

House of Representatives Inquiry into the Arrangements Surrounding Crimes Committed at Sea



Submission to the House of
Representatives Standing Committee on
Social Policy and Legal Affairs

Submission by:



20 December 2012

Introduction

This submission is made on behalf of the Australian Shipowners Association (**ASA**).

ASA represents Australian companies which own or operate:

- international and domestic trading ships;
- cruise ships;
- domestic towage and salvage tugs;
- scientific research vessels; and
- offshore oil and gas support vessels.

ASA also represents employers of Australian and international maritime labour and operators of vessels under Australian and foreign flags.

ASA provides an important focal point for the companies which choose to base their shipping and seafaring employment operations in Australia. The Association provides a range of support services and advice in the areas of ship operations and safety, environment, human resources, workplace practices, government relations, commercial operations, public relations and international direction.

ASA's purpose is to pursue strategic reforms that provide for a sustainable, vibrant and competitive Australian shipping industry and to promote Australian participation in meeting domestic needs for sea transport services and contribution to Australia's international trade to the benefit of Australian shipowners, their customers and the Nation.

ASA welcomes the opportunity to provide a submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry into the arrangements surrounding crimes committed at sea.

International context

ASA is a Member of the International Chamber of Shipping (ICS), who we understand to have made a submission to this inquiry. ASA supports the submissions made by ICS and developments at an international level to improve protocols for the preservation of evidence and support of victims in the event of crimes occurring on board a ship. This is reflected in the development by the International Maritime Organization (IMO) of draft guidelines for the collation and preservation of evidence following an allegation of a serious crime having taken place on board a ship or following a report of a missing person from a ship, and pastoral and medical care of victims.¹

Terms of Reference

We note that the terms of reference for this inquiry highlight three main technical and legal areas for investigation. These are:

- the effectiveness of current arrangements for investigation and prosecution of alleged offences under the *Crimes at Sea Act 2000* and the intergovernmental Agreement – Crimes at Sea (16 November 2000);
- the cross jurisdictional issues that face the States, Territories and the Commonwealth, including overlap of various coronial jurisdictions; and
- if improvements could be made in relation to the reporting, investigation and prosecution of alleged crimes committed at sea.

The arrangements above may apply in both the cruise industry and merchant shipping and in each case, the importance of having in place evidence preservation and investigatory protocols to ensure that crimes occurring at sea are able to be fully investigated and if necessary prosecuted under criminal law, is recognised.

Improved Industry Practice

Much of the background information provided in this inquiry relates to a tragic incident on a cruise ship resulting in the death of Mrs Dianne Brimble. In this context

¹ LEG99/INF.2 International Maritime Organisation 10 February 2012

it is appropriate to note the significant improvements that have been made in the Australian cruise industry to ensure that safety and security of passengers is at the forefront of cruise operators' business objectives. The initiatives undertaken by industry and in particular the Australian cruise industry in this respect clearly demonstrates the seriousness with which the cruise industry took the situation and a commitment to ensure appropriate measures were put in place to protect safety and security of passengers. Companies should be encouraged to maintain vigilance and ensure that their policies, procedures and protocols are subject to continuous improvement.

Effectiveness of current arrangements for the investigation and prosecution of alleged offences

ASA is of the view that the current arrangements regarding the investigation and prosecution of alleged offences occurring at sea are appropriate. Given the global nature of the industry, it is, however, important that any formalisation of guidance that is to be utilised in the industry, such as that currently being developed at the IMO, be sufficiently cognisant of the wide variety of vessels in operation in the global industry. For example, merchant vessels with a relatively sparse crew complement (typically between 17 – 30) may have vastly different yet no less appropriate response protocols for response to a potentially criminal incident than a cruise ship which will sail with a considerably larger crew complement (numbered in the hundreds for larger vessels). Any formal guidance should be mindful of these types of considerations.

Given the jurisdictional limitations of the *Crimes at Sea Act 2000*, there appears to be benefit in Australia exploring bilateral agreements/arrangements with other Flag States in circumstances where an alleged offence, either through geography, flag or nationality of victim/alleged perpetrator has the requisite nexus to Australia. Other submissions have comprehensively addressed the issue of jurisdiction and Australia's domestic legislation extending to the fullest potential reach.²

² LEWINS Background paper/submission on behalf of MLAANZ

The cross jurisdictional issues that face the States, Territories and the Commonwealth, including overlap of various coronial jurisdictions

ASA understands that a practical understanding between State, Territory and Commonwealth law enforcement agencies exists to ensure issues of jurisdiction do not become a hindrance to the investigation of alleged crimes occurring at sea, or the prosecution of such crimes.

The Government Response to the Recommendations of the NSW Coroner following the Inquest into the Death of Mrs Dianne Brimble identifies the interaction of State and Federal law enforcement agencies when investigating crimes at sea. Further, that document identifies an Intergovernmental Agreement made pursuant to the *Crimes at Sea Act 2000* that sets out the geographical jurisdiction of State, Territory and Federal agencies for the investigation and prosecution of crimes at sea. ASA understands that the operation of the Intergovernmental Agreement in combination with the *National Protocol for Receiving Reports of Crimes at Sea* ensure that issues of jurisdictional coverage do not stand in the way of immediate investigations of alleged crimes at sea.

Improvements to the reporting, investigation and prosecution of alleged crimes committed at sea

ASA recommends that any measures taken to improve the reporting, investigation and prosecution of crimes committed at sea must take into account initiatives being discussed at an international level. Formal guidance, if it were to be created, should consider that not all vessels will have the ability to follow prescriptive guidelines which fail to take into account the size and operation of the vessel and its crew. ASA supports the development of formal guidelines created in the context of the comments above.

Pragmatic measures that will clarify responsibility in incidents of alleged crimes at sea, which may come in the form of bilateral arrangements between sovereign States, are supported. Ensuring clear information on reporting obligations of ship operators is available and widely understood will also assist investigating agencies to prevent accidental delays in the notification of incidents to the appropriate body.