

Promoting safety and crime prevention

- 4.1 The main interest of victims' groups is to ensure that the tragedies they suffered do not occur again. For these groups, improved on-board safety measures and better crime prevention are the central focus of their work. These things may rely on changes to the law, as well as improved passenger information and the promotion of more accountable corporate cultures.
- 4.2 This Chapter will consider two main categories of measures to improve safety and crime prevention:
- On-board crime prevention and safety measures:
 - ⇒ The Milledge Recommendations;
 - ⇒ Alcohol service;
 - ⇒ On-board security;
 - ⇒ Video monitoring; and
 - ⇒ Operators' liability for negligence.
 - Pre-departure preparation and awareness of passengers:
 - ⇒ Consumer information; and
 - ⇒ The *Smarttraveller* website.

On-board crime prevention and safety measures

- 4.3 The Milledge Recommendations contained a number of suggested measures to increase safety on cruise ships, aimed at preventing the committing of crimes. Amongst these were:
- The attachment of a Federal Police Officer (or Officers) to travel with ships;

- Drug detection scanning for passengers and crew boarding all vessels at Australian ports; and
 - Drug detection dogs used at all Australian ports.
- 4.4 These measures reflect the principle that protecting the rights of individuals relies on the prevention of crime and accidents, as well as the prosecution of perpetrators through the criminal justice system.
- 4.5 In the United States, the *Kerry Act* requires cruise ships that come within its ambit to conform to certain design standards for greater passenger security, such as rails that are at least 42 inches high, peep holes in cabin doors, security door latches, 'man-overboard' (MOB) detection technology, and video surveillance.¹
- 4.6 As discussed in Chapter 3, the Legal Advice makes it clear that UNCLOS restricts the regulation of the design, construction, manning and equipment of foreign-flagged ships unless those laws give effect to generally accepted international standards or rules.² The United States is not a party to UNCLOS and is therefore able to regulate under the *Kerry Act*. Australia is more limited in its ability to legislate for matters contained in the *Kerry Act*. Hence the Australian Government must direct its efforts to intergovernmental work in fora such as the IMO in relation to some of the safety and prevention measures discussed in this Chapter.

Alcohol service

- 4.7 The recreational nature of cruise ships means that passengers are more likely to consume alcohol, and probably more than they would on land. Providing evidence about the consumption of both alcohol and drugs, the Australian National Council on Drugs said that:

There is a limited research available on the higher levels of drug or alcohol use (and other 'risk-taking' activities) among people who are travelling or on holiday, without being specific to cruise ships. Higher consumption of alcohol or drugs among this group may relate to these activities being associated with pleasurable experiences or leisure time, to the use of alcohol or other drugs as social lubricants, to their role for some in celebrations, or to other factors. Some of the research has noted that drug use while away from home is regarded by some as being less risky than drug use at home. It could be inferred that higher levels of use on cruise ships (compared to use in the general population) would not be unexpected given this research. However, there needs to be

1 Section 3507-8, Title 46 (shipping), USA Code.

2 Legal Advice, Appendix D, p. 2.

caution using this information given the clear differences that exist for cruise ship passengers compared to land based travellers.³

- 4.8 General evidence to the inquiry suggested that high consumption of alcohol is a feature of cruise ships. According to the International Cruise Victims Association, excessive alcohol consumption leads to numerous risks:

The over-indulgence of alcoholic beverages by cruise ship passengers on a carefree holiday has led on more than one occasion to safety related accidents onboard ship, physical and sexual assaults, and even the unfortunate death of passengers who have fallen over the ship's railing while becoming sick after consuming too much alcohol. While most adult passengers are responsible enough to control their drinking activities as they would in any other social setting, many other passengers, including juvenile underage drinkers are the most vulnerable to the party-like environment of a cruise ship where alcohol is virtually available, 24 hours a day.⁴

- 4.9 The consumption of alcohol can have a direct impact on the level of crime. As stated in an academic paper by Ross Klein and Jill Poulston:

Around half of all sexual assaults are associated with alcohol consumption...of either the perpetrator or victim.
[...]

Although most cruise ships prohibit the consumption of alcohol purchased elsewhere...alcohol is also a major factor in sexual crimes committed on cruise ships.⁵

- 4.10 Numerous examples of current or past cruising policies demonstrate how retail and bar policies can encourage of excessive alcohol consumption. Examples include:

- Promotional events, such as 'happy hours' or 'two-for-one specials';
- Purchase of bulk drinks packages;⁶
- Alcohol sales-commissions for staff; and
- The consumption of duty-free alcohol purchased in ports.⁷

- 4.11 However, the cruise industry claims that it has made some efforts in recent years to prevent alcohol from driving dangerous or criminal

3 Australian National Council on Drugs, *Submission 8*, p. 1.

4 International Cruise Victims Association, *Supplementary Submission 12.2*, p. 18.

5 Dr Jill Poulston, *Submission 5*, (Attachment A), p. 7.

6 International Cruise Victims Association, *Supplementary Submission 12.2*, p. 52.

7 Carnival Australia, *Submission 9*, p. 4.

behaviour on board ships. Ms Ann Sherry, CEO of Carnival Australia, considers that the cruising industry has undergone a 'transformation', including in relation to alcohol service:

The transformation has involved a significant number of changes, so there is now zero tolerance of excessive behaviour on board any Carnival Australia cruise ships. This policy has seen the introduction of a series of significant changes. We have now strict policies and procedures to ensure responsible service and consumption of alcohol and no bar staff are on incentives to sell alcohol, nor do any of our ships in this region have unlimited drinking packages.⁸

4.12 Since 2002, Carnival Australia has taken the following steps to reduce the abuse of alcohol:

- Ending alcohol sales-commissions for staff;
- Confiscation of alcohol that passengers attempt to bring on board;
- Compulsory *Responsible Service of Alcohol* (RSA) training for crew; and
- Additional controls to prevent alcohol service to minors.⁹

Royal Caribbean Cruise Lines, the other major player in the Australian cruise industry, advised that commissions are not paid for the sale of alcohol.¹⁰

4.13 Evidence given by cruise company representatives detailed how such changes have been implemented. In respect of confiscation of off-ship alcohol:

On P&O ships no alcohol is allowed on board as passengers embark, and that was a decision we made at the time that there were suggestions that that was how people were circumventing the rules. Everyone is screened, like with airport screeners, both shore-side and on the ship. So it is impossible, basically, for you to have a bottle of alcohol sitting under your jacket and for us not to find it, although people do try. With some of our companies that have older passengers and passengers who are paying a lot more for their cruises we have an option of bringing a special bottle of wine on board, but it is very limited. People buying duty-free alcohol have it given to them as they disembark the ship at their home port, so you do not have the opportunity to buy lots and lots of duty-free alcohol and have that in your cabin and be drinking it

8 Ms Ann Sherry, Carnival Australia, *Committee Hansard*, 15 February 2013, p. 1.

9 Carnival Australia, *Submission 9*, p. 4.

10 Mr Gavin Smith, Royal Caribbean Line Cruises Ltd, *Committee Hansard*, 15 February, p. 10.

rather than engaging in the public spaces where we have more visibility.¹¹

And for the *Responsible Service of Alcohol*:

Rather than dealing with people after they get to the stage of needing more intervention, we have supervisors in all of the bars, whom we call RSA supervisors, who watch the dynamic of what is going on. If we see people who are clearly drinking too fast or getting too drunk, we stop serving them alcohol. We have a lot of authority on board the ships to stop serving. The RSA supervisors will often suggest to people and their friends that maybe they cool off or even that it is time to call it a night. We are much more involved in making sure that everyone on board the ship has a great time. Often that requires us to say to the people who are absolutely at the margin of that, 'You are disrupting people and perhaps it is time you went to bed.' Most of our passengers are very happy to do so once someone comes up to them and says, 'Maybe it is time to call it a night,' and it is very rare that we are required to even contemplate something like holding people or doing that.¹²

4.14 Retail management systems on cruising vessels give companies ample information about passengers' spending and drinking habits, which can strengthen the *Responsible Service of Alcohol*:

The issue with alcohol consumption is that there is no suggestion within the cruise line management that there is a revenue orientation towards alcohol consumption. We look at guests, from the young child through to the older guest, and look at their spend across the ship – between shore tours, the casino, shop purchases and beverages. The relationship that we have with our guests is very broad. Part of that is the responsible service of alcohol if that indeed is part of their consumption.¹³

Because we are in a controlled environment, we have the capability to shut the account of that guest so that they can no longer make any purchases...on the ship.¹⁴

[the passenger cannot go to another bar on ship] because every single transaction is undertaken using their electronic card, which

11 Ms Ann Sherry, Carnival Australia, *Committee Hansard*, 15 February 2013, p. 14.

12 Ms Ann Sherry, Carnival Australia, *Committee Hansard*, 15 February 2013, p. 9.

13 Mr Gavin Smith, International Cruise Council of Australasia, *Committee Hansard*, 7 February 2013, p. 12.

14 Mr Gavin Smith, International Cruise Council of Australasia, *Committee Hansard*, 7 February 2013, p. 14.

is their pass key. Once they are cut off, which is the standard industry phrase, they are cut off. Again, we are well practised in making sure that another guest does not start purchasing for a guest that has been cut off. If that does happen, and it must happen in pubs and clubs ashore, if somebody does that, they are cut off as well. That is exercised very diligently.¹⁵

Schoolies cruises

4.15 Until 2007 Carnival operated designated 'schoolies cruises', aimed at school-leavers. However, it eventually discontinued such cruise marketing, concerned about the risk of 'risk of secondary supply of alcohol on board its cruise ships to passengers under the age of 18'¹⁶ on schoolies cruises. There are many other risks associated with 'schoolies' events on land, including risky behaviour, alcohol-fuelled violence and drug use.¹⁷

4.16 In order to effect such a ban, Carnival Australia had to secure an exemption from anti-discrimination law:

We have banned schoolies cruises, a change that required obtaining a unique exemption from the Australian Human Rights Commission and the Age Discrimination Act. We have radically shifted our emphasis so that cruising is now promoted as a relaxed family holiday for all age groups.¹⁸

4.17 The exemption from the Human Rights Commission is to allow Carnival Australia to restrict the carriage of passengers as follows:

... between 1 November and 7 January annually, passengers who are under the age of 19 must be accompanied by a responsible adult (the 'Responsible Adult Requirement'); and

... between 8 January and 31 January annually, [Carnival] will permit a quota of 60 passengers per cruise who are under 19 years of age and not accompanied by a responsible adult. After this quota is filled, [Carnival] will apply its requirement that

15 Mr Gavin Smith, International Cruise Council of Australasia, *Committee Hansard*, 7 February 2013, p. 14.

16 Australian Human Rights Commission, *Notice to Grant a Temporary Exemption*, Applicant: Carnival Australia, 2010, p. 2.

