

Investigating crimes at sea

- 6.1 Victims and their families expect justice for crimes, wherever crimes are committed. However, when crimes occur at sea, the response of the criminal justice system can be complicated by the jurisdictional questions discussed in other Chapters.
- 6.2 When a serious crime at sea is reported to Australian police, officers swiftly make arrangements to commence an investigation. Because of Australia's federal structure, this will often include immediate discussions with counterparts from other police agencies. Where Australia has jurisdiction to investigate and prosecute crimes committed at sea, appropriate intergovernmental arrangements are necessary to provide for a cooperative response by investigating authorities.
- 6.3 As part of this inquiry, the Committee examined the protocols setting out the investigative response between jurisdictions and the effectiveness of current arrangements.
- 6.4 This Chapter considers the following matters:
- Establishing domestic jurisdiction;
 - Investigating and prosecuting crimes committed at sea;
 - Coronial jurisdictions and investigations; and
 - The Committee's concluding comments.

Establishing domestic jurisdiction

- 6.5 When a crime at sea is reported, police establish jurisdiction to investigate that offence based on the *Intergovernmental Agreement – Crimes at Sea 2000* (the Intergovernmental Agreement)¹ as discussed in Chapter 3.

1 Intergovernmental Agreement – Crimes at Sea, Appendix H.

6.6 In terms of investigating and prosecuting the alleged offence, the purpose of the Intergovernmental Agreement is to harmonise the approach taken by the relevant jurisdictions to 'enable more effective law enforcement'.² The Intergovernmental Agreement states that:

A decision of an authority of the State (or the Commonwealth) having primary responsibility under clause 4 whether to investigate, or further investigate, or prosecute or seek extradition, must be taken in the same manner and subject to the same considerations and policies as apply to decisions in relation to other similar alleged offences against the laws of that State or the Commonwealth.³

6.7 The Intergovernmental Agreement also sets out that the relevant parties will undertake to consult and assist with the investigation and prosecution of the alleged offence.⁴

6.8 In circumstances where a person has died at sea from unknown or apparent unnatural causes, the relevant Coroner (according to jurisdiction) assumes legal control over the body of the deceased. The Coroner must then establish the circumstances surrounding the death, how the death occurred, the cause of death, and the particulars needed to register the death.

Investigating and prosecuting crimes committed at sea

6.9 Australia's federal structure necessitates cooperative systems for effective law enforcement, both on the Australian mainland, and at sea. Chapter 3 outlined the jurisdictions of law enforcement set out in the Agreement. The evidence suggests that the interaction between Commonwealth and State law enforcement agencies and their capacity to investigate and prosecute alleged crimes at sea are operating effectively.

Police investigations

6.10 In 2010, all Australian police jurisdictions endorsed the National Protocols for Reporting Crimes at Sea (NPRCS). The New South Wales Police Force (NSWPF) stated that the NPRCS 'aims to ensure that all reported crime is thoroughly investigated by the responding agency as if the crime had

2 The Hon Dr Stone MP, Parliamentary Secretary to the Minister for the Environment and Heritage, Crimes at Sea Bill 1999, Second Reading Speech, *House Hansard*, 30 September 1999, p.1034.

3 Intergovernmental Agreement – Crimes at Sea, Appendix H, p.3.

4 Intergovernmental Agreement – Crimes at Sea, Appendix H, p.3.

occurred in their own area of jurisdiction', and 'to ensure the rights and needs of victims of crimes at sea are protected'.⁵

6.11 The intention of the NPRCS is to confirm:

- An appropriate police response to crimes at sea reported to Australian law enforcement agencies who are participants in this agreement;
- That the rights and needs of victims and perpetrators of crimes at sea are protected;
- That evidence is obtained and or secured at the earliest opportunity in accordance with guidelines and policies of the jurisdiction investigating the crime;
- That where appropriate, prosecutions are commenced in accordance with existing laws and agreements/protocols; and
- A cooperative approach to the commencement of an investigation by the police jurisdiction receiving the report if it is required.⁶

6.12 The Australian Federal Police (AFP) gave evidence that it was satisfied that the existing arrangements between police jurisdictions were working. Commander Errol Raiser from the AFP said that:

Whilst some of those jurisdictional overlaps can appear confusing, most of that we deal with very well through some of the cooperative arrangements and relationships that we have built over the years.⁷

