



Australian Government

Australian Government response to the
recommendations of the House of Representatives Standing
Committee on Social Policy and Legal Affairs in its report:

*Troubled Waters – Inquiry into the arrangements surrounding
crimes committed at sea*

[November 2014]

AUSTRALIAN GOVERNMENT RESPONSE TO THE RECOMMENDATIONS OF THE HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON SOCIAL POLICY AND LEGAL AFFAIRS IN ITS REPORT *TROUBLED WATERS – INQUIRY INTO THE ARRANGEMENTS SURROUNDING CRIMES COMMITTED AT SEA*

Introduction

The Australian Government welcomes the recommendations of the House of Representatives Standing Committee on Social Policy and Legal Affairs (the Committee) in its report *Troubled Waters – Inquiry into the Arrangements Surrounding Crimes Committed at Sea* (Report).

On 3 December 2010, the former New South Wales Senior Deputy State Coroner, Magistrate Jacqueline M Milledge handed down 9 recommendations following the inquest into the death of Ms Brimble. The recommendations covered a broad range of matters, including police and coronial jurisdictions, the *Cruise Vessel Security and Safety Act* (US) (the Kerry Act), Australian Federal Police (AFP) presence on ships, drug scanning and drug detection dogs at ports, and coronial best practice.

On 22 June 2012, the former Government responded to the Coroner's recommendations. Recommendations 1, 3, 7, 8 and 9 were agreed (either wholly or in part) and some of the issues raised by the Coroner were referred to the Committee for consideration.

On 9 September 2012, the then Attorney-General, the Hon Nicola Roxon MP, wrote to the Committee's Chair requesting that the Committee undertake an inquiry into the arrangements surrounding crimes committed at sea. The terms of reference for the Committee's inquiry were based on the matters that the Government referred to the Committee in its response to the Coroner's recommendations.

On 11 October 2012, the Attorney-General's Department briefed the Committee to assist with the technical aspects of the inquiry. The briefing covered the scope of the proposed terms of reference, national and international jurisdictional issues, and how the recommendations of International Cruise Victims Australia and the reforms undertaken by P&O Australia related to the terms of reference for the Committee's inquiry.

The Department of Foreign Affairs and Trade (DFAT), the former Department of Infrastructure and Transport and the Commonwealth Director of Public Prosecutions each prepared written submissions for the Committee during the inquiry. The Australian Federal Police and the Attorney-General's Department did not prepare written submissions, but appeared before the Committee at public hearings held on 15 February 2013 and 14 March 2013 respectively.

The Committee's report was published on 25 June 2013. The report makes 11 recommendations relating to arrangements for the investigation and reporting of crimes committed at sea, mainly on cruise ships.

The recommendations cover many issues which were not raised by the Coroner in 2010, including the collection and publication of statistics on crimes committed at sea, the review

of cruise vessel operators' liability for cruise tickets purchased in Australia, the distribution of safety brochures to passengers in Australian ports; the use and enforcement of International Maritime Organisation (IMO) Guidelines as a condition of entering Australian ports, and the establishment of formal processes for reviewing National Protocols for Reporting Crimes.

The Government has noted or agreed (either wholly or in part) to recommendations 2, 3, 4, 5, 6, 8, 10 and 11. The Government already has arrangements in place which address a number of issues covered in the recommendations, and has referred to these arrangements where relevant.

The Government has taken advice from the following Commonwealth Government departments and agencies with responsibility for and expertise in matters relating to the maritime sector:

- Attorney-General's Department
- Australian Federal Police (AFP)
- The Treasury
- Department of Foreign Affairs and Trade, including Austrade (Tourism Division),
- Department of Infrastructure and Regional Development, including the Australian Maritime Safety Authority (AMSA) and the Office of Transport Safety, and
- The Australian Customs and Border Protection Service.

The Government notes that Australia's maritime regulatory framework remains largely unchanged from 2012.

Recommendation 1:

The Australian Institute of Criminology should compile, maintain and publish statistics on crime committed at sea by or against Australians.

Not agreed.

In considering this recommendation, the Government notes that the evidence presented to the Committee during its inquiry drew attention to US studies which suggest that crime on cruise liners is below the average of a typical city, as well as the cruise industry's own assessment that crime committed on board is a minor problem.

