

Responding to crimes at sea

- 5.1 Despite the efficacy of crime prevention and passenger safety measures, there will be occasions where passengers are victims of crimes on cruise ships. In the aftermath of such a crime, victims rely almost entirely on the ship's crew to respond appropriately.
- 5.2 This Chapter considers how cruise operators respond to crimes at sea and how this responsibility is delineated and imposed. This includes a discussion on Australia's capacity to dictate the response of cruise ship operators to crimes at sea, including through crew training and obligations to report incidents.
- 5.3 The safety of passengers and personnel on board a ship is the responsibility of the company that owns the ship, which, in turn is vested in the Master (often the captain) of the Ship. The Master of the Ship is responsible for following international law and the domestic criminal law of the country in which the ship is registered (the flag state). Additionally, the Master may have obligations to follow the domestic law of a port or national waters as relevant.
- 5.4 As Royal Caribbean Cruise Lines confirmed:
- (I)t has been the longstanding maritime law and tradition that the master of the ship is completely responsible for the safety of the ship and all the passengers and crew. Maritime tradition and law gives the master almost unlimited authority to do what he or she needs to do to protect the ship and its passengers.¹
- 5.5 While the Master of a Ship must ensure the safety of all those on board, an additional responsibility of the Master is to manage the circumstances that follow the committal of a crime on board. This responsibility will be particularly important during the time between the criminal act and the

¹ Mr Michael Giglia, Royal Caribbean Line Cruises, *Committee Hansard*, 15 February 2013, p. 12.

arrival of police investigators to commence a formal criminal investigation, arrest suspects and interview victims and witnesses.

5.6 The Committee has considered two examples of rules regarding vessel operators' responses to crimes committed at sea: the *Kerry Act* and Guidelines being considered by the IMO. These will be discussed in detail throughout the Chapter as applicable, however, in general:

- The *Kerry Act* imposes certain obligations on cruising operators relating to these areas of responsibility. The *Kerry Act* applies to vessels that are:
 - ⇒ Authorized to carry at least 250 passengers;
 - ⇒ Have on-board sleeping facilities for each passenger;
 - ⇒ Are on a voyage that embarks or disembarks passengers in the United States; and
 - ⇒ Are not engaged on a coastwise voyage.²
- The IMO Guidelines (awaiting adoption):
 - ⇒ Have been approved by the Legal Committee of the IMO;
 - ⇒ Are titled '*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*';
 - ⇒ Will be referred to the session of the IMO Assembly in November 2013 for adoption;
 - ⇒ Australia is a member of the IMO, and the NSW Police Force suggested that an industry 'code of practice' covering similar matters should be considered;³
 - ⇒ The relevant resolution of the IMO Assembly (which directed the Legal Committee to prepare Guidelines) notes that:
 - ... while voluntary, such guidance would assist shipowners, ship operators and shipmasters in cooperating with relevant investigating authorities and contribute to effective and efficient criminal investigations in cases of serious crime or missing persons from ships and would further facilitate and expedite cooperation and coordination between investigating authorities, consistent with international law.⁴

5.7 The responsibility of responding to crimes at sea is made up of three distinct parts, which will be discussed below:

2 Section 3507(k) Title 46 (shipping), USA Code.

3 NSW Police Force, *Submission 20*, p. 2.

4 Resolution A.1058(27), International Maritime Organisation, p.2.

- Protecting victims' welfare;
- Preserving the crime scene; and
- Reporting crimes.

Protecting victims' welfare

5.8 Following a crime or alleged crime at sea, the primary concern of the vessel operator must be to ensure the safety and welfare of the victims and family. It is important to note that, in addition to the primary victim of a crime, the immediate target of the criminal act, there are secondary victims to crime who are equally in need of protection.

5.9 When a ship is far from port, the responsibility for the welfare of both the victim and family resides with the ship personnel. The following section outlines victims' needs and the Guidelines in place to ensure these needs are met.

5.10 P&O displayed an appalling lack of care for and sensitivity to the family of Dianne Brimble in the hours and days following her tragic death. Mr Mark Brimble gave evidence about the absence of concern for their welfare, including the fact that the family who had been on board with Ms Brimble were 'literally left at the gangplank in Noumea', without a hotel room or advice about how to get home. As Mr Brimble further stated:

The first time I received communication from the cruise company [P&O] was at the coronial inquest, which was some two years later. I was handed back money that was belonging to Dianne that the cruise company had held in its accounts for two years. There are a number of things that the cruise company at that time knew; they knew they had made some fundamental errors right up until that day. It seemed that nobody cared.⁵

5.11 The South Australian Commissioner for Victims' Rights provided a summary of the major needs of victims of crimes:

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;

5 Mr Mark Brimble, *International Cruise Victims Australia, Committee Hansard*, 1 February 2013, pp. 1-2.

4. victims want the international community to combat impunity and provide and maintain equal justice and reasonable redress.⁶

5.12 Whilst such needs depend in large part on the justice system, there is an immediate role for a cruise ship operator to play in protecting the welfare of victims. Delayed attention to a victim's welfare could itself cause additional harm.

