Seamen Leadership School Evaluation

"Reasonable Women" Define Harassment

LEUT Kelvin Turner

15 Nov 1993

- 1 Letter dated 22 February 1994 from Committee Secretary to LEUT K. Turner
- 2 Letter dated 25 February 1994 from LEUT Turner to Committee Secretary

Mr Ben Wadham

21 February 1994

Mr G A Waldie

12 Nov 1993

COL J A Wallace, AM

9 Nov 1993

RADM R Walls (In Hansard)

- 1 Letter dated 18 March 1994 from Committee Secretary to RADM R. Walls

- 2 Letter dated 24 March 1994 from RADM Walls to Committee Secretary including **submission** and **Annexures A to X**
- 3 Statement by Rear Admiral R.A.K. Walls to Committee, 25 March 1994.
- 4 Letter dated 6 April 1994 from CAPT T. Stodulka to Committee Secretary
Enclosure K

Ms S Walpole (see Sex Discrimination Commissioner)

CMDR E G Walsh 10 Nov 1993

LCDR (Dr) N Westphalen (In Hansard) 17 Nov 1993

Dr C Wheat 17 Nov 1993

- 1 Letter dated 3 November 1993 to Committee Chairman from Minter Ellison Morris Fletcher, Solicitors
- 2 Letter dated 4 November 1993 from CAPT T Stodulka to Minter Ellison Morris Fletcher, Solicitors
- 3 2 Letters dated 10 November 1993 from Minter Ellison Morris Fletcher, Solicitors to CAPT Stodulka
- 4 Letter dated 15 November 1993 from Minter Ellison Morris Fletcher, Solicitors to Committee Chairman
- 5 Letter dated 2 December 1993 from Minter Ellison Morris Fletcher, Solicitors to Committee Secretary
- 6 Letter dated 14 December 1993 from Minter Ellison Morris Fletcher, Solicitors to Committee Secretary
- 6(a) Letter dated 17 December 1994 from Committee Secretary to Minter Ellison Morris Fletcher, Solicitors
- 7 Letter dated 6 January 1994 from Minter Ellison Morris Fletcher, Solicitors to Committee Secretary
- 8 Letter dated 6 January 1994 from Committee Secretary to Dr Wheat
- 9 Letter dated 21 January 1994 from Committee Secretary to Dr Wheat
- 10 Letter dated 21 January 1994 from Committee Secretary relating to releasing the Court Martial transcript
- 11 Letter dated 3 February 1994 from Minter Ellison Morris Fletcher, Solicitors
- 12 Letter dated 8 February 1994 from Minter Ellison Morris Fletcher, Solicitors to Committee Secretary
- 13 Letter dated 10 February 1994 from Dr Colin Moore to Minter Ellison Morris Fletcher, Solicitors

- 14 Letter dated 24 February 1994 from Committee Secretary to Minter Ellison Morris Fletcher, Solicitors
- 15 Letter dated 3 March 1994 from Minter Ellison Morris Fletcher, Solicitors to Committee Secretary
- 16 Letter dated 15 March 1994 from Minter Ellison Morris Fletcher, Solicitors to Committee Secretary
- 17 Letter dated 11 May 1994 from Minter Ellison Morris Fletcher, Solicitors to Committee Secretary
- 18 Letter from Committee Secretary to Minter Ellison Morris Fletcher, Solicitors concerning extension of reporting date
- 19 Letter dated 14 June 1994 from Minter Ellison Morris Fletcher, Solicitors to Committee Secretary
- 20 Letter dated 1 July 1994 from Committee Secretary to Dr Wheat
- 21 Letter dated 14 July 1994 from Minter Ellison Morris Fletcher, Solicitors to Committee Secretary

Further submissions from Dr Wheat

- 22 Further **submission** from Dr Wheat dated 11 March 1994 - Chronology of events
- 23 Final **submission** from Dr Wheat dated 26 May 1994

Mr G R Worledge 15 Nov 1993

Dr Peter Wurth 22 Nov 1993

LEUT G Zilko

- 1 Letter dated 11 January 1994 from Committee Secretary to LEUT Zilko
- 2 Letter dated 24 January 1994 from Mrs A. Zilko to Committee Secretary
- 3 Letter dated 10 February 1994 from LEUT Zilko to Committee Secretary

The Committee also received 8 submissions from persons whose names have been withheld. They are submissions Nos. 1 - 8.

COMMENTS - NO RESPONSE RECEIVED

The following persons chose not to respond to the comments about them which could be construed as adverse and which were forwarded to them by the Committee Secretary:

CMDR Donovan

CPO McKay

LEUT Walker

PO Wells

MINISTERIAL CORRESPONDENCE

- 1 Letter dated 17 March 1994 from Committee Chairman to Minister for Defence Science and Personnel
- 2 Letter dated 18 May 1994 from Minister for Defence Science and Personnel, the Hon. Gary Punch, MP to Committee Chairman

Attachments:

- . Letter dated 16 September 1993 from Minister for Defence Science and Personnel to Dr C Wheat
- . Letter dated 13 September 1993 from Dr C Wheat to Minister for Defence Science and Personnel
- . Letter dated 26 August 1993 from Dr C Wheat to Minister for Defence Science and Personnel
- . Letter dated 23 August 1993 from Minister for Defence Science and Personnel to Dr Wheat
- . Letter dated 29 July 1993 from Dr C Wheat to Minister for Defence Science and Personnel
- . Letter dated 25 November 1992 from Dr C Wheat to Minister for Defence Science and Personnel
- . Letter dated 19 November 1992 from Mr John Beaumont to Mr P. Reith, MP
- . Letter dated 11 November 1992 from Mr John Beaumont to Mr P. Reith, MP

DOCUMENTS RECEIVED FROM NAVY

(In addition to submission and other documents incorporated in Hansard)

- 1 Report of Board of Inquiry convened by the Maritime Commander on 21 December 1992
- 2 Transcript of evidence given by witnesses called before the Board of Inquiry
- 3 Transcript of evidence given by witnesses at the Court Martial of Lieutenant Commander R. James, 9-18 December 1992
- 4 "Accommodation of Women in HMAS SWAN", 24 April 1990
- 5 Employment of Women in the RAN - Various signals
- 6 "Mixed Gender Awareness - Sexual Harassment", Message to the Fleet, 4 June 1990
- 7 CNS Report to Minister (10 August 1993)
- 8 Extracts from "Women in the Military. The Tailhook Affair and the problem of Sexual Harassment"
- 9 Administrative Censure of Officers - DI(N) ADMIN 35-1
- 10 CNS Minute dated 18 January 1993, "Unacceptable Sexual Behaviour and Interpersonal Relationships by Members of the RAN - Directives and Guidelines"
- 11 Minute from Maritime Commander, Australia (MCAUST) to ACPERS-N, 25 June 1993

Enclosure: Privacy of facilities onboard HMA Ships
- 12 Minute re censures from MCAUST to CNS, 12 July 1993
- 13 Minute from Director of Naval Legal Services (DNLS) to ACPERS-N, 16 July 1993
- 14 Minute from ACPERS-N to CNS, 20 July 1993
- 15 Instructions to Commanding Officers (DI(N) 30-3)
- 16 CNS Minute 8 September 1993 - Sexual Harassment and Unacceptable Behaviour in the Workplace
- 17 CNS Message of 13 September 1993
- 18 Good Working Relationships Project's "Brief for the Minister for Defence", 15 September 1993: *"Modifications made to RAN ships to accommodate female crew members"*
- 19 Message of 27 September 1993 to Fleet re Operation LifeGuard

- 20 CNS Minute to Minister, 28 September 1993, "CNS endorsement of the strategy to engender Good Working Relationships in Navy"
- 21 Papers provided at Good Working Relations Seminar:
 Management of Unacceptable Behaviour
 Confidential Database
- 22 Divisional Handbook
- 23 Draft for DI(G) PERS 35-3 - "Unacceptable Sexual and Sexist Behaviour by Members of the Australian Defence Force". Letter dated 10 December 1993 from CAPT T. Stodulka to Committee Secretary
- 24 Fax dated 16 December 1993 to Committee Secretary, "Redirection of allegations of sexual harassment - Operation Lifeguard"
- 25 "Top Cover", Letter dated 21 December 1993 to Committee Secretary from CAPT B. Robertson
- 26 Information Pack: "Creating a better workplace for the Royal Australian Navy"
- 27 Letter dated 22 December 1993 to Committee Secretary from CAPT T. Stodulka (re Court Martial Transcript)
- 28 Letter dated 18 January 1994 to Committee Secretary from CAPT T. Stodulka
- 29 Letter dated 18 February 1994 from CAPT B. Robertson to Committee Secretary, "Update on progress of Good Working Relationships project"

Annex:

 Protocols for Management of Confidential Databases

- 30 Fax dated 28 February 1994 from CAPT B. Robertson to Committee Secretary, DI(G) 35-1 (Nov. 86)
- 31 Letter dated 2 March 1994 from CAPT B. Robertson to Committee Secretary

Enclosures:

