

6 The ADFIS investigations

6.1 In Part One of this report I consider the following aspects of the Australian Defence Force Investigative Service's early investigations of the allegations about personnel onboard HMAS *Success* during the Asian deployment of March–May 2009:

- the various Notifiable Incident reports, in paragraphs 2.641, 2.658, 2.702 and 4.271
- the appointment and despatch of the ADFIS investigation team headed by [REDACTED] and the allegations to be investigated by ADFIS, in paragraphs 4.345 to 4.352
- the arrival of the ADFIS investigation team in Singapore, the material provided to the team, and the various meetings between [REDACTED] and key personnel, including the Commanding Officer of *Success*, CPONPC Peter Gunn, LEUT Di McArthur and WO Melville Harker, in paragraphs 4.357 to 4.364
- the various ADFIS investigation files, in paragraph 4.365 and Table 4.1
- the allegations not investigated, or not adequately investigated, by ADFIS when [REDACTED] was in Singapore, including the allegations about the sex ledger (paragraphs 4.367 to 4.371), the public sex act in Qingdao (paragraphs 4.372 to 4.376), threats against members of the crew if they spoke out about unacceptable behaviour (paragraph 4.377) and the discovery of drug paraphernalia (paragraphs 4.378 to 4.381).

6.2 The results of the investigations ADFIS completed can be summarised thus:

- INV-ADF01-BUT-2009-5 refers to the investigation into an allegation of assault on a superior or insubordination, or both, to the effect that [REDACTED] was grabbed around the throat by [REDACTED] in a bar in Hong Kong on or about 30 April 2009. The file was created on 11 May 2009 and as at 25 March 2010 the Defence Policing Security Management System was reporting its status as 'pending'. By minute dated 15 August 2009, however, WO1 Andrew Johnston of ADFIS wrote to the Chief Coxswain of *Success*, enclosing the brief of evidence for his action. That minute stated in part:

11. The evidence obtained by ADFIS Investigator/s during the conduct of this enquiry supports the following charges:
 - a. Assaulting a superior officer, pursuant to the DFDA [*Defence Force Discipline Act 1982*] s25(1) in that [REDACTED] assaulted [REDACTED] his superior officer, by grabbing her around the throat whilst in Hong Kong on 30 Apr 09; and
 - b. Insubordinate conduct, pursuant to the DFDA s26(1) in that [REDACTED] was insubordinate towards [REDACTED] [REDACTED] his superior officer, whilst in Hong Kong on 30 Apr 09.
12. Advice should be sought from your Unit or Command Legal Officer before proceeding with DFDA or administrative action. If legal advice is not readily available, guidance may be obtained from the ADFIS Legal Officer or the Office of Director of Military Prosecutions.

Although that case is still pending, [REDACTED] has not been so charged. Apparently he will not be charged since his contract has expired without renewal.

- INV-ADF01-BUT-2009-6 refers to the investigation into an allegation of indecent assault in a motel room in Darwin on 4 April 2009 and is of no import to this Inquiry. The file was created on 12 May 2009, and the Defence Policing Security Management System file reported its status as at 25 March 2010 as 'pending'. On 24 February 2010 the Directorate of Military Prosecutions wrote to the Commanding Officer of *Success*, advising that a decision had been made not to proceed with charges against the respondent. The reason given was that it would not be possible to prove beyond a reasonable doubt that the alleged acts had been committed and that there was a lack of evidence or corroboration supporting the complainant's recollection of the events.
- INV-ADF01-BUT-2009-07 refers to the investigation into an allegation of assault, to the effect that [REDACTED] was pushed against a wall and threatened with violence by [REDACTED] [REDACTED] at a night club in Hong Kong on 30 April 2009. The file was created on 14 May 2009, and the Defence Policing Security Management System report as at 25 March 2010 noted the overall outcome as 'Investigation Ceased—Insufficient Evidence'. The ADFIS Service Police Report dated 13 August 2009, completed by [REDACTED] states:

10. Owing to the lack of corroborative evidence to support the allegation made by [REDACTED] it is

recommended that no disciplinary action be taken against [REDACTED] regarding this incident. However, this recommendation does not preclude the unit from taking administrative action against [REDACTED] for his overall conduct during the evening of 30 Apr 09.

- INV-ADF01-BUT-2009-08 refers to the investigation into an allegation of indecent assault, to the effect that [REDACTED] grabbed [REDACTED] breasts and assaulted her while in a bar in Hong Kong on 2 May 2009. The file was created on 11 May 2009, and the Defence Policing Security Management System recorded its status as 'pending' on 25 March 2010. The matter was referred to the Office of the Director of Military Prosecutions in November 2009. By minute dated 22 February 2010 BRIG Lynette McDade, the Director of Military Prosecutions, notified the Commanding Officer of *Success* of her decision not to proceed with charges against [REDACTED]. She stated:

In all the circumstances, I have formed the view that it would not be possible to prove beyond reasonable doubt that he committed the acts as alleged. The essential difficulty is the lack of evidence or corroboration supporting the complainant's recollection of events.

