

**IN THE CORONER'S COURT OF NEW SOUTH WALES INQUEST INTO THE DEATH OF
DIANNE BRIMBLE ON THE P&O PACIFIC SKY ON 24 SEPTEMBER 2002**

**SUBMISSIONS OF MARK BRIMBLE AND
INTERNATIONAL CRUISE VICTIMS (AUSTRALIA) PTY LTD**

1. INTRODUCTION

1.1 Overview

- (a) This is an inquest into the death of Ms Dianne Brimble aboard the P&O Pacific Sky on 24 September 2002.
- (b) These submissions are made by me as a victim and as sole director of International Cruise Victims (Australia) Pty Ltd ("ICVA") pursuant to the constitutional objects of the company.
- (c) In these submissions, I set out the security, safety and legislative issues surrounding the death of Dianne Brimble on an international cruise ship.
- (d) These issues are relevant to the recommendations that the Coroner may make under section 82 of the *Coroners Act* 2009 (NSW) ("Coroner's Act") as they relate to public health and safety and ways to prevent deaths from happening in similar circumstances in the future.

1.2 Relationship to Dianne Brimble

- (a) Dianne and I married in 1982 during which time we had 2 sons.
- (b) Following our divorce in 1987, my relationship with Dianne was amicable as we had continued dealings due to our children.
- (c) In the years prior to Dianne's death, my second wife Leigh and I became close friends with Dianne. We would all attend many of the same family functions and Dianne was always welcome in our home and spent times with us during various celebrations.

1.3 Personal Qualifications and Experience

- (a) I have a post-graduate diploma degree in Communications with a mature aged recognised undergraduate degree.
- (b) My past memberships and positions include President of the Real Estate Institute of Queensland, Chairman of the Board of the Real Estate Institute of Queensland, Director of the Real Estate Institute of Queensland and Director of Real Estate Institute of Australia.

- (c) My association with the International Cruise Victims Association began in 2006. I am currently the sole director of International Cruise Victims (Australia) Pty Ltd. I am also the Vice President of the International Cruise Victims Association (United States of America) and a Director of International Cruise Victims incorporated in New York.

1.4 International Cruise Victims

- (a) I incorporated ICV Australia in 2008. I was also instrumental in the establishment of the International Cruise Victims Association in the United States of America.
- (b) The International Cruise Victims Association has members in over 20 different countries who are people who have experienced tragedies on cruises and who have been treated poorly by cruise lines.
- (c) The objects of ICV are to:
 - (i) Provide services, conduct activities, co-ordinate projects and provide support for any person who has been adversely affected by the actions of a passenger cruise line, while at sea or under any other circumstances;
 - (ii) Represent the views of any person referred to above to all levels of Government and the community at large and to engage in advocacy on their behalf;
 - (iii) Provide support to charitable institutions or community service organisations whose principal objects are directed to the assistance of any person referred to above; and
 - (iv) Do all acts and things reasonably necessary or incidental to the carrying out of these objects.
- (d) ICVA works in partnership with the International Cruise Victims Association, based in the United States of America, to represent victims of crime on cruise ships, their families and individuals concerned about problems of victimisation and disappearances on cruise ships. ICV advocates for legislative reform to protect passengers from crimes that occur on cruise ships and provides support to victims of crimes occurring on cruise ships.
- (e) ICV was active in the introduction of the United States of America's Cruise Vessel Safety and Security Act ("the Kerry Act") which has paved the way for widespread reforms in the Cruise Ship Industry.

- (f) The goal of ICV is not to damage the Cruise Ship Industry but to make them responsible and to hold them accountable for the safety of their passengers and crew members and to require prompt and accurate reports to authorities of crimes, deaths, disappearances and other matters that would normally be investigated if they had occurred on land.

2. LEGAL PRINCIPLES

2.1 Human Rights

- (a) ICVA submits that the Coroner's Court has an important role to play in the protection of human rights and consequently, Australia's compliance with its human rights obligations.
- (b) Article 6(1) of the International Covenant on Civil and Political Rights ("ICCPR") provides relevantly that "Every human being has the inherent right to life. This right shall be protected by law."
- (c) It is settled that Article 6 of the ICCPR requires Government to take appropriate steps to safeguard the lives of those within its jurisdiction.¹ Consequentially, there is a positive obligation to prevent death.
- (d) The Human Rights Committee has stated:²

The right to life has been too often narrowly interpreted. The expression "inherent right to life" cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures.

- (e) Accordingly, it is incumbent upon the State and Commonwealth Governments to take steps to address the short comings in regulating the Cruise Ship Industry to protect the rights of those that board these ships.

2.2 State Laws

- (a) The States and Territories of Australia are responsible for enacting laws for the peace, order and good Government of their jurisdiction and each State and Territory is charged with enforcing and investigating the laws that they enact. Often however, the cooperation of the Commonwealth is required.
- (b) During the period between 1998 and 2001, all Australian States and Territories with coastal waters introduced uniform legislation – the *Crimes at Sea Acts*.³ The Commonwealth has also enacted parallel legislation – the *Crimes at Sea Act* 2000 (Cth). These laws determine the jurisdiction of crimes committed at sea aboard vessels that are within 200 nautical miles of the Australian coast

with State laws applying to vessels located within 12 nautical miles of their respective coastlines. Between the distance of 12 and 20 nautical miles from the coastline, the relevant State law applies under the jurisdiction of the Commonwealth.⁴

2.3 Federal Laws

- (a) The Commonwealth enacted the *Admiralty Act* 1988 which declares authority over any ship intended for use at sea.⁵ The Act provides for civil actions to be brought against ship owners for a variety of claims such as personal injury and loss of life.⁶ The Act extends to any action regardless of the location of ship at the time of the incident or Flag State the relevant ship. In practice however, jurisdiction is not exerted unless there is some nexus with Australia.⁷ Further, Cruise Ship Lines may attempt to limit the application of certain laws by specifying the jurisdiction at the time of ticket purchase.

2.4 International Law

- (a) The increase in international commerce and widespread acknowledgment of the need to ensure standardised safety and environmental standards aboard vessels has led to the development of international regulation.⁸
- (b) Australia is currently a signatory to approximately 40 International Maritime Organisation conventions, amendments and protocols.⁹
- (c) Usually, the Country with jurisdiction over the water in which the incident takes place implements the terms of the conventions. However, if the incident occurs on the high sea, the onus of enforcing the relevant convention falls on the Flag State of the ship.¹⁰

2.5 Flags of Convenience (FOC)

- (a) As set out above, Australian passengers aboard an Australian Cruise Ship within Australian territorial waters are afforded the protection of Australian laws. However, passengers aboard a ship outside of Australia's territorial waters are normally subject to foreign laws, commonly those of the Flag State of the ship with some, or even no, reference to Australian authorities.
- (b) It is common place for ships to be registered in other countries to circumvent particular laws, restrictions and requirements and to avoid certain taxes.¹¹
- (c) Registration in a foreign country means that the laws and regulations of that country govern the activities on that ship. A number of FOC countries compete to supply attractive regulatory packages to ship owners.¹² For example, some FOC countries will employ lenient labour, safety and environmental

regulations.¹³ This allows ship owners to “shop around” to find the most profitable and advantage regime for their business enterprise.¹⁴

- (d) Unfortunately for passengers and crew, the use of FOC can lead to poor regulation and lack of enforcement on cruise ships. This could expose passengers to a reduced safety standard below that which they would otherwise expect.

3. CRUISE SHIP CRIME

3.1 Crimes at Sea

- (a) There are many issues relevant to crimes committed at sea such as the lack of police presence on cruise ships.
- (b) In addition to jurisdictional issues and the lack of sufficient laws and regulations, there are inherent difficulties in investigating any such crimes as investigators are not always able to access cruise ships in a timely manner. There are also ongoing difficulties such as obtaining information from possible witnesses as they may not make themselves known to investigators or may disembark the ship prior to investigators obtaining necessary information from them. These passengers and crew would then disperse throughout the country and possibly return to their own country of origin making investigation not only difficult but subject to differing jurisdictions both at state or international levels.

3.2 Crime Rates

- (a) In an editorial dated 16 May 2008, internet site Cruise Critic cites results of a survey of 1700 people that have taken a cruise and found that 10% of respondents said “yes” to the question: “Have you ever been affected by crime, minor or major, on a cruise ship?”¹⁵
- (b) Based on statistics quoted by The International Cruise Council Australasia (ICCA) 2009 Australian Cruise Industry Report, this means that more than 35,000 Australians were affected by crime on a cruise ship last year alone.
- (c) This figure may be significantly higher as many crimes go unreported by the victims and the ship’s crew.¹⁶
- (d) Disturbingly, Court records for a major cruise line covering the period of 2003 – 2005 have determined that approximately 80% of the alleged offenders in reported incidents were employees of the ship industry.

4. THE CRUISE SHIP INDUSTRY

4.1 Cruise Lines

- (a) There are currently in excess of 25 Cruise Lines that operate within Australian waters.
- (b) While P&O Cruises Australia has agreed to improve certain of its current procedures and implement new procedures in light of the events surrounding the death of Dianne Brimble, the actions of only one Cruise Line do not provide protection to passengers travelling on ships of other cruise lines.

4.2 Staff

- (a) Based on information published on their website, ships within P&O Cruises Australia's fleet carry an average of 1,918 passengers. These passengers are contained on a ship with access to alcohol and entertainment with the only form of security being provided by staff employed by the Cruise Line.
- (b) The practice of using international hiring offices to employ crews from human resource pools raises various security concerns for passengers and other crew members. While cruise ship lines may undertake background checks on prospective staff, these are not always performed to the extent required in Australia.¹⁷
- (c) ICVA has obtained a report from Mark Gaouette in response to the Overview of Reforms submitted by P&O Cruises Australia. A copy of this report is attached as Annexure 1. Mr Gaouette's extensive qualifications are set out in the attached report. As stated by Mr Gaouette, security personnel are not looked on with the highest regard. Mr Gaouette comments that when someone does not fit in or is unskilled in other technical areas, a role as a security guard is an obvious fit. Almost exclusively, they come from foreign countries where the prospect of working on a modern cruise ship is a dream come true.
- (d) Many security and related safety concerns arise as a result of security officers being paid employees of the cruise line. Security staff being employed solely by the Cruise Line lends itself to a culture of bias toward protecting the interest of the cruise line instead of the legitimate interests of the passengers. Further, security officers do not have authority to act in any meaningful capacity when presented with an alleged crime. This is particularly the case when accusations are made against the cruise line, other passengers or crew members.
- (e) There is a clear conflict of interest between the public relations goals of the cruise line and the public safety requirements of its passengers. Cruise lines have a vested interest in protecting their reputation for obvious reasons.

However, the pure economic interests of the cruise lines should not impinge upon or restrict the safety and rights of their patrons. It is therefore submitted that cruise ship companies are not capable of, nor should they be permitted to, act as their own police force.¹⁸

- (f) Cruise ship security personnel also carry a burden of being required to perform numerous tasks on board a ship in addition to crime scene investigation. Security personnel are also required to conduct screens for contraband, act as bouncers, maintain control and order throughout the ship and carry out other related security duties. The many varied tasks of the security officers create the potential for distraction and can impact upon security's ability to respond immediate and accurately to a reported crime.

5. THE INVESTIGATION

5.1 P&O Cruises Australia

- (a) It is well accepted that following the discovery of Dianne Brimble's body, the scene was not sealed and staff of P&O Cruises Australia allowed persons of interest to access and remove items from the room. As heard by this Court, this was in direct contravention of a request by police on route to investigate Dianne Brimble's death that the Manager of Pacific operations for P&O secure the scene.
- (b) It has been raised that it was at this time the drugs that contributed to Dianne's death were removed from the room. Permitting the occupants to enter the room to remove their belongings hampered the police investigation which ultimately led to the need for this Inquest.
- (c) Following the discovery of Dianne Brimble's body, the Pacific Sky continued for a further 2 days to Noumea before being boarded by the New South Wales Water Police. Ms Brimble's family aboard the ship endured this time with very limited means of contacting their family in Australia. Staff on board the Pacific Sky did not provide adequate support, care or consideration to Ms Brimble's family on board. In fact, unlike the persons of interest, Dianne's family were not permitted to return to their room for to retrieve their personal belongings.
- (d) Once the ship arrived in Noumea, Dianne's family were ultimately left to make their own accommodation and travel arrangements both in Noumea and to return to Australia.
- (e) In general, the Brimble family were extremely dissatisfied with the treatment that they received from P&O Cruises Australia following Dianne's death. The family received little information, communication or assistance from the Cruise

Line and believe that the actions of P&O Cruises Australia further exacerbated an already unhappy and stressful situation.

5.2 New South Wales Police

- (a) In accordance with standard police procedure, a suspicious death would ordinarily be investigated by homicide detectives. Initially, the investigation into Dianne Brimble's death was conducted by the New South Wales Water Police. It is understood that the lead detectives had no former experience with homicide cases, let alone a case of this nature.
- (b) The lead investigative officers were Detective Senior Constables Erdinc Ozen and Victor Rulewski. This Court has heard that the investigative officers failed to obtain sufficient information prior to boarding the ship enabling them to adequately equip themselves to conduct the required interviews. Detective Senior Constables Ozen and Rulewski were unaware that there were possibly 8 persons of interest in relation to Dianne Brimble's death. Accordingly, they did not take sufficient numbers of tapes to record interviews with 8 people. They also failed to carry out background checks on all 8 men prior to departing New South Wales.
- (c) During their 8 days on board the Pacific Sky Cruise Ship, it is understood that only 8 interviews were conducted by the investigative officers and it appears that their time on board the Ship was used more for enjoyment than an investigative expedition. Information received by ICVA leads to the conclusion that the investigative officers fraternised with the passengers instead of thoroughly investigating the matter at hand.
- (d) Information ICVA has received reveals that officers involved in the initial investigation on the Pacific Sky were dancing at discos with various passengers and took a day off to holiday in Port Vila during the investigation. ICVA has also heard of reports of officers responding inappropriately to callous remarks made by persons of interest.
- (e) This Court received information that Detective Senior Constable Ozen was photographed posing with staff of P&O Cruises Australia enjoying a drink while he was employed to be investigating Dianne Brimble's death onboard the Pacific Sky.
- (f) This Court has heard that not all staff relevant to the investigation were interviewed by the New South Wales Police and that not all evidence may have been processed and not all leads may have been followed up.
- (g) As stated by New South Wales Coroner, Jacqueline Milledge in this Court, the refusal by the South Australian Police to provide evidence on the grounds of

public interest immunity has prevented persons of interest being called as witnesses and hampered the progress of this Inquest.

- (h) The appropriateness of the New South Wales Water Police officers has also been called into question as it has been revealed during this inquest that Detective Senior Constable Ozen was on a P&O Cruises Australia "schoolies" cruise the year prior to the commencement of the investigation and that the former head of the New South Wales Water Police, Graeme O'Neill was working for P&O Cruises Australia while on sick leave from the office of the Police Commissioner.
- (i) Mr O'Neill advised this Court that it was regular practice for police to go on free cruises in their holidays and be recalled to duty if they needed to investigate any incidents.
- (j) The initial interview with one of the 8 men identified by this Court as a person of interest, Letterio Silvestri, was procedurally flawed. The written transcript of the taped interview did not disclose that the police formally cautioned Mr Silvestri at the start of his interview, a basic procedural requirement when conducting a record of interview with a suspect in a potential criminal matter.
- (k) At the end of the interview, the officers also failed to give Mr Silvestri the opportunity to declare that his answers were true and correct and given of his own free will, another key procedural requirement. "Even if the water police officers considered him as only a witness and not a suspect at that early stage, it would appear that they took no precaution to make the interview admissible to be used in any criminal proceedings at a later date" a retired senior detective has said.
- (l) I was interviewed by one of the investigative officers in early 2004 during which time I was advised that that was the final interview to be conducted by police. It took the New South Wales Water Police approximately 2 ½ years to provide its brief to this Court following the granting of some 11 extensions of time.
- (m) Following numerous unsatisfactory dealings with the New South Wales Police, I wrote to the New South Wales Police Commissioner seeking information and an explanation as to the handling of this matter. It was only following my statement on the ABC's Australian Story Television that I had not received a response that I received contact from the New South Wales Police Commissioner.
- (n) The Brimble Family believe that the New South Wales Police failed to communicate with the Family and conduct the investigation in an appropriate, professional and acceptable manner.

- (o) The Brimble Family were extremely frustrated and disappointed with the actions of the New South Wales Police in their conduct of this matter and are of the opinion that the manner in which the investigation was conducted added to the continued delay and distress suffered by the Family.

6. P&O CRUISES AUSTRALIA'S REFORMS

6.1 Reforms

- (a) P&O Cruises Australia has recognised that its treatment of the Brimble family following Dianne's death fell short of their needs.¹⁹ The events surrounding Ms Brimble's death have led to P&O Cruises Australia implementing many reforms to its security and passenger related systems.
- (b) P&O Cruises Australia states that it "agrees that it would be in the interests of the public to generally ensure that the industry as a whole meets best practice standards."²⁰ P&O also stated in the same document that it "will not oppose legislation that augments the important reforms already achieved."²¹

6.2 Comments on Reforms

- (a) ICVA commends the increased use of CCTV and recording systems to monitor activities a cruise ships as they provide a potential wealth of evidence and documentary record of any criminal activity.
- (b) ICVA also commends P&O Cruises Australia's efforts in relation to the responsible service of alcohol. As identified in Mark Gaouette's report, nothing is more central to shipboard activities than the prevalent abundance of alcoholic beverages on cruise ships. The duties of the RSA Supervisor outlined on page 14, paragraph 63, Onboard Safety and Security – Update, represent a reasonable concerted effort to ensure that the service of alcohol on P&O cruise ships does not interfere with the safety of passengers on the cruise ship.
- (c) P&O Cruises Australia's Policies and Procedures Regarding Security – 2010 sets out that all security incidents and potential crimes are treated as suspicious unless and until shore side management with the assistance of appropriate authorities determines otherwise. ICVA submits that the determination as to whether a potential crime is suspicious should rest with the appropriate authorities, not cruise line management.
- (d) P&O Cruises Australia states that it was their previous practice to report all suspected serious criminal conduct to: State Police, depending on where the ship is based; the Australian Federal Police, if the suspected criminal activity contravenes federal law; the local police at the ship's next port of call; and the

local police of the alleged victim.²² In order to alleviate the confusion created by this practice, P&O Cruises Australia has created partnerships and reporting protocols with law enforcement bodies of Australia and the Pacific Islands. ICVA submits that while an investigation into alleged criminal activity should commence without precious time being taken to resolve any jurisdictional issues, it is equally crucial that those conducting the initial investigation have the authority and training that would qualify them to lead a criminal investigation which would include collecting evidence, interviewing witnesses preserving a crime scene. This all must be done on an impartial and non-biased basis, thus increasing the chances of the evidence being admissible in court. ICVA endorses an investigation into alleged criminal activity being commenced without precious time being taken to resolve any jurisdictional issues to reduce the occurrence of both time and evidence being lost.

- (e) P&O Cruises Australia has stated that it has updated and improved its Crime Manual for Ship's Security Officers in the Fleet Regulations. The Crime Manual was created by the UK Police to give immediate advice to Ship Security Officers and crew on important aspects of crime investigation and crime scene management. It was prepared by the UK's Association of Chief Police Officers and Hampshire Constabulary, in consultation with Carnival plc, the Ministry of Defence Police, Maritime and Coastguard Agency and the Red Ensign Group.²³ For the purposes of criminal investigative training and certification it is submitted that an internationally recognised investigative agency should be involved in the preparation and updating of the manual such as the FBI, Scotland Yard, or Interpol. It is also submitted that consultation should be had with the authorities of any countries frequented by the relevant ships.
- (f) As the potential for contact with evidence is extremely high, it is submitted that all medical staff should receive full training under the Crime Manual to ensure competence in crime scene entry and evidence preservation.
- (g) P&O Cruises Australia requires that ship Security Officers undertake accredited Ship Security Officer training provided by the UK Department of Transport prior to commencing duties. It would appear that, as the ships sail predominantly from Australia, a more appropriate authority to provide such training would be as required within Australia.
- (h) The Ship Security officer should also pass competency tests and oral examination in crime scene investigation that complies with the standards being adopted by the Flag State of the ship.
- (i) P&O Cruises Australia's CARE program is welcomed by ICVA however; it does not address the importance of criminal acts where a death occurs. As stated in Mark Gaouette's report, clear protocols must be developed and in place to ensure that the body of the victim is preserved until qualified medical coroners

can examine the body. This includes preventing efforts to embalm the body before returning it to a different international location or to family members.

