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of South Australia**

**Commissioner for
Victims' Rights**

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Chair,
Social Policy and Legal Affairs Committee
House of Representatives
PO Box 6021
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Dear Chair, Social Policy & Legal Affairs Committee

Re Arrangements Surrounding Crimes Committed at Sea - Victims of crime at sea

By way of brief introduction, his Excellency the Governor for South Australia appointed me as Commissioner for Victims' Rights (section 16 of the Victims of Crime Act 2001). My role is likened to a crime-victim ombudsman although my functions are broader than traditionally associated with an ombudsman. My authority is primarily limited to South Australia but my activities have extended nationally and internationally.

I make this submission as the Commissioner for Victims' Rights, so the views are my own.

In 2012 IMO Secretary-General, Koji Sekimizu stated, "This year ... I urge the IMO Member Governments and the shipping industry as a whole to refresh their determination to improve and enhance the safety of passenger shipping today, and into the future."

Although there is a body of international conventions, supported by hundreds of guidelines and other documents that govern most facets of the shipping industry, it seems to me that with respect to victims of crime there are important omissions.

Daily the lives and property of thousands of people are in the hands of ships' management, captains, crews and operating staff as well as others. In light of this fact, Selimizu (2012) urged the IMO and the shipping industry to "generate a new impetus in shipping to go beyond compliance with regulations and explore industry-wide mechanisms to ensure the safety culture is embedded throughout the entire industry." Such safety culture will require more than legislative measures.

Lewins (2012) proffers that it would be reasonable to expect that cruise ships carrying in excess of 6000 passengers and crews up to 2400 "would suffer the same rate of crime per head of population as a town of equivalent size"; however, the cruise industry's statistics suggest that "the rate of crime on cruise ships is very low". Conversely, while commenting on sexual assaults on ships, Garvin (2005, p246) points to "a pattern of cover-ups that often began as soon as the crime was reported at sea, in international waters, where the only police are the ship's security officers." Similarly, the International Cruise Victims Association (2012) (ICVA), which is based in the United States, asserts that the "rate of sexual crimes onboard cruise ships is anywhere from 50% to 100% higher than the average city." The ICVA also estimates that "someone goes overboard almost every 2 weeks" (Carver 2012).

Unfortunately, I was unable to attain local and national crime statistics pertaining to crimes at sea. The South Australia Police record crime on vessels and ships but it is not readily evident which of those crimes happened on, for instance, a cruise ship docked in local waters. Approximately 50 to 100 crimes that happened on either a vessel or ship each year for the past three years are known to the police in South Australia. Notwithstanding, the lack of data information gleaned from international sources show violent and property crimes on happen on ships; indeed, the such crimes cover much of the array of offences in Australia's criminal laws.

The location of the ship at the time of the crime, its previous and next port, its flag State and the citizenship of the suspect and the victim, as well as respective domestic law, determine which nation-State might have jurisdiction over the crime. According to Lewins (2012, p2), "A [nation-State] will only be entitled to prosecute a crime if it has recognised grounds to claim jurisdiction over the event in international law, and its domestic law expressly asserts that jurisdiction."

I do not profess to be an expert on international laws of the sea. Federal Australian law – namely the Crimes at Sea Act 2000 – provides for the application of Australia's criminal law in relation to 'serious crimes' on a 'territorial basis' but also is sufficient that Australia might seek to exercise jurisdiction in 'other than on a territorial basis' (see section 6). Section 115 of the Commonwealth Criminal Code Act 1995 applies when an Australian citizen or resident of Australia is killed or seriously harmed, no matter where such act happens. Thus, the extra-territorial effect of section 115 could argument the Crimes at Sea Act 2000. It is unclear, however, how the Courts of Australia or elsewhere would interpret the application of such law should an Australian citizen or resident become the victim of a serious crime on a cruise ship in international waters. It is clear, it seems, that the law would not apply should an Australian citizen or resident become the victim of less than serious violent crime or the victim of a property crime.

Mindful of the short-comings in Australian law, the Coroner's findings pertaining to the Inquest into the Death of Dianne Brimble recommended, amongst other things, that the Australian Government introduce new laws similar to the United States Cruise Vessel and Safety Act 2010. That Act has three main objectives: prevention of crime and overboard incidences by employing crime prevention techniques such as closed circuit television monitoring; harm minimisation, including better treatment of victims of sexual assault to reduce secondary victimisation and crime scene preservation; and, improved reporting of crimes on board ships that carry 250 passengers or more and have on-board sleeping facilities for those passengers.