6.13 Commander Raiser further said that:

As the Federal Police, you would appreciate that we work with and rely very heavily on our colleagues in the states and territories for their community policing skills and the resources that they have available. We certainly say that, due to the federal structure, the Commonwealth, state, territory and foreign police jurisdictions are not mutually exclusive. We often find that there are overlaps and that it is very much through negotiation and some of the protocols that you have already touched on that we arrive at a final decision on who will take the lead. We would also say that that flexibility really lends itself in the traditional world of policing in any respect, short of getting too prescriptive. Whilst many of the instances are complex, at a practical level, they are resolved very

5 New South Wales Police Force, *Submission 20*, p. 1.

6 National Protocols for Reporting Crimes at Sea, Appendix G, p. 4.

7 Cmdr Errol Raiser, Australian Federal Police, *Committee Hansard*, 15 February 2013, p. 20.

effectively, and we would like to think probably in a more efficient manner by utilising the relationships that we have.⁸

- 6.14 Assistant Commissioner Mark Hutchings from the New South Wales Police Force (NSWPF) agreed that the present system was adequate, commenting that:

...not only in maritime situations are we confronted with this. In almost all serious major crime there is consideration about working with other agencies and other jurisdictions. This is normal investigative behaviour at this level. We simply do not have the volume of these types of issues reported to us for it to become a problem where simply picking the phone up is going to stop the timeliness of an investigation.⁹

- 6.15 Additionally, Assistant Commissioner Hutchings drew the Committee's attention towards the need for the development of either a national maritime law manual, or consistent individual state manuals to provide guidance for police in investigating crimes at sea. While the NSWPF has developed a Maritime Law Manual, the Committee did not receive evidence that police in other jurisdictions were provided with similar guidance.¹⁰

- 6.16 The Committee received evidence that, in partnership with the relevant authorities, Carnival Australia had developed and adopted reporting protocols with police in Australia, New Zealand and the Pacific Islands.¹¹

- 6.17 In 2009, Carnival developed and adopted the Pacific Island Chiefs of Police Crime Reporting Guidelines. According to Ms Ann Sherry, Carnival Australia's Chief Executive Officer, this protocol 'has a similar effect to the Australian protocols' (the NPRCS).¹²

Prosecuting crimes

- 6.18 The Commonwealth Director of Public Prosecutions (CDPP) provided the Committee with an overview of its role in prosecuting crimes committed at sea, in cooperation with the prosecuting authorities of the States:

8 Cmdr Errol Raiser, Australian Federal Police, *Committee Hansard*, 15 February 2013, p. 19.

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

10 Assistant Commissioner Mark Hutchings, New South Wales Police Force, *Committee Hansard*, 15 February 2013, p. 19. The NSWPF provided the Committee with a copy of its Maritime Law Manual. As the Manual contains operational details of the NSWPF, the Committee resolved to take this document as confidential evidence.

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

12 Ms Ann Sherry, Carnival Australia, *Committee Hansard*, 15 February 2013, p. 2.

The CDPP is an independent prosecuting service established by the Director of Public Prosecutions Act 1983 (Cth) to prosecute alleged offences against Commonwealth law. The functions of the CDPP include prosecuting offences under the law as applied by the provisions of the CAS Act, a function it shares with the prosecuting authorities of the States (in this submission, as in Schedule 1 of the CAS Act, a reference to the States includes the Northern Territory).¹³

- 6.19 The CDPP raised no concerns about the existing arrangements under the cooperative Intergovernmental Agreement.

Coronial jurisdictions and investigations

- 6.20 The effectiveness of State Coronial systems for investigating unnatural or unexplained deaths at sea requires cooperation between discrete jurisdictions. State Coronial jurisdictions are consistent with the adjacent areas of each State, as set out in Figure 2 (Chapter 3).

- 6.21 Each State Coroner operates in accordance with their relevant Coroners Act, which include provisions for overcoming questions of jurisdiction. For example, the *New South Wales Coroners Act 2009* states that:

A coroner does not have jurisdiction to hold an inquest concerning a death or suspected death unless it appears to the coroner that:

- (a) the remains of the person are in the State, or
- (b) the death or suspected death or the cause of the death or of the suspected death occurred in the State, or
- (c) the death or suspected death occurred outside the State but the person had a sufficient connection with the State, as referred to in subsection (2).¹⁴

A person had a sufficient connection with the State if the person:

- (a) was ordinarily resident in the State when the death or suspected death occurred, or
- (b) was, when the death or suspected death occurred, in the course of a journey to or from some place in the State, or

13 Commonwealth Director of Public Prosecutions, *Submission 6*, p. 1.

14 *New South Wales Coroners Act 2009*, Section 13C(1).