- (j) In response to recognising the shortcomings in the treatment of the Brimble family, P&O's CARE program is stated to ensure that "dedicated CARE team members are assigned to passengers and crew in the event of an emergency or traumatising event."²⁴ As the program is focused toward passengers and crew, this program quite obviously fails to provide any form of support to family not on board the ship.
- (k) P&O Cruises Australia has stated that all crew on board P&O Cruises Australia's Australian based ships whose responsibilities include passenger contact have undertaken CARE training.²⁵ It appears clear that in a major catastrophe, all crew have a potential of contact with passengers. Accordingly it is submitted that all crew should receive CARE training.
- (l) ICVA notes that the CARE team member providing support to the passengers are again, employees of the cruise line. This is the case also with any medical staff on board the ship. This creates a conflict of interest as referred to above as between the rights of the passengers and the reputation of the Cruise Lines. In the absence of an independent party on board the ship, it is imperative that any information provided CARE team members or medical staff is kept in the strictest confidence unless disclosure is consented to in writing by the affected party.
- (m) P&O Cruises Australia state that all crew CARE team members are required to attend training workshops every 24 months²⁶. It is noted that P&O Cruises Australia have not provided details of any tracking or auditing systems for this program.
- (n) While P&O Cruises Australia asserts that it has increased its security processes on board its ships, ICVA is unaware of any charges being brought against passengers for drug related offences. Based on the number of passengers that travel on P&O Cruises Australia's ships, this leads to the inference that either these processes are not being correctly implemented or that appropriate penalties are not being pursued

6.3 Expert Report of Brigadier (Retd) Brian Parritt, dated 19 October 2010

- (a) Based on the presumptions made in Brigadier Parritt's report, it appears that he did not physically inspect any vessels owned by P&O Cruises Australia and that all conclusions drawn by Brigadier Parritt are based on the information provided to him by the Cruise Line. Therefore, any findings made by Brigadier Parritt must be heavily qualified as there is a lack of any independent verification that

the systems and processes referred to by P&O Cruises Australia have actually been implemented.

- (b) Brigadier Parritt has an extensive and impressive track record and widely considered to an expert in maritime security. However, Brigadier Parritt's career has largely seen him involved in counter terrorism at sea. Brigadier Parritt has not served in any capacity as a sea going security officer nor on the shore based management of any cruise line.
- (c) Despite authoring works on Crime at Sea, none of the Brigadier's writing likely came from personal experience, as he would not have had the opportunity to investigate a crime that took onboard a ship, especially, those of a sexual or physical nature.
- (d) ICVA questions how Brigadier Parritt can be referred to as an Independent Expert Witness, when his work was commissioned by Carnival Cruises.
- (e) ICVA notes that, as referred to in paragraph 3 of Part 1 of his report, Brigadier Parritt was the founder of International Maritime Security ("IMS"). IMS created a Model Ship Security Plan that was adopted by the International Council of Cruise Lines. Accordingly, the Brigadier's own Security Plan was likely used in part, if not entirely, as the Security Plan aboard the Pacific Sky at the time of Dianne Brimble's death. If this is the case, ICVA submits that a conflict of interest exists in Brigadier Parritt reviewing the systems of P&O Cruises Australia that have evolved from a system originally implemented by him.
- (f) Brigadier Parritt makes constant reference to International Cruise Line "Best Practice" however, it is noted that best practices are not law. Further, the ISPS Code referenced by the Brigadier focuses predominantly on counter terrorism and not onboard crimes.

6.4 Conclusion on Reforms

- (a) While the reforms appear to be a significant step forward to delivering increased security and safety measures for passengers and crew, P&O Cruises Australia have failed to implement any programs that provide for independent auditing of their systems.
- (b) In light of the shortcomings that have been identified in this Court, it is essential to the safety of all those aboard Cruise Ships that a completely independent third party be responsible for reviewing and reporting on the systems of Cruise Lines to ensure that all required standards are satisfied and maintained.

7. THE KERRY ACT

7.1 The Act

- (a) Earlier this year, the United States of America passed legislation in relation to the Cruise Ship industry. The *Cruise Vessel Security and Safety Act* ("the Kerry Act") applies to all ships that dock at American ports. A copy of the Kerry Act is attached as Annexure 2.
- (b) The Kerry Act includes the following requirements:
 - (i) Structural safety standards such as minimum rail heights, peel holes in passenger doors, security latches and time sensitive key technology;
 - (ii) Installation of technology for capturing images of passengers or detecting passengers who have fallen overboard;
 - (iii) Maintenance of video surveillance systems to assist in documenting crimes;
 - (iv) Cruise ship owners must provide access to video records to any law enforcement official if required in relation to an investigation;
 - (v) A security guide must be made available to all passengers that provides a description and contact details for the security and medical staff onboard, sets out the jurisdictional authority applicable and provides contact information for appropriate law enforcement authorities;
 - (vi) The Cruise Lines must maintain adequate supplies of anti-retroviral medications and equipment for the medical examination in sexual assault cases to evaluate the patient for trauma, provide medical care and preserve relevant evidence;
 - (vii) Appropriately trained medical staff must be available at all times;
 - (viii) Any patient treated must be provided with free and immediate access to contact information for law enforcement officials and counselling hotlines, a private telephone and internet ready computer to enable access to law enforcement officials, lawyers and counsellors;
 - (ix) No medical information in relation to a sexual assault may be released to the cruise line without the consent of the patient;
 - (x) The limitation of crew access to passenger rooms;

- (xi) The owner must maintain a log book that details all complaints of crimes onboard the ship and that log book must be made available to law enforcement;
- (xii) The owner of the vessel must report crimes onboard the ship relating to homicide, suspicious death, missing persons, kidnapping, assault with serious bodily injury and other serious crimes to the FBI by telephone as soon as possible after the crime's occurrence;
- (xiii) The establishment and maintenance of a incident data website and each cruise line must maintain a link to incident data website on their own web page;
- (xiv) All security personnel, crewmembers and law enforcement officials must be trained and certified on appropriate methods for prevention, detection, evidence preservation and reporting of criminal activities in the international maritime environment. The training standards and training curriculum is to be established with the assistance of the Director of the FBI.

7.2 Comments

- (a) P&O Cruises Australia confirms that, the Carnival Group (of which P&O Cruises Australia forms part, supported the passage of the Kerry Act in the United States of America.²⁷ They have further advised that the Carnival Group is in the process of ensuring that all companies within the Carnival Group effectively comply with the *substantive* requirements of the Act notwithstanding that all of their ships do not dock at American ports.²⁸
- (b) The Kerry Act is supported by P&O Cruises who "considers the Kerry Act may provide a model for any legislation that may be introduced to apply to ships calling in and out of Australian ports."²⁹
- (c) ICVA welcomes and applauds the introduction of this ground breaking legislation and urges the Australian Government to urgently consider and use this model as a base for the introduction of similar legislation in Australia.

8. **RECOMMENDATIONS**

8.1 Overview

- (a) The processes proposed by P&O Cruises Australia as a result of the events that lead to Dianne Brimble's tragic death are commended and welcomed by ICVA. However, as these changes are clearly a reactive response to an incident that has received wide ranging media coverage, it is imperative that industry wide

changes are implemented as a result of legally enforceable requirements to ensure the safety of all future passengers.

- (b) Former Prime Minister John Howard MP said he would be prepared to work to attempt to regulate the cruise ship industry.³⁰ ICVA has also received support from Prime Minister Julia Gillard MP, Queensland Premier, Anna Bligh and former Premier of New South Wales Nathan Rees.
- (c) ICVA submits that the Commonwealth Government should, by the use of its foreign affairs power under the Constitution, and in conjunction with the States and Territories, commit to enacting legislation to regulate the cruise industry.³¹
- (d) Based on the information heard by this Court, ICVA urges the Coroner to have regard to the matters set out below when making her recommendations pursuant to section 82 of the *Coroners Act* 2009. ICVA submits that substantive recommendations are necessary and warranted to ensure the prevention of deaths from happening in similar circumstances in the future.

8.2 Legislation

- (a) As discussed above, ICVA submits that legislation should be implemented by the Commonwealth Government, in conjunction with the States and Territories. Similar to the Kerry Act, ICVA submits that an effective application for the legislation is to all cruise ships registered within Australia and those that embark or disembark passengers at Australian ports.
- (b) ICVA submits that the Kerry Act is a sound model for the introduction of cruise industry legislation in Australia.
- (c) As a minimum requirement, ICVA submits that any enacted legislation address the following:
 - (i) Prevention
 - Require all passenger and crew cabin doors be equipped with peep holes or other means of visual identification;
 - Require that all passenger and crew cabin doors be equipped with security latches and time-sensitive key technology;
 - Require cruise ships to maintain electronic video surveillance to assist in documenting crimes to be provided as evidence for prosecution when required and that all electronic records be kept for a minimum of 90 after the completion of the cruise.

- Require video records to be made available to law enforcement, upon request during an investigation;
- Cruise operators must provide a “security guide” to each passenger that describes medical and security personnel designated to prevent and respond to criminal and medical situations within 24-hour contact instructions. The security guide must contain information to passengers on how to report crimes to the Australian Federal Police or relevant State Police regardless of where the crime is committed
- Cruise operators must publish their security guide on their website so as to be readily accessible to passengers and the public.
- Cruise ship operators and owners must implement procedures and restrictions concerning which crewmembers have access to passenger cabins;
- Cruise ships must implement acceptable responsible service of alcohol procedures and enforce penalties against passengers and crew that do not comply with these procedures. These procedures need to be monitored by an independent authority.

(ii) Intervention

- Require cruise ship operators/owners to maintain on the vessel adequate, in-date supplies of anti-retroviral medication and other medications designed at preventing sexually transmitted diseases;
- Adequate equipment and materials must be maintained for performing examinations of sexual assault victims to evaluate the patient for trauma, provide medical care, and preserve relevant evidence;
- Vessels are required to make available at all times medical staff (licensed physician or registered nurse) who have undergone an accrediting process to Australian Medical Association standards as a minimum;
- Medical staff must have at least 3 years post-graduate/registration clinical practice and emergency medicine and must be able to provide assistance in the event of a sexual assault and to conduct a rape kit exam;
- When acting in relation to a sexual assault, medical staff must prepare and provide victims with medical documentation of the findings of the exam and provide the patient with free and immediate access to contact

local law enforcement, Australian Federal Police, or Embassy or Consulate and contact to a sexual assault counselling program;

- The cruise ship operator must provide a telephone line and internet-accessible computer terminal by which a victim of crime may confidentially access law enforcement, lawyers and information and support services available through a third party advocacy service.

(iii) Victim Privacy

- Masters of the vessel are required to treat all information, especially medical information, confidential and shall not release any such information to cruise line operators or owners or their legal representatives without the prior knowledge and written approval of the patient, or patient's next-of-kin. Exceptions to this confidentiality include:
 - information, other than medical findings, to be included in a centralised crime log;
 - information to ensure the safety of passengers or crew on board the vessel
 - any information to law enforcement officials performing official duties in the course of investigation

(iv) Record Keeping

- All vessels are required to keep a centralised log book of all complaints of crimes and make a log book available upon the request to any agent of the Australian Federal Police, Coast Guard, and law enforcement official performing official duties in the course of investigation.

(v) Reporting

- Cruise ship operators must contact the nearest Australian Federal Police office or relevant State Police no more than two hours after the occurrence or report of specified crimes having being committed;
- Cruise ship operators must file a report of the incident on an Internet based portal maintained by the Australian Federal Police;
- The crime must be reported irrespective of the location of the vessel at the time the incident occurred if:

- the vessel is owned in whole or in part, by an Australian person/corporation, regardless of the nationality of the victim;
- the offence is committed by or against an Australian citizen;
- the offence occurs in the Territorial Sea of Australia;
- the offence is committed by or against a Australian citizen on a vessel during a voyage that departed from or will arrive at an Australian port

(vi) Information

- Australian Federal police must maintain a statistical compilation of all incidents on an Internet site that provides numerical accounting of missing persons or alleged crimes;
- Data must be updated no less than quarterly and each crime shall be identified as to whether the crime was committed by a passenger or crew member;
- Cruise lines embarking or disembarking passengers in Australia must provide an Internet website link to the database on their website.

(vii) Staff training/certification

- Australian Federal Police must issue guidelines, training curricula, and inspection and certification procedures within 6 months of enactment of an Act of Parliament;
- Within 1 year of enactment the Australian Federal Police must develop training standards and curricula for security personnel, crewmembers, and law enforcement officials on the appropriate methods of prevention, detection, evidence preservation, and reporting of criminal activities in international waters;
- Beginning 2 years after these standards being established, no ship is to be permitted to enter an Australian port or carry an Australian citizen as a passenger unless there is at least 1 crewmember on board who is certified as having successfully completed training in prevention, detection, evidence preservation, and reporting of criminal activities.

(viii) Penalties

- Penalties must be properly established and enforced if any legislative requirements are violated by a cruise owner or operator.

(ix) Auditing and Reporting

- An independent, government body is to be established to monitor compliance with these requirements and conduct audits on the compliance by cruise lines.
- Details on continued failures should be made available to the public for their information.

8.3 Additional matters for consideration

- (a) ICV submits that consideration also be given to the following being imposed upon cruise owners and operators:
- (i) A requirement to place independent security personnel or having a rotation of Federal or State police onboard ships to overcome any conflict of interest for employed security;
 - (ii) A requirement for customs checks at embarkation and disembarkation onto ships at ports during a cruise to check for drug detection;
 - (iii) Structural and onboard safety system enhancements such as adequate minimum guard rail heights;
 - (iv) The requirement for camera evidence to be retained for 90days after the completion of the cruise or until it can be reviewed by law enforcement whichever is the greater;
 - (v) A requirement for the monitoring of all camera recording systems by shipboard security personnel in a dedicated watch centre;
 - (vi) A requirement for logs of those personnel assigned to monitor shipboard CCTV systems should be kept on board the ship for at least one year to assist investigation;
 - (vii) Improve methods concerning the discovery, reporting, searching and investigation concerning a missing person or overboard passenger;
 - (viii) Cruise ships be required to improve fire prevention and emergency procedures.

- (ix) Requirement for authorities at embarkation to check for a history of sexual crime convictions; and
- (x) The imposition of a minimum standard for the employment of security staff including stringent background checks.

9. CONCLUSION

The cruise industry is rapidly growing and during the course of this Inquest the number of Australians taking a cruise has almost doubled. As a consequence, Australia will be increasingly seen as an attractive venue for additional cruise operations. Accordingly, Australia can expect to see an increase in crimes committed at sea.

ICV is unable to provide this Court with current and accurate statistics as to the number of crimes that have occurred onboard ships within our jurisdiction as these details are not readily provided by the Cruise Lines. However, ICV submits that it is a reasonable assumption that crime rates will increase proportionately to the growth of the industry.

Dianne Brimble's death occurred at a period when the cruise industry refused to acknowledge that the changing social environment required it to substantially alter its processes and systems to ensure the safety of its passengers. At the time of Dianne Brimble's death, the Australian public had a limited understanding of the drug GHB. Yet, as this Court has heard, GHB was readily available on P&O Cruises Australia's Pacific Sky which, when combined with a rampant alcohol culture, resulted in tragedy.

ICV submits that the Australian Government should take a proactive approach to this increasing issue and implement the necessary laws and regulations as opposed to reacting once more tragedies have occurred.

Attached is a letter from Commissioner for Victims' Rights South Australia, Michael O'Connell, which highlights the importance of victim's rights and the application of these principles to victims of crime aboard cruise ships.

Cruising is a holiday that any Australian should be able to enjoy however, all passengers should be made fully aware of the risks that are associated with cruise ships before boarding. Passengers should also know that in the event of being the victim of a crime there is an independent authority to provide them with the necessary advice or assistance. Similarly, this right should be available to crewmembers when the ship is departing from or returning to an Australian port. All Australians should feel safe in the knowledge that they are protected by the laws of

our land when travelling aboard any ship that embarks or disembarks passengers in Australia.

Dianne Brimble's death brought extreme pain to her family but the impact of the investigation, subsequent inquest, trial and media interest could not be measured. ICV and the Brimble family now seek to have some form of benefit come from this devastating experience by the way of sweeping changes to the cruise industry to ensure no other family is forced to endure the pain and suffering that resulted from Diane Brimble's untimely death.

ATTACHMENTS

1. Report by Mark Gaouette.
2. Cruise Vessel Security and Safety Act of 2010.
3. "Cruise Industry Regulations: What Happens on Vacation Stays on Vacation" (2007)
4. Letter from Commissioner for Victims 'Rights South Australia, Michael O'Connell



Mark Brimble
Sole Director
International Cruise Victims (Australia) Pty Ltd
12 November 2010

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- ¹ *Osman v United Kingdom* (1998) 29 European Human Rights Reported 2452 at [115]; *Keenan v United Kingdom* [2001] ECHR 242 (3 April 2001), within the meaning of the equivalent provision in the *Convention for the Protection of Human Rights and Fundamental Freedoms*.
- ² Human Rights Committee, General Comment No. 6: The right to life (Art 6): 30/04/82, CCPR General Comment No. 6 at [5].
- ³ *Crimes at Sea Act 1998* (NSW), *Crimes at Sea Act 2000* (NT), *Crimes at Sea Act 2001* (Qld), *Crimes at Sea Act 1998* (SA), *Crimes at Sea Act 1999* (Tas), *Crimes at Sea Act 1999* (Vic), *Crimes at Sea Act 2000* (WA).
- ⁴ See generally Schedule 2 Part 2 of the legislation.
- ⁵ *Admiralty Act 1988* (Cth), s5.
- ⁶ *Ibid*, s4(3)(c),(d).
- ⁷ A Mutton, "Choice of Law and the High Seas" *Blunden v Commonwealth* (2004) 26 *Sydney Law Review* 427, 428.
- ⁸ R Myers, "Cruise Industry Regulation: What Happens on Vacation Stays on Vacation" (2007) 21 *A&NZ Mar LJ* at page 110.
- ⁹ *Status of Convention by Country*, International Maritime Organisation, http://www.imo.org/includes/blastDataOnly.asp/data_id%3D16070/status.xls.
- ¹⁰ R Myers, "Cruise Industry Regulation: What Happens on Vacation Stays on Vacation" (2007) 21 *A&NZ Mar LJ* at page 112.
- ¹¹ MJ Wing, "Rethinking the easy way out: Flag of convenience in the post-September 11 era" (2003) 28 *Tulane Maritime law Journal* 173, 175.
- ¹² *Ibid*, 176.
- ¹³ *Ibid*, 177.
- ¹⁴ *Ibid*.
- ¹⁵ Cruise Critic Crime Ship Survey 05/16/05 <http://www.cruisecritic.com/features/articles.cfm?ID=241>
- ¹⁶ "The World Today – Cruise ship crime causes international concern" (2006) ABC Online, <http://www.guaradian.co.uk/crime/article/0,,1992955,00.html>.
- ¹⁷ JA Kinney, *The Slippery Slope of Security in the Cruise Industry: Report prepared for the Hon Chris Shays and the ICCL*, <http://blog/lipcon.com/Cruise%20Ship%20Security.pdf>.
- ¹⁸ R Myers, "Cruise Industry Regulation: What Happens on Vacation Stays on Vacation" (2007) 21 *A&NZ Mar LJ* at page 107.
- ¹⁹ P&O Cruises Australia "Care and assistance for P&O Cruises Australia passengers in times of need", page 1, para 2.
- ²⁰ P&O Cruises Australia "Overview of reforms" page 1, para 4.
- ²¹ *Ibid* at page 2, para 4.
- ²² P&O Cruises Australia "Onboard Safety and Security – Update" page 2.
- ²³ P&O Cruises Australia "Onboard Safety and Security – Update" page 7.
- ²⁴ P&O Cruises Australia "Care and assistance for P&O Cruises Australia passengers in times of need", page 1, para 4.
- ²⁵ *Ibid* at page 5, para 23.
- ²⁶ P&O Cruises Australia "Passenger Care and Assistance Note" page 8.
- ²⁷ *Ibid* at page 10, para 22.
- ²⁸ *Ibid*.
- ²⁹ *Ibid* at page 10, para 23.
- ³⁰ ABC Radio "Transcript of the Prime Minister, the Hon John Howard MP, interview with Madonna King" 7 July 2006, <http://www.pm.gov.au/media/Interview/2006/Interview2013.cfm>
- ³¹ *Commonwealth of Australia Constitution Act 1900* (Cth) s51(xxix).