The Australian Government's response the 'Brimble Inquest' recommendations are mixed. On the one hand, the Government rejects the recommendation pertaining to the aforementioned United States Act. On the other hand, the Government agreed to refer certain matters to a Parliamentary Committee, including jurisdictional issues on investigation into incidents, such as crime.

While the Australian Government's rejection of the United States Act might be grounded on its understanding of certain international law, it seems to ignore Australia's endorsement of international and multi-jurisdictional instruments to do with crime victims' rights and victim assistance. Australia has international obligations to crime victims under the Universal Declaration on Human Rights, the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Commonwealth Nations Statement of Basic Principles of Justice for Victims of Crime, among other instruments listed later. The Australian Government should take seriously the rights and needs of victims of crime at sea.

Factors that influence discussions on victims' rights

Modern interest in crime victims can be attributed to several personalities and a number of factors, for example:

- The roots of the scientific study of victims, victimisation and so on — often called Victimology — are often attributed to Mendelsohn (1940, 1956; see Walklate, 1989) and von Hentig (1940, 1948; see Elias, 1986), whom Walklate (2007: p. 3) calls 'émigré lawyers'; the criminologists Wolfgang (1957) and Nagel (1963; see van Dijk, 1999); and the psychiatrist Wertham (1949; see Fattah, 1991 and Zedner, 1997).
- The growth of state-funded victim assistance can be traced to the 1950s and 1960s when English magistrate Marjory Fry drew attention to the need to treat victims better. She lobbied for governments to establish crime victim compensation schemes. In 1963 New Zealand introduced the first scheme; followed by England in 1964. Since then States and Territories in Australia, as well as other places, have introduced such schemes.
- In the 1970s, social movements began to pay more attention to crime victims. The women's movement lobbied for the establishment of specialist rape and sex offence crisis centres and women's shelters for female victims of family violence. They also advocated for law reform to protect victims from re-victimisation by criminal justice practitioners and others.
- Crime statistics and victims' responses to national surveys revealed different aspects of the so-called crime problem. Police began to encourage more victims to report crime, while prosecutors wanted to increase the number of victim-witnesses who would give evidence in courts.

These and other factors were prevalent in Australia. In the late 1960s several States introduced state-funded victim compensation schemes for victims of violent crime. In the early 1970s specialist sex offence medical services and women's shelters were established. In 1979 the Victims of Crime Service (VOCS) was founded in South Australia by co-victims of homicide and has since been professionalised and expanded to operate a metropolitan office and seven regional offices in that State. Furthermore, the first Inquiry into Victims of Crime was authorised by the Government of South Australia in 1980 (and reported in 1981). It produced a 'blue-print' for significant reforms. The committee made sixty-seven recommendations of which sixty-five had been acted on by 1985. Similar inquiries on victims of crime have happened in other Australian States and Territories.

Likewise in 1982, the US President appointed a Commission on Victims of Crime that also produced a 'blue-print' for reforms. The commission made sixty-eight recommendations that incorporated a draft constitutional amendment on crime victims' rights. Most recently the US Congress enacted the Crime Victims Act of 2004 that has given, according to some commentators and by implication some Courts' interpretations, victims of crime status as a party in federal criminal proceedings.

International Developments on Victims' Rights

Traditionally, international law has not paid sufficient attention to victims of crime. In 1982, the World Society of Victimology began to advocate with the United Nations for an international declaration on victims' rights. By 1985, the concept had gained great momentum with help from the Australian delegation that attended a Congress in Milan. Then

in November 1985 the United Nations General Assembly resolved to adopt and implement the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly Resolution 40/34). This declaration has been described as the Magna Carta on Victims' Rights. Notably, in the lead-up to the General Assembly's endorsement Australians played a central role in the negotiations. Australia has also had a representative on the workgroup that devised the guidelines on the implementation of the Declaration.

