

**GOVERNMENT RESPONSE TO THE RECOMMENDATIONS OF THE NSW CORONER  
FOLLOWING THE INQUEST INTO THE DEATH OF MS DIANNE BRIMBLE**

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The tragic death of Dianne Brimble has caused much sadness and pain for Ms Brimble's family and friends.

The Government commends Ms Brimble's family and friends, particularly Mr Mark Brimble, for their patience through the many processes arising from her death, including most recently, the Government's careful consideration of the former New South Wales (NSW) Coroner's findings.

On 3 December 2010, the former NSW Senior Deputy State Coroner, Magistrate Jacqueline M. Milledge, made the "Brimble" recommendations (the recommendations) following the inquest into the death of Ms Dianne Brimble on board the P&O cruise ship 'Pacific Sky' on 24 September 2002.

The Government has accepted recommendations 1, 3, 7, 8 and 9 of the coroner, (either wholly or in part). The Government will refer some of the issues raised by the Coroner to the House Standing Committee on Social Policy and Legal Affairs.

There are a number of areas covered by the Coroner's recommendations in which improvements have been made to existing practices following the death of Ms Brimble or there are already arrangements in place which largely address the issues raised by the Coroner. The Government has referred to these arrangements where relevant.

The recommendations cover a broad range of matters, including police and coronial jurisdictions, the United States (US) Kerry Act, federal police presence on ships, drug scanning and drug detection dogs at ports, and coronial best practice.

These recommendations have been considered by the Commonwealth Government departments and agencies with responsibility for and expertise in matters relating to the maritime sector including the regulation of Australian-flagged ships, maritime safety, the control of Australia's borders, crime prevention, reporting of crime and the investigation of crimes that occur on ships within Australia's jurisdiction. The responsibility for responding to the recommendations has been shared across a number of departments and agencies.

The departments and agencies involved included the:

- Attorney-General's Department, including the Office of International Law
- Australian Federal Police (AFP)
- Australian Customs and Border Protection Service (ACBPS)
- Department of Foreign Affairs and Trade
- Department of Infrastructure and Transport, including the Office for Transport Security and the Australian Maritime Safety Authority (AMSA)
- Department of Resources, Energy and Tourism
- Department of Health and Ageing, and
- Department of Defence.

Australia's maritime regulatory framework regarding maritime safety and the regulation of Australian flagged ships, is comprised of policies, requirements and guidelines relating to ship construction standards, ship survey and safety, crewing, seafarers' qualifications and welfare, occupational health and safety, carriage and handling of cargoes, passengers and marine pollution prevention. Enforceable requirements are legislated through Marine Orders under the *Navigation Act 1912* (Cth).

ACBPS chairs the National Sea Passengers Facilitation Committee (NSPFC), a joint government and industry forum established to discuss and develop collaborative approaches to managing cruise vessel issues. Ms Milledge's recommendations were noted at the NSPFC meeting in April 2011.

AMSA is the national maritime regulator and is responsible for developing and implementing national and international maritime safety standards, including monitoring compliance with operational standards for ships, administering training standards, and providing search and rescue services in cooperation with the States and Territories. AMSA works closely with the National Marine Safety Committee to improve consistency and safety outcomes across state and territory marine authorities through the National Marine Safety Strategy.

In relation to the reporting of crime and the investigation of crimes at sea, including on cruise ships, Australia's domestic legislation applies to the full extent possible under international law. The Commonwealth is limited in its criminal jurisdiction, however, by section 51 of the Australian Constitution.

The *Crimes at Sea Act 2000* (Cth) (Crimes at Sea Act) was enacted partly in response to the findings of a Coastal Surveillance Task Force established on 12 April 1999, chaired by the then Secretary of the Department of the Prime Minister and Cabinet, Mr Max Moore-Wilton, in the context of people smuggling. The Task Force reported in June 1999 that '[c]urrent maritime enforcement legislation does not implement fully the powers available under international law'<sup>1</sup> and recommended that 'comprehensive legislative amendments be introduced to further strengthen maritime investigatory and enforcement powers against both Australian and foreign flag vessels'.<sup>2</sup>

The Second Reading Speech to the Bill states, 'The new crimes at sea scheme will be simpler to understand and apply, and will result in more effective law enforcement.'<sup>3</sup>