- . Syllabus for the Qualified Entry Officers Course
- . Project Mainstay Report (Extracts)
- . Employment of women (CNS Memo 15 Feb 1991)
- . DI(N) PERS 40-15 - Sexual Assault
- . Appeal by Petty Officer Anning
- . 008 Telephone Service - Update

32 Letter dated 4 March 1994 from CAPT B. Robertson to Committee Secretary

Enclosure:

. DI(N) 45-1 dated 31 January 1992

33 Letter dated 14 March 1994 from CAPT B. Robertson to Committee Secretary

Enclosures:

- . Consideration of Possible Charges against LCDR R.D. James, RAN - Legal Opinions
- . LEUT C Wheat RANR -Statements
- . LEUT C. Wheat, RANR - Transcripts & Audio Tapes of Interview
- . HMAS SWAN Disciplinary Records -1991-1993
- . Board of Inquiry - Correspondence with Witnesses (2 documents)
- . LEUT C. Wheat, RANR -Employment & Seniority Correspondence
- . Matters raised by LEUT Wheat 25 Nov.92 - Assistant Chief of Naval Staff (Personnel) Report
- . A/CAPT D. W. Mole, RAN -Chief of Naval Staff Censure
- . LEUT C. Wheat, RANR - Letter dated 10 Nov.92
- . Decision to prosecute to Court Martial - Chronology
- . Naval Police Coxswains - Complement
- . Boards of Inquiry
- . Board of Inquiry - Adverse Comment Warnings to Witnesses
- . Defence Instruction (Navy) - Promulgation Chronology (includes copy of DI(N) 16-5; DI(G) 35-3)
- . Board of Inquiry - Witnesses
- . HMAS SWAN Personnel - Comparative Annual Salaries
- . Australian Federal Police
- . Commanding officer Designate Course - A/CAPT D.W. Mole, RAN
- . Explanatory Notes - Defence Force Disciplinary Act & Prosecution Policy of the Commonwealth
- . LEUT C. Wheat, RANR - Officer Selection Board

- 34 Letter dated 16 March 1994 from CAPT B. Robertson to Committee Secretary, "Commanding Officer's Designate Course - A/Capt D. W. Mole, RAN"
- 35 Letter dated 16 March 1994 from CAPT B. ROBERTSON to Committee Secretary

Enclosures:

- . Extract from "The Queen's Regulations 1862"
 - . Quotation by Josef Konrad "Command at Sea"
 - . Extract from Wall Street Journal dated 14 May 1952
 - . DI(N) ADMIN 30-3, "Instructions to the Commanding Officer"
 - . Maritime Commander's " Notes to Commanding Officers" dated 1/1/93
- 36 Letter dated 18 March 1994 to CAPT B. Robertson from Committee Secretary
- 37 Letter dated 24 March 1994 to CAPT B. Robertson from Committee Secretary
- 38 "Boards of Inquiry" (Letter dated 24 March 1994 from CAPT B. Robertson to Committee Secretary)
- . **Submission** by the RAN in relation to some legal issues raised by A/c CAPT D. Mole, RAN
- 39 Senate Inquiry - A/CAPT Mole Aspects (Letter dated 24 March 1994 from CAPT T. Stodulka to Committee Secretary)
- 40 Letter dated 6 April 1994 from CAPT B. Robertson to Committee Secretary
- 41 Letter dated 7 April 1994 from CAPT B. Robertson to Committee Secretary

Enclosures:

- . Transcript of Vice Admiral MacDougall's Press Conference - 9 September 1994
- . CNS Letter offering formal apology to Dr Wheat (29 Oct. 93)
- . Dr Wheat's handwritten statement & typed statement of 22/8/92 describing events of 15 August 1992
- . Documentation advising Commander Willee that a Board of Inquiry had been established
- . Correspondence between Maritime Headquarters and HMAS SWAN re initial investigation venue and accommodation details of personnel
- . HMAS SWAN - Medical Log (not released)

- . Letters from Mr Beaumont to Mr P. Reith, MP
 - . Postings/ positions Acting CAPT Mole, LCDR Spruce, LEUT Bartlett, Chief Petty Officer Broad
 - . Transcript of Interview - LCDR James at Lumut
 - . Minute from Minister Faulkner to CNS, 29 July 1994
- 42 Letter dated 8 April 1994 from CAPT B. Robertson to Committee Secretary, "Senate Inquiry - Dr Wheat Aspects"
- Annex:**
- . Memorandum from LEUT Slattery to CAPT Robertson dated 7/4/1994
- Enclosures:**
- . Second Opinion provided by LCDR Hoyle dated 26 Oct. 92
 - . Claim for Payment to CMDR Willee dated 15 January 1993
 - . Record of (27/11/92) conversation b/w Fleet Legal Officer & Dr Wheat
 - . Claim for payment to Dr Wheat dated 21 Jan. 1993
 - . Record of conversation between FLO and DNLS dated 4 Dec. 1992
 - . Copy of Cabcharge vouchers used by Dr Wheat on 19 Dec. 1992
 - . Minute from FLO to HMAS KUTTABUL re accommodation dated 30 Nov.92
 - . Copy of facsimile to Olims Hotel on 2 December 1992
 - . Copy of facsimile to Woolloomooloo Waters on 3 Dec. 92
 - . Copy of correspondence relating to release of BOI report to Dr Wheat
 - . Letter from Minister Faulkner to Dr Wheat dated 26 August 1993
 - . Letter from ACPERS-N to Dr Wheat dated 17 Dec. 92
- 43 Senate Inquiry - Questions on Notice 25 March 94 (Letter dated 8 April 1994 to Committee Secretary)
- 44 Letter dated 5 May 1994 from Committee Chairman to CAPT B. Robertson

- 45 Letters dated 11 May and 12 May 1994 to Committee Secretary from CAPT B. Robertson, "Senate Inquiry - Sexual Harassment - Request for Answers to Specific Questions"

Answers to Questions

- . Paper by Commander C. Brand, "Assimilation of Women at sea"
 - . Calls to 008 number
- 46 Letters dated 9 June and 10 June 1994 from CAPT T. Stodulka to Committee Secretary, "Senate Inquiry - Dr Wheat Aspects" Legal fees.
- 47 US Navy's Conflict resolution Program, "Resolving Conflict ... Following the Light of personal Behaviour"
- 48 Letter dated 17 June 1994 from Commander M. Toohey, "Senate Inquiry - HMAS SWAN - RANTEWSS team - Male discharges"
- 49 Letter dated 22 June 1994 to Committee Chairman from Commander M. Toohey, "Censures issued by CNS"

Enclosures:

- . CNS Minute to LEUT Bartlett dated 30 July 1993
 - . CNS Minute to CPO Broad dated 30 July 1993
- 50 DIN (PERS) 52-2 "Reporting and Promotion System, Officers, Warrant Officers and Officer Candidates"
- 51 Letters of apology dated 5 November 1993 from the Chief of Naval Staff to Ms S Connelly and Ms W. Flannery
- 52 Minute dated 17 August 1994 from RADM C. Oxenbould to Committee Secretary

LIST B - WITNESSES AT PUBLIC HEARINGS

Witness	Date of Hearing	Venue
Commodore C Barrie	4 February 1994	Canberra
	10 & 25 March 1994	Canberra
Mr J R Brett	16 February 1994	Canberra
Petty Officer S E Brown	11 February 1994	Sydney
Professor L J Bryson	18 March 1994	Canberra
Ms M R Cane	16 February 1994	Canberra
Rear Admiral D Chalmers Maritime Commander	4 February 1994	Canberra
Rear Admiral A Carwardine	10 March 1994	Canberra
Mrs S J Chandler	16 February 1994	Canberra
Lieutenant B Christensen	11 February 1994	Sydney
Mr B V Clark	4 February 1994	Canberra
Petty Officer J Clark	11 February 1994	Sydney
Leading Seaman D T Cleary	11 February 1994	Sydney
Commander E J Coles	16 February 1994	Canberra
Air Vice-Marshal F D Cox	18 March 1994	Canberra
Mr M A Frawley	4 February 1994	Canberra
Ms K A Freytag	4 February 1994	Canberra
Mr M Garrett	16 February 1994	Canberra
Major-General S N Gower	18 March 1994	Canberra
Mrs H J P Hammond	16 February 1994	Canberra
Rear Admiral D G Holthouse (RAN RTD)	16 February 1994	Canberra
Lieutenant A G Horder	11 February 1994	Sydney