As an aside, Magna Carta, one of the earliest pieces of multi-national law if one takes account of its influence, was put forward by Sir Edward Coke "as the true character of English liberties". Coke was an ardent proponent of common law. He drew on "out-of-date learning in the law" to construct a partly mythical, partly propagandist view that accorded with many elite interests to challenge the prerogatives of the Crown. Notwithstanding this somewhat heretical comment, Magna Carta helped shape the relationship between the governed and the Government. It provided a charter of rights to prevent citizens becoming victims of oppression and of arbitrary decisions of state institutions; thus, it provides for example, the entitlement for an accused to a fair trial. It also set the foundation for a fundamental principle that if presumed rights are ignored or dispensed with, the appropriate action should be taken to restore them. Arguably, Magna Carta gave enforceable rights to victims of abuse of Crown or State power. It could therefore be one of the earliest charters of victims' rights that applied multi-nationally.

Returning to the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, all 157 nations represented at the General Assembly in 1985 committed to improve access to justice and fair treatment, to ensure restitution from the offender and compensation from the state, to also ensure victims are heard when their personal interests are affected and to improve access to material, medical, psychological assistance and other victim support. Since then, the Declaration has been listed as an international human rights instrument. It is based, in part, on Article 18 of the Universal Declaration on Human Rights (Resolution 217 A (III) 1948). The Declaration on Human Rights also comprises the right of every human being to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him or her by the constitution or by law (see also Bassiouni 2003, pp134-185).

Alas, despite the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (which is complemented by a guide for policy makers and a guide on best practice examples for implementation), it is still too few victims world-wide who are fortunate enough to receive fair treatment and the promise of access to a victim-oriented justice etc. Victims of crime on cruise ships, especially in international waters and waters of those nations that have not actively embodied the international declaration in law and practice, are a prime example. Moreover, although the Declaration is a very significant milestone, it lacks an essential ingredient of a true Magna Carta - that is, if the principles of justice are true victims' rights there would be appropriate remedies if those rights were ignored or dispersed with. There are no remedies, however. This is one of the reasons why the World Society of Victimology, international victimological research institutes, other victim-oriented organisations and people - including me - are calling on the international community to agree on a convention on victims' rights. In the context of crimes at sea, a convention would impose a stronger obligation on signatory nation-States to prevent crime and prevention victimisation as well as honour victims' rights.

There are other international instruments relevant to victims' rights. For example, the Basic Principles and Guidelines on the Right to a Remedy and Preparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law that were adopted by the U.N. Human Rights Commission in 2005. This Declaration includes the right to justice and the right to reparations. The protocol on

trafficking in human beings that complements the United Nations Convention on Transnational and Organised Crime, the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters as well as the Convention on the Elimination of Discrimination Against Women and the Guidelines on Justice for Child Victims all have clauses that acknowledge victims have rights.

In 2003 the Commonwealth Secretariat produced Guidelines for the Treatment of Victims of Crime; followed in 2005 by the communiqué of the Commonwealth of Nations Senior Law Officers that comprised a Statement of Basic Principles of Justice for Victims of Crime. In 2011, those Senior Law Officers reiterated their commitment to the Statement but also extended its application to witnesses. They also acknowledged the aforementioned guidelines.

The Council of Europe and the European Union have also promulgated regional victims' rights instruments. However, there is no like instruments of common commitment in the Asia Pacific rim, yet many Australian citizens and residents, among others, become victims of crime and have to deal with more than one jurisdiction, or on return to Australia after, for instance, a cruise they might deal with the nation-State seeking to exercising its jurisdiction.

Scope of victim of crime in international law

There are several international instruments relevant to the scope of the concept of victim. These include the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985); the Declaration on the Protection of All Persons from Enforced Disappearance (1992) (and the International Convention for the Protection of All Persons from Enforced Disappearance (2006)); the Rome Statute of the International Criminal Court (1998); and, the Basic Principles and Guidelines of the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005).

Since 1985, the most prominent definition of "victim" has been that in the United Nations (UN) Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Victims include persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial diminution of their fundamental rights due to a criminal offence. A person shall be considered a victim (or survivor) regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation.

In much of the crime literature victim describes a person who has been physically and/mentally injured or harmed in other ways as a result of actual (or threatened) sexual abuse. This person is often referred to as the primary (or direct) victim. In accordance with international law (as above), a person can be a victim of crime at sea (such as on a cruise ship) regardless of whether the perpetrator has been identified, apprehended, prosecuted, convicted or acquitted.

