



Australian Government
Attorney-General's Department
Criminal Justice Division

12/9927

24 April 2013

Mr Thomas Gregory
Secretary
Standing Committee on Social Policy and Legal Affairs
PO Box 6021
CANBERRA ACT 2600

Dear Mr Gregory

I refer to the Attorney-General's Department's appearance before the Committee on 14 March 2013 in relation to the inquiry into the arrangements surrounding crimes committed at sea.

I am pleased to attach responses to the questions taken on notice at the Department's appearance before the Committee. I apologise for the delay in providing the response, however extensive file searches were necessary. It was also necessary to consult with State and federal law enforcement and prosecuting agencies to determine the outcomes of the relevant matters.

I understand that the Office of International Law will reply directly to the Committee's request for clarification regarding the UN Convention on the Law of the Sea.

Yours sincerely

Iain Anderson
First Assistant Secretary

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT
Questions on Notice taken on
14 March 2013

Question 1

The Committee on Social Policy and Legal Affairs asked the following question at the Crimes at Sea hearing on 14 March 2013:

Dr STONE: With regard to the national protocol, you are perfectly satisfied with it in terms of its content?

Mr Anderson: As far as we can judge, it appears to be appropriate. We are not the people to say what the police need to have rules about for the carrying out of operations and investigations, but it appears to provide everything it needs to provide and appears to be working.

Dr STONE: Thank you.

CHAIR: You say it 'appears to provide', do you have some statistics in terms of the number of prosecutions under the Crimes at Sea Act?

Mr Anderson: I mentioned earlier that there are four matters that have been referred in recent times—that is, in the past two years—but I do not think we have anything beyond that. We do not have further details here but we could provide those on notice.

CHAIR: That would be good.

Ms Inverarity: How far back would you like us to go? Files get a bit murky as we go further back but we can do our best—

CHAIR: 1995—would you go back that far?

Ms Inverarity: We will do our best.

The answer to the Committee's question is as follows:

Between the years 2000 and 2013 the Attorney-General consented to the prosecution of eight matters, pursuant to the *Crimes at Sea Act 2000*. Of these matters, one is awaiting sentence, six were prosecuted resulting in a conviction, and in one case the accused failed to attend court and bail was forfeited. More information on these cases can be found at Attachment A.

At the hearing on 14 March 2013, the Committee asked if the Department could check files dating back to 1995. The Department has searched files from the year 2001, which was the year of commencement of the provisions in the *Crimes at Sea Act 2000* regarding the Attorney-General's consent.

Question 2

The Committee on Social Policy and Legal Affairs asked the following question at the Crimes at Sea hearing on 14 March 2013:

CHAIR: So the Commonwealth Attorney-General gives consent, even though it is inside—

Ms Inverarity: That is correct. Because it is a foreign ship. Then we have a current matter which we are processing at the moment where consent has not been determined. This was also on a cruise ship—a Royal Caribbean cruise ship—where the vessel flag is the Bahamas, and we are the start of the process of considering this one. The alleged offences are the possession of a prohibited drug and a prohibited weapon. This was an Australian male who had a belt buckle with a concealed knife in it which became apparent, I believe, again, in a bar. We are yet to process that one. It did occur within 25 nautical miles of New South Wales. We will be proceeding with that one. I should have mentioned in the second case with the merchant vessel that it was the Commonwealth Director of Public Prosecutions who sought our consent in that manner, and in the last one it was the New South Wales police who sought our consent. For the first three we will take on notice the outcome of those prosecutions and get back to you on that.

The answer to the Committee's question is as follows:

Attachment A contains the outcomes of all prosecutions that have proceeded following consent being issued by the Attorney-General under the Crimes at Sea Act.

Question 3

The Committee on Social Policy and Legal Affairs asked the following question at the Crimes at Sea hearing on 14 March 2013:

CHAIR: I was going to ask about that in terms of custody while someone is perhaps not even charged. None of the crimes you have talked about—although one was reasonably serious wasn't it, the two young girls—

Ms Inverarity: The two most recent ones were Australian offenders. They live here, they can be summonsed to appear before a court or arrested at whatever point in time is necessary. The other two were slightly longer ago. One of them was an act of indecency against a minor.

CHAIR: So they would appear in custody?

Ms Inverarity: We would have to check those details as to whether they were remanded within Australia. We can check and get back to you on that.

CHAIR: So they would appear in custody?

Ms Inverarity: We would have to check

The answer to the Committee's question is as follows:

In both cases the defendants were arrested in Australia when they disembarked the vessel. One defendant served his sentence in Australia, the other was released on bail so that he could return to Pakistan pending his hearing date. The accused failed to attend, or be represented, at his next hearing. As a result, bail was forfeited and there is an alert out for his arrest if he returns to Australia.