17 See for example: House of Representatives Standing Committee on Family, Community, House and Youth, *Avoid the Harm - Stay Calm / report on the inquiry into the impact of violence on young Australians*, July 2010; Legislative Assembly of Queensland Law Justice and Safety Committee, *Inquiry into Alcohol-Related violence - final report*, March 2010.

18 Ms Ann Sherry, Carnival Australia, *Committee Hansard*, 15 February 2013, p. 2.

passengers under 19 years of age must be accompanied by a responsible adult.¹⁹

- 4.18 The Human Rights Commission exemption expires on 22 June 2013, and Carnival Australia will have to reapply in order to seek a further exemption. Although Carnival Australia has taken decisive action to abandon the 'schoolies' part of the market, other operators may continue to do so, and new entrants into the market may seek to profit from such cruises. The Committee's conclusions about this matter are included in the Committee Comment section at the end of this Chapter.

On-board security

- 4.19 Evidence from cruise operators emphasised the role of security staff in all aspects of ship operations. As expressed by Cruise Lines International Association: 'Major lines have sophisticated security departments run by former federal, state or military law enforcement officials and staffed by competent, qualified security personnel.'²⁰ Carnival Australia noted that improved security arrangements are part of its response to tragedies in the past, stating that there are 'Highly trained security teams on-board (at least 20 security personnel on each P&O Cruises cruise).'²¹
- 4.20 Internationally, the International Cruise Victims Association (ICVA) has proposed an independent enforcement agency, the Cruiseline Law Adherence Monitoring Personnel.²²
- 4.21 Security officers have numerous roles to play on a ship, but they are particularly important in preventing dangerous or criminal behaviour. As pointed out by the ICVA, on-board security is the closest thing to a police force whilst at sea:

While the ship has many employees, one noticeable element missing from this well-staffed city at sea, is a police force with jurisdictional authority over its citizens. That is not to say that the seagoing city is not without security. On the contrary, it maintains a contingent of paid employees that enforce the ship's security policies. They are, for all intent purposes, paid to keep the

19 Australian Human Rights Commission, *Notice to Grant a Temporary Exemption*, Applicant: Carnival Australia, 2010, p. 1.

20 Cruise Lines International Association, *Submission 11*, p. 1.

21 Carnival Australia, *Submission 9*, p. 3.

22 International Cruise Victims Association, *Cruiseline Law Adherence Monitoring Personnel (CLAMP)* <<http://internationalcruisevictims.activeboard.com/t10401106/icv-outlines-proposal-for-independent-security-personal-on-c/>> viewed 29 January 2013.

gangways operating smoothly and or to prevent unauthorized access to bars and casinos.²³

- 4.22 Security officers evidently have a very important role in monitoring the safety of all passengers, and in overseeing the supply of alcohol, as noted above. Security officers also have particular obligations to perform when a crime has been committed, which is discussed further in Chapter 4.
- 4.23 Concerns raised about security during the inquiry focussed on:
- Background and training of officers;
 - Potential conflict between interests of passengers and interests of the vessel owner; and
 - Police officers attached to vessels.

Background and training

- 4.24 Carnival Australia told the Committee that police background checks are conducted on all crew members every two years, and every 12 months for crew who work with children.²⁴
- 4.25 It is not clear if the cruise industry outside Australia operates in a similar way. On an inspection of *MS Amsterdam*, a Holland America Line ship docked at Sydney, a child care worker told the Committee that she could not recollect undergoing a background or qualifications check since the commencement of her employment eight years ago.²⁵
- 4.26 As noted in Chapter 1, the Committee did not hear from the smaller companies in the cruise industry. Mr Mark Brimble noted that:
- While P&O Cruises Australia has agreed to improve certain of its current procedures and implement new procedures in light of the events surrounding the death of Dianne Brimble, the actions of only one Cruise Line do not provide protection to passengers travelling on ships of other cruise lines.²⁶
- 4.27 The Legal Advice provided to the Committee expresses doubt that Australia would be able to impose conditions on entry to Australian ports around the training or background of security staff:
- The imposition of conditions requiring ships to ... have carry crew with particular training are also likely to be regarded as going

23 International Cruise Victims Association, *Supplementary Submission 12.2*, p. 7.

24 Ms Ann Sherry, *Carnival Australia, Committee Hansard*, 15 February, p. 2.

25 Site inspection, 15 February 2013, Appendix C.

26 M Brimble and International Cruise Victims (Australia), *Submission to the Coroner's Court of New South Wales Inquest into the Death of Dianne Brimble on the P&O Pacific Sky on 24 September 2002*, p. 6 <www.internationalcruisevictims.org/files/DOC121110.pdf>.

