

Inquiry into crimes committed at sea

The *Troubled Waters* report

- 1.1 In June 2013 the Social Policy and Legal Affairs Committee published its report entitled *Troubled Waters: Inquiry into the arrangements surrounding crimes committed at sea* (the *Troubled Waters* report).¹ The Committee's inquiry arose as a consequence of the New South Wales coronial inquest into the death of Ms Dianne Brimble aboard a P&O cruise liner in 2002. The coroner investigating Ms Brimble's death made a number of recommendations to the Australian Government, and some of these were referred to the Committee for investigation by the then Attorney-General, the Hon Nicola Roxon MP in September 2012.
- 1.2 The Government response to the *Troubled Waters* report was provided in November 2014. Government responses to Committee reports are expected within six months of the report being presented in the House.² As such, the Government response to the Committee's report was ten months overdue.
- 1.3 Of the 11 recommendations in the *Troubled Waters* report, only two were agreed to. Three of the Committee's most substantial recommendations

1 Standing Committee on Social Policy and Legal Affairs, *Troubled Waters: Inquiry into the arrangements surrounding crimes committed at sea*, June 2013.

2 Resolution adopted 29 September 2010, http://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/resolutions, viewed 4 May 2015.

were not agreed to, a further two noted, and four agreed to in principle only.³

- 1.4 Crimes at sea remain a matter of public debate. The Cruise Victims' Association continues to raise concerns about safety on board cruise vessels, and a recent in-depth investigation of cruise safety by Pro Publica, a US public-interest journalism website, highlighted many of the issues considered by the Committee in its *Troubled Waters* report.⁴
- 1.5 In light of this, the Committee resolved to conduct a short inquiry to consider the issues raised by the Government response. To inform itself on the rationale for the response, the Committee held a private hearing on 26 March 2015. The hearing was attended by the Attorney-General's Department, the Australian Federal Police, and by representatives from the cruise industry and from the Cruise Victims Association.
- 1.6 This report will revisit the recommendations of the *Troubled Waters* report and consider the Government response to these recommendations.

The need for independent statistics

- 1.7 One of the fundamental problems faced by the Committee in formulating its recommendations in the *Troubled Waters* report was the lack of independent statistical information on the pervasiveness of crimes at sea. The report had this to say on the dearth of reliable information:

there is a serious deficit of data about the prevalence of crimes committed at sea. Governments have limited information to inform action; short of the occasional tragedy reported in the media, Australian consumers do not have a source of information about the safety of cruising.⁵
- 1.8 The Committee noted the cruise industry's view that crime on board cruise vessels is a comparatively minor problem. However, it also noted the importance of independent data to policymakers:

The cruising industry may well advance its genuine belief that crimes at sea are rare, but there is no independent source of data to

3 Australian Government response, November 2014, <http://www.ag.gov.au/Publications/Pages/GovernmentResponseToTroubledWatersInquiryIntoTheArrangementsSurroundingCrimesCommittedAtSea.aspx>, viewed 26 May 2015.

4 Pro Publica, *Cruise Control*, May 2015, <https://projects.propublica.org/cruises>, viewed 27 May 2015.

5 Standing Committee on Social Policy and Legal Affairs, *Troubled Waters: Inquiry into the arrangements surrounding crimes committed at sea*, June 2013, p. 19.

inform government policy or prove the rarity of crimes to consumers.⁶

- 1.9 So that future Government policy in relation to alleged crimes at sea could be better informed, the Committee recommended the collection of statistics on crimes at sea involving Australian citizens:

Recommendation 1: The Committee recommends that the Australian Institute of Criminology should compile, maintain and publish statistics on crimes committed at sea by or against Australians.⁷

- 1.10 The Government did not agree to this recommendation and gave two reasons for not doing so. Firstly, the Government pointed to academic studies from the United States which suggested that rates of crime at sea are substantially lower than the crime rate in a typical city, while also pointing to the cruise industry's assertion that 'crime committed on board is a minor problem'.
- 1.11 Secondly, the Government argued that the Australian Institute of Criminology is unable to compile accurate, reliable statistics on crimes committed at sea because 'there are no reliable, national statistics on crimes committed against Australians at sea'.⁸