Crimes at Sea Act 2000 - AGD consent to prosecute matters 2001-2013¹

Incident date	20 July 2012	25 December 2010	31 October 2010	26 June 2010	11 March 2009	23 November 2007	18 April 2003	24 September 2002
Consent issued	November 2012	August 2011	July 2011	20 September 2010	20 October 2009	13 January 2009	20 June 2003	17 July 2009
Consent requested by	NSW Police	CDPP	CDPP	NSW Police	NSW Police	NSW Police	Queensland Police	NSW DPP
Vessel type	Cruise ship	Cruise ship	Merchant	Cruise ship	Cruise ship	Cruise ship	Merchant	Cruise ship
Vessel flag	United Kingdom	United Kingdom	Liberia	United Kingdom	United Kingdom	United Kingdom	Philippines	United Kingdom
Accused nationality	Australian	Indonesian	Pakistani	New Zealand	Australian	Australian	Filippino	Australia
Victim/s nationality	Indian Filippino	Australian	Sri Lankan	Australian company, Carnival PLC	Australian	Australian	Filippino	Australia
Charge (s)	Reckless grievous bodily harm, reckless wounding, common assault, wilful and obscene exposure, behaving in an offensive manner – <i>Crimes Act 1900</i> (NSW) and <i>Summary Offences Act 1988</i> (NSW)	Acts of indecency with a minor (6 counts) – s 61(2) <i>Crimes Act 1900</i> (ACT)	Assault occasioning bodily harm – s 24(1) <i>Crime Act 1900</i> (ACT)	Larceny by clerk or servant – s156 <i>Crimes Act 1900</i> (NSW)	Assault occasioning actual bodily harm – s59 <i>Crimes Act 1900</i> (NSW)	Assault occasioning actual bodily harm – s59 <i>Crimes Act 1900</i> (NSW)	Murder – s35(4) <i>Criminal Code Act 1899</i> (Qld)	Manslaughter (dropped); supplying a prohibited drug – s25 <i>Drug Misuse and Trafficking Act</i> (NSW)
Location at time of incident	Inner adjacent area (Territorial sea) (11.8 nm from NSW)	Outside adjacent area (50-100 nm off New Caledonia)	Outside adjacent area (Archipelago waters of Indonesia (Java Sea))	Outer adjacent area (15.6 nm off NSW)	Outer adjacent area (22 nm off NSW)	Outer adjacent area (15nm off NSW)	Outer adjacent area (35 nm off Queensland)	Outer adjacent area (100 nm from Sydney)
Foreign States with interest	United Kingdom	Indonesia United Kingdom	Pakistan Liberia Indonesia Sri Lanka	United Kingdom New Zealand	United Kingdom	United Kingdom	Philippines	United Kingdom
First port after incident	Australia (Jervis Bay)	Australia (Brisbane)	Australia (Northern Territory)	Australia (NSW)	Australia (Sydney)	Australia (Port Stephens)	Australia (Nambour)	Australia (Sydney)
Case outcome	Adjourned for hearing at local court on 28/05/13	Pleaded guilty to six charges of acts of indecency with young people, contrary to s 61(2) of the <i>Crimes Act 1900</i> (ACT). In September 2011, sentenced to 18 months' imprisonment to be released after four months upon security by recognisance in the sum of \$1,000 and on the condition that he be of good behaviour for a period of six months.	Arrested in Australia on 4 November 2010 on departure from the vessel. Granted bail 9 November 2010 with condition he would attend future hearings. On 15 November 2010 bail was varied to enable him to return to Pakistan pending hearing dates. The accused did not attend hearings and was not represented on hearing dates. The court ordered that the accused bail be forfeited for non-appearance. If the accused returns to Australia, there is an alert for his arrest, and an additional offence of breach of bail under s 37B of the Bail Act (NT) will be considered.	Conviction imposed by Local Court on 14 September 2010. Fined \$500 and \$79 court costs	Conviction imposed by District Court in September 2009. Bond and supervision with Community Correction Victoria to include drug and alcohol counselling and anger management if thought necessary	Conviction imposed by Local Court on 14 May 2009. Fined \$600 and \$73 court costs	Convicted of manslaughter in Brisbane Supreme Court on 1 October 2004. Sentenced to 8 years' imprisonment. Considered eligible for post-prison community-based release after serving two years and eight months.	Manslaughter charge not accepted by Supreme Court on 29 April 2010. Court accepted guilty plea for charge of supply prohibited drug. No further sentence imposed.

¹ The Department has an ongoing case that does not appear in the above table. The matter involves an Australian national on board a Bahamas flagged cruise vessel while the vessel was 25 nautical miles from the New South Wales coastline (outer adjacent area). The Attorney-General has not yet considered whether consent will be granted in this case and the views of the Bahamas are being sought.