

## BOOK REVIEW

**Kate Lewins, *International Carriage of Passengers by Sea* (Sweet & Maxwell, 2016)  
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Australian maritime law scholarship and jurisprudence has been a long time in developing but over the recent years its scholars and judges are gradually filling the gap and the latest book on maritime law Kate Lewins *International Carriage of Passengers by Sea*, is a welcome addition to that end. The book is comprised of 473 pages spread over five parts, with numerous sub-parts. Lewins is an Associate Professor at Murdoch University, Perth where she has been for almost 20 years and before that she was in practice for many years which gives her wide legal experience to write this book.

Of course it is not the only contribution she has made to maritime law. She has lectured maritime law at Murdoch University for many years, has made a major contribution to the Maritime Law Association of Australia and New Zealand and has been the Director of the International Maritime Law Arbitration Moot since she took the task over from Sarah Derrington many years ago. The IMLAM moot has been the largest and best international maritime moot in the world for many years and being its Director is no mean feat.

The subject matter of the book, the law of carriage of passengers by sea, is important for Australia and more widely. Apart from the large numbers of passengers carried in ferries in Australian waters, the many tourist passengers that travel out daily to the Great Barrier Reef by boat and, of course, more and more cruise ships operate out of Australian ports. The cruise industry makes up a significant part of the Australian economy. Over the period 2015-2016 there were 1,015 cruise ship visits to Australian ports, carrying some 2.76 million passengers who spent A\$1.7 billion dollars (passenger and crew spending, supply of provisions, bunkers and the like).<sup>1</sup> The Australian cruising industry has become one of the fastest growing passenger markets in the world and over the 2013-2014 period it achieved over a 20% increase, with only one other country in the world achieving double digit growth.<sup>2</sup> The number of ships based in Australia during the Southern Pacific cruising season is steadily rising and from December 2016 the Royal Caribbean's newest US\$ 1 billion dollar cruise ship will be based in Sydney for part of each year. This ship, the *Ovation of the Seas*, can accommodate almost 5,000 passengers and about 1,500 crew.<sup>3</sup>

All of this activity means there will be increased litigation and advices sought about legal liability for passengers arising from these numbers going to sea. Those of us who are former mariners are very concerned at the thought of a major calamity with a fully loaded large cruise vessel meeting a major calamity through ship wreck, collision or fire, with perhaps over 6,000 souls on board and only a few hundred of them trained mariners. The loss of life and property could be immense and so this is where Lewin's book is so timely and helpful.

Part 1 of the book addresses the regulation of the industry, both at an international and domestic Australian level, where the author deals with who is defined as a passenger, what international conventions apply, including UNCLOS and SOLAS,<sup>4</sup> and crimes at sea. Each topic is dealt with in great depth throughout the book so the basis of the actual maritime law foundations are described as well as where the maritime law fits in to the whole legal structure.

Crimes occurring at sea on passenger ships when beyond territorial waters presents a vexed problem as to which country has jurisdiction to prosecute and the effective resources and courts in which to do so. In territorial waters the coastal state jurisdiction applies and for Australia the relevant State criminal law applies of its own right out to 12 nautical miles and by force of Commonwealth laws to the 200nm outer limit of the EEZ.<sup>5</sup> Lewins gives a

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<sup>1</sup> Australian Cruise Association, *Economic Impact Assessment of the Cruise Industry in Australia, 2015-2016* (August 2016) Tourism Australia <[http://www.tourism.australia.com/documents/Industry/ACA\\_Cruise\\_EIA\\_2015-16\\_Executive\\_Summary.pdf](http://www.tourism.australia.com/documents/Industry/ACA_Cruise_EIA_2015-16_Executive_Summary.pdf)>.

<sup>2</sup> Inga Ting, 'Australia named world's faster-growing cruise market in the CLIA Report' *Traveller*, (online), May 27 2015, <<http://www.traveller.com.au/australia-named-worlds-fastestgrowing-cruise-market-in-clia-report-gh9u44>>. Of course Australian figures comprise only 4.5% of the world cruise market with North America by far the largest and many of the EU countries coming next.

<sup>3</sup> Annie Dang, 'Ovation of the Seas cruise ship: New, billion-dollar cruise giant to call Australia home', *Traveller* (online), 5 April 2015 <<http://www.traveller.com.au/ovation-of-the-seas-cruise-ship-new-billiondollar-cruise-giant-to-call-australia-home-1mlg0d>>.

<sup>4</sup> *International Convention for the Law of the Sea 1982; International Convention for the Safety of Life at Sea*.

<sup>5</sup> See Michael White, *Australian Offshore Laws* (Federation Press, 2009) ch 4; now available gratuitously for access online by the UQ Library espace <[https://espace.library.uq.edu.au/view/UQ:203661/Australian\\_Offshore\\_Laws.pdf](https://espace.library.uq.edu.au/view/UQ:203661/Australian_Offshore_Laws.pdf)>.

thorough and careful presentation on the applicable criminal law,<sup>6</sup> including on the coronial inquest into the death of the Australian woman Dianne Brimble in the cruise liner *Pacific Sky* and the later Commonwealth Parliamentary Inquiry Report tendered in 2013 and the ‘lukewarm response’ by the then Commonwealth government 18 months later. She makes the good point that the Report and government response missed an opportunity to recommend legislative changes to clarify the Australian laws in this regard.<sup>7</sup>

Part 2 moves on to the formation of the contract of carriage for passengers and deals with the statutory regulation of these contracts, including such consumer law as applies to them. The chapter is thorough in dealing not just with the maritime aspects of the law but the fundamentals such as where the contract was formed, the rules as to interpretation of contracts and what statutory intervention may apply, but on consumer law more under.