Under the Crimes at Sea Act, the Commonwealth and the States have agreed to a cooperative scheme to apply the criminal law of the States extraterritorially in the

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<sup>1</sup> Prime Minister's Coastal Surveillance Task Force, *Report of the Prime Minister's Coastal Surveillance Task Force*, June 1999, para 34

<sup>2</sup> *Report of the Prime Minister's Coastal Surveillance Task Force*, Recommendation 17

<sup>3</sup> The Hon Dr Stone MP, Parliamentary Secretary to the Minister for the Environment and Heritage, Crimes at Sea Bill 1999, Second Reading Speech, *House Hansard*, 30 September 1999, p 11034

areas adjacent to the coast of Australia. Under the scheme, the criminal law of each State is to apply in the area adjacent to the State:

- (a) for a distance of 12 nautical miles from the baseline for the State—by force of the law of the State, and
- (b) beyond 12 nautical miles up to a distance of 200 nautical miles from the baseline for the State or the outer limit of the continental shelf (whichever is the greater distance)—by force of the law of the Commonwealth.

Beyond 200 nautical miles from the baseline for the State or the outer limit of the continental shelf, the substantive criminal law of the Jervis Bay Territory applies at sea to a criminal act:

- on an Australian ship or in the course of activities controlled by an Australian ship
- that is committed by a person who has abandoned or temporarily left an Australian ship and has not returned to land
- that is committed by an Australian citizen who is not a crew member on a foreign ship, in the course of activities from the foreign ship, or who has abandoned or temporarily left a foreign ship, or
- on a foreign ship, in the course of activities controlled by a foreign ship or that is committed by a person who has abandoned, or temporarily left, a foreign ship if the first country at which the ship calls or the person lands after the criminal act is Australia or an external territory.<sup>4</sup>

In terms of enforcement, the AFP has primary responsibility for investigating Commonwealth offences that are not applied State offences<sup>5</sup> throughout Australia, including in the adjacent maritime areas. It also has jurisdiction to investigate applied State offences and State offences with a federal aspect.<sup>6</sup> State police generally have responsibility for the enforcement of State criminal law, whether 'pure' State law or applied under Commonwealth law, including the Crimes at Sea Act. This comprises the majority of the criminal law applicable in Australia and its waters.

Under the Crimes at Sea Act, before prosecuting offences that occurred on a foreign flagged ship or outside the adjacent area (but where there is a relevant nexus with Australia, as listed above), the relevant State or Federal authorities must obtain the consent of the Attorney-General before a prosecution can proceed.<sup>7</sup> In providing this consent, the Attorney-General must take into account the views of the flag state.<sup>8</sup>

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<sup>4</sup> Subsection 6, *Crimes at Sea Act 2000* (Cth)

<sup>5</sup> An offence will be an applied State offence where the laws of a State are applied to a Commonwealth place (a place acquired by the Commonwealth for public purposes) pursuant to section 4 of the *Commonwealth Places (Application of Laws) Act 1970* (Cth).

<sup>6</sup> See section 3AA, *Crimes Act 1914* (Cth)

<sup>7</sup> Subsection 6(4) and Schedule 1, subsection 7(1), *Crimes at Sea Act 2000* (Cth)

<sup>8</sup> Subsection 6(5) and Schedule 1, subsection 7(2), *Crimes at Sea Act 2000* (Cth)

Some crimes committed at sea, including causing death or injury to a person, are also covered by the *Crimes (Ships and Fixed Platforms) Act 1992* (Cth) which implements the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation.<sup>9</sup> Proceedings under this Act may be brought if the ship was on or scheduled to engage in an international voyage or in the territorial sea or internal waters of a foreign country, and the alleged offence had:

- an Australian element (the ship was an Australian ship or the offender was an Australian national), or
- a Convention State element (the ship was flying the flag of or was in the territorial sea or internal waters of a State Party to the Convention, the alleged offender was a national or stateless resident of a Convention State, a national of a Convention State was seized, threatened, injured or killed, or the alleged offence was committed in an attempt to compel a Convention State to do or abstain from doing any act).<sup>10</sup>

Before prosecuting such an offence, the consent of the Attorney-General or authorised person is required.<sup>11</sup>

Australian law enforcement agencies have effective legislative and operational systems in place to respond to alleged crimes at sea.

