



# Department of Defence

## ALLEGATIONS CONCERNING THE HMAS *WESTRALIA* FIRE

April 2008

Report by the Commonwealth and Defence Force Ombudsman,  
Prof. John McMillan, under the *Ombudsman Act 1976*

REPORT NO. **03|2008**

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## EXECUTIVE SUMMARY

On 14 February 2007, articles appeared in a number of newspapers suggesting that Department of Defence (Defence) investigators had been forewarned of the faulty fuel lines that caused the fire on board HMAS *Westralia* in May 1998.

At the heart of the allegations was the appearance of an unsigned minute dated 6 February 1998 from Inspector-General Division (IGD) investigators. The minute reported allegations from Baileys Diesel Services Pty Ltd (Baileys) about corruption and misconduct in Royal Australian Navy (RAN) contracting and maintenance, including the use of non-genuine and sub-standard spare parts (the 6 February 1998 document). The minute cited HMAS *Westralia* as a ship that had recently suffered problems as a result of the use of such parts. Allegations also emerged that Baileys had raised safety concerns even earlier, in 1997.

On 14 March 2007, the Minister for Defence wrote to the Acting Ombudsman passing on the findings of an internal Defence investigation of the media allegations. Although the Defence investigation confirmed that Baileys had made allegations to Defence investigators on 6 February 1998, the investigation concluded that Baileys' allegations did not amount to a forewarning of safety risks to HMAS *Westralia*.

Nevertheless, the internal Defence investigation did identify some areas of concern with Defence's handling of the allegations. Accordingly, the Minister invited the Ombudsman to consider conducting an own motion investigation into the allegations and into the procedural competence and integrity of the IGD with respect to this matter.

On 17 April 2007, the Ombudsman initiated an own motion investigation to examine whether Defence had forewarning of possible safety risks to HMAS *Westralia*, whether in 1997 or 1998, and to look more generally at Defence's handling of Baileys' allegations.

Following fresh allegations from Mr Stephen Bailey in May 2007, the investigation's scope broadened to include examination of Defence contracting and maintenance processes. This aspect of the Ombudsman's investigation is being dealt with separately from this report.

After an investigation involving an extensive examination of several thousand Defence documents, formal interviews with key witnesses, and consideration of statements from other witnesses, we reached the views set out below.

- The press reports of February 2007 stating that Defence was warned about the safety risk to HMAS *Westralia* and failed to act were wrong.
- Baileys may have had concerns, in and/or around August 1997, about the use of non-genuine spare parts in the HMAS *Westralia*. However, we are satisfied that Defence was not aware of any such concerns.
- Baileys did raise a number of allegations and concerns about Defence contracting and maintenance practices between August 1997 and 6 February 1998. However, none of Baileys' allegations or concerns can reasonably be interpreted as any kind of warning of the circumstances that contributed to the HMAS *Westralia* fire.

- The balance of evidence suggests that Baileys' concerns at the 6 February 1998 meeting were about corruption, not safety, and this is how they were received and understood by IGD investigators. It is difficult to characterise Baileys' 6 February 1998 meeting with the IGD as a 'warning of the circumstances' that contributed to the HMAS *Westralia* fire and Defence cannot reasonably be said to have failed to act on any such warning.
- The balance of evidence indicates that various Defence authorities followed up most of Baileys' concerns in the period prior to the HMAS *Westralia* fire. However, there is no evidence that Baileys' concerns about having been improperly excluded from RAN contracts was followed up at this time.
- In 2000, Defence received an anonymous letter that, amongst other things, alleged the IGD investigators, Mr Smythe and Mr Ryan, had warned in 1998 that 'if no action is taken, a serious mishap at sea could occur'. In our view, the decision taken by the IGD not to investigate this allegation was not unreasonable. However, Defence should have maintained a clear audit trail of what action was taken at the time, and documented the reasons for not pursuing the matter.
- In 2005, Defence received unsigned copies of the 6 February 1998 document. We are satisfied that the steps taken by Defence to investigate the issues raised by the document were reasonable. However, Defence failed to clearly articulate its position on the authenticity of the document at that time and failed to ensure it had a clear record of which allegations made by Baileys had been investigated, when and by whom; and Defence provided misleading advice to the Hon De-Anne Kelly, MP, Minister Assisting the Minister for Defence, about these issues.
- We are nevertheless satisfied that these failures in 2005 were not the result of any attempt to hide actual or perceived failures or wrong-doing by Australian Government officials.
- The balance of evidence supports Defence's 2007 internal investigation conclusions with respect to the allegations of the extent of forewarning that Defence had about the safety risk to HMAS *Westralia*.
- We have not found any versions of the 6 February 1998 document on Defence files (other than the copies received in 2005) or any contemporaneous reference to such a document on Defence files. On balance, the evidence points to the document coming into existence at a date later than 6 February 1998 by an unofficial channel.
- Defence's investigation into the February 2007 allegations that it had had forewarning of the safety risk to HMAS *Westralia* was timely and thorough. In our view, its conclusions were reasonable and had a sound evidentiary basis.

## PART 1—INTRODUCTION

### The HMAS *Westralia* fire and its aftermath

1.1 On 5 May 1998, at about 10.30 am, a fire broke out in the main machinery space onboard HMAS *Westralia*, a modified tanker and underway replenishment ship, and part of the RAN's Afloat Support Force. The fire was intense and took almost two hours to extinguish. By that time, it had claimed the lives of four young sailors and caused injuries to at least five other RAN personnel.<sup>1</sup> It was the worst Australian naval disaster in 34 years.

1.2 A Naval Board of Inquiry (BOI) was convened on 11 May 1998:

... to investigate all the relevant circumstances surrounding the fire in *WESTRALIA* on Tuesday, 5 May 1998, the death of personnel in that fire and the injury of other members of the ship's company ... including ... the cause of the fire [and] ... the materiel state of *WESTRALIA* at the time of the fire ...<sup>2</sup>

1.3 The BOI reported on 28 August 1998. After hearing testimony from 92 witnesses and reviewing more than 481 exhibits,<sup>3</sup> the BOI concluded that the fire 'was caused by diesel fuel from a burst flexible hose spraying onto a hot engine component and then igniting'.<sup>4</sup> The BOI further concluded that 'the hoses were not properly designed and were unfit for the intended purpose', and the proper processes for organising and carrying out the configuration change that led to the fitting of the flexible hoses 'were bypassed, largely as a result of ignorance and incompetence' on the part of key personnel in the RAN and in ADI Limited (ADI), the prime contractor responsible for carrying out the maintenance work on the HMAS *Westralia*.<sup>5</sup> The flexible fuel hoses were one of two 'serious deficiencies' in the materiel state of the ship identified by the BOI.<sup>6</sup> However the BOI also concluded that there was 'no sign of any inherent flaw' in the flexible fuel lines and 'no obvious materiel deficiency that should have prevented the ship from sailing' on the morning of 5 May 1998.<sup>7</sup>

1.4 The BOI made 114 recommendations, ranging from matters relating directly to HMAS *Westralia* and its engine fuel supply and fire-fighting equipment, through to RAN-wide recommendations about configuration and contract management and training for key personnel.<sup>8</sup>

1.5 In response to ongoing concerns about the BOI findings expressed by the families of those who died in the HMAS *Westralia* fire, including suggestions about alternative theories of what caused the fire, the State Coroner of Western Australia initiated an inquest hearing on 14 June 2002. The Coroner expressly indicated that,

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<sup>1</sup> See Department of Defence, *Report of the Board of Inquiry into the fire in HMAS WESTRALIA on 5 May 1998*, Defence Publishing Services, 1998 (*Westralia BOI report*), Annex E: 'Timeline of the Incident'.

<sup>2</sup> *Westralia BOI report*, page 1.

<sup>3</sup> *Westralia BOI report*, page 3.

<sup>4</sup> *Westralia BOI report*, page 12.

<sup>5</sup> *Westralia BOI report*, page 12.

<sup>6</sup> *Westralia BOI report*, page 9. The other 'serious deficiency' related to the CO<sub>2</sub> fire-fighting system and is not relevant to this investigation. For further information on this, see *Westralia BOI report*, pages 131–132.

<sup>7</sup> *Westralia BOI report*, pages 9–10.

<sup>8</sup> *Westralia BOI report*, Section 18.

‘An important purpose of holding this inquest hearing has been to allow the families to ensure that relevant issues of concern to them have been adequately ventilated’.<sup>9</sup>

1.6 After an inquiry involving some weeks of hearings and many months of consideration, the Coroner confirmed the BOI conclusion that the fire started when the flexible fuel hoses fitted to HMAS *Westralia* failed as a result of fatigue.<sup>10</sup> The Coroner also confirmed the BOI conclusions about ‘a series of mistakes and systemic deficiencies’ that led to the fitting of the flexible fuel hoses, describing this as ‘an outrageously bad error’, which had it been the action of ‘a single person with reasonable knowledge, it would have amounted to negligence of the most gross kind’.<sup>11</sup>

1.7 Running simultaneously with the Coroner’s inquest hearing was a raft of lawsuits to determine where liability lay as between the Commonwealth, the prime contractor, and the various sub-contractors and related entities, as well as actions initiated by the injured crew. To give an idea of the size of this litigation, there were at one stage 19 parties to the dispute, involving at least 10 cross-claims, and discovery involving the review of around 90,000 documents and three compact discs worth of images.

1.8 In 2004, further actions were initiated, first by the Commonwealth Director of Public Prosecutions against ADI for breaches of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (OH&S Act), and then by the families of those who died in the HMAS *Westralia* fire, for personal injury and economic loss.

1.9 On 17 June 2005, ADI was found guilty of breaching the OH&S Act for its failure to properly oversee the work on HMAS *Westralia*’s engines, and subsequently fined \$75,000.

1.10 The actions between the Commonwealth, the prime contractor and the various sub-contractors and related entities were settled in June 2006, with the Australian Government agreeing to take over the various crew claims, family claims, shareholder claims and the judgment against ADI. The Australian Government has settled all of the crew claims and five of the family claims. One remaining family claim cannot be settled within terms consistent with the Attorney-General’s Legal Services Directions. Options based on Act of Grace and/or ex-gratia payments have been considered and these options are to be raised with the claimant’s solicitor.

## The 2007 allegations

1.11 On 14 February 2007, articles appeared in a number of newspapers suggesting that Defence was warned in February 1998 that HMAS *Westralia* ‘was in grave danger from faulty fuel lines’ that caused the fire onboard on 5 May 1998.<sup>12</sup>

1.12 At the heart of the allegations was the appearance of an unsigned minute dated 6 February 1998, apparently written by IGD investigators, reporting allegations made by Baileys, a Wollongong-based company servicing diesel fuel pumps and

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<sup>9</sup> *Inquest into the deaths of Shaun Damian Smith; Phillip John Carroll; Megan Anne Pelly and Bradley John Meek (HMAS Westralia)*, State Coroner of Western Australia, 19 December 2003 (*WA Coronial Inquest report*), page 21.

<sup>10</sup> *WA Coronial Inquest report*, pages 25–28.

<sup>11</sup> *WA Coronial Inquest report*, pages 4 and 27.

<sup>12</sup> See for example Ian McPhedran and Amanda Gearing, ‘Left for Dead: Defence ignored safety warning and four sailors died—Navy’s Death Shame’, *The Daily Telegraph*, 14 February 2007, page 1.

injectors. The allegations were of corruption and misconduct in RAN contracting and maintenance, including the use of non-genuine and sub-standard spare parts. The minute cited HMAS *Westralia* as a ship that had recently suffered problems as a result of the use of such parts.

Mr M. Leishman  
DDFIR – Inspector general Division

RESULTS OF MEETING WITH BAILEY DIESEL SERVICES – URWIN AND BAILEY

As discussed with you by phone Mr Ryan and I met with the owners / operators of Bailey Diesel Services at Woollongong. During this meeting Bailey and Urwin made numerous allegations about Navy contracts, specifically in relation to misconduct in business dealings, contract nepotism, warranty abuse, misquotations, substitutions of reproduced vs genuine parts. Bailey and Urwin have also stated that they are aware of a number of diesel component failures whilst ships have been at sea. They stated that this situation, if not addressed and handled properly could cause serious damage to engines and equipment. This would result in more costly repairs. The ship, HMAS *Westralia* was identified by Bailey and Urwin as having a recent history of substandard and non genuine parts installed.

As directed by you this meeting was recorded and the tapes, along with further meeting details recorded onto an occurrence sheet were lodged with Ms Glenda Bannerman on our return.

Based upon the nature and content of the information provided by Bailey's, which includes numerous documents and records (invoices etc) it is believed by the undersigned that these allegations should be given the highest consideration in the priority of the current investigation.

D.M. RYAN  
A/ASO5 Investigator  
Inspector General Division

P.R. SMYTHE  
Federal Agent 5353

6 February 1998

1.13 The media reports of 14 February 2007 were picked up that same day in questions for the Secretary and senior officials of Defence at an Additional Estimates hearing. The Departmental officials indicated that there was no record of the 6 February 1998 document having been received in Defence prior to 2005 and raised questions about the document's authenticity.<sup>13</sup>

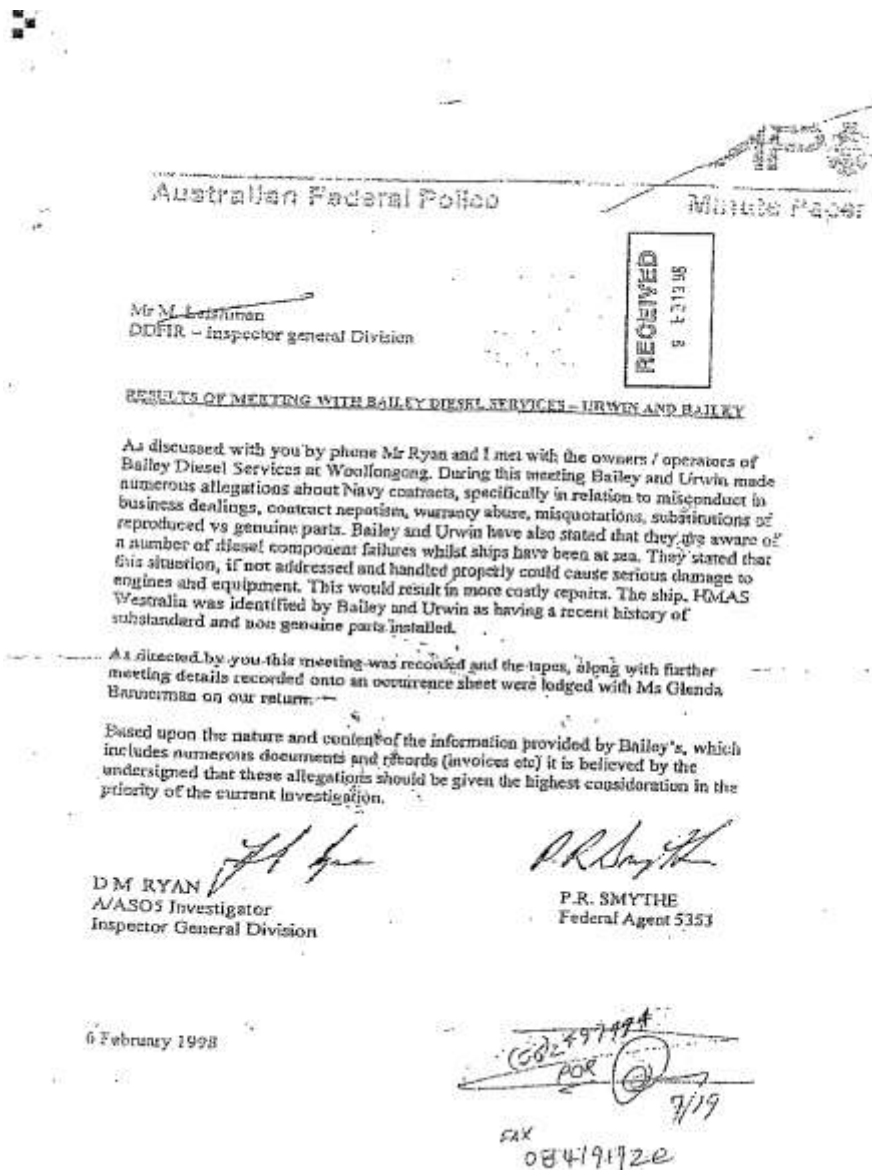
1.14 In March 2007, further press reports carried claims that the Minister Assisting the Minister for Defence had confirmed in November 2005 that Defence had received and investigated the allegations contained in the 6 February 1998 document. The press also reported that Baileys were now claiming that they had warned Defence about the use of non-genuine parts in HMAS *Westralia*'s fuel pumps as early as August 1997.<sup>14</sup>

<sup>13</sup> Senate Foreign Affairs, Defence and Trade Committee, Additional Estimates, Wednesday 14 February 2007, pages 28–34 and 130–146.

<sup>14</sup> See for example Ian McPhedran, 'Minister confirms Defence received *Westralia* warning', *The Daily Telegraph*, 16 March 2007, page 1.



1.15 On 30 May 2007, a signed copy of the 6 February 1998 document, on Australian Federal Police (AFP) minute paper, appeared in the press.<sup>15</sup> Senator the Hon John Faulkner tabled the signed minute during a Budget Estimates hearing that day.<sup>16</sup>



1.16 Senator Faulkner also indicated during the 30 May 2007 Budget Estimates hearing that he had received a statement, supported by documents, from Mr Stephen Bailey of Baileys, repeating the allegations Baileys had made in 1998 about the use of non-genuine parts in RAN maintenance, expressly linking those allegations to the safety risk to HMAS *Westralia* at that time, and confirming that Baileys had made similar warnings in 1997. Mr Bailey also alleged that his company continued to be improperly and unfairly excluded from Defence contracts, in part because of the practices outlined in his earlier allegations (concerning the use of

<sup>15</sup> See for example Ian McPhedran, 'HMAS *Westralia*—safety fears raised months before fire—Death ship's secret faults', *Adelaide Advertiser*, 30 May 2007, page 4.

<sup>16</sup> Senate Foreign Affairs, Defence and Trade Committee, Budget Estimates, Wednesday 30 May 2007, page 28.

unsuitable contractors for Defence maintenance and repair work), and in part because of the making of those earlier allegations.

1.17 Senator Faulkner provided copies of the signed 6 February 1998 document, and Mr Bailey's statement and supporting documents, to the Ombudsman in early June 2007. In his covering letter to the Ombudsman, Senator Faulkner characterised the allegations as claims:

... that the Department of Defence was warned of the circumstances which may have contributed to the tragic fire on HMAS *Westralia* in May 1998 ... Evidence to the Estimates Committee was that those allegations referred to contracting practices in part, but also to a warning that 'sub standard and non-genuine' parts were being fitted to Navy ships ...<sup>17</sup>

Referring to Mr Bailey's statement and supporting documents, Senator Faulkner wrote:

These documents raise concerns that Mr Bailey has suffered commercially, but also go to his allegation that maintenance practices in the Navy are sub-standard. This necessarily involves the matter of quality assurance of all work against manufacturers' specifications and standards which is important when examining the cause of the *Westralia* fire, including the operational safety of diesel injection pumps as well as flexible fuel hoses.<sup>18</sup>

## The Defence position

1.18 Immediately following the appearance of the media allegations on 14 February 2007, the Secretary of the Department of Defence initiated an internal investigation to review Defence files in an attempt to discover any evidence of the 6 February 1998 document, and to more generally test the veracity of the allegation that Defence had been forewarned of the safety risk posed to HMAS *Westralia* by non-genuine and sub-standard parts.

1.19 The Defence internal investigation reported to the Secretary on 1 March 2007. The key findings of the report are set out below.

- A comprehensive review of Defence files had not identified the 6 February 1998 document or any references to that document.
- Interviews with key personnel from the IGD at the time revealed no recollection of the 6 February 1998 document.
- A transcript of the 6 February 1998 meeting between IGD investigators and Baileys existed, but made only two brief references to HMAS *Westralia* in a 58 page transcript, and no reference to the configuration change that led to the fire onboard HMAS *Westralia*.
- The specific configuration changes to HMAS *Westralia* that led to the fire did not occur until some months after the 6 February meeting.
- IGD investigators followed up with Baileys after 6 February 1998 but before the fire, and there was no record of the allegations about HMAS *Westralia* being repeated.

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<sup>17</sup> Senator Faulkner to Dr Vivienne Thom, Acting Commonwealth Ombudsman, 7 June 2007.

<sup>18</sup> Ibid.

- IGD investigators had had dealings with Baileys after the fire (in October 1998 and October 2000), and again Baileys did not repeat their allegations or make any links between their earlier allegations and the HMAS *Westralia* fire.
- Three specific allegations made by Baileys during the 6 February 1998 meeting that could be said to relate to the fire onboard HMAS *Westralia* were found to be unsubstantiated when tested.

