

5 Conclusions and recommendations

- 5.1 I express my conclusions and make recommendations concerning the Marine Technical sailors at the end of Chapter 2. I now turn to consider the March–May 2009 deployment of HMAS *Success* more generally and the management of the problems that emerged.
- 5.2 It should be understood that this was a Commission of Inquiry as opposed to a series of disciplinary hearings. The evidence was not assembled or presented in order to make findings against individuals; rather, it was gathered in order to establish a factual narrative of events in which many individuals played a part.
- 5.3 A sense of proportion is necessary, too. Most of the behaviour the Commission examined occurred away from the vessel, when members of the ship's company were on shore leave. There is no suggestion of operational failure or deficiencies. Indeed, Fleet Command was surprised by the allegations of unacceptable behaviour because the vessel was judged to be operating well. The questionable behaviour was, by and large, on the part of relatively young sailors and cannot be considered in isolation from the behaviour of their peers in civilian society and other naval vessels' crews when they are on shore leave. The behaviour of a crew member ashore on leave is primarily a personal matter, although the behaviour the Commission examined usually involved groups of sailors in public.
- 5.4 Nonetheless, some types of behaviour are unacceptable whatever the circumstances, and the behaviour of members of a ship's company on shore leave in a foreign port can have consequences. The vessel, the Navy and Australia can be brought into disrepute. Conduct—sexual or otherwise—between crew members ashore can affect relationships onboard and adversely affect members' ability to work together. Discipline can also be affected. The effects of alcohol and recreational drugs can directly affect work performance. In brief, conduct ashore can compromise the safety and effectiveness of the ship's company.
- 5.5 It is necessary to guard against the use of hindsight when judging behaviour and decision making. What might seem obvious in retrospect might not be so easily discerned as events unfold. It must also be kept in mind that those in command on HMAS *Success*, and in Fleet Command ashore, all had many duties and responsibilities quite apart from the actions and events this Commission brought into focus.
- 5.6 I do not have a military background. My primary task is to expose the facts for the benefit of the Chief of the Defence Force and those who

advise him. Nonetheless, the exposure of some of the facts does call for comment or criticism. I do this from time to time in the report. I now venture some conclusions and recommendations that seem to me to follow from an examination of the facts.

- 5.7 It can safely be concluded that the behaviour of the crew of *Success* whilst ashore in ports on the deployment was out of control and discipline had broken down. There was damage to two bars in Manila; a public sex act and property damage in Qingdao; the 'robe run', so-called fancy-dress incidents and severe alcohol-related collapses in Hong Kong; along with numerous instances of verbal and physical confrontation between males and females in public in all three ports. This, occurring as it did without any disciplinary action being taken, either on the spot by senior sailors or later by the responsible officers, is sufficient to illustrate the point.
- 5.8 Before *Success's* arrival in Qingdao the Commanding Officer personally reprimanded the Petty Officers' Mess for undue fraternisation and not enforcing discipline whilst ashore in Manila. The Executive Officer had sent an email to the President of the Petty Officers' mess about other unsatisfactory aspects of the behaviour of Petty Officers in Manila. These actions had little, if any, effect on behaviour in Qingdao and Hong Kong: far from the Petty Officers playing a more active role in correcting and directing the behaviour of junior sailors, some of them, at least, were participants in unacceptable behaviour.
- 5.9 No doubt the considerable volume of alcohol that was consumed by many members of the crew—male and female—was a factor contributing to virtually every untoward incident. It is doubtful, however, whether behaviour on this deployment was very different in that respect from that occurring on other deployments and other naval vessels or, indeed, among other groups of young people on holiday.
- 5.10 There is a limit to what the Navy can or should do about alcohol consumption on shore leave. It is not unlawful. It is a cultural issue. Effective onboard testing of those on duty, coupled with a genuinely random program, including where appropriate all-of-ship testing, is a necessity. The testing for those on duty on *Success* was reasonable save for the system of protection of MT sailors. Those rostered on for duty by and large seemed to adjust their social activities accordingly. The random testing program was not as effective.
- 5.11 Anti-social behaviour caused by drinking should not to be tolerated. Senior sailors and junior officers play an important role in this respect by leading by example, in their ability to correct and direct anti-social behaviour, and by ensuring that those who are intoxicated return to the ship or to local lodgings. There is a line between reasonable socialising