Committee comment

- 1.12 The available evidence on the incidence of crimes at sea is much more equivocal than the Government response would indicate. The US study referred to in the response was written by a paid consultant to the *Cruise Lines International Association*, and was based on statistics provided by the industry itself.⁹ It is therefore not independently verifiable. In addition, as the *Troubled Waters* report notes, its conclusions are contradicted by evidence produced by the cruise lines under subpoena and via freedom of information requests.¹⁰
- 1.13 The Committee also notes that during the *Troubled Waters* inquiry, evidence was taken noting that serious crimes such as sexual assault and

6 Standing Committee on Social Policy and Legal Affairs, *Troubled Waters: Inquiry into the arrangements surrounding crimes committed at sea*, June 2013, p. 19.

7 Standing Committee on Social Policy and Legal Affairs, *Troubled Waters: Inquiry into the arrangements surrounding crimes committed at sea*, June 2013, p. 20.

8 Australian Government Response, p. 4.

9 Fox, Dr James, "Safe at Sea", *Crime and Punishment Weblog*, http://www.boston.com/community/blogs/crime_punishment/2013/08/safe_at_sea.html, viewed 31 March 2015.

10 Standing Committee on Social Policy and Legal Affairs, *Troubled Waters: Inquiry into the arrangements surrounding crimes committed at sea*, June 2013, pp. 17-18.

rape are typically under reported. As such, there is no firm evidentiary basis to support the statements from the cruise industry, echoed by the Government, that crime rates are lower on cruise ships than on land.

- 1.14 Further, it is disingenuous to argue that the Government cannot collect and publish accurate statistics on crimes at sea because those statistics are not being collected. If relevant agencies are not at present cataloguing, retaining or communicating information in such a way that the Government can compile statistics on crimes at sea, then the Government should take steps to ensure that they do so in future. The creation of systems for the appropriate classification, communication and publication of this information was the thrust of the Committee's initial recommendation.
- 1.15 As such, the Committee reiterates its view that impartial statistics on alleged crimes at sea are necessary, and that the Government should take steps to ensure that agencies at all levels of government that come into possession of relevant information are aware of the need to deal with it appropriately.
- 1.16 The Committee is not prescribing the method or agency to be responsible for the collection, maintenance and publication of this data, but is recommending that all necessary steps are taken to track and record the incidences of alleged crimes at sea.

Recommendation 1

The Committee recommends that the Australian Government take the necessary steps to ensure that all data on alleged crimes at sea involving Australians in the possession of any Australian government agency (local, State, Territory or Federal) is provided to a Federal agency capable of compiling, maintaining and publishing statistics, and that the Government publish those statistics annually.

International organisations

- 1.17 Crimes committed at sea raise complex issues of jurisdiction and international law. Chapter three of the *Troubled Waters* report considered these issues and concluded that there may be limitations on Australia's ability to legislate unilaterally in relation to some aspects of crimes at sea.
- 1.18 While recommending that the Government legislate to the extent possible given these limitations, the report also advised the Government to pursue

reforms through international organisations like the International Maritime Organisation (IMO). Recommendations two and three deal with how the Australian Government may contribute to the development of international consensus through the IMO.

1.19 Specifically, the Committee recommended the following:

Recommendation 2: The Committee recommends that the Australian Government dramatically increase its efforts to achieve greater cruise passenger safety and crime prevention strategies within the International Maritime Organisation and other organisations as appropriate, including pursuing cooperative agreement for the following urgent priorities:

- the installation and real-time monitoring of CCTV;
- the installation of ‘man-overboard’ alarm systems to alert onboard security to passengers going overboard;
- the adoption of reporting protocols analogous to those in the Kerry Act; and
- a Responsible Service of Alcohol code.

Recommendation 3: The Committee recommends that the Australian Government vote in favour of the *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*, at the upcoming International Maritime Organisation Assembly in November 2013.