1.20 The three specific allegations made by Baileys during the 6 February 1998 meeting that Defence identified as arguably relevant to the fire onboard HMAS *Westralia* were:

- that a company in Runaway Bay, Queensland (Diesel and Components Pty Ltd) was not an authorised provider of parts
- in 1996, HMAS *Westralia* suffered a major engine failure shortly after maintenance at Forgacs in Newcastle that resulted in its engine ‘exploding into a million pieces’ and the ship being towed into Darwin for repair
- hence an implication that HMAS *Westralia* had a recent history of being fitted with sub-standard and non-genuine parts.

1.21 The internal Defence investigation reported that the Defence Materiel Organisation (DMO) had examined each of these allegations and advised the following.

- Diesel and Components Pty Ltd is, and was in 1998, an endorsed exclusive Australian representative of the ALCO engines US Original Equipment Manufacturer.
- There is no record of HMAS *Westralia*’s engine ‘exploding into a million pieces’. The closest incident to the one Baileys described was when the ship suffered a seized cylinder in one engine in March 1997. This was due to a piece of rag left in the water-cooling system and not the use of sub-standard parts. The ship subsequently entered Townsville, under its own power, for repair.
- A review by the DMO did not show a history of ‘backyard’ operators or sub-standard parts being used in HMAS *Westralia*’s main engines, although generic parts of a suitable standard had been used.

1.22 The Defence investigation concluded that, even if Baileys’ allegations had been followed up more closely in 1998, they would have been found to be unsubstantiated, that no further investigation was therefore likely at that time, and ‘in all likelihood investigation of Baileys’ claims would not have alerted sufficiently experienced marine engineers in the RAN to the unapproved configuration change being implemented at the time by ADI and its sub-contractors’.

1.23 Defence has maintained this position in subsequent Budget Estimates and other parliamentary hearings, and throughout the course of our investigation.

## The involvement of the Ombudsman

1.24 On 14 March 2007, the Minister for Defence wrote to the Acting Ombudsman, passing on the findings of the internal Defence investigation of the media allegations. Although the Defence investigation concluded that the allegations about the safety warning to HMAS *Westralia* were not substantiated, the investigation did identify some areas of concern with Defence’s handling of the allegations—including failure

to convey the outcome of complaints and investigations, allegations of misconduct within the IGD not being properly followed up, possible failure to freshly or thoroughly review evidence, and errors in communicating with other areas of Defence, Ministers' offices and the press about the investigation.

1.25 In light of those concerns, the Minister's letter of 14 March 2007 invited the Ombudsman to consider conducting an own motion investigation into the allegations that Defence had been forewarned of the safety risk to HMAS *Westralia* and into the procedural competence and integrity of the IGD with respect to this matter.

1.26 On 17 April 2007, the Acting Ombudsman replied to the Minister advising that she had initiated an own motion investigation into the various allegations around the HMAS *Westralia* fire.

### ***Scope of investigation***

1.27 The initial scope of the Ombudsman's inquiry related to the media allegations of February 2007 about Defence having been forewarned of the specific safety risk to HMAS *Westralia*, and the concerns identified by the internal Defence investigation relating to the appropriateness of both Defence's initial and subsequent responses to the allegations made by Baileys in 1998, with particular reference to the procedural competence and integrity of the IGD area at the time.

1.28 When the further allegations and concerns of Baileys came to light in May 2007 (see paragraph 1.16 above), those additional matters were also investigated. However, this aspect of our investigation is not reported here.

1.29 The scope of our inquiry was monitored and modified throughout the course of the investigation, consistent with fresh evidence and allegations received in the course of interviewing witnesses and reviewing relevant records.

1.30 The final scope of our investigation looked at:

- (i) whether Defence had been forewarned of safety risks to HMAS *Westralia* in 1996 or 1997 in particular, and more generally the adequacy of Defence's handling of the allegations made by Baileys in 1998 (Part 2 of this report)
- (ii) Defence's handling of subsequent allegations that it had been forewarned about safety risks to HMAS *Westralia* fire, including anonymous allegations in February 2000, allegations in early 2005 by Mr Bernard Collaery, solicitor representing the families, and the most recent media allegations in 2007 (Part 3 of this report).

1.31 The scope of our investigation was limited to those allegations that had arisen subsequent to the BOI and the Coronial Inquest taking place and did not cover issues previously considered in these forums.

### ***Approach and methodology***

1.32 We intended initially to parallel the course of the 2007 internal Defence investigation, testing the evidence examined by that inquiry, and the reasonableness of the conclusions it reached with respect to the media allegations of February 2007.

1.33 In the course of our investigation, and particularly following Mr Bailey's statement of 28 May 2007, which included fresh allegations about the events of 1997–1998 as well as claims about ongoing Defence practices, we broadened the scope of our inquiry to also test those more recent allegations.

1.34 To put beyond doubt or question the independence and thoroughness of the investigation, we served formal notice on the Secretary of Defence, requiring him to make available to our investigators all documentation held by Defence that was or could have been relevant to our investigation. The notice was cast in the broadest terms to ensure that it adequately covered all relevant documentation.

1.35 At all times we had the full and open cooperation of Defence officials in providing access to records and information sought by our investigation, including IGD staff in relation to their own records and their assisting in liaison with other areas of Defence.

1.36 Our investigation reviewed several thousand Defence records, including:

- over 80 investigation files of the IGD Special Investigation Team (SIT), later the Operation Majorca team
- the SIT occurrence sheet register
- the SIT tasking register
- the SIT administrative files (six parts)
- IGD files on the HMAS *Westralia* allegations, including the 6 February 1998 transcript (created in 2005), responses to allegations from Mr Bernard Collaery, media responses from the IGD
- freedom of information files of Baileys' requests
- Baileys' Ministerial files for 2000
- RAN and DMO records on maintenance on HMAS *Westralia* from 1990 to 1998 (and beyond)
- RAN and DMO records on the refit of HMAS *Manoora* and HMAS *Kanimbla* in 1997.

1.37 Throughout the investigation, we have had informative and constructive discussions with senior Defence officials in relation to issues around the HMAS *Westralia* allegations, the work of the SIT and Operation Majorca, the role and function of the IGD, and RAN maintenance and repair contracting and quality assurance process. This includes useful discussions with Dr Geoff Goodwin of the Defence Science and Technology Organisation with respect to the cause of the HMAS *Westralia* fire, the operation and maintenance of maritime diesel engines, and industry practice around the manufacture and use of parts and spares.

1.38 Following the appearance of the 6 February 1998 document on AFP minute paper and our interview with former Federal Agent Peter Smythe, we also served formal notice on the Commissioner of the AFP for access to all AFP records relevant to our investigation. The AFP responded on 4 September 2007, indicating that it had conducted 'an exhaustive search of its electronic and hard copy holdings' but had no record of the 6 February 1998 document 'ever having been created, forwarded, or stored on AFP databases'. The AFP was able to provide some material and information that we had requested, but nothing relevant to the allegations around the HMAS *Westralia* fire.

1.39 We also served formal notices to interview eleven key witnesses and to take formal statements from three other witnesses. Two further witnesses overseas (and so beyond the reach of the formal information-gathering powers of the *Ombudsman Act 1976*) were contacted and invited to provide statements. One key witness did so.

The other witness elected not to provide a statement, however, the information we believed this witness may have been able to offer was not critical to the investigation and therefore the absence of this statement has not had any material affect on our investigation.

1.40 We met with Mr Stephen Bailey at Baileys in Wollongong on a number of occasions, and reviewed documentation prepared and provided by Baileys. Mr Bailey has been open and helpful throughout our investigation, making available his premises in Wollongong for our interviews, and keeping us well informed of his ongoing dealings with Defence on the contracting issues.

1.41 We also received other documentation from some of our witnesses that has been useful in identifying new leads for further witnesses and further documents (including references to our own complaint records).

1.42 We also discussed aspects of our investigation with Senator Faulkner and his staff, keeping the Senator's office informed of our progress and exchanging thoughts on possible areas for further inquiry beyond the scope of our investigation.

1.43 At all times we have approached this case with the usual focus and perspective of the Ombudsman's office, looking to the administrative actions of Defence to identify if they have been lawful and not unreasonable, and with an eye to making practical recommendations in the event that Defence's actions have been deficient.

1.44 Our views are based on our assessment of the available evidence. We have tried to avoid speculation where possible, and to simply present the facts and evidence as we see it. We do not pretend to offer the authoritative account of this matter, and we accept that others might have different views about the relevance and weighting of some of the evidence.

1.45 This report does go into greater factual detail than is normally the case with Ombudsman reports. We felt that it was important to set out for the public record a detailed account of Baileys' various interactions with Defence during the period leading up to the HMAS *Westralia* fire, to leave as little scope as possible for continuing uncertainty and speculation and in light of the obvious public interest and attention the matter has received to date.

1.46 We have also focused less on identifying recommendations than would normally be the case for an Ombudsman investigation. In part, this is because a central aim has been to air the available evidence in order to provide a more complete and balanced account than that which has otherwise been publicly available.

1.47 We have not made any recommendations in this report. Most of the events we are investigating took place almost a decade ago. Rather than look to make recommendations based on our identification of any deficiencies in those past actions, we have looked first to ensure systems are now in place that might have avoided or ameliorated those deficiencies.

## PART 2—WARNINGS ABOUT THE SAFETY RISK TO HMAS *WESTRALIA*

2.1 The most serious allegation reported in the press in February 2007 was that Defence had been warned about the safety risk to HMAS *Westralia* before the fatal fire of May 1998 and had failed to act appropriately on those warnings.<sup>19</sup> Initial press reporting focused on a warning allegedly provided to Defence investigators by Baileys in February 1998. In a statement of 28 May 2007 and in related press reporting, Mr Stephen Bailey indicated that a similar warning had been provided to Defence as early as August 1997.

2.2 At the outset, it is worth noting that the press reports in February 2007 that Defence had been warned HMAS *Westralia* ‘was in grave danger from faulty fuel lines’ that caused the fire onboard on 5 May 1998 are, in the words of the internal Defence investigation, ‘immediately questionable’. As the internal Defence investigation pointed out, ‘It is highly unlikely that in February 1998 Baileys were warning Defence about the danger of the faulty fuel lines that caused the fire on HMAS *Westralia*, because the flexible fuel hoses had not been fitted to the ship at that time’. The flexible fuel hoses were fitted to HMAS *Westralia*’s main engines between 8 and 10 April 1998.

2.3 Although there had been discussions within Defence and between Defence and various ship repair and maintenance firms since 1996 about the use of flexible fuel hoses to address HMAS *Westralia*’s problems with fuel leaks, there is no evidence that Baileys were aware of that discussion. In our interviews with Mr Stephen Bailey, Mr Ricky Erwin (General Manager at Baileys between 1995 and 2000), and Mr Michael Evans (a former Baileys’ technician who had worked on two of HMAS *Westralia*’s fuel pumps in 1997), it was clear that Baileys had no knowledge of any proposal to fit flexible fuel hoses on HMAS *Westralia*’s engines.

2.4 To this extent, the initial press reports that Defence had been warned that HMAS *Westralia* ‘was in grave danger from faulty fuel lines’ that caused the fire onboard on 5 May 1998 are plainly wrong.

2.5 However, as Defence has already acknowledged, there was contact between Baileys and IGD investigators on 6 February 1998, and that contact did involve both discussion of issues around the maintenance of HMAS *Westralia* and more general issues around RAN contracting and maintenance. As such, there are legitimate questions about whether or not Baileys had warned Defence about issues that went in more general terms to the cause of the HMAS *Westralia* fire. As Senator Faulkner has characterised the allegations:

... the Department of Defence was **warned of the circumstances which may have contributed** to the tragic fire on HMAS *Westralia* in May 1998 ... Evidence to the Estimates Committee was that those allegations referred to **contracting practices** in

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<sup>19</sup> See for example Ian McPhedran and Amanda Gearing, ‘Left for Dead: Defence ignored safety warning and four sailors died—Navy’s Death Shame’, *The Daily Telegraph*, 14 February 2007, page 1.

part, but also to a warning that ‘sub standard and non-genuine’ parts were being fitted to Navy ships ...<sup>20</sup> [our emphasis]

2.6 As our investigation progressed, it became increasingly clear that the question whether Baileys’ contact with Defence on 6 February 1998 can reasonably be characterised as a warning about the circumstances that may have contributed to the HMAS *Westralia* fire. This can only be answered properly by reference to the historical context of Baileys’ dealings with Defence over this time.

2.7 This part of the report therefore begins with a brief description of Baileys’ history and early dealings with Defence and the RAN. It then works chronologically through the events leading up to the fire onboard HMAS *Westralia*, examining the form, nature and timing of any warnings or possible warnings provided by Baileys. Finally, this part of the report concludes with discussion of the nature and adequacy of Defence’s actions in 1998 taken in response to those warnings.

## Baileys and the Royal Australian Navy

2.8 Mr Stephen Bailey established Baileys in 1979 as a firm dedicated to the sale, service and repair of diesel fuel pumps and injection systems. Up until 1989, the firm’s activities were focused on the automotive diesel engine market. At around that time, Baileys identified a possible business opportunity in the larger single cylinder segment of the diesel engine market, such as power generation, mining, locomotives and marine diesel. In support of Baileys’ move into these markets, as well as opening up new business opportunities for manufacture and sales, Mr Bailey developed an ITE 2000 test bench to test large fuel injection equipment on medium speed engines to International Organization for Standardization (ISO) standards. The ITE 2000 test bench came online around 1996.

2.9 We understand from Baileys that it did carry out some small jobs for the RAN in the early 1990s. In 1995–96, once the test bench was operational, Baileys began more regular fuel injection service work for the RAN, first on Oberon class submarines, and then, in late 1996, the overhaul of 16 fuel injectors on HMAS *Tobruk*. It appears that Baileys were subcontracted to do most of this work by ADI. This work also brought Baileys into contact with ship’s crews and engineers, as well as Defence contracting officials.

2.10 After HMAS *Tobruk* in October 1996, Baileys worked on two fuel pumps from HMAS *Westralia* in August 1997, and the overhaul of fuel pumps on HMAS *Farncomb* in late-1998/early-1999 and on HMAS *Success* in early 2000.

2.11 We are also aware of a number of unsuccessful tenders by Baileys for subcontracted RAN work: on HMAS *Westralia* in February 1998; on HMAS *Tobruk* in March 1998; and again on HMAS *Westralia* in February 1999.

2.12 We understand that Baileys ceased tendering for RAN work from around 2000–2001.

2.13 Baileys are still in operation, trading now as Baileys Diesel Fuel Injection Pty Ltd. The automotive diesel engine market continues to be the mainstay of the business.

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<sup>20</sup> Senator Faulkner to Dr Vivienne Thom, Acting Commonwealth Ombudsman, 7 June 2007.



## Possible warnings prior to 1997

2.14 There have been on the public record to date allegations of only two specific warnings that could be said to go to the circumstances which contributed to the fire onboard HMAS *Westralia*, namely Baileys' warnings in August 1997 and again in February 1998.

2.15 In the course of our investigation, during a formal interview with Mr Ricky Erwin, General Manager at Baileys from 1995 to 2000, there was some suggestion that Baileys may have raised similar warnings prior to 1997. As noted at paragraph 2.8 above, Baileys was doing more regular work for the RAN from the mid-1990s, particularly on the *Oberon*-class submarines and HMAS *Tobruk*. In describing some of this early work for the RAN, Mr Erwin told our investigators:

So I think we got to look at a few different fuel pumps, a series of pumps like, not as an engine kit or as an overhaul thing, but just send us one or two for a service and that and what we started to find was these pumps that were turning up were just—we'd test them before we'd pull them down and just found the settings were way off the mark.

When we stripped them down, we found that they were full of non-genuine components, they had, like I said earlier, you know, copper washers in places where you need high pressure seals and things like that ... [We] took all this information back to Bob [Collins, Materiel Manager, Machinery and Propulsion, Naval Support Command Headquarters] again and, you know, kind of freaked him about because he's like 'this has been going on for years and years' and it's like it's a serious thing.<sup>21</sup>

2.16 Mr Erwin further stated that when Baileys took their concerns to Mr Bob Collins, Materiel Manager, Machinery and Propulsion, Naval Support Command Headquarters (NSCHQ):

Mr Collins started to challenge, you know, Naval—the way they did things about that and to go back to previous contractors and when worked failed, to actually—because what was happening was work would fail.

It would come back into stores and they would just put something else on the engine.

So there was no tracking of the failures. It was just oh, that pump's leaking, take it off, who cares who did it, who cares who did what to who, just get another one out of stores and off we go.

So there was no tracking of what was going on. So then he [Mr Collins] started to do this and started to follow stuff and then the unfortunate thing with that is then he got very ill ... and left work ...<sup>22</sup>

2.17 Mr Erwin was not able to provide our investigation with specific details and dates in support of his testimony above, and acknowledged that he had an imperfect recollection of dates and the sequence of events in particular.

2.18 We know from Defence records that Mr Collins started work with Defence in December 1965 and did not leave that work until January 2001. Mr Collins died in 2001.

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<sup>21</sup> Commonwealth Ombudsman 'Transcript of interview with Mr Ricky Erwin' dated 21 August 2007 (Erwin Transcript), page 8.

<sup>22</sup> Ibid.

2.19 We have not been able to identify any records that support the suggestion that Baileys raised concerns about the use of non-genuine spare parts in the RAN's fuel injection equipment at the time Mr Erwin's testimony to us suggests (around 1996 or early 1997).

2.20 We have seen contemporaneous documentary evidence which shows that Baileys did raise concerns about tendering and contracting processes with Mr Collins in January 1999, and a suggestion that Baileys raised similar issues with Mr Collins in early February 1998. This last reference also suggests that this may have been the first time that Baileys had approached Mr Collins with these issues. While this does not rule out Baileys having raised concerns earlier with Mr Collins, it certainly lends support to the notion that Mr Erwin is, as he acknowledges, mistaken as to his account of the sequence of these events.

2.21 The possible contact between Baileys and Mr Collins in February 1998 is discussed in greater detail below (at paragraph 2.54).

### **Possible Baileys' warning in August 1997**

2.22 In August 1997, CHES Diesel & Marine Services (CHES) subcontracted Baileys to strip and survey two main engine fuel pumps from HMAS *Westralia*. In his statement of 28 May 2007, Mr Bailey stated that Baileys provided an inspection report to CHES on or around 19 August 1997, the content of which was in point form and as follows:

- non-genuine spare parts
- fuel leaks
- concern for safety
- previous contractor would not have ISO test bench to calibrate the work correctly
- recommend remaining fuel pumps be serviced.

2.23 Mr Bailey said he could not find a copy of the inspection report nor recall if the inspection report was prepared by himself or by Mr Michael Evans, the technician who worked on the job, but stated he did remember the content and that he saw the report before it was sent to CHES. Mr Bailey's statement also included as an attachment a copy of a 'service report' from Baileys to CHES dated 24 September 1997 that refers to a 'previous inspection report', but does not shed any light on the form or content of that previous report.

2.24 When Mr Bailey's statement was raised during the Senate Foreign Affairs, Defence and Trade Committee's Budget Estimates hearing of 30 May 2007, Defence officials indicated that Defence had a copy of a document from Baileys to CHES dated 22 August 1997 (see below), written by Mr Michael Evans, and setting out the results of Baileys' inspection of two fuel pumps from HMAS *Westralia*. In evidence before the committee, Rear Admiral Ruting, Head of Maritime Systems, DMO, indicated that the 22 August 1997 document did not express any concerns about spare parts, nor make any mention of fuel leaks, concern for safety, or suggestion that any other fuel pumps from HMAS *Westralia* be serviced.<sup>23</sup>

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<sup>23</sup> Senate Foreign Affairs, Defence and Trade Committee, Budget Estimates, Wednesday 30 May 2007, page 40.

40 002  
 FUEL INJECTION PUMP  
 1977-8-22 314  
 S.E.M.T.-PIELSTICK  
 BCC-MAINTENANCE

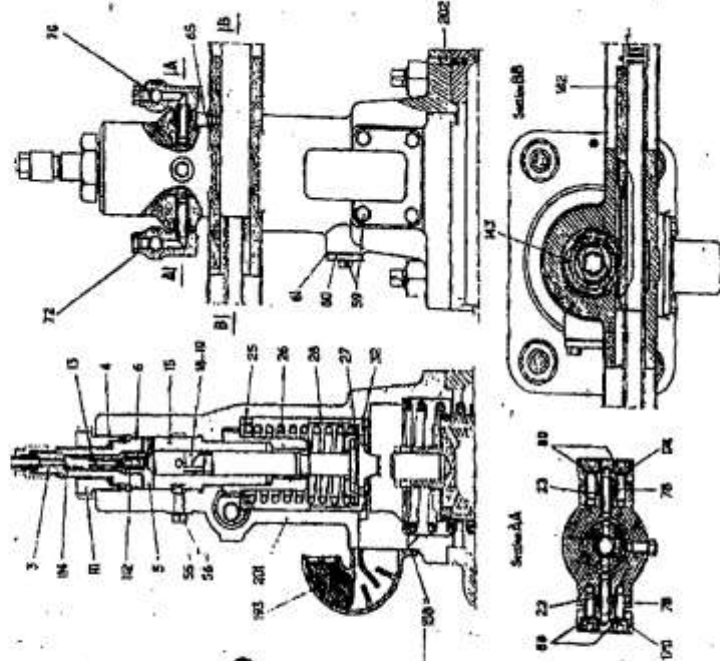


Fig. 2 - Fuel Injection pump present standard

ADL074.005.0017  
 Page 1 of 10

40 002  
 BAILEYS DIESEL SERVICE  
 PTY. LTD.  
 A/CAL 003 770 790  
 Member A.A.D.S.  
 Authorised Agent  
 Broth, Byron  
 C.A.U. Diesel Unit  
 ALSO SERVICE  
 Sign, Roma Motor

**FACSIMILE COVER SHEET**

Please advise by telephone 41 43 723 000 if there is any problem with this transmission.  
 If this fax has been sent to you by mistake, please do not return the fax by post. We will pay your costs. This fax may contain information which may be confidential. Therefore you must not use the fax or information within it, in any way.

