



CDPP

Australia's Federal Prosecution Service

**Commonwealth Director
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Our Reference:

28 March 2019

Senator Barry O'Sullivan
Chair
Senate Standing Committee on Rural and Regional Affairs and Transport
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Senator O'Sullivan

**Inquiry into the performance of Australian Maritime Safety Authority:
CDPP/AMSA communications re *Ten Sixty Six* and Mr Damien Mills**

I write in response to your letter dated 25 February 2019.

You requested further information with respect to:

1. The details of any communication (both oral and written) that took place between the CDPP and AMSA with respect to a possible prosecution relating to the death at sea of Mr Damien Mills in October 2014 and the charter company which operated the *Ten Sixty Six* vessel;
2. The further file referred to in evidence provided to Additional Senate Estimates on 19 February 2019, where the Commonwealth Solicitor for Public Prosecutions, Ms Pavleka, stated that the 'Commonwealth DPP was approached for advice in relation to that particular defendant, but on other matters – not on the matter that is of interest to the [Senate Standing Committee on Rural and Regional Affairs and Transport];
3. Confirmation in writing as to whether the CDPP provided advice to AMSA not to send a brief to the CDPP for prosecution.

1. COMMUNICATION BETWEEN CDPP AND AMSA RE PROSECUTION RELATING TO THE DEATH OF MR DAMIEN MILLS

A review of the CDPP's records shows there was no written or oral communication between the CDPP and AMSA regarding possible prosecution of any individual or company for events relating to the death of Mr Damien Mills on 31 October 2014.

The notes for the meetings record that oral discussion revolved around potential offences alleged to have been committed subsequent to the incident involving Mr Mills. The notes do not disclose any discussion of potential offences or of advice sought in respect thereof, relating to the incident involving Mr Mills, the failure to conduct a headcount on the relevant voyage, the failure to record such a headcount, or any other safety duty breaches relating to that incident, including the alleged failure to induct a deckhand.

2. FURTHER FILE REFERRED TO IN EVIDENCE PROVIDED TO ADDITIONAL SENATE ESTIMATES ON 19 FEBRUARY 2019

At the Senate Estimates Hearing held 19 February 2019, the Commonwealth Solicitor for Public Prosecutions, Ms Andrea Pavleka, gave evidence that AMSA approached the CDPP to provide advice on matters unrelated to the *Ten Sixty Six* matter (ie the death of Mr Mills).

We confirm that the CDPP received material relating to matters arising subsequent to the Damien Mills incident. That material dealt with a specific aspect of the investigation into the Dolphin Dive Charters' operations relating to alleged false responses to notices issued by AMSA including a summary of facts and an email from AMSA requesting advice.

On 7 January 2016, the CDPP provided written pre-brief advice to AMSA dealing with allegations surrounding the vessel *Pia Rebecca*. We understand that a copy of the written advice has been provided to the Committee by AMSA.

3. WHETHER THE CDPP PROVIDED ADVICE TO AMSA NOT TO SEND A BRIEF TO THE CDPP FOR PROSECUTION

We can find nothing on our file to suggest that the incident concerning the death of Mr Mills, and potential offences relating to that incident, were ever raised with the CDPP for the purpose of seeking advice, including advice about the prospects of conviction. As indicated by Ms Pavleka on 19 February 2019, Mr Mills' death was mentioned to the CDPP by AMSA by way of context for how authorities came to subsequently scrutinise Dolphin Dive Charters' operations.

It would be highly unusual for the CDPP to advise an investigative agency to not send a brief of evidence to us for consideration. Having reviewed our file we can find nothing to suggest the CDPP advised AMSA (either orally or in writing) to not send a brief to the CDPP with respect to the incident concerning the death of Mr Mills and allegations regarding headcounts.

Yours faithfully

David Adsett
Deputy Director
National Business Improvement and International Assistance and Specialist Agencies