1.20 In relation to recommendation two, the Government response argued that Australia is already ‘making a significant effort’ to address the issues raised. In relation to ‘man overboard’ systems, the Government noted that it has been working since 2010 to develop domestic and international standards for man overboard systems, but that international negotiations on this issue in recent years have been ‘lengthy and, at times, highly controversial’.¹¹

1.21 The Government also argued that Australia has implemented reporting protocols similar to the United States *Cruise Vessel Safety and Security Act 2010* (known as the *Kerry Act*) ‘to the extent legally possible’. The response also noted that the November 2013 IMO *Guidelines* provide that cruise vessels should notify ‘relevant authorities’ of incidents aboard, and that this is sufficient to ensure proper reporting of crimes at sea.¹²

11 Australian Government Response, p. 5.

12 Australian Government Response, p. 5.

- 1.22 Although the Government noted that there is 'potential for increased discussion' at the IMO on the issues of CCTV usage and the responsible service of alcohol, it 'does not agree that a dramatic increase in efforts to achieve greater cruise passenger safety and crime prevention strategies at the IMO is needed'.¹³
- 1.23 The Committee invited the major cruise lines to provide it with updated information on their safety practices, including on the responsible service of alcohol and the efficacy of CCTV, but did not receive a response. The Committee notes that a responsible service of alcohol clause is included in both Carnival and Royal Caribbean's Australian terms and conditions.
- 1.24 The *Guidelines* referred to in recommendation three specify how authorities on board a vessel should respond to an alleged crime, particularly with respect to the preservation of evidence, the appropriate care of victims, and the notification of relevant authorities.
- 1.25 The Committee recommended that the Government vote in favour of the *Guidelines*, and the Government did so. The *Guidelines* were adopted by the IMO Assembly in November 2013.

Committee comment

- 1.26 Australia has a long history of positive contributions to international organisations like the IMO, and the Committee is satisfied that Australia will continue to make an active and positive contribution to cruise safety issues at the IMO.
- 1.27 However, the Committee will continue to monitor the progress of negotiations at the IMO, and will invite the Attorney-General's Department to appear before the Committee before the end of 2015 to provide a progress update on these issues.
- 1.28 Regardless of IMO negotiations, the Committee notes its support for the cruise industry to demonstrate its commitment to passenger safety standards through the voluntary adoption of a Responsible Service of Alcohol code.

Consumer protection and safety information

- 1.29 Cruise passengers tend to feel safer, more familiar with their surroundings and thus more secure than tourists on land. There is a consequent

13 Australian Government Response, p. 6.

tendency to take fewer basic personal safety measures on board cruise vessels.¹⁴

- 1.30 Chapter four of the *Troubled Waters* report considered strategies for promoting personal safety and crime prevention on board cruise ships, and for giving Australians the information they need to find help if crime prevention strategies fail.
- 1.31 The *Kerry Act* requires US cruise lines to give passengers a security guide containing basic safety information. The guide must provide contact information for security and medical personnel on board, as well as information on jurisdiction, law enforcement processes and contact details in case of incidents occurring either in US waters or on the high seas.¹⁵
- 1.32 The *Troubled Waters* report argued that passenger safety would be increased if Australia adopted a similar regime. As such, the Committee made two recommendations directed to ensuring Australian cruise passengers are adequately informed about the potential risks of international cruises and on measures to take in the event of crimes at sea. The Committee also made a recommendation directed to ensuring that cruise line passengers were protected by the Australian Consumer Law (ACL). The recommendations were as follows:

Recommendation 4: The Committee recommends that the Australian Government conduct a comprehensive review and report on cruise vessel operators' liability for cruise tickets purchased in Australia, including Australia's capacity to provide legislative safeguards for Australian consumers.

Recommendation 5: The Committee recommends the Australian Government legislate such that all cruise operators must distribute to all cruise passengers, when boarding a cruising vessel at an Australian port, a brochure that provides information on the following:

- What to do in case of an accident or a potential crime being committed on board;
- The rights of passengers in the case of injury or death;
- The numerous jurisdictions that may apply to a vessel that is travelling through numerous national waters and international waters;
- Contact details for cruising operator support services, as well as other support services, such as rape crisis services;

14 Standing Committee on Social Policy and Legal Affairs, *Troubled Waters: Inquiry into the arrangements surrounding crimes committed at sea*, June 2013, p. 57

15 Standing Committee on Social Policy and Legal Affairs, *Troubled Waters: Inquiry into the arrangements surrounding crimes committed at sea*, June 2013, pp. 56-57.