TO: CBES ENGINE RECONDITIONING FAX No: 08 5335 8435  
 ATTENTION: Mr Paul Couphy YOUR REF: WT A1124  
 FROM: Michael Brails OUR REF:  
 DATE: 22 August 1997 PAGE(S): 1 of 2  
 PAUL

We have erigped and inspected the two fuel pumps type 27A-A 7649 as per your order and would like to report as follows -

- Pump No 8322 72
- Slipring assembly not serviceable (Items 15, 18-19)
- Delivery valve assembly not supplied (Items 3, 11A, 11, 12, 112, 6, 5)
- Broken pipe in housing assembly (Item 70 needs to be drilled out)
- Broken bolt from 78 needs to be removed.

- Pump No 8775 73
- Slipring assembly not serviceable (Items 15, 18-19)
- Delivery valve not serviceable (Items 3, 11A, 11, 12, 11A, 13, 6)

- The remote broken end and broken pipe \$155.00 extra
- Items needed to be supplied from vessel
- 2 No Item 15 18-19
- 2 No Item 3
- 2 No Item 6
- 2 No Item 11A
- 2 No Item 12
- 2 No Item 55
- 2 No Item 112
- 1 No Item 3
- 1 No Item 131
- Your assembly

Michael Brails  
 Field Service and Sales Engineer

ADL074.005.0016

DIESEL FUEL INJECTION SALES AND SERVICE

2.25 During a formal interview with our investigators, Mr Evans confirmed that the 22 August 1997 document was the report that he had provided to CHES following the survey and inspection of the two HMAS *Westralia* fuel pumps, and which was the ‘previous inspection report’ referred to in the service report to CHES dated 24 September 1997. Mr Evans further confirmed that he had not sent any written report to CHES expressing concerns about spare parts, fuel leaks, or safety, or suggesting that any other fuel pumps from HMAS *Westralia* be serviced.

2.26 In a formal interview with our investigators on 31 July 2007, Mr Bailey stated that he had been in contact with Mr Evans after making his 28 May 2007 statement, and he now accepted that his recollection of an inspection report as he had outlined in that statement was incorrect. Mr Bailey also accepted that Baileys had not provided any documentation to CHES expressing concerns, but believed that concerns about spare parts and other issues had been raised with CHES in telephone conversations. Mr Bailey also felt that Mr Evans and Mr Erwin would be able to provide us with further information about those concerns and conversations.

2.27 When we asked Mr Evans about what issues of concern he had identified in his survey and inspection of the two HMAS *Westralia* fuel pumps, Mr Evans stated that the only problem identified related to the use and supply of what he described as ‘non-identifiable parts’; that is, either parts already in the fuel pumps as they had been sent to Baileys, or parts subsequently supplied by CHES from the RAN that did not have ‘formal [manufacturer’s] identification’ on them or were not in original packaging. As such, Mr Evans could not be certain whether or not the parts were ‘genuine’, that is, parts manufactured or supplied by the original fuel pump manufacturer.

2.28 Mr Evans could not recall if he raised the issue around ‘non-identifiable parts’ with CHES either in person or during a telephone conversation.

2.29 Mr Erwin confirmed that the survey and inspection of the two HMAS *Westralia* fuel pumps in August 1997 had identified the problem of non-genuine spare parts. Mr Erwin was also more confident than Mr Evans that this information had been conveyed to CHES, and believed that Baileys may have conveyed their concerns about the use of non-genuine spare parts on HMAS *Westralia* directly to Defence, but he had no firm recollection of the form, timing or recipient of any such communication.<sup>24</sup>

2.30 Mr Evans was also unable to recall if Baileys went on to use the ‘non-identifiable’/non-genuine parts supplied by the RAN in rebuilding the two HMAS *Westralia* pumps, but believed that this was possible:

I don’t know whether I’ve raised it [the supply of non-genuine parts] ... or we just said, okay you’ve supplied me these spare parts, this is what we’re using.<sup>25</sup>

2.31 The documentary evidence suggests that Baileys used the parts supplied by the RAN to complete the job. There was certainly no charge or other indication on Baileys’ billing documentation to CHES that Baileys had sourced other spare parts to complete the work on the HMAS *Westralia* pumps.

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<sup>24</sup> See the comments at paragraphs 2.15 and 2.16 of this report.

<sup>25</sup> Commonwealth Ombudsman ‘Transcript of interview with Mr Michael Evans’ 13 August 2007 (Evans Transcript), page 15.

2.32 When we approached CHES, they had no records and no recollection of Baileys passing on concerns about the use of non-genuine parts in the RAN fuel injection equipment.

2.33 We have identified no Defence records that would indicate Defence was aware of Baileys' concerns at this time.

2.34 On the basis of the evidence identified and reviewed by our investigation, we are satisfied that Defence was not aware of Baileys' concerns about the use of non-genuine spare parts, either generally, or specifically in relation to HMAS *Westralia*, in or around August 1997.

### **Possible warnings between September 1997 and 5 February 1998**

2.35 This section examines the period from Baileys' dealings with CHES on the two HMAS *Westralia* pumps, up to (but not including) 6 February 1998. Although the recent media allegations did not refer to any warnings from Baileys in this period (September 1997 to 5 February 1998), we felt that it was important to look at this period closely and to set out our findings in some detail. The interactions between Baileys and Defence during this period, while not necessarily related to issues about or around HMAS *Westralia*, provide a necessary context to the events of 6 February 1998 and after.

2.36 In November 1997, Baileys again contacted Defence officials, this time in relation to concerns about Defence contracting processes and the alleged misconduct and/or fraud of Officer X, a Contract Repair Control Officer (CRCO) operating out of the Defence National Stores and Distribution Centre (DNSDC) in Moorebank, Sydney, in relation to a possibly fraudulent invoice for Baileys' services.

2.37 Baileys' complaint about Officer X and DNSDC was initially raised with Defence by the New South Wales Independent Commission Against Corruption (ICAC), to whom Baileys had taken a series of corruption allegations across a range of jurisdictions, including the allegation involving DNSDC. As this matter was beyond the jurisdiction of ICAC, the allegations were referred on to the relevant DNSDC authorities in November 1997, finding their way through to Captain J Wood, Commander of DNSDC.

2.38 On 24 November 1997, Captain Wood wrote to Baileys, thanking them for raising their complaint, and advising that the matter was being investigated.<sup>26</sup> Major R P Playford was appointed as the Investigation Officer. On 1 December 1997, following meetings between Baileys and Major Playford and Warrant Officer Cherry of DNSDC, Baileys lodged a formal complaint, with supporting statement and documentation. They alleged that Officer X had asked Baileys to dishonestly increase an invoice by \$470.40. Baileys were concerned that the purpose of Officer X's request was to compromise Baileys with a view to Officer X's gaining favours at a later date.

2.39 Major Playford's investigation was confined to the allegations about Officer X. Our investigation has identified no evidence that Baileys raised with Major Playford either any specific concerns involving HMAS *Westralia*, nor any broader concerns about Defence maintenance and contracting.

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<sup>26</sup> Transcript of IGD meeting with Baileys on 6 February 1998 (Baileys 1998 Transcript), page 15.

2.40 On 18 December 1997, Major Playford submitted his investigation report to Captain Wood, confirming Baileys' allegation about the increased invoice and attributing this to Officer X's 'lack of personal integrity and considerable laziness'. The report also identified a number of systemic weaknesses within DNSDC's handling and oversight of contracts.

2.41 The report recommended that disciplinary action be taken against Officer X, including suspension from his duties as a contracts officer, and made a further six recommendations, including recommendations that:

- an investigation into the conduct of all [DNSDC] contract repair processes be conducted ... [and]
- a review of [DNSDC] procedures be conducted with consideration to arranging repairs by standing offer or period contract ...

2.42 Although Major Playford's recommendations addressed systemic issues concerning repair contract management, it is important to understand that both Baileys' allegation, and Major Playford's investigation and recommendations, were confined to activities within DNSDC. There has never been any suggestion that Baileys' allegation about Officer X related in any way to the use of sub-standard or non-genuine parts, or to more general safety concerns about RAN maintenance. Nor was DNSDC in any way connected to maintenance contracts for HMAS *Westralia*, which had its own maintenance office under the Ordering Authority of Western Australia.<sup>27</sup>

2.43 Captain Wood accepted Major Playford's findings and recommendations on 15 January 1998, and referred them to his commanding officer at Support Command Australia Headquarters (SCAHQ) Melbourne on 22 January 1998, together with information about the audit of all DNSDC's CRCOs and seeking direction on Officer X's suspension.

2.44 On 3 February 1998, SCAHQ forwarded Major Playford's report to Mr Garry Ryle, Director, Fraud Investigation and Recovery, IGD, for advice on some of the recommendations, and for any information the IGD might hold on any other fraudulent activity by Officer X. In turn, Mr Ryle forwarded it on to Mr Mark Leishman, Deputy Director, Fraud Investigation and Recovery.

2.45 Mr Leishman was team leader of the IGD's SIT, which had been set up to investigate a series of allegations about corruption in the Naval Police Coxswain (NPC) service and DNSDC.<sup>28</sup>

2.46 The SIT was also learning about Baileys through other sources in early 1998. On 20 January 1998, during meetings at DNSDC, Federal Agent Peter Smythe, on secondment to the SIT from the AFP, received information 'that DNSDC is currently conducting internal investigations into large diesel discrepancies relating to Baileys/Baleys/Balys diesel supplies'.<sup>29</sup>

2.47 On 23 January 1998, again during meetings at DNSDC, Federal Agent Smythe and Sergeant Andrew Harper (another SIT member) were advised that Warrant Officer Cherry from DNSDC had received a telephone call from Mr Rick Laws of ICAC:

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<sup>27</sup> *Westralia BOI report*, page 169.

<sup>28</sup> See Appendix A for background information about the SIT (Special Investigation Team).

<sup>29</sup> Peter Smythe, occurrence sheet 160, 20 January 1998, SIT occurrence sheet register.

Re corruption inquiry (Baileys) regarding an employee from DNSDC. WO2 Cherry suggested that in light of what is occurring at DNSDC, Rick Laws should be consulted.<sup>30</sup>

2.48 On 3 February 1998, Sergeant Harper contacted Mr Laws of ICAC, and recorded the following record of conversation:

ICAC received a complaint from a Manager/Director of Baileys Diesel Services, Unanderra, NSW, regarding the inference/request of a kick back from DNSDC whilst tendering for a contract there ... Baileys Manager irate, as in the past he had been requested or had to be involved with kickbacks on tendering for contracts with Military establishments especially Navy. [Rick Laws] Believes that he has further information on DNSDC. Manager there very cooperative ... Apparently he has a lot of information to pass on ...<sup>31</sup>

Sergeant Harper's file note also indicates that 'Mark Leishman informed'.

2.49 On 5 February 1998, Sergeant Harper lodged another occurrence sheet detailing a further conversation with Mr Laws of ICAC and related follow-up action:

Mr Laws stated that he had received a telephone call from a Mr Rick Urwin [*sic*]. Baileys Diesel, Unanderra, NSW, who indicated that the pressure was being put on him by a Navy chap in relation to his knowledge of Navy contracts. He also said that he had been approached by a male from DNSDC who had informed him that allegations about DNSDC and its tendering process had been investigated, that everything was fine, and don't worry about anything. Mr Laws stated that ICAC were under the impression that Baileys Diesel had a lot of information that would be worthwhile to this investigation ...

#### Action Taken

1. ICAC informed that IG's would look into the matter and requested that they forward copies of any relevant information relating to the allegations.
2. Glenda [Bannerman, Executive Assistant to Mark Leishman] informed at 1530 hr.
3. Dave [Ryan, a member of IGD's Special Investigation Team] and Peter [Smythe] informed at 1530 hr.
4. Baileys contacted and an appointment for 0830 hr 6 Feb 98 with the Directors of the firm confirmed at 1545 hr.\*
5. Mark Leishman informed of the meeting at 1600 hr.
6. Dave and Peter to attend the meeting on 6 Feb 98.

\* Mr Rick Urwin [*sic*] stated that he wished to speak to an Investigator urgently as he was due to have a meeting with a Naval member to work out issues relating to kickbacks. He further stated that he had a lot to say in regards to the Defence Dept and that he would not know where to begin.<sup>32</sup>

<sup>30</sup> Andrew Harper, occurrence sheet 190, 23 January 1998, SIT occurrence sheet register.

<sup>31</sup> Andrew Harper, Record of Conversation, occurrence sheet 214, 3 February 1998, SIT occurrence sheet register.

<sup>32</sup> Andrew Harper, Record of Conversation, occurrence sheet 226, 5 February 1998, SIT occurrence sheet register.

2.50 These actions were the precursor to an interview on 6 February 1998 between Baileys and Federal Agent Smythe and SIT member Mr Ryan. That interview, in turn, is the subject of the 6 February 1998 document that is now central to the allegation that Defence was forewarned about a safety risk to HMAS *Westralia*.

2.51 The 6 February 1998 interview and its outcomes are considered in detail below. However, before going on to that discussion, two additional matters are worthy of note.

2.52 First, our investigation has identified no documents concerning Baileys' contacts with Defence prior to 6 February 1998 that refer either to sub-standard and/or non-genuine parts, or to Baileys having expressed any concerns about the safety of HMAS *Westralia*.

2.53 Some Defence documents do refer to Baileys' concerns about certain aspects of Defence contracting. However, the only specific allegations were those relating to Officer X and the DNSDC. None of the other concerns expressed by Baileys, as recorded in these documents, can reasonably be said to relate to circumstances that may have contributed to the HMAS *Westralia* fire.

2.54 The second matter worth noting is the likely meeting between Baileys and Mr Bob Collins, Materiel Manager, Machinery and Propulsion, NSCHQ, in early February 1998. As we noted at paragraph 2.21 above, the transcript of Baileys' 6 February 1998 interview with Mr Smythe and Mr Ryan refers to a meeting between Mr Erwin and Mr Collins in Sydney on 4 or 5 February 1998:

[ERWIN]: ... I went to the Navy with this [allegations about breaches to Quality Assurance (QA) and the failure to regulate QA], this week – to Bob Collins ...

[ERWIN, in response to a question about whether he had heard anything since talking with Bob Collins]: ... I only saw him yesterday [5 February 1998] ... No, sorry, the day before yesterday ... Wednesday [4 February 1998] ...<sup>33</sup>

Mr Stephen Bailey, later in the transcript, suggests that the meeting was 'yesterday', that is 5 February 1998.<sup>34</sup>

2.55 Sergeant Harper's 5 February 1998 record of conversation (at paragraph 2.49 above) notes:

Mr Rick Urwin stated that he wished to speak to an Investigator urgently **as he was due to have a meeting with a Naval member to work out issues relating to kickbacks** [our emphasis] ...<sup>35</sup>

This could be a reference to a meeting with Mr Collins. We are not aware of any other planned meetings between Baileys and Defence to which this could be referring, but the apparent timing of Sergeant Harper's discussion with Mr Erwin—3.45 pm—would not have left much time for such a meeting to occur.

2.56 Defence has been unable to locate any record of a meeting between Mr Collins and Mr Erwin on or around 4 or 5 February 1998, or any other time, and as we noted at paragraph 2.18 above, Mr Collins passed away in 2001.

<sup>33</sup> Baileys 1998 Transcript, pages 30 and 38.

<sup>34</sup> Baileys 1998 Transcript, page 44.

<sup>35</sup> Andrew Harper, Record of Conversation, occurrence sheet 226, 5 February 1998, SIT occurrence sheet register.



2.57 Notwithstanding the absence of Defence documentation, and the uncertainty around the specific date of any meeting between Mr Erwin and Mr Collins, in our view the available evidence supports the conclusion that Baileys did raise concerns with Mr Collins in or around early February 1998.

2.58 This evidence includes the references to such a meeting in the contemporaneous taped record of Baileys' 6 February 1998 interview, which also provides some indication of the issues Baileys raised with Mr Collins. In summary, these issues included:

- breaches of Quality Assurance processes with respect to RAN maintenance
- RAN maintenance work and the provision of spare parts without warranty
- corrupt activity by Officer Y, a RAN contract officer, particularly with respect to the improper letting of work and an improper relationship with a particular supplier of parts, Diesel and Components Pty Ltd.

2.59 As our only source for the content of any discussion between Baileys and Mr Collins is the taped record of the almost contemporaneous and seemingly parallel discussions with the IGD on 6 February 1998, we have held over more detailed discussion of the nature of those issues to the next section. We can say, however, that we have seen no evidence that Baileys made any reference to HMAS *Westralia* in its discussion with Mr Collins.

2.60 Defence's handling of the issues raised with Mr Collins is separately discussed in the section 'Defence's response to Baileys' warnings' (paragraphs 2.136 to 2.169).

### **Possible Baileys' warning of 6 February 1998**

2.61 As we noted at paragraph 2.58 above, it is an established and accepted fact that Baileys and two IGD investigators, Mr Smythe and Mr Ryan, met on 6 February 1998. What has been at issue is the content of that day's discussions, and whether or not those discussions can reasonably be regarded as a warning about circumstances that may have contributed to the HMAS *Westralia* fire.

2.62 It is necessary therefore to look at the available evidence about what Baileys said on 6 February 1998, what Baileys meant, what the two IGD investigators understood Baileys to mean, and what if anything was further communicated within Defence about those discussions.

2.63 This section will also look in more detail at the content of any discussions between Baileys and Mr Collins in or around early February 1998, as set out in the available records of the 6 February 1998 meeting between Baileys and the IGD.

2.64 To date, the evidence that has dominated the public consideration of these issues is the 6 February 1998 document. However, there are significant questions about that document's authenticity and provenance. Both Defence and the AFP have provided detailed observations calling the authenticity of the 6 February 1998 document into question, particularly in its signed form. Many of these questions have also arisen directly in the course of our investigation.<sup>36</sup>

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<sup>36</sup> See Appendix B for more discussion about the provenance and authenticity of the 6 February 1998 minute.

2.65 After reviewing thousands of Defence records, as detailed at paragraph 1.36, our investigation has not found any versions of the 6 February 1998 document, nor any contemporaneous reference to it, on any Defence files created prior to 2005.

2.66 The earliest appearance of the unsigned 6 February 1998 document that we have been able to confirm is in April 2004, when Ms Liz Jackson of the ABC Television's 'Four Corners' program provided a copy to Mr David Ryan. The earliest appearance of the signed 6 February 1998 document that we have been able to confirm is in May 2007, when it appeared in the press.

2.67 Mr Smythe, under oath, informed our investigators that he had kept an electronic copy of the 6 February 1998 document after leaving the IGD. He stated that in March 1998 he had printed a copy of the document—unsigned and without AFP letterhead—and provided it to the AFP as an attachment to a report and complaint about his time with the IGD.

2.68 As noted earlier (paragraph 1.38), following our interview with Mr Smythe, we served a formal notice on the Commissioner of the AFP for access to all AFP records relevant to our investigation. The AFP responded on 4 September 2007, indicating that it had conducted 'an exhaustive search of its electronic and hard copy holdings' but had no record of the 6 February 1998 document 'ever having been created, forwarded, or stored on AFP databases'. We were not able to find any copies of this attachment in any other location.

2.69 Mr Smythe also suggested that there may have been electronic copies of the document held within Defence.<sup>37</sup> In light of this, and in the absence of clear contemporaneous evidence of the 6 February 1998 document in its current form and content, we cannot rule out the possibility of someone creating or altering the document after 6 February 1998, including after the HMAS *Westralia* fire itself.

2.70 In any case, even if the 6 February 1998 document is genuine, our investigation has identified significantly more evidence about Baileys' meeting with the IGD. This evidence provides a more comprehensive and accurate picture of the nature and context of any warning Baileys might have given on 6 February 1998.

2.71 The most important piece of evidence is the taped record of the 6 February 1998 interview. The tape was lodged in the IGD's exhibits safe shortly after the meeting, in accordance with the IGD's standard practice for such meetings. The tape was transcribed in 2005. We have read the transcript while listening to the tape, and can verify that it is an accurate record of the discussion recorded on it. A copy of the full transcript is included with this report at Appendix C.<sup>38</sup>

2.72 However, it is also clear that the tape does not provide a complete record of the discussions on 6 February 1998.

2.73 There is some dispute about the number of tapes that were made, and about whether the tape or tape-recorder malfunctioned.<sup>39</sup> The most reliable contemporaneous evidence available—the IGD exhibit register receipt signed by Mr Ryan—states that only one tape was lodged.