**IN THE CORONER'S COURT OF NEW SOUTH WALES INQUEST INTO THE DEATH OF
DIANNE BRIMBLE ON THE P&O PACIFIC SKY ON 24 SEPTEMBER 2002**

**SUBMISSIONS OF MARK BRIMBLE AND
INTERNATIONAL CRUISE VICTIMS (AUSTRALIA) PTY LTD**

ATTACHMENT 1

International Cruise Victims Organization – Cdr. Gaouette –
Inquest into the death of Mrs. Dianne Brimble

1. My name is Mark J. Gaouette. I have served as a volunteer on the Board of Directors for the International Cruise Victim's Organization since 2008. I would like to comment on the response of P&O Cruises Australia's steps to strengthen its security program subsequent to the Inquest into the death of Mrs. Dianne Brimble. I would like to first briefly outline my educational, professional security, military and government background, which I believe allows me to comment on these matters:

- I am currently employed by the Department of Homeland Security, Customs and Border Protection a Sr. Security Specialist, Office of Air & Marine.
- Prior to this, I was a Special Agent of the Defense Intelligence Agency as a Force Protection Officer. I am Department of Defense, Level II trained in anti-terrorism.
- I was the former Director of Security for Princess Cruises in Santa Clarita, California from 2003 to 2005.
- The bulk of my federal government career was spent as a Special Agent of the Diplomatic Security Service (DSS) of the U.S. Department of State. I served as a Regional Security Officer (RSO) at five high-threat U.S. Embassies (La Paz, Bolivia, - 2 years, Managua Nicaragua, - 2 years, Moscow Russia, 2 –years Beirut, Lebanon, 1 year, and Sana'a, Yemen - 6 months).
- While a Special Agent of the Diplomatic Security Service, I conducted criminal investigations for the Department of State and presented criminal cases to the Assistant U.S. Attorney in the Central District of California. I have testified before the Federal Magistrate and Federal Grand Juries.
- I served as a Naval Officer on active duty (1982 – 1986) with 42 months of sea duty aboard an aircraft carrier. I was Surface Warfare qualified as an Officer of the Deck (OOD), Assistant Communications Officer, and Ship's Security Officer.
- I was a Reserve Agent of the Naval Criminal Investigative Service with the rank of Commander (O-5) in the U.S. Naval Reserves. I investigated criminal conduct of U.S. Naval Forces throughout the world which included, murder, rape, child molestation, and assault.

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- I have graduated from the U.S. Federal Law Enforcement Academy located at Glynnco, Georgia on two occasions - once with the Naval Criminal Investigative Service (NCIS), and once with the Diplomatic Security Service, (DSS). On both occasions, I completed the Federal Criminal Investigator's Basic Course (16 week program).
- In addition to this, I have completed numerous professional, military, and government security training courses online and through formal schooling.
- I graduated from advanced language programs at the Foreign Service Institute(FSI), U.S. Department of State in Arlington, Virginia, 6 months full-time language training in Spanish (1991) and 1 year full-time language training in Russian (1998- 1999).
- I graduated from the University of California at Los Angeles, (UCLA) with a Bachelor's degree in Political Science, International Relations.
- I hold a California Private Investigator License.
- In March 2010, ABC-CLIO, a division of Greenwood Press/Praeger Publications, published my book, *"Cruising for Trouble, Cruise Ships as soft Targets for Pirates, Terrorists, and Common Criminals."*

2. As the Director of Security for Princess Cruises, I was responsible for the P&O Cruises Brand of Carnival plc in Australia. I reported to the Vice President of Marine Operations, Princess Cruises in Santa Clarita, California. I was involved in bringing Mr. David Dingle to Australia as the Fleet Security Manager, P&O Australia from his previous assignment in the U.K.

3. The death of Mrs. Brimble occurred a year before I was hired by Princess Cruises as their Director of Security. Although I was briefed on the basic tenants of Brimble case, I was never tasked with any major follow-up or investigation. The bulk of my tenure with Princess Cruises was spent in bringing the Princess, P&O Australia and Cunard fleet of cruise ships into alignment with the international mandated security requirements of the ISPS Code and to guide the company through the security requirements of the 2004 Summer Olympics in Athens, Greece. Carnival had chartered their *Queen Mary II* flagship to act as a floating hotel during this event.

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4. During my tenure as Director of Security, our security department innovated many new security programs to protect cruise ships as a result of the terrorist attack on the United States in September, 2001. With an endorsement from Peter Ratcliffe, the former Princess Cruises CEO, we outfitted the entire Princess, P&O Australia and Cunard fleets with the LRAD technology, acoustic hailing devices. This device was credited with saving the Seabourn *Spirit* and all its passengers and crew when it was attacked by pirates in the Gulf of Aden in November, 2005. Through my direction, we designed a shore based/shipboard security data base, hired “port inspectors” and instituted new port security inspections worldwide for all Princess ports of call, created a new ship security personnel qualifications and training program, installed new X-ray and screening technology on all ships, outfitted all ships with quick-closing, bullet resistant hatch doors, as well as movable pier vehicle barriers which are carried by the ships. As a response to complaints of child safety and security incidents during peak vacation periods, we designed and implemented a youth security counselor program. We also hired a new contingent of Canadian Ship Security Officers to augment the British SECOs as well as beginning the practice of hiring Indian ship security personnel to augment the Gurkha security forces already serving on these ships.

5. With the exception of certain elements of the ISPS Code which made mandatory improvements to all cruise ship security programs beginning in July, 2004, e.g., hiring a CSO – Company Security Officer and a Ship Security Officer, conducting shipboard security vulnerability assessments, and setting the MARSEC levels on the ships, most, if not all of the security and safety improvements implemented by Princess and P&O Australia to remedy the conditions and security environment which contributed to the tragic death of Dianne Brimble came after my tenure as security director. The revision to the security model of P&O Cruises Australia were a direct response to the public’s exposure to certain elements of P&O Cruises Australia business model which were made known in the wake of the Brimble death such sexually oriented advertising, “Schoolie’s cruises,” and shocking behavior by passengers running naked through the ship’s corridors and urinating over the side of the ship.

6. A recent article in Cruise Industry News entitled “*Ship Security: Better than Ever*,” FBI maritime program supervisory Special Agent David Spanich of the Miami Field Office suggested that the new Cruise Vessel Security and Safety Act was “simply a rubber stamp on what was already present.”¹

¹ Monty Mathisen, Ship Security: Better Than Ever,” Cruise Industry News Quarterly Magazine: Fall 2010, pg 25

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- a) The International Cruise Victim's Organization (ICV) was instrumental in helping to pass the historic 2009 Cruise Vessel Security and Safety Act (The Kerry Act) and ICV does not believe that the Kerry Act represents simply a rubber stamp of the current cruise line security model as FBI Agent Spanich suggests. Such views by senior U.S. law enforcement personnel diminish the significance and the need for the Kerry Act and its importance in improving the cruise ship security environment.
- b) Most of the needed reforms in the Kerry Act include new mandatory reporting requirements of crimes committed on cruise ships to the FBI, which were only voluntarily submitted by them under the cruise industry's "Zero Tolerance" policy. Thus, the cruise lines had the ability to cherry pick which crimes it volunteered to report. As pointed out earlier, the ISPS Code, implemented in July 2004 helped strengthen cruise ships against the possibility of attacks by pirates and terrorists but did little, if anything, to improve the internal policies and regulations of cruise ships in relation to crime prevention, victim response and shipboard criminal investigations.
- c) ICV commends P&O Cruises Australia and its statement that the Kerry Act "may provide a model for any legislation that may be introduced to apply to ships calling in and out of Australian ports."² Such an endorsement is a "way forward" in providing a measured level of security for not only cruise ships calling on American ports of call, but also Australian ports. ICV also sees this legislation as being a model to be recognized by international agreement throughout the world. ICV asks for P&O Cruise's partnership in making the Kerry Act, or something similar to it, the law in Australia and throughout the world.

7. In paragraph 22 of the Overview of Reforms, P&O Cruises Australia states that "The Carnival Group is in the process of ensuring that all Carnival brands, including P&O Cruises Australia, effectively comply with the substantive requirements of the legislation (Kerry Act), even though ships that do not call in and out of US ports are not obliged to do so."³ ICV would like to ask:

- a) What are the "substantive requirements" of the (Kerry) Act that P&O Cruises Australia intends to comply with?

² P&O Cruises Australia – Overview of reforms, Inquest into the death of Mrs. Brimble, pg 10

³ Ibid, pg 10

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- b) What aspects of the Act if any, does P&O Cruises Australia see it not being able to comply with?
- c) What aspects of the Kerry Act legislation would not be applicable in Australia?
- d) What recommendations would P&O Cruises Australia make to remedy the parts of the Act they do not see enforceable in Australia?

8. On page 2 of the Onboard Safety and Security – Update, the issue of Reporting and Investigating Suspected crime at sea is addressed. In it, P&O Cruises Australia states that it is their previous practice to report all suspected serious criminal conduct to: State Police, depending on where the ship is based; the Australian Federal Police if the suspected criminal activity contravenes federal law (for example, the importation of illegal drugs); the local police at the ship's next port of call; and the home police of the alleged victim.⁴ In response to the confusion that these requirements created, P&O Cruises Australia has crafted partnerships and reporting protocols with the law enforcement bodies of Australia (Australian National Protocols), and the Pacific Islands (PICP Protocols). ICV endorses and agrees to the standard of beginning an investigation to an alleged criminal act onboard a ship without waiting to resolve jurisdictional questions. This is as the reforms state, "to ensure that precious time and potential evidence is not lost." ICV endorses and agrees that no jurisdictional vacuum should exist when it comes to reporting and investigating crimes at sea. The Protocols that P&O Cruises Australia has enacted should apply to all passengers regardless of their country of citizenship. ICV would like to ensure that crimes involving citizens of other countries that are investigated by Australian law enforcement be reported to the Flag States of that country for statistical purposes. The established protocols stipulated by P&O Cruises Australia require that security officers make their first reports to the corporate office instead of directly to the recognized local, state or national law enforcement authority when suspected evidence of a crime occurs on one of their ships. It is unclear if cruise ship security officers can report crime directly to the law enforcement agencies described in the protocols above.

- a) Is simultaneous reporting directly to law enforcement agencies stipulated in the reporting requirements on their cruise ships in the current Protocols. Direct reporting of criminal activity on cruise ships to law enforcement agencies via the Captain/Master of the vessel with info to the corporate office will ensure prompt

⁴ P&O Cruises Australia "Onboard Safety and Security – Update," pg 2

mobilization of investigative resources and provide for transparency in the reporting of crime at sea.

9. In the absence of any international standard, ICV sees P&O Cruises Australia efforts to improve crime scene investigation as a potential model for the cruise lines. In paragraph 22 of the Onboard Safety and Security - Update, P&O Cruises Australia states the newly adopted Crime Manual that replaced the Investigation Handbook, represents an international “best practice” for responding to ship board crime. The Update states that the Manual was prepared by the UK’s Association of Chief Police Officers and Hampshire Constabulary, in consultation with Carnival plc, the Ministry of Defence Police, Maritime and Coastguard Agency and the Red Ensign Group. The explanations included in the Crime Manual “sets out a detailed protocol for the management of a crime scene onboard (at p39); provides specific details on what to do in the event of a sudden death (at p106); includes links to the International Maritime Organization’s general security guidelines (at p105); provides a detailed explanation as to why physical evidence is critical, and how its collection and custody affects its probative value in Court (at p33); and sets out the rationale for policies and procedures (at p10).”⁵ Efforts should continue to ensure that those responsible for conducting crime scene investigations on cruise ships be provided with the most recent, and accepted law enforcement methods and practices for responding to crime.

10. Despite these efforts however, the need to explain in detail, the importance of basic crime scene investigation dramatizes the need for an international standard for cruise ship security officers and does not remedy the fact that all cruise ship security officers and security personnel, despite their law enforcement or military backgrounds, are employees of the cruise lines and not law enforcement officers. Unlike an airline jet, cruise ships are public conveyances of transportation that also serve as hotel, restaurant, playground, shopping mall and recreational park to the sea-going public. In essence, they are floating cities at sea, albeit without a police force. Crime scene investigation is only one aspect of the hired security personnel duties on a cruise ship. The cruise ship security department hires employees to conduct among other functions, screening passengers and crew for illegal contraband, access control, barroom bouncer and other related security duties are these crew members basic job description. The urgency of prompt and immediate response to a crime scene requires qualified and trained security personnel who do not require “On-The Job-Training,” who might find it necessary to stop and

⁵ P&O Cruises Australia “Onboard Safety and Security – Update,” pg 6, paragraph 23

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consult a reference book to ensure that rules of evidence, the collection of evidence, the search and questioning of suspects, recording of witness statements, etc., all comply with legal standards, be they local, state, national or international. Because cruise ship security personnel must act in a proxy capacity for law enforcement officers, it is crucial that all ship security personnel, be trained and certified by a National recognized law enforcement agency authority prior to commencing duties. It is unclear from the reference whether the U.K. Department of Transport conducts criminal investigation training for ship security officers. However, for purposes of criminal investigative training and certification, a more appropriate authority might be an internationally recognized investigative agency such as Scotland Yard, Interpol or the FBI. The Ship Security Officer should also pass competency tests and oral examination in crime scene investigation that comply with the standards being adopted by that Flag State's ship, in this case the U.K. Crime Manual adopted for use by P&O Cruises Australia.

11. Regarding the Recruitment of Security Personnel, P&O Cruises Australia states that it continues to regard prior law enforcement and/or military experience as a prerequisite for new security officers. Such a standard is valid in the absence of any international standard for shipboard security officers or security personnel. Nothing can be more important to the safety of passengers and crew aboard a cruise ship than the demonstrated professionalism of its security staff. The same holds true for any guard operation or police force. The ability to react with decisiveness and with jurisdictional authority must be combined with professionally trained personnel using modern resources and training methods focused on the criminal threats and emerging security threats. From this comes real crime prevention for the company, city or town, organization or agency who hired the private security. With respect to cruise ships, both the cause and effect of many of the cruise ship security problems and related safety issues stem from the fact that security officers on cruise ships are paid employees of the cruise lines and not an independent law enforcement agency with authority to act officially in any meaningful capacity when an alleged crime has been committed or the victim's of alleged crimes make accusations against the cruise line, other passengers or crew members.

Security personnel, like most security personnel employed by companies or government agencies are not looked on with the highest regard in terms of a professional career path. In some case that is obviously true. When someone does not fit in or is unskilled in other technical areas, a security guard is an obvious fit. In more extreme circumstances, misfits, disgruntled personnel or individuals who washed out of more traditional police training programs end up as security guards or even as security

supervisors. Guard companies throughout the world traditionally recruit from the lowest rungs on the resource job pool. Even then, these security guard companies would admit that recruiting and retaining individuals who meet the *minimum* qualifications is often difficult. Security personnel must be entrusted with great responsibility so even basic screening requirements in most of the fifty states require a criminal record backgrounds check and no convictions for a felony before a guard card certification can be issued. State professional boards such as the California Bureau of Security and Investigative Services (BSIS) regulate every aspect of the guards training, certification and recertification in the State of California which includes certifying each piece of equipment that the guard is trained on and required to carry in the performance of his or her duties including firearms. Security guard jobs are entry level positions for most job seekers or the end of the line for many who find employment as a guard after their otherwise colorful and prosperous careers spent in other fields. Thus the motivations for becoming a security guard may be desperation (for a paying job); lack of skills set which would preclude the individual to find a higher paying career field, or the ability of the individual to find employment well beyond his or her prime earning years. These are the harsh realities when speaking strictly about security guards and where they come from.

Security personnel who work on a cruise ship fit some but not all of these descriptions and situations. Certainly, almost exclusively, they all come from foreign countries where the prospect of working on a modern cruise ship is a dream comes true for most. Certainly true is the fact that they must “pass” some sort of background investigation conducted by numerous third party hiring agencies and submitted along with hundreds of other candidates for cruise ship positions. In truth, most candidates for shipboard security contracts do not necessarily start out as recruits for security positions. The hiring agencies do a robust business clearing individuals for shipboard duty. Some of the lower skilled recruits end up in deck billets that perform general maintenance on the ship’s hulls and structures, and upkeep on the ship’s pools, weather decks, or as general laborers which help load and unload baggage. Some are recruited in this general entry level category are destined for the hotel department as housekeepers, restaurant workers, and ship’s laundry. Other more skilled recruits are placed in positions as enginemen in the ship’s propulsion plant. Generally, security positions are placed at the lowest rung of the hiring ladder and are not recruited for anything other than physical stature and ability to perform repetitive job functions. With these notions in mind,

- a) P&O Cruises Australia should continue with this practice and recruit from the ranks of the military with previous experience in military law enforcement

versus a rating that may have only a supply clerk's background or cook's experience.

- b) Former law enforcement personnel such as police or detectives should be given priority in the hiring process when possible.
- c) Shipboard security ratings should also have a modicum of security or military background such as P&O Cruises Australia's hiring of security personnel with experience as security officers working nightclub or bars, in addition to holding an equivalent NSW Security License.
- d) It was not stipulated as to the reasons why off-duty members of the NSW police or other states no longer undertake any onboard security functions (Onboard Safety and Security – Update pg 7, paragraph 28,) ICV would like to know why off-duty policemen are no longer used as security or augment/supplement the security staff on P&O Cruises Australia fleet of cruise ships?

12. ICV would like to see the expanded use of national or local police on cruise ships to act as “independent” monitors representing an immediate law enforcement presence. Anytime crime occurs, whether it is on land or at sea requires those with law real enforcement authority to be the recognized first responders. This idea was first presented to the California Legislature in 2008 by state Senator Joe Simitian under the “Ocean Ranger” initiative. “On board security works for the cruise line -- not for the passengers and not for the public,” Simitian said in support of the Bill. “There's an inherent conflict of interest between the public relations goals of the employer and the public safety requirements of the passenger.”⁶ ICV aggress with the position that cruise ship security personnel, despite their training and initiative in protecting cruise ship passengers and crew members are inherently biased in their orientation towards protecting the cruise ship and cruise line interest first, over the interests of its passengers and crew. Simitian went on to say that “We've got air marshals on planes with a couple hundred passengers, but we've got no one on board the cruise ships with 10 times the number of passengers.”⁷ A comprehensive program to place law enforcement officers on cruise ships ultimately will ensure that passengers and crew members are guaranteed professional law enforcement coverage when criminal activity occurs. It guarantees an impartial “first responder” that is capable of stabilizing a criminal situation to protect life and limb, collect evidence,

⁶ “Bill Would Require Peace Officers On Cruise Ships,” ETurboNews, February 23, 2008, <http://www.eturbonews.com/1411/bill-would-require-peace-officers-cruise-ship>

⁷ Ibid

interview witnesses and organizes investigative responses with his or her parent law enforcement agency. Such a presence undoes the complicated and sometimes confusing atmosphere for victims of crime when attempting to organize a civil or criminal legal suit against their alleged assailants, or the cruise line itself. Cruise lines have the inherent position to protect their standing in a civil or criminal case for obvious reasons. But that should not stand in the way of a competent, professional and transparent investigation on behalf of the victims, especially when the victim may be an employee of the cruise line. While P&O Cruises Australia has presented impressive protocols for their security personnel to respond and investigate alleged criminal activity, shipboard security personnel have no greater law enforcement personnel than a private citizen, much like a private security guard who is hired by a facility, store or building to protect property on behalf of the owner. Arrests made by these private security guards, when they are made at all, are made as private citizens even if the security guard is and off-duty policeman or federal agent working in the capacity of a private security guard. Cruise ship security personnel who conduct criminal investigations become liable in terms of legal action against that security officer for any incorrect action they make in their investigative response.

