



**Government  
of South Australia**

**Commissioner for  
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Chair, Social Policy and Legal Affairs Committee  
House of Representatives  
PO Box 6021  
Parliament House, Canberra ACT 2600

Dear Chair, Social Policy & Legal Affairs Committee

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

Thank you allowing me to be an observer at the committee's hearing in Brisbane on 1 February 2013. Mr Kendall Carver founder and current chair of the International Cruise Victims Association invited to assist him in preparing for his oral submission; and, Mr Mark Brimble asked me to be present to help him address the committee's questions should that be necessary and approved by you, as chair.

Having heard their oral submissions and Ms Nicola Doumany for Victim Assist Queensland in addition to the committee's questions, I respectfully provide for your consideration (if appropriate) this letter as a supplement submission - for your consideration, if appropriate.

It seems to me that incidents involving either passengers or crew of the nature raised by Mr Carver and Mr Brimble should be approached by all from the perspective that 'This might not be a crime but it might be. This person or these people are seeking our help – now.' The provision of such help should foremost be directed towards attaining a comprehensive understanding of the 'victim' as well as a proper assessment of his or her physical, psychological, social, cognitive and legal situation and needs.

As a 'victim', he or she should be promptly informed by first responders of his or her rights to assistance, protection, information, legal help and so on, as well as informed on how to access these rights. In broad terms victims' rights are described in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (and as I pointed out in my earlier submission, these rights are embodied in both statute law and administrative policy across Australia). I hasten to add that the United Nations General Assembly, comprising over 150 nation-states at the time, in 1985 unanimously endorsed that declaration – so victims' rights should know no borders.

I concede that there are many legal and practical complexities that impact approaches to crimes and other victimisation at sea<sup>1</sup>. The difficulties have been highlighted and solutions suggested already to the committee. Further to those solutions, I point to the European Union where more than two dozen sovereign (nation) states have been able to agree on conventions to enhance crime victims' access to justice systems and assistance. Carnival's

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<sup>1</sup> USA Case Law — Everett v. Carnival Cruise Lines, 912 F.2d 1355, 1358 (11th Cir.1990) (holding "[e]ven when the parties allege diversity of citizenship as the basis of the federal court's jurisdiction, if the injury occurred on navigable waters, federal maritime law governs").

submission includes a procedural agreement between Pacific Police Commissioners and itself as an organisation, which suggests a willingness to co-operate and co-ordinate to improve outcomes for victims, amongst others. Perhaps this procedural agreement (that has no provision for enforcement, nor mechanism to hold persons or agencies or Carnival accountable) is a first draft 'blue-print' for a multi-jurisdictional instrument, such as a regional declaration, convention or treaty.

Australia helped forge the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; perhaps, it might show the same leadership regionally – not just for the sake of its citizens but because Australia has responsibilities and obligations as a 'global citizen'.

The concept of a 'Ship Marshall' is flawed unless such is able to operate with policing authorities in other nation's jurisdictions and in international waters (which would require flag-nations to recognise the Ship Marshall's authority). Dr Lewins' proposal, however, that Australia have jurisdiction to investigate and prosecute when the respective flag-state is unable or unwilling to do so warrants consideration. A like legislative provision was introduced as an anti-terrorism initiative.

Private security is (unfortunately) necessary on cruise ships. Private security officers are employed to maintain order on behalf of the cruise company. They have a vested interest to protect the cruise company by mitigating risk of criminal and/or civil prosecution. Such officers are apparently trained and tasked to interview victims, witnesses and suspects. I query for whom that information (intellectual property) is attained. If the information reveals the company or an employee of the company is negligent, I query whether the information will forthwith, complete and unedited, be handed over to an independent authority such as police, work-safe inspectors, prosecutors etc.

Some 60 per cent of cruise ships are now registered in Panama, Liberia and the Bahamas, which are nations called 'flags of convenience'. Amnesty International has concluded that violent crime continues unabated in much of Panama. Reports of rape and other sexual violence are prevalent despite the under-reporting. Panama in addition has a large problem in trafficking in women and children who are sexually exploited. The police are widely accused of violating people's human rights. Conversely, the US Consular service notes that the Panama Police have taken steps to improve into responses to violence and other investigations. Violence against women and girls is as recent as late 2012 said to be "a massive problem in Liberia". A 2010 human rights report on the Bahamas that states, "Human rights problems reported included complaints of abuse by police and prison and detention center guards; poor detention conditions; a poorly functioning judicial system, leading to delays in trials and lengthy pre-trial detention; violence against women and children; and discrimination against persons of Haitian descent."