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<sup>9</sup> UN General Assembly, *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation*, 10 March 1988, No. 29004, available at: <<http://www.unhcr.org/refworld/docid/3ae6b3664.html>>

<sup>10</sup> Section 18, *Crimes (Ships and Fixed Platforms) Act 1992* (Cth)

<sup>11</sup> Section 30, *Crimes (Ships and Fixed Platforms) Act 1992* (Cth)

**Recommendation 1:**

That the Australian Federal Government establish a special Parliamentary Committee to consider the same issues that have been addressed in the 'Kerry' Act.

The committee should have specific regard to:

- a. Cross jurisdictional issues that face the States, Territories and the Commonwealth
- b. The overlap of the various Coronial Jurisdictions with power to investigate the 'cause and manner' of death (even extending beyond the limits set by the Crimes at Sea Act) and those of the many State, Territory and Federal Police Forces and other investigative bodies
- c. The need to adapt the 'Kerry' Act to the specific demographic of this country
- d. Ensuring that when determining the jurisdiction to be the 'lead investigator' into serious crime, that the competency of the jurisdiction to ensure best practice be the foremost consideration
- e. Flag state status of the vessel be disregarded if that State (Country) is not equipped to undertake the rigor of a thorough and competent investigation
- f. Ensuring that the prosecution of offenders be firmly within the jurisdiction of Australian authorities

Agreed in part

The Government agrees to refer some of the issues raised above to the House Standing Committee on Social Policy and Legal Affairs ('the Committee') for consideration. The Government does not consider it necessary to establish a special Parliamentary committee when there is already a committee with the capacity to conduct such an inquiry.

In relation to the specific issues identified, the Government's response is as follows.

(a) Cross-jurisdictional issues

The Government will refer to the Committee consideration of the effectiveness of current arrangements for the investigation and prosecution of alleged offences under the Crimes at Sea Act and the Intergovernmental Agreement.

The Government notes that in relation to the police and coronial investigation into Ms Brimble's death, New South Wales (NSW) had, and continues to have, primary jurisdiction by virtue of the Crimes at Sea Act and the *Coroners Act 2009* (NSW). The inquest report of the Coroner does not identify any specific deficiencies in existing protocols and arrangements for determining cross-jurisdictional issues in response to the incident. Accordingly the Government is of the view that the current arrangements are appropriate. However, there is value in the Committee considering whether these arrangements can be improved.

The Intergovernmental Agreement made under clause 5 of Schedule 1 of the Crimes at Sea Act sets out the geographical jurisdiction of State, Territory and Federal agencies for the investigation and prosecution of crimes at sea. This includes the

allocation of primary investigative responsibility and mechanisms to resolve concurrent jurisdiction.

Due to Australia's federal structure and the operation of international law, however, Commonwealth, State, Territory and foreign police jurisdictions are not mutually exclusive: any incident at sea may involve more than one jurisdiction concurrently. While consideration of criminal jurisdiction for crimes at sea may in some cases be complex, this complexity is dealt with at an operational level through long-established mechanisms of cooperation amongst the jurisdictions.

Commonwealth, State and Territory Police Commissioners have already taken steps to formalise arrangements where jurisdiction over an incident at sea may be unclear, or overlap. On 29 April 2010, it was agreed by all Police Commissioners, including the AFP Commissioner, to establish the *National Protocol for Receiving Reports of Crimes At Sea* (the Protocol). The Protocol aims to ensure that where a crime at sea has been reported, regardless of which agency has received the report, an appropriate response is initiated without delay. This includes:

- protecting the rights of victims/suspects
- ensuring evidence is obtained and secured at the earliest opportunity
- ensuring prosecutions are commenced in accordance with existing laws/protocols, and
- ensuring a cooperative approach to investigations is undertaken where required.

#### (b) Overlap of coronial and police jurisdictions

The Government will refer to the Committee consideration of cross jurisdiction issues that face the States, Territories and the Commonwealth, including the overlap of various Coronial Jurisdictions.

The Government notes that there are existing cooperative arrangements in relation to the overlap of coronial and police jurisdictions, however it is of the view that there is value in further examination of these arrangements.