(c) was last at some place in the State before the circumstances of his or her death or suspected death arose.¹⁵

6.22 However, there are provisions within the relevant Coroners Acts to enable cooperation between State Coroners where jurisdiction is unclear, or where assistance is required. According to the *New South Wales Coroners Act 2009*:

- The State Coroner may request in writing that the person holding a corresponding office in another State or a Territory provide assistance in connection with the exercise by the State Coroner or another coroner of any power under this Act.
- The State Coroner, at the written request of the person holding a corresponding office in another State or a Territory, may provide assistance to that person or a coroner of that State or Territory in connection with the exercise of a power under the law of that State or Territory.
- For the purpose of providing assistance, the State Coroner or a coroner may exercise any of his or her powers under this Act irrespective of whether he or she would, apart from this section, have authority to exercise that power.¹⁶

6.23 In presenting the outcomes of the inquest into the death of Ms Brimble, Coroner Milledge recommended that the Federal Attorney General establish a Federal Coronial Jurisdiction. This recommendation was not supported by the Government in its response to the inquest findings.¹⁷

6.24 At a public hearing in Sydney, the Committee received evidence that establishing a Federal Coroner would be unworkable and unnecessary. Both Mr Don McLennan (Manager, New South Wales Coronial Services) and Mr Greg Cavanagh (Coroner, Northern Territory Office of the Coroner) did not support the establishment of a Federal Coronial Jurisdiction.¹⁸

6.25 Similarly, the Western Australian Coroner submitted that establishing a Federal Coroner was unnecessary because the present system was working effectively. The Coroner said that:

...in the 16 years during which I have been State Coroner I cannot recall a single case where there have been problems as a result of

15 *New South Wales Coroners Act 2009*, Section 13C(2).

16 *New South Wales Coroners Act 2009*, Section 54A(2).

17 Government Response, Appendix F, p. 12.

18 See: *Committee Hansard*, 15 February 2013, p. 31.

overlap of coronial jurisdictions which could not be resolved quickly over the telephone.¹⁹

- 6.26 The Western Australian Coroner raised concerns that State Coroners are unable to direct members of the AFP in the same way as they are empowered to direct State police. The Coroner submitted that:

In my view in cases where the AFP is conducting an investigation on behalf of a State Coroner, there should be a provision which would enable a coroner to give a direction to officers acting as coroner's investigators to ensure that adequate investigations are conducted and important issues adequately addressed.²⁰

- 6.27 The Western Australian Coroner also remarked on a lack of clarity in the arrangements between the Commonwealth and the States in relation to costs. The Coroner remarked that:

In cases where there is Commonwealth involvement, such as deaths of asylum seekers whose bodies have been taken to Christmas Island and then to Western Australia, while appropriate costing decisions have eventually been made, there do not appear to be appropriate arrangements in place on an ongoing basis which would establish which costs are to be borne by the Commonwealth and which costs are to be borne by the State.²¹

- 6.28 These two concerns were consistent with the evidence provided to the Committee by Mr Cavanagh (Northern Territory Office of the Coroner).²²

Committee Comment

- 6.29 The Committee is encouraged by the evidence it received about the cooperative arrangements set out in the Intergovernmental Agreement, and the subsequent protocols (NPRCS) agreed to by Commonwealth and State authorities.
- 6.30 The Committee was also encouraged by the evidence it received about the arrangements for State Coronial investigations, particularly the cooperative approach taken by Coroners to establish jurisdiction and obtain evidence.
- 6.31 Given the complexities inherent in Australia's federal system, the Committee views the proactive and cooperative approach taken by these

19 State Coroner on behalf of the Coroner's Court of Western Australia, *Submission 18*, p. 1.

20 State Coroner on behalf of the Coroner's Court of Western Australia, *Submission 18*, p. 1.

21 State Coroner on behalf of the Coroner's Court of Western Australia, *Submission 18*, p. 2.

22 *Committee Hansard*, 15 February 2013, pp. 30-31.

various authorities as vital for ensuring that crimes committed at sea are appropriately investigated and prosecuted, and that the rights of victims and perpetrators are protected adequately. The Committee is satisfied that current arrangements are operating adequately.