- Contact details for Australian consular assistance throughout the world; and
- Contact details for Australian Police agencies.

Recommendation 6: The Committee recommends the Department of Foreign Affairs and Trade provide general safety advice on the *Smartraveller* website about cruising and how passengers may ensure their own safety, as well as providing individual advice on each major cruising operator visiting Australian ports.

- 1.33 In relation to recommendation four, the Government noted that the ACL does apply to cruise operators carrying on business in Australia and noted that a review of the ACL is scheduled to begin in 2016.
- 1.34 The Government agreed in principle to recommendation five, noting that ‘there is scope for Australia to take further steps to improve the information provided to cruise passengers boarding a cruising vessel at an Australian port’. However, rather than legislate, the Government expressed a preference for ‘a voluntary, cooperative scheme led by cruise vessel providers’.¹⁶
- 1.35 The Committee understands that the Government will soon begin consulting with industry on this topic.
- 1.36 Recommendation six related to cruise safety information on the *Smartraveller* website. The Government agreed in principle to this recommendation but stated its view that there is no need to add to the information already on the website:

The Government is of the view that there is already sufficient general safety advice on the *Smartraveller* website about cruising and how passengers may ensure their own safety.¹⁷

Committee comment

- 1.37 The Committee accepts the Government position that an industry-led voluntary scheme to provide safety information to cruise line passengers may be an acceptable alternative to a legislative scheme. However, the Committee will continue to monitor progress in this area, and will expect an update on the outcome of its engagement with the cruise industry on this topic before the end of 2015.

16 Australian Government Response, p. 7.

17 Australian Government Response, p. 8.

Recommendation 2

The Committee recommends that the Australian Government report back to the Committee by the end of 2015 on cruise operators' agreement to provide safety information to all cruise passengers departing Australia, and a timetable for the implementation of that agreement.

Mandatory crime scene management and reporting standards

- 1.38 Even with improvements in crime prevention measures, crimes at sea remain a regrettable inevitability. As such, chapter five of the *Troubled Waters* report considered how cruise lines can improve their response to alleged crimes at sea through better crime scene management and reporting practices, and through improved victim support measures.
- 1.39 Throughout its inquiry, the Committee received evidence of inadequacies in the investigation and reporting of crimes at sea, as well as in the treatment of alleged victims of crime.¹⁸
- 1.40 The *Troubled Waters* report acknowledged that cruise lines have made significant improvements to the way they respond to crimes at sea in recent years. Nevertheless, the Committee took the view that the ongoing risk of similar incidents warranted legislated minimum standards for the response to alleged crimes at sea.
- 1.41 Recommendations seven, eight and nine provided for legislation that would make it a condition of entry to Australian ports that cruise lines comply with certain minimum standards in relation to alleged crimes. The recommendations are as follows:

Recommendation 7: 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.

Recommendation 8: The Committee recommends the Australian Government develop crime scene management protocols (in

18 Standing Committee on Social Policy and Legal Affairs, *Troubled Waters: Inquiry into the arrangements surrounding crimes committed at sea*, June 2013, pp. 65-67.

collaboration with all Australian police forces), with which vessel operators would need to comply in order to access Australian ports.

Recommendation 9: 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.

1.42 The Government did not support the creation of these compulsory standards as a condition of entry into Australian ports, and advanced four reasons for not doing so:

- enforcement may prove difficult, since ships would enter Australian ports before authorities could establish whether the ship's Master had complied with the law,
- the ship's Master may be less likely to report alleged crimes if proper procedures have not been followed,
- attempting to enforce Australian crime scene management protocols on international cruise vessels may lead to protests from the vessels' flag state, and
- enacting compulsory minimum standards would be taking the IMO *Guidelines* beyond their intended purpose.¹⁹

Committee comment

1.43 The Government's objections are, in the Committee's view, unwarranted. Firstly, the proposed conditions are not intended to apply solely on the basis of individual vessels, but in the same way that other regulatory and safety regimes assess and manage risk – via patterns of compliance or non-compliance which are established over time.