#### *Coronial inquiries*

The laws governing which deaths are reportable to, and examinable by, a coroner are similar throughout Australia.<sup>12</sup> While extraterritorial jurisdiction is conferred on all State and Territory coroners in relation to people normally resident within that State or Territory (irrespective of where they died), some jurisdictions also confer extraterritorial jurisdiction where a person was on a journey to or from the State or Territory.<sup>13</sup>

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<sup>12</sup> *Coroners Act 2009* (NSW); *Coroners Act 2008* (Vic), *Coroners Act 2003* (Qld); *Coroners Act 1996* (WA); *Coroners Act 2003* (SA); *Coroners Act 1995* (Tas); *Coroners Act 1997* (ACT); *Coroners Act* (NT).

<sup>13</sup> Section 18, *Coroners Act 2009* (NSW); section 8, *Coroners Act 2003* (Qld); section 3, *Coroners Act 1995* (Tas).

It is understood that practice among the coronial jurisdictions is highly cooperative. For instance, in practice, the findings of an inquest in one jurisdiction may be adopted by another jurisdiction rather than a second inquest being undertaken. There is also assisting legislation in all jurisdictions, for instance enabling States and Territories to provide investigative assistance to each other.<sup>14</sup>

The Government also notes that in the matter of Ms Brimble's death, the NSW State Coroner's jurisdiction was clear under the *Coroners Act 2009* (NSW).

### *Police investigations*

The Intergovernmental Agreement under the Crimes At Sea Act and the *National Protocol for Receiving Reports of Crimes At Sea* referred to in the response to recommendation 1(a) address the overlap between State, Territory and Federal Police Forces.

### (c) Adoption of the Kerry Act

The Government considers that the current arrangements already cover the areas raised in the Kerry Act to the extent possible under Australia's obligations pursuant to international law.

The Government also acknowledges the Coroner's reference to the reforms to safety and security implemented by P&O Cruises Australia and supports the development of similar safety and security measures by other ship operators.

The *Cruise Vessel Security and Safety Act* (US) (the Kerry Act) applies to all passenger vessels authorised to carry at least 250 people that embark or disembark passengers in the United States (US), wherever the vessel is registered. It creates obligations regarding vessel design, equipment, construction, video surveillance, safety information, sexual assault responses, crew access, and log books and reporting. By way of enforcement, it imposes civil and criminal penalties, and the possibility of denial of entry for contravention.

Adopting the Kerry Act may be inconsistent or in conflict with Australia's existing international maritime obligations, including international conventions to which Australia is a party. For example, the United Nations Convention on the Law of the Sea (UNCLOS) Article 21 provides that although coastal states can adopt certain laws relating to innocent passage through its territorial sea "such laws and regulations shall not apply to the design, construction, manning or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards".

Australia regulates matters similar to those covered by the Kerry Act, although most are limited in their application to Australian flagged vessels, which currently do not

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<sup>14</sup> Section 102, *Coroners Act 2009* (NSW); section 51, *Coroners Act 2008* (Vic), section 71A, *Coroners Act 2003* (Qld); section 31, *Coroners Act 1996* (WA); section 31, *Coroners Act 2003* (SA); section 33, *Coroners Act 1995* (Tas); section 17, *Coroners Act 1997* (ACT); section 18, *Coroners Act* (NT).

include any large passenger vessels. For example, reporting requirements which fulfil many of the objectives of section 3507(f)(3) of the Kerry Act include:

- AMSA's national Rescue Coordination Centre (RCC Australia) provides a Maritime Assistance Service (MAS) in accordance with International Maritime Organization (IMO) Assembly Resolution 950(23), which can assist ships of all flags to communicate with, and receive direction from, relevant government agencies (including law enforcement)
- section 18 of the *Transport Safety Investigation (TSI) Act 2003* (Cth) requires a responsible person<sup>15</sup> to report marine accidents and serious incidents to a nominated official (including a member of AMSA staff) as soon as is reasonably practicable
- section 417 of the *Navigation Act 1912* requires that reports of deaths or disappearances must be submitted by Australian ships at all times and other ships during a voyage within Australian waters or on voyage to an Australian port, and
- section 107 of the *Occupational Health and Safety (Maritime Industry) Act 1993* (Cth) requires Australian flagged ships to report any accident that results in the death of, or serious personal injury to any person.

Additionally, AMSA requires and approves training courses which implement international minimum standards for training and certification of vessel security personnel, which are equivalent to section 3508(b) of the Kerry Act.

In general, under international law, the State to which a vessel is flagged has jurisdiction over that vessel and the extent to which Australia can regulate foreign flagged ships is limited. The majority of (if not all) passenger cruise vessels that operate into and out of Australia are registered under the laws of another country.