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<sup>37</sup> Commonwealth Ombudsman 'Transcript of interview with Mr Peter Smythe' 17 July 2007, pages 39 and 113 (Smythe Transcript) although it is not clear if these references would include the 6 February 1998 document.

<sup>38</sup> See Appendix C for transcript (on disk inside back cover of report).

<sup>39</sup> See discussion in Appendix B.

2.74 However, the fact of a problem with either the tape or tape-recorder during the meeting is clear from the tape itself, which cuts in and out just after half way into the discussion. It cannot be known for certain how much time was taken up attempting to restart the tape, but it does not seem to have been more than a minute or so. The lost discussion is likely to have focused primarily on the problem with the tape itself.

2.75 Further, Mr Ryan's diary indicates that he and Mr Smythe arrived at Baileys at around 9.00 am on the morning of 6 February 1998. The taped record of interview started at 10.10 am. Even allowing for introductions and explanations of the visit, there would still have been some significant preliminary discussions before the tape was started.

2.76 The tape finally cuts out at or around 11.30 am, without the interview formally concluding. According to Mr Ryan's diary, he and Mr Smythe left Baileys at 12.10 pm on 6 February 1998. This suggests that there was up to forty minutes for further conversation after the tape cut out. Some of this time would have been taken up in outlining future courses of action, including the possibility of a return visit by the IGD and further interviews. It is, nevertheless, reasonable to assume that there may well have been further discussion on matters of substance for some time after the tape stopped.

2.77 Notwithstanding the gaps in the taped record and transcript, they provide us with both the most complete and the most objective contemporaneous record of the meeting. We have tested the accuracy of that record with each of the four parties to the meeting. All have confirmed that, to the best of their recollection, it provides a reasonable record of the content and nature of the discussion they had on the morning of 6 February 1998.

2.78 In light of this, and also of the balance of the testimony of each of those parties, and of standard investigative and interview techniques, it is reasonable to assume that the tape and transcript do provide an accurate picture of the nature, and probably much of the content, of any discussion that took place before and after the tape was running.

2.79 It is difficult to imagine, for instance, that any initial discussion would have been highly detailed and specific, particularly as the subsequent taped conversation is more accurately characterised as general and largely non-specific. It is also difficult to imagine that, once the tape was running, the investigators would have ignored matters of significance that had been discussed prior to the tape commencing, although these may have been matters that were discussed after the tape or tape recorder malfunctioned.

2.80 Baileys' allegations about the RAN that were recorded on 6 February 1998 are summarised below.

- Forgacs Shipyards was doing unnecessary, costly and sub-standard work on the 'two American ships' [HMAS *Kanimbla* and HMAS *Manoura*].
- A particular company, Diesel and Components Pty Ltd, was responsible for unnecessary work on the engines for HMAS *Kanimbla* and HMAS *Manoura*.
- There was no proper tendering process for the work on the fuel systems for the HMAS *Kanimbla* and HMAS *Manoura* engines.
- This work was not going through proper Quality Assurance processes.

- Spare parts were being fitted without warranty and engines were being serviced by ‘someone who doesn’t know what they’re doing’.
- Work on fuel systems was not being tendered out as a separate item.
- Officer Y, a Defence contract official, had been improperly managing the letting of repair and maintenance contracts, had an improper relationship with Diesel and Components Pty Ltd, and was seeking to improperly influence Baileys by offering work in exchange for Baileys’ silence.
- Diesel and Components Pty Ltd operated ‘out of a boot of a car’ and was supplying ‘pirated parts’ to the RAN ‘with no backup’.
- Forgacs (and others?) were inflating prices, which were being accepted without competitive tenders.
- Forgacs (and others?) were otherwise defrauding the Australian government.
- Baileys, as an authorised agent for various fuel injection systems, were being improperly excluded from bidding on fuel injection work.
- In 1996 HMAS *Westralia*’s engine ‘blew up’, ‘exploded into a million pieces’, after Forgacs serviced it, and the ship had to be towed into Darwin for repairs.
- Forgacs were winning contracts due to political pressure and influence.
- HMAS *Westralia*’s engine exploding ‘into a million pieces’ was an example of Forgacs not doing the work they charged for and then charging to redo the work.

2.81 As this summary shows, Baileys’ allegations of 6 February 1998 included both specific references to problems with HMAS *Westralia*’s engine, and general references to problems with the management and monitoring of RAN maintenance contracts, poor quality maintenance work on RAN vessels, failings in RAN Quality Assurance processes around contracted maintenance work, and the use of what Baileys described as ‘sub-standard’ and ‘non-genuine’ spare parts.

2.82 These general issues were also identified by the HMAS *Westralia* BOI and the Western Australian Coroner’s inquiry as factors contributing to the fire onboard HMAS *Westralia* in May 1998.

2.83 It could only be argued superficially that Defence was being warned on 6 February 1998 of circumstances that may have contributed to the fire on HMAS *Westralia* in May 1998, given the weight of information that reasonably contradicts this assertion.

2.84 When looked at this in context, however, it becomes more difficult to sustain an argument that Baileys’ allegations were either meant, or understood, as in any way being a safety warning, or that the issues they were raising could reasonably be construed at the time as circumstances that could cause a fire onboard either HMAS *Westralia* or other RAN ships.

2.85 The first matter to note is that, in 58 pages of transcript, there are just two references to HMAS *Westralia*. The first does not appear until page 47, and both references were more by way of passing example rather than specific warning or statement.

2.86 During the interview with our investigators, Mr Smythe stated that HMAS *Westralia* had featured in some of the earlier discussion of 6 February 1998, prior to the taped discussion.

- SMYTHE: There's no doubt there was considerable discussion beforehand.
- As I said to you, there was a practice that we adopted with everyone was to, you know, we had to establish that rapport and, you know, settle them down.
- They wanted to know as much about us as us about them and, you know, so there was general conversations, can you give us examples and things like that and I'm sure we'll get to it and that's why the *WESTRALIA*'s mentioned in this because we had – and the way it's typed, and I would believe, the way it's spoken is that he's referring to the *WESTRALIA* as the good example because that's what we spoke about previously.
- INVESTIGATOR: Okay. So in other words, they were specific references to *WESTRALIA* in the earlier - - -
- SMYTHE: In the – yes.
- INVESTIGATOR: - - - conversations?
- SMYTHE: Yes.
- INVESTIGATOR: Okay. So in some ways, the references back – these are almost references back to this?
- SMYTHE: Yes, correct. Because I would've said to him, I'm sure, you know, 'if we were to record this, you know, could you give us examples'.
- It would've been something like that, you know. I would've said to him, 'listen, you know, Steve, these are very serious allegations and we'd like to go away with some specifics because we have to report this', you know, we're talking about, you know, people getting injured and all that sort of stuff and they were, 'yes, sure, no worries, yes. We can give you', you know, and they started talking about the *WESTRALIA* and, I can't remember what it was about these other two vessels [HMAS *Kanimbla* and HMAS *Manoura*].
- ...
- INVESTIGATOR: The references to the *WESTRALIA* in here [the transcript] were not the first time the *WESTRALIA* had been referred to?
- SMYTHE: No.
- INVESTIGATOR: They had referred to them in the – that, sort of, pre-conversation?
- SMYTHE: Pre-amble—oh, I think that's fairly evident [from the transcript] ...<sup>40</sup>

2.87 None of the other parties to the 6 February 1998 meeting had any specific recollection of discussing HMAS *Westralia* prior to the taped discussion.

2.88 It is possible that HMAS *Westralia* was discussed before the tape was started and/or after it stopped. However, it is impossible to say much about the content of any such discussion beyond observing, as we noted at paragraph 2.79 above, that it is unlikely that any such discussion would have been in greater detail than the references to HMAS *Westralia* that do appear in the transcript.

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<sup>40</sup> Smythe Transcript, pages 51–52 and 63.

2.89 The second point to note is the specific contexts in which HMAS *Westralia* was referred to.

2.90 In the first instance where HMAS *Westralia* was mentioned, the discussion concerned allegations about the RAN's failure to properly monitor and manage warranties in relation to ship repairs.

Q363 Right. So just getting back to the – if I can just follow the warranty side of things, if this stuff [non-genuine component parts] was installed on these vessels ... it's obviously not under warranty. If the equipment was to fail again, the Navy would have to go through the same process again, wouldn't it?

[ERWIN] Yeah.

BAILEY And it happens quite regularly.

Q365 It's almost ---

ERWIN And that's ---

Q366 I'm an outsider looking in, but to me it looks as – almost as if that's a deliberate thing.

BAILEY Could be.

Q367 So they just – it's just a ---

ERWIN So ---

Q368 --- It's just a circle that just keeps going ---

BAILEY It happens all the time.

Q369 --- and going.

ERWIN Yeah. Yeah.

Q370 So we're constantly having ships refitted ---

ERWIN Yeah.

Q371 --- when really ---

BAILEY The *Westralia* is a perfect example. Forgacs did the engine on that, it blew up, went up and had it all fixed and they [Navy] had to pay for it again ---

ERWIN Yeah.

BAILEY --- no questions asked.

Q372 How long ago was that?

BAILEY Not long ago.

ERWIN That was [---]

BAILEY But this happens all the time --- (indistinct) ---

ERWIN [---] '96.

BAILEY --- (indistinct) --- ...common thing.

Q374 Now, hang on ---

ERWIN End of '96.

Q375 --- a minute. If this happens all the time, then ---

ERWIN Then why isn't it addressed?

Q376 --- addressing – that's right, that's the first thing. But the reason the Navy's having to pay for it all the time is because they're foregoing their warranties by using these non---

ERWIN Substandard.

Q377 --- authorised parts and fitters, or whatever.

ERWIN Don't know about that either.

BAILEY Well, I think if it becomes political, then they're not game enough to touch it ...<sup>41</sup>

2.91 The discussion then went on to how Baileys would do the same work using genuine parts with a full warranty, so if the part failed the RAN could expect the work to be repaired by them without cost.

2.92 The second reference to HMAS *Westralia* was also about RAN repair work not being carried out under warranty, and more generally work going to Forgacs Shipyard in Newcastle for political reasons:

Q410 I wonder what political pressures are being brought to bear on the work going to Newcastle.

ERWIN Lots.

BAILEY Yeah. Because there was an article in the paper the other day with just --- (indistinct) --- Forgacs – the government – say the government up there – how much was it?

ERWIN That was – that was a deal ---

BAILEY Yeah, but that ---

ERWIN --- because BHP had closed down and that was ---

Q411 Yeah, just to keep things ticking over.

ERWIN Yeah.

BAILEY Yeah.

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<sup>41</sup> Baileys 1998 Transcript, pages 46–48.

- ERWIN Give them a couple of million dollars. But, I mean, that was – that was the other thing – the refit on the *Westralia* engine.
- BAILEY --- (indistinct) ---
- ERWIN We believe – and the people at ADI have told us – that they actually won that contract and then, the week before it was to come into dry dock in at ADI it went to Newcastle.
- Q412 Why?
- ERWIN They never got an answer. And they ---
- BAILEY Everybody – everybody’s asking that question.
- ERWIN --- and actually they told us – didn’t they – they did take that to the Minister of the day and received no response.
- Q413 How long ago was that?
- ERWIN ’96. And then it [*Westralia*] came out of Forgacs, it just got outside of Darwin and the engine exploded into a million pieces. But, hey, us taxpayers will just pay for it again. And that was funny, because I was talking to a guy the other day – the engineer who went up who was the agent for the – for that engine in the country, who went up to survey the engine after it blew up and said, ‘Well, you know, these guys [Forgacs] haven’t done what you’ve [Navy] been charged for. You know, you’re laughing, you know. You’re going to get all this under warranty.’ It was dropped.
- BAILEY Didn’t want to know nothing.
- Q414 Yeah?
- BAILEY Yeah.
- Q415 Are there problems with having repairs done under warranty? I mean, would there be unnecessary delays or ---
- ERWIN No.
- Q416 I mean, why would they shy away from doing work under warranty?
- ERWIN Because ---
- BAILEY Probably ‘cause it’s been the done thing for so many years. It’s just the way the circle goes.
- ERWIN It’s probably a couple of things. One, they were never qualified to do that type of work. They should never have been allowed to do that type of work. And what spare parts went into the engine and what was charged for ...<sup>42</sup>

2.93 The discussion then went on to what Baileys would do if an engine they had worked on failed, and how Baileys had insurance to cover themselves for work they might have to do under warranty.

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<sup>42</sup> Baileys 1998 Transcript, pages 52–54.



2.94 Thus, the only references to HMAS *Westralia* in the taped record of the meeting related to past events, not to possible future events, and both references were by way of example of more general problems about which Baileys were concerned. Significantly, neither reference to HMAS *Westralia*:

- mentioned HMAS *Westralia*'s fuel system, fuel pumps or fuel lines
- mentioned any general or specific safety risks or dangers to HMAS *Westralia*
- used the words 'safety', 'danger', 'risk', or any other words we might usually expect to see in a warning
- mentioned Baileys' direct experience with HMAS *Westralia* (working on the two fuel pumps in 1997).

2.95 Other than these two specific references, there was nothing else to connect HMAS *Westralia* with the specific names, dates and places that Baileys provided to the IGD investigators. For example, there was no suggestion that any of the named firms that Baileys criticised, nor any of the named Defence officials, had any involvement in HMAS *Westralia*'s maintenance in the lead-up to the fire. Similarly, as noted above, there was no link between the actions of Officer X and DNSDC and HMAS *Westralia*'s maintenance.

2.96 Baileys did refer to ADI, then the prime contractor for HMAS *Westralia*, but these comments were not critical and did not link ADI to the corrupt practices Baileys described. As we understand it, in February 1998, Baileys had a relatively positive and productive relationship with ADI, through whom they had obtained some RAN work.

2.97 Even where the references to HMAS *Westralia* could be construed as potentially linked to safety issues—for example, the reference to an engine exploding into a million pieces, which would appear to be a reference to an inherently unsafe situation—Baileys' focus, and the direction of the subsequent IGD questions, were not on safety, but rather on the financial cost and waste of public money: 'But, hey, us taxpayers will pay for it again'.

2.98 The impression that the discussion of 6 February 1998 was focused on corruption and public waste, not safety, is reinforced when the whole of the 6 February 1998 transcript is read.

2.99 The common theme of the 6 February 1998 taped record is not the RAN, or even Defence, but corruption in the engine maintenance and repair industry. Eight-and-a-half pages of the 58 page transcript concern allegations of corruption in the letting and management of maintenance contracts by state transport authorities. A further 14 pages of the transcript relate to the allegations about Officer X and the subsequent DNSDC investigation (see paragraphs 2.36 to 2.53 above), which Baileys see as relating to the Australian Army (Army), not the RAN.

2.100 As noted above (paragraph 2.81) Baileys' general allegations relating to the RAN centred around the management and monitoring of RAN maintenance contracts, poor quality maintenance work on RAN vessels, failings in RAN Quality Assurance processes around contracted maintenance work, and the use of what Baileys described as 'sub-standard' and 'non-genuine' spare parts.<sup>43</sup>

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<sup>43</sup> In Part 3 of this report there are some questions about the substance of some of these issues.

2.101 As with the specific references to HMAS *Westralia*, the words ‘safety’, ‘danger’, ‘risk’, or any other words we might usually expect to see in a warning or discussion about safety, were not used at any time during the 80-minute taped record of that meeting.

2.102 Our investigators also asked all four of the parties to the 6 February 1998 meeting to provide their own characterisation of the overall subject or nature of the discussions at that meeting, with full knowledge that we were investigating an allegation that the RAN had been forewarned of the safety risk to HMAS *Westralia*.

2.103 Mr Smythe was the only one who said that the central issue was safety.

2.104 When we asked Mr Bailey to describe in general terms the content of his discussion on 6 February 1998, he independently volunteered ‘corruption’:

INVESTIGATOR: ... What we might do is just very quickly talk a bit about the content of the discussion you had with Smythe and Ryan that day [6 February 1998] and we’ll then leave you with the transcript and you might be able to have a look through that ...

So just in very general terms, what do you recall being the content of that discussion? What were the - - -

BAILEY: Corruption.

INVESTIGATOR: Right.

BAILEY: That’s what it was all over. Like that was the hot topic. We’d spent a lot of money. We’d proven every time we were right but we never got any responses with anything. So we were going nowhere but we’ll spend a lot of money. A lot of money but it was always my belief we were doing it for the right reasons. It’s not – we weren’t doing it for any other reason than to do it for the right reasons because it was in everybody’s best interests anyway. We were the ones that could provide the service. We could do everything but we couldn’t infiltrate the loop, that’s what I call it.

INVESTIGATOR: Yes, yes, and that was corruption in the Navy predominantly?

BAILEY: Yes, yes. Well nepotism was the word. We looked it up in the dictionary and fitted it pretty good.<sup>44</sup>

2.105 We asked Mr Erwin a similar question. His response was more complex, citing primary concerns of public waste and corruption, but linking these to safety issues.

INVESTIGATOR: ... If you were to use ... one word to sum up what was at the heart of the – of your concerns when you’ve ... met with those two investigators, Defence investigators, what would that word be? Can you do that?

ERWIN: As in terms of issues we have?

INVESTIGATOR: Yes.

ERWIN: I mean the biggest issue for us was that – well, me personally, the biggest issue is my money they’re spending, you know.

Biggest issue for me first and the fact that they were just wasted taxpayers’ money over and over and over and over and over.

<sup>44</sup> Commonwealth Ombudsman ‘Transcript of interview with Mr Stephen Bailey’ 31 July 2007 (Baileys Transcript), pages 59–60.

The second issue probably wasn't of that higher – I mean, the corruption, the collusion, all that sort of stuff, for me was the key thing because that just makes me sick to my stomach.

The underlying thing was the safety of the people that were in those engine rooms.

Basically because, as I've told you, nobody in those engine rooms, in my opinion, knows what they're doing and it's not because they're bad or they don't want to or they're lazy, it's because they're not given the opportunity to learn, to do it the right way so, you know, it's held in that frame.

INVESTIGATOR: And that ties back to – it's held in that frame because it connects back to the - - -

ERWIN: Making money.

INVESTIGATOR: Yes.

ERWIN: Collusion, the whole thing.<sup>45</sup>

2.106 When we asked Mr Ryan a similar question, his response was that the focus was on contracting:

INVESTIGATOR: ... what was your ... take on the allegations?

RYAN: My feelings were if it was correct then we had problems with the Defence contract area and not only Defence but also the other areas that they mentioned, you know, State Rail ...<sup>46</sup>

2.107 Mr Smythe, in his evidence to our investigation, stated that Mr Erwin specifically used the expression 'lives at risk' when referring to corruption in RAN maintenance practices:

... there was corruption and, you know, they [Baileys] were concerned that people's lives were at risk and Steve [sic] Erwin made that perfectly clear to me and I underlined – I remember that. That's something I underlined in my flip notebook, 'lives at risk'.<sup>47</sup>

2.108 When our investigators pointed out to Mr Smythe that the taped record of the 6 February 1998 meeting contained no express references to safety risks or to lives being at risk, Mr Smythe stated that Mr Erwin had used the expression during the preliminary discussions, prior to the tape commencing.

2.109 None of the other parties to that meeting have any recollection of the expression 'lives at risk' being used.

2.110 We sought access to Mr Smythe's notebooks from the AFP, but were informed that the AFP only holds Mr Smythe's notebooks for 1995–1996 and 2000–2001. The AFP did provide us with Mr Smythe's AFP Field Book for 1995–2000 (an A4 notepad), but this contained no information relevant to our investigation.

2.111 We cannot rule out the possibility that the expression 'lives at risk' was used in the discussion before and/or after the taped record of discussion on 6 February

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<sup>45</sup> Erwin Transcript, page 56.

<sup>46</sup> Commonwealth Ombudsman 'Transcript of interview with Mr David Ryan' 12 July 2007 (Ryan Transcript), page 14.

<sup>47</sup> Smythe Transcript, page 44.

1998. Nevertheless, had the issue of lives being at risk been discussed prior to the tape starting, as Mr Smythe claims, it seems unlikely that such a significant matter would not have been touched on in almost 80 minutes of taped discussion, or that the IGD investigators would not have sought to steer conversation to that issue when the opportunity arose (for example, when references were made to HMAS *Westralia*'s engine exploding into a million pieces).

2.112 Like the taped record of the 6 February 1998 meeting, the other contemporaneous records of that meeting, including the disputed 6 February 1998 document, make no express or specific reference to safety concerns.

2.113 Mr Smythe advised our investigators that, throughout his time with the IGD, he maintained a running sheet of his activities. In the course of our investigation, we were able to obtain a copy of Mr Smythe's complete running sheet from papers that had been provided to a Senate inquiry in September 2004.