5.13 These victims' needs are expressed in the United Nations' *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* as outlined in the submission from the South Australian Commissioner for Victims' Rights (SA Commissioner):

- Victims should be treated with compassion and respect for their dignity;
- Victims should be informed of their rights in seeking redress;
- Victims should be informed of their role and the scope, timing and progress of the proceedings;
- Victims should be allowed to present their views and have them considered at appropriate stages;
- Measures should be taken to:
 - a) minimise inconvenience to victims;
 - b) protect victims privacy and ensure their safety;
- Victims should receive necessary material, medical, psychological and social assistance;
- Victims should be informed of the availability of health and social services;
- Police, justice, health, social service and others should receive training to sensitise them to victims' needs and to ensure proper and prompt first aid;
- Attention should be given to victims with special needs arising from race, colour, sex, age, religion, ethnic or social origin, disability etc ⁷

5.14 As discussed by the SA Commissioner, particular attention should be given to the possibility that the treatment of a victim can lead to secondary victimisation:

The victim of crime at sea who chooses to [report] 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'.⁸

6 Commissioner for Victims' Rights, South Australia, *Submission 7*, p. 9.

7 Commissioner for Victims' Rights, South Australia, *Submission 7*, pp. 11-15.

8 Commissioner for Victims' Rights, South Australia, *Submission 7*, p. 5.

- 5.15 Anecdotal evidence from witnesses highlighted the potential for poor attention to victims' needs to further injure victims:

I was then taken down to the doctor, who asked me a few questions. I [didn't] want to talk with him and just said that I had been raped. I was given some pills which I threw out. I then was taken to the purser's office and asked if I wanted to make a statement. I said yes. They brought in a security officer who said it will never go anywhere and I will never be able to prove what happened. The purser decided he was right and that police need not come on board; after all, I was drinking and the crew [didn't] like me. The statement I wrote was ripped up in front of me. My manager was brought in; he told them that I was a very outgoing, funny personality and he was shocked that such a thing would have happened to me. The captain never saw me and never said anything to me about this.⁹

- 5.16 Mr Mark Brimble described the appalling attitude adopted by P&O towards Ms Brimble's family on board the ship, causing further trauma:

The care of the family is a side that I think was fundamentally wrong, and I think it has been recorded many times as to what happened to the family on board the ship. They were the victims. They seemed to be treated almost as if they were guilty of something, and I still to this day wonder why they were treated that way.¹⁰

- 5.17 The SA Commissioner suggested that cruise ships should operate on a presumption in favour of victims:

... incidents involving either passengers or crew of the nature raised [in evidence to the Committee] 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,

9 International Cruise Victims Association, *Submission 12* (Attachment A), p. 8.

10 Mr Mark Brimble, International Cruise Victims Association, *Committee Hansard*, 1 February 2013, p. 4.

information, legal help and so on, as well as informed on how to access these rights.¹¹

- 5.18 The cruising industry has, in some cases, made efforts to improve the support provided to victims of crimes at sea. Carnival Australia provided information to the Committee about its *CARE* program:

Under the CARE program, passengers, their family members (including family members on shore) and crew receive emotional and practical face to face support during times of need.

When onboard, the majority of passenger-facing crew members are CARE-trained. They are supported by shore-side CARE team members who are on call for deployment when necessary. As of 1 November 2012 Carnival Australia has 120 CARE-trained staff working shore-side.

Dedicated CARE team members are assigned to passengers, their family members (including family members on shore) and crew in the event of an emergency or traumatising event (including events of a personal nature, such as a family emergency on shore). Each of Carnival's operating companies around the world has a CARE team which may be deployed to support any Australian passengers overseas.

All CARE team members receive specialised training, so they can assist people affected by trauma. We acknowledge the assistance of Mr Mark Brimble in the development of this training.