Part 3 addresses the international conventions relating to passengers claims including giving an excellent description of the *Athens Convention*<sup>8</sup> as to which, despite the efforts made by Lewins and the MLAANZ committee, Australia has still not become a party.

Part 4 moves on to passenger claims, mentioning the likely terms of the contract, the statutory impositions and then deals in turn with claims for personal injury, for property loss or damage and failure to perform the contract by the carrier. When I addressed these issues, in a chapter in one of my books,<sup>9</sup> my research showed that the Caribbean line, one of the biggest companies operating out of Sydney, took every opportunity to avoid or lessen liability that the law allowed, which left passengers few rights to redress wrongs. This is in contrast to the much wider and better rights allowed to citizens when they are ‘consumers’ as opposed to cruise ship passengers. Lewins addresses the aspects of consumer protection very thoroughly starting with the UK and EU laws and moving on to Singapore and other countries, including Australia.<sup>10</sup>

Lewins thoroughness may be illustrated by drawing attention to the many cases of widely transmitted illnesses on board a ship, such as stomach upsets, and she sets out the views of such people as a professor of microbiology of the University of Florida.<sup>11</sup> The book also notes that the CLIA Cruise Industry “Passengers Bill of Rights” states that passengers are entitled, when the ship is offshore, to have full time professional medical attention available on board until they can get to shore side attention.<sup>12</sup> This sort of thoroughness would be very helpful to anyone called on to advise, prosecute or defend a class action about the negligence of the ship management allowing this sort of infection to occur and spread on board.

The final Part, Part 5, turns to the practical aspects of making claims in Australia, Singapore and England by addressing initiating proceedings, time bars within which they must be commenced and the jurisdiction in various countries of various courts. Her sections on forum shopping should be useful to many a practitioner called on to deal with these difficult international law matters.<sup>13</sup>

The book concludes with reproducing 10 of the important international conventions, protocols, decisions and regulations. This is very helpful as the reader can refer to the details of them in the one manuscript and not rely on online editions which are not necessarily up to date or accurate.

Before concluding I mention the heartening development advances made in maritime scholarship and jurisprudence in Australia in recent times. The highly regarded Davies & Dickey *Shipping Law*, 4<sup>th</sup> edition, has appeared in both hard and e-form (Law Book Co), Derrington & Turner’s *The Law and Practice of Admiralty Matters*, 2<sup>nd</sup> edition, has been published in England (OUP), which is mainly UK Admiralty Law but also covers the Australian legislation and cases. Damien Cremean’s major contribution with his *Admiralty Jurisdiction Law and Practice*, 4<sup>th</sup> edition (Federation Press) and my colleagues Professors Nick Gaskell and Craig Forrest’s detailed and insightful article on the law of wreck and the Wreck Removal Convention 2007 in *Lloyds Maritime Commercial Law Quarterly*.<sup>14</sup> There is also a steady stream of scholarly addresses and other articles, not least of which is the Nicholas J Healy Lecture, organised by the CMI Association of the US, by the Honourable James Allsop, Chief Justice of the Australian Federal Court, “Comity and Unity in Maritime Law.” He addresses the

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<sup>6</sup> Kate Lewins, *International Carriage of Passengers by Sea* (Sweet & Maxwell, 2016) 28 [1-028] (‘Lewins’).

<sup>7</sup> Lewins, 29 [1-031].

<sup>8</sup> *Convention for the Carriage of Passengers by Sea*, done at Athens in 1974, and its 2002 Protocol.

<sup>9</sup> Michael White *Australian Maritime Law* (Federation Press, 3<sup>rd</sup> ed, 2014) ch 5.

<sup>10</sup> Lewins, 204-243 [4-032]-[4-076].

<sup>11</sup> Lewins, 188 [4-107].

<sup>12</sup> Lewins, 199 [4-026].

<sup>13</sup> Lewins, 318 [5-055]-[5-059]; The ‘Contents’ of the book goes a bit awry on the para numbering here but the contents of the chapter are perfectly sound.

<sup>14</sup> Nick Gaskell and Craig Forrest, ‘The Wreck Removal Convention 2007’ [2016] *LMCLQ* 49.

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topic of comity amongst international jurisdictions and its application in domestic law in various countries, published in the *Journal of Maritime Law and Commerce* (2016) Vol 47, 295.

To conclude then about this recent addition to Australian maritime law. Kate Lewins' book *International Carriage of Passengers by Sea* has made a major contribution to Australian scholarship and she is to be commended for it. The book is exceptionally well researched and written covering this important and growing topic of passengers at sea. No maritime academic, practitioner, regulator or law library should be without it.