In addition, the Government does not believe that the proposed collection of statistics will result in an accurate or complete picture of crimes at sea by or against Australians.

This is largely because the AIC would be unable to rely on police records for the collection of statistics. As the Committee identified in paragraphs 2.34 – 2.39 of its report, there are no reliable, national statistics on crimes committed against Australians at sea. Instead, the AIC would need to rely on the collection of self-report information through a survey of passengers. The Government also anticipates there would be a high level of under-reporting of crime in this area.

Recommendation 2:

The Australian Government dramatically increase its efforts to achieve greater cruise passenger safety and crime prevention strategies within the International Maritime Organisation and other organisations as appropriate, including pursuing cooperative agreement for the following urgent priorities:

- a. The installation and real-time monitoring of CCTV;
- b. The installation of 'man-overboard' alarm systems to alert on-board security to passengers going overboard,
- c. The adoption of reporting protocols analogous to those in the Kerry Act; and
- d. A Responsible Service of Alcohol code.

Noted.

Passenger ship safety is a high priority for the Government at the IMO, with significant efforts currently being made to address priorities (b) and (c) of Recommendation 2.

To date, the Government's efforts have included:

b) 'Man-overboard' alarm systems

Australia has been working since 2010 to develop domestic and international standards for 'man-overboard' (MOB) systems or 'maritime survivor locating systems,' (MSLS) that are capable of sending notifications (alarms) to the parent vessel, vessels in the vicinity and coastal stations in range.

The Government works closely with New Zealand to develop standards for the installation of a range of MOB systems for use in Australia and New Zealand. The agreed standards have been referenced in AMSA *Marine Order 54 (Coastal Pilotage)* and AS/NZS 4869.1. In

addition, in March 2014 the Government lodged a new project proposal with Standards Australia's (Australia's peak non-government Standards organisation) Standards Development Committee to directly adopt certain overseas MOB standards as suitable for use in Australia and New Zealand. The Australian Government chairs Standards Australia - Committee RC-004, which is considering these issues.

The Government notes that negotiations on this issue at the IMO, International Telecommunication Union (ITU) and International Electrotechnical Commission (IEC) have been lengthy, and at times, highly controversial amongst industry and Member States. At this stage adoption of other international guidelines for man-overboard devices suitable for use on cruise liners remains subject to careful assessment of the several technologies available, with new technologies still in development.

c) Kerry Act reporting protocols

The Government considers that Australia's current domestic and international arrangements cover the reporting protocols in the Kerry Act to the extent legally possible:¹

At the 28th Session of the IMO Assembly in November 2013, Australia supported the approval of the IMO *Guidelines on the preservation and collection 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 persons affected*. These guidelines provide that "Once the safety of all concerned has been assured, the master should contact the relevant authorities for appropriate guidance," as well as contacting the flag state at the commencement of a search and rescue, in the event of an allegation of a serious crime, or in the event that a serious crime has taken place.

While there remains potential for increased discussion at the IMO on the additional matters listed in Recommendation 2 (namely, the installation and real-time monitoring of CCTV and the adoption of a Responsible Service of Alcohol code), any proposals for the inclusion of

¹ Section 3507(g)(3) of the *Cruise Vessel Security and Safety Act* (US) (Kerry Act) sets out the requirements on vessel owners to report crimes and other information, including:

- (A) (i) contact the nearest FBI office by telephone as soon as possible after the occurrence on board the vessel of an incident involving homicide, suspicious death, a missing United States national, kidnapping, assault with serious bodily injury etc;
- (ii) furnish a written report of the incident;
- (iii) report (optional) any serious incident that isn't covered above; and
- (iv) report (optional) any other criminal incident involving passengers and/or crewmembers to the proper State or legal government law enforcement authority

Section 3507(g)(1) obliges vessel owners to record all complaints of crime in a log book. The vessel owner must include (at a minimum) the following details—

- (A) the vessel operator;
- (B) the name of the cruise line;
- (C) the flag under which the vessel was operating;
- (D) the age and gender of the victim and the accused assailant;
- (E) the nature of the alleged crime or complaint, including whether the alleged perpetrator was a passenger or a crewmember;
- (F) the vessel's position at the time of the incident or the initial report;
- (G) the time, date and method of the initial report and the law enforcement authority to which it was made;
- (H) the time and date the incident occurred (if known);
- (I) the total number of passengers and crewmembers on the voyage; and
- (J) the case number or other identifier provided by the law enforcement authority to which the initial report was made.

new issues must undergo a rigorous approval process at the IMO and fit into the IMO's approved Strategic and High Level Action Plans. Any unplanned outputs must also be given express approval by IMO Committees, requiring extensive consultation with Member States, and agreement that cruise passenger safety and crime prevention strategies are not currently being adequately addressed at the IMO.