Ms S D Humphrey	11 February 1994	Sydney
Mrs O J Ingle	16 February 1994	Canberra
Lieutenant-Commander P D Jones	11 February 1994	Sydney
Captain G Kennedy	4 February 1994 10 March 1994 25 March 1994	Canberra Canberra Canberra
Lieutenant-Commander P J Kraus	11 February 1994	Sydney
Captain A B MacKinnon	16 February 1994	Canberra
Mr J Linton-Mann	11 February 1994	Sydney
Lieutenant-Commander J E Lloyd	11 February 1994	Sydney
Vice-Admiral I MacDougall	4 February 1994 10 March 1994	Canberra Canberra
Petty Officer A J Malouf	11 February 1994	Sydney
Leading Seaman K McMullen	11 February 1994	Sydney
Rear Admiral C J Oxenbould	10 March 1994 25 March 1994	Canberra Canberra
Warrant Officer F Pontarolo	11 February 1994	Sydney
Mr D L Price	11 February 1994	Sydney
Major K E Quinn	11 February 1994	Sydney
Reverend W D Reddin	11 February 1994	Sydney
Captain Brian Robertson	4 February 1994 10 March 1994 25 March 1994	Canberra Canberra Canberra
Ms Chris Ronalds	4 February 1994	Canberra
Lieutenant W K Russell	11 February 1994	Sydney
Able Seaman C J Rutland	11 February 1994	Sydney
Commodore G V Sloper	18 March 1994	Canberra

Lieutenant S J Sly	11 February 1994	Sydney
Ms A J Smith	16 February 1994	Canberra
Dr H Smith	16 February 1994	Canberra
Major-General J P Stevens	18 March 1994	Canberra
Captain T Stodulka	10 March 1994 25 March 1994	Canberra Canberra
Ms Helen Taylor	4 February 1994	Canberra
Vice-Admiral R G Taylor	10 March 1994 25 March 1994	Canberra Canberra
Ms S R Triulzi	4 February 1994	Canberra
Rear Admiral R A K Walls	4 February 1994 10 March 1994 25 March 1994	Canberra Canberra Canberra
Ms Sue Walpole	4 February 1994	Canberra
Dr N Westphalen	16 February 1994	Canberra

LIST C - SUBMISSIONS INCORPORATED IN HANSARD

Originator	Hansard
Australian Defence Force (ADM A L Beaumont Chief of the Defence Force)	10 March 1994 18 March 1994
Australian Federal Police (Dr M Henderson, Assistant Secretary Government and Public Relations Division)	16 February 1994
Anti-Submarine Officers' Association (Mr David Price, President)	11 February 1994
Petty Officer S E Brown	11 February 1994
Mrs S J Chandler	16 February 1994
Lieutenant B Christensen	11 February 1994
Petty Officer J Clark	11 February 1994
Leading Seaman D T Cleary	11 February 1994
Commander E J Coles	16 February 1994
Department of Industrial Relations (Mr Bruce Clark, Acting First Assistant Secretary, Government Authorities and Defence Division)	4 February 1994
Lieutenant A G Horder	11 February 1994
Ms Sonia Humphrey/Mr Jeremy Linton-Mann	11 February 1994
Lieutenant-Commander P D Jones	11 February 1994
Lieutenant-Commander P J Kraus	11 February 1994
Captain A B MacKinnon	16 February 1994
Acting Captain D W Mole	10 March 1994
Lieutenant-Commander J E Lloyd	11 February 1994
Petty Officer A J Malouf	11 February 1994

Leading Seaman K McMullen	11 February 1994
Royal Australian Navy (RADM D.B. Chalmers, Assistant Chief of the Naval Staff - Personnel)	4 February 1994 10 March 1994 25 March 1994
Warrant Officer F Pontarolo	11 February 1994
Public Service Commission (Ms Maureen Cane, First Assistant Secretary)	16 February 1994
Major K E Quinn	11 February 1994
Reverend W D Reddin	11 February 1994
Returned Services League (Ms June Healy, National Secretary)	16 February 1994
Lieutenant W K Russell	11 February 1994
Able Seaman C J Rutland	11 February 1994
Sex Discrimination Commissioner (Ms Sue Walpole)	4 February 1994
Lieutenant S J Sly	11 February 1994
Ms A J Smith	16 February 1994
Dr Hugh Smith	16 February 1994
Triulzi Collins Solutions Pty Ltd (Ms Sandra Triulzi, Director)	4 February 1994
Dr N Westphalen	16 February 1994
Dr Carole Wheat	22 March 1994

INTEGRATION OF WOMEN IN THE NAVY AND HMAS SWAN

CHRONOLOGY OF EVENTS

- September 1984
All women who joined the Navy from 3 September 1984 informed that they would be liable for sea service
- 3 November 1986
DI(N) PERS 44 - 2 "Employment of Women in the Defence Force"
DI(N) PERS 23 - 1 "Application of the Sex Discrimination Act to the Australian Defence Force"
DI(N) PERS 23 - 2 "Sexual Harassment"
- 3 July 1989
Dr Wheat commences work at HMAS CERBERUS under contract as a full-time medical practitioner
- 30 May 1990
Press release from the Hon Gordon Bilney MP, Minister for Defence Science and Personnel, "Combat - Related roles for Women"
- 4 June 1990
Message to RAN Personnel issued by the Chief of Naval Staff (VADM M Hudson), "Mixed Gender Awareness - Sexual Harassment"
- 15 February 1991
The Chief of Naval Staff (VADM M Hudson) issues "Protocols on the Employment of Women in the RAN"
- March 1991
The Maritime Commander Australia (RADM K Doolan) issues "Guidelines on the Employment and Treatment of women at Sea"
- 31 July 1991
DI(N) PERS 40 - 15 "Sexual Assault"
- 25 September 1991
DI(N) PERS 5 - 7 "Critical Incident Stress Management"
- 30 October 1991
CMDR Moie commences as Commanding Officer HMAS SWAN
- 19 December 1991
Director of Naval Training and Education gives approval for Mixed Gender Awareness training modules to be trialled

- February/March 1992
Modifications made to SWAN to provide suitable accommodation for female sailors
- 5 March 1992
Navy engineering study into standards of living for male and female personnel in all RAN ships, reports
- 8 March 1992
16 member RANTEWSS team (including 4 women) embarks on SWAN for the K92 and Asia deployments
- 27 March 1992
Dr Wheat joins the Naval Reserve as Lieutenant (RANR)
- Late April 1992
RANTEWSS team stands down for one month
- Early May 1992
Dr Wheat completes NBCD course at HMAS PENGUIN
- 24 May 1992
Dr Wheat embarks on SWAN for the Asia deployment
- 26 May 1992
SWAN departs HMAS STIRLING for the Asia deployment
- 1 - 3 June 1992
SWAN visits Singapore
- 3 - 4 June 1992
SWAN conducts joint exercises with the Singaporean Navy in the South China Sea
- 4 - 10 June 1992
SWAN visits Singapore
- 15 - 18 June 1992
SWAN visits Manila
- 19 - 22 June 1992
SWAN visits San Fernando, the Philippines
- 21 June - 9 August 1992
Chaplain Thiem embarks on HMAS SWAN
- 22 June 1992
DI(N) PERS 16 - 5 "Unacceptable Sexual Behaviour by Members of the Australian Defence Force" issued

- 22 June - 27 July 1992
Dr Wheat embarks on HMAS WESTRALIA
- 25 - 30 June 1992
SWAN visits Sasebo, Japan
- 27 June 1992
Sub-Lieutenants Mary Ganter and Michelle Miller embark on HMAS SWAN
- 30 June - 1 July 1992
SWAN exercises with Japanese Maritime Self Defence Force in the East China Sea
- 30 June 1992
Dr Wheat submits a Posting Preference form indicating a desire for either 2 years continuous full-time service in the Reserves or transfer to the Permanent Naval Force
- 3 - 6 July 1992
SWAN visits Inchon, South Korea
- 8 July 1992
LSEW Connelly and LSEW Flannery see Chaplain Thiem regarding the problems they are encountering with CPO Broad
- Sometime between 3 and 10 July 1992
CAPT Mole interviews LS Flannery, in the presence of CPO Broad, about her complaints with the assessment in her PERS 1
- 10 - 18 July 1992
SWAN visits Hong Kong
LS Flannery, aided by LS Connelly, attempts to have her leg broken by British servicemen
- Officers from SWAN and WESTRALIA visit a restaurant on Lamma Island
- 17 July 1992
CAPT Mole forwards to MHQ the ship's medical journal for 1 January - 30 June prepared by Dr Wheat
- 24 - 27 July 1992
SWAN visits Jakarta
- 24 July 1992
Crew's leave stopped because of a drinking incident

27 July 1992

Dr Wheat rejoins HMAS SWAN

4 - 8 August 1992

CAPT Mole is alerted by the Coxswain that Dr Wheat appears upset. CAPT Mole seeks to establish the nature of Dr Wheat's concerns and invites Dr Wheat to submit further written comment.

LEUT Bartlett is reprimanded and removed from his post as Operations Officer. CAPT Mole also directs LCDR Spruce to speak to members of wardroom about their behaviour.