Certain CARE team members are also specifically trained to be able to assist sexual assault complainants if necessary.¹²

- 5.19 A second Carnival program is aimed at assisting passengers who disembark early or irregularly from ships:

Under the Cruise Care program, passengers are assisted if they are disembarked for any reason, or otherwise need any form of administrative and emotional assistance in the course of their relationship with a Carnival Australia cruise ship. This program is operated by three full-time members of staff who are dedicated to providing practical and emotional support for passengers. These staff are also on call 24 hours per day over the weekend to provide support as needed.¹³

11 Commissioner for Victims' Rights, South Australia, *Supplementary Submission 7.1*, p. 1.

12 Carnival Australia, *Submission 9*, p. 12.

13 Carnival Australia, *Submission 9*, p. 12.

5.20 The Department of Foreign Affairs and Trade (DFAT) provided information about the consular support available to Australians who are victims of crime at sea:

DFAT provides consular assistance to Australian citizens and permanent residents travelling or living abroad. This includes where Australians are victims of crimes committed at sea where these crimes are not in Australian territorial waters. The Smartraveller website, www.smartraveller.gov.au, provides useful information for Australians travelling by seas, including on safety and security issues.¹⁴

5.21 The *Kerry Act* contains provisions that deal with the treatment of victims of crime, which is aimed at preventing further harm being caused. For example, the *Kerry Act* mandates that vessels have available on board at all times medical staff who can provide assistance in the event of an alleged sexual assault. Such staff must have:

received training in conducting forensic sexual assault examination, and is able to promptly perform such an examination upon request and provide proper medical treatment of a victim, including administration of antiretroviral medications and other medications that may prevent the transmission of human immunodeficiency virus and other sexually transmitted diseases...

5.22 Additionally, such a member of staff must be able to verify that he or she 'meets guidelines established by the American College of Emergency Physicians relating to the treatment and care of victims of sexual assault'.¹⁵

5.23 Further, the vessel owner must provide the victim of sexual assault with free and immediate access to:

contact information for local law enforcement, the Federal Bureau of Investigation, the United States Coast Guard, the nearest United States consulate or embassy, and the National Sexual Assault Hotline program or other third party victim advocacy hotline service;¹⁶

and

a private telephone line and Internet accessible computer terminal by which the individual may confidentially access law enforcement officials, an attorney, and the information and support services available through the National Sexual Assault

14 Department of Foreign Affairs and Trade, *Submission 10*, p. 1.

15 Section 3507(d)(3), Title 46 (shipping), USA Code.

16 Section 3507(d)(5)(A), Title 46 (shipping), USA Code.

Hotline program or other third party victim advocacy hotline service.¹⁷

5.24 The *Kerry Act* also provides that information obtained through the examination, and during support and counselling must be kept confidential, and must not be disclosed 'to the cruise line or other owner of the vessel or any legal representative thereof' unless it is in order to report a crime to police, to secure the safety of passengers or crew, or when in response to law enforcement officials.¹⁸

5.25 However, as already discussed, the Legal Advice expresses the clear opinion that it would not be possible for Australia to mandate particular training for security or medical staff:

The imposition of conditions requiring ships to ... carry crew with particular training are also likely to be regarded as going beyond what Australia is entitled to require as a condition of port access.¹⁹

5.26 While many witnesses made a compelling case for Australia to follow the US and legislate similarly to the *Kerry Act*, including regulating matters such as staff training and procedures to ensure victim welfare, the Legal Advice confirms that this would be beyond Australia's jurisdiction. The Australian Government must therefore make use of other opportunities to improve the regulation of the cruising industry to ensure victim welfare is protected on cruising vessels.

IMO Guidelines

5.27 As noted above, the IMO Legal Committee has approved Guidelines that deal, in part, with the pastoral and medical care of persons affected by crimes on ships. The Guidelines state that:

it is of the utmost importance that allegations of sexual assault and other serious crimes are taken seriously, that the persons affected are protected and that their pastoral needs are fully addressed.²⁰

5.28 At a principled level, the Guidelines state that all persons affected by serious crime 'deserve full consideration of the allegations and should receive pastoral and medical care, as appropriate.'²¹

5.29 The Guidelines provide that:

17 Section 3507(d)(5)(B), Title 46 (shipping), USA Code.

18 Section 3507(e), Title 46 (shipping), USA Code.

19 Legal Advice, Appendix D, p. 2.

20 Attorney-General's Department, *Supplementary Submission 22.1*, p. 11.

21 Attorney-General's Department, *Supplementary Submission 22.1*, p. 13.

In cases of allegations of a serious crime, especially sexual assaults and serious physical attacks, the persons affected should receive *respect for coming forward, recognition that the allegation will be reported and given support* during this time of trauma. They should be given *every opportunity to explain what has happened, give a full account of the incident, and be assured that every effort will be made to protect them from any further harm while they remain on board the vessel.* The persons affected should also be free of any burden of decision-making in relation to the alleged perpetrator. [emphasis added].²²

5.30 Finally, the Guidelines also state that:

The persons mentioned in this section should have access to medical care and attention by a medical professional either on board or ashore, as necessary. The privacy of the person affected should be respected during this process. Where relevant, radio medical advice should be sought.²³

5.31 While Australia is a member of the IMO, the Guidelines are voluntary and have not as yet been adopted by the IMO Assembly.