Regulating the conduct of crew members at sea, including the master of the vessel, by requiring certain responses to incidents, the provision of information to passengers, the maintenance of confidentiality of information, and the regulation of crew member access to passenger cabins is also a matter for the flag state. Under the Kerry Act, certain crimes must be reported to the Federal Bureau of Investigations (FBI). In the Australian context, crimes committed on board cruise ships should generally be reported to the State or Territory jurisdiction with a nexus to the incident, that is:

- the departing jurisdiction
- the arriving jurisdiction, or
- the jurisdiction in which the victim resides.<sup>16</sup>

If, however, an issue is reported to the wrong jurisdiction, the *National Protocol for Receiving Reports of Crimes At Sea* ensures that investigations and management of victims, witnesses and offenders (amongst other things) commences immediately.

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<sup>15</sup> A responsible person is defined by regulation as the Master or person in charge of the ship, the owner or operator or the agent, or a pilot who has duties on board the ship.

<sup>16</sup> A decision to investigate is based upon a policy determination based on whether the offence has an effect in the State – see for example section 10C of the *Crimes Act 1900* (NSW). This is based on the consequence test under common law.



The imposition of ship design or manning requirements as a condition of entry into Australian ports is likely to elicit protest from the flag states of foreign vessels.

(d) Competency to be considered in determining 'lead investigator'

The Government considers that the current legal framework for determining investigative jurisdiction functions well, in accordance with international and domestic law.

The Government is of the view it would be impractical and inappropriate to attempt to assess the level of investigative 'competency' of jurisdictional agencies before determining which agency should take the lead in a particular case.

At international law, under Article 91 of the UNCLOS, ships have the nationality of the state whose flag they fly. Under Article 92, a ship is subject to the exclusive jurisdiction of its flag state on the high seas (save for exceptional circumstances recognised in UNCLOS or other international treaties). Even where a vessel is in the territorial waters of a foreign state or in a foreign port, the jurisdiction of the flag state of the vessel operates concurrently with the criminal jurisdiction of the coastal or port state. A state has a positive duty under Article 94 of the UNCLOS to 'effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag', and must assume jurisdiction under its internal (domestic) law over ships flying its flag and the ship's master, officer and crew in respect of those same matters.

At domestic law, under section 6(4) of the Crimes at Sea Act, before prosecuting an offence that occurred on a foreign flagged vessel, the relevant State or Federal authorities must obtain the consent of the Attorney-General before a prosecution can proceed. In providing this consent, the Attorney-General must take into account the views of the flag state.

(e) Disregarding Flag State status

In light of the position at international and domestic law discussed under recommendation 1(d) above, Australia cannot 'disregard' the flag state's jurisdiction.

(f) Jurisdiction over offenders for crimes at sea

The Government will refer to the Committee consideration of whether improvements could be made in relation to the reporting, investigation and prosecution of alleged crimes committed at sea.

The Government notes that the Crimes at Sea Act provides an appropriate legal framework for the prosecution of offenders for crimes at sea. However, the Government is of the view that consideration should be given to whether this framework can be improved in any way.

The Crimes at Sea Act establishes the jurisdiction of Australian authorities to prosecute offenders to the fullest extent permissible under international law. Australia has comprehensive jurisdiction over offenders, including foreign nationals, who

commit crimes on board Australian or foreign flagged vessels, in both Australian and international waters, provided those crimes have a connection with Australia.

Specifically, the criminal law extends to acts that occur at sea outside Australia by operation of the Crimes at Sea Act, whereby the substantive criminal law of the Jervis Bay Territory applies at sea to a criminal act:

- on an Australian ship or in the course of activities controlled by an Australian ship
- that is committed by a person who has abandoned or temporarily left an Australian ship and has not returned to land
- that is committed by an Australian citizen who is not a crew member on a foreign ship, in the course of activities controlled from the foreign ship, or who has abandoned or temporarily left a foreign ship, or
- on a foreign ship, in the course of activities controlled by a foreign ship or that is committed by a person who has abandoned, or temporarily left, a foreign ship and the first country at which the ship calls after the criminal act is Australia or an external territory.<sup>17</sup>

This covers a similar range of circumstances outside Australia (ie on foreign flagged ships) to the example given by the NSW Coroner of Division 272 of the *Criminal Code Act 1995* (child sex offences outside Australia).<sup>18</sup> This Division extends to conduct committed wholly outside Australia if the perpetrator was an Australian citizen, Australian resident, a body corporate incorporated under Australian law, or any other body corporate that carries on its activities principally in Australia.<sup>19</sup>

**Recommendation 2:**

That the Federal Parliamentary Committee consider legislation for the attachment of a Federal Police Officer (or Officers) to travel with a ship to ensure a timely and appropriate response to crime.