beyond what Australia is entitled to require as a condition of port access.²⁷

Conflict of interest

4.28 Some submissions questioned the capacity of security officers to protect both the interests of passengers and the interests of the cruise operator, their employers, when these conflicted. The ICVA submitted that:

The safety of passengers and crew aboard a cruise and that is reflected in the professionalism of its security staff. The ability to react with decisiveness and with authority must be combined with professionally trained personnel using modern resources and training methods. With respect to cruise ships, the response of the security force to incidents has predictable responses. This stems from the fact that security officers on cruise ships are paid employees of the cruise lines and not an independent law enforcement representative with any authority (other than what the cruise lines give them). Their capacity to act officially in an investigation when an alleged crime has been committed is limited to the direction given by the Captain and/or the cruise lines.²⁸

4.29 Provisions of the *Kerry Act*, for example, impose mandatory reporting and confidentiality requirements that would reduce the possibility of vessel operators putting their own interests before the interests of passengers.

Police officers attached to vessels

4.30 The Milledge Recommendations proposed attaching police officers to cruising vessels:

Consideration should be given to the use of Federal Police Officers as 'on board' investigators travelling with the ship at all times. It would not be intended that their presence be intrusive but they would be reactive to crime reporting and could ensure a timely investigation. They would also have significant impact on crime prevention.²⁹

4.31 Mr Brimble and International Cruise Victims (Australia) recommended, in their evidence to the inquest:

27 Legal Advice, Appendix D, p. 2.

28 International Cruise Victims Association, *Supplementary Submission 12.2*, p. 6.

29 Milledge Recommendations, Appendix E, p. 3.

A requirement to place independent security personnel or having a rotation of Federal or State police onboard ships to overcome any conflict of interest for employed security.³⁰

4.32 The Government response rejected this particular recommendation, citing 'a number of complex legal, jurisdictional and practical impediments to complying with it'.³¹ The Australian Government indicated that such legislation would face considerable difficulties, including the:

- Likelihood of exceeding the permissible international legal limits on extraterritorial jurisdiction;
- Inability of an Australian Federal Police officer to exercise any enforcement powers, such as arrest, on a foreign vessel except with the consent of the flag state; and
- Potential challenges to an Australian Court's jurisdiction over any resultant prosecution on account of irregular arrest.³²

4.33 Moreover, criminal acts on cruise ships tend to be related to the crimes that State and Territory police agencies are responsible for.³³

4.34 Ms Ann Sherry, CEO of Carnival Australia, told the Committee that 'sea marshals' had been trialled in the past in New South Wales, whereby off-duty or holidaying police officers travelled on cruise ships.³⁴ The practice was discontinued when Carnival Australia and the New South Wales police force concluded that it was an ineffective measure.³⁵

4.35 Mr Giglia, Director Fleet Security and Investigations for Royal Caribbean Cruise Line, suggested that there are two practical obstacles to the effectiveness of 'sea marshals': the ability to have multiple governments agree on a single representative to wield jurisdiction in all areas, and the constitutional limits on the authority of a government official.³⁶

4.36 Mr Ken Moroney, in a private capacity, suggested that sea marshals would be less effective than good security officers:

I am not all that convinced that sea marshals would work, because it is like policing land side: it is about the visibility of people

30 M Brimble and International Cruise Victims (Australia), *Submission to the Coroner's Court of New South Wales Inquest into the Death of Dianne Brimble on the P&O Pacific Sky on 24 September 2002*, p. 6 <www.internationalcruisevictims.org/files/DOC121110.pdf>.

31 Government response, p. 10.

32 Government response, p. 11.

33 Government response, p. 11.

34 Sherry, 15 February 2013, p. 7.

35 Sherry, 15 February 2013, p. 7.

36 Mr Michael Giglia, Royal Caribbean Line Cruises, *Committee Hansard*, 15 February 2013, pp. 11-12.

engaged in security. It is about the visibility of the police on the street. You know yourselves, you are driving your own car down the street and you look in the rear-vision mirror and there is a highway patrol car behind you, you tend to feel for the seatbelt and you tend to check the speedo, even though you may be stationary. You tend to do all those things because of that awareness of who is around you. One of the important issues of land-based policing, in terms of prevention, then, is about the visibility of the operative. My preference would be to strengthen the role and function of security staff in terms of visibility and their operation and effectiveness rather than deploy covert sea marshals.³⁷

Video monitoring

- 4.37 Evidence to the inquiry frequently raised questions about the use of closed-circuit television cameras (CCTV). CCTV can make a considerable contribution to on-board safety through:
- Deterring individuals from committing criminal acts;
 - Rapidly identifying dangerous or criminal conduct as it is occurring; and
 - Recording evidence for later use by ship security and police agencies.
- 4.38 Carnival Australia has improved on-board installation of CCTV on its ships. Ms Sherry provided that: 'There are now up to 600 CCTV security cameras introduced to public areas of our ships, as well as infra-red cameras along the sides of our ships.'³⁸ Ms Sherry further noted, 'I think the focus – and the reason for having so much CCTV – is actually on early intervention.'³⁹ More generally, Mr Gavin Smith, of ICCA said that:
- [security officers work] in a very controlled environment. The point you raise is in respect of all public areas throughout the ship, which are monitored by CCTV. There are anywhere from 500 to 600 cameras, to more than a thousand cameras, depending on the size of the ship. So all of the activities of staff and guests in all public areas across the ship are monitored and recorded.⁴⁰
- 4.39 While CCTV can help interrupt dangerous or criminal behaviour if it continuously monitored, it is not clear that this continuous monitoring is