13. Regarding P&O Cruises Australia's efforts to upgrade and improve its technology in crime prevention efforts on its ships, ICV commends the increased use of CCTV and recording systems to monitor the activities on a large cruise ship. These systems provide a potential wealth of evidence and documentary record of any criminal event and have implications for the cruise ship outside of crime prevention. These include documenting injury cases, monitoring areas of the ship for fire or flooding, access control, and preventing acts of sabotage or terrorism. In reality, the use of CCTV to prevent crime or to prevent accidents is at best, unreliable even when it is used robustly based on the latest study from one of the most prolific users of CCTV, the United Kingdom. In a shocking revelation in 2008, British police stated that despite the massive investment of CCTV's throughout Great Britain and particularly in London, British police were only able to solve 3 percent of street crimes with the technology.⁸

⁸ Massive investment in CCTV cameras to prevent crime in the UK has failed to have a significant impact, despite billions of pounds spent on the new technology, a senior police officer piloting a new database has warned. Only 3% of street robberies in London were solved using CCTV images, despite the fact that Britain has more security cameras than any other country in Europe. Use of CCTV images for court evidence has also thus far, been very poor, according to Detective Chief Inspector Mick Neville, the officer in charge of the Metropolitan police unit. "CCTV was originally seen as a preventative measure," Neville told the Security Document World Conference in London. "Billions of pounds have been spent on kit, but no thought has gone into how the police are going to use the images and how they will be used in court. It's been an utter fiasco: only 3% of crimes were solved by CCTV. There's no fear of CCTV. Why don't people fear it? [They think] the cameras are not working." Source: Owen Bowcott, "CCTV boom has failed to slash crime, say police," The Guardian, May 6, 2008, <http://www.guardian.co.uk/uk/2008/may/06/ukcrime1>

While it is understood that the cost to implement CCTV systems and 300 – 600 cameras on a ship is no small investment to the cruise lines, the cost is small compared to those systems preventing criminal activity or an accident or tragedy (e.g., man overboard). The mention of the extensive implementation of CCTV cameras on the P&O Cruises Australia's fleet of cruise ships is impressive. However, it has been the unfortunate experience on the majority of cruise ships that requests to review CCTV recordings by counsel for victims after an alleged incident has taken place, have been refused, or the cruise lines have denied the existence of any recording that could support the victim's claim and or exonerate the suspect. With such extensive use of CCTV cameras through the P&O Cruises Australia's fleet of ships, it seems logical that most if not all areas of the ship, such as crew quarters, passenger areas, public areas, boutiques, bars, restaurants, machinery spaces and access control points are covered by some form of CCTV surveillance. P&O Cruises Australia however has not provided a purpose as to what role their CCTV systems play. For example, are CCTV systems installed for surveillance purposes of crew, passengers, for crime prevention, to protect company assets, to document vital safety and security functions?

- a) P&O Cruises Australia should provide a more detailed mission statement of the role and purpose of CCTV cameras and recording systems on their fleet of ships and to the extent that they "assist security personnel to investigate complaints."
- b) What use can a passenger or crew member be to review the ship's CCTV systems in the event they become the victim of an alleged crime or serious accident on the ship? When the victim of an alleged crime that has occurred on a cruise ship, or the victim's family or counsel for the victim believes that there is documentary footage of the victim contained on the ship's CCTV recording system, that passenger (or crew member), must have the right to request in writing through the ship's Captain, that potential CCTV evidence be retained until it can be reviewed by a law enforcement official who would normally have jurisdiction in that case or the counsel for the alleged victim or suspect. A similar right should be extended to passengers and crew when they have been seriously injured on the ship.
- c) In the reference to CCTV cameras in section 2.10, Onboard Safety and Security – Update, pg 12, paragraph 56, P&O Cruises Australia makes mention of its ongoing efforts to gauge the effectiveness of its security operations and particularly, its use of CCTV. It says that subsequent to an analysis conducted in 2007 of the use of CCTV on the Pacific Sun, additional cameras were added to enhance CCTV coverage. ICV would like to see the

results of that analysis or be provided a detailed summary of the analysis which led P&O Cruises Australia to that conclusion.

13. While the Kerry Act legislation makes the possibility of new technology to detect man-overboard incidents, the current CCTV systems if used more robustly have the capability to save a passenger or crewmembers life. All too often evidence of a tragedy at sea is recorded only to be replayed hours or days after an event. The death on Daniel Dipiero in May 2005 is a case in point. Cameras on the Royal Caribbean Cruise Lines *Mariner of the Seas* captured the last moments of the young man as he hung over the ship's railing to vomit after consuming excessive alcohol. Had a ship security guard been monitoring the ship's railing live on CCTV, there might have been a good chance that a security guard or other ship's personnel could have physically responded to the scene of the tragedy and prevented the young man from falling overboard. As it turned out, only when his traveling companions could not locate their friend did they alert security personnel who reviewed the CCTV recording nine hours after the point where he fell into the sea. More shocking was the claim by the family of Daniel Dipiero that by the time the family was allowed to view the CCTV recording of the tragic event, it appeared to have been edited. Regarding CCTV systems on P&O Cruises Australia fleet of ships, if not already the practice,

- a) All ship's with these systems be monitored (and recorded) by shipboard security personnel in a dedicated watch center. The number of security watch standers to accomplish this should be proportionate to the number of cameras on the ship. 300- 600 CCTV cameras may appear to be a large amount of screens to monitor, however areas of the ship normally not accessed by crew or passengers during at sea (e.g. gangways and baggage holds) or in port can record but not be required to be monitored live by ship security personnel.
- b) Monitoring should include areas of the ship where passengers have the potential for being injured, (e.g., ship's railings), around casinos, bars and discos, and youth centers.
- c) Logs of those personnel assigned to monitoring shipboard CCTV systems should be kept on board the ship for at least one year to assist investigators.

14. Regarding the issue of the retrieval and storage of CCTV recordings, if not already the practice, that:

- a) Any recording on a particular ship where an alleged crime has been committed or serious injury accident has occurred and the possibility that evidence is contained on a CCTV DVR system exists; these recording must be retained in excess of 14 days as is currently the norm. That storage should be accomplished by extending the maximum recording capability for that CCTV recording system or downloaded to and archived.
- b) ICV Would like to be provided with information concerning what type of CCTV recording systems are available on P&O Cruises fleet of cruise ships e.g., Bosch DVR, etc., and the maximum recording capabilities of those CCTV recording systems e.g., 30-60-90 days or more?
- c) A law enforcement investigator must be the authority to decide what photographic evidence in a criminal investigation is. The investigator may develop other investigative leads to establish whereabouts of the victim or a suspect at a certain time on the ship which the ship security officer has not figured in to his investigation. Thus, an investigator must have the ability to review all CCTV DRV recordings available on the ship in addition to the one which the cruise lines say contains evidence of a crime. A law enforcement official must be able to examine the CCTV recording(s) in their original state, on the ship in their original form in addition to any archived disc.
- d) A law enforcement investigator must be given a detailed list of the number and locations of all CCTV cameras on board ship to help determine if all aspects of an alleged crime or incident have been reviewed for evidentiary content. ICV would also like to be provided with the list.
- e) Rules of evidence should apply when retrieving CCTV footage and the retrieval by ship security ratings. Retrieval should follow a more detailed set of procedures than currently done. On page 13, Onboard Safety and Security – Update, the procedure outlined delegates this responsibility to a security rating and that this retrieval practice is relatively simple. The ship security officer should supervise the retrieval process and be available to testify to this fact later on. Ideally, the security rating should be the same watch-stander (person) who was on duty at the alleged time of the incident.

15. Regarding onboard security audits, (Onboard Safety and Security – Update, ICV recognizes the international role of the Flag States in conducting security assessments in accordance with the provisions of the ISPS Code. While these audits are useful to ensure compliance with the provisions of the ISPS Code, especially with regards to preventing terrorism, illegal contraband, stowaways, of pirate attacks, it does little to provide for a crime prevention program on board the ship.

- a) ICV endorses the use of independent audit teams such as the Carnival plc audit team. Results of the audit should be used to refine any shortcomings in the crime response by ship's personnel and,
- b) Be made available to criminal investigators to determine if those audits revealed any deficiencies which may have attributed or compounded any criminal or negligent circumstances on the cruise ship.
- c) Audits should contain a detailed review of crew member incidents and disciplinary actions and the cause for any removal of a crew member from their duties on a cruise ship.
- d) As is contained in the Kerry legislation, the ship must make available to investigators, a ship's log (electronic or written) which contains a chronological entry for all reported crimes, suspicious incidents, injuries, and unattended deaths, mysterious deaths and missing persons, whether they relate to events or incidents involving crew members or passengers. These records are to remain permanent archives of the ship.

16. ICV commends P&O Cruises Australia effort in the responsible Serving of Alcohol. Nothing is more central to shipboard activities than the prevalent abundance of alcoholic beverages on cruise ships. In general, there is no difference between a cruise ship severing spirits to its guests than it is for any other vacation resort, bar or casino. The difference is that unlike most land based resorts, serving alcohol which are subject to curfew and laws restricting the sale of alcohol to minors (specifically in the United States), cruise ships operating on the high seas in international waters are free to set their own policies regarding the hours it may sell alcohol, and the age restrictions it chooses to enforce. As emphasized in the opening chapter, with regards to cruise ships, it unfortunately makes a difference to the cruise ship passenger on what cruise line, what cruise ship, and what itinerary the passenger is embarked on in calculating the potential for alcohol related incidents. The over-indulgence of alcoholic beverages by cruise ship passengers on a carefree holiday has led on more than one occasion to safety related accidents onboard ship, physical and sexual assaults, and even the unfortunate death of

passengers who have fallen over the ship's railing while becoming sick after consuming too much alcohol. While most adult passenger are responsible enough to control their drinking activities as they would in any other social setting, many other passengers, including juvenile underage drinkers are the most vulnerable to the party-like environment of a cruise ship where alcohol is virtually available, 24 hours a day. The duties of the RSA Supervisor which have been outlined on page 14, paragraph 63, Onboard Safety and Security – Update, represent a reasonable concerted effort to ensure that the serving of alcohol on P&O cruise ships does not interfere with the safety of a passenger or passengers while embarked on the cruise ship. ICV would like to see similar monitoring of crew members and ensure that crew members who violate alcohol policies regarding the serving of alcohol to minors, or other unauthorized persons are reported to the ship security officer, RSA supervisor and Captain, for disciplinary action.

- a) Promotions on the ship, such as “happy hours,” themed drinks and “two for one specials,” which encourage the consumption of alcohol, should be eliminated. Passengers understand they have the capability to purchase drinks but those choices should not be the central theme for any ship board event or activity.
- b) Finally, a robust program to tack and spot underage drinkers should continue such as the use of colored wristbands or the Fidelio system used as a tool to prevent the purchasing of alcohol onboard P&O Cruises Australia's ship.

17. Under the Care and Assistance for P&O Cruises Australia passengers in times of need, page 8, paragraph 42, it states that “If a death were now to occur onboard one of P&O Cruises Australia's ships, P&O Cruises Australia would provide compassionate care and practical support to that passenger's family and traveling companions in accordance with its CARE program.” When death occurs on a cruise ship under suspicious circumstances, as is the case in any death investigation, the body of the deceased is considered the “best evidence.” Many criminal investigations have been solved through the evidence collected from not only the crime scene, but the body itself. While P&O Cruises Australia's CARE program is a model to be welcomed throughout the industry, it does not address the importance of criminal acts where death occurs. In regards to the death of a passenger or crew member under suspicious circumstances, clear protocols should be in place to ensure that the body of the victim/deceased is preserved until qualified medical coroners can examine the body; this includes preventing efforts to embalm the body before returning it to a different international location or to family members.

**IN THE CORONER'S COURT OF NEW SOUTH WALES INQUEST INTO THE DEATH OF
DIANNE BRIMBLE ON THE P&O PACIFIC SKY ON 24 SEPTEMBER 2002**

**SUBMISSIONS OF MARK BRIMBLE AND
INTERNATIONAL CRUISE VICTIMS (AUSTRALIA) PTY LTD**

ATTACHMENT 2

One Hundred Eleventh Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday,
the fifth day of January, two thousand and ten*

An Act

To amend title 46, United States Code, to establish requirements to ensure the security and safety of passengers and crew on cruise vessels, and for other purposes.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Cruise Vessel Security and Safety Act of 2010”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Cruise vessel security and safety requirements.
- Sec. 4. Offset of administrative costs.
- Sec. 5. Budgetary effects.

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) There are approximately 200 overnight ocean-going cruise vessels worldwide. The average ocean-going cruise vessel carries 2,000 passengers with a crew of 950 people.

(2) In 2007 alone, approximately 12,000,000 passengers were projected to take a cruise worldwide.

(3) Passengers on cruise vessels have an inadequate appreciation of their potential vulnerability to crime while on ocean voyages, and those who may be victimized lack the information they need to understand their legal rights or to know whom to contact for help in the immediate aftermath of the crime.

(4) Sexual violence, the disappearance of passengers from vessels on the high seas, and other serious crimes have occurred during luxury cruises.

(5) Over the last 5 years, sexual assault and physical assaults on cruise vessels were the leading crimes investigated by the Federal Bureau of Investigation with regard to cruise vessel incidents.

(6) These crimes at sea can involve attacks both by passengers and crewmembers on other passengers and crewmembers.

(7) Except for United States flagged vessels, or foreign flagged vessels operating in an area subject to the direct jurisdiction of the United States, there are no Federal statutes or regulations that explicitly require cruise lines to report alleged crimes to United States Government officials.

(8) It is not known precisely how often crimes occur on cruise vessels or exactly how many people have disappeared

during ocean voyages because cruise line companies do not make comprehensive, crime-related data readily available to the public.

(9) Obtaining reliable crime-related cruise data from governmental sources can be difficult, because multiple countries may be involved when a crime occurs on the high seas, including the flag country for the vessel, the country of citizenship of particular passengers, and any countries having special or maritime jurisdiction.

(10) It can be difficult for professional crime investigators to immediately secure an alleged crime scene on a cruise vessel, recover evidence of an onboard offense, and identify or interview potential witnesses to the alleged crime.

(11) Most cruise vessels that operate into and out of United States ports are registered under the laws of another country, and investigations and prosecutions of crimes against passengers and crewmembers may involve the laws and authorities of multiple nations.

(12) The Department of Homeland Security has found it necessary to establish 500-yard security zones around cruise vessels to limit the risk of terrorist attack. Recently piracy has dramatically increased throughout the world.

(13) To enhance the safety of cruise passengers, the owners of cruise vessels could upgrade, modernize, and retrofit the safety and security infrastructure on such vessels by installing peep holes in passenger room doors, installing security video cameras in targeted areas, limiting access to passenger rooms to select staff during specific times, and installing acoustic hailing and warning devices capable of communicating over distances.

SEC. 3. CRUISE VESSEL SECURITY AND SAFETY REQUIREMENTS.

(a) IN GENERAL.—Chapter 35 of title 46, United States Code, is amended by adding at the end the following:

“§ 3507. Passenger vessel security and safety requirements

“(a) VESSEL DESIGN, EQUIPMENT, CONSTRUCTION, AND RETROFITTING REQUIREMENTS.—

“(1) IN GENERAL.—Each vessel to which this subsection applies shall comply with the following design and construction standards:

“(A) The vessel shall be equipped with ship rails that are located not less than 42 inches above the cabin deck.

“(B) Each passenger stateroom and crew cabin shall be equipped with entry doors that include peep holes or other means of visual identification.

“(C) For any vessel the keel of which is laid after the date of enactment of the Cruise Vessel Security and Safety Act of 2010, each passenger stateroom and crew cabin shall be equipped with—

“(i) security latches; and

“(ii) time-sensitive key technology.

“(D) The vessel shall integrate technology that can be used for capturing images of passengers or detecting passengers who have fallen overboard, to the extent that such technology is available.

“(E) The vessel shall be equipped with a sufficient number of operable acoustic hailing or other such warning devices to provide communication capability around the entire vessel when operating in high risk areas (as defined by the United States Coast Guard).

“(2) FIRE SAFETY CODES.—In administering the requirements of paragraph (1)(C), the Secretary shall take into consideration fire safety and other applicable emergency requirements established by the U. S. Coast Guard and under international law, as appropriate.

“(3) EFFECTIVE DATE.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the requirements of paragraph (1) shall take effect 18 months after the date of enactment of the Cruise Vessel Security and Safety Act of 2010.

“(B) LATCH AND KEY REQUIREMENTS.—The requirements of paragraph (1)(C) take effect on the date of enactment of the Cruise Vessel Security and Safety Act of 2010.

“(b) VIDEO RECORDING.—

“(1) REQUIREMENT TO MAINTAIN SURVEILLANCE.—The owner of a vessel to which this section applies shall maintain a video surveillance system to assist in documenting crimes on the vessel and in providing evidence for the prosecution of such crimes, as determined by the Secretary.

“(2) ACCESS TO VIDEO RECORDS.—The owner of a vessel to which this section applies shall provide to any law enforcement official performing official duties in the course and scope of an investigation, upon request, a copy of all records of video surveillance that the official believes may provide evidence of a crime reported to law enforcement officials.

“(c) SAFETY INFORMATION.—

“(1) CRIMINAL ACTIVITY PREVENTION AND RESPONSE GUIDE.—The owner of a vessel to which this section applies (or the owner's designee) shall—

“(A) have available for each passenger a guide (referred to in this subsection as the ‘security guide’), written in commonly understood English, which—

“(i) provides a description of medical and security personnel designated on board to prevent and respond to criminal and medical situations with 24 hour contact instructions;

“(ii) describes the jurisdictional authority applicable, and the law enforcement processes available, with respect to the reporting of homicide, suspicious death, a missing United States national, kidnapping, assault with serious bodily injury, any offense to which section 2241, 2242, 2243, or 2244(a) or (c) of title 18 applies, firing or tampering with the vessel, or theft of money or property in excess of \$10,000, together with contact information for the appropriate law enforcement authorities for missing persons or reportable crimes which arise—

“(I) in the territorial waters of the United States;

“(II) on the high seas; or

“(III) in any country to be visited on the voyage;

“(B) provide a copy of the security guide to the Federal Bureau of Investigation for comment; and

“(C) publicize the security guide on the website of the vessel owner.

“(2) EMBASSY AND CONSULATE LOCATIONS.—The owner of a vessel to which this section applies shall provide in each passenger stateroom, and post in a location readily accessible to all crew and in other places specified by the Secretary, information regarding the locations of the United States embassy and each consulate of the United States for each country the vessel will visit during the course of the voyage.

“(d) SEXUAL ASSAULT.—The owner of a vessel to which this section applies shall—

“(1) maintain on the vessel adequate, in-date supplies of anti-retroviral medications and other medications designed to prevent sexually transmitted diseases after a sexual assault;

“(2) maintain on the vessel equipment and materials for performing a medical examination in sexual assault cases to evaluate the patient for trauma, provide medical care, and preserve relevant medical evidence;

“(3) make available on the vessel at all times medical staff who have undergone a credentialing process to verify that he or she—

“(A) possesses a current physician's or registered nurse's license and—

“(i) has at least 3 years of post-graduate or post-registration clinical practice in general and emergency medicine; or

“(ii) holds board certification in emergency medicine, family practice medicine, or internal medicine;

“(B) is able to provide assistance in the event of an alleged sexual assault, has received training in conducting forensic sexual assault examination, and is able to promptly perform such an examination upon request and provide proper medical treatment of a victim, including administration of anti-retroviral medications and other medications that may prevent the transmission of human immunodeficiency virus and other sexually transmitted diseases; and

“(C) meets guidelines established by the American College of Emergency Physicians relating to the treatment and care of victims of sexual assault;

“(4) prepare, provide to the patient, and maintain written documentation of the findings of such examination that is signed by the patient; and

“(5) provide the patient free and immediate access to—

“(A) contact information for local law enforcement, the Federal Bureau of Investigation, the United States Coast Guard, the nearest United States consulate or embassy, and the National Sexual Assault Hotline program or other third party victim advocacy hotline service; and

“(B) a private telephone line and Internet-accessible computer terminal by which the individual may confidentially access law enforcement officials, an attorney, and the information and support services available through the National Sexual Assault Hotline program or other third party victim advocacy hotline service.

“(e) CONFIDENTIALITY OF SEXUAL ASSAULT EXAMINATION AND SUPPORT INFORMATION.—The master or other individual in charge of a vessel to which this section applies shall—

“(1) treat all information concerning an examination under subsection (d) confidential, so that no medical information may be released to the cruise line or other owner of the vessel or any legal representative thereof without the prior knowledge and approval in writing of the patient, or, if the patient is unable to provide written authorization, the patient's next-of-kin, except that nothing in this paragraph prohibits the release of—

“(A) information, other than medical findings, necessary for the owner or master of the vessel to comply with the provisions of subsection (g) or other applicable incident reporting laws;

“(B) information to secure the safety of passengers or crew on board the vessel; or

“(C) any information to law enforcement officials performing official duties in the course and scope of an investigation; and

“(2) treat any information derived from, or obtained in connection with, post-assault counseling or other supportive services confidential, so no such information may be released to the cruise line or any legal representative thereof without the prior knowledge and approval in writing of the patient, or, if the patient is unable to provide written authorization, the patient's next-of-kin.

“(f) CREW ACCESS TO PASSENGER STATEROOMS.—The owner of a vessel to which this section applies shall—

“(1) establish and implement procedures and restrictions concerning—

“(A) which crewmembers have access to passenger staterooms; and

“(B) the periods during which they have that access; and

“(2) ensure that the procedures and restrictions are fully and properly implemented and periodically reviewed.