2.114 The running sheet is written in the first person and has no named author, but the accounts are consistent with Mr Smythe's activities in the IGD, and Mr Smythe has satisfactorily confirmed for us that the document is his. On reading through the running sheet, it is clear that some parts have been written some time after the events that they describe, and not always in sequence. For example, the significance and relevance of some early entries are predicated upon information obtained and detailed in later entries. Nevertheless, we are satisfied that the running sheet provides a reasonably contemporaneous account of Mr Smythe's time with the IGD.

2.115 Mr Smythe's running sheet includes a reference to the meeting with Baileys on 6 February 1998 and describes the meeting as follows:

Conducted record of conversation with Urwin [*sic*] and Bailey, both provided information relating to Navy and DNSDC. Their information centred around Navy misconduct in business dealings, contract nepotism, warranty abuse, misquotations, substitutions of reproduced vs genuine parts ... Urwin [*sic*] and Bailey provided further information about fraudulent activities involving Navy and refitting of vessels at Newcastle ...<sup>48</sup>

2.116 This running sheet entry contains no reference to HMAS *Westralia* or any other RAN vessels. Nor does it include the words 'safety', 'danger', 'risk', or any other words we might usually expect to see in a warning or discussion about safety.

2.117 Mr Ryan's diary is silent as to the content of the discussions of 6 February 1998. However, we do have a file note about the meeting prepared by Mr Ryan on 15 April 1998.

2.118 The Ryan file note runs for almost two-and-a-half pages, with significantly more detail about the 6 February 1998 meeting than either Mr Smythe's running sheet entry or the 6 February 1998 document. Mr Ryan's file note states that Baileys had initiated the 6 February 1998 meeting as 'they believed that they had been passed over [on Defence contracts] due to corruption within the Defence department'.<sup>49</sup> The note goes on to set out Baileys' particular allegations in detail.

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<sup>48</sup> Peter Smythe, 'running sheet for period 24/11/97 to 17/2/98', Entry 47.

<sup>49</sup> David Ryan, 'occurrence sheet', 15 April 1998, page 1.

They had been passed over for Defence contracts for a number of years. Some of these contracts were beaten by unknown parties for as little as \$5. Stated that they have copies of the quotes.

They stated that in 96/97 they won a contract and quoted a figure of \$300. They stated that when the representative from Defence attended to pickup the gear they were given a cheque for double the amount they quoted. They stated they brought this to the reps attention however were informed that don't worry about it we scratch your back and vice versa. That's how its done.

... [An allegation about a state transit authority and an authority employee threatening Erwin] ...

They stated that they had been threatened a number of times. These threats usually came by way of telephone messages at the business.

They stated that they are the sole suppliers for a particular diesel injector. They stated that they are the only outlet for the part. They placed a tender with the Navy to complete the work however were passed over for a cheaper quote. The parts were replaced however broke do[wn] almost immediately. The ship was taken back to FourGacs [*sic*] dockyard Newcastle to have them replaced. Bailey stated that his company supplied a guarantee for the parts and would have fixed the breakage free of charge. The tender that beat them had no such warranty and the Navy had to pay full costs to install the same equipment that was originally replaced.

Erwin stated that he believed that the business telephones were bugged and that they were possibly under surveillance.

Both Bailey and Erwin stated that a tender that beat them for a contract worked out of a rear yard in Runaway Bay, Queensland and was supplying shoddy parts. He stated that he made this information available to the person responsible for defence contracts that works in Defence Plaza Sydney.

Erwin stated that he holds all appropriate paperwork for the grievances they are making. He was informed to keep documenting everything and that investigators would take them on another date.

The tape recorder malfunctioned at this stage destroyed the tape.<sup>50</sup>

2.119 Notwithstanding the greater level of detail, Mr Ryan's file note again does not mention HMAS *Westralia* or any other named RAN vessels, nor use the words 'safety', 'danger', 'risk', or any other words we might usually expect to see in a warning or discussion about safety.

2.120 The file note does refer to parts failing on one unnamed RAN vessel, but the emphasis was on warranty abuse: where Baileys would have replaced the broken part for free, the RAN had to pay again. The file note also refers to a particular company 'supplying shoddy parts', but indicates that Baileys had already passed on this information to a Defence contract official.

2.121 Overall, the file note does not convey the impression either that Baileys were concerned about safety, or that Mr Ryan had understood Baileys' issues as going to safety.

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<sup>50</sup> David Ryan, 'occurrence sheet', 15 April 1998, pages 1–2.

2.122 Even the disputed 6 February 1998 document itself describes Baileys' allegations as being about:

... Navy contracts, specifically in relation to misconduct in business dealings, contract nepotism, warranty abuse, misquotations, substitutions of reproduced vs genuine parts.<sup>51</sup>

2.123 Where the document does discuss issues that would appear to be inherently concerned with safety, the emphasis is on the risk to machinery, not persons, and the associated costs:

Bailey and Urwin [*sic*] have also stated that they are aware of a number of diesel component failures whilst ships have been at sea. They stated that this situation, if not addressed and handled properly could cause serious damage to engines and equipment. This would result in more costly repairs.<sup>52</sup>

2.124 Finally, the 6 February 1998 document's recommendation, that Baileys' 'allegations should be given the highest consideration in the priority of the current investigation', must be read in light of that investigation's scope and focus, which was on allegations of fraud, corruption and criminal activity. This suggests that the signatories to the document themselves believed the allegations should be addressed as part of an ongoing corruption investigation, not referred to the RAN to address any urgent safety concerns.

2.125 This reading of the contemporaneous records of the 6 February 1998 meeting—that the discussion was less concerned with issues of safety than matters of corruption—is also consistent with evidence available to us from after the HMAS *Westralia* fire.

2.126 For example, had Baileys considered their discussion of 6 February 1998 to be about safety risks onboard RAN vessels, it is not unreasonable to expect that they would raise the example of the HMAS *Westralia* fire in their subsequent dealings with Defence about those same issues that they raised in February 1998. Baileys in fact spoke with an IGD investigator on 11 May 1998, less than one week after the HMAS *Westralia* fire, but there is no evidence that Baileys referred to the fire, or made any link between the fire and their earlier allegations at this time.

2.127 There was also considerable correspondence from Baileys to Defence after May 1998. However, this correspondence contains only one possible, albeit oblique, reference to the HMAS *Westralia* fire.

2.128 This reference was made in the context of a dispute between Baileys and ADI in mid-1998 over a failed tender to service fuel pumps off HMAS *Tobruk*. In a letter of September 1998 to Commander Ross Wendt of the RAN's Ordering Authority Eastern Australia, Baileys raised concerns about ADI's alleged use of sub-contractors not authorised by the original equipment manufacturer for HMAS *Tobruk*'s fuel injection system. Mr Erwin wrote:

It would seem to me that with recent events taken into account, this type of hiding behind a prime contractor does not work, should one of these fuel pumps explode under load, leak and cause a fire or the engine suddenly run on due to poor

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<sup>51</sup> 6 February 1998 minute. These are the same words that appear in the relevant entry of Smythe's running sheet (see paragraph 2.105 above).

<sup>52</sup> *Ibid.*

calibration settings who will then take the responsibility? Or will ADI suddenly claim the sub-contractor didn't perform to their expectations.<sup>53</sup>

Even here, however, Baileys did not suggest that they had previously warned Defence about such a risk, or that there was any connection between their earlier allegations and the fire.

2.129 In summing up, what can we say about the nature and content of the discussion of 6 February 1998 between Baileys and the IGD investigators?

2.130 On the one hand, Baileys' allegations did cover issues that were also identified by both the HMAS *Westralia* BOI and the Western Australian Coroner's inquiry as contributory factors to the fire onboard HMAS *Westralia* in May 1998. In particular, Baileys' allegations included, *inter alia*, concerns with poor quality maintenance work on RAN vessels, the management and monitoring of RAN maintenance contracts, failings in RAN Quality Assurance processes around contracted maintenance work, and the use of what Baileys described as 'sub-standard' and 'non-genuine' spare parts.

2.131 On the other hand, we have found no evidence that Baileys provided any specific warnings about HMAS *Westralia*. Baileys' references to HMAS *Westralia* in February 1998 were to past events, not to possible future events, and were by way of example of the kinds of general problems about which Baileys were concerned.

2.132 Further, other than a few passing references to HMAS *Westralia*, we have identified no evidence that can reasonably connect the specific information provided by Baileys with the HMAS *Westralia* fire. In particular, none of the firms, officials or practices Baileys specifically criticised had any connection to HMAS *Westralia* at the time.

2.133 Finally, the balance of evidence suggests that Baileys' concerns at the 6 February 1998 meeting were about corruption, not safety, and this is how they were received and understood by the IGD investigators.

2.134 Looked at in this light, it is difficult to characterise Baileys' 6 February 1998 meeting with the IGD as a 'warning of the circumstances' that contributed to the HMAS *Westralia* fire. It is especially difficult to believe that contemporaries, without the benefit of hindsight—that is, without the knowledge of the HMAS *Westralia* fire and particularly the findings of the BOI and the Western Australia Coroner's inquiry—could reasonably have interpreted Baileys' allegations as any kind of 'warning of the circumstances' that contributed to the HMAS *Westralia* fire.

2.135 This is not to say that Baileys had not raised significant issues of concern warranting further investigation. The final section of this Part of the report details Defence's response to Baileys' allegations. In doing so, it provides what we believe to be the most complete and balanced public account of these events to date.

## **Defence's response to possible Baileys' warnings**

2.136 An integral element of the current allegations about Defence's forewarning of the HMAS *Westralia* fire is that Defence received a warning and failed to act or acted

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<sup>53</sup> Letter from Mr Erwin to Commander Wendt dated 3 September 1998.

inadequately. *The Daily Telegraph* headline when breaking the story of the 6 February 1998 document was typical: 'Defence ignored safety warning'.<sup>54</sup>

2.137 The following section therefore focuses on Defence's response to Baileys' concerns after 6 February 1998, up to and around the time of the HMAS *Westralia* fire on 5 May 1998.<sup>55</sup>

2.138 As previously stated, Baileys' allegation regarding Officer X was referred to the IGD's SIT<sup>56</sup> by ICAC on 3 February. An allegation file was raised. On 5 February 1998, ICAC provided further information regarding Baileys' allegations about contracting matters. The same day, IGD investigators (Mr Ryan and Mr Smythe) were tasked with conducting an initial interview with Baileys, to gain more information about their concerns. This would allow the IGD to assess and prioritise their allegations.

2.139 It is not clear how much detail Mr Smythe and Mr Ryan provided to Mr Leishman on their return from interviewing Baileys, but for the reasons given above, it is likely that they conveyed a focus on widespread corruption across diesel services and RAN maintenance in Baileys' allegations.

2.140 In a statement provided to assist our investigation, Mr Leishman maintains that the information Mr Smythe and Mr Ryan provided related to Baileys' allegation that they had been passed over for Defence contracts. Mr Leishman specifically stated:

In relation to the specific allegations recently raised as to Baileys forewarning the SIT members of the danger posed to HMAS *Westralia*, I can say that I was not briefed by Smythe or Ryan that there was anything in the interview of Baileys which even remotely indicated a serious safety concern to the ADF and in particular, HMAS *Westralia*.

2.141 Baileys' allegation was assessed and given a low priority for further follow up. This was not unreasonable, given that the SIT was only small at the time, and focused firmly on investigating allegations of drug smuggling on RAN ships, theft of weapons and explosives from the DNSDC, and corruption and organised crime in the Naval Investigative Service (NIS) and NPC. This investigation was being undertaken at the direction of the Minister for Defence, who was eager to see quick results, particularly in relation to the NPC allegations.<sup>57</sup> The investigation was also subject to high profile media attention. The limited SIT resources were initially focused primarily on the NPC investigation, with other allegations given lower priority.

2.142 On Tuesday 10 February 1998 Mr Ryan lodged the tape of the record of conversation with Baileys from the 6 February 1998 meeting (held on the previous Friday), in the IGD exhibit register.

2.143 An unsigned, undated, hand-written file note suggests that Mr Bailey subsequently telephoned the IGD and referred to a meeting that had been arranged for 11 or 12 February 1998, which was then cancelled.

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<sup>54</sup> Ian McPhedran and Amanda Gearing, 'Left for Dead: Defence ignored safety warning and four sailors died—Navy's Death Shame', *The Daily Telegraph*, 14 February 2007, page 1.

<sup>55</sup> Our investigation of Defence's handling of Baileys' allegations and complaints after May 1998 will be finalised separately from this report.

<sup>56</sup> See Appendix A for background to the SIT.

<sup>57</sup> See Appendix A for background to the SIT and further information on the investigations conducted.



Steven Bailey—complainant. [Record of Conversation] (taped) on 7 Feb 98 [sic].  
Tape failed. [Appointment] made for 11 or 12 Feb. 11 or 12 Feb 98. [Appointment]  
made then cancelled.

2.144 Mr Smythe's running sheet makes reference to further contact with Baileys on 13 February 1998.

13/2/98 commenced duties as per usual ... Telephone conversation with Rick Urwin [sic], who rang to inform IG's [Inspector General's] that he had returned from Perth and was now available to meet and provide further information re Navy Kickbacks and DNSDC. Urwin [sic] advised that IG will attend Wednesday, 10am 18/2/98 ...<sup>58</sup>

2.145 It appears the meeting Mr Smythe arranged for 18 February 1998 did not take place. It may have been overtaken by personnel changes, as Defence and the AFP had determined that a more experienced AFP investigator was required, and therefore Mr Smythe was returned to the AFP in exchange for another federal agent. Mr Smythe was informed of this decision on 17 February 1998. He left the team the next morning on 18 February 1998.

2.146 In an interview with our investigators, Mr Ryan advised that he remembers receiving a telephone call from Mr Erwin on 18 February 1998 about the meeting. Mr Ryan said he had advised Mr Erwin that he was not involved in the matter and that Baileys' allegations had been referred to Mr Leishman.

2.147 Following Mr Smythe's departure, Federal Agent Des Killmier joined the SIT in March 1998. In an interview with our investigators, Mr Smythe stated that on 18 March 1998 he travelled to Canberra from Adelaide, to brief Mr Killmier on the DNSDC investigation he had been working on, as well as the Baileys' allegations.

SMYTHE: Yes, Des Killmier.

INVESTIGATOR: - - - was the AFP officer who came in after you had gone.

SMYTHE: Yes, after I had left or I was sent home.

INVESTIGATOR: Did you know him?

SMYTHE: After I was sent back to Canberra to give them all a briefing, no.

INVESTIGATOR: Right. But he was AFP, as I understand it, he was AFP internal affairs is that right?

SMYTHE: Yes. I was replaced by – I was sent home, funnily enough, on 17 February, the day before the boys from Baileys Diesel were supposed to come in and hand everything over with their solicitor and that.

I was sent home, I think it was the 17th or the morning of the 18th, I can't remember now and I was replaced by Des Killmier, Ed Tyrie – there was two others.

...

SMYTHE: Well, the first action that was taken was that I was ordered back to Canberra to give the new team a full briefing on my findings into the missing weapons.

INVESTIGATOR: This is Ed Tyrie?

SMYTHE: Ed Tyrie, Des Killmier and I can't remember the other guys' names.

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<sup>58</sup> Peter Smythe, 'running sheet for period 24/11/97 to 17/2/98', Number 56.

...

I prepared a briefing on everything that I found and whatnot and then on Wednesday 18 March 1998, I travelled back to Canberra where I was met at Canberra Airport by Des Killmier ...

So anyway, I get to Canberra believing that I'm going to be doing this briefing to the Inspector General and, you know, and want a PowerPoint and all this sort of stuff.

So I get marched into the office, the same old office and it's all set up now.

There's all these computers everywhere and there's Ed Tyrie, he walked out the door and they seemed to be in a hurry, exiting and I bumped into Mark Leishman and I said, 'how are you going mate?'

He said, 'yes, good'.

I said, 'you going to be here for this briefing?'

He said, 'no'. He says, 'I've got other commitments'.

I think, you know, 'oh, that's unusual', you know and Des Killmier said, 'oh come in here' so we sat down in a little office and he went out and he came in and he had all my DNSDC stuff, folders and everything else.

Plonked it on the table and he said, 'right'.

He said, 'we're going to go through this and I want you to tell me, you know, exactly', you know.

I said, 'oh, you know, what about this briefing?'

He goes – I won't tell you exactly what he said, some colourful language about the briefing but I was then interviewed by Des Killmier as to why I had created spreadsheets on senior officers in the Department of Defence.

Why I'd spread – why I had created spreadsheets in relation to targeting certain individuals, mission statements, briefing notes, who I spoke to, when I spoke to them, yes.

This went on for a couple of hours. We spoke about the WESTRALIA.

He had that minute because I asked him about the WESTRALIA.

I said, 'how's the Baileys thing going?' and it was he who coined the phrase 'it was nothing but sour grapes', it had been written off and this is on 18 March.

Then I asked him, I said 'oh, so you've got, you know, an expert in to go over there, you know, to go over their material' and everything else and he told me not to be a smart arse, in which case I just closed down because I just knew that this was, you know, I was being shafted here.

...

INVESTIGATOR: That day, did you speak to any others from the team? Who was there from the team? Who was - - -

SMYTHE: There was a couple of other people I didn't know.

The team had expanded quite clearly and I saw, I think it was Tony Monsoon, said g'day to Tony because up until, you know, Killmier came in and slammed the door behind him and threw all the stuff on the table and

started, you know, yelling at me, I thought I was there to give a briefing, yes.

I can't think of the other guy's name. There was two other guys there. Yes, I can't remember.

INVESTIGATOR: Did you talk to anyone else about WESTRALIA?

SMYTHE: No, just to Des Killmier. And he knew all about it. He did the – he had the file. He had the DNSDC file.

...

We spoke about WESTRALIA, Baileys and the allegation and we spoke about the guns, the missing guns.

He wanted to know why I wanted to – why I had commenced doing business checks and background checks, business background checks on certain individuals and their spouses and contracts and the company names of contracts.

Obviously looking to see if there was any circular type back to, you know, and he wasn't real happy and I was supposed to be there all day and I think if you look at those tickets there, they booked me out of town earlier and I had to fly back to Sydney and then back to Adelaide to get home and I had a fair amount of turnaround time so I was sitting in the airport there thinking about what the hell have I done and why did I join the AFP and from that point, my career in the AFP went down hill rather rapidly.

Not that I had a career, but any career, you know, yes.

INVESTIGATOR: This was about one month after you left?

SMYTHE: March.

INVESTIGATOR: Yes.

SMYTHE: Yes.

INVESTIGATOR: Yes.

SMYTHE: 18 March so it would've been, you know, around that, yes.

Have I spoken to, you know, was there any further discussions about WESTRALIA specifically? No.

There was further discussions about, you know, my treatment, my performance on the - - - [team].

2.148 Mr Smythe provided boarding pass stubs and hand written notes supporting his statement that he had travelled to Sydney on 18 March 1998 for the briefing. However, no other party recollects such a briefing taking place.

2.149 On 15 April 1998 Mr Ryan prepared an occurrence report on the 6 February 1998 meeting with Baileys. Mr Ryan stated in the report that it was prepared on Mr Killmier's request. This suggests that a report had not previously been submitted on the 6 February 1998 interview, necessitating Mr Killmier's request so as to allow him to take over the investigation of the Baileys' allegations.

2.150 Mr Ryan noted in his 15 April 1998 occurrence report that he and Mr Smythe had briefed Mr Leishman on the Baileys' 6 February 1998 visit:

Investigators informed the Director of the naval inquiry of the developments that arose from speaking to the persons [Stephen Bailey and Rick Erwin] in Unanderra. Informed him [Leishman] that arrangements had been made to re attend [*sic*] and take a more organised record of conversation and to take receipt of the paperwork held by both Erwin and Bailey. Investigators were instructed to hold off from that particular inquiry and concentrate efforts on the NPC side of the inquiry. When informed that Bailey and Erwin were expecting investigators to return they were informed that he [Leishman] would take care of the matter.

2.151 Mr Ryan's occurrence report also stated that arrangements had been made on 6 February 1998 for a further meeting to occur on 11 February 1998. This aligns with the undated note, discussed above, indicating that Mr Bailey later called and cancelled this meeting.

2.152 In an interview with our investigators, Mr Erwin stated that he recalled speaking to either Mr Smythe or Mr Ryan shortly after the 6 February 1998 meeting:

ERWIN: The next day, one of those guys rang me up and said, 'oh, about yesterday, basically we were only there to speak about the Army thing and we can't do anything about the other stuff. I'm really sorry. I know that you, you know, I said that, you know, we could do this and we could do that but we can't do anything about it' and I remember saying to Steve I got home, I said to Steve, 'I can't believe it' you know, like you think you're getting somewhere.

You think you've finally got – and you get cut off again, you know, and that's how I felt at the time and I don't even – I can't even recall what happened after that because we were sort of getting to that point where we put so much time and effort into trying just to do – provide a good service, do the right thing.

INVESTIGATOR: Yes, okay. Now, did you have any other contact with either of them after that point in time?