The Government considers that Australia is currently making a significant effort to address the priorities in Recommendation 2, and does not agree that a dramatic increase in efforts to achieve greater cruise passenger safety and crime prevention strategies at the IMO is needed.

Recommendation 3:

The Australian Government vote in favour of the *Guidelines on the preservation and collection 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 persons affected*, at the upcoming International Maritime Organisation Assembly in November 2013.

Agreed.

Australia supported the adoption of the Guidelines at the 28th session of the International Maritime Organisation Assembly, which was held on 25 November 2013. The Guidelines were also supported by like-minded States.

While adoption by the Assembly signals Australia's support for the Guidelines, such adoption does not create any binding obligations on Member States to implement or follow the Guidelines. Rather, the purpose of the Guidelines is to provide assistance to the master and crew of a vessel on how to practically respond to any alleged crime committed at sea.

States which have supported the Guidelines are urged to consider the Guidelines and are requested to assist in the preparation and collection of evidence.

Recommendation 4:

The Australian Government conduct a comprehensive review and report on cruise vessel operators' liability for cruise tickets purchased in Australia, including Australia's capacity to provide legislative safeguards for Australian consumers.

Noted.

On 1 January 2011, the Australian Consumer Law (ACL), which is set out in Schedule 2 of the *Competition and Consumer Act 2010*, came into force. It replaced provisions across 20 national, State and Territory consumer laws with one law.

The ACL includes core consumer protection provisions prohibiting misleading or deceptive conduct, unconscionable conduct and unfair contract terms as well as specific provisions such as the system of statutory consumer guarantees.

Under the ACL, all goods and services purchased by consumers are covered by statutory consumer guarantees. This means that services, including cruises, must be rendered with due

care and skill and be fit for purpose. Importantly, the ACL's requirements apply to conduct which takes place overseas by businesses which are incorporated or carrying on business in Australia, and by Australian citizens and permanent residents.

Australian consumer agencies will commence an implementation review of the ACL from 2016. This review will assess the effectiveness of the ACL and the consumer policy framework, including implementation of the law, consumer policy development, consumer and business awareness of the law, and education, compliance and enforcement activities. It will consider the ACL's application across the entire economy.

The Government considers that it would be impractical and extremely resource intensive to conduct a separate review into cruise operators' liability for cruise tickets purchased in Australia prior to the review of the ACL in 2016.

Recommendation 5:

The Australian Government legislate such that all cruise operators must distribute to all cruise passengers, when boarding a cruising vessel at an Australian port, a brochure that provides information on the following:

- a. What to do in case of an accident or a potential crime being committed on board;
- b. The rights of passengers in the case of injury or death;
- c. The numerous jurisdictions that may apply to a vessel that is travelling through numerous national waters and international waters;
- d. Contact details from cruising operator support services, as well as other support services, such as rape crisis services;
- e. Contact details for Australian consular assistance throughout the world; and
- f. Contact details for Australian Police agencies.

Agreed in principle.

The Government accepts that there is scope for Australia to take further steps to improve the information provided to cruise passengers boarding a cruising vessel at an Australian port.

However, the Government believes that this initiative would be better progressed through a voluntary, cooperative scheme led by cruise vessel providers, rather than through mandatory legislation.

The Government will engage with major operators to encourage a cooperative approach.

Recommendation 6:

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

Agreed in principle.

The Government is of the view that there is already sufficient general safety advice on the *Smartraveller* website about cruising and how passengers may ensure their own safety. The advice can be found at: <http://smartraveller.gov.au/tips/boats.html>.

The Government considers that it is beyond the scope of the *Smartraveller* website to provide individual advice on each major cruising operator which visits Australian ports.