The victim of crime at sea who chooses to a crime encounters a culmination of attitudes, behaviours, legal and procedural restrictions as well as other obstacles. Such encounters can cause secondary victimisation, or result in a 'second injury'. The notion of the victim as a survivor is often associated with the struggles and challenges encountered by victims as he or she navigates the aftermath of the victimisation process, including the criminal justice system and 'diplomatic issues'.

Crime does not just affect the primary victim. Secondary victims (or secondary survivors) also includes relatives (e.g. immediate family), friends, and other people close to the direct victim, as well as caregivers. Secondary victims can, like the primary victim, suffer health, social, and economic harm or after-effects. It is my experience that the scope of 'victimhood' commonly constitutes a larger group than state-actors (such as policy makers and criminal justice practitioners and non-state actors (such as shipping companies and ships' crews) consider.

Victims' Rights in Australia

Australia has nine adversarial criminal justice systems; each based on the English common law. Interest in victims first emerges in the 1960s in the context of debate on state-funded victim compensation. In the 1970s victim assistance, especially for victims of sexual assault and domestic violence but later families of homicide victims, became the focus; followed by victims' rights in the 1980s. A notable step was taken in 1985 when the Government for South Australia promulgated Australia's first declaration on victims' rights. This section of my letter presents a brief overview on the evolution of victims' rights in Australia (see also table enclosed). It also mentions some of the victim assistance programmes that are available.

Australia

The (federal) Government of Australia endorsed the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) and the Commonwealth Nations Statement of Basic Principles of Justice for Victims of Crime (2005). There is no unique federal Declaration or Charter of Victims Rights, although the current Government has stated that it will introduce one. In 1993 the Standing Committee of Attorney Generals (SCAG) endorsed a "National Charter for Victims Rights". The Charter is based on the United Nations Declaration and comprises 10 principles to guide the treatment of victims of crime. The previous Labor Government under Hon Kevin Rudd as Prime Minister committed to introducing a charter or similar on victims' rights and a Workgroup was established to advise on how this might be achieved; however, it is unclear how committed the current Labor Government is to that commitment. This is pertinent given the Commonwealth's territorial jurisdiction with respect to crimes at sea and the victims thereof of such crimes.

There is no federal generic victim assistance scheme; however, victims can access federal services such as Medicare funded treatment for mental illness. There is a federal victim support programme for victims of trafficking and schemes have been set-up *ad hoc* for victims of terrorism. The Australia Parliament has debated a bill on state-funded compensation for Australian citizens and residents, who become victims of terrorism.

In the absence of a federal scheme for state-funded victim compensation, victims of crimes at sea have limited access to state-funded victim compensation. South Australia is the only jurisdiction that has specific law on state-funded victim compensation to protect its citizens and residents entitlement to apply for such compensation (by way of ex gratia payments at the discretion of the Attorney-General).

Australian Capital Territory

The Australian Capital Territory enacted the Victims of Crime Act in 1994, which sets out principles that, as far as practical and appropriate, govern the treatment of victims of crime. A public official who breaches a guideline can face disciplinary proceedings within his or her own agency. A Victims of Crime Co-ordinator promotes efficient and effective services to victims of crime and investigates alleged breaches by criminal justice agencies of the principles.

The ACT Assembly has enacted appointed a Commissioner for Victims of Crime who has similar functions to the former Victims of Crime Co-ordinator but also stronger authorities to act for crime victims.

Victim Support ACT¹ is a government service which helps victims of crime. Its main services are: the Victims Services Scheme (VSS) provides support, counselling and other services; and, the Justice Advocacy Unit (JAU) will help with information, advocacy and assistance with the criminal justice system, your rights and entitlements.

Queensland

Queensland² has enacted new victims' rights and victim assistance legislation. The Act states principles of justice for victims of crime and imposes an obligation on government agencies to develop a strategy on the implementation of the principles. The Act also provides for the appointment of a Victims of Crime Co-ordinator.

VictimAssist, which is a government agency, came into operation in Queensland late last year. It helps victims of crime with financial assistance and is responsible for the co-ordination of victim services, information for victims, training public officials and policy development. If a victim complains about a violation of his or her rights, there should be an investigation by the respective public agency and the result of the investigation must be reported to VictimAssist. Furthermore, public agencies ought to co-operate with VictimAssist in resolving victims' complaints.