- INV-ADF01-BUT-2009-09 refers to the investigation into an allegation of assault of a superior, to the effect that [REDACTED] grabbed [REDACTED] from behind and placed her in a headlock while in a bar in Hong Kong on 3 May 2009. The file was created on 11 May 2009. The Defence Policing Security Management System report as at 25 March 2010 recorded its status as 'closed' and the overall outcome as 'Charges Not Recommended'. The ADFIS Service Police Report dated 25 August 2009, completed by [REDACTED] states:

Owing to the lack of corroborative evidence to support the allegation made by [REDACTED] it is recommended that no disciplinary action be taken against [REDACTED] regarding this incident. However, this recommendation does not preclude the unit from taking administrative action against [REDACTED] for his overall conduct during the evening of 03–04 May 09.

- INV-ADF01-SYD-2010-9 refers to the investigation into the alleged public sex act involving [REDACTED] in Qingdao. As just noted here, and in Part One of this report, the handling of this investigation was deficient and, after some confusion with [REDACTED] about who had carriage of this matter, it was subsequently transferred to investigators in Sydney to be dealt with.

- [REDACTED] was charged with obscene conduct pursuant to s. 33(c) of the Defence Force Discipline Act. This charge was heard on 5 October 2010. She entered a plea of guilty and subsequently received seven days' restriction of privileges, a fine of five days' pay over two pay periods, and a severe reprimand.
- [REDACTED] was charged with obscene conduct pursuant to s. 33(c) of the Defence Force Discipline Act. This charge was heard on 24 November 2010. He entered a plea of guilty and subsequently received 14 days' restriction of privileges.

The delay in charging these offenders, the disparity between the penalties, and the leniency in relation to [REDACTED] are noteworthy.

6.3 LTCOL Stephen Vokes, Director of Operations in ADFIS, said in evidence:

The headquarters of the ADFIS was by and large very unsatisfied with the methodology and approach that the lead investigator took with regards to all of that series of SUCCESS investigations. It ranged from everything from diligence and application to duty to application of knowledge and procedure. It was generally considered poor and the Provost Marshal saw fit to strike a routine inquiry investigating the ADFIS issues in relation to SUCCESS.

His written submission to the Commission contains the following statement:

ADFIS accepts the criticism that the initial investigations were faulty and that it was not until the true extent of those failures became apparent that corrective action began to take place. The ADFIS has conducted its own Routine Inquiry into those matters and has addressed the faults.

6.4 On 15 January 2010 WGCDR Andrew Roberts, Deputy Provost Marshall of the Australian Defence Force, appointed FLGOFF B Baker to conduct a quick assessment 'into allegations of poor investigation standards by [REDACTED] in relation to HMAS SUCCESS incidents of 2009'.

6.5 FLGOFF Baker's quick assessment report is dated 18 January 2010. She recommended the appointment of a Routine Inquiry and that ADFIS review its procedures for dealing with investigators' poor work performance in international locations.

6.6 On 27 January 2010 COL Martyn Andrew Reed, the Provost Marshall of the Australian Defence Force, appointed WOFF Peter Larsen as a Routine Inquiry Officer to inquire into:

matters concerning the circumstances surrounding the standard and quality of Australian Defence Force Investigative Service (ADFIS) into several incidents undertaken by ADFIS into a number of alleged incidents aboard HMAS Success in 2009 [the Larsen Routine Inquiry].

CPO Peter Ensor was appointed Assistant Inquiry Officer.

- 6.7 WOFF Larsen's Routine Inquiry report is dated March 2010. It is a detailed report of 37 pages responding in turn to each of the terms of reference. It states that 12 individuals were interviewed and each interview was recorded and transcribed. WOFF Larsen found significant deficiencies with the ADFIS investigations. He conducted his investigation in greater depth than time has permitted for this Commission.
- 6.8 There were clear failures in the ADFIS investigations: serious allegations were not investigated or not properly investigated; in some instances investigation files were not opened or adequately maintained; important witnesses were not interviewed or signed statements were not taken; adequate searches were not conducted and evidence seized; important documents (such as Notifiable Incident reports) were not considered; and there was a general failure in communication between the ADFIS investigation team, the Chief Coxswain, the command of *Success* and Fleet Headquarters as to precisely what was to be investigated and by whom.
- 6.9 The scope of the matters ADFIS investigated was narrow compared with the breadth of the allegations that had been made. One gains the impression that ADFIS chose the easy targets—specific incidents requiring little investigation. That decision cannot be attributed to the investigators on the spot: it was made at higher levels. LTCOL Vokes pointed out that the decision was made in the knowledge that all the allegations would be subject to an administrative inquiry having compulsory powers—a much more effective form of investigation of general allegations than an ADFIS investigation in which answers cannot be compelled and proof beyond reasonable doubt is required. There is force in LTCOL Vokes's argument.
- 6.10 The result of such investigations as were completed reveals a very conservative approach to instituting disciplinary proceedings. The onus of proof does not mean that only certain 'winners' should be prosecuted. In particular, there should be no general rule that corroboration of a complaint is always required.