Recommendation 7:

The Australian Government make vessel operators' use and enforcement of the IMO *Guidelines on the preservation and collection 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 persons affected* a condition of entry to Australian ports, should the Guidelines be adopted by the IMO Assembly.

Not agreed.

The Government does not agree with this recommendation on the basis that making vessel operators' use and enforcement of the IMO Guidelines a condition of entry into Australian ports would go beyond the intended purpose of the Guidelines.

Australia supported the adoption of the IMO Guidelines on 25 November 2013. As noted above, such adoption does not create any binding obligations upon Australia, or any other States, to implement or follow the Guidelines. Rather, the purpose of the Guidelines is to provide assistance to the master and crew of a vessel on how to practically respond to any alleged crime committed at sea.

The Government also considers that enforcement of such a condition of entry would be difficult to achieve and possibly counterproductive for law enforcement purposes. For example, it would be difficult to establish whether a master has followed the Guidelines *before* the vessel enters an Australian port. Also, if a master hasn't followed the Guidelines correctly in relation to the collection of evidence, the master may be discouraged from reporting the alleged crime to local authorities altogether for fear of being denied access to port.

Recommendation 8:

The Australian Government develop crime scene management protocols (in collaboration with all Australian police forces), with which vessel operators would need to comply in order to access Australian ports.

Agreed in principle.

The Government agrees that crime scene management protocols are an important measure to improve the effectiveness of police and coronial investigations into incidents occurring on vessels while they are at sea.

However, it is likely that the enforcement of the protocols 'as a condition of entry to Australian ports' may face practical difficulties, and may also lead to protests from the flag states of the foreign vessels.

Instead, Australia has opportunities to develop crime management protocols to improve cruise passenger safety through multilateral bodies such as the IMO. A clear example of this opportunity is Australia's recent support of the adoption of the IMO *Guidelines on the preservation and collection 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 persons affected*. These Guidelines may provide a basis for increased communication and cooperation between the different States involved (for example, the port State and the flag State).

Recommendation 9:

The Australian Government develop and legislate for a mandatory crime at sea reporting scheme, with which vessels would have to comply in order to enter Australian ports. Under such a scheme, reports must be made:

- Of allegations about criminal acts that are crimes under the *Crimes At Sea Act* regime,
- Where the accuser or accused is Australian.

Such reports must be made to an Australian police force *as soon as possible* after a member of the vessel's staff becomes aware of the act or allegation.

Not agreed.

The Government considers that it would be difficult for Australian authorities to enforce a requirement for vessels to comply with a mandatory reporting scheme 'as a condition of entry to Australian ports'. In practice, it is unlikely that Australian authorities would become aware of a vessel's non-compliance with any mandatory reporting scheme prior to the vessel entering an Australian port. In addition, if a vessel has not fully complied with a mandatory reporting scheme, or failed to report within the relevant timeframe, the master of the vessel may be discouraged from reporting the alleged crime to local authorities altogether for fear of being denied access to port, or being otherwise penalised for non-compliance.

The Government notes that for international cruise vessel operators the IMO *Guidelines on the preservation and collection 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 persons affected provide guidance on reporting alleged or discovered crimes at sea "to the flag State, other interested States and parties involved, including law-enforcement agencies". The IMO Guidelines also advise flag States and other interested States to respond swiftly and cooperatively in their response and "to maintain communications between themselves to inform each other about the initiation, progress and outcome of their criminal investigations".

Recommendation 10:

The Australian Government, in cooperation with the States, establish a regular timeframe and formal process for reviewing the National Protocols for Reporting Crimes at Sea.

Agreed.

The existing *National Protocols for Reporting Crimes At Sea* (the Protocol) has recently undergone an extensive review by the AFP in consultation with State and Territory police forces. The jointly updated Protocol will be signed by the Commissioner of each police force. It has been amended to include a provision for review every two years.

Recommendation 11:

The Australian Government, in cooperation with the States, establish a formal protocol ensuring clarity in the arrangements between the Australian Federal Police and State Coroners.

Agreed in principle.

The Government notes that the detail of what may be covered in such a Protocol would need to be determined in consultation with the AFP and State and Territory police and coroners.

The Government will consider the best mechanism for consulting with the States and Territories in order to progress this recommendation, which may be through the new Law, Crime and Community Safety Council.