5.32 The Legal Advice does, however, suggest that Australia might be able to make compliance with the IMO Guidelines a condition of entry to Australian ports, if they are adopted by the IMO Assembly:

If the guidelines are adopted by the IMO with broad support of the States members, and particularly if the relevant flag States support their adoption, then there would probably be good arguments that it is reasonable for Australia to make it a condition of entry to Australian ports that the owners/operators of a cruise ship have adopted those guidelines as part of the normal practice for the operation of the vessel.²⁴

5.33 The IMO Guidelines could also have added force under international law, to the extent that they are considered to reflect 'customary law'. If the Guidelines are accepted to reflect customary law, they would become binding on all countries, and not just those who are members of the IMO.

5.34 The Committee addresses the enforcement of IMO Guidelines in its comments at the conclusion of this Chapter.

22 Attorney-General's Department, *Supplementary Submission 22.1*, p. 13.

23 Attorney-General's Department, *Supplementary Submission 22.1*, p. 13.

24 Legal Advice, Appendix D, p. 15.

Crime scene preservation

- 5.35 The second key element of responding to crimes committed at sea is the preservation of the crime scene and associated evidence. The prospects of justice for victims are strongly linked to preserving the crime scene, and prosecutions of crimes are profoundly dependent on good evidence collection and preservation. Mr Mark Brimble spoke powerfully of the consequences when evidence is not properly preserved.²⁵ Carnival Australia emphasised the fundamental importance of ensuring that crime scenes are preserved, without tampering, so that evidence can be collected by law enforcement officers for the prosecution of crimes.²⁶
- 5.36 In addition to preserving the actual crime scene, cruising operators may need to preserve other evidence, including other locations on board and movable objects. Further responsibilities may include taking statements from the victim, perpetrator and witnesses whilst the event is fresh in their minds.
- 5.37 Some witnesses observed that the preservation of a crime scene and the collecting of other evidence must be done in such a way that it is unimpeachable. The ICVA pointed out the importance of dealing very carefully with evidence, so that it can be used in future prosecutions:
- The importance of physical evidence as well as testimonial evidence from the victim, witnesses and suspect thus is paramount in any criminal investigation and, must be conducted using standardized methodology.²⁷
- 5.38 As described by ICVA, crime scene preservation must be done without delay, in order to protect evidence in situ:
- The Golden Hour Principle is a term police use to describe taking quick and positive early action in securing significant material (evidence) that would otherwise be lost to in the investigation. In short, crucial evidence should be identified within the first hour after a crime...Even where the incident happened some time before Security or the police are alerted, effective early action often leads to the recovery of material which enables the investigation to make rapid progress.²⁸

25 Mr Mark Brimble, International Cruise Victims Association, *Committee Hansard*, 1 February 2013, p. 4.

26 Carnival Australia, *Submission 9*, p. 4.

27 International Cruise Victims Association, *Supplementary Submission 12.2*, p. 49.

28 International Cruise Victims Association, *Supplementary Submission 12.2*, p. 49.

5.39 Evidence also underlined the power and responsibility of a Ship's Master to exert physical control over the ship, particularly in the aftermath of a crime being committed. As described by Assistant Commissioner Mark Hutchings, of the New South Wales Police Force:

... the captain of the ship has primacy over what occurs at sea, as master of that ship. If you have an assault in a bar on a ship, or it could be a merchant ship, the captain has got a lot of power. They will arrest the alleged offender and put him in his cabin, they will do their best to maintain the crime scene and grab the CCTV footage, and they will dispel any further violence that could happen on the ship using security. That might mean that the person will be in custody until they get back to the next port of call.²⁹

5.40 Crime scene preservation relies on well trained staff, as well as strong leadership from the Master:

I sat in on training programs that Graeme O'Neill and others developed. One that particularly stood out was in relation to the preservation of crime scenes and the authority of the security officer to prevent people from contaminating the crime scene. Sitting in the audience was the captain. My understanding of the authority of a captain of a ship at sea is that it is quite deliberate and fixed, but to my great surprise and endorsement, I distinctly recall the captain – and I do not think it was said for my sake – at the end of Graeme O'Neill's presentation on crime scene preservation, standing up and reinforcing the role and function of the security officers. That is where the leadership has to come from: it has to come from the captain, not the head security officer. That is important.³⁰

5.41 Carnival Australia has improved its own crime scene preservation measures in the past decade. Its submission briefly details 'training programs for crime scene preservation, response and investigation':