It seems to me in the case of *J Doe v NCL (Bahamas)*<sup>2</sup> an employee who alleged she was sexually assaulted that some staff for the cruise company engaged in a process of

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<sup>2</sup> Extract from *Doe v. Princess Cruise Lines, Ltd.*, 10-10809 (11th Cir. 2011) — "Doe told her work supervisor that she had been raped while unconscious in cabin 3342. She wanted to report the rape to a personnel manager then so that she could ask permission to miss work and get medical treatment, but her supervisor refused to permit her to leave, telling her that she could wait until the next morning to report it. After she got off work the next morning, which was June 22, 2009, Doe went to the personnel manager and reported that she had been raped and explained the circumstances in which it had happened. The personnel manager told her to write a report and then go back to work. That afternoon, Doe was interrogated by ship officers and required to repeatedly recount the details of the rape in the presence of male officers and supervisors. That same afternoon the cruise line had her prepare another statement and tape recorded her account. As a result Doe, who had not eaten all day, felt "weak and traumatized." She had not been given any medical attention.

Doe was finally allowed to go to the ship's infirmary on the afternoon of June 22, more than 24 hours after she had reported the rape. After examining her, the ship's doctor concluded that Doe had a torn labia, which could

'revictimisation'. Also, during the court proceedings it seems that the law arguably did not afford the victim the same 'vulnerable witness' protections that are common-place in Australia. Thus, issues pertaining to the victim's past sexual history, abortion, marital status and so on were raised to – I assume – both attack the victim's credibility and to suggest some sinister motivation for her accusations. In another case, it is alleged that a 17 year old female victim of sexual assault, Jane Doe, was found "on the ship afterwards, sort of on the floor, crying" The victim's legal counsel allegedly said, "What's truly incredible is that X - Cruise Company - X had her give a written statement while she was still intoxicated, then sent her for medical examination, where she tested positive for .101 blood alcohol content."<sup>3</sup>

Under international law of the sea, it is possible for the cruise ship's master to elect to have a criminal incident reported to the flag-nation of convenience, which include the Bahamas and Liberia. The Australian Government should explore legal and procedural remedies to protect Australian citizens, especially women, who as victims of violent crime might be 'required' to report offences and deal with police and others in 'flags of convenience'.

I further query whether information gathered by private security employed by (or contracted by) a cruise company would be used in such ways that do not necessarily facilitate access to justice but rather impede it. If the victim likely had grounds to seek 'damages' by civil prosecution, I also query how willingly the cruise company would disclose all information. Legally, the accuser is required to prove his or her allegation, and the accused can remain silent. I am mindful that ICVA have drawn attention to their proposal on CLAMP as an alternative.

Police officers who perform investigative functions are trained for six to 12 months then supervised by senior police as they undertake on-job training. They might complete investigator training, crime scene training and other professional development. Private security officers who work on-shore in Australia must also complete an approved training course to attain a security licence. I therefore query the standard of training each private security officer undertakes. Perhaps, the training is focused on 'crowd control' rather than crime scene preservation and evidence gathering. Given cruise companies register ships in flag-nations of convenience, I query whether the standards for security officers will be determined by employing personnel qualified in 'nations' of convenience.

About two decades ago as a lecturer on criminal justice studies, I facilitated seminars via audio-visual conferencing between Adelaide TAFE and Spokane Community College. The Spokane Police at that time comprised about 500 staff of whom about 250 were sworn officers, about 150 were civilian staff and about 100 were volunteers. The police trained some of those volunteers in skills and knowledge in relation to crime scene preservation. Some trained volunteers apparently could also perform 'basic' evidence gathering tasks. It is therefore probable that a basic training course could be developed and delivered for certain cruise ship staff, such as 'specific' security officers. I re-state, however, that this approach would give rise to the aforementioned conflict of interest.