Northern Territory

The Victims of Crime Rights and Services Act 2008³ consolidated a range of victim related legislation complementing the Victims of Crime Assistance Act. The Act established the new Crimes Victims Services Unit (CVSU) and the Victims Register. The CVSU administers both the counselling scheme and financial assistance to victims of crime. It also provides administrative support to the Crime Victims Advisory Committee and operates the Victims Register. Furthermore, the CVSU is charged with promoting and overseeing victims' rights, including raising public awareness on these rights.

South Australia

The Victims of Crime Act 2001 in South Australia incorporates the Declaration of Principles Governing Treatment of Victims of Crime. A breach of a principle does not give rise to a criminal or civil proceeding, although public officials and public agencies should take reasonable steps to comply with the declaration. A Commissioner for Victims Rights is an independent statutory officer who (amongst other functions) advises government on how to use its resources to help victims; consults government agencies about victims' needs; helps victims in their dealings with prosecutions, the courts and other government agencies; and participates in certain criminal proceedings for victims in general or specific victims. Another function has been likened to a victim ombudsman.

The State's victim assistance comprises the non-government (but publicly funded) Victim Support Service; non-government and government domestic violence services; a government Rape and Sexual Assault Service and Child Protection Services, as well as a Road Trauma Support Team and a Homicide Victims Support Group – both non-government but receive public funds.

¹ <http://www.victimsupport.act.gov.au/>

² www.justice.qld.gov.au

³ <http://www.nt.gov.au/justice/victimcrime.shtml>

Importantly, as mentioned above, South Australia's Victims of Crime Act 2001 provides for ex gratia payments (at the discretion of the Attorney-General) for its citizens and residents who become victims of crime in other places where there is no state-funded victim compensation.

Western Australia

Western Australia⁴ has a statement on guidelines to protect and support victims of crime in a schedule to the Victims of Crime Act 1994. These guidelines, which apply to public agencies, govern how victims should be treated. Public agencies are expected to apply the guidelines to the extent that it is reasonably practicable. The government minister responsible for the Act is charged with reporting annually to Parliament on its operation. If a victim has a complaint, he or she is encouraged to contact the respective agency first, or the Ombudsman if he or she feels that a public official has not violated the guidelines.

The Liberal Government in that State has announced it is considering several reforms, including giving victims the right to comment on sentence in their impact statements and appointing a victim advocate similar to the Commissioner for Victims' Rights in South Australia.

The government Victim Support Service is the peak victim assistance agency, with a metropolitan service and a state-wide network of contracted service providers. There are also specialist services for victims of sexual assault and family violence, as well as non-government organisations such as groups to support families bereaved by homicide and road crashes.

Victoria⁵

The Victims' Charter Act sets out principles on how the criminal justice system and victim support agencies respond to victims of crime. Disciplinary action can be taken against an official for failure to uphold the principles. The Attorney General must report on the operation of the Act.

The government Victims Support Agency (VSA) represents victims of crime and coordinates a whole-of-government approach to services for victims. It funds state-wide services to provide counselling and practical assistance to help victims of violent crime recover from the effects of crime and links victims to the service system. If a victim of crime believes that any of the principles in the Victims Charter have not been followed, he or she can complain to the VSA, which operates the Victims Charter and Complaint Line.

Tasmania

The Tasmanian Parliament is yet to formally adopt a declaration on victims' rights⁶. Instead, the Parliament has enacted specific legislation on, for instance, victim impact statements and victim compensation. The Justice Department has adopted the UN declaration as guidelines for the treatment of victims of crime. A Victim Assistance Unit, amongst other functions, administers the victims register, liaises with other justice agencies, and provides information and court support to victims, and runs a programme for victims of family violence. It also helps victims to resolve complaints.

In November 2010 the Tasmania Government hosted national conference on victims' rights. The programme included a paper on victims' participatory rights and another on a draft international convention on victims' rights that, as said, is being promulgated by the World Society of Victimology and its partners (such as Tilburg (Netherlands) University's INTERVICT and Tokiwa (Japan) University's International Victimology Institute).

⁴ http://www.dotag.wa.gov.au/V/victims_of_crime.