“(g) LOG BOOK AND REPORTING REQUIREMENTS.—

“(1) IN GENERAL.—The owner of a vessel to which this section applies shall—

“(A) record in a log book, either electronically or otherwise, in a centralized location readily accessible to law enforcement personnel, a report on—

“(i) all complaints of crimes described in paragraph (3)(A)(i),

“(ii) all complaints of theft of property valued in excess of \$1,000, and

“(iii) all complaints of other crimes, committed on any voyage that embarks or disembarks passengers in the United States; and

“(B) make such log book available upon request to any agent of the Federal Bureau of Investigation, any member of the United States Coast Guard, and any law enforcement officer performing official duties in the course and scope of an investigation.

“(2) DETAILS REQUIRED.—The information recorded under paragraph (1) shall include, at a minimum—

- “(A) the vessel operator;
- “(B) the name of the cruise line;
- “(C) the flag under which the vessel was operating at the time the reported incident occurred;
- “(D) the age and gender of the victim and the accused assailant;
- “(E) the nature of the alleged crime or complaint, as applicable, including whether the alleged perpetrator was a passenger or a crewmember;
- “(F) the vessel’s position at the time of the incident, if known, or the position of the vessel at the time of the initial report;
- “(G) the time, date, and method of the initial report and the law enforcement authority to which the initial report was made;
- “(H) the time and date the incident occurred, if known;
- “(I) the total number of passengers and the total number of crew members on the voyage; and
- “(J) the case number or other identifier provided by the law enforcement authority to which the initial report was made.

“(3) REQUIREMENT TO REPORT CRIMES AND OTHER INFORMATION.—

“(A) IN GENERAL.—The owner of a vessel to which this section applies (or the owner’s designee)—

“(i) shall contact the nearest Federal Bureau of Investigation Field Office or Legal Attache by telephone as soon as possible after the occurrence on board the vessel of an incident involving homicide, suspicious death, a missing United States national, kidnapping, assault with serious bodily injury, any offense to which section 2241, 2242, 2243, or 2244(a) or (c) of title 18 applies, firing or tampering with the vessel, or theft of money or property in excess of \$10,000 to report the incident;

“(ii) shall furnish a written report of the incident to an Internet based portal maintained by the Secretary;

“(iii) may report any serious incident that does not meet the reporting requirements of clause (i) and that does not require immediate attention by the Federal Bureau of Investigation via the Internet based portal maintained by the Secretary; and

“(iv) may report any other criminal incident involving passengers or crewmembers, or both, to the proper State or local government law enforcement authority.

“(B) INCIDENTS TO WHICH SUBPARAGRAPH (A) APPLIES.—Subparagraph (A) applies to an incident involving criminal activity if—

“(i) the vessel, regardless of registry, is owned, in whole or in part, by a United States person, regardless of the nationality of the victim or perpetrator, and the incident occurs when the vessel is within the admiralty and maritime jurisdiction of the United States and outside the jurisdiction of any State;

“(ii) the incident concerns an offense by or against a United States national committed outside the jurisdiction of any nation;

“(iii) the incident occurs in the Territorial Sea of the United States, regardless of the nationality of the vessel, the victim, or the perpetrator; or

“(iv) the incident concerns a victim or perpetrator who is a United States national on a vessel during a voyage that departed from or will arrive at a United States port.

“(4) AVAILABILITY OF INCIDENT DATA VIA INTERNET.—

“(A) WEBSITE.—The Secretary shall maintain a statistical compilation of all incidents described in paragraph (3)(A)(i) on an Internet site that provides a numerical accounting of the missing persons and alleged crimes recorded in each report filed under paragraph (3)(A)(i) that are no longer under investigation by the Federal Bureau of Investigation. The data shall be updated no less frequently than quarterly, aggregated by cruise line, each cruise line shall be identified by name, and each crime shall be identified as to whether it was committed by a passenger or a crew member.

“(B) ACCESS TO WEBSITE.—Each cruise line taking on or discharging passengers in the United States shall include a link on its Internet website to the website maintained by the Secretary under subparagraph (A).

“(h) ENFORCEMENT.—

“(1) PENALTIES.—

“(A) CIVIL PENALTY.—Any person that violates this section or a regulation under this section shall be liable for a civil penalty of not more than \$25,000 for each day during which the violation continues, except that the maximum penalty for a continuing violation is \$50,000.

“(B) CRIMINAL PENALTY.—Any person that willfully violates this section or a regulation under this section shall be fined not more than \$250,000 or imprisoned not more than 1 year, or both.

“(2) DENIAL OF ENTRY.—The Secretary may deny entry into the United States to a vessel to which this section applies if the owner of the vessel—

“(A) commits an act or omission for which a penalty may be imposed under this subsection; or

“(B) fails to pay a penalty imposed on the owner under this subsection.

“(i) PROCEDURES.—Within 6 months after the date of enactment of the Cruise Vessel Security and Safety Act of 2010, the Secretary shall issue guidelines, training curricula, and inspection and certification procedures necessary to carry out the requirements of this section.

“(j) REGULATIONS.—The Secretary and the Commandant shall each issue such regulations as are necessary to implement this section.

“(k) APPLICATION.—

“(1) IN GENERAL.—This section and section 3508 apply to a passenger vessel (as defined in section 2101(22)) that—

“(A) is authorized to carry at least 250 passengers;

“(B) has onboard sleeping facilities for each passenger;

“(C) is on a voyage that embarks or disembarks passengers in the United States; and

“(D) is not engaged on a coastwise voyage.

“(2) FEDERAL AND STATE VESSELS.—This section and section 3508 do not apply to a vessel of the United States operated by the Federal Government or a vessel owned and operated by a State.

“(1) DEFINITIONS.—In this section and section 3508:

“(1) COMMANDANT.—The term ‘Commandant’ means the Commandant of the Coast Guard.

“(2) OWNER.—The term ‘owner’ means the owner, charterer, managing operator, master, or other individual in charge of a vessel.

“§ 3508. Crime scene preservation training for passenger vessel crewmembers

“(a) IN GENERAL.—Within 1 year after the date of enactment of the Cruise Vessel Security and Safety Act of 2010, the Secretary, in consultation with the Director of the Federal Bureau of Investigation and the Maritime Administration, shall develop training standards and curricula to allow for the certification of passenger vessel security personnel, crewmembers, and law enforcement officials on the appropriate methods for prevention, detection, evidence preservation, and reporting of criminal activities in the international maritime environment. The Administrator of the Maritime Administration may certify organizations in the United States and abroad that offer the curriculum for training and certification under subsection (c).

“(b) MINIMUM STANDARDS.—The standards established by the Secretary under subsection (a) shall include—

“(1) the training and certification of vessel security personnel, crewmembers, and law enforcement officials in accordance with accepted law enforcement and security guidelines, policies, and procedures, including recommendations for incorporating a background check process for personnel trained and certified in foreign ports;

“(2) the training of students and instructors in all aspects of prevention, detection, evidence preservation, and reporting of criminal activities in the international maritime environment; and

“(3) the provision or recognition of off-site training and certification courses in the United States and foreign countries to develop and provide the required training and certification described in subsection (a) and to enhance security awareness and security practices related to the preservation of evidence in response to crimes on board passenger vessels.

“(c) CERTIFICATION REQUIREMENT.—Beginning 2 years after the standards are established under subsection (b), no vessel to which this section applies may enter a United States port on a voyage (or voyage segment) on which a United States citizen is a passenger unless there is at least 1 crewmember onboard who is certified as having successfully completed training in the prevention, detection, evidence preservation, and reporting of criminal activities in the international maritime environment on passenger vessels under subsection (a).

“(d) INTERIM TRAINING REQUIREMENT.—No vessel to which this section applies may enter a United States port on a voyage (or

voyage segment) on which a United States citizen is a passenger unless there is at least 1 crewmember onboard who has been properly trained in the prevention detection, evidence preservation and the reporting requirements of criminal activities in the international maritime environment. The owner of a such a vessel shall maintain certification or other documentation, as prescribed by the Secretary, verifying the training of such individual and provide such documentation upon request for inspection in connection with enforcement of the provisions of this section. This subsection shall take effect 1 year after the date of enactment of the Cruise Vessel Safety and Security Act of 2010 and shall remain in effect until superseded by the requirements of subsection (c).

“(e) CIVIL PENALTY.—Any person that violates this section or a regulation under this section shall be liable for a civil penalty of not more than \$50,000.

“(f) DENIAL OF ENTRY.—The Secretary may deny entry into the United States to a vessel to which this section applies if the owner of the vessel—

“(1) commits an act or omission for which a penalty may be imposed under subsection (e); or

“(2) fails to pay a penalty imposed on the owner under subsection (e).”.

(b) CLERICAL AMENDMENT.—The table of contents for such chapter is amended by adding at the end the following:

“3507. Passenger vessel security and safety requirements

“3508. Crime scene preservation training for passenger vessel crewmembers”.

SEC. 4. OFFSET OF ADMINISTRATIVE COSTS.

(a) REPEAL OF CERTAIN REPORT REQUIREMENTS.—

(1) Section 1130 of the Coast Guard Authorization Act of 1996 (33 U.S.C. 2720 note) is amended by striking subsection (b).

(2) Section 112 of the Maritime Transportation Security Act of 2002 (46 U.S.C. 70101 note) is repealed.

(3) Section 676 of title 14, United States Code, is amended by striking subsection (d).

(4) Section 355 of title 37, United States Code, is amended by striking subsection (h) and redesignating subsection (i) as subsection (h).

(5) Section 205 of the Coast Guard and Maritime Transportation Act of 2006 (14 U.S.C. 637 note) is amended by striking subsection (d).

(b) COMBINATION OF FISHERIES ENFORCEMENT PLANS AND FOREIGN FISHING INCURSION REPORTS.—The Secretary of the department in which the Coast Guard is operating shall combine the reports required under section 224 of the Coast Guard and Maritime Transportation Act of 2004 (16 U.S.C. 1861b) and section 804 of the Coast Guard and Maritime Transportation Act of 2006 (16 U.S.C. 1828) into a single annual report for fiscal years beginning after fiscal year 2010.

SEC. 5. BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the

H. R. 3360—10

Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

**IN THE CORONER'S COURT OF NEW SOUTH WALES INQUEST INTO THE DEATH OF
DIANNE BRIMBLE ON THE P&O PACIFIC SKY ON 24 SEPTEMBER 2002**

**SUBMISSIONS OF MARK BRIMBLE AND
INTERNATIONAL CRUISE VICTIMS (AUSTRALIA) PTY LTD**

ATTACHMENT 3

CRUISE INDUSTRY REGULATION: WHAT HAPPENS ON VACATION STAYS ON VACATION

Rosie Myers*

1. Introduction

1.1 The Dianne Brimble Story

On 24 September 2002, the half-naked body of Queensland mother Dianne Brimble was discovered on the floor of a stranger's cabin on the P & O cruise ship 'Pacific Sky'. The ongoing coronial inquest was informed that Ms Brimble died of an overdose of a combination of alcohol and the illegal drug gamma-hydroxybutyrate, also known as 'Fantasy' or 'GBH'. She had been sexually assaulted, possibly by a number of men.

The inquest by the NSW Coroner identified a number of alarming issues relating to possible cover-ups in the days after the attack. There have been assertions that the cabin was not sealed and that ship's security staff allowed people of interest to remove items from it.¹ This was despite a request by Australian Detectives on route to investigate Ms Brimble's death that the Manager of Pacific Operations for P&O secure the scene.² A memory card from a camera belonging to one of the men who was last seen with Ms Brimble was lost. It was later found by a young boy and returned to police. Although the card had been reformatted, it was found to contain photos of Ms Brimble engaging in intercourse with several men, and of her lying in her own faeces on the floor.³

Stories have also emerged of several passengers who saw Ms Brimble's body in the cabin but who apparently did not realise that she was dead at the time. Other women have come forward to say that they were offered drugs on board the cruise. There has been evidence of alcohol induced activities such as men running naked through the corridors of the ship.⁴

Australian investigators were unable to board the vessel for two days following Ms Brimble's death while the ship travelled to New Caledonia. Once onboard, detectives carried out their investigation by socialising with other passengers in the onboard nightclub. Further, not all the relevant staff were interviewed about the incident. There have also been allegations that some evidence was not processed and that not all leads were followed through.⁵ The Brimble inquest has raised many questions about what may have occurred in the days following Ms Brimble's death and the overall quality of the investigation.⁶

While Ms Brimble's death itself is tragic, the alleged circumstances leading up to it and the following cover-up are shocking. They have led to calls for greater regulation of the cruise industry.⁷ On 7 July 2006, the Australian Prime Minister, John Howard MP, said he would be prepared to work with the States in any

* Rosie Myers LLB (Hons) is currently employed as an Articled Clerk at Legal Aid WA. This essay originally formed a research paper undertaken as a student in Maritime Law at Murdoch University. The author would like to thank Kate Lewins for her valuable comments and advice in finalising this paper.

¹ ABC Radio 'Brimble Inquest Hears staff disturbed crime scene', *World Today*, 15 June 2006 <<http://www.abc.net.au/worldtoday/content/2006/s1663754.htm>> at 31 October 2006.

² P&O told to seal Brimble Cabin, *Inquest Told*, (2007) ABC News Online <<http://abc.net.au/news/newsitems/200702/s1841277.htm>> at 7 February 2007.

³ ABC Radio 'Brimble inquest: Losic changes story on the stand' *PM*, 15 September 2006 <<http://www.abc.net.au/pm/content/2006/s1742357.htm>> at 31 October 2006.

⁴ ABC Radio 'Brimble inquest calls for more P and O staff to come forward' *PM*, 26 June 2006, <<http://www.abc.net.au/pm/content/2006/s1672345.htm>> at 31 October 2006.

⁵ ABC Radio 'Brimble inquest hears of weak security on ship' *PM Show*, 8 February 2007, <<http://www.abc.net.au/pm/content/2007/s1843593.htm>> at 20 February 2007.

⁶ *Ibid.*

⁷ While Ms Brimble's death may have acted as a catalyst for discussion on these issues (in Australia at least) it is clear that regulation needs to cover a far wider range of issues.

attempt to regulate the cruise ship industry.⁸ However regulating the cruise industry is not a simple exercise. Cruise ships spend little time actually in port, operators are based outside Australia and cruise lines are adverse to negative publicity. Considering the more recent claim of rape against a teenage girl from Queensland on the P&O ship "Pacific Star,"⁹ it is fair to say that calls for regulation are warranted. Current regulations not only fail to address the investigation and reporting of crimes at sea, but also issues such as passenger health and safety, labour regulation and the environmental impact of cruise ships.

1.2 Outline and objective of this paper

This paper looks at the issues that face regulators in addressing the problems found on cruise ships working in an international setting. The first section looks at examples of the types of issues that need to be addressed by the industry and legislators. The second is an overview of the various regulation regimes already in place. The third part considers some of the issues that need to be overcome in order to fully regulate the cruise industry and examines some of the solutions offered by other countries. Finally, the paper concludes with suggestions of how industry regulation can be achieved and enforced.

2. Types of issues that are relevant to cruise ships

2.1 Crimes at sea

Many issues relating to crimes that occur at sea give rise to unease, such as the lack of a police presence onboard cruise liners and the prevalence of crimes occurring on cruises. In particular investigators face difficulties in investigating crimes at sea, first in not being able to access ships quickly and secondly, collecting information from both the crew and possible witnesses amongst the passengers.¹⁰ This is in part because they may not come forward to investigators, or they may depart for other countries at the end of their cruise before the investigation is underway. There is also an issue with crimes not being reported either by victims or the ship's crew.¹¹

Violence at sea should ideally be investigated by the Captain and the cruise line's onboard security staff and these incidences reported to independent authorities.¹² However, considering the financial implications of adverse publicity if the public becomes aware of the extent of some of these claims, cruise ships are clearly in a position of conflict of interest when it comes to crimes occurring on board their vessel. As such, one has to wonder if they are capable of (or should be permitted to) act as their own police officers. The existence of these impediments to investigation may raise some suspicion of secrecy surrounding the cruise industry.

While the main purpose of this paper is to discuss the issues that arise when crimes occur at sea, this is not the only conduct that occurs on cruise ships that causes international unease. The following are some other examples of questionable conduct that have led to calls for greater regulation of the cruise industry. These examples help to identify some of the problems faced in attempting to regulate the cruise ship industry.

2.2 Passenger Safety

Violent crimes are not the only dangers facing cruise passengers. Onboard the isolated environment of cruise liners, passengers are at the mercy of both man and nature. Events such as fires at sea and adverse

⁸ ABC Radio 'Transcript of the Prime Minister, The Hon John Howard MP, interview with Madonna King', 7 July 2006, <<http://www.pm.gov.au/media/Interview/2006/Interview2013.cfm>> at 2 March 2007.

⁹ *Police investigate cruise rape allegation* (2007) ABC News Online <<http://www.abc.net.au/news/australia/qld/capricornia/200701/s1834811.htm>> at 7 February 2007.

¹⁰ 'Death on the High Seas', *The Guardian*, 18 January 2007 <<http://www.guardian.co.uk/crime/article/0,,1992955,00.html>> at 8 February 2007.

¹¹ *The World Today – Cruise ship crime causes international concern* (2006) ABC Online <<http://www.abc.net.au/worldtoday/content/2006/s1674817.htm>> at 14 August 2006.

¹² JA Kinney, *The Slippery Slope of Security in the Cruise Industry: Report prepared for the Hon Chris Shays and the ICCI*, <<http://blog.lipcon.com/Cruise%20Ship%20Security.pdf>> at 1 November 2006, 7.

weather conditions pose particular threats to both passengers and crew and there is the constant threat of piracy or terrorist attacks.¹³ Passengers need to rely on the limited medical services available onboard in the case of any medical emergencies. In recent times, there have been a series of outbreaks of infectious disease such as noroviruses and gastrointestinal bugs aboard cruise ships, which have infected hundreds of passengers and crew at the one time.¹⁴ Such outbreaks have caused the implementation of procedures to assess the health of cruise passengers before they enter port,¹⁵ although they may not necessarily be used in all ports. While it is not the writer's intention to suggest that the ship's crew are unable to cope with such emergencies, passengers should be made clearly aware of the special limitations that are intrinsic to life on board a ship before contracting for the cruise.

Although the cruise industry works hard to reassure consumers that cruising is one of the safest forms of transport,¹⁶ the reality is that life-threatening events occur regularly at sea. The extent and success of handling of these incidents depends on the training and skills of the crew and the emergency management programs that have been developed and implemented to cope with such urgent situations. There are regulations that require ships to have emergency procedures in place,¹⁷ but there is currently no uniform approach to inspection and enforcement to ensure that the procedures are correctly implemented and maintained.¹⁸ Passengers should also be aware that the ship's level of security and safety regulation is not standardised but rather is dependent on the burdens placed on it by the nation under which it is registered.

2.3 Environmental Safety

The International Maritime Organization (IMO) is a specialized agency formed by the United Nations to assess the need for international maritime conventions and to oversee their implementation.¹⁹ Amongst them is the *International Convention for the Prevention of Maritime Pollution from Ships 1978* (MARPOL 73/78).²⁰ The convention and amendments aim to protect the marine environment from pollution by sea going vessels. While the implementation of Annex I²¹ and II²² are compulsory for signatory states, the others are voluntary.²³

There is a particular emphasis under MARPOL 73/78 on particular regions considered to be of special importance due to the nature and extent of maritime traffic in those areas.²⁴ Unfortunately, some of the most vulnerable areas are those highly populated by cruise lines. The special precautions have not been implemented in these areas because coastal states concerned have failed to ratify them.²⁵

For cruise lines, two of the most important MARPOL 73/78 Annexes are:

- IV – Regulations for the Prevention of Pollution by Sewerage from Ships, and
- V – Regulation for the Prevention of Pollution by Garbage.

¹³S Sole and D Forney, *Controlling Crisis* (2006) World Cruise [Preventing Piracy]

<<http://www.worldcruise-network.com/features/feature102/printable.html>> at 12 September 2006.

¹⁴J Pain, *Some Question Health Care on Cruise Ships*, Associated Press <http://www.lipcon.com/news_article35.shtml> at 25 October 2006.

¹⁵For a discussion on this issue see MJ Ferson, and K Ressler, 'Bound for Sydney Town: Health surveillance on international cruise vessels visiting the Port of Sydney' (2005) 182 Medical Journal of Australia 391

<http://www.mja.com.au/public/issues/182_08_180405/fer10713_fm.html> at 14 August 2006.

¹⁶For example see *Personal Safety and Security*, International Council of Cruise Lines Website <<http://www.iccl.org/policies/personal.cfm>> at 1 November 2006.

¹⁷For example SOLAS provisions discussed below.

¹⁸See below for further discussion on this point.

¹⁹*Homepage* (2007) International Maritime Organization website <<http://www.imo.org/home.asp>> at 31 January 2007.