- Security personnel have specialised training
- Allegations are treated as suspicious pending investigation by relevant authorities
- Allegations of crime are fully investigated
- Procedures are in place for the collection of evidence, the preservation of crime scenes and the obtaining of statements³¹

29 Assistant Commissioner Mark Hutchings, New South Wales Police Force, *Committee Hansard*, 15 February 2013, p. 23.

30 Mr Ken Moroney, *Committee Hansard*, 15 February 2013, p. 39.

31 Carnival Australia, *Submission 9*, p. 5.

- 5.42 The Committee sought clarification about Australia's ability to enforce standard protocols for the preservation of a crime scene and evidence when crimes are committed at sea. The Legal Advice prepared for the Committee suggested that there might be some scope to incorporate requirements about crime scene preservation into Australian legislation:

It may also be possible to impose some conditions relating to the preservation of evidence and the standard of investigation of offences in relation to which Australia has jurisdiction, provided these do not interfere with the concurrent jurisdiction of other States, and notably the jurisdiction of the flag State.³²

- 5.43 In addition to the option of unilaterally regulating crime scene management through Australian law, the IMO Guidelines also hold some potential to improve crime scene preservation practices on cruise ships.

IMO Guidelines

- 5.44 The aforementioned IMO Guidelines provide guidance relating to the preservation and collection of evidence on board a ship. The Guidelines carry the caveat that:

The master is not a professional crime scene investigator and does not act as a criminal law enforcement official when applying these Guidelines. These Guidelines should not be construed as establishing a basis of any liability, criminal or otherwise, of the master in preserving and/or handling evidence or related matters.³³

- 5.45 The Guidelines focus on the efforts that can be made on board a vessel until appropriate law enforcement authorities arrive to conduct a formal investigation. The Guidelines also point out that the 'overriding role of the Master is to ensure the safety of passengers and crew, which should take precedence over any concerns related to the preservation or collection of evidence.'³⁴

- 5.46 The Guidelines advise that:

The master should attempt to secure the scene of the alleged crime as soon as possible, with the main aim of allowing professional crime scene investigators to be able to undertake their work. The best option for preserving evidence is to seal the space, if practicable, and for all persons to be prevented from entering it. An example would be where an incident has taken place in a

32 Legal Advice, Appendix D, p. 14.

33 Attorney-General's Department, *Supplementary Submission 22.1*, p. 11.

34 Attorney-General's Department, *Supplementary Submission 22.1*, p. 12.

cabin, then the best option would be for the cabin door to be locked, the key secured and notices posted which would inform that no one should enter.

Where an incident has occurred in a space that cannot be seated, the master should aim to collect the evidence, as may be instructed by the flag State Administration, or as otherwise guided by the law enforcement authorities. While recognizing that collecting evidence will likely only be carried out in limited and exceptional circumstances, in such cases the master could use the techniques and procedures outlined in appendix 2.

Following the allegation of a serious crime, and given the master's inherent authority on board the ship, the master should draw a list of persons who may have information and invite them to record their recollection of events on the pro forma attached as appendix 1. Any person may refuse to provide their recollection of events. Whenever possible, the master should attempt to obtain accurate contact information for persons believed to have information about an alleged crime or missing person to facilitate subsequent contact by law enforcement officials or other professional crime scene investigators.³⁵

- 5.47 As noted above, if these Guidelines are adopted by the IMO, Australia might be able to make entry to Australian ports dependent on their incorporation into cruising companies' operations. The Committee addresses this and other options for enforcing crime scene preservation protocols in its comments at the end of this Chapter.

Reporting crimes

- 5.48 The third element of response to crimes committed at sea is the reporting of all alleged crimes and potentially criminal acts to the appropriate law enforcement authorities. This ensures that crimes can be properly investigated and prosecuted, and that accurate crime statistics can be maintained. Importantly, whilst victims on land may make their own complaint to police in person or on the phone, victims on cruise ships are much more reliant on the vessel operator assisting or reporting on their behalf.
- 5.49 As Ms Ann Sherry detailed, reporting is crucial to a suitable response being made by law enforcement agencies:

35 Attorney-General's Department, *Supplementary Submission 22.1*, p. 13-4.

Crimes at sea are a rare recurrence. However, we have introduced policies and procedures that are strictly followed in the event that a crime is reported...The national protocol [for reporting crimes at sea] is aimed to ensure that, when a crime at sea has been reported, regardless of which agency receives the report a response is initiated without delay. The response protects the rights of victims and suspects, secures evidence and sets out guidelines for investigations and prosecutions.³⁶

These policing protocols are discussed further in Chapter 6.

- 5.50 Recognising the importance of reporting in order that expert investigation can be conducted, the section discusses the reporting that is required in Australian law. It then goes on to consider whether current reporting reflects the actual rate of crime at sea, and examines how reporting might be improved.