with junior sailors on one hand and joining them in a binge on the other. Unrealistic standards should not be set, though: senior sailors and junior officers cannot be expected to play the roles of nursemaid, medic and police. Training in relation to leadership ashore should, however, be given to senior sailors and junior officers, and it should be backed up and reinforced by command on the vessel.

- 5.12 The Navy seeks to deal with the cultural problem of alcohol consumption through the Safe Spirit Program. That program should be reviewed to ensure that it gives sufficient emphasis to shore leave in foreign ports. Particular attention should also be paid to organising activities on foreign port visits that provide appealing alternatives to meeting in the nearest or most popular bar.
- 5.13 The policy on *Success*, as illustrated in Hong Kong, was that there were no consequences for a sailor who returned to the ship completely inebriated and in need of help and supervision—assuming that he or she was not due to go on duty on return. The rationale was that if there were consequences inebriated crew members would not return to the ship and would end up in a much riskier situation. Although that rationale has force, a case can be made that returning in that condition does require a response—even if that is compulsory counselling. This question should be considered by those with relevant experience and expertise.
- 5.14 The protection given to the MT sailors, including [REDACTED] Marine Technical sailors who misbehaved in each foreign port, no doubt contributed to the general breakdown in discipline. Nonetheless, serious misbehaviour was by no means limited to [REDACTED] or, indeed, to MT sailors.
- 5.15 Another contributing factor was the manner in which the two incidents of property damage in Manila were swept under the carpet. That would have sent to the crew a clear message that no adverse disciplinary or administrative action would be taken against crew members involved in serious incidents ashore. This, in turn, reinforced that what happened ashore stayed ashore or, as it was more colourfully put by one of the crew, 'what goes on on the piss stays on the piss'. The failure to act in those cases—and the failure to properly look into an incident between two Petty Officers and some junior female sailors at the Manila Hotel—could not but undermine attempts by the Commanding Officer and the Executive Officer to improve the behaviour of crew members ashore in Qingdao.
- 5.16 If decisive action had been taken after the serious misbehaviour ashore in Manila, at least some of the later excesses would probably have been avoided. The extraordinary failure to deal with the public sex act in

Qingdao effectively and promptly—or, indeed, at all on the deployment—reinforced the notion that discipline did not apply ashore. No wonder the serial offenders were at it again in Hong Kong.

- 5.17 In contrast to the failure to act in relation to unacceptable conduct ashore, an allegation of sexual relations occurring onboard the vessel in Qingdao was dealt with promptly and effectively. After the matter was investigated by the Coxswain the Commanding Officer took firm and decisive action.
- 5.18 Command on *Success* should insist on the maintenance of discipline and proper respect for rank. There should be zero tolerance of unacceptable behaviour on shore leave until the message that such behaviour is not tolerated gets through.
- 5.19 In future, action under the *Defence Force Discipline Act 1982* should be taken where breaches might have occurred. The command chain and the Coxswain should follow up and investigate potential breaches promptly, diligently and pro-actively and should not depend only on formal complaints by crew members. Proper records should be kept.
- 5.20 If action under the *Defence Force Discipline Act* does not follow or is unsuccessful, administrative action should be considered. Charges under the Act need to be proved beyond reasonable doubt. Administrative action does not require that onus (or any onus) to be satisfied. Again, proper records should be kept so that a sailor's file contains all relevant information as to conduct.
- 5.21 There is evidence that the equity and diversity system was used as a convenient way of burying complaints of unacceptable behaviour. It appears that the system and the interplay between it, the disciplinary system, administrative action and the divisional system are not well understood on *Success* and more widely in the Navy. I will expand on these issues in my second report.
- 5.22 All Navy disciplinary and personnel systems should recognise and endeavour to allay crew members' reluctance to come forward and complain about grievances for fear of repercussions. That tendency was exaggerated on *Success* because of the MT culture.
- 5.23 That tendency also makes it difficult to monitor the equity and diversity program and military justice arrangements. For example, *Success* had received a favourable report from the Inspector General of the Australian Defence Force Military Justice Audit in July 2006. It cannot be assumed that the situation in 2006 was as bad as that in 2009, but the conduct that led to the Kenyon inquiry in 2004 bears sufficient similarity to the conduct in 2009 to lead to a reasonable inference that a problem existed in 2006. The Kenyon inquiry was not referred to in the