The Care Programme is an acknowledged improvement but also has the potential, in the context of the pointers raised about private security, to be 'risk management' renamed. Enhancements could be made, such as providing Australian citizens as victims of sexual

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have been a result of "forced entry." The doctor drew blood and tested Doe's urine for the presence of date rape drugs. The test was positive, although the ship doctor characterized the results as "weak," which Doe asserts was attributable to the "length of time since the rape."

See also: <http://www.cruiselawnews.com/2011/06/articles/rape-1/pub-crawl-on-the-norwegian-sun-ends-with-rape-allegation-against-ncl/>; <http://www.tampafloridacriminalattorney.com/blog/23-reports-of-sexual-assault-on-ncl-cruise-ships-in-15-months>; <http://www.cruiselawnews.com/tags/ncl/>

<sup>3</sup> [http://blogs.miaminewtimes.com/riptide/2011/05/royal\\_caribbean\\_sued\\_after\\_17-.php](http://blogs.miaminewtimes.com/riptide/2011/05/royal_caribbean_sued_after_17-.php)

## Supplementary Submission 7.1

assault 'free' and unfettered access via telephone to 1800 RESPECT (the Australian Government funded national help-line).

Medical services are available on cruise ships<sup>4</sup>, although these services apparently often function independent of other facets of the day-to-day running of a cruise ship. Whilst I do not doubt the competence of the doctors in general medical procedure, I query their competence as forensic witnesses in criminal proceedings. If a sexual assault happens, the duty doctor will need to conduct (if the victim consents) a forensic medical examination, including the collection of forensic samples as per the 'rape kits' widely used in Australia. If I recall correctly, Mr Brimble spoke of a report made regarding a doctor on board a cruise ship seeking to use a 'rape kit' that was out-of-date. A regular audit is necessary to remedy the possibility of like error. Previously, I was told these kits are not kept by consular services.

It also seems to me that medical staff on cruises should be trained by 'expert' sexual assault medical examiners. In South Australia, for instance, medical staff employed by the Rape and Sexual Assault Services (Yarrow Place) train doctors in regional centres consistent with the objective of providing a state-wide forensic medical service.

Regarding victim assistance, I concur with the overview given on Victim Assist Queensland and the generalisations about victim assistance in other States and Territories. It is important to add that section 27 of the Victims of Crime Act 2001 (SA), the Attorney-General is authorised to make ex gratia (act of grace) payments to assist South Australian residents who become victims of crime in other places where there is no compensation scheme. By virtue of section 31(2) the Attorney-General is also authorised to make payments to individuals as victims of crime to help them deal with 'specific effects' or to advance their interests.

An Attorney-General exercise his discretion to make payments equivalent to those payable as 'state-funded compensation' to South Australian residents who were victims of the terrorist attack on the World Trade Centre and the Bali bombings (section 27). Both the former and the current Attorney-General have made discretionary payments to cover the costs of parents from South Sudan, the United States and other to attend the funerals of murder victims (section 31(2)). It is probable (and I use this word because a payment made does not set a precedent for a future payment) that such payments could be made to help South Australia residents as victims of crime on cruise ships in international waters and other places. I recommend a similar law to the Commonwealth.

In closing, at the public hearing a query was raised about the financial impact of the US 'Kerry law' on the cruise industry. With the focus on financial circumstances, I draw your attention to a recent Washington Post article on losses incurred by Royal Caribbean<sup>5</sup>.

Yours sincerely



*Michael O'Connell*  
**Commissioner for Victims' Rights**  
South Australia

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<sup>4</sup> HAJTMAN v. NCL (BAHAMAS) LTD. 526 F.Supp.2d 1324 (2007)

<sup>5</sup> [http://www.washingtonpost.com/business/the-cruise-line-posted-a-392m-loss-says-north-american-cruise-interest-makes-up-for-europe/2013/02/04/c830537a-6edc-11e2-b35a-0ee56f0518d2\\_story.html](http://www.washingtonpost.com/business/the-cruise-line-posted-a-392m-loss-says-north-american-cruise-interest-makes-up-for-europe/2013/02/04/c830537a-6edc-11e2-b35a-0ee56f0518d2_story.html)