LEUT Bartlett apologises to Dr Wheat

5 - 10 August 1992

SWAN visits Madras, India

15 - 24 August 1992

SWAN visits Lumut, Malaysia

15 August 1992

alleged sexual assault of Dr Wheat by LCDR James

16 August 1992

Dr Wheat and LCDR James visit Ipoh for the day

17 August 1992

Dr Wheat informs the Coxswain that she may have been sexually assaulted. The Coxswain reports this to CAPT Mole who begins preliminary investigations and requests an investigation team from MHQ

19 August 1992

The investigation team comprising CMDR Horobin and LCDR Flynn (policeman) and CAPT Flynn (doctor) arrive in Lumut

20 August 1992

Dr Wheat is interviewed by CMDR Horobin and LCDR Flynn and is medically examined by CAPT Flynn

Dr Wheat moves from SWAN to a hotel

20 - 22 August 1992

CMDR Horobin and LCDR Flynn interview other members of SWAN's crew

22 August 1992

The investigation team interviews LCDR James

Dr Wheat provides a hand written statement of the incident. An edited final version is typed and signed by Dr Wheat

The team returns to Australia

23 August 1992

Dr Wheat returns to HMAS WESTRALIA

24 - 26 August 1992

SWAN exercises with Malaysian Navy in the Malacca Strait

25 August 1992

CAPT Mole interviews LS Connelly about the care arrangements for her daughter and offers to have her flown back to Australia. She declines this offer

26 August - 4 September 1992

SWAN visits Singapore

LCDR A McLaren replaces Dr Wheat for the remainder of the deployment

27 August 1992

CMDR Mole's posting as Commander Australian Submarine Squadron, with the rank of Acting Captain, and to take effect on 18 January 1993, announced

29 August 1992

Dr Wheat returns to Australia. Possibility of a posting to COONAWARRA discussed with Dr Wheat

4 - 7 September 1992

SWAN participates in a combined exercise in the South China Sea

9 - 21 September 1992

SWAN visits Sattahip, Thailand

9 September 1992

CMDR Horobin and LCDR Flynn interview Dr Wheat a second time. They also interview her husband, Mr John Beaumont

16 September 1992

Investigation team's report concluded

18 September 1992

Dr Wheat requests to be transferred from the Reserves to the Permanent Naval Force and from HMAS CERBERUS to HMAS COONAWARRA

21 - 24 September 1992

SWAN exercises with the Thai Navy in the South China Sea

25 September 1992

LCDR TR Hoyle RANR, Deputy Senior Crown Prosecutor, provides first opinion on proceeding to court martial

30 September 1992

Personal Memorandum on sexual harassment from the Maritime Commander Australia (RADM R Walls) issued to all Commanding Officers

Dr Wheat provided with a copy of her statement in relation to the alleged sexual assault, in response to her request

2 October 1992

SWAN returns to HMAS STIRLING

Dr Wheat withdraws her request for transfer to the Permanent Naval Force

3 October 1992

Dr Wheat's 134 Continuous Full Time Service contract as Medical Officer, HMAS SWAN concludes

5 October 1992

Dr Wheat re-submits request for transfer to PNF and posting to COONAWARRA

12 October 1992

Dr Wheat re-submits a request to join the Permanent Naval Force

19 October 1992

Dr Wheat provided with a copy of the transcript between herself and the investigation team, at her request

25 October 1992

Fleet Legal Officer receives Dr Wheat's second statement, dated 9 October 1992, about the alleged assault of 15 August 1992

26 October 1992

LCDR TR Hoyle RANR, after receiving Dr Wheat's statement dated 9 October and interviewing her, provides a second opinion on proceeding to court martial

10 November 1992

Dr Wheat writes to LCDR McConachie, Fleet Legal Officer, stating that she is "still keen to proceed with charges of sexual assault against LCDR James"

12 November 1992

Navy receives LEUT MJ Slattery RANR opinion on proceeding to court martial

Mr John Beaumont writes to Mr Peter Reith MP with his complaints about Navy's treatment of Dr Wheat

16 November 1992

Dr Wheat orally withdraws her request for transfer to the Permanent Naval Force "upon advice that the posting to HMAS COONAWARRA was no longer available"

LCDR James charged with sexual assault of Dr Wheat

17 November 1992

Dr Wheat receives the PR5 raised by CAPT Mole assessing her performance while embarked on SWAN. She refuses to sign it

19 November 1992

Mr John Beaumont writes to Peter Reith MP citing the COONAWARRA posting and the PR5 as examples of Navy's mistreatment of Dr Wheat

20 November 1992

Maritime Commander signs convening document for Court Martial of LCDR James

24 November 1992

CMDR Paul Willee RANR is appointed as legal counsel for Dr Wheat, initially for the court-martial and subsequently for the Board of Inquiry. He has continued as her legal counsel for the Senate inquiry and compensation claims

25 November 1992

Dr Wheat writes to the Minister for Defence Science and Personnel, Gordon Bilney MP, setting out her complaints about Navy's treatment of her. This is referred to the Chief of Naval Staff (VADM I MacDougall) who directs the Maritime Commander Australia (RADM R Walls) and the Assistant Chief of the Naval Staff - Personnel (RADM D Chalmers) to investigate Dr Wheat's allegations

8 December 1992

Paper prepared by Commander Carolyn Brand for the Maritime Commander Australia (RADM R Walls), entitled "Assimilation of Women at Sea"

9 December 1992

Court martial of LCDR James begins

11 December 1992

Personal Memorandum on sexual harassment from the Maritime Commander Australia (RADM R Walls) to all Commanding Officers

The Chief of Naval Staff (VADM MacDougall) refers the letters from Dr Wheat and Mr John Beaumont to the Maritime Commander Australia (RADM R Walls) and the Assistant Chief of the Naval Staff - Personnel (RADM D Chalmers) for their investigation of the allegations made

15 December 1992

Initial Navy contact with Triulzi Collins Solutions concerning gender awareness training

17 December 1992

The Assistant Chief of the Naval Staff - Personnel (RADM D Chalmers) writes to Dr Wheat explaining that if she transfers to the Permanent Naval Force she will lose rank seniority but retain pay seniority and offers her "a one year extension to [her] contract in HMAS CERBERUS or two years continuous full time service on the RANR in HMAS ALBATROSS." He also advises her that "transfer to the PNF requires an unfettered ability to move freely between postings in any locality, and that [she] would be liable for further sea service"

18 December 1992

Court-martial acquits LCDR James of the sexual assault of Dr Wheat

Dr Wheat's contract as a civilian medical practitioner at HMAS CERBERUS expires

21 December 1992

The Board of Inquiry convened by the Maritime Commander Australia (RADM R Walls) begins taking evidence into the events on SWAN

23 December 1992

The Assistant Chief of the Naval Staff - Personnel (RADM D Chalmers) reports to the Chief of Naval Staff on the matters related to conditions of employment in Dr Wheat's letter of 25 November 1993

29 December 1992

Hysterectomy performed on Dr Wheat

January 1993

The Chief of Naval Staff (VADM I MacDougall) holds discussions with Triulzi Collins Solutions and commissions the development of a gender awareness training package for all Navy personnel

18 January 1993

Captain Mole commences posting as Commander of the Australian Submarine Squadron

8 March 1993

The Board of Inquiry delivers its findings to the Maritime Commander Australia (RADM R Walls)

29 March 1993

The Chief of Staff to the Maritime Commander and the Fleet Legal Officer commence briefing tour to all RAN ships and units on "Management of Unacceptable Behaviour"

18 April 1993

Dr Wheat enters into agreement as Contract Medical Practitioner at HMAS CERBERUS

Minister responds to CMDR Willee's request for release of BOI Report, advising that he has approved the release of the Report with conditions to Dr Wheat, her husband and CMDR Willee

28 April 1993

Contract for the Good Working Relationships approved

13 May 1993

The Maritime Commander Australia (RADM R Walls) serves Notices of Cause for Censure on CAPT Mole, LCDR Spruce and LEUT Bartlett relating to SWAN

The Maritime Commander Australia (RADM R Walls) serves a Notice of Cause for Discharge on CPO Broad

1 July 1993

Request by Mr John Langmore MP on behalf of LS Connolly for a copy of the BOI Report not agreed to by Minister

29 July 1993

Dr Wheat writes to the Minister for Defence Science and Personnel, Senator the Hon J Faulkner, seeking a continuation of Commonwealth funding for her legal costs and settlement of the complaints in her letter of 25 November 1992

30 July 1993

The Chief of Naval Staff (VADM I MacDougall) censures CAPT Mole, LCDR Spruce, LEUT Bartlett and CPO Broad

1 August 1993

Dr Wheat resigns as contract medical practitioner from HMAS CERBERUS

23 August 1993

Senator Faulkner responds to Dr Wheat's letter of 25 November 1992 setting out the action Navy has taken following the findings of the Board of Inquiry

26 August 1993

Senator Faulkner invites Dr Wheat to submit a claim for compensation to Navy

Early September 1993

The Board of Inquiry Report is leaked to the Media

9 September 1993

Senator Faulkner and the Chief of Naval Staff (VADM I MacDougall) hold a Press Conference about the events on SWAN and subsequently

VADM I MacDougall offers a public apology to Dr Wheat, Ms Connelly and Ms Flannery during the Press Conference

13 September 1993

Dr Wheat writes to Senator Faulkner seeking the transcripts of the court-martial and Board of Inquiry as well as "[his] commitment to meet [her] reasonable legal expenses in reviewing the court-martial, in advising [her] in respect of obtaining compensation and lastly in assisting [her] in relation to the Senate hearing"