Existing Australian reporting requirements

- 5.51 The existing arrangements for the mandatory reporting of crimes to Australian authorities are relatively weak. As noted by the Government Response, reporting requirements are currently contained in Australian legislation, although 'most are limited in their application to Australian flagged vessels, which currently do not include any large passenger vessels.'³⁷ Dr Kate Lewins provides that the reporting requirements:

... mostly relate to 'accidents' and define 'accident' in terms of workplace safety. It may be somewhat of a long bow to call sexual assault of a minor on a cruise ship a 'maritime accident'. The *Navigation Act 2012* (Cth), once in force [the second half of 2013], will require reporting of such crimes as a 'marine incident'. A marine incident is defined as an event resulting in a death or serious injury on board or the loss of a person from a ship (s185).³⁸

- 5.52 As Dr Lewins further points out, reporting requirements may apply to both Australian and foreign ships, but are only operative on a foreign vessel if it is:

- In an Australian port; or
- Entering or leaving an Australian port; or
- In the internal waters of Australia; or

36 Ms Ann Sherry, *Carnival Australia*, *Committee Hansard*, 15 February 2013, p. 1.

37 Government Response, Appendix F, p. 8.

38 Dr Kate Lewins, *Submission 1*, p. 19.

- In the territorial sea of Australia.³⁹

5.53 Dr Lewins suggested that these limits

...when read together, seem to impose the reporting obligation only for voyage transiting territorial waters and the port. If that is the case, then the reporting obligation will end at the limits of the territorial sea.⁴⁰

5.54 By contrast, the *Kerry Act* imposed a reporting regime that is not bound by such geographical limits. The legislation imposes a reporting requirement for:

an incident involving homicide, suspicious death, a missing United States national, kidnapping, assault with serious bodily injury, [certain sexual assaults], firing or tampering with the vessel, or theft of money or property in excess of \$10,000⁴¹

where:

- (i) the vessel, regardless of registry, is owned, in whole or in part, by a United States person, regardless of the nationality of the victim or perpetrator, and the incident occurs when the vessel is within the admiralty and maritime jurisdiction of the United States and outside the jurisdiction of any State;
- (ii) the incident concerns an offense by or against a United States national committed outside the jurisdiction of any nation;
- (iii) the incident occurs in the Territorial Sea of the United States, regardless of the nationality of the vessel, the victim, or the perpetrator; or
- (iv) the incident concerns a victim or perpetrator who is a United States national on a vessel during a voyage that departed from or will arrive at a United States port.⁴²

Current reporting

5.55 Whilst there are some reporting requirements under Australian law, these are inadequate. Without a strong enforceable requirement, reporting of crimes will not reflect the actual rate of crimes committed at sea. ICVA suggested that, in the absence of legal obligations to report crimes, reporting will not occur:

39 *Navigation Act 2012*, Section 9.

40 Dr Kate Lewins, *Submission 1*, p. 20.

41 Section 3507(g)(3)(A)(1), Title 46 (shipping), USA Code.

42 Section 3507(g)(3)(B), Title 46 (shipping), USA Code.

Since the cruise ships do not investigate crimes and report them only on a voluntary basis, most criminals are not apprehended or punished for the crimes they commit on cruise ships. As United State Representative Christopher Shays indicated, “it is the perfect place to commit a crime.”⁴³

- 5.56 A submission made to the IMO Legal Committee when it was preparing the Guidelines discussed above suggests that there is a ‘compelling need’ for such guidance for Ships’ Masters. The submission argues that:

In addition to the immediate securing of the scene of the incident and the care of victims, it is of great importance that the investigating agencies are informed of the incident. By informing the investigating authorities, proper coordination between them can be undertaken which will contribute to effective and efficient criminal investigations especially when more than one State seeks to assert jurisdiction.⁴⁴

- 5.57 The cruising industry is clearly aware of the need to improve the reporting of crimes committed at sea. The Australian Shipowners Association submitted that:

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.* [emphasis added].

