

1 Introduction

- 1.1 A copy of the Instrument of Appointment dated 9 March 2010, as issued to the President of the Commission of Inquiry by the Chief of the Defence Force, Air Chief Marshal Angus Houston AC AFC, pursuant to Regulation 109 of the Defence (Inquiry) Regulations 1985, is presented in Appendix A to this part of the report.
- 1.2 The substantive terms of reference for this Inquiry require that the Commission do the following:
- ... inquire into the alleged incidents of unacceptable behaviour, as defined in applicable Defence Instructions, or other behaviour which could compromise the safety and effectiveness of the crew onboard HMAS *Success* that were brought to the attention of command between March and May 2009, and *issues associated with the subsequent management of such allegations and of personnel allegedly involved.* [emphasis added]
- 1.3 Part One of this report dealt with the alleged incidents of unacceptable behaviour or other behaviour that could compromise the safety and effectiveness of the crew onboard HMAS *Success* that were brought to the attention of command between March and May 2009. It also dealt with the subsequent management of those allegations and of the personnel allegedly involved until the landing of four sailors on 9 May 2009 in Singapore and the immediate aftermath of those landings. This second part of the report deals with the management of the allegations and of the personnel allegedly involved from 9 May 2009 until the appointment of this Commission of Inquiry on 9 March 2010. A brief outline of the main events during that period is provided in paragraph 1.124 of Part One of the report.
- 1.4 In the third, and final, part of this report general matters arising from the preceding parts of the report will be dealt with—particularly matters pertaining to administrative inquiries and procedures and the interplay with discipline and equity and diversity.
- 1.5 The Instrument of Appointment directs the Commission to make inquiries in the light of the 'Inquiry context', which is annexure A to the Instrument of Appointment. Paragraphs 3(c) and 3(d) of the Inquiry context have particular relevance to this current part of the report. Further, the Commission is, so far as is practicable, to have regard to the terms of reference of the Senate Foreign Affairs, Defence and Trade Committee's Inquiry into an Equity and Diversity Health Check in the Royal Australian Navy—HMAS *Success* and to respond to, when considered appropriate, any matters more fully described in those terms

of reference, which are attached as Appendix 1 of Annexure A to the Instrument of Appointment. Terms of reference (e) to (m) are pertinent.

- 1.6 The expression 'personnel allegedly involved' in the Instrument of Appointment refers to personnel allegedly involved in perpetrating the behaviour or condoning it, rather than those who made or supported the allegations. A ruling to that effect was made during the course of the Commission's hearings. Counsel for [REDACTED] sought to pursue proof of the adverse effects on the health and career of her client caused by her client's coming forward to the command of HMAS *Success* with complaints from female sailors. The topic of intimidation of and fear of repercussions on the part of complainants is dealt with in paragraphs 2.237 to 2.342 of Part One of this report since it was directly connected with the behaviour in question. The later history of those who made complaints does not have that direct connection. I gave serious consideration to identifying (pursuant to paragraph 8 of the Inquiry context) the subsequent treatment of complainants as sufficiently closely related to the matters before the Commission to bring it to the attention of the Chief of the Defence Force, with a recommendation that I inquire into that treatment.
- 1.7 There is no doubting the importance of the topic. People's reluctance to come forward with complaints for fear of repercussions is well understood in most workplaces, but it seems to be of particular significance in institutions such as the military and the police. Some HMAS *Success* personnel were simply not prepared to give evidence in anything other than complete confidence. I was satisfied that fears of repercussions—both physical and in terms of career—were genuinely held by those people. There was enough evidence to suggest that the possibility of adverse consequences was more than academic, at least in the cases of [REDACTED]. Such a situation could also have applied to others, including the Commanding Officer of HMAS *Success*. Further, there is a certain imbalance in concentrating on the consequences for those alleged to be involved in the unacceptable behaviour (in practice, the landed sailors) without regard to the consequences for those who came forward with or supported the allegations.
- 1.8 I concluded, however, that opening up another significant line of inquiry would delay the completion of evidence and so delay reporting. The scope of the Commission had already far exceeded expectations. In my view, the public interest was best served by reporting as promptly as possible on the events that actually took place on the deployment of March to May 2009 and their immediate aftermath.