37 Mr Ken Moroney, *Committee Hansard*, 15 February 2013, p. 40.

38 Ms Ann Sherry, *Carnival Australia, Committee Hansard*, 15 February 2013, p. 1.

39 Ms Ann Sherry, *Carnival Australia, Committee Hansard*, 15 February 2013, p. 9.

40 Mr Gavin Smith, *International Cruise Council of Australasia, Committee Hansard*, 7 February 2013, p. 14.

occurring. Whilst Ms Sherry emphasised the continuous monitoring of these camera systems at the Committee's public hearing, subsequent media statements cast doubt on her evidence. The public hearing included the following exchange:

Dr STONE: The 600 cameras that you referred to in your evidence, is that across your ships or per ship?

Ms Sherry: That is per ship.

Dr STONE: Including infrared alongside.

Ms Sherry: Yes. It is in public areas. It is clearly not in people's cabins, but it is in all of the public areas so that we have got capacity to monitor what is happening on board the ship.

Dr STONE: Is that continuously monitored or is it just checked when there is an incident?

Ms Sherry: It is continuously monitored by staff dedicated to that.⁴¹

However, a different practice is suggested by recent media reports relating to the disappearance of the two passengers from a cruising vessel (discussed in Chapter 2):

...Ms Sherry says not all CCTV footage is monitored all the time.

"CCTV is monitored, but not every camera is monitored," she said.

"At that time of night, it was the last night of a cruise. Virtually everybody else was in the public spaces on the ship and they're the areas that we focus on at those times."⁴²

- 4.40 CCTV can provide cruise vessel operators with effective knowledge about events in public areas of the vessel, in real time. However, in order to be fully effective, CCTV must be monitored by staff, with appropriate systems for reporting and taking action when cameras show that dangerous or criminal behaviour may be taking place. In the absence of such monitoring and systems, CCTV will serve merely to record evidence rather than contributing to prevention and safety.
- 4.41 In addition to CCTV, other equipment and systems can contribute to passenger safety. In addition to passively capturing images if an individual falls from the ship, other systems are intended to sound an alert when the individual's fall is detected. So-called 'man overboard' (MOB) detection systems have been considered by CLIA, particularly given

41 Ms Ann Sherry, *Carnival Australia, Committee Hansard*, 15 February 2013, p. 7.

42 ABC News, *Hope fades for couple missing at sea*, <http://www.abc.net.au/news/2013-05-09/search-on-for-two-missing-from-cruise-ship/4680056>.

requirements of the *Kerry Act* to integrate such technology to the extent that it is available.

- 4.42 CLIA's white paper on this issue provides the summary that: 'CLIA believes that reliable MOB detection technology is not currently available. CLIA believes that image capture technology has been successful and is currently in use today.'⁴³ The white paper also reports that:

CLIA recognizes that many systems exist and are suitable in a static land based environment. However, the cruise industry has evaluated and demonstrated numerous MOB detection systems, and most have been determined to be unworthy of further consideration on board cruise ships in transit...To date, no current MOB technology has proven to be reliable in a cruise ship environment. Nonetheless, CLIA member lines continue to research, test and evaluate existing and future technologies.⁴⁴

- 4.43 Although increasing use of CCTV has been made in the cruising industry, according to the Legal Advice received by the Committee, there is no scope for the Australian Government to mandate its installation or use on foreign flagged vessels⁴⁵, which account for almost all cruising operations visiting Australian ports. However, this is no reason for inaction.
- 4.44 Given recent tragedies, it is an urgent priority for the cruising industry to source or develop appropriate MOB detection technology to increase vessel safety. The Australian Government also has a role in improving international regulation of these matters, which is discussed in the Committee Comment section at the end of this Chapter.

Operators' liability for negligence

- 4.45 The Committee has considered, above, the various on-board systems and protocols to improve the safety of passengers at sea. In addition to improving active safety systems, the prospect of liability for negligence can encourage cruise operators to improve safety. The potential of substantial financial penalties for negligent acts or omissions is an added incentive for better on-board passenger protection systems.
- 4.46 When accidents occur at sea, passengers rightly expect that they are entitled to compensation. Recent examples demonstrate the different ways this can be dealt with. Passengers who had been on board the *Costa*

43 Cruise Lines International Association, *White paper - Capture or Detection Technology Cruise Vessel Security and Safety Act of 2010*, p. 2.

44 Cruise Lines International Association, *White paper - Capture or Detection Technology Cruise Vessel Security and Safety Act of 2010*, pp. 1-2.

45 Legal Advice, Appendix D, p. 2.

Concordia when it ran aground in January 2012 were offered small compensation payments in exchange for agreeing not to pursue legal action.