- 5.58 Dr Jill Poulston added weight to the need for improved reporting, given her research that incidents of sexual assault and sexual victimization are significantly more common on cruise ships than on land:

I support this inquiry because of my understanding of the frequency and causes of sexual assaults both on land and at sea, and the view that poor jurisdiction over crimes at sea means they are difficult to bring to a satisfactory resolution from the perspective of victims and their families. I submit the view that improvements are needed in relation to the reporting, investigation and prosecution of alleged crimes committed at sea.⁴⁵

43 International Cruise Victims Association, *Supplementary Submission 12.1*, p. 3.

44 International Cruise Council Australasia, *Submission 11 (Attachment A)*, para. 9.

45 Dr Jill Poulston, *Submission 5*, p. 2.

- 5.59 The SA Commissioner forcefully supported increased reporting requirements:

Thus, I also urge the Australian Government to reconsider its opposition to adopting legislation like the [*Kerry Act*]. 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).⁴⁶ [emphasis added]

- 5.60 Anecdotal evidence also demonstrated that individuals believe that criminal acts have been unreported:

I still can't fathom that Captain's total disregard for not only the welfare of my child, but also the potential danger to every kid on that Holiday cruise. *Despite my repeated requests, they wouldn't even call the Police.*⁴⁷ [emphasis added]

The cruise line failed to report that Merrian was missing to the FBI until five weeks after she went missing and only after we contacted the cruise line.⁴⁸

Making improvements to reporting requirements

- 5.61 There is a clear need for improved reporting requirements, amply demonstrated by the evidence cited above. Some participants in the inquiry support the establishment of a legislative reporting regime similar to that under the *Kerry Act* in the USA. Evidence also supported the improvement of reporting standards through the IMO Guidelines, as well as other international efforts and bilateral agreements.

- 5.62 Criticisms have been made of the reporting requirements under the *Kerry Act*, as noted in Chapter 2. Nonetheless, evidence to the inquiry frequently supported the *Kerry Act* as a model that Australia should emulate:

It would be preferable for the reporting obligation to be enunciated more broadly; for example to report a crime occurring en route to an Australian port, or en route from an Australian port. In order to protect Australian citizens and those visiting our shores to embark on a cruise, is also desirable for a foreign cruise ship to be obliged to report deaths, serious injuries and other possibly criminal acts on board to a central authority in Australia, even if they did not occur as a result of an 'event'. This may well

46 Commissioner for Victims' Rights, South Australia, *Submission 7*, p. 10.

47 International Cruise Victims Association, *Submission 12 (Attachment A)*, p. 3.

48 International Cruise Victims Association, *Supplementary Submission 12.1*, p. 1.

already be the practice of some cruise lines, but it ought to be required.⁴⁹

- 5.63 The Legal Advice suggested that it would be possible for Australia to introduce a mandatory reporting requirement as a condition for entry to Australian ports. In particular, it gave the opinion that:

...conditions that are not particularly onerous, that are related to matters in relation to which Australia has jurisdiction and do not interfere with other States' jurisdiction could probably be imposed consistently with international law. Such conditions would include, for example, that the master or shipowner undertakes to inform Australian authorities of alleged offences in relation to which Australia has jurisdiction.⁵⁰

However, this would need to be carefully delineated, so as not to over-extend Australian jurisdiction:

A condition requiring Australian authorities to be notified of incidents on board in relation to which Australia has no claim to criminal jurisdiction, and which do not otherwise involve Australian nationals or Australian interests, would also run a significant risk of being considered contrary to international law, in our view.⁵¹

- 5.64 The IMO Guidelines provide general advice about reporting crimes to the appropriate authorities:

Generally, the master should report to the flag State, other interested States and parties involved, including law enforcement authorities, alleged or discovered serious crimes. These could include, but are not limited to, a suspicious death or disappearance, a criminal act leading to serious bodily injury, sexual assault, conduct endangering the safety of the vessel, or substantial loss of currency or property.⁵²

In its detailed advice, it further provides that:

Once an allegation of a serious crime on board a ship has been made, the master should, as soon as possible, report the allegation to the flag State. The master should, as appropriate, also report the allegation to the interested States and parties involved, including law enforcement authorities.⁵³

49 Dr Kate Lewins, *Submission 1*, p. 20.

50 Legal Advice, Appendix D, p. 14.

51 Legal Advice, Appendix D, p. 14.

52 Attorney-General's Department, *Supplementary Submission 22.1*, p. 11.

53 Attorney-General's Department, *Supplementary Submission 22.1*, p. 12.

- 5.65 The Australian Shipowners Association (ASA) frequently reiterated the need for any standards to reflect the diversity of the shipping industry:

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 [International Maritime Organisation], be sufficiently cognisant of the wide variety of vessels in operation in the global industry.⁵⁴

- 5.66 ASA also suggested that agreements between Australia and other countries should be pursued:

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.⁵⁵

- 5.67 Carnival Australia cited the protocols agreed between national police forces as suitable to improve the handling of crime reports:

We report alleged crimes to police for investigation and all necessary steps are taken to preserve any crime scenes. Also in place are agreed protocols with the Australian Federal and State police and police in the Pacific Islands and New Zealand to deal with crimes at sea should they occur while the ship is at sea in that region.⁵⁶

- 5.68 Cruise Lines International Association (CLIA) gave evidence that the industry is working towards an international standard on the reporting of crimes:

Operating within this structure, CLIA is working proactively with the IMO towards adoption of crime reporting provisions of [the *Kerry Act*]...