⁵ <http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/Home/Victims/>

⁶ <http://www.justice.tas.gov.au/victims>

State-funded victim compensation

State-funded victim compensation is a key component of governments' responses primarily to victims of violent crime. Schemes operate in all states and territories, although there are significant variations in the way they are structured. They provide monetary awards to victims of crime in recognition of the harm they have suffered. Despite the Australian Law Reform Commission recommending a federal state-funded victim compensation scheme, Australia still does not have such a scheme (see comments above).

Concluding commentary

As this letter demonstrates, recent developments in victims' rights have happened against a background of mounting public anxiety about crime and heightened fear of criminal victimisation, as well as victim activism and political responses. There have been a range of responses to victims' needs. Victims are no longer forgotten bystanders in Australia's criminal justice systems. On a more cautionary note, however, it is important to acknowledge that the process of reform remains uneven; for example, the implementation of victims' rights has been patchy across the globe and Australia.

Given the international attention to victims of crime in general one has to ask why victims of crimes at sea - some of whom are the victims of some of the worst crimes in nation-States' criminal laws - have received 'second class' treatment and only limited access to justice, if access at all. Australian citizens and residents as victims of crime in Australia can access established victim assistance programmes, including financial assistance; and, state-actors such as the police and prosecutors are obliged as far as reasonably practical to give effect to declarations or charters on victims' rights. Perhaps the omissions regarding victims of crime at sea are indicative of the once dominant understanding that criminal law has traditionally had the criminal at the centre without considering the victim. To focus on the criminal and his or her wrongful act alone is unacceptable. The rights and needs of victims of crime at sea should be paid sufficient attention - they should not be ignored.

It is intolerable that a victim of crime at sea in general and an Australian citizen or resident in particular who becomes a victim of crime on, for instance, a cruise ship does not have the same entitlement to procedural and distributive justice as other crime victims.

It seems to me vital that the question is asked, 'What sort of justice do victims of crime that happens on cruises want?' In reply, I am mindful that Yael Danieli (2005) has summarised the wants of crime victims in general into four categories, which I will paraphrase:

1. victims want re-establishment of their esteem, dignity and equality of power and value as people
2. victims want relief from the effects and from the stigmatisation, as well as acknowledgement
3. victims want equal rights under law and the provision of justice; and prevention of further victimisation
4. victims want the international community to combat impunity and provide and maintain equal justice and reasonable redress

In considering the question and the application of these categories to crime victims at sea (and on cruises in particular) — indeed as tourists in flight and so on — I plead that Australia respect crime victims' rights and honour its pledge to the international community, as per its endorsement of the United Nations Declaration and other instruments as well as its endorsement of the multi-nation Commonwealth Statement.

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Cruise ships return to sea but what about the victim and his or her family. To paraphrase the late President JF Kennedy — if the rights of one victim are threatened then the rights of all crime victims are diminished. To paraphrase yet another of the former President's observations but in a reverse context, Australia's Governments should be asking not what victims can do for them (e.g. give evidence for the State) but what they can do for victims.

It's time for Australia's Government to devote more resources to helping crime victims at sea. Although Federally as well as Australia's States and self-governing Territories spend millions of dollars on our legal, criminal justice, and corrections systems, only a fraction of that amount is spent on victim assistance, state-funded victim compensation and other victim-oriented initiatives. As a result, victims of crimes at sea are left to absorb most of the impact of crime themselves, with little regard for their rights from governments and the shipping industry.

There is a nexus between crime prevention and victimisation prevention. Thus, I also urge the Australian Government to reconsider its opposition to adopting legislation like the United States Cruise Vessel and Safety Act 2010. If it is not willing to do so, then others in the Parliament of Australia should act to prevent crimes at sea; to reduce the harm done to victims; and, to ensure transparency on reporting crimes at seas so that Australia's policies and laws are properly informed (evidence-based).