**Not agreed**

The Government has considered this recommendation and found a number of complex legal, jurisdictional and practical impediments to complying with it.

On balance, overcoming these difficulties presents a much greater challenge than the benefit that would be derived from the implementation of this recommendation due to the nature of criminal behaviour on cruise ships.

<sup>17</sup> Section 6, *Crimes at Sea Act 2000* (Cth)

<sup>18</sup> The "Brimble" Recommendations, p 3

<sup>19</sup> Section 272.6, *Criminal Code Act 1995* (Cth)

In relation to the maritime environment, Australia has jurisdiction and the AFP or State or Territory Police may take action under the Crimes at Sea Act inside the adjacent area, or outside the adjacent area in relation to a criminal act:

- on an Australian ship or in the course of activities controlled by an Australian ship
- that is committed by a person who has abandoned or temporarily left an Australian ship and has not returned to land
- that is committed by an Australian citizen who is not a crew member on a foreign ship, in the course of activities from the foreign ship, or who has abandoned or temporarily left a foreign ship, or
- on a foreign ship if the first country at which the ship calls after the criminal act is Australia or an external territory.

There are considerable, and potentially insurmountable, difficulties with legislating for the attachment of an AFP officer to a foreign cruise ship throughout its journey.

First, this is likely to exceed the permissible international legal limits on extraterritorial jurisdiction. Secondly, an AFP officer could not exercise any enforcement powers, such as arrest, on a foreign vessel except with the consent of the flag state. Even if Australia were to secure flag state consent, there are issues regarding the applicable law under which the AFP officer would be operating while on the vessel (which would generally be the law of the flag state), and potential challenges to an Australian Court's jurisdiction over any resultant prosecution on account of irregular arrest.

It is a long held tradition that the master of the vessel has overall responsibility for security on board his or her vessel. The Government is not aware of any precedent where police officers from one sovereign nation are routinely placed on board vessels of a different nation-state to undertake community policing duties. As stated above, few if any cruise ships have Australian flag state status.

In relation to Australian flagged vessels, although Australia has jurisdiction, there are practical difficulties in attaching an AFP officer to a domestic cruise ship. Criminal behaviour on cruise ships generally relates to the types of offences that State and Territory police forces deal with. The creation of such a police presence on board cruise vessels would also be extremely resource-intensive.

**Recommendation 3:**

That the Federal, State and Territory Police Commissioners devise, in consultation with each other, firm guidelines clearly setting out the geographical jurisdiction of each investigative agency. The Coroners of each State and Territory should be consulted to ensure the requirements of their respective Coroners Acts are not overlooked particularly when dealing with the coroner's ability to deal with persons who have died, or suspected to have died outside the jurisdictional limits of the Commonwealth.

**Agreed in principle**

The current arrangements under the Crimes at Sea Act and the *National Protocol for Receiving Reports of Crimes At Sea* (the Protocol) are adequate to address the issues raised in recommendation 3. The Intergovernmental Agreement made under clause 5 of Schedule 1 of the Crimes at Sea Act sets out the geographical jurisdiction of State, Territory and Federal agencies for the investigation and prosecution of crimes at sea. This includes the allocation of primary investigative responsibility and mechanisms to resolve concurrent jurisdiction, and does not affect State and Territory coronial jurisdiction.

**Recommendation 4:**

That the Commonwealth Attorney-General establish a Federal Coronial Jurisdiction. A Federal Court Judge should be appointed as the Federal Coroner.

**Not agreed**

The Government considers that there is not a demonstrated need for a federal coronial jurisdiction at this time, due to the collaborative arrangements currently in place to facilitate a cross-jurisdictional approach. There is no evidence of a gap in the current coronial system in Australia.

Collaboration amongst State and Territory coroners is well developed. For example, coroners regularly meet to discuss issues of a cross-jurisdictional nature and have an established practice of regular liaison and cooperation on operational issues. State and Territory coroners have collaborated in the past in conducting inquests, such as following the Bali Bombings.