ERWIN: Not that I can recollect.

INVESTIGATOR: Okay, okay.

ERWIN: I really can't.

INVESTIGATOR: And had they given you – when they explained or when he explained that they weren't going to be able to pursue it, what was the – did he give a reason? Did they go into any detail on that?

ERWIN: He just said that he'd been told from powers to be that it was too hot to handle and to leave it alone.

INVESTIGATOR: Okay.

ERWIN: And it wasn't – it was in his interests to drop it. That's what he said to me and he said, 'I feel really bad'.

He said, 'I know, you know, I said' – and it must've been the next day because he said, 'I know I said yesterday that I could do this and this', he said 'but our brief is to look at the [Officer X] thing and we're not going anywhere near any of the other stuff'.

INVESTIGATOR: Okay.

ERWIN: And I think, I then said, 'well who do I speak to about this? Where do I go?' and he said to me, 'realistically' he said 'if I was you, I'd just drop it because it goes way above us'.

INVESTIGATOR: So are you saying you have a fairly clear recollection of that statement?

ERWIN: Yes, I do because that sticks in my mind because he, you know – I remember him saying 'it goes well above us', so.

He didn't allude to what 'well above us' was. He just left it at that.

2.153 However, the IGD did follow up on Baileys' allegation concerning Officer X and DNSDC. On 21 April 1998, after taking over the case, Mr Killmier prepared a tasking sheet, which indicates that Mr Bailey and Mr Erwin were to be interviewed regarding 'alleged requests for Secret Commission offences by DNSDC staff'.<sup>59</sup>

2.154 Mr Killmier then visited Baileys on 28 April 1998. His occurrence report on this meeting noted Baileys' reluctance to talk. Mr Killmier recorded Mr Bailey and Mr Erwin as having stated that they 'had much information on both the Army and the RAN but were not inclined to give it at this stage',<sup>60</sup> and as having expressed concerns that the IGD investigators 'may be political stooges there to white wash the matter, as they had been told by Mr Smythe previously that he had been taken off the job because of "politics" and not to trust anyone in the future'.<sup>61</sup>

2.155 Mr Smythe denies that he made this statement, and there is insufficient evidence to form a conclusive view as to this. The Ombudsman's office has not further investigated this issue as it is tangential to the main issues under consideration, and the evidence is sufficient to conclude that, for whatever reason, on this occasion Baileys did limit their discussion to the Officer X matter.

2.156 Thus, following explanations from the IGD investigators regarding the delay in following up their allegations, Mr Erwin provided a 10 page, signed statement regarding Baileys' allegations about Officer X, but not dealing with any of their other concerns.<sup>62</sup>

2.157 Mr Erwin has since confirmed to our office that he provided information only about the Officer X matter, and that he did not raise any other allegations with the IGD investigators on 28 April 1998.

2.158 On 4 May 1998 Mr Leishman contacted Ms Leanne Johninke, Executive Officer Audits, Resource Management Branch, SCAHQ, to see what progress DNSDC Headquarters were making in responding to the Playford report. Mr Leishman noted that no further action had been taken since his last conversation with Ms Johninke.

2.159 On 6 May 1998 Mr Killmier and another IGD investigator visited Baileys' premises in Unanderra, to follow up on the Officer X/DNDSC matter. However, Mr Bailey and Mr Erwin were both interstate on business, so Mr Killmier left Mr Leishman's business card with Mr Bailey's secretary, and made arrangements to speak with either Mr Bailey or Mr Erwin on 11 May 1998.

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<sup>59</sup> Print out from the IGD's computerised tasking register, Task ID 48 dated 21/4/98.

<sup>60</sup> Des Killmier 'occurrence sheet' dated 28/4/98, page 1.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

2.160 On 7 May 1998 Mr Killmier raised a tasking record in the IGD system for Baileys to be telephoned on 11 May 1998. The tasking was completed on that day, six days after the HMAS *Westralia* fire had occurred. The tasking record indicates that Mr Killmier spoke to Mr Erwin and advised him that Mr Leishman was taking over the investigation. As noted above, there is no evidence in this record, or elsewhere, that Mr Erwin made any link between the HMAS *Westralia* fire and the allegations that Baileys had previously made to Mr Smythe and Mr Ryan.

2.161 Meanwhile, according to Mr Leishman's statement to this office, the SIT reviewed all of its files to determine whether it held any information relevant to the HMAS *Westralia* fire:

... at the time of the HMAS *Westralia* fire, we reviewed all SIT allegations to see if anything related to HMAS *Westralia* was known which would be of importance to a future Board of Inquiry. Nothing was identified nor did any member of the SIT, which at that time still included Mr Ryan, advise that they had any information of significance regarding HMAS *Westralia*.<sup>63</sup>

2.162 Overall, we are satisfied that the IGD appropriately followed up Baileys' allegations about Officer X and DNSDC in the period between 6 February 1998 and the HMAS *Westralia* fire.

2.163 On the other hand, it does not appear that Defence followed up Baileys' other more general allegations about diesel contracting issues during this period.

2.164 We are satisfied, on the basis of the evidence discussed earlier (paragraphs 2.35 to 2.60) that Baileys did raise some concerns with Mr Bob Collins of NSCHQ in February 1998, and that they had met with Mr Collins one or two days before the 6 February 1998 meeting with Mr Smythe and Mr Ryan. However, Defence has no record of these contacts, or of any action being taken in response.

2.165 In part this may be because, as Mr Erwin stated during the 6 February 1998 interview, Mr Collins had undertaken to investigate the complaint, but had also asked him to put his allegations in writing, and he had not yet done so.

2.166 Mr Smythe responded by stating:

No, that's alright. We can go and talk to him [Bob Collins] and find out how he's going to approach things.<sup>64</sup>

2.167 However, there is no evidence that either Mr Smythe or Mr Ryan in fact contacted Mr Collins prior to Mr Killmier taking over investigation of the Baileys' allegations. As noted above, when he did so, Mr Bailey and Mr Erwin limited their information to the allegation concerning Officer X and DNSDC. It was not unreasonable therefore for the IGD to restrict its investigation to this issue.

2.168 The failure of Naval Support Command to record what action Mr Collins did or did not take on Baileys' allegations, and why, is unfortunate. In our view, when serious allegations are made, even verbally, they should be recorded, subjected to further assessment, and where appropriate, investigated. In the absence of any

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<sup>63</sup> Statement provided to our office by Mark Leishman, former head of the SIT (Leishman Statement), 20 November 2007.

<sup>64</sup> Baileys 1998 Transcript, page 38.

evidence that this occurred in this case, the suggestion is open that Defence failed to respond reasonably to Baileys' allegations on this occasion.

2.169 However, it must be emphasised that this does not mean that Defence failed to respond reasonably to forewarnings of a safety risk to HMAS *Westralia*. There is no evidence that the allegations that Baileys made to Mr Collins prior to 6 February 1998 were qualitatively different from those made to Mr Smythe and Mr Ryan on 6 February 1998. For the reasons given above (paragraphs 2.61 to 2.135) we are satisfied that none of these allegations could reasonably have been interpreted as any kind of warning of the circumstances that contributed to the HMAS *Westralia* fire.

## Summary and conclusions to Part 2

2.170 The press reports of February 2007 stating that Defence was warned about the safety risk to HMAS *Westralia* and failed to act were wrong.

2.171 The HMAS *Westralia* fire was caused by the failure of flexible fuel hoses fitted in April 1998. Baileys was not aware of any proposal to fit such hoses to HMAS *Westralia* or any other RAN ship, and made no prior warning about such a configuration change.

2.172 Baileys may have had concerns, in and/or around August 1997, about the use of non-genuine spare parts in HMAS *Westralia*, arising out of its inspection of two fuel pumps from that ship. However, we are satisfied that Defence was not aware of any such concerns.

2.173 Baileys did raise a number of allegations and concerns about Defence contracting and maintenance practices between August 1997 and 6 February 1998.

2.174 Some, but not all, of these concerns were appropriately followed up by various Defence authorities in the period prior to the HMAS *Westralia* fire. In particular, there is no evidence that Baileys' concerns about having improperly been excluded from RAN contracts was followed up at this time.

2.175 However, none of Baileys' allegations or concerns can reasonably be interpreted as any kind of a warning of the circumstances that contributed to the HMAS *Westralia* fire, and Defence cannot reasonably be said to have failed to act on any such warning.

## PART 3—DEFENCE’S HANDLING OF THE SUBSEQUENT ALLEGATIONS

### The anonymous allegation of 2000

3.1 On 10 February 2000 an anonymous letter was received by the then Minister for Veterans’ Affairs, and referred to Defence.

3.2 The author claimed to be an ex-NPC and made a number of allegations, including those set out below.

- In October 1997 the author was ordered to investigate and monitor a number of people who had been assigned to an investigation unit created by the Minister in response to a number of allegations about the RAN in *The Bulletin* magazine (presumably the SIT).
- The author had been the source of information provided to the Minister’s office and the media alleging that certain members of the team had been identified as corrupt or a security risk, and the author makes various allegations about misconduct within the team, including the abuse of travel allowances.
- In early 1998, Mr Leishman, the team leader [of the IGD’s SIT], had instructed Mr Ryan and Mr Smythe to interview Baileys. The author asserts that prior to this ‘we had made every effort to keep this investigation away from Baileys, primarily because it would have exposed major corruption, including kickbacks and tendering fraud within Pitt Street headquarters. Mr Ryan and Smyth [*sic*] returned to Sydney with tapes that gave every specific detail of who, what, where, when and how much’.
- After the HMAS *Westralia* fire, the author started to collect relevant information, and determined that Mr Ryan and Mr Smythe had identified the following in their report to Mr Leishman:
  - Baileys were able to provide names, dates, and places of people responsible for corrupt practices
  - they recommended that an entire audit of RAN diesel components be conducted to determine the extent of sub-standard units currently used by the RAN
  - that the entire matter be handed over to either the National Crime Authority or the AFP.
- Mr Smythe and Mr Ryan’s report had concluded that ‘if no action is taken, a serious mishap at sea could occur’.
- The author had concluded that ‘it was as if something like this [the HMAS *Westralia* fire] had been predicted and nothing was done—deliberately’.
- The author had reported his findings to his commanding officer and subsequently all records relating to Baileys were deliberately destroyed.

3.3 The relevant Defence file about this letter contains a minute to the Minister for Defence dated 1 March 2000, signed by the then Inspector-General, Mr Claude Neumann, and noted by the Minister’s office on 9 October 2000.



3.4 The minute provides information about various Operation Majorca reports, as requested by the Minister's office, but does not address the allegations outlined above. In particular, it does not refer to HMAS *Westralia*, Baileys, safety issues, or the destruction of documents. The file contains little else that sheds light on how the anonymous letter was addressed, or what other action Defence took on the matter.

3.5 Mr Neumann was interviewed about his recollection of events around the time that the letter was received. Mr Neumann did not specifically remember the anonymous letter but stated he would have usually seen all ministerial correspondence that passed through the area. Later practice was that all allegations, including anonymous allegations, would be looked at to see whether they could be tested but he could not recall whether that was standard practice in 2000. Mr Neumann noted that although there might now be an emphasis on HMAS *Westralia* upon reading the letter, in 2000 the emphasis would have been on Operation Majorca and that would have been why the letter would have been referred to him.

3.6 In 2000, Mr Martyn Taylor was the Assistant Secretary, General Investigation and Review in the IGD. When interviewed, Mr Taylor said that he had been shown the letter. He had doubted the credibility of the whole document and believed it contained 'untruths and half-truths'. He described it as 'a malicious document'.<sup>65</sup> He noted that he was referred to personally in the letter, and said that he therefore would have kept some distance from the management of the response. He said that he considered that the HMAS *Westralia* incident had been examined thoroughly by the BOI, and he assumed that the letter's author would have raised any concerns with the Board. The letter included allegations about abuse of travel allowance by members of the Operation Majorca team. Mr Taylor said that he had earlier investigated and dismissed similar allegations when they had been raised internally by members of the Operation Majorca team.

3.7 Mr Mark Leishman was also asked about this letter. He stated that he had been made aware at the time that some allegations had been made, but he was not given a copy of the letter. His current opinion is that the letter was inaccurate and misleading. He gave a number of examples of factual inaccuracies.

3.8 We can find no documentation that would indicate that the letter's allegations about HMAS *Westralia* were followed up or investigated in any depth. From Mr Taylor's evidence at interview, it appears that the staff at the IGD at the time did not view the anonymous letter as credible. They may also have believed that the BOI had examined all of the circumstance surrounding the HMAS *Westralia* fire, and concluded that the other allegations were not worthy of further investigation. This is certainly how Mr Neumann characterised the letter when shown it at interview.

3.9 In our view, there are serious questions about the letter's credibility. Prima facie, it appears unlikely that any person fitting the author's self-description would have had first-hand knowledge of all the events detailed in the letter. The letter's details suggest instead that the author may have been part of the SIT and/or Operation Majorca.

3.10 Our investigation sought to match the information in the letter regarding the author's position and dates and location of service against defence personnel records. We were unable to identify any individual who matched all criteria.

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<sup>65</sup> Commonwealth Ombudsman 'Transcript of interview with Mr Martyn Taylor' 16 August 2007 (Taylor Transcript), page 21.

3.11 It also seems that further investigation of the allegation in 2000 would probably not have yielded any more useful outcome regarding the allegations relating to safety concerns: we have found no contemporaneous evidence to corroborate the allegation that Mr Smythe and Mr Ryan's report predicted a 'serious mishap at sea' or even that there was any such report, and certainly there was no specific prediction of a fire aboard HMAS *Westralia*.

3.12 It may have been reasonable for the IGD to decide not to investigate the allegations but the reasons for not pursuing the matter were not documented, and there is no clear audit trail of what action was taken at the time.

3.13 The IGD has advised us that it now has a case management system in place for all allegations, including anonymous allegations. This system requires the registration of allegations in a database and the documentation of follow up action, including decisions not to investigate. If such a system had been in place in 2000 it could have provided a clear record of the decisions made about dealing with the anonymous allegation.

### **Baileys' 2000 ministerial complaint**

3.14 On 18 February 2000 the Shadow Minister for Defence, the Hon Stephen Martin, MP wrote to the Minister for Defence, regarding complaints by Baileys about being excluded from quoting on Defence contracts. It seems that the letter was mislaid and the complaints were not dealt with until they were resent in October 2000.

3.15 On 22 December 2000 Mr Neumann signed a minute to the Minister for Defence. He explained that the complaint had been investigated and reviewed and set out Defence's new procedures relating to the use of original equipment manufacturers.

3.16 Both this minute, and the minute about the anonymous allegation discussed above, passed through the IGD in October 2000. There is no record to suggest that the IGD recognised that these matters could be connected. The allegation that Baileys had provided information about corrupt practices in 1998 does not appear to have been linked to the correspondence regarding Baileys' more recent assertion about being blocked out of contracts. The response to the Minister's office on the anonymous allegation focused on providing information about Operation Majorca, whereas the response to Baileys' complaints could be characterised as responding solely to an allegation about Baileys being blocked from contract work (which was the focus of Mr Martin's representation). Neither response referred to safety concerns or the HMAS *Westralia* fire.

3.17 There is a further minute dated 24 January 2000 (presumably the year should be 2001) including the additional information that an investigator had briefed Mr Bailey and that Mr Bailey understood and accepted the outcome of the investigation. On the basis of this advice, the Minister wrote to the Shadow Minister advising him that an investigation had been conducted and that there was no evidence that any member of Defence had deliberately excluded Baileys from quoting on Defence contracts.

3.18 A large number of documents are attached to the letter from the Shadow Minister including a facsimile cover sheet with a 'CHES Diesel & Marine Services' letterhead dated 8 January 1999. The facsimile is addressed to Mr Rick Erwin of Baileys and has a message 'Enclosed is a copy of work instruction for Pielstick fuel

pumps to quote on'. Attached to the cover sheet are two pages apparently setting out the work instructions and the equipment specifications for HMAS *Westralia*. The copy of the cover page on the Defence file has a hand-written annotation which appears to read, 'Different theory to explain *Westralia* fire'.

3.19 Our investigation has not been able to determine who wrote this annotation, when it was written, or the significance of it. It would appear that it was already on the document when it was provided to Defence. It could have originated in CHES, Baileys, the Shadow Minister's office, the Minister's office or elsewhere. There is no reference to this annotation in the covering letter or any other documentation supporting Mr Martin's representation and it seems that the IGD did not pick it up or consider it relevant when preparing their Ministerial response in 2000. This is not unreasonable, given that the Ministerial request did not concern or otherwise make reference to the HMAS *Westralia* fire.

### Mr Bernard Collaery's allegation of 2005

3.20 On 29 April 2005 Defence Legal received an unsigned copy of the 6 February 1998 document from Comcare, together with the extract from Mr Smythe's running sheet<sup>66</sup> covering that date. Comcare was instructing the Commonwealth Director of Public Prosecutions (CDPP), who was prosecuting ADI in the Perth Magistrates Court, for breach of the OH&S Act as a result of the HMAS *Westralia* fire.

3.21 ADI had received the document from Mr Bernard Collaery, a lawyer acting on behalf of the families of those killed in the fire.

3.22 Comcare was seeking to discharge its duty of disclosure to the court of any evidence material to any possible defence ADI might have had to the charge against it. Comcare requested that Defence provide the CDPP with 'any reports, statements, documents or other material that relates to allegations of the supply of non-genuine or sub-standard parts to the HMAS *Westralia* prior to the fire on board in May 1998'.<sup>67</sup>

3.23 On the same day, Defence Legal referred the documents to the IGD, requesting that it 'look into the issue' and advise whether 'there is anything which the defence should be advised of' in relation to the charge against ADI.<sup>68</sup>

3.24 Mr Terry Riley from the IGD was given this task. He was already familiar with Baileys, having been involved with the IGD's handling of the Officer X/DNSDC issue later in 1998, and having prepared advice in relation to Baileys' 2000 Ministerial submission.

3.25 Mr Riley and Mr Trevor McNaught from the IGD searched IGD's files and did not find either a signed or an unsigned copy of the 6 February 1998 document. On 2 May 2005, Mr McNaught spoke with Mr Leishman by telephone. No file note was made of this conversation. Mr McNaught subsequently recalled that he read the document out to Mr Leishman, and described its form. According to Mr McNaught, Mr Leishman did not recall ever having seen the document, and expressed confidence that had it been received it would be referenced in the IGD's documents. Given the significance of this conversation it is surprising that no file note was made at the time.

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<sup>66</sup> See paragraph 2.113 of this report.

<sup>67</sup> Facsimile from Mr Len Sorbello, General Counsel, Comcare, to Mr Richard Miller, Defence Legal, sent 29 April 2005.

<sup>68</sup> Facsimile from Mr Richard Miller, Defence Legal to Mr Terry Riley, IGD, dated 29 April 2005.

3.26 Meanwhile, Mr Riley had found a number of other documents generated as a result of the meeting between Baileys and the IGD on 6 February 1998. These included Mr Ryan's 15 April 1998 occurrence sheet, and the tape of the 6 February 1998 interview. Mr Riley was able to have the tape transcribed, notwithstanding Mr Smythe and Mr Ryan's belief in 1998 that the tape had malfunctioned.

3.27 Mr Riley took note of the specific references to HMAS *Westralia* during the interview. He sought records from the Fleet Intermediate Maintenance Authority (FIMA) to determine whether there was any evidence corroborating the allegation that, shortly after maintenance at Forgacs in Newcastle in 1996, HMAS *Westralia* had suffered a major engine failure, its engine 'exploding into a million pieces', requiring the ship to be towed into Darwin for repair.

3.28 Mr Riley concluded that FIMA's records demonstrated that HMAS *Westralia* had sailed south, not north, after undergoing a routine refit at Forgacs in Newcastle in 1996, and that it 'did not suffer an engine failure similar to that described and did not break down at sea in 1996 or 1997'.<sup>69</sup>

3.29 Mr Riley also considered the allegation made during the interview that 'non-genuine parts were being fitted into RAN ships and were not covered by warranty'. He considered that this allegation related mainly to HMAS *Kanimbla*, HMAS *Manoora* and HMAS *Tobruk*, not HMAS *Westralia*. He also concluded that 'the only basis' for this allegation was an assumption 'that a particular sub-contractor used by Navy was not qualified and did not have access to genuine parts'. This assumption 'was based on their discussions with an unnamed employee at ADI', who was also the source for the unfounded allegation that HMAS *Westralia* had suffered a major engine failure.<sup>70</sup> Mr Riley did not further investigate this allegation.

3.30 Mr Riley documented the outcome of his enquiries in affidavit form, in case it was required in relation to any litigation concerning the HMAS *Westralia* fire.

3.31 In the meantime, Mr Collaery had himself provided copies of the unsigned 6 February 1998 document, and the extract from Mr Smythe's running sheet, to the Australian Government Solicitor (AGS) on 21 June 2005, and to the Minister Assisting the Minister for Defence on 11 July 2005. This occurred in the context of correspondence between Mr Collaery and the Commonwealth relating to the families' legal action against the Commonwealth arising out of the HMAS *Westralia* fire.