- 6.32 However, the Committee did not receive evidence that a formal review process has been established to ensure the effectiveness of the NPRCS. The Committee therefore recommends that a formal review of the protocols be undertaken regularly by the Commonwealth, in cooperation with the States, to ensure that the NPRCS are operating effectively into the future and are updated as required.

Recommendation 10

- 6.33 **The Committee recommends that the Australian Government, in cooperation with the States, establish a regular timeframe and formal process for reviewing the National Protocols for Reporting Crimes at Sea.**
- 6.34 The Committee notes that the NSWPF has developed a Maritime Law Manual, and strongly endorses the development of comprehensive operational guidelines for maritime law within all jurisdictions to provide authorities with the relevant information about their jurisdictional responsibilities in accordance with the NPRCS.
- 6.35 The Committee was concerned by the evidence it received that arrangements between the AFP and State Coroners was unclear. The Committee recommends that arrangements for cooperation between the AFP and State Coroners be agreed to, and formally clarified.

Recommendation 11

- 6.36 **The Committee recommends that the Australian Government, in cooperation with the States, establish a formal protocol ensuring clarity in the arrangements between the Australian Federal Police and State Coroners.**
- 6.37 Australia's federal system vests each State with the constitutional authority to make criminal laws. Though criminal laws are broadly consistent throughout the jurisdictions, the Committee received evidence that the procedures of law enforcement authorities and state/territory Coroners differ slightly throughout the various jurisdictions. The Committee encourages greater dialogue between jurisdictions to create a

more consistent approach in these procedures so as to ensure more consistent policing, prosecution and Coronial investigation arrangements.

Concluding Comments

- 6.38 The Committee has conducted this inquiry because it is concerned to ensure that tragedies like the death of Dianne Brimble do not happen again. The inquiry was referred so that the Committee could conduct a review of the arrangements put in place since that tragedy, both within the industry and government. Whilst there have been some notable improvements, there remains important work to be done by both cruising operators and the Australian Government to protect passengers on cruise ships, and to ensure that victims of crime receive justice. It is the conclusion of the Committee that the Australian Government and industry have more work to do in their approach to ensuring an effective safety framework for cruise ship passengers.
- 6.39 The cruising industry is growing around the world, and is growing particularly quickly in Australia. This means that the industry has both the need and the capacity to improve its operations to keep passengers safe. As more passengers embark on cruises, the risk of accidents and crime is increased. At the same time, healthy growth means that the industry has the resources to invest in better safety and crime prevention, as well as to provide better responses to crimes committed at sea.
- 6.40 The Committee notes the significant changes that have taken place since the death of Ms Brimble over a decade ago. These changes have included improved safety measures on Carnival Australia's vessels, clarity in policing protocols and international guidelines on responding to crimes at sea.
- 6.41 These measures are all to be applauded and it is the view of the Committee that many deficiencies have been rectified. However, there remain a number of areas of concern, and the victims and families affected by crimes at sea are rightfully concerned at Australia's lack of action across a number of areas. The Committee reiterates its frustration that some actions are beyond Australia's jurisdiction. However, this does not mean that Australia is powerless to lead or effect change.
- 6.42 Despite the growth of the Australian cruising market, there is a worrying lack of data about the prevalence of crimes being committed at sea. The Committee believes that both industry and government need a better understanding of crime statistics if they are to operate and regulate cruising in a responsible way. Consumers also need an independent source of information about the safety of cruising, and this will give industry an opportunity to prove its claims about the rarity of crimes at sea. The Committee has accordingly recommended the compilation and publication of data on crimes at sea committed by or against Australians.