The Government will give consideration to establishing a federal coronial jurisdiction if a need is identified.

**Recommendation 5:**

That passengers and crew boarding all vessels at Australian ports be subjected to the rigors of drug detection scanning.

**Not agreed**

The Government is of the view that the current law enforcement arrangements are adequate to address the issues raised in recommendation 5. The AFP and ACBPS will continue to monitor the effectiveness of current arrangements for detecting drugs at Australian ports.

Following the tragic death of Ms Brimble in 2002, P&O reported that it introduced drug screening of all passengers.<sup>20</sup> The screening includes baggage screening and personal X-rays on embarkation in addition to random drug screens at overseas ports. It is understood that other companies undertake similar activities. This is consistent with arrangements at other similar private-public places of this nature.

Currently all passengers departing Australian ports are required to present their passport and the Outgoing Passenger Card to Customs and Border Protection for immigration and border clearance purposes. Additional checks on passengers and/or crew may be undertaken on an intelligence-led risk basis.

Commonwealth law enforcement activities in the maritime context are intelligence-led and risk-based. This ensures that resources are directed to the highest threats to the Australian border. This recommendation, effectively a mass screening approach, is not as effective as Australia's intelligence-led approach to managing border risks.

The costs and economic impact of this recommendation outweigh the potential benefit. In the last decade, cruise operators have already directed significant effort to security and risk targeting hundreds of vessels and tens of thousands of passengers to ensure an incident of this nature has not been repeated.

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<sup>20</sup> Safety and Security, P&O Cruises Australia:  
<<http://www.pocruises.com.au/aboutus/pages/safetyandsecurity.aspx>>

**Recommendation 6:**

That drug detection dogs be used at all Australian ports.

**Not agreed**

The Government is of the view that the current approach to managing border risks is sufficient.

As part of increased security measures implemented by P&O, it reports that it currently uses drug detection dogs at the start of all cruises,<sup>21</sup> and it is understood that other companies undertake similar activities. This is consistent with arrangements at other similar private-public places of this nature.

As stated in response to recommendation 5, a mass screening approach is not as effective as Australian law enforcement's intelligence-led approach to managing border risks. The ACBPS deploys resources as necessary where a specific risk is identified, and regularly reviews its approach to managing border risks, including risk assessing sea passengers.

The AFP and ACBPS will continue to monitor the effectiveness of current port drug detection arrangements.

**Recommendation 7:**

That the Federal Government Committee established to consider the legislative reform of the cruise industry (in the same terms as the 'Kerry' Act) have regard to the issues and recommendations of Mr Mark Brimble and the International Cruise Victims of Australia. These recommendations are supported by the coroner.

**Agreed in part**

The Government will refer to the Committee consideration of some of issues and recommendations of Mr Mark Brimble and the International Cruise Victims of Australia to the Committee in so far as they reflect the agreed terms of the inquiry in Recommendation 1.

Mr Brimble and the International Cruise Victims of Australia would be encouraged to appear as witnesses before the inquiry.

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<sup>21</sup> Safety and Security, P&O Cruises Australia:  
<<http://www.pocruises.com.au/aboutus/pages/safetyandsecurity.aspx>>

**Recommendation 8:**

That the Committee have regard to the submission and reforms undertaken by P&O Australia when considering the development of legislation and policy.

**Agreed**

The Government will ask the Committee to have regard to the reforms undertaken by P&O Australia.

A number of the P& O reforms address the recommendations of Mr Brimble and International Cruise Victims Australia, including:

- Installation of closed circuit television surveillance operating on a 24 hour rolling basis;
- Introduction of procedures for collecting evidence and preserving the crime scene, supported by a training programme for security personnel.
- Improved medical and security procedures for dealing with serious allegations;
- Working with Australian and South Pacific police to develop protocols for managing crimes at sea;
- Implementation of Responsible Serving of Alcohol procedures, including compulsory training for staff.

**Recommendation 9:**

That Commonwealth Health and New South Wales Health establish a committee to set 'best practice' guidelines for the preservation of bodies requiring examination 'post mortem' where the death occurs outside the jurisdiction limits of the State, Territories and Commonwealth.

**Agreed in principle**

There are established fora where 'best practice guidelines' can be considered without the need to create a new committee. The Government will refer such guidelines to the Standing Council on Health for consideration and further work.