IGADF audit report. Monitoring procedures should be reviewed to ensure that compliance is not judged by absence of complaint.

- 5.24 The divisional system should be reviewed with the needs of female sailors in mind. Many witnesses seemed to misunderstand the relationship between the divisional system and operational command—particularly because the same people seem to play a role at a similar level in each system.
- 5.25 Difficulties with the transition from junior sailor to senior sailor were revealed in the evidence. Some of this can be attributed to the sailors remaining on the same vessel after promotion, and I make a recommendation about that in paragraph 2.748. I also recommend that the leadership and management training of senior sailors be reviewed to ensure that it is adequate and relevant to current needs, including dealing with conduct on shore leave in foreign ports. The same might apply to promotion from the ranks to junior officer.
- 5.26 I cannot see that the rules governing behaviour ashore caused any problems on the March–May 2009 deployment. They reflect a reasonable balance between the rights and interests of crew members and the rights and interests of the Navy and Australia. I do note, however, that on at least one occasion declaring a relationship between people of different ranks led to those people being posted off the vessel. They saw themselves as disadvantaged compared with others involved in undisclosed relationships.
- 5.27 The response by command on the vessel and ashore to the allegations made to the Commanding Officer on 26 April 2009 is examined at some length in Chapter 4. I concluded that the Executive Officer and the Commanding Officer were correct in taking the complaints about the behaviour of MT sailors seriously and that the Commanding Officer was justified in thinking that the problem could not be dealt with on the vessel. It was appropriate to go to Fleet Command for assistance.
- 5.28 I was, however, critical of Fleet Command's decision to send the equity and diversity team to the ship with the instructions the team was given. This was an unconventional approach to an unusual problem and it departed from established procedures. It was fraught with danger and danger eventuated. As a result, the so-called E&D health check was a flawed process. That affected the E&D report that was presented to the Commanding Officer and his actions in response to that report.
- 5.29 There was sufficient substance to the complaints made to the Commanding Officer to warrant serious investigation. There might have been a proper basis for temporarily landing certain sailors off the ship pending such investigation. But the decision by the Commanding Officer, with the approval of Fleet Command, to land those sailors who

were landed was not the result of a proper process. Furthermore, the timing and manner of the landings were not appropriate and the landed sailors were not treated fairly.

- 5.30 For present purposes the question is whether these circumstances resulted from deficiencies in the system that should be redressed or from individual decision making, or both. Both seemed to play a part. The allegations presented a very unusual problem to which there was no ready solution. A system cannot have a ready-made solution for all problems, and not all decisions turn out to be correct in the long run. That was the case here.
- 5.31 The system failed in allowing the situation to develop on *Success* over some years, rather than in not having a turnkey solution when the problem was revealed. A failure to enforce discipline and to properly pursue potential Defence Force Discipline Act breaches—such as those observed on and after the March–May 2009 deployment—might well have been characteristic of *Success* for some years and might well not be limited to *Success*. I will return to this topic in my second report.
- 5.32 I do not make any recommendation as to disciplinary or administrative action against particular individuals. I have endeavoured to expose the facts as best I can. That has inevitably involved forming judgments about the conduct of many individuals. The question of what should be done about the actions of individuals is best determined by those with the responsibilities of command, having taken into account, among other things, what has occurred in the period since the deployment in question.