16 September 1993

Senator Faulkner responds to Dr Wheat's letter of 13 September that "subject to the receipt of authorising advice from the Attorney-General's Department" and the removal of personal information "all available parts of the transcript [of the court-martial] will be given to CMDR Willee"

He is prepared to release the transcript of the BOI on "condition that it be used by [Dr Wheat] only for [the] purposes [of preparing her case before the Senate and a possible claim or claims for compensation]". He advises that he has "put in train measures to have legal aid approved, with the usual reasonable costs conditions to apply"

17 September 1993

The Chief of Naval Staff Advisory Committee (CNSAC) endorses the Good Working Relationships Project strategy recommended by Triulzi Collins Solutions for eradicating all forms of inappropriate behaviour in the workplace

29 September 1993

The Senate refers the matter of sexual harassment in the Defence Force, with particular regard to the events on HMAS SWAN, to the Senate Standing Committee on Foreign Affairs, Defence and Trade for inquiry and report

Navy implements "Operation Lifeguard" and opens a toll-free hotline for personnel who are subjected to sexual harassment

29 October 1993

The Chief of Naval Staff (VADM I MacDougall) formally apologises by letter to Dr Wheat

4 February 1994

The Senate Committee on Foreign Affairs, Defence and Trade begins hearings into the matters in the terms of reference

22 February 1994

Dr Wheat lodges with the HREOC a dormant claim against the Commonwealth and members of the Navy

GLOSSARY

ACPERS	Assistant Chief of Defence Force - Personnel
ACPERS - N	Assistant Chief of Naval Staff - Personnel
ACPERS - A	Assistant Chief of General Staff - Personnel
ACPERS - AF	Assistant Chief of Air Staff - Personnel
ADF	Australian Defence Force
ADFA	Australian Defence Force Academy
AF (memorandum)	Australian Fleet (memorandum)
AGPS	Australian Government Publishing Service
BHP	Broken Hill Propriety Limited
BOI	Board of Inquiry
CAS	Chief of Air Staff
CDF	Chief of Defence Force
CGS	Chief of General Staff
CNS	Chief of Naval Staff
CNSAC	Chief of Naval Staff Advisory Committee
CO	Commanding Officer
DCNS	Deputy Chief of Naval Staff
DDG	Guided Missile Destroyer
DE	Destroyer Escort
DFDA	Defence Force Disciplinary Act
DGNHS	Director General Naval Health Services
DI (G)	Defence Instruction (General), applies to all three services as well as the Department of Defence
DI (N)	Defence Instruction (Navy), applies only to the Navy
DNLS	Director of Naval Legal Services
DNOP	Director of Naval Officers Postings
DNPS	Director of Naval Personnel Services
EEO	Equal Employment Opportunity
EWO	Electronic Warfare Office
EXO (also XO)	Executive Officer (the second in command)
FCPB	Fremantle Class Patrol Boat
FFG	Guided Missile Frigate
FONSC	Flag Officer Naval Support Command
FYPD	Five Year Defence Plan

GWR	Good Working Relationships
HBOI	Harrington Board of Inquiry (the Board of Inquiry convened by the Maritime Commander to investigate the allegations contained in Dr Wheat's letter to the Minister of 25 November 1992. It is named after the presiding officer CAPT Harrington RAN)
HREOC (also HUREOC)	Human Rights and Equal Opportunity Commission
HQADF	Headquarters Australian Defence Force
HMAS	Her Majesty's Australian Ship
K92	Exercise Kangaroo 1992
MCAUST	Maritime Commander Australia
MHQ (AUST)	Maritime Headquarters (Australia)
NBCD	Nuclear Biological Chemical Defence
NQM	Naval Quality Management
NTGSI	Navy Task Group - Senate Inquiry
PERS 1	Performance assessment of RAN enlisted personnel
PLT	Personnel Liaison Team
PMB	Program Management and Budgetting
PNF	Permanent Naval Force
PR5	Performance assessment of RAN commissioned officers
PSC	Public Service Commission
QC	Queen's Counsel
RAAF	Royal Australian Air Force
RAN	Royal Australian Navy
RANEM	Royal Australian Navy Emergency Reserve (former members of the PNF who have transferred to the Reserves)
RANR	Royal Australian Navy Reserve
RANTEWSS	Royal Australian Navy Tactical Electronic Warfare Support Section
RBS70	Anti-aircraft missile system
RNIN	Retention Not in the Interest of Navy
SAIK	Sexual Assault Investigation Kit
SDA	Sex Discrimination Act 1984
SDC	Sex Discrimination Commissioner

SGADF
TCS
TQM

Surgeon General Australian Defence Force
Triulzi Collins Solutions
Total Quality Management

RAN RANK ABBREVIATIONS

Able Seaman	AB
<i>Radio Operator</i>	ABRO
<i>Writer</i>	ABWTR
Leading Seaman	LS
<i>Electronic Warfare</i>	LSEW
<i>Steward</i>	LSSTD
Petty Officer	PO
<i>Electronic Warfare Linguist Submarine</i>	POEWLSM
<i>Fire Control</i>	POFC
<i>Medic</i>	POMED
<i>Steward</i>	POSTD
Chief Petty Officer	CPO
<i>Electronic Warfare Linguist Submarine</i>	CPOEWLSM
<i>Naval Police Coxswain</i>	CPONPC or
	CPOCOXN
<i>Underwater Control</i>	CPOUC
Warrant Officer	WO
Midshipman	MIDN
Sub-Lieutenant	SBLT
Lieutenant	LEUT
Lieutenant Commander	LCDR
Commander	CMDR
Captain	CAPT
Commodore	CDRE
Rear-Admiral	RADM
Vice-Admiral	VADM
Admiral	ADM

ARMY RANK ABBREVIATIONS

Private	PTE
Lance Corporal	LCPL
Corporal	CPL
Sergeant	SGT
Staff Sergeant	SSGT
Warrant Officer Class 2	WO2
Warrant Officer Class 1	WO1

2nd Lieutenant	2LT
Lieutenant	LT
Captain	CAPT
Major	MAJ
Lieutenant Colonel	LTCOL
Colonel	COL
Brigadier	BRIG
Major General	MAJGEN
Lieutenant General	LTGEN
General	GEN

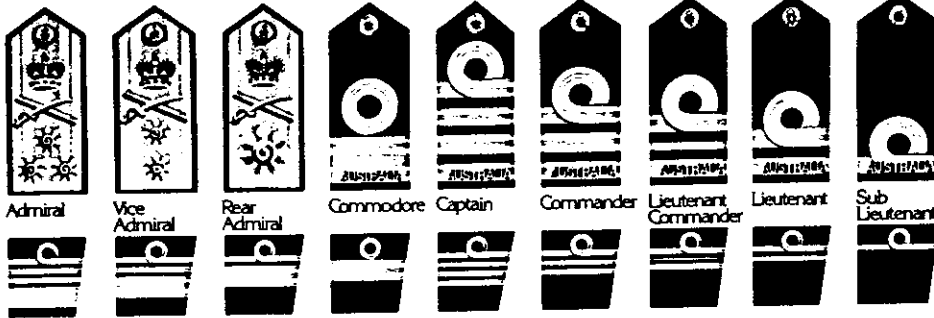
AIR FORCE RANK ABBREVIATIONS

Leading Aircraftsman/woman	LAC/LACW
Corporal	CPL
Sergeant	SGT
Flight Sergeant	FSGT
Warrant Officer	WOFF
Pilot Officer	PLTOFF
Flying Officer	FLGOFF
Flight Lieutenant	FLTLT
Squadron Leader	SQNLDR
Wing Commander	WGCDR
Group Captain	GPCAPT
Air Commodore	ACDRE
Air Vice Marshall	AVM
Air Marshall	AM
Air Chief Marshall	ACM

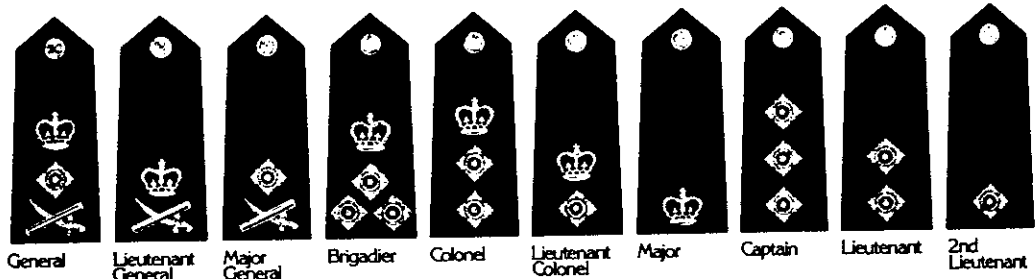
Armed Forces of Australia BADGES OF RANK