²⁰*International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto* (MARPOL 73/78), International Maritime Organization website <<http://www.imo.org/home.asp>> at 31 October 2006.

²¹Regulation for the Prevention of Pollution by Oil.

²²Regulation for the Control of Pollution by Noxious Liquid Substances in Bulk.

²³Above n 20.

²⁴*Special Areas*, International Maritime Organization website <<http://www.imo.org/home.asp>> at 31 October 2006.

²⁵*Ibid.*

It is estimated that a cruise ship with 3000 passengers will create 30,000 gallons of sewage and 11.5 tons of garbage in a day.²⁶ However the regulations that these ships operate under are the same as large tankers and other vessels operating with far fewer crew and passengers.²⁷ Additionally, as with safety regulations, the level of enforcement of the regulation of discharge by cruise ships is dependent on the undertaking made by the country the ship is registered under or where the pollution occurs.

2.4 Labour Issues

Cruise ships draw workers from around the world attracted by the idea of eternal holidays and fun in the sun. The reality is that many of these people work 12 – 14 hours a day, seven days a week.²⁸ Often they rely largely on tips to supplement their meagre income. Some cruise companies pay travel and accommodation costs for their crew. In the event that a worker resigns or is fired they may be required to pay back their travel money by continuing to work onboard without pay, sometimes for several weeks.²⁹

The practice of using international hiring offices to employ crews from human resource pools also raises security concerns. While companies may require background checks on staff, they cannot guarantee that these are carried out to the extent that may be required in countries such as the USA or Australia.³⁰ While most of the senior staff come from shipping families, many of the most disadvantaged and low paid staff are from poorly educated, low socioeconomic backgrounds and may have difficulty communicating with passengers.³¹ However, they may be responsible for important areas such as food preparation, cleaning and hygiene, and childcare.

In all these examples the problems arise not necessarily from a lack of regulation but from the discrepancies created when various nations are responsible for identifying, investigating and punishing crimes and breaches of law. The discussion below identifies how these discrepancies have come about and how the international maritime community is attempting to alleviate these problems.

3. Conflict of laws

Although it may seem that greater regulation is required to prevent unwanted incidents occurring on cruise ships, it is not necessarily the case that there is a lack of regulation governing cruise line activities. In fact, many local and international laws, regulations and agreements govern maritime conduct. The result is a complex matrix of jurisdictional conflict that combines to muddy the waters when it comes to regulating conduct or investigating maritime crime. The following is an overview of the various levels of regulation for a cruise ship operating in Australia and a summary of their consequences.

3.1 State legislation

In Australia the individual States and Territories have responsibility for enacting laws for the ‘peace, order and good Government’ of their jurisdiction. Such laws are enforced to the extent that they do not conflict with any law made under the Constitution of Australia.

The states and territories also have independent control of the investigation and enforcement of laws that they have enacted, through the local police force and other security agencies. However, due to the nature of the Commonwealth there is often a need for cooperation between the various state and federal agencies.

Between 1998 and 2001, all Australian States and Territories, except the ACT,³² introduced uniform legislation through the *Crimes at Sea Acts*.³³ These Acts determine the jurisdiction of crimes committed at

²⁶ Washington Public Interest Research Group, *Cruising for a Bruising: Why Washington needs laws to protect its waters from cruise ship dumping* (2005) 6.

²⁷ Oceans Blue Foundation, *Blowing the Whistle and the case for cruise certification* (2002) 18.

²⁸ International Transport Workers Union, *The Cruise Industry: A submission to the International Commission on Shipping* (2000) 7.

²⁹ International Commission on Shipping, *Inquiry into ship safety: Ships, Slaves and Competition* (2000) 60.

³⁰ Above n 12, 4.

³¹ Ibid.

³² As the ACT has no coastal waters, it was not necessary to enact legislation.

sea aboard vessels within two hundred nautical miles of the Australian coast. The Commonwealth has enacted mirror legislation in the *Crimes at Sea Act 2000* (Cth). Under the various legislations, the laws of a state apply under state jurisdiction to crimes committed within twelve nautical miles of the state or territory coastline.³⁴ Between twelve and two hundred nautical miles from the coastline, the law of the relevant State or Territory applies under the jurisdiction of the Commonwealth.³⁵

The jurisdictional distinction, though seemingly minor, can have a profound effect on the outcome of a trial. For example, while a trial for an offence committed within the Commonwealth jurisdictional zone off the coast of Western Australia will be tried according to Western Australian criminal law in a State court, the trial will run under Commonwealth procedure.³⁶ This would mean, for example, that in such a trial a person could not be convicted by a majority verdict even though it is permitted under the State legislation³⁷ as it has been determined that Section 80 of the *Judiciary Act*³⁸ excludes majority verdicts for criminal offences against the Commonwealth.³⁹

Despite these difficulties however, at least there is some defined approach to incidents occurring within 200 nautical miles of the coast. As we shall see, this approach is infinitely preferable to what might happen if the events occur on the high seas. The jurisdictional conflict between the States, Territories and Commonwealth provides an insight into the possible issues that may arise when international laws and conventions are included in the equation.

3.2 Other relevant Federal legislation

In addition to the *Crimes at Sea Act 2000*, the Commonwealth has enacted the *Admiralty Act 1988* which has force over any ship not intended for use in inland waters.⁴⁰ The *Admiralty Act* provides jurisdiction for civil actions against a ship for a variety of maritime claims, including personal injury and loss of life.⁴¹ The *Admiralty Act* applies to any action regardless of the location of the originating incident or the nationality of the ship involved.⁴² However, in reality, jurisdiction is generally restricted unless there is some nexus with Australia.⁴³ In the case of cruise lines, jurisdiction may possibly be inferred from the mere fact that Australian passengers are affected by the incident, although this right may be lost if the conditions on the cruise ticket specifies an alternative jurisdiction.⁴⁴

The Commonwealth also has the authority to bind Australia, including the States and Territories, to international conventions and treaties as considered appropriate. Some of the relevant conventions are discussed below.

3.3 Conventions and International Law

There are many maritime conventions and other protocols and agreements currently overseen by the IMO.⁴⁵ The need for these international regulations has developed from an increase in international commerce and recognition of the need to ensure uniform safety and environmental standards aboard vessels.

³³ *Crimes at Sea Act 1998* (NSW), *Crimes At Sea Act 2000* (NT), *Crimes at Sea Act 2001* (Qld), *Crimes at Sea Act 1998* (SA), *Crimes at Sea Act 1999* (Tas), *Crimes at Sea Act 1999* (Vic), *Crimes at Sea Act 2000* (WA).

³⁴ See generally Schedule 2 Part 2 of the State and Territory legislation.

³⁵ See generally Schedule 2 Part 2 of the State and Territory legislation.

³⁶ Schedule 2 Part 2 s3.

³⁷ Schedule 1 Part 2 s3(2) Example 1 of the State and Territory legislation.

³⁸ *Judiciary Act 1903* (Cth).

³⁹ *Cheatle v The Queen* (1993) 177 CLR 541.

⁴⁰ *Admiralty Act 1988* (Cth) s5(1), (3).

⁴¹ *Admiralty Act 1988* (Cth) s4(3)(c), (d).

⁴² *Admiralty Act 1988* (Cth) s5(1).

⁴³ A Mutton, 'Choice of Law and the High Seas: *Blunden v Commonwealth* (2004) 26 *Sydney Law Review* 427, 428.

⁴⁴ For a discussion on choice of jurisdiction clauses and disclaimers on cruise tickets see K Lewins, 'The Cruise Ship Industry – Liability to Passengers for Breach of s52 and s74 *Trade Practices Act 1974* (Cth)' (2004) 18 *MLAANZ Journal* 30, 32. For a comparison on this issue see also DM Muller, 'Recent Developments in Maritime Personal Law: Personal Injury' 22 *Tulane Maritime Law Journal* 513, 526.

⁴⁵ *Conventions*, International Maritime Organization website <<http://www.imo.org/home.asp>> at 31 October 2006.

Australia is a signatory to approximately 40 IMO conventions, amendments and protocols.⁴⁶ Among those most relevant for the purposes of this paper are:

- *The International Convention for Safety of Life At Sea (SOLAS)* 1974,
- *The Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea (PAL)* 1974,
- *The Convention on Limitation of Liability for Maritime Claims (LLMC)* 1976, and
- *The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers*, 1978 (*STCW*).

IMO conventions are continuously under review to meet the changing needs of modern shipping. In particular, changes have been made to reflect the dramatic increase in size of modern cruise liners and the consequential increase in the number of passengers onboard. In response to calls for a review of cruise ship safety in 2000,⁴⁷ the IMO Maritime Safety Committee (MSC) recently completed a project focusing on passenger ship safety. The MSC concluded that prevention is the best approach to protect passenger safety aboard cruise ships. To help to achieve this aim, a series of amendments to *SOLAS* were adopted in late 2006.⁴⁸

The 2006 *SOLAS* amendments relate primarily to the design of passenger vessels. They have been introduced with the aim of ensuring the safety of passengers in the event that damage occurs to the vessel. In particular, the amendments state that where the casualty threshold⁴⁹ is exceeded a vessel should be capable of remaining viable for three hours. This is the time considered sufficient to properly evacuate the vessel.⁵⁰ Other changes include:

- that safe areas and the essential systems are to be maintained while a ship proceeds to port after a casualty, which requires redundancy of propulsion and other essential systems;
- the provision of on board safety centres from which safety systems can be controlled, operated and monitored;
- the installation of fixed fire detection and alarm systems, including requirements for fire detectors and manually operated call points, capable of being remotely and individually identified;
- the introduction of fire prevention techniques, including amendments aimed at enhancing the fire safety of atriums, the means of escape in case of fire and ventilation systems; and
- that sufficient time be allowed for orderly evacuation and abandonment, including a requirement for the installation of essential systems that must remain operational in case any one main vertical zone is unserviceable due to fire.⁵¹

While these changes are important, they are not expected to enter into force until July 2010⁵². Further, they appear to apply only to newly built vessels⁵³ leaving passengers on existing vessels unaware of the possible lack of protection.

As a result of an inquiry into a series of incidents during the late 1980s⁵⁴ the IMO also undertook to introduce regulation to better manage the protection of human life and to ensure safety and prevent injury at sea. The aim of the regulation was to address the influence of 'human element' in incidents onboard ships. The resulting *International Management Code for the Safe Operation of Ships and for Pollution Prevention*

⁴⁶ *Status of Conventions by Country*, International Maritime Organization website.

<http://www.imo.org/includes/blastDataOnly.asp/data_id%3D16070/status.xls> at 31 October 2006.

⁴⁷ *IMO Secretary-General calls for review of safety of large passenger ships*, International Maritime Organization website <http://www.imo.org/About/mainframe.asp?topic_id=68&doc_id=553> at 31 October 2006.

⁴⁸ *Passenger Ships*, International Maritime Organization Website <<http://www.imo.org/home.asp>> at 23 January 2007.

⁴⁹ The casualty threshold is the amount of damage that a ship can sustain and still return to port.

⁵⁰ Above n 48.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ LJ Sheen, *Herald of Free Enterprise* as discussed on Safety Management, International Maritime Organization website <<http://www.imo.org/home.asp>> at 31 October 2006.

(ISM Code) became compulsory for passenger ships, tankers and high speed water craft in July 1998.⁵⁵ The ISM Code creates an onus on the responsible operator of the ship to ensure the establishment of a safety management system onboard the ship.⁵⁶ While the ISM and the 2002 amendments were welcomed by the maritime industry, the extent that they have been fully implemented as a tool for upgrading and maintaining vessels is questionable.⁵⁷

To counter increases in terrorist activity in shipping, the IMO established the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 (SUA 1988)*.⁵⁸ The effect of SUA 1988 is to ensure that appropriate action is taken against people committing unlawful acts against ships and their passengers. SUA 1988 covers actions such as the seizure of a ship by force, acts of violence against people onboard and placing devices onboard a ship that are likely to damage or destroy it.⁵⁹ SUA 1988 has since been amended to extend to offshore platforms and to acts intended to intimidate Governments or international organisations, though these protocols have not yet come into force.⁶⁰

Breaches of conventions can be enforced in a number of ways. Some countries have introduced legislation that will allow jurisdictional control of an incident if either the offender or the victim is a citizen of that country.⁶¹ Primarily, the country with jurisdiction over the water in which the incident occurred enforces breaches of conventions. However, if the incident occurs on the high sea, the onus of enforcing the relevant convention falls on the nation under which the offending vessel is flagged. This procedure is problematic as many cruise ships in particular are registered under a flag of a country with which they have no other connection. As discussed below, the so-called 'Flag of Convenience' has proven to be a popular tool to help protect cruise ships from regulatory scrutiny.

3.4 The use by Cruise Ships of Flags of Convenience (FOC)

In the early 1920's American built cruise liners registered in other countries to circumvent US prohibition restrictions.⁶² While this motivation is not necessary today,⁶³ the use of an FOC is still popular to help overcome restrictive labour and safety requirements as well as to avoid costly local taxes.⁶⁴

Registration in a FOC country means that the laws and regulations of that country govern activities onboard that ship. Many FOC countries compete to produce regulatory packages most appealing to ship owners and their specific circumstances.⁶⁵ However, this use of FOC can endanger the well-being of passengers and crew through poor regulation and lack of enforcement.

In an attempt to attract registration, some FOC countries will implement lax labour, safety and environment codes.⁶⁶ Ship owners can simply 'forum shop' in order to find the most profitable and advantageous regime for their business enterprise.⁶⁷ This puts consumers, who are unlikely to be aware of the differences in regulation governing FOC vessels, in a position where they may be disillusioned when services do not comply with the standards to which they are accustomed. Further, the fact that consumers are unaware of

⁵⁵ *Information Resources on the International Safety Management Code: Information Sheet 23* (2006)

<http://www.imo.org/includes/blastDataOnly.asp/data_id%3D16180/ISMCode%2825October2006%29.doc> at 31 October 2006.

⁵⁶ Ibid.

⁵⁷ 'Code of Conduct', *Lloyd's List*, 16 October 2006 (No.59273) 7 as quoted in 'Information resources on the International Safety Management Code: Information Sheet No 23', 25 October 2006 *International Maritime Organization Library Service External Relations Office* <http://www.imo.org/includes/blastDataOnly.asp/data_id%3D16180/ISMCode%2825October2006%29.doc> at 31 October 2006.

⁵⁸ The SUA came into force on 1 March 1992.

⁵⁹ *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988*, International Maritime Organization Website <http://www.imo.org/Conventions/mainframe.asp?topic_id=259&doc_id=686> at 1 November 2006.

⁶⁰ Ibid.

⁶¹ For example *Merchant Shipping Act 1995* (UK) and *United States Code*, Title 18, Chapter 1, s7.

⁶² MJ Wing, 'Rethinking the easy way out: Flag of convenience in the post-September 11th era' (2003) 28 *Tulane Maritime Law Journal* 173,175.

⁶³ US States started to repeal prohibition laws from 1933.

⁶⁴ Above n 62.

⁶⁵ Ibid 176.

⁶⁶ Ibid, 177.

⁶⁷ Ibid.

lesser regulation, particularly regarding safety requirements, means that if an incident does occur they may not be afforded the protection that they would normally expect.

Following accidents in isolated areas at sea, it is vitally important that passengers and crew have available to them a full range of protective measures to ensure their safety. As discussed above, the standard for these measures is set out in the ISM Code. It is the responsibility of the country of registration to ensure that their ships comply with these regulations. However, if FOC countries do not undertake to enforce these measures to the full extent required under the ISM Code, there is little that other countries can do to impose conformity.

In recent years, the fear of terrorist attacks on cruise liners has increased.⁶⁸ As a result of the 9/11 attacks on the USA, most countries have increased security measures, particularly in the tourism sector. This is not necessarily so for the cruise industry where the lack of security checks may be one of the attractions passengers.⁶⁹ Unfortunately, if cruise companies continue to ignore the need for full security checks on all passengers and crew, the threat of an attack could become a horrendous reality. While security solutions may be created by the IMO, little can be done to force an operator to comply. In the meantime, there is likely to be an imbalance between the level of security the passengers would assume to be in place, and the reality of what actually exists.

Even in Western countries there has been some opposition to high-level background check on maritime workers.⁷⁰ The logistics of carrying out complex checks on crew from many different nationalities, many of whom come from countries that already identify them as being a potential terrorist threat, are enormous. Comprehensive background checks cannot be carried out without the full cooperation of all maritime registry nations, cruise lines, countries of origin and even the ports of operation.

Aside from the involvement in the IMO, the United Nations itself has also been involved in the preparation of conventions designed to regulate international use of the marine environment and to resolve conflict over the jurisdiction of the high sea.⁷¹ The *UN Convention on the Law of the Sea* (10 December 1982) (*UNCLOS*) reinforces the requirements placed on ships by other conventions. *UNCLOS* includes the requirement for ships to be registered and to fly the flag of one nation.⁷² Registration under a State (the 'Registry State') creates an onus on that State to ensure that ships are seaworthy and that proper precautions are undertaken to ensure safety at sea and prevent pollution.⁷³ This includes the burden of ensuring that relevant international regulations are understood and observed by the ship's crew,⁷⁴ and enforcing appropriate penalties where required.⁷⁵

There is also an obligation on Registry States to ensure that fatalities or injury occurring onboard one of their registered ships are subject to an inquiry by suitably qualified persons.⁷⁶ However, once again the extent of inquiry required is not clearly defined leaving interpretation of the extent of this duty to the relevant State. As outlined earlier, one of the major difficulties when anything untoward happens at sea is that the cruise ship operator is in charge of the crime scene. The cruise ship operator is also in a position of conflict because it is in the best interests of the operator to downplay the matter. As has been demonstrated in the Brimble inquiry, cruise lines can not be relied upon to make the best interests of the victim a priority.

⁶⁸ United States. Congress. Congressional Research Service. *Maritime Security: Potential Terrorist Attacks and Protection Priorities. Report, 9 January 2007*. <<http://www.fas.org/srg/crs/homsec/RL33787.pdf>> at 21 February 2007.

⁶⁹ Above n 62, 189.

⁷⁰ 'Union warns: No witch hunt' (2004) *Maritime Workers Journal*.

<http://www.mua.org.au/journal/julaug_2004/witchhunt.html> at 31 October 2006.

⁷¹ *United Nations Convention on the Law of the Sea: A historical Perspective*, (1998) Oceans and Laws of the Sea, A division for Ocean Affairs and the Law of the Sea <http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm> at 1 November 2006.

⁷² *UN Convention on the Law of the Sea* Arts 91, 92.

⁷³ *UN Convention on the Law of the Sea* Art 94 (3).

⁷⁴ *UN Convention on the Law of the Sea* Art 94 (4)(c).

⁷⁵ *UN Convention on the Law of the Sea* Art 94 (5).

⁷⁶ *UN Convention on the Law of the Sea* Art 94 (7).

Clearly, there is a gap in the current international requirements as to the procedure that should take place when a crime occurs at sea. While P&O have agreed to improve their procedures⁷⁷ this is not sufficient to protect passengers boarding other cruise lines. In any event one has to doubt the effectiveness of self regulation given the conflict of interest already discussed. Some other solution needs to be found.

One way to ensure uniform enforcement of safety provisions would be to increase the obligations under UNCLOS to include carrying an independent investigator or officer over and above their normal security personnel. These officers could operate in a capacity similar to that of an air marshal with both protective and investigative powers. For this to operate logistically, the officer would ideally be provided either by the port of departure or the next port of call. If these changes cannot be achieved through the Convention then it may be necessary, though not ideal, for port of call countries to regulate on this matter individually. However, this approach is likely to exacerbate the existing jurisdictional ambiguity.

4. Possible resolutions for jurisdictional differences

Independent attempts have been made by some nations to resolve the complex issues created by jurisdictional conflicts, in order to better investigate and prosecute maritime crime and to increase transparency in the cruise industry.⁷⁸ Examples of the changes introduced in the US and UK are discussed below. Unfortunately, these attempts are usually reactive responses to incidents such as the attacks against Ms Brimble. However, despite this fact, there is undoubtedly a need to resolve the maritime conflict of laws issues in order to better address crimes committed at sea. The following is a discussion on some of the most recent attempts at simplifying the jurisdictional question.