Yours sincerely

Michael O'Connell
Commissioner for Victims' Rights
South Australia

Victims' Rights in Australia

In 1985, the introduction of the *Declaration on Victims' Rights* in South Australia was seen as deserved recognition that victims were treated poorly in a criminal justice system that depends on their co-operation. In the same year, the United Nations' endorsement of the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* was seen, and still is, as a triumph for victims and their advocates. Since then, other Australian States and Territories have promulgated charters or declarations on victims' rights. Initially these were administrative directions. Australia's Constitution gives the States and self-governing Territories the primary responsibility for crime control and victim assistance. The Australian Capital Territory, New South Wales, Queensland, South Australia, Victoria and Western Australia have now enshrined their charters or declarations in law. Northern Territory provides in law for an administrative charter. Tasmania does not have a charter but endorses the United Nations' declaration. The Commonwealth of Australia does not have a declaration or charter. In 1996, however, the Standing Committee of Attorneys-General agreed to a national charter comprising ten principles of justice for victims of crime. To commemorate the twentieth anniversary of the United Nations' declaration, the Standing Committee of Attorneys-General released a communiqué in July 2005 in which they committed to strengthening victims' rights.

Figure 1 compares the Australian charters or declarations with the United Nations' declaration.

United Nations	Commonwealth Nations	National Charter	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Victims should be treated with compassion & respect for their dignity	Yes See below	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Victims should be informed of their rights in seeking redress		Yes	Yes	Yes		Yes	Yes		Yes	Yes
Victims should be informed of their role and the scope, timing & progress of the proceedings		Yes	Yes	Yes Not required to attend preliminary hearings	Yes	Yes Inconvenience minimised	Yes Not required to attend preliminary hearings	Yes	Yes	Yes

United Nations	Common-wealth Nations	National Charter	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Victims should be allowed to present their views and have them considered at appropriate stages		Yes	Yes Bail hearings VIS	Yes Bail hearings, charge bargaining, VIS & Parole	Yes Bail hearings; VIS	Yes Bail hearings VIS	Yes Bail hearings VIS & Parole	Yes Bail hearings VIS & Parole	Bail hearings VIS	Yes Bail hearings VIS
Victims should be provided proper assistance throughout the legal process			Yes	Yes	Yes	Yes	Yes			Yes
Measures should be taken to: a) minimise inconvenience to victims b) protect victims privacy and ensure their safety		Yes	Yes	Yes	Yes	Afforded all necessary protection from violence & intimidation	Yes	Yes	Yes	Be informed about the availability of lawful protection
Avoid unnecessary delay in the disposition of cases and the execution of orders / decrees granting awards			Yes	Yes		Yes				Yes

United Nations	Commonwealth Nations	National Charter	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Offenders or third parties should, where appropriate, make fair restitution including: a) returning property b) paying for injury, losses & damages			Yes	Yes	Yes	Yes	Yes ss 52 & 53 Crim Law (Sent) Act	Yes	Yes	Yes
Victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted			Yes Victim Assistance	Yes Victim Compensation	Yes Financial Assistance	Yes CIC	Yes Victim Compensation	Yes CIC	Yes Victim Assistance	Yes CIC

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United Nations	Commonwealth Nations	National Charter	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
If compensation is not fully available from the offender or other sources, States should endeavour to provide financial support to a) victims who sustained significant bodily injury or impairment of physical / mental health b) family of persons who have died or become physically / mentally incapacitated			Yes Financial loss & non-financial (e.g. pain & suffering) limited by offence / victim category	Yes Financial loss & non-financial (e.g. pain & suffering)	Yes Financial Assistance	Yes Financial loss & non-financial loss (e.g. pain & suffering)	Yes Financial loss & non-financial loss (e.g. pain & suffering)	Yes Financial loss & non-financial loss (e.g. pain & suffering)	Yes Financial loss & non-financial loss (e.g. distress in homicide cases & pain & suffering by offence)	Yes Financial loss & non-financial loss (e.g. pain & suffering)
Victims should receive necessary material, medical, psychological & social assistance		Yes	Yes Gov victim service scheme	Yes Gov & funded private counselling		Yes Gov & grants to non-gov victim services	Yes Gov & grant to non-gov victim support service	Yes Gov & grant to non-gov victim support services	Yes Gov referral & assist. scheme	Yes Gov victim support service & contract services
Victims should be informed of the availability of health & social services				Yes		Yes	Yes			Implied

United Nations	Commonwealth Nations	National Charter	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Police, justice, health, social service & others should receive training to sensitise them to victims' needs & to ensure proper & prompt first aid	Yes		Yes			Yes	Not in rights but compulsory police training	Yes		Yes
Attention should be given to victims with special needs arising from race, colour, sex, age, religion, ethnic or social origin, disability etc			Yes	Yes	Yes	Yes	Yes	Implied		Implied