NAVY

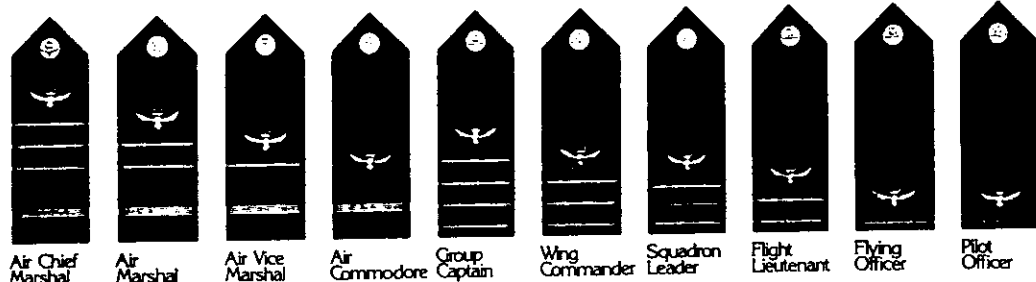
Commissioned Officers



ARMY



AIR FORCE

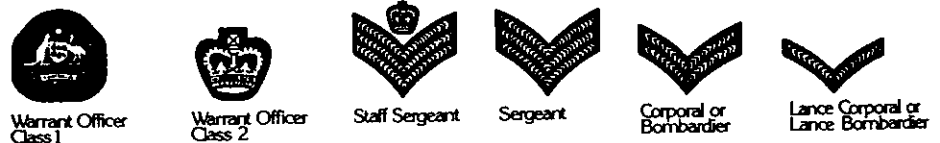


Warrant and Non Commissioned Officers

NAVY



ARMY



AIR FORCE



Note on Rank/Position

There have been changes in the rank, position and status of many of the individuals involved in the 1992 SWAN events. As a result, there are variations in the way they are referred to in this Report, both in the text and in quotations from other documents. The following gives an indication of some of the changes that have occurred.

Dennis Mole holds the substantive rank of Commander, which is the rank he held during his posting as Commanding Officer of HMAS Swan. He was granted the acting rank of Captain when he took up the position of Commander of the Australian Submarine Squadron but will revert to his substantive rank of Commander upon completion of this posting unless he is promoted to the substantive rank of Captain. For the most part he is referred to in this Report as "Captain".

Carole Wheat holds the rank of Lieutenant in the RAN Reserve (RANR) although she is not currently an active member of the Reserve. This is the rank she held when she was embarked as the medical officer on HMA Ships SWAN and WESTRALIA in 1992 and during the court martial and Board of Inquiry. For the most part she is referred to in this Report as "Dr Wheat".

Wendy Flannery and Sheena Connelly held the rank of Leading Seaman when embarked on SWAN. Both have since been discharged from the Navy. In this Report they are referred to as "Ms Flannery" and "Ms Connelly" when referring to evidence provided since their discharge; otherwise they are referred to as Leading Seaman.

Michelle Miller and Mary Ganter held the rank of Sub-Lieutenant when they were embarked on SWAN. Ganter was promoted to Lieutenant before the Board of Inquiry was convened and Miller was promoted after the Board had delivered its findings.

**TABLE OF INCUMBENTS FOR CNS, ACPERS &
MC AUST**

CNS

NAME	RANK	DATES
LEACH DW	VICE ADMIRAL AC CBE LVO	21APR82 - 20APR85
HUDSON MW	VICE ADMIRAL AC	21APR85 - 8MAR91
MACDOUGALL IDG	VICE ADMIRAL AO	09MAR91 -

ACPERS-N

NAME	RANK	DATES
MARTIN DJ	REAR ADMIRAL	05APR82 - 02JAN84
CROSSLEY WJ	REAR ADMIRAL AO	03JAN84 - 06APR86
HORTON AR	REAR ADMIRAL AO	07APR86 - 17JAN88
CARWARDINE AM	REAR ADMIRAL AO	18JAN88 - 12OCT89
HOLTHOUSE DG	REAR ADMIRAL AO	13OCT89 - 18JAN91
STUBINGTON EG	REAR ADMIRAL AM	19JAN91 - 15JAN92
CHALMERS DB	REAR ADMIRAL AO	16JAN92 -

MC AUST

NAME	RANK	DATES
HUDSON MW	REAR ADMIRAL AC	15MAR82 - 1OCT83
WOOLRYCH GJH	REAR ADMIRAL AO	22OCT83 - 3MAY85
KNOX IW	REAR ADMIRAL AO	04MAY85 - 6JAN87
SINCLAIR PR	REAR ADMIRAL AO	07JAN87 - 06JAN89
MACDOUGALL IDC	REAR ADMIRAL	07JAN89 - 09JUL90
DOOLAN KA	REAR ADMIRAL AO	10JUL90 - 07NOV91
WALLS RAK	REAR ADMIRAL AO	07NOV91 -

**MESSAGE
FROM
CHIEF OF NAVAL STAFF**

You will no doubt have read the press releases with regard to sexual harassment experienced by some members onboard HMAS SWAN last year. In order to allay any fears that you may have in regard to the treatment of our men and women in the Navy, and to give you some background of the events reported in the press, I am sending you the attached information package.

Be assured that the Navy is pursuing a strong line to prevent unacceptable behaviour of any kind in the workplace, be it at sea or ashore. The Navy must maintain its operational effectiveness, and in doing so the welfare of our people is vitally important. The Navy is determined to promote a working environment in which all personnel can work without fear or favour.

Navy will have an opportunity to highlight these positive steps to create a harmonious and effective working environment as part of its comprehensive presentation to the Senate Inquiry in December. Should you wish to express your views, submissions should be forwarded 15 November to:

**THE SECRETARY
SENATE STANDING COMMITTEE ON
FOREIGN AFFAIRS, DEFENCE AND TRADE
S1.59 (20.3)
PARLIAMENT HOUSE
CANBERRA ACT 2600**

I. MacDougall

**I.D.G. MACDOUGALL
Vice Admiral RAN
Chief of Naval Staff**

CCNS CRFD

07/10/93 12:28:03 Received Message:

VZCZCBN800 UU
RR RAYWHH
DE RAYWHH 5916 2801044
ZNR UUUUU
R 070927Z OCT 93 ZZM1
FM CNS CANBERRA
TO AIG 3600
AIG 3601
AIG 3602
RAYWAA/HQADF
RAYWAE/DSD CANBERRA
RAYWBBK/DIO CANBERRA
BT
UNCLAS

*DGMSR
ASRP-N
DSDM/1810
DSDM/1810
DNPOZ
DNW*

*Pls ensure that this
is brought to the
attention of your
people.*

CORRECTED VERSION 8/12

*rem-n
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*Pre personally
with you
people particular
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SIC WAA/WAC
105 ALL OVERSEAS 283 ALL SHIP 285 ALL SHORE
AUSTCOM KUALA LUMPUR AUSTCOM NEW DELHI AUSTCOM WELLINGTON AUSTCOM
SINGAPORE AUSTEMB SUVA (FOR DEFENCE ADVISER) AUSTEMB BONN AUSTEMB
BANGKOK AUSTEMB MANILA AUSTEMB BEIJING AUSTEMB TOKYO (FOR DEFENCE
ATTACHE) AUSTCOM LONDON (FOR HADS) AUSTCOM PORT MORESBY (FOR HADS
PNG) AUSTEMB JAKARTA (FOR NAVAL ATTACHE) AUSTCOM NUKU ALOFA AUSTCOM
APIA AUSTCOM VILA (FOR RAN ADVISER) AUSTCOM HONIARA (FOR MARITIME
SURVEILLANCE ADVISER) AUSTEMB POHNPEI (FOR MSA FSM/MSA RMI)
HQADF, DSD AND DIO CANBERRA FOR DISTRIBUTION TO ALL NAVAL PERSONNEL
IN YOUR COMMAND

SUBJ: SUBMISSIONS TO THE SENATE STANDING COMMITTEE ON FOREIGN
AFFAIRS, DEFENCE AND TRADE

A. CNS CANBERRA WAA/WAC 130659Z SEP 93
1. ON 29SEP93, THE SENATE DIRECTED THE SENATE STANDING COMMITTEE ON
FOREIGN AFFAIRS, DEFENCE AND TRADE TO INQUIRE INTO THE INCIDENT OF
SEXUAL HARASSMENT OR SEXUAL ASSAULT IN THE RAN, AND THE
APPROPRIATENESS OF THE HANDLING BY THE RAN OF SUCH HARASSMENT OR
ASSAULT, WITH PARTICULAR REFERENCE TO:

- A. ALLEGATIONS OF SEXUAL HARASSMENT TOWARDS FEMALE PERSONNEL SERVING
IN HMAS SWAN IN 1992
- B. THE ADEQUACY OF LIVING CONDITIONS PROVIDED FOR FEMALE PERSONNEL
ON HMAS SWAN, INCLUDING THE SLEEPING AND ABLUTION AREAS,
- C. THE BEHAVIOUR OF OFFICERS FROM HMAS SWAN WHILE ASHORE DURING
DEPLOYMENTS IN SOUTH EAST ASIA IN 1992
- D. OTHER APPROPRIATE MATTERS CONTAINED IN THE BOARD OF INQUIRY REPORT
- E. WHETHER THE TERMS OF REFERENCE OF THE BOARD OF INQUIRY WERE
SUFFICIENT TO ENABLE THE BOARD TO CONSIDER ANY ASPECTS OF THIS
UNACCEPTABLE BEHAVIOUR OCCURRING ONBOARD HMAS SWAN AND THE
APPROPRIATENESS OF THE RECOMMENDATIONS OF THE BOARD
- F. WHETHER THE SUBSEQUENT DISCIPLINARY AND ADMINISTRATIVE ACTION
TAKEN AGAINST PERSONS NAMED IN THE BOARD OF INQUIRY WAS SUFFICIENT
AND APPROPRIATE