4.1 US approach

The US has a great affinity with the cruise industry. Americans are amongst the highest consumers of cruise ship holidays. Many American cities are regular ports of call for cruise liners. The US has enforced laws that allow certain US agencies the authority to inspect ships visiting US ports to ensure that they meet international sanitation and safety standards.⁷⁹ In addition, the shipping industry in the US is bound by the *Merchant Marine Act - 1920 (US)*, (*Jones Act*), which requires that all vessels transporting goods, including passengers, between US ports must be US built, owned and documented.⁸⁰ However, cruise lines are able to circumvent this legislation by using American cities as a port of call between other nations. This prevents the need for ships to register in the US and allows for continued use of the FOC.⁸¹

Further power of investigation is provided to US authorities by the *United States Code (US Code)*. Under the *US Code*,⁸² the FBI has jurisdiction to investigate crimes committed on a ship if:

1. the ship, regardless of flag, is a US owned vessel, either whole or in part, regardless of the nationality of the victim or the perpetrator;
2. the crime occurs in the US territorial sea (within 12 miles of the coast), regardless of the nationality of the vessel, the victim or the perpetrator; or
3. the victim or perpetrator is a US national on any vessel that departed from or will arrive in a US port.⁸³

⁷⁷ *Statement from P&O Cruises Australia on Safety and Security* (2006) P&O Cruises website.

<http://www.pocruises.com.au/html/statement_from_p_o_cruises_australia_on_safety_and_security.cfm> at 20 February 2007.

⁷⁸ For example the *US Cruise Line Accurate Safety Statistics Act (CLASS ACT)* introduced into Congress on 28 June 2006

<<http://www.govtrack.us/congress/bill.xpd?bill=h109-5707>> at (1 November 2006).

⁷⁹ K Dupont, 'Cruise lines operate under layers of laws -- Vessels fly different flags; rules complex across seas', *The Miami Herald* (Miami), 31 May 2003, 15.

⁸⁰ *Merchant Marine Act of 1920 (US)* Sec 27 (*Jones Act*).

⁸¹ Above n 62, 181.

⁸² *United States Code*, Title 18, Chapter 1, s7.

⁸³ United States. Cong. House of Representatives. Committee on Government Reform Subcommittee on National Security. Emerging Threats and International Relations and the subcommittee on Criminal Justice, Drug Policy and Human Resources. Chris Swecker. Testimony, 13 December 2005. *Chris Swecker, Assistant Director*,

More recently, Congress has introduced legislation to make reporting of injury or crime at sea compulsory through the *Cruise Line Accurate Safety Statistics Act (CLASS Act)*.⁸⁴ While still in the early stages of implementation,⁸⁵ the *CLASS Act* is designed to ensure that cruise companies are more transparent in their reporting of incidents that occur at sea. Among other objectives, the *CLASS Act* will require:

- cruise ship owners that use a US port to report any crime, man overboard or missing person incident that occurs onboard and involves an American citizen to the Department of Homeland Security (DHS) within four hours of the master of the ship learning of the incident;
- the cruise company to submit a quarterly report of each crime, missing person or man overboard case which occurs on its vessel to the DHS, which will make the information available on the internet;
- the DHS to inspect each cruise ship that docks in the US to ensure that ship has adequate equipment and trained personnel to investigate crimes; and
- a cruise company to refer potential consumers to the internet site with cruise crime statistics and provide the name of each country the ship is visiting and the location of the US embassy and consulate in each country.⁸⁶

These changes may help to remove some of the secrecy surrounding the cruise industry. The *CLASS Act* allows for the imposition of civil penalties for non-compliance with these requirements. It does not go so far as to require the authorities to investigate any incident, however the power of investigation may be implicit under the US Code discussed above. Without proper investigation and prosecution of these incidents by American or other international authorities as they occur, the Act does little more than advise potential consumers that incidents have occurred.

It is also recognised that success in any investigation requires the cooperation of the other involved nations.⁸⁷ While a discretionary right to jurisdiction remains, countries such as the US will still be at the mercy of FOC countries to require their ships to abide by these conditions. Ideally, in addition to the civil penalties, the *CLASS Act* would restrict access and departure of US ports if cruise lines failed to comply. While such restrictions may provide a further financial incentive for cruise ship operators, the logistics of holding huge cruise ships with thousands of passengers and crew in port or offshore for extended periods of time may make this proposal unworkable.

4.2 UK approach

The UK has legislation that applies the jurisdiction of the British Court over crimes committed within the territorial waters. The *Territorial Waters Jurisdiction Act 1878* (UK) confers jurisdiction of UK law on incidents occurring within 12 nautical miles of the coastline. The *Aviation and Maritime Security Act 1990* (UK) gives jurisdiction to the offence of hijacking and subsequent related offences against a person or property regardless of the nationality of the perpetrator or the location of the ship.⁸⁸ Under this legislation there is no required territorial nexus with the UK unless the ship is a warship, naval auxiliary or ship used by customs or police.⁸⁹

Jurisdiction is also extended to include crimes committed by a British subject on board a foreign ship under the *Merchant Shipping Act 1995* (UK).⁹⁰ However, it appears that the English Courts are loathe to claim

What International and National Laws Pertain to Security of Americans Onboard Ships Travelling Outside U.S. Territorial Waters?, FBI Website <<http://www.fbi.gov/congress/congress05/swecker121305.htm>> at (1 November 2006).

⁸⁴ *US Cruise Line Accurate Safety Statistics Act (CLASS Act)* introduced into Congress on 28 June 2006 <<http://www.govtrack.us/congress/bills/109/h109-5707>> at 1 November 2006.

⁸⁵ The Bill was sent to the Subcommittee on Coast Guard and Maritime Transportation on 29/6/2006. As of 10 February 2007 there has been no further action.

⁸⁶ *Shays, International Cruise Victims announce bipartisan Cruise Line Accurate Safety Statistics Act* (2006) Congressman Christopher Shays's website <<http://www.house.gov/shays/news/2006/june/junecruise.htm>> at 1 November 2006.

⁸⁷ Above n 83.

⁸⁸ *Aviation and Maritime Security Act 1990* (UK) Part II ss 9-13.

⁸⁹ *Aviation and Maritime Security Act 1990* (UK) Part II ss 9-13.

⁹⁰ *Merchant Shipping Act 1995* (UK) ss281, 282.

jurisdiction unless there is some real nexus to the crime.⁹¹ It remains to be seen whether the UK will extend its boundaries for this purpose in the event that a crime that occurs on a ship that falls under a FOC regime is not prosecuted.

5. How should Australia regulate the cruise ship industry?

The Commonwealth Government has a number of options available to it, such as - to create new legislation to provide protection to Australians at sea, and to require higher standards by cruise liners through use of existing legislation. Suggestions are discussed below.

5.1 Further regulation

Just as the Commonwealth has the power to invoke jurisdiction under the *Admiralty Act*, so too could legislation be enacted to confer jurisdiction for criminal actions without a direct nexus to Australia as is required under the *Crimes at Sea Act*. Use of the external affairs power under the Constitution⁹² will enable legislation that will ensure that Australian services could investigate and prosecute crimes committed on the high seas. While there may be no physical nexus as such, it would be sufficient that the criminal act occurred outside of Australian waters⁹³ and the subject matter of the Act was of international concern⁹⁴ or that the Act is intended to foster good relations with other countries.⁹⁵ Such legislation would be particularly useful for ships leaving or bound for Australian ports.

Ideally, legislation of this type would work in a similar vein as the *US Code* and *CLASS Act* in that it would require all incidents onboard to be reported to Australian authorities within a certain time. The difficulty would be to enforce this requirement on foreign owned ships. To overcome this problem all ships visiting Australian ports, both when arriving and departing, could be required to maintain and provide to Australian authorities a record of any onboard incidents as a condition of further entry to port, coupled with financial penalties if this does not occur. Even though some of these incidents may occur within the waters of other nations, in this age of electronic communication it is not a great burden on a ship to report to a number of different countries. While it would also be ideal to have the power to carry out investigations onboard while the ship is in port, logistically this may not be appropriate. However, the financial implications of being forbidden to enter Australian ports again may force cruise lines to comply.

5.2 Existing Powers

Australia already has in place comprehensive legislation protecting the rights of consumers through the *Trade Practices Act 1974* (Cth) (*TPA*).⁹⁶ The *TPA* helps to ensure honesty in advertising by restricting conduct by corporations that is misleading or deceptive, or likely to mislead.⁹⁷ Section 52 provides a mechanism for action against companies who misrepresent their goods or services through the actions of their employees or the information provided to consumers. In some cases, this includes a duty not to remain silent if there is a reasonable expectation that information should be disclosed that may influence a persons decision to enter into the contract.⁹⁸ An action can also be brought against companies for claiming that services are of a particular quality or standard if it is found that they do not meet those standards.⁹⁹ The jurisdiction of the *TPA* extends offshore through the inclusion in the definition of a 'corporation' of foreign corporations as long as the company is registered in Australia.¹⁰⁰ It may be necessary to insist on local

⁹¹ *Answers of England and Wales to CMI Questionnaire on Criminal Offences committed on Foreign Flagged Ships*, British Maritime Law Association website <<http://www.bmla.org.uk/>> at 31 October 2006.

⁹² *Commonwealth of Australia Constitution Act 1900* (Cth) s51(xxix).

⁹³ *Polyukhovich v Cth* (War Crimes Act Case) (1991) 172 CLR 501, Mason CJ, Deane, McHugh and Dawson JJ.

⁹⁴ *Commonwealth v Tasmania* (Tasmanian Dams Case) (1983) 158 CLR 1 at 101, Gibbs CJ.

⁹⁵ *R v Sharkey* (1949) 79 CLR 121 at 123, Latham CJ.

⁹⁶ *Trade Practices Act 1974* (Cth).

⁹⁷ *Trade Practices Act 1974* (Cth) s52.

⁹⁸ *Henjo Investments Pty Ltd v Collins Marrickville Pty Ltd (No 1)* (1988) 79 ALR 83, 95, Lockhart J.

⁹⁹ *TPA* S53(aa).

¹⁰⁰ *TPA* S4.

registration of cruise lines operating from overseas as a condition of entry to Australian ports to be able to enforce *TPA* provisions on foreign owned vessels.

It may then be possible to enforce a requirement on cruise lines advertising in Australia to disclose the safety standards with which their vessels comply. If this was to occur, Australian consumers will have more information to assist them to make informed decisions about the risks they may face due to the intrinsic dangers in life onboard any ocean vessel. They will also be aware of any possible differences in safety standards and onboard safety requirements. A possible backlash by consumers may be enough of an incentive for all cruise lines to increase their standards to meet those expected by Australian passengers.

Under the *TPA*, owners and operators of the cruise lines can also be prosecuted and fined for false or misleading statements about the quality or standard of service where the representation is made in Australia.¹⁰¹ The financial impact of such a prosecution may be sufficiently great to encourage full compliance and enforcement of existing international safety conventions by lines that may not have been as well regulated in the past. The full extent of the powers of the *TPA* are outside of the ambit of this paper however this may be an effective use of existing legislation where applicable.¹⁰²

5.3 Further amendments to SOLAS

It can take many years for amendments to IMO conventions to be suggested, debated, approved, accepted and to come into force. Generally, a specific percentage of contracting states have to accept provisions before they came into force. In part due to the nature of the need to make timely changes to the safety provisions in *SOLAS* when the need arises, changes were made to the amendment procedure to speed up the acceptance process. Tacit acceptance provisions allow for amendments to enter into force on a particular date unless objections have been received by one third of contracting Governments prior to this time.¹⁰³

Using this process, amendments could be introduced relatively quickly requiring stricter enforcement of current provisions, reporting of incidents occurring at sea to all signatory States, and greater ability for involvement of non-flag States in subsequent investigations. One impediment to such amendments occurring is the need for member states to sponsor and draft the amendment as well as the committees and other members accepting the changes. There is an opportunity for Australia to lead the way in this process. However, these challenges may render the task too difficult or time consuming. If so, individual States may then choose to combat specific problems that arise by introducing their own legislation instead.¹⁰⁴

6. Conclusion

The existing conflict of laws adds confusion to the investigation and prosecution of maritime crime. While the conflict exists, it is also impossible to ensure that all security standards are equal. Further, there is the added difficulty of deciding which jurisdiction's laws should be applied.¹⁰⁵ However, under the current regime jurisdictional conflict will arise regularly. Where there is a choice of forum, parties to a conflict will generally avoid the most complex system,¹⁰⁶ which may increase the appeal of more lenient regimes. To properly regulate the international cruise line industry requires more than mere cooperation between the federal and state divisions of a single country. The inherent nature of the cruise industry requires a cooperative international approach to resolve these issues.

¹⁰¹ *TPA* s 75AZC (b).

¹⁰² See generally K Lewins, 'The Cruise Ship Industry – Liability to Passengers for Breach of s52 and s74 *Trade Practices Act 1974* (Cth)' (2004) 18 *MLAANZ Journal* 30 although some aspects of the law have changed since publication of this article.

¹⁰³ 'Conventions', International Maritime Organization website <<http://www.imo.org/home.asp>> at 1 February 2007.

¹⁰⁴ PJ Griggs, 'Obstacles to Uniformity of Maritime Law: The Nicholas J Healy Lecture' (2003) 34 *Journal of Maritime Law and Commerce* 191, 200.

¹⁰⁵ LE Teitz, 'From the Courthouse in Tobago to the Internet: The Increasing Need to Prove Foreign Law in US Courts' (2003) 34 *Journal of Maritime Law and Commerce* 97, 99.

¹⁰⁶ Allsop J, 'Australian Admiralty and Maritime Law – Sources and Future Directions' (Lecture in Memory and Honour of the Hon Justice Richard Cooper, Brisbane, 2006) <http://www.fedcourt.gov.au/how/Richard_Cooper_lecture.html> at 1 February 2007.

The continuing use of FOC regimes creates an umbrella of suspicion over the industry that will only be raised with improved measures to increase transparency in the actions undertaken by cruise ships. Compulsory and immediate reporting mechanisms and proper enforcement of international conventions must be achieved in order to improve the industry's image.

The economic reward that FOC countries have come to rely on through the income afforded by cruise lines will prove to be a difficult hurdle to overcome in the push for reform. We have already seen that many of these countries have been reticent to apply the full force of existing regulation for fear that it may make their regime less desirable. The increasing number of available FOC regimes will also continue to influence the market.

The estimated 2005 gross economic output generated by cruise lines and their passengers and invested in the US economy was US\$32.4 billion.¹⁰⁷ The economic interest of other coastal states is also likely to be significant. It would be a disappointing outcome if economic incentives prevented the international cooperation required to institute real changes to cruise regulation. Unfortunately, this currently appears to be the case, and it may be that a large scale disaster will have to occur before these economic interests are overcome. However, the families of the victims of onboard crimes would argue that this has already occurred.¹⁰⁸

The onus is on the coastal states to address the problem. Restriction of access to ports unless certain conditions are met will promote change, so long as the most powerful coastal states all commit to enforcing the restrictions. It is imperative that countries such as Australia, UK and US protect the best interests of their own citizens over the rights and financial interests of foreign owned or operated companies. Unfortunately, until this level of cooperation is achieved passengers such as Ms Brimble will continue to experience cruise nightmares rather than the dreams they thought they had been promised.

While organisations such as the IMO, UN and the CMI react to apparent problems in the current regimes to create uniform legislation, the process from recognition of need to convention takes many years.¹⁰⁹ Already there has been much discussion on the intrinsic problems faced by courts trying to enforce regulation on cruise liners, but without assistance from the more powerful coastal states and the cooperation of the industry itself, the process of implementing change will be prolonged.

If an internationally cooperative solution is not found soon, individual countries may have no choice but to implement their own regulation. If this occurs, a number of countries may claim jurisdiction over an onboard incident, which will only further complicate the issue. In a situation where an Australian citizen is assaulted on a foreign owned vessel at the hands of a US citizen while on the high seas, there is no clear rule as to which government can claim control over the investigation. Considering the interest that the cruise line has in the outcome of the investigation, they should not be relied upon to take responsibility for the scene. To overcome this problem cooperative action must be undertaken by the coastal states as a matter of utmost urgency. Australia is now in a position to lead the way in this approach. Use of the tacit acceptance provisions in SOLAS could see amendments accepted two years after introduction.

Change in the shorter term will require action from the cruise industry itself through self-regulation. However, this will require recognition by the industry of a systemic problem within the current scheme, a view that currently is not forthcoming.¹¹⁰ The recent acceptance of some responsibility in the death of Ms Brimble by P&O cruises is a positive step.¹¹¹ However, change by one company, while encouraging, is not

¹⁰⁷ *The contribution of the North American Cruise Industry to the US Economy in 2005*, (2006) Prepared for the International Council of Cruise Lines by Business and Economic Research Advisors
<<http://www.cruising.org/Press/research/Ecoimpact/2005%20Econ%20Impact%20detail.pdf>> at 12 February 2007.

¹⁰⁸ For example see <<http://cruisebrimble.com/index.html>> at 1 February 2007.

¹⁰⁹ PJ Griggs, 'Obstacles to Uniformity of Maritime Law: The Nicholas J Healy Lecture' (2003) 34 *Journal of Maritime Law and Commerce* 191, 200.

¹¹⁰ *Personal Safety and Security*, Cruise Lines International Association Website <<http://www.iccl.org/policies/personal.cfm>> at 14 February 2006).

¹¹¹ *Cruise company offers compo to grieving family*, ABC News Online
<<http://www.abc.net.au/news/newsitems/200702/s1854162.htm>> at 25 February 2007.

enough. Considering that the defenders of the cruise industry are as staunch in their praise for the organisation as their opponents are against it,¹¹² it may be a while before any real change is achieved.

¹¹² For example see PeltzRD and VJ Warger, 'Medicine on the Seas' (2003) 27 *Tulane Maritime Law Journal* 425.

**IN THE CORONER'S COURT OF NEW SOUTH WALES INQUEST INTO THE DEATH OF
DIANNE BRIMBLE ON THE P&O PACIFIC SKY ON 24 SEPTEMBER 2002**

**SUBMISSIONS OF MARK BRIMBLE AND
INTERNATIONAL CRUISE VICTIMS (AUSTRALIA) PTY LTD**

ATTACHMENT 4



**Government
of South Australia**

**Commissioner for
Victims' Rights**

Level 11
45 Pirie Street
Adelaide SA 5000

GPO Box 464
Adelaide SA 5001
DX 336

Tel 08 8207 1723
Fax 08 8207 1736

If calling please ask for
Michael O'Connell

Telephone
+61 +8 8207 1969

Email
oconnell.michael@agd.sa.gov.au

Reference
LETTER(O'CONNELL).DOC

5 November 2010

Mark Brimble
{Address omitted for privacy}

Dear Mark

Re Victims' Rights - Internationally and in Australia

I refer to our telephone conversation that resulted in my pledge to provide you with an overview on the evolution of crime victims' rights internationally and across Australia. Please note that I approve you making this letter available to the Coroner and others associated with the inquest into Dianne's death.

Please also know that I was deeply saddened to read about her death and then dismayed by the struggle you and others have endured in an endeavour to seek answers to important questions and attain justice.

Factors that influence discussions on victims' rights

Modern interest in crime victims can be attributed to several personalities and a number of factors, for example:

- The roots of the scientific study of victims, victimisation and so on — often called Victimology — are often attributed to Mendelsohn (1940, 1956; see Walklate, 1989) and von Hentig (1940, 1948; see Elias, 1986), whom Walklate (2007: p. 3) calls 'émigré lawyers'; the criminologists Wolfgang (1957) and Nagel (1963; see van Dijk, 1999); and the psychiatrist Wertham (1949; see Fattah, 1991 and Zedner, 1997).
- The growth of state-funded victim assistance can be traced to the 1950s and 1960s when English magistrate Marjory Fry drew attention to the need to treat victims better. She lobbied for governments to establish crime victim compensation schemes. In 1963 New Zealand introduced the first scheme; followed by England in 1964. Since then States and Territories in Australia, as well as other places, have introduced such schemes.
- In the 1970s, social movements began to pay more attention to crime victims. The women's movement lobbied for the establishment of specialist rape and sex offence crisis centres and women's shelters for female victims of family violence. They also advocated for law reform to protect victims from re-victimisation by criminal justice practitioners and others.

- Crime statistics and victims' responses to national surveys revealed different aspects of the so-called crime problem. Police began to encourage more victims to report crime, while prosecutors wanted to increase the number of victim-witnesses who would give evidence in courts.

These and other factors were prevalent in Australia. In the late 1960s several States introduced state-funded victim compensation schemes for victims of violent crime. In the early 1970s specialist sex offence medical services and women's shelters were established. In 1979 the Victims of Crime Service (VOCS) was founded in South Australia by co-victims of homicide and has since been professionalised and expanded to operate a metropolitan office and seven regional offices in that State. Furthermore, the first Inquiry into Victims of Crime was authorised by the Government of South Australia in 1980 (and reported in 1981). It produced a 'blue-print' for significant reforms. The committee made sixty-seven recommendations of which sixty-five had been acted on by 1985.