The Government notes that guidelines for the management of human remains at sea can already be found in the *International Medical Guide for Ships (3<sup>rd</sup> Edition) 2007* (the relevant extract of the Guidelines is at Attachment A), published by the World Health Organization (WHO) in collaboration with the International Labour Organisation (ILO) and the International Maritime Organization (IMO). The guidelines include advice for dealing with the remains of anyone who dies in circumstances that are 'unusual, sudden or unknown, or if there is any possibility of criminal intent'.

# International Medical Guide for Ships

*3rd edition*

Including the ship's medicine chest



**World Health  
Organization**



# Death at sea

When nothing can be done to save a patient's life, everything should be done to alleviate the patient's suffering and loneliness in the final moments of life.

## SIGNS OF DEATH

- Early signs of death:
  - the heart has stopped:
    - › there is no pulse and no heart sounds can be heard with a stethoscope;
  - breathing has stopped:
    - › with your ear over the patient's nose and mouth, you feel no air and see no chest or abdominal movement;
    - › no breath sounds can be heard with a stethoscope;
  - there is no activity in the brain:
    - › the pupils are very large, and do not become smaller when you shine a bright light directly into them;
  - the patient looks dead:
    - › eyes dull;
    - › skin pale.
- A person who is suffering from extreme cold (hypothermia) may look dead but still be alive (see Chapter 28, *Medical care for survivors at sea*).
- A person who has been struck by lightning may have large unresponsive pupils and still be alive (see Chapter 9, *Burns, chemical splashes, smoke inhalation, and electrocution*).
- If you are not confident declaring a patient dead from the early signs, wait for rigor mortis to appear (see below).
- Later signs of death:
  - stiffness of the muscles (rigor mortis) sets in three to four hours after death:
    - › most easily felt in the jaw, elbow, and knee;
  - reddish or purplish patches resembling bruises (post-mortem lividity or staining) appear on the lower parts of the body (back, and back of the limbs, if the body has been placed or left face upwards after death);
  - the cornea takes on a milky appearance about 15 hours after death;
  - changes due to decomposition can be seen two to three days after death, usually first appearing in the abdomen, which may turn a greenish colour: this is a certain sign of death:
    - › discoloration spreads to the rest of the abdomen and trunk, then upwards to the neck and head and downwards into the limbs.

### ✓ What to do

- If the dead person was ill on board, consult any records that were made of the nature and course of the illness and the treatment given.
- If the person was injured, investigate and record the circumstances of the injury or injuries.

- If the circumstances of death were unusual, sudden, or unknown, or if there is **any** possibility of criminal intent, a post-mortem examination is indispensable. You may be suspected of concealing a crime if a person is buried at sea under these circumstances:
  - to preserve the body for examination put it in a body bag and then in a refrigerator or cold-store;
  - failing this, place the body in a bath in which you have put a large amount of ice.
- Only if the ship is not near a port and the body cannot be kept on board because it poses a risk of infection should you proceed to burial at sea:
  - seek medical advice to confirm that it is dangerous to keep the body on board and record this advice in the log;
  - examine the body thoroughly (see below, *Examining a dead body*);
  - if the patient's identity is not known, look for signs that might assist in subsequent identification.
- Strip the body of all clothing, without tearing or cutting any clothes:
  - note if there is blood on the clothing.
- List each item of clothing briefly and note any initials or names on the garments.
- Remove and clean any dentures and place them with the other articles to be kept for future examination.
- List any papers, wallet, money, etc., that you find.
- Dry any wet articles and put them into a plastic bag, which you should seal, label, and keep in a safe place for delivery to the police or to other authorities at the next port.
- Have a witness present while you do this and have them sign all the records you make of your findings.

## EXAMINING A DEAD BODY

- Record the exact time and date of the examination.
- Use universal body fluid precautions (gloves, eye protection, gown, if necessary).
- If the circumstances of death were unusual, photograph the body where it was found from several angles. When the body is moved, take more photographs of the scene to show any blood on the deck or any other evidence.
- Photograph the unclothed body, particularly any wounds, scars, and injuries.
- Photograph the face from the front and the side.
- Record the dead person's:
  - skin colour
  - approximate age
  - height
  - body size and shape (fat, thin, wasted, muscular, etc.)
  - hair length and colour