130659Z Fwd to	DNW
130659Z ACTION	DNW
130659Z DATE	DNW

- G. APPROPRIATENESS OF THE DECISIONS MADE AS PART OF DETERMINING
WHETHER SEXUAL ASSAULT CHARGES SHOULD BE LAID, AND A COURT MARTIAL
CONVENED, IN REFERENCE TO AN OFFICER ONBOARD HMAS SWAN IN 1992
 - H. THE CONTENT AND TIMING OF DIRECTIVES FROM THE GOVERNMENT IN
RELATION TO THE INTEGRATION OF FEMALE PERSONNEL INTO THE NAVY, WITH
PARTICULAR REFERENCE TO SEA-GOING APPOINTMENTS, AND THE ACTIONS TAKEN
BY THE GOVERNMENT RELATING TO THE BOARD OF INQUIRY
 - I. THE APPROPRIATENESS OF ACTIONS TAKEN BY THE NAVY SUBSEQUENT TO
THE BOARD OF INQUIRY REPORT TO ADDRESS THE ISSUES OF SEXUAL
HARASSMENT ON NAVY SHIPS, AND
 - J. AN EVALUATION OF THE QUOTE GOOD WORKING RELATIONSHIPS UNQUOTE
PROJECT BEING UNDERTAKEN BY NAVY
2. THE COMMITTEE IS CANVASSING VIEWS FROM ACROSS THE COMMUNITY. TO
THIS END I WOULD ENCOURAGE THOSE OF YOU WHO FEEL YOU HAVE A FACTUAL
AND CONSTRUCTIVE CONTRIBUTION TO MAKE, BE IT POSITIVE OR NEGATIVE, TO
DO SO IN WRITING TO THE COMMITTEE BY 15NOV93.
SUBMISSIONS SHOULD BE FORWARDED TO:
THE SECRETARY

SENATE STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE
S1.59 (20.3)
PARLIAMENT HOUSE
CANBERRA ACT 2600

3. THE COMMITTEE WILL CONSIDER ALL SUBMISSIONS AND MAY INVITE INDIVIDUALS AND ORGANISATIONS TO GIVE SUPPORTING EVIDENCE AT PUBLIC HEARINGS. SUBMISSIONS TO THE COMMITTEE MAY BE PUBLISHED BY THE COMMITTEE AT ITS DISCRETION AND SHOULD NOT OTHERWISE BE PUBLISHED WITHOUT THE PRIOR CONCURRENCE OF THE COMMITTEE. FURTHER INFORMATION TO ASSIST IN THE PREPARATION OF SUBMISSIONS WILL BE IN THE 22OCT93 EDITION OF NAVY NEWS
BT

SIC : WAA
ACTION : DGNM
C : DNER-SM
R : ACPERS-N, DGNM, DNMP, DNOP(3)

SIC : WAC
ACTION : ACPERS-N
C : DNER-SM
R : ACPERS-N, ARC, ASRP-N, CNS(2), DCNS, DGNPW, DGPSC-N, DNMP, DNOP(3), DNPOL, DNSC-I, DNSC-P, DNW, DPFS-N

SIC : WAA/WAC
C : DNER-SM
R : ACPERS-N, ARC, ASRP-N, CNS(2), DCNS, DGNM, DGNPW, DGPSC-N, DNMP, DNOP(3), DNPOL, DNSC-I, DNSC-P, DNW, DPFS-N

C : 1 COPIES
R : 18 COPIES *Final Dist + All Sent me same file*

Can/69

NNNN

**DEPARTMENTAL CIRCULAR
MEMORANDUM NO 111/93**

Note: Departmental Circular Memoranda are of a permanent nature and remain in force until cancelled. They should be reviewed by the sponsor every two years and repromulgated only where a significant change of content is necessary.

1 NOVEMBER 1993

**SENATE STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND
TRADE: INQUIRY INTO SEXUAL HARASSMENT IN THE ADF**

1. On 29 September 1992, the Senate referred the following matter to the Senate Standing Committee on Foreign Affairs, Defence and Trade for inquiry and report by the last sitting day in February 1994:
 - a. The incidence of sexual harassment or sexual assault in the Royal Australian Navy, and the appropriateness of the handling by the Royal Australian Navy of allegations of such harassment or assault, with particular reference to:
 - (1) allegations of sexual harassment towards female personnel aboard HMAS Swan in 1992;
 - (2) the adequacy of living conditions provided for female personnel on HMAS Swan, including the sleeping and ablution areas;
 - (3) the behaviour of officers from HMAS Swan while ashore during deployments in South East Asia in 1992;
 - (4) other appropriate matters contained in the Board of Inquiry Report;
 - (5) whether the Terms of Reference of the Board of Inquiry were sufficient to enable the Board to consider any aspects of the unacceptable behaviour occurring on board HMAS Swan, and the appropriateness of the recommendations of the Board;
 - (6) whether the subsequent disciplinary and administrative action taken against persons named in the Board of Inquiry Report was sufficient and appropriate;
 - (7) the appropriateness of the decisions made as part of determining whether sexual assault charges should be laid, and a Court Martial convened, in reference to an officer aboard HMAS Swan in 1992;
 - (8) the content and timing of directives from the Government in relation to the integration of female personnel into the Navy with particular reference to sea-going appointments, and the actions taken by the Government relating to the Board of Inquiry;
 - (9) the appropriateness of actions taken by the Navy subsequent to the Board of Inquiry Report to address the issues of sexual harassment on Navy ships; and
 - (10) an evaluation of the 'Good Working Relationships' Projects being undertaken by the Navy.
 - b. While dealing with and reporting first on the case of sexual harassment on HMAS Swan, the Committee is also to inquire into the nature and extent, if any, of sexual harassment in the other armed forces.

2. The Committee is interested in receiving submissions from any member of the ADF who wishes to express a view on any aspect of the Terms of Reference.

3. Submissions must be received by the Committee by the 15 November 1993. Submissions should be addressed to:

The Chairman
Senate Standing Committee on
Foreign Affairs, Defence and Trade
Parliament House
CANBERRA ACT 2600

4. Inquiries to the Committee should be made to the Committee Secretary, Ms Ilze Svenne, Parliament House (Suite S1.59), Canberra, ACT, 2600, Telephone (06) 277 3535, facsimile (06) 277 5706.

5. Any Departmental inquiries can be addressed to the Assistant Chief of the Defence Force (Personnel), SSCFADT inquiry, Building F-3-58, Russell, ACT, 2600, telephone (06) 265 4987, facsimile (06) 265 6206.



J.S. BAKER
Lieutenant General
Vice Chief of the Defence Force

DISTRIBUTION: SDL 1, 2, 3, 4, 5, 6, 9A, 12, 14

RAN 'sexual harassment': Senate inquiry dates set

(By Colin Blair)

It's official. The public inquiry by a Senate Standing Committee into the incidence of sexual harassment or sexual assault in the RAN is scheduled to begin taking submissions on December 17, 1993.

The 10-point Terms of Reference for the inquiry by the Senate Standing Committee on Foreign Affairs, Defence and Trade was released in Canberra last week (September 28).

The inquiry was prompted by allegations of sexual harassment and assault aboard HMAS SWAN during and after Exercise Kangaroo 92.

While the Senate Committee will initially concentrate its investigation on these incidents, it has also announced that the inquiry will be extended to include the nature and extent, if any, of sexual harassment in the other two Services.

The Chief of Naval Staff, Vice Admiral Ian MacDougall, in a signal published in the last *Navy News* emphasised the seriousness

with which Navy views sexual harassment.

He also highlighted the "very positive steps that we have been taking within Navy to ensure all forms of inappropriate workplace behaviour are eradicated as quickly as possible".

While these important initiatives will be underlined during the Senate Inquiry, they should already be familiar to the Navy community.

Indeed, many Navy members have already attended the presentation given by Captain Tom Stodulka (DNLS) and Monsignor Ian Dempsey last November/December which clearly outlined the new unacceptable sexual behaviour policy.

Others will have attended the Maritime Command series of briefings earlier this year on unacceptable behav-

our while others have taken part in the series of special interviews and focus group sessions held by the Good Working Relations project in May/June.

By now more than 7,000 RAN personnel will have attended one or more of these educational forums.

Soon Navy members will be seeing changes emerging as current policies in this important area are amended so as better to reflect our working environment.

All personnel can expect a comprehensive through-career education and training program which addresses the whole issue of unacceptable behaviour in the Service.

CONCERN

Meanwhile, those who are wrestling with this problem right now can find instant support by calling the "Operational Lifeguard" toll-free number (008 644247) from anywhere within Australia.

