



Australian Government

Australian Government response to the
House of Representatives Standing Committee on Social Policy
and Legal Affairs report:

*Reviewing Troubled Waters: Consideration of the
Government Response to the 2012 inquiry into arrangements
surrounding crimes at sea*

September 2016

**AUSTRALIAN GOVERNMENT RESPONSE TO THE HOUSE OF
REPRESENTATIVES STANDING COMMITTEE ON SOCIAL POLICY AND
LEGAL AFFAIRS REPORT *REVIEWING TROUBLED WATERS:
CONSIDERATION OF THE GOVERNMENT RESPONSE TO THE 2012
INQUIRY INTO ARRANGEMENTS SURROUNDING CRIMES AT
SEA***

Introduction

The Australian Government welcomes the further consideration of the House of Representatives Standing Committee on Social Policy and Legal Affairs (the Committee) into arrangements surrounding crimes at sea.

On 25 June 2013, the Committee released its report entitled *Troubled Waters: Inquiry into the arrangements surrounding crimes committed at sea* (‘the Troubled Waters Report’) which provided 11 recommendations relating to the arrangements for the investigation and reporting of crimes committed at sea.

The Government response to the Troubled Waters Report was tabled in November 2014. This followed extensive consultation led by the Attorney-General’s Department. The length of time taken to respond was due to the breadth and complexity of the issues raised and the number of agencies to be consulted. Of the 11 recommendations, the Government accepted two, agreed in principle to four, noted two and did not agree to three.

On 19 December 2014, the Committee resolved to inquire into ‘a matter arising from the 2013-14 Annual Report of the Commonwealth Director of Public Prosecutions, namely Crimes at Sea.’

On 26 March 2015, AGD appeared before a private hearing of the Committee about the response to the Troubled Waters Report, along with representatives from the Australian Federal Police, the cruise industry and Mr Mark Brimble.

On 22 June 2015, the Committee tabled a report *Reviewing Troubled Waters: Consideration of the Government response to the 2012 inquiry into arrangements surrounding crimes at sea* (the ‘Further Report’). The Further Report contains three recommendations (extracted below), which reiterate recommendations from the Troubled Waters Report.

The Government agrees (in principle) to recommendation 2. The Government addressed recommendation 1 and 3 in its response to the Troubled Waters Report and there has been no change to its position since its tabling.

The Government response was informed by further consultation with relevant Commonwealth Government departments and agencies with responsibility for and expertise in matters relating to the maritime sector, including:

- Attorney-General’s Department (AGD)
- Australian Federal Police (AFP)
- The Treasury, including the Australian Bureau of Statistics (ABS)
- Department of Foreign Affairs and Trade, including Austrade (Tourism Division),
- Department of Infrastructure and Regional Development, including the Australian Maritime Safety Authority (AMSA) and the Office of Transport Security, and
- Australian Border Force.

Recommendations

Recommendation 1

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

Not Agreed

In its Troubled Waters Report, the Committee recommended that the Australian Institute of Criminology (AIC) should compile, maintain and publish statistics on crimes at sea by or against Australians (recommendation 1). The above recommendation is similar in intent but removes specific reference to the AIC.

The Government's response to the Troubled Waters Report noted that the proposed collection of statistics will not be accurate or complete as there is no comprehensive data set and approach that the AIC would be able to rely on for the collection of statistics.

This continues to be an issue regardless of which agency is nominated to compile the statistics. Obtaining all data in the possession of local, state, territory or Commonwealth government agencies would require the agreement of the states and territories to provide records. State and territory police do not typically record whether alleged crimes occurred at sea when preparing crime reports. Furthermore, this data is likely to be inaccurate because it would continue to rely upon self-reporting by cruise ship passengers. While the cruise industry maintains records of incidents, these statistics are not independently verifiable.

In preparing this response to the 'Further Report', AGD consulted the ABS as Australia's national statistics collection agency. The ABS agrees with this analysis.

Recommendation 2

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

Agreed in principle

In the Troubled Waters Report, the Committee recommended that the Australian Government legislate for the provision of information to cruise passengers when boarding a cruising vessel at an Australian port (recommendation 5). The Government agreed in principle that there was scope to improve the information provided to passengers boarding cruising vessels at Australian ports. The Government noted, however, that it would engage with major operators to encourage a cooperative approach to the provision of information on a voluntary basis in and report back thereafter.

In the Further Report, the Committee accepted the position expressed in the Government response to the Troubled Waters Report that an industry-led voluntary scheme may be an appropriate alternative to a legislated, mandatory scheme of safety information provision.

The Government will engage with cruise operators in 2016 on the development of an industry-led voluntary scheme to provide safety information to all cruise ship passengers departing from Australia.

Recommendation 3

The Committee recommends that the Australian Government introduce legislation by 30 June 2016 to create mandatory regimes for: the implementation of the IMO Guidelines, crime scene management, and reporting of alleged crimes at sea as per recommendations 7, 8 and 9 from the Committee's Troubled Waters report.

Not Agreed

In its response to the Troubled Waters Report, the Government did not agree to recommendations 7 and 9, following extensive consultation with stakeholders. The Government agreed in principle to recommendation 8, which called on the Government to develop crime scene management protocols.

The response to these recommendations reflected expert advice from relevant agencies that the enforcement of a mandatory regime would be difficult to achieve and could be counterproductive for law enforcement purposes.

In particular, the mandatory reporting of crimes at sea may discourage reporting to Australian authorities if the mandated procedures have not been followed. It would also go beyond the intended purpose of the International Maritime Organisation (IMO) Guidelines, which were adopted on a non-binding basis, to make their use and enforcement by vessel operators a condition of entry into Australian ports.

Enforcement of mandatory regimes as a condition of entry to Australian ports would also be challenging, as ships would necessarily need to enter an Australian port before authorities could establish whether the ship's Master had complied with the law. Refusing entry to Australian ports could also raise serious potential consequences. For example, if a cruise ship was refused entry without prior notice, this could raise issues about re-supply of provisions while the ship remains at sea, as well as interrupting the scheduled boarding and disembarkation of passengers. This risk could undermine the overall goal of cruise ship safety for all passengers. Further, the nature and form of the Guidelines do not lend themselves to mandatory implementation as they were developed to provide general assistance to the Master and crew, who are not trained to conduct police-style investigations.

The Government's view on these recommendations remains unchanged.

The Government appreciates the intent of the Committee's recommendations, and will continue to work through multilateral bodies such as the IMO to develop protocols which will provide a basis for increased communication and cooperation with other countries and with the cruise industry.