4.47 In contrast, a class action lawsuit has been filed against Carnival Corporation in the USA, relating to events on the vessel *Carnival Triumph* in February 2013. An engine fire on the *Triumph* caused the ship to lose propulsion and drift in the Gulf of Mexico for five days without a working sewerage system or usual on-board amenities.

4.48 Dr Kate Lewins gave evidence that Australian cruise customers are unprotected in case of accidents. She said that:

The legal rights of Australians are woefully unprotected in relation to their rights to civil remedies against cruise ships. Cruise ship lines carry passengers according to their own conditions of carriage, and that may require people to sue in overseas countries; it may require them to sue in a place that does not have English as an official language. It may also restrict their rights to damages and injuries to an amount as little as one-tenth of what the protocols would entitle someone to recover.⁴⁶

4.49 Dr Lewins was concerned that Australia has enacted neither the 1990 nor 2002 Protocols of the *Athens Convention on the Carriage of Passengers and their Luggage by Sea 1974* (the Athens Convention). Dr Lewins describes the Athens Convention as essentially a trade-off between 'the right of freedom of contract (which allows a carrier to exclude liability to its passengers entirely) in exchange for the carrier being able to impose caps on liability'.⁴⁷

4.50 Carnival Australia noted in their submission that 'while the Athens Convention has entered into force internationally, Australia is not a party to it'.⁴⁸ Accordingly, Carnival Australia notes:

...that it does not refer to the Athens Convention in any of its Australian passage contracts or brochures. Similarly, Carnival Australia does not attempt to apply a monetary limit to its potential liability to passengers.⁴⁹

4.51 Carnival Australia's Cruise Ticket Contract (*Important Terms and Conditions of Contract*) states at item 28 'Limitation of Liability' that:

With the exception of Consumer Guarantees, to the extent permitted by law, we exclude:

46 Dr Kate Lewins, *Committee Hansard*, 1 November 2012, p. 2.

47 Dr Kate Lewins, *Submission 1* (Attachment A), p. 3.

48 Carnival Australia, *Submission 9*, p. 13.

49 Carnival Australia, *Submission 9*, p. 13.

- any term, condition or warranty that may otherwise be implied by custom, law or statute;
 - any liability for loss, including loss arising out of:
 - i) the death or physical or mental injury of a passenger; or
 - ii) damage to any luggage or other belongings, caused by our negligence or the negligence of our servants or agents; and
 - any liability for Consequential Loss.⁵⁰
- 4.52 In the increasingly common situation where an Australian consumer purchases a ticket online, the action of proceeding to payment is sufficient for the consumer to agree to these conditions of liability.⁵¹ However, these conditions may be contested under Australia's consumer protection laws.
- 4.53 Dr Lewins submitted that enacting the Athens Convention would be 'an act of consumer protection with the added benefit of certainty for cruise ship operators'.⁵²
- 4.54 Carnival Australia agreed with Dr Lewins that:
- Australia's consumer protection laws are a complicating factor when it comes to what might be covered in a cruise contract. We agree there is merit in considering whether a civil liability regime would give a clearer outcome.⁵³
- 4.55 The Committee's conclusions about operators' liability for negligence are included in the Committee Comment section at the end of this Chapter.

Pre-departure preparation and awareness of passengers

- 4.56 Alongside improving on-board crime prevention and safety measures, passenger safety may be improved by increased pre-departure advice and information to alert consumers to taking basic precautionary measures.
- 4.57 Consumers can be empowered to improve their own cruising safety, through better information about their rights and responsibilities, and by registering their travel with the Australian Government.

50 Carnival Australia, *Cruise Ticket Contract*, item 28, <<http://www.carnival.com.au/Terms.aspx>>, accessed 24 May 2013.

51 Carnival Australia, *Cruise Ticket Contract*, item 3, <<http://www.carnival.com.au/Terms.aspx>>, accessed 24 May 2013.

52 Dr Kate Lewins, *Submission 1 (Attachment A)*, p. 13.

53 Carnival Australia, *Submission 9*, p.13.

Consumer information

4.58 The provision of better advice about consumers' rights and responsibilities should ideally occur well before passengers embark on a vessel. The two major cruise operators in Australia provided evidence on the information given to passengers. Royal Caribbean explained:

[the] security guide describes the medical and security resources available onboard each ship, as well as jurisdiction if a crime occurs – various folks may have jurisdiction. So, the guide is provided... With regard to who to contact, we also provide, in each stateroom and the other venues I just described, the list of embassy contact information as well as the local law enforcement officials in each port of call. That is available in the manner I described. Also, each day in each stateroom, along with that description you get each day when you are on a cruise – of what events are occurring in that particular port, such as the weather and that sort of thing – included will be the law enforcement agency in the port that you are going to. So, if a crime were to befall you, either on the ship or while you were visiting the port, you would have that contact information.⁵⁴

Carnival Australia supported these claims, stating that:

That is also true on all of our vessels. There is information in the cabins, as has been described, and we also have a television message that runs when you come onboard, advising you of the things to think about and look out for – what your responsibilities are as well as your rights onboard and so on. So, where you can go for help is very clear on all ships now, as well as what the rights and responsibilities of all passengers are.⁵⁵

4.59 As noted by both Royal Caribbean and Carnival Australia, this information is provided in a variety of formats and means of communication. However, there is no standard requirement imposed by the Australian Government about what should be contained in consumer information. In the absence of prescriptive rules about what information should be provided, consumers must rely on the judgment of cruising operators about what kinds of information is relevant. There may be instances where the interests of the operator and consumer diverge with regard to what information should be provided.