ISD numbers for overseas posts will be announced soon.

The number provides a prompt information and referral service for anyone who considers they have been subjected to, accused of, or witness to any form of discrimination or harassment and who now seeks information about their rights and options for further action.

It is stressed that this is a confidential service and no follow-up action will be taken without the express agreement of the callers who need not identify themselves.

CNS has stressed that "Operation Lifeguard" is designed to determine the nature of the caller's concern and then to provide information on the options available if the caller wishes to take further action.

This includes referral to appropriate counselling services if requested.

RAN personnel should also feel free to send occa-

sional submissions to:

The Secretary, Senate Standing Committee on Foreign Affairs, Defence and Trade, S1 59 (23.3), Parliament House, Canberra ACT 2600.

The following factual information concerning HMAS SWAN may be of useful background for personnel who wish to send a submission to the Senate Inquiry.

THE SWAN COURT MARTIAL:

A female Reserve Officer who was posted to HMAS SWAN for three months in 1992 including a SE-Asian deployment, alleged in August 1992 that she had been sexually assaulted by another officer onboard whilst the ship was overseas. A Court Martial was subsequently convened in December 1992 and the defendant was acquitted.

THE SWAN BOARD OF INQUIRY:

In a letter from the complainant to the Minister for Defence Science and Personnel (in November 1992 prior to the Court Martial), she alleged, amongst other things, that she and several other females aboard SWAN had been subjected to sexual harassment. MCAUST convened a BOI to investigate these allegations in December 1992.

The inquiry found that some sexual harassment, mainly in the form of inappropriate and offensive language, had occurred.

As a result, three officers and one senior sailor have been formally censured by CNS for either indulging in inappropriate conduct or for failing to take adequate steps to ensure that such conduct did not occur.

More details of the Good Working Relations project and other education initiatives will appear in the next issue of *Navy News*.

"NAVY NEWS" OCTOBER 1993

Australian Technology Information Pty Ltd

ATI, a wholly owned Australian company is currently expanding its maintenance division and is seeking the services of an electronics maintainer for its Sydney operations.

The position requires the successful applicant to be able to work unsupervised in the areas of installation, set-to-work, and planned maintenance of radars and IFF equipment in a Naval environment.

The applicant must be able to gain and maintain a Security Clearance in accordance with the requirements of Australian Industrial Security.

International and interstate travel will be required. Remuneration will be discussed during interview.

Please send a written resume to:

Mr B Mansell
Managing Director
A T I Pty Limited
P O Box 846
WODEN ACT 2606

THE NATURE OF REPORTED INCIDENTS OF SEXUAL HARASSMENT IN THE ADF

1. The tables shown below reflect, by year, the nature of reported incidents of sexual harassment within the ADF. Analysis of these figures shows no readily identifiable trends regarding geographic location, type of unit or type of harassment. Reported incidents of harassment have occurred nearly equally at training and non-training establishments/ships and the geographic spread of the incidents is broad (including overseas locations).

2. Determination of the nature of harassment is made particularly difficult by the framing of charges under the Defence Force Discipline Act. Relatively minor charges under the act are phrased as, for example '...did harass..', with details of the exact nature of the incident not stated. No attempt has been made to replicate all of the statistics at Table 2 in Part 4. The incidents which were not proceeded with, for all of the reasons listed at Table 2, have not been isolated in this Annex. From the details available, the charges have been tabulated into three categories of Language, Non-Contact Actions and Others.

3. Falling into the Language category are incidents such as offensive language, obscene telephone calls, provocative language, sexist comments and offensive written material. Non-contact actions include exposing of various anatomical regions, obscene behaviour and 'peeping tom' allegations. The general category of Other groups those instances for which detail is insufficient to permit specific categorisation.

Table 1a - Number and Type of ADF Harassment Incidents in 1989

SERVICE	HARASSMENT			TOTAL
	Language	Non-Contact Action	Other	
Navy	7	2	3	12
Army	1	2	6	9
Air Force	3	5	23	31
HQ ADF (ADFA)	0	0	0	0
TOTAL	11	9	32	52

Table 1b - Number of ADF Offences in 1989

SERVICE	OFFENCES
Navy	1
Army	8
Air Force	19
HQ ADF (ADFA)	0
TOTAL	28

Table 2a - Number and Type of ADF Incidents in 1990

SERVICE	HARASSMENT			TOTAL
	Language	Non-Contact Action	Other	
Navy	0	0	0	0
Army	1	0	3	4
Air Force	0	2	0	2
HQ ADF (ADFA)	1	0	1	2
TOTAL	2	2	4	8

Table 2b - Number of ADF Offences in 1990

SERVICE	OFFENCES
Navy	1
Army	14
Air Force	10
HQ ADF (ADFA)	1
TOTAL	26

Table 3a - Number and Type of ADF Incidents in 1991

SERVICE	HARASSMENT			TOTAL
	Language	Non-Contact Action	Other	
Navy	3	4	0	7
Army	0	1	4	5
Air Force	3	1	6	10
HQ ADF (ADFA)	4	0	0	4
TOTAL	10	6	10	26

Table 3b - Number of ADF Offences in 1991

SERVICE	OFFENCES
Navy	0
Army	10
Air Force	10
HQ ADF (ADFA)	1
TOTAL	21

Table 4a - Number and Type of ADF Incidents in 1992

SERVICE	HARASSMENT			TOTAL
	Language	Non-Contact Action	Other	
Navy	2	1	3	6
Army	5	4	3	12
Air Force	3	3	1	7
HQ ADF (ADFA)	0	0	1	1
TOTAL	10	8	8	26

Table 4b - Number of ADF Offences in 1992

SERVICE	OFFENCES
Navy	2
Army	11
Air Force	8
HQ ADF (ADFA)	1
TOTAL	22

Number and Type of ADF Incidents in 1993.

SERVICE	HARASSMENT			TOTAL
	Language	Non-Contact Action	Other	
Navy	6	4	4	14
Army	3	2	5	10
Air Force	2	2	4	8
HQADF (ADFA)	0	0	0	0
TOTAL	11	8	13	32

Number and Types of ADF Offences in 1993

SERVICE	OFFENCES
Navy	13
Army	8
Air Force	6
HQADF (ADFA)	0
TOTAL	27

ANNEX 9

- a. Comparative Figures for Male and Female Junior and Senior Officers (as at 30 June 1994)

NAVY			ARMY			AIR FORCE		
Rank	Male	Female	Rank	Male	Female	Rank	Male	Female
ADM	1	0	GEN	0	0	ACM	0	0
VADM	1	0	LTGEN	3	0	AM	1	0
RADM	8	0	MAJGEN	12	0	AVM	7	0
CDRE	29	0	BRIG	36	0	AIRCDRE	36	0
CAPT	79	1	COL	119	1	GPCAPT	96	0
CMDR	278	9	LTCOL	437	15	WGCDR	343	7
LCDR	580	33	MAJ	1241	129	SQNLDR	735	62
LEUT	886	188	CAPT	1370	193	FLTLT	1289	238
SBLT	262	95	LT	804	160	FLGOFF	421	116
Total	2124	326		4022	498		2928	423

- b. Appointment to the Rank of Captain, Colonel and Group Captain in the past Three Years (1992 - 1994)

YEAR	NAVY (CAPT)		ARMY (COL)		AIR FORCE (GPCAPT)	
	Male	Female	Male	Female	Male	Female
1992	10	0	5	1	14	0
1993	12	0	18	0	11	0
1994	11	1	14	1*	13	0
Total	33	1	37	2	38	0

* One additional female has been cleared, but not yet promoted in 1994.

c. Rate of Separation from the Services Male and Female Junior Officers over the past Three Years (to 22 July 1994)

1992

	NAVY	ARMY	AIR FORCE
	LCDR	MAJ	SQNLDR
Male	5.2%	12.0%	3.5%
Female	3.4%	9.2%	1.7%
	LEUT	CAPT	FLTLT
Male	4.8%	5.8%	4.6%
Female	8.2%	6.3%	3.5%
	SBLT	LT	FLGOFF
Male	3.6%	2.0%	1.1%
Female	3.8%	5.3%	5.7%

1993

	NAVY	ARMY	AIR FORCE
	LCDR	MAJ	SQNLDR
Male	8.1%	9.5%	7.1%
Female	3.0%	8.8%	8.6%
	LEUT	CAPT	FLTLT
Male	4.7%	6.0%	9.4%
Female	7.1%	5.6%	14.7%
	SBLT	LT	FLGOFF
Male	2.6%	2.9%	2.8%
Female	0.0%	4.5%	4.9%

1994

	NAVY	ARMY	AIR FORCE
	LCDR	MAJ	SQNLDR
Male	5.7%	4.5%	7.5%
Female	9.1%	3.9%	9.7%
	LEUT	CAPT	FLTLT
Male	5.6%	3.1%	5.5%
Female	4.8%	3.1%	9.7%
	SBLT	LT	FLGOFF
Male	2.7%	2.1%	2.6%
Female	1.1%	2.5%	2.5%