- 6.43 Questions of jurisdiction underlie almost every aspect of the cruising industry. From staffing to ship construction, ports, seas, crime investigations and liability for passengers' losses, debates about the ability of Australia to regulate the industry have enlivened the inquiry. Given the complex application of international law to the cruising industry, the Committee obtained legal advice so that it could have a firm basis on which to make its recommendations. The Legal Advice makes it clear that there are significant limits on Australia's ability to legislate for the cruising industry.
- 6.44 Many Australian consumers would be surprised about the limits on Australia's ability to regulate the cruising industry. The Committee is disappointed that these limits prevent the adoption of comprehensive cruising regulation in Australia like the USA's *Kerry Act*. However, given the clarity of the Legal Advice, the Committee has been able to recommend definite action of various kinds as appropriate.
- 6.45 Where Australia has jurisdiction, the Committee has recommended the Australian Government act to improve the conduct of cruising as it affects Australians. Where Australia does not have jurisdiction, the Committee has made clear recommendations about Australia working harder at the international level to bring about change to the industry. Using both of these approaches, the Committee is confident that the Australian Government can do more to ensure that all cruising passengers are safer at sea, and that justice is served when they are victims of crime.
- 6.46 In relation to specific international work, the Committee has recommended the Australian Government advocate for and vote in favour of the IMO Guidelines addressing crime response and pastoral care for victims at sea which are being considered at the IMO Assembly later this year. This was supported by CLIA, in evidence given at the public hearing on 7 February.
- 6.47 The Committee has considered measures to promote safety and prevent crimes on cruising vessels. Four areas of vessel management have been considered in detail: alcohol service, security staffing, video monitoring and 'man-overboard' detection systems. Despite the fact that Australia is severely limited in its ability to regulate these aspects of vessel management, the Committee believes that action can be taken by the industry to improve safety and crime prevention on cruising vessels. The Committee has also recommended the Australian Government work harder at the international level to improve passenger protection systems, such as CCTV, 'man-overboard' detection, the responsible service of alcohol and mandatory crime reporting.

- 6.48 The Committee has also considered the liability of vessel operators for negligence. Australia is not a party to the international agreements that regulate this area, and the Committee is concerned that Australian consumers would lack protection if cruise operators are negligent. Clear liability for negligence will give the industry additional financial motivation to redouble its efforts to ensure passenger safety. The Committee recommends the Australian Government address the issue by reviewing current arrangements, and taking action as necessary to ensure that Australian consumers are not deprived of reasonable compensation when vessel operators are negligent.
- 6.49 The Committee is also concerned to ensure that consumers are well informed about their rights and responsibilities when cruising. The Australian Government must do more to ensure that passengers understand that cruising is itself international travel. Australians taking cruises must understand that they should exercise the precautions that they would take on any international journey. The Committee has therefore recommended the Australian Government legislate to require that safety brochures with important information are distributed to all vessel passengers. The Committee has also recommended the *Smartraveller* website provide specific information about being safe on cruises as well as advice on the individual cruise operators in the Australian market.
- 6.50 When a crime does occur on a ship at sea, cruising operators have three primary responsibilities when they respond. They must ensure that the victims' welfare is protected, that the crime scene is preserved, and that crimes are reported to law enforcement agencies. Whilst operators are aware of these responsibilities, it is not clear that staff on vessels have the necessary training and resources to carry out these responsibilities fully. If vessel operators are deficient in any of these things, irreparable additional trauma can be done to victims, causing revictimisation.
- 6.51 Australia's ability to regulate the response of vessel operators to crimes is limited, however the Committee has made recommendations for unilateral Australian Government action where appropriate. In particular, the Committee has recommended the Australian Government make entry to Australian ports dependent on vessel operators' use and enforcement of the IMO Guidelines in their operations. The Committee has also recommended the Australian Government develop crime scene management protocols for use by vessel operators, compliance with which would also be a condition of entry to Australian ports. Thirdly, the Committee has recommended the Australian Government legislate for a mandatory crime reporting scheme. Vessels would also need to comply with such a scheme in order to enter Australian ports.

- 6.52 When crimes occur on vessels, victims ultimately rely on police, prosecutors and coroners to ensure that justice is served. Given Australia's federal structure, the criminal justice system must work collaboratively and cooperatively to investigate and prosecute crimes committed at sea. The Committee believes that the existing cooperative arrangements provide the necessary flexibility when dealing with the relatively rare occurrence of crimes at sea and also ensure that there is clarity about jurisdiction for investigation and prosecution. A regular review of the current protocols is recommended to ensure that the system – which is used relatively infrequently – is operating well. In addition, the Committee has recommended protocols to provide clear arrangements between state and territory coroners and the Australian Federal Police
- 6.53 A small but dedicated group of victims and their families have lobbied and advocated for improved safety and crime prevention for all cruise passengers, in Australia and around the world. They have contributed greatly to the inquiry, and shared their expertise and given their time to improve the safety of others. They have been motivated to do so through their own personal tragedies, and the Committee commends them for their passion and steadfast resolve to improve cruising for everyone, to prevent others from going through such tragedies. The Committee believes that this report will provide additional support for their campaigns for improved cruise vessel safety internationally, and thanks them for their significant contribution to the inquiry.

Mr Graham Perrett MP

Chair

17 June 2013