In 2005 the Commonwealth Law Ministers recalled the adoption by the United Nations General Assembly of Resolution 40/34 which recognised “that the victims of crime and the victims of abuse of power, and also frequently their families, and others who aid them, are unjustly subjected to loss, damage or injury and that they may, in addition, suffer hardship when assisting in the prosecution of offenders”, and the adoption of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (the Basic Principles). The Commonwealth Law Ministers reaffirmed the principle that victims must be treated with courtesy, compassion and respect for personal dignity. To express their commitment to the Basic Principles, Ministers agreed that member countries would give consideration to the national implementation of measures designed to give practical effect to these Principles, in particular for serious crime. {My emphasis}

Thus, they endorsed a communiqué that states they believe that:-

1. Guidelines and training programmes should be developed to ensure that Police:-
 - § are sensitive to the needs of victims;
 - § are informed, knowledgeable, and supportive of existing social services and programmes for victims;
 - § introduce, to the extent possible, procedures consistent with legal requirements to allow for the prompt return of property to victims, including the consideration of alternative methods of retaining and introducing evidence such as the use of photographs; and

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§ establish procedures to ensure that, to the extent possible, victims of crime requiring information are periodically informed of the general status of investigations, taking into consideration the need to ensure the proper administration of justice.

2. Prosecutors, in the exercise of their powers and performance of their duties should:-

§ be sensitised to the fact that public interest should specifically take into consideration the views of victims, including consideration of pre-trial sessions with victims for this purpose, if possible and appropriate;

§ endeavour to provide information to victims – either directly or through another authority - about the status of the case such as scheduling, progress, final outcomes and general reasons for those outcomes;

§ to the extent possible and as appropriate taking into account all of the relevant fair trial interests, bring to the attention of the court the impact of the offence, investigation and the trial process on the victim, the better to inform the court's decisions on bail, adjournments, sentencing, compensation and restitution

§ take appropriate action with respect to any persons who harass, threaten, injure or otherwise attempt to intimidate or retaliate against victims or witnesses, including referring the matter to the police or an application for bail variation, the withdrawal of bail, or the revocation of parole;

§ use a victim and witness on-call system, where practicable, to ensure that victims do not waste time unnecessarily in court;

§ to the extent possible, introduce procedures consistent with legal requirements to allow for the prompt return of property to victims, including the consideration of alternative methods of retaining and introducing evidence such as the use of photographs;

§ establish and maintain liaison with victim support structures; and

§ be sensitised to the trauma and well being of victims of serious crimes.

3. Law Ministers may propose for the consideration of the Chief Justices and other members of the Judiciary of their respective jurisdictions, the following suggestions that they believe will assist in the achievement of national adherence to the Basic Principles:-

§ encouraging participation in a training programme sensitising judges to the needs and interests of victims of crime in relation to the judicial process;

§ allowing victims and witnesses to be on-call for court proceedings where practicable;

§ in so far as possible, ensuring that their court officials establish separate waiting rooms for prosecution and defence witnesses;

§ means by which members of the judiciary can bear their share of responsibility for reducing court congestion by ensuring that all participants fully and responsibly utilise court time;

§ to allow, to the extent possible and appropriate taking into account all of the relevant fair trial interests, the views, if any, of victims to be made known to the court at bail hearings, postponements, sentencing, restitution or any compensation hearings;

§ sensitising judges, where applicable, to consider ordering restitution to the victim in appropriate cases where such orders are possible;

§ ensuring that, after having given any evidence, the victim's attendance at the trial is facilitated if he or she so wishes and, as requested, a member of the victim's family as well; and

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§ giving substantial weight to the victim's interest in the speedy return of property before trial in ruling on the admissibility of photographs of that property as being sufficient evidence.

4. Ministers also agree that they will give consideration to the passage, where necessary or appropriate, of legislation that will assist in the realisation of adherence to the Basic Principles. They further agreed that national consideration should be given to the development of appropriate mechanisms designed to provide assistance to the victims. They recognise that the precise form that such mechanisms could take must remain a matter for national decision, taking into account economic, social and cultural norms of each member country.