

THE “BRIMBLE” RECOMMENDATIONS

The Inquest into the cause and manner of Dianne Brimble’s death was terminated under the provisions of Section 19 Coroners Act 1980 (the old Act).

The inquest has been resumed pursuant to Section 79 Coroners Act 2009 (the new Act) for the purpose of coronial recommendations.

Section 82 (the old Section 22A) provides:

- (1) *A coroner (whether or not there is a jury) or a jury may make such recommendations as the coroner or jury considers necessary or desirable to make in relation to any matter connected with the death, suspected death, fire or explosion with which an inquest or inquiry is concerned*
- (2) *Without limiting subsection (1), the following are matters that can be the subject of a recommendation:*
 - a. *public health and safety,*
 - b. *that a matter be investigated or reviewed by a specified person or body.*
- (3) & (4) *not applicable*

Formal findings of fact were published 30 November 2010. These recommendations should be considered with reference to those findings.

The coroner has been greatly assisted in formulating recommendations by the comprehensive and very relevant submissions of parties to the inquest:

- Mr Mark Brimble and the International Cruise Victims (Australia) Pty Ltd and
- Mr Sheahan SC and his client P&O Cruises Australia

I have given careful consideration to matters raised in each submission and whilst there are some differences, for the most part they are complimentary. Clearly the objectives are the same.

In its submissions P&O Cruises Australia sets the tone for the changes that were very much needed within the cruise industry: I quote from the beginning of their document:

“The death of Ms Brimble was an unexpected tragedy that has affected the lives of many people, most especially her family.

“P&O Cruises Australia (P&O Cruises) has done and continues to do all it that it can to ensure that such a tragic event never occurs again, and that for Ms Brimble there is a legacy of constructive reform.

“Since 2002, and particularly since 2006, P&O Cruises has fundamentally changed its operations. The inquest has been the catalyst for many of these reforms. As P&O Cruises has acknowledged and deeply regrets, there were shortcomings in its response to Ms Brimble’s tragic death. P&O Cruises has sought to ensure that they will never occur again”

Mr Brimble's detailed submission contains extracts from the **International Covenant on Civil and Political Rights**.

He and his Association use the Covenant as a backdrop to weigh in favour of legislative reform of the cruise industry. Significantly he quotes **Article 6(1)** which provides that **"Every human being has the inherent right to life. This right shall be protected by law"**.

Mr Brimble asserts that Article 6 "requires Government to take appropriate steps to safeguard the lives of those within its jurisdiction. Consequently there is a positive obligation to prevent death"

He further submits:

"The Human Rights Committee has stated:

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.

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".

In July 2010, the United State Congress passed the **Cruise Vessel Security and Safety Act** (the 'Kerry' Act).

Difficulties within the cruise industry were identified by a number of sub committees reporting to the Congressional Committee of Inquiry. The Senate and the House of Representatives made formal findings and they are set out in the preamble to the Act. The issues that were identified are the same issues that face Australian Authorities when attempting to regulate in the areas of safety, crime prevention, reporting of crime and its subsequent investigation.

The 'Kerry' Act legislates in the following areas:

- Vessel Design, Equipment, Construction, and Retro Fitting Requirements
- Video recording – maintaining surveillance
- Safety Information – Crime prevention and Response Guide
- Sexual Assault – provision for medical assistance, counselling and other services
- Confidentiality Requirement for all medical, psychological and other related services accessed by passengers/staff
- Controlled Access to Passenger Staterooms
- Maintaining Log Books and Strict Reporting of Crimes. Incident Data to be Reported and Available via Internet
- Importantly there are Enforcement provisions for individuals and corporations that fail in the requirements of the Act.

The facts as they relate to the death of Dianne Brimble illustrate the need for the Australian Federal Government to adopt an identical approach to Federal legislation as the United States Congress.

President Obama signed the Bill into Law on 29 July 2010. The International Cruise Victims Australia with Mr Brimble as its Director, were active and influential in its introduction.

I Recommend that the Australian Federal Government establish a special Parliamentary Committee to consider the same issues that have been addressed in the 'Kerry' Act.

The committee should have specific regard to:

- ***cross jurisdictional issues that face the States, Territories and the Commonwealth***
- ***the overlap of the various Colonial Jurisdictions with power to investigate the 'cause and manner' of death (even extending beyond the limits set by the Crimes at Sea Act) and those of the many State, Territory and Federal Police Forces and other investigative bodies***
- ***the need to adopt the 'Kerry' Act to the specific demographic of this country***
- ***ensuring that when determining the jurisdiction to be the 'lead investigator' into serious crime, that the competency of the jurisdiction to ensure best practice be the foremost consideration***
- ***Flag State status of the vessel be disregarded if that State (Country) is not equipped to undertake the rigor of a thorough and competent investigation***
- ***ensuring that the prosecution of offenders be firmly within the jurisdiction of Australian authorities***

With regard to the latter requirement, it is respectfully suggested that a similar provision to Section 272 of the Criminal Code that provides Australian citizens in foreign countries to be prosecuted for specific sexual offences could be implemented by the Commonwealth to deal with its citizens when travelling on ships registered and controlled outside Australia.

The nature and the mechanics of any provision of this legislation would require detailed analysis by the Commonwealth Attorney General's Department and the various Parliamentary Committees.

Consideration should be given to the use of Federal Police Officers as 'on board' investigators travelling with the ship at all times. It would not be intended that their presence be intrusive but they would be reactive to crime reporting and could ensure a timely investigation. They would also have significant impact on crime prevention.

I recommend that the Federal Parliamentary Committee consider legislating for the attachment of a Federal Police Officer (or Officers) to travel with a ship to ensure a timely and appropriate response to crime.