3.32 In his correspondence, Mr Collaery referred to Operation Majorca, and alleged that the Commonwealth had 'knowledge three months before the tragedy that non-specification parts were going into the *Westralia*'.<sup>71</sup> Mr Collaery suggested that Defence may have improperly withheld evidence about this, from both its own lawyers, and from the Western Australian State Coroner. He called for a judicial enquiry into the conduct of Defence Legal and the Inspector-General. Mr Collaery also stated, in a letter to the AGS dated 19 September 2005, that Mr Smythe and Mr Ryan were prepared to give evidence that Mr Leishman had obstructed their investigation into the allegation that non-specification parts were being fitted to HMAS *Westralia*.

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<sup>69</sup> Affidavit of Mr Terry Riley, 18 July 2005, paragraph 30.

<sup>70</sup> Affidavit of Mr Terry Riley, 18 July 2005, paragraphs 27–28.

<sup>71</sup> Letter from Mr Bernard Collaery to Senator the Hon. Nick Minchin, then Minister for Finance and Administration, 4 March 2005.

3.33 In response to Mr Collaery's allegations, the Minister sought advice from Defence Legal, which in turn sought advice from the IGD. This request dovetailed with the enquiries that the IGD was already conducting as a result of Comcare's request.

3.34 AGS also conducted some enquiries. On 10 October 2005, a member of AGS staff spoke to Mr Leishman by telephone, and discussed the unsigned 6 February 1998 document, and the allegation that he had obstructed Mr Smythe and Mr Ryan's investigation into the allegation about sub-standard parts being fitted to HMAS *Westralia*. Mr Leishman again expressed confidence that the document would be on file if it had been received, and explained the circumstances in which Mr Smythe and Mr Ryan had ceased handling the Baileys' allegations in 1998.

3.35 That Baileys itself was not contacted in the course of the 2005 investigation is not unreasonable. The substance of the allegations made in 1998 could be determined directly from the tape of the interview, and Mr Riley had interviewed Mr Stephen Bailey on two other occasions.

3.36 On the other hand, the investigation conducted at this time could have gone further in one respect. As noted above, Mr Riley did not investigate the allegation recorded on the tape that a particular sub-contractor was not authorised by the Original Equipment Manufacturer, and therefore lacked access to genuine parts. As discussed below, this allegation was not investigated until 2007, when it was disproved. It would have been preferable for this step to be taken in 2005.

3.37 Having said that, when considered overall, the steps taken by Defence to investigate the issues raised by the receipt of the 6 February 1998 document, and by Mr Collaery's allegations more generally, were not unreasonable.

3.38 However, problems did emerge in the terms in which Defence Legal advised the Minister Assisting the Minister for Defence on 18 October 2005.<sup>72</sup> The advice contained the following recommendations:

1. That you note that the allegation contained in the documents referred to by Mr Collaery were addressed by the Inspector-General upon receipt in February 1998 and subsequently, were considered to be unfounded.
2. That you note Mr Collaery's criticism of the role of the Inspector-General and his call for a Royal Commission or judicial inquiry into the investigation.
3. That you agree to sign the attached response to Mr Collaery.

3.39 The Minister signed the attached response on 1 November 2005. That letter stated, in part, that the two documents provided by Mr Collaery:

... were referred to the Inspector-General who ... confirmed that the allegations they contained had been considered by his office upon their receipt on 6 February 1998 by the officers who prepared the actual reports. I am also advised that investigations carried out later that month and following, in connection with the matters raised in the

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<sup>72</sup> Mark Cunliffe, Ministerial 80362 to the Minister Assisting the Minister of Defence, 'HMAS *Westralia*/Subject of Operation Majorca/allegations of Safety compensation', 18 October 2005.

documents, led the investigators to conclude that the allegations regarding parts supplied to HMAS *Westralia* were unfounded.<sup>73</sup>

3.40 The advice to the Minister, and the Minister's response to Mr Collaery, were misleading in significant respects.

- While it was not explicitly stated that the 6 February 1998 document itself (as opposed to the allegations it contained) had been received at that time, the Minister's letter, by referring to the 'actual reports', implies that it was.
- Indeed, the question whether the 6 February 1998 document had been received at the time is not directly addressed at all.
- Not all of the allegations raised by Baileys on 6 February 1998 had been investigated at that time.
- In particular, the allegations recorded in the 6 February 1998 document, that there had been 'diesel component failures whilst ships have been at sea', and that HMAS *Westralia* had 'a recent history of sub-standard and non-genuine parts installed', had not been investigated during 1998.
- Similarly, the allegation made during the 6 February 1998 interview (but not specifically referred to in the 6 February 1998 document) that a particular sub-contractor was not authorised to supply genuine parts had not been investigated in either 1998 or 2005.
- The investigations that did occur in 1998, were not conducted 'by the officers who prepared the actual reports', that is Mr Smythe and Mr Ryan.

3.41 Defence itself has acknowledged that it:

... should have taken action at the time to capture on record a clear articulation of Defence's position on the status of [the 6 February 1998 document] in order to alert and prepare it to deal effectively and quickly with any subsequent external enquiry or challenge. This would likely have avoided the effort and reputation damage that flowed from the matter being raised publicly in February 2007.<sup>74</sup>

3.42 Defence equally should have ensured that it had a clear record of which substantive allegations raised by Baileys during the 6 February 1998 interview had been investigated, when, and by whom; and that the advice provided to the Minister and the response to Mr Collaery were accurate in these respects.

3.43 This evidently did not occur in this case. We have not enquired into the primary source of the incorrect advice, nor sought to apportion responsibility for it. However, we are satisfied that it was not the result of any attempt to hide actual or perceived failures or wrongdoing by Australian Government officials, whether before the HMAS *Westralia* fire, or in relation to the subsequent inquiries and litigation that resulted from the fire.

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<sup>73</sup> Letter from the Hon. De-Anne Kelly MP, Minister Assisting the Minister for Defence, to Mr Bernard Collaery dated 1 November 2005.

<sup>74</sup> Inspector-General (Defence), *Examination of the Link Between the HMAS Westralia Fire and the 1998 Inspector-General Investigation Into Corruption in Naval Police Services*, February 2007, paragraph 93.

## The recent media allegations

3.44 This section focuses on the adequacy or otherwise of Defence's response to the most recent media allegations, most notably the internal investigation initiated on 14 February 2007.

3.45 Immediately following the appearance of the media allegations on 14 February 2007, the Secretary of Defence initiated an internal investigation to review Defence files in an attempt to discover any evidence of the 6 February 1998 document, and to more generally test the veracity of the allegation that Defence had been forewarned of the safety risk posed to HMAS *Westralia* by non-genuine and sub-standard parts.

3.46 The Defence internal investigation reported to the Secretary on 1 March 2007. Key findings of the report are set out below.

- A comprehensive review of Defence files had not identified the 6 February 1998 document or any references to that document.
- Interviews with key personnel from the IGD at the time revealed no recollection of the 6 February 1998 document.
- A transcript of the 6 February 1998 meeting between IGD investigators and Baileys existed, but made only two brief references to HMAS *Westralia* in a 58 page transcript, and no reference to the configuration change that led to the fire onboard HMAS *Westralia*.
- The specific configuration changes to HMAS *Westralia* that led to the fire did not occur until some months after the 6 February 1998 meeting.
- IGD investigators followed up with Baileys after 6 February 1998 but before the fire and had no record of the allegations about HMAS *Westralia* being repeated.
- IGD investigators had had dealings with Baileys after the fire (in October 1998 and October 2000), and again Baileys did not repeat their allegations or make any links between their earlier allegations and the HMAS *Westralia* fire.
- Three specific allegations made by Baileys during the 6 February 1998 meeting that could be said to relate to the fire onboard HMAS *Westralia* were found to be unsubstantiated when tested.

3.47 The three specific allegations made by Baileys during the 6 February 1998 meeting that Defence identified as arguably relevant to the fire onboard HMAS *Westralia* were:

- that a company in Runaway Bay, Queensland, (Diesel and Components Pty Ltd) was not an authorised provider of parts
- in 1996, HMAS *Westralia* suffered a major engine failure shortly after maintenance at Forgacs in Newcastle that resulted in its engine 'exploding into a million pieces' and the ship being towed into Darwin for repair
- hence, it could be implied that HMAS *Westralia* had a recent history of being fitted with sub-standard and non-genuine parts.

3.48 The internal Defence investigation reported that the DMO had examined each of these allegations and advised that:

- Diesel and Components Pty Ltd is, and was in 1998, an endorsed exclusive Australian representative of the ALCO engines US Original Equipment Manufacturer
- There is no record of HMAS *Westralia*'s engine 'exploding into a million pieces'. The closest incident to the one Baileys described was when the ship suffered a seized cylinder in one engine in March 1997. This was due to a piece of rag left in the cooling water system and not the use of sub-standard parts. The ship subsequently entered Townsville, under its own power, for repair
- The DMO's search has not shown a history of 'backyard' operators or sub-standard parts being used in HMAS *Westralia*'s main engines, although generic parts of a suitable standard have been used.

3.49 The Defence investigation concluded that, even if Baileys' allegations had been followed up more closely in 1998, they would have been found to be unsubstantiated, that no further investigation was therefore likely at that time, and that 'in all likelihood investigation of Baileys' claims would not have alerted sufficiently experienced marine engineers in the RAN to the unapproved configuration change being implemented at the time by ADI and its sub-contractors'.<sup>75</sup>

3.50 In our view, Defence's investigation into the February 2007 allegations asked the right questions and was undertaken promptly and thoroughly, and its conclusions were reasonable and had a sound evidentiary basis.

### Summary and conclusions to Part 3

3.51 In 2000, Defence received an anonymous letter that, amongst other things, alleged that Mr Smythe and Mr Ryan had warned in 1998 that 'if no action is taken, a serious mishap at sea could occur'. In our view, the decision taken by the IGD not to investigate this allegation was not unreasonable. However, Defence should have maintained a clear audit trail of what action was taken at the time, and documented the reasons for not pursuing the matter.

3.52 In 2005, Defence received unsigned copies of the 6 February 1998 document. We are satisfied that the steps taken by Defence to investigate the issues raised by the document were not unreasonable. However, Defence failed to clearly articulate its position on the authenticity of that document at the time and failed to ensure that it had a clear record of which allegations made by Baileys had been investigated, when and by whom; and provided misleading advice to the Minister Assisting the Minister for Defence about these issues. Nevertheless, we are satisfied that these failures in 2005 were not the result of any attempt to hide actual or perceived failures or wrong-doing by Australian Government officials.

3.53 Defence's investigation into the February 2007 allegations that it had had forewarning of the safety risk to HMAS *Westralia* was timely and thorough. In our view, its conclusions were reasonable and had a sound evidentiary basis.

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<sup>75</sup> 'Examination into recent media allegations that Defence was warned of the danger to HMAS *Westralia* before the fire on 5 May 1998', minute from Mr Stephen Merchant, Deputy Secretary Intelligence and Security, to Secretary, Department of Defence, 1 March 2007, DEPSEC I&S/OUT/2007/22, page 4.



## APPENDIX A—IGD SPECIAL INVESTIGATION TEAM AND OPERATION MAJORCA

On 14 October 1997, *The Bulletin* magazine published a cover story titled ‘Rape, Loot and Pillage’.<sup>76</sup> The article contained allegations of drug smuggling on RAN ships, the theft of weapons and explosives from the DNSDC, as well as corruption and organised crime in the NIS, the NPC, and the RAN’s service police. The article claimed to draw on information contained in a RAN investigation report by Lieutenant Commander Joe Busuttil, or ‘the Busuttil report’.

The following day, the then Minister for Defence, Industry, Science and Personnel, the Hon Bronwyn Bishop MP, announced that an investigation would be conducted by the Inspector-General of Defence (IG) under joint tasking from the Chief of the Defence Force and the Secretary of Defence. As well as undertaking a detailed investigation of each of the allegations made in *The Bulletin*, the IGD was also tasked with examining other related issues that may emerge relating to the NIS and the NPC.

The SIT was formed within the IGD to undertake this investigation. Mr Mark Leishman, who was the Deputy Director of the Fraud Investigations and Recovery Directorate (DDFIR) within the IGD, was appointed as the head of the SIT and was responsible for setting up the team. The team initially consisted of four Defence civilians, three Army investigators, three Royal Australian Air Force investigators and one AFP attachment. In common with general investigative procedure, the team tended to work in partnerships of two, with significant flexibility given the relatively limited resources.

An automated intelligence and case management system also had to be developed to manage the large amount of data referred to the investigation, which included several hundred files, names and investigation reports. In addition to information gained from areas across Defence, information was also provided by other relevant law enforcement agencies.

There was a total of 130 allegations relating to the RAN to be investigated. A further 14 issues were identified in relation to the DNSDC. The SIT investigation initially focused much of its resources on the NPC area, as these allegations were most prominent in *The Bulletin* article and were clearly set out in the Busuttil report. The allegations concerning DNSDC were less clear and required more complex data-matching and more sensitive investigation.

The SIT’s early focus was on making an initial assessment of each allegation and setting the priority to be given to each. Two investigators from SIT were assigned to assess the DNSDC matter and obtain intelligence. One of the investigators was the AFP officer who had been attached to the SIT, former Federal Agent Peter Smythe.

The preliminary assessment of the DNSDC team in January 1998 identified some wide-ranging and complex issues, involving possible criminal links beyond Defence. Accordingly, Mr Leishman began to prepare a paper recommending that the DNSDC aspects of the investigation might more usefully be referred to the AFP for direct carriage. At the same time, the pressure to progress the NPC side of the

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<sup>76</sup> ‘Rape, Loot and Pillage’, *The Bulletin*, 14 October 1997, pages 22–26.

investigation was mounting, and so the two-member DNSDC team were shifted onto some of the NPC work.

Time was also spent resolving issues within the team. On 17 February 1998, Mr Leishman agreed that Mr Smythe should return to the AFP, which he did the next day. His replacement was Federal Agent Mr Killmier, a more senior and experienced AFP officer, who joined the SIT on 10 March 1998. Mr Killmier was given responsibility for the DNSDC investigation, although he also continued to work on other issues, such as the Baileys' allegation.

A complete assessment on the DNSDC matter and planning for the investigation was completed by April 1998. On 11 May 1998 Mr Leishman reported that most of the NPC allegations would be completed shortly, with more time then becoming available to progress the DNSDC allegations. By this time, the SIT had completed 160 interviews, produced 70 transcripts and completed 22 investigations.

On 13 May 1998, a meeting was convened by the Minister for Defence Industry, Science and Personnel and attended by the Secretary of Defence, the Vice Chief of the Defence Force and the Commissioner of the AFP. Following discussion between the AFP and Defence, it was decided that the investigation had reached a stage where it was appropriate for the AFP to take over responsibility for leading the investigation, with the continued involvement of the IGD and Defence investigators. From this point, the investigation became known as 'Operation Majorca'. Commander Ed Tyrie was appointed to head the investigation and reported periodically to the Commissioner of the AFP, the Chief of the Defence Force and the Secretary of Defence.

The Majorca investigation first reviewed the NPC investigations conducted by the SIT and then further pursued the DNSDC and weapons-related issues. Some matters were substantiated with resulting disciplinary action taken. However, there was insufficient evidence to support any charges. The most concerning and serious allegations of widespread corruption and crime throughout the RAN were not substantiated. A report on the outcome of Operation Majorca was provided to the Minister for Defence in August 1999.

## APPENDIX B—PROVENANCE AND AUTHENTICITY OF THE 6 FEBRUARY 1998 DOCUMENT

As we have stated in the body of the report (see paragraph 2.64), there are significant questions about the provenance and authenticity of the 6 February 1998 document, both in its unsigned and signed forms. We have also noted, however, that the document is not centrally relevant to our investigation in light of the other evidence concerning both the content of the 6 February 1998 meeting with Baileys and Defence's actions in response to that meeting.

Nevertheless, we feel that, given the public interest in the 6 February 1998 document, there is clear value in our setting out the evidence for and against the document (both signed and unsigned) being genuine, including the commentary provided by both Defence and the AFP in relation to both the signed and unsigned documents.

It should also be understood that the debate about the provenance and authenticity of the document relates less to what it says—after all, Mr Bailey and Mr Erwin have confirmed that much of the content provides a reasonable reflection of what was discussed at the 6 February 1998 meeting—but rather to whether or not the document existed at the time and in the format that we now see (particularly in relation to the document as it appears on AFP minute paper), and so whether the document can be relied upon in the manner it has been to date, that is that the document itself was the forewarning with respect to HMAS *Westralia*.

The key evidence in support of the document's existence on or around 6 February 1998 comes from the testimony of the two signatories to the document, Federal Agent Peter Smythe and Mr David Ryan, and from Ms Glenda Bannerman, Executive Assistant to Mr Leishman.

### **Federal Agent Peter Smythe**

On 12 June 2007, Mr Smythe signed a statement certifying that the signed 6 February 1998 document on AFP minute paper is 'a true copy of the text of the letter I [Smythe] provided to M[ark] Leishman on 6/2/98' and that it is his signature that appears above his signature block. Mr Smythe confirmed this, under oath, to our investigation, and has provided further testimony to our investigation in support of the document's existence and his having provided it to Mr Mark Leishman on 6 February 1998.

In particular, Mr Smythe provided our investigation with a detailed account of his preparation of the 6 February 1998 document, its signing by both himself and Mr Ryan, Mr Smythe's passing it on in person to Mr Leishman on or very shortly after 6 February 1998, and the discussion that he and Mr Leishman then had about the document, including Mr Leishman's apparent decision not to take the matter further. Mr Smythe believed that the document was prepared on AFP letterhead but was not 100% certain.

It should also be noted that throughout our dealings with Mr Smythe, we have found him to be a genuine and sincere witness. Nevertheless, elements of his account of

the creation and distribution of the 6 February 1998 document do not marry well with contemporaneous evidence that our investigation has considered.

For example, Mr Smythe was confident that as the document was dated 6 February 1998, that it would have been created and signed by both himself and Mr Ryan on that day. However, Mr Ryan's diary suggests that he and Mr Smythe did not leave Baileys' Wollongong head office until around 12.10 pm on 6 February 1998, arriving back in the IGD offices in Sydney at 1.35 pm. Mr Ryan's diary further records that he departed Sydney for Canberra at 2.10 pm that same day. If Mr Ryan's diary is correct, it does raise a question about the likelihood of the document being created and signed by Mr Smythe and Mr Ryan in the relatively limited time available to them.

To assist us in addressing these issues, Mr Smythe provided our investigation with suggestions as to where we might identify other contemporaneous evidence in support of his account. In particular, Mr Smythe told us that he maintained a complete running sheet of his activities during his time with the IGD and indicated that these had either been kept by the IGD or returned to the AFP after his departure from the AFP in 2001. He had also maintained notes in his AFP notebook and field book, which he states were left with the AFP on his departure. Mr Smythe also told us that an unsigned copy of the 6 February 1998 document was attached to a report and complaint about his time with the IGD that he lodged with the AFP in March 1998.

Our review of Defence records disclosed no evidence of Mr Smythe's running sheet ever having been retained as a Defence record, although Defence did have a copy of one page covering the 6 February 1998 meeting with Baileys, which had been provided to Defence in 2005 via Mr Bernard Collaery (see paragraph 3.20). This had already been provided to our investigation, and we were able to confirm with Mr Smythe that this was from his running sheet, and that he had supplied the copy to Mr Collaery in 2004 or early 2005.

In following up Mr Smythe's information about his AFP notebooks and field book, the AFP advised that the only such notebooks it holds are for 1995–1996 and 2000–2001. The AFP did provide us with Mr Smythe's AFP Field Book for 1995–2000, but this contained no information relevant to our investigation.

We were however able to obtain a copy of Mr Smythe's complete running sheet from papers that had been provided to a Senate inquiry in September 2004. The document is written in the first person and has no named author, but the accounts are consistent with Mr Smythe's activities in the IGD and the page covering the 6 February 1998 meeting with Baileys is identical with the page that was provided to Defence via Mr Bernard Collaery in 2005 and which Mr Smythe, during his interview with our investigators, had confirmed was from his running sheet.

On reading through the running sheet, it is clear that some parts have been written subsequent to the events that took place and not always in sequence. For example, the significance and relevance of some early entries are predicated upon information obtained and detailed in later entries. Nevertheless, it provides a reasonably contemporaneous account of Mr Smythe's time with the IGD.