54 Mr Michael Giglia, Royal Caribbean Line Cruises, *Committee Hansard*, 15 February 2013, p. 12.

55 Ms Ann Sherry, Carnival Australia, *Committee Hansard*, 15 February 2013, p. 13.

4.60 By contrast, legislation in the USA is prescriptive about what information should be provided. Under the *Kerry Act*, passengers that come within its ambit must be provided with a *Security Guide* by the vessel owner. The *Security Guide* must be written in plain English and must provide:

a description of medical and security personnel designated on board to prevent and respond to criminal and medical situations with 24 hour contact instructions;

and must describe:

the jurisdictional authority applicable, and the law enforcement processes available, with respect to the reporting of homicide, suspicious death, a missing United States national, kidnapping, assault with serious bodily injury [and other crimes covered by the Act]... together with contact information for the appropriate law enforcement authorities for missing persons or reportable crimes which arise –

- (I) in the territorial waters of the United States;
- (II) on the high seas; or
- (III) in any country to be visited on the voyage.⁵⁶

4.61 In contrast to land-based holidays outside Australia, cruising gives vacationers a strong sense of security and familiarity with their surroundings. However, passengers must also exercise basic personal safety measures and remember that they are sharing a vessel with potentially thousands of strangers, in a foreign setting. Normal holiday precautions are essential to remaining safe at sea, particularly when travelling long distances from Australia.

Smartraveller website

4.62 The Department of Foreign Affairs and Trade maintains the *Smartraveller*⁵⁷ website, which provides travellers with authoritative advice on foreign travel destinations. The website provides advice on a country-specific basis, including regular updates and an 'alert level', which ranges from the straightforward 'exercise normal safety precautions' to 'do not travel'.

4.63 However, given that cruises often traverse the waters of many countries, as well as travelling through international waters, it is unrealistic to expect potential cruising customers to research the advice relating to all potential jurisdictions to which they might be subject at some point in a cruise.

56 Section 3507(c), Title 46 (shipping), USA Code.

57 < <http://www.smartraveller.gov.au/> >

- 4.64 *Smartraveller* also provides advice on the basis of ‘issues and events’, such as ‘avian influenza’ and ‘piracy’, which does not necessarily specify particular countries. This kind of advice is more general, and provides links to further advice on particular matters such as health organisations. However, no specific advice regarding travel by cruise ships is provided.
- 4.65 *Smartraveller* hosts a service under which Australians can register their travel plans before they depart. Under the current arrangements, travellers must enter each planned port as a separate destination, as well as recording the cruising operator in their contact details. This is not conducive to cruise ship passengers registering their travel and may contribute to a misplaced sense of safety amongst cruise travellers.
- 4.66 Australians are famous for their international travelling, exploring the continents of the world, often from their first years of adulthood. Australian travelling culture is alive to the risks of foreign travel, and Australians generally travel with careful attention to safety.
- 4.67 However, there is a perception amongst Australian cruising passengers that the ‘international’ aspect of a cruise is the foreign ports that are visited, rather than the travel by cruise itself. The fact that they are often travelling with a majority of fellow Australians may add to this misplaced confidence. This is a concerning impression, as even in an Australian port cruise ships are partly subject to foreign laws. A cruise vessel is an international destination in and of itself.
- 4.68 When cruising, passengers should be aware that they are in an environment where, at the very least, there is the potential for confusion or competing claims about which country’s laws and regulations apply.
- 4.69 Unfortunately, the *Smartraveller* website’s silence about cruising contributes to the misplaced perception of passengers that the cruise vessel is governed by Australian laws and standards even as it travels in international waters and towards foreign ports.
- 4.70 *Smartraveller* fails to identify cruising as an international destination itself, and not just a form of transit. Pre-departure advice should reflect cruising’s status as a holiday destination and not just a means of transport.

Committee Comment

- 4.71 Crime prevention measures are central to the safety of passengers on cruises. Whilst they will not prevent all crimes, they can improve the security of all people on board a cruising vessel, including through avoiding accidents.
- 4.72 The *Responsible Service of Alcohol* is a fundamental responsibility of any company or organisation that sells alcohol. Anecdotal accounts of

tragedies at sea clearly demonstrate the dangers of intoxication on large ocean-going vessels.