1.44 These recommendations are targeted at the small number of cruise lines that control the vast majority of the Australian cruise market. They are intended to apply should the Government conclude that one of these cruise lines is failing to implement systems which provide for the welfare

¹⁹ Australian Government Response, pp. 8-9.

of Australian citizens and the investigation of crimes involving them. Such a risk management system, applied as it is to systems rather than individual instances, is unlikely to give rise to the enforcement and reporting problems the Government has foreseen.

- 1.45 Secondly, the legal advice from the Australian Government Solicitor prepared for the *Troubled Waters* report indicates that Australia has jurisdiction to legislate in these areas, particularly in light of the IMO's adoption of the *Guidelines*.²⁰ As such, depending on the exact content of the conditions of entry, flag states would have limited grounds for complaint.
- 1.46 Finally, Australia's regulatory environment has no bearing on the status of the IMO *Guidelines*. They will remain in place, unaffected, regardless of whether individual States ignore them, respect them, or implement regulatory regimes based on them.
- 1.47 Given the less than persuasive reasons advanced for rejecting the *Troubled Waters* report's recommendations, the Committee restates its view that legislative minimum standards are a prudent measure to protect the welfare of Australians aboard cruise vessels and to ensure that Australia is capable of investigating when Australians become victims of crime at sea.
- 1.48 The Committee understands that the IMO *Guidelines* enjoy broad support from the international community, and from large cruise lines. As such, the impact of a regulatory regime implementing them should be limited.
- 1.49 It should also be noted that mandatory reporting of alleged crimes at sea would greatly assist the Government in collecting independent statistics on the rates of crimes at sea involving Australian citizens. The burden of meeting recommendation one would therefore be greatly reduced.
- 1.50 Consequently the Committee recommends that the Australian Government introduce legislation which provides for the use and enforcement of the IMO *Guidelines*, mandatory crime scene management protocols, and the mandatory reporting of alleged crimes at sea involving Australian citizens as a condition of entry into Australian ports.

20 Standing Committee on Social Policy and Legal Affairs, *Troubled Waters: Inquiry into the arrangements surrounding crimes committed at sea*, June 2013, Appendix D, p. 15.

Recommendation 3

The Committee recommends that the Australian Government introduce legislation by 30 June 2016 to create mandatory regimes for:

- the implementation of the IMO *Guidelines*
- crime scene management, and
- reporting of alleged crimes at sea

as per recommendations 7, 8 and 9 from the Committee's *Troubled Waters* report.

The investigation of crimes at sea

- 1.51 Recommendations ten and eleven relate to the investigation of crimes at sea. The *Troubled Waters* report found that Commonwealth and State law enforcement agencies are 'operating effectively' in relation to the investigation and prosecution of crimes at sea.²¹
- 1.52 The recommendations were agreed or agreed in principle and the Committee has no further comment on them.

Concluding comments

- 1.53 The Committee considers that the Government response to the *Troubled Waters* report is concerning in several respects, as the comments above indicate.
- 1.54 The Committee notes that there were substantial delays in the production of the Government response, despite a House resolution requiring that the Government respond within six months. No clear explanation for the delay was provided, despite the fact that 16 months elapsed before the Committee was provided with the Government response.
- 1.55 The Committee also found the response lacking in detail. Several recommendations were 'noted' or 'agreed in principle' without any indication of whether there is to be further action resulting from them.

21 Standing Committee on Social Policy and Legal Affairs, *Troubled Waters: Inquiry into the arrangements surrounding crimes committed at sea*, June 2013, p. 86.

- 1.56 Given the seriousness of the ongoing human impacts of crimes at sea, the Committee sincerely hopes that the recommendations in this report will receive deeper consideration, and that a response will be provided within the six month timeframe – that is, by the end of 2015.

Mr George Christensen MP
Chair

4 June 2015