Irrespective of the legal requirements, all CLIA members are required to comply with CLIA policies. These include the reporting of crimes and missing persons, which was developed as part of the industry's effort to unify crime reporting practices consistent with [the *Kerry Act*] wherever our memberships travel and to make sure that serious crimes are always officially and promptly reported to the appropriate authorities.

54 Australian Shipowners' Association, *Submission 13*, p. 4.

55 Australian Shipowners' Association, *Submission 13*, p. 5.

56 Carnival Australia, *Submission 9*, p. 4.

- 5.69 The Committee's conclusions about improved reporting are included below.

Committee Comment

- 5.70 Passengers expect that, above all, the Ship's Master will keep them safe. Cruises are increasingly being marketed to families as a safe holiday that provides a familiar cultural environment, and cruise customers rightly expect that their safety is the primary consideration in all decisions made by the Master and vessel owner.
- 5.71 The most important moral duty of a Ship's Master is to keep everyone on board safe. This is an unwavering responsibility, reinforced by numerous international treaties and domestic Australian legislation. In this, the captain must be fully supported by the vessel's owner, both in respect of the vessel itself and the training and management of its crew.
- 5.72 The tragedies discussed at the beginning of this report are unsettling, as they suggest that sometimes cruise operators have failed to do everything possible to keep passengers safe. Whilst in recent years the industry has taken significant steps to improve on-board safety and crime prevention, there remain some deficiencies in the way operators respond to crimes committed at sea. The Committee believes that these deficiencies can and must be addressed through action by the Australian Government.
- 5.73 The Committee expresses its disappointment and frustration that Australia is not in a position to clearly and definitively legislate to enforce appropriate standards for cruising operators to respond to crimes at sea. However, a critical outcome of this inquiry is clarity regarding where Australia may take unilateral action and legislate, and where Australia should instead pursue a multilateral approach to improve the regulation of cruising.
- 5.74 When crimes or accidents occur, the first responsibility of a ship's Master is to protect the welfare of the victim. Victims should be treated with dignity and respect, their immediate medical and pastoral care needs met, and they should be offered every assistance to report crimes and make arrangements to return home. The Committee agrees with the SA Commissioner who stated that cruising operators should operate on a presumption in favour of victims, rather than casting doubt on victims' claims.
- 5.75 When serious crimes occur, the securing and preservation of evidence is crucial to prosecutions. When this does not occur, prosecutions can be impossible. Justice for victims demands that those with the power to take

charge of crime scenes (in this case, the vessel's Master) do so with professionalism and resolutely, even in the face of protest from alleged perpetrators. In the case of sexual assault, the use of a rape kit is usually appropriate, and this must be done with sensitivity and confidentiality.

- 5.76 As discussed throughout this Chapter, Guidelines on managing crimes at sea will be referred to the IMO Assembly later in 2013. If adopted, vessel operators' use and enforcement of these Guidelines should be a condition of entry to Australian ports. The Committee therefore recommends the Australian Government legislate that, as a condition of entry to Australian ports, all ocean vessels use and enforce the IMO Guidelines in their operations, following the adoption of the Guidelines by the IMO Assembly.

Recommendation 7

- 5.77 **The Committee recommends 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.**

- 5.78 As noted in this Chapter, there is a limited capacity for Australia to introduce requirements around crime scene management, relating to crimes for which Australia has jurisdiction. Accordingly, other mechanisms must be used and it is imperative that the Australian Government exercise its powers and make use of its expertise to the fullest capacity possible. The Committee therefore recommends 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.

Recommendation 8

- 5.79 **The Committee recommends 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.**

- 5.80 Finally, vessel operators have a responsibility to properly report crimes to authorities, rather than passively leaving such matters to victims. As noted in this Chapter, victims on vessels have even less agency than victims on land. It is, however, clear that reporting is not standard and that, in the absence of a reporting requirement, operators may fail to report all incidents.
- 5.81 For this reason, the Committee recommends that a legislative mandatory reporting scheme, reflecting Australia's jurisdictional powers discussed in Chapter 3, be introduced. Entry to Australian ports should be made dependent on complying with the scheme.
- 5.82 The Legal Advice gave the firm opinion that Australia was within its powers to legislate for such a scheme. The Australian Government must act to ensure that, where there are allegations of crimes committed at sea, vessel operators are obliged by law to report those crimes.
- 5.83 The Committee, therefore, recommends the Australian Government introduce a mandatory crimes at sea reporting scheme.

Recommendation 9

- 5.84 **The Committee recommends 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.