Mr Smythe's running sheet details a number of interactions and conversations with Mr Leishman, including an entry immediately following the account of the interview with Baileys:

On our return trip home Ryan called Leishman and provided details of our meeting with Baileys, including the implications of possible corrupt activities of defence personnel at DNSDC and Defence Plaza. Leishman advised that he was not going to change the direction of the investigation ...<sup>77</sup>

Mr Smythe's running sheet does not contain any reference to either the preparation of the 6 February 1998 document, its provision to Mr Leishman or any subsequent discussion with Mr Leishman. There are a number of references and cross-references to documents in the running sheet, but none of these would appear to be a reference to the 6 February 1998 document. The closest that we come to such a reference comes immediately after the entry quoted above and provides a possible explanation as to why our investigation has not been able to confirm its existence prior to 2004:

Returned to Adelaide for the weekend, on Saturday the 7/2/98 I went to AFP Headquarters with the intention of recording my concerns. However, on arriving at the building I met Special Agent Ros Bell, who was working on the second floor. I decided that I would raise my concerns with her, not being too specific because of the classification of the work. I asked Bell to record somewhere that I had spoken to her re these concerns. I then left the building.<sup>78</sup>

The other contemporaneous, or near contemporaneous, evidence that Mr Smythe suggested we consider in our search for the 6 February 1998 document was the report that he lodged with the AFP in March 1998 raising his concerns about the IGD SIT.

Mr Smythe did not have a complete copy of any of the reports with attachments that he provided to the AFP. Mr Smythe did provide to our investigation a copy of an unsigned letter from himself to the Director of Operations for AFP Central Region (DOCR) and General Manager of AFP Central Region (GMCR) dated 11 March 1998, which appears to be a covering letter for 'a report outlining events and concerns in relation to my attachment to the Inspector-General's Division'.<sup>79</sup>

Mr Smythe also provided us with a copy of an unsigned minute from himself to 'GMSR' dated 9 September 1998, which makes reference to a report being submitted to GMCR on 16 March 1998 and a revised report being resubmitted to GMCR on 23 March 1998. The 9 September 1998 minute indicates that the 23 March 1998 report was attached (and suggests other reports may also have been attached), but we were not provided with a copy of any attached reports. There is no reference to any other attachments in the 9 September 1998 minute.

Finally, Mr Smythe provided us with a copy of the first page of an undated minute in response to his minute of 9 September 1998. This minute makes reference to minutes from Mr Smythe to GMCR dated 16 and 23 March 1998, and to other documents, including documents relating to the work of the SIT and the IGD. These latter documents could well be attachments to Mr Smythe's report. There is, however, no reference to anything that could be the 6 February 1998 document.

The AFP advised us that, after a thorough search of its records, it was unable to locate any copies of Mr Smythe's report and attachments or any of the documents described in the undated response to Mr Smythe's minute of 9 September 1998. We

<sup>77</sup> Peter Smythe, 'Running sheet for period 24/11/97 to 17/2/98', Number 48.

<sup>78</sup> Peter Smythe, 'Running sheet for period 24/11/97 to 17/2/98', Number 49.

<sup>79</sup> Peter Smythe, 11 March 1998.

understand that these documents were also the subject of an unsuccessful freedom of information request by Mr Smythe and review by the Administrative Appeals Tribunal in 2002, which confirmed that, after a reasonable search the AFP has not been able to locate the documents.

Defence has provided us with a copy of a minute from Federal Agent Smythe to the GMCR dated 23 March 1998. This document was faxed to Mr Leishman on 6 April 1998 by GMCR, in preparation for a 'workplace reconciliation' between Mr Smythe and Mr Leishman set down for 7 April 1998. The facsimile cover describes the minute as 'the report submitted by Peter SMYTHE'.

The report as sent through to Mr Leishman was three pages long, has no attachments and makes no reference to any attachments. The report contains no reference or other information that points to the 6 February 1998 document.

### Mr David Ryan

Mr Ryan has also testified in support of the 6 February 1998 document's authenticity. On 14 June 2007, Mr Ryan certified that the signed 6 February 1998 document on AFP minute paper is 'a true copy of the text of the letter provided to M[ark] Leishman on 6/2/98' and that it is his signature that appears above his signature block. Mr Ryan confirmed this under affirmation in the course of our interview with him.

However, Mr Ryan was uncertain about key elements of his actions and knowledge in relation to signing the document and its provision to Mr Leishman. Unlike Mr Smythe, his testimony to our investigation was more circumspect, stressing that the Baileys' investigation was not his, and that, accordingly, his recollection was not strong. For example, Mr Ryan was unable to provide any direct recollection of either signing the document on AFP letterhead or any recollection of how and when either copy of the document was provided to Mr Leishman:

INVESTIGATOR: ... So you do recall seeing the documents with the AFP letterhead?

RYAN: Well, my signature's on them so I must've seen it so – because how would my signature get there.

INVESTIGATOR: That's one of the questions, I guess. Do you recall, specifically recall signing this document [the 6 February 1998 document on AFP minute paper]

RYAN: No. Not really ...

...

INVESTIGATOR: ... you've stated here that you believe that it [the 6 February 1998 document] was provided [to Mr Leishman] ... Did you provide it to Mr Leishman?

RYAN: No. That would've been Pete [Smythe] ...

...

INVESTIGATOR: So did you know for a fact that Pete [Smythe] had submitted [the 6 February 1998 document] or you're assuming that he did?

RYAN: I'm assuming that he did.<sup>80</sup>

This is consistent with Mr Ryan's responses when interviewed by IGD investigators in February 2007 as part of the internal Defence investigation. Significantly, at that time,

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<sup>80</sup> Ryan Transcript, pages 21 and 24.

Mr Ryan had no recollection of signing the 6 February 1998 document, nor any knowledge or recollection of how and when the document may have been submitted.

It is also worth noting that Mr Ryan's file note of 15 April 1998, in which he sets out his recollection of the 6 February 1998 interview with Baileys and the actions that followed from it, states that Mr Leishman was informed about the Baileys' interview, but does not indicate how and makes no reference to the 6 February 1998 document. That Mr Ryan had to make a file note of the 6 February 1998 interview for Mr Killmier in April 1998 would itself suggest that the 6 February 1998 document was not available to Mr Killmier at that time.

### **Ms Glenda Bannerman**

The only other direct evidence we received in support of the 6 February 1998 document's authenticity came from Ms Glenda Bannerman, Executive Assistant to Mr Leishman in 1998 and SIT's administrative officer. When asked by our investigators if she had seen the 6 February 1998 document, Ms Bannerman, under affirmation, stated that she had, and believed that Mr Ryan or Mr Smythe provided it to her. This was a somewhat different account than that which Ms Bannerman provided IGD investigators in February 2007, when she indicated that she had no specific recollection of seeing the 6 February 1998 document.

When questioned further by our investigators, Ms Bannerman had no specific recollection of when and how she had seen the document. Ms Bannerman also had a tendency to reconstruct her recollection of the document based on her recollection of her usual practice at the time and the content of the document itself, as the following extract shows:

BANNERMAN: I can definitely recall this one [after being shown the unsigned 6 February 1998 document] ...

INVESTIGATOR: Can I just ask you when you say you recall the document, in what context do you recall the document?

BANNERMAN: I told Defence [when interviewed as part of the internal investigation in February 2007] that I recognised the document and it would have been given to me by probably Dave Ryan or Peter Smythe to log in my log book. And I'm assuming – I don't know I can't recall – but they may have given me this with a tape as well.

INVESTIGATOR: Okay so your recollection extends to the workplace at the time?

BANNERMAN: Yes, yes.

INVESTIGATOR: Now when you say your log book you don't mean the notebook?

BANNERMAN: No.

INVESTIGATOR: You mean a separate - - -

BANNERMAN: Probably a book where I would log each piece of paper and give it a folio number as on these document reference.

INVESTIGATOR: Yes and that would have been with a stamp, a stamped folio number?

BANNERMAN: Yes.

INVESTIGATOR: So essentially we're talking about some sort of register?

BANNERMAN: Yes.

INVESTIGATOR: Is that an accurate way to describe it do you think?

BANNERMAN: I'm trying to recall if it was that or if I put the folio number on the document when I filed it on a file; I just can't get my head around that I'm sorry.

INVESTIGATOR: So just going back again you recall receiving it?

BANNERMAN: I do and because I know that the investigators went to Wollongong to interview someone at Baileys it would have been strange and I would have noticed, I think, if they'd not given me something after being away all day. Yes after coming back into the office they would have—I mean that was just the way things occurred.

...

INVESTIGATOR: ... what was your practice when you would receive a document? Would you ... log it straight away or would it come into your in tray, would it be hand delivered to you?

BANNERMAN: It was either handed to me or popped in my in tray.

INVESTIGATOR: Okay so it could be either?

BANNERMAN: Yes.

INVESTIGATOR: Do you have any specific recollection with this document?

BANNERMAN: Because I know that they went there—I don't know—and I know that – well I mean I've seen a document and I know that in it it's been said that it was handed to me. It's something to do with—it's to do with this meeting at Baileys. So that's why - - -

INVESTIGATOR: The document itself though says that ... other papers were handed to you is that right? Could you read the relevant paragraph for us?

BANNERMAN: Yes 'As directed by you this meeting was recorded and the tapes along with further meeting details recorded on to an occurrence sheet were lodged with Mrs Glenda Bannerman on our return.' You want me to recall these other meeting details?

INVESTIGATOR: Well do you recall receiving an occurrence sheet or—about this matter?

BANNERMAN: Too long ago I can't say yes.

INVESTIGATOR: But you do recall seeing this document at the time?

BANNERMAN: Pretty sure.

INVESTIGATOR: But you don't recall what you did with it?

BANNERMAN: It would have been—it would have been logged and it would have been taken to Canberra.<sup>81</sup>

## Discussion

Other than Mr Smythe, Mr Ryan and Ms Bannerman, no contemporary IGD staff we interviewed or took statements from had any recollection of having seen any version of the 6 February 1998 document, at least until its provision to Defence in 2005 via Mr Bernard Collaery.

In particular, Mr Leishman categorically denied any contemporaneous knowledge of the 6 February 1998 document:

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<sup>81</sup> Commonwealth Ombudsman 'Transcript of interview with Glenda Bannerman', 10 August 2007, pages 15 to 18.



I did not see the document in or about the date recorded, nor did I see it at any time during the SIT/Operation Majorca.<sup>82</sup>

Mr Leishman further stated that he did not see any version of the document until the AGS showed him the unsigned version in 2005, which was subsequently shown to him by the IGD in 2007.

Mr Leishman stated he had never seen the signed version until Ombudsman investigators provided it to him as part of our investigation in 2007.

Mr Leishman raised a number of issues that go to the authenticity of both the signed and unsigned versions of the document. In particular, he draws attention to certain formatting anomalies, which he states undermine any contention that the documents were created contemporaneously by anyone employed in the SIT. Mr Leishman states that the SIT did not use AFP letterhead, and were at pains generally to prevent any perception of AFP ownership of SIT operations, given the team was run by the IGD with only one AFP officer attached at the time.

Similarly, Mr Leishman takes issue with Mr Ryan's signature on what purports to be an AFP document as Mr Leishman asserts that Ryan, as an employee of Defence, would not have been authorised to sign an AFP document.

Mr Leishman also notes a number of procedural inconsistencies that, in his view, count against the likelihood of the document being created within the operational confines of the SIT. Although these take a similar form to Ms Bannerman's observations on SIT procedures, in that they are based on his recollection of the SIT's usual practices rather than on any specific event, they are worth noting in light of Mr Leishman's position as team leader within the SIT.

For example, Mr Leishman stated that the implication within the document that such minutes were an ordinary part of the SIT's case management paper trail is incorrect as it is his firm recollection that, outside of any electronic record, running sheets and occurrence entries were the primary case management documents employed by the SIT. Mr Leishman further states that the date stamp on the document is 'not something either the SIT or myself used'.

Further to the above, there are also elements of the contents of the 6 February 1998 document that appear to be inconsistent with the documentary record, and which suggest either an error in the content, and/or that the document was prepared or finalised some time later than 6 February 1998.

For example, the document makes reference to 'tapes' of the interview being lodged 'on our return' with Ms Glenda Bannerman, the Executive Assistant to Mr Leishman and the SIT's administrative officer. However, a receipt from the IGD Exhibit Register records the deposit of only one tape for the 6 February 1998 meeting, and shows that Mr Ryan lodged the tape on 10 February 1998.

Ms Bannerman confirmed that, in her role as administrative officer, she did receive tapes of interviews and records of meetings, however she had no specific recollection of receiving the Baileys' tape or tapes or any occurrence sheet on the Baileys' meeting.

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<sup>82</sup> Leishman Statement, page 7.

Mr Smythe believed that more than one tape was used—suggesting to our investigators that as many as three might have existed. Mr Erwin initially indicated to our investigators that ‘there was definitely two [tapes] because we changed the tape once’, but later acknowledged that his most clear recollection was that the tape was stopped once and could have been to change sides on the same tape. Stopping the tape once would also be consistent with the record from the one tape from the meeting that we do have, which is attributed to the investigator’s checking a possible tape or recorder malfunction.

Although Mr Ryan had no recollection of any of these details, he has confirmed that it was his signature on the Exhibit Register receipt for 10 February 1998 and that this suggests that a tape (or tapes) was not lodged on 6 February 1998. There is also some support in Mr Ryan’s diary for 10 February 1998 as the day any tape was lodged. Firstly, Mr Ryan’s diary entry for 6 February 1998 indicates that, on his return to Sydney from Wollongong, he was in the office for only 35 minutes before departing for Canberra, during which time he made a number of telephone calls. Secondly, the diary indicates that on 10 February 1998, Mr Ryan spent the entire day on ‘paper work’, which could well have included lodgement of any exhibits.

The 6 February 1998 document also states that an occurrence sheet of the meeting was lodged with Ms Bannerman. Our review of the IGD occurrence sheet register has not disclosed any occurrence sheet to cover the 6 February 1998 meeting with Baileys. The only record we did identify to fit this description was an occurrence sheet prepared by Mr Ryan on 15 April 1998, which was not included on the register, and which made no reference or cross-reference to an earlier occurrence sheet.

The IGD occurrence sheet register does have a small number of documents missing or recorded as removed. There are, however, no records missing or removed from where we would normally expect a 6 February 1998 occurrence sheet to reside on the register, noting that the occurrence sheets were not always in chronological order.

Occurrence sheet 213, immediately preceding the entry for Sergeant Harper’s first (3 February 1998) record of conversation with ICAC about Baileys’ allegations, is recorded in the register as having been removed and ‘held by DDFIR [Leishman]’. The small number of other occurrence sheets recorded as removed and held by DDFIR generally relate to matters of sensitivity, and we understand that Defence has usually been able to locate these holdings elsewhere. In some instances, these occurrence sheets have been returned to the register, without removing the record of the sheets’ removal.

Defence has not been able to locate occurrence sheet 213. There is, however, no evidence to suggest that occurrence sheet 213 related to the 6 February 1998 meeting with Baileys, and the location of this missing sheet next to an occurrence sheet detailing an earlier interaction about Baileys’ matter would appear to be mere coincidence.

As noted previously, Mr Leishman recollects that running sheets and occurrence entries were the standard case management documents used by the SIT. He recalls a strong emphasis on timeliness of recording information, as prioritisation and allocation of tasks were based on daily running sheet reviews.

Ms Bannerman confirmed that part of her role as administrative officer was to receive and register occurrence sheets, however, as with the tapes, she had no specific recollection of receiving an occurrence sheet on the Baileys’ meeting.

Mr Smythe confirmed that occurrence sheets were the standard information record for the SIT, however he did not provide us with a specific recollection of an occurrence sheet for the 6 February 1998 meeting. He also appeared to suggest that the 6 February 1998 document may have been prepared in place of an occurrence sheet:

[In response to questions about providing the 6 February 1998 document to Leishman]

SMYTHE: Well, he [Leishman] was often saying 'give it to me ... give it to me in a meeting ... put it on an occurrence sheet' or something like that and Dave [Ryan] and I would've pre-empted that and had that [the 6 February 1998 document] ready for him and slid it under his nose ...<sup>83</sup>

Mr Ryan had no recollection of any occurrence sheet for the 6 February 1998 meeting and indicated that he believed it would have been Mr Smythe's responsibility to prepare any occurrence sheet for the meeting. He also indicated that he did not recall having access to any documentation other than his diary when he prepared his occurrence sheet on the 6 February 1998 meeting with Baileys on 15 April 1998.

Both Defence and the AFP have also provided us with their observations about the 6 February 1998 document. Their comments include:

- the minute paper used appears to be pre-1995 stock, lacking both a slogan and print date contained on 1998 minute paper
- the use of AFP minute paper to record a Defence investigation was not usual practice, and there are no other examples of this occurring
- Mr Ryan's signature is offset and does not strike through the signature block—this is inconsistent with other examples of Mr Ryan's signature
- Mr Ryan's signature appears to have been pixilated, suggesting that his signature has been electronically captured in the past.

### **Ombudsman investigation**

Finally, there are the conclusions we draw from our own investigation. As we have noted elsewhere (see paragraphs 1.36 and 2.65), after reviewing thousands of Defence records our investigation has not found any versions of the 6 February 1998 document on Defence files prior to 2005 nor any contemporaneous reference to such a document on Defence files.

Following the appearance of the signed 6 February 1998 document on AFP minute paper and other information received during our interview with former Federal Agent Peter Smythe, we served formal notice on the Commissioner of the AFP for access to all AFP records relevant to our investigation. The AFP response indicated that the AFP had conducted 'an exhaustive search of its electronic and hard copy holdings' but had no record of the 6 February 1998 document 'ever having been created, forwarded, or stored on AFP databases'. The AFP was able to provide some material and information that we had requested, but we could not identify any record or reference to support the existence of the 6 February 1998 document.

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<sup>83</sup> Smythe Transcript, pages 22–24.

The earliest appearance of the *unsigned* 6 February 1998 document that we have been able to confirm is April 2004, when Ms Liz Jackson of the ABC Television's 'Four Corners' program provided a copy to Mr David Ryan.<sup>84</sup> The earliest appearance of the *signed* 6 February 1998 document that we have been able to confirm is May 2007, when it appeared in the press and when Senator Faulkner tabled it during a Budget Estimates hearing.

Mr Smythe also advised our investigators that when he returned to the AFP he brought with him an electronic copy of the 6 February 1998 document on his work laptop computer. It was from this electronic copy that he printed a copy of the document—unsigned and without AFP letterhead—which he had provided in March 1998 to the AFP as part of a report and complaint about his time with the IGD. Mr Smythe also suggested that there may have been electronic copies of the document held within Defence. In light of this, and in the absence of clear contemporaneous evidence of the 6 February 1998 document in its current form and content, we cannot rule out the possibility of someone creating or altering the document after 6 February 1998, including after the HMAS *Westralia* fire itself.

Significant questions about the provenance and authenticity of both the signed and the unsigned 6 February 1998 document therefore remain unresolved. However, on balance the evidence points to the document coming into existence at a time later than the 6 February 1998 by an unofficial channel.

Furthermore, even if the 6 February 1998 document is genuine, our investigation has identified significantly more evidence about Baileys' meeting with the IGD, which provides a more comprehensive and accurate picture of the nature and context of any warning Baileys gave on 6 February 1998. That evidence establishes that none of Baileys' allegations or concerns expressed on 6 February 1998 could reasonably have been interpreted as any kind of a warning of the circumstances that contributed to the HMAS *Westralia* fire, and Defence cannot reasonably be said to have failed to act on any such warning.

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<sup>84</sup> Ms Liz Jackson, ABC Television's 'Four Corners', to Mr David Ryan, 22 April 2004.

## **APPENDIX C—TRANSCRIPT OF THE 6 FEBRUARY 1998 MEETING BETWEEN IGD INVESTIGATORS AND BAILEYS DIESEL SERVICES PTY LTD**

The transcript of the 6 February 1998 meeting between IGD investigators and Baileys Diesel Services Pty Ltd has been edited to remove names or references that could be used to identify third parties, in the interests of privacy and to protect the speakers against liability.

The transcript was not reproduced in the printed report, but was included on a disk inside the back cover. It can be viewed as an attachment to this report online at [www.ombudsman.gov.au](http://www.ombudsman.gov.au) in the Publications/Investigation reports area.

## ATTACHMENT A—ACRONYMS AND ABBREVIATIONS

ADI	ADI Limited
AFP	Australian Federal Police
AGS	Australian Government Solicitor
Army	Australian Army
Baileys	Baileys Diesel Services Pty Ltd
BOI	Board of Inquiry
CDDP	Commonwealth Director of Public Prosecutions
CHES	CHES Diesel & Marine Services
CRCO	Contract Repair Control Officer
DDFIR	Deputy Director Fraud Investigations and Recovery
Defence	Department of Defence
DMO	Defence Materiel Organisation
DNSDC	Defence National Stores and Distribution Centre
DOCR	Director of Operations Central Region (AFP)
FIMA	Fleet Intermediate Maintenance Authority
GMCR	General Manager of Central Region (AFP)
HMAS	Her Majesty's Australian Ship
ICAC	Independent Commission Against Corruption
IG	Inspector-General of Defence
IGD	Inspector-General Division
ISO	International Organization for Standardization
NIS	Naval Investigative Service
NPC	Naval Police Coxswain
NSCHQ	Naval Support Command Headquarters
OH&S Act	<i>Occupational Health and Safety (Commonwealth Employment) Act 1991 (Cth)</i>
RAN	Royal Australian Navy
SIT	Special Investigation Team
SCAHQ	Support Command Australia Headquarters