- 4.73 Some cruising operators have evidently learnt the lessons of past tragedies, and ensure that customer safety is not endangered by irresponsible alcohol policies. The Committee commends the improvements made in alcohol service in the cruising industry, and strongly supports their retention and improvement.
- 4.74 However, the cruising industry is large and diverse, and as the Australian market continues to grow, there is a possibility that responsible operators may be undercut by new entrants to the market who do not adhere to the voluntary RSA practices.
- 4.75 Carnival Australia's decision to ban schoolies cruises is a responsible one. However, there is a possibility that other operators will seek to take advantage of the 'schoolies' market and run such cruises in future. The Committee believes that operating 'schoolies cruises' is irresponsible, and expects that operators, informed by the tragedies of recent years, will refrain from doing so.
- 4.76 The Committee notes that Carnival Australia will soon have to reapply for an exemption for its schoolies-cruise ban. The Human Rights Commission must consider such an exemption on its merits, and the Committee is fully supportive of Carnival's decision to ban schoolies cruises.
- 4.77 On-board security staff play a number of linked but separate roles on a cruising vessel. As noted above, they have a responsibility to their employer that might, at times, conflict with the interests of passengers. Such conflicts of interest must be managed by the cruising operator, and security staff should be well aware of their responsibilities to protect the welfare of all passengers, including those who have suffered an accident or are victims of on-board crime.
- 4.78 Although the attachment of police officers to cruising vessels might, in some cases, assist in the prevention and investigation of crimes, there are a number of practical and legal barriers to such a regime being put in place. The Committee does not believe that such policing attachments should be made.
- 4.79 The role of CCTV in preventing and investigating crime can be significant, and the cruising industry is to be commended for increasing its use of CCTV to keep passengers safe. However, there remain questions about the monitoring and use of CCTV footage. If CCTV is properly monitored, on-board security can immediately respond when an accident or crime is actually occurring.

- 4.80 The Committee is not convinced that continuous monitoring of CCTV is occurring. Recent tragedies suggest that the monitoring of cameras is inadequate, and that passenger safety is at risk as a result. Even a short delay in identifying dangerous or criminal behaviour can mean the difference between safety and tragedy.
- 4.81 The Committee therefore strongly urges all cruise ship operators to improve passenger safety, particularly through the provision of continuous monitoring of CCTV and the development of reliable MOB detection technologies.
- 4.82 While the issue of passenger liability is not a central tenet of this inquiry, the Committee has deep reservations about the limited civil protections provided under Australian law for Australian passengers on cruise ships.
- 4.83 Carnival Australia's evidence that it provides *no financial limit* on its potential liability to passengers is literally consistent with its Cruise Ticket Contract, insofar as that contract absolves Carnival from *any liability for negligent conduct*. The Committee is of the view that this type of carrier contract is unfair, and may result in cases where Australians with legitimate claims against negligence would not be able to be adequately compensated.
- 4.84 Further, the Committee is concerned that many passengers on cruise ships may be unaware of the limited liability condition, particularly when booking their tickets online. This is particularly worrying to the Committee, given the potential financial gravity of the contractual waiver. The Committee therefore calls on the cruise industry to ensure that consumers are more actively made aware of these contract conditions, particularly on online booking systems.
- 4.85 Given that the cruise industry in Australia continues to grow at an exceptional rate, the Committee does not view the provision of legal protections against negligence to passengers as an unfair financial burden to be placed upon those companies.
- 4.86 The Committee considers that the current position of absolution from any liability may operative to diminish incentives for the cruise industry to maintain high standards of on-board safety.
- 4.87 The Committee sees merit in Australia enacting an Athens Convention based liability regime, but does not have the capacity in this inquiry to fully canvass all options and legislative arrangements. The Committee therefore recommends that the Australian Government conduct a comprehensive review of cruise vessel operators' liability for cruise tickets purchased in Australia, in order to develop appropriate safeguards for Australians travelling at sea.

Recommendation 4

- 4.88 **The Committee recommends that the Australian Government conduct a comprehensive review and report on cruise vessel operators' liability for cruise tickets purchased in Australia, including Australia's capacity to provide legislative safeguards for Australian consumers.**
- 4.89 The Committee believes that passengers will be safer on cruises if they are given more information about their rights and responsibilities, as discussed above. For this reason, the Committee recommends the Australian Government legislate that cruise operators distribute mandatory safety information to passengers about their rights and responsibilities. Ideally, such information should be prepared with the involvement and input of cruise victims organisations.

Recommendation 5

- 4.90 **The Committee recommends the Australian Government legislate such that all cruise operators must distribute to all cruise passengers, when boarding a cruising vessel at an Australian port, a brochure that provides information on the following:**
- **What to do in case of an accident or a potential crime being committed on board;**
 - **The rights of passengers in the case of injury or death;**
 - **The numerous jurisdictions that may apply to a vessel that is travelling through numerous national waters and international waters;**
 - **Contact details for cruising operator support services, as well as other support services, such as rape crisis services;**
 - **Contact details for Australian consular assistance throughout the world; and**
 - **Contact details for Australian Police agencies.**
- 4.91 The Committee believes that greater use can be made of the *Smarttraveller* website. In particular, the website should provide general safety advice about travelling on cruising vessels, as well as posting advice about each major cruising operator visiting Australian ports. The Committee

therefore recommends that the Department of Foreign Affairs and Trade post additional cruising safety information on the *Smartraveller* website.

Recommendation 6

- 4.92 **The Committee recommends the Department of Foreign Affairs and Trade provide general safety advice on the *Smartraveller* website about cruising and how passengers may ensure their own safety, as well as providing individual advice on each major cruising operator visiting Australian ports.**