Likewise in 1982, the US President appointed a Commission on Victims of Crime that also produced a 'blue-print' for reforms. The commission made sixty-eight recommendations that incorporated a draft constitutional amendment on crime victims' rights.

International Developments on Victims' Rights

As well in 1982, the World Society of Victimology began to advocate with the United Nations for an international declaration on victims' rights. By 1985, the concept had gained great momentum with help from the Australian delegation that attended a Congress in Milan. Then in November 1985 the United Nations General Assembly resolved to adopt and implement the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. This declaration has been described as the Magna Carta on Victims' Rights.

As an aside, Magna Carta, one of the earliest pieces of multi-national law if one takes account of its influence, was put forward by Sir Edward Coke "as the true character of English liberties". Coke was an ardent proponent of common law. He drew on "out-of-date learning in the law" to construct a partly mythical, partly propagandist view that accorded with many elite interests to challenge the prerogatives of the Crown. Notwithstanding this somewhat heretical comment, Magna Carta helped shape the relationship between the governed and the Government. It provided a charter of rights to prevent citizens becoming victims of oppression and of arbitrary decisions of state institutions; thus, it provides for example, the entitlement for an accused to a fair trial. It also set the foundation for a fundamental principle that if presumed rights are ignored or dispensed with, the appropriate action should be taken to restore them. Arguably, Magna Carta gave enforceable rights to victims of abuse of Crown or State power. It could therefore be one of the earliest charters of victims' rights that applied multi-nationally.

Returning to the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, all 157 nations represented at the General Assembly in 1985 committed to improve access to justice and fair treatment, to ensure restitution from the offender and compensation from the state, to also ensure victims are heard when their personal interests are affected and to improve access to material, medical, psychological assistance and other victim support. Since then, the Declaration has been listed as an international human rights instrument.

Alas, despite the Declaration (which is complemented by a guide for policy makers and a guide on best practice examples for implementation), it is still too few victims world-wide who are fortunate enough to receive fair treatment and the promise of access to a victim-oriented justice etc. Victims of crime on cruise ships, especially in international waters and waters of

those nations that have not actively embodied the international declaration in law and practice, are a prime example. Moreover, although the Declaration is a very significant milestone, it lacks an essential ingredient of a true Magna Carta - that is, if the principles of justice are true victims' rights there would be appropriate remedies if those rights were ignored or dispersed with. There are no remedies, however. This is one of the reasons why the World Society of Victimology, international victimological research institutes, other victim-oriented organisations and people - including me - are calling on the international community to agree on a convention on victims' rights.

There are other international instruments relevant to victims' rights. For example, the Basic Principles and Guidelines on the Right to a Remedy and Preparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law that were adopted by the U.N. Human Rights Commission in 2005. This Declaration includes the right to justice and the right to reparations. The protocol on trafficking in human beings that complements the United Nations Convention on Transnational and Organised Crime, the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters as well as the Convention on the Elimination of Discrimination Against Women and the Guidelines on Justice for Child Victims all have clauses that acknowledge victims have rights.

In 2003 the Commonwealth Secretariat produced Guidelines for the Treatment of Victims of Crime; followed in 2005 by the communiqué of the Commonwealth of Nations Senior Law Officer that comprised a Statement of Basic Principles of Justice for Victims of Crime. The Council of Europe and the European Union have also promulgated regional victims' rights instruments.

Victims' Rights in Australia

Australia has nine adversarial criminal justice systems; each based on the English common law. Interest in victims first emerges in the 1960s in the context of debate on state-funded victim compensation. In the 1970s victim assistance, especially for victims of sexual assault and domestic violence but later families of homicide victims, became the focus; followed by victims' rights in the 1980s. A notable step was taken in 1985 when the Government for South Australia promulgated Australia's first declaration on victims' rights. This section of my letter presents a brief overview on the evolution of victims' rights in Australia (see also table enclosed). It also mentions some of the victim assistance programmes that are available.

Australia

The (federal) Government of Australia endorsed the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) and the Commonwealth Nations Statement of Basic Principles of Justice for Victims of Crime (2005). There is no unique federal Declaration or Charter of Victims Rights, although the current Government has stated that it will introduce one. In 1993 the Standing Committee of Attorney Generals (SCAG) endorsed a "National Charter for Victims Rights". The Charter is based on the United Nations Declaration and comprises 10 principles to guide the treatment of victims of crime.

There is no federal generic victim assistance scheme; however, victims can access federal services such as Medicare funded treatment for mental illness. There is a federal victim support programme for victims of trafficking and schemes have been set-up *ad hoc* for victims of terrorism.

Australian Capital Territory

The Australian Capital Territory enacted the Victims of Crime Act in 1994, which sets out principles that, as far as practical and appropriate, govern the treatment of victims of crime.

A public official who breaches a guideline can face disciplinary proceedings within his or her own agency. A Victims of Crime Co-ordinator promotes efficient and effective services to victims of crime and investigates alleged breaches by criminal justice agencies of the principles.

The ACT Assembly has enacted legislation to, amongst other initiatives, appoint a Victims of Crime Commissioner who will have similar functions to the Victims of Crime Co-ordinator but also stronger authorities to act for crime victims.

Victim Support ACT¹ is a government service which helps victims of crime. Its main services are: the Victims Services Scheme (VSS) provides support, counselling and other services; and, the Justice Advocacy Unit (JAU) will help with information, advocacy and assistance with the criminal justice system, your rights and entitlements.

Queensland

Queensland² has recently enacted new victims' rights and victim assistance legislation. The new Act states principles of justice for victims of crime and imposes an obligation on government agencies to develop a strategy on the implementation of the principles. The Act also provides for the appointment of a Victims of Crime Co-ordinator.

VictimAssist, which is a government agency, came into operation in Queensland late last year. It helps victims of crime with financial assistance and is responsible for the co-ordination of victim services, information for victims, training public officials and policy development. If a victim complains about a violation of his or her rights, there should be an investigation by the respective public agency and the result of the investigation must be reported to VictimAssist. Furthermore, public agencies ought to co-operate with VictimAssist in resolving victims' complaints.

Northern Territory

The Victims of Crime Rights and Services Act 2008³ consolidated a range of victim related legislation complementing the Victims of Crime Assistance Act. The Act established the new Crimes Victims Services Unit (CVSU) and the Victims Register. The CVSU administers both the counselling scheme and financial assistance to victims of crime. It also provides administrative support to the Crime Victims Advisory Committee and operates the Victims Register. Furthermore, the CVSU is charged with promoting and overseeing victims' rights, including raising public awareness on these rights.

South Australia

The Victims of Crime Act 2001 in South Australia incorporates the Declaration of Principles Governing Treatment of Victims of Crime. A breach of a principle does not give rise to a criminal or civil proceeding, although public officials and public agencies should take reasonable steps to comply with the declaration. A Commissioner for Victims Rights is an independent statutory officer who (amongst other functions) advises government on how to use its resources to help victims; consults government agencies about victims' needs; helps victims in their dealings with prosecutions, the courts and other government agencies; and participates in certain criminal proceedings for victims in general or specific victims. Another function has been likened to a victim ombudsman.

The State's victim assistance comprises the non-government (but publicly funded) Victim Support Service; non-government and government domestic violence services; a government Rape and Sexual Assault Service and Child Protection Services, as well as a

¹ <http://www.victimsupport.act.gov.au/>

² www.justice.qld.gov.au

³ <http://www.nt.gov.au/justice/victimcrime.shtml>

Road Trauma Support Team and a Homicide Victims Support Group – both non-government but receive public funds.

Western Australia

Western Australia⁴ has a statement on guidelines to protect and support victims of crime in a schedule to the Victims of Crime Act 1994. These guidelines, which apply to public agencies, govern how victims should be treated. Public agencies are expected to apply the guidelines to the extent that it is reasonably practicable. The government minister responsible for the Act is charged with reporting annually to Parliament on its operation. If a victim has a complaint, he or she is encouraged to contact the respective agency first, or the Ombudsman if he or she feels that a public official has not violated the guidelines.

The Liberal Government in that State has announced it is considering several reforms, including giving victims the right to comment on sentence in their impact statements and appointing a victim advocate similar to the Commissioner for Victims' Rights in South Australia.

The government Victim Support Service is the peak victim assistance agency, with a metropolitan service and a state-wide network of contracted service providers. There are also specialist services for victims of sexual assault and family violence, as well as non-government organisations such as groups to support families bereaved by homicide and road crashes.

Victoria⁵

The Victims' Charter Act sets out principles on how the criminal justice system and victim support agencies respond to victims of crime. Disciplinary action can be taken against an official for failure to uphold the principles. The Attorney General must report on the operation of the Act.

The government Victims Support Agency (VSA) represents victims of crime and coordinates a whole-of-government approach to services for victims. It funds state-wide services to provide counselling and practical assistance to help victims of violent crime recover from the effects of crime and links victims to the service system. If a victim of crime believes that any of the principles in the Victims Charter have not been followed, he or she can complain to the VSA, which operates the Victims Charter and Complaint Line.

Tasmania

The Tasmanian Parliament is yet to formally adopt a declaration on victims' rights⁶. Instead, the Parliament has enacted specific legislation on, for instance, victim impact statements and victim compensation. The Justice Department has adopted the UN declaration as guidelines for the treatment of victims of crime. A Victim Assistance Unit, amongst other functions, administers the victims register, liaises with other justice agencies, and provides information and court support to victims, and runs a programme for victims of family violence. It also helps victims to resolve complaints.

In November 2010 the Tasmania Government is hosting a national conference on victims' rights. The programme includes a paper on victims' participatory rights and another on a draft international convention on victims' rights that, as said, is being promulgated by the World Society of Victimology and its partners.

⁴ http://www.dotag.wa.gov.au/V/victims_of_crime.

⁵ <http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/Home/Victims/>

⁶ <http://www.justice.tas.gov.au/victims>

State-funded victim compensation

State-funded victim compensation is a key component of governments' responses primarily to victims of violent crime. Schemes operate in all states and territories, although there are significant variations in the way they are structured. They provide monetary awards to victims of crime in recognition of the harm they have suffered. Despite the Australian Law Reform Commission recommending a federal state-funded victim compensation scheme, Australia still does not have such a scheme.

Concluding commentary

As this letter demonstrates, recent developments in victims' rights have happened against a background of mounting public anxiety about crime and heightened fear of criminal victimisation, as well as victim activism and political responses. There have been a range of responses to victims' needs. Victims are no longer forgotten bystanders in Australia's criminal justice systems. On a more cautionary note, however, it is important to acknowledge that the process of reform remains uneven; for example, the implementation of victims' rights has been patchy across the globe and Australia.

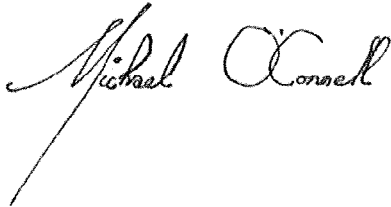
It seems to me vital that the question is asked, what sort of justice do victims of crime that happens on cruises want? In reply, I am mindful that Yael Danieli (2005) has summarised the wants of crime victims in general into four categories, which I will paraphrase:

1. victims want re-establishment of their esteem, dignity and equality of power and value as people
2. victims want relief from the effects and from the stigmatisation, as well as acknowledgement
3. victims want equal rights under law and the provision of justice; and prevention of further victimisation
4. victims want the international community to combat impunity and provide and maintain equal justice and reasonable redress

In considering the question and the application of these categories to crime victims on cruises — indeed as tourists in flight and so on — I plead that institutions such as the Coroner's Court respect crime victims' rights. An inquest affords victims' families the chance to discover answers to important, even 'haunting', questions. Cruise ships return to sea but what about the victim and his or her family.

In closing, I draw inspiration from the late President JF Kennedy, by saying — if the rights of one victim are threatened then the rights of all crime victims are diminished. Let us not forget this in November 2010, the 25 anniversary of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

Yours sincerely

A handwritten signature in black ink, reading "Michael O'Connell". The signature is fluid and cursive, with the first name "Michael" and the last name "O'Connell" clearly distinguishable.

Michael O'Connell
Commissioner for Victims' Rights
South Australia

Victims' Rights in Australia

In 1985, the introduction of the *Declaration on Victims' Rights* in South Australia was seen as deserved recognition that victims were treated poorly in a criminal justice system that depends on their co-operation. In the same year, the United Nations' endorsement of the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* was seen, and still is, as a triumph for victims and their advocates. Since then, other Australian States and Territories have promulgated charters or declarations on victims' rights. Initially these were administrative directions. The Australian Constitution gives the States and self-governing Territories the primary responsibility for crime control and victim assistance. The Australian Capital Territory, New South Wales, Queensland, South Australia, Victoria and Western Australia have now enshrined their charters or declarations in law. Northern Territory provides in law for an administrative charter. Tasmania does not have a charter but endorses the United Nations' declaration. The Commonwealth of Australia does not have a declaration or charter. In 1996, however, the Standing Committee of Attorneys-General agreed to a national charter comprising ten principles of justice for victims of crime. To commemorate the twentieth anniversary of the United Nations' declaration, the Standing Committee of Attorneys-General released a communiqué in July 2005 in which they committed to strengthening victims' rights.

Figure 1 compares the Australian charters or declarations with the United Nations' declaration.

United Nations	Commonwealth Nations	National Charter	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Victims should be treated with compassion & respect for their dignity	Yes See below	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Victims should be informed of their rights in seeking redress		Yes	Yes	Yes		Yes	Yes		Yes	Yes
Victims should be informed of their role and the scope, timing & progress of the proceedings		Yes	Yes	Yes Not required to attend preliminary hearings	Yes	Yes Inconvenience to attend preliminary hearings	Yes Not required to attend preliminary hearings	Yes	Yes	Yes

United Nations	Common-wealth Nations	National Charter	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Victims should be allowed to present their views and have them considered at appropriate stages		Yes	Yes Bail hearings VIS	Yes Bail hearings, charge bargaining, VIS & Parole	Yes Bail hearings; VIS	Yes Bail hearings VIS	Yes Bail hearings VIS & Parole	Yes Bail hearings VIS & Parole	Bail hearings VIS	Yes Bail hearings VIS
Victims should be provided proper assistance throughout the legal process			Yes	Yes	Yes	Yes	Yes			Yes
Measures should be taken to: a) minimise inconvenience to victims b) protect victims privacy and ensure their safety		Yes	Yes	Yes	Yes	Afforded all necessary protection from violence & intimidation	Yes	Yes	Yes	Be informed about the availability of lawful protection
Avoid unnecessary delay in disposition of cases and the execution of orders / decrees granting awards			Yes	Yes		Yes				Yes

United Nations	Common-wealth Nations	National Charter	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Offenders or third parties should, where appropriate, make fair restitution including: a) returning property b) paying for injury, losses & damages			Yes	Yes	Yes	Yes	Yes ss 52 & 53 Crim Law (Sent) Act	Yes	Yes	Yes
Victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted			Yes Victim Assistance e	Yes Victim Compensatio n	Yes Financial Assistance e	Yes CIC	Yes Victim Compensatio n	Yes CIC	Yes Victim Assistance e	Yes CIC

United Nations	Commonwealth Nations	National Charter	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
If compensation is not fully available from the offender or other sources, States should endeavour to provide financial support to a) victims who sustained bodily injury or impairment of physical / mental health b) family of persons who have died or become physically / mentally incapacitated			Yes Financial loss & non-financial (e.g. pain & suffering) limited by offence / victim category	Yes Financial loss & non-financial (e.g. pain & suffering)	Yes Financial Assistance	Yes Financial loss & non-financial loss (e.g. pain & suffering)	Yes Financial loss & non-financial loss (e.g. pain & suffering)	Yes Financial loss & non-financial loss (e.g. pain & suffering)	Yes Financial loss & non-financial loss (e.g. distress in homicide cases & pain & suffering by offence)	Yes Financial loss & non-financial loss (e.g. pain & suffering)
Victims should receive necessary material, medical, psychological & social assistance		Yes	Yes Gov victim service scheme	Yes Gov & funded private counselling		Yes Gov & grants to non-gov victim services	Yes Gov & grant to non-gov victim support service	Yes Gov & grant to non-gov victim support services	Yes Gov referral & assist. scheme	Yes Gov victim support service & contract services
Victims should be informed of the availability of health & social services				Yes		Yes	Yes			Implied

United Nations	Common-wealth Nations	National Charter	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Police, justice, health, social service & others should receive training to sensitise them to victims' needs & to ensure proper & prompt first aid	Yes		Yes			Yes	Not in rights but compulsory police training	Yes		Yes
Attention should be given to victims with special needs arising from race, colour, sex, age, religion, ethnic or social origin, disability etc			Yes	Yes	Yes	Yes	Yes	Implied		Implied

In 2005 the Commonwealth Law Ministers recalled the adoption by the United Nations General Assembly of Resolution 40/34 which recognised "that the victims of crime and the victims of abuse of power, and also frequently their families, and others who aid them, are unjustly subjected to loss, damage or injury and that they may, in addition, suffer hardship when assisting in the prosecution of offenders", and the adoption of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (the Basic Principles). The Commonwealth Law Ministers reaffirmed the principle that victims must be treated with courtesy, compassion and respect for personal dignity. To express their commitment to the Basic Principles, Ministers agreed that member countries would give consideration to the national implementation of measures designed to give practical effect to these Principles, in particular for serious crime. {My emphasis}

Thus, they endorsed a communiqué that states they believe that:-

1. Guidelines and training programmes should be developed to ensure that Police:-

- \$ are sensitive to the needs of victims;
- \$ are informed, knowledgeable, and supportive of existing social services and programmes for victims;
- \$ introduce, to the extent possible, procedures consistent with legal requirements to allow for the prompt return of property to victims, including the consideration of alternative methods of retaining and introducing evidence such as the use of photographs; and

§ establish procedures to ensure that, to the extent possible, victims of crime requiring information are periodically informed of the general status of investigations, taking into consideration the need to ensure the proper administration of justice.

2. Prosecutors, in the exercise of their powers and performance of their duties should:-

- § be sensitised to the fact that public interest should specifically take into consideration the views of victims, including consideration of pre-trial sessions with victims for this purpose, if possible and appropriate;
- § endeavour to provide information to victims – either directly or through another authority – about the status of the case such as scheduling, progress, final outcomes and general reasons for those outcomes;
- § to the extent possible and as appropriate taking into account all of the relevant fair trial interests, bring to the attention of the court the impact of the offence, investigation and the trial process on the victim, the better to inform the court's decisions on bail, adjournments, sentencing, compensation and restitution
- § take appropriate action with respect to any persons who harass, threaten, injure or otherwise attempt to intimidate or retaliate against victims or witnesses, including referring the matter to the police or an application for bail variation, the withdrawal of bail, or the revocation of parole;
- § use a victim and witness on-call system, where practicable, to ensure that victims do not waste time unnecessarily in court;
- § to the extent possible, introduce procedures consistent with legal requirements to allow for the prompt return of property to victims, including the consideration of alternative methods of retaining and introducing evidence such as the use of photographs;
- § establish and maintain liaison with victim support structures; and
- § be sensitised to the trauma and well being of victims of serious crimes.

3. Law Ministers may propose for the consideration of the Chief Justices and other members of the Judiciary of their respective jurisdictions, the following suggestions that they believe will assist in the achievement of national adherence to the Basic Principles:-

- § encouraging participation in a training programme sensitising judges to the needs and interests of victims of crime in relation to the judicial process;
- § allowing victims and witnesses to be on-call for court proceedings where practicable;
- § in so far as possible, ensuring that their court officials establish separate waiting rooms for prosecution and defence witnesses;
- § means by which members of the judiciary can bear their share of responsibility for reducing court congestion by ensuring that all participants fully and responsibly utilise court time;
- § to allow, to the extent possible and appropriate taking into account all of the relevant fair trial interests, the views, if any, of victims to be made known to the court at bail hearings, postponements, sentencing, restitution or any compensation hearings;
- § sensitising judges, where applicable, to consider ordering restitution to the victim in appropriate cases where such orders are possible;
- § ensuring that, after having given any evidence, the victim's attendance at the trial is facilitated if he or she so wishes and, as requested, a member of the victim's family as well; and

§ giving substantial weight to the victim's interest in the speedy return of property before trial in ruling on the admissibility of photographs of that property as being sufficient evidence.

4. Ministers also agree that they will give consideration to the passage, where necessary or appropriate, of legislation that will assist in the realisation of adherence to the Basic Principles. They further agreed that national consideration should be given to the development of appropriate mechanisms designed to provide assistance to the victims. They recognise that the precise form that such mechanisms could take must remain a matter for national decision, taking into account economic, social and cultural norms of each member country.