

10 DEC 2012



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Mr Graham Perrett
Chair
Standing Committee on Social Policy
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PO Box 6021
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Dear Mr Perrett

Thank you for your letter dated 12 October 2012, to the Chief Minister of the Northern Territory, the Hon Terry Mills MLA, regarding the House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry into arrangements surrounding crimes committed at sea. Your letter was forwarded to me for response.

Term of Reference (a):

The current legislative and intergovernmental arrangements concerning crimes at sea appear to be working effectively and work in unison with Australia's obligations under the United Nations Convention of the Law of the Sea. The application of Part 3 of the Commonwealth *Crimes at Sea Act 2000* allows state and territory authorities to prosecute offenders to the fullest extent permissible under international law.

Term of Reference (b):

Cross jurisdictional criminal law arrangements and overlapping Commonwealth, state and territory laws have been examined recently by the High Court in *Dickson v The Queen* [2010] HCA 30 and *Momcilovic v The Queen* [2011] HCA 34. The decisions in *Dickson* and *Momcilovic* highlight that overlapping state / territory and Commonwealth offences and investigative powers should be avoided as the Commonwealth law may prevail, even though it was not intended to override state or territory law by the legislature, to the extent of any inconsistencies. It is therefore preferable to have a clear legislative demarcation between state and territory criminal offences and the Commonwealth offences and laws of procedure. This is particularly significant regarding the current crimes at sea regime as there may be simultaneous Commonwealth and state / territory investigations and state / territory laws which apply by application of the law of the Commonwealth.

Regarding coronial jurisdictions, the Northern Territory Coroner has the discretionary power to investigate and hold an inquest into any reportable death, where the person normally resided in the Territory, irrespective of whether it occurred within the Territory or not (section 12(1) of the *Coroners Act* (NT) refers). Other state and territory Coroners have similar extraterritorial investigation and inquest holding powers. The Coroners Acts in New South Wales, Queensland and Tasmania also confer extraterritorial power where a person was on a journey to or from that state. All Coroners Acts allow investigative assistance to take place to aid another state or territory Coroner and the current coronial arrangements in Australia appear to be working effectively.

Terms of Reference (c) and (d):

With regard to the Terms of Reference (c) and (d), it is noted that adopting certain clauses of the *American Cruise Vessel Security and Safety Act 2010* (the Kerry Act) may conflict with Australia's existing international maritime obligations, including the United Nations Convention of the Law of the Sea, of which Australia is a signatory. Furthermore, many of the reporting and safety requirements in the Kerry Act already form part of Commonwealth legislation, namely section 18 of the *Transport Safety Investigation Act 2003* and section 107 of the *Occupational Health and Safety (Maritime Industry) Act 1993*.

Yours sincerely,

~~JOHN ELFERINK~~

14:25

27/11/12