The Crimes at Sea Act 2000 empowers the State to act in criminal matters up to a distance of 12 nautical miles from the baseline of the State and the Commonwealth beyond 12 and up to 200 nautical miles. This means that when a ship travels

beyond those jurisdictional limits the Flag State of the vessel may be a determinant in the jurisdiction to act.

It appears that this is a significant impediment to the investigative agencies timely understanding of which country has the lead in the criminal investigation. Given that each cruise must be chartered prior to embarkation, consideration should be given to where the jurisdiction would lie at each point in the journey.

Until there is Commonwealth Legislation that can give certainty to the issues of jurisdiction and crime investigation, each State and Territory Police Force should provide guidelines for their investigators.

The guidelines should set out the powers police have to conduct investigations on board ships. The guidelines should re enforce the powers that the Master of the Vessel has in detaining and otherwise dealing with suspects and other miscreants and how they can supplement and support the police.

I recommend that the Federal, State and Territory Police Commissioners devise, in consultation with each other, firm guidelines clearly setting out the geographical jurisdiction of each investigative agency.

The Coroners of each State and Territory should be consulted to ensure the requirements of their respective Coroners Acts are not overlooked particularly when dealing with the coroner's ability to deal with persons who have died, or suspected to have died outside the jurisdictional limits of the Commonwealth.

In recent years there have been a number of deaths reported to the New South Wales State Coroner under the provisions of Section 13C (now Section 18 new Act). The 2000 and 2002 Bali Bombing victims, the Tsunami Victims 2004, the murder of the 'Balibo Five' journalists, the shooting of Private Jake Kovco and many others.

Investigating the death of Dianne Brimble and the resulting inquest was resource poor but complex and challenging for the limits of the State jurisdiction. There is a real and pressing need for these 'mega' inquests to be undertaken by a Federal Coroner who would have the investigative and administrative resources that are lacking at State level. I agree with Counsel Assisting that these significant and important investigations would often have a substantial impact on the Commonwealth.

The Federal Coroner should be a Federal Court Judge to reflect the importance and scope of the role.

I recommend that the Commonwealth Attorney General establish a Federal Coronial Jurisdiction. A Federal Court Judge should be appointed as the Federal Coroner.

The Ports Authority and Australian Customs should increase their drug detection and deterrent procedures to ensure that all passengers, visitors, crew and staff of every ship are properly scanned. Scanning should not be random or target based but every individual should undergo its rigors.

The use of drug detection dogs at each and every port is required.

I recommend that passengers and crew boarding all vessels at Australian ports be subjected to the rigors of drug detection scanning.

I recommend the drug detection dogs be used at all Australian ports.

I adopt the submissions of Mr Brimble and the International Cruise Victim's Association. I support his careful analysis of the industry and the recommendations he believes would equate to best practice.

I also acknowledge the significant improvements to safety and security implemented by P&O Cruises Australia. I commend them for their immediate response to their deficiencies as evidenced at inquest.

The timely and appropriate action has eliminated the need for the coroner to make recommendations on many of the issues of concern.

Whilst I accept Mr Brimble's submission that P&O is only one of many cruise lines that carry Australian citizens and operate in our waters, P&O has undergone substantial reform, no doubt at significant cost but in doing so has ensured its corporate integrity and the comfort and safety of future passengers.

Mr Sheahan has urged the coroner to regard the reforms P&O has introduced as 'best practice for the industry'. Whilst I have no difficulty in doing that, I agree with International Cruise Victims Australia and Mr Brimble that 'best practice' must be seen as complete legislative reform visa vis the 'Kerry' Act.

It should be relatively simple to incorporate the already existing good work of P&O into Federal legislation.

The current protocols that are relied on:

- National Protocols for Reporting Crimes at Sea
- Pacific Islands Chiefs of Police

have no effect at law.

P&O concludes in its submission "the broader adoption across Australian cruise industry of the kinds of reforms that P&O Cruises has voluntarily undertaken in the course of this inquest (and that are envisaged by the Kerry Act), would assist in ensuring the safety and security of all passengers, regardless of the identity of the particular cruise operator." I agree.

I recommend that the Federal Government Committee established to consider the legislative reform of the cruise industry (in the same terms as the 'Kerry'

Act) have regard to the issues and recommendations of Mr Mark Brimble and the International Cruise Victims of Australia. These recommendations are supported by the coroner.

I recommend to that Committee that they have regard to the submission and reforms undertaken by P&O Cruises Australia when considering the development of legislation and policy.

Following a number of concerns that were raised by Professor Dufrou, Institute of Forensic Medicine Glebe, regarding the preservation of the body awaiting post mortem and the collection of specimens needed for forensic medical examination (eg the taking of samples from the 'vitreous humor' to ensure the best possible analysis for drug detection), NSW Health and Commonwealth Health should convene a joint committee to have regard to the needs all aspects of post mortem examination and autopsy.

I recommend that Commonwealth Health and New South Wales Health establish a committee to set 'best practice' guidelines for the preservation of bodies requiring examination 'post mortem' where the death occurs outside the jurisdiction limits of the State, Territories and Commonwealth.

I direct that these recommendations and copies of the submissions for P&O Cruises Australia (withholding sensitive material that is ordered not to be published or displayed) and those of Mr Mark Brimble and International Cruise Victims Association Pty Ltd together with my 'finding; be sent to:

- The Prime Minister
- The Commonwealth Attorney General
- Minister for Infrastructure and Transport
- Minister for Health and Aging
- The Commissioner, Australian Federal Police
- The Premier of New South Wales
- The NSW Attorney General
- Minister for NSW Health
- NSW Police Commissioner

Magistrate Jacqueline M. Milledge
(Former Senior Deputy State Coroner)
3 December 2010