

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Group 2

Program 1.3

Question No. 162

Senator Humphries asked the following question at the hearing on 16 October 2012:

Asylum seeker boats

- a) What are the laws surrounding the making of fake distress calls at sea?
- b) What are the Safety of Life at Sea rules around the returning of passengers to the nearest port?
- c) Has the Government questioned any of the crew or passengers of the boats that have made false distress calls; are there plans to charge anyone over these offences?
- d) What are the instructions given to ADF personnel boarding asylum seeker boats who are confronted with violence against their persons or deliberate sabotage?
- e) Are these actions (violence against ADF personnel and sabotage), crimes under the Australian crimes act, if not, will the government consider making such attacks criminal offences?

The answer to the honourable senator's question is as follows:

- a) This question should be directed to the Australian Maritime Safety Authority.
- b) 'The *International Convention for the Safety of Life at Sea* (SOLAS Convention) and the *International Convention on Maritime Search and Rescue* (SAR Convention) are the key international agreements that govern maritime search and rescue. States Parties to the SOLAS Convention and the SAR Convention are required to coordinate and cooperate to ensure that:
 1. masters of ships which assist persons in distress at sea are to be released from their obligations with minimum further deviation from the ship's intended voyage, and
 2. survivors are disembarked from the assisting ship as soon as reasonably practicable and delivered to a 'place of safety.'

In relation to the 'place of safety', guidelines formulated by the International Maritime Organisation provide that:

- it is a place where the survivor's safety is no longer threatened, basic human needs can be met, and from where arrangements can be made for onward transportation
- an assisting ship should not be considered a 'place of safety', but should be relieved of its responsibility as soon as alternative arrangements can be made, and

- circumstances to be considered in determining a ‘place of safety’ include the situation on board the assisting ship, on scene conditions, medical needs, and availability of transportation.

Governments should cooperate with regard to identifying a suitable ‘place of safety’ after considering all the relevant factors and risks. In some cases, the ‘place of safety’ may be the nearest port.’

- c) The AFP endeavour to obtain evidence and conduct investigations with regard to all People Smuggling related offences. The AFP has not charged anyone for offences related to false distress calls nor do we have any charges currently planned.
- d) In the interests of preserving operational security, and to maintain the safety of our crews and irregular maritime arrivals, Border Protection Command (BPC) will not release the specific procedures and techniques used to effect maritime security operations.

However, all ADF personnel who participate in the boarding of suspected irregular entry vessels (SIEVs) receive training and routine competency assessment in the application of Use of Force. ADF personnel also have the inherent right to self-defence and to undertake actions to protect their safety. When boarding a SIEV, Boarding Party members are prepared for strong resistance and act proportionately in response to any resistance or non-compliant behaviour displayed or that may arise.

If confronted with acts of violence ADF personnel’s application of Use of Force is to a level relative to the resistance displayed, to establish or re-establish control of a situation. The level of force exercised is escalated and de-escalated as necessary and is exercised in accordance with the law and the Royal Australian Navy Use of Force Continuum. The Use of Force ceases immediately upon control being established.

When Boarding Party members identify evidence of suspected sabotage, further investigation, assessment and evidence collection is undertaken. All incidents of suspected sabotage are reported.

e)

Is violence against Defence Force personnel a crime under the *Crimes Act 1914*?

The *Crimes at Sea Act 2000* (Cth) sets out the cooperative agreement between States, the Northern Territory and the Commonwealth for dealing with crimes committed at sea. The scheme applies the criminal laws of the States or Northern Territory extraterritorially in areas adjacent to the coastline of that State/Territory, up to 200 nautical miles or the outer limits of the continental shelf (whichever is greater). Outside this adjacent area, Commonwealth laws will apply to conduct on board an Australian vessel (which includes a defence force vessel) or on board a foreign vessel if the first country the ship calls after the act is Australia.

Causing harm, or threatening to cause harm, to Commonwealth public officials, which include members of the Australian Defence Force, are indictable offences under Division 147 of the *Criminal Code 1995* (Cth). There are also offences in the *Crimes (Ships and Fixed Platforms) Act 1992* (Cth) relating to committing acts of violence or causing injury to a person if the safe navigation of the ship is endangered.

The Commonwealth has the primary responsibility for investigation and prosecution action in respect of an alleged offence on or from an Australian Defence Force ship outside the limits of a State or Territory.

Is Sabotage a crime under the *Crimes Act 1914*?

Sabotage is an indictable offence under section 24AB of the *Crimes Act 1914* (Cth). Section 24AB provides that a person who carries out an act of sabotage, or has in his or her possession any article that is capable of use, and which he or she intends for use, in carrying out an act of sabotage, is guilty of an indictable offence. An 'Act of sabotage' includes the destruction, damage or impairment, of any article that is used, or intended to be used, by the Defence Force or for any purpose that relates directly to the defence of the Commonwealth. A person must have, or appear to have, the intention to prejudice the safety or defence of the Commonwealth.